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P R E S E N T

GOVERNOR MARTIN O'MALLEY, Presiding;

HONORABLE PETER FRANCHOT, Comptroller;

HONORABLE NANCY KOPP, Treasurer;

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

AL COLLINS, Secretary, Department of General
Services;

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

JAMES SMITH, Secretary, Department of
Transportation;

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

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

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

MISSY HODGES, Recording Secretary, Board
of Public Works.

C O N T E N T S

<u>Subject</u>	<u>Agenda</u>	<u>Witness</u>	<u>Page</u>
Grant for the Repair and Renovation of The Arch Social Club	DGS Item 12-CGL, p. 26	Al Collins Del. Melvin Stukes Van Anderson	12
Grant for the Repair and Renovation of The Patterson Park Public Charter School	DGS Item 21-CGL, p. 40	Al Collins Ed Rutkowski	17
Update on Maryland's Implementation Of the Affordable Care Act		Governor O'Malley	19
SEC Agenda	SEC	Sheila McDonald	26
Amendments To Maryland Environmental Trust Easements	DNR Item 6A, p. 11A	Emily Wilson Jim O'Connell	27
Maryland Environmental Trust Easements	DNR Item 7A, p. 13A	Emily Wilson Jim O'Connell	27

<u>Subject</u>	<u>Agenda</u>	<u>Witness</u>	<u>Page</u>
Technical Support to Public Service Commission Staff on Offshore Wind Energy	DBM Item 1-S, p. 1B	T. Eloise Foster Robert Cain Crissy Godfrey	34
PARCC Project Management	DBM Item 9-S, p. 24B	T. Eloise Foster Dr. Louise Lowery Laura Slover Steve Brooks Lydia Hoover Elizabeth Kameen Arnold Jolivet Zenita Wickham Hurley	42
USM Agenda	USM	Jim Stirling	105
Replacement of Statewide Personnel Management System	DoIT Item 7-IT p. 14D	Elliot Schlanger	108
Cleaning and Sweeping of Roadways in Carroll County	DOT Item 22-M, p. 47	Jim Smith Michael Lesniowski Chris Ryon Scott Morell Mathew Bernhardt Julie Kestner	116

12/18/13

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Board of Public Works

*

5

<u>Subject</u>	<u>Agenda</u>	<u>Witness</u>	<u>Page</u>
Closed Circuit TV System at MTA Stations	DOT Item 23-GM, p. 176	Jim Smith Joseph Kovars Keith Jernigan Byron Smith Samantha Chong Heidi Tarleton	135

P R O C E E D I N G S

GOVERNOR O'MALLEY: Good morning everyone, and welcome to the Board of Public Works. Happy Holidays. Happy Hanukkah, Merry Christmas, Happy Kwanzaa, Happy New Year, Happy, Happy People.

So it is December 18, 2013. And I want to ask if the Treasurer or the Comptroller would have any opening thoughts? Comments?

COMPTROLLER FRANCHOT: Thank you, Governor. Good morning, Madam Treasurer. It is hard to believe, as you mentioned, that we are just a week away from Christmas. But as we head into the final stretch of the holiday season I wanted to say once again to my fellow Marylanders, please shop Maryland for the holidays.

As I mentioned a couple of meetings ago I have been visiting Main Streets across the State to promote our local retailers. The hardworking folks who employ our friends and our neighbors, sustain our neighborhoods, and reinvest in our communities. I continue to remind people that these small businesses are the folks who sponsor our little leagues, booster our high schools, and adopt our highways.

In meeting some of these small business owners in La Plata, Cumberland, Laurel, Mt. Washington, Annapolis, Easton,

and Cambridge in the last two weeks, and in hearing the stories of how they have reinvented themselves in tough economic times, made sacrifices, undergone unthinkable risks to hold true to their community and their family's legacy, because so many of these businesses are second or third generation, I have once again found myself richer in spirit for the experience even if I am a bit lighter in my wallet. Because I try to put my money where my mouth is.

But at each stop I seem to find a hidden treasure and a perfect gift for a friend or a loved one. But the gift that you buy locally is not about the one person the gift is for. It is about all of us in the Maryland economy. Because these small businesses that you make these purchases at support and are the backbone of the Maryland economy. Getting off the internet and shopping Maryland for the holidays ensures that our hard earned money stays in our communities, supports the people and places we care so much about.

So I hope to be joined by my fellow Marylanders as we make our last minute holiday purchases. And my best Christmas, and holiday, and Hanukkah wishes to everyone.

I did find in Easton an independent bookstore. There aren't very many of them left. But God bless this one, and I saw a copy of a wonderful new book, Bully Pulpit by Doris

Kearns Goodwin, about President Theodore Roosevelt and President William Howard Taft, and the golden age of journalism. And I bought it as a Christmas gift for the Governor.

(Applause.)

GOVERNOR O'MALLEY: Thank you. Thank you very, very much. Mr. Comptroller, that's very kind of you. Thank you. I love Doris Kearns Goodwin.

COMPTROLLER FRANCHOT: Well we kid ourselves at Democratic events. We say the last great Republican President was Abraham Lincoln. But this gentleman, President Roosevelt, albeit a Republican, I mean he is a fascinating and very appealing political figure. And I thought you would be interested in it.

GOVERNOR O'MALLEY: Yeah, you know when you read some of his talks, his generation struggled in language almost very reminiscent or echoing of the language you hear a lot of our leaders talking about. Where they talk about how their fathers were in the Second World War, and their parents' generation did all of that. And in one talk that Roosevelt gave he was saying, yeah, but we have our challenges, too. And we have --

COMPTROLLER FRANCHOT: Yes.

GOVERNOR O'MALLEY: -- we have things we have to do in our generation. But it struck me as how very similar it is to the way we, our leaders sometimes appear to be groping for the ability to measure up to what their parents' generation had done. It's very fascinating. Thank you. That's very nice. And a nice little warm message in here.

(Laughter.)

COMPTROLLER FRANCHOT: That will stay private --

(Laughter.)

GOVERNOR O'MALLEY: I've got to go find something for you now.

COMPTROLLER FRANCHOT: No, don't worry. But I also at the same store found Pillar of Fire by Taylor Branch. And anyone who has read anything by this fabulous Maryland author Taylor Branch understands how well he understood the sixties. And the Treasurer and I lived through the, somehow survived the sixties. And I wanted to give this to you.

TREASURER KOPP: It was a great time.

COMPTROLLER FRANCHOT: Happy Holidays.

TREASURER KOPP: Oh Peter, thank you. That's very, very fine.

GOVERNOR O'MALLEY: Did you get a warm message?

(Laughter.)

TREASURER KOPP: I got a warm message. Thank you.
Thank you. This is lovely.

GOVERNOR O'MALLEY: That's very kind of you, Peter.

TREASURER KOPP: That's very, very good of you.
America in the King Years, 1963-65, I remember them well. They
were --

COMPTROLLER FRANCHOT: Very tumultuous.

TREASURER KOPP: -- they were difficult, but yes.
Yes. I have only a very brief report. I listened to the
Comptroller for the last several weeks and I have done as you
said. And Maryland merchants ought to be very pleased with the
Kopp family this year.

(Laughter.)

TREASURER KOPP: I appreciate it. And I join the
Comptroller and the Governor in wishing everybody a very Happy
Holidays, happy family time. It's a time when you can really
stop, we just stop and just sort of walk around our
neighborhood and the area and say hello to people that you just
normally just sort of wave, and they go by, and you don't say
anything. One more wonderful reason for loving being in
Maryland. But thank you.

An independent bookstore, I mean, God knows we
certainly don't have enough of them. And ones that sell

actually real books, I mean, with pages that you actually can feel, and turn. That's I hope not a dying pleasure, but a great pleasure. That's, I'm glad to be here.

GOVERNOR O'MALLEY: Ready to roll? Ready to go? What are we doing, Kevin? Do you have any, okay, let me know when you do. All right, we are going to start with the Secretary's Agenda now.

SECRETARY MCDONALD: We can. But I believe actually Secretary Collins has one project we could do and then maybe the other people will be ready.

GOVERNOR O'MALLEY: Okay.

SECRETARY MCDONALD: So Secretary Collins?

MR. COLLINS: Good morning, Governor, Madam Treasurer, Mr. Comptroller. On the DGS Agenda, it's actually Item 12-CGL, we have an item that I would like to move first, if you would, on behalf of Delegate Melvin Stukes, Governor, who is to your right. It has to do with a building that you are very familiar with, that Arch Social Club. There is a grant totaling \$118,000 to that facility for that particular monument. Governor, looking at my Agenda I think I have almost no controversy at this time. The one item that was contentious we moved to a further meeting. So if I could move my entire Agenda, I would appreciate it.

GOVERNOR O'MALLEY: Sure --

(Laughter.)

GOVERNOR O'MALLEY: We're calling the entire DGS Agenda.

MR. COLLINS: Thank you, Governor.

SECRETARY MCDONALD: Could you formally withdraw Item 1, please, to make --

MR. COLLINS: Yes, I am.

SECRETARY MCDONALD: Okay.

GOVERNOR O'MALLEY: Item --

MR. COLLINS: DGS has 23 items on our Agenda, including one supplemental. We are withdrawing Item 1-C, which was the one controversial issue at this time. And we are asking, we are glad to answer any questions on any of the remaining projects. Governor, I will add along with Delegate Stukes we have a number of citizens from across Maryland for grants and loans at this time, and they are just very pleased to be here. Some of them came from long distances so I would like to move them back to home as soon as we could.

GOVERNOR O'MALLEY: Okay. Delegate, do you want to be heard here? And what item is the Arch Social Club?

MR. COLLINS: Item 12-CGL, sir.

GOVERNOR O'MALLEY: Item 12-CGL.

DELEGATE STUKES: Yes, I will come up here. It might be our only opportunity. Hello, everyone.

TREASURER KOPP: Good morning.

DELEGATE STUKES: And happy holiday season to everyone. I stand before you, Mr. Governor, Mr. Comptroller, Mr. Secretary, and all of the secretaries, and all of God's people, to thank you for the opportunity to be able to go first. I've got two funerals, so I need to get back to Baltimore. Two sisters, they passed within three days of each other. So I'm thankful to you, Secretary Collins, to allow us to do this.

Standing before me is the President of the Arch Social Club Mr. Van Anderson. We received and got a bond passed a couple of years ago to renovate a building at Pennsylvania North Avenue known as the Arch Social Club. This State helped to participate and last year we celebrated, we thought we were the oldest in the country, but we found out once we went on to advertise our 100th anniversary that we were the second oldest. So we'll take that. Delaware. The oldest black men's social club in the State of Maryland, and the second oldest one in the entire country of America. And it needed some work. And I'm thankful to the Board for what it is that you have on your Agenda, and hopefully we will get a yay

all the way down the line on that so that we can continue what has already been started.

It has really invigorated the entire community there at Pennsylvania North. And those that know about the history of Pennsylvania Avenue. And I am one that on my epitaph I want to say helped to restore the history of Pennsylvania Avenue that was a gift to the entire world as far as entertainment. And this can go a tremendously long way in doing that.

So that's basically the statement I have to make for you. And hopefully we will receive a favorable opinion from you both, I mean, all three. Okay?

GOVERNOR O'MALLEY: Mr. President, do you want to be heard?

MR. ANDERSON: I would just like to say thank you to the State of Maryland, and thank you to Delegate Stukes and Senator Rothwell for providing us with the support that we needed in order to try to get the renovation work done on the building. We're happy and proud to be a part of the State of Maryland for 100 years, incorporated since 1912. And we even still have some pictures of the event. I think we had an event where you played upstairs down at the Club --

GOVERNOR O'MALLEY: Yeah, that's right.

MR. ANDERSON: -- at one time. So, you know, we haven't forgot about you --

GOVERNOR O'MALLEY: That was a good day. That was, what, about 13 years ago or something?

MR. ANDERSON: Yes, sir. So as soon as we get this renovation complete we would like to invite you and some other groups back.

GOVERNOR O'MALLEY: Awesome.

MR. ANDERSON: And we can help to revitalize live entertainment on the Avenue. So we just thank you all, and we hope and wish for your continued support.

GOVERNOR O'MALLEY: It's a great old building. You can really sense the history inside the place.

MR. ANDERSON: Yes, sir.

GOVERNOR O'MALLEY: I'm honored to be able to say I once played the Arch Social Club.

(Laughter.)

MR. ANDERSON: Yes, sir.

GOVERNOR O'MALLEY: Anything? Okay. Mr. Comptroller?

COMPTROLLER FRANCHOT: No, that's fine. Thank you. It's great to see the Delegate here. Merry Christmas.

GOVERNOR O'MALLEY: You're good. We're going to vote on it in one second.

DELEGATE STUKES: All right. Just in closing, it happens that they were incorporated on a day very near and dear to me, the ides of March in 1912. And it just to happened in 1948 there was another delivery made in the State of Maryland at University Hospital. They named him Melvin L. Stukes.

(Laughter.)

DELEGATE STUKES: So you know it's near and dear to me. Thank you very much.

COMPTROLLER FRANCHOT: Governor, thank you. Mr. Secretary, Item 21 is the grant to the Board of Directors of the Patterson Park Public Charter School. And that's a fabulous program that's going on up there. And thank you very much for, well, putting it on the Agenda, and letting us be able to vote --

MR. COLLINS: There is a representative here, Mr. Comptroller, from Patterson Park. Here, there is.

COMPTROLLER FRANCHOT: Oh, great.

GOVERNOR O'MALLEY: Do you want to speak? Or do you want pretend that it's going to pass?

COMPTROLLER FRANCHOT: Yeah.

GOVERNOR O'MALLEY: No, come on up.

SECRETARY MCDONALD: If you can say your name --

GOVERNOR O'MALLEY: You can't do that.

MR. RUTKOWSKI: Well, thank you very, very much.

SECRETARY MCDONALD: Could you say your name for the record, please?

MR. RUTKOWSKI: Ed Rutkowski.

SECRETARY MCDONALD: Thank you.

MR. RUTKOWSKI: And actually the Governor came and celebrated, helped to celebrate our fifth anniversary. So thank you. Thank you to the 46th District Delegation, and to you, assuming the vote is positive. And with that, if anybody wants to see one of Baltimore's great schools, come to the Patterson Park Public Charter School in Baltimore. Thank you.

GOVERNOR O'MALLEY: You've done some great work up there, Ed. It's come a long way since you were first swinging your hammer one house at a time 15 years ago.

MR. RUTKOWSKI: Now it's schools. Schools are the things that matter.

GOVERNOR O'MALLEY: Yeah, it's great. Mr. Comptroller?

COMPTROLLER FRANCHOT: No, I'm delighted.

GOVERNOR O'MALLEY: All right. The Comptroller moves approval of the entire Agenda items of DGS, seconded by the Treasurer. All in favor signal by saying, "Aye."

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed?

(No response.)

GOVERNOR O'MALLEY: The ayes have it. And we move on now to the three slides I wanted to share with you. We're going to go to the Secretary's Agenda, but I wanted to just update you. Are you good to go, Kevin? Are you sure? I can - - okay. I want to just update you on the Affordable Care Act and its implementation here in Maryland.

We got off to a rocky start with the healthcare shopping website. Every state in the Union had to make an election as to whether or not they wanted to be leaders and implement their own or whether they wanted to fall back and rely on the sort of federal catch all site. We decided to be one of those states as an early implementer that was a leader. With any leadership there are risks. Leaders make themselves vulnerable. In our case we got off to a rocky start but we have been making some important strides, still improving this. It's like changing the tires on a rolling car along with some engine parts. But we are moving forward and we are making

strides. And I just wanted to give you a brief sort of snapshot update on this.

This pie chart represents the, the light, the one color blue, the largest chunk, is the 87 percent of us who already have health insurance and really aren't terribly affected by this. The five percent that is the lighter blue are insured people who we think probably won't even sign up for this even though they can now. They will probably take the penalty and not sign up. The yellow represents people that are not eligible. They are residents, they are not yet naturalized. And then so the chunk of the people in our State, those persons that have been most inconvenienced and frustrated by their desire to sign up for insurance when it, on the first date that it is available, which is January 1st under the Affordable Care Act, are the wedges there that are in the dark green, the light green, and the black. The darkest green are the additional people, the 150,000 that you hear about in some of the newspaper articles of people that we hope will by the end of the March enrollment sign up for the qualified health plan. That is a private provider plan. The light green are those we hope will sign up for additional, the light green and the black represent those that we will sign up for Medicaid. So about three percent of the people, and when we talk about

this chunk of five percent, three percent are the people we look to sign up for private provider plans and then the two percent are the people that we look to sign up for Medicaid.

