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HONORABLE NANCY KOPP, Treasurer;

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Compliance, 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. Welcome to the Board of Public Works. Today is October 6, 2010 in the great State of Maryland. And before we begin, and we're going to begin because we have distinguished visitors here, not visitors, citizens here, and leaders from Queen Anne's County. So we're going to, our first one will be the DGS Agenda items. But before we begin that, let me ask the Comptroller and the Treasurer if they have any thoughts as we open this meeting?

COMPTROLLER FRANCHOT: Governor, thank you, and Madam Treasurer. I hope everyone is enjoying the brief respite of sunshine that we're getting. I was in St. Mary's County, Governor, last week. And they told me they had thirteen inches of rain in one day.

GOVERNOR O'MALLEY: They're the winner.

COMPTROLLER FRANCHOT: So the year of extreme weather continues. We did have another nice ray of sunshine, frankly, when both of the, what I call our Maryland teams, went into Pennsylvania and

played their arch rivals. And both the Ravens and the Redskins gave the teams from Pennsylvania a comeuppance and came home winners.

(Applause)

COMPTROLLER FRANCHOT: So you can tell Donovan McNabb that you can go home, go home and win.

I just wanted to briefly share some other good news that my office released today. Thanks to innovative partnerships that Maryland has created with the IRS we have now collected in the last four years over \$160 million in tax revenues that heretofore have been very, very difficult to collect because they're in some form of litigation or another.

TREASURER KOPP: That's terrific.

COMPTROLLER FRANCHOT: And, and so these are

--

GOVERNOR O'MALLEY: How much is it?

TREASURER KOPP: Excellent.

COMPTROLLER FRANCHOT: \$160 million over four years. We are --

GOVERNOR O'MALLEY: That's great.

COMPTROLLER FRANCHOT: -- going to be on track to be generating almost \$100 million. And I emphasize, you know, these are not new taxes, these are not expansion of taxes, they are simply better ways of making compliance and getting, frankly, money that the courts have already adjudicated belongs to Maryland. But because of the litigation situation, when you individually go after these companies it takes forever. And it in effect becomes very difficult to collect.

We were the first State in the Union to partner with the IRS on one program called Federal Vendor Offset. The basic idea there is that before sending payment to any vendors we check with the IRS to see if the vendors had any federal tax liabilities. It's a very big computer tape that they send us of everybody that owes the feds money. We cross ref it across our State vendor payments. The IRS does the opposite. They check their vendor payments against anyone who owes the State of Maryland money. It cost us back in '07 about \$1 million to upgrade our computers, because the feds are just so huge. And I

think that's the only reason other states never did it. We, we have sent the feds on average \$50,000 a week in dollars that we garnish from State vendor payments that are owed them. For the last three years they've been sending us \$320,000 a week on average.

TREASURER KOPP: That's the way it should be.

(Laughter)

COMPTROLLER FRANCHOT: But, you know, in effect the \$1 million we had to invest to get into the program was paid in the first month. And we're now in almost the thirty-sixth month.

So we recently went over the \$50 million mark in that one program alone. And frankly, in this climate every bit helps. It's just another example of how we're using technology for effective compliance. And I really want to thank the Governor and the Treasurer, leaders of the General Assembly, but particularly my colleagues here on the Board of Public Works for supporting an investment that pays off for the people of Maryland.

I would like to take just another note, because I'm Vice Chair of the Pension Board of Trustees with the Treasurer as the Chair, to note that a very important task force will hold their first meeting tomorrow. The Commission chaired by former Speaker Cas Taylor, and frankly includes the Treasurer and several of Maryland's most respected public and private sector leaders. It has been tasked with examining the long term financial sustainability of our State's retirement systems and the healthcare benefits that are offered to our retired State government workers. These are issues of vital importance to our State's fiscal well-being and the challenges that we face in meeting our long term obligations must not be taken lightly.

Now obviously these deliberations are going to be important to the active and retired public employees who have consistently delivered superior services to Maryland families over the span, frankly, of multiple generations. Individuals that have worked for me with distinguished service for more than forty years in my agency. And that's true all across State



government. And in doing that they've given Maryland a reputation as a wonderful place to live and work and invest. Given the gravity and complexity of these issues, because they are enormous fiscal issues and they are tremendously complicated, I often cite than when an air craft carrier is out on the open ocean it takes eleven miles to stop the air craft carrier. These pension systems are enormously complicated fiscal enterprises and they must be examined in a thoughtful and deliberative manner without being turned into any kind of ideological football that's kicked around.

Given the stature of the members of this Commission I have every confidence that these issues will receive the serious examination they deserve and with a due sense of urgency.

If I can make just one more comment at the end, Governor, on a sadder note. The Director of my General Accounting Division passed away over the weekend. Roland Unger had a long and distinguished career in both the public and private sectors. Anyone here from Carroll County may recall his years of

service to the City of Westminster. And those of us who have been in the State for some time will recall his effective service to the State's Supplemental Retirement Plans. He was a good man, effective and honorable public servant. I personally am going to sorely miss his services. And I hope that all of us will send our thoughts and prayers to his wife Ann and his entire family during a difficult time. Thank you, Governor.

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

TREASURER KOPP: Thank you, Governor. I too want to extend my personal sympathies to the Unger Family. Roland worked with Supplemental Retirement System for a number of years when I was on the Board and was really very sound, outstanding, very nice, nice gentleman.

Governor, I was going to both commiserate and congratulate you and the State on a recent promotion. The outstanding and brilliant woman whom you appointed to be Commissioner of Financial --

GOVERNOR O'MALLEY: I was going to say,  
which one?

TREASURER KOPP: -- matters.

(Laughter)

TREASURER KOPP: Sarah Bloom Raskin was  
confirmed and is now a member of the Federal Reserve  
Board of the United States.

GOVERNOR O'MALLEY: That's a big deal.

TREASURER KOPP: About the most outstanding  
appointment that a person can have in the financial  
world. It is the Board that makes a tremendous amount  
of difference to the financial health of the country  
and of all its citizens. And I know we will all be  
sending Sarah our very best wishes because I know she  
can do a terrific job. She's very good, as you found  
out, looking out for the consumer, for the individual,  
putting a human face on things. But she also is an  
outstanding economist and theoretical financial  
wizard. And we are all very fortunate to have her  
there.

I was going to mention the Commission on the  
Sustainability of Benefits also, and I'm really very

pleased that the Comptroller did and made the statement that he did. I want to associate myself with his statement. These are difficult questions. This is not, I believe, a crisis but a time for thoughtful people to look at the situation in Maryland. We're not Illinois, we're not New Jersey, we're not California. But to look at the situation and the best way to attract and retain outstanding public employees in the 21st Century and look at total compensation. And for that I thank you very much.

GOVERNOR O'MALLEY: Thank you. Let's go --

TREASURER KOPP: I have to say one more thing.

(Laughter)

GOVERNOR O'MALLEY: Sure.

TREASURER KOPP: I couldn't let the moment pass without informing everybody in this room, because some of them knew my daughter, Emily. My daughter Emily was the first child born to a woman State Legislator in the United States, as far as we know, a woman in office. And three weeks ago yesterday Emily

gave birth to two wonderful twin children in Amsterdam.

GOVERNOR O'MALLEY: That's great.

(Applause)

TREASURER KOPP: Thank you.

GOVERNOR O'MALLEY: I'm glad you did say that.

(Laughter)

TREASURER KOPP: Pretty cool.

GOVERNOR O'MALLEY: I was wondering why you were beaming.

TREASURER KOPP: Yes.

(Laughter)

GOVERNOR O'MALLEY: Well, that is good news. But let's go to the Department of General Services Agenda items.

MR. COLLINS: Yes, sir.

GOVERNOR O'MALLEY: And ask the County, we have a number of leaders here from Queen Anne's County. And so let's focus on Item 21, in fact, of the Department of General Services Agenda. We have joining us Gene Ransom, President of the Board of

Commissioners. And we also have Commissioner Carol Fordonski, Carol thank you for being here. And County Administrator Gregg Todd is with us as well. So what do you want to tell us about Item 21, Commissioners?

