



Seneca County Industrial Development Agency

Project Approval and Monitoring Report of Examination

Period Covered:

January 1, 2014 — August 13, 2015

2015M-207



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of Local Government and School Accountability

December 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 Agency governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard government assets.

Following is a report of our audit of the Seneca County Industrial Development Agency, entitled Project 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*

Introduction

Background

An industrial development agency (IDA) is an independent public benefit corporation whose purpose is to promote, develop, encourage and assist in acquiring, constructing, improving, maintaining, equipping and furnishing 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 for the people of the State. The Seneca County Industrial Development Agency (SCIDA) was created in 1973 and is the sole IDA within Seneca County (County). SCIDA's mission is to "advance the job opportunities and economic welfare of the people of Seneca County, by actively promoting, encouraging and attracting economically sound commerce, industry and recreational opportunities."

The SCIDA Board (Board) consists of nine members, who are appointed by the County Board of Supervisors. The Board is responsible for the general management and control of SCIDA's financial and operational affairs. The Board appoints the Executive Director who currently serves dually as the chief executive and chief fiscal officer and is responsible for day-to-day operations, with the assistance of other professional staff. SCIDA funds its operations primarily with fees charged for processing applications and administering agreements. SCIDA generally assumes the title of the real or personal property owned by the businesses that are involved in approved projects, thereby allowing SCIDA to offer financial assistance to these businesses (e.g., sales and use tax exemptions, mortgage recording tax exemptions and real property tax exemptions). SCIDA is not required to pay taxes or assessments on any property it acquires or that is under its jurisdiction, control or supervision. It enters into a general payment in lieu of taxes (PILOT) agreement to approved projects governed by SCIDA's Uniform Tax Exemption Policy (UTEP). For calendar year 2014, SCIDA reported 43 projects, of which 31 had active PILOTs. For calendar year 2015, SCIDA has 33 projects,¹ of which 30 projects have active PILOTs.²

Additionally, best practices link strong benefits associated with the use of standard application forms or requests for financial assistance, uniform criteria for the evaluation and selection for each category of projects for which financial assistance is provided and uniform

¹ As of July 31, 2015

² The Lago Resort & Casino included in the overall project total also has a PILOT agreement, which is not included in the 2015 figure because the PILOT was not active prior to the conclusion of our audit fieldwork.

project agreements which include a standard claw-back provision, to increased accountability and improved efficiency and transparency of IDA operations.

Objective

The objective of our audit was to review SCIDA's processes for evaluating, awarding and monitoring projects. Our audit addressed the following related question:

- Does the Board ensure that projects are evaluated, provided financial assistance and subsequently monitored in accordance with SCIDA's mission?

Scope and Methodology

We examined SCIDA's management practices, project files and related information for the period January 1, 2014 through August 13, 2015.

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 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. Agency officials generally agreed with our recommendations and indicated that they planned to take corrective action.

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's offices.

Project Approval and Monitoring

New York State General Municipal Law provides that certain types of projects are eligible for IDA financial assistance and that each IDA must establish a UTEP, which provides the Board with detailed guidelines to make project approval or denial decisions. Because financial assistance provided by an IDA result in a cost³ to the community, it is important for an IDA to consider whether a project meets more than the minimum eligibility requirements for financial assistance. IDA officials should also develop project evaluation criteria and procedures, which should be consistently applied when making project evaluation and selection decisions. Additionally, sound business practices recommend that IDA officials verify the information on project applications.

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 applications. Without effective monitoring, SCIDA may not be able to identify and address business performance shortfalls and the community may not receive expected benefits from the financial assistance. In addition, SCIDA should have specific provisions included in all agreements as to the expectations of the businesses (e.g., reporting requirements and goals) and also have provisions in place to hold those businesses accountable, as appropriate, if expectations are not met.

Although SCIDA officials developed a UTEP for project evaluation and approval, the method of determining the benefits to be provided is not well-defined or required to be documented. Therefore, it is possible that not all project applications of the same type were evaluated using the same criteria. SCIDA officials also do not verify the information provided by businesses on project applications for accuracy and completeness. As a result, a definitive determination cannot be made whether or not the Board evaluated and provided financial assistance to projects in accordance with SCIDA's mission.

