

State high court clears way for private firms on public works jobs

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Monday, November 5, 2007

(11-05) 17:58 PST SAN FRANCISCO - The California Supreme Court overturned a state employee union's contract Monday that limited Caltrans' ability to assign engineering work to private companies, saying it violated a 2000 ballot initiative that removed legal barriers to such arrangements.

The unanimous ruling was the second time in seven months that the court has rejected an attempt by the union, Professional Engineers in California Government, to limit the scope of voter-approved Proposition 35.

The initiative, sponsored by a contractors organization, repealed state laws that had allowed California to use private firms for engineering and architectural jobs only when state employees were unavailable or companies could save the state money.

Implementation of Prop. 35 has been slowed by legal challenges, but it could shift substantial work from the public to the private sector, starting with projects funded by a \$19.9 billion transportation bond that voters approved in November 2006.

The ruling means state agencies "will have the ability to contract out, if they need to, to get many of these roadway projects completed," said Deputy Attorney General Vickie Whitney, the state's lawyer in the case.

Bay Area projects that will be funded by the transportation bond include carpool lanes for Interstate 80 and 580 and a fourth bore for the Caldecott Tunnel.

"It is a victory for everyone who drives a car, rides public transit, needs water or sends kids to school," said Paul Meyer, executive director of the Consulting Engineers and Land Surveyors of California, a group of 1,200 companies that sponsored Prop. 35.

But Bruce Blanning of the engineers union said the ruling left some issues unresolved, including whether labor contracts with the state can give preference to public employees on the grounds that they cost less than private contractors.

"Prop. 35 requires the best value to the taxpayer," which may still be the state's civil service work force, Blanning said. He said contractors are more than twice as expensive as state engineers doing the same work; Meyer countered that a recent study found that the costs were about the same but that contractors may be able to complete jobs faster.

The state's high court upheld Prop. 35 in another unanimous ruling in April, saying the state

constitutional amendment nullified all laws that interfered with California's use of contractors for engineering or architectural work.

Monday's ruling involved a contract negotiated by a 10,000-member unit of the engineers union and approved by the Legislature and then-Gov. Gray Davis in 2003. It gave union members preference over private contractors for transportation-related work and required Caltrans to make every effort to use state engineers before hiring contractors.

The union, backed by legislative leaders, argued to the court that Prop. 35 merely authorized the state to hire contractors and did not prohibit Caltrans or other agencies from favoring state employees in a labor agreement. The state Supreme Court disagreed, upholding lower-court rulings that voided the contract provisions.

The 2000 ballot measure did not require state agencies to use contractors when state employees could do a particular job more effectively, Justice Carlos Moreno said in Monday's ruling. But he said Prop. 35 barred state actions that would "impair an individual agency's choice to engage in private contracting."

"Neither the governor nor the Legislature, separately or jointly, can undo by (labor agreement) what the electorate enacted," Moreno said.

The case is Consulting Engineers and Land Surveyors of California vs. Professional Engineers in California Government, S145341.

Online resources

To read the state supreme court's ruling, go to:

links.sfgate.com/ZBMD

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