

Union Calendar No. 39

115TH CONGRESS
1ST SESSION

H. R. 679

[Report No. 115–68]

To amend title 41, United States Code, to improve the manner in which Federal contracts for design and construction services are awarded, to prohibit the use of reverse auctions for design and construction services procurements, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 24, 2017

Mr. MEADOWS (for himself, Mr. GRAVES of Missouri, and Mr. RUSSELL) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

MARCH 29, 2017

Additional sponsors: Mr. FARENTHOLD and Mr. LYNCH

MARCH 29, 2017

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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A BILL

To amend title 41, United States Code, to improve the manner in which Federal contracts for design and construction services are awarded, to prohibit the use of reverse auctions for design and construction services procurements, and for other purposes.

(a) SHORT TITLE.—This Act may be cited as the
“Construction Consensus Procurement Improvement Act
of 2017”.

Sec. 1. Short title; table of contents.

Sec. 2. Congressional findings.

Sec. 3. Design-build construction process improvement.

Sec. 4. Prohibition on the use of a reverse auction for the award of a contract for design and construction services.

10 Congress makes the following findings:

(2) Federal procurement officials often adopt contracting techniques from the private sector and have used those techniques effectively to procure products and services.

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1 (4) The current statutory framework for de-
2 sign-build could benefit from legislative refinement.

3 (5) Reverse auctions are another procurement
4 technique Federal officials have adopted from the
5 private sector and used successfully to award con-
6 tracts for the procurement of products that are com-
7 mercially equivalent to commodities.

8 (6) Despite their success in other contexts, re-
9 verse auctions are generally inappropriate for the
10 procurement of design and construction services,
11 given the unique nature of each such project.

12 **SEC. 3. DESIGN-BUILD CONSTRUCTION PROCESS IMPROVE-**
13 **MENT.**

14 (a) CIVILIAN CONTRACTS.—

15 (1) IN GENERAL.—Section 3309(b) of title 41,
16 United States Code, is amended to read as follows:

17 “(b) CRITERIA FOR USE.—

18 “(1) CONTRACTS WITH A VALUE OF AT LEAST
19 \$3,000,000.—Two-phase selection procedures shall
20 be used for entering into a contract for the design
21 and construction of a public building, facility, or
22 work if a contracting officer determines that the
23 project has a value of \$3,000,000 or greater.

24 “(2) CONTRACTS WITH A VALUE LESS THAN
25 \$3,000,000.—For any project that a contracting of-

1 ficer determines has a value of less than \$3,000,000,
2 the contracting officer shall make a determination
3 on whether two-phase selection procedures are ap-
4 propriate for use for entering into a contract for the
5 design and construction of a public building, facility,
6 or work if—

7 “(A) the contracting officer anticipates
8 that 3 or more offers will be received for the
9 contract;

10 “(B) design work must be performed be-
11 fore an offeror can develop a price or cost pro-
12 posal for the contract;

13 “(C) the offeror will incur a substantial
14 amount of expense in preparing the offer; and

15 “(D) the contracting officer has considered
16 information such as—

17 “(i) the extent to which the project re-
18 quirements have been adequately defined;

19 “(ii) the time constraints for delivery
20 of the project;

21 “(iii) the capability and experience of
22 potential contractors;

23 “(iv) the suitability of the project for
24 use of the two-phase selection procedures;

1 “(v) the capability of the agency to
2 manage the two-phase selection process;
3 and

4 “(vi) other criteria established by the
5 agency.”.

6 (2) ANNUAL REPORTS.—

7 (A) IN GENERAL.—Not later than Novem-
8 ber 30 of 2018, 2019, 2020, 2021, and 2022,
9 the head of each executive agency shall compile
10 *and submit to the Director of the Office of Man-*
11 *agement and Budget* an annual report of each
12 instance in which the agency awarded a design-
13 build contract pursuant to section 3309 of title
14 41, United States Code, during the fiscal year
15 ending in such calendar year, in which—

16 (i) more than 5 finalists were selected
17 for phase-two requests for proposals; or

18 (ii) the contract or order was awarded
19 without using two-phase selection proce-
20 dures.

21 (B) PUBLIC AVAILABILITY.—The Director
22 of the Office of Management and Budget shall
23 facilitate public access to the reports, including
24 by posting them on a publicly available Internet

1 website. A notice of the availability of each re-
 2 port shall be published in the Federal Register.

3 *(C) SUBMISSION TO GAO.—Not later than*
 4 *30 days after the deadline described under sub-*
 5 *paragraph (A), the Director of the Office of Man-*
 6 *agement and Budget shall compile and submit*
 7 *the reports submitted to the Director under such*
 8 *subparagraph to the Comptroller General.*

9 (b) GAO REPORTS.—Not later than 270 days after
 10 the deadline ~~for each annual report~~ under subsection
 11 (a)(2)(A), the Comptroller General of the United States
 12 shall issue a report analyzing ~~the compliance of each exec-~~
 13 ~~utive agency~~ *the reports submitted under subsection*
 14 *(a)(2)(C) and agency compliance* with the requirements of
 15 section 3309 of title 41, United States Code, as added by
 16 subsection (a)(1).

17 **SEC. 4. PROHIBITION ON THE USE OF A REVERSE AUCTION**
 18 **FOR THE AWARD OF A CONTRACT FOR DE-**
 19 **SIGN AND CONSTRUCTION SERVICES.**

20 (a) FINDING.—Congress finds that, in contrast to a
 21 traditional auction in which the buyers bid up the price,
 22 sellers bid down the price in a reverse auction.

23 (b) PROHIBITION.—Not later than 180 days after the
 24 date of the enactment of this Act, the Federal Acquisition
 25 Regulation shall be amended to prohibit the use of reverse

1 auctions as part of the two-phase selection procedures for
2 awarding contracts for design and construction services.

3 (c) DEFINITIONS.—For purposes of this section—

4 (1) the term “design and construction services”
5 means—

6 (A) site planning and landscape design;

7 (B) architectural and engineering services
8 (as defined in section 1102 of title 40, United
9 States Code);

10 (C) interior design;

11 (D) performance of substantial construc-
12 tion work for facility, infrastructure, and envi-
13 ronmental restoration projects;

14 (E) delivery and supply of construction
15 materials to construction sites; or

16 (F) construction or substantial alteration
17 of public buildings or public works; and

18 (2) the term “reverse auction” means, with re-
19 spect to any procurement by an executive agency—

20 (A) a real-time auction conducted through
21 an electronic medium among 2 or more offerors
22 who compete by submitting bids for a supply or
23 service contract, or a delivery order, task order,
24 or purchase order under the contract, with the

1 ability to submit revised lower bids at any time
2 before the closing of the auction; and
3 (B) the award of the contract, delivery
4 order, task order, or purchase order to the of-
5 feror, in whole or in part, based on the price
6 obtained through the auction process.

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