

114TH CONGRESS  
2D SESSION

# H. R. 5199

To amend title 41, United States Code, to improve the manner in which Federal contracts for construction and design services are awarded, and to prohibit the use of reverse auctions for design and construction services procurements.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 11, 2016

Mr. MEADOWS introduced the following bill; which was referred to the Committee on Oversight and Government Reform

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## A BILL

To amend title 41, United States Code, to improve the manner in which Federal contracts for construction and design services are awarded, and to prohibit the use of reverse auctions for design and construction services procurements.

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 2016”.

1 (b) TABLE OF CONTENTS.—The table of contents for  
2 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.

3 **SEC. 2. CONGRESSIONAL FINDINGS.**

4 Congress makes the following findings:

5 (1) The acquisition procedures that are often  
6 used effectively to procure products and other forms  
7 of services are not always appropriate for procure-  
8 ment of design and construction services.

9 (2) Federal procurement officials often adopt  
10 contracting techniques from the private sector and  
11 have used those techniques effectively to procure  
12 products and services.

13 (3) Design-build is a procurement technique  
14 Federal officials have adopted from the private sec-  
15 tor that has worked well for procurement of design  
16 and construction services.

17 (4) The current statutory framework for de-  
18 sign-build could benefit from legislative refinement.

19 (5) Reverse auctions are another procurement  
20 technique Federal officials have adopted from the  
21 private sector and used successfully to award con-  
22 tracts for the purchase of products that are commer-  
23 cially equivalent to commodities.



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) ANNUAL REPORTS.—

2 (A) IN GENERAL.—Not later than Novem-  
3 ber 30 of 2017, 2018, 2019, 2020, and 2021,  
4 the head of each agency shall compile an annual  
5 report of each instance in which the agency  
6 awarded a design-build contract pursuant to  
7 section 3309 of title 41, United States Code,  
8 during the fiscal year ending in such calendar  
9 year, in which—

10 (i) more than 5 finalists were selected  
11 for phase-two requests for proposals; or

12 (ii) the contract or order was awarded  
13 without using two-phase selection proce-  
14 dures.

15 (B) PUBLIC AVAILABILITY.—The Director  
16 of the Office of Management and Budget shall  
17 facilitate public access to the reports, including  
18 by posting them on a publicly available Internet  
19 website. A notice of the availability of each re-  
20 port shall be published in the Federal Register.

21 (b) GAO REPORTS.—Not later than 270 days after  
22 the deadline for the final reports required under sub-  
23 section (f) of section 3309 of title 41, United States Code,  
24 as added by subsection (a)(1), the Comptroller General of  
25 the United States shall issue a report analyzing the com-

1 pliance of the various Federal agencies with the require-  
2 ments of such section.

3 **SEC. 4. PROHIBITION ON THE USE OF A REVERSE AUCTION**  
4 **FOR THE AWARD OF A CONTRACT FOR DE-**  
5 **SIGN AND CONSTRUCTION SERVICES.**

6 (a) FINDING.—Congress finds that, in contrast to a  
7 traditional auction in which the buyers bid up the price,  
8 sellers bid down the price in a reverse auction.

9 (b) PROHIBITION.—Not later than 180 days after the  
10 date of the enactment of this Act, the Federal Acquisition  
11 Regulatory Council, in consultation with the Adminis-  
12 trator for Federal Procurement Policy, shall amend the  
13 Federal Acquisition Regulation to prohibit the use of re-  
14 verse auctions as part of the two-phase selection procedure  
15 for awarding contracts for construction and design serv-  
16 ices.

17 (c) DEFINITIONS.—For purposes of this section—

18 (1) the term “design and construction services”  
19 means—

20 (A) site planning and landscape design;

21 (B) architectural and engineering services  
22 (including surveying and mapping defined in  
23 section 1101 of title 40, United States Code);

24 (C) interior design;

1 (D) performance of substantial construc-  
2 tion work for facility, infrastructure, and envi-  
3 ronmental restoration projects;

4 (E) delivery and supply of construction  
5 materials to construction sites; or

6 (F) construction or substantial alteration  
7 of public buildings or public works; and

8 (2) the term “reverse auction” means, with re-  
9 spect to procurement by an agency—

10 (A) a real-time auction conducted through  
11 an electronic medium among 2 or more offerors  
12 who compete by submitting bids for a supply or  
13 service contract with the ability to submit re-  
14 vised lower bids at any time before the closing  
15 of the auction; and

16 (B) the award of the contract, delivery  
17 order, task order, or purchase order to the of-  
18 feror, in whole or in part, based on the price  
19 obtained through the auction process.

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