**DFARS Case 2024-D004**

**Pilot Program to Incentivize Contracting with Employee-Owned Businesses**

**Final Rule**

**PART 206—COMPETITION REQUIREMENTS**

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**SUBPART 206.3—OTHER THAN FULL AND OPEN COMPETITION**

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**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 (**[s]**~~S~~ection 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).]**

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

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**Subpart 212.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Products and Commercial Services**

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

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(f) The following additional provisions and clauses apply to DoD solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services. If the offeror has completed any of the following provisions listed in this paragraph electronically as part of its annual representations and certifications at *https://www.sam.gov*, the contracting officer shall consider this information instead of requiring the offeror to complete these provisions for a particular solicitation. The contracting officer shall not use other FAR or DFARS provisions and clauses unless required by the FAR or DFARS or consistent with customary commercial practices (section 874(b)(1)(A), Pub. L. 114–328).

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**[(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).]**

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

Commercially available off-the-shelf (COTS) items are a subset of commercial products. Therefore, the provisions and clauses listed in 212.370 as not applicable to contracts or subcontracts for the acquisition of commercial products are also not applicable to contracts or subcontracts for the acquisition of COTS items. In addition, the following provisions and clauses published after January 1, 2015, not expressly authorized in law, are not applicable to contracts for the acquisition of COTS items:

(a) \* \* \*

(b) ~~Reserved.~~**[****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.]**

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

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**SUBPART 252.2—TEXT OF PROVISIONS AND CLAUSES**

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**[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)]**

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**[PART 270—DEFENSE CONTRACTING PROGRAMS**

**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 provisionat 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.]**