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To: Defense Acquisition Regulations System, Department of Defense (DoD)
DFARS Case 2024–D004 Public Comments

From: Employee-Owned Contractors Roundtable
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Subject: DFARS Case 2024–D004 – Comments on Proposed Rule to Implement the Pilot Program to Incentivize Contracting with Employee-Owned Businesses

The Employee-Owned Contractors Roundtable (ECR) is a coalition of federal government contractors organized as private subchapter S corporations wholly-owned through an employee stock ownership plan (100% ESOP). ECR member companies provide products and services for the federal government, from manufacturing engines and timing belts to developing some of the most advanced combat simulators and sonar detection technologies. Employee-owned companies provide significant benefits to the U.S. economy and unique advantages to individual employees. Due to this, Congress has supported and promoted ESOPs for decades through various growth mechanisms, including tax policy. ECR works to modernize federal contracting regulations to align with existing federal pro-ESOP objectives by advancing policies to support and expand employee ownership within the federal contracting arena.

Congress authorized the subchapter S corporation ESOP structure over two decades ago to encourage and expand retirement savings by giving American workers the opportunity to have equity in the companies where they work. A subchapter S corporation is a business entity that provides flow-through tax treatment to its shareholders. An ESOP is a qualified defined contribution plan that provides an employee with retirement savings through company stock ownership. ESOPs are regulated by the Department of Labor in accordance with the Employee Retirement Income Security Act just like pension funds, 401(k) plans, and other qualified retirement plans.

As employee ownership in America has grown, employee-owned businesses have consistently provided the economy, their workers, and their customers with unique and tangible benefits. When a company is owned by its employees, important socioeconomic dynamics arise that benefit workers, the company, the community, and the national economy. Because ESOPs are regulated by a strict legal code that requires ownership to be broadly held across employees, from the mailroom to the boardroom, companies that are ESOP-owned – and particularly those that are majority or wholly ESOP-owned – consistently report better job growth, fewer job reductions during economic downturns, and boosted employee savings. Multiple studies underscore the specific value of ESOPs to include:



- Despite the financial stresses caused by the 2008/09 economic downturn and the resulting recession, ESOP-owned companies kept far more jobs than other private companies. According to a 2012 study by Alex Brill, employment among employee-owned firms increased more than 60% from 2001-2011, while the private sector had flat or negative growth in the same period.
- A 2016 study by Jared Bernstein shows that ESOPs promote financial security in the American workforce. Additionally, the study found that by increasing wage-earning employees' share of their business capital, ESOPs reduced the wealth concentration among the top 10 percent of employees by 2.5%.
- A new report released in July of 2024 from Dr. James Hasik highlights the value of federal government contractors organized as private subchapter S corporations wholly owned through an ESOP. The study, titled "Outperform and Outlast, 100% Employee-Owned Contractors Top the Charts", confirms that 100% ESOP federal contractors receive higher Contractor Performance Assessment Rating System scores than all other firms. The study further highlights that 100% ESOP federal contractors are more resilient to acquisition, which helps avoid consolidation of the defense industrial base.

In line with these studies, Congress recognized this unique value proposition of 100% ESOPs and authorized a Pilot Program to Incentivize Contracting with Employee-Owned Businesses in Section 874 of the National Defense Authorization Act (NDAA) for Fiscal Year 2022. With improvements in Section 872 of the FY24 NDAA, Sec. 874/Sec. 872 provides authority for the Department of Defense (DoD) to establish a pilot program allowing contracting officers the option to award a sole source follow-on contract of similar substance to 100% ESOPs. To qualify, the 100% ESOP must be the incumbent and have received a "satisfactory" or above rating in the applicable past performance database.

Rulemaking to Authorize Contracts by and For Department of Defense Customers

ECR applauds the efforts of DoD in conducting rulemaking to establish the pilot program that incentivizes contracting with employee-owned businesses. The proposed rule, published in the Federal Register on May 30, 2024, amends the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Sec. 874 of the FY22 NDAA as well as the improvements contained in Sec. 872 of the FY24 NDAA. By establishing the pilot program in DFARS, the option to use the sole source follow-on authority will be available to DoD contracting officers and contracting officers awarding on behalf of DoD (e.g. Government Services Administration). This is consistent with the statute that allows for the authority to be used for contracts by and for DoD customers.

New Part 270 – Defense Contracting Programs

ECR supports the creation of a new Part 270 - Defense Contracting Programs to facilitate future rules that do not properly fall under DFARS subchapter D, Socioeconomic Programs, and neither implement nor supplement Federal Acquisition Regulations (FAR) Part 19, Small Business Programs, or FAR Parts 22 through 25 (Labor Laws, Environment, Privacy and Freedom of Information Act, Foreign Acquisition). Additionally, ECR agrees with the determination the pilot program should apply to the acquisition of commercial products and commercial services.

Data Collection to Assess Effectiveness of Pilot Program

ECR supports the inclusion in the proposed rule of the statutory requirement of collecting data on the companies awarded sole source follow-on contracts to assess the effectiveness of the pilot program. The process outlined of



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requesting approval from Defense Pricing and Contracting (now Defense Pricing, Contracting, and Acquisition Policy) to use the authority to facilitate collecting the data required by statute is reasonable. ECR member companies who participated in the original uses of the pilot program found the initial data collection to be straight forward and require minimal time. ECR member companies stand ready to support the continued collection of data as well as future efforts of the Government Accountability Office to provide feedback to Congress.

Justification for Exception to Full and Open Competition

ECR appreciates the requirement listed in the Part 270.X02(b) directing contracting officers opting to use the authority for a sole source, follow-on contract to simply cite as the justification FAR 6.302-5, Authorized or required by statute, as the exception to full and open competition. This clarifies and removes the need for any further justification. ECR assesses this is reasonable and in line with implementation of other sole source authorities.

In summary, ECR believes the proposed rule to be thoughtful and consistent with the text and intent of the statute. Thank you for this opportunity to provide feedback on the proposed rule to implement the Pilot Program to Incentivize Contracting with Employee-Owned Businesses.

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