

113TH CONGRESS  
2D SESSION

# S. 2652

To improve the design-build process in Federal contracting.

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IN THE SENATE OF THE UNITED STATES

JULY 24, 2014

Mrs. FISCHER introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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## A BILL

To improve the design-build process in Federal contracting.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. DESIGN-BUILD CONSTRUCTION PROCESS IM-**  
4       **PROVEMENT.**

5       (a) CIVILIAN CONTRACTS.—Section 3309 of title 41,  
6       United States Code, is amended—

7               (1) in subsection (d), by striking “The max-  
8       imum number specified in the solicitation shall not  
9       exceed 5 unless the agency determines with respect  
10      to” and all that follows through the period at the  
11      end and inserting the following: “The maximum  
12      number specified in the solicitation shall not exceed

1       5 unless the head of the contracting activity ap-  
 2       proves the contracting officer’s justification that an  
 3       individual solicitation must have greater than 5 fi-  
 4       nalists to be in the Federal Government’s interest.  
 5       The contracting officer shall provide written docu-  
 6       mentation of how a maximum number of offerors ex-  
 7       ceeding 5 is consistent with the purposes and objec-  
 8       tives of the two-phase selection process.”; and

9               (2) by adding at the end the following new sub-  
 10      section:

11      “(f) DESIGN AND CONSTRUCTION CONTRACTS.—  
 12      Two-phase selection procedures shall be used for entering  
 13      into a contract for the design and construction of a public  
 14      building, facility, or work when a contracting officer deter-  
 15      mines that the contract has a value of \$750,000 or great-  
 16      er, as adjusted for inflation in accordance with section  
 17      1908 of title 41, United States Code.”.

18      (b) DEFENSE CONTRACTS.—Section 2305a(d) of title  
 19      10, United States Code, is amended—

20               (1) in subsection (d) by striking “The max-  
 21      imum number specified in the solicitation shall not  
 22      exceed 5 unless the agency determines with respect  
 23      to” and all that follows through the period at the  
 24      end and inserting the following: “The maximum  
 25      number specified in the solicitation shall not exceed

1        5 unless the head of the agency contracting activity  
 2        approves the contracting officers justification that  
 3        an individual solicitation must have greater than 5  
 4        finalists to be in the Federal Government's interest.  
 5        The contracting officer shall provide written docu-  
 6        mentation of how a maximum number of offerors ex-  
 7        ceeding 5 is consistent with the purposes and objec-  
 8        tives of the two-phase selection process.”; and

9            (2) by adding at the end the following new sub-  
 10        section:

11        “(f) DESIGN AND CONSTRUCTION CONTRACTS.—  
 12        Two-phase selection procedures shall be used for entering  
 13        into a contract for the design and construction of a public  
 14        building, facility, or work when a contracting officer deter-  
 15        mines that the contract has a value of \$750,000 or great-  
 16        er, as adjusted for inflation in accordance with section  
 17        1908 of title 41, United States Code.”.

18        (c) REPORTS.—

19            (1) REPORTS REGARDING AGENCY ACTIONS.—

20            (A) IN GENERAL.—There shall be compiled  
 21        for each executive agency an annual report of  
 22        each instance in which the agency awarded a  
 23        design-build contract pursuant to section 3309  
 24        of title 41, United States Code, or section

2305a(d) of title 10, United States Code, as amended by this Act, in which—

(i) more than 5 finalists were selected for phase-two requests for competitive proposals; or

(ii) the contract was awarded without using two-phase selection procedures.

(B) RESPONSIBILITY.—The Director of the Office of Management and Budget shall designate the head of each executive agency to serve as executive agent for the compilation of the report required by subparagraph (A) and to facilitate public access to the report through electronic means. A notice of the availability of each report shall be published in the Federal Register.

(C) DEADLINE.—The first report shall include reportable instances during the fiscal year that includes the date of enactment of this Act. Additional reports shall be issued for the subsequent 4 fiscal years. Each report shall be issued within 60 days after the end of the fiscal year covered by the report.

(2) GAO REPORT.—Not later than 270 days after the deadline for the final report required under

1 paragraph (1), the Comptroller General of the  
2 United States shall issue a report analyzing the  
3 compliance of the various executive agencies in com-  
4 plying with the requirements of section 3309 of title  
5 41, United States Code, and section 2305a(d) of  
6 title 10, United States Code, as applicable, as  
7 amended by this section.

8 (3) EXECUTIVE AGENCY DEFINED.—In this  
9 subsection, the term “executive agency” has the  
10 meaning given the term in section 133 of title 41,  
11 United States Code.

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