

Congress of the United States
Washington, DC 20515

To: Members, Veterans Affairs' Committee's Subcommittee on Oversight and Investigations
Members, Small Business Committee's Subcommittee on Contracting and Workforce

From: Committee Staff

Re: Joint Hearing: "Contracting Away Accountability – Reverse Auctions in Federal Agency Acquisitions."

Date: December 5, 2013

On December 11, 2013, the House Veterans' Affairs Committee Subcommittee on Oversight and Investigations (O&I) and the House Small Business Committee Subcommittee on Contracting and Workforce will hold a joint oversight hearing titled "**Contracting Away Accountability – Reverse Auctions in Federal Agency Acquisitions.**" The hearing will begin at 10:00 AM in Cannon House Office Building room 334.

The purpose of this hearing will be to address serious problems with the use of reverse auctions by the Department of Veterans Affairs (VA) and other federal agencies. A reverse auction is a contracting process in which a buyer solicits bids from multiple sellers, in contrast to a standard auction where a seller solicits bids from multiple buyers. This hearing is the result of a two-year investigation conducted by O&I. Following O&I's collection of evidence, the findings were given to the Government Accountability Office (GAO) which substantiated the majority of the problems and drafted a report that will be released on Dec. 9, 2013, two days prior to the hearing.

Should you have any questions, please contact Eric Hannel, O&I Majority Staff Director, at 5-3569 or Emily Murphy, Senior Counsel, Committee on Small Business at 5-5821.

WITNESS LIST

Panel 1

Mr. Nigel Cary
President

Cox Construction Company
On behalf of the Association of General Contractors

Mr. Louis J. Celli Jr.
Director, Legislative Division
The American Legion

Panel 2

Ms. Michelle Mackin
Director
Acquisition and Sourcing Management
Government Accountability Office

Mr. Joseph Jordan
Administrator
Office of Federal Procurement Policy
Office of Management and Budget

Mr. William Sisk
Deputy Commissioner
Federal Acquisition Service
General Services Administration

Panel 3

Mr. Jan Frye
Deputy Assistant Secretary
Office of Acquisitions and Logistics
Department of Veterans Affairs

Accompanied by:

Mr. Philip Matkovsky
Assistant Deputy Under Secretary for Health for Administrative Operations
Veterans Health Administration

I. Background

Reverse auctions first gained popularity in the late 1990s, as Internet-based technologies allowed potential vendors to underbid each other in real time. Since then, they have grown to account for nearly one percent of federal prime contract dollars awarded each fiscal year.¹ While the Office of Federal Procurement Policy (OFPP) has been promising guidance on the use of reverse auction procurements since 2000, to date no guidance or regulations have been forthcoming, meaning that over \$828 million in procurements are awarded using a methodology never mentioned in the Federal Acquisition Regulation (FAR) or in statute.² Instead, OFPP and the

¹ GAO, REVERSE AUCTIONS, GUIDANCE IS NEEDED TO MAXIMIZE COMPETITION AND ACHIEVE COST SAVINGS 2 GAO-14-108 (2013).

² Colleen O'Hara, "Reverse Auctions Move Forward," FEDERAL COMPUTER WEEK (Aug. 3, 2000) *available at* <http://fcw.com/articles/2000/08/03/reverse-auctions-move-forward.aspx>, quoting the OFPP Administrator as planning to "issue guidance to sharpen up the Federal Acquisition Regulation regarding reverse auctions."

Office of Management and Budget (OMB) have encouraged the use of reverse auctions without offering guidance on how to best use this methodology.³

Of the \$828 million in federal agency reverse auctions awarded in FY 2012, GAO reported that 99% were conducted by the same contractor, FedBid,⁴ and VA awarded the greatest dollar value of these – over \$200 million. Due to this, for purposes of this hearing, the primary focus will be on the use of FedBid by VA, although similar issues arise when any agency chooses a nongovernmental entity to conduct reverse auctions on its behalf. This memorandum will examine the selection and compensation of FedBid, savings to VA when using FedBid, questions regarding competition, issues specific to small businesses, and whether additional guidance or legislation is necessary.

