
STATE OF MARYLAND
BOARD OF PUBLIC WORKS
ANNAPOLIS, MARYLAND

September 2, 2020
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PRESENT

HONORABLE LARRY HOGAN

Governor

HONORABLE NANCY KOPP

Treasurer

HONORABLE PETER FRANCHOT

Comptroller

JOHN GONTRUM

Secretary, Board of Public Works

ELLINGTON CHURCHILL

Secretary, Department of General Services

DAVID BRINKLEY

Secretary, Department of Budget and Management

GREG SLATER

Secretary, Department of Transportation

JEANNIE HADDAWAY-RICCIO

Secretary, Department of Natural Resources

MIKE LEAHY

Secretary, Department of Information Technology

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Office of Small, Minority and Women Business Affairs

LISA GRIGSBY

Recording Secretary, Board of Public Works

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PROCEEDINGS

GOVERNOR HOGAN: Well, good morning, everybody.

Welcome to the Board of Public Works. I want to begin today by recognizing the Department of General Services Office of State Procurement for their exemplary service and their unwavering commitment throughout the emergency response to the COVID-19 pandemic.

In order to meet the extreme demands to protect our citizens, medical staff, and first responders, they have been working really day and night, spending countless hours acquiring things that the State has never really had to deal with before, like significant amounts of personal protective equipment and ventilators. And with guidance from the Maryland Department of Health and the Maryland Emergency Management Agency, to date the Office of State Procurement has purchased and received over 170 million pieces of personal protective equipment, including 13 million N95 masks, 46 million KN95 masks, 31 million surgical masks, 2 million face shields, 52 billion gloves, 25 billion gowns, and 95,000 gallons of hand sanitizer. And this office has also been responsible for securing the critical services required to increase in our hospital capacity, including securing properties, building medical units, and equipping these spaces with power supplies.

So I just want to take a moment to sincerely thank all of the dedicated public servants for their service to the people of Maryland. And a special thanks goes to Director of Procurement Danny Mays, Director of the Office of Emergency Management Jennifer Edwards, Program Managers Calvin Gladden, April Weimer, Mark Riesett, and Samantha Buchanan, Procurement Officers Allegra Daye, Kimberly Hackett, and Charles Bailey, and the rest of the entire team. And I would like to virtually present them with this Governor's Citation to all of them, to all of you, with our sincere appreciation. So thank you all very much. And we'll get this to you in person hopefully sometime soon.

With that, I'm going to turn it over to my colleagues for any opening remarks for our meeting this morning. Madam Treasurer? Let's start with you.

TREASURER KOPP: Thank you, Governor. I was going to wait until we got to the Agenda for procurement, State procurement. But let me just say, I appreciate when we get to those items, they are all set out so well. You can see what was bought, when was it bought, how much did it cost, how much of the material have we received to date. I think the transparency, when I talk to other treasurers around the country, really is quite good. I thank you --

GOVERNOR HOGAN: Thank you.

TREASURER KOPP: -- Mr. Secretary, Governor, whomever. It took a little while --

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GOVERNOR HOGAN: Thank you.

TREASURER KOPP: -- and I thank you very much.

Governor, I just want to recognize the progress because we don't always hear it that often, of the State and the local boards of elections as we head towards an election two months from tomorrow. There have been ups and downs, but I have to say I've heard from so many neighbors in the last week who have received applications for absentee ballots, who are eagerly awaiting the lists of drop boxes near them, because they want to participate, absolutely. This is going to be a great turnout, just as the primary was. They want to participate, but they want to do it in a way that they feel is safe. And I just want to thank, I know that they are still working very hard, especially at the local level, our local county boards, to recruit an appropriate number of people to man all of the voting centers and to work at the data processing to open all those ballots and to scan them in. And I am very impressed, Comptroller, that a number of your people are going to be working on that. And Governor, I want to commend you. We didn't always agree on every aspect, but I think everybody is now working and contributing. And it's just very good. And I want to thank everybody, everybody who is involved. There are going to be bumps along the way and some of us are not going to be completely happy 24/7, both up to and after November 3rd. But I really think Maryland is going to stand out as a place where everyone who wants

to participate, and that's just about everybody, will be participating. And with that, I thank you, and welcome you, and admire the flags behind you.

GOVERNOR HOGAN: Thank you, Madam Treasurer. Mr. Comptroller?

COMPTROLLER FRANCHOT: Yes, that's an icebox behind me. But thank you, Governor. I associate myself with your remarks on procurement, and obviously Madam Treasurer, your comments about the election. I agree with you. And I feel that there is a strong amount of calmness and optimism in the State of Maryland. So let's keep our fingers crossed as far as the November 3rd election.

I wanted to just comment briefly on the fact that thousands of students and teachers and staff are going to begin, have either begun or are going to begin the school year, and I just want to take a moment and wish them all a safe and productive and successful year.

I have personally, happen to have very strong concerns about in-person K through 12 and even higher ed institutions. I mean, let's be honest about what young people do when they get together in big groups. I just think we're being prematurely rushed, I hope we're not, in the face of a virus which is far from contained nationally. In Maryland, the Governor and his team, I've praised them repeatedly as far as their aggressiveness, but let's be honest, the virus is spreading among our communities. And for the vast majority of schools

across the State that are beginning this school year virtually, including my own home county of Montgomery County, the kids are going to be behind laptop screens and in virtual classrooms and they are not going to have the kind of meaningful and cherished interactions of being together in person. But I think that's okay. Because otherwise, all of our kids are going to be engaged in what amounts to a huge medical experiment, whether or not they can get together in large gatherings indoors. And I happen to think we should delay that.

But even for the few schools in Maryland that are providing in person instruction with face mask requirements and social distancing, obviously that's going to be a huge social adjustment also. This COVID pandemic has been disruptive to every facet of our society. Education has not been immune from the challenges and inconveniences that this pandemic has caused. It's not a situation that any of us want. None of it is normal. We must acknowledge that this school year is going to be incredibly challenging for everyone involved, from our students to our hardworking and dedicated teachers and our parents.

But I think that if we work together collectively, we can make the best of this situation. We're obviously going to get through it. I want to applaud the majority of county school boards that have chosen to heed the advice of experts and follow science and not cave in under pressure from folks down the road in Washington who want to downplay the gravity of this disease and by making the responsible decision to begin this school year virtually.

It's extraordinary. I mean, Montgomery County, one of if not the largest jurisdiction, I believe has postponed their school year start until January, in person, January or February. Obviously, we must make every accommodation for disadvantaged kids who lack broadband connections and computers. And this digital divide, as it's called, and events of the last few months have made it glaringly obvious, that we have to make adjustments as far as kids that come from disadvantaged neighborhoods. But Maryland, unlike other states, in my opinion, has made significant progress in combating the virus, due in large part to our reliance on facts and data and not caving in to political pressure.

I, for one, would not be personally comfortable sending my kids to school in this environment. I would wait and try to do it virtually until January when the picture will be clearer as far as what the virus' impacts on young people is. I would be very concerned if a family member of mine was forced to teach in person, given the widespread existence of the virus, as we head particularly into the flu season. I got my, I went to CVS the other day and got my flu shot, and Madam Treasurer and Governor, it's pain free, I can guarantee it and very convenient. But nonetheless, I would strongly urge the schools that are open, and I know there are some of them even in Montgomery, private schools, I really urge them to take the precautions and safety measures seriously and I sincerely hope that the local health departments at the local level will work very closely with

these schools to prioritize the safety and well-being of students, teachers, and (indiscernible). And Governor, thank you for --

GOVERNOR HOGAN: Thank you, Mr. Comptroller, Madam Treasurer. Let's move on with the business of the day. Let's go ahead and get started with the Secretary's Agenda.

SECRETARY GONTRUM: Good morning, Mr. Governor, Madam Treasurer, Mr. Comptroller. There are 22 items on the Secretary's Agenda and 12 reports of emergency procurement. Item 22 has been revised. I'm happy to assist with answering any questions.

GOVERNOR HOGAN: Are there any questions on the Secretary's Agenda?

COMPTROLLER FRANCHOT: Well, I know you both have noted the procurement situation and I concur with you folks. But I just wanted to confirm with the Secretary, using Item A12 I guess, that you are submitting emergency services contracts individually to the Board of Public Works, but could we get, is there some kind of a spreadsheet that you have done for commodities that you could submit to the Board? Is that what you were referring to, Madam Treasurer?

TREASURER KOPP: Yes, Item 12. Isn't it 12? A12.