The overall system, Kev? Hold on one second. There we go. So folks, this is the system. This is how it, this is how it was designed. The person to the, that you look at the left, that little person icon in a tie, is how an individual, thank you, would apply. And it was envisioned that most people would apply to the website. Failing the website, or if they get stuck, then they'd call that call center. Failing either of those, they can put in a paper application.

The piece of this that actually worked very -- and then that, all of that eventually has to go to the Maryland Health Exchange. The piece of this that has actually worked very well from the outset was the interaction between the Health Exchange and that federal hub above it that is represented in this slide by a, it looks like a computer with various stacks to it. That represents eight different databases in the federal government, IRS, INS, other databases, that are supposed to instantaneously calculate whether you are entitled under the law to a tax credit when you sign up for health insurance. That instantaneous interaction as well as the confirmation that you qualify for this then goes back to

the health exchange. And then a completed electronic packet of information on every individual applying, once they choose a healthcare plan, is supposed to go to the private provider or to Medicaid.

So that is how the system worked overall. That's how it was designed anyway. But when it started off there were glitches at every point. The call center became overwhelmed. The manual processes became many to overcome the technical challenges. Isabel, this thing, this project has been run very much akin to an emergency management operation, as you might imagine, since the first day when we got off to the rocky start and saw the problems were much deeper than any of our contractors entirely understood before we started rolling.

There were nine major, so there were four pieces of this that we needed to stabilize, to make functional. One was the website itself for users. The second one was that interface with private providers. The third was the interface with Medicaid. And the fourth was the business and the manual processes, all those work arounds.

We have, we were able to make nine major fixes. There are still many minor fixes throughout this process. But the nine major fixes have allowed the site to become functional for most users. And now we are starting to begin our marketing

efforts to get people to go on and sign up if they are so inclined and so situated.

The first people have already started to receive their cards. And CareFirst and the other people have been receiving payments under this. So that 834 interface, as they call it, with the private providers is working. It's still in need of improvement, but working. The Medicaid one we hope to have working shortly. The call center and the manual processes we still, we still have work to do, and the website as well. But overall it is functioning a little better. The best proof of that is not my word to you, but this next slide which represents, and the one we're looking for is the red and blue graph, Kevin. These are the enrollments through the -- coming up in a second here. The enrollments through the website. Got it.

I'll say this while we're finding that last graph. That the, yesterday was a record level of enrollments once again for this website. That is on top of the record number of enrollments for the prior few days. So every day since, every weekday since Friday, actually, has been a record high level of enrollments.

So this graph shows you the, back to the week ending of November 2nd. And every week after that, shows you the

uptick in enrollment. So we're now up to about 29,758 enrollments so far. And the light blue represents the qualified health plan, the private providers. That looks to be in the neighborhood of about 7,000 or more. The rest of that are new Medicaid.

The total goal in all of this is to sign up and cover 260,000 people that did not have healthcare coverage before and to do that by the end of March. So that's where we are. When we, those people that we had been aggressively marketing to all year in what we call the primary adult care category, those 80,000 will also be signed up into Medicaid and covered. So we are pretty confident we will hit the 110,000 new Medicaid enrollees. And we're now starting to do our push so that the second half of this game we put some more points on the board in terms of people covered than we did in the first half of this game in terms of the private provider plans.

So that's who we are and what we do. The reason Isabel Fitzgerald isn't here is because she's been managing this operation, which had mostly IT problems rather than health policy problems. But it was getting in the way of the accomplishment of this major health policy. So we're sorting this out and it's getting better by degrees. And I thank you for giving me the opportunity to update you.

Okay. Secretary's Agenda?

SECRETARY MCDONALD: Thank you, Governor, good morning. Good morning, Treasurer, Mr. Comptroller. Six items on the Secretary's Agenda this morning, three reports of emergency procurements. And we are prepared for your questions.

GOVERNOR O'MALLEY: Do you have something? No? Okay. 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 on to the Department of Natural Resources Real Property Agenda.

MS. WILSON: Good morning, Governor, Madam Treasurer, Mr. Comptroller. Emily Wilson with the Maryland Department of Natural Resources. We have seven items on our Agenda today. Of note, just between the two Boards in December, Maryland Environmental Trust has brought over 1,500 acres of conservation easements to the Board. And today we do have Jim O'Connell, who is the Chairman of the Board of Trustees for the Maryland Environmental Trust, and Liz Buxton who is the

Executive Director is also here. If you don't mind, I believe Jim would like to say just a few brief comments.

GOVERNOR O'MALLEY: Good. Come on up, Mr. O'Connell, Ms. Buxton.

MR. O'CONNELL: Good morning, Governor, Mr. Comptroller, and Madam Treasurer. My name is Jim O'Connell and I'm the Chairman of the Maryland Environmental Trust. I think we are the smallest part of the State government. We have a total of ten State employees but we operate with about 25 volunteers who put in a significant number of hours, plus an additional 35 volunteers who help us monitor our easements.

I want to thank the Board for their support. I also want to specifically thank the Governor for helping us recruit easement donations this year by sending a personal letter to all prior easement donors. It was effective.

GOVERNOR O'MALLEY: Good.

MR. O'CONNELL: I mean, we saw a real uptick in the interest in the Trust. I want thank the Comptroller for meeting with me about tax issues and we had some initial discussions about transferable tax credits, which I think is something that we need to spend some more time in the future.

I also want to thank the Governor for sponsoring a reception for easement donors, which was very popular and provided tremendous outreach for our program.

GOVERNOR O'MALLEY: Let's make sure we do it again.

MR. O'CONNELL: Okay.

GOVERNOR O'MALLEY: And don't let me forget.

MR. O'CONNELL: Okay. Now let me just, I give you the result so far for this year. We are still not done. But we have 23 easements which have permanently protected about 2,400 acres. We've had three bargain sales where we have had some donations of money which we use to help put easements together.

Of the 2,400 acres we have preserved something over 1,000 are in the targeted ecological area. There is 1,100 acres of farmland; 980 acres of woodland; and 192 acres of wetlands.

GOVERNOR O'MALLEY: What percentage is that, then, in the targeted ecological area?

MR. O'CONNELL: Slightly less than half. Since 2007 we have preserved 19,000 acres with voluntary donations from the citizens of Maryland. We are truly a public private organization and 20 percent of our budget for last year was based on private donations. So the State provides us our

employees and provides the support of the Attorney General's Office, but we depend to a significant degree on public contributions. And part of the outreach, which we were helped with by the Governor's letter, was that we were able to make contact with our donors and we are raising money because it is necessary.

Now that is this year. And just to tell you what we are going to be doing next year, we have started a new program called Urban Easements. And we are working with Baltimore NeighborSpace. And we are trying to help them get access to potential parks and things like that by taking conservation easements on small pieces of land that are needed for access. And we have actually done this in a couple of places on the Eastern Shore. So that is a whole new direction we're moving there.

With the Civil War Trust we are going to, the Civil War Trust is going to be purchasing some land around the Antietam Battlefield, up to \$2 million worth, and MET will hold those easements on those properties around the battlefield.

We have more and more easements to monitor and this is where our volunteers really help us.

We need to focus on some of the different areas of the State where we have not been as successful. Honestly we

need to do more work in Western Maryland and Southern Maryland to get more easements there. And when I say that that brings up this idea of transferable tax credits. Because we do have a Maryland tax credit but you have to be a Maryland resident to get the benefits of that. And we find that a significant number of pieces of land that we would like to preserve are owned by people who are not residents of the State and have no use for those tax credits. And like Virginia has done, we would like to see some way that those could be transferable and help us preserve more land.

We intend to be engaging in more outreach and fundraising. We are looking for more urban easements. And we are looking forward to another good year.

I would mention that the federal enhanced tax credit ends on December 31. I have an article from the BNA Tax and Accounting which came out last week which says that we still enjoy the majority support of both parties on both sides of the aisle, and yet we cannot get this bill through Congress. So it's puzzling. There is some recent break in the dam. The Farm Bill, which is just, I think just got the support in the House, provides some conservation projects that will be useful to the State of Maryland and to MET.

Just in conclusion I would like to thank all of your for your support and work. And we intend to do a better job next year. Thank you.

GOVERNOR O'MALLEY: Thank you.

TREASURER KOPP: That sounds like a very exciting agenda for next year. That's really, I think the urban, the urban piece idea is --

MR. O'CONNELL: That's kind of a new idea in this whole land trust thing. Just a quick example, one we were able to do down on the Eastern Shore, there was a creek where people like to, you know, use kayaks and canoes, and taking an easement on less than an acre of land we were able to provide public access to the citizens of the town. So we are taking a different look at how these easements can be useful.

GOVERNOR O'MALLEY: Good. Great. Thank you.

MR. O'CONNELL: Thank you, Governor.

GOVERNOR O'MALLEY: Anything else? Okay.

MS. WILSON: If you don't mind, I would just like to recognize MET has really done a sprint toward the end of this calendar year. And one of the key players in that has been John Hudson. John is standing over here. He is retiring imminently and this is his last Board.

GOVERNOR O'MALLEY: Where are you, John? Stand up.

There we go. Thank you, John.

(Applause.)

GOVERNOR O'MALLEY: John, do you want to say anything?

MR. HUDSON: No, thank you.

(Laughter.)

GOVERNOR O'MALLEY: All right. John, thanks for your service. That's a lot of, that's a gift that goes forward to future generations. All right. The Comptroller moves approval, seconded by the Treasurer. All in favor signal by saying, "Aye."

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed?

(No response.)

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

MS. FOSTER: Governor, Madam Treasurer, and Mr. Comptroller, good morning. There are 18 items on the Department of Budget and Management's Agenda for today. We'll be happy to answer any questions you may have.

GOVERNOR O'MALLEY: Mr. Comptroller?

COMPTROLLER FRANCHOT: Item 1, please?

MS. FOSTER: Yes. Item 1 is a contract to provide the Public Service Commission's technical staff with support to alter the Maryland Renewable Energy Standard Program basically to include offshore wind energy projects. So we have from the Public Service Commission Robert Cain, who is the Associate General Counsel; and also Crissy Godfrey.

COMPTROLLER FRANCHOT: Okay. No, here's my problem with this. Obviously offshore wind is a big priority. But we're being asked to award a three-year contract with a value of roughly \$970,000 to the Washington-based law firm of Kaye Scholer. Their job as I understand it is to help you at the PSC incorporate offshore wind energy into the State's existing renewable energy program.

Here is the concern, though. We're being asked to award this contract for almost \$1 million to Kaye Scholer and in so doing bypass two other vendors who came with considerably lower bids. For example, the Boston Pacific Company submitted a proposal for roughly \$720,000, a 26 percent price differential. While Nixon Peabody, a prominent firm, came in far lower at about \$327,000. I've been around long enough to dismiss outlier bids like Nixon Peabody, or at least take it with a grain of salt.

But my question is, what justifies giving the contract to Kaye Scholer purely on technical grounds when Boston Pacific appears to be highly regarded within the industry for its subject matter expertise. A cursory glance at their website, for instance, shows that they were hired by the New Jersey Board of Public Utilities to review applications for developing offshore wind facilities off the Jersey coastline. In fact, they have worked with the Maryland PSC in recent years, notably as a consultant in the process that led to the award of a contract to build and operate a natural gas fired combined cycle facility in Charles County.

So the question is, what are the technical factors that justify spending an additional quarter of a million dollars of taxpayer money to secure a, or ratepayer money, to secure Kaye Scholer's services, please?

MR. CAIN: Mr. Comptroller, the reason why Kay Scholer was chosen was because of experience. Boston Pacific, as you noted, is very experienced in the energy field. However, Kay Scholer is the most experienced in offshore wind. They participated in the most offshore wind projects than Boston Pacific. Also the team that they are going to have working on this project are more senior than Boston Pacific. And additionally Boston Pacific when they put in their proposal

failed to address one of the key issues that the proposals were weighted on, which is the cost effectiveness factor. Which is a big part in offshore wind and in the legislation that was passed. Therefore, the Public Service Commission was left with deciding who should work on the project. Should a more experienced team, or a team that was cheaper? And the agency decided that the most experienced team should be the team to work on offshore wind to make sure that the project is successful and Maryland benefits from offshore wind.

COMPTROLLER FRANCHOT: Well, that's interesting. Because I looked at the website, as I mentioned, for Boston Pacific. And they talked about their New Jersey experience with offshore wind facilities, similar to this. You go to the Kay Scholer corporate website and there isn't a single mention of anything to do with this subject matter. Nothing. So help me understand how they are substantively so far ahead of Boston Pacific.

MR. CAIN: Well here with me today is Ms. Crissy Godfrey. She is actually the Director of our Energy Analysis and Planning Division and she was on the selection committee. And she probably could answer that question --

COMPTROLLER FRANCHOT: Great.

MR. CAIN: -- better than I can.

COMPTROLLER FRANCHOT: I don't know either of the firms that well. But \$250,000 is a lot of money to some people. And I guess the question is how do you justify that?

MS. GODFREY: Sure. Let me note I guess for one I'm aware of the fact that Boston Pacific has worked with the New Jersey process for offshore wind. They haven't finished that process yet, nor do they have a successful offshore wind farm as of yet.

The Maryland process was modeled very closely to New Jersey's. But we felt that we wanted the breadth of experience from Kaye Scholer that, I shouldn't say Kaye Scholer specifically, but their sub, which it is escaping my mind at the moment. But I think it's Kai or something like that. Well, Sullivan Cove is another subcontractor. Anyway, specifically they have the renewable energy and offshore wind experience explicitly, not only in Europe, but the Great Lakes, the Northeast, and Texas. So in the evaluation team's mind we felt like that breadth of experience was certainly something that we needed since internally the PSC staff only has onshore wind experience, and given the short time frame that we have in order to get the regulations done, we felt that that experience was worth the extra money.

COMPTROLLER FRANCHOT: Great. Well that kind of makes sense. But I'd hope that in the briefing materials we would get this information. I take it your testimony is that we are hiring Kaye Scholer because they have a subcontract partner that has experience in offshore wind. So I guess we are paying for Kaye Scholer and the subcontractor, and that explains why we are paying more money. But anyway, I'm going to vote for this, Governor. I know you are a big champion of this proposal. And hopefully, I am skeptical about the economics of offshore wind. But I'm happy to move forward and see what these folks come up with. But I am, I would have been perfectly happy with Boston Pacific. But in the Christmas spirit I'll let it pass.

(Laughter.)

GOVERNOR O'MALLEY: Okay. Anything else?

COMPTROLLER FRANCHOT: Yes. I had another item --

TREASURER KOPP: Could I just say about that one, I assume, I don't know what the constraints are going into the background of the awards in this meeting. But the background information that you have given us in fact does make it look as though Kaye Scholer has significantly more experience broken down into the one, two, three, four, five, six, seven areas in which you looked. I don't know if this is public, but it made

me feel significantly better about it. It was not just that, sort of a, well, they've got more experience. But actually broken down into the specific things.

MS. GODFREY: That is correct.

COMPTROLLER FRANCHOT: But what it turns out apparently is that they don't necessarily, but they have a subcontractor --

TREASURER KOPP: Yeah. Now what --

MS. GODFREY: Let me clarify. I'm not trying to say that only the sub has the experience on offshore wind, but they do have significant experience on offshore wind. So the team together for us more than kind of blew away Boston Pacific's proposal in terms of experience.

TREASURER KOPP: Yes, well, anyhow. Thank you.

COMPTROLLER FRANCHOT: Well let me just conclude by saying we really need obviously wind energy for our renewable portfolio. That is a given. But we have to make sure we get it done right and that we're getting good value for what we're asking everybody to sacrifice and put in. And that's why we appreciate all the rigor you can apply to these contracts. I assume there will be more in the future. Thank you.

TREASURER KOPP: Can I ask one question while we're on this?

GOVERNOR O'MALLEY: Sure.

TREASURER KOPP: What is the impact of the announcement that the Secretary of the Interior made?

GOVERNOR O'MALLEY: Yes, Secretary of the Interior made an announcement yesterday that they are now putting out for lease by developers some 80,000 acres of ocean just off, in an area just off of the Delaware-Maryland line. It has been deconflicted in terms of shipping traffic and other concerns. And so we hope to be able to hear back now. And it's an important milestone in the process. That's what she was here to announce yesterday. Right?

MS. GODFREY: Yes.

GOVERNOR O'MALLEY: Okay. Well you work at the PSC. All right.

TREASURER KOPP: Okay. Thank you.

GOVERNOR O'MALLEY: That's what she was here to announce.

TREASURER KOPP: All right.

GOVERNOR O'MALLEY: I was there. I heard her announce it.

TREASURER KOPP: Okay.

GOVERNOR O'MALLEY: All right. Thanks very much.

The Treasurer moves approval, seconded by the Comptroller. All in favor signal by saying --

TREASURER KOPP: Of that item.

GOVERNOR O'MALLEY: I'm sorry.

COMPTROLLER FRANCHOT: I have a few --

GOVERNOR O'MALLEY: Okay, we have other items. Hold up, then.

COMPTROLLER FRANCHOT: Item 9-S.

GOVERNOR O'MALLEY: Item 9-S.

MS. FOSTER: Okay. Item 9-S, and I think the Superintendent is here, Dr. Lowery? Item 9 is a contract to provide project management and grant support services on behalf of the Partnership for the Assessment of Readiness for College and Career Consortium that is going to be provided to execute the Race to the Top Assessment Program. Dr. Lowery?

DR. LOWERY: Good morning, Governor, Madam Treasurer, Mr. Comptroller.

COMPTROLLER FRANCHOT: Thank you, Madam Superintendent. Thank you for being here. This item we're being asked to award a \$95 million sole source contract to an entity called the Partnership for the Assessment of Readiness

for College and Career. Acronym is it PARCC? Is that how you pronounce it?

DR. LOWERY: Yes.

COMPTROLLER FRANCHOT: To implement here in Maryland the national testing program better known as the common core standards. I'm not going to make this meeting a platform for discussing the merits or the shortcomings of the National Common Core Initiative. This isn't the right venue, although I've heard a lot about it from teachers and parents and other folks who are not here in the room.

But I would like to gain a better understanding of how this particular consortium works and what exactly it's actually going to be doing here in Maryland given the fact that I read it's federal dollars. But is it being funded entirely by federal dollars? And can you confirm that no State dollars are being used to pay for PARCC services?

DR. LOWERY: Yes to both, Mr. Comptroller. This is the U.S. Department of Education Race to the Top Grant under the American Recovery and Reinvestment Act.

The grant is solely awarded to this consortium to develop assessments that will align with the Maryland College and Career Ready Standards that we are implementing fully this year. And that assessment will ensure a more profound look at

students' analytical performance and higher order thinking skills. It performs in ways that we have never had assessments to perform before.

We are one of the states in the 18 consortium that has been in the consortium since it's inception. We are the only state in the consortium that will be field testing the new assessment in every single school in our State. So we have embraced this work because we want to make sure that we have an assessment that will give us good feedback. And I believe the reason we were asked to take on this fiscal agency is because we have been involved since day one and we are committed to this work.

COMPTROLLER FRANCHOT: Well we're all in favor, obviously, of assessment and accountability, and having everybody taught the basics that will prepare them for their colleges and careers. The question is, obviously, the implementation.

DR. LOWERY: Sure.

COMPTROLLER FRANCHOT: And that's what I'm getting at here with this grant. Because in the grant it says that, "this \$95 million is, they are going to successfully execute all purposes of USDE's Race to the Top Assessment Program Grant that includes the development of national student assessments

that provide valid, reliable, and fair assessment of students' readiness for colleges and careers." I mean, as you more eloquently stated that is a huge undertaking. And my concern I guess is that it appears that they are going to have a lot of power over the education that our kids will receive in Maryland Public Schools, and the tests that will wield considerable influence over their futures, as well as those of our teachers and schools in which they work. So exactly who is getting the \$95 million? Who are the people? Is it a, I mean I understand it's a corporate entity that's getting a truckload of federal dollars to do this in Maryland and other states. But is there anybody from PARCC here this morning to shed some light on the company and the business model that is going to receive this extraordinary amount of money?

DR. LOWERY: I would like to introduce the Chief Executive Officer, if I may, before I bring Ms. Slover up to respond to the first part of your assessment about the work.

COMPTROLLER FRANCHOT: Sure.

DR. LOWERY: The, so goes PARCC, Inc., you know, so goes the Consortium, so goes PARCC, Inc. If the 18 states aren't happy, PARCC, Inc. no longer exists. PARCC, Inc. evolved from the 18-state Consortium. And so we act, the states, as advisory board. We put out exactly what we need and

what we must have in order to be successful and they respond to our needs.

So to your question who is actually driving this work, this work is being driven by leaders at the State level. And our teachers are involved in every aspect of development. So with that I will introduce Laura Slover, who is not only the Chief Executive Officer for PARCC, Inc. but she is also a sitting state board member in the District of Columbia. And so her district as well is a part of this work.

MS. SLOVER: Good morning. I'm Laura Slover. I'm the CEO of PARCC, Inc. Would you like me to pick up where Dr. Lowery left off?

COMPTROLLER FRANCHOT: Yes. I'm delighted you're here.

MS. SLOVER: Great. Thank you for having me. Merry Christmas, Happy Holidays. Let me give you a little bit of background about the PARCC Consortium, which as Dr. Lowery said is made up of 19 member states that together over the last three and a half years with dollars from the Race to the Top Assessment Grant have been building a set of tests, a set of tests in grades three through eight and in high school that will help track student progress all the way through their

education and indicating their readiness to go directly into credit bearing courses in colleges and to go into good jobs.

COMPTROLLER FRANCHOT: Let me interrupt just for a minute if I could?

MS. SLOVER: Yes?

COMPTROLLER FRANCHOT: Not to, just because before I forget this. You said there are 19 states in the Consortium?

MS. SLOVER: There are 18 and the District of Columbia.

COMPTROLLER FRANCHOT: Eighteen and the District of Columbia?

MS. SLOVER: Correct.

COMPTROLLER FRANCHOT: And are all of them contracting with PARCC for this turnkey test process?

MS. SLOVER: Let me tell you a little bit about how it works because the answer is no. The dollars flow from the federal grant, the Race to the Top Grant, directly to Maryland and to PARCC, Inc. to then pay the contractors. There are seven contractors that have been involved in this project for three and a half years. The first fiscal agent of this project was Florida. Florida through competitive bids solicited the services of a number of contractors to build test items, to

pilot those test items, to build technology supports, all of the things that go into a 21st Century assessment.

Those contracts have been underway for a number of years and they will transfer from Florida to PARCC, Inc. So those same contracts will be held by PARCC, Inc. And then through the contractual arrangement that PARCC, Inc. has with Maryland, PARCC, Inc. will continue to build on those relationships and to pay those vendors. So the individual states will not pay the vendors directly, nor will they pay PARCC, Inc. directly. Those federal dollars will flow through Maryland, which is the new fiscal agent that has agreed to take on this work on behalf of the Consortium and contract with us to do all the programmatic work that is involved in the Consortium, from government and management of the states, to development of the assessment, to building the research agenda, and to helping states think about what are the policies that are going to govern this assessment in the future.

The Consortium itself, PARCC, Inc., will not make high level decisions about what students learn, what happens in the classroom. Those decisions are not Consortium decisions. Those are state decisions and of course belong to educators and districts in those states.

PARCC, Inc. was established for the sole purpose of supporting the 19 states as they finish out this Race to the Top Assessment Grant. They shared a common vision for the assessment system that I talked about. They have developed that through the beginning, through their original proposal in 2010, and then through the subsequent work over the last three years. Countless educators across all of the states have reviewed every test item. They have been in every conversation of the sausage making of the test, which I won't go into the details of but countless hours from test specifications, to the design, to the items, etcetera. All with the goal of measuring student performance in common across the states so they can have a common benchmark and be able to gauge progress compared to one another. So they can lock arms and do this together.

While the organization PARCC, Inc. is new it is essentially a spinoff from the organization called Achieve where I and my team have worked over the last three years, which was competitively procured, and that has served as the project manager since 2010.

COMPTROLLER FRANCHOT: Who was that competitively procured by?

MS. SLOVER: It was competitively procured through the State of Kentucky. That contract was then transferred,

which was another partner state, is another partner state.

See, the states share this responsibility of procurement.

COMPTROLLER FRANCHOT: You understand why I --

MS. SLOVER: It's complicated.

COMPTROLLER FRANCHOT: Just the word labyrinth comes to mind.

MS. SLOVER: Yes.

COMPTROLLER FRANCHOT: And --

MS. SLOVER: Tell me about it. I've lived this for three and a half years. It is quite complicated. So that contract will now go directly between Maryland and PARCC, Inc. And the responsibilities of Achieve will be folded in to the responsibilities of the new organization. Essentially we are a spinoff from the existing organization. We are bringing all of my team over from Achieve, so we are just going to hit the ground running with the expertise and the professional knowledge built in the last three years. We have been managing this process for the last three years. We have managed all of the vendors. We have built relationships with the states and run all of the operations of the Consortium to date. So it's important and it's an important aspect of that contract that the full team is coming over, and I have three of my teammates here with me today.

So it's technically an administrative shift in how we are running the work of the Consortium rather than an entirely new endeavor. I hope I answered your question.

COMPTROLLER FRANCHOT: Yeah, no, it's, you have a difficult task trying to unravel all of this stuff. And as I said, conceptually I'm in favor of what you are doing. It's the implementation that I am hearing considerable controversy about at the classroom level. And -- hang on, because I see the Superintendent getting up there.

(Laughter.)

COMPTROLLER FRANCHOT: And trust me, it's, at least private conversations, I don't know what she experiences in public, but there is a lot of concern about the rush to implementation and of this particular initiative in the State of Maryland. And this is from people that support the overall concept but are really concerned about the negative impact of going too fast, too soon.

So I have some other questions, because you mentioned Florida. Which apparently is now, we are replacing -- I'm sorry, go ahead.

DR. LOWERY: Mr. Comptroller, if I may for just an intersection here.

COMPTROLLER FRANCHOT: On the controversy?

DR. LOWERY: Yes. Because I just want to kind of disaggregate PARCC's work from the implementation of the standards. So I think the information that you are hearing when you are out traveling the State around the implementation of the curriculum is the implementation of the Maryland College and Career Ready Standards. This is the assessment wing that is going to be standing at the end to actually give us feedback on how well students are learning. So I'll stop there. We can have another conversation --

COMPTROLLER FRANCHOT: Sure.

DR. LOWERY: -- about that implementation process. But I want to save Laura from owning that piece.

COMPTROLLER FRANCHOT: No that's, I understand that. Thank you for making that. And their concern is that the State has an obsession with testing rather than teaching. And look, we're all for accountability, everyone. But to the point it becomes kind of an exotic fetish where we're all just like all consumed with this test, and the curriculum for the test, and everyone is evaluated on the test, aren't we losing -- well, we can talk about that some other time, I guess. But thank you. I don't mean to cut it off. But it is a big topic among teachers and parents out there, that it's the implementation rather than the concept.

But you mentioned Florida, we are taking Florida's place I take it? Florida was the grants administrator and general manager of the initiative. Why did Florida stop?

DR. LOWERY: I believe the only reason we can give you is that the state decided that they no longer wanted to be fiscal agents. They had, were, discusses with the United States Department of Education and with the Consortium members, just that. I mean, they didn't go into a lot of detail. I don't know, so I can't give you the details. I can tell you that we sat down with the United States Department of Education, PARCC, Inc., Florida, and Maryland, our Assistant Attorneys General have been phenomenal through this work. And Steve Brooks, my Chief Operating Officer. So we have vetted the numbers and the integrity of what we are now transferring so that we know we are in a good place there. The reasons that Florida made the decision that they made have not been articulated other than they didn't want to do it anymore.

COMPTROLLER FRANCHOT: And that, well that's a pretty short and sweet answer, I guess, to --

DR. LOWERY: I don't want to --

COMPTROLLER FRANCHOT: But it, but yea --

DR. LOWERY: I don't want to put words in anyone's mouth. I don't know.

COMPTROLLER FRANCHOT: Well it does raise some concerns that there is something other than ideology going on here. But let me just kind of, since I have both of you here, and I may not again on this, and it's a big amount of money. The question, if you are asked out in the public who actually is minding the store with this complicated system of PARCC that we now have ownership of, I guess, because we are now the grants administrator, who is responsible for the oversight of the initiative? I understand we have a multistate Consortium with 18 states. But who is overseeing the corporate wing of the Consortium? Who is actually responsible for doing the work? And who is acting as an honest independent broker to hold the Consortium, as I'm sure you would like to be, held accountable for job performance? And it's right now based on my reading of the background materials it appears that you are going to be in charge of, and I'm sure you are very talented, basically in charge of everything including essentially the evaluation. So tell me why it's not the fox guarding the chicken house here as far as a, and I'm not making any implications. Obviously, you are very, obviously you have outstanding backgrounds. But who is minding the store?

MS. SLOVER: I am going to invite, if it's okay with you, my CFO Curt Smith to join me up here.

COMPTROLLER FRANCHOT: Good.

MS. SLOVER: There's a number of controls that have been put in place. And there are multiple layers of this project, which you have noticed. It is a complex endeavor with 18 states and the District of Columbia working together to build this assessment. Having established a new entity to continue the management and oversight of the work, PARCC, Inc. will be governed by two entities. One, its own board. We have a small but growing board of directors that includes Paul Pastorek, formerly the State Superintendent in Louisiana; and Gene Wilhoit, formerly the State Superintendent in Kentucky, Superintendent of Education, excuse me. And Gene Wilhoit also served for seven years as the Director of the Council of the Chief State School Officers. So they come to this with a great deal of education background and some fiscal responsibility and background as well running agencies. Ultimately, so the PARCC, Inc. Board has oversight of the PARCC, Inc. finances. We have built internal controls. We have a CFO on board. He's here and can join me at the podium. Thank you. And he can talk specifically about the internal controls that we have built in the organization should that be helpful.

COMPTROLLER FRANCHOT: So --

MS. SLOVER: There are a number of vendors who will be under contract to PARCC, Inc. So the contracts that will get transferred from Florida to PARCC, Inc. And we will be responsible in collaboration with the state partners for overseeing the quality of that work, for signing off on deliverables, and saying to Maryland, "These are okay to pay." So Maryland then can transfer those dollars to us and we can pay the vendor.

So let me give you some of the names of the vendors who are the contractors for this project. Pacific Metrics; Pearson; the National Math and Science Institute; ETS, the Educational Testing Services. Those are just some of the examples of the pretty large contracts that PARCC has. And the bulk of that \$96 million that you referred to will be essentially a pass through to go to those vendors for the contracts for the work already underway. The PARCC, Inc. budget is a relatively small piece of that that we will use to staff ourselves and provide oversight and ongoing support for the work.

Now there are two other very important controls that have been put in place. One is the State of Maryland. In order to give PARCC, Inc. the money in order to pay the vendors it has to have evidence of receipt of deliverables. Those

receipt of deliverables have to be signed off by both PARCC, Inc. and the Consortium. So member states will serve on the panel that receives and attests to the comprehensiveness and quality of every deliverable from the vendors. So that will be a shared task so that Maryland has good comfort that we are not the only ones that are signing off but also their partners, their partner states.

In the end, of course, the U.S. Department of Ed. has the final, they are the final arbiter of how the dollars are spent and whether the dollars are being responsibly, we have multiple checkpoints set up within monthly calls, regular budget check ins. So there are multiple tiers of checks and balances in the system to support that.

COMPTROLLER FRANCHOT: Okay. And I appreciate the CFO there.

MS. SLOVER: I hope that was comprehensive --

COMPTROLLER FRANCHOT: You mentioned Pearson Assessments. If I'm trying to find the person in your network of consulting contracts who is actually preparing the test, who is it?

MS. SLOVER: Again, a little bit of a complicated answer. If I might, there are two contractors, the Educational Testing Service and Pearson, who have been contracted, again

through a competitive bidding process in Florida, to develop the items. Prior to that the states, the 19 states, 18 plus D.C., worked to establish the test specifications, the content frameworks that would guide the development of those items. They put in place an evidence centered design process. I won't bore you with the details of test design, but it was a very robust process that lasted for over a year to design the framework, if you will, within which the items would fit. Then the competitive bid went out. Pearson and ETS, two vendors, were selected in order to provide some internal checks and balances and internal ongoing competition among vendors to get best in class, highest quality. And then those folks are developing those items.

Now every one of those items is reviewed by multiple people from across the State. So if you can imagine review meetings where hundreds of educators are looking at every set of items so that every item, no item will go on this test that has not been signed off on by content folks by, including Maryland.

DR. LOWERY: And if I may just add, our current assessments, MSA and HSA, are dually produced by Pearson and ETS. And we already have teachers in our State who have been for the past ten years a part of the process of vetting. So

while they are aligning to a new set of standards the relationship that PARCC, Inc. has with those two vendors in particular is one that Maryland has enjoyed for the last ten years.

COMPTROLLER FRANCHOT: Okay, stay right there.

Because this is, you brought this testing up. Is part of this test, I take it, going to be administered online to our students? Is that --

DR. LOWERY: The hope is that the final test all will be administered online. We have a transition plan that Laura and her team can kind of detail a little more. But we have a paper and pencil answer going into it until we can ensure that all of our districts are up and ready to be online. But the, in order for the test to perform with the dynamics we want so that students can really demonstrate their knowledge it would be an online test.

COMPTROLLER FRANCHOT: And that's going to require obviously tens of thousands of middle students to have computers, or tablets, or laptops, or keyboards, or something so that they can log on at the same time and take the test.

DR. LOWERY: So yes, sir. And I will tell you currently we have anywhere from 40 to 50 percent of our middle school and high school students already taking their tests

online. Some high schools and some middle schools are already giving their full battery of tests online. And our science test is given completely online. So Maryland again has been doing that for many years. The good news is Maryland has been doing that in a two-week window. With PARCC we now have a four-week window. So we really are going to get, have to do a great job of getting our arms around what we need to actually assess our students and what would be maximum for our districts that they could have all that they wanted. We just need to make sure that we make that distinction so that we are comparing apples to apples.

COMPTROLLER FRANCHOT: Okay. And when is the first test going to be taken?

DR. LOWERY: We will take, in March we will do the pilot test. But the first operational test won't be given until next Fall or Winter, in March of 2014-15.

COMPTROLLER FRANCHOT: March of 2015? Early Spring?

DR. LOWERY: Right.

COMPTROLLER FRANCHOT: Okay. And do all of the jurisdictions in Maryland are they aware that they are going to need some kind of software infrastructure and hardware, I guess, to pull this off?

DR. LOWERY: Yes. And we have been working very hard with their local coordinators for technology to assess. PARCC has given us tools, I think we're in the third iteration now, of tools where we can look at the number of students, the amount of hardware, the number of hours so we can kind of make an assessment of what we actually need to give the test. And we gave that information back to the superintendents last week when we met with them so they could vet it and make sure that what their staff is giving us is what we thought. But we are also able to go into our database and see which schools were already giving their tests online. So we can have a check and balance.

COMPTROLLER FRANCHOT: Okay. And I'm, thank you for your patience to my colleagues. I've just got a few other questions. And you understand the concern that I have --

DR. LOWERY: Sure.

COMPTROLLER FRANCHOT: -- based on this testing, preparing for testing, evaluation based on testing, crowding out teaching. Which I'm sure you are keeping an eye on. But let me ask about the \$250 million that we received. Someday I'd love to be President and just be able to hand out \$250 million to a state and what exactly, I take it that was to secure all of the infrastructure that will be needed to

implement these tests. If that, if that's the case, can you assure the Board of Public Works that the \$250 million that we are receiving from the federal government is going to be used for that purpose?

MR. BROOKS: Good morning, Mr. Comptroller. My name is Steve Brooks. I'm Chief Operating Officer with Maryland State Department of Education. Good morning, Governor. Good morning, Madam Treasurer.

The \$250 million is referring to the Race to the Top Grant that Maryland received as a successful recipient of a four-year grant designated for four purposes. One, to assure that our teachers and our students are, have the assessment, a strong assessment program. Second, to support our lowest achieving schools. Third, to continue growth of school, quality schoolteachers and principals. And fourth, of course, to support technology.

Of the \$250 million, \$125 million of it was kept at the Maryland State Department of Education for statewide initiatives to support all of our local school systems. And of that the majority of the funding, or the largest portion toward any of those four components, was designated for technology. The other \$125 million was directed to the individual grants to our local school systems. So the participating local school

systems, 22 of the 24 who joined us in the Race to the Top Grant, received a portion of that, the second half of that that they could then dedicate toward where they saw the needs most significant in their systems.

COMPTROLLER FRANCHOT: So half of the \$250 million is being spent with your approval? Or is there some listing of how the money is spent?

MR. BROOKS: Yes, Mr. Comptroller. Both the \$125 million that we spend on statewide initiatives as well as the \$125 million that the participating local school systems spend of their Race to the Top dollars, all of that is monitored closely by the U.S. Department of Education. There are monthly discussions with U.S. Department of Education on the status of that grant. And they are indeed monitoring that very closely.

COMPTROLLER FRANCHOT: Yes?

DR. LOWERY: Mr. Comptroller, when we received the money the money was received to fund a plan. So it wasn't as if we got \$250 million and then we could decide how we were going to spend it to address those things that Steve articulated. But what we had to do was look at those four protocols under which we had to agree to make improvements and then give a scope of work under each of those. And each piece of work had a dollar amount attached to it. And so they are

holding us accountable to spend X amount of dollars on this project exactly the way we said we were going to do it. So before the money even was released to the State, we had to have a plan of action that not only had the individual strategies we were going to employ, but how much each would cost.

COMPTROLLER FRANCHOT: Okay. And if you could give to the Board of Public Works a list of how the \$250 million was spent, I would be grateful, and any kind of detail that you have available. And I am probably going to vote against this proposal. Not because I do not agree with the concept, but I have major concerns about Florida hiring contractors and consultants through their procurement process, and now these folks are being handed over to us to implement programs for Maryland children. And I obviously appreciate the Superintendent's overall administration. But I have very, I am not happy with the, with what I'm hearing here. Because it's so complicated, and byzantine, and you know, I am assuming at the end there is going to be accountability for Maryland kids. But, and I understand the difference between implementation and test preparation. But boy, this thing is really, as you say, complicated.

DR. LOWERY: As Laura said, complicated, Mr. Comptroller.

COMPTROLLER FRANCHOT: Someone said complicated.

DR. LOWERY: But Mr. Comptroller, if I just may, and I of course respect you and your decision. But the Consortium is a Consortium of 18 states and the District of Columbia. And all the work that we are doing with this Consortium was work that was agreed upon, and that was interesting even with our higher ed partners at the table among the states. So while each state, and I think the piece where the complication may have been referenced is that all states had to have buy in. So we had to share the work appropriately and it's our time.

COMPTROLLER FRANCHOT: Okay. Well that's --

DR. LOWERY: Thank you.

COMPTROLLER FRANCHOT: -- you've been great, and I've taken too long. But in the list of how the money was spent would you identify whether it was spent for administrative purposes or for classroom purposes, please? Please, in those different grants that were, that you are going to send us. Thank you.

GOVERNOR O'MALLEY: Can I ask, how many states are still in the Consortium. Some have dropped out, right?

DR. LOWERY: Eighteen. Eighteen, plus the District of Columbia. Nineteen. There were 22 initially, or 23?

MS. SLOVER: Twenty-three.

DR. LOWERY: Twenty-three initially.

GOVERNOR O'MALLEY: All right. This isn't easy.

Everybody likes higher standards and a better curriculum for their kids in theory, but they don't, but in practice it becomes something more difficult. So and we were asked by Secretary Duncan to do this, correct?

DR. LOWERY: And, yes sir. And we were asked by Secretary Duncan because of his long relationship with Maryland and the work that Maryland has done over the years. He wanted to give it to someone that he thought could handle it and get it done.

GOVERNOR O'MALLEY: Well, good. More work.

DR. LOWERY: Mm-hmm.

GOVERNOR O'MALLEY: -- step up to the plate.

TREASURER KOPP: I just have one, you have no question that you've got the capacity to do it?

DR. LOWERY: So we have four positions that will come with it, Steve's a five. And Steve's most critical hire, and we already have applications, is the general manager. So we will have five people new to the department that we will take out of the administrative costs whose sole purpose for being in the State will be to manage this grant.

TREASURER KOPP: And that is your judgment of what is required?

DR. LOWERY: Yes. And that's what Florida had as well.

COMPTROLLER FRANCHOT: And that is an interesting question also. Is the AG here that worked on this? Yes?

DR. LOWERY: We have two of them. They were amazing.

COMPTROLLER FRANCHOT: Good.

DR. LOWERY: I think the U.S. Department would like to hire them away, but --

(Laughter.)

COMPTROLLER FRANCHOT: So I guess in brief, is there any legal or financial liability attached to Maryland now taking Florida's place and being the grants administrator if for some reason that we never, you know, why would any internet system every go wrong? But suppose there is a big problem with the implementation. Is there any liability that attaches to the State of Maryland because of our new role here?

MS. HOOVER: Do you want to start? I'm Lydia Hoover, Assistant Attorney General for the Maryland State Department of Education. We have looked at this and I guess I would just like to say that it's not as complicated from a procurement standpoint as it seems mostly because what happens is that

Maryland is stepping in after three years of a grant award. So in the grants transfer agreement that is going to be executed hopefully between USDE, Florida, and Maryland, there is going to hopefully be a clean break between what Florida has done and what Maryland will be doing. So anything that occurs prior to January 1, 2014 would be the responsibility of Florida.

Anything that happens January 1, 2014 on will be the responsibility of Maryland. But it will be solely funded by the federal funds and the grant dollars that are going to be transferred to Maryland.

COMPTROLLER FRANCHOT: So your testimony is there is no fiscal or legal liability that is going to develop, despite our best intentions for a good execution of all this, because of our leadership here, our leadership role?

MS. KAMEEN: Mr. Comptroller --

COMPTROLLER FRANCHOT: Because that seems a little, who is the fiscal agent, I guess? Are we?

MS. KAMEEN: The State of Maryland is the fiscal agent, sure.

COMPTROLLER FRANCHOT: Yeah.

MS. KAMEEN: I'm Elizabeth Kameen and I'm Principal Counsel to the Maryland State Department of Education. To stand in front of anyone and say there is no liability ever for

anything would be a statement that no lawyer would ever make.

The, there is always a possibility that the federal government would come behind on Maryland's work and say, well, we're going to disallow these particular costs. That ends up in appeals. So I can never guarantee that there is no liability for anything.

What we have built in to the sole source procurement contract and to the grant transfer is a clean break with Florida, number one, so that we are not taking on their problems and obligations. And number two, a good team which is always what is really important in contract management. You really have to have a good team standing and looking at where the expenditures are being made and why they are being made. And that is part of what keeps you out of legal trouble.

COMPTROLLER FRANCHOT: Good. Thank you, Governor.

GOVERNOR O'MALLEY: Sure. Anything else on --

SECRETARY MCDONALD: We have a request to speak in opposition on this.

GOVERNOR O'MALLEY: Okay. That's right. All right, thank you all very much. I appreciate it. Sure.

SECRETARY MCDONALD: Mr. Jolivet --

GOVERNOR O'MALLEY: This is kind of a unique one, Mr. Jolivet.

MR. JOLIVET: Good morning.

GOVERNOR O'MALLEY: Thank you.

MR. JOLIVET: Good morning, Madam Treasurer, Governor, Mr. Comptroller. Before I speak to you about this particular job I just, I want to thank Mrs. McDonald in terms of whenever we in the minority community have issues or have to communicate with her, I am always struck of how they reach out to help us. And I, if I can, Mrs. McDonald, I'd like to just say thank you.

SECRETARY MCDONALD: Thank you. Merry Christmas.

MR. JOLIVET: I've been doing this job for a considerable amount of time. And I have to confess this morning, Governor, I'm a bit melancholy. And I'm somewhat offended that we in Maryland would propose, even propose to engage in a \$97 million procurement and not spend one dime with the minority business enterprise. I'm offended, I'm offended, I'm offended.

So I want to ask you this morning to bear with me. To please bear with me. Because in all of my career, with all that we do in Maryland to promote and facilitate minority inclusion, I am offended that a Maryland State procurement agency would even think of bringing before this honorable Board an effectively \$97 million procurement and not propose that one

dollar be spent with the minority business enterprise, or not one dollar be spent with an African American owned enterprise.

And what I attempted to do today, and I don't, I don't want to belabor the point. But I'm here today largely because of a letter that I got from a very extraordinarily well qualified African American owned educational consulting firm who asked me, who asked me to come today before your honorable Board and convey the sentiment that what they are proposing with this particular grant, it may be laudable, Mr. Comptroller, it may have great purposes, it may have great intent, and it may even be successful. But it should not be approved by this honorable Board as it is currently structured and as it is currently presented to this Board.

I would submit to you, and what is so disturbing, extremely disturbing about this grant, and I attempted to record it for you. Two years ago, Mr. Comptroller, I came before this Board and I, on a very similar matter, where it's recorded in my exhibits where the Maryland Department of Education presented a \$3.6 million non-bid and sole sourced procurement to hire a, to award a contract to hire these principals, former principals, who would be training principals in our urban communities. And it was very, very, very disappointing that we were going to spend \$3 million and all of

the very well qualified African American and other minority educational consultants who could have participated in this grant, the Department of Education came before this honorable Board and justified a sole source procurement for this grant.

Now I would submit to you, it even at that time, Mr. Comptroller, it was not appropriate, totally not appropriate to approve the grant as a sole source. Because under Maryland law, everyone knows, under Maryland law the Court of Appeals has interpreted sole source procurement very, very circumscribedly and in a very limited situation. We just can't award a sole source contract, Mr. Comptroller, just because we want to. The law, Maryland law is very, very limited in terms of when we can award a sole source. It was not an appropriate sole source in 2011. There were two contracts that came before the Board. I protested those contracts because at the time I said to you, and I provided documentations, that those two contracts were not an appropriate factual situation to justify awarding the contracts without competitive bidding. I said also that it is always detrimental and disadvantageous to award sole source contracts because under sole source contracts the State minority business provisions can be dispensed with.

So therefore it is very, very important for this Board to be sensitive, very sensitive of agencies requests to

support and approval a sole source contract. Because in so approving a sole source contract we inevitably and indirectly and inherently exclude our minority firms. That's what we do. We exclude. Because sole source do not require or even encourage minority participation.

And again, I want to impress upon this Board to have this contract reviewed. I know there is an extraordinary urgency from the agency to have this contract approved. I know that. I'm, that has been communicated to me. But I think that all that we have done in Maryland, and Governor even all that you did when you were in Baltimore City, to encourage and to promote and facilitate minority inclusion for us as a State, for you as a representative of the people of Maryland, for you to put your stamp of approval on this completely extraordinarily illegal contract, Governor, it would offend me. It offends me that I'm even here today to have to talk to you about this, that some agency, Department of Education, would bring this before you.

And I want to just comment on this, if I can? It was revealed today that the seven contractors who are the major players in this Consortium, it was revealed that, the names of these seven contractors. And in my research, and in my research in preparation for coming to this Board today, I

discovered of the seven contractors, independent contractors who were selected allegedly competitively in the initial design and implementation, they are already part of the Consortium, this contract. I was struck that not one of these seven contractors are minority, not one.

That is not only offending but it is unacceptable for us as a Board to put our stamp of approval on something that comes to us already convoluted. What they are asking you to do is to put your stamp of approval on a proposed agreement that comes to us, that is tainted with racial discrimination and exclusionary practices. And I say, Mr. Comptroller, Governor, Madam Treasurer, I've been in this State too long. And I have seen what we have been able to do collectively, trying to make sure that there is a level playing field. And what we do in government has integrity and is inclusive. And I say to you this morning that this particular proposal does not qualify. It does not. This is not an appropriate factual predicate to justify award of a sole source contract.

In fact what it is is merely a subgrantee in disguise as a sole source contract. And under the --

GOVERNOR O'MALLEY: Mr. Jolivet, you've got to wrap up now.

MR. JOLIVET: -- under the statutory scheme enacted by the Congress under the Race to the Top, it is wrong and it's impossible and it's unlawful to do subgrants. It's a matter of public knowledge.

GOVERNOR O'MALLEY: Thanks very much, Mr. Jolivet. Let's get a response from the Attorney General. Thanks.

MR. JOLIVET: But Governor, I want to ask you, in closing I want to respectfully ask you if we can possibly delay this proposal award and at least make an effort to see if we can be more inclusive. That we can convince those, the people that you're going to award it to to open up this contract for qualified minority firms. And I know that we have qualified, I put a letter from one of our most extraordinary African American firms.

GOVERNOR O'MALLEY: I know Dr. Amprey very well.

MR. JOLIVET: Excellent educational consultant.

GOVERNOR O'MALLEY: Yes. Mr. Jolivet, you need to let us move on with this Agenda now.

MR. JOLIVET: But Governor, he should not have been left out of this.

GOVERNOR O'MALLEY: Yes, Mr. Jolivet. I understand.

MR. JOLIVET: And I just want to say that. I want to emphasize that.

GOVERNOR O'MALLEY: Yes, sir. I understand your point. And you have emphasized it several times at great volume. Now you are going to wrap up for us so that we can answer your questions in a respectful way.

