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*STATE OF MARYLAND*  
**BOARD OF PUBLIC WORKS**  
*GOVERNOR'S RECEPTION ROOM, SECOND FLOOR, STATE HOUSE*  
*ANNAPOLIS, MARYLAND*

**October 1, 2014**  
**10:20 a.m.**

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# **PRESENT**

**HONORABLE MARTIN O'MALLEY**

Governor

**HONORABLE NANCY KOPP**

Treasurer

**HONORABLE PETER FRANCHOT**

Comptroller

**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 & 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

**MISSY HODGES**

Recording Secretary, Board of Public Works

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# PROCEEDINGS

GOVERNOR O'MALLEY: It is October 1, 2014. This is the Board of Public Works for the State of Maryland. October already here. So as we begin, I ask the Treasurer or the Comptroller if they have any opening thoughts or comments?

TREASURER KOPP: Let me just say, Governor, one very personal note. I noticed the unveiling, I saw the unveiling of the portrait of Frederick Douglass, which is a wonderful portrait done by a great artist, Simmie Knox, who I would point out to everybody not only did this great portrait, and one of President Clinton, and a number of others, but did the portrait of former Treasurer Richard Dixon which is in the Reception Room at the Treasurer's Office in the Treasury Building. It is the greatest portrait I think I have ever seen. So anyone who is interested in great portraits, and particularly those among us who remember Richard, really ought to come and look at this wonderful, wonderful picture. It's great to see Simmie Knox doing so well. And you can understand why we take a personal interest.

GOVERNOR O'MALLEY: That's great. And I, as long as you're mentioning that, I want to thank, let everyone know that as a people we have to thank Sylvia and Eddie Brown for very generously commissioning Mr. Knox to do a top notch job. And Frederick Douglass will greet every school kid that takes

a tour of the Governor's Residence of Maryland now. Whenever they walk in that front door, he's right there. Mr. Comptroller?

COMPTROLLER FRANCHOT: Yes, thank you Governor and Madam Treasurer. A couple of weeks ago when we were last here it was the day after the Orioles and the Nationals clinched their Division titles.

(Laughter.)

COMPTROLLER FRANCHOT: And I hate to repeat myself, but how can we not keep talking about these wonderful baseball teams and the upcoming Beltway Series? With both teams beginning their postseasons this week, the Orioles tomorrow, the Nats on Friday, it's hard not to catch baseball fever in Maryland. I, for one, can't wait to sit down with a cold beer and watch our two teams try to make the Battle of the Beltways a reality, something only a few years ago was absolutely impossible. In fact, I watched two teams last night, Kansas City Royals and the Oakland Athletics, I have no interest in, just to get warmed up and --

(Laughter.)

COMPTROLLER FRANCHOT: But can Nelson Cruz, Adam Jones, and J.J. Hardy slug their way to the O's first World Series title since 1983? Can the Nat's incredible pitching staff capitalize on the momentum of that amazing no-hitter and circus catch final out on Sunday to bring the Crown, the

World Series Crown, back to D.C. for the first time since 1924? Think about that. Walter Johnson was pitching then. Calvin Coolidge was President. Yep, I'm sure he attended the games. But look how far we've come, as a game, a State, and a nation.

With everything that's going on in the country and the world, I would recommend that as Marylanders we just sit back and enjoy all the excitement in the region. And as Comptroller I love how much the Os, the Nats in their postseason will actually provide to the Maryland economy. I've mentioned that it's like one of those satellite photos from outer space that you can see things on earth. When these two teams are successful, trust me, I can see through the data from the economy that Marylanders are happy and they open up their wallets and they shop. And that's good for the economy.

So it certainly promises to be a Fall that baseball fans and Maryland will never forget. Thank you all. And best of luck to those of you who bleed either orange or red. It's a good time to be a baseball fan and a great time to be a Marylander. Thank you, Governor.

GOVERNOR O'MALLEY: Thank you, Mr. Comptroller. It sure is. All right. Let's begin with the Secretary's Agenda.

SECRETARY MCDONALD: Good morning, Governor, Madam Treasurer, Mr. Comptroller. We have 20 items on the Secretary's Agenda. There

are four reports of emergency procurements. We are withdrawing Item 9 from the Department of Housing and Community Development and we anticipate that item will return at a later date.

GOVERNOR O'MALLEY: Okay. Any questions?

(No response.)

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

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed?

(No response.)

GOVERNOR O'MALLEY: The ayes have it. We move on now to the Department of Natural Resources Real Property.

MS. WILSON: Good morning, Governor, Madam Treasurer, Mr. Comptroller. Emily Wilson with the Maryland Department of Natural Resources. We have five items on our Agenda today. Of note actually is, I would say, Item 5A. It's an island acquisition in the Potomac River, about 275 acres all told. One large island and three smaller islands that are right next to each other. It is also right next to Oxley Island, which is already owned and managed by the Department.

There are about 30 islands in the Potomac that the department owns and manages as part of Wildlife Management Area system. All told in the Potomac, believe it or not, there are 452 islands. We, this scored a 116, which is extremely ecologically significant. And we're actually acquiring it at a pretty decent discount of 24 percent.

TREASURER KOPP: Emily, I'm embarrassed to ask you this. But where exactly is it?

MS. WILSON: It's about a mile north of where White's Ferry is.

TREASURER KOPP: Okay.

MS. WILSON: And it's actually right, there's a Rural Legacy Area, you know, in the Montgomery County section there.

TREASURER KOPP: Right. Sort of my backyard, which is why I was embarrassed.

MS. WILSON: Beautiful area.

TREASURER KOPP: So I thank you, yes.

GOVERNOR O'MALLEY: I'm sorry, what number was it? Five?

MS. WILSON: 5A.

GOVERNOR O'MALLEY: And you always have great maps. It's the Maryland GreenPrint, and what did this rank on its -- on the ecological ranking?

MS. WILSON: It was a 116.

GOVERNOR O'MALLEY: That's high?

MS. WILSON: That's very high.