SECRETARY GONTRUM: Item A12 is the compilation of emergency procurement reports regarding commodities submitted by the Department of General Services.

TREASURER KOPP: That's the one I was referring to.

COMPTROLLER FRANCHOT: I just want to make sure we get it in a manageable spreadsheet and not individual contracts. Is that possible?

MR. CHURCHILL: When we're talking about the commodities contracts which we have submitted in chart form, that is the simplest way to transmit the information. And we can update that for you on a periodic basis concerning the continued completion of commodity contracts. If we're talking about service contracts, that we will be bringing on an individual basis to the Board. And we have already submitted some of those emergency contracts. But we are engaged in completing those over these next couple of months for the Board to review as a --

COMPTROLLER FRANCHOT: But I guess what I'm asking for is a spreadsheet on the emergency services contracts in addition to the spreadsheet, like the spreadsheet for commodities. That's all.

MR. CHURCHILL: Oh --

COMPTROLLER FRANCHOT: -- management oversight.

MR. CHURCHILL: We were anticipating submitting individual items. But if the Board would like to have the chart on the other services, we can gladly oblige your request and submit that for review.

TREASURER KOPP: Well, can't we have both? I mean --

MR. CHURCHILL: We intend to.

TREASURER KOPP: -- and as we proceed on the individual items, I don't want to give up --

MR. CHURCHILL: I wasn't, I wasn't indicating that we were going to give up what we have already agreed to do, which is to bring individual items on emergency procurements in that category to the Board. The Board has asked for an additional chart as a summarizing document and we're happy to do that as well, is what I want to confirm for you.

COMPTROLLER FRANCHOT: Thank you, Governor. I would move approval --

TREASURER KOPP: I do have just a couple of questions, brief. The first one is not a question. Actually, Item 8, the replica of the ship, the *Dove*. I just want to point out, it's not only a great item but the folks who are working on it and who got the contract, the Maritime Museum, you all recall the Deputy Treasurer Howard Freedlander is a great staunch supporter of the museum and is really into this. And I know they will do a terrific job and can't wait to go down

and see it. It actually will be a replica that is, that we can sail on, that we can go on. And I think that's going to be really terrific. I did have a question --

GOVERNOR HOGAN: The Board may all, we could have a meeting on it. We could all --

TREASURER KOPP: We could meet on it.

GOVERNOR HOGAN: -- get on the boat together.

TREASURER KOPP: -- nobody getting seasick --

GOVERNOR HOGAN: -- three of us, at least.

TREASURER KOPP: Item 12, DHCD, the Pumphouse Development looks like a major development. I would love to just hear a little bit about it.

SECRETARY GONTRUM: We have Michael Haloskey from the Department of Housing and Community Development available to answer questions about the contract.

MR. HALOSKEY: Hello, yes, I'm available.

TREASURER KOPP: Hi, could you just --

MR. HALOSKEY: Hello.

TREASURER KOPP: -- Mr. Gontrum, if he could just explain to us what we are building, what it's going to be like when it's all built out and what the time frame is?

MR. HALOSKEY: Absolutely. Good morning, Madam Treasurer, Governor Hogan, and Mr. Comptroller. The Pumphouse sits on the former Baltimore City Pumping Station grounds, which is, you know, roughly a four-acre campus containing five historic buildings. The project has been in the works now for several years. It's a pretty extensive project, obviously. It's, you know, a total of a \$27 million multiphase historic renovation. The property contains five historic buildings, which are dated back to the 1890s. And they have been, you know, vacant for the last 20-plus years. So to see the renovations to date that have taken place on the property, it is pretty impressive. When we initially went to the groundbreaking, which I believe was in 2013-2014, I mean, these old brick buildings had trees growing out of them, I mean, it was formerly a dump site for the last 20 years. So extensive multi-stage renovation.

So what's happening here, we're in the, currently they are in the third stage of the renovation. Stage one has been complete, which is the City Seeds Culinary Arts Center, which is operated by Humanim. So there's a lot of workforce training for the culinary arts. Building number three has been completed, and that's going to house, or that's available for lease for nonprofit organizations. And then the current stage is the complete renovation of building one, which will house Pitango Gelato, which is relocating their manufacturing site. And then we're also bringing in Green Leaf Construction.

So when the project is all complete, you know, there's going to be five historic buildings renovated, a total of, you know, a \$27 million project. It's being funded through many sources, a lot of State and federal historic tax credits, new market tax credits. And in the end what you're going to have is you're going to have a -- the name, the current name of the property was originally the Food Hub. But that's being rebranded because it's not only going to contain food related entities, it's also going to contain traditional business, retail, and commercial type businesses. So it's going to employ quite a bit of people, create jobs. And it's a significant revitalization that continues the revitalization in East Baltimore that has been, you know, started by Johns Hopkins over the last several years. So in the end you're going to have, you know, food related industries, you're going to have a construction company, or manufacturing relocating there. There's going to be nonprofit office space, there's going to be a restaurant, and there's also going to be an Exquisite Catering business on the site. So in the end, it's going to be a, you know, a combination of many good retail and commercial businesses that are greatly needed in that area and will continue to support the revitalization efforts of Baltimore City. And it just shows that a project of this size cannot be completed without significant private and State investment.

TREASURER KOPP: Governor, I wanted to mention this because we hear so many negative or pessimistic things about, not just about the City, but about all cities and about revitalization. And I think this project, we visited it a

few years ago, actually. This is going to be a stand out project of national importance. It was an area that truly needed revitalization. The people who lived there wanted it. The people who worked near it wanted it. Everyone wanted it. And it could only be done, as was said, it could only be done through cooperation. There's no way the private sector alone or the public sector alone could do it. (Indiscernible) jobs and an area of the City that people are going to want to be in. So I just, I just couldn't let it --

GOVERNOR HOGAN: Thank you for highlighting the great work and the public-private partnership and giving everybody a chance to hear a little bit more about it. I appreciate that, Madam Treasurer. Are there any other questions or is there a motion on the Secretary's Agenda?

COMPTROLLER FRANCHOT: Move approval.

TREASURER KOPP: Second.

GOVERNOR HOGAN: There's a second. All those in favor, all three, three-nothing. We'll move on to the DNR Real Property Agenda.

MS. HADDAWAY-RICCIO: Hi, good morning, Governor, Madam Treasurer, Mr. Comptroller. For the record, Jeannie Haddaway-Riccio, Secretary of the Maryland Department of Natural Resources. We have 13 items on our Real Property Agenda today and I just wanted to take a second to highlight Item 1A.

Governor, in July you and the Board members commemorated the 30th anniversary of the Americans with Disabilities Act and so it's especially fitting that we have this item before us today. Our department has been working with the Maryland Department of Disabilities, the Maryland Department of Veterans Affairs, the City of Annapolis, and the Chesapeake Region Accessible Boating Organization on the acquisition of this property, which will serve as an adaptive and accessible boating facility in the Annapolis area. You'll also note that there are several grants to local jurisdictions on our Agenda to help them install ADA compliant playground equipment and these are just great ways that our administration is working together to ensure that all Marylanders have access to our natural resources. And with that, I'm happy to answer any questions you may have.

GOVERNOR HOGAN: Well, thank you for that great work, Madam Secretary, and thank you for bringing that to our attention. Any questions on the DNR Agenda?

COMPTROLLER FRANCHOT: Move approval.

GOVERNOR HOGAN: Is there a motion? Is there a second?

TREASURER KOPP: Second.

GOVERNOR HOGAN: Very good. Three-nothing. Thank you, Madam Secretary. We're going to move on to the University System Agenda.

MR. HICKEY: Good morning, Governor, Madam Treasurer, Mr. Comptroller. Tom Hickey, representing University System of Maryland. We have four items for your consideration and I'm happy to answer any questions you may have.

GOVERNOR HOGAN: Thank you, Tom. Any questions on the University System? Is there a motion?

COMPTROLLER FRANCHOT: Move approval.

TREASURER KOPP: Second.

GOVERNOR HOGAN: Second? Thank you very much.

MR. HICKEY: Great, thank you.

GOVERNOR HOGAN: We're going to move on to the Department of Transportation Agenda. Good morning.

MR. SLATER: Good morning, Governor, Madam Treasurer, Mr. Comptroller. For the record, my name is Greg Slater, Secretary of the Maryland Department of Transportation. The Maryland Department of Transportation is presenting 22 items for your consideration. Items 1-GM and 3-GM are being withdrawn, leaving 20 items for your consideration. We'll be happy to answer any questions you may have.

