

117TH CONGRESS
1ST SESSION

S. 2402

To establish a pilot program to incentivize employee ownership in defense contracting.

IN THE SENATE OF THE UNITED STATES

JULY 20, 2021

Ms. WARREN (for herself and Mr. TILLIS) introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL

To establish a pilot program to incentivize employee ownership in defense contracting.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. PILOT PROGRAM TO INCENTIVIZE EMPLOYEE**

4 **OWNERSHIP IN DEFENSE CONTRACTING.**

5 (a) DEFINITIONS.—In this section:

6 (1) APPROPRIATE COMMITTEES OF CON-
7 GRESS.—The term “appropriate committees of Con-
8 gress” means—

1 (A) the Committee on Armed Services and
2 the Committee on Homeland Security and Gov-
3 ernmental Affairs of the Senate; and

4 (B) the Committee on Armed Services and
5 the Committee on Oversight and Government
6 Reform of the House of Representatives.

7 (2) QUALIFIED BUSINESS WHOLLY-OWNED
8 THROUGH AN ESOP.—The term “qualified businesses
9 wholly-owned through an ESOP” means an S cor-
10 poration (as defined in section 1361(a)(1) of the In-
11 ternal Revenue Code of 1986) for which 100 percent
12 of the outstanding stock is held through an employee
13 stock ownership plan (as defined in section
14 4975(e)(7) of the Internal Revenue Code).

15 (b) AUTHORITY TO USE NONCOMPETITIVE PROCE-
16 DURES FOR FOLLOW-ON CONTRACTS TO QUALIFIED
17 BUSINESSES WHOLLY-OWNED THROUGH AN ESOP.—
18 Notwithstanding the requirements of section 2304 of title
19 10, United States Code, in the case of a follow-on contract
20 for the continued development, production, or provision of
21 products or services that are the same as or substantially
22 similar to the products or services procured by the Depart-
23 ment of Defense under a prior contract held by a qualified
24 business wholly-owned through an ESOP, such products
25 or services may be deemed to be available only from the

1 holder of the prior contract and may be procured by the
2 Department of Defense through procedures other than
3 competitive procedures if the performance of the qualified
4 business wholly-owned through an ESOP on the prior con-
5 tract was rated as satisfactory (or the equivalent) or better
6 in the applicable past performance database.

7 (c) VERIFICATION AND REPORTING OF QUALIFIED
8 BUSINESSES WHOLLY-OWNED THROUGH AN ESOP.—
9 The Secretary of Defense shall prescribe such procedures
10 as may be necessary for—

11 (1) businesses to verify that they are qualified
12 businesses wholly-owned through an ESOP for the
13 purposes of subsection (b);

14 (2) a qualified businesses wholly-owned through
15 an ESOP to certify that not more than 25 percent
16 of the amount paid under the contract will be ex-
17 pended on subcontracts, subject to such necessary
18 and reasonable waivers as the Secretary may pre-
19 scribe; and

20 (3) recording information on each use of the
21 authority under subsection (b), including details rel-
22 evant to the nature of the contract and the qualified
23 business wholly-owned through an ESOP, and pro-
24 viding such information to the Comptroller General
25 of the United States.

1 (d) SUNSET.—The authority under subsection (b)
2 shall expire on the date that is three years after the date
3 of the enactment of this Act.

4 (e) COMPTROLLER GENERAL OF THE UNITED
5 STATES REPORT.—

6 (1) IN GENERAL.—Not later than two years
7 after the date of the enactment of this Act, the
8 Comptroller General of the United States shall sub-
9 mit to the appropriate committees of Congress a re-
10 port on the individual and aggregate uses of the au-
11 thority under subsection (b), using such data as may
12 be available up to that time.

13 (2) ELEMENTS.—The report under paragraph
14 (1) shall include the following elements:

15 (A) An assessment of the frequency and
16 nature of the use of the authority under sub-
17 section (b).

18 (B) The tendency of businesses to become
19 qualified businesses wholly-owned through an
20 ESOP in order to qualify for the authority
21 under subsection (b).

22 (C) Acquisition authorities that could
23 incentivize businesses to become qualified busi-
24 nesses wholly-owned through an ESOP, includ-

1 ing the extension of the authority under sub-
2 section (b).

3 (D) Any related matters the Comptroller
4 General considers appropriate.

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