

HOUSE JOINT RESOLUTION NO. HJ0010

Procurement investigation.

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.

15

1           WHEREAS, SF103 (2014), codified at Wyo. Stat. §§ 9-5-  
2 110 - 9-5-113, created a body to oversee procurement and  
3 construction relating to the "Capitol Square Project."  
4 This body is known as the "Capitol Building Restoration  
5 Oversight Group." Section 9-5-111 provides that the  
6 Governor, Matthew H. Mead, President of the Senate, Phillip  
7 Nicholas, Speaker of the House, Kermit Brown, Senate  
8 Majority Floor Leader, Eli Bebout, Senate Minority Floor  
9 Leader, Chris Rothfuss, House Majority Floor Leader, Rosie  
10 Burger, House Minority Floor Leader, Mary Throne, and at  
11 will members Representative Tim Stubson and Senator Tony  
12 Ross shall comprise the oversight body. Pursuant to W.S. §  
13 9-5-111, as Governor Matt Mead is responsible for ensuring  
14 compliance with the Wyoming Constitution and the  
15 procurement statutes of Wyoming as pertaining to the  
16 Capitol Square Project. As President of the Senate, Phil  
17 Nicholas pursuant to W.S. § 9-5-111, is responsible for  
18 ensuring compliance with the Wyoming Constitution and the  
19 procurement statutes of Wyoming as pertaining to the  
20 Capitol Square Project. As Speaker of the House, Kermit  
21 Brown pursuant to W.S. § 9-5-111, is responsible for  
22 ensuring compliance with the Wyoming Constitution and the  
23 procurement statutes of Wyoming as pertaining to the

1 Capitol Square Project. As Majority Floor Leader in the  
2 Senate, Eli Bebout under W.S. § 9-5-111, is responsible for  
3 ensuring compliance with the Wyoming Constitution and the  
4 procurement statutes of Wyoming as pertaining to the  
5 Capitol Square Project. As Majority Floor Leader for House  
6 of Representatives, Tim Stubson pursuant to W.S. § 9-5-111,  
7 is responsible for ensuring compliance with the Wyoming  
8 Constitution and the procurement statutes of Wyoming as  
9 pertaining to the Capitol Square Project. As Minority  
10 Floor Leader in the Senate, Chris Rothfuss pursuant to W.S.  
11 § 9-5-111, is responsible for ensuring compliance with the  
12 Wyoming Constitution and the procurement statutes of  
13 Wyoming as pertaining to the Capitol Square Project. The  
14 House Minority Floor Leader, Mary Throne is responsible for  
15 ensuring compliance with the Wyoming Constitution and the  
16 procurement statutes of Wyoming as pertaining to the  
17 Capitol Square Project. A Senator is a member of the  
18 Capitol Building Restoration Oversight Group, as selected  
19 by the President of the Senate, pursuant to W.S. § 9-5-111,  
20 and is responsible for ensuring compliance with the Wyoming  
21 Constitution and the procurement statutes of Wyoming as  
22 pertaining to the Capitol Square Project. A Representative  
23 is a member of the Capitol Building Restoration Oversight

1 Group, as selected by the Speaker of the House, and is  
2 responsible for ensuring compliance with the Wyoming  
3 Constitution and the procurement statutes of Wyoming as  
4 pertaining to the Capitol Square Project.

5

6 WHEREAS, members of the House of Representatives,  
7 through independent investigation, are in possession of  
8 information relating to potential violations of the Wyoming  
9 Constitution and the procurement statutes of the State of  
10 Wyoming and have brought these matters to the attention of  
11 the House of Representatives. These potential violations  
12 of the Wyoming Constitution and the procurement statutes  
13 include the letting of contracts without utilization of the  
14 competitive bidding process, as required.

15

16 WHEREAS, the potential violations appear to constitute  
17 pattern of conduct of violations of the Wyoming  
18 Constitution and Wyoming statutes.

19

20 WHEREAS, the potential exists that contracts were  
21 directed to specific persons and entities including some  
22 who had made campaign contributions to the Governor. And,

23

1           WHEREAS, the potential violations of the Wyoming  
2 Constitution and procurement statutes may consist of  
3 misuses of federal money.

