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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

October 4, 2006

Mr. Paul Koessler
Chairman
Buffalo and Fort Erie Public Bridge Authority
1 Peace Bridge Plaza
Buffalo, NY 14213

Re: Public Communication, Board Governance,
Real Estate Acquisitions, and Procurement
Practices
Follow-up Report 2006-F-22

Dear Mr. Koessler:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law, we have followed up on the actions taken by officials of the Buffalo and Fort Erie Public Bridge Authority (Authority) to implement the recommendations contained in our audit report, *Public Communication, Board Governance, Real Estate Acquisitions, and Procurement Practices* (Report 2004-S-38).

Background, Scope and Objectives

The Peace Bridge crosses the Niagara River between Buffalo, New York and Fort Erie, Ontario, Canada. The bridge is a major commercial and tourist crossing point as it is the third busiest international commercial crossing and second busiest overall crossing on the United States-Canadian border.

The bi-national Buffalo and Fort Erie Public Bridge Authority (Authority) was established under New York State legislation in 1933, under Canadian Parliamentary action in 1934 and by United States Congressional consent, to operate and maintain the Peace Bridge. Chapter 662 of the Laws of 1997 and Chapter 214 of the Laws of 2004 (New York) modified the Authority's purpose to include construction, operation, and maintenance of an additional independent adjacent or replacement bridge and limited eminent domain rights. The Authority is currently involved in the Bi-National Integrated Environmental Process, which will result in an Environmental Impact Statement (EIS) for capacity expansion that involves both the construction of a new bridge and a new United States Plaza (U.S. Plaza) for processing traffic that crosses the bridge. According to the EIS, capacity expansion is necessary because the traffic volume for the bridge and the U.S. Plaza has exceeded operational capacity. Congestion on the bridge has resulted in long waits by commuters

and commercial carriers. For commercial carriers, this may jeopardize their delivery schedules. Overall, traffic crossing the Peace Bridge has grown considerably over the last ten years and growth is projected to continue.

A previous attempt by the Authority for capacity expansion was halted by legal action. The court's decision voided all previous granted permits issued to the Authority because the environmental review process for the U.S. Plaza and bridge capacity expansion was done as two separate projects rather than one. In the court's decision, the Authority was directed to pursue an EIS for capacity expansion as a single project - the U.S. Plaza and a new bridge. Besides the legal action, there was a public perception that the EIS process had been closed to public involvement.

The Authority proceeded with an EIS in 2001 that not only combined the new bridge with the U.S. Plaza, but also sought to maximize public involvement in the EIS process. In December of 2004, the United States and Canadian governments announced a joint framework to move forward with Shared Border Management (SBM) or border pre-clearance at the Peace Bridge as a pilot project. The SBM concept would allow all U.S. Customs and Border Protection operations to be relocated to the Peace Bridge plaza in Fort Erie, Ontario. Engineering and environmental analysis are in process to include the SBM alternative into the Draft Environmental Impact Statement. Inclusion of SBM into the EIS has resulted in a delay in issuing a record of decision, which is now expected to be issued in late 2007. At that date, the stage will be set to proceed with permitting, design and construction of the new bridge and the U.S. Plaza.

The Authority contracted with Parsons Transportation Group (Project Manager) to provide project management services for the EIS. According to the contract, the Project Manager is responsible for all aspects of public outreach, including defining and tracking all public involvement activities, and revising and implementing the Public Involvement Plan (Plan) as necessary. The Authority and the Project Manager developed the Plan as a means to secure two-way communication with the public during the EIS process. The EIS is funded by a \$15.4 million Federal grant under the Intermodal Surface Transportation Act of 1991. As of July 2006, the EIS process incurred costs of more than \$14 million (91 percent of the \$15.4 million) of which about \$2 million was spent on public communication.

For calendar year 2005, the Authority had an operating budget of more than \$14.3 million and about 89 full-time employees at a cost of \$8.8 million, including employee benefits. For the same time period, revenue from tolls totaled more than \$19 million, and rental and other revenue totaled more than \$7.4 million. Repair and maintenance costs for the bridge from 1994 through 2006 totaled more than \$32 million, including lead abatement.

Our initial audit report, which was issued on February 8, 2005, examined certain aspects of Authority operations relating to this planned expansion. Our report identified that the Authority adequately and effectively received and responded to public communication regarding the planned expansion. We also determined that the Authority's Board is fulfilling its legal and fiduciary responsibilities. However, we identified opportunities for improvement in the Authority's procurement and real estate acquisition practices. The objective of our follow-up, which was conducted in accordance with generally accepted government auditing standards, was to assess the

extent of implementation as of August 21, 2006 of the 11 recommendations included in our initial report.

Summary Conclusions and Status of Audit Recommendations

We found that Authority officials have made substantial progress in implementing the recommendations contained within our audit report dated February 8, 2005. Of the 11 audit recommendations, 6 recommendations have been implemented, 4 recommendations have been partially implemented, and 1 recommendation is not applicable. The recommendations that have been partially implemented relate to communication of technical cost estimates associated with bridge and plaza expansion plans being studied as part of the Bi-National Integrated Environmental Process. As of the date of this report, the Authority did not yet have final regulatory approval to release the documents containing this technical information; therefore, they were unable to completely implement the associated recommendations.

Follow-up Observations

Recommendation 1

As the capacity expansion project goes forward, continue to maintain public involvement including effective two-way communication.