The Board did not develop and implement adequate procedures to monitor approved projects. Although not required, the Board did adopt and include recapture provisions in the project agreements and the UTEP. However, these provisions are vague and do not include sufficient detail, such as specific plans for the recovery of previously provided financial assistance if job creation and economic goals or other terms of the agreements are not met. SCIDA officials have implemented procedures for monitoring projects, including obtaining

³ Property, sales and mortgage tax exemptions

sufficient information annually to support project jobs and sales tax exemptions, but the analysis of the information obtained from the companies was not sufficient. Therefore, we reviewed the job data provided by all 43 projects for 2014, which had a combined goal of creating or retaining 2,227 jobs. We identified four projects that missed their combined job creation/retention goal of 405 jobs by 44 jobs. Without adequate documented procedures for evaluating, awarding and monitoring projects, the Board has limited assurance that SCIDA projects have met their performance goals and benefited taxpayers. In addition, without an adequate recapture provision, SCIDA limits its ability to take recourse in the event that a project is underperforming.

Project Approval

IDAs provide eligible businesses with financial assistance in the form of exemptions from real property, sales or mortgage recording taxes. In return for IDA assistance, approved projects should deliver documented benefits that will help advance the job opportunities, health, general prosperity and economic welfare of the people of the State. Because IDA projects are tax exempt, businesses provided financial assistance typically enter into PILOT agreements. Under PILOT agreements, payments are made equal to the amount, or a portion of the amount, of taxes that would have been imposed if the project was not tax exempt by reason of IDA involvement. The IDA's UTEP should list the specific reasons why a project would be eligible for a general PILOT or must establish a procedure for any deviation from the UTEP. In addition to UTEP procedural guidelines, IDA officials should establish a standard application and specific criteria for evaluating all project applications in a consistent manner and to ensure that only qualified and deserving businesses receive IDA financial assistance. Additionally, IDA officials should document their rationale, based on these evaluation criteria, for making the decision to either approve or deny assistance to each applicant.

SCIDA requires an inducement⁴ and authorizing resolution for each project,⁵ 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. SCIDA staff are responsible for pre-evaluating project applications prior to being presented to the Board for evaluation and approval.

⁴ The first official action indicating SCIDA's intent to select a project to receive financial incentives

⁵ With the exception of those projects receiving less than \$100,000 in financial assistance, which only require an authorizing resolution

We examined project applications and supporting documents for the eight projects approved during our audit period,⁶ totaling approximately \$440 million. We found that SCIDA officials did use a standard application; however, they were unable to provide any formal or specific criteria that they used to evaluate any of the projects. Additionally, SCIDA's UTEP contains vague criteria regarding project approval and the type of PILOT that a specific project would be eligible for. SCIDA staff have developed a preliminary "draft" policy, which outlines targeted PILOT schedules for specific industries as well as highlights reasons why the Agency might be interested in certain projects within a specific industry, but this policy was not approved by the Board at the time of audit fieldwork. However, the eight projects we reviewed were in accordance with SCIDA's mission. Although SCIDA officials included some discussion of project approvals in the Board minutes, they did not document in detail how they arrived at their decisions in approving project applications or extensions, nor did they include this information in the project files, which would have provided greater transparency. In addition, we found there was no evidence that SCIDA officials verified the information provided by the applicants for accuracy and ensured that this information was complete. Without documented and specific criteria and procedures, it is unlikely that the Board and SCIDA staff can determine if project approval criteria was applied consistently to all projects or if approved projects met the intended goals.

Project Monitoring and Job Performance

A significant responsibility of an IDA Board is to monitor and evaluate the performance of projects to determine whether the businesses are meeting the goals or terms included in their project applications and agreements, such as jobs created or retained. This includes evaluating project performance to ensure that projects fulfill their application goals and protect the IDA's interests. The IDA may also request additional information to monitor project performance. One of SCIDA's specific goals as outlined in its mission is to advance job opportunities in the County.

SCIDA staff have established procedures for monitoring projects. However, these procedures are not documented and an adequate analysis of annual information collected to monitor projects is not performed. Job performance goals are outlined in project applications, and quarterly payroll tax information is obtained annually from projects to verify compliance with these goals, but an adequate analysis of this information was not evident. Through an initial review of SCIDA's 2014 annual report, we identified 43 projects which had a combined goal of creating or retaining 2,227 jobs. However, we found projects

⁶ For the purpose of this audit, we assume that SCIDA's approved projects were within the legal authority of an IDA.

that appeared to be underperforming, but were not identified as such. Because of these deficiencies, we performed a detailed analysis of project employment information collected for 2014 by comparing this information to project application estimates.

