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September 2017

Frank S. Venezia, Chairman
Board of Directors
Town of Bethlehem Industrial Development Agency
445 Delaware Avenue
Delmar, New York 12054

Report S9-15-71:

Dear Chairman Venezia and Members of the Board of Directors:

A top priority of the Office of the State Comptroller is to help local officials manage their resources efficiently and effectively and, by so doing, provide accountability for public dollars spent to support government operations. The Comptroller oversees the fiscal affairs of local governments and certain other public entities statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and governance. Audits can also identify strategies to reduce costs and to strengthen controls intended to safeguard assets.

In accordance with these goals, we conducted an audit of six Industrial Development Agencies (IDAs) throughout New York State. The objective of our audit was to determine whether the IDA Board of Directors provides effective oversight of the IDA's projects. We included the Town of Bethlehem IDA (Agency) in this audit. Within the scope of this audit, we examined the Agency policies and procedures and reviewed records and project files for the audit period January 1, 2014 through May 31, 2015. For selected projects, we expanded the audit period back to April 26, 2001. This audit was conducted 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.

This draft report of examination letter contains our findings and recommendations specific to the Agency. We discussed the findings and recommendations with Agency officials and considered their comments, which appear in Appendix B, in preparing this report. Agency officials generally agreed with our recommendations and indicated they plan to initiate corrective action. At the completion of our audit of the six IDAs, we prepared a global report that summarizes the significant issues we identified at the IDAs audited.

Summary of Findings

We found that, while the Board of Directors (Board) generally provides effective oversight of the Agency's operations, some improvements could be made. The Board uses a standard project application¹ that currently complies with legislation that became effective in June 2016 and has developed project selection criteria. However, the criteria is not specific to each type of project (for example, manufacturing, warehousing, distribution, etc.).

The Board adopted a project monitoring policy and procedure to help the Agency monitor approved projects and ensure that project goals are met.² As of May 2015, project owners are required to annually submit a New York State-45 form. The Agency uses the form to confirm the project owner's job figures.³

While the Board adopted a Uniform Tax Exemption Policy (UTEP) – which includes provisions for the recapture or “claw-back” of financial assistance when project goals are not met – and has enforced these provisions, at the time of our audit, no official threshold was set for when to recapture financial assistance. The decision to recapture assistance is done on a case-by-case basis.

We also found the Board has not developed adequate policies and procedures to report reliable project information from project owners. As a result, statutory information the Agency must provide in an annual report to the Authorities Budget Office and the Office of the State Comptroller is not always accurate.

Background and Methodology

An IDA is an independent public benefit corporation whose purpose is to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation and certain other facilities. The overall goal of an IDA is to advance the job opportunities, health, general prosperity and economic welfare of the people of the State.

IDAs are authorized to provide financial assistance for certain types of projects. Financial assistance includes the issuance of bonds by the IDA to finance construction of a project and straight-lease transactions. Since the property and activities of IDAs are tax exempt, the IDA may pass the benefits of certain tax exemptions (e.g., real property, sales and mortgage recording taxes) to the private entities that undertake the projects. The loss of revenue associated with these tax exemptions can be offset with an agreement for payments in lieu of taxes (PILOTs), under which the private entity agrees to pay all or a portion of the taxes that would otherwise have been imposed had the project not been an IDA project. The role of the IDA is not just to act as the conduit for financial assistance, but also to monitor the success, progress and cost-benefit of projects, including whether projects are honoring their commitments and agreements.

¹ The Board used a standard application throughout our audit period and recently updated its application in October 2015, which contains all of the new legislation's requirements.

² The policy was officially adopted by the Board in May 2015. However, we saw that requirements for the verification of retained employment began in 2014.

³ Beginning with the annual employment reports from project owners for the year 2015.

In June 2016, new legislation became effective to increase the accountability and improve the efficiency and transparency of IDA operations.⁴ For new projects, the law requires standard application forms for requests for financial assistance, uniform criteria for the evaluation and selection for each category of projects for which financial assistance is provided, uniform project agreements, annual assessments on project progress including job creation and retention, as well as policies to recapture, discontinue or modify financial assistance or tax exemptions.

The Agency, created in 1973, is governed by the Board composed of seven members who are appointed by the Town of Bethlehem Board. The Board is responsible for the general management and control of the Agency. A Board member's role and responsibilities include executing direct oversight of the Agency's officers; understanding, reviewing and monitoring financial controls and operating decisions; adopting organizational policies; and performing their duties "in good faith and with the degree of diligence, care and skill which an ordinary prudent person in a like position would use under similar circumstances."⁵ An Executive Director and a Chief Financial Officer (CFO) (officers) manage the Agency's day-to-day operations.

For calendar year 2014, the Agency's annual report included 16 active projects including three active bonds and 13 active PILOT agreements. The Agency had approximately \$159,000 in expenditures in 2014, funded primarily with fees charged for processing project applications and for administering benefits granted to approved projects.

To complete our objective, we interviewed Board members and Agency officials and examined Agency records and project files for the period January 1, 2014 through May 31, 2015. For selected projects, we expanded the audit period back to April 26, 2001.

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit are included in Appendix C of this report. 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.

Project Approval

The Board is responsible for reviewing the merits of each project and then making project approval or denial decisions. Because tax benefits granted by the Board to approved projects result in a cost to the community, it is important for the Board to evaluate the merit of each project and the benefits the community should realize from the Agency's investment. Promoting the use of a standard application when project owners request financial assistance from the Agency can help ensure consistency in the evaluation of projects. Although not required at the time of our audit, the Board should adopt uniform criteria for the evaluation and selection of each category of projects (e.g., manufacturing, warehousing and distribution) for which financial assistance would be provided. Such practices should also include documenting the rationale for approving financial assistance and verifying information provided in the application.

⁴ Chapter 563 of the Laws of 2015.

⁵ New York State Public Authorities Law, Section 2824

As a matter of good business practice, a standard application should include, among other things:

- A description of the proposed project, including the amount and type of financial assistance requested and an estimate of the capital costs of the project;
- The number of and estimates of salary and fringe benefits for full-time equivalent jobs that would be retained or created if the financial assistance is provided and the projected timeframes for creation of new jobs;
- A statement acknowledging the submission of any knowingly false or misleading information may lead to immediate termination of any financial assistance and reimbursement of an amount equal to all or part of any tax exemptions claimed as a result of the project;
- A statement that the information is true under penalty of perjury;
- A statement that Agency assistance is necessary to undertake the project; and
- A statement that the project owner is in substantial compliance with all laws, rules and regulations.

Good business practices also promote that an IDA's uniform evaluation criteria should, at a minimum, require that prior to approval of any financial assistance, the IDA should verify and evaluate all material information provided with the application. It should also undertake a written cost-benefit analysis that identifies the extent to which a project will create or retain permanent, private sector investment generated or likely to be generated by the proposed project, the likelihood of accomplishing the proposed project in a timely manner, and the extent to which the proposed project will provide additional revenue for municipalities and school districts.

Although the Board used a standard project application during the audit period, the application did not include all of the components detailed above. However, the Board revised its standard application in October 2015. The revised standard application contains all components required in the new legislation.

While we also found the Board historically did not require information such as job creation and retention estimates to be verified or confirmed before the Board voted on awarding financial assistance to the application, in May 2015 the Board adopted a policy that requires project owners to support salary and employment levels during the application process. In addition, we found Board members used their collective knowledge to evaluate the applicant's cost estimates and job creation goals.

We judgmentally selected a sample of five projects totaling \$428.2 million to review the project selection process (Figure 1). Four projects have received approximately \$1.7 million in property tax abatements and will receive about \$3.5 million in property tax abatements in the future. Officials were unable to determine the property tax abatements one project received and will receive in the future because the tax abatements are based on a consumption rate. The Agency does not have sufficient information to calculate the abatements.