GOVERNOR HOGAN: Any questions for Secretary Slater on the Transportation Agenda?

COMPTROLLER FRANCHOT: I had a question on 5-C and first I'll start with a generic one, actually. We obviously have goals for disadvantaged business enterprise and also MBEs, minority business enterprise. So these goals generally are a 25 percent participation goal. I noticed that this contract, which is fine on the substance, to date has only a six percent compliance rate with the DBE participation goal. I'm just curious as to how you are going to make that up in the relatively short period of time remaining?

MR. SLATER: Yes, sir. We asked that very question. So that is our Polk Street maintenance facility over at MTA. So we met with the project manager. The DBE goals on that project are associated with flooring, electrical, concrete work, which is done towards the end of the project. So we're confident that we're going to meet that at the end. We asked that very question as well.

COMPTROLLER FRANCHOT: Excellent. And as you know, the procurement system, the Governor correctly recognized them for work during the pandemic. But this whole MBE/DBE goals that are somewhat not mandates but are aspirational, I guess. These definitely improve the system and make it more diverse and inclusive. So it's important. Thank you for checking on it. And if you could report back when the modification period expires in January as to how successful they were, I would appreciate it. Thank you.

MR. SLATER: I'd be happy to, sir.

GOVERNOR HOGAN: Thank you. Any other questions on the Transportation? Is there a motion?

COMPTROLLER FRANCHOT: Move approval.

TREASURER KOPP: Second.

GOVERNOR HOGAN: Second? Three-nothing. Thank you very much. We're going to move on to the Department of General Services. I think you're on, you may be on mute, Mr. Secretary.

MR. CHURCHILL: Oh, I did it again. Okay. Good morning, Governor, Madam Treasurer, Mr. Comptroller. For the record, I'm Ellington Churchill, Secretary for the Maryland Department of General Services. First, again, thank you for your support and guidance while navigating us through the state of emergency. Though we couldn't have predicted that doing great service would have meant all that it has meant in 2020, I'm proud to stand with our offices and our staff to achieve this accomplishment.

Today, we are presenting 44 items for your consideration, including four supplementals. Please note that two item revisions were submitted yesterday. Item 37 has been revised to correct the original approved lease term from a five-year lease to a two-year lease with a five-year renewal, for which the department is seeking approval. And in addition, Item 43 for the Maryland 529 Pre-Paid College Trust has been revised to reflect the base period totaling \$425,000. If the future renewal options are executed, then the contract will total

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\$475,000. And then finally the department is withdrawing Item 6 and Item 16 at this time. And we have representatives available to answer any questions you may have. Thank you.

GOVERNOR HOGAN: Thank you, Mr. Secretary. I believe that we are honored to have University of Maryland Baltimore County President Freeman Hrabowski joining us this morning. And so I think we ought to start with him, with Item 32-RP, which transfers the Catonsville District Courthouse back to UMBC once the courthouse moves into its new facility. Good morning, Dr. Hrabowski.

DR. HRABOWSKI: Good morning, Mr. Governor and Mr. Comptroller and Ms. Treasurer, and Secretary Churchill, who has been working with us. I'm really honored to be here. I didn't know how people did this at the State level. I know what we do at the System level. You all are all business.

Let me just thank you on behalf of my students and faculty for all you're doing to keep us safe. We really appreciate it. And as I talk to universities around the country, they know that Maryland is doing the right thing and following the science and respecting education. So we're delighted about that.

Secretary Churchill has worked very closely with us. We are really hoping you will give us this courthouse. It is going to be used for space for some of the high demand programs. We are expanding in technology areas all of the time. This State will have more and more opportunities to build

cybersecurity, all the kinds of engineering and computing, especially in these times. This will help us to do that with support units and things in that building. So we hope you will approve it. Thank you.

GOVERNOR HOGAN: Well, thank you very much for your leadership. We couldn't be more excited about all the progress at UMBC. Thank you and thank you to your faculty and staff and the students that are doing a great job. Thank you. Thank you very much.

I understand we have some requests to speak on DGS Item 17-S, which is a contract to perform the 2020 school facilities assessment, inspecting the conditions and educational sufficiency of all public school facilities across the State. So we'll take that item up, and we're going to start off by hearing about this assessment from our Executive Director of our Public School Construction Program Bob Gorrell. Is Bob with us? Is Bob on mute? Or Bob's not with us?

MR. GORRELL: Can you hear me? Thank you. I apologize. I thought that somebody else was unmuting me and I should have paid attention to Secretary Churchill's lead.

GOVERNOR HOGAN: Yeah, you were following in Secretary Churchill's footsteps, that's all. He set you off on the wrong path.

MR. GORRELL: Good morning, Governor, Treasurer, and Comptroller. For the record, I'm Bob Gorrell, the Executive Director of your Interagency Commission on School Construction. This assessment is necessary

to better differentiate and prioritize between the many competing needs we have in school facilities. It will measure, as you said Governor, both the educational sufficiency and building conditions of every pre-K public school facility in the State of Maryland. And it will provide us with good comparable data for the many purposes of facility management and capital planning that we have.

The initial assessment of all schools in Maryland will be conducted through this contract and then ongoing assessments and updates will be made by Interagency Commission staff that's required by H.B. 1783 that passed into law in 2018. This is a very important tool and requires the shift of the IAC's role from grant management to facility management, and for maximizing the use of available capital dollars as well as increasing transparency, equity, and accountability. I stand for questions.

GOVERNOR HOGAN: Thank you, Bob. Any questions of Bob before we go to our other presenters? All right. Well, thank you. Next, we will hear from Trey Traviesa, Chairman and CEO of MGT Consulting Group.

MR. TRAVIESA: I'm showing myself as muted. Can you hear me?

GOVERNOR HOGAN: Yeah, we hear you.

MR. TRAVIESA: Very good. Thank you very much. Governor, Madam Treasurer, Mr. Comptroller, and all others involved, my name is Trey Traviesa. I have the privilege of being the Chairman and CEO of MGT

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Consulting Group, and we're a national leader in public sector consulting and technology services. Thank you very much for allowing me to address you on behalf of our organization and our employees.

For 45 years, MGT people have served public sector agencies as their chosen professional path to serve the public. In fact, 12,000 city, county, state, and school district clients have been served during that period, supporting their fiscal needs with fiscal services, their diversity needs with one of the nation's top diversity, equity, and inclusion teams, and most of all their education needs, especially in our top area of education expertise and national recognition, K-12 facilities planning and funding.

Facilities planning and funding work is as complex as it is rewarding. Population trends, enrollment forecasting, equity standards, safety measures, technology development, evolutions in teaching methods, fiscal constraints, and public alignment and engagement are all critical dimensions of getting K-12 facilities, a major consumer of public resources, right. When done right, this work sets up a school district for success long term in their quest to improve education outcomes for all kids, especially those with the highest needs, powerfully impacting communities as a result. Our people do this work because of the skill it takes and the impact it makes on kids and communities.

As a result, we were delighted in 2018 to be one of several parties requested to participate in preliminary collaborative conversations about how the

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State of Maryland could evolve its K-12 facilities understanding and methods to serve K-12 kids and its citizens better. This is common and customary, and especially because it was Maryland, a state where we have a long and valued history, 54 engagements for Maryland city, county, State, and education agencies over the last 15 years. And when the State of Maryland sought an implementation partner for Bridges to Excellence in 2005, Maryland chose MGT.

We were impressed with and frankly felt obligated to support the State's effort to more painstakingly consider and advance the myriad dynamics that could affect the State's procurement approach in order to ensure that the facilities RFP served the State well. What would it have said about us and what would it do to our chances to participate if we had refused to support?

It's very uncomfortable for me and very expensive for us to mount a challenge like this and we've never done it before, ever. We are challenging this individual decision not because we lost on a bid. We lose some and win some every day, and we respect the decisions of our government partners. We're seeking redress here because the basis of this decision inaccurately and unjustly excluded MGT and impugns our reputation as a company and that of our people in a world that runs on reputation. I might add it also withholds from the State the opportunity to consider and assemble the best people to undertake this seminal work. MGT was and continues to be objectively damaged by this exclusion.

So on behalf of our people and the legacy of our company, we've done here what we've never done before, which is challenge a government decision and ask you to simply afford us the fairness and the time to simply be judged on the merits of our concerns. We're two years into this discomforting process and that has yet to happen.

