



THE ERIE COUNTY LEGISLATURE

Session No. 12
JUNE 20, 2024

April N.M. Baskin
Chair

Timothy J. Meyers
Majority Leader

John J. Mills
Minority Leader

Olivia M. Owens
Clerk of the Legislature

ROLL CALL

INVOCATION: Mr. Kooshoian

PLEDGE OF ALLEGIANCE: Mr. Greene

TABLED ITEMS

ITEMS FOR RECONSIDERATION FROM PREVIOUS MEETING

MINUTES OF PREVIOUS MEETING: Meeting No. 11

PUBLIC HEARING

MISCELLANEOUS RESOLUTIONS:

LOCAL LAWS:

COMMITTEE REPORTS:

LEGISLATOR RESOLUTIONS:

COMMUNICATIONS DISCHARGED FROM COMMITTEE:

SUSPENSION OF THE RULES:

COMMUNICATIONS FROM ELECTED OFFICIALS:

COMM. 12E-1	COMPTROLLER	Department of Law Risk Retention Fund Spending - April 2024
COMM. 12E-2	COMPTROLLER	EC Cultural Funding Grant Monitoring Program - Orchard Park Symphony Orchestra
COMM. 12E-3	COMPTROLLER	EC Cultural Funding Grant Monitoring Program - Theatre of Youth
COMM. 12E-4	COMPTROLLER	EC Cultural Funding Grant Monitoring Program - Hispanic Heritage Council of

WNY, Inc.

COMM. 12E-5	COMPTROLLER	EC Cultural Funding Grant Monitoring Program - Clarence Concert Association
COMM. 12E-6	COMPTROLLER	EC Cultural Funding Grant Monitoring Program - Polish Art Club of Buffalo
COMM. 12E-7	COMPTROLLER	EC Cultural Funding Grant Monitoring Program - Danceability, Inc.
COMM. 12E-8	COMPTROLLER	EC Cultural Funding Grant Monitoring Program - Can You Dig It, Inc (DBA South Buffalo Irish Festival)
COMM. 12E-9	COMPTROLLER	EC Cultural Funding Grant Monitoring Program - Amherst Male Glee Club, Inc.
COMM. 12E-10	COMPTROLLER	EC Cultural Funding Grant Monitoring Program - Buffalo & EC Botanical Gardens Society, Inc.
COMM. 12E-11	GREENE	Letter to Locust Street Art Board Members
COMM. 12E-12	COUNTY CLERK	Resolution to Authorize Entry Into Contract with Tyler Technologies, Inc.
COMM. 12E-13	COUNTY EXECUTIVE	Appointment of the Commissioner of Central Police Services
COMM. 12E-14	COUNTY EXECUTIVE	Amendment to EBO Administrator; COMM. 3E-7 (2024)
COMM. 12E-15	COUNTY EXECUTIVE	Authorization to Enter Into Contract with Safeware, Inc.
COMM. 12E-16	COUNTY EXECUTIVE	Levy of the 2024-2025 School Tax Budgets
COMM. 12E-17	COUNTY EXECUTIVE	ECSD No. 3 - Engineering Term Contract Agreement
COMM. 12E-18	COUNTY EXECUTIVE	ECSD No. 3 - Engineer Term Contract Agreement
COMM. 12E-19	COUNTY EXECUTIVE	ECSD No. 3 - Engineering Term Contract Agreement
COMM. 12E-20	COUNTY EXECUTIVE	ECSD No. 3 - Eighteenmile Creek Sewer Line Stabilization Mitigation Project
COMM. 12E-21	COUNTY EXECUTIVE	Amendment to HHW & CESQG Contracts

COMM. 12E-22	COUNTY EXECUTIVE	Award of Agreement 2024, On-Call Dam Engineering Services
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COMM. 12E-23	COUNTY EXECUTIVE	Amendment of Contract - Professional Design Engineering Services Agreement for Lakeshore Road
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COMM. 12E-24	COUNTY EXECUTIVE	Amendment of Contract - Professional Design Engineering Services Agreement for Back Creek Road
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COMM. 12E-25	COUNTY EXECUTIVE	Right-of-Way Acquisition - Replacement of Genesee Road Bridge
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COMMUNICATIONS FROM THE DEPARTMENTS:

COMMUNICATIONS FROM THE PEOPLE AND OTHER AGENCIES:

COMM. 12M-1	NFTA COUNSEL	NFTA - Notice of Proposed Rulemaking
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ANNOUNCEMENTS:

MEMORIAL RESOLUTIONS:

ADJOURNMENT:

Erie County Legislature
Meeting Date: 06/20/2024

SUBJECT

COMM. 12E-1

COMPTROLLER

Department of Law Risk Retention Fund
Spending - April 2024

Attachments

24COMM. 12E-1



EC LEG JUN 5 '24 PM 2:41

ERIE COUNTY COMPTROLLER
KEVIN R. HARDWICK

June 5, 2024

Honorable Members
Erie County Legislature
92 Franklin Street, Fourth Floor
Buffalo, New York 14202

Re: Department of Law Risk Retention Fund Spending – April 2024

Dear Honorable Members:

Pursuant to Resolution Intro. 3-2 (2016), as amended, please find attached an accounting of expenses from the County's Risk Retention Fund for April 2024.

Sincerely,

A handwritten signature in black ink, appearing to read "K. R. Hardwick", is written over a faint, larger version of the signature.

Kevin R. Hardwick, Ph.D.
Erie County Comptroller

Attachment

County of Erie
Law Department Spending
Risk Retention
April, 2024

Run Date: 6/5/2024

<u>Vendor Number</u>	<u>Vendor Name</u>	<u>Expenditures</u>
101109	BOND, SCHOENECK & KING, PLLC	1,144.00
102816	Feldman Kieffer LLP	9,736.00
103442	Hodgson Russ	26,859.10
104457	LAWLEY SERVICE INSURANCE GROUP	634,568.00
106065	PHILLIPS LYTLE HITCHCOCK	22,693.00
118314	JEREMY C TOTH AS CUSTODIAN	13,372.85
120447	LIPPES MATHIAS WEXLER FRIEDMAN LLP	216,606.87
139834	LEGAL MED	29,910.00
143544	THOMAS E WEBB JR ESQ	2,850.00
6	Harold Bihr o/b/o Bihr Landscape	6,055.97
6	Suzanne Maxwell Barnes	2,145.85
		<u>965,941.64</u>

Erie County Legislature
Meeting Date: 06/20/2024

SUBJECT

COMM. 12E-2

COMPTROLLER

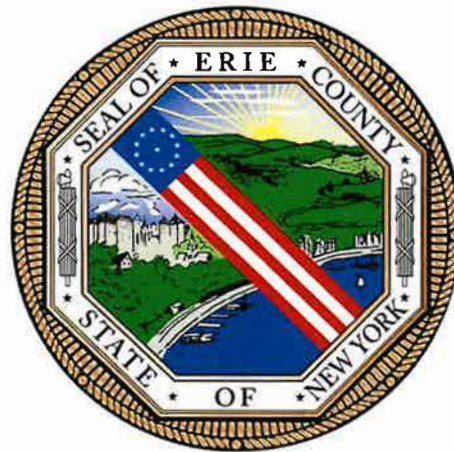
EC Cultural Funding Grant Monitoring
Program - Orchard Park Symphony Orchestra

Attachments

24COMM. 12E-2

June 2024

**Erie County Cultural Funding Grant
Monitoring Program
Orchard Park Symphony Orchestra
January 1, 2020 through December 31, 2022**



**HON. KEVIN R. HARDWICK
ERIE COUNTY COMPTROLLER**

**HON. KEVIN R. HARDWICK
ERIE COUNTY COMPTROLLER'S OFFICE
DIVISION OF AUDIT & CONTROL
95 FRANKLIN STREET
BUFFALO, NEW YORK 14202**



June 10, 2024

Erie County Legislature
92 Franklin Street, Fourth Floor
Buffalo, New York 14202

Dear Honorable Members:

In 2023, the Erie County Comptroller's Office, Division of Audit & Control initiated a regular Monitoring Program of Erie County Cultural Funding Grants. The Erie County Cultural Funding program provides annual grants to non-profit arts and cultural organizations operating within the County. County funds are intended to be limited in their use to current operating expenses including salaries, program costs, fringe benefits, rents, utilities, office supplies, and equipment. Grant funds may not be used for or applied towards capital projects or physical improvements of buildings or facilities, nor as a revenue offset against accounts receivable. No funds received shall be used for any services provided or activities performed outside Erie County. The County's Department of Environment and Planning executes contracts with organizations and is the primary agency charged with monitoring.

Objective

The objective of the Cultural Funding Monitoring Program is to verify that the recipients have utilized County funds according to the terms and conditions associated with the Erie County Cultural Funding grant process and the recipient's contract with the County. In order to verify the proper use of the grant award, a number of agencies were selected in order to review their expenses and financial records.

Scope and Methodology

Approximately 120 different organizations receive funding annually from Erie County. The Comptroller's Cultural Funding Grant Monitoring Program is intended to review organizations that received a minimum of \$5,000 in funding during any of the three prior years. Approximately 80 agencies were identified as receiving \$5,000 or more in grant funding. The list of recipient organizations was split into two groups of approximately 40 agencies. The first batch of letters announcing the commencement of a review was sent to the selected non-profit organizations during mid-February 2023, and a second batch was sent in early October 2023. The review of all agencies is expected to be completed by October 31, 2024.

2023 – 2024 Program

During the interview phase, the Auditor identifies use of funding to narrow down the expenses to be verified. A table of agencies which meet the criteria for review along with the amount of grant awards can be found on the following page.

Monitoring Program – Phase I

ACT #	APPROPRIATION	VENDOR NUMBER	TAX YEAR 2020	TAX YEAR 2021	TAX YEAR 2022
	Enlightenment Literary Arts Center &				
517125	Dog Ears Bookstore	152183	\$ 28,600.00	\$ 36,600.00	\$ 55,000.00
518004	African American Cultural Center	112604	\$ 275,450.00	\$ 311,950.00	\$ 200,000.00
518012	Alleway Theatre	109140	\$ 8,500.00	\$ 8,500.00	\$ 11,000.00
518016	American Legion Band of	100379	\$ 7,500.00	\$ 7,500.00	\$ 45,000.00
513017	Amherst Symphony Orchestra	120475	\$ 32,500.00	\$ 26,750.00	\$ 28,740.00
518019	Arts Services Initiative of WNY Inc	147159	\$ 26,050.00	\$ 26,050.00	\$ 10,000.00
518023	Bailler Artists Of WNY (Neglia)	100784	\$ 24,000.00	\$ 24,000.00	\$ 30,000.00
	Buffalo Arts Studio (Arts Studio of				
518040	Western New York, Inc	101244	\$ 38,000.00	\$ 45,500.00	\$ 53,000.00
518044	Buffalo Inner City Ballet Co. Inc	108597	\$ 27,000.00	\$ 27,000.00	\$ 27,000.00
518050	Buffalo Music Hall of Fame	113142	\$ 4,500.00	\$ -	\$ 5,500.00
518051	Buffalo Heritage Carousel	167629	\$ 30,000.00	\$ 30,000.00	\$ 35,000.00
518074	Colored Musicians Club	130377	\$ 5,000.00	\$ -	\$ 12,900.00
518084	El Museo Gallery	109636	\$ 12,585.00	\$ 8,585.00	\$ 11,000.00
518104	Graycliff Conservancy	103197	\$ 59,200.00	\$ 59,200.00	\$ 60,000.00
518113	Hull House Foundation	143473	\$ 11,375.00	\$ 9,375.00	\$ 7,500.00
	Jewish Community Center Cultural				
518119	Jewish Ctr of Greater Buff	111239	\$ 13,500.00	\$ 8,750.00	\$ 13,500.00
518120	Just Buffalo Literacy Center	108577	\$ 78,100.00	\$ 78,100.00	\$ 83,500.00
518132	Locust St Neighborhood Art Classes	109985	\$ 29,250.00	\$ 25,250.00	\$ 28,500.00
518126	Martin House Restoration	104563	\$ 175,500.00	\$ 175,500.00	\$ 190,000.00
518139	Music Is Art	139515	\$ 48,000.00	\$ 48,000.00	\$ 39,000.00
518145	Polish Arts Club Of Buffalo Inc	106132	\$ 7,000.00	\$ 7,000.00	\$ 3,500.00
518147	Preservation Buffalo Niagara	147509	\$ 4,615.00	\$ 4,615.00	\$ 6,000.00
518160	Springville Center For The Arts	113306	\$ 30,505.00	\$ 20,505.00	\$ 36,000.00
518164	Squeaky Wheel	101268	\$ 20,920.00	\$ 20,920.00	\$ 27,000.00
518172	Theodore Roosevelt Inaugural Site	106552	\$ 32,320.00	\$ 32,320.00	\$ 37,000.00
518176	Ujima Company	101047	\$ 83,000.00	\$ 83,000.00	\$ 57,714.00
518180	Western New York Artists Group	108295	\$ 6,275.00	\$ 6,275.00	\$ 7,500.00
518181	WNY Book Arts Collaborative, Inc	135959	\$ 4,640.00	\$ 4,640.00	\$ 6,000.00
518184	Young Audiences Of WNY	109316	\$ 10,500.00	\$ 10,500.00	\$ 14,000.00
518196	Buffalo Niagara Heritage Village	151996	\$ 18,500.00	\$ 18,500.00	\$ 24,500.00
518200	Michigan Str African Amer Heritage	152578	\$ 15,000.00	\$ 15,000.00	\$ 22,500.00
518201	Brighton Palast Association	103060	\$ 10,000.00	\$ 11,000.00	\$ 12,500.00
518204	Nighthon Place, Inc	135124	\$ 10,000.00	\$ 16,000.00	\$ 20,000.00
518211	Hispanic Heritage Council of WNY	159505	\$ 12,000.00	\$ 20,000.00	\$ 24,500.00
	Black Rock Historical Society (Black				
518215	Rock Rivers de Alliance	170365	\$ 22,500.00	\$ 7,500.00	\$ 10,000.00
518233	Centro Culturale Italiano di Buffalo	167500	\$ 25,000.00	\$ 20,000.00	\$ 35,000.00
518549	South Buffalo Irish Fe/Can You Dig	113041	\$ 18,000.00	\$ 15,000.00	\$ 15,000.00
518596	Net Positive DBA The Foundry	160005	\$ 5,000.00	\$ -	\$ 5,000.00

Monitoring Program – Phase II

ACT #	APPROPRIATION	VENDOR NUMBER	TAX YEAR 2020	TAX YEAR 2021	TAX YEAR 2022
517533	buffalo Olmsted Parks Conservancy	140237	\$ 35,910.00	\$ 25,910.00	\$ 35,000.00
518028	Albright-Knox Art Gallery	108707	\$ 575,000.00	\$ 575,000.00	\$ 675,000.00
518009	Albright-Knox Public Art Curator	147224	\$ 68,250.00	\$ 68,250.00	\$ -
518025	Assembly House 150, Inc	167747	\$ 1,000.00	\$ 1,000.00	\$ 6,500.00
518034	Buffalo & Erie County Botanical Garden	108743	\$ 102,000.00	\$ 125,000.00	\$ 150,000.00
518036	Buffalo & Erie Co Historical Society	108772	\$ 417,000.00	\$ 417,000.00	\$ 417,000.00
	Buffalo & Erie County Naval & Servicemans				
518052	Park	109639	\$ 35,000.00	\$ 35,000.00	\$ 30,000.00
518060	Buffalo Philharmonic Orh Society	101032	\$ 926,000.00	\$ 926,000.00	\$ 940,000.00
518061	Buffalo Philharmonic Chorus	109796	\$ 34,500.00	\$ 34,500.00	\$ 35,000.00
518064	Buffalo Society Natural Sciences	109767	\$ 955,000.00	\$ 955,000.00	\$ 955,000.00
518065	Buffalo String Works, Inc	167851	\$ 3,500.00	\$ 3,500.00	\$ 5,355.00
518068	Burchfield Penney Art Center	101004	\$ 155,000.00	\$ 155,000.00	\$ 160,000.00
518072	Center for Exploratory and Perceptu	109934	\$ 35,000.00	\$ 35,000.00	\$ 63,000.00
518092	Danceability	156639	\$ 2,500.00	\$ 5,500.00	\$ 3,000.00
518099	Region & More Children's Museum	102758	\$ 42,000.00	\$ 42,000.00	\$ 78,000.00
518108	Haitiwaits Contemporary Arts Center	105598	\$ 57,000.00	\$ 57,000.00	\$ 60,000.00
518112	Hamburg Nat Hist Society/Fenn-Dixie	102282	\$ 98,314.00	\$ 96,314.00	\$ 96,314.00
518116	Irish Classical Theatre Company	103727	\$ 83,500.00	\$ 83,500.00	\$ 93,500.00
518124	O'Youville Cottage Kavinoky Theater	109341	\$ 11,750.00	\$ -	\$ 9,500.00
518128	Lancaster Opera House	111681	\$ 45,300.00	\$ 30,300.00	\$ 35,000.00
518140	MusicalFare Theatre	105308	\$ 81,625.00	\$ 81,625.00	\$ 68,000.00
518148	Read Less Traveled Productions	109342	\$ 7,500.00	\$ 7,500.00	\$ -
518152	Roycroft Campus Cooperation	121045	\$ 63,500.00	\$ 63,500.00	\$ 67,000.00
518156	Shakespeare In The Park	118213	\$ 50,000.00	\$ 40,000.00	\$ 50,000.00
518156	Shakespeare In The Park	106675	\$ 95,000.00	\$ 95,000.00	\$ 95,000.00
518188	Theatre Of Youth	109888	\$ 69,400.00	\$ 69,400.00	\$ 74,000.00
518173	Torn Space Theatre	143673	\$ 20,460.00	\$ 15,460.00	\$ 29,500.00
518188	Zoological Society Of Buffalo	108623	\$ 1,500,000.00	\$ 1,500,000.00	\$ 1,700,000.00
518195	Orchard Park Symphony Orchestra	147747	\$ 4,615.00	\$ 4,615.00	\$ 6,000.00
518202	Buffalo Opera Unlimited Incorporated	155973	\$ 2,300.00	\$ 2,300.00	\$ 10,000.00
518203	Buffalo Toronto Public Media WNEP/WBFO	173209	\$ 3,750.00	\$ -	\$ 5,000.00
518205	Cheektowaga Comm Symphony Orchestra	109177	\$ -	\$ 7,500.00	\$ -
518209	Newstead Historical Society	105518	\$ 5,300.00	\$ 3,500.00	\$ 5,000.00
518213	O'Connell & Company Productions	159162	\$ 23,100.00	\$ 23,100.00	\$ 31,500.00
	Amherst Male Glee Club dba Red Blazer				
518219	Men's Chorus	162045	\$ 3,000.00	\$ 3,000.00	\$ 6,000.00
518221	Buffalo Center for Arts and Technology	152207	\$ 3,000.00	\$ 3,000.00	\$ 7,500.00
518225	Cheektowaga Historical Association	161121	\$ 3,250.00	\$ 6,250.00	\$ 6,100.00
518229	Second Generation Theatre Company	164957	\$ 2,020.00	\$ 2,020.00	\$ 5,000.00
518230	Steel Plant Museum of Western New York	147740	\$ 2,020.00	\$ 2,020.00	\$ 5,000.00
518503	Alden Christian Theater Society	143458	\$ 10,000.00	\$ -	\$ 3,000.00
518514	Clarence Concert Association	101711	\$ 3,500.00	\$ -	\$ 5,000.00
	Clarence Museum (Historical Soc of the				
518353	Town of Clarence)	113067	\$ 5,500.00	\$ -	\$ 6,000.00

BEST PRACTICES

Over the course of the Monitoring Program, the Division of Audit found a number of problematic practices and questionable expense categories on a recurring basis. In order to address issues pertaining to a large number of organizations, certain generally applicable best practices and recommendations are included here.

Alcohol

Several organizations used or appeared to use CGF funds to obtain alcohol. While the Division of Audit does not recommend that CGF awards be made contingent on the absence of alcohol from events hosted by the organization, alcohol should not be purchased with CGF funds. The Division of Audit found dozens of alcohol purchases that appeared to be personal in nature and several more which likely violated NYS Alcoholic Beverage Control Laws. Furthermore, the NYS Comptroller has long held that alcohol is not a "lawful county charge", meaning that government officials and employees may not use taxpayer funds to purchase alcohol. The Division of Audit sees no reason that organizations receiving taxpayer funds should be treated differently.

Debit Cards

Credit cards, particularly with smaller organizations, can provide a critical layer of expense control. The Division of Audit found a large quantity of small-dollar expenses appearing personal in nature. If a debit card is used, the money is gone by the time statements are typically reviewed, while a credit card bill often needs to be paid and approved by the organization's board of directors.

Alternate Funding Sources and Segregation of Accounts

Organizations may have several sources of governmental or philanthropic funding. One way to ensure that CGF funds go farthest is to tailor awards to the needs of the organization. Such an assessment would require applicants to provide certain financial documents covering prior years and a disclosure of current year funding applications. Furthermore, accounts received from Erie County should not be comingled with the other funds of the organization. Having source information upfront and requiring the segregation of accounts substantially decreases the likelihood of wasted CGF funds.

ORCHARD PARK SYMPHONY ORCHESTRA

BACKGROUND

The Orchard Park Symphony Orchestra (OPSO) is a 501(c)(3) non-profit organization established in 1949 by a group of musicians as part of Orchard Park's Central School District's adult education program. The organization draws a group of both amateur and professional musicians and has become one of the hallmark musical attractions in Western New York.

OPSO received \$4,615 in Cultural Grant Funding (CGF) for the years 2020 and 2021, and \$6,000 in CGF for the year 2022.

AUDITOR'S OBSERVATIONS

OPSO is a musical group composed of professional and amateur musicians that produce a series of concerts each year. Musicians in the group play a large variety of brass, string, and woodwind instruments and host four concerts each year as part of its scheduled programming. Concerts held include an autumn, Christmas and winter concert, as well as a spring concert produced in collaboration with the Southtowns Youth Orchestra. All performances take place at Orchard Park Middle School or Orchard Park High School.

The primary source of funding for OPSO is generated from private donations, which are received from individuals as well as corporations in the form of sponsorships. Programming income is also generated through ticket sales, as all concerts are ticketed events. OPSO sells season tickets as well as individual concert tickets each year.

Within the organization, a committee known as the Orchard Park Symphony Women's Committee (Women's Committee) was founded in 1957 to promote attendance at concerts and to provide hospitality as well as assistance to the orchestra. The Women's Committee is currently responsible for all fundraising events, post-concert receptions, annual plant sales, scholarship competitions, community service events and functions such as the anniversary gala. The Women's Committee functions within OPSO but has its own separate bank account and financial records.

AUDITOR'S CONCLUSION

During the grant monitoring review process, OPSO was able to provide the Auditor with adequate substantiation for use of CGF awards for the years funding was received. Documentation provided by the organization to substantiate expenses and use of funding included copies of bank statements, cancelled checks, tax return documents, and information return documentation.

CGF awards are allocated by the organization towards the stipend paid to the Executive Director. The Executive Director functions as an independent contractor for the organization. OPSO currently has a Board of Directors consisting of fifteen members, with an executive committee of seven members. Board terms are three years in length, and there is currently no limit to the number of terms that can be served. While Board terms can extend for lengthy periods of time, there appears to be an adequate level of internal controls as the organization segregates duties and responsibilities, and the Board performs appropriate reviews of expenses incurred and income received.

Based on a review of the organization's records, it was determined that the Executive Director is paid in the form of a stipend as an independent contractor. A review of the contract drafted for the executive director by the organization combined with a review of the functions performed by the individual suggested that the nature of the work performed is potentially miscategorized. The duties and responsibilities of the executive director appear to meet the guidelines of a wage-earning employee. The Auditor advised the organization to consult their accounting professional as well as additional federal and state guidance regarding employee and subcontractor classification to ensure compliance.

At the conclusion of the grant review, the Auditor was able to determine that OPSO is currently in compliance with the filing of all returns, the issuance of information return documents and other federal and state obligations.

Erie County Legislature
Meeting Date: 06/20/2024

SUBJECT

COMM. 12E-3

COMPTROLLER

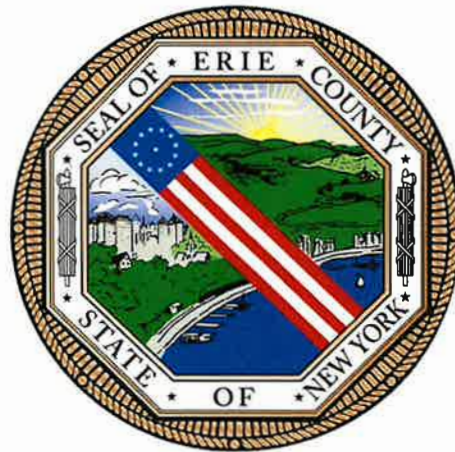
EC Cultural Funding Grant Monitoring
Program - Theatre of Youth

Attachments

24COMM. 12E-3

June 2024

**Erie County Cultural Funding Grant
Monitoring Program
Theatre of Youth
January 1, 2020 through December 31, 2022**



**HON. KEVIN R. HARDWICK
ERIE COUNTY COMPTROLLER**

**HON. KEVIN R. HARDWICK
ERIE COUNTY COMPTROLLER'S OFFICE
DIVISION OF AUDIT & CONTROL
95 FRANKLIN STREET
BUFFALO, NEW YORK 14202**



June 10, 2024

Erie County Legislature
92 Franklin Street, Fourth Floor
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Dear Honorable Members:

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2023 – 2024 Program

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Monitoring Program – Phase I

ACT #	APPROPRIATION	VENUE NUMBER	TAX YEAR 2019	TAX YEAR 2020	TAX YEAR 2021	TAX YEAR 2022
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518146	Polish Arts Club Of Buffalo Inc	106132	\$ 7,000.00	\$ 7,000.00	\$ 3,800.00	
518147	Preservation Buffalo Niagara	147509	\$ 4,615.00	\$ 4,615.00	\$ 6,000.00	
518180	Springville Center For The Arts	113308	\$ 30,505.00	\$ 20,505.00	\$ 16,000.00	
518164	Squeaky Wheel	101266	\$ 20,920.00	\$ 20,920.00	\$ 27,000.00	
518172	Theodore Roosevelt Inaugural Site	106552	\$ 32,320.00	\$ 32,320.00	\$ 37,000.00	
518176	Ujima Company	101047	\$ 83,000.00	\$ 83,000.00	\$ 57,714.00	
518180	Western New York Artists Group	108295	\$ 6,275.00	\$ 6,275.00	\$ 7,500.00	
518181	WNY Book Arts Collaborative, Inc	135959	\$ 4,640.00	\$ 4,640.00	\$ 6,000.00	
518184	Young Audiences Of WNY	109818	\$ 10,500.00	\$ 18,900.00	\$ 14,000.00	
518196	Buffalo Niagara Heritage Village	151996	\$ 18,500.00	\$ 18,500.00	\$ 24,500.00	
518200	Michigan St African Amer Heritage	152576	\$ 15,300.00	\$ 15,000.00	\$ 32,500.00	
518201	General Pulesti Association	103060	\$ 10,000.00	\$ 11,000.00	\$ 12,500.00	
518204	Brighton Place, Inc	156194	\$ 10,000.00	\$ 16,000.00	\$ 20,000.00	
518211	Hispanic Heritage Council of WNY	159305	\$ 12,000.00	\$ 20,000.00	\$ 24,500.00	
518216	Black Rock Historical Society (Black Rock-Riverside Alliance)	170369	\$ 22,500.00	\$ 7,500.00	\$ 10,000.00	
518223	Centro Culturale Italiano di Buffalo	167500	\$ 25,000.00	\$ 20,000.00	\$ 15,000.00	
518549	South Buffalo Irish Feis/Can You Dig	113041	\$ 18,000.00	\$ 15,000.00	\$ 15,000.00	
518596	Net Positive DBA The Foundry	168005	\$ 5,000.00	\$ -	\$ 5,000.00	

Monitoring Program – Phase II

ACT #	APPROPRIATION	VENUE NUMBER	TAX YEAR 2019	TAX YEAR 2020	TAX YEAR 2021	TAX YEAR 2022
517533	Buffalo Olmsted Parks Conservancy	140237	\$ 25,910.00	\$ 25,910.00	\$ 35,000.00	
518008	Albright-Knox Art Gallery	108707	\$ 575,000.00	\$ 575,000.00	\$ 675,000.00	
518009	Albright-Knox Public Art Curator	147228	\$ 58,250.00	\$ 68,250.00	\$ -	
518025	Assembly House 150, Inc	167747	\$ 1,000.00	\$ 1,000.00	\$ 6,500.00	
518034	Buffalo & Erie County Botanical Garden	108743	\$ 102,000.00	\$ 125,000.00	\$ 150,000.00	
518036	Buffalo & Erie Co Historical Society	108772	\$ 417,000.00	\$ 667,000.00	\$ 417,000.00	
518052	Buffalo & Erie County Naval & Servicemans Park	109339	\$ 35,000.00	\$ 35,000.00	\$ 50,000.00	
518060	Buffalo Philharmonic Orch Society	101032	\$ 926,000.00	\$ 926,000.00	\$ 940,000.00	
518061	Buffalo Philharmonic Chorus	109754	\$ 34,500.00	\$ 34,500.00	\$ 35,000.00	
518064	Buffalo Society Natural Sciences	109767	\$ 955,000.00	\$ 955,000.00	\$ 955,000.00	
518065	Buffalo String Works, Inc	167853	\$ 3,500.00	\$ 3,500.00	\$ 5,355.00	
518068	Burchfield Penney Art Center	101004	\$ 155,000.00	\$ 155,000.00	\$ 160,000.00	
518072	Center for Exploratory and Perceptu	109934	\$ 55,000.00	\$ 55,000.00	\$ 83,000.00	
518082	Danceability	156439	\$ 2,500.00	\$ -	\$ 5,500.00	
518096	Explore & More Children's Museum	102758	\$ 42,000.00	\$ 42,000.00	\$ 78,000.00	
518108	Haliwalls Contemporary Arts Center	108598	\$ 57,000.00	\$ 57,000.00	\$ 60,000.00	
518112	Hamburg Nat Hist Society/Penn Dixie	103282	\$ 98,314.00	\$ 96,314.00	\$ 96,314.00	
518116	Irish Classical Theatre Company	103727	\$ 83,500.00	\$ 83,500.00	\$ 93,500.00	
518124	D Youville College Kavinsky Theater	109341	\$ 11,750.00	\$ -	\$ 9,500.00	
518128	Lancaster Opera House	111681	\$ 45,300.00	\$ 30,300.00	\$ 35,000.00	
518140	MusicalFare Theatre	109308	\$ 61,250.00	\$ 61,250.00	\$ 66,000.00	
518141	New Phoenix Theatre	109342	\$ 7,500.00	\$ 7,500.00	\$ -	
518144	Road Less Traveled Productions	110404	\$ 63,500.00	\$ 63,500.00	\$ 67,000.00	
518152	Roycroft Campus Cooperation	118213	\$ 50,000.00	\$ 40,000.00	\$ 50,000.00	
518156	Shakespeare in The Park	106675	\$ 95,000.00	\$ 95,000.00	\$ 95,000.00	
518168	Theatre Of Youth	109888	\$ 69,400.00	\$ 69,400.00	\$ 74,000.00	
518173	Torn Space Theatre	113679	\$ 20,460.00	\$ 15,460.00	\$ 29,500.00	
518188	Zoological Society Of Buffalo	108623	\$ 1,500,000.00	\$ 1,500,000.00	\$ 1,700,000.00	
518195	Orchard Park Symphony Orchestra	147747	\$ 4,515.00	\$ 4,515.00	\$ 6,000.00	
518202	Buffalo Opera Unlimited Incorporated	155873	\$ 2,300.00	\$ 2,300.00	\$ 10,000.00	
518203	Buffalo-Toronto Public Media WNEP/WBFO	175909	\$ 1,750.00	\$ -	\$ 5,000.00	
518205	Cheektowaga Comm Symphony Orchestra	109177	\$ -	\$ 7,500.00	\$ -	
518209	Newstead Historical Society	105518	\$ 5,500.00	\$ 3,500.00	\$ 5,000.00	
518213	O'Connell & Company Productions	159162	\$ 23,100.00	\$ 23,100.00	\$ 31,500.00	
518219	Amherst Male Glee Club dba Red Blazer Men's Chorus	102005	\$ 3,000.00	\$ 3,000.00	\$ 6,000.00	
518221	Buffalo Center for Arts and Technology	152207	\$ 3,000.00	\$ 3,000.00	\$ 7,500.00	
518226	Cheektowaga Historical Association	163121	\$ 3,250.00	\$ 6,250.00	\$ 6,100.00	
518229	Second Generation Theatre Company	164957	\$ 2,020.00	\$ 2,020.00	\$ 5,000.00	
518230	Steel Plant Museum of Western New York	147740	\$ 2,020.00	\$ 2,020.00	\$ 5,000.00	
518203	Alden Christian Theater Society	114358	\$ 10,000.00	\$ -	\$ 3,000.00	
518514	Clarence Concert Association	101711	\$ 3,500.00	\$ -	\$ 3,000.00	
518515	Clarence Museum (Historical Soc of the Town of Clarence)	113067	\$ 5,500.00	\$ -	\$ 6,000.00	

BEST PRACTICES

Over the course of the Monitoring Program, the Division of Audit found a number of problematic practices and questionable expense categories on a recurring basis. In order to address issues pertaining to a large number of organizations, certain generally applicable best practices and recommendations are included here.

Alcohol

Several organizations used or appeared to use CGF funds to obtain alcohol. While the Division of Audit does not recommend that CGF awards be made contingent on the absence of alcohol from events hosted by the organization, alcohol should not be purchased with CGF funds. The Division of Audit found dozens of alcohol purchases that appeared to be personal in nature and several more which likely violated NYS Alcoholic Beverage Control Laws. Furthermore, the NYS Comptroller has long held that alcohol is not a "lawful county charge", meaning that government officials and employees may not use taxpayer funds to purchase alcohol. The Division of Audit sees no reason that organizations receiving taxpayer funds should be treated differently.

Debit Cards

Credit cards, particularly with smaller organizations, can provide a critical layer of expense control. The Division of Audit found a large quantity of small-dollar expenses appearing personal in nature. If a debit card is used, the money is gone by the time statements are typically reviewed, while a credit card bill often needs to be paid and approved by the organization's board of directors.

Alternate Funding Sources and Segregation of Accounts

Organizations may have several sources of governmental or philanthropic funding. One way to ensure that CGF funds go farthest is to tailor awards to the needs of the organization. Such an assessment would require applicants to provide certain financial documents covering prior years and a disclosure of current year funding applications. Furthermore, accounts received from Erie County should not be comingled with the other funds of the organization. Having source information upfront and requiring the segregation of accounts substantially decreases the likelihood of wasted CGF funds.

THEATRE OF YOUTH

BACKGROUND

Theatre of Youth (TOY) is a 501(c)(3) non-profit organization in the performing arts sector established in 1972 by a pair of college instructors in Buffalo. TOY is a professional theatre company which produces theatrical and musical productions targeted towards school-aged children from kindergarten to 12th grade, based on children's literature and other topics.

TOY received \$69,400 in Cultural Grant Funding (CGF) for the years 2020 and 2021, and \$74,000 in CGF for the year 2022.

AUDITOR'S OBSERVATIONS

TOY is an educational professional theater dedicated to serving children and young people through child-centered, professionally produced theater programs. In addition to the performance of plays and musical productions, the organization hosts events such as family activities and summer educational workshops in areas such as visual media, storytelling, playwriting and production. TOY also performs one sensory show per production season in order to accommodate children with sensory challenges or other related disabilities.

TOY produces three or four plays and musicals each season. TOY also collaborates with other local theaters for large-scale or more costly productions.

Ticket sales and funding from grants and foundations are the major sources of funding for TOY. The organization does not issue memberships or season tickets as productions are focused on different target audiences. The organization is currently exploring fundraising ideas and opportunities that will fall within the scope of its mission. TOY wants to ensure that events hosted are focused on children. The organization also holds an annual appeal for donations. Due to children aging out of the target audience, individual donations make up a much smaller portion of the organization's revenue.

AUDITOR'S CONCLUSION

During the grant monitoring review process, TOY was able to provide the Auditor with adequate substantiation for use of CGF for each year under review. Documentation provided by the organization included copies of bank statements, business credit card statements, payroll records, general ledgers, copies of tax returns and invoices as substantiation for expenses incurred.

CGF awards received by TOY for the years under review are allocated to offset the cost of annual operating expenses such as wages, insurance costs and production expenses. The operating expenses exceeded the funding amount received for each of the years covered under review and therefore compliant with the County's contract.

TOY currently has a Board of Directors consisting of nine members. Board terms are three years, and members can serve up to two consecutive terms. The organization has a total of two employees who handle all financial matters. Even with a small staff, the organization appears to have an adequate level of internal controls and properly segregates responsibilities. During the review of the organization's financial records, the Auditor did not identify any questionable expenses.

At the conclusion of the grant review, the Auditor was able to determine that TOY is currently in compliance with the filing of all returns, the issuance of information return documents and other federal and state obligations.

Erie County Legislature
Meeting Date: 06/20/2024

SUBJECT

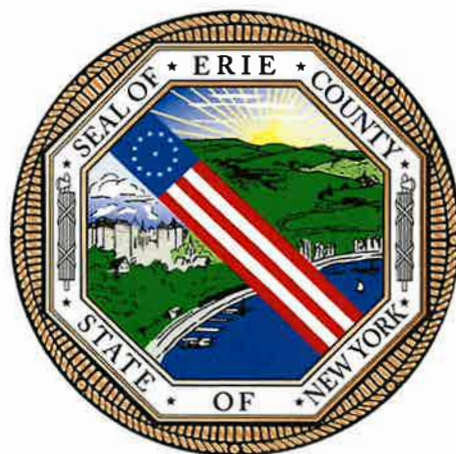
COMM. 12E-4	COMPTROLLER	EC Cultural Funding Grant Monitoring Program - Hispanic Heritage Council of WNY, Inc.
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Attachments

24COMM. 12E-4

June 2024

**Erie County Cultural Funding Grant
Monitoring Program
Hispanic Heritage Council of Western New York, Inc.
January 1, 2020 through December 31, 2022**



**HON. KEVIN R. HARDWICK
ERIE COUNTY COMPTROLLER**

**HON. KEVIN R. HARDWICK
ERIE COUNTY COMPTROLLER'S OFFICE
DIVISION OF AUDIT & CONTROL
95 FRANKLIN STREET
BUFFALO, NEW YORK 14202**



June 10, 2024

Erie County Legislature
92 Franklin Street, Fourth Floor
Buffalo, New York 14202

Dear Honorable Members:

In 2023, the Erie County Comptroller's Office, Division of Audit & Control initiated a regular Monitoring Program of Erie County Cultural Funding Grants. The Erie County Cultural Funding program provides annual grants to non-profit arts and cultural organizations operating within the County. County funds are intended to be limited in their use to current operating expenses including salaries, program costs, fringe benefits, rents, utilities, office supplies, and equipment. Grant funds may not be used for or applied towards capital projects or physical improvements of buildings or facilities, nor as a revenue offset against accounts receivable. No funds received shall be used for any services provided or activities performed outside Erie County. The County's Department of Environment and Planning executes contracts with organizations and is the primary agency charged with monitoring.

Objective

The objective of the Cultural Funding Monitoring Program is to verify that the recipients have utilized County funds according to the terms and conditions associated with the Erie County Cultural Funding grant process and the recipient's contract with the County. In order to verify the proper use of the grant award, a number of agencies were selected in order to review their expenses and financial records.

Scope and Methodology

Approximately 120 different organizations receive funding annually from Erie County. The Comptroller's Cultural Funding Grant Monitoring Program is intended to review organizations that received a minimum of \$5,000 in funding during any of the three prior years. Approximately 80 agencies were identified as receiving \$5,000 or more in grant funding. The list of recipient organizations was split into two groups of approximately 40 agencies. The first batch of letters announcing the commencement of a review was sent to the selected non-profit organizations during mid-February 2023, and a second batch was sent in early October 2023. The review of all agencies is expected to be completed by October 31, 2024.

2023 – 2024 Program

During the interview phase, the Auditor identifies use of funding to narrow down the expenses to be verified. A table of agencies which meet the criteria for review along with the amount of grant awards can be found on the following page.

