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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;

DARRELL MOBLEY, Acting Secretary, Department  
of Transportation;

EMILY WILSON, Acting Director, Land  
Acquisition and Planning, Department of  
Natural Resources;

ZENITA WICKHAM HURLEY, Special Secretary,  
Governor's Office of Minority Affairs;

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

MARION BOSCHERT, Recording Secretary, Board  
of Public Works.

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P R O C E E D I N G S

GOVERNOR O'MALLEY: Good morning, everyone.

This is December 19, 2012. This is the Board of Public Works for the great State of Maryland. Any opening thoughts? Or do we go right to the Secretary's Agenda? Okay.

COMPTROLLER FRANCHOT: Good morning. We should be here talking about the conclusion of Hanukkah, frankly, or the arrival of Christmas, upcoming celebration. And we're talking about and reflecting on what a great year it has been for Maryland for a variety of reasons. And how optimistic we are as a nation, frankly, moving into the New Year.

But I think instead our hearts and minds can't escape thinking about the tragedy in Newtown, Connecticut. And frankly, that can reduce you to tears, thinking about the victims of the Sandy Hook massacre and their families. Think about the joy on a child's face at Christmastime, and how hopeful these

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sweet, innocent kindergartners were in Connecticut as they excitedly looked ahead to that morning. But now their families are left to endure the holiday season in a haze, dreading spending Christmas Day without their loved ones who were tragically taken too early in a senseless act of violence. It's unconscionable that their lives were snuffed out in that terrible scene, as they were up until the last minute happily going about their school day unaware that a killer would end their lives in this terrible way.

There's little doubt that the shooter at Sandy Hook Elementary School was mentally ill. There could be no other explanation for his actions. And this sheds a light, yet again, I know the Governor and the Legislature are going to be looking at this, how painfully inadequate care for the mentally ill is in this country. As a nation we need to rededicate ourselves to the proper diagnosis, treatment, and management of mental healthcare, a subject that has

lacked coherent policy making and adequate resources in the past.

Second, we must enact legislation that will keep deadly weapons that serve no rational public purpose, either hunting or self-defense, off of our streets and out of our communities. We have the right to bear arms, that's true. But we all know when our founding fathers ensured that we have that right there is no way they could have imagined that firepower that would be invented hundreds of years later that could wipe out an entire kindergarten class in a matter of seconds.

And thirdly, we need to redouble our commitment to keeping our school facilities as secure as possible. That means locking building doors; requiring identification from visitors; employing safety officers, some of them off duty police officers; establishing text or other notification systems for parents. And until we figure all of the legislative and mental health and other security

procedures out, there should be a trained security guard at every elementary and middle school in Maryland. You know, there are millions of mentally ill people in society in America now. Obviously, the vast, vast majority of them are law abiding. But when you combine that number of mentally disturbed individuals with hundreds of millions of guns, a significant percentage of which are sold without any background check at all. Over the internet you can buy an assault weapon with a credit card and have overnight delivery. I have to show more information to buy a cold medicine at CVS than an individual needs to buy at a gun show or a flea market, or over the internet an assault weapon.

So yes, there is a Second Amendment right to bear arms. There is no Second Amendment right to murder six- and seven-year-olds in a classroom with an assault weapon. Schools need to be as safe as our nation's courthouses, airports, and federal buildings. As a member of this body, I'm dedicated to seeing that

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happen in Maryland. And while this is not a proper forum to conduct policy debates on issues that this shooting raised, I think we are all thinking about everyone in Newtown today, whether we are at this meeting or outside walking past the flag at half staff, or with our own beloved families we're holding especially close to us these days.

And as we share a collective moment of grief, we can also pause to remember for every monster who turns a semi-automatic pistol or rifle in a room full of six- and seven-year-olds and earns a special place in hell, there are millions of Americans, police officers, teachers, soldiers, nurses, and volunteers, who fight against those who do harm. And there are always those whose actions help others, even sacrificing their own lives. And there are those who give comfort to others in time of intense grief. And it's people like these who leave me convinced that this country is absolutely going to be all right. The good guys are going to pull this out.

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So I wish all of you Marylanders, and indeed all Americans, a blessed holiday season, that includes happiness amidst the heartbreak and joy within your families while we remember those frankly whose lives were extinguished last Friday. Thank you, Governor.

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

TREASURER KOPP: Governor, I think the Comptroller said what is in all of our hearts and prayers as we think of those families, the little children that, candidly even more the families that they leave behind. And their grief at this holiday season, but also at their gratitude, our gratitude for the way communities pull together and support each other. I couldn't, I couldn't agree more with the Comptroller regarding gun control. We've been fighting that battle together for over 30 years, and as I know the Governor has. And I think that Maryland can be proud of the progress we've made and recognize there's a lot farther to go. The problems of mental

health are very deep and very difficult. And there are, all of us, I think probably, in our families and in our neighborhoods, have friends who need assistance and help who are not only law abiding but very productive and very good people. And I would certainly not want us to lose sight of that. Thank you, Governor.

GOVERNOR O'MALLEY: Thank you, Madam Treasurer. Madam Secretary, we're on the Secretary's Agenda?

SECRETARY MCDONALD: Good morning, Governor

--

GOVERNOR O'MALLEY: Hi.

SECRETARY MCDONALD: -- Madam Treasurer, Mr. Comptroller. We have 16 items on the Secretary's Agenda this morning. We have three reports of emergency procurements.

GOVERNOR O'MALLEY: Any questions on the Secretary's Agenda items? None for the Comptroller. Any for the Treasurer?

TREASURER KOPP: None.

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

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed?

(No response.)

GOVERNOR O'MALLEY: And the ayes have it.  
We now move on to the DNR Real Property Agenda?

SECRETARY MCDONALD: Ms. Wilson is here.

GOVERNOR O'MALLEY: Ms. Wilson?

MS. WILSON: Good morning, Governor, Mr. Comptroller, Madam Treasurer. Emily Wilson with Department of Natural Resources. We have five items on our Agenda today. We'll be happy to try to answer any questions.

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

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THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed?

(No response.)

GOVERNOR O'MALLEY: The ayes have it.

MS. WILSON: Thank you.

GOVERNOR O'MALLEY: Now we move on to the  
Department of Budget and Management Agenda items.

MS. FOSTER: Governor, Madam Treasurer, Mr.  
Comptroller, good morning. There are 16 items on the  
Department of Budget and Management's Agenda for  
today. We'll be happy to answer any questions you may  
have.

MS. FOSTER: Any questions, Department of  
Budget and Management Agenda? Mr. Comptroller?

COMPTROLLER FRANCHOT: I have questions  
about a couple of items, Madam Secretary.

GOVERNOR O'MALLEY: What's your pleasure?

COMPTROLLER FRANCHOT: Item 2-S.

GOVERNOR O'MALLEY: Item 2-S? This would  
be?

MS. FOSTER: Okay. Item 2-S is a contract for a third party administrator to perform the accounting, enrollment, and other participant services in the supplemental retirement plan. Michael Halpin is here to answer questions on that. And I think this is a contract that actually the former Deputy Comptroller worked on.

MR. HALPIN: Yes.

COMPTROLLER FRANCHOT: So I have no real problem with the contract --

MR. HALPIN: Thank you.

COMPTROLLER FRANCHOT: -- as it's proposed. But, you know, we'd like to see more bid competition, obviously, in an ideal place. And I'm sure the incumbent has done a good job of managing the current account. So I'm going to be voting in support of the item. But I'd like to ask a few questions of you, if I could, Mr. Halpin? That have been weighing on my mind recently. According to a recent report from Fidelity the average 401K balance in this country is

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\$75,900, which was billed as an all time high. And now this release, I didn't see a break down, the average balance is by age so that number lacks some context. But I

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didn't see that as particularly good news. I view it as an indication that there are a huge number of Americans who are completely and utterly unprepared for the future. They have done precious little to assure they can maintain their current standard of living in retirement. I think this is a ticking time bomb for the nation's economy. And to the extent that defined contribution plans are being considered by some policy makers as an alternative to traditional pensions, obviously my concern has a public policy implication. Do you know what the average overall account balance, and how it is broken down by age brackets? And give me some insight into the saving habits of our workforce? And also, now Nationwide is helping, if at all possible, our members understand and make educated investment decisions so that they understand that \$75,000 is not enough for an average retirement 401K? And are they reaching out to folks that are younger and advising them that they should be in more aggressive investments and helping folks that



are approaching retirement to ratchet back? And then most importantly to me advising people that don't have significant 401Ks that there are going to be real problems if they don't take action as they approach retirement?

MR. HALPIN: Certainly, Mr. Comptroller.

And good morning, Governor, Madam Treasurer. My name is Mike Halpin. I'm the Director of the Supplemental Retirement Plans. These are very conservative numbers, but I do have those kind of balances and ranges. The overall average balance per participant in the supplemental retirement plan is about \$46,800. But that's all of them. And as you referred to, State employees do have a pension to count on. And personally, I thank the Governor, I thank the Legislature, I thank especially the Board of Trustees for the retirement pension system for that coverage. That's very important to us.

But to break it down further as you asked, for employees in the age bracket of 46 to 55, that's

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generally sort of mid-career, I think the average employee falls about there, the average balance then is about \$37,000 in supplemental retirement. And that age group makes up about 30 percent of all of our participants. For the age brackets from 56 to 65, that average balance is about \$62,000. And that makes up another 30 percent of our employees. And then for the age bracket over 65, some of which are still working, the average balance is about \$92,000. And that's about 11 percent of our participants.

The average contribution to the supplemental retirement plans by all employees is about \$4,400 a year, or about \$169 every two weeks. That's a substantial amount and we applaud them for that. But of course, those numbers are all over the scale that come up to that average. So we work hard, with our team with the plan administrator, to reach out to those employees.

We reach out to them wherever they work. As soon as they get a job we attempt to teach them the

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ropes and help them learn how to get started early and learn the ropes. We return to see them every year, several times a year in all of those places. We get to see them at all times of days, in all kinds of settings. We have plan administrator representatives that are manning the midnight shift in some facilities in order to get through and make themselves available to participants. Our own staff for the Board has conducted over 650 events just this year in the first nine months. We've talked to literally thousands and thousands of employees, and that's just the Board staff. We have another team of over a dozen that come with this contract to reach out to employees. We have our award winning event which we hold every year here in Annapolis and in Baltimore, the Savings Expo. It's been a great success and it did win a national award. And we have even expanded that to take it on the road so we can reach folks on the Eastern Shore and in Western Maryland.

We send out customized messages to employees. We reach out to them. And in fact, in the fourth, the last statement of this year, there will be a message going out to all employees who are over 45 years old. And that basically asks, are you ready to live until you are 80? It's a great message. We're also going to include in that statement for participants, just for participants who have an account but they are not taking money out and they are not putting any money in, and we are simply offering them help to get back in the game.

COMPTROLLER FRANCHOT: That's your team?  
Not Nationwide?

MR. HALPIN: That's all of us together.

COMPTROLLER FRANCHOT: All together?

MR. HALPIN: All of us together.

COMPTROLLER FRANCHOT: Okay. Terrific.

MR. HALPIN: And Nationwide has a great website with lots of tools for the do-it-yourselfer, and there are plenty of those out there. And they

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make their customer service line available, that's manned in Columbus, Ohio, a toll free number, that's available from 8:00 a.m. to 11:00 p.m. weekdays. It's a fantastic service.

