



ACQUISITION
AND SUSTAINMENT

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION
COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING)
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Revision 1, Pilot Program to Incentivize Contracting with Employee-Owned
Businesses

On October 10, 2024, the U.S. Department of Defense (DoD) published a final rule to amend the Defense Federal Acquisition Regulation Supplement to implement Section 874 of the 2022 National Defense Authorization Act (NDAA) as amended by Section 872 of the 2024 NDAA. The rule is set to take effect on November 25, 2024.

The final rule allows the noncompetitive award for certain follow-on contracts to a wholly employee-owned business through an employee stock ownership plan (ESOP) that meets the definition of a “qualified business.” Section 874 as amended defines a “qualified business” as an S corporation (as defined in section 1361(a)(1) of the Internal Revenue Code of 1986) for which 100 percent of the outstanding stock is held through an employee stock ownership plan as defined in section 4975(e)(7) of such code.

Notwithstanding 10 U.S.C. § 3201 (formerly § 2304), Contracting Officers (COs) supporting a program selected for participation in the pilot will be able to award a follow-on contract for the continued development, production or provision of products or services that are the same or substantially similar to those procured by DoD under a previous contract with a “qualified business” under the authority of 10 U.S.C § 3204(a)(5).

Participation in the pilot program is subject to the following:

- To receive an award under the pilot program, the qualified business must have a minimum performance rating of Satisfactory (or the equivalent) for the predecessor contract in the Contractor Performance Assessment Reporting System (CPARS) (see Federal Acquisition Regulation (FAR) Subpart 42.15, Contractor Performance Information). If the predecessor contract is not in CPARS, provide alternative evidence

- of satisfactory performance under predecessor contract.
- The CO shall prepare a justification and approval for each contract approved for award under the pilot program, citing the authority at FAR 6.302-5, Authorized or required by statute.
- The contract must be for the continued development, production, or provision of products or services substantially similar to those procured under the predecessor contract awarded to the contractor by or for DoD.
- Qualified businesses are limited to one sole-source follow-on contract award for each predecessor contract unless the head of the contracting activity grants a waiver.

DoD COs interested in participating in the pilot program must submit a completed application form (Attachment A1) to the DPCAP/CP at osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil in accordance with agency procedures. The email subject line should read: ESOP APPLICATION PACKAGE (Agency Name_Date). DPCAP/CP will respond to submissions within 30 days of receipt. Upon approval by DPCAP/CP, the CO may negotiate and award a follow-on contract without providing for full and open competition under the authority of FAR 6.302-5 and this pilot program pursuant to section 874 as amended.

If accepted into the pilot program, contractors must provide the information in the data collection template (Attachment A2) to the CO. The CO must then submit this completed template to DPCAP/CP at osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil upon completion of 6 months of contractor performance or no later than 30 days after the contract end date, whichever is sooner.

Attachment A3 provides a list of FAQs to address common inquiries and concerns and to assist in understanding and implementing the program. The authority to award contracts under this subpart expires on December 27, 2029. My point of contact is Ms. Adeline Maissonet, DPCAP/CP, who can be reached at osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil.

Sincerely,

TENAGLIA.JOHN.
M.1154945926

Digitally signed by
TENAGLIA.JOHN.M.1154945926
Date: 2025.03.06 17:03:36 -05'00'

John M. Tenaglia
Principal Director,
Defense Pricing, Contracting, and
Acquisition Policy

Attachments:
As stated

ESOP PILOT APPLICATION FORM

Agency	Contractor Name
Predecessor Contract Number	Contractor CAGE
Proposed Contract Number	Business Size
Contract Type	Total Contract Value
Contract Action Expected Award Date	Period of Performance / Delivery
Contracting Officer	
Contracting Officer Email	
Contracting Officer Phone Number	

Description of <u>Prior</u> Requirement	
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Description of <u>Current</u> Requirement	
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The contract must be for the continued development, production, or provision of products or services that are the same as or substantially similar to those procured under the predecessor contract awarded to the contractor by or for DoD.

Question	Response	Notes
Did the business verify its status as a qualified businesses wholly-owned through an Employee Stock Ownership Plan during the predecessor contract? Provide documentation (e.g. Trust Agreement, Trustee Certification, Employee Retirement Income Security Act (ERISA) compliance documents, Summary Plan Description (SPD), Annual ESOP report, Form 5500).		
Did the business represent that no more than 50% of the amount paid under the follow-on contract will be expended on subcontracts?		
Has the business demonstrated satisfactory performance on the predecessor contract, as evidenced by a minimum performance rating of Satisfactory (or the equivalent) in the Contractor Performance Assessment Reporting System (CPARS) for each rating period of the contract's Period of Performance? Provide CPARS documentation. If the predecessor contract is not in CPARS, provide alternative evidence of satisfactory performance under that contract. (See Federal Acquisition Regulation (FAR) Subpart 42.15, Contractor Performance Information)		
Will the Contracting Officer prepare a justification and approval for contract award under the pilot program citing the authority at FAR 6.302-5, Authorized by Statute?		
Is this the first time the contractor is being awarded a contract in the pilot program for this requirement? If no, was a waiver signed by the head of contracting activity (HCA)? Provide copy of HCA waiver.		
Does the Contracting Officer/Agency agree to submit the data collection template at Attachment A2 to osd.pentagon.osd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil upon completion of 6 months of contractor performance or not later than 30 days after the contract end date, whichever is sooner?		
Will the contract include all provisions and clauses associated with the ESOP pilot, specifically 252.270-7000, 252.270-7001, and 252.270-7002?		

