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LISA WARD, Land Acquisition and Planning,
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ZENITA WICKHAM-HURLEY, Special Secretary,
Governor's Office of Minority Affairs;

MARY JO CHILDS, Procurement Advisor, Board
of Public Works; and,

MARION BOSCHERT, Recording Secretary, Board
of Public Works.

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P R O C E E D I N G S

GOVERNOR O'MALLEY: Welcome to the Board of Public Works. In case some of you are wondering why we are over here it is because we are having a bond sale. We are one of only eight states that defends a AAA bond rating of these United States and that is due to the fiscal discipline applied by the Comptroller, the Treasurer, and other people within this State's government. And so at 11:00 we will be breaking in order to offer for sale Maryland's AAA rated bonds. And the Treasurer will walk us through all of those proceedings.

Before I turn it over to the Treasurer and the Comptroller I wanted to note with sadness the passing of Hatim Jabaji. Hatim, many of you would have known. Some of you worked with him in the City of Baltimore. He was really our green building, energy conservation go to guy. Our guru on how to do this and how to transform our buildings so that the manner in which we operate them could be more energy conscious, could be cleaner, could be greener. And he had passed away rather suddenly and unexpectedly

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leaving behind a beautiful young wife and two little boys. So our hearts go out to the Jabaji family, and we are going to miss him.

I also note with, on the flip side of the coin of sadness that we are very glad to be joined by Zenita Hurley, who is here as our new Director, Secretary of Minority Business Development for the State of Maryland. And we welcome you, Zenita.

(Applause)

GOVERNOR O'MALLEY: Last year we achieved over 24 percent minority business participation, I believe, in StateStat agencies and I know you'll do a good job moving us forward to the next level. Pretty amazing that for all of the excuse that the recession might have given the departments and the agencies that instead they did better in terms of minority business and women business inclusion. So thank you for stepping into this important role.

Madam Treasurer, do you want to tell us what the bond sale is all about today?

TREASURER KOPP: Thank you, Governor. Very briefly we are in the midst of a semi-annual bond

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sale. We sold \$50 million worth of bonds on Friday and Monday directly to Maryland, individual Maryland investors, Maryland citizens. Every Maryland citizen who signed up with a broker and said they wanted to buy a Maryland bond got a Maryland bond. Today is the large sale of about \$550 million, \$543,915,000 to large institutions, the competitive sale. Seven firms have already registered to bid on our bonds. As you point out there are not that many AAA rated states around the country, AAA rated by all three rating agencies. And so there is a premium on Maryland bonds.

We're going to have that sale at 11:00. And then after that in another room there's going to be a sale of the refunding bonds. We found about \$140 million worth of bonds that we believe we can sell at, and get a lower rate, save some millions of dollars. We're not sure how much yet. And then at 11:30 Patti Konrad, who is our State Director of Debt Management, will come back and let us know what the rates were and what the savings were for the citizens and the total savings.

The money as you know goes to build schools and other capital facilities. Some states, they go from paycheck to paycheck borrowing money to, for payrolls and operating expenses. We don't do that in Maryland. That's one of the main reasons we're a AAA rated state. We're very prudent. And I think we'll do extremely well and we'll find out in a little while.

GOVERNOR O'MALLEY: Mr. Comptroller?

COMPTROLLER FRANCHOT: Thank you, Governor. And I hope everyone is enjoying the early spring weather. I asked that the windows be opened. Hatim is probably upset with me up there for letting Mother Nature in. But I will salute him, also. I disagreed with him from time to time when he was before the Board. But he was such a spectacularly smart and nice guy. And I know he revered the Governor. And I am so delighted that he was mentioned today.

Welcome to the Louis Goldstein Treasury Building. I always get a smile on my face when we walk in because his statue is right out here. And I check it for any kind of cobwebs or anything. And if

it looks messy we send someone out there to fix it. He was a bluff figure. But I also from time to time reflect on that other giant of Maryland political history whose portrait is right out in the gallery there, William Donald Schaefer and the lifetime that he devoted to public service.

We're approaching the one-year anniversary of his death and I've been thinking more about him, and his passion for the State, and his heartfelt belief that we can all make a difference in our country. And so I've decided to recognize individuals and organizations in each of Maryland's 24 jurisdictions who like Governor Schaefer are driven by his guiding principle of helping people. Nominations are going to be reviewed by special panel of friends and colleagues of Governor Schaefer, and I'll be proud to personally present the award to each winner.

And it's not just the big projects, or the things that people often associate with Governor Schaefer that I'll remember as a legislator. It's that he was always worried about the potholes. And he called himself Mayor Pothole. And he was always doing

things, the small acts of kindness, the personal interactions that lift people up in a whole neighborhood.

So we're announcing today that we're going to award, the Comptroller's Office, the Schaefer Helping People Award. The nominations can be sent to www.marylandtaxes.com. And I can't think of a better way to honor Governor Schaefer's legacy of public service. So if any of you have nominations you would like to make, as I said we are going to select one person and one organization from each of the counties and Baltimore City.

So thank you, Governor.

GOVERNOR O'MALLEY: Thank you, Mr. Comptroller. All right, the Secretary's Agenda.

SECRETARY MCDONALD: Good morning, Governor, Madam Treasurer, Mr. Comptroller. We have 16 items on the Secretary's Agenda this morning. We are withdrawing Item 16, that will come back at a later date. There are two reports of emergency procurements. We are prepared for your questions. Actually, Item 1, let me just point out, is the bond

sale. So we will hold Item 1 now. So we will answer your questions on 2 through 15, or the emergencies. And actually, Item 12 is the African American Heritage Preservation Program. I know Ms. Anne Raines is here from the Department of Planning. She also has with her Otho Thompson, the Loving and Charity Hall project. There's Anne, okay. Do you want to tell us a little bit about the Loving and Charity Hall project, Anne?

MS. RAINES: Yes, good morning. I am pleased to have with me today Otho Thompson, who is probably known to some of you. The Loving and Charity Hall project is a site that the Maryland Historic Trust funds are of incredible importance to the State of Maryland. On this property there's a church, there is a large hall, there is a school, and there is a cook shop. And to find one side of the house all four of those still standing, even though as you can see from the photograph in your packet, the large hall, the Loving and Charity Hall is barely still standing.

So our task in this case is to restore the Loving and Charity Hall and Otho Thompson is going to speak to this project.

MR. THOMPSON: Governor, Madam Treasurer, Mr. Comptroller, thank you. This has been a project that has been close to my heart. That's where I grew up, in Western Montgomery County, in a small African American community. And it represented an organization that purchased these three buildings about 15 years ago and we're in the process of restoring all of them. The church, the one room schoolhouse where my dad went to school, and the Loving Charity Hall. So we really are appreciative of the grant that will help us to kick start this project. So I want thank you very much.

GOVERNOR O'MALLEY: Thank you. Any questions? Mr. Mack, are you on board with this?

MR. MACK: I'm on board.

GOVERNOR O'MALLEY: Wow, okay.

TREASURER KOPP: It's good.

GOVERNOR O'MALLEY: Any questions? So is this, am I on the right page here, what item is this?

SECRETARY MCDONALD: This is Item 12, Item
12 --

GOVERNOR O'MALLEY: So this is --

MR. THOMPSON: That's the hall.

GOVERNOR O'MALLEY: That's Loving Charity
Hall?

MR. THOMPSON: It's in great need of repair.
It's about to fall off the foundation. We have
stabilized the building and we've had difficulty
getting the planning portion of our project off the
ground.

GOVERNOR O'MALLEY: And how old is it, Mr.
Thompson?

MR. THOMPSON: It was built in the early
1900's.

GOVERNOR O'MALLEY: Wow. That's pretty
neat. And where in Western Montgomery County is it?

MR. THOMPSON: It's a small town just west
of Poolesville called Martinsburg.

GOVERNOR O'MALLEY: Uh-huh.

MR. THOMPSON: It's on the way to White's Ferry, heading towards Virginia. It's about three miles from the Virginia border.

GOVERNOR O'MALLEY: And when was the community founded there?

MR. THOMPSON: The community itself grew after, shortly after the Civil War. There were free African Americans that built this community. And actually it was landowning community and they built their own assembly hall, the church, and the school. And this was the center of the community for the African American people in that area. So it's a small rural African American community that thrived and we want to preserve all of the heritage that is a part of what we're doing and what our ancestors had put together.

GOVERNOR O'MALLEY: And it still has the three principal institutions, the church, the school, the community lodge still in existence.

MR. THOMPSON: Right.

MS. RAINES: And the cook shop.

GOVERNOR O'MALLEY: And the what shop?

MS. RAINES: The cook shop.

GOVERNOR O'MALLEY: The cook shop?

TREASURER KOPP: Where is, how do, if I'm driving out 270 how do I get there?

MR. THOMPSON: You go up by 28, towards Poolesville, get off on 107 and 109 heading towards White's Ferry. About three miles before you get to the ferry on the right hand side you'll see the site.

TREASURER KOPP: I'll be there.

MR. THOMPSON: Yes.

MS. RAINES: Yes. So the four buildings are all on the same property, right within close proximity. And the project has also been assisted by State bond bill funds. And so, you know, in addition to the \$50,000 request today there has been other funds approved. So once this gets started with the architectural engineering and design then it should really start to move forward and --

TREASURER KOPP: What is the time frame for the total project?

MS. RAINES: Our grant is supposed to be wrapped up within two years. I think the whole

project will probably be wrapped up in three, using the funding that they have.

TREASURER KOPP: That's good.

MS. RAINES: That's an estimate.

TREASURER KOPP: Thank you.

MS. RAINES: Otho didn't pass out so it must have been okay.

(Laughter)

GOVERNOR O'MALLEY: Any other questions, on anything else on the Secretary's Agenda? All right. Hearing none, the Comptroller moves approval, seconded by the Treasurer. All in favor signal by saying, "Aye."

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed?

(No response.)

