

**List of Subjects in 48 CFR Parts 205, 212, 214, 215, and 237**

Government procurement.

**Jennifer D. Johnson,**

*Editor/Publisher, Defense Acquisition Regulations System.*

Therefore, the Defense Acquisition Regulations System amends 48 CFR parts 205, 212, 214, 215, and 237 as follows:

- 1. The authority citation for 48 CFR parts 205, 212, 214, 215, and 237 continues to read as follows:

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

**PART 205—PUBLICIZING CONTRACT ACTIONS**

- 2. Add subpart 205.1 to read as follows:

**Subpart 205.1—Dissemination of Information**

Sec.  
205.102 Availability of solicitations.  
205.102–70 Availability of DoD solicitations.

**Subpart 205.1—Dissemination of Information**

**205.102 Availability of solicitations.**

**205.102–70 Availability of DoD solicitations.**

See PGI 205.102–70 for policy and procedures related to the Solicitation Module within the Procurement Integrated Enterprise Environment.

**PART 212—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES**

- 3. Amend section 212.203 by adding paragraph (6) to read as follows:

**212.203 Procedures for solicitation, evaluation, and award.**

\* \* \* \* \*

(6) See the procedures at PGI 205.102–70 for use of the Solicitation Module within the Procurement Integrated Enterprise Environment.

**PART 214—SEALED BIDDING**

- 4. Add section 214.203 to read as follows:

**214.203 Methods of soliciting bids.**

See the procedures at PGI 205.102–70 for use of the Solicitation Module within the Procurement Integrated Enterprise Environment.

**PART 215—CONTRACTING BY NEGOTIATION**

- 5. Add section 215.205 to read as follows:

**215.205 Issuing solicitations.**

See the procedures at PGI 205.102–70 for use of the Solicitation Module within the Procurement Integrated Enterprise Environment.

**PART 237—SERVICE CONTRACTING****237.102–77 [Removed and Reserved]**

- 6. Remove and reserve section 237.102–77.

[FR Doc. 2024–23228 Filed 10–9–24; 8:45 am]

**BILLING CODE 6001–FR–P**

**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:** Final rule.

**SUMMARY:** DoD is issuing a final rule amending 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:** Effective November 25, 2024.

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

**SUPPLEMENTARY INFORMATION:****I. Background**

DoD published a proposed rule in the **Federal Register** at 89 FR 46831 on May 30, 2024, 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. Five respondents submitted public comments in response to the proposed rule.

**II. Discussion and Analysis**

DoD reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments is provided, as follows:

**A. Summary of Significant Changes From the Proposed Rule**

There are no significant changes from the proposed rule.

**B. Analysis of Public Comments****1. Support for the Rule**

*Comment:* The respondents expressed support for the rule.

*Response:* DoD acknowledges the respondents' support for the rule.

**2. Clarifications**

*Comment:* One respondent recommended revising the proposed rule text at DFARS 270.X02 to clarify that a reference to Federal Acquisition Regulation (FAR) 6.302–5 is sufficient to justify a sole-source award under the pilot program. The respondent also recommended adding the following sentence to the text: "A justification that cites FAR 6.302–5, makes reference to 48 CFR 206.302–5(b)(iii), and meets the requirements of subparts 207.X03 and 207.X04 shall be considered complete and sufficient for an exception to full an open competition." One respondent indicated that a justification and approval (J&A) that only references FAR 6.302–5 is likely to be found insufficient by audit agencies.

*Response:* The proposed rule text at DFARS 270.102(b) requires the contracting officer to justify the use of a sole-source contract in accordance with FAR 6.303 and 6.304 prior to conducting negotiations and to cite FAR 6.302–5, Authorized or required by statute, as the exception to full and open competitive procedures. FAR 6.303 specifies the requirements for and the content of a justification. The statute did not modify the requirements for or content of a justification; therefore, DoD cannot make the recommended change. However, the final rule text at DFARS 270–X02(b) has been amended to remove duplicative text addressed at FAR 6.303–1(a).

