

**AMENDMENT TO THE RULES COMMITTEE PRINT
FOR H.R. 1735
OFFERED BY MR. HANNA OF NEW YORK**

At the end of subtitle D of title VIII, add the following new section:

1 **SEC. 8** ____. **LIMITATIONS ON REVERSE AUCTIONS.**

2 (a) SENSE OF CONGRESS.—It is the sense of Con-
3 gress that, when used appropriately, reverse auctions may
4 improve the Federal Government’s procurement of com-
5 mercially available commodities by increasing competition,
6 reducing prices, and improving opportunities for small
7 businesses.

8 (b) LIMITATIONS ON REVERSE AUCTIONS.—The
9 Small Business Act (15 U.S.C. 631 et seq.) is amended—

10 (1) by redesignating section 47 (15 U.S.C. 631
11 note) as section 48; and

12 (2) by inserting after section 46 the following
13 new section:

14 **“SEC. 47. LIMITATIONS ON REVERSE AUCTIONS.**

15 **“(a) PROHIBITION ON USING REVERSE AUCTIONS**
16 **FOR COVERED CONTRACTS.**—In the case of a covered con-
17 tract described in subsection (c), a reverse auction may

1 not be used if the award of the contract is to be made
2 under—

3 “(1) section 8(a);

4 “(2) section 8(m);

5 “(3) section 15(a);

6 “(4) section 15(j);

7 “(5) section 31; or

8 “(6) section 36.

9 “(b) LIMITATIONS ON USING REVERSE AUCTIONS.—

10 In the case of the award of a contract made under para-
11 graphs (1) through (6) of subsection (a) that is not a cov-
12 ered contract, a reverse auction may be used for the award
13 of such a contract, but only if the following requirements
14 are met:

15 “(1) DECISIONS REGARDING USE OF A RE-
16 VERSE AUCTION.—Subject to paragraph (2), the fol-
17 lowing decisions with respect to such a contract shall
18 be made only by a contracting officer:

19 “(A) A decision to use a reverse auction as
20 part of the competition for award of such a con-
21 tract.

22 “(B) Any decision made after the decision
23 described in subsection (A) regarding the ap-
24 propriate evaluation criteria, the inclusion of
25 vendors, the acceptability of vendor submissions

1 (including decisions regarding timeliness), and
2 the selection of the winner.

3 “(2) TRAINING REQUIRED.—Only a contracting
4 officer who has received training on the appropriate
5 use and supervision of reverse auctions may use or
6 supervise a reverse auction for the award of such a
7 contract. The training shall be provided by, or simi-
8 lar to the training provided by, the Defense Acquisi-
9 tion University as described in section 824 of the
10 Carl Levin and Howard P. ‘Buck’ McKeon National
11 Defense Authorization Act for Fiscal Year 2015
12 (Public Law 113–291).

13 “(3) NUMBER OF OFFERS; REVISIONS TO
14 BIDS.—A Federal agency may not award such a con-
15 tract using a reverse auction if only one offer is re-
16 ceived or if offerors do not have the ability to submit
17 revised bids with lower prices throughout the course
18 of the auction.

19 “(4) TECHNICALLY ACCEPTABLE OFFERS.—A
20 Federal agency awarding such a contract using a re-
21 verse auction shall evaluate the technical accept-
22 ability of offers only as technically acceptable or un-
23 acceptable.

24 “(5) USE OF PRICE RANKINGS.—A Federal
25 agency may not award such a contract using a re-

1 verse auction if at any time during the award proc-
2 ess the Federal agency misinforms an offeror about
3 the price ranking of the offeror's last offer sub-
4 mitted in relation to offers submitted by other
5 offerors.

6 “(6) USE OF THIRD-PARTY AGENTS.—If a Fed-
7 eral agency uses a third party agent to assist with
8 the award of such a contract using a reverse auc-
9 tion, the Federal agency shall ensure that—

10 “(A) inherently governmental functions (as
11 such term is used in section 2303 of title 41,
12 United States Code) are not performed by pri-
13 vate contractors, including by the third party
14 agent;

15 “(B) information on the past contract per-
16 formance of offerors created by the third party
17 agent and shared with the Federal agency is
18 collected, maintained, and shared in compliance
19 with section 1126 of title 41, United States
20 Code;

21 “(C) information on whether an offeror is
22 a responsible source (as defined in section 113
23 of title 41, United States Code) that is created
24 by the third party agent and shared with the

1 Federal agency is shared with the offeror and
2 complies with section 8(b)(7) of this Act; and

3 “(D) disputes between the third party
4 agent and an offeror may not be used to justify
5 a determination that an offeror is not a respon-
6 sible source (as defined in section 113 of title
7 41, United States Code) or to otherwise restrict
8 the ability of an offeror to compete for the
9 award of such a contract or task or delivery
10 order.

11 “(c) DEFINITIONS.—In this section:

12 “(1) CONTRACTING OFFICER.—The term ‘con-
13 tracting officer’ has the meaning given that term in
14 section 2101(1) of title 41, United States Code.

15 “(2) COVERED CONTRACT.—The term ‘covered
16 contract’ means a contract—

17 “(A) for design and construction services;

18 “(B) for goods purchased to protect Fed-
19 eral employees, members of the Armed Forces,
20 or civilians from bodily harm; or

21 “(C) for goods or services other than those
22 goods or services described in subparagraph (A)
23 or (B)—

1 “(i) to be awarded based on factors
2 other than price and technical responsi-
3 bility; or

4 “(ii) if awarding the contract requires
5 the contracting officer to conduct discus-
6 sions with the offerors about their offer.

7 “(3) DESIGN AND CONSTRUCTION SERVICES.—

8 The term ‘design and construction services’ means—

9 “(A) site planning and landscape design;

10 “(B) architectural and interior design;

11 “(C) engineering system design;

12 “(D) performance of construction work for
13 facility, infrastructure, and environmental res-
14 toration projects;

15 “(E) delivery and supply of construction
16 materials to construction sites;

17 “(F) construction, alteration, or repair, in-
18 cluding painting and decorating, of public build-
19 ings and public works; and

20 “(G) architectural and engineering services
21 as defined in section 1102 of title 40, United
22 States Code.

23 “(4) REVERSE AUCTION.—The term ‘reverse
24 auction’, with respect to procurement by an agency,
25 means an auction between a group of offerors who

1 compete against each other by submitting offers for
2 a contract or task or delivery order with the ability
3 to submit revised offers with lower prices throughout
4 the course of the auction.”.

