



STATE OF MAINE
DEPARTMENT OF TRANSPORTATION
16 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0016

JOHN ELIAS BALDACCI
GOVERNOR

DAVID A. COLE
COMMISSIONER

October 4, 2006
Subject: **Calais-St. Stephens**
Project No. NCPD/CBI-8483(360)X
Pin No. 8483.36
Amendment No. 1

Dear Sir/Ms:

The following question has been received.

Question: Could you please forward a copy of the decision made by the Canada Review Agency on April 20, 2006 (case #65184) which is referenced in Special Provision 108.6.2 of the Bid Documents?

Response: Please see attached documents.

Consider this information prior to submitting your bid on October 25, 2006.

Sincerely,

A handwritten signature in black ink, appearing to read 'Scott Bickford', written over a printed name.

Scott Bickford
Contracts & Specifications Engineer



PRINTED ON RECYCLED PAPER



Canada Revenue Agency
Agence du revenu du Canada

Atlantic GST/HST Rulings Centre
1557 Hollis Street
PO Box 638, Halifax, NS B3J 2T5

Our file

Maine Department of Transportation
16 State House Station Augusta,
Maine 04333

Case Number: 65184

Attention: Richard Hewes
Legal Services

April 20, 2006

Dear Mr. Hewes:

Subject: GST/HST RULING
Construction costs of international bridge

Thank you for your email of November 15, 2005 concerning the application of the Goods and Services Tax (GST)/Harmonized Sales Tax (HST) to the State of Maine's acquisition of taxable supplies for use in the construction of a proposed bridge crossing the Canada-United States boundary.

All legislative references are to the *Excise Tax Act* (ETA) and the regulations therein, unless otherwise specified.

STATEMENT OF FACTS

The following information was provided in your fax, the agreements, and phone conversations with yourself and Susi Derrah of the New Brunswick Department of Transportation:

- 1) This project involves the construction of a new Canada/United States International Bridge across the St. Croix River between St. Stephen, NB and Calais, Maine.
- 2) A draft International Agreement (hereafter referred to as the Agreement) has been provided between the State of Maine, United States of America and Her Majesty the Queen in Right of the Province of New Brunswick, Canada regarding the construction, administration and funding of the international bridge, as represented by the State of Maine Department of Transportation (hereafter referred to as Maine DOT) and the New Brunswick Minister of Transportation (hereafter referred to as NB DOT).

- 2 -

The following information is provided in this Agreement, beginning with the following definitions:

Bridge - the superstructure, abutments, piers and all related substructures of the international bridge spanning the St. Croix River exclusive of the approaches.

Approach(es) - mean the roadways, connecting ramps and all incidental structures necessary to connect the existing roadway system to the bridge.

Contract - all documents affecting the respective rights and responsibilities of Maine DOT, NB DOT and the Contractor.

Contractor ~ party with whom Maine DOT enters into the contract to construct the Bridge. The Contractor will be the single point of responsibility for all Contract obligations to Maine DOT.

In consultation and agreement with NB DOT, Maine will prepare all Contract documents (including bid amendments, contract modifications and change orders) for the design and construction of the Bridge. Maine will advertise and, with the concurrence and agreement of NB DOT, award the Contract. Thereafter, Maine DOT will administer, subject to the terms of the Agreement, the Contract to construct the Bridge but Maine DOT will not amend or terminate the contract without the express written consent of NB DOT.

Maine DOT shall make all necessary progress payments to the Contractor for work completed in accordance with the terms of the Contract. NB DOT will reimburse Maine DOT within 60 days of receipt of each invoice from Maine DOT for NB DOT's share of progress payments and other costs under the Contract.

Each party will be responsible for one-half of all costs and expenses to design and construct the Bridge (Bridge Costs) incurred between July 11, 2003 and the acceptance of the Bridge pursuant to clause 13, together with unsettled claims arising from the Contract, upon settlement and payment of those claims by Maine DOT, but Bridge Costs shall not include any duties, sales taxes, use taxes, customs and tariffs charged for materials, equipment, labour and supplies and these Excluded Costs shall be borne entirely by the party within whose country or territory those levies become due and owing.

Maine DOT and NB DOT shall be My responsible for all costs and expenses to design and construct their approaches to the Bridge, including all right of way costs therefore. These expenses and costs shall not be Bridge Costs, but shall be entirely the responsibility of Maine DOT and NB DOT respectively.

Competitive bidding for the Contract to construct the Bridge shall be open to all prequalified bidders.

- 3 -

NB DOT shall reimburse Maine DOT for all Bridge Costs in US dollars.
Maine DOT shall ensure that the Bridge is constructed in accordance with the Contract.

Upon and after completion and final acceptance of the Bridge by both parties, the parties will enter into an agreement for the maintenance of the Bridge.

Maine DOT and NB DOT agree that NB DOT is intended to be a third party beneficiary of the Contract with full rights to enforce any provision which benefits or is intended to benefit Maine DOT or NB DOT.

