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114TH CONGRESS
1ST SESSION

S. 71

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

JANUARY 7, 2015

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

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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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Government Neutrality in Contracting Act''.

SEC. 2. PURPOSES.

It is the purpose of this Act to—

(1) promote and ensure open competition on Federal and federally funded or assisted construction projects;

(2) maintain Federal Government neutrality towards the labor relations of Federal Government contractors on Federal and federally funded or assisted construction projects;

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

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

(5) prevent discrimination against Federal Government contractors or their employees based upon labor affiliation or the lack thereof, thereby promoting the economical, nondiscriminatory, and efficient administration and completion of Federal and federally funded or assisted construction projects.

SEC. 3. PRESERVATION OF OPEN COMPETITION AND FEDERAL GOVERNMENT NEUTRALITY.

(a) PROHIBITION.—

(1) GENERAL RULE.—The head of each executive agency that awards any construction contract after the date of enactment of this Act, or that obligates funds pursuant to such a contract, shall ensure that the agency, and any construction manager

acting on behalf of the Federal Government with respect to such contract, in its bid specifications, project agreements, or other controlling documents does not—

(A) require or prohibit a bidder, offeror, contractor, or subcontractor from entering into, or adhering to, agreements with one or more labor organizations, with respect to that construction project or another related construction project; or

(B) otherwise discriminate against a bidder, offeror, contractor, or subcontractor because such bidder, offeror, contractor, or subcontractor—

(i) becomes a signatory to, or otherwise adheres to, an agreement with one or more labor organizations with respect to that construction project or another related construction project; or

(ii) refuses to become a signatory to, or otherwise adhere to, an agreement with one or more labor organizations with respect to that construction project or another related construction project.

(2) APPLICATION OF PROHIBITION.—The provisions of this section shall not apply to contracts awarded prior to the date of enactment of this Act, and subcontracts awarded pursuant to such contracts regardless of the date of such subcontracts.

(3) RULE OF CONSTRUCTION.—Nothing in paragraph (1) shall be construed to prohibit a contractor or subcontractor from voluntarily entering into an agreement described in such paragraph.

(b) RECIPIENTS OF GRANTS AND OTHER ASSISTANCE.—The head of each executive agency that awards grants, provides financial assistance, or enters into cooperative agreements for construction projects after the date of enactment of this Act, shall ensure that—

(1) the bid specifications, project agreements, or other controlling documents for such construction projects of a recipient of a grant or financial assistance, or by the parties to a cooperative agreement, do not contain any of the requirements or prohibitions described in subparagraphs (A) and (B) of subsection (a)(1); or

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

not contain any of the requirements or prohibitions described in subparagraphs (A) and (B) of subsection (a)(1).

(c) FAILURE TO COMPLY.—If an executive agency, a recipient of a grant or financial assistance from an executive agency, a party to a cooperative agreement with an executive agency, or a construction manager acting on behalf of such agency, recipient, or party, fails to comply with subsection (a) or (b), the head of the executive agency awarding the contract, grant, or assistance, or entering into the agreement involved, shall take such action, consistent with law, as the head of the agency determines to be appropriate.

(d) EXEMPTIONS.—

(1) IN GENERAL.—The head of an executive agency may exempt a particular project, contract, subcontract, grant, or cooperative agreement from the requirements of one or more of the provisions of subsections (a) and (b) if the head of such agency determines that special circumstances exist that require an exemption in order to avert an imminent threat to public health or safety or to serve the national security.

(2) SPECIAL CIRCUMSTANCES.—For purposes of paragraph (1), a finding of ''special cir-

cumstances'' may not be based on the possibility or existence of a labor dispute concerning contractors or subcontractors that are nonsignatories to, or that otherwise do not adhere to, agreements with one or more labor organizations, or a labor dispute concerning employees on the project who are not members of, or affiliated with, a labor organization.

(3) ADDITIONAL EXEMPTION FOR CERTAIN PROJECTS.—The head of an executive agency, upon application of an awarding authority, a recipient of grants or financial assistance, a party to a cooperative agreement, or a construction manager acting on behalf of any of such entities, may exempt a particular project from the requirements of any or all of the provisions of subsection (a) or (b) if the agency head finds—

(A) that the awarding authority, recipient of grants or financial assistance, party to a cooperative agreement, or construction manager acting on behalf of any of such entities had issued or was a party to, as of the date of the enactment of this Act, bid specifications, project agreements, agreements with one or more labor organizations, or other controlling documents with respect to that particular project, which

contained any of the requirements or prohibitions set forth in subsection (a)(1); and

(B) that one or more construction contracts subject to such requirements or prohibitions had been awarded as of the date of the enactment of this Act.

(e) FEDERAL ACQUISITION REGULATORY COUNCIL.—With respect to Federal contracts to which this section applies, not later than 60 days after the date of enactment of this Act, the Federal Acquisition Regulatory Council shall take appropriate action to amend the Federal Acquisition Regulation to implement the provisions of this section.

(f) DEFINITIONS.—In this section:

(1) CONSTRUCTION CONTRACT.—The term ''construction contract'' means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

(2) EXECUTIVE AGENCY.—The term ''executive agency'' has the meaning given such term in section 133 of title 41, United States Code, except that such term shall not include the Government Accountability Office.

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

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