

116TH CONGRESS  
1ST SESSION

# H. R. 2022

To establish certain procurement procedures with respect to businesses wholly-owned through an ESOP, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 2, 2019

Mr. BUCSHON introduced the following bill; which was referred to the Committee on Oversight and Reform, and in addition to the Committees on Armed Services, and Small Business, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To establish certain procurement procedures with respect to businesses wholly-owned through an ESOP, and for other purposes.

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. SHORT TITLE.**

4 This Act may be referred to as the “ESOP Business  
5 Act of 2019”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1           (1) Businesses wholly-owned through an  
2 ESOP—

3           (A) offer unique benefits to the United  
4 States and to customers of such businesses;

5           (B) provide better retirement security,  
6 work culture, and wage growth for workers; and

7           (C) reduce wealth inequality among man-  
8 agers and employees.

9           (2) Current Federal contracting laws may inad-  
10 vertently exclude businesses wholly-owned through  
11 an ESOP from key projects.

12           (3) The growth of the number of businesses  
13 wholly-owned through an ESOP benefits employees  
14 of such businesses.

15 **SEC. 3. SENSE OF CONGRESS.**

16 It is the sense of Congress that—

17           (1) businesses wholly-owned through an ESOP  
18 are beneficial to the economy;

19           (2) Congress should provide incentives for busi-  
20 nesses to become businesses wholly-owned through  
21 an ESOP; and

22           (3) businesses wholly-owned through an ESOP  
23 should be rewarded through the Federal contracting  
24 process for the benefits that such businesses provide.

1 **SEC. 4. DEEMING OF BUSINESSES WHOLLY-OWNED**  
2 **THROUGH AN ESOP AS SMALL BUSINESS**  
3 **CONCERNS.**

4 Section 3(a) of the Small Business Act (15 U.S.C.  
5 632(a)) is amended by adding at the end the following  
6 new paragraph:

7 “(10) APPLICATION TO BUSINESSES WHOLLY-  
8 OWNED THROUGH AN ESOP.—

9 “(A) IN GENERAL.—Notwithstanding the  
10 requirements relating to size standards in this  
11 subsection, a business wholly-owned through an  
12 ESOP shall be deemed to be a small business  
13 concern for the purposes of any Federal pro-  
14 curement programs.

15 “(B) DEFINITION.—The term ‘business  
16 wholly-owned through an ESOP’ means a busi-  
17 ness for which 100 percent of the outstanding  
18 stock is held through an employee stock owner-  
19 ship plan (as defined in section 4795(e)(7) of  
20 the Internal Revenue Code).”.

21 **SEC. 5. PRICING PREFERENCE FOR CONTRACTS AWARDED**  
22 **TO BUSINESSES WHOLLY-OWNED THROUGH**  
23 **AN ESOP.**

24 (a) PRICING PREFERENCE FOR DEFENSE CON-  
25 TRACTS.—Section 2304 of title 10, United States Code,

1 is amended by adding at the end the following new sub-  
2 section:

3       “(m) For a contract awarded pursuant to this sec-  
4 tion, the head of the agency may enter into a contract  
5 with a business wholly-owned through an ESOP using a  
6 price evaluation preference not in excess of 10 percent  
7 when evaluating an offer received from such a business.  
8 In this subsection, the term ‘business wholly-owned  
9 through an ESOP’ means a business for which 100 per-  
10 cent of the outstanding stock is held through an employee  
11 stock ownership plan (as defined in section 4795(e)(7) of  
12 the Internal Revenue Code).”.

13       (b) PRICING PREFERENCE FOR CIVILIAN CON-  
14 TRACTS.—Section 3301 of title 41, United States Code,  
15 is amended by adding at the end the following new sub-  
16 section:

17       “(g) PRICING PREFERENCE FOR CONTRACTS.—For  
18 a contract awarded pursuant to this section, the head of  
19 an agency may enter into a contract with a business whol-  
20 ly-owned through an ESOP using a price evaluation pref-  
21 erence not in excess of 10 percent when evaluating an  
22 offer received from such a business. In this subsection,  
23 the term ‘business wholly-owned through an ESOP’ means  
24 a business for which 100 percent of the outstanding stock  
25 is held through an employee stock ownership plan (as de-

1 fined in section 4795(e)(7) of the Internal Revenue  
2 Code).”.

3 **SEC. 6. FOLLOW-ON CONTRACTS FOR BUSINESSES WHOL-**  
4 **LY-OWNED THROUGH AN ESOP.**

5 (a) USE OF NONCOMPETITIVE PROCEDURES FOR  
6 DEFENSE CONTRACTS.—Section 2304(d)(1) of title 10,  
7 United States Code, is amended by adding at the end the  
8 following new subparagraph:

9 “(C) in the case of a follow-on contract for the  
10 delivery of goods or services that are the same as or  
11 substantially similar to the goods or services deliv-  
12 ered under a prior contract awarded to a source that  
13 is a business wholly-owned through an ESOP (as de-  
14 fined in subsection (m)), such goods or services shall  
15 be deemed to be available only from that source if  
16 the Secretary rates the performance of that source  
17 on the prior contract as satisfactory or better (or the  
18 equivalent) in the applicable past performance data-  
19 base used by the Secretary for making source selec-  
20 tion decisions”.

21 (b) USE OF NONCOMPETITIVE PROCEDURES FOR CI-  
22 VILIAN CONTRACTS.—Section 3304(b) of title 41, United  
23 States Code, is amended—

24 (1) in paragraph (1), by striking “or” after  
25 “procurement;”;

1           (2) in paragraph (2)(B), by striking the period  
2           and inserting “; or”; and

3           (3) by adding at the end the following:

4           “(3) a follow-on contract for the delivery of  
5           goods or services determined by the head of the ex-  
6           ecutive agency to be substantially similar to the  
7           goods or services delivered under a prior contract  
8           awarded to a source that is a business wholly-owned  
9           through an ESOP, such goods or services shall be  
10          deemed to be available only from that source if the  
11          executive agency rates the performance of that  
12          source on the prior contract as satisfactory or better  
13          (or the equivalent) in the applicable past perform-  
14          ance database used by the head of the agency for  
15          making source selection decisions.”.

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