

3009.171-5

the individual, will be sufficient to determine that the individual owns, controls or operates the business concern. However, specific facts of the case may warrant a different determination by the contracting officer, where, for example, an indicator in paragraph (c) of this subsection, in light of all of the facts and circumstances, suggests that the individual lacks sufficient authority or autonomy to exert authority customarily associated with ownership or control or the assertion of operational prerogatives (e.g. the individual is one of twenty on a board of directors, plays no other role, and holds no other interest). Conversely, ownership, control, or the ability to operate the business concern, if it exists in fact, can be reflected by other roles or interests.

[74 FR 58856, Nov. 16, 2009]

3009.171-5 Serious felonies prohibiting award.

(a) Only serious felony convictions will prohibit a business concern from being awarded a contract for FPS guard services. Serious felonies that will prohibit contract award are any felonies that involve dishonesty, fraud, deceit, misrepresentation, or deliberate violence; that reflect adversely on the individual's honesty, trustworthiness, or fitness to own, control, or operate a business concern; that cast doubt on the integrity or business ethics of the business concern; or are of a nature that is inconsistent with the mission of FPS, including, without limitation, those felonies listed in paragraphs (b)(1) through (12) of this subsection.

(b) The following is a list of offenses determined by DHS to be serious felonies for purposes of the Federal Protective Service Guard Reform Act of 2008. Except as provided in (HSAR) 48 CFR 3009.171-7(f), award of a contract for FPS guard services will not be made to any business that is owned, controlled, or operated by an individual who has been convicted of a felony involving:

(1) Fraud of any type, including those arising out of a procurement contract, cooperative agreement, grant or other assistance relationship with the federal, state or local government, as well as, without limitation, embezzlement, fraudulent conversion, false claims or

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statements, kickbacks, misappropriations of property, unfair or deceptive trade practices, or restraint of trade;

(2) Bribery, graft, or a conflict of interest;

(3) Threatened or actual harm to a government official or family member;

(4) Threatened or actual harm to government property;

(5) A crime of violence;

(6) A threat to national security;

(7) Commercial bribery, counterfeiting, or forgery;

(8) Obstruction of justice, perjury or subornation of perjury, or bribery of a witness;

(9) An attempt to evade or defeat Federal tax;

(10) Willful failure to collect or pay over Federal tax;

(11) Trafficking in illegal drugs, alcohol, firearms, explosives, or other weapons;

(12) Immigration violations (e.g., 8 U.S.C. 1324, 1324c, 1326); and

(13) Any other felony that involves dishonesty, fraud, deceit, misrepresentation, or deliberate violence; that reflects adversely on the individual's honesty, trustworthiness, or fitness to own, control, or operate a business concern; that casts doubt on the integrity or business ethics of the business concern; or is of a nature that is inconsistent with the mission of FPS.

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3009.171-6 Guidelines for contracting officers.

(a) In accordance with FAR Subpart 9.4 (48 CFR subpart 9.4), a contracting officer may not award a contract for FPS guard services to any business concern that is suspended, debarred or proposed for debarment unless the agency head determines that there is a compelling reason for such action.

(b) The contracting officer shall not award a contract for FPS guard services to any business concern that is otherwise nonresponsible on the same contract.

(c) The contracting officer shall not award an FPS guard services contract to any business concern that is owned, controlled or operated by an individual convicted of a serious felony as defined in (HSAR) 48 CFR 3009.171-5 except as