

*A REPORT BY THE NEW YORK STATE
OFFICE OF THE STATE COMPTROLLER*

**Alan G. Hevesi
COMPTROLLER**



***BUFFALO AND FORT ERIE PUBLIC
BRIDGE AUTHORITY***

***PUBLIC COMMUNICATION, BOARD
GOVERNANCE, REAL ESTATE
ACQUISITIONS, AND PROCUREMENT
PRACTICES***

2004-S-38

DIVISION OF STATE SERVICES

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Alan G. Hevesi
COMPTROLLER

Report 2004-S-38

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

Dear Mr. Koessler:

The following is our report on the Buffalo and Fort Erie Public Bridge Authority's practices relating to public communication, Board governance, real estate acquisitions, and procurement.

We performed this audit pursuant to the State Comptroller's authority as set forth in Article X, Section 5 of the State Constitution. We list major contributors to this report in Appendix A.

Office of the State Comptroller
Division of State Services

February 8, 2005

EXECUTIVE SUMMARY

BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY

PUBLIC COMMUNICATION, BOARD GOVERNANCE, REAL ESTATE ACQUISITIONS, AND PROCUREMENT PRACTICES

SCOPE OF AUDIT

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 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. The Authority is currently seeking approval of an Environmental Impact Statement (EIS) for 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. The Authority contracted with Parsons Transportation Group (Project Manager) to provide project management services for the EIS.

Our audit addressed the following questions about the Authority:

- Has the Authority established an adequate and effective system to receive and respond to public communication related to bridge expansion?
- Is the Authority's Board of Directors (Board) fulfilling its legal and fiduciary responsibilities?
- Has the Authority established an adequate system to ensure a fair contracting process for real estate acquisitions and for the procurement of services?

The scope of our audit generally included Authority activities for the period March 1, 2001 through August 31, 2004. However, with regards to real estate

transactions, we extended our examination to include certain properties acquired between July 1, 1995 and April 30, 2004.

AUDIT OBSERVATIONS AND CONCLUSIONS

In general, the Authority has adequately and effectively received and responded to public communication related to bridge expansion. We also determined that the Authority's Board is fulfilling its legal and fiduciary responsibilities. We found improvement opportunities relating to the Authority's contracting process for acquiring real estate and for procuring services.

The Authority has made a comprehensive effort to involve the public in the capacity expansion process, in excess of the regulatory requirements for the EIS. The EIS has proceeded according to the plan developed by the Project Manager allowing for extensive public input and communication through public meetings, reports, workshops, the project website, and other means, including public polling. We believe that such efforts have generally been effective, although we identified opportunities for improvement, as detailed in our report. For example, the Authority routinely conveys important data to the general public regarding cost estimates and related methodology, but such information is not always clear or fully explained. We concluded that public understanding of certain data could be enhanced in future reports and meetings, and our report contains recommendations to address this issue. (See pp. 13 - 24)

We reviewed Board activities and noted that the Board is fulfilling its responsibilities. For example, Board members actively participate in the affairs of the Authority. The Board has good attendance at meetings where substantive issues are discussed and decisions are made. The Board has adopted a code of ethics and a policy for preventing and disclosing conflicts of interest. However, we noted that the Board has not developed a written policy on responding to the public's request for information relating to the Authority's activities and affairs. As a bi-national public authority, the Authority is not legally required to comply with the State of New York's Freedom of Information Law (FOIL) or the Dominion of Canada's Access to Information Act (AIA). Instead, the Authority responds to the public's request for information on a case-by-case basis. We recommended that the Authority develop written disclosure policies, and consider voluntarily incorporating AIA and FOIL into these policies. (See pp. 25 - 28)

From August 1988 through April 2004, the Authority participated in 52 real estate acquisitions, with a value of more than \$23.9 million, for the expansion of bridge plazas. The Authority does not have formal, Board-approved written policies and procedures for property acquisition. However, Authority officials explained to us the process they use to acquire property, such as obtaining property appraisals, negotiating an agreeable price, and requiring Board approval of all acquisitions. We determined that the Authority generally adheres to its described process, but we recommended that the Authority develop and implement written policies and

procedures. This is particularly important at this time, as the Authority received eminent domain rights in July 2004. (See pp. 29 - 32)

We found that the Authority has a procurement policy and has established an adequate system for procuring competitively bid contracts and for monitoring the delivery of contracted services. However, we noted two instances where the Authority did not seek competition before awarding certain contracts. We recommended that the Authority adhere to its procurement policy. (See pp. 33 - 36)

COMMENTS OF AUTHORITY OFFICIALS

Authority officials agreed with our recommendations.

CONTENTS

Introduction

Background	9
Audit Scope, Objectives and Methodology	10
Comments of Authority Officials to Audit	12

Public Communication

Public Involvement in the Environmental Impact Statement	13
Recommendation	17
Effectiveness of Communications	18
Recommendations	22
Day-to-Day Operations	22
Recommendations	24

Board Governance

Recommendation	28
----------------	----

Real Estate Acquisitions

Recommendation	32
----------------	----

Procurement Practices

Sole Source Contracts	33
Competitively Awarded Contracts	35
Contract Monitoring	35
Recommendation	36

Appendix A

Major Contributors to This Report	37
-----------------------------------	----

Appendix B

Public Involvement in the Selection Process	39
---	----

Appendix C

Comments of Authority Officials to Audit	41
--	----

INTRODUCTION

Background

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. The EIS has an anticipated record of decision date of March 2005 for the U.S. Plaza and bridge design concept. At that date, the stage will be set to proceed with permitting, design and construction of the new bridge and 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 Efficiency Act of 1991. As of March 2004, the EIS process incurred costs of more than \$11.2 million (73 percent of the \$15.4 million) of which about \$2 million was spent on public communication.

