

OFFICE OF THE NEW YORK STATE COMPTROLLER



DIVISION OF LOCAL GOVERNMENT
& SCHOOL ACCOUNTABILITY

Tompkins County Industrial Development Agency

Board Oversight

Report of Examination

Period Covered:

January 1, 2013 – June 12, 2014

2015M-33



Thomas P. DiNapoli

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State of New York

Office of the State Comptroller

Division of Local Government and School Accountability

September 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 government assets.

Following is a report of our audit of the Tompkins County Industrial Development Agency, entitled Board Oversight. 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**
EXECUTIVE SUMMARY

The Tompkins County Industrial Development Agency (TCIDA) was established in 1971 to advance the job opportunities, health, general prosperity and economic welfare of Tompkins County and its inhabitants. TCIDA bylaws establish the powers and duties of its various officers. TCIDA is governed by a seven-member Board of Directors (Board) appointed by the County and includes four members that are County Legislators. Because the TCIDA does not employ any staff, they hired the Tompkins County Area Development (TCAD), a not-for-profit development organization, to perform all TCIDA's administrative and financial services based on a memorandum of understanding between the two entities.¹ The President of TCAD serves as TCIDA's Administrative Director² and performs the day-to-day management under the Board's supervision.

TCIDA generally assumes the title of the real and personal property owned by the businesses that are involved in approved projects, thereby allowing TCIDA to offer benefits to these businesses (i.e., sales and use tax exemptions, mortgage recording tax exemptions and real property tax exemptions). TCIDA is not required to pay property taxes or assessments on any property it acquires or that is under its jurisdiction, control or supervision. TCIDA instead arranges for the applicable businesses to make payments in lieu of taxes (PILOTs)³ pursuant to an agreement governed by TCIDA's Uniform Tax Exemption Policy.

¹ Two TCIDA Board members told us the Board established many years ago that TCIDA would not have employees, which was long before either served on the Board. They both indicated, however, that it is more efficient to have one entity (with employees) manage economic development within the County.

² It is unclear whether the President of TCAD also holds the office of Administrative Director of TCIDA. TCIDA's website indicates that this individual is the Administrative Director of TCIDA and TCIDA is "managed by" TCAD. In addition, he executed several contracts on behalf of TCIDA as "Administrative Director" (e.g., Agent Agreements). However, we found no evidence of any TCIDA Board resolution appointing him to the office Administrative Director of TCIDA. If the President of TCAD has not been appointed to the TCIDA office of Administrative Director, but rather exercises the functions of this position as a member of the outside contracting firm, then we believe TCIDA has improperly delegated functions to the President of TCAD in his capacity as an officer or employee of TCAD. If TCIDA intended to establish the office of Administrative Director of TCIDA and appoint the person who is also the President of TCAD to that TCIDA office, then TCIDA should expressly do so by Board resolution. If that appointment as TCIDA officer occurs, however, it raises potential conflict of interest issues under article 18 of GML. This individual, as an officer of TCIDA, would have an interest in TCIDA's contract with TCAD, for which he also serves as President (GML §§800[3], 883). Although the interest would not be prohibited under article 18 of GML (see GML §802[1] [f]), he must disclose his interest in the TCIDA's contract with TCAD (GML §803). Moreover, the attorney for the IDA should review TCIDA's code of ethics to determine whether any provisions are contravened by the holding of the two positions at the same time.

³ PILOTs are payments equal to all or part of the amount of real property taxes which would have been levied by or on behalf of an "affected tax jurisdiction" if the IDA project was not tax-exempt by reason of the IDA's involvement. An "affected tax jurisdiction" is a municipality or school district in which the IDA project is located which will fail to receive tax payments that would be otherwise due, except for the tax-exempt status of the IDA project (GML §854[16],[17]).

Scope and Objective

The objective of our audit was to review TCIDA's process for approving, monitoring and reporting projects for the period January 1, 2013 through June 12, 2014. We expanded our scope period to examine project performance for projects that were active as of January 1, 2013, which included projects with approval dates as early as March 1999. Our audit addressed the following related question:

- Did the Board provide adequate management oversight?

