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PRESENT

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Governor

HONORABLE NANCY KOPP
Treasurer

HONORABLE PETER FRANCHOT
Comptroller

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PROCEEDINGS

GOVERNOR HOGAN: Good morning, everyone.

ALL: Good morning, Governor.

GOVERNOR HOGAN: Thank you for joining us. I just want to start by taking a personal moment to thank all of the many people who have expressed condolences and well wishes and reached out on the loss of my dad. And I just want you to know how much it means to me and the rest of the family. And my dad was an incredible man who led a full and interesting life, and he contributed a lot to the State of Maryland. And we're going to miss him greatly. But thank you all for your concern and your condolences.

With that, I'll turn it over to my colleagues for any opening comments. Madam Treasurer?

TREASURER KOPP: Governor, as the senior person here let me say that I like many people actually do remember very well the day that Congressman Hoyer -- Congressman Hoyer.

GOVERNOR HOGAN: He's the one that came after him. It's the same seat. It's the same seat.

TREASURER KOPP: Hoyer was after him. Congressman Hogan spoke up. They were very difficult and frightening times. And he took a stand that did not endear him to everyone. It was a really tough, courageous and

statesmanlike position to take. And it led many of us to think that there in fact could be a brighter tomorrow.

We were going through what President Ford called a great national nightmare. And Larry Hogan was one of those voices that spoke up clearly and came to what clearly was for him a very difficult decision and inspired all the rest of us. And I say that as someone who later opposed him in some things and in fact helped run some demonstrations against some of the things he did. But never without this feeling of great obligation and respect to a really strong statesman.

GOVERNOR HOGAN: Thank you. Thank you very much.

TREASURER KOPP: I thank you. It's never easy to part with a -

-

GOVERNOR HOGAN: Yeah, well thank you so much. Mr. Comptroller?

COMPTROLLER FRANCHOT: Yes. Thank you, Governor, and thank you, Madam Treasurer. I would also like to give my condolences, Governor, to you and to your family. And your dad, as the Treasurer noted, is going to be remembered as a man of great courage who had a crucible in American history, rose to the occasion, and he put the best interests of the country above those of his party and frankly even his own political career. And I will always recall the special relationship that you, Larry, had with your dad. And he

obviously passed along his commitment to public service and gave you a role model which is fabulous. And which you are living right now.

It was a true privilege to know Congressman Hogan. I don't go as far back as the Treasurer. But I did see him at several occasions in the last few years and, well, we all give our condolences to the Governor.

And if I could just switch gears briefly and take a quick moment to express my gratitude to the men and women of my agency in the Comptroller's Office who have worked so hard over the course of this year's tax season. No news is good news coming from my agency. Because each and every day we're dealing with an unbelievably complicated technological process of processing 3.2 million returns. And we treat every taxpayer with respect, with responsiveness.

We get results for the taxpayers. But it's not easy given the fact that, well, 90 percent of these returns are filed by e-file these days. We've processed 2.6 million returns. We've paid out more than 1.7 million tax refunds totaling \$2 billion. We've averaged 2.1 business days upon receiving your refund request and putting your money back in your bank account.

We continue to be aggressive in combating tax fraud and identity theft. We have successfully intercepted and blocked 6,500 fraudulent tax returns. Why do we know they are fraudulent? Because they are sitting on my desk and they are fraudulent. And we've blocked, well, \$13 million from going out of the Treasury. Additionally we suspended processing returns from 93 tax preparation

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services at 111 locations around the State after we detected a high level of suspicious and potentially fraudulent activities from their firms.

And Governor, let me just personally thank you once again for including the Taxpayer Protection Act in your administrative legislative package. That has lingered for years in the Legislature and well it just made all the difference when you put it in your administrative legislative package.

And I'd like to thank the members of the General Assembly for passing this very important piece of legislation unanimously after all of the back and forth. Because it gives my agency the statutory tools we need to more effectively protect Marylanders from these growingly sophisticated financial crimes by actually bringing some of the perpetrators to justice.

Thank you, Governor.

GOVERNOR HOGAN: Thank you, Mr. Comptroller. Let's go ahead and get started with the Secretary's Agenda.

SECRETARY MCDONALD: Good morning, Governor, Madam Treasurer, Mr. Comptroller. We have 20 items on the Secretary's Agenda. We have one report of an emergency procurement. We are withdrawing Item 15. And we are prepared for questions on the other items.

GOVERNOR HOGAN: I'd like to highlight Item 18.

SECRETARY MCDONALD: I would like to highlight Item 18, too. I think you have both Robert Gorrell from the School Construction Program

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and Adam Dubitsky from the Governor's Office to explain this item. Oh, I'm sorry. This is 18. The Treasurer --

TREASURER KOPP: No.

GOVERNOR HOGAN: No, we didn't get there yet.

TREASURER KOPP: I don't think so.

GOVERNOR HOGAN: I'm just, I just wanted to --

SECRETARY MCDONALD: I'm sorry. I'm sorry.

GOVERNOR HOGAN: I'm just pleased that once again the Commission on State Debt was able to recommend holding the line on the State property tax rate. And we will remain committed to fiscal responsibility and prudent capital spending. The days of raiding cash from the Transportation Trust Fund or the Chesapeake Bay Trust Fund or Program Open Space and backfilling them with debt in order to pay for other things that are unrelated is over, are over. We'll continue our vigilance to keep Maryland's fiscal house in order. And I want to particularly thank the members of the Commission, my colleagues right here, Treasurer Kopp and Comptroller Franchot, as well as Secretary Brinkley, Secretary Rahn, and Director Higgs for their great work on the Commission. Thank you.

TREASURER KOPP: Governor, could I just point out Christian Lund, who I'm told is here, who is the State's Debt Manager and a very hardworking young man who pulled us all together --

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GOVERNOR HOGAN: Why don't you stand up so we can give you a big round of applause? Thank you --

(Applause.)

TREASURER KOPP: You may recall we actually stole Christian from the Department of Budget and Management.

(Laughter.)

TREASURER KOPP: We are still very appreciative.

GOVERNOR HOGAN: That wasn't very nice.

TREASURER KOPP: No, it wasn't. I'd like to take this occasion though, Governor, to point out that Maryland is even more unique this week than we were last week in having a AAA bond rating, stable AAA bond rating from all the rating agencies. Standard and Poor put a negative seal on Virginia last week.

GOVERNOR HOGAN: Wow.

TREASURER KOPP: And in large part because A, they didn't keep the same level of rainy day fund reserves that Maryland has. But B, also that they are looking at the impact on employment and revenue of the federal government and its actions. And they see Virginia as particularly impacted. This is just something that put us all on notice, too, that people realized that what is going on in Washington could very well impact the cost of constructing schools in Virginia and Maryland. And this is not something an academic issue. And so far no one has mentioned downgrading or putting Maryland on watch. But I think

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it's something for us to all be concerned about. Another reason to be glad that we kept our tax rates stable, that we do have the reserves that we do maintain, and we haven't gone into them. And that we have a very tight, consistent, and thorough fiscal policy to which we all queue. It has served us well. I congratulate you.

GOVERNOR HOGAN: Yeah. Thank you. I'll also throw in there that while we certainly are impacted by federal spending and federal jobs, and just as Virginia is, the difference is we have added 105,000 jobs and cut our unemployment rate down to 4.2 percent. We're growing jobs at one of the fastest rates in the country, most of them in the private sector, and I think that's maybe why they looked at Virginia differently than they did us.

COMPTROLLER FRANCHOT: Yeah. And I noticed that also, what the Treasurer reported, and that's what Virginia gets for coming over here and trying to steal Marriott from us.

(Laughter.)

COMPTROLLER FRANCHOT: Yeah. Now they're over here trying to poach every brewery in the State to come over to Virginia. So hopefully we'll correct that image. But they are pretty aggressive over there and I think this should help us keep what we have, I hope.

GOVERNOR HOGAN: Well and the previous Governor of Virginia said stealing companies from Maryland was like spearing fish in a barrel. But I think we've turned that around.

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COMPTROLLER FRANCHOT: Yeah.

GOVERNOR HOGAN: We're actually bringing some of them back across the Potomac River. So we're happy with that.

I also want to note Item 19. This item proposes an amendment to the Board of Public Works school construction regulations which will allow for broadband infrastructure funding under the federal E-rate program to be included in State school construction. And we need to make decisive steps to bridge the digital divide in our schools. And with these new regulations we'll be able I believe to effectively and efficiently connect more Maryland public schools to high speed broadband internet.

And the item before us today is the result of a collaborative effort with the Governor's Office, the Treasurer's Office, the Maryland State Department of Education, and the Public School Construction Program. And I'd like to call up our policy director Adam Dubitsky and Robert Gorrell from the Public School Construction Program to provide us with some more details. Thank you.

MR. DUBITSKY: Good morning, Governor. My condolences to you and your family.

GOVERNOR HOGAN: Thank you.

MR. DUBITSKY: And Madam Treasurer, Comptroller, as you said this is really the culmination of the work we began with the National

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Governor's Association Bipartisan Group to close that digital divide, to make sure that all our schools regardless of where they are have the bandwidth they need not only for today, but also to future proof them so as new technologies come online, new ways of digital learning, new devices come available, even security systems, they have the bandwidth that they need. And the federal government has a time limited program to match State funds for the construction part of it, to make sure that schools can have these construction projects and also get the federal incentives to get it done. And as you said, it was a collaborative effort. And it really became a template for working together, both within the, with DoIT, with MSDE, with the local education agencies, outside consultants. And it created a real template for solving a highly complex problem by bringing people together. So not only, I think, does it work with this but we'll also have a template going forward on this.

GOVERNOR HOGAN: Great. Thank you, Adam. Mr. Gorrell, anything to add?

MR. GORRELL: Mr. Governor, no, I don't have anything more to add. I think Adam said it all. It is a good opportunity. The iron is hot and I think that it's striking at the right time.

GOVERNOR HOGAN: Well good. Thank you both for your efforts on the project. Any questions?

COMPTROLLER FRANCHOT: Yeah, you're with the, who's with the IAC?

MR. GORRELL: I'm the Executive, your new Executive Director

--

COMPTROLLER FRANCHOT: Oh, that's right.

MR. GORRELL: -- of the Public School Construction Program.

So I serve the IAC and of course the Board of Public Works.

COMPTROLLER FRANCHOT: Okay. So how many schools currently don't have broadband?

MR. DUBITSKY: Out of the 1,460 some odd schools about 80 don't have fiber optic broadband. Of those 60 have projects underway. That only leaves about 20 right now that don't have fiber at all. Ten of those are elementary schools in Montgomery County that they are looking at plans. Some of the other schools are because they have a, either a geographic or some other impediment to putting the fiber in. They have to stream the fiber over a mountain, under a highway, and those sorts of things. So it's, we're about 96 percent of our schools now have fiber. These funds will be available for not only new fiber for those schools but also to upgrade as necessary.

