

**Erie County Industrial  
Development Agency**

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Office of the State Comptroller  
Statewide Unit  
State Office Bld, Room 409  
333 East Washington Street  
Syracuse, NY 13202

March 9, 2006

Dear Office of the State Comptroller:

We appreciate the time and effort that the Office of the State Comptroller has devoted over the last 20 months to auditing the Erie County Industrial Development Agency (ECIDA) and five of the other IDA's in New York State. We share the Comptroller's objectives in consistently applying criteria to select firms receiving economic development incentives. Where we occasionally differ with the Comptroller's report is in the methods by which we achieve those objectives.

We would like to highlight that the Comptroller's report does not take into account the unique economic challenges we face in Erie County and Upstate New York. Our economy has consistently underperformed both the New York State and National economies over the last few decades. Specifically, Upstate New York has experienced a steady erosion of population (particularly in working-age groups) and a loss of major employers with a fragmentation of the remaining business base. For example:

- In the 1990's the Upstate New York manufacturing sector lost over 1/3 of its jobs
- From 1990 to 2000 Erie County lost over 20% of its population aged 20-34
- Since 1990, the rate of Upstate New York manufacturing job loss has been 67% higher than the National average

Our operating policies and procedures have been developed in direct response to these economic conditions. We are proud of the fact that while Erie County lost 1/3 of its manufacturing jobs from 1990 to 2000, the ECIDA projects surveyed by the Comptroller actually resulted in a net job gain of nearly 8%.

It is also noteworthy to us that the Comptroller did not raise any areas where the ECIDA is not in full compliance with the General Municipal Law. In fact, included as Attachment A, is a summary of General Municipal Law requirements pertaining to the provision of tax abatement and how these requirements are addressed by the ECIDA.

The Comptroller conducted a performance-based audit and has made suggestions as to how IDAs could further evaluate project applicants and verify data that is submitted. We have specifically addressed the Comptroller's five suggestions below.

***Suggestion 1: The ECIDA Board should develop specific project evaluation criteria upon which to base sponsorship decisions. This would include setting standards for reasonable cost-benefit determination of projects and ways to evaluate the likelihood of a project being undertaken without IDA assistance. The criteria would also enable the Board to develop benchmarks to evaluate approved project performance.***

The ECIDA has in place detailed criteria by which we evaluate a project applicant's eligibility for benefits. Most important is our requirement that a significant capital investment be made in eligible industries with the most beneficial economic impact. This policy was developed in conjunction with, and uniformly adopted by, all IDAs in Erie County. In addition, our policies have always been more restrictive than statutory requirements. Although the Comptroller's suggestion of the use of specific criteria may appear to have some merit, such an approach also has some inherent problems:

- In our view, many of the criteria suggested by the Comptroller are fundamentally subjective (such as the quality of a company's management and its financial strength) and could not be applied consistently or impartially.
- We question the Comptroller's recommendation that each IDA should develop its own specific criteria. If this recommendation were implemented, a project that would be eligible for one IDA's benefits may not be eligible for another's. This could encourage companies to "benefit shop" within the State to find the IDA that has the right set of criteria for them. Worse, companies could get so confused by the inconsistent criteria and perceived subjectivity involved that they are lured by a competitive State with more transparent policies for tax abatement.
- The reliance upon employment growth as the primary criteria for tax abatement is particularly counter-productive in an area like Western New York and in the context of a global economy. For example, there are instances where large companies (such as General Motors) have made significant investments in productivity improvements or automated processes which have ultimately resulted in a loss of jobs in the area. However, the capital investment has positioned the company for future expansions and/or has stabilized and retained a significant portion of the company's employment base.

All of the above indicates that a company may find specific criteria both difficult to comprehend and inconsistently applied across the State and/or even within the same County. We would prefer that any changes in the criteria for the evaluation of projects be subject to legislative review and adopted within General Municipal Law, so that at least IDA's are consistently applying the same criteria across New York State. These criteria should also take into account how competing States evaluate projects so that New York State does not create even more disincentives for companies to invest in the State.

***Suggestion 2: The ECIDA Board should develop a process to verify information included on project applications submitted by businesses:***

During the application stage, the ECIDA does in fact verify some of the information included in project applications through extensive discussions with management, written correspondence and site visits. In addition, since benefits are based on capital expenditures, the ECIDA automatically verifies these costs upon the close of a project.

However, we do agree with the Office of the State Comptroller that our verification procedures are not always documented in our project files to the extent that the Comptroller would prefer. In some cases this is because projects develop over an extended period of time and/or companies may be meeting with other economic development partners prior to submitting an application for IDA benefits. In the future, however, we will endeavor to more fully document key discussions, site visits and any other verification procedures we may perform. In addition, we will consider requesting proof of initial employment levels, where feasible, at the time of application.

***Suggestion 3: ECIDA officials should consider requiring applicants moving from another area in the State to provide supporting documentation when they claim one of the exceptions provided by General Municipal Law:***

The ECIDA does obtain supporting documentation when companies claim one of the exceptions provided by General Municipal Law. ECIDA counsel reviews all applications and directs us to obtain additional documentation where necessary. Upon receipt of this documentation, our counsel also assists us in determining whether this is sufficient in order to meet the General Municipal Law requirements. Contemporaneous notes to this affect may not always have been included in our project files. In the future, we will be more diligent in this regard.

