



DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 206, 212, 252, and 270

[Docket DARS-2024-0017]

RIN 0750-AM01

Defense Federal Acquisition Regulation Supplement: Pilot Program to Incentivize Contracting with Employee-Owned Businesses (DFARS Case 2024-D004)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement sections of the National Defense Authorization Acts for Fiscal Year 2022 and Fiscal Year 2024 that authorize DoD to establish a pilot program that allows for the noncompetitive award of certain follow-on contracts to certain employee-owned businesses.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2024-D004, using either of the following methods:

- o *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 attached documents.

o *Email:* *osd.dfars@mail.mil*. Include DFARS Case 2024-D004 in the subject line of the message.

Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanette Snyder, telephone 703-508-7524.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to revise the DFARS to implement section 874 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2022 (Pub. L. 117-81; 10 U.S.C. 3204 note) as amended by section 872 of the NDAA for FY 2024 (Pub. L. 118-31; 10 U.S.C. 3204 note). Sections 874 and 872 authorize DoD to establish a pilot program that allows for the noncompetitive award of certain follow-on contracts to employee-owned businesses that meet the definition of a qualified business. The Office of the Under Secretary of Defense (Acquisition and Sustainment), Defense Pricing and Contracting implemented section 874 via a contract policy memorandum dated November 8, 2022.

II. Discussion and Analysis

This rule proposes to add new DFARS part 270, Defense Contracting Programs, to include new subpart 270.X, Pilot Program to Incentivize Contracting with Employee-Owned Businesses, to implement section 874 of the NDAA for FY 2022 and section 872 of the NDAA for FY 2024. This proposed new part 270 will contain contracting programs that are unique to DoD but are not socioeconomic programs such as those located in DFARS part 226, Other Socioeconomic Programs. The proposed subpart 270.X provides the scope, definition, policy, limitations, procedures, solicitation provisions, and contract clause associated with the pilot program. This proposed rule, at DFARS 270.X02, Policy, authorizes contracting officers to award one sole-source, follow-on contract for the continued development, production, or provision of products or services that are the same or substantially similar to those procured under previous contracts awarded by or for DoD to contractors that meet the definition of a qualified business. Although section 874 allows for noncompetitive awards, the proposed rule requires such awards to be supported by written justifications and approvals as required at Federal Acquisition Regulation (FAR) 6.303 and FAR 6.304.

Under the pilot program, contracts are awarded to qualified businesses. Therefore, a definition of "qualified business" is added to DFARS 270.X01, Definition, as follows: 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).

The proposed rule, at 270.X03, Limitations, specifies that—

- Only a contracting officer may submit an application to participate in the pilot program;
- Contracting officers may only award contracts to contractors that meet the definition of a qualified business;
- Contracting officers may only award one sole-source, follow-on contract to a qualified business for each predecessor contract, unless a waiver is obtained; and
- Unless waived, a qualified business shall not pay more than 50 percent of the amount paid by the Government for contract performance to subcontractors that are not qualified businesses, except when the contract is for a product and subcontracts for materials are not available from another qualified business.

Proposed section 270.X00, Scope of subpart, provides references to the NDAA sections implemented by the subpart. In addition, this section also advises contracting officers the authority to award contracts under the pilot program expires on December 27, 2029.

The proposed solicitation provision, 252.270-70WW, Pilot Program to Incentivize Contracting with Employee-Owned Businesses—Representation, requires offerors to represent that they are a qualified business. The proposed solicitation provision, 252.270-70XX, Pilot Program to Incentivize Contracting with Employee-Owned Businesses—Subcontracting

Certification, requires offerors to certify that they will comply with the limitations on subcontracting.

The proposed contract clause, 252.270-70YY, Pilot Program to Incentivize Contracting with Employee-Owned Businesses, requires contractors to comply with the limitations on subcontracting. In addition, the clause specifies the information contractors are required to report to contracting officers not later than 30 days after the end of the period of performance of the contract.

