

February 8, 2012

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BOARD OF PUBLIC WORKS
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HONORABLE NANCY KOPP, Treasurer;

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

ALVIN C. COLLINS, Deputy Secretary,
Department of General Services;

T. ELOISE FOSTER, Secretary, Department
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BEVERLEY SWAIM-STALEY, Secretary,
Department of Transportation;

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

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

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

MARION BOSCHERT, Recording Secretary, Board
of Public Works.

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P R O C E E D I N G S

GOVERNOR O'MALLEY: Welcome to February 8th, which is my oldest daughter's birthday.

TREASURER KOPP: Happy Birthday.

GOVERNOR O'MALLEY: And February 8th, and this is the Board of Public Works. We are delighted to be joined by Governor Harry Hughes, whose likeness has changed not one iota from that dashing figure that adorns this room. Madam Treasurer or Mr. Comptroller, any opening thoughts?

TREASURER KOPP: Actually, not this morning.

COMPTROLLER FRANCHOT: I completely agree with you. In fact, he looks younger than the portrait, so --

TREASURER KOPP: He always looked better than that picture, actually.

(Laughter)

COMPTROLLER FRANCHOT: Governor, I just want to mention that Pennsylvania has its Punxsutawney Phil that comes out. We in Western Maryland have Murray the Groundhog who has made his appearance and predicted six more weeks of winter. It may be a

little unsentimental but February means to me not Groundhog Day, or Presidents' Day, or even Valentine's Day, but a beginning of a very busy season collecting taxes for the Comptroller's Office. And now that we've gotten to that point in the year where Marylanders are preparing to pay their taxes I'd like to take just a minute of the Board's time this morning and highlight the way our office is operating more efficiently and more taxpayer friendly and more green.

When I took office I vowed to increase the number of Marylanders who file electronically. I was told that this was going to meet a lot of resistance. But I'm happy to report that we've made tremendous progress and 70 percent of all Marylanders now file electronically, which is almost double what it was five years ago. Why are they doing it? It's safer and more secure for the taxpayer, it saves the State almost two dollars per return. That's \$2.5 million that we save to support our priorities at a time when we're stretched thin. Over 26 million pages of paper are not wasted because of the electronic filing.

We've generated over \$1 million in savings and rebates through improved paperless payment programs.

My goal is to be virtually paperless by 2014, 100 percent paper free. Not at the expense of quality government service but in a more efficient way to achieve it. It's not about making draconian cuts on the services people rely upon. It's about reforming the way we spend public money to ensure we can afford the priorities we share.

In addition to electronic filing we encourage direct deposits of tax refunds and also pay our vendors by direct deposit, additional paperless ways we're doing business. And we're taking our effort to go green another step further. Rather than continuing to incur the expense of printing out an excessive number of tax booklets each year we've instituted a policy this year of printing out and mailing paper tax returns only to those households who filed by paper last year. And next year we're not even going to do that. We're going to ask all of those Marylanders to go online and print out, if they choose to file by paper which I hope they don't, but

if they choose to they can go online next year and print out the paper. This is a solution that will allow our office to reduce expenses and further our commitment to the environment. It will also save the State \$250,000. In addition, instead of printing our random numbers of copies to ship to public libraries any library can now request a CD-ROM of Maryland tax forms to print out when they get requests from their library visitors.

In any case these forms will be available for any Marylander who wants to go to the Comptroller's website and print them out. But as we continue our efforts to achieve taxpayer savings and improve the efficiency of our service delivery and become more sustainable, we remain ever dedicated to providing Maryland taxpayers with the highest level of customer service possible. Thank you, Governor.

GOVERNOR O'MALLEY: Thank you, Mr. Comptroller. All right, let's step right into the Agenda and let's begin with the item that Governor Hughes is here for. And that would be on which Agenda item?

SECRETARY MCDONALD: It's Item 17 on the Secretary's Agenda. But the Secretary of General Services, Al Collins, is going to introduce the item for us.

MR. COLLINS: May I introduce the item, Governor?

GOVERNOR O'MALLEY: Secretary Collins?

MR. COLLINS: Good morning, Governor, Madam Treasurer, Mr. Comptroller. I'm very pleased today to recommend to this Board that we rename the Jeffrey Building at 16 Francis Street, rename that building to the Fred L. Wineland Building. Mr. Wineland is here with us today with his family. And let me just note a few things about him, Governor. Item 17 obviously lays out how tremendous this public servant is and has been and all the great things he's done. Let me note that he is the former Secretary of State, having done that job for 11 years, the longest serving Secretary of State. I noticed also he is the two-term Chair of the National Association of State Secretaries of State. He was a member of the House and a member of the Senate. He is the longest serving member of the

Maryland Port Commission, which I also found very interesting in his past history. A World War II veteran, and was the Chair of the Vietnam Veterans Memorial Commission. And I could go on and on and on. But Mr. Wineland is an outstanding citizen and it's my pleasure to recommend that we rename that building to the Fred L. Wineland Building.

GOVERNOR O'MALLEY: Governor Hughes, do you want to speak to this item?

GOVERNOR HUGHES: Yes, please. Thank you, Governor. Fred Wineland has been a friend of mine for longer than I'd like to remember.

(Laughter)

GOVERNOR HUGHES: And I want to, Governor Glendening was hoping to be here this morning but I think he's on the West Coast doing something, I don't know what. But --

TREASURER KOPP: We do have a letter from Governor Glendening.

GOVERNOR HUGHES: Yes, you do. Which I was going to read, but I don't think I will. You've got it in the record and you've already heard most of what

is in the letter anyway. But I'm here to recommend very highly the naming of the Jeffrey Building, why it's named the Jeffrey Building I just learned this morning and I'm glad they're taking the name off.

(Laughter)

GOVERNOR HUGHES: Naming it after Fred Wineland. Fred and I served together in the General Assembly in the Maryland Senate for several years. Then he was Treasurer during, or Secretary of State, excuse me, during my eight years as Governor. Most of them, I think the last couple of years we had --

TREASURER KOPP: Although he did serve in the House of Delegates before the State Senate.

GOVERNOR HUGHES: He did serve in the House of Delegates before serving in the Senate. I didn't mean to ignore the House of Delegates.

TREASURER KOPP: Thank you.

(Laughter)

GOVERNOR HUGHES: Former Delegate Nancy Kopp. But it is my pleasure and honor to recommend the naming of the Jeffrey Building after Fred Wineland. It's very well deserved. And there's

someone else I think I should mention in addition to Governor Glendening who really started this is Mike Canning, who is sitting back here. Who had the good fortune to work for me for many years. He won't admit that, but it's true. And so with that, Governor, I don't think there's any point in taking any more time. But I think it might be nice to hear from Senator Wineland himself --

GOVERNOR O'MALLEY: I agree.

GOVERNOR HUGHES: -- and hear his family, introduce his family. Will this letter be in the record, please?

GOVERNOR O'MALLEY: Yes, sir. We have before us a letter from Governor Glendening dated February 7, 2012, in which he adds to Governor Hughes' eloquent testimony. And he urges that this building, "I greatly appreciate your support for the naming of the Office of the Secretary of State's building after Fred. I look forward to the dedication." So Mr. Secretary of State, Senator?

SENATOR WINELAND: Governor, thank you. Governor O'Malley, and my favorite Comptroller, as

well as my fellow member of the House of Delegates, Nancy Kopp. I was stunned when I got this news, a call from Governor Glendening. And I'm flying so high I had to bring my own oxygen.

(Laughter)

SENATOR WINELAND: And I hope Secretary Collins that you use a little oxygen at times yourself.

MR. COLLINS: Absolutely --

SENATOR WINELAND: Yes. Yeah. And I think somebody told you that I was a pilot for 4,000 hours. That's untrue, it's only 2,000. But I'm truly honored to have this building named after me, something I never thought about really. And I strongly suspect that my youngest son Kirk and Mike Canning, who's upheld by his wife or he probably couldn't get out of bed in the morning. I've known him forever. But I think this is a wonderful place and I stayed here for 20 years. And I can't say that I had a really bad day. And I don't want to take up any more of your time, but I'd like to introduce my family. Secretary Collins, I thought you suggested that.

MR. COLLINS: By all means, please.

SENATOR WINELAND: And I was away for so much that I sometimes forgot the names of my children. I now find that I have difficulty in remembering the names of my grandchildren. But let me start, as I did with my wife, and ask her how son number one, could son number one stand? My --

(Laughter)

SENATOR WINELAND: My son, David, David Wineland. A former, many, many years ago, employee of the State of Maryland. And his son sitting next to him, Jesse Wineland. And my number two son, William Wineland, and his wife and, and my granddaughter Jessica Wineland. Who I might say that when she was born she was so beautiful that I wrote a song about her and if I wasn't hoarse I'd sing it for you.

(Laughter)

SENATOR WINELAND: But I now get to my daughter Gail, who loved us dearly but went off to Denver and married and then went to get her masters degree down at Emory. And it was a difficult time for her. And I say this because my wife told me this, she

told my wife, after marriage, working in a pizza shop, and going to school that when she came home at night she'd put her head under the pillow, cried, and thought about the good old days. And she's had good days ever since then.

I have eight grandchildren. They are scattered all over the place, just the two are here today. I want again thank Governor Hughes. It was a privilege and an honor to serve under him and to work with Governor Glendening and work for him.

Governor, I thank you very much. And I'll sit down now and we'll slip away just as soon as this concludes.

GOVERNOR O'MALLEY: Well Mr. Secretary --

SENATOR WINELAND: Oh, I've forgotten my number three son!

(Laughter)

SENATOR WINELAND: Well I've done that before and my wife would say, "What about number three?" I'd say, "What's his name?" Where is Kirk?

(Laughter)

GOVERNOR O'MALLEY: Kirk, that means he loves you the best. Don't tell the others.

(Laughter)

GOVERNOR O'MALLEY: Well I have the, a proclamation that I will incorporate into a motion here. Fred Wineland served our State for more than 40 years in elected and appointed capacities with the highest degree of ethics and concern for our citizens' well being.

And whereas, Fred Wineland is Maryland's longest serving Secretary of State serving a total of 11 years from 1971 to 1982. As a veteran of World War II, where he served in the Pacific theater as a member of the United States Navy, Mr. Wineland was elected and served as a member of the House of Delegates from 1963 to 1965, and in the State Senate from 1965 to 1971.

And Mr. Wineland continued his commitment to America's veterans and our country by serving as Chair of the Vietnam Veterans Memorial Commission, the World War II Veterans Commission, and as a driving force in

the creation and operation of the Maryland Veterans Cemetery Program.

And Mr. Wineland served on the Maryland Port Commission longer than anyone else, knowing the incredible importance of the Port of Baltimore to the economic well being of our State. In that capacity he became an international ambassador for Maryland and contributed significantly to the creation of our modern and competitive facilities that generate such great returns for jobs and opportunities in Maryland.

Mr. Wineland's service as a lifelong member of the Allentown Road Volunteer Fire Department demonstrates his commitment to his local community and his passion and dedication on behalf of Maryland. He also served as a two-time Chairman of the National Association of Secretaries of State, and has received multiple awards on a local, State, and national level for his genuine leadership and invaluable public service to our State and nation.

Now therefore I, Martin O'Malley, Governor of the State of Maryland, do hereby move Item 17 on the Secretary's Agenda that will name the Jeffrey

Building, located at 16, 18, and 26 Francis Street in the City of Annapolis be known forevermore as the Fred L. Wineland Building.

Is there a second?

TREASURER KOPP: Second.

COMPTROLLER FRANCHOT: Second.

GOVERNOR O'MALLEY: Seconded simultaneously by the Secretary, I mean by the Comptroller and also the Treasurer. All in favor signal by saying, "Aye."

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed?

(No response.)

GOVERNOR O'MALLEY: It's unanimous, Fred.
Congratulations to you.

SENATOR WINELAND: Thank you, ladies and gentlemen.

GOVERNOR O'MALLEY: Thank you. Why don't you bring your family up here? We'll do a picture and let you guys go to lunch.

(Applause)

GOVERNOR O'MALLEY: And Governor Hughes, and I think you'll want to come around this, can somebody

clear a pathway here? How's it going? This is fun.
Are you going to make him take you to lunch? Good.
Good.

Fred, why don't you stand right in the
middle? Governor, come on up. Everybody squeeze in.
It will feel unnatural but it will look good. Make
sure --

(Laughter)

GOVERNOR O'MALLEY: -- Jay can see your
picture.

Congratulations to you.

SENATOR WINELAND: Thank you, Governor.

GOVERNOR O'MALLEY: Governor, thank you.
You've got a good friend in this guy. He never let
up. Hey, you're very welcome. Thank you. Beautiful
family.

