OFFICE OF THE NEW YORK STATE COMPTROLLER

DIVISION OF LOCAL GOVERNMENT
& SCHOOL ACCOUNTABILITY

Oneida County Industrial Development Agency

Project Approval and Monitoring

Report of Examination

Period Covered:

January 1, 2010 — January 31, 2012

2012M-149

STATE OF NEW YORK
EXCELSIOR
COMPTROLLER

Thomas P. DiNapoli

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State of New York
Office of the State Comptroller

Division of Local Government
and School Accountability

October 2012

Dear Local Officials:

A top priority of the Office of the State Comptroller is to help local government officials manage government resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of local governments statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and Board governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard local government assets.

Following is a report of our audit of the Oneida County Industrial Development Agency, entitled Project Approval and Monitoring. This audit was conducted pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the General Municipal Law.

This audit's results and recommendations are resources for local government officials to use in effectively managing operations and in meeting the expectations of their constituents. If you have questions about this report, please feel free to contact the local regional office for your county, as listed at the end of this report.

Respectfully submitted,

Office of the State Comptroller
Division of Local Government
and School Accountability

State of New York
Office of the State Comptroller

EXECUTIVE SUMMARY

The Oneida County IDA (OCIDA) was created in 1970 by the Oneida County Board of Legislators for the purpose of encouraging economic growth. The benefits available to companies who receive OCIDA sponsorship include NYS mortgage and sales tax exemptions, real property tax abatement, and low-interest bonds. In return, many of the projects that benefit from OCIDA assistance include agreements to create new jobs or retain existing jobs in the community and make annual PILOTs[1] to help offset the loss of revenues from the tax exemptions provided. OCIDA generally assumes the title of the real and/or personal property owned by the business which allows OCIDA to offer such benefits.

OCIDA comprises a seven-member Board of Directors (Board), which is responsible for the general management and control of OCIDA's financial and operational affairs. Economic Development Growth Enterprises (EDGE), a not-for-profit development organization, performs all the administrative and accounting services for OCIDA, which then pays service fees to the organization. A representative from EDGE serves as the Executive Director for OCIDA.

Scope and Objective

The objective of our audit was to review OCIDA's approval and monitoring of projects open during the period January 1, 2010 to January 31, 2012. We focused on projects that were initially sponsored by OCIDA from 2006 to 2010.

Our audit addressed the following related questions:

- Does OCIDA have criteria for selecting firms or businesses receiving sponsorship and economic development incentives and are those criteria consistently applied?
- Does OCIDA design and implement systems to evaluate and monitor job data and the project's performance, and to recapture benefits for performance shortfall?

Audit Results

OCIDA has established criteria for selecting firms or businesses receiving sponsorship and economic development incentives and has consistently applied its criteria. The Board has established its Uniform Tax Exemption Policy (UTEP), which are the written criteria the Board uses for evaluating all projects

[1] Payments in lieu of taxes (PILOTs) are amounts paid for certain tax-exempt parcels in lieu of real property taxes that would otherwise have been paid, had the property not been tax-exempt.

under consideration. As of December 31, 2010, OCIDA had taken title to 37 companies from 2006 to 2010. Twenty of these projects received tax relief (tax abatements and exemptions in excess of PILOT payments) during 2010 totaling approximately $2 million. We reviewed the application files for these projects and found that each application was complete and contained the information necessary to address the criteria in the UTEP. In addition, OCIDA uses a detailed cost/benefit analysis when making project sponsorship decisions.

OCIDA officials have adequately monitored its sponsored projects to ensure they met or made reasonable progress toward their employment projections and imposed recapture penalties where projects failed to create jobs as projected. We reviewed the job performance for 18 companies for 2010 and 2011. We identified four companies that did not meet their job commitments. We verified that EDGE had performed on-site visits with the four companies and obtained explanations for job shortfalls. OCIDA officials told us the Board will decide what course of action to take, based on the companies' responses, in future Board meetings. During the audit period, OCIDA invoked recapture penalties to a company whose job creation was significantly less than the jobs promised in the initial application.[2]

Because OCIDA uses formal evaluation criteria in its sponsorship decision-making process, it provides the public with greater assurance that the Board follows a consistent approach to achieve the IDA's objectives, and makes decisions based on reasonable cost-benefit determinations. This helps ensure that only those projects that are most beneficial to the community receive OCIDA sponsorship. Likewise, because OCIDA is effectively monitoring performance data, the IDA is able to identify a business performance shortfall which helps the Board decide what course of action to take when a company is not achieving the established goals. We commend OCIDA for actively monitoring the performance of its sponsored projects and for instituting a policy that recaptures tax benefits when necessary.