As I close, allow me to point out, which I think is obvious and it certainly aligns with, Mr. Comptroller, your remarks in the beginning, that COVID-19 very likely has made these two RFPs moot. Every day with over 400 active clients, we're discussing the dramatic changes that must be made to facilities strategies, and by implication, funding, as a result of the pandemic, such as major new technology requirements, blended learning developments, critical social distancing standards, major shifts in enrollment as the pandemic drove dislocation, especially among our most disadvantaged citizens. Truly these RFPs do not address the current circumstances. For all of these reasons, I respectfully request that you, as a Board, not award this contract today and allow our merits to be considered in the coming appeal. And thank you very much for the opportunity to share my thoughts and concerns with you.

GOVERNOR HOGAN: Thank you very much. Next up, we have David Hamilton of Womble Bond and Dickinson, who is the counsel for MGT.

MR. HAMILTON: Good morning, Governor. Can you hear me?

GOVERNOR HOGAN: We hear you.

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MR. HAMILTON: Great. Thank you, Governor, and thank you, Mr. Comptroller, thank you, Madam Treasurer. Good morning, Secretary Churchill. I'm pleased and honored to be able to represent MGT in this matter. I am mindful of the constraints about time so I'm going to be direct. I don't think you'll mind me being direct on a matter like this. While we -- and I think those of you that know me expect no less.

Governor, I'm with you in congratulating the Office of Procurement in its great work for the citizens of the State and indeed the nation, and your leadership on COVID matters. Regrettably, here we have some botched procurements. We have botched procurements by two agencies. We have an agency withholding documents and a decision by the Board of Contract Appeals that is so clearly wrong that a first-year law student would be ashamed to have offered that opinion. We are not here, I think, to convince you about the merits of MGT and its bid. It wasn't allowed to bid. So this is not a sour grapes kind of protest to the Circuit Court for Baltimore City. This indeed is a procedural protest.

MGT was excluded from participating in this bidding process and that's what is being protested. The Board of Contract Appeals noted that this is a matter of first impression given the reorganization in procurement and as well the transfer of some ethical responsibilities. The procurement officers to me have been given increased gatekeeping powers and therefore this issue about whether a

party can be excluded, and that constitutes an injury, is an important precedential issue for the courts to clear up. Frankly, the Board of Contract Appeals got the law wrong. I don't think I need to convince you of it. But I am clearly convinced that the court is going to reverse this. And so we are asking for time to let the legal process run its course.

I have provided a memorandum to your offices this morning that illustrate the issues. I'm going to comment, I'm going to skip issue number two and comment on issue number three, which Mr. Traviesa commented on. This RFP was drafted in 2018 and issued in 2019. It was reissued in 2019. And if the State takes the position that RFPs number one and number two are the same, then we're dealing with an RFP that is completely outdated. I think in joining the Comptroller on the issue about how the pandemic has changed everything about education, and combining that with Mr. Traviesa's comments, what you have is an obsolete RFP. It just does not address the contemporary circumstances. And in one of two fashions, we ask that the Board of Public Works not put its stamp of approval on something that is both obsolete and is so wrongly decided. So I think that the Board of Public Works may have two choices that align with our interests. One is not to award the contract and let the legal process go forward. The second choice would be to just toss the bid and ask that it be rebid by the agency.

I'd be pleased to answer any questions but I'm mindful of my time.

Thank you.

GOVERNOR HOGAN: Thank you, Mr. Hamilton. And now, we're going to hear from Doug Carrey-Beaver, Chief of the Contract Litigation Division in the Office of the Attorney General, who I would imagine has another side to the story or may want to answer some of those questions.

MR. CARREY-BEAVER: Yes. This is Douglas Carrey-Beaver. Can you hear me okay?

GOVERNOR HOGAN: Yes.

MR. CARREY-BEAVER: Great. Yes, I was the lead counsel for the case before the Board of Contract Appeals. It was actually a very interesting case because some of the testimony was done remotely. I don't agree, obviously, I don't agree that the decision was clearly wrong. I think a first-year law student would understand the decision and that the standing, the firm did not have standing, it did not appeal the first decision. And it was bound by that decision. Since the second RFP was virtually the same, the Board found that they had acquiesced in that and did not have standing. They didn't even submit a proposal for the second RFP. They did for the first, and they were told they couldn't submit one for the first. They submitted a proposal for that and they did not submit a proposal for the second RFP, the 2020 RFP, and the Board found that

their decision not to do that and to appeal the first Board decision that excluded them from competition was valid.

TREASURER KOPP: Governor, could I just --

GOVERNOR HOGAN: Sure.

TREASURER KOPP: This does seem like a complex process. As I understand it, I just want to make sure I understand it, there was an RFP issued on which the company helped develop and therefore the company was deemed not appropriate to bid on.

MR. CARREY-BEAVER: That's correct.

TREASURER KOPP: That was then rescinded and put out, but you say it's the same proposal --

MR. CARREY-BEAVER: It's virtually the same. There are some wording differences, but the substance of the, and the Board found this as well, the substance of the RFP was the same as the first RFP. The second RFP was the same in substance as the first RFP. And given that, they just, they did not appeal the first one so therefore the second one was not, was not -- I'm sorry. I had a senior moment here, I'm sorry. The second one was not --

TREASURER KOPP: Inappropriate?

MR. CARREY-BEAVER: Inappropriate, thank you. Thank you. Sorry. And --

TREASURER KOPP: That was a guess on my part.

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MR. CARREY-BEAVER: It was a good guess. The Board also found that, you know, the standard for a review of a procurement officer's decision is whether the decision to exclude MGT from competition on the 2020 RFP was arbitrary, capricious, unreasonable, or unlawful. And the Board found that the continued exclusion of MGT from the second RFP was reasonable. So even if, even if the court would somehow find that the Board was wrong, and I don't think they were, they still would uphold their decision given that the PO's, the procurement officer's decision was a reasonable decision based on the facts and the law.

GOVERNOR HOGAN: Okay. Thank you. Our final presenter is Matt Munter, who is the Executive Vice President of Bureau Veritas Technical Assessments, LLC, which is the recommended awardee of the contract.

MR. MUNTER: Thank you, Governor Hogan. Can everybody hear me okay?

GOVERNOR HOGAN: Yes.

MR. MUNTER: Madam Treasurer, Mr. Comptroller, so two quick points. Number one, I am Matt Munter, Executive VP of Bureau Veritas. I'm talking to you from my office or headquarters in Owings Mills, Maryland. I'm a Maryland licensed mechanical engineer, have been for 25 years. This is an important contract. And as you heard, it's one that we've actually bid on and been awarded twice, once in 2018, that was protested by the same company you

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heard from, and again we've been awarded the contract here in 2020. And again, the same firm is protesting it. We've got over 50 people ready to get back to work and work on this contract. Mr. Comptroller, you talked about MBEs and how important they are to the State. I've exceeded the requirement in this RFP, so a 17 percent requirement, I've brought on four Maryland based MBEs. And I've committed to exceed the 17 percent requirement by a minimum of 20 percent and we're shooting for five percent over the goal. We have, we do that on every contract. We've got good partners and we're good at that.

Second piece that I want to make a point about is you mentioned about coronavirus and how everything is changing. The fact is, the studies are coming out now and there's unequal impacts, as you mentioned before, across the State with who is benefitting from remote learning. When we get the students back into the classrooms, there's no reason that we shouldn't be thinking about having equitable school facilities and that's what this contract is about. Within the contract, there is the ability to tweak the standards up and down however necessary. So the idea that somehow this RFP is obsolete I think is a Hail Mary pass for the firm that spoke before me.

So we're looking forward to getting started on this contract. It's a very important contract. I think if you look at our record, we've done more work in the State of Maryland with counties, K-12 schools, than any other firm and we appreciate the chance to speak. Thank you.

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GOVERNOR HOGAN: Thank you very much. Any questions from anybody?

COMPTROLLER FRANCHOT: It looks we have Mr. Hamilton?

GOVERNOR HOGAN: Sure, go ahead, Mr. Comptroller.

COMPTROLLER FRANCHOT: Yeah, no, how, no, the concern here, Mr. Hamilton, of course, always is that these grievances are sometimes litigated for delay purposes. But you don't seem to be, that doesn't seem to be the case here. But just for my edification, how long would an appeal to the Circuit Court of Prince George's County require before a decision could be made by them as to whether the award is proper or not?

