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

**September 17, 2014**  
**10:09 a.m.**

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# PRESENT

**HONORABLE ANTHONY BROWN**

Lieutenant Governor

**HONORABLE NANCY KOPP**

Treasurer

**HONORABLE PETER FRANCHOT**

Comptroller

**SHEILA C. MCDONALD**

Secretary of Public Works

**BART THOMAS**

Deputy Secretary of General Services

**MARC NICOLE**

Executive Director, Office of Budget Analysis, Department of Budget and Management

**JAMES SMITH**

Secretary 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

LIEUTENANT GOVERNOR BROWN: Let's get started on the September 17th meeting of the Board of Public Works. I'm Lieutenant Governor Anthony Brown. I'll preside on behalf of Governor O'Malley, who is out of country traveling, participating in policy conferences in London. So I want to welcome everyone to the Board of Public Works. Thank you for your service to the people of Maryland and your interest in the work that we do. With that, let me see if the Treasurer has any opening remarks? And then we'll see if the Comptroller does.

COMPTROLLER FRANCHOT: Thank you.

TREASURER KOPP: I just want to say good morning to everybody. This is an amazing week. I mean, first the Bicentennial, which was just mind-blowing, I think. And it sends out a message, I think, to the world that the United States was really finally, firmly, finally, founded here in Baltimore, 200 years ago last weekend. A very, very dramatic story going out to people who really had not known anything about it, other than a song, before. And I think it's part of Maryland's duty, Governor, to keep it before --

LIEUTENANT GOVERNOR BROWN: Mm-hmm.

TREASURER KOPP: -- before the people in the future. And the other, the other is, I'm no great athlete. I'm not the athlete up here. But this

really is a tremendously wonderful week. So my congratulations to both of our fine teams.

LIEUTENANT GOVERNOR BROWN: Thank you. Mr. Comptroller?

COMPTROLLER FRANCHOT: Yes, thank you. And I heartily concur with the Treasurer on both of her excellent points. And I got up this morning and read about our armed forces going to Africa for Ebola, and there are so many events going on that frankly are confusing and troubling and anxiety provoking. So, sitting with my wife Annie last night in front of the TV set, and explaining to her what the magic number means and how significant this is. And she finally concluded after listening to me that, okay, I get it, the Orioles are now minus one. But watching the O's, and obviously switching back, since I live right on the D.C. line, to watch the Washington Nationals, it made me, it was in a quiet way just an opportunity to say thank God for baseball. And for giving an inspirational little boost to our wonderful region and State.

And this morning I was walking Henry, my yellow lab, down the street, Sycamore Avenue, and I bumped into two different groups of moms bringing their kids up to the school bus. And in our area it's a rabid Washington Nationals area so they, the kids had all their hats and Washington Nationals shirts on. And I'd look at them and say, "How about those Nationals?" And they'd go,

“Yeah, yeah.” And I’d say, “How about those O’s?” And they’d say, “No, no, we don’t like that.”

(Laughter.)

COMPTROLLER FRANCHOT: So I’m here to report that there is a budding rivalry developing between the Nationals and the Orioles that we will all have a lot of fun and entertainment with. I, of course, had to remind the kids that it’s going to be an orange October, trust me. None of this red October. Oh, but for my constituents that love the Nats, I will say I’m rooting for both teams. And --

(Laughter.)

COMPTROLLER FRANCHOT: -- but what a great activity for us to take a moment from all of the troubling things we read about all the time and just enjoy, frankly, last night, a cold beer and the company of my wife, and be able to watch America’s pastime. Thank you, Governor.

LIEUTENANT GOVERNOR BROWN: Okay. Well, thank you, Mr. Comptroller. And with that, why don’t we just launch right into the Secretary’s Agenda.

SECRETARY MCDONALD: Good morning, Lieutenant Governor, Madam Treasurer, Mr. Comptroller. We have 12 items on the

Secretary's Agenda this morning. We are prepared for any questions you may have.

LIEUTENANT GOVERNOR BROWN: I just have a question on Items 10 and 11. Are these the first --

SECRETARY MCDONALD: They are.

LIEUTENANT GOVERNOR BROWN: -- items that are coming through regarding the Baltimore City school construction program?

SECRETARY MCDONALD: They are. Mr. Michael Frenz from the Stadium Authority is here. He also has people from the, Mr. Frenz, do you want to come up to the podium? And bring whoever you want to bring up.

LIEUTENANT GOVERNOR BROWN: Sure.

SECRETARY MCDONALD: Dr. Lever is here from School Construction. There might be people here from Baltimore City. But this is exciting because Items 10 and 11 are the first items the Board has seen after the memorandum of understanding on the actual steps to go forward with renovating Baltimore schools.

LIEUTENANT GOVERNOR BROWN: Great.

MR. FRENZ: Yes I --

LIEUTENANT GOVERNOR BROWN: So just, yes, give us a little sense of how things are going. And --



MR. FRENZ: Well, things are going well. And it's correct that these are the first architect/engineering design services for the first two schools of this program. I am here with David Lever, whom you all know from the Public Schools Construction Program, and Gary McGuigan, who is the person who is actually shepherding this program for the Maryland Stadium Authority. I think I speak for both of them when I say that it's going well. It has, we have had some early successes and some challenges. All of the parties have been working well together, however. And there is a, you know, I think we are all working together toward the same goal, which is to build, you know, 21st Century schools for the schoolchildren of Baltimore and to get as much as we can out of the money that has been allocated. David, do you have anything to add?

DR. LEVER: Just to second that it has been an outstanding collaboration. And we are working on many, many issues. The Stadium Authority is really taking the lead on the 21st Century school plans. We, the Public School Construction Program, is very much involved in maintenance issues that affect the other schools, project delivery on capital improvement program projects, and other areas that relate to the schools that are not affected by the Stadium Authority funding. And all together it has been a very strong collaborative effort with City Schools, with City of Baltimore, and with the Stadium Authority.

LIEUTENANT GOVERNOR BROWN: Just remind us, how many schools will be either replaced or renovated as a result, or because of the \$1.1 billion bond authorization to the Stadium Authority?

MR. MCGUIGAN: Good morning. Gary McGuigan with the Stadium Authority. The original projection last summer was 35 schools but it was based on very preliminary information. As we went through the feasibility study process, the renovation projects were coming in over budget and we went through an exercise to try and maximize the number of schools, which we are completing right now and getting ready for our October 1st report back to the Board which will have all the details on the number of schools and all the efforts of the last year.

LIEUTENANT GOVERNOR BROWN: So it will be down from 35?

MR. MCGUIGAN: Yes, sir.

LIEUTENANT GOVERNOR BROWN: Okay.

TREASURER KOPP: And will you have a roll out schedule at the same time?

MR. MCGUIGAN: Yes, ma'am --

TREASURER KOPP: Like when the first schools will open and --

MR. MCGUIGAN: Yes. I mean, these two schools will open summer of '17. They are on schedule. The good news is the overall program is on schedule to end in 2020 but we have had some delays in the other year one schools that were over budget through the feasibility study process.

TREASURER KOPP: Okay.

COMPTROLLER FRANCHOT: Yes, no, I had the pleasure of touring Waverly Elementary School yesterday with Dr. Johnson and other folks from the Baltimore school system, and also Mary Pat Clarke, the local representatives. And I know this is one that is only, well it's the first new school I think built in 20 years or so in Baltimore, a \$27 million effort. I think \$15 million came from the State. But boy, is that a good, if you are looking for a model, that's a pretty impressive facility. And the thing that caught my eye was that you visit some schools and you go in and ask the kids in K through 8, these are those grades, if you get in front of a classroom sometimes when you ask anybody have any questions, nobody has a question. Not at Waverly. I mean, I would stand in front of these first graders, second graders and say, "Anybody have a question?" Yeah, they've got questions. "How much do you get paid?"

(Laughter.)

COMPTROLLER FRANCHOT: "Who are you?"

(Laughter.)

COMPTROLLER FRANCHOT: But the point was there were hands up in the air. And the kids have a brand new school. And they have, you know, the elementary school wears a blue shirt and the middle school wears a purple shirt, or whatever. There is some, there is a high morale, attributable in part to the construction and the facility and the light that comes into the school. And so, boy, members of the community and local officials are very, very happy, Dr. Lever, to see your steady hand involved in all this. So good luck as it continues down the road. It was very, very pleasing to see a world class school in a, obviously an area that, well one of the parents that was with us had gone to Waverly when she was young. But not that Waverly. And not the other Waverly. But a third Waverly that was just, you know, almost a schoolhouse. So this is, this is going to be a game changer. Thank you.