GOVERNOR O'MALLEY: Yes. And Mason's Island, this is it. My map's upside down after I praised your map, though. Could this -- I mean, I think the north and south on it's wrong.

TREASURER KOPP: No, that's --

MS. WILSON: White's Ferry is sort of at the --

GOVERNOR O'MALLEY: No, I apologize. It's right. It's just up where the Potomac loops around.

MS. WILSON: Right. Okay.

GOVERNOR O'MALLEY: And it was across Mason's Island that James Madison crossed on his way to Brookeville after the burning of the White House.

MS. WILSON: I did not know that.

GOVERNOR O'MALLEY: Do we give any points for historic value on --

(Laughter.)

MS. WILSON: That's interesting, thank you.

GOVERNOR O'MALLEY: Mm-hmm.

TREASURER KOPP: Emily, what's the other red island in the south? Do you know offhand?

MS. WILSON: Which map are you looking at? To the -- just to the north?

TREASURER KOPP: Just to the north --

MS. WILSON: The one that is shaded red is Oxley Island.

TREASURER KOPP: No, I'm looking at the big -- the next page. I think that page that you just turned.

MS. WILSON: This one?

TREASURER KOPP: Yes. See the little red thing --

MS. WILSON: That's the island --

TREASURER KOPP: No, south of there.

MS. WILSON: Oh. I do not.

TREASURER KOPP: Oh no, I see what it is. Sorry. That's what happens when you read over someone's shoulder. Not it's the top of the --

MS. WILSON: Oh, the interstate sign.

(Laughter.)

TREASURER KOPP: That is my backyard, that's why I wondered.

MS. WILSON: Okay.

(Laughter.)

GOVERNOR O'MALLEY: But it's the same sign.

TREASURER KOPP: No, I got it. Thank you. It's a great location.

(Laughter.)

GOVERNOR O'MALLEY: Mason's Island. Okay.

TREASURER KOPP: That's great.

GOVERNOR O'MALLEY: In fact, the guy that owned it was I think the son of the famous James Mason, the Virginia Masons.

MS. WILSON: Okay.

GOVERNOR O'MALLEY: Okay, any questions?

(No response.)

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

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed?

(No response.)

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

MS. WILSON: Thank you.

GOVERNOR O'MALLEY: -- thank you -- of Budget and Management.

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

GOVERNOR O'MALLEY: Any questions? Comptroller?

COMPTROLLER FRANCHOT: Item 2S, please, Madam Secretary?

MS. FOSTER: Certainly. Item 2 is a contract to provide review services for the evaluation of an application that's submitted to the Public Service Commission that requests approval of an offshore wind project. And from the Public Service Commission we have Robert Cain and Marissa Paslick.

MS. PASLICK: Yes, ma'am.

MS. FOSTER: And your name?

MR. JOHNSTON: Andrew Johnston.

MS. FOSTER: Okay.

COMPTROLLER FRANCHOT: Thank you, Madam Secretary. Apparently we're being asked to award with this contract a three-year, \$1.3 million relationship to a Boston-based firm named Levitan & Associates under which it would evaluate applications that come into the PSC for approval of a proposed offshore wind project. I have a couple of questions about it. First, what exactly is Levitan going to do that amounts to \$1.3 million worth of work?

MS. PASLICK: Good morning --

COMPTROLLER FRANCHOT: And let me just say as background, excuse me, that, you know, the briefing material, the reason I ask the question is that it says what the contractor is going to do is prepare for and assist in the evaluation of applications so that the Commission may approve, conditionally approve, or deny, an application within 180 days of the close of an application period, and that to properly discharge these duties the contractor, quote, shall be available by phone and email to respond to the contract manager within two days of a request for information. Obviously important work, but it sounds as if they are being hired as a supporting role in what is essentially a single specialized executive review. So I'm particularly interested in what the maximum number of hours per week is that the PSC expects this consultant to devote to the project, how many members of the Levitan team have been assigned, and frankly

from the briefing it seems like an awful lot of money for kind of a standby support.

MS. PASLICK: Yes, sir. I believe I can answer all those questions.

COMPTROLLER FRANCHOT: Great.

MS. PASLICK: My name is Marissa Paslick. I'm the Commission's Advisor and I will be managing this contract for the Commission.

COMPTROLLER FRANCHOT: I'm sorry, excuse me. What is your position with the Commission?

MS. PASLICK: I'm the Commission's Advisor.

COMPTROLLER FRANCHOT: Do you work for the Commission?

MS. PASLICK: Yes, sir.

COMPTROLLER FRANCHOT: Okay. Good.

MS. PASLICK: So first of all, the \$1.3 million price tag is really split into two parts of the contract. The first phase, which is the \$613,000 gets -- it's the fixed cost that goes to the pre-application tasks, and the other fixed price items such as establishing the communication protocols and hosting the website and developing the right price schedule which facilitates the submission of their applications.

The remainder of that contract which was submitted to you was based on the idea that five applications would be received but there is no minimum or maximum number of applications that the Commission may receive per statute. So we asked the applicants to provide a price per application reviewed. And so really that \$614,000 is the fixed price and then for any application that we receive it's \$136,000. So the 1.3 -- the \$136,000 is fixed per application. But if we only receive one application that's all they receive. So it's not necessarily the \$1.3 million.

For reviewing each individual application they have to assist us with several tasks that the statute requires the Commission to do, including assessing whether it's administratively complete, meets several statutory minimum threshold criteria. And then they have to assist the Commission in doing a qualitative and quantitative evaluation so that by statute the Commission is required to only approve something that provides net benefits, economic, environmental, and health, for the ratepayers of Maryland. And that includes using some sophisticated ratepayer impact models and other models that also have licensing associated with them.

So the number of hours a week that the PSC expects the contractor to work is however many it takes for them to get it done. It's a fixed price contract. And the hours per week will vary depending on the stage of the

evaluation process that we're in. Levitan has assigned 11 team members to this, which was in the range that the other applicants proposed, between 10 and 12. And I think I covered your questions, but please let me know.

TREASURER KOPP: What made this respondent technically better than all the others?

MS. PASLICK: So we received four applicants for this scope of work. They were the second highest financially.

TREASURER KOPP: Mm-hmm.

MS. PASLICK: The one that was ranked -- the one that was the most expensive we considered, the committee considered, to be technically capable on the same level. However, they were ranked higher which is why they were put aside. The two applicants that ranked -- that were less expensive, the committee felt that the technical expertise and their understanding of the statute and the statutory requirements that the Commission would have to fulfill were inferior to what Levitan could provide, especially because of Levitan's track record working for the Commission in helping us to develop the regulations.

TREASURER KOPP: So you had the feeling they understood the law better? Is that the technical difference?

MS. PASLICK: Also -- I wouldn't put it that way. They have a better understanding of the ratepayer impact models and how to derive the RPS

percentage and aspects, how to put into practice aspects of the law that were not demonstrated by the other applicants.

COMPTROLLER FRANCHOT: Yes, no, I'm glad the Treasurer mentioned that because I'd like to ask also about the cost, which you brought up, and that she quite appropriately asked about. I did notice this contract's for \$1.3 million and there's a firm called Jacobs Consultancy out of Houston that came in at roughly half the figure.

MS. PASLICK: Yes --

COMPTROLLER FRANCHOT: \$650,557.

MS. PASLICK: So Jacobs only submitted a portion of the price bid that we requested. We requested that they submit their fixed cost and their price per application reviewed. They only submitted their price per application reviewed, which was comparable to the other ones that were submitted.

COMPTROLLER FRANCHOT: Okay. And a firm named Axum Energy Ventures out of Wilmington came in just slightly higher at \$670,418.

MS. PASLICK: Yes, sir. Their price per application reviewed was also in the same range as the other submissions. They offered just under \$110,000 and Levitan came in at \$136,000. The difference between the prices there were the subtotal of the fixed costs which went to the pre-application tasks.

The committee felt that that firm did not put forth a proposal that captured all of the pre-application tasks that the scope of work was requesting.

COMPTROLLER FRANCHOT: Okay. That's a great explanation because I have no idea what this consulting company is going to be doing. None. Zero. I mean, really. It's a -- you have explained it, apparently, but -- and I tried to follow it. What are they going to be doing?

MS. PASLICK: Sure. So the first thing that has to be done is the statute was very prescriptive in the elements that the Commission has to consider when approving an application but did not provide any further guidance about how to do that evaluation or how to weight it. So what it boils down to at this -- the consultant is going to have to assist with the qualitative and quantitative evaluation of those applications which look at the net benefits on -- for the environmental, the health, and the economic costs to ratepayers. There were ratepayer threshold tests that were included in the statute that the consultant is going to have to help with, which includes doing projections on the energy market and looking forward in a way that is required to determine the net benefits of the application.

TREASURER KOPP: Could I just say that one would have no idea of that or the answers to the Comptroller's other questions from reading what is before us. And --

GOVERNOR O'MALLEY: Welcome to the energy world.

TREASURER KOPP: Yes. I mean, I candidly don't understand why that information wasn't in the remarks to start with.

GOVERNOR O'MALLEY: We have a hard time sometimes with plain English --

TREASURER KOPP: Nothing personal, but I mean I wouldn't know it --

GOVERNOR O'MALLEY: It's culture.

TREASURER KOPP: -- if we hadn't asked you these questions.

MS. PASLICK: Yes, ma'am. And I apologize for that.

GOVERNOR O'MALLEY: Yes, I've really noticed about --and one of our strategic goals has been renewable energy, and the other is reduction, the conservation programs. And they -- I've rarely seen, even in Transportation, Jim, this doesn't happen, I've rarely seen a group of people that develop their own nomenclature and acronyms and take as much pride in speaking a separate language that none of us can understand. It's remarkable.

(Laughter.)

MS. PASLICK: Yes, sir. I'm --

GOVERNOR O'MALLEY: It really is. I've had -- and I know we're not trying to be mean here. But what the Treasurer and the Comptroller

says is absolutely true. It's almost as if, I don't know why it happened, but it makes other people feel like you must be hiding something if you can't say it in English that the vast majority of us can understand. It's like pulling teeth. And even when we tried to capsulize just for constituents, you know, how we've done, what we've done on energy, you really need a -- you need a new app or something that can act like a translator app, which makes it harder for those of us that are generalists --

TREASURER KOPP: Yes.

GOVERNOR O'MALLEY: -- to be able to build the consensus for the better decisions, but right decisions, to give us a more secure and sustainable energy future, truly. So --

COMPTROLLER FRANCHOT: If I could just -- thank you, Governor. I applaud your advocacy for wind power. Obviously wind power is a -- something we all aspire to. And if there's anyone here that can help me with that beleaguered project on the Lower Eastern Shore from the State perspective, because I continue to be bewildered as to why that project is held up. But that's not what we have before us here.

Did the PSC go back and ask for an explanation from the folks that, I guess in your opinion, had inadequate applications and ask for a last and final best offer based on what you wanted?

MS. PASLICK: We did. We requested best and final offers and we also offered the opportunity for debriefings with the contract team. Unfortunately, none of the non-winners opted to have a debriefing with us.

TREASURER KOPP: Why were they responsive if they didn't answer the entire RFP, essentially? Is that -- that's what you are saying, that at least that one left off base fixed costs. Why is that -- how is that responsive?

MS. PASLICK: To -- oh, responsive to --

TREASURER KOPP: To the RFP.

MS. PASLICK: -- the RFP?

MR. CAIN: Well my opinion is probably because this is a new area and there are not that many companies that specialize in wind power. And --

TREASURER KOPP: No, I'm not asking why they didn't do it. I'm asking why they weren't found non-responsive.

MR. CAIN: I'm not sure why.

TREASURER KOPP: Oh. They didn't -- oh.