Audit Results

TCIDA had no employees and instead the Board relied on TCAD employees to carry out TCIDA's mission without making independent judgments. Although the Board approved the IDA projects submitted to it, the Board did not provide adequate oversight during its project approval process. Therefore, the Board could not be certain if TCAD staff submitted all IDA projects for its approval and projects could have been given IDA benefits without its knowledge.

Additionally the Board was not sufficiently involved in monitoring various aspects of the projects. Although three businesses did not meet their job creation goals, the Board did not formally document its decision not to recapture benefits. Further, one local taxing authority did not bill one business enough and another taxing authority did not bill two businesses enough for PILOT payments. As a result, two businesses⁴ were underbilled by more than \$26,000 and the Board was unaware that, as a party to the PILOT agreement, it was responsible for overseeing this process. Lastly, the Board did not review or approve the required annual reports to ensure accuracy or completeness. As a result, the Board cannot be sure that the community is receiving the expected economic benefits.

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 they planned to take corrective action. Appendix B includes our comments on the issues raised in the Agency's response letter.

⁴ One business was underbilled by both taxing authorities.

Introduction

Background

Industrial development agencies (IDAs) are independent public benefit corporations 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 IDAs is to advance the job opportunities, health, general prosperity and economic welfare of the people of the State. The powers and duties of IDAs are set forth primarily in Article 18-A of General Municipal Law (GML). Typically, projects that receive IDA benefits involve the acquisition, construction or major renovation of buildings or other structures and generate short- and long-term employment in construction and operations-related jobs.

The Tompkins County Industrial Development Agency (TCIDA) was established in 1971 for the benefit of Tompkins County (County) and its inhabitants. GML and other laws and legal principles establish the parameters within which TCIDA must operate. TCIDA bylaws set forth powers and duties of various officers. TCIDA is governed by a seven-member Board of Directors (Board) appointed by the County Legislature and includes four members who are County legislators. Because the TCIDA does not employ any staff, they hired a not-for-profit corporation, Tompkins County Area Development, Inc. (TCAD), to perform administrative and financial services for TCIDA based on a “memorandum of understanding” (MOU) between the two entities.⁵ Two TCIDA Board members told us the Board established many years ago that TCIDA would not have employees, which was long before either served on the Board. They both indicated, however, that it is more efficient to have one entity (with employees) manage economic development within the County.

The functions performed by TCAD include, but are not limited to, monitoring and documenting the impact of projects following completion, periodically meeting with project owners on project status and completing all information reporting of project activities including financial assistance provided and benefits to the community realized in a timely manner. In accordance with the 2014 MOU, TCIDA agreed to pay TCAD \$100,000 for services provided. The

⁵ According to the MOU, TCAD “as the community’s lead economic development agency, offers financial assistance, technical assistance and real estate development services. TCAD is responsible for creating and implementing the comprehensive economic development strategy for the county that provide the leadership to create a supportive economic environment. TCAD will provide administrative management to TCIDA.”

President of TCAD, serves as TCIDA's Administrative Director⁶ and performs the day-to-day management under the Board's supervision.

TCIDA generally assumes the title of the real and personal property owned by the businesses that are involved in approved projects, thereby allowing TCIDA to offer benefits to these businesses (i.e., sales and use tax exemptions, mortgage recording tax exemptions and real property tax exemptions). TCIDA is not required to pay property taxes or assessments on any property it acquires or that is under its jurisdiction, control or supervision. TCIDA instead arranges for the applicable businesses to make payments in lieu of taxes (PILOTs)⁷ pursuant to an agreement governed by TCIDA's Uniform Tax Exemption Policy (UTEP).

Objective

The objective of our audit was to review the Board's process for approving, monitoring and reporting TCIDA projects. Our audit addressed the following related question:

- Did the Board provide adequate management oversight?

