

**American Council of Engineering Companies (ACEC) California  
Policy Platform  
Contracting Out**

Approved by the Executive Committee on January 21, 2014

Adopted by the Board of Directors on February 3, 2014

**Issue**

- Faced with significant funding shortfalls for the design, construction, repair, operation, and maintenance of public infrastructure, public agencies have searched for strategies to alleviate their funding shortages and improve efficiency. Obtaining needed services from the private sector, i.e. contracting out, has proven to be an important element of cost-effective and timely project delivery.
- For many years, local and state public agencies have routinely contracted out for professional design services. However, prior to 2000, California courts issued multiple rulings that severely restricted the authority of California's public agencies to procure professional design services from the private sector. In November 2000, the California voters approved Proposition 35, which enacted Article XXII of the State Constitution, and associated statutes, and thereby gave state and local public agencies the clear, unfettered legal authority to procure architectural and engineering services from private firms when they desire to do so.
- Since the passage of Proposition 35, a state employee union has mounted numerous legal, administrative, and legislative attacks on Proposition 35. To date, ACEC California has countered these attacks with resounding success, including the California Supreme Court's issuance of two unanimous rulings upholding Proposition 35.
- Contracting out enables public agencies to:
  - Procure specialized services that may not be available in-house when needed for a particular project,
  - Receive the benefits of open competition, including greater innovation, by gaining access to the broad experience and specialized expertise available in the open marketplace for design professional services,

- Gain more flexibility and faster project delivery by matching project needs with the right experienced design professionals,
- Deliver projects cost effectively by avoiding delays and maintaining budget accountability, and
- Utilize private sector design professionals, in lieu of hiring permanent in-house staff, when long-term workloads are uncertain.
- Contracting out avoids the long-term unfunded pension and medical care liabilities that are often associated with the extensive use of public employees and avoids having to carry out the difficult, litigious task of laying off public employees when a public agency's design needs and infrastructure funding declines.
- The contracting out issue involves state legislators, state and local public agency officials, public sector unions, private sector unions, taxpayer groups, the courts, contractor organizations and ACEC California.

## **Policy**

- ACEC California supports the clear and unrestricted authority of state and local public agencies to procure architectural and engineering services from the private sector when an agency needs or desires to do so. No statute, ordinance, regulation or general administrative policy should interfere with that authority.

## **Rationale**

- In the Legislative Analyst's Office (LAO) report to the legislature on the Governor's 2011-2012 State Budget, the LAO urged increasing from 10 to 20 percent the portion of state transportation work that is contracted out. The LAO cited declining transportation funding, Caltrans' need for more flexibility in managing its resources, and the importance of avoiding long term spending commitments. The LAO was also critical of the accuracy of Caltrans' Capital Outlay Support program personnel and cost budget data used for project pricing in comparison to contracting out pricing. To see the LAO report, go to <http://www.lao.ca.gov/laoapp/budgetlist/PublicSearch.aspx?Yr=2011&KeyCol=442>.

- Allowing public agencies the right to utilize contracting out is a high priority issue for ACEC California. ACEC California first led the tremendous effort to research, qualify, and pass Proposition 35, and since then has led the continuing effort to defend Proposition 35 in the legislature, in the courts, and during administrative proceedings.
- ACEC California strongly believes, as do many others outside of the organization, that contracting out benefits taxpayers and public agencies who sponsor infrastructure projects. The best evidence reinforcing this belief is the widespread and huge success of contracting out. Indeed, contracting out should continue to be an indispensable project delivery tool for state and local officials throughout the United States and other countries.

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*First Approved February 3, 2014*