MR. JOLIVET: I want to thank you for --

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

MR. JOLIVET: I want to thank you for allowing me to be here today, and I preference --

GOVERNOR O'MALLEY: Always, Mr. Jolivet.

MR. JOLIVET: I preference my comments initially because, as I said to you before, Governor, I'm offended. I'm totally offended.

GOVERNOR O'MALLEY: You have made that clear several times, Mr. Jolivet.

MR. JOLIVET: I am offended that we have to do --

GOVERNOR O'MALLEY: I understand. We're going to try to answer --

MR. JOLIVET: -- that you can leave us out. I'm offended.

GOVERNOR O'MALLEY: I understand, Mr. Jolivet. Thank you very, very much for being here. And we're going to answer in a respectful way. The concerns Mr. Jolivet have, I think substantively, beyond his personal offense, is that this

contract is illegal because of the sole source, and that it also does not include any minority business persons within this bid. Would you answer each of those arguments that he has made to us?

MS. HOOVER: Yes, Governor. Our position is that the contract is not illegal. It has been signed off for legal sufficiency. And there are two procurement points that Mr. Jolivet mentioned that you succinctly summed up. Is one, the sole source portion of the procurement at issue, and then the MBE goal which is zero percent.

So first on the sole source, under the procurement regulations the agency needs to make a determination that only one vendor exists to perform the contract. That determination has been made by the agency, that PARCC, Inc. at this point in time is the only vendor that can perform the contract. And the reasons for that are several but two of the main points are that PARCC, Inc. will be assuming all of the contracts that Florida originally competitively bid. That's going to be about \$87 million of this contract. So PARCC, Inc. will be the only entity that is in privity of contract with those vendors like ETS and Pearson and Ms. Slover had mentioned.

The rest of the approximately \$96 million is all going to be worked that has to be self-performed by PARCC, Inc.

And it has to be self-performed by PARCC, Inc. because the PARCC, Inc. personnel have been around since the inception of the grant and the work that's being done to further the test in this matter. They have been around since 2010. At this point there is approximately nine months left on the grant. The same people have to perform for consistency purposes. So there is the assumption part and then the self-performance part.

Not related to sole source but related to Mr. Jolivet's points was the MBE goal. There is no MBE requirement of a percentage to be put on any contract in the State of Maryland. The MBE is merely a goal. Each agency determines on a contract by contract basis what that goal should be. The agency personnel look at the contract, they look at the subcontracting opportunities, they look at the available MBEs. MSDE did all of that through their procurement review group, which is required by the Board of Public Works Advisory. And they determined that there was a zero percent goal.

One of the things that the agency added in, however, was even though there is a zero percent goal they still want to encourage PARCC, Inc. to use as many minority business enterprises as they possibly can in using good faith efforts as the work progresses.

GOVERNOR O'MALLEY: How much do they, and so what does that mean? How much work do they have to do that's not the self work?

MS. HOOVER: What we understand from speaking with PARCC, Inc. is that there may be things like the office supplies that they can purchase once they are under a Maryland contract. There may be some IT services. PARCC, Inc. may be able to speak to that a little better than I can. But they have looked at certain things that they might be able to procure through an MBE contractor.

GOVERNOR O'MALLEY: Mm-hmm. Does somebody from PARCC want to address that?

MS. SLOVER: Yes, thank you. And I'll just build on the Attorney General's statement. PARCC, Inc. is very willing to explore contracting with businesses for things like IT services, printing, communications, transcription services. We have multiple meetings and there are often the need for transcription services. So we are committed to exploring those things. We have taken a look at the MBE business website and will pay some attention to that moving forward.

GOVERNOR O'MALLEY: How much contracting? How much, what's the dollar amount?

MS. SLOVER: The flexible dollars to spend are relatively small. As I mentioned most of the contracts are already in place through existing contracts for about \$86 million existing.

GOVERNOR O'MALLEY: And when this was bid, was this bid under federal requirements? Or Florida state requirements? Or, I mean, what --

MS. SLOVER: The multiple contracts were bid through Florida. And they were bid therefore under Florida state law.

GOVERNOR O'MALLEY: Okay. So why should we even have to count this on our MBEs? I mean, we're picking up contracts that have already been engaged in for the most part, right Ms. Hurley?

MS. HURLEY: Right. But unfortunately now that we've taken ownership of it in particular MSDE will be recording this in their annual reports. And so that is a downside to assuming a procurement that was left under another state's rules. Maryland was unable to apply its rules for MBE inclusion. But we still will have to record it in our annual spending because we will be overseeing the disbursement of these funds.

GOVERNOR O'MALLEY: Mm-hmm. Mm-hmm.

MS. HURLEY: And it's unclear to me being a federal grant, you know, exactly whether our requirements could apply -

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GOVERNOR O'MALLEY: Dr. Lowery?

DR. LOWERY: Yes, Governor.

GOVERNOR O'MALLEY: Did you all, do you go through this in your -- Mr. Jolivet, you can have a seat. I'll call you back up as I always do respectfully to shout at us again before we're done. Dr. Lowery, did you all discuss this one?

DR. LOWERY: Yes, we've discussed it at length. As a matter of fact, Steve Brooks, who is the Chief Operating Officer, had this conversation with the Attorneys General and PARCC, Inc. from the very beginning. We currently sit at about a 25 percent MBE rate, about 25 percent. But we made this a point early on and that is why we had a discussion with them with the money remaining outside of the \$86 million that is left where they can procure other services that they consider MBE as a priority.

MR. BROOKS: Actually the 25 percent relates to Maryland's prior year MBE. We have been committed to MBE through our contracts wherever possible and have had strong representation in all of our MSDE contracts. Last year we did hit the 25 percent level. We have been above that level

significantly year after a year. So it is very important to the department.

In this situation, as Ms. Slover mentioned, most of the contracts, and so the vast majority of this funding had already been put into contracts through Florida. So therefore there was very limited opportunity with regard to the entire grant. Given the amount of time that we had we did not know how much PARCC, Inc. could commit of the remaining work that still needs to be let to MBEs. So therefore there is a zero MBE goal, however we have stressed to PARCC, Inc., to Ms. Slover that they do need to go on to the Transportation website and look for those opportunities for Maryland MBEs to participate in this grant wherever possible.

GOVERNOR O'MALLEY: Mm-hmm.

DR. LOWERY: And Governor, if I may, and of course we are all very sensitive to the MBE protocols that Maryland has handled so well. We are in the middle of two or three years of this work. Our students have to have a summative assessment by March, 2015. We have to field test in March. If we do anything to disrupt the consistency of this work, we stop everything. We put our students and students in 18 other jurisdictions in jeopardy. In many of the states like Maryland, and you will hear from us today about an extension,

really are moving to this assessment at the decision to move away from the others. This is our assessment. So we are not only working on real finite timelines about making the transition from Florida to Maryland, but we are working on finite timelines for making sure that everything runs consistently so that we can have our services.

GOVERNOR O'MALLEY: And Ms. Hurley, what is the overall MBE goal that we, I mean, what number did we hit last year?

MS. HURLEY: Twenty-five --

GOVERNOR O'MALLEY: And was that the all time high?

MS. HURLEY: That is the all time high.

GOVERNOR O'MALLEY: So no administration on any year has ever hit the 25 percent that we hit last year?

MS. HURLEY: That is correct.

GOVERNOR O'MALLEY: All right. And we're here, Dr. Lowery, in essence picking up the ball after Florida dropped it at the request of President Obama's Secretary of Education.

DR. LOWERY: Right.

GOVERNOR O'MALLEY: And even though the vast majority of these contracts for the testing and education things have already been let by Florida, but there is a remaining several million dollars that could be open to MBE?

DR. LOWERY: Right. Right.

GOVERNOR O'MALLEY: And Ms. Slover, was that the --

DR. LOWERY: I think, what, about \$10 million? \$86 million is for the transfer so I think like \$10 million?

MS. SLOVER: There's about \$86 million that have already been encumbered, and there are about \$500,000, about half a million dollars for within the PARCC, Inc. budget, within my direct services budget, that I have responsibility for. And we will make it a priority to explore using MBE contractors for the work that we do.

GOVERNOR O'MALLEY: And Mr. Jolivet has some names, including those of Doctor, Ms. Slover?

MS. SLOVER: Sorry, pardon?

GOVERNOR O'MALLEY: Yeah. So in other words, I mean, this is jarring to the ear for many of us because we have the highest MBE goal of any state in the Union. We also have a lot of education professionals, IT professionals who are minority, African American. So we, we feel kind of saddled here by this contract, that we understand it's important. We don't want to put you back. But we need you to be more than simply open to maybe possibly exploring greater minority participation. Do you understand what I'm saying?

MS. SLOVER: I appreciate that. I appreciate that.

GOVERNOR O'MALLEY: Okay.

MS. SLOVER: Yes. You have my commitment that we will be very aggressive in exploring those opportunities.

GOVERNOR O'MALLEY: And I would encourage you to talk to, you know, everyone you possibly can, work with Ms. Hurley. We're not going to designate particular contractors, we can't do that. But we have a lot of good people in our State. And we're doing the President a favor here, and we're glad to do that. Mr. Jolivet, do you want to conclude for us?

MS. SLOVER: Thank you very much.

GOVERNOR O'MALLEY: Thank you.

MR. JOLIVET: Governor, I would just like in closing in my investigation of the facts of this particular grant it was called to my attention when the State of Florida Department of Education was in the process of putting this grant together there are very serious small business and minority requirements that are imposed on grants of this kind by the federal law. Public Law 95-507, which was offered by Congressman Parren Mitchell, requires projects like this to provide and to establish goals for not only small business but minority business. So what we discovered is that somehow or another this got kind of shoved under the rug, or wasn't facilitated, and it never happened. There were not small business, minority

business, or disadvantaged businesses to participate in the grant at all. We think that was certainly a most serious flaw. But more importantly, there is some evidence that it was deliberate and calculated and purposeful. But nonetheless, I'm not here today to prove that. But the bottom line is that the factor, the controlling factor that I would ask this Board to be sensitive to, and even consider in your decision as to whether or not we want in Maryland, all that we do in Maryland, whether we in Maryland should put our stamp of approval on a grant that comes to us already defective. That already has racial, gender, ethnic shortcomings to it.

So the question that I think the Board should consider, is it appropriate at all for the great State of Maryland, in light of all that we do to promote, facilitate equal opportunity for everyone, should we put our stamp of approval on a racially discriminatory document and program that seeks to leave some of our people out? And my answer, and my suggested answer to this honorable Board is that, no, absolutely a resounding no. Because we don't do business like that in Maryland. That's not the way we do business. We do business in the fair and equitable way. And we should never put our stamp of approval on a racially discriminatory program or project.

And with that I just need to thank you, Governor.

And I apologize for hollering in your ear.

GOVERNOR O'MALLEY: That's okay.

MR. JOLIVET: But I used to do the same thing when you were at the Board of Estimates --

(Laughter.)

MR. JOLIVET: -- so I don't, I don't know, Governor, why, I hope you're not getting soft on me.

(Laughter.)

MR. JOLIVET: I used to do the same thing to you and you used to say, "Arnold, thanks for getting me straight." Has there been a change?

GOVERNOR O'MALLEY: No, sir.

MR. JOLIVET: I used to do the same thing years ago and you and I used to walk out, and when the battle was over with you'd say, "Arnold, I love you." And I'd say, "Governor, I love you, too." Has that changed?

GOVERNOR O'MALLEY: Mr. Jolivet, I love you.

(Laughter.)

MR. JOLIVET: But in all humor, I needed to remind you, and I apologize for disclosing your business in the public. But we had a great time in Baltimore. And to a large extent we have had a great time in your last seven years. And

one of the things, like I said, I actually apologize. But when I prefaced my remarks when I came to you, because I knew this morning that I was going to be melancholy and I was going to be somewhat offended about this whole situation. So I gave you fair warning, Governor. I did. I think I did.

But nevertheless, I just, I don't come down here often. Madam Treasurer, and you know I don't. I don't come down very often. But when I come I always try to present a compelling argument that whatever is being done in terms of our minority and our women's business program is not compatible with the historical high standard that we have done. And quite frankly, I'm about to retire right now, Governor. I've got another year or so in this business. But I am always proud. In fact, I'm writing a book, Governor. I'm writing a book on minority participation in the City of Baltimore. I'm writing another book on minority participation in the State of Maryland. And because of my relationship with the late Congressman Mitchell, I'm writing a book on minority participation in the federal government.

So I'm doing this largely because it has been a labor of love. I just feel, I was born in the South, Mr. Comptroller. And I saw discrimination. I saw exclusionary tactics. I saw the worst and I saw the best. I marched with

Martin Luther King, Jr. I marched with Ralph Abernathy. But the greatest of all the civil rights fighters was our own Congressman Parren J. Mitchell. And I was his political aide. And I learned at that time that we have, all of us have an overriding duty and responsibility to make sure that we are fair and that we are inclusive in everything that we do. And I sometimes take issue with the Governor. But he knows that all together cumulatively, he knows that I'm very fond of him. I think very highly of him. I promote him wherever I can. I don't get involved in politics because I'm not a politician.

But nevertheless, to make a long story short, I just, I need to wind it down. And just in all fairness and honesty just tell you how much I appreciate you just listening to me. And Governor, you always says, oh, I can buy some of what you say and some of it I can't.

But nonetheless, let me just thank you for being attentive, to listening to me for maybe ten minutes. But Governor, I appreciate it. Madam Treasurer, I want you to know how much I appreciate you, too. And I think we are all in this business together.

TREASURER KOPP: Thank you, Arnold.

MR. JOLIVET: I might, it might be my job to run the Association of Minority Businesses. But I always feel

confident that when I come before you and I make my case as best as I can, that you will have sufficient information to make intelligent decisions. And that's all I can ask. And I believe if you make an intelligent, reasonable decision on this, you would not approve this Agenda. Thank you.

GOVERNOR O'MALLEY: Thank you, Mr. Jolivet. And I hope the book reflects that by the time we left the City of Baltimore that we had achieved the highest goals that the City had ever achieved on minority business development, as well as last year having achieved the highest goals here.

This is a unique circumstance. I mean, we're picking up the ball for contracts that were let before it came here. Florida has let the President down and we're not going to do that. But we do expect Ms. Slover, since we are, if we move forward with this, that you will actually employ as many of our Maryland people as you can. And pursue the spirit of the inclusion and the diversity that we believe is our strength in our State.

Are there any other issues on other Agenda items?

COMPTROLLER FRANCHOT: Can I --

GOVERNOR O'MALLEY: Yes, Mr. Comptroller?

COMPTROLLER FRANCHOT: -- just sum up why I'm going to vote no on this particular proposal? I continue to be

uncomfortable with the idea that Maryland is becoming the front person, I guess, on this sprawling contract which is perhaps clear to folks but not very clear to me as to exactly, A, why Florida handed it off, and why we're picking it up. I am similarly uncomfortable with spending almost \$100 million on another, yet another long and interminable line of tests for our kids. And I said earlier that I think we're becoming obsessed to a point of being counterproductive with these standardized exams. And I'm very uncomfortable with approving an initiative that apparently is going to require tens of thousands of our kids in Maryland to use the same technology at the same time to take a test come Spring of 2015.

So I appreciate Mr. Jolivet's concerns. I can see why some folks would say that that's a little difficult right now. Mr. Jolivet, I, we kid a lot about you sometimes. Where is he?

MR. JOLIVET: Here I am.

COMPTROLLER FRANCHOT: You've got a great necktie over there, I'll tell you that.

MR. JOLIVET: Thank you.

COMPTROLLER FRANCHOT: Yep. And I just want to say Merry Christmas to you, and it's not easy being out there fighting for the battles that you do. But I've got some major

concerns here with this contract. And I hope that the information we get from the department will keep us in the loop as it continues to be implemented.

So I would vote no on this, and I do have one other item.

TREASURER KOPP: Could I just, since we are talking about this project, I want to say I understand I have, I too, we all have been the recipient of enumerable concerns about the Common Core and about the impact on teaching and the ability of teachers to use their skills to the best of what they think of their advantage. Maryland has been at the forefront, however, of accountability for a couple of decades now. And I think it has served us well. It has needed a lot of changing, examination, reforms along the way. And I assume it will continue to. But you can't exercise this project, you can't go forward with our goals without some form of accountability. And venturing into this new Consortium with essentially not just Maryland but a large number of the leading states is going to be tough. But when you look at the competition our kids are facing around the globe, we have to continue to be in the forefront of education in America or we're sunk.

So I wish actually that we had started in the position of the leadership and in being able to use our laws

and do the procurement ourselves. But Florida got that role. Florida has since, as the Governor said, backed out. And the question is whether the venture goes forward. If the venture goes forward, and we want to make sure it goes forward now, I have great faith in Dr. Lowery and the ability of her department to do it. I think PARCC is the natural successor and we're simply picking up the oversight of it. It's a tough job.

I think the Comptroller is right. There are a lot of things that have to work right. But that doesn't mean we stop, or we give up. So we will be watching. I usually agree with Mr. Jolivet. I think on this particular one I don't. The contracts have been let. To the extent that they haven't been let I am quite sure that PARCC and Ms. Slover will reach out and that we will keep on top of it too and see through Dr. Lowery that in fact, and the Secretary, that they do accomplish what they seek to in terms of minority participation.

And so for all these reasons, I feel quite comfortable actually voting for this item, Governor.

GOVERNOR O'MALLEY: Okay. All right. And Dr. Lowery, describe for me, how much of this is an IT challenge and how much of it is the testing and education task?

DR. LOWERY: A lot of it is really building items. And I would just like to just explicate a little further about the assessments.

GOVERNOR O'MALLEY: Mm-hmm.

DR. LOWERY: I met with the Teachers of the Year yesterday. Right now what we have is the summative assessment we know that's coming on board. But what they are asking for and what a lot of this work is would be two formative assessments. So instead of using lagging data from last year we can assess students when they walk into the door at the beginning of the school year, we can assess them again in the middle of the year so teachers are really aligned with what students must know and be able to do at the end of the year. So our teachers are asking for this. And a lot of systems already do it.

Just to reiterate, Governor, we only, the only tests that the State requires is the summative assessment. A lot of the other tests that are given --

GOVERNOR O'MALLEY: Mm-hmm.

DR. LOWERY: -- are formative assessments that are administered at the local level so that they can get information on their students.

GOVERNOR O'MALLEY: Okay.

DR. LOWERY: So a lot of --

GOVERNOR O'MALLEY: So it's mostly the testing and not the IT.

DR. LOWERY: It's the testing. It's not the IT.

GOVERNOR O'MALLEY: Is part of this about a billion kids going online and taking an IT, an exam online?

DR. LOWERY: No, it's not.

GOVERNOR O'MALLEY: Okay, good. Because I was going to say that if there's anything we've learned from the recent weeks --

(Laughter.)

GOVERNOR O'MALLEY: -- make sure you have the IT people driving the IT train and not the educators, or the health, or the police people. You would have thought I'd learn that one years ago. All right. Anything else on these matters which are still, are we still on you, T. Eloise Foster? All right. Any other matters from Budget and Management? Okay. The -- what was that one? We want to do that one separately, right? You want to vote on that one, right?

COMPTROLLER FRANCHOT: Please. It's --

MS. FOSTER: Item 9.

GOVERNOR O'MALLEY: All right. We're going to call Item 9 first. The Treasurer moves approval, seconded by the Governor. All in favor signal by saying, "Aye." Aye.

TREASURER KOPP: Aye.

GOVERNOR O'MALLEY: All opposed?

COMPTROLLER FRANCHOT: No.

GOVERNOR O'MALLEY: The Comptroller votes no. Now we are on the balance of the Budget and Management Agenda items. 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. All right.
Now we move on to University System of Maryland.

MR. STIRLING: Good morning, Governor, Mr.
Comptroller, and Madam Treasurer.

GOVERNOR O'MALLEY: Yeah, let's do this. A lot of people are going to clear out and I need to take a bio break myself. So I'll be back in one minute. Just hold your powder.

MR. STIRLING: Very good.

(Recess.)

GOVERNOR O'MALLEY: So here we go. All right. We are resuming now the most exciting part of the Board of Public Works Agenda, and that would be the part that starts at 12:10.

MR. STIRLING: So good afternoon.

GOVERNOR O'MALLEY: So University System of Maryland?

MR. STIRLING: Good afternoon, Governor, Mr. Comptroller, Madam Treasurer. I'm Jim Stirling from the University System. We have 11 items on today's Agenda. And I just wanted to let you know that I observed with the Procurement Advisor over there that we may need to change the rotation of agencies because it is really affecting my self-esteem that everybody gets up and walks out when I step up to the podium.

(Laughter.)

COMPTROLLER FRANCHOT: Yeah, that's okay.

GOVERNOR O'MALLEY: Any questions?

COMPTROLLER FRANCHOT: Nope, move approval.

GOVERNOR O'MALLEY: The Comptroller moves approval --

MR. STIRLING: Thank you.

TREASURER KOPP: -- seconded by the Treasurer.

TREASURER KOPP: It's nothing personal.

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

"Aye."

THE BOARD: Aye.

SECRETARY MCDONALD: Good job.

MR. STIRLING: Thank you.

GOVERNOR O'MALLEY: All right. We now move on to the Department of Information Technology. Secretary Schlanger, you're back.

MR. SCHLANGER: I'm back to help out.

GOVERNOR O'MALLEY: Now which would you rather be right now? The Acting Secretary of DoIT, or in charge of the implementation of the Maryland Health --

MR. SCHLANGER: I'd rather be at Disney World.

(Laughter.)

MR. SCHLANGER: Good afternoon, Governor, Madam Treasurer, Mr. Comptroller. Elliot Schlanger, representing the Department of Information Technology this afternoon. We have six items on our Agenda. We would like to withdraw Item 6-IT. I'd be happy to answer any questions at this time.

GOVERNOR O'MALLEY: Yes sir, Mr. Comptroller?

COMPTROLLER FRANCHOT: Thank you. I have a question on Item 7. But before I ask the Acting Director a couple of questions I would like to just introduce David Hildebrand who is my new Acting Director of IT in the Comptroller's Office; and Susan Phillips, who is the new Acting Director of Budget.

If they could both stand up? They are great public servants and I am delighted they are going to be starting those responsibilities. Thank you.

Secretary Schlanger, according to my materials we are about with Item 7 to invest \$104.5 million in a contract to overhaul essentially the entire statewide personnel management infrastructure through the procurement of a new state of the art technology platform. And I'm wondering if, is it you or is it Secretary Fitzgerald who could possibly tell us about the inadequacies of the current system?

MR. SCHLANGER: Sure. So I would be happy to do that, Mr. Comptroller. I would like to say that this is potentially \$104 million that will be awarded to the Oakland Group, which is a local MBE. And it is in fact to replace our antique personnel system. And I just need to point out that the roots of this system go back to 1975. That was six years before the PC was even invented. And actually when we talk about the current system there is a, it's a mainframe piece, and there's a lot of homegrown agency access databases, spreadsheets, post it notes, paper files. So over 40 years or so our system has really become very ineffective and I would say convoluted.

But the biggest issue that we have today, the system that we have will fail, and it will fail soon because old guys like us who know something about it, we're going to be gone and there will be no one left to backfill behind. So the time is now. We need to replace this system.

COMPTROLLER FRANCHOT: Not too many people use COBOL anymore, huh?

MR. SCHLANGER: It's very tough to find COBOL programmers, sir.

COMPTROLLER FRANCHOT: Okay. So I'm struggling a little bit with it. Obviously I'm pleased that you are proactively moving and to improve the State's position, and obviously that this is to a certified MBE firm, correct?

MR. SCHLANGER: Correct.

COMPTROLLER FRANCHOT: Mr. Jolivet went, but that's a

--

(Laughter.)

COMPTROLLER FRANCHOT: But I'm a little concerned about how we arrived at the point. I understand there were six proposals that responded to the RFP and five were deemed "not reasonably susceptible of being selected for award." So in essence we are entering into a \$104.5 million, 15-year deal, including two option periods, with a single bidder. And if I

could hear from you, Mr. Schlanger, or the Secretary of the department, about the decision to disqualify five of the six vendors?

MR. SCHLANGER: Sure.

COMPTROLLER FRANCHOT: Is that something we should have looked at starting over, or issuing a new RFP and trying to get some --

MR. SCHLANGER: Sure.

COMPTROLLER FRANCHOT: -- at least some competition.

MR. SCHLANGER: Right. So when we started out because as you know we are looking to procure a cloud-based, multi-tenant, software as a service product, by definition we are really out there in the front of the pack. We're not the first but we are definitely innovative here. And the purpose of having to pick that approach is as opposed to the traditional hire a contractor to develop a one off for the State of Maryland and build a big infrastructure that in fact we take on and have to support ourselves, we wanted to look at a product that exists, we can see in operation in many other instances, and just be tasked with configuring that product that is shared with many for the requirements of the State of Maryland.

So before we began with went to the Gardiner Group, who is the premier consulting firm in our field, and we said before we go down this route do you think it is a feasible approach, and how many software service providers can we anticipate to bid? And their educated guess when we started the process a couple of years back was three. We put the RFP out and as you know we got six offers. Four were not found technically susceptible. In two cases, there were two firms that offered incomplete bids. And we tried to reconcile, as a matter of fact you may say that each had half of the requirements. And in an attempt to help them we said, look, why don't you two firms form a partnership and come forward because we think you have something there. And they refused to do that for the reasons I can't explain.

In another two cases the offerors did not provide the specific product that we sought, which was a multi-tenant, software as a service product. We're interested only in an existing product that is shared by many and we have no desire to build a custom one off for ourselves. They could not meet that requirement. There were two firms that were actually found susceptible. And in one case that firm could not come to basic fundamental terms that the State had imposed. And so hence we started with six, we were left with one.

COMPTROLLER FRANCHOT: Okay. So all I have in front of me is the \$104.5 million cost. The question I have is is there any idea as to whether that is a good deal for the State given the lack of being able to contrast that with something else?

MR. SCHLANGER: Right. So the data point which I can provide is that since firm number five was technically susceptible, we did open their price proposal.

COMPTROLLER FRANCHOT: Mm-hmm.

MR. SCHLANGER: And the difference between firm five and six, the recommendation, was under I would say three percent.

COMPTROLLER FRANCHOT: Mm-hmm.

MR. SCHLANGER: So we had a data point, and it gave us the confidence that this was not a case where we were overpaying for what we think is the right system for the State of Maryland.

COMPTROLLER FRANCHOT: Okay. And I obviously support the award to an MBE company in Maryland, that is fabulous. But I'm concerned that we're entering into this technology contract with a 15-year time horizon and that's just almost an eternity in technology as far as I can tell. So what are we doing to

make sure that, you know, these, this is, shouldn't we be doing these in five-year chunks so that we're not locked in?

MR. SCHLANGER: So in actuality we are going to issue a five-year contract with two five-year options. So we always have let's say the gates that we need to go through in order to continue. But one of the reasons that we chose doing this cloud-base is we are going to be sharing a system with companies like Johnson & Johnson, Hewlett Packard, State of Nebraska, Nissan, Sony. And so what happens is, there's a lot of pressure on the provider to constantly update and upgrade according to the technology as it happens to change. Similarly if in fact the vendor creates an issue, there's a lot of pressure from all of the customers on the provider to fix whatever that issue is. And as you know, the feds have a cloud first approach and we think that is the way to go today. We don't want to wait. And we're pretty satisfied that the nature of this contract will keep us ahead of the curve with respect to changes in IT.

COMPTROLLER FRANCHOT: Okay. And finally, the briefing material says that the contract's costs are reimbursable.

MR. SCHLANGER: Right.

COMPTROLLER FRANCHOT: What does that actually mean?

MR. SCHLANGER: So what I understand is that, well, DBM will allocate the cost of the system to the agencies who participate. So I think that is the simple explanation of that.

COMPTROLLER FRANCHOT: Okay, thank you, Governor.

GOVERNOR O'MALLEY: Thank you.

COMPTROLLER FRANCHOT: And keep up the great work.

MR. SCHLANGER: Thank you, Mr. Comptroller.

GOVERNOR O'MALLEY: Okay. We now go to, the Treasurer moves approval of the Department of Information Technology, seconded by the Comptroller. All in favor signal by saying, "Aye."

THE BOARD: Aye.

GOVERNOR O'MALLEY: We move on now to the Department of Transportation.

MR. SMITH: Good afternoon, Governor, Madam Treasurer, and Mr. Comptroller. For the record, Jim Smith, Secretary for MDOT. MDOT is presenting 22 items as Item 18-GM has been withdrawn. I'll be happy to answer any questions.

GOVERNOR O'MALLEY: Any questions? No?

COMPTROLLER FRANCHOT: Happy to move approval?

GOVERNOR O'MALLEY: Second?

SECRETARY MCDONALD: Oh, we do have people here to speak --

TREASURER KOPP: Yeah somebody --

GOVERNOR O'MALLEY: Oh, sorry.

SECRETARY MCDONALD: There are two items that people have asked to speak in opposition to, Item 22 and Item 23. I don't know if Secretary Smith would like to explain the items first from the department's point of view? Item 22 is street sweeping.

MR. SMITH: Item 22 is a street sweeping contract and it was awarded to J&M Sweeping, LLC out of Middle River, Maryland. There was a protest filed by H.D. Myles. The basis of the protest as I understand it was that there was untruthfulness on the answering of the question with regard to whether there was any judgment against the contractor. That answer was, the answer provided was no and it turns out that they are in a domestic case, one of the owners of the business had a judgment in connection with a custody dispute between the mother and the divorced father. But that wasn't, had anything to do with the company and it wasn't a company judgment. And so we are bringing that before you so that we can move forward with this contract.

As far as Item 22 --

SECRETARY MCDONALD: Well why don't we --

MR. SMITH: Oh, do you want to just --

SECRETARY MCDONALD: Would you like to hear from Mr. Lesniowski?

GOVERNOR O'MALLEY: Sure.

SECRETARY MCDONALD: Mr. Lesniowski, are you here? Okay. And also in addition after he opposes it, he is from the bidder who did not win the contract, I do believe that the bidder who won the contract is here and can respond as well.

MR. LESNIEWSKI: Good morning, members of the Board. Thank you for the opportunity to speak before you today. My name is Michael Lesniowski and I'm the President of H.D. Myles, Inc. We're located in Church Hill, Maryland. It's on the Eastern Shore.

More than three years ago my company was formed and we've been a proud partner with the State of Maryland since. We have worked on multiple contracts with State Highway Administration. We provide snow removal, street sweeping, maintenance, and operational services across the State. I'm here today to object to the award of the contract before you to J&M Sweeping, LLC.

As part of our procurement for the Carroll County street sweeping contract J&M was asked to complete an equipment

experience form. The form asked a straightforward question. The question read, are there any judgments, claims, arbitration proceedings, or suits pending or outstanding against your organization or its officers? SHA requested this information to help determine whether J&M was a responsible bidder. The question was clear. J&M answered no. Its answer was notarized and signed by an owner operator of J&M with a sworn representation and certification that its answer was true and correct.

Here is the problem. J&M's response was false. At the time J&M submitted its form there were outstanding judgments against two owner operators at J&M. The judgment stemmed from a case in Anne Arundel County Circuit Court where the two owners have been found liable for jury for civil fraud. In addition at the time J&M submitted its answer the two owner operators of J&M had filed for bankruptcy and their cases were before bankruptcy court.

SHA asked J&M to complete that form for a reason. It looked to assess J&M's integrity. J&M's incorrect response should have raised a red flag. Despite providing the false information, SHA has elected to proceed with the award of the contract to J&M. SHA now suggests it was not interested in domestic matters or personal civil matters related to J&M's

owners. If it did not mean to ask for certain information, then SHA should have adjusted the form to indicate that but it did not.

H.D. Myles is sensitive to this issue, as you know, and it is not just because we were second low bidder. Three years ago my company was selected for a contract award by SHA to operate and manage the I-95 welcome centers in Howard County. At the time we submitted our bid for that contract H.D. Myles had not yet incorporated. Based on our communication with SHA we were told this would not be a problem as long as we were incorporated before award. However, when that contract award came before this Board in September and October of 2010, you expressed serious reservations. You pointed to an affidavit that we submitted. There was concern that we presented false information. As a result of this Board's reservations, the contract was ultimately withdrawn by MDOT.

The primary purpose of the State's procurement law is to ensure fair treatment to the businesses that compete for State contracts. We are not asking for special favors. We just want consistency and to be treated fairly. We believe it would be unfair to approve J&M's contracts today in light of precedent that was set three years ago.

Again I ask that you not approve the J&M contract. Thank you for the opportunity to speak. I appreciate your consideration.

GOVERNOR O'MALLEY: Thank you. Okay.

MR. SMITH: As the owner approaches I will also say that the protest was filed and the Board of Contract Appeals has denied the protest. So it has been through that process.

MR. LESNIEWSKI: Also I would like to introduce Mr. Chris Ryon, who is our company counsel, as well.