We remain concerned with requiring absolute proof of a company's possible relocation to another State. We do not want to encourage companies to explore other State incentive packages in order to meet our documentation requirements since this requirement may induce the exact behavior that we are working to avoid – i.e. movement out of New York State.

***Suggestion 4: ECIDA officials should take independent steps to verify reported employment data, such as making on-site inspections of company premises or ensuring they obtain payroll information for all the companies. The Board should consider entering into contractual agreements with benefited project owners that provide IDA officials with access to employment information.***

Prior to receiving the Comptroller's draft audit report, and at some cost to the ECIDA itself, we engaged our external auditors to begin verifying employment data included in our Annual Report. In addition, where we do not receive proof of employment from a

company, we may consider performing site-visits on a sample basis to verify employment information.

Our contractual agreements do require that benefited project owners provide IDA officials with employment data. As a result, we do require NYS 45 forms verifying employment levels from companies when we conduct our annual employment survey. However, we have been reluctant to enforce this provision for non-reporting companies, since canceling future benefits over such an issue could have serious ramifications for the company, its employees and our economy.

We would like to note that in the past we were able to obtain third-party verification of employment levels from the New York State Department of Labor, however, DOL has declined to continue to provide this information. If there is any way that the Comptroller could secure access to DOL records to verify employment data, we would welcome this opportunity.

***Suggestion 5: The ECIDA Board should require that project monitoring be performed to determine if the projects are producing benefits as intended. The Board should specify sanctions, such as recapture provisions or increased PILOT payments, for those projects that fall below performance standards.***

It should be noted, that if a company substantially reduces its operations, ECIDA benefits may be terminated on a prospective basis. However, it is not evident that any IDA has successfully utilized a recapture or claw-back action in New York State. In practice it is often extremely difficult to retroactively recapture benefits that have already been provided. In most cases, companies that are not “producing benefits as intended” either had a significant or unforeseen event impact them (for example: calamities like 9/11, or new competition from China) or the company is in poor financial condition. In these circumstances, recapturing benefits could force the company to lay off even more employees or close permanently.

In addition, if a recapture provision were to be strictly enforced, bankers who lend to such companies would be less willing to fund these projects if there was a possibility taxes would be recaptured. This would negate some of the positive impact of providing the tax incentives in the first place.

Finally, since our benefits are primarily based on capital investment, in most cases the companies do “produce benefits as intended” since the company has made the intended capital investment by either constructing, renovating or expanding a facility. In these cases, a recapture provision is not necessary.

If the Comptroller would be able to recommend a practical and enforceable mechanism for recapturing benefits, we would be happy to consider such a policy.

***In Summary:***

When other States are out-competing New York State in the attraction of business, we are very careful to ensure that our tax incentive policies do not become overly complicated, overly politicized or inconsistently applied. We do not believe that the establishment of very detailed criteria or the recapture of benefits are the best practices to achieve those objectives in the long run. We believe in encouraging company projects with new capital investment, employment and/or positive economic impact in the community.

I would be happy to discuss any of our response with you should you have any further questions.

Regards,

A handwritten signature in black ink, appearing to read "Charles E. Webb". The signature is written in a cursive, flowing style.

Charles E. Webb  
President

Attachment A

ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY  
 REQUIREMENTS FOR SALE BOND/LEASE PROGRAM  
 UNDER GML ARTICLE 18-A (THE "IDA ACT")  
 June 7, 2004

<u>Requirement</u>	<u>Resolution</u>
1. Compliance with SEQRA	1. EAF and Opinion of Counsel required with application materials. Staff and counsel review, require additional submittals as warranted, and make recommendations to ECIDA Board. ECIDA Board makes negative or positive declaration.
2. Equal Employment Opportunity (GML §858-b)	2. Statutory obligations imposed under lease agreement/installment sale agreement. Subtenants required to acknowledge obligations pursuant to Addendum to Sublease.
3. Maintenance of Books and Records/Annual Filing of Audited Financial Statements (GML §859)	3. Books and records maintained by staff. Annual financial statements filed by staff with State Comptroller, DED, Erie County, New York Commissioner of Health, New York State Senate Finance Committee, New York State Assembly Ways and Means Committee, New York State Senate Health Committee and New York State Assembly Health Committee. All project occupants required to provide ECIDA with employment information, pursuant to lease agreement/installment sale agreement provisions.
4. Public Hearing Requirements (GML §859-a)	4. Notice published in <u>Buffalo News</u> and sent by certified mail to CEO of affected tax jurisdictions. Hearings held by ECIDA staff in municipality where project is to be located. Transcript of public hearing made available to ECIDA Board members before vote on project. Notices provide for right of public to review project application; project application materials include cost benefit analysis for proposed project.
5. Procedures for Continuing Care Retirement Community (GML §859-b)	5. Only one project to date (Canterbury Woods). Procedures outlined in statute followed by staff.

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|--|---|
| 6. Anti Piracy Restrictions (GML §862(1))  | 6. Application materials reviewed by staff and counsel. Additional materials required as needed, to support required findings for exceptions to restrictions, if applicable. ECIDA Board makes final determination/findings.  |
| 7. Retail restrictions (GML §862(2))   | 7. Application materials reviewed by staff and counsel. Additional materials required as needed to support required findings for exceptions to restrictions, if applicable. Staff reviews census maps for determination as to "highly distressed area". ECIDA Board makes final determination/findings. Restrictions imposed in lease agreement/installment sale agreement and subtenants required to acknowledge restrictions in Addendum to Sublease. |
| 8. Establishment of Uniform Tax Exemption Policy (GML §874(4)).                              | 8. Policy approved by ECIDA Board after seeking input from each affected tax jurisdiction, after public hearing (with 60 days prior notice) and after submission of report to affected tax jurisdiction 60 days prior to hearing.   |
| 9. Non-Standard PILOT Arrangements (GML §874(4)(c))  | 9. Notice sent by certified mail to CEO of each affected tax jurisdiction and to all local IDAs 30 days prior to ECIDA Board meeting; any correspondence received from affected tax jurisdiction or local IDA responded to; affected tax jurisdictions and local IDAs allowed to address ECIDA Board.   |
| 10. Penalties for Delinquent PILOT Payments (GML §874(5) & (6))                              | 10. Included in all PILOT Agreements; affected tax jurisdictions given authority to enforce.  |
| 11. Annual Filing by Agency Agents and Project Operators (GML §874(8))                       | 11. Requirement included in all lease agreement/installment sale agreements with project operators.   |
| 12. Filing by Agency of Statement of Designation of Project Operators as Agent (GML §874(9)) | 12. Form filed by staff.  |

**Erie County Industrial  
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April 12, 2006

Ms. Rebecca Wilcox  
Office of the State Comptroller  
Division of Local Government Services and Economic Dev.  
State Office Bld, Room 409  
333 East Washington Street  
Syracuse, NY 13202

Dear Ms. Wilcox:

Thank you for your report on the six IDA's from across New York State. Since this "global" report includes issues that we have previously addressed in our response to our individual audit report, we have incorporated a copy of our original response as an attachment rather than repeating these comments.

While your audit report appears to be very comprehensive, we are completely surprised that the Office of the State Comptroller has overlooked, or perhaps ignored, any discussion or analysis focusing on the substantial capital investment that IDA's encourage in their respective regions. This is especially surprising since capital investment is the primary rationale for providing public incentives under the General Municipal Law (GML) that created IDAs in the first place. The concept embedded in the GML and followed by IDAs is that, by encouraging capital investment, a region improves its competitiveness and, thereby, jobs and "general prosperity" will follow. Since this is the legal requirement, our Board of Directors also reviews and approves projects on the basis of capital investment.

Since the Comptroller did not perform any analysis of capital investment created by projects we assisted, we have performed our own analysis. Using the same two years that the Comptroller audited (2000-2001) we found that projects encouraged by the Erie County IDA generated \$548 million of new capital investment in the region. This investment in new buildings and equipment is especially significant since Erie County has experienced very little capital investment over the last several decades. Since our incentives are tied to capital investment, these projects only received benefits to the extent that they generated the promised capital investment as enumerated under GML.

However, we are very proud of the fact that the projects encouraged by the Erie County IDA did meet 99.9% of their total estimated jobs and that, combined, all six IDA's met 85% of their total estimated jobs. The following table shows the individual results for the Erie County IDA using the data tables from the Comptroller's report:

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**Officers and Board of Directors** • Kevin J. Clarke, Chairman of the Board • Robert P. Fine, Secretary • Richard D'Arcy • James F. Doherty • David A. Franczyk  
• Dennis H. Gabryszak • Joel A. Giambra • Susan J. Grelid • George A. Holt, Jr. • Mark Jones • Alfred F. Luhr III • Anthony M. Masiello  
• Susan A. McCartney • Lawrence M. Medkler • Frank B. Mesah • Ronald H. Moline • Andrew J. Rudnick • Fred B. Saia • Timothy M. Wroblewski



Source:	Total Jobs Estimated	2004 Reported Jobs	Reported Jobs Over/(Short) of Projection	%age Over/(Short) of Projection
Table 2	5,800	5,567	(233)	(4.0%)
Table 3	828	1,056	228	27.5%
	6,628	6,623	(5)	(0.1%)

The percentages included in the Comptroller's report are somewhat misleading as they focus only on jobs created. In an era of jobs moving to other States, or overseas, we view a job being retained as important as a job created. In addition, the Comptroller could not have chosen a more skewed sample by analyzing projects closed only in 2000 and 2001. Obviously companies operating at that time could not have foreseen the economic downturn to hit the U.S. economy, nor the devastating impacts of 9/11 on the New York State economy. Based on these external economic events, we are not surprised that the job estimates were not fully achieved.