MR. RANSOM: First, Commissioner Fordonski and I are here on behalf of the citizens of Queen Anne's County. And good morning Treasurer Kopp, Comptroller Franchot, and Governor O'Malley. First I want to give you a quick update on the emergency room. It opened on Monday.

GOVERNOR O'MALLEY: That's great.

MR. RANSOM: And thanks to your help, your office's help, you obviously signed two bills into law and you helped us with some of your staff, keeping them working together so we could get that thing done quickly. And twenty folks used the facility on the first day.

GOVERNOR O'MALLEY: Good.

MR. RANSOM: And more importantly, about fifty folks went to work in the facility on the first day. Because obviously adding jobs to the County is a good thing given these tough times. And we also are

moving forward with the ancillary buildings. The County has sped the approvals through and they are getting built. So we are really excited. It's going to be a big benefit, and it's a good example of the State and the County working together with private industry to get something done.

And actually that's why we're here again today, is I have the pleasure --

TREASURER KOPP: Good segue.

MR. RANSOM: Yeah, I'm trying my best, I'm doing my best. And the pleasure of talking about another hopeful public/private project that we can get approved. The Matapeake Model has been somewhat of an albatross around Queen Anne's County's neck since '66 or '68, before I was born. Essentially this project has a bit of a checkered past. But the good news is, is more recently, with the help of the Treasurer and the Governor and Comptroller and this new direction that we've taken, we've come up with a really good public/private partnership with two companies. Miltec and NRL, who are both growing companies in Queen Anne's County. And they are really good businesses.

Miltec does UV screening, high tech jobs, kind of new science, new technology, new manufacturing. And NRL does all kinds of manufacturing of high tech equipment. They do some work for GE, healthcare equipment, they do some work for some defense companies. So these are not, these are the kind of jobs that are the jobs for tomorrow and they are growing businesses.

GOVERNOR O'MALLEY: That's great.

MR. RANSOM: So what we're here today is to essentially ask that we continue this partnership. And I can't say enough about how wonderful your staff has been, the Department of General Services, and everybody with the State. This really has not been an easy situation given the long history and the difficult situation with the property. But essentially it's pretty straightforward. We're not asking for any money, so that's a good thing. We're simply asking to help these two private businesses purchase the property, take over the property, and expand their businesses in Queen Anne's County.

GOVERNOR O'MALLEY: That's great.



MR. RANSOM: And this is not speculative at all. These are growing businesses that have done well during my term. And Commissioner Fordonski and I and the entire Board, all five of the Commissioners, are strongly supportive of this. And I turn it over to Gregg Todd to give us a little more detail.

MR. TODD: Good morning Treasurer Kopp, Governor, and Comptroller Franchot. I appreciate you having us in today. I asked Gene to keep it short, and that's about as short as Gene can keep it.

(Laughter)

MR. TODD: So we'll move from there. I wanted to give kind of a quick overview for the public and for everyone that's watching on what the Matapeake Bay Model is. The Matapeake Bay Model was a project that was started back in the sixties when the federal government looked at the entire Chesapeake Bay estuary and wanted to model the effects that the Bay has. The, with the Bay Bridge, or with the Bay Bridge opening in 1952 the site that it sets on was the old Matapeake Ferry Terminal site so that land became available. So in 1970 Maryland sold the site, fifty-

three-acre site, to the U.S. Army Corps of Engineers for \$10. And at the time it might not have seemed like a good deal but that's the only money that's been made off the site in forty years so it actually was pretty good.

The Bay Model opened in 1976 and shortly thereafter computer models came along that duplicated exactly what could be done with the model. So it became obsolete. So in 1984 the federal government closed the Bay Model and agreed to give the site back to the State of Maryland.

So in 1994 the Board of Public Works voted to take the property back. And with that they had a plan to put a shrimp farm down there. So they brought a shrimp farmer in, and that was one of the first of many plans down there that didn't work out quite as well. So that did not work. And in 1996 they came to the County and said, "Listen, we would like to give the County this fifty-three-acre site but we want to see some economic development generated here. We know it's got some uses so we'd like to see you use it." And with that we would like, the State requested that

20 percent of the revenue come back to the State. And they also put a reverter clause on the project so that if in ten years if we did not come up with an economically viable project the property would revert to the State.

So we had a couple of projects that we tried to do. We did a paper storage project that didn't work. And then about 2003 the President's Day Snowstorm of 2003, half of the building collapsed. That actually was a pretty monumental thing for us. It did two things. It allowed us to go in and take the insurance money and clean the site up, and get rid of a majority of that fourteen-acre building. We brought another company in, Matapeake Maritime Center, to do a, maritime operations out of there. And that ended up not working out well either. So that brings us to today.

In 2008 the Commissioners said, "Listen, we need to find a use for this building." The State had given us a three-year extension on the reverter clause. That clause is up at the end of this year. So we worked with MEDCO. MEDCO did a survey of what

we could do there. Found out that light industrial would actually work. So we put an RFP out to the community, and we had two respondents. We had Linden Contracting, who wanted to take the whole site on and develop it as flex space, light industrial. And we had Miltec, who was a company in the business park, that wanted to come in also. So we negotiated with both of those, and that's when we started working. And you can see on the slide there, thank you Tom, by the way, there's an overview of what the Bay Model was before, after the snowstorm. And the white portion at the bottom of your screen on that fourteen-acre building was the part that collapsed. That has since been cleaned up. We are finishing up the removal of that building now.

So we went to the Department of General Services, and thank you, Secretary Collins for your help. And thank your staff, also. Michael Gaines and Gerry Krebs were phenomenal. Gerry, I hear this is his last meeting so he's going out on a good note, here. And we're asking for four things, basically.

Tom, I don't know if you can go back to the JPEG that had the phase one? There you go.

What you're looking at on the screen, the three buildings that are shown, that's phase one of the project. And we are asking that we be allowed to sell phase one for \$50,000 an acre to Miltec and to Linden Contracting. We're asking that the reverter clause that goes along with phase one be extinguished and removed so the deed is free and clear. We're asking for an extension on the reversionary clause on phase two, which Tom, I don't know if you can get to the next slide or not, is the remainder of the property that you see in green to the right of the screen, for an additional five years so we can work on developing that. The Commissioners -- oh wait, the fourth thing is the original revenue sharing agreement said that 20 percent of the revenue went to the State. To sell the land is roughly \$1 million. So the \$200,000 that the State would be getting we are asking that that be put back into the infrastructure on the site.

The County Commissioners have committed to all of the money that they generate from the sale of the land going into the infrastructure. And in addition to that we're working with DBED's CDBG Program to get another \$500,000 to in towards the infrastructure. So for a \$1.3 million to \$1.5 million project for infrastructure, that just about covers us. We would like the State money in case we need it. Our plan is to use that last. So if we get through the infrastructure and we have money left over naturally we will give that back to the State.

We are doing the majority of the work in house through our roads department. The HER cuts have left them looking for jobs, and we are going to do that. The building is all being recycled. And the concrete footers for the building, we're going to excavate and we're going to crush that and put that back on the site as road base. So everything on the site is being used in a productive use.

We have two, like I said we have the two businesses, Linden and Miltec, that are moving in. Linden is a contract purchaser and they are bringing

in NRL, and Jim Smith from NRL is here with us today. And the Miltec is looking to relocate there, and we have Bob Blandford and Charlie Blandford here representing them.

And the really exciting thing about this project is that, not so much what we're doing, what the County and the State is doing, but it's what these companies are doing. These companies in this tough economic time are growing. And they are not just growing a little bit, they are growing a lot. If you can look, that's Miltec's projected revenues through 2018. Thomas, if you can go to the next slide? And that's Miltec's projected growth in employees from about forty this year to over 120 by 2020.

GOVERNOR O'MALLEY: That's great. And remind us again what Miltec --

MR. TODD: Miltec does, they do UV curing.

GOVERNOR O'MALLEY: Great.

MR. TODD: This, the table that's in front of you, hardwood floors. They sell the bulbs and they sell the machinery that cures that. And their curing process is done strictly through UV so there's no

solvents. So it's an incredibly green technology. There's no emission coming out.

COMPTROLLER FRANCHOT: And isn't it true that they sell a lot of these products to China?

MR. TODD: They do. They have a very strong overseas --

MR. BOB BLANDFORD: We export to China.

