

Town of Clarence Industrial Development Agency

Project Approval and Monitoring

SEPTEMBER 2021



OFFICE OF THE NEW YORK STATE COMPTROLLER
Thomas P. DiNapoli, State Comptroller

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Report Highlights

Town of Clarence Industrial Development Agency

Audit Objective

Determine whether the Board of the Town of Clarence Industrial Development Agency (CIDA) properly approved and monitored projects.

Key Findings

The Board did not properly approve or monitor its projects.

- The Board did not verify job creation goals or other criteria while assessing material aspects of the proposed projects prior to approving them.
- The Board did not properly monitor projects to determine whether project goals were being met.
- Officials did not ensure that project approvals were transparent to the public by posting required documents on CIDA's website.
- The Board and officials did not ensure that CIDA's annual report was accurate before submitting it to State oversight agencies.

Key Recommendations

- Approve projects that include measurable goals in project agreements.
- Monitor all active projects to determine whether job creation and/or retention goals are being met.
- Post required information on CIDA's website.
- Submit accurate reports to State oversight agencies.

Although IDA officials disagreed with certain aspects of our findings, they generally agreed with our recommendations. Appendix C includes OSC's comments on issues raised in the IDA's response.

Background

CIDA is an independent public benefit corporation that was established in 1973 at the request of the Town of Clarence (Town) in Erie County.

All seven members of CIDA's Board are appointed by the Town Board. The Board is responsible for CIDA's general management and financial and operational affairs.

CIDA annually reports information for its approved projects. CIDA's 2018 annual report included active projects approved between 2003 and 2018. The Board approved six projects between June 15, 2016 and June 30, 2019.

2018 CIDA Annual Report

Quick Facts

Projects	39
Tax Exemptions	\$1.5 million
Payments in Lieu of Taxes (PILOTs)	\$975,000

Audit Period

June 15, 2016 – November 1, 2019

Project Approval and Monitoring¹

How Should IDA Projects Be Properly Approved?

Effective June 2016, industrial development agencies (IDAs) must comply with certain statutory requirements before providing financial assistance, which include the following:

Project Application and Approval – IDAs are required to develop a standard application form that must include the name and address of the applicant, a description of the proposed project, the amount and type of financial assistance requested, an estimate of the project’s capital costs, the projected number of jobs to be retained or created and a statement acknowledging that the submission of any knowingly false or misleading information may lead to termination of any financial assistance.

Also, an IDA can require applicants to submit supplemental information with their applications. This could include supporting documents and information the IDA board needs to assist it in evaluating the project. CIDA required applicants to complete its standard project application.

Cost-Benefit Analysis (CBA) – An IDA’s uniform selection criteria requires the IDA to prepare a written CBA, prior to project approval, that identifies the extent to which a project will create or retain permanent jobs, estimated value of any tax exemptions to be provided, amount of capital investment needed, likelihood of a timely project completion and extent of additional sources of revenue that the project will provide for surrounding local governments and school districts.²

IDA board members and officials should ensure they understand the chosen CBA calculation methodology and ensure it meets their IDA’s needs and purposes before the IDA board adopts the calculation methodology. The IDA board also should ensure that each CBA contains a conclusion or meaningful determination or summary of what the analysis indicates.

Uniform Project Agreements – IDAs must develop uniform project agreements that describe the terms and conditions under which financial assistance will be provided to project owners. The agreements must contain policies for suspending or discontinuing financial assistance, modifying payment in lieu of tax (PILOT) agreements to require increased payments under specified circumstances (i.e., material violations of the terms and conditions of a project agreement) and returning all or part of financial assistance approved for a project.

IDA board members and officials should ensure they understand the chosen CBA calculation methodology...

¹ Refer to Appendix A for more information about the purpose, powers and duties of industrial development agencies.

² An example of providing an additional source of revenue could involve the construction of a new hotel and conference center, which would provide new jobs for local residents and could improve tourism in the area by increasing the number of customers patronizing local business establishments.

At a minimum, agreements must describe the projects, amounts and types of financial assistance to be provided and the IDA's purpose to be achieved for the projects. Also, agreements must require project owners to indicate the full-time equivalent (FTE)³ jobs retained and created as a result of the financial assistance and indicate averages or ranges for employees' salaries and fringe benefits.

In addition, agreements must indicate PILOT payment dates and provide an estimate of the amounts payable to each affected taxing jurisdiction (ATJ),⁴ or formulas by which those amounts may be calculated. Furthermore, measurable performance goals can be incorporated into project agreements, which can assist the IDAs in fulfilling their requirement to evaluate each project's progress.

Upon approval of projects requiring more than \$100,000 of financial assistance, an IDA board must pass a resolution indicating the name and description of the project and the amount of financial assistance (tax exemptions) for which the project was approved.