All right, any other items on the
Secretary's Agenda?

COMPTROLLER FRANCHOT: I have a, I do have
an item.

GOVERNOR O'MALLEY: Comptroller?

COMPTROLLER FRANCHOT: Yes. I'd like to just call Item 16.

SECRETARY MCDONALD: Okay, Item 16. This is one of the 17 items that we have on the Agenda, with one emergency report. Item 16 is public school construction program, western region. Dr. David Lever is here for the public school construction program but I believe he has a representative with him from Western Maryland that could help answer your questions.

COMPTROLLER FRANCHOT: Okay.

SECRETARY MCDONALD: Did you want to introduce yourself and introduce your representatives, please?

DR. LEVER: Yes, good morning. We have with us today representatives Mr. Vince Montana, from Allegany County Public Schools; Mr. William Caine from Carroll County Public Schools; Mr. Al Eilbacher from Carroll County Public Schools. And if you have any questions we'd be glad to answer them.

COMPTROLLER FRANCHOT: Well actually I don't have any questions. But I really don't have any

problems with the priority projects that are being presented. I believe that all five of the school districts that are represented in this request have a well deserved reputation for sound fiscal management and a commitment to effective school maintenance, which I consider to be very important.

I was just out in Washington County earlier this week to visit Bester Elementary School in Hagerstown. In the last public school maintenance survey that was published in 2010 Washington County had eight schools surveyed at random, three of them achieved a superior rating. Not bad, when you compare it to some of the big counties that have 25 or 30 schools randomly inspected and end up, if they're lucky, with one superior rating. So congratulations to Washington County.

Allegany County had only three schools surveyed and two of them were ranked superior. I do find that many of our smaller, rural jurisdictions where there isn't that critical mass of taxable wealth and money has historically been very tight are especially tight with taxpayer dollars. They are

especially committed to taking care of what they already have. I admire and applaud it. I believe it should be rewarded, Dr. Lever, and I appreciate all your good efforts to underline the importance.

But seeing Garrett County's request come in front of us reminds me of another issue that I'd like to raise briefly. I've watched with considerable interest how the public school calendar has evolved in recent years. There was a time not that long ago when the school year wouldn't begin until after Labor Day. I'm sure there were some downsides that weren't apparent to folks like me. But I can tell you what it did mean to me to hold off school until that Tuesday or Wednesday after Labor Day. It meant that young families could enjoy those last few days of summer as a family, stay a few extra days down at the beach, out at Deep Creek Lake, take that last Labor Day vacation without having to work around the academic calendar. It meant that small businesses at the beach, up in the mountains, and throughout the State, which are still the heart and soul of the Maryland economy, could keep their seasonal help just a little while longer to help

get through the end of summer rush. It meant that businesses in summertime tourist destinations like Ocean City and Deep Creek Lake could enjoy an even more prosperous end of summer boom before their businesses begin to slow down for the fall and winter.

I'm not sure when all these things began to change or why, but I look at the calendar now and I see that all 24 of our school systems come back in the month of August. Some like Prince George's, Dorchester, Anne Arundel open nearly two weeks before Labor Day, which is prime time for a tourism oriented State like ours. I can only imagine the amount of money that's being lost in tourism destinations around our State. I can only imagine the burden that's placed on countless small business owners who have to scramble to cover the workload left behind by their seasonal staff. Most of all I can only imagine how irritating it would be for a lot of folks who would like to take that week long, end of summer vacation but can't because their kids are already back in school.

All of this is to say that I would really like to see the State of Maryland and its 24 school systems reexamine this trend towards early school openings. I understand our public school students under law are required to complete 180 school days each year. Pushing back the date that kids come back in the fall would obviously push back the date that kids get out in the summer. I also understand I might be risking votes of a lot of parents who by the end of August, frankly, are more than ready to send them back to school.

In all seriousness, I think this is something that requires another look. I would think there is enough flexibility in the academic calendar to accommodate a change of this nature without extending the academic calendar out too long. I would personally start by revisiting the length of the annual holiday break, but that's just me. And while there may be issues that I'm not aware of, and which I'm sure I'll hear about now, I really believe this would be a change for the better for young families and small businesses around our State. And I think

Norman Rockwell would appreciate it, the family value, and wonderful Labor Day, what Labor Day represented to all of us growing up, which was the end of summer and the start of school.

Dr. Lever, that has nothing to do with you.

(Laughter)

COMPTROLLER FRANCHOT: But I'm pleased that you came up and I'll revisit this down the road. But thank you for your service to our State, particularly on the school maintenance issue.

DR. LEVER: You're welcome. Thank you for your words.

GOVERNOR O'MALLEY: The Comptroller moves approval of Item 16, 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. Anything else on the balance of, thank you gentlemen, on the balance of the Secretary's Agenda?

TREASURER KOPP: I would point out, Governor, Item 6 is a notice of the bond sale that we have scheduled to be held the first week in March. As you know we first, the Board of Public Works has to pass a resolution establishing the bond sale. And then as we get closer to the date we can be absolutely certain looking at market conditions exactly what the size will be. But the amount of new money bonds right now in Item 6 is proposed to be \$600 million. And that's for two reasons. It's a little more than usual. This is issuance, not new authorization. But how when we go out to get the money to pay for what's already been authorized.

First of all, we are spending the money more quickly. We are building more quickly. And finishing building more quickly, so obviously creating jobs and stimulating the economy which is a very good thing. Over the last six months we've averaged over \$95 million a month, and all the proceeds therefore from the last sale have been spent. Mostly, I would say, on school and education buildings, but on the range of State responsibilities as well. The other reason for

doing it is that interest rates are at a historic low level so it makes more sense to issue bonds when you can essentially buy the money more cheaply and build more quickly.

We also are going to go ahead, as we have in the last few sales, and have a couple of days first of retail sale aimed specifically at individual Maryland investors, not the large institutions. There is more and more demand for that. As I mentioned at the last bond sale, we seem to see people recognizing a good deal and the flight to quality from even U.S. bonds to Maryland bonds was quite, quite obvious last time.

We propose to allocate \$150 million to the retail part of Series A. That would be March 2nd, which is a Friday, and perhaps going over to the 5th, a Monday, depending on how the market goes. And then the rest of it will be new money on the next Wednesday as it has been in the past, competitively sold in public. We invite everybody to come and watch the sale. We believe we will do extremely, extremely well.

The other thing is that because of low interest rates at the moment we are constantly combing our present portfolio to find opportunities to refund bonds at a lower interest rate and reduce debt. Last year we were able to net out a savings to the taxpayers of about \$11 million through refunding. We propose selling, in this resolution it says up to \$500 million because we really don't know until you see the market conditions very close to the time of sale exactly how much you can sell. But based on current market conditions we would save over \$30 million in future debt service costs going to the market with \$500 million. Whatever it is we will gain, I believe, several million dollars which will then go into the bond annuity fund to help pay the debt service on future debt sales and build the schools that we need.

That's Item 6, Governor. And I would, I would propose that the Board today endorse the sale and I will be back to you with more information at the next meeting.

GOVERNOR O'MALLEY: Will do. So the Treasurer moves approval of Item 6, seconded by the Comptroller. All in favor signal by saying, "Aye."

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed?

(No response.)

GOVERNOR O'MALLEY: The ayes have it. We now, is there anything else in the balance of the Secretary's Agenda? Hearing none, the Comptroller moves approval of the balance of the Secretary's Agenda, 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 now move on, I know we have an item on, that was deferred from last time on Department of Budget and Management Agenda.

SECRETARY MCDONALD: -- Open Space?

GOVERNOR O'MALLEY: I'm sorry, we go to Open Space? All right. I'm getting ahead of ourselves. We go to Open Space, my favorite part of the Agenda.

MS. WARD: Good morning, Governor, Madam Treasurer, Mr. Comptroller. Lisa Ward for the Department of Natural Resources. Today we have two items on our Agenda.

GOVERNOR O'MALLEY: 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. We now -- I'm going to skip over DBM and go, we'll come back to you shortly. Go to University System of Maryland. Any question on the University System of Maryland Agenda items?

MR. STIRLING: We are withdrawing Item 9-C, by the way.

GOVERNOR O'MALLEY: You could have gotten it passed.

(Laughter)

GOVERNOR O'MALLEY: All right. Item 9-C is withdrawn. Item 9-C is withdrawn. Any questions on the balance of the University System of Maryland Agenda items? Hearing none, 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 move on to the Department of Information Technology, Secretary of IT Elliot Schlanger reporting.

MR. SCHLANGER: Good morning, Governor, Madam Treasurer, Mr. Comptroller. Elliot Schlanger, Department of IT. We have two items on the Agenda this morning. I'll be happy to answer any questions.

GOVERNOR O'MALLEY: Hearing none, the Treasurer moves approval, seconded by the Comptroller. All in favor signal by saying, "Aye."

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed?

(No response.)

GOVERNOR O'MALLEY: The ayes have it.

MR. SCHLANGER: Thank you.

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

MS. SWAIM-STALEY: Good morning, Governor, Madam Treasurer, Mr. Comptroller. For the record, Beverley Swaim-Staley representing MDOT. We have eight items today, and Item 4 has been revised. We're happy to answer your questions.

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

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed?

(No response.)

GOVERNOR O'MALLEY: And the ayes have it.

We now move to the Department of General Services.

MR. COLLINS: Sure. Again, Governor, good morning. Al Collins, Madam Treasurer, Mr. Comptroller. We have 12 items on our Agenda. We want to note Items 1 and 12 have been revised. Also, Governor, I'd like to point out joining us this morning on Item 1 is Secretary Gary Maynard. This is a two-part request on behalf of the Board concerning the Maryland House of Correction. Part one is to request permission of the Board to approve demolition of 14 of the 16 existing buildings. And Part B of our Agenda item is to approve the engineering services, the firm represented to draw up the plans for that demolition.

Governor, I think this is part of a Public Safety strategy that's been long coming and we're ready to move this item forward on behalf of the Secretary.

GOVERNOR O'MALLEY: Mr. Secretary?

Secretary Maynard? General Maynard? General Maynard,

I understand that you received an award of national distinction recently?

GENERAL MAYNARD: Yes, sir.

GOVERNOR O'MALLEY: And what was that award?

GENERAL MAYNARD: It was the Edward R. Cass Award given by the American Correctional Association.

GOVERNOR O'MALLEY: And that's an award that's given by your peers? Or --

GENERAL MAYNARD: That's given by, the American Correctional Association is about 24,000 members across the country and so it comes from that group.

GOVERNOR O'MALLEY: Secretary Maynard is very humble and unassuming. This is probably the highest professional honor in our country where corrections is concerned, and we're very, very proud of the job you're doing.

GENERAL MAYNARD: Thank you.

GOVERNOR O'MALLEY: And by extension proud that you received that award, which I know you claimed only on behalf of the hardworking men and women of the Department of Public Safety and Correctional Services.

GENERAL MAYNARD: Very true. Very true.

GOVERNOR O'MALLEY: And your wife.

GENERAL MAYNARD: Very, very true.

(Laughter)

TREASURER KOPP: Congratulations.

GENERAL MAYNARD: Thank you.

GOVERNOR O'MALLEY: So what are we doing here? This is the House of Corrections, which we closed in the first 52 days of this administration.

GENERAL MAYNARD: There are two Agenda items. One is to request permission to demolish the House of Correction that was closed in 2007. It has remained vacant. The second is to request approval for an engineering firm to engineer and design the deconstruction of that facility. We looked at demolition of the facility initially and the cost estimate was in excess of \$10 million just to demolish it and take it to the landfill. We started looking a deconstruction techniques and how we might use inmate labor to help deconstruct, and the price went way down. Plus we will recycle all the materials, keep it out of the landfill, train a lot of inmates, develop

apprenticeships, and improve the employability of the inmates leaving our system. We, I expect we will probably train in that project at Jessup using inmates from JCI probably 150 inmates that will be trained in asbestos abatement, lead paint abatement, deconstruction techniques, forklift operation, skid loader operation, and end safety, OSHA safety, all of that.

GOVERNOR O'MALLEY: Gary could these, General Maynard could these be, I mean these would be skills that these, that the inmates would be able to use when they return to neighborhoods, and --

GENERAL MAYNARD: Absolutely. We did have a meeting yesterday, just this is a group of deconstruction stakeholders around --

GOVERNOR O'MALLEY: Man, I would have loved to have been there.

GENERAL MAYNARD: Oh, it was great.

GOVERNOR O'MALLEY: So these are people that do this in the private sector?

GENERAL MAYNARD: Well there were some, there were a lot of representation from nonprofits who

want to provide training for inmates. There were representation from the unions, from the painters association, and from asbestos folks. And they are very interested in, in fact the painter union person told me, who is the lead paint expert, he said he can't get people for apprenticeships. He wants to set up apprenticeships there for inmates, free apprenticeships, over 200 hours of training. And when they leave they will be very, very employable. He said he can't find enough people that are trained in lead paint abatement, and the same way with asbestos abatement. So there will be a lot of really good training. And the nonprofits are there because we can't include in the contract for deconstruction, we can't include the inmate training portion. So the nonprofits are going to provide the training for us. And that will amount to about \$150,000. And they said yesterday that's a very easy number to get and they're all excited about that. So.

GOVERNOR O'MALLEY: That's great.

GENERAL MAYNARD: It's a great program.

GOVERNOR O'MALLEY: You know, sometimes back in those days when we had the dollars to do demolition in the City of Baltimore, which has all the infrastructure to accommodate hiring and growth at greater density. But, you know, there's old buildings vacant, abandoned --

GENERAL MAYNARD: Absolutely.

GOVERNOR O'MALLEY: -- in the way. Would these sorts of skills be the sort of things that we might be able to do at a more impactful scale, say as inmate labor projects?

GENERAL MAYNARD: Yes, sir.

GOVERNOR O'MALLEY: To remove vacant --

GENERAL MAYNARD: In fact we have for years in the City of Baltimore been working with Habitat for Humanity, because they do some deconstructing of old rowhomes and they reconstruct others out of the salvaged material. There is, and again there is a lot of national interest in this. This will be the very largest deconstruction project that inmate labor has been involved in in the country. And there is no question about if we do this, we salvage this

material, and there's a lot of salvageable material. The slate roof, the stone, the copper, the steel, the air conditioner. There's a thousand cells, each of those has a steel front and a sliding bar door that's probably 1,000 pounds. So there's a lot of steel in there that can be salvaged. Once we do that we could move, with a trained crew, to other State agencies, Department of Juvenile Services, vacant buildings. Henryton is a good example of a facility that's been sitting there and needs to be deconstructed.

GOVERNOR O'MALLEY: Rosewood.

GENERAL MAYNARD: Rosewood, Springfield, a lot of those, yes, sir.

GOVERNOR O'MALLEY: Not to mention the vacants that face the railroad right of way going through the City of Baltimore.

GENERAL MAYNARD: Right. A lot of, a lot of work. And it's a skill that inmates, deconstruction is sort of the new construction technique, and green construction.

GOVERNOR O'MALLEY: More sustainable.

GENERAL MAYNARD: Right, very much.

GOVERNOR O'MALLEY: Sustainable
deconstruction.

GENERAL MAYNARD: Right.

GOVERNOR O'MALLEY: Wow, it's exciting.

TREASURER KOPP: That's actually very
exciting, yes.

GOVERNOR O'MALLEY: Have you met with
anybody at the City of Baltimore yet? I guess --

GENERAL MAYNARD: We've had conversations,
yes. But they haven't gone very far yet. We have
done some work in some rowhomes certainly in
Baltimore.

GOVERNOR O'MALLEY: You know, I would think
Commissioner Graziano, and this is more --

GENERAL MAYNARD: Yes. And I've talked to
him, yes.

GOVERNOR O'MALLEY: -- cost effective, less
expensive than demolition?

GENERAL MAYNARD: Absolutely. I mean --

GOVERNOR O'MALLEY: Not to mention dumping
whole houses in the landfill versus --

GENERAL MAYNARD: Absolutely. The estimate for demolition and bulldozing and taking it to the landfill was in excess of \$10 million. This deconstruction cost, with the recycling and resale of materials, would be I guess it's up to \$7 million --

MR. COLLINS: That's correct.

GENERAL MAYNARD: But it's \$3 million or \$4 million less than just bulldozing, plus all the skill training --

GOVERNOR O'MALLEY: Right.

GENERAL MAYNARD: -- plus the recycling, plus keeping it out of the landfill.

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

GENERAL MAYNARD: That is. It's going to be great.

GOVERNOR O'MALLEY: Hey, if there's any reporters in the audience that one might be a good one.

(Laughter)

GOVERNOR O'MALLEY: You wouldn't even have to mention my name in it. You could just say it's something --

(Laughter)

GOVERNOR O'MALLEY: -- that Gary thought of, which you did. There is so much good work that you are doing on the restorative justice front.

GENERAL MAYNARD: Thank you.

GOVERNOR O'MALLEY: And I got your calendar, and it was really good stuff. I mean the oyster aquiculture, the forestry programs, the, you know, so many of the projects that you've been able to do even in these times of cuts and austerity to keep their, our, you know, fellow men and women in our State who are inmates for this time of their lives doing something productive.

GENERAL MAYNARD: Well they want to work. It's really our obligation to find them work to do, and training. They all, 99 percent, want to work, want to do better, and want to get out and be successful. So.

GOVERNOR O'MALLEY: More trees. More trees.

TREASURER KOPP: Are you building into your programs any sort of follow up?

GENERAL MAYNARD: Yes.

TREASURER KOPP: After --

GENERAL MAYNARD: Yes. Yes. A lot of our programs have built in follow up programs. And certainly with this we will.

TREASURER KOPP: So you can judge how well the different programs have worked?

GENERAL MAYNARD: Absolutely.

TREASURER KOPP: And shape --

GENERAL MAYNARD: Absolutely. A part of the training of this deconstruction project will be follow up specifically to this project. And again, I think Jessup Correctional Institution, 1700 inmates just sitting right half a block away from this project, we'll probably use in excess of, I mean I've been using the number 150 inmates that will be trained. The painters union yesterday, the lead paint people said we're talking about 250 people they will take to do this project, inmates. So the contract will have a private company with private employees, and then they will see that the training, the safety training, the apprenticeship training, all of that takes place. It

will be a large number of inmates that are affected by this and there will be follow up, yes.

GOVERNOR O'MALLEY: This is the best facility we ever closed.

GENERAL MAYNARD: Well the good thing about it, Governor, is if you can imagine one of the worst prisons in the country, one of the most violent, and inmates having an opportunity to deconstruct that. Take that prison down at the same time learning skills that make them employable. So it's really a good story.

GOVERNOR O'MALLEY: Probably something healing in the deconstruction itself.

GENERAL MAYNARD: Right. Absolutely.

GOVERNOR O'MALLEY: And assaults against correctional officers since that closed have continued to --

GENERAL MAYNARD: Cut in half, yes, sir.

GOVERNOR O'MALLEY: -- go down, cut in half. All right. Any other questions on the balance of the DGS Agenda items? The Comptroller moves approval -- I'm sorry?

TREASURER KOPP: Governor, I would, not a question, but point out that Delegate Jim Proctor was here earlier, had to go down to the session, to testify in support of Item 9, just to register his and his community's support of the National Park and Planning Commission's field lights project in Prince George's.

MR. COLLINS: It's a grant and loans program, Governor, project.

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

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed?

(No response.)

GOVERNOR O'MALLEY: All right, the ayes have it. And that was Department of General Services. We now return to our originally scheduled programming. Department of Budget and Management. I know that we have the issue we deferred from last time regarding one of the larger contracts we ever do, which is for the pharmacy benefits plan. Is there, are there any

other items, holding that one aside for one second, any other concerns about the balance of the Department of Budget and Management Agenda items?

MS. FOSTER: Only there are six items on the department's Agenda. Item 1 is the pharmacy benefits management contract, and that's the item that was deferred at the January 25th meeting of the Board.

GOVERNOR O'MALLEY: Got you. Any other questions on DBM Agenda? Mr. Comptroller?

COMPTROLLER FRANCHOT: I think the Treasurer mentioned maybe a concern about Item 6.

GOVERNOR O'MALLEY: Item 6?

MS. FOSTER: Item 6 is a settlement in the Rosetta Demby case v. the Department of Health and Mental Hygiene. And we have Christopher Gozdor from the Attorney General's Office.

MR. GOZDOR: Good morning, Governor, Madam Treasurer, Mr. Comptroller. Chris Gozdor, Assistant Attorney General on behalf of the Department of Health and Mental Hygiene. And also if the Board would have questions for DHMH itself, programmatic or clinical questions, we have Dr. Gail Jordan-Randolph here. And

also on behalf of the plaintiffs, plaintiffs' counsel that is in support of the Board approving this measure is Jonathan Puth.

GOVERNOR O'MALLEY: Okay. All right, any questions?

COMPTROLLER FRANCHOT: Yeah, no, I, we received a letter at the last minute from the Dorchester branch of the NAACP and also the Maryland State Conference NAACP President Mr. Stansbury asking that this be deferred for two weeks, and I take it you wouldn't have a problem with that? To a future Board meeting?

MR. GOZDOR: We are, the Attorney General's Office is prepared to go forward today but we would not object to the Board exercising its prerogative to table the measure.

COMPTROLLER FRANCHOT: And Governor I don't, I'm not doing it other than the fact that I rarely hear from Mr. Stansbury, but he is the President of the Statewide Conference. And I'm not suggesting he, there's any merit to this, I'm just saying as a courtesy we probably should defer. But if, Madam

Treasurer, I don't know whether that's, my, if I'm putting words in your mouth, I apologize if I am. But I would prefer that we delay for two weeks just as a courtesy to this statewide organization.

TREASURER KOPP: Well if, I was not proposing that. But if that is what you wish, and if it would give, my understanding having studied the papers that we had is that this is a case which has taken a great deal of time which has been signed off by an agreement between the plaintiffs and the attorneys, the plaintiffs and their attorneys and the attorneys in the Attorney General's Office, and approved by two different levels of federal judges. But if there are questions that remain unanswered either to the members of the Board, since we have only just seen it, or if there are things you can explain to the NAACP that they don't know, I guess two weeks would give them time. I at the moment am prepared to support this item, now or in two weeks.

COMPTROLLER FRANCHOT: And I in all likelihood will support it in two weeks. But I think it's appropriate to --

GOVERNOR O'MALLEY: Had they called you before they sent this letter and said they wanted to talk to you about his or anything, or the AG's Office?

MR. GOZDOR: They have not.

GOVERNOR O'MALLEY: All right. Can you make yourself available to them --

MR. GOZDOR: Yes.

GOVERNOR O'MALLEY: -- over these next two weeks?

MR. GOZDOR: I will.

GOVERNOR O'MALLEY: For any questions they may have? Are the plaintiffs' lawyers here who are trying to set this aside? Did they come today, or did they just get the NAACP to send a letter?

MR. GOZDOR: I have not seen them, Your Honor.

TREASURER KOPP: My understanding is the plaintiffs' lawyer who has been representing them, is that you, sir?

MR. GOZDOR: Yes, Mr. Puth. Yes.

TREASURER KOPP: Endorses this settlement.

GOVERNOR O'MALLEY: Do you want to be heard from, sir?

GOVERNOR O'MALLEY: I'm sorry, I thought that there were other lawyers trying to set it aside or something.

MR. PUTH: Yes. Governor, thank you very much. My name is Jonathan Puth of Webster, Frederickson, Correia, and Puth. We've been very privileged to represent Rosetta Denby and Shirley Williams. We've litigated this case quite thoroughly and engaged in extensive discovery in the case.

In 2010, given the concerns regarding the capacity of these intellectually disabled individuals to fully appreciate the risks and rewards of going forward the District Court, United States District Court of Maryland appointed a guardian ad litem in the case, Mr. David Ferleger, who is a lifelong advocate for the intellectually disabled who served as a guardian ad litem. A settlement was reached with the State which I believe is very robust and generous and appropriate in this case given the risks and rewards.

After the court held a hearing on the settlement, at which time the individuals Ms. Denby and Ms. Williams were heard, approved, held the hearing on October 26, 2011 and approved the settlement in November, late November, 2011. Since that time in mid-December two attorneys representing the individuals did enter an appearance in the case. They have not contacted me. They have not sought to review the record or discuss the risks and rewards of moving forward. A guardian ad litem standing in the shoes of these individuals did produce an extensive report, very thoughtful report, and found the settlement to be very fair to these individuals, was duly appointed. But there's been no movement by these attorneys to seek to set aside the approval of the settlement, to appeal in any way, or to take any other action in court.

So this settlement has been approved by the parties and in an unusual step, because most settlements are not approved by the court, this settlement was approved by the court and great safeguards and thoughtfulness were put into the matter

of the appointment of the guardian ad litem and approval of the settlement after hearing that on behalf of the plaintiffs, through the guardian ad litem and in conjunction with the State, we urge approval of the matter.

We had heard by letter issued to the court in mid-December, I haven't seen this letter, I imagine it's similar, but since that time we've just heard nothing from them, nor have they taken any action in court to set aside the matter.