COMPTROLLER FRANCHOT: Thank you. Thank you.

SECRETARY MCDONALD: Gregg, if you could identify any speaker?

MR. TODD: Yeah, and I'm sorry, that was Bob Blandford speaking there. Yeah, Bob likes to say that they're one of the companies that actually fill the cargo containers up going back to China when they come over here.

(Laughter)

MR. TODD: So it's a great --

TREASURER KOPP: That's a story we like to hear.

MR. TODD: That's right, it's a great business. And Jim Smith at NRL, they do a lot of work



for GE Medical. I've been through their shop, a lot of you guys have been through their shop, you go in with anything they can build it. So it's a pretty neat group. And they're working on some solar, it's very interesting and I know Treasurer Kopp was very interested in it. But really, this is what we're here for. We're here for the jobs. You know? We're here to get, we're here to provide good businesses with a site that they can go on that they can build and own their own building. They're not asking for subsidies, they're not asking for any government assistance, other than a place where they can grow. And, you know, short of the government functions of roads and schools and public safety, that's something that I think is overlooked a lot from the government side, is our ability to go out and provide an economic opportunity for businesses like this. So we're very, very excited about it.

We also have today, we have Memo Diriker, we have Sandra Bunch, sorry, Sarah Bunch, and Jim Garrity from BEACON who did the, Tom I don't know if you can get the next, they did the BEACON study, the economic

development study that I know you all have seen. And if you have any questions I would just as soon turn it over to them because I, that's something that I can't really answer on.

But in closing I would like to, I would be remiss if I did not thank some people here. Your staff is phenomenal. Sheila McDonald, Thomas Hickey, Howard Freedlander, and Jerry Klasmeier are just a pleasure to work with. And they make this process, they make the very unknown process of coming before the Board of Public Works, they give it a personal face and they help us out a lot. So we really, we really respect them and like working with them. And I would also like to thank Faith Elliott-Rossing who is our Director of Economic Development, and David Bliden, who we also hired to help us with this. David is in South Africa right now on a wine tour, so --

(Laughter)

MR. TODD: -- that's really probably all I need to say about Mr. Bliden.

(Laughter)

MR. TODD: Any questions?

GOVERNOR O'MALLEY: I'd like to hear from the businessmen.

MR. TODD: Excellent.

GOVERNOR O'MALLEY: The entrepreneurs of the clean tech, green tech innovation economy that Maryland is creating.

MR. BOB BLANDFORD: What would you like to know?

GOVERNOR O'MALLEY: So --

SECRETARY MCDONALD: Could you just introduce yourself for the record and say your company? Both of you, and then --

MR. BOB BLANDFORD: Yes. Sure, I'm Bob Blandford, I'm Senior Vice President of Miltec UV.

GOVERNOR O'MALLEY: And give us a -- I'm sorry. Go ahead.

MR. SMITH: Jim Smith, President and CEO of NRL & Associates.

GOVERNOR O'MALLEY: And so how many employees do you have right now, and what will you --

MR. BOB BLANDFORD: We have forty.

GOVERNOR O'MALLEY: And you anticipate adding another 120, is that the number I heard?

MR. BOB BLANDFORD: Up to 120 in about the next eight to ten years.

GOVERNOR O'MALLEY: That's great. And you just came back from China? You export to China?

MR. BOB BLANDFORD: We export.

GOVERNOR O'MALLEY: What a great idea.

MR. BOB BLANDFORD: Yeah.

(Laughter)

MR. BOB BLANDFORD: It's an unbelievable concept.

GOVERNOR O'MALLEY: Let's export products and not jobs to China.

MR. BOB BLANDFORD: No. We want to manufacture here in Maryland, not China. We sell to China manufacturing. It's, you know, there's a big need over there for high technology because they don't have it yet. And so our equipment is extremely successful and our parts, so we sell spare parts to existing UV systems that are over in China. So we've been very successful. And had zero sales in China as

of what, about three years ago? So we've grown it quite a bit. We now export to Japan, Southeast Asia, India. So it's --

GOVERNOR O'MALLEY: And it's a clean technology?

MR. BOB BLANDFORD: It's a green technology because the chemistry that cures underneath the high powered UV lights has no solvents. Typically with wet chemistry there's solvents that evaporate into the atmosphere and that's not a good thing.

TREASURER KOPP: It's more than just green itself. It actually is an improvement in, a significant improvement from traditional practices in terms of --

MR. BOB BLANDFORD: You need to come sell for us.

(Laughter)

TREASURER KOPP: I was just very impressed.

MR. BOB BLANDFORD: She's absolutely right. It gives, UV chemistries typically give you performance enhanced properties, such as abrasion resistant coating on hardwood flooring, high speed

production. You can cure it instantly, so optical fiber cable is all cured with high powered UV lights. So all of your Verizon FIOS, all that optical fiber going in worldwide for the infrastructure in China and India is all cured under high powered UV light, and that's our technology.

GOVERNOR O'MALLEY: That's great.

MR. BOB BLANDFORD: Yeah.

GOVERNOR O'MALLEY: And Mr. Smith?

MR. SMITH: We're a contract manufacturer so we do work for someone like Miltec, GE Medical, Northrup Grumman, Lockheed Martin, and it goes on and on and on. We're more of a build to order, build to print. If you can imagine it, we can pretty much build it. We've grown, doubled in four years.

GOVERNOR O'MALLEY: That's great.

MR. SMITH: I mean we took over, we started in '86. I actually started there in '86, one of the first employees. Myself and two other individuals took the company over in 2006. The previous owner passed away from pancreatic cancer. Since then we've doubled in size. We're at sixty-two employees now,

sixty-three employees actually today, from forty. Our revenue has doubled in four years.

GOVERNOR O'MALLEY: That's great.

MR. SMITH: And it's, it's, we're looking at anywhere from a conservative 15 percent to 30 percent a year in growth.

GOVERNOR O'MALLEY: So you're specialty manufacturing?

MR. SMITH: We're specialty manufacturing.

GOVERNOR O'MALLEY: Uh-huh.

MR. SMITH: Machine fabricated, electromechanical assembly. GE Medical, we do Maternal/Infant Care Division with them, critical care incubators and infant warmers. We just got awarded a new contract for ONI, is a company that does MRI chairs out of Connecticut. We're be building the chairs for those MRI machines for GE.

GOVERNOR O'MALLEY: Mm-hmm.

MR. SMITH: It's, Black and Decker used to be 60 percent of our business in '99. They went to China. They actually have called up in the past couple years and asked to come back, and we're not, at

this point we're not interested. It's, what we're hearing in the marketplace out there from the higher end customers, it's not worth the aggravation to go to China with what you have to deal with, with the coming back, from freight, container costs. It's starting to turn around.

GOVERNOR O'MALLEY: Good.

MR. SMITH: The, you know, the shuttle project that they saw for GE, when the tours went on. That actual project was designed, it's a, the shuttle is a device that hooks to the incubator. It gives them self-contained power, air, oxygen so they can transport the babies out of the NICU and take them to the MRI, X-ray, to the parents, wherever. That was designed in India. We spent a year and a half of our time fixing the design to get it to the point where it needed to be manufactured. It was a mess. It was a mess.

GOVERNOR O'MALLEY: Hm.

MR. SMITH: What we see from GE and everybody else is that they realize that the third world countries have their technology and what they



need to do, hospitals, so on. America, they don't want to spend \$4,000 for an incubator for a hospital. They'll spend the \$30,000, \$50,000, \$60,000 for the incubator. So the manufacturing does seem to be staying here more so than the way it was in the early '03, '04 era.

GOVERNOR O'MALLEY: Right.

MR. SMITH: So it's been good the past four years.

GOVERNOR O'MALLEY: Well you guys represent, the U.S. Chamber of Commerce named Maryland one of the top two states in America for innovation and entrepreneurship. And your stories and what you're doing, soldiering forward in a courageous way out of this recession, and building and creating jobs, and opening up new markets for new American products, are why the Chamber, you know, would conclude that. We're, these next two decades can be Maryland's decades because of you guys. So we're glad to play a small role here in accommodating the growth of your innovation and what you're doing for our economy. Thank you all very, very much.

MR. BOB BLANDFORD: Any tax breaks on research and innovation?

