

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 discomfoting 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,

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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

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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.

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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 --

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.)