

114TH CONGRESS
1ST SESSION

H. R. 1444

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

IN THE HOUSE OF REPRESENTATIVES

MARCH 18, 2015

Mr. HANNA (for himself, Mr. CHABOT, and Ms. MENG) introduced the following bill; which was referred to the Committee on Small Business

A BILL

To amend the Small Business Act to prohibit the use of reverse auctions for procurements 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 “Commonsense Con-
5 tracting Act of 2015”.

6 **SEC. 2. SENSE OF CONGRESS.**

7 It is the sense of Congress that, when used appro-
8 priately, reverse auctions may improve the Federal Gov-
9 ernment’s procurement of commercially available commod-

ities by increasing competition, reducing prices, and improving opportunities for small businesses.

SEC. 3. PROHIBITION ON REVERSE AUCTIONS FOR COVERED CONTRACTS.

The Small Business Act (15 U.S.C. 631 et seq.) is amended—

(1) by redesignating section 47 (15 U.S.C. 631 note) as section 48; and

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

“SEC. 47. REVERSE AUCTIONS PROHIBITED FOR COVERED CONTRACTS.

“(a) IN GENERAL.—In the case of a covered contract described in subsection (c), reverse auction methods may not be used if the award of the contract is to be made under—

“(1) section 8(a);

“(2) section 8(m);

“(3) section 15(a);

“(4) section 15(j);

“(5) section 31; or

“(6) section 36.

“(b) LIMITATIONS ON USING REVERSE AUCTIONS.—

“(1) DECISIONS REGARDING USE OF A REVERSE AUCTION.—The following decisions are the

1 responsibility of the contracting officer and may not
2 be delegated to any person except for another con-
3 tracting officer who meets the training requirements
4 of paragraph (2):

5 “(A) A decision to use reverse auction
6 methods as part of the competition for award of
7 a covered contract.

8 “(B) Any decision made after the decision
9 described in subsection (A) regarding the ap-
10 propriate evaluation criteria, the inclusion of
11 vendors, the acceptability of vendor submissions
12 (including decisions regarding timeliness), and
13 the selection of the winner.

14 “(2) TRAINING REQUIRED.—Only a contracting
15 officer who has received training on the appropriate
16 use and supervision of reverse auction methods of
17 contracting may supervise or use such methods in a
18 procurement for a covered contract. The training
19 shall be provided by, or similar to the training pro-
20 vided by, the Defense Acquisition University as de-
21 scribed in section 824 of the Carl Levin and Howard
22 P. ‘Buck’ McKeon National Defense Authorization
23 Act for Fiscal Year 2015 (Public Law 113–291).

24 “(3) NUMBER OF OFFERS; REVISIONS TO
25 BIDS.—A Federal agency may not award a covered

1 contract using a reverse auction method if only one
2 offer is received or if offerors do not have the ability
3 to submit revised bids with lower prices throughout
4 the course of the auction.

5 “(4) TECHNICALLY ACCEPTABLE OFFERS.—A
6 Federal agency awarding a covered contract using a
7 reverse auction method shall evaluate the technical
8 acceptability of offers only as technically acceptable
9 or unacceptable.

10 “(5) USE OF PRICE RANKINGS.—A Federal
11 agency may not award a covered contract using a re-
12 verse auction method if at any time during the
13 award process the Federal agency misinforms an of-
14 feror about the price ranking of the offeror’s last
15 offer submitted in relation to offers submitted by
16 other offerors.

17 “(6) USE OF THIRD-PARTY AGENTS.—If a Fed-
18 eral agency uses a third party agent to assist with
19 the award of covered contracts using a reverse auc-
20 tion method, the Federal agency shall ensure that—

21 “(A) inherently governmental functions (as
22 such term is used in section 2303 of title 41,
23 United States Code) are not performed by pri-
24 vate contractors, including by the third party
25 agent;

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

7 “(C) information on whether an offeror is
8 a responsible source (as defined in section 113
9 of title 41, United States Code) that is created
10 by the third party agent and shared with the
11 Federal agency is shared with the offeror and
12 complies with section 8(b)(7) of this Act; and

13 “(D) disputes between the third party
14 agent and an offeror may not be used to justify
15 a determination that an offeror is not a respon-
16 sible source (as defined in section 113 of title
17 41, United States Code) or to otherwise restrict
18 the ability of an offeror to compete for the
19 award of a contract or task or delivery order.

20 “(c) DEFINITIONS.—In this section:

21 “(1) CONTRACTING OFFICER.—The term ‘con-
22 tracting officer’ has the meaning given that term in
23 section 2101(1) of title 41, United States Code.

24 “(2) COVERED CONTRACT.—The term ‘covered
25 contract’ means a contract—

1 “(A) for design and construction services;

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

5 “(C) for goods or services other than those
6 goods or services described in subparagraph (A)
7 or (B)—

8 “(i) to be awarded based on factors
9 other than price and technical responsi-
10 bility; or

11 “(ii) if awarding the contract requires
12 the contracting officer to conduct discus-
13 sions with the offerors about their offer.

14 “(3) DESIGN AND CONSTRUCTION SERVICES.—

15 The term ‘design and construction services’ means—

16 “(A) site planning and landscape design;

17 “(B) architectural and interior design;

18 “(C) engineering system design;

19 “(D) performance of construction work for
20 facility, infrastructure, and environmental res-
21 toration projects;

22 “(E) delivery and supply of construction
23 materials to construction sites;

1 “(F) construction, alteration, or repair, in-
2 cluding painting and decorating, of public build-
3 ings and public works; and

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

7 “(4) REVERSE AUCTION.—The term ‘reverse
8 auction’ means, with respect to procurement by an
9 agency, an auction between a group of offerors who
10 compete against each other by submitting offers for
11 a contract or task or delivery order with the ability
12 to submit revised offers with lower prices throughout
13 the course of the auction.”.

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