⁶ It is unclear whether the President of TCAD also holds the office of Administrative Director of TCIDA. TCIDA's website indicates that this individual is the Administrative Director of TCIDA and TCIDA is "managed by" TCAD. In addition, he executed several contracts on behalf of TCIDA as "Administrative Director" (e.g., Agent Agreements). However, we found no evidence of any TCIDA Board resolution appointing him to the office Administrative Director of TCIDA. If the President of TCAD has not been appointed to the TCIDA office of Administrative Director, but rather exercises the functions of this position as a member of the outside contracting firm, then we believe TCIDA has improperly delegated functions to the President of TCAD in his capacity as an officer or employee of TCAD. If TCIDA intended to establish the office of Administrative Director of TCIDA and appoint the person who is also the President of TCAD to that TCIDA office, then TCIDA should expressly do so by Board resolution. If that appointment as TCIDA officer occurs, however, it raises potential conflict of interest issues under article 18 of GML. This individual, as an officer of TCIDA, would have an interest in TCIDA's contract with TCAD, for which he also serves as President (GML §§800[3], 883). Although the interest would not be prohibited under article 18 of GML (see GML §802[1] [f]), he must disclose his interest in the TCIDA's contract with TCAD (GML §803). Moreover, the attorney for the IDA should review TCIDA's code of ethics to determine whether any provisions are contravened by the holding of the two positions at the same time.

⁷ PILOTs are payments equal to all or part of the amount of real property taxes which would have been levied by or on behalf of an "affected tax jurisdiction" if the IDA project was not tax-exempt by reason of the IDA's involvement. An "affected tax jurisdiction" is a municipality or school district in which the IDA project is located which will fail to receive tax payments that would be otherwise due, except for the tax-exempt status of the IDA project (GML §854[16],[17]).

Scope and Methodology

We examined TCIDA records and project files for the period January 1, 2013 to June 12, 2014. We expanded our scope period to examine project performance for projects that were active as of January 1, 2013, which included projects with approval dates as early as March 1999.

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 they planned to take corrective action. Appendix B includes our comments on the issues raised in the Agency's response letter.

The Board of Directors 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 Secretary's office.

Board Oversight

The Board has the overall responsibility for TCIDA operations and to advance TCIDA's stated mission that aims to "create and retain quality employment opportunities and strengthen the local tax base." Private parties may be retained to advise and assist the Board in performing its duties and to perform functions that are ministerial in nature. However, it is a general principal that, absent express statutory authority, discretionary powers and duties of public officers may not be exercised or discharged by contracting with private parties.⁸ The Board should ensure it approves all projects and any related project amendments or modifications to agreements. In addition, the Board should monitor the approved projects to make certain that the projected benefits are achieved and verify that project information is accurately reported pursuant to New York State Public Authorities Law.

TCIDA had no employees and instead the Board relied on TCAD employees⁹ to carry out TCIDA's mission without making independent judgments. Although the Board approved the IDA projects submitted to it, the Board did not provide adequate oversight during its project approval process. Therefore, the Board could not be certain if TCAD staff submitted all projects for its approval and projects could have been given benefits without its knowledge. Additionally, the Board was not sufficiently involved in monitoring various aspects of the projects. Although three businesses did not meet their job creation goals, the Board did not formally document its decision not to recapture benefits. Further, two local taxing authorities did not bill two businesses enough for PILOT payments. As result, the businesses were underbilled by more than \$26,000 and the Board was unaware that, as a party to the PILOT agreements, it was responsible for overseeing this process. Lastly, the Board did not review or approve the required annual reports to ensure accuracy or completeness. As a result, the Board cannot be sure that the community is receiving the expected economic benefits.

Project Approval

Project approval decisions are a Board's fundamental discretionary responsibility and cannot be delegated to any other party, including TCAD. The Board established a UTEP and a standard application

⁸ Ministerial functions may be generally characterized as those that involve strict adherence to specific instructions or directions from the public official with no exercise of judgment, discretion or latitude of choice by the contracting entity (see, e.g., OSC Opinion No. 90-53).

