Part 270 - DEFENSE CONTRACTING PROGRAMS

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.

Parent topic: Defense Federal Acquisition Regulation

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 2 252.270-7002, 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.