



Niagara Frontier Transportation Authority
Serving Buffalo Niagara

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716-855-7300
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August 3, 2021,2021

Robert M. Graber, Clerk
Erie County Legislature
92 Franklin, Fourth Floor
Buffalo, New York 14202

Re: NIAGARA FRONTIER TRANSPORTATION AUTHORITY (NFTA)
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, which are the NFTA's Procurement Guidelines. Enclosed kindly find a copy of the NFTA's Notice of Proposed Rulemaking, together with the text of said proposed revisions.

Kindly contact me with any questions at 716.855.7420, or 716.630.6125.

Very Truly Yours,

A handwritten signature in black ink that reads "Karen Curtin". The signature is written in a cursive, flowing style.

Karen Curtin, Esq.
Counsel

Kc/Encs.

Notice of Proposed Rule Making

Niagara Frontier Transportation Authority
(SUBMITTING AGENCY)

- Approval has been granted by Executive Chamber to propose this rule making.
- 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, 1159.4, 1159.5	Title 21 NYCRR
_____	_____	Title _____ NYCRR
_____	_____	Title _____ NYCRR
_____	_____	Title _____ NYCRR
_____	_____	Title _____ NYCRR
_____	_____	Title _____ NYCRR

- B. 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. [REDACTED]. Attached is a brief description of the objection that caused/is causing the prior notice to be withdrawn [SAPA §202(1)(e)].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:
New York Public Authorities Law, Section 1299-t

3. Subject of the rule:
Procurement Guidelines of the Niagara Frontier Transportation Authority and Niagara Frontier Transit Metro System, Inc.

4. Purpose of the rule:
To amend Procurement Guidelines to reflect changes in law, clarifying provisions and change in signing authority level.

5. Public hearings (check box and complete as applicable):
- 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 60 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. 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 on the following State website. [Pursuant to SAPA §202(7)(d), provide sufficient information to enable the public to access the full text without extensive searching. For example, provide a URL or a title to either a webpage or a specific section of the website where the full text is posted]:

- 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]. Web posting of full text of such rule is not required [SAPA §202(1)(a)].

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

Agency contact Karen Curtin, Esq.
 Agency Name Niagara Frontier Transportation Authority
 Office address 181 Ellicott Street
Buffalo, New York 14203
 Telephone (716) 855-7300 E-mail: Karen.Curtin@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:*

- 60 days after publication of this notice (MINIMUM public comment period).
- 5 days after the last scheduled public hearing required by statute (MINIMUM, with required hearing).
- 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).

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*.

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.

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.

Full text is posted on the following State website. [Pursuant to SAPA §202(7)(d), provide sufficient information to enable the public to access the full text without extensive searching. For example, provide a URL or a title to either a webpage or a specific section of the website where the full text is posted]:

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].

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.

Full text is posted on the following State website. [Pursuant to SAPA §202(7)(d), provide sufficient information to enable the public to access the full text without extensive searching. For example, provide a URL or a title to either a webpage or a specific section of the website where the full text is posted]:

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].

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.

Full text is posted on the following State website. [Pursuant to SAPA §202(7)(d), provide sufficient information to enable the public to access the full text without extensive searching. For example, provide a URL or a title to either a webpage or a specific section of the website where the full text is posted]:

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].

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:

The full text of the JIS.

A summary of the JIS.

Full text is posted on the following State website. [Pursuant to SAPA §202(7)(d), provide sufficient information to enable the public to access the full text without extensive searching. For example, provide a URL or a title to either a webpage or a specific section of the website where the full text is posted]:

[Redacted text]

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.: [Redacted] issue date: [Redacted].

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 Karen Curtin, Esq.

Signature 

Address 181 Ellicott Street, Buffalo, NY 14203

Telephone (716) 855-7300

E-Mail Karen.Curtin@nfta.com

Date 07/20/2021

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 (in MS Word), should be e-filed via the Department of State website.

Notice of Proposed Rule Making

Niagara Frontier Transportation Authority
(SUBMITTING AGENCY)

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- This rule making does not require Executive Chamber approval.