MR. MCGUIGAN: Thank you.

COMPTROLLER FRANCHOT: And congratulations to you, Governor, for your activity in support of this, and Governor O'Malley, and the Legislature. Because boy, is this, there is a real model up there in Waverly. If that is what you are planning. I take it that is somewhat, am I in the ballpark as far as are we building schools like that?

MR. MCGUIGAN: Yes, I would say so. I mean, they are all going to be at least LEED Silver certified. There will be lots of natural daylight. But the plan is --

COMPTROLLER FRANCHOT: They had a grass roof.

MR. MCGUIGAN: Right, and that is going to be on some of the schools. And they are learning environments, also. So these will be transformational schools, and efficient.

COMPTROLLER FRANCHOT: Thank you.

LIEUTENANT GOVERNOR BROWN: Okay. Anything else on Items 10 or 11? Thank you very much.

MR. MCGUIGAN: All right, thank you.

LIEUTENANT GOVERNOR BROWN: Well, following up on the theme on how much do you get paid, who is the best person to speak to Item 12 dealing with --

SECRETARY MCDONALD: Rick Norman is here from the Office of the Comptroller. And this is an item where you are setting the salaries for the Registers of Wills for the next four-year term.

MR. NORMAN: Good morning, Governor. How are you, sir?

LIEUTENANT GOVERNOR BROWN: Good.

MR. NORMAN: Mr. Comptroller, Madam Treasurer.

COMPTROLLER FRANCHOT: Nice to see you.

LIEUTENANT GOVERNOR BROWN: Can you just explain how we arrived at the proposed increases in salaries for the Registers of Wills in all 24 jurisdictions?

MR. NORMAN: Yes, sir. My understanding is the Legislature a year ago passed a law, Section 2-205, increasing the maximum salary for the Registers of Wills be \$114,500.

LIEUTENANT GOVERNOR BROWN: What was it first, before?

MR. NORMAN: It was \$98,500, sir.

LIEUTENANT GOVERNOR BROWN: Okay.

MR. NORMAN: And that represents a 16.2439 percent raise over the \$98,500. The Register of Wills is broken up into categories depending upon the revenues, the amount of service they do for the counties. So we take that 16.2437, or 39, percent and we multiply it by the salaries that were scheduled four years ago. So you, for Caroline County, for the sake of argument, it went from \$86,100 to \$100,086. It's a 16 percent raise.

LIEUTENANT GOVERNOR BROWN: So this is essentially implementing the will of the Legislature as reflected in Section 2-205?

MR. NORMAN: Yes, sir.

LIEUTENANT GOVERNOR BROWN: Okay. Anybody else have any questions or comments on that one? That's all the questions I had.

MR. NORMAN: Thank you, Governor.

LIEUTENANT GOVERNOR BROWN: Thanks. Are there any questions, comments, or discussion on any other items of the Secretary's Agenda? Seeing none, the Comptroller moves approval, seconded by the Treasurer. All those in favor say, "Aye."

THE BOARD: Aye.

LIEUTENANT GOVERNOR BROWN: Any opposed?

(No response.)

LIEUTENANT GOVERNOR BROWN: Hearing none, the Secretary's Agenda is approved. And now we'll go to the DNR Real Property, good morning.

MS. WILSON: Good morning, Lieutenant Governor, Mr. Comptroller, Madam Treasurer. Emily Wilson with the Maryland Department of Natural Resources. We have four items on our Agenda today. I'll be happy to try to answer any questions. And if I may, just to add onto the good baseball news, I heard a term yesterday that I loved, is that we're in Clinchmas at this time of the year.

(Laughter.)

LIEUTENANT GOVERNOR BROWN: That's great.

TREASURER KOPP: Well could I just say, just to build on what the Comptroller said, if we are finally in the position where we have to make a choice that would in fact be a very fine thing.

COMPTROLLER FRANCHOT: And it would great for the Maryland economy.

TREASURER KOPP: It --

LIEUTENANT GOVERNOR BROWN: Mm-hmm.

COMPTROLLER FRANCHOT: But let's bring on a Beltway Series. Why not?

TREASURER KOPP: Yes.

(Laughter.)

COMPTROLLER FRANCHOT: But be careful, Os fans, down in my area. It gets a little heated sometimes. But --

TREASURER KOPP: And remember Happy, Merry Clinchmas.

MS. WILSON: Right. Exactly.

COMPTROLLER FRANCHOT: Clinchmas, yes. Why not?

MS. WILSON: I thought that was good.



LIEUTENANT GOVERNOR BROWN: Okay. Any other comments or discussion on this Agenda? Seeing none, the Treasurer moves approval, seconded by the Comptroller. All those in favor say, "Aye."

THE BOARD: Aye.

LIEUTENANT GOVERNOR BROWN: Any opposed?

(No response.)

LIEUTENANT GOVERNOR BROWN: Hearing none, that Agenda is approved. Let's --

MS. WILSON: Thank you.

LIEUTENANT GOVERNOR BROWN: Okay I see -- thank you. I see that DBM has no Agenda today. So that brings us to the University System of Maryland. Good morning.

MR. STIRLING: Good morning, Lieutenant Governor, Madam Treasurer, Mr. Comptroller. I'm Jim Stirling from the University System. We have three items on today's Agenda. I'd be happy to address any questions.

LIEUTENANT GOVERNOR BROWN: Any questions or comments by the Treasurer or the Comptroller?

TREASURER KOPP: Just recognize it's a great thing to see Item 1-C, the, draw your attention to the Biomedical Sciences --

LIEUTENANT GOVERNOR BROWN: Mm-hmm.

MR. STIRLING: -- start up at Shady Grove.

TREASURER KOPP: -- Building at Shady Grove starting up. Yes. It will be great, great progress for the University and for the Shady Grove campus and for the State of Maryland. And I look forward to seeing this progressing --

MR. STIRLING: As do we.

TREASURER KOPP: -- with, yes, expediently.

LIEUTENANT GOVERNOR BROWN: Infrastructure investments that support a growing economy.

TREASURER KOPP: Right. The right move in the right place.

LIEUTENANT GOVERNOR BROWN: Mm-hmm. Okay, any other conversation or discussion, questions? Okay. Hearing none, the Comptroller moves approval, seconded by the Treasurer. All those in favor say, "Aye."

THE BOARD: Aye.

LIEUTENANT GOVERNOR BROWN: Any opposed?

(No response.)

LIEUTENANT GOVERNOR BROWN: Hearing none, congratulations.

MR. STIRLING: Thank you.

LIEUTENANT GOVERNOR BROWN: Your Agenda has been approved today. Department of Information Technology, good morning.

MR. URBAN: Good morning, Lieutenant Governor, Madam Treasurer, Mr. Comptroller. I'm Greg Urban with the Department of Information Technology. I have four items on the Agenda. I'm pleased to answer any questions that you might have.

LIEUTENANT GOVERNOR BROWN: Any questions, comments? Seeing none, the Treasurer moves approval, seconded by the Comptroller. All those in favor say, "Aye."

THE BOARD: Aye.

LIEUTENANT GOVERNOR BROWN: Any opposed?

(No response.)

LIEUTENANT GOVERNOR BROWN: None. Congratulations.

MR. URBAN: Thank you.

LIEUTENANT GOVERNOR BROWN: Let's move on to MDOT Agenda. Good morning.

MR. SMITH: Good morning, Governor, Treasurer, and Comptroller. Secretary Smith on behalf of MDOT. We have 19 items. I'd be happy to answer any questions.

LIEUTENANT GOVERNOR BROWN: Can you just have someone speak to Item 1 and tell us what is happening there?

MR. SMITH: Number one? Who do we have for Item 1?

MR. LOCKETT: Good morning.

LIEUTENANT GOVERNOR BROWN: Good morning.

MR. LOCKETT: My name is Gary Lockett. I'm with the Maryland Port Administration as Procurement Officer. Good morning, Comptroller and Lieutenant Governor and Treasurer. What is going on here, this is an item, this is a contract to demolish a RORO ramp at the Dundalk Marine Terminal. And it is basically a demolition job and removal of and disposal of reinforced concrete and steel and a platform to free up space at the Port, you know, for additional shipping and items and such.

