

SUPPORTING STATEMENT – PART A

Defense Federal Acquisition Regulation Supplement Part 270, Defense Contracting Programs— Pilot Program to Incentivize Contracting with Employee-Owned Businesses, and Related Clause OMB Control Number 0750-0ZZZ

1. Need for the Information Collection

This statement supports a request for approval of the new information collection requirement for Defense Federal Acquisition Regulation Supplement (DFARS) part 270 and the related clause at DFARS 252.270-70YY, Pilot Program to Incentivize Contracting with Employee-Owned Businesses. This information collection originated with DFARS proposed rule 2024-D004, Pilot Program to Incentivize Contracting with Employee-Owned Businesses.

This information collection is required by 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 the Secretary of Defense to establish a pilot program permitting other than competitive procedures for certain contract awards to qualified contractors wholly owned through employee stock ownership plans. Paragraph (d) of section 874 requires the Secretary of Defense to collect and analyze data to share best practices and overall outcomes with leadership and congressional defense committees. The authority to award contracts under this pilot program expires on December 27, 2029.

2. Use of the Information

The information obtained through the clause at DFARS 252.270-70YY is used to develop and share best practices relating to the pilot program and to provide information to leadership and the congressional defense committees. Contractors awarded contracts under this pilot program will be required to provide information at the end of the period of performance of the contract. Contractors will be required to submit the following information to the contracting officer: (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; 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. This requirement in the clause at DFARS 252.270-70YY will be included in contracts awarded under this pilot program.

There is no specified format for submitting the data, nor is there a requirement for the contractor to maintain the data. Contracting officers will submit the information to the Office of the Undersecretary for Defense (Acquisition and Sustainment), Defense Pricing, Contracting, and Acquisition Policy (DPCAP). The data will be maintained by DPCAP until requested for review by leadership or to share best practices, if the pilot program is established on a permanent basis by Congress.

3. Use of Information Technology

Information technology is expected to be used to collect 100% of the information.

4. Non-duplication

The information obtained through this collection is unique and is not already available for use or adaptation from another cleared source.

5. Burden on Small Businesses

This information collection does not impose a significant economic impact on a substantial number of small businesses.

6. Less Frequent Collection

Every attempt has been made to keep the frequency of collection to a minimum. The requirement for this information collection is included in each contract awarded under the pilot program. Contractors provide a single submission after completion of the period of performance of the contract. If the information is collected less frequently, the Government would not obtain the information required to be collected in accordance with the statute.

7. Paperwork Reduction Act Guidelines

This collection of information is consistent with the guidelines delineated in 5 CFR 1320.5(d)(2).

8. Consultation and Public Comments

a. Public Notice

i. A 60-day notice for the collection was published in the *Federal Register* with the proposed rule on May 30, 2024, at 89 FR 46831. Five comments were received during the 60-day comment period. They are included below along with DoD's responses to the comments.

Comment: Three respondents took exception to the proposed rule reporting requirements. One respondent indicated that some of the proposed reporting requirements specified in the clause 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.

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 clause at DFARS 252.270-70YY, 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 text at DFARS Procedures, Guidance, and Information (PGI) 270.X04, 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.X04, the contracting officer may use information from CPARS.

Comment: 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: To minimize the time required to collect and submit the data, the reporting requirements in the clause at DFARS 252.270-70YY are amended to clarify that data regarding challenges faced due to the contractor's corporate 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.

ii. A 30-day notice for the collection was published in the *Federal Register* on Xxx xx, 2024, at XX FR XXXX.

b. Consultation

No additional consultation, apart from soliciting public comments through the *Federal Register*, was conducted for this submission.

9. Gifts or Payment

No payments or gifts are being offered to respondents as an incentive to participate in the collection, other than remuneration to contractors under their contracts.