For calendar year 2003 the Authority had an operating budget of more than \$14.9 million and about 102 full-time employees at a cost of \$9.2 million, including employee benefits. For the same time period, revenue from tolls totaled more than \$19.3 million, and rental and other revenue totaled more than \$6.2 million. Repair and maintenance costs for the bridge from 1994 through 2004 totaled more than \$31 million, including lead abatement.

Audit Scope, Objectives and Methodology

We audited the Authority's public communication practices, Board governance, and procurement practices for the period March 1, 2001 through August 31, 2004. We also examined certain real estate transactions for properties acquired between July 1, 1995 and April 30, 2004. The objectives of our performance audit were to determine whether the Authority has established an adequate and effective public communication system related to capacity expansion, whether the Authority's Board of Directors is fulfilling its legal and fiduciary responsibilities, and whether the Authority has established an adequate system to ensure a fair contracting

process for real estate acquisitions and the procurement of services.

To accomplish our objectives, we reviewed applicable statutes, rules, regulations, Authority policies and procedures, and Authority By-Laws. We interviewed Authority officials, the EIS Project Manager, and selected members of involved entities. We also reviewed consultant agreements, contracts, EIS reports and other related Authority records.

We also followed up on certain allegations concerning the Authority's operations. The allegations concern conflict of interest involving two Board members. One allegation was related to the procurement of personal services and the other allegation was related to the procurement of steel in advance of construction for the initial attempt at capacity expansion. We reviewed a series of operational accounts and records from 1997 through the present and nothing came to our attention that caused us to further pursue these issues as part of our audit.

We conducted our audit in accordance with Generally Accepted Government Auditing Standards. Such standards require that we plan and perform our audit to adequately assess those operations of the Authority that are within our audit scope. Further, these standards require that we understand the Authority's internal control structure and its compliance with those laws, rules and regulations that are relevant to the operations included in our audit scope. An audit includes examining, on a test basis, evidence supporting transactions recorded in the accounting and operating records and applying such other auditing procedures as we consider necessary in the circumstances. An audit also includes assessing the estimates, judgments, and decisions made by management. We believe that our audit provides a reasonable basis for our findings, conclusions and recommendations.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State, several of which are performed by the Division of State Services. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members of certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may

be considered management functions for the purposes of evaluating organizational independence under Generally Accepted Government Auditing Standards. In our opinion, these management functions do not affect our ability to conduct independent audits of program performance.

Comments of Authority Officials to Audit

A draft copy of this report was provided to Authority officials for their review and comment. Their comments were considered in preparing this report, and are included as Appendix C. Authority officials agreed with our recommendations.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Chairman of the Authority shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

PUBLIC COMMUNICATION

We found that the Authority has made a comprehensive effort to involve the public in the capacity expansion process in excess of the regulatory requirements for the EIS. The Project Manager has proceeded according to a Public Involvement Plan (Plan) allowing for extensive public input and communication. The communication has allowed the public and key stakeholders an active role in providing input to the selection of design alternatives. We also concluded that public understanding of certain information conveyed needed to be enhanced through clarifying statements and explanations. Lastly, we found that while public communications related to day-to-day operations was timely, the Authority did not have a written policy with procedures for responding to such communications.

Public Involvement in the Environmental Impact Statement

All activities leading up to the final decision on a design alternative and EIS take place through the Bi-National Integrated Environmental Process (Process), which was begun by the Authority in 2001. The Process allows for stakeholders and the general public from both countries to provide input for evaluating alternatives based upon the environmental issues for a new bridge and U.S. Plaza. The Authority has entered into separate agreements with the Town of Fort Erie and the City of Buffalo to jointly ratify key Process milestones. These three entities comprise the Partnering Group.

The EIS process is regulated by the State Environmental Quality Review Act (SEQRA). Public involvement under SEQRA is required at two specific phases. The process is also regulated by the National Environmental Policy Act (NEPA), which requires an EIS. The scoping phase, which culminates in the EIS Final Scoping Document, identifies problems and potential solutions regarding capacity expansion (e.g., environmental issues, impact on the community and project location). In the scoping phase, SEQRA (Part 617.8) requires an opportunity for public participation through meetings, exchanges of written material, or other means. After the

scoping phase, SEQRA (Part 617.9) requires similar public participation after the publishing of the Draft EIS. All comments received at the Draft and Final EIS phases are incorporated into the Final EIS.

The scoping phase ended with the Partnering Group signing off on the Final Scoping Document on February 5, 2004. During scoping, the Process included two formal public meetings, a formal comment period, and incorporation of 611 comments and responses in the EIS Final Scoping Document. The Process met the public involvement requirements of SEQRA (Part 617.8).

We found the Process went beyond the minimum regulatory requirements to secure the goals of public communication, involvement, and input. For example, the Authority and the Project Manager developed the Plan to secure ongoing, inclusive and meaningful two-way communication with the public during and after the initial scoping phase and prior to the Draft and Final EIS phases. The objectives for achieving this goal include educating the public about the EIS, developing mechanisms to provide feedback and multiple viewpoints from the public to the Project Manager, public input in the development of preferred alternatives, public understanding of the reason for selecting the preferred alternative, and open access to the Project Manager throughout the process.

In addition, the Plan includes dialogue with various entities including the general public and various interest groups. The Plan assigns specific roles to the Partnering Group and the Bi-National Civic Advisory Committee (CAC). The Plan also allows for structured public involvement in Concept Development and Collaborative Workshops (Workshops).

