

# Calendar No. 308

114TH CONGRESS  
1ST SESSION

# S. 2139

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

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 6, 2015

Mr. VITTER (for himself and Mrs. SHAHEEN) introduced the following bill; which was read twice and referred to the Committee on Small Business and Entrepreneurship

DECEMBER 2, 2015

Reported by Mr. VITTER, with amendments

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## A BILL

To amend the Small Business Act to prohibit the use of reverse auctions for the procurement 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 “Small Contractors Im-  
5 prove Competition Act of 2015”.

1 **SEC. 2. LIMITATIONS ON REVERSE AUCTIONS.**

2 (a) SENSE OF CONGRESS.—It is the sense of Con-  
 3 gress that, when used appropriately, reverse auctions may  
 4 improve procurement by the Federal Government of com-  
 5 mercially available commodities by increasing competition,  
 6 reducing prices, and improving opportunities for small  
 7 businesses.

8 (b) LIMITATIONS ON REVERSE AUCTIONS.—The  
 9 Small Business Act (15 U.S.C. 631 et seq.) is amended—

10 (1) by redesignating section 47 as section 48;

11 and

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

13 **“SEC. 47. LIMITATIONS ON REVERSE AUCTIONS FOR COV-**  
 14 **ERED CONTRACTS.**

15 “(a) DEFINITIONS.—In this section—

16 “(1) the term ‘contracting officer’ has the  
 17 meaning given the term in section 2101 of title 41,  
 18 United States Code;

19 “(2) the term ‘covered contract’ means a con-  
 20 tract—

21 “(A) for design and construction services;

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

1           “(C) for goods or services other than those  
2 goods or services described in subparagraph (A)  
3 or (B)—

4           “(i) to be awarded based on factors  
5 other than price and technical responsi-  
6 bility; or

7           “(ii) if awarding the contract requires  
8 the contracting officer to conduct discus-  
9 sions with the offerors about their offer;

10          “(3) the term ‘design and construction services’  
11 means—

12           “(A) site planning and landscape design;

13           “(B) architectural and interior design;

14           “(C) engineering system design;

15           “(D) performance of construction work for  
16 facility, infrastructure, and environmental res-  
17 toration projects;

18           “(E) delivery and supply of construction  
19 materials to construction sites;

20           “(F) construction, alteration, or repair, in-  
21 cluding painting and decorating, of public build-  
22 ings and public works; and

23           “(G) architectural and engineering serv-  
24 ices, as defined in section 1102 of title 40,  
25 United States Code;

1           “(4) the term ‘responsible source’ has the  
2 meaning given the term in section 113 of title 41,  
3 United States Code; and

4           “(5) the term ‘reverse auction’, with respect to  
5 procurement by an agency, means an auction be-  
6 tween a group of offerors who compete against each  
7 other by submitting offers for a contract or task or  
8 delivery order with the ability to submit revised of-  
9 fers with lower prices throughout the course of the  
10 auction.

11       “(b) PROHIBITION ON USING REVERSE AUCTIONS  
12 FOR COVERED CONTRACTS.—In the case of a covered con-  
13 tract, a reverse auction may not be used if the award of  
14 the covered contract is to be made under—

15           “(1) section 8(a);

16           “(2) section 8(m);

17           “(3) section 15(a);

18           “(4) section 15(j);

19           “(5) section 31; or

20           “(6) section 36.

21       “(c) LIMITATIONS ON USING REVERSE AUCTIONS.—  
22 In the case of the award of a contract made under *a provi-*  
23 *sion of law described in* paragraphs (1) through (6) of sub-  
24 section (b) that is not a covered contract, a reverse auction

1 may be used for the award of such a contract only if the  
2 following requirements are met:

3 “(1) DECISIONS REGARDING USE OF A RE-  
4 VERSE AUCTION.—Subject to paragraph (2), the fol-  
5 lowing decisions with respect to such a contract shall  
6 only be made by a contracting officer:

7 “(A) A decision to use a reverse auction as  
8 part of the competition for award of such a con-  
9 tract.

10 “(B) Any decision made after the decision  
11 described in subparagraph (A) regarding the  
12 appropriate evaluation criteria, the inclusion of  
13 vendors, the acceptability of vendor submissions  
14 (including decisions regarding timeliness), and  
15 the selection of the winner.

