Duffy, Daniel FOI #13334

From: Duffy, Daniel
Sent: Friday, July 13, 2012 9:47 AM
To: Torres Rojas, Genara
Subject: RE: 4 of 17

From: Boburg, Shawn [mailto:Boburg@northjersey.com]
Sent: Wednesday, July 11, 2012 6:02 PM
To: Duffy, Daniel
Subject: 4 of 17

I am requesting copies of the following contract, as identified by their reference numbers on the Port Authority web site, on the contracting activity page:
APPCD12005, a $35,000 contract awarded to New York Container of Staten Island NY for Joint Study of Toll Increase Impact

THE PORT AUTHORITY OF NY & NJ

Daniel D. Duffy
FOI Administrator

October 4, 2012

Mr. Shawn Boburg
The Record
1 Garret Mountain Plaza
Woodland, NJ 07424

Re: Freedom of Information Reference No. 13334

Dear Mr. Boburg:

This is a response to your July 11, 2012 request, which has been processed under the Port Authority's Freedom of Information Code (the "Code") for a copy of Contract No. APPCD12005 awarded to New York Container of Staten Island NY for Joint Study of Toll Increase Impact.

Material responsive to your request and available under the Code can be found on the Port Authority's website at http://www.panynj.gov/corporate-information/foi/13334-LPA.pdf. Paper copies of the available records are available upon request.

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

Very truly yours,

Daniel D. Duffy
FOI Administrator

225 Park Avenue South
New York, , NY 10003
T: 212 435 3642 F: 212 435 7555

COST-SHARING AGREEMENT BETWEEN PORT AUTHORITY AND NYCT

This Cost-Sharing Agreement (the "Agreement") is entered into this 23rd day of February, 2012, by and between THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, a body corporate and politic created by Compact between the States of New Jersey and New York with the consent of the Congress of the United States, having its principal office at 225 Park Avenue South, New York, New York 10003, hereinafter referred to as the "Port Authority," and NEW YORK CONTAINER TERMINAL LLC, a limited liability company of the State of New York, having its principal office at 330 Western Avenue, Staten Island, New York 10303 ("NYCT");

WITNESSETH:

WHEREAS, NYCT operates a container terminal facility at the Howland Hook Marine Terminal ("Howland Hook") pursuant to a lease with the Port Authority; and

WHEREAS, at its meeting of August 19, 2011, the Board of Commissioners of the Port Authority authorized an increase in the toll schedule at its vehicular bridges and tunnels (the "Toll Increase"), with the first adjustment in such toll schedule effective on September 18, 2011, and with further adjustments in such toll schedule to take effect in December 2012, December 2013, December 2014 and December 2015; and

WHEREAS, Howland Hook is located in the vicinity of the Goethals Bridge, one of the bridges operated by the Port Authority subject to the Toll Increase, and NYCT has claimed that the Toll Increase has imposed an unreasonable burden on its container terminal operation at Howland Hook, and has placed NYCT at an unfair competitive disadvantage in comparison to container terminal operators at the Port Authority's marine terminal facilities located in New Jersey; and

WHEREAS, in an effort to resolve the dispute between NYCT and the Port Authority (each may be referred to, individually, as a "Party," and referred to, collectively, as the "Parties") regarding the Toll Increase, the Parties have agreed to retain jointly SY&CG LLC to serve as an independent economic expert (the "Expert") and to conduct a study of the economic impact of the Toll Increase on NYCT's operations at Howland Hook (the "Study") and to issue a report concerning the Study and its findings; and

WHEREAS, the Parties wish to enter into this agreement to establish a framework for the retention of the Expert to perform the Study, and for the Parties to share equally the costs in connection with the retention of the Expert,

NOW THEREFORE, in consideration of the foregoing, the Parties mutually agree as follows:

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1. **Purpose**

The purpose of this Agreement is to set forth the manner and means by which the Parties will cooperate, as necessary, and share the costs with respect to the following:

1.1 **Retention of Expert.** The Parties have agreed mutually to select SY&CG LLC to serve as the Expert to conduct the Study of the economic impact of the Toll Increase on NYCT's container terminal operations at Howland Hook. NYCT will be responsible for entering into an agreement with the Expert to retain the Expert to conduct the Study, with the form of such agreement to be subject to the prior approval of the Port Authority (such approval not to be withheld unreasonably).