⁹ TCAD employees also administer the Tompkins County Empire Zone and Capital Tourism Grant Program.

to be filled out by project owners to assist the Board in the project approval process. Once approved, the TCIDA's bylaws state the Board Chairperson shall execute project contracts and agreements and further allows for that authority to be delegated by resolution to an agent of TCIDA. If this duty is delegated by a resolution, the Board should implement additional procedures to ensure the agent executes project contracts and agreements solely for projects approved by the Board. The information the Board uses to determine if a project is acceptable according to the UTEP should be supported by documentation such as payroll reports that show current levels of employment.

The Board did not provide adequate oversight during its project approval process. The seven approved projects we reviewed appeared to meet the UTEP requirements. In addition, the Board approved the two amendments relating to approved projects that occurred during our audit period.¹⁰ However, all these project approvals relied on TCAD staff to submit them to the Board for its approval and the Board's decisions were based solely on information provided by TCAD staff and application information, such as current jobs data that was not supported by payroll reports.

All of TCIDA's properties on the 2014 tax assessment rolls were associated with projects that would have been approved prior to our audit period. Therefore, we were unable to determine if any projects were awarded without Board approval during our audit period.¹¹ In addition, we were unable to determine if all projects with sales tax exemptions were approved by the Board. While TCAD staff provided us with sales tax forms awarding incentives to projects, we could not verify that all sales tax exempt forms the TCAD President signed on behalf of TCIDA were provided to us.

As a result of these weaknesses, there is a risk that projects could be given benefits without the Board's knowledge. This risk is further increased since the Administrative Director, who is a TCAD employee signs most of the paperwork relating to the contracts for the projects.¹²

Project Monitoring

The Board is responsible for monitoring and evaluating the performance of businesses receiving financial assistance and

¹⁰ One amendment extended a project's sales tax benefits and the other extended another project's PILOT agreement term.

¹¹ During our fieldwork, 2015 tax assessment rolls were not yet available and the time between awarding incentives and when the project is closed (and status changed on the tax assessment rolls) could be over a year.

¹² As previously mentioned, it is unclear whether the President of TCAD also holds the office of Administrative Director of TCIDA or was performing this functions in his capacity as President of TCAD. In the latter case, the IDA may have improperly delegated functions to the President of TCAD in his capacity as an officer or employee of TCAD.

determining whether the goals established in the project applications are being met. The Board cannot delegate its discretionary functions in connection with this duty to another party, including TCAD. Such monitoring should include verifying that the information contained in the application, such as projected jobs retention or additions, increases in assessed real property values and PILOT payments are actually occurring.

Another aspect of effective monitoring is ensuring that data used to evaluate project performance is verified for accuracy by requesting supporting documentation from the businesses. Such documentation could include quarterly payroll tax filings to verify employment numbers and sales reports to verify reasons for performance shortfalls. If the Board has established a policy to recapture benefits from businesses that are not meeting established project goals, it should formally discuss potential project shortfalls and determine how and when the recapture policy should be implemented.

The Board established an Economic Incentive Recapture Policy to recapture benefits if businesses were not meeting the goals specified in the project applications, but did not formally discuss performance shortfalls or if the policy should be implemented. Further, the Board delegated project monitoring duties relating to job creation and retention to the TCAD staff without providing sufficient oversight of the process. The Board also did not monitor increases in assessed real property values or ensure that all PILOT payments were accurately billed and actually received.

Jobs – While the Board received an annual report monitoring job creation and retention, this report was prepared solely by TCAD staff and was based on information from the project owners that was not confirmed. Although the Board minutes indicated that the Board discussed project results with TCAD staff, the Board did not confirm that the information contained in this report was accurate.

