THE BIG RED MESS: THE UNIVERSITY OF PHOENIX STADIUM CONCESSIONS CONTRACT

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Tom Sadler was responsible for operating a corporate and political body charged with economic development in the Phoenix area through increasing sports and tourism since June of 2008.[1] Tom served as President and Chief Executive Officer of the Arizona Sports & Tourism Authority (AZSTA), an entity created in 2000.[2] This entity was developed to spur economic growth through tourism primarily from sporting events and sport venue development.[3] At its creation, the AZSTA was predicted to generate $1.95 billion in economic output and to create 16,430 jobs per year,[4] primarily though the ownership of the University of Phoenix stadium, home to the Arizona Cardinals and the Tostitos Fiesta Bowl.[5]

Sadler joined the AZSTA in 2008 as President and CEO.[6] He brought relevant and high-level experience operating sports venues with him, having spent three

1. *Mission,* Arizona Sports and Tourism Authority, http://www.az-sta.com/purpose (last visited Feb. 2, 2015).

2. The Arizona Sports and Tourism Authority is a "quasi-governmental agency," meaning that it was created by the government, its board of directors is appointed through a political process, but it is a partnership with private entity and so does not have to comply with all of the regulations that govern true governmental agencies.

3. *Governor's Stadium Plan "B" Advisory Task Force Final Report,* Arizona Tourism Retention and Promotion, *available at* http://azmemory.azlibrary.gov/cdm/ref/collection/statepubs/id/8829 (last visited Feb. 2, 2015).

4. *History*, Arizona Sports and Tourism Authority, http://www.az-sta.com/about (last visited Feb. 2, 2015).

5. *University of Phoenix Stadium,* Arizona Sports and Tourism Authority, http://www.az-sta.com/purpose/stadium, (last visited Feb. 2, 2015).

6. *Staff,* Arizona Sports and Tourism Authority, http://www.az-sta.com/about/staff, (last visited Feb. 2, 2015).

years as President of Management and Marketing for Global Entertainment, Inc.[7] At Global Entertainment, Tom was in charge of growing the company and bringing in new contracts for food and beverage services at different event centers.[8] In addition, Tom was very familiar with both the sports environment in the Phoenix area, as he had held various positions at Arizona State University over the course of 20 years,[9] and had served on the host committee for Super Bowl XXX at ASU Stadium in 1996.[10]

As President and CEO, Tom was not only a public face of the AZSTA, but also was responsible for hiring staff and for signing all contracts for services in the AZSTA facilities.[11] Tom worked to generate additional revenue by bringing in over 100 events such as the 2011 Bowl Championship Series title game and several international soccer matches.[12] In addition to increasing revenue opportunities at the University of Phoenix Stadium, Tom also worked to expand Arizona's Major League Baseball spring training program (the Cactus League), and to grow the more general Arizona tourism industry.[13]

Unfortunately, just a couple of years after becoming CEO of the AZSTA, Tom faced a politically tricky and complicated situation. The contract for concessions at the Stadium was about to expire and the AZSTA Board of Directors ("Board") needed to decide whether to negotiate a new contract with the current vendor, select a new vendor, or put out a public call for bids. Because of its status as a quasi-political body, the Board was exempt from the state's procurement requirements and so could select a vendor in any reasonable manner.[14]

The selection of a vendor became even more complicated because the AZSTA was experiencing significant financial shortfalls and was operating with a financial deficit.[15] One reason to consider changing concession vendors was the hope that a new contract would produce additional sources of revenue and additional means to generate cost savings.[16]

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7. *Global Entertainment Names Tom Sadler, President and Roger J. Swanson, Vice President Operations of Facility Management Company,* The Free Library, http://www.thefreelibrary.com/Global+Entertainment+Names+Tom+Sadler%2c+President+and+Roger+J....-a0136495926, (last visited Feb. 2, 2015).

8. *Id.*

9. *Staff,* Arizona Sports and Tourism Authority, *supra,* note 5.

10. The Free Library, *supra,* note 6.

11. *See, Archives, Arizona Sports and Tourism Authority,* http://www.az-sta.com/archives (last visited Feb. 2, 2015). (A review of the contracts in the archives shows that past Presidents and CEOs sign the contracts).

12. *Stadium News*, University of Phoenix Stadium, (Feb. 2, 2015), http://www.universityofphoenixstadium.com/news.

13. *Performance Audit: Arizona Sports and Tourism Authority,* (March 2009), http://www.azauditor.gov/reports-publications/state-agencies/sports-and-tourism-authority/report/arizona-sports-and-tourism.

14. *Minutes of the 112th Meeting of the Arizona Sports & Tourism Authority Board of Directors*, Arizona Sports and Tourism Authority, (Nov. 15, 2011), http://www.az-sta.com/downloads/files/meetings/minutes.pdf.

15. *Id.*

16. *Id.*

While several national concession companies were potential bidders, the decision was convoluted by the entrance of a newly-established bidder, Rojo Hospitality, owned by the Bidwill family, who also owned the Arizona Cardinals franchise.[17] The Cardinals' owners were very powerful stakeholders as the primary client of the AZSTA and the main tenant in the University of Phoenix Stadium.[18] If Rojo Hospitality did not receive the concessions contract, there was a reasonable fear that the Stadium's relationship with Bidwill family would be compromised, and, as a worst-case scenario, the family could decide to move the Cardinals out of Arizona or out of the Stadium. This potential threat was very concerning as such a move could cripple the AZSTA's ability to accomplish its mission.

I. THE ARIZONA SPORTS & TOURISM AUTHORITY (AZSTA)

From the late 1990s to the year 2000, Arizona State University's Sun Devil Stadium was home to both the Arizona (then Phoenix) Cardinals and the Fiesta Bowl.[19] At that time, the owners of the Cardinals, Arizona's only National Football League (NFL) franchised team, were rumored to be looking for upgraded facilities and a new stadium to call home.[20] Without a new stadium, both the franchise and the bowl game were rumored to be looking to leave Arizona, costing the state millions of dollars in lost revenue.[21]

In light of these rumors, Arizona Governor Jane Hull established a special task force to research ways for Arizona to preserve its NFL franchise, as well as ways to attract future Super Bowl and other high profile collegiate football events to the state.[22] In 1999, this special task force of thirty-five business and civic leaders was charged with determining whether a new stadium would best serve the state's interests, as well as how the construction of such a stadium could be funded.[23] The task force heard testimony from many different constituent groups, including members of the tourism industry who reported that tourism in Arizona was extremely underfunded when compared to other states. It also heard testimony from financial experts providing estimates of the economic impact on the state from the presence or potential loss of their NFL franchise.[24] Additionally, the task force was presented with information on the potential impact to Arizona of other states' efforts, in particular Florida and Nevada, who had been actively attempting to lure professional baseball teams away from the Arizona Cactus League's spring training

17. Arizona Corporation Commission, State of Arizona Public Access System, Corporate Inquiry: Rojo Hospitality, http://ecorp.azcc.gov/Details/Corp?corpId=R15353387 (last visited Jun. 12, 2015).

18. University of Phoenix Stadium, *Stadium History*, http://www.universityofphoenixstadium.com/stadium (last visited Feb. 2, 2015).

19. *Sun Devil Stadium* , Stadiums of Pro Football, http://www.stadiumsofprofootball.com/past/SunDevilStadium.htm (last visited Feb. 2, 2015).

20. *University of Phoenix Stadium*, Stadiums of Pro Football, http://www.stadiumsofprofootball.com/nfc/UniversityofPhoenixStadium.htm (last visited Feb. 2, 2015).

21. Arizona Sports and Tourism Authority History, http://www.az-sta.com/about (last visited Feb. 2, 2015).

22. *Id.*

23. *Id.*

24. *Id.*

facilities in the state.[25] The task force supported building a new multi-use facility and recommended the creation of a new state board of tourism to oversee and coordinate the stadium as well as other tourism-based economic development.[26]

Within two months, the Arizona legislature acted and introduced Senate Bill 1220.[27] On April 24, 2000, Governor Hull signed Senate Bill 1220 into law, establishing the Arizona Tourism and Sports Authority (renamed the Arizona Sports and Tourism Authority in April 2004) as a corporate and political body with all of the rights of a municipal corporation.[28] The Authority was governed by a nine-member board of directors that were all citizens of Maricopa County and whom would subsequently receive no compensation.[29] Five members of the Board were appointed by the Arizona Governor, two members were appointed by the President of the Arizona Senate, and two members were appointed by the Speaker of the Arizona House of Representatives.[30] Each director was appointed to a five-year term and was eligible to serve a maximum of two terms.[31] The Board was responsible for hiring a Chief Executive Officer and a Chief Financial Officer to run the daily operations of the agency.[32]

The new law also required Maricopa County, where Phoenix is located, to hold an election by August 1, 2000, seeking voter approval for a tax increase to partially fund the AZSTA.[33] That vote was held and Maricopa county residents approved, with 52% of the vote, Arizona Proposition 302.[34] Proposition 302 approved the use of revenues from a 1% hotel bed tax and a 3.25% car rental tax to fund the building of the new stadium.[35] With financing underway, it was decided that the Office of Tourism Promotion in Maricopa County would be housed with the AZSTA who would also take over management of the Cactus League Association, a group offering spring training opportunities for professional baseball teams.[36]

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25. *Id.*

26. *Id.*

27. Plaintiffs' Response to Defendant-in-Intervention's Motion for Summary Judgment and Plaintiffs' Cross-Motion for Summary Judgment at 2 Saban Rent-A Car, LLC v. Arizona Department of Revenue (2002) (Case No. TX 2010-001089) *available at* http://www.ashrlaw.com/dox/tax/RspMsj-XMsj%20SOF%20110321.pdf (last viewed Feb. 2, 2015).