We had five bids on this contract. Four bids were responsive. One bid was rejected for non-responsiveness. The second low bidder is Corman Marine Construction. There is an eight percent MBE goal and Corman Marine has plans to meet that goal with an 8.15. And also they have committed to the three percent VSBE goal. The bid price was \$1.3 million, which is basically 27 percent lower than the engineer's estimate. And the apparent low bidder, McLean Contracting, the bid was rejected as non-responsive for failure to comply with the MBE subcontracting participation goals as required in the IFB. And we issued a

procurement officer's determination to that effect and denied their, denied their, rejected their bid.

LIEUTENANT GOVERNOR BROWN: So this is part of a, so this is demolition work?

MR. LOCKETT: Yes.

LIEUTENANT GOVERNOR BROWN: This is part of a larger project to replace a platform?

MR. LOCKETT: Well that, we're not going to replace the platform. We're going to remove that platform and it will allow space for additional, you know, cargo shipping in.

LIEUTENANT GOVERNOR BROWN: Okay --

MR. LOCKETT: Because there's also a crane there that is going to be removed that is on the Agenda also. But --

LIEUTENANT GOVERNOR BROWN: So is this more a matter of accommodating increased volume? Or is it just removing a no longer functioning and necessary facility?

MR. LOCKETT: It's to accommodate the more space, more room.

LIEUTENANT GOVERNOR BROWN: Okay. Infrastructure investments to support a growing economy?

MR. LOCKETT: Yes.

LIEUTENANT GOVERNOR BROWN: Okay.

COMPTROLLER FRANCHOT: Governor, if I could?

LIEUTENANT GOVERNOR BROWN: Mr. Comptroller?

COMPTROLLER FRANCHOT: I applaud the Governor for bringing attention to this issue. Because I look forward in the years to come to having a lot more attention paid to the procurement contracts that are brought before us. I don't really understand the explanation as to why the winning bidder, the low bidder, was disqualified. It strikes me as perhaps way too fine a point, particularly because they were, what, \$300,000 less expensive than the contract we are about to vote on?

MR. LOCKETT: Well the reason they were, the bid was rejected, is because they, you know, failed to meet, to effectively meet that goal --

COMPTROLLER FRANCHOT: What was the goal?

MR. LOCKETT: The goal was eight percent?

COMPTROLLER FRANCHOT: And what did they come up with?

MR. LOCKETT: 7.21 when you factor in one of the items, one of the subcontracting items that they used, one of the subcontractors they used is a supplier. And you have to apply a rule when you are dealing with suppliers.

COMPTROLLER FRANCHOT: Oh. So you guys came in, they applied and said we have eight percent, we have met the waiver. You then went in and said, oh no, you don't, you have 7.2 percent?

MR. LOCKETT: Yes.

TREASURER KOPP: And that was because --

MR. LOCKETT: One of the sub, the subcontractors that they used does not meet the definition of, they were a supplier and a wholesaler. So you had to apply a 60 percent reduction to that, to that goal, to that item.

COMPTROLLER FRANCHOT: Oh. Well, you can see why it strikes me as a bit of a technical point. Maybe meritorious, but the cost to the taxpayers for some pretty conventional work is \$300,000. I'm not going to make a big deal out of it but I applaud the Lieutenant Governor to even ask about it. Because trust me, there are opportunities for procurement to produce savings for the taxpayers. But we are going to have to have a different, I don't know whether we need reform in the statutes, as the Treasurer was alluding to. But there has got to be some kind of opportunity for greater taxpayer savings so that we have the money to invest for the jobs that the Lieutenant Governor mentioned. I mean, this is a, this is not software or high tech or something. This is demolition work. Is the company that got disqualified, are they a local company?

MR. LOCKETT: No, that company, well they are locally based, but the company is not from, not originally from Maryland based. It is not a Maryland based company, I don't believe. You mean the, the, oh the company --

COMPTROLLER FRANCHOT: The one that got disqualified?

MR. LOCKETT: -- yes, I'm sorry. I'm sorry. I'm sorry. That company is a local based company.

COMPTROLLER FRANCHOT: Yeah. And --

LIEUTENANT GOVERNOR BROWN: And can --

COMPTROLLER FRANCHOT: No, please. I just, I applaud what you're --

LIEUTENANT GOVERNOR BROWN: Does the procurement process provide an opportunity for that disqualified bidder to be able to kind of cure or address that MBE deficiency? I call it a deficiency, but the MBE issue and stay in the bid process? Or do we not offer that opportunity? Is there flexibility where you can make good on an MBE or any -- we'll stick with MBE right now. MBE requirement when your initial bid doesn't meet the test?

MR. LOCKETT: Well the way we, the IFB documents or that particular form is set up it's very, it's very, it's a, it's kind of restrictive and it required that they complete this information, you know, exactly, exact.

LIEUTENANT GOVERNOR BROWN: Mm-hmm.



MR. LOCKETT: And it's a decision, you know, internally that we work through to see if we warrant applying it. And we do apply it consistently.

LIEUTENANT GOVERNOR BROWN: Right. So you, and that's, I think you ought to do that. So you applied it consistently, determined that one of their subs was not an MBE eligible, they fell below the eight. Do you have the discretion, the flexibility to go back to that bidder and say, "Look we see that you fall below the eight percent because of this particular issue. You have an opportunity to correct that if you want to continue to be considered for this bid." Do you have that flexibility to do that? Not --

MR. TALIAFERRO: Maybe I can help, Lieutenant Governor.

LIEUTENANT GOVERNOR BROWN: Sure. Just identify yourself.

MR. TALIAFERRO: I'm Peter Taliaferro, I'm an Assistant Attorney General with the Maryland Port Administration.

LIEUTENANT GOVERNOR BROWN: Mm-hmm.

MR. TALIAFERRO: And the thrust of your --

LIEUTENANT GOVERNOR BROWN: Let's have you step up to the podium here --

MR. TALIAFERRO: Certainly. The thrust of your inquiry is what flexibility exists in where you have a firm MBE participation standard.

LIEUTENANT GOVERNOR BROWN: Yes.

MR. TALIAFERRO: And there are two criteria that any contractor can avail itself of. One is to request a waiver, demonstrate that it is not able to find sufficient MBE participation. Or two, if a subcontractor is ineligible the subcontractor can request an opportunity to modify its MBE participation schedule. So those are the two flexibility standards that are built into the procurement code.

LIEUTENANT GOVERNOR BROWN: So the answer then really would be yes on this. There was flexibility --

MR. TALIAFERRO: Yes, that's exactly right.

LIEUTENANT GOVERNOR BROWN: Right. Is this a time sensitive procurement?

MR. LOCKETT: No --

TREASURER KOPP: But what was the flexibility in this particular case?

MR. TALIAFERRO: The flexibility standard is when, there are two principles --

TREASURER KOPP: No, I heard what you said. But in this particular case I thought that the 60 percent rule was because the company actually was a wholesaler and not a labor provider.

MR. TALIAFERRO: Yes, the percent --

TREASURER KOPP: Can they, they can't change that.

MR. LOCKETT: No, they can't change that.

TREASURER KOPP: And that's a question, not, it sounded like a statement. That was a, they can't change --

MR. LOCKETT: No, they --

TREASURER KOPP: -- from being a wholesaler to a --

MR. LOCKETT: Right.

TREASURER KOPP: So it would be a question of a waiver, would it?

MR. TALIAFERRO: We, that's up to the bidder. Excuse me. It wasn't a, no waiver was requested.

TREASURER KOPP: Right.

MR. TALIAFERRO: And the contractor did not request an opportunity to substitute an alternate contractor. It availed itself of neither of the flexibility standards.

TREASURER KOPP: Well but --

LIEUTENANT GOVERNOR BROWN: And is the contractor, the bidder presumed to know the two options?

MR. TALIAFERRO: Well --

LIEUTENANT GOVERNOR BROWN: Would you, would we reach out to them and say, hey, just as a reminder you are, you know, you've got these two options here. Do you want to exercise?