GOVERNOR O'MALLEY: Mr. Thompson, congratulations.

MR. THOMPSON: Thank you.

GOVERNOR O'MALLEY: Thank you. Good seeing you again.

MS. RAINES: Thank you.

GOVERNOR O'MALLEY: The next up would be the, do we have any DNR? Yes?

SECRETARY MCDONALD: Yes, we do.

GOVERNOR O'MALLEY: DNR Real Property.

MS. WARD: Good morning, Governor, Madam Treasurer, Mr. Comptroller. This is Lisa Ward for the Department of Natural Resources. Today we have two local side items for your approval.

GOVERNOR O'MALLEY: What is your favorite one?

MS. WARD: Well it's definitely not going to be the planning of the, let's see, the item that we have is \$60,000 for the planning project we have for the LPPR Plan for Howard County. So I would have to go with number two. We have a nice walkway in Sykesville in Carroll County.

GOVERNOR O'MALLEY: With adjacent grass swales.

MS. WARD: Mm-hmm.

GOVERNOR O'MALLEY: It's the swales that really make the project.

(Laughter)

MS. WARD: Yes.

GOVERNOR O'MALLEY: Okay. The Comptroller moves approval, seconded by the Treasurer. All in favor signal by saying, "Aye."

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed?

(No response.)

MS. WARD: Thank you.

GOVERNOR O'MALLEY: The ayes have it. We now go to the Department of Budget and Management.

MS. FOSTER: Governor, Madam Treasurer, Mr. Comptroller, good morning. There are ten items on the Department of Budget and Management's Agenda for today. I would like to withdraw Item 3. And I will be happy to answer any questions.

TREASURER KOPP: Governor, if I could take advantage of the moment, Item 8? I see that Joan Marshal is here, the Executive Director of the College Savings Plan, and a representative from T. Rowe Price. This is a good story which I probably should ask Joan to come up and tell, if I could? But as you know the College Savings Plan has been cited in the national

press and in Morningstar, Maryland's College Savings Plan, as one of the best in the nation. And one of the reasons is our strong partnership with Maryland based T. Rowe Price.

And the item before you, Item 8, and I will point out that not only do I chair the board but the Comptroller is represented on the board as well by Mr. Kenney. And we are very pleased that what we're bringing is an item that will save money for the members, continue to provide one of the most outstanding plans in the country, and continue to work closely with a strong Maryland firm. Can I ask Joan to come for just a couple of minutes?

GOVERNOR O'MALLEY: Sure.

TREASURER KOPP: And explain what the project is?

MS. MARSHALL: Good morning, Governor, Mr. Comptroller, Madam Treasurer. I have with me Tom Kazmierczak, he's the Vice President at T. Rowe Price who regularly participates in all of our board meetings. And so we're very pleased today that this, the decision by the Board would be to extend our

contract with T. Rowe Price to continue to manage the Maryland College Investment Plan for another two years. And at the time of the contract renewal in 2013 there will be a reduction in the annual fee that some account holders pay on their plan, and T. Rowe Price and the Board have worked together over the initial seven-year term of the contract to continue to have cost reductions and fee reductions in this plan as well.

So at this point we have about \$2.4 billion invested in the Maryland College Investment Plan on behalf of about 145,000 beneficiaries. So it has grown very nicely. It continues to grow. Our partnership with T. Rowe Price has been a very productive one and we look forward to continuing that with them.

GOVERNOR O'MALLEY: Okay.

MS. MARSHALL: Thank you.

TREASURER KOPP: Thanks.

GOVERNOR O'MALLEY: Thank you. Okay, any other questions on Department of Budget and Management Agenda items? Hearing none, the Treasurer moves

approval, seconded by the Comptroller. All in favor signal by saying, "Aye."

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed?

(No response.)

GOVERNOR O'MALLEY: The ayes have it. We move on now to the University System of Maryland.

MR. STIRLING: Good morning, Governor, Madam Treasurer, Mr. Comptroller. Jim Stirling for the University System. We have three items. I'll be happy to address any questions.

GOVERNOR O'MALLEY: Any questions? None. The Comptroller moves approval, seconded by the Treasurer. All in favor signal by saying, "Aye." All opposed?

(No response.)

GOVERNOR O'MALLEY: The ayes have it.

MR. STIRLING: Thank you.

GOVERNOR O'MALLEY: Thank you. There is no Department of Information Technology Agenda items. We move on now to the Department of Transportation.

SECRETARY MCDONALD: Do you want to do General Services, first? Do you want to do General Services -- okay.

MS. SWAIM-STALEY: Good morning, Governor, Madam Treasurer, Mr. Comptroller. For the record, Beverley Swaim-Staley representing MDOT. We have 19 items this morning. Item 19 is a supplemental item. Item 18 has been revised.

GOVERNOR O'MALLEY: Do we need you to come to the microphone, Mr. Stenographer, sir?

THE REPORTER: I can hear him, sir.

GOVERNOR O'MALLEY: Hear her?

(Laughter)

GOVERNOR O'MALLEY: Okay.

MS. SWAIM-STALEY: Item 19 is an item that was deferred from the last Agenda item. So if there are, if you wish I can proceed to describe Item 19. We do have people here to testify on that item.

GOVERNOR O'MALLEY: Sure. Why don't you come up to the microphone?

SECRETARY MCDONALD: I think it is better for all --

MS. SWAIM-STALEY: Thank you very much. I'm here representing the Maryland Transportation Authority today and we're asking for consideration of the lease and concession agreement to redevelop the travel plazas owned by the Maryland Transportation Authority. I do have several members of the Authority here with us again today. Mr. Art Hock, who was here two weeks ago. Also joining us today are Reverend Calhoun, Jack Basso, and Michael Whitson.

Given the long term nature of this agreement, the services and financial implications, obviously this has been a very important process for the Transportation Authority. We have worked on this process for several years and have worked very closely in conjunction with the Department of Legislative Services and members of the Maryland General Assembly.

This process has been conducted with quite a bit of rigor and independence throughout this extensive process. The evaluation committee weighted the proposals against the project goals and drew on the technical support of many of both internal and external experts that we have. We in fact brought in

some of the folks who had done the Seagirt project for us, a project that we were very, very fortunate on. Ms. Laurie Mahon had led that effort, provided the technical services and financial advice on that project and she did the same on this project. The Executive Secretary of the Maryland Transportation Authority, Harold Bartlett, affirmed the selection of the evaluation committee and communicated that decision to the Maryland Board of Directors, the Transportation Authority. They, exercising their fiduciary responsibility, unanimously voted for this contract. I want to say that the members of the Authority are made up of individuals that have expertise in banking, law, land use, engineering, and transportation planning.

We then, the Department of Legislative Services reviewed the project and the process. And as I said, we had worked for the past couple of years with the Department of Legislative Services making sure that they followed along with us and that they were aware of what we were doing as part of the process.

The Maryland General Assembly then exercised its statutory authority to review and comment on this agreement. The Senate and House Budget Committees both held hearings and then the committee chairs did send letters saying that they believed that this contract would provide a very fair return for the State of Maryland.

So I am here today to recommend that we enter into a partnership with Areas USA. We believe that they would bring a very strong commitment and that in fact we could repeat the same success that we had with regard to the first P3 that we did which was the Seagirt Marine Terminal.

You are all well aware that the deal with Ports America that we completed a little over two years ago is going to result in Maryland having, being on one of two ports that has a 50-foot berth. That project and that arrangement with Ports America for 50 years is ahead of schedule. And in fact we going to have that facility, they are going to have, I should say, Ports America, is going to have that facility up and running two years ahead of schedule. We were

hoping to have that project completed in time for the Panama Canal so that we would be able to have the larger ships come into the Port of Baltimore. The only way we would have been able to do that was with the P3 and that was very, very successful. So we tried to leverage the same kind of experience and expertise that we had gathered from the Seagirt experience and use that with regard to this particular solicitation.

So today the State is faced with a similar decision. The Maryland and the Chesapeake House up on I-95 are well beyond their useful life. Every turnpike facility from Delaware to Connecticut has completed new travel plazas. So at this point Maryland, we have the oldest facilities. Our facilities, Chesapeake House and Maryland House, are upwards of 40 and 50 years old. They are in need of significant rehab. They do not provide anywhere near the kinds of amenities that the other new travel plazas on the East Coast do. And obviously, these are great revenue generators for the Maryland Transportation Authority and we certainly want to make

sure that we are not losing revenue because we are not keeping up with the amenities that the traveling public expects.

If we had followed the conventional approach it would have taken years before the Authority could have built these facilities unless the Authority would have taken the money out of other much needed projects, system preservation projects that we have on our bridges and tunnels. So it was deemed that that would not be the best use of Transportation Authority toll receipts but in fact we should follow the example set by many other states and other transportation authorities and seek a public/private partnership. We have worked on that for the past couple of years and we are very proud that we have selected Areas, a company that is managing concessions in airports around the country and travel plazas around the world.

Pending your consideration this would allow us to have new travel plazas without not a single dime of State or Authority expenditure. They would replace the existing facilities. They would also provide in addition to the restaurants a convenience store and

other amenities that are really now part of state of the art. And we would very much hope that we would be able to compete with the other states as we continue to move along.

Areas has very good references. Although there have been many statements made, Areas and the Transportation Authority have gone back and made sure that we do in fact have good references. That they are a solid employer. That they have the solid financial backing to complete this, and that they have the solid experience to do so.

Every bidder, every offeror I should say, was given a chance to provide us with their very best offer. And it was very clear that Areas was by far the better offeror and provided the greatest return to the citizens of the State of Maryland. Their offer at a minimum was \$148 million better than the next best offer. So again, I'm very proud on behalf of the Authority to bring this to you here today. We think that this will set another standard and we can continue in the great pattern that we started with Seagirt, making sure that everyone knows that Maryland

is indeed open for public/private partnerships. We want the best deal and we're open for business. Thank you.

