

provided in under (HSAR) 48 CFR 3009.171-7.

(d) In considering an award request under (HSAR) 48 CFR 3009.171-7, the contracting officer may not review the fact of the conviction itself, but may consider any information provided by the individual or business concern, and any information known to the contracting officer. Factors that the contracting officer may consider include, but are not limited to:

- (1) The age of the conviction.
- (2) The nature and circumstances surrounding the conviction.
- (3) Protective measures taken by the individual or business concern to reduce or eliminate the risk of further misconduct.
- (4) Whether the individual has made full restitution for the felony.
- (5) Whether the individual has accepted responsibility for past misconduct resulting in the felony conviction.

[74 FR 58856, Nov. 16, 2009]

**3009.171-7 Contract award approval procedures for contractors with felony convictions.**

(a) The HCA has sole discretion to approve a request to permit award of a contract for FPS guard services to a business concern owned, controlled, or operated by an individual convicted of a felony, for any reason permitted by this regulation. This authority is not delegable.

(b) A business concern owned, operated or controlled by an individual convicted of any felony (including a serious felony) may submit an award request to the contracting officer. The basis for such request shall be that the subject felony is not a serious felony as defined by this regulation; that such individual does not or no longer owns, controls or operates the business concern; or that the commission of a serious felony no longer poses the contract risk the Act and this regulation were designed to guard against. The business concern shall bear the burden of proof for award requests.

(c) A copy of the award approval request with supporting documentation or a previously approved award request shall be attached with the bid or proposal.

(d) An award approval request shall contain the basis for the request, including, at a minimum, the following information:

- (1) Name and date of birth of individual convicted of a felony;
- (2) A full description of which roles or interests indicate that the individual owns, controls, or operates, or may own control or operate the business concern;
- (3) Date sentenced;
- (4) Statute/Charge;
- (5) Docket/Case Number;
- (6) Court/Jurisdiction;
- (7) The nature and circumstances surrounding the conviction;
- (8) Protective measures taken by the individual or business concern to reduce or eliminate the risk of further misconduct;
- (9) Whether the individual has made full restitution for the felony; and
- (10) Whether the individual has accepted responsibility for past misconduct resulting in the felony conviction.

(e) If the contracting officer is unable to affirmatively determine that the subject felony is not a serious felony as defined in (HSAR) 48 CFR 3009.171-5; that such individual no longer owns, controls or operates the business concern; or that the commission of a serious felony no longer calls into question the individual or business concern's integrity or business ethics and would be consistent with the mission of FPS, then the contracting officer shall deny the award approval request and not forward such request to the HCA.

(f) For a felony that meets any of the following conditions, the contracting officer shall refer the award request, with a copy of the contracting officer's determination, to the HCA with a recommendation for approval:

- (1) The subject felony is not a serious felony as defined by this regulation;
- (2) The convicted individual does not or no longer owns, controls or operates the business concern; or
- (3) The commission of a serious felony no longer calls into question the individual or business concern's integrity or business ethics and that an award would be consistent with the mission of the FPS.

**3009.171-8**

(g) The HCA shall make a final written decision on the award approval request following referral and after any necessary additional inquiry.

[74 FR 58856, Nov. 16, 2009]

**3009.171-8 Ineligible contractors.**

Any business concern determined to be ineligible for award under (HSAR) 48 CFR 3009.171-5 to 3009.171-7 shall be ineligible to receive a contract for guard services under the FPS guard program until such time as:

(a) The concern demonstrates that it has addressed and resolved the issues that resulted in the determination of ineligibility, and

(b) The HCA approves an award request under (HSAR) 48 CFR 3009.171-7.

[74 FR 58856, Nov. 16, 2009]

**3009.171-9 Clause.**

Insert the clause (HSAR) 48 CFR 3052.209-76, Prohibition on Federal Protective Service guard services contracts with business concerns owned, controlled, or operated by an individual convicted of a felony, in all solicitations and contracts for FPS guard services.

[74 FR 58856, Nov. 16, 2009]

**Subpart 3009.4—Debarment, Suspension, and Ineligibility**

**3009.470 Reserve Officer Training Corps and military recruiting on campus.**

**3009.470-1 Definition.**

*Institution of higher education* as used in this section, means an institution that meets the requirements of 20 U.S.C. 1001 and includes all subelements of such an institution.

**3009.470-2 Policy.**

(a) Except as provided in paragraph (b) of this subsection, 10 U.S.C. 983 prohibits the Department of Homeland Security from providing funds by contract or grant to an institution of higher education if the Secretary of Defense determines that the institution has a policy or practice that prohibits or in effect prevents—

(1) The Secretary of a military department from maintaining, estab-

**48 CFR Ch. 30 (10-1-10 Edition)**

lishing, or operating a unit of the Senior Reserve Officer Training Corps (ROTC) at that institution;

(2) A student at that institution from enrolling in a unit of the Senior ROTC at another institution of higher education;

(3) The Secretary of a military department or the Secretary of Homeland Security from gaining entry to campuses, or access to students on campuses, for purposes of military recruiting; or

(4) Military recruiters from accessing certain information pertaining to students enrolled at that institution.

(b) The prohibition in paragraph (a) of this subsection does not apply to an institution of higher education if the Secretary of Defense determines that—

(1) The institution (and each subelement of that institution) has ceased the policy or practice described in paragraph (a) of this subsection; or

(2) The institution involved has a long-standing policy of pacifism based on historical religious affiliation.

**3009.470-3 Procedures.**

Whenever the Secretary of Defense determines that an institution of higher education (including any subelement of such institution) is ineligible and the provisions of 10 U.S.C. 983 apply:

(a) The Secretary of Defense will list the institution on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs published by the General Services Administration (also see (FAR) 48 CFR 9.404 and 32 CFR part 216); and

(b) The Department of Homeland Security—

(1) Shall not solicit offers from, award contracts to, or consent to subcontracts with the institution;

(2) Shall make no further payments under existing contracts with the institution; and

(3) Shall terminate existing contracts with the institution.

**3009.470-4 Contract clause.**

Insert the clause at (HSAR) 48 CFR 3052.209-71, Reserve Officer Training