

STATE TRANSPORTATION BOARD MEETING
1:00 p.m., Friday, December 7, 2018
Arizona Department of Transportation
Executive Conference Room
206 S. 17th Avenue, Phoenix, AZ 85007

Call to Order

Chairman Cuthbertson called the State Transportation Board meeting to order at 1:00 p.m.

Pledge

The Pledge of Allegiance was led by Chairman Cuthbertson.

Roll Call by Board Secretary Linda Priano

A quorum of the State Transportation Board was present. **In attendance:** Bill Cuthbertson, Mike Hammond, Steve Stratton and Sam Elters. Board Attorney Michelle Kunzman was also present.

By Telephone Conference: Vice Chair Jack Sellers, Board Members Jesse Thompson and Gary Knight participated by teleconference. There were approximately 10 members of the public in the audience.

Opening Remarks

Chairman Cuthbertson provided a recap of why we were having today's special board meeting.

Title VI of the Civil Rights Act

Board Secretary, Linda Priano, reminded all attendees to fill out the optional survey cards to assist our Civil Rights Department.

Call to the Audience

An opportunity was provided to members of the public to address the State Transportation Board. Members of the public were requested not to exceed a three minute time period for their comments.

ARIZONA STATE TRANSPORTATION
BOARD SPECIAL MEETING

Arizona Department of Transportation
Executive Conference Room
206 South 17th Avenue
Phoenix, Arizona 85007
December 7, 2018
1:00 p.m.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

CALL TO THE AUDIENCE

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Robert Roos, Esquire.....	8

PREPARED FOR:
ADOT - STATE TRANSPORTATION BOARD
(Certified Copy)

1 (Beginning of excerpt.)

2

3 CHAIRMAN CUTHBERTSON: Okay. Thank you.

4 Before we begin, just to kind of set the stage,
5 I'd like to recap some of the events that have led today's -- to
6 today's special meeting and to kind of review how today's
7 agenda's structured a little bit. It's a little bit different.

8 So board members will recall that on October
9 26th, the board meeting at Lake Havasu, construction contract
10 award for the Ehrenberg-Phoenix Highway Project was presented
11 for the Board's consideration. Staff's recommendation was to
12 postpone the award of the contract to enable the Department to
13 hold a hearing to address a bid protest that had arisen.

14 The Transportation Board accepted staff's
15 recommendation, and the item was postponed to the November 26th
16 -- or November 16th meeting in Wickenburg.

17 In November's meeting, the project was again
18 presented for the Board's consideration, along with a
19 recommendation by staff to award the contract to the low bid,
20 which was submitted by Sunland Asphalt Construction, Inc.

21 As part of the Transportation Board's discussion
22 on the item, the state engineer provided an overview of the bid
23 protest hearing that had taken place earlier that week and
24 provided the Board with a written package of documents
25 pertaining to the bid protest.

1 The Board also heard statements relating to the
2 protest from Tommy Fisher, president and CEO of Fisher Sand &
3 Gravel, which is the company that was protesting the bid or is
4 protesting the bid; and from attorneys from Fisher and from
5 Sunland, as well as ADOT's attorney.

6 Unfortunately, the Board's legal counsel had a
7 medical emergency and could not be in attendance, so the Board
8 was out -- without her advice. So upon due consideration of the
9 Board, the information presented -- the Board elected to defer
10 the consideration of the award of the contract to the December
11 21st board meeting.

12 The purpose of the deferral was to provide the
13 Board with time to review the written information that had been
14 provided pertaining to the bid protest and have an opportunity
15 to get legal opinion from our legal counsel.

16 So that's what today's meeting is about. It's
17 about -- it's -- it's not about making an award to the contract.
18 The -- this information as we present later in the meeting will
19 be for discussion only, and we'll come back better informed for
20 our decision later in the month.

21 So the way that the meeting will work is we'll
22 open with our standard call to the audience. So I already have
23 a couple of cards here. This isn't the same as we did last
24 meetings. It's not really a presentation. We've heard that.
25 We'll allow three minutes per person with -- that fills out a

1 public input card form to make comments, and then if it meets
2 with the board members' approval, we'll retreat to -- retreat --
3 we'll -- I don't know if that's the right word.

