

Initiative #59
Campaign Contributions from Certain Government Contractors

1 **Amendment __ proposes amending the Colorado Constitution to:**

- 2 ♦ prohibit certain government contractors from contributing to a political
3 party or candidate for the contract's duration and two years thereafter;
- 4 ♦ prohibit contributors to ballot issue campaigns from entering into certain
5 government contracts relating to the ballot issue;
- 6 ♦ apply the prohibitions on campaign contributions and ballot issue
7 contracts to any contractor with a government contract or contracts,
8 including a collective bargaining agreement, that does not use a public
9 and competitive bidding process soliciting at least three bids and with a
10 total value greater than \$100,000 in a single year; and
- 11 ♦ set penalties for violations of the measure and allow a registered voter
12 to seek enforcement of its provisions through district court.

13 **Summary and Analysis**

14 Government entities purchase goods and services from private-sector vendors for
15 the operation of government. The awarding of contracts for these goods and services
16 by the state is a regulated process governed by state law. Local governments largely
17 determine their own practices.

18 ***How are state government contracts awarded?*** State law requires, with few
19 exceptions, that vendors for state contracts be selected through a competitive bidding
20 process. Separate rules govern small and emergency purchases. In some cases, the
21 head of a state agency may determine that only one good or service can reasonably
22 meet the agency's need, and only one vendor can provide the particular good or
23 service. Examples of circumstances when competitive bidding is not used include
24 cases:

- 25 ♦ where equipment, accessories, or replacement parts must be
26 compatible;
- 27 ♦ where a sole supplier's item is needed for trial use or testing; and
- 28 ♦ where public utility services are to be purchased.

29 Under current law, collective bargaining agreements are not considered state
30 contracts, and thus are not subject to competitive bidding requirements.

1 **How does the measure affect government contracts?** Amendment ____
2 establishes a constitutional definition for a specific type of government contract which,
3 once met, triggers a prohibition on campaign contributions. Under this measure, the
4 prohibition applies to contractors with a total contract value of greater than \$100,000 in
5 a single year where fewer than three bids are solicited. The definition also includes
6 collective bargaining agreements with labor organizations. Amendment ____ refers to
7 these contracts as "sole-source contracts."

8 Amendment ____ applies to contracts awarded by the state, cities, counties, school
9 districts, and other special districts. The measure requires the state to publish and
10 maintain a database of every sole-source government contract issued at every level of
11 government.

12 **How does the measure affect campaign contributions?** Under the measure,
13 covered government contractors are prohibited from making a campaign contribution
14 themselves, or on behalf of a family member, to any political party or any state or local
15 candidate for the duration of the contract plus two additional years. A contract holder
16 includes:

- 17 ◆ the contracting entity's officers, directors, or trustees;
- 18 ◆ any individual who controls at least 10 percent of the shares of or
19 interest in the entity; and
- 20 ◆ in the case of a collective bargaining agreement, a labor organization
21 and any political committees it creates to make campaign contributions.

22 The measure also prohibits a person who contributes to a ballot issue campaign from
23 entering into a sole-source government contract relating to the ballot issue.

24 Passage of the measure would not affect current contribution limits on the amount
25 of money that can be contributed to candidates for state office in an election cycle, or
26 the amount of money a candidate or political party can receive from a single source.
27 Candidates for a local government elective office are not subject to state limits on
28 campaign contributions. Some local governments have enacted their own laws
29 governing campaign finance. For example, the cities of Boulder and Fort Collins have
30 enacted laws placing restrictions on campaign contributions by individuals holding any
31 type of contract with the local government.

32 **What penalties exist under Amendment ____?** Under Amendment ____,
33 individuals who accept contributions from covered government contractors for the
34 benefit of a political party or candidate must pay restitution to the contracting
35 government. Elected or appointed officials may be removed or disqualified from office
36 for knowingly violating Amendment _____. Further, a covered government contractor
37 who intentionally makes a contribution in violation of the measure is barred from
38 holding a sole-source government contract or public employment for three years. The
39 governor may suspend these penalties during a declared state of emergency.

