H. R. ____________

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

Mr. BUDD introduced the following bill; which was referred to the Committee on ________________

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.

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 “Fair and Open Competition Act” or the “FOCA 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 or enters into any construction contract 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 1 or more labor organizations, with respect to that construction project or another related construction project; or

(B) discriminate against or give preference to a bidder, offeror, contractor, or subcontractor because such bidder, offeror, contractor, or subcontractor—

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

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

(2) APPLICATION OF PROHIBITION.—This subsection shall apply with respect to—
(A) contracts awarded on or after the date
of the enactment of this Act; and
(B) subcontracts awarded under such con-
tracts.

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

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

(b) RECIPIENTS OF GRANTS AND OTHER ASSIST-
ANCE.—The head of each executive agency that awards
grants, provides financial assistance, or enters into coop-er-
ative agreements for construction projects after the date
of the 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 assis-
tance, or by the parties to a cooperative agreement,
do not contain any of the requirements or prohibi-
tions described in subparagraph (A) or (B) of sub-
section (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 subparagraph (A) or (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 an 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 the law, as the head of such 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 1 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 circumstances 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 1 or more labor organizations, or labor disputes 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 head of such agency 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 1 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 1 or more construction contracts subject to such requirements or prohibitions had been awarded as of the date of the enactment of this Act.

(e) 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 the term “Executive agency” in section 105 of title 5, United States Code, except that such term does not include the Government Accountability Office.

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