COMPTROLLER FRANCHOT: Okay. And how many areas in the State of Maryland do not, outside of schools, do not have access to the internet?

MR. DUBITSKY: In terms of access to internet?

COMPTROLLER FRANCHOT: Roughly, yeah. Just --

MR. DUBITSKY: I do not, I have to check that. I know that the rural areas have less bandwidth in terms of not only commercial but residential. About ten counties are using Network Maryland for their bandwidth within the school systems. Other areas, for example in the western counties, Lower Eastern Shore, they are looking for private providers to come in and help string that. The challenge has been the same as it was with either sewer and phones or other things, is if you have a small number of houses it's an exorbitant charge or cost to have that line strung to a small number of houses. There has not been, and I think that has probably been the impediment for the providers in putting that last mile of fiber in.

COMPTROLLER FRANCHOT: Right. Maybe you could just send me something on that? Because there are, my neighbors go to West Virginia sometimes for vacation and they report there are huge areas where there is no internet. So businesses are obviously affected and I found that to be kind of shocking. I guess I should go to West Virginia more often. But what about Maryland? And to the extent small businesses are, I mean, the schools are a top priority but how about what's going on in the rest of rural Maryland? And that kind of surprised me.

GOVERNOR HOGAN: Well as Mr. Dubitsky mentioned, Lower Eastern Shore and Western Maryland, we're working very hard on a collaborative basis with agencies across State government and with the private sector to try to extend high speed broadband all the way down to those areas where it is difficult and not cost effective. For example, I think we're working with the University System --

MR. DUBITSKY: That's correct.

GOVERNOR HOGAN: -- and with the University of Maryland Eastern Shore and our Corrections Department to try to find a way to justify and to get the fiber optics all the way down to the Lower Shore. And we're working on similar things in Western Maryland. So it's important.

MR. DUBITSKY: Absolutely.

COMPTROLLER FRANCHOT: Yeah.

GOVERNOR HOGAN: But thank you all very much for your --

COMPTROLLER FRANCHOT: If you could also take back to the IAC just my personal observations. They have definitely gotten my attention by this action to try to cut us out of the oversight of the school construction money. And if you could just take back to the members of that wonderful body -- I have no idea where they meet. There is like some closet somewhere that they get together in and make decision. I personally am going to redouble my efforts to give transparency and accountability to the hundreds of millions of dollars that

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are applied to our schools. Why would I do that? I would do that because we need to respect the taxpayers who are providing this money by having oversight. And that's just my personal observation. They have definitely piqued my interest, so to speak, and --

GOVERNOR HOGAN: Well there's no, I didn't know we were going to talk about this topic --

COMPTROLLER FRANCHOT: I know. I'm sorry to bring it up. But --

GOVERNOR HOGAN: -- but now that you brought it up, there's no question in our mind that the action was unconstitutional, with this sentence that they snuck into the budget in the middle of the night. And it has no effect whatsoever. We're not going to pay any attention to it. Obviously the IAC is a creature of the Board of Public Works. Its only power and authority is what we delegate to them. They are an agent of the IAC [sic]. And we're not going to allow an unelected body to make decisions on billions of dollars in construction projects. The fiscal officers of the State are going to continue to do so regardless of what the Legislature may think. So --

MR. GORRELL: Governor Hogan --

GOVERNOR HOGAN: -- you might want to pass that on to your members.

MR. GORRELL: -- Comptroller --

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TREASURER KOPP: Could I just say, I thought we weren't going to get into it either.

GOVERNOR HOGAN: I didn't either.

TREASURER KOPP: And I'm not about to. But I hope you will extend our regards also to Senator Hoffman. I'm sorry to hear that she's so ill and has been in the hospital.

MR. GORRELL: Treasurer, yes. I understand she's doing better and will be out soon.

TREASURER KOPP: That's great. That's good news.

GOVERNOR HOGAN: Great. Thank you.

MR. GORRELL: Thank you.

MR. DUBITSKY: Thank you.

GOVERNOR HOGAN: Thank you both. Any questions on the balance of the Secretary's Agenda? Is there a motion?

TREASURER KOPP: Favorable.

COMPTROLLER FRANCHOT: Move approval.

GOVERNOR HOGAN: Second?

TREASURER KOPP: Second.

GOVERNOR HOGAN: Three-nothing. We'll now move on to DNR Real Property Agenda.

MR. BELTON: Good morning, Governor. My condolences --

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GOVERNOR HOGAN: Oh, thank you.

MR. BELTON: -- and those of the entire department on your loss, sir.

GOVERNOR HOGAN: Thank you.

MR. BELTON: Mr. Comptroller, Madam Treasurer, for the record I'm Mark Belton, Secretary of the Department of Natural Resources. We have six items on our Real Property Agenda for your approval this morning.

GOVERNOR HOGAN: Great. Any questions on DNR?

COMPTROLLER FRANCHOT: Move approval.

TREASURER KOPP: Governor, I don't but could I take, I don't want to embarrass Mark but --

GOVERNOR HOGAN: It sounds like you're going to anyway.

(Laughter.)

TREASURER KOPP: -- I'm going to. I serve on your Maryland Commission on Climate Change --

MR. BELTON: Climate Change.

TREASURER KOPP: -- with the Secretary, who is the head of the section on adaptation and resilience. And I just want to say he and his people are doing a great job --

MR. BELTON: Thank you.

TREASURER KOPP: -- pulling together things, working with the local governments, working with the regions. I think the people of our State don't realize in fact how much is being done. And I hope that somehow there is a way to get that across. Because Mark is really on point and on target. I didn't want to embarrass him.

GOVERNOR HOGAN: Thank you very much for saying it. I thought you were going to embarrass him in a bad way.

TREASURER KOPP: No.

(Laughter.)

GOVERNOR HOGAN: But that's embarrassing in a good way.

TREASURER KOPP: But I --

GOVERNOR HOGAN: So thank you. No questions? So there is a motion, and a second, and three-nothing --

COMPTROLLER FRANCHOT: Yep.

GOVERNOR HOGAN: -- on DNR. We're going to move on to DBM.

MR. NICOLE: Good morning, Governor. My condolences to you and your family.

GOVERNOR HOGAN: Thank you. First of all, before you get started I just want to recognize Deputy Secretary Marc Nicole, who is sitting in for Secretary Brinkley today. Both of you are to be commended, and your entire

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team did such a great job on this year's budget, holding the line on spending. For the third year in a row we actually had the Legislature overwhelmingly approve the budget weeks early, rather than fighting down to the last minute with very little debate or discussion. And for the third year in a row we have instead of tax increases, we have tax cuts. So thank you very much. And please pass on to your department how much we appreciate all their efforts.

MR. NICOLE: We will do that. Thank you very much for the compliment. Governor, Mr. Comptroller, Madam Treasurer, for the record Marc Nicole, Deputy Secretary of the Department of Budget and Management. The department has submitted 15 items for today's Agenda. I have representatives to answer any questions you may have. Items 2-S, 7-S, and 8-S have been revised.

GOVERNOR HOGAN: Great. Thank you, Mr. Nicole. We have several speakers signed up on Item 2, the State's pharmacy benefit manager contract, which is on the Agenda for approval today. I think we'll start with the agency presentation of the contract and then we'll be happy to hear from those who have signed up to speak.

MR. NICOLE: Thank you, Governor. I have some few, a few opening remarks --

GOVERNOR HOGAN: Please. Yeah.

MR. NICOLE: -- and then I'm going to turn it over to Anne Timmons, DBM's Director of Employee --

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GOVERNOR HOGAN: Thank you.

MR. NICOLE: -- Benefits to make a presentation which is --

GOVERNOR HOGAN: Okay.

MR. NICOLE: -- behind you. Item 2-S is the pharmacy benefits management contract for the State of Maryland. It is part of the State Employee and Retiree Health and Welfare Benefits Program. We have been through an extensive procurement process. The PBM contract has been recommended for award to CVS Health. This contract would replace a contract that currently expires on December 31, 2017 and will cover a three-year base period with two two-year renewal options.

The Department of Budget and Management has determined that CVS' proposal is the most advantageous to the State and we ask for your approval today. DBM is confident that the procurement was conducted in a professional, fair, and responsible manner that fully complied with State procurement law. RFPs were solicited in March 2016. Five proposals were received, four of which were determined to be reasonably susceptible of being selected for award. The process included multiple cure and revision opportunities for offerors' proposals, oral presentations by offerors, and two best and final offers. After a comprehensive evaluation and robust consideration of both technical and financial factors, it was determined that CVS provided the best value to the State, earning them the number one overall ranking.

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Since the contract recommendation was announced in March, ESI has filed a protest, and OptumRx has filed one protest and two subsequent supplemental protests, all of which were or will be denied by DBM. In April both companies filed appeals with the Maryland State Board of Contract Appeals. These appeals have not yet been heard. For several reasons we are asking the Board to proceed with approval of the contract award today despite the pending appeals.

First, there is a substantial State interest in moving forward without delay due to the significant savings offered by the contract with CVS. The new contract is expected to save the State \$78 million in the first year, and \$1.1 billion over the seven-year term as compared to the current contract. These savings will not only benefit the State, but also its employees and retirees, including those on fixed incomes. Twenty percent of the savings of this contract accrue to State employees and retirees. Employees could see savings in the range of \$60 to \$240 in the first year and retirees could see savings in the range of \$74 to \$298 in the first year, depending on their coverage level. Additional savings will accrue in future years.

Second, acting now will ensure that we have adequate time to meet open enrollment requirements for the 2018 plan year beginning on January 1, 2018. Transition activities must start soon to avoid the risk of disrupting benefits for State employees and retirees.

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Finally, approval prevents a duplication and wasteful use of State resources. Failure to award the contract will require two integrations between the SPS benefits project and the State's current and future pharmacy benefit management. This delayed approval could cost the State an additional \$4 million to \$6 million.

Let me turn the discussion over to Anne Timmons, our Director of Employee Benefits, to make a presentation addressing a number of other important aspects of the contract.

GOVERNOR HOGAN: Thank you. Good morning.

MS. TIMMONS: Good morning. Thank you, Marc. Good morning, Governor, Madam Treasurer, Mr. Comptroller. My condolences, Mr. Governor. I'm sure this is a tough week for you so I appreciate that you are here today. Thank you very much.