II. The Selection and Compensation of FedBid

In choosing FedBid to conduct its reverse auctions, O&I found that VA did not solicit offers from any other contractors, contradicting the spirit of the Competition in Contracting Act of 1984, which requires that agencies fully compete contracts except in seven limited circumstances.⁵ VA has signed three contracts with FedBid to perform these services, each contract containing an action obligation of \$1. Rather than VA paying a true contractual value for the services, FedBid is compensated by the fee (up to 3 percent) it adds onto the final award price of vendor contracts. As such, FedBid and federal agencies claim that use of FedBid is free to the government. However, when FedBid's fee is tacked onto the final award price of a contract, the seller is effectively passing on the fee to the government. Consequently, if VA is using a contract that already charges a fee for its use, it ends up paying two fees for these services: one for the use of the existing contract vehicle and another to pay FedBid its percentage.⁶ Thus, GAO determined that in FY 2012, four agencies using FedBid paid \$1.3

³ See Robert Burton, Acting OFPP Administrator, "Utilization of Commercially Available Online Procurement Services" (May 12, 2004), available at http://www.whitehouse.gov/sites/default/files/omb/assets/omb/procurement/publications/online_procurement_051204.pdf; Paul Denett, OFPP Administrator, "Effective Practices for Enhancing Competition" (Jul. 18, 2008) available at http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/enhancing_competition_071808.pdf; Jeffrey Zients, Deputy Director, OMB, "The Accountable Government Initiative" (Sept. 14, 2010) available at http://www.whitehouse.gov/sites/default/files/omb/memoranda/2010/AccountableGovernmentInitiative_09142010.pdf.

⁴ FedBid is a Virginia company founded by Ali Saadat in 1999. In 2012, it secured "significant investment from Revolution Growth, a venture capital fund created by Steve Case, Ted Leonsis and Donn Davis." <http://www.fedbid.com/about/directors/> Mssrs. Case and Leonsis were the cofounders of AOL, and Mr. Leonsis is the owner of the Washington Wizards and Capitols. FedBid's Board of Directors includes General George Casey, Jr., former Army Chief of Staff, Mr. Leonsis, and Susan Bostrom, former CMO of Cisco. *Id.* Their list of advisors includes former political appointees of Presidents Clinton and George W. Bush, generals, admirals, and Members of Congress. <http://www.fedbid.com/about/advisors/>.

⁵ Enacted as part of the Deficit Reduction Act of 1984, P.L. 98-369, §§ 2701-2753, 98 Stat. 1175 (1984), codified at 41 U.S.C. § 2304.

⁶ The General Services Administration's (GSA's) Multiple Award Schedule (MAS) contracts carry a fee of 0.75 percent. Other Governmentwide Acquisition Contracts (GWACs), Multiple Award Contracts (MACs), Indefinite Delivery/Indefinite Quantity (ID/IQ) contracts and Multiple Award Task Order Contracts (MATOCs) may carry varying levels of fees.

million in fees to use MAS contracts, and another \$2.8 million in fees for FedBid to run the reverse auction against these same contracts.⁷

III. Savings

The fees charged by FedBid to run reverse auctions for agencies may be acceptable if they are offset by otherwise unattainable savings, but this does not seem to be the case. Of the \$1.7 billion in federal and commercial auctions conducted by FedBid in FY 2013, FedBid claims to have saved its customers \$159 million – savings of about 8.5 percent, including fees.⁸ In a briefing for subcommittee staff, FedBid stated that on VA construction contracts the savings rate actually exceeds 10%.

However, GAO rightly cautioned that all information related to fees and savings is provided by FedBid itself.⁹ According to FedBid, it calculates its savings against the government's estimated target price.¹⁰ Unfortunately, this calculation assumes the government is thoroughly researching its cost estimates, when for commercial items, the government frequently just reviews list prices.¹¹ As such, for commercial items, simply relying on published list prices is unlikely to result in the best price since volume discounts are frequently available.¹² Further, until April 2012, VA did not attempt any independent assessment of those savings, although guidance issued by VA now requires independent confirmation.¹³

IV. Competition of Reverse Auction Awards

While competition itself would reasonably be expected to reduce the price paid by the government – this is the foundation of our procurement system – competition is frequently absent or not meaningful in some reverse auctions conducted by FedBid. In FY 2012, over one-third of reverse auctions conducted by FedBid for federal agencies had no interactive bidding, defined by GAO as “where vendors engage in multiple rounds of bidding against each other to drive prices lower.”¹⁴ In 27 percent of auctions, there was only one bidder.¹⁵ Further, in eight percent there were multiple bidders but only one round of offers – essentially, this was a sealed bid procurement.¹⁶ However, agencies paid \$3.9 million in fees for these procurement services.¹⁷ Perhaps even more problematic is the fact that for over 3,600 reverse auctions, \$1.7 million in fees was paid even though only one offer was received from one bidder – thus the government paid extra to award a sole source contract.

