



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

As you may know, 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 receive “satisfactory” or above Contractor Performance Assessment Rating System (CPARS) scores.

On October 10, 2024, DoD published a final rule 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. The effective date for the final rule is November 25, 2024.

Some highlights of the final rule include:

- Creates 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.

To learn more about the Rule or ECR, please be in touch with Matt Scott at [matt.scott@ecrcoalition.com](mailto:matt.scott@ecrcoalition.com) or visit [www.ecrcoalition.com](http://www.ecrcoalition.com).