Figure 1: Summary of Five Projects Reviewed		
Project Approval Date	Description	Project Cost
PSEG Power NY, Inc. 4/26/2001	Acquisition and construction of an 82,000 square foot turbine building and a 17,500 square foot plant services building.	\$400,000,000
Selkirk Ventures, LLC 3/22/2002	Acquisition and renovation of a 350,000 square foot building into a distribution warehouse and office facility.	\$7,510,000
SRS Bethlehem, LLC 12/30/2011	Construction of a 65,000 square foot building retail grocery store.	\$12,300,000
Finke Enterprises, LLC 3/20/2013	Construction of a 56,000 square foot office, showroom and operating training center.	\$7,171,200
35 Hamilton of Glenmont 3/20/2011	Construction of a 20,000 square foot multi-tenant office and warehouse.	\$1,200,000

Agency officials could not provide criteria that was used to evaluate the five projects, and the Board did not document how it arrived at its decisions to approve these projects. Board minutes reflected only that the projects were approved to receive assistance, the jobs to be created and retained as a result of the projects, and claw-back terms, if applicable.

The Board adopted uniform evaluation criteria in 2014 and used it for all project applications. This adopted criteria is not specific to each project type (for example, manufacturing, warehousing, distribution, etc.). While uniform evaluation criteria was not required during our audit period, it is required under the new legislation for all new projects and each project type.

Project Monitoring

A significant Board responsibility is to monitor and evaluate the performance of projects receiving financial assistance to determine whether they are meeting the goals included in their applications, such as the number of jobs to be created. The Board should evaluate each project's performance to ensure the project fulfills the commitments made to the residents in exchange for the financial assistance awarded. Although not required at the time of our audit, a uniform project agreement between the IDA and the project owners receiving financial assistance should be in place and used to monitor and evaluate projects' performance. In addition, Agency officials should also use each project's required annual status report to assist in monitoring project performance. Without effective monitoring, the community may not receive the expected benefits from the financial assistance provided.

The Board uses a uniform project agreement, including a UTEP, and in May 2015, adopted a monitoring policy. The monitoring policy is used to ensure projects are receiving only incentives they are entitled to (PILOT abatements and Sales and Use Tax Exemptions) and monitoring employment levels including requiring New York State-45 tax forms to confirm existing jobs. Additionally, the Agency tracks project goals compared to current employment levels on an annual

basis for recapture consideration. Reports have been prepared and presented to the Board since 2012.

Project Agreements – To properly monitor projects, IDAs should adopt and use uniform project agreements. Although not required at the time of our audit, a uniform project agreement should, at a minimum, include:

- The Agency purpose to be achieved by the project;
- A description of the project and the financial assistance to be provided;
- A requirement for an annual certification by the project owner, occupant or operator of full-time equivalent jobs created and retained as a result of the financial assistance;
- The dates when PILOT payments are to be made and estimates of the amounts or formulas by which these amounts are calculated;
- A provision for the suspension or discontinuance of financial assistance, or for the modification of any PILOT agreement to require increased payments, for certain defined performance shortfalls;
- A provision for the return of all or a part of the financial assistance provided for in accordance with Agency policy; and
- A provision that the business certify, under penalty of perjury, that it is in substantial compliance with all laws, rules and regulations.

The Agency's project agreement contains most of the best practice components. However, for our sample of five projects, we found the project agreements were missing components that could help the Agency more effectively monitor the projects. For example, the agreements do not require updated information if job salaries or benefits change, and they do not state under penalty of perjury that the project owner is compliant with all laws and regulations.

Job Performance – During the audit period, the Board did not require project owners to provide documentation to support the number of jobs or salaries associated with the jobs they purportedly created or retained. While this documentation was not required during our audit, it would provide Agency officials with information to assess whether each project's stated goals are being met. The Board and Agency officials relied on the project owner's integrity to ensure the number of jobs created and retained were accurately reported. As a result, the Agency did not know whether promised jobs were actually created or retained or whether the employees were paid at rates stated in the project application. However, as of May 2015, under the monitoring policy, project owners are required to submit New York State-45 tax forms to support the project owner's annual employment figures.