We reviewed 13 projects with active PILOT agreements as of January 1, 2013. Our review of job figures reported by the project owners in 2012 and 2013 disclosed that three projects achieved between 53 to 80 percent of the planned job growth stated on their applications, two projects did not have job goals and eight projects met their employment goals. According to the TCAD President,¹³ these three companies did not meet job creation goals because of decline in revenue due to the economic recession. However, the Board minutes did not contain any formal discussions relating to the potential recapture of benefits for these performance shortfalls.

¹³ Ibid.

Board members told us they were satisfied allowing TCAD staff to perform these duties and discuss the available job data without receiving further confirmation of the data. However, without formal Board action relating to recapture of benefits, it is unclear if the Board was making decisions concerning exercising the recapture policy or merely acquiescing to decisions made by TCAD. In addition, without reliable job data the Board cannot be certain that any evaluations of project performance, including for the purpose of applying the recapture policy, are effective to ensure the community is receiving the benefit of job creation goals.

Increase in Assessed Values – No one monitored the projected increase in assessed values. We compared the assessed values as stated on the County’s 2014 assessment roll with the assessed value before the start of 17 projects and found all these projects showed an increase in assessed value, which totaled almost \$43 million. The projected increase in assessed values for the four most recent projects, as reported in the project application, disclosed three projects had increases in assessed values that exceeded projections and the fourth achieved 99 percent of the expected increase. Although our testing revealed these projects realized the expected increase in assessed real property value, without proper oversight there is no assurance these projects will achieve their planned increases in assessed values.

PILOT Payments – TCIDA had 32 projects with active PILOT payments during our audit period. The Board did not provide adequate oversight for these payments. Neither the Board nor TCAD staff tracked the PILOT payments to ensure they were billed and paid in accordance with PILOT agreements. Instead, this responsibility fell to the respective taxing authorities who prepared the PILOT bills. The Board was not aware that, as the party to the PILOT agreement, it was responsible for overseeing this process.

Because of this weakness, we calculated the amount of PILOT payments 12 taxing jurisdictions¹⁴ should have billed 17 businesses (\$597,000 in 2013 and \$690,000 in 2014). We then compared our results with the amounts the taxing authorities reported as billed and received. For 10 taxing authorities, we found PILOT payments were generally properly billed and received. However, during 2013 and 2014 we found one taxing authority did not bill one business enough for PILOTs, resulting in the business being underbilled \$9,452. During 2013, another taxing authority did not bill two businesses enough for PILOTs, resulting in the two businesses being underbilled a total of \$16,925.

¹⁴ Including the County, four towns, two villages, one city and four school districts.

Without procedures in place, the Board could not track PILOT payments. As a result, billing errors may continue to occur and taxing authorities may not receive all the amounts to which they are entitled.

Reporting

The Public Authorities Reporting Information System (PARIS) is the online, electronic data entry and collection system jointly operated by the NYS Authority Budget Office (ABO) and the State Comptroller's Office (OSC). Public authorities use PARIS to comply with the various reporting requirements of the Public Authorities Law, GML and regulations. These reports allow the Board and other interested parties to monitor IDA activities and are used as the basis for accountability reports.

The Board is responsible for ensuring that the annual report is submitted with complete and accurate information. The Board can provide that TCAD staff perform ministerial filing functions, but the Board still is responsible for undertaking discretionary actions, such as directly making required certifications to the effect that the information filed is accurate.¹⁵

The Board relied on TCAD staff to file the annual financial report, but did not provide adequate oversight to ensure this report was accurate. The annual report data was entered, submitted and certified by the TCAD office manager who gathered the data needed for this report from a schedule prepared by TCIDA's independent auditor. However, neither the Board nor TCAD staff reviewed or approved the report. A Board member told us he did not think it was necessary to oversee the filing or certification of the annual report.