⁷ *Supra* note 1 at 20.

⁸ <http://www.fedbid.com/about/resources/fact/>.

⁹ *Supra* note 1 at 18-19.

¹⁰ *Id.*

¹¹ DISA, INDEPENDENT GOVERNMENT COST ESTIMATES 2 (2009). “Commercial item cost estimates often come directly from published price lists obtained during the acquisition manager's market research.” *Id.*

¹² FAR § 8.405.

¹³ Jan Frye, “Updated Policy and Procedures for Using Reverse Auctions (VAIQ 722015)” (April 3, 2012) available at <http://www.va.gov/oal/docs/business/pps/flash12-14attachment1.pdf>.

¹⁴ *Supra* note 1 at 16.

¹⁵ *Id.* at 16-17.

¹⁶ *Id.*

¹⁷ *Id.*

V. Inherently Governmental Functions

Another issue raised by the use of third party reverse auction providers deals with inherently governmental functions. According to the FAR, an action should only be undertaken by a federal employee if it could “[b]ind the United States to take or not to take some action by contract,” “[d]etermine, protect, and advance United States . . . interests by contract management,” or “[e]xert ultimate control over the acquisition, use, or disposition” of property or funds.¹⁸ While FedBid does not itself award contracts, it is in a position of exercising functions closely associated with inherently governmental activities. For example, according to discussions with FedBid, any questions a vendor may wish to pose to a contracting officer must be submitted through FedBid. Likewise, FedBid states that it keeps independent past performance records on vendors which it shares with the government, including information regarding the creditworthiness of vendors, but does not share this information with the vendors.¹⁹ Given the close hold a private company has over the award of a contract or task order, the fact that the actual award is signed by a contracting officer may not mitigate all of the inherently governmental aspects of the process.

VI. Small Business Concerns

According to the Small Business Act, all contracts between \$3,000 and \$150,000 are exclusively reserved for small businesses, provided that there are two or more small businesses able to provide the good or service at a fair and reasonable price.²⁰ Further, in cases where the contract exceeds \$150,000, if two or more small businesses are able to compete for the contract, it is to be set aside for small business. Likewise, if there are two or more service-disabled veteran-owned small businesses (SDVOSBs), competition should be further restricted.²¹ Approximately 80 percent of the dollars awarded using FedBid-administered reverse auctions were under \$150,000, and 86 percent of the contracts were awarded to small businesses.²² However, given that items purchased using reverse auctions are supposed to be commercially available and not complex, one question is, why are all of these procurements not reserved for small businesses? Indeed, the Chief Counsel for Advocacy of the Small Business Administration (SBA Advocacy) sent a letter to OFPP stating that “some Federal agencies using reverse auctions may not be complying with the simplified acquisition threshold requirements for contracts to be reserved for small businesses.”²³ One of the issues may be that FedBid – as a commercial entity – does not have the authority to recommend that a contract be restricted to small businesses, and that small business advocates do not have the same level of oversight on third-party-facilitated contracts. In any case, given that these contracts are of a type and kind normally reserved for small business, additional care may be warranted.

¹⁸ FAR § 2.101; *see also* FAR § 7.5.

¹⁹ FAR § 15.306. Further, if a contracting officer determines that a small business’s past performance make it unsuitable for award, it should refer that business to the Small Business Administration for review. FAR § 19.6.

²⁰ Section 15(j)(1).

²¹ FAR § 19. For a more complete explanation, please see Committee on Small Business, “Small Business Act Programs for Small Federal Contractors (2013) available at http://smallbusiness.house.gov/uploadedfiles/small_business_act_programs_for_small_federal_contractors.pdf

²² *Supra* note 1 at 9.