While the involvement activities were the direct responsibility of the Project Manager, the participants in Workshops, CAC, and the Partnering Group also had specific roles. We reviewed the activity of the Project Manager, interaction at Workshops, CAC activities and the Partnering Group involvement and conclude that the EIS public involvement has proceeded in accordance with the Plan and has resulted in substantial two-way communication.

Project Manager's Role

The Project Manager serves as the focal point for all communication throughout the EIS Process. All letters, phone calls, e-mails, etc. are routed to the Project Manager, and all reports, from interim studies to formal scoping reports, come from the Project Manager. The Project Manager maintains the project website. With advice from Authority officials, the Project Manager responds to specific inquiries about the EIS. Over the period November 2001 through June 2004, the Project Manager responded to 134 e-mails concerning the EIS. Also during this time period, the Project Manager made 16 reports available on the website including the Draft and Final Scoping Documents, technical studies of the existing Peace Bridge, and air quality studies. The Project Manager provides a monthly progress report to the Authority. These reports are also available on the project website.

From March 2001 through June 2004, the Project Manager held 46 meetings with civic organizations, neighborhood groups, and other interested parties, and held more than 150 meetings with governmental and political officials. The Project Manager has facilitated public presentations on EIS issues at CAC meetings and at the six Workshops. The Project Manager also informed the public of the various meetings and Workshops through the media such as mass mailings and advertisements. To emphasize the bi-national aspect of the project, Workshop locations alternated between the U.S. and Canada. Transportation to the Workshops was provided upon request. Scheduled meeting agendas are available on the project website, as are some of the presentations made.

Role of the Collaborative Workshops

As part of the Plan, the general public was invited to participate in a series of Workshops to help determine a list of feasible project alternatives to be retained for further consideration as the project proceeds. Six Workshops have been held from September 2002 through May 2004. Topics discussed have included the development of project goals and objectives, evaluation of alternative crossings, and evaluation of bridge concepts (type of bridge to be built). The Workshops were well attended.

We attended Workshop 6 on May 1, 2004. The purpose of the Workshop was to provide 13 bridge concepts to the public and to discuss the means to be used to evaluate the concepts. We observed two-way communication through presentations and formal question and answer sessions.

Role of CAC

CAC was formed to provide an open forum for key stakeholders, interest groups, and individuals from Canada and the U.S. for discussion of the purpose and need, goals and objectives, environmental issues and impact, progress and findings of the EIS. According to documents available on the Authority website, CAC currently has 119 members representing a broad range of diverse views, expertise and interests.

CAC has met 16 times from July 2001 through May 2004. Meeting topics have ranged from general discussion of the scoping process to discussion and evaluation of bridge design concepts, historic preservation, and existing bridge maintenance.

We met with two CAC members during the course of our audit, one of whom was a party to the litigation which halted the previous capacity expansion project. Both stated that CAC has provided a good sounding board and that the consensus reached at meetings has been taken into consideration by the Project Manager.

Partnering Group

The Partnering Group represents the three entities that are the primary public stakeholders in the capacity expansion project: the Authority, the City of Buffalo, and the Town of Fort Erie. The Partnering Group has specific ratification responsibilities at key project milestones as follows:

1. Ratification of the EIS Final Scoping Document
2. Ratification of the Draft EIS
3. Ratification of the Final EIS

The Partnering Group provides general oversight and guidance to the EIS, as well as advice, consultations, and recommendations to the Board. In addition to two formal meetings, the members of the Partnering Group and their

representatives have met with the Project Manager 79 times between February 2002 and April 2004 to discuss concerns regarding the EIS. Items discussed have included bridge concepts, traffic flow, environmental issues, and the future of Buffalo's west side.

Oversight Agencies

The Federal Highway Administration (FHWA) and the New York State Department of Transportation (NYSDOT) monitor to ensure the EIS proceeds according to regulatory requirements. We discussed the EIS with an official in each agency. The FHWA official told us that the EIS is proceeding in accordance with regulations and that the public involvement has been effective. The NYSDOT official told us that the level of public involvement in the Plan was beyond the minimum required by regulations but is probably necessary given the complex issues involved.

Outcomes to Date

The principal outcome of the enhanced public involvement has been the selection of design alternatives for capacity expansion. Through the various Workshops, CAC meetings, and other events, including public polling, the Process has moved through the evaluation of 59 alternatives at seven different crossings to four bridge concepts at the existing location. Appendix B illustrates public involvement in the selection process.

Public involvement has been comprehensive and responsive. To date, it has been specific to the EIS. We believe there will be a continued need for effective two-way communication after the Process ends and the project moves forward through design and construction.

Recommendation

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

Effectiveness of Communications

The Project Manager routinely, through reports and meetings, conveys important data to the general public. In order to measure the effectiveness of these communications, and to determine whether the data was adequately supported, we selected three representations (Demolition, Rehabilitation Costs and Life-Cycle Cost Analysis) presented to the public at Workshop 6. We compared this information to detailed estimates for demolition, rehabilitation, and life-cycle maintenance cost information provided to us during the course of the audit by the Project Manager. We also used information contained in the Initial Bridge Study of October 2003. This study, which was prepared by consulting engineers, evaluates the condition of the bridge and its future maintenance and rehabilitation needs.

In general, we determined that demolition costs, life-cycle maintenance costs and rehabilitation cost are supported by engineering estimates. We concluded that public understanding of the representations would be enhanced if clarifying statements are included in future presentations of demolition and rehabilitation. We also concluded that the Project Manager's reports and meetings could have more clearly described the nature and purpose of life-cycle maintenance costs, and that differences between life-cycle maintenance events and historic capital maintenance events should be clearly explained to the general public.

Part of Workshop 6 included a presentation on methods to be used to evaluate the two general options for capacity expansion. One option would rehabilitate the existing bridge and construct an adjacent bridge (Companion Bridge). The other option would build a larger new bridge and remove the existing bridge (Replacement Bridge). The participants were provided with the following economic evaluation model for estimating the costs for each option.

