



Arizona House of Representatives  
Phoenix, Arizona 85007

February 12, 2024

Via Email & U.S. Mail

Kris Mayes  
Arizona Attorney General  
2005 North Central Avenue  
Phoenix, Arizona 85004

**Re: Request for S.B. 1487 Investigation of Yuma County's Approval of Master Agreement with ALLO Communications for Broadband Middle Mile Fiber Network**

Dear Attorney General Mayes:

We request you to investigate a taxpayer-funded public works project in Yuma County that very likely involves violations of state law and the Gift Clause of the Arizona Constitution, as well as favoritism and abuse through a fundamentally flawed and potentially illegal procurement process. Millions in federal COVID-19 relief funds that were supposed to bring broadband to underserved areas of Yuma County are being handed to an out-of-state unlicensed contractor. It is our understanding that some aspects of this procurement dispute are the subject of litigation in the Yuma County Superior Court. Nonetheless, we cannot ignore Yuma County's apparent disregard of Arizona law and the lack of oversight and accountability surrounding this critical project.

Pursuant to A.R.S. § 41-194.01, in our official capacity as legislators in the Arizona House of Representatives and Arizona State Senate, we respectfully request an investigation of the Yuma County Board of Supervisors' ("Yuma County") actions approving of a Master Agreement for Network Design and Construction Services and Work Order ("Master Agreement") with a Nebraska-based company, ALLO Communications ("ALLO") for a Broadband Middle Mile Fiber Network. Specifically, we request an investigation of the following question:

**Does Yuma County's approval of the Master Agreement with ALLO violate A.R.S. § 32-1123 (Contract Bidding with Unlicensed Contractors), A.R.S. § 32-1151 (Contracting without a License), or the Arizona Constitution, article 9, § 7 (Gift Clause)?**

We submit the following background in support of our request. In mid-2021, Yuma County issued a Request for Proposals ("RFP") for the construction of a "countywide broadband middle-mile fiber backbone connecting local internet carriers to major networks."<sup>1</sup> The project budget exceeds \$30,000,000.

<sup>1</sup> <https://www.pressreader.com/usa/yuma-sun/20211226/281496459611398>

At a meeting on December 20, 2021, discussion ensued among the supervisors concerning whether Yuma County had correctly adhered to the RFP process. *See* 12/20/21 Minutes (enclosed). By a 3-2 vote, the Board authorized the County Administrator to enter into negotiations for a contract with ALLO, “subject to legal review, and to bring the contract for approval by the Board[.]” *See* 12/20/21 Minutes.

On January 26, 2022, the Board considered the approval of the Master Agreement with ALLO. At this meeting, an attorney who was present on behalf of a local company, Gila Electronics, noted that ALLO did not have a contractor license in Arizona. The Board minutes indicate that “[f]urther comments were made in reference to the RFP, procurement policy and potential violations of the gift clause.” 1/26/22 Minutes.

An ALLO representative promised that ALLO intended to “comply with all regulations and did not anticipate having any issues getting a contractor license.” *Id.* However, an attorney for Yuma County correctly observed that **if ALLO “d[id] not have the proper license, [the Master Agreement] would be unlawful and the contract would be void.”** *Id.* (emphasis added); *see also* A.R.S. § 32-1123 (“if an entity that is not licensed or not properly licensed pursuant to this chapter bids on a contract for a project with an aggregate worth of more than \$1,000, the registrar may not issue the entity a license for one year after the bid date”); A.R.S. § 32-1151 (prohibiting any person, firm, partnership, corporation, association or other organization from “engag[ing] in the business of, submit[ting] a bid or respond[ing] to a request for qualification or a request for proposals for construction services...without having a contractor’s license in good standing...”). Section 32-1151 “bars anyone from bidding on a contract” without a license and “requires a bidder to have all licenses required for the entire project at the time it submits a bid.” *City of Phoenix v. Superior Court*, 184 Ariz. 435, 437 (App. 1995).

Despite these clear legal concerns, the Board voted 4-1 to enter into an agreement with ALLO for the broadband project, “contingent on ALLO Communications meeting all Arizona State Statutes that pertain to the project.” 1/26/22 Minutes. Unfortunately, we have also learned of allegations that, after execution of the Master Agreement, ALLO changed the work order, raised its prices, and significantly increased its hourly rates and the terms relating to the number of hours spent on design and permitting—all to the detriment of taxpayers.

These alleged facts not only implicate A.R.S. § 32-1123 and § 32-1151; as the Arizona Supreme Court recently reiterated, “[t]he Gift Clause is triggered” when “the public is disproportionately short-changed.” *Neptune Swimming Foundation v. City of Scottsdale*, ¶ 36 (Ariz. Feb. 6, 2024). A Gift Clause inquiry also involves consideration of the “unsuccessful offers” in a procurement dispute to identify the fair market value of the contract. *Id.* at ¶ 40. Here, it appears there were several bids by *eligible* vendors that would have been in the public’s best interests, yet those were inexplicably rejected by Yuma County in favor of an *ineligible* vendor, ALLO. Given these circumstances, it is imperative that Yuma County’s actions are reviewed for a potential violation of article 9, § 7 of the Arizona Constitution.

Finally, if you determine that an investigation of the legality of Yuma County’s actions cannot be completed within 30 days as required under A.R.S. § 41-194.01, we authorize you to treat our request as a Public Monies Complaint. *See* A.R.S. § 35-212.

Please feel free to contact us if you have any questions.

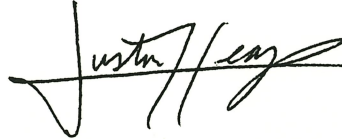
Respectfully,




Representative Laurin Hendrix



Representative Joseph Chaplik



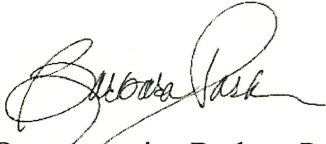
Representative Justin Heap



Representative Alexander Kolodin



Representative David Marshall



Representative Barbara Parker