MR. CAIN: Pretty much I believe that they --

MS. PASLICK: We were given -- we -- I contacted them as the contract manager and offered the opportunity for them to correct that, what we found was lacking from their presentation. When they weren't -- when they didn't provide that second piece the second time, they continued to submit the

price application that only had the one piece on it, we felt like the rest of their application did not merit further consideration given its comparison to the other applications. And I think in an overabundance of caution we evaluated their application but still found them to be the least qualified of the four submissions.

TREASURER KOPP: Okay. I mean, I'm not an expert in procurement law at all, especially PSC. But I would think if they didn't respond to everything that was in the RFP, then they didn't -- I mean, but you didn't choose them anyhow.

MS. PASLICK: Correct.

TREASURER KOPP: And presumably their financial bid would have been significantly higher if they had responded as was appropriate?

MS. PASLICK: I believe so because they only responded to the portion of the bid that asked for the price per application reviewed. And that was --

TREASURER KOPP: Right. No, I got that.

MS. PASLICK: I'm sorry?

TREASURER KOPP: I got that you asked for two things --

MS. PASLICK: Okay, yes.

TREASURER KOPP: -- the base and the per application and they just didn't submit.

MS. PASLICK: Right. And I presume that their bid would have been much higher because there were additional tasks in the RFP that were -- would not have been incorporated into the bid for application reviewed.

TREASURER KOPP: Thank you. I'm not sure, honestly, except for your very candid response that that was an answer, but okay.

GOVERNOR O'MALLEY: So any other --

COMPTROLLER FRANCHOT: Madam Secretary --

GOVERNOR O'MALLEY: -- questions?

COMPTROLLER FRANCHOT: Yes, Governor, if I could. Is there anyone here from the Department of the Environment, or someone who knows something about my favorite wind project down on the Lower Shore? Since we're talking about wind power.

GOVERNOR O'MALLEY: Well, they were all out late night --

COMPTROLLER FRANCHOT: They were all out?

GOVERNOR O'MALLEY: -- at the Truitt Awards last night.

COMPTROLLER FRANCHOT: Oh, okay.

MS. FOSTER: I don't think anyone's here --

GOVERNOR O'MALLEY: I don't think anybody's here. We can certainly have someone contact you.

COMPTROLLER FRANCHOT: Thank you. And I applaud, Governor, your advocacy for that project, because it's still mystifying to me as to what the problem is.

GOVERNOR O'MALLEY: Yes, well last we had checked it was, what --

COMPTROLLER FRANCHOT: The commissioners down there apparently now are in some kind of backroom negotiation. And so I just find the whole thing to be --

GOVERNOR O'MALLEY: Is this the one our federal friends held up?

COMPTROLLER FRANCHOT: Well this is the one where we're basically chasing this private sector company and their \$200 million project, telling them to get the heck out of Maryland. And it's a shame, because the farmers down there get lease payments and --

GOVERNOR O'MALLEY: Right.

COMPTROLLER FRANCHOT: -- it's a -- it's what you have so admirably championed, which is renewable wind energy. But hey --

GOVERNOR O'MALLEY: Apparently Congress has more expertise than the Navy does and they're being directed to say that it interferes with their radar, which was actually, I think, a bigger national security problem

because then any of our enemies know that in order to make their countries impenetrable by naval air radar all they need to do is surround themselves with windmills.

(Laughter.)

COMPTROLLER FRANCHOT: Well, anyway, thank you.

GOVERNOR O'MALLEY: Okay. Any other questions? All right. Any other Agenda items on the -- or in the DBM portion of the Agenda?

COMPTROLLER FRANCHOT: No, but I'm going to quietly vote no against this one.

GOVERNOR O'MALLEY: Okay. This is what, 2-S?

MS. FOSTER: This is 2-S.

TREASURER KOPP: I do have a question about another one.

MS. FOSTER: Yes?

TREASURER KOPP: Unless you want to take this one out first? Okay. I don't --

GOVERNOR O'MALLEY: Yes, okay. We'll call Item 2. I move Item 2, seconded by the Treasurer. All in favor signal by saying, "Aye." The Comptroller votes quietly --

(Laughter.)

GOVERNOR O'MALLEY: -- no. Okay. And the ayes have it. And we move on now, the Treasurer has a question on the balance of the Agenda?

TREASURER KOPP: I just had a question, yes, on 4-S.

MS. FOSTER: Yes. So Item 4-S is a contract to manage the Statewide Travel Management Program for executive branch employees who are traveling throughout the country. Larry Williams is here from the Department of Budget and Management.

MR. WILLIAMS: Good morning.

TREASURER KOPP: Good morning. Mr. Williams, my question is a very basic one. And that is how do you measure, I see the virtue of having this contract according just to what I read, is that it allows you to make -- take care of situations in a fee waiver program, such as name changes on a ticket and trip changes which are performed at reduced fees or sometimes without a fee.

MR. WILLIAMS: Right.

TREASURER KOPP: To be fair, in many cases without a fee. Is that why we have this contract, for those very, I hope, outlying situations?

MR. WILLIAMS: No. That's one part of it. Our contract is basically designed to make sure that we get the lowest logical fare. That people don't go out and get business class tickets, that they don't -- they get, you know, a ticket because they like a particular airline. And this way, this contract ensures

that every ticket that's purchased, we purchase about 5,000 a year, is reviewed by someone at Globetrotter, who is our vendor, to make sure that that was the best ticket available at that time of purchase.

TREASURER KOPP: So you actually go in and do essentially a post-audit, or --

MR. WILLIAMS: Yes, our contractor does.

TREASURER KOPP: I have to tell you, the reason I ask, this is just a personal thing, when I travel, and it's not that often, but when I do on State business --

MR. WILLIAMS: Mm-hmm.

TREASURER KOPP: -- we get the Globetrotter, or the service, it's Globetrotter at the moment. And then I go on the internet to find a ticket which is almost invariably less expensive. And I just wonder how that works?

MR. WILLIAMS: Well, ticket prices change by the minute sometimes.

TREASURER KOPP: Right.

MR. WILLIAMS: And sometimes you can go on in the morning --

TREASURER KOPP: This is done simultaneous --

MR. WILLIAMS: -- and depending on what day. The other --

TREASURER KOPP: But you do look at that?

