

114TH CONGRESS  
1ST SESSION

# S. 2139

To amend the Small Business Act to prohibit the use of reverse auctions for the procurement of covered contracts.

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IN THE SENATE OF THE UNITED STATES

OCTOBER 6, 2015

Mr. VITTER (for himself and Mrs. SHAHEEN) introduced the following bill; which was read twice and referred to the Committee on Small Business and Entrepreneurship

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## A BILL

To amend the Small Business Act to prohibit the use of reverse auctions for the procurement of covered contracts.

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 “Small Contractors Im-  
5 prove Competition Act of 2015”.

6 **SEC. 2. LIMITATIONS ON REVERSE AUCTIONS.**

7 (a) SENSE OF CONGRESS.—It is the sense of Con-  
8 gress that, when used appropriately, reverse auctions may  
9 improve procurement by the Federal Government of com-  
10 mercially available commodities by increasing competition,

1 reducing prices, and improving opportunities for small  
2 businesses.

3 (b) LIMITATIONS ON REVERSE AUCTIONS.—The  
4 Small Business Act (15 U.S.C. 631 et seq.) is amended—

5 (1) by redesignating section 47 as section 48;

6 and

7 (2) by inserting after section 46 the following:

8 **“SEC. 47. LIMITATIONS ON REVERSE AUCTIONS FOR COV-**  
9 **ERED CONTRACTS.**

10 “(a) DEFINITIONS.—In this section—

11 “(1) the term ‘contracting officer’ has the  
12 meaning given the term in section 2101 of title 41,  
13 United States Code;

14 “(2) the term ‘covered contract’ means a con-  
15 tract—

16 “(A) for design and construction services;

17 “(B) for goods purchased to protect Fed-  
18 eral employees, members of the Armed Forces,  
19 or civilians from bodily harm; or

20 “(C) for goods or services other than those  
21 goods or services described in subparagraph (A)  
22 or (B)—

23 “(i) to be awarded based on factors  
24 other than price and technical responsi-  
25 bility; or

1                   “(ii) if awarding the contract requires  
2                   the contracting officer to conduct discus-  
3                   sions with the offerors about their offer;

4                   “(3) the term ‘design and construction services’  
5                   means—

6                   “(A) site planning and landscape design;

7                   “(B) architectural and interior design;

8                   “(C) engineering system design;

9                   “(D) performance of construction work for  
10                  facility, infrastructure, and environmental res-  
11                  toration projects;

12                  “(E) delivery and supply of construction  
13                  materials to construction sites;

14                  “(F) construction, alteration, or repair, in-  
15                  cluding painting and decorating, of public build-  
16                  ings and public works; and

17                  “(G) architectural and engineering serv-  
18                  ices, as defined in section 1102 of title 40,  
19                  United States Code;

20                  “(4) the term ‘responsible source’ has the  
21                  meaning given the term in section 113 of title 41,  
22                  United States Code; and

23                  “(5) the term ‘reverse auction’, with respect to  
24                  procurement by an agency, means an auction be-  
25                  tween a group of offerors who compete against each

1 other by submitting offers for a contract or task or  
2 delivery order with the ability to submit revised of-  
3 fers with lower prices throughout the course of the  
4 auction.

5 “(b) PROHIBITION ON USING REVERSE AUCTIONS  
6 FOR COVERED CONTRACTS.—In the case of a covered con-  
7 tract, a reverse auction may not be used if the award of  
8 the covered contract is to be made under—

9 “(1) section 8(a);

10 “(2) section 8(m);

11 “(3) section 15(a);

12 “(4) section 15(j);

13 “(5) section 31; or

14 “(6) section 36.

15 “(c) LIMITATIONS ON USING REVERSE AUCTIONS.—  
16 In the case of the award of a contract made under para-  
17 graphs (1) through (6) of subsection (b) that is not a cov-  
18 ered contract, a reverse auction may be used for the award  
19 of such a contract only if the following requirements are  
20 met:

21 “(1) DECISIONS REGARDING USE OF A RE-  
22 VERSE AUCTION.—Subject to paragraph (2), the fol-  
23 lowing decisions with respect to such a contract shall  
24 only be made by a contracting officer:

1           “(A) A decision to use a reverse auction as  
2 part of the competition for award of such a con-  
3 tract.

4           “(B) Any decision made after the decision  
5 described in subparagraph (A) regarding the  
6 appropriate evaluation criteria, the inclusion of  
7 vendors, the acceptability of vendor submissions  
8 (including decisions regarding timeliness), and  
9 the selection of the winner.

10       “(2) TRAINING REQUIRED.—

11           “(A) IN GENERAL.—Only a contracting of-  
12 ficer who has received training on the appro-  
13 priate use and supervision of reverse auctions  
14 may use or supervise a reverse auction for the  
15 award of such a contract.

16           “(B) TRAINING.—The training described  
17 in subparagraph (A) shall be provided by, or  
18 similar to the training provided by, the Defense  
19 Acquisition University as described in section  
20 824 of the Carl Levin and Howard P. ‘Buck’  
21 McKeon National Defense Authorization Act  
22 for Fiscal Year 2015 (Public Law 113–291;  
23 127 Stat. 3436).

1           “(3) NUMBER OF OFFERS; REVISIONS TO  
2 BIDS.—A Federal agency may not award such a con-  
3 tract using a reverse auction if—

4                   “(A) only 1 offer is received; or

5                   “(B) offerors do not have the ability to  
6 submit revised bids with lower prices through-  
7 out the course of the auction.

8           “(4) TECHNICALLY ACCEPTABLE OFFERS.—A  
9 Federal agency awarding such a contract using a re-  
10 verse auction shall evaluate the technical accept-  
11 ability of offers only as technically acceptable or un-  
12 acceptable.

13           “(5) USE OF PRICE RANKINGS.—A Federal  
14 agency may not award such a contract using a re-  
15 verse auction if at any time during the procurement  
16 process the Federal agency misinforms an offeror  
17 about the price ranking of the last offer of the offer-  
18 or submitted in relation to offers submitted by other  
19 offerors.

20           “(6) USE OF THIRD-PARTY AGENTS.—If a Fed-  
21 eral agency uses a third-party agent to assist with  
22 the award of such a contract using a reverse auc-  
23 tion, the Federal agency shall ensure that—

1           “(A) inherently governmental functions are  
2 not performed by private contractors, including  
3 by the third-party agent;

4           “(B) information on the past contract per-  
5 formance of offerors created by the third-party  
6 agent and shared with the Federal agency is  
7 collected, maintained, and shared in compliance  
8 with section 1126 of title 41, United States  
9 Code;

10           “(C) information on whether an offeror is  
11 a responsible source that is created by the  
12 third-party agent and shared with the Federal  
13 agency is shared with the offeror and complies  
14 with section 8(b)(7); and

15           “(D) disputes between the third-party  
16 agent and an offeror may not be used to justify  
17 a determination that an offeror is not a respon-  
18 sible source or to otherwise restrict the ability  
19 of an offeror to compete for the award of a con-  
20 tract or task.”.

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