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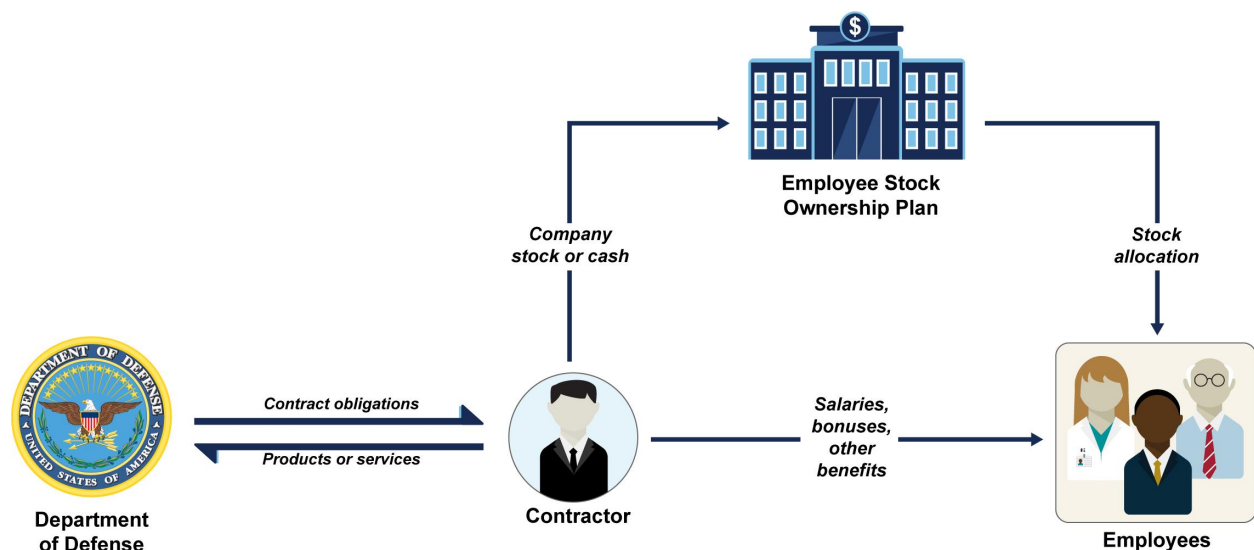
The Honorable Adam Smith
Chairman
The Honorable Mac Thornberry
Ranking Member
Committee on Armed Services
House of Representatives

Defense Contracting: DOD Contracts with Companies Having Employee Stock Ownership Plans

The Department of Defense (DOD) is the largest contracting agency in the federal government and contracts with thousands of companies annually, including companies that have employee stock ownership plans (ESOP). ESOPs are employee benefit plans designed to invest primarily in shares of the sponsoring company, but ESOPs can also invest in other assets, such as the stock of other companies or government securities.

You requested that we analyze DOD’s contracting with companies that have ESOPs. This report identifies what federal procurement data show regarding DOD contracting with companies that had ESOPs during calendar years 2014 through 2017, which is the latest year for which complete data were available. The report focuses on areas such as obligation amounts and contractor performance. Figure 1 illustrates the relationships of the various parties in the contracting process.

Figure 1: Department of Defense Contracting with Companies that Have Employee Stock Ownership Plans



Source: GAO analysis. | GAO-20-514R

As a company employee benefit plan, the ESOP can be a retirement plan for company employees, a means to transfer company stock ownership to the employees, and a means to provide tax-favored corporate financing to companies in certain circumstances. Companies can be wholly or partially owned by the ESOP, but there are no readily available data to determine what percent of a company is owned by an ESOP.