We make tons of efforts to get out there, to give messages to people who in a lurch, as you point out. But we can't exactly grab them by the necktie. I think over the next year the Board will be considering ways that we can offer financial advice to employees. But in the meantime, we for five years offered a target date retirement set of funds, where somebody can make their investment based on their birthday and their estimated retirement age, and T. Rowe Price takes care of it from there. Mixes it up, and makes it more conservative as they get older and approach their retirement. And I'm happy to say that we've got over 11 percent of assets in those funds right now. And over 20 percent of new dollars coming in each paycheck is going into those types of investments. So I think that's a great success.

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COMPTROLLER FRANCHOT: T. Rowe Price is a great Maryland company.

MR. HALPIN: Absolutely.

COMPTROLLER FRANCHOT: Well thank you very much for that, and keep up the good work.

MR. HALPIN: Thank you, sir.

TREASURER KOPP: Can I just add that one thing that we could consider, this is a supplemental system and the majority of people in America who have 401ks, actually it's their retirement system. And I couldn't agree with the Comptroller more. We have a really serious retirement problem with this nation. I mean, support for old people in this nation. It's not the public employee system particularly. It's in the private sector, where the employers have just pulled back all together. But one thing we could consider, especially as the pension system becomes more limited, is a system in which new State employees would be assumed to have joined the supplemental system and then opt out if they choose, rather than the reverse.

And my understanding is that that's one of the proposals that's gaining some traction elsewhere in this country. But I would just urge us, as Maryland, if the economy improves, and Maryland salaries get back on track, and we don't have the furloughs, and all the other issues that cut into State employees' take home pay, the idea of taking one more step towards encouraging savings it seems to me, tax advantage savings, would be worth considering. It would take legislation.

MR. HALPIN: Absolutely.

COMPTROLLER FRANCHOT: Just keep up the good work. I agree.

GOVERNOR O'MALLEY: Thanks very much.  
Anything else on the Department of Budget and Management Agenda items?

COMPTROLLER FRANCHOT: Item 8-S, Governor?

GOVERNOR O'MALLEY: 8-S.

COMPTROLLER FRANCHOT: Okay. Madam Secretary, 8-S is?

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MS. FOSTER: Item 8-S is a revenue generating contract. It provides commissary services and also puts into place an inmate banking system at the Department of Public Safety and Correctional Services. And Secretary Maynard is here to answer any questions the Comptroller and members of the Board may have.

GOVERNOR O'MALLEY: Mr. Secretary, good to see you, sir.

GENERAL MAYNARD: Thank you, Governor.

GOVERNOR O'MALLEY: Thank you for your good work.

GENERAL MAYNARD: Thank you, Governor. Thank you, Mr. Comptroller, Madam Treasurer. We're here today to recommend for the Board's approval a revenue generating contract with Keefe Commissary Network for the privatization of the Department's commissary services. This contract will protect more than 80 State positions while creating almost 100 private sector jobs. Additionally, the contract will



provide \$3.69 million in additional revenues which directly fund programs and services such as inmate education that better prepare inmates for reentry. This is a perfect example of a public-private partnership that positively influences private sector growth, saves the State money, creates efficiencies in the provision of services, all the time saving State jobs. When I see a contract that saves taxpayers money, protects and creates jobs, and provides better services to the State's inmate population, it's my obligation as Secretary of the Department of Public Safety to recommend approval of that contract.

COMPTROLLER FRANCHOT: Excellent. I appreciate that, Commissioner. And I think there are some very attractive aspects to the proposal. But I have a couple of practice questions. Will the employees that are currently State employees that are doing these prison convenience stores, will they be reassigned within their existing facilities or to other facilities?

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GENERAL MAYNARD: Yes, sir. The plan is to reassign all of those within the existing facilities where they work now.

COMPTROLLER FRANCHOT: And my notes say that they are going to be used to improve security and facilitate better inventory management --

GENERAL MAYNARD: Yes, sir.

COMPTROLLER FRANCHOT: -- of raw materials and supplies. What exactly does that mean? Does that fit with their training and their --

GENERAL MAYNARD: Yes, sir. They would be, we have correctional officers who work as supply officers, who work as food service officers. These would be assigned, some would be assigned to shifts to beef up the correctional officer staffing. Others would be assigned to inventory control, which would help us in our overall operations.

COMPTROLLER FRANCHOT: So they would continue as permanent positions? Or would they --

GENERAL MAYNARD: Yes, sir.

COMPTROLLER FRANCHOT: -- disappear when those employees leave?

GENERAL MAYNARD: No, sir. They would be permanent positions. No, sir.

COMPTROLLER FRANCHOT: And I understand that a lot of the product provided in the commissaries come from local Maryland based vendors. Is that going to continue?

GENERAL MAYNARD: Yes, sir. We, there was a question that came up early on after, in fact in the RFP when the successful vendors made the proposal, their proposal was to work with local vendors to make sure that they were held harmless as much as possible. I have met with the legislators on the Eastern Shore, to include Chairman Conway and Senator Mathias and other delegation over there, talked to vendors on the Eastern Shore, I've talked to Western Maryland delegation, Senator Edwards, Delegate Kelly, Delegate Donoghue, explained this to them and they don't have an issue with it. They know that Keefe Corporation

will work with those vendors to make sure that they are held as harmless as possible. In fact, in some cases it may increase the amount of products that would be bought from them.

COMPTROLLER FRANCHOT: Excellent. We want to buy Maryland if it's appropriate.

GENERAL MAYNARD: Yes, sir.

COMPTROLLER FRANCHOT: And --

TREASURER KOPP: Could I ask a question about that?

COMPTROLLER FRANCHOT: -- yes, please.

TREASURER KOPP: So instead of those vendors selling directly, they will go through the intermediary, through Keefe, is that right?

GENERAL MAYNARD: In, no, in some cases it would be, this, Keefe Corporation is in ten states across the country.

TREASURER KOPP: And I gather elsewhere in Maryland, too.

GENERAL MAYNARD: Yes. And in ten counties in Maryland. And three of those counties, three of the more robust, Anne Arundel County, Prince George's County, and Montgomery County, I've talked to those, to those directors of those operations and they are very satisfied with the way Keefe has worked with the locals, the way Keefe has worked with their institutions.

TREASURER KOPP: But just on the point that the Comptroller raises, if the local vendors now sell to them --

GENERAL MAYNARD: Yes.

TREASURER KOPP: -- and they will be working with Keefe --

GENERAL MAYNARD: Yes.

TREASURER KOPP: -- are they going to have to pay another fee? Or somehow get less profit because they are going through Keefe?

GENERAL MAYNARD: I don't think so. I think that Keefe Corporation would purchase items from them

to be sold in the commissary. So it's possible that there may be a vendor on the Eastern Shore that would, Keefe would purchase products from that would be sold statewide.

TREASURER KOPP: Okay.

GENERAL MAYNARD: Which would enhance their sales.

TREASURER KOPP: But you feel comfortable telling us that we could feel comfortable that the local vendors will not end up worse off financially --

GENERAL MAYNARD: I feel comfortable --

TREASURER KOPP: -- because of this move?

GENERAL MAYNARD: I feel comfortable that that's the case.

TREASURER KOPP: Okay. Thank you. Sorry, thank you.

COMPTROLLER FRANCHOT: No, that's a good question. I'm just, you know, I agree with your direction and sentiment. It's just that inevitably this is an out of state company and I can imagine that

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in their business plan they have some economies of scale, and purchasing supplies that don't come from the same local vendors. And so there's kind of an inherent conflict there. Do you have anything in the contract that would allow you to have some leverage over supervising that? Or are we just going to have to --

GENERAL MAYNARD: I'm not sure. Our procurement officer is here that could --

COMPTROLLER FRANCHOT: Great.

GENERAL MAYNARD: -- respond to that. Ms. Hopkins?

MS. HOPKINS: Good morning. Joselyn Hopkins, Procurement Director for Public Safety. There is language in the contract that will hold the vendor accountable, to make sure that they are working with minority vendors and the local vendors in the area.

COMPTROLLER FRANCHOT: Mm-hmm. And what kind of leverage do you have in the contract to make

sure that if the performance is not satisfactory that we, you have redress?

MS. HOPKINS: The same basic language that is included in all State contracts. We could bring it in, you know, discuss it, give them a cure letter, ultimately termination. But they have been very cooperative. We actually do business with them currently. We wouldn't have any issues with them making sure that they work with those vendors.

COMPTROLLER FRANCHOT: And you are confident from their experience in other states, some of which I'm sure was positive but some of which was negative, that we are not going to see some of the problems that they experienced resurfacing here?

MS. HOPKINS: No, not at all. And we actually do business with them currently. We spend about \$4 million with them a year. We've had no issues as far as the quality of their products or their performance.



COMPTROLLER FRANCHOT: Okay. Thank you.

Thank you, Governor.

GOVERNOR O'MALLEY: Thank you.

TREASURER KOPP: Could I ask one, one other question? My understanding, from what you have told our staff, is that the price of essential items is laid out in the contract. The price of nonessential items will be set how?

MS. HOPKINS: Well what we did was we set caps on the mandatory items. For the discretionary items we asked that 30 days prior to, 30 days after they received the notice of recommended award that they would give us the pricing of those discretionary items. They have. Our contract monitor has reviewed those items to make sure that they are fair market value, that they are reasonable. The prices are reasonable. We compare them to what we are paying currently. And all those prices are subject to the department's approval so they can't gouge us in any

way. No item will be, you know, delivered at a price that we don't approve of.

TREASURER KOPP: Thank you.

GENERAL MAYNARD: I think another issue that was brought up by the union was a question about the security procedures of that organization within our institutions. And in checking with, again, Montgomery County and Anne Arundel County, two of our larger, more robust, more professional departments, they indicated that Keefe Corporation followed all of their procedures within their institutions and they didn't have any issues at all. And we don't expect any either.

COMPTROLLER FRANCHOT: Thank you. You do a good job. I have confidence in your oversight of this. There are some people that are concerned about it.

GENERAL MAYNARD: Sure. Thank you.

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

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SECRETARY MCDONALD: Mr. Moran had requested to speak.

GOVERNOR O'MALLEY: Mr. Moran? Come on down.

MR. MORAN: Good morning, Governor, Madam Treasurer, and Mr. Comptroller. My name is Patrick Moran and I am from AFSCME Maryland. We represent State employees here, including correctional officers and the commissary officers that will be displaced if this were to go through.

We have a number of concerns regarding this contract. On the surface it appears incredibly bureaucratic to add a middle person, or a middleman if you will, to the process when local vendors here in Maryland are already providing this service. This is, as I think the Comptroller mentioned, is an out of state organization. It's based in St. Louis. So that's where the profits will end up going.

Second of all, from an economic standpoint we don't understand how when you introduce a middle person or a middleman how the economies of scale are

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going to benefit the State, and additionally the different institutions, and the local vendors themselves when they are now going to have to work through a person. I think we all know if we are familiar with having to deal with distributors or any people of that nature we end up paying them a price or a fee in order to access the end customer.

The other issue that the Secretary brought up was no one is being displaced. Well in reality there is going to be a number of people displaced and those are the folks that currently do the job. They are going to go into custody, yes. They will go into custody positions. But the reality is there is a staffing gap. So they need people in those custody positions and as a result the commissary jobs are going to be privatized and those are not going to stay within the State. And that's another issue we have and a concern we have. So it's not beefing up security, as the Secretary noted. It's filling

vacancies that were noted in the staffing analysis we've done over the last couple years.

So, you know, the State is at the end of the day, in our mind and on the surface, looks like it's going to lose something through this. They are going to lose jobs. They are going to lose money. And we don't think that's a wise investment for the State and we don't think it's the right direction to go. Time and time again we've had conversations with the Secretary who has stated that he is not for privatization, but then why in this turn or in this instance is he pursuing the course of privatization? Thank you.