The Board also adopted a UTEP which includes provisions for the recapture or claw-back of financial assistance when project goals are not met. However, the Board had not established UTEP implementation procedures or clearly defined when financial assistance should be recovered or

terminated. The decision to claw-back financial assistance was at the Agency’s discretion. As of January 22, 2016, the Board revised its UTEP to include specific thresholds for when to recapture financial assistance and procedures for implementing such a recapture. We found the Board has recaptured financial assistance. For example, the Selkirk Ventures, LLC project had \$85,580 in financial assistance recaptured and disbursed to the taxing jurisdictions in 2006 when the project tenant became bankrupt and vacated the premises.

We reviewed 16 approved projects to determine whether they created and retained the number of jobs specified in their project agreements. We found 10 project owners agreed to create and/or retain 263 jobs and they reported they created and retained 322.5 jobs. However, the remaining six project owners reported they did not (Figure 2). For example, these projects should have created and retained a total of 363 jobs. The 2014 annual reports for the projects indicate that 312 jobs were created or retained, a shortfall of only 51 (14 percent).

Figure 2: Projects Falling Short of Job Creation and Retention Goals			
Project Approval Date	Job Creation and Retention Figures		Variance
	Project Agreement	2014 Annual Report	
35 Hamilton of Glenmont (3/20/2011)	10	1	(9)
Albany Enterprises, LLC (3/23/2012)	10	9	(1)
American Housing Foundation (6/28/1999)	4	2.5	(1.5)
Columbia 5 Vista, LLC (8/20/2013)	25	24	(1)
Columbia 14 Vista Blvd, LLC (5/16/2012)	14	13	(1)
SRS Bethlehem, LLC (12/30/2011)	300	262.5	(37.5)
Totals	363	312	(51)

Annual Reporting

IDAs are required to maintain specific information on all projects for which they approve financial assistance. While the project owner is responsible for providing project information to the IDA, the IDA is responsible for collecting and reporting the data. IDAs use this information to submit an annual report of its operations and financial activity, including information on projects which receive financial assistance, to the Authorities Budget Office and the Office of the State Comptroller. Before the Agency submits its annual report, the Board should review the information for accuracy. The Agency’s chief financial officer (CFO) must then certify that it is complete and accurate. Good business practices would require the Board to establish policies and procedures for obtaining and reporting reliable project information.

To develop the annual report, the Agency sends a letter to each project owner requesting updated project information, including current employment numbers. To determine whether the Agency correctly reported project information, we compared the 2014 annual report, which included 16

projects, to project documentation maintained by Agency officials. We found five projects had erroneous project information:

- One project was assigned to a new owner, but the Agency did not report the new owner in the annual report. The Selkirk Ventures, LLC project was assigned in July 2014 to ARCP ID Feura Bush NY, LLC, but the annual report still showed Selkirk Ventures, LLC as the project owner.
- Three projects had incorrect job creation and retention numbers. For example, the Agency has consistently reported that the Finke Enterprises project should retain 36 jobs and create 10 jobs. However, the application states the project will retain 35 jobs and create five jobs.
- One project was erroneously reported as active. However, the project ended in 2013 and should have been removed from the report.

The CFO is responsible for collecting and tracking the project information received from project owners and certifying the annual report. While the Board reviews the report prior to the CFO certifying it, the Board's review did not identify the erroneous information. We believe the errors were caused, in part, because the Board has not established adequate policies and procedures to report reliable project information. The Agency was also unaware of the requirement to enter a new project on the annual report when project ownership changes. The implementation of adequate policies and procedures may have identified these errors and helped ensure accurate project information was publicly reported.

