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BOARD OF PUBLIC WORKS  
GOVERNOR'S RECEPTION ROOM  
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ANNAPOLIS, MARYLAND

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P R E S E N T

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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 B. MOBLEY, Deputy Secretary,  
Department of Transportation;

LISA WARD, Land Acquisition and Planning,  
Department of Natural Resources;

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

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

MARION BOSCHERT, Recording Secretary, Board  
of Public Works.

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P R O C E E D I N G S

GOVERNOR O'MALLEY: Good to see you. Good morning, everyone. Welcome to the Board of Public Works. Today's date is, yes it is, December 21st already. And we have a number of items today, and including some important naming at the Department of Natural Resources. We have a presentation from Jim Harkins on the anaerobic digestion -- hold one second, John. And we also have, we also have, is there a third one? No. We have a contested procurement or two. I know the Comptroller has some questions on the latest slots thing. So we've got a great Agenda. We're not lacking for any work, this week before Christmas.

TREASURER KOPP: Why does the phrase, "Ho, ho, ho," come to mind?

(Laughter)

GOVERNOR O'MALLEY: So let me ask the Treasurer and the Comptroller if they have any comments as we begin, here?

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COMPTROLLER FRANCHOT: Madam Treasurer?

TREASURER KOPP: No, except it's good to be here. It's good to be back home. I was out of state for a while and came back to see the newspaper headline about increasing jobs in Maryland.

GOVERNOR O'MALLEY: It's great.

TREASURER KOPP: And that's what you like to see when you get off the airplane.

GOVERNOR O'MALLEY: Three months in a row, positive job growth. Mr. Comptroller?

COMPTROLLER FRANCHOT: Thank you. Gosh knows we need them. And but let me just reach out to those of you that have perhaps not done your Christmas shopping. I feel guilty sitting here knowing that I've got to get out in the next couple of days. I advocate, of course, shop local. But frankly at this point --

TREASURER KOPP: Comptroller --

COMPTROLLER FRANCHOT: -- frankly I've just got to get out and shop.

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(Laughter)

TREASURER KOPP: Could I, yeah, could I, I meant to say and I apologize that not only for those of you who have not done Christmas shopping but those of you who know that today is the second day of Hanukkah and you've got several days to go, listen to what the Comptroller has to say. Thank you.

(Laughter)

COMPTROLLER FRANCHOT: Well I have shopped local all over the State with these local entourages of local officials. And people say, well, haven't you gotten gifts? And I have a very tight budget when I'm out there. And I'm just, a Christmas ornament will not work for my wife. You need to, so anyway, many best wishes for the holiday season. It's such a great time of the year, because we're able to look back over the year and realize what we're grateful for as far as family and friends and all the blessings, frankly, that we have. I continue to love being your

Comptroller and I beat William Donald Schaefer, the

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Babe Ruth of politics. Whoever would have thought that that could have happened? Yet, here we are. That's the wonder and humbleness, frankly, of being in this seat.

But one of the things that I really want to just reach out and extend some appreciation during this season for are the amazing people that I get to work with as Comptroller. I see the Speaker standing here, and I worked with him for 20 years in the Legislature. But as Comptroller I've been able to work with 1,200 people in my agency who are phenomenal people. I've been able to work with the Governor and the Treasurer, and all the talented people around the table here with the Board of Public Works. Sheila McDonald, and frankly with each of you in the audience who have always demonstrated such great professionalism, passion, done such a great job working in your different positions. And I just want to reach out and say I appreciate the dedication that

everybody represents here. And I wish all of you a great holiday season.

I also just want to mention quickly that it's a tough season for those of us who have lost close friends or loved ones here on the Board of Public Works. We lost Dave Boschert, a great Marine, friend of all of us. Hannah White. I'd also like to remember Ron Smith who recently passed away after a valiant battle with pancreatic cancer. And from time to time I would go on Ron Smith's show and he would always control the people in his audience who took great delight in criticizing anybody on his show, I think, that was involved with politics. But Ron Smith was a gentleman and a voice of reason, and he would calm people down. He wouldn't always agree with you. And I think Senator Cardin made a very great statement about that, that you know you can disagree, have philosophical differences, be liberal or conservative. But I think what Ron Smith showed was at the end of

the day we are all the same. But my condolences go out to his wife June and the entire family.

And Governor, on a happy note let me just conclude by wishing you and your family a healthy and happy season, and the Treasurer, and Merry Christmas, Happy Hanukkah. I know there's a list of others. I'd love to go through it. But, yes. It's a great season.

TREASURER KOPP: Yesterday the Comptroller was moved to say that for a moment he had caught the Christmas spirit.

COMPTROLLER FRANCHOT: Yes.

TREASURER KOPP: Did he tell you that? And he's done it again. And I thank you, and returns to you and your family.

COMPTROLLER FRANCHOT: Thank you.

GOVERNOR O'MALLEY: And to all those in Whoville.

(Laughter)

GOVERNOR O'MALLEY: Mr. Speaker, which one are you here for?

SPEAKER BUSCH: I'm here for the Bozman property.

GOVERNOR O'MALLEY: The Bozman property?

MS. WARD: That's on our Agenda. It's DNR, Item 10A.

GOVERNOR O'MALLEY: With your permission, both of you having been from the House of Delegates, I'd like to exercise a little bit of prerogative of the Chair and call the Bozman property off of the --

SECRETARY MCDONALD: Item 10A --

GOVERNOR O'MALLEY: Item 10A on the --

SECRETARY MCDONALD: -- on the DNR Agenda.

GOVERNOR O'MALLEY: On the DNR Agenda. Not Open Space, but DNR?

SECRETARY MCDONALD: Well, because they have a lot of other things in addition to Open Space on their Agenda now. But yes, this Item 10A is a Program Open Space item.

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SPEAKER BUSCH: Yes. Well, it's really generated by the Department of Natural Resources. If I could ask the Secretary to come up as well and talk a little bit about the Bozman property. It was a piece of property that was owned by the Audubon Society. And I believe about a decade ago the State was actually interested in purchasing the property. But at the time it was prohibitive because of the cost. It's a wonderful piece of property to preserve. But I think also that the management of the property was an issue for the Department of Natural Resources as well. It's eight miles of waterfront, I believe about 900 acres. And the fact of the matter is that it was in great disrepair when the Audubon Society sold it to Mr. Pascal, who also owns property on the Eastern Shore that has been put into the Environmental Trust through the State of Maryland.

He has 44 buildable lots on that. But in our discussions with both Secretary Griffin and myself, how nice it would be if there was some kind of

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public access that would be granted to the citizens of the State of Maryland on the property in some kind of controlled manner. I think the Secretary has laid out numerous programs that could take place there.

Mr. Pascal will be granted an easement for his ability to give up the right to develop 44 pieces of property. The easement granted by the State would be one that would take place. It would qualify for federal and State tax credits if they were granted by the federal government. It is somewhat of a risk. If the federal government does not grant him the tax credits the easement still stays in place, and the fact of the matter is the 44 individual lots would not be developed.

Secretary Griffin has come to me and asked me what I thought of the project. I think it's, in this tough economic time when we're struggling with the transfer tax to continue to preserve Open Space property across the State of Maryland to put this in perpetuity as a permanent piece of Open Space on a

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magnificent piece of waterfront which is upgraded each year by Mr. Pascal to the tune of about half a million dollars to keep up the six buildings and the rest of the farm, I think it would be very beneficial considering the fact that he would also open it up to the general public on certain times and dates of the year. Which I think is extraordinary compared to the easements we give out to other private individuals which does not require any public access.

I would ask for any questions that, of detail to go to Mr. Griffin. But I've been to the property. The reason I'm here, I've been to the property when it was owned by the Audubon Society. They had great discussions on the fact that they could not keep it up. They were looking for a purchaser who was going to preserve the property. It used to be owned by the DuPont family. And Mr. Pascal, who has been a preservationist on the Eastern Shore for many years, has stepped up to the plate to do that. He wants to bring in Wounded Warrior projects, so they

can bring their families down there and enjoy the farm and the outdoors, children's groups, and others that would be directed by the Department of Natural Resources.

I don't know if I missed anything, Secretary Griffin? But before I step aside I want to wish everyone a happy holiday season. And just say to each and every one of you that I hope all the districts that you have, you like. Because we spent a lot of time doing that and I'm glad that's behind us as well.

(Laughter)

GOVERNOR O'MALLEY: So John, this is not a purchase of Open Space? This is a purchase of development rights?

MR. GRIFFIN: Governor, Comptroller, Madam Treasurer, good morning. No, it's not a purchase. It's a donated conservation easement.

GOVERNOR O'MALLEY: I see.

MR. GRIFFIN: So we're not purchasing anything directly. If the donor, like all of the

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other donors whose easements are presented to you, and if you approve them, they potentially are eligible for federal income tax credits. Those roll through to the State level. There's a small State income tax credit. And I believe there may be some State and local property tax abatements that would apply. But I guess my point is, any donor at the time they come before you with a donated easement to be accepted, they do not know then necessarily whether what they are donating will be, will meet the variety of requirements imposed and stipulated by the IRS to qualify it as a qualified easement for purposes of an income tax deduction.

But of course the whole purpose for those tax credits and property tax abatements are to induce philanthropy by conservation minded property owners around the State. And we have a great history of and track record of that, through local land trusts, through the original land trust in the State, the Maryland Environmental Trust. The reason that we

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accepted this easement, if you are wondering, not a local land trust or the Maryland Environmental Trust, is because of the work we've done when Audubon owned the property and since then with Mr. Pascal. Helping to develop conservation plans for the property, helping to schedule in groups who have used the property since he's purchased it. And we'll be working with him if you approve this easement to schedule in a variety of groups. Not only our Wounded Warriors, but we've done a lot of work with, as you know Governor under your initiative on, partnership with Children in Nature, for kids to get out and reconnect with nature. We've worked with the Talbot County Parks and Recs Department, federal agencies, to develop a lot of potential plans for group use of the property that would be scheduled in.

I might say, this is fairly unique among donated easements. Most property owners, as you know, continue to own the land. Many live on the land. And normally they resist somewhat

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understandably, the notion of granting public access on their property, particularly at this level of intended use. So as the Speaker said, in these days when revenues are very tight it's always a welcome opportunity, it seems to me, to accept an easement like this. And to preserve this 950-acre piece of property with eight miles of shoreline and to allow the public to use it.

GOVERNOR O'MALLEY: Great. And so this is being, this is being donated?

MR. GRIFFIN: It's a donated easement.

GOVERNOR O'MALLEY: And the donor receives tax credits?

MR. GRIFFIN: May receive. I'm sure Mr. Pascal, I'm not speaking for him, like any other donor that comes before you with donated easements hopes to secure the tax credits that he may be entitled to. But that's a fairly lengthy process, particularly at the federal level, in order to qualify for that.

GOVERNOR O'MALLEY: I see. And from the public standpoint, Mr. Pascal is giving to the public for perpetuity?

MR. GRIFFIN: Yes.

GOVERNOR O'MALLEY: The assurance that this will never be developed?

MR. GRIFFIN: Correct.

GOVERNOR O'MALLEY: Great. Mr. Pascal, anything you want to say?

MR. PASCAL: Well, thank you. Nice to see you all.

GOVERNOR O'MALLEY: Good to see you, Mr. Pascal.

MR. PASCAL: Real quick --

GOVERNOR O'MALLEY: And thank you for doing this.

MR. PASCAL: It's real quick. That piece of property is probably one of the more unique pieces left on the Eastern Shore. And it's just too big and too great to have one man hoard. And I just thought

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this was an opportunity to share it with as many people as possible without losing the ability to use it yourself. So I contacted DNR. We had all kinds of people that wanted to do it on the conventional easement way. And I said, "What about DNR? What can we do?" And we just hosted lady hunters. There were 15 or 20 ladies came, and they wanted to hunt a deer. Well, that got a little edgy --

(Laughter)

MR. PASCAL: But they had a, they had a great time. And we've got the, the Wounded Warriors are going to have one of the developments there, to go out and utilize on weekends with their families and fish and do whatever they want to do. And we're having schoolchildren come down and walk around and take pictures and enjoy the environment.

So, this is my bucket list. And this is a great way to spend whatever time left you've got on Earth to do something like that.

GOVERNOR O'MALLEY: That's a wonderful thing you're doing.

MR. PASCAL: Yes.

GOVERNOR O'MALLEY: Thank you, Mr. Pascal.  
Mr. Franchot?

COMPTROLLER FRANCHOT: Mr. County Executive,  
I want to just thank you for this because obviously  
this is a gem.

MR. PASCAL: Pardon me?

COMPTROLLER FRANCHOT: This is a gem.

MR. PASCAL: Absolutely.

COMPTROLLER FRANCHOT: A jewel on the Shore  
that you are in effect giving to the citizens. And I  
think everybody is very excited about the significance  
of it and you are to be applauded. How will the  
public access work? Is it something that you --

MR. PASCAL: At my discretion.

COMPTROLLER FRANCHOT: Your discretion? And

--

MR. PASCAL: Along with the department. To open it up every day is just not the way to go on this. So we are going to pick our spots and handle it in that way.

COMPTROLLER FRANCHOT: And I take it the 44 lots passed perc tests and are, could have been developed? Or sold? Or --

MR. PASCAL: For sure.

COMPTROLLER FRANCHOT: So what you are giving us is very significant. As a tax collector I'm obviously sorry to see whatever tax revenues go, but that's okay.

(Laughter)

COMPTROLLER FRANCHOT: This far outweighs that issue and I think the Governor is right in saying we're not paying for this, you are approaching us. But I had one detail question because I noticed that a familiar name, Mr. David Sutherland, is listed as a consultant. And he came up four years ago in a very controversial situation before this Board. In effect,

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we were paying almost \$2 million more than the purchase, the original purchase price for a piece of public property. And I'm not going to go through that Gardner deal again. But --

GOVERNOR O'MALLEY: Where was that one?

COMPTROLLER FRANCHOT: -- I guess I want to know what exactly was Mr. Sutherland's role in this, if any? And Mr. Secretary, is Mr. Sutherland involved in other deals right now with the State that I am not aware of?

MR. PASCAL: He had a lot of contacts with Audubon and helped us put the deal together.

COMPTROLLER FRANCHOT: And Secretary Griffin, is he involved with other --

MR. GRIFFIN: The only thing I'm aware of he does have, he is employed by the National, or the U.S. Civil War Trust which is, you may know the President and CEO of that is former, also a former Anne Arundel County Executive and Secretary of Transportation James Lighthizer. And he's working on some properties

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around the country, including with federal funds that Mr. Lighthizer secured from Congress he's working on some acquisitions up at South Mountain, which is near Antietam, that's a State Park preserving that Civil War battlefield. Other than that I'm not aware of anything else he's doing with us.

COMPTROLLER FRANCHOT: Well give him my regards. Tell him this is a great project.

MR. GRIFFIN: Thank you.

COMPTROLLER FRANCHOT: And good luck to you.

MR. PASCAL: Thank you very much.

TREASURER KOPP: Bob, I just want to add?

MR. PASCAL: Sure.

TREASURER KOPP: Almost a thousand acres dedicated in perpetuity to the public I think is outstanding. I mean, it's a great model. You were County Executive during tough times and you know how hard it is to see something like this and have to make it go away and develop into townhouses or whatever because the public doesn't have the funds to devote to

something like this. And I just think we all wish we could do it, and we are very, very happy and proud that there are those who do do it and allow us to continue to use the resources we have in projects that are, as the Comptroller would say, shovel ready and job producing while there are other ways to procure the Open Space for our children and children's children forever. And I just, this is a great Christmas gift to the people of the State of Maryland.

MR. PASCAL: Well, thank you. And I'm going to invite you all personally to come down and tour it. You've really got to see it to appreciate it.

TREASURER KOPP: Well an interdependent mosaic of migratory bird habitat is indeed --

MR. PASCAL: Thank you.

(Laughter)

TREASURER KOPP: Thank you. Thank you.  
Beautiful.

GOVERNOR O'MALLEY: When I was about a stone's throw from there, about parallel with there, my dad used to take me down to Peach Blossom Creek --

MR. PASCAL: There you go.

GOVERNOR O'MALLEY: -- to a couple little lots that he had down there. And when I was a little boy I thought those two little lots in the woods, and the ducks, and everything there were all the beauty of creation in one little place. So this is a big place. And I'm going to take you up on your offer.

MR. PASCAL: Do that. I would appreciate it. Thank you.

GOVERNOR O'MALLEY: Mr. County Executive, thank you. The Comptroller moves approval of 10A, 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 thank you, gentlemen. We now move on to, we're going to put your Agenda items on hold. We're going to skip around a little bit here. And I'd like Jim Harkins, Jim, are you here?

MR. COLLINS: Yes, sir. Item --

GOVERNOR O'MALLEY: We're going to the DGS portion of the Agenda, and this item is, Secretary Collins?

MR. COLLINS: Item 9-LL, Jim Harkins.

GOVERNOR O'MALLEY: 9-LL?

MR. COLLINS: 9-LL on my Agenda.

GOVERNOR O'MALLEY: 9-LL?

MR. COLLINS: Yes, sir, LL.

GOVERNOR O'MALLEY: On the Department of General Services Agenda.

MR. HARKINS: Good morning, Governor, members of the Board.

GOVERNOR O'MALLEY: Good morning, Mr. Secretary. I'm very excited about this.

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MR. HARKINS: Yes, sir.

GOVERNOR O'MALLEY: I told the Treasurer this has been like a David Lean epic movie, five years in the making, on six continents.

MR. HARKINS: Geez, with that kind of build up, Governor, we're going to talk about chicken manure, so. I want to begin by saying that this is a project that does have a history. As you know, Governor, it started with the genesis of a study that we did, a grant that came to the Maryland Environmental Service from the Maryland Energy Administration. Working cooperatively with the Department of General Services, with Maryland Agriculture, Department of Agriculture, we did a survey of all the technologies that exist, at the time, to take chicken manure and make power out of it. Forty-five different respondents, some off the wall, some a little more contemporary. We took those five, honed them down to the five most promising, and then put together a work group and began to look at them.

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The five most promising included the project that's in front of you today, a thermophilic anaerobic digester. If you look at the overhead --

TREASURER KOPP: Say that three times quickly.

MR. HARKINS: It rolls off the tongue after you've worked on it a while, Madam Treasurer. I know more about these things now than I ever wanted to know. The project, let's see if we can get it right here, lean it over that way. All right. Yep. You know I can build a digester but I'm technologically challenged when it comes to changing the -- I got it. The project overview, what is an anaerobic digester? Why develop an AD in Maryland? Phases of the AD development at ECI, the current activities, and the milestones.

GOVERNOR O'MALLEY: And ECI, for everyone, is what?

MR. HARKINS: Is the Eastern Correctional Institute, located in Princess Anne, sir. A prison

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site. In the essence, facilitating the development of this digester, as I just said in Somerset County, Secretary Bezanson, Deputy Secretary Bezanson, site staff, DGS staff, have been instrumental in the project and the siting, the real estate considerations. ECOCORP is the developer that we have chosen after a competitive procurement. He is responsible for the anaerobic digester funding and construction. The State will pay the ECOCORP company for the energy from the anaerobic digester according to the terms of a power purchase agreement that we signed in October, 2010. MES is coordinating the AD effort with the other State stakeholders, the Maryland Energy Administration, the Maryland Department of Agriculture, Department of Public Safety, Department of General Services, Maryland Department of the Environment. And particularly those secretaries of those agencies, Malcolm Woolf as well as Abby Hopper have been very significant in their contributions.

An anaerobic digester is a series of microbiological processes that encourage the natural breakdown of organic matter in the absence of air. Cut to the chase, it's taking chicken manure, mixing it with water and making a slurry, and then heating it up in a microwave to a super hot temperature and pulling off the methane gas. That's the layman's terms but not the engineering process. But that's how it's going to work.

GOVERNOR O'MALLEY: Not incineration.

MR. HARKINS: Non-incineration. It will have solids and liquid byproducts that can be used as a nutrient rich soil conditioner and liquid fertilizer. And the anaerobic digester is a prevalent energy power source.

An example of how an anaerobic digester process works, the material is taken in, again heated in a heat exchanger. The biogas is pulled off. The biogas is then used ultimately to run a genset. The genset produces electricity by generator and then

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ultimately will be consumed by the prison at the Eastern Correctional Facility.

Why develop it? To develop a renewable energy source. We have a very stringent portfolio in Maryland, as I know you are well aware, which requires 20 percent of our electricity to be generated from renewable energy sources. And this is very much a renewable energy source. And also to potentially assist with nutrient management for the Chesapeake Bay. To promote the use of similar technologies in Maryland. This will really be a grand pilot demonstration project that we are very hopeful to get members of the poultry industry in to look at. We've shared this already with the State of Virginia, who are also struggling with finding use for poultry litter, as well as the Delmarva poultry industry themselves. They have followed it very closely and we have kept them up to speed on it throughout. And also it promotes a public-private partnership of the State.

The location of this facility, again, will be at the Eastern Correctional Institute. It will be next to the cogen facility, which is a wood-fired facility that MES runs for the Department of Public Safety that produces the power for that facility.

The phases of the ED development at ECI. We signed a power purchase agreement with Energy Corp. We secured the rate that the State will pay for the purchase for a renewable energy project for a 20-year period. MES will be coordinating the site location, permitting, and the design of the plant. ECOCORP, our vendor, will facilitate the feed stock, assessment, and financing. The feed stock will be chicken manure, as well as what we call energy crops, barley, rye, switch grass, and corn stover. Corn stover is that residue left after you pick the corn.

We expect construction to begin, I'm sorry I'm getting ahead of myself. The site selection, final stages are complete. The real estate agreement, obviously today you are passing this, this agreement

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will bring us to that point. We are working with ECOCORP, the PSC, to obtain the letters that we need from them. That is all progressing. The design, ECOCORP has developed a preliminary plant design, including the civil, mechanical, and electrical drawings. That is all moving forward.

The feed stock and the fertilizer, ECOCORP is arranging contracts with local farmers to supply the feed stock that we need. And ECOCORP is arranging for the private funding.

Again, drawings of how the AD will look.

Milestones of the project. As I said, the potential signing today, the Board of Public Works lease agreement. We expect to have 100 percent construction drawings complete in early 2012, with the start of the actual construction project in the summer of 2012. And we hope to have it fully operational after testing and start up in June of 2013.

And lastly, the technical overview of all those things that you will have for cocktail parties

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now to discuss with people and they will wonder how you ever came up with this. You know, the anaerobic digester will produce one megawatt of power. The feed stock is about 5,500 tons of poultry waste annually. That will be mixed with treated wastewater from the prison that would have been discharged into Kings Creek. Instead we will not discharge it. We will mix it in that slurry that I mentioned earlier. And then up to 8,000 tons of energy crops annually. The annual energy purchase, about 6,990 megawatts would be the equivalent of about 600 homes in a year of power. We will supply 25 percent of the power used by Eastern Correctional Institute, the prison. And the usable byproducts, again the fertilizer, can be sold to the local farming community.

So that's an overview of the project. I'm happy to answer any questions that you may have. If they are highly technical I've got my engineer here as well, so I thank you.

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GOVERNOR O'MALLEY: Questions?

TREASURER KOPP: This shows you how, what an odd State Treasurer you have. But I think this is so exciting. I'm really --

(Laughter)

TREASURER KOPP: I know it's a pilot, and I know we'll be watching to see how well we do it and how it succeeds. But if it can do all these things, and create economic development, bringing the public and the private sectors, take care of environmental waste, and produce energy, it's a marvelous, it's a marvelous model.

I was just saying to the Assistant Treasurer, between, I mean we started out with wood chips some decades ago.

MR. HARKINS: Right.

TREASURER KOPP: And it was very, very difficult. But between the wood chips, the solar farm at UMES, the geothermal projects at the schools on the Shore, and now this plant? I think Maryland is in a

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position to actually be a model for other states and other localities who A, experiment, and B, then go forward into the new century and do our part and more in addressing both environmental harm and energy creation.

It's terribly exciting. I know there is such a thing as agritourism, where you go to vineyards, et cetera, and then get a chance to see how things work. I hope that in the next few years we can look at energy tourism, or something like that. Because it's a great site and people should know about these projects.

MR. HARKINS: Well there's a lot going on in this area. The Secretary of General Services and I have lamented that we know a lot more about chicken litter than we ever thought we would know.

TREASURER KOPP: Well it's a big product of the State of Maryland. We do a lot of it.

MR. HARKINS: Well but it also will have a major impact on one of our major agro industries in

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Maryland on the Eastern Shore. No one is here to say that this will be the remedy for all the ills of the world. But it's a technology step in the right direction. It will be one of the first in the nation that's been done with chicken litter. These have been done successfully with other manures but chicken litter will be a first. And we've gone to extreme, we've even had our engineering peer reviewed by other engineers. Because forever and a day if we get this wrong it will be the example of the thing that's wrong.

TREASURER KOPP: Right.

MR. HARKINS: We feel not cocky but quite confident in the work that we've done to bring it to this point.

TREASURER KOPP: Well I have to say I remember the time about a little more than 30 years ago when a new delegate from Bethesda, from Montgomery County, got on the Appropriations Committee under the chairmanship of a farmer from the Eastern Shore and

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had a crash course in chicken litter. And since then have had a significant interest in how you dispose of chicken litter, and integrated poultry technology. Of which John Hargreaves was one of the proponents, prime proponents. And I just think that this really is a great step forward. If it doesn't work we stand back, and reshape it, and try again. But this is the sort of thing the State of Maryland should be doing. And I really commend --

MR. HARKINS: Thank you.

TREASURER KOPP: -- the Governor and you for all the, and the Secretary, for all the difficult and not always 100 percent pleasant work that goes into taking these sorts of big steps.

GOVERNOR O'MALLEY: And tell me, can you explain to me, Jim, I mean I agree with everything that the Treasurer said and, you know, one of the great industries of our State is the poultry industry. And one of the great challenges of our times is how we live in better balance with the other living systems

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of this increasingly crowded planet. And my, I'm wondering if you can revisit a little bit for me if you would the financing of this?

MR. HARKINS: Yes, sir.

GOVERNOR O'MALLEY: How much is it? How does it work? And what if any preferential treatment does this project receive by merit, if any, of the renewable energy portfolio standards or any of those sorts of things?

MR. HARKINS: Dave Ferguson is our engineer and our point person. So I'm going to let Dave field that question. Go ahead. Thank you.

MR. FERGUSON: Good morning. Thanks for letting me come. The base model is the developer is responsible for all the capital costs, the operations, and the contracts to feed the digester. We've had, several years ago we had vendor after vendor come through our office saying these digesters are great deals, look at the return on investment. You know, you should invest in this. And finally we turned it

around and said times are tough for the State. We think if it's such a great deal you build it and we'll buy the power. And we thought frankly that would chase most of the people out of our office. Well instead several companies came back and said okay, we're still interested in talking to you at that point.

So we conducted a series of procurements. Initially an expression of interest and we got three companies that were interested, two from overseas and one here in the U.S. They submitted bids. We evaluated them with the technical criteria, with the financial criteria. We qualified the top two respondents and then we negotiated a final power purchase agreement which was signed in October of 2010.

So at that point the understanding was if they could build the facility, if they could finance the facility, they operate it, they are responsible for the regulatory aspects, they are responsible for

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all the contracts to keep it rolling, then we would buy the final product that comes off of the gensets that they produce.

So the incentives that were communicated to the developers were one is we would try to assist them with a favorable real estate deal. Because we knew if we charged them big bucks for real estate they would basically recycle that cost right back through the unit rate they sold us electricity for. We would assist them with navigating the State permits, administrative requirements. And we would also help them work on any other technical review and design and issues like that that they needed assistance with.

So the State's responsibility is to basically buy the electricity once the digester is completed. And they have complete responsibility. The estimated cost right now is about \$5 million to build the facility.

GOVERNOR O'MALLEY: All right. How many people will be employed in its building and its running?

MR. FERGUSON: Well probably somewhere in the neighborhood of 12 to 15 people will be employed during its construction and probably about four people or so after it's up and running. It's pretty high tech so it won't require a real heavy footprint.

GOVERNOR O'MALLEY: You mean it's pretty low tech?

MR. FERGUSON: Low tech, well --

GOVERNOR O'MALLEY: No, did you mean high tech?

MR. FERGUSON: No, sir. I do mean the process itself, the reactor, the computer controls, the mixture of the organisms as they process the poultry litter and energy crops, that part is high tech and well regulated to maintain a relatively low level of human interaction.

GOVERNOR O'MALLEY: More mechanized, got you. And so, and we were going to buy electricity anyway?

MR. FERGUSON: Yes. Right now, as you mentioned, we're buying about 25 percent to about one-third of our electricity for the prison. It's a 3,500 inmate facility. We buy, we generate about two-thirds of the power required by the cogen plant running wood chips. The other third is purchased from Delmarva. That varies seasonally. It varies by maintenance requirements. The intention of this project is to replace purchased electricity from the grid. That will free up power for the grid. It will make the institution itself more independent in terms of its own power needs. And it will also satisfy the renewable energy portfolio, or go towards it.

GOVERNOR O'MALLEY: And you are bringing down your, you know, you are reducing the TMDL burden --

MR. FERGUSON: Right.

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GOVERNOR O'MALLEY: -- by reducing the amount of water that you have to discharge --

MR. FERGUSON: Exactly. The amount of water, at this scale the amount of water that we are discharging is maybe one percent or so of the total discharges for the plant. That will be taken into the digester, recirculated, and then the final liquid product can then be marketed to the local farmers as a fertilizer. So we will be reducing the discharge from the wastewater plant which is on site.

We also, of course we'll be taking raw poultry litter off of the market in the Somerset County area. And once it is metabolized the solid byproduct can also be used by the farmers. And it can be applied to the fields. And it's actually in a better, it's in a better chemical state to be absorbed by the plants than just the raw poultry manure. Plus the chemical makeup is better known. So the farmers know exactly what they are getting when they are putting it on the field. They know if they need to

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add anything to it, specifically nitrogen which they probably will add a little bit. But they know exactly what they are doing. They are not overapplying the nitrogen because they have the chemical formulation correct.

GOVERNOR O'MALLEY: But the end process of this is less harmful poultry manure being spread on fields?

MR. FERGUSON: I don't know that it's less harmful. The quantities are better known so you can apply it more precisely. For example if you might have applied --

GOVERNOR O'MALLEY: I meant less, comma --

MR. HARKINS: The volume will be less because we're, you know, there will be some condensing --

GOVERNOR O'MALLEY: Right.

MR. HARKINS: -- that in fact occurs. A precision ag situation, the farmer is going to be doing soil samples and applying the nitrogen, and what

have you, as needed. And in a precision ag situation this material will be tested and we will know what percentage of nitrogen, what the total contents of the byproduct are. So but we, the other thing I want to throw is, throw back in is that it will continue to be recycled. We won't clean out, you know, the facility after every run. You just add more material and you keep, just like a wastewater treatment plant. You don't remove the solids every time you do a process batch.

GOVERNOR O'MALLEY: And tell me about the corn stover again? That's mixed with the slurry?

MR. FERGUSON: The formula, the current formula calls for about 40 percent poultry manure and 60 percent energy crops. And those crops can vary. Basically whatever they can get on the market, at the best price, at the best BTU.

GOVERNOR O'MALLEY: Switch grass?

MR. FERGUSON: Switch grass is a possibility, barley is a possibility, corn stover is a

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possibility. A lot of it will be market driven. One of the neat things that this developer, ECOCORP, has already done, he has already had extensive conversations with local farmers. He's had extensive conversations with trucking companies in the area. Hopewell Agri-Services, they supply and have relationships with existing farmers. He can call them up and have them deliver the poultry litter or the energy crops to the site on an as needed basis. And he can also, he also will facilitate the selling of the fertilizer back to the very same farmers.

This past summer we had a meeting down on the Eastern Shore in Princess Anne. We had on a Friday night we got a dozen farmers to come out and a very pleasant surprise was they said if we sell you our manure will you guarantee us that you will sell us the fertilizer back? So that was a very positive sign, because that's part of his prospectus is he has to be able to market the solid and the liquid byproduct. And having these farmers who are normally

very skeptical of anything new in technology like this say we want you, you know, will you guarantee us that you will sell us the fertilizer byproduct was a very positive sign and just encouragement to him to keep moving forward.

GOVERNOR O'MALLEY: Great.

MR. HARKINS: Probably more than you ever wanted to know about that.

GOVERNOR O'MALLEY: No, it's important. And the hope is, a final question and then the Comptroller has some questions. And the hope is that should this work, that this can become a distributed power generation source --

MR. HARKINS: Excuse me, we have --

GOVERNOR O'MALLEY: -- that's located closer to the feed stock all around the Shore. So rather than having to spend huge amounts of money on gasoline --

MR. FERGUSON: Sure.

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GOVERNOR O'MALLEY: -- trucking poultry  
litter --

MR. FERGUSON: Absolutely.

GOVERNOR O'MALLEY: -- across the Bay Bridge  
--

MR. FERGUSON: Right.

GOVERNOR O'MALLEY: -- or up north --

MR. HARKINS: It's all about, it's all about  
transportation, Governor. You hit the nail on the  
head. We envision that these things because of the  
size, because of the price, there are federal programs  
where farmers can form cooperatives and build an  
anaerobic digester and four or five farmers contribute  
their chicken manure to a particular project. And  
then share in those resources. And there is a, as I  
said, State, or federal money to fund them. So you  
have to have the first one up and running successfully  
--

GOVERNOR O'MALLEY: Right.

MR. HARKINS: -- you know before anyone will ever envision those things. And it has to be done correctly, and it has to work.

GOVERNOR O'MALLEY: Everybody wants to be the best at doing something second.

(Laughter)

MR. HARKINS: Yes.

GOVERNOR O'MALLEY: Mr. Comptroller?

COMPTROLLER FRANCHOT: Yes, County Executive Harkins I just want to compliment you on having excellent staff who can explain all this. And --

MR. HARKINS: I thought I might get some questions.

COMPTROLLER FRANCHOT: Yeah.

MR. HARKINS: So I brought some backup.

COMPTROLLER FRANCHOT: I'm not going to, at the cocktail parties that were mentioned or whatever I'm not going to describe this as the anaerobic digester at Eastern Correctional Institution. I'm going to put this in my files as Harkins Hope.

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(Laughter)

MR. HARKINS: I'm sure I'll be reminded if it's a Harkins failure.

COMPTROLLER FRANCHOT: I happen to think it's a good news story. I think this is a great example of public/private partnership and federal money. I think there was some federal stimulus money, not a lot, but some put into this. And it's in a pretty desperate corner of the State as far as economic activity. So to have this kind of environmentally sustainable project there is good news. And I compliment you and the Governor.

I'm particularly happy, frankly, to see that Maryland's poultry industry is going to be used as part of the environmental solution. And, because the poultry industry has taken in my view some extraordinary steps to improve what they are doing over on the Shore, and process its products in an environmentally sensitive manner. And I personally believe the industry has not received the credit that

it's due. And that's a shame because as you know it's an absolute lifeline for the people on the Eastern Shore. Without the jobs, the economic activity, the charitable giving, the philanthropy that the chicken industry is directly responsible for frankly the Eastern Shore, which has taken a number of hits in the economic crisis, frankly without the chicken industry they would be on life support over there. So this is welcome news, not just because it makes sense environmentally but because it brings the poultry industry into a great partnership. So kudos.

MR. HARKINS: Thank you.

GOVERNOR O'MALLEY: Anybody here from ECOCORP?

MR. HARKINS: They are not here today, sir. They are --

GOVERNOR O'MALLEY: So much confidence had they in you.

(Laughter)

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GOVERNOR O'MALLEY: How much of stimulus dollars were in this?

MR. FERGUSON: We had one grant from MEA, \$155,000. It just expired last week. So that was ARRA own money.

GOVERNOR O'MALLEY: And you used it?

MR. FERGUSON: Yes.

MR. HARKINS: Yes. MES, we so believed in this process, as you know we are a fee for service agency.

GOVERNOR O'MALLEY: Right.

MR. HARKINS: We dipped into our reserves and went out and speculated on it. We --

GOVERNOR O'MALLEY: Good.

MR. HARKINS: -- you know, somebody has to break the glass ceiling.

GOVERNOR O'MALLEY: Yep.

MR. HARKINS: And so we think this project was worthy of --

GOVERNOR O'MALLEY: Good job, Jim. No, this is good. And I know that you've been, I don't think a day ever went by when we would run into each other and I didn't ask you about the anaerobic digester.

MR. HARKINS: Yes, sir. That is very true.

GOVERNOR O'MALLEY: Okay. Any other questions on this? All right. The Comptroller moves approval, the Treasurer second. 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. Congratulations. Thank you.

MR. HARKINS: Thank you, Governor.

GOVERNOR O'MALLEY: I want to come out and cut a ribbon.

MR. HARKINS: Yes, sir. Thank you.

MR. FERGUSON: Thank you.



GOVERNOR O'MALLEY: Let's, we now have one last item before we get into the body of this Agenda. Believe it or not we're not in the body of the Agenda. We, which item is that?

SECRETARY MCDONALD: Item 6 on the Secretary's Agenda. Secretary Griffin is here to suggest naming the Lefty Kreh Fishing Trail.

MR. GRIFFIN: Thank you, Madam Secretary.

GOVERNOR O'MALLEY: This is a great brochure here. This is the Maryland Fishing Guide 2012. For those of you watching on the internet because you are all done with your Christmas shopping this is a great guide you can put in as a stocking stuffer. I want to thank the good people at Under Armour here. I assume they helped pay for it by buying this page?

MR. GRIFFIN: Yes, good assumption, Governor.

GOVERNOR O'MALLEY: With a very athletic looking fisherman in the Under Armour outfit. John, what do we have?

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MR. GRIFFIN: Board members, good morning.

I want to thank you for allowing us to place this item on the Agenda, given your very full Agenda today. And I want to thank everybody in the audience for your patience.

In keeping with the holiday season I'm here to present another gift. This one is a Maryland treasure, not a piece of property but a world renowned fisherman and conservationist, Mr. Lefty Kreh. So I'm honored on behalf of literally millions of people in this State and around the world who are friends and admirers of Mr. Kreh to highlight aspects of his life and career accomplishments for all of you. Someone whom Tom Brokaw referred to as the embodiment of the Greatest Generation.

GOVERNOR O'MALLEY: And this is Mr. Kreh on the front of this 2012 --

MR. GRIFFIN: Yes, and here's Mr. Kreh in person.

GOVERNOR O'MALLEY: And that's himself?

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MR. GRIFFIN: He's a very humble man, but a great man. And I would ask, if you don't mind, everybody here who are friends of Lefty to stand? Not Lefty, you stay seated.

(Applause)

MR. GRIFFIN: Thank you. We have this power point. I'll run through it very quickly. Lefty is a Marylander. He was born in Frederick in 1925, enlisted in the Army during World War II. He fought in, among other places, the Battle of the Bulge and the Ardennes Forest, received five battle stars and a Purple Heart. Next, Joe?

He started to work after the War at the new Fort Detrick Bio Warfare Lab and he contracted anthrax. Thankfully, he survived. Two of his colleagues did not. But a strain of anthrax was named after him, BVK-1, Bernard Vernon Kreh-1.

He started writing as the outdoors editor of the *Frederick News-Post* and did that from '51 through '64. By 1954 he was regularly writing for *Outdoor*

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*Life, Field and Stream*, and five newspapers. And he's been a consultant to L.L. Bean and the National Wildlife Federation; exhibition shooter for Remington Arms. I might mention the fish you see there, actually Secretary Collins fishes those weekly. He's really the --

(Laughter)

MR. GRIFFIN: He's the Secretary of DNR in hiding. But --

TREASURER KOPP: What kind of fish is that?