28. S.B. 1220, 44th Leg., 2d Reg Sess., (Az 2000), *available at* http://www.azleg.state.a z.us/legtext /44leg/2r/laws/0372.htm (last visited Feb. 2, 2015).

29. *Board of Directors*, Arizona Sports and Tourism Authority, http://www.az-sta.com/about/ directors, (last visited Feb. 2, 2015).

30. *Id.*

31. *Id.*

32. *Staff*, Arizona Sports and Tourism Authority, http://www.az-sta.com/about/staff (last visited Feb. 2, 2015).

33. Plaintiff's Response, *supra* note 26.

34. *Arizona Stadium Initiative*, Smith & Harroff, www.smithharroff.com/case-studies/arizona-stadium-initiative/ (last visited on Feb. 2, 2015).

35. *Prop 302: Ten Year Retrospective An Economic/Fiscal Analysis & Review* 7 (2010), Elliot D. Pollack & Co., http://www.az-sta.com/downloads/files/reports/2010-study-prop-302-impact-statement-web-version.pdf.

36. *Cactus League*, Arizona Sports and Tourism Authority, www.az-sta.com/purpose/cactus (last visited Feb. 2, 2015).

II. THE UNIVERSITY OF PHOENIX STADIUM

Construction crews first broke ground on the Cardinals' Stadium on April 12, 2003.[37] The stadium opened on August 1, 2006, with a final price tag of approximately $455 million.[38] Shortly after its opening, the University of Phoenix, a for-profit online university headquartered in the Phoenix area, purchased the naming rights and the stadium was renamed The University of Phoenix Stadium.[39] The stadium was called "one of the ten most impressive sports facilities in the world" by *BusinessWeek* magazine.[40] It was unlike any other stadium in North America as it featured a retractable roof and field and a natural-grass playing field that could be moved in and out of the stadium while non-football events such as concerts and trade shows were hosted.[41] With over 1.7 million square feet of space, it was the perfect venue for the Arizona Cardinals and the annual Tostitos Fiesta Bowl.[42] The Stadium was built to hold 63,400 spectators in permanent seating with an ability to add nearly 9,000 more temporary seats for large-scale events.[43]

III. GLOBAL SPECTRUM AND STADIUM FOOD/BEVERAGE CONTRACTS

The AZSTA hired international corporation Global Spectrum in 2004 to manage operations of the Stadium.[44] Global Spectrum was responsible for ensuring that the Stadium was ready to begin operations when construction was complete.[45] This included working with sub-contractors hired by the AZSTA to perform the various functions required, such as concessions, marketing, ticketing and janitorial services.[46]

Global Spectrum was founded in 1994 as a venue management company.[47] It remained a small company and managed only seven venues until 2000 when it was acquired by Comcast Spectacor, a large sports and entertainment company based

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37. Stadium History, *supra* note 17.

38. University of Phoenix Stadium, Statistics, www.universityofphoenixstadium.com/stadium/statistics (last visited Feb. 2, 2015).

39. Phoenix.org, University of Phoenix Stadium, http://www.phoenix.org/university-of-phoenix-stadium/ (last visited Feb. 2, 2015); Associated Press, Cardinals New home renamed U. of Phoenix Stadium (Sept. 27, 2006), http://tucsoncitizen.com/morgue/2006/09/27/27513-cardinals-new-home-renamed-u-of-phoenix-stadium/.

40. BusinessWeek, Wonders of the World, http://images.businessweek.com/ss/06/02/sports_stadiums/source/9.htm (last visited Feb. 2, 2015).

41. University of Phoenix Stadium, *supra* note 37.

42. *Id.*

43. Arizona Sports and Tourism Authority Purpose, http://www.az-sta.com/purpose/stadium (last visited Feb. 3, 2015).

44. Management and Pre-Opening Services Agreement Between Arizona Tourism and Sports Authority and Global Spectrum, L.P., (May 10, 2004), *available at* http://www.az-sta.com/downloads/files/agreements/managment-and-pre-opening-services-agreement.pdf.

45. *Id.*

46. *Id.*

47. Global Spectrum, Who We Are, http://www.global-spectrum.com/region/en/who-we-are.aspx (last visited Feb. 3, 2015).

out of Philadelphia.[48] Comcast Spectacor was owned by Comcast Corporation, one of the world's largest multimedia and communication companies, which also owned NBC, Telemundo and other major television networks.[49] After its acquisition, Global Spectrum grew to become one of the top private venue management companies in the United States, managing over one hundred venues worldwide.[50] In addition to the University of Phoenix Stadium, Global Spectrum's major venues included the Wells Fargo Center in Philadelphia and the Comcast Arena in Everett, Washington.[51] Global Spectrum was originally hired for a five-year contract, which was renewed three separate times with the latest expiration date scheduled for June 30, 2016.[52]

While Global Spectrum was responsible for managing operations within the Stadium, the Board selected those contractors. In preparation for the opening of the University of Phoenix Stadium in 2006, the AZSTA selected Centerplate, an international food and beverage company, and a major vendor for the NFL, as the stadium's first concessions vendor.[53]

Centerplate was a catering and food-service company based out of Stamford, Connecticut.[54] It operated in 250 sports stadiums, convention centers, and entertainment venues throughout North America.[55] Centerplate also was the largest food and beverage company in the NFL with venues that included Qualcomm Stadium in San Diego and the Mercedes-Benz Superdome in New Orleans.[56] The company signature was its E3 formula: "Executing Extraordinary Experiences."[57] Their brand promise — "Craveable Experiences. Raveable Results" — was directed toward every guest and outlined their dedication to customer service.[58]

Centerplate's contract with the University of Phoenix Stadium was set to expire in July 2010.[59] Due to some financial shortages, the AZSTA had to consider how

48. *Id.*

49. Comcast Spectacor, About Us, http://comcastspectacor.com/overview/ (last visited Jul. 20, 2015).

50. Global Spectrum, *supra* note 46.

51. *Id.*

52. *See Global Spectrum Agreements*, AZSTA, http://www.az-sta.com/archives/files/agreements/global-spectrum (last visited Feb. 3, 2015) (for a list of agreements between the AZSTA and Global Spectrum). *See also Amendment Number Three to Management and Pre-Opening Services Agreement*, AZSTA, http://www.az-sta.com/downloads/files/agreements/amendment-no-3-to-managment-and-pre-opening-services-agreement.pdf (last visited Feb. 3, 2015) (for the most recent extension).

53. *Management and Pre-opening Services Agreement*, AZSTA (May 10, 2004), http://www.az-sta.com/downloads/files/agreements/managment-and-pre-opening-services-agreement.pdf (last visited Feb 3, 2015).

54. *Contact Us*, Centerplate, http://centerplate.com/contact-us/ (last visited Feb. 3, 2015).

55. *North American Venue Partners*, Centerplate, http://centerplate.com/venue-partners/ (last visited Feb. 3, 2015).

56. *See generally About Us*, Centerplate, http://www.centerplate.com/about/ (last visited Feb. 3, 2015); *see also Catering*, Mercedes-Benz Superdome, http://www.mbsuperdome.com/book-your-event/catering (last visited Feb. 3, 2015).

57. *See, e.g.*, *Food and Beverage Hospitality Services for Exhibitors*, Orange County Convention Center, http://www.occc.net/exhibitor/services_exclusive_catering.asp (last visited Feb. 3, 2015); *see also Centerplate*, Hospitality Online, http://www.hospitalityonline.com/centerplate (last visited Feb. 3, 2015).

58. *See, e.g.*, *Food and Beverage Hospitality Services for Exhibitors*, Orange County Convention Center, http://www.occc.net/exhibitor/services_exclusive_catering.asp (last visited Feb. 3, 2015).