²³ Winslow Sargeant, Impact of Reverse Auctions on Small Businesses (2012), available at <http://www.sba.gov/advocacy/816/42071>.

VII. Guidance and Legislation

In March 2012, Jan Frye, VA Deputy Assistant Secretary for the Office of Acquisitions and Logistics, suspended all use of FedBid due to a “‘ground swell’ of complaints from VA suppliers, . . . at least one protest, potential increased costs, small-business program anomalies, and ‘violations of our VA contract hierarchy.’”²⁴ Mr. Frye is quoted as saying that once the memorandum was released, there were “‘lobbying groups after me, . . . congressmen calling me, senators calling – it was unbelievable.”²⁵ VA reversed this decision one month later, issuing new guidance on the use of reverse auctions.²⁶ While the new guidance is an improvement, it may not be sufficient.

For example, the revised memorandum states that reverse auctions may be used only if price is the sole factor for award.²⁷ However, in recent staff briefings, FedBid stated that it conducted best value reverse auctions, which by definition consider factors other than price. Likewise, the new guidance does not take into account the comments of SBA Advocacy, nor its recommendations that all guidance must comply with the Small Business Act, and that reverse auctions should only be used for commodity – not service – contracts.²⁸ Further, it did not account for best practices, such as those establishing that reverse auctions should not be used for construction-related services.²⁹ Indeed, there is legislation pending before the Committee on Small Business that would restrict the use of reverse auctions for construction services contracts.³⁰

Given that this is not simply a VA problem, the question then becomes why government wide guidance has not been provided. Congress directed OFPP to provide such guidance in 2005, stating that, “[t]he conferees direct the Administrator for Federal Procurement Policy, in consultation with the Federal Acquisition Regulatory Council established pursuant to section 25 of the Office of Federal Procurement Policy Act (41 U.S.C. 421), to review the use of online procurement services, such as reverse auction services, and identify: (1) types of commercial item procurements that are suitable for the use of such services; and (2) features that should be provided by online procurement services that are used by federal agencies.”³¹ No guidance has been provided.

²⁴ Mathew Weigelt, “VA Halts Reverse Auctions, Citing ‘Violations’ of Contract Hierarchy,” FEDERAL COMPUTER WEEK (Mar. 7, 2012) available at <http://fcw.com/articles/2012/03/07/va-halt-reverse-auctions.aspx>.

²⁵ Camille Tuutti, “VA Official Explains Decision to Halt Reverse Auctions,” FEDERAL COMPUTER WEEK (Apr. 26, 2012) available at <http://fcw.com/articles/2012/04/26/va-jan-frye-reverse-auctions.aspx>.

²⁶ *Supra* note 13.

²⁷ *Id.*

²⁸ *Supra* note 23.

²⁹ Army Corps of Engineers, FINAL REPORT ON THE USACE PILOT PROGRAM ON REVERSE AUCTIONING 11 (2004).

³⁰ H.R. 2751, the Commonsense Construction Contracting Act of 2013, introduced by Chairman Richard Hanna.

³¹ H.R. Rep. 109-360 at 770 (2005).

VIII. Issues Before the Subcommittees

In the course of the Joint Subcommittee hearing, the Subcommittees wish to obtain testimony regarding the following:

- Whether reverse auctions save money, and in what circumstances;
- Whether VA's use of reverse auctions violates the principle of an inherently governmental function, and if there are more appropriate ways to achieve the same benefits;
- Whether VA properly competed its use of reverse auction service providers;
- Whether VA maximized competition for awards of contracts and task orders under reverse auctions;
- How to prevent the misuse and abuse of reverse auctions as identified by the O&I/GAO investigation; and
- Whether additional guidance or legislation are necessary.

Recommended reading (available upon request)

- Draft GAO Report

GAO Highlights

Highlights of GAO-14-108, a report to congressional requesters

Why GAO Did This Study

Reverse auctions are one tool used by federal agencies to increase competition and reduce the cost of certain items. Reverse auctions differ from traditional auctions in that sellers compete against one another to provide the lowest price or highest-value offer to a buyer. GAO was asked to review issues related to agencies' use of reverse auctions. This report examines (1) what agencies are buying through reverse auctions and trends in their use; (2) how agencies are conducting reverse auctions; and (3) the extent to which the potential benefits of reverse auctions are being maximized. GAO identified five agencies conducting about 70 percent of government reverse auctions. GAO analyzed available data and guidance and interviewed agency officials and contractors. GAO also reviewed a random sample of contract files to understand agency procedures; the results of this analysis are generalizable to all reverse auctions for four of the five agencies in our review.

