

**NDA FY22 and FY24
Employee Stock Ownership Plan Pilot Program FAQ
as of December 10, 2025***

1. What is the ESOP Pilot Program that is Authorized by Section 874 of the FY 22 National Defense Authorization Act (NDAA) as Amended by Section 872 of the FY 2024 NDAA?

The ESOP Pilot Program that is authorized by section 874 of the FY 22 NDAA as amended is a pilot program to provide opportunities for Employee Stock Ownership Plan (ESOP) companies to participate in the federal contracting process.

2. What is an ESOP?

ESOP is a retirement plan that primarily invests in the stock of the sponsoring employer. This structure involves establishing a trust that holds the company shares. Over time, these shares are gradually transferred to the participating employees, typically upon retirement or separation from the company. This model offers a dual benefit, providing tax advantages to both the sponsoring company and the participating employees. S corporations can realize significant tax savings by utilizing ESOP trusts, as profits directed into the trust generally avoid federal income tax due to their exempt status.

3. What businesses qualify for the ESOP Pilot Program?

Qualified businesses must be S corporations as defined in 26 U.S.C. 1361(a)(1) and have 100 percent of the outstanding stock through an ESOP structure as defined in 26 U.S.C. 4975(e)(7). ESOPs must be owned through a trust and not through an individual.

4. Are there specific deadlines or timeframes for applying to the ESOP Pilot Program?

No. The ESOP Pilot Program does not have a set application timeframe or a cutoff date for submitting applications. The program will operate on a rolling basis, allowing applications to be submitted at any time during the duration of the program. Applications will be reviewed and considered for award continuously through the pilot program end date of December 27, 2029.

5. Is there a limit to the number of contracts awarded in Phase II of the ESOP program?

No. There is no limit to the number of contracts that may be awarded through Phase II of the ESOP Pilot Program.

6. Can a company be a Women-Owned Small Business (WOSB) and an ESOP?

No. Due to legal restrictions, a company cannot be both a Women-Owned Small Business (WOSB) and an Employee Stock Ownership Plan (ESOP). ESOPs require stocks be held by a trust, which conflicts with the direct ownership requirements of a WOSB. See 13 CFR § 127.201 for more details. Other small business concerns that require direct ownership may have similar organizational constraints that impact ESOP program eligibility requirements.

*FAQs are a living document updated throughout the duration of the ESOP Pilot Program, please continue to check for the most up-to-date FAQs posted on the website.

7. Do contracting officers (COs) still need approval from the Defense Pricing, Contracting, and Acquisition Policy, Contract Policy Directorate (DPCAP/CP) for each contract proposed for award?

Yes. Approval from DPCAP/CP must be obtained for each contract proposed for award under the ESOP Pilot Program.

8. Can a qualified business receive multiple sole-source awards through this program?

Yes. A qualified business is generally limited to one follow-on contract that will be awarded on a sole-source basis to the incumbent per predecessor contract. However, a waiver can be approved by the head of the contracting activity (HCA) or a delegated to an official at a level no lower than one level above the CO. Such a waiver duly executed will allow for additional sole-source awards to the incumbent contractor.

9. Is the ESOP Pilot Program applicable to contracts below the Simplified Acquisition Threshold (SAT)?

No. The ESOP Pilot Program is not applicable to contracts below the SAT.

10. Is the ESOP Pilot Program applicable to commercial products?

Yes. The ESOP Pilot Program is applicable for the acquisition of commercial products and commercial services excluding commercial off-the-shelf (COTS) items.

11. Can a large business participate in the program?

Qualified businesses may be large or small. To be a qualified business under the Pilot Program, the contractor has to meet the requirements of 26 U.S.C. 1361(a)(1), which defines an S corporation as a small business corporation that has elected to be treated as such under section 1362(a). However, this small business categorization does not necessarily correlate with the small business size standards established by the Small Business Administration under FAR subpart 19.1 Size Standards. While a business's North American Industry Classification System (NAICS) code may be relevant for other federal government contracting programs, the NAICS code does not determine whether a company is eligible for the ESOP pilot program authorized by section 874. There is no direct link between a business's NAICS code and whether the company is eligible for participation in the ESOP pilot program.

12. What is the timeframe from submission to approval of my application package?

DPCAP/CP is estimating 30 days for approval of an application package, provided the submission is clear, accurate and complete. However, the entire approval process may take longer depending on the specific circumstances and complexity of the request.

13. Who can submit an application package for participation in the pilot program?

Only COs awarding contracts for or by the DoW may submit an application to participate in the pilot program.