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		Title	NYCRR
		Title	NYCRR
		Title	NYCRR
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- B. 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 [redacted]. 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:*
New York Public Authorities Law, Section 1299-t

3. *Subject of the rule:*
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4. *Purpose of the rule:*
To amend Procurement Guidelines to reflect changes in law, clarifying provisions and change in signing authority level.

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

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Agency Name Niagara Frontier Transportation Authority
Office address 181 Ellicott Street
Buffalo, New York 14203
Telephone (716) 855-7300 *E-mail:* Karen.Curtin@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:*
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 5 days after the last scheduled public hearing required by statute (MINIMUM, with required hearing).
 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).

[Redacted area]

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*.

Not applicable.

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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.

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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].

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):

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- 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].
- 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.

Full text is posted on the following State website. [Pursuant to SAPA §202(7)(d), provide sufficient information to enable the public to access the full text without extensive searching. For example, provide a URL or a title to either a webpage or a specific section of the website where the full text is posted]:

- 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].
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20. **Job Impact Statement (JIS)**

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS):

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[Redacted text]

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.: [Redacted] - [Redacted] issue date: [Redacted].

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 Karen Curtin, Esq.

Signature 

Address 181 Ellicott Street, Buffalo, NY 14203

Telephone (716) 855-7300

E-Mail Karen.Curtin@nfta.com

Date 07/20/2021

Please read before submitting this notice:

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2. Rule making notices, with any necessary attachments (in MS Word), should be e-filed via the Department of State website.

Section 1159.3(ad) is amended:

Services. A personal, professional, consulting, technical, or other service, including but not limited to legal, testing.

The section after 1159.3 (ap) is amended:

[(1)Procurement department.

(i)The procurement department shall be responsible for conducting the following minimum preprocurement planning activities on at least an annual basis:

- (a)forecasting the price and availability of items and materials for user departments;
- (b)developing a purchasing schedule for IFBs and RFPs;
- (c)establishing purchasing goals and objectives.

(ii)The functions of the procurement department shall be to:

- (a)Analyze the marketplace to determine the status of competition, technological developments, the impact of the economy on potential vendors, labor conditions, and changes in pricing or delivery methods.
- (b)Communicate and coordinate with similarly situated procurement departments to explore joint purchasing arrangements and to share marketplace information.
- (c)Analyze user department procurement requisitions to ensure the proper authorizations are present, and that the procurement is tailored to meet the authority's needs and is not unnecessary or duplicative. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach.

(d) Prepare invitation for bids, requests for proposals, informal solicitations, and notices of procurement opportunity, as needed.

(e) Administer the acquisition process, including: ensuring adequate advertisement of the notice of procurement opportunity; surveying sources; serving as contact for potential contractors; and accepting, opening, evaluating, and tabulating bids.

(f) Remain current and in compliance with applicable Federal and State laws.

(g) Maintain vendors files.

(h) Maintain all support documentation including small purchases authorization, small purchase tabulation and solicitation summary, single bid/proposal validation reports and single source validation report.

(2) User department (The department in need of and requesting the procurement of goods or services):

(i) It shall be the responsibility of each user department to evaluate its projected procurement needs on an annual basis, and to undertake and coordinate procurement planning activities with the procurement department, annually.

(ii) For the procurement of any product or service of \$ 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 \$ 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.

(iii) The requisition shall include the following elements:

(a) properly completed form per the authority's requisition procedures; and

(b) budget; including proposed funding source by designation of the account funding code, estimated cost and basis for estimated cost; and

(c) specifications; completed in accordance with subdivision (m) of this section.

(iv) The user department is responsible for managing the final contract and/or purchase order in accordance with Authority Procedure 2-01-01.

(3) Engineering department:

(i) The engineering department shall serve as the user department for all major public work projects.

(ii) The preparation and submittal of a requisition shall be required for public work projects which have been developed or identified under board authorization or which have received State or Federal funding approval.

(4) Internal audit: The internal audit department shall have responsibility for evaluating the adequacy and effectiveness of internal controls governing the procurement process, for providing cost analysis services upon the request of the procurement department and for conducting any necessary audits, such as those required by the Federal Buy America Act.