Monitoring Program – Phase I

ACT #	APPROPRIATION	WINDOW NUMBER	TAX YEAR 2021	TAX YEAR 2022	TAX YEAR 2023	TAX YEAR 2024
	Enlightenment Literary Arts Center &					
517125	Dog Ears Bookstore	152185	\$ 28,500.00	\$ 36,600.00	\$ 35,000.00	
518004	African American Cultural Center	112604	\$ 275,450.00	\$ 311,950.00	\$ 200,000.00	
518032	Alleyway Theatre	109340	\$ 8,500.00	\$ 8,500.00	\$ 11,200.00	
518016	American Legion Band of	100379	\$ 7,500.00	\$ 7,500.00	\$ 45,000.00	
518037	Amherst Symphony Orchestra	100475	\$ 32,500.00	\$ 26,750.00	\$ 28,740.00	
518039	Arts Services Initiative of WNY Inc	147159	\$ 26,050.00	\$ 26,050.00	\$ 30,000.00	
518028	Ballet Artists Of WNY (Neglia)	100794	\$ 24,000.00	\$ 24,000.00	\$ 30,000.00	
	Buffalo Arts Studio (Arts Studio of					
518040	Western New York, Inc)	101244	\$ 38,000.00	\$ 45,500.00	\$ 53,000.00	
519044	Buffalo Inner City Ballet Co. Inc	108597	\$ 27,000.00	\$ 27,000.00	\$ 27,000.00	
518050	Buffalo Music Hall of Fame	113142	\$ 4,500.00	\$ -	\$ 5,900.00	
518051	Buffalo Heritage Carousel	167829	\$ 30,000.00	\$ 30,000.00	\$ 35,000.00	
518074	Colored Musicians Club	130277	\$ 5,000.00	\$ -	\$ 12,500.00	
518082	El Museo Gallery	109836	\$ 12,585.00	\$ 8,585.00	\$ 11,000.00	
518104	GrayCliff Conservancy	103197	\$ 59,200.00	\$ 59,200.00	\$ 60,000.00	
518113	Hull House Foundation	143473	\$ 15,375.00	\$ 5,375.00	\$ 7,500.00	
	Jewish Community Center Cultural					
518119	(Jewish Ctr of Greater Buff)	111236	\$ 13,500.00	\$ 8,750.00	\$ 13,500.00	
518120	Just Buffalo Literacy Center	108577	\$ 78,100.00	\$ 78,100.00	\$ 83,500.00	
518132	Locust St Neighborhood Art Classes	109985	\$ 29,250.00	\$ 25,250.00	\$ 28,500.00	
518136	Martin House Restoration	104683	\$ 173,500.00	\$ 173,500.00	\$ 190,000.00	
518139	Music Is Art	139615	\$ 48,000.00	\$ 48,000.00	\$ 39,000.00	
518146	Polish Arts Club Of Buffalo Inc	106132	\$ 7,000.00	\$ 7,000.00	\$ 3,600.00	
518147	Preservation Buffalo Niagara	147509	\$ 4,615.00	\$ 4,615.00	\$ 6,000.00	
518160	Springville Center For The Arts	113308	\$ 30,505.00	\$ 20,505.00	\$ 36,000.00	
518164	Squeaky Wheel	101268	\$ 20,920.00	\$ 20,920.00	\$ 27,000.00	
518172	Theodore Roosevelt Inaugural Site	106552	\$ 32,320.00	\$ 32,320.00	\$ 37,000.00	
518176	Ujima Company	101047	\$ 83,000.00	\$ 83,000.00	\$ 57,714.00	
518180	Western New York Artists Group	106295	\$ 8,275.00	\$ 8,275.00	\$ 7,500.00	
518181	WNY Book Arts Collaborative, Inc	135559	\$ 4,640.00	\$ 4,640.00	\$ 6,000.00	
518184	Young Audiences Of WNY	109818	\$ 10,500.00	\$ 10,500.00	\$ 14,000.00	
518196	Buffalo Niagara Heritage Village	151996	\$ 18,500.00	\$ 18,500.00	\$ 24,500.00	
518200	Michigan Str African Amer Heritage	152375	\$ 15,000.00	\$ 15,000.00	\$ 32,500.00	
518201	General Pulaski Association	103060	\$ 10,000.00	\$ 11,000.00	\$ 12,500.00	
518204	Brighton Place, Inc	156194	\$ 10,000.00	\$ 16,000.00	\$ 20,000.00	
518211	Hispanic Heritage Council of WNY	159305	\$ 12,000.00	\$ 20,000.00	\$ 24,500.00	
	Black Rock Historical Society (Black					
518216	Rock-Riverside Alliance)	170369	\$ 22,500.00	\$ 7,500.00	\$ 10,000.00	
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518249	South Buffalo Irish Feis/Can You Dig	113041	\$ 19,000.00	\$ 15,000.00	\$ 15,000.00	
518598	Net Positive DBA The Foundry	168005	\$ 5,000.00	\$ -	\$ 5,000.00	

Monitoring Program – Phase II

ACT #	APPROPRIATION	WINDOW NUMBER	TAX YEAR 2021	TAX YEAR 2022	TAX YEAR 2023	TAX YEAR 2024
517533	Buffalo Olmsted Parks Conservancy	140237	\$ 25,910.00	\$ 25,910.00	\$ 35,000.00	
518008	Albright-Knox Art Gallery	108707	\$ 575,000.00	\$ 575,000.00	\$ 675,000.00	
518009	Albright-Knox Public Art Curator	147228	\$ 88,250.00	\$ 88,250.00	\$ -	
518025	Assembly House 190, Inc	167747	\$ 1,000.00	\$ 1,000.00	\$ 6,500.00	
518034	Buffalo & Erie County Botanical Garden	108745	\$ 102,000.00	\$ 125,000.00	\$ 150,000.00	
518036	Buffalo & Erie Co Historical Society	108772	\$ 417,000.00	\$ 667,000.00	\$ 417,000.00	
	Buffalo & Erie County Naval & Servicemans					
518052	Park	109339	\$ 35,000.00	\$ 35,000.00	\$ 50,000.00	
518060	Buffalo Philharmonic Orch Society	101032	\$ 926,000.00	\$ 926,000.00	\$ 940,000.00	
518061	Buffalo Philharmonic Chorus	109796	\$ 34,500.00	\$ 34,500.00	\$ 35,000.00	
518064	Buffalo Society Natural Sciences	109767	\$ 955,000.00	\$ 955,000.00	\$ 955,000.00	
518065	Buffalo String Works, Inc	167855	\$ 3,500.00	\$ 3,500.00	\$ 3,355.00	
518068	Butchfield Penney Art Center	101004	\$ 155,000.00	\$ 155,000.00	\$ 160,000.00	
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518082	Danceability	156639	\$ 2,500.00	\$ 5,000.00	\$ 3,000.00	
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518108	Hallwalls Contemporary Arts Center	108598	\$ 57,000.00	\$ 57,000.00	\$ 60,000.00	
518112	Hamburg Nat Hist Society/Penn-Delaw	101282	\$ 98,314.00	\$ 96,314.00	\$ 98,314.00	
518116	Irish Classical Theatre Company	103727	\$ 83,500.00	\$ 83,500.00	\$ 93,500.00	
518124	O'Connell College Kavinsky Theater	109341	\$ 11,750.00	\$ -	\$ 9,000.00	
518128	Lancaster Opera House	111881	\$ 45,300.00	\$ 30,300.00	\$ 35,000.00	
518140	Musical Arts Theatre	105308	\$ 61,525.00	\$ 61,525.00	\$ 66,000.00	
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518152	Roycroft Campus Cooperation	118213	\$ 50,000.00	\$ 40,000.00	\$ 50,000.00	
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518168	Theatre Of Youth	109688	\$ 69,400.00	\$ 69,400.00	\$ 74,000.00	
518173	Torn Space Theatre	142673	\$ 20,400.00	\$ 15,400.00	\$ 29,500.00	
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518226	Cheektowaga Historical Association	163121	\$ 3,250.00	\$ 6,250.00	\$ 6,100.00	
518239	Second Generation Theatre Company	164957	\$ 2,020.00	\$ 2,020.00	\$ 5,000.00	
518230	Steel Plant Museum of Western New York	147750	\$ 2,020.00	\$ 2,020.00	\$ 3,000.00	
518503	Alden Christian Theater Society	114358	\$ 10,000.00	\$ -	\$ 3,000.00	
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	Clarence Museum (Historical Soc of the					
518515	Town of Clarence)	113067	\$ 5,500.00	\$ -	\$ 6,000.00	

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HISPANIC HERITAGE COUNCIL OF WESTERN NEW YORK, INC.

BACKGROUND

The Hispanic Heritage Council of Western New York (HHC) is a 501(c)(3) non-profit organization established in 2010. The stated mission of the organization is to foster and inspire awareness, understanding and appreciation of past, present and future contributions of the Hispanic community in Western New York and to support local Hispanic heritage by promoting the food, dance, music and other forms of cultural entertainment and exhibits in community events.

The HHC received \$12,000 in Cultural Grant Funding (CGF) for the year 2020, \$20,000 for the year 2021, and \$24,500 for the year 2022. CGF awarded to HHC for the year 2020 was \$4,000 above the executive recommendation, and funding awarded for the years 2021 and 2022 was \$12,000 above the executive recommendation for both years. While outside of the scope of this review, HHC was also awarded a capital improvement grant for \$500,000 to be used towards the building of the Hispanic Heritage Cultural Institute (HHCI) on Hudson Street in the City of Buffalo.

AUDITOR'S OBSERVATIONS

HHC is an organization that focuses on promoting Hispanic culture through events focused on music, food, dance and entertainment. The Three Kings Celebration, Spanish Language Day, Borinqueñeers Day, Day of the Child, Parranda Buffalo, Day of the Dead and Hispanic Heritage Month are some of the main recurring events organized by HHC focused on the Hispanic culture and provided to the community at no cost.

Grants, sponsorships and donations are some of the major sources of funding for the HHC. The Hispanic Heritage Community Breakfast is one of the primary annual fundraising events for the organization. The majority of the revenue generated from this event is secured in the form of sponsorships and donations. The Hispanic Heritage Breakfast focuses on updating the community and sponsors on the organization's accomplishments, milestones, and future projects. During this event the organization also honors the current recipient of the Ralph R. Hernandez Bilingual Education Scholarship, awarded each year to a high school or college student pursuing an Education Degree.

HHC is currently working on the construction of the Hispanic Heritage Cultural Institute (HHCI). The HHCI will feature a learning center, art gallery, museum, a performing arts theater, media center, café, gift shop, administrative and event spaces. The project broke ground in the fall of 2023. A capital campaign was initially organized to secure \$10 million dollars for a 33,000 square foot building. Based on more recent public

information, the project has expanded to a 37,000 sq. ft. building and has increased the cost to \$30 million dollars. Millions of dollars have been secured or pledged from organizations such as Western New York Regional Economic Development, Empire State Development, New York Power Authority, Erie County and the City of Buffalo.

AUDITOR'S CONCLUSION

During the grant monitoring review process, HHC provided the Auditor with copies of financial reports, bank statements and copies of cancelled checks corresponding to the expenses identified by the organization as those paid for with the CGF awards.

CGF awards received by the organization are generally allocated towards general operating expenses, primarily towards the expenses incurred for rents, internet, expenses for the Guitar Initiative Program and miscellaneous supplies.

Based on the information and documentation provided, the Auditor was able to partially verify expenses incurred as a portion of selected documentation was unavailable from the organization. Ample time was provided for the submission of the requested documentation before the grant review was completed.

A review of the organization's tax returns indicated that all revenue received is calculated together. Breakdowns such as program service revenue or fundraising revenue are not adequately computed. Expenses for the organization are also categorized as a single expense. Categorization of expenses as outlined in IRS Form 990 should be followed.

HHC currently has a Board of Directors consisting of eight members. Board members are limited to two three-year terms, which can be served consecutively. The organization prepares a chart which highlights the skills and professional expertise needed by the organization to ensure that recruitment efforts focus on filling those needs. The Board conducts regular meetings and reviews the organization's financials and the status of upcoming projects. The organization employs dual signature authorization for most of the checks written.

At the conclusion of the grant review, the Auditor was able to verify the HHC is currently in compliance with the filing of all federal and state tax returns. The Auditor was not able to verify compliance with the issuance and filing of information return documents as they were not provided for review.

Erie County Legislature
Meeting Date: 06/20/2024

SUBJECT

COMM. 12E-5

COMPTROLLER

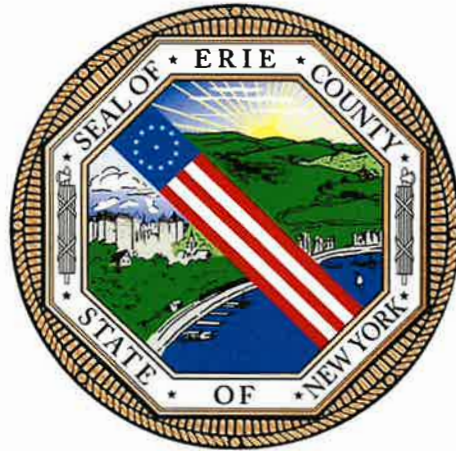
EC Cultural Funding Grant Monitoring
Program - Clarence Concert Association

Attachments

24COMM. 12E-5

June 2024

**Erie County Cultural Funding Grant
Monitoring Program
Clarence Concert Association
January 1, 2020 through December 31, 2022**



**HON. KEVIN R. HARDWICK
ERIE COUNTY COMPTROLLER**

**HON. KEVIN R. HARDWICK
ERIE COUNTY COMPTROLLER'S OFFICE
DIVISION OF AUDIT & CONTROL
95 FRANKLIN STREET
BUFFALO, NEW YORK 14202**



June 10, 2024

Erie County Legislature
92 Franklin Street, Fourth Floor
Buffalo, New York 14202

Dear Honorable Members:

In 2023, the Erie County Comptroller's Office, Division of Audit & Control initiated a regular Monitoring Program of Erie County Cultural Funding Grants. The Erie County Cultural Funding program provides annual grants to non-profit arts and cultural organizations operating within the County. County funds are intended to be limited in their use to current operating expenses including salaries, program costs, fringe benefits, rents, utilities, office supplies, and equipment. Grant funds may not be used for or applied towards capital projects or physical improvements of buildings or facilities, nor as a revenue offset against accounts receivable. No funds received shall be used for any services provided or activities performed outside Erie County. The County's Department of Environment and Planning executes contracts with organizations and is the primary agency charged with monitoring.

Objective

The objective of the Cultural Funding Monitoring Program is to verify that the recipients have utilized County funds according to the terms and conditions associated with the Erie County Cultural Funding grant process and the recipient's contract with the County. In order to verify the proper use of the grant award, a number of agencies were selected in order to review their expenses and financial records.

Scope and Methodology

Approximately 120 different organizations receive funding annually from Erie County. The Comptroller's Cultural Funding Grant Monitoring Program is intended to review organizations that received a minimum of \$5,000 in funding during any of the three prior years. Approximately 80 agencies were identified as receiving \$5,000 or more in grant funding. The list of recipient organizations was split into two groups of approximately 40 agencies. The first batch of letters announcing the commencement of a review was sent to the selected non-profit organizations during mid-February 2023, and a second batch was sent in early October 2023. The review of all agencies is expected to be completed by October 31, 2024.

2023 – 2024 Program

During the interview phase, the Auditor identifies use of funding to narrow down the expenses to be verified. A table of agencies which meet the criteria for review along with the amount of grant awards can be found on the following page.

Monitoring Program – Phase I

ACT #	APPROPRIATION	VENDOR NUMBER	TAX YEAR 2020	TAX YEAR 2021	TAX YEAR 2022
	Enlightenment Literary Arts Center & Dog Ears Bookstore	152183	\$ 28,600.00	\$ 36,600.00	\$ 35,000.00
518004	African American Cultural Center	112604	\$ 275,450.00	\$ 311,950.00	\$ 200,000.00
518012	Alleyway Theatre	109340	\$ 8,500.00	\$ 8,500.00	\$ 11,000.00
518016	American Legion Band of	100379	\$ 7,500.00	\$ 7,500.00	\$ 45,000.00
518017	Amherst Symphony Orchestra	100475	\$ 32,500.00	\$ 26,750.00	\$ 28,740.00
518019	Arts Services Initiative of WNY Inc	147159	\$ 26,050.00	\$ 26,050.00	\$ 30,000.00
51802E	Ballet Artists Of WNY (Inglia)	100794	\$ 24,000.00	\$ 24,000.00	\$ 30,000.00
	Buffalo Arts Studio (Arts Studio of Western New York, Inc)	101244	\$ 38,000.00	\$ 45,500.00	\$ 53,000.00
518044	Buffalo Inner City Ballet Co, Inc	108597	\$ 27,000.00	\$ 27,000.00	\$ 27,000.00
518050	Buffalo Music Hall of Fame	113142	\$ 4,500.00	\$ -	\$ 5,500.00
518051	Buffalo Heritage Carousel	167829	\$ 30,000.00	\$ 30,000.00	\$ 35,000.00
518074	Colored Musicians Club	130377	\$ 5,000.00	\$ -	\$ 12,500.00
518084	El Museo Gallery	109336	\$ 12,583.00	\$ 8,585.00	\$ 11,000.00
518304	Graycliff Foundation	303197	\$ 59,200.00	\$ 59,200.00	\$ 60,000.00
518113	Hull House Foundation	143473	\$ 15,375.00	\$ 5,375.00	\$ 7,500.00
	Jewish Community Center Cultural	111239	\$ 13,500.00	\$ 8,750.00	\$ 13,500.00
518119	Jewish Ctr of Greater Buff	108577	\$ 78,100.00	\$ 78,100.00	\$ 83,500.00
518120	Just Buffalo Literacy Center	109985	\$ 29,250.00	\$ 25,250.00	\$ 28,500.00
518132	Locust St Neighborhood Art Classes	104883	\$ 175,500.00	\$ 175,500.00	\$ 190,000.00
518136	Martin House Restoration	139615	\$ 48,000.00	\$ 48,000.00	\$ 39,000.00
518139	Musicians Art	106132	\$ 7,000.00	\$ 7,000.00	\$ 3,800.00
518146	Polish Arts Club Of Buffalo Inc	147509	\$ 4,615.00	\$ 4,615.00	\$ 6,000.00
518147	Preservation Buffalo Niagara	113308	\$ 30,505.00	\$ 20,505.00	\$ 26,000.00
518160	Springville Center For The Arts	101268	\$ 20,920.00	\$ 20,920.00	\$ 27,000.00
518172	Theodore Roosevelt Inaugural Site	106532	\$ 32,320.00	\$ 32,320.00	\$ 37,000.00
518176	Ujima Company	101047	\$ 83,000.00	\$ 83,000.00	\$ 57,714.00
518180	Western New York Artists Group	108295	\$ 6,275.00	\$ 6,275.00	\$ 7,500.00
518181	WNY Book Arts Collaborative, Inc	135955	\$ 4,640.00	\$ 4,640.00	\$ 6,000.00
518184	Young Audiences Of WNY	109818	\$ 10,500.00	\$ 10,500.00	\$ 14,000.00
518196	Buffalo Niagara Heritage Village	151996	\$ 18,500.00	\$ 18,500.00	\$ 24,500.00
518200	Michigan St African Amer Heritage	123578	\$ 15,000.00	\$ 15,000.00	\$ 22,500.00
518201	General Pulaski Association	103060	\$ 10,000.00	\$ 11,000.00	\$ 12,500.00
518204	Brighton Place, Inc	156194	\$ 10,000.00	\$ 16,000.00	\$ 20,000.00
518211	Hispanic Heritage Council of WNY	159905	\$ 12,000.00	\$ 20,000.00	\$ 24,500.00
	Black Rock Historical Society (Black Rock-Riverside Alliance)	170366	\$ 22,500.00	\$ 7,500.00	\$ 10,000.00
518233	Centro Culturale Italiano di Buffalo	167500	\$ 25,000.00	\$ 20,000.00	\$ 15,000.00
518549	South Buffalo High Feis/Can You Dig	113041	\$ 15,000.00	\$ 15,000.00	\$ 15,000.00
518596	Net Positive DBA The Foundry	168005	\$ 5,000.00	\$ -	\$ 5,000.00

Monitoring Program – Phase II

ACT #	APPROPRIATION	VENDOR NUMBER	TAX YEAR 2020	TAX YEAR 2021	TAX YEAR 2022
517533	buffalo Olmsted Parks Conservancy	140237	\$ 25,910.00	\$ 25,910.00	\$ 35,000.00
518008	Albright-Knox Art Gallery	108707	\$ 575,000.00	\$ 575,000.00	\$ 675,000.00
518009	Albright-Knox Public Art Curator	147228	\$ 68,250.00	\$ 68,250.00	\$ -
518025	Assembly House 150, Inc	167747	\$ 1,000.00	\$ 1,000.00	\$ 6,500.00
518034	Buffalo & Erie County Botanical Garden	108743	\$ 102,000.00	\$ 123,000.00	\$ 150,000.00
518036	Buffalo & Erie Co Historical Society	108772	\$ 417,000.00	\$ 667,000.00	\$ 417,000.00
	Buffalo & Erie County Naval & Servicemans Park	109339	\$ 35,000.00	\$ 35,000.00	\$ 50,000.00
518050	Buffalo Philharmonic Orch Society	101032	\$ 926,000.00	\$ 926,000.00	\$ 940,000.00
518051	Buffalo Philharmonic Chorus	109798	\$ 34,500.00	\$ 34,500.00	\$ 35,000.00
518064	Buffalo Society Natural Sciences	109767	\$ 955,000.00	\$ 955,000.00	\$ 955,000.00
518065	Buffalo String Works, Inc	167853	\$ 3,500.00	\$ 3,500.00	\$ 5,355.00
518068	Burchfield Penney Art Center	101004	\$ 155,000.00	\$ 155,000.00	\$ 160,000.00
518072	Center for Exploratory and Perceptu	156639	\$ 2,500.00	\$ 5,500.00	\$ 4,000.00
518082	Danceability	109934	\$ 53,000.00	\$ 53,000.00	\$ 53,000.00
518097	Explore & More Children's Museum	102758	\$ 42,000.00	\$ 42,000.00	\$ 78,000.00
518108	Hallwalls Contemporary Arts Center	108598	\$ 57,000.00	\$ 57,000.00	\$ 60,000.00
518112	Hamburg Nat Hist Society/Penn-Dive	103282	\$ 96,314.00	\$ 96,314.00	\$ 96,314.00
518116	Irish Classical Theatre Company	103727	\$ 83,500.00	\$ 83,500.00	\$ 93,500.00
518124	O'Youville Cottage Historical Theatre	109341	\$ 11,750.00	\$ -	\$ 9,500.00
518128	Lancaster Opera House	111581	\$ 45,300.00	\$ 30,300.00	\$ 35,000.00
518140	Musicalfare Theatre	105308	\$ 6,525.00	\$ 6,525.00	\$ 66,000.00
518141	New Phoenix Theatre	109342	\$ 7,500.00	\$ 7,500.00	\$ -
518148	Road Less Traveled Productions	121045	\$ 63,500.00	\$ 63,500.00	\$ 67,000.00
518152	Roycroft Campus Corporation	118213	\$ 50,000.00	\$ 40,000.00	\$ 50,000.00
518156	Shakespeare In The Park	109675	\$ 95,000.00	\$ 95,000.00	\$ 95,000.00
518168	Theatre Of Youth	109488	\$ 69,400.00	\$ 69,400.00	\$ 74,000.00
518173	Torn Space Theatre	143673	\$ 20,460.00	\$ 15,460.00	\$ 29,500.00
518188	Zoological Society Of Buffalo	108623	\$ 1,500,000.00	\$ 1,500,000.00	\$ 1,700,000.00
518195	Orchard Park Symphony Orchestra	147747	\$ 4,515.00	\$ 4,515.00	\$ 6,000.00
518202	Buffalo Opera Unlimited Incorporated	155973	\$ 2,300.00	\$ 2,300.00	\$ 10,000.00
518203	Buffalo-Toronto Public Media WNEP/WBFO	172909	\$ 3,750.00	\$ -	\$ 3,000.00
518205	Cheektowaga Comm Symphony Orchestra	109177	\$ -	\$ 7,500.00	\$ -
518209	Newstead Historical Societs	105518	\$ 5,500.00	\$ 3,500.00	\$ 5,000.00
518213	O'Connell & Company Productions	159162	\$ 23,300.00	\$ 23,300.00	\$ 31,500.00
	Amherst Male Glee Club dba Red Blazer	160045	\$ 3,500.00	\$ 3,000.00	\$ 6,000.00
518219	Men's Chorus	162007	\$ 3,000.00	\$ 3,000.00	\$ 7,500.00
518221	Buffalo Center For Arts and Technology	161121	\$ 3,250.00	\$ 4,250.00	\$ 6,100.00
518226	Cheektowaga Historical Association	161121	\$ 3,250.00	\$ 4,250.00	\$ 6,100.00
518229	Second Generation Theatre Company	164957	\$ 2,020.00	\$ 2,020.00	\$ 5,000.00
518230	Steel Plant Museum of Western New York	147740	\$ 2,020.00	\$ 2,020.00	\$ 5,000.00
518503	Alden Christian Theater Society	114958	\$ 10,000.00	\$ -	\$ 3,000.00
518514	Clarence Concert Association	101711	\$ 3,500.00	\$ -	\$ 5,000.00
518515	Clarence Museum (Historical Soc of the Town of Clarence)	113067	\$ 5,500.00	\$ -	\$ 4,000.00

BEST PRACTICES

Over the course of the Monitoring Program, the Division of Audit found a number of problematic practices and questionable expense categories on a recurring basis. In order to address issues pertaining to a large number of organizations, certain generally applicable best practices and recommendations are included here.

Alcohol

Several organizations used or appeared to use CGF funds to obtain alcohol. While the Division of Audit does not recommend that CGF awards be made contingent on the absence of alcohol from events hosted by the organization, alcohol should not be purchased with CGF funds. The Division of Audit found dozens of alcohol purchases that appeared to be personal in nature and several more which likely violated NYS Alcoholic Beverage Control Laws. Furthermore, the NYS Comptroller has long held that alcohol is not a "lawful county charge", meaning that government officials and employees may not use taxpayer funds to purchase alcohol. The Division of Audit sees no reason that organizations receiving taxpayer funds should be treated differently.

Debit Cards

Credit cards, particularly with smaller organizations, can provide a critical layer of expense control. The Division of Audit found a large quantity of small-dollar expenses appearing personal in nature. If a debit card is used, the money is gone by the time statements are typically reviewed, while a credit card bill often needs to be paid and approved by the organization's board of directors.

Alternate Funding Sources and Segregation of Accounts

Organizations may have several sources of governmental or philanthropic funding. One way to ensure that CGF funds go farthest is to tailor awards to the needs of the organization. Such an assessment would require applicants to provide certain financial documents covering prior years and a disclosure of current year funding applications. Furthermore, accounts received from Erie County should not be comingled with the other funds of the organization. Having source information upfront and requiring the segregation of accounts substantially decreases the likelihood of wasted CGF funds.

CLARENCE CONCERT ASSOCIATION

BACKGROUND

The Clarence Concert Association (CCA) is a 501(c)(3) nonprofit organization established in 1958 by the Town of Clarence as part of the Town's sesquicentennial celebration. The stated mission of CCA is to put music in the heart of the community by introducing children to orchestra and providing seasonal entertainment to the community at no cost.

CCA received \$3,500 in Cultural Grant Funding (CGF) for the year 2020 and \$15,000 for the year 2022. Further review of County records indicated that funding for the year 2022 was received as part of a Legislative Public Benefit Funding award.

AUDITOR'S OBSERVATIONS

CCA is a professional orchestra that provides a full repertoire of seasonal concerts and entertainment at no cost to the public. CCA operates out of the Clarence Town Park, where concerts take place. CCA also performs at the Clarence Middle School Auditorium when weather conditions do not permit outdoor performances.

The Concerts in the Park series is the main programming event hosted annually by the organization. The concert series takes place during the summer months and consists of approximately six admission-free concerts. Approximately 90% of the organization's operating budget expenses are related to the Summer Concert Series. CCA hosts over 1,000 patrons for each concert, with an overall attendance of over 10,000 people each year. CCA was unable to host its Summer Concert Series during 2020 due to the Covid-19 pandemic restrictions. CCA relies on private donations, corporate sponsorships and government grants as its primary sources of funding. CCA receives both financial and physical support from the Town of Clarence in order to support its operation. In addition to donations and grant funding, CCA holds one or two small raffles as well as an annual wine and cheese reception to raise additional operating funds.

CCA collaborates with other musical organizations such as the Buffalo Philharmonic Orchestra, the Amherst Symphony Orchestra and the Orchard Park Symphony Orchestra.

AUDITOR'S CONCLUSION

During the cultural grant monitoring review process, CCA was able to provide adequate documentation to substantiate its use of the CGF award received during each year under review. The organization allocates grant funding towards programming costs, primarily for the payments to the musicians and groups who perform at

their events. CCA did not use the full amount of the CGF it received in 2020 due to the mandatory COVID-19 closure. Some of the excess funds were used to cover the cost of other operating expenses such as printing, postage and supplies. The remainder of the unused funds for 2020 were carried forward to the next year and subsequently allocated towards the musician payments for the year 2021.

CCA has a Board of Directors consisting of 14 members, who meet once per month. Board members are not term limited. Many of the organization's board members have been serving for many years. CCA demonstrated adequate levels of internal controls and separation of duties.

In addition, the Auditor was able to determine that the organization was in compliance with other fundraising related requirements. Wine sales for the wine & cheese reception are provided by a winery who carries its own State Liquor Authority (SLA) license, therefore CCA is not required to obtain an SLA license for the event. Gross revenue raised from raffles falls below the New York State Gaming Commission's (NYSGC) threshold and thus CCA is not required to obtain a Game of Chance Identification Number.

At the conclusion of the grant review, the Auditor was able to determine that CCA is currently in compliance with the filing of all returns, the issuance of information return documents and other federal and state obligations.

Erie County Legislature
Meeting Date: 06/20/2024

SUBJECT

COMM. 12E-6

COMPTROLLER

EC Cultural Funding Grant Monitoring
Program - Polish Art Club of Buffalo

Attachments

24COMM. 12E-6

June 2024

**Erie County Cultural Funding Grant
Monitoring Program
Polish Art Club of Buffalo
January 1, 2020 through December 31, 2022**



**HON. KEVIN R. HARDWICK
ERIE COUNTY COMPTROLLER**

**HON. KEVIN R. HARDWICK
ERIE COUNTY COMPTROLLER'S OFFICE
DIVISION OF AUDIT & CONTROL
95 FRANKLIN STREET
BUFFALO, NEW YORK 14202**



June 10, 2024

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518044	Buffalo Inner City Ballet Co, Inc	108397	\$ 27,000.00	\$ 27,000.00	\$ 27,000.00
518050	Buffalo Music Hall of Fame	113142	\$ 4,500.00	\$ -	\$ 3,500.00
518051	Buffalo Heritage Carousel	167329	\$ 30,000.00	\$ 30,000.00	\$ 35,000.00
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518088	El Museo Gallery	109336	\$ 12,585.00	\$ 8,585.00	\$ 11,000.00
518104	Graycliff Conservancy	103197	\$ 59,200.00	\$ 59,200.00	\$ 60,000.00
518113	Hull House Foundation	143472	\$ 15,375.00	\$ 3,375.00	\$ 7,500.00
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518164	Squeaky Wheel	101266	\$ 20,920.00	\$ 20,920.00	\$ 27,000.00
518172	Theodore Roosevelt Inaugural Site	106352	\$ 32,320.00	\$ 32,320.00	\$ 37,000.00
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Monitoring Program – Phase II

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518025	Assembly House 150, Inc	167747	\$ 3,000.00	\$ 3,000.00	\$ 6,500.00
518034	Buffalo & Erie County Botanical Garden	108743	\$ 102,000.00	\$ 125,000.00	\$ 150,000.00
518036	Buffalo & Erie Co Historical Society	108772	\$ 417,000.00	\$ 667,000.00	\$ 417,000.00
	Buffalo & Erie County Naval & Servicemans				
518052	Park	109339	\$ 35,000.00	\$ 35,000.00	\$ 50,000.00
518060	Buffalo Philharmonic Orch Society	101032	\$ 926,000.00	\$ 926,000.00	\$ 940,000.00
518061	Buffalo Philharmonic Chorus	109795	\$ 34,500.00	\$ 34,500.00	\$ 35,000.00
518064	Buffalo Society Natural Sciences	109767	\$ 955,000.00	\$ 955,000.00	\$ 955,000.00
518065	Buffalo String Works, Inc	167855	\$ 3,500.00	\$ 3,500.00	\$ 5,955.00
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518108	Haliwal's Contemporary Arts Center	108598	\$ 57,000.00	\$ 57,000.00	\$ 60,000.00
518112	Hamburg Nat Hist Society/Penn-Delaware	103182	\$ 69,314.00	\$ 66,314.00	\$ 95,214.00
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518124	O Youville College Kavinsky Theater	109341	\$ 11,750.00	\$ -	\$ 9,900.00
518128	Lancaster Opera House	111681	\$ 45,300.00	\$ 30,300.00	\$ 35,000.00
518140	MusicalLife Theatre	105368	\$ 61,525.00	\$ 61,525.00	\$ 66,000.00
518148	New Phoenia Theatre	109342	\$ 7,500.00	\$ 7,500.00	\$ -
518148	Road Less Traveled Productions	121043	\$ 63,500.00	\$ 63,500.00	\$ 67,000.00
518152	Roycroft Campus Cooperation	118213	\$ 50,000.00	\$ 40,000.00	\$ 50,000.00
518156	Shakespeare In The Park	109675	\$ 95,000.00	\$ 95,000.00	\$ 95,000.00
518168	Theatre Of Youth	109888	\$ 69,400.00	\$ 69,400.00	\$ 74,000.00
518173	Tam Spae Theatre	133673	\$ 20,460.00	\$ 15,460.00	\$ 29,500.00
518188	Zoological Society Of Buffalo	108623	\$ 1,500,000.00	\$ 1,500,000.00	\$ 1,700,000.00
518195	Orlando Park Symphony Orchestra	117747	\$ 4,615.00	\$ 4,615.00	\$ 6,000.00
518202	Buffalo Opera Unlimited Incorporated	155973	\$ 2,300.00	\$ 2,300.00	\$ 10,000.00
518203	Buffalo-Teronto Public Media WNED/WBFO	172909	\$ 3,750.00	\$ -	\$ 5,000.00
518205	Cheektowaga Comm Symphony Orchestra	109177	\$ -	\$ 7,500.00	\$ -
518209	Newstead Historical Society	105518	\$ 5,500.00	\$ 3,500.00	\$ 5,000.00
518213	O'Connell & Company Productions	159162	\$ 23,100.00	\$ 23,100.00	\$ 31,500.00
	Amherst Male Glee Club dba Red Blazer				
518219	Men's Chorus	161045	\$ 3,000.00	\$ 3,000.00	\$ 6,000.00
518221	Buffalo Center for Arts and Technology	152207	\$ 3,000.00	\$ 3,000.00	\$ 7,500.00
518226	Cheektowaga Historical Association	161121	\$ 3,250.00	\$ 6,250.00	\$ 8,100.00
518229	Second Generation Theatre Company	164957	\$ 2,020.00	\$ 2,020.00	\$ 5,000.00
518230	Steel Plant Museum of Western New York	147740	\$ 2,020.00	\$ 2,020.00	\$ 3,000.00
518503	Alden Christian Theater Society	114358	\$ 10,000.00	\$ -	\$ 3,000.00
518514	Clarence Concert Association	101711	\$ 3,500.00	\$ -	\$ 5,000.00
	Clarence Museum (Historical Soc of the				
518515	Town of Clarence)	113067	\$ 5,500.00	\$ -	\$ 6,000.00

BEST PRACTICES

Over the course of the Monitoring Program, the Division of Audit found a number of problematic practices and questionable expense categories on a recurring basis. In order to address issues pertaining to a large number of organizations, certain generally applicable best practices and recommendations are included here.

Alcohol

Several organizations used or appeared to use CGF funds to obtain alcohol. While the Division of Audit does not recommend that CGF awards be made contingent on the absence of alcohol from events hosted by the organization, alcohol should not be purchased with CGF funds. The Division of Audit found dozens of alcohol purchases that appeared to be personal in nature and several more which likely violated NYS Alcoholic Beverage Control Laws. Furthermore, the NYS Comptroller has long held that alcohol is not a "lawful county charge", meaning that government officials and employees may not use taxpayer funds to purchase alcohol. The Division of Audit sees no reason that organizations receiving taxpayer funds should be treated differently.

Debit Cards

Credit cards, particularly with smaller organizations, can provide a critical layer of expense control. The Division of Audit found a large quantity of small-dollar expenses appearing personal in nature. If a debit card is used, the money is gone by the time statements are typically reviewed, while a credit card bill often needs to be paid and approved by the organization's board of directors.

Alternate Funding Sources and Segregation of Accounts

Organizations may have several sources of governmental or philanthropic funding. One way to ensure that CGF funds go farthest is to tailor awards to the needs of the organization. Such an assessment would require applicants to provide certain financial documents covering prior years and a disclosure of current year funding applications. Furthermore, accounts received from Erie County should not be comingled with the other funds of the organization. Having source information upfront and requiring the segregation of accounts substantially decreases the likelihood of wasted CGF funds.

POLISH ARTS CLUB OF BUFFALO

BACKGROUND

The Polish Arts Club of Buffalo (PAC) is a 501(c)(3) non-profit organization established in 1945 as the result of a series of lectures presented with the goal to acquaint Americans with the Polish culture and heritage. The stated mission for PAC is to enhance Western New York's cultural resources by fostering interest, appreciation and understanding of culture and history of Poland and Polish Americans and by safeguarding Polish American heritage through Western New York.

PAC received \$7,000 in Cultural Grant Funding (CGF) for the years 2020 and 2021, and \$3,800 in CGF for the year 2022.

AUDITOR'S OBSERVATIONS

PAC is a small, volunteer-run organization whose focus is to produce a variety of Polish cultural events, including musical events, lectures, recitals, film showings, exhibits, workshops and social events with the goal of providing Western New York with the opportunity to learn and expand their knowledge of Polish culture and Poland's contributions to American culture. Most programming hosted by PAC is free of charge to the community. All events hosted by PAC are open to the public.

PAC offers a yearly scholarship to students of Polish ancestry who are studying visual or performing arts. The organization has awarded approximately 70 scholarships since the inception of the program in 1986. A scholarship trust entitled "The Polish Arts Club of Buffalo Inc. Scholarship Foundation" was created to manage and issue the scholarships.

Membership dues and grant funding are the primary sources of revenue for PAC, followed by private donations and sponsorships. PAC also hosts a series of fundraising events in order to secure additional operating funds to support its operation. Some of the fundraising events hosted by the organization include an annual scholarship award and installation luncheon, Polish art workshops and participation in various local festivals.

AUDITOR'S CONCLUSION

During the grant monitoring review process, PAC was able to provide the Auditor with adequate substantiation for use of cultural grant funding for all years under review. Documentation provided by the organization includes copies of bank account statements, cancelled checks, copies of tax returns and invoices as substantiation for expenses incurred.

CGF received by PAC for the years under review was allocated to offset the cost of annual operating expenses. Funds are primarily allocated towards expenses for rent, a copier lease, and programming expenses such as printing, workshop space rental, and concerts.

PAC currently has a Board of Directors consisting of ten members. The Auditor was informed that Board terms are currently unlimited due to declining interest and participation over the years. Even though board members have held positions for many years, there appears to be an adequate level of internal controls as the organization segregates responsibilities, has a requirement for dual signatures and performs adequate review of expenses incurred and income received.

During the review process, the Auditor was able to determine that the organization was in compliance with other fundraising related requirements. PAC will be hosting a fundraising event, which will require the use of a temporary State Liquor Authority (SLA) license. The Auditor was able to verify that the organization secured the necessary license and secured an authorized distributor.

At the conclusion of the grant review, the Auditor was able to determine that PAC is currently in compliance with the filing of all returns, the issuance of information return documents and other federal and state obligations.

Erie County Legislature
Meeting Date: 06/20/2024

SUBJECT

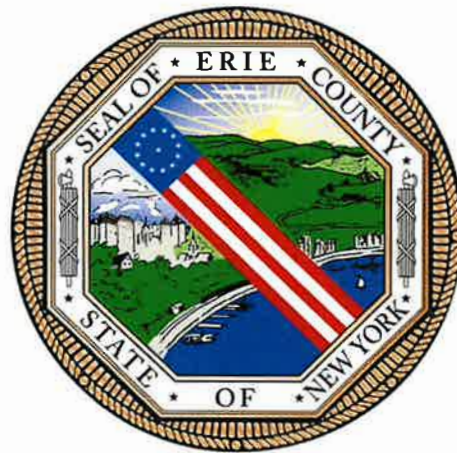
COMM. 12E-7	COMPTROLLER	EC Cultural Funding Grant Monitoring Program - Danceability, Inc.
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Attachments

24COMM. 12E-7

June 2024

**Erie County Cultural Funding Grant
Monitoring Program
Danceability, Inc.
January 1, 2020 through December 31, 2022**



**HON. KEVIN R. HARDWICK
ERIE COUNTY COMPTROLLER**

**HON. KEVIN R. HARDWICK
ERIE COUNTY COMPTROLLER'S OFFICE
DIVISION OF AUDIT & CONTROL
95 FRANKLIN STREET
BUFFALO, NEW YORK 14202**



June 10, 2024

Erie County Legislature
92 Franklin Street, Fourth Floor
Buffalo, New York 14202

Dear Honorable Members:

In 2023, the Erie County Comptroller's Office, Division of Audit & Control initiated a regular Monitoring Program of Erie County Cultural Funding Grants. The Erie County Cultural Funding program provides annual grants to non-profit arts and cultural organizations operating within the County. County funds are intended to be limited in their use to current operating expenses including salaries, program costs, fringe benefits, rents, utilities, office supplies, and equipment. Grant funds may not be used for or applied towards capital projects or physical improvements of buildings or facilities, nor as a revenue offset against accounts receivable. No funds received shall be used for any services provided or activities performed outside Erie County. The County's Department of Environment and Planning executes contracts with organizations and is the primary agency charged with monitoring.

Objective

The objective of the Cultural Funding Monitoring Program is to verify that the recipients have utilized County funds according to the terms and conditions associated with the Erie County Cultural Funding grant process and the recipient's contract with the County. In order to verify the proper use of the grant award, a number of agencies were selected in order to review their expenses and financial records.

Scope and Methodology

Approximately 120 different organizations receive funding annually from Erie County. The Comptroller's Cultural Funding Grant Monitoring Program is intended to review organizations that received a minimum of \$5,000 in funding during any of the three prior years. Approximately 80 agencies were identified as receiving \$5,000 or more in grant funding. The list of recipient organizations was split into two groups of approximately 40 agencies. The first batch of letters announcing the commencement of a review was sent to the selected non-profit organizations during mid-February 2023, and a second batch was sent in early October 2023. The review of all agencies is expected to be completed by October 31, 2024.

2023 – 2024 Program

During the interview phase, the Auditor identifies use of funding to narrow down the expenses to be verified. A table of agencies which meet the criteria for review along with the amount of grant awards can be found on the following page.

