

113TH CONGRESS
1ST SESSION

H. R. 436

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

IN THE HOUSE OF REPRESENTATIVES

JANUARY 29, 2013

Mr. HARRIS (for himself, Mr. ADERHOLT, Mr. ALEXANDER, Mr. AMASH, Mr. AMODEI, Mrs. BACHMANN, Mr. BACHUS, Mr. BARTON, Mrs. BLACK, Mrs. BLACKBURN, Mr. BROOKS of Alabama, Mr. BROUN of Georgia, Mr. BUCSHON, Mr. BURGESS, Mr. CALVERT, Mr. COFFMAN, Mr. DESJARLAIS, Mr. DUNCAN of South Carolina, Mr. DUNCAN of Tennessee, Mr. FINCHER, Mr. FLEISCHMANN, Mr. FORTENBERRY, Mr. GARRETT, Mr. GOSAR, Mr. HARPER, Mr. HUELSKAMP, Mr. HUIZENGA of Michigan, Mr. HURT, Mr. JORDAN, Mr. KING of Iowa, Mr. LATTA, Mr. GARY G. MILLER of California, Mr. MILLER of Florida, Mr. MULVANEY, Mr. NEUGEBAUER, Mr. NUNNELEE, Mr. PALAZZO, Mr. PEARCE, Mr. POE of Texas, Mr. RIBBLE, Mr. ROE of Tennessee, Mr. ROSS, Mr. SCA LISE, Mr. SENSENBRENNER, Mr. SESSIONS, Mr. SMITH of Texas, Mr. STIVERS, Mr. STUTZMAN, Mr. THOMPSON of Pennsylvania, Mr. THORN BERRY, Mr. WEBSTER of Florida, Mr. WESTMORELAND, Mr. WILSON of South Carolina, Mr. WOLF, Mr. WOMACK, and Mr. YOUNG of Indiana) 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.

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 “Government Neutrality
5 in Contracting 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 any construction contract
6 after the date of enactment of this Act, or that obli-
7 gates funds pursuant to such a contract, shall en-
8 sure that the agency, and any construction manager
9 acting on behalf of the Federal Government with re-
10 spect to such contract, in its bid specifications,
11 project agreements, or other controlling documents
12 does not—

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

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

23 (i) becomes a signatory, or otherwise
24 adheres to, an agreement with 1 or more
25 labor organizations with respect to that

1 construction project or another related
2 construction project; or

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

8 (2) APPLICATION OF PROHIBITION.—The provi-
9 sions of this section shall not apply to contracts
10 awarded prior to the date of enactment of this Act,
11 and subcontracts awarded pursuant to such con-
12 tracts regardless of the date of such subcontracts.

13 (3) RULE OF CONSTRUCTION.—Nothing in
14 paragraph (1) shall be construed to prohibit a con-
15 tractor or subcontractor from voluntarily entering
16 into an agreement described in such paragraph.

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 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),
8 do not contain any of the requirements or prohibi-
9 tions described in subparagraph (A) or (B) of sub-
10 section (a)(1).

11 (c) FAILURE TO COMPLY.—If an executive agency,
12 a recipient of a grant or financial assistance from an execu-
13 tive 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 the agency determines to
20 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
23 agency head 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) FEDERAL ACQUISITION REGULATORY COUN-
15 CIL.—With respect to Federal contracts to which this sec-
16 tion applies, not later than 60 days after the date of enact-
17 ment of this Act, the Federal Acquisition Regulatory
18 Council shall take appropriate action to amend the Fed-
19 eral Acquisition Regulation to implement the provisions of
20 this section.

21 (f) DEFINITIONS.—In this section:

22 (1) CONSTRUCTION CONTRACT.—The term
23 “construction contract” means any contract for the
24 construction, rehabilitation, alteration, conversion,

1 extension, or repair of buildings, highways, or other
2 improvements to real property.

3 (2) EXECUTIVE AGENCY.—The term “executive
4 agency” has the meaning given such term in section
5 105 of title 5, United States Code, except that such
6 term shall not include the Government Account-
7 ability Office.

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

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