As Marc indicated, I'm Anne Timmons. I'm the Director of the Employee Benefits Division so I have oversight of all the health contracts covering our employees and retirees. I've been in the field of employee benefits for almost 30 years and I'm giving away my age. Some of the gray hair is from being in employee benefits.

(Laughter.)

MS. TIMMONS: The first 20 years were in the private sector. I started in consulting, and then moved to the employer side at progressively larger employers.

I say that as background because I am confident in the decision reached by the evaluation committee and the procurement officer in recommending CVS for this award. The procurement was sound. It was thorough. And it was carefully and thoughtfully conducted. It's my direct reports who will work closely with this vendor and I will be involved throughout the implementation and the duration of this contract.

As you'll see from the next few slides, we crafted an air-tight contract that protects and improves the State's interests, as well as those of its employees, retirees, and taxpayers. Let's get started.

So just some highlights of our RFP. We continued with the 100 percent pass through pricing model. We continued with our pricing guarantees and 24 performance guarantees. New to this contract are annual market checks, and we also defined the brand and generic drugs. And that is done primarily to prevent PBMs from changing the classification of a drug to improve its rebates or its profits or to meet certain performance guarantees. So we've tightened up this contract even more.

This is just a snapshot of what you have in your Agenda item.

That just shows the rankings of our bidders. Any questions on this slide?

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The CVS offer really is the most advantageous to the State. They offered the best value. Their offer includes a price protection cap that does not run afoul of our transparency requirements, which is key. Day one control of new drug launches; extensive customer service training; they actually include specific elder sensitivity training, which is very helpful for our retirees. Prescription drugs can be very confusing and it's helpful that they have taken the step to train their customer service specifically to deal with the elder population. They also spend nine weeks on just training their employees on Medicare Part D.

There is minimal pharmacy disruption. We're talking about all the, you know, the bidders on this contract were the top PBMs in the country so there's minimal pharmacy network disruption. No formulary disruption.

If we delay approval there will be a significant impact to this that impairs implementation. This is an intricate and complex contract and ideally eight months to implement is preferred. Getting eligibility set up, making sure that we have the transfers of any prior authorizations and open refills, all of that needs to be coordinated so that on day one everything runs smoothly for all of our employees and retirees.

It also impairs our impending open enrollment. Open enrollment is the fall of each year and we will need to get all of that information put together ready to go mid to late summer, because we are distributing 110,000 open enrollment kits and it takes a little effort to get those printed and distributed. So

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that's a significant challenge as well. But it also delays the savings to the employees and retirees. Those dollars that were quoted by Marc are real savings that will be money in their pocket. And it's not fair to delay that for our employees and retirees, especially the retirees who are on a fixed income. It also could add additional costs to the SPS benefits transition because if we have to implement two separate PBMs at two different times we're looking at extending that contract for a cost of between \$4 million and \$6 million.

And we really can't overstate the financial savings to the employees and retirees. It's significant. With escalating healthcare and prescription drug costs, employees and retirees feel that the most. We passed on a nine percent rate increase on the prescription drug for 2017 and that's real money out of individuals' pockets so it would be nice to give that back. But it's also again in keeping with what the Secretary and Deputy Secretary have been doing for three years, which is to control State spending. We're looking at saving over \$1 billion over this seven-year contract.

GOVERNOR HOGAN: Well thank you very much. We're going to, can you stick around? Because we'll probably have some questions.

MS. TIMMONS: Yes, that's what I figured.

TREASURER KOPP: Could I --

GOVERNOR HOGAN: Yes, sure.

TREASURER KOPP: -- also ask you, please, to distribute those slides, which we couldn't see from here?

MS. TIMMONS: Oh --

TREASURER KOPP: I followed what you were saying. But it would be a little easier if we could see it. Yeah, I get it. I appreciate it. But it should have happened before.

GOVERNOR HOGAN: Yeah.

TREASURER KOPP: Thank you.

MS. TIMMONS: Yep. Sorry about that.

GOVERNOR HOGAN: Yeah. Thank you. Now we'll go to our speakers. First up is Ralph Tyler representing Express Scripts.

MR. TYLER: Thank you.

GOVERNOR HOGAN: Good morning.

MR. TYLER: Good morning. And first, as others, I join in the condolences to you, sir. Mr. Governor, Madam Treasurer, Mr. Comptroller, my name is Ralph Tyler. I represent Express Scripts. With me from the company are Mr. Jeff Scott and Mr. Jeff Fisher. We appreciate the opportunity to address you on this important subject.

Express Scripts is, as you know, the current incumbent on this contract. It believes it has provided great and important and highly useful and valuable service to the State. It is certainly disappointed in the outcome of the

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procurement and in the recommendation. What it seeks is the opportunity to raise what it believes are serious questions about the procurement. The Comptroller spoke earlier about transparency. To date, there really, respectfully there has been no transparency with respect to this matter. We have, we filed a bid protest. We have filed Public Information Act requests. To date we have received no documents. The only path to review the procurement, to determine whether it was fairly and properly conducted as represented, is through the Board of Contract Appeals.

There is, as the earlier slide in the Agenda item noted, a wide disparity in the price proposals which on its face raises serious questions. These are all sophisticated bidders and the rationale for that disparity certainly has not yet been examined. And here there is an opportunity to hear the appeal and to still meet the implementation date set by the State. The RFP indicates an implementation period of 90 days. The proceedings at the Board of Contract Appeals can go forward. We seek the opportunity to do that and if this value is as good to the State as represented, it would be there at the end of the process. Thank you. And if Mr. Scott could address the Board? Thank you, sir.

GOVERNOR HOGAN: Thank you, Mr. Tyler.

MR. SCOTT: Mr. Governor, Madam Treasurer, and Mr. Comptroller, just to echo a little bit of what Mr. Tyler mentioned, we're confident that we can continue to provide benefits as we always have with the State of

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Maryland at a high level, deliver savings. And we do have concerns about the disparity in this evaluation and are simply asking that this item be deferred and not be awarded today to allow for the protest process to run its course.

As many of you probably know, several years ago when we were awarded the contract there was a protest and in that situation the State made a decision to allow that process to go forth and not award until it was completed. And we're simply asking for the same request today. And certainly the transition timeframe, as Ms. Timmons said, eight months is ideal, would be great. But as we see, all of the big PBMs, we transition large accounts like this in 90 days routinely. So it's not something that would be difficult for any PBM to handle.

So again, we thank you and would respectfully request that you defer on this issue today.

GOVERNOR HOGAN: Thank you.

MR. SCOTT: Thank you.

COMPTROLLER FRANCHOT: I have a question. Is he still up here?

MR. SCOTT: Yes.

GOVERNOR HOGAN: Mm-hmm.

COMPTROLLER FRANCHOT: Yeah. So I guess my question is I'm not a big expert in this field, obviously. But it does strike me that there are relatively low margins involved. And so I'm intrigued by the presentation by

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DBM that apparently the winning bidder was \$543 million less than the next closest bid. I take it that was yours?

MR. SCOTT: Correct.

COMPTROLLER FRANCHOT: So that's almost a 20 percent --

MR. SCOTT: Twenty-five percent, right?

COMPTROLLER FRANCHOT: Twenty-five percent?

MR. SCOTT: Well you know math better than I, sir, I'm sure. So.

COMPTROLLER FRANCHOT: So are we, is it your contention in the protest that we're not comparing apples to apples?

MR. SCOTT: We believe that's a concern of ours, is because we don't have visibility into exactly how it was evaluated, we're concerned that something is amiss. And that's why we'd like to be able to see, go through the process to evaluate that to see if there is substance. As Mr. Tyler said, if at the end of the protest it's evaluated that these numbers are real, then congratulations. The State of Maryland has a very, very good contract. But we, because we compete in this space, I've been in this business 25 years, public sector, working with large state clients. It's just highly, highly unusual that you would see a 25 percent difference between bidders on a piece of business as huge as the State of Maryland. So that's what raises our concern.

COMPTROLLER FRANCHOT: And what exactly is the concern about generic versus brand name drugs?

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MR. SCOTT: Well, as Ms. Timmons noted in her presentation, they laid out very clearly a brand generic definition that's unique perhaps in the industry. And so one of our concerns is did everyone approach this bid using the same basis for calculating? Because as Ms. Timmons says, however you determine brand generic affects many things in your underwriting and the offer that you're able to present.

COMPTROLLER FRANCHOT: And give me an example how that impacts the average member or State employee?

MR. SCOTT: Well it could --

COMPTROLLER FRANCHOT: That confusion --

MR. SCOTT: Yeah. From the member standpoint what it would potentially impact them is that that what a plan, what the State of Maryland says we wanted this drug to be defined as a generic, but the PBM has it coded as a brand. And so therefore the member is going to pay a brand copay and then it also affects of course on the plan reconciliation side as far as the guarantees. It would trail through that reconciliation and impact those numbers as well. But the members, it would be their copay could be impacted and they could be paying more than what the plan had anticipated.

COMPTROLLER FRANCHOT: Okay. So for the members and their families and retirees, what about these performance guarantees? Are they binding on you and when you, I mean, is that something we can rely on?

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MR. SCOTT: Obviously I can't speak to what our competitors put in there. But certainly performance guarantees are very standard in procurements like this. And certainly we are held to them. So again, if the evaluation clearly is, was done in a way to ensure that those performance guarantees will be measured properly and reported then yes, they are ironclad.

COMPTROLLER FRANCHOT: Okay. Thank you.

GOVERNOR HOGAN: Great. Thank you very much.

MR. SCOTT: Thank you. I appreciate your time.

GOVERNOR HOGAN: I'd like to give the agency the opportunity to respond to concerns that were raised.

MS. TIMMONS: Thank you very much. So as far as the brand and generic definition goes, our definition is not unique. It's based on the FDA labeling. And the example that the representatives from Express Scripts gave is exactly why we would want that, because if that drug is supposed to be a generic we want our employees paying the lower generic copay not the higher brand name copay. And we also want to keep the PBMs from changing that classification for how they are paying that claim and then changing it to something completely different when our auditors are going in to audit those performance guarantees. So that's one reason why we did that.

As far as the cost differential and whether or not these are numbers to be believed, this is the whole purpose of our competitive bid process. We are

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here to get the very best contract that we can get for the State. Being part of DBM, our imperative is to save money. That's what we do.

And there's, as far as transparency in the procurement process, everybody was on the same level playing field. The financial model built in, using our actual claims, built in trend and enrollment to project out over the costs so those are real, true numbers that we can hold onto for the duration of the contract. So I find that their arguments are largely without merit. Yes, sir?

