



CITY OF HAYWARD AGENDA REPORT

AGENDA DATE 04/14/98

AGENDA ITEM 7

WORK SESSION ITEM _____

TO: Mayor and City Council
FROM: Director of Public Works
SUBJECT: **Resolution Opposing Proposition 224, the Professional Engineers in California Government (PECG) Initiative**

Recommendation:

It is recommended that the City Council pass a resolution opposing Proposition 224, the PECG Initiative, which will appear on the June 2, 1998 ballot.

Background/Discussion:

A State engineer's group, known as the Professional Engineers in California Government (PECG), which is composed largely of Caltrans employees, has sponsored an initiative titled the "Government Cost Savings and Taxpayer Protection Amendment." This initiative will appear as Proposition 224 on the June 2, 1998 ballot. A copy of the initiative ballot measure and the pro/con arguments are attached at Exhibit A.

The intent of this initiative is to prohibit awarding any contracts for engineering, architectural, surveying, environmental, or engineering geology services for projects that involve any "State funds" unless the proposed contractor provides those services at a lower cost than using State civil service employees to perform the same services. The determination would be made by the State Controller's office. Under present State law, State and local agencies are free to award contracts for the above-mentioned services without this limitation.

Under the initiative, a contract is first negotiated with a private contractor to perform design work. The contract will then be reviewed by the State Controller where a determination would be made as to whether the work can be performed less expensively by State employees. The contract cannot be awarded if the Controller's analysis finds that State employees can perform the work at less cost than the cost of the contract, or if the Controller finds that the contract is not in the public's interest (there are provisions for emergency awards). In performing the analysis, only the additional direct cost to the State by use of State employees will be considered. Indirect costs (such as the cost of existing overhead) will not be included in the analysis.

Disadvantages of the Initiative

If this initiative is approved by the voters, it has the potential of severely and negatively impacting the implementation of local projects. If a project contains "State money," no contract over \$50,000 for design services can be awarded until a review by the State Controller is completed. It is anticipated that the review process will be a lengthy process considering the numerous projects that would be affected, thus resulting in significant project delays.

Additionally, the initiative requires the State Controller's analysis to consider only the direct costs to the State. The initiative does not allow the cost evaluation process to look at factors, such as expertise, reliability, responsibility, or timeliness of delivery. As such, the initiative ignores

existing State law, which requires the selection of firms supplying services to be based upon demonstrated competence and on the professional qualifications necessary for satisfactory performance of the services required. Additionally, factors such as all anticipated contract costs, costs incurred by the State in the competitive bidding/evaluating/awarding process, and costs of inspection, supervision, verification, monitoring, and project oversight are not included in the evaluation.

The initiative does not include provisions to ensure prompt and satisfactory performance from state civil service employees. In addition to the delays expected to result from the State Controller's cost-review process, delays may be expected to result from the State's performance of these services, thereby increasing costs. The State Legislative Analyst has estimated that the initiative will cost the State Controller's office \$2 million annually to implement.

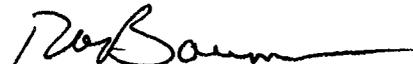
From the local perspective, the initiative could also be interpreted to classify the City's gas tax money in our capital budget as "State funds." If this interpretation is held to be valid, some of our larger local transportation projects, similar to the Harder Road and SPRR Grade Separation, will also be subject to the same types of significant delays, since design services would be over \$50,000. In addition, projects like the Measure B funded Mission Boulevard spot widening project would be effected because it is on a state highway. Such delays will only further the public's frustration with the slow pace of constructing needed transportation improvements. Moreover, there is no requirement for any of the projects to be completed within budget and on time.

Numerous county, city, regional, and special district governing bodies have taken positions opposing Proposition 224, as have many other public and private agencies and associations, including business organizations and labor unions (see Exhibit B). The proposition is also opposed by the California League of Cities and the California Association of Counties.

Conclusion

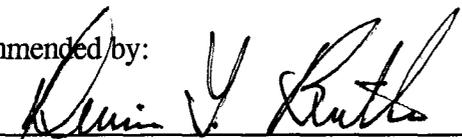
For the reasons specified above, it is recommended that the Council pass the attached resolution opposing Proposition 224 and urge that voters not approve the measure on the June 2 , 1998 ballot.