To identify companies that had ESOPs, we used data from the Department of Labor's Form 5500 Series reports, which companies that sponsor employee benefit plans, including ESOPs, are required to file. We then used the System for Award Management and the Federal Procurement Data System-Next Generation, both of which are managed by the General Services Administration, to identify companies with ESOPs that had DOD contracts, including orders, during calendar years 2014–2017. We focused on contracts and orders with annual obligations greater than \$150,000, which was the simplified acquisition threshold at that time and is the dollar value under which contracting officials can use a streamlined acquisition approach.¹ Further, we assessed DOD past performance data from the Contractor Performance Assessment Reporting System. We found the data in these systems to be sufficiently reliable for the purposes of identifying companies that had ESOPs, analyzing DOD contract obligations, and reporting contractor performance. We also conducted interviews with DOD contracting officials and officials from the National Center for Employee Ownership, a nonprofit organization established to provide information and support to the employee ownership community, to obtain their perspective on the use of ESOPs and available data.

See enclosure I for additional details on our scope and methodology, and a description of key terms used in this report.

Summary

- DOD obligated almost half of all contracting dollars to companies that had ESOPs during calendar years 2014 through 2017. Specifically, about \$562.8 billion of the total of \$1.2 trillion obligated on DOD contracts with annual obligations greater than \$150,000 went to 622 companies that had ESOPs. Ninety percent of these obligations went to 20 companies that had ESOPs, while the remaining 10 percent of obligations went to another 602 companies.
- DOD officials do not consider whether a company has an ESOP during the contract award process. Rather, DOD officials said that award decisions are based on a prospective contractor's ability to deliver quality products and services and other applicable factors, such as the proposed price.²

¹The simplified acquisition threshold increased to \$250,000 with the implementation of DOD Class Deviation 2018-O0013, dated April 13, 2018. The National Defense Authorization Act for Fiscal Year 2018 amended the definition of simplified acquisition threshold at section 134 of title 41, United States Code, to mean \$250,000. Pub. L. No. 115-91, § 805 (2017). There is an open Federal Acquisition Regulation case to amend the definition of simplified acquisition threshold at Federal Acquisition Regulation 2.101.

²DOD Source Selection Procedures do not include whether a company has an ESOP as a factor or subfactor in the solicitation, evaluation, or contract award decision process. The DOD Source Selection Procedures document provides the department procedures for conducting competitively negotiated source selections and outlines a common set of principles and procedures for conducting such acquisitions in accordance with applicable statutes and regulations. The objective of these procedures is to ensure the department's source selection process delivers quality and timely products and services to the warfighter and the nation at the best value to the taxpayer. Defense Federal Acquisition Regulations Supplement 215.300; see also Procedures, Guidance, and Information 215.300.

- Performance ratings for quality, cost, and schedule for contracts with companies that had ESOPs during calendar years 2014–2017 were generally “satisfactory” or better. The same is true for all other companies with performance ratings that contracted with DOD during this time. DOD officials said that they do not consider whether a company has an ESOP when assessing contractor performance.

See enclosure II, which provides detailed analysis of DOD contract obligations with companies that had ESOPs during calendar years 2014–2017, including contractor performance assessments.

Agency Comments

We provided a draft of this report to DOD, the Department of Labor, and the General Services Administration for their review and comment. None of the agencies had formal comments, but DOD provided technical comments, which we addressed as appropriate.

We are sending copies of this report to the appropriate congressional committees; the Secretary of Defense; the Assistant Secretary of Labor, Employee Benefits Security Administration; the Administrator of General Services; and other interested parties. In addition, the report is available at no charge on the GAO website at <https://www.gao.gov>.

If you or your staff have any questions concerning this report, please contact me at (202) 512-4841 or by email at woodsw@gao.gov. Contact points for our Office of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report were Penny Berrier (Assistant Director); James Kim; Cory Gerlach; Beth Reed-Fritts; Rose Brister; Roxanna Sun; Suellen Foth; Lorraine Ettaro; Julia M. Kennon; and Kurt Gurka.