Changes are proposed at DFARS 206.302-5 to add the pilot program to the list of authorities agencies may utilize to justify the use of other than full and open competitive procedures. Changes are also proposed at DFARS 212.301 to add the proposed solicitation provisions and contract clause to the list of provisions and clauses that apply to DoD solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT), for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), and for Commercial Services

This proposed rule proposes two new provisions and a new clause to implement the requirements of section 874 of the NDAA for FY 2022 (Pub. L. 117-81; 10 U.S.C. 3204 note) as amended by section 872 of the NDAA for FY 2024 (Pub. L. 118-31; 10 U.S.C. 3204 note): (1) DFARS clause 252.270-70WW, Pilot Program to Incentivize Contracting with Employee-Owned Businesses-

Representation; (2) DFARS 252.270-70XX, Pilot Program to Incentivize Contracting with Employee-Owned Businesses— Certification; and (3) DFARS 252.270-70YY, Pilot Program to Incentivize Contracting with Employee-Owned Businesses. The provisions and clause at DFARS 252.270-70WW, 252.270-70XX and 252.270-70YY are prescribed at DFARS 270.X05 for use in solicitations and contracts for approved acquisitions under the Pilot Program to Incentivize Contracting with Employee-Owned Businesses. DoD does not intend to apply the proposed rule to contracts at or below the SAT. DoD does intend to apply the proposed rule to contracts for the acquisition of commercial products, excluding COTS items, and commercial services.

A. Applicability to Contracts at or Below the Simplified Acquisition Threshold

41 U.S.C. 1905 governs the applicability of laws to contracts or subcontracts in amounts not greater than the simplified acquisition threshold. It is intended to limit the applicability of laws to such contracts or subcontracts. 41 U.S.C. 1905 provides that if a provision of law contains criminal or civil penalties, or if the Federal Acquisition Regulatory Council makes a written determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the SAT, the law will apply to them. The Principal Director, Defense Pricing and Contracting (DPC), is the appropriate authority to make comparable determinations for regulations to be published in the

DFARS, which is part of the Federal Acquisition Regulation system of regulations. DoD does not intend to make that determination. Therefore, this proposed rule will not apply at or below the simplified acquisition threshold.

B. Applicability to Contracts for the Acquisition of Commercial Products Including COTS Items and for the Acquisition of Commercial Services

10 U.S.C. 3452 exempts contracts and subcontracts for the acquisition of commercial products, including COTS items, and commercial services from provisions of law enacted after October 13, 1994, unless the Under Secretary of Defense (Acquisition and Sustainment) (USD(A&S)) makes a written determination that it would not be in the best interest of DoD to exempt contracts for the procurement of commercial products and commercial services from the applicability of the provision or contract requirement, except for a provision of law that—

- Provides for criminal or civil penalties;
- Requires that certain articles be bought from American sources pursuant to 10 U.S.C. 4862, or that strategic materials critical to national security be bought from American sources pursuant to 10 U.S.C. 4863; or
- Specifically refers to 10 U.S.C. 3452 and states that it shall apply to contracts and subcontracts for the acquisition of commercial products (including COTS items) and commercial services.

The statutes implemented in this proposed rule do not impose criminal or civil penalties, do not require purchase pursuant to 10 U.S.C. 4862 or 4863, and do not refer to 10 U.S.C. 3452. Therefore, section 874 of the NDAA for FY 2022, as amended by section 872 of the NDAA for FY 2024, will not apply to the acquisition of commercial products, including COTS items, or commercial services unless a written determination is made. Due to delegations of authority, the Principal Director, DPC is the appropriate authority to make this determination. DoD intends to make that determination to apply the statutes to the acquisition of commercial products, excluding COTS items, and to the acquisition of commercial services. Therefore, this proposed rule will apply to the acquisition of commercial products, excluding COTS items, and to the acquisition of commercial services.

C. Determination

Given that the requirements of section 874 of the NDAA for FY 2022 and section 872 of the NDAA for FY 2024 were enacted to authorize DoD to establish a pilot program to incentivize contracting with employee-owned businesses for the continued development, production, or provision of products or services, and since the pilot program, thus far, has been utilized for commercial products and commercial services, it is in the best interest of the Government to apply the statutes to contracts for the acquisition of commercial products, excluding COTS items, and commercial services, as defined at Federal

Acquisition Regulation 2.101. An exception for contracts for the acquisition of commercial products, excluding COTS items, and commercial services would exclude the contracts intended to be covered by the law, thereby undermining the overarching public policy purpose of the law.

IV. Expected Impact of the Rule

This proposed rule implements section 874 of the NDAA for FY 2022, as amended by section 872 of the NDAA for FY 2024, which authorizes DoD to establish a pilot program to incentivize contracting with employee-owned businesses that meet the proposed definition of "qualified business." This proposed rule, when finalized, is expected to impact the Government and contractors that participate in the pilot program. This proposed rule is expected to incentivize and expedite the award of follow-on contracts to qualified businesses for the continued development, production, or provision of products or services previously procured by or for DoD. As a result, employee-owned businesses may benefit from more opportunities to contract with DoD, which may benefit DoD by expanding the defense industrial base.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety

effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, as amended.