(5) Office of general counsel: The office of general counsel shall provide interpretations of the procurement guidelines, advice to the user and procurement departments on statutory and regulatory compliance and assist in the board agenda process for awards requiring board approval. All issues regarding disqualification and/or release of a low bidder must be reviewed by the Office of General Counsel prior to a decision being made.

(6) EEO/Diversity Development Department: The Office of EEO/Diversity Development shall develop DBE and MWBE goals. EEO/Diversity Development will monitor DBE and MWBE participation for Federal and State funded project. The EEO/Diversity Development Department will also report DBE and MWBE utilization to appropriate Federal and State agencies.

(aq)Evaluating responsiveness and responsibility. (1) Factors which should be considered by the authority in evaluating responsiveness should include the following considerations:

- (i)Has all required information been provided?
- (ii)Does the bid contain mistakes?
- (iii)Has bidder failed to commit to a firm price?
- (iv)Are there unacceptable qualifications or conditions tied to the bid?
- (v)Has the bid been prepared in accordance with the bidding instructions?
- (vi)Are unacceptable provisions included in the bid?
- (vii)Has the bidder altered or limited any of the contract or solicitation provisions?
- (viii)Has the bidder offered nonconforming products or services?
- (ix)Has the bidder failed to acknowledge amendments to the IFB issued by the authority?

Note that the forgoing list is not exhaustive. Minor deviations which are immaterial and do not affect quantity, quality or delivery, may be waived by the authority if such waiver does not prejudice or affect the relative standing of the bidders.

(2)In evaluating the responsibility of an apparent low bidder or proposed subcontractor, the authority may consider, among other factors, whether the subjects' record with the authority or other public owners includes or demonstrates:

- (i)Poor prior performance on an authority contract.
- (ii)Lack of adequate expertise; prior experience with comparable projects; or financial resources necessary to perform the work outlined in the contract in a timely, competent and acceptable manner. Evidence of such factors may include failure to submit satisfactory evidence of insurance, surety bonds, or financial responsibility; or a history of terminations for cause.

(iii) Being listed on a federal or state debarred contractors list.

(iv) Engagement in criminal conduct in connection with any other government contracts or the conduct of business activity that involves such crimes as extortion, racketeering, bribery, fraud, bid-rigging and embezzlement.

(v) Grave disregard for the safety of employees, State personnel, or members of the public.

Consideration will be given to whether employees who will be assigned to work on the project are properly trained and whether the equipment to be used is safe and functioning properly.

(vi) Willful noncompliance with the State's Labor Laws regarding prevailing wage and supplement payment requirements, including consideration of any pending violations.

(vii) Disregard for other State Labor Laws, including child labor, proper and timely wage payments and unemployment insurance laws.

(viii) Violations of the State Workers' Compensation Law including failure to provide proof of proper workers' compensation or disability coverage.

(ix) Violations of the State's Environmental Conservation Law or violations of any other Federal or State environmental statutes.

(x) The failure to abide by State and Federal statutes and regulations regarding efforts to solicit and utilize disadvantaged, minority and women-owned business enterprises as potential subcontractors.

(xi) The submission of a bid which is mathematically or materially unbalanced.

(xii) The submission of a bid which is so much lower than the authority's confidential engineer's estimate that it appears unlikely that the contractor will be able to complete the project satisfactorily at the price bid.

(xiii) The presentation of false or misleading statements or any other issue that raises serious

questions about the responsibility of the bidder or proposed subcontractor.]

Section 1159.4(a)(1)(ii)(i) is amended:

- (i) develop MWBE and SDVOB participation goals, monitor MWBE and SD[BOV] VOB participation, and report MWBE and SDVOB utilization to appropriate state agencies.

Section 1159.4(a)(6) is amended:

EEO/diversity development will monitor DBE participation for Federal and State funded projects. The EEO/diversity development department will also report DBE utilization to appropriate Federal agencies.

Section 1159.4(d)(1) is amended:

(1)Federal requirements. Procurements which include Federal funds are subject to Federal Buy America requirements. Generally, this means that steel, iron, and/or manufactured products which are incorporated in public works or product purchases are to have been produced in the United States, unless a waiver has been granted by a Federal agency or the project is subject to a general waiver (see, 49 CFR 661.7 appendix A) or included in the FAA Nationwide Buy America Waivers Issued list. General waivers have been established for microcomputer equipment, including software, and purchases of \$ 150,000 or less.