Also, IDAs must complete and submit a New York State (NYS) IDA Appointment of Project Operator or Agent for Sales Tax Purposes form (ST-60 form) for each project to the NYS Department of Taxation and Finance (NYSTF). This form reports the approved amount of sales tax exemption awarded to each project to NYSTF.

Transparency – IDAs must post their standard application form, uniform selection criteria, uniform project agreement and uniform tax exemption policy (UTEP) on their website. For each approved project, IDAs must post the project's approved application form, required supplemental information, CBA and the IDA board's assessment of all material application information.

In addition, each project's approved project agreement and PILOT agreement, along with all attachments and relevant records, must be posted on the website. IDAs also must post on their website documentation of their board's annual assessment of each project's progress for all projects that receive financial assistance.

The Board Did Not Properly Approve Projects

During our audit period, the Board approved the applications of six projects totaling approximately \$13.3 million. We reviewed these projects and found they were not properly approved.

Project Application – CIDA officials did not ensure applications were filled out completely and did not retain the original application records. Consequently,

...[M]easurable performance goals can be incorporated into project agreements, which can assist the IDAs in fulfilling their requirement to evaluate each project's progress.

3 FTE is a calculation used to convert the hours worked by several part-time employees into the hours worked by full-time employees.

4 Such as local governments and school districts

officials could not provide evidence that the Board considered all necessary information before evaluating and approving CIDA projects. For example, we found that the applications for two projects totaling \$900,000 were not signed by any project officials to verify the accuracy of the information provided.

Also, none of the projects were supported by supplemental information or documentation, such as capital project plans, preproject employee headcount and payroll information. As a result, CIDA officials could not ensure that the application information was complete and reasonably reliable. Without reasonably reliable application information, the Board would not have sufficient information to determine whether a potential project would be able to achieve its goals or to properly monitor project progress.

Cost-Benefit Analysis – All six project applications that we reviewed were supported by a required CBA. However, none of the CBAs contained a conclusion or a meaningful determination or summary of what they indicated. Also, the CBAs did not indicate whether the analyses showed that each potential project would meet their stated goals during the estimated time frames.

The Board contracted with another IDA to calculate CBAs for all potential CIDA projects. Although the Board reviewed each CBA prior to approving the projects, CIDA officials did not know how the CBAs were calculated. Without this understanding, the Board could not properly assess the potential community costs and benefits of the proposed projects before approving them. Furthermore, the Board could not ensure the CBA calculation methodology for each project's business category (e.g., manufacturing or retail) was appropriate for the Town's size, population and economic development needs.

Uniform Project Agreements – The Board documented its approval for all six projects within each project's uniform project agreements. These agreements contained all statutorily required provisions.

While not statutorily required, the agreements did not identify measurable project performance goals, such as an annual percentage of progress toward attaining the FTE numbers indicated in the project application. This information could assist the Board and CIDA officials in monitoring each project. Without documented measurable project performance goals, the Board's ability to properly monitor project performance was diminished.

ST-60 Forms – The Board did not ensure that the sales tax amounts it approved for all six projects were properly and accurately stated in the ST-60 forms that were submitted to NYSTF. We compared the amount of sales tax exemptions stated on the forms to the amounts that the Board approved and found that the amounts reported to NYSTF for three projects were approximately \$16,000 more than the amounts approved by the Board.

...CIDA officials could not ensure that the application information was complete and reasonably reliable.

Furthermore, CIDA officials did not prepare and submit the ST-60 forms; a consultant the Board contracted with to bring eligible projects to the Town performed this task. However, preparing and submitting the ST-60 forms was not indicated as one of the consultant's responsibilities in his contract with CIDA. This occurred because the Board and CIDA officials did not establish policies or procedures regarding the consultant's responsibilities or monitor the consultant's work.

The consultant told us he used estimates from the project applications to complete the ST-60 forms instead of using the amounts approved by the Board. As a result, the project owners may have paid less in sales taxes for project-related purchases than the Board intended and approved.

Transparency – The Board and CIDA officials did not post on the website any documentation for approved projects, such as completed applications, CBAs, the Board's assessment of all material application information, project agreements, PILOT agreements and other supplemental information, or documentation of the Board's annual assessment of CIDA's active projects. As a result, the transparency of the project approval process and required monitoring was diminished.

The findings previously mentioned occurred primarily because CIDA's Board members did not receive periodic training to remain current with changing regulations and laws. As a result, the Board did not have comprehensive and up-to-date guidance to follow. For example, although new and updated IDA statutory requirements became effective in June 2016, CIDA's UTEP was last updated on January 1, 2010.

Consequently, the outdated UTEP indicated that CIDA could recapture financial assistance only if an application contained a false or intentionally misleading statement related to any material fact provided in a project application. Further, the UTEP did not provide comprehensive guidance regarding the following:

- A definition of material information (e.g., supplemental information) needed by the Board to adequately assess project applications and evaluate projects' financial aspects to ensure they are reasonably reliable.
- The CBA calculation methodology used, how CBAs are evaluated and the type of conclusions that the Board required in the CBAs for each project type.
- When and how previously extended tax exemption benefits would be recaptured if project application estimates are not satisfactorily achieved during or after the project's life cycle.