59. *University of Phoenix Stadium*, Ballparks.com (Jul. 23, 2009), http://football.ballparks.com

to maximize profits and minimize expenses, without sacrificing consumer satisfaction, as they looked at their next concessions contract.[60]

IV. FINANCIAL PERFORMANCE OF THE AZSTA

The AZSTA was facing a revenue shortfall (reference Appendix A for financial statements for 2008, 2009, and 2010).[61] According to the State of Arizona Office of the Auditor General, in their Special Audit Report of the Arizona Sports and Tourism Authority, the AZSTA faced several challenges and was projected to have operating deficits through fiscal year 2014.[62] While there would be projected surplus in 2015 and 2016, these surpluses were estimated to be relatively small, leading to a projected cumulative operating deficit of $6 million by the end of fiscal year 2016 (reference Table 1).[63] The AZSTA had managed to take certain steps to reduce operating expenses and was able to find creative sources of additional revenue, leading to a $9 million operating reserve (as of June 30, 2010), but their tourism revenue (funded from hotel bed taxes and rental car surcharges) and facilities revenue clearing (funded from NFL income tax, sales tax recapture and event revenues) accounts were suffering due to the financial recession that began in 2008.[64] The impact of this revenue shortfall was projected to reduce that reserve account to negligible levels, meaning that the AZSTA would not be able to fund three reserve accounts that it was statutorily required to fund by the state of Arizona (i.e., operating reserves, youth and amateur sports reserves, and capital repair and replacement reserves).[65]

A. *TABLE 1: SUMMARY OF AZSTA PROJECTED CUMULATIVE OPERATING DEFICIT*

FISCAL YEARS 2011 THROUGH 2016 (IN MILLIONS)[66]

Fiscal Year	Projected Operating (Deficit) or Surplus	Projected Cumulative Operating Deficit
2011	$ (2.6)	$ (2.6)
2012	$ (3.0)	$ (5.6)
2013	$ (1.3)	$ (6.9)
2014	$ (0.8)	$ (7.7)

/NFL/ArizonaCardinals/newindex.htm.

60. Mike Sunnucks, *AZSTA: Concessions bids similar for stadium contract, but Cardinals offshoot promised extra revenue*, Phx. Bus. Journal (Feb. 5, 2010), http://www.bizjournals.com/phoenix/stories/2010/02/01/daily55.html?page=all.

61. EideBailly.com, Financial Statements 2009 and 2010 of AZSTA, Arizona Sports and Tourism Authority, http://www.az-sta.com/downloads/files/financial/audit-2010-final-audit-azsta.pdf (last visited Feb. 3, 2015); Office of the Auditor General, Special Audit AZSTA Report No. 10-09 (December 2010), http://azmemory.azlibrary.gov/cdm/ref/collection/statepubs/id/21523.

62. Auditor General, *supra* note 60, at 27.

63. *Id.* at 31.

64. *Id.* at 1.

65. *Id.* at 33-34.

66. *Id.* at 1, 33.

2015	$ 0.3	$ (7.4)
2016	$ 1.4	$ (6.0)

To further complicate the situation, the AZSTA's organizational form as set forth in the organizing legislation limits their options when trying to increase revenues.[67] Arizona statutes dictate how the AZSTA must distribute any revenues generated.[68] Table 2 details the AZSTA's statutory flow of funds, including their only sources of funding and the obligated uses of those funds in terms of priority. For example, the senior and subordinate bonds and debt service must be satisfied first above all other priorities.[69]

B. Table 2: AZSTA Statutory Flow of Funds

Including Sources of Funds and Uses of Funds[70]

SOURCES OF FUNDS	
TOURISM REVENUE CLEARING ACCOUNT (TRCA)	Hotel and Bed Tax Revenue (1%) Rental Car Surcharge Tax (3.25%)
FACILITIES REVENUE CLEARING ACCOUNT (FRCA)	NFL Income Tax Sales Tax Recapture Facility Event Revenues
USES OF FUNDS	
Priority 1: Senior Bond Debt Service	$176.74 million principal—Series 2012A bonds—Final payment July 1, 2036 $90 million principal—Series 2007A bonds—Final payment July 1, 2024
PRIORITY 2: TOURISM PROMOTION	Total of $236.76 million+ over 30 years for Maricopa County tourism marketing and promotion Final distribution in May 2031
PRIORITY 3: CACTUS LEAGUE PROMOTION	$205 million over 30 years for Maricopa County Cactus League support and promotion *1st priority*: $32.4 million principal—Series 2003 subordinate bonds — Final payment July 1, 2016 *2nd priority*: $3.24 million subordinate bond reserve

67. *Id.* at 34, 42.
68. *Id.* at 1.
69. *Id.*
70. *Id.*

	fund (100% funded since October 2007) *3rd priority*: Funding spring training facility renovation projects — Final distribution May 2031
PRIORITY 4: YOUTH & AMATEUR SPORTS	Total of $73.5 million, plus over 30 years for Maricopa youth and amateur sports support and promotion. Began in June 2001, based on $1 million per year, growing by $100,000 each year thereafter — Final distribution May 2013.
PRIORITY 5: AZSTA OPERATIONS	
PRIORITY 6: RESERVES	AZSTA is required to fund three reserve accounts, assuming funds are available: (1) operating reserve, (2) youth and amateur sports reserve, and (3) capital repair and replacement reserve.

The AZSTA could not arbitrarily increase the bed tax and rental car surcharge without gaining voter approval; they could also not make any changes to NFL state income taxes or sales tax recapture without legislative action.[71] This left only two areas of control: (1) they could explore means to increase event revenues or (2) they could explore additional means to decrease operating expenses.[72] A change in the concessions contract could potentially increase revenue and decrease expenses.

V. THE POTENTIAL CONCESSIONAIRES

The AZSTA could look at the upcoming concessions contract expiration as one means to address the financial problems. As early as 2008, Centerplate offered the AZSTA several options to assist with the financial situation.[73] Centerplate offered cash grants in exchange for a longer term concessions contract and they also offered cash advances to the AZSTA from future concessions monies; both ideas were rejected by the AZSTA who informed Centerplate that more significant structural changes were required, including a potential change in concessions operations.[74] If Centerplate were to continue as concessionaire, it would have to propose some operational changes that would decrease costs and/or increase revenue.

Also, as early as 2008, the Cardinals expressed interest in helping the AZSTA address the financial challenges and proposed that a potential concessions contract with a Cardinals affiliate would lead to additional revenue generation.[75] Soon after, in June 2009, Rojo Hospitality Group was formed by Michael J. Bidwill, of the family who owned the Arizona Cardinals organization.[76] Bidwill brought in several

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71. Auditor General, *supra* note 60, at 2.
72. *Id.* at 35–36.
73. EideBailly.com, *supra* note 60, at 18.
74. *Id.*
75. *Id.* at 33.
76. Arizona Corporation Commission, *supra* note 16.

industry experts to start up a company, presumably in order to bid for the University of Phoenix contract.[77]

There was always the potential for the AZSTA to go with another national entity as well. Aramark, a food service, facility management, and uniform apparel company based out of Philadelphia,[78] was one of the largest food service companies in the industry with over 270,000 employees (called service stars) working in twenty-two different countries.[79] In 2013, *Fortune* magazine recognized Aramark on its list of "World's Most Admired Companies."[80] They also were named "one of the World's Most Ethical Companies" by the Ethisphere Institute in 2012, 2013, and 2014.[81] Aramark was a very diverse company, providing services to: industrial businesses, schools and universities, hospitals, sports stadiums, parks and resorts, and convention centers.[82] They offered food and beverage services to 150 stadiums, arenas, and convention centers throughout North America.[83] Two NFL clients included Arrowhead Stadium, home of the Kansas City Chiefs, and Reliant Stadium, home of the Houston Texans.[84] Aramark had a mission of employee advocacy, environmental stewardship, health & wellness, and community involvement.[85] As a sports and entertainment company focused on customer service, Aramark gathered data to predict guest behaviors, searched for new creative solutions, and built strong relationships with guests and clients. They set out to make their work culture fun, fresh and creative.[86]

VI. THE 2010 CONTRACT PROCESS

Arizona law required that government entities follow specific procurement policies when selecting vendors.[87] Because the AZSTA was created as a separate legal body from the state of Arizona, it was exempt from state procurement requirement policy laws.[88] As such, there was no legal obligation to go through any particular bidding process. Even so, the AZSTA had developed a procurement policy that required competitive bidding for contracts over a set dollar amount.[89]

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77. *About Us*, Rojo Hospitality, http://www.rojohospitality.com/about-us (last visited Feb. 3, 2015) (noting the management team has over 200 years of hospitality experience).

78. *See generally History*, Aramark, http://www.aramark.com/about-us/history (last visited Feb. 3, 2015) (discussing the general history of the company).

79. Aramark, About Aramark, http://www.aramark.com/AboutARAMARK/(last visited Feb. 3, 2015).

80. *Id.*

81. *Id.*

82. *Id.*

83. *News*, Aramark, http://www.aramark.com/about-us/News/stadiums-arenas/tastiest-eats-NBA-NHL-arenas-season (last visited Feb. 3, 2015).