Status - Implemented

Authority Action - Authority management continues to keep the public involved during the project planning phase. The Authority's website (www.peacebridgex.com) is available to keep the public informed. The website is updated monthly with information pertaining to project meetings, next steps, milestones achieved during the period, and issues impacting the schedule. The website also contains information regarding the project background, public events, and studies and reports. Other mechanisms in place for keeping the public involved and ensuring two-way communication is occurring include a comment and feedback section as part of the website, public meetings, direct mailings and 1-800 numbers in both the United States and Canada.

Recommendation 2

Ensure that future public presentations of the demolition costs contain the revised estimate and the reason for the revision.

Status - Not Applicable

Authority Action - As of August 10, 2006, the Authority had not held another public presentation since Workshop 6, which was held during the time frame in which we conducted the original audit. Consequently, the Authority has not had an opportunity to present the revised estimates and the reasons for the revision to the public. Officials stated to us they will address this issue when they hold their public hearing.

Recommendation 3

Disclose to the public that the contingency amount includes the undetermined cost needed to strengthen the existing bridge, that the amount may be revised based upon future engineering studies, and that bridge strengthening is optional.

Status - Partially Implemented

Authority Action - The Authority has developed a pre-draft Environmental Impact Statement (pre-draft EIS) which contains information regarding the bridge estimates. Specifically, the pre-draft EIS indicates that the contingency amounts include the undetermined costs needed to strengthen the bridge, that the amount may be revised, and that bridge strengthening is optional. However, as of August 21, 2006, the Authority did not have final regulatory approval to release the pre-draft EIS and as such, this information has not yet been made available to the public for review and comment.

Recommendation 4

Clearly communicate a concise description of the life-cycle cost estimate of maintenance, and the reasons why life-cycle cost estimates are used, in all future reports and presentations which use the estimate.

Status - Partially Implemented

Authority Action - The Authority included a brief description of the life-cycle cost estimate of maintenance and the reasons why these cost estimates are used in the pre-draft EIS and as an appendix in the Bridge Technical Evaluation Report. However, as indicated in the Authority Action Section for Recommendation 3, these reports have not yet been approved for release and as such have not been made available to the public for review and comment.

Recommendation 5

Provide life-cycle cost components of the \$94.7 million in all future reports and presentations.

Status - Partially Implemented

Authority Action - The Authority has developed an updated life cycle cost breakdown for recurring capital maintenance items for the existing bridge, post rehabilitation. The Authority shows the present worth of the costs over 75 years. However, since the pre-draft EIS has not yet been approved for release, the Authority has not presented these costs to the public.

Recommendation 6

Clearly explain the distinctions between historic cost maintenance events and life-cycle maintenance events in all future public reports and presentations.

Status - Partially Implemented

Authority Action - The Authority, in the pre-draft EIS and the Bridge Technical Evaluation Report, explained the distinctions between historic cost maintenance and life-cycle maintenance. Since these reports have not yet been released, the public has not yet had the opportunity to review this information.

Recommendation 7

Develop and implement written policies and procedure for the area of public correspondence.

Status - Implemented

Authority Action - The Authority has implemented policies and procedures for responding to public inquiries/complaints. The policy covers the processing of complaints via mail, email, in person, and by telephone. The policy also establishes standards for response times to the inquiry or complaint.

Recommendation 8

Develop and implement complaint/correspondence logs to capture the patterns and trends for all public correspondence issues. Use the log to track responses and ensure timely response.

Status - Implemented

Authority Action - The Authority maintains a complaint/correspondence log which it uses to capture relevant information pertaining to public correspondence issues and to monitor the actions taken to respond to these matters. We reviewed the log and found evidence that management is reviewing the log specifically to look for any patterns or trends and to ensure that action is taken in a timely manner. We also found evidence that Authority officials have taken action to assess customer satisfaction. Specifically, Authority officials conducted a survey of E-Z Pass customers to determine their level of satisfaction and any needed areas of improvement.

Recommendation 9

Develop written disclosure policies and consider voluntarily incorporating the legislative intent of AIA and FOIL into these policies.

Status - Implemented

Authority Action - The Authority is not subject to the provisions of the Canadian Access to Information Act (AIA) or the US Freedom of Information Law (FOIL). Nevertheless, the

Authority voluntarily responds to requests for information. As such, Authority officials have implemented a policy regarding public access to records, which incorporates the legislative intent of AIA and FOIL. We reviewed documentation for the three requests for information made since March 22, 2005 and determined that the Authority followed their policy in all three instances.

Recommendation 10

Develop and implement Board-approved written policies and procedures for property acquisition.

Status - Implemented

Authority Action - The Authority has developed and implemented a policy for the acquisition of real property. This policy was approved by the Board in April 2005. However, the Authority has not purchased any property since the policy was issued.

Recommendation 11

Comply with the Authority's procurement policy for sole source contracts.

Status - Implemented

Authority Action - The Authority's procurement policy requires Board approval for the acquisition of goods or services without the benefit of competition. We reviewed a listing of contracts the Authority entered into during the period February 1, 2005 through August 10, 2006 and identified three contracts that were awarded as sole source contracts. We determined the Authority complied with its procurement policy for these three contracts.

Major contributors to this report were Ed Durocher and Nicholas Angel.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We also thank the management and staff of the Authority for the courtesies and cooperation extended to our auditors during this process.

Very truly yours,

Richard K. Sturm
Audit Manager

cc: Lisa Ng, Division of the Budget