

Homeland Security Department

3009.171-4

Felony means an offense which, if committed by a natural person, is punishable by death or imprisonment for a term exceeding one year.

Convicted of a felony means any conviction of a felony in violation of state or federal criminal statutes, including the Uniform Code of Military Justice, whether entered on a verdict or plea, including a plea of *nolo contendere*, for which a sentence has been imposed.

Individual means any person, corporation, partnership, or other entity with a legally independent status.

[74 FR 58856, Nov. 16, 2009]

3009.171-3 Determination of eligibility for award of FPS guard service contracts.

(a) Contracting officers shall make a determination of eligibility for award of FPS guard service contracts upon identification of the apparent successful offeror as a result of a solicitation for offers.

(b) Contractors shall be required to immediately notify the contracting officer in writing upon any felony conviction of personnel who own, control or operate a business concern as defined in (HSAR) 48 CFR 3009.171-4 at any time during the duration of an Indefinite Delivery/Indefinite Quantity Contract, Blanket Purchase Agreements, or other contractual instrument that may result in the issuance of task orders or calls, or exercise of an option or options to extend the term of a contract. Upon notification of a felony conviction, the contracting officer shall review and make a new determination of eligibility prior to the issuance of any task order, call or exercise of an option.

[74 FR 58856, Nov. 16, 2009]

3009.171-4 Determination of ownership, control, or operation.

(a) Whether an individual owns, controls, or operates a business concern is determined on the specific facts of the case, with reference to the factors identified in paragraphs (b) and (c) of this subsection. Prior to contract award, such individual must provide any additional documentation to the contracting officer upon the contracting officer's request for the agency's use in

determining ownership, control, or operation. The refusal to provide or to timely provide such documentation may serve as grounds for the contracting officer to refuse making contract award to the business concern.

(b) Any financial, voting, operational, or employment interest in the business concern of a spouse, child, or other family member of, or person sharing a household with, the individual will be imputed to the individual in determining whether and the extent to which the individual owns, controls, or operates the business concern.

(c) An individual owns, controls, or operates a business concern by fulfilling or holding the following types of roles or interests with respect to the business concern:

(1) Director or officer, including incumbents of boards and offices that perform duties ordinarily performed by a chairman or member of a board of directors, a secretary, treasurer, president, a vice president, or other chief official of a business concern, including Chief Financial Officer, Chief Operating Officer, or Chief contracting official.

(2) Officials of comparable function and status to those described in paragraph (c)(1) of this subsection as exist in partnerships of all kind and other business organizations, including sole proprietorships.

(3) A general partner in a general or limited partnership.

(4) An individual with a limited partnership interest of 25% or more.

(5) An individual that has the:

(i) Power to vote, directly or indirectly, 25% or more interest in any class of voting stock of the business concern;

(ii) Ability to direct in any manner the election of a majority of the business concern's directors or trustees; or

(iii) Ability to exercise a controlling influence over the business concern's management, policies, or decision making.

(d) Generally, the existence of one or more of the roles or interests set forth in paragraph (c) of this subsection, including roles or interests attributed to