Based on our analysis, we found that the original estimates for certain projects had been incorrectly entered in SCIDA’s annual report, and the full-time-equivalent (FTE) jobs for some projects had been calculated incorrectly by the companies and SCIDA, based on the agreements. Overall, of the 43 projects reported for 2014, we determined that 18 projects were reported with information that was not specifically related to the project, or aggregated data for multiple projects, making it unfeasible to analyze the success of each project. In addition, five projects were still within the job creation period. The remaining 20 projects that had clear goals and reported data had a combined estimated job retention/creation goal of 656 jobs. We found 16 projects with a combined estimated job retention/creation goal of 251 jobs met or exceeded their original goal, creating and retaining a combined 383.5 jobs. However, the remaining four projects with a combined job creation/retention goal of 405 jobs missed their goal⁷ by a total of 44 jobs (see Figure 1).

Figure 1: Job Performance

Project	FTE Employees Before SCIDA Involvement	Original Estimate of Jobs to be Created	Original Estimate of Jobs to be Retained	Total Job Creation/ Retention Goal	FTE Employees reported at 12/31/14	Total Jobs Created/ Retained Over/ (Under) Goal
Projects (16) Meeting or Exceeding Goals						
Total	62	189	62	251	383.5	132.5
Projects Underperforming Goals						
DeCarolis Truck Rental Inc.	16	5	16	21	9	(12)
Hillside	193	122	193	315	309	(6)
TarJac Inc.	24	39	24	63	39	(24)
The Blade Shop	4	2	4	6	4	(2)
Total	237	168	237	405	361	(44)

Upon further review and discussion with SCIDA staff, there were no specific explanations provided for the job shortfalls for DeCarolis Truck Rental Inc., Hillside or The Blade Shop, but an independent report from SCIDA’s consultant suggests that TarJac Inc. struggles with maintaining the same level of business after the implementation

⁷ All four projects were past the job creation period outlined in their respective agreements.

of the NY SAFE Act.⁸ Additionally, The Blade Shop is not currently receiving any financial assistance from SCIDA.

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 receiving appropriate benefits as a result of IDA financial assistance and whether these businesses should continue to receive assistance in accordance with project agreements. In addition, when project applicants receive the benefit of financial assistance that includes tax exemptions without creating and retaining jobs as indicated in their applications, the community does not receive the expected benefits from the project.

Claw-Back/ Recapture Provisions

Although not required by statute, when appropriate IDAs should incorporate recapture or claw-back provisions in project agreements to allow the agency to recoup previously granted financial assistance if job creation or retention, or other economic goals or terms of the agreements are not met. Penalties for non-performance such as a shortfall in job creation or other expected benefits could take various forms. For example, a business could be prohibited from reapplying for financial assistance, or a recapture provision could require the business to return all or part of the amount of any tax exemptions received. A recapture provision may be based on the number of new jobs created, a specific length of time a business must stay at a subsidized location, or other factors determined by IDA officials. The development of a uniform project agreement which includes a provision for the return of all or part of the financial assistance provided, in the event that a project does not meet its goals or violates material terms of project agreements, would assist the IDA in enforcing these penalties.

SCIDA has included default and remedy (recapture) provisions in individual project contracts, and began including an “additional events of default” provision in the PILOT agreements for its more recently approved projects.⁹ These provisions specifically define job creation and retention goals, and a timeline for the attainment of these goals in order to maintain incentives. However, SCIDA does not have a detailed recapture provision in its UTEP, and only refers to the recapture provisions within individual project agreements. In general, the recapture provisions in the individual project agreements are not adequately detailed, such as specific requirements for recourse

⁸ The New York Secure Ammunition and Firearms Enforcement Act of 2013 amended various statutes to, among other things, reform the regulatory structure related to guns and ammunition. TarJac Inc.’s primary business is coating hunting guns in camouflage.

