

114TH CONGRESS  
1ST SESSION

# H. R. 1666

To require the use of two-phase selection procedures when design-build contracts are suitable for award to small business concerns.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 26, 2015

Mr. GRAVES of Missouri (for himself and Mr. TIBERI) introduced the following bill; which was referred to the Committee on Oversight and Government Reform, and in addition to the Committee on Armed Services, 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 require the use of two-phase selection procedures when design-build contracts are suitable for award to small business concerns.

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 cited as the “Design-Build Effi-  
5 ciency and Jobs Act of 2015”.

1 **SEC. 2. IMPROVEMENTS TO THE DESIGN-BUILD CONSTRUC-**  
2 **TION PROCESS FOR CIVILIAN CONTRACTS.**

3 Section 3309 of title 41, United States Code, is  
4 amended—

5 (1) by amending subsection (b) to read as fol-  
6 lows:

7 “(b) CRITERIA FOR USE.—

8 “(1) CONTRACTS WITH A VALUE OF AT LEAST  
9 \$750,000.—Two-phase selection procedures shall be  
10 used for entering into a contract for the design and  
11 construction of a public building, facility, or work  
12 when a contracting officer determines that the con-  
13 tract has a value of \$750,000 or greater.

14 “(2) CONTRACTS WITH A VALUE LESS THAN  
15 \$750,000.—For projects that a contracting officer de-  
16 termines have a value of less than \$750,000, the  
17 contracting officer shall make a determination  
18 whether two-phase selection procedures are appro-  
19 priate for use for entering into a contract for the de-  
20 sign and construction of a public building, facility,  
21 or work when—

22 “(A) the contracting officer anticipates  
23 that 3 or more offers will be received for the  
24 contract;

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

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

6 “(D) the contracting officer has considered  
7 information such as—

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

10 “(ii) the time constraints for delivery  
11 of the project;

12 “(iii) the capability and experience of  
13 potential contractors;

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

16 “(v) the capability of the agency to  
17 manage the two-phase selection process;  
18 and

19 “(vi) other criteria established by the  
20 agency.”;

21 (2) by striking the second sentence in sub-  
22 section (d) and inserting the following: “The max-  
23 imum number specified in the solicitation shall not  
24 be greater than 5 unless the head of the contracting  
25 activity (or a designee of the head who is in a posi-

1       tion not lower than the supervisor of the contracting  
2       officer) approves the contracting officer’s justifica-  
3       tion with respect to an individual solicitation that a  
4       specified number greater than 5 is in the Federal  
5       Government’s interest. The contracting officer shall  
6       provide written documentation of how a maximum  
7       number greater than 5 is consistent with the pur-  
8       poses and objectives of the two-phase selection pro-  
9       cedures.”; and

10           (3) by adding at the end the following new sub-  
11       section:

12       “(f) ANNUAL REPORTS.—

13           “(1) IN GENERAL.—Not later than November  
14       30 of each of the years 2016 through 2020, the head  
15       of each agency shall submit to the Director of the  
16       Office of Management and Budget an annual report  
17       containing each instance in which the agency award-  
18       ed a design-build contract pursuant to section 3309  
19       of this title, during the preceding fiscal year in  
20       which—

21           “(A) more than 5 finalists were selected  
22       for phase-two requests for proposals; or

23           “(B) the contract was awarded without  
24       using two-phase selection procedures.

1           “(2) PUBLIC AVAILABILITY.—The Director of  
2           the Office of Management and Budget shall make  
3           available to the public, including on the Internet, the  
4           annual reports described in paragraph (1), and pub-  
5           lish a notice of the availability of each report in the  
6           Federal Register.”.

7   **SEC. 3. IMPROVEMENTS TO THE DESIGN-BUILD CONSTRUC-**  
8                           **TION PROCESS FOR DEFENSE CONTRACTS.**

9           Section 2305a of title 10, United States Code, is  
10   amended—

11           (1) by amending subsection (b) to read as fol-  
12           lows:

13           “(b) CRITERIA FOR USE.—

14           “(1) CONTRACTS WITH A VALUE OF AT LEAST  
15           \$750,000.—Two-phase selection procedures shall be  
16           used for entering into a contract for the design and  
17           construction of a public building, facility, or work  
18           when a contracting officer determines that the con-  
19           tract has a value of \$750,000 or greater.

20           “(2) CONTRACTS WITH A VALUE LESS THAN  
21           \$750,000.—For projects that a contracting officer de-  
22           termines have a value of less than \$750,000, the  
23           contracting officer shall make a determination  
24           whether two-phase selection procedures are appro-  
25           priate for use for entering into a contract for the de-

1 sign and construction of a public building, facility,  
2 or work when—

3 “(A) the contracting officer anticipates  
4 that 3 or more offers will be received for the  
5 contract;

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

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

11 “(D) the contracting officer has considered  
12 information such as—

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

15 “(ii) the time constraints for delivery  
16 of the project;

17 “(iii) the capability and experience of  
18 potential contractors;

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

21 “(v) the capability of the agency to  
22 manage the two-phase selection process;  
23 and

24 “(vi) other criteria established by the  
25 agency.”;

1           (2) by striking the second sentence in sub-  
2           section (d) and inserting the following: “The max-  
3           imum number specified in the solicitation shall not  
4           be greater than 5 unless the head of the contracting  
5           activity (or a designee of the head who is in a posi-  
6           tion not lower than the supervisor of the contracting  
7           officer) approves the contracting officer’s justifica-  
8           tion with respect to an individual solicitation that a  
9           specified number greater than 5 is in the Federal  
10          Government’s interest.”; and

11          (3) by adding at the end the following new sub-  
12          section:

13          “(g) ANNUAL REPORTS.—

14               “(1) IN GENERAL.—Not later than November  
15               30 of each of the years 2016 through 2020, the Sec-  
16               retary of Defense shall submit to the Director of the  
17               Office of Management and Budget an annual report  
18               containing each instance in which the agency award-  
19               ed a design-build contract pursuant to section 2305a  
20               of this title, during the preceding fiscal year in  
21               which—

22                       “(A) more than 5 finalists were selected  
23                       for phase-two requests for proposals; or

24                       “(B) the contract was awarded without  
25                       using two-phase selection procedures.

1           “(2) PUBLIC AVAILABILITY.—The Director of  
2           the Office of Management and Budget shall make  
3           available to the public, including on the Internet, the  
4           annual reports described in paragraph (1), and pub-  
5           lish a notice of the availability of each report in the  
6           Federal Register.”.

7   **SEC. 4. GOVERNMENT ACCOUNTABILITY OFFICE REPORT.**

8           Not later than 270 days after November 30, 2020,  
9           the Comptroller General of the United States shall issue  
10          a report analyzing the compliance of the various Federal  
11          agencies with the requirements of subsection (g) of section  
12          2305a of title 10, United States Code (as added by sub-  
13          section (b)(3)) and subsection (f) of section 3309 of title  
14          41, United States Code (as added by subsection (a)(3)).

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