MR. WILLIAMS: Oh, absolutely.

TREASURER KOPP: And that's my questions. This is --

MR. WILLIAMS: Yes. Absolutely.

TREASURER KOPP: Okay. So it's just fortuitous that when I do  
it --

MR. WILLIAMS: Right.

TREASURER KOPP: Okay.

MR. WILLIAMS: Okay.

TREASURER KOPP: Thank you. But I do have a -- wonder  
about it. I mean, I understand it in principle. It's just that when the rubber hits  
the road, I hope you actually are looking at this and making sure that we do get  
our money's worth out of this.

MR. WILLIAMS: Absolutely.

TREASURER KOPP: And I would love to hear, like in six  
months or something, how this is done and what you found. Would that be  
possible?

MR. WILLIAMS: Yes, ma'am.

GOVERNOR O'MALLEY: And this falls under which  
department?

MS. FOSTER: Under the Department of Budget and Management.

GOVERNOR O'MALLEY: Under DBM.

MS. FOSTER: Yes. In our Travel and Fleet Program, which Larry is the Director.

GOVERNOR O'MALLEY: How long have you been there?

MR. WILLIAMS: Twenty-two years.

GOVERNOR O'MALLEY: Wow.

TREASURER KOPP: Wow.

GOVERNOR O'MALLEY: Who owns Globetrotter?

MR. WILLIAMS: It is a Maryland-based company. Mike Buttner is the President. It's out of Olney, Maryland.

GOVERNOR O'MALLEY: Mm-hmm.

TREASURER KOPP: Great place.

MR. WILLIAMS: Mm-hmm.

GOVERNOR O'MALLEY: Okay. Anything else?

MR. WILLIAMS: Thank you.

TREASURER KOPP: Thank you.

GOVERNOR O'MALLEY: Okay. Anything else on the balance of the DBM Agenda items?

COMPTROLLER FRANCHOT: Move approval.

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

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed?

(No response.)

GOVERNOR O'MALLEY: The ayes have it. We move on now to the University System of Maryland, where we'll no doubt be updated on their efforts to put up a Frederick Douglass statue at College Park.

MR. STIRLING: I'm going to start by introducing myself. Jim Stirling for the University System. Good morning. We have seven items on today's Agenda, and I'll start with the Frederick Douglass question if it's okay.

(Laughter.)

MR. STIRLING: We do not as yet have a statue. We have commenced design on the Frederick Douglass Plaza, which is budgeted at \$375,000 and it's near the Hornbake Library with pavers, benches, new landscaping, lighting, and a site for a statue. The statue itself we don't have yet.

GOVERNOR O'MALLEY: Have you been able to contact those folks that were doing one for the Irish Frederick Douglass project?

MR. STIRLING: I don't believe that contact has been made yet.

GOVERNOR O'MALLEY: Okay. Let's make that happen, Nina. Help me follow up on that. We might get a twofer, you know. It's a good statue.

MR. STIRLING: It just so happens I was in Ireland about a month ago and I intended to go looking for it but I never made it out of Dublin. Too many other things to do there.

GOVERNOR O'MALLEY: It's down in Cobh, it's down in Cork. I think. No, I don't think it's up yet. But the design for it will be in --

TREASURER KOPP: Ah.

GOVERNOR O'MALLEY: -- Cobh. I don't know. You need to fact check me on that, too. Okay.

TREASURER KOPP: Maybe Mr. Salt [sic] will have to go back to check it out.

SECRETARY MCDONALD: -- Globetrotter.

MR. STIRLING: I'll be happy to go back and check it out.

GOVERNOR O'MALLEY: Anything in particular you want to emphasize here?

MR. STIRLING: Fairly routine.

GOVERNOR O'MALLEY: Any questions?

(No response.)

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

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed?

(No response.)

GOVERNOR O'MALLEY: The ayes have it.

MR. STIRLING: Thank you.

GOVERNOR O'MALLEY: Thank you. We would be moving on to the Department of Information Technology. But they have nothing on the Agenda so we're going to move past the Department of Information Technology and move to the Department of Transportation.

MR. SMITH: Good morning, Governor, Madam Treasurer, and Mr. Comptroller. Secretary Smith on behalf of MDOT. We have 21 items. Item 14-RP is being withdrawn and will be reintroduced on a future DNR Agenda. I'll be happy to answer any questions.

COMPTROLLER FRANCHOT: I'd just like for the record to reiterate my admiration for the Secretary. I think he's got a lot on the agency's plate and he's handling it magnificently. So I'm all for Secretary Smith. But Item 1-C is another one of these single bid awards for \$2.2 million, I guess, for repairs to the daily garage. And it was -- resulted from a competitive sealed proposal

which resulted in only one single responsive bid. And so we've approved in the last four years, 250 single bid contracts with a total value of \$750 million. On the current Agenda there are five more single bid awards with a total value of \$9 million.

The Procurement Advisory Council apparently met and sent a letter to all the agencies brainstorming, I guess, straightforward ways to seek more participation. And they recommended reviewing solicitations with an eye to requiring only what is required, not relying solely on market, e-market, eMaryland Marketplace, doing Google or other internet searches, personal contact, picking up the phone and asking companies to bid, letting vendors know they're welcome to bid, encouraging them, encourage more direct solicitation, industry trade associations, survey other procurement officers in other states, I take it, or other jurisdictions, publicize forecasts, encourage agencies to accept electronic submission of bids and proposals. And I'm not quite sure what kind of intensive effort is required to result in more vendors but I would certainly like to urge MDOT, but also all the agencies, to meet face to face with the vendor communities and find out what is inhibiting the bidders because it's -- and obviously this is a generic problem, Mr. Secretary, I just took advantage of your item to bring it up again.