COMPTROLLER FRANCHOT: No, my concern is that the, A, it comes from, I mean if it were just from Dorchester I'm not sure I'd request a deferral. Not that Dorchester is unimportant but who knows. But when it comes from Mr. Stansbury, who I have a lot of respect for as the President of the Statewide Conference, and there is extremely strong language here. So I'd, I assume that the Governor and the Treasurer and I will approve what the court is, and you have come up with. But I certainly think that somebody ought to talk to somebody about what's in this letter because the language is so jarring.

MR. PUTH: And we certainly stand ready to answer any questions of the Board of Public Works and we're glad to address this at any time.

GOVERNOR O'MALLEY: All right. We're moving to defer for two weeks. We apologize for the delay and it sounds like you, you know, a lot of work has been done in the five years leading up to this.

MR. GOZDOR: Thank you.

GOVERNOR O'MALLEY: Thank you.

TREASURER KOPP: Could I, could I just say I hope you will have an opportunity to explain. Because it looks to me, having read the record, that Mr. Stansbury and Mr. Pinkett are not in fact aware of everything that has gone and all the work that has gone into this case. I think you have two vulnerable plaintiffs who went through a difficult, very bad, horrible experience. I hope they will not be used by anyone for any purpose. And I look forward to resolving this in two weeks.

MR. GOZDOR: Thank you.

MR. PUTH: I appreciate your comments.

GOVERNOR O'MALLEY: So Item 6-GM, the Comptroller moves deferral for two weeks, seconded by me. All in favor signal by saying, "Aye."

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed?

(No response.)

GOVERNOR O'MALLEY: The ayes have it. That leaves us with the balance of the Department of Budget and Management Agenda, holding aside for a second the big pharmacy contract. Any questions on the balance of the Department of Budget and Management Agenda? Hearing none, 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 we still have a full room, huh?

(Laughter)

GOVERNOR O'MALLEY: All right. Okay. So we are calling Item 1-S, the long deliberated.

MS. FOSTER: This is the item that, Item 1-S is the Pharmacy Benefits Management Contract, members of the Board. This item was deferred at the January 25th meeting to allow time for the Board and for the staff members to review the decision of the Board of Contract Appeals. Now that you've had the opportunity to look at this contract over the last two weeks the Department of Budget and Management is back today to ask your approval of the award of the contract to Express Scripts. The award will cover full, five full plan years and six weeks beginning May 16th.

We believe that moving forward with the new contract is in the best interests of the State for several reasons. The contract with Express Scripts is projected to provide in excess of \$100 million in savings over the term of the contract to the State. Moving forward on May 16th, which is the projected start date if approved by the Board, will save us approximately \$2 million for the remaining six weeks of this fiscal year. In addition, the May 16th start date will give Express Scripts an opportunity to be involved in the State's open enrollment period for the

plan year that begins July, 2012. And approval of this contract today will allow for a smooth, 90-day transition prior to that.

In closing, I would just reiterate that Express Scripts was unanimously selected for award after a thorough and fair procurement. The department has concluded that Express Scripts is a responsible offeror whose proposal is most advantageous to the State. We have the representatives here today from the department's employee benefits division. We have representatives from the Attorney General's Office, and our consultants GRS are here. We're all available to address any questions that you may have. In addition, there are representatives from Express Scripts in here as well.

So with that we'll be happy to begin to answer and address any issues that the members of the Board may have.

GOVERNOR O'MALLEY: Mr. Comptroller?

COMPTROLLER FRANCHOT: Thank you, Governor. And thank you, Madam Secretary. And as you stated, we're being asked to award a five-year, \$2.4 billion

pharmaceutical benefits contract to Express Scripts, which is a nationally known, St. Louis based firm. In so doing we're being asked to unseat the incumbent vendor, a successful Maryland based company which assumed responsibility for this exceedingly complex contract five years ago and who by all accounts has carried out its duties exceptionally well.

It's probably not a surprise I have questions about the contract we're being asked to award here today given the dollars that are at stake and the effect that this decision could have on the well being of hundreds of thousands of Marylanders. Those who subscribe to the State of Maryland's pharmaceutical benefits plan as well as those people whose livelihoods could be placed in jeopardy if a local firm were to lose a \$2.4 billion contract.

It's my understanding that according to the original RFP that was distributed to prospective vendors cost and technical considerations would be given equal weight. According to the background materials I've read, Catalyst Rx, the incumbent vendor which is headquartered right up the road in Rockville,

achieved the highest technical score among all the vendors. Furthermore as DBM's own procurement office acknowledged in a letter to you, Madam Secretary, dated December 10, 2010, Catalyst's fixed cost, its administrative fees for example, and its paper claim processing and drug utilization review fees, would be substantially lower than that of Express Scripts International. And yet apparently DBM chose to award this contract to Express Scripts primarily on the expectation that ESI, the St. Louis based company, could ultimately achieve cost savings through, "lower ingredient costs."

My first question is this. Where did you get the idea that ESI could provide lower ingredient costs? An opinion that was issued by the Board of Contract Appeals on the bid protest, authored by former Delegate Dana Dembrow who is an extraordinarily smart lawyer himself, I thought did a really outstanding job in drafting his opinion. But in that opinion he states on page 73 that, "The precise mode of tabulation of ingredient cost estimates is not fully disclosed in written GRS reports," that's your

consultant I think, "or any oral testimony concerning that work." Indeed he states on page 43 that, "notwithstanding ESI's superior offer of minimum guaranteed discount, ESI's historical average of actual ingredient cost used to calculate the State's future liability is higher than Catalyst's." And that ESI's actual drug ingredient costs for 2008-2009 were higher than Catalyst's in all three tiers of drug categories, single source, multi source brand, and generic.

So I guess in plain English here's what's happened as far as I can tell. DBM solicits bids for a contract, promises to give technical and cost considerations the same amount of weight. Catalyst is better on technical, also came in cheaper on all those costs that we can actually measure, all those fixed costs. But DBM is poised to award the contract to this St. Louis based company on the basis of a single cost determinant, despite the fact there is apparently nothing in writing to back up your assumption, and despite the fact that Catalyst has historically come in cheaper on that as well. And I think right at the

outset I guess I'd like to get some explanation, because on the surface it raises a possibility that we're buying a pig in a poke here. Where, you know, the history shows that this key item, ingredient costs, Catalyst has delivered at a lower rate than ESI. So we end up on both the technical and the financial. So please help me understand, I guess, the balance between financial and technical issues and, because obviously this is A, a lot of money, and B, a lot of disruption potentially to our citizens.

MS. FOSTER: Well, thank you for your long question. But first of all, you are absolutely correct. When this RFP was put out on the street we said from the beginning that technical and financial would be given equal weight, and that is exactly what we did. Certainly in looking at the price of these items, and looking at the overall cost of the proposal, there were four basic elements that we looked at. We looked at what the administrative fees were going to be. We looked at what the dispensing fees were going to be. We looked at the ingredient costs, and we looked at rebates. And you are

absolutely correct, what our consultants and what the team of procurement evaluators found was that they found ESI offered a better minimum guarantee in regard, better than Catalyst, in regard to the ingredient costs.

I was not a part of the evaluation team, but we do have experts here. I would really like to ask our consultant, who is with GRS, who is Michael Madalena, to come up, along with Anne Timmons, who is head of our employee benefits unit, was a member of the evaluation team. And I'm sure that they can address all of your specific questions in regard to ingredient costs and basically give you some comfort that after their review of the item that they too agree that ESI had a better price in regard to the ingredient costs. Thank you.

COMPTROLLER FRANCHOT: Okay. I appreciate your presence here. Who is Kevin Distefano?

MS. FOSTER: Actually as I explained to your staff yesterday we have two consultants who we are working with with GRS. Kevin is one. He was unavailable today. I explained that. But also Mr.

Madalena works with him. He is quite prepared to address the same questions that Kevin would be.

COMPTROLLER FRANCHOT: Okay. So the judge rules in your favor because the legal standard is arbitrary and capricious and they couldn't, he said it did not rise to that. But he had some I think very troubling statements in there about the lack of either written or oral substance to your claim to us, the State, that there is going to be a 3 percent, or a significant savings because of your determination of ingredient costs. I mean, that's what this whole thing is pinned on. And I guess my question is, where is the, where is the analysis? Is it in writing, or -

-

MS. TIMMONS: Well this RFP included an industry standard financial evaluation model, and that model is what produced the comparative results between the proposals.

COMPTROLLER FRANCHOT: Well yeah, but that's a lot of gobbledegook. I mean, where is the analysis? Is there a written, the judge in this case, I mean he's the one who wrote it. He said there's no oral or

written document or statement that I can look at to make any determination. He said I have to take it on DBM's statement that it's not arbitrary and capricious so it is legal. But he certainly raised questions as to whether it was right to rely upon consultants who according to him, you know, there wasn't anything for him to look at. And then secondly he brought in this, maybe it's a case that Catalyst is making, that in fact when you look at history the drug ingredient costs of ESI are a lot higher than Catalyst. Is there a possibility you guys are just dead wrong?

MR. MADALENA: If I may, sir?

COMPTROLLER FRANCHOT: Yes.

MR. MADALENA: The analysis, the calculation of what ingredient costs was predicted to be was an integral part of the spreadsheet that each of the offerors were asked to provide. The way the analysis worked, and it's included as part of the procurement and as part of the spreadsheet, where we developed and we gave the offerors a mix of basically the buckets, as it were, of different kinds of drugs. We're asking them to provide guarantees in terms of what kind of

discount you would provide for, for example at the retail store setting, what generic discount you're guaranteeing, what dispensing fee you're guaranteeing, rebates, all of those components were provided to each of the offerors. And in the analysis the predicted ingredient costs, or you know, approximately 98 percent of the costs associated with this benefit are related to ingredient costs or simply the multiplication of the guaranteed discount times the average wholesale price and industry standard methodology for expressing what the top end cost is for a drug, plus the dispensing fee that the proposer was guaranteeing, less rebates. So it was a product of all that. And the spreadsheet that was used for the evaluation, then given to all the offerors as part of their response, included that calculation inside of the spreadsheet. So they were able to provide, basically, their own financial result.

TREASURER KOPP: So you could compare apples and apples because you in fact set up the matrix, essentially of --

MR. MADALENA: Yes, ma'am. Yes, ma'am. And those data points were based entirely on the claims experience of the group. So in other words, we had the actual mix of brand drugs and generic drugs and mail order, retail, 90-day, but all of that was based upon the experience of the group as opposed to some sort of standardized benchmarking dataset.

COMPTROLLER FRANCHOT: But are you surprised by, I'm not sure whether I call him Judge Denbrow, or whatever his title is --

GOVERNOR O'MALLEY: Board member?

COMPTROLLER FRANCHOT: -- Board member. And here's the quote, "ESI's actual drug ingredient costs for 2008-2009 were higher than Catalyst in all three tiers of drug categories, single source, multi source brand, and generic. How do you compare the prospective with what really happened?"

MR. MADALENA: Those numbers were not adjusted for any of the very mixed, the drug mix of each of those. Those were basically, not, planned design, that was sort of their book of business and no adjustment was made for that, you know, that maybe

different kinds of groups have different utilization patterns. Those, that, the meaningful, or in our opinion the meaningful numbers were ones that were generated by the specific utilization of the group. So those were sort of national, unadjusted numbers that didn't look at, didn't really consider any differences in the populations that the companies were serving, any mix of drugs that were being prescribed, specialty medicines, a number of factors, they were just sort of gross, top line numbers.

MS. TIMMONS: And simply self reported by each of those vendors.

COMPTROLLER FRANCHOT: I'm, you know, I'm not challenging you guys. I'm just wondering where the work product is, since it was noted by the Board member that it was not, he couldn't find any written or oral backup to your conclusions. And that's, it appears to me that that's the entire tip of this upside down pyramid that we're making a decision on. So it's kind of important.

But while I've got you I've got another question about, apparently on page 44 of the opinion

Catalyst self reported 20 percent of the administrative fee is paid by Maryland to achieve its profit, while ESI's bid didn't reflect a profit even though I quote, and from the opinion, "ESI subsequently confidentially disclosed to DBM its average profit per claim." I guess there are two aspects there that bother me. One is that we're not comparing apples to apples. Catalyst baked its profits into its cost model, ESI didn't. Second, there's no evidence to suggest, I'd love to be proven wrong on this one, Madam Secretary, that DBM went back to revisit its cost assumptions for ESI even after receiving this information.

MS. TIMMONS: Well the model of this RFP and our contract is 100 percent pass through pricing. So they can make no additional money on our account other than what we pay in admin fees. Any rebate, any grant money, any money at all, any revenue stream has to come back to the State.

