Niagara Frontier Transportation Authority
Serving Buffalo Niagara

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October 29, 2013

Mr. Robert M. Graber
Erie County
Clerk of the Legislature
92 Franklin Street
4th Floor
Buffalo, New York 14202

Re: Niagara Frontier Transportation Authority
Notice of Proposed Rulemaking

Dear Mr. Graber:

Pursuant to section 1299-t of the Public Authorities Law, notice is hereby given of a proposed amendment to 21 NYCRR Part 1159, the NFTA's Procurement Guidelines. Enclosed is a copy of the NFTA's Notice of Proposed Rulemaking together with the text of the proposed revisions. If you or someone on your staff have any questions or require any further information please call me at 855-7398.

Very truly yours,

Ruth Keating

Ruth A. Keating
Senior Counsel

RAK

Enclosures

For Department of State use only

Notice of Proposed Rule Making

Niagara Frontier Transportation Authority
(SUBMITTING AGENCY)

[ ] Approval has been granted by Executive Chamber to propose this rule making.
[x] This rule making does not require Executive Chamber approval.

NOTE: Typing and submission instructions are at the end of this form. Please be sure to COMPLETE ALL ITEMS. Incomplete forms will be cause for rejection of this notice.

1. A. *Proposed action:*

Amendment of	sections 1159.3 and 1159.5	Title 21	NYCRR
		Title	NYCRR
		Title	NYCRR
		Title	NYCRR
		Title	NYCRR
		Title	NYCRR

B. [x] This is a consensus rule making. A statement is attached setting forth the agency's determination that no person is likely to object to the rule as written [SAPA §202(1)(b)(i)].

C. [ ] This rule was previously proposed as a consensus rule making under I.D. No
Attached is a brief description of the objection that caused/is causing the prior notice to be withdrawn [SAPA §202(1)(e)].

D. [ ] This rule is proposed pursuant to [SAPA §207(3)], 5-Year Review of Existing Rules (see also item 16).

2. *Statutory authority under which the rule is proposed:*

Public Authorities Law, sections 1299-e (5) and 1299-t.

3. *Subject of the rule:*

The NFTA's Procurement Guidelines.

4. *Purpose of the rule:*

To amend the NFTA's Procurement Guidelines regarding internal levels of approval.

5. *Public hearings* (check box and complete as applicable):

[x] A public hearing is not scheduled. (*SKIP TO ITEM 8*)

[ ] A public hearing is required by law and is scheduled below. (***Note***: first hearing date must be at least 45 days **after** publication of this notice unless a different time is specified in statute.)

[ ] A public hearing is not required by law, but is scheduled below.

Time:	*Date:*	*Location:*

6. *Interpreter services* (check only if a public hearing is scheduled):
   [ ] Interpreter services will be made available to hearing impaired persons, at no charge, upon written request to the agency contact designated in this notice.

7. Accessibility (check appropriate box only if a public hearing is scheduled):
   [ ] All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.
   [ ] Attached is a list of public hearing locations that are **not** reasonably accessible to persons with a mobility impairment. An explanation is submitted regarding diligent efforts made to provide accessible hearing sites.

8. *Terms of rule* (SELECT ONE SECTION):
   A. [x] The full text of the rule is attached because it does not exceed 2,000 words.
   B. [ ] A summary of the rule is attached because the full text of the rule exceeds 2,000 words.
      [ ] Full text is posted at the following State website: _____
      [ ] Full text is not posted on a State website.
      [ ] Full text is not posted on a State website; this is a consensus rule or a rule defined in SAPA § 102 (2)(a)(ii).
   C. [ ] Pursuant to SAPA §202(7)(b), the agency elects to print a description of the subject, purpose and substance of the rule as defined in SAPA §102(2)(a)(ii) [Rate Making].

9. *The text of the rule and any required statements and analyses may be obtained from:*

Agency contact Ruth A. Keating
Agency Name Niagara Frontier Transportation Authority
Office address 181 Ellicott Street
Buffalo, New York 14203
Telephone (716) 855-7398 *E-mail:* Ruth_Keating@nfta.com

10. *Submit data, views or arguments to* (complete only if different than previously named agency contact):

Agency contact _____
Agency name _____
Office address _____
_____
Telephone _____ *E-mail:* _____

11. Public comment will be received until:

[x] 45 days after publication of this notice (MINIMUM public comment period when full text is attached because it does not exceed 2000 words or full text of rule has been posted on a State web site or the rule is a consensus rule or a rule defined under SAPA §102[2][a][ii] [Rate Making]).

