

Tompkins County Industrial Development Agency

Project Approval and Monitoring

DECEMBER 2021



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

Contents

- Report Highlights 1**

- Project Approval and Monitoring 2**
 - How Should a Board Approve Projects?. 2
 - The Board Appropriately Evaluated Projects Prior to Their Approval . 3
 - How Should a Board Monitor Projects? 4
 - The Board Should Improve Its Efforts to Monitor Employment Levels. 5
 - The Board Did Not Properly Monitor PILOT Agreements 6
 - What Do We Recommend? 7

- Appendix A – Response From IDA Officials 8**

- Appendix B – Audit Methodology and Standards 10**

- Appendix C – Resources and Services 13**

Report Highlights

Tompkins County Industrial Development Agency

Audit Objective

Determine whether the Tompkins County Industrial Development Agency (TCIDA) Board of Directors (Board) evaluated projects prior to approval and subsequently monitored the performance of businesses that received financial benefits.

Key Findings

While the Board evaluated projects prior to their approval, Board members should improve TCIDA's efforts to monitor businesses' job performance and tax exemptions.

- Officials did not obtain required documentation to support project owners' self-reported job performance. As a result, the Board has no assurance the reported job performance information is accurate.
- The Board did not ensure payments in lieu of taxes (PILOTs) were billed and paid in accordance with PILOT agreements. As a result, a business was underbilled \$78,600, a business was not billed for its agreed upon PILOT totaling \$18,900 and another business was overbilled \$873.

Key Recommendations

- Obtain required supporting documentation for self-reported job performance.
- Properly monitor PILOTs, and establish and implement written policies and procedures to track PILOT amounts billed and received.

IDA officials agreed with our findings and indicated they have begun to initiate corrective action.

Background

TCIDA is an independent public benefit corporation established in 1971. TCIDA's Board is composed of seven members appointed by the Tompkins County (County) Legislature and responsible for TCIDA's general management and financial and operational affairs.

Ithaca Area Economic Development, Inc. (IAED), was hired to perform administrative services defined in a memorandum of understanding.

The Board-appointed Administrative Director, who is employed by IAED, is the chief executive officer responsible for the day-to-day operations. The County Finance Director serves as the chief fiscal officer and maintains all financial records. TCIDA funds its operations primarily with application and administrative fees.

Quick Facts

Active Approved Projects	55
PILOT Amounts Owed	\$3.7 million
Application and Administration Fees Collected	\$312,100

Audit Period

January 1, 2020 – January 31, 2021

We extended our audit period to June 29, 2021 to review a closed lease-leaseback project for the mortgage recording tax exemption received.

Project Approval and Monitoring

According to its mission statement, TCIDA was established to offer economic incentives to County businesses in order to create and retain quality employment opportunities and strengthen the local tax base. TCIDA offers financial assistance to businesses – including real property, mortgage recording and sales tax exemptions – by generally taking title or entering into lease-leaseback agreements of the property owned or leased by the business. TCIDA facilitates the provision of the financial assistance because the property is tax-exempt under New York State General Municipal Law (GML). In return, many projects receiving TCIDA financial assistance promise to create new jobs or retain existing jobs in the community, invest in new buildings or in the renovation of existing buildings, and agree to make annual payments in lieu of taxes (PILOT) for affected tax jurisdictions (municipalities or school districts) to help offset the loss of revenues from the tax exemptions provided.

How Should a Board Approve Projects?

Tax exemptions provided through IDA lease-leaseback agreements often result in a significant cost to the community. As such, a board must ensure project approval decisions are based on accurate and reliable information. For new projects starting June 15, 2016, GML requires standard application forms for requests for financial assistance including business information and a statement that there is a likelihood that the project would not be undertaken without financial assistance or, if the project could be undertaken without financial assistance, a statement indicating why the project should be undertaken by the IDA. An IDA is also required to use uniform criteria for the evaluation and selection for each category of projects for which financial assistance is provided.

An IDA must prepare a written cost-benefit analysis (CBA) for each proposed project, comparing the cost of the requested assistance to the intended benefits to the community, to assist in a board's decision to approve or deny a project. A board should use the CBA's results when evaluating a project's eligibility for assistance and to ensure taxpayers receive an adequate benefit. A board is required to have uniform project agreements that include the goals associated with these promised benefits (e.g., number of jobs to be created) to help ensure expectations are clear and provide accountability if goals are not met. Furthermore, the project agreement must incorporate recapture or "claw-back" provisions. If project goals are not met, these provisions allow an IDA to recoup previously granted financial assistance or seek other penalties for non-performance, such as prohibiting a business from reapplying for financial assistance.

Additionally, a board should have a mechanism to determine whether any IDA official has a financial interest in any potential project prior to its approval. A board should adopt a code of ethics that defines potential conflicts of interest and

Tax exemptions provided through IDA lease-leaseback agreements often result in a significant cost to the community.

requires board members to complete and file financial disclosure forms so that a board's selection of projects does not create an appearance of impropriety.

A board should also establish procedures to ensure that all application and administrative fees charged to projects are properly calculated, billed and collected. Fees should be consistent with established fee schedules and independently reviewed and approved prior to billing. A board should document and approve deviations from the fee schedule.

The Board Appropriately Evaluated Projects Prior to Their Approval

Before an application is submitted, IAED staff typically meet with the applicants to discuss the scope of the proposed project and familiarize the applicant with TCIDA's process and the uniform tax exemption policy (UTEP), which outlines the application process. If businesses meet all qualifications, they submit an application. IAED staff review the application to ensure it is complete, determine the type of assistance to be provided to the project and present it to the Board. The Board reviews and adopts a resolution accepting the application. Once the Board has accepted the application, if the cost of the project is over \$100,000, a public hearing will be scheduled and the public will be notified. The Administrative Director prepares a CBA, which is presented to the Board and at the public hearing. The public hearing is held, giving an opportunity for the public to make comments, and the minutes are presented to the Board for final approval of the project. The Board determines whether the project, in consideration of the financial assistance to be provided, is in the community's best interest before approving. If the Board approves, the project's closing documents, including the PILOT agreement, are drafted.

We reviewed nine out of 30 projects¹ approved after June 15, 2016 and found for each project that the standard application, uniform evaluation criteria and uniform project agreement (when closed out) were used. We also verified the accuracy of the CBAs from the project application's information. Additionally, the uniform project agreements included clear expectations and claw-back provisions. Furthermore, all required public notices for these projects, where applicable, were published at least 10 days prior to when the public hearings were held, and the Board passed resolutions with final approval on all of the projects tested.

Additionally, the Board adopted a code of ethics that requires Board members to file financial disclosure forms each year. We reviewed these disclosure forms against project applications and did not find any conflicts of interests listed. We

...[T]he uniform project agreements included clear expectations and claw-back provisions.

¹ Refer to Appendix B for more information on our audit sample selection.

also saw evidence in the minutes where Board members recused themselves from discussions about certain projects where there could be the appearance of a conflict of interest.

The Board adopted application and administrative fees including a \$1,000 non-refundable fee for all applications submitted, and administrative fees amounting to 1 percent of the total project cost. We reviewed all eight project applications that were submitted during our audit period and found that all application fees, except one, which was properly waived, were received, recorded and deposited. We also reviewed the two projects that had lease-leaseback closings during our audit period. In a lease-leaseback agreement, the IDA takes possession of the project's property. With the ending of the project term, its exemption from property taxes ceases and it is usually returned to the tax roll. Besides minor discrepancies discussed with the Administrative Director, we determined the proper administrative fees were received, recorded and deposited.

How Should a Board Monitor Projects?

A board is responsible for establishing a process to monitor and evaluate the performance of businesses receiving financial assistance to determine whether they are meeting the goals established in their project applications, such as creating and retaining jobs, staying within sales and use and mortgage recording tax exemptions, and making payments in accordance with their PILOT agreements. A board should clearly define expectations and have written policies and procedures to hold businesses accountable if expectations are not met. A board must, at least annually, assess the progress of each project that continues to receive financial assistance, toward achieving job retention or creation, or other objectives of the project indicated in the application. To that end, a board should obtain annual performance information from businesses, such as employment levels, and verify that information for projects with job creation or retention goals. The board should determine whether project goals were met and the community is receiving the intended benefits.