COMPTROLLER FRANCHOT: Yes, no, that's interesting. But you know, we had this famous prison food concession contract where someone just as reputable as you stood up in front of us and said, I guarantee you that this outlier bid, which seemed so bizarre in the monies it can save the State, is absolutely ironclad, performance guarantees, everything else. And it ended up being a, we had egg all over our face. This precedes the current Governor. But it was pretty embarrassing because it proved to be just a fairytale. The whole, we had to go back in and I think the prisoners rioted on the thing because there was no food. So that's the only concern I have here. Because this seems like an enormous savings for a business that has relatively low margins. And let me just ask if --

MS. TIMMONS: Well there's --

COMPTROLLER FRANCHOT: Let --

MS. TIMMONS: -- the PBMs can make a lot of money from the pharmaceutical manufacturers.

COMPTROLLER FRANCHOT: Well that's kind of the question -

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MS. TIMMONS: So it's not a lot of low margin.

COMPTROLLER FRANCHOT: That's kind of the question I was addressing, which is what do you have to say about the previous contract that we approved? I can't remember whether I voted for it or not. Generally I voted against Express Scripts all the time, I think. But I mean, are we getting overcharged by 20 to 25 percent by the incumbent?

MS. TIMMONS: Well since the incumbent also significantly reduced their costs, yes, absolutely.

COMPTROLLER FRANCHOT: Well what, tell me, help me then understand. My main concern with this is obviously we want to take care of our employees and retirees. I'm not part of the system, so I'm not speaking for myself here. But how are we addressing this issue of a long term contract in the -
- excuse me. Sorry.

(Laughter.)

COMPTROLLER FRANCHOT: It's only my wife telling me to shut up.

(Laughter.)

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COMPTROLLER FRANCHOT: So help me --

TREASURER KOPP: Good woman --

(Laughter.)

MS. TIMMONS: Sure.

COMPTROLLER FRANCHOT: Help me understand why we would go, for example, with two, a three-year contract with two two-year renewals? Why don't we just go with a two-year contract and see how it goes? And then revisit this?

MS. TIMMONS: Well the industry average now is a three-year base contract with anywhere from one to four renewal options, one to four-year renewal options. So our previous contract was a flat five years. By going to the three years with the two two-year renewal options, we actually have greater flexibility. And because of the annual market checks we get to go out into the marketplace and make sure that we're still getting the best pricing for this service. So we're able to do that every year. And if it's determined that we need to procure it, then we have that opportunity sooner rather than later to do that.

COMPTROLLER FRANCHOT: Well if I could get the options removed or turned into something that has to be brought before the Board for a complete review, where you are not just rubber stamping this, I might feel a little differently. Three years is, you know, it's not my preference but I can kind of see that. My concern here is that these performance, the performance guarantees that

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are ironclad, how ironclad are they? What happens if they just come back and say, we can't do what we said we were going to do?

MS. TIMMONS: Then they are assessed liquidated damages that they have to pay us each year.

COMPTROLLER FRANCHOT: What --

MS. TIMMONS: They are assessed liquidated damages that they would have to pay us for failing to meet those performance guarantees.

COMPTROLLER FRANCHOT: And that brings the cost to the State down to what they are advertising --

MS. TIMMONS: Right.

COMPTROLLER FRANCHOT: -- those damages? Well on the timing issue, I don't really see too much in that because, you know, we're told all the time you've got to support the contract or bad things are going to happen. And I kind of, I think Express Scripts is probably accurate. We could put this off.

MS. TIMMONS: Well it --

COMPTROLLER FRANCHOT: What's your response to that?

MS. TIMMONS: We started this procurement, we actually started drafting that RFP in the end of 2015. We released it March 1, 2016. So we have been thoughtfully working on this with a two-year goal to get to January 1 of '18.

COMPTROLLER FRANCHOT: And the revisions, Mr. Assistant Secretary, that you mentioned. This is before us with revisions. What are those?

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MR. NICOLE: Right, they are the ones that are highlighted in the, on your Agenda item. They are in yellow. We provided a little bit more detail on some of the aspects of the RFP.

MS. TOMASZEWSKI: Good morning, Governor, Madam Treasurer, Mr. Comptroller. Jamie Tomaszewski, Chief of Procurement for the Department of Budget and Management. The revised Agenda item states the substantial State interest that Deputy Secretary Nicole mentioned in his remarks this morning. So we just wanted to put that into the record with the Agenda item. So the revisions were all reflected in the comments to you this morning.

As far as the renewal options, we do bring those back to the Board. So they would not be exercised without bringing them to you for approval at that time. So the way the contract is set up the three-year base is approved by you today, hopefully. And then we would come back after the three years with the first renewal option for your approval at that time if we decide to move forward with those options.

COMPTROLLER FRANCHOT: For --

MS. TOMASZEWSKI: For approval by the Board.

COMPTROLLER FRANCHOT: -- a complete review?

MS. TOMASZEWSKI: Yes.

COMPTROLLER FRANCHOT: Okay.

MS. TOMASZEWSKI: And then the second as well. So we would bring those renewal options back to the Board before they would be awarded.

COMPTROLLER FRANCHOT: And what is the status of the bid protest if we approve the contract in the face of a bid protest? What happens to that?

MS. TOMASZEWSKI: The appeals can move forward because my understanding is that the protesters would like to see the actual prices, which are at this point confidential until the contract is awarded. So they could move forward with those appeals. And we feel confident that we would win in that case as well, just like we did with the State Medical Director contract. And so there would be no change if the Board of Contract Appeals says that we did something wrong, arbitrary, and capricious, which I highly doubt. But we would come back at that time to decide whether we need to do a new procurement or go with the Board's recommendations.

COMPTROLLER FRANCHOT: So you are stating for the record that you under no circumstances are coming back to this Board saying, gee, we just learned from the bid protest process that in fact there is some confusion here and we're going to ask you to change the contract, or we're going to ask you to add money in, because yeah, we're saving 20 to 25 percent but really we're only saving 15 percent, even with the liquidated damages. You're not going to, we're

not going to see you for three years, other than our happy State employees saying how great the system is?

MS. TOMASZEWSKI: Right. That is our goal. There is nothing

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COMPTROLLER FRANCHOT: You're saying that for the record?

MS. TOMASZEWSKI: For the record I can say that the State did not do anything arbitrary and capricious in conducting this procurement, and we feel that we will prevail at the Board of Contract Appeals. We are confident in the RFP specs and that is why we made it the way it was, to be clean so everyone was on a level playing field, everyone had the same specs, everyone had the same data to propose their prices. And the prices we are very confident in. And we can have CVS also tell you that their prices --

COMPTROLLER FRANCHOT: And how long have you been head of procurement?

MS. TOMASZEWSKI: A year and a half now, head of procurement.

COMPTROLLER FRANCHOT: And you worked for the agency before that?

MS. TOMASZEWSKI: Ten years for the agency.

COMPTROLLER FRANCHOT: Okay. So what is this say about the previous contract? And the previous bid?

MS. TOMASZEWSKI: Well --

COMPTROLLER FRANCHOT: That we're getting a better contract for lower prices. Are drugs a lot cheaper these days?

MS. TIMMONS: That's really a reflection of the market, not so much the RFP. The market has changed. We have adapted our RFP to that. And we got the top PBMs to bid on this contract.

COMPTROLLER FRANCHOT: Well that's exactly my point. What if the market changes --

MS. TOMASZEWSKI: That's why we have the market --

COMPTROLLER FRANCHOT: -- next year?

MS. TOMASZEWSKI: We have the market --

MS. TIMMONS: That's why we have an annual market check --

MS. TOMASZEWSKI: We added that in.

MS. TIMMONS: -- built into the contract.

MS. TOMASZEWSKI: So that we would be able to check it every year. Not just after the base term but every year of the contract. So that we can make sure we are still continuing to get the best prices because the market has changed.

TREASURER KOPP: Could I just jump in?

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COMPTROLLER FRANCHOT: Yeah, I kind of wish we'd had that --

TREASURER KOPP: Jamie --

COMPTROLLER FRANCHOT: -- in the previous contract, don't you?

TREASURER KOPP: Exactly.

MS. TOMASZEWSKI: Yeah. That's why we have it now.

TREASURER KOPP: This, I think this annual market check is a terrific --

MS. TOMASZEWSKI: Yeah.

TREASURER KOPP: -- tool and I would urge you and General Services, we talked about this in the Procurement Task Force, to whenever possible insert in things like the intergovernmental contract where we just ride on someone else and in the beginning it clearly is the cheapest, most efficient way.

MS. TOMASZEWSKI: Right but as the market --

TREASURER KOPP: To try to build in these market checks. I think that's just terrific.

MS. TOMASZEWSKI: Right. Yes, as more players come into the market or changing market --

MS. TIMMONS: Or as you consolidate --

MS. TOMASZEWSKI: -- consolidate, yeah, exactly.

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MS. TIMMONS: Right. Yes.

GOVERNOR HOGAN: Okay. We've got a number of speakers and --

COMPTROLLER FRANCHOT: Okay.

GOVERNOR HOGAN: -- thank you, we might have you back up again. But up next is Phil Andrews representing OptumRx.

MR. ANDREWS: Good morning, Board members. I appreciate the opportunity to address you this morning. And I want to join everyone, Governor, in expressing my condolences.

GOVERNOR HOGAN: Thank you.

MR. ANDREWS: There's no other way to put it than that Caremark and its price is a complete outlier situation. It's not just Caremark versus Optum's price, or Caremark versus Express Script's price. It's Caremark having a price that is completely outside the industry norms. And again, it's this question of if it sounds too good to be true, it probably is. And the difficulty is here is that this Board is not the place or the forum to litigate these kinds of issues. And the Board, Optum urges, should not deviate from its policy, which is not to award the contract in the face of a protest or an appeal. And these are not insubstantial or whimsical protests. There's a real question about pricing realism here and the cost savings that are being offered up are, the Board is being asked again to take things on face value.

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I was here five years ago when the last contract was awarded. And I think for the Comptroller and the Treasurer you probably have a sense of déjà vu. It's the same sort of rush, you have to do it right now, we're going to have enrollment issues. The problem is the process, and there is a process, and the reason the Board --

GOVERNOR HOGAN: I wouldn't say it's been rushed --

MR. ANDREWS: Yes?

GOVERNOR HOGAN: -- since they started in the beginning of 2015.

MR. ANDREWS: I understand that, Governor. But my point is they control all the timing on the evaluation and everything else.

GOVERNOR HOGAN: Where I come from that's pretty slow.

MR. ANDREWS: Well it's just, now it's you have to do it right now because if things don't happen by August -- I know protests are inconvenient. I understand that. But there is a process and the Board's regulation needs to mean something. And the substantial State interest here is not the things that are on the Board that no one at this point can really see because that information is not available. The substantial State interest is making certain that the State and the Board, if I may, gets this contract award right. And there is something in the pricing that is entirely unheard of, this type of price differential. And it bears further examination.

