

117TH CONGRESS
1ST SESSION

H. R. 1284

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 24, 2021

Mr. BUDD (for himself, Mr. MOOLENAAR, Mr. GAETZ, Mr. PERRY, Mr. BANKS, Mr. STEUBE, Mr. STEWART, Mr. ROSENDALE, Mr. MULLIN, Mr. NORMAN, Mr. HICE of Georgia, Mr. HARRIS, Mr. CAWTHORN, Mr. KELLY of Mississippi, Mr. JACKSON, Ms. MACE, Mr. WEBER of Texas, Mr. CARTER of Texas, Mr. COLE, Mrs. RODGERS of Washington, Mr. CURTIS, Mr. ISSA, Mrs. HINSON, Mr. LATTA, Mr. WITTMAN, Mr. RICE of South Carolina, Mr. JOHNSON of Louisiana, Mr. SESSIONS, Mr. BABIN, Mr. TIFFANY, Mr. SMITH of Missouri, Mr. CARL, Mr. COMER, Mr. LONG, Mr. HERN, Mr. OWENS, Mr. RUTHERFORD, and Mr. ALLEN) introduced the following bill; which was referred to the Committee on Oversight and Reform

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Fair and Open Com-
3 petition Act” or the “FOCA Act”.

4 **SEC. 2. PURPOSES.**

5 It is the purpose of this Act to—

6 (1) promote and ensure open competition on
7 Federal and federally funded or assisted construc-
8 tion projects;

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

13 (3) reduce construction costs to the Federal
14 Government and to the taxpayers;

15 (4) expand job opportunities, especially for
16 small and disadvantaged businesses; and

17 (5) prevent discrimination against Federal Gov-
18 ernment contractors or their employees based upon
19 labor affiliation or the lack thereof, thereby pro-
20 moting the economical, nondiscriminatory, and effi-
21 cient administration and completion of Federal and
22 federally funded or assisted construction projects.

23 **SEC. 3. PRESERVATION OF OPEN COMPETITION AND FED-
24 ERAL GOVERNMENT NEUTRALITY.**

25 (a) PROHIBITION.—

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

9 (A) require or prohibit a bidder, offeror,
10 contractor, or subcontractor from entering into,
11 or adhering to, agreements with 1 or more
12 labor organizations, with respect to that con-
13 struction project or another related construction
14 project; or

15 (B) discriminate against or give preference
16 to a bidder, offeror, contractor, or subcon-
17 tractor because such bidder, offeror, contractor,
18 or subcontractor—

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

24 (ii) refuses to become a signatory, or
25 otherwise adhere to, an agreement with 1

1 or more labor organizations with respect to
2 that construction project or another related
3 construction project.

4 (2) APPLICATION OF PROHIBITION.—This sub-
5 section shall apply with respect to—

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

8 (B) subcontracts awarded under such con-
9 tracts.

10 (3) RULE OF CONSTRUCTION.—Nothing in
11 paragraph (1) may be construed to prohibit a con-
12 tractor or subcontractor from voluntarily entering
13 into an agreement described in such paragraph.

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

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

24 (1) the bid specifications, project agreements,
25 or other controlling documents for such construction

1 projects of a recipient of a grant or financial assist-
2 ance, or by the parties to a cooperative agreement,
3 do not contain any of the requirements or prohibi-
4 tions described in subparagraph (A) or (B) of sub-
5 section (a)(1); or

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

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

23 (d) EXEMPTIONS.—

24 (1) IN GENERAL.—The head of an executive
25 agency may exempt a particular project, contract,

1 subcontract, grant, or cooperative agreement from
2 the requirements of 1 or more of the provisions of
3 subsections (a) and (b) if the head of such agency
4 determines that special circumstances exist that re-
5 quire an exemption in order to avert an imminent
6 threat to public health or safety or to serve the na-
7 tional security.

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

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

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

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

16 (e) DEFINITIONS.—In this section:

17 (1) CONSTRUCTION CONTRACT.—The term
18 “construction contract” means any contract for the
19 construction, rehabilitation, alteration, conversion,
20 extension, or repair of buildings, highways, or other
21 improvements to real property.

22 (2) EXECUTIVE AGENCY.—The term “executive
23 agency” has the meaning given the term “Executive
24 agency” in section 105 of title 5, United States

1 Code, except that such term does not include the
2 Government Accountability Office.

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

○