### 3. Exceptions to Implementation

*Comment:* Two respondents took exception to the fact that the proposed rule does not provide a process for a contractor to apply to participate in the pilot program to ensure a transparent and accessible process. One respondent indicated the inability for a contractor to apply to participate in the pilot program is overly restrictive and inconsistent with the statute.

*Response:* Section 874 required the Secretary of Defense to submit to the congressional defense committees an implementation plan for the pilot program. This implementation plan indicated that applications for participation in the pilot program will be submitted by contracting officers. The proposed rule text at DFARS 270.103 is consistent with the implementation plan. As such, a contractor is not able to submit an application for participation in the pilot program.

*Comment:* One respondent took exception to the requirement for a J&A, indicating that it is inconsistent with the statute. The respondent further indicated that such a requirement may limit the number of businesses that may participate in the pilot program, citing the fact that there are only eight businesses currently participating in the pilot program.

*Response:* While sections 872 and 874 authorize the use of other than competitive procedures for the award of certain contracts under this pilot program, neither waived the requirement for a J&A; therefore, a J&A is required. The Office of the Under Secretary of Defense (Acquisition and Sustainment), Defense Pricing, Contracting, and Acquisition Policy implemented section 874 via a contract policy memorandum dated November 8, 2022, and limited participation in the pilot program to nine contractors. Therefore, the requirement for a J&A has not limited participation in the pilot program.

*Comment:* Three respondents took exception to the proposed rule reporting requirements, while one respondent expressed support for the reporting requirements. One respondent indicated that some of the proposed reporting requirements are open-ended and subjective, which will lead to confusion as to whether the data provided by the contractor is sufficient. One respondent indicated that the proposed reporting requirements focus on challenges of employee ownership rather than performance and value and indicated that the contractor's past performance rating in the Contractor Performance

Assessment Reporting System (CPARS) would be more useful in assessing the success of the pilot program. One respondent recommended DoD develop a comprehensive plan to monitor the implementation and impact of the Employee Stock Ownership Plan (ESOP) pilot program, allowing for adjustments and improvements over time to optimize its effectiveness. One respondent stated that its member companies who participated in the original, limited pilot program found the data collection to be straightforward and to require minimal time. Another respondent indicated that DoD's estimate of 16 hours to collect and submit the data required by the clause at DFARS 252.270–70YY should be 80 to 120 hours.

*Response:* Section 874 required the Secretary of Defense to establish mechanisms to collect and analyze data on the pilot program for the purposes of developing and sharing best practices with leadership and the congressional defense committees. Section 874 also required the Secretary of Defense to submit to the congressional defense committees a data collection and reporting strategy for the pilot program. The information to be reported in accordance with the contract clause at DFARS 252.270–7002, Pilot Program to Incentivize Contracting with Employee-Owned Businesses, is consistent with this strategy. This information will be submitted to DoD leadership and the congressional defense committees and may be used to determine if additional measures should be taken to assist ESOP businesses in overcoming challenges associated with their corporate structure.

Additionally, the proposed rule text at DFARS Procedures, Guidance, and Information (PGI) 270.104, paragraph(d), specifies the reporting requirements for contracting officers, which include, but are not limited to, a summary of the contractor's performance and the benefits experienced from using the pilot program. This information will be used to assess the success of the pilot program and the need for adjustments and improvements over time. In reporting the contractor's performance pursuant to DFARS PGI 270.104, the contracting officer may use information from CPARS. To minimize the time required to collect and submit the data, the reporting requirements in the clause at DFARS 252.270–7002 are amended to clarify that data regarding challenges faced due to the contractor's corporate ownership structure is only required when applicable. In addition, contractors are only required to report data collected during the period of

performance of the contract; therefore, the data should be readily available.

### 4. Outside the Scope of the Rule

*Comment:* One respondent recommended DoD establish evaluation criteria to give preference to qualified businesses during the source-selection process in lieu of limiting the pilot program to sole-source, follow-on contracts. The respondent also recommended that DoD prioritize efforts to on-ramp qualified businesses onto multiple-award contracts to create a larger pool of qualified businesses eligible for follow-on contracts under this pilot program.