Sincerely yours,



William T. Woods
Director, Contracting and National Security Acquisitions

Enclosures – 2

Enclosure I - Scope, Methodology, and Description of Key Terms

To analyze the Department of Defense's (DOD) contracting actions with companies that had Employee Stock Ownership Plans (ESOP), we used the Form 5500 Series, *Annual Return/Report of Employee Benefit Plan* data from the Department of Labor to identify all ESOPs during calendar years 2014–2017. Form 5500 contains self-reported employee benefit plan information, including ESOPs, such as the company's Employer Identification Number, the number of participants, and assets.

To determine which ESOPs were sponsored by companies that also had DOD contracts during calendar years 2014–2017, we used data from the System for Award Management and the Federal Procurement Data System-Next Generation, which are managed by the General Services Administration. The System for Award Management has information on companies such as Employer Identification Numbers and Data Universal Numbering System (DUNS) numbers assigned by Dun & Bradstreet. We used the DUNS numbers associated with companies that sponsored the ESOPs to identify DOD contracts from the Federal Procurement Data System-Next Generation. We selected DOD contracts, including orders, during calendar years 2014–2017, with annual obligations greater than \$150,000, which was the simplified acquisition threshold at that time.³ We selected contracts during calendar years 2014–2017, because 2017 was the most recent year for which complete Form 5500 Series data were available at the time of our review.⁴ We adjusted contract obligations for inflation based on 2019 dollars and analyzed characteristics for these contracts, such as the percent of products and services, the extent of competition, and the types of contracts. Our analysis is not applicable to contracts with annual obligations less than or equal to \$150,000.

We assessed the reliability of the Form 5500 Series, System for Award Management, and Federal Procurement Data System-Next Generation data by reviewing existing information about these systems and the data they produce. We reviewed the data dictionaries and data validation rules. In addition, we conducted electronic testing for errors in accuracy and completeness of the data and interviewed officials at the Department of Labor's Employee Benefits Security Administration, the General Services Administration, and DOD. We determined that the Form 5500 Series, System for Award Management, and Federal Procurement Data System-Next Generation data were sufficiently reliable for the purposes of determining DOD contracts with companies that have ESOPs for this report.

We assessed DOD past performance data from the Contractor Performance Assessment Reporting System, which is managed by the General Services Administration. Past performance information is relevant information regarding a contractor's actions under previously awarded contracts or orders. Specifically, we analyzed contractors' reported performance under contracts

³The simplified acquisition threshold increased to \$250,000 with the implementation of DOD Class Deviation 2018-O0013, dated April 13, 2018. The National Defense Authorization Act for Fiscal Year 2018 amended the definition of simplified acquisition threshold at section 134 of title 41, United States Code, to mean \$250,000. Pub. L. No. 115-91, § 805 (2017). There is an open Federal Acquisition Regulation case to amend the definition of simplified acquisition threshold at Federal Acquisition Regulation 2.101.

⁴All ESOPs must file an annual return/report. Form 5500 is to be filed within 7 months after the end of the plan year, and a plan year may begin at any time. For example, a 2017 plan year may be from December 1, 2017 to November 30, 2018; therefore, the plan should file by the end of June 2019. Also, a plan may obtain an extension of up to 2 and a half months for filing annual information. The return/report must be filed whether or not the plan was qualified by the Internal Revenue Service ("tax-qualified"), benefits no longer accrued, contributions were not made that plan year, or contributions were no longer made.

and orders previously awarded by DOD to companies that had ESOPs in the quality, cost, and schedule evaluation areas. DOD has minimum dollar thresholds for reporting performance and not all contracts require ratings. See table 1 below for additional details about the Contractor Performance Assessment Reporting System data. We selected nonarchived evaluations with a period of performance during calendar years 2014–2017.⁵ We assessed the reliability of the Contractor Performance Assessment Reporting System by electronically testing for errors in accuracy and completeness and reviewed the data validation rules for reporting, User Manual, and Guidance. We also interviewed officials from DOD and the General Services Administration about the system and its data. We determined the data to be sufficiently reliable to describe the quality, cost, and schedule ratings during calendar years 2014–2017 for the purposes of this report.

To supplement our work, we reviewed DOD’s Source Selection Procedures and conducted interviews with DOD contract policy and other contracting officials. We also interviewed officials from the National Center for Employee Ownership, a nonprofit organization established to provide information and support to the employee ownership community, and three companies: two with the most DOD obligations and one small business that had an ESOP and DOD contracts. See table 1 below for additional details on the key terms used in this report.

Description of Key Terms

Table 1 provides descriptions of key terms from the report, including additional information on how we analyzed the data elements.

⁵Generally, completed evaluations for a contract or order with evaluation completion dates greater than 36 months for systems or nonsystems or greater than 72 months for architect-engineer or construction are archived.

Table 1: Description of Key Terms

Term Used	Description
Companies	We identified and counted companies based on global Data Universal Numbering System (DUNS) numbers from System for Award Management data. The global DUNS number represents parent companies and entities connected to them.
Companies that had ESOPs	<p>Companies that reported having an employee stock ownership plan (ESOP) during calendar years 2014–2017, according to Department of Labor’s Form 5500 Series, <i>Annual Return/Report of Employee Benefit Plan</i> data.</p> <p>In calendar year 2017 (the most recent and complete Form 5500 Series data available at the time of our review), there were 6,499 ESOPs with \$1.6 trillion in assets and 10.6 million active participants.^a</p> <p>We identified ESOPs in Form 5500 Series data that listed one of the three plan characteristic codes that designate plans as an ESOP (2O, 2P, or 2Q). Form 5500 Series data details the ESOP asset categories, such as employer securities or common stock, but there is no available information on the percent of shares of the company stock held by the ESOP.</p> <p>In some cases, one company might have had more than one ESOP for different groups of workers. As a result, the total number of ESOPs was larger than the total number of companies that had ESOPs.</p>
Department of Defense (DOD) contracts	For the purposes of this report, the analysis of DOD contract obligations for competition, products, services, and contract type is based on actions with annual obligations greater than \$150,000. ^b
Top companies that had ESOPs and DOD contracts	<p>Companies with ESOPs that had the highest total DOD contract obligations during calendar years 2014–2017.</p> <p>For calendar year 2017, we found that DOD contracted with companies, or contractors, that had 452 ESOPs with almost \$750 billion in assets and 2.9 million active participants.</p>
Products and Services	
Top products/services	Products and services with the highest DOD contract obligations to companies that had ESOPs during calendar years 2014–2017.
Competition	
Noncompetitive obligations	<p>DOD obligations associated with contracts awarded noncompetitively to companies that had ESOPs during calendar years 2014–2017.</p> <p>We defined noncompetitive obligations to include DOD obligations on contracts that were awarded using the exceptions to full and open competition listed in Federal Acquisition Regulation Subpart 6.3 (Other than Full and Open Competition). We also included noncompetitive orders issued under multiple award indefinite delivery/indefinite quantity contracts or under the General Services Administration’s schedules program. For noncompetitive contract actions, we included contracts and orders coded in FPDS-NG as “not competed,” “not available for competition,” and “not competed under simplified acquisition procedures,” as well as orders coded as an exception to “subject to fair opportunity,” including “urgency,” “only one source,” “minimum guarantee,” “follow-on action following competitive initial action,” “other statutory authority,” and “sole source.”</p>
Competitive obligations	<p>DOD obligations associated with contracts awarded competitively to companies that had ESOPs during calendar years 2014–2017.</p> <p>For competitive contract actions, we included contracts and orders coded in FPDS-NG as “full and open competition,” “full and open after exclusion of sources,” and “competed under simplified acquisition procedures” as well as orders coded as “subject to fair opportunity,” “fair opportunity given,” and “competitive set aside.”</p>