MR. HAMILTON: Yes, thank you, Mr. Comptroller. I'm pleased to answer that question. First, just for your information, the appeal is to the Circuit Court for Baltimore City. The appeal was noted last week. The only unprescribed timing is how long it takes the Board of Contract Appeals to get its record to the Circuit Court. They are literally one block away so getting the record there is not a logistical challenge. The record is pretty self-contained. It might be a few bankers boxes for sure, but it shouldn't take long. The Board of Contract Appeals' clerk is named Ruth Foy. She assures us that this will be done expeditiously. So after that -- and this is an appeal on the record. There's no other discovery, no testimony, nothing other than to consider the issues that are raised on the appeal. We have 30 days to file a memorandum. The State has, I

can't remember if it's 15 or 30 days to respond. And then the court will set in a hearing. As best as I can tell, my experience in the Circuit Court for Baltimore City, is that although hearings are being conducted by Zoom and other web based platforms, the Circuit Court is returned to normal as close to it could in scheduling matters. So I would say that this would be, I obviously can't control what either Circuit Courts do, the Circuit Court or the Board of Contract Appeals do, but I think this will be wrapped up in a four- to six-month period, maybe even a little less.

COMPTROLLER FRANCHOT: Thank you.

MR. HAMILTON: And if I might comment, and I know there is a need for speed to address this facilities survey. But I think that the State's obligation is to get the procurement right and to conduct a transparent process here. And I believe that the way to do that would be to allow the legal process to take place, given the importance of this precedential issue. Thank you.

COMPTROLLER FRANCHOT: Yeah, I'll just comment for the record that the reason I am sitting here as Comptroller is because I was so upset as a legislator when HMSHost was defined out of the bid for the concession contract at BWI. That just, you know, they were the incumbent company and they were told, sorry, you can't bid because we kind of have a different view of things. And that, I just recall that as being such a -- well, they were a Maryland based company. It was such an imposition of just out and out unfairness. You know. I

make it a practice to visit the HMSHost facility when I go up 95 these days, even though it's in Delaware. Why? Because they were a great Maryland company that got absolutely mistreated by the process. And I take it that's the gatekeeper issue that you want to litigate. So I don't really have a dog on this hunt, but I would be inclined to take a delay simply because excluding people doesn't feel right to me, given this situation.

MR. HAMILTON: That you, Comptroller.

GOVERNOR HOGAN: Thank you. Any other questions?

TREASURER KOPP: Yeah, I do. And I don't know of whom this question is, either Bob Gorrell, or I suppose Mr. Hamilton. In what way did MGT participate in the drafting or the creation of the RFP? I mean, that seems to me the question. If they really did, and it's a way that through law and precedence prohibits participation, then I'm sorry about it because MGT has been a great company for Maryland school systems. But --

MR. HAMILTON: Yes, Madam Treasurer, it's David Hamilton. I'd be pleased to answer that. And obviously there is some dispute associated with this. But when Mr. Gorrell was relatively new on the scene in Maryland, he sought out MGT for advice on this facility survey. And the discussion at that point was whether MGT could piggyback on an existing Anne Arundel County contract or not. And the discussion, frankly, was piggybacking or sole source. There was a very limited amount of information that was exchanged. A back of

the cocktail napkin price was given about in response to Dr. Gorrell's question about how much is this going to cost. MGT supplied RFPs, publicly available documents, to which they had responded in, I can't remember if it was eight or nine states. And that was pretty much the extent of the conversations.

Once the department determined that it could not be piggybacked or sole sourced, they determined that it had to go through the procurement process. The department determined that having supplied this information and had correspondence and maybe phone calls and meetings with Dr. Gorrell, they participated in the process of drafting the RFP and therefore should be excluded. That was the basis for the protest in RFP number one. And frankly, we thought that was wrong.

Why we didn't appeal to the Circuit Court at that time, or why MGT did not appeal, was a matter of cost. These are expensive issues to address, both the lawsuits and an RFP. Mr. Traviesa testified at the Board of Contract Appeals that each response to an RFP can cost as much as \$100,000. So, you know, this has become a strategically important process but it's also a very expensive process.

But to answer your question, the original exclusion we think was fundamentally wrong. To seek information from the national leading provider of these facilities survey services and then to flip the switch on them and say, well you answered our questions but that constitutes participating in a process, you're

out, that just seems fundamentally unfair. Now, there's no question that there was no contact at all between MGT and the department, DGS, or the Department of Education, in RFP number two. But the procurement officer's decision was, well, RFP number one and RFP number two are the same, a fact that we disagree with. And therefore, since you participated in RFP number one, we deem you to have participated in RFP number two. Therefore, you are excluded.

It just seems so fundamentally unfair and a misinterpretation of the functional approach that ought to be used for COMAR regulations in dealing with these matters.

GOVERNOR HOGAN: I don't know if the Attorney General's Office wants to address any of that or not? I know Mr. Hamilton said it was so simple, even a one-year law student would know. But there were lots of really smart lawyers on the Board of Contract Appeals that had a totally different opinion, and I think the Attorney General's Office does, too. So maybe we need to hear from the other side.

I don't understand, you know, how or why they were excluded in the 2018 bid, why they didn't challenge it, and then not even being a participant in the 2020 bid, and then losing both cases at the Board of Contract Appeals, and now acting as if it's a pretty simple matter. It doesn't seem, it sounds more complex than that. But I, I'm not, I didn't even go to one year of law school so --

MR. HAMILTON: Could I address -- it's David Hamilton. Could I address one point in what you just said, and why MGT did not submit --

SECRETARY GONTRUM: Mr. Hamilton, please wait until the Board recognizes you.

MR. CARREY-BEAVER: Yeah, this is Douglas Carrey-Beaver back again.

GOVERNOR HOGAN: Yes, go ahead.

MR. CARREY-BEAVER: I'm having trouble understanding Mr. Hamilton's concern. I mean, they were clearly involved in the first RFP. The Board spent a very lengthy decision analyzing that and found that under the ethics rules, and now that that rule is now before the Board of Contract Appeals, that that rule required that they not be permitted, that they be excluded from competition because they were involved. And by being involved even to that extent, they have a leg up on competition. I mean, that's just, that's the fairness here. And since the second RFP was, and the board found this, was substantially the same as the first RFP, that whole, that taints, that kind of poisons the well on the second RFP as well and taints that, and taints your competition in the second RFP. So it's like the fruit of the poisoned tree. So I just, I just don't see their, I just don't see their point. I mean, this is a, is it fair to them? Maybe, maybe not. But the fairness goes to the entire competition, not just to MGT. And I think the fairness, the broadness of the fairness applies here to the process, the competitive

process has to be maintained in this State so that bidders and offerors feel comfortable that they are going to get a fair shake when they bid on a project.

GOVERNOR HOGAN: Are there any other questions?

COMPTROLLER FRANCHOT: Did Mr. Hamilton want to say something?

MR. HAMILTON: Yes, please.

MR. MUNTER: This is Matt Munter. I'd love to speak, also.

MR. HAMILTON: Yes, please. Governor, to address your point about why MGT did not submit a bid, remember what the process was. The same day that the RFP number two was issued, MGT received a letter from the procurement officer saying, you're excluded so you cannot submit a bid. You can't participate in this process. We had seven days to appeal that. MGT did appeal that process and that was the appeal in front of the Board of Contract Appeals. So MGT's rationale is why would I submit a proposal when I've already been told that it's not going to be considered? We've been excluded from the process.

My second point is, this is to Mr. Carrey-Beaver's point, there has been harm to the competitive process here. That exclusion letter effectively acted as a blacklisting letter. MGT was unable to secure any kind of subcontractor or vendor relationship because they've been excluded from the process. So what's been harmed here? The competitive process has been harmed because the State

has been deprived of receiving a bid from a very well credentialed, the national leading provider of facilities services surveys. I hope that answers your question, Governor.

GOVERNOR HOGAN: Yeah, I guess I'm still trying to understand why you lost all of your appeals at the Board of Contract Appeals and are now coming back to us.

MR. HAMILTON: It's our last remedy. If the Board goes forward with this contract, it moots the appeal. And again, the appeal is so important not only for MGT, but for the precedential issue of whether it should have been excluded in the first place. We think that the legal process should take place.

MR. CARREY-BEAVER: Mr. Secretary, may I address --

GOVERNOR HOGAN: Yes.

MR. CARREY-BEAVER: In the first RFP, when they were found excluded, they actually were told not to submit a proposal and they did submit a proposal. In the second RFP when they were told that they were excluded from competition, they were not told they could not submit a proposal. But they did not submit a proposal the second time, and that's part of the standing issue that the Governor is actually addressing as well. Competition is (indiscernible) and I think the interested party would be certainly affected negatively by not awarding this contract today to get the work done. Because I understand that this is work that's been delayed and needs to go forward.

