

Proposition 35: Its Development and Effects on Out-Sourcing

When voters approved California’s Proposition 35 in November 2000, they authorized all phases of state public works projects to be privatized. Since that time, Caltrans increasingly has contracted private vendors to perform state infrastructure projects. State workers are naturally concerned whether these contracts violate the civil service mandate and in particular, the restriction on contracting out work that could be performed by state workers.

How Proposition 35 Came About and What It Does

In *Professional Engineers v. Department of Transportation* (1997), the Supreme Court rejected the Legislature’s attempt to bypass the civil service requirement and ordered construction and engineering projects to be in-sourced. Soon after, though, private engineering firms who no longer received the benefit of this work joined forces to put Proposition 35 on the ballot and win voter approval.

Proposition 35 allows the state to contract out all phases of A&E projects. The proposition contained a set of stated purposes:

- To remove restrictions on contracting for A&E contracts
- To use private A&E firms to help deliver transportation, schools, water, seismic retrofit and other infrastructure projects safely, cost effectively, and on time.
- To speed project completion and the elimination of backlog.
- To encourage public/private partnerships.
- To promote fair competition so that both public and private sector A&E providers work smarter, more efficiently and deliver better value.
- To ensure a fair, competitive selection process free of undue political influence to obtain the best quality and value.

Financing the Campaigns For and Against Proposition 35

- Supporters for Proposition 35 contributed over \$12.3 million, outspending Opposition over 2-to-1.
- The largest supporting contributors were engineering firms, with US Bank as a notable exception and the largest contributor.
- Opposition was mainly public sector unions and PACs -- Professional Engineers in California Government (PECG) single handedly contributed close to \$3.9 million.

Proposition 35 Financing	
Supporters -- Top Five out of 3350	Contribution
US Bank	\$2,500,000
American Consulting Engineers	\$413,405
DPIC Companies	\$370,000
AECOM Technology Corp.	\$315,000
CH2M Hill	\$308,000
All supporter contributions	\$12,389,264
Opposition -- Top Five out of 11	Contribution
Professional Engineers In California Government (PECG)	\$3,870,467
California State Employee's Associated Initiative Committee	\$1,042,832
Professional Engineers in California Government Issues PAC	\$382,687
California State Council of Service Employees Political Action	\$100,044
California Association of Professional Scientists	\$10,000
All opposition contributions	\$5,407,881
<i>Note: Purple Shading Indicates SEIU Local 1000 Political Group</i>	

Other Supporters Include:

- A. Teichert & Son Inc., Granite Construction Inc., Bay Counties Civil Engineers & Land Surveyors Association, Associated General Contractors of California, Associated Third Party Administrators...
- Of the 3350 supporters, 1070 were from out of state and contributed close to \$2.2 million to get Proposition 35 passed.

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Life After Proposition 35

Caltrans enters into contracts with private vendors that include services for all phases of public works projects. Understandably, many Caltrans workers have expressed concern that the work they perform is being contracted out under the umbrella of Proposition 35. However, according to California Government Code, A&E services include all architectural, landscape, environmental, engineering, land surveying, and construction project management services (section 4529.10). On top of all this, Caltrans issued regulations to implement the new requirements, which specifically included the “incidental services” that accompany A&E work as covered activities under Proposition 35 (Title 21 California Code of Regulations, section 1520.1).

Thus far, the successful passage of Proposition 35, changes in the government code and new Caltrans regulations severely hamper (or have eliminated) our ability to win outsourcing challenges through appeals to the State Personnel Board.

Time Line of Proposition 35, its Legal Cases and Battles