COMPTROLLER FRANCHOT: But after DBM revealed its average profit per claim that was irrelevant to you guys because we're going to have

this information that we will, who is going to be tracking that? You guys? Or somebody else? I mean, this is an enormously intricate, complex situation. And I just --

MS. TIMMONS: It is, and --

COMPTROLLER FRANCHOT: -- I'm just shaking my head at how anybody is held accountable for anything given the complexity of what we have here.

MS. TIMMONS: Well we hold these vendors extremely accountable. Not only do we have outside contract auditors that will audit the previous plan year in detail, clinical, financial, claims accuracy, and contract adherence, but we also have built into our consulting contract what's called a pharmacy directorship. And so during the plan year we are monitoring every piece of that pass through pricing on a quarterly basis so that we can go back to that vendor real time and say, "Okay, it doesn't look like you're hitting the discounts," or, "This isn't what was part of the contract," and we can begin discussions even before the outside contract auditor sits down with them.

COMPTROLLER FRANCHOT: So you don't, you're not impressed that their ingredient costs were higher than Catalyst historically? That doesn't trouble you as far as moving down the road?

MR. MADALENA: No, sir, not without really looking at the, you know, the book of business and the detailed data that would go behind that calculation. I think the, in our opinion as we move forward with this we're very comfortable with it in that it's based upon the experience of this group in particular, the 219,000 approximate members who are served by the program. So in that, you know, we're not, we're not creating any mismatch between what is being used and what the offerors, or the vendors are offering us in terms of the price proposal.

COMPTROLLER FRANCHOT: Okay. Well I continue, if I could and you can stay there if you want because there may be something else that comes up, but this tension between technical and cost factors, Madam Secretary, you stated that they were even steven, equally weighted. But the Board of Contract Appeals opinion points out it's clear in the

evaluation phase of the procurement your agency's tendency was to overweight the promise, however tenuous and unsubstantiated, of ESI's cost savings. The spirit of the agency attitude seems to be summarized in an email by the procurement officer to the members of the evaluation committee, which stated, according to the opinion, "With roughly," according to the, the procurement officer said according to the opinion, "with roughly an estimated \$47 million higher expense I have yet to be convinced that Catalyst Rx is the better choice given the current economic budget climate." That sounds to me like we're going to make this decision based on cost and not equally weight it with technical.

MS. FOSTER: Mr. Comptroller, let me reiterate. This proposal was based on, 50 percent on technical and financial being equal, and that's how the department proceeded.

COMPTROLLER FRANCHOT: But if Catalyst gave you a proposal that included their profit, and ESI didn't, how can you possibly compare those two and say ESI is going to save us money?

MS. FOSTER: I think that the financial model that was used is one that reflects an industry standard, it's an actuarially approved methodology, and it is one that it's designed to compare apples to apples.

COMPTROLLER FRANCHOT: Okay.

MS. FOSTER: And you know it's, I think that the consultant as well as Ms. Timmons have been pretty clear that we did look at the these on an apples to apples basis.

COMPTROLLER FRANCHOT: Well I'd love to see some proof of that because it sure doesn't strike me that you did. The one proposal had the profit in it, the other proposal didn't. Somebody went back and had some kind of confidential discussion and came back and said, "Oh, even though Catalyst baked in their profit," transparent, accountable, the winning bidder, ESI, didn't do it. But we had a conversation with them and we kind of got, I don't know what, comfortable? And so you're comparing not apples to apples, but you're comparing apples to oranges.

MS. FOSTER: I think you know that as a part of this process there are written documents that are provided. The members of the evaluation teams review them. It's followed up by having oral presentations with each of the offerors. And even following, there's additional follow up if the members of the evaluation committee have questions based on subsequent materials that are submitted. So, you know, this is a process that's been going on for over two years. Certainly the evaluation team met and worked with each of the offerors over a period of six months. So I think during that period they had an opportunity to answer numerous questions, they got satisfactory answers, and in the end their decision was that Express Scripts provided the best offer for the State.

MR. MADALENA: If I might add just one thing about the profits?

COMPTROLLER FRANCHOT: Yeah, please, because I --

MR. MADALENA: Because the profit, I'm, the way that the offerors presented their financial

proposals to the State, profit was, is expected and is in fact built into the administrative fees. There are several places, just and I'm speaking out from like our role in the quarterly review of pharmacy, the pharmacy directorship role, whoever the vendor is must be, you know, provide basically where their profit centers are. We know where those are. We know that the administrative fee is a source for them to make money. They have the potential to make money in certain other aspects which are always fully disclosed as part of their agreement. So I guess in our mind and in our opinion when we were looking at these offers, any profit built, was indeed built into the administrative fee and the way that the offerors structured their discounts, their guarantees and such. So I think it is, the way it was evaluated that profit was considered.

COMPTROLLER FRANCHOT: Okay. But I'm just relying on what the opinion says, that Catalyst self reported 20 percent of administrative fees as its profit. ESI's bid didn't reflect a profit. That's his words. And it was only some kind of confidential

phone call down the road, that talking about average profit per claim, that you confidentially, guys all got together and said, "Oh yeah, no, it's, even though it's not in their proposal it's in this conversation, I guess."

MS. FOSTER: Mr. Comptroller, I'm going to ask Bruce Martin, who is our principal counsel, to join our team, and maybe he can elaborate on your question.

COMPTROLLER FRANCHOT: Good.

MR. MARTIN: Thank you, Mr. Comptroller. I believe, and of course the members of the evaluation committee and the expert are best able to address this, but I believe it's all in the way that the two offerors reflected, how they demonstrated what their profit would be. And I believe they just used two entirely different methods, if that's correct?

MR. MADALENA: In a sense it is. I think that, you know, we've made it abundantly clear, I guess, and I guess through the procurement process that there would be no other, and all profits are disclosed, all sources of revenue are disclosed to the

State and fully auditable by the State. And you said there's, there's, and as you've noted, sir, that this is a very complex business and there are a number of ways that PBMs offer, prepare their pricing. And it really varies from PBM to PBM. So there are multiple methodologies out there for when a PBM is presenting its cost to you. And given the State's transparency requirements the admin fee really is the source for profit. And I, there are other places where there are potential for the PBMs to make profit, in mail order for example. But those were all fully disclosed to the State and well vetted through the process.

COMPTROLLER FRANCHOT: Well I'm all for the State saving money. It just strikes me that there's a possibility here, and a pretty strong one, that we may not be saving money. And you know, Madam Secretary in these bids, I would put these proposals out, if you are going to say at the end it's a cost consideration that's going to outweigh the technical I'd suggest that we just go ahead and do that.

MS. FOSTER: Mr. Comptroller --

COMPTROLLER FRANCHOT: What I'm complaining about here is the inconsistency. I remember the Arinc contract which we had here, where we had a great Maryland based company that was the low bidder, \$40 million less than Motorola, a big out of state company, and we decided to go with the technical thing and take it away from the Maryland company that was the low bidder. Here we've got, you know, the Maryland company ranks higher on technical and we, you know, based on these cost considerations we're going to take it from the incumbent and there's going to be a lot of obviously transition, disruption that goes on. It's not your fault, or ESI's fault. It's just inevitable.

And all I'm asking for isn't, can't we get some consistency where businesses that come and apply for these things are not going to feel like they are in a subjective process where, you know, the strike zone can change at any point. And when you've got a \$2.4 billion contract I would, you know, I can kind of sympathize with businesses that say, you know, where

is the, are we changing, are we, are these rules subject to change in midstream?

So anyway, I'm --

MS. FOSTER: Mr. Comptroller, let me just reiterate --

COMPTROLLER FRANCHOT: -- delighted to hear the Secretary's response.

MS. FOSTER: Yes. Let me reiterate for the third time, the RFP provided for the technical and the financial to be equal, and that's exactly what we did. I mean, I think if we're looking at what the Board of Contract Appeals said I think first of all, you know, I just want to point out and reiterate that they did uphold DBM's actions in awarding to Express Scripts. If we're going to talk about some of the many things that they said in their opinion, the Board described the evaluation process as thorough. They described it as careful, thoughtful, and well reasoned. And the Board recognized that DBM performed admirably during the course of a large, multilayer, and complex procurement. So I think, you know, that's the other side of the story here. Is that this was looked at

carefully. We started out with these proposals getting equal technical and financial consideration, and that's the way we ended up.

COMPTROLLER FRANCHOT: Well I would strongly recommend everyone to read that opinion themselves because I found it to be very troubling. But let me switch to Walgreens, if I could. Because apparently Walgreens drug stores are no longer part of the winning, or the person you want to, or the company you want to award the contract to. For the record, how many Walgreens stores are currently open in Maryland and how many plan subscribers currently get their prescriptions filled at local Walgreens?

MS. FOSTER: Well if I could start this off by saying, you know, one of the things that the RFP did was it just required that a bidder's network have at least one pharmacy within a certain number of miles of 98 percent of participants' homes. We didn't get into making any determination about who should be in that network. And I think for us the bottom line was that Express Scripts came forward with a network that exceeded our 98 percent requirement.

COMPTROLLER FRANCHOT: Okay. So how many Walgreens stores are there, and how many plan subscribers currently get their prescriptions filled?

MS. FOSTER: According to the information I have, Walgreens has 58 pharmacies in Maryland. But at the same time Express Scripts has almost 1200 pharmacies in its network.

COMPTROLLER FRANCHOT: Okay. And how many of our plan people currently use Walgreens? I only ask this because I get my prescriptions at CVS. So I go down to the pharmacy, and I get my whatever it is once a month that I need. But if those guys told me I had to go to another CVS, even within the same system, I'd balk, and say no way. I've been coming here for ten years, doggone it, I know my pharmacist. I know my drugstore. And you know, I don't trust the other pharmacist even though he's a CVS guy. Here you're saying to people, no, you have to go to a completely different chain. And I don't think it's as easy as you suggest. I assume that there are quite a few people that are going to be affected. And --

MS. TIMMONS: Well I can answer that.

COMPTROLLER FRANCHOT: So I find it hard to believe. Is Walgreens represented here?

MS. FOSTER: Well why don't you let Ms. Timmons answer your question?

COMPTROLLER FRANCHOT: Yeah, okay, go ahead.

MS. TIMMONS: In the terms that I use, there are 32,000 belly buttons that are impacted, you know, that use Walgreens. I count doorbells as family units, and belly buttons as everybody that's in that family unit.

GOVERNOR O'MALLEY: I can't say that this Board of Public Works --

(Laughter)

GOVERNOR O'MALLEY: -- I've ever quite heard of an organization of belly buttons.

TREASURER KOPP: Belly buttons, no.

MS. TIMMONS: Well, of those 32,000 --

GOVERNOR O'MALLEY: So that was doorbells and belly buttons?

MS. TIMMONS: Yes, that's right.

GOVERNOR O'MALLEY: So would the doorbells be a subset of your belly button number? Or the belly button be a subset of your doorbell number?

MS. TIMMONS: Belly button is a subset of your doorbells. So it's the belly buttons behind your doorbell.

GOVERNOR O'MALLEY: Got you.

MS. TIMMONS: Okay. So of those 32,000, 61 percent of those members using Walgreens also fill their prescriptions at other pharmacies. So they are not seeing Walgreens exclusively. And additionally if you turn around and look around there may be a Walgreens on this corner, but there's going to be a CVS, a Rite Aid, a Target, a Costco, a Giant Pharmacy on any of the other corners. And I spoke with the benefits director in Baltimore City, who had a similar transition, and they indicated that ESI was extremely helpful in assisting members with transferring from one pharmacy to the other. There is also a myriad of advertisements and posters up from all the other pharmacies saying, "Hey, we accept Express Scripts, and we will certainly help you transfer your

prescriptions." So yes, there will be some disruption but I believe that it will be well mitigated.

MS. FOSTER: And I think what's key is they are going to have one pharmacy within three miles for urban areas, five within, one within five miles for suburban areas, and one pharmacy within ten miles for rural areas.

TREASURER KOPP: Which was the provision in the RFP?

MS. FOSTER: Which exceeds the provision that was in the RFP.

COMPTROLLER FRANCHOT: Okay. But just for the record, how many belly buttons were there you were talking about?

MS. TIMMONS: 32,000.

COMPTROLLER FRANCHOT: 34,000?

MS. TIMMONS: 32,000.

COMPTROLLER FRANCHOT: 32,000, okay. Madam Secretary, when did we get word that there was going to be a possible problem with ESI and Walgreens?

MS. FOSTER: I beg your pardon?

COMPTROLLER FRANCHOT: When did you first become aware of the problems between Walgreens and Express Scripts, that they were about to have a rupture, I guess, in their relationship?

MS. FOSTER: Well I think --

COMPTROLLER FRANCHOT: And when you learned that did it cause you to have any reassessment in your support for the contract?