VI. Regulatory Flexibility Act

DoD does not expect this proposed rule, when finalized, to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it only allows for the award of sole-source, follow-on contracts to qualified businesses under certain circumstances. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

This proposed rule is necessary to implement section 874 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2022 (Pub. L. 117-81; 10 U.S.C. 3204 note) and section 872 of the NDAA for FY 2024 (Pub. L. 118-31; 10 U.S.C. 3204 note). Sections 874 and 872 authorize DoD to establish a pilot program to incentivize contracting with employee-owned businesses. The pilot program provides for the use of noncompetitive procedures for certain follow-on contracts to qualified businesses wholly-owned through an employee stock ownership plan. A "qualified business" is defined as 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).

The objective of this proposed rule is to implement section 874 of the NDAA for FY 2022 and section 872 of the NDAA for FY 2024 to establish a pilot program to incentivize contracting with employee-owned businesses. The legal basis for the rule is section 874 of the NDAA for FY 2022 and section 872 of the NDAA for FY 2024.

Data from the System for Award Management (SAM) revealed there were 330,704 small entities registered in SAM as of June 2023. Data on the number of small entities that are a qualified business, as defined in the proposed rule, is not available.

The pilot program was implemented on November 8, 2022. To date, eight businesses are participating in the pilot, six of which are small entities. DoD cannot estimate the number of contracting officers who will submit applications for participation in the pilot program, how many applications will be approved for participation, or how many of the subsequent awards will be made to small entities. However, based on current participation, DoD expects that the pilot program will grow to approximately 16 contractors per year, of which approximately 12 may be small entities.

This proposed rule imposes a new reporting requirement. Not later than 30 days after the end of the period of performance of the contract, contractors participating in the pilot program will be required to submit to the contracting officer the

following information: (1) the number of years the contractor has been wholly-owned by its employee stock ownership plan; (2) the contractor's challenges in attracting and retaining a talented workforce; (3) challenges the contractor experienced due to its corporate ownership structure that hinder its ability to contract with DoD in order to scale its technologies and capabilities due to its corporate ownership structure; and (4) challenges the contractor experienced due to its corporate ownership structure in obtaining capital necessary to bridge funding gaps, for example, between prototype demonstration and full-scale development. The annual reporting burden is estimated as follows: 16 respondents, with 16 total annual responses (1 response per respondent), and a total annual burden of 16 hours.

The proposed rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known alternatives that would accomplish the stated objectives of the applicable statutes.

DoD invites comments from small business concerns and other interested parties on the expected impact of this proposed rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this proposed rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2024-D004), in correspondence.

VII. Paperwork Reduction Act

This proposed rule contains information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35). Accordingly, DoD has submitted a request for approval of a new information collection requirement concerning DFARS case 2024-D004, Pilot Program to Incentivize Contracting with Employee-Owned Businesses, to the Office of Management and Budget.

A. Estimate of Public Burden

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows:

Respondents: 16.

Total annual responses: 16.

Total annual burden hours: 16.

B. Request for Comments Regarding Paperwork Burden

Written comments and recommendations on the proposed information collection, including suggestions for reducing this burden, should be submitted using the Federal eRulemaking Portal at <https://www.regulations.gov> or by email to osd.dfars@mail.mil. Comments can be received up to 60 days after the date of this notice.

Public comments are particularly invited on: whether this collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; the accuracy of DoD's estimate of the burden of this information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

To obtain a copy of the supporting statement and associated collection instruments, please email osd.dfars@mail.mil. Include DFARS Case 2024-D004 in the subject line of the message.

List of Subjects in 48 CFR Parts 206, 212, 252, and 270

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, Defense Acquisition Regulations System proposes to amend 48 CFR parts 206, 212, and 252, and add 270 as follows:

PART 206—COMPETITION REQUIREMENTS

1. The authority citation for part 206 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

2. Revise and republish section 206.302-5 to read as follows:

206.302-5 Authorized or required by statute.

(b) *Application.* Agencies may use this authority to—

(i) Acquire supplies and services from military exchange stores outside the United States for use by the armed forces outside the United States in accordance with 10 U.S.C. 2424(a) and subject to the limitations of 10 U.S.C. 2424(b). The limitations of 10 U.S.C. 2424(b)(1) and (2) do not apply to the purchase of soft drinks that are manufactured in the United States. For the purposes of 10 U.S.C. 2424, soft drinks manufactured in the United States are brand name carbonated sodas, manufactured in the United States, as evidenced by product markings.

(ii) Acquire police, fire protection, airfield operation, or other community services from local governments at military installations to be closed under the circumstances in 237.7401 (section 2907 of Fiscal Year 1994 Defense Authorization Act (Pub. L. 103-160)).