REPLACEMENT BRIDGE ALTERNATIVES	COMPANION BRIDGE ALTERNATIVES
Construction Cost - New Bridge	Construction Cost - New Bridge
Demolition Cost - Existing Bridge	Rehabilitation Cost - Existing Bridge
Life-Cycle Maintenance Cost - New Bridge	Life-Cycle Maintenance Cost - Existing Bridge and Life-Cycle Maintenance Cost - New Bridge

Demolition Costs

If a replacement bridge is built, current plans anticipate that the existing bridge would be removed from the Niagara River. The presentation at Workshop 6 estimated it would cost \$20 million to demolish and remove the existing bridge. This estimate was based on data contained in the Initial Bridge Study for complete removal of all bridge structures, including the piers, at a cost of \$19.8 million. However, in July 2004, the Project Manager provided us with a revised estimate which totaled \$22.7 million. The increase resulted from additions made by the Project Manager to cover costs of design and construction management (\$2.9 million) which were not included in the initial estimate. The Project Manager should incorporate and explain the changed estimate in all future public reports and presentations to avoid confusion.

Rehabilitation Costs

According to the Initial Bridge Study, if a companion bridge is built, the existing bridge would need rehabilitation so that it may continue to provide adequate service in the future. According to the Project Manager, the companion bridge would be built and opened to traffic first, then the existing bridge would be closed to traffic during the rehabilitation period.

The Initial Bridge Study noted two major items requiring rehabilitation. The first, re-decking, is necessary because the original bridge deck has reached the end of its useful life. The second major item, structural strengthening, is optional. According to the Project Manager and the Initial Bridge Study, the load capacity of the existing bridge exceeds the current

standards for existing structures but it does not meet the standard for new construction. Therefore, the Authority may decide to strengthen the existing bridge to match that of the companion bridge.

The Project Manager gave us a detailed estimate of rehabilitation costs in July 2004. This estimate, totaling \$20 million, assumes that the bridge would be closed to traffic while undergoing rehabilitation. The estimate includes \$12.9 million for re-decking, \$1 million for widening, \$3.5 million for contingencies, and \$2.6 million for design and construction management.

Although the estimate does not contain a specific item for structural strengthening, the Project Manager told us that the cost of such work is included in the \$3.5 million for contingencies. However, the Project Manager stated that no detailed estimate for structural strengthening has been prepared at this time because the full nature of the work required will not be known until the existing deck is removed.

The Project Manager should inform the public that the contingency amount expected to cover the cost of structural strengthening and the estimate may change when detailed estimates are made. The Project Manager should also clearly explain that the structural strengthening is optional and may not be undertaken.

Life-Cycle Cost Analysis of Future Maintenance

The FHWA recommends that life-cycle cost analysis be used to compare future bridge maintenance costs of different bridge concepts. Life-cycle cost is a complex economic analysis that includes such concepts as constant dollars, discount rates, cost of capital, and present worth. These concepts may be difficult for the general public to understand without adequate explanation. (For example, the present worth amount can be understood as the amount of money needed to be invested today and grow in value over a period of time to yield the full cost of the project - similar to an individual setting aside money for a future purchase.) In fact, comments made by participants at Workshop 6 show that the meaning of present worth and use of life-cycle analysis is not clearly understood. This confusion caused some participants to comment that the Program Manager is misleading the public on the cost of the companion

bridge alternative. For example, between 1994 and 2004, the Authority spent \$31 million for bridge maintenance. During the 75-year period 2010 to 2085, the Authority expects to spend \$94.7 million. Under life-cycle cost analysis, the present worth estimate of the \$94.7 million was \$23.3 million. Because the \$94.7 million was not presented at the Workshop, the public compared the \$23.3 million estimate to maintain the bridge for a 75-year period to the \$31 million it cost the Authority for an 11-year period and questioned how this was possible. While the public was told that the \$23.3 million estimate was present worth dollars, the public found the concept confusing and the public may not have clearly understood the methodology.

Some of the public was further confused because they did not understand that the \$31 million included certain non-recurring maintenance costs. For example, lead abatement, which cost \$23 million, will not need to be done again when the existing bridge is repainted.

We also compared the projected expenditures in the life-cycle cost analysis to historic capital maintenance spending contained in an Authority report on historic capital maintenance costs for the period between 1994 and 2004, provided at a CAC meeting in March 2004. The historic capital maintenance report, which was supported by the Authority's accounting records, shows a total of \$31 million spent in the 11-year period between 1994 and 2004. The projected expenditures used in the life-cycle cost analysis totaled \$94.7 million. Without the following adjustments, however, the costs are not directly comparable:

- The life-cycle cost analysis uses some activities, such as inspections, which are not capital maintenance;
- The life-cycle cost analysis includes \$14 million for re-decking, an activity which is not included in historic cost because the bridge has yet to be re-decked; and
- The historic cost painting and projected cost painting events are not comparable (the life-cycle cost analysis includes a total of \$13.2 million for re-painting while \$23 million of the historic cost is for a one-time lead abatement project which will not be repeated).

Making these adjustments, we found that the life cycle cost estimate for the existing bridge is comparable to actual historic cost. To ensure that these estimates are understood by the general public, the Authority and the Project Manager should ensure that future presentations of the estimate include clarifying information.

Recommendations

2. Ensure that future public presentations of the demolition costs contain the revised estimate and the reason for the revision.
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.
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.
5. Provide life-cycle cost components of the \$94.7 million in all future reports and presentations.
6. Clearly explain the distinctions between historic cost maintenance events and life-cycle maintenance events in all future public reports and presentations.

