

Initiative #59
Campaign Contributions from Government Contractors

- 1 Amendment __ proposes amending the Colorado Constitution to:
- 2 ♦ prohibit holders of sole-source government contracts from contributing
3 to a political party or candidate for the contract's duration and two years
4 beyond;
 - 5 ♦ prohibit contributors to ballot issue campaigns from entering into
6 sole-source government contracts relating to the ballot issue;
 - 7 ♦ define a sole-source government contract as a contract or contracts,
8 including a collective bargaining agreement, with a total value of greater
9 than \$100,000 in a single year that does not use a public and
10 competitive bidding process soliciting at least three bids; 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 ***How are government contracts awarded?*** Government entities purchase goods
15 and services from private-sector vendors for the operation of government. The
16 awarding of contracts for these services by the state is a regulated process governed
17 by state law and regulations. Local governments are authorized to adopt state
18 contracting guidelines and may enforce contracting practices through their local laws.

19 ***What is sole-source contracting and when is it used?*** State law and
20 regulations promote competition among potential vendors for state contracts. With
21 few exceptions, all vendors must be selected through a competitive bidding process.
22 Separate rules govern small purchases and emergency procurement. In some cases,
23 the head of a purchasing agency may determine that only one good or service can
24 reasonably meet the agency's need, and only one vendor can provide the particular
25 good or service. Examples of circumstances when sole-source contracting may be
26 used include cases:

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

31 Under current law, collective bargaining agreements are not considered sole-
32 source contracts, and thus are not subject to regulations for state contracting.

1 **What is the current extent of sole-source contracting by state government?**

2 During the most recent budget year, state agencies engaged in XXX contracts or
 3 amendments to existing contracts with a value of greater than \$100,000. Of this
 4 number, XXX (or XX percent) were sole-source contracts, entered into without a
 5 competitive bidding process. Measured in terms of contract value, sole-source
 6 contracts and amendments negotiated by the state totaled \$XXX million, or XX
 7 percent of the \$XXX total contract value. Table 1 presents the extent of sole-source
 8 contracting entered into by Colorado state agencies in the most recent (2007-08)
 9 budget year.

10 **Table 1: State Contracts for**
 11 **FY 2007-08 with value greater than \$100,000**

	Number of Contracts	Contract Value (in millions)
Sole-Source Contracts	XXX	\$XXX
Total Contracts	XXX	\$XXX
Percentage of Total Contracts	XX%	XX%

15 **How does the measure define sole-source government contract?** This
 16 measure establishes a constitutional definition for a sole-source government contract.
 17 Under existing state law, a state government contract is a sole-source contract if the
 18 head of the purchasing agency determines in writing that there is only one source for
 19 the required item. Under this measure, a sole-source government contract is defined
 20 as a contract or contracts with a total value of greater than \$100,000 in a single year
 21 where less than three bids are solicited. A sole-source government contract also
 22 includes collective bargaining agreements with labor organizations that confer an
 23 exclusive representative status binding all employees to the contract. The measure
 24 requires the state to publish and maintain a database of every sole-source
 25 government contract issued at every level of government.

26 **How does the measure affect campaign contributions?** State law limits the
 27 amount of money that can be contributed to candidates for state office in an election
 28 cycle, and restricts the amount of money a candidate or political party can receive
 29 from a single source. Passage of the measure would not affect current campaign
 30 contribution limits.

31 State law does not place limits on campaign contributions at the local level.
 32 Some local governments have enacted their own laws governing campaign finance.
 33 Certain local governments, such as the cities of Boulder and Fort Collins, have
 34 enacted laws placing restrictions on campaign contributions by persons holding any
 35 type of contract with the local government.

1 Under the measure, sole-source contract holders are prohibited from making a
2 campaign contribution themselves or on behalf of an immediate family member, to any
3 political party or any candidate at any level government for the duration of the contract
4 plus two additional years. A contract holder includes:

- 5 ◆ the contracting entity's officers, directors, or trustees;
- 6 ◆ any individual who controls at least 10 percent of the shares of or
7 interest in the entity; and
- 8 ◆ in the case of a collective bargaining agreement, a labor organization
9 and any committees it creates to make campaign contributions.

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

12 ***What penalties exist under Amendment ___?*** Under the measure, individuals
13 who accept contributions from holders of sole-source government contracts for the
14 benefit of a political party or candidate must pay restitution to the contracting
15 governmental entity. Elected or appointed officials may be removed or disqualified
16 from office for knowingly violating Amendment ____. Further, a sole-source
17 government contract holder who intentionally makes a contribution in violation of the
18 measure is barred from holding a sole-source government contract or public
19 employment for three years.

20 **Arguments For**

21 1) The measure encourages clean government. Adding this new constitutional
22 safeguard helps restore civic trust by ensuring that those who receive sole-source
23 contracts with government do not inappropriately influence the political process.
24 Amendment ___ prevents business interests, labor, and other stakeholders from
25 unduly influencing policy decisions through financial contributions.

26 2) Promoting government transparency is sound public policy. By requiring that state
27 officials publish information regarding the sole-source government contracts, the
28 measure helps ordinary citizens to become more informed regarding the vendors that
29 receive such contracts. This additional transparency allows registered voters to hold
30 both public officials and contractors to a high ethical standard and to seek remedies
31 when violations occur.

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

1 **Arguments Against**

2 1) Amendment ___ proposes a uniform approach for government contracting, when
3 different regions and levels of government throughout the state have varying
4 contracting needs and access to providers of goods and services. For example,
5 municipalities and counties in rural Colorado are likely to have far fewer contracting
6 options than urban communities or state government, particularly when responding to
7 unexpected circumstances.

8 2) The measure fails to deliver an effective approach to reform. Amendment ___
9 does not address the vast majority of campaign contributions, focusing only on
10 sole-source contracts. While the majority of government contractors will still be able
11 to make political contributions in accordance with current law, the measure places
12 stringent restrictions on labor organizations' ability to participate financially in the
13 political process. In addition, sufficient requirements already exist in state statute and
14 rule to ensure a regulated process and competition for state government contracts.

15 3) The restrictions in the measure, in combination with several vague provisions,
16 could have far-reaching consequences. The measure could be used for political
17 purposes by imposing severe penalties on recipients of campaign contributions from
18 sole-source government contractors. In order to avoid potential violations of the
19 measure, candidates and political parties will have to monitor each contribution to
20 ensure that the donor is not a sole-source government contractor.

21 **Estimate of Fiscal Impact**