

# Union Calendar No. 734

118TH CONGRESS  
2D SESSION

# H. R. 1209

[Report No. 118-899]

To preserve open competition and Federal Government neutrality towards the labor relations of Federal Government contractors on Federal and federally funded construction projects, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 27, 2023

Mr. COMER (for himself, Ms. FOXX, Ms. MACE, Mr. MOOLENAAR, Mr. PERRY, Mr. ROSENDALE, Mr. NORMAN, Mr. WEBER of Texas, Mr. JOHNSON of Louisiana, Mr. SESSIONS, Mr. CARL, Mr. HERN, Mr. OWENS, Mr. ALLEN, Mr. CRENSHAW, Ms. BOEBERT, Mr. TIMMONS, Mrs. WAGNER, Mr. BIGGS, Mr. BURCHETT, Mrs. CAMMACK, Mr. MOONEY, Mr. SMUCKER, Mr. WOMACK, Mr. WILSON of South Carolina, Mr. CLOUD, Mr. DUNCAN, Mr. PALMER, Mr. ELLZEY, Mr. DONALDS, Mr. GOSAR, Mrs. HARSHBARGER, Mr. MCCLINTOCK, Mr. FERGUSON, Mr. BISHOP of North Carolina, Mr. LATURNER, Mr. HIGGINS of Louisiana, Mr. FRY, Mr. DESJARLAIS, Mr. MCCORMICK, Mr. MEUSER, Mr. BARR, Mr. FULCHER, Mr. DUNN of Florida, Mr. WALBERG, Mr. FITZGERALD, Mr. BURLISON, Mr. SCHWEIKERT, Mr. CALVERT, Mrs. LESKO, Mr. STEUBE, Mr. CARTER of Texas, Mr. GOOD of Virginia, Mr. SCOTT FRANKLIN of Florida, Ms. LETLOW, Mr. LAMBORN, Mr. WILLIAMS of Texas, Mr. OGLES, Mr. MANN, Mr. MOORE of Alabama, Mr. ROY, Mr. OBERNOLTE, Mr. GUEST, Mr. EZELL, Mrs. MILLER of Illinois, Mr. CRAWFORD, Mr. MURPHY, Ms. GREENE of Georgia, Mr. CARTER of Georgia, Mr. ROUZER, Mr. ROGERS of Alabama, Mr. CISCOMANI, Mr. WEBSTER of Florida, Mr. GOODEN of Texas, Mr. WITTMAN, Mr. NEHLS, Mr. TIFFANY, Mr. GROTHMAN, Mr. JOHNSON of South Dakota, and Mr. RUTHERFORD) introduced the following bill; which was referred to the Committee on Oversight and Accountability

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Additional sponsors: Mrs. RODGERS of Washington, Mr. YAKYM, Mr. PENCE, Mr. CLINE, Mrs. STEEL, Mr. JACKSON of Texas, Mr. BABIN, Mr. ADERHOLT, Mr. THOMPSON of Pennsylvania, Mr. HILL, Mr. GUTHRIE, Mr. FALLON, Ms. LEE of Florida, Mr. HUDSON, Mr. STRONG, Mrs. MCCLAIN, Mr. AUSTIN SCOTT of Georgia, Mr. HUNT, Mr. MASSIE, Mr. ESTES, Mr. BILIRAKIS, Mr. ARMSTRONG, Mrs. HINSON, Mrs. HOUCHIN, Mr. BEAN of Florida, Mr. LAMALFA, Mr. COLLINS, Mr. COLE, Mr. MILLS, Mr. MCHENRY, Mrs. KIGGANS of Virginia, Mr. BUCK, Ms. DE LA CRUZ, Mr. KELLY of Mississippi, Mr. CRANE, Mr. BAIRD, Mrs. BICE, Mr. SELF, Mr. BANKS, Mr. BENTZ, Mr. TONY GONZALES of Texas, Mrs. MILLER of West Virginia, and Ms. HAGEMAN

DECEMBER 18, 2024

Reported with an amendment, committed to the Committee of the Whole  
House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on February 27, 2023]

# **A BILL**

To preserve open competition and Federal Government neutrality towards the labor relations of Federal Government contractors on Federal and federally funded construction projects, and for other purposes.