(iii) Acquire products and services under the Pilot Program to Incentivize Contracting with Employee-Owned Businesses (see subpart 270.X).

(c) *Limitations.*

(i) 10 U.S.C. 4141 precludes use of this exception for awards to colleges or universities for the performance of research and development, or for the construction of any research or other facility, unless—

(A) The statute authorizing or requiring award specifically—

(1) States that the statute modifies or supersedes the provisions of 10 U.S.C. 4141;

(2) Identifies the particular college or university involved; and

(3) States that award is being made in contravention of 10 U.S.C. 4141(a); and

(B) The Secretary of Defense provides Congress written notice of intent to award. The contract cannot be awarded until 180 days have elapsed since the date Congress received the notice of intent to award. Contracting activities must submit a draft notice of intent with supporting documentation through channels to the Principal Director, Defense Pricing and Contracting, Office of the Under Secretary of Defense (Acquisition and Sustainment).

(ii) The limitation in paragraph (c)(i) of this subsection applies only if the statute authorizing or requiring award was enacted after September 30, 1989.

(iii) Subsequent statutes may provide different or additional constraints on the award of contracts to specified colleges and universities. Contracting officers should consult legal counsel on a case-by-case basis.

PART 212—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

3. The authority citation for part 212 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

4. Amend section 212.301 by adding paragraph (f)(xxii) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial products and commercial services.

* * * * *

(f) * * *

(xxii) *Part 270—Defense Contracting Programs.*

(A) Use the provision at 252.270-70WW, Pilot Program to Incentivize Contracting with Employee-Owned Businesses—Representation, as prescribed at 270.X05(a) to comply with section 874 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2022 (Pub. L. 117-81; 10 U.S.C. 3204 note) and section 872 of the NDAA for FY 2024 (Pub. L. 118-31; 10 U.S.C. 3204 note).

(B) Use the provision at 252.270-70XX, Pilot Program to Incentivize Contracting with Employee-Owned Businesses—Subcontracting Certification, as prescribed at 270.X05(b), to comply with section 874 of the NDAA for FY 2022 (Pub. L. 117-81; 10 U.S.C. 3204 note) and section 872 of the NDAA for FY 2024 (Pub. L. 118-31; 10 U.S.C. 3204 note).

(C) Use the clause at 252.270-70YY, Pilot Program to Incentivize Contracting with Employee-Owned Businesses, as prescribed at 270.X05(c), to comply with section 874 of the NDAA for FY 2022 (Pub. L. 117-81; 10 U.S.C. 3204 note) and section 872 of the NDAA for FY 2024 (Pub. L. 118-31; 10 U.S.C. 3204 note).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. The authority citation for part 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

6. Add section 252.270-70WW to read as follows:

252.270-70WW Pilot Program to Incentivize Contracting with Employee-Owned Businesses—Representation.

As prescribed in 270.X05(a), use the following provision:

PILOT PROGRAM TO INCENTIVIZE CONTRACTING WITH EMPLOYEE-OWNED BUSINESSES—REPRESENTATION (DATE)

(a) *Definition.* As used in this provision, *qualified business* has the meaning given in the Defense Federal Acquisition Regulation Supplement 252.270-70YY, Pilot Program to Incentivize Contracting with Employee-Owned Businesses, clause of this solicitation.

(b) *Representation.* The Offeror represents that it is a qualified business.

(End of provision)

7. Add section 252.270-70XX to read as follows:

252.270-70XX Pilot Program to Incentivize Contracting with Employee-Owned Businesses—Subcontracting Certification.

As prescribed in 270.X05(b), use the following provision:

PILOT PROGRAM TO INCENTIVIZE CONTRACTING WITH EMPLOYEE-OWNED BUSINESSES—SUBCONTRACTING CERTIFICATION (DATE)

(a) *Definition.* As used in this provision, *qualified business* has the meaning given in the Defense Federal

Acquisition Regulation Supplement 252.270-70YY, Pilot Program to Incentivize Contracting with Employee-Owned Businesses, clause of this solicitation.

(b) *Limitations on subcontracting.* 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.

(End of provision)

8. Add section 252.270-70YY to read as follows:

252.270-70YY Pilot Program to Incentivize Contracting with Employee-Owned Businesses.

As prescribed in 270.X05(b), use the following clause:

PILOT PROGRAM TO INCENTIVIZE CONTRACTING WITH EMPLOYEE-OWNED BUSINESSES (DATE)

(a) *Definition.* As used in this clause—

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).

(b) *Limitations on subcontracting.* In performance of the contract, the Contractor shall 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.

