

## **Construction Consensus Procurement Amendment Portman-Hirono Amendment #1731 to NDAA**

**Overview:** This amendment provides a framework for growth in the construction industry and for more efficient federal government procurement through simple, no cost to the government solutions. It also addresses the anti-competitive and efficiency issues with reverse auction procurement for design and construction services, encourages better utilization of design-build project delivery, and helps prevent fraud by providing financial certainty to assets that support individual surety bonds.

Specifically, the amendment helps:

- Make the design-build construction process more competitive
- Build upon lessons learned from reverse auction procurement of construction services
- Prevent fraud in the individual surety construction bond marketplace

### **Main highlights of the amendment:**

#### **Design-build section:**

- The design-build process can be expensive for both industry and government clients, which could have the effect of reducing participation by the best design firms which incur much of the cost in these competitions and frequently without reimbursement.
- Streamlining the design-build process will benefit government agencies by limiting the second phase of competition to the strongest teams, requiring less time and fewer resources to evaluate proposals.
- The Congressional Budget Office (CBO) found the changes proposed in this legislation to be revenue neutral. Through a study of former legislation, the CBO found these changes to be neutral as the Contracting Officer would review fewer participants in the second round.

#### **Prohibition of Reverse Auctions section:**

- The amendment would require the Federal Acquisition Regulation Council to issue a rule prohibiting reverse auctions for construction services.
- The U.S. Army Corps of Engineers—the largest and most experienced federal construction agency—issued a 190 page report<sup>1</sup> and testified<sup>2</sup> to the fact that procuring construction services by reverse auction neither ensures a fair and reasonable price nor selection of the most qualified contractor.
- The largest reverse auction vendor stated that procurement of construction services through reverse auctions does not make sense.<sup>3</sup> However, federal agencies still conduct such reverse auctions.

#### **Individual Sureties Section:**

- Requires individual sureties to pledge solely safe, liquidatable assets—unconditionally guaranteed assets backed by the Federal government and to deposit them in the custody and control of the federal government.
- Eliminates future instances in which individual surety bonds are pledged with insufficient or illusory assets.
- Protects the many small businesses that perform as subcontractors and suppliers on federal construction projects, knowing their payment protections are real, not illusory.
- Eases the considerable administrative burden placed on federal contracting offices in determining what assets are considered “acceptable” and “unacceptable.”
- Increases the guarantee to 90% for those surety companies who participate in the Preferred Program of the SBA’s Surety Bond Guarantee Program so that this Program can assist more small and emerging businesses.

**Supporters of amendment:** The Small Business Administration (SBA) has expressed support for this amendment. In addition, the American Institute of Architects; the American Council of Engineering Companies; American Society of Civil Engineers; American Subcontractors Association, Inc.; The Associated General Contractors of America; Construction Management Association of America (CMAA); Council on Federal Procurement of Architectural and Engineering Services; Design-Build Institute of America; Independent Electrical Contractors; Management Association for Private Photogrammetric Surveyors; National Association of Surety Bond Producers; National Electrical Contractors Association; National Society of Professional Surveyors; and The Surety and Fidelity Association of America.

<sup>1</sup> <http://docs.house.gov/meetings/VR/VR08/20131211/101557/HHRG-113-VR08-Wstate-CaryN-20131211.pdf>

<sup>2</sup> [http://smallbusiness.house.gov/uploadedfiles/5-23-2013\\_dalton\\_testimony.pdf](http://smallbusiness.house.gov/uploadedfiles/5-23-2013_dalton_testimony.pdf)

<sup>3</sup> [http://www.nytimes.com/2014/04/07/business/reverse-auctions-draw-scrutiny.html?\\_r=1](http://www.nytimes.com/2014/04/07/business/reverse-auctions-draw-scrutiny.html?_r=1)