While Board officials were aware that new IDA legislation had been passed, they told us they did not know training was available regarding the effect that

the legislation had on IDA governance and operations. Without training, Board officials' ability to properly respond to the new IDA legislation was diminished.

How Should IDA Projects Be Properly Monitored?

Annually, IDA officials must assess each project's progress toward achieving its objectives listed in the project application. IDA officials must then submit the assessments to their boards.

Each year, IDAs also must annually report certain information for their approved projects to the NYS Authorities Budget Office (ABO) and the Office of the State Comptroller (OSC). This information includes, but is not limited to, the types of projects that were approved during the year, applicant information, granted tax exemptions, PILOT amounts and projected employment figures.

Reported information should be supported by supplemental information, such as copies of quarterly wage reports (NYS-45 form, the Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance Return) and/or annual sales and use tax exemptions claimed reports (ST-340 form) that project owners submit to State agencies as of December 31. Before an IDA submits its annual report, the IDA board and IDA officials should review the information to verify its accuracy.

According to CIDA project agreements, project owners must annually submit to CIDA duplicate copies of all statements that the projects filed with State agencies, which includes the projects' NYS-45 form and ST-340 form.

To assist the Board with its monitoring and reporting responsibilities, CIDA contracted with an accounting firm (firm) to prepare and submit the annual report to ABO and OSC. To monitor the annual progress of CIDA's active projects, the firm sent out survey questionnaires to the project owners requesting information regarding their projects' current status. The firm used the information in the completed questionnaires to compile statistical information for CIDA's annual report.⁵

Each project owner was required to have various project officials sign their completed questionnaire to certify the accuracy of the information and return the questionnaire to the firm. The project owners also were required to provide supplemental information, along with the questionnaires, as supporting documentation of their project's progress.

Using the information in the returned questionnaires and supplemental information, the firm compared the current year's statistical information to the

Before an IDA submits its annual report, the IDA board and IDA officials should review the information to verify its accuracy.

⁵ When completed by project owners, these questionnaires and the information contained in them served as the vehicle by which project owners fulfilled their project agreement requirement to report their project's progress toward the goals stated in their uniform project applications.

prior year's information and prepared CIDA's annual report. In addition, the firm assisted CIDA officials with entering the compiled annual questionnaire information into OSC's Public Authorities Reporting Information System (PARIS) online reporting system.

The Board Did Not Properly Monitor Projects

The Board and CIDA officials did not properly monitor all 39 active projects⁶ totaling \$101 million during our audit period. We reviewed the questionnaires and supplemental information for five projects totaling approximately \$10 million that the Board approved during our audit period, and we reviewed CIDA's 2018 annual PARIS report for all 39 active projects, and found discrepancies caused by insufficient and incomplete responses to the annual survey questionnaires submitted by active project owners.

Annual Questionnaire – The Board did not properly monitor the firm's activities to ensure projects were properly surveyed. The Board and CIDA officials did not retain custody of the completed questionnaire forms, did not ensure that the firm received all properly completed questionnaires and supplemental information from active projects, and were unaware of the questionnaires' annual results.

CIDA officials asked the firm to provide us with the 2018 questionnaires and supplemental information for the five projects that we reviewed. During our review of the questionnaires, we found that none of the five project owners included copies of their NYS-45 forms. However, three of the five project owners included ST-340 forms with their questionnaires, as required by their project agreements.

CIDA officials told us they were unaware that CIDA's uniform project agreement required project owners to annually submit these forms. Officials also told us they did not require the firm to follow up with project owners who did not submit required supplemental information with the completed questionnaires. Because the Board and CIDA officials did not establish policies or procedures for monitoring the firm's work, they were unable to properly oversee the firm's work.

Because the 2018 questionnaires for the five projects were not supported by required supplemental information, the project owners did not sufficiently fulfill their project agreement requirement of reporting their projects' annual progress to CIDA. Consequently, the Board did not properly monitor all CIDA projects. Without adequate supplemental information, the Board is unable to verify the accuracy of the information in the returned 2018 questionnaires.

Annual PARIS Report – Because the firm did not require adequate data from all active project owners, CIDA's 2018 annual PARIS report (annual report) was

⁶ Although there were 40 projects that were active during our audit period, one project agreement totaling \$3.4 million was approved after December 31, 2018. Therefore, it was not included in CIDA's 2018 annual PARIS report or our sample selection for this audit test.

The Board did not properly monitor the firm's activities to ensure projects were properly surveyed.

...[T]he project owners did not sufficiently fulfill their project agreement requirement of reporting their projects' annual progress to CIDA.

incomplete and insufficient. We reviewed the annual report dated December 31, 2018, which was prepared by the firm and certified (signed) by the Board Chairman, and found it was incomplete and unreliable.

