

**Initiative #59
Campaign Contributions from Government Contractors**

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

- 2 ♦ prohibit holders of sole-source, or no-bid, government contracts from
3 contributing to a political party or candidate for the contract's duration
4 and two years thereafter;
- 5 ♦ prohibit contributors to ballot issue campaigns from entering into no-bid
6 government contracts relating to the ballot issue;
- 7 ♦ define a sole-source, or no-bid, government contract as a contract or
8 contracts, including a collective bargaining agreement, that does not
9 use a public and competitive bidding process soliciting at least three
10 bids and with a 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 ***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. Local governments largely determine their own practices.

18 ***What is no-bid contracting and when is it used?*** State law and regulations
19 require, with few exceptions, that vendors for state contracts be selected through a
20 competitive bidding process. Separate rules govern small and emergency purchases.
21 In some cases, the head of a state agency may determine that only one good or
22 service can reasonably meet the agency's need, and only one vendor can provide the
23 particular good or service. This is called a no-bid or sole-source contract. Examples
24 of circumstances when competitive bidding is not used include 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 no-bid
30 contracts, and thus are not subject to regulations for state contracting.

1 **What is the current extent of no-bid contracting by state government?**
 2 During the most recent budget year, state agencies signed XXX contracts or contract
 3 amendments with a value greater than \$100,000. Of this number, XXX (or XX
 4 percent) were no-bid contracts. These no-bid contracts totaled \$XXX million, or XX
 5 percent of the \$XXX total contract value. Table 1 presents the extent of state no-bid
 6 contracting in the 2008 budget year.

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

	Number of Contracts	Contract Value (in millions)
No Bid Contracts	XXX	\$XXX
Total Contracts	XXX	\$XXX
Percentage of Total Contracts	XX%	XX%

14 **How does the measure define a no-bid government contract?** This measure
 15 establishes a constitutional definition for a sole-source, or no-bid, government
 16 contract. Under this measure, a no-bid contract is a contract or contracts with a total
 17 value of greater than \$100,000 in a single year where fewer than three bids are
 18 solicited. A no-bid government contract also includes collective bargaining
 19 agreements with labor organizations. This definition applies to the state, cities,
 20 counties, school districts, and other special districts. Once the definition of a no-bid
 21 contract is met, limitations on campaign contributions are triggered. The measure
 22 requires the state to publish and maintain a database of every no-bid government
 23 contract issued at every level of government.

24 **How does the measure affect campaign contributions?** Under the measure,
 25 no-bid contract holders are prohibited from making a campaign contribution
 26 themselves, or on behalf of a family member, to any political party or any state or local
 27 candidate for the duration of the contract plus two additional years. A contract holder
 28 includes:

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

34 The measure also prohibits a person who contributes to a ballot issue campaign from
 35 entering into a no-bid government contract relating to the ballot issue.

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

9 ***What penalties exist under Amendment ___?*** Under the measure, individuals
10 who accept contributions from holders of no-bid government contracts for the benefit
11 of a political party or candidate must pay restitution to the contracting governmental
12 entity. Elected or appointed officials may be removed or disqualified from office for
13 knowingly violating Amendment ____. Further, a no-bid government contract holder
14 who intentionally makes a contribution in violation of the measure is barred from
15 holding a no-bid government contract or public employment for three years.

16 **Arguments For**

17 1) The measure encourages clean and open government. Adding this
18 constitutional safeguard helps restore civic trust by ensuring that those who receive
19 no-bid government contracts do not inappropriately influence the political process.
20 Amendment ___ prevents business interests, labor, and other stakeholders from
21 unduly influencing policy decisions through campaign contributions.

22 2) Promoting government transparency is sound public policy. By requiring that
23 state officials publish information regarding no-bid government contracts, the measure
24 helps ordinary citizens become more informed regarding the vendors that receive
25 such contracts. This measure allows registered voters to hold both public officials and
26 contractors to a high ethical standard and to seek remedies when violations occur.

27 3) Amendment ___ furthers the efficient use of taxpayer dollars by promoting
28 competitive bidding for government contracts. For each government contract, at least
29 three bids must be solicited, or the contract is considered a no-bid contract.
30 Amendment ___ makes these contracts less attractive by prohibiting political
31 contributions by entities that receive such contracts. The measure thus encourages
32 taxpayer value in contracting, and discourages instances where it may be easy to rely
33 on contractors with existing relationships.

34 **Arguments Against**

35 1) The measure is not an effective approach to reform. Amendment ___ does not
36 affect the majority of government contractors, and those that fall under the definition of
37 no-bid contractor could end up making contributions through new avenues or
38 organizations with less disclosure. The public is better served by existing campaign
39 disclosure requirements.

1 2) Several broad provisions in the measure could have far-reaching
2 consequences. The measure prevents an individual with a no-bid contract in one town
3 from making a contribution to a candidate in a different county or at the state level.
4 Additionally, the measure prohibits contributions from a relative of a no-bid contractor,
5 who may not be involved in the contract or live in Colorado. To avoid violations of the
6 measure, candidates and political parties will have to monitor each contribution to
7 ensure that the donor is not a no-bid government contractor, or a relative of a no-bid
8 contractor.

9 3) Amendment ___ proposes a uniform approach for government contracting,
10 when different regions and levels of government throughout the state have varying
11 contracting needs and access to providers of goods and services. Because rural
12 cities and counties are likely to have fewer contracting options than urban
13 communities or state government, various entities and individuals may unexpectedly
14 become subject to the measure's restrictions. For example, if one organization in a
15 small community is the only available contractor for community services, the
16 individuals affiliated with the organization may fall under the measure's provisions.

17 **Estimate of Fiscal Impact**

18 Amendment ___ requires the state to publish and maintain a summary of each
19 sole-source government contract issued by the state and all local government entities,
20 beginning December 31, 2008. The cost of hiring a contractor to develop the
21 database is \$234,000. In addition, annual state expenditures of \$73,000 for
22 1.5 employees are required to manage the database of no-bid contracts of
23 approximately 4,000 governmental entities. Thus, the total cost to the state will be
24 \$271,000 and .75 employees in budget year 2009 and \$73,000 and 1.5 employees in
25 budget year 2010.