



# Schuyler County Industrial Development Agency

## Project and Sublease Approval and Monitoring

### Report of Examination

Period Covered:

January 1, 2013 — November 19, 2014

2014M-369



Thomas P. DiNapoli

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# State of New York Office of the State Comptroller

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## **Division of Local Government and School Accountability**

April 2015

Dear Agency Officials:

A top priority of the Office of the State Comptroller is to help local officials manage government resources efficiently and effectively and, by so doing, provide accountability for public dollars spent to support government operations. The Comptroller oversees the fiscal affairs of local governments and certain other public entities 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 governmental assets.

Following is a report of our audit of the Schuyler County Industrial Development Agency, entitled Project and Sublease Approval and Monitoring. This audit was conducted pursuant to the State Comptroller's authority as set forth in Article X, Section 5 of the State Constitution and Article 3 of the New York State General Municipal Law.

This audit's results and recommendations are resources for Agency 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

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### EXECUTIVE SUMMARY

The Schuyler County Industrial Development Agency (SCIDA) is the sole IDA in Schuyler County (County). The SCIDA Board (Board) consists of eight members, who are appointed by the County Legislature. The Board is responsible for the general management and control of SCIDA's financial and operational affairs. The Board appoints the Executive Director who serves dually as the chief executive and chief fiscal officers and is responsible for day-to-day operations. The current Executive Director was appointed in June 2014. SCIDA funds its operations primarily with fees charged for processing applications and administering agreements. SCIDA contracts with the Schuyler County Partnership for Economic Development for its administrative functions.

SCIDA generally assumes the title of the real and/or personal property owned by the businesses that are involved in approved projects, thereby allowing SCIDA to offer benefits to these businesses (e.g., sales and use tax exemptions, mortgage recording tax exemptions and real property tax abatements). SCIDA's Uniform Tax Exemption Policy (UTEP) outlines these benefits and requires the businesses to enter into payment in lieu of taxes agreements for the real property tax abatements. For calendar year 2014, SCIDA had 10 active projects, of which nine were also active in 2013. SCIDA also entered into four sublease agreements with businesses for the development of park property located along Seneca Lake.

#### **Scope and Objective**

The objective of our audit was to review SCIDA's management practices for the period January 1, 2013 through November 19, 2014. Our audit addressed the following related question:

- Does the Board have criteria for selecting and monitoring projects and subleases?

#### **Audit Results**

The Board has not established documented criteria and procedures for selecting projects and subleases. However, the Board has established a UTEP, but this policy does not include specific criteria for selecting and approving projects. The Board also does not document its approval process or rationale for approved projects or subleases nor prepares a documented cost-benefit analysis or risk assessment during the project approval process. Although the Board has established an application and administrative fee schedule, the amounts collected for administrative fees deviated from this schedule for six of the nine current active projects where information was available for review.<sup>1</sup> As a result, SCIDA charged

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<sup>1</sup> Two projects did not have fee information available.

approximately \$50,000 less in fees than its schedule. In addition, it forgave administrative fees after the fact, resulting in approximately \$100,000 in additional lost revenue. SCIDA also relies on County officials to negotiate and select subleases and has not established its own criteria.

### **Comments of Agency Officials**

The results of our audit and recommendations have been discussed with Agency officials, and their comments, which appear in Appendix A, have been considered in preparing this report. Except as specified in Appendix A, Agency officials generally agreed with our recommendations and indicated that they planned to take corrective action. Appendix B includes our comments on issues raised in SCIDA's response letter.

# Introduction

## Background

An Industrial Development Agency (IDA) is an independent public benefit corporation whose purpose is to promote, develop and assist industrial, manufacturing, warehousing, commercial, research and recreation facilities. The overall goal of an IDA is to advance the job opportunities, health, general prosperity and economic welfare of people of the State.

The Schuyler County Industrial Development Agency (SCIDA) was created in 1971 and is the sole IDA in Schuyler County (County). The SCIDA Board (Board) consists of eight members, who are appointed by the County Legislature (Legislature). The Board is responsible for the general management and control of SCIDA's financial and operational affairs. The Board appoints the Executive Director who serves dually as the chief executive and chief fiscal officer and is responsible for day-to-day operations. The current Executive Director was appointed in June 2014. SCIDA funds its operations primarily with fees charged for processing applications and administering agreements. SCIDA contracts with the Schuyler County Partnership for Economic Development for its administrative functions.

SCIDA generally assumes the title of the real and/or personal property owned by the businesses that are involved in approved projects, thereby allowing SCIDA to offer benefits to these businesses (e.g., sales and use tax exemptions, mortgage recording tax exemptions and real property tax abatements). SCIDA's Uniform Tax Exemption Policy (UTEP) outlines these benefits and requires the businesses to enter into payment in lieu of taxes (PILOT) agreements for the real property tax abatements. For calendar year 2014, SCIDA had 10 active projects, of which nine were also active in 2013.

SCIDA is also involved in subleasing County-owned property for development. The County received special legislation from New York State in 1983 which authorized it to lease public park property located along Seneca Lake to SCIDA for economic development purposes. SCIDA has entered into four sublease agreements with businesses for the development of this property.

## Objective

The objective of our audit was to review SCIDA's management practices. Our audit addressed the following related question:

- Does the Board have criteria for selecting and monitoring projects and subleases?

**Scope and  
Methodology**

We examined SCIDA’s active projects and sublease files and relevant records for the period January 1, 2013 through November 19, 2014.