To provide perspective, we compared the annual report's content to information contained in other CIDA project records, where available, and found the following discrepancies:

- Job Performance – The annual report indicated that 39 projects estimated that FTEs would total approximately 2,000 upon project completion. However, we found that actual FTEs totaled approximately 1,740, which was nearly 260 FTEs less to date. When we brought these apparent job creation and/or retention shortages to the Board Chairman's attention, the Board analyzed the reasons for these differences and determined that four companies experienced them due to economic conditions beyond the companies' control. Therefore, the IDA would not be required to recapture any financial assistance from these projects.

Although the Board Chairman certified the annual report, the Board as a whole was unaware of the job creation and/or retention shortages until we brought them to the Board Chairman's attention. This occurred because the Board did not adequately monitor CIDA's projects or require the firm to provide it with the results of the questionnaires' annual results.

- Sales Tax – The annual report indicated that only one project had claimed sales tax exemptions totaling approximately \$82,500. However, because the Board and CIDA officials did not obtain all of the ST-340 forms from the five projects we reviewed, they could not ensure that the sales tax exemption amounts reported in the annual report were accurate. This diminishes the Board's ability to properly monitor or report on its active projects.

PILOT Calculations – While ATJs should bill project owners directly for the PILOT amounts as indicated in the projects' PILOT agreements, CIDA officials are responsible for ensuring PILOT billing calculations are accurate.

The 2018 annual report indicated that 39 projects had real property tax exemptions totaling approximately \$1.5 million and PILOTs due totaling approximately \$975,000. While CIDA officials verified that project owners paid the PILOTs to the ATJs, officials did not monitor the payment amounts to ensure that PILOT billing calculations were accurate.

We reviewed the 35 PILOT agreements that were active as of December 31, 2018 and required a PILOT payment. We found that five project owners were underbilled by \$5,300. This occurred because CIDA officials did not adequately communicate with or provide appropriate guidance to the ATJs regarding how they should calculate PILOT billings. Also, CIDA officials did not review the billing calculations to ensure they were accurate. As a result, in 2018, the CIDA

staff member who prepared the Town's PILOT billings underbilled all five project owners by \$3,200 and an ATJ underbilled three of the project owners by \$2,100.

The Board and CIDA officials did not properly monitor or report on the progress of CIDA's projects because they were unaware that they were required to do so. This occurred because they did not attend or receive periodic or recent training on statutory changes. Consequently, the Board did not ensure that the IDA complied with all statutory requirements as evidenced by the numerous exceptions identified in this audit report.

What Do We Recommend?

The Board and CIDA officials should:

1. Ensure project applications are properly completed and supported with applicable supplemental information, such as capital project plans or preproject FTE job counts and payroll information.
2. Retain all completed project applications and supplemental information.
3. Understand and approve the CBA calculation methodology and ensure each CBA contains a conclusion or meaningful determination or summary of what the analysis indicates.
4. Include measurable project performance goals in project agreements.
5. Ensure the sales tax exemption amounts approved by the Board are accurately reported to NYSTF on the ST-60 forms.
6. Post required information and documents on CIDA's website.
7. Attend training regarding their IDA oversight responsibilities and continue to periodically attend training to remain current with updated statutory requirements.
8. Update the UTEP to provide comprehensive written guidance regarding:
 - A definition of material information (e.g., supplemental information) needed by the Board to adequately assess project applications and evaluate projects' financial aspects.
 - The CBA calculation methodology used, how CBAs are evaluated and the type of conclusions that the Board requires in a CBA for each project type.
 - When and how previously extended tax exemption benefits would be recaptured if project application estimates are not satisfactorily achieved during or after the project's life cycle.

...CIDA officials did not review the billing calculations to ensure they were accurate.

-
9. Properly monitor all active projects at least annually to determine whether they are meeting performance estimates and/or goals.
 10. Retain all completed questionnaires and supplemental information in CIDA's custody.
 11. Enforce the terms of the project agreements, such as requiring project owners to report their projects' annual progress to CIDA. This includes accurately completing the annual survey questionnaires and submitting their annual NYS-45 and ST-340 forms to the firm, along with other required supplemental information, with their completed questionnaires.
 12. Ensure that the supplemental information submitted with the completed questionnaires is reasonably reliable to assist the Board in its monitoring and oversight responsibilities.
 13. Ensure that the firm provides CIDA with the results of the annual survey questionnaires.
 14. Establish policies and procedures regarding the Board and CIDA officials' responsibilities for monitoring the firm's work.
 15. Review the annual PARIS report and compare its data to the results of the annual survey questionnaires to ensure it is accurate and complete before submitting it to State oversight agencies.
 16. Monitor PILOT billings to ensure they are calculated in accordance with the provisions of the PILOT agreements.
 17. Communicate with and provide appropriate guidance to the ATJs regarding how they should calculate PILOT billings.
 18. Consult with legal counsel and work with the ATJs to assess whether previous fiscal year PILOTs that were underbilled can be recovered from the project owners.