GOVERNOR O'MALLEY: Thank you. Do we want to take a break at this point, Madam Treasurer? Are we right on the --

TREASURER KOPP: Yes.

GOVERNOR O'MALLEY: -- verge here?

MS. SWAIM-STALEY: I speeded up because I saw the folks --

(Laughter)

TREASURER KOPP: Thank you, Madam Secretary. Patti, do you want to? You know Kina Johnson-Malcolm and Patty Konrad, the Chief and Deputy Debt Managers.

MS. KONRAD: And we have Amber with us today, too.

TREASURER KOPP: And Amber Teitt from the Department of Budget and Management.

(Bond sale)

GOVERNOR O'MALLEY: We just had concluded the presentation from Secretary Beverley Swaim-Staley on the travel plazas. I know we have protests here.

I know we have the winning bidder here. Who wants to be heard and who wants to go first?

SECRETARY MCDONALD: Secretary Swaim-Staley, do you --

TREASURER KOPP: No one does.

GOVERNOR O'MALLEY: Well if no one does --

TREASURER KOPP: If no one does I'll move to --

COMPTROLLER FRANCHOT: I have some questions of the Secretary.

MS. SWAIM-STALEY: Do you have questions before?

GOVERNOR O'MALLEY: The Comptroller has some questions for the Secretary.

MS. SWAIM-STALEY: Absolutely.

COMPTROLLER FRANCHOT: Thank you, Madam Secretary. And as I did last time this item was before us I really salute you in your capacity as Chair of the Authority.

MS. SWAIM-STALEY: Thank you.

COMPTROLLER FRANCHOT: I think you show tremendous examples of professionalism and I salute

you for this and other things that you are doing. And also Executive Secretary Harold Bartlett, you know, you two are committed to these public/private partnerships. And members of your board that are here and from the Authority, welcome. I know Bishop Calhoun is someone that -- can I call you Bishop? You're a Bishop in my universe.

(Laughter)

COMPTROLLER FRANCHOT: But, you know, just a great Maryland leader and someone that for more than 38 years has helped out the fabulous church but also, in Baltimore, but was able to come and give us the benefit of his leadership here.

So this is a relatively new model for financing, the public/private partnerships. And this one obviously makes a great deal of sense conceptually. It allows Maryland to capitalize on the expertise of the private sector, which as we all know has a more developed sense of the consumer marketplace. And obviously has a far greater incentive just conceptually. I'm not talking about anybody's, you know, capabilities on the public side.

I'm just saying the private side, this is what they do. They manage costs and they deliver quality services. That is their raison d'être.

And so I appreciate this model that we're looking at. Because it allows you, as you said, to really focus on maintenance and system preservation. That's a good thing.

This particular lease, though, is attracting a lot of public, you know, attention. And it's, my questions really are in the context of the P3, as it's called, the public/private partnerships. We're in kind of the beginning stages. We mentioned Seagirt example, which has been a great success. But essentially this is a pretty new direction for the State to go in. And I also think that we're establishing some procedural and policy precedents that are going to extend well beyond this item.

So I'd just like to ask a few questions.

MS. SWAIM-STALEY: Sure. Of course.

COMPTROLLER FRANCHOT: And it's in that context of we're going into this new territory. I guess I'd like to ask you or your, or our legal

counsel, or MDOT's, the Authority's legal counsel, what exactly is the situation with the lawsuit between Host and Areas, I guess, the winning company? And what's the status of the temporary restraining order? And what are the constraints, if any, that are placed on the Board's authority to award this contract?

MS. SWAIM-STALEY: Well, as all those sound like legal questions. So I will ask the Attorney General's Office to come up and address those specific questions with regard to the lawsuit. Stan Turk.

MR. TURK: Good morning. I'm Stan Turk, Assistant Attorney General. And as you said earlier, we're representing both the Transportation Authority and the Board of Public Works in the litigation.

As you recall previously when we last met there was pending before the court in Montgomery County a temporary restraining order. At the time that we met the court had deferred and there was nothing preventing the Board from acting on that at the time that the Board met. Later that day the court did enter a temporary restraining order enjoining the

Board from considering the matter. Of course, that had already happened.

Subsequently our office filed a motion to dissolve the TRO. And you will recall when we discussed TROs in general, they are often issued upon a statement of urgency. And the court really doesn't have much time to give full consideration. So in this case after having the opportunity to more fully consider the matter, on Friday afternoon of March 2 the court dissolved the TRO opening the way again for this Board to consider the matter.

Also what occurred on that day, I will tell you there was a motion to dismiss or change the venue. That was filed by Areas. The court has not ruled on that. The court deferred on that, but I am happy to tell you that there was agreement among counsel to transfer the case to Baltimore City. That has not been, there's nothing that's been executed in writing. But we would expect that to happen if not today, early tomorrow.

So that is the legal status. And if there's any other questions regarding that I'm happy to --

COMPTROLLER FRANCHOT: Yes. You know, I'm pretty well known on the Board for generally being reluctant to approve a contract while that award is being challenged by a dissatisfied competitor. And believe me, I understand the counterargument which is that, you know, good vendors win contracts, and then it's to their detriment that everybody goes and sues and contests the award, and some incumbents just want to hang on for an extra payday. I recognize the counterargument. But at the end of the day I just think it's a critical and unconditional right of due process that for any vendor that applied to be able to appeal it. And under the procurement laws they can go to the Board of Contract Appeals. And this is a little more precedent setting because they are going into Circuit Court.

MR. TURK: Correct.

COMPTROLLER FRANCHOT: Host apparently, for their own reasons, has decided to challenge the contract in the courts. And based on what you just said I'd like to ask what would happen if we were to approve the lease and concession agreement today with Areas, allow them to take occupancy of the Maryland and Chesapeake Houses when the current contract with Host expires in September, begin their redesign of these facilities, only to have the court invalidate the agreement at a later date? I'm not saying it's

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likely. I'm just asking is there a possibility. What happens

then? How do we go about putting the toothpaste back into the tube? And isn't there really an argument to defer the contract award until the court challenges are settled?

MR. TURK: Well I can tell you, first of all I can tell you what happens under a procurement contract. And under a procurement contract, which of course this is not and that issue is not being contested. But under a procurement contract there are options that would face the agency and the Board. The Board could, for example, declare the contract to be void. Or the Board in certain circumstances could determine it to be voidable and then ratify the contract.

This is different. As you suggest, we are in the court system. There are issues of law that will need to be litigated. And quite frankly, it would appear that if Host pursues this that there will be issues of law which must be dealt with by an appellate court. That, as you will likely be aware, is a process that would take not months, but certainly years.

There would be, the answer to your question in this case is we can't answer that question. And the reason is because there are a number of things and permutations, quite frankly, of that, what could happen in the Circuit Court or after appellate review. And no matter what happens there is options to be presented to the Board and the agency. But those are wholly dependent upon the specific findings of the court. So I can't tell you today what your options are because I don't know what the specific findings would be. We don't know whether the court will find that there was a major problem, or a minor problem. But I can generally tell you that the constitutional authority and the legislative authority of this Board would allow this Board to do what is ever in the best interest of the State. And those options are really something that we cannot, we cannot even discuss until we know how the case finally resolves.

COMPTROLLER FRANCHOT: So there is uncertainty I take it.

MR. TURK: There is uncertainty. I have to tell you that.

COMPTROLLER FRANCHOT: Okay. Let me just ask about the language that the Montgomery County Circuit Court judge used in the granting of the temporary, granting the TRO that you mentioned.

MR. TURK: Certainly.

COMPTROLLER FRANCHOT: And that order, as you say, has been rescinded. But the language in the order would seem to put some kind of legal weight behind the idea that both the process and the outcome of this solicitation were flawed, at least from the description of the judge's language. So I do believe it's, I guess the question is, since we're entering into a 35-year contract, we've got a circuit judge who has used some pretty strong language about unfairness, shouldn't we be cautious in moving forward? Particularly because we're going to start demolishing and building new facilities?

MR. TURK: Well if I can point out again, that as we said last time, TROs are often granted on an urgent basis. The court did not in that case apparently have an opportunity to fully review the matter. And when the court did go back and fully

review it was not reluctant at all to lift the TRO both on grounds that it was improper to issue a TRO against this body, but also upon a motion to reconsider the court also said that it had not additionally ruled on these four factors that are required for a TRO, and ruled from the bench that it would also find that Host had not shown that there would be immediate irreparable harm. And then we understand that as saying that Host had not proved all the necessary elements of a TRO. So it was issued on an emergency basis, sort of a seat of the pants kind of thing. And then upon further reflection it was dissolved.

COMPTROLLER FRANCHOT: Okay. If I could just ask --

GOVERNOR O'MALLEY: Is seat of the pants a legal term, or is that --

(Laughter)

MR. TURK: It's in *Black's Law Dictionary*, Governor.

COMPTROLLER FRANCHOT: I guess I'd like to ask the Secretary if I could, and please stay up here

if you could counsel, how much of this award was based on technical consideration? How much was based on just the revenue projections that you mentioned at the end of your statement? Over the 35-year term of the contract you said there were, I thought you said there was \$140 million --

MS. SWAIM-STALEY: Mm-hmm. A minimum of \$148 million difference in the contracts, yes.

COMPTROLLER FRANCHOT: Okay. What were the specific components of the two categories as far you making your decision between --

MS. SWAIM-STALEY: Right. There were three --

COMPTROLLER FRANCHOT: -- which, revenue or technical?

MS. SWAIM-STALEY: There were three goals and they had, as I understand it they were equal. The three goals were outlined in the solicitation. And that was that we have new or like new facilities; that we provided the best quality services that we could provide, customer service to the traveling public; and that we provide the best rate of return to the State.

And those were the three goals and those three goals were evaluated with similar, with equal weights.

COMPTROLLER FRANCHOT: Equal weights? Okay.

And --

MS. SWAIM-STALEY: And as I said before at the last meeting, Areas was the, did win in all three areas.