Recommendations

The Board should:

1. Develop and implement additional uniform project selection criteria for each category of project for which the Agency provides financial assistance.
2. Ensure the adopted monitoring policy is effectively implemented by requiring project owners to provide documentation to support their self-reported employment information.
3. Continue to use the new UTEP implementation procedures that define thresholds for when financial assistance should be recovered or terminated.
4. Develop procedures to ensure the annual report filed with the Authorities Budget Office and the Office of the State Comptroller is accurate.

The Board has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and forwarded to our office within 90 days, pursuant to Section 35 of General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Board to make this plan available for public review in the Board Secretary's office.

Our office is available to assist you upon request. If you have any further questions, please contact Ann Singer, Chief Examiner of the Statewide and Regional Projects Unit, at (607) 721-8306.

We thank Agency officials and staff for the courtesies and cooperation extended to our auditors during this audit.

Sincerely,

Gabriel F. Deyo
Deputy Comptroller

APPENDIX A

Figure 4: Tax Exemptions Provided to Projects

Project Approval Date	Property Tax Abatement ^a		Tax Exemptions		Total
	Received	Pending ^b	Sales and Use	Mortgage Recording	
Finke Enterprises, LLC 3/20/2013	\$134,650	\$2,640,692	\$288,173	\$70,000	\$3,133,515
SRS Bethlehem, LLC 12/30/2011	\$536,470	\$772,189	\$988,763	\$156,506	\$2,453,928
Selkirk Ventures, LLC 3/22/2002	\$969,286	\$46,074	Unknown ^c	Unknown ^c	\$1,015,360
35 Hamilton of Glenmont 3/20/2011	\$34,406	\$24,758	\$48,000	\$11,250	\$118,414
PSEG Power NY, Inc. 4/26/2001	N/A ^c	N/A ^d	Unknown ^c	Unknown ^c	N/A
Total	\$1,674,812	\$3,483,713	\$1,324,936	\$237,756	\$6,721,217

a) Amounts were provided from the Town Comptroller.
 b) Assumes a 2 percent annual tax rate increase.
 c) The project application does not indicate if tax exemptions were granted, and Agency officials were unable to provide documentation to support if exemptions were or were not granted. As a result, we could not determine the exemption values.
 d) These property tax exemptions are based on consumption rates. Sufficient information was not available to determine the property tax abatements.

APPENDIX B

RESPONSE FROM AGENCY OFFICIALS

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

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May 4, 2017

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Re: Draft Audit report S9-15-71

Dear Ms. Singer:

The Town of Bethlehem Industrial Development Agency accepts the draft audit report from the New York State Office of the State Comptroller.

The audit process and the exit interview with the OSC staff were educational and useful to improve the Agency's procedures and projects to ensure compliance with statutes and good business practices. We appreciate the OSC's examination of our procedures and projects. We agree with the findings and will work to implement the recommendations of the audit report.

We look forward to receiving the final audit document.

Very truly yours,

Thomas P. Connolly

Executive Director

cc: Frank S. Venezia

APPENDIX C

AUDIT METHODOLOGY AND STANDARDS

The objective of our audit was to determine if the Agency's Board was providing effective oversight responsibilities of the Agency's operations for the period January 1, 2014 through May 31, 2015. For selected projects, we extended our audit period back to the date of their inception.

To achieve our audit objective and obtain valid evidence, we performed the following procedures:

- We interviewed the Board and Agency officials to understand and assess the Agency's processes and procedures.
- We reviewed the Agency's policies, including the UTEP, to identify written criteria outlining an applicant's eligibility for sponsorship and the benefits that are offered.
- We judgmentally selected five projects to obtain a sample of various sizes and types of projects for further review and testing. This testing included, among other things, comparing amounts projected to be spent and amounts actually spent, comparing the reported actual job numbers by the businesses to projected jobs on the application, and reviewing PILOT agreements and payments to ensure that they were accurate and complied with the agreements.
- We reviewed Board minutes to identify project monitoring or job creation discussions and reports to the Board regarding projects failing to achieve project goals.
- We reviewed the Agency's project application, project agreements and any applicable evaluation criteria and compared them to the new legislation.

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