10. Confidentiality

This information is disclosed only to the extent consistent with prudent business practices and current regulatory, statutory, and Freedom of Information Act requirements. No assurance of confidentiality is provided to respondents. A Privacy Act Statement is not required for this collection because DoD is not requesting individuals to furnish personal information for a system of records. A System of Record Notice (SORN) is not required for this collection because records are not retrievable by personally identifiable information (PII). A Privacy Impact Assessment (PIA) is not required for this collection because PII is not being collected electronically.

11. Sensitive Questions

No questions considered sensitive are being asked in this collection.

12. Respondent Burden and its Labor Costs

a. DFARS 252.270-70YY

1. Estimation of Respondent Burden

The estimated respondent burden and labor cost for the new data collection requirement at DFARS 252.270-70YY, Pilot Program to Incentivize Contracting with Employee-Owned Businesses, is shown in the following table and a discussion of the burdens is provided below the table.

The number of responses and respondents is based on the number of contracting activities currently approved to participate in the pilot program and, thus the number of contracts awarded, which is 8. To expedite the implementation of this pilot program in advance of a proposed rule and because this pilot program imposes an information collection requirement, it was implemented via policy memorandum on November 8, 2022, and was limited to 9 participants. DPC received only 8 applications before the pilot cutoff; therefore, the estimate is 8 contracts per year for the four years of the pilot program (assuming the publication of the final DFARS rule in 2025), which would be 32 contracts. The estimate is also based on the assumption that the period of performance of 16 of those contracts would end in the same year, thus, requiring reporting in the same year. Each contracting activity approved to participate in the pilot program will result in one awarded contract, which will result in one post-award submission from the contractor.

DoD further estimates that, since the required information submission to the contracting officer would already be known by the contractor, the additional burden is minimal and estimated to be one hour per contract.

Estimation of Respondent Burden Hours: 252.270-70YY	
Number of respondents	16
Number of responses per respondent	1
Number of total annual responses	16

Hours per response	1
Annual respondent burden hours	16

2. Labor Cost of Respondent Burden

The number of responses is estimated to be 16 annually and the time required per response is 1 hour. It is estimated that the information would be provided by a midlevel management official who is most likely to have access to or knowledge of the information provided at a cost per hour based on the Office of Personnel Management (OPM) General Schedule (GS) 13, Step 5, base hourly rate for calendar year 2024 for the rest of the US (\$56.16) plus the 36.25% civilian personnel full fringe benefit rate from OMB Memo M-08-13 (\$20.36), for a total of \$76.52 (rounded to \$77).

Labor Cost of Respondent Burden: 252.270-70YY	
Number of total annual responses	16
Hours per response	1
Cost per hour (hourly wage)	\$77
Labor burden per response	\$77
Annual Labor Burden	\$1,232

13. Respondent Costs Other Than Burden Hour Costs

There are no annualized costs to respondents other than the labor burden costs addressed in Section 12 of this document to complete this collection.

14. Cost to the Federal Government

a. Labor Cost to the Federal Government

The time required for the Government review is estimated at 1 hour per response. The cost is based on the OPM GS 13, Step 5, base hourly rate for calendar year 2024 for the rest of the US (\$56.16) plus the 36.25% civilian personnel full fringe benefit rate from OMB Memo M-08-13 (\$20.36), for a total of \$76.52 (rounded to \$77).

Labor Cost to the Federal Government: 252.270-70YY	
Number of total annual responses	16
Hours per response	1
Cost per hour (hourly wage)	\$77
Cost per response	\$77

Total cost	\$1,232
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b. Operational and Maintenance Costs

There are no operational and maintenance costs associated with this information collection.

c. Total Cost to the Federal Government

Total labor burden	\$1,232
Total operational and maintenance costs	\$0
Total cost to the Federal Government	\$1,232

15. Reasons for Change in Burden

This is a new collection with a new associated burden.

16. Publication of Results

The results of this information collection will not be published.

17. Non-Display of OMB Expiration Date

DoD is not seeking approval to omit the display of the expiration date of the OMB approval.

18. Exceptions to “Certification for Paperwork Reduction Submissions”

DoD is not requesting any exemptions to the provisions stated in 5 CFR 1320.9.