Contract Type	
Fixed-price	The government pays a fixed price. The contractor must meet contract requirements, including the times, places, and prices specified in the contract. The contractor generally bears the risk of cost overrun. Incentive arrangements included in the contract can allow the government to share in cost savings and can also allow the contractor to earn fees tied to performance.
Cost-reimbursement	The government pays the contractor's allowable costs incurred, to the extent prescribed by the contract. The government may also pay a fee, which may be related to performance. Contracts include an estimated total cost for purposes of obligating funds and a ceiling that the contractor exceeds at its own risk unless approved by the contracting officer. The government is not promised a completed end item or service within the estimated cost. The contractor makes a good faith effort to meet contract requirements within the estimated cost. The government bears the risk of cost overrun up to the ceiling.
Other	This category includes other contract types, such as time-and-materials and labor-hour contracts. For time-and-materials and labor-hour contracts, the government pays fixed per-hour labor rates that include wages, overhead, general administrative costs, and profit as well as the actual cost of materials. Materials costs may include both direct and indirect costs. In a labor-hour contract, materials are not supplied by the contractor. Contracts include a ceiling price that the contractor exceeds at its own risk.

Contractor Performance	
Contractor performance ratings	<p>Performance ratings were based on the Contractor Performance Assessment Reporting System (CPARS), which is a government-wide information system for collecting and processing contractor performance information. Contractors are generally evaluated on six areas:</p> <ol style="list-style-type: none"> (1) technical (quality of product or service), (2) cost control (not required for fixed-price contract type), (3) schedule/timeliness, (4) management or business relations, (5) small business subcontracting, and (6) other (as applicable). <p>For each of these areas, contracting officials enter a performance rating—"exceptional," "very good," "satisfactory," "marginal," or "unsatisfactory"—and provide a supporting written narrative.^c</p> <p>Contracts can have more than one rating for the duration of the contract. CPARS guidance states that annual contract ratings are required for DOD contracts or orders that meet the following criteria:</p> <ul style="list-style-type: none"> • Systems (includes new development and major modifications): >\$5 million; • Nonsystems: <ul style="list-style-type: none"> ○ Operations support: >\$5 million; ○ Services: >\$1 million; ○ Technology: >\$1 million; ○ Ship repair and overhaul: >\$500,000; • Architect-engineer: >\$35,000 or terminated for default; and • Construction: >\$700,000 or terminated for default. <p>We assessed CPARS ratings for companies that had ESOPs on contract actions with annual obligations greater than \$150,000 during calendar years 2014–2017 and met the CPARS dollar thresholds above. We also assessed all other available CPARS ratings for other DOD contractors during the same time period. Due to the higher CPARS thresholds, the number of ratings was different than the number of contracts with annual obligations greater than \$150,000.</p>

Sources: GAO analysis of the Federal Acquisition Regulation, FPDS-NG, System for Award Management, and CPARS data elements. GAO analysis of FPDS-NG data dictionary and CPARS guidance. | GAO-20-514R

^cAccording to Department of the Treasury estimates, special tax rules for ESOPs resulted in an estimated \$2.1 billion in reduced income tax revenue in fiscal year 2019. Tax expenditures are provisions of the tax code that

reduce taxpayers' tax liability and, therefore, the amount of tax revenue paid to the government. Special tax rules allow an employer to deduct contributions to an ESOP as employee compensation, and employees defer tax on the income until benefits are paid.

^bContracts include what the General Services Administration's Federal Procurement Data System-Next Generation (FPDS-NG) categorizes as definitive vehicles (definitive contracts and purchase orders that have a defined scope of work that do not allow for individual orders under them), and for what FPDS-NG categorizes as indefinite delivery vehicles (orders under the Federal Supply Schedule, orders/calls under blanket purchase agreements, orders under basic ordering agreements, orders under government-wide acquisition contracts, and orders under other indefinite delivery vehicles, such as indefinite delivery, indefinite quantity contracts).

^cFederal Acquisition Regulation 42.1503(b)(2) and (4).

We conducted this performance audit from July 2019 through June 2020 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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