Maine DOT and NB DOT agree that the Contract and this Agreement will be administered by Maine DOT and, therefore, the interpretation of the Contract and this Agreement shall be governed by the substantive laws of Maine and the procedural laws of New Brunswick pursuant to section 16 of the Agreement.

Maine obtained permission to enter into this Agreement from the United States by virtue of 33 U.S.C. 535a(1) and pursuant to Executive Order 11423. Said approval was granted on May 31, 2005 in the form of Presidential Permit No. 05-03 (copy provided).

NB DOT obtained permission to enter into this Agreement from the Government of Canada pursuant to a licence agreement dated the 28th day of November 2005 and O.I.C. number 2006-11.

- 3) Presidential Permit No. 05-03 dated May 31, 2005 grants permission to Maine DOT to construct, connect, operate and maintain a bridge crossing the international boundary at a point near Calais, Maine. The border inspection facilities will be operated and maintained by the United States General Services Administration, the United States Department of Homeland Security, and other federal inspection agencies. Maine DOT shall not begin construction of the bridge until it has been notified by the Department of State that such construction has been authorized by an exchange of diplomatic notes between the Governments of the United States and Canada. The diplomatic notes have not yet been exchanged.
- 4) A Canada-New Brunswick Agreement for the construction and maintenance of an international bridge between St. Stephen, NB and Calais, Maine was signed in January of 2006 (copy provided). In this agreement, the Minister of Transport Canada authorizes NB DOT to construct, operate and maintain the Canadian portion of the Bridge.

The portion of the Bridge on the Canadian side of the border shall be owned and controlled by the Province of New Brunswick, as represented by the Minister of Transportation for New Brunswick. The power to operate and maintain the Bridge may not otherwise be assigned or delegated by NB DOT without the prior written approval of the Minister of Transport Canada.

NB DOT agrees to operate and maintain the new Bridge and its related infrastructure in a manner that supports the Bridge's long-term viability, and encourages the safe, secure,

-4-

and efficient flow of traffic and people in the region. For this purpose, NB DOT may enter into an agreement with the State of Maine.

The new Bridge is a component of a larger regional transportation infrastructure project, the terms and conditions for which have been approved by Canada and the Province under the *Canada Strategic Infrastructure Fund Act and the Border Infrastructure Fund*.

- 5) In a letter dated August 15, 2005, the Maine DOT has requested a letter of authorization from the International Boundary Commission, U.S. Section, in support of the construction and operation of the new border crossing. This authorization has not yet been received.
- 6) NB DOT had provided a report to Transport Canada, which accompanied their request to construct the bridge, which indicated that the contract for the construction of the Bridge was expected to be tendered by Maine DOT in the fall of 2005 and construction will commence in the fall 2006, to be completed in the fall of 2007. NB DOT anticipates that the Bridge will be open to traffic in 2008.

RULING REQUESTED

You would like to know if section 2 of Part VIII of Schedule VI will apply to taxable supplies of property or services acquired by Maine DOT for use in the construction of the proposed international bridge.

RULING GIVEN

Based on the facts set out above, we rule that the taxable supplies acquired by Maine DOT for use in the construction of the international bridge are relieved from the payment of GST/HST.

This ruling is subject to the qualifications in GST/HST Memorandum 1.4, *Goods and Services Tax Rulings*. We are bound by this ruling provided that none of the above issues is currently under audit, objection, or appeal, that no future changes to the ETA, regulations or our interpretative policy affect its validity, and all relevant facts and transactions have been fully disclosed.

EXPLANATION

A supplier may supply taxable property or services to Maine DOT on a tax-free basis providing satisfactory documentation is retained by the supplier evidencing that the supplies were acquired for use by Maine DOT as set out in section 2 of Part VIII of Schedule VI. This documentation may be reviewed by the Canada Revenue Agency at the time of a GST/HST audit of the supplier. Therefore, when Maine DOT procures taxable goods and services for use in the construction of the bridge, the following certification clause should be provided to the supplier.

-5-

Maine DOT hereby certifies that the property/service ordered is for use in the construction of the St. Stephen-Calais International Bridge and is therefore relieved from payment of GST/HST under section 2 of Part VIII of Schedule VI of the Excise Tax Act.

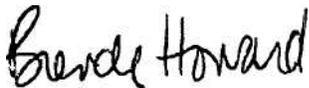
Signature and Title of
Authorized State of Maine Official

Date

This ruling applies to Maine DOT's acquisition of supplies for its use in the project to construct the proposed crossing between Calais-St.Stephen. After the bridge is completed, please be aware that relief will not apply to future acquisitions by Maine DOT or NB DOT for use in the day-to-day operation or maintenance of the bridge.

If you require clarification with respect to any of the issues discussed in this letter, please call me directly at 902-426-7686. Should you have additional questions on the interpretation and application of GST/HST, please contact a GST/HST Rulings officer at 1-800-959-8287.

Yours truly,



Brenda Howard
Senior Technical Interpretations Analyst
GST/HST Rulings Centre