



# CITY OF LODI

# COUNCIL COMMUNICATION

**AGENDA TITLE:** Oppose Professional Engineers in California Government Constitutional Amendment Initiative Entitled "Government Cost Savings and Taxpayers Protection"

**MEETING DATE:** March 18, 1998

**PREPARED BY:** Public Works Director

**RECOMMENDED ACTION:** That the City Council adopt the attached resolution in opposition to the Professional Engineers in California (PECG) government initiative, entitled "Government Cost Savings and Taxpayers Protection", a proposed constitutional amendment initiative, and forward copies to the appropriate parties.

**BACKGROUND INFORMATION:** PECG, a State-employees group, has sponsored an initiative to amend the California Constitution to require that design of virtually all projects which are funded in part or in whole by the State of California be done by State employees. This initiative (copy attached) will be on the June 1998 ballot as Proposition 224.

The initiative, if approved, would apply to architectural and engineering contracts awarded by public agencies under many circumstances. The proposed constitutional amendment would require the submittal of architectural and engineering contracts to the State Controller's office for performance of a cost analysis and comparison of that contract, for every State, local, or private project which receives State funds or for which the State will operate, such as a freeway interchange. If the service can be performed at a lower cost by using State employees, the contract cannot be awarded. The State Controller's review considers all of the consultant's costs (including profit, taxes, rent and overhead) and the State's cost bidding and overseeing the contract versus the State's direct costs (employees' salary and benefits) not other overhead, such as buildings, administration, etc.

Three other significant factors that are not considered in the State Controller's analysis are: 1) how quickly the project can be developed, 2) the need to apply specialized expertise, and 3) the indirect cost of State employees resulting from increased staff added to handle peak loads but underutilized during off-peak periods.

Thus, it is likely that few, if any, projects receiving State funds would be designed by private engineering firms. From a local perspective, the concern is that requiring local projects to be designed by State employees would create a significant bottleneck. Many projects are clearly time sensitive, including schools, roads, water treatment facilities, medical facilities, mass transit, and water supply facilities. Should such projects be unnecessarily delayed, there exists the potential to increase the overall project costs rather than reduce them. The bottom line is that while State employees can and should be involved at some appropriate level in project design, it is bad policy to embed such a restriction in the State's Constitution.

A number of counties, cities, special districts, and Statewide organizations, including the League of California Cities (see attached letter) and the California Chamber of Commerce, have already adopted resolutions in opposition to the subject initiative.

A "pro" and "con" article that recently appeared in the *Engineering News Record* is also attached.

**FUNDING:** Not applicable.

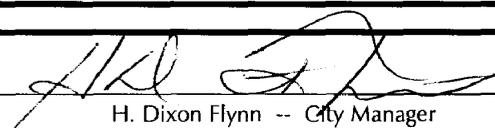
  
Richard C. Prima, Jr.  
Public Works Director

Prepared by Jack L. Ronsko, Outgoing Public Works Director, and Richard C. Prima, Jr., Public Works Director

**Attachments**

cc: City Attorney            LUSD Facilities & Planning Dept., Mamie Starr, Administrative Director  
City Engineer  
Jack L. Ronsko

APPROVED: \_\_\_\_\_

  
H. Dixon Flynn -- City Manager

## GOVERNMENT COST SAVINGS AND TAXPAYERS PROTECTION AMENDMENT

### SECTION 1. TITLE

This measure shall be known and may be cited as the Government Cost Savings and Taxpayer Protection Amendment.

### SECTION 2. PURPOSE AND INTENT

It is the intent of the people of the State of California in enacting this measure that engineering, architectural, and similar services provided by the state and certain other entities be furnished at the lowest cost to taxpayers, consistent with quality, health, safety, and the public interest; that contracts for such services be awarded through a competitive bidding process, free of undue political influence; and that contractors be held fully responsible for the performance of their contracts.