1.2 **Scope of Work.** The Expert shall conduct the Study of the economic impact of the Toll Increase on NYCT's container terminal operations at Howland Hook. The Study shall be conducted in accordance with a Scope of Work developed jointly by the Parties, which is attached hereto as Exhibit A and made part of this Agreement.

1.3 **Additional Matters.** The Expert also may address any additional matters mutually agreed upon by the Parties and subsequently incorporated into this Agreement by amendment thereto.

1.4 **Required Cooperation.** The Parties shall cooperate with each other in good faith to carry out the purposes of this Agreement and shall attempt to resolve any disputes among them through good-faith negotiations and by consensus.

2. **Payment of Costs**

2.1 **Shared Costs.** "Shared Costs" shall mean all costs in connection with the retention of the Expert to perform services arising out of Paragraph 1.2 of this Agreement.

2.2 **Equal Responsibility for Costs.** Each Party shall be responsible for 50 percent of the Shared Costs. NYCT shall be responsible for the payment of the full amount of the Shared Costs directly to the Expert, and the Port Authority shall be responsible for providing reimbursement to NYCT of 50 percent of the amount of the Shared Costs, pursuant to Paragraph 2.4 of this Agreement.

2.3 **Limitation on Amount of Costs.** The total amount of the Shared Costs is not to exceed $100,000, with each Party's respective share of the Shared Costs not to exceed $50,000. This limitation on the total amount of the Shared Costs shall not be increased unless agreed upon in writing by both Parties.

2.4 **Payment.** In connection with its performance of the Scope of Work described in Exhibit A of this Agreement, the Expert shall submit to NYCT invoices setting

forth the amount of the Shared Costs to be paid. NYCT shall be responsible for the payment of the full amount of the invoices to the Expert. After making such payments to the Expert, NYCT shall submit to the Port Authority the invoices from the Expert, along with certifications that NYCT has paid the full amount of the invoices to the Expert. Upon receipt by the Port Authority of such invoices and certifications, and after verifying the accuracy and appropriateness of the invoices for reimbursement under this Agreement, the Port Authority will reimburse NYCT for 50 percent of the amount of the invoices within 30 days of the Port Authority's receipt of the invoices.

2.5 **Default.** Should NYCT fail to make payments to the Expert of the full amount of the invoices from the Expert within 45 days of its receipt of such invoices, the payments shall be considered past due, and NYCT shall be considered in default, unless, for good cause shown, the Expert grants an extension beyond the due dates, upon such terms as the Expert sees fit. Should the Port Authority fail to provide reimbursement to NYCT of 50 percent of the amount of the invoices within 45 days of its receipt from NYCT of the invoices from the Expert, along with certifications that NYCT has paid the full amount of the invoices to the Expert, the reimbursements shall be considered past due, and the Port Authority shall be considered in default, unless, for good cause shown, NYCT grants an extension beyond that date, upon such terms as NYCT sees fit.

3. Confidentiality

3.1 The Parties agree that neither Party shall use the Study, or any work product of the Expert in connection with the Study (including, but not limited to, any report or other documents prepared by the Expert in connection with the Study), in connection with any future litigation involving the Parties. The Parties agree further that neither Party shall seek to have the Expert, or any principal, employee or agent of the Expert, offer any testimonial or other evidence regarding the Study, or the impact of the Toll Increases on NYCT's operations, in any future litigation involving the Parties.

3.2 The Parties agree that the Study, and any work product of the Expert in connection with the Study (including, but not limited to, any report or other documents prepared by the Expert in connection with the Study), shall be treated as confidential by the Parties, and shall not be shared with any person or entity other than a Party without the consent of the other Party.

3.3 The Parties agree that the existence of the Study, and of any work product of the Expert in connection with the Study (including, but not limited to, any report or other documents prepared by the Expert in connection with the Study), shall not be disclosed by either Party to any person or entity other than a Party, except as required by law.

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3.4 If any person or entity other than a Party requests or demands, by subpoena or otherwise, any information regarding the Study, or any work product of the Expert in connection with the Study (including, but not limited to, any report or other documents prepared by the Expert in connection with the Study), from a Party or its counsel, the Party and/or counsel receiving such request or demand shall immediately notify the other Party. If such information becomes the subject of an administrative or judicial order requiring disclosure of such information by a Party, the Party may satisfy its confidentiality obligations hereunder by immediately notifying the other Party.