Monitoring Program – Phase I

ACT #	APPROPRIATION	YEAR/NO	TAX YEAR	TAX YEAR	TAX YEAR
		NUMBR	2020	2021	2022
	Enlightenment Literary Arts Center & Doc Eric Rockstore	152183	\$ 28,600.00	\$ 36,600.00	\$ 35,000.00
518004	African American Cultural Center	112604	\$ 275,450.00	\$ 311,950.00	\$ 200,000.00
518012	Alleyway Theatre	109340	\$ 8,500.00	\$ 8,500.00	\$ 11,000.00
518016	American Legion Band of	100379	\$ 7,500.00	\$ 7,500.00	\$ 45,000.00
518017	Amherst Symphony Orchestra	100475	\$ 32,500.00	\$ 26,750.00	\$ 28,740.00
518019	Arts Services Initiative of WNY Inc	147159	\$ 26,050.00	\$ 26,050.00	\$ 30,000.00
518028	Ballet Artists Of WNY (Neglia)	100794	\$ 24,000.00	\$ 24,000.00	\$ 30,000.00
	Buffalo Arts Studio (Arts Studio of Western New York, Inc)	101244	\$ 38,000.00	\$ 45,500.00	\$ 53,000.00
518044	Buffalo Inner City Ballet Co, Inc	108597	\$ 27,000.00	\$ 27,000.00	\$ 27,000.00
518050	Buffalo Music Hall of Fame	113142	\$ 4,500.00	\$ -	\$ 5,500.00
518051	Buffalo Heritage Carousel	167529	\$ 30,000.00	\$ 30,000.00	\$ 35,000.00
518074	Colored Musicians Club	130377	\$ 5,000.00	\$ -	\$ 12,500.00
518084	El Museo Gallery	109836	\$ 12,585.00	\$ 8,585.00	\$ 11,000.00
518104	Graycliff Foundation	103197	\$ 59,200.00	\$ 59,200.00	\$ 60,000.00
518113	Hull House Foundation	143477	\$ 15,375.00	\$ 5,375.00	\$ 7,500.00
	Jewish Community Center Cultural	111236	\$ 13,500.00	\$ 4,750.00	\$ 13,500.00
518119	Jewish Ctr of Greater Buff	108577	\$ 78,100.00	\$ 78,100.00	\$ 83,500.00
518120	Just Buffalo Literacy Center	109857	\$ 29,250.00	\$ 25,250.00	\$ 28,500.00
518132	Locust St Neighborhood Art Classes	109985	\$ 175,500.00	\$ 175,500.00	\$ 180,000.00
518136	Martin House Restoration	104863	\$ 48,000.00	\$ 48,000.00	\$ 39,000.00
518139	Musicians Art	139615	\$ 7,000.00	\$ 7,000.00	\$ 3,500.00
518148	Polish Arts Club Of Buffalo Inc	106132	\$ 4,615.00	\$ 4,615.00	\$ 6,000.00
518147	Preservation Buffalo Niagara	147509	\$ 30,505.00	\$ 20,505.00	\$ 26,000.00
518160	Springville Center For The Arts	113308	\$ 20,920.00	\$ 20,920.00	\$ 27,000.00
518164	Squeaky Wheel	101268	\$ 32,320.00	\$ 32,320.00	\$ 37,000.00
518172	Theodore Roosevelt Inaugural Site	106552	\$ 83,000.00	\$ 83,000.00	\$ 57,714.00
518176	Ultima Company	101047	\$ 6,275.00	\$ 6,275.00	\$ 7,500.00
518180	Western New York Artists Group	108285	\$ 4,640.00	\$ 4,640.00	\$ 6,000.00
518181	WNY Book Arts Collaborative, Inc	139559	\$ 10,500.00	\$ 10,500.00	\$ 14,000.00
518184	Young Audiences Of WNY	109818	\$ 18,500.00	\$ 18,500.00	\$ 24,500.00
518196	Buffalo Niagara Heritage Village	151996	\$ 15,000.00	\$ 15,000.00	\$ 32,500.00
518200	Michigan St African Amer Heritage	152578	\$ 10,000.00	\$ 11,000.00	\$ 12,500.00
518201	General Pulaski Association	103080	\$ 10,000.00	\$ 16,000.00	\$ 20,000.00
518204	Brighton Place, Inc	156194	\$ 22,500.00	\$ 20,000.00	\$ 24,500.00
518211	Hispanic Heritage Council of WNY	159905	\$ 22,500.00	\$ 7,500.00	\$ 10,000.00
518216	Black Rock Historical Society (Black Rock Rivers de Alliance)	170369	\$ 25,000.00	\$ 20,000.00	\$ 15,000.00
518233	Centro Culturale Italiano di Buffalo	167500	\$ 18,000.00	\$ 15,000.00	\$ 15,000.00
518549	South Buffalo Irish Feis/Cian You Dig	113041	\$ 5,000.00	\$ -	\$ 5,000.00
518596	Net Positive DBA The Foundry	168005	\$ 5,000.00	\$ -	\$ 5,000.00

Monitoring Program – Phase II

ACT #	APPROPRIATION	YEAR/NO	TAX YEAR	TAX YEAR	TAX YEAR
		NUMBR	2020	2021	2022
517533	Buffalo Olmsted Parks Conservancy	140337	\$ 25,910.00	\$ 25,910.00	\$ 35,000.00
518008	Albright-Knox Art Gallery	108707	\$ 575,000.00	\$ 575,000.00	\$ 675,000.00
518009	Albright Knox Public Art Curator	147228	\$ 68,250.00	\$ 68,250.00	\$ -
518025	Assembly House 150, Inc	167747	\$ 1,000.00	\$ 1,000.00	\$ 6,500.00
518034	Buffalo & Erie County Botanical Garden	108743	\$ 102,000.00	\$ 125,000.00	\$ 150,000.00
518036	Buffalo & Erie Co Historical Society	108772	\$ 417,000.00	\$ 417,000.00	\$ 417,000.00
	Buffalo & Erie County Naval & Servicemans	109339	\$ 35,000.00	\$ 35,000.00	\$ 30,000.00
518050	Buffalo Philharmonic Orch Society	101032	\$ 926,000.00	\$ 926,000.00	\$ 940,000.00
518061	Buffalo Philharmonic Chorus	109796	\$ 34,500.00	\$ 34,500.00	\$ 35,000.00
518064	Buffalo Society Natural Sciences	109767	\$ 955,000.00	\$ 955,000.00	\$ 955,000.00
518065	Buffalo String Works, Inc	167853	\$ 3,500.00	\$ 3,500.00	\$ 5,355.00
518068	Burchfield Penney Art Center	101004	\$ 155,000.00	\$ 155,000.00	\$ 160,000.00
518072	Center for Exploratory and Perceptu	109934	\$ 55,000.00	\$ 55,000.00	\$ 63,000.00
518082	Danceability	156638	\$ 2,500.00	\$ 5,500.00	\$ 3,000.00
518098	Explore & Move Children's Museum	102758	\$ 42,000.00	\$ 42,000.00	\$ 78,000.00
518108	Haltwalls Contemporary Arts Center	108598	\$ 57,000.00	\$ 57,000.00	\$ 60,000.00
518112	Hamburg Nat Hist Society/Penn Divis	103282	\$ 96,314.00	\$ 96,314.00	\$ 96,314.00
518116	Irish Classical Theatre Company	103727	\$ 83,500.00	\$ 83,500.00	\$ 93,500.00
518124	D Youville College Kavinsky Theater	109341	\$ 11,750.00	\$ -	\$ 9,500.00
518128	Lancaster Opera House	111681	\$ 45,300.00	\$ 30,300.00	\$ 35,000.00
518140	MusicalFare Theatre	105308	\$ 61,325.00	\$ 61,325.00	\$ 66,000.00
518141	New Opera Theatre	109342	\$ 7,500.00	\$ 7,500.00	\$ -
518148	Road Less Traveled Productions	121045	\$ 63,300.00	\$ 63,300.00	\$ 67,000.00
518152	Roycroft Campus Cooperation	138213	\$ 50,000.00	\$ 40,000.00	\$ 50,000.00
518156	Shakespeare In The Park	109675	\$ 95,000.00	\$ 95,000.00	\$ 95,000.00
518168	Theatre Of Youth	109888	\$ 69,400.00	\$ 69,400.00	\$ 74,000.00
518177	Tonn Space Theatre	143673	\$ 20,460.00	\$ 15,460.00	\$ 29,500.00
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518203	Buffalo Opera Unlimited Incorporated	155978	\$ 2,300.00	\$ 2,300.00	\$ 10,000.00
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518205	Cheektowaga Comm Symphony Orchestra	109177	\$ -	\$ 7,500.00	\$ -
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518229	Second Generation Theatre Company	164957	\$ 2,020.00	\$ 2,020.00	\$ 5,000.00
518230	Steel Plant Museum of Western New York	147740	\$ 2,020.00	\$ 2,020.00	\$ 3,000.00
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518514	Clarence Concert Association	101711	\$ 3,500.00	\$ -	\$ 5,000.00
	Clarence Museum (Historical Soc of the	113067	\$ 5,000.00	\$ -	\$ 5,000.00
518515	Town of Clarence	113067	\$ 5,000.00	\$ -	\$ 5,000.00

BEST PRACTICES

Over the course of the Monitoring Program, the Division of Audit found a number of problematic practices and questionable expense categories on a recurring basis. In order to address issues pertaining to a large number of organizations, certain generally applicable best practices and recommendations are included here.

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Several organizations used or appeared to use CGF funds to obtain alcohol. While the Division of Audit does not recommend that CGF awards be made contingent on the absence of alcohol from events hosted by the organization, alcohol should not be purchased with CGF funds. The Division of Audit found dozens of alcohol purchases that appeared to be personal in nature and several more which likely violated NYS Alcoholic Beverage Control Laws. Furthermore, the NYS Comptroller has long held that alcohol is not a "lawful county charge", meaning that government officials and employees may not use taxpayer funds to purchase alcohol. The Division of Audit sees no reason that organizations receiving taxpayer funds should be treated differently.

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Alternate Funding Sources and Segregation of Accounts

Organizations may have several sources of governmental or philanthropic funding. One way to ensure that CGF funds go farthest is to tailor awards to the needs of the organization. Such an assessment would require applicants to provide certain financial documents covering prior years and a disclosure of current year funding applications. Furthermore, accounts received from Erie County should not be comingled with the other funds of the organization. Having source information upfront and requiring the segregation of accounts substantially decreases the likelihood of wasted CGF funds.

DANCEABILITY, INC.

BACKGROUND

Danceability, Inc is a 501(c)(3) non-profit organization established in 2007 with the goal of providing individualized dance, fitness and movement programs to individuals of every age and ability within the special needs community.

Danceability received \$2,500 in Cultural Grant Funding (CGF) for year 2020, \$5,500 for year 2021 and \$3,000 for the year 2022.

AUDITOR'S OBSERVATIONS

Danceability operates as a dance studio for the special needs community in Western New York. The organization offers a variety of programs, including a full season program, a summer dance camp, a full season fitness program, a theater class, and most recently a drumming class. Danceability has also expanded in size, and currently operates two studios to better serve dancers with autism who require sensory-based accommodations. Participants do not age out and can continue their participation indefinitely.

Danceability continued to operate during the pandemic by offering virtual classes and conducting meetings virtually. The organization wanted to ensure that participants continued engaging in the program and receiving its benefits.

Tuition accounts for approximately 50% of the organization's operating revenue. Other sources of revenue include grants from governmental sources, foundations, an annual appeal, a recital event, and annual fundraisers hosted by the organization.

Fundraising events hosted by the organization include an annual golf tournament, which is one of its major fundraising events. Danceability also hosts other fundraising events such as a Chiavetta's chicken barbeque and an annual auction and raffle.

AUDITOR'S CONCLUSION

During the cultural grant monitoring review process, Danceability was able to provide adequate substantiation for use of the CGF award received during each year under review. CGF awarded to Danceability for the years under review was allocated towards the monthly rent expense for their current locations.

Documentation provided by the organization to substantiate expenses included rental contract information as well as copies of bank statements, where posted and cleared rent payments could be verified by the Auditor. The amount of rent expenses incurred by the organization exceeded funding amounts received for each of the years under review.

Danceability currently has a Board of Directors consisting of eight members. Board members are limited to two three-year terms, which can be served consecutively. Based on information provided by the organization, there appears to be an adequate level of internal controls, as the organization segregates duties and responsibilities, and the Board performs appropriate reviews of expenses incurred and income received. The organization does not currently have a dual-signature requirement as most of their payments are made online.

Danceability hosts an annual auction which includes raffles (games of chance) to raise funds for the operation of the organization. The event is hosted in person as well as online. The Auditor referenced the New York State Gaming Commission's (NYSGC) guidelines for conducting raffles and games of chance. The organization was not required to obtain a Game of Chance Identification Number or license since the raffles conducted for the years under review generated revenue amounts which fell under the applicable thresholds. It should be noted that the auction and raffle fundraising event hosted by the organization appears to be growing in size and scope as it has become one of the organization's main fundraisers. The Auditor recommends that the organization refer to Part 4620 of the NYSGC Regulations to ensure that it remains in compliance with all applicable requirements.

Finally, based on a review of the organization's website and social media accounts, the Auditor was not able to identify an acknowledgment of County support. The Auditor suggests that for the years in which County funding is received, the organization make the necessary updates to its webpage and social media accounts to comply with Erie County Cultural Service Contract § 21. That section stipulates that an "Organization agrees to acknowledge in any and all promotional material the fact that the Organization receives financial support from the County, including, but not limited to the Organization's website, marketing materials and/or publications."

At the conclusion of the grant review, the Auditor was able to determine that Danceability is currently in compliance with the filing of all returns, the issuance of information return documents and other federal and state obligations.

Erie County Legislature
Meeting Date: 06/20/2024

SUBJECT

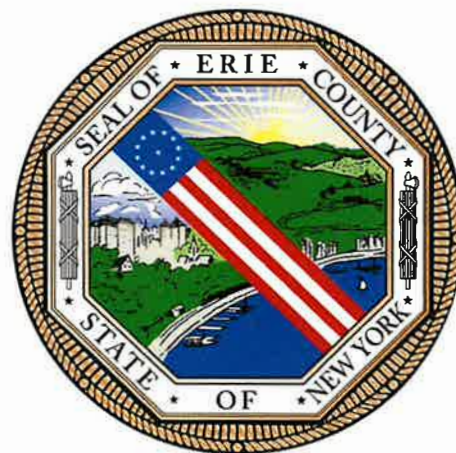
COMM. 12E-8	COMPTROLLER	EC Cultural Funding Grant Monitoring Program - Can You Dig It, Inc (DBA South Buffalo Irish Festival)
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Attachments

24COMM. 12E-8

June 2024

**Erie County Cultural Funding Grant
Monitoring Program
Can You Dig It, Inc.
(DBA South Buffalo Irish Festival)
January 1, 2020 through December 31, 2022**



**HON. KEVIN R. HARDWICK
ERIE COUNTY COMPTROLLER**

**HON. KEVIN R. HARDWICK
ERIE COUNTY COMPTROLLER'S OFFICE
DIVISION OF AUDIT & CONTROL
95 FRANKLIN STREET
BUFFALO, NEW YORK 14202**



June 10, 2024

Erie County Legislature
92 Franklin Street, Fourth Floor
Buffalo, New York 14202

Dear Honorable Members:

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Objective

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Scope and Methodology

Approximately 120 different organizations receive funding annually from Erie County. The Comptroller's Cultural Funding Grant Monitoring Program is intended to review organizations that received a minimum of \$5,000 in funding during any of the three prior years. Approximately 80 agencies were identified as receiving \$5,000 or more in grant funding. The list of recipient organizations was split into two groups of approximately 40 agencies. The first batch of letters announcing the commencement of a review was sent to the selected non-profit organizations during mid-February 2023, and a second batch was sent in early October 2023. The review of all agencies is expected to be completed by October 31, 2024.

2023 – 2024 Program

During the interview phase, the Auditor identifies use of funding to narrow down the expenses to be verified. A table of agencies which meet the criteria for review along with the amount of grant awards can be found on the following page.

Monitoring Program – Phase I

ACT #	APPROPRIATION	VENDOR NUMBER	TAX YEAR 2020	TAX YEAR 2021	TAX YEAR 2022
517125	Enlightenment Literary Arts Center & Dog Ears Bookstore	152181	\$ 28,600.00	\$ 36,600.00	\$ 55,000.00
518004	African American Cultural Center	112604	\$ 275,450.00	\$ 311,950.00	\$ 200,000.00
518012	Alleyway Theatre	109340	\$ 8,500.00	\$ 8,500.00	\$ 11,000.00
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	Buffalo Arts Studio (Arts Studio of				
518040	Western New York, Inc)	101244	\$ 38,000.00	\$ 45,500.00	\$ 53,000.00
518044	Buffalo Inner City Ballet Co, Inc	108597	\$ 27,000.00	\$ 27,000.00	\$ 27,000.00
518050	Buffalo Music Hall of Fame	113142	\$ 4,500.00	\$ -	\$ 5,500.00
518051	Buffalo Heritage Carousel	167329	\$ 30,000.00	\$ 30,000.00	\$ 35,000.00
518074	Colored Musicians Club	130377	\$ 5,000.00	\$ -	\$ 12,500.00
518084	El Museo Gallery	109876	\$ 12,585.00	\$ 8,585.00	\$ 11,000.00
518104	Graydilly Conservancy	103197	\$ 59,200.00	\$ 59,200.00	\$ 60,000.00
518113	Hull House Foundation	143473	\$ 15,375.00	\$ 5,375.00	\$ 7,500.00
	Jewish Community Center Cultural				
518119	(Jewish Ctr of Greater Buff)	111239	\$ 13,500.00	\$ 4,750.00	\$ 15,500.00
518120	Just Buffalo Literacy Center	108577	\$ 78,100.00	\$ 78,100.00	\$ 83,100.00
518132	Locust St Neighborhood Art Classes	109985	\$ 29,250.00	\$ 25,250.00	\$ 28,500.00
518136	Martin House Restoration	104363	\$ 175,500.00	\$ 173,500.00	\$ 190,000.00
518139	Music Is Art	139515	\$ 48,000.00	\$ 48,000.00	\$ 39,000.00
518146	Polish Arts Club Of Buffalo Inc	106132	\$ 7,000.00	\$ 7,000.00	\$ 3,800.00
518147	Preservation Buffalo Niagara	147506	\$ 4,615.00	\$ 4,615.00	\$ 6,000.00
518150	Springville Center For The Arts	113906	\$ 30,505.00	\$ 20,505.00	\$ 36,000.00
518164	Squeaky Wheel	101266	\$ 20,920.00	\$ 20,920.00	\$ 27,000.00
518172	Theodore Roosevelt Inaugural Site	106552	\$ 32,320.00	\$ 32,320.00	\$ 37,000.00
518176	Ujima Company	101047	\$ 83,000.00	\$ 83,000.00	\$ 57,714.00
518180	Western New York Artists Group	108295	\$ 6,275.00	\$ 6,275.00	\$ 7,300.00
518181	WNY Book Arts Collaborative, Inc	135959	\$ 4,640.00	\$ 4,640.00	\$ 6,000.00
518184	Young Audiences Of WNY	109816	\$ 10,500.00	\$ 10,500.00	\$ 14,000.00
518196	Buffalo Niagara Heritage Village	151996	\$ 18,500.00	\$ 18,500.00	\$ 24,500.00
518200	Michigan Str African Amer Heritage	152573	\$ 15,000.00	\$ 15,000.00	\$ 32,500.00
518201	General Pulaski Association	103060	\$ 10,000.00	\$ 11,000.00	\$ 12,500.00
518204	Brighton Place, Inc	156194	\$ 10,000.00	\$ 16,000.00	\$ 20,000.00
518211	Hispanic Heritage Council of WNY	159305	\$ 12,000.00	\$ 20,000.00	\$ 24,500.00
	Black Rock Historical Society (Black				
518216	Rcd-Riverside Alliance)	170366	\$ 12,500.00	\$ 7,500.00	\$ 10,000.00
518233	Centro Culturale Italiano di Buffalo	167500	\$ 25,000.00	\$ 20,000.00	\$ 15,000.00
518249	South Buffalo Irish Feis/Can You Dig	113041	\$ 18,000.00	\$ 15,000.00	\$ 15,000.00
518596	Net Positive DBA The Foundry	168005	\$ 5,000.00	\$ -	\$ 5,000.00

Monitoring Program – Phase II

ACT #	APPROPRIATION	VENDOR NUMBER	TAX YEAR 2020	TAX YEAR 2021	TAX YEAR 2022
517533	Buffalo Olmsted Parks Conservancy	140237	\$ 25,910.00	\$ 25,910.00	\$ 35,000.00
518008	Albright-Knox Art Gallery	108107	\$ 575,000.00	\$ 575,000.00	\$ 675,000.00
518009	Albright-Knox Public Art Curator	147228	\$ 68,350.00	\$ -	\$ 68,250.00
518025	Assembly House 150, Inc	167747	\$ 1,000.00	\$ 1,000.00	\$ 6,500.00
518034	Buffalo & Erie County Botanical Garden	108743	\$ 102,000.00	\$ 125,000.00	\$ 150,000.00
518036	Buffalo & Erie Co Historical Society	108772	\$ 417,000.00	\$ 667,000.00	\$ 417,000.00
	Buffalo & Erie County Naval & Servicemans				
518052	Park	109339	\$ 35,000.00	\$ -	\$ 50,000.00
518060	Buffalo Philharmonic Orch Society	101032	\$ 926,000.00	\$ 926,000.00	\$ 940,000.00
518061	Buffalo Philharmonic Chorus	109796	\$ 34,500.00	\$ 34,500.00	\$ 35,000.00
518064	Buffalo Society Natural Sciences	109787	\$ 955,000.00	\$ 955,000.00	\$ 955,000.00
518065	Buffalo String Works, Inc	167853	\$ 3,500.00	\$ 3,500.00	\$ 3,355.00
518068	Burchfield Penney Art Center	101004	\$ 155,000.00	\$ 155,000.00	\$ 160,000.00
518072	Center for Exploratory and Perceptu	109934	\$ 55,000.00	\$ 55,000.00	\$ 63,000.00
518082	Danceability	156639	\$ 2,500.00	\$ 5,500.00	\$ 3,000.00
518096	Explore & More Children's Museum	102758	\$ 42,000.00	\$ 42,000.00	\$ 78,000.00
518108	Halleways Contemporary Arts Center	108598	\$ 57,000.00	\$ 57,000.00	\$ 60,000.00
518112	Hamburg Nat Hist Society/Penn-Div	103282	\$ 9,314.00	\$ 38,312.00	\$ 36,314.00
518116	Irish Classical Theatre Company	103727	\$ 83,500.00	\$ 83,500.00	\$ 93,500.00
518124	D Youville College Kavinsky Theater	109341	\$ 11,750.00	\$ -	\$ 9,500.00
518128	Lancaster Opera House	111681	\$ 45,300.00	\$ 30,300.00	\$ 35,000.00
518140	Musicalfare Theatre	105308	\$ 61,525.00	\$ 61,525.00	\$ 66,000.00
518141	New Phoenix Theatre	109342	\$ 7,500.00	\$ 7,500.00	\$ -
518144	Road Less Traveled Productions	111043	\$ 63,500.00	\$ 63,500.00	\$ 67,000.00
518152	Reverish Campus Cooperation	118213	\$ 50,000.00	\$ 40,000.00	\$ 50,000.00
518156	Shakespeare In The Park	109675	\$ 95,000.00	\$ 95,000.00	\$ 95,000.00
518168	Theatre Of Youth	109888	\$ 69,400.00	\$ 69,400.00	\$ 76,000.00
518173	Torn Space Theatre	143673	\$ 20,460.00	\$ 15,460.00	\$ 29,500.00
518188	Zoological Society Of Buffalo	108623	\$ 1,500,000.00	\$ 1,500,000.00	\$ 1,700,000.00
518195	Orchard Park Symphony Orchestra	147747	\$ 4,615.00	\$ 4,615.00	\$ 5,000.00
518202	Buffalo Opera Unlimited Incorporated	155973	\$ 2,300.00	\$ 2,300.00	\$ 30,000.00
518203	Buffalo-Toronto Public Media WNEP/WBFO	173509	\$ 3,750.00	\$ -	\$ 5,000.00
518205	Cheektowaga Comm Symphony Orchestra	109177	\$ -	\$ 7,500.00	\$ -
518209	Newsstead Historical Society	105518	\$ 3,500.00	\$ 3,500.00	\$ 5,000.00
518213	O'Connell & Company Productions	159162	\$ 23,100.00	\$ 23,100.00	\$ 31,500.00
	Amherst Male Glee Club dba Red Blazer				
518219	Men's Chorus	162045	\$ 3,000.00	\$ 3,000.00	\$ 6,000.00
518221	Buffalo Center for Arts and Technology	152207	\$ 3,000.00	\$ 3,000.00	\$ 7,500.00
518226	Cheektowaga Historical Association	161121	\$ 3,250.00	\$ 6,250.00	\$ 6,100.00
518229	Second Generation Theatre Company	164967	\$ 2,000.00	\$ 2,000.00	\$ 5,000.00
518232	Steve Piant Museum of Western New York	147746	\$ 2,200.00	\$ 2,200.00	\$ 3,000.00
518503	Alden Christian Theater Society	114358	\$ 10,000.00	\$ -	\$ 3,000.00
518514	Clarence Concert Association	101711	\$ 3,500.00	\$ -	\$ 5,000.00
	Clarence Museum (Historical Soc. of the				
518335	Town of Clarence)	113067	\$ 5,500.00	\$ -	\$ 8,000.00

BEST PRACTICES

Over the course of the Monitoring Program, the Division of Audit found a number of problematic practices and questionable expense categories on a recurring basis. In order to address issues pertaining to a large number of organizations, certain generally applicable best practices and recommendations are included here.

Alcohol

Several organizations used or appeared to use CGF funds to obtain alcohol. While the Division of Audit does not recommend that CGF awards be made contingent on the absence of alcohol from events hosted by the organization, alcohol should not be purchased with CGF funds. The Division of Audit found dozens of alcohol purchases that appeared to be personal in nature and several more which likely violated NYS Alcoholic Beverage Control Laws. Furthermore, the NYS Comptroller has long held that alcohol is not a "lawful county charge", meaning that government officials and employees may not use taxpayer funds to purchase alcohol. The Division of Audit sees no reason that organizations receiving taxpayer funds should be treated differently.

Debit Cards

Credit cards, particularly with smaller organizations, can provide a critical layer of expense control. The Division of Audit found a large quantity of small-dollar expenses appearing personal in nature. If a debit card is used, the money is gone by the time statements are typically reviewed, while a credit card bill often needs to be paid and approved by the organization's board of directors.

Alternate Funding Sources and Segregation of Accounts

Organizations may have several sources of governmental or philanthropic funding. One way to ensure that CGF funds go farthest is to tailor awards to the needs of the organization. Such an assessment would require applicants to provide certain financial documents covering prior years and a disclosure of current year funding applications. Furthermore, accounts received from Erie County should not be comingled with the other funds of the organization. Having source information upfront and requiring the segregation of accounts substantially decreases the likelihood of wasted CGF funds.

CAN YOU DIG IT, INC (DBA SOUTH BUFFALO IRISH FESTIVAL)

BACKGROUND

Can You Dig It, Inc. (CYDI) (dba South Buffalo Irish Festival) is a 501(c)(3) non-profit organization established in 2003 to run the yearly Irish Festival in South Buffalo. The organization's mission is to foster the betterment of South Buffalo and the City of Buffalo and to instill a sense of cultural awareness and civic pride in and amongst the community.

CYDI received \$18,000 in Cultural Grant Funding (CGF) for the year 2020. CYDI received \$15,000 for the years 2021 and 2022. However, those funds were awarded as part of a Legislative Public Benefit Funding award.

AUDITOR'S OBSERVATIONS

CYDI organizes and produces the annual South Buffalo Irish Festival in Cazenovia Park each August. The South Buffalo Irish Festival (Festival) is the organization's largest event, which is free to the public. The Festival draws hundreds of attendees and offers family-friendly activities such as live music and Irish entertainment, activities for children and food from local restaurants. CYDI also organizes the South Buffalo Porchfest which is a neighborhood music festival whereby local musicians use porches (as well as decks and driveways) as the stage so those passing by may enjoy the performance. Music in the Park is also organized by the CYDI in collaboration with the South District Office of the Buffalo Common Council, which takes place at Cazenovia Park each Thursday during the month of June.

CYDI was not able to organize the Festival or the South Buffalo Porchfest in the year 2020 due to the COVID-19 shut down and restrictions. The organization produced a virtual Porchfest in lieu of the live performances.

In 2020, CYDI filed for a new DBA with the New York State Department of State (NYDOS) called *South Buffalo Roots*. In addition to the promotion of Irish culture and heritage associated with South Buffalo, the organization has expanded their mission to include the promotion of civic activity through volunteerism, beautification projects, and by providing financial support to other local civic/community groups. In addition, they want to foster efforts to abate urban decay through communal and family-based activities and prevent juvenile delinquency through community involvement and awareness. The organization determined that the new name will better reflect their mission.

Primary sources of funding for CYDI include state and local grants, sponsorships, donations, and event revenue. The organization does hold a few fundraising events that contribute a small amount of revenue to support the activities held by the organization.

The majority of expenses incurred by CYDI each year are directly related to organizing and running its three main events, primarily the Festival. Signage, tents, stages, musicians, sanitation, permits and supplies are some of the major expenses incurred each year in order to run the event.

AUDITOR'S CONCLUSION

During the grant monitoring review process, CYDI was able to provide the Auditor with adequate substantiation for use of CGF awards for the years funding was received. Documentation provided by the organization includes copies of bank statements, cancelled checks, financial reports and copies of receipts to confirm expenses and donations to organizations such as Feed the Frontline, Community Table, Buffalo Public School #67 and Buffalo Renaissance Foundation.

CGF awards received by the organization are applied towards expenses for the Festival, primarily towards the rental expenses incurred for the stage and equipment. The CGF award received during the year 2020 was not utilized towards the cost of the Festival due to the COVID-19 closure.

The organization allocated CGF received during the year 2020 towards operating expenses such as insurance and filing fees. Funds were also utilized to provide support to other civic organizations in the form of donations. Any funds which could not be utilized were carried forward to the following year and subsequently applied towards expenses for the Festival.

CYDI currently has a Board of Directors consisting of seven members. Board members are limited to two five-year terms, which can be served consecutively. The Auditor found an adequate level of internal controls as the organization segregates responsibilities, and the Board performs appropriate reviews of expenses incurred and income received. Many of the expenses paid by the organization are executed online, thus the number of checks written by the organization has decreased. CYDI began accepting electronic payments at the Festival, thereby decreasing the amount of cash received and handled. Festival deposits are also made with a police or security escort.

During the review process, the Auditor was able to determine that the organization was in compliance with other event-related requirements. CYDI secures all necessary festival permits each year, including the required State Liquor Authority (SLA) temporary liquor license. A review of the organization's expenses revealed that alcohol purchased for resale is obtained from authorized distributors. Gross revenue raised from occasional raffles falls below the New York State Gaming Commission's (NYSGC) threshold, thus the organization is not required to obtain a Game of Chance Identification Number.

Based on a review of the organization's website and social media accounts, the Auditor was not able to identify an acknowledgment of County support. The Auditor suggests that for the years in which County funding is received, the organization make the necessary updates to its webpage and social media accounts to comply with Erie County Cultural Service Contract § 21. That section stipulates that an "Organization agrees to acknowledge in any and all promotional material the fact that the Organization receives financial support from the County, including, but not limited to the Organization's website, marketing materials and/or publications."

At the conclusion of the grant review, the Auditor was able to determine that CYDI is currently in compliance with the filing of all returns, the issuance of information return documents and other federal and state obligations.

Erie County Legislature
Meeting Date: 06/20/2024

SUBJECT

COMM. 12E-9

COMPTROLLER

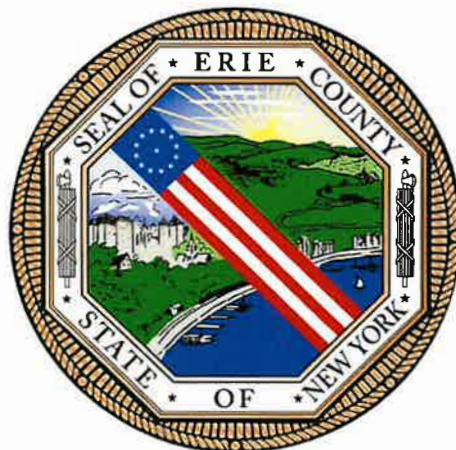
EC Cultural Funding Grant Monitoring
Program - Amherst Male Glee Club, Inc.

Attachments

24COMM. 12E-9

June 2024

**Erie County Cultural Funding Grant
Monitoring Program
Amherst Male Glee Club, Inc.
(DBA Red Blazer Men's Chorus)
January 1, 2020 through December 31, 2022**



**HON. KEVIN R. HARDWICK
ERIE COUNTY COMPTROLLER**

**HON. KEVIN R. HARDWICK
ERIE COUNTY COMPTROLLER'S OFFICE
DIVISION OF AUDIT & CONTROL
95 FRANKLIN STREET
BUFFALO, NEW YORK 14202**



June 10, 2024

Erie County Legislature
92 Franklin Street, Fourth Floor
Buffalo, New York 14202

Dear Honorable Members:

In 2023, the Erie County Comptroller's Office, Division of Audit & Control initiated a regular Monitoring Program of Erie County Cultural Funding Grants. The Erie County Cultural Funding program provides annual grants to non-profit arts and cultural organizations operating within the County. County funds are intended to be limited in their use to current operating expenses including salaries, program costs, fringe benefits, rents, utilities, office supplies, and equipment. Grant funds may not be used for or applied towards capital projects or physical improvements of buildings or facilities, nor as a revenue offset against accounts receivable. No funds received shall be used for any services provided or activities performed outside Erie County. The County's Department of Environment and Planning executes contracts with organizations and is the primary agency charged with monitoring.

Objective

The objective of the Cultural Funding Monitoring Program is to verify that the recipients have utilized County funds according to the terms and conditions associated with the Erie County Cultural Funding grant process and the recipient's contract with the County. In order to verify the proper use of the grant award, a number of agencies were selected in order to review their expenses and financial records.

Scope and Methodology

Approximately 120 different organizations receive funding annually from Erie County. The Comptroller's Cultural Funding Grant Monitoring Program is intended to review organizations that received a minimum of \$5,000 in funding during any of the three prior years. Approximately 80 agencies were identified as receiving \$5,000 or more in grant funding. The list of recipient organizations was split into two groups of approximately 40 agencies. The first batch of letters announcing the commencement of a review was sent to the selected non-profit organizations during mid-February 2023, and a second batch was sent in early October 2023. The review of all agencies is expected to be completed by October 31, 2024.

2023 – 2024 Program

During the interview phase, the Auditor identifies use of funding to narrow down the expenses to be verified. A table of agencies which meet the criteria for review along with the amount of grant awards can be found on the following page.

Monitoring Program – Phase I

ACT #	APPROPRIATION	VENDOR NUMBER	TAX YEAR 2020	TAX YEAR 2021	TAX YEAR 2022
	Enlightenment Literary Arts Center & Dog Ears Bookstore	152183	\$ 28,600.00	\$ 36,600.00	\$ 35,000.00
518004	African American Cultural Center	112504	\$ 275,450.00	\$ 311,950.00	\$ 200,000.00
518012	Alleyway Theatre	109540	\$ 8,500.00	\$ 8,500.00	\$ 11,000.00
518016	American Legion Band of	108379	\$ 7,500.00	\$ 7,500.00	\$ 45,000.00
518017	Amherst Symphony Orchestra	100475	\$ 32,500.00	\$ 26,750.00	\$ 28,740.00
518019	Arts Services Initiative of WNY Inc	147159	\$ 26,050.00	\$ 26,050.00	\$ 30,000.00
518028	Ballet Artists Of WNY (Neglia)	100794	\$ 24,000.00	\$ 24,000.00	\$ 30,000.00
	Buffalo Arts Studio (Arts Studio of Western New York, Inc)	101244	\$ 34,000.00	\$ 45,500.00	\$ 53,000.00
518044	Buffalo Inner City Ballet Co, Inc	108597	\$ 27,000.00	\$ 27,000.00	\$ 27,000.00
518050	Buffalo Music Hall of Fame	113142	\$ 4,500.00	\$ -	\$ 5,000.00
518051	Buffalo Heritage Carousel	167825	\$ 30,000.00	\$ 30,000.00	\$ 35,000.00
518074	Colored Musicians Club	130377	\$ 5,000.00	\$ -	\$ 12,500.00
518084	El Museo Gallery	104936	\$ 12,585.00	\$ 8,585.00	\$ 11,000.00
518104	Graycliff Conservancy	103197	\$ 59,200.00	\$ 59,200.00	\$ 60,000.00
518113	Hull House Foundation	143473	\$ 18,375.00	\$ 5,375.00	\$ 7,500.00
	Jewish Community Center Cultural (Jewish Ctr of Greater Buff)	111239	\$ 13,500.00	\$ 8,750.00	\$ 13,500.00
518120	Just Buffalo Literacy Center	108577	\$ 78,100.00	\$ 78,100.00	\$ 83,500.00
518132	Locus St Neighborhood Art Classes	109985	\$ 29,250.00	\$ 25,250.00	\$ 28,500.00
518136	Maitin House Restoration	104361	\$ 175,500.00	\$ 175,500.00	\$ 190,000.00
518139	Music Is Art	139615	\$ 48,000.00	\$ 48,000.00	\$ 39,000.00
518143	Polish Arts Club Of Buffalo Inc	106132	\$ 7,000.00	\$ 7,000.00	\$ 3,800.00
518147	Preservation Buffalo Niagara	147509	\$ 4,615.00	\$ 4,615.00	\$ 6,000.00
518180	Springville Center For The Arts	113306	\$ 30,505.00	\$ 20,505.00	\$ 36,000.00
518164	Squeaky Wheel	101268	\$ 20,920.00	\$ 20,920.00	\$ 27,000.00
518172	Theodore Roosevelt Inaugural Site	106552	\$ 32,320.00	\$ 32,320.00	\$ 37,000.00
518176	Ujima Company	101047	\$ 83,000.00	\$ 83,000.00	\$ 57,714.00
518180	Western New York Artists Group	108295	\$ 6,275.00	\$ 6,275.00	\$ 7,500.00
518181	WNY Book Arts Collaborative, Inc	139556	\$ 4,640.00	\$ 4,640.00	\$ 6,000.00
518184	Young Audiences Of WNY	109816	\$ 10,500.00	\$ 10,300.00	\$ 14,000.00
518196	Buffalo Niagara Heritage Village	151996	\$ 18,500.00	\$ 18,500.00	\$ 24,500.00
518200	Michigan St African Amer Heritage	152575	\$ 15,000.00	\$ 15,000.00	\$ 32,500.00
518201	General Pulaski Association	103960	\$ 10,000.00	\$ 11,000.00	\$ 12,500.00
518204	Brighton Place, Inc	136184	\$ 10,000.00	\$ 16,000.00	\$ 20,000.00
518211	Hispanic Heritage Council of WNY	159305	\$ 12,080.00	\$ 20,000.00	\$ 24,500.00
	Black Rock Historical Society (Black Rock-Riverside Alliance)	170366	\$ 22,500.00	\$ 7,500.00	\$ 10,000.00
518233	Centro Culturale Italiano di Buffalo	167500	\$ 25,000.00	\$ 20,000.00	\$ 15,000.00
518549	South Buffalo Irish Fairs/Can You Dig	113021	\$ 18,000.00	\$ 15,000.00	\$ 15,000.00
518596	Net Positive DBA The Foundry	168005	\$ 5,000.00	\$ -	\$ 5,000.00

Monitoring Program – Phase II

ACT #	APPROPRIATION	VENDOR NUMBER	TAX YEAR 2020	TAX YEAR 2021	TAX YEAR 2022
518533	Buffalo Orchestral Bands Conservancy	140237	\$ 25,910.00	\$ 25,910.00	\$ 35,000.00
518008	Abricht Knox Art Gallery	108707	\$ 575,000.00	\$ 575,000.00	\$ 675,000.00
518009	Abricht Knox Public Art Curator	147228	\$ 68,250.00	\$ 68,250.00	\$ -
518025	Assembly House 150, Inc	167747	\$ 1,000.00	\$ 1,000.00	\$ 6,500.00
518034	Buffalo & Erie County Botanical Garden	108743	\$ 103,000.00	\$ 125,000.00	\$ 150,000.00
518036	Buffalo & Erie Co Historical Society	108772	\$ 417,000.00	\$ 667,000.00	\$ 417,000.00
	Buffalo & Erie County Naval & Servicemans				
518052	Park	109339	\$ 35,000.00	\$ 35,000.00	\$ 50,000.00
518060	Buffalo Philharmonic Orch Society	101032	\$ 926,000.00	\$ 926,000.00	\$ 940,000.00
518061	Buffalo Philharmonic Chorus	129796	\$ 34,500.00	\$ 34,500.00	\$ 35,000.00
518064	Buffalo Society Natural Sciences	109767	\$ 955,000.00	\$ 955,000.00	\$ 955,000.00
518065	Buffalo String Works, Inc	167853	\$ 3,500.00	\$ 3,500.00	\$ 5,355.00
518068	Burchfield Penney Art Center	102004	\$ 158,000.00	\$ 155,000.00	\$ 160,000.00
518072	Center for Exploratory and Perceptu	129934	\$ 53,000.00	\$ 53,000.00	\$ 63,000.00
518082	Danceability	156639	\$ 2,500.00	\$ 5,500.00	\$ 3,000.00
518098	Empire & More Children's Museum	102758	\$ 42,300.00	\$ 42,300.00	\$ 79,000.00
518108	Haltiwiler Contemporary Arts Center	108598	\$ 57,000.00	\$ 57,000.00	\$ 60,000.00
518112	Hamburg Nat Hist Society/Penn-Delaw	103182	\$ 9,311.00	\$ 96,314.00	\$ 96,314.00
518116	Irish Classical Theatre Company	103727	\$ 83,500.00	\$ 83,500.00	\$ 93,500.00
518114	D'Youville Cottage Kawinoku Theater	109341	\$ 11,750.00	\$ -	\$ 9,500.00
518128	Lanaster Opera House	113681	\$ 45,300.00	\$ 30,300.00	\$ 35,000.00
518140	MusicalFare Theatre	129328	\$ 61,525.00	\$ 61,525.00	\$ 66,000.00
518141	New Phoenix Theatre	109342	\$ 7,500.00	\$ 7,500.00	\$ -
518148	Road Less Traveled Productions	121043	\$ 63,500.00	\$ 63,500.00	\$ 67,000.00
518152	Roycroft Campus Cooperation	118213	\$ 50,000.00	\$ 40,000.00	\$ 50,000.00
518156	Shakespeare In The Park	109675	\$ 95,000.00	\$ 95,000.00	\$ 95,000.00
518168	Theatre Of Youth	109888	\$ 69,400.00	\$ 69,400.00	\$ 74,000.00
518173	Torn Space Theatre	143573	\$ 20,460.00	\$ 15,460.00	\$ 29,500.00
518188	Zoological Society Of Buffalo	108623	\$ 1,500,000.00	\$ 1,500,000.00	\$ 1,700,000.00
518195	Orchard Park Symphony Orchestra	147747	\$ 4,615.00	\$ 4,615.00	\$ 6,000.00
518202	Buffalo Opera Unlimited Incorporated	155973	\$ 2,300.00	\$ 2,300.00	\$ 10,000.00
518203	Buffalo-Toronto Public Media WREB/WSPD	172909	\$ 3,750.00	\$ -	\$ 5,000.00
518205	Cheektowaga Comm Symphony Orchestra	105177	\$ -	\$ 7,500.00	\$ -
518209	Newstead Historical Society	105518	\$ 3,500.00	\$ 3,500.00	\$ 5,000.00
518213	O'Connell & Company Productions	159162	\$ 23,100.00	\$ 23,100.00	\$ 31,500.00
	Amherst Male Glee Club dba Red Blazer				
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518225	Cheektowaga Historical Association	161221	\$ 1,250.00	\$ 6,250.00	\$ 8,100.00
518229	Second Generation Theatre Company	164957	\$ 2,020.00	\$ 2,020.00	\$ 5,000.00
518230	Steel Plant Museum of Western New York	147740	\$ 2,020.00	\$ 2,020.00	\$ 3,000.00
518503	Alden Christian Theater Society	114358	\$ 10,000.00	\$ -	\$ 10,000.00
518524	Clarence Concert Association	101711	\$ 3,500.00	\$ -	\$ 5,000.00
	Clarence Museum (Historical Soc. of the Town of Clarence)				
518315	Town of Clarence	113067	\$ 5,500.00	\$ -	\$ 6,000.00

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Over the course of the Monitoring Program, the Division of Audit found a number of problematic practices and questionable expense categories on a recurring basis. In order to address issues pertaining to a large number of organizations, certain generally applicable best practices and recommendations are included here.

Alcohol

Several organizations used or appeared to use CGF funds to obtain alcohol. While the Division of Audit does not recommend that CGF awards be made contingent on the absence of alcohol from events hosted by the organization, alcohol should not be purchased with CGF funds. The Division of Audit found dozens of alcohol purchases that appeared to be personal in nature and several more which likely violated NYS Alcoholic Beverage Control Laws. Furthermore, the NYS Comptroller has long held that alcohol is not a "lawful county charge", meaning that government officials and employees may not use taxpayer funds to purchase alcohol. The Division of Audit sees no reason that organizations receiving taxpayer funds should be treated differently.

Debit Cards

Credit cards, particularly with smaller organizations, can provide a critical layer of expense control. The Division of Audit found a large quantity of small-dollar expenses appearing personal in nature. If a debit card is used, the money is gone by the time statements are typically reviewed, while a credit card bill often needs to be paid and approved by the organization's board of directors.

Alternate Funding Sources and Segregation of Accounts

Organizations may have several sources of governmental or philanthropic funding. One way to ensure that CGF funds go farthest is to tailor awards to the needs of the organization. Such an assessment would require applicants to provide certain financial documents covering prior years and a disclosure of current year funding applications. Furthermore, accounts received from Erie County should not be comingled with the other funds of the organization. Having source information upfront and requiring the segregation of accounts substantially decreases the likelihood of wasted CGF funds.

AMHERST MALE GLEE CLUB, INC.