We do note that one specific and unique project included in the Erie County IDA's sample, should have been excluded. This project was constructed on behalf of the State of New York and was only closed by the Erie County IDA as there was a requirement in the State grant funding agreement that the Erie County IDA had to take title to the project. Since this project generated more tax revenue to the local municipalities *after* the Erie County IDA's involvement, this project and the resulting net shortfall of 96 jobs should be excluded from the Comptroller's audit report. If this project was excluded from the Comptroller's report, the revised table for the Erie County IDA would be as follows:

Source	Total Jobs Estimated	2004 Reported Jobs	Reported Jobs Over/(Short) of Projection	%age Over/(Short) of Projection
Table 2	5,557	5,420	(137)	(2.5%)
Table 3	828	1,056	228	27.5%
	6,385	6,476	91	1.4%

***In Summary:***

We are proud of the capital investment that the Erie County IDA has encouraged in the region. However, we are disappointed that the Comptroller's report fails to analyze this key component of IDA assistance. We are also disappointed that the audit report presents sometimes misleading job statistics and also has a skewed sample by including only projects closed just prior to or at the beginning of the last recession.

When other States are out-competing New York State in the attraction of business, we are very careful to ensure that our tax incentive policies do not become overly complicated, overly politicized or inconsistently applied. We would prefer, therefore, that any changes in the criteria for the evaluation of projects be subject to legislative review and adopted within General Municipal Law so that at least IDA's are consistently applying the same criteria across New York State.

I would be happy to discuss anything about our response with you should you have any further questions.

Regards,

A handwritten signature in cursive script, appearing to read "Charles Webb".

Charles E. Webb  
President

Attachment

**James J. Allen**  
Executive Director



April 14, 2006

Office of the State Comptroller  
Division of Local Government Services  
and Economic Development  
State Office Building, Room 409  
333 East Washington Street  
Syracuse, New York 13202

**RE: Draft Industrial Development Agencies' Project Approval Evaluation and Monitoring Efforts**

On behalf of the Board of Directors of the Town of Amherst Industrial Development Agency (AIDA), thank you for your time and effort in assessing the ways in which we can improve operations and providing suggestions on making these improvements in the "Draft Industrial Development Agencies' Project Approval Evaluation and Monitoring Efforts. We continue to be pleased regarding your assessment that the AIDA continues to comply with State Law governing our policy in procedures for providing incentives, and furthermore pleased to learn that you recognize areas in our policies and procedures that exceed the requirements set forth in the law.

It is our mission, to sustain, diversify and grow the tax base through investment, which creates the environment that can retain and grow jobs. As detailed in our response to the "Draft Report of Examination Letter" dated March 8, 2006, we consider this statement as the basis for the Countywide Eligibility Policy, our procedures in encouraging investment, approval by the AIDA Board of Directors and strategy by which we approach growing our economy.

The AIDA was created to implement and execute the areas of Town of Amherst's Master Plan dealing with economic development. In the years 2000 through 2004, which overlaps the audit period your office evaluated 8 projects, 68 AIDA projects totaled in excess of \$585 million representing the construction of 1,502,943 square feet of space. In addition to the effected 11,255 jobs (6,251 retained and 5,004 created), new property tax revenues totaling \$27,102,579 will be realized by the Town of Amherst, County of Erie and the Amherst, Sweet Home and Williamsville School Districts. A copy of the memorandum detailing this analysis was previously provided to you.

The economy is dynamic, as are the various markets businesses assisted operate in, which makes recapture provisions or sanctions an ineffective mechanism for measuring project performance and ignores the purpose for which IDAs were created. Even in instances where companies have had to scale back employment or square footage, these spaces provide opportunity for growth for other companies. We firmly believe that without this

type of incentive in place, companies such as GEICO, which was able to temporarily occupy space vacated by a company that required a more efficient and subsequently smaller layout, would bypass our area entirely.

Again, it should be noted however, that the AIDA provides in its payment in lieu of tax agreement with a project operator a provision that requires the property to pay the full equivalent of taxes should the property not be used in accordance with General Municipal Law Article 18-A and its lease agreement with the Agency. Also contained in the lease agreement is a list of "Events of Default". Should a project operator cause an Event of Default, the Agency may terminate the Lease Agreement and convey title back to the project operator.

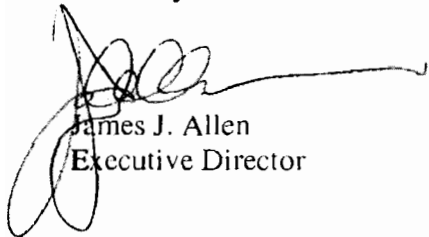
The other area you note we are deficient is in verifying project data, both at the time of application and in subsequent years. With regard to applications for assistance, all applicants are required to certify to the accuracy of the information they are providing for consideration of financial incentives. To imply that a company's information is not accurate is disingenuous and assumes that the relationship we enter into with an applicant is based on false pretenses.

