

Public Law 117–28  
117th Congress

An Act

July 26, 2021  
[H.R. 26]

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.

Construction  
Consensus  
Procurement  
Improvement Act  
of 2021.  
41 USC 101 note.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Construction Consensus Procurement Improvement Act of 2021”.

**SEC. 2. AMENDMENT.**

41 USC 3309  
note.

Section 402 of title IV of division U of the Consolidated Appropriations Act, 2021, is amended to read as follows:

“PROHIBITION ON USE OF A REVERSE AUCTION FOR THE AWARD OF A CONTRACT FOR COMPLEX, SPECIALIZED, OR SUBSTANTIAL DESIGN AND CONSTRUCTION SERVICES

“SEC. 402.

“(a) FINDINGS.—Congress makes the following findings:

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

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

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

“(c) PROHIBITION.—

Deadline.

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

“(2) APPLICABILITY TO ACQUISITIONS ABOVE THE SIMPLIFIED ACQUISITION THRESHOLD.—The prohibition on reverse auctions for complex, specialized, or substantial design and construction services shall apply only to acquisitions above the simplified acquisition threshold (SAT) for construction and design services pursuant to part 36 of the Federal Acquisition Regulation.

“(d) **RULEMAKING FOR COMPLEX, SPECIALIZED, OR SUBSTANTIAL SERVICES.**—Not later than 180 days after the date of the enactment of this section, the Federal Acquisition Regulatory Council shall promulgate a definition of complex, specialized, or substantial design and construction services, which shall include—

Deadline.  
Definition.  
41 USC 3309  
note.

“(1) site planning and landscape design;

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

“(3) interior design;

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

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

“(e) **RULE OF CONSTRUCTION.**—Nothing in this section shall be construed to restrict the use of reverse auctions for the procurement of other goods and services except as specifically provided for under this section.

“(f) **REPORT.**—Not later than two years after the date of the enactment of this section, the Administrator of General Services shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Reform of the House of Representatives a report on the effectiveness of this section in delivering complex, specialized, or substantial design and construction services to the United States Government.”.

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

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

Approved July 26, 2021.

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#### **LEGISLATIVE HISTORY—H.R. 26:**

CONGRESSIONAL RECORD, Vol. 167 (2021):

Jan. 5, considered and passed House.

July 13, considered and passed Senate.