GOVERNOR O'MALLEY: Thank you. Anybody else want to be heard on this one?

TREASURER KOPP: Could I just get a clarification of the jobs? Just, I mean, I think, of the specific jobs and the people who are working in these jobs right now.

GENERAL MAYNARD: Yes.

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TREASURER KOPP: You said that they would be doing what?

GENERAL MAYNARD: Some would be moving back to shift work as a correctional officer --

TREASURER KOPP: If they were --

GENERAL MAYNARD: -- to fill some of the slots that we don't have filled now. I mean, their positions would move and work on those shifts to beef up correctional officer staffing. Others would be moved to inventory control officers to work with our supply operations in the institutions to reduce audit exceptions, to reduce all of those issues --

TREASURER KOPP: Right, we know the audit --

GENERAL MAYNARD: -- that we deal with, yes.

TREASURER KOPP: -- audit concerns.

GENERAL MAYNARD: And another point, Mr. Moran indicated I had indicated an opposition to privatization. That is not the case. When I talked to the union five years ago when I came, they asked me about private prisons. And I told them my opinion on

private prisons. I've run corrections in three different states. None of that time there were private prisons involved in that. I've been questioned by the legislatures in other states about private prisons. I think maximum, medium, minimum security prisons are the state's business or the federal government's business. I don't think they should be privatized. I have not worked to bring private prisons anyplace I have never worked. I am not opposed to privatization. We use privatization contracts all the time. We have elevators downtown in Maryland that a private contract comes in and works on. We don't have State employees doing that. We have thousands of contracts that are privatized. We have halfway houses in Baltimore that are Threshold and Dismas House. They are private contracts. I think that's okay for community based private organizations to provide those services. So I have not been opposed to privatization. I have been opposed to private prisons.

TREASURER KOPP: I appreciate that.



MR. MORAN: If I could just for one moment, we're asking the Board of Public Works to either defer this issue for the future or vote it down. Thank you.

GOVERNOR O'MALLEY: Thanks.

TREASURER KOPP: Thank you.

GOVERNOR O'MALLEY: And these folks, explain something to me. Are these folks union or non-union?

GENERAL MAYNARD: Pardon?

GOVERNOR O'MALLEY: The incumbents are union or non-union?

GENERAL MAYNARD: Non-union. And they are going to build a warehouse in Howard County.

GOVERNOR O'MALLEY: Uh-huh.

GENERAL MAYNARD: That's where they will employ the 98 private sector jobs that we, all those jobs that will put money into the Maryland economy.

GOVERNOR O'MALLEY: But the ones that are doing right now are also non-union?

GENERAL MAYNARD: They are, the correctional officers are union, yes, sir.

GOVERNOR O'MALLEY: Are union?

GENERAL MAYNARD: Yes.

GOVERNOR O'MALLEY: Okay.

GENERAL MAYNARD: And they will be moved over to other jobs so we don't lose any union jobs.

GOVERNOR O'MALLEY: Okay. We're not losing any union jobs?

GENERAL MAYNARD: We increase 98 private sector jobs.

GOVERNOR O'MALLEY: And correctional officers are going to do what correctional officers should do.

GENERAL MAYNARD: Yes.

GOVERNOR O'MALLEY: And then we are going to bring in retail clerical people to do what retail clerical people do?

GENERAL MAYNARD: Exactly. Exactly.

GOVERNOR O'MALLEY: And there's going to be more of them?

GENERAL MAYNARD: Yes. Private sector jobs, yes, 98.

GOVERNOR O'MALLEY: And if those workers should care to unionize, they are welcome to do that, too.

(Laughter.)

GOVERNOR O'MALLEY: Because in our State we believe that stronger unions make for a stronger middle class. Okay. I have no questions. Anybody else? The Treasurer moves approval --

COMPTROLLER FRANCHOT: Oh, I have another item.

TREASURER KOPP: I have another --

GOVERNOR O'MALLEY: Another item on this one?

COMPTROLLER FRANCHOT: On this calendar. Oh, you want to vote on this one item?

MS. FOSTER: I think that the Comptroller has another question on the DBM Agenda.

GOVERNOR O'MALLEY: Okay. What are we going to, do we have, I mean, isn't everybody here on a bunch of different items on the DBM Agenda?

SECRETARY MCDONALD: No. The other speakers are all on different agendas.

GOVERNOR O'MALLEY: Okay. All right. So there's only one more contested item on the DBM Agenda?

SECRETARY MCDONALD: I don't think there's any more contested items. I think the Comptroller --

GOVERNOR O'MALLEY: Okay. Mr. Comptroller, go ahead. And we'll do them all as a group --

COMPTROLLER FRANCHOT: No, it's a, it's an old chestnut, so to speak. Item 15?

MS. FOSTER: Okay. Item 15 is --

GOVERNOR O'MALLEY: Then this is a good time of year for that one, to roast on the open fire.

(Laughter.)

GOVERNOR O'MALLEY: You are all thinking that, aren't you?

MS. FOSTER: Okay. So Item 15 is a settlement in the case of *Project Vote/Voting for America, Inc. V. Dickerson*. And Matthew Fader is here from the Attorney General's Office.

MR. FADER: Yes. Thank you, Governor, Mr. Comptroller, Madam Treasurer. This is actually not a settlement. It is a judgment, a final judgment that was entered by the Federal District Court for attorneys fees from this case. The underlying case was a case brought for violations of the First and Fourteenth Amendments to the United States Constitution dealing with a former regulation addressing free speech activities on MTA property.

GOVERNOR O'MALLEY: And as it was implemented by the former administration?

MR. FADER: As it was implemented by the former administration in a lawsuit that was brought just a few days before your administration.

GOVERNOR O'MALLEY: Right. When, and we corrected it as soon as we came in, right?

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MR. FADER: It was corrected shortly after the lawsuit was filed. It was brought to the attention of the Attorney General's Office and negotiations were promptly begun with the new administration, which agreed almost immediately not to enforce the old regulation and a new regulation was entered that everybody is happy with.

GOVERNOR O'MALLEY: And then they sued us for money?

MR. FADER: They sued, the original lawsuit was for only nominal damages. And after that settlement was entered they sought attorneys fees and their attorneys fees claim eventually was a little over \$370,000.

GOVERNOR O'MALLEY: Mm-hmm.

MR. FADER: And of course the defendants contested that. But the Fourth Circuit ultimately ruled that the claimants were entitled to get attorneys fees. And then the attorneys fees claim was about \$370,000. We contested the amount of that and

the judgment was entered in the amount of \$199,000 and change.

COMPTROLLER FRANCHOT: Okay. Can I --

GOVERNOR O'MALLEY: Sure.

COMPTROLLER FRANCHOT: I have just a technical question here. Who actually is the plaintiff in this case? Because my understanding is that the Association for Community Organizations for Reform Now, better known as ACORN, no longer exists. That they officially disbanded in 2010. The State Department of Assessments and Taxation lists them as dissolved in their corporate status. And needless to say, it's not in good standing because they failed to submit annual personal property returns for the State since 2009. I find it exceedingly difficult to believe that anyone in this long defunct organization is still here. And so I guess the question is, was that looked at by you folks in our defense here? Because in my own office, the Comptroller's Agency, we require citizens to be up to date on their taxes.

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MR. FADER: Yes --

COMPTROLLER FRANCHOT: Or at least they need to be on a current payment plan in order to receive their full tax refunds, their occupational licenses, even their drivers licenses and vehicle registrations. So here we are sending \$200,000 to an organization that we would never give something from the Comptroller's Office to this group because they are in arrears on their tax filings.

MR. FADER: None of this money is going to that organization. There were originally three plaintiffs in the case. There was an individual plaintiff who had been the person who was originally trying to engage in voter registration activities but who pursuant to this regulation was denied that opportunity. He is still involved in the case. And another organization called Project Vote/Voting for America was a third plaintiff that's still a plaintiff in the case. When the case was on appeal ACORN actually voluntarily dismissed its appeal. So it was



not involved in the appeal stage. It was not involved when it came back to the District Court and was not a plaintiff when the attorneys fee award was entered.

COMPTROLLER FRANCHOT: Okay. So but this is an award to a law firm? Or is it an award to some group?

MR. FADER: It is an award to the plaintiffs, who are the individual plaintiff, Mr. Pezold, and to Project Vote/Voting for American of the attorneys fees.

COMPTROLLER FRANCHOT: But it's essentially going to be paid, it's going to be paid to a law firm?

MR. FADER: To a law firm, and from my understanding the American Civil Liberties Union was also involved in providing the defense and they might get some of that as well.

COMPTROLLER FRANCHOT: Well with all due respect to the Fourth Circuit, I'm going to vote no. and I'm happy to see what compliance they would like to, if I'm supported, we're supported on this.

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Because I think this is just a bid to recoup some law fees and some legal fees. And I don't think it's appropriate.

GOVERNOR O'MALLEY: What's the enforcement mechanism.

MR. FADER: It's a final judgment entered by Federal District Court. So there are, I, if it's voted down then I would anticipate the plaintiff seeking to potentially garnish State funds are seek to execute --

TREASURER KOPP: How do they do that?

MR. FADER: Sorry?

TREASURER KOPP: Just out of curiosity --

MR. FADER: Well I don't, the defendants in this case are three MTA, the former administrator of the MTA, and it's sued in their official and individual capacity. And so there are three individual defendants and three defendants sued in their official capacity. I'm not aware of any situation, of a prior situation where a final judgment

was not paid that was rendered against officials in their official capacity. So I don't think there's a road map for exactly how they would do it.

TREASURER KOPP: Insurance?

MR. FADER: But it's a final judgment of a Federal District Court and I would expect the plaintiffs to try to find a way to collect on that.

GOVERNOR O'MALLEY: So Mr. Fader, let me understand, and I'm sorry if I was distracted. I thought I understood this scenario. So these dollars are not the attorneys fees for ACORN? They are the attorneys fees for the individuals who were sued by ACORN and the ACLU in their individual and professional capacity at the WMATA? Or the MTA?

MR. FADER: No, I'm sorry if I wasn't clear. These are the attorneys fees for the plaintiffs in this case, the remaining plaintiffs, who are the individual plaintiff Mr. Pezold and Project Vote/Voting for America. The defendants in the case were represented by the Office of the Attorney

General. I referenced them because that's who the judgment has been entered against. And enforcement activities that might be, that the plaintiffs might engage in in order to collect on this judgment would be taken against those defendants. Three defendants in their official capacity on behalf of the State, three in their individual capacity.

GOVERNOR O'MALLEY: Mm-hmm.

MR. FADER: But the attorneys fees were the attorneys fees that were incurred by the plaintiffs in prosecuting this litigation.

GOVERNOR O'MALLEY: This litigation that never went to litigation, that required no prosecuting? Because as soon as I was elected we changed the policy?

MR. FADER: That was certainly the --

GOVERNOR O'MALLEY: That extended and protracted litigation matter?

MR. FADER: That was certainly the position that the defendants took in litigation and took to the Fourth Circuit, and --

GOVERNOR O'MALLEY: That's good work if you can get it, isn't it?

MR. FADER: -- the Fourth Circuit disagreed.

GOVERNOR O'MALLEY: That's great.

COMPTROLLER FRANCHOT: \$200,000.

TREASURER KOPP: Well it would have, it would have been \$60,000.

GOVERNOR O'MALLEY: If we had just knuckled under --

TREASURER KOPP: Yep.

GOVERNOR O'MALLEY: -- to the utter irrationality of this before, huh?