(Laughter)

MR. BOB BLANDFORD: Well we actually, we actually did extend the sunset on the R & D tax credit this year. And we increased by \$2 million our biotech tax credit. And you should also know that we are one of the only states that passed a new hiring tax credit. So \$5,000 for any Marylander you hire off of the unemployment rolls of our State and get them back to work. And additionally, President Obama just signed a big Small Business Recovery bill two weeks ago that allowed us to grow our Small Business Loan Guarantee Fund from \$10 million. Now the President has put \$23 million in federal dollars into that as we prime the pumps of small business lending so that you guys that are growing can, you know, hopefully we coax the banks out of their shells, and --

MR. SMITH: That's, that's the problem.

GOVERNOR O'MALLEY: Because they are evaluating based on your cash flow of the last two years, right? And nobody has had cash flow the last

two years. We need Presidential pardon for cash flow in 2009.

(Laughter)

MR. SMITH: Our cash flow is tied up in growth.

GOVERNOR O'MALLEY: Pardon?

MR. SMITH: It's tied up in growth.

GOVERNOR O'MALLEY: Right.

MR. SMITH: Our cash flow is tied up in growth, and you can look at the balance and you can see.

GOVERNOR O'MALLEY: Right. But you've run into that problem with the banks, right?

MR. SMITH: Pretty much, yeah. You know, the bank only wants to loan you money if you don't need it.

GOVERNOR O'MALLEY: Right. Well, we have that Small Business Loan Guarantee Fund. We're trying, we are reaching out to the banks, making them aware of it. Because, I mean, in essence what we do is we take a portion of that risk. And then -- look,

thank you guys very, very much for coming here. You want to call this vote?

COMPTROLLER FRANCHOT: I have --

TREASURER KOPP: Can I just ask a question -

GOVERNOR O'MALLEY: Sure.

TREASURER KOPP: -- about timing? Assuming this is approved, as I think it will be right now, what's the timing of --

MR. BOB BLANDFORD: We are ready to move now. I mean we are, our bank has already given us a green light for financing, for the construction. We just have, we've met with one architect, we have to get through several architects. Then we select a builder and move forward. So we're ready to get moving.

MR. TODD: Shovels in the ground before this Board leaves office. That's our Board.

TREASURER KOPP: Really?

MR. TODD: That's what we want to see, yeah. We want --

SECRETARY MCDONALD: Your Board.

TREASURER KOPP: Well I mean that, it can't take that long, that's five years.

SECRETARY MCDONALD: He's talking about his Board. The County Commissioners. I was afraid he was talking about our Board, but --

TREASURER KOPP: No, that's very exciting.

GOVERNOR O'MALLEY: Mr. Comptroller?

COMPTROLLER FRANCHOT: I wanted, thank you, Madam Treasurer. I just wanted to thank Commissioner Ransom for bringing this presentation to us, and Miltec, and NRL. Obviously it's a good project and we're going to support it. But I also wanted to note that last week I was at the ribbon cutting for the emergency room. And I want to applaud specifically you, Commissioner Ransom, and also Senator Pipkin for the leadership that allowed government to partner and produce that. But frankly calling it an emergency room is like saying our Shock Trauma is just a run of the mill shock trauma program. We have the finest shock trauma unit in the world and that emergency room, as you described it, is a 21st century model of what a stand alone clinic should be. I mean,

everybody who, hopefully nobody has to go there out of necessity. But if you happen to stop by and look at it you're going to be amazed at the technology. And I just applaud Queen Anne's County frankly for having the foresight to move forward with that.

It was driving rain when we were all there cutting the ribbon. But it just underlined the fact that, how important that is. Because people, you know, who have trauma do not want to have to take a chance with the Chesapeake Bay Bridge. And now you've got something there for Queen Anne's County. So hats off to you.

I have two quick questions. One, since you're here, what happened to the community pool that we were, are you still using Chesapeake --

MR. RANSOM: Only, actually that is another success story.

GOVERNOR O'MALLEY: Gene, you need to come to the microphone.

MR. RANSOM: We're having a conversation.

GOVERNOR O'MALLEY: Or otherwise our web broadcast will not be able to --

MR. RANSOM: That's another success story.

GOVERNOR O'MALLEY: Thank you.

MR. RANSOM: We convinced Chesapeake College to keep it open for the kids. It took a little arm twisting, but they saw the light and have agreed to an extension. And the Board recently entered into an agreement with the Talbot County YMCA and we are in negotiations and very close to working out something in Centreville to build a new pool. So that is going to, it looks like it worked out. We have a, we voted three to two at the last meeting to move forward with a plan with the Talbot County YMCA to come up with a fundraising plan to get it done, and they're willing to commit \$2 million towards the project. It's going to be another public/private partnership. So hopefully that will be open for the kids there. So that's another success story.

COMPTROLLER FRANCHOT: Excellent. And then one final question, on the MTA commuter bus service. Do you hear from your riders --

MR. RANSOM: That is --

COMPTROLLER FRANCHOT: Where are we as far as --

MR. RANSOM: That has got to be one of the best things, great work, that is one of the best things you guys ever did. As you know, one of the things that Queen Anne's County kind of gets a rap on is for being a commuter kind of county. You know, 60 percent of the folks who live in Queen Anne's County cross the Bridge every day to go to work. So by getting those buses and getting those, and working with the State, and essentially the County and the State, for those of you who don't remember, worked together to find additional places for folks to park so they could ride the buses to D.C. And we got additional bus service there during this very difficult time. But again, this is very positive because a lot of people who were driving cars across the Bridge every day are now getting on a bus. And those buses are nice, Dillon does a very good job. And again, public/private partnership, I hear nothing but positives. I've been encouraging some of the Commission candidates to go down there and campaign



with donuts as they, before they go across the Bridge. And that seems to be working out very well. We hear only good things about that. And I appreciate everything, again, the three of you have done to keep that going and expand that. That's a great service.

GOVERNOR O'MALLEY: So it sounds like with the emergency center, with the expanded bus service, with the addition of new jobs, that you are moving forward and not back?

MR. RANSOM: We are moving forward and not back, yes, very much so. And you can be green and grow business. Because everything we've done is very green. The ER was a green project, these are green projects, they're not, they're not against one another. I think that's another important message here.

GOVERNOR O'MALLEY: It's real.

MR. RANSOM: It is real.

GOVERNOR O'MALLEY: It's all real, and it's happening.

MR. RANSOM: And government does make a difference. Thank you.

GOVERNOR O'MALLEY: And each of us must try.  
All right. Mr. Comptroller, do you want to move  
approval?

COMPTROLLER FRANCHOT: Please, move  
approval.

GOVERNOR O'MALLEY: Madam Treasurer, would  
you like to second approval --

TREASURER KOPP: With pleasure.

GOVERNOR O'MALLEY: -- of Item 21?

TREASURER KOPP: With pleasure.

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

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed?

(No response.)

GOVERNOR O'MALLEY: The ayes have it.  
Unanimous. Thank you guys very, very much. Go forth  
and multiply jobs.

(Laughter)

GOVERNOR O'MALLEY: How about the balance of  
the DGS Agenda items?

MR. COLLINS: Yes, sir. Governor, I have an additional twenty-one items. But before I get to that, may I introduce to the Board a guy you've seen many times, Gerry Krebs, who is my Director of Appraisals and Evaluations.

GOVERNOR O'MALLEY: Gerry, stand up would you?

MR. COLLINS: Thirty-three years or so, he's decided to finally retire from us and it's a great loss. But I am so happy with him. He's just been an outstanding --

(Applause)

MR. COLLINS: And just, Item 21 was in fact his last item in the Department.

GOVERNOR O'MALLEY: Wow. Gerry, come on up here. Let's do a quick picture. Thirty-three years, huh? Thank you. Congratulations to you.

MR. COLLINS: Great.

GOVERNOR O'MALLEY: Gerry, thank you for your dedicated service. We have, our State and local government bureaucracy ranks as the eighth smallest among the fifty states on a per capita basis.

MR. COLLINS: Some days it feel that way.

(Laughter)

GOVERNOR O'MALLEY: And it's, but the commitment of so many people doing their jobs professionally, notwithstanding the furloughs and the difficulties of these years of serving the public, I really want to thank you, Mr. Krebs, and by extension everyone else.