4

5           ARTICLE I—POTENTIAL VIOLATIONS OF ARTICLE 3, SECTION 31

6

7           (1) Article 3, Section 31 of the Wyoming Constitution  
8 provides that:

9

10           All stationary, printing paper, fuel,  
11           and lights using in the legislature and  
12           other departments of government shall  
13           be furnished, and the printing and  
14           binding of the laws, journals and  
15           department reports and other printing  
16           and binding, and the *repairing and*  
17           *furnishing the halls and rooms used*  
18           *for the meeting of the legislature, and*  
19           *its committees shall be performed under*  
20           *contract, to be given to the lowest*  
21           *responsible bidder, below such maximum*  
22           *price and under such regulations as may*  
23           *be prescribed by law.* No member or

1           officer of any department of the  
2           government shall be in any way  
3           *interested in any such contract;* and  
4           *all such contracts shall be subject to*  
5           *the approval of the governor and the*  
6           *state treasurer.* (Emphasis added).

7  
8           (2) The referenced constitutional provision was  
9           adopted by the delegates to the Wyoming Constitutional  
10          Convention in 1889 to (a) ensure that the public received  
11          competitively priced goods and services, (b) to guard  
12          against governmental graft and corruption through the  
13          letting of contracts to as furthering the political  
14          interests of elected officials, and (c) to maintain the  
15          integrity of government.

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

1

2           (4) Questions exist whether the contracts entered  
3 into for the Capitol Square Project have complied with  
4 Article 3, Section 31 in that (a) contracts for the  
5 repairing and furnishing of the halls of the legislature  
6 were not let utilizing competitive bidding processing, (b)  
7 did not set a maximum price and have been allowed to  
8 escalate through change orders and mismanagement, (c) were  
9 let in furtherance of the political interest of the  
10 political interests of an elected official, and (d) were  
11 not approved by the Governor and State Treasurer.

12

13           (5) This Resolution makes no accusations of  
14 misconduct but calls for investigation in interest of the  
15 proper administration of government.

16

17           (6) The following three lease contracts and  
18 associated tenant improvement contracts demonstrate a  
19 failure to bid contracts competitively, an interest of a  
20 member or officer of the government and none of the  
21 contracts had approval from both the Governor and the State  
22 Treasurer.

23

1 *The Lease for Housing the Legislature during Capitol*  
2 *Renovation:*

3

4 (7) W.S. Section 9-5-1016 (b) (xix) governs the  
5 process of leasing buildings and requires a bid and  
6 proposal basis with advertising of space needs. The  
7 Wyoming Constitution also requires bidding for a lease  
8 contract in Article 3, Section 31. That article requires  
9 that no member or officer of any department of the  
10 government shall in any way interested in such contract.  
11 The lease for the housing of the legislature during capitol  
12 construction is a contract between Pershing Circle, LLC  
13 (Lessor) and the Department of Administration and  
14 Information Construction Management Division (Tenant).  
15 This building is known informally as the Jonah Business  
16 Center.

17

18 (8) The lease was signed on January 30, 2015 by the  
19 lessor Neil A. McMurry also known as Mick McMurry, Managing  
20 Member of Pershing Circle LLC. The contract was witnessed  
21 by Richard J. Bratton, Registered Agent of Pershing Circle,  
22 LLC. Dean Fausset, Director of Department of  
23 Administration and Information, signed presumably as the



1 Governor's designee. Mel Muldrow, Administrator  
2 Construction Management Division of Department of  
3 Administration and Information also signed presumably as  
4 the Governor's designee. Peter K. Michael signed as the  
5 Attorney General for approval as to form. The lease was  
6 entered into **without bid** and was **not approved by the State**  
7 **Treasurer.**

8

9 (9) The question arises was there any interest of any  
10 member or officer of any department of the government and  
11 merits investigation. Mark Edward Macy, Chairman of the  
12 Wyoming for Matt Mead PAC collected funds for the election  
13 of Matt Mead to the office of Governor. The Mead for  
14 Governor Campaign Committee was the entity that collected  
15 contributions to Matt Mead, the Candidate. The following  
16 contributions are relevant to the Jonah Business Center  
17 Lease:

18

- 19 • Neil A. ("Mick") McMurry Contributed \$60,000 to  
20 Building a Better Wyoming PAC on July 24, 2014.  
21 This was the sole contribution to that PAC,  
22 controlled by Mr. McMurry

- 1       • Building a Better Wyoming PAC, a PAC known to be  
2       influenced by Mick McMurry, contributed \$50,000  
3       to Wyoming for Matt Mead PAC on July 24, 2014.  
4       Wyoming for Mead PAC is controlled by Mark Macy.
- 5       • Building a Better Wyoming PAC contributed \$2,500  
6       to Mead for Governor Candidate Committee on June  
7       19, 2014.