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COMPTROLLER FRANCHOT: Yeah, well, can I ask a question?

MR. CARREY-BEAVER: Sure.

COMPTROLLER FRANCHOT: I mean, I went to law school. I'm a member of the Bar, but I call myself a public interest lawyer, which means in the public interest I don't practice law. So take my --

(Laughter.)

COMPTROLLER FRANCHOT: But do you have any inclination or any information that somehow the communications that were used by the procurement officer were somehow influenced or in an unethical way by MGT, a very substantial Maryland company? It sounded to me like they were asked to give advice. They were paid for the advice. And they were told after the fact, oh gee, no there's something unethical here.

MR. CARREY-BEAVER: Well there was --

COMPTROLLER FRANCHOT: It doesn't sound to me like there is, but that's what this, you know, procedure of gatekeeping is supposed to prevent, corruption and bid peddling, unfair stuff. Do you have any, do the procurement officers have any scintilla of that?

MR. CARREY-BEAVER: Concerning the law school, I think we went to the same, I went to Northeastern Law School --

COMPTROLLER FRANCHOT: Yes.

MR. CARREY-BEAVER: -- and I think you did as well. I graduated a little bit later than you, I believe. So I just thought I'd mention that. So I've done public interest work myself.

No the procurement officer for the first procurement was a different procurement officer than the procurement officer for the second procurement. When the whole procurement reform occurred, this issue or this contract was transferred to DGS. And the procurement officer there, a very experienced procurement officer, she actually is a lawyer, who has done this type of work for a long time, took a very careful look at the first RFP and compared it to the second RFP. She actually tried to draft a second RFP so that it would be different and so MGT would be able to compete. And she just could not, and she testified to this, she could not do that. She actually took the 2018 RFP and worked off of that, so they really are the same, it's really the same RFP.

COMPTROLLER FRANCHOT: Well, I understand that. I don't, I'm not criticizing that.

MR. CARREY-BEAVER: Yes.

COMPTROLLER FRANCHOT: I just, it's the whole point is to prevent illegal, unethical, improper influence over the procurement process. Is there any scintilla in the first or second that somehow the company that Mr. Hamilton represents, which has a very long record here in Maryland, did

something improper? Because that's certainly the giveaway, if in fact this decision is allowed to stand.

MR. CARREY-BEAVER: Yeah, I have seen nothing, no evidence of what you're referencing, Mr. Comptroller. The procurement officer took what she saw in front of her, did a very thorough analysis of the RFP, came to the conclusion you came to. The Board of Contract Appeals reviewed that decision and agreed with her that her decision was reasonable, not arbitrary and capricious. So --

TREASURER KOPP: Well, and Mr. Beaver, could I just, her decision, I gather her decision was that the OSP contract, DGS contract, was the same essentially as the IAC contract?

MR. CARREY-BEAVER: That's right, and that's what the board found as well. Yes.

TREASURER KOPP: And that's why she came to the conclusion there was no way of changing the requirements --

COMPTROLLER FRANCHOT: -- Madam Treasurer, you're a company trying to get business here --

TREASURER KOPP: Yes.

COMPTROLLER FRANCHOT: -- and you have a competition with someone, and all of a sudden you're retained by them to do some kind of a conversation about specifics, and then you're told no, that removes you because

now there is some kind of a cloud. I mean, what about just a phone call where you call up someone and say, you know, we have a lot of expertise, we're a Maryland company, and is that then, gee, you are influencing something that is, looks bad. No, it doesn't look bad if this is a company that's had two relationships. I assume those relationships sometimes they were consulted for their expert opinion. And I just think this sounds like a point, too fine a point for it to pass the fairness test. That's my sense, just from the conversation I've heard.

And so I would, I would hope that we would not, I hope -- and generally I support the Maryland Board of Contract Appeals, as you know. I've voted repeatedly against contracts that are being protested to them when we haven't heard from them. This one is a little trickier because it's the Circuit Court. But you know, four, four to six months is not that long. And this to me strikes me as an important issue. You know, can, what is it that disqualifies a company from bidding on a State contract? It could be almost anything, under my impression of this thing.

GOVERNOR HOGAN: I think Secretary Churchill wanted to make a comment.

MR. CHURCHILL: And I appreciate the discussion that's going on. I think at the core of this is not the fact that (indiscernible), but the process to be able to keep things fair and equitable for all companies was not achieved. And so information from MGT was garnered, but there would be under our processes,

there would be a process to put that out, that exact question for comment across the industry and take that information and incorporate it into a solicitation. And that's what did not happen. And I think that's at the core of the poisoned fruit. And there is a substantial process that we have to go through to make sure that we can assert that all companies have been treated fairly. And the department, both departments, the client agency and General Services, in an attempt to try to remedy this did try to change the second procurement to be able to remedy the actions from the first procurement. But unfortunately, the program, as identified by the client agency, that's the best program presentation that would do the business of the department in terms of assessments. So we really could not substantially change the second procurement and you have already heard the other comments from the AG's Office and the vendor's counsel, so.

COMPTROLLER FRANCHOT: Didn't the State create this conflict itself by retaining MGT to give them the benefit of their wisdom?

TREASURER KOPP: (Indiscernible).

COMPTROLLER FRANCHOT: If I could just finish, Madam Treasurer. Then the State turns that very conversation against the company. It just, I find it to be worse than I thought when I first heard the presentations. I mean, it's your fault, right? On your end? That this situation exists.

MR. CHURCHILL: The second procurement was handled by General Services under the new procurement rules. The first procurement was

handled directly by the agency. And so when the procurement transferred from the client agency to General Services, unfortunately, looking at the entire procurement, which we did, and in consultation with the Attorney General's Office to understand the nuances about what exactly would be required to allow MGT to bid, the decision ended up that the first procurement and the second were essentially the same, very minor changes. And so it was difficult to correct, to correct that.

COMPTROLLER FRANCHOT: Different agencies, Mr. Secretary, different agencies, two different agencies --

MR. CHURCHILL: Yes.

COMPTROLLER FRANCHOT: -- one State of Maryland --

MR. CHURCHILL: Yes.

COMPTROLLER FRANCHOT: -- get too down in the weeds here, but I'll defer to my colleagues.

MR. CARREY-BEAVER: This is Doug Carrey. Can I address the four to six months? I've done a number of these petitions for judicial review. I've never had a decision from the Circuit Court in four to six months. I mean, we're talking more like nine months to a year. That's typically the length of time that I've seen that it's taken me to get a decision from the Circuit Court on a review of an MSBCA decision. So four to six months I think is completely unrealistic.

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TREASURER KOPP: Governor, could I just ask one more question? I'm trying to understand. The original problem was with the potential relationship, or whatever, between MGT and the IAC. Secretary Churchill was not involved in that. Your procurement people were not involved in that. What, was MGT actually retained? The Comptroller assumes they were paid for advice, but was that in fact so? Or was it informal?

MR. CHURCHILL: I'm going to let --

GOVERNOR HOGAN: I don't know who we're answering the question of. I don't have any idea.

TREASURER KOPP: And was MGT told that they may not be, that speaking about it may disqualify them from competition?

MR. HAMILTON: Governor, it's David Hamilton. May I answer that question?

TREASURER KOPP: Well, I'd like to hear from Mr. Gorrell.

GOVERNOR HOGAN: No, I don't think you should.

MR. HAMILTON: All right. Thank you.

GOVERNOR HOGAN: -- probably answer that. Maybe the attorney for the State, or maybe Bob Gorrell, or somebody.

TREASURER KOPP: Mr. Gorrell has gone away?

MR. GORRELL: No, I'm here. I was waiting for the procurement to determine, or the Office of the Attorney General, if they were going to answer that.

TREASURER KOPP: I'd like to hear from you, if you don't mind.

MR. GORRELL: Yes. No. They were not retained. We were in a, trying to do this quickly. There was a lot of pressure to get the assessment done. We found an agreement, an assessment agreement in Anne Arundel that happened to be MGT that had an interagency clause attached to it. We had wanted to use that, I think it has already been determined. And we agreed that as we looked into it further and we looked at what the scoping was that we required, it was not the same. And we said we can't do this, and we turned around and created an RFP and put it out. And I'm sorry for having put MGT in that position. I did not say anything to them that they would not be able to propose on this. That came later. It wasn't our decision. That was the procurement, and they are the professionals in this. And I respect their wisdom. We operate under the Department of Education. We do not have a procurement office of our own.