Day-to-Day Operations

The Authority receives five major categories of public correspondence on a daily basis: general inquiries; traffic conditions; customer/toll collector confrontation; customer shortchanged at toll; and E-ZPass inquiries. In general, we observed that the Authority responded timely to public communication. However, we found that the Authority has not developed a formalized written policy, with procedures, for day-to-day public communication. In addition, the Authority has developed and implemented a complaint/correspondence log for certain categories of public correspondence (customer confrontation/toll shortages) but not all correspondence.

We reviewed all four customer confrontation/toll shortages and randomly selected 46 email correspondences out of 218 received during our audit period. (The 218 emails represent less than one per day received during our audit scope.) The 46 emails include 29 traffic inquiries, 15 general inquiries and 2 E-ZPass inquiries.

For the four customer confrontation/toll shortages, we found that the Authority's responses were timely. The response to the one toll shortage resulted in a refund being issued within 14 business days.

For our sample of email responses, we found that the responses for 39 of 46 emails received were timely. Of these 39 responses, 36 responses occurred within four hours of being received by the Authority and the remaining three were responded to between one and three days. For the other seven emails, Authority officials told us that four emails were inadvertently not responded to due to an oversight and that they could not provide documentation for their responses to the three remaining emails. During the course of our audit, Authority officials told us that they had implemented changes to ensure that all emails are responded to and that the responses are retained.

Authority officials stated that a written policy and a general complaint/correspondence log does not exist because after removing correspondence of general inquiries related to Customs, Immigration, and E-ZPass, which are forwarded to the appropriate agency for response, the correspondence is minimal in quantity and is discussed at various meetings.

It is important, in the spirit of customer service, for the Authority to respond to all public correspondence. Having formalized written policies helps to ensure that management's intended goals and objectives are accurately communicated throughout the organization and are being adhered to. In addition, formalized written policies allow for an easier transition when employees assume new responsibilities. Fully developed complaint/correspondence logs can be utilized by management to identify trends and patterns for areas of improvement. We believe that these logs are needed for all areas of correspondence to identify improvement opportunities in customer service.

Recommendations

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

BOARD GOVERNANCE

The governing Board of Directors (Board) of a public authority is the top-level executive decision-making body of the organization. Based on our review, we conclude that the Authority's Board is fulfilling its legal and fiduciary responsibilities. Although exempt, the Board should consider developing a more open government policy related to requests for information.

Pursuant to its enabling legislation, the Authority has a ten member Board with equal representation of U.S. and Canadian appointments. As required, the Board annually elects a chairman and vice-chairman (one U.S. and one Canadian, who alternate positions annually), a treasurer, assistant treasurer, secretary and assistant secretary.

Because of the Authority's bi-national nature, certain regulatory requirements for New York State public authorities do not apply to the Authority. Specifically, the Authority is exempt from Article 9 of the Public Authorities Law, which includes reporting and governance requirements for New York State public authorities. Instead, the Authority is guided by its enabling legislation and By-Laws.

To determine whether the Board is fulfilling its legal and fiduciary responsibilities, we reviewed relevant legislation, Authority By-Laws, Board meeting minutes and other reports. We judgmentally selected and reviewed ten monthly Board meeting minutes and associated committee reports. We also tested for evidence of Board involvement in procurement and the public communication process of the EIS.

The Board has a full authorized membership, has good attendance at meetings where substantive issues are discussed and decisions are made, and the Board has adopted a code of ethics and a policy for preventing and disclosing conflicts of interest. Also, the Board membership actively participates in the affairs of the Authority, and the Board has established and recently revised By-Laws governing its operations as well as the Authority's management structure. The Board has a committee structure specific to major tasks and functions, and it has

developed a strategic plan for the Authority. The Board is currently at full membership. The By-Laws specify that the Board conduct one annual meeting and 11 monthly meetings, hold special meetings upon notice from the chair or vice-chair, delegate specific responsibilities to a committee structure, and assign certain officers specific roles in contracting and disbursing Authority funds. We found that the Board met 18 times in 2002 and 15 times in 2003, averaging 9 members in attendance at meetings.

In July 2004, the Board approved a revised code of ethics for Board members and all Authority employees. The code of ethics also applies to the Board. The code of ethics covers various areas, such as legal compliance, business practices, conflicts of interest, confidentiality, business relationships, protection of assets, and reporting and resolution of these issues. The code also regulates outside compensation and outside business relationships including companies that Board members may own or work for.

We reviewed the minutes and reports of ten of 39 Board meetings we judgmentally selected (one from each quarter) from the period January 2002 through July 2004. The minutes included the agendas and reports for any committee meetings for the month reviewed. We found that:

- Board members generally received a package with an agenda and all relative reports two or three days prior to the scheduled meeting;
- There was a quorum present at all ten meetings reviewed;
- The Board reviewed and monitored the implementation of fundamental financial, management, and operational decisions of the Authority;
- At the two annual meetings reviewed, the Board elected the chairman and vice-chairman as required by the enabling legislation;
- The Board approved the annual audited financial statements; and

- The Board approved Authority policies and amendments to By-Laws.

The Board currently has four committees: Executive; Finance and Audit; Operations and Capital Maintenance; and Capacity Expansion. Board members are also members of the various committees. Committees generally meet at a date prior to that of the regular Board meeting and submit reports to the Board.

We reviewed agendas and reports of the four committees relative to the ten Board meetings in our sample. We found that each committee was informed and active in their areas of responsibility. For example, the Capacity Expansion Committee is informed about the progress of the EIS. The Committee received monthly EIS progress reports and monthly budget reports. In the meetings we reviewed, we noted that representatives from the Project Manager's office were in attendance as presenters.