TREASURER KOPP: Right. And would not have created a constitutional crisis of a really interesting conflict between the Federal Court of Appeals and whoever the other side will be if we don't now.

MR. FADER: After the original vote to reject the first settlement, the Federal District Court actually agreed with the defendants. We filed -

GOVERNOR O'MALLEY: Agreed with us?

MR. FADER: Absolutely. We, the State --

GOVERNOR O'MALLEY: So we're one and one.

MR. FADER: -- the State objected, said that the plaintiffs were not entitled to any attorneys fees based on Fourth Circuit law. The District Court agreed and entered judgment in favor of the defendants. The plaintiffs appealed that to the Fourth Circuit, and the Fourth Circuit in a per curiam decision said that the plaintiffs had succeeded on the merits, and were entitled to their fees, and sent it back to the District Court to determine the amounts.

GOVERNOR O'MALLEY: Per curiam? Per curiam means?

MR. FADER: It means that it was, it actually didn't even go to argument. The three-judge

panel sent a decision back that, without being authored by a particular judge --

GOVERNOR O'MALLEY: Without even argument? Without even hearing us?

MR. FADER: Without, yes.

GOVERNOR O'MALLEY: So they didn't even have to, so they didn't even have to argue and they got more money on top of the money they already shouldn't have received?

MR. FADER: The Fourth Circuit decided that they were --

GOVERNOR O'MALLEY: That's what per curiam means?

(Laughter.)

MR. FADER: In this case.

(Laughter.)

GOVERNOR O'MALLEY: Can we not appeal this?

MR. FADER: The State actually, after the per curiam opinion came down the State sought review by the entire Fourth Circuit and that was denied. So

we did seek to appeal that ruling to see if the entire Fourth Circuit would review the case and overturn it. Because we thought it was inconsistent with existing Fourth Circuit precedent.

GOVERNOR O'MALLEY: Mm-hmm.

MR. FADER: But that review was denied.

GOVERNOR O'MALLEY: You can't go to the Supreme Court?

MR. FADER: The decision was made not to seek certiorari by the Supreme Court and --

GOVERNOR O'MALLEY: By whom?

MR. FADER: By the Office of the Attorney General. And that was, I'll say that a very significant part of the attorneys fees that are at issue now were attorneys fees that were actually incurred in fighting that appeal. The plaintiffs actually got a significant portion of their attorneys fees for the appeal to the Fourth Circuit that we ended up losing, and there would have been --



GOVERNOR O'MALLEY: The one that there was no argument about.

MR. FADER: The one that there was no argument on, yes.

GOVERNOR O'MALLEY: Well, that's great. Isn't it?

TREASURER KOPP: Gee. I, I wish I'd become a lawyer like the other two guys.

COMPTROLLER FRANCHOT: I'm a no vote.

TREASURER KOPP: I'm a yes vote again.

GOVERNOR O'MALLEY: Hm.

(Laughter.)

GOVERNOR O'MALLEY: I pass. I pass.

TREASURER KOPP: It depends on what the motion was.

GOVERNOR O'MALLEY: So this is more argument actually than the Fourth Circuit heard?

(Laughter.)

MR. FADER: In spite of our best efforts to get them to hear us, it is.

GOVERNOR O'MALLEY: Okay. So we've got, what's the, what's the --

COMPTROLLER FRANCHOT: One no, and one yes.

GOVERNOR O'MALLEY: Well we haven't called this one. We're, we're, what item is this?

SECRETARY MCDONALD: Item 15.

MS. FOSTER: Fifteen.

GOVERNOR O'MALLEY: Fifteen. Is there anything else that you, any other issues that you'd like to explore?

COMPTROLLER FRANCHOT: I have one last issue. GOVERNOR O'MALLEY: Thank you very, very, very much. I think we're going to go talk about another issue.

COMPTROLLER FRANCHOT: Item 16, Madam Secretary. The last one I have on your schedule.

MS. FOSTER: Item 16 is a request to extend the term of the inmate pharmacy services contract for six months to allow time for that appeals process to be completed, and for the department to be able to

transition to a new contractor. And Thomas Sullivan, who is the Director of the Inmate Health Services, is here to answer any questions that the Board may have.

MR. SULLIVAN: Good morning, Comptroller, Governor, Treasurer.

COMPTROLLER FRANCHOT: How are you? So what is the problem here?

MR. SULLIVAN: We had the contract, it was up for an award and it wasn't awarded. And we're going through the process of developing a new contract, a new RFP, and a new set of bids. So this is the matter of getting that in place and getting an award done, and doing whatever we can do to have a competitive award done. And in the meantime we need to continue services. This is at no cost to the existing contract that's in place.

COMPTROLLER FRANCHOT: Okay. So you are moving forward with a new RFP based on the Board of Contract Appeals decision to vacate the award?

MR. SULLIVAN: That's one of the options that we're working on. The other option is the legal option, that may be further view of the department's recommendation or desire to go forward with the award of the original recommendation that was made at the time the RFPs were evaluated.

COMPTROLLER FRANCHOT: Okay. Well what I --

MR. SULLIVAN: And those, none of those things, as far as I know and we have legal counsel here, have been decided in any final way. So in the meantime we continue with the services that we need.

COMPTROLLER FRANCHOT: Okay. Well my understanding of this situation is a little more troubling than what you've just described. Because my understanding is that the incumbent submitted several bid protests before the Board of Contract Appeals. That's a fundamental right that we have in our Code for our vendors and it's a valuable check and balance, frankly.

But on September 28th lawyers for Correct Rx filed a motion for sanctions with the Board of Contract Appeals citing your failure to comply with court ordered discovery and asking that the recommendation for award to Diamond be thrown out the window in its entirety. Correct Rx claimed among other things that the State didn't provide documents that Correct Rx had requested, improperly restricted access to certain State documents, and produced others in formats that were utterly unusable. In other words, the incumbent was seeking judgment against the State for being utterly nonresponsive and uncooperative, if not downright contemptuous of their right to have their day in court. And I think without precedent, it's the first time in history the Board of Contract Appeals agreed with the incumbent. They vacated the recommendation from the department for award, directed the department to issue a new RFP.

And I'm not sure anybody is still awake out there, but this is a very significant instance where

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the Board of Contract Appeals, which traditionally frankly is very supportive of the State's position on these appeals, took this unprecedented step. I don't know whether that's frustration, or anger, or being upset with what they viewed as incompetence by the State agency and the legal team, but somebody blew it here. And do you have an explanation as to what's going on with the Board of Contract Appeals?

MR. NATHAN: Yes. My name is Stuart Nathan with the Attorney General's Office, Department of Public Safety and Correctional Services. And we would vigorously contest that characterization of what happened. There was from the Correct Rx, who was the incumbent, had been a number of requests for documents. An all encompassing request for every piece of paper, and every document, every email that was related to this procurement, which ended up being in the first instance over 40,000 documents, 40,000 emails, because this, as the Comptroller will recall, this procurement has had a long history, with the

prior procurement being canceled, a new RFP being issued. So there's a long history behind this procurement.

The efforts to try to get all those documents together and to turn them all over, both the Department of Budget and Management documents and the Department of Public Safety and Correctional Services documents has been a long and daunting task to try to do that. 40,000 documents were turned over electronically on a disc in September. The Board of Contract Appeals did, and Correct Rx disagreed with the format in which they were turned over and interposed a number of objections. There were two hearings subsequent to that concerning the motion for sanctions in which the department said that they had made good faith efforts to turn over all the documents that they had in their possession, including documents that the department considered to be privileged. The Board of Contract Appeals didn't agree with that and took a different approach and vacated, as you

indicated, vacated the recommended award and ordered a new RFP.

We continue to vigorously contest that. The State has filed what we believe to be a persuasive motion for reconsideration, which will be heard by the Board of Contract Appeals on January 10th. So we believe there is a long history to this.

COMPTROLLER FRANCHOT: Not to be argumentative. But how did we get into this situation, which is obviously a black eye to the State. There is no way you can blame them, or they can blame you. But how did we get into a situation like this? With this Board, which traditionally is very compliant, I believe, and responsive. Did you not communicate with them and say here is what we are delivering? And here is what we are going to provide on X day? And, or was it just --

MR. NATHAN: The Board was aware, the Board had a hearing in August at which time it ordered the documents be turned over and provided a 30-day time

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frame for turning over those documents. The documents were turned over. The documents that had been collected were turned over on September 13th, as the Board had ordered. What turned out, and then Correct Rx and another one of the bidders interposed a number of objections. They didn't like the format that the documents were turned over. The, many of the documents were considered to be privileged. They thought that the privilege, that the use of the privilege had been overused. So there were a number of discovery issues. Never once did the Board of Contract Appeals say that there was any defect in the procurement itself. All the dispute has been about discovery matters, none of which bearing on the merits of the actual procurement in this case. Then there were subsequent hearings on the motion for sanctions at which time the State explained to the Board of Contract Appeals what the issues were in trying to collect all the documents, including all the emails.

The State, the agency is not really set up to be able to very effectively and speedily go through and provide all the electronically stored documents. That's something that, you know, if we had to do it over again we wish that there was a better system for doing that. But it has taken months to be able to secure electronically all the documents that were requested by the protesters.

COMPTROLLER FRANCHOT: All I'm reflecting is that this is a highly irregular action by this Board to vote to vacate the award, even without hearing the merits of the case. And so obviously there is something more than just, gee, this is a difficult request from the agency. There is something going on with the Board where they said we're, I don't know whether it's incompetence, indifference, or arrogance which drove them to this decision. But it is a highly irregular action by them. And I'm --

MR. NATHAN: We think the Board --

COMPTROLLER FRANCHOT: I just want to know what, you know, why are we putting ourselves through this? I happen to think it was a botched procurement. But why can't we provide the plaintiff their due process? And who do we hold accountable for this mess?

MR. NATHAN: Well we think the Board is just plain wrong in its decision. We don't believe the Board had the authority to order the relief that it ordered in this case, and that's what we say in our motion for reconsideration, and that's what we're going to argue in January. But it speaks to larger issues about the procurement process, and what's involved in discovery requests that encompass thousands and thousands of documents, and the ability to be able to distill those thousands of documents into what protesters say that they need to have in order to prosecute their cases.

COMPTROLLER FRANCHOT: Well I appreciate that. Obviously thousands of documents, frivolous requests for documents, I don't support that. But I

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certainly support the integrity of the Board saying we are so troubled by this that we're going to act in a highly unique way, unprecedented. That means there's something more than just, gee, we had a difficult assembling the documents. And I, you know, we have to hold people accountable at the Board of Public Works. And you know, I hope that this forked road, you know, Yogi Berra says you come to a fork, take it. I hope you choose the botched procurement road, and drop this, and move forward with a new RFP to get us beyond this. And I don't know how you correct through the reform process the Governor has articulated the procurement process if you have agencies that are not responding to legitimate requests for discovery. It's not good enough to come and say, gee, it's hard. Thank you.

MR. NATHAN: Thank you.

GOVERNOR O'MALLEY: And so the action requested on this one is that we once again --

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MS. FOSTER: The issue is that the inmate pharmacy services contract needs to be extended for six months as they continue to go through one of the appeals process and make some decision in regard to how they will transition to a new contractor.

GOVERNOR O'MALLEY: This is the longest extended contract in the history of Maryland, isn't it?

MS. FOSTER: It's pretty long, Governor.

TREASURER KOPP: I mean, we have to provide the services.

MS. FOSTER: Yeah.

GOVERNOR O'MALLEY: Correct.