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 is included in Appendix C of this report.

**Comments of  
Agency Officials and  
Corrective Action**

The results of our audit and recommendations have been discussed with Agency officials, and their comments, which appear in Appendix A, have been considered in preparing this report. Except as specified in Appendix A, Agency officials generally agreed with our recommendations and indicated that they planned to take corrective action. Appendix B includes our comments on issues raised in SCIDA’s response letter.

The Board has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and forwarded to our office within 90 days, pursuant to Section 35 of the General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Board to make this plan available for public review in the Agency Secretary’s office.

## Project and Sublease Approval and Monitoring

The General Municipal Law provides that certain types of projects are eligible for IDA assistance and that each IDA must establish a UTEP, which provides the Board with detailed guidelines to make project approval or denial decisions. Because business owners are eligible for real property tax abatements and typically enter into PILOT agreements, an IDA's UTEP should also list the specific reasons why a project would be eligible for a general PILOT or any deviation from the general PILOT. Sound business practices also require that IDA officials verify the information on project applications and prepare a cost-benefit analysis of each prospective project, comparing the cost of the requested assistance to the intended project benefits to the community, to help and support their decision to either approve or deny a project application.

The Board is responsible for monitoring and evaluating the performance of businesses receiving financial assistance and determining whether they are meeting the goals established in their project and sublease applications. Without effective monitoring, SCIDA will not be able to identify and address business performance shortfalls and the community may not receive expected benefits from investments. In addition, SCIDA should have specific provisions included in all agreements as to the expectations of the businesses (e.g., reporting requirements) and have policies and procedures in place to hold those businesses accountable if expectations are not met.

The Board has not established documented criteria and procedures for selecting projects and subleases. However, the Board has established a UTEP, but this policy does not include specific criteria for selecting and approving projects. The Board also does not document its approval process or rationale for approved projects or subleases nor prepare a documented cost-benefit analysis or risk assessment during the project approval process. Although the Board has established an application and administrative fee schedule, the amounts collected for administrative fees deviated from this schedule for six of the nine current active projects where information was available for review.<sup>2</sup> As a result, SCIDA charged approximately \$50,000 less in fees than their schedule. In addition, it forgave administrative fees after the fact, resulting in approximately \$100,000 in additional lost revenue. SCIDA also relies on County officials to negotiate and select subleases and has not established its own criteria.

<sup>2</sup> Two projects did not have fee information available.

SCIDA officials did not adequately monitor SCIDA-sponsored projects to ensure that they made reasonable progress toward their employment projections or other goals stated in their applications. Although the Board collected annual employment data for projects, they did not request support for the employment information or otherwise verify data provided until December 2014, after the audit fieldwork was completed. The Board has included a recapture provision in the UTEP as well as in individual project or sublease agreements, but the recapture provisions are vague and do not include specific details for implementation. Moreover, they did not impose penalties on businesses in cases where projects failed to create or retain jobs as projected. Additionally, SCIDA incurred a \$3,600 audit expenditure related to the re-negotiation of a sublease that had not previously provided financial statements as required per the agreement. Without appropriate criteria for selecting and monitoring projects and subleases, the Board has limited assurance that SCIDA projects have met their performance goals and benefited taxpayers.

## **Projects**

All approved projects should advance job opportunities and the health, general prosperity and economic welfare of the people within an IDA's geographic area. These public benefits are achieved through financial assistance in the form of low-interest financing and exemption from real property tax, sales tax or mortgage recording tax. Each project should be evaluated for the benefits it will provide relative to the assistance it will need. The Board is responsible for establishing specific criteria for approving projects and for ensuring that it has all the necessary and accurate information to make that decision. The information provided on project applications serves as a base measurement of project employment and other factors, such as the estimated cost of benefits the project will receive and the jobs to be retained and added. The Board should use this information to monitor the projects' ongoing progress toward achieving their stated goals and in decisions for recapturing benefits in the event a project fails to achieve its goals.

Approval – In return for SCIDA incentives, approved projects agree to deliver documented benefits that will help revitalize depressed areas, improve quality of life, increase the tax base or provide affordable housing for community residents. In addition to UTEP procedural guidelines, SCIDA officials should establish specific criteria for evaluating all project applications and supporting documents in a consistent manner and to ensure that only qualified and deserving businesses receive the taxpayer-funded SCIDA benefits. SCIDA officials should also document their rationale, based on evaluation criteria, for making the decision to either approve or deny benefits to each applicant.

SCIDA requires an inducement and authorizing resolution for each project, as well as the completion of a standard project application. The project application provides for estimates of performance (jobs to be retained and new construction and permanent jobs to be created) and cost so that interested parties would be able to determine the scope of the project and ascertain the cost and benefits that would accrue when the project is completed. The application also includes a description of the project, project owners, type of entity, estimated project cost and other pertinent information.

We examined project applications and supporting documents for eight<sup>3</sup> of the nine projects that had active PILOTs.<sup>4</sup> For the project that did not have an application available for review, we reviewed other relevant information contained in the project files. Although the applications require information about project costs, applications sometimes had “TBD” or were left blank instead of listing amounts. As a result, we reviewed various supporting documentation in the project files to determine the project cost for eight of the nine active projects,<sup>5</sup> totaling approximately \$64 million:

- 208 Broadway/Union School – Renovation of former Montour Falls Union Grammar School into mixed commercial and residential space.
- Empire Pipeline – Construction of approximately 78 miles of natural gas transportation pipeline across five counties (15 miles located in Schuyler County).
- US Salt – Construction and equipping of a fluidized bed boiling system at salt production and packaging facility.
- Schuyler Redevelopment – Redevelopment of former Shepard Niles Crane location to relocate Welliver Construction and develop the property into a business park with offices for rent.
- Cargill – Construction of salt production, packaging and distribution plant.
- Finger Lakes Railway – Construction, reconstruction, maintenance, equipping and furnishing of railroad facilities for the purpose of promoting and developing economically sound commerce and industry.