(DBA RED BLAZER MEN'S CHORUS)

BACKGROUND

The Amherst Male Glee Club, dba Red Blazer Men's Chorus (RBMC) is a 501(c)(3) nonprofit organization established in 1948 to offer male choral singing and entertainment in Western New York. The stated mission of the organization is to encourage, develop, and promote the advancement of male choral music, to serve its members and the public, and to generate community interest in male choral music and the theatrical arts through the presentation of public concerts and performances. In 2013, the organization adopted the name *Red Blazer Men's Chorus* to reflect their signature concert uniform.

RBMC received \$3,000 in Cultural Grant Funding (CGF) for the years 2020 and 2022, and \$6,000 in CGF for the year 2021.

AUDITOR'S OBSERVATIONS

The Red Blazer Men's Chorus was started at Amherst Central High School as a result of the school expanding their adult education program. Men from many towns and counties across the greater Buffalo area joined the organization. RBMC became a member of the Associated Male Choruses of America and has participated in regional as well as international singing events in the past.

RBMC hosts an annual holiday show in December and a spring variety show in April, which are the two leading events each year for the organization. Performances are staged at Sweet Home Middle School. RBMC also entertains various community groups and performs a Senior Citizen Concert Series annually across Erie County, where performances are free to the residents, family members and staff of various senior living facilities.

During the COVID-19 pandemic period, RBMC was not able to perform live concerts; therefore, virtual concerts and prior performances were streamed. The organization continued to pay its music director and hired a videographer to produce virtual programming.

The primary sources of revenue for the organization include its annual sustaining membership program, event ticket sales and program advertising sponsorships. Chorus members are also required to pay annual dues, which provides the organization with additional operating revenue.

RBMC hosts a spring and Christmas dinner annually as well as a summer picnic for its members. The cost of events is mainly covered by the organization's members through ticket sales; therefore, the cost to the organization is de minimis in nature.

AUDITOR'S CONCLUSION

During the grant monitoring review process, RBMC was able to provide adequate documentation to substantiate its use of the CGF award received during each year under review. Documentation provided by the organization to substantiate expenses included copies of bank statements, cancelled checks, tax return documents, and information return documentation.

CGF awards are allocated by the organization towards the cost of their music library, printing of event programs, cost of advertising, and the cost of concert space rental.

RBMC currently has a Board of Directors consisting of nine members. Board terms are three years in length and up to two consecutive terms can be served before members are required to step down for a minimum of one year. Board terms were established approximately five years ago, when new bylaws were adopted. The organization does not currently have a dual signature threshold for checks and payments, but there are several members of the board who have access to review the organization's bank accounts and finances. The organization appears to have an adequate level of internal controls including the segregation of duties and responsibilities. The Auditor found that the Board performs appropriate reviews of expenses incurred and income received.

Based on a review of the organization's website and social media accounts, the Auditor was not able to identify an acknowledgment of County support. The Auditor suggests that for the years in which County funding is received, the organization make the necessary updates to its webpage and social media accounts to comply with Erie County Cultural Service Contract § 21. That section stipulates that an "Organization agrees to acknowledge in any and all promotional material the fact that the Organization receives financial support from the County, including, but not limited to the Organization's website, marketing materials and/or publications."

At the conclusion of the grant review, the Auditor was able to determine that RBMC is currently in compliance with the filing of all returns, the issuance of information return documents and other federal and state obligations.

Erie County Legislature
Meeting Date: 06/20/2024

SUBJECT

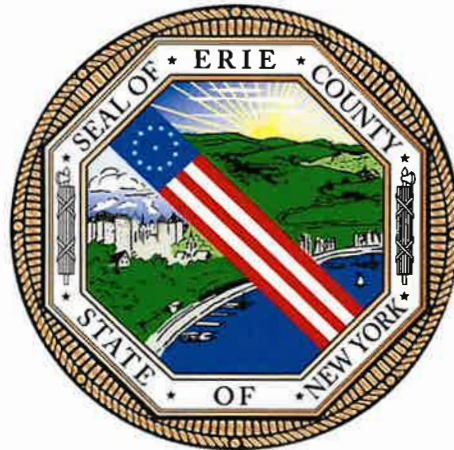
COMM. 12E-10	COMPTROLLER	EC Cultural Funding Grant Monitoring Program - Buffalo & EC Botanical Gardens Society, Inc.
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Attachments

24COMM. 12E-10

June 2024

**Erie County Cultural Funding Grant
Monitoring Program
Buffalo & Erie County Botanical Gardens Society, Inc.
January 1, 2020 through December 31, 2022**



**HON. KEVIN R. HARDWICK
ERIE COUNTY COMPTROLLER**

**HON. KEVIN R. HARDWICK
ERIE COUNTY COMPTROLLER'S OFFICE
DIVISION OF AUDIT & CONTROL
95 FRANKLIN STREET
BUFFALO, NEW YORK 14202**



June 10, 2024

Erie County Legislature
92 Franklin Street, Fourth Floor
Buffalo, New York 14202

Dear Honorable Members:

In 2023, the Erie County Comptroller's Office, Division of Audit & Control initiated a regular Monitoring Program of Erie County Cultural Funding Grants. The Erie County Cultural Funding program provides annual grants to non-profit arts and cultural organizations operating within the County. County funds are intended to be limited in their use to current operating expenses including salaries, program costs, fringe benefits, rents, utilities, office supplies, and equipment. Grant funds may not be used for or applied towards capital projects or physical improvements of buildings or facilities, nor as a revenue offset against accounts receivable. No funds received shall be used for any services provided or activities performed outside Erie County. The County's Department of Environment and Planning executes contracts with organizations and is the primary agency charged with monitoring.

Objective

The objective of the Cultural Funding Monitoring Program is to verify that the recipients have utilized County funds according to the terms and conditions associated with the Erie County Cultural Funding grant process and the recipient's contract with the County. In order to verify the proper use of the grant award, a number of agencies were selected in order to review their expenses and financial records.

Scope and Methodology

Approximately 120 different organizations receive funding annually from Erie County. The Comptroller's Cultural Funding Grant Monitoring Program is intended to review organizations that received a minimum of \$5,000 in funding during any of the three prior years. Approximately 80 agencies were identified as receiving \$5,000 or more in grant funding. The list of recipient organizations was split into two groups of approximately 40 agencies. The first batch of letters announcing the commencement of a review was sent to the selected non-profit organizations during mid-February 2023, and a second batch was sent in early October 2023. The review of all agencies is expected to be completed by October 31, 2024.

2023 – 2024 Program

During the interview phase, the Auditor identifies use of funding to narrow down the expenses to be verified. A table of agencies which meet the criteria for review along with the amount of grant awards can be found on the following page.

Monitoring Program – Phase I

ACT #	APPROPRIATION	VENDOR NUMBER	TAX YEAR 2023	TAX YEAR 2021	TAX YEAR 2022
	Enlightenment Literary Arts Center &				
517125	Dog Ears Bookstore	152183	\$ 28,600.00	\$ 36,800.00	\$ 35,000.00
518004	African American Cultural Center	112604	\$ 275,450.00	\$ 311,950.00	\$ 200,000.00
518012	Alleyway Theatre	109350	\$ 8,500.00	\$ 8,500.00	\$ 11,000.00
518016	American Legion Band of	100339	\$ 7,500.00	\$ 7,500.00	\$ 45,000.00
518017	Amherst Symphony Orchestra	100475	\$ 32,500.00	\$ 26,750.00	\$ 28,740.00
518019	Arts Services Initiative of WNY Inc	147159	\$ 26,050.00	\$ 26,050.00	\$ 30,000.00
518028	Ballet Artists Of WNY (Resale)	100794	\$ 24,000.00	\$ 24,000.00	\$ 30,000.00
	Buffalo Arts Studio (Arts Studio of				
518040	Western New York, Inc)	101244	\$ 38,000.00	\$ 45,500.00	\$ 53,000.00
518044	Buffalo Inner City Ballet Co, Inc	108597	\$ 27,000.00	\$ 27,000.00	\$ 27,000.00
518050	Buffalo Music Hall of Fame	113142	\$ 4,500.00	\$ -	\$ 5,500.00
518051	Buffalo Heritage Carousel	167329	\$ 30,000.00	\$ 30,000.00	\$ 35,000.00
518074	Colored Musicians Club	130377	\$ 5,000.00	\$ -	\$ 12,500.00
518084	El Museo Gallery	109336	\$ 12,585.00	\$ 8,585.00	\$ 11,000.00
518104	Graycliff Conservancy	103197	\$ 59,200.00	\$ 59,200.00	\$ 60,000.00
518113	Hull House Foundation	143473	\$ 15,375.00	\$ 5,375.00	\$ 7,500.00
	Jewish Community Center Cultural				
518119	(Jewish Ctr of Greater Buff)	111239	\$ 13,500.00	\$ 8,750.00	\$ 13,500.00
518120	Just Buffalo Literary Center	108577	\$ 78,100.00	\$ 78,100.00	\$ 83,500.00
518132	Locust St Neighborhood Art Classes	109985	\$ 29,250.00	\$ 25,250.00	\$ 28,500.00
518136	Martin House Restoration	104463	\$ 175,500.00	\$ 175,500.00	\$ 150,000.00
518139	Music is Art	139615	\$ 48,000.00	\$ 48,000.00	\$ 39,000.00
518146	Polish Arts Club Of Buffalo Inc	106132	\$ 7,000.00	\$ 7,000.00	\$ 3,800.00
518147	Preservation Buffalo Niagara	147509	\$ 4,615.00	\$ 4,615.00	\$ 6,000.00
518160	Springville Center For The Arts	113305	\$ 30,505.00	\$ 30,505.00	\$ 36,000.00
518164	Squeaky Wheel	101268	\$ 20,920.00	\$ 20,920.00	\$ 27,000.00
518172	Theodore Roosevelt Inaugural Site	106552	\$ 32,320.00	\$ 32,320.00	\$ 37,000.00
518176	Ujima Company	101047	\$ 83,000.00	\$ 83,000.00	\$ 57,714.00
518180	Western New York Artists Group	108295	\$ 6,275.00	\$ 6,275.00	\$ 7,500.00
518181	WNY Book Arts Collaborative, Inc	135958	\$ 4,640.00	\$ 4,640.00	\$ 6,000.00
518184	Young Audiences Of WNY	109818	\$ 10,500.00	\$ 10,500.00	\$ 14,000.00
518196	Buffalo Niagara Heritage Village	151996	\$ 18,500.00	\$ 18,500.00	\$ 24,500.00
518200	Michigan Sr African Amer Heritage	152578	\$ 15,000.00	\$ 15,000.00	\$ 21,500.00
518201	General Pulaski Association	103060	\$ 10,000.00	\$ 11,000.00	\$ 12,500.00
518204	Brighton Place, Inc	136194	\$ 10,000.00	\$ 16,000.00	\$ 20,000.00
518211	Hispanic Heritage Council of WNY	159305	\$ 12,000.00	\$ 20,000.00	\$ 24,500.00
	Black Rock Historical Society (Black				
518216	Rock-Riverside Alliance)	170569	\$ 22,500.00	\$ 7,500.00	\$ 10,000.00
518233	Centro Culturale Italiano di Buffalo	167500	\$ 25,000.00	\$ 20,000.00	\$ 15,000.00
518249	South Buffalo Irish Feis/Cian You Dig	112041	\$ 18,000.00	\$ 15,000.00	\$ 13,000.00
518586	Net Positive DBA The Foundry	168005	\$ 5,000.00	\$ -	\$ 5,000.00

Monitoring Program – Phase II

ACT #	APPROPRIATION	VENDOR NUMBER	TAX YEAR 2023	TAX YEAR 2021	TAX YEAR 2022
517533	Buffalo Olmsted Parks Conservancy	140237	\$ 35,910.00	\$ 35,910.00	\$ 35,900.00
518008	Albright-Knox Art Gallery	108707	\$ 575,000.00	\$ 575,000.00	\$ 675,000.00
518009	Albright-Knox Public Art Curator	147228	\$ 88,250.00	\$ 88,250.00	\$ -
518025	Assembly House 150, Inc	167747	\$ 1,000.00	\$ 1,000.00	\$ 6,500.00
518034	Buffalo & Erie County Botanical Garden	108743	\$ 102,000.00	\$ 125,000.00	\$ 130,000.00
518036	Buffalo & Erie Co Historical Society	108772	\$ 417,000.00	\$ 667,000.00	\$ 417,000.00
	Buffalo & Erie County Naval & Servicemans				
518052	Park	109339	\$ 35,000.00	\$ 35,000.00	\$ 30,000.00
518060	Buffalo Philharmonic Orch Society	101032	\$ 926,000.00	\$ 926,000.00	\$ 840,000.00
518061	Buffalo Philharmonic Chorus	109295	\$ 4,500.00	\$ 34,500.00	\$ 35,000.00
518064	Buffalo Society Natural Sciences	109767	\$ 955,000.00	\$ 955,000.00	\$ 955,000.00
518065	Buffalo String Works, Inc	167853	\$ 3,500.00	\$ 3,500.00	\$ 5,355.00
518068	Burchfield Penney Art Center	101004	\$ 155,000.00	\$ 155,000.00	\$ 160,000.00
518072	Center for Exploratory and Perceptu	109934	\$ 35,000.00	\$ 35,000.00	\$ 63,000.00
518082	Danceability	156639	\$ 2,500.00	\$ 5,500.00	\$ 3,000.00
518096	Explore & More Children's Museum	102758	\$ 42,000.00	\$ 42,000.00	\$ 78,000.00
518108	Haliwallis Contemporary Arts Center	108598	\$ 57,000.00	\$ 57,000.00	\$ 60,000.00
518112	Hamburg Nat Hist Society/Penn Drive	103283	\$ 9,314.00	\$ 9,314.00	\$ 9,314.00
518116	Irish Classical Theatre Company	103727	\$ 83,500.00	\$ 83,500.00	\$ 93,500.00
518124	O Youville College Kavinsky Theater	109341	\$ 11,750.00	\$ -	\$ 3,500.00
518128	Lancaster Opera House	111681	\$ 45,300.00	\$ 30,300.00	\$ 35,000.00
518140	Musical Fare Theatre	105308	\$ 61,525.00	\$ 61,525.00	\$ 66,000.00
518141	New Phoenix Theatre	109342	\$ 7,500.00	\$ 7,500.00	\$ -
518148	Road Less Traveled Productions	121044	\$ 63,500.00	\$ 63,500.00	\$ 47,000.00
518152	Raybrok Campus Cooperation	118213	\$ 50,000.00	\$ 48,000.00	\$ 50,000.00
518156	Shakespeare in The Park	109675	\$ 95,000.00	\$ 95,000.00	\$ 95,000.00
518168	Theatre Of Youth	109888	\$ 69,400.00	\$ 69,400.00	\$ 74,000.00
518173	Yarn Spool Theatre	143673	\$ 20,460.00	\$ 15,460.00	\$ 29,500.00
518189	Zoological Society Of Buffalo	108623	\$ 1,500,000.00	\$ 1,500,000.00	\$ 1,700,000.00
518195	Orchard Park Symphony Orchestra	147747	\$ -6,615.00	\$ -6,615.00	\$ 8,000.00
518202	Buffalo Opera Unlimited Incorporated	155973	\$ 2,300.00	\$ 2,300.00	\$ 10,000.00
518203	Buffalo-Toronto Public Media WNEP-WBFO	172509	\$ 3,500.00	\$ -	\$ 5,000.00
518205	Cheektowaga Comm Symphony Orchestra	109717	\$ 3,500.00	\$ 3,500.00	\$ 3,000.00
518209	Newstead Historical Society	105518	\$ 3,500.00	\$ 3,500.00	\$ 3,000.00
518213	O'Connell & Company Productions	159162	\$ 23,100.00	\$ 23,100.00	\$ 31,500.00
	Amherst Male Glee Club dba Red Blazer				
518219	Men's Chorus	162045	\$ 3,000.00	\$ 3,000.00	\$ 6,000.00
518221	Buffalo Center for Arts and Technology	152207	\$ 3,000.00	\$ 3,000.00	\$ 7,500.00
518226	Cheektowaga Historical Association	163121	\$ 3,250.00	\$ 6,250.00	\$ 6,000.00
518229	Second Generation Theatre Company	164957	\$ 2,000.00	\$ 2,000.00	\$ 5,000.00
518230	Steel Plant Museum of Western New York	147760	\$ 2,020.00	\$ 2,020.00	\$ 3,000.00
518503	Alden Christian Theater Society	114358	\$ 10,000.00	\$ -	\$ 3,000.00
518514	Clarence Concert Association	101711	\$ 3,500.00	\$ -	\$ 5,000.00
	Clarence Museum (Historical Soc of the				
518515	Town of Clarence)	113067	\$ 5,500.00	\$ -	\$ 6,000.00

BEST PRACTICES

Over the course of the Monitoring Program, the Division of Audit found a number of problematic practices and questionable expense categories on a recurring basis. In order to address issues pertaining to a large number of organizations, certain generally applicable best practices and recommendations are included here.

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Several organizations used or appeared to use CGF funds to obtain alcohol. While the Division of Audit does not recommend that CGF awards be made contingent on the absence of alcohol from events hosted by the organization, alcohol should not be purchased with CGF funds. The Division of Audit found dozens of alcohol purchases that appeared to be personal in nature and several more which likely violated NYS Alcoholic Beverage Control Laws. Furthermore, the NYS Comptroller has long held that alcohol is not a "lawful county charge", meaning that government officials and employees may not use taxpayer funds to purchase alcohol. The Division of Audit sees no reason that organizations receiving taxpayer funds should be treated differently.

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BUFFALO AND ERIE COUNTY BOTANICAL GARDENS SOCIETY, INC.**BACKGROUND**

The Buffalo and Erie Botanical Gardens Society, Inc. (BEBG) is a 501(c)(3) nonprofit organization established in 1981 with a mission to inspire curiosity and connect people to the natural world through its historic living museum. The design and inception of the BEBG dates to the 1860s, when Frederick Law Olmstead and William A. Burnham, among others, incorporated the notion of a glass conservatory to serve as the keystone of Buffalo's South Park. The South Park Conservatory and Botanical Gardens were completed in time for the 1901 Pan-American Exposition.

BEBG received \$102,000 in cultural grant funding (CGF) for the year 2020, \$125,000 for the year 2021 and \$150,000 for the year 2022. CGF awarded to BEBG was \$2,000 above the executive recommendation for the year 2020 and \$25,000 over the executive recommendation for the year 2021.

AUDITOR'S OBSERVATION

BEBG is a living museum, national historic site and education center that provides year-round programming and visitor services, located within Buffalo's South Park. BEBG provides educational programming, engaging exhibits and indoor/outdoor garden sanctuaries to approximately 100,000 annual visitors. BEBG also serves as a special events venue, hosting a wide range of events including fundraisers, weddings and photography sessions amongst other events for individuals, businesses and other non-profit organizations.

Admission and memberships are the primary source of revenue for BEBG, accounting for approximately 40% of its annual revenue. Special events and charitable contributions are also among the primary sources of funding for BEBG. The organization relies on the support of public funding from organizations such as the County of Erie, the City of Buffalo, and the New York State Office of Parks and Recreation and Historic Preservation to support its programming efforts. BEBG also organizes several fundraising events as means to raise additional

funding. The organization hosts an annual gala, which is one of their recurring fundraising events. Other fundraisers include dinner events, games of chance such as raffles and an annual appeal campaign.

BEBG is currently undergoing a few changes, including an addition to their structure, a renovated welcome center, and a larger gift shop, among other capital improvements. The organization is also digitizing many of their older records and undergoing a shift in focus toward community-related outreach and functions.

The largest operating expenses for the organization include salaries, employee benefits and horticulture costs. BEBG is not responsible for the cost of rent and other occupancy expenses, as the County of Erie purchased the conservatory and land surrounding South Park from the City of Buffalo in 1981.

AUDITOR'S CONCLUSION

During the grant monitoring review process, BEBG was able to provide the Auditor with adequate substantiation for use of CGF awards for the years funding was received. Documentation provided by the organization to substantiate expenses and use of grant funding includes copies of bank statements, credit card statements, tax return documents, payroll records and audited financial statements. CGF awards are allocated towards expenses for wages paid to maintenance and horticulture staff.

BEBG currently has a Board of Directors consisting of 20 members. Officers are limited to two 2-year terms, which can be served consecutively. Officers can continue to serve on the Board of Directors, but they cannot serve as an officer once their two terms have expired. BEBG appears to have an adequate level of internal controls as the organization segregates duties and responsibilities, and the Board performs appropriate reviews of expenses incurred and income received. BEBG also appears to have a thorough process for approving expenses and verifying income is properly accounted, particularly income unrelated to their exempt functions.

During the review process, the Auditor was able to determine that the organization complied with fundraising and special event related requirements. BEBG maintains thorough records of events, ensures special event permits such as temporary State Liquor Authority (SLA) licenses are filed and are also in compliance with the New York State Gaming Commission's (NYSGC) and the requirements for obtaining a Game of Chance Identification Number.

At the conclusion of the grant review, the Auditor was able to determine that BEBG is currently in compliance with the filing of all returns, the issuance of information return documents and other federal and state obligations.

Erie County Legislature
Meeting Date: 06/20/2024

SUBJECT

COMM. 12E-11

GREENE

Letter to Locust Street Art Board Members

Attachments

24COMM. 12E-11



ERIE COUNTY LEGISLATURE

HON. CHRISTOPHER D. GREENE

LEGISLATOR

EC LEG JUN 13 '24 AM 10:33

Rachelyn Noworyta, Executive Director, Locust Street Art
Kinsey O'Brien, Board President
Shanel Kerekes, Board Vice President
Simone Ragland, Board Treasurer
Heather Gring, Board Secretary
Bradley Bethel, Board Member
Kevin Kitchen, Board Member

June 12, 2024

Dear Executive Director Nowoyta and Locust Street Art Board Members,

It has come to my attention that Rachel Shanowitz of Ohr Temimim School in Amherst recently sent an email inquiring about your services, expressing an interest in working with their middle school students on projects involving ceramics. Morgan Arnett, representing your organization, sent a reply stating *"unfortunately, upon further review of your organization, we have found our missions are not aligned and we will not be able to set up programming with your school. It seems we are on opposite sides of a great ethical divide and cannot in good consciousness work with a pro-Israel organization that supports the ongoing genocide in Palestine."*

This is deeply troubling on many levels. A review of Ohr Temimim School's website describes it as an Orthodox Day School where Jewish children of all backgrounds are educated; "Our teachers and staff bring a warm, loving atmosphere to each classroom. They work with every child to inspire a love for learning and Jewish traditions." Furthermore, it is accredited by the Education Department of the State of New York and follows the same guidelines and curriculum as public schools in the region. The website makes no mention of the Israel-Palestine conflict or even the state of Israel. In fact, students there participate in an incentive program that keeps them motivated to do mitzvot and good deeds. In the absence of any Israeli-related political statement on their website, it seems abundantly clear that Ms. Arnett's decision on behalf of Locust Street Art demonstrates overt antisemitism.

Your organization receives significant public dollars. Your organization for 2024, Locust Street Art, received \$34,500 from Erie County, an increase from \$30,000 in 2023. In an annual filing for charitable organizations for filing year 2021, you listed total contributions as \$195,802, which included \$16,162.00 from the SBA, \$36,000 from the New York State Council on the Arts, and \$28,500 from Erie County. In addition, Erie County recently invested \$50,000 in capital funds for ADA improvements.

Title VII of the Federal Civil Rights Act of 1964 maintains; *“no business is allowed to turn away a customer based on the person being a member of the following protected status: Race or color, national origin or citizenship status, religious beliefs, sex, age, veteran status, disability or pregnancy, sexual orientation, gender identity.”* I cannot in good conscience continue to support providing public dollars for an organization that would discriminate and show such hostilities to a school that simply wanted to partner with Locust Street Art for art classes for its young students. Your stated mission on your website proclaims, “Where Art is for everyone.” You go on to state that: “We offer a variety of Community Supported FREE studio arts classes from age 4 to senior adult, low-cost specialized workshops and custom services to our community and beyond.” The denial of offerings by Morgan Arnett runs counter to that mission statement. Personally, I was incredibly impressed with the presentation your organization provided to the Erie County Legislature at budget hearings last November, which is why Ms. Arnett’s words are so shocking to me.

I do understand that a follow-up email was sent by the Executive Director, apologizing for the earlier decision and your organization’s “lapse in judgement.” While I appreciate the outreach, it troubles me that it required a full day of reflection to come to this conclusion when it is quite clearly antisemitism. Meanwhile, the damage has already been done. No mention was made of whether Morgan Arnett would face any disciplinary action or mandated cultural sensitivity training, and whether she was truly sorry for her divisive and hurtful email that made some very broad assumptions, and wrongly brought young, innocent people into a political conflict.

Irrespective of one’s personal political beliefs, organizations like yours are provided with public dollars based on their stated mission. Ms. Arnett’s email response brought back painful reminders of another time that this country has worked hard to keep in the past. Please advise as to what further steps your organization plans to take to ensure something like this never happens again.

Sincerely,



Hon. Christopher Greene
Erie County Legislator

Erie County Legislature
Meeting Date: 06/20/2024

SUBJECT

COMM. 12E-12	COUNTY CLERK	Resolution to Authorize Entry Into Contract with Tyler Technologies, Inc.
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Attachments

24COMM. 12E-12



0 JUN 13 2024 10:48

COUNTY OF ERIE

MICHAEL P. KEARNS
COUNTY CLERK

June 13, 2024

The Honorable Erie County Legislature
92 Franklin Street – Fourth Floor
Buffalo, New York 14202

**Re: Resolution to Authorize Entry into Contract with Tyler Technologies, Inc.
Pursuant to RFP #2024-023VF**

Dear Honorable Members:

The attached proposed Resolution seeks authorization for the Erie County Executive to execute a contract with Tyler Technologies, Inc. as the winning bidder of RFP #2024-023VF for recordkeeping software services at the Erie County Clerk's Office.

Enclosed please find the proposed Resolution referenced above as well as a memorandum of support. A full record of the RFP selection process can be made available if desired.

Thank you for your consideration of this matter. If your Honorable Body requires further information, kindly contact the Erie County Clerk's Office.

Respectfully submitted,


MICHAEL P. KEARNS
Erie County Clerk

MPK/wal

Encl.

**STATE OF NEW YORK
LEGISLATURE OF ERIE COUNTY
BUFFALO, NEW YORK**

**A Resolution Submitted by the Erie County Clerk
Re: Recordkeeping Software Services for Erie County Clerk's Office**

WHEREAS, the Erie County Clerk is responsible for recording, filing, and maintaining a central repository of legal documents, court filings, and records affecting property titles, including land and real estate transactions, in its Registrar Division; and

WHEREAS, NewVision Systems Corporation ("NewVision") has been the provider of recordkeeping software services in the Erie County Clerk's Office since 2004; and

WHEREAS, the Erie County Comptroller released an audit in June 2023 of the Erie County Clerk's Office, Registrar Division Operating Budget Revenues (23COMM. 14E-28); and

WHEREAS, the Erie County Comptroller found in the June 2023 Audit that numerous "errors were detected in NewVision system reports that could not be explained", and advised the Erie County Clerk's Office to "assess NewVision and the system's ability to meet the specific needs of the Clerk's Office in providing adequate and reliable financial reporting"; and

WHEREAS, it was noted in the June 2023 Audit that "NewVision does not interface with the County's accounting software system (SAP), and the company which administers NewVision, Catalis, LLC, has not created a translation tool which would facilitate the transfer of financial data from NewVision to SAP"; and

WHEREAS, the Erie County Comptroller further recommended in the June 2023 Audit that, if the current software system could not be updated to ensure accurate financial information, the system should be replaced with "a system capable of providing financial data consistent with the Clerk's obligations under § 1904 of the Erie County Administrative Code"; and

WHEREAS, the current software provider acknowledged the presence of "system error" and "visual bugs" in its response to the findings by the Erie County Comptroller's Office published by the Erie County Clerk's Office in September 2023 (23COMM. 18E-1); and

WHEREAS, following the June 2023 Audit, the Erie County Clerk's Office met with an adjacent county clerk's office and potential software vendors to discuss both improvements to the existing software and the feasibility of acquiring new software; and

WHEREAS, the Erie County Comptroller released an audit in February 2024 of the Erie County Clerk's Office, Registrar Division Mortgage Tax Collection and Distribution (24COMM. 4E-6); and

WHEREAS, the Erie County Comptroller again found issues with the current recordkeeping software, noting that "reports generated by the Clerk's NewVision Cashiering

System are routinely inconsistent and show discrepancies in the financial information being reported”; and

WHEREAS, the Erie County Clerk’s Office is grateful to the Erie County Comptroller’s Office for the long-overdue audits that highlighted the need for new software; and

WHEREAS, it is incontrovertible that the current recordkeeping software no longer meets the myriad needs of the Erie County Clerk’s Office nor the taxpayers of Erie County; and

WHEREAS, the current recordkeeping software is set to be phased out in the next 2-3 years, making a transition to new software not only essential to perform the duties of the Erie County Clerk’s Office but unavoidable; and

WHEREAS, transitioning all of the recordkeeping duties from one system to another could take as long as eight months to one year; and

WHEREAS, the Erie County Clerk’s Office advised this Honorable Body of the need and potential costs of new software via correspondence filed March 4, 2024 (24Comm. 5E-35); and

WHEREAS, the Erie County Clerk’s Office consulted with the Division of Information and Support Services (“DISS”) on drafting a Request for Proposals (“RFP”) for new software, and obtained approval from DISS on the content for such an RFP; and

WHEREAS, on April 10, 2024, the Erie County Clerk’s Office issued RFP #2024-023VF seeking proposers for recordkeeping software services, published online through the Erie County Division of Purchase and posted on other government bidding sites; and

WHEREAS, a selection committee, including a member of DISS, received, reviewed, and scored the two (2) proposals that were submitted in response to the RFP and unanimously determined that Tyler Technologies, Inc. submitted the best proposal and that their organization was the most technically qualified and best-positioned to perform the services requested; and

WHEREAS, the software provided by Tyler Technologies is expected to increase the efficiency and productivity of the Clerk’s Office with integrated solutions such as eRecording, Bi-directional support with the Unified Court System, Intelligent OCR indexing, self-serving public access, and POS payment processing, in addition to featuring robust financial reporting, fee management, and automated data extracts that make it possible for the Clerk’s Office to achieve GAAP compliance; and

WHEREAS, the funds necessary to cover the costs of this contract are currently available from the Mortgage Tax expense allocation, pursuant to Section 262 of the New York State Tax Law and approved by this Honorable Body in COMM. 18E-3(2023), on December 7, 2023 and amended on April 25, 2024; and

WHEREAS, additional funding to cover the costs of this contract are currently available in the following account: County Clerk- Registrar Division, Account No.: 516020- Professional Services Contracts and Fees; and

WHEREAS, the Erie County Clerk's Office has reported a significant surplus of funds every year since 2018, with the most recent surplus in 2023 totaling approximately \$2,387,636.00.

NOW, THEREFORE, BE IT

RESOLVED, that the County of Erie is hereby authorized to enter into negotiations for, and execute a contract with, Tyler Technologies, Inc. for the purpose of transitioning to and maintaining a recordkeeping software system at the Erie County Clerk's Office; and be it further

RESOLVED, that said contract, subject to continued negotiations and approval by the County Attorney, shall be for a term of five (5) years, with the first year payment not to exceed approximately \$640,290; this amount includes a one-time service fee, one-time hardware fee, estimated on-site training expenses, and annual SaaS (software-as-a-service) fees; and the remaining four annual payments not to exceed approximately \$348,720 per year, which includes annual SaaS fees and on-site process reviewing expenses; in a grand total amount not to exceed \$2,035,170; and be it further

RESOLVED, that the County Executive, or the Deputy County Executive, is authorized to authorize the said contract with the fundamental terms set forth above, subject to a form of the final contract being approved by the County Attorney; and be it further

RESOLVED, that the source of funds comprising payment under the contract with Tyler Technologies, Inc. shall be from and are currently available in the following sources: the Mortgage Tax expense allocation, pursuant to Section 262 of the New York State Tax Law and approved by this Honorable Body in COMM. 18E-3(2023), on December 7, 2023 and amended on April 25, 2024; and County Clerk- Registrar Division, Account No.: 516020- Professional Services Contracts and Fees; and be it further

RESOLVED, that authorization is hereby given for the Division of Budget and Management to make any technical adjustments necessary to effectuate this resolution; and be it further

RESOLVED, that the Clerk of the Legislature shall forward certified copies of this Resolution to the Erie County Executive; the Erie County Attorney; the Director of the Division of Budget and Management; the Erie County Comptroller; and the Erie County Clerk.

MEMORANDUM

TO: Honorable Members of the Erie County Legislature
FROM: Michael P. Kearns, Erie County Clerk
RE: RFP #2024-023VF – Recordkeeping Software Services Contract
Date: June 13, 2024

SUMMARY

The Erie County Clerk's Office is requesting authorization to enter into a contract with Tyler Technologies, Inc. as the winning bidder of a Request for Proposal ("RFP") for recordkeeping software services at the Erie County Clerk's Office, specifically RFP #2024-023VF.

The need for new software was made abundantly clear by the release of two audits by the Erie County Comptroller in June 2023 (23COMM. 14E-28) and February 2024 (23COMM. 4E-6). Numerous findings exposed errors with the current system which could not be explained, even by the current provider. The inaccurate reports and financial data brought about by acknowledged "system error" and "visual bugs" led to the Erie County Comptroller recommending that the software be replaced with "a system capable of providing financial data consistent with the Clerk's obligations under § 1904 of the Erie County Administrative Code."

In addition, the current software does not integrate with the County's accounting software system (SAP), nor NYSCEF, the electronic court filing system used statewide.

FISCAL IMPLICATIONS

The terms of the contract, subject to continued negotiations and approval by the County Attorney, will be for a term of five (5) years, with the first year payment not to exceed approximately \$640,290. This amount includes a one-time service fee, one-time hardware fee, estimated on-site training expenses, and annual SaaS (software-as-a-service) fees; and the remaining four annual payments not to exceed approximately \$348,720 per year, which includes annual SaaS fees and on-site process reviewing expenses; in a grand total amount not to exceed \$2,035,170.

That the source of funds comprising payment under the contract with Tyler Technologies, Inc. are currently available from the following sources: the Mortgage Tax expense allocation, pursuant to Section 262 of the New York State Tax Law and approved by this Honorable Body in COMM. 18E-3(2023), on December 7, 2023 and amended on April 25, 2024; and County Clerk- Registrar Division, Account No.: 516020- Professional Services Contracts and Fees. It is noted that the Erie County Clerk's Office has reported an annual surplus of funds since 2018, with the most recent surplus in 2023 totaling approximately \$2,387,636.00.

REASONS FOR RECOMMENDATION

The findings by the Comptroller's Office in 2023 and 2024 revealed the numerous errors and visual bugs within the current system, many of which were acknowledged by the software provider itself. In addition, the Clerk's Office was made aware that the existing recordkeeping software, known

as RecordsNG, is being phased out within the next few years. As such, it is incontrovertible that the Clerk's Office needs new software. Transitioning all of the recordkeeping duties from one system to another could take as long as eight months to one year, with an additional six months of staff training to understand the new system. The RFP process was placed on hold so that the Comptroller's Office could complete its audits. With those audits completed, the time is now to approve and begin the transition to new software.

The Clerk's Office took the recommendations of the Comptroller's Office seriously and did not rush to release the RFP. Following the June 2023 Audit, the Clerk's Office met with an adjacent county clerk's office and potential software vendors to discuss both improvements to the existing software and the feasibility of acquiring new software. Then, following the February 2024 Audit, the Clerk's Office met with the Division of Information and Support Services ("DISS") on drafting an RFP, and obtained approval from DISS on the content for such an RFP. As to the RFP process itself, a member of DISS sat on the selection committee, which unanimously voted in favor of Tyler Technologies.

If approved, the software provided by Tyler Technologies is expected to increase the efficiency and productivity of the Clerk's Office with integrated solutions such as eRecording, Bi-directional support with the Unified Court System, Intelligent OCR indexing, self-serving public access, and POS payment processing, in addition to featuring robust financial reporting, fee management, and automated data extracts that make it possible for the Clerk's Office to achieve GAAP compliance; and

CONSEQUENCES OF NEGATIVE ACTION

The Clerk's Office will continue to rely on outdated software with acknowledged visual bugs and errors in reporting, affecting the hundreds of thousands of transactions that take place every year and likely leading to additional errors.

STEPS FOLLOWING APPROVAL

The Clerk's Office will work with the County Attorney and Division of Budget and Management to enter into a contract with the vendor.

Erie County Legislature
Meeting Date: 06/20/2024

SUBJECT

COMM. 12E-13	COUNTY EXECUTIVE	Appointment of the Commissioner of Central Police Services
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Attachments

24COMM. 12E-13



2024 JUN 13 '24 1:26

COUNTY OF ERIE
MARK C. POLONCARZ
COUNTY EXECUTIVE

June 13, 2024

Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, NY 14202

Re: Appointment of the Commissioner of Central Police Services

Dear Honorable Members:

Pursuant to Article 15, Section 1501 of the Erie County Charter, I hereby appoint Brian Ross, to the position of the Commissioner of the Department Central Police Services.

Should your Honorable Body require further information, I encourage you to contact my Chief of Staff, Benjamin Swanekamp. Thank you for your consideration on this matter.

Sincerely yours,

Mark C. Poloncarz
Erie County Executive

cc: Marlaine Hoffman, Interim Commissioner
MCP/nn

Education

State University of New York College at Buffalo- Buffalo, New York

- Master of Science- Criminal Justice- December 2006
- Bachelor of Science- Criminal Justice- August 2003

Law Enforcement Experience

Erie County Central Police Services Law Enforcement Training Academy- Williamsville, NY

2013-Current

- State Certified Master Instructor.
- Lecturer of the following topics: Preliminary Investigations, Injury/Death Cases, Interview and Interrogation, Case Preparation and courtroom testimony, Supervisor and Investigator response to Officer involved Shootings, Police Discretion, Under the color of law civil rights violations, Vicarious liability, Body Cams, Response to Excited Delirium cases, and Policing when race matters, and Race relations.
- Supervised, mentored, disciplined and trained over 586 police recruits since 2020.
- Facilitator and lead lecturer of the ECLETA Police Supervision School. Trained over 171 First line supervisors throughout WNY.
- Created and facilitated 2 ½ day Internal Affairs Investigation seminar- Provided agencies with best practices instruction to standardize internal affairs investigations and resolutions.
- Facilitator of practical police exercises to include: Vehicle Stops, Robbery, Domestic Violence incidents, Off-duty encounters, and Street Encounters.
- Created and developed the "Policing when race matters, and race relations" curriculum, which is taught at the basic academy and was provided to staff members at CPS on two separate occasions at the direction of former CPS Commissioner James Jancewicz.

State of New York Office of the Attorney General- Criminal Investigator

October 2015-2019

- Criminal Investigator assigned to the Criminal Investigations and Public Integrity Bureaus. Duties included the investigation and prosecution of public officials at the local, state, and federal level.
- Assigned to the Executive Protection Detail for General's Eric Schneiderman, Barbara Underwood, and Letitia James.
- Assigned to the Special Investigations and Prosecution Unit (SIPU), which was tasked with investigating deaths of unarmed civilians during interactions with the police per Gov Andrew Cuomo's Executive Order 147.

City of Buffalo Police Department-New York-Police Officer/Detective

January 1997-August 2015

Detective-Homicide/Cold Case Unit

January 2007 - August 2015 (Retired)

- Responded to, processed, and investigated scenes of serious assaults, unattended deaths, suicides, infant deaths, overdoses and homicides. Made arrests when applicable.
- Maintained incident command on all scenes. Determined the size and scope of the scene, directed police personnel throughout the scene, summoned outside resources to the scene, and released the scene after the completion of the investigation.
- Interviewed and Interrogated witnesses and suspects during investigations.
- Attended and documented post mortem examinations (autopsy). Gained thorough insight of Forensic pathology as it relates to determination of cause and manner of death.
- Testified in several Wade Hearings, Huntley Hearings, Grand Juries (Federal and State), and Trials.
- Participated in a joint partnership with the FBI Safe Streets Task Force and the US Attorney's office, to target and eradicate local violent street gangs using the Federal RICO statutes.
- Monitored Title-3 Federal wiretaps.
- Coordinated with the forensic serologist at the Erie County Forensic lab to facilitate the efficient resolution of criminal investigations.

January 1997 - September 2000

- Dispatched and responded to emergency calls for service. Conducted Traffic Stops.
- Arrested individuals for violations of the New York State Penal Law.
- Enforced the New York State Vehicle and traffic Law.
- Testified in City of Buffalo, Erie County, State Supreme and Federal Courts.
- Community police officer at D-District, where I instructed at several certified landlord training seminars held in the City of Buffalo, Attended and facilitated several Block Club meetings within the geographical borders of D-District, coordinated community enhancement efforts with Mayor Anthony Masiello and several common council members, and conducted personal and property safety seminars at local block club meetings, using the CPTED (Crime Prevention Through Environmental Design) model.

Military Experience

United States Air Force-August 11, 1992 - August 10,1996

- Avionics Systems Specialist on the F-15 Fighter
- Assigned to Lackland AFB, San Antonio Texas; Lowry AFB, Denver Colorado, Langley AFB, Hampton Virginia, King Abdul Aziz AB, Kingdom of Saudi Arabia, United States Naval Air Station, Keflavik Iceland
- Avionics systems specialist on the F-15 Fighter Jet for the following systems: Communications, Countermeasures and Navigation.
- Supervised and trained 12 Avionics Systems Specialists.
- Held NATO (North Atlantic Treaty Organizations) security clearance.

Teaching Experience

**Erie County Central Police Services Law Enforcement Training Academy- Williamsville, NY
2013-Current**

- On-staff lecturer and facilitator of practical exercises.

**Bryant and Stratton College- Buffalo, Amherst, Orchard Park NY
April 2008 - July 2010**

- Adjunct Professor-Criminal Investigations, Corrections, Ethics in Criminal Justice.

**Medaille College- Buffalo, NY
September 2008 - December 2008**

- Adjunct Professor- Criminal Investigations lab

Skills

- Experienced Public Speaker and lecturer.
- Consultant for agencies throughout NYS regarding the proper response to officer involved critical incidents.
- Able to establish rapport with audiences and convey information with clarity and enthusiasm.
- Developed functional relationships with administrators and the rank-in-file members throughout the Erie and Niagara County law enforcement community.
- Experienced in interview and interrogation of witness', victims, and suspects.
- Proficient in the use of the Glock 17, Glock 23, Glock 27, and M-16 Semi-Automatic Rifle.
- Executive Protection.

Awards and Accolades

- Awarded two U.S. Air Force Achievement Medals for exceptional duties during Operation Southern Watch. (Saudi Arabia)
- Awarded the U.S. Air Force Good Conduct Medal.
- Awarded the SUNY Graduate Diversity Fellowship- Buffalo State College 2005
- Awarded the Commissioner's Medal of Commendation for the investigation into the City Grill Mass Homicide. July 21st, 2011
- Graduate of the Colonel Henry Williams International Homicide Seminar. September 22, 2011
- Awarded the Erie County Law Enforcement Foundation, Inc award for dedicated service to Law Enforcement and Crime Prevention. May 10, 2012
- Awarded the Commissioner's Medal of Commendation for Joint collaboration with the FBI Safe Street's Task Force in the eradication of several local violent street gangs. June 6th, 2013
- Awarded the Erie County Bar Associations Police Officers Award. April 29, 2014

Brian G. Ross

16 Endicott Drive, Amherst New York 14226

Cell phone 716-946-7979

E-Mail: rossb@ecc.edu

May 17, 2024

Dr. Brian Bray,

I am writing to express my interest in the "Commissioner of Central Police Services" position.