In addition, the Board is involved in developing a strategic plan for the Authority. The strategic plan includes various goals, such as:

- Implement improvements in crossing capacity and transportation technology, and continue to demonstrate stewardship;
- Continue sound fiscal and reporting practices to ensure the future financial security of the Authority and to ensure bond holder and public confidence;
- Enhance customer service and monitor satisfaction levels by building a stronger and accountable community outreach program; and
- Strengthen the organization through an external relationship campaign to improve the Authority's image and credibility.

As noted in its strategic plan, the Board recognizes the need to further improve the Authority's public image and credibility. As a bi-national public authority, the Authority is not legally required to comply with the State of New York's Freedom of Information Law (FOIL) or the Dominion of Canada's Access to Information Act (AIA). Authority officials stated that informally they follow

FOIL in that they respond to the public's request for information on a case-by-case basis. The decision to respond to requested information rests with the Authority's General Manager, who is responsible for the Authority's day-to-day operations. The Board has not developed a written policy to carry out this responsibility. Requests for information that are not fulfilled are requests related to personnel issues, legal or litigation issues, and property acquisitions. According to Authority officials, these requests are not fulfilled because it would violate the Personal Protection Privacy Act of Canada.

We believe the Board could further enhance the Authority's public image and credibility by voluntarily adopting formal disclosure policies similar to FOIL and AIA. The Port Authority of New York and New Jersey, a bi-state public authority, is also exempt from complying with FOIL, but has voluntarily adopted disclosure policies that are similar to FOIL.

Recommendation

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

REAL ESTATE ACQUISITIONS

From August 1988 through April 2004, the Authority participated in 52 real estate acquisitions, with a value of more than \$23.9 million, for the expansion of bridge plazas. The Authority participated in 46 Canadian real estate acquisitions for more than \$21.6 million (Canadian dollars) and six U.S. real estate acquisitions for more than \$2.3 million (U.S. dollars).

We determined that the Authority generally acquires appraisals which are used in purchase price negotiations for property acquisitions. We also observed instances where an agreeable price could not be negotiated and the Authority did not acquire these properties. During the course of acquiring real estate the Board is informed of the progress and status of these purchases. We reviewed 19 executive session minutes from Board meetings, and land and building committee reports for the ten most recent property acquisitions from August 1999 through April 2004. We found that the Board is aware of price negotiations and other issues relevant to property acquisitions.

In Canada, the Authority does not have expropriation rights and it did not receive eminent domain rights in the U.S. until July 2004. Eminent domain and expropriation rights are the power of a government to acquire private property for public use. These are used frequently to obtain real property that cannot be purchased from owners in a voluntary transaction.

We sought to determine whether the Authority is adhering to its described process of obtaining property appraisals, negotiating an acceptable purchase price, rescinding its offer or interest to purchase property if an acceptable price is not agreed upon, and whether the Board is aware of the status of each real estate acquisition.

The Authority does not have formal, Board-approved written policies and procedures for property acquisition. However, Authority officials explained the process they use to acquire property, as follows.

The Authority's Board is actively aware of the acquisition of desired property and is kept apprised by the General Manager of the status of each real estate transaction. The Board is not involved in price negotiation, but may at times set a ceiling price for real estate acquisition. The Board is responsible for approving all real estate transactions. When the Authority is interested in acquiring a parcel of real estate, its General Manager directly contacts the property owner with an offer to purchase their property for a specific price, or requests that the property owner obtain an appraisal at the Authority's expense. When a property owner approaches the Authority to sell their property, the offer is considered by the Authority based on the General Manager's knowledge of the local real estate market and prior appraisals. If the owner refuses to negotiate an acceptable purchase price, the Authority rescinds its purchase offer or refuses to consider the property owner's offering price.

To determine if the Authority was adhering to its process for acquiring property, we judgmentally selected nine of 52 real estate acquisitions. These included the four most recent transactions with the Town of Fort Erie, as well as, the highest dollar purchase with Fort Erie. The remaining four acquisitions represented recent purchases of U.S. properties. The nine transactions represented 43 percent of the dollar value of the real estate purchases in each country. Our sample included real estate acquired from 1995 through 2004 and was comprised of five Canadian real estate acquisitions with a value of more than \$9.2 million (Canadian) and four U.S. real estate acquisitions with a value of more than \$994,000 (U.S.). We found that for eight of the nine real estate acquisitions the Authority obtained real estate appraisals or an independent third party valuation (assessed property value or insurance replacement cost) and negotiated the purchase price. (The ninth property (the Town courthouse) is discussed later on in this report.)

For example, in 1993 the Authority approached the Town of Fort Erie (Town) with their planned plaza expansion. The Town was willing to sell an ice arena and surrounding roads to the Authority, if the Authority replaced the ice arena. The Town's insurance carrier estimated the replacement value of the ice arena at about \$4 million (Canadian). The Town utilized an existing appraisal for a nearby road in order to establish a value of about \$3 million (Canadian) for the roads surrounding the ice arena. This resulted in a total purchase price for the ice arena

and surrounding roads of more than \$7 million (Canadian). During the price negotiation process the Board was kept apprised of this acquisition and the Board established a ceiling price of \$6.5 million (Canadian). The Authority refused the \$7 million (Canadian) offer and countered by not paying more than the Board-approved purchase price of \$6.5 million (Canadian), which was the final sale price on July 17, 1995.

The Authority purchased the Town court house from the Province of Ontario on July 9, 1996. Authority officials stated that the Town had the existing court house appraised which served as the basis for the purchase price of \$200,000 (Canadian). However, the Authority was unable to provide the appraisal, which the Authority said was prepared in 1993, to support the purchase price for this property acquisition. The existing court house property was a critical acquisition for the Authority's site plan. As part of this acquisition, the Authority agreed to replace the Town's court house. The cost of the new court house, which the Authority paid for, was more than \$1.3 million (Canadian) based on the required construction design established by the Ministry of the Attorney General's Guidelines for Courthouses.