TREASURER KOPP: But I think the Comptroller's frustration is --

GOVERNOR O'MALLEY: We allow, that's one of the problems with our procurement process, is the resort to indefinite postponement. Thereby allowing -

-

COMPTROLLER FRANCHOT: Right. But let's not blame the incumbent here. Because they made a request and for whatever reason it was, there was all sorts of foot dragging. And I wouldn't be upset if this Board wasn't, because they've never done this. So I, you know, we go through these sometimes. I think they are very important, to turn actions by this Board, to say to agencies we are not going to put up, whatever the system is, we're not going to put up with foot dragging and non-disclosure and non-transparency, and nobody is going to be accountable. And by the way, due process is just a word in Maryland, it's not enforced. Do some people take advantage of this process we have? Maybe they do. But here we have the Board saying the agency is not producing the basic discovery information. And I just --

MS. FOSTER: Mr. Comptroller, I think just to follow up, I think what the attorney said was that the information was provided. It wasn't provided in the format that the Board thought it should have been.

So the information was provided, and it was provided on a timely basis.

COMPTROLLER FRANCHOT: I'm sorry. I apologize for interrupting the Governor.

GOVERNOR O'MALLEY: That's okay. And so the Board of Contract Appeals said that as a sanction for the failure to provide the discovery in the manner they felt it should have been provided they did not?

COMPTROLLER FRANCHOT: Vacated --

GOVERNOR O'MALLEY: They vacated --

COMPTROLLER FRANCHOT: -- the award.

GOVERNOR O'MALLEY: They vacated the award. And they have the power to do that?

MS. FOSTER: I think that's the question, in terms of whether the Board of Contract Appeals has that authority. And I think the State is pursuing and making the decision in terms of whether that can be appealed.

MR. NATHAN: Right. We don't believe that they did have the authority to do that.

GOVERNOR O'MALLEY: Mm-hmm.

MR. NATHAN: That's the subject matter of the motion for reconsideration.

GOVERNOR O'MALLEY: Which is coming up on what?

MR. NATHAN: January 10th.

GOVERNOR O'MALLEY: Tenth? Okay. And hence the reason for your requesting that we continue, do an extension of this? All right.

MR. NATHAN: Yes.

COMPTROLLER FRANCHOT: I'm going to vote for it.

GOVERNOR O'MALLEY: You're going to vote what?

COMPTROLLER FRANCHOT: For the extension.

GOVERNOR O'MALLEY: You're going to vote for the extension?

COMPTROLLER FRANCHOT: Right. I have concerns.



GOVERNOR O'MALLEY: Okay. All right. And those concerns have been voiced and shared.

COMPTROLLER FRANCHOT: No I just -- thank you.

GOVERNOR O'MALLEY: Anything, anything else on the Department of Budget and Management Agenda? All right. Do we want to separate a few of these matters out?

SECRETARY MCDONALD: My impression is that Item 15-GM, the attorneys fees, is the only one that needs to be voted on separately, unless --

GOVERNOR O'MALLEY: Okay. So we'll take the, we'll take the matters --

MS. FOSTER: One through 14?

GOVERNOR O'MALLEY: -- with the exception of 15.

SECRETARY MCDONALD: Of 15, right. And that would include Item 8, the commissary, and Item 16, this pharmacy contract, would be included in the block --

GOVERNOR O'MALLEY: Okay.

SECRETARY MCDONALD: -- you are voting on.

GOVERNOR O'MALLEY: Is that okay? We are  
all on board with that?

COMPTROLLER FRANCHOT: Mm-hmm. Yeah.

GOVERNOR O'MALLEY: All right. The  
Comptroller moves approval, the Treasurer seconds it.  
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.  
So now we are on 15-GM.

TREASURER KOPP: I would move a favorable.  
Or is that the motion? Favorably --

GOVERNOR O'MALLEY: The Treasurer moves  
favorable.

COMPTROLLER FRANCHOT: I don't hear a  
second. GOVERNOR O'MALLEY: Motion fails for

lack of a second. Okay. We go on now to the University System of Maryland. Mr. Evans?

MR. EVANS: Good morning. Joe Evans representing University System of Maryland. We have seven items on the Agenda today. I'm here to answer any questions. Any questions, University System of Maryland?

COMPTROLLER FRANCHOT: Item 5-S.

GOVERNOR O'MALLEY: Item 5-S?

MR. EVANS: Item 5-S is the marketing contract for University of Maryland University College. Mr. George Shoenberger, Senior Vice President, Chief Business Officer will answer any questions.

MR. SHOENBERGER: Good morning. George Shoenberger, Chief Business Officer, University of Maryland University College. I'll be happy to answer any questions you have.

COMPTROLLER FRANCHOT: Well this is a staggering amount of money for marketing, \$152

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million. Frankly, you know, I appreciate the business model that you have over there, with your online marketing. But it's still a pretty jolting amount of money even given the different competitive space that you occupy. So what exactly are we up to here? We've got, what are the methods that you are going to use to determine the success of the marketing blitz, I take it? You expect it will result in a higher caliber student? Is there a particular region of the country it's going to? Is Chancellor Kirwan often suggests, or do you have any dashboard indicators that you are using to judge whether this \$152 million actually produces a good result?

MR. SHOENBERGER: At the end of the day it's all about enrollments, and that's the major dashboard indicator. Whether we were able to grow enrollments as we need to do given our business model. \$152 million, Mr. Comptroller, is a lot of money. It's an awful lot of money. But as a percentage of our budget, it's a little bit less than seven percent of

our budget. In this space our competitors are spending between nine and 19 percent of their budget on marketing. And they are outspending us many, many times over.

Most of this marketing is done in Maryland in this region. The majority of the money here, about \$135 million, is actually directly being spent with radio and television, newspapers, and that type of thing. And the balance is for services.

We have a professional marketing operation at UMUC. We have a Vice President for Marketing, who I have here with me today. He's ultimately responsible to make sure that this spend is done appropriately and wisely. As I'm sure everyone knows, marketing is both, it's an art and a science, I guess is the words that I'm looking for. So we try to maximize the science part of this in terms of looking at reaction to various types of advertising and tweak this as we go along to maximize the dollars spent.

COMPTROLLER FRANCHOT: Okay. And the current marketing department has how many people and what budget?

MR. SHOENBERGER: About 50.

COMPTROLLER FRANCHOT: Fifty people?

MR. SHOENBERGER: Yes, sir.

COMPTROLLER FRANCHOT: And what budget?

MR. SHOENBERGER: I'm sorry?

COMPTROLLER FRANCHOT: What's the budget of the marketing department?

MR. SHOENBERGER: For those 50 people, just a little bit less than \$5 million.

COMPTROLLER FRANCHOT: Okay. And you are going to hire, I see, two agencies are primary, two as secondary. These are prominent firms. My exposure to marketing and consultants is that these are really high powered, creative egos. What steps are being taken to make sure they have a cohesive program and strategy, given, you know, the fact that they are all going to be pushing their own vision, I take it?

MR. SHOENBERGER: Right. Well we are very accustomed to working with firms like this. This contract, although it's a new contract, is really a continuation of marketing contracts that we've had for many years with firms that have those personalities that you describe. We're accustomed to this. At the end of the day these decisions are made by the University and will continue to be made by the University. We have quite a professional team that I think gets up to the task.

COMPTROLLER FRANCHOT: Okay. Well you are aware of the significance of the amount, and the need to measure the results?

MR. SHOENBERGER: Yes, sir, we are. Very much so.

TREASURER KOPP: Could I just ask one question about the MBE participation?

MR. SHOENBERGER: Yes, ma'am.

TREASURER KOPP: Just so I understand it. It looks relatively low to me. But my understanding

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is that it is a high proportion of the spend outside of the spend actually on the advertising itself? I mean, on the media itself? Is that right?

MR. SHOENBERGER: You are exactly correct. It's two percent, which on the surface sounds low.

TREASURER KOPP: Is not much.

MR. SHOENBERGER: But that's against \$152 million, of which \$135 million is a straight pass through to media outlets. So if you look at the balance of the contract amount, it's about 19 percent MBE participation on that balance.

COMPTROLLER FRANCHOT: It's a great institution, university.

MR. SHOENBERGER: Thank you, sir.

GOVERNOR O'MALLEY: Largest online state university in the world.

MR. SHOENBERGER: Yes, sir, with over 90,000 students worldwide.

GOVERNOR O'MALLEY: I believe that that's the wave of the future. We need to get out of this



Harry Potter goes to Hogwarts for four years for the model. I mean it's just, we just can't afford it. The most expensive college costs in the world are here in the United States. The best colleges, many of them, arguably. But we have to make it easier for people to go back and knock off that last year of college, or get the credit they need without giving up their job or giving up their family. So anyway, any other questions on University System of Maryland?

MR. SHOENBERGER: Thank you.

GOVERNOR O'MALLEY: Thank you. 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 go on to Department of Information Technology. What number was that on USM?

COMPTROLLER FRANCHOT: USM?

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TREASURER KOPP: Seven?

COMPTROLLER FRANCHOT: Five.

GOVERNOR O'MALLEY: Thank you.

MR. SCHLANGER: Good morning, Governor, Madam Treasurer, Mr. Comptroller. For the record, Elliot Schlanger, Department of IT. This morning we have seven items on our Agenda. I would like to withdraw Item 5-IT, which I will bring back on January 2nd. Also, I'd like to call the Board's attention to Item 7-IT, which on behalf of Public Safety is a new contract for inmate pay phone equipment and services. I need to inform the Board that this contract for which we seek the Board's approval is currently under protest. At this time I'd be happy to answer any questions. I do understand we have some speakers to Item 7-IT, but I'll proceed with the pleasure of the Board.

TREASURER KOPP: I just want to thank you for deferring Item 5 so people have a chance to look at it.

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MR. SCHLANGER: You are quite welcome, Madam Treasurer.

GOVERNOR O'MALLEY: Item 5 was deferred.  
Anything else on the rest of the DoIT Agenda items?

SECRETARY MCDONALD: We have some speakers in opposition and in support of Item 7-IT. Maybe Mr. Schlanger would like to give a little explanation of 7-IT first to set the stage?

MR. SCHLANGER: If I may?

SECRETARY MCDONALD: Or Secretary Maynard?

MR. SCHLANGER: I will invite Secretary Maynard to --

GOVERNOR O'MALLEY: What are the items that we delving into here? Which two?

GENERAL MAYNARD: This is the item regarding the phone, inmate phone service.

GOVERNOR O'MALLEY: Inmate phone service.  
Is there another item on the DoIT one?

TREASURER KOPP: No --

SECRETARY MCDONALD: No.

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GOVERNOR O'MALLEY: Okay. All right.

SECRETARY MCDONALD: Now that they've withdrawn five.

GOVERNOR O'MALLEY: Okay. Well then let's, the Comptroller moves that we approve the balance of the DoIT Agenda items, 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. Okay. So this is the last remaining item on the DoIT Agenda. Go ahead, Mr. Secretary.

GENERAL MAYNARD: Thank you, Governor. I am recommending for the Board's approval a revenue generating contract with Global Tel Link, GTL, for the department's inmate telephone equipment and services as was mentioned in the face of the protest by the incumbent, Securus Technologies.

This RFP was published on July 12th of this year. Two proposals were received which were deemed reasonably susceptible for award, the incumbent, Securus, and Global Tel Link, GTL. A four-member evaluation committee which included department officials from our information technology and also from our security unit evaluated the proposals and unanimously ranked GTL, their technical and financial proposals, first; and rated the incumbent, Securus Technologies, technical and financial proposals second. Based on the committee's evaluation and their unanimous decision, the procurement officer recommended that GTL be selected for award and I accepted this recommendation.

