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:

SEC. 8. LIMITATIONS ON REVERSE AUCTIONS.

(a) SENSE OF CONGRESS.—It is the sense of Congress that, when used appropriately, reverse auctions may improve the Federal Government’s procurement of commercially available commodities by increasing competition, reducing prices, and improving opportunities for small businesses.

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

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

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

“SEC. 47. LIMITATIONS ON REVERSE AUCTIONS.

“(a) PROHIBITION ON USING REVERSE AUCTIONS FOR COVERED CONTRACTS.—In the case of a covered contract described in subsection (c), a reverse auction may
not be used if the award of the contract is to be made under—

“(1) section 8(a);
“(2) section 8(m);
“(3) section 15(a);
“(4) section 15(j);
“(5) section 31; or
“(6) section 36.

“(b) LIMITATIONS ON USING REVERSE AUCTIONS.—

In the case of the award of a contract made under paragraphs (1) through (6) of subsection (a) that is not a covered contract, a reverse auction may be used for the award of such a contract, but only if the following requirements are met:

“(1) DECISIONS REGARDING USE OF A REVERSE AUCTION.—Subject to paragraph (2), the following decisions with respect to such a contract shall be made only by a contracting officer:

“(A) A decision to use a reverse auction as part of the competition for award of such a contract.

“(B) Any decision made after the decision described in subsection (A) regarding the appropriate evaluation criteria, the inclusion of vendors, the acceptability of vendor submissions
(including decisions regarding timeliness), and
the selection of the winner.

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

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

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

“(5) USE OF PRICE RANKINGS.—A Federal
agency may not award such a contract using a re-
verse auction if at any time during the award proc-

ess the Federal agency misinforms an offeror about

the price ranking of the offeror’s last offer sub-

mitted in relation to offers submitted by other

offerors.

“(6) USE OF THIRD-PARTY AGENTS.—If a Fed-

eral agency uses a third party agent to assist with

the award of such a contract using a reverse auc-

tion, the Federal agency shall ensure that—

“(A) inherently governmental functions (as

such term is used in section 2303 of title 41,

United States Code) are not performed by pri-

vate contractors, including by the third party

agent;

“(B) information on the past contract per-

formance of offerors created by the third party

agent and shared with the Federal agency is

collected, maintained, and shared in compliance

with section 1126 of title 41, United States

Code;

“(C) information on whether an offeror is

a responsible source (as defined in section 113

of title 41, United States Code) that is created

by the third party agent and shared with the
Federal agency is shared with the offeror and complies with section 8(b)(7) of this Act; and

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

“(e) DEFINITIONS.—In this section:

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

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

“(A) for design and construction services;

“(B) for goods purchased to protect Federal employees, members of the Armed Forces, or civilians from bodily harm; or

“(C) for goods or services other than those goods or services described in subparagraph (A) or (B)—
“(i) to be awarded based on factors other than price and technical responsibility; or

“(ii) if awarding the contract requires the contracting officer to conduct discussions with the offerors about their offer.

“(3) DESIGN AND CONSTRUCTION SERVICES.— The term ‘design and construction services’ means—

“(A) site planning and landscape design;

“(B) architectural and interior design;

“(C) engineering system design;

“(D) performance of construction work for facility, infrastructure, and environmental restoration projects;

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

“(F) construction, alteration, or repair, including painting and decorating, of public buildings and public works; and

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

“(4) REVERSE AUCTION.—The term ‘reverse auction’, with respect to procurement by an agency, means an auction between a group of offerors who
compete against each other by submitting offers for a contract or task or delivery order with the ability to submit revised offers with lower prices throughout the course of the auction.”