MR. LOCKETT: Yes, it's stated in the documents that are sent out with the solicitation and all bidders are, you know, apprised of this, you know, through reviewing the bid documents upon advertising and at a pre-bid conference. So, one of the head documents in the MBE forms that we use offers that. You can check off that you are going to meet the goal or you can request a waiver, and then it goes into a different --

LIEUTENANT GOVERNOR BROWN: That's different, though. I mean, I know, I know I'm harping on this, that's different. That's up front, waiver or are you going to meet the goal? The question is, you think you are meeting the goal, you submit your bid only to find out that it was defective on the MBE component. And the question is, and I think the answer from a legal standpoint is, there is flexibility in the system where we could reach out to that bidder and say your bid was disqualified because you actually didn't meet what you thought you met, the MBE requirement. We're going to give you an opportunity to substitute whatever it is you need to substitute to meet the MBE and to be responsive to the RFP. Right?

MR. TALIAFERRO: It's possible to do that, yes.

LIEUTENANT GOVERNOR BROWN: It's possible to do that.

MR. LOCKETT: Yes.

LIEUTENANT GOVERNOR BROWN: Okay. So then I think the point, I think the point that, I mean, kind of jointly we're making here is we've got to be able to pursue overlapping goals in our procurement process. We need to pursue, nobody is suggesting that they should come in for a waiver. But we need to be able to pursue the MBE goals vigorously, but also, assuming that the bidder is, you know, meets all the other criteria, to get the best price for the taxpayers. And I think that is the point that the Comptroller is making, the point that I'm making. You've got the flexibility to do it and now maybe I understand in this case, maybe the bidder would have said, no, we don't, we don't want any of those options. We're not going to ask for a waiver and we can't, there's no changes that we can make where we can satisfy. I understand that, that that may be the case. So the point I think that is being made just more generally is as we approach procurements let's achieve multiple goals simultaneously. MBE, cost, quality.

MR. LOCKETT: Okay.

LIEUTENANT GOVERNOR BROWN: Mr. Comptroller?

COMPTROLLER FRANCHOT: Yes. No, I applaud once again your bringing this issue up. Because I think you hit the nail right on the head.

And believe me, do I feel like I have been somewhat on a desert a little bit, and here is somebody who is coming along with a big bucket of water to say, you know what? We really need to look at this.

I mean, my understanding from this stuff in front of me is that the company thought that it had complied with the MBE classification and then because of the 60 percent rule, which I have never heard of, and the wholesaler versus the direct employer, which I have never heard of but which apparently is in statute, they fell eight-tenths of one percent below. And they were disqualified. I would be pretty frustrated if I were a Maryland company and that was, nobody came to me and said you have a chance to cure this if you, you know, take care of this 60 percent rule. And, and so I'm very pleased the Lieutenant Governor brought it up. I'm happy to defer this and have somebody go back and take a look at it if you want. I understand the company, the Maryland company, protested this?

MR. LOCKETT: Yes.

LIEUTENANT GOVERNOR BROWN: That was the one that was disqualified?

MR. LOCKETT: Yes, they did.

LIEUTENANT GOVERNOR BROWN: Mm-hmm. So just, can someone tell us what our options here, what are the Board's options?

TREASURER KOPP: Can we just hear, I would like to hear from the Secretary --

LIEUTENANT GOVERNOR BROWN: Yes. I mean we, I asked someone to speak to the item. If the Secretary or the Special Secretary need to speak to it, that's perfectly fine.

TREASURER KOPP: No, I meant --

MS. WICKHAM-HURLEY: On the MBE policy issue? Yes. Good morning. GOMA, we actually worked with MPA to review this closely over the last week. And we did based on the facts remind the agency that there was flexibility and they, that there was some discretion here that was put in place by what we now call the 72-hour rule that counsel spoke about that addresses an issue where a contractor may include a subcontractor that is ineligible to do a portion of the work. And while a key determining factor that the Port relied upon was the 60 percent rule, there is some indication that the 72-hour rule may have given them some discretion to allow the contractor to cure. And so what we did was we reminded the agency of this discretion.

The law does give the contractor the right, and maybe even the obligation, to raise this issue. But in practice agencies often will let a contractor know that they have an issue with the eligibility of a firm and give them the 72

hours to cure it. And so we had advised them moving forward that under similar circumstances they should definitely consider the 72-hour rule

TREASURER KOPP: So I guess maybe this is a question for the, for our advisor, or for the PAC. Is there a way to just more automatically as a matter of course have people have this notice before they go in so they know?

MS. CHILDS: As a matter of fact Secretary Hurley chaired a, the MBE Policy Work Group yesterday. And we discussed just these very issues.

TREASURER KOPP: Mm-hmm.

MS. CHILDS: Discussing ways to keep bids in rather than looking for ways to throw them out, which is exactly what the Lieutenant Governor is advocating. And I think we have come up with some concrete remedies to make sure that in the future situations like this are clarified for our procurement officers. Because they are looking at a million different issues when they are looking at these complex procurements and we want to make sure that they have a clear handle on these MBE issues and that we are able to keep these types of bids in in similar circumstances.

MS. WICKHAM-HURLEY: And I will add that we are working closely with the Attorney General's Office to develop Statewide guidance to address both this so that they know best practice. Even though the law may not require them to give this notice to the contractor, that they should give this notice



to the contractor. This guidance will also address other issues that have come up with regard to waivers and checking the wrong box, and what, things I think that most reasonable people would call maybe a technical issue rather than a true intent to meet the goal that is stated in the contract. So we are going to be working with the Attorney General's Office to put that out as quickly as possible.

MR. SMITH: I just have a question of my own people, actually.

(Laughter.)

MR. SMITH: Is that, is that really an issue in this case, that the bidder did not know that they could request to substitute the contractor that they included in their bid with another contractor? Did they indicate that they, is there any indication they didn't know that they could do that?

MR. TALIAFERRO: Mr. Secretary, this is a very sophisticated bidder for this contract that was well represented by sophisticated procurement counsel. And the choice upon receiving a notice that the bid was rejected was to seek reconsideration of the status of the subcontractor as a supplier versus being a service provider. And in this case, going back to the Lieutenant Governor's question, did the bidder know about this? In this instance and this degree of sophistication being present, it is safe to presume that this bidder knew the availability of the 72-hour rule. And the focus was not to say I want to get a substitute subcontractor. The bidder's focus was to say please reconsider whether

this fuel provider is a supplier versus a service provider. That was the option that that entity took in this instance. In other instances the kind of flexibility that we have heard about here is a, shows you a good path forward.

MR. SMITH: All right.

LIEUTENANT GOVERNOR BROWN: It sort of reminds me of, we're on the baseball theme, the new rule of catchers not giving a lane for the runner coming home. And depending on the nature of your challenge, whether or not you actually tagged the runner before they came home or whether you blocked their lane could dictate the outcome of the appeal. Listen, I mean I support this item. It comes under the engineer's estimate. Based on the representation that I just heard that a sophisticated bidder knew of their options, exercised for reconsideration of the determination as opposed to a substitution, I'm satisfied.

I think that this discussion, and it sounds like you have had discussions about this and what the issues that it represents, I think this has been a good discussion. And, because remember, the, and the, we need, we need all procurement personnel to understand and appreciate that there are several goals that we are trying to achieve simultaneously. And we want to drive that MBE participation, okay. We want to get the best value, the lowest cost and best value, emphasis on value, for the taxpayers. We can do both of them simultaneously and

this is, this is a type of example where it can be done. But again, I'm satisfied that this was handled well.

MR. LOCKETT: Okay.

MR. TALIAFERRO: Thank you.

MR. LOCKETT: Thank you.

COMPTROLLER FRANCHOT: Could I just, because I'm not particularly satisfied. And I remember seeing our great catcher, Caleb Joseph, in a mild way as he tagged out the Toronto Blue Jay Reyes individual, I guess his name was, at the plate. I thought that was a great play, new rule or no new rule. And the next inning our player, I forget who -- oh, it was Caleb Joseph, came up, the catcher. And that Toronto Blue Jays pitcher threw a fast ball right at his head and almost, you know, could have killed him. And I wouldn't have blamed the Os for storming on the field and having a riot. And I wouldn't be so cavalier about this sophisticated, the sophistication of this Maryland company. Nobody likes to lose a bid, particularly when it's \$300,000 under this area. So I'm, I'm going to vote against this. Because my question is, what about the \$300,000? If this were your money, would you really stand up before us and say, hey, we're going to like, we're going to go ahead and award this even though it's \$300,000 more than what we need to pay for it. Really?

LIEUTENANT GOVERNOR BROWN: I don't think they have discretion on this one. Because the fifth bidder wasn't eligible.