3.5 The confidentiality obligations of the Parties under this Agreement shall remain in full force and effect, and shall survive the termination of this Agreement. The confidentiality provisions of this Agreement shall not apply to information which is now, or hereafter becomes, public knowledge without violation of this Agreement, or which is sought and obtained from a Party pursuant to applicable discovery procedures and not otherwise protected from disclosure.

4. **Denial of Liability.** This Agreement shall not be used by either Party, or any other person or entity, as evidence of any admission of liability, law or fact, a waiver of any right or defense, or an estoppel against either party to this Agreement. However, nothing in this paragraph is intended to or should be construed to limit, bar, or otherwise impede the enforcement of any term or condition of this Agreement against either Party.

5. **Successor and Assigns.** This Agreement shall be binding upon any successors and/or assigns of the Parties. No assignment of the obligation to make any payment or reimbursement hereunder will release the assigning Party without the prior written consent of the other Party.

6. **Notices.** Notices and any communications under this Agreement shall be in writing and sent by certified mail, return receipt requested, and shall be directed as follows, or to such other address as the Party receiving such notice shall have previously specified by notice to the Party sending such notice:

(1) if to the Port Authority:

The Port Authority of New York and New Jersey
225 Park Avenue South – 11th Floor
New York, New York 10003
Attn: Thomas P. Hannan, Manager, Market Research and
Analysis, Port Commerce Department

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(2) if to NYCT:

New York Container Terminal LLC
330 Western Avenue
Staten Island, New York 10303
Attn: James J. Devine, President and CEO

6. **Severability.** If any provision of this Agreement shall be such as to destroy its mutuality or to render it invalid or illegal, then, if it shall not appear to have been so material that without it this Agreement would not have been made by the Parties, it shall not be deemed to form a part hereof, but the balance of this Agreement shall remain in full force and effect.

7. **Entire Agreement/Amendment.** The entire agreement between the Parties is contained herein, and no change in or modification, termination, or discharge of this Agreement shall be effective unless in writing and signed by both Parties.

8. **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without reference to choice of law principles.

9. **Nature of Agreement.** Nothing herein shall be deemed to create a partnership or joint venture and/or principal and agent relationship between or among the Parties. There are no intended or unintended third-party beneficiaries to this Agreement. Entry into this Agreement shall not affect or alter any other obligation, agreement, or claim of any nature whatsoever between or among either of the Parties that now exists or may come into existence in the future.

10. **No Individual Liability.**
(a) No Commissioner, officer, agent, or employee of the Port Authority shall be held personally liable under any provision of this Agreement or because of its execution or attempted execution or because of any breach or alleged breach hereof.

(b) No officer, agent or employee of the NYCT shall be held personally liable under any provision of this Agreement or because of its execution or attempted execution or because of any breach or alleged breach hereof.

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IN WITNESS WHEREOF, the Parties hereto enter into this Agreement. Each person signing this Agreement represents and warrants that he or she has been duly authorized to enter into this Agreement by the Party on whose behalf it is indicated that the person is signing.

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By: _____ DATE: February 23, 2012
Richard M. Larrabee
Director, Port Commerce

NEW YORK CONTAINER TERMINAL LLC

By: _____ DATE: Feb 19 2012
James J. Devine
President and CEO

APPROVED:
FORM SM | TERMS T. | H.

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EXHIBIT A – SCOPE OF WORK

NYCT Drayage Operations vs. New Jersey Container Terminal Drayage Operations

For container drayage between NYCT or PNCT/Global and logistics facilities, truckers need to cross either a bridge or tunnel and/or pay a toll on roads such as the NJ Turnpike. An Origin to Destination (O-D) analysis is used to determine the truck route and thereby the total bridge and road toll charges. The toll costs of drayage will be compared between the two terminals. The tasks undertaken in this effort include:

Task 1. **Determine sample size for analysis**. One typical day of 2,500 gate transactions (in and out) at NYCT is used to determine the survey sample size in order to obtain an outcome with 99% confidence level (see task 4 below).

Task 2. **Develop a survey questionnaire**. A survey questionnaire will be prepared for each of the terminals.