I have been a member of the Erie County Law Enforcement community since January 1997, when I was sworn in as a Buffalo Police Officer. For the next 27 years, I engaged with members of Law Enforcement at every level, from basic recruit, to Chiefs/Commissioners, District Attorney's, and 3-New York State Attorney's General.

My time at the Buffalo Police Department, the New York State Office of the Attorney General, and the Erie County Law Enforcement training academy, have provided me with tremendous incite on the various roles of Law Enforcement: from the decisions made by officers at the street level, to the political ramifications of the aforementioned decisions, and all things in between.

Following the George Floyd incident, there has been a mass exodus of experienced law enforcement officers and administrators. The wisdom lost with these departures is impossible to calculate, but it is clear that training of the young and inexperienced officers left behind needs to be a priority going forward. Study after study have shown, that lack of training is overwhelmingly the leading cause of bad police/citizen outcomes. I am interested in bridging that gap.

I am a skilled and experienced investigator with extensive knowledge of the New York State Penal, Criminal Procedure, and Vehicle and Traffic Laws. I have specific expertise in Homicide Investigations, Federal RICO/Gang investigations, and public corruption/fraud Investigations. Additionally, I have more than 15-years of experience facilitating and lecturing about criminal justice related topics at the Erie County Law Enforcement training academy, at local colleges, and at seminars throughout the state of New York. Recently, I was tasked with running the DCJS mandated Police Supervision Course at the academy. I have built the program to provide the newest and latest information to local police supervisors to give them the tools and insight necessary to successfully supervise their fledgling subordinates.

In addition to my law enforcement career, I am also a veteran of the United States Air Force. During my time in the Air Force, my duties provided me the opportunity to travel the world and experience a wide variety of races, cultures, and legal systems. These experiences have allowed me to be become more culturally adroit and have benefitted me significantly throughout my law enforcement and teaching careers.

My military background, education, and law enforcement experience, have provide me a specific set of skills, that have allowed me to obtain success in every endeavor that I have undertaken during my professional career. I pay attention to detail, am self-motivated and work effectively in either autonomous or team/group environments. I also understand the relationship between politics and policing.

I have had significant engagement with just about every section of Erie County Central Police Services throughout my 27-year career.

As a homicide/cold case detective, I regularly met with serologists and lab directors to discuss my cases. Many of those staff members are still working and are in supervisory roles now. During those meetings, we collaborated and shared information, which allowed us to develop strategies to efficiently analyze evidence and produce quick results that led to the arrests of the most violent offenders in WNY.

I have worked with 911 Communications Director Lisa Sears on several occasions to provide diversity and inclusion training to her staff.

Last, but certainly not least, the over ten-years of lecturing and training at the Police Academy has provided me with invaluable insight on training and the need for resources throughout the Law Enforcement Community.

The accompanying resume should serve to give you an idea, not only of my past achievements, but also of my potential for making a significant contribution to your institution.

Please feel free to contact me if you have any additional questions. References are available upon request. Thank you in advance for your consideration.

Very Truly yours,

Brian G. Ross

Erie County Legislature
Meeting Date: 06/20/2024

SUBJECT

COMM. 12E-14	COUNTY EXECUTIVE	Amendment to EBO Administrator; COMM. 3E-7 (2024)
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Attachments

24COMM. 12E-14



EE LEG JUN 13 '24 PM 5:59

COUNTY OF ERIE
MARK C. POLONCARZ
COUNTY EXECUTIVE

June 14, 2024

Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

RE: Amendment to EBO Administrator; COMM.3E-7(2015)

Dear Honorable Members:

The attached proposed resolution requests authorization to amend resolution COMM.3E-7(2015) specifically naming the Director of the Division of Equal Employment Opportunity, to update the administrator with New York State as the EBO administrator for Erie County. The New York State Department of Transportation (NYSDOT) requires a resolution specifically naming an EBO Administrator.

Should your Honorable Body require further information, I encourage you to contact the Director of Equal Employment Opportunity, Andrew McLaren. Thank you for your consideration on this matter.

Sincerely yours,

A handwritten signature in blue ink that reads "Mark C. Poloncarz".

Mark C. Poloncarz, Esq.
Erie County Executive

MCP/jp
Enclosure

MEMORANDUM

To: Honorable Members of the Erie County Legislature
From: Erie County Office of Equal Employment Opportunity
Re: Amendment to COMM. 3E-7 (2015)
Date: June 14, 2024

SUMMARY

The New York State Department of Transportation (NYSDOT) is requiring a resolution specifically naming the Director and application to update Erie County's EBO Administrator.

It is recommended that the Legislature authorize the County Executive to amend resolution COMM. 3E-7(2015) to specifically name the Director of Division of Equal Employment Opportunity (EEO).

FISCAL IMPLICATIONS

There are no fiscal implications to authorizing this update to the prior resolution.

REASONS FOR RECOMMENDATION

Pursuant to EEOs requirements to monitor the compliance programs of MWDBE participation percentages the County must have an administrator who oversees and assigns authority in the Equitable Business Opportunities Solution (EBO) program. The Director of EEO is the named administrator per, COMM. 3E-7(2015) however, NYSDOT has new requirements that mandates the Director's name be in the resolution to update or change the administrator in their database.

Additionally, any NYS project cannot be properly monitored without the administrator granting access to those in the County requiring access for Federally monitored projects.

BACKGROUND INFORMATION

The New York State Department of Transportation (NYSDOT) has implemented a web-based civil rights reporting system called EBO (Equitable Business Opportunities) to streamline and reduce the efforts required by the construction and engineering industries to satisfy contractual civil rights reporting requirements. EBO went into production in May 2007. The Department holds the license for EBO, and the software resides on Department servers. EBO is made available to vendors participating on Department contracts and Federal-Aid locally sponsored contracts. The software is available free of charge and Contractors are not required to purchase or maintain any software other than a web browser.

CONSEQUENCES OF NEGATIVE ACTION

Failure to approve this resolution will serve to hinder the DEEO ability to monitor and enforce the MWDBE firm participation for County contractions. The County must have a designated EBO administrator NYSDOT, which it cannot do without an updated resolution.

STEPS FOLLOWING APPROVAL

The Erie County Division of Equal Employment Opportunity will follow the appropriate steps necessary to conduct the disparity study contract.

A RESOLUTION SUBMITTED BY:
THE ERIE COUNTY DIVISION OF EQUAL EMPLOYMENT
AMENDMENT TO COMM. 3E-7 (2015)

RE: Amendment to EBO Administrator; COMM.3E-7(2015)

WHEREAS, the County regularly contracts with NYSDOT for the design and construction of projects utilizing federal aid; and

WHEREAS, NYSDOT has instituted a new web based civil rights reporting system called Equitable Business Opportunities (EBO); and

WHEREAS, NYSDOT has made use of the EBO system mandatory on all federal aid projects; and

WHEREAS, NYSDOT requires that in order to access the EBO system Erie County must designate an EBO administrator

NOW, THEREFORE, BE IT

RESOLVED, that the County Legislature approves the County Executive's designation of the Director of the Division of Equal Employment Opportunity (EEO), Andrew McLaren, as the County's EBO Administrator; and be it further.

RESOLVED, that the County Legislature of the County of Erie hereby authorize the Director of the Erie County Division EEO, Andrew McLaren to complete the EBO application and submit it to NYSDOT; and be it further

RESOLVED, that once approved as Erie County's EBO administrator the Director, Division of EEO will be responsible for providing access to other County staff as required for the management of NYSDOT sponsored federal aid projects; and be it further

RESOLVED, that ten (10) certified copies of this resolution be forwarded to the Department of Public Works, Office of the Commissioner and one each to the Office of the County Executive, the Division of Budget and Management, the Office of the County Attorney, the Office of the Comptroller and the Division of the Equal Employment Opportunity.

Erie County Legislature
Meeting Date: 06/20/2024

SUBJECT

COMM. 12E-15	COUNTY EXECUTIVE	Authorization to Enter Into Contract with Safeware, Inc.
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Attachments

24COMM. 12E-15



COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE

SC LEG JUN 13 '24 PM 5:59

June 14, 2024

Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Re: Authorization to Enter into Contract with Safeware, Inc.

Dear Honorable Members:

Enclosed please find a proposed resolution and accompanying memorandum from the Department of Homeland Security & Emergency Services requesting authorization to contract with Safeware, Inc. to provide training for addressing Hazardous Materials concerns during incidents.

Should your Honorable Body require further information, I encourage you to contact Commissioner Daniel Neaverth Jr. at the Department of Homeland Security & Emergency Services. Thank you for your consideration on this matter.

Sincerely yours,

Mark C. Poloncarz, Esq.
Erie County Executive

MCP/dp
Enclosure

cc: Daniel Neaverth

MEMORANDUM

To: Honorable Members of the Erie County Legislature
From: Department of Homeland Security & Emergency Services
Re: Authorization to Enter into Contract with Safeware, Inc.
Date: June 14, 2024

SUMMARY

This proposed resolution authorizes the Department of Homeland Security and Emergency Services to contract with Safeware, Inc. to conduct Hazardous Materials Prevention/Response Training.

FISCAL IMPLICATIONS

The New York State Department of Homeland Security and Emergency Services provided Erie County with funds in the FY2022 Hazardous Materials Emergency Preparedness Grant Program to be utilized for regional Hazardous Materials Response Team training. A twenty-five percent (25%) county match for these funds is required. This match is to be achieved using FY2024 salary appropriations currently budgeted in Fund 110.

REASONS FOR RECOMMENDATION

The Erie County Department of Homeland Security & Emergency Services as the fiduciary agency has determined that Safeware, Inc. will be able to provide the requested training in a timely and efficient manner. As a result of a request for proposal Safeware, Inc. was deemed the most competent firm to accomplish this regional task.

BACKGROUND INFORMATION

Erie County, Niagara County, City of Buffalo, Brighton Volunteer Fire Company, and Clarence Fire Company all operate Hazardous Materials Response Teams. As such, continuing education and training is required to ensure efficient response to incidents involving hazardous material incidents exceeding the training level of the standard firefighter. As such, these Hazardous Materials Response Teams conduct multiple independent and combined training sessions annually. The cost of these training sessions are bore utilizing a combination of grant funding and municipal funding.

CONSEQUENCES OF NEGATIVE ACTION

Without this Legislation, the training will not occur and the gap in emergency response capability will not be addressed.

STEPS FOLLOWING APPROVAL

The Department of Homeland Security and Emergency Services will work with Erie County Bureau of Purchase to issue a purchase order, followed by the department scheduling training to be completed in 2024.

A RESOLUTION SUBMITTED BY:
DEPARTMENT OF HOMELAND SECURITY & EMERGENCY
SERVICES

RE: Authorization to Enter into Contract with Safeware, Inc.

WHEREAS, the Department of Homeland Security & Emergency Services, through NYS Department of Homeland Security and Emergency Services, has agreed to provide funding for training in emergency response; and

WHEREAS, the Department of Homeland Security & Emergency Services issued a Request for Proposal (RFP) in March of 2024 RFP #2024-025VF; and

WHEREAS, Safeware, Inc. responded to the RFP with a strong proposal; and

WHEREAS, Fiscal Year 2022 Hazardous Materials Emergency Preparedness Grant funding was accepted through legislative approval in July 2023 resolution COMM. 13E-15 (2023); and

WHEREAS, funding is available in Fiscal Year 2024 Operating Fund Budget, Fund 110, Funds Center 16700, Account – 516020 Professional Services Contracts and Fees to cover the costs incurred for this training; and

WHEREAS, the vendor will be managed by the Erie County Department of Homeland Security & Emergency Services.

NOW, THEREFORE, BE IT

RESOLVED, that the Erie County Legislature hereby authorizes the County Executive and/or Deputy County Executive to enter into contract with Safeware, Inc. in an amount not to exceed \$16,000 to conduct emergency response training to Hazardous Materials incidents; and be it further

RESOLVED, that sufficient funding exists to cover this expense in the 2024 Operating Fund Budget, Fund 110, Funds Center 16700, Account 516020 – Professional Services Contracts and Fees; and be it further

RESOLVED, that authorization is hereby given for the Division of Budget and Management to make any technical adjustments necessary to effectuate this resolution; and be it further

RESOLVED, that certified copies of this resolution will be forwarded to the Erie County Executive's Office, Comptroller's Office, Department of Homeland Security and Emergency Services and Division of Budget and Management.



Department of Homeland Security & Emergency Services
 Recommendation for RFP# 2024-026VF
 Date: 06/03/2024

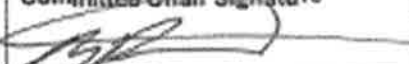

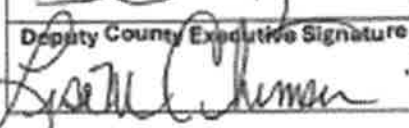
The review panel has completed its task of evaluating the proposals for the above named RFP. The proposals were graded individually by each panel member as well by Administration as to compliance with the RFP requirements and fiscal compliance/soundness.

Hazardous Materials Full Scale Exercise Training Submission Committee Member Rankings

Proposer (alphabetical order)	Units earned by all training to be done	Staff Experience/Qualifications	Fire Experience with similar projects	Organizing and Scheduling	Percentage of M/WHM Participation	Weighted Average Qualifications Score
	Weight = 10%	Weight = 20%	Weight = 20%	Weight = 15%	Weight = 35%	
	Committee Member Rank Score (0-100)	Committee Member Rank Score (0-100)	Committee Member Rank Score (0-100)	Committee Member Rank Score (0-100)	Committee Member Rank Score (0-100)	
Resilience Solutions, LLC	28	37	30	27	27	27.8
Safeware, Inc.	50	50	50	50	50	50.0
						0
						0

It is recommended that Safeware, Inc. provide training services to the regional hazardous Materials Response Teams. Supporting documentation is included in this packet.

The Department of Homeland Security & Emergency Services has complied with all applicable provisions of section 26.08 of the Erie County Administrative Code.

	Committee Chair Signature	Printed name	Date
		Darion Pritchett	5/29/2024
	Commissioner Signature	Printed name	Date
		Daniel Neaverth	5/29/2024
	Deputy County Executive Signature	Printed name	Date
		Use Chimera	5/29/2024

Once reviewed and approved, please return to Carraugh Nowak at Carraugh.nowak@erie.usny for processing, thank you.

Erie County Legislature
Meeting Date: 06/20/2024

SUBJECT

COMM. 12E-16 COUNTY EXECUTIVE Levy of the 2024-2025 School Tax Budgets

Attachments

24COMM. 12E-16



COUNTY OF ERIE
MARK C. POLONCARZ
COUNTY EXECUTIVE

EC LEG JUN 13 '24 PM 5:59

June 14, 2024

Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

RE: Levy of the 2024-2025 School Tax Budgets

Dear Honorable Members:

Please find enclosed a resolution and accompanying memorandum to levy the 2024-2025 School Tax Budgets.

Should your Honorable Body require further information, I encourage you to contact Scott Bylewski, Director of Real Property Tax Services. Thank you for your consideration on this matter.

Sincerely yours,

A handwritten signature in blue ink, reading "Mark C. Poloncarz". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Mark C. Poloncarz, Esq.
Erie County Executive

MCP/sab
Enclosure

cc: Scott A. Bylewski, Director of Real Property Tax Services

MEMORANDUM

To: Honorable Members of the Erie County Legislature
From: Real Property Tax Services
Re: Levy of 2024-2025 School Tax Budgets
Date: June 14, 2024

SUMMARY

Several non-city school districts lying within Erie County have adopted their school budgets determined the amounts to be raised and fix their school tax rates. Per the Erie County Tax Act, Erie County Legislature must levy the school taxes in September.

FISCAL IMPLICATIONS

School districts will receive their property tax levy.

REASONS FOR RECOMMENDATION

Erie County Tax Act requires the Erie County Legislature to levy the 2024-2025 school taxes.

BACKGROUND INFORMATION

The Director of Real Property Tax Services has spread and extended said school tax amounts, at the school tax rates certified to him, against the taxable real property appearing on the respective school assessment rolls.

Several non-city school districts lying within Erie County have adopted their school budgets, determined the amounts to be raised, and fix their school tax rates. Per the Erie County Tax Act, Erie County Legislature must levy the school taxes in September.

CONSEQUENCES OF NEGATIVE ACTION

School districts will not receive their property tax levy.

STEPS FOLLOWING APPROVAL

Director of Real Property Tax Services will deliver school district tax rolls, bills and warrants to such school tax collecting officials.

A RESOLUTION SUBMITTED BY:
REAL PROPERTY TAX SERVICES

RE: Levy 2024-2025 School Tax Budgets

WHEREAS, the several non-city school districts lying within the County of Erie have adopted their school budgets for the current school year, determined the amount thereof to be raised by real property tax and will have fixed their school tax rates, said budgets, amounts and rates to be certified to and filed with the Real Property Tax Services Department of Erie County, no later than August 10, 2024; and

WHEREAS, the Director for said Real Property Tax Services Department will spread and extend said school tax amounts, at the school tax rates certified to him, against the taxable real property appearing on the respective school assessment rolls.

NOW, THEREFORE, BE IT

RESOLVED, that there is hereby levied and assessed upon the taxable real property appearing on the school assessment rolls for the respective school districts the amounts to be raised by school taxes, as spread and extended by the Director of the Real Property Tax Services Department, which amounts shall be collected from the persons and corporations liable therefore in accordance with and pursuant to the provisions of the statutes in such cases made and provided; and be it further

RESOLVED, that the Chair and the Clerk of the Legislature are hereby directed to execute in the name and under the seal of the County of Erie, and to annex to the respective school district tax rolls as they are compiled by the Director of the Real Property Tax Services Department, a good and sufficient warrant, addressed to the proper tax collecting officials, commanding them to collect such school district taxes in accordance with applicable law; and be it further

RESOLVED, that the Director of the Real Property Tax Services Department is hereby directed to deliver such school district tax rolls and warrants to such tax collecting officials to be acted upon in accordance with applicable law; and be it further

RESOLVED, that each and every act of the Director for the Real Property Tax Services Department in connection with the foregoing is hereby ratified and confirmed; and be it further

RESOLVED, the Clerk of the Legislature is hereby directed to cause such non-city school district budgets, tax rates and resolutions to be printed in the journal of the proceedings of the Legislature; and be it further

RESOLVED, that certified copies of this resolution be forwarded to the County Executive's Office, Comptroller's Office, Department of Law, Department of Real Property Tax Services and Division of Budget and Management.

Erie County Legislature
Meeting Date: 06/20/2024

SUBJECT

COMM. 12E-17	COUNTY EXECUTIVE	ECSD No. 3 - Engineering Term Contract Agreement
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Attachments

24COMM. 12E-17



COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE

REC LEG JUN 13 '24 PM 5:59

June 14, 2024

Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, NY 14202

**RE: Erie County Sewer District No. 3
Engineering Term Contract Agreement
Arcadis of New York, Inc.
Work Order: ARC-4**

Dear Honorable Members:

Enclosed please find a memorandum from the Department of Environment and Planning, Division of Sewerage Management, for the issuance of a work order as authorized by the Erie County Legislature, related to 3-year Term Agreements.

Should your Honorable Body require further information, I encourage you to contact Joseph Fiegl, P.E. in the Division of Sewerage Management. Thank you for your consideration in this matter.

Sincerely yours,

Mark C. Poloncarz, Esq.

Erie County Executive

MCP:dm

Enclosure

cc: J. Fiegl – Deputy Commissioner, Division of Sewerage Management

MEMORANDUM

To: Honorable Members of the Erie County Legislature
From: Department of Environment and Planning
Re: Erie County Sewer District No. 3
Engineer Term Contract Agreement
Arcadis of New York, Inc.
Work Order: ARC-4
Date: June 14, 2024

SUMMARY

The Erie County Legislature is requested to receive and file this communication pertaining to the Department of Environment and Planning's issuance of a work order with Arcadis of New York, Inc. for Erie County Sewer District (ECSD) No. 3 in an amount not to exceed \$36,985.00.

FISCAL IMPLICATIONS

There will be no impact to the County's General Fund. The cost of the engineering work related to this communication will be paid from ECSD No. 3 Professional Services Account No. 516020.

REASONS FOR RECOMMENDATION

The Division of Sewerage Management has issued work order ARC-4 to Arcadis of New York, Inc. to provide Engineering Services associated with the preparation of a Feasibility Study Report to allow ECSD No. 3 to proceed with activities necessary to reclaim the closed landfill at the Southtowns Advanced Wastewater Treatment Facility (AWTF).

BACKGROUND INFORMATION

Your Honorable Body passed Legislative Comm. 16E-11 (2022) authorizing a 3-year Term Agreement with Arcadis of New York, Inc. for Engineering Services for small and/or time critical projects. At the time of the contract award, the Division of Sewerage Management committed to notifying the Honorable Legislature of each work order issued.

The Term Agreement was approved to provide the Division of Sewerage Management with engineering services required to complete various initiatives throughout the Erie County Sewer Districts. To reclaim the existing landfill at the Southtowns AWTF for the purpose of making the footprint available for other uses, Arcadis will prepare a Feasibility Study Report in accordance with Title 6, Chapter IV, Subchapter B, Part 363 of 6NYCRR Part 363-11. The final report will be submitted to the New York State Department of Environmental Conservation for review and approval.

CONSEQUENCES OF NEGATIVE ACTION

This is a receive and file item.

STEPS TO FOLLOW APPROVAL

This is a receive and file item.

**ERIE COUNTY SEWER DISTRICT NO. 3
WORK ORDER NO. ARC-4**

ENGINEER: Arcadis of New York, Inc.

CONTRACT DATE: November 17, 2022

1. Title of Proposal:

Arcadis of New York, Inc. will provide Engineering Services associated with a Feasibility Study Report that will allow ECDEP to proceed with activities necessary to reclaim the closed landfill at the Southtowns Advanced Wastewater Treatment Facility in ECSD No. 3.

2. Company/Address/Principal In-Charge:

Jason J. Williams, P.E.
Arcadis of New York, Inc.
50 Fountain Plaza
Suite 360
Buffalo, NY 14202

3. Effective Dates of Proposal:

June 4, 2024

4. Brief Description of Work for Which Proposal is Submitted:

Arcadis will prepare a Feasibility Study Report in accordance with Title 6, Chapter IV, Subchapter B, Part 363 of 6NYCRR Part 363-11 as part of the regulatory requirements necessary to reclaim the existing landfill at the Southtowns AWTF. The final report will be submitted to the New York State Department of Environmental Conservation for review and approval.

5. Engineering Cost:

\$36,985.00

Source of Funds: ECSD No. 3 Professional Services Account No. 516020.

6. Project No: ARC-4

7. Attachments: Arcadis letter dated 5/29/2024 (4 pages)

8. File: 0.3.2. ARC (23-25) Eng

DATE: June 4, 2024

Accepted By: _____

Prepared By: _____
 David C. Millar, P.E.

Authorized By: _____
 Joseph Fiegl, P.E., BCEE
 Deputy Commissioner

Erie County Legislature
Meeting Date: 06/20/2024

SUBJECT

COMM. 12E-18	COUNTY EXECUTIVE	ECSD No. 3 - Engineer Term Contract Agreement
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Attachments

24COMM. 12E-18



EC LEG JUN 13 '24 01:54:59

COUNTY OF ERIE
MARK C. POLONCARZ
COUNTY EXECUTIVE

June 14, 2024

Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

**RE: Erie County Sewer District No. 3
Engineer Term Contract Agreement
JM Davidson Engineering, DPC
Work Order: JMD-5**

Dear Honorable Members:

Enclosed please find a memorandum from the Department of Environment and Planning, Division of Sewerage Management, for the issuance of a work order as authorized by the Erie County Legislature, related to 3-year Term Agreements

Should your Honorable Body require further information, I encourage you to contact Joseph Fiegl, P.E. in the Division of Sewerage Management. Thank you for your consideration in this matter.

Sincerely yours,

A handwritten signature in blue ink that reads "Mark Poloncarz". The signature is written in a cursive style and is positioned above the printed name and title.

Mark C. Poloncarz, Esq.
Erie County Executive

MCP:ms
Enclosure

cc: Joseph Fiegl, Deputy Commissioner, Division of Sewerage Management

MEMORANDUM

To: Honorable Members of the Erie County Legislature
From: Department of Environment and Planning
Re: Erie County Sewer District No. 3
Engineer Term Contract Agreement
JM Davidson Engineering, DPC
Work Order: JMD-5
Date: June 14, 2024

SUMMARY

The Erie County Legislature is requested to receive and file this communication pertaining to the Department of Environment and Planning's issuance of a work order with JM Davidson Engineering, DPC for Erie County Sewer District (ECSD) No. 3 in the amount not to exceed \$34,039.10.

FISCAL IMPLICATIONS

There will be no impact to the County's General Fund. The cost of the engineering work related to this communication will be paid from Capital Account No. C.21150 (American Rescue Plan funds).

REASONS FOR RECOMMENDATION

The Division of Sewerage Management has issued work order JMD-5 to JM Davidson Engineering, DPC to provide construction inspection services associated with the roof and ventilation replacement project for the Southtowns Advanced Wastewater Treatment Facility (AWTF).

BACKGROUND INFORMATION

Your Honorable Body passed Legislative Comm. 16E-11 (2022) authorizing a 3-year Term Agreement with JM Davidson Engineering, DPC. for Engineering Services for small and/or time critical projects. At the time of the contract award, the Division of Sewerage Management committed to notifying the Honorable Legislature of each work order issued.

The Term Agreement was approved to provide the Division of Sewerage Management with engineering services required to complete various initiatives throughout the Erie County Sewer Districts. This work order will provide the last portion of construction inspection services required for the roof and ventilation replacement project at the Southtowns AWTF.

CONSEQUENCES OF NEGATIVE ACTION

This is a receive and file item.

STEPS TO FOLLOW APPROVAL

This is a receive and file item.

COMPTROLLER'S OFFICE REVIEW

The proposed action has been reviewed by the Comptroller's Office and is related to an authorized capital project for which there are sufficient appropriations for the action proposed.

Signed Timothy Q. Callan Date 6/7/24
Title Timothy Q. Callan, Ph.D.
Deputy Comptroller

Erle County Sewer District No. 3
Work Order: JMD-5
Capital Account No. C.21150 (American Rescue Plan Funds)

**ERIE COUNTY SEWER DISTRICT NO. 3
WORK ORDER NO. JMD-5**

ENGINEER: JM Davidson Engineering, DPC

CONTRACT DATE: November 21, 2022

1. Title of Proposal:

Construction Inspection Services for the Roof & HVU Replacement Project at the Southtowns AWTF, ECSD No.3.

2. Name and Business Address of Proposer:

Jaime Davidson, P.E.
JM Davidson Engineering, DPC
935 Sheridan Drive
Tonawanda, NY 142150

3. Effective Dates of Proposal:

May 15, 2023

4. Brief Description of Work for Which Proposal is Submitted:

The engineer will provide the last portion of construction inspection services associated with the roof and HVU replacement project at the Southtowns AWTF in ECSD No. 3, as detailed in the attached JM Davidson Engineering, DPC email, dated May 13, 2024.

5. Engineering Cost: \$34,039.10

6. Source of Funds: Capital Account No. C.21150 (American Rescue Plan funds).

7. Project No: JMD-5

8. Attachments JM Davidson Engineering, DPC Cost Est., 1 page.

9. File: 0.3.2. JMD (23-25) Eng.

DATE: June 5, 2024

Accepted By: _____

Prepared By: _____

Matt A. Salah, P.E.

Authorized By: _____

Joseph Fiegl, P.E., BCEE
Deputy Commissioner

TO: COMPTRROLLER'S OFFICE

PROPOSED RESOLUTIONS REQUIRING RULE 55

CONTRACT APPROVAL CHECKLIST
CONFIRMATION OF AVAILABILITY OF FUNDS IN CAPITAL PROJECTS

REQUESTING DEPARTMENT

COMPLETE ITEMS 1 THROUGH 5

- | | |
|-----------------------|--|
| 1. CONTRACTOR'S NAME | <u>JM Davidson</u> |
| 2. AMOUNT OF CONTRACT | <u>\$34,039.10</u> |
| 3. PROJECT NUMBER | <u>Capital Acct. C.21150 (ARP)</u> |
| 4. PROJECT TITLE | <u>Construction Inspection Services
Roof & HVU Replacement Project</u> |
| 5. DEPARTMENT CONTACT | <u>Beth Pfalzer x6144</u> |

COMPTRROLLER'S OFFICE

COMPLETE ITEMS 6 AND 7

- | | |
|------------------------------------|---------------------------|
| 6. AVAILABILITY OF FUNDS | <u>\$5,072,804.71</u> |
| 7. PERFORMED BY | <u><i>[Signature]</i></u> |
| Date Sent to Comptroller's Office: | <u>June 6, 2024</u> |

[55 compt_10]

Erie County Legislature
Meeting Date: 06/20/2024

SUBJECT

COMM. 12E-19	COUNTY EXECUTIVE	ECSD No. 3 - Engineering Term Contract Agreement
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Attachments

24COMM. 12E-19



COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE

20 JUN 13 24 PM 5:59

June 14, 2024

Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, NY 14202

**RE: Erie County Sewer District No. 3
Engineering Term Contract Agreement
Arcadis of New York, Inc.
Work Order: ARC-5**

Dear Honorable Members:

Enclosed please find a memorandum from the Department of Environment and Planning, Division of Sewerage Management, for the issuance of a work order as authorized by the Erie County Legislature, related to 3-year Term Agreements.

Should your Honorable Body require further information, I encourage you to contact Joseph Fiegl, P.E. in the Division of Sewerage Management. Thank you for your consideration in this matter.

Sincerely yours,

Mark C. Poloncarz, Esq.
Erie County Executive

MCP:dm

Enclosure

cc: J. Fiegl – Deputy Commissioner, Division of Sewerage Management

MEMORANDUM

To: Honorable Members of the Erie County Legislature
From: Department of Environment and Planning
Re: Erie County Sewer District No. 3
Engineer Term Contract Agreement
Arcadis of New York, Inc.
Work Order: ARC-5
Date: June 14, 2024

SUMMARY

The Erie County Legislature is requested to receive and file this communication pertaining to the Department of Environment and Planning's issuance of a work order with Arcadis of New York, Inc. for Erie County Sewer District (ECSD) No. 3 in an amount not to exceed \$52,010.00.

FISCAL IMPLICATIONS

There will be no impact to the County's General Fund. The cost of the engineering work related to this communication will be paid from ECSD No. 3 Capital Account No. C.00062.

REASONS FOR RECOMMENDATION

The Division of Sewerage Management has issued work order ARC-5 to Arcadis of New York, Inc. to provide Engineering Services associated with the preparation of a Reclamation Work Plan to allow ECSD No. 3 to proceed with activities necessary to reclaim the closed landfill at the Southtowns Advanced Wastewater Treatment Facility (AWTF).

BACKGROUND INFORMATION

Your Honorable Body passed Legislative Comm. 16E-11 (2022) authorizing a 3-year Term Agreement with Arcadis of New York, Inc. for Engineering Services for small and/or time critical projects. At the time of the contract award, the Division of Sewerage Management committed to notifying the Honorable Legislature of each work order issued.

The Term Agreement was approved to provide the Division of Sewerage Management with engineering services required to complete various initiatives throughout the Erie County Sewer Districts. To reclaim the existing landfill at the Southtowns AWTF for the purpose of making the footprint available for other necessary uses, Arcadis will prepare a Reclamation Work Plan in accordance with Title 6, Chapter IV, Subchapter B, Part 363 of 6NYCRR Part 363-11. The work plan follows the required Feasibility Study authorized under Work Order ARC-4. The final work plan will be submitted to the New York State Department of Environmental Conservation for review and approval.

CONSEQUENCES OF NEGATIVE ACTION

This is a receive and file item.

STEPS TO FOLLOW APPROVAL

This is a receive and file item.

COMPTROLLER'S OFFICE REVIEW

The proposed action has been reviewed by the Comptroller's Office and is related to an authorized capital project for which there are sufficient appropriations for the action proposed.

Signed Timothy C. Callan Date 6/7/24
Title Timothy C. Callan, PhD
Deputy Comptroller

Erie County Sewer District No. 3
Work Order: ARC-5
Capital Account No. C.00062

**ERIE COUNTY SEWER DISTRICT NO. 3
WORK ORDER NO. ARC-5**

ENGINEER: Arcadis of New York, Inc.

CONTRACT DATE: November 17, 2022

1. Title of Proposal:

Arcadis of New York, Inc. will provide Engineering Services associated with a Reclamation Work Plan that will allow ECDEP to proceed with activities necessary to reclaim the closed landfill at the Southtowns Advanced Wastewater Treatment Facility in ECSD No. 3.

2. Company/Address/Principal In-Charge:

Jason J. Williams, P.E.
Arcadis of New York, Inc.
50 Fountain Plaza
Suite 360
Buffalo, NY 14202

3. Effective Dates of Proposal:

June 4, 2024

4. Brief Description of Work for Which Proposal is Submitted:

Arcadis will prepare a Reclamation Work Plan in accordance with Title 6, Chapter IV, Subchapter B, Part 363 of 6NYCRR Part 363-11 as part of the regulatory requirements necessary to reclaim the existing landfill at the Southtowns AWTF. The final work plan will be submitted to the New York State Department of Environmental Conservation for review and approval.

5. Engineering Cost:

\$52,010.00

Source of Funds: ECSD No. 3 Capital Account C.00062.

6. Project No: ARC-5

7. Attachments: Arcadis letter dated 5/29/2024 (4 pages)

8. File: 0.3.2. ARC (23-25) Eng

DATE: June 4, 2024

Accepted By: _____

Prepared By: _____
 David C. Millar, P.E.

Authorized By: _____
 Joseph Fiegl, P.E., BCEE
 Deputy Commissioner

TO: COMPROLLER'S OFFICE

PROPOSED RESOLUTIONS REQUIRING RULE 55

CONTRACT APPROVAL CHECKLIST
CONFIRMATION OF AVAILABILITY OF FUNDS IN CAPITAL PROJECTS


REQUESTING DEPARTMENT

COMPLETE ITEMS 1 THROUGH 5

1. CONTRACTOR'S NAME Arcadis of New York
2. AMOUNT OF CONTRACT 52,010.00
3. PROJECT NUMBER Capital Account. C.00062
4. PROJECT TITLE Engineering Term Agr. Work Order Arc-5
5. DEPARTMENT CONTACT Beth Pfalzer x6144

COMPROLLER'S OFFICE

COMPLETE ITEMS 6 AND 7

6. AVAILABILITY OF FUNDS \$1,907,252.33
 7. PERFORMED BY 
- Date Sent to Comptroller's Office: June 6, 2024

[55 compt_10]

Erie County Legislature
Meeting Date: 06/20/2024

SUBJECT

COMM. 12E-20

COUNTY EXECUTIVE

ECSD No. 3 - Eighteenmile Creek Sewer Line
Stabilization Mitigation Project

Attachments

24COMM. 12E-20



COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE

June 14, 2024

EC LEG JUN 13 '24 PM 5:58

Erie County Legislature
92 Franklin Street – Fourth Floor
Buffalo, New York 14202

**RE: Placeholder – Energy & Environment Committee
Erie County Sewer District No. 3, Contract No. 79
Eighteenmile Creek Sewer Line Stabilization Mitigation Project**

Dear Honorable Members:

The Department of Environment and Planning, Division of Sewerage Management has the need to reestablish protection of a sanitary sewer trunkline that has become exposed in Eighteenmile Creek in the Town of Boston. This work is proposed to be completed as an amendment to an existing contract between Erie County and the Erie County Soil & Water Conservation District authorized under Legislative Comm. 2E-17 (2023). The terms and cost of this additional scope are presently being finalized.

To commence construction within seasonal restrictions set by various environmental laws, we respectfully request an open item/placeholder be established on the agenda of the Legislature's Energy and Environment Committee for the Erie County Sewer District No. 3, Contract No. 79 - Eighteenmile Creek Sewer Line Stabilization Mitigation Project.

Should your honorable body require further information, I encourage you to contact Joseph Fiegl, P.E. in the Division of Sewerage Management. Thank you for your consideration on this matter.

Sincerely yours,

A handwritten signature in blue ink that reads "Mark C. Poloncarz".

Mark C. Poloncarz, Esq.
Erie County Executive

MCP:gp

Cc: Joseph Fiegl, Deputy Commissioner, Division of Sewerage Management

Erie County Legislature
Meeting Date: 06/20/2024

SUBJECT

COMM. 12E-21 COUNTY EXECUTIVE Amendment to HHW & CESQG Contracts

Attachments

24COMM. 12E-21



EC LEC JUN 13 '24 PM 5:58

COUNTY OF ERIE
MARK C. POLONCARZ
COUNTY EXECUTIVE

June 14, 2024

Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

RE: Amendment of Household Hazardous Waste (HHW) and Conditionally Exempt Small Quantity Generator (CESQG) Contracts

Dear Honorable Members:

Please find enclosed a resolution from the Department of Environment and Planning to amend the current contracts for the Household Hazardous Waste (HHW) collection contractors, MXI Environmental Services, LLC (MXI), and Environmental Service Group (ESG) in order to include two, one-year extensions. The contracts were authorized by your Honorably Body in 2023, following a competitive RFP process. The Department has been satisfied with the services and recommends that the contracts be amended to allow for the additional two, one-year extensions.

Should your Honorable Body require further information, I encourage you to contact Deputy Commissioner Bonnie Lawrence at the Department of Environment and Planning. Thank you for your consideration on this matter.

Sincerely yours,

Mark C. Poloncarz, Esq.
Erie County Executive

MCP/nb
Enclosure

cc: Daniel R. Castle, Commissioner, Environment and Planning
Bonnie Lawrence, Deputy Commissioner, Environment and Planning

MEMORANDUM

To: Honorable Members of the Erie County Legislature
From: Department of Environment and Planning
Re: Extension of Household Hazardous Waste (HHW) and Conditionally Exempt Small Quantity Generator (CESQG) Contracts
Date: June 14, 2024

SUMMARY

It is recommended that the Legislature approve the attached resolution prepared by the Department of Environment and Planning (DEP) to authorize the amendment of contracts with both MXI Environmental Services, LLC (MXI) and Environmental Service Group (ESG), as the selected contractors for Erie County's Household Hazardous Waste (HHW) and Conditionally Exempt Small Quantity Generator (CESQG) programs to allow for two, one-year extensions. The contracts were authorized by Erie County Legislature Resolution COMM. 4E-11(2023) following a competitive RFP process. DEP has been satisfied with the services and recommends that the contracts be amended to allow for the two, one-year extensions. While the original RFP contemplated these extensions pursuant to Erie County Code Section 26.08, the executed contracts did not and amendments are needed to extend this program without a gap in service in 2024 and 2025.

BACKGROUND INFORMATION

The Erie County HHW Program has been in existence since 1988 and has serviced well over 60,000 households by providing single-day HHW collection events multiple times annually at no charge to participating residents. In 2020, the HHW Voucher Program was introduced to provide County residents who could not make the scheduled events with a means for proper disposal of HHW. The Voucher program allows residents to make an appointment and receive a voucher for the disposal of up to 50 pounds of accepted HHW at ESG's local permitted HHW facility in Tonawanda, Hazmat, at no charge.

Increased participation in these programs has reduced the amount of hazardous chemical products stored in homes, reducing fire and poisoning risk, improving first responder and sanitation worker safety, while also preventing these hazardous materials from being released into the environment. DEP has scheduled three collection events in 2024, along with the continuation of the HHW Voucher Program at the Hazmat facility.

FISCAL IMPLICATIONS

Existing funding exists within the Department of Environment and Planning's 2024 Adopted Budget (Fund 110, Funds Center 16200) Account 517629 for the \$135,000 HHW collection and Account 517577 for the \$60,000 in for CESQG services. In addition, Erie County would realize a fiscal benefit from partial, up to fifty percent, State reimbursement for expenses associated with the collection and disposal of household hazardous waste.

REASONS FOR RECOMMENDATION

The Erie County Household Hazardous Waste Collection Program provides residents with the opportunity for proper disposal of unwanted hazardous household chemicals. The Program protects the environment, protects first responders and sanitation workers, and improves home safety. Application for State partial reimbursement increases the fiscal sustainability of the program.

CONSEQUENCES OF NEGATIVE ACTION

The County would no longer be able to provide residents with safe and proper disposal options for Household Hazardous Wastes resulting in an increased amount of hazardous chemical products stored in homes, increasing fire and poisoning risk, reducing first responder and sanitation worker safety, and potentially increasing the likelihood of these dangerous wastes entering the environment. In addition, Erie County would forfeit the State Aid funding available to offset costs associated with the Household Hazardous Waste Collection Program.

STEPS FOLLOWING APPROVAL

The necessary contract amendment with MXI Environmental Services, LLC (MXI) and Environmental Service Group (ESG) will be executed and the initial one-year extension will be authorized.

A RESOLUTION SUBMITTED BY:
DEPARTMENT OF ENVIRONMENT AND PLANNING

RE: Extension of Household Hazardous Waste (HHW) and Conditionally Exempt Small Quantity Generator (CESQG) Contracts

WHEREAS, Erie County has a Household Hazardous Waste (HHW) Collection Program to provide residents with a safe, effective, and cost-free opportunity to dispose of household generated hazardous waste; and

WHEREAS, every year, Erie County hosts periodic HHW events to properly dispose of chemicals that pose a health and safety hazard and might otherwise contaminate our water, land, or air; and

WHEREAS, beginning in June of 2020, the HHW Voucher program has provided service to over 1,000 Erie County residents on an annual basis; and

WHEREAS, these two services combined service approximately 2,000 households per year; and

WHEREAS, Erie County would realize a fiscal benefit from partial, up to fifty percent, State reimbursement for expenses associated with the collection and disposal of HHW, and

WHEREAS, the Erie County Legislature authorized the County Executive to enter into contracts with MXI Environmental Services, LLC (MXI) and The Environmental Service Group (ESG) with the passage of Resolution COMM. 4E-11(2023); and

WHEREAS, the proposed contract amendment provides for two, one-year extensions of the contracts; and

WHEREAS, the Department of Environment and Planning and the contractors, MXI and ESG, wish to extend the contracts for an additional year.

NOW, THEREFORE, BE IT

RESOLVED, that the Erie County Legislature hereby authorizes the County Executive or the Deputy County Executive to amend the existing contracts with MXI Environmental Services, LLC (MXI) and The Environmental Service Group (ESG) to allow for two, one-year extension for the provision of HHW and CESQG Collection and Management Services under all other existing conditions; and be it further

RESOLVED, that sufficient funding exists within the Department of Environment and Planning's 2024 Operating Budget (Fund 110, Funds Center 16200) Accounts 517577 – Hazardous Waste – Comm Generators (CESQG) and 517629 – Hazardous Waste Days; and be it further

RESOLVED, that two certified copies of this resolution shall be forwarded to the Department of Environment and Planning and one certified copy to each of the County Executive's Office, Comptroller's Office, Division of Budget and Management and Department of Law.

Erie County Legislature
Meeting Date: 06/20/2024

SUBJECT

COMM. 12E-22	COUNTY EXECUTIVE	Award of Agreement 2024, On-Call Dam Engineering Services
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Attachments

24COMM. 12E-22



COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE

June 14, 2024

Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

RE: Award of Agreement 2024 On-Call Dam Engineering Services

Dear Honorable Members:

The accompanying resolution requests that the County Executive be authorized to execute an On-Call Dam Engineering Services Agreement with Colliers Engineering & Design, Architecture, Landscape Architecture, Surveying, CT, P.C. (Colliers). The agreement will be for a term of 3 years with the option of two one-year renewals.