*Response:* These comments are outside the scope of this rule. Sections 872 and 874 do not authorize DoD to establish source selection evaluation criteria to give preference to qualified businesses or to use on-ramps under the pilot program.

#### C. Other Changes

DFARS 270.102(b) is revised in the final rule to simplify the direction to contracting officers. The final rule revises the prescriptions for the solicitation provisions at DFARS 252.270–7000 and 252.270–7001 and the clause at DFARS 252.270–7002 to specify that they are not to be included in solicitations and contracts solely for the acquisition of commercially available off-the-shelf items. These provisions and this clause are added to the list of provisions and clauses that are not applicable to COTS items, located at DFARS 212.371. The reporting requirements are clarified in the clause at DFARS 252.270–7002.

### 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

The two provisions and the clause at DFARS 252.270–7000, Pilot Program to Incentivize Contracting with Employee-Owned Businesses-Representation; DFARS 252.270–7001, Pilot Program to Incentivize Contracting with Employee-Owned Businesses—Certification; and DFARS 252.270–7002, Pilot Program to Incentivize Contracting with Employee-Owned Businesses, are prescribed at DFARS 270.105 for use in solicitations and contracts for approved acquisitions under the Pilot Program to Incentivize Contracting with Employee-Owned Businesses. Consistent with the analysis that DoD provided in the proposed rule with regard to the application of the requirements of section 874 of the NDAA for FY 2022, as amended by

section 872 of the NDAA for FY 2024, DoD has decided to not apply the statutes to contracts at or below the SAT, and DoD has made the determination to apply the statutes, as implemented in the provisions and clause at 252.270–7000, 252.270–7001, and 252.270–7002, to contracts for the acquisition of commercial products excluding COTS items and for the acquisition of commercial services, as defined at Federal Acquisition Regulation 2.101.

#### IV. Expected Impact of the Rule

This final rule is expected to impact the Government and contractors that participate in the Pilot Program to Incentivize Contracting with Employee-Owned Businesses. This final 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 additional 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. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules Under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

#### VII. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* and is summarized as follows:

This final 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). The objective of the rule is to implement sections 874 and 872, which 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. 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).

There were no significant issues raised by the public comments in response to the initial regulatory flexibility analysis. One respondent took exception to the number of hours DoD estimated it would take a contractor to comply with the reporting requirement. DoD reviewed the data to be collected and modified the reporting requirement to clarify that the contractor is required to only report challenges it faced, if any. Although not specified in the DFARS text, because this is a contract clause, contractors are only required to report data collected during the period of performance of the contract.

Data from the System for Award Management (SAM) revealed there were 384,145 small entities registered in SAM as of August 2024. Data on the number of small entities that are a qualified business, as defined in the final 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 that 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 final 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, if any, in attracting and retaining a talented workforce due to its corporate ownership structure; (3) challenges, if any, the contractor experienced 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, if any, 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.

There are no known significant alternative approaches that would accomplish the stated objectives.

#### VIII. Paperwork Reduction Act

This final rule contains information collection requirements that have been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35). This information collection requirement has been assigned OMB Control Number 0750–0012, Defense Federal Acquisition Regulation Supplement Part 270, Defense Contracting Programs—Pilot Program to Incentivize Contracting with Employee-Owned Businesses, and Related Clause.

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

Government procurement.

**Jennifer D. Johnson,**  
*Editor/Publisher, Defense Acquisition Regulations System.*

Therefore, the Defense Acquisition Regulations System amends 48 CFR chapter 2 as follows 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 270.1).

(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, Contracting, and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition and Sustainment).

(ii) The limitation in paragraph (c)(i) of this section 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 252.270–7000, Pilot Program to Incentivize Contracting with Employee-Owned Businesses—Representation, as prescribed at 270.105(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 252.270–7001, Pilot Program to Incentivize Contracting with Employee-Owned Businesses—Subcontracting Certification, as prescribed at 270.105(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 252.270–7002, Pilot Program to Incentivize Contracting with Employee-Owned Businesses, as prescribed at 270.105(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).

