

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 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.

Parent topic: Subpart 3009.1—Responsible Prospective Contractors