4 MR. KNIGHT: Adjourn.

5 CHAIRMAN CUTHBERTSON: We'll adjourn to an
6 executive session, and we will get legal advice from our legal
7 counsel. We'll come out of executive session, and we'll go
8 through the one and only item on the agenda, and that is, again,
9 for information and discussion only of the board members on the
10 item.

11 So any questions on how that will work?

12 MR. KNIGHT: Mr. Chairman, it's Gary Knight.

13 CHAIRMAN CUTHBERTSON: Yes, Gary. Go ahead.

14 MR. KNIGHT: Are we going to adjourn, or are we
15 going to recess to an executive session?

16 CHAIRMAN CUTHBERTSON: Probably -- I don't know
17 what the right term is. Recess, is that the right thing?

18 MS. KUNZMAN: Gary, this is Michelle. What will
19 actually have to occur is the board members will have to vote to
20 make the --

21 MR. KNIGHT: Right.

22 MS. KUNZMAN: -- decision to go into executive
23 session for the purposes of receiving legal advice if the Board
24 so chooses.

25 (Speaking simultaneously.)

1 MR. KNIGHT: But I guess we're going to come back
2 when we recess to executive session and then come back?

3 (Inaudible.)

4 MS. KUNZMAN: Correct. Yeah. You -- recess
5 would probably be the way --

6 MR. KNIGHT: Right.

7 MS. KUNZMAN: -- to refer to it.

8 CHAIRMAN CUTHBERTSON: That's right. We'll --
9 after executive session, we'll come back to this board meeting
10 and finish this board meeting up. So that's what will happen.

11 MR. KNIGHT: Thank you.

12 CHAIRMAN CUTHBERTSON: Okay. Good. Thanks.

13 Any other questions?

14 So let's go ahead and start with the call to the
15 audience. So we'll -- just a reminder. We'll try and limit our
16 comments to three minutes per speaker, and when you get past
17 three minutes, Linda will let you know that it's time to wrap it
18 up. So -- okay?

19 Start with Tim Priebe, the General Counsel for
20 Fisher Sand & Gravel Company.

21 MR. PRIEBE: Mr. Chairman, board members, thank
22 you for the opportunity to give brief comments. I'm not going
23 to take three minutes. I filed a ton of documents with you. I
24 apologize for this.

25 I really appreciate all of the time that this

1 board is taking looking at this issue, because we think it's a
2 very serious issue with ADOT and for the Board. So I just
3 wanted to reiterate two points. One, I think this board does
4 have authority in this matter. I think up in Wickenburg there
5 were comments that prequalification has nothing to do with this
6 board.

7 Where you have the authority, I put in the letter
8 from yesterday, is this is the final board to approve a
9 contract. If you approve the contract to Sunland, I think you
10 are basically endorsing the ADOT prequalification process, which
11 we think is -- has been interpreted and has a lot of flaws in
12 it. So we think the Board has the approval there.

13 In addition, you know, I did find on the website,
14 I think it's the most recent version of this board's policy from
15 2015 that one of the policy decisions this board made is to make
16 sure in the award of all contracts, there's non-discrimination
17 amongst the contractors.

18 The second point I'd like to make is we --
19 Southwest -- SWP really feels that -- you know, they've been
20 giving us information that the rules have not been applied
21 similarly to them. So that's why they came forward and said,
22 Provide this to the Board. It's confidential. So, you know,
23 nobody can see it without their consent. They did give that
24 consent. So we would urge the Board to look at what they
25 submitted as opposed to Sunland submitted and just see if the

1 Board's comfortable that everybody's being treated fairly in
2 this.

3 So unless the Board has questions, again, I
4 really appreciate your time and, you know, indulging us in
5 reading through all the materials. So I'll conclude my
6 comments.

7 CHAIRMAN CUTHBERTSON: Okay. Thank you.

8 Okay. Next, Robert Roos, Counsel for Sunland
9 Asphalt & Construction.

10 MR. ROOS: Thank you, Mr. Chairman, members of
11 the Board. I'm Robert Roos. I am associated with Mr. Sestak.
12 He's still counsel as well for Sunland Asphalt & Construction,
13 and he, too, has submitted voluminous materials to you, and I
14 just wanted to cover a few points as well.

15 First of all, all of the normal Department of
16 Transportation procedures were followed here. All of the
17 parties were given a full and free opportunity to bid on the
18 project, apply for job-by-job prequalification, which occurred
19 here, and has occurred in the past for many, many years, and
20 then to bid on the project. So you've had a full and open
21 public competitive bidding process, and staff has recommended an
22 award to Sunland in this case.