TREASURER KOPP: How many years has Mr. Krebs?

GOVERNOR O'MALLEY: Thirty-three. That's a lot of service.

MR. COLLINS: Yes, sir. And Governor, I have twenty-one remaining items on our Agenda, including now one supplemental. Item 2-M has been revised. And we'd be glad to answer any questions that you have.

GOVERNOR O'MALLEY: This isn't the one, I know Chief Rudy Hall is here.

MR. COLLINS: Yes, sir.

GOVERNOR O'MALLEY: Item 9? That's not on your Agenda, is it?

MR. COLLINS: It is on my, on my --

GOVERNOR O'MALLEY: That's on the DGS

Agenda? SECRETARY MCDONALD: 9-CGL.

GOVERNOR O'MALLEY: Item 9 is Bending Water  
Park.

MR. COLLINS: Oh I'm sorry, that is not --

GOVERNOR O'MALLEY: No, that's not this?  
I'm sorry, Chief. What is that, on the Open Space?

TREASURER KOPP: No, it is.

MR. COLLINS: Is it here?

TREASURER KOPP: It is.

MR. COLLINS: Oh --

TREASURER KOPP: It's a matching grant.

GOVERNOR O'MALLEY: Okay. Chief, do you  
want to come forward? We're joined by Chief Rudy Hall  
of the Accohannock Tribe, also known as Chief Laughing  
Otter. And he's a very good man who serves his people  
well. So Chief, what is this item?

CHIEF HALL: First of all, I want to thank  
you, Your Honor, and your administration. And I'd  
like to thank Delegate Conway and Page Elmore for  
introducing the bill. And we have a project that's

going on. I don't know whether the people know how rich that the State of Maryland is in history, both American Indian and also European. And we have chosen to represent the American Indian down in Somerset County to build a living Native American village with a reception center that serves American Indian cuisine, a reception with classrooms to educate the public, and also a museum.

GOVERNOR O'MALLEY: That's great.

CHIEF HALL: And it's been a long, drawn out process. We started with one oyster sandwich at a time to pay the bills. We are the only American Indian tribe in the State of Maryland that has an office outside of the home. We have an office and we also have thirteen employees. And as far as I know, we're the only Indian tribe that has employees. But that is shortly coming to an end because the grants have ran out. And it's very appreciative if we receive the bond that we have been approved for, or that we've put in for. It makes it more in this project that we're on. We'll hire 100 people in Somerset County and they are people that, of low

caliber, that we're working with. They can't find jobs otherwise.

And also, we have a project in hand that we're working on. We're working on an oyster restoration project that the oysters from the Chesapeake Bay will go all over the world. And at some time when the project is further into, we're about two-thirds of the way with developing the project. We're working with the federal government on it. And at some time shortly we will come to the State and ask them if they can help us with it. And it's a well worthy project and it also creates more jobs in the Lower Somerset County.

GOVERNOR O'MALLEY: That's great.

CHIEF HALL: And I want to thank the Governor, because this is the first administration that I can remember of that's ever recognized the Indian people and tried to help. And I wanted to thank you deeply for that.

GOVERNOR O'MALLEY: Okay, thank you, Chief. Thank you very, very much.

CHIEF HALL: Thank you much. Could she say just --

GOVERNOR O'MALLEY: Absolutely.

CHIEF HALL: -- a few words about what the project? I get all excited and I'll stay here for all day long.

(Laughter)

MS. MAJORS: Sherry Majors, Accohannock Indian Tribe. I'm Chief Rudy's assistant. Yes, our Bending Water Park project is an environmentally friendly, ecotourism project. A lot of people associate the Lower Eastern Shore with its marshy vistas or the ocean side to go to Ocean City, and the amusements that are there. We would like to present something that is natural, environmentally friendly, no electronic gadgets or such. We would like for our children and families to have a place to go where they can interact together, go canoeing, kayaking, paddle boating, take part in activities in our living village where there will have hands on opportunity for ancient Native American crafts so that we can keep that part of our history alive.



And another initiative, because I am member of the Maryland Indian Commission, we have an educational initiative. And what we're hoping to do is meld the education, our Maryland history, not as Native American or as colonial but how the Native American and colonial interacted together to create who we all are today. And I'm looking forward to getting further involved in this. And the tribe will be very much focused on that with our classrooms, and our museums, our artifacts. And so we just appreciate all your support. And keep us in mind, you know, when, if you see something come across your desk, "Oh yes, I remember those folks." Thank you.

GOVERNOR O'MALLEY: And Ms. Majors, thank you. I love this project. How we treat one another is reflected in how we treat nature. All right, any other questions? Mr. Comptroller?

COMPTROLLER FRANCHOT: Item 17?

GOVERNOR O'MALLEY: Item 17.

MR. COLLINS: The University of Maryland Medical Systems ER Expansion Project. Yes, sir?

COMPTROLLER FRANCHOT: I neglected earlier when I was describing the Queen Anne's Trauma Clinic, I would call it, which Shore Health has brought to the forefront, that the University of Maryland System was heavily involved in this. I see Mr. Wasserman back there, maybe you could come forward and just explain what, the significance of this? Because my comments about your trauma system, Mr. Wasserman, are very heartfelt. I think we have something in Maryland that is the envy of the world.

MR. WASSERMAN: Thank you, Mr. Comptroller. Madam Treasurer, Governor, Mr. Comptroller, yeah, I'll provide a few comments on the item before you.

COMPTROLLER FRANCHOT: Sure.

MR. WASSERMAN: So you have the world's best EMS system, and you have the most eminent shock trauma center in the world. And I think you can say that without any hyperbole. It wouldn't be that way without a significant partnership with the State. And what's emblematic in what's being presented to you this morning is that partnership.

We have a very big hole in the ground at the corner of Lombard and Penn in Baltimore, \$160 million job. It's one of the few large cranes in downtown Baltimore right now. Three hundred people working on site, 250 permanent jobs. But most importantly, this is going to extend the reach and the power of shock trauma to provide the security blanket that it represents for all Marylanders. You will have ten new operating rooms. A national training center which will allow us to train EMS personnel from around the State. Sixty-four new intensive care beds. We're going to open our doors in 2013. It's a fabulous project. It will maintain our preeminence. And it's, we couldn't do it without partnership with the State.

COMPTROLLER FRANCHOT: Okay, thank you.

GOVERNOR O'MALLEY: Thank you.

MR. WASSERMAN: Thank you.

GOVERNOR O'MALLEY: Thanks, Mark. Any other questions on the DGS Agenda items?

COMPTROLLER FRANCHOT: Move approval.

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

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed?

(No response.)

GOVERNOR O'MALLEY: The ayes have it. We move now to I guess the Secretary's Agenda.

SECRETARY MCDONALD: Thank you, Governor. Good morning, Governor, Madam Treasurer, Mr. Comptroller. We have ten items on the Secretary's Agenda. We are withdrawing Item 8 and Item 10.

GOVERNOR O'MALLEY: Any questions? Hey, Chief? Ms. Majors? Could I see you over here just one second on your way out? Any questions? Hearing none the Treasurer, oh, the Treasurer moves approval, seconded by the Comptroller. All in favor signal by saying, "Aye."

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed?

(No response.)

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

MS. LATHBURY: Good morning, Governor, Madam Treasurer, Mr. Comptroller. Meredith Lathbury from the Department of Natural Resources. We have five items on the Open Space Agenda today. We have four Local Program Open Space items --

TREASURER KOPP: Can, I'm sorry, I'm having trouble hearing you.

MS. LATHBURY: Oh, I'll move a little closer. How's that?

TREASURER KOPP: Thank you.

MS. LATHBURY: We have five items on our Agenda this morning, four Local Program Open Space items and one Rural Legacy Easement. I'll be happy to answer any questions you may have.

TREASURER KOPP: I just wanted to hear what you had to say.

(Laughter)

MS. LATHBURY: It was profound, wasn't it?

(Laughter)

COMPTROLLER FRANCHOT: Geez, I guess we're in charge, Madam Treasurer.

(Laughter)

TREASURER KOPP: All right, Peter, let's go for it.