Comments of Local Officials

The results of our audit have been discussed with local officials and their comments, which appear in Appendix A, have been considered in preparing this report. OCIDA officials agreed with the findings in our report.

[2] This company was not included in our sample of 18 companies.

Introduction

Background

Industrial Development Authorities (IDAs) are independent public benefit corporations whose purpose is to promote, develop, encourage and assist in acquiring, constructing, improving, maintaining or equipping certain facilities. The overall goal of IDAs is to advance the job opportunities, health, general prosperity and the economic welfare of the people of the State. The powers and duties of IDAs are set forth under Article 18-A of the General Municipal Law (GML). There are 114 IDAs in the towns, villages, cities, and counties of New York State. Typically, projects that receive IDA benefits involve the acquisition, construction, or major renovations of buildings or other structures and generate short-term and long-term employment in construction and operations-related jobs.

The Oneida County IDA (OCIDA) was created in 1970 by the Oneida County Board of Legislators for the purpose of encouraging economic growth. The primary functions of OCIDA are to act as the intermediary between bonding companies and local businesses for the purpose of issuing industrial revenue bonds and obtaining payment in lieu of taxes (PILOT) Agreements.[3] The benefits available to companies who receive OCIDA sponsorship include exemptions from New York State mortgage and sales taxes, real property tax abatement, and low-interest bonds. In return, many of the projects that benefit from OCIDA assistance include agreements to create new jobs or retain existing jobs in the community and make an annual PILOT to help offset the loss of revenues from the tax exemptions and abatements provided. OCIDA generally assumes the title of the real and/or personal property owned by the business which allows OCIDA to offer such benefits. OCIDA is not required to pay taxes or assessments on any property that it acquires or that is under its jurisdiction, control, or supervision.

OCIDA comprises a seven-member Board of Directors (Board), which is appointed by the County Legislature, and is responsible for the general management and control of OCIDA's financial and operational affairs. Economic Development Growth Enterprises (EDGE), a not-for-profit development organization performs all the administrative and accounting services for OCIDA. A representative from EDGE serves as the Executive Director for OCIDA. For the December 31, 2010 fiscal year, OCIDA managed 92 active projects that received $13.6 million in tax exemptions and abatements. The primary revenues for OCIDA are administrative fees collected from the applicant for the services provided by OCIDA.

[3] PILOTs are amounts paid for certain tax-exempt parcels in lieu of real property taxes that would otherwise have been paid, had the property not been tax-exempt.

Objective

The objective of our audit was to review the approval and monitoring of projects sponsored by OCIDA. Our audit addressed the following related questions:

- Does OCIDA have criteria for selecting firms or businesses receiving sponsorship and economic development incentives and are those criteria consistently applied?

- Does OCIDA design and implement systems to evaluate and monitor job data and the project's performance, and to recapture benefits for performance shortfall?

Scope and Methodology

We examined OCIDA records and project files for the period January 1, 2010 to January 31, 2012. We focused on projects that were initially sponsored by OCIDA from 2006 to 2010 and that were still open during our audit period.

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit are included in Appendix B of this report.

Comments of Local Officials

The results of our audit have been discussed with local officials and their comments, which appear in Appendix A, have been considered in preparing this report. OCIDA officials agreed with the findings in our report.

Project Evaluation Criteria and Approval

GML provides that certain types of projects are eligible for IDA assistance. These include industrial projects (i.e., manufacturing, assembly processing, and product research and development) and nonindustrial projects (i.e., warehouse, wholesale/distribution, qualified retail, office, hotel/motel, and recreational businesses). Given the range of these potential activities, each IDA typically establishes its own individual project criteria based on the economic needs and goals of the community it serves. Such criteria can help ensure that all project applications are measured against the same standards. GML requires each IDA to establish a Uniform Tax Exemption Policy (UTEP) which provides the Board with detailed procedural guidelines to make project approval or denial decisions. Since tax benefits granted by IDAs may result in a substantial cost to the community, it is important for IDAs to go beyond eligibility and develop project evaluation criteria and use these criteria consistently when making project sponsorship decisions.

