August 13, 2013

Dr. Dorothy Robyn
Commissioner, Public Building Service
U.S. General Services Administration
18th & F Streets NW 1344
Washington, D.C. 20405-0001

Sent via electronic-mail

Dear Commissioner Robyn:

As the nation’s largest commercial construction industry association, representing over 28,000 companies, the Associated General Contractors of America (AGC) maintains heightened interest in the General Services Administration’s (GSA) launch of an online reverse auction platform (“RA Platform”) (http://reverseauctions.gsa.gov/) that enables the procurement of construction services and materials. AGC believes in maintaining an open and competitive system for the awarding of construction contracts. However, AGC is concerned that GSA’s commitment to preserve a competitive environment is at odds with its intended use of reverse auction procurement and will unintentionally limit the pool of qualified contractors from engaging in the competition. As such, we strongly urge GSA to remove from its RA Platform the construction services options outlined in Schedule 56—noted below—and respectfully request to meet with you on this matter.

Specifically, the RA Platform enables federal agencies to procure “Buildings and Building Materials, Industrial Services & Supplies” through Schedule 56. Schedule 56 includes “Ancillary Repair and Alteration requiring minor construction (includes Davis Bacon and construction clauses); and Installation and Site Preparation requiring Construction, which is necessary for Roof Repair or Replacement, to install a Pre-Engineered or Prefabricated Building or Structure, to install an Above Ground Storage Tank or to Install Alternative Energy and Power Distribution Solutions (includes Davis Bacon and construction clauses) ” and construction of foundations.¹ Based on past federal agency experience, AGC is compelled to share our grave concerns about and objections to the use of reverse auctioning for construction services contracts as though construction services were commercial items.

AGC White Paper and Policy on Reverse Auctions

AGC has found that owners, both public and private, maximize their results when they require or encourage competition on all of the relevant “fronts,” including but not limited to price, schedule, safety, quality, responsiveness, and past performance. The federal government has spent many years developing new methods in how construction contracts are procured, thus enabling the federal agencies to emphasize the factors considered to be most important to that unique procurement. Historically, when owners consider price to be most important, sealed bidding has been the most successful means of procuring construction contracts. This time-tested method ensures the integrity of the procurement process. When owners consider non-price factors (such as energy efficiency, scheduling, or safety) to be important, or wish to discuss the work with the competitors, they engage in some form of negotiation, using the request for proposal selection process and project delivery system.

Regardless of the procurement method selected, knowledgeable owners value healthy and vibrant relationships with their construction contractors, recognizing that each project entails unique variables that require consistent, sustained communication and the willingness of both parties to address and work through project challenges and issues. As outlined in AGC’s own White Paper on Reverse Auctions (see enclosure), contractors with experience in reverse auctions have repeatedly reported that this is an acquisition tool that disregards processes focused on negotiation to expand communication between the owner and prospective contractors for the purpose of discussing selection criteria such as qualifications, past performance and unique needs.

Reverse auctions are not successful as a cost savings method for acquiring construction and construction services and may not lower the ultimate cost of construction. For example, “winning” bids may simply be an established increment below the second lowest bid—not the lowest responsible and responsive price, as received through a sealed bid process. Moreover, in reverse auctions, each bidder recognizes that he or she will be required to provide successive, lower bids if they intend to successfully compete in the auction process. As a result, a bidder has little incentive to offer its best price and subsequently may never offer its lowest price.

In fact, no objective public or private study, including an U.S. Army Corps of Engineers (USACE) study on the issue, has provided persuasive evidence that reverse auctions generate savings for the procurement of construction services.

Federal Agency—USACE—Report, Experience and Policy on Reverse Auctions

We have reviewed the findings of a federal agency—USACE—study, published in 2004 entitled “Final Report Regarding the U.S. Army Corps of Engineers Pilot Program on Reverse Auctioning” (see enclosure). The report determined that although reverse auctioning had potential in the purchase of “simple commodities” where variability is exceedingly small or nil (identical products under identical conditions), its use for the purchase of construction services where the dynamics and variables are just too diverse “should be the very rare exception and not the rule – if used at all.” The Corps report further states that on the rare occasion reverse auctioning may be considered as an acquisition method, such consideration should only be made after sealed bidding has failed. Accordingly, GSA’s use of reverse auctioning in the proposed solicitation contravenes a federal government agency’s own findings and recommendations detailed in its Reverse Auction Pilot Program final report to Congress.

On March 6, 2008, Major General Ronald L. Johnson, former Deputy Commanding General of the U.S. Army Corps of Engineers, testified before the House Committee on Small Business on this very issue. MG Johnson testified that “The Corps, through our pilot study, found no basis to claim that reverse auctioning provided any significant or marginal savings over a traditional contracting process for construction or construction services.” MG Johnson also testified that “[w]hile this tool may be appropriate and beneficial in more repetitive types of acquisition, we did not find it to be a useful tool for our construction program and do not currently utilize it today to any great extent.”