84. Aramark, Stadiums and Arenas, http://www.Aramarkentertainment.com/venues/stadiums-arenas/overview.aspx (select "Venue Map link) (last visited Feb. 3, 2015).

85. Aramark, Corporate Citizenship, http://www.aramarkentertainment.com/difference/our-corporate-citizenship.aspx (last visited Feb. 3, 2015).

86. Aramark, Insight to Impact, http://www.Aramarkentertainment.com/difference/overview.aspx (last visited Feb. 3, 2015).

87. Auditor General, *supra* note 60, at 18.

88. *Id.* at 2.

89. *Id.*

Because it was a company policy instead of a law, the Board could decide to waive that policy.

At the July 15, 2009 meeting, the Board discussed a concessions contract with Rojo Hospitality.[90] They agreed unanimously to approve a concessions services agreement contract with Rojo Hospitality, subject to the final contract being presented and conditioned on the Board agreeing to waive its procurement policy.[91] Mr. John MacDonald, a representative from the Fiesta Bowl, apparently was concerned about the potential conflicts of interests involved and asked to address the members of the Board, but was denied because the agenda did not call for public comment.[92] The following week, during the next board meeting the Board again addressed the concessions contract and voted unanimously not to waive the procurement policy, but instead to issue a formal request for proposals for concession services at the stadium.[93] During public comment, representatives from both the Fiesta Bowl and Centerplate thanked the Board for opening up the request for proposal to multiple bidders.[94]

Mr. Sadler expected several companies to bid for the contract, including Centerplate, Aramark, and, of course, Rojo Hospitality.[95] Centerplate would be an easy selection with its knowledge of the stadium and its established relationship. Strategically, the selection of Rojo Hospitality could further solidify the relationship between the Cardinals and the stadium management, but with the risk of future conflicts of interest as the same family would hold the concessions contract and serve as the main client of the stadium.[96]

To manage the bidding process, the AZSTA brought in Chris Bigelow, a neutral food service industry expert, as a consultant.[97] He worked with the Board on the selection process and criteria, as well as the potential length of a new contract.[98]

VII. THE DECISION

Tom Sadler and the Board had a strategic decision to make. Should they stick with a tried and true concessionaire and continue with their current food and beverage partner? Should they go with a start-up company owned by the AZSTA's

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90. Arizona Sports & Tourism Authority, Minutes of the 94th meeting of the Board of Directors (Jul. 15, 2009), http://www.az-sta.com/downloads/files/meetings/board-minutes-7152009.pdf.

91. *Id.*

92. *Id.*

93. Arizona Sports & Tourism Authority, Minutes of the 95th meeting of the Board of Directors (Jul. 20, 2009), http://www.az-sta.com/downloads/files/meetings/board-minutes-7202009.pdf.

94. *Id.*

95. Sunnucks, *supra* note 59.

96. Amy Wang, *Cardinals Gain Ground on University of Phoenix Stadium Concession Takeover* (Jan. 21, 2010, 12:00 AM), http://www.azcentral.com/news/articles/2010/01/21/20100121cardinals-concessions0121.html.

97. *Minutes of the 98th Meeting of the Board of Directors, December 28, 2009*, Arizona Sports & Tourism Authority, *available at* http://www.az-sta.com/downloads/files/meetings/board-minutes-12282009.pdf (last visited Feb. 3, 2015).

98. *Id.*

biggest client? Or should they go with a company that is completely unrelated to any users or contractors of the stadium?

On December 28, 2009, the Board convened to view presentations from each of the bidding firms.[99] During this meeting, Chris Bigelow, the food service industry consultant, reported on the status of the food service industry.[100] Bigelow explained that the industry was heavily impacted by the poor economy and that the bidding firms were "more cautious as a result" of the economic recession.[101] Centerplate, Rojo Hospitality, and Aramark each gave formal presentations.[102] While each of the bids were very similar in content, Rojo Hospitality included a statement that they would guarantee $750,000 per year in additional revenue from expanded events or via cost savings measures at the stadium.[103]

On January 20, 2010, at the next board meeting Mr. Bigelow offered his analysis of the bids and stated that Rojo Hospitality was the bid he believed was in the best interests of the AZSTA.[104] He also suggested that the AZSTA enter into an exclusive 30-day contract negotiation period with the Rojo Hospitality, which the Board approved 8-1.[105] The general opinion of the Board was that since the vast majority of concession revenues are generated via NFL events that a Cardinals-affiliated organization was the logical choice for the concessions contract.[106] Mr. John Benton, Board member, was quoted in the *Arizona Republic*, "[The Cardinals] have a bigger incentive to make their customers happy than even we do." Mr. John MacDonald, a spokesperson for the Fiesta Bowl, was quoted in the same article, "[W]e're very disappointed [with the decision] but hardly surprised [as the] AZSTA was ready to award this contract to the Cardinals months ago."[107]

The media had a field day with the news that the AZSTA was in exclusive contract negotiations with Rojo Hospitality.[108] The media reported that the other professional sports venues in the Phoenix market each contract with outside vendors to handle their concessions.[109] Several state politicians, including State Senate President Bob Burns, State Representative Judy Burges, and State Senator Thayer Verschoor, expressed concerns about the Cardinals being exclusively considered when they are the main tenant of the publicly financed and owned stadium.[110] Centerplate wrote letters to the AZSTA stating that the bidding process

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. Carrie Watters and Craig Harris, *University of Phoenix Stadium Concession Contract Questioned* (Feb. 10, 2010, 12:00 AM), http://www.azcentral.com/news/articles/2010/02/10/20100210 azsta0210.html.

104. *Minutes of the 99th meeting of the Board of Directors,* Arizona Sports and Tourism Authority, (Jan. 20, 2010), http://www.az-sta.com/downloads/files/meetings/board-minutes-1202010.pdf.

105. *Id.*

106. Wang, *supra* note 96.

107. *Id.*

108. *Id.*

109. Mike Sunnucks, *State Lawmakers Want Review of Stadium Concessions Contract Going to Arizona Cardinals* (Feb. 3, 2010), http://www.bizjournals.com/phoenix/stories/2010/02/01/daily39.ht ml?page=all.

110. *Id.*

was unfair because the Cardinals organization had advantages in bidding that stemmed from their ownership of the NFL franchise and because of their ownership of the Sportsman's Park that could be used to host events that would generate more income for the AZSTA.[111] The Fiesta Bowl organization expressed their continued concerns that this concessions contract and process were problematic.[112]

EPILOGUE

On February 9, 2010, the Board voted unanimously to award the concessions contract to Rojo Hospitality.[113] The three bids were considered to be very similar, but Rojo Hospitality's promise of $750,000 in new revenue from hosting more game day events and their promise to help bring in new non-sporting events to the stadium (such as car shows, concerts, and conventions) gave Rojo the edge.[114]

Clearly the political pressures around the decision were very real. Around the time of the decision, both the Arizona Senate and the Arizona House of Representatives, while stating that they were not accusing anyone of any formal wrongdoing, began to fast track bills that would authorize the Auditor General's office to conduct an audit on the AZSTA's business practices.[115]

On February 11, 2010, officials from the AZSTA were asked to meet with staff from the Arizona legislature to discuss the decision to award the concessions contract to Rojo Hospitality.[116] The Arizona state legislature eventually passed a bill directing the State Auditor General to audit the bid process.[117] The results of that audit showed that the AZSTA was free of any inappropriate activity.[118] While the AZSTA was deemed to have done nothing legally wrong, the process of how they made their selection was heavily criticized because it created extra work and cost for the agency, as well as for the state of Arizona.[119]

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111. Watters, *supra* note 103.

112. *Id.*

113. *Minutes of the 100th meeting of the Board of Directors*, Arizona Sports & Tourism Authority (Feb. 9, 2010), http://www.az-sta.com/downloads/files/meetings/board-minutes-292010.pdf.

114. Ballparks.com, University of Phoenix Stadium, http://football.ballparks.com/NFL/Arizona Cardinals/newindex.htm (last visited Feb. 3, 2015).

115. Watters, *supra* note 103.

116. Mike Sunnucks, *Arizona Legislature asks AZSTA Officials for Info on UOP Stadium Concessions Deal, Cubs Financing*, http://www.bizjournals.com/phoenix/stories/2010/02/08/daily79.html (last visited Feb. 3, 2015).

117. Watters, *supra* note 103.

118. Mike Sunnucks, *Audit Clears Arizona Cardinals Concessions Contract with Stadium Authority* (Dec. 23, 2010), http://www.bizjournals.com/phoenix/news/2010/12/23/audit-clears-cardinals-concessions-bid.html.