What GAO Recommends

GAO recommends that the Director of the Office of Management and Budget (OMB) take steps to amend the FAR to address agencies' use of reverse auctions and issue government-wide guidance to maximize competition and savings when using reverse auctions. OMB generally agreed with GAO's recommendations, noting that FAR coverage should be considered and that, before taking concrete steps to amend the FAR, they would discuss GAO's findings and conclusions with the FAR and Chief Acquisition Officers Councils.

View GAO-14-108. For more information, contact Michele Mackin at (202) 512-4841 or MackinM@gao.gov.

December 2013

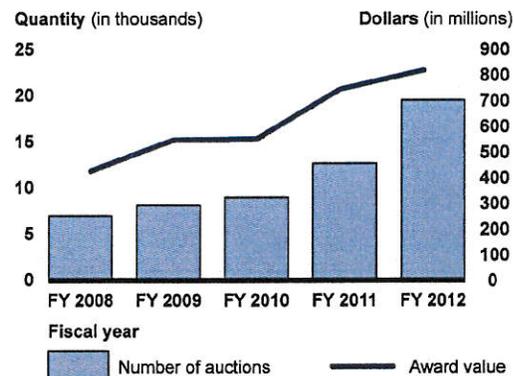
REVERSE AUCTIONS

Guidance Is Needed to Maximize Competition and Achieve Cost Savings

What GAO Found

The Departments of the Army, Homeland Security, the Interior, and Veterans Affairs used reverse auctions to acquire predominantly commercial items and services—primarily for information technology products and medical equipment and supplies—although the mix of products and services varied among agencies. Most—but not all—of the auctions resulted in contracts with relatively small dollar value awards—typically \$150,000 or less—and a high rate of awards to small businesses. The four agencies steadily increased their use of reverse auctions from fiscal years 2008 through 2012, with about \$828 million in contract awards in 2012 alone. GAO was not able to analyze data from a fifth agency, the Defense Logistics Agency (DLA), because it collected only summary level information during fiscal year 2012. DLA guidance states that the reverse auction pricing tool should be used for all competitive purchases over \$150,000.

Number and Value of Reverse Auctions across the Four Selected Agencies, Fiscal Years 2008 to 2012



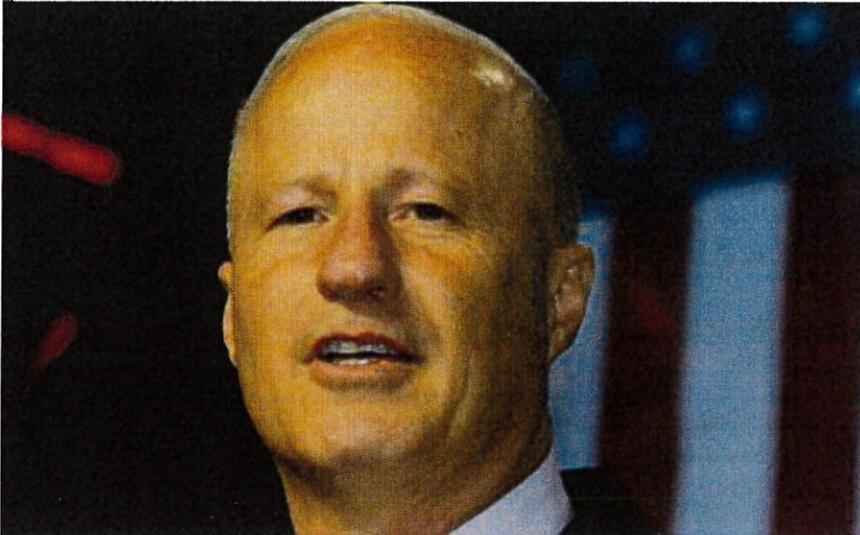
Source: GAO analysis of FedBid data.