THEREFORE, THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

### SECTION 3. REQUIREMENTS FOR CONTRACTS FOR ENGINEERING, ARCHITECTURAL AND SIMILAR SERVICES

Article VII, section 12 is hereby added to the California Constitution to read:

(a) This section shall apply to contracts for engineering, architectural, landscape architectural, surveying, environmental, or engineering geology services awarded by the state of California or by any state agency to any public or private entity. As used in this section, "state agency" means every state office, officer, agency, department, division, bureau, board, and commission but does not include the University of California, the California State University and Colleges, and local public entities. "State agency" also includes a state agency acting jointly with another state agency or with a local public entity. As used in this section, "local public entity" means any city, county, city and county, including a chartered city or county, public or municipal corporation, school district, special district, authority, or other public entity formed for the local performance of governmental and proprietary functions within limited boundaries. "Local public entity" also includes two or more local public entities acting jointly.

(b) This section shall also apply to contracts for services specified in subsection (a) awarded by private entities or local public entities when the contract awarded by the public or private entity involves expenditure of state funds or involves a program, project, facility, or public work for which the state or any state agency has or will have ownership, liability, or responsibility for construction, operation, or maintenance. As used in this section, "state funds" means all money appropriated by the Legislature for expenditure by the state or a state agency and all money included in special funds that the state or a state agency controls.

(c) Prior to the award of any contract covered by this section, the Controller shall prepare and verify an analysis of the cost of performing the work using state civil service employees and the cost of the contract. In comparing costs, the cost of performing the work using state civil service employees shall include only the additional direct costs to the state to provide the same services as the contractor, and the cost of the contract shall include all anticipated contract costs and all costs to be incurred by the state, state agencies, and the contracting entity for the bidding, evaluation, and contract award process and for inspecting, supervising, verifying, monitoring, and overseeing the contract.

(d) The contract shall not be awarded if either of the following conditions is met: (1) the Controller's analysis concludes that state civil service employees can perform the work at less cost than the cost of the contract, unless the services are such an urgent nature that public interest, health, or safety requires award of the contract; or (2) the Controller or the contracting entity concludes that the contract would not be in the public interest, would have an adverse impact on public health or safety, or would result in lower quality work than if state civil service employees performed the services.

(e) Except for contracts for which a delay resulting from the competitive bidding process would endanger public health or safety, every contract, including amendments, covered by this section that exceeds fifty

thousand dollars (\$50,000), adjusted annually to reflect changes in the appropriate consumer price index as determined by the Controller, shall be awarded through a publicized competitive bidding process involving sealed bids. Each contract shall be awarded to the lowest qualified bidder. If the contract cost based on the lowest qualified bid exceeds the anticipated contract costs the Controller estimated pursuant to subsection (c), the Controller shall prepare and verify a revised analysis using the contract bid cost, and that revised analysis shall be used in applying subsection (d).

(f) For every contract covered by this section, the contractor shall assume full responsibility and liability for its performance of the contract and shall defend, indemnify, and hold the state, the contracting entity, and their agents and employees harmless from any legal action resulting from the performance of the contract.

(g) This section shall not be applied in a manner that will result in the loss of federal funding to the contracting entity for contracts for services.

#### SECTION 4. SEVERABILITY

If any provision of this Amendment or its application to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of the Amendment which can be given effect without the invalid provision or application, and to this end the provisions of this Amendment are severable.

#### SECTION 5. APPLICABILITY OF CURRENT LAW

Nothing in this Amendment shall expand or restrict the state's constitutional authority, as determined by decisions of the California Supreme Court and California Courts of Appeal in effect on the effective date of this Amendment, to enter into contracts with private or public entities.

#### SECTION 6. RELATIONSHIP TO OTHER MEASURES

To the extent that any other measure on the same subject shall be on the ballot at the same election, it is the intent of the voters that this measure be deemed, to the maximum extent possible, not to be in conflict with such other measure, but rather that this measure should be harmonized with the other measure.



## League of California Cities

May 12, 1997

The Professional Engineers in California Government (PECG) has put an initiative on the next ballot that attempts to change the method of procurement of engineering and other design services from the historically recognized and legally mandated qualification-based selection system. In California, qualification-based selection has been the law since 1974. The Executive Board of the League of California Cities has taken a position to oppose this initiative.