119. *Id.*

APPENDIX A: AZSTA FINANCIAL STATEMENTS

AZSTA SCHEDULE OF NET ASSETS[120] AS OF JUNE 30, 2008, 2009, AND 2010 (IN MILLIONS OF DOLLARS)

	2008	2009	2010
Assets:			
Cash and cash equivalents -			
Restricted for bond reserve and payments	$12.3	$14.3	$14.8
Restricted for youth and amateur sports	3.8	3.7	3.6
Restricted for Tourism and Facility Revenue Clearing Account distributions [1]	3.3	2.6	3.1
Restricted ticket sales held for promoters		4.2	0.2
Restricted for construction	0.3		
Designed for facility operations	0.2	0.5	0.7
Unrestricted general operating	*8.9*	*5.4*	*8.9*
Total cash and cash equivalents	28.8	30.7	31.3
Capital Assets, net of accumulated depreciation	457.7	442.2	426.7
Deferred bond issue costs, net	8.9	8.4	7.9
Hotel tax, car rental surcharge, and sales tax recapture receivables	4.9	4.1	5.6
Other	*0.8*	*0.7*	*0.8*
Total assets	*501.1*	*486.1*	*472.3*
Liabilities:			
Bond-related [2]	319.2	321.6	320.4
Cactus League payable	128.6	130.6	136.7
Arizona Cardinals payable	6.9	7.2	7.6
Accounts payable and accrued expenses	3.2	5.9	2.0
Youth and amateur sports payable	3.8	1.9	2.3
Other	*1.3*	*0.7*	*1.7*
Total liabilities	*463.0*	*467.9*	*470.7*
Net assets	$38.1	$18.2	$ 1.6

120. *Performance Audit: Arizona Sports and Tourism Authority,* Office of the Auditor General (March 2009), http://www.azauditor.gov/Reports/Other/PAD/Arizona_Tourism_and_Sports_Authority/09-04/09-04.pdf.

[1] Consists of monies received that have not been distributed for statutory funding priorities.
[2] Beginning in fiscal year 2009, as a result of the implementation of a new accounting standard, the amount includes a liability for the value of the Authority's senior variable bond swap agreement that it entered to protect against interest rate increases. Because interest rates have fallen significantly in the past years, the agreement had a negative fair value to the AZSTA resulting in a liability of approximately $3.9 and $6.9 million at June 30, 2009 and 2010, respectively.

AZSTA SCHEDULE OF REVENUES, EXPENSES, AND CHANGES IN NET ASSETS[121] FOR FISCAL YEARS 2008, 2009, AND 2010 (IN MILLIONS OF DOLLARS)

	2008	2009	2010
Operating revenues and expenses:			
Stadium revenues [1]	$13.1	$10.3	$23.2
Less: stadium expenses [1]	*22.7*	*19.9*	*28.2*
Operating loss before depreciation and AZSTA operating expenses	9.6	9.6	5.0
Depreciation	15.6	15.6	15.5
AZSTA operating expenses	*1.2*	*1.1*	*1.1*
Operating loss	*26.4*	*26.3*	*21.6*
Non-operating revenues:			
Hotel bed taxes	15.1	12.4	11.5
Rental car surcharges	10.3	8.8	9.3
Sales tax recapture	6.5	7.2	7.3
NFL income taxes	4.1	4.2	6.4
Other	*1.0*	*0.6*	— [2]
Total non-operating revenues	*37.0*	*33.2*	*34.5*
Non-operating expenses:			
Bond interest and other related expenses [3]	16.5	18.4	16.3
Cactus League facility expense	6.2		
Other interest	1.8	3.6	6.3
Arizona Office of Tourism distribution	5.4	5.7	5.3
Youth and amateur sports awards	*2.0*	— [2]	*1.6*
Total non-operating expenses	*31.9*	*27.7*	*29.5*
Net non-operating revenues	*5.1*	*5.5*	*5.0*
Decrease in net assets	21.3	20.8	16.6

121. *Id.*

Net assets, beginning of year	59.4	38.1	18.2
Restatement, change in accounting policy [4]		0.9	
Net assets, end of year	$38.1	$18.2	$ 1.6

[1] Amounts include event revenues and expenses, including monies collected at events that are paid to event promoters.

[2] Amount is less than $50,000 and does not appear in this table because amounts are shown in millions.

[3] Amounts include amortization of deferred bond issue costs and various fees related to the AZSTA's variable interest rate bonds. Beginning in fiscal year 2009, it also includes the change in fair value for the AZSTA's senior variable bond swap agreement. See footnote 4 below for additional information.

[4] Amount is an adjustment the AZSTA made to implement a new government accounting standard. The effect of implementing the standard is that, beginning in fiscal year 2009, the AZSTA now reports the changes in fair value for its senior variable bond swap agreement.

TEACHING NOTE

I. THE BIG RED MESS: ARIZONA CARDINALS AND THE UNIVERSITY OF PHOENIX STADIUM CONCESSIONS CONTRACT CASE OVERVIEW

The Arizona Sports & Tourism Authority (AZSTA), a corporate and political body charged with economic development in the Phoenix metropolitan area through increasing sports and tourism activities, was established via the passage of Arizona Senate Bill 1220 and Proposition 302. A significant part of the AZSTA's mission was to own and manage the operations of the University of Phoenix Stadium, a state-funded multi-use facility that is the home to the Arizona Cardinals and the Tostito's Fiesta Bowl. In 2010, the AZSTA was facing a significant revenue shortfall. The case describes how the AZSTA, as a pseudo-government agency, is severely limited in ways it can increase revenues and is required by Arizona law to a statutory flow of funds in order of specific priority; leaving very few options to resolve their financial obligations. Tom Sadler, President and CEO, along with the AZSTA's board of directors, decided to use their concessions contract (which was set to expire) as a means to generate additional revenue. The case describes how the Arizona Cardinals organization, the AZSTA's main client as the University of Phoenix's top tenant, established a new concessions fulfillment company, named Rojo Hospitality, in order to compete for the lucrative contract. The AZSTA finds themselves in an ethically "gray area" when they decide that awarding the concessions contract to their most powerful stakeholder is in their best long-term strategic interests.

A. Usage of Case

This case is appropriate for use in a standalone business ethics course, or in an ethics module for a course in strategic management, strategic marketing, sports management or business law/legal environment of business. The case offers a great opportunity for students to evaluate a difficult business situation with a myriad of background key issues (and unintended consequences) that should be addressed.

This case may be used at either the undergraduate or graduate level. If used at the undergraduate level, students should be exposed to a general ethics framework before assigning the case. This case offers an opportunity to discuss the role of boards of directors, conflicts of interest, strategic control and coordination, and the importance of strategic relationships. Of particular interest, this case also offers an opportunity to discuss politics and business, without having to be bogged down with partisan political discussions that many instructors may choose to avoid.

Students will likely find this case to be very interesting and enjoyable. Students, as a group, seem to be interested in sports management, with many students having great familiarity with sports teams. Students will likely be very surprised by the political environmental issues, contractual issues, as well as the interesting power and relationship dimensions that shape how business is done.

B. Learning Objectives

The learning objectives of the Arizona Cardinals Concessions Contract case are:

To identify primary and secondary stakeholders of the Arizona Sports and Tourism Authority and the University of Phoenix Stadium, as well as to understand how these stakeholders affect business performance.

To understand the strategic implications of relationships and critical forces.

To understand the political environment and how politics can shape business decisions.

To understand different power dimensions, as well as the potential conflicts of interest that may arise from leveraging this power.

To develop and evaluate strategies to respond effectively to the issues presented in the case.

To understand the importance of strategic coordination and control.

To understand how ethics affects strategic decisions, as well as the importance of evaluating potential unintended consequences of strategic decisions.

C. Sample Questions

What is the mission of the AZSTA? Why is this mission important to the state of Arizona?

Has the AZSTA been successful in accomplishing their mission?

What are the sources of revenue for the AZSTA?

What environmental and political factors are shaping the decision point highlighted in the case?

Should the AZSTA simply award the concessions contract to Rojo Hospitality, with its close relationship to the Cardinals organization?

Who are the primary stakeholders in this case? Who are the secondary stakeholders in this case?

Who is appointed to the AZSTA Board of Directors?

Do any of these stakeholders hold significant power or influence? Do any of these stakeholders have low power to influence?

Was it ethical to award the concessions contract to Rojo Hospitality? What sort of ethical analysis would justify this decision?

How can the AZSTA improve their decision making process? What steps should AZSTA take to better manage the concessions contract situation?

For undergraduate students, the authors suggest offering the sample questions before the class meets so that they are better prepared for a thought-provoking class discussion. For graduate students, the authors suggest the instructor not offer these questions before the class discussion, as it is preferred for more sophisticated students to conceptualize the key issues surrounding the decision point on their own. Graduate students can be asked to come to class prepared with their own clear key issue statements. It is quite interesting to note how different students will conceptualize the core problems very differently

D. Teaching Plan and Class Discussion

The authors suggest beginning case discussion by asking for student volunteers to give a quick overview of the case. The first student will likely give a good generic overview of what is going on and will also likely offer some preliminary opinions on what is wrong/right with the situation. The next student volunteer can be asked to respond to that overview and offer any new perspectives. This student will likely give additional overview that is complementary to the first student, but will also likely differ slightly regarding their thoughts on what is going wrong/right with the situation. A third or fourth student, if needed, can be asked to give a general overview as well.