MR. GRIFFIN: I think that's a tarpon. A tarpon.

GOVERNOR O'MALLEY: Now did they put that, Lefty, honestly. Did they put the lens of that camera right down on the damn fish?

MR. KREH: No comment.

(Laughter)

MR. GRIFFIN: Closer to home he was, as many of you know, the outdoor writer, esteemed outdoor writer for the *Baltimore Sun* for 18 years until 1991.

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In 1974 he wrote and produced *Fly Fishing in Saltwater*, which has now become a seminal book on saltwater fly fishing. It's now in its third edition. Lefty's Deceiver, in the late 1950's he invented this unique and now widely used saltwater fly to deceive and catch striped bass, the State fish. And it's now the most popular fly of its kind around the world. And in 1991 the U.S. Postal Service recognized this by minting a stamp to recognize this unique accomplishment.

Lefty has written over 30 books, he recently completed his 31st, and many instructional videos. Here are some of those here on the table. We didn't bring all 31. Just to give you a feeling for how prolific this young man is.

Let's see, just in this last picture, that was Tom Brokaw on the left and the gentleman on the right, excuse me the gentleman on the left is the President of Patagonia Company.

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So what is before you, we are recommending that the Board consider naming the south, the current South Trail of the Hereford Area of Gunpowder Falls State Park the Lefty Kreh Fishing Trail. Just to tell you a few things briefly about it. This part of the Gunpowder flows through Baltimore City property at the Reservoir, and through that part of Gunpowder Falls State Park. This area is also a wildland, which is the equivalent at the federal level of a wilderness area designated in State law. The catch and release for trout stretches 7.2 miles from Prettyboy Reservoir down to Blue Mount Road. In 1986 Trout Unlimited, Department of Natural Resources, negotiated with the City of Baltimore a release schedule from Prettyboy to continue to get cold water, enough cold water flowing down into this part of the Gunpowder. And you might recognize Jim Gracie is here, longtime conservationist.

GOVERNOR O'MALLEY: Hello, Jim.

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MR. GRIFFIN: Former Maryland and National President of Trout Unlimited who was a driving force behind those agreements with the City that ended up turning this section of the Gunpowder into a blue ribbon trout fishery. And it's a rite of passage for every Maryland trout fisherman to come here and fish. It's one of the, I don't know if you know this, but the Gunpowder, and particularly this section, is one of the top ten trout streams in the country now. So this trail is a shady path that runs along this 7.2-mile stretch along the stream. So --

GOVERNOR O'MALLEY: And it runs along the stream there?

MR. GRIFFIN: Yes.

GOVERNOR O'MALLEY: Great.

MR. GRIFFIN: Great trout stream. So --

GOVERNOR O'MALLEY: John, you've got to teach me how to do fly fishing.

MR. GRIFFIN: I'm a very poor teacher.

GOVERNOR O'MALLEY: Maybe Lefty, Mr. Lefty, maybe you can teach me. Come the spring, maybe? When is, is spring the best time? Or --

MR. KREH: When it gets warm.

GOVERNOR O'MALLEY: When it gets warmer?

(Laughter)

GOVERNOR O'MALLEY: Is it better later in the summer or earlier in the summer?

MR. KREH: March on.

GOVERNOR O'MALLEY: March on?

MR. GRIFFIN: So assuming, or pending Board approval of this request, we will have a big ceremony with lots and lots of people there when the weather gets warmer with --

GOVERNOR O'MALLEY: Let me know.

MR. GRIFFIN: Yes, sir. Sure will.

GOVERNOR O'MALLEY: Okay?

MR. GRIFFIN: But all the Board members --

GOVERNOR O'MALLEY: That's a great picture.



MR. GRIFFIN: And there it is. That's the form. So I would ask the Board's permission --

GOVERNOR O'MALLEY: Who painted that, Mr. K?

MR. KREH: Monica Acee, she donated it. They couldn't afford it.

GOVERNOR O'MALLEY: Uh-huh.

MR. KREH: \$150,000 she wanted to donate to some organization.

GOVERNOR O'MALLEY: That's nice.

COMPTROLLER FRANCHOT: Can we hear from Mr. Kreh?

MR. GRIFFIN: Yes, thank you very much, Mr. Comptroller. Left, would you mind coming up and saying a few words? Thank you.

MR. KREH: I reluctantly appeared here.

(Laughter)

MR. KREH: I'll be 87 in a few weeks. I'm so old I remember when men wore tattoos and women wore the earrings.

(Laughter)

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MR. KREH: And what bothers me is that this is the third national recognition I've had in about two to three months and I'm beginning to wonder if you all think I'm leaving this place.

(Laughter)

MR. KREH: And the only thing I have to say is what Marc Antony said when he crawled into Cleopatra's tent. "I didn't come here to make a speech."

(Laughter)

MR. KREH: And before I get out, and before they let me go out that door over there I do want to thank this administration for what you are doing for our natural resources. Thank you very much.

GOVERNOR O'MALLEY: Thank you.

(Applause)

MR. GRIFFIN: Lefty promised me before he came up he wouldn't tell any jokes.

(Laughter)

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MR. GRIFFIN: He couldn't help it. He brought some gifts for the Board members for Christmas or Hanukkah. Joe Evans on our staff has those. Joe, why don't you tell everybody, tell the Board what those are?

COMPTROLLER FRANCHOT: Oh, boy. Isn't that great? Lefty's deceiver.

GOVERNOR O'MALLEY: Oh, this is great.

COMPTROLLER FRANCHOT: You know, Governor, I went up --

TREASURER KOPP: Thank you.

COMPTROLLER FRANCHOT: Thank you. But I went up before and was chatting with Mr. Kreh. And I said, just to make conversation I said, "I'm left handed." And he looked back up at me and said, "I'm right handed."

(Laughter)

COMPTROLLER FRANCHOT: So, yeah.

MR. GRIFFIN: He also has a book for each of you.

COMPTROLLER FRANCHOT: But apparently --

TREASURER KOPP: How do you write 30 books?

I mean, gosh.

COMPTROLLER FRANCHOT: -- the story was that when Mr. Kreh was growing up in Frederick he was a spectacular athlete. And he was so good that all the other kids, even though he was right handed, made him play with his left hand. So that I think is the story.

But I also just wanted to say thank you for your service in World War II. My uncle, who is no longer with us, was an artillery captain in the Battle of the Bulge. And he described in great detail taking these huge 88 howitzer artillery guns, and about to be overrun by the Germans he put them absolutely horizontal to the ground. He said I had no idea who we, what we were doing, but we just shot. Because it was such a cataclysmic event. So thank you for being part of the Greatest Generation. And thank you for these gifts. Because, you know, you represent --

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MR. KREH: It's a bribe.

COMPTROLLER FRANCHOT: -- you represent the best, a bribe, yeah we haven't voted yet, right?

(Laughter)

COMPTROLLER FRANCHOT: But, and thank you for a couple of good lines. I'm going to steal those.

(Laughter)

GOVERNOR O'MALLEY: He will.

(Laughter)

MR. GRIFFIN: Governor, we have a mock up of the sign as we normally do.

GOVERNOR O'MALLEY: Great.

MR. GRIFFIN: If the Board members had a moment --

GOVERNOR O'MALLEY: Sure.

MR. GRIFFIN: -- to join Lefty --

COMPTROLLER FRANCHOT: Yeah.

MR. GRIFFIN: -- and take a picture?

GOVERNOR O'MALLEY: Mr. Kreh, could you come on up? And so we'll do a picture alone, and then

we'll do one with all your friends. And then Cass, if you wouldn't mind showing our guests just the Governor's Office as long as they are here?

Who has that camera? Come on in. Mr. Kreh, good to see you. Thanks for your time and knowledge about what we've been doing. And let's just move this chair out of the way.

COMPTROLLER FRANCHOT: John, join us.

GOVERNOR O'MALLEY: How about Lefty's bodyguard detail?

(Laughter)

GOVERNOR O'MALLEY: Jim, how about the Menhaden?

MR. GRACIE: We're getting there. Aren't we, Governor?

GOVERNOR O'MALLEY: We are. Okay, can we have a couple on the other side with Treasurer Kopp?

MR. GRACIE: Thanks for your work on the Menhaden.

GOVERNOR O'MALLEY: Hey, it was a good one. All right. Friends of Lefty. Give us a one, two, three.

SECRETARY MCDONALD: More coming. Come on, come on. Come on.

GOVERNOR O'MALLEY: Wait a minute, we've got more coming.

MR. KREH: Come on. Come on over to this side.

GOVERNOR O'MALLEY: Great. All right. You can leave. But what I would suggest is --

(Laughter)

GOVERNOR O'MALLEY: -- when you grab your coats if you follow the young woman right there? If you follow Cassie you'll get a tour of the Governor's Office while as long as you're here. Well, that was fun.

TREASURER KOPP: Yes, thank you. The high point of the day.

GOVERNOR O'MALLEY: And the gifts just keep piling up. Are there any other --

MR. COLLINS: Kevin Manning from our, Stevenson College --

COMPTROLLER FRANCHOT: Which the \$3 million --

MR. COLLINS: The \$3 million grant.

GOVERNOR O'MALLEY: Is this a long item, or -- okay. What item is it, though?

MR. COLLINS: It's our, it's going to be 15-CGL. Item 15.

GOVERNOR O'MALLEY: We are now going to Item 15-CGL, also part of the Department of General Services Agenda items. President Manning? Come on down. Tell us what this item is.

DR. MANNING: Good morning. Thank you very much for putting me ahead. I appreciate it. We, as you know, we are building a campus in Owings Mills. We have a 100-acre site where the Ravens used to practice and then we're in the process of talking to

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the State about Rosewood. Well we were able to purchase a 28-acre site from Scherer Pharmaceuticals in England and we're going to move our school of the sciences and our school of design onto that piece of property after we renovate it. We purchased it already. The \$3 million is for the purchase of the land and then we're going to subsequently renovate it over the next two years.

So this is an important part of our expansion. It's contiguous to the campus that already exists and it's part of our effort to accommodate 4,000 students at Stevenson. You know, we've doubled in size in ten years and we're going to go another 800 students in the next five years, so.

GOVERNOR O'MALLEY: That's great.

DR. MANNING: It's part of that.

GOVERNOR O'MALLEY: Okay. Any questions on this one?

TREASURER KOPP: We look forward to cutting a ribbon.

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DR. MANNING: Thank you. We'll look forward to having you out.

TREASURER KOPP: I congratulate you on the progress. You know, I had some question --

DR. MANNING: Right.

TREASURER KOPP: -- when there were all the big changes at Stevenson.

DR. MANNING: Yes.

TREASURER KOPP: And I think you've done a terrific job.

DR. MANNING: Well I appreciate all your support.

GOVERNOR O'MALLEY: Okay. All right. And 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.

DR. MANNING: And thank you again. And have a nice holiday.

GOVERNOR O'MALLEY: Thank you. Is there anything else on Department of General Services Agenda?

MR. COLLINS: I have 14 other items, Governor, but they are routine.

GOVERNOR O'MALLEY: All right. We have reviewed these items with staff -- Treasurer?

TREASURER KOPP: There is one, though, I'd like, I think it's on your Agenda. The green environmental --

MR. COLLINS: Oh yeah, your, for your building?

TREASURER KOPP: For the Treasury Building.

MR. COLLINS: Yes. Yes.

TREASURER KOPP: And just exactly what, I don't have it right before me, but which number is that?

SECRETARY MCDONALD: Four.

MR. COLLINS: Four?

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TREASURER KOPP: Okay.

MR. COLLINS: Item 4-M, Madam Treasurer.

TREASURER KOPP: Yeah. I'm just interested because it's our building, but also because as you know the Pension System is involved in real estate.

MR. COLLINS: Right.

TREASURER KOPP: Not individual building, and interested in the question of green maintenance.

MR. COLLINS: Yes.

TREASURER KOPP: And exactly what that means in this instance.

MR. COLLINS: Well the long and short of it, Madam Treasurer, and thank you for asking the question. Al Collins, Secretary of the Department of General Services. And we really are trying to move forward with a LEED process for janitorial services. So we are using your facility to bring a LEED certified janitorial company in to start that process. So this is the first time we have actually kicked up our LEED work and the emphasis, again with the

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Governor's leadership, that we want to make sure that we put all the environmental techniques in place for our janitorial services. And we're going to use your building as the first process for that.

TREASURER KOPP: What sort of thing are we talking about?

MR. COLLINS: Green products, application of green products, training of staff in the appropriate techniques, and that sort of thing.

TREASURER KOPP: Okay. That's terrific. And according to what we've seen at least a lot better for the staff.

MR. COLLINS: Oh, absolutely. Absolutely. The environment will be much better for the staff, and the application of their products and the environment and what have you, focuses on making sure that we do all we can to be supportive to the staff that lives in that facility. And we hope, again this is the first time we've used one of these and I'm really excited about that.

TREASURER KOPP: Well I'm thinking of your staff. Not so much the staff that live in the facility, but the people who have to apply --

MR. COLLINS: Oh, sure. Absolutely. Absolutely.

TREASURER KOPP: -- I think there is a correlation between green products, green care, well trained staff --

MR. COLLINS: Yes.

TREASURER KOPP: -- and the actual, the health and welfare of the people who work there.

MR. COLLINS: Absolutely. And we're looking to learn a lot from this first time with this contractor and then apply some of those techniques in other day to day, other areas that we, which we maintain.

TREASURER KOPP: Well, great. Well I for one, but I'm sure the other folk here, will be very interested in keeping on top of this and seeing how it goes.

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MR. COLLINS: Sure. My pleasure.

TREASURER KOPP: Thank you. Thanks,  
Governor.

GOVERNOR O'MALLEY: Okay. On the balance of  
the DGS Agenda items the Treasurer moves approval,  
then, seconded by the Comptroller. All in favor  
signal by saying, "Aye."

THE BOARD: Aye.

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

(No response.)

GOVERNOR O'MALLEY: The ayes have it. We're  
going to move some seats here, ladies and gentlemen.  
University System of Maryland.

SECRETARY MCDONALD: Mr. Evans is here.

GOVERNOR O'MALLEY: We've reviewed these  
items prior to our meeting. Madam Treasurer, any  
questions? Mr. Comptroller? None. The Comptroller  
moves approval, seconded by the Treasurer. All in  
favor signal by saying, "Aye."

THE BOARD: Aye.

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(Laughter)

MR. EVANS: Thank you.

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

(No response.)

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

TREASURER KOPP: Merry Christmas.

MR. EVANS: Thank you.

GOVERNOR O'MALLEY: What about  
Transportation? Anything on Transportation,  
Comptroller?

COMPTROLLER FRANCHOT: No.

GOVERNOR O'MALLEY: Okay. How about DoIT?  
Anything on DoIT? Well, the slots thing is on DoIT  
and you want to ask on that so we can't do that.

SECRETARY MCDONALD: There's nothing else on  
the Secretary's. I mean, you can go back to  
Secretary. We don't have --

GOVERNOR O'MALLEY: Department of Budget and  
Management?

TREASURER KOPP: Oh, no. No.

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SECRETARY MCDONALD: She's got --

GOVERNOR O'MALLEY: She's got the prison.

Okay.

SECRETARY MCDONALD: I think you've got the Secretary's Agenda.

GOVERNOR O'MALLEY: Okay, let's do --

COMPTROLLER FRANCHOT: You could do POS.

GOVERNOR O'MALLEY: Okay. On DoIT, are there any, what is that item that we want to hold there?

SECRETARY MCDONALD: Well it's just Item 6 that there might be some questions, I don't know, Secretary Schlanger, if you --

GOVERNOR O'MALLEY: Just on the chance that there's somebody sitting here on other items, we're going to reserve on Item 6. Does the Treasurer or Comptroller have any questions on the other items on the Department of Information Technology?

COMPTROLLER FRANCHOT: Move approval.

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

THE BOARD: Aye.

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

(No response.)

GOVERNOR O'MALLEY: Thank you. Have a seat. We'll call you when your next contesting round comes.

(Laughter)

GOVERNOR O'MALLEY: The Department of Budget and Management, Secretary Foster the item in controversy here that Senator Miedusiewski is here on is which item?

MS. FOSTER: The items we need to hold, Governor, are Items 11 and 12.

GOVERNOR O'MALLEY: Well Item 11 and Item 12?

MS. FOSTER: Right.

GOVERNOR O'MALLEY: All right. Let's consider the balance of the Department of Budget and

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Management, the Budget and Management Agenda items with the exception of Items 11 and 12. Any questions on those? Hearing none, the Treasurer moves approval, seconded by the Comptroller. All in favor signal by saying, "Aye."

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed?

(No response.)

GOVERNOR O'MALLEY: The ayes have it. We move to, what was it?

SECRETARY MCDONALD: The Secretary's Agenda.

GOVERNOR O'MALLEY: On the Secretary's Agenda. Anything else of controversy on the Secretary's Agenda? Hearing none, the Comptroller moves approval, seconded by the Treasurer. All in favor signal by saying, "Aye."

THE BOARD: Aye.

SECRETARY MCDONALD: And we're back to DNR, perhaps?

GOVERNOR O'MALLEY: And now we're back to DNR, and including Program Open Space. Are we combining these now?

SECRETARY MCDONALD: It's really the Department of Natural Resources Real Property Agenda. Last General Assembly session they were given a lot more responsibility for procuring all of the real property. So we converted the Agenda. We just call it DNR, but you certainly don't have to if you prefer POS.

GOVERNOR O'MALLEY: All right, DNR?

MS. WARD: Lisa Ward for the Department of Natural Resources.

GOVERNOR O'MALLEY: Hello, Lisa.

MS. WARD: We have ten items on our Agenda today, one of which 10A was approved.

GOVERNOR O'MALLEY: One what? What was the last one?

MS. WARD: 10A was the one that we took first.

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GOVERNOR O'MALLEY: Right.

MS. WARD: We're here to answer any questions that you have.

GOVERNOR O'MALLEY: Any questions of the other good things here on Program Open Space?

COMPTROLLER FRANCHOT: Move approval.

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

THE BOARD: Aye.

MS. WARD: Thank you.

GOVERNOR O'MALLEY: All opposed?

(No response.)

GOVERNOR O'MALLEY: The ayes have it. Some good stuff in here. People who are watching online should go online and check out the maps and the big parcels that are being assembled for the benefit of your great-grandchildren. All right. We --

TREASURER KOPP: Yeah. I think it's important, Governor, to point out that while we had a

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spectacular item in the beginning, of Mr. Pascal's donation of almost 1,000 acres, there are also some very significant projects on this Agenda amounting to a large number, a large number of acres that will be now preserved for our children's children's children, and maybe even more.

GOVERNOR O'MALLEY: Very good things.

TREASURER KOPP: I don't want to go off without thanking those folks.

GOVERNOR O'MALLEY: What is this one with the 3,000 acres, Cayman Dreams? That looks like a lot of woods.

MS. WARD: Sure. That's Item 5A. Let me get that for you. The property is an inholding in Cunningham State Park, 3.8 acres, and we did purchase it at a discounted sale.

GOVERNOR O'MALLEY: Got you. I misread the point as a comma.

SECRETARY MCDONALD: 3,000 acres --

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GOVERNOR O'MALLEY: How the hell is that?  
How is that getting voted on without any discussion?

(Laughter)

GOVERNOR O'MALLEY: It's still a good one.  
And you can see when you go on the map that an  
inholding means that it's putting together contiguous  
habitat.

TREASURER KOPP: But on 7A, for instance,  
those are donations of --

MS. WARD: Yes, ma'am. Actually MET just  
left --

GOVERNOR O'MALLEY: Which one? I'm sorry.

MS. WARD: I think they thought that you had  
approved the Agenda.

TREASURER KOPP: The Maryland Environmental  
Trust.

SECRETARY MCDONALD: Item 7A.

MS. WARD: Yeah. Elizabeth Buxton and John  
Hudson were here to answer. I think they thought the  
Agenda was approved and they just --

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GOVERNOR O'MALLEY: It was.