[ ] 60 days after publication of this notice (MINIMUM public comment period when full text is not attached or full text is not posted on a State web site or the rule is not a consensus rule or a rule defined under SAPA §102[2][a][ii] [Rate Making]).

[ ] 5 days after the last scheduled public hearing required by statute (MINIMUM, with required hearing). This box may not be checked and the minimum 60-day comment period applies if full text is not attached or text is not posted on a State web site or the rule is not a consensus rule or a rule defined under SAPA §102[2][a][ii] [Rate Making]).

[ ] Other: (*specify*) _____.

12. A prior emergency rule making for this action was previously published in the _____ issue of the *Register*, I.D. No. _____-_____.

13. *Expiration date* (check only if applicable):

[ ] This proposal will not expire in 365 days because it is for a "rate making" as defined in SAPA §102 (2)(a)(ii).

14. *Additional matter required by statute:*

[ ] Yes (include below material required by statute).

[x] No additional material required by statute.

15. *Regulatory Agenda* (See SAPA §202-d[1]):

[ ] This rule was a Regulatory Agenda item for this agency in the following issue of the *State Register*:

_____.

[ ] This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the *Register*.

[x] Not applicable.

16. ***Review of Existing Rules*** (ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

This rule is proposed pursuant to SAPA §207 (item 1D applies) (check applicable boxes):

Attached is a statement setting forth a reasoned justification for modification of the rule. Where appropriate, include a discussion of the degree to which changes in technology, economic conditions or other factors in the area affected by the rule necessitate changes in the rule.

Attached is an assessment of public comments received by the agency in response to its publication of a list of rules to be reviewed.

An assessment of public comments is not attached because no comments were received.

[x] Not applicable.

17. ***Regulatory Impact Statement (RIS)***
(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS, EXCLUDING SUMMARIES OF STUDIES, REPORTS OR ANALYSES [Needs and Benefits]):

A. The attached RIS contains:
[ ] The full text of the RIS.
[ ] A summary of the RIS.
[ ] A consolidated RIS, because this rule is one of a series of closely related and simultaneously proposed rules or is virtually identical to rules proposed during the same year.

B. A RIS is **not attached,** because this rule is:
[ ] subject to a consolidated RIS printed in the *Register* under I.D. No.: _____-_____; issue date: _____ .
[ ] exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].
[x] exempt, as defined in SAPA §102(11) [Consensus Rule Making].

C. [ ] A **statement is attached** claiming exemption pursuant to SAPA § 202-a (technical amendment).

18. ***Regulatory Flexibility Analysis (RFA) for small businesses and local governments***
(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS):

A. The attached RFA contains:
[ ] The full text of the RFA.
[ ] A summary of the RFA.
[ ] A consolidated RFA, because this rule is one of a series of closely related rules.

B. [ ] A **statement is attached** explaining why a RFA is not required. This statement is in scanner format and explains the agency's finding that the rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments and the reason(s) upon which the finding was made, including any measures used to determine that the rule will not impose such adverse economic impacts or compliance requirements.

C. A RFA is **not** attached, because this rule:
[ ] is subject to a consolidated RFA printed in the *Register* under I.D. No.: _____-_____; issue date: _____ .
[ ] is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].
[x] is exempt, as defined in SAPA §102(11) [Consensus Rule Making].

19. ***Rural Area Flexibility Analysis (RAFA)***
(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS):

A. The attached RAFA contains:
[ ] The full text of the RAFA.
[ ] A summary of the RAFA.
[ ] A consolidated RAFA, because this rule is one of a series of closely related rules.

B. [ ] A **statement is attached** explaining why a RAFA is not required. This statement is in scanner format and explains the agency's finding that the rule will not impose any adverse impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas and the reason(s) upon which the finding was made, including what measures were used to determine that the rule will not impose such adverse impact or compliance requirements.

C. A RAFA is **not attached,** because this rule:
[ ] is subject to a consolidated RAFA printed in the *Register* under I.D. No.: _____-_____; issue date: _____ .
[ ] is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].

[x] is exempt, as defined in SAPA §102(11) [Consensus Rule Making].

20. ***Job Impact Statement (JIS)***
(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS):

A. The attached JIS contains:

[x] The full text of the JIS.

[ ] A summary of the JIS.

[ ] A consolidated JIS, because this rule is one of a series of closely related rules.

B. [ ] A **statement is attached** explaining why a JIS is not required. This statement is in scanner format and explains the agency's finding that the rule will not have a substantial adverse impact on jobs and employment opportunities (as apparent from its nature and purpose) and explains the agency's finding that the rule will have a positive impact or no impact on jobs and employment opportunities; except when it is evident from the subject matter of the rule that it could only have a positive impact or no impact on jobs and employment opportunities, the statement shall include a summary of the information and methodology underlying that determination.