Most recently, on May 23, 2013, USACE Engineering and Construction Chief James C. Dalton, P.E., testified also before the House Small Business Committee on a similar topic. Mr. Dalton noted that reverse auction procurement “provides a benefit when commodities or manufactured goods procured are of a controlled and consistent nature with little or no variability. Construction is not a commodity.” He went on to state that “procuring construction by reverse auction neither ensures a fair and reasonable price nor selection of the most qualified contractors.” As a result of its experiences, USACE does not procure construction services using reverse auction procurement.

Furthermore, the federal government has elsewhere acknowledged that construction services stand apart from commodities or manufactured goods. In a July 3, 2003 memorandum from Office of Federal Procurement Policy
Administrator Angela Styles, the government states that “[n]ew construction projects and complex alteration and repair, in particular, involve a high degree of variability, including innumerable combinations of site requirements, weather and physical conditions, labor availability, and schedules.” This memorandum was sent to all federal procurement executives to encourage them not to treat construction as a commodity for government procurement purposes.

**Construction is Not a Commercial Item or Commodity**

As noted, Schedule 56 includes a host of construction services. While GSA may intend for the procurement of what is deemed “simple,” “ancillary” or “preparatory” construction services through reverse auction, in practice, such undefined terms could allow for federal owner misuse of the RA Platform, costing the federal government—and tax-payers—more in the long run. Determining which contractor is the most qualified at the lowest price to clear and improve land for construction, construct a building foundation, install prefabricated buildings, and repair roofs, among other things in Schedule 56, demands a procurement agency evaluates a host of source selection factors together, which reverse auctions do not consider. For example, installation of prefabricated buildings can require a degree of design-build project delivery expertise that varies among contractors. However, a reverse auction only evaluates price, whereas sealed-bidding allows for the consideration of this expertise.

In addition, construction contract awardees face a multitude of diverse challenges and variable conditions that must be addressed in a manner that is consistent with the procurement of a construction services contract and not for a commercial item. The work is subject to, among other things, weather conditions, rapidly rising diesel fuel prices, as well as conditions that introduce an extreme degree of variability to construction, like changing labor supply and equipment costs and time. Additionally, construction projects can include unforeseen site issues, such as soil conditions, the existence and necessary safe removal of hazardous materials, and other below ground possibilities.

The complexities of these processes simply do not compare to the purchase of an off-the-shelf commercial item. The reverse auction process ignores the unique nature of construction. Construction contractors, specialty contractors, subcontractors and suppliers offer and provide a mix of services, materials and systems. They do not “manufacture” buildings, highways, or other facilities. And, not all federal owners have the construction procurement expertise that GSA has to utilize this platform in an appropriate manner. As a result, the RA Platform subjects the industry and taxpayers to the very real likelihood of costly construction services procurement mistakes. The only true solution to preventing the misuse of the RA platform is to completely remove construction services from its bevy of reverse auction options.

**Reverse Auctions Risk the Most Harm to Small Businesses**

Reverse auction bid discipline is critical, yet difficult to maintain. The competitors have to deal with multiple rounds of bidding, all in quick succession. The process may move too quickly for competitors to accurately reassess either their costs or the way they would actually do the work. If competitors act rashly and bid imprudently, the results may be detrimental to everyone, including the federal agency.

During reverse auctions, small construction businesses are most likely to fall victim to such imprudent bidding and experience the greatest harm. Small construction businesses have less cash flow and the ability to handle less risk than non-small construction businesses. Federal construction spending is down 28 percent since August 2011 according to the U.S. Census Bureau. And, the outlook for public construction remains grim as agencies at all levels of government continue to cut construction spending. Given this reality, small business contractors may simply bid a job below cost to maintain some form of cash flow to remain in businesses. Additionally,
some may fall victim to the auction’s time restraints and consequent knowledge gap. Under pressure to win the job, small businesses may unwittingly underbid, thinking that the subcontractors it has lined up would perform at that low of a price. Unable to have subcontractors perform the work, the prime small business may not have the capabilities to actually perform all the work on its own and default.

Concluding Remarks

Current procurement practices and processes recognize the value and quality of project relationships and other factors that promote greater collaboration among the owner and project team members. Reverse auctions, on the other hand, do not promote communication between the parties. Current studies of reverse auctions between buyers and suppliers have found that reverse auctions often have a deleterious effect on the relationship between buyer and seller. Moreover, non-price factors that are of consequence to the owner, such as quality of relationship, past performance, and unique needs, are deemphasized in the auction.

AGC realizes and greatly appreciates the budgetary realities facing the GSA and all federal agencies during difficult economic times. However, we remain convinced that the GSA’s decision-making is flawed if it believes that reverse auctioning will result in the lowest price for acquiring construction services. Most federal owners use sealed bid procurements for construction services contracts where price is of primary importance. GSA should not abandon this time-tested method, and it should not encourage its disuse by other federal owners through the RA Platform. Again, we strongly urge GSA to remove from its RA Platform the construction services options outlined in Schedule 56 and respectfully request to meet with you on this matter.

Sincerely,

Stephen E. Sandherr
Chief Executive Officer
The Associated General Contractors of America

Encl.  Associated General Contractors of America White Paper on Reverse Auctions For Procurement of Construction

            Final Report Regarding U.S. Army Corps of Engineers Pilot Program on Reverse Auctioning

CC:  Les Sheperd, Chief Architect
     David Insinga, Acting Assistant Commissioner for Project Delivery