TREASURER KOPP: This --

COMPTROLLER FRANCHOT: So nobody told them this would, this conversation would not, would disqualify them from bidding, I take it?

TREASURER KOPP: Did you talk to your attorneys when you did this? No.

MR. GORRELL: The Interagency Commission does not have an attorney. The Department of Education has an attorney.

TREASURER KOPP: Okay.

MR. GORRELL: And yes, as soon as we recognized that there needed to be discussion on this, as we were putting together the RFP, of course we talked to the attorneys in the Department of Education.

TREASURER KOPP: After the fact.

MR. GORRELL: Yes. They, decisions were made outside of us.

TREASURER KOPP: (Indiscernible).

GOVERNOR HOGAN: (Indiscernible). I'm going to make a motion that we table this item for two weeks from now so that we can gather some more information. Obviously there's a whole lot of questions without a whole lot of answers. But my concern is that, you know, this contract was awarded in May of 2018.

TREASURER KOPP: Right.

GOVERNOR HOGAN: And you know, we delayed this from April so that this, so that MGT could appeal it to the Board of Contract Appeals. And the Board of Contract Appeals has already ruled pretty strongly and now we're coming back again like it's brand new, two years later, more than two years later. I think for us to try to overturn this -- I'm not saying they've been treated

fairly or that they don't deserve their opportunity to discuss some of these issues.

But if we throw out the bidder who has already won twice --

TREASURER KOPP: Right.

GOVERNOR HOGAN: -- to go back to these guys, then they are going to have a suit against us and they are going to be treated unfairly. So I don't want to make that decision without lots of lawyers giving us good advice. And I, you know, the Board of Contract Appeals is there for that reason and they have already acted. And that's why we have a Circuit Court, and they are going to act. But I'm, I don't feel comfortable with all of these issues, either one, not moving forward today, or saying we're going to put it off for a year. We can't do that. So why don't we get our act together in two weeks and have everybody on this, everybody here that doesn't seem to know what they are doing, come back to us in two weeks with all the information that we need. Is there a second to that motion?

TREASURER KOPP: I second that.

SECRETARY GONTRUM: To clarify, Governor, the next meeting is on September 23rd, in three weeks. But --

GOVERNOR HOGAN: All right. Three weeks. Then let's pull this item out of the DGS Agenda and have a separate vote on that to delay it until September whatever the three weeks --

TREASURER KOPP: And Governor, could I just say to allay concerns of people with whom I have worked for years, I recognize how important this is. We have been waiting for this assessment for about a decade --

GOVERNOR HOGAN: Well, I don't want to wait another year either.

TREASURER KOPP: -- but it's got to be done correctly. You know. And Mr. Gorrell, I'd like to hear a little more about --

GOVERNOR HOGAN: Yes. But I don't think we're getting anywhere today. So I think we probably ought to wait three weeks and come back. I don't want to talk about this all afternoon.

TREASURER KOPP: Right.

COMPTROLLER FRANCHOT: Always happy to support Governor Hogan --

GOVERNOR HOGAN: So that's three-nothing on the motion to move this for three weeks from now, pull it out of the Agenda. Now we're going to move on to Item 44.

COMPTROLLER FRANCHOT: What's that?

GOVERNOR HOGAN: IT, this is the one-year renewal option on the eGovernment Services contract. I know everybody has been working together trying to find a solution to this issue so that we can continue providing these vital services to our citizens and businesses. And so we're going to start off by getting

an update from the Office of State Procurement, which we all tasked with trying to find a way forward on this issue.

MR. CHURCHILL: And Mike Haifley, the Deputy Chief Procurement Officer for the Office of State Procurement, will address the Board.

SECRETARY GONTRUM: It's my understanding that Robert Gorrell is with Mr. Haifley and is the person who will be, whose camera needs to be turned on for Mr. Haifley to address the Board.

TREASURER KOPP: Robert Gorrell is with Mr. Haifley?

SECRETARY GONTRUM: I'm sorry, Robert Gleason.

MR. CHURCHILL: Robert Gleason, the Chief Procurement --

SECRETARY GONTRUM: Robert Gleason, thank you.

MR. CHURCHILL: Mike, your -- that is Mike Haifley. Your mike is off.

GOVERNOR HOGAN: Mike does not have a mike.

MR. HAIFLEY: Can you hear me now?

GOVERNOR HOGAN: We hear you.

MR. HAIFLEY: Okay. Good morning, Governor, Madam Treasurer, Mr. Comptroller. My name is Michael Haifley. I'm the Deputy Chief Procurement Officer for the Office of State Procurement, Department of General Services.

At the previous BPW meeting on August 12th, the item requesting the final option for the NICUSA contract was deferred with instructions from the Lieutenant Governor for DGS to take the lead on the replacement contract. And we noted the Board's strong desire for a competitive solution. And since that time, we have formed a group of four stakeholders, consisting of the Department of Information Technology, the State Treasurer's Office, as well as DGS, and we have also recruited the Maryland Department of Transportation Motor Vehicle Administration, and reached out to one other agency who is also a power user, if you will, of the current solution.

The team has already met and developed a path, I believe, that will determine whether or not there is a competitive solution to get to the next generation of this contract. And as you know, I briefed the Board's staff last Wednesday regarding that plan. That briefing is the first of what will be monthly status updates that we will be delivering to them.

During that briefing, a comment regarding the structure of the contract option was raised as it relates to the incorporation by reference to the recently expired contract. This concern was shared with DoIT. The contract was subsequently modified to remove the incorporation by reference language of that earlier contract. And the staff seemed to be satisfied that that issue was resolved. And so now the contract stands alone.

Speaking to the path forward, specifically there are a few logical steps that need to be taken. And let me emphasize the approach that we are taking is to present the State's business problem, that is the provision of self-funded eGov services, to the business community and ask them for ideas on ways to best solve the problem. We need to be open-minded in our approach and we need to be willing to be flexible, and above all else we need to listen to the market. And again, I've walked your staff through those steps but I can do that again if you desire.

But generally speaking, we need to research what are the other states doing, what is the business community capable of doing, what are the requirements of the State agencies, and what is the framework that any potential solution needs to fit within. We are prepared to do that and have begun those activities. And I think we should have an answer in three to six months and be able to come back to your staff or the Board itself to share those findings and a recommendation on how to move forward if it's the Board's pleasure. And thank you, and if you have any questions I'll try to address them.

GOVERNOR HOGAN: Questions?

TREASURER KOPP: I have a question, Governor. As I understand it, Mr. Haifley, we're talking about the path going forward, not specifically this item for a, that's still a DoIT item. Is that right? For --

MR. HAIFLEY: That's correct. My understanding was our mission was to work with the stakeholders to develop a new contract.

TREASURER KOPP: Well Governor, I want to say I appreciate that very much, you and the Lieutenant Governor, the Secretary. I think it's a new day and I hope we can go forward with something that is the best for the people of Maryland and have a record of it so we'll know what is happening. This DoIT item is, as I understand it, a proposal to go forward for a year with what is essentially the renewal, but it's rewritten so it doesn't refer to a contract that is no longer in effect and that was based on unaudited, at least we don't have the audit numbers. This is a one-year, in its own, going forward. I assume the \$4.5 million estimate of cost is based on something. Do you happen to know what it's based on?

MR. HAIFLEY: That was the estimate I believe that was provided by the Department of Information Technology when the contract was executed originally. What I do know is the most recent year the spend was a little over \$3 million. I would anticipate a similar figure would be needed for the next year.

TREASURER KOPP: Well this is a not to exceed, as I understand it, \$4.5 million.

MR. HAIFLEY: Yes, that's how it's presented, yes.

TREASURER KOPP: I really appreciate the work that was done by DoIT in rewriting this and taking out the language that made it impossible for

me to support it last year. And I'm prepared to support going forward, as long as we have an accurate accounting for this year as we go forward of how much is spent, perhaps on a quarterly basis. We know now that the State does have access to the information which would allow them to report it, at least according to the company involved. And my understanding is according to the auditor from the Department of Budget and Management, they have access to that amount of money. This is not your concern. I'm sort of stumbling, because it really is DoIT. It's not you all. But I would be prepared to support this with the understanding that we are going to get reports. You mentioned three month, maybe quarterly reports on exactly how much has been spent on the services. My understanding is, Comptroller, you might be interested in having them come back in six months and reupping. I believe --

COMPTROLLER FRANCHOT: Are you addressing me, Madam Treasurer?

TREASURER KOPP: Yes. Yes.