Securus Technologies filed a protest November 19th of this year. The department responded denying the protest on November 30th. Securus appealed the procurement officer's decision to the Maryland State Board of Contract Appeals on December 4th and as far as I know it's not on the docket yet.

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I'm requesting the contract be awarded to GTL in the fact of the protest for several reasons. The State has substantial interest in awarding this contract. One, increased revenue to the State. GTL's proposed commission rate to the State will provide more than \$2.3 million additional revenue to the State over the next three years. One hundred percent of the funds go to Inmate Welfare Fund, which provides for education, library services, legal services, chaplains, which otherwise would come out of State funds.

Second, decreased cost to inmates and families. And this is very important to our department. GTL's proposed call rate will save inmate families and friends over \$5.8 million over the next three years compared to the existing call rates. Lower rates will raise call volumes and this increased communication between inmates and their friends and families enhances community reentry and reduces recidivism.

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Third is the increased monitoring and security technology. Award of this contract would expedite implementation of a state of the art phone system that will enhance public safety and institutional security. GTL's proposed system offers information gathering and investigative tools for the department, such as link charting, data mining, and GTL's proprietary data IQ, which integrates inmate telephone calls with other data sources like financial records and visitation records.

GTL currently provides inmate phone services in all the bordering states departments of corrections around us, Pennsylvania, New Jersey, Delaware, Washington, D.C., and Virginia, as well as the Federal Bureau of Prisons facility in Cumberland, Maryland. The State will benefit substantially from the information sharing capabilities available only through GTL's unified databases in all those states and its focused platform.

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The economic benefits, GTL has made a 20 percent MBE commitment which will recycle 32 percent of its contract dollars into the Maryland economy and projects payments of \$6.4 million to Maryland certified MBEs over the life of the contract. Moving forward with this contract would not only benefit the State, but the inmates and their families as well. And I am requesting your approval of this contract.

GOVERNOR O'MALLEY: Questions anybody? Anybody want to be heard in opposition or proponent? Yes, sir. Come on down.

MR. LIVINGSTON: Good morning, Governor --

GOVERNOR O'MALLEY: Hi.

MR. LIVINGSTON: -- Mr. Comptroller, Madam State Treasurer. My name is Scott Livingston. I represent Securus, which is the incumbent contractor which has been providing satisfactory to excellent service for the last several years to the State.

In this instance what we request is that the issue of award in the face of the protest be tabled,

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be postponed for a couple of months. If the Board of Contract Appeals did what it did in that other matter, we're not taking a long time. We want the documents delivered, or produced, made available to us. We've requested the documents, the agency has refused.

GOVERNOR O'MALLEY: Anything else?

MR. LIVINGSTON: Yeah, it's a matter of due process. We don't know what we don't know about the way these matters were handled. We don't actually have the evidence to know whether the evaluation committee acted fairly. And it's a matter of transparency, which is good for all citizens. And these are really hallmarks of your administration, is transparency and the idea of due process. And then the Board, accountability, the Comptroller is right about that.

You are correctly holding folks accountable. We don't have any qualms at the moment with the department. We think the department usually does good things. We think the department is just imperfect,

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like others, and we want the opportunity to be heard. The due process part is we want to see the documents. And within seven days of when the documents are disclosed we will be filing whatever bid protest, if any, emerge. If none emerge, we will withdraw the existing appeal and we'll go away. So we don't think we need, we don't need a three-year extension. We think instead of award, there's no reason to rush to judgment to award in the face of the protest. Instead, let the MSBCA process go forward, and I would expect that seven days after I get the documents from the department, which thanks to that tongue lashing a moment ago may be very soon, and we'll be able to say whether we are or are not going forward.

GOVERNOR O'MALLEY: Oh I'm, okay. Well, the Comptroller has a question, I think, for Mr. Maynard.

COMPTROLLER FRANCHOT: Yes. Is that Willie Nelson?

MR. LIVINGSTON: Yes.

COMPTROLLER FRANCHOT: Yes, that's my favorite.

GOVERNOR O'MALLEY: Whose ring tone was that? Giannetti, was that yours?

MR. GIANNETTI: No --

COMPTROLLER FRANCHOT: That's great. I love that. Could I ask the agency what the problem is with producing the documents?

MS. ARNQUIST: Thank you. Lisa Arnquist, Assistant Attorney General for the department. There's no problem with producing the documents when the parties are entitled to them. As, before the award is made a statute prohibits the State from disclosing the contents of the proposals to anyone other than those that are conducting the evaluation. And in addition, a statute prohibits the disclosure of the advisory, or deliberative records of the evaluator of a proposal. To date the incumbent has filed PIA requests that have been lawfully denied under those statutory provisions that I just mentioned. And if

their appeal at the Board of Contract Appeals they will have additional rights to documents through the discovery process there, upon the signing of a confidentiality agreement. There's been no documents that have been withheld from the incumbent that they are entitled to at this time. And I just find it troubling because they, Mr. Livingston in essence has said that he doesn't know what his grounds for appeal is and is essentially asking to hold up this contract that will substantially benefit both the inmates and their families and increase revenue to the State so that they can go on a fishing expedition and find a reason to protest this solicitation.

COMPTROLLER FRANCHOT: But you understand the due process concern when it is appropriate with the confidentiality agreement should they move forward, that the documents be produced --

MS. ARNQUIST: Yes.

COMPTROLLER FRANCHOT: -- without --

MS. ARNQUIST: Absolutely.

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COMPTROLLER FRANCHOT: -- the sense, and maybe mistaken, that there is a certain indifference to handing the documents over. And I can see, I can understand what you are saying. I very rarely vote to approve something in the face of protest but I'm inclined to do that. And but my major concern is just respecting the vendors and making sure that they get what you have.

MS. ARNQUIST: I understand, and it will be done.

COMPTROLLER FRANCHOT: So I would move approval.

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

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed?

(No response.)

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

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MR. MOBLEY: Good morning, Governor, Madam Treasurer, Mr. Comptroller, for the record Acting Secretary Darrell Mobley representing MDOT. MDOT is presenting seven items. Item 7-GM is a supplemental item. We'll be happy to answer any questions that you may have.

TREASURER KOPP: We'll all now turn to 7-GM.

COMPTROLLER FRANCHOT: Governor, I have a question on Item 3-A.

MR. MOBLEY: Item 3-A is the SHA retroactive approval of 106 contracts for modifications. We do have SHA Administrator Linda Peters here to speak on this particular item.

COMPTROLLER FRANCHOT: Great.

MS. PETERS: Good morning.

COMPTROLLER FRANCHOT: Thank you for being here. I'm going to vote in support of these provisions, but I think it would be a little bit awkward if we didn't at least take a minute to discuss the audit of SHA that was recently released by the

Office of Legislative Audits. And I'm not going to read from it, because it obviously has some history and some, it's not a good record. But I have a great deal of confidence in Ms. Peters. I'm satisfied that she and her new management team are working aggressively to correct the shortcomings that were identified in the audit. It did detail numerous efforts to circumvent the Board of Public Works' legally mandated role, as well as inadequate provisions, I guess, to ensure that we were paying appropriate amounts for vendor services. Maybe you could just summarize some of the steps that you have taken to reform the, whatever the culture was that was there at SHA which permitted these numerous contracts to become problems?

MS. PETERS: Absolutely, Mr. Comptroller. Thank you very much for the opportunity to highlight the work that we've been doing over the last year to make adjustments.

As you all know, the audit, the triennial audit that was just completed covered the same exact period as the review, the special reviews that were done over a year ago. So it didn't capture all of the work that we've done over the last year to change our internal processes to make sure that we are following correct procedures. And first and foremost, I want to recognize that we fully respect the authority of the Board of Public Works and the work that you do to ensure that we're in compliance with our contracts. We've made major adjustments and the last 106 contracts that we're bringing here today for retroactive approval complete that work and the review that we've done to make sure that going forward we've addressed all the issues.

The contracts today that we're bringing forward were either not authorized under the original contract terms or they didn't have properly documented contract modifications. So this is that final grouping of contracts. We've done a lot of additional

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work to add checks and balances in our processes internally to correct procedures that we did not have in place before. First and foremost, we've completely reorganized our Office of Procurement to an Office of Procurement and Contract Management. I have a new Director in place, Ms. Norie Calvert. And I want to thank the Board's staff for their work with us over the last year and a half to make some revisions to our processes and make sure that we were bringing the issues forward to the Board that we needed to.

We've also added a check in our process where previously contracts were being managed, the financial management system, the office that was managing those contracts had the ability to make adjustments to the contract's completion date. That's no longer allowed. We've moved that over into our Office of Finance. So that approval has to happen independently of the office managing the contracts to ensure that we are following a process and bringing those contracts back to the Board if we need an

extension or if we need to add money to those contracts. And that was probably the most important first step, to remove that authority from those offices. We've also required a new process for written justifications of the contract values to make sure that they are appropriate, and that there is accountability for documenting the values in our contract. In addition that helps to, in our work with the Board of Public Works staff, to make sure that we have properly documented our process before we bring the contract forward.

We've added some internal controls in our invoice review. And as part of the checklist, the staff have to review the work that's being done to make sure it's in compliance with the contract as it exists. And we've also added an new quality control process to our A&E procurements to make sure that as they work through the procurement itself we have checks and balances in that procurement itself.

But probably one of the other most important thing we've done is we've issued new procurement and contract management guidelines to all of our managers and procurement staff, as well as some extensive training that we've been going through to make sure that we reeducate staff on the processes that they need to follow.

COMPTROLLER FRANCHOT: Thank you for that. And here's why it matters so much. Obviously we're all aware that the State's Transportation Trust Fund doesn't have the resources to invest in improvements to our highways, bridges, and transit lines, or even to do ordinary maintenance. And we're getting obviously to the point where there's going to have to be some serious conversation and action about new transportation resources for the sake of our business climate and our quality of life and even our public safety. And I just want to make sure that everyone in your department is aware that the public strongly demands that the money that is appropriated gets spent

as if it were their own, I guess is the best phrase. And that we have the kind of quality control measures that you are talking about. A, that the money is spent on transportation; and B, so that it is properly supervised by your team. And so thank you for those reforms, I guess, to assure the taxpayers that you are spending your money wisely and appropriately.

MS. PETERS: Thank you.

GOVERNOR O'MALLEY: Okay. Any other questions? Ms. Peters, thanks very much.

MS. PETERS: Thank you, sir.

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 on now to the Department of General Services.

MR. COLLINS: Good morning, Governor.

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GOVERNOR O'MALLEY: Doing good service.

MR. COLLINS: Yes sir, doing great service.

GOVERNOR O'MALLEY: Doing green service.

MR. COLLINS: Yes sir, we are also doing  
that.

GOVERNOR O'MALLEY: Doing good green  
service.

MR. COLLINS: Good green service,  
absolutely. We're green in Maryland, sir. Good  
morning, Governor, Madam Treasurer, Mr. Comptroller.  
Al Collins, Secretary of the Department of General  
Services. The department has 26 items on our Agenda.  
We have revised Item 1, and I have withdrawn Item 9.  
We will be glad to answer any questions that you have  
at this time. Governor, we have a number of  
individuals on the community grants and loans portion  
of our Agenda today. We are very pleased to have them  
here to watch this process go forth.

Item 24, I will note, is a grant to the  
Montgomery Village Sports Association. There is one

protester on that particular item, she wants to be heard. And there are also representatives of that particular activity as well.

GOVERNOR O'MALLEY: Okay. Any questions?

COMPTROLLER FRANCHOT: There is one item that Senator Giannetti is here.

MR. COLLINS: Yes.

