

115TH CONGRESS
1ST SESSION

H. R. 1552

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

MARCH 15, 2017

Mr. ROSS introduced the following bill; which was referred to the Committee on Oversight and Government 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,*

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. PURPOSES.**

7 It is the purpose of this Act to—

1 (1) promote and ensure open competition on
2 Federal and federally funded or assisted construc-
3 tion projects;

4 (2) maintain Federal Government neutrality to-
5 wards the labor relations of Federal Government
6 contractors on Federal and federally funded or as-
7 sisted construction projects;

8 (3) reduce construction costs to the Federal
9 Government and to the taxpayers;

10 (4) expand job opportunities, especially for
11 small and disadvantaged businesses; and

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

18 **SEC. 3. PRESERVATION OF OPEN COMPETITION AND FED-**

19 **ERAL GOVERNMENT NEUTRALITY.**

20 (a) PROHIBITION.—

21 (1) GENERAL RULE.—The head of each execu-
22 tive agency that awards any construction contract
23 after the date of the enactment of this Act, or that
24 obligates funds pursuant to such a contract, shall
25 ensure that the agency, and any construction man-

1 ager acting on behalf of the Federal Government
2 with respect to such contract, in its bid specifica-
3 tions, project agreements, or other controlling docu-
4 ments does not—

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

11 (B) otherwise discriminate against or give
12 preference to a bidder, offeror, contractor, or
13 subcontractor because such bidder, offeror, con-
14 tractor, or subcontractor—

15 (i) becomes a signatory, or otherwise
16 adheres to, an agreement with 1 or more
17 labor organizations with respect to that
18 construction project or another related
19 construction project; or

20 (ii) refuses to become a signatory, or
21 otherwise adhere to, an agreement with 1
22 or more labor organizations with respect to
23 that construction project or another related
24 construction project.

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

3 (A) contracts entered into on or after the
4 date of the enactment of this Act; and

5 (B) subcontracts awarded under such con-
6 tracts.

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

11 (4) FEDERAL ACQUISITION REGULATION.—
12 With respect to Federal contracts to which this sub-
13 section applies, not later than 60 days after the date
14 of the enactment of this Act, the Federal Acquisition
15 Regulation shall be revised to implement the provi-
16 sions of this subsection.

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

22 (1) the bid specifications, project agreements,
23 or other controlling documents for such construction
24 projects of a recipient of a grant or financial assist-
25 ance, or by the parties to a cooperative agreement,

1 do not contain any of the requirements or prohibi-
2 tions described in subparagraph (A) or (B) of sub-
3 section (a)(1); or

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

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

21 (d) EXEMPTIONS.—

22 (1) IN GENERAL.—The head of an executive
23 agency may exempt a particular project, contract,
24 subcontract, grant, or cooperative agreement from
25 the requirements of 1 or more of the provisions of

1 subsections (a) and (b) if the head of such agency
2 determines that special circumstances exist that re-
3 quire an exemption in order to avert an imminent
4 threat to public health or safety or to serve the na-
5 tional security.

6 (2) SPECIAL CIRCUMSTANCES.—For purposes
7 of paragraph (1), a finding of “special cir-
8 cumstances” may not be based on the possibility or
9 existence of a labor dispute concerning contractors
10 or subcontractors that are nonsignatories to, or that
11 otherwise do not adhere to, agreements with 1 or
12 more labor organizations, or labor disputes con-
13 cerning employees on the project who are not mem-
14 bers of, or affiliated with, a labor organization.

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

24 (A) that the awarding authority, recipient
25 of grants or financial assistance, party to a co-

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

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

14 (e) DEFINITIONS.—In this section:

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

20 (2) EXECUTIVE AGENCY.—The term “executive
21 agency” has the meaning given the term “Executive
22 agency” in section 105 of title 5, United States
23 Code, except that such term does not include the
24 Government Accountability Office.

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

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