1 **What is the current extent of state contracting outside of the competitive**
 2 **bidding process?** Last year, about 6 percent of state contracts had a value greater
 3 than \$100,000 and were not put out for bid. These contracts represented about
 4 5 percent of the total value of state contracts. Table 1 presents information on the
 5 number and value of no-bid contracts as a share of total state contracts last year.

6 **Table 1. State Contracts in 2008 Budget Year**
 7 **with Value Greater than \$100,000**

	Number of Contracts	Contract Value
Contracts Not Put Out for Bid	224	\$309 million
Total Contracts	4,095	\$6.8 billion
Percentage of Total Contracts	5.5%	4.5%

13 **Do local governments enter into contracts outside of the competitive**
 14 **bidding process?** Local governments throughout the state enter into no-bid
 15 contracts, but statewide data is not available on the scope of these contracts. Local
 16 governments also enter into collective bargaining agreements. For example, 45
 17 school districts, representing 80 percent of teachers in the state, and four city police
 18 departments, representing 33 percent of the state's police officers, are covered under
 19 collective bargaining agreements.

20 **Arguments For**

21 1) Amendment ___ promotes civic trust and government transparency. By
 22 restricting sole-source government contractors from giving campaign contributions,
 23 Amendment ___ ensures that business interests, labor, and other stakeholders with
 24 sole-source contracts do not influence policy decisions through campaign
 25 contributions. In addition, by requiring state officials to publish information regarding
 26 holders of sole-source government contracts, the measure makes information on
 27 vendors that receive such contracts easier to obtain by ordinary citizens. Registered
 28 voters may hold both public officials and contractors to a high ethical standard and
 29 seek remedies when violations occur.

30 2) Amendment ___ furthers the efficient use of taxpayer dollars by promoting
 31 competitive bidding for government contracts. For each government contract, at least
 32 three bids must be solicited, or the contract is considered a sole-source contract.
 33 Amendment ___ makes these contracts less attractive by prohibiting political
 34 contributions by entities that receive such contracts. The measure thus encourages
 35 taxpayer value in contracting, and discourages instances where it may be easy to rely
 36 on entities with existing contracts.

1 **Arguments Against**

2 1) The broad scope of the measure could have far-reaching consequences for
3 contractors, political candidates, and elected officials. For example, an individual
4 holding a covered contract with one local government could be penalized for making a
5 contribution to a candidate in a separate jurisdiction. To avoid violations and
6 penalties, candidates and political parties will have to monitor each contribution to
7 ensure that it is not made by a sole-source government contractor, or by the
8 contractor on behalf of a relative. Furthermore, Amendment ___'s penalties put
9 elected officials at risk of losing office for even a small technical oversight.

10 2) Amendment ___ proposes an inflexible approach for government contracting.
11 Different regions and levels of government throughout the state have varying
12 contracting needs and access to providers of goods and services. Because rural
13 cities and counties typically have fewer contracting options than urban communities or
14 state government, the measure presents unique challenges for small communities and
15 their service providers. For example, if one organization in a small community is the
16 only available contractor for community services, the organization would have to
17 choose between accepting a contract and participating financially in the political
18 process.

19 **Estimate of Fiscal Impact**

20 Amendment ___ requires the state to publish and maintain a summary of each
21 sole-source government contract issued by the state and all local government entities,
22 beginning December 31, 2008. The cost of hiring a contractor to develop the
23 database is \$234,000. In addition, annual state expenditures of \$85,000 for
24 one employee are required to manage the database of contracts of approximately
25 4,000 governmental entities. Thus, the total cost to the state will be \$277,000 and a
26 half-time employee in budget year 2009 and \$85,000 and one employee in budget
27 year 2010.