

HOUSE JOINT RESOLUTION NO. HJ0011

Procurement investigation-2.

Sponsored by: Representative(s) Gay

A JOINT RESOLUTION

for

1 A JOINT RESOLUTION relating to the state capitol project;
 2 calling for an investigation regarding contract bids and
 3 the letting of contracts and potential conflicts of
 4 interest relating to the project.

5

6 WHEREAS, the Governor of the State of Wyoming and the
 7 Attorney General hold the statutory responsibility of
 8 overseeing compliance with the procurement statutes
 9 contained in the Wyoming Statutes. In holding the Office
 10 of Governor and the Office of Attorney General, the
 11 Governor and Attorney General respectively, are entrusted
 12 with the responsibility for ensuring compliance with the
 13 Wyoming Constitution and the statutes relating to
 14 procurement; and

15

1 WHEREAS, 2014 Wyoming Session Laws chapter 40, created
2 a body to oversee procurement and construction relating to
3 the "Capitol Square Project." This body is known as the
4 state capitol building rehabilitation and restoration
5 oversight group and by law consists of the Governor,
6 President of the Senate, Speaker of the House, Senate
7 Majority Floor Leader, Senate Minority Floor Leader, House
8 Majority Floor Leader, House Minority Floor Leader, and an
9 additional member of each house of the Legislature.
10 Pursuant to W.S. 9-5-111 and the Wyoming Constitution, the
11 Governor and legislative members of the state capitol
12 building rehabilitation and restoration oversight group are
13 responsible for ensuring compliance with the Wyoming
14 Constitution and the procurement statutes of Wyoming as
15 pertaining to the Capitol Square Project; and

16

17 WHEREAS, members of the House of Representatives,
18 through independent investigation, are in possession of
19 information relating to potential violations of the Wyoming
20 Constitution and the procurement statutes of the State of
21 Wyoming and have brought these matters to the attention of
22 the House of Representatives. These potential violations
23 of the Wyoming Constitution and the procurement statutes

1 include the letting of contracts without utilization of the
2 competitive bidding process, as required; and

3

4 WHEREAS, the potential violations appear to constitute
5 a pattern of conduct of violations of the Wyoming
6 Constitution and Wyoming statutes; and

7

8 WHEREAS, the potential exists that contracts were
9 directed to specific persons and entities including some
10 who had made campaign contributions to the Governor; and

11

12 WHEREAS, Article 3, Section 31 of the Wyoming
13 Constitution provides that:

14

15 All stationery, printing, paper, fuel and lights used
16 in the legislature and other departments of government
17 shall be furnished, and the printing and binding of
18 the laws, journals and department reports and other
19 printing and binding, *and the repairing and furnishing*
20 *the halls and rooms used for the meeting of the*
21 *legislature and its committees shall be performed*
22 *under contract, to be given to the lowest responsible*
23 *bidder, below such maximum price and under such*

1 *regulations as may be prescribed by law.* No member or
2 officer of any department of the government shall be
3 *in any way interested in any such contract; and all*
4 *such contracts shall be subject to the approval of the*
5 *governor and state treasurer.* (Emphasis added).

6

7 WHEREAS, Article 3, Section 31 was adopted by the
8 delegates to the Wyoming Constitutional Convention in 1889
9 to ensure that the public received competitively priced
10 goods and services, to guard against governmental graft and
11 corruption through the letting of contracts furthering the
12 political interests of elected officials, and to maintain
13 the integrity of government; and

14

15 WHEREAS, Article 3, Section 31 requires that
16 competitive bidding to secure the lowest responsible bidder
17 shall be utilized. The section further requires that
18 contracts set a maximum price. No member of the
19 legislature or elected official may have an interest in
20 such contracts. Finally, all such contracts must be
21 approved by the governor and the state treasurer; and

22

1 WHEREAS, questions exist whether the contracts entered
2 into for the Capitol Square Project have complied with
3 Article 3, Section 31 in that contracts for the repairing
4 and furnishing of the halls of the legislature were:

5

6 (a) Not let utilizing competitive bidding processing;

7

8 (b) Did not set a maximum price and have been allowed
9 to escalate through change orders and mismanagement;

10

11 (c) Possibly let in furtherance of the political
12 interest of the political interests of an elected official;
13 and

14

15 (d) Not approved by the Governor and State Treasurer.

16

17 WHEREAS, this Resolution makes no accusations of
18 misconduct but calls for investigation in the interests of
19 the proper administration of government; and

20

21 WHEREAS, the following three lease contracts and
22 associated tenant improvement contracts demonstrate a
23 failure to bid contracts competitively, and include a

1 possible interest of a member or officer of the government
2 and none of the contracts had approval from both the
3 Governor and the State Treasurer.

4

5 (a) The Lease for Housing the Legislature during the
6 Capitol Renovation. W.S. 9-5-1016 (b) (xix) governs the
7 process of leasing buildings and requires a bid and
8 proposal basis with advertising of space needs. The
9 Wyoming Constitution also requires bidding for a lease
10 contract in Article 3, Section 31. That section also
11 requires that no member or officer of any department of the
12 government shall in any way be interested in such contract.
13 The lease appears to have benefitted persons who had
14 contributed directly or through political action committees
15 to the Mead for Governor Campaign Committee. The lease was
16 entered into without bid and was not approved by the State
17 Treasurer. The question arises as to whether there was any
18 interest of any member or officer of any department of the
19 government and merits investigation.

