

117TH CONGRESS  
1ST SESSION

# 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.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 2021

Mr. COMER (for himself and Mr. KHANNA) introduced the following bill; which was referred to the Committee on Oversight and Reform, and in addition to the Committee on the Budget, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

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.

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 Act of 2021”.

1 **SEC. 2. AMENDMENT.**

2 Section 402 of title IV of division U of the Consoli-  
3 dated Appropriations Act, 2021, is amended to read as  
4 follows:

5 “PROHIBITION ON USE OF A REVERSE AUCTION FOR THE  
6 AWARD OF A CONTRACT FOR COMPLEX, SPECIAL-  
7 IZED, OR SUBSTANTIAL DESIGN AND CONSTRUCTION  
8 SERVICES

9 “SEC. 402.

10 “(a) FINDINGS.—Congress makes the following find-  
11 ings:

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

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

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

1 submit revised lower bids at any time before the closing  
2 of the auction.

3 “(c) PROHIBITION.—

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

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

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

24 “(1) site planning and landscape design;

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

4           “(3) interior design;

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

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

10       “(e) RULE OF CONSTRUCTION.—Nothing in this sec-  
11     tion shall be construed to restrict the use of reverse auc-  
12     tions for the procurement of other goods and services ex-  
13     cept as specifically provided for under this section.

14       “(f) REPORT.—Not later than two years after the  
15     date of the enactment of this section, the Administrator  
16     of General Services shall submit to the Committee on  
17     Homeland Security and Governmental Affairs of the Sen-  
18     ate and the Committee on Oversight and Reform of the  
19     House of Representatives a report on the effectiveness of  
20     this section in delivering complex, specialized, or substan-  
21     tial design and construction services to the United States  
22     Government.”.

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

24       The budgetary effects of this Act, for the purpose of  
25     complying with the Statutory Pay-As-You-Go Act of 2010,

1 shall be determined by reference to the latest statement  
2 titled “Budgetary Effects of PAYGO Legislation” for this  
3 Act, submitted for printing in the Congressional Record  
4 by the Chairman of the House Budget Committee, pro-  
5 vided that such statement has been submitted prior to the  
6 vote on passage.

