



OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

ACQUISITION
AND SUSTAINMENT

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: Pilot Program to Incentivize Contracting with Employee-Owned Businesses

The Department of Defense (DoD) has established a new pilot program authorized by section 874 of the National Defense Authorization Act for FY 2022 (Pub. L. 117-81) that allows the noncompetitive award for certain follow-on contracts to an employee-owned business that meets the definition of a “qualified business.” Section 874 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 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 § 3201(c)(5).

Participation in the pilot program is subject to the following limitations:

- Contracting officers shall request and obtain approval from Defense Pricing and Contracting (DPC), Contract Policy (CP) for each contract proposed for award under the pilot program, using the procedures in this memorandum.
- Only DoD Contracting Officers may submit an application to participate in the pilot program.
- 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 (see Federal Acquisition Regulation (FAR) Subpart 42.15, Contractor Performance Information).

- Use of the pilot program is authorized for not more than nine entities in accordance with the limitations set forth in the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).
- DPC, CP will accept submissions until April 28, 2023, or until it approves nine contracts for award under the pilot program.
- The contracting officer 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.
- Any follow-on contracts awarded without providing for full and open competition under FAR 6.302-5 and this pilot authority shall be awarded no later than August 31, 2023.
- A qualified business will be limited to a single opportunity for award of a sole source follow-on contract.
- Not more than 50 percent of the amount paid under the follow-on contract may be expended on subcontracts.

DoD contracting officers interested in participating in the pilot program shall submit a completed application template (attachment 1) to osd.pentagon.ousd-a-smbx.dpc-cp@mail.mil, in accordance with agency procedures.

DPC will respond to initial submissions within 30 days of receipt. Upon approval by DPC, CP, the contracting officer 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.

DoD contracting officers approved to participate in the pilot program are required to-

- Obtain the following from each qualified business:
 - Representation that it meets the definition of a qualified business, wholly-owned through an Employee Stock Ownership Plan during the prior contract performance and as a participant in this pilot program;
 - Representation that not more than 50 percent of the amount paid under the contract will be expended on subcontracts.
 - Agreement to provide responses required by the Data Collection Template at Attachment A2, within 30 days of contracting officer request. The contracting officer shall submit such a request upon completion of 6 months of contractor performance or not later than 30 days after the contract end date, whichever is sooner.
- Submit the following, prior to award, to DPC, CP:
 - Confirmation that all pilot program requirements have been met (i.e., required representations and agreements have been collected, and the contractor's past performance ratings on the prior contract are satisfactory or better); and

- Agency agreement to submit the data collection template (attachment 2) to osd.pentagon.ousd-a-smbx.dpc-cp@mail.mil upon completion of 6 months of contractor performance or not later than 30 days after the contract end date, whichever is sooner.

This pilot program remains in effect until December 7, 2026. My point of contact is Ms. Sara Van Gorder, DPC/CP, who may be reached at osd.pentagon.ousd-a-smbx.dpc-cp@mail.mil.

John M. Tenaglia
Principal Director,
Defense Pricing and Contracting

Attachments:
As stated

Application Template

Pilot Program to Incentivize Contracting with Employee-Owned Businesses

Authorized under Section 874, National Defense Authorization Act for Fiscal Year 2022

- I. Program/Prospective Contract Information
 - A. Cognizant Contracting Activity: *(Buying office, Command, Department or Agency):*
 - B. Point of Contact: *(Name, Title, email, telephone number)*
 - C. Description of requirement: *(Product, quantity, period of performance):*
 - D. Contract value of the requirement:

- II. Prime Contractor Information
 - A. Contractor Name:
 - B. Contractor CAGE:
 - C. Business size:
 - D. Existing knowledge of contractor's 100% ownership through an Employee Stock Ownership Plan (ESOP) status:
 - E. Description of prior requirement: *(Product, quantity, period of performance):*
 - F. Summary of contractor performance on prior contract:

- III. Expected Benefit
 - Identify and discuss any expected benefits for the contracting activity or agency if approved to utilize the pilot program.

Data Collection Template**Pilot Program to Incentivize Contracting with Employee-Owned Businesses****Authorized under Section 874, National Defense Authorization Act for Fiscal Year 2022**

- 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 their 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?
- 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.