



April 11, 2012

The Honorable Shannon Grove
California State Assembly
State Capitol, Room 3098
Sacramento, CA 95814

Re: Assembly Bill 1947 - SUPPORT

Dear Assemblywoman Grove:

As a private citizen of the State of California and the President and CEO of Labor Issues Solutions, LLC and the Dayton Public Policy Institute, I write to support your Assembly Bill 1947.

The people of California expect that their state government agencies – whether in the legislative branch, the executive branch, or the judicial branch – will spend their tax money wisely by using open and competitive bidding for goods and services, in order to get the best quality work from capable and responsible companies at the best price.

But with the special exemption of the state legislature from competitive bidding under the State Contract Act, certain legislators and legislative employees have been able to practice favoritism in awarding contracts, without scrutiny. One prominent example is the State Capitol Park Safety and Security Improvements construction project. Here is a summary of what happened.

In December 2004, a group of contractors in the Sacramento region that had previously performed work at the State Capitol Complex received phone calls from a representative of California's Department of General Services (DGS) asking if their companies employed union workers. This was the first indication that the legislature was going to impose a union-only requirement on a future construction project at the State Capitol.

In late April 2005, a notice from a pre-selected union general contractor seeking subcontractors bluntly stated that the State Capitol Park Safety and Security Improvements Project was “to bid

100% union shop contractors only, at Owner's request." Local contractors began contacting the DGS to find out the origins of this requirement and the reasons for it.

"The non-union natives are restless at the Capitol," stated one DGS official in an internal e-mail warning that the contractors "may get more vocal with the press." At that time, a top official for the Senate Rules Committee directed the DGS to add a statement to bid documents that required contractors to employ an all union-workforce.

No law, regulation, or authority was cited for the union-only requirement. The DGS appeared to add the requirement by literally cutting and pasting a sentence into the original document stating "Workforce: contractor and subcontractors shall employ an all union workforce."

Associated Builders and Contractors (ABC) of California, a construction trade association based in Sacramento, tried but failed to identify any sort of committee or legislative vote or internal legislature policy restricting Capitol construction contracts to unionized companies, despite the claim of a Senate Rules Committee staffer to the *Sacramento Bee* newspaper that such a policy was in effect.

In response to ABC's subsequent request under the California's Legislative Open Records Act for documents related to this decision, the Secretary of the Senate responded that correspondence between legislators and their staff is exempt from the Legislative Open Records Act, and "...we are not in possession of any documents as described in your request, or the documents we do have fall within the above exemptions." The response proved that the union-only policy for construction contracts was not an official policy.

Obviously the policy was obviously instituted internally, without public scrutiny or debate, by one or more legislators and their staff, possibly in consultation with private citizens. The legislature could get away with instituting a union-only bid specification in secret, because it is exempt from the state's competitive bidding laws, as confirmed in a 2006 decision of a Sacramento County Superior Court judge and a 2008 decision of the California Third Appellate Court in *The Zumbrun Law Firm v. California Legislature*. (The California Supreme Court denied to hear an appeal of that appeals court decision.)

In its arguments against the Zumbrun Law Firm, the legislature declared that it was delegating management of the project to the Department of General Services, but the project remained under contract to the legislature. Money was appropriated in the state budget to the Department of General Services for the State Capitol Park Safety and Security Improvements Project, and then eventually the Department of General Services reimbursed the legislature for the cost of the contract from that fund.

In truth, both the legislature and the Department of General Services denied contractor responsibility for the project when it would be inconvenient to do so. For example, in 2007 a private third-party labor compliance program (approved by the California Department of Industrial Relations) requested certified payroll records for the State Capitol Park Safety and Security Improvements Project from the Senate Rules Committee and the Assembly Rules

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Committee, as authorized under Labor Code Section 1776 and Section 16400 of Title 8 of the California Code of Regulations. Representatives of the Senate and Assembly responded with the exact same language contending they had “no records responsive to your request.” Likewise, the Department of General Services was not collecting certified payroll records from contractors on the State Capitol Park Safety and Security Improvements Project.

By shifting appropriations and contracting responsibility back and forth behind the Senate Rules Committee and the Department of General Services, the legislature and any individual legislators who demanded the “all union workforce” requirement managed to evade any accountability for implementing a bid specification that brazenly violated the state’s competitive bidding laws under the State Contract Act.

Shady incidents such as these can be avoided in the future with approval of AB 1947. This bill establishes a standard process for contracting by the legislature that matches the process already and separately established for the Department of General Services. Surely the legislature is not so exceptional that it can exempt itself from basic competitive bidding procedures already used without controversy by the Department of General Services.

Sincerely,

Kevin Dayton
President and CEO
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