[ ] A JIS/Request for Assistance [SAPA §201-a(2)(c)] is attached.

C. A JIS is **not attached,** because this rule:

[ ] is subject to a consolidated JIS printed in the *Register* under I.D. No.: _____, issue date:

[ ] is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].

[ ] is proposed by the State Comptroller or Attorney General.

AGENCY CERTIFICATION (To be completed by the person who PREPARED the notice.)

I have reviewed this form and the information submitted with it. The information contained in this notice is correct to the best of my knowledge.

I have reviewed Article 2 of SAPA and Parts 260 through 263 of 19 NYCRR, and I hereby certify that this notice complies with all applicable provisions.

Name Ruth A. Keating *Signature* Ruth A. Keating

Address 181 Ellicott Street. Buffalo, New York 14203

Telephone (716) 855-7398 *E-Mail* Ruth_Keating@nfta.com

Date 10/29/2013

Please read before submitting this notice:

1. Except for this form itself, all text must be typed in the prescribed format as described in the Department of State's Register procedures manual, *Rule Making in New York.*
2. Rule making notices with any necessary attachments should be e-filed via the Department of State website.

Subdivision (ae) of section 1159.3 is amended as follows:

(ae) Small Purchase. The acquisition of goods or services having an actual price less than $[50,000] 100,000. [See section 1159.4(n) of this Part.]

Subdivision (af) of section 1159.3 is amended as follows:

(af) Small purchase formal bidding. A small purchases method of procuring goods or services under $[50,000.00] 100,000.00, based upon competitive selection following the publication of a notice of procurement opportunity in the New York State Contract Reporter and the acceptance of sealed bids or proposals. [See section 1159.4(n)(2) of this Part.]

Subdivision (ag) of section 1159.3 is amended as follows:

(ag) Small purchase informal bidding. A small purchases method of procuring goods or services under $[15,000.00] 50,000.00, based upon competitive selection which may be made on the basis of written or telephonic quotes and in accordance with the guidelines set forth in section 1159.4([n]o)(3) of this Part.

Subsection (1) to subdivision (a) of section 1159.4 is amended as follows:

(1) all contracts for goods or services in the actual or estimated value of $[50,000] 100,000 or more;

Subsection (1) to subdivision (f) of section 1159.4 is amended as follows:

(1) Sealed bidding is the preferred procurement method for acquisitions of $[15,000] 50,000 or more where the following factors are present:

Subsection (i) to subsection (2) to subdivision (f) of section 1159.4 is amended as follows:

(i) The purchase is under $[15,000] 50,000 and an informal, small purchase procurement procedure is being followed;

Subsection (1) to subdivision (h) of section 1159.4 is amended as follows:

(1) Procurement by negotiation is the preferred procurement method for acquisitions of $[15,000] 50,000 or more where one or more of the following factors are present:

Subsection (i) to subsection (2) to subdivision (h) of section 1159.4 is amended as follows:

(i) the purchase is under $[15,000] 50,000 and an informal, small purchase procurement procedure is being followed;.

Subdivision (k) of section 1159.4 is amended as follows:

(k) New York State Contract Reporter. All procurements of goods or services having an actual or estimated value of $[15,000] or 50,000 or more shall be published in THE NEW YORK STATE CONTRACT REPORTER (NYSCR) The notice of procurement opportunity shall appear in the NYSCR at least 15 business days prior to the bid or proposal due date. However, advance publication shall not be required under emergency or exigency conditions, or when an expediency action has been adopted by the board, or if the procurement is being solicited within 45 business days after the date bids or proposals were originally due. At the time a determination of intent to award a procurement contract is made, the following information shall be submitted for publication in NYSCR: for procurement contracts obtained through the sealed bidding process, the result of the bid opening including the names of bidding firms and the amounts bid by each; for procurement contracts

obtained through the negotiation and/or qualification-based processes, the names of firm submitting proposals and the proposal selected as the best value offer; and for all other procurement contracts, the name of the proposed awardee.

The Note to subsection (4) to subdivision (l) of section 1159.4 is amended as follows:

Note: With the exception of awards made under subparagraphs (i), (ii) and (iii) of this paragraph, the aggregate value of single source, unadvertised awards to any one firm or person shall not exceed $[50,000] 100,000 per year, absent board approval.

