

117TH CONGRESS  
1ST SESSION

# H. R. 26

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IN THE SENATE OF THE UNITED STATES

JANUARY 6, 2021

Received; read twice and referred to the Committee on Homeland Security and  
Governmental Affairs

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## AN ACT

To amend the Consolidated Appropriations Act, 2021, to correct a provision on the prohibition on the use of a reverse auction, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Construction Con-  
3 sensus Procurement Improvement Act of 2021”.

4 **SEC. 2. AMENDMENT.**

5 Section 402 of title IV of division U of the Consoli-  
6 dated Appropriations Act, 2021, is amended to read as  
7 follows:

8 “PROHIBITION ON USE OF A REVERSE AUCTION FOR THE  
9 AWARD OF A CONTRACT FOR COMPLEX, SPECIAL-  
10 IZED, OR SUBSTANTIAL DESIGN AND CONSTRUCTION  
11 SERVICES

12 “SEC. 402.

13 “(a) FINDINGS.—Congress makes the following find-  
14 ings:

15 “(1) In contrast to a traditional auction in  
16 which the buyers bid up the price, sellers bid down  
17 the price in a reverse auction.

18 “(2) Reverse auctions, while providing value for  
19 the vast majority of Federal acquisitions, including  
20 certain construction-related acquisitions, are limited  
21 in value for complex, specialized, or substantial de-  
22 sign and construction services.

23 “(b) REVERSE AUCTION DEFINED.—In this section,  
24 the term ‘reverse auction’ means, with respect to any pro-  
25 curement by an executive agency, a real-time auction gen-  
26 erally conducted through an electronic medium among two

1 or more offerors who compete by submitting bids for a  
2 supply or service contract, or a delivery order, task order,  
3 or purchase order under the contract, with the ability to  
4 submit revised lower bids at any time before the closing  
5 of the auction.

6 “(c) PROHIBITION.—

7 “(1) IN GENERAL.—Not later than 270 days  
8 after the date of the enactment of this section, the  
9 Federal Acquisition Regulation shall be amended to  
10 prohibit the use of reverse auctions for awarding  
11 contracts for complex, specialized, or substantial de-  
12 sign and construction services.

13 “(2) APPLICABILITY TO ACQUISITIONS ABOVE  
14 THE SIMPLIFIED ACQUISITION THRESHOLD.—The  
15 prohibition on reverse auctions for complex, special-  
16 ized, or substantial design and construction services  
17 shall apply only to acquisitions above the simplified  
18 acquisition threshold (SAT) for construction and de-  
19 sign services pursuant to part 36 of the Federal Ac-  
20 quisition Regulation.

21 “(d) RULEMAKING FOR COMPLEX, SPECIALIZED, OR  
22 SUBSTANTIAL SERVICES.—Not later than 180 days after  
23 the date of the enactment of this section, the Federal Ac-  
24 quisition Regulatory Council shall promulgate a definition

1 of complex, specialized, or substantial design and con-  
2 struction services, which shall include—

3 “(1) site planning and landscape design;

4 “(2) architectural and engineering services (as  
5 defined in section 1102 of title 40, United States  
6 Code);

7 “(3) interior design;

8 “(4) performance of substantial construction  
9 work for facility, infrastructure, and environmental  
10 restoration projects; and

11 “(5) construction or substantial alteration of  
12 public buildings or public works.

13 “(e) RULE OF CONSTRUCTION.—Nothing in this sec-  
14 tion shall be construed to restrict the use of reverse auc-  
15 tions for the procurement of other goods and services ex-  
16 cept as specifically provided for under this section.

17 “(f) REPORT.—Not later than two years after the  
18 date of the enactment of this section, the Administrator  
19 of General Services shall submit to the Committee on  
20 Homeland Security and Governmental Affairs of the Sen-  
21 ate and the Committee on Oversight and Reform of the  
22 House of Representatives a report on the effectiveness of  
23 this section in delivering complex, specialized, or substan-  
24 tial design and construction services to the United States  
25 Government.”.

1 **SEC. 3. DETERMINATION OF BUDGETARY EFFECTS.**

2       The budgetary effects of this Act, for the purpose of  
3 complying with the Statutory Pay-As-You-Go Act of 2010,  
4 shall be determined by reference to the latest statement  
5 titled “Budgetary Effects of PAYGO Legislation” for this  
6 Act, submitted for printing in the Congressional Record  
7 by the Chairman of the House Budget Committee, pro-  
8 vided that such statement has been submitted prior to the  
9 vote on passage.

Passed the House of Representatives January 5,  
2021.

Attest:                               CHERYL L. JOHNSON,  
*Clerk.*