MS. FOSTER: I think when we learned that there were discussions going on, I think my staff immediately began to look into how many of our members could potentially be impacted. But I think for us the overall driving factor was the fact, again, based on the requirements that we had put forth in the RFP Express Scripts exceeded the RFP access requirements. So we were comfortable with the fact of whether Walgreens was in or out of the network that we would have adequate facilities to serve our members.

COMPTROLLER FRANCHOT: Okay. And it doesn't surprise you to hear the 32,000 figure?

MS. FOSTER: The 32,000, as we indicated, were ones that we knew that used, that did use

Walgreens. But as Ms. Timmons indicated 61 percent of them didn't use it exclusively.

COMPTROLLER FRANCHOT: Okay. Is Walgreens here? Can you, are those, can you come up and identify yourself, please? You've heard my questions. Are we, what is the, I guess is that, is the data correct about the number of pharmacies and the disruption, the belly buttons, and this, that, and the other thing?

MR. BURKOWITZ: Governor, we have a very significant presence, my name is Jeff Burkowitz from Walgreens. We have a very significant presence in the State of Maryland, 58 stores, close to a thousand employees, 350,000 prescriptions on an annual basis. I think from an access perspective what you are hearing from the consultants is that every retail pharmacy in the practice of pharmacy is the same, no matter where you go. And I think that has been a big part of the dialogue between Express Scripts and Walgreens, is that there is a value proposition with a Walgreens pharmacist that also provides a significant savings that has not been taken into account, where

they focus on overall medical and healthcare costs versus just the focus on the drug spend specifically, which has not been taken into account.

I think also we haven't discussed the issue of 24-hour pharmacies in the State. So there are about 36, a third of which are Walgreens pharmacies. And they represent a very significant component of the Rx's with 24-hour pharmacies.

In terms of the disruption, we believe anecdotally again we are in a very unprecedented space in retail pharmacy. There has always been near universal access and there is very, very limited uptake of what this would be, which is a narrow network that doesn't include one of the large national chains. We're at less than 40 days into that disruption so we really don't know exactly what it means.

We hear anecdotally that there are all sorts of issues. Certainly you raised one, which is the very valuable relationship between a patient and their pharmacist. And we see six million patients a day on a national basis that come through our doors and we

believe that relationship between the pharmacist and the patient and the consumer is critically important to their healthcare. We are hearing anecdotally that folks that are going to other pharmacists are either not getting full prescriptions filled or they are being asked to come back in a couple of days. We hear anecdotally that people are going back to their physicians for new prescriptions. So there is a very important cost consideration here in the disruption because people aren't just transferring over the prescriptions, they are going back to their physicians and getting new prescriptions. They are losing their pharmacy history in the way that those are being transferred over as well.

COMPTROLLER FRANCHOT: Well I mentioned my relationship with my own pharmacist. It's, everybody has got that. And so the 61 percent that go to two different pharmacies, I don't know who they are. But that's a, they are not in my universe, that's for sure. Because, you know, there is, it's a comfort level and it's loyalty. You mentioned cost savings, I'm not aware of that. But what is the, because you

have a different situation, but what is the status of talks between you and ESI? And is there any hope of negotiating an end? Or is it just to the stalemate? Or is the relationship just irreconcilable?

MR. BURKOWITZ: Sure. The contract expired on December 31st. We had originally announced in June of 2011 that there was a very real chance that Walgreens would not be participating in the Express Scripts network and we haven't had very productive conversations since that time. And there has certainly been no conversations in the calendar year of 2012 related to this issue. And ultimately what you are getting again, which was not part of the process, was a restricted network with a large national chain not participating, which again was not anticipated in the process here.

COMPTROLLER FRANCHOT: And what is your office, sir? What is your title?

MR. BURKOWITZ: I'm the Senior Vice President of Pharmaceutical Development and Market Access for Walgreens.

COMPTROLLER FRANCHOT: Well great, thank you for appearing here. And then if I could just ask, Madam Secretary, the move to generics, is that part of this contract?

MS. FOSTER: The move to generics? I'm going to defer to Anne Timmons, who is head of employee benefits.

COMPTROLLER FRANCHOT: In other words I, going back to my own experience, I have some of my prescriptions cost for a 90-day supply \$1.18. I'm stunned when I have to pay, you know, basically pay with change in my pocket. Other prescriptions cost \$80, \$90, \$100. Obviously it's the generic brand that costs the lesser amount. Is there a, in this RFP, or this contract we're approving today are there demands like I am demanding my agency get more e-filed tax returns because it's a good idea, is there a demand in this contract that the generics be increased from whatever they are to double?

MS. TIMMONS: Well under our contract the PBM is certainly tasked with improving our generic

dispensary. And they have various ways of doing that, through targeted outreach to members --

MR. MADALENA: Prescribers.

MS. TIMMONS: Prescribers, right --

COMPTROLLER FRANCHOT: What about ESI? Are they under any contractual obligation to increase the percentage of generics?

MS. TIMMONS: Neither party is required to increase it, but it is certainly part of our expectations.

COMPTROLLER FRANCHOT: Well I don't know whether Catalyst is allowed to speak, but my understanding of their success was due in part to a significant increase in use of generics, which saves the State a lot of money. I mean, once again, \$1.18 versus \$87. I'm just picking two different examples.

MR. MADALENA: We love generics, absolutely, sir. There's a number of things happening in the marketplace that has, that influences generic utilization. First off this is, as materials roll off the patent and become generically available, I mean the most recent, this most recent change of Lipitor to

a generic status is a windfall for, it will be a huge savings for plan sponsors. So the, one of the largest drivers in that is just that, as the FDA approves and things come off into a new generic status. That is a very, very large driver of that.

MR. BURKOWITZ: Comptroller, Walgreens has the highest generic dispensing rate of any retail pharmacy in the country. And interesting enough Express Scripts has recently signed a deal although Lipitor has gone off patent and is available generically they have signed a deal with Pfizer to issue the branded product for the first six months of generic entry versus the generic that is now available. So they partner with the branded pharmaceutical company --

MS. TIMMONS: As has, Catalyst has done the same thing.

COMPTROLLER FRANCHOT: Yeah, well --

MS. TIMMONS: Catalyst has done the same thing. And I would beg to differ that the, Walgreens is not the largest dispenser of generics for our plan.

In fact, they are ranked four in the State. So they are not --

COMPTROLLER FRANCHOT: Well why don't we, if I could, as Mr. Blair, he's back there, if he can come up and speak about anything he wants to say.

TREASURER KOPP: Who is Mr. Blair?

GOVERNOR O'MALLEY: Mr. Blair is the CEO of the incumbent.

MR. BLAIR: Good morning.

COMPTROLLER FRANCHOT: Welcome.

MR. BLAIR: Thank you. I'm David Blair, the Chairman and CEO of Catalyst. And clearly we've been proud to serve the Maryland employees and dependents for the past five years. Certainly as a Maryland company that started here ten years ago with, you know, two employees and this idea that we could deliver local solutions with transparency and be a fiduciary. And today we'll, you know, we'll have annualized revenues of over \$6 billion.

I think the results for the State of Maryland employees speak for themselves, and I appreciate the kind words about our ability to drive

generic utilization up 25 percent over the past five years. We've exceeded our network discounts and rebates over the past several years by \$40 million, so above and beyond the guarantees. And numerous other clinical programs that have saved the State tens of millions of dollars.

And of course, that didn't happen by accident, right? We have local pharmacists and account managers right here in Maryland that meet with your top prescribing doctors, and your members, and your pharmacists on a regular basis.

TREASURER KOPP: Is that, that's part of the contract, is it? To have people on site here?

MR. BLAIR: It's certainly part of our commitment.

TREASURER KOPP: Yes.

MS. FOSTER: Can you come back up?

TREASURER KOPP: I just want to clarify the question that having people on site in Maryland, that is, is that or is that not part of the contract? Part of the RFP?

MS. TIMMONS: We have, they, on our current contract there are two pharmacists that are dedicated to our account. And they do meet with the top 100 prescribers under our plan. However, as part of the pharmacy directorship and other quarterly reporting that we get, we have been unable to get any documented proof of any effectiveness of that, unfortunately. Of their work to bring down, or to increase our generic utilization.

TREASURER KOPP: Okay. But the number of pharmacists, the way the contract is executed, is part, I assume, of the contract?

MS. TIMMONS: Mm-hmm.

TREASURER KOPP: That's my, I mean it's, okay. That's terrific.

COMPTROLLER FRANCHOT: Could I just ask, so how many employees is Express Scripts going to hire in Maryland? When we give them a \$2.4 billion contract?

MS. FOSTER: I think at the present time the proposal provides for five dedicated employees, which is the same as what the incumbent has.

COMPTROLLER FRANCHOT: Which is the same as what? As who?

MS. FOSTER: The same number. Five dedicated --

COMPTROLLER FRANCHOT: Five employees?

MS. FOSTER: Five dedicated employees to this account.

COMPTROLLER FRANCHOT: And I take it the statement that generic use has gone up 25 percent, that's not something you guys agree with?

MS. TIMMONS: Well we really, that speaks to going all the way back to the contract that Caremark had, and goes back, that's a starting point of year 2005. So that's more than five years, really.

MR. MADALENA: And there have been a number of material, drugs that have gone to generic status just through the normal course of events as patents expire.

COMPTROLLER FRANCHOT: Okay. So Mr. Blair was speaking, and --

MR. BLAIR: I'll just comment on the number of employees in Maryland. One of our commitments to

the State as well was to maintain our corporate headquarters here in Maryland, along with this contract. So obviously there's a much bigger economic impact. I think there was someone from Towson, a professor of economics there did a study, I think it was like \$110 million benefit to the State on an annualized basis.

I don't want to debate our track record. Obviously we are very perplexed with this procurement process. We have over 40 state and local governments across the country. And I've scratch my head more on this one than any other procurement process. The 78-page opinion really speaks for itself, and I'm not going to belabor that and go through those items. But candidly what's most troubling to me today is this Walgreens issue. And let me just elaborate on that and why it's such a problem.

And it's not about access, right? This isn't an access issue, because those 32,000 belly buttons I think will be able to find another pharmacy. They can walk across the street to your CVS and find another pharmacy. So it's not an access issue. This

is an issue about evaluating the bids on a level playing field. And I know that's what the State wants to do. And so all three bidders, right, all three offerors, when they submitted their proposals they bid an open network. And there was like 12 questions about your pharmacy network. Do you have all the major chains? How many pharmacies do you have by county? What's the member disruption going to be?

There was a huge focus on network. And the reason there was is because the State said this is the second most important thing from a technical perspective, the size of your network and member access. So Catalyst, and Express Scripts, and Envision, the other offeror, they all bid these open networks because that was obviously very important.

We didn't have to do that because the requirements were much, much lower than that. We only had to have one pharmacy within every three miles in urban areas, one in every five miles for suburban areas. So we could have bid, we could have taken out two networks, maybe even three networks, and still met that minimum access requirements.

Okay, so but why didn't the bidders do that, right? Because we wanted to score very well from a technical perspective. That was what we were trying to do. Because that's so important to Maryland. Maryland wants access. So all three bidders bid an open network. I think in Express Scripts' proposal it said we have all major national chains. We have 97 percent of the pharmacies in Maryland.

Now why would a PBM offer a limited network? Right? Because we could have. We could have put in our proposal, "We exclude Walgreens," or somebody else. Because as you limit the network your discounts go up, right? If I go to CVS and I say, "I'm going to exclude Walgreens from my network," guess what CVS does? They go discount. You narrow the network, you get bigger discounts. And so what I, why I'm so perplexed, right? As a Maryland guy, a Maryland resident, a Maryland company, as your fiduciary, nobody calls me up and says, "Hey, David, I want to make sure we're comparing apples to apples. If we took Walgreens out of your network, what would the discount be? Would you get a better discount?" Yes,

3 percent to 4 percent better. So we could, I could totally wipe out any perceived pricing disadvantage if we eliminated a major chain like Walgreens.

And then we get the number one technical proposal, and the best pricing. And so, so I'm very much disappointed, very much perplexed about how, it never occurred to us and nobody ever told us that we could bid an open network for the technical evaluation. We have everybody. But then submit a limited network for pricing. It never occurred to us to do that, we were never told that we could do that.

So I would urge the Board if you are not going to rebid this, you must reevaluate it. Ask, ask Catalyst, ask the other PBM, "Hey, what would our pricing be for a limited network?" And make sure that the State is indeed getting the best proposal.