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<sup>3</sup> Cargill did not have a project application on file. This is SCIDA’s oldest active project, and in its recent move to a new location the application may have been misplaced within other files currently being stored at the County.

<sup>4</sup> Two of the projects, Schuyler Redevelopment and Seneca Market, have PILOT agreements but are currently not paying PILOTs because they are receiving Empire Zone credits.

<sup>5</sup> Project cost information was not included on the application or other project documents for Finger Lakes Railway.

- Montour Falls House – Rehabilitation of historic property in the Village of Montour Falls known as the Montour House to accommodate mixed use residential and commercial tenants.
- Seneca Market – Construction of a hotel at the end of Seneca Lake on property that was formally not on the tax roll and not developed.
- Water Works Center – Renovation of the former Village of Watkins Glen water pump plant into four apartments/condominiums along with the construction of an additional 12 condominium units on the property and renovation of a portion of the former water pump house into an art gallery.
  - o Water Works Center (Omnibus) – Amendment of the Water Works Center project to allow for the sale of condominium units, rather than lease, and the extension of secondary PILOTs to individual condo owners in addition to the master PILOT.

SCIDA officials were not able to provide any formal or specific criteria that they used to evaluate any of the nine active projects, including the amendment of the Water Works Center project. They did not document how they arrived at their decisions in approving project applications or amendments. Without formal criteria, the Board and SCIDA officials cannot determine if project approval was applied consistently to all projects or if approved projects met the intended goals. We also found that the SCIDA did not deny any projects, providing further indication that the SCIDA does not have criteria that must be met to obtain project approval.

Application and Administrative Fees – IDAs charge application fees to help with the cost of reviewing and approving applications. In addition, IDAs generally charge administrative fees to assist with the cost of executing legal documents that are required for each project and for the monitoring of and recordkeeping for projects.

The Board has adopted a project application and administration fee schedule. The application fee for all projects is \$3,000, while the administrative fees for approved projects are based on a percentage of total project costs.<sup>6</sup> We recalculated the administrative fees for seven<sup>7</sup> of the nine projects with available information using the fee schedule and found that the Board deviated from the established administrative fee schedule for six projects reviewed. SCIDA charged approximately

<sup>6</sup> Prior to May 2010, the administrative fee schedule was 1 percent of the total project cost. The current administrative fee schedule is as follows: first \$10 million of total project costs - 1 percent fee; second \$10-\$20 million of total project costs - 0.5 percent fee; and amount of total project costs over \$20 million - 0.25 percent fee.

<sup>7</sup> Information related to fees was not available for two of the active projects, Cargill and Finger Lakes Railway.

\$50,000 less in administrative fees than its schedule dictates and forgave an additional approximately \$100,000 in administrative fees, resulting in a total loss in potential revenue of \$150,000 (see Figure 1). In addition, we did not find any documentation for the Board’s determination that fees should be forgiven or renegotiated after the fact for these six projects.

In the case of US Salt, SCIDA officials stated that the company requested that the remaining fees be forgiven, but no further information was provided nor documentation was included in the project file. Additionally, Seneca Market project owners requested forgiveness of the remaining fees because the project costs had exceeded the original estimates by approximately \$6 million. For those projects where fees were originally charged at less than the established rates, project owners had typically only asked the Board for lower fees, with no additional explanation or supporting documentation for why this reduction was necessary.

**Figure 1: Project Administrative Fees**

Project Name	OSC Calculated Administrative Fee	Administrative Fee Charged	Fee Amount Forgiven (after charged)
208 Broadway/Union School	\$17,680	\$8,840	\$0
Empire Pipeline	\$226,000	\$226,000	\$0
US Salt	\$167,800	\$167,800	\$33,310
Schuyler Redevelopment	\$36,570	\$28,177	\$0
Montour Falls House	\$11,543	\$5,771	\$0
Seneca Market	\$105,000	\$105,000	\$70,000
Water Works Center	\$37,000	\$9,003	\$0
<b>Totals</b>	<b>\$601,593</b>	<b>\$550,591</b>	<b>\$103,310</b>

Forgiving fees or failing to adhere to the established fee schedule without a reasonable, documented explanation not only deprives SCIDA of revenue but may give the appearance of favoritism and results in an unfair advantage by lowering costs to certain projects.

Cost-Benefit Analysis and Risk Assessment – Good business practices dictate that IDA officials prepare a cost-benefit analysis for each proposed project based on the information provided in the application, as well as a risk assessment. It is important that each cost-benefit analysis include all the costs associated with the project, as well as any benefits to the community that are expected to be derived from the project, to help assist a board in deciding whether to approve or deny a project. Once the cost-benefit analysis has been completed, IDA officials should compare it to the business owner’s submitted application and IDA’s UTEP criteria in order to make appropriate project sponsorship decisions. A risk assessment of a project should consider the implications of not providing financial assistance, whether or not a project would or could still continue without it and the risk of a project not meeting its employment goals.