TREASURER KOPP: No, no problem. All I'm saying is that there are many, many acres --

MS. WARD: Yes.

TREASURER KOPP: -- that are being donated via the Maryland Environmental Trust also that are significant.

GOVERNOR O'MALLEY: Okay. All right. So those items were approved and now what do we want to do --

SECRETARY MCDONALD: We have left the Department of Transportation Agenda, we have Item 6 on the IT Agenda, and we have Item 11 and 12 on DBM. So maybe you want to go to Transportation? We haven't done their Agenda at all.

GOVERNOR O'MALLEY: Transportation, the Comptroller has a question on one of those. Which Agenda item?

COMPTROLLER FRANCHOT: Item 16.

SECRETARY MCDONALD: Sixteen.

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GOVERNOR O'MALLEY: Item 16? So we're going to reserve on Item 16. And the balance of the Agenda. Any questions on the balance of the Department of Transportation Agenda items?

TREASURER KOPP: I don't have a question but I noticed there's at least one that deals with janitorial custodial care. And I would just hope that we would hear, depending on how Secretary Collins does with the green janitorial care, the MDOT and its various modalities are also getting lessons learned. Because it really could all the way around, if we got the right kind of people.

MR. COLLINS: Yes.

TREASURER KOPP: No questions.

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

THE BOARD: Aye.

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

(No response.)

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TREASURER KOPP: Could I just add --

GOVERNOR O'MALLEY: Sure.

TREASURER KOPP: -- in the mode of the Christmas season that I hope Secretary Swaim-Staley is well --

MR. MOBLEY: Yes.

TREASURER KOPP: -- and recovers from her accident --

MR. MOBLEY: Yes.

TREASURER KOPP: -- and --

MR. MOBLEY: Secretary Swaim-Staley fell last night --

TREASURER KOPP: Yes.

MR. MOBLEY: -- broke her upper arm at the rotator cuff and she is unable to attend. She is on a pain medication and she was not able to attend this morning.

TREASURER KOPP: I didn't realize it was broken. I had heard she had hurt it.

MR. MOBLEY: Yes. She fell and went to the emergency room late last night.

TREASURER KOPP: Please do extend to her our wishes for a speedy recovery.

MR. MOBLEY: I certainly will. Thank you.

TREASURER KOPP: A recovery, and hopefully a speedy recovery.

MR. MOBLEY: Yes.

SECRETARY MCDONALD: All right. So we have three matters left to draw straws from, perhaps. Three matters, or four. The slots machines, the inmate pharmacy contracts, and the State Highway Administration A&E modifications. Those two are together.

GOVERNOR O'MALLEY: How many of you are here for the, how many are here for the federal, I feel like Judge Gerstung, God rest his soul. How many of you are here for the federal, I mean I'm sorry, the pharmacy contract, please stand. Please stand. All of you here for the pharmacy contract? Okay, thank

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you very, very much. How many, what was the other one?

SECRETARY MCDONALD: State Highway Audit, State Highway A&E contract modifications.

GOVERNOR O'MALLEY: How many of you are here for the State A&E contract modifications, please stand?

And how many of you are here for --

SECRETARY MCDONALD: For the slots purchase --

GOVERNOR O'MALLEY: -- the slots discussion? Okay. Let's do the Department of Transportation, the A&E contract. Come on up.

SECRETARY MCDONALD: I think that Secretary Mobley --

MR. MOBLEY: Deputy Secretary Darrell Mobley representing the Department of Transportation here to present --

GOVERNOR O'MALLEY: What's the item number?

SECRETARY MCDONALD: Item 16-AE.

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MR. MOBLEY: Item 16.

SECRETARY MCDONALD: Do you want to give a little background on it? And then I think there are some questions.

MR. MOBLEY: We're here to answer any questions that you may have.

GOVERNOR O'MALLEY: Mr. Comptroller?

COMPTROLLER FRANCHOT: Yes, thank you, Mr. Secretary. And please give my best wishes to the Secretary. And hopefully she wasn't Christmas shopping and bringing presents in or something, but I wish her a speedy recovery. We're being asked to approve today 66 engineering contracts that are being extended. I believe just for the record that that will allow the SHA to wrap up the procurement process for the replacement contracts. And I just want to make sure these, are these the contracts that were referenced in the recent legislative audit? Which among many, many other things cited the SHA for improperly extending the expiration dates of several

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contracts for the purpose of retaining approximately \$26 million in unspent contract funds? And recommended that the SHA follow proper procedures by submitting them to the Board of Public Works for approval?

MR. MOBLEY: No, sir. These are contracts that are set to expire from January 1, 2012 through November, 2012. These would allow us to, by extending these contracts it would allow us to have sufficient time to get new procurements in place.

COMPTROLLER FRANCHOT: Okay. But these are the subject of the audit and the articles that we read about?

MR. MOBLEY: Yes, sir.

COMPTROLLER FRANCHOT: Okay. I'm sure everybody has had a chance to look at that audit that wrapped up a month ago, I think hit the street a couple of weeks ago. For the record, I have to say that I'm impressed by the strong and proactive approach that your boss took to the crisis. She

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didn't try to spin the issue. She didn't try to argue, you know, her side I guess. She didn't try to divert attention by cheerleading about other things. She basically assumed responsibility and said she was going to fix it, and acknowledged the gravity of the situations. And I understand she is taking some aggressive steps. And I thought that was very appropriate because I for one was shocked and I assume people reading about it who understand the procurement process were deeply troubled.

And frankly I thought it devastated the reputation of State Highway, which is nationally regarded as one of the finest highway departments in the country. But it was devastating to their reputation because it painted a picture of basically your employees, Transportation bureaucrats, going rogue. Actively conspiring with vendors to circumvent the procurement laws of the State in order to hoard taxpayer money and do so for the sake of spending it indiscriminately without accountability or oversight.

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And they did it at a time when the trust fund was inadequately equipped to keep up with our State's demands and funds for new roads and new transit, and adequate maintenance of the infrastructure. There's talk here in Annapolis of raising the gas tax on working people that have already been taken to the wall by this terrible economy and are just trying to make it from one day to the next.

So the money that your employees hoarded could have been used to fix potholes, repair broken sidewalks, fund capital maintenance on our transit lines, lay the groundwork for new projects that would literally save people's lives.

So since it's the first time that frankly I've had a chance to ask anybody about this, the audit's findings, perhaps you'd like to restate the steps that Secretary Swaim-Staley is taking to ensure that this abuse of taxpayer money doesn't happen again.

MR. MOBLEY: Absolutely. Thank you very much, Mr. Comptroller. Let me start by first

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acknowledging our new SHA administrator is here today, Ms. Melinda Peters. And also next to Ms. Peters we also have our new Director of Procurement, which is Norie Calvert, here with us today.

We have implemented new financial management information system controls, two-step control, to ensure that we restore the trust of the citizens of Maryland. That two-step process will allow us to have internal financial controls through our office of finance so that no contracts are extended without the approval of the Board of Public Works. In addition to that all contracts that require any extension of time or money will come through the Board of Public Works as they should have been and will always continue to come to the Board of Public Works.

The 66 contracts that we are bringing today is a step in that correct direction for the Department of Transportation. These are contracts that were procured properly. There is no extension of additional funds. It is an extension of time.

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In addition to that we have ongoing training for all of our employees. We have currently trained 1,800 employees on contract management and procurement and ethics training. So we are taking steps to restore the trust of the public with regards to our contract management.

COMPTROLLER FRANCHOT: Okay. Let me just challenge you on that statement that you are simply extending things. Because one of the audit's findings was that SHA couldn't adequately document the basis for the maximum value of construction and inspection contracts submitted to BPW. Just for the record I want to make sure that you are certain that each of these 66 contracts before us today are necessary. And I heard what you said about extension and no additional funds, but actually that's a little misleading. Because while we may be technically approving no additional funds that's only because there's \$75 million in these contracts left over within the existing contracts that are going to be

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used for expenditures. And so we're really, I believe, approving an expenditure of additional taxpayer money, as much as \$75 million.

But even assuming that we approve these contracts today for the sake of operating continuity I hope that you'll take a look and your colleagues at this question as you solicit and negotiate new contracts next year. Do we actually need all of these contracts?

MR. MOBLEY: Absolutely, Mr. Comptroller, we definitely will do that.

COMPTROLLER FRANCHOT: Great. And then I'd just quickly like to shift gears slightly and ask you, and if you could ask the Secretary when you see her when she's back, about a project that I've gotten familiar with that's over on the Eastern Shore. And it's the need of a new interchange and overpass at the intersection of U.S. 301 and Maryland Route 304 in Centreville.

As you know that intersection has the reputation of a death trap. There have been five fatalities in the past six years. I believe a total of 14 fatalities in recent memory. I visited that site with a small group of elected officials and concerned citizens, State Highway officials, and State and county law enforcement officers last week. And having seen the logistics of the intersection and the speed at which these tractor trailers come down 301 and the interaction with school buses, and van pools, and 16-year-old drivers who are barreling through the intersection, it really in its current configuration is a death trap of an intersection.

And I've been very impressed with your response. SHA has had a tremendous response to frankly the latest tragedy, which was a gruesome accident that claimed the life of 16-year-old Conner Rice, who died on his way to school. They and you frankly have been a regular fixture in Queen Anne's County, and I personally appreciate that. What you

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did, taking the pulse, getting municipal feedback. At your leadership SHA conducted and opened a new J-turn in a little less than three months, a little more than three months, or two months, actually, after the accident. And that's a safety measure that hopefully will prevent the occurrence in the near future of any other fatalities.

But let's face it, the J-turn if you go out and look at it, is a short term solution. It's not a long term solution. And frankly, it creates some hazards of its own if you've been out there to see the configuration. The only viable long term solution to this public safety crisis is a grade separated interchange with an overpass. And while constructing a new interchange isn't cheap, and while I know there are other priorities around the State, there are more than we have money to pay for, I would respectfully contend that this project and others like it must be moved to the front of the line. And it isn't about relieving traffic congestion, or stimulating mixed use

development, or promoting sustainable alternatives, or any of the other reasons why we build transportation projects in our State. This has everything to do with saving lives and doing everything we can do to ensure that nobody has to live with what Conner Rice's parents have had to go through this holiday season.

It's my understanding that for \$5 million to \$7 million the State can complete the critical design phase of this project and move forward to the next step. I would respectfully ask you and ultimately the Secretary and Governor and Legislature to support the county's request for that money in next year's capital budget.

MR. MOBLEY: Thank you, Mr. Comptroller.

COMPTROLLER FRANCHOT: Thank you.

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

THE BOARD: Aye.

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

(No response.)

GOVERNOR O'MALLEY: No nays. So with that it gets approved. We now move forward to the --

TREASURER KOPP: Information.

GOVERNOR O'MALLEY: -- Department of Information Technology.

TREASURER KOPP: Which number is this?

SECRETARY MCDONALD: It's 6-IT.

GOVERNOR O'MALLEY: 6-IT.

MR. SCHLANGER: Good morning, Governor --

GOVERNOR O'MALLEY: Good morning, Mr. Schlanger.

MR. SCHLANGER: -- Madam Treasurer, Mr. Comptroller. Elliot Schlanger, Department of IT. Item 6-IT, we're asking the Board to consider and approve raising the ceiling on the master contract for VLTs as well as the initial order for VLTs for the Anne Arundel County casino. I will entertain any

questions at this time with help with my colleagues from the Lottery, who are here today.

COMPTROLLER FRANCHOT: I have a question for Mr. Martino.

MR. SCHLANGER: Sure, Mr. Comptroller.

MR. MARTINO: Good morning, Comptroller.  
How are you?

COMPTROLLER FRANCHOT: Yes, nice to see you, Mr. Martino. And thank you for your service. We're going to be asked, as the Secretary indicated, to approve \$168.5 million in order to lease 4,719 video lottery terminals at Arundel Mills.

MR. MARTINO: Yes, sir. That is the request.

COMPTROLLER FRANCHOT: I like you. I think you do a good job.

GOVERNOR O'MALLEY: Be careful, now.

COMPTROLLER FRANCHOT: But I remain  
disgusted by the fact that we as a State are holding  
onto this idea that slots are a solution to our fiscal

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challenges and not just another predatory scheme to separate working people from money they cannot afford to lose. And I am still appalled by the fact that the taxpayers of our State are forced to pay for these machines that are being used to further enrich private gambling companies.

That said, I think Mr. Martino has done the best job that he could possibly do given the preposterous conditions that the General Assembly has forced you to work under. I guess I don't like your line of work, but I appreciate the fact that you do it in a way that is professional and dedicated.

And as I understand today, all of the machines are being leased and not purchased, which I presume will give us more flexibility to swap out machines if they either become technologically outdated or prove to be a dud with gamblers.

When these contracts first came before the Board last year I expressed my frustration with the foolishness of buying our own machines given that the

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industry constantly comes up with newer, bigger, and flashier games that redefine the gambling experience. I think the decision to lease is a good thing. I'd just like to hear Mr. Martino speak in more detail to the advantages of that approach, leasing rather than purchasing.

MR. MARTINO: I'm happy to do that and you are correct. Stephen Martino, Director of the Maryland Lottery for the record. You are correct. We have before the Board a request to lease the 4,719 machines and I think precisely for the reason that you stated. That we believe long term that this will provide greater flexibility for the State to maximize revenue. It is an area of agreement among all the casinos that the long term interests of the State would be better served by leasing the machines.

And primarily what leasing does is two things. One, it gives us an opportunity to move machines that are not productive off of the floor.

Under the terms of the lease after the first 18 months

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if a machine is not meeting 85 percent of the floor average we can move it off with 30 days notice and replace it with a more popular machine. We can correct our supply and demand problem.

Second, under the least terms we will work cooperatively with the manufacturers and the casinos to ensure that the newest technology is on the floor so we don't have obsolete technology and once again are able to maximize revenue for the State of Maryland.

COMPTROLLER FRANCHOT: Just for the record, the aggregate lease price we are approving today comes out to \$35,717 per machine. The previous 2,250 machines that we purchased for Perryville and Ocean Downs cost \$98 million, or \$43,564 per machine. So I, not only is it good from a marketing standpoint. I think it's obviously less costly to the taxpayers.

I'm going to vote in opposition to the contract, with all due respect to the law that was enacted by the General Assembly. I cannot in good

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conscience vote to spend taxpayer dollars to purchase, maintain, and repair slot machines which common sense, and the rest of the country tell us, should be the responsibility of the casino operators who are getting rich off of this.

I do just want to ask about minority contracting MBE goals. I notice that the two firms getting the largest slices of the pie, IGT and is it Spielo Manufacturing? Spielo, is that how you pronounce it?

MR. MARTINO: That's correct.

COMPTROLLER FRANCHOT: They are the firms who drag down the average for the entire contract. I find it hard to understand that five of the smaller firms were able to meet the MBE goals, but two firms who will be making nearly \$110 million off this vote today couldn't put a little more of their back into this effort as far as MBE. Can you speak to that issue?

MR. MARTINO: I can. We have an aggressive goal in Maryland and we continue to push. I can tell you that the goals for both of these manufacturers are considerably higher after intense conversations with the Lottery and us making clear what our requirements are and what we think the expectations of the State is.

I can also say that I do believe that it's not a mistake that the variance in the MBE goal occurs when you have a larger number of machines because simply, and I think we've discussed this in the past, that there are some economies of scale. Most of the MBE participation is coming on the maintenance side. And the more machines you have the more efficient you are, the more efficient it is to maintain them.

That being said, we continue to engage all of the manufacturers at working with them and identifying MBE opportunities. And in fact that has happened very recently with one of the manufacturers, pointing them in the direction of opportunities that

has increased their percentage. And we are going to continue to do that I think in an even more collaborative way. Because there may be some of the things that some of the manufacturers are doing and counting towards MBE that's acceptable that frankly some of the other manufacturers are not aware of. It's an aggressive goal. We didn't meet it. But I can assure you that it was not for a lack of interest or effort on the part of the Lottery to encourage them and let them know how important this is.

COMPTROLLER FRANCHOT: Okay. And on a related subject, as you know many of the shoppers and employees at Arundel Mills, residents obviously of the nearby communities, they are concerned about public safety. And the area has had a reputation, whether it's deserved or not, as being kind of a center of gravity for loitering teenagers. And just last month the Arundel Mills parking lot was the site of two fatal shootings. The safety perceptions have evolved to a point where I believe the management is erecting

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a new mobile surveillance tower, another surveillance device, 15, 25 feet tall. This is in addition to the normal battery of closed circuit security cameras and security officers on Segways. Given the volatile history, what additional public safety resources are you aware of that are being deployed to the site in time for the opening of the new casino?

MR. MARTINO: I can't speak to the activities of the mall itself. But I can tell you that under the regulations and under the law the casino is required to submit to the Lottery Commission for our review a security and surveillance plan of their entire facility. And that is security and surveillance both inside the facility and outside. That security plan and surveillance plan will be reviewed and approved by the Commission. We have on site enforcement and compliance officers there 24 hours a day, seven days a week. The head of our enforcement division is a captain detailed from the State Police. So we take security very seriously

within the footprint of the casino and that activity around the mall. Obviously I can't speak to what the mall might be doing on the other side. I know that there are some existing issues but I can assure you that we will be giving the security of the facility itself our highest attention.

COMPTROLLER FRANCHOT: Excellent. And I understand that several traffic sections are soon to be widened in order to facilitate a better flow of cars throughout the traffic pattern. How many traffic intersections are we talking about? And do you have any idea how much they are and who is going to pay for them?

MR. MARTINO: I don't have information. We don't have oversight for the traffic issues. I would, I can certainly gather that information for you and get back. But that would be an issue for the developer, the mall owner, and for the county itself that would oversee and ensure that there is adequate movement of vehicles around the mall.

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COMPTROLLER FRANCHOT: Okay. Then while you are here I happened to look at the media coverage of the Baltimore casino bid, which I understand there is a bid in from Caesar's Palace, or someone, to operate that. And apparently your Commission at their request changed your rule about whether investors that have been involved in bad activity were eligible. And it surprised me, frankly. Because the investor that was involved apparently some time ago was involved in a sports gambling exercise, in which there were allegations of physical threats to people that weren't paying their debts. And I take it that there was concern that that investor would not be eligible under your rules. So the Commission changed the rules.

MR. MARTINO: I think --

COMPTROLLER FRANCHOT: What is that, what do you, what do you think the members of the public feel when they read about that?

MR. MARTINO: Well let me, if I can, clarify what happened. And I think that there are two issues

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there. One issue that I am not going to get into, and that is anyone who currently has an application before the Commission that would be being investigated. It would not be appropriate for that to happen. There is an application, as you know, that has been filed for the Baltimore casino. The background investigation is currently taking place and that will be presented to the Commission for its review and approval sometime in the spring.

As it regards the story that ran this past weekend in the Washington Post, what I can say, and if it wasn't clear try to clarify, is that what the Commission, it was brought to their attention that there was a perceived ambiguity in the regulations about whether a, whether potential bad acts that happened out of state more than ten years ago that did not result in a conviction would be classified or qualified as an automatic disqualifier under Maryland law. That was brought to the attention of the Attorney General's Office. The Attorney General's

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Office looked at it I think at very high levels and determined that in fact there was an ambiguity. And so what the Commission has said is that if there is a bad act in any person's application before the Commission that occurred more than ten years ago out of state that it is not an automatic disqualification for a gaming license in the State. However, that information contained in the background investigation will be presented to the Commission and the Commission still retains plenary authority to exercise its judgment and determine whether that person is suitable. So I don't think that in any way the Commission has indicated for any individual that any potential act is or is not disqualifying. They simply haven't gotten the information. But they still have the authority under the law and regulation to review that appropriately.