GOVERNOR O'MALLEY: Any response to that, Secretary Foster? Did you all look at that? Closed, I mean --

MS. FOSTER: I think we've looked at everything and --

GOVERNOR O'MALLEY: Closed network, open network, well what Mr. Blair says is if he was allowed to dump Walgreens he could have given you, given us a benefit that was a superior price and he already had the superior technical. How about the people we paid a lot of money to to evaluate this? Do you want to respond to that one?

MR. MADALENA: Mr. Governor, at the time of the, at the time of the request for proposals all the bidders indeed were instructed to quote an open network. And in fact we received quotes, for guarantees, contract revisions for an open network. Those provisions are still the provisions that we are applying for projecting this contract forward. Absolutely correct, if you do say a limited network that will change the pricing. That is absolutely true. However, that is not, we don't have a closed network. We have an open network. There is a, one chain has chosen not to participate. We don't have a chain under contract that ESI does not. And ESI's pricing currently is evaluating, as it were, as if Walgreens was still there.

COMPTROLLER FRANCHOT: How can you say that?

MR. MADALENA: We didn't, we didn't, they didn't --

COMPTROLLER FRANCHOT: How can you say that?

MR. MADALENA: They did not provide, or they did not give us revised discounting information or revised contractual terms based upon the fact that Walgreens was no longer in the network.

COMPTROLLER FRANCHOT: Yeah, but what if they knew that? Obviously there's been this impending divorce. I mean this is not something that just popped up right at the end. And so, you know, how can you say that as a, you know, to us saying this company that you want us to give this contract to isn't factoring this into their bid?

MS. FOSTER: If I could kind of interject for a second. I think we've heard from Walgreens, we've heard from Catalyst. It may be good in this environment for us to hear from ESI and for them to respond to Walgreens version of what happened and what happens with the network.

GOVERNOR O'MALLEY: Can they respond to that question, though? The last one? And about how can you evaluate it as if Walgreens is in it if Walgreens isn't in it? And I don't, I didn't quite follow that.

MR. MADALENA: It's the pricing, sir. What we evaluated in the proposals when we solicited the quotations, that was prior to the --

MR. MARTIN: It was a year prior to.

MR. MADALENA: -- prior to the issues that developed between Walgreens and ESI. I think, I believe the best and final offers were gathered prior to that. So at that point we had the pricing in place that was offered, and it's still the same best and final pricing that was offered prior to any of this happening. So if we are to, you know, if that were to, you know --

MR. MARTIN: It affects their prices. If the absence of Walgreens from their network actually results in --

MR. MADALENA: An improvement.

MR. MARTIN: -- improvements for them those get, those dollars get passed through to the State.

COMPTROLLER FRANCHOT: How can you say that?

GOVERNOR O'MALLEY: -- would be that if Walgreens were not in --

MR. MARTINO: Because --

GOVERNOR O'MALLEY: -- were not in that network that they would pass on a greater discount with fewer --

MR. MADALENA: If they were to renegotiate. I do not believe our pricing, though, the pricing they have offered us hasn't been adjusted to reflect not having Walgreens in the network.

MR. MARTIN: That's in terms of the guarantees.

MR. MADALENA: That's in terms of the guarantees.

MR. MARTIN: However, if there are actual --

MR. MADALENA: Actual reductions in cost, the State benefits from those.

COMPTROLLER FRANCHOT: Well, Governor --

GOVERNOR O'MALLEY: Sure.

COMPTROLLER FRANCHOT: -- that doesn't make sense. We just heard from Mr. Blair that that's how

profits are moved up and down, based on the network.

And so, I mean, let me just ask you this while I've got you here because I guess we're going to move on --

TREASURER KOPP: I'm sorry, but was he going to answer?

MR. MADALENA: Yeah, I didn't --

COMPTROLLER FRANCHOT: How, I mean you just heard that this is a very important sponge in their whole corporate way of, obviously they have to make money. They are a private company.

MR. MARTIN: But on this State's contract the money is made off the administrative fee, not off of the --

MR. MADALENA: Differences in pricing, right.

MR. MARTIN: That all gets passed through to the State.

COMPTROLLER FRANCHOT: Well, I'm going to ask Mr. Blair that. Because I think frankly they and ESI are a lot more expert than, with all due respect, the AG is on this. And I just, if I could ask this, are you aware of any other state that's entering a

contract like this with such a gaping hole in the distribution network?

MS. FOSTER: I don't think we tend to believe that there is a gaping hole in the network. I think --

MR. MADALENA: I wouldn't, go ahead. I wouldn't, well, I --

COMPTROLLER FRANCHOT: I mean, you are just the national consultants, right?

MR. MARTIN: He can talk to the market penetration.

MR. MADALENA: I can, you know right, West Virginia, for example, right next store, is contracting with ESI and has done so for the past number of years so you would have the same issue there. I think that from what we have been finding out from the industry that this lack of having Walgreens in the network has been fairly well mitigated by the efforts of ESI to make sure that the members aren't disrupted, to make sure that records are readily available to and transitioned to a new

pharmacy. So from what we've been finding in the field, sir, that has been very well mitigated by ESI.

MS. FOSTER: I mean, I think the bottom line is that network pharmacies change all the time. It's negotiations with the pharmacies is what determines who is in the network. And that's a changing --

COMPTROLLER FRANCHOT: Well let me ask this, then. What percentage of 24-hour pharmacies in Maryland are Walgreens?

MS. FOSTER: The bottom line was that as part of this contract we did not ask to have 24-hour service. That's not an industry standard and it's not one that we included in our RFP. And the reason we didn't include it is because what we did find was in regard to 24-hour pharmacies the basic thing is that between 10:00 and 7:00 a.m. they are basically filling prescriptions from the prior day.

COMPTROLLER FRANCHOT: Well, I don't know. If you are going to bring ESI I want Mr. Blair to come back and just respond to this. Because then I misheard what he was saying, which is that it's a --

MS. FOSTER: Well I think as the vendor who we're recommending for award, you have heard from everyone else, it may be helpful to hear from ESI.

GOVERNOR O'MALLEY: Okay.

MS. FOSTER: Gentlemen? Could you introduce yourself --

MR. TYSON: Sure.

MS. FOSTER: -- for the record, and your name and your position?

MR. TYSON: Governor, Madam Treasurer, Mr. Comptroller, my name is Ron Tyson and I'm Vice President of Signature Accounts for Express Scripts. I've worked in the pharmacy benefit management area for 24 years and the State of Maryland is very important to us. It's true that we are a Missouri based company, but we also house a subsidiary in Maryland, Connect Your Care, that employs Marylanders. And we're dedicated to having an account team in Maryland that is actually Maryland residents as well as supporting Maryland based subcontractors through the course of this contract.

The question that you asked about Walgreens, when we bid this contract we bid the contract with guaranteed pricing. And the guaranteed pricing that we put out in the bid actually assumed at that time that Walgreens was going to be in the network. By the time the network had been reviewed and awarded, actually at the time of award we had still anticipated that Walgreens would be part of the network and in June of last year Walgreens came to us and six months in advance of when their contract was going to expire and advised us that they would be terminating the contract in December of that year.

The State requires that 98 percent of the members have access to a pharmacy in the State. We exceed those requirements by 99.34 percent, which is by a wide margin. The State also has selected an open network. And this open network, any pharmacy can be a part of the network that chooses to. Walgreens has chosen not to participate in our network because it thinks it deserves higher prices than any other pharmacy chain in the country. What we've seen over the past few months with our clients is that they

disagree. Adding Walgreens makes virtually no measurable difference to member access or convenience and they only represent about 5 percent of the nearly 1200 pharmacies in Maryland. There is another network store within one mile for 52 of the 58 Walgreens in Maryland. We moved millions of people away from Walgreens over the past several months with virtually no patient disruption.

In regards to 24 access since that issue actually came up, we have a network pharmacy 24 hour location within eight miles of any 24 hour Walgreens store. And only about one percent of all prescripts filled overnight, for those prescriptions filled are not necessarily for emergencies. Chains are open 24 hours, as the Secretary said, because they fill next day scripts that are actually left into the pharmacy. For an example, the Easton Walgreens location submitted an average of less than one script per night to ESI in 2011.

In regards to the discounts, the discounts that we laid out in the original proposal, we did not modify those discounts once we learned that Walgreens

was going to be leaving the network. We left the discounts as is. This is a pass through arrangement in the network pharmacy, in the network pharmacy portion of the contract. And if we achieve greater savings as a result of Walgreens being out of the network those savings are passed on to the State. They are not retained by Express Scripts. So we left, we made no modifications to the pricing that was proposed --

COMPTROLLER FRANCHOT: So you are basically a not for profit?

MR. TYSON: I'm sorry?

COMPTROLLER FRANCHOT: You are basically a not for profit company?

MR. TYSON: No. It's not that we're a not for profit. I mean, most companies have a profit building component. What I'm saying is in the network arena, the proposal as it was laid out required that the network pharmacies be pass through pricing. So what we pay to the retail pharmacies is what the State pays. We did not, we did not alter or modify those

numbers once we learned that Walgreens was no longer going to be in the network.

COMPTROLLER FRANCHOT: Okay. Well I'm just trying to figure out how you make your money. Because it seems as if everything is pass through at cost to the State, and your statement is that if there are any things that are, we're unaware of because of events happening that's all going to pass through also. So I guess the question I have is Catalyst claims they baked in a profit that was transparent, you guys didn't and had some kind of confidential phone call afterwards to explain where your profit came from. Is that in writing, or is there some --

MS. FOSTER: I think what we've said --

COMPTROLLER FRANCHOT: -- basis that we can be assured that your proposal included everything that Catalyst's proposal included? And that we're not sitting here, as I say, possibly signing off on a long term contract where we're not going to save any money?

MR. TYSON: What I can tell you is that we have guaranteed you rates in this contract. We've given full audit rights to make sure that we are

complying with those rates, and that the rates that we proposed in the contract are the rates that still stand. And there is transparency for you to be able to audit and ensure that we are held to the terms of the contract.

MS. FOSTER: And I think in terms of, if I can just speak up and not to get into any specifics, I think basically profits are recovered through the administrative fees, which are based on a per member, per script, or per member, per month fee. And that is essentially where the profits come from.

COMPTROLLER FRANCHOT: You know, I don't have anything against ESI. You're a big national company. But my concern here is that we're displacing a Maryland company that frankly did very well in technical and claims that their price is better than yours if you compare apples to apples. And I referenced the Arinc contract of some time ago, another huge \$800 million contract, where we did exactly the opposite. And the only consistent thing between those two decisions was that the Maryland based company had their business yanked away. And you

know, I'm just, there's a pattern here that I don't like. It's not the inconsistency between the technical and the financial matters, it's the indifference, I guess, that we have in the State facing these Maryland companies that do a tremendous job for us and bid for our business and feel as if the balls and strikes are being changed. It's not anything to do with you guys. You're just coming into this. But it's a troubling pattern, I guess. And I hope that I'm wrong, and I hope that, you know, all of this is going to be resolved because I don't think I'm going to have two votes on the Board. But, you know.

MS. FOSTER: Mr. Comptroller I'll just reiterate, now for the fourth time, that we looked at this. We looked at the technical, we looked at the financial, we looked at them on an equal basis. The department of recommending that the contract be awarded to ESI because we believe overall that that provides the best value to the State.

COMPTROLLER FRANCHOT: Madam Secretary?

MS. FOSTER: And we would recommend that to the Board, and ask you to approve that.

COMPTROLLER FRANCHOT: And I appreciate that. But let me ask you with all due respect, have you read --

MS. FOSTER: I read all 78 pages, yes, I did.

COMPTROLLER FRANCHOT: And what was, did anything jump out at you?

MS. FOSTER: I think what jumped out at me is throughout the opinion that they proceeded to, the Board agreed that the evaluation process was thorough, it was careful, it was thoughtful, it was well reasoned. And in the end the Board made a decision to deny the Catalyst appeal and uphold the department's decision. And I would ask that the Board do the same.

MR. TYSON: Let me --

GOVERNOR O'MALLEY: -- Express Script guys before we get to dinnertime. Does Express Scripts want to be heard?

COMPTROLLER FRANCHOT: They were.

GOVERNOR O'MALLEY: Any more, anybody else?

TREASURER KOPP: Do you have anything else?

COMPTROLLER FRANCHOT: Do you want to, just in the dying embers here of this, Mr. Blair do you have any, because I thought your statement was quite cogent, that we are comparing apples to oranges here.

MR. BLAIR: Mr. Comptroller, I would just reiterate what I said earlier about the Walgreens, which it is not an access issue. All three bidders represented that they had all major networks in their pharmacy because we all wanted to get good technical scores. My guess is if Express Scripts hadn't had Walgreens in their technical scores wouldn't have been as high, because we all wanted to represent that we had no member disruption. And so now you're getting a limited network and the pricing that can only reflect what an open network would be. And I think it's incumbent upon the Board if we're not going to rebid this, reevaluate it. Because as I said earlier, I know if I eliminate a major chain like Walgreens I'll get you 3 percent to 4 percent better savings and eliminate the pricing discrepancy.