Appendix A: Purpose, Powers and Duties of an IDA

IDAs are established by special acts of the State Legislature to advance the job opportunities, economic welfare, health and general prosperity of the people of New York State. They provide financial assistance to businesses to encourage various types of economic development projects, including industrial, manufacturing, warehousing, commercial, research and recreational facilities. The powers and duties of IDAs are set forth under GML.⁷ IDAs are required to follow several statutory requirements regarding project applications.⁸

A business may apply to any IDA that has jurisdiction where the business operates, or plans to operate, for financial support for construction, expansion or renovation. If the IDA approves the business's application, the business's property and improvements become an IDA project, and the business typically becomes the project operator. This means that the IDA takes possession of the title of property owned by the business, or it enters into a lease-leaseback agreement⁹ for the property owned or leased by the business.

This arrangement provides financial assistance to the business because the property is then tax-exempt under GML,¹⁰ which means it is eligible for exemption from various taxes, including real property, mortgage recording and sales taxes for some purchases. The business also may be eligible for tax-exempt financing through the IDA.

IDAs do not impose taxes. They generally fund their operations by charging fees to businesses that receive their financial assistance. CIDA funds its operations primarily with application and project-closing fees charged to applicants seeking financial assistance.

However, IDA activities can affect taxpayers in their communities. In particular, as long as an IDA project is receiving property tax exemptions, it can reduce a local government's or school district's property tax base, which may then increase other residents' property tax bills.

In return for tax exemptions and financial assistance, many project owner occupants or operators (project owners) who receive IDA financial assistance promise to create new jobs or retain existing jobs in the community and invest in constructing new buildings or renovating existing buildings. To help offset the loss of revenues from the tax exemptions provided, the project owners agree to make PILOT payments to ATJs.

⁷ New York State General Municipal Law (GML), Section 858

⁸ GML Section 859-a

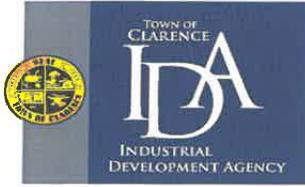
⁹ In a lease-leaseback agreement, the IDA takes possession of the project's property. With the ending of the project term, the project is leased back to the operator (project owner), its exemption from property taxes ceases and it is usually returned to the taxable portion of the real property tax roll.

¹⁰ GML, Section 874(1)

The amounts and frequency of PILOT payments are stated in uniform project agreements¹¹ established between the IDA and the businesses. The agreements themselves are governed by the IDA's UTEP.

¹¹ These agreements are also referred to as uniform project closing agreements, especially when an IDA assumes ownership of property owned by a project owner.

Appendix B: Response From IDA Officials



TOWN OF CLARENCE INDUSTRIAL DEVELOPMENT AGENCY

One Town Place, Clarence, New York 14031

(716) 741-8935

Fax (716) 741-4715

Christopher C. Kempton, Chairman

Steven B. Bengart, Asst. Secretary/Counsel
Lawrence M. Meckler, Asst. Secretary/Counsel

March 9, 2021

State of New York
Office of the State Comptroller
295 Main Street – Suite 1032
Buffalo, NY 14203

Attention: [REDACTED] Auditor Three

Dear [REDACTED]

Please accept this Response and Corrective Action Plan as the Town of Clarence, Erie County Industrial Development Agency's ("CIDA") formal response to the State of New York State Office of the State Comptroller's ("OSC") draft audit report entitled "Town of Clarence Industrial Development Agency Project Approval and Monitoring Report of Examination 2020M-97."¹

The CIDA Board of Directors has been and continues to contribute in being successful in providing a high quality of life to the residents of the Town, by promoting, developing, encouraging, and assisting in the acquiring, constructing, reconstructing, improving, maintaining, equipping, and furnishing industrial, manufacturing, warehousing, commercial, research, and recreation facilities; through incentives; and thereby advancing the job opportunities, health, general prosperity, and economic welfare of the Town residents in a cost effective and efficient manner.

While the OSC has identified a few areas that the CIDA can improve upon, the Board is pleased with the overall positive outcome of the draft audit and we look forward to working with OSC to provide the best service possible for the Clarence Community. It is our understanding that the audit was conducted by an auditor who had never conducted an audit of an Industrial Development Agency. We hope that we were able to assist in educating him in better understanding the operation of an Industrial Development Agency.

Project Application

The CIDA is pleased that OSC recognizes that we have developed and use a full and complete Project Application.

¹ Please note that the correct name, pursuant to New General Municipal Law Section 901-a, of the Agency is: The Town of Clarence, Erie County, Industrial Development Agency.