COMPTROLLER FRANCHOT: Well, okay. And according to their website, Areas, they have one interstate travel plaza in the U.S. which is down in, contract, which is down in Florida where they signed a 30-year deal to upgrade and replace eight rest areas on the Florida Turnpike. And I understand that project is behind schedule, and just a few weeks ago someone from the Turnpike Authority sent a letter saying that Areas was at risk of incurring monthly penalties of \$40,000 each month the project remains uncompleted. So since this is really the only job reference we have in the U.S. on a highway travel plaza, and I heard what you said about airport concessions, and rest plazas in Europe, but this is, you know, Areas' one reference, I take it, is down in

Florida. Did you, before you granted the contract, did you contact your peers in Florida and get a thumbs up from them that this is a good company, and --

MS. SWAIM-STALEY: Absolutely, we did. The evaluation team did initially. And subsequently I personally have talked to the Secretary of Transportation, who reiterated that they are very pleased with their selection and that things are on track. In addition, Harold Bartlett, the Executive Secretary, went down and personally visited and reviewed and saw the facilities. And I think subsequent to those allegations being made there have been further letters and those allegations have been followed up, and in fact Areas is not behind schedule. They received a letter warning them that they should not get behind schedule. But I think they met the deadlines that they had for 2011, and they are on target to meet the deadline they have for the completions I believe that don't come up until December of 2012. But they are also here and can certainly address that.

COMPTROLLER FRANCHOT: That's fine. And then the question of local involvement for Maryland companies. Areas and Host both have competing claims. But one that caught my eye was that Host used Southern Maryland Oil for its gasoline, which is a big component of this. And Areas is using someone from Pennsylvania. Is that, am I off the --

MS. SWAIM-STALEY: That may be. Each partnership brought, I mean, they had a different set of partners obviously with each one. A combination of local firms and firms outside of Maryland. They also both brought a combination of minority and women owned business firms. I do want to point out, which I didn't before because I was trying to get through the presentation, that Areas brought a very strong series of local partners with them. They have ten firms on their winning team and the significant local firms, by no means not all of them, but include Ayers Saint Gross of Baltimore, a longstanding very popular group business in Baltimore, been there for a very, very long time. Clark Construction of Bethesda, a major employer I believe in Montgomery County. And also

Cain Contracting of Columbia, a minority contractor that has been awarded many times frankly for being a terrific MBE. So again, that's just three but they in fact do get a large amount of the business that will result from this contract. So I think, you know, Areas came to Maryland knowing that we had a friendly business environment. But they also knew that it was very important to partner with local partners. And so their partnership really is substantially made up from local existing businesses.

COMPTROLLER FRANCHOT: Okay. And then just two quick questions at the end. One is about this best and final offer, which is, I don't know, a well trodden path in our procurement law. But in this instance I think what happened is I understand from your testimony, was that you all decided to award the contract to Areas and then went and negotiated with them for further benefits for the State, which obviously is commendable.

MS. SWAIM-STALEY: Yeah, very typical in either a procurement or a P3. Yes.

COMPTROLLER FRANCHOT: So in procurement after you get a BAFO, a best and final offer, and you have decided to award a contract, you often go back and negotiate further reductions --

MS. SWAIM-STALEY: Absolutely. I mean, I think we, absolutely. We always try to get the, squeeze the most we can for the State.

COMPTROLLER FRANCHOT: And but what about the rights of everybody to compete fairly here if in fact they can make an offer and then I understand that that offer could be changed after the best and final offer?

MS. SWAIM-STALEY: Well as I said, based on the initial offers, Areas' offer was about \$150 million better. So it was on that basis, along with the other evaluation factors, where I said Areas had won all three factors, that it was determined that that was, that they were by far and away the best bidder. BAFOs are an option but they are certainly not a requirement in any procurement. And so it was decided to go ahead and proceed. But once again, we always try to make sure we're getting the very best

deal. So we did ask them once they were selected if there was even more that they could do, not knowing if they would say yes or not. But thank you for your question. Because I think that that has been out there. And what is very important is that there were a series of interviews with the other bidder as well with Host. And as part of that, you know, clearly they were asked whether or not that was their best bid. They do have the travel plazas in Delaware so we obviously knew what the offers had been in Delaware. So there was a discussion about being able to bring a better offer. And I was not on the evaluation committee. But what has been confirmed to me repeatedly is that, you know, Host indicated that they had provided their best offer. Which is certainly understandable. One should certainly bring your best offer that you can to the table when you are bringing in a proposal.

COMPTROLLER FRANCHOT: Okay. Well I'm still considering how I'm going to vote on this. But my problem I think is that the \$150 million that you cited is obviously over a 35-year period, or not?

MS. SWAIM-STALEY: That's correct.

COMPTROLLER FRANCHOT: So --

MS. SWAIM-STALEY: And again, that's a minimum based on some very conservative projections. As was indicated in the last meeting we attempted to equalize so we could have apples to apples comparisons. And we actually set the model so that we would be making this solicitation and selection based upon what we felt were very conservative estimates. So those are all very conservative estimates.

COMPTROLLER FRANCHOT: And how did you pick 35 years? That's a long time --

(Laughter)

GOVERNOR O'MALLEY: Speak for yourself --

(Laughter)

MS. SWAIM-STALEY: Well I'm with you. I'm with you. I'm older, so. Public/private partnerships, you know, we've looked at how these are done around the country. There certainly have been several. And what we have been told, you obviously need to make it a long enough time. Because you're asking the private sector to come in and invest, which

is what we do. We call them in because we really can't afford to build these kinds of facilities. But they have to be here long enough to have a fair rate of return.

In fact, when we did the Seagirt contract we were actually told by some of our national experts that we should consider going 75, I think someone even told us up to 90 years. And we obviously said clearly none of us would be around in 90 years. But, so we weighed what we thought was in the best interest of the State, and in that case we came back to 50 years. And we, although that was a shorter term than what we had been advised we were in fact able to get a terrific deal. We're still reaping those benefits today. So with regard to the travel plazas, again, we had to make that determination. And we felt again, based on what some of the other experience, that we would try to have 35 years. We are obviously more comfortable, as you said, with the shorter term. But again, we need to make sure that it was long enough that we would be able to attract businesses who would want to come do business here in Maryland, and

Maryland businesses who would also like to throw their hat in the ring.

COMPTROLLER FRANCHOT: Thank you, Governor.

GOVERNOR O'MALLEY: Thank you.

GOVERNOR O'MALLEY: Okay. Anyone else want to be heard on this matter? Sure. Come on down.

MR. WOLF: Good morning, Governor.

GOVERNOR O'MALLEY: Hi.

MR. WOLF: Good morning, Madam Treasurer, Mr. Comptroller. It is my privilege to address the Board. My name is John Wolf. I'm the lawyer who sued you.

GOVERNOR O'MALLEY: Which one?

(Laughter)

MR. WOLF: I did so in your obviously official capacity. I think at our last hearing it was described in your personal capacity, and that is certainly not the case. It was done so on behalf of Host International, Inc. with great consideration and without apologies, respectfully, because we are now in a very important issue regarding the legality of the procurement of a very important contract in uncharted

waters of P3. I need not tell this Board, and certainly Madam Treasurer who sits on the Governor's, on the Lieutenant Governor's joint commission, that P3s are the coming thing. But Maryland is late to the table with P3s. We have had one successful P3 with one bidder. There is litigation involving State Center. There is recent litigation regarding, although not directly a P3, the public health lab in Baltimore.

We bring this suit, and brought this suit, on the 18th of February to quite frankly stop the process after requesting MdTA from presenting this the first time on February 22nd. But that request was denied. Our protest had been denied three days earlier. And had this been a regular procurement, pursuant to regulations of the State Finance and Procurement Code the matter would not be presented to the Board. There would be an automatic stay while the proceeding would be heard in the Board of Contract Appeals. That goes to your question, Mr. Comptroller. Why are we in court? Why the proceeding? And in fact there is agreement that the statute enabling the

MdTA's effort here says that this is not a Title 2 procurement. So the jurisdiction is in a trial court and not before the Board of Contract Appeals.

If I may address quite briefly, Mr. Comptroller and Board members, the issues raised in your question of the Assistant Attorney General regarding the lawsuit. Extensive briefing was put before the court on February 21, the day before your last hearing here, before Circuit Judge Eric Johnson of the Montgomery County Circuit Court, fully briefed by both sides. And what Judge Johnson ultimately ruled two hours after you all properly deferred in granting the initial TRO, and if I might, that Host is likely to succeed on the merits of its claim that defendant MdTA failed to follow government procurement law and regulations, and this is important, in the evaluation and selection process employed and by not following regulations pertaining to P3 proposals and allowing plaintiff an identical opportunity to improve its proposal.

When we appeared before Judge Johnson last Friday he never backed off of that finding. What

Judge Johnson found, upon case law submitted to him immediately prior to the motion to dissolve, was that he in his view was not empowered to stop this Board from exercising its discretion. It was a separation of powers issue and not dealing with the merits of the procurement.

The case will be transferred to Baltimore City and will proceed on the validity of the contract, hesitantly, regretfully, because MdTA again deferred and rejected our request not to submit it to you as the Board which would approve it. It is our request here today that you disapprove it, and relet it. Not defer, but to disapprove for the following basis.

Madam Treasurer, I have the benefit of the transcript from the last hearing. I know that's sometimes unfair. But one of the things you did request of MdTA and the Secretary, Madam Secretary specifically, was a written description of the process which was undertaken. Because process is what this challenge is all about. Not the relative strengths and weaknesses of the Host versus Areas proposals, although we will contend that Host's is better for the

State. But we are talking about a level playing field in uncharted territory, and the State and its taxpayers have a great interest in that.

Regarding process, may I take you back to December 23, 2011? This is following MdTA's second meeting with Host regarding its proposal. And at that time MdTA's consultant, Ms. Mahon, you have heard her identified as a national leader, told, and a member of the evaluation committee, I might add, from MdTA, tells a Host representative that there will be negotiations following the holidays and nothing will happen until January.