COMPTROLLER FRANCHOT: The Legislature used to have things we called red headed Eskimo bills, that were bills designed for one person. And you know, I

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just urge you and the Commission to be extremely cautious here. Because that is the perception I have, that the rule has been changed for one person. And you know, I ask what that person is investing, I'm told I, you know, that's confidential information. But it certainly looks like a red headed Eskimo. And in this sector which is one half step away, let's be honest, nationally, one half step away from a lot of elements in society that we don't like who engage in criminal activity, you know, we need to be very, very careful. And changing that ambiguity, as you say, that's another term we used in the Legislature a lot. Which was, you know, the ambiguity was just -- put it this way, the things we did for the individuals cleared up the ambiguity in their favor. And in this area where we have such a connection historically, you know from Las Vegas on down, I think we need to be absolutely on the level. And sorry that that happened, and hope that that investor ultimately is,

after you look at, is, look at whatever it is, is you know the old rules apply.

MR. MARTINO: Right. If I might just respond, I just want to say I appreciate your concern. Obviously I think the Commission went forward in a way knowing that it would still retain authority to review that. But we have three operators, two casinos that are in operation now, one that will be opening in June. All of them have their backgrounds investigated. And I can assure you that it's an ongoing obligation of the Commission to make sure that they are in compliance. But thus far I think all of them have represented themselves and the State of Maryland well in carrying out the mission of this legislation.

COMPTROLLER FRANCHOT: Okay, that's great. That's the Baltimore casino. And just finally on the Anne Arundel casino, I understand that the operators are actively exploring getting individuals from as far away as China and other countries to participate in

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this cash for visa program. Which as described to me in the paper was that if an individual contributes \$500,000 to a project like the, I guess the gambling casino, they get an automatic green card and two years later they get citizenship for them and all the members of their family. Which is kind of an extraordinary program. Apparently it's now the subject of a lot of national attention, not for the gambling but for the fact that it's turning into a, you know, a real problem. Because everybody is using these cash for visa programs to locate cash overseas.

And I hope that you are paying attention to this because I know it's not your application to the federal government. But right now a lot of, now a lot of the national attention is now turning to the fact that the criteria are being abused for this program. For example, they are only supposedly eligible for high unemployment areas. I know this is not your area, but I hope that you'll take a look at it and warn these companies that are out there using this

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loophole that they should be extremely cautious. Because, you know, there's going to be a lot of review of this. And I hope it's not used. But if it is used it's going to be closely looked at. And I'm happy for your comment.

MR. MARTINO: You are referring to the federal EB-5 program?

COMPTROLLER FRANCHOT: Yes.

MR. MARTINO: Which is an economic development tool that's been approved by Congress. It's not exclusive to gaming, and you pointed that out.

COMPTROLLER FRANCHOT: Correct.

MR. MARTINO: I would just say that we have had some preliminary conversations with the Cordish company as they look at potential financing mechanisms. This is a federally approved economic development tool. The money would come into a Maryland-based fund. It's actually the Maryland Center for Foreign Investment. It's actually based in

Columbia. We've had preliminary review. If that happens we would conduct a through character and background investigation of that group. But this is a tool that's used nationwide. I don't think this is the first time that domestic, you know, U.S. projects have been funded with money from overseas and particularly China. And so, but we are looking at it --

COMPTROLLER FRANCHOT: Yeah, just make sure you look at the front page New York Times article on Sunday where a building in downtown New York magically found itself, which has zero unemployment in the area according to the Census figures, found itself in a high unemployment area and eligible for all of this money. Kind of magical like according to how the lines were drawn. So there's a lot of potential abuse affiliated with this and I would strongly urge you to warn your private sector partners that this is going to come under very strict review.

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MR. MARTINO: And I don't know what the unemployment rate in that area where the casinos are being constructed. But I would say that this project is creating 2,500 construction jobs at this time. And when it's fully operational in June it will create 1,500 new jobs at the facility, both at the casino and its ancillary development. So, but we are keeping a very close eye. And I understand what you are saying and we will keep you informed.

COMPTROLLER FRANCHOT: Cash for Visas can be very embarrassing. Thank you.

GOVERNOR O'MALLEY: Mr. Martino, thank you for the good job that you do with total professionalism and integrity.

MR. MARTINO: Thank you. Thank you.

GOVERNOR O'MALLEY: Okay. Anything else on this Agenda item? Hearing none, Comptroller you --

COMPTROLLER FRANCHOT: I vote no.

GOVERNOR O'MALLEY: Okay. Treasurer moves approval --

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TREASURER KOPP: Yes.

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

TREASURER KOPP: Aye.

GOVERNOR O'MALLEY: All opposed?

COMPTROLLER FRANCHOT: No.

GOVERNOR O'MALLEY: No? Record Comptroller as voting no. Thanks very, very much. We now move on to the remaining item number --

MS. FOSTER: Numbers 11 and 12, Governor.

GOVERNOR O'MALLEY: Numbers 11 and 12 on Department of Budget and Management Agenda items.

MS. FOSTER: So members of the Board, good morning.

GOVERNOR O'MALLEY: Pull that microphone over to you, if you would, Madam Secretary?

MS. FOSTER: Will do. Members of the Board, we're here to talk about two items, Items 11 and 12. Item 11 is a five-year contract for inmate pharmacy services. Item 12 would extend the inmate pharmacy

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contract's current vendor for up to six months with the right to terminate after 90 days. I would point out that for Item 12 there is no signed contract at this time.

In terms of Item 11, the Departments of Public Safety and Correctional Services and the Department of Budget and Management are recommending that this five-year contract be awarded to Diamond Pharmacy Services. The Department of Public Safety has determined that the Diamond proposal is the most advantageous and offers the best value to the State of Maryland.

Diamond has extensive experience with large scale inmate pharmacy service contracts, including several state correctional contracts, and serves about one-third of Maryland's local jails. Diamond has served correctional facilities for nearly 30 years and currently serves one of every five inmates incarcerated in the United States.

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The procurement process that resulted in the selection of Diamond was thorough, it was fair, and it was consistent with Maryland law. The proposals were evaluated by a committee of knowledgeable Department of Public Safety and Correctional Services personnel, including the lead inmate medical and health services staff who brought a great deal of expertise to this process.

The RFP for this procurement provided that technical and financial factors would have equal weight in the overall determination of the award. In layman's terms this provision means that the final award decision will be based on whether the difference in the technical merit of the proposals is worth the difference in price without an inherent edge to either technical merit or price.

Out of the six proposals submitted in response to the RFP Diamond was ranked number one overall, having the second highest weighted technical offer and the third lowest price. Diamond's technical

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offer was ranked very close behind the top ranked technical proposal but came in at a substantially lower price, nearly 20 percent or \$24 million less. In addition, Diamond's technical ranking was considerably ahead of the third ranked proposal, which came in at the lowest price.

The evaluation committee determined that the technical differences between Diamond and the other top ranked proposal were relatively slight and not substantial enough to override the significant difference in price. Moreover, the third ranked technical proposal came in only \$1.3 million less than Diamond, a minimal savings that did not justify going with the lesser technical quality.

As a result the evaluators agreed that Diamond provided the best value to the State and ranked its proposal number one overall.

As the members of the committee know, the incumbent has filed several protests throughout the procurement process, all of which have been denied by

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the Department of Public Safety and Correctional Services. Two of these are currently before the Board of Contract Appeals but they have not yet been heard. On December 8th the incumbent protested the recommended award to Diamond and on December 19th both the incumbent and another unsuccessful offeror filed protests following their debriefings.

The Department of Public Safety and Correctional Services is in the process of responding to those protests but has determined that they are without merit.

The Board of Public Works is asked to award the contract to Diamond, notwithstanding protests. This request is being made for several reasons. First, there is a substantial State interest in moving forward without delay due to the significant savings offered by the contract with Diamond. As indicated earlier, the difference in pricing between the proposals is \$24 million over five years. Delaying the approval of this contract would jeopardize the

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nearly \$5 million of savings that we could achieve in fiscal year 2013, dollars which are particularly important during this time when the State resources are strained.

Second, we are confident that this procurement will withstand scrutiny and the Department of Public Safety and Correctional Services will prevail at the Board of Contract Appeals should these cases proceed.

Finally, since the incumbent's contract expires at the end of this month we need to begin a transition process as soon as possible.

In closing I would reiterate that Diamond has been recommended for award of the inmate pharmacy contract because their proposal offers the best value to the State of Maryland. Thank you very much. There are staff here from the Department of Public Safety and Correctional Services and the Department of Budget and Management who are available to answer any

questions that the members of the Board may have and address your concerns.

COMPTROLLER FRANCHOT: Governor?

GOVERNOR O'MALLEY: Mr. Comptroller?

COMPTROLLER FRANCHOT: Yes. Thank you, Madam Secretary. We are being asked to award these two contracts for Maryland's inmate population. And it's a \$120 million contract to Diamond Pharmacy Services for five years out of Indiana, Pennsylvania. I take it the second contract is just a bridge contract to get --

MS. FOSTER: The second contract would be transition. The proposal was for up to six months with the right to terminate after 90 days.

COMPTROLLER FRANCHOT: Okay. So my questions are about the first contract. Because I understand it's now the subject of an active bid protest by two unsuccessful vendors, the dislodged incumbent Correct Rx as well as Omnicare, both of which happen to be Maryland companies and one is

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located just a couple of miles away in Annapolis Junction.

As is always the case when these situations arise I would like to basically know how we justify awarding a large contract like this, multiyear, in the face of not one but two active bid protests? I mean, I heard what you said. But I regard the protest phase of a procurement as a fundamental and legally proscribed right of any vendor. Frankly it's an effective check and balance. It's built into the system to confirm the integrity of the process. If we're going to continually short circuit this part of the process simply because it's too time consuming or inconvenient, or because we personally believe the litigant's case is without merit, what's the point of allowing bid protests? And how do you communicate with businesses around the country to say come into Maryland and bid for our business. We have a fair and open process. If you don't have due process in the

procurement process, we have a remedy where you can appeal and get your due process.

Here it's the agency that approved the contract is now determining that it, the bid protests are without merit. If I'm a member of the business community and I'm out there saying, geez, do I really want to get involved in Maryland? I would have a real problem with that. Honestly.

So what's the --

MS. FOSTER: Well certainly there are attorneys here who can address the legal issues and talk about the COMAR statute that allows us to award in light of the fact that there is a protest. I think I was very clear that we thought that one of the major reasons in terms of moving forward with this contract --

GOVERNOR O'MALLEY: Hold on, Madam Secretary, so the Comptroller can hear the answer to the question he asked you.

COMPTROLLER FRANCHOT: Yeah.  
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GOVERNOR O'MALLEY: Go ahead.

MS. FOSTER: Okay. As I said, Mr.

Comptroller, there are certainly attorneys here who can address the fact that COMAR and State law does allow the State the right to go forward with and award contracts in the face of the protest. But one of the things that I certainly stressed and one of the things that I think is relevant in terms of moving forward with this contract is that it's in the best interest of the State.

This is a contract where the difference in pricing in the proposals is a difference of \$24 million over five years. I think certainly that's almost nearly \$5 million going into the next year's budget. And as you know and you've indicated this, we are facing financial problems. The Board of Revenue Estimates wrote down revenues. I think at a time when we have an opportunity to put into place a contract where we can get some savings we need to take advantage of it.

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COMPTROLLER FRANCHOT: Okay. I heard that and I just happen to disagree. Because this is easily the fifth time we've been asked to award in the face of a bid protest significant contracts. The thing that drove my attention here is that two of the bid protesters are Maryland based companies. They employ our local people. Those are our jobs. And you know I'm all for open bidding and getting business from out of state, but what does it say to our local home grown businesses if we don't even give them a chance to have their day in court? I guess. It's not really a court. It's the Board of Contract Appeals.

So I have real concerns and disagree with you. I think it has a negative and a corrosive impact on the State's transparency and responsiveness.

But let me address this issue of savings to the State. I note that Correct Rx, the incumbent which apparently has done a very good job, submitted a bid that came in nearly \$24 million higher than the company you want to award the contract to. Yeah, I

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like to shop for the best deal. But I get a little bit concerned when I see a successful, proven vendor lose out to bidders that are completely out of the ballpark. And it makes me wonder whether these other vendors have any idea how much it actually costs to administer a program of this size successfully or whether they will try to do so by cutting corners and potentially exposing the State to bigger problems down the road. What is your, how do you respond to the, I mean does it --

MS. FOSTER: Well certainly there are people here who were on the evaluation team and can speak to that. But I think without having been privy to the financials it's certainly, I don't think it's a responsible statement to say that it's out of the ballpark. I think certainly in terms of the company that's being awarded this contract, I started off saying that they have 30 years of experience. So I think that they basically knew what they were bidding on when they submitted that proposal.

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COMPTROLLER FRANCHOT: Okay. I'm also troubled by the circumstance of this particular award. At one point more than a year ago the incumbent, Correct Rx, a Maryland based company, was in fact notified that it was the successful vendor as a result of the initial solicitation for these services. In other words, they had won the bid. Only to be informed that the award was canceled after you determined that the original solicitation, which your office had reviewed and approved before it was issued, was somehow defective.

As I noted, in the past when other inmate health contracts were extended in the last BPW meeting Correct Rx may have had its competitive standing compromised on the rebid for these services because of the extraordinarily long time, six months, required by the State to respond to the protest filed by Correct Rx. So I mean this is a mess.

MS. FOSTER: Well let me speak to that.

Certainly I think what occurred was that the

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incumbent, Correct Rx, was issued a letter where they were told they were being recommended for award.

Obviously an award isn't final until it's approved by this Board. Before that occurred the review of the RFP really revealed that there were a number of outstanding problems. The offerors had been asked to report on what the acquisition costs was going to be of the drugs. When the proposal was looked at there was no definition of what an acquisition cost was.

In addition, the offerors were asked to quote what the price was on 175 drugs. But nowhere in that process has anybody asked them to come up with some invoices which basically would document and verify that those were the prices.

Overall I think by the time the proposal got to the department, we reviewed it. We realized that there were numerous conflicts, there were numerous inconsistencies, and they were things that could be problematic. It could mean in the end that we didn't get the best price for the State of Maryland. And

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certainly in terms of record keeping it could result in terms of audit exceptions. The incumbent --

COMPTROLLER FRANCHOT: But that was our mistake in not asking the right questions.

MS. FOSTER: Well certainly what we did was we found out that there was a problem and we decided not to go forward with a problematic RFP. We did make a decision that we would go forward and we would amend the RFP and make some corrections. Before we could do that the incumbent essentially protested that we not amend the contract, that we not ask for best and final, and alternatively that the procurement be canceled. And then we canceled the procurement and my understanding is that's when Correct Rx filed a protest in regard to the cancellation.

COMPTROLLER FRANCHOT: Do you know how many people Correct Rx employs in the State of Maryland, directly or indirectly, because of the contract that they currently have?



MS. FOSTER: I don't know off the top of my head. The evaluation committee would know that. That would be something that had to be reported in the technical portion of the report. That is one of the elements that we look at. We look at staffing. We look at the work plan. We look at the overall ability of the company to perform the contract. And we look at the economic benefit.

COMPTROLLER FRANCHOT: Okay --

MS. FOSTER: So all of that was taken into consideration.

COMPTROLLER FRANCHOT: Okay. Is there anyone here that can tell me how many Marylanders are employed directly or indirectly by Correct Rx? And you might as well throw in Omnicare while we're there since they are --

MS. FOSTER: So why don't I have some members who were on the evaluation team come up and address those questions on your behalf. Tom Sullivan is here. Well, they are all telling me that that is

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not information that they can disclose. Obviously the Correct Rx folks are here. If you want to ask them that question you may. But in terms of the procurement process I'm being told that they cannot reveal that to you.

COMPTROLLER FRANCHOT: Okay. Well I look forward to hearing whoever is testifying. But, you know, this all could have been caught. I see all your procurement experts here. This is our procurement that we put out. And I can frankly understand some Maryland businesses being pretty steamed up over the situation. And it's only adding insult to injury now to award it in the face of a bid protest.

But anyway, thank you for your responses.

GOVERNOR O'MALLEY: Do we want to hear from, do you think it's time to hear from Correct Rx first?

MS. FOSTER: Unless you had any questions for the members of the evaluation team?

GOVERNOR O'MALLEY: No, why don't we do this since, you know --

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MS. FOSTER: Okay.

GOVERNOR O'MALLEY: -- it's their protest --

TREASURER KOPP: I assume we will have the opportunity to ask questions of the evaluation team, whether they choose to answer or not apparently is not clear. But after we hear from --

MS. FOSTER: They will answer the questions if they are able here. And maybe they can respond to some of the criticisms and concerns that Omnicare and Correct Rx may have.

TREASURER KOPP: I think that would be helpful.

GOVERNOR O'MALLEY: Well let's hear the protest, and then we'll have rebuttal from the protest. And here we go. Senator Miedusiewski?

MR. MIEDUSIEWSKI: Good afternoon --

GOVERNOR O'MALLEY: Good afternoon.

MR. MIEDUSIEWSKI: -- Governor, Madam Treasurer, Mr. Comptroller. Joe Miedusiewski here on behalf of Correct Rx, for the record. I'd like to

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just give you just a little bit of history about why we're here and how this contract came to be. But before I do that let me just say that I don't come before this Board that often. In fact, I don't think I've been before this Board as it's constituted since this membership has been here. So I take it very, very seriously. I have clients that manufacture slot machines and I have clients that come and bid on the contracts. And I go to the bid debriefings with them. And if they blew it, I'd tell them they blew it. Don't come to the Board of Public Works to muck things up or to frustrate the system. We're here to plead our case because we think that the RFP is flawed and the whole premise of that RFP is flawed.

But let's go back to 2005. 2005, the State of Maryland's inmate services were deplorable. The ACLU filed complaints, and the Department of Justice was breathing down our necks. The inmates weren't getting the proper care that they were supposed to get and I guess the State was pretty much in somewhat of a

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panic so they brought prospective vendors in and said can you do these kinds of services? What will you charge for this? And actually there was an agreement between the vendors and the State and they moved forward.

Correct Rx was the winner of that particular exercise. And for six and a half years the system that was put in place has evolved. There have been no lawsuits. There have been no change orders. There have been no complaints. No inmate deaths. In fact, Correct Rx's model has become a model for the rest of the country to follow.

Then comes a time for a new contract. So a new contract is placed, I should say RFP is put out on the street. And in our opinion the Department of Public Safety and Correctional Services botched it. So as I would tell my client you blew it, I would say to the Department of Public Safety and Correctional Services you blew it on your side. It's a different equation here today. We're here to prove or to plead

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to you that the Department of Public Safety and Correctional Services blew their opportunity on a contract.

This is one of the strangest procurements that I've been a part of. For some reason ever since the new RFP came out there has been a whispering campaign that I really have never experienced before. People on the street are telling me that Correct Rx got fat from this contract that they've had for five and a half, six years.

GOVERNOR O'MALLEY: That they got what?

MR. MIEDUSIEWSKI: Fat, money wise. That this was a sweetheart deal. Well I have to say that if we've taken the State of Maryland from the deplorable conditions that the situation was in to where it is where there are no complaints, there are no lawsuits, they are an exemplary model I think the State of Maryland got a really good return --

GOVERNOR O'MALLEY: And Senator, Mr. Miedusiewski, when did they first start doing this work for the State?

MR. MIEDUSIEWSKI: Two thousand, well you mean the original contract?

GOVERNOR O'MALLEY: Yes, sir.

MR. MIEDUSIEWSKI: 2005, well I guess the, yeah, 2005.

GOVERNOR O'MALLEY: 2005? Thank you.

MR. MIEDUSIEWSKI: So we're six and a half years into it. Well anyway when the, this rumor came out it seemed that everybody got fixated on price rather than technical ability. And I know that we're in tough economic times. But everywhere I turned, no matter who I talked to, said oh yeah, that's the contract that Correct Rx did real well on. And let me just say from the outset this is not a fixed price contract. And this is where, this is where the plot thickens. Correct Rx pointed out early on that the RFP was flawed. That the way you save this State

money going down the road is through utilization. Through your pharmacist consulting with the doctors, through formulary control, you know, working with and without and in and outside of the formulary. The model that we put in place is the model to continue on.