COMPTROLLER FRANCHOT: Mr. Hicks, the Governor doesn't have any problem with it, does he?

TREASURER KOPP: Move favorable.

COMPTROLLER FRANCHOT: Move favorable?  
Second. All in favor say, "Yes." Aye.

TREASURER KOPP: Aye.

COMPTROLLER FRANCHOT: Okay. Tom could you see if we need to take a recess, or --

GOVERNOR O'MALLEY: We'll ask the Governor -  
-

COMPTROLLER FRANCHOT: Well, let's move on to the DBM Budget.

SECRETARY MCDONALD: The DBM Agenda is next.

COMPTROLLER FRANCHOT: Go ahead. Go ahead.

SECRETARY MCDONALD: Secretary Foster is here.

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

COMPTROLLER FRANCHOT: Madam Treasurer?

TREASURER KOPP: I don't think so. A very good Agenda, pretty clear. I would --

COMPTROLLER FRANCHOT: I have a, Item 4-S?

MS. FOSTER: Okay. Item 4-S is a request to increase the initial spending authority for the prescription drug program. We're requesting to increase the amount that was approved by the Board back in April of 2007. And this increase in authorization is needed basically to reflect an increase in our enrollment, the increase in utilization, and inflationary increases.

COMPTROLLER FRANCHOT: Okay. That's, I appreciate that. And, but it is a pretty significant modification, over \$250 million. And I understand that we're using a different scope of service. I guess when we bid this we made the companies bid

according to an assumed flat membership? And your statement today is that since enrollments have gone up between 4.7 percent and 8 percent --

MS. FOSTER: Mm-hmm.

COMPTROLLER FRANCHOT: -- that's why we're looking at this additional modification. And I'm asking, I guess, what is it that, why did you choose 100,000 rather than, say, 110,000 as far as the assumed membership? Is there any historical basis for how we do this? Or were you simply, was this simply a procurement benchmark?

MS. FOSTER: Well, I'm going to ask Anne Timmons to come up. Anne is the Director of Employee Benefits. But basically, Mr. Comptroller, as you know this contract was very complex. Essentially when we were putting it together we did base the financial model on the assumption that we'd use flat enrollment and flat trends. And in doing that we were just basically trying to make sure that during the evaluation we were comparing apples to apples. And adding these other factors in would just complicate what was already a very complex procurement.



COMPTROLLER FRANCHOT: No, I appreciate comparing apples to apples, Madam Secretary. I think that's entirely appropriate. I guess my only question is, why didn't we pick a more --

MS. FOSTER: So Anne --

COMPTROLLER FRANCHOT: -- ambitious enrollment growth so we could pare back rather than add on?

MS. TIMMONS: When the RFP was prepared the, we used the enrollment data that we had at that point. So you figure if this contract ended June 30, 2006, we would have been using '05 enrollment in order to get the RFP out on the street in time to be able to make a proper evaluation and in order to have a new plan in place for July 1. So --

COMPTROLLER FRANCHOT: Right. I'm just suggesting perhaps that rather than using these flat enrollment figures, you know, I'm concerned about other, I guess, contracts that might have implications here. The dental insurance, and the healthcare, other healthcare contracts that perhaps we should revisit that use of the previous year's figure as a flat

enrollment. Because obviously, as we deliver good product there's going to be increased enrollment. And obviously this modification is the reflection of that. But other than that, how has Catalyst done in executing this, their side of the equation?

MS. TIMMONS: They've done an excellent job. They have met all of the pass through pricing guarantees, the rebate payments, and the customer satisfaction surveys that we've done for the past three years, they've always come back in the mid to upper nineties as the number of respondents that indicated satisfied or very satisfied.

COMPTROLLER FRANCHOT: And then, just while you're here, the last item on this, on the adjustment and modification, I didn't really understand. You have four different criteria. If you could, in reading through this, I don't have it in front of me. Oh, it's the \$97 million adjustment for utilization and trend. And it says financial evaluation did not have a utilization trend factor. This is the value of the increased utilization for the four-year term versus the evaluation model.

MS. TIMMONS: Correct. The evaluation model, financial model, was keeping everything flat and even in order to do the apples to apples comparison. So it didn't factor in trend growth, enrollment growth, and inflationary utilization growth.

MS. FOSTER: So I think of the entire \$267 million, \$177 million is really accounted for by enrollment and inflation.

COMPTROLLER FRANCHOT: Mm-hmm.

MS. FOSTER: And then there's another \$81 million, which essentially is accounted for in regard to the rebates. I think at the time that the procurement was put together we assumed that rebates would occur when the drugs were dispensed. But actually there's a delay, and that's on the order of six to nine months.

TREASURER KOPP: So you're saying that's a timing issue?

MS. FOSTER: Yes, that's a timing issue.

COMPTROLLER FRANCHOT: Okay. Well I just, I welcome your input as to for other health related

contracts this issue of flat enrollment. I think we need to be a little more creative as far as dealing with this, notwithstanding the apples to apples comparison. Which I support. I take it without that people would be bidding on things that are, you know, their own creation, I guess, as far as enrollment, et cetera.

MS. FOSTER: As with anything, hindsight is always 20/20. Certainly we can take the experience we've learned here and go forward.

COMPTROLLER FRANCHOT: Yeah. I would urge you to pick that up. Because it's much easier for us to approve them giving us money than us giving them more money.

MS. TIMMONS: Understood.

COMPTROLLER FRANCHOT: Thank you.

MS. TIMMONS: Thank you. Any other questions?

GOVERNOR O'MALLEY: Any other questions, Department of Budget and Management Agenda items? Hearing none, the Comptroller moves approval, seconded

by the Treasurer. All in favor signal by saying,  
"Aye."

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed?

(No response.)

GOVERNOR O'MALLEY: And the ayes have it.

We move now to the University System of Maryland.

SECRETARY MCDONALD: Governor, would you  
like to be recorded as a yes vote on Program Open  
Space?

GOVERNOR O'MALLEY: Yes, I would.

SECRETARY MCDONALD: Okay, thank you. Okay.

MR. EVANS: Joe Evans representing  
University System of Maryland. We have ten items on  
the Agenda today. We're here to answer any questions.

GOVERNOR O'MALLEY: Any questions,  
University of Maryland System? 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 the Department of Information Technology.

MR. SCHLANGER: Good morning, Governor, Madam Treasurer, Mr. Comptroller. Elliot Schlanger, Department of Information Technology. This morning we have two items on the Agenda. I'd be happy to take any questions at this time.

GOVERNOR O'MALLEY: Any questions, Department of Information Technology? The Treasurer moves approval, seconded by the Comptroller. All in favor signal by saying, "Aye."

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed?

(No response.)

GOVERNOR O'MALLEY: The ayes have it.

MR. SCHLANGER: Thank you.

GOVERNOR O'MALLEY: Department of Transportation. And I know we have a matter we deferred from two weeks ago here on the Department of Transportation.

MS. SWAIM-STALEY: That's correct. Good morning.

GOVERNOR O'MALLEY: What item was that?

MS. SWAIM-STALEY: That was Item 3.

GOVERNOR O'MALLEY: Item 3? Okay. Why don't we take that first. I know we have counsel that we heard from at the last meeting that we will hear from again at this meeting. And we had asked, as I recall, our counsel to the Board, Greg, would you like to come up to the, testify? I, at issue here was whether a company in formation can be awarded a contract, can be awarded a contract, period.

MS. SWAIM-STALEY: Right. Right, the corporate registration policy.

GOVERNOR O'MALLEY: All right. Greg, do you want to walk us through? I know we have a, let the record reflect that we have received a, your four-page, I think it's four-page, memorandum of law on this matter, well-reasoned, logical, and clear, thank you. And timely. Do you want to walk us through for the benefit of those hearing your voice and watching these proceedings? Capsulize the issue for us and, if

you would, walk us through your reasoning and your advice?

MR. BEDWARD: Sure. Well let -- good morning, Greg Bedward, counsel to the Board. Last week the Procurement Advisor and I looked at the bid affidavit to this contract in connection with some of the issues raised at the prior meeting. And we concluded that the Board could in its discretion award, approve the award of the contract to the proposed vendor. That conclusion is reached, supported by several Maryland State Board of Contract Appeals decisions which state that the bid affidavit can be, any inaccuracies in that affidavit can be corrected after bid opening and prior to award, which is the case here. So that conclusion is supported by several decisions of the MSBCA. And that's essentially, I mean, that's essentially it.