Additionally, for projects that receive sales and use tax or mortgage recording tax exemptions, a board should track the exemptions taken to ensure that businesses do not exceed the approved amounts. Furthermore, PILOT agreements should be monitored to ensure payments comply with the agreements and are made on time. Additionally, a board should determine whether to exercise agreed-upon recapture provisions if there are material violations of the terms and conditions of project agreements, such as material shortfalls in job creation or retention projections or delinquent PILOT agreements.

A board should clearly define expectations and have written policies and procedures to hold businesses accountable if expectations are not met.

The Board Should Improve Its Efforts to Monitor Employment Levels

TCIDA procedures require project owners to annually submit project reports to IAED staff that include supporting documentation, such as their quarterly New York State Combined Withholding, Wage Reporting and Unemployment Insurance Return (NYS-45), which indicates the number of employees, and annual forms indicating the amount of sales tax exemptions taken (ST-340). IAED staff keep a sales tax exemption tracking spreadsheet of all projects under construction to help ensure that businesses are staying within the amount approved by the Board. Mortgage recording tax is abated during the closing and the Administrative Director stated that this is monitored at this time. The Board adopted a written project recapture policy that details TCIDA's right to suspend, discontinue or recapture any financial assistance granted for a project. The Administrative Director prepares an annual report using the project reports and the sales tax exemption tracking spreadsheet and presents it to the Board with recommendations as to whether to recapture or terminate the financial assistance. Ultimately, it is up to the Board to make this decision.

Jobs – We reviewed three projects² that had job retention and creation goals and found two projects reported they met their goals during 2020, while the other project did not. This project was approved in 2019. The project had 55 employees when applying for assistance and projected the creation of 12 new jobs. However, it reported employing 53 employees at the end of 2020, which was a loss of two jobs. Additionally, none of the three project owners submitted the NYS-45 forms with their annual project reports; therefore, the Board cannot be sure that the information provided was accurate.

We also reviewed the 2020 annual project report provided to the Board and found there were 27 projects that had job creation or retention goals, and 11 of them were not meeting their goals. These 11 projects had 1,377 employees when applying for financial assistance and projected the creation of 146 jobs. However, at the end of 2020, the projects reported employing 1,009 employees, which was a loss of 368 jobs. Due to the COVID-19 pandemic, the Administrative Director recommended that the Board not recapture or terminate any of the financial assistance to these projects. She informed us that the Board would be looking at this more closely in the following years if the trends continue.

Sales Tax – We reviewed three projects that were approved to take sales tax exemptions during 2019 and 2020 and found that all had stayed within their sales tax exemption limit with the proper ST-340 forms on file.

² Refer to Appendix B for more information on our audit sample selection.

Mortgage Recording Tax – We reviewed four projects that were approved during 2020 that received the mortgage recording tax exemption. However, only one of these projects had a lease-leaseback closing, and we found that the business received the allowable mortgage recording tax exemption.

The Board Did Not Properly Monitor PILOT Agreements

TCIDA had 39 projects with active PILOT agreements during our audit period. The Board did not provide adequate oversight for these agreements. Neither the Board nor IAED staff tracked the PILOTs to ensure they were billed and paid in accordance with the PILOT agreements. The Administrative Director stated that the County is responsible for the PILOT billings. However, the Board, as a party to the PILOT agreements, is responsible for overseeing the billing process. Instead, nine taxing jurisdictions prepared their own PILOT bills and the County Treasury Manager prepared PILOT bills for four other affected taxing jurisdictions. The County Treasury Manager also provided eight of these taxing jurisdictions with the assessed values to be used to bill for their portion of the PILOT agreements. The Administrative Director stated that IAED staff review the County Treasury Manager's spreadsheet showing the calculated assessed values and billing amounts. However, there is no follow up to ensure the amount billed is accurate or collected.