COMPTROLLER FRANCHOT: Okay, so then we have the discretion. I'm going to vote no on the thing. I don't, I think it, I can't imagine there is any time sensitivity to this. You can go out and rebid it again.

LIEUTENANT GOVERNOR BROWN: Let me ask you this. Is the, is the, did the award go to the second lowest bidder?

MR. LOCKETT: Yes.

LIEUTENANT GOVERNOR BROWN: See, because keep in mind now, I mean, if we don't approve it and it goes back out, you are not going to get that disqualified bidder to come back in. Because they have already, they have already said, according to counsel, that we are not trying to meet the goal, we are trying to convince you that, that this subcontractor is eligible. But they have made a determination that they are not eligible. So they would not be coming back --

COMPTROLLER FRANCHOT: I can see that, and I listened very carefully to the comment. But that is a hearsay conclusion. I mean, you think that is what, based on their sophistication, that is what they were intending. But maybe they weren't. And maybe it was, you know, maybe their counsel wasn't as up to date on the 72-hour rule as everybody thinks. I don't know. All I know is

\$300,000 is a lot of money. Mary Pat Clarke, I mentioned her, up at Waverly Elementary? She said the key thing to that elementary school, it's not even the new school, or the new teachers, or the uniforms, or the kids, or the involvement of the community. It's the after school daycare that is provided by the school. She said this is revolutionary in our communities, to have after school daycare that is subsidized. And she said we couldn't have it without the State of Maryland. You guys have subsidized this daycare at Waverly, and the one at some other school that was right next door. She said we fight for that thing. Every year they try to cut it out, but thank God for the State of Maryland because they provide the \$170,000 a year that we need to keep those daycare, school-based daycare open. Here we're talking \$300,000. I don't know. I think you ought to go and rebid this thing and save the taxpayers some money. And that is the way to send a message to the agencies that we really take it seriously that they have a balanced approach to procurement. I don't want to put you in a tough spot, Governor. Because --

LIEUTENANT GOVERNOR BROWN: Well look, I'm not in a tough spot. I, look, what I want is I want bidders to come in and meet the MBE goals. I want the bidders to come in and meet the MBE goal of eight percent with a \$900,000 bid, which is \$300,000 less than what we are awarding it to. That is what I would have wanted. This bidder, whether they are sophisticated or not,

they knew that they didn't meet it. I wanted them to come in and say, you know what? We're not going to argue that we meet it. We're going to exercise the option, we're going to find the MBE subcontractor, we're going to meet the MBE goals, we're going to give you the lowest cost, the best value, so we can take the \$300,000 and support after school programs. That's what I want. But I'm not going to get into a position where I'm making choices between after school programs and MBE participation. We're going to do all of that in Maryland.

Now in order for that to happen we've got to be aggressive and make sure that we are confident that in cases like this that we are aggressively reaching out to those bidders and saying, okay now, are you sure now? Okay? Whether you are sophisticated or not, okay, you've got some options here. We have already interpreted that it doesn't meet the definition. But you can substitute. Do you want to do that? Yes or no? Do you want to try that? Yes or no? And I understand what you did, and I got that. That's why I'm satisfied with where we are. It's \$500,000 below the engineer's estimate. It's not the lowest, but it meets the MBE goal which the Legislature wants, the people of Maryland want, what this Board has done a really good job. You guys have done a really good job here in the Board in helping to drive those MBE numbers up. And I think this conversation is important. But I don't, I just don't think that we need to reject this in order to make that point any further. Madam Treasurer?

Okay, let's take that one out, right? What do we have, we don't have to motion to take it out? We can just separate it?

SECRETARY MCDONALD: No, you can just take a motion on Item 1, the Treasurer if she wants to approve she --

TREASURER KOPP: Move favorable.

SECRETARY MCDONALD: Move to approve Item 1 --

LIEUTENANT GOVERNOR BROWN: I don't even know what the motion is. What's the motion?

SECRETARY MCDONALD: Oh.

TREASURER KOPP: What she is saying is just take a vote on this one, if that's what you want.

LIEUTENANT GOVERNOR BROWN: All right. So you don't have to, you don't have to --

SECRETARY MCDONALD: No, no.

LIEUTENANT GOVERNOR BROWN: Okay.

SECRETARY MCDONALD: She can just make a motion to approve Item 1 and if somebody seconds it --

LIEUTENANT GOVERNOR BROWN: Okay. So the Treasurer is moving to approve Item 1, seconded by the Lieutenant Governor. All those in favor say, "Aye." Aye.

TREASURER KOPP: Aye.

LIEUTENANT GOVERNOR BROWN: Opposed?

COMPTROLLER FRANCHOT: No.

LIEUTENANT GOVERNOR BROWN: Okay, that item is approved. Any more conversation or discussion or questions on the remainder of MDOT's Agenda?

COMPTROLLER FRANCHOT: I have a, Item 9, please.

LIEUTENANT GOVERNOR BROWN: By the way, do not throw any fast balls at anybody's head.

(Laughter.)

LIEUTENANT GOVERNOR BROWN: Item 9?

MR. SMITH: Mr. Comptroller, I will try to handle at least initially your concerns. And if I can't handle the whole game, I'll turn it over to Wayne Pennell or someone from MAA.

I had anticipated that there would be concern about having a one bid response to the RFP. So I had staff go back and look at what was the response in the last RFP prior to this one. And there were actually three bidders that bid on the RFP that preceded the one that we are here this morning for. And of those the, one of those bidders is the current provider of airside snow removal and chose not to bid on this one because they were having all their resources



committed to the bid that they had won with regard to airside. The other bidder in the prior bid elected not to bid because they felt that the requirements were too resource intensive and they couldn't meet those requirements.

With respect to the one bid that we did receive, it is six percent less than the prior bid that was awarded where we did have the competition of the three bidders. So that really is the explanation for why we had one bid, and also the explanation as to why we were fairly, we are confident that we have a reasonable bid price because it's less than the bid price of three years prior, and it is also, that bid price was, there was competition in connection with that bid. So there are at least the overview explanations. If you have more specific --

COMPTROLLER FRANCHOT: Sure. No, and I have nothing but praise for you and the way you run your agency. It is transparent. The bids are competitive for the most part. And you know that I'm a big fan of --

MR. SMITH: Sure.

COMPTROLLER FRANCHOT: -- your leadership and the Airport. So this, these questions, or the question I have about this contract frankly is a little bit unusual for me because I have a lot of respect for what your agency is able to demonstrate on behalf of the public.

But this is for snow removal services. It's a three-year contract. It's \$20.9 million, three years with one two-year option. I don't have any

problem with the company that won it. It's the fact that you mentioned, that there was just one bid.

MR. SMITH: Right.

COMPTROLLER FRANCHOT: And apparently your agency or the Airport went to 250 potential bidders, including 64 small business enterprises and 34 minority business enterprises. So despite these efforts, only one bid. And so that is, caught my eye. Because this is a bad economy we're in, it's a lethargic economy. And I understand that snow removal is a, probably more sophisticated than I think of. But the fact that 251 businesses were approached on this and they were too darn busy to compete for a \$21 million State contract?

MR. SMITH: Well don't forget the requirements for the snow removal itself, they have to do it quickly, and they have to do it thoroughly, and it does require a lot of equipment. So if they --

COMPTROLLER FRANCHOT: And it ties up heavy equipment that can't --

MR. SMITH: Exactly. Exactly.

COMPTROLLER FRANCHOT: I understand that. I think that's right. But --

MR. SMITH: I think that's part of the explanation as to why, even though we reached out to 251 potentials, that we did not get as much response as we had hoped we would get. Because --

COMPTROLLER FRANCHOT: And my, I appreciate the response that it is lower than the previous contract, but that's the same argument that I was given on Pearson with the Common Core contract. That was a \$57.9 million contract and I was told to, in effect, you know, be quiet because even though there was only one bid, and there were allegations that that was basically tailored for the winner, it was 25 percent lower than the previous contract. But my question there is, how do we know? Because there is, there is no back and forth between two folks. So I would give the benefit of the doubt to you, Mr. Secretary. I am happy to vote for a three-year contract. But that two-year option I think is, I would, I think you should --

MR. SMITH: Well we --

COMPTROLLER FRANCHOT: -- I would recommend that you toss that in and just take a three-year contract. Because --

MR. SMITH: Well all you are really voting on today really is the three years. Because if we try to exercise the two years, we have to come back to you anyway. But we will be doing our evaluation. And, if in fact, we believe that if we rebid it that we would get a better deal, or if the contractor doesn't live up to

the standard that we have to have in order to keep the Airport going, or whatever. If you all, if the Board wants to condition approval on that we don't exercise that option, that is all, it is still all things that you are in control of, whether you condition it or whether you just warn us that we are going to have to have a really good deal if in fact we're going to come back to exercise the option. That is certainly up to you. But I do think that the one safeguard that you have, Mr. Comptroller, I believe is the fact that it was only three years ago it was competitively bid and it was, they were the low bidders then in a competition, and that now it's still lower than that bid. So I think we're, we can have some confidence that at least for the three years we're getting a good deal.

