

## **TRANSPORTATION COMMISSION OF WYOMING**

The Transportation Commission of Wyoming met in the Commission Room of the Transportation Headquarters building in Cheyenne on May 30, 2008. The special teleconference meeting was convened at 9:08 a.m. by Chairman Hawkins. The following members were present constituting a quorum:

Rip Hawkins, Chairman, Devils Tower (via telephone)  
Susan Dziardziel, Vice Chair, Douglas (via telephone)  
Emerson Scott III, Commissioner, Dayton (via telephone)  
Charlie Monk, Commissioner, Lovell (via telephone)  
Cactus Covello Jr., Commissioner, Torrington (via telephone)  
Jim Latta, Commissioner, Pinedale (via telephone)  
Sandi McCormick, Commissioner, Rock Springs (via telephone)  
John F. Cox, Director  
Sandra J. Scott, Commission Secretary

Also present and participating in the meeting from WYDOT were: Delbert McOmie, Chief Engineer; Pat Collins, Assistant Chief Engineer of Engineering and Planning; Tim Hibbard, Assistant Chief Engineer of Operations; Jim O'Connor, Support Services Administrator; Dave Kingham, Assistant Public Affairs Manager; Mike Kahler, Assistant Attorney General; Ken Spear, Contracts & Estimates Engineer; Mark Eisenhart, State Construction Engineer; Kristin Burkart, Acting Internal Review Services Manager; Lyle Lamb, Resident Engineer (via telephone); Cody Beers, Public Involvement Specialist, Riverton (via telephone); Sheri Howe, Public Involvement Specialist, Dubois (via telephone); Dave Haller, Transportation Technician, Basin (via telephone); and Vern Mickelsen, Assistant Division Administrator, Federal Highway Administration.

Also present and participating in the meeting from Fisher Sand & Gravel Co. (FSG), of Dickinson, North Dakota, were: Tommy Fisher, President (via telephone); Scott LaFond, Area Manager for Montana/Wyoming/Western South Dakota; and Dave Bren, Assistant Area Manager for Montana/Wyoming/Western South Dakota; and Tim Priebe, General Council.

Also present and participating in the meeting from Oftedal Construction, Inc., of Miles City, Montana, were: Hal Fuglevand, President (via telephone), and Jeff McDonald, Vice President.

Messrs. Colonel Sam Powell, Wyoming Highway Patrol Administrator; Dennis Byrne, Aeronautics Administrator, and Kevin Hibbard, Budget Officer, were absent.

1. Secretary Scott confirmed a quorum via roll call.
2. Chairman Hawkins explained the proposed process for discussion and voting. There were no objections or comments made about the described procedures.
3. Mr. Collins advised that the reason for the special meeting was to consider the following bids from the May 8, 2008, letting held in Cody.

**COMMISSION DISTRICTS 3 and 7**  
**Jim Latta - Commissioner**  
**Susan Dziardziel - Vice Chair**

Federal projects SIB-ACNH-N301016 and ACNH-HP-0301018 combined, involving grading, draining, placing crushed base and bituminous pavement surfacing, concrete, bridge work, removal and replacement of guardrail, landscaping, fencing, and miscellaneous work on 16.28 miles of US 26, beginning at reference marker 14.47 between Moran Junction and Dubois Road, in Fremont and Teton counties. Completion date - July 15, 2011

Engineer's Estimate	\$63,397,636.15	
<b>Fisher Sand &amp; Gravel Co. and Subsidiary, Dickinson, ND</b>	<b>\$63,765,788.50</b>	<b>+0.6%</b>
Oftedal Construction, Inc., Miles City, MT	\$65,299,681.27	
Simon Contractors, Cheyenne, WY	\$76,238,064.22	

The Commission tabled the project award at their May 15, 2008, meeting until further information could be obtained about the 11 counts of tax fraud and subsequent indictment of Micheal L. Fisher (Vice President), Amiel Schaff (Treasurer), and Fisher Sand & Gravel Co. (FSG), the apparent low bidder on the project.

4. It was recommended by Mr. Collins, moved by Commissioner Latta, seconded by Commissioner Scott, and carried to take from the table the Moran Junction to Dubois project award.

5. Mr. Collins provided a brief background of the matter in question, as follows:

- Project bids were opened on May 8, 2008, in Cody, Wyoming.
- Knowledge of the indictment handed down to FSG was received the evening of May 14, 2008, the day before the Transportation Commission meeting in Cody. Nothing was known before this time.
- In the short time before the meeting, two relevant pieces of information were obtained, an Associated Press news article and a release issued by the Department of Justice, United States Attorney in the District of North Dakota. The news releases were presented to the Commission during the meeting.
- With some three weeks remaining in the 30 day window provided in the 2003 WYDOT Standard Specifications for Road and Bridge Construction, the Commission chose to table action on the bids to gather additional information.
- Upon examination of the bid proposal submitted by FSG, it was learned that FSG had indicated on the Certification of Suspension or Debarment certificate that they were not under indictment. The bid proposal was signed and notarized on May 8, 2008.
- Upon further investigation, it was learned that the indictment was officially served on FSG on May 1, 2008.