Public Safety and Correctional Services in concert with DBM dismissed our comments and continued to force the price issue. And we were put in that position. I find it interesting that the incumbent vendor missed that number by such a large amount. So one of us is either very, very wrong on this or one of us is very, very right on the number.

And I have to say that at this point it should go to somebody who can be neutral in evaluating this whole situation. That's why we think it should go to the Board of Contract Appeals and let them make the decision. Because the conversation that was supposed to take place between the department and the vendor, and it was supposed to be a conversation, it

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has devolved into a confrontation. And frankly, I think that the department can't see the fight for the blood in its eyes right now. And that's where we are. That's why I'm appealing to you that it really needs to go to the Board of Contract Appeals.

The savings is going to be in the quantity of the drugs. And if you look through the RFP the department has made this assumption for the next five years the numbers of drugs, the quantity of drugs are going to stay the same. That's insane. The quantity of drugs is not going to stay the same. It's going to fluctuate. And part of what Correct Rx does is determines that fluctuation. Can we keep those drugs down, and keep the price down? And that's done through our management. And that's why we need, you know, we charge a certain amount for our management services and the management services are such that bring the cost of the drugs down over time. Again, dismissed out of hand because the department chose to go with price. And they evaluated only 173 drugs out

of the 2,000 drugs that are used in the whole situation.

DBM's offer to look at price is a fiction. And I need you to consider that. You need to go back to have someone who is objective to walk through the technical data in this RFP and make a rational decision. We have, Correct Rx has been treated differently. Every other vendor, whether it be mental or medical, they have been given an extension at the current terms that they originally had their contract. Each time we have had our contract extended they have asked us to cut our price. They have asked us to change, they changed the rules for us so much so that we literally showed our hand because these extensions have been very, very closely related to the new RFP. Which I feel gave our competitors an advantage. And I think that the whole RFP process was really fundamentally flawed.

There are 26,000 inmates that Correct Rx services and the incumbent vendor is going to have to

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do the same thing. Mr. Comptroller, I appreciate your comments about Maryland companies. Not only is Correct Rx a Maryland company, it's a WBE that fostered an MBE, which made the 20 percent MBE requirement. Ninety-eight percent of the employees are Maryland residents. There are 98 employees at Correct Rx, 43 of which will be let go if we lose this contract. That means income taxes, property taxes will be lost. And the taxes that we pay are not only on this Maryland contract. We service, we service correctional facilities around the country. So you get a nice, you get a nice return on your taxes from Correct Rx's operational method being at 98 employees.

GOVERNOR O'MALLEY: How many total employees, Mr. Miedusiewski ?

MR. MIEDUSIEWSKI: Ninety-eight.

GOVERNOR O'MALLEY: Ninety-eight?

MR. MIEDUSIEWSKI: Ninety-eight.

GOVERNOR O'MALLEY: Forty-three of them you claim --

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MR. MIEDUSIEWSKI: Forty-three will need to be let go.

GOVERNOR O'MALLEY: Would be laid off. And how much other work do they do, is it safe then to say that the State contract is 50 percent of their work?

MR. MIEDUSIEWSKI: It is 30, 43 percent of the work. Forty-three percent of the work.

GOVERNOR O'MALLEY: Forty-three employees, 43 percent of the work out of 98. Mm-hmm. Where are the other places that they work?

MR. MIEDUSIEWSKI: I beg your pardon?

GOVERNOR O'MALLEY: Where are the other places that they work?

MR. MIEDUSIEWSKI: That we provide? Delaware, we do the whole state and then we do local jail facilities around the country.

MS. YANKELLO: Hello, I'm Ellen Yankello.

MR. MIEDUSIEWSKI: Ellen Yankello, the WBE in this case.

GOVERNOR O'MALLEY: I know her well.

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MS. YANKELLO: Yes. I'm the President and CEO of Correct Rx. And one of the other, the other two owners are here, Jill Molofsky and Jim Tristani.

We understand the tough economic times in the State. I am so nervous, but we understand. And this is such a crisis for us. But we're all Maryland residents. We're all Maryland taxpayers. We're an S corp. Every dollar that flows through this company we pay Maryland income tax. Last year the owners paid \$1.6 million in income tax to the State of Maryland. It's a big number. You'll miss it if it's not there. If we have to end this contract, which will be next Friday, we have to lay off 43 people. Over \$2 million in payroll. And an equivalent of about \$400,000 in benefits. The tax equivalent is about \$4.6 million a year, almost over five years over \$20 million in tax impact, the loss of tax impact to the State. We're talking about payroll tax, unemployment tax, all the things. And we're all property owners. The owners of

Correct Rx, although maybe we've gotten so fat on this contract which I'm really resentful to hear. But --

GOVERNOR O'MALLEY: Your attorney said it.

(Laughter)

MS. YANKELLO: We don't have properties in Florida. I don't own a property anyplace but in Maryland. I have a property in Baltimore County and I have a property on the Lower Eastern Shore of Maryland in Somerset Country right next to ECI at Deale Island, Maryland. And it's a little fishing village. And so I support the Skipjack races, we support everything in the State and we are a very philanthropic company in addition to the fact that we are good taxpayers and good citizens.

TREASURER KOPP: Could I just interrupt to ask you one question?

MS. YANKELLO: You ask one question, can I answer --

TREASURER KOPP: Well just to clarify the one thing that you said, the \$1.6 million in taxes?

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MS. YANKELLO: Right.

TREASURER KOPP: That's the total, that's not just from this --

MS. YANKELLO: Oh no, but that's what the owners of the company pay.

TREASURER KOPP: Yeah, no, no, I understand. But it's not just from this. It's the company.

MS. YANKELLO: No.

TREASURER KOPP: Great. Thank you.

MS. YANKELLO: And so to go back, we service about 200,000 lives across the country. We operate in 34 different states. We have two other statewide contracts currently. The State of Delaware, which we started a year ago July so it would be 2010 we began that. You can call them. They are absolutely thrilled with our services. I would contend that the Department of Public Safety and Correctional Services has been very pleased with our services. We have had no liquidated damages, no fines, no corrective action plans. We've had the same management team running

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that contract since the day we started it. And almost no one, no vendor can say to you they've never had a turnover.

And here is the big flaw in this whole thing. Is that the savings being projected aren't real. Because 90 percent of the spend in this contract, so \$120 million whatever it is, 90 percent is the drugs. The other part is the services. And the services was a line that said overhead and profit. And so there are, the assumption that the difference between us and Diamond or whoever was awarded it was profit. It's not profit. It's the amount of services that are required in this contract in order to perform at the highest level and to provide the savings by the selection of the type of drug selected and the quantity of drugs selected. And also the outcomes for the patients. So we have a model really of actually have this whole team of clinical pharmacists, this whole team of program managers, this whole team of operational efficiencies, and we are hands on. So

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this isn't just five people that are staffing this. This isn't just one or two people involved in this contract. This is a whole, it takes a village to run this contract.

And when we took it over it was in total disarray. Everybody knows it, it was. It wasn't just a little bit broken, it was broken. So what resources did we have to put into that in order to fix it? And so no one did the heavy lifting of pulling apart how much of it was profit and how much of it was resources that we needed to put into that so that you didn't have any liquidated damages, so that you get out from under the DOJ, so that you get a methadone treatment program in place, so that all these things happened. And they happened without settling one lawsuit. Have you ever heard of a pharmacy that services 200,000 lives in the last eight years across and has never settled a lawsuit?

I mean, it's just incredible to me. And here I am. I'm a, no one gave me this company. We

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went out and borrowed a million dollars to start it. And we were successful. And so I didn't inherit it from my parents. I started it out and with the two partners that I have we have worked day and night over the last eight years. And so you should be promoting this as this is a great success story. And we fixed the pharmacy services issues. We deliver our medications into the med rooms, every day, seven days a week, every day directly, same day service. Not, so we go from Linthicum out to Cumberland every day and all the way down to ECI. Everyday, same day. And those all result in savings, they equate to savings. Those extra, those services control the big spend.

So it's shortsighted to say well wait a minute we want, at least allow us an opportunity to have the Court of Appeals listen to this and if they say, "Ellen, you are wrong." And by the way, it is not easy to win in the Court of Appeals, I understand. But we're willing to try it because we believe we're right. And we believe that the Department of Public

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Safety and Correctional Services deserves a client, and then if the savings were really real I would be 100 percent behind this because I'm a Maryland taxpayer, too. If the \$24 million was a real number I would say go for it because oh, by the way, it saves me, I live in Maryland. I wouldn't want you to do that. I'm saying to you the number isn't real. And that the variable is the 90 percent, which is the drug spend, and the only fixed price is the line item of profit and overhead. And you can't assume the difference is to our profit. You have to assume part of it is the extra resources that we are putting into this to make it go right.

GOVERNOR O'MALLEY: So you believe that the RFP should have had a separate line that said services rather than assuming that all services are profit?

MS. YANKELLO: What I believe is that the, if you ask me, you did ask me, what I would believe is that the technical should have been weighted more heavily than the pricing because it's the technical,

there were 36 items in Tab D, which is under services, that you had to delineate in great detail of how those would equate to savings. And so unless you actually do the heavy lifting of the calculation of what does same day delivery do? And what is the corresponding savings for that? Unless you do that calculation then you can't say they are equal because you haven't done the part that says oh, what does that service equal to in savings on services? So there are, well you've heard it.

GOVERNOR O'MALLEY: Mm-hmm.

MS. YANKELLO: And now I'm repeating myself so I'll stop.

GOVERNOR O'MALLEY: How many times has this been extended?

MS. FOSTER: Oh, this has been extended, this has two extensions. This would be a third.

MS. YANKELLO: Three. No, there's three.

MR. MIEDUSIEWSKI: Three.

MS. YANKELLO: It was supposed to, the new contract, we actually got a letter on August 20, 2010 of an intent to award. I have now learned the very slight difference between award and intent to award. I want you to know that when I won this contract in 2005 I didn't have a procurement attorney, I didn't have a lobbyist, I didn't even know a procurement attorney. Now I've gone through two of them, and one of them is sitting right there. And I can assure you, and I've had advisors, I've had KO, I've had Mark Puente, Riverside, you name it. I've spent \$180,000 on advisors trying to figure out how to stay in place. What in the world has gone wrong here? So here I am. I'm just Ellen. I'm just a person that in 2005 I put together my best proposal, said this is what I'm going to do, the State said this is what we're going to pay you to do it, and I won the contract.

All of a sudden we go back, and it was supposed to have started on July 1<sup>st</sup> of 2010, the new award. And between then and now it's unraveled. DBM

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took over the, the oversight of the procurement from DPSCS and we are now on our third extension. By the way on which one, on December 9, 2010, was reconstructed to the, the pricing methodology really matches very similar to what the current RFP is. So they did an extension that said take it or leave it, and we're changing your reimbursement. Which we took a \$5.5 million haircut and didn't decrease our services by one bit.

And so here we are. And now all of a sudden we look like this bit outliner. Like somehow or another we don't even know what we're doing. Do you know I've bid against Diamond? I know Mark Zilner. I know the whole family. I have bid against them everywhere in the country and we are always within one or two percent of each other, just time in and time out. So how is it this time here I am doing the work day in and day out and I don't know what I'm doing. My price is \$24 million higher. I'm telling you it's fictitious. I'm telling you that that savings isn't

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real. Because the big number is in the spend and it's the services that are going to impact that spend.

GOVERNOR O'MALLEY: So your point is that the, I mean stated another way, is that this contract was bid weighting too much on the price of the per unit commodity rather than the overall utilization which is in itself brought down by the additional services which made you not as competitive on that line with the company?

MS. YANKELLO: Exactly. And the other part is this. It's the incumbent curse, too. We can't hide behind the fact once we put our number in. Because the department has been working with us for six and a half years. We know what they expect. We know when they say XYZ that they mean XYZ. So if we write into our RFP in our response, that we are going to something they are going to expect us to do it. A new vendor coming in may very well say, "Oh, I didn't really necessarily understand you meant that." So, you know, all right, and we couldn't hide that way.

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There would be no way for us to say we didn't grasp the concept because we've been doing it for six and a half years.

GOVERNOR O'MALLEY: Madam Secretary, why was this taken away from Public Safety and Corrections? If it was. I mean, that was the assertion, that it was handled by Public Safety and Corrections --

MS. FOSTER: The original contract where there were problems was developed by the Department of Public Safety. When they got ready to issue and the Budget Department did the review we noticed those flaws. So at that time we made a decision that we would go back, we would revamp the RFP, correct those shortcomings and issue another document so that we could all go forward and we would know exactly what we were doing in regard to the pricing.

GOVERNOR O'MALLEY: Mm-hmm.

COMPTROLLER FRANCHOT: Could I ask a question? Didn't you though review the original RFP? Didn't your experts back here look at it?

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MS. FOSTER: I don't recall. Probably so. But at the time, here is, the bottom line is before the contract was issued those shortcomings were identified. You know I think it's, I think one of the things that as a State we have to look and make a decision and design a procurement that we think is in the best interest of the State and the return that we're going to get for the citizens. I understand that Ms. Yankello is very passionate about this. But you know there is another side. And I think I would like to, I would like to have one, the attorneys address some of the issues that were brought up in regard go the RFP being flawed. The prior RFP may have been flawed but certainly one of the things that was done this second time around and the reason we issued a second RFP was to correct those flaws.

Throughout the process as we got letters of concern I think we tried to work with your organization to address those letters of concern. And when we agreed we made the changes that were

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recommended. So I'd like for the staff from Public Safety to kind of address that.

GOVERNOR O'MALLEY: Do you want to stand down for a little bit?

MR. MIEDUSIEWSKI: Thank you very much.

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

MS. FOSTER: To also talk about the so called model that has been put in place. And then to talk about the savings issue because I think that that's something that really needs to be focused on. And when all of that is said and done obviously the people who won the contract are here and you may want to hear from them as well.

GOVERNOR O'MALLEY: Mm-hmm. Okay.

MS. FOSTER: So if I could ask Dr. Sharon Baucom, who is the Medical Director, to come up, along with Thomas Sullivan, who is the Director of Inmate Health Services --

COMPTROLLER FRANCHOT: Governor, before that could I just suggest that since we heard from Ms. Yankello's group Correct Rx --

MS. FOSTER: This was Correct Rx.

COMPTROLLER FRANCHOT: What about Omnicare? Are they here? Would it be okay to bring them up --

GOVERNOR O'MALLEY: Sure, you guys want to kind of tell us why you don't like this either?

SECRETARY MCDONALD: Because --

MS. FOSTER: They didn't sign up.

SECRETARY MCDONALD: Right, they didn't sign up. But we have a letter in the record from them from yesterday but we didn't know if they were here.

MR. BAKER: Yes. Thank you. Daniel Baker, Regional Vice President of Omnicare, on behalf of the 600 employees of Omnicare in the State of Maryland. I don't want to be repetitive to my colleagues from Correct Rx. Being that the awarding of this contract out of state does have significant economic impact to the State of Maryland, both on the income side to the

employees that would in some cases lose their jobs or gain their jobs if we were awarded the contract. We would plan to hire 30 to 40 additional FTEs to service the inmates and the associated economic impact on the tax side.

I don't want to be repetitive to all that. The reason that I would suggest that the Board look at sending this to appeals is that we do have some fundamental business differences in how we operate. And our bid was the lowest in State bid. We were the lowest in State bid and within less than a percent of the lowest bidder overall. By definition of the RFP we are, we had the merit to be in the final round and had the technical ability to service the contract. Being that we are in state and we do have a very different business model than the majority of the other businesses being represented we do believe that that \$20 million to \$25 million difference in the bid between our bid and the incumbents' in the same ballpark, being a million and a half less than the

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awarded bid, would give us the opportunity to realize that savings for the State, to the point of the Secretary and the tough economic times, realize that that savings while maintaining a level of service appropriate.

And that's done through a variety of different ways, proprietary and fully subsidized technologies offered to the State that would really give us the opportunity to maintain that level of service while realizing that significant amount of savings.

GOVERNOR O'MALLEY: Got you. Any questions?

COMPTROLLER FRANCHOT: So you have 600 employees in Maryland?

MR. BAKER: Yes. We currently have 600 employees in Maryland. We service in any given year 85,000 to 100,000 primarily Maryland residents in institutional facilities including nursing homes, assisted livings, group homes, developmentally disabled homes. So we certainly have the technical

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merit, dispensing over 13,000 prescriptions on a daily basis to provide a level of service --

TREASURER KOPP: Presumably they will continue doing what they are doing regardless of the Board of Contract Appeals?

MR. BAKER: Absolutely. We would propose to add 30 to 40 FTEs as well that would be employed in the State of Maryland.

GOVERNOR O'MALLEY: Okay.

MR. BAKER: Thank you.

MS. FOSTER: So again, if I could have the Public Safety people come up? If you could talk about the RFP one, not being flawed. The value of having a procurement wherein the technical and the financial factors are given equal weight. If you could address the model that you've put in place at Public Safety. And finally I need someone to talk about the savings of this contract and why the savings are real. So could you introduce yourself to the Board and proceed? Thank you.

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DR. BAUCOM: Hi, I'm Dr. Sharon Baucom, Chief Medical Officer for the Department of Public Safety and the Director of Clinical Services. And I thank you for the opportunity to address you and to meet again with my colleagues who deliver pharmacy services for Maryland.

I'd like to address initially Omnicare's position with respect to their protest. Omnicare Annapolis bid this contract with the parent Omnicare. But in effect if you go to the website for Omnicare Annapolis and look for the correctional experience of this company, you will find none. If you go to the website for Diamond, and for Correct Rx, you will find multiple comments with respect to the delivery of services for corrections. Omnicare Annapolis has never served any correctional populations. The parent company has served about, a little less than 20,000 inmates to date with no correctional statewide contracts. Diamond as the largest correctional pharmacy service provider in the nation with 420,000

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inmates in 42 states, 900 facilities, and been in corrections for 26 years has the experience of developing a correctional formulary.

We've already heard that drug acquisition costs certainly lend themselves to increasing the cost for care. But formulary management of those drugs is the primary way to save funds. If you have never, ever developed a correctional formulary management tool, as Omnicare Annapolis has never done, then the difficulties in having cost savings for corrections will not be realized.

In addition the overlay of some of the barriers that experienced correctional companies have already put systems into place to correct are related to the various populations that are unique to corrections that you may not find in long term nursing care patients. They are not going to have a disproportionate number of geriatric patients with HIV. They are probably not going to have a lot of those geriatric patients with Hepatitis C. Those are

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medications that represent a tremendous cost to the State. They may not also have the opportunity to delivery services pharmaceutically for juveniles, or for pregnant inmates. And in fact to date Omnicare Annapolis has not.

The non-formulary process that's developed in long term care nursing homes are specifically based on Medicare and Medicaid drugs. As already mentioned the formulary opportunities for drug acquisition costs certainly are far more reaching in corrections as it relates to cost and competitive bidding than Medicare and Medicaid reimbursement.

To be able to have the opportunity to develop along with Correct Rx a model of clinical pharmacology where the clinical pharmacologist is the expert in disease management and that in looking at the definition related to this specialty we understand that Omnicare Annapolis has not had the opportunity to have those kind of clinical pharmacy experts help them develop and manage a correctional population.

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So although they were ranked fourth in technical, but low in price, we feel that the experience of the company that we chose far exceeds and would make up that cost differential.

Now, you've asked me to address what I think is a critical component of what's been talked about since 2005. I've been the Medical Director for Maryland since 2001. I've lived through the opportunity to have my name in the paper associated with processes related to grand juries, Department of Justice, ACLU, the prison justice system. And it was because I didn't want my mother reading my name in the paper associated with those activities in 2005, directed by Secretary Saar, along with Walt Wirshing, we were asked to develop a hybrid model of medical care delivery for Maryland. Hybrid in the sense that it was not a comprehensive bundled service, with a medical primary provider, with subcontractors in dental, pharmacy, and mental health. And we did that. We did that in 2005. And up to that point in time the

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introduction of a clinical pharmacist associated with this contract had never been done. So the role of the clinical pharmacist and the introduction of that expertise was written by myself and the Administrator for Inmate Health in 2005.