Because of this lack of oversight, we calculated the PILOT amounts the 13 taxing jurisdictions should have billed 27 businesses totaling \$3.7 million in 2020. We then compared our results with the amounts the taxing jurisdictions reported as billed and found 10 taxing jurisdictions generally properly billed PILOTs. However, three taxing jurisdictions underbilled one business by almost \$78,600 and overbilled one business by \$873, all due to the wrong assessed values being used to calculate the bills. Additionally, one taxing jurisdiction did not send a bill at all to one business for its PILOT totaling over \$18,900. We informed all affected taxing jurisdictions and TCIDA officials of these errors. The Administrative Director told us she would follow up on them.

Because the Board is not monitoring and tracking the PILOTs, billing errors occurred and may continue to occur, and taxing jurisdictions did not receive all amounts to which they were entitled. Furthermore, the Board is not able to make informed decisions as to whether it should recapture financial benefits provided to those businesses delinquent with their payments.

What Do We Recommend?

The Board should:

1. Follow its procedures and require businesses to submit NYS-45 forms with their project reports to verify the employment information reported.
2. Properly monitor PILOTs and establish and implement written policies and procedures to track PILOT amounts billed and received to ensure that PILOT bills are accurately prepared and PILOT amounts are being received in a timely manner.
3. Work with the affected taxing jurisdictions to address the billing errors and recover funds from or refund the businesses that were either overbilled, underbilled or not billed.

Appendix A: Response From IDA Officials

Tompkins County Industrial Development Agency

Administration provided by Ithaca Area Economic Development

November 22, 2021

Ann Singer, Chief Examiner
Office of the State Comptroller
Binghamton Regional Office
44 Hawley Street, Suite 1702
Binghamton, NY 13901-4417

Re: Response to draft audit of the Tompkins County Industrial Development Agency and corrective action plan

Dear Ms. Singer:

The Tompkins County Industrial Development Agency (TCIDA) appreciates the opportunity to submit this response and corrective action plan regarding the draft audit report. The TCIDA board and staff take great pride in the work of the TCIDA to support economic growth in our community. The draft audit recognizes the exemplary oversight and management of the organization. We are grateful for the efforts of the Office of the State Comptroller to assist in strengthening the board's approval, evaluations and monitoring processes.

Finding #1: Officials did not obtain required documentation to support project owners self-reported job performance. As a result, the Board has no assurance the reported job performance information is accurate.

Recommendation: Obtain required supporting documentation for self-reported job performance.

Response Corrective Action:

The TCIDA relies on written statements certified by applicants in their annual project reports. This is similar to the certified statements required by State Development for its economic development projects and the State's Department of Labor for its NYS-45 submissions. The TCIDA believes this does provide assurances that job reporting information is accurate.

The TCIDA voluntarily implemented a further assurance (in addition to the certified written statement) by requiring NYS-45 as backup information in 2019 (the project reporting year you reviewed). Of the 55 active projects, we did not receive the backup documentation for just three projects. Staff will track compliance and report to the TCIDA board.

Finding #2: The Board did not ensure payments in lieu of taxes (PILOTs) were billed and paid in accordance with PILOT agreements. As a result, a business was underbilled \$78,600, a business was not billed for its agreed upon PILOT totaling \$18,900 and another business was overbilled \$873. Recommendation: Properly monitor PILOTs and establish and implement written policies and procedures to track PILOT amounts billed and received.

Response Corrective Action:

We note that the majority of the PILOT payments were appropriately billed and 97.6% of funds the \$3.7 million in payments were collected. Of course, we aim for 100% accuracy. The Tompkins County Department of Finance coordinates billing on our behalf with oversight from Ithaca Area Economic Development (IAED). In 2016 a PILOT checking system was put in place whereby the County provides a spreadsheet of their calculations and actual payments received. IAED then reviews the data and ensures accuracy. There has since been staff turnover in the Finance Department and as a result, the actual payments received were not reconciled. As soon as we were alerted to the discrepancies a meeting was held with County Assessment and County Finance and IAED to review the process and discuss better coordination and implementation of this important check and balance.

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Improvements to the annual correspondence with those taxing jurisdictions was modified to include the tax year that should be used in calculating amount owed under the PILOT (when the calculations are sent by County Finance some of those municipalities have not yet established their tax rate, so there was some confusion on their part about what tax rates to use).