We reviewed the eight available applications for SCIDA's nine active projects to determine if the cost benefit analysis or risk assessment was performed. Although the Board minutes occasionally stated a review was completed, we found there was no evidence that SCIDA officials verified the information provided by the applicants, ensured that this information was complete or performed a cost-benefit analysis or risk assessment of any of these Board-approved projects. Additionally, one application noted "TBD"<sup>8</sup> and others left blanks in the areas where project costs should be listed, and anticipated incentives to be provided for a project were often not completed in applications. Board members stated that this information is discussed prior to approving projects but is not documented or maintained in project files or in the Board minutes.

Without verification of the goals that these projects set, such as investments, job creation and retention, and comparing them to the estimated tax benefits that the projects are slated to receive, SCIDA officials could not be certain that the project estimates were realistic and beneficial to the County and local jurisdictions. If SCIDA officials approve projects that do not have an adequate balance between the tax benefits and the jobs to be created and retained, then the local taxing jurisdictions might not collect needed tax revenues.

Monitoring Performance – The Board is responsible for establishing a process to monitor and enforce agreed-upon job expectations, which should include procedures to determine whether reporting requirements are met, employment data is reliable and businesses demonstrate that they have met employment goals.

The Board has not established adequate, written criteria and processes for monitoring projects. Goals are outlined in project applications and contracts, but procedures for verifying compliance with goals and agreement terms have not been adopted. SCIDA officials do not adequately monitor projects for compliance with job creation and retention goals. Although SCIDA officials annually obtain employment information from project owners, which is required to be notarized, no additional support is obtained or verification performed.<sup>9</sup> Because of these deficiencies, we performed an analysis of project employment information collected for 2013 by comparing this information to estimates on project applications.

Based on our analysis, we found that, of the nine active projects, two projects had only construction jobs and were already past the construction period. For the remaining seven active projects, four

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<sup>8</sup> To be determined

<sup>9</sup> SCIDA has updated its 2014 project information request to also require businesses to provide payroll tax information, in order to better verify annual employment.

projects were not in compliance with original employment estimates. Upon further review and discussion with SCIDA officials, we found that three of these projects – Schuyler Redevelopment, 208 Broadway/ Union School and Water Works Center – had based original estimates on tenants that they planned to lease redeveloped property to. However, based on the numbers provided, the companies are only reporting their annual employment information and not including their tenants’ employees, resulting in a shortfall of 177 employees when compared with original estimates. The other project, US Salt, fell short of its original estimates for jobs created/retained for 2013 by 17 permanent positions.<sup>10</sup>

Without adequate criteria for monitoring projects, detailing procedures to be followed and verification to be performed, SCIDA officials cannot effectively monitor projects to ensure that the community is getting an appropriate return on its investment and that the businesses should continue to receive benefits.

Recapture Provisions – IDAs may place provisions in project contracts that allow them to recapture, or recover, economic benefits if businesses do not meet their project goals. Penalties for non-performance such as a shortfall in job creation or other promised benefits could take various forms. For example, a business could be prohibited from reapplying for an incentive program, or a recapture provision could require the business to return all or part of the tax exemptions received. A recapture provision may be based on the number of jobs created or retained, a specific length of time a business must stay at a subsidized location or other factors determined by IDA officials.

SCIDA has included recapture provisions in individual project contracts and has a recapture provision in its UTEP. However, the recapture provisions in both the contracts and the UTEP are vague and do not include adequate detail, such as specific requirements for recourse and plans for implementation or potential penalties. Because the UTEP has no guidance for implementation or quantification of the benefits to recapture, calculation of potential recapture of benefits from failed projects is left to the Board to define if it decides to recapture. For those projects identified previously that did not meet employment goals, SCIDA did not enforce recapture provisions. Based on discussion with Board members, they were not aware that there had ever been a project that was not in compliance with goals or terms.<sup>11</sup> If recapture provisions are not appropriately enforced, some

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<sup>10</sup> SCIDA officials stated that US Salt changed ownership during the project period, which may have attributed to it not meeting project full-time equivalent job goals.

<sup>11</sup> Officials did not realize that those projects with tenants had originally provided estimates that included the tenants but were not reporting tenant job information.

businesses may continue to receive benefits when not providing the expected economic benefits to the County and other local taxing jurisdictions.

## Subleases

SCIDA has entered into subleases with businesses for development of portions of County property located at the end of Seneca Lake in the Village of Watkins Glen. These subleases require that services provided be available to the public and certain financial information be provided annually. The majority of the sublease fees that are paid are then remitted to the County, with SCIDA retaining 5 percent for administrative costs. The Board is responsible for establishing criteria for approving and monitoring subleases, ensuring that sublessees are in compliance with agreement terms and special authorizing legislation from the State.

Approval – The Board has responsibility as sublessor to ensure that the sublease approval process is fair and criteria is consistently applied. The County has special authorizing legislation from the State to lease the portion of land located at the end of Seneca Lake, designated for use, development and operation by the IDA for recreational purposes. This land is leased to SCIDA, which subsequently sublets portions of the property to businesses for County-approved development and activities. SCIDA currently has four subleases, which include the following:

- Village Marina (Docks and Pier) – Public marina which includes a boat launch, service docks and related facilities (such as restrooms and a bathhouse).
- Village Marina (Restaurant) – Bar and grill restaurant located at the public marina.
- Wine and Glass Tours – Provides boat excursions and tours on Seneca Lake.
- Schooner Excursions – Portion of dock at public marina subleased to provide sailboat tours and excursions.