Acknowledgement and Certification Statement

I, the undersigned, hereby certify that I understand the requirements of the Employee Stock Ownership Plan (ESOP) pilot program and have reviewed the criteria with the contractor. By signing this document, I attest that all information provided is accurate and factual to the best of my knowledge.

Name	Date	Signature

Data Collection Template

Pilot Program to Incentivize Contracting with Wholly Employee Stock Ownership Plan Businesses

Authorized under Section 874, National Defense Authorization Act for Fiscal Year 2022 As Amended by Section 872, National Defense Authorization Act for Fiscal Year 2024

- I. Program/Contract Information *(Contracting Officer to complete)*
 - A. Cognizant Contracting Activity: *(Buying office, Command, Department or Agency):*
 - B. Description of Requirement: *(Product, quantity, period of performance):*
 - C. Contract value of the requirement:

- II. Prime Contractor Information *(Contracting Officer to complete)*
 - A. Contractor Name:
 - B. Contractor CAGE:
 - C. Business size:

- III. Contractor Feedback *(Contracting Officer to collect answers from participating Contractor and may attach copies of contractor correspondence that address these questions.)*
 - A. How many years has the contractor been wholly-owned by its employee stock ownership plan?
 - B. Has the contractor experienced challenges in attracting and retaining a talented workforce in a competitive market?
 - C. Has the contractor experienced any challenges related to its corporate ownership structure that hinder its ability to contract with the DoD to scale its technologies and capabilities?
 - D. Has the contractor experienced any challenges related to its corporate ownership structure in obtaining capital needed to bridge the funding gap between prototype demonstration and full-scale development?
 - E. What is the contractor's employee retention rate?
 - F. What is the contractor's total retirement plan value?
 - G. What is the average per employee retirement savings?

Pilot Program to Incentivize Contracting with Wholly Employee Stock Ownership Plan Businesses

- IV. Contracting Officer Feedback (*Contracting Officer to complete*)
- A. Summary of contractor performance on prior contract.
 - B. Summary of contractor performance during follow-on contract.
 - C. Identify and discuss any benefits or disadvantages the contracting activity or agency may have experienced using the pilot program.
 - D. Identify any best practices the agency may have implemented as a result of the pilot program.
 - E. Please provide any other feedback or information the agency would like to share on the experience using the pilot program.

**NDAA FY22 and FY24
Employee Stock Ownership Plan Pilot Program FAQ
Revision 1**

- 1. What is the ESOP Pilot Program that is Authorized by Section 874 of the FY 22 National Defense Authorization Act (NDAAs) 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 businesses qualify for the ESOP Pilot Program?**

Qualified businesses are S corporations as defined in 26 U.S.C. 1361(a)(1) for which 100 percent of the outstanding stock is held through an employee stock ownership plan as defined in 26 U.S.C. 4975(e)(7). Qualified businesses may be large or small.
- 3. 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.
- 4. 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.
- 5. 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 100% employee ownership, which conflicts with the ownership requirements of a WOSB. See 13 CFR § 127.201 for more details. Other small business concerns may have similar organizational constraints that impact the ownership eligibility requirements.
- 6. Do contracting officers 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.
- 7. 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 award 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 contracting officer. Such a waiver duly executed will allow for additional sole-source awards to the incumbent contractor.

8. 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.

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

Yes. The ESOP Pilot Program is applicable for the acquisition of commercial products excluding COTS items.

10. Can a large business participate in the program?

Yes.

11. 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.

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

Only DoD contracting officers (COs) may submit an application to participate in the pilot program.

13. Is there an exception to the contracting officer only rule?

No.

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. How do I submit my application to the program?

DoD 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.

16. 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.

17. Are there any parameters or 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 the Department of Defense under a prior contract held by a qualified business wholly-owned through an Employee Stock Ownership Plan. To determine the substantial similarity of the work requirements, Contracting Officer'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.

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

No. Per the NDAA of FY 2022, only contracts "procured by the Department of Defense under a prior contract" held by a wholly owned ESOP qualify for the program.

19. Is there a pool of ESOP eligible companies?

No.