The importance of getting general perspectives right away is that it should point out that many of us will look at the problems presented in the case differently. Some of the factors that will really interest some students, may not be considered a big issue to others. We find that it is helpful for the instructor to restate the general overview comments given by students into salient problem statements that exhibit a clear need or discrepancy that must be addressed.

This approach seems to inspire better discussion without requiring the instructor to "spoon feed" a list of problems to the class. At the graduate level, students should be prepared to offer their own key issue statements without the need for the instructor to do this for them.

Several key issues that may come up from the initial case introduction:

The AZSTA was facing significant financial difficulties ($10 million shortfall was expected for 2010).

There was a need for the AZSTA to find ways to increase revenues and decrease expenses so they could reach financial viability.

The AZSTA had a critical mission that was important to the state of Arizona, especially given the economic recession during the time of the case.

There was a need for the AZSTA to increase Arizona and Maricopa County tourism.

The Cardinals could be angered by the AZSTA's decision and leave Arizona altogether.

There was a need for the AZSTA to have better coordination and control of their operations, as well as their strategic partners.

There was also a need to make the Arizona Cardinals organization happy because they were a powerful stakeholder who had direct influence on whether or not the AZSTA could achieve their organizational mission.

The AZSTA could damage their reputation among important stakeholders. The AZSTA originally tried to award the concessions contract to Rojo/Cardinals organization without a formal bidding process. Even when they did go through a formal RFP and decided to enter into exclusive negotiations with Rojo, this angered the media, many taxpayers and many state politicians.

The University of Phoenix Stadium was a publicly-financed and owned stadium. As the taxpayers of Arizona technically owned the stadium, there was a need to maintain transparency, scrutiny and fairness when reviewing contract bids.

The AZSTA was a pseudo-political body with a Board of Directors appointed by Arizona politicians.

The AZSTA needed to be able to justify changes to concessionaires and needed to ensure that bidding procedures were administered in a legal and ethical manner.

There was a need to ensure that state lawmakers were happy.

The Arizona Cardinals were not the only AZSTA partner; there could be conflicts of interest by awarding that contract to a close affiliate of the Cardinals organization.

The AZSTA needed to consider other partners, such as the Tostito's Fiesta Bowl, who may have been concerned that the Cardinals organization would have too much power by having such a close relationship with the concessionaire.

Stadium customers were a critical group. Most customers might not have cared about the actual vendor, but would have cared about the service offerings from that vendor.

There was a need to make customers happy and to select a concessions vendor who could help make these customers happy.

Once key issues are briefly discussed, students should see that the AZSTA decision is not "black and white." Unfortunately, there are many gray issues surrounding this particular decision point. The instructor can briefly ask the students if they, personally, would feel comfortable making this decision.

Next, it is suggested that the instructor utilize the sample questions to take the discussion to a deeper level. The first question is designed to ensure that students understand the strategic purpose of the AZSTA. Subsequent questions are designed to help the students understand important stakeholders, environmental factors, as well as potential ethical, legal and reputational issues that could arise for the AZSTA.

II. WHAT IS THE MISSION OF THE AZSTA? WHY IS THIS MISSION IMPORTANT TO THE STATE OF ARIZONA?

According to their website (as of 2014; they had a very similar mission during the decision point for the case), "The Arizona Sports and Tourism Authority enhances our economy and our community's quality of life through the development of professional and amateur sports facilities, the attraction of entertainment, sporting, and business events, and through tourism promotion. Formed as a result of voter approval of Proposition 302 in November 2000, AZSTA is responsible for: Owning and operating the University of Phoenix Stadium; Funding tourism promotion in Maricopa County; Funding the construction and renovation of Cactus League Spring Training facilities; Funding youth and amateur sports projects and programs; The Citizens of Maricopa County."

This mission is important in that it is designed to develop tourism and leisure opportunities in the state of Arizona, particularly in Maricopa County. This mission is also a bit complicated as this organization is a quasi-political organization governed by directors that are appointed by Arizona state politicians and relies upon revenue generated via taxes on tourism.

III. FOLLOW UP QUESTION: HAS THE AZSTA BEEN SUCCESSFUL IN ACCOMPLISHING THIS MISSION?

In general, the AZSTA has been successful thus far in accomplishing their mission. According to the 2010 Proposition 302 Ten-Year Retrospective Report, the 10-year economic impact is listed at $3.8 billion for the state of Arizona, with 11,610 annual jobs created. This report also identifies that "for every dollar spent to market Arizona as a destination, a return of seven dollars is realized."

The actual construction of the University of Phoenix stadium also generated $32.2 million in taxes for the state and Maricopa County, with approximately $23.5 million per year in primary and secondary tax collections generated from ongoing operations of the stadium as well as the Cardinals organization.

Additionally, it could be argued that Arizona residents' quality of life is much improved by having an NFL franchise, and by having a large spectator venue that attracts not only sporting events (including Super Bowl events, the Tostitos Fiesta Bowl and BCS Championship games) but also attracts large-scale music acts and other entertainment to the state.

IV. FOLLOW UP QUESTION: WHAT ARE THE SOURCES OF REVENUE FOR THE AZSTA?

Proposition 302 established a tourism revenue clearing account for the AZSTA. Here, a 1% hotel bed tax and a 3.25% car rental surcharge are levied to fund the AZSTA. Additionally, the AZSTA has a facility revenue clearing account from operations at the University of Phoenix Stadium. Here, the AZSTA receives tax revenue generated on NFL income (including Cardinals' employees/players/spouse Arizona state income taxes), as well as sales tax recapture (set at 5% of state sales taxes generated at stadium events) and facility event revenues (including Cardinals rent, Fiesta Bowl payments, and facility use fees).

V. WHAT ENVIRONMENTAL FACTORS ARE SHAPING THE DECISIONS HIGHLIGHTED IN THE CASE (OR THE DECISIONS MENTIONED BY STUDENTS AND HIGHLIGHTED ON THE LEFT BOARD)?

A board plan is useful for discussing environmental factors. On the right board, make a list as students mention factors in the environment that affect the decision. A framework, like PESTEL (or PETSC) can help here. When making the list, try to organize the list in terms of positive factors and negative factors. Listing positive and negative factors can be problematic for students, so you will likely need to clarify that you mean positive environmental factors are in the firm's favor (potential opportunities) and negative environmental factors that are not in the firm's favor (potential threats). The purpose of this list is to identify those factors that may lead to uncertainty and may shape the final decisions. Some of the factors that will likely be discussed are the following:

Political factors: The AZSTA is a political organization that was established via Proposition 302 (November 2000), which allowed for the construction of the University of Phoenix Stadium. The organization must answer to a board of politically appointed members. Since rental cars and hotel rooms are taxed to fund the AZSTA, representatives from the tourism industries have a major stake (these industries are also represented on the Board). Debbie Johnson, President and CEO of the Arizona Hotel & Lodging Association, stated in the Prop 302 Ten-Year Retrospective Report that, "the monies generated by Proposition 302 are an integral part of the tourism promotional efforts of Maricopa County. These valuable dollars play a critical role in marketing hotels, attractions, arts & culture, sporting events and other attributes that attract visitors to our destinations. These visitors, in turn, support tens of thousands of tourism jobs and generate millions in state, county and city tax revenues." Because the political environment is so critical to the AZSTA, the organization spent $96,000 on lobbying efforts in fiscal years 2009 and 2010.

Economic factors: Tourism is big business for the state of Arizona and Maricopa County. According to the 2010 Proposition 302 Ten-Year Retrospective Report, the 10-year economic impact is listed at $3.8 billion for the state of Arizona, with 11,610 annual jobs created. Because of the economic impact, the success of AZSTA is critical. Unfortunately, during the time of the case decisions, the United States was in the midst of an economic recession. Consequently, the AZSTA was experiencing significant operating deficits with projected revenues insufficient to cover projected expenses. According to the 2009 AZSTA Special Audit Report, many factors contribute to this financial situation, including: (1) lower NFL income tax collections are not growing at the rates projected (i.e., projections of 8-percent annually are more like 2.2-percent annually); (2) decisions by the AZSTA have resulted in reduced revenues and higher debt obligations (e.g., construction and material costs for the stadium were higher than projected; the AZSTA funded $9.61 million in interior improvements to the stadium facilities; and the AZSTA undertook site improvements that were originally supposed be the responsibility of the City of Glendale); (3) event expenses were higher than projected and led to the AZSTA having unrecovered operating costs of approximately $8.6 million in 2007 and $9.1 million in 2008; (4) poor economy was leading to declining tourism revenues which directly impact AZSTA revenues.