Four agencies used the same commercial service provider to conduct their reverse auctions and paid a variable fee for this service, which was no more than 3 percent of the winning bid amount. DLA conducts its own auctions through a purchased license. Regardless of the method used, according to agency officials, contracting officers are still responsible for following established contracting procedures when using reverse auctions.

GAO found that the potential benefits of reverse auctions—competition and savings—had not been maximized by the agencies. GAO found that over one-third of fiscal year 2012 reverse auctions had no interactive bidding, where vendors bid against each other to drive prices lower. In addition, almost half of the reverse auctions were used to obtain items from pre-existing contracts that in some cases resulted in agencies paying two fees—one to use the contract and one to use the reverse auction contractor's services. There is a lack of comprehensive governmentwide guidance and the Federal Acquisition Regulation (FAR), which is the primary document for publishing uniform policies and procedures related to federal acquisitions, does not specifically address reverse auctions. As a result, confusion exists about their use and agencies may be limited in their ability to maximize the potential benefits of reverse auctions.

VA's Use of Reverse-Auction Contracts Comes Under Attack

- By Charles S. Clark
- December 11, 2013



"FedBid's real compensation comes from the fee -- up to 3 percent-- it adds onto the final award price of vendor contracts," Rep. Mike Coffman, R-Colo., said in a statement

David Zalubowski/AP file photo

The use of so-called reverse auctions to lower contracting costs at the Veterans Affairs Department and General Services Administration came under tough scrutiny on Wednesday at a House joint committee hearing.

Rather than saving money, critics said, the tool drives out competition, favors a single auction company and risks a lowering of quality in the work if applied to complex projects such as construction.

Reverse auctions are a contracting process used by the government since the late 1990s to promote competition by having the agency buyer solicit bids from multiple sellers, in contrast to a standard auction where a seller solicits bids from multiple buyers. GSA in July launched a new reverse auction initiative aimed at the purchasing of supplies, or commodities, more than complex services.

But both a recently concluded two-year House investigation and a just-released Government Accountability Office report faulted the technique, noting that more than one-third of fiscal 2012 reverse auctions had no interactive bidding, and agencies paid \$3.9 million in fees for those auctions. In March 2012, Veterans Affairs temporarily suspended the tool's use so it could study the claimed savings for purchases of information technology products, medical equipment and supplies.

"Having worked in the industry for 30 years, I know firsthand that small contractors are concerned that using reverse auctions for construction places them at a competitive disadvantage," said Rep. Richard Hanna, R-N.Y., chairman of the House Small Business oversight subcommittee, which joined with its Veterans Affairs Committee counterpart to hold the hearing. "Washington should do more to ensure a level competition process for small construction contractors. It should start by prohibiting the use of reverse auctions for bidding on construction contracts."

Rep. Mike Coffman, R-Colo., who serves on both the veterans and small business panels, criticized VA's use of a sole contractor, FedBid Inc., to run the auctions. "FedBid's real compensation comes from the fee -- up to 3 percent-- it adds onto the final award price of vendor contracts," he said in a prepared statement. "Accordingly, some advocates have concluded from this arrangement that FedBid's service is free to the government. However, it is obvious that when FedBid's fee is tacked onto the final award price of a contract, the seller is effectively passing on the fee to the government."

Democrats largely agreed on the need for reforms. "One has to question the need for any auction when there's only one bidder," said Rep. Grace Meng, D-N.Y., a member of the Small Business Subcommittee on Contracting and the Workforce.

GAO in testimony said, "the potential benefits of reverse auctions -- competition and savings -- had not been maximized by the agencies" examined, which included the Army and the Homeland Security, Interior and Veterans Affairs departments.

"Almost half of the reverse auctions were used to obtain items from pre-existing contracts that in some cases resulted in agencies paying two fees -- one to use the contract and one to use the reverse auction contractor's services," said Michelle Mackin, GAO's director of acquisition and sourcing management. "There is a lack of comprehensive governmentwide guidance and the Federal Acquisition Regulation, which ... does not specifically address reverse auctions. As a result, confusion exists about their use and agencies may be limited in their ability to maximize the potential benefits of reverse auctions."

Several witnesses denounced the use of reverse auctions. Nigel Cary, president of Cox Construction Co., warned against any use of the tool for complex construction projects, and said agencies are driving out the number of bidders on specific contracts. "Reverse auctions ignore best value," he said. "It's unfortunate and misguided that each agency learns the lesson on their own."