And I would just, and I would just conclude with as you think about the overall costs to Maryland

from a health perspective, it will be much more driven by utilization. Are our members compliant? Are we keeping your diabetic population testing themselves? Are we keeping them out of the ER? Are members, are physicians prescribing generic drugs? Are we promoting over the counter products when appropriate? And so from a technical perspective I think clearly Catalyst is better positioned, as reflected in ranking highest out of five of the six categories from a technical perspective, to drive lower costs while also improving care.

GOVERNOR O'MALLEY: David, given the large amount of this contract, and given the margin by which the competitor/challenger beat you on price, and given the fact that you are a very valued Maryland headquartered and Maryland located firm, why could you not have beaten them on price for another \$50 million?

MR. BLAIR: So --

GOVERNOR O'MALLEY: Excuse me, \$102 million, what it's projected in the models to work out.

MR. BLAIR: So Governor, we're one of the fastest growing companies in the country because we've

been able to offer low discounts and low administrative fees. And so we've been very perplexed by why we didn't have the lowest pricing. And so there was a lot of confusion around this brand/generic algorithm which we won't get into today. But now when I look at it and you say, "David, if you could exclude one major chain?" Well, there you go. So now I could, now you could compare apples to apples. Give Catalyst a chance to exclude one major chain, let us resubmit our pricing, and then compare. Because then you truly are comparing apples to apples, versus right now it's apples to oranges.

COMPTROLLER FRANCHOT: I'm happy to move that.

GOVERNOR O'MALLEY: A best and final, final offer?

MS. FOSTER: We've already had --

COMPTROLLER FRANCHOT: Yes, exactly. Do it again.

TREASURER KOPP: How --

MS. FOSTER: You know, the only thing about it at this point is you're really saying that you're

going to open this up where we really had an exposure of, a lot of information has gone to the Board. And, I mean this is --

GOVERNOR O'MALLEY: And a lot of information has gone to Walgreens apparently, too.

COMPTROLLER FRANCHOT: The only standard for this Board of Public works is doing whatever is in the best interest of the State. And so I'm happy to, Governor, Treasurer, if, I think this is troubling. I think there are, we should take a look at at least an assessment or try to find whether this is at all true. We had these consultants, I guess, who were asked to look at it. But I'm not comfortable voting for this based on the statements that we've heard today. And this Board has a very important responsibility according to the statutes and constitution of the State, which is to do exactly what we're doing right now. Determining whether this is a good deal for Maryland.

MS. FOSTER: But I think what we've done is we've had a lot of open discussion about this. We've had pricing and bidding strategies discussed in

public. I think obviously this puts us in a position where you're just informing the bidding process.

GOVERNOR O'MALLEY: Well it sounds like we're going to back to --

TREASURER KOPP: No, I don't see how that works without going through the whole thing again. Does it? I mean --

MS. FOSTER: I mean, we can't reevaluate this now. It would be, it would really mean that we'd have to go back and rebid this. Rebidding this now I think would be unfair to all the offerors who are participating. I think rebidding this now will have a chilling effect on competition on State contracts. And the bottom line, it's going to further delay this contract for three years.

GOVERNOR O'MALLEY: Why would it delay it for three years?

MS. FOSTER: Well, it would delay it for three plan years. We'd have one year to do the procurement, and probably one year to relitigate this again. And we've already had a one year delay in this contract.

GOVERNOR O'MALLEY: Well let me ask the Attorney General, so if you want to chime in on that whole, Mr. Blair's suggestion --

TREASURER KOPP: Yeah, and then I think ESI wanted to address it, too.

GOVERNOR O'MALLEY: -- that it could just be reevaluated without being rebid? Would you address that for us here, for the generalists that compose this Board?

MR. MARTIN: Thank you. The problem is that we've already had the best and final offers and a recommendation for award. What I think the Board can do is accept or reject, approve or not approve. Those, that's the choice we're faced with now. And if the Board chooses not to approve then we have to restart the procurement process. And that's, I think what the Secretary was referring to in terms of creating another delay. It took us quite a long time to bring this to the point of recommending an award. Presumably we would have to go through that process again. It would in effect be an extension, I gather, of the contract to Catalyst for another year, or two,

or perhaps three. And frankly that calls into question the fairness of the procurement process --

GOVERNOR O'MALLEY: Right.

MR. MARTIN: -- if we were to do that. And it would, and it would probably hurt competition for any contracts in Maryland. If vendors think that there's no end to the process and then incumbents are given an enormous advantage.

GOVERNOR O'MALLEY: Mr. Blair, you shared information with Walgreens, right? About the stuff that came, you know, that was part of the bid package here? Right?

MR. BLAIR: Yes. I've had conversations with them.

GOVERNOR O'MALLEY: Right.

MR. BLAIR: Numerous conversations with them.

GOVERNOR O'MALLEY: And I have a hard time believing that Walgreens is here because you want to be left out of both of the successful bidders. That kind of stretches credulity. You don't really, you didn't take the time to be here because you want to be

left out of both contracts. No. All right. I don't think we've had a contract that's been gone over more than this one.

TREASURER KOPP: But Governor, I think the gentleman from ESI had --

MR. TYSON: I just wanted to make a quick point about the, it almost sounds like the gentleman from Catalyst is asserting that we had an advantage in the process because we could have put better pricing out there without Walgreens in the network.

GOVERNOR O'MALLEY: Mm-hmm.

MR. TYSON: And I just wanted to bring it back to the point that the pricing that was proposed when this RFP was done assumed that Walgreens was in place. And we made no modifications to that pricing once the award was made. And in June of last year, when we learned that Walgreens was going to no longer be part of the network, it could go either way. We have proposed guarantees, so when the bid was evaluated it was evaluated as an apples to apples comparison, assuming Walgreens was in place. I think going back and changing the pricing now just because

Walgreens is out doesn't, it doesn't make sense in the sense of how the bid was originally evaluated.

COMPTROLLER FRANCHOT: Well yeah, but with all due respect it's a completely different environment. I mean, there's an enormous hole in the distribution network that they claim would have significantly adjusted their situation. And you guys, I don't know what your position is as far as how you make your money.

But Governor let me just say that I think the problem, one of the problems here is that we've had such a difficult time evaluating the cost proposals because we have not gotten the data given to members of the Board. It's been encrypted, it's been given to us under, you know, if you tell anybody about this we're going to have to get rid of you, it's everything is like --

MS. FOSTER: Mr. --

COMPTROLLER FRANCHOT: -- temporarily shared with staff at meetings, it all arrives late, it's all basically incomprehensible. And --

MS. FOSTER: Mr. --

COMPTROLLER FRANCHOT: -- so I, I think that

--

GOVERNOR O'MALLEY: I'll give you a chance.

COMPTROLLER FRANCHOT: I think that the, many of the problems we're, that could have been avoided in this if we'd gotten it, at least for members of the Board, a transparent, transferral of analysis and data. And I'm going to vote no against the contract. I think there is a significant chance that there is no, will be no savings and in fact significant cost to the State of Maryland, a lot of disruption. A Maryland based company that's done a great job according to everybody is going to get left at the door and you know I think a lot of it could have been avoided if we'd had full disclosure, if things hadn't been blacked out and acted as if they are top secret. We get the redacted statements, there's nothing proprietary in it. It just had an opinion from one of the evaluators that exactly what I'm saying is true.

GOVERNOR O'MALLEY: Is there any statement that hasn't been provided to you? Any redaction that hasn't --

COMPTROLLER FRANCHOT: Yeah, but it's all been driven --

GOVERNOR O'MALLEY: Any time that hasn't been allowed to you to evaluate, or review this, or read the full statement?

COMPTROLLER FRANCHOT: All I'm saying --

GOVERNOR O'MALLEY: That's a serious question --

COMPTROLLER FRANCHOT: All I'm saying --

GOVERNOR O'MALLEY: -- because --

COMPTROLLER FRANCHOT: -- is that the situation my, and it's basically my staff, Governor, you know it's been a difficult process. And I think a lot of that could be avoided in the future, and less redaction and more transparency.

GOVERNOR O'MALLEY: Madam Treasurer, any thoughts, closing thoughts here?

TREASURER KOPP: Yeah. The Comptroller suggests we all read this opinion. I've read it

several times. I read it quite thoroughly, actually, I don't want you to think that I didn't. I, as the gentleman though, I come from Chicago and I'm very fond of Walgreens. I'm sorry Walgreens chose not to be part of the network and we have lost their, at the moment, 58 stores out of over 1100. I hope they will come back. But I don't think that's what this contract is about at all.

We've been, it's almost a year, it's a year next month that we first saw this contract and we were asked to withhold judgment until it went to the Board of Contract Appeals, which we did. The Board of Contract Appeals has looked at it and unanimously agreed that the decision was an appropriate one. I don't know whether the taxpayers will be saving \$100 million or more, but I do know that it's very important.

And most importantly I know, Governor, that you are very concerned, the Comptroller and I about the procurement process itself. I wish the Maryland based firm had been best on cost. I think it would have been great. But they gave it their best shot and

they weren't. And I see no reason to think that the process wasn't appropriate. I see a lot of reasons to think that they were. I appreciate anecdotal evidence but I recognize it is anecdotal evidence and we can get anecdotes from almost anybody we see. I see no reason after all this time, and I am pleased, I'm happy for Catalyst they got an extra year out of the contract so they had the full five years. But I see no reason to right now upset the entire procurement process and not award the contract as the department, the evaluators, the department, and the Board of Contract Appeals indicated appropriate.

GOVERNOR O'MALLEY: I've rarely been involved in the six years here in a contract that was pored over more than this one. With the experts that were retained by the Department of Budget and Management, with the due process that was not only granted, extended, the openness of this latest of several hearings here today, and I agree with the Treasurer that nothing would have made me happier than for this Maryland company to have been able to have won this on price. Especially given the size of this

contract. This is one of the bigger, more complex procurements that we do.

Let me just touch for a moment on Maryland businesses. We of course want to maximize the opportunities for Maryland businesses in our State contracting. And our commitment to Maryland businesses is reflected in the fact that in calendar year 2011, 863 of the 1,077 contracts that the Board of Public Works approved were awarded to Maryland resident businesses. We value each and every one of them. There is no job more important than the next job that we create.

This is a procurement process that has been a long time coming. When this was awarded in the prior administration it was hard fought and there were delays in implementation. And given the amount of dollars that pass through this contract on a monthly basis every aspect of due process was wrung out of it, of that procurement process years ago. So I understand, I don't have personal recollection. And that's what's happened in this case.

The Board of Contract Appeals found that Express Scripts met the requirements of both the RFP and the Maryland law in using a subsidiary to satisfy the various requirements here. The Board recognized that Catalyst also planned to use wholly owned subsidiaries and affiliated companies to perform its work under the contract. On the evaluation, I'm not going to touch on that one. But the evaluation committee also looked at the criteria, the algorithms that were placed out there, things to which no one objected on at the outset. The bottom line conclusion of the Board of Contract Appeals was that they found that DBM, excuse me, where's my stuff here? They concluded that DBM actually, the Department of Budget and Management had conducted a very professional and very exhaustive procurement process, and that they followed the law in this case. It was a, "large, multilayered, and complex procurement." And although the Board criticized DBM on a few matters it ultimately rejected all of the claims that have been made so well and presented so well by the various

lawyers and advocates for Catalyst, including their own very distinguished and honorable CEO.

Throughout the opinion the Board described the evaluation process as, "thorough," "careful," "thoughtful," "well reasoned." And while no procurement process is perfect the Board recognized that, the Board of Contract Appeals recognized that the Department of Budget and Management performed admirably.

I might also add that a few meetings ago we were told that if we had just allowed this to go to the Board of Contract Appeals, and had allow us to make this case in the fullness of time, that that is all that we are asking for. We have done that, and we have done more. And I believe that the Department of Budget and Management has acted in good faith with the counsel of the Attorney General's Office and with the other experts here. And I will move approval of this matter.

TREASURER KOPP: Second.

GOVERNOR O'MALLEY: Seconded by the Treasurer. All in favor signal by saying, "Aye."

TREASURER KOPP: Aye.

GOVERNOR O'MALLEY: Aye. All opposed?

COMPTROLLER FRANCHOT: No.

GOVERNOR O'MALLEY: The Comptroller votes no for aforestated reasons. Thank you all very, very much.

(Whereupon, at 12:37 p.m., the meeting was concluded.)