COMPTROLLER FRANCHOT: Item 24, whenever it is appropriate, if I could say a few words I would appreciate it.

GOVERNOR O'MALLEY: Okay.

TREASURER KOPP: Well --

SECRETARY MCDONALD: It might be better to have the bond bill explained first and then have the opponent.

MR. COLLINS: Bart, would you explain -- 23?  
I'm sorry --

COMPTROLLER FRANCHOT: Sorry about that. I apologize.

MR. COLLINS: Item 24 is the one where there was --

SECRETARY MCDONALD: Right --

COMPTROLLER FRANCHOT: Yeah, Item 23 then.

MR. THOMAS: Good morning. Bart Thomas, Assistant Secretary with Department of General Services. Item 23-CGL is requesting the Board approve the certified matching funds and enter into a grant agreement with the Board of Trustees for the Aman Memorial Trust for the Battle of Bladensburg Visitors Center Monument, for the construction and renovation of the Battle of Bladensburg Visitors Center and Monument located in Bladensburg.

GOVERNOR O'MALLEY: And we're opposed to this?

MR. THOMAS: No. It's a, they would like to speak on behalf of it.

TREASURER KOPP: Thank you.

MR. JOHN GIANNETTI, JR.: You know, I'm too young to be a senior advisor. But I am a senior

advisor to this project. And the real person who is doing all the work is the Aman Trust, and my father, John Giannetti, Sr., is the person who is the energy and the effort behind this. And you can see by the sheet that's passed out, this is going to be a battle memorial that happened in Prince George's County as the British troops were marching to burn the White House.

TREASURER KOPP: Did you do this, Mr. Giannetti?

MR. JOHN GIANNETTI, SR.: What is that?

TREASURER KOPP: Did you do --

MR. JOHN GIANNETTI, SR.: No --

MR. JOHN GIANNETTI, JR.: The artist is present --

MR. JOHN GIANNETTI, SR.: -- right here, Joanna Blake. And she accompanied us here. And she



came up with the design for the monument and she has now completed the full size scale model.

TREASURER KOPP: Oh, there she is --

GOVERNOR O'MALLEY: And Ms. Blake, Ms. Blake is it true that the person falling down with the sword raised and wounded position, that the model for that was actually President Mike Miller?

(Laughter.)

MS. BLAKE: No sir, it was not.

MR. JOHN GIANNETTI, SR.: He had a lot to do with helping us with our funding.

GOVERNOR O'MALLEY: Okay. It looks a lot like him. Is that --

(Laughter.)

MS. BLAKE: It's coincidental, I guess.

GOVERNOR O'MALLEY: Is that Joshua Barney?

MS. BLAKE: It's supposed to be, yes.

GOVERNOR O'MALLEY: It looks like Mike Miller.

MR. JOHN GIANNETTI, SR.: Joshua Barney, there are three figures. Joshua Barney is in the center, of course. And he led a group of Marines and Flotilla Men to try to --

GOVERNOR O'MALLEY: Chesapeake Flotilla Men.

MR. JOHN GIANNETTI, SR.: And the Flotilla Men that is shown in the picture --

GOVERNOR O'MALLEY: Charles Ball?

MR. JOHN GIANNETTI, SR.: -- is Charles Ball, you're right. And Governor, I would really like to thank you for your great support of the bicentennial project that's going on throughout the State. And we really appreciate your energy and enthusiasm for it.

GOVERNOR O'MALLEY: Who is the third guy?

MR. JOHN GIANNETTI, SR.: That's a United States Marine. Now there were about 250 Marines. Now the Marines took most of the casualties at the Battle of Bladensburg. And this monument is really a tribute

of gratitude to the soldiers, sailors, and Marines  
that fought and died --

GOVERNOR O'MALLEY: Now when you say  
Marines, the Marines --

MR. JOHN GIANNETTI, SR.: United States  
Marines.

GOVERNOR O'MALLEY: Marines that were part  
of Barney's Flotilla Men, or separate from the  
Flotilla Men?

MR. JOHN GIANNETTI, SR.: They were  
assisting the Flotilla.

GOVERNOR O'MALLEY: I see.

MR. JOHN GIANNETTI, SR.: And so we've had a  
great committee here to put all of this together, and  
I'd like to thank the help from the State. I really  
do appreciate it. And we're going to get this thing  
done here in the next year. And I hope you'll be  
there for the dedication.

GOVERNOR O'MALLEY: I hope so, too.

MR. JOHN GIANNETTI, SR.: In fact, all of you.

GOVERNOR O'MALLEY: And where is it located in proximity to the actions of the engagement?

MR. JOHN GIANNETTI, SR.: Well it's going to be located almost in the very spot where the Battle of Bladensburg started. Right there near the peace cross, if you are all familiar with the peace cross?

GOVERNOR O'MALLEY: Mm-hmm. Yes, sir.

MR. JOHN GIANNETTI, SR.: That will be where this monument will be located. In fact, Parks and Planning also is our partner in this and they have donated the land. And we've got all our finances pretty much in line now to get this thing done.

COMPTROLLER FRANCHOT: Was Mike Miller the Senate President back then?

MR. JOHN GIANNETTI, SR.: He may have been. There was a Miller in the battle. He was one of the Marines that was the Captain of Marines. And his name was Miller. So it might be a distant relative.

GOVERNOR O'MALLEY: And it's one of the very few monuments that has the likeness and image of an African American soldier.

MR. JOHN GIANNETTI, SR.: Yeah. Charles Ball was one of the Flotilla Men. And it's amazing, because this was 50 years before the Civil War --

GOVERNOR O'MALLEY: Mm-hmm.

MR. JOHN GIANNETTI, SR.: -- approximately. And Commodore Joshua Barney needed soldiers, I mean sailors, to man his Flotilla. And he had a number of African Americans part of the Flotilla. And I think it's a pretty remarkable thing.

GOVERNOR O'MALLEY: And they inflicted the greatest number of casualties on the British at that battle, right?

MR. JOHN GIANNETTI, SR.: That's right. The British had 550 casualties. And there were according to Don Shomette, who is an archaeologist and historian, there were about 350 Americans wounded in that, this whole action.

GOVERNOR O'MALLEY: Mm-hmm.

MR. JOHN GIANNETTI, SR.: Not all dead --

GOVERNOR O'MALLEY: Right.

MR. JOHN GIANNETTI, SR.: -- but wounded.

So --

GOVERNOR O'MALLEY: And then they paroled him, Joshua Barney, right? That's when they caught up with him?

MR. JOHN GIANNETTI, SR.: Well I think the amazing thing is when Barney went down, and he finally told his men to retreat, he, as the British commander, General Robert Ross, came up, he commended Barney for the virtue that they showed that day, for the valor and courage in counterattacking so many times. And in fact, he said he paroled him right on the spot. And it's an interesting footnote that the great-great-grandson of General Ross has contributed to this monument.

GOVERNOR O'MALLEY: Mm-hmm.

MR. JOHN GIANNETTI, SR.: And has made a very substantial thing. He also will be there at the dedication.

GOVERNOR O'MALLEY: Right. That's great. And you know, I met him up at the Fort McHenry at the Defender's Day celebration. And he was being shepherded down and shown around Baltimore. He is himself a officer in the British Army now, right?

MR. JOHN GIANNETTI, SR.: I believe so.

GOVERNOR O'MALLEY: And he was being shown around Baltimore, including the tailgate parties before the Ravens game by one Brian McComas, who is descended, McComas of Wells and McComas, who are the two sharpshooters credited with killing Ross --

MR. JOHN GIANNETTI, SR.: That's right.

GOVERNOR O'MALLEY: -- when he came up through North Point and through the woods there. So it's a very --

MR. JOHN GIANNETTI, SR.: Yeah.

GOVERNOR O'MALLEY: -- you know, very interesting. And also Barney, after being granted that parole right on the spot, and told never to fight again, showed up at Lazaretto Point in Baltimore for the defense of Baltimore a few weeks later.

MR. JOHN GIANNETTI, SR.: Yeah. Yeah. And so was Charles Ball, was also --

GOVERNOR O'MALLEY: He was at the Lazaretto as well?

MR. JOHN GIANNETTI, SR.: Yeah, he was there. You know, this is the Cadillac version of our monument.

GOVERNOR O'MALLEY: Here it comes.

MR. JOHN GIANNETTI, SR.: And of course we're still in the process of raising funds. We're very hopeful that maybe the Bicentennial Commission, we have a grant into them but we're hoping that, because on the back of the monument will be an interpretive panel. And we're hoping to raise enough money to put the whole thing together and make it look



like this. So if you could put in the word to that Bicentennial Committee, I would certainly appreciate it.

GOVERNOR O'MALLEY: We are still selling the coins. And how much is this grant for?

MR. COLLINS: For \$125,000.

GOVERNOR O'MALLEY: \$125,000?

MR. JOHN GIANNETTI, SR.: \$125,000.

GOVERNOR O'MALLEY: And what's the total cost, Mr. Giannetti?

MR. JOHN GIANNETTI, SR.: Well it's going to be in excess of \$350,000, not counting the land. And if we can do the interpretive panel it might take it up to close to \$400,000. But after 200 years we feel the time is right to remember these patriots that went out to Bladensburg. They didn't stop the British that day but they at least went out and tried to put up a fight. And I think this is a way that we can remember them and inspire young people, I hope, not to give up. To keep fighting. And the name of the monument will

be Undaunted in Battle. And we're hoping it will be an inspiration to --

GOVERNOR O'MALLEY: Yeah, those Flotilla Men are quite a story. I mean to, it's great.

MR. JOHN GIANNETTI, SR.: Well again, thank you for your great interest and enthusiasm for the subject.

GOVERNOR O'MALLEY: Thank you for yours. Any other questions on this? Would the artist like to be heard? I mean, you're the artist.

COMPTROLLER FRANCHOT: Please.

GOVERNOR O'MALLEY: Come on --

MS. BLAKE: I --

MR. JOHN GIANNETTI, SR.: You can tell how you designed it. She designed it and came up with the idea.

MS. BLAKE: Well I guess the challenge really was how do you commemorate a defeat?

GOVERNOR O'MALLEY: Right.

MS. BLAKE: Because it was a defeat.

GOVERNOR O'MALLEY: And so you consulted  
Irish history, and Irish history --

(Laughter.)

MS. BLAKE: No, but I did, we did do a visit  
to Baltimore. And everything here is just too  
triumphant. You know, the Francis Scott Key Memorial  
has the gilded figure on the top, and things turned  
out differently here, thankfully. But yeah, the idea  
was to show Barney wounded. Not, you know, in a  
moment of triumph, but right after he's been wounded.  
But he still has the sighting sphere, and then he's  
being helped up by these people who were supporting  
him. And the shape of it is based on Latrobe's  
mausoleums, it's a federalist style architecture  
that's from the time period. So kind of making it a  
little more funereal than triumphant, I guess, was the  
idea. So it's kind of based on a mausoleum.

GOVERNOR O'MALLEY: Hm.

MS. BLAKE: And then these guys, actually  
Robert Stewart, who works for the Park Service at Fort

McHenry as a reenactor, modeled for me, and Myron Peterson with Ships Company reenacted that model for the figure of Barney. So they call came to the art studio and, you know, were good sports about it. Because we tried lots of different poses to get just the right sort of combination of, you know, undauntedness, I guess.

(Laughter.)

COMPTROLLER FRANCHOT: What is your background?

MS. BLAKE: I studied painting. But came to sculpture, actually, working with these guys, right out of college. And that's where I met Ray Kaskey. And I was fortunate enough to get to work on the National World War II Memorial in Washington, D.C. And since then we've done a bunch of projects around the country, The Schermerhorn Symphony Center in Nashville; Portrait of George Washington at Mt. Vernon; the History of the Teamsters at their Headquarters downtown. So some really fun projects.

