

Congress of the United States
Washington, DC 20515

December 4, 2014

The Honorable Anne Rung
Administrator
Office of Federal Procurement Policy
Office of Management and Budget
NEOB Room 9013
Washington, DC 20503

Re: Reverse Auctions

Dear Administrator Rung,

Congratulations on your recent confirmation as Administrator of the Office of Federal Procurement Policy (OFPP) at the Office of Management and Budget (OMB). The Committees on Small Business and Veterans Affairs look forward to working with you to improve the state of federal acquisition. Therefore, we request that you address, with all due haste, the recommendations from the December 2013 Government Accountability Office (GAO) report, *Reverse Auctions: Guidance Is Needed to Maximize Competition and Achieve Cost Savings* (GAO 14-108).

As you may know, while our two Committees recognize that reverse auctions, when properly used, may deliver savings to the taxpayer, we have long been concerned that some are misusing this tool to evade competition and compliance with other procurement regulations. The GAO report found that over one-third of the reverse auctions they studied had inadequate competition, meaning that only one offer was received or that only one round of bids was solicited, yet the agencies paid commercial providers fees for these procurements. Since the issuance of that report last December, the Inspector General at the Department of Veterans Affairs (VA OIG) has issued two reports that further highlight the need for regulatory guidance on the use of reverse auctions.¹ In these, the VA OIG stated that the VA's use of reverse auctions "raises serious concerns about the integrity of the procurement process," and that it "ignores priority source requirements."²

These reports echo the concerns brought to our Committees, but do not address all of the problems the Committees have heard related to reverse auctions. Specifically, despite the fact that the United States Army Corps of Engineers demonstrated that reverse auctions are not

¹ See Department of Veterans Affairs, Office of the Inspector General (VA OIG), *Administrative Investigation, Conduct Prejudicial to the Government and Interference of a VA Official for the Financial Benefit of a Contractor, Veterans Health Administration, Procurement & Logistics Office, Washington, DC Report 13-03065-304* (Sept. 26, 2014) and *VA OIG Review of the Veterans Health Administration's Use of Reverse Auction Acquisitions, Report 13-01408-294* (Sept. 26, 2014).

² VA OIG *Review of the Veterans Health Administration's Use of Reverse Auction Acquisitions* at 19-20.

suitable for construction service contracts,³ and that OFPP stated that construction services contracts should not be treated as commercial items,⁴ agencies continue to use reverse auctions to purchase construction services.⁵ Likewise, we continue to receive reports of reverse auctions being conducted where a commercial reverse auction provider shares past performance and financial responsibility information with the contracting officer, but that information is not provided to the offeror nor referred to the Small Business Administration, in violation of FAR 42.1503(b) and FAR 9.104-3(d), respectively. Additionally, small businesses complain that if they are in a financial dispute with a commercial reverse auction provider, that provider may exclude them from a competition, effectively suspending the contractor with no due process. Other examples demonstrate that the government's cost estimate is based simply on the base contract price, without regard to the expected discounts inherent to negotiation or volume discounts. Finally, businesses allege that in some reverse auctions, phony bidders are established to create the perception that the leading bidder is under-bidding and needs to improve its offer, essentially lying to the inflate the winning contract price.

Therefore, we believe that the GAO's recommendations from December 2013 are increasingly important. Specifically, GAO recommended that the OMB:

- (1) Take steps to amend the FAR to address agencies' use of reverse auctions.
 - (2) Issue guidance:
 - advising agencies to collect and analyze data on the level of interactive bidding and, where applicable, fees paid, to determine the cost effectiveness of using reverse auctions, and
 - disseminating best practices from agencies on their use of reverse auctions related to maximizing competition and savings.
- GAO-14-108 at 30.

The GAO report indicates that, "Senior OMB staff stated that they generally agreed with our recommendations . . . [and] agreed that FAR coverage should be considered," but first "they would discuss our findings and conclusions with the FAR and Chief Acquisition Officers Councils." However, nearly a year has passed without any guidance being issued or regulation

³ US ARMY CORPS OF ENGINEERS(USACE), FINAL REPORT REGARDING THE USACE PILOT PROGRAM ON REVERSE AUCTIONING 34-37 (2004). Reverse auctions for construction services "offered not even marginal edge in savings over the sealed bid process for construction service projects" and that construction was too variable to be considered a commodity.

⁴ Memorandum From Angela Styles, Administrator, Office of Federal Procurement Policy, Applicability of FAR Part 12 to Construction Acquisitions (Jul. 3, 2003) available at

http://www.whitehouse.gov/sites/default/files/omb/assets/omb/procurement/far/far_part12.pdf.

⁵ See, e.g., Department of the Interior, *Solicitation P12PS25233* (Jun 13, 2012), available at

https://www.fbo.gov/?s=opportunity&mode=form&tab=core&id=b55a55a0cc7346ab722e4c4b011c4911&_cview=0 (supply and deliver flexible road base); VA, *Solicitation VA24413Q0363*, (Jan 31, 2013), available at

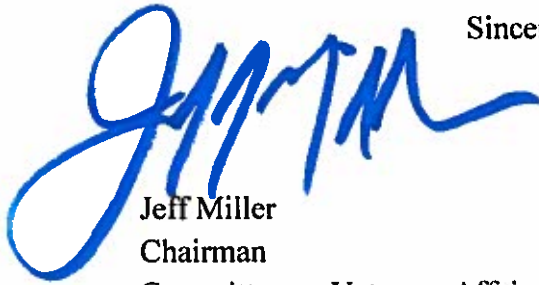
https://www.fbo.gov/?s=opportunity&mode=form&id=039cf8d115384d0cebcf055c25934d07&tab=core&_cview=1 (testing or poser distribution system); VA, *Solicitation VA24312Q1952* (Jul 30, 2012), available at

https://www.fbo.gov/?s=opportunity&mode=form&id=8a576e312880690d317f3fc78314f401&tab=core&_cview=0 (complete overhaul of chiller).

proposed. Each day that passes only further undermines the integrity of the procurement system and exposes the American taxpayer to unnecessary waste. Consequently, we strongly believe that a FAR case needs to be opened immediately.

Thank you in advance for your attention to this matter. If you have any questions, please contact Eric Hannel with the Committee on Veterans Affairs or Emily Murphy with Committee on Small Business.

Sincerely,



Jeff Miller
Chairman
Committee on Veterans Affairs



Sam Graves
Chairman
Committee on Small Business