8

9       (10) Mr. McMurry using the Building a Better Wyoming  
10      PAC and contributing to the Wyoming for Mead PAC made **one**  
11      **of the largest contributions in a political campaign**  
12      **outside of the candidate or immediate family of a candidate**  
13      **in Wyoming history** by a single individual. In return, the  
14      McMurry entity benefitted from the lease agreement with  
15      rent of \$872,336 annually not to exceed \$2,617,008  
16      providing that tenant improvements up to \$750,000 are  
17      payable at lessor's expense (later amended in Amendment 1  
18      and 2 to the lease). The Wyoming for Mead PAC appears to  
19      pay expenses of the governor's campaign committee.  
20      Expenses such as the website and the strategy consultant  
21      appear to be shared by the PAC and the campaign committee.  
22      There is no documentation of contributions or in-kind

1 contributions from the PAC to the campaign committee to  
2 account for sharing expenses.

3

4 *2020 Carey Avenue Lease*

5

6 (11) W.S. 9-5-1016 (b) (xix) governs the process of  
7 leasing buildings and requires a bid and proposal basis  
8 with advertising of space needs. The Wyoming Constitution  
9 also requires bidding for a lease contract in Article 3,  
10 Section 31. That article requires that no member or  
11 officer of any department of the government shall in any  
12 way interested in such contract. The lease for the housing  
13 of the Wyoming State Treasurer, Wyoming State Auditor and  
14 the Wyoming Secretary of State during capitol construction  
15 is a contract between Voss Family Limited Partnership  
16 (Lessor) and the Department of Administration and  
17 Information Construction Management Division (Tenant).  
18 This building is known informally as 2020 Carey Avenue.

19

20 (12) The lease was signed on January 30, 2015 by the  
21 lessor Wayne T. Voss. The contract was witnessed by Tina  
22 M. Ortiz. Dean Fausset, Director of Department of  
23 Administration and Information, signed presumably as the

1 Governor's designee. Mel Muldrow, Administrator  
2 Construction Management Division of Department of  
3 Administration and Information also signed presumably as  
4 the Governor's designee. Kristin M. Nuss signed as Senior  
5 Assistant Attorney General for approval as to form. The  
6 lease was entered into **without competitive bid. The lease**  
7 **was not approved by the State Treasurer.**

8

9 (13) The language of the contract requires use of  
10 contractors determined by the State of Wyoming for all  
11 improvements to the building regardless of whether the cost  
12 is to be applied to the owner or the tenant. Therefore,  
13 the procurement of those contractors would be subject to  
14 the constitution and the statutes that govern procurement.

15

16 (14) There are a number of contracts that were  
17 entered into by the State of Wyoming to bring the building  
18 into compliance with building codes as well as improving  
19 the spaces for occupancy.

20

21 (15) JE Dunn was contracted in amendment 4  
22 (\$1,708,477) and 6 (\$53,853) of their CMAR contract to  
23 provide improvements to 2020 Carey Avenue for a total

1 amount of \$1,762,330. **There was no competitive bidding for**  
2 **this contract.** The amendments are specifically separate  
3 from the Construction Cost Limit and therefore represent a  
4 different type of contract than the Construction Manager at  
5 Risk contract represented by the original contract. These  
6 facts merit investigation why the work not competitively  
7 bid? **This may constitute a violation of the Wyoming**  
8 **Constitution and the procurement statutes.** Amendment 3 of  
9 the JE Dunn Contract delays setting the Guaranteed Maximum  
10 Price for the contract. Article 3, Section 31 of the  
11 Wyoming constitution requires that contracts be given below  
12 a maximum price. **The State Treasurer did not approve this**  
13 **contract or amendments to the contract.**

14

15 (16) Kone Inc. provided a bid and was a sole source  
16 contract to bring 2020 Carey Avenue elevators into  
17 compliance with building codes. A bid waiver was issued.  
18 The owner rejected this contractor and a new bid was  
19 obtained from Thyssen Krupp for \$409,552 and awarded  
20 **without competitive bidding.** A bid waiver was also issued  
21 for this contract. **The State Treasurer did not approve**  
22 **this contract.**