GOVERNOR O'MALLEY: Okay. Mr. Hausner, would you, do you want to --

COMPTROLLER FRANCHOT: Could I just ask a question?

GOVERNOR O'MALLEY: Sure. Mr. Comptroller?



COMPTROLLER FRANCHOT: You know, the troubling issue here is that the person that's bidding lied on the affidavit. Are you telling us that your legal interpretation is that someone can lie on an affidavit, under oath, and then go back and say, "Whoops, it was wrong. I'm changing it and I have the contract now. Please?"

MR. BEDWARD: Mr. Comptroller, I don't think -- I'm sorry. I don't think we can conclude that the proposed vendor lied or intended to deceive the State Procurement Office. In fact I --

COMPTROLLER FRANCHOT: Well let me, not to interrupt --

MR. BEDWARD: Sure.

COMPTROLLER FRANCHOT: -- but they answered at least one question falsely. And then swore that they were telling the truth.

MR. BEDWARD: And those facts are consistent with the prior MSBCA cases which state that any inaccuracies in the bid affidavit can be corrected after bid opening and prior to award. I think lie represents an intention, an intention to deceive. And

I've spoken to the proposed vendor, I know the AG's Office has spoken with the vendor as well. And I don't think there was an intent to deceive here. So I don't think we can conclude that there was a, this was a lie.

GOVERNOR O'MALLEY: And it's a check off, could you talk a little bit about the check off box here, and what we're going to do prospectively to clarify this? Because they allege that the information that was inaccurate, the information that was cured by them actually becoming incorporated by the time of award, I mean, that is a check off box, correct? It was not a handwritten statement, it was a --

MR. BEDWARD: Exactly.

GOVERNOR O'MALLEY: And what's going to be done? And what are we looking at in order to clarify this for the future?

MR. BEDWARD: Currently the bid affidavit asks the vendor to check that it's either a domestic corporation registered with the State Department of Assessments and Taxation, or a foreign corporation.

It doesn't accommodate a corporation that has yet to be formed. So our goal, I'm going to work with the procurement advisor to submit a package to next month's PAC, is to revise the form to accommodate pre-incorporation bids and bid affidavits to make it more flexible for those in the position of H.D. Myles, the proposed vendor here.

COMPTROLLER FRANCHOT: Okay. But did anybody ask the company why they didn't write in, "We can't check this box. We are in the process, or anticipate if the bid is awarded of forming a Maryland corporation and doing the filing requirements?" And did anybody ask them why they didn't do that?

MR. BEDWARD: In my conversations with Mr. Lesniowski, and principal of H.D. Myles, a couple of years ago he did pose that question with respect to submitting a bid on a not yet formed entity. And he, you know, he was given guidance that that practice was consistent with COMAR. So this contract right here, he simply relied on his prior guidance in the past.

GOVERNOR O'MALLEY: Guidance from whom?

MR. BEDWARD: SHA. So he did ask the question the first time he submitted a bid in this fashion.

COMPTROLLER FRANCHOT: Really? So it's, I mean, I'm just stunned that we're sitting here, you know, condoning this. This is, you know, I can't get inside the head of the person that's signed the affidavit. But, you know, I have 2.5 million tax returns that come into the State signed by good, honest taxpayers saying the information here is correct. If what we're saying is that doesn't really matter, anybody can go back and change things --

GOVERNOR O'MALLEY: I've had that same question.

COMPTROLLER FRANCHOT: I, I really -- excuse me, Governor.

GOVERNOR O'MALLEY: Sure.

COMPTROLLER FRANCHOT: I just think this is wrong. And you know, I'm, I hope that we turn this contract down because it sends a message which can be misinterpreted, unfortunately. I mean, this is someone saying under oath, "I'm telling you that this

is the case," whether they checked it, or wrote it in. I don't, it doesn't really matter to me. And then we turn around and say, "Oh, that's okay."

MR. BEDWARD: I would just -- sorry.

GOVERNOR O'MALLEY: No, go ahead.

MR. BEDWARD: Yeah, again, the facts here are very similar to prior, again, MSBCA cases which state that that is permissible under the State Financial Procurement Law. So we're not blazing --

COMPTROLLER FRANCHOT: Well I can't imagine if that is the case, where someone checks something and says something is true and it isn't true, and that they were approving. I assume what they were talking about were technical changes in the, you know. This goes to the heart of things that are very important to our values system and our procurement process, and it's called integrity and telling the truth. This was not telling the truth, and this was doing it under oath. And we should not grant this contract, and I hope we don't.

GOVERNOR O'MALLEY: Let me ask you, Greg. You found no evidence of this company or people

involved in any fraud or anything of that nature in the past, have you?

MR. BEDWARD: No, no not at all.

GOVERNOR O'MALLEY: All right. And in this case, I mean, I had many of the same concerns as the Comptroller which was why we deferred it to look at this. But Greg, it would appear that the problem here is that our forms, long in use, did not have an appropriate box for this notion of a company in formation, correct?

MR. BEDWARD: I think that's correct.

GOVERNOR O'MALLEY: Okay. And what you're going to be looking at is updating these forms so that there is a box that can accurately reflect the circumstance that we're encountered before, and awarded contracts before, to companies that are in formation that then become incorporated by the time of the award, correct?

MR. BEDWARD: That's correct.

GOVERNOR O'MALLEY: Okay. Mr. Hausner, do you want to, you've been here all morning and you were here two weeks ago. Would you like to say anything --

MR. HAUSNER: Certainly. Good morning, Madam Treasurer, Governor, Comptroller. My name is David Hausner, I'm general counsel for Abacus Corporation. I was before you two weeks ago to address two separate and distinct legal arguments, one of them which was addressed today by counsel, the other was not. I think both of them are separate and distinct, and independent of each other would preclude the award of this contract.

The first has to do with the affidavit. The affidavit is not just a form, it is an affidavit signed under penalties of perjury. It is input into the regulation, and is Maryland law, and is required. It's mandatory that it be submitted with the bid. It was not answered accurately. The individual that answered it also upon information and belief of Abacus Corporation is a Maryland State Police Officer. An Officer certainly should know and have the understanding of the implications of signing an affidavit under penalties of perjury. To just have asked a question of State Highway and relied upon that

to enter into an affidavit I think doesn't rise to the level that is required here.

In addition, all of the cases that we're talking about that have been cited here, the one particular case and all of those cases are quite distinguishable. In this instance, the entity did not exist. In every one of those cases, the entities existed, the person that entered into them had the legal authority to bind the company. Neither of those two facts exist here.

The second legal argument that I raised last week is that it is a requirement that the bid be signed by someone authorized to sign it. Not the affidavit, the bid itself. The bid was signed by an individual that didn't have legal capacity to bind anything. The entity was a fiction, there's nothing to bind. The, by signing that document stating that you're the President of it when you don't have the legal authority to do so, you've essentially signed nothing. You cannot bind an entity that doesn't exist to anything. Part of the bid process that's required, and it's stated by the Board in Apollo Paving, is that



it is a mandatory requirement of Maryland Procurement Law, that bidders must sign their bids. "Without the signature of an authorized representative of the bidder's organization the bid would not constitute necessarily a binding offer to perform the work described in the invitation. The low bidder under such circumstances would have the opportunity to withdraw his bid after reviewing the competitors' prices, thus obtaining the proverbial two bites at the apple. Such a system obviously would be extremely unfair and ultimately would subvert the integrity of the competitive bid procedure. For this reason, therefore, the authorized signature of the bidder is considered mandatory to establish both the intent of the bidder to be bound and the responsiveness of the bid."

Maryland law of this opinion requires that there be an authorized signer. There was no authorized signer here. Maryland Code requires or states that you cannot become the President of an entity until the entity is formed. That being the case, there is no authorization to execute this bid.

The law under Apollo states that there must be an authorized signature. There was not.

That was not addressed. I addressed it last week, but it has not been addressed by the State.

Thank you.

GOVERNOR O'MALLEY: Greg, do you have any response to that?