In fact, MdTA was required to negotiate with all proposers, plural, not just one of the three, but all proposers. It called for in its own RFP, its request for proposal, in the plural, it could not pick and choose. And that is indeed consistent with standard procurement law, that all proposers need to be treated fairly. Ignoring its own RFP and its controlling regulations, MdTA has now said, and we heard it again today, we are permitted only to negotiate with Areas because we made a decision

internally that Areas was the winner. And we have heard this in the court suit. We have heard it now in two hearings. Respectfully, that is patently incorrect. We have served public information act requests on the State. And as recently as two days ago they have kept coming.

On January 4th, travel plaza oversight manager for MdTA George Fish, this is after Host has been told we will negotiate with you in January. Mr. Fish is sending an email which we have had produced to us, pursuant to the PI request. This is to confirm our conversation. This is an email from Mr. Fish, MdTA's contact point, to Mr. Rabell from Areas. Again, says Mr. Fish on January 4, we have not made a final selection but would like to start negotiations.

From that point forward Host is not negotiated with at all. No comparable offer was extended. A review of the legislative report in this approval process shows that Areas was allowed robust modifications and changes. Host was never allowed to modify its proposal. They were not allowed to increase, and we have found from the legislative

report that rent was increased \$65 million from the first Areas proposal to the second.

Host was not allowed to reduce capital, provide fewer services, provide lower cost infrastructure, reduce the number of restaurant offerings, or increase the percentage of rent. All of which was offered to the winning proposer Areas.

On the record in court the Assistant Attorney General chastised Host for not negotiating a closed deal in December of 2011 when it has been told, "We're not going to negotiate in December. We're not going to negotiate until after the holidays. We will do so in January."

Only one proposer was allowed to improve its offer, Areas. As a consequence the procurement process and award to Areas is illegal. In this uncharted area, what is the response back in court and on the record from MdTA? In essence it says we have carte blanche. We have no rules. We're fair. Trust us. This is not allowed even under P3, where there is no application of the procurement code. In point of fact, the law is such that when an agency does not

have regulations, when it is exempt from State regulations it must create its own. And MdTA says we don't have to follow that, or our own regulations.

I'll refer you if I might to the State Finance and Procurement Code, 12-401, that to have a procurement without regulations, which it admits that it did not follow, is invalid. I also point out that which Judge Johnson relied on. At COMAR 11.07.06.04, despite the fact that P3 transaction is excluded from the procurement code MdTA has the following regulation, which it says it doesn't have to follow. "The evaluation and selection process for both solicited and unsolicited P3 project proposals, the evaluation and selection process shall be conducted in accordance with the requirements of the Finance and Procurement Code."

Respectfully, and I thank you for your time, Board members. There is a Hobson's choice facing MdTA. It says we are not required to follow the regulations, and indeed we have no regulations. They are wrong. They have their own regulations. I just read them. Their website says they have them.

On the other hand the Hobson's choice is if they say we have none and followed none, then their procurement is invalid. Host is compelled to continue its lawsuit. What happens is under the circumstances the exposure, the uncertainty which Mr. Comptroller you alluded to remains, unfortunately. With the State caught in the awkward position that if the contract is deemed to have been procured illegally it voids it and Areas is entitled to its termination for convenience charges. Everyone loses.

In closing, the Lieutenant Governor's commission calls for even handling this on a level playing field in P3, transparency and fairness. None was asserted here. We respectfully request this Board disapprove and order a reletting and reprocurement. Your time today is much appreciated.

GOVERNOR O'MALLEY: Mr. Wolf, you had said that their own regulations, are you asserting that their own regulations say that they should have made, given an opportunity to the losing bidders to make a best and final offer? Is that your position?

MR. WOLF: If what, it's two-fold, Governor. Their own regulation says go to COMAR as if it were a State procurement. The State procurement reg says if you negotiate with one, you negotiate with all. And I gave you the email regarding negotiations, we are continuing without a decision, who wins. With respect to best and final, the same rule applies. If you extend best and final opportunities to one, you do it to all unequivocally.

GOVERNOR O'MALLEY: Thank you. Mr. Comptroller?

COMPTROLLER FRANCHOT: Yes. How, it was quoted I think by my lawyer that it might take years to resolve this in the courts. What is your view of the --

MR. WOLF: We are now on the regular track because of the emergent situation of the TRO and the preliminary injunction is passed. I believe that with agreement of the parties this matter could be ripe for a summary judgment and cross summary judgment motions within a matter of months. The appellate ladder is perhaps not quite so quick.

COMPTROLLER FRANCHOT: Mm-hmm. And you mentioned convenience charges should it, despite our counsel's best efforts, go against the State and your side is upheld, say, two years from now. What are we talking about as far as a range of convenience charges --

MR. WOLF: Well --

COMPTROLLER FRANCHOT: -- that the State might be liable for?

MR. WOLF: -- the termination for convenience rubric is that the State under its contract has the ability for whatever reason to cancel the contract. And in that circumstance the contractor who is terminated is entitled to provable costs that he has spent in the project. I'm sorry, I don't have even a rough estimate as to what that might be.

COMPTROLLER FRANCHOT: It sounds like it would be a large number.

MR. WOLF: Yes. Considering the elements of the capital improvement which is at hand.

COMPTROLLER FRANCHOT: Thank you. Even though you're suing me --

(Laughter)

COMPTROLLER FRANCHOT: -- for the information.

MR. WOLF: I appreciate your understanding.

GOVERNOR O'MALLEY: May I ask -- Mr. Wolf, thanks a lot.

MR. WOLF: Yes, sir.

GOVERNOR O'MALLEY: We might bring you back when these, because I know Patti has, wants to return here. Do you want to do this now, Madam Treasurer?

TREASURER KOPP: We can do this now or --

GOVERNOR O'MALLEY: Absolutely. You can interrupt us whenever you like, Madam Treasurer.

TREASURER KOPP: All right. I do have a couple of motions to make. It will be brief, and then Patti can explain how we've done.

I move that the Board adopt the resolutions before us today concerning the State and local facilities loan of 2012 for a series. In particular, I move that the Board ratify and approve the preliminary official statement dated February 23, 2012; the summary notice of sale for the 2012 First

Series B and First Series C bonds published on February 23, 2012 in the *Bond Buyer*; and the resolutions the Board adopted on February 8, which were amended and supplemented on March 7th, that's today, concerning the bond sale. And I have to ask for a second on those that I just said --

GOVERNOR O'MALLEY: And the Comptroller moves?

COMPTROLLER FRANCHOT: Seconded?

GOVERNOR O'MALLEY: Seconded? All right. No, you moved, the Comptroller seconded. All in favor signal by saying, "Aye."

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed?

(No response.)

GOVERNOR O'MALLEY: And the ayes have it.

TREASURER KOPP: All right. Then for the First Series A bonds I move that the syndicate of underwriters represented by Merrill Lynch, Pierce, Fenner and Smith, Incorporated be awarded the First Series A tax exempt bonds in the aggregate principal amount of \$56,085,000 with a net premium of

\$6,388,188.79 and at a true interest cost of 2.1820 percent. And I further move that the bond purchase agreement for such bonds be accepted and approved, and that the First Series A bonds be issued in the amounts and maturities and the interest rates and prices set forth in the bond purchase agreement.

I would move that and ask for a second and vote on First Series A. Yes.

GOVERNOR O'MALLEY: All right. The Comptroller seconds. All in favor signal by saying, "Aye."

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed?

(No response.)

GOVERNOR O'MALLEY: The ayes have it.

TREASURER KOPP: Okay. Thank you. For the First Series B, which was the big one that we saw up on the board a little while ago, I move that Bank of America Merrill Lynch be declared the successful bidder for the First Series B tax exempt bonds in the aggregate principal amount of \$543,915,000 with a net premium of \$65,877,897.70, and a true interest cost of

2.421950 percent. And I further move that the First Series B Bonds be issued in the amounts and maturities and at the interest rates and prices set forth in the successful bid for the bonds.

I would move that, Governor.

GOVERNOR O'MALLEY: Seconded by the Comptroller. All in favor signal by saying, "Aye."

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed?

(No response.)

GOVERNOR O'MALLEY: The ayes have it.

TREASURER KOPP: And for the First Series C bonds, the refunding bonds, I move that Bank of American Merrill Lynch be declared the successful bidder for the First Series C tax exempt refunding bonds in the aggregate principal amount of \$136,340,000 with a net premium of \$22,970,979.45, and a true interest cost of 1.697786 percent. And I further move that the First Series C Bonds be issued in the amounts and maturities and at the interest rates and prices set forth in the successful bid for the bonds.

I would move that, Governor.

GOVERNOR O'MALLEY: Seconded by the
Comptroller. All in favor --

COMPTROLLER FRANCHOT: Can I just ask a --

GOVERNOR O'MALLEY: Sure. Mr. Comptroller?

COMPTROLLER FRANCHOT: Could you give us
some context here as to, given the volatility of the
municipal bond market and changes by the rating
agencies as far as all of their folks that I have read
about in the last week, what exactly is, I mean we
love the numbers. But what exactly is going on? And
what's the significance of this particular refunding?

MS. KONRAD: The refunding will save us more
than \$7 million in debt service. The markets are
really volatile. There is a lot of volume this week,
also. This is the heaviest volume week of the year.

2011, if you remember, started out with
Meredith Whitney proclaiming that there would be
massive municipal defaults in 2011. None of that
proved true. But that made for a hard market in 2011.
And as 2011 closed people began to realize that these

were good credits. Municipal bonds were good credits. And they started to move back into them.

There has also been a lot of concern about Greece and the European sovereign countries and their debt, and what their debt means to their banks if they default, and what those defaults could mean to U.S. markets. As a result there has been a flight to quality. Again, Treasuries are very, very low, as you know, U.S. Treasuries are low despite the fact that S&P has downgraded them into and given them a status of negative outlook. And municipals have followed course. COMPTROLLER FRANCHOT: I understand this may be your last bond sale?