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. SHORT TITLE.**

4 *This Act may be cited as the “Fair and Open Competi-*  
5 *tion Act of 2023” or the “FOCA Act of 2023”.*

6 **SEC. 2. PURPOSES.**

7 *It is the purpose of this Act to—*

8 *(1) promote and ensure open competition on*  
9 *Federal and federally funded or assisted construction*  
10 *projects;*

11 *(2) maintain Federal Government neutrality to-*  
12 *wards the labor relations of Federal Government con-*  
13 *tractors on Federal and federally funded or assisted*  
14 *construction projects;*

15 *(3) reduce construction costs to the Federal Gov-*  
16 *ernment and to the taxpayers;*

17 *(4) expand job opportunities, especially for small*  
18 *and disadvantaged businesses; and*

19 *(5) prevent discrimination against Federal Gov-*  
20 *ernment contractors or their employees based upon*  
21 *labor affiliation or the lack thereof, thereby promoting*  
22 *the economical, nondiscriminatory, and efficient ad-*  
23 *ministration and completion of Federal and federally*  
24 *funded or assisted construction projects.*

1 **SEC. 3. PRESERVATION OF OPEN COMPETITION AND FED-**  
2 **ERAL GOVERNMENT NEUTRALITY.**

3 (a) *PROHIBITION.*—

4 (1) *GENERAL RULE.*—*The head of each executive*  
5 *agency that awards or enters into any construction*  
6 *contract or that obligates funds pursuant to such a*  
7 *contract, shall ensure that the agency, and any con-*  
8 *struction manager acting on behalf of the Federal*  
9 *Government with respect to such contract, in its bid*  
10 *specifications, project agreements, or other controlling*  
11 *documents does not—*

12 (A) *require or prohibit a bidder, offeror,*  
13 *contractor, or subcontractor from entering into,*  
14 *or adhering to, agreements with 1 or more labor*  
15 *organizations, with respect to that construction*  
16 *project or another related construction project; or*

17 (B) *discriminate against or give preference*  
18 *to a bidder, offeror, contractor, or subcontractor*  
19 *because such bidder, offeror, contractor, or sub-*  
20 *contractor—*

21 (i) *becomes a signatory, or otherwise*  
22 *adheres to, an agreement with 1 or more*  
23 *labor organizations with respect to that con-*  
24 *struction project or another related con-*  
25 *struction project; or*

1                   (ii) refuses to become a signatory, or  
2                   otherwise adhere to, an agreement with 1 or  
3                   more labor organizations with respect to  
4                   that construction project or another related  
5                   construction project.

6                   (2) *APPLICATION OF PROHIBITION.*—This sub-  
7                   section shall apply with respect to—

8                   (A) contracts awarded on or after the date  
9                   of the enactment of this Act; and

10                  (B) subcontracts awarded under such con-  
11                  tracts.

12                  (3) *RULE OF CONSTRUCTION.*—Nothing in para-  
13                  graph (1) may be construed to prohibit a contractor  
14                  or subcontractor from voluntarily entering into an  
15                  agreement described in such paragraph.

16                  (4) *FEDERAL ACQUISITION REGULATION.*—Not  
17                  later than 60 days after the date of the enactment of  
18                  this Act, the Federal Acquisition Regulation shall be  
19                  revised to implement the provisions of this subsection.

20                  (b) *RECIPIENTS OF GRANTS AND OTHER ASSIST-*  
21 *ANCE.*—The head of each executive agency that awards  
22 grants, provides financial assistance, or enters into coopera-  
23 tive agreements for construction projects after the date of  
24 the enactment of this Act shall ensure that—

1           (1) *the bid specifications, project agreements, or*  
2           *other controlling documents for such construction*  
3           *projects of a recipient of a grant or financial assist-*  
4           *ance, or by the parties to a cooperative agreement, do*  
5           *not contain any of the requirements or prohibitions*  
6           *described in subparagraph (A) or (B) of subsection*  
7           *(a)(1); or*