MR. SMITH: Well, I agree with you. Your overall policy of having competitive bidding, there is no doubt that that is, from a price perspective, a critical element of any RFP. In this case, however, we had eight bidders who submitted bids. And we had a protest that was filed on March 26, 2013 and that was denied. And then we had another protest that was filed on October 11, '13 and that was denied and was appealed to the Board of Contract Appeals and was just recently denied. And the other five bidders refused because of the passage of time to hold their bid price. So with regard to this contract, that is the explanation for how we ended up with just one bid. And that is not to denigrate from your concern about only having one bidder. We are concerned. And there are a number of contracts before you today that for one reason or another ended up with just one bid. I think there's like three other ones on here. And it doesn't make me happy, obviously. I've looked into them anticipating that you would rightly raise the issue. But because of the nature of some of the RFPs and because of individualized circumstances with respect to the particular vendors involved, sometimes we end up with just one bid. But that doesn't mean that the procurement generally should not be striving to make sure there's competition in the bids that are being requested.

COMPTROLLER FRANCHOT: Thank you, Mr. Secretary. And Madam Secretary, and perhaps you could keep us informed about efforts of how

the Procurement Advisory Council and other advisory groups, whatever it is that we can do to remove impediments to bids. I'm not sure who, whether that is you, or someone else --

SECRETARY MCDONALD: Yes, I think Ms. Childs has been working on this --

MS. CHILDS: Yes, sir. We continue to talk about best practices. But I think one of the most effective tools is the bully pulpit of the Board of Public Works and your continuing efforts to bring this up as a serious problem. So I thank you for continuing your efforts. And we will continue to carry your message.

SECRETARY MCDONALD: And because of that we did meet with the Airport last week and had good talks about these things. And we're going to do more reaching out. I think your instructions about perhaps the agencies meeting with contractors is well placed. But we at the Board are going to just do some more round table brown bag discussions and maybe bring people in from other agencies just to talk on this topic. We have gotten some research from the certification agencies, organizations, that is on this topic. I don't think it's just a Maryland problem. I mean, it is a government procurement. So we are going to hound that. But Ms. Childs is completely right. The more the Board of

Public Works members let everybody know that this is their priority, the more we can work on this.

COMPTROLLER FRANCHOT: Thank you, Governor.

GOVERNOR O'MALLEY: Thank you. All right. Any other questions, Department of Transportation? Hearing none --

TREASURER KOPP: Yes --

GOVERNOR O'MALLEY: -- I'm sorry. Madam Treasurer?

TREASURER KOPP: -- just for the record. Jim, 15. Item 15 looks at first glance as though we're paying significantly more than the appraised value of the property and I'm sure there's a reason.

MR. SMITH: There is a reason. That property is positioned exactly where we need to put the ventilation system shaft for the Red Line. And when I say it's exactly positioned, there are two other properties that could be utilized, but they are very successful businesses that would cost us a lot more than even what we're paying for the property that we have to acquire. And it has to be in that area in order to meet the technical needs.

TREASURER KOPP: Health and safety.

MR. SMITH: Yes.

TREASURER KOPP: And the reason you settled on 550 as opposed to less?

MR. SMITH: Is because he wanted four times, or they wanted four times, and we got them down to two -- about two times, and that's as far as we could get them to go.

TREASURER KOPP: Yes --

MR. SMITH: And the FTA, the FTA has approved the acquisition.

TREASURER KOPP: Okay. Let me just ask outright -- yes? No, we don't have to -- I think the answer is that's the price of the mortgage on the property?

MR. FABULA: Yes. Good morning. George Fabula. I manage the Real Estate Division for the MTA. We're tasked with acquiring the properties for the Baltimore Red Line and also the Purple Line as well. The 550 is the mortgage that the property has.

TREASURER KOPP: Okay. My only question is how was the amount set, and the answer is that's the mortgage value of the property.

MR. FABULA: This is the mortgage, it's an underwater mortgage.

TREASURER KOPP: And it has to be in that position?

MR. FABULA: Yes.

TREASURER KOPP: I get that.

COMPTROLLER FRANCHOT: I'm glad the Treasurer brought this up because what's the point of having an appraisal? Why don't we just go to the landowners in these situations and say, well, what would you be willing to take? I mean, really. The fact that it's underwater doesn't concern me at all. The fact is they -- it was appraised at half the amount you're paying. And --

MR. FABULA: Well we went to the -- his mortgage company to negotiate a price that was lower than the remaining balance. And that was -- we received a strong response that wanted to get paid in full, basically. So we went to the mortgage company looking basically for a short sale and that was rejected by them.

COMPTROLLER FRANCHOT: Uh-huh. And who is his? Who's he?

MR. FABULA: The property owner?

COMPTROLLER FRANCHOT: Yes.

MR. FABULA: Is Mark Sapperstein.

COMPTROLLER FRANCHOT: Okay. Well he's very prominent, obviously. But the building's only worth half of what we're paying.

MR. FABULA: Well, there is some exposure --

COMPTROLLER FRANCHOT: What about eminent domain?

MR. FABULA: We could do that as well. The property itself was slated, the property on the right is the 114 E. Lombard Street. That's the subject property. The property to the left is 108 E. Lombard Street, which is a City-owned property. It was planned to combine those two properties together at one time for a hotel in that area itself. The City pulled out on the deal for 114 E. Lombard Street. That was the consideration for the property, the 550, pulled -- and they pulled out on the deal. There is some exposure I think to the State if we did go to court on this that we may be on the hook for the 550 and then maybe some on top of that as well.

COMPTROLLER FRANCHOT: Well, I'm glad the Treasurer brought it up because --

TREASURER KOPP: Right. Yes. I assume you factor in the cost of litigating?

MR. FABULA: Yes.

TREASURER KOPP: It's a nice looking property in the slide.

GOVERNOR O'MALLEY: And it's right smack dab in the middle. It could go a lot higher. So I'm --

TREASURER KOPP: Yes.

GOVERNOR O'MALLEY: -- so there was a proposal that would have taken it to a much higher density in keeping with that section of the

Downtown there which is right off Calvert Street as you're going north. And that deal fell apart because the City pulled out of it?

MR. FABULA: That's my understanding.