Furthermore, two bills have been introduced in the State Legislature to help in the legislative effort of the initiative, SB 479 (Alpert) and AB 376 (Baca). The League has taken an opposed position in this legislation as well.

SB 479 would place into statute the cost comparison provisions that require the State Controller to compare the costs of a design contract with the cost of having state employees produce the design. Like the initiative, SB 479 allows state cost to be zero if state staff is available to perform the work. SB 479 would apply to state, local and private projects. SB 479 enacts a portion of the initiative which PECG has qualified for the next election and adds it to the statutes of the State of California. The net result of SB 479 is the same as the PECG initiative and if either are passed, then projects would be slowed down for years. AB 376 incorporates the low bid and liability provisions of the PECG initiative.

For these reasons, the League opposes the PECG initiative, SB 479 and AB 379.

Sincerely,

Don Benninghoven  
Executive Director

cc: Bob Carlson, CRA

CONFERENCE REGISTRATION OFFICE  
BOX 1519, LAFAYETTE, CA 94549  
(510) 283-2113  
FAX (510) 283-7833

HEADQUARTERS  
1400 K STREET, SACRAMENTO, CA 95814  
(916) 658-8200  
FAX (916) 658-8240

SOUTHERN CALIFORNIA OFFICE  
602 EAST HUNTINGTON DR., SUITE C  
MONROVIA, CA 91016  
(618) 306-1315  
CITY OF MONROVIA, CA

# VIEWPOINT

## CONTRACTING OUT

ARTHUR P. DUFFY

### Require Bids from Engineers

California voters will choose in June whether to scrap the current wasteful, politically influenced process of awarding overpriced, no-bid contracts for state engineering work. The Competitive Bidding Initiative, a proposed constitutional amendment on the state ballot, would require the commonsense business practices of cost analyses, competitive bidding and contractor responsibility.

Over the past 10 years, the administration of California Gov. Pete Wilson (R) has contracted out state engineering work through overpriced, no-bid contracts to campaign contributors. At the same time, his administration has laid off state engineers who could have done the job at half the cost. Based on data from the state's Legislative Analyst, the annual

cost for a state engineer is \$75,000, while an engineering consultant costs about \$138,000.

The California Supreme Court recently confirmed these findings. More than \$500 million has been wasted in this way since 1990, in some cases on shamefully poor quality. Californians had been promised that privatization in general would provide taxpayers more services at less cost. The opposite occurred with the contracting out of highway engineering services.

Waste is not the only concern. The Competitive Bidding Initiative would take politics out of the contract-award process, particularly at the California Dept. of Transpor-

tation. In recent years, recipients of Caltrans' no-bid contracts have made more than \$4 million in contributions to state elected officials. This cycle of accepting campaign contributions and awarding no-bid contracts has led to scandal and corruption elsewhere. It resulted in the downfall of former Vice President Spiro Agnew because of con-

tributions accepted while he served as Maryland's governor. Recently, campaign contributions from no-bid contractors have resulted in scandals and criminal sanctions at the Metropolitan Transportation Authority in Los Angeles.

Safety is another key issue. In San Diego, slipshod inspections by no-bid contractors led to 13,000 defective welds in the retrofit of an Interstate 805 interchange. In Los Angeles, no-bid contracts to campaign contributors have

turned the subway project into a disaster of collapsing streets, sinkholes and defective construction that might never get fixed. Our initiative would put an end to these disgraceful disasters by requiring objective contract awards through competitive bidding and by holding contractors financially responsible for their work.

California voters soon will have the chance to reform a wasteful, politically influenced process and replace it with competitive bidding, cost analyses, and contractor responsibility when awarding hundreds of millions of dollars each year in highway engineering contracts

*Arthur P. Duffy, an engineer in the hydraulics department of the California Dept. of Transportation in Oakland, is a past president of Professional Engineers in California Government.*

*Sacramento-based PECC represents 10,000 state engineers and related professionals.*



## CONTRACTING OUT

JOHN BAKER

### Kill the "Competition Killer"

The "Competition Killer" Initiative would grant exclusive benefit to its promoters, hand a multibillion-dollar debt to California taxpayers and set a precedent that threatens the entire nation. Its promoters say the initiative would save the government money and protect taxpayers. Not true. It would result in the hiring of up to 12,000 new state employees at an annual cost of \$1.5 billion.