COMPTROLLER FRANCHOT: Well I would just reiterate I'm --

MR. SMITH: Right.

COMPTROLLER FRANCHOT: -- I will vote for a three-year contract. I'm not voting for a two-year option.

MR. SMITH: Okay. Sure.

COMPTROLLER FRANCHOT: I don't know whether we have the authority to separate it like that.

SECRETARY MCDONALD: Secretary Smith is absolutely correct. You are actually only voting on the three-year contract. The information is provided on the item that there is an option, but the Department of

Transportation is not authorized to exercise that option until they would come back to you.

COMPTROLLER FRANCHOT: Well --

SECRETARY MCDONALD: So this is a vote on the three-year contract.

COMPTROLLER FRANCHOT: And just in response, Mr. Secretary, the Governor, Governor O'Malley, when we voted on this Common Core contract made the observation sometimes when a company doesn't respond to a bid, that is a form of competition even if you only end up with one bidder. It takes two people to compete.

MR. SMITH: Right. I agree.

COMPTROLLER FRANCHOT: I mean, the Ravens, if they show up on the field and the other team isn't there, that's hardly a victory, I guess. I don't know. Maybe it's a default.

MR. SMITH: I will take it, though. I will take it --

COMPTROLLER FRANCHOT: You will take it, yes.

(Laughter.)

COMPTROLLER FRANCHOT: Yes. But you know what I'm talking about. How do we know? I mean maybe competition would save us 12 percent.

MR. SMITH: And that will be six years down the road, too. From the, from the competitive bid. So your point is well made.

COMPTROLLER FRANCHOT: Okay. Well --

TREASURER KOPP: Just one very brief question, actually. Did you look at reconfiguring? If the problem is they have to have too much equipment and be there and under bid significantly the present contract in order to underbid this firm --

MR. SMITH: Mm-hmm.

TREASURER KOPP: -- did you look at reconfiguring any of that? Is that at all practical?

MR. SMITH: I don't think so but I don't really, I'll have to call on Wayne Pennell for that. Because that's a little beyond my --

LIEUTENANT GOVERNOR BROWN: Are you talking about reconfiguring the requirements of the contract?

TREASURER KOPP: Yes.

MR. SMITH: I know that the contract is, has serious requirements because we have to get the Airport open --

TREASURER KOPP: Right. And I have no question about it. It's important to the economy and to safety --

MR. SMITH: Right, exactly --

TREASURER KOPP: -- and to everything else. But like I don't know, having, breaking it into two? Or I don't know what --

MR. PENNELL: Good morning. Wayne Pennell, I'm the Chief Operating Officer for the Aviation Administration. Mr. Governor, Madam Treasurer, Mr. Comptroller. Yes, we have looked at the equipment.

TREASURER KOPP: Okay.

MR. PENNELL: To give you an example, a call up one, which would be just over two inches of snow, if they are forecasting it, the equipment that's required is approximately 80 pieces. We're asking the contractors who would bid to have nine pieces of equipment staged at the airfield. It's eight single axle dump trucks with blades and spreaders on the back for chemical, sand, and salt application, and one double axel, tandem axle dump truck. So it's not a significant amount of equipment that we have asked them to store at the Airport. However, I do recognize that's nine pieces. In the prior contract we didn't have that requirement but operationally we have required them to do that and the contractor has done it.

Of the 251, sir, that, of those solicitations that went out through eMaryland Marketplace, we cannot say that all 251 of those companies would have had the qualifications to do this job. They were just in that code, so they are there. There may have been five companies who have the capabilities to handle a

complex the size of BWI with the immediate response. But the equipment that we are looking at, is literally, it's nine pieces of equipment, nine dump trucks.

COMPTROLLER FRANCHOT: Yeah, that's --

MR. PENNELL: And we --

COMPTROLLER FRANCHOT: -- that's terrific. I understand that completely, and I see what the Secretary says. But that even raises more concerns for me. Because one of the problems with these procurements, this is one of 17,000 I think that have come before the Board in my eight years, is the lingering concern that the RFP in fact is, and I'm not saying that's the case here, but it can be adjusted to benefit the incumbent. And I, to the extent you go out and compete and you say in this contract there are nine major pieces, and God knows that the specifications were, but you see what I'm talking about. There is the opportunity for a bias to creep in for the incumbent, or for some other company. And the RFP then ends up with a single bidder and we are sitting here saying you've got to vote for it because the snow is on its way. I don't know. I'm not happy with this situation. So --

MR. PENNELL: I understand --

COMPTROLLER FRANCHOT: -- hey, it looks like I'm in the minority. But --



LIEUTENANT GOVERNOR BROWN: No, I still have some questions. I'm not, I haven't reached a conclusion one way or the other. My question is you said, how many years ago was the current contract bid?

MR. SMITH: -- three.

LIEUTENANT GOVERNOR BROWN: Three?

MR. SMITH: Three.

MR. PENNELL: Three to five years.

LIEUTENANT GOVERNOR BROWN: Three to five years ago, was there in that RFP a requirement for pre-staging equipment?

MR. PENNELL: No, there was not. However --

LIEUTENANT GOVERNOR BROWN: Then what has changed in the last four or five years? Is it the experience, the weather experience? I mean, what has changed --

MR. PENNELL: It is a combination, sir, of all of the operation. What we found since the last contract was bid was that we needed the equipment on site because there are times, and you know I don't want to just go back to the storms of 2010, but there are times when the equipment cannot get to the facility on time. That is why we have requested that, you know, operationally --

LIEUTENANT GOVERNOR BROWN: Okay. So now there are times, and that is sort of definitely, hypothetically, probably indisputable. Have

there been in experience, though, under the current contract in the last three to five years where we have been at risk of not keeping the Airport open or not opening it, you know, has it impacted operations under the current contract? Is that, are you looking at real sort of data that says, hey, we need to make a change in the requirements in this contract?

MR. PENNELL: I would have to go back and look at that, Mr. Governor. And I can do that. But I believe that yes, we have. We have had difficulty getting the equipment needed at the Airport to clear the roadways, in this case. We're not talking about airside. These are all the roadways and the parking lots. That we have had that situation. So for the past four years or so we have been requiring the existing contractor to stage that equipment there, and they have. And the existing contractors also, for the record, I know Mr. Secretary said that it was six percent below the last bid. They are also an SBR, they are a small business reserve. This contract.

LIEUTENANT GOVERNOR BROWN: They are. This one.  
This is --

MR. PENNELL: Yes, this company is.

LIEUTENANT GOVERNOR BROWN: -- an SBI, 25 percent  
MBE --

MR. PENNELL: Twenty-five percent, and they have met their MBE goals in the past and the plan that they gave us in the IFB will meet it again. I hope I have answered the questions.

COMPTROLLER FRANCHOT: No, my question is what about the taxpayers?

MR. PENNELL: In which way, sir?

COMPTROLLER FRANCHOT: In the way that we are voting on a \$20 million contract with no competition, one person, one bidder, has a great relationship with you guys because he is the incumbent, and there is no competition. So how do we know whether the taxpayers are getting a good deal here? We don't. And in my humble opinion, having been on the Board for eight years, the only way we are ever going to change that is to start saying go back and rebid it and get some competition. And if you have to change your RFP in order to do that, do it. But anyway, I'm, I appreciate the indulgence of the Lieutenant Governor and I described him as water on the desert, and I continue to think that. And I have great expectations that down the road we're going to see a lot more tightening up as far as what, not so much what we're, areas we're spending money, but what about the money? Does it deliver at a most efficient rate what people would normally expect of us? And in this instance I think most people would say snow removal? \$20 million? Three years with a two-year option? I

mean, I mentioned 17,000 contracts. I can't think of a single instance where an option in my eight years has ever been rejected. It's always presented as, you want the snow removed? Don't make us bid it. Let's just renew the option. And we, put in that situation, 100 percent of the time renew the option.