GOVERNOR O'MALLEY: And prior to that falling apart, somehow somebody borrowed \$550,000 on properties that in their current condition are only worth 250?

MR. FABULA: I think it was rented at one time. It was an occupied building. It wasn't an abandoned building or unoccupied. I think it was --

GOVERNOR O'MALLEY: It was an Indian restaurant.

MR. FABULA: Okay.

GOVERNOR O'MALLEY: Pretty good, too.

(Laughter.)

MR. FABULA: But we do have the Brookshire to the right, which is as you know a hotel.

GOVERNOR O'MALLEY: Mm-hmm.

MR. FABULA: And then to the left we have some occupied commercial properties, and also CVS is on the corner as well.

GOVERNOR O'MALLEY: So the building itself only do at 250 but it's actually a pretty valuable parcel, right? I mean, in the middle of Downtown?

MR. SMITH: And has been before the recession.

GOVERNOR O'MALLEY: Because it's zoned. And those aren't historic?

MR. SMITH: I don't -- that has not been --

MR. FABULA: No. It's not on the registry based on our research.

GOVERNOR O'MALLEY: My gosh, don't tell anybody. Soon they will be.

MR. SMITH: Yes, right.

GOVERNOR O'MALLEY: Okay. All right. Anyone else have questions on this?

COMPTROLLER FRANCHOT: Yes, I have a question.

TREASURER KOPP: Yes, I have --

GOVERNOR O'MALLEY: Mr. Comptroller?

COMPTROLLER FRANCHOT: Madam Treasurer, thank you for bringing this up because exactly, it --

TREASURER KOPP: It's difficult.

COMPTROLLER FRANCHOT: I mean, if this were a -- okay. I would like to register my objection and just vote no on this.

TREASURER KOPP: I have to say, Governor, that was my first inclination. But hearing more about it and understanding the impact actually of the State's and City's action on the value of that property which is now going to be very difficult for, I assume, to be used for another purpose, and one hopes with the economy returning will not go cheaper, and being interested in the health and safety of people who ride the subway, which is the most important thing if the Red Line in fact is developed, and being interested --

MR. SMITH: When, Madam Treasurer, when the Red Line --

TREASURER KOPP: Yes, when, and the health and safety of riders of the Purple Line as well, I'm going to reluctantly support it. But it strikes me that the cost of litigating -- you don't have quick take, right?

MR. FABULA: Do we have quick take? No. The State would use their standard eminent domain process.

TREASURER KOPP: Yes, right. Yes. Okay. Thank you.

COMPTROLLER FRANCHOT: And you're in charge of all the Red Line acquisitions?

MR. FABULA: And Purple Line as well.

COMPTROLLER FRANCHOT: Purple Line. On the Red Line are there other properties that have been acquired like this for twice the appraised value?

MR. FABULA: Well, so far what we're taking to the Board has been the subsurface easements for the Cooks Lane Tunnel.

TREASURER KOPP: Right.

MR. FABULA: Those have been -- those are a small consideration but they are basically going for the fair market value. We are finding out that the commercial owners along the Baltimore Red Line are negotiating for above what the fair market value is. They're holding out and negotiating for as much as they can get out of us. So we're continuing those negotiations with those property owners.

COMPTROLLER FRANCHOT: How many of those are there, ballpark?

MR. FABULA: For the Operations and Maintenance Facility on the West Side on Calverton we have four or five properties. Not many full acquisitions associated with the Baltimore Red Line.

COMPTROLLER FRANCHOT: Well, I'm not necessarily angry with you guys. I'm just frustrated with the situation.

TREASURER KOPP: Mm-hmm.

COMPTROLLER FRANCHOT: I mean, really.

TREASURER KOPP: Right. Unless you take them to court.

COMPTROLLER FRANCHOT: Okay.

TREASURER KOPP: And then you've just got to figure out the cost benefit.

MR. SMITH: Mm-hmm.

MR. FABULA: And we're trying to meet schedule as well.

TREASURER KOPP: Yes, and they know that.

MR. SMITH: This is really not an unusual situation --

TREASURER KOPP: No, that's the problem.

MR. SMITH: -- with condemnation --

TREASURER KOPP: Yes.

MR. SMITH: -- generally speaking. When they know that government wants or needs a particular property, it's a challenge to negotiate something that they will sell for. And then if you don't do that, you have to go through the condemnation, which is fine, but then you have the issue of time and you also have the issue of you really don't know what the cost is going to be.

TREASURER KOPP: Right.

GOVERNOR O'MALLEY: And as Daniel Patrick Moynihan said the problem with urban redevelopment is everything's already connected to everything else. So it's, you know, it's not like it's --

MR. SMITH: Right.

GOVERNOR O'MALLEY: -- a green field or a highway right of way.

TREASURER KOPP: Right. Do you ever give any thought to using condemnation as a cautionary example?

MR. SMITH: Sure.

GOVERNOR O'MALLEY: I used it all the time.

MR. SMITH: Oh, yes. In fact, we're doing that --

TREASURER KOPP: So you weigh each individual case?

MR. SMITH: Oh yes.

GOVERNOR O'MALLEY: Mm-hmm.

MR. SMITH: Absolutely. Yes.

COMPTROLLER FRANCHOT: And the timeframe for condemnation is what?

MR. FABULA: It could be about 12 to 18 months altogether

COMPTROLLER FRANCHOT: What --

TREASURER KOPP: That's why some governments who are able instituted a process of quick take --

MR. SMITH: Right.

MR. FABULA: Mm-hmm.

TREASURER KOPP: -- for other types of --

MR. SMITH: Yes. Quick take is a huge help in the area of condemnation because that is a little leverage you have with respect to the negotiations with property owners, who also have to undertake expenses if they go the condemnation route. So, but we can't use quick take except in --

TREASURER KOPP: Yes.

GOVERNOR O'MALLEY: Yes, the fact remains for the better we're --

TREASURER KOPP: You're building a subway.

GOVERNOR O'MALLEY: -- we're, yes, well, and we're a nation that affords due process --

MR. SMITH: Right.

