

**Torres Rojas, Genara**

FOI# 12209

**From:** nmougakos@contractorlawoffices.com  
**Sent:** Friday, March 18, 2011 2:29 PM  
**To:** Van Duyne, Sheree  
**Cc:** Torres Rojas, Genara; Duffy, Daniel  
**Subject:** Freedom of Information Online Request Form

**Information:**

First Name: Nicole  
Last Name: Mougakos  
Company: Steven A Berkowitz & Assoc, PC  
Mailing Address 1: One Greentree Centre, Suite 201  
Mailing Address 2: 10000 Lincoln Drive East  
City: Marlton  
State: NJ  
Zip Code: 08035  
Email Address: [nmougakos@contractorlawoffices.com](mailto:nmougakos@contractorlawoffices.com)  
Phone: 856.563.0361  
Required copies of the records: Yes

**List of specific record(s):**

I left a voice mail message today with Mr. Duffy. I seek a copy of the payment and performance bond obtained by Owl Contracting concerning contract number MFP654.126 or at least the bonding company and bond numbers

**THE PORT AUTHORITY OF NY & NJ**

*Sheree Van Duyne  
Acting FOI Administrator*

March 31, 2011

Ms. Nicole Mougakos  
Steven A Berkowitz & Assoc., P.C.  
One Greentree Centre, Suite 201  
10000 Lincoln Drive East  
Marlton, NJ 08035

Re: Freedom of Information Reference No. 12209

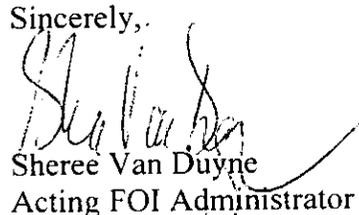
Dear Ms. Mougakos:

This is a response to your March 18, 2011 request, which has been processed under the Port Authority's policy on Freedom of Information (the "Policy," copy enclosed) for a copy of the Payment and Performance Bond submitted by Owl Contracting related to Contract No. MFP-654.126.

Material responsive to your request and available under the Policy, which consists of 3 pages, is enclosed, for a 75¢ photocopying charge for this material (25¢ per page). Payment should be made in cash, certified check or money order payable to "The Port Authority of New York & New Jersey" and should be sent to my attention at 225 Park Avenue South, 17<sup>th</sup> Floor, New York, NY 10003.

Please refer to the above FOI Reference number in any future correspondence relating to your request.

Sincerely,

  
Sheree Van Duyne  
Acting FOI Administrator

Enclosure

*225 Park Avenue South  
17<sup>th</sup> Floor  
New York, NY 10003  
T: 212-435-7348 F: 212-435-7555*

Bond No. 4-039-693

CONTRACT MFP-654.126

**PERFORMANCE AND PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS that we, the undersigned<sup>21</sup> Contractor and surety company (or companies), as principal and surety (or sureties), respectively,

Contractor

Surety

Kelly Excavating & Paving, Inc.  
D/B/A Owl Contracting, a Corporation  
organized under the laws of the  
State of New Jersey

American Fire and Casualty Company

<sup>21</sup> Insert names of the Contractor and surety company (or companies) in the appropriate columns. If space is insufficient add rider.

If the Contractor is a corporation, give the state of incorporation, using also the phrase "a corporation organized under the laws of \_\_\_\_\_".

If the Contractor is a partnership, give full names of partners, using the phrase "co-partners doing business under the firm name of \_\_\_\_\_".

If the Contractor is an individual using a trade name, give individual name, using also the phrase "an individual doing business under the trade name of \_\_\_\_\_".

are hereby held and firmly bound unto The Port Authority of New York and New Jersey (herein called the "Authority") in the penal sum of Nine Hundred Fifty Eight Thousand Nine Hundred <sup>Quilars</sup> ~~Fifty Nine~~ and 00/100 Cents (\$ 958,959.00 ), for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, representatives, executors, administrators, successors and assigns. Each surety, however, if there is more than one, shall be jointly and severally liable for said penal sum.

Signed this 4th day of January 2010

The condition of the above obligation is that

WHEREAS, the above named principal has entered into a Contract in writing with the Authority, a copy of which is hereby made a part of this bond as though herein set forth in full and which is designated Contract MFP-654.126 - "New Jersey Marine Terminals - Pavement and Utility Rehabilitation Via Work Order", and

WHEREAS, the Authority has required this bond for the faithful performance of all obligations imposed by said Contract and also for the payment of all lawful claims of subcontractors, materialmen and workmen arising out of the performance of said Contract,

NOW, if the said principal shall well and faithfully do and perform the things agreed by him to be done and performed according to the terms and true intent and meaning of said Contract and if all lawful claims of subcontractors, materialmen and workmen arising out of the performance of said Contract are paid, then this obligation shall be void, otherwise the same shall remain in full force and effect; it being expressly understood and agreed that, provided the sureties shall comply with the provisions hereof, the aggregate liability of all sureties for any and all claims hereunder shall in no event exceed the penal amount of this obligation as hereinbefore stated.

This undertaking is for the benefit the Authority and all subcontractors, materialmen and workmen having lawful claims arising out of the performance of said Contract, and all such subcontractors, materialmen and workmen (as well as the Authority itself) shall have a direct right of action upon this bond, but the rights and equities of such subcontractors, materialmen and workmen shall be subject and subordinate to those of the Authority.

The sureties, for value received, hereby stipulate and agree that the obligations of said sureties and their bond shall be in no way impaired or affected by any extensions of time, modification, omission, addition or change in or to the said Contract or the construction to be performed thereunder, or by any supervision or inspection or omission to supervise or inspect the construction, or by any payment thereunder before the time required thereon, or by any waiver of any provision or condition thereof (whether precedent or subsequent), or by any assignment, subletting or other transfer thereof or of any part thereof or of any construction to be performed or any moneys due or to become due thereunder; and said sureties do hereby waive notice of any and all of such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts and transfers, and hereby expressly stipulate and agree that any and all things done and omitted to be done by and in relation to assignees, subcontractors and other transferees shall have the same effect as to said sureties as though done by or in relation to said principal.

The sureties shall give the General Counsel of the Authority the following notices:

- A. Written notice of an intent to pay any claim of a subcontractor, materialman or workman hereunder;
- B. Written notice within five days of the institution of an action by a subcontractor, materialman or workman hereunder.

The sureties shall not pay the claim of any subcontractor, materialman or workman hereunder until the expiration of thirty days after receipt by said General Counsel of notice under either subparagraph A or B above, describing the claim to be paid.

of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

Kelly Excavating & Paving, Inc. D/B/A  
Owl Contracting

(Seal)

By <sup>24</sup> *Doag Kelly* Principal  
*Doag Kelly* President  
American Fire and Casualty Company

By <sup>25</sup> *Sandra A. Pace* Surety  
Sandra A. Pace Attorney-in-Fact

APPROVED AS TO ACCEPTABILITY OF SURETIES:

*Muhal Mayumukh*  
Credit Manager

*January 15, 2010*

<sup>24</sup> If not designated by an officer or agent, give title; if signed by a corporation, affix corporate seal