On an annual basis, the AIDA surveys its projects and compiles this information received from companies into an Annual Survey & Business report. Included in this survey is employment information compiled on a company by company basis and reported in aggregate form so as not to violate or provide any proprietary information. You note that the survey forms were not available for the period studied, as those particular years of surveys were unfortunately lost during our move to our new building in the Summer of 2005. It should be noted that we have on file the surveys for the years following the audit period.

Since meeting with representatives of the OSC in early January 2006, AIDA staff has implemented one of the recommendations we are already not doing that is noted in this report, such a procedure to track sales tax exemptions on each project.

We would like to thank you again for your suggestions and recommendations and await the issuance of the final report. Once that report is issued, we will take its recommendations under advisement and consideration with the other IDAs in Erie County and the AIDA Board to determine what changes could be made to the Countywide Eligibility Policy that would improve performance and yield greater economic growth for the area.

Sincerely,



James J. Allen  
Executive Director

# SUFFOLK COUNTY INDUSTRIAL DEVELOPMENT AGENCY

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Steve Levy  
Suffolk County Executive

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April 26, 2006

Ms. Rebecca Wilcox, Principal Examiner  
Officer of the State Comptroller  
Division of Local Government Services  
and Economic Development  
State Office Building, Room 409  
333 East Washington Street  
Syracuse, NY 13202

Re: Draft Industrial Development Agencies' Project Approval, Evaluation,  
& Monitoring Efforts/2005-MS-2

Dear Ms. Wilcox:

On behalf of the Board of Directors of the Suffolk County Industrial Development Agency thank you for this opportunity to review and comment upon the Draft Global IDA Audit Report dated March, 2006. The Board is pleased that the audit found the Agency to be in complete compliance with all current regulatory and financial requirements and statutes. The Board is also very pleased that out of the 6 Agency's audited the Suffolk County IDA was the only one to have actual jobs exceed the original estimates. The Board feels that these results are an excellent indication that the Agency is performing its economic development functions in a manner that is most beneficial to the County.

The Board has implemented a number of improvements in the past and will continue to do so in the future. The recommendations by the Office of the State Comptroller will be reviewed by the Board and by staff and appropriate measures and procedures will be adopted and implemented.

In regard to the draft global report the Agency would like to make the following comments:

- In regard to audit methodology it is unfortunate that the auditors never attempted to familiarize themselves with the economic realities of Suffolk County. They reviewed project applications, project files, Agency Minutes of Meetings, Agency policies and procedures, previously filed Annual Financial Reports, sales tax reporting forms and various other documents and paperwork. They never requested or reviewed past or present demographic data about Suffolk County, unemployment statistics, workforce studies, commercial and industrial vacancy rates, public opinion polls, regional studies, housing prices and availability or any other relevant data that would provide a realistic picture and understanding of the Suffolk County economy. They never met with a business owner; or visited a project location or an industrial park; or interviewed an IDA Board Member or met with a community leader; or a local official; or any other local economic developers. The auditors formulated their entire knowledge and understanding of the Suffolk County economy in a complete vacuum. They failed to perform a "risk assessment" of the competitive position of Suffolk County and therefore failed to grasp the reality of economic development in Suffolk County.
- The Suffolk County IDA requires that projects submit a signed certification with annual job data indicating it is true and accurate. This is the same manner in which the Empire State Development Corporation (ESDC), the economic development agency for New York State, verifies job information.
- Job performance measurements in Table 1 for Suffolk County are somewhat misleading. While seven projects clearly exceeded their job projections, two others that were within 6 jobs of achieving their projections were excluded. One company had 139 jobs which was 1 short or .71% below the projected total of 140. Another company at 330 jobs was 5 jobs or 1.52% below their projection of 335. These companies were 1.26% below their projections and clearly should have been included with the seven other companies that met or exceeded their job projections. When this adjustment is made 60% of the companies assisted reached or exceeded their projected employment levels.
- In regard to speculative office projects the draft global report fails to use the revised job numbers that the Suffolk County IDA submitted with an extensive explanation to the Comptroller's Office for the 2003 Annual Financial Report. These revisions were the result of IDA staff correcting erroneous assumptions used in the economic impact analysis reports required for each project by the IDA and prepared by an outside economic consultant. These studies projected employment based upon number of

employees per square foot. After review and analysis by the IDA it was clear the consultant was basing projected employment on total gross square footage as opposed to net usable square footage. In addition, the consultant projected 100% occupancy for each building when at any given time, according to real estate experts; there is a minimum of a 5 to 10% vacancy level. Finally the draft global report further failed to adjust the job numbers in relationship to the percentage of the project that had been completed.

- In regard to sales tax estimates the auditors indicated during the Exit Conference that they felt one company had prepared the ST-340 incorrectly since it appeared the entire project cost was multiplied by the sales tax rate. The auditors did not verify it but the Agency has confirmed that the company completed the ST-340 incorrectly and grossly overstated the sales tax saved.
- In regard to the recommendations suggested by the Comptroller's Office, some, such as retention of job surveys, ST-340's & adoption of a recapture policy are already in place. The other recommendations will be carefully reviewed; considered and implemented as appropriate. In regard to employment verification and periodic monitoring it would be very helpful if the Office of the State Comptroller could provide specific procedures, forms and/or methodology that would be acceptable. This guidance will help to insure that the Comptroller's Office will have no problems with these areas in the future.