The Board has not established criteria for approving subleases. The Legislature decided to extend the Village Marina (Docks and Pier) sublease in 2014 prior to expiration rather than allow other vendors to apply for the right to sublease the property, without any formal criteria on which to make this decision. Consequently, a lack of specific, documented procedures and criteria for approving subleases could result in a lack of public transparency throughout the lease process.

Monitoring Performance – As the sublessor, the Board and SCIDA officials are primarily responsible for monitoring compliance with

the terms included in the subleases. General sublease requirements and terms are outlined in sublease agreements, which include the services and financial information to be provided, as well as due dates for annual payments. The subleases also include a default and remedy clause that outlines the actions SCIDA could take, such as penalties or termination, in the event of noncompliance. Without effective sublease monitoring, the Board cannot identify and address noncompliance with sublease agreement terms.

Although the sublease agreements establish criteria relevant to monitoring, the Board has not established procedures for monitoring subleases or exercising its remedies in the case of a default. For example, only one of the four subleases has made payments in a timely manner. The Village Marina and Wine and Glass Tours have made annual sublease payments between one to three months late without any consequences. In addition, SCIDA did not receive required financial information, such as audited financial statements, from the Village Marina and Wine and Glass Tours in order to determine if annual sublease payments were appropriate. Until the sublease agreements were recently renegotiated for the Village Marina (Docks and Pier)<sup>12</sup> in April 2014 and Wine and Glass Tours in July 2013, annual sublease payments were based on gross revenues from operations.<sup>13</sup>

Because SCIDA officials failed to obtain the required financial statements from Wine and Glass Tours and there were concerns by SCIDA officials with the amounts received, an independent auditor was hired to complete a forensic audit of the business's gross receipts for 2009 through 2011, as allowed for in the sublease. The cost of this audit to SCIDA was \$3,600. Since SCIDA receives approximately \$1,375 annually from all subleases, it will take SCIDA approximately three years to recoup the cost. Although this audit did not find any substantial differences between gross receipts as reported to SCIDA and actual amounts, had the proper financial information been provided by the company as required, it may not have been necessary to perform such an audit. SCIDA's current sublease agreements all include a default and remedy provision, but the provision has never been enforced when sublessees were not in compliance with agreement terms.

Without procedures for monitoring subleases, there is no assurance that sublessees are in compliance with agreement terms. In addition, without receiving required financial documentation from the

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<sup>12</sup> Sublease covering the docks and piers only; the restaurant sublease expires in 2018.

<sup>13</sup> The only remaining sublease where payments are based on gross sales or receipts is the Village Marina restaurant. The other three subleases' annual payments are based on a multiplier with increasing payments each year.

sublessees, there is no assurance that the proper payments have been received. Finally, when sublessees have not complied with sublease terms in the past, there have been no penalties or repercussions. As a result, SCIDA has incurred additional costs to recover financial information, and sublease payments may continue to be late.

## **Recommendations**

The Board should:

1. Establish and formally adopt policies that define criteria and procedures critical to project and sublease approval and monitoring.
2. Review and update the UTEP to include specific criteria for project approval and recapture of benefits.
3. Adhere to the established application and administration fee schedules for projects or update policies with specific instances of when deviation from the schedule could occur.
4. Ensure that cost-benefit analyses and risk assessments are completed and documented based on verified data and meet economic criteria before approval of projects.
5. Develop formal procedures to monitor and enforce job creation expectations, and ensure projects that included tenants in original job estimates are reporting completely.
6. Develop formal, specific procedures to monitor projects and subleases and ensure compliance with agreement terms.
7. Enforce recapture or default and remedy provisions, as appropriate, if a sublessee does not meet performance expectations or comply with project or sublease agreement terms.

**APPENDIX A**  
**RESPONSE FROM AGENCY OFFICIALS**

The Agency officials' response to this audit can be found on the following pages.



## SCHUYLER COUNTY INDUSTRIAL DEVELOPMENT AGENCY

910 SOUTH DECATUR STREET, WATKINS GLEN, NY 14891 • (607) 535-4341

March 20, 2015

Mr. Edward V. Grant, Jr.  
Chief Examiner  
Office of the State Comptroller  
The Powers Building  
16 West Main Street, Suite 522  
Rochester, NY 14614

RE: Combined Audit Response and Corrective Action Plan  
Schuyler County Industrial Development Agency  
Audit Report Title: Project and Sublease Approval and Monitoring, Report of Examination  
Audit Report Period: January 1, 2013 – November 19, 2014  
Audit Report Number: 2015M-369

Dear Mr. Grant,

Please accept this letter as the Schuyler County Industrial Development Agency's (SCIDA) combined response and Corrective Action Plan (CAP) to the Draft Audit Report referenced above. We appreciate the external audit of our management practices specifically addressing the following question: *Does the Board have criteria for selecting and monitoring projects and subleases?*

SCIDA has been providing valuable financial assistance that benefits the community and fosters sustainable economic development since inception. This is confirmed in a report compiled by the OSC, from data submitted by the IDAs, titled, Annual Performance Report on New York Industrial Development Agencies Fiscal Year Ending 2012. According to this report released in May 2014, SCIDA ranked exceptionally well; the 5<sup>th</sup> best out of the 56 county- level IDAs for the return on investment (ROI) for tax dollars abated. Schuyler County had total capital investment exceeding \$77 million with a corresponding total tax exemption of \$852,392, total payment-in-lieu-of-taxes (PILOT) amount of \$839,098; resulting in a net tax exemption of \$13,294. In addition, the May report also indicates that, with a value of \$29/job gained compared to the average of \$2588/job gained, Schuyler County's investment of public dollars is the best ROI in New York State.