We reviewed TCIDA's 2013 annual financial report and found that one active project was not included. TCAD staff, who are knowledgeable about the projects, agreed that this project should have been included but was left out in error. We also found none of the amounts shown as real property tax exemptions and PILOT payments on the annual report for the seven projects¹⁶ we reviewed were accurate. The total variances for these projects resulted in overstated real property tax exemptions of \$29,700 or 15 percent of the total amounts exempt and understated PILOT receipts of \$15,100 or 3 percent of the amount reported as received.

These variances occurred because the report was prepared using estimates for PILOT payments rather than actual amounts received

¹⁵ See e.g., Public Authorities Law Section 2800(3).

¹⁶ The report listed 31 projects with active PILOT agreements.

and inaccurate real property tax rates.¹⁷ Without accurate reporting, the Board, affected taxing authorities and the public are not provided with transparency, which can result in reduced TCIDA effectiveness.

Recommendations

The Board should:

1. Discontinue allowing TCAD staff to perform discretionary functions and establish a process to carefully oversee TCAD's performance of ministerial functions.
2. Establish a process to ensure that the Board is approving all financial assistance for projects and all project-related agreements.
3. Establish procedures for verifying the employment information and other project performance data provided by businesses.
4. Document its determination of whether financial assistance should be recaptured from those business that fall short of performance goals in compliance with TCIDA's recapture policy.
5. Establish a procedure to monitor increases in assessed values.
6. Establish and implement policies and procedures to track PILOT amounts to ensure that PILOT bills are accurately prepared.
7. Provide oversight to verify the report submitted to PARIS is complete, accurate and certified by TCIDA officials.

¹⁷ The external auditor prepared the PILOT payment schedule by using the actual amounts billed and paid to the County for the County portion of PILOT payments. The external auditor then estimated the amounts that should have been billed by the remaining taxing authorities using the same assessed values as the County calculation and applied the other taxing jurisdictions' real property tax rates. Amounts received were estimated assuming that all estimated billed amounts were fully paid.

APPENDIX A

RESPONSE FROM AGENCY OFFICIALS

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

Tompkins County Industrial Development Agency

ADMINISTRATION PROVIDED BY  TCAD

July 31, 2015

H. Todd Eames
Chief Examiner
Office of the State Comptroller
Binghamton Regional Office
Suite 1702
44 Hawley Street
Binghamton, NY 13901-4417

Re: Response to Draft Audit of Tompkins County Industrial Development Agency

Dear Mr. Eames:

The Tompkins County Industrial Development Agency (TCIDA) is grateful for the opportunity to submit this response to the draft audit report. As the time for response is limited to 30 days, we submit this response without the benefit of a complete review by our legal counsel or our accountant. Accordingly, we hope you will allow us a further opportunity to comment if this letter does not satisfactorily address all the issues raised in the draft audit report.

We would like to address specific findings in the report and then respond to each of the recommendations in the draft audit report. Generally, we note that many of the comments in the report are based on what the Office of State Comptroller believes to be best practices, not on any State laws that govern IDAs.

Initially, we address the following specific findings:

- The report states that it is unclear whether the president of TCAD also holds the office of administrative director of TCIDA because the auditors found no evidence of any TCIDA board resolution appointing him to the office of administrative director.

This issue will be resolved by having the board confirm the appointment at the next TCIDA board meeting.

- The auditors raised the question of whether the appointment of the President of TCAD as administrative director of TCIDA raises potential conflict of interest issues under article 18 of GML.

That issue was considered carefully by both local TCIDA counsel as well as outside bond counsel and they determined that there was no conflict of interest or ethics issue.

Tompkins County Industrial Development Agency

ADMINISTRATION PROVIDED BY  TCAD

- The report raises several issues regarding the relationship between the TCIDA board and TCAD staff. Specifically, the auditors felt that the Board did not provide adequate oversight over projects because it relied on TCAD staff to provide information. The report also states that, because it relies in TCAD staff, the Board could not be certain that all projects were submitted to the Board for approval.