Section 1159.4(k)(1) is amended:

(1)This method is required in procuring architectural, engineering, planning and certain related services whenever State or Federal funds will or may be used. There are differences between the Federal Aviation Administration and Federal Transit Administration as to what services are required to be procured in this manner, so reference should be made to the most current version of FAA Advisory

Circular 150/5100-14[D] E, FTA Advisory Circular 4220.1 For New York State law for guidance.

Delete paragraph after Section 1159.4(n)(4)(vi).

Add paragraph after Section 1159.4(n)(5):

Note: With the exception of awards made under subparagraphs (n)(4) (i), (ii) and (iii) the aggregate value of single source, unadvertised awards to any one firm or person shall not exceed \$ 100,000 per year, absent board approval.

Section 1159.4(u) is hereby amended as follows:

(u)Disadvantaged and Airport Concession Disadvantaged business enterprises/minority women business enterprises/service disabled veteran-owned business.

Section 1159.4(u)(1) is amended:

(1)It is the desire of the board to promote and assist participation by DBEs, ACDBEs, MBEs and WBEs and to facilitate a fair share of the awarding of contracts thereto.

Section 1159.4(u)(2) is amended:

(2)An updated list of all DBE certified firms in New York State may be obtained from the New York State Unified Certification Program website at [WWW.BIZNET.NYSUCP.NET] www.nysucp.newnycontracts.com. A directory of MWBE certified firms may be obtained from the New York State MWBE website at [WWW.NYLOVESMWBE.NY.GOV] ny.new.nycontracts.com. A list of all SDVOB certified firms in New York State may be obtained from the New York State Office of General Services website at [HTTP://WWW.OGS.NY.GOV/CORE/SDVOBA.ASP] www.online.ogs.ny.gov/SDVOB/search. The procurement department shall be responsible for

referencing such lists prior to the publication of a notice of procurement opportunity [or informal solicitation] to determine the availability of certified [DBE], MBE and WBE entities.

The Office of Equal Opportunity/Diversity Development shall be responsible for referencing such lists prior to the publication of a notice of procurement opportunity to determine the availability of certified DBE and ACDBE.

Section 1159.4(y)(1) is amended:

(1)The general counsel, chief financial officer, executive directors of GBNRTC and NITTEC and general managers and directors, or their designees, are authorized to declare an emergency or exigency and to make awards not to exceed [\$ 4,999] Nine Thousand Nine Hundred Ninety-Nine Dollars (\$9,999), per occurrence, and shall report same to the executive director at the earliest opportunity, as described in paragraph (5) of this subdivision.

Section 1159.4(aa) is amended:

(aa)Waiver of competition pursuant to section 2879 of the Public Authorities Law. Pursuant to section 2879 of the Public Authorities Law the board may waive competition for the purchase of goods or services from small business concerns or lose certified as minority- or women-owned business enterprises, or goods or technology that recycled or manufactured, in an amount not-to-exceed [\$ 200,000] \$500,000 in accordance with changes in New York State law. Such a waiver may only be granted for non-federally funded purchases and shall require a two-thirds vote of the members in attendance at a meeting of the board.

Section 1159.4 is amended to add a new clause (ag) immediately following 1159.4(af)(2) as follows:

(ag) Contract Management and Monitoring. The responsibility for Contract management and monitoring rests with the Executive Director acting in consultation with the Executive Director's Management Team. This responsibility includes, but is not limited to, decisions to terminate a contract, and/or invoking breach, default or other provisions of a contract. In keeping with the proper separation of Board oversight and Executive Management functions as recognized by the NY Authority Budget Office, the Executive Director should carry out appropriate policies, make day-to-day operating decisions and keep the Board informed with sufficient information of actions, issues of concern, potential risks, and liabilities, while the Board has a separate responsibility to provide active oversight of management, and an obligation to make reasonable inquiry of activities when appropriate. See NY Authority Budget Policy Guidance No. 06-02.

Sections 1159.5 (c), (d), (e) and (f) are amended to delete the entire section.