



Proposed Rule for Defense Federal Acquisition Regulation Supplement: Pilot Program to Incentivize Contracting with Employee-Owned Businesses

Congress 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 Sec. 872 of the FY24 NDAA, Sec. 874/Sec. 872 provides authority for the Department of Defense (DoD) to establish a pilot program authorizing contracting officers to award a sole source follow-on contract to 100% ESOPs. To qualify, the ESOP must be the incumbent and received “satisfactory” or above Contractor Performance Assessment Rating System (CPARS) scores.

DoD published a proposed rule in the Federal Register on May 30, 2024, to amend 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 FY24 NDAA. Comments to the proposed rule can be submitted through July 29, 2024. Based on the DoD’s DFARS Operating Guide timeline, the final rule is expected to be published in January 2025.

Some highlights of the proposed rule include:

- Creates 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 FAR Part 19, Small Business Programs, or FAR Parts 22 through 25 (Labor Laws, Environment, Privacy and FOIA, Foreign Acquisition).
- Creates the pilot program under Part 270 providing authority to contracting officers to award a sole source follow-on contract to 100% ESOPs for contracts of similar substance.
- Determines the pilot program can apply to the acquisition of commercial products and commercial services.
- Determines the pilot program cannot be applied to acquisitions at or below the Simplified Acquisition Threshold.
- The following items are included in the proposed rule per the statute:
 - o The DFARS authority will be available to DoD contracting officers and contracting officers awarding on behalf of DoD (e.g. Government Services Administration) as directed in statute.
 - o Includes collecting data on the companies awarded sole source follow-on contracts to assess the effectiveness of the pilot program.
 - o Requires the contracting officer request approval from Defense Pricing and Contracting (now Defense Pricing, Contracting, and Acquisition Policy) to use the authority to facilitate collecting of the data.
 - o Includes a limitation on the percentage of the contract that can be subcontracted.
 - o Authorized for 8 years or until December 27, 2029.

Comments on the proposed rule can be submitted online at the Federal eRulemaking Portal:

<https://www.regulations.gov>. Search for DFARS Case 2024–D004. Select “Comment” and follow the instructions to submit a comment. Please include “DFARS Case 2024–D004” on any comments. Comments must be received on or before July 29, 2024. Comments already submitted can be viewed at <https://www.regulations.gov/document/DARS-2024-0017-0001/comment?sortBy=postedDate>

The Employee-Owned Contractor Roundtable (ECR) is a coalition of federal government contractors organized as private subchapter S corporations wholly-owned through an employee stock ownership plan (ESOP). ECR member companies provide products and services for the U.S. Government, from manufacturing engines and timing belts to developing some of the most advanced combat simulators and sonar detection technologies. ECR members can be located across the entire United States, playing critical roles in several sectors of the American economy. If you would like to discuss the rule or learn more about ECR, please be in touch with Matt Scott at matt.scott@ecrcoalition.com or visit www.ecrcoalition.com