MS. KONRAD: It is.

COMPTROLLER FRANCHOT: And God bless you --

GOVERNOR O'MALLEY: Wow.

COMPTROLLER FRANCHOT: Fabulous --

MS. KONRAD: Thank you.

(Applause)

TREASURER KOPP: Governor, thank you for bringing, I was going to after we vote on this, which we haven't done yet, mention that Patti is retiring.

She has been outstanding. More outstanding than anyone could know. Not only with our staff but working across the State.

But I think if anyone were to write a history of the Treasurer's Office and of debt management, State level debt management, they would have to see that Patti moved us totally from one era into another. It is hard to remember what it was like before she came in. It wasn't that long ago. You've been with us --

MS. KONRAD: Six years.

TREASURER KOPP: -- six years. We went through terrible turmoil at the national level which resulted in our working with the sort of finances and capital structures that we had never seen before, no one had seen before, issuing the sort of debt we had never seen before. Refunding in a way that had not been done before, and made a great deal of money for the taxpayers. And in general simply moved us from, I don't want to say the nineties, but the first half of the 20th Century into the 21st.

We're going to miss her sorely. I have a feeling she's going to come back now and then because her to-be successor, who at the moment is still with the Department of Budget and Management, but Amber Teitt is going to be moving over to the Treasurer's Office. Amber has served notice on us that she expects to see Patti back here often. You see the Secretary of Budget smiling, and she's smiling through her tears. She's a good sport.

MS. FOSTER: Unhappy.

GOVERNOR O'MALLEY: Could she pay her a lot more, I wonder?

(Laughter)

GOVERNOR O'MALLEY: That always happens.

TREASURER KOPP: It wasn't the money.

(Laughter)

TREASURER KOPP: Amber will be following a great predecessor, who will be walking alongside her for a while which we appreciate very much. And we're very excited about Amber coming over because she is somebody who knows the State, knows the finances, has on behalf of the Department and the Secretary of

Budget and Management been sitting through many of our bond issues and discussions with the rating agencies and with the investment houses over the past several years. So she hits the ground running, but she is running alongside a great leader in the race. And I just on behalf of all of us want to thank you, Patti.

MS. KONRAD: Thank you very much, Madam Treasurer. And the Governor, and the Comptroller, it's a line on the budget.

TREASURER KOPP: And fun.

MS. KONRAD: And fun. And I also want to thank all the colleagues that I've worked with, our lawyers, our financial advisors, our bankers, who have worked hard on our behalf. Thank you.

GOVERNOR O'MALLEY: Ms. Konrad, thank you. Let me add my voice to the chorus of those that appreciate your service. You have been a consummate professional. So attendant to details, and courteous. And you are a real tribute to the people that all of us service. And we're all very, very honored by the outstanding service that you've given to all of us. At a time when many people become very cynical about

anything that their government is any longer capable of you continue to maintain such a high bar of service and professionalism, and really you are an inspiration to all of us. Thank you for a job very well done.

MS. KONRAD: Thank you, Governor. I appreciate that.

TREASURER KOPP: Governor, could I move the acceptance of the bid on the First Series C Bonds?

GOVERNOR O'MALLEY: Moved by the Treasurer, seconded by the Comptroller. All in favor signal by saying, "Aye."

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed?

(No response.)

GOVERNOR O'MALLEY: The ayes have it.

TREASURER KOPP: And finally, Governor, I move that the Board authorize and approve the issuance of the final official statement for the bonds.

GOVERNOR O'MALLEY: So moved, seconded by the Comptroller. All in favor signal by saying, "Aye."

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed?

(No response.)

GOVERNOR O'MALLEY: And the ayes have it.

TREASURER KOPP: Let me just say that if we had a naming opportunity here it would be the Patti Konrad General Obligation Bonds --

(Laughter)

GOVERNOR O'MALLEY: And I would commend that celebration to all citizens.

TREASURER KOPP: Thank you very much.

MS. KONRAD: We are all done.

TREASURER KOPP: Very good. Excellently well done. The taxpayers should be pleased.

GOVERNOR O'MALLEY: I wanted -- I'm sorry, is there anything --

TREASURER KOPP: That's, no, that's it.

GOVERNOR O'MALLEY: Okay. We're going to switch back now to our regularly scheduled programming.

(Laughter)

GOVERNOR O'MALLEY: And I'd like to ask the Assistant Attorney General if he might respond to Mr.

Wolf's assertions about MdTA and what if any obligation they had to make a best and final offer to those that were not chosen.

MR. TURK: Thank you. Thank you, Governor. I think it's important to remember that the allegations that are made here are simply allegations, and conclusory allegations which are disputed and will be litigated in court, and we will not burden you with litigating the case here in this forum.

But I wanted to make a couple of points. First of all, every argument made by Host that the procurement was illegal is based upon inapplicable procedural law. Mr. Wolf did cite to a procurement regulation and he called it an MdTA regulation. And I just wanted to step back because, and either inform or remind the Board, that the Department of Transportation of course is made up of the Transportation Authority and several modal administrations. And the Department of Transportation has delegated to MdTA oversight of all P3s for the modal administrations. It's an important distinction. Because the regulations relied upon by Host by their

own terms specifically pertain to the modal administrations. State Highway Administration, MAA, Port Administration, Transit Administration, et cetera. That, I would suggest, is a dispute of law and a matter for the court to sort out.

As a fall back, Host asserts that to have no process is illegal. But that's based upon the procurement law, which apparently there is agreement does not apply. But more importantly, there was a process. There was a process that was set forth in the RFP. There was a process that was explained in pre-bid proposals. It was explained that there might be negotiations, and there might be negotiations with one or more of the proposers.

Noticeably absent, with all the claims, there's no allegations in the complaint that Host ever would have made the winning offer. And now after consideration, and full consideration, by the evaluation committee, consideration by the full MdTA board, consideration by the budget committees, and by the way at every step of that way, including this Board here today and the last time, Host has had the

opportunity to be heard. And they have never said, "We would have given you a better offer."

At the end of the day every proposer was provided an opportunity to provide their best proposal. And on the basis of statements by Host the Transportation Authority reasonably believed that it had Host's best proposal.

There are a couple of things I think that need to be considered. In any RFP every proposer honestly believes its proposal is the best. And Host believes that their proposal was the best. Because we asked them to give them their best. No offeror, or proposer, is ever guaranteed to be selected. And Host has never explain why it did not, or if it did not present MdTA with its best offer. That has never been explained.

Unfortunately in any competition there can only be one winner. And in this competition, which was exhaustively evaluated by the good folks at MdTA, and I can tell you I've spoken to evaluators in other cases, it is not an easy job to do. They did not undertake this lightly. They did the work that they

were trained to do. But unfortunately there can only be one winner.

And I think also noticeably absent in all of this discussion is anyone discussing the impact on the traveling public, and the citizens, and the taxpayers, and the thousands of folks that travel I-95. So for those reasons the Transportation Authority and the Department of Transportation is requesting approval of the contract. And if I can answer any other questions I'm happy to.

GOVERNOR O'MALLEY: And so your assertion is, you are saying as a matter of law they were not required to go back and make best and final offers?

MR. TURK: There is never a requirement. There is case law that specifically says there is never a requirement to go back and do best and final offers. And the case law specifically says if a bid, if a proposer submits a proposal, an initial proposal, and it's not their best offer at that time, they should have no expectation that they would have any right to come back and improve that offer.

GOVERNOR O'MALLEY: And then we heard Mr. Wolf make the assertion that they are, about their Hobson's choice and about regulations that say but if you do make a best and final offer and extend that opportunity to one of the bidders you shall extend it to all. Is it your assertion that those regs do not apply to this procurement?

MR. TURK: Those regs do not apply because they are specifically geared toward the modal administrations, of which MdTA is not. But maybe even more importantly if you look at the procurement law, when we're dealing with a lease once an award has been, a winning proposer has been determined, there is still the right of the agency to go back and finalize the terms of that lease.

GOVERNOR O'MALLEY: And in this case the offer was twice, I mean in terms of financials, was twice what the next --

MR. TURK: Well the agency, if you wish, can give you the specific details. But it was far and away on all three evaluation factors, of all three Areas was judged to be superior.

GOVERNOR O'MALLEY: Okay. Mr. Comptroller?

COMPTROLLER FRANCHOT: Yes. Just my question, suppose despite your best efforts representing us you lose? Two years from now the courts finally after the appellate process is through it comes out for Host? Not likely, but certainly not impossible.

MR. TURK: We can't guarantee. All we can guarantee is our best efforts.

COMPTROLLER FRANCHOT: Are we going to owe tens of millions of dollars in convenience fees?

MR. TURK: That's not, that's not a foregone conclusion. It would, and I think it would be speculation to say that.

Let me also say that I know counsel for Areas has requested to speak. I'm not trying to cut anybody short here. But I just wanted to make sure the Board understood that.

COMPTROLLER FRANCHOT: I just get the feeling we're jumping the gun here. And I --

MR. TURK: I understand.

COMPTROLLER FRANCHOT: I'm not sure if other people want to testify?

GOVERNOR O'MALLEY: Anyone else want to be heard here?

MS. SWAIM-STALEY: I think that Areas is here. As I said before they were clearly the best proposal. They came to Maryland knowing that we had a level playing field and that what was important to us was jobs, but at the same time we had financial challenges. And I think they brought us a very good bid. As we've continued through these past several weeks to go through issues and make sure that we are addressing issues we continue to believe, as I said, that they are going to be a great partner here in Maryland and that they understand the local partnerships. And we're very pleased with the local companies that they also bring with them to this particular effort. So, and I think they would like to be heard today.

GOVERNOR O'MALLEY: Okay.