Should your Honorable Body require further information, I encourage you to contact Commissioner William E. Geary, Jr. of the Department of Public Works. Thank you for your consideration on this matter.

Sincerely yours,

A handwritten signature in blue ink that reads "Mark C. Poloncarz".

Mark C. Poloncarz, Esq.
Erie County Executive

MCP/bar/cw
Enclosure

cc: William E. Geary, Jr., Department of Public Works

MEMORANDUM

To: Honorable Members of the Erie County Legislature
From: Department of Public Works/Division of Highways
Re: Award of Agreement for 2024 On-Call Dam Engineering Services
Date: June 14, 2024

SUMMARY

The accompanying resolution requests authority for the County Executive to execute an On-Call Dam Engineering Services Agreement with Colliers Engineering & Design, Architecture, Landscape Architecture, Surveying, CT, P.C. (Colliers). Colliers was selected in accordance with County policy using an open request for proposals and the County selection process. The terms of the agreement will be three (3) years with an option for two (2) one (1) year extensions.

FISCAL IMPLICATIONS

The initial spending authorization requested is a not-to-exceed amount of \$203,300. The funding source for both shares are as follows:

B.17023	2017 Prsrv of Dams Design - Countywide	\$103,300.00
B.19057	2019 Preservation of Dams - Design	\$100,000.00

REASONS FOR RECOMMENDATION

There are many instances where dam engineering services are required for problems or issues of a relatively immediate nature that are not of a size or scope that warrant issuing an RFP. Examples would include dam inspections, coordination with USACE and NYSDEC projects, etc.

BACKGROUND INFORMATION

The On-Call Agreement allows the County to address the needs of its physical infrastructure more efficiently by shortening the time it takes to address developing problems, problems which require professional assistance but are too small to justify issuing a request for proposals (RFP) and emergency and disaster related issues.

CONSEQUENCES OF NEGATIVE ACTION


Without approval, the County will be unable to execute the term agreement. Any issue, no matter how minor or how large an emergency will have to go through the formal RFP, selection, approval and contracting process which can take weeks and limits the County's ability to react to and solve problems as they arise.

STEPS FOLLOWING APPROVAL

The County Executive will execute the On-Call Dam Engineering Services Agreement for an initial term of three years with the option of two one-year extensions.

COMPTROLLER'S OFFICE REVIEW

The proposed legislation has been reviewed by the Office of the Comptroller and is related to authorized capital projects for which there is sufficient funding.


Timothy C. Callan
Deputy Comptroller
Comptroller's Office

Fund 420, Fund Center 123
B.17023 - 2017 Prsrv of Dams Design - Countywide
B.19057 - 2019 Preservation of Dams - Design

A RESOLUTION SUBMITTED BY:
DEPARTMENT OF PUBLIC WORKS
DIVISION OF HIGHWAYS

RE: Award of Agreement for 2024 On-Call Dam Engineering Services

WHEREAS, as Erie County (County) has determined that there is an ongoing need for the ability to access dam engineering services in an efficient and timely manner to be able to respond to problems, emergency situations and issues that are of such magnitude that the issuance of a request for proposals in that instance would neither be reasonable nor efficient, the County Department of Public Works (ECDPW) issued a Request for Proposals (RFP) for an On-Call Dam Engineering Services Term Agreement, received a proposal in accordance with County policy and upon evaluation of the proposal in accordance with the County selection process determined that Colliers Engineering & Design, Architecture, Landscape Architecture, Surveying, CT, P.C. (Colliers) is qualified for an On-Call Dam Engineering Services Term Agreement; and

WHEREAS, it is desired to establish an initial On-Call Dam Engineering Services budget of \$203,300.00.

WHEREAS, the Department of public Works, Division of Highways requires five (5) certified copies of this resolution and the Office of the County Executive, the Division of Budget and Management, and the Office of the Comptroller require one (1) certified copy of the same.

NOW, THEREFORE, BE IT

RESOLVED, that the Erie County Legislature hereby authorizes the County Executive or Deputy County Executive to execute an On-Call Dam Engineering Services Agreement with Colliers Engineering & Design, Architecture, Landscape Architecture, Surveying, CT, P.C. for an initial term of three years with the option of two one-year extensions in an amount not to exceed \$203,300; and be it further

RESOLVED, that sufficient funding is available for this on-call contract in Fund 420, Fund Center 123, as follows:

B.17023	2017 Prsrv of Dams Design - Countywide	\$103,300.00
B.19057	2019 Preservation of Dams - Design	\$100,000.00

and be it further

RESOLVED, that the Clerk of the Legislature be instructed to forward five (5) certified copies of this resolution to the Department of Public Works, Office of the Commissioner, and one copy each to the County Executive's Office, Comptroller's Office and the Division of Budget and Management.

TO: TIMOTHY C. CALLAN, COMPTROLLER'S OFFICE

RE: PROPOSED RESOLUTIONS REQUIRING RULE 55

CONTRACT APPROVAL CHECKLIST
CONFIRMATION OF AVAILABILITY OF FUNDS IN CAPITAL PROJECTS

REQUESTING DEPARTMENT

COMPLETE ITEMS 1 THROUGH 5

- | | |
|-----------------------|---|
| 1. CONTRACTOR'S NAME | <u>Colliers</u> |
| 2. AMOUNT OF CONTRACT | <u>Aggregate Not to Exceed \$203,300.00</u> |
| 3. PROJECT NUMBER | <u>B.17023 - \$103,300.00</u>
<u>B.19057 - \$100,000.00</u> |
| 4. PROJECT TITLE | <u>On-Call Dam Engineering Services</u> |
| 5. DEPARTMENT CONTACT | <u>Funding questions: Darlene Svilokos at 8372</u>
<u>Letter pickup: Christy Weber at 8301</u> |

COMPTROLLER'S OFFICE

COMPLETE ITEMS 6 AND 7

- | | |
|------------------------------------|----------------------|
| 6. AVAILABILITY OF FUNDS | <u>\$ 204,572.79</u> |
| 7. PERFORMED BY | <u><i>King</i></u> |
| Date Sent to Comptroller's Office: | <u>June 3, 2024</u> |

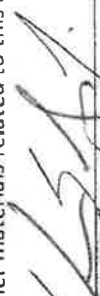
[55 compt_10]




ERIE COUNTY DEPARTMENT OF PUBLIC WORKS - HIGHWAYS
RFP # 2024 On-Call Dam

Proposer	Evaluation Criteria													Evaluation Criteria			
	Proposer's understanding of services required			Demonstrated Experience and Ability to address a variety of dam projects and concerns			Experience and qualifications of proposed staff			Logistics and Familiarity with County Owned Dams			Percentage of Proposed M/WBE Participation			Weighted Average Score (1 - 10)	Ranking
	Weight = 25%			Weight = 25%			Weight = 20%			Weight = 20%			Weight = 10%				
	Committee Member Raw Score (1 - 10)			Committee Member Raw Score (1 - 10)			Committee Member Raw Score (1 - 10)			Committee Member Raw Score (1 - 10)			Committee Member Raw Score (1 - 10)			Avg. Score	
#1	#2	#3	#1	#2	#3	#1	#2	#3	#1	#2	#3	#1	#2	#3			
Colliers	10	9	9	9	9	9	9	9	9	8	9	8	8	9	10	9.33	1
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0.00	2
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0.00	2
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0.00	2
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0.00	2
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0.00	2
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0.00	2
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0.00	2
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0.00	2
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0.00	2
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0.00	2

It is my opinion in recommending Colliers Engineering & Design, Architecture, Landscape Architecture, Surveying, CT, P.C. the Erie County Department of Public Works has complied with all applicable provisions of Section 19-08 of the Erie County Administrative Code. Scoring sheets and other materials related to this matter are available for review at the Department of Public Works' office during regular business hours.


 William E. Geary, Jr., Commissioner
 Erie County Department of Public Works


 Lisa M. Chimera
 Deputy County Executive

Erie County Legislature
Meeting Date: 06/20/2024

SUBJECT

COMM. 12E-23	COUNTY EXECUTIVE	Amendment of Contract - Professional Design Engineering Services Agreement for Lakeshore Road
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Attachments

24COMM. 12E-23



COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE

EC LEG JUN 13 '24 PM 5:58

June 14, 2024

Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

**RE: Amendment of Wendel WD Architecture,
Engineering, Surveying and Landscape
Architect, PC
Professional Design Engineering Services Agreement for
Lakeshore Road (CR111) Drainage Improvements and Road
Rehabilitation Town of Evans, Erie County**

Dear Honorable Members:

We are forwarding for your approval a proposed resolution seeking authorization for the County Executive to execute an amendment to the existing Professional Design Engineering Services Agreement with Wendel WD Architecture, Engineering, Surveying and Landscape Architect, PC.

Should your Honorable Body require further information, I encourage you to contact William E. Geary, Jr., Commissioner of the Department of Public Works. Thank you for your consideration on this matter.

Sincerely yours,

Mark C. Poloncarz
Erie County Executive

MCP/kwr
Enclosure

cc: William E. Geary, Jr., Commissioner of the Department of Public Works

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COMM. 12E-23
Page 1 of 5

MEMORANDUM

To: Honorable Members of the Erie County Legislature
From: Department of Public Works/Division of Highways
Re: Amendment of Wendel WD Architecture, Engineering, Surveying and Landscape Architect, PC
Professional Design Engineering Services Agreement for Lakeshore Road (CR111) Drainage Improvements and Road Rehabilitation Town of Evans, Erie County
Date: June 14, 2024

SUMMARY

The accompanying resolution requests authority for the County Executive to execute an amendment to accommodate an agreed upon change in scope to an existing Professional Design Engineering Services Agreement for the Lakeshore Road (CR111) Drainage Improvements and Road Rehabilitation, authorized by COMM. 9E-7 on May 26, 2022 with Wendel WD Architecture, Engineering, Surveying and Landscape Architect, PC (Wendel).

FISCAL IMPLICATIONS

Funding for this Amendment is not to exceed \$108,737.00, and is available in Fund 420, Funds Center 123, Capital Project B.19008 - 2019 Lakeshore Drain Rehab/Replacement.

REASONS FOR RECOMMENDATION

Wendel provided additional effort to process evaluation documents with NYSDOT, including multiple rounds of comments from NYSDOT and hiring a subconsultant to perform services required by NYS Historic Preservation Office (SHPO). Preparing for a public information meeting between the County and Town of Evans. Updating design of project per County comments provided including extending the walkway south from Hickory Street, investigating walkway extension over the culvert, associated storm sewer changes, and the addition of details required for a mid-block crossing.

BACKGROUND INFORMATION


The limits of the road rehabilitation and improved pedestrian accommodations are from Bennett Beach access road to Evans Town Park. This is the section of road that was scheduled for Phase II of the Lakeshore Shoreline Trail Multi-Use Pathway. The limits of the storm drainage system replacement are from approximately Hickory Street to Big Sister Creek. To preserve access to federal funding for the construction phase of the project, the design phase will be designed according to the New York State Department of Transportation (NYSDOT) Local Projects Manual.

STEPS FOLLOWING APPROVAL

The County Executive will execute an amendment to the Professional Design Engineering Services Agreement with Wendel. Upon full execution, payment for services provided will be made.

COMPTROLLER'S OFFICE REVIEW

The proposed legislation has been reviewed by the Office of the Comptroller and is related to an authorized capital project for which there are sufficient appropriations for the action proposed.



Timothy C. Callan
Deputy Comptroller
Comptroller's Office

Capital Project B.19008 - 2019 Lakeshore Drain Rehab/Repl

A RESOLUTION SUBMITTED BY:
DEPARTMENT OF PUBLIC WORKS
DIVISION OF HIGHWAYS

RE: Amendment of Wendel WD Architecture, Engineering,
Surveying and Landscape Architect, PC
Professional Design Engineering Services Agreement for
Lakeshore Road (CR111) Drainage Improvements and Road Rehabilitation
Town of Evans, Erie County

WHEREAS, authorization is being requested for the County Executive to execute an amendment for additional engineering design services to the Professional Design Engineering Services Agreement for the Lakeshore Road (CR111) Drainage Improvements and Road Rehabilitation (the "Agreement"), authorized by COMM. 9E-7 on May 26, 2022 with Wendel WD Architecture, Engineering, Surveying and Landscape Architect, PC; and

WHEREAS, the total cost of the amendment shall not exceed \$108,737.00 and funds are available in Fund 420, Funds Center 123, through Capital Project - B.19008 - 2019 Lakeshore Drain Rehab/Repl.

WHEREAS, the Department of Public Works, Division of Highways requires five (5) certified copies of this resolution and the Office of the County Executive, the Division of Budget and Management, and the Office of the Comptroller require one (1) certified copy of the same.

NOW, THEREFORE, BE IT

RESOLVED, that the Erie County Legislature hereby authorizes the County Executive or Deputy County Executive to execute an amendment to the existing Agreement with Wendel WD Architecture, Engineering, Surveying and Landscape Architect, PC for design and engineering services related to the Lakeshore Road (CR111) Drainage Improvements and Road Rehabilitation Project in an amount not to exceed \$108,737.00; and be it further

RESOLVED, that sufficient funds are available for this amendment in Fund 420, Funds Center 123, Capital Project B.19008 - 2019 Lakeshore Drain Rehab/Replacement; and be it further

RESOLVED, that the Clerk of the Legislature be instructed to forward five (5) certified copies of this resolution to the Department of Public Works, Division of Highways, and one copy each to the County Executive's Office, Comptroller's Office and Division of Budget and Management.

TO: TIMOTHY C. CALLAN, COMPTROLLER'S OFFICE

RE: PROPOSED RESOLUTIONS REQUIRING RULE 55

CONTRACT APPROVAL CHECKLIST
CONFIRMATION OF AVAILABILITY OF FUNDS IN CAPITAL PROJECTS


REQUESTING DEPARTMENT

COMPLETE ITEMS 1 THROUGH 5

- | | |
|-----------------------|--|
| 1. CONTRACTOR'S NAME | <u>Wendel</u> |
| 2. AMOUNT OF CONTRACT | <u>\$108,737.00</u> |
| 3. PROJECT NUMBER | <u>B.19008 - \$108,737.00</u> |
| 4. PROJECT TITLE | <u>Professional Design Engineering Services
Lakeshore Rd Drain Improv. & Road Rehab
Town of Evans, Erie County</u> |
| 5. DEPARTMENT CONTACT | <u>Funding question: Darlene Svilokos at 7801</u>
<u>Letter pickup: Christy Weber at 8301</u> |

COMPTROLLER'S OFFICE

COMPLETE ITEMS 6 AND 7

- | | |
|------------------------------------|---|
| 6. AVAILABILITY OF FUNDS | <u>\$ 500,000.00</u> |
| 7. PERFORMED BY | <u></u> |
| Date Sent to Comptroller's Office: | <u>May 29, 2024</u> |

[55 compt_10]

Erie County Legislature
Meeting Date: 06/20/2024

SUBJECT

COMM. 12E-24	COUNTY EXECUTIVE	Amendment of Contract - Professional Design Engineering Services Agreement for Back Creek Road
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Attachments

24COMM. 12E-24



COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE

BOULE JUN 13 '24 05:58

June 14, 2024

Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

**RE: Amendment of Bergmann Associates, Architects,
Engineers, Landscape Architects & Surveyors,
Professional Design Engineering Services
Agreement for Back Creek Road (CR438) Slope
and Slide Remediation Town of Boston, Erie
County**

Dear Honorable Members:

We are forwarding for your approval a proposed resolution seeking authorization for the County Executive to execute an amendment to the existing Professional Design Engineering Services Agreement with Bergmann Associates, Architects, Engineers, Landscape Architects & Surveyors, D.P.C.

Should your Honorable Body require further information, I encourage you to contact William E. Geary, Jr., Commissioner of the Department of Public Works. Thank you for your consideration on this matter.

Sincerely yours,

Mark C. Poloncarz
Erie County Executive

MCP/kwr
Enclosure

cc: William E. Geary, Jr., Commissioner of the Department of Public Works

MEMORANDUM

To: Honorable Members of the Erie County Legislature
From: Department of Public Works/Division of Highways
Re: Amendment of Bergmann Associates, Architects, Engineers, Landscape Architects & Surveyors, D.P.C
Professional Design Engineering Services Agreement for Back Creek Road (CR438) Slope and Slide Remediation Town of Boston, Erie County
Date: June 14, 2024

SUMMARY

The accompanying resolution requests authority for the County Executive to execute an amendment to accommodate an agreed upon change in scope to an existing Professional Design Engineering Services Agreement for the Back Creek Road (CR438) Slope and Slide Remediation, authorized by COMM. 12E- 9 on June 22, 2023 with Bergmann Associates, Architects, Engineers, Landscape Architects & Surveyors, D.P.C. (Bergmann Associates).

FISCAL IMPLICATIONS

Funding for this Amendment is not to exceed \$48,011.04, and is available in Fund 420, Funds Center 123, Capital Project B.21103 - 2021 Road Slides Const Back Creek.

REASONS FOR RECOMMENDATION

The Town of Clarence has completed construction of this federal aid project (PIN 5763.59). It was necessary for the Town to acquire Right of Way to facilitate drainage along this corridor. This Right of Way parcel must now be transferred to Erie County for drainage maintenance purposes.

BACKGROUND INFORMATION


Bergmann Associates providing additional construction period engineering services as the project required an unanticipated winter shutdown, as result of suspending the completion of construction so that unforeseen embankment cracking could be monitored and evaluated throughout the winter/spring and be repaired in 2024. The prescribed embankment repair work in 2024 and the completion of the remaining roadway work of the construction contract will result in the construction inspection/support labor budgets being expended prior to the completion of the project.

STEPS FOLLOWING APPROVAL

The County Executive will execute an amendment to the Professional Design Engineering Services Agreement with Bergmann Associates. Upon full execution, payment for services provided will be made.

COMPTROLLER'S OFFICE REVIEW

The proposed legislation has been reviewed by the Office of the Comptroller and is related to authorized capital projects for which there are sufficient appropriations for the action proposed.

 5/29/24

Timothy C. Callan
Deputy Comptroller
Comptroller's Office

Capital Project B.21103 - 2021 Road Slides Const Back Creek

A RESOLUTION SUBMITTED BY:
DEPARTMENT OF PUBLIC WORKS
DIVISION OF HIGHWAYS

RE: Amendment of Bergmann Associates, Architects, Engineers,
Landscape Architects & Surveyors, D.P.C.
Professional Design Engineering Services Agreement for
Back Creek Road (CR438) Slope and Slide Remediation
Town of Boston, Erie County

WHEREAS, authorization is being requested for the County Executive to execute an amendment for additional construction period engineering design services to the Professional Design Engineering Services Agreement for the Back Creek Road (CR438) Slope and Slide Remediation (the "Agreement"), authorized by COMM. 12E-9 on June 22, 2023 with Bergmann Associates, Architects, Engineers, Landscape Architects & Surveyors, D.P.C.; and

WHEREAS, the total cost of the amendment shall not exceed \$48,011.04 and funds are available in Fund 420, Funds Center 123, through Capital Project - B.21103 - 2021 Road Slides Const Back Creek.

WHEREAS, the Department of Public Works, Division of Highways requires five (5) certified copies of this resolution and the Office of the County Executive, the Division of Budget and Management, and the Office of the Comptroller require one (1) certified copy of the same.

NOW, THEREFORE, BE IT

RESOLVED, that the Erie County Legislature hereby authorizes the County Executive or Deputy County Executive to execute an amendment to the existing Agreement with Bergmann Associates, Architects, Engineers, Landscape Architects & Surveyors, D.P.C for additional engineering design services in the amount not to exceed \$48,011.04; and be it further

RESOLVED, that sufficient funding for this amendment is available in Fund 420, Funds Center 123, Capital Project B.21103 - 2021 Road Slides Const Back Creek; and be it further

RESOLVED, that the Clerk of the Legislature be instructed to forward five (5) certified copies of this resolution to the Department of Public Works, Division of Highways, and one copy each to the County Executive's Office, Comptroller's Office and Division of Budget and Management.

TO: TIMOTHY C. CALLAN, COMPTROLLER'S OFFICE

RE: PROPOSED RESOLUTIONS REQUIRING RULE 55

CONTRACT APPROVAL CHECKLIST

CONFIRMATION OF AVAILABILITY OF FUNDS IN CAPITAL PROJECTS

REQUESTING DEPARTMENT

COMPLETE ITEMS 1 THROUGH 5

- | | |
|-----------------------|---|
| 1. CONTRACTOR'S NAME | <u>Bergmann Associates</u> |
| 2. AMOUNT OF CONTRACT | <u>\$48,011.04</u> |
| 3. PROJECT NUMBER | <u>B.21103 - \$48,011.04</u> |
| 4. PROJECT TITLE | <u>Professional Design Engineering Services
Back Creek Rd Slope and Slide Remediation
Town of Boston, Erie County</u> |
| 5. DEPARTMENT CONTACT | <u>Funding question: Darlene Svilkos at 7801
Letter pickup: Christy Weber at 8301</u> |

COMPTROLLER'S OFFICE

COMPLETE ITEMS 6 AND 7

6. AVAILABILITY OF FUNDS

\$ 101,732.45 _____

7. PERFORMED BY

[Handwritten Signature] _____

Date Sent to Comptroller's Office:

May 28, 2024 _____

[55 compt_10]

Erie County Legislature
Meeting Date: 06/20/2024

SUBJECT

COMM. 12E-25	COUNTY EXECUTIVE	Right-of-Way Acquisition - Replacement of Genesee Road Bridge
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Attachments

24COMM. 12E-25



COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE

10:17:00 JUN 13 '24 PM 5:58

June 14, 2024

Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

**RE: Right-of-Way (ROW) Acquisition
Replacement of Genesee Road (CR409) Bridge
over Hosmer Brook Bridge (BIN 3328690)
Project No. CAP-BR409-25
Town of Sardinia, Erie County**

Dear Honorable Members:

We are forwarding for your approval a resolution seeking authorization for the County of Erie to acquire Right-of-Way (ROW) to facilitate construction of the above referenced project.

Should your Honorable Body require further information, I encourage you to contact William E. Geary, Jr., Commissioner of the Department of Public Works. Thank you for your consideration on this matter.

Sincerely yours,

A handwritten signature in blue ink, reading "Mark C. Poloncarz".

Mark C. Poloncarz, Esq.
Erie County Executive

MCP/kwr/cw
Enclosure

cc: William E. Geary, Jr. Department of Public Works

MEMORANDUM

To: Honorable Members of the Erie County Legislature
From: Department of Public Works/Division of Highways
Re: Right-of-Way (ROW) Acquisition
Replacement of Genesee Road (CR409) Bridge
over Hosmer Brook Bridge (BIN 3328690)
Project No. CAP-BR409-25
Town of Sardinia, Erie County
Date: June 14, 2024

SUMMARY

The accompanying resolution requests authority for the County of Erie to acquire Right-of-Way (ROW) from the owners of the subsequently listed parcels and other such parcels as may become necessary for the construction of the above referenced project. Acquisitions are de minimis.

<u>TAX MAP SBL NUMBER</u>	<u>Acquisition Type</u>	<u>TOWNSHIP</u>
SBL 311.00-2-27.12	FEE	Sardinia
SBL 311.00-2-27.2	FEE	Sardinia
SBL 311.00-2-27.2	Temp. Easement (TE)	Sardinia
SBL 311.00-3-40	FEE	Sardinia
SBL 311.00-3-5	FEE	Sardinia

FISCAL IMPLICATIONS

Funding for the acquisitions in a sum not to exceed \$28,000 is available in Fund 420, Fund Center 123, project B.17006 - 2017 Capital Right of Way (Countywide)

REASONS FOR RECOMMENDATION

Allow the County to acquire the necessary Right-of-Way for the construction of the referenced Project.

BACKGROUND INFORMATION

This design of the Project was previously approved in Comm 12E-18 (2022). This Project has construction funding in SAP account B.24010 - 2024 Pres of Bridge Cons Genesee Rd Bridg. Acquisition of the Right-of-Way is necessary prior to the construction phase of the bridge beginning.

CONSEQUENCES OF NEGATIVE ACTION

If Right-of-Way is not acquired the project cannot be constructed and the bridge will continue to deteriorate and hinder travel for the general public.

STEPS FOLLOWING APPROVAL

The Right-of-Way necessary to construct the project will be acquired.

COMPTROLLER'S OFFICE REVIEW

The proposed legislation has been reviewed by the Office of the Comptroller and is related to an authorized capital project for which there are sufficient appropriations for the action proposed.

Timothy C. Callan 5/29/24
Timothy C. Callan
Deputy Comptroller
Comptroller's Office

B.17006 - 2017 Capital Right of Way (Countywide)

A RESOLUTION SUBMITTED BY:
DEPARTMENT OF PUBLIC WORKS
DIVISION OF HIGHWAYS

RE: Right-of-Way (ROW) Acquisition
Replacement of Genesee Road (CR409) Bridge
over Hosmer Brook Bridge (BIN 3328690)
Project No. CAP-BR409-25
Town of Sardinia, Erie County

WHEREAS, the design of the referenced Project (the “Project”), was authorized by your honorable body via Communication 12E-18 (2022), and to facilitate construction it is necessary for the County of Erie (the “County”) to acquire by easement and/or fee, portions of parcels of real property in the vicinity of the project as follows:

<u>TAX MAP SBL NUMBER</u>	<u>Acquisition Type</u>	<u>TOWNSHIP</u>
SBL 311.00-2-27.12	FEE	Sardinia
SBL 311.00-2-27.2	FEE	Sardinia
SBL 311.00-2-27.2	TE (Temporary Easement)	Sardinia
SBL 311.00-3-40	FEE	Sardinia
SBL 311.00-3-5	FEE	Sardinia

and

WHEREAS, such portions of parcels necessary to be acquired by the County are herein referred to as the “Subject Properties”; and

WHEREAS, the acquisitions of the Subject Properties is expected to be de minimis in nature; and

WHEREAS, the estimated total cost of acquisitions of the Subject Properties is \$28,000; and

WHEREAS, it is necessary, for each Subject Property, for the County to establish the amount of just compensation, prepare offers of acquisition and to negotiate those offers with the owners of the Subject Properties for respective just compensation amounts; and

WHEREAS, it will be necessary to prepare and execute all appropriate documents relating to acquiring easement and/or fee interests in the necessary ROW; and

WHEREAS, should one or more owners of the Subject Properties refuse to convey such portion of their real property to the County for an amount not exceeding fair market value, it will be necessary for the County to acquire the Subject Property by commencing eminent domain proceedings; and

WHEREAS, the Department of public Works, Division of Highways requires five (5) certified copies of this resolution and the Office of the County Executive, the Division of Budget and Management, and the Office of the Comptroller require one (1) certified copy of the same.

NOW, THEREFORE, BE IT

RESOLVED, that the Erie County Legislature hereby authorizes Erie County to enter into all necessary contracts and agreements required for the acquisition of real property from the owners of the Subject Properties to facilitate the construction of the Project; and be it further

RESOLVED, the public interest will not be prejudiced by the construction of the Project due to the de minimis nature of the acquisitions of the Subject Properties; and be it further

RESOLVED, that a sum not to exceed \$28,000 from Fund 420, Fund Center 123, project B.17006 - 2017 Capital Right of Way (Countywide) be made available to cover all costs of ROW acquisitions; and be it further

RESOLVED, that authorization is hereby given for the Commissioner of Public Works, or his authorized representatives, including Popli Architecture + Engineering & LS, DPC dba Popli Design Group, to act on behalf of the County in connection with the acquisition of the Subject Properties from their respective owners including the establishment and negotiation of offers which he believes to represent just compensation for the real property interests to be acquired; and be it further

RESOLVED, that the County Attorney shall prepare, and the County Executive shall execute all appropriate documents relating to acquiring easement and/or fee interests in the necessary ROW; and be it further

RESOLVED, that authorization is hereby given for Erie County to commence eminent domain procedures should one or more owners of the Subject Properties refuse to convey such portions of their real property to the County for an amount not to exceed the just compensation determined by the Commissioner of Public Works, or his authorized representatives; and be it further

RESOLVED, that the Clerk of the Legislature forward five (5) certified copies of this resolution to the Department of Public Works, Division of Highways, and one copy each to the County Executive's Office, Comptroller's Office and Division of Budget and Management..

TO: TIMOTHY C. CALLAN, COMPTROLLER'S OFFICE

PROPOSED RESOLUTIONS REQUIRING RULE 55

CONTRACT APPROVAL CHECKLIST
CONFIRMATION OF AVAILABILITY OF FUNDS IN CAPITAL PROJECTS

REQUESTING DEPARTMENT

COMPLETE ITEMS 1 THROUGH 5

1. CONTRACTOR'S NAME

Property Owners as Required

2. AMOUNT OF CONTRACT

\$28,000

3. PROJECT NUMBER

B.17006 - 2017 Capital ROW (Cntywide)

4. PROJECT TITLE

Replacement of Genesee Road (CR409)
over Hosmer Brook Bridge BIN 3328690
Project No. CAP-BR409-25

5. DEPARTMENT CONTACT

Funding questions:
Darlene M. Svilokos, PE at 7801
Letter pickup: Christy Weber at 8301

COMPTROLLER'S OFFICE

COMPLETE ITEMS 6 AND 7

6. AVAILABILITY OF FUNDS

\$ 52,600.00

7. PERFORMED BY



Date Sent to Comptroller's Office:

May 28, 2024

[55 compt_10]

Erie County Legislature
Meeting Date: 06/20/2024

SUBJECT

COMM. 12M-1 NFTA COUNSEL NFTA - Notice of Proposed Rulemaking

Attachments

24COMM. 12M-1



Niagara Frontier Transportation Authority
Serving Buffalo Niagara

EC LEG JUN 5 '24 AM 11:05

181 Ellicott Street
Buffalo, New York 14203
716-855-7300
Fax: 716-855-7657
TDD: 855-7650
www.nfta.com

June 3, 2024

Ms. Olivia Owens
Clerk of the Legislature
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

**Re: Niagara Frontier Transportation Authority (NFTA)
– Notice of Proposed Rulemaking**

Dear Ms. Owens:

Pursuant to section 1299-t of the Public Authorities Law, notice is hereby given of a proposed amendment to 21 NYCRR part 1159, the Procurement Guidelines (the “Guidelines”) of the NFTA and Niagara Frontier Transit Metro System, Inc. Enclosed is a copy of the NFTA’s proposed form of Notice of Proposed Rulemaking together with the attachments to be filed therewith, including details of the proposed revisions.

If you have any questions or require any additional information, please call me ([716] 855-7398) or e-mail (Michael.Flaherty@NFTA.com).

NIAGARA FRONTIER TRANSPORTATION
AUTHORITY

Very truly yours,

By: 
Michael J. Flaherty, Jr.
Counsel

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. <i>Proposed action:</i>			
Amendment of	Parts 1159.3, 1159.4, and 1159.5	Title <u>21</u>	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:*
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 clarifying provisions and change 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]:

<https://www.nfta.com/about/public-information-center/procurement-guidelines>

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 Michael J. Flaherty, Jr.

Agency Name Niagara Frontier Transportation Authority

Office address 181 Ellicott Street

Buffalo, New York 14203

Telephone (716) 855-7398 E-mail: Michael.Flaherty@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]

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 Michael J. Flaherty, Jr.

Signature 

Address 181 Ellicott Street, Buffalo, New York 14203

Telephone (716) 855-7398

E-Mail Michael.Flaherty@NFTA.com

Date 05/31/2024

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.

Niagara Frontier Transportation Authority

Statement of Determination that No Person is Likely to Object to the Rule as Written – 21 NYCRR part 1159

No person is likely to object to the amendment of the rule, as written, because the changes made are technical in nature and limited to (i) reflecting an immaterial increase in the purchasing authority of certain members of management, (ii) making conforming changes for purposes of consistency throughout the rule, and (iii) making clarifying changes that are expected to be beneficial to individuals who participate in the NFTA contracting and procurement processes. In addition, the changes made to the referenced rule are not expected to adversely impact jobs or employment opportunities, nor are they expected to adversely impact any business or industry that participates, or is eligible to participate, in the NFTA contracting and/or procurement processes.

Niagara Frontier Transportation Authority

Subdivisions (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), and (s) of section 1159.3 are renumbered subdivisions (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), (s) and (t) and a new subdivision (b) is added to read as follows:

(b) Airport Concession Disadvantaged Business Enterprise (ACDBE): Small business concern as defined pursuant to section 3 of the Small Business Act: (a) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of a publicly-owned business, at least 51 percent of the capital stock of which is owned by one or more socially and economically disadvantaged individual; (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it; and (c) owns and controls a concession as defined under 49 CFR 23.3.

Newly renumbered subdivision (l) of section 1159.3 is amended to read as follows:

(l) Emergency. Danger or threat of harm to life, health, safety, environment, or property which requires immediate action; provided, that an emergency procurement shall be made with such competition as is practicable under the circumstances and a written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the procurement file. Emergency is a subcategory of ["sole source."] "non-competitive procurement."

Newly renumbered subdivision (m) of section 1159.3 is amended to read as follows:

(m) Exigency. Prospect of interruption to, or obstruction of, the authority's efficient operation or adequate provision of service, arising from an unforeseen circumstance. Exigency is a subcategory of ["sole source."] "non-competitive procurement."

Newly renumbered subdivision (n) of section 1159.3 is amended to read as follows:

(n) Expediency. Prospect of an outcome not in the best interest of the authority arising from adherence to the means and method of the procurement prescribed herein or, alternatively, adherence to these guidelines is impractical or inappropriate given all the existing circumstances, none of which were foreseeable or controllable by the authority. Expediency is a subcategory of ["sole source."] "non-competitive procurement."

Subdivisions (t), (u), (v), (w), (x), (y), (z), (aa), (ab), (ac), (ad), (ae), (af), (ag), (ah), (ai), (aj), (ak), (al), (am), (an), (ao), and (ap) of section 1159.3 are renumbered subdivisions (u), (v), (w), (x), (y), (z), (aa), (ab), (ac), (ad), (ae), (af), (ag), (ah), (ai), (aj), (ak), (al), (am), (an), (ao), (ap), (aq), and (ar) and a new subdivision (u) is added to read as follows:

(u) Non-Competitive Procurement. A general category of awards where competition is waivable, or is not feasible under the circumstances, as determined by the Procurement Department and authorized by the Executive Director. The included subcategories are: single bid, single source, sole source, exigency, expediency, and emergency.

Newly renumbered subdivision (w) of section 1159.3 is amended to read as follows:

(w) Procurement. The buying, purchasing, renting, leasing, or other acquisition by the authority, of products, services, or public works, excepting:

(1) the purchase of periodicals, reference materials, treatises, or professional research tools;

- (2) the payment of membership fees, fees or tuition associated with continuing education courses, training courses, conferences, seminars and symposiums;
- (3) expenditures governed by the authority's "Travel Policy and Guidelines";
- (4) the purchase of advertising space or advertising time in any medium; and
- (5) the purchase of catering services.

Newly renumbered subdivision (ag) of section 1159.3 is amended to read as follows:

(ag) Single bid. Two or more competitive bids are solicited and only one bid is received. A single bid is a subcategory of ["sole source."] “non-competitive procurement.”

Newly renumbered subdivision (ah) of section 1159.3 is amended to read as follows:

(ah) Single source. [The goods or services to be procured are available from only one responsible source; or no other goods or services will satisfy the authority's requirements; or prior State, Federal or board approval has been granted. Single source is a subcategory of "sole source."] A single source procurement is one in which, although there are two or more potential bidders, the authority has determined that it is in the best interest of the State to procure from a particular bidder without conducting a formal competitive procurement. It is expected that this shall be rarely used by the authority. Single Source is a subcategory of “non-competitive procurement.”

Newly renumbered subdivision (ai) of section 1159.3 is amended to read as follows:

(ai) Small purchase. The acquisition of goods or services having an actual price less than [\$ 100,000] or equal to \$150,000 (see section 1159.4(q) of this Part.

Newly renumbered subdivision (aj) of section 1159.3 is amended to read as follows:

(aj) Small purchase formal bidding. A small purchases method of procuring goods or services [under 100,000] less than or equal to \$150,000, 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.

Newly renumbered subdivision (ak) of section 1159.3 is amended to read as follows:

(ak) Small purchase informal bidding. A small purchases method of procuring goods or services under \$ 50,000, 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(g)(3) of this Part; provided, however, that procurement requirements shall not be artificially divided in order to constitute a small purchase.

Newly renumbered subdivision (al) of section 1159.3 is amended to read as follows:

(al) Sole source. [A general category of awards where competition is waivable, or is not feasible under the circumstances, as determined by the procurement department and authorized by the executive director. The included subcategories are: single bid; exigency; expedience; and single source.] The goods or services to be procured are available from only one responsible source; or no other or services will satisfy the authority's requirements as determined by the procurement department and authorized by the executive director; or prior state, federal, or board approval has been granted. Sole Source is a subcategory of "non-competitive procurement."

Subdivision (a) (6) of section 1159.4 is amended to read as follows:

(6) EEO/diversity development department. The Office of EEO/Diversity Development shall develop DBE and ACDBE goals. EEO/diversity development will monitor DBE and ACDBE participation [for Federal and State funded projects]. The EEO/diversity development department will also report DBE and ACDBE utilization to appropriate Federal and State agencies.

Subdivision (b) (1) of section 1159.4 is amended to add two subparagraphs to be numbered (x) and (xi) which read as follows:

(x) Has the bidder provided their DBE, ACDBE, MBE, WBE, SDVOB utilization plans (if required)?

(xi) Has the bidder provided a Diversity Practices Questionnaire (if required)?

Subdivision (b) (2) of section 1159.4 is amended to add two subparagraphs to be numbered (xiv) and (xv) which read as follows:

(xiv) Past history of untimely DBE, ACDBE, MBE, WBE, or SDVOB utilization reports on previous authority contracts.

(xv) Past history of untimely EEO workforce utilization reports on previous authority contracts.

Subdivision (c) (1) of section 1159.4 is amended to read as follows:

(c) Board approval. Board approval is required for each of the following:

(1) all contracts for goods or services in the actual or estimated value of [\$ 100,000 or more] greater than \$150,000;

Subdivision (d) (1) of section 1159.4 is amended to read as follows:

(d) Buy America.

(1) Federal requirements. Procurements which include Federal funds are subject to Federal Buy America requirements. Generally, this means that steel, iron, construction materials and/or manufactured products which are incorporated in public works or product purchases are to have been produced domestically 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 USC §5323(j), 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. Rolling stock must have a 65 percent domestic content in years 2018 and 2019 and a 70 percent domestic content in 2020 and beyond, and final assembly must take place in the United States.] The authority will follow the guidance provided by the Infrastructure Investment and Jobs Act (Pub. L. No. 117-58), which includes the Build America, Buy America Act and the relevant regulations resulting therefrom. When procuring rolling stock, which includes train control, communication, traction power equipment, and rolling stock prototypes, the cost of the components and subcomponents produced in the U.S. must be more than 70 percent. Final assembly for rolling stock also must occur in the U.S. Additionally, rolling stock procurements are subject to the pre-award and post-delivery Buy America audit provisions (see 49 USC §5323(m), 49 CFR part 663).

Subdivision (d)(2)(i) of section 1159.4 is amended to read as follows:

(2) State requirements.

(i) Product purchase contracts for supplies, material or equipment involving an estimated expenditure in excess of \$ 50,000 shall require that to the extent such products are made of, fabricated from, or contain steel components that such steel components are produced or made in

whole or substantial part in the U.S., its territories or possessions, except in the procurement of motor vehicles and automobile equipment assembled in Canada in conformity with the Automotive Products Trade Act of 1965 or any amendments thereto.

Subdivision (f) (6) (i) and (ii) of section 1159.4 is amended to read as follows:

(6) Waiver. (i) Bid and maintenance bond requirements may be waived prior to bid date by the executive director or [his] their designee for cause. In instances where such bonds are not required payment shall be withheld until full and complete performance has been accomplished under the terms of the contract.

(ii) Performance security and labor and material payment bonds may be waived by the executive director or [his] their designee, prior to the bid date, in accordance with State Finance Law, section 137(1), provided that the aggregate amount of the contract is under \$ 100,000 and that the authority retains 20 percent from each progress payment or estimate until the entire contract work has been completed and accepted, at which time the executive director or [his] their designee may authorize, pending the payment of the final estimate, the release of up to 75 percent of the retained percentage.

Subdivision (h) (1) of section 1159.4 is amended to read as follows:

(h) Sealed bidding. (1) Sealed bidding is the preferred procurement method for acquisitions of [\$ 50,000] \$25,000 or more where the following factors are present:

Subdivision (h) (2) (i) of section 1159.4 is amended to read as follows:

(2) Sealed bidding is not required when:

(i) the purchase is under [\$ 50,000] \$25,000 and an informal, small purchase procurement procedure is being followed;

Subdivision (j) (1) of section 1159.4 is amended to read as follows:

(j) Negotiation.

(1) Procurement by negotiation is the preferred procurement method for acquisitions of [\$ 50,000] \$25,000 or more where one or more of the following factors are present:

Subdivision (j) (2) (i) of section 1159.4 is amended to read as follows:

(2) Procurement by negotiation is not required when:

(i) the purchase is under [\$ 50,000] \$25,000 and an informal, small purchase procurement procedure is being followed;

Subdivision (k) (1) of section 1159.4 is amended to read as follows:

(k) Qualifications-based procurement.

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

Subdivision (k) (2) (xiii) (1) of section 1159.4 is amended to become subdivision (l):

[(1)] (l) Options. An option is a unilateral right in a contract by which, for a specified time, the authority may acquire additional equipment, supplies, or services than originally procured. An option may also extend the term of the contract. An option must be evaluated as part of the original contract award. In addition, for procurements funded by the Federal Transit Administration, a cost and price analysis must be conducted at the time of exercise of the option in order to ensure that the option price is still fair and reasonable.

Subdivision (n) (1), (2), (3) and (4) of section 1159.4 is amended to read as follows:

(n) [Sole-source awards.] Non-competitive procurements. (1) A [sole source award] non-competitive procurement shall not be justified on the basis of

(i) a lack of advance planning by the initiating department; or

(ii) concerns related to the amount of funds available (i.e., funds will expire) to the authority for the acquisition of supplies or services.

(2) A [sole-source award] non-competitive procurement is justified under circumstances limited to the following:

(i) a validated "single bid" (subdivision (n)(3) of this section);

(ii) emergency (subdivision [(lx)] (y) of this section);

(iii) exigency (subdivision [(lx)] (y) of this section);

(iv) expediency (waiver of competition, for cause, by a two-thirds vote of the board of commissioners) (subdivision [(y)] (z) of this section); or

A new subdivision (n)(2)(vi) is added to section 1159.4 and reads as follows:

(vi) A validated "Sole Source" (subdivision (n)(5) of this section).

A cost or price analysis must be prepared for all [sole source awards] non-competitive procurements in accordance with FTA guidelines.