See
Note 1
Page 19

See
Note 2
Page 19

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In addition to reviewing the Application prior to Board Meetings; the CIDA Consultant presents each Project Application, along with the CBA at a monthly Board Meeting, which allows the Board to obtain a full understanding of each proposed project.

OSC's claim that the Application does not include a pre-project headcount or payroll information is incorrect. That information is clearly requested on page 7 of the Application.

See
Note 3
Page 19

There is no statutory requirement that supplemental information or documentation, such as capital project plans, be submitted with an Application. The CIDA Application is legally sufficient.

Cost-Benefit Analysis ("CBA")

The CIDA is pleased that OSC recognizes that we conduct a complete CBA that is shared with the Board Members and relevant officials prior to each proposed project being adopted.

See
Note 4
Page 19

The CIDA disagrees with your assertion that the computer program used in creating the CBA is inadequate. The CIDA uses a computer program from ██████████ which is used by many Industrial Development Agencies across New York State. This program does provide a summary of the proposed benefits, even though a summary is not statutorily required.

To save money, the CIDA does contract with another local industrial development agency to run the CBA. This cost savings measure should be applauded by the OSC and not criticized.

The CBA is explained to the Board by the Consultant before any proposed project is approved and all questions posed by Board Members are answered. The Board Members are all aware that the current rate of sales tax abatement is 8.75%, and that the current rate of mortgage tax abatement is .0075%. The real property tax abatements follow the PILOT schedules contained in the UTEP. Further, these calculations are contained in the inducement resolution, which the Board reviews, prior to approving any project. The OSC's assertion that CIDA Officials do not know how CBAs are calculated is incorrect. In fact, The CIDA's transactional counsel provided a training session to the Board to review these benefits and calculations.

See
Note 5
Page 19

Further, it is beyond the scope of a Board Member to audit and confirm the underlying assumptions of a CBA. A Board Member should ascertain its validity and prudence at time of retention. The prudent person rule applies in retaining the CBA service and the CIDA will evaluate the relationship and service on a regular basis like it does with other such vendors.

The conclusion that the CIDA does not understand a CBA is unfounded and should not be included in your final report. We trust that you will agree.

See
Note 5
Page 19

Again, there is no statutory requirement that a CBA include a summary or prohibiting a Consultant from preparing the same.

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Uniform Project Agreements

The CIDA is pleased that OSC recognizes that we have developed and use a full and complete Uniform Project Agreement. As per your own statement, CIDA uses a uniform project agreement that is in full compliance with all statutory requirements.

ST-60 Forms

ST-60 Forms are timely filed for all CIDA projects. There is no statutory requirement that an IDA Board Member file the ST-60.

See Note 6 Page 20

We note that your draft audit states that project owners *may* have paid less in sales tax; but that you offer no proof that any project owner did pay less in sales tax than was authorized by the CIDA.

Transparency

The CIDA is pleased that OSC recognizes that we have posted on our website the application form and the polices that are required to be posted.

While we do see room for improvement on our website; we disagree with some of your conclusions.

By mutual agreement of the Town of Amherst IDA, Town of Lancaster IDA, the Erie County IDA, Town of Hamburg IDA, Town of Concord IDA, and the CIDA; all of these IDAs have agreed to a Joint UTEP Agreement. All of the above IDAs agree that a Joint UTEP best serves the Western New York Community. If OSC finds the CIDA UTEP insufficient, you must make the same finding for all of the Industrial Development Agencies in Erie County.

Prior to the Co-Vid 19 Pandemic, regular meetings were held with all of these IDAs in regard to the UTEP and other matters.

Nonetheless, the joint UTEP does contain recapture provisions at Section X. Further both the PILOT Agreement and the Leaseback Agreement contain provisions regarding the termination of benefits when a Project is in default.

Annual Questionnaire

The CIDA's Accountant does attend a Board Meeting to discuss at length the annual questionnaires including their follow-up methods. It is unfounded for OSC to state that the Board is unaware of any issues with the annual questionnaires. It is further unfounded of the OSC to state that the Accountant does not follow up with delinquent project owners. Both the Accountant and the Consultant do follow up with project owners several times via written correspondence and telephone.

See Note 7 Page 20

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Annual PARIS Report

For all approved Projects, the Board is aware of those Projects that have not met employment goals, as these issues are discussed at CIDA Board Meetings and reviewed against the requirements of the Policy for Recapture and/or Termination and/or Modification of Financial Assistance.

The Project and Agent Agreement does contain definition of material information. The CIDA does have a recapture policy and said policy is included in the Project and Agent Agreement and is referenced as being read and accepted in the Project Application.

In each case, the Board decided that the failure to meet employment goals was due to circumstances beyond the control of the Applicant and that the failure was not due to any fraud or misrepresentation.

The annual report is reviewed by the Accountant at a CIDA Board Meeting.