Socio-cultural factors: The University of Phoenix Stadium is a world class sports and entertainment venue. Because of the stadium, as the home of the Arizona Cardinals NFL franchise and the Tostitos Fiesta Bowl, the state of Arizona has been able to attract cultural events such as BCS Championship games, Super Bowl events, WWE Wrestlemania events, and music acts. The venue has a capacity of 63,400 seats (expandable to 72,200, with standing room capacity for at least 78,600). These high profile events are a big draw to the state of Arizona. As the main tenant at the stadium, the Arizona Cardinals NFL franchise is critical partner. The NFL is an increasingly popular phenomenon in the United States, with record breaking Super Bowl viewership in recent years, as well as increasing popularity of NFL video games and NFL players. Unfortunately, The Arizona Cardinals popularity is relatively low as compared to most NFL franchises, but given the size of the state it would be a very odd situation if the Cardinals left the state altogether, leaving no NFL franchise in Arizona.

Technological and Ecological factors: Technological factors likely play a relatively minor role in the actual decision. In many ways, though, having a food concessionaire who uses technology to drive better efficiencies could help to lessen the AZSTA's revenue shortfall. Ecological factors are also likely to play a relatively minor role in this actual decision. Having a food concessionaire who recycles, monitors water usage, and sources food from sustainable sources is probably an important consideration, but these factors do not appear to be primary considerations with this particular decision. The AZSTA will definitely be concerned with safety overall, including food and water safety, safety from accidental injury, safety due to waste removal, and safety due to security.

Legal factors: According to Section 1 of the AZSTA Bylaws, the "Authority has been created and organized as a corporate and political body of the State of Arizona and, except as otherwise limited, modified or provided by law, has all of the rights, powers and immunities of municipal corporations, including the power of eminent domain pursuant to the provisions of Arizona Statues §5-801 et seq., as amended." The AZSTA is legally bound by Proposition 302. The Authority is limited in that they cannot change the bed tax and rental car surcharge percentage without voter approval. Additionally, they cannot make any changes to their other significant sources of revenue without legislative action. Finally, the AZSTA is legally bound by the facility agreements they have entered into; they cannot arbitrarily modify these agreements without violating state law.

For government contracts in the state of Arizona, there is a strict rule that competitive bids are required. Interestingly, the AZSTA is exempt from the state of Arizona's procurement policies so they are not legally required to go through a formal bidding process. The AZSTA did not use any competitive bidding for its legal services and lobbying contracts. Additionally, the AZSTA originally decided not put up the concessions contract up for formal bids, but due to stakeholder pressure (and to avoid potential reputation problems), they decided to open up the concessionaire contract to formal bids.

VI. SHOULD THE AZSTA HAVE AWARDED THE CONCESSIONS CONTRACT TO ROJO HOSPITALITY, WITH ITS CLOSE CONNECTION TO THE CARDINALS ORGANIZATION, WITHOUT GOING THROUGH A FORMAL BIDDING PROCESS?

This question offers the opportunity to tease out the true ethical dilemma in this case. Since the AZSTA is not legally required to put their contracts up for formal bid, they will not break any laws by making their awards to any concessionaire (so the legal domain is satisfied). While no laws are affected, it could be argued that there is an ethical requirement to be fair, to be transparent, and for the AZSTA to adopt a procurement policy that is comparable to how state government projects are competitively bid (so many students will agree that the AZSTA is in a "gray area" and could potentially be guilty of violating ethical standards).

In many ways, sticking with the current concessionaire is easier as this concessionaire has already been successfully servicing the contract. Unfortunately, business decisions aren't always easy and the fact of the matter is that the AZSTA must identify additional sources of revenue. Legally, they can't modify Proposition 302 to find additional revenue sources without getting voter approval and they can't modify existing contracts for additional revenue generation without breaking the law. Furthermore, the Arizona legislature and state Governor would have to make legislative changes to modify other ways the AZSTA generates revenues.

Needless to say, Tom Sadler, as President and CEO of the AZSTA, is in a very difficult situation. To maintain financial viability, something must be done soon. The Arizona Cardinals organization proposed in early 2008 that the partners in the University of Phoenix facility use a shared-interest concept to help drive up revenues and to help drive down costs. While the shared-interest concept was initially ignored, this option became more and more viable as the realities of the financial situation became more salient. In many ways, the partnership idea sounds extremely viable as a means to generate operational efficiencies and to help identify additional revenue sources, but there are other consequences that should be considered.

From reviewing the minutes of Board meetings around the time of the decision, it appears that the Board has strong interest in partnering with a powerful stakeholder, like the Bidwill family, to make the organization more financially viable. There are both positives and negatives of strengthening the relationship with the Bidwill family. Students should be prompted to think about the unintended consequences that potentially could occur here.

A quick discussion should identify several positives, as well as several negatives of awarding the contract to the Cardinals:

Positives:

Stability of the marketplace. The Cardinals are less likely to leave Phoenix if they have more of a stake in the organization. Rojo's concessions involvement makes for a stronger partnership and gives the Cardinals more "skin in the game".

The Cardinals are happier. As a strategic partner and as the dominant tenant at the University of Phoenix stadium, it is important that the Bidwills are happy with their relationship. The Bidwill family is also very powerful and well-connected in the state of Arizona. An enhanced partnership with the family may give them access to better resources.

The Cardinals organization has made guarantees that they can increase revenues and find efficiencies. As a part of their bid, the organization offered \$750,000 in increased revenues as a guarantee. No other bidders are in the position to make offers such as this.

The Cardinals organization is politically powerful and well-connected. They may be able to help the organization with enhanced lobbying and by using their relationships to better find new sources of revenue.

Better coordination and control could result from having fewer contractors overall. Efficiencies can result from having fewer suppliers. By awarding concessions to the Cardinals organization may lead to mean more opportunities for cross promotion and more opportunities to find new sources of revenue.

Negatives:

Rojo Hospitality is a new subsidiary in the Cardinals organization and they do not have a proven track record. This is a big contract; Rojo may not have the experience to deliver on their promises.

While no laws are violated, the AZSTA's reputation could be damaged.

By shifting to Rojo, a vetted concessionaire who has done a good job in the past will lose the contract. Pulling a contract from a proven concessionaire will be a hard sell to the media, who could have a field day with reporting on this story.

While not required by law, the AZSTA uses a different competitive procurement process than the one the Arizona state government is required to use. Using a different process could be considered "shady" by many constituents.

Arizona residents could be angered that the Cardinals organization is getting special treatment because they are such a powerful stakeholder. As a political organization, their strategic moves are heavily monitored by the public.

The AZSTA Board could be accused of not protecting the best interests of Maricopa county citizens who voted for Proposition 302.

The Bidwill family, as a strategic partner, would become even more powerful and could leverage that power against the AZSTA should they choose.

Does the AZSTA really want to add to the Cardinals power?

What happens with the next lucrative contract that expires? Will the Cardinals organization expect special treatment on contract bidding in the future? Will they have the power to push the Board around?

The Tostitos Fiesta Bowl, as the other main tenant, could be angered by increasing the power of the Cardinals organization.

VII. WHO ARE THE PRIMARY STAKEHOLDERS IN THIS CASE? WHO ARE THE SECONDARY STAKEHOLDERS IN THIS CASE?

This part of the discussion lends itself well to having a board plan. On the left side of the board, make a quick list of the stakeholders as students present them. You may have to prompt students to identify the secondary stakeholders as some students may not think of these groups, or may not have thought through the fact that these stakeholders are, potentially, affected by the issues presented in the case.

Once a general list is presented, try to get the group to parcel out which groups are primary and which ones are secondary. Students should know the difference, but if not, offer a quick discussion on how *primary stakeholders* directly impact the firm's business activities and their ability to carry out its primary mission of providing goods/services, with *secondary stakeholders* being impacted, either directly or indirectly, by the firm's business activities and decisions.

After the students identify stakeholders, the instructor may need to get the group to further develop the list by adding new entries to the list, or by having the group think about dividing certain entries into more usable groups (e.g., some employees may be very powerful, while others have little to no power). The follow up to question 1 may help here.

VIII. FOLLOW UP QUESTION: DO ANY OF THESE STAKEHOLDERS HOLD SIGNIFICANT POWER OR INFLUENCE OVER THE DECISION? ARE ANY OF THESE STAKEHOLDERS LOW POWER OR HAVE LITTLE INFLUENCE?

Working off of the stakeholder list on the left side of the board, make a notation on which stakeholders are powerful and which groups are not powerful. If a group is powerful, try to get the group to identify what makes that group powerful (e.g., a specific buyer holds power over price, or a special interest group has the power to damage firm reputation). With certain groups, students may need some help. For example, grouping employees into one group or customers into one group may be problematic. Certain customers, like institutional customers, may hold considerable power over the firm, with other customers having low power because they are captive to the activities of the firm.