There is a wide range of diverse factors an IDA should consider as evaluation criteria when making project decisions. Criteria could include the creation or retention of a certain number of jobs, achievement of certain wage levels, and increased productivity and competitiveness. Other factors to consider are the project's impact on community development and public policy issues such as whether projects will improve, diversify, or stabilize the local economy. Sound business practices dictate that IDA officials prepare a cost benefit analysis comparing the cost of the requested assistance to the benefits to the community that are expected to be derived from the project. IDAs should also evaluate the project applicant's financial operations prior to approving the project.

In addition, IDAs should carefully determine if IDA involvement is necessary to bring about the job growth or job retention of a specific project. The IDA should, therefore, examine whether a new company would open an operation in the local area; whether an existing company would move to another state if it did not receive IDA assistance; or whether a project would be undertaken even without IDA sponsorship. If IDA sponsorship would not impact such decisions, the Board should weigh this information in deciding whether to provide tax benefits to businesses.

OCIDA has established criteria for selecting firms or businesses receiving sponsorship and economic development incentives and has consistently applied its criteria. The Board has established its UTEP which includes written criteria the Board uses for evaluating all projects under consideration and contains 12 factors in determining whether a project is eligible for assistance (e.g., nature of proposed project, extent to which a project will create or retain jobs, the costs and benefits of the project, the effect of the project on the environment). The UTEP further describes the types of projects eligible for assistance and the levels of tax abatements and exemptions that are available. To be considered for financial assistance, OCIDA requires businesses seeking benefits to complete a project application. The application requires pertinent business information, such as the description of the project, the project's goals, jobs to be created and retained, financial assistance being applied for, and estimated project costs.

Board members told us they consider each criterion under the UTEP when evaluating an applicant and evaluate the financial condition of the company and also management's experience and integrity for those companies already operating in Central New York. OCIDA uses a detailed cost/benefit analysis when making project sponsorship decisions. The Agency prepares this analysis for a three-year period and considers such factors as the estimated abatements the project will likely receive (costs to the community) and the estimated new tax revenues that will result because of the project (benefits to the community). Board members also evaluate how applicants' plans are affected if OCIDA approval is not granted and whether an existing company would move if it did not receive IDA assistance.

OCIDA has denied assistance to applicants even though they qualify under the UTEP guidelines. For example, the Board had denied assistance to a hotel company because it expected that the project would have developed even without OCIDA sponsorship. The company had already secured financial assistance and commenced a significant portion of construction prior to applying for benefits from OCIDA.

As of December 31, 2010, OCIDA had taken title to 37 companies from 2006 to 2010. Twenty of these projects received tax relief (tax abatements and exemptions in excess of PILOT payments) during 2010 totaling approximately $2 million. We reviewed the application file for each of the 20 projects and found that each application was complete and contained the information necessary to address the criteria in the UTEP. OCIDA's cost/benefit calculations for each applicant showed that the estimated benefits to the community exceeded the cost of the requested assistance. Also, each application included the companies' responses in regard to whether its plans would be affected if OCIDA approval is not granted and whether the existing company would move if it did not receive OCIDA assistance. We also found evidence in Board meeting minutes that it had reviewed the application for each project.

Because OCIDA uses formal evaluation criteria in its sponsorship decision-making process, it provides the public with greater assurance that the Board follows a consistent approach to achieve the IDA's objectives, and makes decisions based on reasonable cost-benefit determinations. This helps ensure that only those projects that are most beneficial to the community receive OCIDA sponsorship.

Project Monitoring and Recapture

A significant responsibility of an IDA Board is to monitor and evaluate the performance of businesses receiving financial assistance to determine whether the businesses are meeting the goals established in their project applications. Without effective monitoring, an IDA will not be able to identify and address business performance shortfalls and the community may not receive the expected benefits from investments. Although not required by law, IDAs may place provisions in project contracts that allow them to recapture economic benefits if companies do not meet their project goals.

OCIDA officials adequately monitored IDA-sponsored projects to ensure they met or made reasonable progress toward their employment projections or other goals stated in their applications. OCIDA has imposed recapture penalties where projects failed to create or maintain jobs as projected.

Evaluating Job Performance

The Board has a duty to oversee and monitor projects to ensure they achieve the goals established in their applications. This helps ensure that taxpayers are receiving an adequate return on their investment, and helps the Board evaluate whether it needs to address a project's failure to create jobs and enforce the recapture of benefits. It is also important for the Board to verify the amount of capital investment that business owners have expended since it will eventually correspond to the assessed value of the new building or major renovations, and directly affects the amount of taxes that the local government authorities will receive after the facility is constructed.