PILOT Calculations

The CIDA disagrees with your assertion that PILOT calculations were done incorrectly. Once again, your unverified conclusions should be excluded from your final report until such time as the CIDA can audit your calculations.

See
Note 8
Page 20

The Clarence School District calculates its own PILOT amounts, mails the PILOT invoices and collects the payments. The School does report to the CIDA any PILOT invoices that are not timely paid.

See
Note 9
Page 20

The Town of Clarence Assessment Department calculated PILOT amounts, mails the PILOT invoices and collects the payments. Assessors are trained and certified to make these calculations.

The CIDA Board is made aware of any PILOT payments are not timely made so that the Board can take action as per the Project closing documents.

Corrective Action Plan

The CIDA will take active steps to implement the following actions:

1. The Application is currently being amended to request supplemental information (although this is not statutorily required) that will better inform the Board about proposed projects.
2. CIDA will review Applications more closely to ensure that all Applications are fully completed and signed by the Applicant. Prior to the Consultant submitting Applications to the Board, the same will be reviewed by CIDA counsel.

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3. At Board Meetings, the IDA Consultant will continue to explain, for each proposed project, the CBA calculation methodology. Each Board Member and official will continue to receive a copy of the CBA in advance of the Board Meeting. The CIDA will evaluate the relationship and CBA service on a regular basis like it does with other such vendors.
4. The current Project and Agent Agreement does clearly state measurable project performance goals. However, the Agreement is currently being amended to provide greater detail.
5. The Consultant will be more accurate in filing ST-60 Forms. A revised contract will be signed with the Consultant giving him express permission to file ST-60 Forms on behalf of CIDA.
6. The CIDA is currently working with its IT provider to update the CIDA website, so that all required information will be contained on the website.
7. CIDA Board Members have been provided with the information on where to obtain training. CIDA counsel will also continue their practice of updating the CIDA Board as laws change. *[Note: it would be helpful if OSC provided information on training opportunities in its draft audit report].*
8. Once the Co-Vid 19 Pandemic is over, the Joint IDA Meetings will continue, which is expected to lead to an updated Joint UTEP.
9. The CIDA Board, when it meets with its Accountants will do a more thorough job of reviewing performance estimates and goals.
10. The CIDA does retain all of its records.
11. The CIDA and its Accountants will ensure that all reporting forms and questionnaires are completed accurately.
12. The Application is in the process of being amended to request supplemental information (although supplement information is not a statutory requirement) that will better inform the Board about the Project. Further, Applicants will continue to be required to certify the application as being accurate and true.
13. The Accountant will continue to provide the CIDA with the results of the annual survey questionnaires and presents and explains the same at a Board Meeting.
14. Policies are in place that clearly state the Board's responsibilities. These policies have been reviewed with the Board Members by CIDA Counsel.
15. The PARIS Report will be more thoroughly reviewed before the Report is submitted.

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16-18. PILOT billings are calculated in accordance with the provision of the PILOT Agreements. Moving forward the Board and its Accountants will review PILOT calculations with the Affected Tax Jurisdictions.

Your headline on the draft audit report does not accurately reflect the exceptional job that the CIDA Board of Directors perform in carrying out their duties.

Thank you for this opportunity to respond to your draft audit report. We would also like to thank you for your time and for allowing us the opportunity to improve upon our effectiveness and operations for the benefit of our community.

Very truly yours,

Christopher Kempton
Chairman

Via Certified Mail-Return Receipt Requested
and [REDACTED]

CK/cmr

Appendix C: OSC Comments on the IDA's Response

We are pleased to see that CIDA officials respond in their letter to each of the 18 audit recommendations and indicate that they generally agree with the recommendations and will take corrective action. While we had numerous discussions with CIDA officials during the course of our audit, they did not mention several of the disagreements, concerns and issues addressed in their response letter during our audit fieldwork or at our exit conference, held on February 10, 2021. For example, at our exit conference held on February 10, 2021, CIDA officials in attendance indicated that they did not anticipate any substantial disagreements with our draft report and that they considered our draft audit recommendations to be reasonable.

Note 1

The audit team has a collective audit experience of approximately 50 years, which includes experience auditing IDAs.

Note 2

While we recognize CIDA's legal name is indicated in the footnote, it has been CIDA's practice to identify itself as the Town of Clarence IDA. This is documented in its response letter's header and logo and the abbreviation (CIDA) it uses in the letter. CIDA also uses "Town of Clarence IDA" and "Clarence IDA" interchangeably on its website. As a result, we used the same name for our audit report title.

Note 3

It is unclear how CIDA officials came to this conclusion or understanding. Our audit report does not make this claim. We found that none of CIDA's project applications were supported by supplemental information or documentation, such as capital project plans, preproject employee headcount and payroll information.

Note 4

It is unclear how CIDA officials came to this conclusion or understanding. Our audit report does not make this claim. We found that the Board and CIDA officials did not ensure that the CBA provided a conclusion or meaningful determination of what the detailed analyses indicated or identified the likelihood of timely project completion.

