

Ironies abound: Procurement for New York/New Jersey transparency website shrouded in secrecy

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Last year I wrote about the [New York/New Jersey Port Authority's request for information for a comprehensive transparency website](#) to provide the public with better insight into Port Authority operations and practices. At the time, the semi-independent organization was facing a tremendous amount of heat from both politicians and the public for its secretive and opaque approach to a myriad of hot-button issues, including toll and fare hikes, public meetings, and bonuses paid to top-level authority officials. New Jersey Governor Chris Christie was hammering the organization and threatening to use his veto pen to inflict pain on the Port Authority without major changes to transparency policies. All of this posturing set the stage for the August 2012 RFI and what was supposed to be a new day of open government and transparency.

Well, it turns out that the whole process may have been an exercise in misdirection by the agency, and my experience following up on the RFI is indicative of how the authority's definition of "transparency" can be a little different than yours or mine.

In December 2012, the Port Authority's 2013 operating budget included funding for the establishment of a new Transparency Office charged with overseeing and managing "the unimpeded flow of agency information to the public." It also established a new contracts page that did a better job of keeping the public up to date on award and contract information.

In February 2013, the Board of Commissions officially approved a resolution [adopting a new set of key operating principles for all future Port Authority operations](#). The very first key principle states that "The Port Authority shall proactively communicate, be transparent in its decision making, and set clear expectations upon which to measure the results of its actions."

In April 2013, the designated point of contact in the contracting office declined to answer any and all questions related to this RFI, including whether an open procurement had taken place or whether an award had been made. In May 2013, the Board of Commissioners [adopted a resolution honoring outgoing Port Authority commissioner James P. Rubin](#)

for, among other things, pushing "various initiatives to build on the agency's commitment to the highest standards of accountability and transparency to the public and to promote transparent, efficient and ethical corporate governance practices and to adopt measures to adhere to the highest government accountability standards of the states of New York and New Jersey.

Shortly after that conversation, Deltek filed its first FOIA, requesting all documents related to the establishment of a transparency website. The agency's FOIA office sent a letter in response on May 10, 2013, informing Deltek that these documents were exempt from disclosure under Clause 2A of the [Port Authority's Freedom of Information Code](#). Clause 2A of the organization's code reads that documents can be exempt from FOIA disclosure in cases where "if disclosed, would impair or give a competitive advantage in connection with, present or imminent awards or negotiation of collective bargaining agreements, leases, permits, contracts or other agreements, open procurement matters, contracts not yet awarded, unexecuted leases or permits and portions of scoring or evaluation documents not constituting a part of a final agency action document."

Careful readers of the clause will note it is worded broadly enough to encompass future bids, contract negotiations for released bids, contracts currently under negotiation, and contracts established outside the competitive bidding process. Essentially, the Port Authority doesn't need to comment on or release documents for procurement at any stage of the procurement process except after it has been awarded.

Setting aside the obvious irony of an organization doing everything it can to avoid being transparent about the procurement of a website specifically designed to increase transparency, what is most amazing here is that the agency has carved out an exception from FOIA disclosure so large that it can encompass virtually any procurement or contract it handles until the point where it is far too late for vendors who are shut out of the process to do anything about it.

In the interests of absolute fairness, I called the authority's procurement office again before sitting down to write this piece in the hopes of gaining some kind of insight into what had happened with this project. This time, the office confirmed that an award had been for the requirements set forth in the RFI, but then categorically declined to provide any information about the award. Instead, the contracts officer claimed that the procurement office was not the "proper channel" for ANY questions regarding award or contract information, and that only the FOIA office was empowered to do so. I'll repeat that because it bears repeating: The procurement office for the Port Authority of New York and New Jersey is "not empowered" to discuss procurements or awards made through procurements.

Of course, it is not just procurement matters where the Port Authority has taken heat for a lack of openness. A quick Google search using the terms "Port Authority of New York and New Jersey" and "transparency" shows that this is more or less how Port Authority officials [approach](#) most issues regarding [transparency and disclosure](#), whether the inquiries come from [private citizens](#), businesses and even lawmakers tasked with oversight of the organization.

Analyst's Take

So let's review here. We have an RFI for increased transparency that the purchasing office was instructed not to comment on; an entity that, to this day, operates in a manner so secretive that state political officials charged with oversight cannot get answers on matters that directly affect their constituent; a procurement office that explicitly rejects any claim that it is empowered to discuss procurements or award information, and insists that only the FOIA office can answer award questions; and, finally, a FOIA office that exempts contract and award information from disclosure.

Earlier this week, the chairman of the New Jersey State Assembly Transportation Committee released the following statement regarding his attempts to induce Port Authority officials to release information regarding lane closures in September:

“Despite a budget that exceeds that of more than half of the states in this country, the Port Authority has become an agency that operates with little accountability and no transparency. It has lost sight of what it means to serve the public and I intend to continue my pursuit of the truth about this matter as well as the long list of other issues that have raised questions and concerns about the agency's operations and management.”

Deltak has re-filed a FOIA for contract and award information for this project since the justifications given under Clause 2A of the Port Authority's FOI code should theoretically no longer apply, unless the office can make an argument that releasing awarded contract information would in some way impair or give a competitive advantage to vendors. The results of that FOIA request will be published on the [Tracked Opportunity page](#) that was created to follow the initial RFI.

In the meantime, vendors should take this information in context when doing future business with the Port Authority of New York and New Jersey. There is no substitute for being the first in the door with these contracts, as it can give you the ability to shape and restrict others from that business or knowledge. Of course, a far better alternative would be a Port Authority that takes its own statements and objectives regarding transparency seriously. Failing that, unless you are the selected vendor, chances are you will be more or less in the dark before, during and after the procurement process takes place.