We must respectfully disagree with those findings. TCIDA does not have its own staff. Instead, it relies on the experienced staff of TCAD through a detailed contract. The TCAD staff acts in every way as the staff of TCIDA with all the appropriate oversight and supervision. By establishing this relationship, the TCIDA saves significant taxpayer dollars while assuring that TCIDA business is handled in a professional manner with all appropriate oversight.

- The audit notes that three businesses did not meet their job creation goals but that the TCIDA board did not formally document its decision not to recapture benefits.

TCIDA acknowledges that there is a benefit to formally documenting these decisions and has already made changes to our procedures and policies to implement this improvement.

- The audit notes that two local taxing authorities did not bill two businesses enough for PILOT payments. As a result, the businesses were under-billed by \$26,000.

In response, we note that 99.55% of PILOT payments were appropriately billed; the value of the billing errors amount to 0.45% of total PILOT payments during the audit period. Nevertheless, we expect 100% accuracy. In furtherance of this goal, TCIDA recently met with the County Assessor and the County Finance Manager and, working together, we will add new procedures to ensure that all PILOT bills are correctly issued by local taxing jurisdictions.

- The report states that the auditors' testing revealed that TCIDA projects "realized the expected increase in assessed real property value". However, the report criticizes TCIDA for lack of oversight and noted that, as a result, "there is no assurance such increases in assessed value will continue in the future".

The determination that the projects realized expected increases in property value is very good news. No one can guarantee future increases in assessed value because there are numerous factors beyond the control of TCIDA. Nevertheless, in order to provide better oversight, we have modified our procedures to annually compare projected assessed values included in applications to actual assessed values.

See
Note 1
Page 18

Tompkins County Industrial Development Agency

ADMINISTRATION PROVIDED BY ▲TCAD

The following are the TCIDA's responses to the Draft Audit Report's Recommendations:

1. Discontinue allowing TCAD staff to perform discretionary functions and establish a process to carefully oversee TCAD's performance of ministerial functions.

The TCIDA disagrees with this recommendation. Please see comment in the third bullet point above. In our view, TCAD does not perform any discretionary functions. There may be opportunities to enhance oversight of ministerial functions, and we will explore methods by which we can provide additional oversight.

See
Note 2
Page 18

2. Establish a process to ensure that the Board is approving all financial assistance for projects and all project-related agreements.

The TCIDA disagrees with this recommendation. The Board has always approved all financial assistance for projects and all project-related agreements.

See
Note 3
Page 18

3. Establish procedures for verifying the employment information and other project performance data provided by businesses.

The TCIDA disagrees with this recommendation. The Board relies on written statements certified by applicants much like Empire State Development does for its economic development projects and the State's Department of Labor does. We will study further the possibility of utilizing State DOL payroll records to enhance our data collection and analysis efforts.

4. Document its determination of whether financial assistance should be recaptured from those businesses that fall short of performance goals in compliance with TCIDA's recapture policy.

The TCIDA agrees with this recommendation. We have made the necessary change to our policies.

5. Establish a procedure to monitor increases in assessed values.

The TCIDA agrees with this recommendation. We will establish procedures to monitor on an annual basis the changes in each active project's assessed value and compare that to what was estimated on the original application.

Tompkins County Industrial Development Agency

ADMINISTRATION PROVIDED BY 

6. Establish and implement policies and procedures to track PILOT amounts to ensure that PILOT bills are accurately prepared.

The TCIDA agrees with this recommendation. We have met with the County Assessor and County Finance Manager to discuss this issue and will adopt policies and procedures that will result in an annual process where actual PILOT tax bills are compared to the project's PILOT agreement.

7. Provide oversight to verify the report submitted to PARIS is complete, accurate and certified by TCIDA officials.

The TCIDA agrees with this recommendation. We will make changes to our policies to ensure that the PARIS Report is complete, accurate and certified by the Chair or another officer of the TCIDA.

Again, thank you for the opportunity to respond to the draft audit report.