MR. JOHN GIANNETTI, SR.: I was going to say, we talked to a lot of artists before we chose a sculptor to actually do it. And I can honestly say I don't regret selecting Joanna. Because she has worked on this now almost three years, getting to this point. And she's done a wonderful job. And she has a wonderful future in front of her. It's a wonderful sculpture.

MS. BLAKE: And I also live on the battlefield in Cottage City. So --

MR. JOHN GIANNETTI, SR.: She lives on the battlefield.

MS. BLAKE: -- I'm pretty excited to have a sculpture of this sale in my own, you know, my own work in my own backyard.

GOVERNOR O'MALLEY: Wow, you live on the battlefield?

MS. BLAKE: In Cottage City.

GOVERNOR O'MALLEY: Well we're hoping to do, as they did with the Civil War, if you have ever gone

on the Civil War Trust animated battlefields and look at Antietam, what they have been able to do with GIS so that you can position yourself with an app and your phone and see exactly where you are at the, you know, at whatever juncture, you know, whatever time/space coordinate of the action that is taking place is really remarkable. And we're hoping as part of the bicentennial celebration to be able to create that sort of experience online and through your cell phone, both in Bladensburg and also in Baltimore so that you can know that when you are walking or biking along that trail, you are following the British line of march. Or you are where Barney's Flotilla Men had their, made their last stand before the British broke through to burn Washington. So anyway, all sorts of good things.

This is really a beautiful piece of work you did.

MS. BLAKE: So I'll know what those people are doing in my front yard with their cell phones?

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(Laughter.)

GOVERNOR O'MALLEY: Right. Right, with their cell phones.

MS. BLAKE: No, I mean I hope that it's successful. Because I, yeah, I do feel like this needs attention. You know? That Bladensburg, I mean, the Alamo was a defeat, right? And Pearl Harbor we were caught unaware.

GOVERNOR O'MALLEY: Right.

MS. BLAKE: And the fact that there is nothing there that acknowledges this significant event in American history is kind of sad. So I'm glad to be a part of doing something about it.

MR. JOHN GIANNETTI, SR.: And I think it also unlocked some of the secrets of our weakness. And my gosh, we got into that War of 1812, we weren't really prepared.

GOVERNOR O'MALLEY: Right.

MR. JOHN GIANNETTI, SR.: And I think that's the lesson to be learned from this. And I hope more

people will go away from this area trying to learn more about what happened there and why we lost that battle.

GOVERNOR O'MALLEY: Yeah, there were a lot of people saying we've got to cut, cut, cut.

MR. JOHN GIANNETTI, SR.: Yeah --

GOVERNOR O'MALLEY: You're spending way too much money. This Navy thing? It's a frivolous expense. There's no need for a Navy. It's a great Homeland Security, lots of modern day lessons to be drawn from that. Yes, Al. Something else?

MR. COLLINS: Yes, sir. Governor, I want to call your attention, the Board's attention to Item 24.

GOVERNOR O'MALLEY: Thank you all. Thanks very much.

MR. JOHN GIANNETTI, SR.: Okay, thank you, Governor.

MS. BLAKE: Thank you.

MR. COLLINS: Item 24, the Montgomery Village Sports Association. We're asking your



approval, but there is one protest, one gentleman who is opposed to that issue. And Bart, you want to just --

MR. THOMAS: I'm not the protester. And I look at my watch, I say good afternoon, Board. We're beyond the noontime hour.

MR. COLLINS: Quickly.

MR. THOMAS: Yeah. The Item 24-CGL is requesting the Board to certify matching funds and enter into a grant agreement for the Board of Directors for Montgomery Village Sports Association for the design and construction of the Montgomery Village South Park located in Montgomery Village, and as part of the fact sheet this is to build a concession building and restrooms. And as part of that we're asking you to approve the grant agreement that's been modified to include Montgomery Village Foundation, who is the owner of the property, as a beneficiary throughout the document.

GOVERNOR O'MALLEY: Okay. And who is here to protest against this?

MR. COLLINS: Mr. Don O'Neill is here.

GOVERNOR O'MALLEY: Mr. O'Neill?

MR. O'NEILL: I'm Don O'Neill. I'm a lifelong Marylander and a 44-year resident of Montgomery Village in Montgomery County. I urge the Board of Public Works to disapprove the South Valley Park bond bill project involving Montgomery Village Sports Association and the Montgomery Village Foundation. I offer the following ten reasons for withholding this funding.

Misleadingly listed as the design and construction of South Valley Park, it is actually the design and construction of a restroom and concession stand in South Valley Park. In truth, the project is a \$250,000 toilet.

Irregular tactics were involved in switching the grant recipient from the Foundation on the original application not approved by the Legislature

to the Sports Association, approved by the Legislature but not a responsible party, necessitating DGS to designate the Foundation as beneficiary solely to protect the State.

However, in designating the Foundation as beneficiary, DGS contradicted the earlier action of the Legislature.

The Foundation serves only residents of the well heeled Montgomery Village HOA, while the Sports Association is open to all residents of Montgomery County, a distinction noted by the Legislature in not approving the original Foundation application.

Not part of the Foundation, the Sports Association is not a responsible party. A responsible party owns the property, pays project expenses, and conducts all transactions with the State associated with the project. The Sports Associating does none of this. For example, the Foundation, not the Sports Association, transacted the consultation with Maryland

Historical Trust on Item 3 which explicitly directed the grant recipient to perform this duty.

Recognizing these Sports Association inadequacies, DGS propped up the Sports Association when it patched up the grant agreement designating the Foundation as beneficiary, thereby enabling the Foundation to pose as grant recipient.

Recognizing its own fragility and content to operate as a free-rider, the Sports Association shed its core responsibilities in an MOU linking the Foundation and Sports Association by designating the Foundation as the responsible party.

However, the validity of the MOU is in question since it was not approved by the Foundation Board and does not bear the signature of its elected President.

Furthermore, the MOU indemnity clause violates the Foundation's fiduciary responsibility. Board members have an obligation to act in good faith on behalf of the residents of the Village. Instead,

the MOU improperly places the interests of the Sports Association above those of Village residents, raising into question the underlying trustworthiness of the Foundation.

All this maneuvering, while the State of Maryland is financially strapped with taxes raised and services cut.

Please end the smoke and mirror tactics by disapproving and withholding the \$125,000 funding for the South Valley restroom and concession stand. Thank you.

GOVERNOR O'MALLEY: Are you opposed to the concession stand generally? Or just particularly it going to this group rather than the community association?

MR. O'NEILL: I'm opposed to it because of the irregular tactics employed, because misleading name and description was designed to sort of get a person who is just skipping through 40 or 50 of these

grant agreements and thinking that they are building a park. They are building a toilet.

I was a member, one of the early members of the Montgomery Village Sports Association. I coached the little league team. I coached them in championship games. So I support sports. I was an All American lacrosse player back in the day. So I support the sports programs entirely. But I don't support an irregular process that pulls the wool over the people who were here to approve things, the Legislature, who is there to approve things. And they actually disapproved the MVF. And then the beneficiary role of MVF got put back in, and they start posing as the beneficiary recipient. They did the job that the grant recipient should be doing.

GOVERNOR O'MALLEY: Well if, let's assume that there were no irregularities. Let's assume that this was followed in a manner that you believe that it could better be done. Is your, would you still be

opposed to what, you know, to this concession stand and these rest facilities?

MR. O'NEILL: If this thing were deferred until next year, and they put it back in the system, and it came through the system clean, Governor O'Malley, I would support it. The only pause I would have on that is that within a one-mile radius there are 40 registered sex offenders. And in light of the events on children in recent weeks, you know, my alertness to this sort of thing is way up.

GOVERNOR O'MALLEY: Mm-hmm.

MR. O'NEILL: So, you know, put that, don't put it aside, but it's a context items. I think if this came through the Legislature clean as a whistle, where they approved it, and everything was in order, and there wasn't any attempt to sort of find a way through, water will find a crack and it will go through. We know that. So yeah. That's my position.

GOVERNOR O'MALLEY: Okay. Secretary Collins, do you want to respond to --

MR. COLLINS: Yes, sir.

COMPTROLLER FRANCHOT: Where did you play lacrosse?

MR. O'NEILL: I played at Dickinson College.

COMPTROLLER FRANCHOT: Oh, boy.

MR. O'NEILL: Yeah, I scored 57 goals in 1958. It was the highest in the country.

GOVERNOR O'MALLEY: Wow.

MR. O'NEILL: And I think there's only been one person that has exceeded that. We won the national championship for Division III, which was called the Boy Taylor Division in those days.

COMPTROLLER FRANCHOT: Congratulations.

MR. COLLINS: Governor, we are aware of Mr. O'Neill's concerns. We have reviewed this item, and based upon our opinions and our attorney's review this item is appropriate the way it's presented to you today.

GOVERNOR O'MALLEY: Mm-hmm.



MR. COLLINS: And we do have the President of the Association and other members from the grantee available in the room if you want to hear from them. So but I think we are --

GOVERNOR O'MALLEY: Somebody from the grantee, do you want to be heard?

MR. COLLINS: We are prepared to support it.

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

MR. JACOBS: Governor O'Malley, thank you sir, for having us up today. I'm the President of Montgomery Village Sports Association. My name is David Jacobs. So we're the grantee. It does benefit, the concession stand and restrooms benefit our football programs largely. And to a good extent, Montgomery Village Foundation because there is kind of an opera house there that we have in the summer. I'm a Village resident and I've been associated with the Sports Association for several years. I coach girls softball, traveled around the State. But largely our football program has about 270 kids, a very diverse

population. We currently have our concessions run out of an old trailer that's falling apart. So this very much will benefit us.

As you can imagine, with about 100 kids playing football, with two teams, and without adequate restrooms, the woods around Montgomery Village Sports Association South Valley Field are well fertilized, I'll put it that way. So anyway, this will benefit us greatly. And it will benefit the Village as well, and I'm a Village resident as well as Mr. O'Neill.

GOVERNOR O'MALLEY: Any other questions?

COMPTROLLER FRANCHOT: Can you just identify the other gentleman?

MR. HYDORN: I'm Bob Hydorn, President of Montgomery Village Foundation. And we have worked, the Foundation, for over 40 years with MVSA as an effort for not only the children within Montgomery Village but in the area. Our sports association, the various teams, maybe half are from within, and I think I'm high saying half, are from within Montgomery

Village. They are from within the region. Because especially now that other areas, teams, some of the football teams and the like are dropping in some communities, and we are picking those young people up to keep them active and keep them in the sports. And I have to say, Mr. O'Neill said the Board did not vote on it. The Board voted very clearly in an open Board meeting that Mr. O'Neill did attend, because he is listed on the minutes during residents time as speaking. We did vote on it and the Executive Vice President signed the documents. And he has all the authority from the Board to sign such documents. If you have any questions, as well. Thank you.

TREASURER KOPP: No, it's my understanding also as a matter of course that we have added, I'm looking at the Attorney General over there, have added the actual owners of the properties in these grants as additional beneficiaries, just for the record and for tax purposes.

GOVERNOR O'MALLEY: Okay. Anything else?

Treasurer, are we okay with this? The Treasurer moves approval of the Department of General Services Agenda items, 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. And that concludes our Agenda. Merry Christmas, and to all a good night.

TREASURER KOPP: Yes. Especially to all a good night.

(Whereupon, at 12:20 p.m., the meeting was concluded.)

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