Note 5

During our fieldwork, the Board Vice-President and the consultant told us they did not understand the CBA calculation methodology. In addition, the Board Chairman, who signed CIDA's response letter, told us that he also did not understand the CBA calculation methodology and that the Board would benefit from additional training regarding the calculation methodology.

Note 6

It is unclear how CIDA officials came to this conclusion or understanding. Our audit report does not make this claim. Our audit report indicates that the Board and CIDA officials are responsible for ensuring the ST-60 forms are accurately prepared and submitted.

Note 7

The Chairman's response letter does not indicate that, during our fieldwork, we discussed these findings with him and his administrative assistant. They agreed with the findings and did not provide us with any evidence to show they were incorrect.

Note 8

The Chairman's response letter omits the fact that we discussed the PILOT calculation errors with him and he agreed with our findings. The Chairman also told us that while these billings were incorrect, he would not pursue further action because the dollar amounts, in total, were insignificant. In addition, we discussed the billing errors with CIDA's PILOT billing administrator, and she agreed with our findings.

Note 9

It is unclear how CIDA officials came to this conclusion or understanding. Our audit report discusses the PILOT billing calculation errors that we identified but does not indicate that PILOT payments were late.

Note 10

OSC collaborates with the New York State Economic Development Council (NYSEDC) to provide relevant training for economic development officials through NYSEDC's IDA Academy. CIDA officials could consider attending future training events that may be offered. Information on these events can be found on NYSEDC's website at www.nysedc.org.

Appendix D: Audit Methodology and Standards

We conducted this audit pursuant to Article X, Section 5 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law. To achieve the audit objective and obtain valid audit evidence, our audit procedures included the following:

- We interviewed the Board, CIDA officials, the consultant and representatives from the firm and reviewed CIDA's UTEP and contract with the IDA that performed their CBAs to gain an understanding of the project approval and monitoring process.
- We interviewed Board members and CIDA officials to determine whether they had any training regarding their IDA responsibilities and statutory requirements.
- We reviewed Board minutes and annual PARIS reports to identify active projects that were approved after the 2015 IDA reform legislation became effective on June 15, 2016. We identified six projects totaling approximately \$13.3 million whose project applications were approved from June 15, 2016 through June 30, 2019. We reviewed all six projects and their related records to assess whether they were properly approved. Of the six projects, we also reviewed five to determine whether they were properly monitored. The project agreement for the remaining project, totaling approximately \$3.4 million, was not approved until April 2019. As a result, this project was not reported on CIDA's 2018 annual PARIS report, which is why we excluded it from the monitoring portion of our testing.
- We reviewed CIDA's 2018 annual PARIS report, dated December 31, 2018, and compared it to available CIDA records to assess whether all 39 active projects totaling approximately \$101 million were monitored properly, were reported accurately in the annual report and included all required information.
- All 39 projects included in CIDA's 2018 annual PARIS report had a PILOT agreement and payments totaling \$975,000. We reviewed all 39 PILOT agreements and recalculated the PILOT billings. We then compared the recalculated billings to the PARIS report, and to payments made by the project owners to the ATJs, to determine whether the PILOTs were properly monitored, billed and reported.

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

Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the intent to project the results onto the entire population. Where applicable, information is presented concerning the value and/or size of the relevant population and the sample selected for examination.

The Board has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and provided to our office within 90 days, pursuant to Section 35 of 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 the CAP available for public review in the secretary's office.

Appendix E: Resources and Services

Regional Office Directory

<https://www.osc.state.ny.us/files/local-government/pdf/regional-directory.pdf>

Cost-Saving Ideas – Resources, advice and assistance on cost-saving ideas

<https://www.osc.state.ny.us/local-government/publications>

Fiscal Stress Monitoring – Resources for local government officials experiencing fiscal problems

www.osc.state.ny.us/local-government/fiscal-monitoring

Local Government Management Guides – Series of publications that include technical information and suggested practices for local government management

<https://www.osc.state.ny.us/local-government/publications>

Planning and Budgeting Guides – Resources for developing multiyear financial, capital, strategic and other plans

www.osc.state.ny.us/local-government/resources/planning-resources

Protecting Sensitive Data and Other Local Government Assets – A non-technical cybersecurity guide for local government leaders

<https://www.osc.state.ny.us/files/local-government/publications/pdf/cyber-security-guide.pdf>

Required Reporting – Information and resources for reports and forms that are filed with the Office of the State Comptroller

www.osc.state.ny.us/local-government/required-reporting

Research Reports/Publications – Reports on major policy issues facing local governments and State policy-makers

<https://www.osc.state.ny.us/local-government/publications>

Training – Resources for local government officials on in-person and online training opportunities on a wide range of topics

www.osc.state.ny.us/local-government/academy

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Division of Local Government and School Accountability
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