

107TH CONGRESS
1ST SESSION

S. 962

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 SENATE OF THE UNITED STATES

MAY 24, 2001

Mr. HUTCHINSON introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

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—

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 enactment of this Act, or that obli-
24 gates funds pursuant to such a contract, shall en-
25 sure that the agency, and any construction manager

1 acting on behalf of the Federal Government with re-
2 spect to such contract, in its bid specifications,
3 project agreements, or other controlling documents
4 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 organization, with respect to that con-
9 struction project or another related construction
10 project; or

11 (B) otherwise discriminate against a bid-
12 der, offeror, contractor, or subcontractor be-
13 cause such bidder, offeror, contractor, or
14 subcontractor—

15 (i) became a signatory, or otherwise
16 adhered to, an agreement with 1 or more
17 labor organization with respect to that con-
18 struction project or another related con-
19 struction project; or

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

1 (2) APPLICATION OF PROHIBITION.—The provi-
2 sions of this section shall not apply to contracts
3 awarded prior to the date of enactment of this Act,
4 and subcontracts awarded pursuant to such con-
5 tracts regardless of the date of such subcontracts.

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

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

15 (1) the bid specifications, project agreements,
16 or other controlling documents for such construction
17 projects of a recipient of a grant or financial assist-
18 ance, or by the parties to a cooperative agreement,
19 do not contain any of the requirements or prohibi-
20 tions described in subparagraph (A) or (B) of sub-
21 section (a)(1); or

22 (2) the bid specifications, project agreements,
23 or other controlling documents for such construction
24 projects of a construction manager acting on behalf
25 of a recipient or party described in paragraph (1),

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

4 (c) FAILURE TO COMPLY.—If an executive agency,
5 a recipient of a grant or financial assistance from an execu-
6 tive agency, a party to a cooperative agreement with an
7 executive agency, or a construction manager acting on be-
8 half of such an agency, recipient or party, fails to comply
9 with subsection (a) or (b), the head of the executive agency
10 awarding the contract, grant, or assistance, or entering
11 into the agreement, involved shall take such action, con-
12 sistent with law, as the head of the agency determines to
13 be appropriate.

14 (d) EXEMPTIONS.—

15 (1) SPECIAL CIRCUMSTANCES.—

16 (A) IN GENERAL.—The head of an execu-
17 tive agency may exempt a particular project,
18 contract, subcontract, grant, or cooperative
19 agreement from the requirements of 1 or more
20 of the provisions of subsections (a) and (b) if
21 the head of such agency determines that special
22 circumstances exist that require an exemption
23 in order to avert an imminent threat to public
24 health or safety or to serve the national secu-
25 rity.

1 (B) DEFINITION.—For purposes of sub-
2 paragraph (A), a finding of “special cir-
3 cumstances” may not be based on the possi-
4 bility or existence of a labor dispute concerning
5 contractors or subcontractors that are nonsig-
6 natories to, or that otherwise do not adhere to,
7 agreements with 1 or more labor organization,
8 or labor disputes concerning employees on the
9 project who are not members of, or affiliated
10 with, a labor organization.

11 (2) ADDITIONAL EXEMPTION FOR CERTAIN
12 PROJECTS.—The head of an executive agency, upon
13 the application of an awarding authority, a recipient
14 of grants or financial assistance, a party to a cooper-
15 ative agreement, or a construction manager acting
16 on behalf of any of such entities, may exempt a par-
17 ticular project from the requirements of any or all
18 of the provisions of subsections (a) or (c), if the
19 agency head finds—

20 (A) that the awarding authority, recipient
21 of grants or financial assistance, party to a co-
22 operative agreement, or construction manager
23 acting on behalf of any of such entities had
24 issued or was a party to, as of the date of the
25 enactment of this Act, bid specifications, project

1 agreements, agreements with one or more labor
2 organizations, or other controlling documents,
3 with respect to that particular project, which
4 contained any of the requirements or prohibi-
5 tions set forth in subsection (a)(1); and

6 (B) that one or more construction con-
7 tracts subject to such requirements or prohibi-
8 tions had been awarded as of the date of the
9 enactment of this Act.

10 (e) FEDERAL ACQUISITION REGULATORY COUN-
11 CIL.—With respect to Federal contracts to which this sec-
12 tion applies, not later than 60 days after the date of enact-
13 ment of this Act, the Federal Acquisition Regulatory
14 Council shall take appropriate action to amend the Fed-
15 eral Acquisition Regulation to implement the provisions of
16 this section.

17 (f) DEFINITIONS.—In this section:

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

23 (2) EXECUTIVE AGENCY.—The term “executive
24 agency” has the meaning given such term in section
25 105 of title 5, United States Code, except that such

1 term shall not include the General Accounting Of-
2 fice.

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

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