MR. BEDWARD: Yeah, just a brief response. I did look at the case referred to by Counsel Hausner with respect to the authority of the officer to bind the corporation. And the facts are actually different. That case goes to responsiveness, and I did speak with the AG about that case as well. And AG Ed Harris agrees with me on that interpretation.

So that case, the facts there are different from this case. In that case we're talking about a bid affidavit where the signatory didn't sign and the procurement officer couldn't tell whose signature it was, and whether or not that person, who that person was. So it was not, on the face of it you couldn't tell what was going on with the bid affidavit. Here, it's pretty clear who signed it and in what capacity.

So that case goes to responsiveness. Here we're talking about responsibility, two different ideas.

GOVERNOR O'MALLEY: Mr. Comptroller?

COMPTROLLER FRANCHOT: Could I just ask you, so this is a State Trooper that we're awarding this contract to?

MR. BEDWARD: I believe so. I, I believe so.

COMPTROLLER FRANCHOT: Is this a State Trooper that currently is a State Trooper?

MR. BEDWARD: I believe he's a --

SECRETARY MCDONALD: Maybe you want to get State Highway up there for these factual questions?

MR. BEDWARD: Yeah.

SECRETARY MCDONALD: Mr. Ed Harris and Mr. Bob Gay are here. Ed Harris is from the Attorney General's Office. Bob Gay is directly from SHA.

MR. GAY: Good morning, Bob Gay, State Highway Administration. Yes, Mr. Lesniowski is a Medevac personnel for the Maryland State Police. We did request a ruling from the Maryland State Ethics

Commission on his ability to bid, and they ruled that there was no conflict of interest in him bidding.

COMPTROLLER FRANCHOT: Obviously it doesn't conflict with his interest, but how can this be? Is there a member of the Attorney General here? Do we have --

MS. SWAIM-STALEY: Yes, Ed Harris is here with the Attorney General.

SECRETARY MCDONALD: There was, yeah, we did, our office was concerned about the Ethics Commission ruling. So Mr. Harris might be able to point us out that ruling.

MR. HARRIS: The employee sought before submitting a bid some guidance from the Ethics Commission and was advised by the Commission that it didn't violate the secondary employment rules of the State. And on that basis, particularly from State Highway's perspective, he was a valid bidder and we could not disqualify him on that basis. He happens to be a Medevac paramedic.

GOVERNOR O'MALLEY: In a great shock trauma system.

COMPTROLLER FRANCHOT: Yeah, but it, A, it concerns me about the fact that we're giving current State employees these, you know, \$5 million contracts. That's a concern to me. But as a State Trooper to sign under oath an affidavit that tells a falsehood, whether there is proof getting inside his head that he was intending to deceive or not, I think is outrageous. And, you know, I, this is not correct here. It's a, I'm sorry that this is before us, even. I hope that it gets withdrawn again and deferred until it can be looked at. Because this is, this is not appropriate.

MR. HARRIS: We looked at his status as a State employee, and didn't think that the State Highway Administration could do anything to disqualify him on that basis. We looked at the corporate registration issue and did not find any evidence that he intended to deceive anyone. And so we thought the bid was responsive. And we resolved the legal issue that way. We feel as though awarding to this contractor is, as the low bidder, has some cost benefit to it, and it has some efficiency benefits to

it. If there are other policy issues that the Board wants to address, they certainly can be addressed, and I think in fact already have been addressed on, I understand, on the bid document. The bid affidavit on the website, I understand, has already been modified to reflect this situation so that it could be avoided. And I don't think the contract needs to be disapproved in order to address that policy issue if that's the Board's desire.

COMPTROLLER FRANCHOT: I'm voting no, Governor.

GOVERNOR O'MALLEY: Okay. Well moving forward, anybody else want to be heard before we --

MR. HAUSNER: Can I say one other thing, please? I'm not asserting that they can't award him the contract because he's a State Police Officer. What I'm asserting is that a Police Officer rises to a different level when you're signing an affidavit under penalties of perjury. That person should know what the contents that they are executing. And if they couldn't conform with it, they shouldn't have executed it.

GOVERNOR O'MALLEY: Except that they were advised to, on other work they've done --

TREASURER KOPP: A procurement officer.

GOVERNOR O'MALLEY: -- for the State.

MR. HAUSNER: Oh, if you're advised to sign something I think you should look into it and take it upon yourself to make sure that what you're signing under oath is accurate and complete.

COMPTROLLER FRANCHOT: Yeah, and if I could interrupt I'd also like to find those employees that would stand before us and say, "Yeah, we condone people lying under oath. In fact, we tell them to lie under oath."

GOVERNOR O'MALLEY: I think --

COMPTROLLER FRANCHOT: That's just, I mean -

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GOVERNOR O'MALLEY: If I may, though, I think we're having a trial here on intent. And what I think we have is a form that is poorly drafted that needs to be changed.

MR. HAUSNER: Well, it's not just a form. It's the law. It's within the Maryland Regulation,

that that affidavit must be entered into. So it's not simply a form, the law needs to be changed.

State Highway Administration certainly has discretion to make determinations. However, they don't have discretion to make determinations that are contrary to Maryland Law or Regulation. That's what's occurred here. The law is specific, they didn't meet it. It might not be the best law. It should probably be changed at some point. But when this was entered into it was not done appropriately and correctly.

GOVERNOR O'MALLEY: What is the harm in rebidding this?

MS. SWAIM-STALEY: If that's the wish of the Board, we can rebid this.

GOVERNOR O'MALLEY: Well, the Comptroller feels very adamantly about this. And I don't --

MS. SWAIM-STALEY: We'll work with our attorneys in terms of justification, which they tell me we'll have to do within the law which is why we didn't reject it initially because we didn't necessarily have the grounds to do so. But yes, we



can absolutely work with them and rebid this contract if that would make, if that's the desire.

GOVERNOR O'MALLEY: Well let's --

TREASURER KOPP: I have no problem with that. But I do have some concern about throwing around allegations, and terms like lying.

MR. HAUSNER: I've never accused anyone of lying. I did not.

TREASURER KOPP: No, you did not. I agree with you.

MR. HAUSNER: Oh, okay. I thought you were saying that --

TREASURER KOPP: And I would hope that we would not do that.

MR. HAUSNER: No, I have never done that. I'm not insinuating that. I'm just saying that it's factually inaccurate. I don't know --

TREASURER KOPP: You didn't.

COMPTROLLER FRANCHOT: I did, and I stand by my question. You know, a lot of taxpayers would like to come back to me and say, "Gee, you caught me. Can I please change my tax return and under oath that I

submitted to you. Or I lied and cheated the State out of taxes." And you know, we don't do that.

GOVERNOR O'MALLEY: No, we don't. And I think it's, I don't think it's fair --

COMPTROLLER FRANCHOT: So I appreciate, Governor, if we --

GOVERNOR O'MALLEY: -- to come to the conclusion here with a person here. And I appreciate the fact that you never made that allegation. Okay. Let's, what do we need to do? A motion here to rebid --

SECRETARY MCDONALD: Are you going to withdraw it?

GOVERNOR O'MALLEY: Withdraw?

SECRETARY MCDONALD: Would the Transportation Department like to withdraw the item?

MS. SWAIM-STALEY: Yes, I can start from the beginning and withdraw that item, if you like.

SECRETARY MCDONALD: If you would withdraw, that would be great.

MS. SWAIM-STALEY: Okay. For the record, Beverley Swaim-Staley representing MDOT. MDOT is

presenting seven items today. For the record, Supplemental 9-C has been previously withdrawn, and we are withdrawing Item 3-M. We're happy to answer any further questions.

GOVERNOR O'MALLEY: Any questions on the remaining items on the Transportation Department Agenda? Any? 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, "Nay."

(No response.)

GOVERNOR O'MALLEY: The ayes have it.

SECRETARY MCDONALD: Thank you, Governor.

GOVERNOR O'MALLEY: What else do we have?

Is that it?

SECRETARY MCDONALD: That's it. You did Mr. Collins already.

GOVERNOR O'MALLEY: All right, Mr. Collins. Thank you, everybody. That concludes our meeting.

(Whereupon, at 11:44 a.m., the meeting was concluded.)