

**3009.171-8**

(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.

(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]

**48 CFR Ch. 30 (10-1-14 Edition)**

**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, establishing, 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—

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(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 Corps and Military Recruiting on Campus, in all solicitations and contracts with institutions of higher education.

[68 FR 67871, Dec. 4, 2003, as amended at 71 FR 25769, May 2, 2006]

## Subpart 3009.5—Organizational and Consultant Conflicts of Interest

### 3009.507 Solicitation provision and contract clause. [Reserved]

#### 3009.507-1 Solicitation provision.

The contracting officer shall insert a provision substantially the same as (HSAR) 3052.209-72, Organizational Conflict of Interest, in solicitations and contracts where a potential organizational conflict of interest exists and mitigation may be possible. The contracting officer shall ensure the conditions enumerated in (FAR) 48 CFR sub-

part 9.5 warrant inclusion. The contracting officer shall include the information required by (FAR) 48 CFR 9.507-1 and (HSAR) 3052.209-72(a).

[71 FR 25769, May 2, 2006]

#### 3009.507-2 Contract clause.

The contracting officer shall insert a clause substantially the same as the clause at (HSAR) 48 CFR 3052.209-73, Limitation of Future Contracting, in solicitations and contracts when a potential organizational conflict of interest exists and mitigation is not feasible.

[71 FR 25769, May 2, 2006]

### 3009.570 Limitations on contractors acting as lead system integrators.

#### 3009.570-1 Definitions.

“Direct Financial Interest,” as used in this section, is defined in the clause at HSAR 48 CFR 3052.209-75, Prohibited Financial Interests for Lead System Integrators.

“Lead system integrator,” as used in this section, is defined in the clause at (HSAR) 48 CFR 3052.209-75, Prohibited Financial Interests for Lead System Integrators.

[75 FR 41099, July 15, 2010]

#### 3009.570-2 Policy.

(a) Except as provided in paragraph (b) of this subsection, under 6 U.S.C. 396, no entity performing lead system integrator functions in the acquisition of a major system (See (HSAR) 48 CFR 3002.101) by DHS may have any direct financial interest in the development or construction of any individual system or element of any system of systems under the program in which the entity is performing lead system integrator functions.

(b) The prohibition in paragraph (a) of this subsection does not apply if—

(1) The Secretary of Homeland Security certifies to the Committees on Appropriations of the Senate and the House of Representatives, the Committee on Homeland Security of the House of Representatives, the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the