Subsection (2) to subdivision (o) of section 1159.4 is amended as follows:

(2) Formal bidding. Contracts for goods or services equal to or in excess of $[15,000] 50,000, but less than $[50,000] 100,000 may be awarded by the executive director or her designee, upon satisfaction of the following minimum requirements:

Subsection (3) to subdivision (o) of section 1159.4 is amended as follows:

(3) Informal bidding. Contracts for goods or services for less than $[15,000] 50,000 may be awarded by the executive director, her designee, or for less than $5,000 may be awarded by the general counsel, the chief financial officer, any general manager or director, the executive director of the GBNRTC or the executive director of NITTEC, or their designee (note, that any such delegation must be in writing), upon satisfaction of the following minimum requirements:

Subsection (ii) to subsection (3) to subdivision (o) of section 1159.4 is amended as follows:

(ii) At least three written or telephonic quotes must be solicited for purchases equal to or over $3,000 and under $[15,000] 50,000. Purchases under $3,000 may be made without quotes, if the procurement manager or her designee considers the prices to be fair and reasonable.

Subsection (5) to subdivision (o) of section 1159.4 is amended as follows:

(5) In the event a single source or single bid selection is the subject of a small purchase under $[15,000] 50,000, authorization for the purchase must come from the executive director.

Subsection (2) to subdivision (r) of section 1159.4 is amended as follows:

(2) Professional service contracts which do not exceed $[50,000] 100,000 and will not involve services to be rendered in excess of one year may be awarded following either the formal bidding or informal bidding small purchase guidelines set forth in subdivision ([n]o) of this section, as is appropriate.

Subsection (2) to subdivision (w) of section 1159.4 is amended as follows:

(2) In the event the authorization limits set forth in paragraph (1) of this subdivision will be exceeded, the general counsel, chief financial officer, executive directors of the GBNRTC and NITTEC, directors or general managers shall contact the executive director or in her absence the chairman of the board. The executive director is authorized to declare an emergency or exigency and to make awards not to exceed $[50,000] 100,000, per occurrence and shall report same to the chairman at the earliest opportunity, as described in paragraph (5) of this subdivision.

Subsection (3) to subdivision (w) of section 1159.4 is amended as follows:

(3) In the event the authorization limit set forth in paragraph (2) of this subdivision will be exceeded, the executive director shall contact the chairman of the board, or in his absence, the vice chairman of the board. The chairman (or if applicable, the vice chairman), is authorized to declare an emergency or exigency and to make awards which may exceed $[50,000] 100,000.

Subsection (4) to subdivision (w) of section 1159.4 is amended as follows:

(4) In the event the final contract amount owed is equal to or greater than $[50,000] 100,000, the individual responsible for declaring the emergency or exigency shall prepare and submit a "Declaration of Emergency/Exigency Report" to the executive director for submittal to the board at the earliest possible board meeting. The "Single Source Validation Report" form, in section 1159.5(f) of this Part, may be used. At a minimum, the "Declaration Report" shall set forth the following information:

Subsection (5) to subdivision (w) of section 1159.4 is amended as follows:

(5) In the event the final contract amount is less than $[50,000] 100,000, the individual responsible for declaring the emergency or exigency shall prepare and submit a "Declaration of Emergency/Exigency Report" to the executive director at the earliest possible time, documenting the information outlined in subparagraphs (4)(i) through (vi) of this subdivision.

Subsection (ii) to subsection (2) of subdivision (ab) of section 1159.4 is amended as follows:

(ii) For the procurement of any product or service of $[15,000] 50,000, or more, the user department shall prepare a written requisition and submit same to the procurement department a minimum of three months prior to the desired delivery, bid opening, performance, or proposal due date. For purchases under $[15,000] 50,000, the

requisitions shall be submitted to the procurement department 10 days in advance. The requisition shall serve as the mechanism by which the user department communicates its specific procurement need to the procurement department and it represents the beginning of the procurement process.

Subsection (2) to subdivision (af) of section 1159.4 is amended as follows:

(2) The authority may purchase surplus and second hand supplies, materials or equipment from the Federal Government, the State of New York or any political subdivision municipality, or district without advertising or the solicitation of bids, proposal or quotations, however, purchases involving and expenditure of $[50,000] <u>100,000</u> or more shall require Board approval.

Statement of Agency's Findings of no Impact on Jobs and Employment Opportunities

The Niagara Frontier Transportation Authority has determined adoption of the proposed rule will have no impact on jobs or employment opportunities for the following reasons:

1. The change to the rules will not impact the level of procurements made by the NFTA, and therefore will not impact jobs or employment opportunities.

Statement Concerning Adoption of a Consensus Rule

The Niagara Frontier Transportation Authority has determined that no person is likely to object to the rule being amended for the following reasons:

1. The only change is to the internal approval levels for procurements. This will not impact third parties.
2. The changes are not controversial.