23

1           (17) Honeywell was contracted without competitive  
2 bidding for bringing the fire alarms into compliance with  
3 code. Later the contract was modified to include security  
4 upgrades without competitive bidding. The contract totaled  
5 \$568,355 after the original contract, three change orders  
6 and two bid waivers. **The State Treasurer did not approve**  
7 **the contract, amendments or change orders.**

8

9           (18) A company called "Elements" provided a quote for  
10 wall trim, ceiling trim and parts for \$8,066.67. No  
11 contract was issued, but because there was **no competitive**  
12 **bidding** a bid waiver was issued. **The State Treasurer did**  
13 **not approve this contract.**

14

15           (19) Total amount of contracts issued without  
16 competitive bidding for 2020 Carey is \$2,748,303.67 which  
17 exceeds the lease amount not to exceed \$2,696,400. Wayne  
18 Voss made a \$1,000 Campaign contribution to the Mead for  
19 Governor campaign committee on October 29, 2010.

20

21 *Maurice Brown Shopping Center Lease*

22

1           (20) W.S. Section 9-5-1016 (b) (xix) governs the  
2 process of leasing buildings and requires a bid and  
3 proposal basis with advertising of space needs. The  
4 Wyoming Constitution also requires bidding for a lease  
5 contract in Article 3, Section 31. That article requires  
6 that no member or officer of any department of the  
7 government shall in any way interested in such contract.  
8 The lease for the housing of various agencies of state  
9 government during capitol construction and is a contract  
10 between Maurice W. Brown (Lessor) and the Department of  
11 Administration and Information Construction Management  
12 Division (Tenant). This building is known informally as  
13 516 S. Greeley Highway.

14

15           (21) The lease was signed on May 28, 2015 by the  
16 lessor Maurice W. Brown. The contract was witnessed by  
17 Sharon L. Bailey. Dean Fausset, Director of Department of  
18 Administration and Information, signed presumably as the  
19 Governor's designee. Mel Muldrow, Administrator  
20 Construction Management Division of Department of  
21 Administration and Information also signed presumably as  
22 the Governor's designee. Kristin M. Nuss signed as Senior  
23 Assistant Attorney General for approval as to form. **The**

1 **lease was entered into without bid. The State Treasurer**  
2 **did not approve the lease.**

3

4 (22) Maurice Brown contributed \$1,000 to Mead for  
5 Governor campaign committee on March 26, 2014.

6

7 (23) Examples of contracting for services in the  
8 Capitol Square Project are outlined below. There is a  
9 **pattern of not performing competitive bidding** in the  
10 examples. Some contracts are let without a maximum price.  
11 **There is no contract in the entire project that has been**  
12 **approved by the State Treasurer as required by the Wyoming**  
13 **Constitution.**

14

15 *Bidding of JE Dunn Contract*

16

17 (24) The Construction Manager at Risk (CMAR) contract  
18 for the Capitol Square Project was bid based on pre-  
19 construction costs. **No competitive bidding was performed**  
20 **for the vast majority of the money to be spent on the**  
21 **Capitol Square Project.** While pre-construction services  
22 were competitively bid, the actual construction activities  
23 were not. The original contract was signed on March 9,



1 2015. The contract had a Construction Cost Limitation  
2 (CCL) of \$199 million but was not executed with a maximum  
3 price as required by Article 3, Section 31 of the Wyoming  
4 Constitution.

5

6 (25) On May 26, 2015 the contract was amended  
7 (amendment 1) for additional work.

8

9 (26) On June 11, 2015 the contract was amended again  
10 (amendment 2) to simply raise the Construction Cost  
11 Limitation (CCL) from \$199,000,000 to \$219,382,000. There  
12 was no explanation given for the \$20.382 million increase.  
13 Also on June 11, Additional work was added to the contract  
14 in (amendment 3).

15

16 (27) The next day, on June 12, 2015, work was added  
17 to the contract for tenant improvements at 2020 Carey  
18 Avenue. The amendment (amendment 4) was for \$1,708,477 and  
19 it was agreed that this would stand apart from the  
20 Guaranteed Maximum Price and the Construction Cost Limit.  
21 Essentially, this is a separate project added onto the  
22 contract by amendment. It was anticipated in the original  
23 contract but not required, thereby giving rise to the

1 question why was this not bid. There was no bid waiver for  
2 tenant improvements at 2020 Carey.