(3) A single bid is not validated for purposes of [sole source] non-competitive award until authority staff:

(4) A single source is not validated for purposes of a [sole source] non-competitive award until authority staff investigates and documents one or more of the following circumstances:

Subdivision (n)(5) of section 1159.4 is renumbered subdivision (n)(6) and a new paragraph (n)(5) is added to read as follows:

(5) A sole source is not validated for purposes of a non-competitive award until staff authority investigates and documents one or more of the following circumstances: (i) only one manufacturer makes the item meeting required specifications and that manufacturer sells only direct or exclusively through one regional/national distributor; (ii) item must be identical to equipment already in use to ensure compatibility with existing equipment or systems, and that item is available from only one source; (iii) only one service provider maintains the required certification for services required by the authority.

Subdivision (n) of section 1159.4 is amended to add new paragraph (7) to read as follows:

(7) The individual responsible for recommending a "Single Bid," "Single Source," or "Sole Source," shall prepare a justification based on the format prescribed by the procurement department. At a minimum, the justification shall set forth the following information:

(i) vendor name and contact information; (ii) funding source; (iii) independent cost estimate (accompanied by the “Independent Cost Estimate Form”); (iv) description of goods and services to be procured; (v) identification of non-competitive procurement sole source method: an explanation of why the selected vendor is the only available source to provide the goods or services; and, (vi) an explanation of why the price is considered fair and reasonable.

The approval of the non-competitive procurement shall not be granted until the foregoing information has been reviewed and endorsed by the director of procurement & supply chain or their designee and sent to the executive director for final approval.

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~~] \$150,000 per year, absent board approval.

Subdivision (q)(2), (3) and (5) of section 1159.4 is amended to read as follows:

(q) Small purchases.

(2) Formal bidding. Contracts for goods or services equal to or in excess of \$ 50,000, but [less than \$ 100,000] equal to or less than \$150,000 may be awarded by the executive director or [his] their designee, upon satisfaction of the following minimum requirements:

(3) Informal bidding. Contracts for goods or services for:

(i) [less than \$ 100,000] \$150,000 or less may be awarded by the executive director or [his/her] their designee; provided, however, that if such contract is a GBNRTC or NITTEC contract, it shall first be approved by its board of directors; or

(ii) less than [\$ 10,000] \$15,000 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 respective designee (note, that any such delegation must be in writing), upon satisfaction of the following minimum requirements:

(b) at least three written [or telephonic] quotes must be solicited for purchases equal to or over [\$ 3,000] \$5,000 and under \$ 50,000. Purchases [under \$ 3,000] up to \$5,000 may be made without quotes, if the procurement manager or [her] their designee considers the prices to be fair and reasonable;

(d) in the case of procurements of [\$ 3,000] \$5,000 or more, if three or more quotations cannot be obtained because there is not a sufficient number of suppliers able to meet the purchase requirements (including timely delivery), such facts shall be set forth in writing.

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

Subdivision (t)(2) and (3) of section 1159.4 is amended to read as follows:

(t) Professional service contracts.

(2) Professional service contracts which do not exceed [\$ 100,000] \$150,000 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 [(o)] (q) of this section, as is appropriate.

(3) The selection of professional service contractors shall be on a competitive basis, except that the board may waive competition by a two-thirds vote of the members in attendance at a meeting

of the board, if it is in the best interests of the authority to do so. The standard of best interest of the authority may, but need not be based upon one or more of the following criteria for the selection of professional service contractors:

(v) lack of responsible competition, as validated pursuant to subdivision [(k)] (n) of this section, supra;

Subdivision (u) (2) of section 1159.4 is amended to read as follows:

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

(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.NYSUCP.NEWNYCONTRACTS.COM] <https://nysucp.newnycontracts.com/>. A

directory of MWBE certified firms may be obtained from the New York State MWBE website at [NY.NEW.NYCONTRACTS.COM]

<https://ny.newnycontracts.com/FrontEnd/searchcertifieddirectory.asp>. 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 [WWW.ONLINE.OGS.NY.GOV/SDVOB/SEARCH]

<https://sdves.ogs.ny.gov/business-search>. The procurement department shall be responsible for referencing such lists prior to the publication of a notice of procurement opportunity to determine the availability of certified SDVOB, 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.

Subdivision (x) (1) of section 1159.4 is amended to read as follows:

(x) Contract modifications, change orders and supplemental agreements.

(1) Change orders, supplemental agreements or other contract modifications which alter a procurement contract shall be approved by either the board, the executive director, the general counsel, the chief financial officer, the executive directors of GBNRTC and NITTEC, a general manager, or director as is appropriate and as is limited by the levels of authorization outlined in subdivision [(n)] (q) of this section, small purchases.

Subdivision (x) of section 1159.4 is amended to add two new paragraphs to be numbered (6) and (7) which read as follows:

(6) The procurement compliance manager will evaluate the updated agreement and determine if MBE, WBE, or SDVOB participation goals need to be updated due to the revised scope.

(7) The Office of EEO/Diversity Development will evaluate the updated agreement and determine if DBE or ACDBE participation goals need to be updated due to the revised scope.

Subdivision (y) of section 1159.4 is amended to read as follows:

(y) Emergency or exigency.

(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 [\$ 9,999] \$14,999, per occurrence, and shall report same to the executive director at the earliest opportunity, as described in paragraph (5) of this subdivision. The delegation of this authority must be in writing and the designee must report directly to the authorized individual.

(2) In the event the authorization limit 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 [his] their absence the [chairman] chair of the board. The executive director is authorized to declare an emergency or exigency and to make awards not to exceed [\$ 100,000] \$150,000, per occurrence and shall report same to the [chairman] chair at the earliest opportunity, as described in paragraph (5) of this subdivision.

(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] chair of the board, or in [his] their absence, the vice [chairman] chair of the board. The [chairman] chair (or if applicable, the vice [chairman] chair), is authorized to declare an emergency or exigency and to make awards which may exceed [\$ 100,000] \$150,000.

(4) In the event the final contract amount owed is equal to or greater than [\$ 100,000] \$150,000, 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:

(5) In the event the final contract amount is [less than \$ 100,000] \$150,000 or less, 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.

Subdivision (aa) of section 1159.4 is amended to read as follows:

(aa) Waiver of competition [pursuant to section 2879 of the Public Authorities Law]. (1) 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 those certified as minority- or women-owned business enterprises, or goods or technology that recycled or manufactured, in an amount not-to-exceed \$ 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.

Subdivision (aa) of section 1159.4 is amended to add new paragraph (2) to read as follows:

(2) Pursuant to article 3 of the New York State Veterans' Services Law, the board may waive competition for the purchase of commodities or services from certified SDVOBs in an amount not to exceed \$750,000 in order to meet the New York State SDVOB participation goal. The commodities, services, and technology being acquired must meet the authority's form, function, and utility. A minimum of three quotes from NYS certified SDVOBs must be obtained to justify the adequacy of competition and reasonableness of price.

Subdivision (af) of section 1159.4 is amended to read as follows:

(af) Utilities, surplus and second-hand supplies.

(1) Utilities and utility services such as telephone, water, electric power and natural gas (except for those utilities and utility services which are competitively procured), may be purchased upon

the authorization of the CFO or their designee without board approval, provided that the cumulative dollar amount for such purchases for the year is within the amounts budgeted for such utilities or services, as approved by the board.

(2) The authority may purchase surplus and [second hand] 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, proposals or quotations, however, purchases involving an expenditure of [\$ 100,000 or more] greater than \$150,000 shall require board approval.

Subdivision (a) (1)(ii) of section 1159.5 is amended to read as follows:

(a) Code of ethics. In addition to the requirements imposed by:

(i) sections 73 and 74 of the New York Public Officers Law, which govern outside business/professional activities and conflicts of interest, respectively, and apply to all employees of the authority:

(ii) Authority Policy 01-01-04 (Code of Ethics) and;

(iii) the Board of Commissioners Code of Ethics, the authority will assure that ethical conduct is maintained by adhering to the following requirements:

(1) No employee, officer, commissioner, or agent of the authority shall participate in the selection, or in the award or administration of a contract, if a conflict of interest real or apparent would be involved. Such a conflict would arise when:

(i) the commissioner, officer, employee, or agent;

(ii) [any member of his/her immediate family;] the relative of any commissioner, officer, employee, or agent; or

Subdivision (a) (1)(iii) of section 1159.5 is amended to read as follows:

(iii) [his/her] the commissioner, officer, employee, or agent's partner; or

(iv) an organization that employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

Subdivision (a) (2) of section 1159.5 is amended to read as follows:

(2) The [authority's,] NFTA's commissioners, officers, employees, or agents will neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub agreements or interested sources. An interested source is a person or entity that has a vested interest in influencing you or your agency (see 19 NYCRR 933.2).

Subdivision (a) (3) of section 1159.5 is amended to read as follows:

(3) [Rule with respect to conflicts of interest.] No commissioner, officer or employee of the authority should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of [his] the commissioner's, officer's, or employee's duties in the public interest. If an employee thinks there is a potential conflict of interest the commissioner, officer, or employee should immediately disclose this to their branch manager. The branch manager will then inform the Executive Director and General Counsel.

Subdivision (a) (4)(i) of section 1159.5 is amended to read as follows:

(4) Standards. (i) No commissioner, officer or employee of the authority should:

(a) accept other employment which will impair [his] the commissioner's, officer's,

or employee's independence of judgment in the exercise of [his] their official duties;

(b) accept employment or engage in any business or professional activity which will require [him] the commissioner, officer, or employee to disclose confidential information which [he] the commissioner, officer, or employee has gained by reason of [his] their official position or authority;

(c) disclose confidential information acquired by [him] the commissioner, officer, or

employee in the course of [his] the commissioner's, officer's, or employee's official duties nor use such information to further [his] the commissioner's, officer's, or

employee's personal interests;

(d) use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others, including but not limited to, the misappropriation to himself, herself, or to others of the property, services, or other resources of the NFTA and/or Metro for private business or other compensated non-governmental purposes;

(e) engage in any transaction as representative or agent of the authority with any business entity in which [he] the commissioner, officer, or employee has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of [his] the commissioner's, officer's, or employee's official duties;

(f) by [his] the commissioner's, officer's, or employee's conduct give reasonable basis for the impression that any person can improperly influence [him] the commissioner, officer, or employee or unduly enjoy [his] the commissioner's, officer's or employee's favor in the performance of [his] their official duties, or that [he] the commissioner, officer, or employee is affected by the kinship, rank, position, or influence of any party or person.

Subdivision (a) (4)(ii) of section 1159.5 is amended to read as follows:

(ii) A commissioner, officer or employee of the authority should:

(a) abstain from making personal investments in enterprises which [he] the commissioner, officer, or employee has reason to believe may be directly involved in decisions to be made by [him] the commissioner, officer, or employee or which will otherwise create substantial conflict between [his] the commissioner's, officer's, or employee's duty in the public interest and [his] the commissioner's, officer's, or employee's private interest;

(b) endeavor to pursue a course of conduct which will not raise suspicion among the public that [he] the commissioner, officer, or employee is likely to be engaged in acts that are in violation of [his] the commissioner's, officer's, or employee's trust.

(iii) [Anyone] Any person involved in the negotiation of contracts shall ensure that all statements, communications, and representations to contractor representatives are accurate and truthful.

(iv) Great care must be exercised to ensure the proper recording and charging of all costs to the appropriate account, regardless of the status of the budget for that account. The falsification of time reports or other cost records will not be tolerated. [Every] Each supervisor is responsible for assuring that the work time of employees is recorded promptly and charged accurately.

(v) No employee may submit or concur in the submission of any claims, bids, proposals, or any other document that is false, fictitious, or fraudulent.

(vi) Great care must be exercised by supervisors to avoid placing, or seemingly to place, pressure on subordinates which might cause them to deviate from acceptable norms of conduct.

(vii) The purchase of supplies, materials, and services from suppliers, vendors, contractors, and subcontractors must be done in a manner that preserves the integrity of [our] the NFTA's procurement process based on the bid process.

(viii) Laws and regulations regarding entertainment, gifts, and payments may be somewhat complicated. For this reason, questions regarding specific policies should be referred to the authority's ethics officer (NFTA general counsel).

Subdivision (a) (5) of section 1159.5 is amended to read as follows:

(5) Violations. In addition to any penalty contained in any other provision of law, any such commissioner, officer, or employee who shall knowingly and intentionally violate any of the provisions of this section may be subject to disciplinary action, suspended, or removed from office or employment in the manner provided by contract, law, or established employment policies. The NFTA's ethics officer (NFTA general counsel) is available to render advisory opinions to employees with respect to their proposed conduct as it relates to the code of ethics. The ethics officer is also available to review complaints charging employees with violations of the code of ethics.

Job Impact Statement (SAPA §201-a)

1. Nature of impact:

The Niagara Frontier Transportation Authority and Niagara Frontier Transit Metro System, Inc. (together, the NFTA) are amending 21 NYCRR part 1159, sections 1159.3, and 1159.4 in order to (i) reflect an increase in the purchasing authority of certain members of management, (ii) make conforming changes for purposes of consistency and (iii) make clarifying changes that are expected to be beneficial to individuals who participate in the NFTA contract and procurement processes. The changes to the referenced regulation are not expected to adversely impact jobs or employment opportunities as the overall level of NFTA contracting and procurement opportunities will not be adversely impacted by the changes made.

2. Categories and numbers affected:

The changes made to the referenced regulation are not expected to adversely impact any business or industry that participates, or is eligible to participate in, the NFTA contracting and procurement processes. The changes are not expected to result in any competitive disadvantage to any business or industry that participates in the NFTA contracting and procurement processes.

3. Regions of adverse impact:

No region of New York State is expected to be adversely impacted by the changes made to the referenced regulation.

4. Minimizing adverse impact:

The changes made to the referenced regulation are not expected to adversely impact any business or industry that participates, or is eligible to participate, in the NFTA contracting and/or procurement processes as the changes made apply to all businesses and industries equally and compliance is not expected to impose additional costs on any business or industry that participates or is eligible to participate in the NFTA contracting/or procurement processes.

5. Self-employment opportunities:

The NFTA is currently unaware of any adverse impact on self-employment as a result of the changes made to the referenced regulation.

PROCUREMENT GUIDELINES
OF
NIAGARA FRONTIER TRANSPORTATION AUTHORITY
AND
NIAGARA FRONTIER TRANSIT METRO SYSTEM, INC.

Effective April 24, 2024
By Resolution of the Board
of Commissioners

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PROCUREMENT GUIDELINES

SCOPE

Set forth herein are comprehensive guidelines established for the purpose of governing the procurement of goods and services by the Niagara Frontier Transportation Authority and Niagara Frontier Transit Metro System, Inc. (together, the "Authority").

The Greater Buffalo-Niagara Regional Transportation Council ("GBNRTC") and the Niagara International Transportation Technology Coalition ("NITTEC"), for which the Authority serves in a limited capacity as "administrative host agency," has agreed to procure goods and services consistent with these guidelines.

INTENT

It is the Authority's intent to implement and strictly enforce Procurement Guidelines that encourage and promote open competition; ensure fairness and equity in the procurement process; and result in the acquisition of goods and services at fair and reasonable prices.

DEFINITIONS

1. ADVERTISEMENT:

- A. The publication of a Notice of Procurement Opportunity in any of the following forums, as is appropriate: newspapers of general circulation in Erie and Niagara County; regional, state, national and international trade journals, and magazines; newsletters, MBE/WBE/DBE/SDVOB publications that may exist from time to time and the Authority website.
- B. The dissemination of a Notice of Procurement Opportunity to three (3) or more potential bidders, proposers, or suppliers by telephone, in writing or by e-mail.
- C. Any or all methods of advertisement as are herein defined may be utilized as is necessary and appropriate to promote competition under the guidelines.

2. AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE):

Small business concern as defined pursuant to Section 3 of the Small Business Act: (a) which is at least fifty-one percent (51%) owned by one or more socially and economically disadvantaged individuals or, in the case of a publicly-owned business, at least fifty-one percent (51%) of the capital stock of which is owned by one or more socially and economically disadvantaged individual; (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it; and (c) owns and controls a concession as defined under 49 CFR 23.3.

3. ALLOWABLE INDIRECT COSTS:

Those costs generally associated with overhead that cannot be specifically identified with a single project or contract and are considered reasonable and allowable under specific State contract or allowability limits.

4. **BOARD:**

The Authority Board of Commissioners.

5. **COMPETITIVE RANGE:**

All proposals that are determined to have a reasonable chance of being selected for award based upon price and other factors as stated in the Notice of Procurement Opportunity or Request for Proposals ("RFP").

6. **CONTRACT FOR GOODS OR SERVICES:**

Any authorized written agreement including contracts, purchase orders, letter agreements or memoranda of understanding, which creates a mutually binding legal relationship, which obligates the seller to furnish (or dispose of) products, services or Public Work, and the buyer to pay for same.

7. **CONTRACTOR:**

Any individual (or group of individuals), business, firm, union, club, organization, or other entity obligated to sell, furnish, provide, or render goods or services to the Authority pursuant to a contract including sellers, consultants, vendors, suppliers and construction contractors.

8. **COST-REIMBURSEMENT (CR) TYPE CONTRACT:**

A general compensation arrangement which requires the Authority to pay the Consultant a fixed fee plus all allowable actual costs (as established by predetermined cost principles and rates) provided such costs and fee do not exceed the final negotiated contract price, as incurred by the Consultant in performing the "agreed to" Scope of Work.

9. **DISADVANTAGED BUSINESS ENTERPRISE (DBE):**

Small business concern as defined pursuant to Section 3 of the Small Business Act: (a) which is at least fifty-one percent (51%) owned by one or more socially and economically disadvantaged individuals or, in the case of a publicly-owned business, at least fifty-one percent (51%) of the capital stock of which is owned by one or more socially and economically disadvantaged individual; (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

10. **DISCRIMINATORY JURISDICTION:**

Any other country, nation, province, state, or political subdivision thereof which employs a preference or price distorting mechanism to the detriment of or otherwise discriminates against a New York state business enterprise in the procurement of goods and services by the same or a non-governmental entity influenced by the same, as defined in section 2879 of the Public Authorities Law.

11. **DISCUSSION:**

Discussion is defined as any oral or written communication between the Authority and

an offeror, other than communication conducted for the purpose of minor clarification whether or not initiated by the Authority, that (1) involves information essential for determining the acceptability of a proposal, or (2) provides the offeror an opportunity to revise or modify its proposal.

12. **EMERGENCY:**

Danger or threat of harm to life, health, safety, environment, or property which requires immediate action; provided, that an emergency procurement shall be made with such competition as is practicable under the circumstances and a written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the procurement file. Emergency is a subcategory of "Non-Competitive Procurement".

13. **EXIGENCY:**

Prospect of interruption to, or obstruction of, the Authority's efficient operation or adequate provision of service, arising from an unforeseen circumstance. Exigency is a subcategory of "Non-Competitive Procurement".

14. **EXPEDIENCY:**

Prospect of an outcome not in the "best interest" of the Authority arising from adherence to the means and method of the procurement prescribed herein or, alternatively, adherence to these Guidelines is impractical or inappropriate given all the existing circumstances, none of which were foreseeable or controllable by the Authority. Expediency is a subcategory of "Non-Competitive Procurement".

15. **FIRM-FIXED-PRICE (FFP) TYPE CONTRACT:**

A general compensation arrangement which places the risk of performance for a lump sum on the contractor, regardless of the actual costs incurred by the contractor. The only allowable adjustments to the lump sum contract price are those arising from authorized changes in scope of services or changes in specifications.

16. **FOREIGN BUSINESS ENTERPRISE:**

A business enterprise, including a sole proprietorship, partnership, or corporation, which offers for sale, lease or other form of exchange, goods sought by the Authority, and which are substantially produced outside New York State, or services, other than construction services, sought by the Authority which are substantially performed outside New York State. For purposes of construction services, foreign business enterprise shall mean a business enterprise which has its principal place of business outside New York state.

17. **LABOR SURPLUS AREA FIRM:**

A business entity which performs substantially in a labor surplus area (a geographical area as is defined by the U.S. Department of Labor as an area of concentrated unemployment, underemployment, or labor surplus).

18. **MINORITY BUSINESS ENTERPRISE (MBE):**

Any business enterprise which is at least fifty-one percent (51%) owned by, or in the

case of a publicly owned business, at least fifty-one percent (51%) of the common stock or other voting interests of which is owned by minority group members, and such ownership interest is real, substantial, and continuing. The minority ownership must have and exercise the authority to independently control the business decisions of the entity. The enterprise must also be authorized to do business in New York State, be independently owned and operated, and not be dominant in its field. For the purposes of these guidelines "minority group member" shall have the meaning set forth in § 2879(3) of the Public Authorities Law.

19. NEGOTIATION:

Procurement by evaluation of proposals in the competitive range on the basis of pre-established and published selection criteria which criteria may be evaluated with price as a factor.

20. NEW YORK STATE CONTRACT REPORTER:

A publication of procurement opportunities printed for the New York State Economic Development Bureau pursuant to the New York State Economic Development Law.

21. NON-COMPETITIVE PROCUREMENT

A general category of awards where competition is waivable, or is not feasible under the circumstances, as determined by the Procurement Department and authorized by the Executive Director. The included subcategories are single bid, single source, sole source, exigency, expediency, and emergency.

22. NOTICE OF PROCUREMENT OPPORTUNITY:

A written or verbal communication which shall identify the proposed procurement action and the terms of pursuing the opportunity.

23. PROCUREMENT:

The buying, purchasing, renting, leasing or other acquisition by the Authority, of products, services, or Public Works, excepting:

- A. the purchase of periodicals, reference materials, treatises or professional research tools;
- B. the payment of membership fees, fees, or tuition associated with continuing education courses, training courses, conferences, seminars and symposiums;
- C. expenditures governed by the Authority's "Travel Policy and Guidelines";
- D. the purchase of advertising space or advertising time in any medium; and
- E. the purchase of catering services.

24. **PRODUCT:**

Equipment, materials, and supplies including, but not limited to, printing, insurance (except for health / welfare-related insurance required under a collective bargaining agreement pursuant to which the Authority is bound) and leases of property excluding land or interests in land.

25. **PUBLIC WORK:**

The construction, demolition, repair, rehabilitation, restoration or maintenance of any building, roadway, structure, fixture, facility, or improvement owned by, or leased to, the Authority and the Authority or Metro must be a party to the related contract. For the avoidance of doubt, a Public Work does not include the routine operation, repair or maintenance of any existing public structure, building or real property.

26. **PURCHASE:**

The receipt of products, services, or Public Works by the Authority, in exchange for money, property or other valuable consideration including like-kind trades.

27. **QUALIFICATIONS BASED PROCUREMENT:**

A competitive procurement method under which competitors' qualifications are evaluated on the basis of pre-established and published selection criteria and negotiations are conducted with only the most qualified offeror. Price shall not be considered as a factor in determining the most qualified offeror.

28. **RESPONSIBLE:**

A potential contractor is responsible if it can demonstrate that it has the capability to perform fully and successfully under the terms of the proposed contract, taking into account the offeror's technical and financial capability, and the integrity and reliability necessary to ensure good faith performance.

29. **RESPONSIVE:**

A bid is responsive if it complies with the terms of the solicitation in all material respects, and it is completed, executed, and submitted in accordance with the instructions in the solicitation.

30. **SEALED BIDDING:**

A competitive procurement method under which a contract is awarded to the lowest priced, responsive, responsible bidder.

31. **SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS:**

A business that is at least fifty one percent (51%) owned and controlled by a service-disabled veteran, and the daily management operations of such business are controlled by a service-disabled veteran or caregiver of a service-disabled veteran, and such business must be a "small business," as defined by the Small Business Administration.

32. **SERVICES:**

A personal, professional, consulting, technical, or other service including, but not limited to, legal, testing, accounting, bookkeeping, secretarial, management consulting, audit, investment banking, planning, training, statistical research, insurance, advertising, public relations, architectural, engineering, appraisal, janitorial, surveying, housekeeping, and waste disposal, performed for a fee, commission or other compensation.

33. **SINGLE BID:**

Two or more competitive bids are solicited and only one bid is received. A Single Bid is a subcategory of "Non-Competitive Procurement".

34. **SINGLE SOURCE:**

A single source procurement is one in which, although there are two or more potential bidders, the Authority has determined that it is in the best interest of the State to procure from a particular bidder without conducting a formal competitive procurement. It is expected that this shall be rarely used by the Authority. Single Source is a subcategory of "Non-Competitive Procurement".

35. **SMALL PURCHASE:**

The acquisition of goods or services having an actual price less than or equal to One Hundred Fifty Thousand Dollars (\$150,000) See Article 15.

36. **SMALL PURCHASE FORMAL BIDDING:**

A "small purchases" method of procuring goods or services less than or equal to One Hundred Fifty Thousand Dollars (\$150,000), 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 Article 15.

37. **SMALL PURCHASE INFORMAL BIDDING:**

A small purchases method of procuring goods or services under \$50,000, based upon competitive selection which may be made on the basis of written quotes and in accordance with the guidelines set forth in Article 15(C); provided, however, that procurement requirements shall not be artificially divided in order to constitute a small purchase.

38. **SOLE SOURCE**

The goods or services to be procured are available from only one responsible source; or no other or services will satisfy the Authority's requirements as determined by the Procurement Department and authorized by the Executive Director; or prior state, federal or Board approval has been granted. Sole Source is a subcategory of "Non-Competitive Procurement".

39. **SOLICITATION:**

The process by which the Authority contacts prospective vendors, suppliers, or consultants to provide notice of a procurement opportunity and invite the submission of quotes, bids, proposals or statements of qualifications.

40. **TERM CONTRACT:**

A competitively procured contract based on qualifications that allows the Authority, at its discretion, to retain the services of the term consultant or term contractor, on a project-by- project basis, subject to pre-negotiated terms and conditions.

41. **TIED-BID:**

The receipt of two or more equally low, responsive bids from responsible bidders. See, Article 6 (D).

42. **TIME AND MATERIAL (T & M) CONTRACT:**

A general compensation arrangement which provides for a fixed rate including overhead and profit, and material paid for at cost plus handling charges.

43. **WOMEN-OWNED BUSINESS ENTERPRISE (WBE):**

Any business enterprise which is at least fifty-one percent (51%) owned by, or in the case of a publicly owned business, at least fifty-one percent (51%) of the common stock or other voting interests of which is owned by citizens or permanent resident aliens who are women, and such ownership interest is real, substantial and continuing. Women business owners must have and exercise the authority to independently control the business decisions of the entity. The enterprise must also be authorized to do business in New York State, be independently owned and operated, and not be dominant in its field.

PROCUREMENT PROTOCOL

The primary objective of procurement is to ensure and foster economy, efficiency, and effectiveness in the acquisition of goods and services. To achieve these goals, it is essential that all of the participants in the procurement process have a clear understanding of their roles and responsibilities. Set forth in this Article is a general outline of the various departmental functions to be fulfilled in the procurement process. The Procurement Department maintains a comprehensive written procurement systems manual based on these concepts.

(A) **Procurement Department:**

- (i) The Procurement Department shall be responsible for conducting the following minimum pre-procurement 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 procurement authorization, small purchase tabulation and solicitation summary, single bid/proposal validation reports and single source validation report.
 - (i) Develop MWBE and SDVOB participation goals, monitor MWBE and SDVOB participation, and report MWBE and SDVOB utilization to appropriate state agencies.

(B) **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 Twenty-Five Thousand Dollars (\$25,000), or more, the User Department shall prepare a written purchase requisition and submit same to the Procurement Department a minimum of three (3) months prior to the desired delivery, bid opening, performance, or proposal due date. For purchases under Twenty-Five

Thousand Dollars (\$25,000), the purchase requisition shall be submitted to the Procurement Department not less than ten (10) days in advance. The purchase 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 Article 13.
- (iv) The User Department is responsible for (i) managing all phases of the contract administration procedure, (ii) monitoring the performance of the contract to ensure compliance with its terms and (iii) the final contract and/or purchase order in accordance with Authority Procedure 2-01-01, as amended from time to time.

(C) **Engineering Department:**

- (i) The Engineering Department shall serve as the User Department for major Public Work projects.
 - (a) 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.

(D) **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.

(E) **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.

(F) **EEO/Diversity Development Department**

- (G) The Office of EEO/Diversity Development shall develop DBE and ACDBE goals. EEO/Diversity Development will monitor DBE and ACDBE participation. The EEO/Diversity Development Department will also report DBE and ACDBE utilization to appropriate federal and state agencies.

EVALUATING RESPONSIVENESS AND RESPONSIBILITY

- (A) 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 non-conforming products or services?
 - (ix) Has the bidder failed to acknowledge amendments to the IFB issued by the Authority?
 - (x) Has the bidder provided their DBE, ACDBE, MBE, WBE, SDVOB utilization plans (if required)?
 - (xi) Has the bidder provided a Diversity Practices Questionnaire (if required)?

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

- (B) 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 owners includes or demonstrates:
- (i) Being listed on a federal or state debarred contractors list.
 - (ii) Poor prior performance on an Authority contract.
 - (iii) Lack of adequate expertise; prior experience with comparable projects; or financial resources necessary to perform the work outlined in the contract in 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.
 - (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 sub-contractors.
- (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.
- (xiv) Past history of untimely DBE, ACDBE, MBE, WBE, or SDVOB utilization reports on previous Authority contracts.
- (xv) Past history of untimely EEO workforce utilization reports on previous Authority contracts.

GUIDELINES

ARTICLE 1: BOARD APPROVAL

Board approval is required for each of the following:

- (A) All Contracts for Goods or Services in the actual or estimated value of greater than One Hundred Fifty Thousand Dollars (\$150,000); and
- (B) Contracts where performance is to continue for a period in excess of one (1) year.

ARTICLE 2. BUY AMERICA

- (A) **FEDERAL REQUIREMENTS:** Procurements which include federal funds are subject to federal "Buy America" requirements. Generally, this means that steel, iron, construction materials and/or manufactured products which are incorporated in Public Works or product purchases are to have been produced domestically 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 USC 5323(j), 49 CFR 661.7 App. A) or included in the FAA Nationwide Buy America Waivers Issued list. The Authority will follow the guidance provided by the Infrastructure Investment and Jobs Act (Pub. L. No. 117-58), which

includes the Build America, Buy America Act and the relevant regulations resulting therefrom. When procuring rolling stock, which includes train control, communication, traction power equipment, and rolling stock prototypes, the cost of the components and subcomponents produced in the U.S. must be more than 70 percent. Final assembly for rolling stock also must occur in the U.S. Additionally, rolling stock procurements are subject to the pre-award and post-delivery Buy America audit provisions (see 49 U.S.C. 5323[m], 49 CFR part 663).

(B) STATE REQUIREMENTS:

- (i) Product purchase contracts for supplies, material or equipment involving an estimated expenditure in excess of \$50,000.00 shall require that to the extent such products are made of, fabricated from, or contain steel components that such steel components are produced or made in whole or substantial part in the U.S., its territories or possessions, except in the procurement of motor vehicles and automobile equipment assembled in Canada in conformity with the "Automotive Products Trade Act of 1965" or any amendments thereto.
- (ii) Public work projects in excess of \$100,000.00 shall require that all structural steel, reinforcing steel or other major steel items to be incorporated in the project shall be produced or made in whole or substantial part in the U.S., its territories or possessions.
- (iii) By resolution of the Board of Commissioners these state provisions may be waived if it is determined that such provisions would result in unreasonable costs or that such steel products or steel components cannot be produced or made in the U.S. in sufficient and reasonably available quantities or of satisfactory quality or design.

ARTICLE 3. FOREIGN BUSINESS ENTERPRISES

In the event of the award of a Contract for the Goods or Services from a Foreign Business Enterprise in an amount equal to or greater than one million dollars, simultaneously with notifying the successful bidder or proposer, the Authority shall notify the NYS Commissioner of Economic Development of the pending award. The pending Contract for Goods or Services shall not be entered into until at least fifteen days have elapsed. However, this provision does not apply to Contracts for Goods or Services awarded on an emergency or exigency basis or where a waiver of this requirement has been obtained from the NYS Commissioner of Economic Development.

The notification to the NYS Commissioner of Economic Development shall include the name, address and telephone and facsimile number of the Foreign Business Enterprise, a brief description of the goods or services to be obtained, the amount and term of the proposed Contract for Goods or Services, and the name of the individual at the Foreign Business Enterprise or acting on behalf of the same who is principally responsible for the proposed Contract for Goods or Services.

ARTICLE 4. PERFORMANCE SECURITY AND BONDING
REQUIREMENTS

(A) Bid Security

All Public Work contracts equal to or in excess of Fifty Thousand Dollars (\$50,000) shall require bid security equal to ten percent (10%) of the bid price. Bid security may be in the form of a bid bond, certified check or other guaranteed negotiable instrument or letter of credit.

The bid security of the bidders submitting the three lowest bids will be retained until execution of the contract or until a maximum of 180 days after bid opening, whichever is sooner. Bid security of the remaining bidders will be returned within ten calendar days after the bid opening date.

In the event of neglect or refusal on the part of the successful bidder to execute the contract and furnish evidence of insurances within ten (10) days after written notification of notice of intent to award the contract, and furnish the Performance Security and Labor and Material Payment Bond within three (3) days after receipt of the executed contract, the entire bid security shall be forfeited to and retained by the Authority as liquidated damages for such neglect or refusal.

Bid security is not mandated for product contracts.

(B) Performance Security

All Public Work contracts of Ten Thousand Dollars (\$10,000.00) or more, shall require a performance bond or certified check or other guaranteed negotiable instrument or letter of credit guaranteeing the contractor's faithful performance.

Performance security is not mandated for product contracts.

In instances where a performance bond is offered, the bond shall be in the amount of the contract and be issued by a duly incorporated entity authorized to guarantee the faithful performance of contracts and to do business in the State of New York as a surety.

(C) Letter of Credit

A letter of credit used as bid or performance security should be an irrevocable letter of credit issued by a bank or financial institution of B-rating or better, as determined by Moody's and Standard & Poors, signed by an authorized representative of the issuing institution and naming the Authority as beneficiary. The letter of credit must state that an amount representing at least ten percent (10%) of the bid price is available to be drawn on unconditionally by the Authority under the expressed terms and conditions. These terms and conditions, including the location at which the Authority can draw the funds, an effective date, and expiration date should be clearly stated in the letter of credit.

(D) Labor and Material Payment Bonds

All Public Work contracts, regardless of amount, shall require Labor and Material Payment Bonds in an amount equal to the contract amount.

(E) **Maintenance Bonds**

All Public Work contracts, regardless of the amount, shall require as a minimum, a one (1) year Maintenance Bond, which period shall commence as of the date of Final Acceptance. The Maintenance Bond shall be the full contract amount.

(F) **Waiver**

- (1) Bid and Maintenance Bond requirements may be waived prior to bid date by the Executive Director or their designee for cause. In instances where such bonds are not required payment shall be withheld until full and complete performance has been accomplished under the terms of the contract.
- (2) Performance Security and Labor and Material Payment Bonds may be waived by the Executive Director or their designee, prior to the bid date, in accordance with State Finance Law § 137(1), provided that the aggregate amount of the Contract is under One Hundred Thousand Dollars (\$100,000.00) and that the Authority retains twenty percent from each progress payment or estimate until the entire contract work has been completed and accepted, at which time the Executive Director or their designee may authorize, pending the payment of the final estimate, the release of up to seventy-five percent of the retained percentage.

ARTICLE 5. PREVAILING WAGE RATES

Certain Public Work contracts may be subject to the payment of prevailing wage rates, regardless of the dollar amount of the contract. It shall be the responsibility of the Procurement Department and/or the Engineering Department to obtain the applicable prevailing wage rates for the particular procurement and ensure that the rates are included in the bid solicitation.

Generally, projects for construction, reconstruction or maintenance done on behalf of a public entity involving the employment of laborers, workers or mechanics are Public Works. In instances where there is a question regarding whether this condition exists, the Bureau of Public Work will make a determination based on the particular project details.

Generally, agreements between a contractor and a public entity in which the principal purpose is to furnish services through the use of "building service employees" are subject to prevailing wage rates. A "building service employee" includes, but is not limited, to, building cleaner, janitor, gardener, groundskeeper, window cleaner, and occupations relating to the collection of garbage or refuse, and to the transportation of office furniture and equipment, and the transportation and delivery of fossil fuel.

The Procurement and Engineering Departments are encouraged to contact the Legal Department for assistance in the event they are uncertain as to the applicability of prevailing rates to a particular procurement.

ARTICLE 6. SEALED BIDDING

- (A) Sealed bidding is the preferred procurement method for acquisitions of Twenty-Five Thousand Dollars (\$25,000) or more where the following factors are present:
- (i) The contract will be based upon a complete, adequate and realistic

- specification or purchase description and/or an itemized bid proposal;
- (ii) Two (2) or more responsible bidders are willing and able to compete effectively for the award;
- (iii) A fair and reasonable award can be made principally on the basis of price; and
- (iv) The procurement lends itself to an FFP-type contract.

(B) Sealed bidding is not required when:

- (i) The purchase is under \$25,000 and an Informal; small purchase procurement procedure is being followed;
- (ii) An emergency or exigency exists which renders delay impermissible;
- (iii) A single source has been validated;
- (iv) A single bid has been validated;
- (v) Federal or state authorization for non-competitive negotiations has been obtained;
- (vi) A modification or amendment to a contract is justified;
- (vii) The procurement lends itself to a CR-type contract; or
- (viii) A resolution adopted by a vote of at least two-thirds of the Members in attendance at a meeting of the Board states that the Board has determined that it is not in the best interest of the Authority to advertise for bids.

(C) Minimum requirements for sealed bidding include:

- (i) the preparation of an independent estimate prior to bid opening;
- (ii) the "advertisement" of an Invitation For Bids (IFB) or a synopsis of a procurement action;
- (iii) the acceptance of sealed bids;
- (iv) the public opening of sealed bids;
- (v) the preparation of a written bid analysis; and
- (vi) the award of a FFP type contract to the lowest priced responsive, responsible bidder.

(D) In the event of a tied-bid, the contract shall be awarded based upon the following descending order of priorities:

- (i) Small businesses which are "labor surplus area firms".
- (ii) Other small businesses.
- (iii) Other businesses that are also "labor surplus area firms".
- (iv) Other businesses (i.e., DBEs, WBEs & MBEs).
- (v) If two or more bidders still remain equally eligible after application of the above order of priority, award shall be made by a drawing by lot limited to those bidders. If time permits, the bidders involved shall be given an opportunity to attend the drawing. The drawing shall be witnessed by at least three persons, and the contract file shall contain the names and addresses of the witnesses and the person supervising the drawing.

ARTICLE 7. SEALED BIDDING (Two-Step Variation)

(A) The two-step sealed bidding method may be appropriate in instances where the specification is "functional" or performance based and there may exist a variety of acceptable technical approaches.

- (i) Step one consists of the request for, submittal, evaluation, and "discussion"

(optional) of a technical proposal. For purposes of two-step sealed bidding, this includes engineering approach, special manufacturing processes and special testing techniques. No pricing is considered in step one. Discussions may be conducted for clarification of questions relating to technical requirements.

- (ii) Step two consists of the submission of sealed price bids by those who submitted acceptable technical proposals in step one. Each bidder's price shall be based on its own technical proposal. If an award is made, a FFP-type contract is awarded to the lowest priced responsive, responsible bidder.

ARTICLE 8. NEGOTIATION

(A) Procurement by Negotiation is the preferred procurement method for acquisitions of Twenty-Five Thousand Dollars (\$25,000) or more where one (1) or more of the following factors are present:

- (i) The desired goods or services cannot be precisely defined, described, or standardized.
- (ii) The desired end product is conceptual in nature.
- (iii) A CR type contract is contemplated.
- (iv) Discussions concerning the technical aspects and price negotiation are intended.
- (v) Offerors are to be given the opportunity to revise the price or technical aspects of their proposal.
- (vi) Price alone cannot be the determinative factor in award. Quality, qualifications, performance data, or other contractual factors are to be considered in selecting the most advantageous offering.
- (vii) Artistic or aesthetic values supersede price as primary selection criteria.

(B) Procurement by Negotiation is not required when:

- (i) The purchase is under \$25,000 and an Informal; small purchase procurement procedure is being followed;
- (ii) An emergency or exigency exists which renders delay impermissible;
- (iii) A single source award or single bid award is validated;
- (iv) Federal or state authorization for noncompetitive procurement has been obtained;
- (vi) A resolution adopted by a vote of at least two-thirds of the Members in

attendance at a Meeting of the Board states that the Board has determined that it is impractical to advertise for competitive proposals or it is not in the best interest of the Authority to do so; or

(vii) A modification or amendment to a contract is justified.

(C) Minimum requirements for Negotiation include:

- (i) The solicitation of statements of qualifications (SOQ) and/or the advertisement of a Request for Proposals (RFP) a minimum of 21 days shall be allowed for the preparation of proposals and the setting of the proposal due date;
- (ii) In the event that an SOQ is advertised, preparation of a preselection list of the best qualified consultants, based on the experience and qualification data supplied by the consultants. Generally, the preselection list may consist of 3 to 5 consultants. If technical proposals were solicited in conjunction with the advertisement, all consultants who submitted responsive proposals must be included for evaluation.
- (iii) The acceptance of sealed proposals;
- (iv) The evaluation of the proposals on the basis of published selection criteria;
- (v) The published selection criteria for procurements less than \$250,000 shall be as follows:
 - (a) Professional Services; 40% qualifications and experience, 30% technical criteria and 30% cost.
 - (b) Revenue Generating and Other Services; 20% qualifications and experience, 30% technical criteria and 50% cost.
 - (c) Technical/Operation Sensitive Services; 20% qualifications and experience; 40% technical criteria and 40% cost.
 - (d) Specialty Vehicles, Equipment and Technical Products; 20% qualifications and experience, 50% technical criteria and 30% cost.

Diversity Practices will be assessed for procurements anticipated to be \$250,000 or greater when it is practical, feasible and appropriate to do so.

Published selection criteria shall be as follows:

- (a) Professional Services; 35% qualifications and experience, 30% technical criteria, 30% cost and 5% diversity practices.
- (b) Revenue Generating and Other Services; 20% qualifications and experience, 30% technical criteria and 50% cost.
- (c) Technical/Operation Sensitive Services; 20% qualifications and experience; 40% technical criteria, 35% cost and 5% diversity practices.
- (d) Specialty Vehicles, Equipment and Technical Products; 20% qualifications and experience, 45% technical criteria, 30% cost and 5% diversity practices.

- (v) The preparation of an independent estimate before opening the sealed proposal;
 - (vi) Proposals within the "competitive range" are identified and discussions are held with each proposer;
 - (vii) Best and final offers (BAFOs) may be requested of all proposers determined to be within the competitive range or on the short-list; and
 - (viii) The Authority evaluates BAFOs and awards either a FFP-type or a CR-type contract to the proposer whose BAFO is most advantageous to the Authority.
- (D) If so stated in the RFP, selection may be based on the basis of the original proposals, without discussions with any offeror. However, in the event discussions are conducted with any one offeror, discussions **must** then be conducted with all offerors in the competitive range.

ARTICLE 9. QUALIFICATIONS-BASED PROCUREMENT

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 150/5100-14E, FTA Advisory Circular 4220.1F or New York State law for guidance.