Louis Celli Jr., director of the legislative division of the American Legion, said his members call reverse auctions "unfair, deceptive and fraught with cheating." They put the federal government in a "predatory position" that allows agencies to accumulate savings in a "slush fund" out of Congress' control, he testified.

But William Sisk, deputy commissioner of GSA's Federal Acquisition Service, defended use of reverse auctions to purchase supplies. GSA data indicate that 485 auctions produced a 6.7 percent savings rate and averaged three vendors per auction, and 85 percent of the awards went to small businesses, he said. The Web-based platform introduced last summer has generated "considerable interest" and will provide insight in possible use of such auctions for strategic sourcing.

At Veterans Affairs, reverse auctions make up only 5 percent of contracts, but "when used appropriately, save money and time," said Jan Frye, deputy assistant secretary at the Office of Acquisitions and Logistics. Reverse auctions were used increasingly in recent years, and in fiscal 2012, VA used the tool in 7,587 auctions for a volume of \$305 million, with 79 percent going to small businesses, he said.

Frye acknowledged, however, the need for last year's moratorium, saying the department needed to "crunch the numbers" on the savings claimed by the FedBid auction service. A new policy, he said, requires contracting officers to do an independent review of the savings.

Philip Matkovsky, assistant deputy undersecretary for health for administrative operations at the Veterans Health Administration, said the 3 percent fee is built into the contractor's final price, adding that the VA has not had in-house capacity to conduct auctions. Construction awards, he said, are for "local, noncomplex projects such as roof repair and flooring, not major design/build on a new operating room."

Solutions offered at the hearing included increased oversight and training, and passage of H.R. 2157, which would prohibit federal agencies from using reverse auctions to bid out construction contracts suitable for awards to small businesses. The White House Office of Federal Procurement Policy, GAO noted, has agreed that new guidance is needed.

113TH CONGRESS
1ST SESSION

H. R. 2751

To amend the Small Business Act to prohibit the use of reverse auctions for design and construction services procurements.

IN THE HOUSE OF REPRESENTATIVES

JULY 19, 2013

Mr. HANNA (for himself, Mr. GRAVES of Missouri, and Ms. MENG) introduced the following bill; which was referred to the Committee on Small Business

A BILL

To amend the Small Business Act 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.**

4 This Act may be cited as the “Commonsense Con-
5 struction Contracting Act of 2013”.

6 **SEC. 2. REVERSE AUCTIONS PROHIBITED FOR CONTRACTS**
7 **FOR DESIGN AND CONSTRUCTION SERVICES.**

8 The Small Business Act (15 U.S.C. 631 et seq.) is
9 amended—

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

2 and

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

4 **“SEC. 47. REVERSE AUCTIONS PROHIBITED FOR CON-**
5 **TRACTS FOR DESIGN AND CONSTRUCTION**
6 **SERVICES.**

7 “(a) IN GENERAL.—In the case of any contract for
8 design and construction services, reverse auction methods
9 may not be used if the contract—

10 “(1) is suitable for award to a small business
11 concern; or

12 “(2) if the award is to be made under—

13 “(A) section 8(a);

14 “(B) section 8(m);

15 “(C) section 15(a);

16 “(D) section 15(j);

17 “(E) section 31; or

18 “(F) section 36.

19 “(b) DEFINITIONS.—For purposes of this section—

20 “(1) The term ‘reverse auction’ means, with re-
21 spect to procurement by an agency, a real-time auc-
22 tion on the Internet between a group of offerors who
23 compete against each other by submitting bids for a
24 contract or task order with the ability to submit re-
25 vised bids throughout the course of the auction, and

1 the award being made to the offeror who submits
2 the lowest bid.

3 “(2) The term ‘design and construction serv-
4 ices’ means—

5 “(A) site planning and landscape design;

6 “(B) architectural and interior design;

7 “(C) engineering system design;

8 “(D) performance of construction work for
9 facility, infrastructure, and environmental res-
10 toration projects;

11 “(E) delivery and supply of construction
12 materials to construction sites; and

13 “(F) construction, alteration, or repair, in-
14 cluding painting and decorating, of public build-
15 ings and public works.”.

○