23 Fisher's attempting to bring other
24 prequalification procedures before you. They've given you an
25 application for Southwest -- or SWP Construction. SWP went

1 through the prequalification process previously, and if they
2 were unhappy with the outcome of that process, they had an
3 opportunity to appeal. Actually, the prequalification rules
4 provide contractors with two opportunities to appeal. First to
5 staff, and then beyond staff. And for whatever reason, SWP
6 decided it wasn't going to pursue that.

7 And at this point, SWP has really no complaint
8 with the process followed in its own prequalification
9 proceedings. If it did, there was a time for it to raise those
10 concerns, and it did not do that. So that's really a red
11 herring and something that's not before you here.

12 What's before you is an opportunity to award the
13 contract after a process has been fully undertaken fairly by
14 ADOT, and you had a staff recommendation, and that is to award
15 the contract to Sunland. So I would just encourage you as you
16 deliberate to keep in mind, yes, non-discrimination's important.
17 There has been no discrimination, and if SWP felt they were
18 discriminated against, or any contractor, they have appeal
19 rights.

20 And under the circumstances, I would urge you to
21 reject sort of those arguments that attempt to bring in issues
22 that aren't pertinent to an award to someone.

23 So unless you have any questions, that's all I
24 have today.

25 CHAIRMAN CUTHBERTSON: Okay.

1 MR. ROOS: Thank you very much.

2 CHAIRMAN CUTHBERTSON: Thank you.

3 So is there a motion to enter into executive
4 session for the purpose of discussion or consultation for legal
5 advice with legal counsel?

6 MR. STRATTON: So moved.

7 MR. HAMMOND: Second.

8 CHAIRMAN CUTHBERTSON: Moved by Board Member
9 Stratton, seconded by Board Member Hammond. All in favor
10 indicate by saying aye.

11 BOARD MEMBERS: Aye.

12 CHAIRMAN CUTHBERTSON: Opposed, nay.

13 Ayes have it. Motion passes. We will enter into
14 executive session.

15 (The Board entered into Executive Session from
16 1:11 a.m. to 2:09 p.m.)

17 CHAIRMAN CUTHBERTSON: Okay. Looks like we're
18 all back pretty much. Thank you for being patient with us.

19 So having come out of the executive session,
20 we'll move on to Item No. 1 on the agenda, which is the
21 construction contract.

22 So Transportation Board members will discuss the
23 construction contract award for the Ehrenberg-Phoenix Highway
24 I-10 Project, for information and discussion only.

25 MS. KUNZMAN: You're already actually on that

1 item.

2 UNIDENTIFIED SPEAKER: Yeah.

3 CHAIRMAN CUTHBERTSON: Oh, we were on it before

4 we --

5 MS. KUNZMAN: Yeah.

6 CHAIRMAN CUTHBERTSON: -- adjourned the executive

7 session? Okay.

8 MS. KUNZMAN: Yes. That is the basis for going

9 into executive session.

10 CHAIRMAN CUTHBERTSON: Okay. We'll return to
11 that then. Is there any further questions, comments, discussion
12 board members have?

13 UNIDENTIFIED SPEAKER: No.

14 CHAIRMAN CUTHBERTSON: Okay. I think -- I think

15 -- I think it's -- we've worked our way through the one agenda

16 item.

17 (End of excerpt.)

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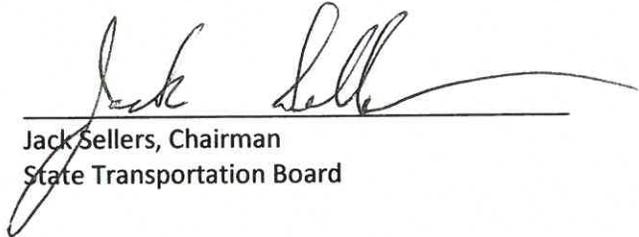
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Adjournment

A motion to adjourn the December 7, 2018 State Transportation Special Board meeting was made by Board Member Hammond and seconded by Board Member Stratton. In a voice vote, the motion carried.

Meeting adjourned at 2:10 p.m. MST.



Jack Sellers, Chairman
State Transportation Board



Linda Priano, Board Secretary
Arizona Department of Transportation