MR. RYON: I just want to say I'm here to the extent there are some legal issues that arise concerning the Board of Contract Appeals decision, or concerning Board of Contract Appeals precedent. I'm here to address those on behalf of my client. Thank you.

SECRETARY MCDONALD: Do you have State Highways' attorney here? Or is there a response from State Highway?

MR. SMITH: Yes.

SECRETARY MCDONALD: Okay. Well maybe you want to hear from State Highway, and then the owner, the contractor could come up but probably State Highway needs to respond to the selection.

MR. MORELL: Madam Treasurer, Mr. Governor, Mr. Comptroller, Happy Holidays. My name is Scott Morell. I'm an

Assistant Attorney General. I represent the Maryland State Highway Administration. I won't be long but at the heart of this matter is SHA's determination that J&M, LLC, J&M Sweeping, LLC, a certified MBE, is a responsible bidder for this sweeping and cleaning contract in Carroll County. That decision -- let me back up.

The 2010 that Mr. Lesniowski talked about, there are some distinctions that I believe are important here. The form that Mr. Lesniowski described earlier was a form which is called a bid affidavit. And part of what Mr. Lesniowski wrote on that form was that H.D. Myles, Inc. was registered to do business in the State of Maryland, and it had a resident agent, and provided a name for that resident agent. The form that, at the heart of the protest for J&M Sweeping, it's called an experience and equipment certification. And what that form is, after bid opening and we have determined who the apparent low bidder is, a letter goes out and it says fill out your experience and equipment certification. It provides a myriad of different information, the officers of the company, the equipment that they have. And there are some questions associated with it.

Just very briefly, there's four questions that were at the heart of this. Has your organization ever failed to

compete any work awarded to it? The answer was no. The question at the heart of the issue in the protest was are there any judgments, claims, arbitration proceedings, or suits pending our outstanding against your organization or its officers? J&M answered no. The next question, has your organization filed any lawsuits or requested arbitration with regards to construction contracts within the last five years? Again, no. Has your organization ever had a State contract that was terminated? Again, the answer was no.

Another distinct difference of what we have in 2010 and what we have here is a bid protest was filed by H.D. Myles indicating that answer to question, no, SHA should deem J&M Sweeping to be a non-responsible bidder. That experience and equipment certification, it's a tool for SHA. SHA can go into further inquiries regarding equipment, can go into further inquiries regarding these questions. Again, it is just sort of a tool in the toolbox to determine whether they have the capability of performing the contract and the integrity and the reliability that will ensure a good faith performance of the contract.

SHA's procurement officer reviewed all of the material provided in the bid protest, he determined to deny the protest. That is different than what we had previous. That

decision then was appealed to the Board of Contract Appeals, which wasn't done obviously previously. The Board of Contract Appeals, both sides filed briefs on the matter. There was a hearing where live testimony was taken. There was post-hearing briefs filed by both parties. At the end of all that review the Board of Contract Appeals upheld the procurement officer's final decision. And one of the rationales for doing it is, and I quote from that decision, the procurement officer made a reasonable determination that question 4.2.2. of the E&E statement, that is the experience and equipment certification, does not require bidders to list all personal civil judgments that officers of organizations have against them. So what we have here is an administrative process that wasn't, you know, that didn't occur in 2010 and that Board of Contract Appeals upheld State Highway's determination that J&M Sweeping can perform this cleaning and sweeping contract in Carroll County. Thank you.

COMPTROLLER FRANCHOT: So --

MR. MORELL: Yes?

COMPTROLLER FRANCHOT: -- but having been here for the process with H.D. Myles --

MR. MORELL: Yes?

COMPTROLLER FRANCHOT: -- I don't know whether there is a legal doctrine of sauce for the goose and sauce for the gander. But that question seems pretty specific. Are there any court actions against your organization or its officers, and they said no, and there are. So, I mean, I appreciate the Board of Contract Appeals. But --

MR. MORELL: I understand. But I think along with that there is an aspect of she, Ms. Kestner was involved in a personal matter. It was not her as an officer of the company. You can be sued as an officer of a particular entity, as that officer. In this case that's not the situation. So I believe when Ms. Kestner was notified of this she said, well, based on the other four questions and the question regarding as an officer of the entity, I answered no to that question believing that I answered the question correctly. I'm not so sure that Mr. Lesniowski could say the same thing in regards to are you certified to work by the State Department of Assessments and Taxation and have a resident agent. That's simply, you know, I think that's a, I think there is a distinction, sir.

COMPTROLLER FRANCHOT: I can understand the distinction, but on the merits as I recall you guys were up here saying that the H.D. Myles situation a few years ago was not a problem and could be resolved by filing before the, you

know, etcetera, etcetera. It was pretty harsh I thought for me and others to say, hey, go back and redo it. And now I'm just saying I don't see any real intellectual difference between what we clobbered H.D. Myles on a number of years ago and now we're supposedly going to approve in the instance. So I'm --

MR. MORELL: I understand the concern. But at least from the previous matter, this has gone through an administrative process. And at the end of that the Board of Contract Appeals upheld State Highway's determination that they were a responsible bidder. And H.D. Myles at that point could have chosen to appeal that to a Circuit Court also and they decided not to do so.

COMPTROLLER FRANCHOT: I think they have a valid point myself. But go ahead, did someone want to say something? Governor? I mean --

MR. RYON: Thank you, Mr. Comptroller. I would just like to respond to a couple points. Three years ago there actually was an appeal to the Board of Contract Appeals by the second low bidder and the appeal was denied by the Maryland State Board of Contract Appeals.

The other thing I would like to point out is that three years ago I wasn't here for the live testimony, but I read the transcript, there was testimony from the Attorney

General's Office and also Board counsel that focused on Board case law that suggested that affidavits could be corrected post-bid submission, prior to award. This Board took this information into account and yet it still did not approve the contract.

Here we have a situation where not only was an incorrect answer submitted but the underlying litigation is also troubling. We have a situation where the low bidder, where officers of the low bidder, both officers, were found liable for civil fraud based on clear and convincing evidence. This was evidence that a jury considered. Both of the officers were also in bankruptcy at the time. I mean, these are, this is troubling. And I'm assuming one of the reasons why State Highway asks these questions is because the answer to this question impacts responsibility. Responsibility has two components. There is the integrity component and the capability. And when you are in bankruptcy, when there are \$350,000 judgments that were in place at the time of bid submission that could affect not only, that could affect the ability to do the work.

So under Maryland's procurement law, in particular under the regulations that have been adopted by this Board, you are not bound by the Board of Contract Appeals. Frankly the

Board is very deferential to agencies. It has constantly said that it is the agency that has to live with its decision. What we're asking for today is consistency from this Board. Thank you.

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

MR. BERNHARDT: Good afternoon, Mr. Governor, Madam Treasurer, Mr. Comptroller, ladies and gentlemen, I am Mathew Bernhardt on behalf of J&M Sweeping, my client Ms. Julie Kestner.

We recommend that the Board of Public Works accepts the recommendation of the State Highway Administration, upholds the decision of the Board of Contract Appeals, and awards the sweeping contract to J&M. J&M, a minority business enterprise, has extensive experience in sweeping and has the manpower and equipment to successfully deliver under the terms of this contract. Mr. Kestner has over 35 years of experience while Ms. Kestner has over 13 years. At present time they have over 16 street sweeping machines.

Most unfortunately H.D. Myles has taken every possible action to delay the awarding of this contract due to a prior situation that directly involved H.D. Myles, as you've heard today. This situation was really to whether H.D. Myles

was a corporation at the time they submitted this bid. Our situation conversely involves a personal situation related directly to Ms. Kestner, her now husband, and her current ex-husband. This has no bearing on J&M Sweeping, which is a separate legal entity. The prior money judgment, which was so eloquently stated at \$350,000, has been completely vacated. Today that judgment is at zero dollars.

Despite Mr. Lesniowski's statement that we are not asking for any special favors, that is exactly what they are here today doing. Unfortunately they were the second low bidder on this contract and the contract, as I would say, was correctly awarded to J&M Sweeping, whose bid was at \$417,000. J&M went to great lengths to ensure that they adequately responded to the allegations submitted by H.D. Myles in its initial bid protest. They have been forthcoming with documents and testimony to ensure that the State Highway Administration would make an informed decision based on all relevant information in awarding this contract. After a complete and full review of all evidence presented by all parties, the State Highway Administration has recommended that this contract be awarded to J&M Sweeping. The Board of Contract Appeals feels the same. All that I ask is that we follow the recommendation

and the decision of the Board of Contract Appeals and award this contract to J&M Sweeping. Thank you.

GOVERNOR O'MALLEY: Thank you. Any questions? Okay. Any other questions on the Department of Transportation Agenda?

SECRETARY MCDONALD: Well there is another item.

GOVERNOR O'MALLEY: Okay.

SECRETARY MCDONALD: With an actual official protest, they want it to be awarded in the face of an office protest that's pending --

COMPTROLLER FRANCHOT: Let me ask while you are here, and there was some other issue other than the judgment that was brought up by H.D. Myles.

MR. BERNHARDT: Yes, sir?

COMPTROLLER FRANCHOT: Does that have any --

MR. BERNHARDT: What issue is that exactly, sir?

COMPTROLLER FRANCHOT: I believe they said there were judgments for some kind of fraud or something?

MR. BERNHARDT: It's a custody dispute between Ms. Kestner and her ex-husband involving their daughter, who is now married, and it involved that situation. Her ex-husband alleged that there was some fraud by my clients. That money judgment, sir, has been completely wiped out. We have a new trial. That's when my firm came in, after that.

COMPTROLLER FRANCHOT: So --

GOVERNOR O'MALLEY: Okay.

MR. BERNHARDT: I would say that has no bearing on this. As I stated before, J&M Sweeping is a separate legal entity and --

COMPTROLLER FRANCHOT: Yeah, but it's, how many people are employed?

MR. BERNHARDT: How many employees do you have?

MS. KESTNER: Between 30 and 35.

COMPTROLLER FRANCHOT: And so, and you are the sole owner?

MS. KESTNER: I am. My husband works with me but I am the sole owner.

MR. BERNHARDT: Talk about your experience in previous contracts under the State Highway Administration.

MS. KESTNER: I do a lot of work as a sub since May of 2000, that's when we began, working under large prime contractors doing the milling and paving process. But we started bidding I think it was like six years ago on the municipal clean ups and I had a contract, I did the Baltimore County clean up. The, I'm sorry I'm nervous, Dayton, and Carroll, and Frederick. I've always received As on my performance. We worked well with the shop managers and really

enjoy doing the sweeping for the State of Maryland. And I haven't had any problems, and they have never had any problems with us.

COMPTROLLER FRANCHOT: Thank you.

MS. KESTNER: And I also wanted to apologize. I believed that I answered the question as it was asked. I thought it was asking if I had a judgment against me as an officer or towards my corporation. And when I saw the protest I immediately called State Highway and apologized if I had misinterpreted. And explained, you know, that I had answered it as an officer not as me personally because it didn't say me personally. So that was my misunderstanding.

COMPTROLLER FRANCHOT: Okay. I'm confused myself as to whether it's corporate or personal. But anyway, thank you for that.

MS. KESTNER: Thank you.

GOVERNOR O'MALLEY: Thank you. Someone else, sir, you want to be heard again?

MR. RYON: I just wanted to make one clarification. The judgments were not wiped out. A new trial was ordered on the issue of damages, not liability. So the liability against the officers for civil fraud and fraudulent concealment are still on the books. There's going to be a new trial on damages

and the court specifically said that punitive damages are on the table.

The other thing is just to clarify for this contract J&M is the prime, it's not a minority business enterprise. Thank you.

MR. BERNHARDT: And just final rebuttal, that underlying dispute involved our client signing for her daughter to become married. Civil fraud sounds a lot more intimidation but it's an intentional toward negligence actions. She signed for her daughter to get married and indeed the current money judgment, as I stated, is zero dollars. Thank you.

GOVERNOR O'MALLEY: Okay. Anything else? What is the other matter that's up here?

SECRETARY MCDONALD: It's Item 23. Would Secretary Smith like to give the subject matter of that one, then we can talk about --

MR. SMITH: Right. The subject matter of this one is it's the phase four of a replacement and installation of a closed circuit TV system at 18 stations throughout the MTA locations that are going to provide surveillance of Amtrak, CSX, and MTA transit properties.

A protest has been filed and the basis of the protest is that the winning bidder does not have a security system

license. Now the three issues with respect to that are, number one, we have a dispute as to whether the State is a person and we say the State is not a person. Therefore it was not subject to that provision. It was only applicable for residential and commercial enterprises and government is not residential and it's not commercial, so that the license was not required. We also, there is a problem that this was not raised prior to the bid opening as required and of course our contention is that in phases one, two, three, and four, we had no such requirement that there be a security system license.

The urgency with respect to this is this is 100 percent funded by Homeland Security funds. It's \$14 million. It expires on May 31, 2014. We have to have contracts in place by then to lock in the funding. And if this gets postponed we won't be able to beat those deadlines. That's the reason we're bringing it forward even though the protest has been filed and the protest has not yet been resolved. I can have Heidi answer any further questions you may have. But that's where we are, I believe. Did I misstate anything, Heidi? Okay.

SECRETARY MCDONALD: May we have the offeror who came in second, G4S Technology, G4S Technology is here represented by Joseph Kovars from the firm of Ober Kaler.

MR. KOVARS: Good afternoon, Mr. Governor, Madam Treasurer, Mr. Comptroller. Happy Holidays. Thank you for your patience for being here. It's been a long morning. We're into the afternoon. I'm going to try to address the issues briefly.

With me today is Keith Jernigan. He is the Director of Business Development for G4S. He is in the Bowie office of the company and he is the person who was in charge of the procurement from the offeror's side.

This proposed procurement in our view does not reflect well on the State, the integrity of the procurement system, or this distinguished Board. There were several serious irregularities. The license is the last of a long list of irregularities, but there were several irregularities with this procurement which were all serious and have been in our view ignored by MTA in the rush to get the federal funding.

The first serious problem was that G4S was told several times that its technical proposal was ranked significantly higher than that of CSI. This was a competitive negotiated procurement. The request for proposals, the RFP, said that technical was to be given more weight than price and they were ranked first. My client was ranked first. The original procurement officer told G4S that they were ranked

first. The bid protest decision that was issued by the agency said that G4S was ranked very good and Critical Solutions, who is the company that they would like to give the award to, was only ranked acceptable, and Kratos, the third bidder, was also ranked acceptable.

The first submission of the item to the Board of Public Works had this same language in it, that said that this was the ranking of the bidders. And then yesterday or late the day before it was changed to say that all three bidders were ranked the same. Now I don't know what your experience is but my experience in the procurement business since I've been doing it for about 35 years is no three bidders have ever been ranked the same in a technical evaluation. It's like hitting the Lotto. The odds are not very good that that happens.

The second problem is that --

COMPTROLLER FRANCHOT: Speaking of Lotto, I did not win.

(Laughter.)

MR. KOVARS: And I'm shocked, surprised. Yeah. The second problem was that after the first round with the prices, CSI, the company that they would like to give the award to, was actually the highest of the three bidder. He had submitted the highest price. And they decided to go to a best and final

round and prices were submitted. And miraculously they were now the lowest. Now it's possible that that could happen but our belief and we have heard this from a couple of sources was that CSI was several million dollars high in the first round and that somehow they have miraculously dropped their price several million dollars to become the low bidder. We believe that this could only happen if there was a transfer of information. If somehow they got inside information as to what was the price that they needed to beat. And we have theories that we're chasing and we intend to resolve that issue at the Board of Contract Appeals where this case is pending. So that's the second problem with this.

The third problem is that we have repeatedly asked the agency to produce documents that would show what were in fact the rankings, what was the technical evaluation, provide some information that would help clear up these questions, these clouds, the odor that's coming off of this procurement. And they have stonewalled us. We asked them at the debriefing, which was approximately five weeks ago, and we followed it up with a public information request. And to this day we have not received one document from the agency. So, you know, there is a problem here that we think is not being addressed and they would just like to have it go under the rug and say that, well,

we've got the federal funds, we need to get the award, let's not really pay attention to these problems.

The fourth problem was that the evaluation committee for MTA was made up of only three people. Which is okay except that one of the people on the committee was a supervisor, another person was a subordinate. So that instead of getting independent advice from this evaluation committee, they had a committee structure set up so that it was really locked in as a two to one vote going into the committee. There is I understand MTA policies or regulations that prohibits them doing that and yet they have this committee set up that way.