I think that the model is an excellent one. We had the privilege just in October with the National Commission of Correctional Health Service to have four presentations representing this multivendor model. I think that the expertise that Ellen Yankello has talked about with respect to the utilization of that expertise speaks for itself.

But in case you don't know, clinical pharmacy is a science and a discipline that takes a correctional pharmacist from a simple pill pusher to a highly integrated clinical component of a correctional healthcare system. These clinical pharmacists encompass the inmates' entire drug therapy, how it relates to the global healthcare plan, every aspect of medication management, monitored, including drug

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selection, the formulary, drug safety, efficacy, outcomes, education, and cost.

We have had morbidity and mortality associated with medications. Not ascribed directly to Correct Rx but because of medical vendors and security issues inherent in corrections.

The model of same day delivery, twice a day in Baltimore that they have very much so complied to, was placed in the RFP by myself and the manager to alleviate some of the issues brought by lawsuits and advocacy groups --

TREASURER KOPP: Excuse me, you're talking in all these instances about the 2005 --

DR. BAUCOM: The model contract. I'm speaking that the same day delivery model, twice a day, was placed in the RFP. Correct Rx, and I quote, knows firsthand that this multiprovider model requires collaboration between the various vendors, custody, and the agency overseeing the contract. We understand that pharmacy is just one portion of the overall

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health services program and fully comprehend how intertwined the pharmacy module is with the other modules. It was designed that way. And although we applaud and appreciate the expertise that Correct Rx has continued to bring to the table, it is a model that I first came to be a part of in 1975 when a patient came in with two bags of medicine and advised that she had to choose between buying her medicine or buying food.

COMPTROLLER FRANCHOT: Could I just interrupt for one second?

DR. BAUCOM: Sure.

COMPTROLLER FRANCHOT: I apologize for doing that.

DR. BAUCOM: That's okay, sir.

COMPTROLLER FRANCHOT: But Governor and Madam Treasurer, I think our decision today is not to reach the merits of who is right and who is wrong. It's whether we're going to allow these two Maryland companies to have their day in court. They have a

point of view. It's complicated. The department has a point of view. The Budget Secretary here has her point of view. The question is, can we get an independent hearing before the Board of Contract Appeals and let them resolve this, because that's what their job is? And I'm not challenging anything you are saying. I'm just saying it's, I'm not the expert. And I'm not going to say you are better than they are. I just want to get it in the right forum.

DR. BAUCOM: No, I'm not better than they are. I'm part of their team.

COMPTROLLER FRANCHOT: And that's not us. We really need to send this to the Board of Contract Appeals.

MS. FOSTER: I would just say in fairness to the people who are here, in light of the fact that you allowed Correct Rx to speak I would hope --

COMPTROLLER FRANCHOT: No, that's fine. I'm happy to sit here and listen to all the details. I'm just saying that it's obvious that these folks have a

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huge investment in, you know, supporting Diamond Pharmacy Services. I don't blame you or them for that --

TREASURER KOPP: No, that's not --

COMPTROLLER FRANCHOT: They're the winner and doing your thing. The question is are they a fair and impartial judge of this bid protest? They aren't.

DR. BAUCOM: Again --

GOVERNOR O'MALLEY: Madam Treasurer, did you want to --

TREASURER KOPP: No, I just don't think it is fair to assume, as was implied, that they are biased in their judgment. I do think the question before us is whether it should be voted on in the face of a protest. I have to agree with the Comptroller about that. But statements have been made about who did what. And I think it's fair to try to have this public and on the record, I think it's fair.

DR. BAUCOM: Yes. I simply wanted to illustrate, and I quote --

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GOVERNOR O'MALLEY: Take your time.

DR. BAUCOM: Thank you.

GOVERNOR O'MALLEY: And say what you want to say.

DR. BAUCOM: I simply wanted to illustrate that this has been a multivendor collaboration. That it is not a testimony to how well Correct Rx did or how well they performed. It simply addresses the model and our participation. And I'm not going to defend the choice of Diamond. I'm going to allow, hopefully, their opportunity. But for the fiscal component of this I do believe that the opportunities for the manager of the contract to at least comment on that might be cogent. Thank you.

TREASURER KOPP: Could I just, just to clarify one thing in my mind. You said that this model, by which I assume not just multivendor but the use of professional expertise to try to bring the right treatment and the most cost effective treatment



in, was essentially, was in the RFP but then was worked out --

DR. BAUCOM: Correct.

TREASURER KOPP: -- with the provider who is Correct Rx, at that time in 2005, 2006. And from what I hear you say about making presentations nationally, and I know Correct Rx has been cited nationally, this is now, as Mr. Miedusiewski said, part of the national model that is incorporated in most forward looking, progressive programs of this type.

DR. BAUCOM: Absolutely --

TREASURER KOPP: Is that a fair, as opposed to pre-2005?

DR. BAUCOM: That's correct.

GOVERNOR O'MALLEY: Can I ask you -- I'm sorry --

TREASURER KOPP: No. Just, so the model that was brought, developed by everyone is now part of the assumed model going forward that everyone else is supposed to meet?

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DR. BAUCOM: I don't want to take credit but I think this is unique model because of the leadership of the department and the various leadership associated with the medical contract and mental health as well.

MS. FOSTER: I think what I would stress is the model was a part of the RFP and it is what all of the --

TREASURER KOPP: Right.

MS. FOSTER: -- six vendors responded to.

TREASURER KOPP: That's, yes. That, it is now incorporated going forward in everyone's proposal.

MS. FOSTER: Yes.

DR. BAUCOM: That's correct. And it's been expanded.

GOVERNOR O'MALLEY: Can I ask on your, you heard the assertion made that the bid on whatever one, the one that's being recommended, is fictitious. That it's not real. That the savings won't be there.

You're going to be paying a little less on commodity

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but you're going to be consuming so much more of the commodity because you're not getting the services that we include that manages that consumption overall in a better way. How do you respond to that one?

DR. BAUCOM: I respond to it in a sense of absolute assurity that the expertise demonstrated by the company that we chose will more than account for and support the savings that have been realized with the relationship with the incumbent, sir.

GOVERNOR O'MALLEY: So in the RFP, and you were part of the evaluation process, Doctor?

DR. BAUCOM: Yes, sir. I was.

GOVERNOR O'MALLEY: And when you looked at the evaluation process did they agree to provide the same sort of delivery and the same sort of services, all the same sort of things that the incumbent is currently providing?

DR. BAUCOM: In the technical proposal Correct Rx was rated number one, but Diamond was rated very closely at number two. And we looked at the

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components of delivery. We looked at technology and data management reports for formulary management. And we are very confident that we will not have any lapses in service or delivery that will put the State at risk or inmates at harm.

GOVERNOR O'MALLEY: And the amount that's arrived at, the \$5 million a year, I don't suppose that there's any sort of performance bond or anything that the bidder puts up to guarantee that this won't be a sort of bait and switch situation, where we swap out, we get into the new contract, and they say, oh geez Louise, there's just so much more utilization now that ate up your \$5 million in savings.

DR. BAUCOM: In actuality, I don't want to trade my MD hat for a CFO hat, but may I refer that question to my colleague?

GOVERNOR O'MALLEY: Sure.

DR. BAUCOM: Thank you.

GOVERNOR O'MALLEY: Come on down and introduce yourself, colleague, so designated.

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MR. SULLIVAN: Good morning, Governor, and good morning Board members. Tom Sullivan, I'm the Contract Manager and the Medical Administrator for the Department of Public Safety. A couple of the comments that came up while I was sitting in here listening. The one was, did we break up the contract into different parts of the bid? Did we break it down into services and did we break it down into the actual medications themselves?

Now the true part of this is the number of medications that will be ordered in a given month and a given year will fluctuate. So the costs that we reimburse for those medications will fluctuate. We learned during our research during the committee and before the committee that the best pricing structure was acquisition cost for drugs. It's becoming more of an industry standard and people are working away from the average wholesale pricing structure which was not the best structure for us to be involved in.

TREASURER KOPP: The what pricing structure?

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MR. SULLIVAN: The average wholesale price versus acquisition. Under acquisition we actually see an invoice in my office when we do an audit and we see that this pill was acquired for that dollar amount. Now if we were doing that structure in an RFP then there has to be services and there has to be profit, and there has to be overhead. So that's why we said we want the acquisition cost for drugs, which we can monitor throughout the contract, and then we want services.

And in services, in the development of the RFP, and I do want to thank the people from DBM in terms of working with us in developing this RFP. We needed that expertise and support of a real team effort where we had correctional people, like Dr. Baucom, Director of Nursing Pat Dove, myself who is more involved with medical administration, and we had experts in purchasing.

So when we sat down with the experts we decided the best way to structure this was to be very

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specific about services and not to do anything in the future to jeopardize the progress we made. And I have been to American Correctional Association and other places where they look at Maryland as a leader in using clinical pharmacists, in managing disease, in not just looking at this as, you know, how many pills a certain patients gets and in managing the best outcomes. I'm really proud of the fact that our model has been used in other states in terms of procuring pharmacy and medical services because it is very important.

So on that side of the contract we very diligently said we must have the five clinical pharmacists, must be in place. Everyone who is bidding on this contract must deliver that service to us. And we must have daily delivery to all of our facilities. And in some of the facilities in Baltimore we have to have it twice a day because of the dynamics of Central Booking. And when we're developing this we know it's difficult for vendors to

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answer that call. Twice a day delivery is very difficult. But if you're having that type of a massive reception jail type situation that's what we want. And one thing I always tell people when you are developing an RFP you put in that what you want. You put in the services that you want and you desire and you describe as best you can.

So I think that answers in a much shorter way, although Dr. Baucom, I love the detail she goes into, but that's how we structured this and that's how we did it. And I guess the reasons that we want to award is because we did do our due diligence. It's, we've never been displeased with the incumbent who is doing services for us right now, Correct Rx, but we did our due diligence to check references. To insure that we got the services we wanted. To have those clinical pharmacists in place. And to preserve that disease management model we would do nothing but go forward with a model that's showing success.

GOVERNOR O'MALLEY: Got you.

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TREASURER KOPP: Could I just ask, the model that's showing success, I'm hearing two different things. One is on site five clinical pharmacists.

MR. SULLIVAN: Mm-hmm.

TREASURER KOPP: The other thing I'm hearing is going deeper into multidisciplinary coordination when needed. And we haven't on this Board, despite the fact that I think, and that's clearly part of the service component --

MR. SULLIVAN: Mm-hmm.

TREASURER KOPP: -- in this total financial as well as technical, right? Is that right?

MR. SULLIVAN: That's correct.

TREASURER KOPP: But we can't see that break down here. We don't have access to those numbers. And I have to tell you that I am somewhat troubled because of this difference in the financials, the \$24 million or so over five years. I understand that it's supposed to be comparing apples and apples.

MR. SULLIVAN: Correct.

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TREASURER KOPP: But I haven't been able to see it and I just don't know. I think the model that you've got is great. I think the department did it with the cooperation of a very good company. I think there are other very good companies who could do the same thing. And if we can do the same thing at a significantly less cost, we ought to. But I have to say that I am just troubled. I don't think, the question of corrosion of the process, I think is, I mean, out of state vendors can be dissuaded because there are always appeals, too. I know, sir, I respect your expertise. But every time there is a big contract that an incumbent doesn't get, there are going to be appeals. We know that.

But I am truly troubled by the fact that we don't have access to all the information that will, would come through an appeal. And maybe at the cost of fiscal year 2013 \$4 million or so, if the Board of Contract Appeals can act expeditiously. But this is a

long term contract that I think we have to get right.

And --

MR. SULLIVAN: I can answer some of that, and I certainly can't answer everything that might come up during an appeal process.

TREASURER KOPP: No, because I'm told that we can't get --

MR. SULLIVAN: But I think some of the questions I can answer. What else besides the clinical pharm piece goes into the management of a contract like this? And in the RFP you will find that all of the committees and all of the associated activities were spelled out very specifically in the RFP and were answered very specifically by the vendors responding. One of the things that we didn't say how many people you have to dedicate to certain areas in your management, but we did say you have to attend the Pharmacy and Therapeutics Committee meeting and here is the people that have to attend it. So that's an enforceable contract item. I want you at that

meeting. You will participate in that meeting, and these are the level of expertise. We have continually quality improvement and we said the same things.

In the development of an RFP your balancing act between getting the services you want but not absolutely dictating every single term and condition where you will have ten people here and you will have five people here. With delivery we said you will deliver everyday to the site. You will find out how you do it. That is part of you responding to the RFP. You'll tell me you are going to do it by van, or with an independent driver, or through a subcontractor. Because there is some flexibility involved. But the things that we need and the things that preserve the system that we have, I'm very committed to the fact that they are described in the RFP, which might have taken an extended period of time to develop and get out, but it has done the things that we wanted to do.

TREASURER KOPP: I appreciate that. And I think all the work has undoubtedly made it a better

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RFP than your department was able to produce originally. But I don't like to put \$4 million or \$5 million at risk any more than anyone else. And I would hope the Board of Contract Appeals could act quickly. Maybe we could urge them to act quickly. I don't know whether that would make any difference or not.

But after listening to all this I'm troubled, I am troubled enough that I just think that the award in the face of this protest from several purveyors, I can't support.

GOVERNOR O'MALLEY: Okay.

TREASURER KOPP: And I don't mean to interrupt anything but since everybody was --

GOVERNOR O'MALLEY: Madam Secretary, anything, anything else that you want to add from --

MS. FOSTER: I would just say that the President of Diamond is here, and I don't know whether he wants to make some remarks to the Board before you make a final decision?

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GOVERNOR O'MALLEY: Sure. I think that would be --

TREASURER KOPP: I think we should hear from, let me just say this has nothing to do with the competence of any of the people who are participating in this. And I don't have any question at all that Diamond is very competent, that everyone is very competent. And I would hate to see them discouraged from pursuing contracts in the State of Maryland, which is why I say that I differed significantly from the perspective of the Comptroller regarding corrosion. But this is part of the process and there is enough difference here and enough confusion that I think the process should be able to be completed, hopefully expeditiously.

MR. SULLIVAN: I would just --

TREASURER KOPP: But I would, I think we should hear from whoever is --

MR. SULLIVAN: Okay, thank you. Any other questions?

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GOVERNOR O'MALLEY: Thank you, Mr. Sullivan.  
Okay. The gentleman from Diamond?

MR. ZILNER: Good afternoon. I appreciate the opportunity to speak today. My name is Mark Zilner. I'm one of the primary owners of Diamond Pharmacy, also the COO. And my purpose here is just to clear up some of the points that I've heard from a couple of the other bidders and such.

A little history, we're the largest correctional provider in the nation. The pharmacy was started by my parents, who started servicing institutions 40 years ago. We've been servicing corrections, you know, 26 years now. We work very hard for what we do. We're dedicated to our customers and, you know, put in a lot of hours.

As far as the RFP language, I felt that it was very consistent to what I've seen in other bids. We've bid on more correctional facilities than any other pharmacy in the nation. Very consistent with how they asked for pricing and service. In fact, the

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service was above and beyond where most departments, what most departments ask for. Even to the point, as an out of state vendor, several years when this was bid, we looked at it, we thought we don't have a chance unless we really plan to do something and to be able to provide twice a day delivery and provide everything that was required, because it was very strict.

We worked all those years in trying to develop a plan, waiting for this to come out again. And I probably spent more time working on this RFP than any other one in our, you know, 26 years of correctional history. I think it was very thoroughly written as far as the pricing. Acquisition costs plus a dispensing fee is very consistent with what I'm seeing in other departments of corrections. To the point that, and to give them credit, they had asked for copies of the invoices. Here's our list of top meds, give us your invoices, prove to us that this is what you pay.

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They also asked for additional rebating off of that to, you know, what percent are you going to share? They didn't leave it arbitrary, like a lot of departments will say give us your rebates and there's no way to hold you accountable. They asked what specific percent for brand and generics, black and white, every bidder was to submit.

As far as the management fee I commend them, too. Typically departments charge a fee per prescription. In this case it was a fee per patient. You know, regardless of if we were doing four prescriptions per inmate per month on average, or one, what is your price? And it's a fixed price. So that's a pretty fixed number.

As I looked at the evaluation I saw that of the six bidders, there were four very close. I mean, very close in the size of the contract. And two that were, you know, way out of the ballpark.

As far as comments not knowing how demanding this department could be? I mean we've serviced

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probably 11 different departments of corrections in our years. We're currently servicing seven right now. We've got some demanding customers. And you know, one in particular, Pennsylvania Department of Corrections, they require many more meetings.

Now on this one it's even on more clinical. We put the proposed, the five pharm Ds that they asked for to help keep costs down. We're centered around keeping costs, you know, at the most competitive pricing. We are constantly negotiating with our manufacturers to try to get the best possible price to save our customers, to be more competitive when we bid. We invest a lot of our profit back into automation so we can continue to grow and be cost effective, and be able to provide, you know, the best service at the best price.

I'm very confident that we know the requirements of the bid. We can, you know, comply with them all. And they have penalties. You know, we're not going to go in there and not provide when

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with the excessive penalties that there are. Our customers are all very happy with us. I'm sure the department has called our references. I'm sure a lot of our references have attested to how much money we could save on a clinical end. The Pennsylvania Department of Corrections, our first year in servicing them, previously they had a privatized healthcare group, capitated bid. It was their incentive to decrease costs. The first year of the contract we reduced the price by formulary management by nearly \$6 million. We didn't get paid any more for it. It's what we do for our partners. So I feel that we are very centered around cost.

As far as economic benefit, we looked at the requirements of the bid. We have proposed to put a pharmacy in Baltimore so we can generate new jobs. I think that's, you know, going above and beyond. We know how much staff it's going to take. We also service other county jails in Maryland, which they

will be filling orders for there and generating new jobs.

Within Pennsylvania we're the largest independently owned nursing home provider. We plan on servicing nursing homes out of that pharmacy to create more jobs. We have operated satellite pharmacies before. We currently have two institutional pharmacies that we operate in Pennsylvania, for a total of three institutionals. One of which is two hours from Baltimore. Our main location is two hours from Cumberland. So within the first year of the contract we will have the pharmacy in Maryland and we proposed that within our bid.

We, unlike some of the, you know, companies that bid on corrections we have not used lobbyists or attorneys on this. I mean we just, we bid it fair. We put everything, offered everything that they asked for, and went above and beyond. We even offered some of our technology which the department may or may not elect to use at no charge. Which would typically be,

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from most electronic health record providers, about a \$2.5 million charge on a contract like this. We are offering it at no charge to the department if they want it. And that was clearly mentioned within our bid.

So with our pharmacy that we're putting in Baltimore and prior to it being open we will be delivering once a day, seven days a week. And then on the sites that require in the Baltimore area twice a day deliver, we're also providing twice a day delivery there. So we're, you know, we're meeting those requirements.

Another comment, we fill about seven million prescriptions a year. We have never had a lawsuit in our 40-year history. Inmates, you know, are pretty litigious. Some frivolous cases that have been, you know, settled upon. But no successful lawsuits.

That's, you know without getting into more detail about services because I know, you know, the review committee reviewed that and selected us, you

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know, pretty close to first. But I know our reputation speaks for itself. We'd be committed to servicing the department at the best price and at the best level of service.

GOVERNOR O'MALLEY: Okay.

TREASURER KOPP: Okay, I don't know why I'm speaking so much, but let me just say that I don't, there's nothing which you've said with which I could quibble at all. And I know the Secretary is quite confident that as soon as the Board of Contract Appeals makes a decision that it will uphold the decision of the department. And what you have said is very encouraging. And I appreciate it all. It has nothing to do with the question of the competence of your company. It may be that the difference is size and that accounts for the difference in cost. That could well be, that you have the benefits of size. If there is a difference of \$20 million, \$25 million, you can build a lot of jobs in Maryland for that amount of

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money. I don't disagree with that. You didn't say it, but you could well say that.