- (A) **Minimum requirements for a qualifications-based procurement include:**
- (i) Empaneling of the selection board, consisting of usually at least three qualified members. If the intended procurement is for a GBNRTC, or NITTEC study either a GBNRTC, or NITTEC, study manager or the GBNRTC, or NITTEC, Executive Director shall be included on the Selection Board, as is appropriate for the scope of the study. The selection board shall be prepared to evaluate qualifications, proposals, potential consultants (i.e., conduct interviews and inquiries as required), and make recommendations. Where a GBNRTC, or NITTEC, study may not be in the direct interest of the Authority, the Selection Board may include representatives from outside agencies which have an interest in the study.
 - (ii) Development by the selection board, of the selection criteria and the evaluation system to be used in preparing a preselection list of consultants, and in determining the final selection.
 - (iii) The solicitation of qualifications by either advertisement of a Request For Qualifications (RFQ) or by requiring qualifications as part of a Request For Proposals (RFP) advertisement. A minimum of 21 calendar days shall be allowed for the preparation of proposals and the setting of the proposal due date.
 - (iv) In the event that an RFQ is advertised, preparation of a preselection list of the best qualified consultants, by the selection board, based on the experience and qualification data supplied by the consultants. If technical proposals were

solicited in conjunction with the advertisement, all consultants who submitted proposals must be included for evaluation. Generally, the preselection list may consist of 3 to 5 consultants.

- (v) Notification to the unsuccessful consultants who expressed an interest.
- (vi) Solicitation of sealed technical proposals from each of the consultants.
- (vii) The selection board, at its option may conduct interviews, presentations, and/or discussions. If this option is elected, interviews, presentations, and/or discussions must be held with each consultant who has submitted a technical proposal if the initial solicitation was by way of RFQ. If not, interviews, presentations, and/or discussions must be held with each consultant in the competitive range in accordance with the evaluation of the technical proposals.
- (viii)) Evaluation of technical proposals and experience and qualification data based upon published selection criteria of which price shall not be a factor, rank and identify most qualified Consultant.
- (ix) Initiate discussions with the most qualified, acceptable proposer to develop and agree upon the "Scope of Work." Thereafter, the Authority prepares its Engineer's Estimate and requests the cost proposal of the most qualified, acceptable proposer.
- (x) Upon completion of the Engineer's Estimate the selection board shall open and review the cost proposal. Thereafter, negotiations are undertaken.
- (xi) If a fair and reasonable price cannot be reached with the most qualified, acceptable proposer, negotiations are commenced with the next most qualified and acceptable proposer. The cost proposal of the next most qualified proposer may be requested **only after** negotiations with the most qualified proposer have been formally terminated. This process shall be repeated until the successful negotiation of a fair and reasonable contract price for an acceptable proposal from a qualified proposer is reached, or until the procurement is discontinued;
- (xii) In accordance with the requirements of New York Public Authorities Law §2879(3)(b)(iv) the Authority will not refuse to negotiate with a professional firm solely because the ratio of the "Allowable Indirect Costs" to direct labor costs of the professional firm or the hourly rate in any labor category of the professional firm exceeds a limitation generally set by the Authority in the determination of the reasonableness of the estimated cost of services to be rendered by the professional firm, but rather the Authority should also consider the reasonableness of cost based on the total estimated cost of the service of the professional firm which should include, among other things, all the direct labor costs of the professional firm for such services, plus all "allowable indirect costs," other direct costs, and negotiated profit of the professional firm. A professional firm is defined for the purpose of this subparagraph as any legal entity permitted by law to practice the professions of architecture, engineering or surveying.
- (xiii) Submittal of written and documented recommendation for award by the selection board to the Board of Commissioners when required. In addition, the GBNRTC, or NITTEC, studies documentation of the Selection Board's

recommendation for award will be maintained at the GBNRTC, or NITTEC offices and will be available to interested parties.

ARTICLE 10. OPTIONS

An option is a unilateral right in a contract by which, for a specified time, the Authority may acquire additional equipment, supplies, or services than originally procured. An option may also extend the term of the contract. An option must be evaluated as part of the original contract award. In addition, for procurements funded by the Federal Transit Administration, a cost and price analysis must be conducted at the time of exercise of the option in order to ensure that the option price is still fair and reasonable.

ARTICLE 11. NEW YORK STATE CONTRACT REPORTER

All procurements of goods or services having an actual or estimated value of Fifty Thousand Dollars (\$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 fifteen (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 resolicited 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 firms submitting proposals and the proposal selected as the best value offer; and for all other procurement contracts, the name of the proposed awardee.

ARTICLE 12. NON-COMPETITIVE PROCUREMENTS

- (A) A non-competitive procurement shall not be justified on the basis of:
- (i) A lack of advance planning by the initiating department; or
 - (ii) Concerns related to the amount of funds available (i.e., funds will expire) to the Authority for the acquisition of supplies or services.
- (B) A non-competitive procurement is justified under circumstances limited to the following:
- (i) A validated "Single Bid"(Article 12[C]);
 - (ii) Emergency (Article 23);
 - (i) Exigency (Article 23);
 - (ii) Expediency (waiver of competition, for cause, by a two-thirds vote of the Board of Commissioners) (Article 24); or
 - (iii) A validated "Single Source" (Article 12[D]).

(iv) A validated "Sole Source" (Article 12[E]).

A cost or price analysis must be prepared for all non-competitive procurement in accordance with FTA guidelines.

(C) A single bid is not validated for purposes of a non-competitive award until Authority staff:

- (i) canvasses all, or in the alternative, three (3) or more prospective bidders from whom bids were solicited to learn the causes for the lack of bidding activity;
- (ii) evaluates and documents the responses;
- (iii) reconsiders its requirements and specifications;
- (iv) makes findings supporting the need for the original requirements and the sufficiency of the specifications, and that the single bidder is responsive and responsible or that the proposer is qualified and the proposal is acceptable; and
- (v) conducts a price or cost analysis to establish that the bid price is fair and reasonable. The cost analysis shall verify the proposed cost data, the projections of the data and the evaluation of specific elements of cost and profit.

(D) A single source is not validated for purposes of a non-competitive award until Authority staff investigates and documents one (1) or more of the following circumstances:

- (i) The proposed source is the original manufacturer and the terms and conditions of a viable warranty would be violated by the installation of unauthorized parts or components in existing equipment, machinery, vehicles, or systems, or "servicing" by uncertified or unauthorized personnel, and there are no other sources from which authorized parts or components or servicing from certified or authorized personnel may be obtained;
- (ii) The proposed source possesses exclusive, limited rights in data, patent rights, copyrights, secret processes, or the control of basic raw material;
- (iii) The proposed source is the provider under an existing "term contract" (see, Definitions) and the procurement constitutes a subaward thereunder.
- (iv) Prior approval by a State or Federal funding Agency.
- (v) The Executive Director has determined, in accordance with a standardization program adopted by the Authority, that only specified makes and models of technical equipment and parts will satisfy the Authority's needs for additional units or replacement items and only one (1) source is available;
- (vi) The goods or services are available through an existing contract which had been awarded through a competitive procurement method and a price or cost analysis establishes that the price is fair and reasonable.

(E) A sole source is not validated for purposes of a non-competitive award until Staff Authority investigates and documents one (1) or more of the following circumstances:

- (i) Only one manufacturer makes the item meeting required specifications and that manufacturer sells only direct or exclusively through one regional/national distributor.
- (ii) Item must be identical to equipment already in use to ensure compatibility with existing equipment or systems, and that item is available from only one source.
- (iii) Only one service provider maintains the required certification for services

required by the Authority

- (F) All eligible contracts for the purchase of goods or services which are to be awarded on a single source basis, sole source basis or pursuant to any other method of procurement that is not a competitive procurement and where the aggregate consideration under the contract may reasonably be valued in excess of \$1,000,000 and eligible amendments to contracts previously approved by the Comptroller where the value of the amendment is 10% or more of the contract amount previously approved by the Comptroller are subject to the prior review and approval of the New York State Comptroller. Please refer to section 2979-a of the New York Public Authorities Law and Part 206 to 2 N.Y.C.R.R. for relevant definitions and the process to be followed.
- (G) The individual responsible for recommending a “Single Bid”, “Single Source”, or “Sole Source” shall prepare a justification based on the format prescribed by the Procurement Department. At a minimum, the justification shall set forth the following information:
 - (i) Vendor name and contact information
 - (ii) Funding Source
 - (iii) Independent Cost Estimate (accompanied by the “Independent Cost Estimate Form”)
 - (iv) Description of Goods and Services to be procured.
 - (v) Identification of Non-competitive Procurement Method:
 - (vi) An explanation of why the selected vendor is the only available source to provide the goods or services. An explanation of why the price is considered fair and reasonable.

The approval of the Non-competitive Procurement shall not be granted until the foregoing information has been reviewed and endorsed by the Director of Procurement or their designee and sent to the Executive Director for final approval.

NOTE: With the exception of awards made under Articles 12(D)(i), (ii), (iii) the aggregate value of single source, unadvertised awards to any one firm or person shall not exceed One Hundred Fifty Thousand Dollars (\$150,000) per year, absent Board approval.

ARTICLE 13. CONTRACT TYPES

- (A) A Firm Fixed Price (FFP) type contract should be used where there are no substantial uncertainties relating to cost, performance, or schedule (Lump Sum and Unit Price contracts are examples of FFP-Type Contracts).
- (B) Cost-Reimbursement (CR) type contracts are generally appropriate for qualifications-based procurements and Negotiated procurements based on a Scope of Services rather than detailed Specifications.
- (C) Cost Plus Percentage of Cost type contracts, and Cost-Plus Percentage of Construction Cost type contracts are prohibited.
- (D) Time and Material (T&M) contracts are permitted only:
 - (i) After a determination that no other compensation arrangement is suitable; and

- (ii) The contract or purchase order contains a price ceiling that the contractor exceeds at its own risk; and
- (iii) All labor and equipment rates (including overhead and profit) are predetermined and set forth in the contract and materials are to be paid for at cost.

ARTICLE 14. SPECIFICATIONS

- (A) To permit the preparation and evaluation of bids on a common basis, specifications shall present a clear and accurate description of the desired technical requirements for materials, products or services. Further, the specifications shall state the criteria by which the Authority shall determine whether the requirements have been satisfied.
- (B) The specifications shall reflect the Authority's actual needs and shall not contain features which unduly restrict competition.
- (C) A "brand name or equal" description may be used when:
 - (i) It is impractical or uneconomical to make an accurate description of technical requirements; or
 - (ii) An adequate or more detailed description could not be provided, other than by inspection and analysis, in time for the procurement; and
 - (iii) The specification clearly sets forth the salient physical and functional characteristics of the brand name product which are essential to the Authority's minimum requirements and will be used to evaluate proposed or equal substitutions; and
 - (iv) The specification includes the complete common generic identification of the "brand name" product, together with applicable model, make or catalog number, and address of the company.
- (D) Or equal substitutions should be considered for acceptance where the Authority determines that the proposed substitution is equal in all material respects to the brand-name product. Or equal substitutions should not be rejected on the basis of minor differences in design, construction or features which do not affect the suitability of the products for their intended use.
- (E) Prior to developing acquisition specifications Authority staff shall conduct a study of the marketplace to determine market availability to satisfy the intended acquisition. If a specification is in any way restrictive, a needs analysis must be prepared establishing justification for the specifications. Also, a market analysis must be prepared to document the efforts made in identifying the available marketplace.

ARTICLE 15. SMALL PURCHASES

- (A) Small purchase acquisitions do not require Board approval unless the term of such acquisition will continue in excess of one (1) year.

(B) Formal Bidding

Contracts for goods or services equal to or in excess of Fifty Thousand Dollars (\$50,000), but equal to or less than One Hundred Fifty Thousand Dollars (\$150,000) may be awarded by the Executive Director or their designee, upon satisfaction of the following minimum requirements:

- (i) Publication of a notice of procurement opportunity in the NEW YORK STATE CONTRACT REPORTER (NYSCR), and either advertisement of a notice of procurement opportunity in any other appropriate forum, or dissemination of a notice of procurement to at least three (3) potential offerors by telephone or in writing.
- (ii) Dissemination of detailed information regarding the proposed procurement, including but not limited to, terms and conditions of the contractual relationship and the scope of services to all interested potential offerors.
- (iii) Receipt of competitive bids or proposals pursuant to sealed bidding procedures or Negotiation procedures, as is applicable.
- (iv) Examination of OGS NYS Commodity Index to determine whether the procurement may be obtained from that source on terms advantageous to the Authority.
- (v) Documentation of the procedures followed and report of same including identification of the budget line item, to the Executive Director or their designee.

(C) Informal Bidding

Contracts for goods or services for (i) One Hundred Fifty Thousand Dollars (\$150,000) or less may be awarded by the Executive Director or, their designee; provided, however, that if such contract is a GBNRTC or NITTEC contract, it shall first be approved by its Board of Directors, or (ii) less than Fifteen Thousand Dollars (\$15,000) 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:

- (i) If appropriate, examination of OGS NYS Commodity Index to determine whether the procurement may be obtained from that source on terms advantageous to the Authority.
- (ii) At least three (3) written quotes must be solicited for purchases equal to or over Five Thousand Dollars (\$5,000) and under Fifty Thousand Dollars (\$50,000). Purchases up to Five Thousand Dollars (\$5,000) may be made without quotes, if the procurement manager or their designee considers the prices to be fair and reasonable.
- (iii) For each, procurement records shall be maintained which set forth: the names and addresses of the contractors or vendors solicited; the terms and prices quoted; whether the goods or service may be procured under the OGS NYS Commodity Index, and if so, the price.
- (iv) In the case of procurements of Five Thousand Dollars (\$5,000) or more, if

three (3) or more quotations cannot be obtained because there is not a sufficient number of suppliers able to meet the purchase requirements (including timely delivery), such facts shall be set forth in writing.

- (v) Approval of a small purchase contract award shall not be granted unless and until the foregoing written information has been reviewed and found to be acceptable. Approval may be indicated by dated signature authorization by the Executive Director or the authorized individual.
- (vi) Price Lists or catalogs may be used in obtaining three (3) or more quotes.
- (D) A written confirmation of the successful contractor's quotation, including price and relevant contract terms shall be obtained in the case of verbal quotes or offers, prior to award.
- (E) In the event a "Single Source", "Sole Source" or "Single Bid" selection is the subject of a Small Purchase under \$50,000, authorization for the purchase must come from the Executive Director.

ARTICLE 16. FEDERAL, STATE AND COUNTY CONTRACT LISTS

The State Office of General Services contract prices and County contract prices are deemed competitive prices. Contracts may be awarded based on the state or county contract price without additional competitive procedures. The United States General Services Administration (GSA) has identified specific contracts that the Authority is authorized to use. Contracts may be awarded based on the federal contract price when allowed by the GSA. If the contract price available through the federal, state or county price lists is lower than the lowest bid price after sealed bidding, formal bidding, or informal bidding, the bids shall be rejected and a contract awarded based upon the federal, state or county contract price.

ARTICLE 17. FUNDING

- (A) In all cases where contracts are being funded by state or federal funds, applicable regulations of the state or federal authorities governing the award of such contracts shall be observed.
- (B) The Federal Aviation Administration and the Federal Transit Administration each have specific criteria for the procurement of Design-Bid-Build and Design-Build contracts. Please refer to the relevant Advisory Circular for specific requirements.
- (C) The Federal Aviation Administration and the Federal Transit Administration each prohibit the use of in-State or local geographical preferences, with the exception of architectural and engineering services.
- (D) The Federal Aviation Administration and the Federal Transit Administration require a cost analysis or a price analysis in connection with every procurement action.
The Federal Transit Administration requires the use of Part 31 of the Federal Acquisition Regulations with respect to pricing issues.
- (E) The Federal Transit Administration has specific rules governing advance payments

and progress payments. Advance payments are prohibited. Progress payments are permitted provided that title has been obtained. Please refer to FTA Circular 4220.1F.

- (F) No contract shall be awarded, or obligation incurred for any purpose which involves the expenditure of money, in excess of the monies appropriated and available in the Authority's budgets for said purpose, except as otherwise authorized by the Board.

ARTICLE 18. PROFESSIONAL SERVICE CONTRACTS

- (A) The following guidelines apply to the procurement of consulting or professional services such as legal, audit, planning, testing, accounting, architectural, engineering, or surveying services, except to the extent that the procurement of such services are governed by state or federal regulations.
- (B) Professional service contracts which do not exceed One Hundred Fifty Thousand Dollars (\$150,000) and will not involve services to be rendered in excess of one (1) year may be awarded following either the Formal Bidding or Informal Bidding Small Purchase guidelines set forth under Article 15, as is appropriate.
- (C) The selection of professional service contractors shall be on a competitive basis, except that the Board may waive competition by a two-thirds vote of the Members in attendance at a Meeting of the Board, if it is in the Best Interests of the Authority to do so. The standard of "Best Interest of the Authority" may, but need not be based upon one or more of the following criteria for the selection of professional service contractors:
 - (i) Confidentiality;
 - (ii) Specialized expertise or unusual qualifications or services are obtainable from one source only;
 - (iii) Historical relationship with the Authority, the continuation of which will result in some economy advantage to the Authority and will avoid duplication of costs;
 - (iv) Specialized knowledge;
 - (v) Lack of responsible competition, as validated pursuant to Article 11, supra;
 - (vi) Nature, magnitude or complexity of services required;
 - (vii) Lack of resources, support staff, specialized facilities or equipment;
 - (viii) Short term or infrequent need for services; and
 - (ix) Selection which is necessary as a result of emergency or exigency conditions.

ARTICLE 19. DISADVANTAGED and AIRPORT DISADVANTAGED BUSINESS ENTERPRISES/MINORITY WOMEN BUSINESS ENTERPRISES/SERVICE DISABLED VETERAN-OWNED BUSINESSES

- (A) It is the desire of the Board to promote and assist participation by DBEs, ACDBEs, MBEs, WBEs and to facilitate a fair share of the awarding of contracts thereto.
- (B) An updated list of all DBE/ACDBE certified firms in New York State may be

obtained from the New York State Unified Certification Program website at <https://data.ny.gov/widgets/pfeu-dsx> A directory of MWBE certified firms may be obtained from the New York State MWBE website at 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 <https://sdves.ogs.ny.gov/business-search>. The Procurement Department shall be responsible for referencing such lists prior to the publication of a notice of procurement opportunity to determine the availability of certified SDVOB, 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's and ACDBE's.

- (C) The Procurement Manager shall ensure that the Authority establishes appropriate goals for participation by MWBEs and SDVOBs in procurement contracts awarded by the Authority and for the utilization of MWBEs and SDVOBs as subcontractors and suppliers by entities having procurement contracts with the Authority. Statewide numerical participation target goals shall be established by the Authority based on the findings of the most current disparity study.
- (D) Every effort will be made to achieve the MWBE and SDVOB goals assigned to projects. The Authority's procurement solicitation documents shall include MWBE and SDVOB goals, as appropriate. These documents are advertised and posted on the Authority's website. MWBE and SDVOB utilization will be monitored and reported by the Procurement Department with assistance from the Engineering Departments.

ARTICLE 20. CONFIDENTIALITY AND CONFLICTS OF INTEREST

- (A) Authority staff engaged in the procurement process shall ensure that proprietary information submitted by bidders and proposers, and source selection information, including the number or identity of offerors is not disclosed to any unauthorized person. In the event a request for such confidential information is made, the Office of General Counsel shall determine the appropriateness of disclosure.
- (B) No procurement contracts shall be entered into with former commissioners, officers, or employees of the Authority except to the extent permitted by Section 73 of the Public Officers Law and the Authority Board of Commissioners' Code of Ethics.
- (C) No procurement contracts shall be awarded to a firm to:
 - (i) Prepare the work statement/specifications for purchase of supplies or a proposed Public Work when the firm is affiliated with another company whose business is related to the pending procurement. (In order to ensure objective contractor performance and eliminate any unfair competitive advantage, a contractor that develops or drafts specifications for a particular procurement shall be excluded from competing for and performing work under the directly ensuing procurement, unless the initial design contract was awarded under a competitive selection process); or
 - (ii) Perform a study or work effort concerning a certain organization, technical

field or geographic area when the firm has a business relationship or common interest with the organization, field or area to be studied.

- (D) The files for procurement contracts covered by Section 139-k of the State Finance Law must include the required information regarding persons or organizations retained to attempt to influence the procurement process. Any contacts that reasonably appear to be an attempt to influence the procurement process by persons or organizations other than those identified in the bid or proposal documents shall be recorded as required by Section 139-k of the State Finance Law.

ARTICLE 21. MINIMUM CONTRACT REQUIREMENTS

- (A) The following types of provisions shall be contained in all goods and services contracts, except that any of the provisions listed which are inapplicable or unnecessary because of the nature or duration of the services to be performed or goods to be supplied, the location or locations where they are to be performed or supplied, or the type of the compensation being paid, therefore, need not be included:
- (i) Description of services or goods or the scope and extent of contract work;
 - (ii) Compensation, delineating the contract price and method of payment or the rates and fees upon which compensation shall be based;
 - (iii) Time for performance or date of completion, including when appropriate, dates for completion of significant tasks; the Authority shall not enter into any contract for rolling stock or replacement parts with a period of performance exceeding five years inclusive of options;
 - (iv) Liability of contractor; indemnification of Authority;
 - (v) Reports of contractor;
 - (vi) Ownership of plans, drawings or other products of the performance of the service;
 - (vii) No assignments or subcontracts without the express prior written consent of the Authority;
 - (viii) Maintenance of records, accounts;
 - (ix) Rights of inspection and audit of books and records;
 - (x) Insurance requirements;
 - (xi) Termination;
 - (xii) Monitoring of the performance of services;
 - (xiii) The extent of subcontracting and sub-consulting agreements;
 - (xiv) Contract modification or change order requirements;
 - (xv) Notice of Claim/Disputes;
 - (xvi) Use of Authority's supplies, facilities or property.
 - (xvii) Use of Authority's personnel, and certification of key personnel and facilities necessary to accomplish the work within the time required; and
 - (xviii) All provisions required to be included in the contracts of the Authority by federal,

state or local laws, ordinances, codes, rules or regulations, including when appropriate, notice to the Contractor that the proposed procurement action will be subject to state and/or federal funding regulations and approval.

ARTICLE 22. CONTRACT MODIFICATIONS, CHANGE ORDERS AND SUPPLEMENTAL AGREEMENTS

- (A) Change orders, supplemental agreements or other contract modifications which alter a procurement contract shall be approved by either the Board, the Executive Director, the General Counsel, the Chief Financial Officer, the Executive Directors of GBNRTC and NITTEC, a General Manager, or Director as is appropriate and as is limited by the levels of authorization outlined in Article 15, Small Purchases.
- (B) The Authority shall perform a cost analysis unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation.
- (C) Profit shall be negotiated as a separate element, taking into consideration:
 - (i) complexity of the work,
 - (ii) the risk borne by the contractor,
 - (iii) the contractor's investment,
 - (iv) the degree of subcontracting,
 - (v) the contractor's past performance, and
 - (vi) industry profit rates for similar work.
- (D) Any change order, supplemental agreement or other contract modification shall contain a justification assuring that the proposed action is an appropriate alternative, under the circumstances, to competitive procurement.
- (E) The Federal Transit Administration prohibits cardinal changes, defined as significant changes in contract work that cause major deviations from the original purpose of the work or the intended method of achievement, or cause revisions of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract. Please refer to FTA Circular 4220.1F for further information.
- (F) The Procurement Compliance Manager will evaluate the updated agreement and determine if MBE, WBE, or SDVOB Participation Goals need to be updated due to the revised scope.
- (G) The Office of EEO/Diversity Development will evaluate the updated agreement and determine if DBE or ACDBE Participation Goals need to be updated due to the revised scope.

ARTICLE 23. EMERGENCY OR EXIGENCY

- (A) The General Counsel, Chief Financial Officer, Executive Directors of GBNRTC and NITTEC and General Managers and Directors, or their designee, are authorized to declare an emergency or exigency and to make awards not to exceed Fourteen Thousand Nine Hundred Ninety-Nine Dollars (\$14,999), per occurrence, and shall report same to the Executive Director at the earliest opportunity, as described in part (E), below. The delegation of this authority must be in writing and the designee must report directly to the authorized individual.
- (B) In the event the authorization limit set forth in Paragraph 23(A) 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 their absence the Chairman of the Board. The Executive Director is authorized to declare an emergency or exigency and to make awards not to exceed One Hundred Fifty Thousand Dollars (\$150,000), per occurrence and shall report same to the Chairman at the earliest opportunity, as described in part (E), below.
- (C) In the event the authorization limit set forth in Paragraph 23(B) will be exceeded, the Executive Director shall contact the Chairman of the Board, or in their 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 One Hundred Fifty Thousand Dollars (\$150,000).
- (D) In the event the final contract amount owed is equal to or greater than One Hundred Fifty Thousand Dollars (\$150,000) 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. At a minimum, the "DECLARATION REPORT" shall set forth the following information:
- (i) A description of the emergency or exigent circumstances, or the unforeseen circumstance.
 - (ii) A description of the perceived damages or threat of harm or loss, or the perceived interruption to or obstruction of operation or provision of service.
 - (iii) A description of the preventative action taken.
 - (iv) A listing of all Authority personnel involved in the response or the occurrence.
- (i) An explanation of the steps taken to procure goods or services and the rationale for the award and procurement decisions made by the individual.
 - (ii) Identification of the source of funds used to pay for the response.
 - (iii) A request for Board ratification of the response to the Emergency or Exigency.
- (E) In the event the final contract amount is less than One Hundred Fifty Thousand Dollars (\$150,000) or less, 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 sections (D) (i) through (vi), above.

ARTICLE 24. EXPEDIENCY

- (A) The provisions of this article shall be implemented under special and limited circumstances as determined by a two-third's vote of the Members in attendance at a Meeting of the Board, based on the best interests of the Authority upon request by staff seeking Board Waiver of one or more procurement guidelines. The criteria for establishing best interests of the Authority for the purposes of this Article may be found at Article 18(C).
- (B) The request shall include but not be limited to the following:
 - (i) Statement of objective and rationale for expediency;
 - (ii) Course of action outlining:
 - a. step-by step procedure to accomplish the objective;
 - b. specific guideline waiver request(s);
 - c. Justification and anticipated benefit to the Authority.
 - (iii) Request for authorization to proceed.

ARTICLE 25. WAIVER OF COMPETITION

- A. 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 those certified as minority or women-owned business enterprises, or goods or technology that are recycled or remanufactured, in an amount not-to-exceed \$500,000.00 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.
- B. Pursuant to article 3 of the New York State Veterans' Services Law the Board may waive competition for the purchase of commodities or services from certified SDVOBs in an amount not to exceed \$750,000 in order to meet the New York State's SDVOB participation goal. The commodities, services, and technology being acquired must meet the Authority's form, function, and utility. A minimum of three quotes from NYS certified SDVOBs must be obtained to justify the adequacy of competition and reasonableness of price.

ARTICLE 26. RECORDS RETENTION

Procurement records shall be retained in accordance with the New York State Records Retention Manual.

Every procurement file shall contain, at a minimum, records detailing:

- (A) the rationale for the method of procurement,
- (B) the rationale for the selection of contract type,
- (C) reasons for contractor selection or rejection, and

- (D) the basis for the contract price.

ARTICLE 27. PROCUREMENT REPORTING

The Procurement Department shall ensure that on an annual basis, the Authority shall prepare, approve, and make publicly available, a report summarizing the Authority's procurement activity for the period of the report. The report shall include a listing of all contracts of Five Thousand Dollars (\$5,000), or more, the selection process used to select such contractors, and the status of existing procurement contracts.

- (A) On an annual basis the Office of General Counsel shall prepare and submit for Board approval a report on Procurement Contracts. This report shall include a copy of the existing guidelines, an explanation of the guidelines and any amendments thereto since the last annual report. This report may be made a part of any other reports that the Authority is required to make.
- (B) This information shall be submitted annually through the New York State Public Authorities Data Report to the New York State Division of Budget, and copies thereof to the New York State Department of Audit and Control, the Senate Finance Committee, the Assembly Ways and Means Committee and the Executive Officers and Legislatures of Erie and Niagara Counties.

ARTICLE 28. SPLIT PROCUREMENTS

The splitting of procurements for the purpose of circumventing the requirements of more complex procurement procedures or a higher level of authority or decision-making is prohibited.

ARTICLE 29. UPDATING, MONITORING AND CONTROL OF PROCUREMENT GUIDELINES AND PROCEDURES

- (A) The Procurement Department and the Office of General Counsel shall ensure that the Procurement Guidelines and Procedures are submitted to the Board for review, updating (if deemed necessary), and re-authorization, on an annual basis.
- (B) The Department of Internal Audit shall develop and implement a program to monitor the Authority's compliance with the Procurement Guidelines and Procedures.
- (C) The Procurement Department shall develop and implement a control system to ensure that the Guidelines and procedures are being followed.

ARTICLE 30. UTILITIES, SURPLUS, AND SECOND-HAND SUPPLIES

- (A) Utilities and utility services such as telephone, water, electric power, and natural gas (except for those utilities and utility services which are competitively procured), may be purchased upon the authorization of the CFO or their designee without Board approval,

provided that the cumulative dollar amount for such purchases for the year is within the amounts budgeted for such utilities or services, as approved by the Board.

- (B) 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, proposals, or quotations, however, purchases involving an expenditure of greater than One Hundred Fifty Thousand (\$150,000) shall require Board Approval.

ARTICLE 31. 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.*

ATTACHMENT "A"

CODE OF ETHICS

All NFTA and Metro employees are covered by the provisions of Sections 73 and 74 of the Public Officers Law. Section 73 regulates outside business or professional activities conducted by state employees.

Section 74 governs conflicts of interest. Please refer to the New York State Commission on Ethics and Lobbying in Government website that lists the Ethics Laws, and other information:

<https://ethics.ny.gov/>.

NFTA will assure that ethical conduct is maintained by adhering to the following requirements:

1. No employee, officer, commissioner, or agent of the Authority shall participate in the selection, or in the award or administration of a contract, if a conflict of interest real or apparent would be involved. Such a conflict would arise when:
 - a. The commissioner, officer, employee, or agent,
 - b. The relative of any commissioner, officer, employee, or agent,
 - c. The commissioner, officer, employee, or agent's partner, or
 - d. An organization that employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.
- ** Note: Relative is defined as any person living in the same household as the individual and any person who is a direct descendant of that individual's grandparents or the spouse of such descendant.**
2. The NFTA's commissioners, officers, employees, or agents will neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub agreements, or interested sources. An interested source is a person or entity that has a vested interest in influencing you or your agency (*See* 19 N.Y.C.R.R. 933.2).
3. No commissioner, officer or employee of the Authority should have any interest, financial or otherwise, direct, or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of the commissioner's, officer's or employee's duties in the public interest. If an employee thinks there is a potential conflict of interest the commissioner, officer, or employee should immediately disclose this to their branch manager. The branch manager will then inform the Executive Director and General Counsel.
4. Standards:
 - a. No commissioner, officer or employee of the Authority should:
 - i. Accept other employment which will impair the commissioner's, officer's, or employee's independence of judgment in the exercise of their official duties.
 - ii. Accept employment or engage in any business or professional activity which

will require the commissioner, officer, or employee to disclose confidential information which the commissioner, officer or employees has gained by reason of their official position or authority.

- iii. Disclose confidential information acquired by the commissioner, officer, or employee in the course of the commissioner's, officer's or employee's official duties nor use such information to further the commissioner's, officer's, or employee's personal interests.
- iv. Use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others, including but not limited to, the misappropriation to himself, herself or to others of the property, services or other resources of the NFTA and/or Metro for private business or other compensated non-governmental purposes.
- v. Engage in any transaction as representative or agent of the NFTA with any business entity in which the commissioner, officer or employee has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of the commissioner's, officer's or employee's official duties.
- vi. By the commissioner's, officer's, or employee's conduct, give reasonable basis for the impression that any person can improperly influence the commissioner, officer or employee or unduly enjoy the commissioner's, officer's, or employee's favor in the performance of their official duties, or that the commissioner, officer, or employee is affected by the kinship, rank, position or influence of any party or person.

b. A commissioner, officer or employee of the Authority should:

- i. Abstain from making personal investments in enterprises which the commissioner, officer or employee has reason to believe may be directly involved in decisions to be made by the commissioner, officer, or employee or which will otherwise create substantial conflict between the commissioner's, officer's or employee's duty in the public interest and the commissioner's, officer's, or employee's private interest.
- ii. Endeavor to pursue a course of conduct which will not raise suspicion among the public that the commissioner, officer, or employee is likely to be engaged in acts that are in violation of the commissioner's, officer's, or employee's trust.
- iii. Any person involved in the negotiation of contracts shall ensure that all statements, communications, and representations to contractor representatives are accurate and truthful.
- iv. Great care must be exercised to ensure the proper recording and charging of all costs to the appropriate account, regardless of the status of the budget for that account. The falsification of time reports or other cost records will not be tolerated. Each supervisor is responsible for assuring that the work time of employees is recorded promptly and charged accurately.
- v. No employee may submit or concur in the submission of any claims, bids, proposals, or any other document that is false, fictitious, or

fraudulent.

- vi. Great care must be exercised by supervisors to avoid placing, or seemingly to place, pressure on subordinates which might cause them to deviate from acceptable norms of conduct.
- vii. The purchase of supplies, materials, and services from suppliers, vendors, contractors, and subcontractors must be done in a manner that preserves the integrity of NFTA's procurement process based on the bid process.
- viii. Laws and regulations regarding entertainment, gifts and payments may be somewhat complicated. For this reason, questions regarding specific policies should be referred to Authority's Ethics Officer (NFTA General Counsel).
- ix. Employees should report any instance in which they are offered money, gifts, or anything else of value by a supplier or prospective supplier or contractor of the Authority to the Authority's Ethics Officer.
- x. Every employee is charged with the duty to preserve the Authority's assets, property, plant, and equipment.

Violations: In addition to any penalty contained in any other provision of law any such commissioner, officer or employee who shall knowingly and intentionally violate any of the provisions of this section may be subject to disciplinary action, suspended, or removed from office or employment in the manner provided by contract, law, or established employment policies.

The NFTA's Ethics Officer (NFTA General Counsel) is available to render advisory opinions to employees with respect to their proposed conduct as it relates to the code of ethics. The Ethics Officer is also available to review complaints charging employees with violations of the code of ethics.

ATTACHMENT "B"

PROTEST PROCEDURES

The Protest Procedures set forth herein apply to both sealed bids and negotiated procurements.

1. Pre-Bid/Proposal Opening Protests. If a bidder/proponent can demonstrate that the Contract Documents issued by the Authority are unduly exclusionary and restrictive or that federal, state or local laws or regulations have been violated during the course of the procurement, then the bidder/proponent may seek a review by the Executive Director or their appointed representative, at 181 Ellicott Street, Buffalo, New York 14203. Protests shall be clearly identified as Protests and submitted in writing as early as possible, but no later than five (5) business days before bid/proposal opening. Within four (4) business days after receipt of a pre-bid/proposal protest, the Executive Director shall make one of the determinations listed in paragraph (3).

2. Post-Bid/Proposal Opening Protests. A protest to the acceptance or rejection of any or of all offers or bids to a contract, or to the award thereof, or to any such action proposed or intended by the Authority must be received in writing by the Executive Director no later than five (5) business days after the protesting party first learned, or reasonably ought to have learned, of the required Board action or, if Board action is not required, any proposed or intended action to which he/she protests.

3. In the event the protestor alleges that the Executive Director or the representative appointed by the Executive Director to serve as Decision-Maker for the particular protest, engaged in improper conduct during the subject procurement, the General Counsel shall serve as the Decision-Maker. In the event it has been alleged that the General Counsel has engaged in improper conduct during the subject procurement, either the Executive Director or the Director of Engineering shall serve as the Decision-Maker.

4. Rulings on Protests. Within four (4) business days, the Executive Director shall render one of the following determinations:

- (a) Protest is overruled.
- (b) Protest is substantiated. Executive Director shall issue instructions to remedy issues relating to the protest.
- (c) Procurement activity is suspended until written notification by the Executive Director.:

Such determination shall be in writing and shall provide at a minimum a general response to each material issue raised in the protest. All documents submitted by the Protestor and/or Authority Staff and reviewed by the Decision-Maker in the reaching of a determination shall form and be retained by the Authority as the formal record of the dispute resolution process.

The issuance of the foregoing determination is the Authority's final decision of the dispute.

All interested parties shall be notified of any protests that are filed. The Authority shall refrain from awarding a contract within five (5) business days of the date of a decision rendered by the Executive Director regarding a protest, unless the Authority determines that:

- (i) The items to be procured are urgently required.
- (ii) Delivery or performance will be unduly delayed by failure to make a prompt award.
- (iii) Failure to make a prompt award will otherwise cause undue harm to the Authority or the federal government.

ATTACHMENT "B"

5. Protestor's Appeal to Federal or State Agencies. In the event federal or state funds are participating in the procurement, then the protestor may seek a review by the appropriate funding agency. The Federal Transit Administration will only consider a protest if the Authority (a) does not have protest procedures, (b) has not complied with its protest procedures, or (3) has not reviewed the protest when given the opportunity to do so. The Federal Transit Administration will exercise discretionary jurisdiction over those appeals involving issues important to the Federal Transit Administration's overall public transportation program.

Protestors shall file such a protest in accordance with the requirements set forth below, not later than five (5) business days after a final decision is rendered under the Authority's protest procedure. In instances where the protestor alleges that the Authority failed to make a final determination on the protest, protestors shall file a protest with the appropriate agency not later than five (5) business days after the protestor knew or should have known of Authority's failure to render a final determination on the protest.

ATTACHMENT "C"

CRITERIA and STANDARDS GOVERNING COMMERCIAL ADVERTISING

1. All advertising placed in facilities and vehicles owned and operated by the Niagara Frontier Transportation Authority / Niagara Frontier Transit Metro System, Inc. must reflect a high level of good taste, decency and community standards in copy and art. All advertising should harmonize with the environment of its placement.
2. All advertising should be truthful and comply with the spirit and letter of all applicable laws and regulations of the various jurisdictions into which it is introduced. All copy and art should avoid conveying derisive, exaggerated, distorted, deceptive or offensive impressions.
3. The advertisement and promotion of tobacco, tobacco-related products, including but not limited to cigarette, chewing tobacco and snuff, or vaping-related products, is expressly prohibited.
4. Advertising promoting contests should insure the contest is being conducted with fairness to all entrants and complies with all applicable laws and regulations.
5. Advertisements that support or oppose any political party or candidate or that are political in nature or contain political messages, including advertisements involving political figures or candidates for public offices, advertisements involving political parties or political affiliations, and/or advertisements involving an issue reasonably deemed by NFTA or Metro to be political in nature in that it directly or indirectly implicates the action, inaction, prospective action, or policies of a governmental entity, are prohibited.
6. Testimonials should be authentic and should honestly reflect the response of the person making them. The advertising sales contract provides for the indemnification of Niagara Frontier Transportation Authority and Niagara Frontier Transit Metro System, Inc. against any action by any person quoted or referred to in any advertisement placed in Niagara Frontier Transportation Authority / Niagara Frontier Transit Metro System, Inc. owned facilities and vehicles.
7. Medical products or treatments should be presented in a restrained and inoffensive manner to the general public.
8. Advertisers should take special care to avoid illustrations or references that disregard normal safety precautions.
9. Advertising offering premiums or gifts should avoid representations that would enlarge the value of the item in the minds of the viewers.
10. Use of Niagara Frontier Transportation Authority or Niagara Frontier Transit Metro System, Inc. graphics or representations in advertising is subject to approval by the Executive Director or other proper official.
11. No implied or declared endorsement of any product or service by Niagara Frontier Transportation Authority or Niagara Frontier Transit Metro System, Inc. is permitted.
12. The Niagara Frontier Transportation Authority and Niagara Frontier Transit Metro System, Inc. reserve the right to reject or remove any advertising that it deems to be not in good taste and decency and not in the public interest.
13. Items or references which might be objectionable to a substantial segment of the

community should be avoided. For example, advertising depicting or referring to an undesirable social behavior or which might be offensive because of racial or religious references should be avoided. Copy which might be contrary to the best interest of the Niagara Frontier Transportation Authority/Niagara Frontier Transit Metro System, Inc. and harmful to the users of their facilities and vehicles will not be acceptable. Advertisements intended to influence members of the public regarding an issue on which there are varying opinions are prohibited.

If any provision or restriction under this Attachment C – Criteria Governing Commercial Advertising, or any application of any provision of this Attachment C – Criteria Governing Commercial Advertising, is held to be invalid, or ruled to violate or be inconsistent with any applicable federal law or regulation, that shall not affect the validity or effectiveness of any provision or restriction of this Attachment C – Criteria Governing Commercial Advertising. It is hereby declared to be the intent of the Board of Commissioners that this act would have been enacted even if such invalid provisions or restrictions had not been included herein.

ATTACHMENT "C"

CRITERIA and STANDARDS GOVERNING PUBLIC SERVICE ADVERTISING

Public Service Advertising proposed to be posted in any of the equipment or facilities of NFTA and/or Metro will be such:

1. The advertisement will be non-commercial, non-partisan politically and not designed to influence legislation. Advertising will be accepted only from not-for-profit organizations, corporations or government agencies, philanthropic or cultural organizations whose activities would be of interest or benefit to a majority of the area population.
2. That the advertisement must meet the same guidelines governing commercial advertising.
3. The purpose of the project be such that the advertising methodology can help achieve its objectives and goals.
4. That the action message shall have region-wide appeal, significance, and applicability.
5. That the project be of sufficient seriousness and public importance to warrant the use of public service advertising space.
6. That the sponsoring organization be classified as a tax-exempt organization by the Internal Revenue Services or that specific activity, or event, being promoted by the "for-profit" organization be in and of itself "non-profit" in nature.
7. That the name of the sponsoring organization, either as it appears on the document granting tax-exempt status, or by the name generally recognized by the public as determined by the Contracting Officer, may be required to be identified on the advertisement. If the name of the sponsoring organization is not a part of the message itself, a "sponsored by" line may be required that, in the judgment of the Contracting Officer, is of a type size and type style to be easily identifiable and readable by the public.
8. That public service space will not be granted to any organization that, in the last twelve months, has purchased, or is purchasing, commercial advertising space or time in any media for the general subject campaign or promotion.
9. That the advertisement involves monies (fund-raising, admission fees, donations, and other methods of compensation) must clearly identify the nature of the appeal (e.g. if donations are to be sought, whether the collection will be voluntary or if the donation is a required admission fee must be explained).
10. That in advertisements where a phone number or an address is given a written explanation must be furnished to the Contracting Officer as a condition of the approval, which document will state exactly what is intended to happen to an individual when he or she either calls the number listed, writes to, or stops by the address given.
11. That the sponsoring organization shall pay the applicable labor cost for installation and removal of the subject message as charged by the Authority's advertising contractor and approved by the Contracting Officer. That, prior to installation, the camera-ready artwork, graphics, photographs be submitted to the Contracting Officer for approval
12. The advertising is subject to approval by the NFTA and Metro director of public relations and advertising and the advertising contractor. Public service advertising will be accepted on a space-available basis only. The advertisement will be posted only for

such period of time as the advertisement space remains available and is not required for commercial advertisement. The public service advertiser will indemnify and hold harmless NFTA and Metro and the advertising contractor from any and all claims brought as a result of the display of the advertisement.

If any provision or restriction under this Attachment C – Criteria and Standards Governing Public Service Advertising, or any application of any provision of this Attachment C – Criteria and Standards Governing Public Service Advertising, is held to be invalid, or ruled to violate or be inconsistent with any applicable federal law or regulation, that shall not affect the validity or effectiveness of any provision or restriction of this Attachment C – Criteria and Standards Governing Public Service Advertising. It is hereby declared to be the intent of the Board of Commissioners that this act would have been enacted even if such invalid provisions or restrictions had not been included here.