3

4 (28) On September 8, 2015 more additional work,  
5 (amendment 5). One week later on September 15, 2015,  
6 another \$53,853 was added to the contract for work at 2020  
7 Carey Avenue separate from the GMP and CCL.

8

9 (29) In summary, this contract was not set below a  
10 maximum price as required by Article 3, section 31 of the  
11 Wyoming Constitution. Bidding became completely non-  
12 competitive with amendment 2 which raised the CCL and the  
13 construction fee. No bidding was done for work on 2020  
14 Carey Avenue contrary to Article 3, Section 31 and WS 9-2-  
15 1016.

16

17 (30) The following contract displays the failure to  
18 obtain bids from multiple vendors for common services. The  
19 contract was **not** approved by the governor and the treasurer  
20 per the Wyoming constitution.

21

22 *Bidding of Prestige Corporate Relocation LLC*

23

1           (31) There was a single company that bid on the  
2 moving of Department of Environmental Quality (DEQ) from  
3 the Herschler building. Prestige Corporate Relocation LLC  
4 provided pricing matrices on pages 4 and 5 of their  
5 proposal. The addition of the four activities listed in  
6 the company proposal added to a total of \$67,590.74 The  
7 company totaled the amount wrongly to \$93,852.92. The  
8 Department of Administration and Information wrote the  
9 contract for the wrong higher amount. There is no  
10 explanation for the discrepancy in the mathematics. The  
11 bid waiver justification was because of a non-response from  
12 the Request for Proposal (RFP). This does not make sense  
13 because there are at least 3 other moving companies  
14 involved in the moving of people for the project. There  
15 are at least ten companies qualified to do the work between  
16 within a 125-mile radius. When the work was completed the  
17 State Auditor paid \$83,256.61. The state treasurer did not  
18 approve the contract.

19

20 *A Potential Pattern of Disregard of Procurement Laws*

21

22           (32) A review of bid waivers published by the  
23 Department of Administration and Information reveals a

1 pattern of conduct of avoiding the competitive bidding  
2 statutes and the requirements under the Wyoming  
3 Constitution. This pattern of conduct extends to general  
4 contracting within state government. For the current  
5 biennium, a total of well over \$500,000,000 (one half of a  
6 billion dollars) has been expended under contracts that  
7 were not competitively bid.

8

9 *Potential Violation of Separation of Powers*

10

11 (33) Article 2, Section 1 of the Wyoming Constitution  
12 provides for the separation of powers between branches of  
13 government. Powers belonging to one branch of government  
14 are not to be exercised by another branch. The power of  
15 appropriation resides in the Wyoming Legislature.  
16 Administration of expenditures, under the Wyoming  
17 Constitution, resides in the Executive Branch.

18

19 (34) In the case of the Capitol Square Project, the  
20 Wyoming Legislature appropriated funds to be administered  
21 by a committee that, in turn, performed executive branch  
22 functions in making hundreds of day-to-day executive  
23 decisions including spending decisions that are not made by

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

11

## 12 ARTICLE II—RESOLUTION FOR INVESTIGATION

13

14 (35) Based on the evidence that Article 3, Section 31  
15 of the Wyoming Constitution has been violated by process  
16 and by passage of SEA 43, 2014 session, and based on the  
17 evidence that W.S. Section 9-2-1016, was violated as to  
18 competitive bidding and procurement of services for the  
19 Capitol Square Project,

20

21 *NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE*  
22 *LEGISLATURE OF THE STATE OF WYOMING:*

23

1           BE IT RESOLVED, there is to be an investigation  
2 conducted by an independent investigator to determine  
3 whether Article 3, Section 21 of the Wyoming Constitution  
4 and the procurement statutes were violated in disregarding  
5 competitive bidding and letting of contracts to the lowest  
6 responsible bidder under such maximum price in accordance  
7 with Article 3, Section 21 of the Wyoming Constitution by  
8 the Capitol Building Restoration Oversight Group, the  
9 Governor of Wyoming, Department of Enterprise Technology  
10 Services, and the Department of Administration and  
11 Information.

12

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

22

1           BE IT FURTHER RESOLVED that an audit of current  
2 expenditures, accounting, procurement processes and  
3 contractual processes be performed by an independent  
4 auditor working with and reporting to the independent  
5 investigator.

6

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

12

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

21

22

(END)