

**Frequently Asked Questions (FAQs)
for DoD Customers on Final Rule Making for the
Pilot Program to Incentivize Contracting with Employee-Owned Businesses
DFARS Open Case 2024-D004**

What is the 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% S Corp ESOPs. To qualify, the ESOP must be the incumbent and received a “satisfactory” rating or above in the applicable past performance database.

What is an Employee Stock Ownership Plan (ESOPs)?

An ESOP is a qualified defined contribution plan that provides a company’s workers with retirement savings through their investments in their employer’s stock, *at no cost to the worker*. ESOPs are regulated by the Department of Labor under the Employee Retirement Income Security Act just like pension funds, 401(k) plans, and other qualified retirement plans. Congress authorized the S corporation ESOP structure over two decades ago to encourage and expand retirement savings by workers providing the opportunity to have equity in the companies where they work.

What is a business wholly-owned through an S Corp ESOP?

A business wholly-owned through an S Corp ESOP means that the employees own 100% of the business. Technically, the S Corp ESOP owns 100% of the business and the employees are the shareholders of the S Corp ESOP.

Where can I find the authority in DFARS?

The final rule was published on October 10, 2024 and will become effective on November 25, 2024. Before November 25, the authority will be incorporated in DFARS in Part 270. The text of the final rule can be found here: [Federal Register :: Defense Federal Acquisition Regulation Supplement: Pilot Program To Incentivize Contracting With Employee-Owned Businesses \(DFARS Case 2024-D004\)](#)

When will I be able to use the authority granted in Sec. 874 / Sec. 872?

The final rule will become effective on November 25, 2024. Prior to that date, the rule will be incorporated into the DFARS.

How can I use the authority granted in Sec. 874 / Sec. 872?

A document called Procedures, Guidance, and Information (PGI) will be published as a companion to Part 270 and will contain additional instructions for how the DoD customers can use the authority granted in Sec. 874 / Sec. 872. The text of the draft PGI is included at the end of this document.

Does the proposed rule include limitations on subcontracting?

Yes. The proposed rule, based on the statute, includes limitations on subcontracting. These limitations include the offeror certifies that in performance of the contract it will not expend more than 50 percent of the amount paid under the contract on subcontracts unless—

- (1) The subcontract is awarded to a qualified business;
- (2) The contract is for products and the subcontract is for materials not available from another qualified business; or
- (3) A waiver is granted.

What is a Qualified Business?

A qualified business means an S corporation 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).

How do I prepare to use the authority in Sec. 874 / Sec. 872?

DoD customers can work with their 100% ESOP contractors to collect the information in the application and data collection template. While the requested information in this document is based on earlier versions from the initial implementation of the pilot program, it is expected the final version in the PGI will be similar.

Who is the DoD POC?

Questions for the initial implementation of the pilot program were directed to Ms. Sara Van Gorder, DPC/CP, osd.pentagon.ousd-a-s.mbx.asdadp-c-contractpolicy@mail.mil.

PGI 270—DEFENSE CONTRACTING PROGRAMS

PGI 270.1—PILOT PROGRAM TO INCENTIVIZE CONTRACTING WITH EMPLOYEE- OWNED BUSINESSES

PGI 270.104 Procedures.

(a) Contracting officers may submit applications for participation in the pilot program to OUSD(A&S), Defense Pricing, Contracting, and Acquisition Policy (DPCAP) (Contract Policy) (DPCAP/CP) via email at osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil. The application shall include the following:

(1) The cognizant contracting activity, including the department or agency, command, awarding contract office, and program office.

(2) A copy of the predecessor contract and modifications, except funding and administrative modifications, and indicate if such contract was awarded pursuant to DFARS [270.1](#).

(3) A description of the proposed follow-on requirement, including the product or service, quantity, and period of performance.

(4) The anticipated contract value.

(5) A copy of any waiver(s) issued.

(b) DPCAP/CP will respond to the contracting officer within 30 days of receipt of the application.

(c) Contracting officers shall not issue a solicitation prior to receipt of DPCAP/CP approval of participation in this pilot program.

(d) Not later than 60 days after the end of the period of performance of the contract, the contracting activity shall submit to DPCAP/CP via email at osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil—

(1) The contractor's response submitted to the contracting officer pursuant to the clause at DFARS [252.270-7002](#), Pilot Program to Incentivize Contracting with Employee-Owned Businesses; and

(2) Information from the contracting officer as follows:

(i) Summary of contractor performance on the predecessor contract.

(ii) Summary of contractor performance on the follow-on contract.

(iii) Identification and discussion of any benefits or disadvantages the activity, department, or agency experienced using the pilot program.

(iv) Any best practices the department or agency implemented as a result of the pilot program.

(v) Any other information the department or agency would like to share regarding its experience utilizing the pilot program.