MR. ANDREWS: Good morning, members of the Board. Phil Andrews, I'm a lawyer, I represent Areas

USA. There are Areas executives and representatives here, but in the interest of time, and they will be happy to answer your questions, but in the interest of time I'd like to address a couple of the legal issues and then step back and let the Board do what the Circuit Court for Montgomery County has cleared the way for the Board to do.

Members of the Board it would be a terrible mistake to let this litigation brought by Host derail this project. And I say that for several reasons. First, the chances, to answer your question, Mr. Comptroller, the chances of Host prevailing are very small. And I say that because first of all the Host, Host has an uphill battle because courts routinely, and there are lots of cases that say this and I know you don't want me to recite cases, but courts routinely defer to the judgment and the expertise of administrative agencies. And I think it should be clear to the Board that this agency and this selection process did a careful, careful job in the process and did make it fair, and did follow the RFP, and did follow the P3 statute.

And Host's arguments, and I'm not going to try the case here because I know you don't want that, but Host's arguments, the three things that it claims are a problem were all things that appear in the RFP. The RFP said no guarantee of any BAFOs. The RFP said here are the evaluation criteria, and it didn't say this one is more important, or they are equal, or anything else like that. And it also said most clearly that this is a P3 procurement, it is not a general procurement law procurement. And the procurement cases are clear, the selection cases are clear no matter whose law is being applied that a bidder cannot simply sit back and say, "Well, you know I'll take my chances. Maybe I don't like what the RFP says, but maybe I'll win. But if I don't win then I'll throw a monkey wrench into the process. Then I'll file suit. Then I'll protest."

So they've got an uphill battle in any event because of the discretion that's given by the courts to the agencies. And then they've got an uphill battle because the court, I believe, is going to rule that they waived the opportunity to raise any of these

arguments, and the arguments don't have merit anyway. Courts don't substitute their judgment for administrative agencies. And they won't here, why would they? Areas had by far the best offer.

Two other points, because I know the Board has heard a lot today. The temporary restraining order, and Mr. Comptroller you mentioned the language that was in the temporary restraining order. Those kinds of orders have a formula and a set set of language that they must include. And that's what was in there. But Mr. Comptroller and members of the Board, that order has been dissolved. It's in no further effect. It's null and void. And anything that's in that order is not binding, now because the case has moved to Baltimore City, is not binding on the court going forward. So the order, in my humble opinion, should never have been issued in the first place. But it was, but it's been dissolved. And the court canceled the preliminary junction hearing and that's why we're here today. So what's in the order should not give this Board pause.

And the difference between a litigation like this, which can go on for a very long time, with discovery, a very wide discovery, and appeals, it's different from the Board of Contract Appeals. Which is an expedited, streamlined process, very limited discovery, and very limited appeals. This will have the capacity for going on for a long time. To paralyze this project at this juncture is a mistake. And that is Areas' position, and I believe it is properly held.

And I want to say one other thing with respect to your lawyer, who I think has done an excellent job all the way through this. We'll disagree about what happens in the very, very unlikely event that Host were to prevail. I believe the cases say that you have the same result as you would in the general procurement law. Which is come back here if a court declares that there was some flaw, and this Board will decide what to do. I think we would be in a void/voidable situation. Void contracts are those that are procured by fraud or bribery. There's none of that here, not at all. Then otherwise it is

voidable, and the Board decides what is in the best interests of the State at that point.

I appreciate your time hearing from one other lawyer. I'd be happy to answer any questions. Otherwise, I'll step back. As I said, there are representatives from Areas on the corporate side, if you will, who would also be happy to address any questions if you have them.

GOVERNOR O'MALLEY: Okay. Mr. Comptroller?

COMPTROLLER FRANCHOT: Yeah, no, I have great respect for Mr. Andrews. He's well known in the procurement area. And I have no problem with MDOT. I think you all handled yourselves, you know, with a lot of appropriate behavior. And Areas, I have no problem with them. Bring in new companies. I think you are good for business.

My problem here is that the judicial process, for whatever reason, has been triggered. My understanding is that Host, a company that employs a lot of people in Maryland, doesn't make these kinds of litigious charges easily. So it can't be anything but expensive and out of the ordinary for them. And I

would just, as I've said, feel a lot more comfortable if, you know, we allow the legal process to run its due course. And that's because of the uncertainty, despite what you say, which obviously there is, there's uncertainty. And from my view I think the State would be exposed to tens of millions of requests from Host if two or three years from now it is determined that they are right. And despite your great efforts we're wrong. And so because of that possible exposure, and the general uncertainty, and the need. You know, the need, it's, we're talking a 35-year contract. And I've visited those sites, and they are well run, and they're busy, they're congested. But you know, there's no emergency here. It's, and I guess the overall public context for the people that are listening and looking at this issue, there is a down side to public/private partnerships. Because you are out in these uncharted waters. And there's a, there are examples in other states where some really bad things happened. And, you know, a lot of, because of the concentration of decision making

without normal Board of Contract Appeals and procurement protections for the public.

So yeah, it's a great model in theory. But it can be abused very easily. And that's the reason that despite my respect for the Secretary and Areas and I'm, and my good friend Reverend Calhoun, I am probably going to vote no because this is, as someone said, uncharted waters.

MR. ANDREWS: Well there are certainly uncertainties anytime. But there's nothing to suggest that any process has been abused --

COMPTROLLER FRANCHOT: No, and I'm not suggesting that.

MR. ANDREWS: And I'm, I didn't think, I know you're not.

COMPTROLLER FRANCHOT: I'm just saying conceptually, Mr. Andrews. You know about the examples of what happened in this area in other states. And my goodness, if you look at the history of Maryland, God bless our great State, but there are some tremendous examples of public/private partnerships that went south in a major way. Years

ago, I'm talking a hundred years ago. But you know, this is an area that we have to be cautious in rather than just in an effort to avoid paralysis, which we all want to avoid. But there's a flip side to that, which is creating a situation where there are some real problems down the road in other situations, not this one.

MR. ANDREWS: Well I certainly do not want to argue with you, Mr. Comptroller. Because you always have the floor, but, and I don't.

(Laughter)

MR. ANDREWS: But I will say that the allegations that are made here are makeweight. And it's going to stall for years this very important project. And I will let the Secretary continue from here. But I appreciate your hearing from me and I would urge the Board --

COMPTROLLER FRANCHOT: No, it's the precedent that was set, and we are setting, arguably, that is the issue. I'm not in a contrary mode at all, you guys. I'm just saying, that's my concern. I want you to understand that.

MS. SWAIM-STALEY: Thank you. I don't think others are signed up to testify. So I would just say in closing I appreciate that you all understand, I think everyone acted in good faith here to address an area of concern that we have. I would say that we believe that delaying this decision, however, will mean that in the interim we will have to take monies from our other system preservation to keep these facilities up, and certainly these facilities are not to the standard that is now being set on the East Coast. Which unfortunately affects our traveling public, I think our reputation, as well as the bottom line to the Transportation Authority. So I would just respectfully request your approval. And thank you all very much.

GOVERNOR O'MALLEY: Okay. Anybody else want to be heard?

MR. WOLF: Governor, I don't want to be --

GOVERNOR O'MALLEY: That's all right, Mr. Wolf. Come on down.

MR. WOLF: If I could speak to one procedural matter which addresses a concern raised by

the Board, the RFP at 6.4.6.4 requires Areas to hold its proposal open for 240 days from submission, plus another 180 days upon approval. And until the end of any protest in court. So the rush that we heard about at the last meeting and implicit today I respectfully suggest that it does not arise under the RFP.

GOVERNOR O'MALLEY: And you are reading to us from --

MR. WOLF: From the RFP from the MDTA itself?

GOVERNOR O'MALLEY: May I see it?

MR. WOLF: I apologize, I don't have the specific language --

GOVERNOR O'MALLEY: But that was the language in the RFP that they put out written in there?

MR. WOLF: If you will allow a paraphrase, that --

GOVERNOR O'MALLEY: Actually, I kind of wanted to see the actual language.

MR. WOLF: I apologize. I don't have it.

GOVERNOR O'MALLEY: Anybody else want to be heard? It's in there? Where is it? I had to ask.

(Laughter)

MR. WOLF: I have 6.4.6.4.

GOVERNOR O'MALLEY: I enjoyed the few moments I was there.

MR. WOLF: Your indulgence is appreciated.

Page 42, 6.4.6.4, Governor.

GOVERNOR O'MALLEY: Proposed validity period. The proposer agrees that its proposal will remain, proposer agrees that its proposal will remain valid, and who is that in reference to?

MR. WOLF: Anyone proposing, is my interpretation.

GOVERNOR O'MALLEY: So any of the bidders?

MR. WOLF: Yes.

GOVERNOR O'MALLEY: Okay. That its proposal will remain valid for 240 days following the proposal due date. After such period the proposals will cease to be valid unless the proposer and the MdTA agree in writing to extend the validity of the proposal or BAFO received from the proposer receiving the notice of

prior award automatically extends for an additional period of 180 days. Notwithstanding the forgoing, all proposals shall be irrevocable until final administrative and/or judicial disposition, protests, or other challenge of this RFP, including the implementation, the selection process, and the award decision.

Well as I read that that would seem to lock Areas to the bid that they put in, not lock in MdTA to refraining from taking any action until litigation is resolved.

MR. WOLF: I believe that's a fair assessment.

GOVERNOR O'MALLEY: Okay.

TREASURER KOPP: I think Mr. Wolf was addressing something that was said at the last meeting, not by Areas, but it was said that we might lose the bid. Is that --

MR. WOLF: The issue --

GOVERNOR O'MALLEY: Got you. All right. I misunderstood. Okay.

MR. WOLF: Thank you for the opportunity.

GOVERNOR O'MALLEY: Thank you, Mr. Wolf.

Anyone else want to be heard? Okay. Thoughts?

TREASURER KOPP: Governor, we have spent a great deal of time listening to this. It's a very difficult situation because as you know Host before it became a subsidiary of Autogrill was in fact in District 16, and a very good citizen of District 16. A fine company.