8           (2) *the bid specifications, project agreements, or*  
9           *other controlling documents for such construction*  
10          *projects of a construction manager acting on behalf of*  
11          *a recipient or party described in paragraph (1) do*  
12          *not contain any of the requirements or prohibitions*  
13          *described in subparagraph (A) or (B) of subsection*  
14          *(a)(1).*

15          (c) *FAILURE TO COMPLY.—If an executive agency, a*  
16          *recipient of a grant or financial assistance from an execu-*  
17          *tive agency, a party to a cooperative agreement with an*  
18          *executive agency, or a construction manager acting on be-*  
19          *half of such an agency, recipient, or party, fails to comply*  
20          *with subsection (a) or (b), the head of the executive agency*  
21          *awarding the contract, grant, or assistance, or entering into*  
22          *the agreement involved, shall take such action, consistent*  
23          *with the law, as the head of such agency determines to be*  
24          *appropriate.*

25          (d) *EXEMPTIONS.—*



1           (1) *IN GENERAL.*—*The head of an executive*  
2 *agency may exempt a particular project, contract,*  
3 *subcontract, grant, or cooperative agreement from the*  
4 *requirements of 1 or more of the provisions of sub-*  
5 *sections (a) and (b) if the head of such agency deter-*  
6 *mines that special circumstances exist that require an*  
7 *exemption in order to avert an imminent threat to*  
8 *public health or safety or to serve the national secu-*  
9 *rity.*

10           (2) *SPECIAL CIRCUMSTANCES.*—*For purposes of*  
11 *paragraph (1), a finding of special circumstances*  
12 *may not be based on the possibility or existence of a*  
13 *labor dispute concerning contractors or subcontractors*  
14 *that are nonsignatories to, or that otherwise do not*  
15 *adhere to, agreements with 1 or more labor organiza-*  
16 *tions, or labor disputes concerning employees on the*  
17 *project who are not members of, or affiliated with, a*  
18 *labor organization.*

19           (3) *ADDITIONAL EXEMPTION FOR CERTAIN*  
20 *PROJECTS.*—*The head of an executive agency, upon*  
21 *application of an awarding authority, a recipient of*  
22 *grants or financial assistance, a party to a coopera-*  
23 *tive agreement, or a construction manager acting on*  
24 *behalf of any of such entities, may exempt a par-*  
25 *ticular project from the requirements of any or all of*

1 *the provisions of subsection (a) or (b), if the head of*  
2 *such agency finds—*

3 *(A) that the awarding authority, recipient*  
4 *of grants or financial assistance, party to a co-*  
5 *operative agreement, or construction manager*  
6 *acting on behalf of any of such entities had*  
7 *issued or was a party to, as of the date of the*  
8 *enactment of this Act, bid specifications, project*  
9 *agreements, agreements with 1 or more labor or-*  
10 *ganizations, or other controlling documents with*  
11 *respect to that particular project, which con-*  
12 *tained any of the requirements or prohibitions*  
13 *set forth in subsection (a)(1); and*

14 *(B) that 1 or more construction contracts*  
15 *subject to such requirements or prohibitions had*  
16 *been awarded as of the date of the enactment of*  
17 *this Act.*

18 *(e) DEFINITIONS.—In this section:*

19 *(1) CONSTRUCTION CONTRACT.—The term “con-*  
20 *struction contract” means any contract for the con-*  
21 *struction, rehabilitation, alteration, conversion, exten-*  
22 *sion, or repair of buildings, highways, or other im-*  
23 *provements to real property.*

24 *(2) EXECUTIVE AGENCY.—The term “executive*  
25 *agency” has the meaning given the term “Executive*

1       *agency” in section 105 of title 5, United States Code,*  
2       *except that such term does not include the Govern-*  
3       *ment Accountability Office.*

4               (3) *LABOR ORGANIZATION.—The term “labor or-*  
5       *ganization” has the meaning given such term in sec-*  
6       *tion 701 of the Civil Rights Act of 1964 (42 U.S.C.*  
7       *2000e).*

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