The Board of Directors of the Suffolk County Industrial Development Agency sincerely appreciates the opportunity to provide input into the audit process and the recommendations suggested by the Office of the State Comptroller. The Agency will continue to institute policies and procedures that improve both the effectiveness and accountability of the Suffolk County IDA. In that regard the Agency looks forward to working cooperatively with the Office of the State Comptroller.

Again, thank you for this opportunity to provide input into the audit process and if you need anything further, please do not hesitate to contact me.

Sincerely yours,

  
Bruce E. Ferguson  
Executive Director

BEF:dl



April 13, 2006

Office of the State Comptroller  
Statewide Unit  
State Office Bldg, Room 409  
333 E. Washington St.  
Syracuse, NY 13202

RE: IDA Project Approval Evaluation & Monitoring Efforts 2005-MS-2

To Whom It May Concern:

Thank you for the opportunity to respond to the audit findings included with your draft letter dated March 17, 2006. Previously we responded to you in our letter dated March 10, 2006 regarding the individual findings and recommendations you developed after your review of Ontario County Industrial Development Agency.

At the onset we would like to make the distinction between good economic development decision-making and documentation. While we believe that the criteria and process we use to grant benefits is fundamentally sound and has led to a stronger economic base and more high-quality jobs for the citizens of Ontario County, we recognize the audit has found areas in which documentation can be improved.

Our responses are organized according to the main categories of the Comptroller's report.

Project Evaluation and Monitoring

- **Evaluating Job Creation Performance**

We note in the audit report that a variety of criteria in addition to the number of jobs should be considered when conferring benefits. These include wage levels, increased competitiveness and productivity. We feel a more complete picture of project success could be achieved if these other factors were considered.

While reviewing the job performance of these projects at a specific date provides information at that point in time, we feel that it does not tell the whole story of the economic development effort. Job measurement, while important, is not the sole goal of economic development. Even for companies who did not make their projections thousands of additional dollars were collected by local municipalities in the form of PILOT payments. Additionally, high technology companies (several of whom are included in this table) face unique challenges developing

and commercializing new products. They can be more susceptible to adverse economic conditions.

Having said this, high technology companies remain a very important part of our local economy providing many of the innovations, products and jobs of the future. We would like to respond by presenting some specific circumstances that give a more complete picture of the challenges involved in conferring benefits.

<b>Single Unit Projects</b>	
<b>Category</b>	<b>Explanation</b>
Did not meet goals, and added jobs	One company (30 job shortfall - 5 jobs gained) had the misfortune to suffer the unexpected death of their president. The company was ultimately purchased by a locally-based parent who retained jobs in our county.
	Another company's (66 job shortfall -34 jobs gained) research contractor became involved in a protracted legal battle that resulted in a costly delay in perfecting and marketing its new product lines which ultimately affected the products' viability. The company continues R&D efforts with hopes to manufacture new products at their location.
Did not meet goals and reduced jobs	One company (93 job shortfall), a subsidiary of a Canadian parent, was shut down by the parent and a management buyout rejected. A number of small, local, high-tech spin off companies have formed after this company's closure. We hope to attract another high-tech firm to this well-equipped building.
	Another company (120 job shortfall) moved to a more appropriate building in 2004. The project, while included on the 2004 NYS Comptroller's Report was paying the full amount of real estate taxes that year. The building was reoccupied in 2005 by another technology company.
	Another company (128 job shortfall) rolled out an innovative debit card product that was unsuccessful. Several new companies now occupy the building employing 30 people.
<b>Multi-Tenant Projects</b>	
<b>Category</b>	<b>Explanation</b>
Did not meet job projections	Two projects (262 job shortfall), built by the same developer, erroneously reported construction jobs on their application. Tenant employment in both buildings has increased between 2004 and 2005.

- **Recapture Provisions for Performance Shortfall**  
Given the challenges facing companies in New York State, we feel it is an important part of our role as economic developers to work with local companies experiencing setbacks. We feel that punitive measures such as clawing back benefits only hurt an already struggling company, further jeopardizing jobs. We

acknowledge that the recapture provision is a useful tool under certain circumstances.

We will identify thresholds that we feel represent significant employment reductions and will document our discussions and make recommendations to our board regarding a suggested course of action.

Board members will be informed of the range of possible actions including invoking the recapture provision. They will be asked to vote on the suggested course of action.

Other events such as a significant management change, move or sale of the business will also trigger a documented staff and board review.

- **Monitoring Sales Tax Exemptions**  
We will continue to use our best efforts to receive the ST-340 from client companies. We already vigorously follow up with those companies that do not respond to our initial request.  
We will consider a process improvement in which we compare estimated sales tax exemptions to actual exemptions taken by a company.