I asked also, I actually was telling the Secretary, I happen, it sounds very strange, but I happen to have driven both in Portugal and in Spain and stopped at the plazas and I have to say in total candor they just seemed like plazas. I mean to me a rest stop is a plaza is a rest stop is a plaza. It was very nice. Chesapeake House and Maryland House have been terrific for the last several decades but they are getting old and they have had some problems.

I have read through more material than I certainly ever wanted to or can, I mean you saw the size of the RFP. We read through all of this stuff. We have asked questions. We have gone through all the material. I too have looked at minutes. And I just

have to say that I think that the process was fairly done. I think that the RFP was clearly written. I think that it comes down to how much money you're putting into a capitalized structure versus how much you are getting in rent.

I think both companies are going to employ a large number of Marylanders. Both companies are using outstanding construction firms from Maryland. I think that they have both given very good responses. But the response that was accepted by the evaluation committee, and then by the Transportation Commission, and is before us now it seems to me was done appropriately. The difference was quite noticeable in all of the categories of judgment. And I'm quite comfortable supporting the decision of the MdTA and the Secretary. And going forward there are always several branches of government, plus uniquely in Maryland the Board of Public Works. And we each have our jobs to do and we'll see what happens.

But I think the traveling public and the taxpayers will benefit by going forward with this

project at last and taking the best bid that came before us. So I am prepared to support the item.

GOVERNOR O'MALLEY: Mr. Comptroller? Okay. The, I agree with everything that the Treasurer so succinctly stated. In a perfect world I'd love to preside over bids where only the people who had the greatest number of employees in Maryland are the people that always win these, but that's not our procurement process. We do have, we did go out for this request and proposals on this. It's been along time coming. This is not the first time we've done a public/private partnership. In fact, the one that we did at the Port of Baltimore is giving us a ten-year advantage and a ten-year head start on many other ports that won't be able to accommodate the larger ships.

Given the procurement and given the process that's been followed, I believe a unanimous vote by all of those that were on the evaluation committee in looking at this, and Areas prevailing in every category, I am going to move to support this matter which is Item --

MS. SWAIM-STALEY: Nineteen.

SECRETARY MCDONALD: Nineteen.

GOVERNOR O'MALLEY: -- move approval of Item
18.

MS. SWAIM-STALEY: Nineteen.

SECRETARY MCDONALD: Nineteen.

GOVERNOR O'MALLEY: I'm sorry, Item 19.
Move approval, seconded by the Treasurer. All in
favor signal by saying, "Aye." Aye.

TREASURER KOPP: Aye.

GOVERNOR O'MALLEY: All opposed?

COMPTROLLER FRANCHOT: No.

GOVERNOR O'MALLEY: The Comptroller votes
no. Thank you. The balance of the Department of
Transportation Agenda items. Any questions on the
remainder of the items from Department of
Transportation? Comptroller?

COMPTROLLER FRANCHOT: The item that
precedes this, the Silver Diner.

MS. SWAIM-STALEY: I will call Paul
Wiedefeld --

COMPTROLLER FRANCHOT: Oh great, is he here?

MS. SWAIM-STALEY: Yes. Paul Wiedefeld,
Director of BWI Thurgood Marshall Airport.

COMPTROLLER FRANCHOT: Mr. Wiedefeld, how
are you?

MR. WIEDEFELD: Good afternoon. Pretty
good.

COMPTROLLER FRANCHOT: So it's my
understanding that we're being asked to approve with
this item \$3.5 million in moving costs to be paid to
the concessionaire at BWI for moving the Silver Diner
from one spot to the next. And I understand that that
is necessitated by the construction that you have had
at your security checkpoint. We're legally required
to pick up the cost.

But I'd like to just keep this in
perspective, because our revenue from the Silver
Diner, which is a wonderful Maryland company, is about
\$400,000 a year to the Airport. And so this \$3.5
million in cost is going to require us to have almost
nine years of operation before we break even. And I
guess my reading of the background material suggests
that we're being asked to authorize here today only

about \$2.3 million. The remaining \$1.2 million could be used essentially for enhancements to the new site. And I guess what I need is some understanding, since these are relatively large amounts of money for moving a diner down a, I guess a corridor a little bit. And so are we just going up and beyond normal duties for the Silver Diner because they are so great? Or is it something that we would do for anybody?

MR. WIEDEFELD: This is a unique situation, for sure. If I could just put a little bit of context to try to frame it a little bit. The B-C connector, and there's three elements, is the secure side connector between concourses B and C. It's relocated at the security checkpoint at C. And it's driven by the necessary growth for Southwest and AirTran, so that's what is driving the urgency of this project, which is a larger, \$100 million project.

Unfortunately the connector went right through the Silver Diner. And then just by way of background, Silver Diner is located in Montgomery County. It does have six stores in Maryland, has eight in Virginia, one in New Jersey. And roughly

does \$50 million and employs about 1200 employees in their entire enterprise.

At Silver Diner located just down the B security checkpoint, they have been in business just over four years there. They operate 6,000 square feet. They are our largest concessionaire in the entire Airport, so that makes it unique from that perspective. They do employ a number of people at BWI. And they growth, they started out at roughly \$4.5 million in gross revenues and they are up to \$6 million, you know, as you mentioned. So they are one of our highest volume concessionaires and one of our highest growth concessionaires.

And it's also one that we aggressively went after Silver Diner to come to BWI. We, you know, as you know, with the overall concept we've been promoting local businesses and we particularly promote local business out of the Washington region because that's where we compete for passengers, with our surrounding airports.

So with that as background, in the typical process contractually what happens is if we need to

take a space basically we need to offer that concessionaire a comparable space both in terms of square footage and in terms of market. So you just can't move them to any, you know, a dead part of the terminal. And what we would then do is we would then basically provide a shell for that building, or for that concessionaire. And they would build it out to whatever their need is. So that's the typical process.

And in doing that we contractually are required to basically pay them the unappreciated book value of their investment. We need to provide utilities in that new location for them, start them in in fact, and we need to provide the moving cost. So that is standard in what we do, and that's what's in that roughly \$3.5 million.

What's unique about this is the scale of the operation. We have no other space available for them of that footprint. And definitely not in that park area. And in working with them basically we shut down for nine months, which basically would drive them out of business. So they would lose that business. Yes,

we could, you know, throw it away but we would lose that and those hundred jobs. It is a quality product and a really important location for us. We would lose that during that construction. So there was also a concern, what would it do to their type of business? Because, you know, it's a big part of their business. They aren't prepared for this.

So the first thing we tried to do is just could we avoid them in any way? Build around them? And physically we just could not get there. I tried to do that so that we didn't impact them. So we looked at them very closely and came up with a, basically a design package that keeps them in business. They would have to close periodically as we do things, but basically we are taking out the bar, we're taking out their kitchen, and we're taking out half their seating.

So with that basically what we've been able to do is work a deal with them that keeps them in business, keeps the jobs there, keeps revenue coming to the Airport during the time when in fact they would

close down, keeps their high quality product, and keeps there quality thereafter.

So the numbers worked out, as you mentioned the \$3.5 million, basically \$2.3 million, a little over \$2.3 million, contractually we are obligated to it. I mean, I cannot change that. There is another \$1.2 million that basically we did put on the table to try to work with them to keep them in business. Because basically we have to get refinanced and rebuild this whole thing.

So what we've done is, we basically have struck a deal that based on the actual cost they would get a portion of that. And so we're going to audit them at the end, and look at all their costs, and they will get a portion of it. Same with utilities, same with the moving costs, it's based on actuals. So this is sort of the up side numbers, the \$3.5 million, and it will be driven by actual costs. We have an audit in their capital expenditures, or their underappreciated book value, and that's at roughly \$1.5 million. And contractually we are obligated to do that. We can't do anything about that. It doesn't

matter if they were here to not here, we have to pay them that money. If they stay then we are contractually obligated for the utilities and the moving. So again, those are numbers that are hard.

COMPTROLLER FRANCHOT: No, I love the Silver Diner. I go there when I'm up there, and they are a great presence in Montgomery County. So I thank you. But I realize it's somewhat unique --

MR. WIEDEFELD: It is unique. It is unique. And it's a unique situation to have, you know, two major arteries merge right at the point where, you know, a major concessionaire is.

COMPTROLLER FRANCHOT: Okay. Thank you, Governor.

GOVERNOR O'MALLEY: Thank you. Any other questions on this or any other matters on Department of Transportation Agenda items? The Comptroller moves approval, seconded by the Treasurer. All in favor signal by saying, "Aye."

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed?

(No response.)

GOVERNOR O'MALLEY: The ayes have it. We now have the Department of General Services with Al Collins.

MR. COLLINS: Good afternoon, Governor, Madam Treasurer, Mr. Comptroller. The Department of General Services has 21 items on our Agenda today. We are withdrawing Item 2, and revising Item 11. We would be glad to answer any questions that you have at this time.

Governor, before I take any questions I just would like to acknowledge your support to the family of Hatim Jabaji's, and also acknowledge your comments about what a tremendous loss he is to the Department of General Services and to the entire State. Regarding the comments from the Treasurer to Patti, I think Hatim in the four years that he was with the State, along with your Maryland Energy Administration, really leapfrogged the State into the modern era. We have, as you well know, we've done outstanding projects and have some really outstanding things on the drawing board. And we certainly, we're still in shock about losing him. And pledge that we will

continue to be close to his family during this very difficult time. So I'm ready to answer any questions.

GOVERNOR O'MALLEY: Okay, thank you, Al. They will be tough shoes to fill. Any questions, Department of General Services Agenda items? Hearing none, the Comptroller moves approval, seconded by the Treasurer. All in favor signal by saying, "Aye."

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed?

(No response.)

GOVERNOR O'MALLEY: The ayes have it. Thank you all very much.

(Whereupon, at 12:25 p.m., the meeting was concluded.)