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P R E S E N T

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

PATRICIA BARDEN, Administrator, Board of  
Public Works.

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P R O C E E D I N G S

GOVERNOR O'MALLEY: All right, good morning. This is the Board of Public Works. The day's date is May 18, 2011. We have a presentation, I believe at some point early this morning, on the revolving loan fund and how we maintain the dams in our State, such as they are. And so we are going to get to that in a second. But I am wondering if the Comptroller or the Treasurer have any opening thoughts, comments?

COMPTROLLER FRANCHOT: Governor, Madam Treasurer, thank you. I do just want to make a couple of comments because I've been traveling around the state a lot visiting businesses that are creating jobs and I've just seen some wonderful examples of the genius of the private sector in Maryland. And this makes me very proud of the entrepreneurial spirit we have and the fact that we are going to be entering into a recovery and jobs and prosperity are around the corner.

I called for nominations for a "Better For Less Award," which I'm presenting one of to a business in each jurisdiction to recognize Maryland businesses

who have demonstrated entrepreneurship and innovation to deliver better results at reduced costs. And these are businesses that have been hammered by the recession, but have resiliently reengineered their practices so that instead of being threatened they are actually surviving and in these instances thriving.

I've visited twenty counties, plus Baltimore City, I've got three to go, to award recipients an award in person. The sound management principles and ingenuity that I've seen have inspired me. The talent and opportunity we have in Maryland is second to none.

One award went to BJ's on the Water in Ocean City. I hadn't had a chance to go there, Governor, but it's a wonderful restaurant. It's founded by a born and bred Marylander that's utilized creative marketing, outstanding customer service to keep pace in the toughest economy we've seen in generations. Just a couple of miles away from the Delaware line, where there is lots of competition as you know, BJ's is thriving as a destination point for Marylanders and visitors to Maryland.

On the other side of the State in Hagerstown is Beachley Furniture. It's a hundred-year-old family-owned furniture business. Owner is David, I think David is his first name, Beachley. Part of the worst economic recession we've seen in generations, family-owned business completely changed direction and focus to move into the custom furniture business. He said, "We made most of our profits over a hundred years from the Beachley line of furniture." All of a sudden he had to drop the entire line, come up with some other business model. "Otherwise, we would have had to close our doors." They took a huge risk. Their new design catalog that they've created is flying off the shelf. Their expertise is in demand on a national basis. They've got a tremendous workforce that I met. And just is an example of a nimble response to tough times. And it made me very proud, frankly, of the State that we live in.

Some have embraced technology, like the furniture company I just mentioned. Some have made tough choices. Some have been creative about their market niche. I visited Rich Roofing in Baltimore



City. An unbelievable company, owned by an African American woman entrepreneur who was I think a nurse or something. But her husband had this roofing business. He passed away. She took it over. And you know, God bless her, a lot of employment.

E-Structors, in Howard County, a company that didn't exist a few years ago. Now it's one of the nation's leading recyclers of computers and electronic equipment. Once again, adapting to what we have out there, giving good customer service, and taking advantage of strategic opportunities.

So I just wanted to compliment the ingenuity and the best ideas that are flourishing out there in the private sector. And I really think Maryland is the envy of many states because of these small businesses that don't get a lot of recognition, but are out there producing jobs for our friends and neighbors and Marylanders.

Governor, thank you. For that I'll be in Queen Anne's later on today presenting one of these awards --

GOVERNOR O'MALLEY: Great.

COMPTROLLER FRANCHOT: And a lot of good stuff going on out there.

GOVERNOR O'MALLEY: That's absolutely true. I'll be at GANTECH headquarters in Columbia today --

COMPTROLLER FRANCHOT: Great.

GOVERNOR O'MALLEY: -- part of our new economy and businesses expanding. I think 80 percent of our jobs are supported, are jobs that are supported by small business. So great comments. Madam Treasurer?

TREASURER KOPP: Well, I'll be in the office working today.

(Laughter)

TREASURER KOPP: -- many thousands of hardworking State employees.

GOVERNOR O'MALLEY: Great. Well, let's get into the dam presentation.

MR. COLLINS: Yes, sir. Mr. Governor, Madam Treasurer, Mr. Comptroller, several --

SECRETARY MCDONALD: The court reporter should note that it's D-A-M.

MR. COLLINS: Several weeks ago the Board asked DGS to get with MDE and talk about a presentation relative to a dam revolving fund. Mr. Jay Sakai from Maryland Department of the Environment is certainly the lead on that, and he's here this morning to walk you through the presentation.

MR. SAKAI: Good morning, Governor O'Malley, Comptroller Franchot, and Treasurer Kopp. I want to thank the Board for this opportunity to provide you a brief overview of our program and maybe some suggestions on how we might address this problem with respect to financing.

With your indulgence I'm going to go through a brief presentation just to give you a little background on the program itself and then we'll talk a little bit about our recommendations.

Maryland has, the Department of the Environment has the regulatory oversight over dam safety. We have a little over 400 dams in Maryland. These are regulated entities that have to comply with dam safety regulations, which means they have to be able to handle the maximum probable flood. And with

this regulatory program safety, public safety, is really the preeminent issue that we address.

So typically what happens in the course of an inspection of a facility we will often find structural problems with the facility that would potentially undermine the structural integrity of a dam. Often it's a spillway issue. Many people when they think about dams in Maryland they have in their mind the very large facilities. Loch Raven Dam is a good example of what people think about when they think of dams. The reality is we have, aside from the hundreds of regulated dams in Maryland, we also have thousands of small ponds that are also in effect dams. And many communities have grown up around these facilities over time and then as time goes on they require maintenance, capital investment, and often it is the homeowners that are left with the task of coming up with the money to repair.

So often it is a spillway, it is a pipe that has to be repaired. None of this is ever inexpensive. And typical repairs for a small dam repair would range in the several hundreds of thousands. It's a large --

GOVERNOR O'MALLEY: There are very few, and there are very few natural lakes in Maryland, true?

MR. SAKAI: That is true.

GOVERNOR O'MALLEY: I mean, if any. So virtually any lake you see, whether it is, it has a dam somewhere or it wouldn't be a lake, right?

MR. SAKAI: Yeah, that's correct, Governor. And if you think of many of the lakes that people enjoy recreation on, at the head of that lake is a dam that was put in typically decades ago. Most of the lakes, the small lakes that communities have grown up around are in effect entrainments that are being supported by a dam downstream. Often the community will never know that there is a dam downstream. And many times when they find out that there is a dam safety problem and a repair issue they're very much surprised that they have some responsibility for this repair.

So we have faced this problem frequently. And historically there has been very little funding, certainly not within any of the State programs, for these types of repairs. And from the Department's

perspective it's certainly, the funding part of this is certainly something that I think is an important issue to address.

With respect to funding options, we took as tasked by the Board a very hard look at what potential options might exist out there for a private homeowner's association that was faced with the task of a dam repair. And what we've come up with is in terms of the Department of the Environment we have several existing funding programs that historically have not been used for dam repairs --

TREASURER KOPP: Jay, can I --

MR. SAKAI: Yes, ma'am?

TREASURER KOPP: I might have missed this. But is there a numeric breakdown between the three categories of --

MR. SAKAI: I believe there is a report that we had submitted and if not I'll provide it forthwith --

TREASURER KOPP: Just a ballpark --

MR. SAKAI: -- with a breakdown. We have, just to go back, the categories of dams, we classify

them according to public safety hazard. We have high hazard dams, we have significant hazard dams, and we have low hazard dams. And it really depends on our assessment that if the dam in fact catastrophically failed would there be potential loss of life and significant infrastructure damage? So we have a limited number of high hazard dams that we inspect more frequently, and a lower number of --

TREASURER KOPP: -- actually a pretty good number --

MR. SAKAI: -- low hazard dams. So there is a breakdown.

SECRETARY MCDONALD: Jay, your report is in the record and it does have numbers in it.

MR. SAKAI: Thank you. Thank you. So with respect to funding, we've looked at various options here. And internal to the Department's own program we do have a revolving loan program that we think can be brought to bear here as maybe one of the first options for addressing this. Historically we have not used this Clean Water Revolving Loan Fund for dam safety repairs.

Now the change here is that there has been, much in part because of a lot of the work that we've done with the Bay TMDL, a recognition that there is a pretty clear linkage between sediment entrainment behind dams and potential sediment loss and sediment impacts if the dam were to fail. So we can now make this connection between clean water, water quality, and dam repairs under the premise that the failure of a dam would result in a very significant release of sediment to the waterways. So, and this is something that we work out with the Environmental Protection Agency, which passes through the majority of our revolving loan fund money. So there is, and we are recommending that we take, make greater use of the SRF, existing SRF program, to address dam safety problems.

There's another option that has not been used very much in the past and I think it's more a question of it's not particularly well advertised. We have a, what's called a link deposit program. And the link deposit program is a Department of the Environment funding program that allows private



entities who secure capital through their own funding sources to receive an interest rate reduction. In effect, the State subsidizes the interest rate component and it lowers the interest rate and brings more affordability into this. We've had this program in place for some time and it's I think clear to everybody that we can do a better job of making dam owners that are subject to compliance problems more aware of the opportunity to take advantage of the link deposit program. And there is, as I said, a more detailed write up about the structure of those two programs within the report that we had submitted.