Although being a high performing IDA, the Board of Directors recognizes the value of audits, which provide an opportunity for an outside review including observations of internal practices and procedures that can be enhanced and strengthened. The Board is comprised of committed and

experienced volunteers including business leaders and public service leaders that took OSC's comments and recommendations quite seriously. SCIDA appreciates the acknowledgement that the Office of the State Comptroller (OSC) provides in the draft report's findings that SCIDA management practices (i) successfully include recapture provisions in individual project contracts, (ii) has an established recapture provision included in our Unified Tax Exemption Policy, and (iii) the sublease agreements have established criteria relevant to monitoring. Furthermore we agree with the finding that SCIDA annually obtains employment information from project owners and those data submittals are required to be notarized. SCIDA accepts OSC's observation that policies and practices in the selection and monitoring of projects and subleases offer opportunities for implementing best practices and improvement.

However, we have identified the following findings that require some level of factual corrections or clarifications:

- (1) On page 6, the report states that *for calendar year 2014, SCIDA had 10 active projects*. SCIDA actually had 11 active projects during 2014. The report does not include the review of an additional project, Watkins Glen Apartments, for which the Board finalized the agreement on November 7, 2014. This is relevant to this audit report because the Watkins Glen Apartments project, a \$14m investment bringing exempt property onto the tax rolls, fully complied with all the recommended practices through to closing. Specifically, the application was reviewed by officials and the application was completed thoroughly; there was no adjustment of the service fee; and all details surrounding the risk assessment and cost-benefit analysis were completed, reviewed and discussed at the Board level. The cost-benefit analysis was also made available at the public hearing. Additionally, while a majority of the projects reviewed are recent (less than 10 years), the Cargill project is more than 20 years (established in 1992) and the Finger Lakes Railway agreement was made over 19 years ago. SCIDA officials agree that the applications for these aged agreements were not readily available for review.
- (2) On page 8 and page 12, the report states that the board *does not prepare a documented cost-benefit analysis or risk assessment during the project approval process*. In addition to the Watkins Glen Apartments project recently approved, we found that there were several documented instances in which the Board received and discussed the cost benefit analysis of projects. SCIDA concurs with the finding that a thorough cost benefit analysis was not apparent in many of the projects reviewed. However, 2 of the 9 projects reviewed during the audit window had incorporated a cost-benefit analysis as part of project evaluation.

See  
Note 1  
Page 24

See  
Note 2  
Page 24

In the minutes of a regular board meeting held June 20, 2012, the *Board reviewed a cost benefit analysis for the Water Works project. The State Environmental Quality Review (SEQRA) was received to move forward with the project.*

The cost-benefit analysis for several of the subleases was thoroughly completed and SCIDA's minutes reflect a board discussion on April 9, 2014. The cost benefit analysis discussed by the board included a pro forma of the leases through 2033 and provided three performance scenarios. The first scenario included keeping the current contract in place through the end of the current lease which would result in a total value of \$147,142; the second scenario included accepting a proposal from an offer which would result in a net value over the term of the lease (ending in 2033) equaling \$560,525; and the final scenario, ultimately the SCIDA choice, extended the current lease and updated the agreement with new terms that included a worst

case scenario value of \$1,496,414. Unfortunately, this documentation was made available after the audit field work was completed. This information, with redaction, is attached to this report.

- (3) The report indicates that SCIDA reduced during or forgave after the fact, approximately \$150,000 in administrative fees. SCIDA acknowledges that the board minutes lack the necessary detail to document the deliberation and merits used in deciding to reduce the administrative fees. However, the reader should note that Schuyler County is a very rural county without many of the financial assets that larger more urban areas have to work with. Projects that had administrative fees reduced were monumental projects and/or investments for the area. The Seneca Market I (Watkins Glen Harbor Hotel) project, without question, positively transformed the Seneca Lake waterfront and is the catalyst for additional economic development investment. This project has exceeded expectations for sales tax revenues and employment benefits. According to company records, the annual payroll exceeds \$1.6M and the hotel receives 45,000 guests impacting the local economy by approximately \$28M. The initial application committed to 60 permanent jobs and in 2013 the number of jobs created was 116, nearly double the original commitment. The hotel generates \$187,000 or nearly 50% of the entire county occupancy tax collected. Furthermore, the original investment was noted to be \$9 million and the final project totaled more than \$13 million. Due to the unanticipated additional costs related to the redevelopment, it was requested that SCIDA reduce the administrative fee.

Schuyler County, like many other upstate communities, has multiple historic buildings that are in desperate need of renovation and reuse. Many of these facilities are not on the tax rolls or are significantly below their potential assessment – if they were renovated. Three of the IDA PILOT projects identified in the report that had administrative fees reduced were such renovation projects. The total real property value for those three projects combined has increased by over \$6 million as a result of the renovations. The project leader was asked to take a risk by investing in Schuyler County. In fact, the Montour Falls House was destined for demolition before the investment was made. Later, upon completion, it was touted by Governor Cuomo as an exemplary example of a Restore New York revitalization project. This project also demonstrated the power of a partnership between the State, County, Village and private sector to restore vibrancy to a local main street in Upstate New York.