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COMPTROLLER FRANCHOT: What exactly is that, that you just said?

MR. ANDREWS: Well it's --

COMPTROLLER FRANCHOT: Because I don't understand, other than I only pay 97 cents for my 50 tablets of Atenolol, which is a lot better than -- well, I mean I give a dollar to CVS and get a 90-day supply. And I feel sorry for them.

(Laughter.)

MR. ANDREWS: I wouldn't feel sorry for them, Mr. Comptroller. I think they're doing just fine. The question is, how is it --

GOVERNOR HOGAN: Maybe we can make up for it by giving them this contract.

(Laughter.)

MR. ANDREWS: How is it that the incumbent, Express Scripts, OptumRx, which is another national leader in the PBM industry, and the fourth offeror all had prices that were close and there's this 25 percent difference? There's something else going on. It may be in the option years, and whether the option years ever get exercised is unclear. But my point is the reason the regulation exists and it's the Board's regulation is to allow the process to go forward so all that can be examined and the Board can get the right result.

And we've been focused a lot on price. I'd like to speak just briefly about technical. Because the ultimate standard for award of this contract is what is the most advantageous proposal? And it's not just about price. Optum was ranked first technically. At our debriefing Optum was told that Optum's technical proposal had no weaknesses, no weaknesses. So the question now becomes, well, where are we on the pricing, 25 percent differential, that sounds suspicious. But actually if you look at the base contract period, the difference in pricing is only about nine percent between, I can only speak for Optum, between Optum and Caremark. So when you get that close in the pricing then the question comes up, well, what about technical superiority? And the other thing you have to consider, I think, is with this lower pricing does that mean there is going to be a reduction in service benefits? And if you look at how Caremark has priced the option years, there is a huge drop off, I mean, hundreds of millions of dollars, over the year by year pricing for the base contract.

The Comptroller's questions, the Treasurer's questions, these are questions that ought to be answered by the Board of Contract Appeals. And that process should be allowed to go forward here. And the point is if there's a nine percent price difference for the base year, then if it's \$1.00, if you will, Mr. Comptroller, for a pill from Caremark, and a \$1.09 for a pill from Optum, which has the superior technical ranking with no weaknesses, why would you take the chance? The place to examine this, respectfully, is in the Board of Contract

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Appeals. I would urge the Board, urge the Board to comply with its standard policy.

The other thing I will say, and this was in our protest, Caremark has a checkered history with pricing issues and pricing litigation over the past few years. It's all set forth in our protest. I won't repeat it here now. But there are lots of warning flags here. And I urge the Board to heed them. Let the process go forward as intended. I thank you for your time.

GOVERNOR HOGAN: Thank you. Any response from the department?

(Laughter.)

MS. TIMMONS: First of all, that nine percent differential is \$100 million. That's not small dollars. Second of all, Optum itself is the beneficiary of a similarly awarded contract where they were 25 percent lower than the next lowest bidder. So it's interesting for them to be making this argument to me.

Also, they will get their day in court through the Board of Contract Appeals, even if this is approved today. And I would also like to bring up our consultant, George Bognar, who is an expert in the PBM industry to talk about the pricing that's going on now in the marketplace.

MR. BOGNAR: Good morning, Governor, Madam Treasurer, Mr. Comptroller. My name is George Bognar. I work with Segal Consulting. I've

been in the PBM field for 20 years, ten working at an actual PBM, and the last ten in consulting.

I wanted to just spend a few minutes talking about, there's been a lot of questions around can the financials be real or the differences between the financials be real. So I just wanted to tell you a little bit about how they were actually determined.

The way they are determined is we take, we simply take the guaranteed financial terms from each of the bidders, so those are discounts, fees, and rebates, and these are guaranteed terms from each of the bidders, and we apply them to the State's actual claims experience. We do it the exact same way for each of the bidders. And the process actually allows each bidder to see, you know, once those calculations are made they actually see what the bottom line looks like. So you know, it's, there's nothing subjective about them.

And I would also comment there are numerous financial components. There's a lot of financial components that they have to submit. And in none of those did we find a particular price point or rebate or fee that is completely out of line with the industry. So really the result of this large difference over seven years has to do with the fact that CVS provided the most aggressive bid in each one of those components. And when you basically extrapolate them over the seven-year period it comes to that large \$543 million.

And as the gentleman representing Optum said, for three years it's a nine percent

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difference. Which in his example didn't sound like a lot. But as Anne said, that's \$100 million. That's a large number, I think even for the State.

COMPTROLLER FRANCHOT: Yeah, if I could just ask though -

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MR. BOGNAR: Yes, sir?

COMPTROLLER FRANCHOT: -- it's a different figure than is being presented to us, right?

MR. BOGNAR: I'm sorry?

COMPTROLLER FRANCHOT: I mean, we have a figure of \$543 million over seven years. What is the savings over three years?

MR. BOGNAR: A little bit over \$100 million.

COMPTROLLER FRANCHOT: Total? \$33 million a year?

MR. BOGNAR: Correct.

COMPTROLLER FRANCHOT: Well that's a lot different than what we're being asked to vote on. And I would love to ask my colleagues let's vote on what's before us, a three-year contract with a \$33 million a year savings, not a seven-year contract with a \$78 million annual savings. I mean, I would just throw out there I perhaps, despite my reluctance to award bids in the fact of protests, could be, you know, would be happy to join in and vote for a three-year contract. But I'd like to see the right figures put in front of us. But --

GOVERNOR HOGAN: We do have all the figures here.

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TREASURER KOPP: Yeah.

COMPTROLLER FRANCHOT: Yeah, but, isn't, am I wrong here that we're being asked to vote on a three-year base contract that saves the State \$100 million because over seven years with two options that have not been approved and would come back for further action by the Board, there's a \$543 million savings? How can the four option years be five times what the first three years are?

MS. TIMMONS: Well do you want to talk about how --

MR. BOGNAR: Well I think I can answer the question partially. So the difference between the bidders in terms of financial, guaranteed financial terms, increases throughout the life of, throughout the seven-year period. For example, in the first year all bidders are required to keep the formulary that's in place today. So that's a disadvantage to any of the bidders other than the incumbent. So over each year, the difference between the highest bid and the next bid gets larger and larger. And you're right, there will be an opportunity to revisit the price each year through the annual market check. But these are guaranteed terms over the seven-year period.

COMPTROLLER FRANCHOT: Yeah but four of the years are not guaranteed.

MR. BOGNAR: They are, sir.

MS. TOMASZEWSKI: They are.

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COMPTROLLER FRANCHOT: By whom?

MS. TOMASZEWSKI: By the offerors.

MR. BOGNAR: They are guaranteed in this offer.

COMPTROLLER FRANCHOT: Yeah, but we're not guaranteeing them because we're not necessarily approving them, right?

MS. TOMASZEWSKI: Well --

MR. BOGNAR: Well if you reject them then, of course --

COMPTROLLER FRANCHOT: I don't know. I would like to, given the confusion and the protest, vote for the three years. I think that's a reasonable step forward for the State. And the four option years, you can come back down the road. But I'd also like to see the right figures that we're voting on. We're voting on a guaranteed three-year deal with this company and they are going to, based on liquidated damages, give us somewhere in the \$33 million range savings for our members. Okay, I can see that. The rest of it is just maybe, gee whiz, and gosharoonny.

MS. TOMASZEWSKI: That --

COMPTROLLER FRANCHOT: And by the way, neither the Governor nor I, the Treasurer may be here seven years from now, but neither he nor I are probably going to be here. So who is even going to remember it?

MS. TOMASZEWSKI: Well respectfully, Mr. Comptroller, all of the prices are guaranteed for all seven years because those were the prices that

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were proposed by the offerors. All offerors had to propose all seven years. So they had to guarantee those prices.

COMPTROLLER FRANCHOT: And why did they go up so much in the four option years as opposed to the three contract years?

MS. TOMASZEWSKI: Well that's based on what the offerors proposed and the aggressive changes that they proposed --

COMPTROLLER FRANCHOT: I mean, really. Come on.

MS. TOMASZEWSKI: We can have CVS come up --

GOVERNOR HOGAN: Let me, let me suggest --

COMPTROLLER FRANCHOT: Yeah, please. Have CVS come up.

GOVERNOR HOGAN: We're only halfway through our --

MS. TOMASZEWSKI: Yes.

COMPTROLLER FRANCHOT: Okay. Fine.

GOVERNOR HOGAN: -- speakers for this item. So save some of your fire for the next couple of people.

COMPTROLLER FRANCHOT: Okay.

(Laughter.)

MS. TOMASZEWSKI: But we did guarantee all of the prices.

GOVERNOR HOGAN: At this point we're going to call on Sue Esty, representing AFSCME.

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MS. ESTY: Thank you very much, Governor. And good morning, Governor, Madam Treasurer, Mr. Comptroller. It's so tempting to say go for it. State employees really do need anything they can get in the way of savings and I mean, no one knows better than us the plight of our retirees and our members as far as finances go.

But I do have to say that I share some of the concerns voiced by the Comptroller. Because sometimes it does look too good to be true. And given that this is before the Board of Contract Appeals, given that they have the opportunity to really dig deeper, or drill deeper I think is the terminology people use lately, into what's going on with this difference in price, we would recommend at least allowing the Board of Contract Appeals to look at these differences.

Some of the concerns we have is I think I heard, maybe correctly, maybe not, that the formulary could change over time. And in past years that has been an issue, where members were dealing with a formulary that changed and suddenly prescriptions that they were used to costing a certain amount changed. And that is the kind of thing that we would like to see very closely examined. And we think it could be in a hearing before the Board of Contract Appeals.

So I don't really want to take a lot of time except to voice our concern that we want those savings to be real and true. We want the process, and I have a lot of respect and have known for a long time the folks from DBM, you

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know, that have worked on this. But I think that with such a large contract with such a potential for a large impact, it would be perhaps best to go through the entire process and allow that appeal process to go through. Thank you.

GOVERNOR HOGAN: Thank you. And now finally we have Bob Enten on behalf of the winning bidder, Caremark CVS.

MR. ENTEN: Thank you very much, Governor, Madam Treasurer, Mr. Comptroller. Robert Enten, with the Gordon Feinblatt firm. And on behalf of my firm, Governor, we'd like to express our condolences, both mine and our firm's condolences to you and your family.

I'm an attorney in Maryland. I've come before the General Assembly and this Board for over 30 years. I have represented CVS and its predecessors for 22 years. CVS is a \$177.5 billion company. They are number seven on the Fortune 50 list. They have the State contract in 15 states, many of them in our region, and they help to manage the contract and advise the states, five other states.

