

## Union Calendar No. 39

115<sup>TH</sup> CONGRESS  
1<sup>ST</sup> 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.

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### 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

[Omit the part struck through and insert the part printed in italic]

# **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.

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; TABLE OF CONTENTS.**

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

7        (b) TABLE OF CONTENTS.—The table of contents for  
8 this Act is as follows:

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.

9 **SEC. 2. CONGRESSIONAL FINDINGS.**

10        Congress makes the following findings:

11            (1) The acquisition procedures that are often  
12 used effectively to procure products and other forms  
13 of services are not always appropriate for the pro-  
14 curement of design and construction services.

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

19            (3) Design-build is a procurement technique  
20 Federal officials have adopted from the private sec-  
21 tor that has worked well for the procurement of de-  
22 sign and construction services.

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 execu-~~  
13 ~~tive 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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