

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.

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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, 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

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## 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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