- (4) The report states, on page 8, that *although the board collected annual employment data for projects, they did not request support for the employment information or otherwise verify data provided until December 2014, after the fieldwork was completed.* It is vital for the reader to understand that SCIDA was making continuous improvements in our processes and procedures even as the fieldwork was occurring. While it is indicated within the report, in footnote #9 on page 12, that SCIDA implemented an additional verification procedure for the annual reporting; it does not reflect the change that SCIDA made on the application to ensure the applicants are aware of this new reporting requirement during the initial application phase.
- (5) The report also states on the same page that *The Board has included a recapture provision in the UTEP as well as in individual project or lease agreements, but the recapture provisions are vague and do not include specific details for implementation.* Again, as stated above, with the focus on continuous improvement, the Governance Committee worked on strengthening the

See  
Note 3  
Page 24

recapture provisions in early 2015 and on March 11, 2015, SCIDA adopted a significantly stronger, detailed policy and procedure.

- (6) On page 8, the report indicates that SCIDA incurred a \$3600 audit expenditure related to the renegotiation of a lease that had not previously provided financial statements as required. SCIDA has taken several steps to ensure this does not occur in the future. Firstly, SCIDA has strengthened its procurement policy to ensure that *all costs necessary to create, amend, document and enforce any agreement between the SCIDA and a client, will be the responsibility of that client*. Secondly, SCIDA has implemented new review procedures to ensure all required data to verify agreement provisions is collected and reviewed. According to minutes from the SCIDA Board meeting of November 13, 2013, the Board indicated it's desire to have a deeper review regarding the reporting and performance of the projects. Going forward, SCIDA will have greater detail to review regarding the performance measures of the projects.
- (7) On page 10, the report states that SCIDA officials were not able to provide any formal or specific criteria that they used to evaluate any of the nine active projects. As stated earlier, records demonstrate a cost-benefit analysis was, indeed, considered by SCIDA for a minimum of two of the nine projects reviewed. See  
Note 2  
Page 24
- (8) The report, also on page 10, states that *the IDA did not deny any projects, providing further indication that the IDA does not have criteria that must be met to obtain project approval*. SCIDA employs a procedure through SCOPED that sifts through projects to ensure they only advance projects that were ready and would have the greatest impact for the community. Therefore, a vast majority of projects would not have matured to a point where an application would have been completed. See  
Note 4  
Page 24
- (9) Page 11 of the report states that *"...deprives SCIDA of revenue...may give the appearance of favoritism..."*. SCIDA understands the view taken by the auditors but does not share them. The majority of the fee reductions were for projects where the investor was taking significant risks and the outcome was very, very uncertain. See  
Note 3  
Page 24
- (10) Page 13 of the report states that *US Salt fell short of their original estimates for jobs created/retained for 2013 by 17 permanent positions*. SCIDA acknowledges the deficiency in the reported number of jobs created/retained. To clarify for the reader, the capital investment made by U S Salt was quite substantial for Schuyler County, over \$25M for a biomass energy solution. This new process and equipment was not activated due to market conditions that precluded the full implementation of this energy solution. Thus, while the sizable investment was made, there were no associated additional full time employees. SCIDA recognizes the need to improve it's measurement and recapture provisions.

SCIDA is strongly committed to its mission and fiduciary responsibility. Its success is the direct result of dedicated volunteers that serve on its board and SCOPED staff, all of whom constantly strive to improve

SCIDA's performance. As a result, SCIDA welcomed the audit and was open to any recommendations for improvement, which resulted in the proposed plan as set forth on the accompanying pages.

Sincerely,

Kevin Murphy  
Chairman of the Board

cc: IDA Board Members  
Judy McKinney Cherry CEcD, CEO/CFO  
Justin Miller, Esq., Agency Counsel

KM/jmc

Attachments: SCIDA PILOT Agreement Application Process: Flow Chart  
SCIDA IDA Assistance Approval Process  
SCIDA Economic Incentive Recapture Policy  
SCIDA Criteria for Selecting and Prioritizing Projects  
Marina Cost Benefit Analysis -25 year Performa for subleases

# Schuyler County Industrial Development Agency (SCIDA)

## Corrective Action Plan

Below is SCIDA's Corrective Action Plan in response to the OSC recommendations. Our goal is to enhance and strengthen our policies related to the evaluation of projects, re-evaluate the cost-benefit analysis process for applications, and more robustly monitor projects, jobs, and capital investments based on your recommendations. SCIDA accepts the audit recommendation that it should improve its approval, management and monitoring of projects and subleases. Toward that end, the SCIDA has already undertaken the implementation of the following corrective actions based on the OSC recommendations:

- 1. Establish and formally adopt policies that define criteria and procedures critical to project and sublease approval and monitoring.**

**Status – Completed March 11, 2015.** The Board takes to heart its fiduciary responsibility of being demonstrable stewards of public funds. SCIDA has formally adopted policies and procedures that define the criteria to be used to evaluate projects and sublease approval and will ensure they are appropriately enforced. Please refer to the following attachments, *SCIDA Policy for Selecting & Prioritizing Projects; SCIDA financial assistance approval process and related flow chart.*

- 2. Review and update the UTEP to include specific criteria for project approval and recapture of benefits.**

**Status – Completed March 11, 2015.** The SCIDA Board of Directors reviewed and formally adopted an update to the board policies related to criteria for selecting and prioritizing projects and policies for the recapture of financial assistance benefits. Please see attachments, *SCIDA Policy for Selecting & Prioritizing Project and Schuyler County Industrial Development Agency Financial Assistance Recapture Policy.*

- 3. Adhere to the established application and administration fee schedules for projects, or update policies with specific instances of when deviation from the schedule could occur.**

**Status – In process, projected completion July 2015.** The Board will ensure that it will not deviate from the application and administration fee schedule unless specific policies have been adopted that detail specific instances when a deviation could occur. The Governance Committee will undertake a review of the existing policy and, if necessary, recommend changes to the full board.