OCIDA includes provisions in its applications that require companies to submit annual employment reports if OCIDA provides financial assistance. These reports disclose the number of full-time employees prior to OCIDA status, original estimate of jobs to be created and retained, number of jobs actually created and retained during the year, and average employee salaries as of the end of the calendar year. EDGE receives the employment reports and enters the results into a spreadsheet for tracking purposes. In addition, EDGE conducts annual on-site visits at each company in order to discuss financial operations, any performance shortfalls, to observe any new construction or equipment, and to obtain a visual representation of employment levels. EDGE documents the information obtained from these on-site visits in a central database. These on-site visits help ensure that the company is fulfilling the obligations in the original application such as jobs created/retained, acquisition of equipment, and construction of plant and facilities.

On an annual basis, EDGE forwards its tracking spreadsheet to the Board which identifies any companies that are not meeting their job creation and retention commitments as stated in the initial application. The Board considers there to be a job shortfall if a company has not met 80 percent of its total job commitment for jobs to be created and retained. The Board discusses any explanations provided by companies for the shortfalls. The Board may consider the reasons for shortfalls as adequate. For example, we identified a water bottling producer who did not meet 80 percent of its job creation goals from our review of the original application and the annual employment report as of December 31, 2011. EDGE had obtained the company's reason for the job shortfall which explained that the shortfall was due to the seasonal nature of the water bottling industry (less water is produced in winter months rather than summer). The company's workforce in June 2012 had increased due to the increased productivity in the summer allowing the company to meet its job goals. For companies that fail to meet the 80 percent criterion established for job creation and retention commitments, OCIDA sends a letter to the company asking management to provide reasons for the shortfall. Company representatives will typically meet with the Board to discuss financial condition and why job commitments were not met.

We reviewed the job performance for 18 companies[4] by comparing the job retention and creation estimates in the original application to annual employment reports for 2010 and 2011. We identified four companies that did not meet their job commitments. We verified that EDGE had performed on-site visits with the four companies and obtained explanations for job shortfalls. The Board was satisfied with the explanations for two of the companies (one of which was the water producer above) and decided no letter was necessary from the companies to further explain the reasons for their shortfalls. For the remaining two companies, the Board requested letters asking the reasons for shortfall for the 2011 year. OCIDA officials told us the Board will decide what course of action to take during future Board meetings, after it receives the companies' responses.

Because OCIDA is effectively monitoring performance data, the IDA is able to identify a business performance shortfall which helps the Board decide what course of action to take when a company is not achieving the established goals.

Recapture for Performance Shortfalls

Penalties for non-performance, a shortfall in job creation, or other promised benefits could come in varying forms. A company could

[4] Two of the 20 projects we reviewed (see previous section) did not have job creation or retention commitments. These projects were affiliated with another project which was the core business function and had the employment obligations.

be prohibited from reapplying for an incentive program, or the recapture policy could be imposed that would require the company to return all or part of the tax exemptions received. OCIDA's UTEP includes a provision that a company's failure to achieve or maintain its employment obligation could result in recapture of all or a portion of tax benefits.

OCIDA established a detailed recapture policy in October 2009, separate from the UTEP, which outlines the specific penalty amounts companies must pay if they fail to meet 80 percent of their employment obligations (the full-time equivalent number of jobs to be created and retained as set forth in the application for financial assistance).[5] OCIDA officials told us that even though this policy only applies to projects that have been sponsored since the policy was adopted, they still evaluate the job performance of older projects and the Board determines whether to recapture benefits for performance shortfall. The Board Chairman told us that each project is evaluated on a case-by-case basis in deciding whether to invoke benefit recapture. There may be unique circumstances affecting the Board's decision such as the company's job growth from a historical standpoint, the company's financial position, or an unanticipated decline in a product line. He further explained that in today's economy, the Board is more focused on job retention than job creation. The Board would rather have the company continue to pay the property taxes called for in the PILOT instead of invoking stringent penalties that may cause the company to go out of business. If recapture is warranted, the Board decides how much to reduce benefits currently extended to a company (e.g., instead of the company paying one-third of property taxes under a PILOT, the company will pay one-half).

The Board Chairman and Executive Director told us that during our audit period OCIDA has recaptured the tax benefits from one company that had significantly underperformed in its job creation commitment.[6] We reviewed OCIDA's correspondence with the company, and the amended PILOT agreement, which showed that OCIDA reduced tax incentives to one-sixth of the benefits initially offered under the original PILOT agreement which is in direct proportion to the jobs that were actually created.