I'll put it very simply. CVS made its bid because they want to have the Maryland contract. You have a competitive bidding process and they made their bid at the level they made it as part of a competitive process because they wanted the contract. CVS in the State of Maryland has 223 stores. We employ over 5,000 people. We fill 21 million prescriptions a year. We pay taxes of \$55 million a year. We had this contract and we lost this contract to Catalyst,

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which is now part of Optum. Optum lost the contract to Express Scripts. We want the contract back.

We stood by this State last year when things happened in Baltimore. We reopened our store at the intersection of Pennsylvania and North because we have a commitment to the State of Maryland. The idea that CVS would not honor its commitment and its performance guarantees to the State of Maryland is totally specious. There is no history of that. We will stand by this contract. We're subject to the performance guarantees. And we're also subject to the price check, to the market check which guarantees on an annual basis that no matter what the numbers are, what you pay us will be in tune with what's going on in the marketplace.

The savings are the savings. They are guaranteed and we stand behind them. The standard and the argument that, oh, we should just put this on hold and let the things play out at the Board of Contract Appeals because they will delve into it deeper. I think as the members of this Board know very, very well, that what the Board of Contract Appeals does by law is not substitute its judgment for the judgment of the agency or this Board. The standard for review at the Board of Contract Appeals is that they will only overturn the award if it's found to have been arbitrary, capricious, and an abuse of discretion.

These are big contracts. This contract is big, but it's not that much bigger than the last contract, frankly, or the contract before it. They were

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appealed. And in both of those cases the appeals were denied. That's the history on this issue. There is a huge cost to CVS to go ahead and get this contract ready for implementation on the 1st of January in 2018. And they stand to lose if for some reason the contract is nullified. But they will take that risk. They'll take that risk because they believe that their bid was a fair bid that was an open process and they have no doubt whatsoever that under Maryland law the award that was made here will be sustained.

Now you have the discretion to decide whether this contract goes forward now or not. I think there's two issues. One is, do you approve it? And two, does it go forward? We would urge you certainly to approve the contract and we would certainly urge you to go forward with the contract.

There was no mystery about the definitions or anything else. We knew what we were doing. We know what we're doing in the other states. We know what we're doing in the marketplace. There was no mystery. CVS nationally manages the pharmacy benefit for over 75 million people. We're not novices at this. We know what we're doing. We'll stand behind our bid and we'll stand behind our services. It's in the best interest of the State to realize these savings now. It's in the best interest of State government, the best interest of the budget, and ultimately and equally importantly it's in the best interest of the taxpayers and the enrollees in these plans. So we would urge you to approve it. We would urge you to go forward.

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Mr. Steve Kunz is here. Steve is in charge of national sales for CVS. He worked on this RFP. He knows it forwards and backwards and he can address any of the technical questions that you have. But I think that there's, to me it's all based on speculation as to what will happen. We'll stand behind what we promise. Thank you.

GOVERNOR HOGAN: Thank you. Any questions?

COMPTROLLER FRANCHOT: Yeah, no, I have a lot of respect for Mr. Enten. I've known him for years. And but I also have a lot of respect for Mr. Tyler and Mr. Andrews and everybody is well represented here. But forgive me, we're talking about a three-year base contract where there is roughly \$33 million in savings annually, and then four additional years where there is \$110 million or \$115 million annual savings. How do you explain that discrepancy?

MR. ENTEN: I'll let Mr. Kunz talk. He's the one that made the bid and I'll let him answer your question, Mr. Comptroller.

COMPTROLLER FRANCHOT: Great. Thank you very much.

MR. KUNZ: Good morning, Mr. Comptroller, Governor, and Madam Treasurer. In response to that specific question, the way that the RFP was laid out it gave you the option to price out all seven years. And the spreadsheet that was provided showed you exactly how many prescriptions at each retail, mail order, brand versus generic, were assumed in each one of those periods. And then

it totaled everything up. So it gave you the full seven-year total for the PBM contract.

What we did based on the way that the market has evolved over the last number of years, I think this speaks to your point of what's wrong with the old contract. This market has gotten extremely competitive, to the benefit of payers like the State of Maryland. And so what we did was we improved our pricing each of those seven years, regardless of what term you had. And thinking that you were analyzing the full seven years, we gave pricing improvements in each of the components in those years because we bet on ourselves to make more efficient purchasing decisions.

To Bob's point, we're the largest PBM as of the first quarter of this year. We're the second largest retail provider in the CVS stores. And so our purchasing power allows us the ability to procure drugs from pharmaceutical manufacturers differently.

So we put numbers out there that we fully expect to live up to. And they are guaranteed dollar for dollar for all seven years. But what we did was we bet on ourselves having the ability to continue negotiating more effectively with pharmaceutical manufacturers in terms of rebates, in terms of discounts, and of those rebates we passed those through to you whatever we earn back.

COMPTROLLER FRANCHOT: Yeah, I can see that. I can kind of follow that. But it strikes me as you've got two different bids here. You've got a bid for three years and then you've got a bid for the maybe four years. And once you're obviously the incumbent vendor it's different than if you're not the incumbent vendor. And I, you know, arch an eyebrow at that. I like CVS. They're my pharmacy. I said that. But I don't like the idea of a \$2 billion contract where most of the savings to the State come in years four, five, six, and seven, maybe.

MR. ENTEN: But Mr. Comptroller, if I might, there's no maybe --

COMPTROLLER FRANCHOT: And we're, and in the --

MR. KUNZ: There's a guarantee.

MR. ENTEN: There's no maybe. They are guaranteed.

COMPTROLLER FRANCHOT: No. In the face of if we turn down the options and say we're going in a different direction because we didn't like the technical aspect or something, then your argument, Mr. Enten, is turned on its head. Because you're a very big, powerful, well-funded, litigious, litigious company. It's a litigious area. But you know, what are we getting into here? And what are we basing it on? That's all I'm asking.

MR. ENTEN: -- respond --

COMPTROLLER FRANCHOT: Maybe, have you bid like this in other states?

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MR. ENTEN: Yes. And in fact -- Steve, go ahead.

MR. KUNZ: We've actually been very fortunate to pick up as new state clients over the last four years ten state governments around the country. And so New York came on board, very large company. State of Florida, Commonwealth of Kentucky, State of West Virginia. We've had Pennsylvania as a client for a while. And in all those situations it's been a very competitive market. We've lost some RFPs, too. We've lost some PBM clients to our competitors and sometimes you get access to the information. But what we based our pricing on was our ability to be aggressive with the pricing at the same time as not providing substandard services to the State, as well as your employees and retirees. And so it's something that we feel very confident and we provided a number of those as references during this RFP process because of the great relationships we have with those states.

COMPTROLLER FRANCHOT: And the other three bidders who are just like you guys, not identical, but significant players. They don't realize that the first three years can be one price and the next four years three times the savings? They don't, how do they possibly compete against you in other states if this is your model? And it's accurate, I guess?

MR. KUNZ: Right. It's something that each RFP is different and so certain states will only ask for a three-year contract because they are going to bid that contract every three years. And there's no options years involved. In this

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situation the requirements of the RFP was for three years with the four-year, and there were pricing points that you could fill out for each one of those seven years. And so each bidder had the option to choose do you, how do you price each one of those seven years? And not being privy to what our competitors provided in theirs, what I can speak to is that in ours we assume that each year the ability to purchase drugs will get better and better for us, that we would pass on to you, the client.

COMPTROLLER FRANCHOT: I'm, thank you, Governor, for biting your tongue and letting me ask these questions. But --

GOVERNOR HOGAN: You're welcome.

COMPTROLLER FRANCHOT: -- it's a valid concern. And --

MR. ENTEN: If I could just say one thing, Mr. Comptroller? And that is please keep in mind that this contract, putting, even if you look at it for the first, for the three years, is so much more advantageous to the State than prior contracts. Even over the three-year period the savings in the first three-year contract of this contract will double what was saved in the prior contract.

COMPTROLLER FRANCHOT: No, you've got me there. I'm --

MR. ENTEN: And --

COMPTROLLER FRANCHOT: -- I'm comfortable with going with that.

MR. ENTEN: -- we'll stand behind it. Yeah.

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COMPTROLLER FRANCHOT: It's the stuff out there in the future, particularly given your size and clout as a company. I mean this is not a --

MR. ENTEN: We think that's an advantage to the State of Maryland.

COMPTROLLER FRANCHOT: I understand. But it also provides a lot of leverage for whoever sits in these seats to have to put up with four years from now, three years from now.

MR. ENTEN: And in other states, and in other states, Mr. Comptroller, there are discrepancies sometimes of \$1 billion in the larger states between the bids, and that happened very recently. Where one of the companies here today outbid us by \$1 billion. It happens. It's a competitive process. You don't know. Had we known that we were going to be this far below the others, we would have had a much higher price.

(Laughter.)

MR. ENTEN: We didn't know.

GOVERNOR HOGAN: I appreciate that honesty.

(Laughter.)

GOVERNOR HOGAN: Any further questions on this item?

Thank you very much.

MR. ENTEN: Thank you very much.

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GOVERNOR HOGAN: I'd like to move on to Item 5. I want to thank Deputy Secretary James for being here. Last time we held the vote on this item and asked him to come back before us and provide us with an update on the department's efforts to stand up in-state facilities to be able to handle all of our Maryland kids with developmental and behavioral challenges. So thank you, Secretary James.

MR. JAMES: Thank you, Governor, Comptroller, Madam Treasurer. Before I start, Governor, please accept my deepest condolences --

GOVERNOR HOGAN: Thank you very much.

MR. JAMES: -- and those of our department.

Item 5-S is our contract with Woods Services, Inc. in Pennsylvania for residential childcare services. It is a one-year contract with a one-year option with an overall value of \$4.1 million, approximately \$4.1 million, and would cover the placement of 11 children at that program.

In the larger question, and specifically with regard to Judge Rotenberg Center and the children there, when I was before this body in late March I offered a timeframe of 60 days to have those youth transitioned back to Maryland. We are still working aggressively but at this point I do not believe that we are going to make 60 days. It is proving far more challenging to create a program and stand up a program from scratch, basically, in Maryland than we and

our partners, the providers in the community, and our other partners at State agencies had anticipated and hoped.

We are in daily communication with the Department of Health and Mental Hygiene, as well as the Department of Education, and our other sister agencies, the Governor's Office for Children, the Department of Disabilities, examining every opportunity to accelerate our timeline. At this point our strongest candidate is a new program that is being created by an organization called Community Options. They are an existing provider for DDA. They have facilities in Maryland. But their timeframe for creating the type of program that we would need to serve these youth is approximately July 1st. And that's what we're working towards.

