

May 23, 2012

STATE OF MARYLAND
BOARD OF PUBLIC WORKS
GOVERNOR'S RECEPTION ROOM
SECOND FLOOR, STATE HOUSE
ANNAPOLIS, MARYLAND

May 23, 2012

10:19 a.m.

P R E S E N T

GOVERNOR MARTIN O'MALLEY, Presiding;

HONORABLE PETER FRANCHOT, Comptroller;

HONORABLE NANCY KOPP, Treasurer;

SHEILA C. MCDONALD, Secretary, Board of
Public Works;

ALVIN C. COLLINS, Deputy Secretary,
Department of General Services;

T. ELOISE FOSTER, Secretary, Department
of Budget and Management;

DARRELL MOBLEY, Deputy Secretary,
Department of Transportation;

EMILY WILSON, Department of Natural
Resources;

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.

C O N T E N T S

<u>Subject</u>	<u>Agenda</u>	<u>Witness</u>	<u>Page</u>
Allocation of Funds from Alcohol Tax for Public School Construction in Southern Maryland	SEC Item 16, p. 26	Sheila McDonald Dr. David Lever Charles Wineland Brad Clements George Leah	9
DNR Agenda	DNR	Emily Wilson	24
Modification of Contract for Breast and Cervical Cancer Program in Calvert County	DBM Item 10-S-MOD, p. 37B	T. Eloise Foster Thomas Kim	25
Modification of Contract for Pharmaceutical Services for Residents of DDA SETT Program	DBM Item 12-S-MOD, p. 44B	T. Eloise Foster Thomas Kim	25
Modification of Contract for Pharmaceutical Services for Individuals Served by Potomac Center	DBM Item 13-S-MOD, p. 48B	T. Eloise Foster Thomas Kim	25
Modification of Contract for Behavioral Support Services for DDA Southern Maryland	DBM Item 14-S-MOD, p. 52B	T. Eloise Foster Thomas Kim	25

<u>Subject</u>	<u>Agenda</u>	<u>Witness</u>	<u>Page</u>
Modification of Contract for Utilization Review Services for DDA	DBM Item 15-S-MOD, p. 55B	T. Eloise Foster Thomas Kim	25
Contract for Program at Silver Oak Academy	DBM Item 7-S, p. 26B	T. Eloise Foster Sheila McDonald Angela Johnese Sam Abed	38
USM Agenda	USM	Joe Evans	46
Master Contract for Two-Way Radio Equipment, Consoles, and Services	DoIT Item 1-IT MOD, p. 1D	Elliot Schlanger Sheila McDonald Arnold Jolivet Tessa Hill-Aston Lance Lucas Bruce Fryer Zenita Wickham-Hurley	47
Phase 2 of Statewide Public Safety Wireless Communications System	DoIT Item 2-IT MOD, p. 4D	Elliot Schlanger Sheila McDonald Arnold Jolivet Tessa Hill-Aston Lance Lucas Bruce Fryer Zenita Wickham-Hurley	47
Retroactive Approval of 391 Contracts	DOT Item 8-AE-MOD, p. 18	Darrell Mobley	110
Construction Management at Risk Services for New Youth Detention Center at Cheltenham	DGS Item 1-C, p. 1	Al Collins Sam Abed Bart Thomas Maurice Baskin Stan Turk	113

P R O C E E D I N G S

GOVERNOR O'MALLEY: Good morning and welcome to the Board of Public Works. Today is May 23, 2012. And my goodness, already near the end of May. I want to ask the Comptroller or the Treasurer if they have any opening thoughts as we dive into this Agenda?

COMPTROLLER FRANCHOT: Thank you. Thank you, Governor. I just want to wish everyone a Happy Memorial Day weekend and just indicate that everybody is happy in the State of Maryland because the Orioles and the Nationals are doing so well. I hesitate, because I don't want to jinx them but they, when the Orioles beat the Red Sox last night that was, yesterday, it was good stuff.

And I've also been, Governor and Madam Treasurer, visiting different parts of the State awarding the winners of the William Donald Schaefer Helping People Award to all of the jurisdictions. And I've really been touched by the work that these various organizations and people are doing to make life better for everyone in their communities. And the amount of not for profit work of people that are

frankly trying to benefit the most vulnerable among us is just so commendable for our great State.

These groups are filling a void and performing extremely well. We received many nominations for this award and learning about the impact so many have had for countless others has frankly been inspirational and heart warming for me.

For example, and I always say to the groups out there after I say a whole bunch of things about William Donald Schaefer, frankly Governor Schaefer didn't have much use for me but I appreciate his legacy. What he left behind was not just this support for big bricks and mortar projects. It was for the little person. I think his legacy will live on and on through the years.

So we awarded in Baltimore, Baltimore County we awarded first to Moveable Feast, a not for profit organization that provides food and services to people with AIDS, cancer, and other diseases. Then we went to Baltimore County and presented to the Little Sisters for the Poor an award. As you know, a wonderful home for the needy and elderly population.

May 23, 2012

7

In Montgomery County we awarded the Jewish Foundation for their work to create housing and job opportunities for people with disabilities. In Cecil and Worcester Counties we gave to groups that shelter the homeless. And near and dear to my heart, in Prince George's County we presented the Schaefer Award to the Katie Able Foundation in Prince George's County which empower and protects the young with lessons of financial literacy. And in Anne Arundel County we celebrated the group Hope, which furnishes beds, furniture, clothes, and school supplies to need families, all on a shoestring budget, less than \$100,000 a year. And the amount of volunteer and just volume of product that they move out to people is just stunning.

And these are just a few. More examples abound throughout Maryland. Nonprofit organizations are populated by people who put others before themselves and feel a calling to come to the aid of the less fortunate. They do it with little fanfare, not a big budget. They are doing so at a time when the economy is weak and when government is frankly

stretched, almost unable to meet the needs. These groups are invaluable. They are doing so obviously in an economic climate that negatively impacts their donations. It's not easy to continue doing what they are doing. And to the extent that we at the State and local level can support the transformative work of these not for profits, these are investments that I view as having a multiplier effect. That's part of the answer to the of how we stretch our dollars to max out while we are dealing with budgets that are increasingly flat lined.

They are doing more with less and frankly they should be applauded for their efforts. I'm bringing a big bag of clothes down from my house and giving it to Hope in Anne Arundel County because I know it will immediately get in the hands of families that need that help in these tough times. Thank you, Governor.

GOVERNOR O'MALLEY: Thank you, Mr. Comptroller. Madam Treasurer?

TREASURER KOPP: Good morning.

GOVERNOR O'MALLEY: Good morning. Okay.

Well --

(Laughter)

GOVERNOR O'MALLEY: -- here we go. Let's start with the Secretary's Agenda. Madam Secretary?

SECRETARY MCDONALD: Good morning. Good morning, Governor, Mr. Comptroller, Madam Treasurer. We have 17 items on the Secretary's Agenda this morning. We have two reports of emergency procurement. And I will draw your attention to Item 13, which is the public school construction fiscal year 2013 capital budget. We are prepared with answers for questions on any of the items, and Dr. Lever is here on all the school construction items.

GOVERNOR O'MALLEY: Okay. Any questions, Secretary's Agenda? Mr. Comptroller?

COMPTROLLER FRANCHOT: Item 16, please?

SECRETARY MCDONALD: Item 16 is the Southern Maryland allocation for the alcohol beverage supplementary appropriation. This brings to the conclusion the fiscal year 2012 appropriation for that project that went to many regions in the State. And

Southern Maryland is the last region to come here. Dr. Lever is here and can talk about the three counties, Calvert, Charles, and St. Mary's. The Southern Maryland region comprises those three counties.

DR. LEVER: Yes, good morning members of the Board of Public Works. We have representatives from each of the school districts here if you have questions about projects. We could ask them to come to the podium and respond to your questions.

COMPTROLLER FRANCHOT: Well if I could just first ask you, because Dr. Lever I have such great respect for you, we're being asked here to approve an overall disbursement of \$1.25 million to the three Southern Maryland counties for school construction projects. Just to refresh everyone's recollection these are funds that were made available to the counties through the 2011 alcohol tax increase. Under the recommendation that has come to the IAC from the counties, and this is submitted to this Board for our approve before us, the division is the following.

\$550,000 to Charles County, \$410,000 to Calvert County, and \$290,000 to St. Mary's County.

As I recall, Dr. Lever, we have had considerable difficulty in bringing this item to the table because the counties had some trouble achieving consensus on how this money should be divided. As was pointed out in a January 25th letter from St. Mary's superintendent Michael Martirano, the three counties had initially agreed to divide the money nearly equally. Charles would receive \$440,000, Calvert would receive \$405,000, St. Mary's would receive \$405,000. It seemed like a very clean, easy way to go about it.

But something occurred to dissolve that agreement, though, and in early March this Board received a proposal that would have allocated the same amount to Calvert and St. Mary's but given more to Charles and therefore exceeded the \$1.25 allotment by nearly \$100,000. Obviously that wouldn't do. So now nearly three months later at the table with yet another model, one that clearly favors Charles and Calvert Counties at the expense of St. Mary's.

I apologize for the refresher course. But my simple question is what happened?

DR. LEVER: Well as I understand it each of the jurisdictions worked with their delegations responding to a letter that was sent by Senator Miller and Senator Middleton, which outlined a methodology for dividing the funds. And so the final request that we received did reflect the allocations that you see in front of you. And the gentlemen here from the three jurisdictions can probably speak to it in more detail, but that I understand is the general process that was followed to arrive at this final request.

COMPTROLLER FRANCHOT: You are absolutely right. I neglected to mention that in March we received a letter from Senator Miller and Senator Middleton, who represent Calvert and Charles Counties respectively, and you are right. Coincidentally or not in the letter they proposed the exact same funding allocations that we're being presented with here today. \$550,000 for Charles, \$410,000 for Calvert, \$290,000 for St. Mary's.

Over the past several months this Board has approved the supplemental school construction funds for other regions in the State. And I don't recall seeing any other letter even closely resembling the letter from Senator Miller and Senator Middleton. And frankly it strikes me as highly irregular to have two lawmakers of this stature intervene so directly and with such specificity in an issue that traditionally has been resolved collegially by local governments. Can someone, be it you Dr. Lever or anyone from the three impacted jurisdictions, just speak for a moment about how the decision was made? Because at first glimpse it would appear that we're simply responding to a suggestion from a pair of influential State officials, the county commissioners, the school boards, the school superintendents really are just falling into line. Anybody want to comment on that from the jurisdictions?

TREASURER KOPP: Could I just ask another questions? Another based on what the Comptroller said, too. My impression, looking at all of this, was in fact that the division is closely related to the

school population in the three jurisdictions, which are quite different sized.

GOVERNOR O'MALLEY: That's right.

TREASURER KOPP: And maintenance of effort.

Is that not so?

DR. LEVER: That's what I understand.

TREASURER KOPP: That was my assumption.

Perhaps I'm wrong?

DR. LEVER: Yes, I understand that that was how the suggested allocation was arrived at.

TREASURER KOPP: It wasn't just pulled out of the sky? Or by politicians or anyone else?

DR. LEVER: No.

TREASURER KOPP: It's related to the number of students in the school system.

COMPTROLLER FRANCHOT: Well if I could just reclaim my time and ask the representatives of the counties to come up --

TREASURER KOPP: That was a question not a -

-

DR. LEVER: I will ask them to come forward.

DR. LEVER: We have from St. Mary's County Mr. Brad Clements, from Charles County Mr. Charles Wineland, and from Calvert County Mr. George Leah. And I have to just say that, you know, we in the public school construction program don't really know what goes on behind the scenes and internally about how decisions are made about what to request, which projects and how much.

COMPTROLLER FRANCHOT: Okay. So the question, just to refresh your recollection, is that we had a proposal from you local jurisdictions. And then apparently Charles wanted more, so they came in and suggested something different that didn't fly. And all of a sudden we now get a letter from the Senate President and Mr. Middleton with a letter that's very specific that says these are the amounts and Calvert and Charles do fine, St. Mary's doesn't do so fine. And I'm just curious as to whether this is something the county commissioners, school boards, and school superintendents signed on? What was the process?

MR. WINELAND: We from the beginning as --

COMPTROLLER FRANCHOT: I'm sorry --

MR. WINELAND: I'm sorry, Chuck Wineland, Charles County, Assistant Superintendent. We from the beginning felt that the formula basically that Treasurer Kopp has mentioned to you was the equitable one dealing with size of the system, enrollment. And we worked closely with, always work closely with our delegations. Senator Middleton is extremely instrumental in the success of the Charles County School System and what happens at the State level. We would never, ever think twice about not wanting their input, as well as our delegates. Therefore, when this whole situation started to develop they became more involved in the process, the funding process division should be equated to a formula that makes sense based upon the actual numbers and not just an opinion. And therefore we worked very closely with Senator Middleton, Senator Miller, and the formula before that that speaks to the two items that Treasurer Kopp mentioned was the final decision.

COMPTROLLER FRANCHOT: Does anyone from Calvert or St. Mary's?

MR. CLEMENTS: Brad Clements with St. Mary's County Public Schools. Throughout the process starting last Fall the school systems did work collaboratively looking at various methods of how distribution of the funds would take place. And as Mr. Wineland said, speaking about the size of the school systems as well. Later this Spring, as you noted, the letter and the discussions with Senator Middleton and Senator Miller, there was discussions with our delegation as well. And Mr. John Bohanan spoke with the superintendent and all talking about class sizes and everything. And, excuse me, the size of the school systems and everything. And agreed on the procedure that was put in place through the letter and that. And then, you know, we moved over with the project identified. The project we have identified we're very excited about. Energy conservation, and things. So we're ready to move forward.

COMPTROLLER FRANCHOT: Okay. So you're signing off on this, I take it?

MR. CLEMENTS: Yes.

COMPTROLLER FRANCHOT: And Calvert, you do well.

MR. LEAH: George Leah, Calvert County Public Schools, Director of School Construction. And I have to more or less mimic what my two colleagues behind me said. This was a collaborative effort. Our superintendent worked with Mr. Miller on this also and they came to a conclusion. So.

COMPTROLLER FRANCHOT: Okay. I get the drift. But in the letter it's a little ambiguous what it's referring to when I quote, this is the one under the Miller/Middleton formula a much bigger piece of the pie goes to Calvert than to St. Mary's. I quote, "We strongly believe it should reflect to local effort to increase education funding even in these difficult funds. And on that front St. Mary's lags considerably behind Calvert." Dr. Lever, did any of the other rural, less populated jurisdictions consider this factor when deciding how to divide their shares? Or, Ms. McDonald did the enabling legislation dictate or recommend that this was part of the allocation process?

DR. LEVER: No. The enabling legislation only specified the amounts for four regions in the State. It did not specify a methodology. The other three regions in the State each worked out internal mechanisms for dividing the funds cooperatively, using completely different methods in each case as far as I understood them. So these issues didn't emerge.

COMPTROLLER FRANCHOT: Okay. So, and then if I could ask Ms. McDonald did, not to state the obvious, there's a third senator down in Southern Maryland, Senator Dyson. Has he weighed in on the recommendation?

SECRETARY MCDONALD: Actually no, we have not heard from Senator Dyson on this.

COMPTROLLER FRANCHOT: Okay. Based solely upon the data it would appear to be difficult in my mind to justify a significant difference between what Calvert County will receive and what St. Mary's County will receive. According to the 2010-2011 Maryland Board of Education Fact Book, correct me if I'm wrong here, I don't have my copy with me, but Calvert County enrolled 16,795 students in its 26 public schools in

2010, while St. Mary's County actually enrolled more students, 17,271 students in its 28 schools. So they are equal size.

DR. LEVER: But the other factor, and I'm not judging on the merits of the formula, but the other factor that was mentioned had to do with the local effort.

COMPTROLLER FRANCHOT: Yes. But when you look at the fact book further you see that St. Mary's County actually, the needs there actually exceed those of Calvert. I don't dispute Calvert's wonderful system. But according to the fact book St. Mary's County's drop out rate of nearly 3.3 percent is 79 percent higher than Calvert's rate, 1.84. The St. Mary's County Public Schools enrolled 1,610 special education students during the 2010-2011 school year, more than 10 percent more than were enrolled in the Calvert County Public Schools. And according to the Annie E. Casey Foundation 33 percent of St. Mary's students receive free or reduced priced lunches on the basis of financial need, a rate that's 57 percent higher than Calvert's rate of 21 percent. So I don't

minimize Calvert's challenges, or the exceptional work they do. You know, I've saluted that system all over the State for its commitment to teaching financial literacy. I have to just, I have to ask how do you justify a disbursement to Calvert County that exceeds St. Mary's by more than 41 percent when St. Mary's County has more schools, more students, and one could argue more challenges?

DR. LEVER: Sir, I can't respond to the question. I was not involved in putting together recommendations. And in fact, the IAC had no authority in this program.

COMPTROLLER FRANCHOT: I come back to my point. And one of my favorite words is ratiocination. It, for me it stands for ex post facto logical reasoning that justifies a decision that was made before you followed the reasoning.

GOVERNOR O'MALLEY: What's that word again?

COMPTROLLER FRANCHOT: Ratiocination.

GOVERNOR O'MALLEY: Ratio? Like radio?

Ratio?

COMPTROLLER FRANCHOT: Ratio. R-A --

GOVERNOR O'MALLEY: C-I-N?

COMPTROLLER FRANCHOT: Ratiocination.

GOVERNOR O'MALLEY: C-I-N-A --

TREASURER KOPP: T.

GOVERNOR O'MALLEY: I-O-N?

COMPTROLLER FRANCHOT: An easier word is ex post facto rationalization, which is how I view this wonderful letter from my two esteemed friends in the Senate. And obviously the reason that I'm concerned is that if you continue this type of after the fact justifying how you want the money allocated I think you run into a lot of problems down the road. And I'm not particularly satisfied with the answers I've gotten, but it is what it is. I actually deplore the fact that the original consensus worked out by the local authorities was in effect swept aside and this document was inserted. And all of you can't really comment on that, I guess, but I can. And I think it's the wrong direction to proceed. And I register my objection for the record. Thank you.

GOVERNOR O'MALLEY: For the record my favorite word is floccinaucinihilipilification.

(Laughter)

TREASURER KOPP: I beg your pardon?

GOVERNOR O'MALLEY: Do we want to vote on this one separately, Mr. Comptroller?

COMPTROLLER FRANCHOT: No. I'm happy to, obviously I support these communities in their thing.

GOVERNOR O'MALLEY: Okay.

COMPTROLLER FRANCHOT: What I'm objecting to is this heavy handed interference by two influential State senators with specific demands that work to the disadvantage of a jurisdiction. And so, no, I'm going to vote for it. I've made my objection about the process.

GOVERNOR O'MALLEY: Okay. The Comptroller moves approval, seconded by the Treasurer, of the Secretary's Agenda items. 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 -- I'm sorry. Why do

I always do that? It's been six years. Natural Resources Real Property.

SECRETARY MCDONALD: And we have Emily Wilson here sitting in today. Emily, thank you.

MS. WILSON: Good morning. Thank you, Governor, Madam Treasurer, Mr. Comptroller. Emily Wilson with Department of Natural Resources filling in today. We do have six items on the Agenda this morning. I'll be happy to answer any questions.

GOVERNOR O'MALLEY: Any questions, Department of Natural Resources? Okay. 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: And the ayes have it. And we now move on to the Department of Budget and Management. I'm just looking at some of the maps that we just, these are great maps. For those of you watching online. Okay. All right. Department of Budget and Management, Secretary Foster?

MS. FOSTER: Governor, Madam Treasurer, Mr. Comptroller good morning. There are 17 items on the department's Agenda for today. I'll be happy to answer any questions you may have.

GOVERNOR O'MALLEY: Okay. The Comptroller has a question?

COMPTROLLER FRANCHOT: Items 10, 12, 13, 14, and 15, please.

GOVERNOR O'MALLEY: Items 10, 12, 13, 14, and 15.

MS. FOSTER: Okay. All of those are Department of Health and Mental Hygiene. And the Deputy Secretary is here. Item 10 is a request to extend the contract for six months to ensure the continuation of the breast and cervical screening services while the procurement is being completed. Item 12 is a request for a retroactive approval to increase funding for three months and to extend that contract by six months so that they can complete the procurement for pharmaceutical services for the DDA SETT program. Item 13 is a request for retroactive approval to extend that contract for six months to

continue the provision of pharmaceutical services and pharmacists' availability for the residents of the Potomac Center. And 14 is also a request to extend the contract by one year to continue providing the behavioral support services while the procurement is completed. So --

COMPTROLLER FRANCHOT: And Item 15?

MS. FOSTER: -- Deputy Secretary Kim? Oh, and Item 15 is also a request to extend the contract by ten months to allow for the completion of two procurements underway for the utilization review services. So now I'll defer to the Deputy Secretary.

MR. KIM: Good morning, members of the Board. Thomas Kim. I'll be happy to answer your questions.

COMPTROLLER FRANCHOT: Well with all due respect to the Secretary, who is frankly as good as they come and give him my regards. I don't know whether he's here today. But he does a great job for the State and I appreciate that. But this is a mess. I mean, how can you describe this as anything other than a mess? And we appreciate the, you know, I guess

what we're giving here is forgiveness because you are certainly not really asking permission. I mean, it's already happened. So the question is, you know, I'm sure there are plausible explanations why each of these contracts need to be extended or modified but in the aggregate I just think it's an unacceptable situation. I hope that this pattern of retroactive approvals and cost modifications and above all contract extensions, that this is the end of it. Because obviously the whole State's procurement process is based upon deadlines, there are dates in these contracts, there are ends to the contracts. And we need timely and open bid competition to make sure we're getting the best possible services.

So I appreciate the fact that these are specialized services and they are provided by a limited number of vendors. I mean, I guess what I'm concerned about is the lack of a process. I'm sure you've been asked this many times before. But is this the last time that we're going to ask for extensions of these particular contracts? And what's being done

within the department to ensure that future procurements are managed more effectively?

MR. KIM: Sure. First of all, Mr. Comptroller, we certainly, I certainly agree with your assessment. Based on my assessment of the various operational areas within DHMH there are areas that do require improvement. One of the ways, the way in which we communicate with our internal customers regarding these types of procurements. Currently we rely too much on humans with institutional knowledge to perform these tasks. And you know, without a catch all tracking system that instills accountability things like this will fall through the cracks. You know, these items today are an example, you know, of that lack of a comprehensive systems.

We've sought input from the BPW staff, DGS, DBM, and DoIT to, just to develop a simple tracking alert system that allows for transparency throughout the enterprise. And this system, which is about 95 percent completed, which we have been working on for the past six to eight months, it consolidates, you know, all of our active contracts with expiration

dates. This is very, you know, simple and basic stuff. It allows for an online ability for our internal customers to know where a particular solicitation is in the procurement life cycle. And there is from our procurement shop an individual assigned to each and every contract, you know, which allows for us to hold our people accountable to making sure that these things are done on time and within all BPW procurement procedures.

And again, it does provide a simple alert system for the programs and our procurement shop to get the ball rolling working backwards from an expiration date of a contract. It's not particularly innovative, but it's certainly to your point, Mr. Comptroller, very long overdue. And as I explained to the BPW staff, you know, such a system isn't magically going to eradicate, you know, these problems. What it does is it allows us to get an immediate snapshot view of all 250 active contracts throughout, you know, a \$30 billion enterprise and for us to be able to know where exactly are we in the process.

And so, you know, as far as being able to look at that comprehensively, the moment that we do that we will know where our problem areas are and we have to triage, you know, our items accordingly. And like I said, you know, this is a process. It's been challenging. But, you know, it is absolutely necessary. You know, and it's something that, you know, the Secretary is very much dedicated to bringing an end to these types of issues. But, you know, we had to start somewhere. And I'm not explaining this to you certainly by no means as an excuse, you know? For these items. But you know, I wanted to provide the Board some information about what we're doing to structurally address these problems.

We're also holding ourselves accountable through the StateStat process whereby we are tracking the number of extensions and emergencies on a monthly basis to the Governor's staff as well. So I look forward to sharing with you and to anyone else the results of our process. But again, it doesn't take away from the legitimate concerns that you have.

COMPTROLLER FRANCHOT: Thank you.

TREASURER KOPP: Governor, could I?

GOVERNOR O'MALLEY: Sure. Madam Treasurer?

TREASURER KOPP: Not to pile on, but I think I agree completely with the Comptroller, and regret to say I've heard responses that are pretty similar to what I just said, not identical, many times before. I think everybody intends well and everybody starts reforms, and so far we haven't seen the results. Do you have in fact a plan and a roll out so that we can tell when in fact you've got everything in place and actually see it?

MR. KIM: Very much so. In fact, you know, at the very next BPW staff meeting I look forward to, you know, individually, Madam Treasurer, I look forward to just sharing with you what we've done. We haven't --

TREASURER KOPP: Well what you've done, but when you're going to have finished doing what you are planning to do, and when it is put in place and working is really, because we've seen a lot of attempts.

MR. KIM: Right. No, certainly. And I don't disagree with anything that you're saying, Madam Treasurer. But we have such a system now in place. We are working with our programs and our procurement staff to work collaboratively, you know, together based on, you know, these simplified reports. I think that, you know, like I said this is not an innovative platform. I think that, you know, in various areas, whether it's in construction, ContractStat, or you know, call it what you will, with capital, CapStat, or what not. When it comes to various activities that happen, and that happen with deadlines, you have to have such a system. But a system itself won't solve the problem. It's how we actually use the system between ourselves, between the procurement shop and all of the various programs, and how that, we allow that to effectively, you know, communicate with DBM, DGS, DoIT, and all of you. So --

TREASURER KOPP: Well and the need to --

MR. KIM: -- I mean I understand your wariness but, you know, we --

TREASURER KOPP: I mean to say the need is exacerbated because of personnel cuts and it doesn't look like we're going to repopulate a lot of the jobs that have been cut, refill them. And people retiring. You've got to actually have the system in place and not be reliant on people who were there and knew the job because they are not going to be there. Thank you.

GOVERNOR O'MALLEY: And so Thomas can I, just so I understand, I mean, these things come up periodically. You now have a platform, you have a tickler file, you have the basic stuff. So every time these come up you put it in and, boom, we use technology to do what we know technology is supposed to do?

MR. KIM: That's correct.

GOVERNOR O'MALLEY: When will the tail of this thing be through us?

MR. KIM: Well the snake, the mongoose kind of goes through the snake. And so you know we will --

GOVERNOR O'MALLEY: That's an ugly image.

(Laughter)

MR. KIM: You know, we will be expecting a couple, like I said, through this triaged process we will be expecting a few items coming up that are the patients that we cannot resurrect in terms of a procurement process to get them awarded on time before the expiration starts. It's just, you know, where we are.

GOVERNOR O'MALLEY: Is there not a computerized system for payment?

MR. KIM: I'm sorry?

GOVERNOR O'MALLEY: Is there a computer or paper system for payment, or both?

MR. KIM: There is a computer system through FMIS that we track all payments --

GOVERNOR O'MALLEY: Electronic payments or paper payments?

MR. KIM: Electronic payments.

GOVERNOR O'MALLEY: Okay. So if there is an electronic record of payments then certainly those electronic payments have within them a source code that goes to the program with the contract, do they not?

MR. KIM: That's correct.

GOVERNOR O'MALLEY: Okay. So there's not like an infinite number of these, right?

MR. KIM: When it comes to payments to a contractor we very much rely on these reports to be able to say when they are starting to get, rise up to the maximum amount of a contract. What we are, those are not by any means the majority of our challenges. And I think today's item related to a DDA contract is an exception. What we do find as our challenges are those contracts that require a solicitation that take eight months, 12 months to kind of go through the entire process. We don't make up the rules but, you know, we have to follow them. And working backwards we know when, we now know when we have to start a contract.

GOVERNOR O'MALLEY: We now know to what degree.

MR. KIM: I'm sorry?

GOVERNOR O'MALLEY: We now know to what degree. Where is the mongoose through the snake?

MR. KIM: We do, in terms of describing --

GOVERNOR O'MALLEY: Is the mongoose through 60 percent of the snake? Eighty percent of the snake?

MR. KIM: I would say it's about 80 percent of the snake.

GOVERNOR O'MALLEY: Eighty percent of the snake?

MR. KIM: Yeah.

GOVERNOR O'MALLEY: Sounds like an ideal summer internship program.

MR. KIM: We'd certainly welcome --

GOVERNOR O'MALLEY: Yeah, go through the monthly payments, see which ones have source codes, which ones don't, when their contracts are up. And I'm seeing that if on the outside it takes eight months to prepare the thing then you should know that any contract that you're four months into should be somewhere along the continuum, right?

MR. KIM: Exactly.

GOVERNOR O'MALLEY: And so how many contracts have we like this, 100? 200?

MR. KIM: Well at any given time we have anywhere from between 220 and 250 contracts.

GOVERNOR O'MALLEY: Okay. That's a good manageable result, I mean number, right? Okay. So we're 80 percent of the way through 250?

MR. KIM: Yes.

GOVERNOR O'MALLEY: It seems like this should all be on a tickler file, right?

MR. KIM: Absolutely, just like CapStat.

GOVERNOR O'MALLEY: And the dashboard. Uh-huh, all right. Well thank you. I was sharing with Treasurer Kopp on our way in here the effort it has taken to create new systems so that things like this can be managed with the technology that's now so very, very commonplace throughout our world. It's, and for as much as we've done there are still things that need to be done. But on something like this by now certainly a summer intern could have figured this out and had a nice spreadsheet and a file. When you say, did you say CapStat?

MR. KIM: The principles of our ContractStat is the same as that of CapStat.

GOVERNOR O'MALLEY: Right. So the same template, right?

MR. KIM: Correct.

GOVERNOR O'MALLEY: Okay. Good. All right. Thanks. Anything else on Department of Budget and Management?

MS. FOSTER: We did have a request, Governor, for someone to speak on Item 7. Item 7 is a DJS contract. The contract is to provide a residential program at the Silver Oak Academy for 48 DJS males who are ages 14 to 18. And the individual who has asked to speak is Angela Johnese.

SECRETARY MCDONALD: Johnese, Johnese, is Ms. Johnese here? Here she comes.

MS. JOHNESE: Good morning, members of the Board of Public Works. I am Angela Johnese, the Juvenile Justice Director at the Advocates for Children and Youth, a Statewide nonprofit that provides public policy advocacy. I am joined in my request by a number of child and family advocates, including Stacey Gurian-Sherman, the Just Kids Partnership, Maceo Hallmon, Sharon Rubinstein, and Jim McCone.

When I spoke to the staff I said that my position did not fit clearly in opposed or approve the contract. We just wanted the record to go forward, or that agenda item to go forward, with discussion before it was considered by the Board. And we were asking that if information could not be provided about the contract --

TREASURER KOPP: I beg your pardon. I apologize for interrupting, but could we just hear briefly what the project is, item is first? And then --

GOVERNOR O'MALLEY: That's a good idea. We'll come right back to you. Just stay there.

MS. JOHNESE: Okay.

TREASURER KOPP: Yeah, don't go anywhere.

MS. JOHNESE: All right.

MS. FOSTER: The Secretary is here.

GOVERNOR O'MALLEY: Sam? I'm sorry, but I do have to ask you to step back, ma'am.

TREASURER KOPP: What is Item 7?

MS. FOSTER: Item 7 is, as I said, the contract is to provide a residential program at the

Silver Oak Academy. It's for, to provide services for up to 48 DJS males, males who range in age from 14 to 18.

MR. ABED: Yes.

GOVERNOR O'MALLEY: Identify yourself, sir, for the record?

MR. ABED: Sam Abed for the Department of Juvenile Services.

GOVERNOR O'MALLEY: In fact, you are the Secretary of the Department of Juvenile Services.

MR. ABED: Yes, Governor, I am.

GOVERNOR O'MALLEY: Okay. Tell us what this does?

MR. ABED: This contract is for the provision of services for youth. This is residential services for youth that are committed to the department. Silver Oak Academy is a privately operated facility that we contract with on a per diem basis to provide residential services for those youth that are committed to DJS.

GOVERNOR O'MALLEY: Okay.

TREASURER KOPP: And we, this contract was initiated when?

MR. ABED: This is a renewal of a contract.

TREASURER KOPP: Right.

MR. ABED: This is a three-year renewal from the initial contract. It was a three-year contract initially. So this is the --

TREASURER KOPP: And it was a somewhat controversial contract, as I recall? Initially. You weren't the Secretary. There was some concern about the size? Isn't this the one where there was concern about the size of the facility?

MR. ABED: Yes.

TREASURER KOPP: And whether it would grow exponentially? And there were some commitments made at that point that it would not, and that there would be ongoing monitoring. And I don't know if that's what you are concerned about. But it's certainly what I'm concerned about.

MR. ABED: I believe that the concerns, and I don't want to speak for Ms. Johnese. But I believe that the concerns are regarding the increases in the

contract value from the first contract. The first contract was a lesser value than this one for two reasons, principally. First, the first year of that contract was not contemplating a full 48 beds. Because it was a new program, they needed to ramp up. So we did not fund it at a full 48-bed level until they reached the capacity to take those youths. So that number is much lower for year one. Year one of this contract is a full 48 beds because they are still operating.

The other reason that it's lower is when the contract was initially approved there was a missing term for the education services, which is a large percentage of the contract. MSDE sets the rates for education services. It had not set the rate yet. So once the rate was set the department needed to come back to the Board and get an amended contract. We did get an amended contract submitted and therefore this contract contemplates both the full 48 beds and the education services that were amended in the first contract.

TREASURER KOPP: And you still have no intention of expanding it beyond 48?

MR. ABED: This is not an expansion at all. This is just to re, to reup the contract for another 48 beds, the same 48-bed level for three more years, contemplating all of the services in the amended contract.

TREASURER KOPP: And it couldn't be expanded, therefore, beyond that without coming back with a different contract?

MR. ABED: We could not expand it without going through the statement of need process. It would not be something we could do through the budget. We have to do a statement of need.

TREASURER KOPP: Thank you. Thank you.

MS. JOHNESE: Thank you, Mr. Secretary. That does address issue one that we were raising. Because we were concerned that the original contract was approximately \$9.8 million and the renewal contract was appearing on the Agenda at approximately \$17.8 million. And so we were asking that discussion

on the reasoning behind that significant increase was shared with the Board of Public Works.

At the same time we presented issue two. In the contract description it states that the Silver Oak Academy will provide residential services for an average daily population of 48 male youth. In our interpretation the language suggests that there may be times that the provider operates above capacity. I know the Secretary touched on the need for a statement of need before the facility could be expanded beyond 48 beds. But we were just asking that the contract be very specific, particularly with that language about average daily population. And just from reviewing daily population charts that we have access to there have been times that the facility has had 49 youth. I know that's not a big difference, that's not a significant difference, but just that there's clarification in terms of the parameters of the contract and what the actual capacity should be.

And those were the limits of our concerns at this time. And we just ask that that could be

clarified for the Board before the contract is considered for approval. Thank you.

TREASURER KOPP: Thank you.

MR. ABED: Once again, Sam Abed, Secretary of the Department of Juvenile Services. The Silver Oak Academy is licensed for 48 beds. They are not permitted to go over 48 beds. I know that sometimes on our daily population report there are errors, and sometimes, as today, it reports 49. That is not the number. It is 48 beds. They cannot go over 48 beds, because their license is limited to 48 beds.

Additionally, the statement of need process requires public input from players like Ms. Johnese. So we could not expand without going through those public steps.

TREASURER KOPP: But are there not occasions when somebody is going out and somebody else is coming in, and the first person gets sick? I mean, I can conceive of times when you would have in fact 49 for a short period of time if you are really, you know, if all your beds are full.

MR. ABED: I would have to check, but generally we do not permit them to go over 48. We know, they let us know when they are about to release a youth. And we usually have a waiting list for that --

TREASURER KOPP: So you wouldn't fill a bed until it was actually released --

MR. ABED: Until it's vacated, yes.

TREASURER KOPP: Thank you.

MR. ABED: Thank you.

MS. JOHNESE: Thank you.

GOVERNOR O'MALLEY: Okay. Anything else on the Budget and Management Agenda? All right. 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 move to the University System of Maryland.

MR. EVANS: Good morning. Joe Evans representing the University System of Maryland. We

have 14 items on the Agenda today. We're here to answer any questions.

GOVERNOR O'MALLEY: Any questions, University System of Maryland? The Comptroller moves approval, the Treasurer 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. We now move to the Department of Information Technology.

MR. SCHLANGER: Good morning, Governor, Madam Treasurer, Mr. Comptroller. Elliot Schlanger, Department of Information Technology. This morning we have six items on our Agenda. I am prepared to brief you or answer any questions on any of those items. I believe we have some speakers so I will defer to the Secretary to instruct how to proceed. Or the Board, actually.

SECRETARY MCDONALD: Do you want --

GOVERNOR O'MALLEY: Why don't you tell us what we're doing first, Elliot?

TREASURER KOPP: Yeah --

SECRETARY MCDONALD: Okay. On Items 1 and 2 I know that Mr. Arnold Jolivet has asked to speak on those items. In addition, we have two other speakers who would like to speak on Items 1 through 4. But why don't you, because Mr. Jolivet did send us some written comments yesterday that I think you received. So maybe you want to talk about Item 1 and 2, what those contract modifications are about.

MR. SCHLANGER: Right.

SECRETARY MCDONALD: And Mr. Jolivet can certainly take it from there.

MR. SCHLANGER: Right. If I may, I would start with Item 2 which is our contract that was approved by the Board November 17, 2010 to Motorola for the implementation of an enterprise-wide, I mean Statewide, radio system. The Board did approve that contract and we were happy to agree that we would come back to the Board and we would ask for approval for notice to proceed for subsequent phases. At that time we were enabled by the Board to proceed on the first phase.

We're here today just for that purpose. None of the terms of the contract has changed. The value of the contract has not changed. As a matter of fact the only thing that has not changed is that we are well into the testing of the first phase. The first phase has been a success. If Motorola was here today at the podium, and they are here right to my left, they would tell you that everything on this project is like hitting it out of the park. I would just say that the contractor is doing exactly what we asked them to do and we have funding for the second phase. So again, we're only here asking for your approval to proceed with phase two.

As far as the first item goes, this is a, it's a master contract for two-way radio equipment. This contract has been in force since 2009. We are bumping up against a ceiling and we're asking the Board to approve the additional funds required to take us to the end of the year. Other than that, no other terms of the contract have changed. So that is the summary of Items 1 and 2.

COMPTROLLER FRANCHOT: If I could just ask?

MR. SCHLANGER: Sure.

COMPTROLLER FRANCHOT: I was having a great morning until this contract got before me. Because I recollect that this was the one that we had a Maryland based company, a great company, that bid \$44 million less than Motorola. And the only thing that's going to be hit out of the ballpark are the taxpayers when we begin to understand what we've gotten into here. And when we purchase these radios, let me suggest the price is going to be about three, four, or five times what we would have paid for under the Arinc contract, the other proposal. We're going to be paying \$8,000 for radios that Motorola makes and you know, this is not a good deal for the taxpayers. I tried to raise that issue back then. But this is going to be a huge cost for the taxpayer. I have no idea how we can evaluate this. But I would appreciate it if my concern about Motorola using Motorola only products is not going to result in a huge cost to the taxpayers down the road. So I don't know what the speakers want to talk about on this contract. But this really sticks in my memory as a contract that should have gone to a

Maryland based company that was the lowest bidder and we would have done much better because Arinc would not have restricted us to Motorola devices for the life of this contract. So, thank you Governor.

GOVERNOR O'MALLEY: Sure.

COMPTROLLER FRANCHOT: Is there any way to, once these things are, to verify whether I'm correct or not? That this is really going to result in a lot of extra cost to the taxpayer?

MR. SCHLANGER: Well the technology that we are going to implement does not restrict only Motorola radios to be used. It is true that the Motorola radio will provide the responder with the most options or features. But I think it is inaccurate to say that only a Motorola radio can be used with the system that we are implementing.

COMPTROLLER FRANCHOT: I agree from a technical perspective. But from a practice perspective there isn't a single emergency facility out there in the State that's going to do anything other than buy Motorola. And, you know, it's like me with my Apple. I'm going to buy an Apple thing. I'm

not going to take somebody who comes in and says, "I'm not Apple but I'm pretty good."

GOVERNOR O'MALLEY: Actually, they could.

COMPTROLLER FRANCHOT: Who could?

GOVERNOR O'MALLEY: I mean when you said yes, technically that's true, Mr. Comptroller, with all due respect technically it's true because practically it's true. In reality it's true. I mean, if the first responders of our State, who are among the best in the country, choose at the local level to use the Motorola radios because of the greater number of options I would think it's because it's a better radio system. And I think it's false for you to assert that there's some sort of a technical monopoly that makes it impossible for other people with other radios to be prohibited from accessing this bandwidth. In point of fact we are going to be probably the first state in the country that has interoperable communications, and that's a long ten or 11 years after the tragic loss of first responder lives at 9/11, years when we've been under terrorist threat

with the nation's capital in the center of our geography. With all due respect.

MR. SCHLANGER: I would also add that since in fact we have really gone on the road with this project there are local jurisdictions who otherwise would have contemplated the purchase of their own system who are now talking with the State, now that they see this in action, saying, "We believe it would be advantageous for us to join the system in the State as opposed to having our own," and the Motorola system with its features, and its features for interoperability, is giving them the chance to do that. Plus it saves the taxpayers at least in those particular cities and jurisdictions a lot of money because they don't have to invest in their own. They are literally only going to buy, say, the radios, whatever they are, and they're going to attach to the system in the State.

Another point that I would care to make is that there are some systems in the State that are not Motorola. And with the capabilities that we are implementing we will be able to make them a part of

this overall system and they will be interoperable.

Again --

GOVERNOR O'MALLEY: And in fact, that was part of the RFP that involved input from a hundred different first responder agencies and entities across the State. Was it not?

MR. SCHLANGER: That is correct.

COMPTROLLER FRANCHOT: Okay. Well if I could just finish by saying maybe we're getting into Steinway versus Yamaha land here. But the issue here is not the operation of the system. It's what effective for the taxpayer and gets the job done. And I happen to believe that down the road if I were an EMS unit I would go with the \$8,000 Motorola radio because why not? And even though there's a \$2,500 Yamaha over here, why take a chance? And all I'm suggesting is that we're going to end up with the same quality system but we're going to be paying a lot more. And that's the issue that I'd like to get a suggestion from you, Mr. Secretary, who is so terrific. And I don't mean to put you on the spot. But if you could come up with some way we can evaluate

whether my concern on the cost issue is overridden by what the Governor was just saying about the operability of the system?

MR. SCHLANGER: Sure.

COMPTROLLER FRANCHOT: And we can follow this and you can communicate down the road.

MR. SCHLANGER: Sure.

COMPTROLLER FRANCHOT: You are coming back, I take it, with other phases?

MR. SCHLANGER: Mm-hmm.

COMPTROLLER FRANCHOT: And we'll see, you know, what the situation is down the road. I think it's a legitimate inquiry.

MR. SCHLANGER: Well for the record if I can just make one more point? So when we evaluate the offerors we take a look at their ability to deliver to the State the whole system. It goes beyond just these handhelds. And you know, this project follows on the heels of a State just up the road a little bit that had a catastrophic failure. And so we looked at things like experience and the ability or the mitigation of risk for a vendor to build a system that

will work. And when I made the allegation that the vendor might say he's hitting it out of the park, from a project perspective, and we come from a history where perhaps we don't have many successes or as many as we like, I'm happy to say that this one has been a textbook success in terms of project execution. We have been able to bring to this Board in terms of results today everything that we said we would when this Board approved this project in November of 2010. Thank you.

COMPTROLLER FRANCHOT: Thank you.

GOVERNOR O'MALLEY: Okay. Who wants to be heard on this now?

SECRETARY MCDONALD: Mr. Jolivet is waiting.

GOVERNOR O'MALLEY: Mr. Jolivet?

SECRETARY MCDONALD: Mr. Jolivet, do you have something you want to hand out?

MR. JOLIVET: Actually, yes I do. I would like, have some exhibits for the Board. And I have one for you and I have one for Ms. Hurley. So I presume --

SECRETARY MCDONALD: I will give Ms. Hurley's to her.

MR. JOLIVET: Okay.

SECRETARY MCDONALD: Is that your copy for Ms. Hurley?

MR. JOLIVET: Actually I have sufficient copies.

SECRETARY MCDONALD: Okay --

MR. JOLIVET: Okay, thank you. And I want to say good morning to the Board. And I have submitted to you a letter somewhat expressing my concerns. So I am hopeful that I will not have to rehash the items that I put in my letter.

But essentially I want to ask the Board to look at the exhibits that I have given you. And essentially the exhibit on the second page indicates that when this particular RFP, the RFP for this project was initially put out on the street I believe, and I've looked at this very closely, I believe that the contracting agency made a grievous mistake in that it set the goal, it set the minority utilization goal at only 12 percent. Now here you are, we have a \$485

million contract, Governor. And the contracting agency sets the goal at only 12 percent. And after the contracting agency brought the contract to this Board there was tremendous public uproar and clamor about the low goal, the 12 percent.

So consequently as a result of our efforts the Board was kind enough to have the contractor and the agency to redo the goal. That certainly was a very wonderful thing. But it still has not worked out. And it has not worked out because it appears as though the agency and the contract nonetheless still wants to escalate and the show the goal as being higher than what it is in fact with regard to the actual utilization.

And I raised the point somewhat last time because the agency backed out, deleted about \$285 million, according to my numbers, from the \$475 million, \$485 million and therefore computed the MBE goal on the lesser amount versus the total contract amount, which is totally contrary to the intent and purpose of the State's MBE statute and the regulations. Now the percentage that is shown

to the Board this morning I want the Board, I'm here today to respectfully ask the Board to review this, test this number. Because it is inaccurate, it's inflated, it's grossly inflated, and it does not reflect the true participation. And I would suggest to the Board that when a number, percentage of this kind is put on a public document we have an obligation to make sure that that number is accurate and true. And I submit to you that this number is not accurate, it is not true. And in all due respect to the agency I don't think that they have done this willfully but it does suggest that they are attempting to show this Board that they have achieved a participation level that is higher than what it in fact is.

Now I might suggest to the Board also that it's all right, well maybe it's not all right to have a low participation, if it's accurate, I mean it's true. But to have a number and to publicly submit a number, a percentage that is willfully and known to be inaccurate, Governor, it's just not appropriate.

And we would ask the Board, because the minority business community works hard. We have

terrific people. And there is actually, we have a number of very diverse, qualified people to do this job. There is really no need, no compelling need to unnecessarily inflate the goal. There is no need to do that.

And so I'm here today to ask the Board in its wisdom to have this, the Board, the State has just supported a new Secretary of GOMA. We have terrific confidence in her integrity and her commitment to the minority, I would ask the Board this morning in its wisdom to defer this contract. To see, to have the Office, the Special Secretary from GOMA to review the contract. And I know they have already looked at part of it. But I think it's in the public interest with all that we are doing in the State to have this contract reviewed again by GOMA independently to make a determination whether or not it is appropriate the way that the agency has computed the goal, in addition to determine whether or not it is appropriate to leave certain minority firms out of the participation.

And there is a unique irony about this whole contract. Because Motorola is using, or plans to use,

the \$29.3 million that they are asking the Board today to distribute among their local service dealers.

Motorola will not do this work themselves. But I might add it just doesn't make sense for Motorola or anyone to exclude our minorities. Motorola has a qualified licensed dealer. But the irony of it, they have not included this licensed dealer in none of this work. \$485 million, you would think that they would find \$1 for this lone African American firm. But they have not done that. And I would submit to this Board that that is in appropriate.

The Board has the responsibility. And I remember six years ago when the Board had a similar problem with Microsoft. And Microsoft had not one certified minority, African American or otherwise, reseller of their products. And the Board, Mr. Comptroller you remember this very vividly. You sat down with them, your staff sat down with them, the Governor's staff sat down with them and required them to have some participation. And I believe as a result of that that there was significant new minority

resellers licensed by Microsoft. And this is an analogous situation.

So I'm here today to ask the Board to take this thing seriously. Because we in Maryland we do take the minority program serious. But I have to confess, I'm offended the way that they have computed. I work hard to give credibility and integrity to the minority program. And when this kind of computation is submitted to an official board of the State, the highest board of the State, as accurate and efficient and complete, I would submit that it's not right and it's not appropriate. And I would ask this Board in its wisdom to rein in on this and correct it.

The last item that I would like to talk to the Board about is that a sizable portion of this contract with regard to the minority portion of it is going out of State, to an out of State firm. Over \$60 million. Something is intrinsically wrong if we in Maryland have to go to Florida or Georgia to get minority participation when we have one of the most diverse base of minority, to include African American, minority businesses in the whole country. The Census

Bureau recently put out a study and Maryland has 19 percent of all Maryland businesses happen to be African American. Forty percent of all Maryland businesses, including women, are minority businesses.

I submit to this Board that there is no reason that we have to go Florida, that we have to go to Florida, to get minority participation. There is something intrinsically and inherently wrong with that posture, where we have to desert and neglect or Maryland based minority businesses and go to Florida, and Georgia to get minority participation. And lastly --

GOVERNOR O'MALLEY: Do you really think that, Mr. Jolivet, not to interrupt you, do you really think that Florida has better minority participation than Maryland?

MR. JOLIVET: Absolutely no.

GOVERNOR O'MALLEY: Do you really think that?

MR. JOLIVET: Absolutely no.

GOVERNOR O'MALLEY: I didn't think that's what you meant by that.

MR. JOLIVET: Absolutely no.

GOVERNOR O'MALLEY: I don't think there's another state that has greater minority participation than ours, would you not agree?

MR. JOLIVET: Well, that's not the issue though, Governor.

GOVERNOR O'MALLEY: No, this is an individual contract. But overall --

MR. JOLIVET: Overall Maryland has a good record. But that's the point I'm making this morning.

GOVERNOR O'MALLEY: Got you?

MR. JOLIVET: Given Maryland's good, positive record why are we blemishing this record with this kind of undocumented and untruthful assertions as to the accuracy and the participation of minorities in this contract? Governor, this is something that has to be corrected. And I think I have made a good idea to the Board, I think it's a worthy idea to have Ms. Hurley's office to take an independent look. Defer this contract for a few weeks and hopefully Ms. Hurley can take a good solid look at it. Because I believe also it is intrinsically, fundamentally wrong to back

out literally 25 percent to 30 percent of the contract's worth and not even consider minority participation. That's just not right. It's not right.

So I'm asking the Board to take a new look at this. Because, and in all due respect to the agency I don't have a clue why they are presenting this to the Board they way they have done. I don't have a clue why they have allowed the participation to be structured as they have done it. But I would submit to this Board that if we allow the minority participation to be enforced and administered as a ceiling, where once the contract reaches the ceiling, say for instance the goal is set at 20 percent and the contractor actually reaches 20 percent, and the contractor can then tell the agency, "No, we've reached our goal, and this is what's happening here, and we don't have to get anymore participation," then I think that we border, our program borders on the unconstitutionality. Because it then becomes a quota. And if it is a quota it is never accepted in the Maryland court system.

So I'm frustrated. I'm very bewildered as to how the agency can do what they have done here. And in all due respect I want to ask the Board in its wisdom to accept my recommendation to defer this item and allow Ms. Hurley's office to take an independent comprehensive look as to the propriety, of the propriety of what this agency has done. And it doesn't necessarily reflect any mal reflection on the agency. Because all agencies need to be scrutinized, and to be looked at to determine whether or not what they are doing or propose to do is real and right, correct, and has justice in it.

So with that I want to thank you for allowing me to be here.

GOVERNOR O'MALLEY: Thank you.

MR. JOLIVET: And Governor I just, I wish you would weigh in on this as an independent matter. Because you and I go way back. And I just, I just don't, I never thought that you knew the details of what they were doing on this contract. And I knew back in 2010 when the contract was first presented to the Board, you were one of the first ones, was the

first one along with the Comptroller, to require the agency to take a new look at it and refused to approve it the first time it was presented to this Board. And as a result the agency did bring it back. And at some point, I think that in November it was approved. But even with it being approved the Board was not fully aware of the inconsistencies and the shortcomings of how they are computing minority participation. And that's really all I want to say. Thank you for allowing me to speak.

GOVERNOR O'MALLEY: Thank you. Mr. Schlanger, do you want to respond to the MBE concerns?

MR. SCHLANGER: Sure. The first thing I'd like to say is that as you know the setting of the goal is not really arbitrary. An agency has a procurement review group. In this case this process began in 2008. It actually began before the formation of DoIT. The results of that ended in the goal of, let's see, 12 percent. And it was very explicit at that point that that goal would be applied on the construction or the infrastructure and not the radios, the subscriber units. And I just have to remind that

the item that was brought to the Board in November in 2010 for the public record happened to state that the MBE goal did not apply to subscriber units. I mean, that's in really the record.

So I think we were public. We were open. We were, you know, forthcoming. And there was no misinterpretation as to how in fact that goal was set. And as we kind of report on that goal the methodology of calculation hasn't changed. The numbers that we pull in terms of reporting where we are comes from the financial system of the State. And so I just cannot see how in fact there can be any interpretation of anything but pure accuracy in numbers that we report on the MBE.

GOVERNOR O'MALLEY: Okay. Mr. Comptroller? Madam Treasurer? Okay. Anything else, Department of Information Technology?

SECRETARY MCDONALD: I don't know if a Mr. Lance Lucas and a Ms. Hill-Aston? Mr. Lance Lucas called up yesterday and asked if he and Ms. Hill-Aston could speak on these items?

GOVERNOR O'MALLEY: Okay. Ms. Hill-Aston?

MS. HILL-ASTON: Good morning. I'm Tessa Hill-Aston. I'm President of the Baltimore City NAACP. I've been asked to request that this particular project not go further until there's more minority participation. And I represent just not the NAACP and people that have come to me, I also am in partnership with the Latino community which we have partnership with.

And now, I was only going to say that. But now I'm curious because I've never seen the proposal. And now that the Secretary has made a comment about what categories I still think that it should be looked at. Because the categories should be open for all minorities. Any money that's spent in Baltimore City, I think the minorities, I think all minorities should be looked at as part of this contract. Thank you.

MR. LUCAS: Hello, thank you for this opportunity to speak. My name is Lance Lucas. I'm the President of the Greater Baltimore Black Chamber of Commerce. My favorite word is antidisestablishmentarianism.

(Laughter)

MR. LUCAS: Which is the longest word in the English language. I just had to say that, 26 letters. All right. My mentor was Raymond Haysbert, who was the owner of Parks Sausage, which was the first African American company on the stock market, and a Tuskegee Airman. So I learned from one of the best in business and that's the reason that I am here today, is to carry on his legacy after his passing in 2010.

When this came to me years ago there was a resistance by Motorola to even include minorities. Until there was protests and people stood up and said, "This is not right," and then they were included. After the fact. The fact.

And then when they did include minorities they did the very minimum as possible. It is correct, but it is not right.

You get, now I can't ask you to ask for Maryland companies to be the ones to get the contracts. Neither can the folks that work for you. But I can, because I represent Baltimore City and the greater Baltimore area, and I can say that our

companies are just as good as the minority companies that they are utilizing and even better.

And I'm going to give you one fact.

Because, you know, people like facts and they want to make sure that you are accurate when you say things.

One of the companies that is their minority vendor, and I own a Microsoft franchise and I know this, you can't do business with Microsoft as a minority unless

you have two certifications. The Microsoft

certification and then the state certification. Are

all the minority companies that are represented on

there, are they all Motorola certified and state

certified? That's a question. That's a fact

question. Are they Motorola certified dealers? Who

checks that? Who knows if that information is

accurate that they are presenting? Because if we find

out that there is anybody that is doing this work that

is not certified as Motorola dealers then in fact,

hey, there may be something funny going on.

The Maryland Disparity Study took place in my office, the State rented out some space in one of my offices in Downtown Baltimore. And we saw all

kinds of things that were going for people to avoid their responsibility to the great Maryland State MBE program. And I'm not saying that this was going on, but a lot of the things that we have been observing, because since the contract was submitted we've been observing it from day one with one of our best friends, Franklin Lee.

Franklin Lee is a creator of the Commercial Nondiscrimination Act, which we backed in 2008. Which says that if there is discrimination towards a company, a women owned or a small minority business, we have a responsibility to act on that piece. And when Franklin, we've been looking at this, everything, every move that they have made we've looked at it. Everything that they have done. Every person that they have hired, we've been watching since the start, waiting for anything to come out of line. Because there was so much resistance at the beginning to even include minorities so we was like, "Well, we've got to watch this. Because this one may get out of hand."

And from observing from all that time, we've looked at some things that have concerned us a great

deal. And we do think that it's worth a review. Worth a look outside of one particular agency, or Motorola self-checking themselves. And just because you tell me you have a friend like me doesn't mean that you don't discriminate against me.

So today I recommend, first I thank you and I recommend that you do review this process and see that all of the Is are dotted and all the Ts are crossed. I'm not saying that either way things were negatively done, I'm not here to slam Motorola. But I'm here to say of what we observed, independently, outside looking in, there seems to be some things going on that aren't quite up to snuff with the MBE law and the way that it needs to be executed.

And when you do turn down a company and you say, "Hey, we're not going to take this company's bid. We're not going to take your offer." Well, where's the recourse? Well, how do I find out how do I do better? How do I participate next time? There is no talk back. There is no review. If you apply for a State contract, there's a debrief. And when you go through that debriefing they tell you what you need to

do to approve it. Where's the engagement to the minority community and their business associations from Motorola? Those organizations? I can tell you I'm one of them. And I pulled together a coalition of every State minority chamber here in the State of Maryland, we pulled the coalition together. And I'm talking to them and I'm querying them, like, "I don't have any communication directly. I don't have that link. We don't have a commission."

So we're just asking for a little bit more engagement, a little bit more participation. We represent Maryland minority companies and Baltimore minority companies. We just want to make sure that they get a fair shake at the table. And if they do not get accepted for a proposal, or if they are not included, we don't want to hear, "We've got them on the next round." We want to know what you are doing and what you are putting in place to increase Maryland business' opportunities and to help the taxpayers and the employees and employers of the State of Maryland. So thank you very much for your time. And if anybody wants a copy of the Commercial Nondiscrimination Act I

do have a copy right here for you on the paper. Thank you very much.

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

MR. SCHLANGER: If I could just quickly add a couple of points. One is that all of the MBE subcontractors, to the best that I know, are MDOT certified. So I think that's an issue we can take off of the table.

I would also like to point out that there was a reference to an MBE that was from Florida. According to my records that company is really out of Atlanta. But the point I want to make is that they have created eight new jobs in the State of Maryland. And actually when we look at this overall project, based on information that I have, the project itself has created 24 new jobs, I mean directly. And indirectly supports services that support construction and the activities of the project itself, a total of 94 jobs. So yes, there is an out of State company but they have definitely had an impact in the State of Maryland.

GOVERNOR O'MALLEY: Mr. Comptroller?

COMPTROLLER FRANCHOT: If I could ask a question? I take it one of the issues here is that the radios are not included, or some big ticket items are not included in the MBE calculation?

MR. SCHLANGER: So the radios themselves? I'm just --

COMPTROLLER FRANCHOT: Yeah. Why aren't they?

MR. SCHLANGER: Well since I think at the time that the PRG put this together. You know, they took a look at these radios, this is a theory, and they said, "It's really a piece of equipment. How are we going to subcontract the manufacturing and the construction of the equipment?" You know, we're going to buy it from whoever the successful offeror is I think at this point. When in fact we hear arguments that, "Well, you know, perhaps there is a dealer that can offer that." You know, before in fact we had offerors, before we knew who was going to get the contract, I mean, you know, I think it was a logical

assumption that that was a piece of the project that was not subject to segmentation.

And I think that we put a goal out there that was based on the best analysis that we did at the time. We asked the contractor to meet that goal. The proposal did in fact. And I'd just like to correct the record. You know, we did not ask the offeror in the Fall of 2010 to, you know, increase the goal. We did not increase the goal. The contractor came forward and said, "I am sensitive to what I hear," and they voluntarily added to the goal that they had set forth in th proposal. So, you know, that's another element of this that I think that needs to be really put into the record. So I know it's a long answer, Mr. Comptroller, but I believe that's what happened.

COMPTROLLER FRANCHOT: Well you're up there, if I could just ask the Secretary of Minority Affairs how, is there any merit here to looking at this again?

MS. WICKHAM-HURLEY: The short answer to that question is no. I mean I, Mr. Jolivet is correct. I was not here when this contract was fully vetted and evaluated in 2010. But in preparation for

this meeting I did review the transcript from that hearing as well as spoke with GOMA staff and DoIT staff who were involved in the review. And based on my understanding of the MBE program requirements I'm confident and I agree with the agency that the procurement process that was used does comport with current MBE program requirements as well as for the MBE compliance that was reported for the one contract on which there was an MBE goal set and for which DoIT could report MBE participation, that this also comports with what the contractor was required to do under the MBE program. And so I don't believe that additional review by the Governor's Office of Minority Affairs would result in a different determination.

COMPTROLLER FRANCHOT: Thank you.

MR. JOLIVET: Mr. Comptroller, may I have a word? One final word? And I --

GOVERNOR O'MALLEY: Sure, Mr. Jolivet.

MR. JOLIVET: And I want you to know that your question is right on the money and very pertinent. I want to just maybe and, you know, add to what you just said. The Board needs to know that we

have decided at the State level not to put a goal on this subscribe equipment, which is the radios. But I might add, my research indicates that in Baltimore City, Prince George's County, Howard County, Baltimore County, the same contractor is subscribing and is utilizing a minority firm, and African-American firm to perform this very work that we here at the state said we can't do. So --

TREASURER KOPP: What work is that?

MR. JOLIVET: Well it's really installation of radios. The way that I, the two-way radios in the, the way that I understand that there is a tremendous need for the installation and service of these two-way radios into vehicles and perhaps there is some portable ones. And the very fact that we have an African American minority that's doing it in Baltimore City, Baltimore County, Prince George's County, Howard County, and that suggests very strongly that there is something inappropriate about how we're doing it here at the State.

TREASURER KOPP: But Arnold, just to interrupt again, I'm just trying to understand what

the issue is, is it the buying of radios directly from Motorola? Or is it the installing and servicing of the radios? Or is it two things?

MR. JOLIVET: Well I believe it's probably both. But I may not be the best person to answer that question. But the way that I understand it, and believe me I do have understanding about a lot of things. The way that I understand it, that as it works in Baltimore City the subcontractor basically purchases the equipment from Motorola, installs it, and then thereafter services the equipment. And the way that it works in each one of those jurisdictions strongly suggests, and there's been no problems, it strongly suggests that it should work on the State level. There is nothing, not one piece of evidence, that I have seen that would suggest that it wouldn't work here at the State level.

And what it means, Madam Treasurer, is that it doesn't benefit the minority firms who go out and get themselves certified and licensed, in this case the firm is even licensed to perform this work, to install and service this equipment. But if we're

going to come up with a policy or a system which doesn't allow or really disfavors the utilization of minorities in this area it's a bad policy. It's just, it's a very destructive policy. And there's no compelling reason that we should do it. And that's what is baffling about this whole situation.

Motorola comes to the State and says, "We don't want to use minorities to be equipment installers and services. And the State goes right along with it. That's inappropriate. That's just not appropriate.

But nonetheless I just still think that this is a bad situation for the State. It is such a bad precedent because the spirit and the intent and purpose of the MBE law, statute, was to compute participation on the total dollar value of the contract, and not segment it and take parts of it out. And assuming that you do that you don't compute, you don't represent a number as being computed on the whole entire contract. That is inappropriate. The public needs to know that that accurate, that percentage that's being represented in the public

document is accurate. And it is not accurate the way it is being presented. Thank you.

MR. LUCAS: I just want to check on something real quick and then I'm going to go. Just so far as research is concerned, so anybody here can do it for themselves, the website is Dynis. That's one of their minority contractors, Dynis. Okay? And in order, again I own a Microsoft franchise, to do business with them you have to have two certifications, the Maryland and the Motorola certification. And if they have the Motorola certification you'll see Motorola at the bottom of their website. It is not there. And if it's there tomorrow or not, I don't know. But as it stands right now, it's not there. So if you want a simple violation, or a simple something to look at, it's right there in front of you. So if you don't want to look any further into this, that's fine. But it is right in front of you. So thank you very much.

GOVERNOR O'MALLEY: Thank you. Any other questions? Mr. Comptroller, do you want a separate vote on this one?

TREASURER KOPP: I have a question.

GOVERNOR O'MALLEY: Sure.

TREASURER KOPP: Can you clarify, I am, I'll be candid, totally confused at this point. My understanding was that the, there are, were three parts to this contract, right?

SECRETARY MCDONALD: This is Item 1 --

TREASURER KOPP: Item 1, but just in this whole things. There was the two-way communications equipment, the equipment?

MR. SCHLANGER: This is Item 1, that you are talking about. I mean, the master contract that had three functional areas.

TREASURER KOPP: Yeah.

MR. SCHLANGER: One for radios, two for consoles, three for services. And Item 2 was the move ahead with the second phase for the Motorola Statewide Radio project.

TREASURER KOPP: Yeah. Yeah. But this equipment in Item 2?

MR. SCHLANGER: Mm-hmm.

TREASURER KOPP: Right? Isn't that equipment?

MR. SCHLANGER: Right. There is equipment included in Item 2 as it relates purely to the new system. Item 1 is a general master contract --

TREASURER KOPP: Right.

MR. SCHLANGER: -- for two-way equipment. That could be Motorola and other systems that we have in the State, and other equipment that would support a radio system outside the new construction 700 MHz system itself.

TREASURER KOPP: Right. And this equipment has no MBE requirement?

MR. SCHLANGER: That's correct, in Item 1.

TREASURER KOPP: And that's because?

MR. SCHLANGER: Well because in that particular case we would acquire equipment, we would order something out of a catalog, the vendor would go and deliver it.

TREASURER KOPP: Directly --

MR. SCHLANGER: If we required service --

TREASURER KOPP: Yes.

MR. SCHLANGER: -- we could acquire service under functional area number three --

TREASURER KOPP: Right.

MR. SCHLANGER: -- which has a 25 percent --

TREASURER KOPP: Right.

MR. SCHLANGER: -- MBE goal. Right.

SECRETARY MCDONALD: But what about Item 2?

In the Motorola, in the subscriber equipment, when you say subscriber equipment is excluded from the MBE goal in Item 2, Motorola, does that equipment include the installation?

TREASURER KOPP: That's the equipment, isn't it?

SECRETARY MCDONALD: Or is the installation going to be through the first part so there is an MBE goal on installation --

MR. SCHLANGER: There would, no.

SECRETARY MCDONALD: -- in the Motorola --

MR. SCHLANGER: From what I understand, in the Motorola contract --

SECRETARY MCDONALD: Right.

MR. SCHLANGER: -- for the new system they will be providing the equipment installed to us. At the time that we awarded the contract we were looking at one offeror who would go to provide it all. We established the goal, as I explained, through the PRG and it was determined that there would not be a goal applied to the radio systems. In reality based on the total cost of providing the radios to the user in a new system, the cost of providing it, installing it, is trivial. I mean, since I know there are some people who would take exception to the way that I said that, but in proportion of cost it's a tiny sliver of the pie.

So you know, again, I mean this happens to proceed to the Department of IT. I wasn't there when they came up with the goals. There was a contract goal that was really established. No one held a gun to any offeror's head in telling them how they ought to meet the goal. The contractors who proposed on the contract came forward in good faith and told us how they were going to meet the goals. And everyone happens to remember the exercise in the Fall of 2010

where the contractor in this case, who was seeking the award, upped the game. So I hope that answers the question. If not, I'll be happy to try to do a better job.

COMPTROLLER FRANCHOT: And so something, I just think one person's sliver might be another small company's survival. And so I think in my own view, I heard what the Secretary said, I'd feel a little more comfortable in taking a couple of weeks and you come back to us and say, "The Secretary is right here and this is the right way to proceed." I don't, you know, if Mr. Jolivet and Mr. Lucas and Ms. Hill-Aston, who I thought had very intelligence comments, you know, maybe there is something that Motorola can indicate some flexibility on that would, that if in fact, and I don't understand the logistics here, can in fact use Maryland or otherwise based minority businesses for some of the installation. Even though the, I understand the, what you just said about the contract. I mean, it's not rocket science to install a radio.

MR. SCHLANGER: So Motorola is here if we would kind of ask them to speak?

COMPTROLLER FRANCHOT: Great. Is Motorola here? I don't want to extend, I'd much rather --

MR. SCHLANGER: Right. Right.

COMPTROLLER FRANCHOT: -- have the experts look at it and you, you know, I mean I don't, obviously I'm a big fan of yours. But also have something a little more measured presented to us. When I, when everyone first brought this up I was prepared to go forward with it. But I'm not sure what two weeks delay would, is that a big problem for the contract?

TREASURER KOPP: What would two weeks cost? What's the impact of --

MR. SCHLANGER: So what I would tell you is on Item 1 we have impact because we need to purchase things before the end of the year. And I really don't think the Board has issues with Item 1. Item 2, the reason why we are attempting to proceed is the contractor has completed the engineering on the first phase. He wants to keep the same team on this project to keep it going along so we can maintain the schedule. If it is the will of the Board to delay

this a couple of weeks, you know, we'd be happy to do that.

COMPTROLLER FRANCHOT: I just don't see, perhaps there's some opportunity where Motorola could make some adjustments? I have no idea. But I certainly don't, I'd be happy to delay it for two weeks. But obviously I defer to my colleagues.

MS. WICKHAM-HURLEY: If I could just add if the concern that is on the table is about the subscriber equipment and the fact that it has been assessed and no MBE goal has been placed on that portion of the contract, the reason why the Governor's Office of Minority Affairs is okay with that approach is because, and we have spoken directly with the advocates who are here today, in looking at the directory and the agency staff who was involved, the data shows that there's only one certified MBE who could do this sort of work. And under current MBE policy that is not sufficient availability to support an MBE goal. So we could certainly take a closer look. But if this is the sole issue that is raising concern, again, I stand by, you know, my earlier

statement that I don't think closer evaluation is going to change our assessment of that.

COMPTROLLER FRANCHOT: No, I understand that. And I'm sympathetic to your position. I'm just suggesting, thinking of Microsoft, that was the same answer we got from Microsoft. Which was, "Sorry, folks." And they didn't change necessarily even that contract that we were voting on. I think it was a \$65 million contract. But they certainly did make big reforms as far as future contracts by broadening the pool. I'm not sure this is analogous. It may not be. But if it is I'd love to at least have folks considering it.

MR. SCHLANGER: Right. So hearing that from the MBE office's perspective I'm not sure what the benefit is if we were to wait a couple of weeks. However, from the perspective of being fair to businesses, you know, I remember in the Fall of 2010, you know, we've asked the contractor to understand the issues of the State. And you know, I think what we're asking here is it an open or closed issue? Or is the door open perhaps that there could be opportunities as

the contract happens to proceed? And I believe that Motorola is prepared to answer that question if we want to ask it to them. One thing that I will qualify is I have no business speaking on behalf of these guys at Motorola. That we know for sure.

COMPTROLLER FRANCHOT: We are at a disadvantage here. Another mild complaint is that we on the Board get these things at 4:00 on a Friday and we're asked to make some assessment of them, and it's very difficult. I'm just suggesting there's, there may be some opportunity here to improve the situation. But I'm happy to hear from Motorola but I think it's getting late in the day and we're not frankly briefed or prepared on it. That's the problem.

MR. SCHLANGER: So we did --

GOVERNOR O'MALLEY: So Motorola is the only people we haven't heard from. So Motorola, do you want to say a couple of words about your MBE participation? Which was the question that was brought up initially when you first came before this Board?

MR. FRYER: Yes. I'm Bruce Fryer, Project Manager with Motorola. Correct, Motorola has for years, even prior to this contract, worked proactively with the counties, Baltimore City, in being very aggressive in meeting MBE requirements. In this particular project, the 700 MHz Statewide contract, as Mr. Schlanger pointed out, we met the RFP requirements and were compliant. Through the Board of Public Works process and with cooperation with a number of organizations we did additional outreach. So we went from the contract requirement 12 percent to a goal of 20 percent. And we are today exceeding that. So in the context of being fair and open Motorola has we think been more than fair and continues to be fair and continues to do outreach, even at the local --

GOVERNOR O'MALLEY: -- portion of the contract?

MR. FRYER: The infrastructure portion. That's the only portion that was notified for a notice to proceed, that original infrastructure portion. The subscriber --

GOVERNOR O'MALLEY: And that's however, and that of the total amount is the, because I believe what they were saying is that you have a 12 percent goal but it's only on a narrow portion of the contract.

MR. FRYER: It was a huge, \$200 million, quite frankly, so it's a --

GOVERNOR O'MALLEY: Okay. So 12 percent on \$200 million. The overall contract is how much?

MR. FRYER: Well actually the goal is 20 percent quite frankly now. That's the additional commitment Motorola --

GOVERNOR O'MALLEY: But the \$200 million represented what portion?

MR. FRYER: That's roughly two-thirds --

GOVERNOR O'MALLEY: So on two-thirds of the contract you had a 12 percent goal --

MR. FRYER: That's correct. We are exceeding that. We are actually at, as we indicated on your documentation, we are at 27 percent on that \$200 million number. So we are --

GOVERNOR O'MALLEY: Good.

MR. FRYER: So we are tracking that. And we continue to do outreach, continue to do outreach. We haven't closed our doors. In fact, there are a number of firms on this particular contract and other work that we do throughout the national capital region, we have strategic partners and we continue to do outreach on an ongoing basis. So again, I'm not aware of what additional activities Motorola can do to be more open, more collegial in terms of sharing our needs, letting partners know what opportunities are in the future that might avail themselves for collaboration or engagement with their particular skill sets. And again, as Mr. Schlanger pointed out, we feel on the performance of this contract we have been hitting it out of the park. We think the project management team would endorse that. And we've got some significant milestones coming up in June, quite frankly, with the Governor's first call that we're looking forward to.

So again, we continue to do dialogue. We're open to that. But again, we are a little bit befuddled as to why this keeps coming up.

GOVERNOR O'MALLEY: Probably because you did so much better than you did when you first came in.

TREASURER KOPP: One thing. You obviously have done I think very well in the part that had a goal. The part that did not have a goal, as I read it, and this is a question, is the equipment itself, which is bought directly not through third parties. Is that right?

MR. FRYER: Correct. The optional subscriber radios, they are manufactured at our facility, put on a truck, and shipped and brought here to Maryland.

TREASURER KOPP: Just from where they are manufactured, they go to where they are put in?

MR. FRYER: Exactly. Exactly. There was a reference made to installation --

TREASURER KOPP: So, so we wouldn't engage a third party unless it's maint work?

MR. FRYER: Or the State could do the work themselves, which is historically how many of the final installation --

TREASURER KOPP: Well I mean just for the buying of it. Just for the buying of the equipment?

MR. FRYER: Correct. Correct. Correct.

TREASURER KOPP: But part of what you buy is not just equipment, it's the installation? That's what I'm hearing. Is that right? It's a package?

MR. FRYER: Right. Again, let me get to just the handheld radios and the equipment that goes in the vehicles.

TREASURER KOPP: Okay. All the other is installed separately under the third part?

MR. FRYER: That's correct.

TREASURER KOPP: So the only part of installation that we're asking about right now is the installation of the radios --

MR. FRYER: The radios. That's my understanding.

TREASURER KOPP: And that's part of the package when you buy a radio.

MR. FRYER: It could --

TREASURER KOPP: And who does -- but somebody has got to do the installing?

MR. FRYER: Correct. Correct.

TREASURER KOPP: Who does the installing?

MR. FRYER: Many times it's the agency themselves.

TREASURER KOPP: Okay.

MR. FRYER: So it's not even work that Motorola could do, depending on how the agency wants to handle it.

TREASURER KOPP: And when it's not the agency themselves, who is it?

MR. FRYER: We have subcontractors that are available to do that final installation of the radios.

TREASURER KOPP: All right. And those subcontractors, there is no goal for that part of the installation because it falls under the equipment rubric?

MR. FRYER: That's correct.

TREASURER KOPP: But in fact what do we do to assure that that little installation of putting the radios in the cars is done by people who are not directly Motorola but subcontractors, that that is

open? And I gather that is the remaining part that doesn't have a goal but that does employ subs?

MR. FRYER: Correct.

TREASURER KOPP: Is that right?

MR. FRYER: That's correct.

TREASURER KOPP: Okay. So what's the story on that little part?

MR. FRYER: Again, they are Maryland based firms that have historically done that throughout the State of Maryland. We haven't done it on this project because we haven't --

TREASURER KOPP: We haven't done this part. Yeah.

MR. FRYER: The subscriber piece, we're looking for a notice to proceed on that. So there are firms throughout the Maryland area that have expertise and have a history of doing that on other similar projects that we work with.

TREASURER KOPP: And are there MBEs in that group?

MR. FRYER: My understand is that there are several, well I wouldn't say several. I'm thinking

more, the National Capital Region, I guess. They may not be Maryland based MBEs.

TREASURER KOPP: Maryland MBEs, that's the question.

MR. FRYER: They may not be Maryland based MBEs.

TREASURER KOPP: So can, how do we see that in fact now that we're focusing on this little group, and understand that this is a region wide thing, that all the potential Maryland MBEs who might be qualified are considered? I guess that --

MR. FRYER: And I believe that's what the Secretary has pointed out.

MS. WICKHAM-HURLEY: We can confirm. I mean, based on the additional detail that's come into light now what I would like to do is to get with Motorola and do it and confirm my initial understanding, which is that there was only one certified MBE who was licensed by Motorola to engage in any of the related activities for the subscriber equipment. But if it is broader than that then that does change my analysis.

MR. FRYER: Well met me, I was just, maybe I misspoke. I meant Maryland certified. There are others in other states, again, that are not certified in Maryland that we partner with that we could bring in. But again, that's not what we're looking at here.

TREASURER KOPP: Well, can those people be certified in Maryland?

MR. FRYER: Well --

TREASURER KOPP: This is not going to be done overnight.

MR. FRYER: But to me that would go against some of the other points that were being brought up here about not using Maryland based firms. So we can --

MS. WICKHAM-HURLEY: It seems like there are two issues here. When you are looking at whether a goal was reasonably assessed, it's who was certified at the time that the goal was determined. And if there was only one certified MBE that could participate then I think the goal was accurately assessed at zero percent. Moving forward if we're talking about outreach and inclusion as more firms

become certified by the State and certified by Motorola then certainly we can encourage Motorola and Motorola can commit to performing outreach to those firms to ensure diversity in the businesses that do the work on this contract.

MR. FRYER: You have that commitment from Motorola. That's something we do as part of our course of business.

TREASURER KOPP: It sounds like there's not a problem with willingness among any of the --

MS. WICKHAM-HURLEY: But it's, I would not expect that the State as more firms became certified on a long term contract to go back and revisit the MBE goal that was initially set on that contract.

TREASURER KOPP: Well it doesn't sound like you would really have --

COMPTROLLER FRANCHOT: Madam Treasurer, could I just get clarified, they install the radios but don't they also maintain them, these subcontractors here?

MR. FRYER: Some do. Some do, yes.

TREASURER KOPP: But is that under functional area two? Or three?

MR. FRYER: But again, that is not within the scope of, again that is not within the scope of what we're talking about. The maintenance, which would be a follow on option which would be a separate Board action.

MR. SCHLANGER: Right. So if I could just add, so the contract happens to cover a period of warranty. Following that agencies can opt to buy maintenance. They would use the two-way contract. There's a functional area that covers that and that has a 25 percent MBE goal.

GOVERNOR O'MALLEY: How can that have a 25 percent goal but the other one not?

MR. SCHLANGER: Because it is a service as opposed to buying a device.

GOVERNOR O'MALLEY: Hm.

MR. SCHLANGER: And there are --

TREASURER KOPP: As I understand it the service, service is a little part, service that is installation is a little part.

MR. SCHLANGER: After the installation --

TREASURER KOPP: Yeah.

MR. SCHLANGER: -- and after the warranty period some agencies choose to maintain the equipment, whether it is the function, changing of the batteries, the programming, on their own. And some elect to buy it. Those who elect to buy it, that's why we have the two-way contract, which a functional area for service that has an MBE goal.

TREASURER KOPP: Right.

MR. SCHLANGER: Right. So that is after the contract allows for the installation --

TREASURER KOPP: So it's just the initial and servicing under a warranty?

MR. SCHLANGER: Correct. Correct.

TREASURER KOPP: And the question is, is there anything we can do to see that that aspect, which is subcontracted. It's not done in a Motorola factory, the way making a radio is.

MR. SCHLANGER: correct.

TREASURER KOPP: Whether that is as open to MBE and diversity as possible, because there's not an

actual goal for that set in this contract. And that's what you were saying? You would --

MR. FRYER: That's correct. We would do the outreach for additional work over the life of the contract.

MR. SCHLANGER: So what I have heard is although there is not any reason to change the goal, we can't change the goal. What I've heard is that Motorola has suggested that as time happens to go on they will open the door to look for additional partners who will help for these services that can be done by MBEs with respect to installation and service.

TREASURER KOPP: And is there some way we could get a reporting on that as that goes forward?

MR. SCHLANGER: Sure.

MR. FRYER: Yes.

GOVERNOR O'MALLEY: So what, we approve this on condition that you all come back to us in 90 days with strides you've made in the, on the, what is it called, that section? Equipment servicing section?

MR. SCHLANGER: Installation of subscriber equipment.

SECRETARY MCDONALD: Subscriber equipment.

MR. SCHLANGER: Mm-hmm. Sure.

SECRETARY MCDONALD: The other suggestion would be, though, is that you have phases and you are coming back for each phase. And so perhaps just at the next phase you came back you could do a report so that we would be better prepared --

TREASURER KOPP: We would have a specific report on MBE participation in --

SECRETARY MCDONALD: At each time you came for a phase.

TREASURER KOPP: -- in the installation and maintenance of those.

MR. FRYER: Yes, ma'am.

MR. SCHLANGER: Sure. That would be great. So if I'm hearing it right, prior to coming back for approval for the third phase --

SECRETARY MCDONALD: For the next phase.

MR. SCHLANGER: -- we will issue a report on MBE usage as it pertains to the whole project, of course.

SECRETARY MCDONALD: Right. Specifically --

MR. SCHLANGER: But also on installation and maintenance services? Okay.

COMPTROLLER FRANCHOT: No, I --

MR. SCHLANGER: Does that please the Board?

COMPTROLLER FRANCHOT: No, that for me, I appreciate what the Treasurer is trying to do and move this along. But I just think you should take a couple of weeks and sit down with Motorola, and get it in writing, whatever they are going to produce. It doesn't sound like rocket science to me. They are taking these radios and installing them and servicing them through the life of the warranty. That is a sliver, a tiny little sliver. But it's a sliver that's important to the folks that came down here and spoke. Maybe it's not, obviously it's not mandated in the contract. You're, we're talking about corporate good will here. And, but maybe there's some way to give us the benchmarks before we vote on this rather than after the fact. And I'm more comfortable with seeing something in writing before we vote on it.

MR. SCHLANGER: I am pleased to follow the direction of the Board.

COMPTROLLER FRANCHOT: -- Mr. Secretary.

MR. SCHLANGER: I am pleased to follow the direction of the Board.

MS. WICKHAM-HURLEY: I will work with them to that end, to bring something before the Board.

TREASURER KOPP: All right.

GOVERNOR O'MALLEY: So what are we doing? Approving the first contract and deferring the second, Part 2 for two weeks?

SECRETARY MCDONALD: If you need to speak you need to be at the podium and state your name.

GOVERNOR O'MALLEY: Actually, it wasn't a general question to the audience.

(Laughter)

GOVERNOR O'MALLEY: I'm perfectly, I'm, I'm prepared to vote on both of these right now. I'm one of three. So the Comptroller has made it clear that he's not prepared to vote for the second one, though I think you are okay with the first one?

COMPTROLLER FRANCHOT: Thank you, Governor.

GOVERNOR O'MALLEY: And so my question is, what is the Treasurer's preference?

TREASURER KOPP: I would agree with the Comptroller's motion, with the understanding that in two weeks we'll be back and the Secretary will have had a clearer look. It sounds to me like Motorola wants to do the same thing we all want to do.

GOVERNOR O'MALLEY: Okay. So the Treasurer, the Treasurer moves that we defer Item 2. 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. On Item 1, 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. Now on the balance of the IT Agenda?

SECRETARY MCDONALD: Three through six.

GOVERNOR O'MALLEY: Three through six, all in favor -- 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: And the ayes have it.

And now we move on to Department of General Services.

SECRETARY MCDONALD: No, I think you want to do Transportation.

GOVERNOR O'MALLEY: I'm sorry. Did I skip Transportation?

SECRETARY MCDONALD: You did. You could at least get through them before --

GOVERNOR O'MALLEY: Well look. Can we take a 30-second pause for the cause? All right. We'll be right back.

(Short recess)

GOVERNOR O'MALLEY: And it is still May 23rd. And we are now on the Department of Transportation. We've heard a lot of big words this

morning. Antidisestablishmentarianism, floccinaucinihilipilification, and the other one was ratio -- what was the other words?

COMPTROLLER FRANCHOT: Ratiocination.

GOVERNOR O'MALLEY: Ratiocination. So Annie Linskey --

COMPTROLLER FRANCHOT: What was your word?

GOVERNOR O'MALLEY: Mine was floccinaucinihilipilification. And Annie Linskey rushed up from her desk at the *Baltimore Sun* because these are exactly the sorts of debates that really excite her intellectual curiosity as a journalism major. So we welcome her. Now we're on the Department of Transportation.

MR. MOBLEY: Good afternoon, Governor, Madam Treasurer, Mr. Comptroller. For the record, Darrell Mobley, Deputy Secretary, Department of Transportation. MDOT is presenting 21 items. Item 8 has been revised. I'll be more than happy to answer any questions that you may have.

GOVERNOR O'MALLEY: Mr. Comptroller?

COMPTROLLER FRANCHOT: Yes. One on Item 8, please? And my question, Mr. Secretary, is I believe we're being asked to grant retroactive approval to 391 contract modifications, most of which are for contracts that have long since expired. I take it this is part of the clean up process in the wake of last year's scathing SHA audit. As I said before, I really commend Secretary Swaim-Staley and you for stepping up and handling the matter in a forthright manner. But just to put it in perspective for the public, I have to ask what is the aggregate dollar amount of the contract modifications that were executed without Board of Public Works approval? Ball park?

MR. MOBLEY: I do not have the aggregate dollar amount. We do not have it at this time, Mr. Comptroller. But it is 391 contracts, 385 contracts have expired. And we do have six active contracts that are set to expire by October, '12 for this group of contracts.

COMPTROLLER FRANCHOT: And I know you are asked this a lot, but what are the procedural I guess

reforms that will prevent abuse in the future in this area?

MR. MOBLEY: Absolutely. The Department has taken corrective action for a time since these were without BPW approval. We have instituted several checks and balances in place through the Office of Finance, through the Office of Procurements to ensure that these types of time extensions do not occur without Board approval.

COMPTROLLER FRANCHOT: Okay. And are there additional pending items? Or is this the entirety of the, I guess this set of occurrences?

MR. MOBLEY: There will be additional items. These items are for time extension only, no additional contract dollars. This is retroactive contract approvals to address contracts that were within the legislative audit period of 2007 through 2011. Many of these contracts extended back to 1997.

COMPTROLLER FRANCHOT: Thank you.

MR. MOBLEY: This is part of our clean up.

GOVERNOR O'MALLEY: Thank you. Anything else, Department of Transportation? 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. We now move on to the Department of Juvenile Services --

MR. COLLINS: Good afternoon --

GOVERNOR O'MALLEY: Sorry. To the Department of General Services, on which the item of contention will be one affecting the Department of Juvenile Services.

MR. COLLINS: Good afternoon, Governor, Madam Treasurer, Mr. Comptroller. The Department of General Services has 27 items on our Agenda. Item 1 has been revised. And we would be glad to answer any questions you have on any of these items.

GOVERNOR O'MALLEY: Okay. Comptroller? Treasurer? Mr. Abed, do you want to talk about this item of yours? And I think there is somebody that wants to testify against it from ABC? Okay, for the protesters?

MR. ABED: Thank you, Governor. Once again, Sam Abed, Secretary of Department of Juvenile

Services. I would like to advise the Board that the Department of Juvenile Services believes that Maryland, the State of Maryland, has a substantial State interest in constructing the requested detention facility. This proposed facility would be replacing an existing facility known as the Cheltenham Youth Facility.

Cheltenham is located in Prince George's County and has been in operation in 1870. The detention facility serves pre-adjudication youth and those are the youth that are awaiting trial. This would be akin to a jail in the adult system. The average time waiting for a trial is about 15 to 20 days.

Governor O'Malley you've been a long supporter for the need for physical plant upgrades for the Department of Juvenile Services. Under your leadership the Victor Cullen Treatment Center was planned, executed, and put into operation, and it still remains the State's only hardware secure residential treatment option. And in 2011 you greatly improved in State residential treatment services for

girls with the renovation and relaunching of the J. Dewese Carter Center. This administration has also supported the department's detention facility needs by requesting funding not only for this project but also for a needed detention center in the Southern region, all of which are part of a comprehensive capital plan that addresses all of the department's physical plant needs.

Cheltenham is one of nine facilities on the Governor's capital improvement plan for the Department of Juvenile Services. And over and above the facilities I mentioned earlier, the total cost for all of those facilities on the capital improvement plan is \$424 million for construction and equipment. This dollar figure confirms the magnitude of the needs for the department as well as the depth of commitment that the Governor has demonstrated for the Department of Juvenile Services. And while this is a great deal of money the costs for construction are always increasing and if we delay this project then the costs will rise again. And according to DBM's cost estimating guidelines the escalation is at 4 percent. And so for

this project if we wait a year it will cost us over \$2 million more. This is the cost of inaction.

Practices have changed with respect to residential facilities since Cheltenham was originally constructed. And over the years the department has renovated and enhanced the physical plant to keep pace. Over the course of Governor O'Malley's years in office the department has replaced the roofs on six buildings, installed new video surveillance cameras, replaced most of the sidewalks on the campus, replaced a third of the steam pipes, installed backup generators, refurbished the medical unit, installed new electrical panels in the school, and installed new security screens in the residents' housing units, among other upgrades completed. We are currently refurbishing five bathrooms, replacing drainpipes near the administration building, installing new blacktop on basketball courts, and rebuilding the main laundry unit. And we have reached a point now where it is very clear we cannot continue to patch things up. The physical plant needs will continue to be a major cost

for our maintenance budget if we have to continue operating this facility.

The current facility is also broken into separate buildings for housing, dining, education, and intake. The modern facility like the one that we are proposing takes all of these and puts them into one self-contained building. The self-contained building would limit control points and entry and exit points for youth and for staff. Youth will still have access to outdoor recreation activities. However, simple movement from something like lunch back to school will not require youth to walk across an open campus and give them opportunities to run and to hide.

Replacing old facilities like the Cheltenham facility is essential to providing the youth we serve proper conditions, to making the physical environment more safe for both staff and residents, and for the safety of the public by operating a modern facility with vastly improved security features. This contributes to and enhances our ability to achieve our goal of reducing violence against women and children. The State of Maryland has a substantial interest in

the safety of the youth in its care, a substantial interest in the safety of its employees at their work sites, and a substantial interest in the safety of its citizens. I therefore request that this project be approved notwithstanding the protests against it.

Thank you.

GOVERNOR O'MALLEY: Thank you very much.

MR. COLLINS: Governor, may I add?

GOVERNOR O'MALLEY: Yes, sir.

MR. COLLINS: DGS is very proud to work with the Department of Juvenile Services today in bringing this request today for approval of this contract for construction management services, which is phase one of this particular project. I would like, Governor, if you wouldn't mind a minute for the Deputy Secretary, who has worked very hard on this, to read into the record some of the reasons why, what we have done on this project to bring it before you this morning.

GOVERNOR O'MALLEY: Sure. Thank you.

MR. COLLINS: Mr. Bart Thomas, would you take a minute and then we'll listen --

MR. THOMAS: I think I'll be the first to say good afternoon. Sam could have said good morning and good afternoon. I am Bart Thomas, Assistant Secretary for Facilities Planning, Design, and Construction, doing great service under our great Secretary. This project is under my domain, under my office, and I have been personally involved since the very beginning. I would like to turn in for the record, which your staff has Governor, Comptroller, and Madam Treasurer, a pictorial record of the assessments of the facility. I believe each of you are looking at it. Do you need a copy --

SECRETARY MCDONALD: I have it. Actually I have four copies, so thank you very much.

MR. THOMAS: Okay. Thank you very much.

GOVERNOR O'MALLEY: We're flipping through now.

MR. THOMAS: Okay. This is just a pictorial assessment of what Sam has talked about. I think what we need to get into the record is the information concerning the appeal today, the protest today, on where we came from and how we got into this position.

The department under the direction of the Secretary has some ongoing changes in our procurement process trying to maintain the state of the art of what is happening today. We've gone through design-bid-build, design-build. We did a CM at risk for chief medical examiner. It worked out well. And in reviewing additional things we have found that there is a PLA process out there. We have investigated this process and came up with the information that a PLA process, which is a project labor agreement, provides great benefits to the State and to the local economy if it's used on a large, complex project. This is a large, 72-bed, 94,000 state of the art project. So based on our research and communications we have discovered that we believe that the use of a PLA will provide a trained, dedicated professional work force, provide a boost to the local economy through the use of local union and non-union work force hired through the local union halls.

The PLA will provide for a professional, trained work force with apprenticeship programs that will provide future gainful employment for local

community members. This will be by apprenticeship programs to get trained electricians, plumbers, HVAC people that can go on to other jobs and not just be laborers. The use of the PLA will maximize project stability, efficiency, and productivity. The use of the PLA will provide safety training for all trades on the project, creating a safer working environment. It will minimize risk and assure completion of the project in a timely manner and avoid any possible strikes, work stoppages, or delays. And it will promote planned approach to labor relations, allow contractors to more accurately predict labor costs, schedule the production time tables, and encourage greater efficiency and productivity.

The PLA on this project is not a mandatory PLA. It was submitted as a part of seven technical evaluations. It was number six in descending order. The seven vendors submitted technical proposals of which all seven submitted a PLA as part of their proposal. Three of those vendors were found to have insufficient technical data and were removed from the process. The other four vendors have been evaluated,

oral presentations, and have been submitted to you on this Board item with Turner Contracting being the vendor that the evaluation committee determined to give us the best proposal, the best cost.

This project, as you are aware, will take 14 months design. After that 14 months we would come back to the Board with the GMP, the guaranteed maximum price, and then the construction would begin. It's 24 months construction time. Which means we're right now at 38 to 40 months of time before this job would be done. We need to get these facilities working. I'd like to get it done before my retirement. We need to get these facilities working and done.

GOVERNOR O'MALLEY: Me, too.

(Laughter)

MR. THOMAS: Yeah, I know. I agree. But we have two other facilities behind us that we want to get going and done. So with that, we, I request again, as the Secretary has said, that you would award this in the face of the protest so we can get this job done. Thank you very much. Any questions?

GOVERNOR O'MALLEY: Urgently needed. Thank you.

TREASURER KOPP: Can I ask a question of the Secretary before we get to the protest? And it's a very, very brief one. I don't want to go into it here. But is it, is it now the thing to do to put kids back into big buildings instead of, I mean you are building a big center, a 72-bed center.

MR. ABED: This is a, Madam Treasurer, this is a detention facility. It is not a treatment facility. So I think that the trend is --

TREASURER KOPP: And that's the difference?

MR. ABED: Yes.

TREASURER KOPP: Okay.

MR. ABED: This is a facility to detain kids pre-adjudication.

TREASURER KOPP: Okay. So for post-adjudication the theory still is --

MR. ABED: We are limited to 48 beds for post-adjudication facilities.

TREASURER KOPP: Okay. And this new one went through the normal process with the Legislature?

MR. ABED: This --

MR. COLLINS: Yes.

MR. ABED: Yes, it did.

MR. COLLINS: Yes, we went through all the process. Of course.

TREASURER KOPP: Okay, thank you.

MR. COLLINS: Eight months ago.

TREASURER KOPP: I'm sure.

GOVERNOR O'MALLEY: We have such a scarcity of adequate facilities in State for the size of our population. I'm not sure exactly what to attribute it to. I don't know if it's our aversion that children would ever become dangers to themselves or others. I don't know if it's other priorities just giving us greater satisfaction as a progressive people. But for whatever the reason we have a chronic shortage of in State facilities to fulfill our public safety responsibilities, especially as they affect, as it affects and impacts young people who are vulnerable and dangers to themselves and others.

Years ago we, and had put into the capital budget and have preserved through now two Secretaries

of Juvenile Services, dollars in our capital budget to address this shortfall in our continuum of care. It's been one of the more frustrating slogs to get this, that's S-L-O-G-S, one syllable, to get these facilities up and going. But I still have hope. When I was serving the people of Baltimore as their mayor we had gone for 30 years without once building an inpatient drug treatment facility. We had been the most addicted city in America for about ten years and yet we never in those prior 30 had built one inpatient facility. Now that's not to say that, you know, you want more than you need. But you have to have as many as you need. So sorry for that rant. Yes, sir. Please introduce yourself to use.

MR. BASKIN: Thank you. My name is Maurice Baskin with the Venable Law Firm. I'm here representing four protesters who are engaged in a protest currently ongoing at the Appeals Board. And we've heard testimony about why the project is needed. We share that view. The protesters wanted to participate in building the project as soon as possible.

What we have not heard is what substantial interest justifies doing this end run around this Appeals Board while a protest is ongoing in light of self-inflicted delays. The delays that we have heard about have been totally self-inflicted by the department. If they had not engaged in almost a year's worth of secret negotiations with the labor unions to come up with this project labor agreement, a first ever in position on the solicitation process, the project would have been well underway by now. There would have been no need for a protest. The original RFP would have come out sooner. As I say, it would have been well underway.

Even after we filed the protest they took three months to respond to it. And when they did respond it came out that DGS did not perform its due diligence to determine what the impact would be of this particular PLA. In other states where these types of things have happened the courts have struck down project labor agreements that have been imposed without actual evidence of cost savings that would be achieved. Because in many cases the PLAs increase the

cost to taxpayers, which is not something the taxpayers like. So they had not done the kind of study to show there would be any cost savings. No study to show there is any threatened labor disruption. No study to show that anything valuable would be achieved by the PLA.

The State has a substantial interest, and this Board has a substantial interest, in compliance with the rule of law and obeying the competitive bidding laws. It has a substantial interest in not seeing taxpayer dollars wasted. And those interests should be upheld here by deferring. And all we're asking is that you defer what, frankly, should only be a few weeks to get a decision from the Appeals Board.

We actually tried to speed up the process. We filed a motion for summary disposition at the Board because the State, the DGS presented such a weak case for justifying the PLA. They had done no study, as I mentioned. The evidence is no where to be found, other than information about the lengthy negotiations with the labor unions to make this special favoritism deal. This is something that will shortchange the

taxpayers. So there is no reason to short circuit the process that is set up to make sure the competitive bidding laws work properly. And that's what we ask for you to do now, is a deferral to see the outcome of the Appeals Board process. Are we right that they have violated the competitive bidding laws? Or are they going to be able to go forward?

Otherwise you wind up actually delaying the process further. You compel the protesters into a court situation that may be totally unnecessary if the Appeals Board decision is the appropriate one. So as a matter of what is the best substantial interest of the State, as well as what has been shown to date about this project, we want the project to be built. We want it to be built legally. And these are serious contractors with strong local Maryland ties. Ninety percent of the work force in the construction industry in Maryland is not union. So by carving out for this project, for the 10 percent, setting it aside for the 10 percent, you are in effect making it very likely that the costs will go up with no other attendant benefits.

And whatever the merits, you know, here we're just talking about what the substantial interests are of the State. Getting the project done, but getting it done in compliance with the competitive bidding laws and without wasting taxpayer dollars. Find out from the Appeals Board what the answer is that they think should take place. There is no reason to rush it now, having gone this far into the process. So that's what we request. And we ask that you defer the decision on this until the Appeals Board has acted.

GOVERNOR O'MALLEY: Thank you.

MR. BASKIN: Thank you. I'm happy to answer any questions.

GOVERNOR O'MALLEY: Thank you very much. How about, anyone here from the AG's office that wants to respond to that? Mr. Turk?

MR. TURK: Good afternoon. Stan Turk, Assistant Attorney General. I represent DGS in the aforementioned protest. We are not here to discuss the merits of the case. That's a matter for the Board of Contract Appeals. We have filed an agency report.

I would like to comment, though, briefly on what I've just heard regarding the deferral. Because it is not a matter of a few weeks until the Board of Contract Appeals is going to rule.

The litigation status is that there has been an agency report filed and comments to that have been filed by the protesters, and cross motions for summary judgment have been filed and the time for response has not concluded. The State has filed its own cross motion for summary judgment just a little over a week ago, and again the protesters' time for response to that has not expired.

There has been no hearing scheduled before the Board of Contract Appeals as yet. In our experience we're talking months, not weeks, to get a decision. In fact post-briefing ordinarily, post-hearing briefing ordinarily takes six to eight weeks because of the time involved in getting the transcript back and providing the briefs to the Board. So we're really talking on the order of at least four to six months away.

There is no statutory or court prohibition in Maryland prohibiting the use of PLAs. In this particular case the use of a PLA is simply one of many evaluation factors, as you have heard. This particular solicitation does not exclude any contractor. It does not exclude non-union affiliated contractors, or union affiliated contractors, by its terms. It does not exclude any subcontractor whether union affiliated or not. It is simply one of many evaluation factors.

There is no requirement in Maryland for an independent study relating to the evaluation factors. Every single RFP issued by the State of Maryland has evaluation factors and all of them, and none of them, quite frankly, require an independent study. What it requires is that they be reasonably related to the needs of the agency. And in this case the use of a PLA as an evaluation factor, because it is well documented that PLAs and apprenticeship programs that are provided by the unions, provide a better trained work force. And in light of the importance, life,

health, safety issues of this project, that's an entirely reasonable evaluation factor to include.

That doesn't mean that the contractor must include a PLA. But it does tell the agency a little bit of something, a little something about the quality and the training of the work force. There is nothing there that could by any stretch of the imagination be determined unreasonable.

So on the matter of the deferment, this is an important project. There has not been any suggestion whatsoever that the facility isn't needed and that it isn't needed urgently. When we come before this Board on a matter of a protest, award in the face of a protest, it's not something that agencies like to do. It's not something I personally like to do. But the matter of urgency requires it in this case. So on behalf of DGS I would request that the matter not be deferred and that they vote be taken today.

GOVERNOR O'MALLEY: Thank you. Anything else on this matter? Comptroller? Madam Treasurer? Okay. A few other thoughts, here. I mentioned before

that I do believe this facility to be urgently needed. The project is one of a series of investments in order to address that lack of a continuum of appropriate care in discharging our duties to protect the public safety, particularly as it relates to children who are at risk of causing harm to themselves or to others. We need further investments. Actually, the capital improvement plan for DGS includes nine additional facilities with a total cost of approximately \$424 million for construction and equipment. If we were delay on this construction costs themselves would rise. DBM estimates that an escalation of 4 percent per year. Stated another way, another \$2 million a year from now.

The current facility at Cheltenham opened in 1870. It's antiquated. It's expensive to maintain. The State has made some significant renovations to Cheltenham in recent years, including roof replacements on six buildings, installation of backup generators, refurbishing of the medical unit, installation of new electrical panels in the school, installation of new security screens. At a certain

point you can no longer continue to patch things up. The decision to replace rather than continuously renovate an antiquated facility represents a significant investment in the safety and well being of the staff and residents of the facility. Waiting for this litigation to end might cause this project to be delayed for years.

Although the Board of Public Works does not frequently award contracts in the face of a protest, we have done so on several occasions in the past when there's been potential loss of federal funds, either financial savings, or public safety concerns as there is in this one.

Finally, the State of Maryland also has a compelling interest in employing a highly skilled work force on public works projects in order to maximize productivity and economic benefits to the State, to ensure a high quality of work over the lifetime of the project. Secondly, in appropriate circumstances agreements such as the one in this contract can facilitate the timely and efficient completion of such projects by making available a ready, reliable,

adequate supply of highly trained and skilled craft workers permitting public agencies and contractors to accurately determine project labor costs at the outset, and to establish working conditions for the duration of the project. Third, project labor agreements also guarantee labor management cooperation on matters of mutual interest and concern, which minimizes the risk of disruption, delays, and health and safety problems, thus preventing significant loss of time on construction projects. Fourth, the potential benefits of any project labor agreement must be carefully considered.

It's been the evidence before us that those things have been considered by the staff that have presented to us, not only by from the Attorney General's office but from the Department of General Services and Department of Juvenile Services, along with other legitimate goals that the State has in terms of competitive bidding, project costs, and the State's policy in advancing greater economic conclusion, particularly with women and minority owned businesses. The use of project labor agreements

should be considered only upon a determination that encouraging or requiring the use would be in the best interest of the State. Given the voluntary nature of this, including the interest in employing a highly skilled and highly trained work force, efficiency, quality, safety, and timeliness, it's my opinion that we should move forward with this given the public safety imperatives and the urgency.

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.

TREASURER KOPP: Governor, could I just?

GOVERNOR O'MALLEY: Sure.

TREASURER KOPP: Many of you know that when I was in the Legislature for at least 20 years I chaired the Budget subcommittee that dealt with the Department of Juvenile Services. This was a building in need of total change then, and it got worse and worse. And it's only in the last few years, I think,

that we've seen real progress made in these physical facilities for some of the most dangerous and needy of our young people, the people who are almost all invariably coming back to the community. And the facilities have really made it much more difficult to deal with the young people, to treat them, and to prepare them for life outside of the institutions. And I for one can think of few things that are more pressing or more needed, and I'm very pleased to see this going through and going through -- quickly isn't the word. But at least going through and going through strongly.

GOVERNOR O'MALLEY: Madam Treasurer, thank you for that. And I know we have people here from Juvenile Services and no doubt others that may be following along online while they perform all of the other duties. And I appreciate your mentioning the improvements of late. This has been one of the more long neglected functions of our State government. And over the past five years an improved Department of Juvenile Services, in close collaboration with law enforcement, has succeeded in driving down juvenile

homicides by 32 percent Statewide, just over the last five years. And then get this. Over the last five years DJS and local law enforcement have reduced by 53 percent the number of youth killed who ever had a contact with Juvenile Services, a 60 percent decrease in homicides of youth under DJS supervision. And the most dramatic reduction in turn around happened in the City of Baltimore, where the Baltimore City Police, with better partnerships, with a better functioning DJS, have driven down non-fatal shootings among youth by 67 percent just since 2007. So even more lives to be saved in the future --

TREASURER KOPP: And in a bad economy.

GOVERNOR O'MALLEY: In a bad economy. Okay. There, so that one --

MR. COLLINS: The balance of my Agenda.

GOVERNOR O'MALLEY: Right. That one is passed, now the balance of the DGS Agenda. 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. And that concludes our meeting. Thank you all very much.

(Whereupon, at 12:54 p.m., the meeting was concluded.)