But we do have a process that as difficult as it is and as I believe misused as it sometimes is is the process and the law. And I hope you will understand that and know that, speaking for myself only, I'm just trying to do the right thing for the people of the State and see this go through the entire process.

MR. ZILNER: Mm-hmm. Okay. And to your note on the cost, I think most of the cost difference is probably the mark up over the drugs. You know, where --

TREASURER KOPP: I just, we have no idea.

MR. ZILNER: You know, some of them are fairly close within vendors. And so it looks like it's probably more of the mark up and the profitability per se.

GOVERNOR O'MALLEY: Do you think more of the difference is on the commodity side?

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MR. ZILNER: I believe so, on the difference. Because a lot of the brand name companies will bid pretty close so, you know, you purchase at about the same price less some wholesaler discounts and then some special contracts. But at that volume at that large of a difference at nearly \$24 million I would suspect a lot of it would come from the mark up in profitability. The drugs are fairly close. But, and I know you --

TREASURER KOPP: And they will be --

MR. ZILNER: Yeah, I think it's the ability, too, to manage and get those costs reduced. The, you know, one last point and I know you'll make your decision and decide which way it will go, but we are prepared if it is awarded that we could start it by the first of the year. And we have done that with the Florida Department of Corrections in the past when we were much smaller, 25,000 inmates. They gave us a little over one business day to start. And we started



it without a hitch and kept the contract for the full emergency period. And --

TREASURER KOPP: That's amazing.

GOVERNOR O'MALLEY: Okay. All right. Where does this, anybody else want to speak? What is the back up here, Secretary Foster, about? Did we not receive a letter this morning that said that even if there were extensions that Correct Rx isn't interested in doing the extension anymore?

MS. FOSTER: I think the letter that you received essentially, and certainly they can speak for themselves, but I think the letter basically said that they were willing to continue provided we continued with a six-month extension and we didn't have any requirements in regard to termination within 90 days. They did want to be continued at the same rate of pay that they were receiving under the existing contract. They wanted the item to be withdrawn and they wanted this to go to the Board of Contract Appeals. Is that right, Mr. Miedusiewski?

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MR. MIEDUSIEWSKI: Essentially. The Correct  
Rx --

SECRETARY MCDONALD: Can you come to the  
microphone, please? For the court reporter we need  
you at the microphone.

MR. ZILNER: Thank you.

MR. MIEDUSIEWSKI: Correct Rx is just asking  
to be treated as all the other vendors have been  
treated. To extend us, even though we have been  
whittled down two or three times with each extension,  
is to get a six-month extension so that the Board of  
Contract Appeals can work through this, at the current  
contract terms that we are operating under today.  
That's all. And that, and everyone else has never  
been asked to take a cut. They have just been  
extended with their --

TREASURER KOPP: Well I don't, so if the  
Board of Contract Appeals takes more or less time  
that's irrelevant as far as you're concerned?

MR. MIEDUSIEWSKI: Well I don't know.  
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TREASURER KOPP: I don't quite understand where this leaves us. We may have to --

MS. FOSTER: Well the price, the original request that we made of the agency, or of the company, was that they agree to go forward with the price that they had included in their final best and final offer for this procurement. That was a lower price than is existing under their current contract. And that is the price that they indicated they did not want to accept going forward.

MR. MIEDUSIEWSKI: I missed, no, I, whatever our -- oh, there they are.

MS. YANKELLO: I think it's important to note that there's two steps to this. What we said was this. That if the Board of Public Works determined not to go forward under the contract appeal while we are appealing it, then we are willing to stay in place. That's what we said. If you determine that you're going to award it on the face of the appeal then we understand that you selected another vendor

and we would not be willing to stay. That really is the essence of what we said. So we want, we wanted it addressed first at the Board of Contract Appeals, to be able to take it to the Board of Contract Appeals. And during that time we would stay as the pharmacy vendor. So there would be no disruption to pharmacy services.

COMPTROLLER FRANCHOT: Let me ask who, how long, your question is how long is the Board of Contract Appeals?

TREASURER KOPP: Yeah. Right.

MS. YANKELLO: Oh, if they do it expeditiously and we lose? Then at that point then we'll, then Diamond would take over, I guess. I mean we would, I'm not an attorney. I just --

MR. LIVINGSTON: Good afternoon. I'm the author of the letter that I think that Madam Secretary is reading.

MS. FOSTER: Which says the proposed terms of the modification are unacceptable?

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MR. LIVINGSTON: Yeah. The terms of the, that were brought out last Friday are unacceptable. We proposed that the Secretary of DBM rescind or withdraw its Agenda item that requested that you award the contract in the face of the bid protests. And second, once that occurs we will enter into a contract amendment to extend our current services at the current price for the full six-month complement, comma, unless the Board of Contract Appeals rules against us before that time.

COMPTROLLER FRANCHOT: Is six months adequate for the Board of Contract Appeals to consider this?

MR. LIVINGSTON: You get the same two-word answer I often give as a lawyer. It depends. If the Department of Budget and Management furnishes the documents in discovery promptly then we have a good chance of having that occur.

MS. FOSTER: I would remind you that the Catalyst contract is still going on, so.

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SECRETARY MCDONALD: That was in March of '11 that the Board was presented with the state employee prescription contract. And they went right away to MSBCA and we still don't, so at least nine months on the --

MR. LIVINGSTON: And I represent the apparent awardee. We were dying to get awarded the contract in the face of the protests. Your policy as of March seemed to be let the process take place so you find out if the award is appropriate. Otherwise, what would happen if it gets awarded and the Board says you were wrong, and it gets rescinded? That's what the Board, that's what happens. So you had a prudent policy, although it was not what my then client wanted. So the same policy would apply here.

Now as to the time it would take to get a hearing, it took DBM a very long time to produce the documents that my opponent, Catalyst, the requester of those documents wanted. Catalyst kept requesting the

documents and DBM didn't furnish it promptly and that's why it took so long.

In any event, what I would recommend and I would urge is that the Board of Public Works allow Madam Secretary to withdraw the request for approval to award in the face of the bid protests and then by the end of probably today we can wrap up the extension that would provide that we will provide the same services at the same price for six months unless the Board of Contract Appeals rules against us earlier.

COMPTROLLER FRANCHOT: I'm happy to move that, but whatever the pleasure of the Board is I think that would at least move the process along.

TREASURER KOPP: So how does that impact the cost? The way he's --

MR. LIVINGSTON: Your costs will stay what they have been, namely with us trying to reduce the costs of the drug spend.

MS. YANKELLO: Madam Treasurer, if I could just say the drug spend would, right now is at

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acquisition price. And so we have to produce invoices. The same thing that's going on that was requested. And so it would, we would anticipate that the drug spend would remain the same as it is now, and along with our management fee as it was negotiated. So it would just be a continuation of what is happening right now.

MS. FOSTER: That was our original request, to Correct Rx. That they continue -- well, I guess our original request was that they continue --

TREASURER KOPP: At the lower?

MS. FOSTER: -- at the rate that was in their BAFO, which is a lower rate.

MR. LIVINGSTON: The BAFO rate is lower because we would be able to spread our costs over a fixed five-year period. But they have withdrawn that. And I think the parties are quite close that assuming the Board does not award the contract in the face of the bid protest that we will enter into a modification to call for the same services at the same price and at

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the same terms and conditions for a period of six months, comma, or earlier if the Board of Contract Appeals rules against us.

TREASURER KOPP: And we don't have access to what difference the BAFO --

MR. LIVINGSTON: We appreciate your --

COMPTROLLER FRANCHOT: I would move that if that was the pleasure of the Treasurer or the Governor, but I'm happy to take more --

MS. FOSTER: Well I think if we're not going to go forward with the contract what the department would like to see is that the contract be extended at the BAFO rate. That is the lower rate and that's what we've asked.

MS. YANKELLO: There's a real big disconnect that has happened here. And it feels a little awkward because this is my client and we've had a great relationship. And so it feels very awkward. And so I just want to say this. The BAFO rate was based upon the deliverables in the RFP that we didn't get

awarded, okay? So the BAFO rate was based on a five-year award on a set of deliverables that is different than what we are currently doing. Not terribly different, but different. And it's not just one extra pharmacist. It's a whole host of very fine details within that 513-page document that we submitted and they requested on the RFP. So it's like cherry picking. It's sort of like saying, okay, we want your rate of what you supply. But we didn't award you the contract. And oh by the way, all we're going to do is subtract out one pharmacist.

Well the BAFO rate was a very different, was developed on a different set of deliverables. And what we're saying is listen, we'll continue at the current deliverables and the current reimbursement. And because you can't like mix and match. You know what I'm saying? It's like okay, well we'll take this price but the deliverables are different. An example, do you want an example --

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MR. LIVINGSTON: What we're proposing is that we be put in the same position as the other prison healthcare providers, mental, medical, and utilization management. All of whom have had their existing contract, prices, and terms and conditions extended through July 1, or June 30. And that way it, there's a, you can coordinate these services. And I think that's a reasonable way to go rather than carve out the Correct Rx for other lesser treatment.

GOVERNOR O'MALLEY: Did we make those other ones, Madam Secretary, were any of those other ones forced to do their --

MS. FOSTER: I think the circumstances were different --

GOVERNOR O'MALLEY: -- new bid upon prices as they continued? Right, because we sent those to the Board of Contract Appeals.

MS. FOSTER: Right. You sent them to the Board, exactly.

GOVERNOR O'MALLEY: Right. We've now fallen into a little vortex here of sending everything to the Board of Contract Appeals and it delays onset of the new contract by two years.

TREASURER KOPP: No, we haven't actually.

GOVERNOR O'MALLEY: I don't think there's been a time when I've run into is it Dr. Yankello? Dr. Yankello, when I've run into Dr. Yankello and she hasn't asked me to please take a look at this one, get her to somebody that she can talk sense with. I'm not sure that there are procurements that receive more attention from anybody in this organization more so than these big pharmacy contracts.

TREASURER KOPP: Well the big, big contracts like this. And they deserve the most.

GOVERNOR O'MALLEY: Right. But we've now kind of fallen into, maybe they shouldn't even come here until they go through the Board of Contract Appeals if they are over a certain amount and it's for a pharmacy service.

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MS. FOSTER: Please, no.

GOVERNOR O'MALLEY: No?

TREASURER KOPP: Well let me just, they haven't all been sent. Some of them are not complete and some of them we have in the past awarded in the face of contract appeals. But the BAFO was under the new contract. Right? With whatever it --

MS. FOSTER: The best and final offer was made based on the most recent procurement award.

MR. LIVINGSTON: She said award, she didn't mean that.

MS. FOSTER: Best and final offer, Governor, I'm sorry. BAFO is an acronym, best and final offer.

GOVERNOR O'MALLEY: Was based on?

TREASURER KOPP: On the new contract.

MS. FOSTER: It was based on the procurement that --

GOVERNOR O'MALLEY: Yeah, the new one. The one that we're not doing. So what we want them to do is abide by a price and services under a contract

we're not doing rather than continuing them on the old one.

TREASURER KOPP: And what they are saying is continue --

GOVERNOR O'MALLEY: On the old one.

TREASURER KOPP: -- until it's decided?

MR. LIVINGSTON: Yes.

TREASURER KOPP: That's a --

GOVERNOR O'MALLEY: And that's what the other folks did that we had do as well. Right?

MR. LIVINGSTON: Yes.

COMPTROLLER FRANCHOT: Continued on the old one?

MS. FOSTER: Well I would just say that the Catalyst contract, that is one that we did the new BAFO rates for.

GOVERNOR O'MALLEY: The Catalyst we did the new one for? They agreed to do it under their new bid things?

MS. FOSTER: Yes.

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GOVERNOR O'MALLEY: Oh, there you go. The law is not always anything but plausibly stated and boldly maintained.

MR. LIVINGSTON: It's possible that there's a disagreement. Since I represented the other party I don't think, but and the Board of Contract Appeals is reviewing it. I'll have their decision any day now, and then I think the contract is going to be awarded to the apparent awardee that they liked. We worked side by side with them, to try to have that occur.

GOVERNOR O'MALLEY: So we told Catalyst that we'd continue on if you go with the new prices you've offered us?

MS. FOSTER: We asked them if they would continue with the new prices and they agreed.

MR. LIVINGSTON: Good. And you've asked us and we've said thanks, but no thanks.

GOVERNOR O'MALLEY: Okay. So where does that leave us?

MR. LIVINGSTON: It leaves you with they shouldn't have brought this to the Board unless you had a done deal for you to approve or disapprove. And in about five minutes we can have that done deal.

MS. FOSTER: -- we could do an emergency procurement. But that's another issue.

GOVERNOR O'MALLEY: So what are we, I mean, we can't have people going without their pharmacy.

COMPTROLLER FRANCHOT: I have a --

MS. FOSTER: I would defer to the procurement advisor.

GOVERNOR O'MALLEY: This looks like question time at the House of Commons.

SECRETARY MCDONALD: I need to ask people to use the microphone if they are going to speak.

MR. NATHAN: I'm trying to answer the legal.

SECRETARY MCDONALD: We know, Stuart. But if you could introduce yourself?

MR. NATHAN: I'm Stuart Nathan. I'm Counsel to the Department of Public Safety and Correctional

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Services. I mean, I think I'll try to fairly state what the options are, I think. One of which is the one that apparently you are not going to go with, which was to award in the face of the bid protest. Alternatively, you can extend the contract at one of the prices that's been mentioned here. And if there's no agreement, and the Board would have to approve that whatever that price is. And the third choice is if nothing is approved here today, January 1st there's going to be an emergency because the inmate pharmacy medications have to be provided and the department will have to issue an emergency procurement. So I think, if everyone agrees, those are the choices.

COMPTROLLER FRANCHOT: So I would like to move that we extend this for six months, comma whatever it was. And that with all due respect, Catalyst and some of the other contracts I assume were just extended at the current rate. And let's see what the Board of Contract Appeals says. And, you know,

everybody wants the same thing which is to get a good contract and get proper care.

MR. LIVINGSTON: Yes. I'm authorized on behalf of Correct Rx to --

COMPTROLLER FRANCHOT: I feel like I'm walking around in circles here.

MR. LIVINGSTON: Right. And on behalf of Correct Rx we will agree to perform the same services for the next six months at the same prices that we've been using, and there will be no emergency. The inmates will be getting their appropriate healthcare between now and June 30.

GOVERNOR O'MALLEY: We're going to have to roll on this now --

MS. FOSTER: No. I defer to the procurement advisor.

MS. CHILDS: The one thing that, if we do defer and kind of let emergencies take their course the State does lose any kind of negotiating power.

Where we are kind of backed into a corner. My thought

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was perhaps we could do a sort of short term bridge contract and let the two parties maybe calm down a little bit and talk to each other and come up with rates that maybe are satisfactory to both parties. And I, I have to admit I'm a little bit concerned about a six-month period as well because I'm not so sure it will get through the MSBCA process. And then I understand there has to be a transition done at the end of the, the transition between vendors. So if they are, if Correct Rx is not selected then there has to be a transition for a new contractor. So it's not just six months MSBCA decision, there's also a transition period I understand that might be necessary. So my thoughts are perhaps just a short term bridge contract, let the parties go back, figure out what exactly what their needs are, and then work out rates that are satisfactory to both parties for that six-month contract, eight-month contract, whatever they need for the MSBCA to play itself out.

MR. LIVINGSTON: Well we heard from Diamond they could take over in one day someplace else, and they said they could take over in nine days here.

COMPTROLLER FRANCHOT: You know, I am a little upset at this, Governor.

GOVERNOR O'MALLEY: Well why don't we --

COMPTROLLER FRANCHOT: Because I just sense a lot of hostility. And like, you know, people being upset. We're not trying to make people upset. We just want to send it to the Board of Contract Appeals, have something that's acceptable to these folks, and let's move on. I mean, this is not a great federal case. It's simply a Maryland company that's going to lay off 43 people on Christmas Day if they don't feel like they can get their day in court. So let's give them their day in court and then revisit it, I guess, based on what the Board of Contract Appeals says. But it's not -- I'll stop there.

GOVERNOR O'MALLEY: All right. Well look, we could be here all day. And Diamond says they could

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do it tomorrow? Hm? And yet we have the Treasurer and the Comptroller are of the mind that we should send it to the Board of Contract Appeals.

MS. FOSTER: The request that we originally made was to award in the face of the --

GOVERNOR O'MALLEY: And I'd be inclined to go along with that, too. And then the question becomes do we do an emergency for this interim period? Do we continue them on their old terms? Because we've asked them if they would do the new terms, and Dr. Yankello told us that it's way, way, way too complicated to possibly do it on the new terms that they agreed to do if they were to win the bid. So we have to go back and do it on the old terms if we are going to continue them. I, on the face of that, I think it's somewhat unreasonable. But I don't know your business. And I think what we should do is continue it on the old terms, because I'm guessing that between the shift and the puts and the takes and the emergency we would probably end up paying a lot

more for a five-month period of time than we would if we continued with Dr. Yankello's current rates.

And so I don't know exactly where the miscommunication is going on here. I don't think that I've been more accommodating of and facilitated more entrees for proper communication in anticipation of a contract as I have on this one. Maybe a few others. But somehow you all keep talking past each other. And, or maybe you don't. And maybe the anticipation is there's just more to be made in a six-month delay. I don't know. But that's why we have a Board of Contract Appeals.

It seems to be the will of this Board, given what we're not able to see about the ins and outs of this at this Board, Madam Advisor, that the course of action should go to the Board of Contract Appeals. And from the nod to the scent about the additional dollars and the disruption I think we need to continue the contract as it has been. Not putting, I would respectfully suggest, not putting a definitive six-

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month time period on it. Perhaps it will get done more quickly.

So does that sound like that the satisfying solution for a kind of messed up process? Let's, so what is that, do we have anything before us that we can even vote on, though?

SECRETARY MCDONALD: Well you do have Item 11 which is the request to award in the face of the protest so I think you all --

TREASURER KOPP: That's not an issue. But the second --

SECRETARY MCDONALD: Well no, but she, did you withdraw it? I'm sorry. I mean, the item is there. She can withdraw Item 11 or the Board can vote to defer or disapprove. But we have Item 11 on the Agenda.

TREASURER KOPP: Yeah --

GOVERNOR O'MALLEY: Well, look, why don't we defer.

SECRETARY MCDONALD: Because she, okay, I just wanted to make sure --

GOVERNOR O'MALLEY: Let's move to defer Item 11 pending the resolution at the Board of Contract Appeals. That motion is made by the Comptroller, seconded by the Treasurer. All in favor signal by saying, "Aye."

THE BOARD: Aye.

GOVERNOR O'MALLEY: Any nays?

(No response.)

GOVERNOR O'MALLEY: And now we're on Item 12.

SECRETARY MCDONALD: Item 12, which was the six-month but it was not the way you all were talking about six months. So I would suggest that that be withdrawn, or defer that one --

GOVERNOR O'MALLEY: Why don't we defer that? If you could withdraw that one and put it on the Board for the next time. Are we going to be back here again before this contract lapses?



MS. FOSTER: No. But we can make it  
retroactive --

SECRETARY MCDONALD: They can make --

GOVERNOR O'MALLEY: You can do retroactive?  
You won't kill us for making you go retroactive?

COMPTROLLER FRANCHOT: I'll take my  
medicine.

GOVERNOR O'MALLEY: All right. So Item 12  
is then --

SECRETARY MCDONALD: Withdrawn.

MS. FOSTER: Withdrawn.

GOVERNOR O'MALLEY: -- is withdrawn. And  
that concludes our Agenda items for the Board of  
Public Works for this day December 21st. Have a Happy  
--

TREASURER KOPP: Merry Christmas.

SECRETARY MCDONALD: Merry Christmas.

GOVERNOR O'MALLEY: Merry Christmas. Happy  
Hanukkah.

(Whereupon, at 1:48 p.m., the meeting  
was concluded.)