We are also continuing to work with other providers. We recently had a provider contact us and state that they believe that they have additional capacity and would be interested in expanding that. If that option becomes available and is the appropriate fit for those youth, we will move quickly on that and transition those youth to that program. But it has to be the right fit. We don't want to take children from someplace where they are stable and put them someplace that's a bad fit.

So while our primary focus is on the youth at JRC, the State currently has 38 youth out of State. And we are focused on developing programs that serve all 38 with our goal being that we have substantial additional capacity

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by the end of this year. The State has formed an interagency work group on this chaired by the Governor's Office for Children. We are meeting weekly. We have an aggressive timeline to identify what are our barriers currently and how are we going to move forward with this. With that, I'm happy to answer any questions you may have.

GOVERNOR HOGAN: Thank you.

COMPTROLLER FRANCHOT: Yeah --

TREASURER KOPP: Have you found common, you just sort of answered it I think, was that you're working through it, but thus far common threads in terms of the problems or the impediments to creating programs?

MR. JAMES: So I don't think that there's any single obstacle or impediment. I think it is simply that this is a very complex challenge. And that between the licensing requirements and the requirements to obtain a physical facility, and then hire and train your staff, and stand that up. And get that all in place and lined up and assuring that the providers have the capacity to actually serve these kids. That's proving to be fairly challenging and is taking longer than we had hoped or anticipated. But that I think is --

TREASURER KOPP: I would be interested, and it may be down the road in terms of lessons learned, whether there is the capacity in the State either in the public sector or private to have something like, for instance, an ongoing training capacity.

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MR. JAMES: Mm-hmm.

TREASURER KOPP: Since there is a lot of turnover, also.

MR. JAMES: Certainly. Well --

TREASURER KOPP: It, I mean, that sort of ongoing site location capacity --

MR. JAMES: Mm-hmm.

TREASURER KOPP: -- or something like that that would facilitate --

MR. JAMES: So and Madam Treasurer the training frequently is provided by the provider themselves. And so it is as much about hiring the folks and getting them and having enough of a class. But I certainly take your point. And one of the things that the interagency work group is focused on is not just how do we create a new program? It is, you know, I think our experiences over the last year have really driven home that our system is not working the way we want it to work. That the interagency collaboration hasn't been what we wanted it to be and that our system of licensing and monitoring really was not performing where we wanted it to be. So we're looking at overhauling that entire process as part of this interagency work group. And we look forward to reporting back to you on our progress with that.

TREASURER KOPP: Thank you.

COMPTROLLER FRANCHOT: Yeah. So I'm kind of confused because this issue is obviously one of great interest to the folks who are involved in this operation. Not just the families but everybody who is looking in on it. And your testimony today is that 37 people that you have out of State, by the end of the year your interagency group is going to --

MR. JAMES: So --

COMPTROLLER FRANCHOT: -- have a determination, what, about those 37? Are they going to be back in the State of Maryland?

MR. JAMES: So I want to be very careful and as I've stated before, I will not, I can't in good faith say to the Board that all 38 youth are going to transition back to Maryland. Not every out-of-state program is a bad program and not every out-of-state program is a bad fit for the youth.

COMPTROLLER FRANCHOT: Okay. How many of the 38 --

MR. JAMES: And I --

COMPTROLLER FRANCHOT: -- do you predict are going to be back in-state? Take a guess. I won't hold you to it. But what's a reasonable number?

MR. JAMES: So our overall goal I think is to try and get that number down to single digits. But we have to look at the age of the youth, will the youth naturally age out of a program out-of-state? I think our overall goal is to have the capacity in the State. The 38 youth that are out-of-state, some of those

clearly we want to transition back to Maryland as quickly as we can, including the 11 youth that are at the Woods program. Not that, not disparaging the Woods Services program, but anytime we've got 11 youth at a single placement that suggests to us that that's sufficient capacity, there's enough of a cohort of youth that we should be able to serve them in-state.

COMPTROLLER FRANCHOT: Okay. What's the timeline on those 11?

MR. JAMES: So our goal right now is to work with the providers and by the end of this year to have additional capacity to serve those youth within the State of Maryland. We're also actively working to prevent additional out-of-state placements. So as we're bringing up new capacity, in many cases rather than transitioning one youth back to Maryland and sending another youth out-of-state, we're working to make sure first that additional youth don't go out-of-state. And that's what we've been focused on over the past several --

COMPTROLLER FRANCHOT: Well why does this item that you have before us include the ability for other youth to enter or exit the program? What's that all about?

MR. JAMES: I think that's a recognition of the realities that placement needs emerge quickly and between now and when we develop that additional in-state capacity there may be a need for an additional placement.

COMPTROLLER FRANCHOT: Okay. And the other agencies that have out-of-state placements, you, is that, how many kids are involved in that? Am I wrong? Is it just you guys at 37?

MR. JAMES: No. And Mr. Comptroller, it's actually 38.

COMPTROLLER FRANCHOT: Thirty-eight, thank you.

MR. JAMES: In Maryland, currently. And so I apologize. Off the top of my head I cannot give you the number for, total number of out-of-state placements. Department of Juvenile Services has some out-of-state placements with various programs that are very specialized for the needs of their youth. And there are children who are placed out-of-state that are funded by the Department of Health and Mental Hygiene as well and that information is --

COMPTROLLER FRANCHOT: Okay. I have a lot of questions. I'll just send them to you. But my sense of this right now is that nothing much is happening. And it's because the agencies have a certain viewpoint that these kids are out-of-state and we can as long as they, we can get them aged into whatever it is, what do you call that? Where they age out of care? I don't get a sense that anybody is really pressing to bring these kids home. And you know, I'm all for the interagency work group, etcetera. But I'd like to see something happen in the next couple of weeks to get these kids home.

And you say we don't want to take them out of a stable environment and bring them back to a bad environment. I think that's a quote.

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How about if they are in a bad environment now? How about if they are in a horrific environment right now? And we want to bring them back to a good, stable environment? And yeah, I appreciate all the committee meetings. How about just taking some money and going out and saying to these fabulous facilities we have already in the State, we'll pay you money to take care of these Maryland citizens in Maryland. Why wouldn't that work?

MR. JAMES: Respectfully, Comptroller, we --

GOVERNOR HOGAN: First of all, let me just weigh in here. And I tend to disagree with the Comptroller. I think that they've been working around the clock, as hard as they possibly can, and have done a great job under very trying circumstances. And it's not just committee meetings. And maybe you could address, Mr. James, that these are like the most difficult of cases, right? That have particular behavioral challenges. And they need a certain expertise of care that we cannot provide in Maryland. Right? It's not just we're sending kids out-of-state because we don't care about them. It's they are being sent to the places that can provide their specialized needs, right?

MR. JAMES: Absolutely, Governor. And these, at this point the youth who are out of state at these residential programs really do represent the most difficult placements within our system. We have roughly 4,000 youth in out-of-home placements. We're talking about 38 youth. And that's still too many out-of-state. But --

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GOVERNOR HOGAN: Could you just, without getting into real specifics about individual cases, give us an idea of the kinds of challenges that some of these 38 kids may have that we can't handle here?

MR. JAMES: Certainly. Many of them engage in self-injurious behavior. Many are high flight risks, such that when we transport them we can't use conventional commercial transportation. We have to hire an ambulance to drive them from Maryland to their new out-of-state placement because they require that level of close supervision. Many of them require two-on-one or three-on-one supervision because when these children and these youth, who are 18 and 19 years old in many cases, in many cases weigh 200, 250 pounds, are six-foot-tall, when they become agitated it takes three to five staff members to deescalate their behavior and maintain them safely and maintain those around them safely. These are children not only with development disabilities but in many cases behavioral disabilities or mental health issues. And I assure you, Comptroller, if this was simply a matter of money this would have been solved months ago. This is not a problem that we can simply throw money at and snap our fingers and a new program opens its door tomorrow.

COMPTROLLER FRANCHOT: You've got to be kidding me that you're saying that. The State of Maryland compared to the State of Pennsylvania, as far as our healthcare services and our infrastructure and our, what about Spring Grove? What's going on out there? What's the capacity out

there? Eighty percent empty? Why don't we get some money, put it on the table, bring these kids home, get them out of a horrific environment up there at Woods where, you know, I don't need to go over the thing. Kids, 17-year-old falling off a bridge and being hit by a car, cars. Another Woods Services employee guilty of manslaughter for leaving a kid in a van for multiple hours at 140 degrees. I mean, really. And I would just importune you to go and take some money from your budget and go to Hopkins and these other places, whoever these fabulous folks are that we have in our State, and say, look we need to take care of our own kids. And they are not in a stable environment. That's the problem with these groups. Woods, whatever it is, Woods Services in Pennsylvania. And we're putting people up there as recently as two months ago, right?

MR. JAMES: Yes, Comptroller.

COMPTROLLER FRANCHOT: Sent one up to Woods. And yeah, no, I respect, I'm not being critical of anyone here. I'm just saying I've sat in a lot of these work groups and they go on forever and nobody discusses the right things and they end up doing nothing. So hopefully in the next couple of months you can get these kids to come back to Maryland and I, you know, I just can't put it any more baldly. You know, these kids are not in safe, stable environments, based on the history of these organizations. And to have 11 of our kids at Woods, the one I just mentioned, bring them home and pay the money and

set up the program. It's, yeah, are they challenging? Sure. But we need to take care of them, not Pennsylvania. That's, thank you very much.

GOVERNOR HOGAN: Thank you --

COMPTROLLER FRANCHOT: Oh, I did have one question on the contract. The contract has been withdrawn and rewritten, right?

MR. JAMES: So Comptroller the contract --

COMPTROLLER FRANCHOT: And changed?

MR. JAMES: -- for Woods was originally structured as a three-year contract with two one-year options. When that came to my desk, I rejected it. I asked them to revise it to make it a one-year contract with a one-year option, which --

COMPTROLLER FRANCHOT: But did you, is that the same pricing? Or did we reduce the pricing by X amount and the services by three X?

MR. JAMES: No. We did not. The --

COMPTROLLER FRANCHOT: In other words, are we paying more for less service?

MR. JAMES: No. We are not. The pricing --

COMPTROLLER FRANCHOT: I'm --

MR. JAMES: -- for these placements is based on the individual youth. There's a contract that specifies the services that each youth gets and the pricing is based upon that.

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COMPTROLLER FRANCHOT: Okay. So we had a five-year term with a cost of \$5.3 million. The modified request is a two-year term for \$4.2 million. So that's based on the individual kids?

MR. JAMES: Yes. And it's based also on the one additional youth that's been placed there.

COMPTROLLER FRANCHOT: I'm not comfortable waiting until the end of the year. But I'm just the Comptroller.