#### Project Evaluation Criteria & Project Approval

- **Project Evaluation Criteria**  
We are pleased that the NYS Comptroller's staff included the following on page 20 of the draft report, "The Ontario County IDA. . .has developed and documented formal evaluation criteria. The Ontario County IDA utilizes a detailed cost-benefit analysis as its criteria when making project sponsorship decisions."
- **Verification of Application Data**  
Currently, companies requesting benefits certify the employment numbers included in their application. We felt that having a company official sign this certification in the presence of a notary gave us assurance as to the accuracy of current employment and all other information included in the application.  
We will receive and file a payroll tax form or other type of documentation with completed applications to confirm the employment numbers reported by the company. We will also revise the job retention and creation section of the application to differentiate between construction, permanent and temporary employment.
- **Verification IDA Incentives are Necessary**  
Currently we make the determination of whether or not the project requires assistance through our conversations with company officials and our board review process. During the board review the company formally presents the project to the board. Board members often ask questions about all aspects of the project. Without the board's approval the project does not move forward.  
We will include a series of questions in our application designed to document the likelihood of the project moving forward without agency assistance. For

example, questions about the location of customers, suppliers and other company facilities and the impact on the economic viability of the project without agency assistance will be considered. The candidate will continue to present their reasons for requesting assistance to the IDA Board. This will continue to be reflected in the IDA Board minutes.

- Projects that Involve Movement

We take pirating claims very seriously and have rejected projects in the past if we felt there was a possibility of jobs being pirated from one part of the state to our county. We are pleased that the auditors included the following on page 22 of the draft report, "The Ontario County IDA. . .did not sponsor a project that involved the movement of single unit businesses during our test period." As a policy we do not actively pursue companies located in New York State.

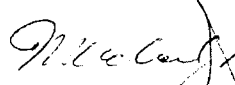
We will verify the information provided by the company through a review of the company's own website or through other means to determine that no jobs are being lost at other company locations in New York State due to contemplated assistance on our part.

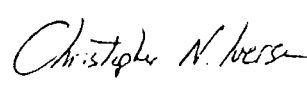
Currently, we work with the developer of multi-tenant facilities to determine the appropriateness of the new building's tenants.

We will customize the multi-tenant building application process to include information gathered directly from tenants. This information will become part of the package that the board will review. Requests will be made annually to developers to supply rent roll information.

We welcome these audit findings as an opportunity to improve an already effective program and look forward to implementing process improvements that address these recommendations.

Sincerely yours,

  
Michael J. Manikowski  
Executive Director

  
Christopher Iversen  
Chairman of the Board



## ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

ONONDAGA COUNTY CIVIC CENTER, 421 MONTGOMERY ST., SYRACUSE, N. Y. 13202  
PHONE: (315) 435-3770 • FAX: (315) 435-3669

April 17, 2006

Ms. Rebecca Wilcox  
Office of the State Comptroller  
Division of Local Government Services and Economic Dev.  
State Office Building, Room 409  
333 East Washington Street  
Syracuse, New York 13202

Re: Industrial Development Agencies' Project Approval, Evaluation and Monitoring Efforts – Draft Report Comments

Dear Ms. Wilcox:

Thank you for the opportunity to respond to the draft audit.

The compiled audit of the six Industrial Development Agencies is based on the individual IDA audits. On March 14, 2006 a response to the draft individual audit of the Onondaga County Industrial Development Agency was submitted to the OSC. At this time it cannot be determined if those comments have been recognized in the individual audit and it appears there has been no time available to consider those comments as part of the draft compiled audit that was issued on March 17, 2006.

General comments include the following:

1. Include in this response, by reference, the fourteen comments regarding the Onondaga County Industrial Development Agency individual audit contained in my letter of March 14, 2006 to Ms. Millard of the OSC.
2. The audit gives no recognition to the economic forces that affect business investment and employment patterns, especially in manufacturing, and especially in New York State. Seven of the 14 Agency projects reviewed in the audit involve manufacturing companies. Four of these the OSC faults for not meeting job projections. The OSC requirement that job projection in the private sector is a rigid goal, which is the basis of the audit, belies economic reality. This is particularly true when the economic benefits are not a factor of new employment, but investment. For manufacturing, in country after country, companies have responded to growing global competition by cutting jobs and increasing output per worker. In New York State, with its embedded cost and regulatory

disadvantages, the stage is not just global, but national and regional. Consider two components of improved productivity: more efficient facilities and equipment; and additional workforce training. Industrial Development Agency benefits are incentives for businesses to undertake the first – capital investment in facilities and equipment. The sales tax exemption, the mortgage recording tax exemption, the payment in lieu of tax agreement, and the issuance of bonds are benefits only derived from capital investment. A company receives none of these benefits unless it undertakes a capital investment and the associated risks.

3. The audit does not recognize the significance of investment activity, particularly construction of new facilities and the impact on construction labor, in areas of the state that have experienced stagnant economies.

4. The audit does not recognize that the principal portion of the economic benefits are foregone local revenue and the operation of an IDA, including its policies, are the undertaken with boards appointed by the unit of government for which the IDA was created. An IDA operation may comport with the local expectations.

5. The audit does not recognize any distinction in the graphic presentation of employment outcomes between single unit and spec projects. A spec project cannot lose jobs and the overall analysis suggests that if an IDA only engaged in spec projects, it's performance will be better than if an IDA supported projects that could experience a decline in employment.