COMPTROLLER FRANCHOT: No, my condition voting approval of it would be that we give you six months and then a six-month renewal. You have to come back at the end of six months and explain where the audit numbers are or aren't and reassure everybody that you're on path to conduct a new procurement. That obviously is what I think the Treasurer and I would like. But if the Governor were willing to accept it, I would say, yeah, a six-month

extension and a six-month renewal. But the six-month extension would require you to come back with the information the Treasurer is missing and you could also give us an update on how the procurement is going.

TREASURER KOPP: And again, I'm a little confused, but would you be the people coming back on this Item 44?

MR. HAIFLEY: No, ma'am, not for the audit. That would be the Department of Information Technology. I would be happy to come back and update you on the status of the new procurement. But the audit issue --

TREASURER KOPP: Yes, well you said you would do that. And I appreciate, going forward it's a new world. But --

MR. HAIFLEY: Yes, ma'am.

TREASURER KOPP: -- from whom are we going to get the information that the Comptroller, who is bringing this item back in six months, if it's six months? I don't understand.

COMPTROLLER FRANCHOT: Well, I don't really care who it is. But I would assume it would be Secretary Churchill, but include Secretary Leahy as far as what's going on with the audit.

MR. CHURCHILL: The item still would be under our Agenda, Madam Treasurer.

TREASURER KOPP: Well, so will you see to it that we have quarterly numbers?

MR. CHURCHILL: What I will do is I will speak with the Department of Information Technology. I want to make sure we understand exactly the information that the Board is asking of us. And we will report back --

TREASURER KOPP: Okay.

MR. CHURCHILL: -- similar to how we have done on other requests to keep the Board informed.

TREASURER KOPP: Thank you. Unlike --

COMPTROLLER FRANCHOT: I would vote, but my motion would be to have this one-year divided into two, where we give them six months with a renewal for an additional six months. But you would have to obviously come back after six months and ask for the renewal and we would get to make, you know, obviously be kept abreast of the progress.

GOVERNOR HOGAN: Great. Is there a second?

TREASURER KOPP: Second.

GOVERNOR HOGAN: Yes. All, three-nothing. We'll pull that out. Are there other questions on the DGS Agenda?

COMPTROLLER FRANCHOT: I wanted to thank you, Governor, for Item 41. Because that's a \$2 million capital grant for Merriweather Post Pavilion, which is one of the most beautiful facilities we have. It's been obviously severely damaged because of the pandemic and the inability to put on concerts and large gatherings. But this grant and support from the State is just so

crucial that Merriweather can get through the next six months until hopefully we have a medical solution and can return to the obviously wonderful concerts and performances and events that they will host in the future. Governor, I just want to applaud you for moving forward in these tough times.

GOVERNOR HOGAN: Yeah, thank you. And absolutely, I agree.

Any other questions, or is there a motion?

COMPTROLLER FRANCHOT: I had a quick question on Item 40, which I have a suggestion I might be able to make on it. Which is this is a Maryland State Police Aviation Command MEDVAC item that I don't have any problem with. But I do have some concerns with what we did last July. I think you were with us then, Governor, where we voted on the cuts. A number then you pulled off the table and I think the Treasurer and I both really appreciated that. But one that passed through was a \$1.3 million in savings for fiscal year 2021, which starts next July 1st, associated with the closure of a MEDVAC base due to the sale of a Maryland State Police helicopter. I heard a lot coming up to the July 1st meeting about the cuts that you proposed and we worked out something where almost everything that anybody disagreed with was delayed until we actually see what the situation is with the pandemic. I didn't hear anything about this item and I assume that it had been vetted and that it was supported, more or less, by the people that are affected.

Obviously, it didn't get, we didn't get the word out because there are a lot of people that are very concerned now that the Maryland State Police Aviation Command is going to lose a post and lose a helicopter. And so I have a little different view on this because I live in Montgomery County. But people on the Eastern Shore are really perhaps, you know, unfairly (indiscernible) government very, very concerned about the sale of a MEDVAC helicopter and the closing of a base because they think it's going to affect them on the Shore.

We haven't approved the sale of a helicopter, so maybe that will down the road come before us again. I suggested that we go back and reverse the \$1.3 million cut, and I've been shown a 30-year old letter from Attorney General Curran saying that we can't do that because the cut has already been somehow bureaucratically noted and therefore we can't go back and reverse it as you could if it hadn't been. But I guess my situation here is that, you know, the cut stands. I happen to be opposed to it based on what people have come and told me. And I was prepared to make a motion to void the \$1.3 million and was told by the attorneys that's not proper under this 30-year old letter.

So I have two requests. Number one, I'd like the Attorney General to do a legal opinion as to what this Board can do in a situation like this. Not a letter from, God bless him, Joe Curran, but a legal opinion because I think it's important. Obviously the cut, even though it has been formalized bureaucratically, has not taken place because the cut was removing all the

contracts for maintenance and repair of one of the helicopters and closing of one of the bases. That has not happened. I hope it doesn't happen, based on what has been communicated to me. And so at this point I would be happy to defer (indiscernible) if we could get a letter from or a real opinion from the Attorney General on what the powers of the Board are in a situation like this where we have voted for a cut but no action has been taken.

GOVERNOR HOGAN: Okay. Mr. Comptroller, I agree with everything you have said. Our fiscal situation has changed a lot since then. I didn't hear anything about this before the item came before the BPW either. This was a recommendation from the State Police. They are currently doing a study of this issue which isn't completed yet, which I haven't seen the results of. We do still have to come back before the Board with potentially hundreds of millions of dollars in additional cuts once we see what the final numbers look like. And I believe we should figure out a way to try to take a look at this issue and item again. I'm also not really in favor of it.

But this item today has nothing to do with that. This is a moving forward with the extension of a lease for space in St. Mary's County for their helicopter. And --

COMPTROLLER FRANCHOT: No, I'm happy to --

GOVERNOR HOGAN: -- we're all in favor of moving forward with St. Mary's County leasing the space for their helicopter, right?

COMPTROLLER FRANCHOT: Yes, and I have no problem with that whatsoever. And my, what you have said makes perfect sense. And I'm also looking forward to the independent study. And as long as everybody is in agreement that no action is going to be taken until we get another bite of this apple --

GOVERNOR HOGAN: Yeah, I'm a hundred percent in agreement with you on this, everything you have said. I just want to make sure that the Aviation Command request for Trooper 7 Helicopter down in St. Mary's County, which is on our Agenda, gets approved, because it's just a renewal of their five-year lease.

COMPTROLLER FRANCHOT: Yeah, no problem with that. I was using it as a foil. So thank you, Governor.

GOVERNOR HOGAN: Yeah, nice use of the foil. But I think we will try to figure out a way to resolve that whole issue. So thank you for bringing it up.

TREASURER KOPP: Governor, could I just, obviously I agree with not taking that cut. But could we see a draft of your letter to the Attorney General asking, I agree with it, asking for an opinion? Because I think it might also, you might also want to include things like conditioned cuts, whether the Board can say we recommend this cut but if revenue turn around by a date certain to a certain amount, then this would be rescinded. I gather right now that that, the

lawyers don't think that's possible. But it would be interesting to hear that from the Attorney General also.

GOVERNOR HOGAN: Yeah, I haven't seen the Comptroller's letter he's referring to from Joe Curran. But we're going to try to take a look at this and we'll bring it up before the next meeting and figure it out.

COMPTROLLER FRANCHOT: I actually read the letter, it was an excellent letter, but it's not a full-fledged opinion. And I think given the ambiguity, we might want to request one.

GOVERNOR HOGAN: Yeah.

COMPTROLLER FRANCHOT: And I'm happy prepare a draft of a letter, but I think the letter should come from the Governor.

GOVERNOR HOGAN: Yeah. I think it will all come together as we're waiting for this base realignment study from the State Police, which was simply a recommendation or a draft from them. And we ought to get the experts, you know, they are telling us what they want to do, but no final decisions have been made on anything. So I think we'll get to the bottom of it.

COMPTROLLER FRANCHOT: Thank you.

GOVERNOR HOGAN: All right?

COMPTROLLER FRANCHOT: Move approval.

GOVERNOR HOGAN: Is there a second?

TREASURER KOPP: Second.

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GOVERNOR HOGAN: Okay, three-nothing on DGS. And that will conclude our Board of Public Works meeting. Thank you all very much. It's good to see you both. Thank you all for joining us this afternoon. Thank you.

TREASURER KOPP: See you in three weeks.

GOVERNOR HOGAN: We'll see you in three weeks.

(Whereupon, at 11:39 a.m., the meeting was concluded.)