GOVERNOR HOGAN: Any other questions? Thank you, Mr. James.

MR. JAMES: Thank you.

GOVERNOR HOGAN: Any other questions on the remainder of the DBM Agenda? I move we approve. Is there a second?

TREASURER KOPP: Second.

COMPTROLLER FRANCHOT: Yes.

GOVERNOR HOGAN: Three-oh. Thank you. We're going to move on to the University System Agenda.

MR. EVANS: Good morning. Governor, the University System --

GOVERNOR HOGAN: It's still morning, I think.

MR. EVANS: -- extends its condolences.

GOVERNOR HOGAN: Thank you.

MR. EVANS: For the record, Joe Evans representing the University System of Maryland. We have seven items on the Agenda. I'm here to answer any questions.

GOVERNOR HOGAN: I don't have any. Any questions?

COMPTROLLER FRANCHOT: Move approval.

TREASURER KOPP: I did -- let me just find --oh. I was just going to point out, just because we have a significant Bowie State University item that I was at a ceremony last week. I just want to memorialize in the record the naming of the building after the late James Proctor, who also was instrumental in getting the support and funding for this building. And how impressed I was. I hadn't visited Bowie for about a year, the campus, you all are doing a really good job.

MR. EVANS: Thank you.

GOVERNOR HOGAN: Thank you. Is there a motion on the University System?

COMPTROLLER FRANCHOT: Move approval.

TREASURER KOPP: Second.

GOVERNOR HOGAN: Second? Three-oh. Thank you, Joe.

MR. EVANS: Thank you.

GOVERNOR HOGAN: We're going to move on to Information Technology. Secretary Leahy?

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MR. LEAHY: Good morning, Mr. Governor. You have been in my family's thoughts and prayers and have our condolences.

GOVERNOR HOGAN: Thank you.

MR. LEAHY: Madam Treasurer, Mr. Comptroller, I'm Michael Leahy, the Acting Secretary of the Department of Information Technology. Today we have ten items on your Agenda. And I do have agency representatives to answer any questions you may have.

GOVERNOR HOGAN: Any questions?

COMPTROLLER FRANCHOT: Move approval.

GOVERNOR HOGAN: Second? Three-nothing. You got off easy today.

MR. LEAHY: Thank you.

GOVERNOR HOGAN: Department of Transportation.

MR. LEWIS: Good morning, Governor Hogan. I'd also like to offer my and the MDOT team's condolences on your loss.

GOVERNOR HOGAN: Yes, thank you.

MR. LEWIS: Good morning, Comptroller Franchot and Treasurer Kopp. For the record, my name is R. Earl Lewis, Jr., Deputy Secretary of the Maryland Department of Transportation. The Maryland Department of Transportation presents 16 items for your consideration.

GOVERNOR HOGAN: Thank you. We have a Mike Lesniowski representing H.D. Myles who is signed up to speak on Item 11. Is he here?

SECRETARY MCDONALD: Yeah, I think the DOT people are just coming in now because there's a whole crowd --

GOVERNOR HOGAN: All right. We're not going to give him much time.

SECRETARY MCDONALD: All right.

GOVERNOR HOGAN: Any other questions on any other items while we're waiting?

SECRETARY MCDONALD: Here he is. This is Item 5 on the Transportation Agenda. Please introduce yourself for the record.

MR. LININGER: Thank you. I'm here for Mr. Lesniowski. My name is Bret Lininger, testifying on behalf of H.D. Myles, Governor, Comptroller, and Treasurer. Governor, my condolences. So H.D. Myles, just to give you a little bit of background, we had some questions. We provided some written testimony. Since submitting the testimony we learned some additional information and we appreciate this opportunity to speak.

We're supportive of the notion of providing services for the disabled. Mr. Lesniowski was a Maryland State Trooper who was, suffered a head on collision when he was on duty and turned this into an opportunity when

he couldn't perform those duties into this company, served as A ratings, received A ratings with the State Highway Administration.

The questions we have regarding this contract is one dealing with fair market value. The proposed contract is, looks like a 15 percent increase from what the incumbent's contract is. In my written testimony I provided a table that shows in 13 other instances where we have contracts of this sort the trend has been a reduction upon the renewal of the agreement. And that has on average been a 29 percent reduction. Here we have a situation where NCIA is not subject to the living wage requirement, yet we have an increase of 15 percent.

Just to give you some perspective here, we're talking about 74 acres of property, the northbound and southbound rest stop areas, with a slew of services that are provided. We have HVAC units, the servicing of eight units, preventative maintenance, fixing them when they are broken; streetlights up to 30 feet in height; roadway signs that could be up to 40 by 40; electrical systems dealing with underground wires; plumbing and sewer lines; water main dig ups; that kind of thing. We are told, we just learned subsequent to submitting our written testimony, that the NCIA is subcontracting out landscaping and snow removal and that it's only one percent of the contract. We have trouble believing one percent is possible. I think our experience in doing these types of contracts as we do provide services in others is more in the 30 to 40 percent range. And we just can't fathom that that would be the case.

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And with this type of preferred provider, the thought is that they are to benefit, specifically benefit the individuals that are disabled and there should be no subcontracting allowed. It shouldn't be allowed to be a pass through. The Lieutenant Governor's Task Force on Procurement Modernization has provided that that should not be allowed when it's dealing with product purchases. We suggest that services as well. There's House Bill 1446, Senate Bill 1144 from this past session dealing with the same kind of issue.

So with all due respect we would suggest that we just need these questions answered. None of this is subject to an open bid process. We do subcontract out but it's a competitive bid process and we've heard, just we question as to also what's the criteria for determining whether a person is disabled to meet one of these contracts? I can tell you anecdotally my client was on a survey, a site survey, when BISM and Maryland Works came out to determine whether or not they could provide this type of service at a different rest stop. And one of the community service providers said to, specifically to my client, we can find something wrong with just about anyone. Which really just raises an eyebrow. I'm not saying NCIA said this, but this was a community service provider. And also when NCIA was notified that they would be the awardee on this contract, they solicited my client's employees to come work for them.

So we think there are enough questions here. You have an increase, so you have an increase in the contract so a question to fair market

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value. And just dealing with the criteria as well. So also, we don't know of any bonding requirements. We don't know if there was any negotiations done. We did a PIA request and received limited information. So with that, I greatly appreciate the opportunity to testify before you.

GOVERNOR HOGAN: Thank you. Any questions before we have SHA respond? Is there someone here that can give the agency --

MR. LEWIS: Yeah, I have a few comments. And then I don't know if Bob Hofmann is here from Maryland Works? Yeah -- but first of all, we follow the law. Obviously Maryland State Finance and Procurement Law requires us, it says we shall get certain services and supplies from preferred providers, to include the Maryland Correctional Enterprises, Blind Industries of Maryland, and the Employment Works program, which is what is in question with this procurement. The pricing selection committee determined that the fair price and reasonable price and we believe we followed all the requirements of the law in awarding this contract to Maryland Works. We can't go by hearsay. We go by the analysis of what was submitted and what the law requires. I'd also like to ask Mr. Bob Hofmann to come talk for Maryland Works.

MR. HOFMANN: Governor, my deepest condolences to you and your family.

GOVERNOR HOGAN: Thank you so much.

MR. HOFMANN: Madam Treasurer, Mr. Comptroller, Bob Hofmann with Maryland Works. And we serve as the coordinating institute for the Employment Works program, creating employment and business ownership opportunities for people with disabilities. I'd be happy to answer any questions you have.

GOVERNOR HOGAN: Any questions? Questions? Thank you very much.

MR. HOFMANN: Thank you.

TREASURER KOPP: Could somebody respond to what -- I don't care who.

MR. LEWIS: We actually responded to the, I think there were 14 or 15 questions that were submitted that we answered from H.D. Myles. And I can't go by hearsay. I mean, if he goes out and talks to somebody all I can say is we followed the process. We know the value of providing jobs to folks who have disabilities, including disabled veterans. And the company NCIA that is part of the Maryland Works system is a company that employs those types of folks and that the actual price is actually \$2,230 less per year than what Mr. Lesniowski has claimed in the most recent documentation that we received.

TREASURER KOPP: So has the price decreased the way it apparently has for comparable jobs?

MR. HOFMANN: What's that?

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TREASURER KOPP: Has the price decreased as it has apparently, unless you respond and say that's not so, for comparable jobs?

MR. HOFMANN: It's an under ten percent increase in this case and there are a number of factors contributing to that. One of the most significant is the escalation in the minimum wage. Between July '16 and July '18, there will be over 20 percent in increases in wage costs. That amounts to a couple of hundred thousand dollars at least on this particular contract. We also encourage the vendors to hire as many full time employees as possible and when full time employees are hired then the Affordable Care Act kicks in and that accounts for some additional added cost.

The, as far as the number of jobs, 75 percent of the jobs under this contract will be held out for people with disabilities. So of 12 full time positions, nine of them will be filled by persons with disabilities. And of the about 20 part time positions, 75 percent of those will be filled by people with disabilities. NCIA already serves those folks. They are not going out recruiting or getting off of the required process to document that people have disabilities. Folks are generally referred to NCIA through the Division of Rehabilitation Services, the Developmental Disabilities Administration, Behavioral Health Administration, etcetera. So these are folks that need services and supports and they are referred to NCIA for those supports.

GOVERNOR HOGAN: Any other questions? Thank you.

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MR. HOFMANN: Thank you.

GOVERNOR HOGAN: Any other questions on the rest of the MDOT Agenda? Is there a motion?

COMPTROLLER FRANCHOT: Move approval.

GOVERNOR HOGAN: Second? Now we're going to close it out with DGS.

MR. CHURCHILL: Governor, thank you.

GOVERNOR HOGAN: Batting clean up.

MR. CHURCHILL: Yes. And we're still in the morning. So --

GOVERNOR HOGAN: So you've got three minutes.

MR. CHURCHILL: We have three minutes. On behalf of the men and women of General Services, we send our condolences to you and your family on the loss of your father.

GOVERNOR HOGAN: Thank you.

MR. CHURCHILL: Governor, Madam Treasurer, Mr. Comptroller, again, good morning. For the record, I'm Ellington Churchill, Secretary for General Services. The department has 31 items on our Agenda today. We are withdrawing Item 5. And we're glad to answer any questions that you have at this time.

GOVERNOR HOGAN: Questions? Motion?

COMPTROLLER FRANCHOT: Move approval.

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TREASURER KOPP: Second.

GOVERNOR HOGAN: Second? Thank you all very much. That concludes our Board of Public Works meeting for today.

(Whereupon, at 11:59 a.m., the meeting was concluded.)