⁹ Projects approved within the last year or so.

and plans for implementation or potential penalties. The recapture provisions generally only define cancelation of the agreement as a penalty, but do not outline a plan for potential recapture of financial assistance already provided. Because the UTEP has no guidance for implementation or quantification of the benefits to recapture, calculation of the potential recapture of financial assistance from projects not meeting goals or violating material terms of project agreements 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. SCIDA staff did provide information on a project that was canceled due to its failure to meet agreement terms and pay the revolving loan fund (RLF) loan. However, when the project was canceled, SCIDA only sought repayment of the RLF loan, but did not seek the recapture of benefits already provided to the company. Consequently, the lack of adequate recapture provisions in project agreements and the UTEP limits SCIDA's ability to take recourse, and some businesses may continue to receive assistance when not providing the expected economic benefits to the County and other local taxing jurisdictions.

Recommendations

The Board should:

1. Establish specific criteria for evaluating project applications in a consistent manner.
2. Review and update the UTEP to include specific criteria for project approval and recapture of benefits.
3. Include detailed recapture or default and remedy provisions in project agreements, and invoke these provisions, as appropriate, if a business does not meet performance expectations or comply with material terms and conditions of projects agreements.
4. Take steps as appropriate and with advice of counsel as necessary to enforce recapture provisions on the projects noted in this report that did not meet employment goals.

The Board, with the assistance of IDA staff, should:

5. Ensure the approval process for each project is adequately documented, and any analysis in arriving at an approval decision is based on verified information.
6. Ensure job data reported by project owners or other appropriate party contains sufficient information to analyze individual projects.

7. Develop specific, written procedures to monitor projects, and ensure project information is adequately analyzed to determine whether a project is meeting its goals and in compliance with the terms and conditions of project agreements.
8. Review job estimates on the annual report to ensure accuracy, and update if necessary.

APPENDIX A

RESPONSE FROM AGENCY OFFICIALS

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

December 3, 2015

Edward V. Grant Jr., Chief Examiner
Office of the State Comptroller
Division of Local Government and School Accountability
The Powers Building
16 West Main Street, Suite 522
Rochester, NY 14614-1608

Dear Mr. Grant:

This letter will serve as our response to your draft audit report titled Seneca County Industrial Development Agency Project Approval and Monitoring Report of Examination January 1, 2014 – August 13, 2015.

The Seneca County Industrial Development Agency (SCIDA) has reviewed the draft report of the aforementioned audit with management and the board, and undergone an exit conference with the Comptroller's staff.

We are pleased with your findings regarding SCIDA's efforts to approve and monitor projects in accordance with legal statutes and Comptroller best practices, and we realize there is room for improvement as summarized in your recommendations. We were particularly glad that you confirmed the accuracy of project PILOT payments, and found them to be in compliance with agreements in place.

We appreciate the time your staff spent conducting the audit of the SCIDA. We will be drafting our Corrective Action Plan (CAP) to enhance and strengthen our policies relative to the evaluation of projects, the cost-benefit analysis process for applications, and more robustly monitor projects, jobs, and capital investments based on your recommendations.

Again, thank you for your time and for the opportunity to respond to your draft audit findings. We would like to commend your staff for their professionalism and suggestions for improvements during the audit process.

Sincerely,


Robert J. Aronson
Executive Director

APPENDIX B

AUDIT METHODOLOGY AND STANDARDS

The objective of our audit was to determine if projects were evaluated, provided financial assistance and subsequently monitored in accordance with SCIDA's mission. 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 the financial assistance offered.
- We reviewed SCIDA's projects that were approved during the audit scope period, a total of eight, including project files containing project applications, lease, leaseback and PILOT agreements; inducement and authorizing resolutions; and public hearing minutes. We summarized agreement information and project file contents.
- We determined if the Board had used any uniform criteria or had documented processes to select projects and enter into PILOT agreements, or set administrative and application fees.
- We compared the 2014 actual job numbers reported by the businesses to projected jobs on the applications.
- We determined if businesses had been in compliance with the terms and conditions of project agreements, if agreements included recapture provisions and whether recourse was sought in the event that terms were not complied with.
- We reviewed SCIDA's PILOT payments for 2014 and 2015, and determined if the calculations were accurate based on the PILOT agreements and schedules, and if the payments were paid to SCIDA and distributed to the taxing jurisdictions accurately and timely.

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 C

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