And then finally one of the recommendations that the Board had asked us to look at is the opportunity for creating, or the value of creating, a stand alone revolving loan fund type program specific to dam repairs. And that's certainly an option and there may be some benefits in doing that in that, you know, if an applicant, a dam owner, comes in for, under the current revolving loan fund for a loan that it's a competitive program, and he's competing with a lot of other people for that money. A dedicated

program would limit the universe of funding just to these dam owners.

I will tell you that historically there have not been large numbers of outstanding compliance problems with dams. We currently have about a half a dozen existing compliance orders with these owners. But as these dams age over time we fully expect this to be a growing problem in the future. And obviously one of the things we're trying to do along the way with this program is increased public awareness of the shared responsibility that many people have if they happen to live on a lake that is supported by a small dam.

So I'm going to leave it at that and be happy to answer any questions that you might have with respect to the basic recommendations.

COMPTROLLER FRANCHOT: Governor, if I may?

GOVERNOR O'MALLEY: Sure, Mr. Comptroller?

COMPTROLLER FRANCHOT: I just want to thank you for this. I think it's excellent. And it came from, as you know, a couple of agendas ago we had some small dam repair projects. And in looking at those

apparently there are dozens that are eligible, or would like to follow up but there is no funding available. And the Treasurer was talking about all the great employees we have in the State of Maryland. I've got one sitting right next to me here, Mr. Klasmeier, who said, "Why don't we try to, in an innovative way, set up some kind of a revolving fund?" So whether it's a revolving fund that the Legislature creates, or this link deposit, which I think is very interesting, that you mentioned, or the existing fund that you have, I really appreciate your attention to it. And if you, whatever you come up with, if you could name it after Mr. Klasmeier, I'd be grateful.

(Laughter)

COMPTROLLER FRANCHOT: And I think it's, you know, a great testament to your agency, Governor, that you know, they in tough times come up with something that perhaps will pay for itself.

GOVERNOR O'MALLEY: What's the, I saw a map in here, in your slide show. Is that live? Can any citizen go on that, and click on where the dams are?

MR. SAKAI: We do not have that live. The Department is working through a revamp of its website and there was some discussion about making more of this information available to the public. So that the public, you know, people that don't know they live on a dam, they can at least see it on the map. So we'll certainly take that back and --

GOVERNOR O'MALLEY: Good. I really want to see it live. The same way the Department of Transportation, we should have the, are the structurally deficient bridges online? Or are all of the bridges online, and then their ranking in terms of which ones are the most structurally deficient? That should be online, too. You can't expect people to make informed decisions about infrastructure investments if you we keep hiding from them the reality of what's underneath their, you know, the wheels.

TREASURER KOPP: The high hazard ones, of which I recall there was something like seventy? Sheila?

SECRETARY MCDONALD: Yes, sorry --

TREASURER KOPP: Seventy-one? I'm sorry, I

--

SECRETARY MCDONALD: It was, the highest, I  
will --

TREASURER KOPP: It, it --

SECRETARY MCDONALD: The high hazard dams  
are seventy-one, high hazard dams. One hundred  
significant hazard dams, and 232 low hazard dams.  
There are in fact seventy-one of the high.

TREASURER KOPP: So if you focused on the  
first two categories where there are probable or  
possible loss of life, are those, is there any pattern  
of ownership? I mean, are they owned by large  
corporations? Communities?

MR. SAKAI: The majority of the high hazard  
dams are owned by government entities --

TREASURER KOPP: Oh, so this is both public  
and private?

MR. SAKAI: This is public and private. And  
as you might expect, you know, certainly the largest,  
most hazardous facilities are owned by municipalities,  
their water supplies. The Department of, in fact,

Natural Resources owns a number of them. Most of them are controlled by municipalities and government entities.

TREASURER KOPP: And those are the ones that are inspected by us every year?

MR. SAKAI: Well, yeah, the high hazard dams are the ones that we inspect every year. And then we have a tiered inspection regime, depending on the level of hazard and the classification of the dam.

TREASURER KOPP: Okay. Yeah. So the high hazard, you've got to have a matrix of both high hazard and likelihood of failure? Or condition, right?

MR. SAKAI: That's correct --

TREASURER KOPP: I mean, you could have something in pristine condition. If it ever went it would be a terrible thing. But --

MR. SAKAI: The, yes, ma'am. The classification of the dam has to do with the consequences of its failure, not its current condition.

TREASURER KOPP: Right.

MR. SAKAI: So the high hazard dams are not the ones that we have designated as impending failures. They are the ones that if they fail, they may be in great condition, if they fail they would result in a --

TREASURER KOPP: So is that matrix -- I'm sorry. I don't have the --

GOVERNOR O'MALLEY: And therefore --

SECRETARY MCDONALD: -- looking to see if there are ones that are actually in danger. I don't know that that information is in here --

GOVERNOR O'MALLEY: And therefore you inspect them more regularly?

MR. SAKAI: That's correct. That's correct.

TREASURER KOPP: So you, among the high hazard ones I trust the State is maintaining them?

MR. SAKAI: We, I think that's an excellent question because it gets really to the heart of how we establish priorities --

TREASURER KOPP: -- public safety.

MR. SAKAI: If there is a, if there's a dam in a high hazard classification that through our

inspection process we determine that there is a compliance problem, meaning that there is some dam safety issue. And an example would be the Savage River Dam was such a facility, had problems with the gate structure. They had an inability to open and close the gates effectively and they needed a repair. It was in this case a very significant, multimillion dollar repair that took place. What we do on the compliance side is for that classification of dam is to compel compliance immediately. Which means that the dam owner has really two options that they have to undertake. They have to reduce the hazard, and they can do that by reducing, draining the lake in effect. And in many cases we require them to lower the lake level to a safe level. And then it buys them time to undertake the repair. If they choose not to do that we have a variety of different enforcement. We have had to go to compliance orders to compel high hazard dams to be repaired more quickly. And always this is driven by concerns about public safety. So if we have a dam that is in imminent failure that is a high hazard we would compel repair very quickly.



It is also within the Department's authority should the dam owner not choose to cooperate for the Department to undertake repairs on its own and charge the owner. We have not had to do that in any circumstance that I'm aware of but it is a tool that is at the State's disposal in the event that there was a threat to public safety.

TREASURER KOPP: So, not to pull on this too much, but what can you tell us in general about the state of public safety regarding the dams now?

MR. SAKAI: What I can tell you is that we have approximately half a dozen current compliance orders, all for high hazard facilities. Which means that they have a repair regime and schedule in place. That has come from the inspections. Those are the only high hazard facilities that we have determined there is a safety issue that needs to be addressed.

TREASURER KOPP: Six?

MR. SAKAI: I mean, it's six right now.

TREASURER KOPP: And of those which are owned by public versus private?

MR. SAKAI: I believe they are all public.

GOVERNOR O'MALLEY: And what are the six?

Do you know?

MR. SAKAI: Off the top of my head I know that the Annapolis City had a facility that was on that list. We have, Montgomery County has got a facility, Montgomery Auto Park has a dam that is in a compliance order. I don't have that list. I can get it to you.

GOVERNOR O'MALLEY: That's okay. When you get a chance, a Blackberry, and let us know. We'll read it out later.

TREASURER KOPP: And, and one other, and again I don't have the backup. Among the second category, which is larger, significant hazard, possible loss of life, do you order them quantitative? I mean, possible loss of one life versus possible loss of a thousand lives?

MR. SAKAI: We do. The high hazard dams are the ones that would result in loss of life --

TREASURER KOPP: But that's probable.

MR. SAKAI: Of probable, even possible loss of life among the high hazard. Meaning that there are

people that live in the floodway downstream of the dam.

TREASURER KOPP: Well in that case the significant hazard is even less possible than the possible -- I'm just reading what you gave us.

MR. SAKAI: Right.

TREASURER KOPP: And you ranked it, which seemed logical, probable, possible, and not really.

MR. SAKAI: Significant hazard is classified as a significant loss of property. But we don't have, those are circumstances where we don't have residences that are proximate downstream of the floodway. And you know, as part of the normal zoning process we, you know, obviously there is a, through identification of the flood plain, there is a normal process that takes place that generally prevents new development from taking place within a downstream floodway. That's how, in fact, the flood program works in general. So we have over time, I think, made more effort to ensure that there are fewer and fewer people living downstream of a dam that may fail.

GOVERNOR O'MALLEY: Do you want to touch on Conowingo? I mean, no dam discussion is complete without touching on Conowingo.

(Laughter)

MR. SAKAI: What would you like to know about Conowingo?

GOVERNOR O'MALLEY: Structural integrity, sediment issue, Army Corps?

MR. SAKAI: There's obviously a, you know, I guess for everybody else the Conowingo facility is a power generating facility on the Susquehanna --

GOVERNOR O'MALLEY: Owned by Exelon.

MR. SAKAI: Owned by Exelon, on the Susquehanna River. And it is used for, really to, it's a peak generating facility owned by, owned and operated by the power company. The structural integrity of that facility is both under the auspices of the Department and of the federal government, the Federal Energy Regulatory Commission.

GOVERNOR O'MALLEY: And a failure at Conowingo would be an economic, or an environmental and an economic disaster.

MR. SAKAI: It would be almost too difficult to measure the impact of a failure of a large facility like that. There is a known --

GOVERNOR O'MALLEY: The whole Bay, it would be devastating.

MR. SAKAI: That's correct, and there --

GOVERNOR O'MALLEY: Because it also catches most of the sediment, well it doesn't catch it. But it, most of the sediment that flows into the Bay comes down through there, right?

MR. SAKAI: That's correct. And there is a known sediment issue with respect to Conowingo. It's well known that there is a huge amount of sediment that is captured behind that dam. And at some point along the way there is an ongoing discussion with the Corps of Engineers about trying to address the sediment build up behind the dam.

Sediment build up behind, of course, behind all dams. And in some cases there has been a beneficial impact to that because they in fact entrain a lot of the sediment that is released from things like construction activity and agricultural activity,

and they have some beneficial impact in terms of keeping the sediment out of the waterway. On the other hand, it's something that causes the, the sediment build up happens continuously and at some point you have loss of capacity and the structure does not operate properly. So you have to address it through capital maintenance.

Conowingo is such a large facility, though, that that study is going to take many years for them to come up with a variety of different solutions for addressing the sediment --

GOVERNOR O'MALLEY: It sounds like a dredging project, eh?

MR. SAKAI: I, probably too early to tell what it is that they are going to be ultimately looking at in terms of a solution to that problem.

GOVERNOR O'MALLEY: Hm. Okay. All right. Well I would like to see, as soon as you guys can get this online so people can know? And click on, I mean, it's an overlay of two things, right? It's an overlay of your risk strata, but it's also an overlay of the structural integrity age sort of thing, not unlike

when you look at bridges. It's not only the structural integrity of the bridge it's the number of passengers that pass over it every day that then lifts out the picture of which ones should be our top priority in terms of funding repair and replacement.

MR. SAKAI: Yeah. We have, we've been, the program has been managing this with GIS for some period of time. So the data is there. The data is online. The data is accessible and applicable internally. We have not generally, historically provided it online. I think there were some concerns some years ago about the sensitivity of the data. But the fact of the matter is is most people already know where these dams are to begin with, so --

GOVERNOR O'MALLEY: Right. It's okay that know, already.

MR. SAKAI: Right.

GOVERNOR O'MALLEY: Okay. Well, great. Jay, thanks very, very much.

COMPTROLLER FRANCHOT: You might substitute the word good for safety in the name of your program, though.

MR. SAKAI: I appreciate that comment.

TREASURER KOPP: Do you, just one, do you look at, or does some other agency look at mitigation as, I mean if something were to happen? Do you just look at the dam itself, or, I mean for instance right now on the Mississippi they are just trying to get people out. I mean, there are certain places you don't build. It just, it's the same thing as we have been talking about with sea level rise?

MR. SAKAI: Madam Treasurer, what I can tell you is that there is, and it's a shared responsibility with the Department of Natural Resources and us with respect to an assessment of all of the dams. And you are probably aware that there has been a move among many in the natural resource community to eliminate dams because they are artificial structures and they impede the healthy movement of sediment through an ecosystem. So there is a more active discussion about trying to take dams out of service in fact to restore watersheds. And that is an assessment that looks at -



TREASURER KOPP: That's part of the total discussion.

MR. SAKAI: That's right.

TREASURER KOPP: Thank you.

MR. SAKAI: Thank you very much for your time.

GOVERNOR O'MALLEY: Thank you, Jay. Okay, let's go to the Secretary's Agenda.

SECRETARY MCDONALD: Good morning, Governor, Mr. Comptroller, Madam Treasurer. We have eleven items on the Secretary's Agenda this morning. There are four reports of emergency procurements. We would be happy to answer any of your questions.

GOVERNOR O'MALLEY: Okay, any questions on the Secretary's Agenda? The Comptroller moves approval, seconded by the Treasurer. All in favor signal by saying, "Aye."

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed, "Nay."

(No response.)

GOVERNOR O'MALLEY: The ayes have it. We move on now to Program Open Space.

MS. LATHBURY: Good morning, Governor --

GOVERNOR O'MALLEY: Good morning.

MS. LATHBURY: -- Madam Treasurer, Mr.

Comptroller. Meredith Lathbury for the Department of Natural Resources. We have five items on the Agenda this morning. I'll be happy to answer any questions.

GOVERNOR O'MALLEY: Program Open Space.

What's the best item on your Agenda?

MS. LATHBURY: Well, they're all terrific projects. But we do have one, a couple of folks here from Cambridge this morning. One --

GOVERNOR O'MALLEY: Who's here from Cambridge? Come on down. Anybody here from Cambridge?

MS. LATHBURY: Oden Wheeler --

GOVERNOR O'MALLEY: And Jackson Stanley? Come on up.

MR. WHEELER: Good morning.

GOVERNOR O'MALLEY: Hi. Tell us about this one.

MR. WHEELER: Governor, Cambridge is very excited about this project. This is a playground that

we're looking to replace that's in a large community that does have a lot of children exposure. It has actually been recently made a bus stop there as well for the schoolchildren. It's a project that we're looking very much forward to completing, hopefully if this is approved and working with DNR, and Chip Price and his department, and Meredith Lathbury, and trying to hope to get this done maybe by the first of August so that the children will still have time to use it.

GOVERNOR O'MALLEY: What's the name of the, what's the neighborhood?

MR. WHEELER: It's the Meadow Avenue Playground. It's in the area of, I know you are familiar with Cambridge, of Race Street, Academy Street, Cedar Street. It basically is encompassed by two of our main thoroughfares, Cedar Street and Washington Street.

GOVERNOR O'MALLEY: Mm-hmm.

MR. WHEELER: So it's in a very dense populated area that will serve a large number of our children and the citizens of Cambridge.

GOVERNOR O'MALLEY: Great. Okay, any questions? 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 move on now to the Department of Budget and Management.

MR. WHEELER: Thank you, sir.

GOVERNOR O'MALLEY: Thank you. Say hey to the Mayor for us.

MR. WHEELER: Thank you, I will.

MS. FOSTER: Governor, Madam Treasurer, Mr. Comptroller, good morning. There are six items on the Department of Budget and Management's Agenda for today. And we'll be happy to answer your questions.

GOVERNOR O'MALLEY: Mr. Comptroller?

COMPTROLLER FRANCHOT: Madam Secretary, Item 3-S? I notice that that's a DJS retroactive approval of six contracts.

MS. FOSTER: Yes. Item 3 is a request for retroactive approval of six contracts so that they can obtain, licensed contractors will provide residential and non-residential services for DJS youth who are getting ready to go before the juvenile courts. The new Secretary of DBED is here --

COMPTROLLER FRANCHOT: Terrific.

MR. ABED: Thank you, Madam Secretary.

COMPTROLLER FRANCHOT: Thank you.

MR. ABED: Governor --

GOVERNOR O'MALLEY: Is this your first time here, Mr. Secretary?

MR. ABED: Yes, it is.

COMPTROLLER FRANCHOT: Okay.

GOVERNOR O'MALLEY: Identify yourself for the record, if you would?

MR. ABED: My name is Sam Abed. I'm the Secretary of Juvenile Services for the State of Maryland.

GOVERNOR O'MALLEY: Thank you.

COMPTROLLER FRANCHOT: I actually wanted to ask Secretary Abed to come up, and say that I've never

been so happy to see six retroactive contracts.

Because I believe at our June meeting you are prepared to bring some prospective contracts for our review and approval. And if you are, and that actually happens, I congratulate you because we've approved a lot of retroactive contracts out of your agency and if you can get that straightened out so that we are following the normal process, my hats off to you.

MR. ABED: Absolutely, Mr. Comptroller.

That is exactly what's going to happen. We have prospective contracts coming. We did identify these. As soon as I was appointed by Governor O'Malley I launched an investigation to determine whether this issue had been fully resolved. We did identify some areas of weakness which have been addressed now. And henceforth we should have prospective contracts for all of the services that the Department utilizes.

COMPTROLLER FRANCHOT: Well I applaud you, and the Governor, and the Treasurer, obviously, has noted this, that these are extraordinarily important services. But they are also expensive. And we're talking almost \$180 million with these six contracts

we are approving today that we have approved retroactively. And I am very pleased to hear that it will be different in the future.

MR. ABED: I appreciate that. And I appreciate the opportunity to come before the Board. And last week coming before the staff as well to go over the details of this, and I'm certainly prepared to do that. I think that has been communicated.

I do also want to take the opportunity to introduce some new members of the team. Deputy Secretary Holmes will be the Deputy Secretary for our Support Services, which will cover this area. And of course Tammy Brown is retained as our Chief of Staff. Michael DiBattista is our Budget Manager. And what you see there is the universe of people who would be presenting to the Board of Public Works moving forward.

TREASURER KOPP: Governor and Comptroller, I did take the opportunity, since you know I am bereft of the Colonel, to attend the staff meeting last week. And I must say I was very impressed by the Secretary, his presentation, and the staff that he had with him who seemed to be really on

top of the issues. As the Comptroller pointed out, you know, I've been watching this now, counting Legislative Service, for a long time. And it's a very important service. There are few things more important, in fact, to the State and the community than a good productive and successful juvenile services program. But it's very hard to do. And I am very impressed by your new staff, the reorganization, and the fact that you seem to have the lines of reporting and control a little more rationalized.

The proof of the pudding, my mother would say, is in the eating. And we'll see. But I think it really is, and I think everyone who was at this, the meeting, agreed that it really is very promising. And the fact that you are really trying to clear out the problems and go forward now, you have our support --

MR. ABED: Thank you very much.

TREASURER KOPP: -- but also we'll be watching.

MR. ABED: Absolutely. I appreciate the support. And I will be watching as well, because while I will hold my staff accountable I will hold



myself accountable to those same standards. We have laws and we have rules, and they must be followed. And this Department will be following all of the rules, whether it be procurement or otherwise. They are there for a reason. If you, before I came to this position and previous to my work in Virginia I was a prosecutor. I'm an attorney. I am cognizant of the rule of law. It's very important to me to follow the rules and we will be doing just that.

COMPTROLLER FRANCHOT: Excellent.

GOVERNOR O'MALLEY: Okay. Secretary, thank you.

MR. ABED: Thank you.

GOVERNOR O'MALLEY: The procurement performance of DJS has been a real sore point for this Board for four years. I'm glad you're making changes. Know that you have authority to make whatever changes you need to in personnel to improve it. Anybody, anything else on this matter? Or any other matters?

SECRETARY MCDONALD: We have one speaker who requested to speak on six items, and three of them are

on this Agenda. I don't know if the Board wants to entertain the request?

GOVERNOR O'MALLEY: On the DBM Agenda?

SECRETARY MCDONALD: Well three of them --

GOVERNOR O'MALLEY: Is this Mr. Jolivet?

SECRETARY MCDONALD: This is --

GOVERNOR O'MALLEY: Mr. Jolivet, why don't you give us rapid fire? I know that you have a number of items that you wanted to talk about.

SECRETARY MCDONALD: Mr. Jolivet asked yesterday if he could speak on DBM Items 1, 2, and 3, and also some University items.

MR. JOLIVET: And good morning, Governor, Madam Treasurer, and Mr. Comptroller. I will attempt to be very brief because I've already sent you a brief in terms of outlining my issues. And with respect to the item with respect to the DJS item with respect to the nonprofit contracts that are asked to be approved this morning through the preference program, I want to make it very clear that I am not here this morning to speak against the preference program. I think that

program certainly has merit. And it has proven to provide a benefit to the State of Maryland.

I would ask this Board, however, there seems to be a really serious problem with regard to how we treat the issue of minority participation on the preference program. All of the, not just this project. And I decided to come here this morning to -  
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GOVERNOR O'MALLEY: What project are we on again? I'm sorry, Mr. Jolivet.

MR. JOLIVET: Well we are talking about the one with the --

SECRETARY MCDONALD: The DJS Item 3, the retroactive for the --

MR. JOLIVET: Yeah, the retroactive, yeah --

SECRETARY MCDONALD: -- the Secretary was just speaking of.

MR. JOLIVET: There are several contracts in here where, all of them of course are awarded to nonprofits. And under the State's MBE statute several nonprofits are defined as minority participation, minority business enterprise. That's a legislative

decision that unfortunately that I don't agree with but I think that what I'm here this morning to ask this Board, that when we award contracts through the preference program to nonprofits who are classified and defined as minority, the law, the State's minority business statute does not allow nonprofits to serve as their own minority business enterprise for purposes of meeting minority business enterprise contract goals.

And I think it, I think it, there is a considerable amount of dollars now going and being awarded to the preference program. And as I said before, I'm not against that. But I believe that under the current structure of the MBE statute we ought to apply and require the nonprofits who are awarded these preference contracts, we should require them to follow the law with respect to meeting MBE utilization goals. That's all I'm here this morning to ask this Board. Because under the current system the nonprofits can serve as their own MBE. And I would submit to you that is counter to the intent and purpose of the MBE statute. There are a number of

non-nonprofits who can do some of the work that these nonprofits are being awarded.

And all I'm saying, if we are going to have, if the current law is going to say that nonprofits cannot meet their own MBE goals, then a clear reading of the law should say that we should follow that law until we get a change. There may be a time when we want to get a change. But under the current law it is not permissible for a nonprofit to meet its own MBE goal. And I would respectfully ask this Board to give support to the law and allow, or require, the nonprofits who are being awarded these preference contracts to also meet the goal just like all other contractors. I think that is a fair and reasonable request.

And again, I would respectfully ask this Board to make sure that the agencies who are sending to you these nonprofit contracts in millions of dollars. The *Business Journal* did a study several months ago which showed that under the State's minority program the nonprofits are the leading recipients of the MBE dollars. And I don't think that

we never intended it to be that way. But it's just working out where the nonprofits, and again, I'm not necessarily per se against the nonprofits. But I want the playing field, Mr. Comptroller, to be fair and equitable where every, all minority entities can have a fair opportunity. And I don't think that's an unreasonable request, Governor. So with that, I don't think that I need to explain my position any further. I don't know if the Secretary wants me to elaborate on other contracts. I have two other concerns with the University of Maryland Systems. I'm not sure that I am permitted to speak on that at this point. But if assuming that the Board --

GOVERNOR O'MALLEY: Let's do this, Mr. Jolivet. Let's, you have a number of items that you want to speak on. So are there any others that are on this Department of Budget and Management portion of the Agenda? I'll bring you back up when we get to the other Agenda items.

MR. JOLIVET: Thank you.

GOVERNOR O'MALLEY: Sure. Let me ask, Madam Treasurer, did you have a point of order that you thought Mary Jo might be interested in?

TREASURER KOPP: Well, it was pointed out to me that there is a task force that has been set up to look at the question of the nonprofit contracting that Mary Jo was heading, I guess?

MS. CHILDS: Thank you, Treasurer.

TREASURER KOPP: Our, the Board's Procurement Officer.

MS. CHILDS: Thank you, Treasurer. Yes, the General Assembly has formed a task force to study procurement of educational and social services. And the Treasurer is actually a member of that task force and our kick off meeting is tomorrow afternoon. And one of the issues that will be front and center is the issue of MBE involvement on human services contracts. So I think many of Mr. Jolivet's concerns will be discussed at length by some folks who are very experienced and very well versed on these issues. So perhaps the task force will come up with some

innovative ideas on maximizing MBE participation in human services procurements.

TREASURER KOPP: Right. I'm glad it was brought home to me that I was on the task force.

(Laughter)

TREASURER KOPP: But that's going forward?

MS. CHILDS: Yes, ma'am.

TREASURER KOPP: Could I ask the Secretary of Minority --

GOVERNOR O'MALLEY: Sure.

TREASURER KOPP: -- I mean, this question of, specific question that was raised, the nonprofit -  
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MS. JENKINS: Sure.

TREASURER KOPP: -- constituting its own sub  
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MS. JENKINS: Sure. For the record, Luwanda Jenkins, Governor's Office of Minority Affairs. Mr. Jolivet raised a multitude of issues surrounding this one Agenda item. To the issue of nonprofits, the State's MBE law currently does allow for certain nonprofits whose missions focus on the needs of the



developmentally disabled to qualify for minority status in the program. Our Health and Human Service agencies do tend to contract in large proportion with nonprofit providers. That was what Mr. Jolivet was referencing in terms of the *BBJ* article. That is not the predominant level of participation for the statewide MBE program. Nonprofits are largely in our Health and Human Service agencies.

The issues specific to the item dealing with the Department of Juvenile Services, what we have done with provider contracts in order to begin to get some level of minority participation, we are holding the contractors or providers who have twenty-five beds or slots, we are now challenging them to meet some level of minority participation. We have worked with the agencies to put a 5 percent goal on the larger provider contracts. So when a nonprofit provider is awarded one of these contracts that provider is subcontracting out or outsourcing 5 percent of the contract.

What Mr. Jolivet is contending is that that nonprofit cannot self-perform the contract. And I

will tell you they are not. They are outsourcing a portion of that contract to other certified MBEs. And the supporting documentation that my office reviewed for the Board of Public Works previous meetings have included those nonprofit firms and their MBE subcontractors to meet the requirement on these contracts.

TREASURER KOPP: And that's for, not for beds but for other services that are performed, presumably?

MS. JENKINS: It can either be for beds or slots, for other per child or per person care. But it's the larger providers that we are asking to meet a 5 percent MBE goal. And what Mr. Jolivet is saying is that that provider should not be, or should be made to outsource that goal and I'm saying that they are.

TREASURER KOPP: That's what is happening?

MS. JENKINS: Yes, that is what is happening. He is contending that one of the providers is performing the goal with their own workforce and that is not the case. It happens to be an MBE

provider that he is questioning on this particular Agenda item.

TREASURER KOPP: So you would agree with Mr. Jolivet's concern that to the extent that there is a goal, it is a subcontracting goal?

MS. JENKINS: It is a subcontracting goal.

TREASURER KOPP: So another --

MS. JENKINS: Yes, and another entity should be brought in and they are being brought in. Mr. Jolivet's concern came to us at 5:00 p.m. yesterday and we have looked into it --

GOVERNOR O'MALLEY: That's Mr. Jolivet's specialty.

TREASURER KOPP: Yes.

MR. JOLIVET: Yeah, well I have been known to do that but I apologize.

(Laughter)

MR. JOLIVET: If it requires a State employee to stay maybe a few hours late, perhaps that's not a good idea.

MS. JENKINS: But we do.

MR. JOLIVET: But nonetheless, I think that I submitted in all due respect, in good faith. But my concern is that when I read the Board of Public Works Agenda and it says that, I have to believe that I can rely on what the information that is stated in the Board's Agenda and it says quite categorically that the provider is meeting 100 percent of the MBE goal. And I don't know anything other than what to rely on. So Ms. Jenkins is probably right and I have no reason to dispute her. But I want to see if maybe in the future that we can state on the Board's official public records what is being done. That's all I'm asking.

MS. JENKINS: The 100 percent relates to Mosaic, which is an MBE provider. So that is why it reads 100 percent. But they are subcontracting a portion of their participation. There is supporting documentation that you as Board members received to that effect.

GOVERNOR O'MALLEY: But it's not on the Agenda?

MS. JENKINS: It's not on the actual Agenda item, it's a part of your backup.

TREASURER KOPP: Maybe it should be.

MS. FOSTER: If I could just add, I think, you know, what may be confusing is that our Agenda does say MBE participation, it has 100 percent. But it's 100 percent because the prime contractor is an MBE.

GOVERNOR O'MALLEY: Right, as I understand that. But our question is why wouldn't it --

TREASURER KOPP: Say that?

GOVERNOR O'MALLEY: -- say that on the Agenda?

TREASURER KOPP: Well, and the ones where they are 5 percent.

MS. FOSTER: Well in terms of clarification, that is something that we can add.

TREASURER KOPP: Yeah.

GOVERNOR O'MALLEY: Okay. Good. All right. Let me --

TREASURER KOPP: So I'm just going to say two things. So these, from now on we can clarify that these projects meet the law?

MS. JENKINS: They do.

TREASURER KOPP: And in the future you are going to be looking and this task force --

GOVERNOR O'MALLEY: There's somebody tapping you on your shoulder trying to tell you why we can't do that.

(Laughter)

MS. FOSTER: Oh. Now what she's telling me is if you look at 9B we have a list of those --

GOVERNOR O'MALLEY: So we do do that?

MS. FOSTER: Page 9B of the Agenda.

GOVERNOR O'MALLEY: If we look at what? 9B?

MS. FOSTER: On the --

TREASURER KOPP: On whose Agenda?

MS. FOSTER: Page 9B of the DBM Agenda.

TREASURER KOPP: Oh.

MS. FOSTER: Okay, top right hand corner,  
9B?

GOVERNOR O'MALLEY: Yep.

MS. FOSTER: Okay. So it shows MBE participation. We show the 100 percent as well as we show the 5 percent subcontracting goal.

GOVERNOR O'MALLEY: I'm not seeing that --

TREASURER KOPP: No.

SECRETARY MCDONALD: It says that one of the providers is a certified MBE and that means that they will be 100 percent. But then it says that three providers have a zero percent goal and three providers have a 5 percent goal. And since there are only six providers, and three and three are six, I think what it's saying is that one of them is 100 percent but each of those six actually have a subcontract goal on it.

TREASURER KOPP: Where does it say that?

SECRETARY MCDONALD: MBE participation?

MS. FOSTER: This is Item 3-S.

TREASURER KOPP: Yeah --

SECRETARY MCDONALD: Okay --

GOVERNOR O'MALLEY: Yeah, I see, I see 3-S -

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(Laughter)

SECRETARY MCDONALD: Page 9.

GOVERNOR O'MALLEY: Okay. I'm at 8B, now I'm at 9. I'm reading one of the six providers is an MDOT certified MBE.

SECRETARY MCDONALD: Right. And I think there should have been a period there and that was the end of that complete thought --

MS. JENKINS: Right.

SECRETARY MCDONALD: -- telling you that one of the six --

MS. JENKINS: That's the 100 percent.

SECRETARY MCDONALD: And that's Mosaic?

MS. JENKINS: Right. Mosaic, correct.

SECRETARY MCDONALD: Okay, so there should have been a period right there. That's the end of that thought. And then the next thought is that of the six contracts, there are six total, three of them have a zero percent goal and three of them have a 5 percent goal. And obviously there's one of the six, that Mosaic comes in that second thought of the zero percent or the 5 percent goal. And then it tells you



to turn to that page twelve to see which of the six has zero, and which of them has five.

MS. JENKINS: So three of the providers are small scale providers. They are not subject to a goal.

MS. FOSTER: Governor, we'll simplify it.

GOVERNOR O'MALLEY: Yeah.

SECRETARY MCDONALD: I think, yeah --

MS. JENKINS: The three larger providers have a 5 percent goal but then --

GOVERNOR O'MALLEY: You need a code breaker to figure that one out.

(Laughter)

TREASURER KOPP: But the important thing is, these meet the requirements?

MS. JENKINS: They absolutely do.

TREASURER KOPP: Here, and you are looking at how to improve it.

GOVERNOR O'MALLEY: All right. Well score one for Mr. Jolivet to make this clear.

TREASURER KOPP: Yeah. Good point.

GOVERNOR O'MALLEY: The Comptroller moves approval? No?

COMPTROLLER FRANCHOT: But also if I could just suggest that Mr. Jolivet, we appreciate your attending this. But maybe we could get a phone number so that these things could be checked out beforehand. Because it's obviously an effort for you to prepare your presentation and come down and appear before us. And just to make sure that the facts are, you know, you know what I'm saying. It could save everybody a lot of time. Because I appreciate the need for more clarification here, but we want to make sure you are protesting things that are in fact, you know, problems. And if you can clear up some of this stuff beforehand, I'll give you my phone number. Well, you have my phone number. But just, let's, you know what I'm saying.

MR. JOLIVET: I agree with you. And obviously I've got way more things to do to appear before this Board to make what, make arguments against contracts. But what I say here, I still think that I'm right with regard to the 100 percent contracting

because I've seen it before. And the only reason that I came here today because I've seen this same identical structure and wording before and contrary to Ms. Jenkins' assertions, it didn't work out that way. So not to beat a dead horse, but I think I've made my point.

COMPTROLLER FRANCHOT: Okay.

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

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed, "Nay."

(No response.)

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

MR. EVANS: Good morning. Joe Evans representing the University System of Maryland. We have nine items on the Agenda today, here to answer any questions.

GOVERNOR O'MALLEY: Questions, University System of Maryland? Anyone? Mr. Jolivet, do you want

to comment on the University System of Maryland? You had something on this one as well, right?

MR. JOLIVET: Yes, I did.

GOVERNOR O'MALLEY: Okay, come on down.

MR. JOLIVET: And again, I think my letter to you was rather self-explanatory. And to make a long story short, what I'm asserting to you is that the State's MBE regulations found in COMAR sets out a dual advertising strategy to make sure that the agency not only advertises a certain contract in the regular traditional way on their website and the other proscribed way, but they also must send a very specific copy of the procurement solicitation and notice of the solicitation, as are outlined in my letter, directly to MBEs. They also under COMAR are required to send a copy of the solicitation along with a copy of the bid proposal to the Governor's Office of Minority Affairs who in turn transmits those solicitation and the RFP documents to the local minority trade associations and the minority contracting group.

Now this assures, at least attempts to assure, that the minority contracting and business community will have a fair and equal opportunity to learn of the proposal. I think you would agree with me that if the contracting community doesn't know of the procurement there is no chance that they would bid on it.

So what I'm submitting to this Board this morning, this is a case where the agency in all due respect did not comply with all of the different procedures in advertising the contract, particularly the procedure that requires direct advertising to the minority business community. And I'm asking this Board, because we see this so often. I'm asking this Board if we are really serious about involving our minority contracting community let us not approve these contracts when it comes to the Board where there is evidence clearly of, clear and convincing evidence that the agency did not comply with the procurement solicitation. I would think that this Board would be within its authority to not approve the contract. And

that's all I'm asking this Board this morning. That's all, Governor.

GOVERNOR O'MALLEY: Thanks, Mr. Jolivet. How about a response from the University of Maryland System? This is Coppin --

SECRETARY MCDONALD: Coppin Item 7, I believe? Their management services for the residence halls at Coppin.

GOVERNOR O'MALLEY: Mr. Evans? What about that assertion?

MR. EVANS: I don't disagree with Mr. Jolivet. He's absolutely correct. In this case it was an oversight on Coppin's plate, the point to directly solicit the MBEs and to send the notice to the Governor's Office of Minority Affairs. However, what I submit is though by advertising that solicitation went out to eighty-four contractors, of which twenty-three of them were MBEs. So the intent is, I read COMAR at 10:30 last night while I was working on this, was so that there would be sufficient number of MBEs that could respond or would respond to a solicitation. And although they did not do it

correctly the end result was it did get out to twenty-three MBEs that had the opportunity to submit a proposal in. Of those we received no MBEs. None submitted.

GOVERNOR O'MALLEY: So what is the percentage that they are hitting?

MR. EVANS: They are doing 10 percent. But I think what Mr. Jolivet is asserting is that it was put in place, though, I guess to get prime MBEs. But this particular procurement has a 10 percent MBE goal on it.

GOVERNOR O'MALLEY: And what are they building here?

MR. EVANS: This is for the management of the residence hall at Coppin, a service contract.

SECRETARY MCDONALD: This is a service contract. It actually is not the same type of scope that Mr. Jolivet is speaking of with the construction management. This is the same issue but it's a service contract to run the residence hall's housing services.

TREASURER KOPP: So --

GOVERNOR O'MALLEY: At Coppin. So this isn't a building, this isn't a construction thing?

SECRETARY MCDONALD: No. That's why I'm not sure that some of our regulations, but I think there is still, I mean, he's still supposed to send notices to GOMA that there's an opportunity.

MS. JENKINS: Sure.

SECRETARY MCDONALD: But it's not the same -  
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GOVERNOR O'MALLEY: Ms. Jenkins, do you want to respond?

MS. JENKINS: I would love to respond. As Mr. Evans indicated all State agencies use eMaryland Marketplace as the online website portal. It is the efficient way for all vendors, including minority firms, to find out about bid solicitations.

Yes, as an added value solicitation distribution, agencies will send GOMA solicitations. We in turn send them out to the trade associations, who in turn publish them on their websites. To my knowledge, the Maryland Minority Contracts and the Maryland/D.C., Mr. Frazier's organization, the



Supplier Development Council all have very robust websites and they regularly post our notices on their website. I am not aware that Mr. Jolivet's firm has a, such a mechanism to get distribution of notices out. I've never seen them. But we do regularly supply trade associations with notices.

On the matter of Coppin, as Mr. Evans mentioned, we did pull the eMaryland Marketplace solicitation report and in fact we do have a list of the eighty-four firms and twenty-three MBE firms who directly receive this solicitation. They received so because vendors register on eMaryland Marketplace to receive solicitations by certain categories of work. And again, it is the most efficient way for firms who want to do business with the State to receive solicitations specific to what they are in business to do. And it is a very efficient system for doing so.

I will certainly give this to Ms. McDonald if you'd like to share this with members of the Board

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GOVERNOR O'MALLEY: So does that meet COMAR or not? Did they do what they were required to do, or not?

MS. JENKINS: I think that Coppin did satisfy the requirement for solicitation on this one, yes.

MR. JOLIVET: Governor maybe, let me just --

GOVERNOR O'MALLEY: On the service, or on the --

MS. JENKINS: On the service. On, the solicitation for the contract to manage their resident halls.

MR. JOLIVET: Governor, let me just close with this, not a rebuttal but the very purpose of the COMAR requirement, the two-stage requirement, assuming that they did send it out directly, and I have no evidence to contradict that. But the other stage of sending it to the Office of Minority Affairs is also a very integral requirement that was not met. And many times in spite and notwithstanding the fact that it was sent out directly to minority firms, a good number of minority firms ultimately receive their

solicitation notice by virtue that someone from the Governor's Office of Minority Affairs sent it to me or someone else in the Trade Association and we in turn send it directly to some of our constituents. Now I know that we live in the internet age. But the fact of the matter, Governor, a lot of small minority firms don't have internet. And you say, "Well, how can they be competitive in the world of business without having access to the internet?" Well the fact of the matter there are a number of them that just don't. And there's five or six, ten percent of them that don't have access to the internet, or don't market themselves through the internet. And the only way that they get noticed, or the most direct way that they get noticed, is when the Governor's Office of Minority Affairs sends a notice to us and we in turn distribute it throughout our constituency.

But I think that this was a serious violation. And I would ask this Board, and I would remind the Board about two months ago when we had this exact identical situation, where the agency did not send it to the Governor's Office of Minority Affairs,

and it did not send it directly to minority firms, and the agency itself agreed that it was a violation and they withdrew the contract and put it out for additional bids. And that was the Maryland Stadium Authority. You are keenly aware of this particular contract. And it was at Coppin State, it was a demolition contract. So I would remember, I would remind this Board that there is precedent, ample precedent where the agency for whatever reason neglects to send the contract notice out according to COMAR to the Governor's Office of Minority Affairs that it's appropriate to reject the bid and put it out for additional bidding.

GOVERNOR O'MALLEY: Somebody want to say something?

MR. EVANS: I just want to say for the record that there's two different agencies here. You had, that agency was the Stadium Authority, we're talking about Coppin. This was just an oversight on Coppin's part. And again I think the intent of COMAR, which was to get sufficient MBE participation or

notice that that was met although they didn't follow COMAR to the letter.

GOVERNOR O'MALLEY: Okay. Anybody else?

TREASURER KOPP: Did you want to say something?

SECRETARY MCDONALD: No. I am reading the regulations. And I am clarifying that for all services and construction that there is a requirement that they send a notice to GOMA. I had thought perhaps there was something different for the University on services, but --

GOVERNOR O'MALLEY: And Ms. Jenkins you, was it your assertion that they did send the notice to you but they did it electronically?

MS. JENKINS: I'm not sure whether or not Coppin sent us the notice on this particular solicitation. We went online to verify that they did send it out through eMaryland Marketplace, which is what they did.

MR. JOLIVET: But that's a different issue.

MS. JENKINS: And they solicited twenty-three MBEs through eMaryland Marketplace.

MR. JOLIVET: But Ms. Jenkins, may I add now to remind you, that is a totally different supposition. Totally different. There are two -- I don't want to go back, I don't want to --

TREASURER KOPP: You've said it, and Mr. Evans agrees. There's no issue.

SECRETARY MCDONALD: Mr. Evans said that they did not send it to GOMA, correct?

TREASURER KOPP: There is no difference. There is an issue.

MS. JENKINS: Right.

GOVERNOR O'MALLEY: What do we want to do with this one?

MR. JOLIVET: Well what I was saying to the Board, though, there is a --

GOVERNOR O'MALLEY: Mr. Jolivet?

MR. JOLIVET: Yes?

GOVERNOR O'MALLEY: Can you give us two seconds to --

MR. JOLIVET: Yes.

GOVERNOR O'MALLEY: I don't mean to interrupt you but --

MR. JOLIVET: I'll give you two seconds.

GOVERNOR O'MALLEY: -- what do we want to do, what do we want to do here?

SECRETARY MCDONALD: Would you like it withdrawn for two weeks so we can at least prepare a response?

GOVERNOR O'MALLEY: Pleasure of the Board? Do you want to pull this item? Reject it? What happens if, Mr. Evans, what happens if we reject this?

MR. EVANS: I guess the problem is that if it's rejected the pricing for these two companies, which is a niche. The work requirements of the RFP was that they had to, the vendors had to have experience in managing university, and university residence halls. And --

TREASURER KOPP: There's no way these are small companies without computers.

MR. JOLIVET: Well, but you know, we can make that argument. But --

TREASURER KOPP: No, that's the reality. There's no way you can have a small company without internet access doing this contract.

MR. JOLIVET: But my point is, how do we know? We didn't do our due diligence so consequently there could be other minority firms who are capable and who have the experience, but they didn't get the required notice. And what I'm saying, the only reason I'm here today is because I'm representing a firm who called me and said, "I didn't know about this and we didn't get notice on it." And I would submit --

GOVERNOR O'MALLEY: Did they email you, or did they --

MR. JOLIVET: They didn't email me, though.

SECRETARY MCDONALD: I, I --

GOVERNOR O'MALLEY: There's two other people come up want to speak on this item now that they see it possibly going south.

MR. DAWSON: Hi. I'm Thomas Dawson, Director of Procurement at Coppin. And I was the one who handled the RFP. Let me state that the management team that put together the specifications tailored it so that it was to be a management contract only. There was no other type of services that were involved in that solicitation. So the thought was there



probably could be no MBE participation on this contract. Because we went out and looked at several companies and talked to other universities that had outsourced this type of contract. And we found that, first of all there were no companies in Maryland that actually did this type of work and that there were no MBEs that were actually qualified to do this.

The reason why we did in turn put a 10 percent goal on this contract was because we insisted that there be some type of ancillary services involved in this contract that MBEs could participate in. That was done at the very last minute before this contract was advertised. And that's the reason why we overlooked sending that to GOMA for their approval.

TREASURER KOPP: I thought you said you sent it to --

MR. DAWSON: No. We did not.

MS. JENKINS: They sent it to eMaryland Marketplace.

MR. DAWSON: We did not. We did post this on eMaryland Marketplace. And we found that there were eighty-four vendors that this solicitation was

sent to. And of the eighty-four, twenty-three were MBE businesses, which is about 27 percent. None of those business responded to an RFP, nor did they attend our pre-bid conference. So we submit that we did do proper due diligence in trying to outreach to MBE companies. However, we found that there were none, including other businesses, that were actually qualified to do the type of services that we were looking for.

MS. JENKINS: Could you explain the 10 percent that you did get of minority participation on this contract? Who is that going to?

MR. DAWSON: Yes. Ten percent, I cannot recall what the business is, but it is a company that will be doing facility management of that portion of that contract that was not originally included in the original scope of the contract.

MS. JENKINS: But you did that as a value added effort --

MR. DAWSON: Absolutely.

MS. JENKINS: -- to achieve some level of minority participation on the contract?

MR. DAWSON: That is correct, yes.

GOVERNOR O'MALLEY: Ms. McDonald?

SECRETARY MCDONALD: What I'm hearing is that the University says that it did not send a notice to the Governor's Office of Minority Affairs. And that is the only thing it failed to do. And technically it is required under the regulations to send that notice. There is a very good probability that if the Board wanted to, you are permitted to permit the award of a contract that could be voidable where a technical regulation was violated. If the Board were to find that the parties acted in good faith, if you were to find that the procurement contract ratifying it would not undermine the purposes of this law, and that the violation, or series of violations, was insignificant. If you make those findings you certainly can approval the contract with a technical violation. I believe if some of the people from Coppin might describe how these residence halls are being managed right now by one employee on staff --

MR. DAWSON: Absolutely.

SECRETARY MCDONALD: And the serious problem that you have, and what it means for the University's enrollment and all that you might tell them how important the contract is.

MS. BASS: Good morning. I'm Sabrina Bass, Executive Director of Capital Planning and University Budgets. Our University goals, as you know, is graduation and retention, and also enrollment. We had a management problem in the residence halls, was being managed by one person. Although we inadvertently, it was an oversight not to send the solicitation to the Governor's Office of Minority Affairs, we did make a valiant effort to do MBE participation. We are very proactive as a Historical Black University. And the impact Governor that you asked if this item was not approved would gravely impact the University as the University residence halls will be opening up in August and we need to put the contract in place to get them started, to be prepared for the Fall semester at Coppin.

GOVERNOR O'MALLEY: So your failure to mail it was not willful?

MS. BASS: No, sir.

GOVERNOR O'MALLEY: And you felt you were making the attempt of posting it electronically, and sending it to eighty-four contractors, twenty-three of whom were certified MBEs?

MS. BASS: That's correct.

GOVERNOR O'MALLEY: Okay. Anybody else?

COMPTROLLER FRANCHOT: I just come back to my point, Mr. Jolivet. If you could come down a week in advance so that we don't have these traffic jams here I would be appreciative, and meet with the staff, and communicate these concerns. I think on this one you have a valid concern. But because of the effective date of the contract, and because of Coppin's situation, I'm just not sure we can meet your request. And then of course we have the letters coming the evening before so we can't really satisfactorily resolve some of these things from your perspective. And I assume that my Board colleagues are going to approve the contract, and I'll support them in that. But I also repeat my request. I'll give you Klasmeier's phone number. Call it.

(Laughter)

COMPTROLLER FRANCHOT: Just so we can together do the right thing. That's what I'm asking down the road. Sorry, Governor.

GOVERNOR O'MALLEY: Hey, no problem. All right.

TREASURER KOPP: Maybe the Board Secretary could send out a reminder to the agencies of this process. It's not just the Office of Minority Affairs. It's also the Office of Business Advocacy and Small Business.

SECRETARY MCDONALD: Yes --

GOVERNOR O'MALLEY: -- for the requirements that day --

TREASURER KOPP: I have it thanks to Mr. Jolivet, actually, who cited it and was correct.

GOVERNOR O'MALLEY: Okay.

MR. JOLIVET: Governor, thank you. I appreciate the opportunity to just be here and to have the Board to hear from view. And Mr. Comptroller, I appreciate your suggestion and I assure the Board that I will do my best, my very best, to make sure that any

item that I send the Board, or request, that it will, I will check with the staff or the agency to make sure that my concern is real and bona fide.

COMPTROLLER FRANCHOT: And often they are.

GOVERNOR O'MALLEY: But the timing was I think more his point. In other words, if we'd known ahead we could have postponed some of these items and we'd have an opportunity to meet and finger climb. But anyway, okay, the Treasurer moves approval, seconded by the Comptroller. All in favor signal by saying, "Aye."

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed, "Nay."

(No response.)

GOVERNOR O'MALLEY: We now move on to the Department of Information Technology.

MR. SCHLANGER: Good morning, Governor, Madam Treasurer, Mr. Comptroller. Elliot Schlander, Department of Information Technology. This morning we have two items on the Agenda. I would be glad to answer any questions at this time.

GOVERNOR O'MALLEY: Questions?

COMPTROLLER FRANCHOT: If I could, Governor, I just wanted to thank the Secretary for Item 2. I think that's in your portfolio?

MR. SCHLANGER: Correct.

COMPTROLLER FRANCHOT: It's a master contract award for six firms.

MR. SCHLANGER: For the telecommunications audits?

COMPTROLLER FRANCHOT: Right.

MR. SCHLANGER: Would you like a little bit of history on that, or background on that?

COMPTROLLER FRANCHOT: Briefly.

MR. SCHLANGER: Sure. So we have had some very successful history in the past in hiring third parties to audit the telephone or the telecom billings. In the past it has generally been a single contract award. So going out this time we decided to open it up and create an opportunity for more than one, actually. There are six offerors who are going to compete for tasks. And when in fact we have an opportunity for someone to come in and audit they will go to propose to the State and we will judge, if you



will, on their technical approach as well as the most favorable commission that they will charge the State for that work.

COMPTROLLER FRANCHOT: Excellent. Well and you estimate that we may recover a million dollars?

MR. SCHLANGER: I believe --

COMPTROLLER FRANCHOT: Or we may have to pay them a million in commissions?

MR. SCHLANGER: Well let me just back up and say that these firms will not charge the State at all until in fact there is a recovery. So to the State there is no risk, there is no up front cost. I will also say that history will tell you that some of the recoveries have been quite significant and beneficial to the State.

COMPTROLLER FRANCHOT: So how much would they have to recover to get a million dollars in commission?

MR. SCHLANGER: Well we asked them to provide the maximum commission rates. And of the six they were in the range of 24 percent, I believe in that area, to 35 percent. And that rate, of course,

would go to depend on the nature of the work that they do. But again, by opening this up to six firms based on what they are going to bid that would drive their rate to be the most competitive. So --

COMPTROLLER FRANCHOT: I think it's terrific. And I hope that we see more of these, because I think it's smart fiscal management to in effect do a commission search for what I take are overbillings. These companies are not obviously in the business of making refunds to us unless they are, unless there is proof that there have been, we have been overcharged.

MR. SCHLANGER: That's true. And just to be fair in part to the, to telecommunications companies and the State, these telephone bills, or telecom bills, are very complex. And it does take an expert unfortunately sometimes after the fact to sort through it and figure out who owes who what.

COMPTROLLER FRANCHOT: So you think it's the complexity and not deliberate overbilling?

MR. SCHLANGER: I think it's a large part the, as I say, the complexity as well as I would say

the volume. I mean, the State receives literally thousands of bills every year. And it does take a significant effort and expertise to look at all those bills and make the determination as to whether in fact there has been overbilling.

COMPTROLLER FRANCHOT: And Madam Secretary, if there is other, if there are other agencies or accounts that might be subject to this kind of model, where vendor underpayment, vendor overpayment by us is, can be identified and were captured without, you know, on a percentage basis I take it, there may be other instances of this you've already got but if you could maybe keep us informed about how this particular audit does? And if there are other instances where this is applicable?

MS. FOSTER: And that is part of our cost containment and balancing strategy. And actually we've had discussions with Elliot and even in terms of going forth in this year's budget we assume from recoveries that we would be able to get X amount of dollars. So we've been working with --

COMPTROLLER FRANCHOT: But if we see other instances like this in the foreseeable future, I really am attracted to this model for recoveries, I guess, or efficiencies.

MS. FOSTER: And so are we.

COMPTROLLER FRANCHOT: Maybe I could give you my phone bill, too. Because for the life of me I can't figure the thing out. So Secretary Schlanger, thank you for bringing this before us.

MR. SCHLANGER: You're welcome.

COMPTROLLER FRANCHOT: I think it's a, probably something that we should explore doing in other audits in your agency but other agencies that may have analogous opportunities for recovery. It's good, good job. Please keep us informed about it.

MR. SCHLANGER: Thanks. We agree and we look forward to good results.

GOVERNOR O'MALLEY: Thanks, Elliot.

TREASURER KOPP: Governor, talking about recovery, I have a question about the second one, the CCU, the Central Collections Unit. I understand this

is an extension, I guess, because we have bought into this hardware and software -- pardon?

SECRETARY MCDONALD: Well, it's Item 1. I think you said two. I was just --

TREASURER KOPP: Oh, Item 1. Sorry.

MS. FOSTER: So actually Anthony Fugett who is Head of the Central Collections Unit is here. But essentially this is a, this is just a contract to provide software maintenance and support services.

TREASURER KOPP: Right.

MS. FOSTER: We are in the process of procuring --

TREASURER KOPP: That was my question.

MS. FOSTER: -- right, a new system. And we're still working on that. That's underway.

TREASURER KOPP: Okay. So we are going to compete a new system at some point --

MS. FOSTER: Yes.

TREASURER KOPP: -- and not simply be caught?

MS. FOSTER: Correct.

TREASURER KOPP: Thank you.

GOVERNOR O'MALLEY: The Comptroller moves enthusiastically for 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: And the ayes have it.

MR. SCHLANGER: Thank you.

GOVERNOR O'MALLEY: We now move on to the Department of Transportation.

MR. MOBLEY: Good morning, Madam Treasurer, Governor, Mr. Comptroller. For the record, Darrell Mobley, representing MDOT. MDOT is presenting seventeen items today and Item 18-L-MOD has previously been withdrawn. For the record, Item 6-M has previously been revised.

GOVERNOR O'MALLEY: Any questions?

TREASURER KOPP: I have a question about --

GOVERNOR O'MALLEY: Madam Treasurer?

TREASURER KOPP: -- not just on this, but the automated fare collection? That's twelve.

GOVERNOR O'MALLEY: Item 12, automated fare collection, smart cards, et cetera.

TREASURER KOPP: Well my basic question, and the answer may be it's just WMATA, it's not us at all. But this company that we go with, Cube, or Cubic, do you know what I mean?

MR. MOBLEY: Cubic Transportation.

TREASURER KOPP: Yeah. What is this problem they are having with, I mean, we keep reupping this company and it's a brand new automated company. But my neighbors who use WMATA, use Metro, are having real problems with their cards. And it is ascribed to this company's software? Do you know? They can't refill their cards because the cards say, "Well, they are due in 2036 and they can't do anything until 2036." I mean, a spate of these people who happen to live in Silver Spring or Bethesda, apparently, who ride the red line.

MR. KNIGHTON: Yeah, good morning, Governor, Madam Treasurer, Mr. Comptroller. For the record, Jim Knighton. I'm Director of Procurement at Maryland Transit Administration and appearing before you for

the first time. I wish I had the answer to that question. I don't know. I do know that other transit systems around the country have had issues with Cubic, and they happen to be a dominant player out there. And we've worked with them for many years, working through various issues, issues with them. And we hope with this extension that we are finally at the end of that process. But I can't speak to the specific issue relating to the WMATA cards.

TREASURER KOPP: Okay. It might have been the bus. I mean, my assumption was that it was Red Line because that's what they take.

MR. KNIGHTON: Subway, yes.

TREASURER KOPP: But it was WMATA.

SECRETARY MCDONALD: Yes, it's the subway --

TREASURER KOPP: And it was Cubic. Well if you could just let us know what is happening with that, it would be very helpful.

MR. KNIGHTON: Sure. Absolutely.

TREASURER KOPP: I could put it on my home answering machine. While you are negotiating with the people, thank you.



GOVERNOR O'MALLEY: Okay, any other questions, Department of Transportation?

COMPTROLLER FRANCHOT: Item 1?

GOVERNOR O'MALLEY: Item 1.

MR. MOBLEY: Item 1 is a change order number one to provide funding for two additional mobile speed enforcing vehicles. Representing the Department we do have staff here to address any questions from State Highway, Bob Gay and Eric Tabacek.

MR. GAY: Good morning, Governor, Board members, Bob Gay, State Highway Administration.

GOVERNOR O'MALLEY: Bob, what did you do to yourself? A work zone?

(Laughter)

MR. GAY: Actually it's, Governor, it was too many years of thinking I was an athlete. And now ten years after I stopped playing everything it has caught up to me. I have to have ankle fusion, so it's, it's a slow process. I'll be kind of appearing before you like this for the next couple of months.

GOVERNOR O'MALLEY: Wow, when did that happen?

MR. GAY: I had the operation March 30th.

GOVERNOR O'MALLEY: Wow.

MR. GAY: Yeah. So it will be a while.

TREASURER KOPP: It's good for building up  
your arm muscles.

SECRETARY MCDONALD: There you go.

MR. GAY: Yes, sir?

COMPTROLLER FRANCHOT: So I obviously  
support this program. But I'm interested in, are you,  
do you set these up in work zones where there are not  
people working?

MR. GAY: Like I said, I have Eric Tabacek,  
he's the program director and he can speak to that.

MR. TABACEK: I'm Eric Tabacek, State  
Highway Administration. Yes we do, we do that because  
national studies have shown that 80 percent of the  
injuries and fatalities that have happened in work  
zones have happened to the motorists themselves to  
this is a twenty-four-hour program.

TREASURER KOPP: Hm. And has it reduced the  
accidents and fatalities?

MR. TABACEK: Yes, ma'am. It has, we have found, our studies have shown that we have reduced accidents probably by 10 percent since the program has begun.

TREASURER KOPP: Including in places that are not actually work zones?

MR. TABACEK: No, just within the work zones.

TREASURER KOPP: Where there are not actually people working?

MR. TABACEK: Correct.

MR. GAY: A lot of that, if I could speak, a lot of that is due to lane restrictions, too. The lane restriction could be there, it's twenty-four hours a day.

TREASURER KOPP: Uh-huh.

MR. GAY: You could go from a twelve-foot lane to a ten-foot-lane restriction, and it's there all the time so you want the public to slow down.

MR. TABACEK: We ensure that the locations that we place the, where we have the deployments, there is some type of change in the roadway

configuration where it could be shoulders have been reduced, the lane widths, or splits in lanes or something like that is taking place twenty-four-hours a day.

TREASURER KOPP: And just to follow the line, the shoulders were reduced or the lanes were changed for a road construction reason? Not --

MR. TABACEK: Correct. No, ma'am.

TREASURER KOPP: I, I'm concerned. Because we first heard about this, obviously, after some serious accidents involving in fact the MDOT workers.

MR. TABACEK: Yes.

TREASURER KOPP: And it made a lot of sense because I know as a driver people do speed through when there is, we had not heard this other rationale that I recall. Not to argue with it, but the problem is the injury to the drivers, not the workers. We had not heard that, I don't think.

COMPTROLLER FRANCHOT: I just wanted to bring it up. I support the program but I hope that there is some monitoring of this. Because, you know, it has lots of little offspring. I mean, you drive

through Chevy Chase, Maryland and you are all of a sudden getting flooded with forty-dollar tickets for, you know. I'm sure that they are technically correct but at some point the question is, you know, are we actually doing what worker protection and driver protection we're talking about, as opposed to generating a lot of revenue. Which we need, but there might be a better way to generate revenue than these systems. And, you know, I say that very delicately because I want, obviously I don't want to get involved in the people that don't like these at all. But just looking at the 432,000 citations that you have given and the considerable amounts of revenue that are generated, I just want to make sure that someone on top is monitoring as to restrict it to what it's supposed to be doing.

MR. GAY: And I supplied a list of possible locations. And most of the locations are on the Capital Beltway for the upcoming projects. The past projects have been on, of course, I-95, I-695 at Charles Street, I-695 at Liberty Road, on Maryland 295 at the Beltway also. So the ones we're putting out

are the mobile speed cameras. They are not the mounted ones that are in school zones. And they are basically in work zones on interstate highways. I think we do it at I-70 also, is another location.

MR. TABACEK: The State Highway Administration's program is freeways only, work zones. The programs that are in question right now are some of the school zone residential ones that are run by local communities. We are attempting to work with them to, holding the reins on them to ensure that they are following all the laws and regulations, but they are basically local programs.

COMPTROLLER FRANCHOT: Just make sure it's -  
-

MR. GAY: Yes, sir.

COMPTROLLER FRANCHOT: -- someone is looking at it because at some point you can lose perspective.

MR. GAY: Yes, sir.

GOVERNOR O'MALLEY: Or popular support. I had always thought that the people being hit by the, the people, as the Treasurer indicated and the Comptroller's line of questioning, I had always

assumed that the people that were injured were the workers. But say what you said again? That the majority of the injuries that occur in work zones are actually the motorists themselves, because of the lane restrictions, the shoulders, the narrowing of lanes and the like?

MR. TABACEK: That's correct, sir.

GOVERNOR O'MALLEY: Hm, interesting.

TREASURER KOPP: It makes sense.

GOVERNOR O'MALLEY: Just kind of, it wasn't quite the original narrative.

TREASURER KOPP: It's not what we thought, yeah.

GOVERNOR O'MALLEY: As I heard it. But I wasn't at the hearing. I just sign these things once they send them to me.

(Laughter)

GOVERNOR O'MALLEY: Okay. Any other questions on MDOT?

COMPTROLLER FRANCHOT: Move approval.

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

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed, "Nay."

(No response.)

GOVERNOR O'MALLEY: The ayes have it and that concludes our Agenda.

MR. COLLINS: No, sir.

GOVERNOR O'MALLEY: No?

TREASURER KOPP: No, it's doesn't.

GOVERNOR O'MALLEY: Oh, sorry. I saw the pack up language from, I saw the pack up motion from the Comptroller.

(Laughter)

MR. COLLINS: I'm still here, Governor.

GOVERNOR O'MALLEY: Like Pavlov's dog, right?

MR. COLLINS: Hang on!

GOVERNOR O'MALLEY: You know, when I saw that big Jerry Klasmeier binder close --

(Laughter)

GOVERNOR O'MALLEY: DGS.

MR. COLLINS: Good morning, Governor, Madam Treasurer, Mr. Comptroller. Department of General



Services has fourteen items and we have revised Item 6. We'll be glad to answer any questions you might have on these items.

GOVERNOR O'MALLEY: The Comptroller moves approval --

(Laughter)

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

THE BOARD: Aye.

GOVERNOR O'MALLEY: And the ayes have it.  
Thanks.

MR. COLLINS: Thank you, Mr. Comptroller.

(Whereupon, at 11:48 a.m., the meeting was concluded.)