The Authority pointed out that, at times, it had to negotiate the purchase price of its real estate acquisitions because a seller's market environment existed. For example, the property at the bridge landing was needed by the Authority but was not initially for sale, requiring the Authority to induce property owners to sell their property. As a result, property owners tried to obtain the highest price possible for their property. Authority officials stated that they have overpaid in some instances for parcels of property, but in order to prevent this from happening to a governmental entity, it needed eminent domain rights. In addition, Authority officials provided us with details of instances where owners were not able to negotiate an acceptable purchase price. For example, in one instance, the Authority refused to pay the owner's price and built around the property.

The majority of Authority property acquisitions in Canada were related to the plaza expansion during the 1990s. Major property acquisition may be needed for the plaza expansion in the U.S. as part of the bridge capacity expansion project. The Authority received eminent domain rights in July 2004. These rights are limited to the duration of bridge capacity expansion or 10 years, whichever comes first. Any U.S. property acquired during that

period and related to the bridge capacity expansion project may take place under the eminent domain process, if an acceptable price can not be negotiated.

Recommendation

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

PROCUREMENT PRACTICES

The Authority's procurement policy states that for professional services with a value greater than \$25,000, a project-specific invitation will be sent to pre-qualified firms in the Authority's database of consultants. A minimum of five firms should be invited to respond. The selection process should emphasize qualifications, experience and creativity to select the professional firm(s) that will be approached for fee negotiation. It further states that the Authority may advertise major projects in local and professional papers. For construction projects in excess of \$100,000 the Authority should issue a formal tender requiring sealed bids, or the Authority may solicit quotes from a minimum of three firms that are pre-qualified and/or have a positive work history with the Authority. A sole source contract is awarded when only one vendor can provide the commodities or services required. Exceptions to the competitive process must be reported to the Board for approval.

We found that the Authority has established an adequate system for the procurement of competitively bid contracts and for monitoring the delivery of contracted services. However, the Authority needs to more closely adhere to its policies for the awarding of sole source contracts. Competition in the procurement process helps ensure quality professional services are provided at a reasonable price. In addition, a risk may exist that the Authority may not be creating a fair and open environment for the awarding of contracted services.

Sole Source Contracts

The Authority has a total of 8 EIS and 5 capital project contracts with a value of more than \$10.1 million that were awarded as sole source contracts from 2002 to 2004. We judgmentally selected six sole source contracts with a value of about \$7.5 million. We included two high, two medium and two low dollar contracts, representing a cross section of those awarded by the Authority.

Firms Selected in Sample / Contract	Original Contract Amount
Contract A	\$5,600,000
Contract B	\$1,248,000
Contract C	\$480,000
Contract D	\$90,000
Contract E	\$54,000
Contract F	\$33,700

In four of the contracts (Contracts A, D, E and F) we found that the Authority complied with established procedures for assuring a competitive process and reasonable justification for the awards.

However, for two contracts (Contracts B and C) we found that the Authority did not comply with established procedures and did not appear to have reasonable justification to award them as sole source. The services under these personal services contracts are not unique services, i.e., only the awarded contractor could provide such services. Authority officials agreed that these are services that most transportation engineering firms could provide. Although these contracts were Board-approved, they were not clearly identified to the Board as sole source contracts and there was no justification provided to the Board.

The Authority's position is that it is in their best interest to contract with these contractors. Based on our review of the contract award process and discussions with Authority officials, the contractors were awarded these contracts because of their longstanding relationships with the Authority and because they were the most familiar with the bridge.

Competitively Awarded Contracts

The Authority has 17 capital project contracts with a value of about \$8.1 million and six EIS contracts with a value of about \$5.9 million that were competitively awarded from 2002 to 2004. We judgmentally selected three capital project contracts with a value of about \$3.1 million and three EIS contracts with a value of about \$2.8 million. These contracts represented two high dollar, two medium dollar and two low dollar contracts. We selected them to get a cross section of the types of contracts awarded by the Authority.

For the six contracts in our sample, we found that the Authority maintained an open and fair process for contract awarding through an invitation for bid process and requests for proposals. Nothing came to our attention that the Authority's established procedures were not functioning as intended for these six contracts.

Contract Monitoring

Effective contract monitoring helps ensure that deliverables and services are performed as required and that payments to contractors are properly authorized and are in line with appropriate budgets.

The Authority has decentralized the contract monitoring function, as each department that procures goods or services is responsible for the delivery of goods or services in accordance with contract terms. The method of contract monitoring varies depending upon the type of contract. Contract monitoring is accomplished through a review of reports and deliverables, construction inspections, periodic progress reports, update meetings, payment request documentation, and regular communication with the contractor. The Authority also has a process in place for approving invoices to ensure the expenses are valid and properly approved by management.

The Authority has a total of 22 capital project and 14 EIS contracts with a value over \$24 million from which we selected 12 contracts with a value of about \$13.4 million. These contracts represented four high dollar, four medium dollar and four low dollar contracts. We selected them to get a cross section of the types of contracts awarded by the Authority.

We reviewed more than 80 contract monitoring documents for the 12 contracts in our sample. We found that the Authority has a reasonable process in place to monitor the delivery of goods and services in accordance with contract terms. While testing for contract monitoring, we tested contract deliverables, monthly progress reports, payment requests, construction inspection reports, minutes from project update meetings and bridge maintenance reports. We also tested invoices submitted by the contractors to confirm the validity of expenses and payment authorization.