■ 5. Amend section 212.371 by adding paragraphs (b), (c), and (d) to read as follows:

**212.371 Inapplicability of certain provisions and clauses to contracts for the acquisition of commercially available off-the-shelf items.**

\* \* \* \* \*

(b) 252.270–7000, Pilot Program to Incentivize Contracting with Employee-Owned Businesses—Representation.

(c) 252.270–7001, Pilot Program to Incentivize Contracting with Employee-Owned Businesses—Subcontracting Certification.

(d) 252.270–7002, Pilot Program to Incentivize Contracting with Employee-Owned Businesses.

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

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

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

■ 7. Add sections 252.270–7000, 252.270–7001, and 252.270–7002 to read as follows:

\* \* \* \* \*

Sec.

252.270–7000 Pilot Program to Incentivize Contracting with Employee-Owned Businesses—Representation.

252.270–7001 Pilot Program to Incentivize Contracting with Employee-Owned Businesses—Subcontracting Certification.

252.270–7002 Pilot Program to Incentivize Contracting with Employee-Owned Businesses.

\* \* \* \* \*

**252.270–7000 Pilot Program to Incentivize Contracting with Employee-Owned Businesses—Representation.**

As prescribed in 270.105(a), use the following provision:

**Pilot Program To Incentivize Contracting With Employee-Owned Businesses—Representation (NOV 2024)**

(a) *Definition.* As used in this provision, *qualified business* has the meaning given in the Defense Federal Acquisition Regulation Supplement 252.270–7002, 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)

**252.270–7001 Pilot Program to Incentivize Contracting with Employee-Owned Businesses—Subcontracting Certification.**

As prescribed in 270.105(b), use the following provision:

Pilot Program To Incentivize Contracting With Employee-Owned Businesses—Subcontracting Certification (NOV 2024)

(a) *Definition.* As used in this provision, *qualified business* has the meaning given in the Defense Federal Acquisition Regulation Supplement 252.270–7002, 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)

**252.270-7002 Pilot Program to Incentivize Contracting with Employee-Owned Businesses.**

As prescribed in 270.105(c), use the following clause:

**Pilot Program To Incentivize Contracting With Employee-Owned Businesses (NOV 2024)**

(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, if any, the Contractor experienced in attracting and retaining a talented workforce in a competitive market due to the Contractor's corporate ownership structure.

(3) Challenges, if any, 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, if any, 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)

■ 8. Add part 270 to read as follows:

**PART 270—DEFENSE CONTRACTING PROGRAMS**

Sec.

270.000 Scope of part.

**Subpart 270.1—Pilot Program to Incentivize Contracting with Employee-Owned Businesses**

270.100 Scope of subpart.

270.101 Definition.

270.102 Policy.

270.103 Limitations.

270.104 Procedures.

270.105 Solicitation provisions 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 270.1—Pilot Program to Incentivize Contracting with Employee-Owned Businesses**

**270.100 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 270.101).

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

**270.101 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).

**270.102 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 as or substantially similar to those

procured under the prior contract awarded to the contractor by or for DoD.

(b) The contracting officer shall justify the use of a sole-source contract in accordance with FAR 6.303 and 6.304 and cite FAR 6.302–5 as the exception to full and open competition.

**270.103 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, Contracting, and Acquisition Policy (Contract Policy). Only a contracting officer may submit an application to participate in the pilot program. See PGI 270.104(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.

**270.104 Procedures.**

See PGI 270.104 for procedures and information concerning the pilot program.

**270.105 Solicitation provisions and contract clause.**

(a) Use the provision at 252.270-7000, 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, except for solicitations solely for the acquisition of commercially available off-the-shelf (COTS) items, that include the clause at 252.270-7002, Pilot Program to Incentivize Contracting with Employee-Owned Businesses.

(b) Unless waived in accordance with 270.103(b)(3), use the provision at 252.270-7001, 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, except for solicitations solely for the acquisition of COTS items, that include the clause at 252.270–7002, Pilot Program to Incentivize Contracting with Employee-Owned Businesses.