Now all of those problems aside, we come to the issue of the license. The license problem, there is a Maryland statute that is in the Maryland Business Occupations Article and it's Section 18-501 that says that before a company may engage, attempt to engage, offer to engage, or solicit to engage in the business of security systems installation, they have to be licensed. And that is Section 18-501. This case has already been litigated. In 2003 there was a decision at the Board of Contract Appeals that the sister agency of MTA, the ports people, had a security system contractor and they disqualified them because they weren't licensed under the same statute that this agency now is saying only applies to

commercial, residential, doesn't really apply to the State.

Well in that case the Department of Transportation's Port Authority took the position that that statute does apply to them. And in a decision that was written by Chairman Harrison, Bob Harrison, who as you recall was the general counsel with MDOT before he became the Chair of the Board of Contract Appeals, he wrote that that is a violation of that statute. They have to be licensed. And the failure to be licensed means that their bid is void. It's an illegal contract to make an award to a company that doesn't have that license. So we think that as a matter, and the, Mr. Harrison says in the decision as a matter of law they were not capable of receiving the award.

These issues are pending in front of the Board now in our protest. They should be resolved in the typical way that these cases get resolved after an evidentiary hearing, after legal arguments are made. There is really no good reason why we should rush to give the project to this particular company particularly since they don't have, as I understand it, they don't have experience in installing these kinds of systems at transit stations. And that's what this is about. This is phase four of a four phase contract to install these security systems. These are surveillance cameras that are tied into the State, the MTA's Police monitoring facility, where they watch

them on a 24/7 basis. There's also feeds to the State Police for the Light Rail. I'm sorry, I apologize, not the State Police, the Baltimore City Police for the Light Rail Systems. This is clearly a security system that is of great importance. This is goal number 12 in the Governor's Homeland Security Program.

GOVERNOR O'MALLEY: You read them!

MR. KOVARS: And they are all very good. And we take them very seriously. And it's very important that we get the right company to do the work to make sure that those goals are carried out properly.

And so we believe that this Board has the option of doing the right thing here. And that is if they are very concerned about the federal funds, they should make the award to my client who submitted the bid by the responsible bidder, who is licensed, and actually had a price that's still within the grant. This grant is 100 percent federally funded. The money could still be used for this purpose. They could make the award to my client and comply with all of the grant guidelines. So there is an option. It won't be like the funds are lost if the Board decides not to make the award to CSI. It's not an either/or, there is a third option.

So with that we ask the Board to do the right thing, and we believe the right thing here is not to make the award to CSI. And if I could I'd just like to have my client representative make a few comments here about his company.

MR. JERNIGAN: Thank you, Joe. Governor, Madam Treasurer, Mr. Comptroller, for the reasons that Joe just specified, you know, we do feel very strongly that we are the right choice both legally and professionally. I won't regurgitate our history, our past performance. That was all spelled out very clearly in our proposal. And as Joe mentioned we were graded the highest relative to that work experience and that technical competency. But there were three points that I did want to bring out.

Number one, our relevant experience. Our relevant experience is tied to us as a prime contractor not the hired subs that we have to do the work. Of course as a prime you always have to hire subs to complete your work competency. But we brought to the table the experience relative to performing this job at a high level. The Amtrak experience that we did, and the tie ins and coordination that's required to work with multiple government agencies in the State of Maryland with a contract like this, we bring that experience to the table. Also the work we did with the Maryland Port Authority, I'm

sorry, the Baltimore, Maryland Port Authority, also brings that experience to the table as well.

The second item I wanted to bring up was that we feel very strongly that the lack of experience that CSI brings to this is of extreme risk to the State of Maryland. They do not have the relative work experience and rail experience that is required for this. And we have brought this experience in Amtrak and Maryland Port Authority in terms of helping them meet their project deadlines as well as their funding deadlines as well.

And the third point I wanted to bring up is that we're invested in Maryland. You know, while we are a global company, we have over 600 employed workers here in the State of Maryland. So we're not, you know, from Texas, which CSI is based in Texas and that's where their employees are. We have 600 employees that are in the State of Maryland so we are invested in the State. Thank you.

GOVERNOR O'MALLEY: Thank you. Anything else? Jim, do you have confidence that these guys that got the bid are licensed and all? Or need one, or don't need one?

MR. SMITH: I'm confident that they don't have to have that license. But I'll call on Byron Smith from the Attorney General's Office to respond.

MR. BYRON SMITH: Good afternoon, Governor, Madam Treasurer, Mr. Comptroller. I'm Byron Smith, Chief Counsel for the Maryland Transit Administration. On the issue of the license there was mentioned a statute under the Business and Professional Article. Everybody seemed to gloss over a very important provision in that statute. And that provision basically states that, it defines security system services. It's in the definition sections, 18-101(f), providing security system services is defined as providing security system services means providing on the premises of a person's residential or commercial property the service of, then there's three items, surveying the property for the purpose of installing a security system; physically installing and maintaining or repairing a security system for a customer; or responding to a distress call or an alarm sounding from a security system.

It has been well settled law in Maryland since I think 1870 that unless the State is defined in the statute as a person where the term person is used in a statute it does not refer to the State of Maryland.

So we are aware of the decision they made reference to, the MACo [sic] case dealing with the Maryland Port Administration. That contract dealt with installing card

readers on doors there. This system is a closed circuit television system. It's not tied into for some police, emergency sounds are going to go off and police is going to dash in. What this system does is monitor the railways and transit-ways in Maryland. This is phase four of a multiphase project.

I would like to point out to you that during this whole process we have been coming down to this Board on several occasions bringing bits and pieces of real estate dealing with Amtrak, CSX, that was to give us access and rights to the property which then brings us directly under the statute, since about the inception of the MARC service, which ironically I represent. We have had these easement agreements and leases with Amtrak and CSX which allows us on the right of way. I won't go into details of security assessments and why this is necessary to put 24/7 surveillance out there. But it is necessary. So when this contract was put out there was not a requirement for an alarm system, security system company to do it. I don't have the RFP in front of me but it's about half the size of what's sitting in front of Mr. Klasmeier. It's basically a construction project. We also checked with the Maryland State Police to find out whether a closed circuit TV

system was required to be licensed and someone had to have a license to install it, they informed us that they did not.

So we recognize the MACo[sic] decision. But we submit the MACo[sic]decision is not appropriate and not controlling here.

The other aspects that he has raised about the experience of CSI, CSI has in its group many of the subs who did phase one, two, and three. And the biggest one was Aralia. It's a software package, but Aralia is also an engineering system integration firm also. So they brought to the table the people who put in phase one, phase two, and phase three. And interestingly enough I'll point out this, during the prebid conference a question was asked can we go talk to the people who installed phase one, two, and three, and the procurement officer at the time said yes, you are free to go do that. And in fact since the system, those phase one, two, and three have been completed, and the procurements on those closed, they could have sent out a Public Information Act request to see what those documents were, see what the details of the system.

And one final point that I make about MTA stonewalling about the NPJA. I refer everybody to the statute. Since no contract has been awarded, this was an RFP, the

statute precludes us from providing the information that they want at this point in time. And they were told that.

So we ask you to award this contract. The MTA has confirmed with Homeland Security that they will in fact lose this grant money if the contract is not awarded and there is a May 31, 2014 deadline in completing this network for the system. So we ask you to award the contract. Those matters in the Board of Contract Appeals will be played out in the Board of Contract Appeals. But there is no basis for not awarding this contract today and we ask you to award it.

GOVERNOR O'MALLEY: Thank you. Anything else you want to say in rebuttal rebuttal?

MR. KOVARS: Thank you, Mr. Governor. Just very briefly it's the Wacor case, not MACo. But the Wacor case was in fact the agency. The MPA took the position opposite of what they are taking here. The agency, the MDOT agency took an opposite position that that statute did apply in that case. And it's the exact same kind of process. You have to have the license in order to do the work. They didn't have the license. And it may be because they are a Texas company, they weren't aware.

The issue in the Wacor case was raised just as it is here that the RFP did not have a specific requirement for the

license. But there are general requirements that you will comply with all Maryland laws and licenses and so forth and so on. And the Board of Contract Appeals there said that that was sufficient to put the bidders on notice they had to get that kind of a license. That was their business that they are in. They need to know that. And if Mr. Jernigan could address the issue about --

MR. JERNIGAN: Yeah.

MR. KOVARS: -- whether or not this is in fact a security system?

MR. JERNIGAN: Right. Well the other point too is there was mention of their prime contractor, their prime subcontractor being Aralia. Well Aralia was called out as a speced item. So all participants have to have Aralia on their team. We had them on our team as well. The question really is experience beyond that, right? So what experience did they bring as a prime contractor? And we contend they bring, they pose a serious risk to the State of Maryland because they lack that experience. And the other component is we recognize and we are sensitive to the fact that there is a timing issue relative to funding. We stand ready to participate if you choose to move forward with our protest as, you know, coming in second. We could step in and transition that right away as I

mentioned before. We have a pretty heavy team here and we're ready and have the resources and financial wherewithal to take over the contract, or move forward with the contract. Thank you.

GOVERNOR O'MALLEY: Thank you. All right.

MS. CHONG: Mr. Governor?

GOVERNOR O'MALLEY: Sure.

MS. CHONG: If I may I just --

SECRETARY MCDONALD: You need to speak at the microphone and introduce yourself.

MS. CHONG: I came from Korea in order to participate in this meeting so I greatly missed the opportunity to register to speak.

GOVERNOR O'MALLEY: Sure. Come on up. You need to -
-

SECRETARY MCDONALD: -- microphone and say your name and who you represent.

MS. CHONG: Thank you. Thank you very much, Mr. Governor, and Mr. Comptroller, and honorable members of the Board of Public Works. I rushed and came to Maryland to participate in this meeting.

GOVERNOR O'MALLEY: And you want to be heard on this item?

MS. CHONG: Excuse me? Oh yes, this is a great revelation that I would like to share with the members.

GOVERNOR O'MALLEY: Okay.

MS. CHONG: My name is Samantha Chong. I'm here on behalf of Samsung Techwin. We are the security camera system manufacturer and solution provider. And we were interested in providing the product. We requested according to the very original RFP it was specified Sony camera or equivalent product and approved. So we requested the approval process, how it should be done at the time that we partnered with a different participant contractor. So overall according to, this is federal grant money, according to the federal acquisition regulation, FAR, subpart 9.0 and 9.3, that if there are, the contracting officer shall test and approve the products that are available at other or less costly methods of ensuring the desired quality. So we simply ask for the camera approve process so we can equally compete against the Sony product. And at the time we were given directions to bring the camera, to go to London, and have the driver made so we can, our cameras be put up for the testing. So at that last minute notice Samsung sent two representatives to London to our really a software company, made the driver that was sent back. We sent our cameras to MTA. I have 53 pages of email

correspondence between the MTA contracting officer at the time and the later on officer stating that they have not only lost our cameras, the contracting agency of MTA, ACOM, the director, and the technical engineer has said that they will not test and approve our cameras. I have all the email correspondence here.

And according to the subpart 3.1, safeguards of the federal contracting grants money, says government business shall be conducted in a manner above reproach and except as authorized by statute or regulation with a complete impartiality and with preferential treatment for none. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct.

Mr. Governor, Samsung very much wants to be in the State of Maryland, expand our business, and promote not only the economy but also the overall security in the buildings, transit communities, and be a good healthy business entity in your State here. But with in terms of the FAR, the federal acquisition regulation, subpart 9, unhealthy, improper procurement processes such as this, we were not even given an opportunity to properly test our product. So anybody, G4S, any participant could have used our highly performing product at less cost. We totally lost the opportunity.

So this relates to the FAR regulation, the integrity of the federal government grants, and the procurement. So this, I know that we want to seize that money. But with all due respect to assistant, the attorney here, Samsung we three times, we at our own time and expense we did a site visit on our own. And once with MTA the site visit, a protocol. And we took pictures and documented all the stations, the camera issues, we saw, we actually went into the Light Rail stations and looked at the images that are captured in the monitor stations. We listened to employees who are working, who are very highly concerned with the security.

The images of the, the captured images were of very poor quality. The cameras were not hung properly. The cameras were located in places that's really not looking at the crime scene that has occurred previously. So overall our assessment, and we put that in our technical proposal, that didn't see the light of day. So right now we have a great product and we did not get the opportunity. And I have over 50 pages of emails stating, and one particular email from Ms. Janet Unger from ACOM has stated that, and very unprofessional using language and such, told us that please do not bother us. And this is a contracted out agency for MTA. We consulted Mr. Kerns' office, attorney office, and we would like to see how the federal grant

money can be placed in the State of Maryland so we can have more access to further grants. Because this is a very transit healthy, you know, we've got red line and purple line going on. We would like to do more business, Mr. Governor, with your State here. We would like to be here. But we need your support.

We would like to have the grant. Our product needs to be placed. But this is a bad example of procurement per MTA and ACOM. And I'm a little excited. The previous gentleman said that he was offended. I'm about to be, you know, offended myself here.

(Laughter.)

MS. CHONG: But with your extension of the Holiday spirit, I thank you for giving me the opportunity to speak. I had to come from Korea to speak at this podium. And I thank you for the time. But this is a serious matter and it just professionalism is really, it's not the matter. But according to the FAR and email evidences, and it just is a huge loss to the State that our great product didn't even get a chance. I followed their protocol according to the RFP how we should be tested. They lost our cameras and we haven't received other cameras that was delivered to MTA office and the cameras were

missing. And they would not test our cameras. It's unheard of.

GOVERNOR O'MALLEY: Thank you.

MS. CHONG: Thank you very much, sir. I really appreciate having the opportunity. Thank you very much.

GOVERNOR O'MALLEY: Thank you. Is there any motion to have these considered separately? Okay.

COMPTROLLER FRANCHOT: Yeah, no. But I share the concerns about procurement. I know the Governor does, too. And there is a lot of tension to making sure that the State has got an equal playing field for everybody out there. So this equivalency, that's a very important federal priority in their procurement. And I guess is there any response from MTA that explains what happened to Samsung's request for, to be considered? Where are the cameras?

MS. TARLETON: The cameras were returned. I'm sorry, this is Heidi Tarleton with MTA. There were five cameras that were submitted to us for testing on phase three and we have a FedEx receipt that we returned those five cameras.

COMPTROLLER FRANCHOT: Okay. But why weren't they tested for equivalency and approved for the contract?

MS. TARLETON: For phase four they were a sub under a prime contractor that was deemed, did not meet minimum

qualifications. And they were the only prime contractor that submitted Samsung as their sub.

COMPTROLLER FRANCHOT: But still, shouldn't they have been tested and rules equivalency, or equivalent, under the federal contract, or federal procurement law?

MR. BYRON SMITH: Well basically the federal acquisition regulations would not apply to this procurement. Even though it's a federal grant, we procure this under the State procurement regulations. There are a lot of instances where we get federal grant money and in the master grant agreement it tells you you will procure it under your own procurement regulations. And then when, the feds will step in if there is a determination that your own procurement regulations are insufficient or doesn't allow for a competitive process. Then at the end of the deal the feds can disallow the grant money. But as of today I have, know of no indication where the federal government in all the grants that I've been involved in since 2005 where they have determined that the State's procurement regulations were insufficient as a matter of law.

COMPTROLLER FRANCHOT: Well I'm letting you know that I think they are insufficient from a training, professionalism, centralization, business friendly approach. And when you have

a major corporation send someone all the way across the ocean and the continent to get here to register a complaint about the State of Maryland, I hope that you guys are going to stand up and pay attention. Because it's not just the taxpayers are not getting the benefit of possibly a lower priced product, it's also the businesses that believe they are not getting proper access to the State's procurements. And this is an issue that is alive and well. The Governor has had a whole report done and there's other aspects to this. But boy, I would not stand back there and say, gee, you know, not our problem.

MR. BYRON SMITH: No. Mr. Comptroller, not to belabor the point, I didn't say it wasn't our problem. The only thing I'm saying is they said they tested the cameras on phase three and found them insufficient. They came back with a sub, and under phase four, and that sub was deemed non-responsive. So along with that, so whatever that sub, whatever that contractor was offering when they were deemed non-responsive, then whatever their sub was seeking to provide to the MTA went away with that.

GOVERNOR O'MALLEY: Okay. I would like to ask the Secretary, if he would, to look into the allegation of the --

MR. SMITH: I will. This is the first I've heard of this.

GOVERNOR O'MALLEY: -- woman from Samsung, and about the rudeness, and --

MR. SMITH: I understand.

COMPTROLLER FRANCHOT: Particularly whether the cameras were lost before they were sent back.

MR. SMITH: Will do. Absolutely.

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

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed?

(No response.)

GOVERNOR O'MALLEY: The ayes have it. Thank you all for your patience.

(Whereupon, at 1:33 p.m., the meeting was concluded.)