Comments on specific sections include the following:

1. In the Scope and Objectives (page 2) one objective of the audit is to determine if IDAs design and implement systems to, among other things, recapture benefits for performance shortfall. There is no requirement in statute for such a system, there is no discussion as to the merits, or effects on investment behavior, of such a requirement. The audit presumes the purpose of a recapture policy is punitive in every case. Two more nuanced reasons for a recapture policy are that it encourages companies to consider carefully the projected future employment and, in the event of an egregious act of disinvestment or bad faith, there is a basis for recourse by the Agency.

2. In the Audit Results (page 3) the projection of jobs is characterized as a job creation goal. Beginning on page 9, the audit mixes terminology, using both "goal" and "projection". The Onondaga County IDA application does not require job goals but requests job estimates. There is a difference and if the audit is to be accurate, it should not begin with the use of the value-laden term "goal".

3. In Project Evaluation and Monitoring section (page 9), the audit refers only to jobs as a basis for evaluation when all IDA benefits are related to investment. The audit gives no attention to the projection of investment and whether or not it should be monitored.

4. The recapture provision section (page 14-15) recognizes the Onondaga County IDA recapture policy. As was described during the audit field visits, the Agency staff had significantly modified the project information collection process in the spring of 2005 to change the collection date by six months to coincide with the end of the Agency fiscal year and to provide more complete information for the OSC annual report. One reason the information from the job surveys had not yet been reviewed with the Board was the change in the collection date.

5. The Project Evaluation Criteria (page 20) only recognizes a portion of the Uniform Tax Exemption Policy as a source of guidance. The audit does not, but should, recognize the Agency's Tax-Exempt, Taxable, and Sale/leaseback policies in which three classes of projects are identified in descending order of significance, with definitions of threshold information. The audit misstates the purpose of the Tax Exemption policy, which is to define those projects that qualify for a direct PILOT agreement. The Tax-Exempt, Taxable and Sale/leaseback policies, while brief, are key qualifying criteria for a project to be considered as an Agency project.

6. In the Verification of Incentives section (page 21) it is stated that PILOT schedules could result in the net loss of future tax revenues of 27.5 percent to 70 percent. The Agency's PILOT policy is based on a payment structure that included the GML 485b exemption schedule. In those areas in Onondaga County where all tax jurisdictions participate in this program, the net loss of future tax revenues is 2.5 percent.

Governmental entities such as Industrial Development Agencies need to be audited. The draft global audit contains several recommendations that will contribute to better operational practices. However an audit should be based on understood, or acknowledged, standards of operations that are in effect during the period of time an organization is audited. That is not the case with the current audit.

Please call me at 315-435-3770 if you have any questions regarding the comments contained in this letter.

Sincerely,



Donald J. Western  
Executive Director

Cc OCIDA Members



*Business expansion, retention and attraction*

April 19, 2006

Rebecca Wilcox  
Office of State Comptroller  
Division of Local Government Services  
State Office Building, Room 409  
333 East Washington Street  
Syracuse, NY 13202

Re: IDA Audit (2005-MS-2)

Dear Ms. Wilcox:

The following are comments on the draft report of the audit referenced above:

1. A reader is likely to conclude from the job creation data on Tables 1 & 2 for the six projects evaluated in Tompkins County that the Tompkins County IDA is not successful in fulfilling its job creation mission. In fact, from 1973 to 2002, 54 projects have projected 1407 new jobs created; actual job creation was 1486. Much like a venture capitalist, the IDA "invests" in a wide-ranging portfolio of projects with the knowledge some will be successful, some will not, and some will take longer to be successful than originally predicted. Overall, the IDA's performance has been exceptional, especially considering that many of its projects involve high tech companies selling unique products to new markets.
2. On page 17, the report notes a substantial difference between estimated sales tax abatement and actual sales tax abatement on two Tompkins County projects. We expect this is because some contractors involved in the projects were confused by the State forms; they entered onto the form the value of the goods and services, not the value of the sales tax of the good and services.
3. Two of the eleven recommendations in the report call for verification of data provided by applicants. Because the most important data is employment information, it would be helpful if the Comptroller's office would encourage the State Department of Labor to provide to the IDAs the information DOL collects. This would seem to be the most efficient and reliable method to verify employment data.

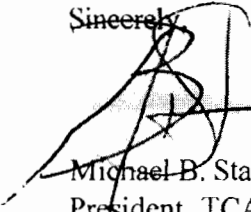
*Tompkins County Area Development*  
200 East Buffalo Street, Suite 102A  
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4. Aside from potential difficulties associated with verification, the report's eleven recommendations are reasonable.

The Tompkins County IDA is in the midst of a comprehensive review of all of its policies and procedures. This will likely be finished by the fall and will result in significant refinements. The State's Comptroller's recommendations have been an integral part of this review.

In closing, we would like to note that the Comptroller's audit staff was professional and courteous throughout the duration of the audit.

Sincerely,



Michael B. Stamm  
President, TCAD  
Administrative Director, TCIDA

MBS/