Our review of the two projects that were sponsored by OCIDA after the recapture policy was established disclosed that neither project had job performance shortfalls during 2010 or 2011 that met the threshold for the imposition of penalties.

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[5] The policy provides that the Agency shall have the right to reduce any payments required under the policy, in extraordinary circumstances, in its sole discretion.

[6] This company was sponsored by the IDA prior to the scope period covered by our audit so we did not include it in our sample testing.

We commend OCIDA for actively monitoring the performance of its sponsored projects and for instituting a policy that will provide for the recapture of tax benefits when necessary. This helps ensure that the community receives the desired benefits of OCIDA sponsorship.

APPENDIX A

RESPONSE FROM LOCAL OFFICIALS

The local officials' response to this audit can be found on the following page.

Anthony J. Picente Jr.
County Executive

Shawna M. Papale
Secretary/
Executive Director

Julianne Cardone
Treasurer

Jennifer Waters
Assistant Secretary

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September 27, 2012

Rebecca A. Wilcox
Chief Examiner
State of New York
Office of the State Comptroller
State Office Building, Room 409
333 E. Washington Street
Syracuse, New York 13202-1428

RE: Oneida County IDA NYS Comptroller's Report of Examination 2012M-149

Dear Ms. Wilcox:

On behalf of the Oneida County Industrial Development Agency Board of Directors, I am pleased to accept the Report of Examination from the New York State Officer of the State Comptroller for our IDA. We appreciate the external examination of our processes, procedures and projects. We agree with the findings, that we have a process that can be a model for other IDAs.

We look forward to receiving the final audit document.

Sincerely,

David Grow
Chairman
Oneida County Industrial Development Agency

CC: Oneida County IDA Board of Directors
Anthony Picente, Oneida County Executive
Gerald Fiorini, Oneida County Board Chairman
Shawna Papale, Executive Director

APPENDIX B

AUDIT METHODOLOGY AND STANDARDS

The objective of our audit was to review the approval and monitoring of projects sponsored by OCIDA. To achieve our audit objective and obtain valid audit evidence, we performed the following audit procedures.

- We reviewed OCIDA's policies, including the UTEP, in order to identify written criteria outlining an applicant's eligibility for sponsorship and the benefits that are offered. We reviewed OCIDA's penalty policy to identify the types of penalties imposed on companies who do not meet its performance goals.

- We interviewed the Executive Director and OCIDA Board members to determine how the criteria under the UTEP are applied when evaluating a prospective applicant for sponsorship and to identify the sources of information used when performing the evaluations.

- We obtained an understanding of how OCIDA tracks and monitors the performance of each company receiving benefits and we identified the types of performance shortfalls and the parameters used by the Board when deciding whether to initiate recapture.

- We inquired as to whether OCIDA invoked recapture penalties to any companies failing to meet its job employment commitments during the audit period.

- We identified all companies that OCIDA took title to from 2006 to 2010. Of these 37 companies, we identified 20 that received tax relief [7] (tax abatements and exemptions in excess of PILOT payments) during 2010 totaling approximately $2 million. We reviewed the application file for each of the 20 projects to determine whether the application was complete and contained the information necessary to address the criteria in the UTEP. From the 20 projects, we reviewed the job performance for 18 companies[8] and identified those which did not meet its job commitments by comparing the job retention and creation estimates in the original application to annual employment reports for years 2010 and 2011.

- We verified that EDGE had performed on-site visits with the companies sponsored by OCIDA in order to discuss financial matters and to evaluate job creation/retention commitments. For companies that experienced job shortfalls, we verified that EDGE obtained the company's reason for the shortfall.

- We reviewed OCIDA correspondence, and the amended PILOT agreement showing that OCIDA had invoked recapture penalties to a company that had not created the jobs as promised in the initial application.

[7] The remaining 17 out of 37 companies did not receive tax abatement or exemptions since they primarily received only low interest bonds, or the company was near the end of its PILOT agreement in which the PILOT amount equaled the abatement/exemption (therefore no tax relief).

[8] Two of the 20 projects we reviewed did not have job creation or retention commitments. One project related to a parcel of forest/wetlands and another related to a sanitary storm sewer. These projects were affiliated with another project that has the core business function and the employment obligations.

We conducted our performance audit in accordance with generally accepted government auditing standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

APPENDIX C

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