So this is an unfortunate, I guess, situation because I started this by saying, and I continue to have the utmost respect for the Secretary, and for the Airport, frankly for the Port also. I'm not upset with them. I'm upset with these situations. And I hope that that water, Lieutenant Governor, is sitting right in front of me. I just want to drink a little bit of it. And say gosh, guys, let's get some competition. Two people, we need it. And thank you very much.

LIEUTENANT GOVERNOR BROWN: Do you have anything?

TREASURER KOPP: No.

LIEUTENANT GOVERNOR BROWN: So, look, I accept the representations that you have reached out to contractors and they advised you that they have got a lot of work at BWI, that the requirements are pretty stringent. And quite frankly, they ought to be stringent. Because BWI Thurgood Marshall International Airport is an economic engine for the State of Maryland. And I've got to imagine, I didn't ask the question, but every hour that that runway is closed costs a lot of dollars and inconvenience to Maryland. So I think that it is certainly snow removal, we want to make sure we've got the best and the right quantity out

there. So I'm fine with that. The fact that you come in six percent lower than three or five years ago, with the additional requirement, actually speaks volumes to me. I don't know what the debate was three or five years ago at this Board about the dollar value at that point, but apparently the Board approved it. So it seemed to be reasonably at the time, that \$13 million, or whatever it was.

Now we are approving \$12.45 million today, not \$20 million, right? It's \$12.45 million. And we can approve it without the two-year option. The concern I have about the option is that we're all busy people and when you look at your stack of, your inbox, and you say, okay, I can't do everything today. This one has got an option, so, and this one doesn't. So let me work on the one that I'd better get teed up for the Board of Public Works because there's no option. The option one is sort of like, well, if I don't get to it at least they've got the option. And then I do share the Comptroller's concern that, you know, three years from now, you know, with, you know, climate change, which I do think is occurring and that, you know, we don't want to be in a situation where we've got to approve a contract because we have no other option and we've got snow on the way. I'm certainly willing to approve this without the two-year option.

TREASURER KOPP: Could I just, I, does that change the bid or the contract? Does that create any problem?

SECRETARY MCDONALD: Oh, it, all the Board does on these items sometimes is they list the option for information for you --

TREASURER KOPP: Right.

SECRETARY MCDONALD: -- so you know that it does have an option. But --

TREASURER KOPP: But I assume the bid was in response to a contract that incorporated an option?

SECRETARY MCDONALD: It was. And we can have, I mean, if you would like Mr. Greg Bedward, the counsel, to come up and explain it, he has looked into it. I think he feels appropriate with approving the contract without the option. But Mr. Bedward has looked at this. And yes, I think that the contract has to have the option remain in it, because that's how it was bid --

TREASURER KOPP: That, that was --

SECRETARY MCDONALD: But it's no --

TREASURER KOPP: We don't have to exercise it. I don't doubt that --

SECRETARY MCDONALD: -- exercise that.

TREASURER KOPP: -- and that we can say don't exercise it, come back to us.

MR. SMITH: Right.

TREASURER KOPP: But if we're talking about rewriting the contract, essentially --

SECRETARY MCDONALD: Right. I think that's what Mr. Bedward would advise, if you want --

MR. BEDWARD: Good morning. Greg Bedward, counsel to the Board. No, today the Board if it chooses to approve the contract, it would not be rewriting the contract at all. In practice it would be approving the three-year contract with the option. But in practice the agency would have to come back for the Board's approval to actually exercise the option. So under the current proposal the Board would not be amending the contract, making any changes at all to the contract.

TREASURER KOPP: No, I, I'm not sure I understand --

SECRETARY MCDONALD: But if you actually wanted them to excise the option --

TREASURER KOPP: Exactly.

SECRETARY MCDONALD: -- so that wasn't possible in there, I think that there --

MR. BEDWARD: Correct. If the Board's rule was to actually remove the option or the option from the contract --

TREASURER KOPP: Right.

MR. BEDWARD: -- that would be a change which is not within the Board's authority today. That would be, that would be up to the agency to go back --

TREASURER KOPP: We would have to reject this contract, go back --

MR. BEDWARD: Precisely. Precisely.

TREASURER KOPP: And renegotiate it.

LIEUTENANT GOVERNOR BROWN: When is the end of the current contract?

MR. PENNELL: The expiration on the current one I believe is the end of October, is that correct? End of October, sir.

LIEUTENANT GOVERNOR BROWN: Yes. So we are kind of where the Comptroller wants us not to be, and I agree, three years from now. You know? A month and a half away from the expiration of a contract and not having what the Board may think is not sufficient options or insufficient options.

MR. SMITH: Well I know that it's not the same as making, having us go back and rebid this as just a three-year straight contract. But there would be no question that we are going to note that we can't exercise the option, you don't want us to exercise the option, and that we won't exercise the option, and we'll rebid it in three years. I think postponing it is, could, depending upon



the weather. I mean, procurement takes, as you well know, takes a long time.  
And --

LIEUTENANT GOVERNOR BROWN: I have been, I've sat, I have presided over this Board on a number of occasions, have a great deal of confidence in the manner in which staff brings back to the Board sort of the record, the historical conversation around these actions that we take. My question is, if we approve this, what is in place to make sure that the agency remembers what we did so that a year out they are already going to bid and that the Board is reminded three years from today that when you approved this, this is what the concerns were raised, and the requests that were made of the Board?

MS. CHILDS: Yes, sir. If I might suggest, the Board can direct that the Airport bring back the option at least six months before it is to take effect. So in case the Board decides not to approve the exercise of the option there will be ample time to rebid.

SECRETARY MCDONALD: But we can definitely put this in our tickler system. We do --

LIEUTENANT GOVERNOR BROWN: Yes.

SECRETARY MCDONALD: -- have reminder systems that we will --

LIEUTENANT GOVERNOR BROWN: What is a reasonable amount of time to bring it back? How long does it take to solicit and --

MR. PENNELL: We can meet the six months, sir.

MR. SMITH: Six months. Six months.

LIEUTENANT GOVERNOR BROWN: Six months.

MR. PENNELL: To answer the Treasurer's question, I have talked to the contractor and they are not concerned about a price change without the option. So I think that answers the question you are asking about.

LIEUTENANT GOVERNOR BROWN: But we can't change --

MR. SMITH: No, they were asking a technical question.

LIEUTENANT GOVERNOR BROWN: Yes.

COMPTROLLER FRANCHOT: Yes, well here's the problem. Despite our best efforts, none of us may be here.

LIEUTENANT GOVERNOR BROWN: Well none of --

COMPTROLLER FRANCHOT: So, none of us, yeah, you guys may be here --

(Laughter.)

LIEUTENANT GOVERNOR BROWN: We've got some great civil servants that are going to continue to be working for the State of Maryland. But that's why I was asking the question about what is --

MR. SMITH: I'm glad I'm more optimistic than the Comptroller.

MR. PENNELL: My fifteen- or fourteen-year-old hopes I'm still here, sir.

LIEUTENANT GOVERNOR BROWN: Okay, I'm --

TREASURER KOPP: We may never see snow again, either.

LIEUTENANT GOVERNOR BROWN: So I'm going to make the motion to approve with the requirement that the department come back six months prior to exercising the option. Anybody second?

TREASURER KOPP: And with the understanding that the Board is not, does not plan to --

MR. SMITH: I understand.

LIEUTENANT GOVERNOR BROWN: Seconded by the Treasurer. All those in favor say, "Aye." Aye.

TREASURER KOPP: Aye.

LIEUTENANT GOVERNOR BROWN: Opposed?

LIEUTENANT GOVERNOR BROWN: One opposed. Any other -- thank you. So Item 9 is approved. Any other items for conversation, consideration?

COMPTROLLER FRANCHOT: Move approval.

LIEUTENANT GOVERNOR BROWN: The Comptroller moves approval for the remainder of the Agenda, MDOT Agenda, seconded by the Treasurer. All those in favor say, "Aye."

THE BOARD: Aye.

LIEUTENANT GOVERNOR BROWN: Any opposed?

(No response.)