The Competition Killer is not what it claims to be. Buried in its fine print is a provision that rigs the system against competition from the private sector, virtually guaranteeing that state employees get design contracts for nearly all state, local and private

projects involving transportation, water treatment, schools, parks and prisons. Such projects would face added delays, local control of local projects would be lost and thousands of jobs would disappear.

For public and some private works, the initiative would require state employees to perform the related engineering services unless the private sector could do so more cheaply. But the state could make its own costs appear artificially low by ignoring essential expenses such as salaries, benefits and rents. The Competition Killer would require the state controller to use this biased cost comparison to determine who would get tens of thousands of projects worth billions of

dollars. The only people who consider this fair are those in the state employees' group that spent more than \$2 million to gather enough signatures to qualify the measure for the ballot.

Not just unfair, the measure would create delays. The state controller's office has no staff or experience to review design contracts. The resulting delays would result in the loss of up to 100,000 construction and related jobs in the first two years alone.

Concerned about the likely delays, the California School Boards Association and others point out that schools cannot afford another hurdle when children need classrooms now. Virtually every California school has been designed by the private sector. If the initiative were to pass, schools, hospitals and even golf courses would have to be designed by state employees.

Local control of such local projects would be lost to state

employees. That's why jurisdictions across the state oppose the initiative. The Competition Killer would devastate California's ability to meet vital needs. It also would send the wrong message to the entire nation.

Join with the more than 400 organizations that have formed a coalition to oppose the measure. Called Taxpayers Fed Up With More State Bureaucracy, its members include the California Chamber of Commerce, Operating Engineers—Local Union No. 3 (AFL-CIO), the California Building Industry Association, the American Consulting Engineers Council, the American Institute of Architects and my group, the Consulting Engineers and Land Surveyors of California.

*John Baker is the president of the Sacramento-based Consulting Engineers and Land Surveyors of California and the regional manager of the environmental engineering firm Kleinfelder, Inc.*



RESOLUTION NO. 98-44

A RESOLUTION OF THE LODI CITY COUNCIL IN  
OPPOSITION TO THE PROFESSIONAL ENGINEERS IN  
CALIFORNIA GOVERNMENT INITIATIVE

WHEREAS, everyday, billions of dollars of critical projects are underway throughout the State of California including seismic retrofitting projects, flood control facilities, schools and hospitals; and

WHEREAS, local governments currently can decide whether to perform design work with their own staff or contract with private firms, on a competitive basis; and

WHEREAS, this process allows local governments to determine the most economical and timely way to deliver a project; and

WHEREAS, the so-called "Government Cost Savings and Taxpayers Protection Amendment" changes the process by giving State employees a virtual monopoly on designing nearly every project; and

WHEREAS, this will thereby require cities, counties, schools, special districts and regional governments to use State employees to design roads, parks, hospitals, health clinics, schools, water treatment facilities, flood control walls and other critical structures, including all engineering, design, geological and environmental work; and

WHEREAS, the proposed initiative eliminates local control and may communities will have to rely on State employees for their design work; and

WHEREAS, the State Controller would have to analyze tens of thousands of proposed contracts per year potentially costing taxpayers hundreds of thousands of dollars, or more, in additional expenses; and

WHEREAS, this could cause delays on important projects in San Joaquin County.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Lodi hereby opposes the so-called "Government Cost Savings and Taxpayers Protection Amendment."

Dated: March 18, 1998

I hereby certify that Resolution No. 98-44 was passed and adopted by the Lodi City Council in a regular meeting held March 18, 1998 by the following vote:

- AYES: Council Members - Johnson, Land, Mann, Pennino and Sieglock  
(Mayor)
- NOES: Council Members - None
- ABSENT: Council Members - None
- ABSTAIN: Council Members - None

*Alice M. Reimche*  
ALICE M. REIMCHE  
City Clerk