GOVERNOR O'MALLEY: -- to individuals and their property rights, which is all good and proper. It's not an excuse for us not to go about public projects in the most timely, responsible, and cost effective way. But you

know, it's why they open, it's part of the reason they're able to open new subway lines every year in Shanghai and why it takes us a little longer here. But --

MR. SMITH: I'm not suggesting that we adopt --

TREASURER KOPP: No.

MR. SMITH: -- the Shanghai model.

(Laughter.)

GOVERNOR O'MALLEY: Nor am I.

(Laughter.)

GOVERNOR O'MALLEY: I prefer on balance blue sky and freedom.

(Laughter.)

COMPTROLLER FRANCHOT: No, but I think the Governor makes a good point. But on the other hand, I think the public would be a little bit upset if here we are putting in public infrastructure --

MR. SMITH: Mm-hmm.

COMPTROLLER FRANCHOT: -- and we're being held up by demands for prohibitive costs from property owners who know darn well the building is not worth what we're paying for it. And so --

GOVERNOR O'MALLEY: But there's a combination of things here, I think, I mean that I, with respect, and I understand you, you may come to a

different conclusion and that's why there's three of us here and not one. But it seems to me there's a couple of things that go into this consideration and negotiation. Certainly there's the need for the infrastructure, that's one. Secondly, this property, were it not for our need for that location and that parcel, and the other ones around it, I mean, you look how tall and new the buildings are around it --

COMPTROLLER FRANCHOT: Mm-hmm.

GOVERNOR O'MALLEY: -- relatively. Or I can tell you, I will proffer to you that the other buildings around there are mostly filled, although there is the little stretch back there of Calvert Street, but I think that's under contract with somebody now.

MR. FABULA: It is.

GOVERNOR O'MALLEY: So were that property to be developed to its highest and best use, it would be a lot more, it would be more valuable than \$550,000. And then the third thing is that knowing the engineering challenges we have, and the likelihood that if push came to shove we would have to go to condemnation there, we have scared away potential other developers from developing it at its highest and best use. And I think it's the swirl of all three of those things that could make some lawyers very happy to litigate, which is -- but all three of those factors then formed --

COMPTROLLER FRANCHOT: Mm-hmm.

GOVERNOR O'MALLEY: -- I think what the Department of Transportation came to on that.

COMPTROLLER FRANCHOT: Thank you. I -- this -- I'm not unsympathetic to this particular situation. But you mentioned there are four or five other properties --

MR. FABULA: Mm-hmm.

MR. SMITH: That's right.

COMPTROLLER FRANCHOT: -- where you're going to get the same, I assume, stubborn refusal unless you raise the amounts the public's going to pay. And all I'm saying is I kind of agree with the Treasurer, that why don't we start litigating some of these things, because it's not just expensive for us --

MR. FABULA: Mm-hmm.

COMPTROLLER FRANCHOT: -- it's pretty gosh darn expensive for the other side.

MR. FABULA: Mm-hmm.

COMPTROLLER FRANCHOT: And maybe that will stimulate, you know, some more. Leaving this one aside, because I think the Governor made some idiosyncratic references about what this project -- how -- why this was a little different. But it sure sounds like it's a pretty tough climate out there. And

how do you get a good deal for the public given these landowners? And litigation's expensive for them, so let's put the burden over on them. We have lots of lawyers that we -- can't -- don't we use our own in-house lawyers?

MR. FABULA: That's correct.

COMPTROLLER FRANCHOT: Yes.

MR. FABULA: Mm-hmm. Point taken, thank you.

COMPTROLLER FRANCHOT: Good. Let's start flexing our muscles. And because if every time, I have heard it over and over again, we're doing these things because we don't want to go to court.

MR. FABULA: Mm-hmm.

COMPTROLLER FRANCHOT: And, you know, those are mostly on other things. But feel free to go to court. Seriously. And thank you, Governor.

GOVERNOR O'MALLEY: Thank you.

COMPTROLLER FRANCHOT: I'd like to be marked down as a no on this one, please?

GOVERNOR O'MALLEY: Okay. This is one-- oh, what number was this? I'm sorry?

SECRETARY MCDONALD: Fifteen.

GOVERNOR O'MALLEY: Fifteen? Is there a letter after it or anything?

SECRETARY MCDONALD: It's 15-RP, thank you.

GOVERNOR O'MALLEY: 15-RP on the Department of Transportation. 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 for the aforementioned reasons. How about the balance of the Transportation Agenda items? Anything there?

(No response.)

GOVERNOR O'MALLEY: Okay. The Comptroller moves on the balance of the Agenda items on the Transportation, 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. The first shall be last and the last shall be first, doing great service, Mr. Al Collins.

MR. COLLINS: Good morning, Governor, Madam Treasurer, Mr. Comptroller. Al Collins, Secretary of the Department of General Services. Today we have 30 items on our Agenda. We'd be glad to answer any questions.

Governor, if I could take just a second of the Board's time. We do have a number of individuals out there who are doing great service on behalf of their communities and service. Let me -- first time ever appearing before the Board is representatives from the Antietam Fire Company in Washington County, represented by Mr. Robert Daveler who's here. Your first grant to National Capital B'nai Housing Assistance, Joe Podson, Joe, are you still in the room? And thirdly, the first time here, Jewish Community Services of Baltimore County, Barbara Gradet. One of the most exciting DSS Directors I have ever worked with in another life, I wanted to introduce.

And also, Governor, we have a couple of other people that took the time to come in this morning. Linnell Bowen, Creative -- Maryland Hall for the Creative Arts; Mary Jelacic from Pregnancy Aid Center of Prince George's County. And I think that's it in terms of our citizens that joined us this morning.

GOVERNOR O'MALLEY: Awesome. Thank you all for being here and for your good work. Any questions?

COMPTROLLER FRANCHOT: Move approval.

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

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed?

(No response.)

GOVERNOR O'MALLEY: The ayes have it. And that concludes the Board of Public Works. Thanks very much.

(Whereupon, at 11:16 a.m., the meeting was concluded.)