

**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Parts 1, 3, 4, 13, 31, 52, and 53**

[FAR Case 93-009]

**Federal Acquisition Regulation;  
Contingent Fee Representation**

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing revising the Federal Acquisition Regulation (FAR) to delete the provision requiring an offeror to provide a contingent fee representation and agreement and to submit a statement of contingent or other fees. Also, the proposed rule rescinds the information collection requirement under Office of Management and Budget (OMB) Clearance Number 9000-0003, Contingent Fee Representation. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**DATES:** Comments should be submitted on or before January 12, 1996, to be considered in the formulation of a final rule.

**ADDRESSES:** Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., Room 4037, Washington, DC 20405.

Please cite FAR case 93-009 in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ralph DeStefano at (202) 501-1758 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAR case 93-009.

**SUPPLEMENTARY INFORMATION:****A. Background**

FAR 3.404(b) requires the contracting officer to insert the provision at 52.203-4, Contingent Fee Representation and Agreement, in all solicitations, with five exceptions. The provision requires offerors to provide a contingent fee representation as requested by the contracting officer. When the representation is answered

affirmatively, the offeror must also provide a complete Standard Form (SF) 119, Statement of Contingent or Other Fees or a signed statement indicating the SF 119 was previously submitted to the same contracting office. The proposed rule revises FAR 3.404 to remove the solicitation provision and removes the accompanying subparts 3.406, 3.407, and 3.408 which deal with the SF 119. FAR 3.409 and 3.410 have been renumbered.

**B. Regulatory Flexibility Act**

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* There is a slight beneficial impact on small entities since offerors will no longer be required to provide contingent fee representations and agreements or to submit statements of contingent or other fees. The contingent fee underlining policy still remains in place. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601 *et seq.* (FAR case 93-009), in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act (Pub. L. 104-13) does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Parts 1, 3, 4, 13, 31, 52, and 53

Government procurement.

Dated: November 3, 1995.

C. Allen Olson,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR Parts 1, 3, 4, 13, 31, 52, and 53 be amended as set forth below:

**PART 1—FEDERAL ACQUISITION  
REGULATIONS SYSTEM**

1. The authority citation for 48 CFR Parts 1, 3, 4, 13, 31, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

**1.106 [Amended]**

2. Section 1.106 is amended in the list of "FAR Segments" and "OMB Control Numbers" following the introductory text by removing "52.203-4" and "9000-0003", and "SF 119" and "9000-0003".

**PART 3—IMPROPER BUSINESS  
PRACTICES AND PERSONAL  
CONFLICTS OF INTEREST**

3. Section 3.404 is revised to read as follows:

**3.404 Contract clause.**

The contracting officer shall insert the clause at 52.203-5, Covenant Against Contingent Fees, in all solicitations and contracts exceeding the simplified acquisition threshold in part 13 other than those for commercial items (see parts 2 and 12).

**3.405 through 3.408-2 [Removed]**

4. Sections 3.405 through 3.408-2 are removed.

**3.409 and 3.410 [Redesignated as 3.405  
and 3.406]**

5. 3.409 and 3.410 are redesignated as 3.405 and 3.406.

6. The newly designated 3.406 is amended by revising the first sentence to read as follows:

**3.406 Records.**

For enforcement purposes, agencies shall preserve any specific evidence of one or more violations of 3.405(a), together or with all other pertinent data, including a record of actions taken.

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**PART 4—ADMINISTRATIVE MATTERS**

7. Section 4.803 is amended by revising (a)(11) to read as follows:

**4.803 Contents of contract files.**

\* \* \* \* \*

(a) \* \* \*

(11) Contractor's certifications and representations.

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**PART 13—SIMPLIFIED ACQUISITION  
PROCEDURES****13.111 [Amended]**

8. Section 13.111 is amended by removing paragraph (c) and redesignating paragraphs (d) through (j) as (c) through (i).

**PART 31—CONTRACT COST  
PRINCIPLES AND PROCEDURES****31.205-38 [Amended]**

9. Section 31.205-38 is amended at the end of paragraph (f) by removing the parenthetical "(see 3.408-2)".

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**PART 52—SOLICITATION PROVISIONS  
AND CONTRACT CLAUSES****52.203-4 [Reserved]**

10. Section 52.203-4 is removed and reserved.

**52.203-5 [Amended]**

11. Section 53.203-5 is amended in the introductory paragraph by removing “3.404(c)” and inserting “3.404”.

**PART 53—FORMS****53.203 [Amended]**

12. Section 53.203 is amended by removing paragraph (a) and the designation of paragraph (b).

**53.301-119 [Removed]**

13. Section 53.301-119 is removed.

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