20

21 (b) W.S. 9-5-1016(b) (xix) governs the process of
22 leasing buildings and requires a bid and proposal basis
23 with advertising of space needs. The Wyoming Constitution

1 also requires bidding for a lease contract in Article 3,
2 Section 31. That article requires that no member or
3 officer of any department of the government shall in any
4 way be interested in such contract. The lease for the
5 housing of the Wyoming State Treasurer, Wyoming State
6 Auditor and the Wyoming Secretary of State during capitol
7 construction is for a building known informally as 2020
8 Carey Avenue. The lease was entered into without
9 competitive bid. The lease appears to have benefitted a
10 contributor to Governor Mead's campaign. The lease was not
11 approved by the State Treasurer. The language of the
12 contract requires use of contractors determined by the
13 State of Wyoming for all improvements to the building
14 regardless of whether the cost is to be applied to the
15 owner or the tenant. Therefore, the procurement of those
16 contractors would be subject to the constitution and the
17 statutes that govern procurement. There are a number of
18 contracts that were entered into by the State of Wyoming to
19 bring the building into compliance with building codes as
20 well as improving the spaces for occupancy. A number of
21 these contracts were not subject to competitive bidding.
22 The amendments are specifically separate from the
23 Construction Cost Limit and therefore represent a different

1 type of contract than the Construction Manager at Risk
2 contract represented by the original contract. The State
3 Treasurer did not approve this contract or amendments to
4 the contract. Other contracts for 2020 Carey for code
5 compliance, were awarded without competitive bidding or
6 have exceeded any set maximum price. The State Treasurer
7 did not approve these contract or various change orders.
8 Total amount of contracts issued without competitive
9 bidding for 2020 Carey is two million seven hundred forty-
10 eight thousand three hundred three dollars and sixty-seven
11 cents (\$2,748,303.67).

12

13 (d) W.S. 9-5-1016 (b) (xix) governs the process of
14 leasing buildings and requires a bid and proposal basis
15 with advertising of space needs. The Wyoming Constitution
16 also requires bidding for a lease contract in Article 3,
17 Section 31. That article requires that no member or
18 officer of any department of the government shall be in any
19 way interested in such contract. A lease for the housing
20 various agencies of state government during capitol
21 construction is for a building informally known as 516 S.
22 Greeley Highway. The lease was entered into without bid.
23 The State Treasurer did not approve the lease. The lease

1 appears to have benefitted a contributor to Governor Mead's
2 campaign.

3

4 WHEREAS, in numerous instances of contracting for
5 services in the Capitol Square Project, there is a pattern
6 of not performing competitive bidding. Some contracts are
7 let without a maximum price. There is no contract in the
8 entire project that has been approved by the State
9 Treasurer as required by the Wyoming Constitution.

10

11 WHEREAS, Article 2, Section 1 of the Wyoming
12 Constitution provides for the separation of powers between
13 branches of government. Powers belonging to one branch of
14 government are not to be exercised by another branch. The
15 power of appropriation resides in the Wyoming Legislature.
16 Administration of expenditures, under the Wyoming
17 Constitution, resides in the Executive Branch. In the case
18 of the Capitol Square Project, the Wyoming Legislature
19 appropriated funds to be administered by a committee that,
20 in turn, performed executive branch functions in making
21 hundreds of day-to-day executive decisions including
22 spending decisions that are not made by the legislative
23 branch. The committee reviewed and approved contractual

1 documents, architectural documents, where to locate people
2 and equipment and even deciding where to put railings on
3 stairways as concerning aesthetics. This illustrates the
4 reason the founders were specific as to who would approve
5 the contractual agreements necessary to maintain the halls
6 and meeting rooms of the legislature under Article 3,
7 section 31 of the Wyoming Constitution to maintain
8 separation of powers in Article 2 of the Wyoming
9 Constitution.

10

11 WHEREAS, based on the evidence that Article 3, Section
12 31 of the Wyoming Constitution has been violated by process
13 and by passage of 2014 Wyoming Session Laws, chapter 40,
14 and based on the evidence that W.S. 9-2-1016, was violated
15 as to competitive bidding and procurement of services for
16 the Capitol Square Project.

17

18 NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE
19 LEGISLATURE OF THE STATE OF WYOMING:

20

21 BE IT RESOLVED, there is to be an investigation
22 conducted by an independent investigator to determine
23 whether Article 3, Section 21 of the Wyoming Constitution

1 and the procurement statutes were violated in disregarding
2 competitive bidding and letting of contracts to the lowest
3 responsible bidder under such maximum price in accordance
4 with Article 3, Section 21 of the Wyoming Constitution by
5 the Capitol Building Restoration Oversight Group, the
6 Governor of Wyoming, Department of Enterprise Technology
7 Services, and the Department of Administration and
8 Information.

9

10 BE IT FURTHER RESOLVED that the investigator shall
11 determine if any member or officer of any department of the
12 government was in any way interested in any contract
13 associated with the Capitol Square Project. This
14 investigation shall include but not be limited to
15 examination of campaign finances of elected officials
16 associated with the Capitol Square Project, clients of
17 members of the committee and families of the committee and
18 departments involved with the Capitol Square Project.

19

20 BE IT FURTHER RESOLVED that an audit of current
21 expenditures, accounting, procurement processes and
22 contractual processes be performed by an independent

1 auditor working with and reporting to the independent
2 investigator.

3

4 BE IT FURTHER RESOLVED that the investigator shall not
5 be restricted in any way to documents associated with the
6 capitol square projects held by any branch of government
7 but shall also extend to the general practices of
8 contracting within state government.

9

10 BE IT FURTHER RESOLVED that the investigator generate
11 a report that details any violations of the Constitution of
12 the State of Wyoming and the statutes of Wyoming. The
13 report will provide accounting of the Capitol Square
14 Project expenses and any findings concerning processes
15 contract processes, accounting processes, and procurement
16 processes as well as reporting on any interest by any
17 member or officer of any department of the government.

18

19

(END)