16 “(2) TRAINING REQUIRED.—

17 “(A) IN GENERAL.—Only a contracting of-  
18 ficer who has received training on the appro-  
19 priate use and supervision of reverse auctions  
20 may use or supervise a reverse auction for the  
21 award of such a contract.

22 “(B) TRAINING.—The training described  
23 in subparagraph (A) shall be provided by, or  
24 similar to the training provided by, the Defense  
25 Acquisition University as described in section

1           824 of the Carl Levin and Howard P. ‘Buck’  
2           McKeon National Defense Authorization Act  
3           for Fiscal Year 2015 (~~Public Law 113–291;~~  
4           ~~127 Stat. 3436~~) (*10 U.S.C. 2304 note*).

5           “(3) NUMBER OF OFFERS; REVISIONS TO  
6           BIDS.—A Federal agency may not award such a con-  
7           tract using a reverse auction if—

8                   “(A) only 1 offer is received; or

9                   “(B) offerors do not have the ability to  
10           submit revised bids with lower prices through-  
11           out the course of the auction.

12           “(4) TECHNICALLY ACCEPTABLE OFFERS.—A  
13           Federal agency awarding such a contract using a re-  
14           verse auction shall evaluate the technical accept-  
15           ability of offers only as technically acceptable or un-  
16           acceptable.

17           “(5) USE OF PRICE RANKINGS.—A Federal  
18           agency may not award such a contract using a re-  
19           verse auction if at any time during the procurement  
20           process the Federal agency misinforms an offeror  
21           about the price ranking of the last offer of the offer-  
22           or submitted in relation to offers submitted by other  
23           offerors.

24           “(6) USE OF THIRD-PARTY AGENTS.—If a Fed-  
25           eral agency uses a third-party agent to assist with

1 the award of such a contract using a reverse auc-  
2 tion, the Federal agency shall ensure that—

3 “(A) inherently governmental functions are  
4 not performed by private contractors, including  
5 by the third-party agent;

6 “(B) information on the past contract per-  
7 formance of offerors created by the third-party  
8 agent and shared with the Federal agency is  
9 collected, maintained, and shared in compliance  
10 with section 1126 of title 41, United States  
11 Code;

12 “(C) information on whether an offeror is  
13 a responsible source that is created by the  
14 third-party agent and shared with the Federal  
15 agency is shared with the offeror and complies  
16 with section 8(b)(7); and

17 “(D) disputes between the third-party  
18 agent and an offeror may not be used to justify  
19 a determination that an offeror is not a respon-  
20 sible source or to otherwise restrict the ability  
21 of an offeror to compete for the award of a con-  
22 tract or task.”.

1 **SEC. 3. SURETY BOND REQUIREMENTS AND AMOUNT OF**  
 2 **GUARANTEE.**

3 (a) *SURETY BOND REQUIREMENTS.*—Chapter 93 of  
 4 title 31, United States Code, is amended—

5 (1) *by adding at the end the following:*

6 **“§9310. Individual sureties**

7 “If another applicable Federal law or regulation per-  
 8 mits the acceptance of a bond from a surety that is not  
 9 subject to sections 9305 and 9306 and is based on a pledge  
 10 of assets by the surety, the assets pledged by such surety  
 11 shall—

12 “(1) consist of eligible obligations described  
 13 under section 9303(a); and

14 “(2) be submitted to the official of the Govern-  
 15 ment required to approve or accept the bond, who  
 16 shall deposit the obligations as described under section  
 17 9303(b).”; and

18 (2) *in the table of sections, by adding at the end*  
 19 *the following:*

“9310. Individual sureties.”.

20 (b) *AMOUNT OF SURETY BOND GUARANTEE FROM*  
 21 *SMALL BUSINESS ADMINISTRATION.*—Section 411(c)(1) of  
 22 the Small Business Investment Act of 1958 (15 U.S.C.  
 23 694b(c)(1)) is amended by striking “70” and inserting  
 24 “90”.



1           (c) *EFFECTIVE DATE.*—*The amendments made by this*  
2 *section shall take effect 1 year after the date of enactment*  
3 *of this Act.*

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