

117TH CONGRESS
1ST SESSION

S. 1231

To amend the Construction Consensus Procurement Improvement Act of 2020 to correct a provision on the prohibition on the use of a reverse auction, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 20, 2021

Mr. PORTMAN (for himself and Ms. HIRONO) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To amend the Construction Consensus Procurement Improvement Act of 2020 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Construction Con-
5 sensus Procurement Improvement Technical Corrections
6 Act”.

1 **SEC. 2. AMENDMENT.**

2 Section 402 of the Construction Consensus Procure-
3 ment Improvement Act of 2020 (title IV of division U of
4 Public Law 116–260) is amended to read as follows:

5 **“SEC. 402. PROHIBITION ON USE OF A REVERSE AUCTION**
6 **FOR THE AWARD OF A CONTRACT FOR DE-**
7 **SIGN AND CONSTRUCTION SERVICES.**

8 “(a) FINDINGS.—Congress makes the following find-
9 ings:

10 “(1) In contrast to a traditional auction in
11 which the buyers bid up the price, sellers bid down
12 the price in a reverse auction.

13 “(2) Reverse auctions, while providing value for
14 the vast majority of Federal acquisitions, including
15 certain construction-related acquisitions, are limited
16 in value for complex, specialized, or substantial de-
17 sign and construction services.

18 “(b) REVERSE AUCTION DEFINED.—In this section,
19 the term ‘reverse auction’ means, with respect to any pro-
20 curement by an executive agency, a real-time auction gen-
21 erally conducted through an electronic medium among two
22 or more offerors who compete by submitting bids for a
23 supply or service contract, or a delivery order, task order,
24 or purchase order under the contract, with the ability to
25 submit revised lower bids at any time before the closing
26 of the auction.

1 “(c) PROHIBITION.—

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

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

16 “(d) RULEMAKING FOR COMPLEX, SPECIALIZED, OR
17 SUBSTANTIAL SERVICES.—Not later than 180 days after
18 the date of the enactment of this section, the Federal Ac-
19 quisition Regulatory Council shall promulgate a definition
20 of complex, specialized, or substantial design and con-
21 struction services, which shall include—

22 “(1) site planning and landscape design;

23 “(2) architectural and engineering services (as
24 defined in section 1102 of title 40, United States
25 Code);

1 “(3) interior design;

2 “(4) performance of substantial construction
3 work for facility, infrastructure, and environmental
4 restoration projects; and

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

7 “(e) RULE OF CONSTRUCTION.—Nothing in this sec-
8 tion shall be construed to restrict the use of reverse auc-
9 tions for the procurement of other goods and services ex-
10 cept as specifically provided for under this section. Not
11 later than two years after the date of the enactment of
12 this section, the Administrator of General Services shall
13 submit to the Committee on Homeland Security and Gov-
14 ernmental Affairs of the Senate and the Committee on
15 Oversight and Reform of the House of Representatives a
16 report on the effectiveness of this section in delivering
17 complex, specialized, or substantial design and construc-
18 tion services to the United States Government.”.

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

20 The budgetary effects of this Act, for the purpose of
21 complying with the Statutory Pay-As-You-Go-Act of 2010,
22 shall be determined by reference to the latest statement
23 titled “Budgetary Effects of PAYGO Legislation” for this
24 Act, submitted for printing in the Congressional Record
25 by the Chairman of the Senate Budget Committee, pro-

- 1 vided that such statement has been submitted prior to the
- 2 vote on passage .