Taxing jurisdictions were also alerted to the over- and under- billings and asked to correct their mistakes. A follow up is planned to ensure corrective action.

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

Sincerely,

Rich John, Chair

cc: Tompkins County Industrial Development Agency Board
Leslyn McBean-Clairborne, Chair, Tompkins County Legislature
Lisa Holmes, Interim Tompkins County Administrator
Rick Snyder, Tompkins County Director of Finance
Russ Gaenzle, Esq., Harris Beach, PLLC
Ryan Silva, Executive Director, NYSEDC

Appendix B: 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 Administrative Director and the County Finance Director, and reviewed the Board meeting minutes to gain an understanding of TCIDA's operations and procedures regarding the approval and monitoring of projects.
- We reviewed the memorandum of understanding between TCIDA and IAED for 2020 and 2021 to determine whether it covers the necessary duties required.
- We used our professional judgment to select nine of the 30 projects approved on or after June 15, 2016 by selecting every third project on the active project listing. We reviewed these nine projects to determine whether:
 - A standard application was completed and met the requirements of GML before it was submitted to the Board for acceptance.
 - The Board used the uniform project evaluation criteria to assess projects before approval.
 - An accurate cost-benefit analysis was prepared and met GML requirements.
 - Public hearings were being held for projects totaling over \$100,000 prior to approval, and meeting notices were being advertised 10 days prior to the meetings.
 - Projects were approved by the Board via a resolution.
 - Projects had uniform project and PILOT agreements, when applicable, that met GML requirements.
- We reviewed the meeting minutes from January 2020 through January 2021 and selected all eight project applications submitted to the Board. We reviewed these applications to determine whether TCIDA received, deposited and recorded all application fees owed or whether the Board properly waived the fee.
- We selected all seven projects approved in 2020 from the active project list. Only two of these projects had their lease-leaseback closing, so we determined what administrative fee should have been received. We determined whether TCIDA collected, deposited and recorded all the fees owed.
- We reviewed disclosure forms for all Board members and the Administrative Director for any conflicts with the approved projects.

-
- We reviewed Board meeting minutes and the Administrative Director's annual report, which included the 2020 project report chart, to determine whether the Board was reviewing projects annually and deciding on recapture provisions for those not meeting performance requirements.
 - We selected seven projects out of the 22 projects approved on or after June 15, 2016, but before 2020 and 2021, from the active project listing by selecting every third project. We reviewed all seven project application agreements and found three projects had job retention or creation goals. We reviewed all three projects to determine whether the 2020 employment and financial assistance certification was submitted to TCIDA with the NYS-45 forms. We also assessed whether these projects were meeting the goals approved by the Board.
 - We reviewed the applications and cost-benefit memos of all projects approved in 2019 and 2020 to determine which requested sales tax exemptions. Out of those 12 projects, we selected every third one to select four projects. We compared the total sales tax exemptions approved to the sales tax already used per the sales tax exemption tracking spreadsheet. We traced the 2020 exemptions used to the ST-340 forms to determine whether the businesses stayed within the approved amounts.
 - We reviewed all applications and cost-benefit memos of all projects approved in 2020 and selected all four which requested mortgage recording tax exemptions. We found only one project had a lease-leaseback closing on June 29, 2021. We reviewed this project to determine whether the total mortgage recording tax exemption approved was the amount the business received.
 - We reviewed all 39 PILOT agreements and calculated the PILOT amounts owed to all taxing jurisdictions for 2020 totaling \$3.7 million. We compared these calculated amounts to what was billed by the taxing jurisdictions to determine whether they were accurately billing the businesses. We also reviewed the taxing jurisdictions' records to determine whether payments were received in a timely manner and recorded properly.
 - We selected all 13 PILOTs received by the County for 11 other taxing jurisdictions totaling \$685,300 and reviewed the canceled check images and bank statements to determine whether these payments were disbursed to the proper taxing jurisdiction within 30 days of receipt and recorded properly.

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 C: Resources and Services

Regional Office Directory

www.osc.state.ny.us/files/local-government/pdf/regional-directory.pdf

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

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

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

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

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Contact

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