

118TH CONGRESS
1ST SESSION

H. R. 1209

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.

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, Mrs. 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. C. 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

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 Com-
5 petition Act” or the “FOCA Act”.

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 construc-
10 tion projects;

11 (2) maintain Federal Government neutrality to-
12 wards the labor relations of Federal Government
13 contractors on Federal and federally funded or as-
14 sisted construction projects;

15 (3) reduce construction costs to the Federal
16 Government and to the taxpayers;

17 (4) expand job opportunities, especially for
18 small 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 pro-
22 moting the economical, nondiscriminatory, and effi-
23 cient administration and completion of Federal and
24 federally 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 execu-
5 tive agency that awards or enters into any construc-
6 tion contract or that obligates funds pursuant to
7 such a contract, shall ensure that the agency, and
8 any construction manager acting on behalf of the
9 Federal Government with respect to such contract,
10 in its bid specifications, project agreements, or other
11 controlling 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
15 labor organizations, with respect to that con-
16 struction project or another related construction
17 project; or

18 (B) discriminate against or give preference
19 to a bidder, offeror, contractor, or subcon-
20 tractor because such bidder, offeror, contractor,
21 or subcontractor—

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

1 (ii) refuses to become a signatory, or
2 otherwise adhere to, an agreement with 1
3 or 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
13 paragraph (1) may be construed to prohibit a con-
14 tractor or subcontractor from voluntarily entering
15 into an agreement described in such paragraph.

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

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

1 (1) the bid specifications, project agreements,
2 or 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,
5 do not contain any of the requirements or prohibi-
6 tions described in subparagraph (A) or (B) of sub-
7 section (a)(1); or

8 (2) the bid specifications, project agreements,
9 or other controlling documents for such construction
10 projects of a construction manager acting on behalf
11 of 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,
16 a 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
22 into the agreement involved, shall take such action, con-
23 sistent with the law, as the head of such agency deter-
24 mines to be 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
4 the requirements of 1 or more of the provisions of
5 subsections (a) and (b) if the head of such agency
6 determines that special circumstances exist that re-
7 quire an exemption in order to avert an imminent
8 threat to public health or safety or to serve the na-
9 tional security.

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

1 of the provisions of subsection (a) or (b), if the head
2 of 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
10 organizations, or other controlling documents
11 with respect to that particular project, which
12 contained any of the requirements or prohibi-
13 tions set forth in subsection (a)(1); and

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

18 (e) DEFINITIONS.—In this section:

19 (1) CONSTRUCTION CONTRACT.—The term
20 “construction contract” means any contract for the
21 construction, rehabilitation, alteration, conversion,
22 extension, or repair of buildings, highways, or other
23 improvements 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
2 Code, except that such term does not include the
3 Government Accountability Office.

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

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