



CALIFORNIA GOLDEN FLEECE AWARDS

If we can prevent the government from wasting the labors of the people under the pretense of taking care of them, they must become happy. — Thomas Jefferson

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California Senate Rules Committee Earns California Golden Fleece Award

by Kevin Dayton

SACRAMENTO, CA – A case filed in Superior Court here this week could reveal which state legislator or legislators are responsible for avoiding the competitive bidding process mandated by the California Public Contract Code.

The purposes of the Contract Code are to “[protect] the public from misuse of public funds,” to “provide all qualified bidders with a fair opportunity to enter the bidding process, thereby stimulating competition in a manner conducive to sound fiscal practices” and to “eliminate favoritism, fraud, and corruption in the awarding of public contracts.”

According to the case, the California legislature has been disregarding these principles and getting away with it.

Consider the 1975 restoration of the California State Capitol. Instead of using competitive bidding as required by law, certain members of the Legislature took control of the project bidding from the California Department of General Services (DGS). These legislators determined who would receive the contracts and subcontracts, and inserted questionable terms into the contract requirements. All internal legislative documents relating to the bidding process “disappeared” shortly after the contract was awarded. Courts invalidated the questionable contract terms, but the bidding procedures could not be reviewed because the documents were gone.

In 2005, an unidentified legislator or legislators on the Senate Rules Committee pulled out the 1975 playbook and manipulated the bidding for a construction contract on the \$6.8 million Capitol Security Fence. With no accountability, these individuals took charge of the project from DGS and invited bids from a select few contractors. They also

inserted a requirement into the contract terms that the contractor use an "all-union" workforce.

Neither the Legislature nor any individual committee ever voted on this policy. Republican committee members and staff claimed to be unaware of it. It remains unclear which legislator or legislators made these decisions, because the Senate Rules Committee has refused to release pertinent records as required under the California Legislative Open Records Act. However, an internal DGS e-mail dated December 21, 2004, and released under the California Public Records Act reveals the details and political motivation of the plot to cut out competition for the Capitol Security Fence contract.

The email reveals that state contracting laws do not allow the DGS to discriminate against a non-union contractor. However, they are required to pay prevailing wages. In 2002 the successful low bidder to repaint the Capitol was a non-union contractor, which raised "significant political issues." For the upcoming project the DGS developed a "selective bidders list." The email says the legislature is "leaning towards exclusion of non-union contractors from bid process" and expects a decision on "how the legislature will select contractors for this project."

In the end, the Legislature never made a final decision or gave an answer about how the project would be bid. That decision was apparently made unilaterally and privately by one or more legislators, and then Senate Rules Committee staffer Keith Felte relayed the union-only requirement to the DGS for inclusion in bid documents.

On February 27, the Zumbrun Law Firm, a public issues firm, filed a complaint in Sacramento County Superior Court that would force the California State Legislature and the Senate Rules Committee to release documents revealing which legislator or legislators gave the directive for restrictive, union-only bidding on the Capitol Security Fence.

Ron Zumbrun, then working for the Pacific Legal Foundation, was the attorney who successfully challenged the 1975 bidding procedure. Thirty years later he is again challenging the legislature's illegal bidding practices for construction at the Capitol. Californians will soon know who is responsible for this under-the-table, anti-competitive bid scheme that earns PRI's California Golden Fleece Award. The question will then become what the legislature or the court is going to do about it.

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