- Three pieces of correspondence have been received from FSG, letters of May 19 and May 23, 2008, and a job-specific organizational chart indicating the specific personnel that would administrate the job for FSG. These were also provided to the Commission.
- A letter was also received from the second low bidder, Oftedal Construction, Inc., and copies were provided to the Commissioners.

6. Mr. Collins then recommended to the Commission that FSG, as the apparent low bidder, be allowed to address the Commission.

Mr. Priebe, General Counsel for FSG, expressed his appreciation to the Commission for the opportunity to address the Commission about the subject. Copies of the indictment were provided to the Commission for their information. Mr. Priebe advised that FSG is taking the indictment very seriously. However, the company has not been convicted of the charges and, therefore, is innocent until proven guilty.

Mr. Priebe noted that a copy of a letter from Mr. Joseph P. Eichten, Resident Vice President for Liberty Mutual Surety, of Eagan, Minnesota, was also provided to the Commission. According to the letter, Mr. Eichten holds FSG in very high regard and Liberty is ready to issue the final bonds (performance bond) on the project. Mr. Priebe stressed that the overall financial status of the company is sound, and if a conviction is made, it will not affect their ability to perform the required work. Mr. Priebe advised that there is no indication at this time that FSG will be disbarred (from bidding on future federal projects), and the corporation will continue to operate as they have in the past.

There was an oversight on the bid form and the suspension and disbarment box was checked incorrectly. The oversight is an irregularity, but Mr. Priebe stated he did not believe that it was cause for rejecting the bid.

Mr. Tommy Fisher, President, explained his company's capability of handling the job, and advised that he was also audited by the Internal Revenue Service and was never contacted again. FSG was issued a civil audit of the company. Mr. Fisher has spoken with representatives from the Arizona, New Mexico, and Nevada Departments of Transportation about future bidding, and they have all expressed support of his company. Mr. Fisher plans to partner with other Wyoming contractors to accomplish the Moran Junction to Dubois project.

7. Mr. Collins recommended to the Commission that Wyoming Assistant Attorney General Mike Kahler comment on the indictment.

Mr. Kahler explained that an indictment does not deem a party guilty. The FSG indictment was filed on April 23, 2008, and was served to FSG's attorney on May 1, 2008.

8. Mr. Collins invited others to address the Commission.

Mr. Jeff McDonald, Vice President for Oftedal Construction, Inc., Casper, Wyoming, referenced page one of the bid documents (Form E-91) which guarantees, under penalty of perjury, that the contractor (bidder) does not falsify the bid documents. The Certification of Suspension or Disbarment (page 14) requires that the bidder indicate if “any interested party has been indicted, convicted, or had a civil judgment rendered against (it) by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.” Commissioner Scott asked who signed the bid document. Mr. Priebe confirmed that Mr. Micheal Fisher, Vice President, signed the bid document.

Mr. Hal Fuglevand, President for Oftedal Construction, Miles City, Montana, emphasized that since the indictment was handed down on May 1 and the certification was signed, dated and notarized on May 8, 2008, the FSG bid was indeed irregular.

FSG asserted that the Wyoming Department of Transportation Standard Specifications for Road and Bridge Construction (Standard Specifications) allows a contractor to provide written acknowledgment of not satisfying bid requirements. They stated that Mr. LaFond was notified on Thursday, May 15, 2008, that the box on the bid for (Certification of Suspension or Debarment) was incorrect. FSG recognized the irregularity on May 16, 2008, and notified the WYDOT Contracts & Estimates Engineer of their acknowledgment in accordance with the Standard Specifications.

9. Mr. Collins then informed the Commission of the issues that Staff had investigated pertinent to the low bidder, FSG, receiving the award. These consisted of the performance bond; the ability of FSG to perform the work if a conviction is returned; the continuity of federal participation if a conviction is returned; and the integrity of the WYDOT bid process. Mr. Collins then stated that all of these issues, excepting the integrity of the bid process, had been satisfactorily addressed, and thus the question of integrity was of utmost importance to consider. Mr. Collins advised the Commission that extreme care must be exercised in considering the bids on this project to not engage an action which has the potential to compromise the integrity of WYDOT’s bid process. It was Mr. Collins’ advice that the falsification of the Certification of Suspension or Debarment in the bid proposal, if allowed to stand, would be a serious compromise.

10. It was recommended by Mr. Collins, moved by Commissioner Scott, seconded by Commissioner Covello, and unanimously carried to reject the FSG bid. The Federal Highway Administration concurred with this decision.

11. It was recommended by Mr. Collins, moved by Commissioner Latta, seconded by Commissioner Monk, and unanimously carried that **Oftedal Construction, Inc., Miles City, Montana**, having prequalified in accordance with rules and regulations adopted by the Transportation Commission of Wyoming, be awarded the contract as the apparent low, responsible bidder. The Federal Highway Administration concurred with this decision.

12. It was moved by Commissioner Covello, seconded by Commissioner Latta, and carried to adjourn the meeting. The meeting was adjourned at 9:50 a.m., Friday, May 30, 2008.