Support Competition by Prohibiting Reverse Auction Procurement for Construction

Co-Sponsor & Support the Common Sense Construction Contracting Act of 2013, H.R. 2751

Background:
In traditional auctions, buyers compete against each other—pushing prices up—to purchase products or services from a seller. In contrast, reverse auctions enable a buyer to evaluate proposals submitted from multiple sellers who, in theory, compete against one another to provide the lowest price. Federal agencies, including the Department of Veterans Affairs and Department of the Interior, are using reverse auctions to procure construction services for full-range construction projects, like complex and multifaceted building renovations.

AGC Message:
- Reverse auctions may work to procure commodities, not professional services for variable projects like construction
  - Manufactured goods are commodities that have little to no variability or change in manufacture or application. In comparison, construction services are project-specific, inherently variable and require expert knowledge. Each construction services contract is subject to the unique and variable project demands, including the geography—i.e., site conditions, seasonality of construction activities, project proximity to major suppliers—the needs, requirements, personnel and budgetary criteria of federal agencies, and specific and unique design and engineering. Well-qualified, expert contractors are necessary to complete such projects.
- Reverse auctions for construction services DO NOT guarantee lowest price or agency savings
  - In reverse auctions, each bidder recognizes that it will have the option to provide progressively lower bids as the auction proceeds. As a result, a bidder has no incentive to offer its best price and subsequently may never offer its lowest price. In 2008, the U.S. Army Corps of Engineers testified that “it found no basis to claim that reverse auctioning provided any significant or marginal savings over a traditional contracting process for construction.”
- Reverse auctions for construction services encourage imprudent bidding
  - Reverse auction offerors have to deal with multiple cost estimates, from multiple sources over multiple rounds of bidding, all in quick succession. The process may move too quickly for offerors to accurately reassess their costs or the way they actually would do the work. If offerors act rashly and bid imprudently, the results may be detrimental to everyone—subcontractors, suppliers and even the agency if the prime contractor defaults on the project.
- Reverse auctions for construction services unnecessarily LIMIT competition
  - Many well-qualified construction companies of all sizes—small, medium and large—choose not to participate in reverse auctions for all of their risks and faults. This limits competition, which detrimentally impacts price.
- The U.S. Army Corps of Engineers—the largest federal constructor—has banned reverse auctions for construction
  - After several failed experiments, USACE prohibited the procurement of construction services through reverse auctions. USACE issued a 2004 “Final Report Regarding U.S. Army Corps of Engineers Pilot Program on Reverse Auctioning.” The report determined that procuring construction services through reverse auctions “should be the very rare exception and not the rule—if used at all.” USACE testified in 2013 that “procuring construction by reverse auction neither ensures a fair and reasonable price nor a selection of the most qualified contractors.”
- The GAO found that agencies have awarded THOUSANDS of contracts through reverse auctions with one bidder
  - According to a 2013 GAO report, federal agencies conducted over 3,600 reverse auctions where only one vendor participated and submitted only one bid. Consequently, agencies paid a fee for using a private reverse auction platform for which there was no competition and paid the contractor’s “asking” price—not “lowest” price.

AGC Recommendation:
Co-Sponsor and Support the Common Sense Construction Contracting Act of 2013, H.R. 2751. This bill would prohibit federal agencies from procuring construction services for projects that small businesses could perform. Consequently, this bill would increase small businesses competition and thereby lower prices to taxpayers.

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