Sincerely,

James P. Dennis
Chairman
TCIDA

cc: TCIDA Board
Michael Lane, Chairman, Tompkins County Legislature
Joe Mareane, Tompkins County Administrator
Jay Franklin, Tompkins County Director of Assessment
Helen Beach, Tompkins County Finance Manager
Jonathan Wood, Esq., Tompkins County Attorney
Mariette Geldenhuys, Esq., TCIDA Attorney
Russ Gaenzle, Esq., Harris Beach, PLLC
Jerry Mickelson, CPA, CDLM
Thomas DiNapoli, NYS Comptroller
Gabriel Deyo, NYS Deputy Comptroller
Brian McMahon, Executive Director, NYSEDC
Assemblywoman Barbara Lifton
Senator Mike Nozzolio
Senator Tom O'Mara
Senator Jim Seward

APPENDIX B

OSC COMMENTS ON THE AGENCY'S RESPONSE

Note 1

The Board is responsible for overall TCIDA operations. Therefore, it is ultimately accountable for oversight of these operations, even if allowable duties are performed by a private party.

Note 2

As indicated in our report, certain discretionary functions were performed by TCAD staff. For example, TCAD staff assessed projects based on the number of jobs to be created and certified that the information contained in TCIDA's annual financial report was accurate.

Note 3

We agree the Board approved all the projects presented to it. However, the Board does not have a system in place to ensure it approves all benefits provided. For example, we were unable to determine if all sales tax exemptions were approved by the Board.

APPENDIX C

AUDIT METHODOLOGY AND STANDARDS

The objective of our audit was to review the Board's process for approving, monitoring and reporting TCIDA projects. To achieve our audit objective and obtain valid evidence, we performed the following procedures:

- We interviewed Board members and TCAD staff members active in TCIDA management regarding the management of the TCIDA daily operations, policies and procedures.
- We reviewed the MOU between TCAD and TCIDA to document the duties outlined in that agreement and evaluate the nature of the duties performed.
- We reviewed Board minutes, audit committee minutes, resolutions, Board policies and other Board actions approved during our audit period.
- We scanned the 2014 tax assessment rolls for all properties owned by TCIDA to determine if the Board approved the project applications and if real property tax benefits were provided for projects without the Board's knowledge.
- We requested all sales tax exemption forms and reviewed those provided by TCAD staff to determine if any sales tax exemptions were provided for projects without the Board's knowledge.
- We reviewed 13 projects with active PILOT agreements and compared the job performance numbers reported on the 2012 and 2013 jobs report submitted to the Board for active PILOT projects with the projected increase in employment on project applications and the survey information submitted by the business for the same period. We used a random number generator to select our sample of 10 projects from the 31 projects listed on the PARIS report. We then included three additional projects in our sample, one project that was excluded from the list in error and two projects that had a TCAD Board member as the project owner.
- We calculated the amounts due to municipalities for 17 projects, in accordance with PILOT agreements in place, to determine the amounts that should have been received for 2012 and 2013 and compared these amounts with the amounts that 12 municipalities informed us was billed and as reported to OSC on their annual financial reports as the amounts received. We used our previously selected sample of 13 projects and added four additional projects to our sample to include all the municipalities within the County.
- For our previously selected sample of 17 projects, we requested assessed values before the start of the projects and for 2014 from the Tompkins County Department of Assessment. We compared these values to determine by what amount the assessed values increased for the properties these projects resided on. For four recent projects we also compared the 2014 assessment figure to their projection in their application.

- We reviewed the 2013 annual report filed with ABO and OSC to determine if all projects with active PILOTs were included by comparing the reported list with 2014 County's tax assessment data for properties with tax exemptions.
- We reviewed the amounts reported on the annual report for seven of the 31 active projects to determine if PILOT payments and real property tax exemptions were accurately reported in the annual financial report. We compared the amounts reported to our calculation of the PILOT payments and exemptions based on the project's PILOT schedules, actual real property tax rates and current assessed values. We arbitrarily selected our seven projects and had no expectation that more or fewer errors would occur in a chosen project than in any other project.

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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APPENDIX E

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