For the 12 contracts in our sample we found that the Authority closely monitors the delivery of goods and services. Nothing came to our attention that the Authority's established procedures were not functioning as intended for these 12 contracts.

Recommendation

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

MAJOR CONTRIBUTORS TO THIS REPORT

William Challice

Richard Sturm

Donald Geary

Bob Mainello

Jeneba Bangura

Jonathan Deeb

Mark Radley

Paul Bachman

APPENDIX B

Public Involvement in the Selection Process

Date	Event	Description
Aug-2001	2 Informational meetings	There were 560 participants. Public Involvement Plan was presented, along with the roles of the Project Manager's consultant teams and the initial 9 alternative design concepts were also presented.
Nov-2001	2 Public Scoping hearings	There were 252 participants. Public hearings were held as required by SEQRA 617.8. The Public was given chance for official comment to be included in the Final Scoping Document.
Dec-2001	Public Concept Development Workshop	There were 125 participants and they came up with 50 new alternative concepts. A total of 59 alternatives at 7 crossings were carried forward.
Sep-2002	Workshop # 1	There were 216 participants and they assigned weights to project goals and objectives, and they developed an alternative evaluation process and evaluation criteria.
Sep-2002	Project Manager and team of Consultants	The team combined common alternatives to narrow alternatives from 59 to 30 bridge concepts.
Sep-2002	Workshop # 2	There were 295 participants and they rated alternatives against the established goals and objectives from workshop #1. The 8 alternatives receiving the highest rating are all located at the current plaza.
Oct-2002	Workshop # 3	There were 242 participants who were given a first look at bridge concepts developed. They provided the consultant team with feedback.
Dec-2002	Workshop # 4	The project consultant team presented technical analysis of various river crossings and participants were asked to evaluate the 30 project alternatives.
Aug-2003	Workshop # 5 held at 3 different times and locations	The purpose of this workshop series was to inform the public and to discuss the technical consultants' recommendations, which are to retain alternatives at the current location and to the immediate north of the existing U.S. plaza for further study. Feedback from this workshop was summarized and input from the workshop was provided to the Partnering Group for their consideration.
Oct-2003	Final Scoping Document published	This included all 59 alternatives and technical reports and 611 public comments.
Feb-2004	Partnering Group ratification of milestone # 1	There was Ratification of the EIS Final Scoping Document
Mar-2004	CAC Meeting	CAC members reviewed bridge concepts. As a result, 4 general concepts emerged and the consultants developed 13 bridge concepts to reflect the preferences.
May-2004	Workshop # 6	At the workshop, the 13 bridge concepts were presented to the public. People were asked to participate in public polling by voting at workshop, by phone or by the internet.
May-2004	Polling results	Top 4 bridge concepts from polling process are being carried forward to the Draft EIS.



November 24, 2004

William P. Challice, Audit Director
Office of the State Comptroller
Division of State Services
State Audit Bureau
21st Floor
123 William Street
New York, NY 10038

Dear Mr. Challice:

**RE: *BUFFALO & FORT ERIE PUBLIC BRIDGE AUTHORITY'S (AUTHORITY)
RESPONSE TO DRAFT AUDIT REPORT 2004-S-38***

We have received and read your draft report concerning public communication, board governance, real estate acquisitions, and procurement practices. The Authority appreciates the efforts of the Office of the State Comptroller in assisting us by recommending improvements that we can make in the areas noted above.

Public Communication

Public Involvement in the Environmental Impact Statement

Audit Recommendation

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

Authority's Response

The Authority agrees with the recommendation. As noted during the audit, the Authority has invested considerable resources towards maintaining effective two-way communication throughout the Process, and is committed to maintaining this stakeholder dialogue.

Effectiveness of Communication

Audit Recommendation

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



BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY ■ PEACE BRIDGE PLAZA
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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.
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.
5. Provide life-cycle cost components of the \$94.7 million in all future reports and presentations.
6. Clearly explain the distinctions between historic cost maintenance events and life-cycle maintenance events in all future public reports and presentations.

Authority's Response

The Authority agrees with the recommendations. The Authority recognizes that the public has a great interest in the replacement/demolition issue and has therefore provided detail technical information to the public, including information beyond regulatory requirements. The Authority has focused on educating the key decision makers (i.e., the Partnering Group) and interested parties (i.e., the Bi-National Civic Advisory Committee) as to the rationale and use of life cycle cost analysis. In addition, this information was prepared using an approach suggested by the lead agency, Federal Highway Administration.

Day-to-Day Operations

Audit Recommendation

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

Authority's Response

The Authority agrees with the recommendation and will develop and implement written policies and procedures and logs to ensure all public queries are responded to.

Board Governance

Audit Recommendation

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

William P. Challice, Audit Director
November 24, 2004
Page 3

Authority's Response

The Authority agrees with the recommendation while recognizing that the Authority currently complies with all reasonable freedom of information requests.

Real Estate Acquisitions

Audit Recommendation

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

Authority's Response

The Authority agrees with the recommendation and will develop and implement a comprehensive policy and procedure for the acquisition of real property.

Procurement Practices

Audit Recommendation

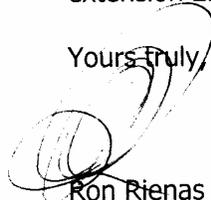
11. Comply with the Authority's procurement policy for sole source contracts.

Authority's Response

The Authority agrees with the recommendation. Future reports will clearly state the justification for awarding any sole source contract.

Thank you for the opportunity to respond to the draft report. If you have any comments or questions, please do not hesitate to contact me at 716-884-6744 extension 226.

Yours truly,



Ron Rienas
General Manager

RR/kab
cc: L. Bogdan