(c) Use the clause at 252.270–7002, 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, except for solicitations and contracts solely for the acquisition of COTS items, for approved pilot program acquisitions.

[FR Doc. 2024–23226 Filed 10–9–24; 8:45 am]

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Part 252

[Docket DARS–2024–0018]

RIN 0750–AM03

#### Defense Federal Acquisition Regulation Supplement: Procurement Technical Assistance Program (DFARS Case 2024–D006)

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

**ACTION:** Final rule.

**SUMMARY:** DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2024 that modifies certain definitions associated with the Procurement Technical Assistance Program.

**DATES:** Effective October 10, 2024.

**FOR FURTHER INFORMATION CONTACT:** Jeanette Snyder, telephone 703–508–7524.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD published a proposed rule in the **Federal Register** at 89 FR 46836 on May 30, 2024, to implement section 853 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2024 (Pub. L. 118–31; 10 U.S.C. 4951). Section 853

amends the definitions of “nonprofit organization” and “business entities” at 10 U.S.C. 4951 for the Procurement Technical Assistance Program (PTAP). One respondent submitted public comments in response to the proposed rule.

##### II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule. A discussion of the comments is provided, as follows:

###### A. Summary of Significant Changes From the Proposed Rule

There are no significant changes from the proposed rule.

###### B. Analysis of Public Comments

*Comment:* The respondent indicated that the statement: “In addition, business entities, including corporations, associations, partnerships, limited liability companies, limited liability partnerships, consortia, not-for-profit, or other legal entities will also be able to be a cooperative agreement holder” in section IV of the proposed rule preamble is inaccurate. The respondent indicated that the term “eligible entity” refers to the entities that may be served by cooperative agreement holders. The respondent also indicated that “(as defined in 10 U.S.C. 4951)” added to DFARS clause 252.205–7000(a) is misleading, as “business entities” are the recipients of procurement technical assistance, not the providers.

*Response:* Subsection (1) of 10 U.S.C. 4951 defines the term “eligible entity” to mean a state, local government, nonprofit organization, and tribal organization. Subsection (5) of 10 U.S.C. 4951 defines the term “business entity” to mean a corporation, association, partnership, limited liability company, limited liability partnership, consortia, not-for-profit, or other legal entity. The statute at 10 U.S.C. 4952 specifies that the purpose of the PTAP is, in part, to increase assistance provided by DoD to “eligible entities” furnishing procurement technical assistance to “business entities”. Therefore, the referenced statement in section IV of the proposed rule preamble is inaccurate and is corrected in this final rule. However, the parenthetical “as defined in 10 U.S.C. 4951” in the contract clause at DFARS 252.205–7000, Provision of Information to Cooperative Agreement Holders, is accurate as “business entities” in this context refers to those entities that may receive assistance.

##### 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 final rule amends the clause at DFARS 252.205–7000, Provision of Information to Cooperative Agreement Holders. However, this final rule does not impose any new requirements on contracts at or below the SAT, for commercial products including COTS items, or for commercial services. The clause will continue to not apply to acquisitions at or below the SAT, and will continue to apply to acquisitions of commercial products excluding COTS items, and to acquisitions of commercial services.

##### IV. Expected Impact of the Rule

This final rule is expected to impact DoD contractors whose contracts include the clause at DFARS 252.205–7000. The clause requires contractors to provide cooperative agreement holders under the PTAP, upon request, with a list of the contractor’s employees or offices responsible for entering into subcontracts under defense contracts. As a result of this final rule, such contractors may be required to provide the list to different entities that are cooperative agreement holders under the PTAP.

The changes in section 853 allow any type of nonprofit organization to be a cooperative agreement holder under the PTAP. In addition, section 853 provides a definition of “business entities” to specify the entities that may receive assistance under the PTAP, including corporations, associations, partnerships, limited liability companies, limited liability partnerships, consortia, not-for-profit, or other legal entities. These changes are reflected in the revisions to the clause at DFARS 252.205–7000. As a result, there may be increases in the number of entities that become cooperative agreement holders and in the number of business entities that receive assistance under the PTAP.

##### 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