Task 3. **Toll information**. The Port Authority and/or the terminals will provide the toll table and the implementation schedule for all the bridges and toll roads. The toll information and detailed implementation and other associated information will be from January 2011 through December 2015.

Task 4. **Data collection**. Vessel calls to the Port are on a weekly schedule, so a weekly breakdown of gate transactions will provide the distribution of O-D of containers and the opportunity to determine how one day differs from another.

Third-party personnel will collect the survey data from the truckers. The data collection period will be between 6:00 a.m. to 1:00 p.m. for five consecutive days. It is expected that the sample data of daily gate activity will be at least 900 transactions. Therefore, the total number of gate activities will be about 9,000 for the two terminals, factoring in the differences in terms of annual container volume at PNCT and/or Global vs NYCT. (i.e. – for 2011 PNCT handled 91,000 **more** containers than NYCT; Global handled 93,000 **fewer** containers than NYCT).

Task 5. **Data tabulation**. Templates of data tabulation will be prepared by the consultant in advance of the completion of the survey data collection. The templates will be designed to capture all the information obtained throughout the survey collection stage. The consultant will carry out the data tabulation.

Task 6. **Data analysis**. The consultant will provide an analysis based on the survey data collected and the toll information provided. The analysis will calculate the change in the incremental differences in toll-related costs (tunnels, bridges **and** highways) for truckers serving NYCT versus truckers serving the NJ MCTs before versus after the Port Authority's September 18, 2011 toll increase and the NJ Turnpike's January 1, 2012 toll increase, based on the toll structure and changes. The analysis will take into consideration toll charges with respect to payment types: cash and E-ZPass, and time of day: peak, off-peak, nighttime, and holiday. Furthermore, the analysis will also consider the incremental toll increases all the way to December 2015. The analysis will select 5 to 8 major container logistics facilities most frequently served by truckers from NYCT, and assume those same locations were to be served

by truckers from a non-NYCT terminal such as PNCT or Global. The routes taken from NYCT to those 5-8 locations are to be used for purposes of calculating the toll-related costs (tunnels, bridges **and** highways) for truckers serving NYCT **only**. The routes taken from the single non-NYCT terminal, to be surveyed as part of this analysis, are to be used for purposes of calculating the toll-related costs (tunnels, bridges **and** highways) for truckers serving the same 5-8 locations from all non-NYCT terminals.

Task 7. **Deliverables**. The consultant will prepare the report and a comparison of toll costs of the container operations of the two terminals.

Timeline to complete the study

The timeline to complete the project is directly affected and determined by how long it takes to complete the data collection and tabulation. The first week will be devoted to determining the sample size, developing the survey, and obtaining the toll information from the Port Authority and NYCT. Assuming that all these activities would be done concurrently, it should not be more than a week (Tables 1 and 2).

Data collection is scheduled for two weeks (first week for collection and second week for gathering the data from the terminals). Data tabulation should be completed within two weeks by the consultant. Analysis and report writing is expected to take four to five weeks. However, these times are feasible only if there are no delays in the preceding tasks. Tables 1 and 2 identify the times and parties' responsibilities and requirements. Any delay will add that amount of time to completion of the project.

Table 1. Task distribution and time per task

	Prepared by:	Consultant (weeks)	Terminal (weeks)	Total time (weeks)
Task 1 – Sample size determination Task 2 – Develop survey *Task 3 – Toll information*	Consultant Consultant *NYCT or PANYNJ*	1		1
Task 4 – Data collection	**(NYCT and PNCT/Global)**		**2**	**2**
Task 5 – Data tabulation	Consultant	2	2	2
Task 6 – Data analysis	Consultant	3		3
Task 7 – Prepare deliverables	Consultant	3		3
Total weeks (all parties)		**9**	**4**	**10**

Table 2. Task time allocation in weeks

	1	2	3	4	5	6	7	8	9	10
Task 1 – Sample size determination	X									
Task 2 – Develop survey	X									
Task 3 – Toll information	X									
Task 4 – Data collection		X	X							
Task 5 – Data tabulation				X	X					
Task 6 – Data analysis						X	X	X		
Task 7 – Prepare deliverables								X	X	X

Budget/Pay Schedule

The budget for the project is $70,000.00.

The consultant will be paid $35,000.00 after the completion of task 5 and the balance of $35.000.00 after the completion of task 7.