- 4. Ensure that cost-benefit analyses and risk assessments are completed and documented based on verified data and meet economic criteria before approval of projects.**

**Status - Completed October 30, 2014.** SCIDA officials completely agree that cost benefit analysis and risk assessments are critical to meeting the organization's fiduciary responsibility. The Board will ensure cost benefit analysis and risk assessments are completed and documented based on verified data and meets economic criteria before approval of projects. The application and approval process has been outlined on a flow chart made available with this report (*Schuyler County Industrial Development Agency Financial Assistance Approval Process Flow Chart*). Additionally, beginning in the first quarter 2015, the Board will have economic impact data available for inclusion in the analysis

of cost-benefit and risk assessment for all projects. This software is the industry standard for quantifying direct, indirect and induced economic impacts.

**5. *Develop formal procedures to monitor and enforce job creation expectations, and ensure projects that included tenants on original job estimates are reporting completely.***

**Status – In process, projected completion June 2015.** The Board agrees that best practice for an organization is to have a clearly defined process and procedure to ensure verification and performance measures are being met. SCIDA will develop formal written procedures to monitor and enforce job creation expectations that clearly define the policies and are consistent with best practices and OSC guidelines. The Board will collect and verify the job creation numbers for those projects that originally included the employment estimated to be made by their tenants.

**6. *Develop formal, specific procedures to monitor projects and subleases, and ensure compliance with agreement terms.***

**Status – In process, projected completion July 2015.** In addition to the corrective action stated in Recommendation #5, SCIDA, through its Governance Committee has already begun the process of developing formal and specific procedures to be followed ensuring projects and subleases are monitored and in compliance with the agreement terms. These, also, will be consistent with best practices and with the guidelines provided by the OSC.

**7. *Enforce recapture or default and remedy provisions, as appropriate, if a sublessee does not meet performance expectations or comply with project or sublease agreement terms.***

**Status – In progress, projected completion June 2015.** The Board of Directors takes seriously their responsibility to evaluate the merits the each project, weigh the risks and benefits to the community, calculate the tax ramifications to all the taxpayers and other stakeholders, and test to ensure that every tax dollar granted is truly needed. To that end, SCIDA will establish formal written procedures and systems to ensure recapture provisions are enforced. Using the detailed recapture provisions used in the Watkins Glen Apartments agreement (completed in November 2014) as a template, the board further ensures that required reporting and remedy provisions will be documented in legal agreements associated with all future financial assistance (i.e. sublessee and project agreements).

###

## APPENDIX B

### OSC COMMENTS ON THE AGENCY'S RESPONSE

#### Note 1

The Watkins Glen Apartments project was included in the calendar year 2014 active projects total of 10 projects but was not reviewed during our audit because it had not been approved or disapproved as of the start of our fieldwork in September 2014. Although not part of our audit scope, we are aware that SCIDA started implementing improved processes for the Watkins Glen Apartments project.

#### Note 2

Although discussion regarding project and sublease cost-benefit analysis was sometimes included in the Board minutes, SCIDA officials did not provide documented cost-benefit analyses to examiners during fieldwork. In addition, the two projects noted as having incorporated a cost-benefit analysis as part of the project evaluation were prepared by the project owners and included no evidence that the Board had procedures in place to require that this analysis be provided as part of the application.

#### Note 3

SCIDA officials did not provide documented explanations for fee reductions or forgiveness. We recognize the benefits these projects have provided to Schuyler County, but, as noted in the report, any deviations from the fee schedule should be clearly documented and supported to ensure fairness to all applicants and provide the highest level of transparency in the decision making process.

#### Note 4

SCIDA officials did not provide examiners with evidence of this process during fieldwork.

## APPENDIX C

### AUDIT METHODOLOGY AND STANDARDS

The objective of our audit was to determine if SCIDA had criteria for selecting and monitoring projects and subleases and if this criteria has been implemented properly. To accomplish the objective of our audit and obtain valid audit evidence, we performed the following steps:

- We interviewed Board members and SCIDA officials and staff to understand and assess SCIDA's processes and procedures.
- We reviewed SCIDA's policies, including the UTEP, in order to identify written criteria outlining an applicant's eligibility for sponsorship and the benefits offered.
- We reviewed the Agency's projects that were active in both 2013 and 2014, a total of nine, including review of project files containing project applications, lease and PILOT agreements, inducement resolutions and public hearing minutes. We summarized agreement information and project contents.
- We determined if the Board had used any uniform criteria or had documented processes to select projects and establish PILOT agreements or set administrative and application fees.
- We reviewed 2013 and 2014 PILOT payments to determine if payments were made in accordance with agreements.
- We reviewed the 2013 annual report and compared figures with the 2013 audited financials and accounting records to ensure agreement.
- We compared the 2013 reported actual job numbers by the businesses to projected jobs on the applications.
- We reviewed the Agency's four sublease agreements and summarized agreement terms and requirements.
- We determined if businesses had been in compliance with project and sublease terms, if agreements included recapture provisions and whether recourse was sought in the event that terms were not complied with.

We conducted this performance audit in accordance with 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 D

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