Primary Stakeholders: Employees and management of AZSTA*, board of directors of the AZSTA*, current tenants of the stadium*(Arizona Cardinals and Tostitos Fiesta Bowl), potential tenants who may lease the venue*, customers/spectators who visit the stadium to watch an event (this group may not care who the concessionaire is so long as the quality of operations is acceptable), the National Football League*, the University of Phoenix who acquired the naming rights as a corporate sponsor in September 2006 for $154.5 million over 20 years.

Secondary Stakeholders: Arizona state and local Maricopa County government*, state lobbyists, the media, special interest groups, citizens of Maricopa County who approved Proposition 302, the general Arizona public, other businesses in the tourism industry* (including restaurants, hotels, Sky Harbor International Airport, etc.), Cactus League, and Youth & Amateur Sports.

The stakeholders denoted with an asterisk (*) are likely powerful stakeholders who have leverage and whose stake must be considered before any decision is made. It is interesting to note that many of these players have political power.

IX. FOLLOW UP QUESTION: WHO SITS ON THE AZSTA BOARD?

The AZSTA is a governed by a nine-member board of directors. These directors are non-paid citizens of Maricopa County who are appointed to 5-year terms by the Governor of the State of Arizona (who appoints five members representing the tourism industry, the hotel/motel industry, youth sports organizations and spring training organizations for Major League Baseball), the Senate President (who appoints two members from different political parties) and the House Speaker (who also appoints two members from different political parties).

The Board membership changed during the time of the decision. On July 15, 2009 (the 94th meeting of the Board), board membership was listed as:

Gerald "Jerry" Walker—Chairman;
Brad Wright;
Bill Peltier;
John Benton;
Judy Bernas;

Rod Williams;
Jody Harwood; and
Verma Pastor

By July 20, 2009 (the 95th meeting of the Board), Brad Wright replaced Jerry Walker as the new Chairman. By December 28, 2009 (the 98th meeting of the Board), the following member was added to the board's membership:

Robert Brinton

X. WAS IT ETHICAL TO AWARD THE CONCESSIONS CONTRACT TO ROJO HOSPITALITY? WHAT SORT OF ETHICAL ANALYSIS WOULD JUSTIFY THIS DECISION?

In order to determine whether it was ethical to award the concessions contract to Rojo Hospitality, students should have an ethical decision-making framework. For the purposes of this Teaching Note, the COVER model of ethical decision making is used.[122] The COVER model incorporates classic decision-making skills (such as fact gathering, issue identification, stakeholder identification and prioritization and alternative generation) with ethical analyses using law, utilitarianism, values-based ethics, and Kantian ethics. The five ethical components in the COVER model (from which the model derives its name) with a brief description are

Code — students should analyze the alternatives with regard to any relevant codes. This includes laws, regulations, industry codes of conduct or ethics and company codes of conduct or ethics.

Outcome — based in Utilitarianism students are asked to evaluate each alternative with a cost/benefit analysis.

Values — students apply the company's mission statement to the alternatives to determine which alternatives best match the company's stated values.

Editorial — students apply the mission statement to the worst publicity that will come from each alternative. This step is based on the "grandma" test.

Rule — students analyze each alternative as if every decision-maker facing a similar decision selects the same alternative and then determine if this "makes the world a better place." This step is based in Kant's categorical imperative and prevents decision-makers from making poor decisions because they are "just one small actor."

In evaluating the alternative to award the contract to Rojo Hospitality, the students should apply the steps as follows:

Code — Because the AZSTA is a semi-governmental entity, it is exempt from the Arizona laws requiring a bidding process. Even so, the "company" had instituted a policy requiring a bidding process for contracts over a certain dollar amount. This contract would require a bidding process under that policy and so the Board would have to waive that policy to award the contract without that process. The Board may have the authority to do so, but chose not to do so. By choosing to

122. Jennifer Mitchell and Eric Yordy, *COVER It: A Comprehensive Framework for Guiding Students Through Ethical Dilemmas*. 27 J. Leg. Stud. Educ., 35–59 (2010).

go through a bidding process, the Board was compliant with its own policies and so violated no code of conduct or ethics.

Outcome — There are several costs and benefits to awarding the contract to Rojo Hospitality:

Benefits	Costs
Strengthen the relationship with the Cardinals organization — the organization won't leave	Apparent conflict of interest — may upset other stakeholders Also if Rojo cannot handle the contract, there is a risk that this will upset the Cardinals organization and they will leave
Rojo promised an extra $750,000 of revenue	Risk associated with a start-up company: no history of quality menu items, no history of success
Rojo is a local company so it may keep more money in Arizona and may hire more local management	

Values: As is stated above, the AZSTA's mission is as follows:

The Arizona Sports and Tourism Authority enhances our economy and our community's quality of life through the development of professional and amateur sports facilities, the attraction of entertainment, sporting, and business events, and through tourism promotion. Formed as a result of voter approval of Proposition 302 in November 2000, AZSTA is responsible for: Owning and operating the University of Phoenix Stadium; Funding tourism promotion in Maricopa County; Funding the construction and renovation of Cactus League Spring Training facilities; Funding youth and amateur sports projects and programs; The Citizens of Maricopa County.

This mission statement may not justify hiring Rojo Hospitality if the company cannot produce high quality food items and service. However, if the quality is equivalent to the other bidders, then hiring Rojo Hospitality is supported by the mission in that it keeps more money in Arizona which can be used for the AZSTA's programming and promotion needs.

Editorial. Awarding the contract to Rojo Hospitality most certainly will result in charges of conflict of interest by news outlets. In order to be prepared for the negative publicity, the AZSTA must be very transparent in how this decision will support the AZSTA's mission and result in economic development for Arizona. The AZSTA also will need to be very transparent in the process it follows and should be ready and able to document how the process was a fair process.

Rule. If all venues hired contractors with close ownership relationships to their largest clients, it may result in the perception that only those major clients will receive benefits, or will receive special benefits, by the venue. In addition, using smaller companies may lose the ability to purchase supplies in large scale, thus costing more. On the other hand, using local companies with ties to the venue may retain funds in the local area and improve the local economy. In addition, local companies may have more desire to see the local venue succeed than an international company would.

Overall, using this ethical framework (or a similar framework) allows the students to view the alternative from a variety of lenses and make a well-reasoned decision.

XI. HOW CAN THE AZSTA IMPROVE THEIR DECISION MAKING PROCESS? WHAT STEPS SHOULD AZSTA TAKE TO BETTER MANAGE THE CONCESSIONS CONTRACT SITUATION?

The AZSTA is a quasi-political institution. Given their strategic mission, they must make difficult decisions given the political realities that exist. The AZSTA has never been accused of violating any laws by their concessions procurement policies, but they definitely came under scrutiny for the way in which they managed the process. In many ways, their decision to go with Rojo Hospitality is justified, as the AZSTA was having financial instability and needed to find additional sources of revenue. The AZSTA projected that they would have operating deficits through 2014 and that these deficits would be of a magnitude that the projected cumulative deficits would reach $6 million by 2016.

The December 2010 AZSTA Performance Audit Report states that the "concessions procurement largely adhered to best practices" but that "additional policies and procedures for future procurements would be helpful." In essence, this audit found that the AZSTA didn't violate any laws as they are exempt from Arizona state government procurement policies. The process made use of an evaluation review team who used a valid evaluation instrument. The procedure did not follow best practices in that it did not include any specific evaluation weights for RFP criteria (so no weights were communicated to bidders) and did not follow best practices in terms of the receipt and review of proposals.

The AZSTA adopted its own procurement policy in March 2004 (at the suggestion of the Auditor General in Report No. 04-01), but it was noted that they don't always use this policy. For example, the AZSTA awarded its legal services and lobbying contracts in 2008–2010 without formal bids. The procurement policy [that was adopted in March 2004] specifies that the Authority [AZSTA]:

> Issue an RFP when contracting for general goods or services that have either a total acquisition or contract value of $25,000 or more. If the Authority determines that the services are specialized or competition is not practicable, the Authority will not issue an RFP. In these cases, the Authority will use written quotes or other documentation to support its decision.
>
> Will not issue an RFP for goods and services with a contract value totaling $25,000 or less that are included in the Authority's annual adopted budget. In situations where an RFP is not issued, the Authority will instead use written or verbal quotations to prove that a competitive price was obtained.
>
> Authorizes the Chief Executive Office to enter into contracts up to $100,000 without prior Board of Directors ratification.

> These contracts/agreements are due to the Board at the next board meeting following the contract's execution.
>
> Will monitor all contracts entered into and verify that, prior to making contractual payments, the goods/services have been provided/received according to the terms and conditions set forth in the contract.

The December 2010 Performance Audit report recommends that the AZSTA should always follow its policy for any bids that are valued at more than $25,000 or give strong documentation on why a competitive bid is not needed. It was also suggested that following such a policy should help to produce higher quality contracts.