LIEUTENANT GOVERNOR BROWN: Hearing none, thank you. Let's move on to Department of General Services. And I know that I think we still have Reverend Dr. A.C.D. Vaughn from Sharon Baptist here on Item 22, which is a grant to Miles Washington Family Support Center. Certainly welcome and, oh, and former Delegate Hank Heller who is here on Item 30, I believe. Is that right? Yes, yes, he's over here, to the far right here. Number 30, which is an acquisition by Cornerstone Montgomery, Inc. So let me ask if former Delegate Hank Heller, are you interested in appearing before the Board? No? Okay, well welcome.

TREASURER KOPP: -- just interested in our approving the project?

LIEUTENANT GOVERNOR BROWN: Thank you very much. And is Dr. Vaughn interested in presenting to the Board on Item 22, or anyone

else that would like to speak to the Miles Washington Family Support Center, you are welcome. Sir, good morning.

DR. VAUGHN: Good morning, happy to be here. And I have to say, a word just about the Miles Connor Center. It is a project of Sharon Baptist Church, of which I am Senior Pastor. And I am blessed now to have been serving as the Pastor for 57 years. And this is a thing that we are really doing for the community, a house that is right across the street from our present property. It has already been declared historical because Annie Williams Brown formerly lived there. I think she was born there. And of course she was the first Bess in *Porgy & Bess*. She died last year. And so her father was a Deacon at our Church in my boyhood. I'm blessed to pastor the Church that I grew up in. And so I know it quite well.

We got the property from the City with the hopes of developing a family support center and of course we are in the midst of renovating it now. And hopefully it will become an outreach center that will deal with drug and also deal with unwedded parents and try to bring them on an upscale basis in terms of living and becoming good citizens to the community. This is a desire of the Church and a desire of my heart that we would do it. We invested money in the project and ended up with a bad contractor who ran off but then the City, through then Mayor Kurt Schmoke and recently through the help of the State of Maryland,

you all gave us a grant of \$175,000. And we are in the process right now of waiting for the contractor to get the new drawings and they are ready to go to work. And hopefully we will see this come to fruition in a neighborhood where it is well needed. We see it as the Church's investment in itself when it invests in the neighborhood.

Our church is blessed because next year Sharon will celebrate 130 years of being in that neighborhood. In the 130 years, we have only had four Senior Pastors and I have been privileged to know all of them but one. And of course I always tease the congregation, I know something else too, I know who the next one will be who will be funeralized, it will be me. Because the rest of them have gone on. But all of them made noble contributions. Out of our church came Dr. Miles Washington Connor, who was the early developing President of Coppin State, now University. And the Church has been there. Again the second Pastor, Dr. Beal Elliott, served in the Probation Department of the City of Baltimore. He was an early Yale graduate. In fact, I have his picture when he graduated in the class of 1901 from Virginia Union. But we have always seen it as our responsibility to minister to the people that we serve. And we take pride in the fact if we can see this come to fruition that it will be a noble contribution to the neighborhood. That's what we're about.

LIEUTENANT GOVERNOR BROWN: Well that's one, thank you very much. You have been not only a spiritual but a ministerial leader to not only the congregation but the difference, the impact you have in the community in the City of Baltimore. So we appreciate this project and your role in this. And I know, and perhaps the Comptroller or the Treasurer want to add something, but I think all of us are pleased with the work that is being done here.

TREASURER KOPP: And our thanks.

DR. VAUGHN: Thank you.

COMPTROLLER FRANCHOT: Thank you.

LIEUTENANT GOVERNOR BROWN: Thank you.

DR. VAUGHN: Thank you.

MR. THOMAS: I'd like to present the items for DGS. We appreciate anyone that wants to come to the Board to speak before us. We would certainly acquiesce. And we thank Dr. Vaughn. Good morning, Lieutenant Governor, Madam Treasurer, and Mr. Comptroller. I'm Bart Thomas, Deputy Secretary for the department. The Secretary is out doing great service today again. The department has 37 items on our Agenda, including one supplemental.

We have multiple people here visiting today to see the Board in action. Dr. Vaughn, we appreciate him. The Delegate. We also have Lori Arguelles from the Watershed Study in Prince George's County. We have John

Spearman, Mark Arsenault, and Clive Savory here from Prince George's County Hospital System. Gwen Zecha from St. Luke's Home. Stewart Moss for The Writer's Center. Sterling Brunson and Edna Manns from the Board of Directors of the Fayette Street Outreach Organization. We would like to recognize that they took the time to come here today. With that, we would be happy to answer any questions you may have.

LIEUTENANT GOVERNOR BROWN: Right. And I will invite whoever on any of these items would like to briefly present to the Board, you are welcome to do so as well. Okay, seeing none, hearing none --

TREASURER KOPP: Could I just put in just a personal note?

LIEUTENANT GOVERNOR BROWN: Yes. Mm-hmm.

TREASURER KOPP: I'm not exactly sure what it was. It might have been 20 years ago or so when Delegate Franchot, I believe, cosponsored with us from Districts 16 and 18 The Writer's Center.

COMPTROLLER FRANCHOT: Yes.

TREASURER KOPP: First time, on Walsh Street. And it's good to see it going strong. And the other, the Alice Ferguson, the other wonderful institutions.

MR. THOMAS: Mm-hmm.

COMPTROLLER FRANCHOT: Governor, if I?



LIEUTENANT GOVERNOR BROWN: Go ahead.

COMPTROLLER FRANCHOT: It's a pleasure to have Delegate Hank Heller with us. He is responsible for more of the education policy in the State of Maryland. And other folks understand, well other folks take credit, Hank. But you did a lot of the work. And I am particularly grateful to you for what you have done for the State of Maryland.

I would like to take just a moment and salute DGS, the Secretary I'm a huge fan of, and delighted the Deputy Secretary Bart Thomas is here. But you will recall several years ago, several months ago we authorized the sale of the Historic Post Office Building on Church Circle, and then we agreed to lease back and help the U.S. Postal Service stay there while we are the owners. And so ultimately I think the Postal Service is going to move on and we are going to use that building for the State's purposes. And it is just about one of the most beautiful visible buildings, with remarkable design characteristics. It's from a bygone era. God bless our new buildings, but they are not anything as historic and beautiful and meaningful as far as the aesthetics. And I think it plays a big role, frankly, in Annapolis. And it has been down on its luck a little bit with the Post Office, I guess, because of their, maybe their budget problems. But it has been looking a little rough around the edges, frankly. And that is probably deferred maintenance, or indifference, I'm not sure. But I was pleasantly

surprised, Madam Treasurer, when walking by it the other day to see it looking so great. I mean, it is amazing what painting a flag pole will do, putting a little bit of landscaping in, painting the, putting a fresh coat of paint on the windowsills. And I guess they did a power washing. But I would like to thank Mr. Thomas and Secretary Collins for doing something which is very, very laudable. And we, I complain myself on this Board a lot, I guess, about different branches of government, and whether you have been doing the right thing, and you are delivering stuff that is efficient. You are.

MR. THOMAS: Thank you.

COMPTROLLER FRANCHOT: You are doing great service. And please continue the faithful restoration of the old Post Office. I think it sends a very positive message to --

MR. THOMAS: I will certainly tell the Secretary. It was under the Secretary's direction. He walks the city streets and he always reminds me you must look up. You can't keep looking down, look up. And he said as soon as we get title to that building, I want it freshened up. And he did, and we did. So we thank you for that.

COMPTROLLER FRANCHOT: Tell him not to forget the Treasury Building,

MR. THOMAS: Oh --

(Laughter.)

TREASURER KOPP: Well it looks like something is going to happen to those stairs --

MR. THOMAS: Yes.

TREASURER KOPP: -- which were otherwise crumbling. And we appreciate it very much. Particularly since we hold the insurance for --

(Laughter.)

MR. THOMAS: Understood. And you wear the high heels and I don't so --

(Laughter.)

MR. THOMAS: Thank you.

LIEUTENANT GOVERNOR BROWN: Great. Any other comments, questions, discussion on DGS's Agenda? Hearing none, the Comptroller moves approval, seconded by the Treasurer. All those in favor say, "Aye."

THE BOARD: Aye.

LIEUTENANT GOVERNOR BROWN: Any opposed? Hearing none, that Agenda item is approved. And that concludes our business for the day. Move to adjourn the September 17th meeting of the Board of Public Works.

(Whereupon, at 11:30 a.m., the meeting was concluded.).