14. What documentation do I need to submit with the application package?

COs need to submit a completed application form along with all supporting documentation requested in the form and identified in DFARS PGI 270.204(a) as attachments. This includes, but is not limited to, a copy of the contract and modifications (including the Statement of Work), past performance documentation, proof of 100% ownership structure, certification documents, and any additional information specified in the application form. Proof of ownership **must clearly** indicate the company has a 100% ESOP structure. Ensure all required documents are thoroughly reviewed and attached to avoid any delays in the processing of your application.

15. What documents should I submit to provide proof of ESOP ownership?

Some examples of documents that may be submitted to provide proof of 100% ESOP ownership are: Trust Agreement, Trustee Certification, Employee Retirement Income Security Act (ERISA) compliance documents, Summary Plan Description (SPD), Annual ESOP report, and Form 5500. COs must verify that the documentation is official (duly signed by an authorized representative) and **clearly states** the company has a 100% ESOP structure. Internal documents such as PowerPoint presentations and marketing material will not be considered as proof of 100% ESOP eligibility.

16. Is Contract Approval or Other Contract Review as required by the Memorandum for Implementation of Department of Government Efficiency (DOGE) Cost Efficiency Initiative dated June 23, 2005, required prior to submitting my application?

Yes. A requirement that meets the criteria for submission as detailed in the Memorandum for Implementation of Department of Government Efficiency (DOGE) Cost Efficiency Initiative dated June 23, 2025, must be approved by DOGE prior to submitting the ESOP application to DPCAP.

17. Is market research required? Do subcontracting plan requirements apply? Do other contract documentation requirements apply?

Yes. The ESOP Pilot Program does not negate other statutory, regulatory, or policy requirements.

18. How do I submit my application to the program?

COs interested in participating in the pilot program shall submit applications to osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil in accordance with agency procedures.

19. What happens after I submit my application?

After an application is submitted, DPCAP/CP will review it to determine whether the contractor and requirement meet the program's eligibility criteria. If the contractor is eligible for inclusion in the pilot program, DPCAP/CP will respond via email with an acceptance into the program.

20. Are there any scope parameters or dollar limits associated with the follow-on contract?

Follow-on contracts under the pilot program must be for the continued development, production, or provision of products or services that are the same as or substantially similar to the products or services procured by or for the Department of War (DoW) under a prior contract held by a qualified business wholly-owned through an ESOP. To determine the substantial similarity of the work requirements, CO's may compare the plain language of the statement of work of the initial contract to the statement of work and the performance terms to those of the follow-on contract noting any changes to the type of product or services to be provided, the quantity of work, changes to the performance period, and increase and/or decrease in cost. Significant changes in price or a change to the NAICS code and/or Product and Service Code (PSC) typically indicates the work is not substantially similar.

21. How do we calculate whether 50% of the amount paid under the follow-on contract will be expended on subcontracts? Are material costs included?

The limitation on contract performance applies to both services and supplies/products. When a contract includes both services and supplies, and services represents the preponderance of the work, the 50% limitation applies to the service portion of the contract. For supply contracts, the cost of materials (raw materials, parts, subassemblies, components, etc.) is excluded from the limitation on subcontracting.

To calculate the percentage paid by the Government, divide the non-qualified subcontractor costs by the total contract value excluding material costs. Then, multiply this number by 100 to calculate the percentage of contract performance by the nonqualified business.

An example is provided below:

For a proposed \$4M supply contract, the cost of materials is \$1M. Excluding the cost of materials, the work requirement is \$3M. The subcontractor is not a qualified business, and the cost of the subcontract is \$2,000,000. In this scenario, the subcontract represents 67% of amount paid for the contract performance and exceeds the 50% limitation subcontracted to a non-qualified business.

22. Does the qualified business certify at the end of the contract that they did not subcontract more than 50% (as in the certification on Limitation of Subcontracting)?

Please review DFARS 252.270-7001 Pilot Program to Incentivize Contracting with Employee-Owned Businesses—Subcontracting Certification. The certification is required prior to award.

23. Can the preceding contract be awarded by an agency other than DoW in support of a DoW component?

Yes. The predecessor contract can be awarded for DoW by a non-DoW agency, such as through an assisted or direct acquisition through General Services Administration (GSA).

24. Is there a pool of ESOP eligible companies?

Yes. Available to COs only upon request.

25. Do you have a sample/template Justification and Approval (J&A) I can use (applicable to Government personnel only)?

No. DPCAP/CP reviews application packages prior to J&A approval. COs should follow their local procedures for preparing and routing J&As.

26. Who can I contact to obtain further information about the ESOP pilot program?

Any questions, comments, or feedback regarding the ESOP pilot program may be submitted to osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil.