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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, Secretary, Department
of General Services;

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

HAROLD BARTLETT, Deputy Secretary,
Department of Transportation;

MEREDITH LATHBURY, Land Acquisition and
Planning, Department of Natural Resources;

LUWANDA JENKINS, Special Secretary,
Governor's Office of Minority Affairs;

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

MARION BOSCHERT, Recording Secretary,
Board of Public Works.

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P R O C E E D I N G S

GOVERNOR O'MALLEY: Good morning everyone and welcome to the Board of Public Works. Today is September 22, 2010. And we have an Agenda before us today on this beautiful day. I want to say a word about the most recent numbers that came out on the economy, and about the most recent numbers for August showing a net job loss rather than a net job gain. While there will be occasional setbacks the fact also remains that for this, or January through August has been the best period of new job creation in Maryland that we've seen since the year 2000. So, and we have a rate of job creation that is twice the national rate of job creation. So we want to see a net positive every month, that won't always happen. But over the long term there are very few states, only four of them, that have held onto their private job base better than we have. And I don't believe that there is any state better positioned to come out of this recession and make the decades ahead very positive decades for job growth and job creation than Maryland

is, because of our hard work in protecting the priorities that make for an innovation economy.

We also have launched a new thing called the Maryland Work Force Exchange, which is a single portal that combines job openings from all over the State. A person can search by industry sector as well. And we know there's a lot of moms and dads that are, that have been searching for jobs for weeks and months, here, and you know, none of us can give up. We have to all keep moving forward. And there are better days coming.

So let me ask if the Treasurer or the Comptroller have any words as we open this meeting?

TREASURER KOPP: I do not, except I have to say good morning. And I think, Governor, that you're right. And I actually have been talking to some treasurers and bond rating folk and other investors from around the country. There's no doubt that things, while they are better, and you can see that in our revenue estimates, no question about that, they, things are still very difficult across this nation. And I for one am very thankful that we've made the

investments in education and the community that we have, even though it meant sacrificing other things that were terribly important. Because as you know, I believe that education, elementary, secondary, higher education, work force training, really is the basis for our success in the future. And I hope we continue to stick to those priorities.

GOVERNOR O'MALLEY: Mr. Comptroller?

COMPTROLLER FRANCHOT: Thank you, Governor.

I just wanted to remind everybody tonight is the official start of fall. I want to wish everyone a happy and safe fall season. And after the harsh winter and the scorching summer that we've had I hope that we get a break in the term, in weather terms.

I know one group of Marylanders who might actually be wishing for some big snowfalls are the hundreds of thousands of students who are now back in our wonderful Maryland schools. They may be daydreaming still a little bit about summer, but in many cases they returned to sparkling clean, newly renovated schools, or frankly completely new buildings. And here on the Board, I've been proud to

support the Governor, and the General Assembly, and the Treasurer, in the historic investment by Maryland in school construction over the past few years. I've visited countless schools to inspect and review these projects. As we move forward I want to make it a priority to recognize and highlight those schools that are doing an outstanding job of maintaining their buildings. And that's helping us save taxpayers' dollars.

Every year we honor the few schools that have been randomly inspected and rated superior by Dr. Lever and our State's Interagency Committee for Public School Construction. In the past weeks I've visited two of these schools, Davidsonville Elementary here in Anne Arundel County, and Charlestown Elementary in Cecil County. Two great schools; I had wonderful visits. I really thank Dr. Lever and the IAC for doing a tremendous job. And their inspection program is a great asset to the State.

But while it's fitting and important that we bring these superior schools here to the Board for acclamation, as we've done, I also want to reward

those schools whose ratings have progressed from inadequate to adequate, or from adequate to very good. I believe that we're entering an era, mini era, of austerity where we are going to be forced to do more with less. And those school systems that put a priority on maintaining their current buildings and those schools that are finding innovative ways to keep their buildings healthy, safe, and clean deserve to be recognized. I've seen so many examples where effective maintenance, including simple and affordable investments like a fresh coat of paint, new carpeting, good power washing, did one myself up at a school in Baltimore, it's amazing how that makes a difference. In addition to providing communities with a renewed sense of pride, research has confirmed the obvious and positive impact that clean, attractive, and comfortable facilities have on student performance.

It's in that spirit that I've established a special recognition, the Silver Hammer Award, for schools that have demonstrated a commitment to fiscal responsibility through superior school maintenance. Recipients of the Silver Hammer Award will be based

upon the recommendations of and input from each of the local education associations and in consultation with the IAC staff. So this fall I look forward to hearing from school districts, traveling to those schools, and reporting back to the Board on the best practices and innovative methods of building maintenance that are being used to help save taxpayers' dollars. And I'll do my best to see that these school continue to be recognized and appreciated for their efforts.

And Governor, thank you for the time, the focus, and the investments that you have made in our children and their public schools.

GOVERNOR O'MALLEY: Thank you, Mr. Comptroller. Let's go to the Secretary's Agenda. Ms. McDonald?

SECRETARY MCDONALD: Good morning, Governor. We have a presentation from the University of Maryland College Park. We could do the University System Agenda, or we could go straight to the Secretary's Agenda. Or would you like to hear from Dr. Wylie or go straight to the Secretary's Agenda?

GOVERNOR O'MALLEY: We can do the presentation.

SECRETARY MCDONALD: Okay. So --

GOVERNOR O'MALLEY: And remind me what we had asked --

SECRETARY MCDONALD: All right. Dr. Ann Wylie is here, Vice President at University of Maryland College Park.

GOVERNOR O'MALLEY: Ah, the sustainability.

SECRETARY MCDONALD: And --

DR. WYLIE: Right.

GOVERNOR O'MALLEY: Right. Maryland was one of --

SECRETARY MCDONALD: -- brochures to hand out --

GOVERNOR O'MALLEY: -- one of nineteen that was selected, universities across the country that was selected because you achieved the highest possible score on sustainable campus, right?

DR. WYLIE: We, actually it was eighteen by the *Princeton Review*. And we actually have no idea what criteria they used. But --

(Laughter)

TREASURER KOPP: But what is it that you do?

GOVERNOR O'MALLEY: That is funny.

DR. WYLIE: But I'd like very much to give you a quick overview.

GOVERNOR O'MALLEY: We'll go back to the Secretary's Agenda now --

(Laughter)

GOVERNOR O'MALLEY: Thanks for coming.

(Laughter)

DR. WYLIE: I'd like very much to give you an overview very quickly of the many things that go on at the University of Maryland that, with a focus on sustainability. And I think it's probably the sum total of these that the *Princeton Review* is reflecting in their ranking.

GOVERNOR O'MALLEY: Yeah, it was my understanding when I read the press release that the ranking was, that there were nineteen that achieved the highest possible score and we were one of them.

DR. WYLIE: Yes, we were. And there are more than 700 that were actually considered. So we --

GOVERNOR O'MALLEY: Right.

DR. WYLIE: -- consider that to be an extremely --

GOVERNOR O'MALLEY: So in other words, that we weren't nineteenth. We were tied for first with eighteen others.

DR. WYLIE: That's right. That's right. That's exactly right, thank you.

(Laughter)

GOVERNOR O'MALLEY: That's what I read, anyway.

DR. WYLIE: I think that's what we put out. The sustainability at the University of Maryland is really a part of our culture. And I think it began more than ten years ago with our facilities master plan, which at that time had sustainability and environmental stewardship as a major theme. And over the last ten years we really have taken up this agenda and put it in everything that we do.

We have received awards in addition to the Princeton Review that you see up here. Every time there is a ranking of sustainability the University of

Maryland is mentioned among the top. Rankings are a funny thing. Some rankings consider one quality, others something else. The University of Maryland was recently ranked eighth in the nation by the *Wall Street Journal* for the quality of our graduates in the corporate recruiting world, and we are very proud of that. That was done by a survey of recruiters. The *U.S. News and World Report* uses a set of data, a lot of which is financial, in which we rank eighteenth among national universities.

TREASURER KOPP: Ann, could I just interrupt to hearken back to what I said at the beginning of this meeting I think? That the investment in education is not only paying off in these great rankings, but more importantly, most importantly, paying off in the great graduates and the great work force we are going to have, as well as making us a model in so many ways. I just --

GOVERNOR O'MALLEY: And therefore the better economy that we have.

TREASURER KOPP: Absolutely, yeah. And I saw you sitting there, Madam Vice President, and I didn't thank you. And I do.

DR. WYLIE: Thank you very much. We appreciate it. So the *Princeton Review*, America's Greenest Campus Contest, we actually won that nationally on the basis of the efforts of our students, faculty, and staff who assessed personally online their carbon footprint and made a commitment to decrease it. So there are all different ways that sustainability and rankings work. But I think whenever there is one the University of Maryland is ranked high, and it really reflects that we are nationally recognized for our sustainability efforts.

The UM sustainability strategy really goes across everything that we do. We focus on infrastructure and operations. We promote sustainable behaviors. We enhance sustainability through education and research. We have a University Sustainability Council that is designed to advise the President on policy. And the Office of Sustainability has been in existence three or four years. And I am

joined today by Scott Lupin, who is the Director of the Office of Sustainability. So if you have any questions at the end of this brief presentation I'm sure he could help us. The Student Sustainability Fund is actually a fee that 91 percent of the undergraduates voted in favor of imposing on themselves three years ago. They voted in a fee, ultimately to be \$12. Last year it was \$4, this year it's \$6, next year it will be \$8, and so forth. And that fee is administered by a student committee with recommendations to the Sustainability Council. So this commitment to sustainability goes everywhere.

We have an environmental friendly procurement policy, which Jim Stirling helped develop. So we are looking in the purchase of all of our products in their environmental impact.

The University of Maryland was one of the first hundred signators to the American College and University Presidents Climate Commitment, which commits to reducing our carbon footprint to zero by 2050. And we established a, we set up a climate action plan which was developed by a committee that

worked broadly for more than a year which laid out strategies to enable us to reach that goal. We actually have been remarkably successful. Since 2005 our carbon footprint has been decreased by more than 10 percent. I have to be quite honest and tell you that there's a little tiny bit of that, maybe a percent or two, that has to do with better data. But the rest of it is really quite genuine. We actually are decreasing our carbon footprint.

GOVERNOR O'MALLEY: Well we never, until recently we never bothered to actually have good data on any of these, whether in the University System or in State government. That's a new development over these last four years.

DR. WYLIE: Yes, that's correct. Next slide? Renewable energy, of course we looked to to help solve some of this reduction in our carbon footprint. We have placed hot water panels on the north campus dining hall, which provides about a third of our hot water needs for that dining hall. With that student sustainability fee last year we purchased renewable energy credits. That fee will go in the

future toward energy efficient projects, but for the first year the students actually want to do something with it right away. So that was about, almost \$100,000 toward renewable energy credits.

The USM worked closely with the State on the Clean Horizons Project. This was led by our very able energy manager, Joan Kowal, and we have three contracts. We would like to have 20 percent of our energy produced by renewable sources. These contracts will give us about 15 percent. So we're very pleased to have a source to purchase energy for the next twenty years with this high renewable component.

We recently received from the Maryland Energy Administration Project Sunburst \$630,000 to put solar energy on Comcast. So we're trying to find every source of funds we can to advance our sustainability.

GOVERNOR O'MALLEY: Awarded by the Maryland Energy Administration?

DR. WYLIE: Yes. It's a DOE grant. Green buildings, we're very proud of the, our green buildings, and our LEED certification. Silver is our

standard. We just opened Knight Hall, that received LEED Gold certification. Our South Campus Commons Building Seven, our residence hall, opened in January with LEED Gold certification. We have other projects. Oakland Hall, the physical sciences complex, which we hope at least that, the sorority house renovations, at least the majority of these will be LEED Gold. You don't know till you get down to the very end, but we will certainly do that. We have more than nineteen LEED certified professionals on our staff. So we begin thinking about a sustainable building from the day that we begin the design, and that's really the way that you can accomplish this high level of certification. You have to start from the very beginning.

Stormwater management is another area where we have put a great deal of effort. We have a green roof on Cumberland Hall. We also have one on the Student Union. A green roof on Denton Dining Hall, and we're planning one on our new shuttle bus facility. We have two cisterns operating, one on Knight Hall and one in the center of Washington Quad.

And we utilize the water that we collect from those cisterns to water the plants in the immediate area.

And recycling, where is it? I have a prop. We are introducing a program called Can the Can. And we no longer have garbage cans in three of our buildings, and we hope to expand that to the campus. We have a recycling bin. In my office I have a recycling bin, and this is my garbage can. And I keep this on my desk, actually. And I am responsible for emptying it myself. So we don't have any housekeeping staff emptying garbage. Their efforts are entirely on removing our recycling.

In the main administration building we introduced this. I had to subject my associates to this. Our recycling rate went from 49 percent to 77 percent in just two months. So this is a really important step in --

GOVERNOR O'MALLEY: And what do you put in that?

DR. WYLIE: I put in -- well, it's empty now. But I had, when I opened it earlier to bring it had an apple core and some candy wrappers. So I put

in the things that will not recycle that I generate in my office.

TREASURER KOPP: You don't have compost?

DR. WYLIE: Well, it's a little hard in my office --

(Laughter)

TREASURER KOPP: It's a little hard in your office but it's not so hard on the campus.

DR. WYLIE: Well, it's, you know, I had one apple core and three candy wrappers, so it's --

TREASURER KOPP: We've got to separate out the candy wrappers.

DR. WYLIE: But we do compost. That's a very big effort for us on our waste generated by our dining halls and in special events. So we have a very big composting effort. Overall, recycling on the campus has increased to 57 percent, and we really hope to get this above 80 percent as we expand the Can the Can across the University.

Transportation, our shuttle bus operation is expanding its use tremendously. We have more than 2.5 million individual rides per year and it's increasing

dramatically. Our number of parking permits on the campus has been going down. So we are doing everything we can to enhance public transportation and design routes that serve the majority of our students. We've done a lot of things to try to bring students closer to the campus, also, to reduce the commuting distance of our students.

So that's kind of a quick overview. There is a document that you have which you -- oh, I'm sorry. Integrating Sustainability Across the Curriculum, this is a very important effort. We have a lot of majors that focus on sustainability themselves. But we want to bring sustainability in areas, in other areas throughout the curriculum. And so for the last two years we've held workshops, and we bring faculty in, and we try to get them, to show them ways that they can use sustainability in whatever course they each. And so we've had fifty-fix courses so far revised to include sustainability.

And the last slide? We have a website, and I urge anyone that would like to know more about what we do to go on our website. And there's very, very

good and comprehensive information. I'd be happy to answer any questions.

COMPTROLLER FRANCHOT: Could I just hear from your Director? Is he --

DR. WYLIE: Come on, Scott.

COMPTROLLER FRANCHOT: Do you have anything to add?

MR. LUPIN: Well, it has been a process of several years, as Ann mentioned.

GOVERNOR O'MALLEY: Tell us your name for the record again?

MR. LUPIN: Oh, sorry. Scott Lupin.

GOVERNOR O'MALLEY: And Scott, spell your last name?

MR. LUPIN: L-U-P-I-N.

GOVERNOR O'MALLEY: And your title is?

MR. LUPIN: I'm the Director of the Office of Sustainability for the University of Maryland College Park. Really, I've been at the University for thirteen years. And sustainability has been an evolving part of our culture. And it continues to be so. The University spent great effort when I first

began to work on environmental regulatory programs and made a conscious decision to move beyond compliance into really environmental performance. And it has really infiltrated much of what we do, from facility design, to current deliberations about our facilities master plan, to how we structure the curriculum. There's talk about a minor in sustainability. And it's not just University of Maryland, it's really colleges and universities across the country are very engaged in this topic. And in fact, I attended on Monday a sustainability education summit here in Washington. And some of the leading folks talking about this issue were talking about the need to ensure that our students coming out of K through 12, and out of our universities, are in fact ecoliterate. And how to integrate this issue into our curriculum, into the student learning experience. And so for many they think this is a really pressing issue for the up and coming generation. So more and more it's become part of the University's culture. So I'm very pleased to be a part of it.

GOVERNOR O'MALLEY: That's good stuff. Can I ask you, have you, we've got to get you into the collaborations that are going on with Department of Natural Resources and the military based in our State. Because your campus, their campus, have a very similar, and are you in that loop yet?

MR. LUPIN: Well I did speak with somebody at DNR yesterday. And we're going to begin to talk about how to --

GOVERNOR O'MALLEY: Because they knew I'd ask you when you came in here today.

MR. LUPIN: We've been playing phone tag for two weeks, and we finally connected with each other. And we're going to, we're talking about how I can provide assistance, how the University can provide assistance for that effort. So we're going to begin to decide how to work the University into those discussions.

GOVERNOR O'MALLEY: And your game plan here, I mean, a very simple dashboard showing what you're achieving, what you're not achieving, what you're halfway to achieving. I mean, that's great. And each

of those military based would find this a useful template for themselves. One of the things that was not touched on was the potable water and reducing water consumption. Hugely important for, you know, any campus with that many human beings packed into it. What have you done that was the most cost effective? I saw pictures of replacing the low flow, you know, toilet pictures. Was that an extensive thing? Is that ongoing? What --

MR. LUPIN: It is extensive. But it's been going on for several years in terms of changing out china in restrooms and low flow spigots and shower heads. That's really the most effective thing we've done so far. But there's a lot to be done in terms of water capture, grade water reuse and so forth, that we have not ventured into in a significant way. But I think we will as we delve into this next master plan, facilities master plan. There's going to be some discussion about how to capture more water and use it beneficially. So it's an area that has a lot of room for improvement, but we have seen a reduction of about 14 percent in our water consumption the last two

years. So again, it takes time, it does cost money to change out restroom fixtures and so forth, but there's a lot we can do, I think, down the road to better use stormwater that is otherwise flowing into our streams and to reduce the environmental impact of that, and to beneficially use the water and reduce our potable water consumption along the way.

GOVERNOR O'MALLEY: Mm-hmm. Well, that's great. Keep going, and as if our lives depend on it. You know?

MR. LUPIN: It's an important issue.

GOVERNOR O'MALLEY: Because the faster you move the more the rest of the country will move.

TREASURER KOPP: I'd like to apologize. I see that you in fact are composting more than 100 tons --

DR. WYLIE: Yes.

TREASURER KOPP: -- a year.

MR. LUPIN: Right.

TREASURER KOPP: Which is a whole lot of composting.

DR. WYLIE: At our dining services we have a lot from one source, and we definitely do that.

GOVERNOR O'MALLEY: Where do you take it to compost it?

MR. LUPIN: It's going to a facility in Cecil County called Recycled Green, which is the only commercial facility I'm aware of in Maryland.

GOVERNOR O'MALLEY: For composting?

MR. LUPIN: Right.

DR. WYLIE: We this year have looked at, we did several experiments trying to try other methods of treating organic waste. We had two pilots operating, one of which turned organic waste into gray water, and the other one made it really into compost itself right at the scene that we could pump and that we could use for effective watering. And both of them were failures. But we are continuing to attempt to try. Because we have to transport it so far we'd like a better solution.

GOVERNOR O'MALLEY: Do you coordinate with these other campuses? Do you all share best

practices? These other nineteen that were, other eighteen that were number one?

MR. LUPIN: We do. There's a, we do, yes. We have a couple of different conferences, one hosted by the University of Maryland. The Smart and Sustainable Campuses Conference, a national conference of all sorts of folks from colleges and universities that get together, talk about issues related to sustainability, best practices, case studies. And our fifth conference will be this coming March --

GOVERNOR O'MALLEY: Mm-hmm.

MR. LUPIN: -- at the College Park campus. So there are two or three major conferences, national conferences held every year. One is college and university people, both from facilities, sustainability directors, people from administration, faculty, students that get together and talk about these issues. So we do share stories, and we have a really broad network. So.

GOVERNOR O'MALLEY: Anybody come from overseas? Like Sweden?

MR. LUPIN: We do get some international attendees.

GOVERNOR O'MALLEY: They're pretty clever. They seem like they're about twenty years ahead of us on this stuff, too.

DR. WYLIE: I'd like to thank very much the leadership of the State, because it makes it possible for us to be successful. We wouldn't be there if we didn't have you.

GOVERNOR O'MALLEY: Well, this is great. Thank you all very, very much. Keep going. All right, let's go to the Secretary's Agenda.

SECRETARY MCDONALD: Okay. Good morning again, Governor, Madam Treasurer, Mr. Comptroller. We have ten items on the Secretary's Agenda. We have three reports of emergency procurements. And we're prepared to answer any questions you may have.

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

THE BOARD: Aye.

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

(No response.)

GOVERNOR O'MALLEY: The ayes have it. We move on now to Program Open Space. And we have the Mayor of Crisfield. P.J. Purnell I understand is with us because there is a hiker/biker trail on our Agenda. And what page would Mayor Purnell's item be on?

SECRETARY MCDONALD: Item 7A.

GOVERNOR O'MALLEY: Item 7A? Mr. Mayor, how are you?

MR. PURNELL: Good.

GOVERNOR O'MALLEY: Good to see you. How is Crisfield?

MR. PURNELL: Crisfield is good. Governor, Madam Treasurer, Comptroller, on behalf of the City of Crisfield I come before you today asking and extending my appreciation and thanks for your pending decision on providing us with \$136,000, I think it is, to complete phase four of a public park. We in the community of Crisfield probably have the highest unemployment both in Crisfield and in Somerset County

in the State of Maryland. And this recreational opportunity is very vital to our future.

I heard earlier that you were talking about jobs, and one of the other points I wanted to make, under the leadership of the Governor and the Department of Business and Economic Development this year we got a grant to help the Sherwin-Williams company retool their plant and it increased our employment by 10 percent. A hundred jobs for a town the size of Crisfield --

GOVERNOR O'MALLEY: That's great.

MR. PURNELL: -- that has less than a thousand jobs. So we kind of see State government all working together and it's worked out extremely well.

GOVERNOR O'MALLEY: And thank you for your time in taking me through that plant, and being able to meet those moms and dads that are working there.

MR. PURNELL: One last thing, I'd like to have the City Councilman I brought with me that's kind of my program manager, would you say? Project manager for this park? I'd like to have him have an

opportunity to say a few words and to extend his gratitude to the Department of Natural Resources.

MR. LAWSON: Governor, Treasurer, Comptroller, as we've moved forward with what was originally thirty-two acres of marsh and upland area that could have, because of its critical area exemption, been used and have been filled in with bricks and mortar, and destroyed another scenic vista of the park, we've set aside this area with Program Open Space monies with a behest of a, eventually hopefully a seven-phase application of infrastructure building and all. By doing this we will preserve open space not necessarily for ball fields, but for vistas, walking trails, environmental stations, and things that are contingent upon what is so important to all of us and that is the preservation of the Chesapeake Bay.

With that I would like to say there is a small thing that is a, an error in the application process that I did not review. It says that the walking trail will have a pervious surface that will be utilizing crushed oyster shells and that was never

intended to be. So we're using sea clam crushed shells, not something that would otherwise that would be put back over and perceived there.

So once again, always cognizant that our City Inspector who is part of the Park Advisory Board, will be working very hard in the innovation of using solar and wind energy for facilities used there. And it is with your funding through the good offices of DNR, Program Open Space, Chip, all of those good things, we would just like to thank you all for your consideration. It's always great working with you.

I would like to say one other thing. We've all, as a Councilman in Crisfield we all know about highway user funds and how municipalities have fought on that. In the presence of Delegate Conway the other okay I went on public record as saying if I have to choose between highways and education, I know where I want my emphasis to be. So although I may feel like I need an apology to my constituents for the limited amount of work that we can do on the streets, and we have done some tremendous work on our streets even in the meantime, the education focus of this

administration and this pushed us in the right direction for the future, and I applaud you. We have to make decisions in tough times and I think we've made the right decision. And I applaud you very much. Thank you.

GOVERNOR O'MALLEY: Thank you, Councilman.

COMPTROLLER FRANCHOT: Mayor -- if I?

GOVERNOR O'MALLEY: Mr. Comptroller?

COMPTROLLER FRANCHOT: Mayor Purnell, I just want to thank you. Whenever I see you I think of two things. One is one of my great predecessors, Governor Tawes, who as you know is the only Marylander in history to occupy at different times all three seats at the Board of Public Works.

MR. PURNELL: Well Mr. Comptroller, at seventy years old I can guarantee you I have no dream of doing that.

(Laughter)

COMPTROLLER FRANCHOT: But I also think -- thank you. I also love the fact that he, I think, said that he like being Comptroller the best. But I also want to just compliment you on the crab feast.

It's a wonderful day down at Tawes in Crisfield. And everyone that came down this summer, it was a little bit hot, but it was a tremendous gathering of talent, and citizens, and oysters, and everything else. So it was a wonderful day. And I'd love to some day see our Board come down there and have a meeting on the day that you're having your great gathering.

MR. PURNELL: We could arrange that and even serve crabs.

COMPTROLLER FRANCHOT: Excellent. Thank you very much.

TREASURER KOPP: Could I just, Mayor, ask one question? I echo everything that has been said, and think that the emphasis on sustainability, on the pervious surface is terrific. I notice it's traversing an abandoned railroad bed. Is there any chance of getting any Rails to Trails money for that?

MR. PURNELL: It's been abandoned a long time. It really has. It's probably pushing twenty-five years.

MR. LAWSON: That is part of our research in utilizing those --

MR. PURNELL: Yeah.

TREASURER KOPP: Yeah. Good.

MR. PURNELL: Thank you.

GOVERNOR O'MALLEY: All right. Any other items on Program Open Space we want to look at? Hearing none, the Comptroller moves approval, seconded by the Treasurer. All in favor signal by saying, "Aye."

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed?

(No response.)

GOVERNOR O'MALLEY: We now move on to the Department of Budget and Management.

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

TREASURER KOPP: I want to commend you on number one. Which I think, in fact, is your agency, the online job postings? Which look like it's not only a great thing to go online to fill those few jobs

that you're allowing us to fill, but to do it in a cost effective way.

MS. FOSTER: It's been very successful. We've had thirty-two agencies to post over, almost 300 jobs. Your office has used it, the Comptroller has used it, I certainly use it. It's been great.

TREASURER KOPP: And the fact that you can do it at a really significant savings.

MS. FOSTER: Thank you.

TREASURER KOPP: Good. Great.

GOVERNOR O'MALLEY: Anything else on Department of Budget and Management?

COMPTROLLER FRANCHOT: Yes.

GOVERNOR O'MALLEY: Mr. Comptroller?

COMPTROLLER FRANCHOT: Item 10-S.

MS. FOSTER: Item 10-S is a contract for the operation and the management of the Charlotte Hall Veterans Home. And to speak on that item we have Sharon Mattia who is the Director of the Veterans Home Program.

COMPTROLLER FRANCHOT: Excellent. I see the total amount, with the options, is \$190 million?

MS. MATTIA: For the five-year term.

COMPTROLLER FRANCHOT: Correct.

MS. MATTIA: Mm-hmm.

COMPTROLLER FRANCHOT: And, you know, this contract received a lot of scrutiny --

MS. MATTIA: Yes, sir.

COMPTROLLER FRANCHOT: -- frankly, from this Board. I think it was the subject of a bid protest that the State Board of Contract Appeals finally resolved. I don't want to go over the whole history, but I just have a couple of questions for you. How would you characterize HMR's management of the Charlotte Hall facility.

MS. MATTIA: They've been at Charlotte Hall -- well, first of all, I'm Sharon Mattia. Good morning, Comptroller, Governor O'Malley, and Madam Treasurer. Charlotte Hall Veterans Home has been managed by HMR for the last six years. And it since has increased by 140 residents. They have made strides with the VA in partnership with the Maryland Department of Veterans Affairs in implementing the CPRS, which is a computerized patient record system.

Their senior management has over ten years of experience with veterans homes and assisted living, whereas the other offeror did not have that experience. So we're very pleased with the management, with their senior staff, and how they treat the employees at Charlotte Hall.

COMPTROLLER FRANCHOT: Well, that's crucial because they are so important to us.

MS. MATTIA: The veterans are very important to us.

COMPTROLLER FRANCHOT: And so you are convinced that they are doing a good job?

MS. MATTIA: Absolutely.

COMPTROLLER FRANCHOT: And the fact that the competitor bidder was \$900,000 less a year, I think --

MS. MATTIA: About 3 percent.

COMPTROLLER FRANCHOT: Three percent?

MS. MATTIA: Mm-hmm.

COMPTROLLER FRANCHOT: Is that something that was looked at by you as far as making sure that the price disparity was --

MS. MATTIA: For the services that we get?
Yes, sir.

COMPTROLLER FRANCHOT: And the, what you or the VA looked at technically, what exactly was that that outweighed the price disparity?

MS. MATTIA: Well, the technical ranking was rated heavier than the price rating. And the evaluation committee had criteria as far as the contract. And HMR outweighed the technical ranking, we ranked them one and two. They were one and the second offeror was two. And basically, it was based on experience. Their MBE participation was 21.1 percent and our contract only asks for 20 percent. So they had more kudos for that. And their, we asked in the RFP that the offeror would propose a report card. And in that report card they were to I guess list their performance guarantees and liquidated damages and they did a wonderful job. Their technical proposal was outstanding.

COMPTROLLER FRANCHOT: Excellent. And do you make the decision? Or does the federal government?

MS. MATTIA: No, not the federal government, the State of Maryland.

COMPTROLLER FRANCHOT: The State of Maryland?

MS. MATTIA: Mm-hmm.

COMPTROLLER FRANCHOT: Good, thank you.

MS. MATTIA: Thank you.

COMPTROLLER FRANCHOT: Thank you, Governor.

GOVERNOR O'MALLEY: Thank you. Okay, Madam Treasurer, Mr. Comptroller, anything else on the Department of Budget and Management Agenda?

COMPTROLLER FRANCHOT: Move approval.

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

THE BOARD: Aye.

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

(No response.)

GOVERNOR O'MALLEY: And we move on now to the University System of Maryland.

MR. STIRLING: Good morning, Governor, Mr. Comptroller, Madam Treasurer. I'm Jim Stirling for the University System. We have fifteen items on

today's Agenda, and I'd be happy to answer any questions.

GOVERNOR O'MALLEY: Any questions, University System of Maryland Agenda items? Hearing none, the Treasurer moves approval, seconded by the Comptroller. All in favor signal by saying, "Aye."

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed?

(No response.)

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

TREASURER KOPP: Good work.

MR. SCHLANGER: Good morning, Governor, Madam Treasurer, Mr. Comptroller. Elliot Schlanger, Department of Information Technology. This morning we have four items on our Agenda. And I would be happy to answer any questions at this time.

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

THE BOARD: Aye.

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

(No response.)

GOVERNOR O'MALLEY: The ayes have it. We move now to the Department of Transportation.

MR. BARTLETT: Good morning, Governor, Mr. Comptroller, Madam Treasurer. For the record I'm Harold Bartlett, Deputy Secretary of MDOT. And MDOT today is presenting twenty-five items. Item 27-AE has been added as a supplemental item. Items 18 and 19 have been previously withdrawn. And for the record, Items 17, 20, and 27-AE have been previously submitted as revised items. And we're prepared to answer any questions you might have.

TREASURER KOPP: I had a question but I think it probably was with Elliot and I missed my chance. It was the 511 number issue.

GOVERNOR O'MALLEY: We can bring him back.

TREASURER KOPP: I thought it was Transportation, but --

GOVERNOR O'MALLEY: Mr. Schlanger, can you please return to the podium?

TREASURER KOPP: Yeah. We just talked about this, I mean, this is a very significant step forward for Maryland.

SECRETARY MCDONALD: Let me just clarify this is Item 1 on the DoIT Agenda, Item 1 on DoIT.

TREASURER KOPP: Yeah. I'm sorry. I was sitting here flipping through looking for it in Transportation.

GOVERNOR O'MALLEY: Recalling for information purposes.

MR. SCHLANGER: And I'm back.

TREASURER KOPP: Yeah.

MR. SCHLANGER: Item 1 is a contract to design, build and operate, host, and maintain a travelers information system. 511, we all know about 911, and 311, and 411, well now we're going to have a 511. And I have my colleagues from, I'm sorry, here they are, from MDOT who would be happy to give you detail on that project.

TREASURER KOPP: Is this as significant a step forward as it looks for us travelers?

MR. GAY: Yes, ma'am. For the record, Bob Gay, State Highway Administration. Good morning. With me I have Glenn McLaughlin who is the Deputy Director, Office of CHART, and Rick Dye, who is our CHART system administrator. And they are the technical experts behind this project, and they can take us through the various things that we're going to get out of this project.

GOVERNOR O'MALLEY: And describe for me what it is?

TREASURER KOPP: Yeah, what is it, yeah.

GOVERNOR O'MALLEY: Describe it. If you were appearing before a community meeting of the citizens for whom we all work, what would you tell them we're doing here? And why is it going to affect their life?

MR. MCLAUGHLIN: Good morning, Governor, Treasurer, Comptroller. Again, I'm Glenn McLaughlin, Deputy Director with the Office of CHART and ITS Development. The 511 program is an opportunity for the State to take information that we currently have, that we use to manage roadways and transit on a daily

basis, and be able to deliver it to the public in a more efficient manner that we can access more easily than we currently do. And it's part of a national program, which includes, which has been going on for about ten years. The USDOT and the Federal Communications Commission identified 511 as an abbreviated dialing code that people can access the information through a phone system, but it will also include a website. We are going to include social media, Facebook, and Twitter in order to be able to provide the information that way.

GOVERNOR O'MALLEY: Interesting. I wonder if you can loop it into GPS?

MR. MCLAUGHLIN: Well, there are certainly a lot of companies that are working on providing information through GPS. That isn't part of what we're going to be doing.

GOVERNOR O'MALLEY: So the notion of this is that if someone is traveling someplace one calls 511 to find out what's on the road ahead?

MR. MCLAUGHLIN: Well, hopefully they'll use it before they are driving, because it could lead to a

distracted. There are opportunities within the website and the service to inform people, you know, of safe driving habits, to not, you know, be using it. In case they do decide to call it with a hands free system, we're going to try to tailor it so that the system will identify them based on their number to, and will be able to tailor. They can just say, "I want my morning commute," and it will automatically give them the information. So they can do it hands free.

GOVERNOR O'MALLEY: So this is all automated? Or --

MR. MCLAUGHLIN: Yeah, it recognizes their voice, and it, you know, takes information from the systems we currently have and, you know, provides it to them.

TREASURER KOPP: So we'll know to avoid the construction zones and the --

MR. MCLAUGHLIN: Absolutely.

TREASURER KOPP: That's great. I would have gotten to Baltimore much faster yesterday.

GOVERNOR O'MALLEY: Huh. So we could call and say we're going to Silver Spring from Annapolis, and there's a prompt identified by your voice?

MR. MCLAUGHLIN: Yeah, it's menu-driven.

GOVERNOR O'MALLEY: Uh-huh.

MR. MCLAUGHLIN: It would be similar to using a, well unless you've tailored it for your own purposes in advance it would be a menu-driven system. So a person coming in for the first time would have to go through, you know, a selection process. But, you know, again, it would be similar to, you know, calling in at a bank or whatever and getting the information that way. Of course, the voice recognition technology keeps getting better and better. So you wouldn't hopefully have the experience of, you know, having to repeat yourself.

GOVERNOR O'MALLEY: And the source of funds is?

MR. MCLAUGHLIN: Oh, it's federally funded.

GOVERNOR O'MALLEY: Federally funded? And the federal government is encouraging us to do this?

MR. MCLAUGHLIN: Absolutely.

GOVERNOR O'MALLEY: But is there any state that's already done it?

MR. MCLAUGHLIN: We'll be, twenty or thirty states have done it already.

GOVERNOR O'MALLEY: Wow, okay. So this is a matter of us getting with the curve, huh? Okay. Any -- mostly out west, huh?

TREASURER KOPP: Yeah, mostly out West and Midwest. But it looks like we're in a growing cadre going north to the northeast, eh? The wave?

MR. MCLAUGHLIN: Yes.

TREASURER KOPP: But I see that you anticipate a quarter of a million calls a month. I mean, is that right?

MR. MCLAUGHLIN: By the experience with other states, and our population of course, yes.

GOVERNOR O'MALLEY: Wow. And this is already information we're tracking now?

MR. MCLAUGHLIN: Yes.

GOVERNOR O'MALLEY: It's just a matter of making it more accessible to the citizens and the travelers?

MR. MCLAUGHLIN: Yes.

GOVERNOR O'MALLEY: Okay.

TREASURER KOPP: Well, I'm glad I asked the question.

GOVERNOR O'MALLEY: God bless the travelers. I'm glad you did, too.

TREASURER KOPP: Thank you.

GOVERNOR O'MALLEY: The Treasurer already moved to approve it.

TREASURER KOPP: I wish I could vote on it again.

(Laughter)

GOVERNOR O'MALLEY: All right, thank you, gentlemen.

MR. MCLAUGHLIN: Thanks.

GOVERNOR O'MALLEY: All right. We are actually still on the Department of Transportation Agenda items.

MR. BARTLETT: Yes, sir.

GOVERNOR O'MALLEY: Any other matters of concern on Department of Transportation?

COMPTROLLER FRANCHOT: Governor?

GOVERNOR O'MALLEY: Mr. Comptroller?

COMPTROLLER FRANCHOT: Item 14-M.

MR. BARTLETT: Yes. Mr. Comptroller, our AG from State Highway Administration will speak to that, Mr. Harris.

COMPTROLLER FRANCHOT: Okay. Welcome.

MR. HARRIS: Good morning, my name is Ed Harris. I'm counsel with the Maryland State Highway Administration and Assistant Attorney General.

COMPTROLLER FRANCHOT: I see that we're, with this item we're awarding a \$4.8 million contract for a term of just under five years to a firm called H.D. Myles for a broad range of property management services at the I-95 rest stops in Howard County. The duties that are listed in the material provided to me say that they are going to do janitorial services, snow, ice removal, painting, landscaping, electrical systems, etcetera. I guess my question is about the procurement process that preceded this award.

According to my notes, this firm that we're giving this contract to wasn't even incorporated until March 24, 2010, forty-eight days after the bids were due.

According to COMAR a business must be a registered corporation, must be in good standing, must be up to date on all of its corporate filing requirements in order to be eligible for State contract awards. How could H.D. Myles meet these eligibility guidelines when they aren't even incorporated, therefore didn't even legally exist, at the time they submitted the bid?

MR. HARRIS: I understand your question, Mr. Comptroller. The requirement is correct, that in order to be eligible for award in order to execute this contract the corporation must exist. And State Highway has a practice of prior to awarding contracts confirming that existence, and the tax number is actually put, I believe, on the Agenda items that are submitted to the Board.

In this instance it's not completely analogous but similar to situations where we've had a foreign corporation, for example an out of state corporation. Foreign doesn't necessarily mean from another country, it means from another state, who is not registered in the State of Maryland. And so long

as they are registered by the time of award they are eligible for the award. There is case law in Maryland that also supports the fact that a corporation in formation, a corporation working to become incorporated, can make a commitment that would bind the corporation.

But I think really the best answer both from a legal perspective and from a protection of the State perspective, is that the bid includes a bid bond. That really, where the bonding company requires, or assures, that this corporation will sign the contract, and if they don't the bond's at risk.

COMPTROLLER FRANCHOT: Who signed the bond?

MR. HARRIS: The bond is signed by the bonding company, and the attorney in fact of the bonding company, and by one of the principals that was forming the corporation. I really cannot answer what assurances the bonding company got. Because in many instances, you know for example in our largest constructive projects, for example, like on the ICC, they, the bids come in in the name of joint ventures that don't exist until and unless they get the award.

So it's not unusual for an entity to not exist until the contract requires their existence.

COMPTROLLER FRANCHOT: And the current maintenance work is done by whom?

MR. HARRIS: Well, currently we're in an interim situation where the work is being performed I believe by SHA forces and some open ended contracts that we have for, in the event that there's an issue that needs to be addressed. But the immediate predecessor contractor was a firm I believe known as Abacus, who was also the protester and took this matter to the Board of Contract Appeals regarding the award of this contract.

COMPTROLLER FRANCHOT: And so the State Highway individuals that are being used now, are they going to be assigned to different responsibilities? How does that work?

MR. HARRIS: The State Highway -- I'm not sure I know exactly the answer. But I do know it's important that we try to resolve this before they need to be doing snow removal. That's what I --

MR. GAY: Again, Bob Gay. What we're doing, sir, is we are pulling forces off the road to come into the rest area and maintain it until we get this contract back. So we are not displacing any employees when we begin this contract.

COMPTROLLER FRANCHOT: Excellent. Just on a related issue, you might as well stay up there. This, I recently traveled up through Maryland on a trip. And the Maryland House and some of these State whatever they call them, Chesapeake House and other places, they are jammed morning, noon, and night. Why don't we have one in Howard County?

MR. GAY: Okay. The reason being was when the Federal Interstate Law was passed there is a prohibition to have commercialization within the right of way. So we are not allowed to have anything other than vending machines in the rest areas.

COMPTROLLER FRANCHOT: Yeah, but why can't we have a hospitality center like Chesapeake House or Maryland House? Are those prohibited?

MR. GAY: Those facilities were built with State funds, so they are allowed to do that. They are

allowed to have restaurants. And we are not allowed to have that on an interstate that was built with federal funding. We suspect but are not positive that the federal regulation that precludes commercialization of the rest areas is probably motivated in part by local businesses who prefer that folks come off the road and use those businesses. But it is a federal regulation.

COMPTROLLER FRANCHOT: I guess I'm a little slow. The Chesapeake House and the Maryland House are not on Route 95?

MR. BARTLETT: They are part of the Maryland Transportation Authority's responsibilities. And that's a tolled section of highway.

MR. GAY: There are not federal maintenance dollars or construction dollars on that portion of the roadway.

GOVERNOR O'MALLEY: Hm, I didn't know that.

COMPTROLLER FRANCHOT: Well, it sounds to me like we're missing out on a real opportunity. And I hope somebody is, you know, commenting with our Washington representatives because it's ludicrous. I

mean that's, if we had a hospitality center in that area it would be probably the biggest in the entire State.

MR. GAY: Well, it is one of the busiest rest areas in the country. And I think there is a move to address that issue. But right now there's a legal prohibition to it.

COMPTROLLER FRANCHOT: Okay. And have you, has SHA got any kind of a study for either this site or other sites as far as the commercial potential?

MR. GAY: I don't believe we have a formal study. We have worked with the Department of Economic Development. And we are looking at some options. But the prohibition of having these, a full commercialized rest area, has always prohibited us from moving forward also on that. But we have been in discussions with DBED.

COMPTROLLER FRANCHOT: Okay.

TREASURER KOPP: Is it a question of how far from the highway? I mean, certainly you can put signs and get off the highway, right?

MR. GAY: It's within the right of way, is the way the law is described.

TREASURER KOPP: Yeah.

MR. GAY: So outside of the right of way, yeah. I mean, you could have a facility there, yes.

TREASURER KOPP: Is that one of the things you're looking at?

MR. GAY: To tell you the truth, Madam Treasurer, I really don't know.

TREASURER KOPP: Not your --

MR. GAY: I'd have to check into that, and I can.

TREASURER KOPP: I would hope, you know, you're looking sort of creatively. I think the Comptroller is absolutely right.

COMPTROLLER FRANCHOT: Yeah. I mean, these places are, along with the 511 system we're putting in, we should try to get some flexibility, and --

TREASURER KOPP: They get the information on 511, find out they're not going to be able to move anywhere, and they get off and go, they meaning we.

MR. BARTLETT: We'd be happy --

COMPTROLLER FRANCHOT: Anyway, I'm serious about this.

MR. BARTLETT: Yes, sir.

COMPTROLLER FRANCHOT: I think there's commercial potential. I understand the small businesses in the area, but you know, this is different. This is a, you know, just a tremendous opportunity. And we ought to try to get an exemption, if nothing else, from the federal prohibition. Thank you.

MR. BARTLETT: And you are correct, sir. The Chesapeake House and the Maryland House just do an incredible volume of business.

COMPTROLLER FRANCHOT: Thank you. No, I agree with you. Okay. I'm through, thank you. I have one other item that was --

SECRETARY MCDONALD: Sir, we did have a request to speak.

COMPTROLLER FRANCHOT: What?

SECRETARY MCDONALD: We have a request to speak on this item. Do you want to hear --

COMPTROLLER FRANCHOT: On this item? Sure.

SECRETARY MCDONALD: All right. Mr. David Hausner?

MR. HAUSNER: Yes.

SECRETARY MCDONALD: All right. Yeah, okay. Mr. David Hausner is here on behalf of the second low bidder of Abacus Corporation.

MR. HAUSNER: Good morning. Governor, Madam Treasurer, Mr. Comptroller, as you aptly pointed out this entity was not formed prior to them submitting a bid. Maryland law requires them to be formed prior to submitting a bid. It's very cut and dry. COMAR requires that an affidavit must be input into this bid process. The affidavit contains in it specifically a provision which demands that a corporation that is applying for the bid be registered as either a domestic corporation or a foreign corporation in good standing under the laws of the State of Maryland. This entity was not. It was not for two months after it submitted its bid.

The person that submitted this bid affirmed to the State Highway Administration that he was the President of this entity and that he was lawfully

entitled to submit this bid. Maryland law also requires that no one can be an officer of a corporation or elected to be an officer of a corporation until the corporation is formed. He had no legal capacity whatsoever to even submit the bid.

Now, State Highway Administration kind of defers that and says, "Well, they were able to get a bond." Okay, they may have been able to get one. I don't know how an entity that doesn't exist can get a bond, but maybe someone sold them a bond. That in and of itself is one requirement. The other minimum requirement is the entity has to exist. This entity did not. The fair competitive bid process is anchored on the fact that the minimum requirements to meet the obligations of a bid are that you need all of the minimum requirements, not just one. This one is fundamental to the process.

The affidavit is very clear. It says within the bid itself that the affidavit is an essential part of the bid. There is a provision that specifically states that all corporations must fill out the corporation certificate stating that they are in good

standing, stating that they are recognized by the State of Maryland. This is not something that the SHA has discretion to move around or say that that's one of the policies that they sometimes don't look at.

The law is very clear. The entity must exist. It didn't. You cannot award the contract to this company. Thank you very much.

COMPTROLLER FRANCHOT: No I, Governor, I agree with you. I'm going to vote against this. I think that our procurement COMAR regulations should have teeth.

MR. HAUSNER: Absolutely.

COMPTROLLER FRANCHOT: If they don't have teeth, you know, what's the point?

MR. HAUSNER: Yes.

COMPTROLLER FRANCHOT: Every time someone like this is in direct violation we just go ahead and invent something at the end that justifies it. I just think it's unacceptable.

MR. HAUSNER: Absolutely. Thank you very much.

TREASURER KOPP: Governor, I don't want to invent something at the end that justifies something, but effectively I don't understand. Our attorney is the Attorney General, with all due respect to our firm. I don't understand. This gentleman made quite a clear presentation, and yet you the Attorney General say otherwise. Can you explain it?

MR. HARRIS: Well, the analogy that I was using before is the same, and the Board of Contract Appeals has addressed this issue with a foreign corporation, an out of state corporation. The affidavit requires that they be registered in accordance with the Corporation Article, in accordance with Maryland law. And the Board of Contract Appeals has ruled that that is a matter of bidder responsibility that must be resolved before a contract is awarded. And that's why SHA looks the corporate registration issue before we sign a contract.

We've gotten bids, for example, on projects as large as the Wilson Bridge from joint ventures that don't exist, but they promise to exist before they sign the contract. And their bond would be, in fact,

be at risk if they did not fulfill that promise. So -
-

COMPTROLLER FRANCHOT: Can I interrupt?
Because the Treasurer had asked a good question. So
did this company exist but it had not, it existed in
some other state?

MR. HARRIS: No, no.

COMPTROLLER FRANCHOT: Like a foreign
company?

MR. HARRIS: No. It --

COMPTROLLER FRANCHOT: Is it somewhere else
--

MR. HARRIS: That's why it's an analogy, but
it is not exactly the same.

COMPTROLLER FRANCHOT: Yeah, it's not a very
good analogy, frankly, if we're going to have any
integrity and teeth in these regulations. I'm, you
know, stunned that you would come back and give this
the Good Housekeeping Seal of Approval. And I don't
know whether I'm going to be supported, but you know,
you are absolutely right. And I've never seen you
before in my life, but thank you for being down here.

GOVERNOR O'MALLEY: So tell me again. May I, so does COMAR say that, COMAR says what? COMAR says they have to be --

MR. HARRIS: The affidavit says they must be registered in accordance with the Corporations Article. This is a corporation that until it received this contract had no other purpose for existence. So their existence requires, if they get the contract they need to exist in order to sign the contract. The analogy that I'm using is, for example, the large joint ventures that bid on the Wilson Bridge contract. They did not, that joint venture did not exist and never would exist if they were not awarded the contract. And before award we assure that the joint venture is in good standing. But at the time of bid the individuals or corporations that signed that contract are committing, and the bond is committing, that that legal entity will exist and sign the contract.

And I understand the Comptroller's frustration. But the fact is that the Board of Contract Appeals has determined that this is a matter

of bidder responsibility which must be resolved before the contract is awarded.

GOVERNOR O'MALLEY: When is award?

MR. HARRIS: The award would come upon your approval of this contract.

GOVERNOR O'MALLEY: So they satisfy the COMAR requirements if they are incorporated before we approve this?

MR. HARRIS: In fact, they were incorporated before the issue was ever raised. But they were not incorporated at the time they signed the bid.

GOVERNOR O'MALLEY: Okay. But it doesn't say you have to be incorporated to sign the bid. It says you have to be incorporated to sign at the time of award.

MR. HARRIS: I understand Mr. Hausner's reading and the Comptroller's reading. But what it says is they must be registered in accordance with the laws of the State of Maryland. And until they have this contract the laws of the State of Maryland don't really require that they exist. They exist if they are doing business in the State. So I know the

foreign corporation is a frustrating example. But a corporation may not do any business in the State, and may not have any need to register in the State, until and unless they are awarded the contract.

GOVERNOR O'MALLEY: So, but the offeror at the time of the award, I mean, the definition of award is when we vote on this at the Board of Public Works?

MR. HARRIS: That would precede the execution of the contract. That would be approving the award of the contract, I believe, yes.

GOVERNOR O'MALLEY: Okay. So I'm just trying to, I mean, it seems like the operative language is, and are they incorporated now?

MR. HARRIS: They are incorporated now. And if they refused to incorporate and refused to sign the contract their bid bond would be at risk.

GOVERNOR O'MALLEY: Okay.

MR. HARRIS: The same as any other entity that would refuse to commit to the promises they made in the bid.

GOVERNOR O'MALLEY: All right. And so now they are incorporated, and once we award this they will remain incorporated. And your advice is?

MR. HARRIS: That under Maryland law a corporation in formation can make a commitment that can bind the future corporation. And --

GOVERNOR O'MALLEY: And that satisfies the COMAR requirement?

MR. HARRIS: It does. It creates a risk, though, that the individuals would have to be held personally liable for the corporation's promise, but the bond protects us from that risk just as it does in any other setting when you don't know if the corporation has assets to satisfy the promise. So the bond is there to protect us.

COMPTROLLER FRANCHOT: If I could just, yeah, I mean not to beat a dead horse. But your analogies are for existing companies that are doing business elsewhere who bid and want to get, I can understand that. But for a company that didn't exist to bid on a Maryland contract, that's got to fail just a fairness test for all the other competitors that are

incorporated and meet the COMAR regulation. I understand the analogy you brought up. But I would, I find it hard to believe that the Board of Contract Appeals, you know, okays this stuff. Because it's unfair.

MR. HARRIS: And sir, I am not at all trying to discount the concern that you are raising. But when this issue was first raised, which was after the corporation existed, we did a, what I guess you would call a little process review at State Highway to make certain that we were complying with what was required to present a legal contract to the Board. And we check corporate registration's status before we bring the matter to you, at the latest possible date. If we checked it at bid opening I'm not sure that there would be a legal, I believe if we rejected this bid that there might be a claim on behalf of the bidder that we were not, that we couldn't reject the bid. Now the Board of Contract Appeals hasn't heard that case, and I don't know what the result of that would be. But once they've said this is a matter of responsibility and now that they exist it's hard to

imagine how legally we could pull the contract from them.

COMPTROLLER FRANCHOT: Amazing what two votes can do.

MR. HAUSNER: May I rebut this?

GOVERNOR O'MALLEY: Sure, go ahead.

MR. HAUSNER: The fact of the matter is, Maryland law dictates and demands that the entity must exist. The law is very clear. The affidavit cannot be cured later. When you sign an affidavit, the facts in it must be true and correct as of the date you sign that affidavit. That was done on February 1st. The President, or so-called President of the entity, asserted on that day that this entity existed, that it was a Maryland corporation, that it was formed in February of 2010, that it existed under Maryland law, that it was in good standing under Maryland law. None of those things were true. The affidavit which is required by Maryland law mandates that that process be in place. It was not. It cannot be cured later. You cannot cure it later.

This is a \$5 million contract. It costs \$150 to set up a corporation in Maryland in one day. The entity should have followed Maryland law. It didn't. It should not be demanded, and it should not be awarded this contract.

GOVERNOR O'MALLEY: How about that, Mr. Attorney General? Why would we require an affidavit averring to these things if it's not necessary that they are true?

MR. HARRIS: Well, Governor O'Malley, I probably should pull out the affidavit and read it. But it doesn't say all the things that Mr. Hausner just said. It requires that you've registered in accordance with the laws of the State of Maryland --

GOVERNOR O'MALLEY: Could you, take your time. Do you have the affidavit? Could you take a look at it? And take your time.

MR. HAUSNER: Let me say one thing. This itself states that the affidavit is an essential part of the bid. It also states that corporations must complete the certification of State registration and tax payments. The person that filled out this did

check the box that it was an S corporation under an affidavit under penalties of perjury.

GOVERNOR O'MALLEY: All right. Give us a second. Is it Mr. Harris? Or --

MR. BARTLETT: Mr. Harris.

MR. HARRIS: Mr. Harris, yes.

GOVERNOR O'MALLEY: Take your time, Mr. Harris. Read the thing.

MR. HARRIS: The corporation registered in accordance with the Corporations and Associations Article, Annotated Code of Maryland; and that it is in good standing and has filed its annual reports together with its filing fees; and so on and so forth. There are often examples, I understand the frustration that the corporation didn't exist at all, but there are often examples of, like I said, joint ventures, foreign corporations, who have filed nothing with the State of Maryland, who check that box, and who are legally obligated under the commitment of their bid to do that by the time of award. And that is the basis of the Board of Contract Appeals decisions on these issues that say that corporate status is a matter of

bidder responsibility, which as distinguished from a matter of bid responsiveness.

In terms of responsiveness, that has, the bid has to be responsive, the four corners of the bid, as of the date the bid is submitted. In terms of responsibility, that is a matter that is determined as of the time that the contract is awarded and executed. So that as long as that corporation exists, and I understand the frustration with the analogy, and I agree that it is not the same. But a, you know I'm going to use an artificial name because I don't recall the name. But Wilson Bridge Constructors, which is the name of a joint venture of three different entities that agree to form that, will never exist until and unless they are awarded that contract. So in accordance with the Corporations Article there's no need for that corporation, for that joint venture or this corporation to exist until and unless they receive the award of this contract.

GOVERNOR O'MALLEY: But those individual corporations did exist even if they have not entered into a joint venture.

MR. HARRIS: There is a decision from one of the, from the Comptroller General, which hears these kinds of issues on the federal level, who heard a very analogous case. And what they concluded was that a bid submitted in a corporate name may be accepted even though the firm became incorporated after bid opening since the firm was, they used the phrase a de facto corporation, and under applicable state law would be estopped from denying its corporate existence and award to the bidder would not involve substitution of a bidding entity.

So the point of that is that a de facto corporation, a corporation in formation to make a promise that they, that they individuals could be held to if they don't comply. But here we don't have that difficulty because we have a bid bond. So we don't have to pierce, if you will, the corporate veil and get to the individual bidder. If this bid was not executed as required by the commitment in the bid, the bond would be at risk. And I can't say what assurances the bonding company got. But I would

suspect that the individuals were on the hook to the bonding company.

COMPTROLLER FRANCHOT: Could I just ask, don't you feel a little bit awkward about awarding a \$5 million contract to someone who lied on an affidavit, under oath?

MR. HARRIS: I think, I know you are not comfortable with the analogy. But I think that when a foreign corporation checks that box and says they are registered in the State of Maryland and have done all these things, they are essentially saying, "If that is required under Maryland law I've done it, in accordance with the Corporations and Associations Article." And until they get the contract there was no legal requirement for them to do that.

GOVERNOR O'MALLEY: What's the harm in rebidding this? I mean, can you do an extension of the current maintenance contract?

MR. HARRIS: Well, the protester was the current contract. That contract has been terminated, and State forces are doing this work. And we, you

know, we would have to survive a legal challenge to rejecting the bid.

MR. BARTLETT: And from a practical perspective, the game has changed, if you will. At this point if we rebid it, the entity in question is in fact now incorporated. And therefore that particular impediment to the whole process would have eliminated itself. You know? And as it stands right now, the proposed award entity is close to a half a million dollars below the next lowest bidder.

GOVERNOR O'MALLEY: Mm-hmm.

MR. HARRIS: I do believe that there are, the decisions of the Board of Contract Appeals related to foreign corporations support the proposition that this gentleman did not lie on the affidavit.

TREASURER KOPP: -- deferring so that we can actually look at these materials ourselves? And the Board does have a counsel, in addition to the Office of Attorney General, the Board of Public Works does. I think it would be appropriate --

MR. BARTLETT: We could, that's fine with us, Madam Treasurer.

GOVERNOR O'MALLEY: Okay.

TREASURER KOPP: I mean, the Attorney General is our State's attorney.

MR. HARRIS: We have communicated with your counsel and raised some of these points, and we'd be happy to discuss that further.

MR. BARTLETT: But we could defer for two weeks and make sure everybody is comfortable with the decision.

TREASURER KOPP: And I understand the disgruntled bidder is the former holder of the contract, and so the longer you prolong changing it --

GOVERNOR O'MALLEY: But they are not still doing the work anyway, right?

MR. BARTLETT: I believe we are doing it with State forces now, Governor.

TREASURER KOPP: Yeah.

MR. HARRIS: No. We were, with all due respect, Abacus were frustrated by the concept that a protest could extend, their own protest could extend their contract.

TREASURER KOPP: Right, it is very frustrating.

MR. HARRIS: So we found another way of addressing the services while this legal issue was being pursued.

GOVERNOR O'MALLEY: Okay.

SECRETARY MCDONALD: Would you like the Board's General Counsel and Procurement Advisor to get back in two weeks and see --

TREASURER KOPP: I think that would be appropriate.

SECRETARY MCDONALD: Okay. And Mr. Harris has talked with Mr. Bedward, and Mr. Hausner if you could meet Mr. Bedward on the way out and talk in the next few weeks.

MR. HAUSNER: Can I say one other thing?

GOVERNOR O'MALLEY: Sure.

MR. HAUSNER: The gentleman is making analogies to foreign entities. Foreign entities exist. Now, I still don't think a foreign entity that is not in compliance with the Maryland law would meet the form of the affidavit.

TREASURER KOPP: Right, that's what we're going to hear about.

MR. HAUSNER: I'm sorry?

TREASURER KOPP: I think that's what we're asking our attorney to --

MR. HAUSNER: Well, but let's read the very specific language in the affidavit. It's very clear. "I further affirm that the business named above is a domestic corporation, February 1, 2010."

TREASURER KOPP: Right. Sir, you are a very strong advocate for your client, but we want to hear from our attorney, not from your client's attorney.

MR. HAUSNER: I understand. But I think the affidavit needs to be understood. The Governor asked that the affidavit be read.

TREASURER KOPP: Good. Very good. Thank you.

MR. HAUSNER: The other thing that I think is very important is that the gentleman said that you can pierce the corporate veil. You can't pierce a corporate veil in an entity --

TREASURER KOPP: You're not helping your client as far as I'm concerned, sir.

SECRETARY MCDONALD: Mr. Hausner, we'll talk in the next few weeks.

GOVERNOR O'MALLEY: Okay. Well let's, let's, I appreciate the attorneys being here. And we'll have the Board of Public Works attorney, and the Attorney General's Office confer, and get us some more definitive word on this. And for me, the operative language seems to come down to the point at which the contract is awarded. But, so. All right.

MR. BARTLETT: Yes, sir.

GOVERNOR O'MALLEY: All right. So the Treasurer moves that we defer for two weeks, seconded I assume by the Comptroller. All in favor signal by saying, "Aye."

THE BOARD: Aye.

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

(No response.)

GOVERNOR O'MALLEY: The ayes have it. We move on now to the balance of the Department of Transportation Agenda items.

COMPTROLLER FRANCHOT: I have a question on Item 27.

GOVERNOR O'MALLEY: Item 27?

COMPTROLLER FRANCHOT: Is there someone here who can answer some questions about this project?

MR. BARTLETT: Yes, sir.

COMPTROLLER FRANCHOT: We deferred this I guess at the last meeting. What did you come up with?

MR. BARTLETT: I'd be happy to respond to any questions you have. But also joining us today is the Deputy Administrator for Planning and Engineering from the Mass Transit Administration, Henry Kay.

COMPTROLLER FRANCHOT: Oh, good. Mr. Kay?

MR. KAY: Good morning.

COMPTROLLER FRANCHOT: Nice to see you. Well, I'll just I guess comment that this was deferred at your request last time. This was a tough issue for me because I support, frankly, all three of the transit projects. But we're talking about \$160 million commitment over eight years. And you know, as much as I support, frankly, the Purple Line, and have for twenty years, and Governor I appreciate your

administration's support of these mass transit projects, it just strikes me that an eight-year, \$160 million commitment is an awful lot of money for an awful long time for, frankly, projects that are still, speculative is probably too harsh a word. But the question of whether they are going to get funded is up in the air. So I would like to make sure, because there are a lot of things that have been cut that really are vital, that you believe these consulting services are absolutely vital to the goal of getting these projects funded and built. And number two, that we are actually going to get \$160 million worth of work out of this labyrinth of consultants that is before us in the work group.

So Mr. Kay, maybe you could give us an overview of what these folks are doing, and why it is crucial to have such a long term relationship? Some of these companies, are they even going to exist eight years from now?

MR. KAY: Yes, certainly. Good morning, Mr. Comptroller, thank you. For the record my name is Henry Kay, I'm the Deputy Administrator for Planning

and Engineering at MTA, Governor, Madam Treasurer.

Mr. Comptroller, thank you for those questions.

We are, the contract in question will support work for the Red Line, the Purple Line, two major rapid rail projects that we are planning in the Baltimore and Washington regions. They are also constructed, the contracts are constructed in a way that we would also be able to do other transit planning and engineering work under them should, you know, the need arise, or the Red and Purple Lines not proceed. You know, given the schedules that we have identified. I mean, these are, these are quite complex projects. We expect it will take many years to develop as, you know, is typically the case for transportation projects. You know, examples we can think of, the ICC, the Woodrow Wilson Bridge, are usually many years in the planning and engineering process before they even go to construction.

What we need is, you know, a team of consultants available to support us during that process so we have the consistency and continuity and project knowledge that it takes to have, to make sure

we can control the project resources, have very tight controls over quality and continuity, and get to the point where we're taking them for construction. Right now, if you look at what we have budgeted for just the Red Line and Purple Line, let alone any other MTA planning and engineering work, there is nearly \$500 million in our six-year program. So we have actually far more budgeted than we can actually cover in these particular contracts. So at this point we are planning to do \$160 million worth of work, and actually far in excess of that, you know, even in the next six years let alone the next eight years.

Now to get to your question about, you know, whether it's really likely we will, these projects will proceed and we'll do this work, it's an absolutely valid question. What we are doing now is going through a process to make these projects eligible for the federal funds that are so critical for them to proceed. I mean, generally we are assuming that these will be 50 percent funded by the federal government. We need to make sure that we are meeting every federal requirement, dotting every I,

crossing every T, so that we are competitive when we go into that process. Part of that competitiveness means having the resources available to design and deliver these projects. And so it's critical for us that we do this work now to make ourselves eligible.

Now should be, you know, this sort of unfortunate circumstance exists where we're not competitive in that process, we don't get the federal funds that we are anticipating, then we would simply not do this work. And these contract resources would either not be used at all or they would be used for other MTA projects. So we are not making a commitment to spend money that we don't have, I mean to sort of get to your bottom line.

COMPTROLLER FRANCHOT: Well, that's a good answer. And what is the current timetable for funding, construction, and completion of the Purple Line and the Red Line?

MR. KAY: These are, the Purple Line and the Red Line are on nearly identical schedules at this point. We are right now making a request to the federal government to enter what they call the

preliminary engineering phase. That's, it's federal terminology that doesn't quite line up with the way we think of it at the State level. It's essentially the end of the planning process and the beginning of the engineering process. We expect to get federal approval to enter that phase early next year. That PE, preliminary engineering, is about a two-year process, after which we have to get approval again to enter final design, and then we go to construction.

So within the next four years, you know, we'll be going through two steps of approval by the federal government. Each of those has funds that are accompanying it, before we go to construction. So it's during that time that we are, you know, going through this process and getting these federal funds.

To answer your question about schedule at this point, for both projects we're expecting to begin construction in 2016 and have these projects open to service in 2019.

COMPTROLLER FRANCHOT: Okay. And your, I mentioned the labyrinth of consultants. That may be too harsh for you guys. But are you convinced that

these folks are not going to be regulating their own subentities, and somehow you've got all this Byzantine

--

MR. KAY: Yeah, thank you. Yeah, I mean you accurately point out, I mean, we have joint ventures here, and they have dozens of, between them dozens of subconsultants that do all the kinds of specialized work that we need to have available to us as we go through this process. And we appreciate the question that was raised before. We have since spent many hours with these joint ventures and their subs. We have reallocated subconsultants to absolutely be sure that no company will be supervising its own work, you know, between one contract and another, so that we create that accountability. We also committed to retain an officer, a project control officer, who will specifically be tasked with monitoring that. We absolutely appreciate the point. We don't want one firm to be monitoring, you know, the work of itself under another contract.

MR. BARTLETT: So Mr. Comptroller?

COMPTROLLER FRANCHOT: Yes?

MR. BARTLETT: That's between the two entities, the project management consultant and the general engineering consultant. You know, great care was taken to make sure that neither entity, that the management consultant would not be overseeing their own work.

COMPTROLLER FRANCHOT: Good. Well, I have a lot of confidence personally in Mr. Kay, because I've worked with you many years. So that's reassuring to have you come down and comment.

On a separate item, Mr. Secretary, I've got a question about the subject that Mayor Purnell brought up, the highway user revenues. There's no doubt, because I drive around a lot, that we have just an epidemic of potholes. And I'm very concerned about these highway user revenue dollars because in balancing the State budget everyone in their wisdom decided to cut that significant amount of money. And it's causing a lot of problems. And I'm wondering what the timetable is, and what your thoughts are, about restoring some of those dollars. Because I'm

going to vote for this eight-year, \$160 million project. I'm fine on that. But --

GOVERNOR O'MALLEY: If I could interdict --

COMPTROLLER FRANCHOT: If I could for just a minute, Governor, I mean this is a crushing problem. And I'm not sure of why the City Councilman got up and made the comment. We shouldn't be putting Hurlock and other towns in the position of, you know, Faustian choices between education and highway maintenance. This is going to cost us a lot down the road if we don't figure out how to get some money down to these communities. Sorry, Governor. I didn't mean --

GOVERNOR O'MALLEY: That's okay. I think I'm, I think that question is better directed to me. We have been facing a lot of, I call them tough choices, but Faustian might be an appropriate word as well. I mean, all of these have been tough choices. And in this trade off as we balance our budget and move forward at the same time, there are a lot of difficult things that we've had to do. I shared with the Maryland Municipal League, and also with MACo, that the last things, they should take some solace

from the fact that the very last things we cut in the course of this three-year march through the desert of declining revenues will also be the first things we look to restore as our revenues come back.

So Mr. Comptroller, I can assure you that I have heard the complaints of people in the counties and in the towns of Maryland as well. And we are looking at revenue performance. And if there is some relief we can provide sooner rather than later we will. But all of that I say within the context of pointing out that we are also, you know, constructing a budget for next year and closing a billion dollar gap there. It's a much smaller gap than it would have been were it not for the additional job creation and the revenue forecast, but I hear you loud and clear. And we are looking at some possibility of doing something. And in the meantime we are pushing FEMA, and there are some dollars that have been forthcoming for the storm reimbursements that are helping somewhat out there. But I am focused on this, Mr. Comptroller, and hopefully we can find a way to ease the pain out there a little bit on this score.

COMPTROLLER FRANCHOT: Great. And I didn't, you know, you have the cards, Governor, as far as helping a little bit here. But it's not your fault. You know, we cut some of this at the Board of Public Works, but others then memorialized it and made it an annual thing. The problem is, it's one of those expenditures that is incredibly cost effective. And frankly I hope, you know, the Governor has tried to manage through a lot of problem areas. But I certainly hope you can look in your budget and we don't have to do this out of a fund balance or something, but we can figure out some way to provide some relief. Because there's a long winter possibly coming up. And, you know, we need to get some relief down there. But thank you, Governor, for your work on this.

MR. BARTLETT: Yes, sir.

GOVERNOR O'MALLEY: Thank you. Anything else on Transportation? Hearing none, the Comptroller moves approval, seconded by the Treasurer. All in favor signal by saying, "Aye."

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed?

(No response.)

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

SECRETARY MCDONALD: You have --

GOVERNOR O'MALLEY: I'm sorry. Ooh, I apologize. Hold on. That does not conclude our Agenda. How could I forget? My favorite, you're my favorite secretary, Mr. Collins.

MR. COLLINS: You move approval of my items

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(Laughter)

GOVERNOR O'MALLEY: Tied for first place, huh? Don't tell the others.

MR. COLLINS: Governor, Madam Treasurer, Mr. Comptroller --

GOVERNOR O'MALLEY: We have one more item, I apologize. Hold your horses. Department of General Services.

MR. COLLINS: Today we have thirty-three items on our Agenda, including one supplemental. We have revised Items 8, 12, 14, and withdrawn Item E on

5-GM. And we'd be glad to answer any questions you have at this time.

GOVERNOR O'MALLEY: Anything on Department of General Services? Madam Treasurer? The Treasurer moves approval, seconded by the Comptroller. All in favor signal by saying, "Aye."

THE BOARD: Aye.

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

(No response.)

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

(Whereupon, at 11:37 p.m., the meeting was concluded.)