(c) *Reporting requirement.* Not later than 30 days after the end of the contract period of performance, the Contractor shall submit to the Contracting Officer the following information in writing:

(1) The number of years the Contractor has been wholly-owned by its employee stock ownership plan.

(2) Challenges the Contractor experienced in attracting and retaining a talented workforce in a competitive market.

(3) Challenges the Contractor experienced that hinder its ability to contract with DoD to scale its technologies and capabilities due to the Contractor's corporate ownership structure.

(4) Challenges the Contractor experienced due to its corporate ownership structure in obtaining capital necessary to bridge funding gaps, for example, between prototype demonstration and full-scale development.

(End of clause)

9. Add part 270 to read as follows:

PART 270—DEFENSE CONTRACTING PROGRAMS

270.000 Scope of part.

Subpart 270.X—PILOT PROGRAM TO INCENTIVIZE CONTRACTING WITH
EMPLOYEE-OWNED BUSINESSES

270.X00 Scope of subpart.
270.X01 Definition.
270.X02 Policy.
270.X03 Limitations.
270.X04 Procedures.
270.X05 Solicitation provision and contract clause.

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

270.000 Scope of part.

This part has been created to facilitate promulgation of additional DFARS coverage of defense-specific contracting programs that do not properly fall under DFARS subchapter D, Socioeconomic Programs, and neither implement nor supplement existing FAR part 19 or parts 22 through 25.

**SUBPART 270.X—PILOT PROGRAM TO INCENTIVIZE CONTRACTING WITH
EMPLOYEE-OWNED BUSINESSES**

270.X00 Scope of subpart.

(a) This subpart implements section 874 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2022 (Pub. L. 117-81; 10 U.S.C. 3204 note) and section 872 of the NDAA for FY 2024 (Pub. L. 118-31; 10 U.S.C. 3204 note). Sections 874 and 872 authorize the establishment of a pilot program that allows for the noncompetitive award of certain follow-on contracts to contractors that meet the definition of a qualified business (see 270.X01).

(b) The authority to award contracts under this subpart expires on December 27, 2029.

270.X01 Definition.

As used in this subpart—

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) .

270.X02 Policy.

(a) The contracting officer may only award one sole-source, follow-on contract to the incumbent contractor if—

(1) The contractor has represented that it is a qualified business; and

(2) The contract is for the continued development, production, or provision of products or services that are the same or substantially similar to those procured under the prior contract awarded to the contractor by or for DoD.

(b) The contracting officer shall not begin negotiations for a sole-source, follow-on contract unless the contracting officer justifies the use of a sole-source contract in accordance with FAR 6.303 and 6.304, citing FAR 6.302-5, Authorized or required by statute, as the exception to full and open competition.

270.X03 Limitations.

(a) Participation in the pilot program is subject to approval by the Under Secretary of Defense (Acquisition and Sustainment), Office of the Principal Director, Defense Pricing and Contracting (Contract Policy). Only a contracting officer may

submit an application to participate in the pilot program. See PGI 270.7X04(a).

(b) Contracting officers shall only award-

(1) One sole-source, follow-on contract per predecessor contract to the incumbent contractor unless waived by the head of the contracting activity, delegable to a level no lower than one level above the contracting officer;

(2) Contracts to qualified businesses that have a minimum performance rating of satisfactory for the predecessor contract in the Contractor Performance Assessment Reporting System (see FAR subpart 42.15); and

(3) Contracts to qualified businesses that have certified they will not pay more than 50 percent of the amount paid by the Government for contract performance to subcontractors that are not qualified businesses, except for subcontracts for materials not available from another qualified business when the contract is for products, unless waived by the head of the contracting activity, delegable to a level no lower than one level above the contracting officer.

270.X04 Procedures.

See PGI 270.X04 for procedures and information concerning the pilot program.

270.X05 Solicitation provision and contract clause.

(a) Use the provision at 252.270-70WW, Pilot Program to Incentivize Contracting with Employee-Owned Businesses-Representation, in solicitations, including solicitations using

FAR part 12 procedures for the acquisition of commercial products and commercial services, that include the clause at 252.270-70YY, Pilot Program to Incentivize Contracting with Employee-Owned Businesses.

(b) Unless waived in accordance with 270.7X03(b)(3), use the provision at 252.270-70XX, Pilot Program to Incentivize Contracting with Employee-Owned Businesses—Subcontracting Certification, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services that include the clause at 252.270-70YY, Pilot Program to Incentivize Contracting with Employee-Owned Businesses.

(c) Use the clause at 252.270-70YY, Pilot Program to Incentivize Contracting with Employee-Owned Businesses, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, for approved pilot program acquisitions.