Prepared by:



Robert A. Bauman, Deputy Director of Public Works

Recommended by:



Dennis L. Butler, Director of Public Works

Approved by:



Jesús Armas, City Manager

Exhibit A - Proposition 224 Ballot Measure and Pro/Con Arguments
Exhibit B - Who Opposes Proposition 224



State-Funded Design and Engineering Services. Initiative Constitutional Amendment.

Official Title and Summary Prepared by the Attorney General

STATE-FUNDED DESIGN AND ENGINEERING SERVICES. INITIATIVE CONSTITUTIONAL AMENDMENT.

- Prohibits contracting where performance of work by civil service employees is less costly unless urgent need for contract.
- Prohibits contracts which Controller or awarding agency determines are against public interest, health, safety or where quality of work would be lower than civil service work.
- Contractors must indemnify state in suits related to performance of contracts.
- Requires defined competitive bidding of state-funded design and engineering contracts over \$50,000, unless delay from bidding would endanger public health or safety.
- Provisions severable and should be harmonized with similar measures on subject.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- Unknown impact on state and local government costs to obtain construction-related services. Impact would depend largely on factors included in the cost comparison analyses required by the proposition.
- Administrative costs to the State Controller—one-time costs of probably less than \$500,000 and annual costs of up to \$2 million.

Analysis by the Legislative Analyst

BACKGROUND

Under California law, services provided by state agencies generally must be performed by state civil service employees. These services cover a broad range of activities—such as clerical support, building maintenance and security, and legal services. In some cases, however, the state may *contract* with private firms to obtain services. Such contracting is allowed, for example, if services needed by the state are: (1) of a temporary nature, (2) not available within the civil service, or (3) of a highly specialized or technical nature. Unlike the state, local governments are not subject to constitutional restrictions on contracting for services.

The state and local governments frequently contract with private firms for construction-related services, which include architecture, engineering, and environmental impact studies. State and local governments enter into these contracts through a process of advertising for the service, selecting the firm that is determined to be best qualified, and negotiating a contract with that firm. Neither the state nor local governments competitively bid for these services. By comparison, competitive bidding generally is used to acquire goods and for construction of projects.

PROPOSAL

This proposition, a constitutional amendment, requires public entities to use a new process prior to awarding a contract for the following construction-related services: engineering, architecture, landscape architecture, surveying, environmental studies, and geologic studies.

(The proposition would not affect contracting out for other types of services.) The new process would apply to:

- All state agencies, except the University of California and the California State University.
- Many local governments and private entities (see below).

What Is Involved in This New Contracting Process?

The Cost Comparison. Under the process established by the proposition, the State Controller would be required to prepare an analysis for each proposed contract and compare the following:

- The cost of contracting with a private firm for the services. This would include the anticipated amount a private firm would charge to provide the services plus the cost to bid, award, administer, and monitor the contract.
- The “additional direct costs” if state employees provide the same services.

Generally, the service could be contracted out if the Controller's analysis indicated that the contract was *less costly* than using state employees. On the other hand, the work would have to be done by state employees if the analysis showed they could do it at lower cost.

Competitive Bidding. As noted earlier, public entities currently negotiate contract terms for construction-related services. This proposition requires that such contracts costing more than \$50,000 be competitively bid to select the lowest qualified bidder. Competitive bidding would not have to be used if it would delay a project *and* the delay would endanger public health or safety.

DRAFT JB 3/30/98

HAYWARD CITY COUNCIL

RESOLUTION NO. _____

Introduced by Council Member _____

**RESOLUTION OPPOSING PROPOSITION 224, THE
PROFESSIONAL ENGINEERS IN CALIFORNIA
GOVERNMENT (PECG) INITIATIVE**

WHEREAS, state, regional, and local governments are currently allowed the flexibility to contract with private firms on a competitive basis to design construction projects; and

WHEREAS, this allows government the flexibility to use private firms to design a project effectively and efficiently; and

WHEREAS, the use of private firms to perform design function allows the City to more effectively use its own staff and to appropriately manage fluctuating work levels; and

WHEREAS, Proposition 224, the Professional Engineers in California Government (PECG) Initiative, known as the "Government Cost Savings and Taxpayer Protection Amendment" completely changes this process by requiring lengthy reviews by the State Controller of potential design contracts; and

WHEREAS, such review will most probably require that any project with state monies be designed by state civil service employees; and

WHEREAS, the initiative will greatly impede the ability of local governments to manage their own projects, keeping them on schedule and within budget.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward opposes Proposition 224.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 1998

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward