



# Dutchess County Industrial Development Agency Management Practices

Report of Examination

Period Covered:

January 1, 2012 — May 31, 2013

2013M-251



Thomas P. DiNapoli

# Table of Contents

|   | <b>Page</b> |
|---|-------------|
| <b>AUTHORITY LETTER</b>   | 2           |
| <b>EXECUTIVE SUMMARY</b>  | 3           |
| <b>INTRODUCTION</b>   | 5           |
| Background  | 5           |
| Objective   | 5           |
| Scope and Methodology   | 6           |
| Comments of Local Officials and Corrective Action               | 6           |
| <b>PROJECT MONITORING</b>                                       | 7           |
| Job Creation Performance  | 7           |
| Recapture Provisions  | 8           |
| Payment in Lieu of Taxes (PILOT)                                | 9           |
| Recommendations   | 10          |
| <b>ANNUAL REPORT</b>  | 11          |
| Recommendations   | 14          |
| <b>APPENDIX A</b> Response From Local Officials                 | 15          |
| <b>APPENDIX B</b> OSC Comments on the IDA's Response            | 26          |
| <b>APPENDIX C</b> Audit Methodology and Standards               | 28          |
| <b>APPENDIX D</b> How to Obtain Additional Copies of the Report | 30          |
| <b>APPENDIX E</b> Local Regional Office Listing                 | 31          |

# State of New York Office of the State Comptroller

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## Division of Local Government and School Accountability

March 2014

Dear Agency Officials:

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

Following is a report of our audit of the Dutchess County Industrial Development Agency, entitled Management Practices. This audit was conducted pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the General Municipal Law.

This audit's results and recommendations are resources for local government officials to use in effectively managing operations and in meeting the expectations of their constituents. If you have questions about this report, please feel free to contact the local regional office for your county, as listed at the end of this report.

Respectfully submitted,

*Office of the State Comptroller  
Division of Local Government  
and School Accountability*



## State of New York Office of the State Comptroller

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# EXECUTIVE SUMMARY

The Dutchess County Industrial Development Agency (DCIDA) was established in 1976 and is governed by a Board which comprises seven members who are appointed by the Dutchess County Legislature. The Board is responsible for the general management and control of DCIDA's financial and operational affairs. The Executive Director and the Chief Financial Officer manage DCIDA's day-to-day operations.

DCIDA generally assumes the title of the real and/or personal property owned by the businesses that are involved in approved projects, thereby allowing DCIDA to offer benefits to these businesses (e.g., sales and use tax exemptions, mortgage recording tax exemptions, and real property tax abatements). DCIDA is not required to pay taxes or assessments on any property it acquires or that is under its jurisdiction, control or supervision. It provides a general payment in lieu of taxes (PILOT) agreement to approved projects governed by DCIDA's Uniform Tax Exemption Policy. In addition, DCIDA provides financial assistance to businesses through the issuance of low interest Industrial Development Revenue Bonds. DCIDA reported 33 active projects including 22 active bonds and 12 PILOT agreements with 21 businesses. DCIDA processed two applications for assistance during our audit period.

### **Scope and Objective**

The objective of our audit was to evaluate DCIDA management practices for the period January 1, 2012 through May 31, 2013. For selected projects we expanded the audit period back to October 1984 to include all activities from the projects' inception date. Our audit addressed the following related questions:

- Did the Board design and implement an adequate system to monitor, evaluate and control benefits and incentives granted to businesses?
- Is the annual report submitted by DCIDA accurate and complete?

### **Audit Results**

The Board did not design or implement an adequate system to monitor, evaluate and control benefits and incentives granted to businesses. Ten of the 21 businesses receiving DCIDA benefits have not met their employment goals. Job creation was less than the agreed upon amount by 1,398 jobs. Six of these 10 companies will receive tax exemption incentives over the life of their contracts, in part, because of their plan to create jobs in Dutchess County. Therefore, taxpayers may not be receiving expected benefits.

Also, DCIDA did not properly bill, collect, and distribute the PILOT amounts for three of seven projects that required that DCIDA control the PILOT amounts. Additionally, none of the 12 PILOT agreements reviewed had a recapture clause.<sup>1</sup> As a result, DCIDA does not have an effective way of recapturing benefits when businesses receiving assistance do not meet employment goals.

The annual report submitted by the DCIDA was not accurate or complete. In October 2011, the NYS Authority Budget Office released a report criticizing IDAs across the state for making grants of their funds without specific authority to do so. Despite this directive, the DCIDA continued to make grants in 2012 but recorded them as “professional service contracts” which made these expenditures incorrectly appear as operating expenses on the DCIDA’s annual report. DCIDA officials said that they continued to make the grants to fulfill terms of previous agreements.

In addition, of the 10 projects with PILOT agreements, five totaling \$14,351,627 were not reported on the PARIS<sup>2</sup> report. Furthermore, two projects that were reported were not correct. Finally, of the 21 project owners’<sup>3</sup> employee statistical information, 14 were reported incorrectly. Inaccurate reporting is misleading because it can overestimate DCIDA’s effectiveness, which may result in the Dutchess County legislature making uninformed decisions.

### **Comments of Local Officials**

The results of our audit and recommendations have been discussed with DCIDA officials and their comments, which appear in Appendix A, have been considered in preparing this report. Except as specified in Appendix A, DCIDA officials generally agreed with our recommendations and indicated that they planned to take corrective action. Appendix B includes our comments on the issues raised in the DCIDA’s response letter.

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<sup>1</sup> Provisions in project contracts that allow the IDA to recapture, or recover, economic benefits if companies do not meet their project goals.

<sup>2</sup> Public Authorities Reporting Information System is the online electronic data entry and collection system jointly designed, developed, and operated by the Authority Budget Office and the Office of the State Comptroller.

<sup>3</sup> Some project owners had multiple projects with the DCIDA.

# Introduction

## Background

An Industrial Development Agency (IDA) is an independent public benefit corporation whose purpose is to promote, develop, and assist industrial, manufacturing, warehousing, commercial, research and recreation facilities. The overall goal of an IDA is to advance the job opportunities, health, general prosperity and economic welfare for the people of the State.

The Dutchess County Industrial Development Agency (DCIDA) was created in 1976 to further economic development in Dutchess County. The goals of DCIDA are to attract, retain and expand businesses and employment in Dutchess County by providing financing and tax incentives as authorized by New York State Law. DCIDA is governed by a Board which comprises seven members who are appointed by the Dutchess County Legislature. The Board is responsible for the general management and control of DCIDA's financial and operational affairs. The Executive Director and the Chief Financial Officer manage DCIDA's day-to-day operations.

DCIDA generally assumes the title of the real and/or personal property owned by the businesses that are involved in approved projects, thereby allowing DCIDA to offer benefits to these businesses (e.g., sales and use tax exemptions, mortgage recording tax exemptions, and real property tax abatements). DCIDA is not required to pay taxes or assessments on any property it acquires or that is under its jurisdiction, control or supervision. It provides a general payment in lieu of taxes (PILOT) agreement to approved projects governed by DCIDA's Uniform Tax Exemption Policy (UTEP).

In addition, DCIDA provides financial assistance to businesses through the issuance of low interest Industrial Development Revenue Bonds. Proceeds of the obligations, as well as debt service payments, are administered by the business through a trustee bank. The obligations are not DCIDA obligations but are a financing arrangement in which DCIDA acts as the financing conduit. For calendar year 2012, DCIDA reported 33 active projects including 22 active bonds and 12 PILOT agreements with 21 businesses. DCIDA processed two<sup>4</sup> applications for assistance during our audit period.

## Objective

The objective of our audit was to evaluate DCIDA management practices. Our audit addressed the following related questions:

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<sup>4</sup> These two applications each resulted in a PILOT agreement and are included in the count of 12 PILOTs; neither had PILOTs due in 2012.

- Did the Board design and implement an adequate system to monitor, evaluate and control benefits and incentives granted to businesses?
- Is the annual report submitted by DCIDA accurate and complete?

**Scope and Methodology**

We examined DCIDA’s records and project files for the period January 1, 2012 through May 31, 2013. For selected projects we expanded the audit period back to October 1984 to include all activities from the projects’ inception date.

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.

**Comments of Local Officials and Corrective Action**

The results of our audit and recommendations have been discussed with DCIDA officials and their comments, which appear in Appendix A, have been considered in preparing this report. Except as specified in Appendix A, DCIDA officials generally agreed with our recommendations and indicated that they planned to take corrective action. Appendix B includes our comments on the issues raised in the IDA’s response letter.

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 the General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Board to make this plan available for public review in the Secretary’s office.



## Project Monitoring

The Board is responsible for monitoring and evaluating the performance of businesses receiving financial assistance and determining whether they are meeting the goals established in their project applications. Without effective monitoring, DCIDA will not be able to identify and address business performance shortfalls and the community may not receive expected benefits from investments. In addition, DCIDA should have specific provisions included in all agreements as to the expectations of the businesses (e.g., reporting requirements) and also policies and procedures in place to hold those businesses accountable if expectations are not met.

DCIDA has a process in place to monitor employment goals. However, it does not have a policy that would allow it to effectively hold businesses accountable when they do not meet specific employment goals. Ten of the 21 businesses receiving DCIDA benefits have not met their employment goals, and none of the PILOT agreements allowed for the recapture of benefits. In addition, DCIDA did not adequately monitor the PILOT payment process. As a result, taxpayers may not be receiving expected benefits and DCIDA does not have an effective way of recapturing benefits when businesses do not meet employment goals.

### **Job Creation Performance**

The overall goal of an IDA is to advance job creation opportunities. Typically, projects that receive IDA benefits involve the acquisition, construction, or major renovation of buildings or other structures and generate short-term and long-term employment in construction and operations-related jobs. The IDA is responsible for establishing a process to monitor and enforce agreed-upon job expectations. The process should include procedures to determine whether reporting requirements are met, employment data is reliable, and businesses demonstrate that they have met employment goals.

DCIDA sends a form annually to each business requesting current employment numbers to use in its annual report and in monitoring. These forms are supposed to be certified by a business executive attesting to the reliability of the information reported.

DCIDA does not have an effective process in place to enforce job creation expectations when employment does not meet the agreed-upon level. We examined the annual reporting forms for 21 businesses and found that 10 of 21 businesses reported employment levels indicated that they had not met their employment goals as of December 31, 2012.



**Table 1: Job Creation Performance**

| Project Name                             | Jobs Reported on 12/31/2012 | Jobs Before DCIDA Involvement | Jobs Created | Job Creation Goal <sup>a</sup> | Difference between Jobs Created & Goal <sup>b</sup> |
|--|-----------------------------|-------------------------------|--------------|--------------------------------|---|
| GPSDC (New York) Inc.                    | 442                         | -                             | 442          | 1,150                          | (708)   |
| Astor Learning Center                    | 49                          | 439                           | (390)        | 6                              | (396)   |
| Mechtronics Corporation                  | 47                          | 34                            | 13           | 105                            | (92)  |
| St. Francis Hospital and Health Centers  | 1,175                       | 1,225                         | (50)         | 16                             | (66)  |
| Columbia SFH, LLC                        | 288                         | -                             | 288          | 340                            | (52)  |
| Adams Fairacre Farms, Inc.               | 121                         | -                             | 121          | 155                            | (34)  |
| Southeastern Container, Inc.             | 60                          | 80                            | (20)         | 5                              | (25)  |
| Baptist Home - Arbor Ridge at Brookmeade | 14                          | -                             | 14           | 24                             | (10)  |
| Baptist Home - Brookview                 | 12                          | -                             | 12           | 20                             | (8)   |
| Beacon Land LLC (dba Hudson Baylor)      | 42                          | -                             | 42           | 49                             | (7)   |
| <b>Total</b>                             | <b>2,250</b>                | <b>1,778</b>                  | <b>472</b>   | <b>1,870</b>                   | <b>(1,398)</b>                                      |

Numbers represent Full Time Equivalent Employees (FTE)

<sup>a</sup> Source: Project Application for Financial Assistance

<sup>b</sup> Difference between Actual and Goal = Jobs Created - Goal of Creation

Six of these 10 companies will receive tax exemption incentives over the life of their contracts, in part, because of their plan to create jobs in Dutchess County. Although not included in the chart above, IBM was awarded two PILOTs without any specific job creation or retention goals. Both applications contained no information regarding job creation and retention goals. The 2011 application stated “projection and head count cannot be provided because of competitive sensitivity and changing IT industry” and the 2012 application stated, “no significant fluctuation is expected due to this project.” However, IBM has reduced its workforce by 631 jobs or 8 percent for the period of January 1, 2011 through December 31, 2012.

Part of the legislative intent when creating an IDA is to advance job opportunities in the municipality in which the project is located. By not having a policy or procedure in place to hold businesses accountable for job creation, DCIDA is limiting its ability to increase employment in the County.

### Recapture Provisions

IDAs may place provisions in project contracts that allow them to recapture, or recover, economic benefits if companies do not meet their project goals. Penalties for non-performance such as a shortfall in job creation or other promised benefits could take various forms. For example, a business could be prohibited from reapplying for an incentive program, or a recapture provision could require the business to return all or part of the tax exemptions received. A

recapture provision may be based on the number of new jobs created, a specific length of time a business must stay at a subsidized location, or other factors determined by the IDA. We found that none of the 12 DCIDA PILOT agreements that we reviewed had a recapture clause. This includes the six businesses that had not met the agreed-upon job creation levels.

DCIDA officials indicated that PILOTs are provided solely to projects involving new construction, which generate new taxes over the long term. Since applicants invest a significant amount of money in these projects, DCIDA has been willing to take the minimal risk involved in granting a tax break to induce the applicant to make the investment. Even if the project is unsuccessful, construction jobs were generated. In addition, DCIDA has not granted many real property tax PILOTs over the years.

Since the DCIDA did not include a recapture clause in its PILOT agreements, businesses are not penalized for non-performance, such as the shortfall in job creation. Therefore, some businesses received benefits that might not provide the expected economic benefit to the County and other local governments.

### **Payment in Lieu of Taxes (PILOT)**

Real property owned by an IDA is entitled to an exemption from real property taxes. These exemptions are passed through to assisted businesses. In most cases, a portion of the property taxes forgone is recaptured via PILOTs made by recipients of IDA benefits to affected taxing jurisdictions (i.e., local governments). To ensure that these benefits are properly administered, it is crucial for the IDA to have a process in place to monitor the PILOTs.

There were 10 businesses with active agreements receiving property tax exemptions during our audit period.<sup>5</sup> Seven of the 10 agreements stipulated that DCIDA would bill, collect, and distribute the PILOT amounts. We found that three of these seven projects were not billed, collected, and distributed by the IDA, but were invoiced directly by the taxing jurisdiction.

In addition, DCIDA did not have a system in place to track the amounts directly billed by the taxing jurisdictions. Of the three projects with agreements stipulating that taxing jurisdictions directly invoice and collect from the project, two were not billed the correct amounts. One project overpaid by \$57,717 and the other underpaid by \$49,190. By not having a process to track the amounts stipulated in the PILOT

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<sup>5</sup> See Table in Appendix C for the list of businesses with active agreements receiving property tax exemptions.

agreements, DCIDA officials have no assurance that project recipients are in compliance with PILOT agreements. The lack of monitoring and/or review of bills prior to distribution contributed to these errors, and as a result, the errors were not detected timely.

DCIDA officials were not aware of the \$49,190 underpayment because they did not monitor payments billed and collected by taxing jurisdictions. DCIDA officials told us that having taxing jurisdictions directly bill, collect, and distribute the PILOTs helps to quicken the distribution of payments. Besides the financial impact these errors had on municipalities, PILOT billing errors also may cause municipalities and the public to look unfavorably at future DCIDA tax abatement proposals. If municipal officials conclude that they are not receiving all required tax payments, they may be less likely to support current or future projects.

## **Recommendations**

1. The Board should put a process in place to enforce job creation expectations.
2. The Board should ensure that all PILOT agreements contain a recapture clause that would allow DCIDA to recover the financial incentives provided if businesses do not produce the intended benefits and should invoke the recapture provision, as appropriate, if a recipient does not meet performance expectations.
3. The Board should establish and implement policies and procedures to ensure that PILOT bills are accurately prepared.

# Annual Report

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

The Board is responsible for managing DCIDA's financial operations. As part of this responsibility, DCIDA officials must accurately report information on DCIDA's annual financial report and file the report in a timely manner. We found that the 2012 annual report submitted by DCIDA was neither accurate nor complete.

Financial Reporting – OSC prescribed a uniform classification of accounts to be used by IDAs for the recording of financial information. This classification serves as the reporting model for both administrative control purposes and for the general public. Each IDA is required to prepare an annual financial report within 90 days following the close of its fiscal year. The financial statement must be audited by a CPA in accordance with Government Auditing Standards.

We compared DCIDA's 2012 annual report to source documents and found that DCIDA shifted its presentation of the income statement after the ABO released a report<sup>6</sup> in October 2011 criticizing IDAs across the State for not having specific legal authority to make grants of their own funds. Prior to 2012, DCIDA reported grants and donations under non-operating expenses, but for the 2012 PARIS report, DCIDA coded these grants as "professional service contracts" so that they appeared to be operating expenses. While either presentation would result in a reported loss, the loss was not due to direct operations. DCIDA officials stated that they were no longer giving out grants as of January 2012 due to the ABO recommendation. However, we found that DCIDA did contract for new grants in 2012.

We reviewed the nine professional service contracts in 2012 totaling \$322,133. Three of these contracts are with the Dutchess County Economic Development Corporation (EDC) totaling \$214,631, and

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<sup>6</sup> *Authorities Budget Office Special Report: Industrial Development Agency Grant Awards*

are written as professional service contracts for shared services to benefit both entities. However, payment terms of two EDC contracts, for the External Marketing Council (EMC) and the Trade Show Grant Program, are written in a manner similar to a matching grant letter and are dated after January 2012.<sup>7</sup> Furthermore, a DCIDA professional service contract with the Hudson Valley Film Commission, dated June 2012, had terms that did not define specific services to be received by DCIDA and appears to be a grant. We also reviewed agreements with the Dutchess County Regional Chamber of Commerce, Mt. Gulian Society, and Hudson Valley Business Development Corporation; these three agreements specifically state that they are matching grant agreements. DCIDA officials commented that these three agreements were in place prior to 2012 and they were required to fulfill the terms of the agreements. However, they should have been reporting these agreements under the non-operating expense on the PARIS report.

Supplemental Schedules – GML requires that the Schedule of Supplemental Information be completed annually for each project initiated in 1990 or after, for which debt was issued, outstanding, or retired during the fiscal year or any straight-lease agreement which was entered into since 1990 and remains outstanding. The Supplemental Section of the annual report requires the name of each project, the name and address of the owner of each project, the amount of tax exemptions granted for each project, the amount of PILOTs, an estimate of the number of jobs created and retained by each project, and other information OSC deems necessary. All PILOTs, whether made by the IDA in connection with property owned by the IDA, or made by business or private developers directly to the taxing authorities, must be included in the supplemental schedule of the annual financial report.

We found that five out of 10 payments, totaling \$14,351,627, were not included in the PARIS report. These were not passed through DCIDA. Since the payments were not seen by DCIDA officials, it was not apparent to them that they should report the PILOTs.

In addition, two projects that were reported on the supplemental schedule were not correct. One project was reported as having paid more than what was actually paid and the other was reported as owing and receiving less than what was actually owed and received. For example, the Bonura and DiBrizzi Enterprises dba<sup>8</sup>/Poughkeepsie

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<sup>7</sup> Up to \$115,000 of matching payments for the purpose of raising funds from the private sector through EDC EMC Program with a minimum payment of \$15,000. Matching payments shall be made by the DCIDA Chief Financial Officer on a quarterly basis upon receipt of documentation listing the amount and source of actual individual private contributions to the EMC of EDC for that quarter.

<sup>8</sup> Doing business as

Grand Hotel PILOT agreement stipulates in addition to the \$100,000 base payment, the project owner was required to submit an income statement and would be billed an additional 5 percent of net income. Even though DCIDA is supposed to bill the project owner, DCIDA authorized the City of Poughkeepsie (City) to bill, collect and distribute the PILOT. We reviewed the documentation supplied by the City and found that the City received \$117,661. However, DCIDA only reported \$100,000. DCIDA officials told us that the PILOT agreement dated back to 1986 and they had not reviewed payments to ensure that they complied with the PILOT agreement.

Employment Statistics – The creation of new jobs or the retention of existing jobs is an important element in many IDA projects. This employment information is obtained from the businesses benefited by IDA involvement. The agreement between the IDA and the businesses should require the project operator to make employment information available to the IDA, and IDA officials should verify reported employment data.

In addition, IDAs should maintain employment statistics for all IDA projects so that this information can be easily and clearly reported in the supplemental section of the annual report. The employment numbers may be estimates, and the amounts reported the first year for full-time equivalent (FTE) employees prior to IDA status, jobs to be created, and jobs to be retained, should not change in subsequent annual reports. Records must also provide a means to compare original estimates to the actual results achieved over the life of the project. However, the IDA should not include construction jobs created as a result of a project in the employment statistics because construction jobs are not considered permanent, long-term jobs.

We compared the original application and 2012 employment data to the PARIS report. Fourteen of the 21 project owners<sup>9</sup> employee statistical information (excluding Health Quest<sup>10</sup>) was reported incorrectly to PARIS. For example, on one project owner's application, the listed jobs before IDA assistance was 438 employees; however, their employment report for 2012 only lists 49 employees before IDA assistance. Supporting documentation on some projects

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<sup>9</sup> Some project owners had multiple projects with the DCIDA.

<sup>10</sup> When reviewing the information for Health Quest - VBMC we found the information reported was significantly different between source documents and the PARIS report. The number of employees before DCIDA's assistance, current jobs, and jobs created included a portion of the facility not related to the DCIDA project. DCIDA tried to remove unrelated jobs from the report. However, DCIDA removed all current job information which resulted in the numbers reported for Health Quest to skew the overall results; therefore, we did not include them in Table 2 (See Table 3).

did not agree with the reported jobs, and other projects had unclear FTE calculations for part-time employees. Overall, the statistical information submitted to PARIS for the actual creation of jobs was overstated by 677, as shown below:

| <b>Table 2: Reporting Differences -All Projects (except Health Quest)</b> |                  |                                   |            |             |
|---|------------------|-----------------------------------|------------|-------------|
|   | Per PARIS Report | Per Source Documents <sup>a</sup> | Difference | Result      |
| <b>Jobs Before DCIDA Assistance</b>                                       | 14,945           | 15,545                            | (600)      | Understated |
| <b>Job Creation Goal</b>  | 2,107            | 1,924                             | 183        | Overstated  |
| <b>Current Jobs</b>   | 12,515           | 12,438                            | 77         | Overstated  |
| <b>Jobs Created</b>   | (2,430)          | (3,107)                           | 677        | Overstated  |

<sup>a</sup> For jobs before DCIDA and Job Creation Goal we reviewed the Project Application for Financial Assistance. For Current Job documentation source we reviewed the Employment Report signed by the Business's Management. Jobs Created is the difference between the number of current jobs and the jobs before DCIDA Assistance.

| <b>Table 3: Reporting Differences - Health Quest</b> |                  |                                   |            |             |
|--|------------------|-----------------------------------|------------|-------------|
|  | Per PARIS Report | Per Source Documents <sup>a</sup> | Difference | Result      |
| <b>Jobs Before DCIDA Assistance</b>                  | 1707             | 1,707                             | 0          | N/A         |
| <b>Job Creation Goal</b>                             | 386              | 204                               | 182        | Overstated  |
| <b>Current Jobs</b>                                  | 1,533            | 3,675                             | (2,142)    | Understated |
| <b>Jobs Created</b>                                  | (174)            | 1,968                             | (1,794)    | Understated |

<sup>a</sup> For jobs before DCIDA and Job Creation Goal we reviewed the Project Application for Financial Assistance. For Current Job documentation source we reviewed the Employment Report signed by the Business's Management. Jobs Created is the difference between the number of current jobs and the jobs before DCIDA Assistance.

These reporting inconsistencies were mostly due to DCIDA officials not looking back to source documents to verify original numbers when reporting each year. Inaccurate reporting is misleading, because it can overestimate DCIDA's effectiveness, which may result in the Dutchess County Legislature and officials from affected jurisdictions making uninformed decisions.

## Recommendations

- The Board should ensure that DCIDA officials file a complete and accurate annual financial report.
- The Board should review information reported to PARIS and amend it, as necessary.



## **APPENDIX A**

### **RESPONSE FROM LOCAL OFFICIALS**

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



December 4, 2013

Tenneh Blamah, Chief Examiner  
Office of the State Comptroller  
33 Airport Center Drive, Suite 103  
New Windsor, New York 12553-4725

Re: Draft Report of Office of the State Comptroller Audit

Dear Chief Examiner Blamah:

I provide the following information as the Dutchess County Industrial Development Agency's response to the November 5, 2013 Draft Report of your Office's recent audit of the Management Practices of the DC IDA.

### **Preliminary Statement**

The DC IDA was created to implement in Dutchess County the New York State's policy, as expressed in NY General Municipal Law Section 852, to "... attract, encourage and develop ... economically sound commerce and industry ..." and to prevent "... unemployment and economic deterioration ..." Pursuant to its corporate purpose, the DC IDA grants to eligible businesses tax benefits consisting of tax exempt bond financing (with the DC IDA as a conduit and a non-recourse party), real property tax exemptions, mortgage tax exemptions and sales tax exemptions. These benefits are described in a Uniform Tax Exemption Policy ("UTEP") adopted by the DC IDA and reviewed annually. The DC IDA does not deviate from its UTEP without the express approval from the affected taxing jurisdictions. And the Agency has exhibited extreme prudence in granting benefits to businesses, as demonstrated by the relatively few projects it has approved<sup>1</sup>.

We welcome advice to assist us in doing our job better. Indeed, there are areas where we concur with your Draft Report concerning our management practices. The audit certainly provided beneficial assistance and guidance to the DC IDA to ensure consistency and cross-checking in its record keeping and annual Public Authorities Reporting Information System ("PARIS") reporting. We did point out some areas where the preliminary draft was inaccurate and your auditors were receptive to our comments. Most of your recommendations that we have accepted have already been implemented. We will address the changes we have made and are making

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<sup>1</sup> Indeed, the Draft Report acknowledges that the DC IDA had not granted many real property tax PILOTs over the years. (Draft Report, p.9.)

more thoroughly in a corrective action plan to be filed after we have received your final audit report. And there are some areas where we disagree with your Draft Report. We address each of these in detail in our analysis of your findings below.

### **I. Project Monitoring**

The Draft Report states that DC IDA does not adequately “monitor, evaluate and control benefits and incentives granted.” (Draft Report, p. 4.) The DC IDA does monitor the projects that are in place, it does evaluate them and, if the applicant is in material breach of its agreements with the DC IDA, the benefits may be lost. The Draft Report then focuses on ten of 21 businesses that “have not met their employment goals.” The Draft Report states that the DC IDA “... does not have an effective process in place to enforce job creation expectations ...” (Draft Report, p. 8.) We disagree with the conclusions drawn.

### **Job Creation Performance**

The ten companies that, on December 31, 2012, “failed to meet their jobs creation goals” are listed in Table 1. (Draft Report, pp. 8-9.)

|                          |
|--------------------------|
| See<br>Note 1<br>Page 26 |
|--------------------------|

1. The GPSDC (New York) Inc. Project. By any measure, the GPSDC (New York) Inc. has to be considered an unqualified economic development success for Dutchess County. The Project entailed the construction of over 2 million square feet of new warehouses on approximately 200 acres to function as the Northeast distribution center for Gap, Inc., and its related companies. In 1999, Gap was prepared to commit to build the center in Pennsylvania. The DC IDA coordinated a massive effort to attract this project with the able assistance of the State of New York and the strong support of the local affected taxing jurisdictions. The project was to be built on land that housed obsolete office buildings (which were demolished) and otherwise vacant land. Indeed, with Gap investing over \$150 million into the new facility, it is inconceivable that it could have been enticed to abandon the Pennsylvania project if the DC IDA insisted on a refund of benefits for its failure to meet job creation estimates.

The DC IDA and the involved state and local entities negotiated a 20 year real property tax PILOT agreement that has resulted in just under \$18 million in PILOT payments from 2000 to 2013 on property that previously was generating about \$200,000 in taxes per year. The project has resulted in extensive economic growth in the adjacent area including the construction of many hotels and eateries to accommodate the numerous truckers using the Gap facility.

GPSDC estimated that it would have 1,150 jobs in 5 years, i.e., by 2005. In fact, by 2002, it had created over 1,300 jobs, over 150 more jobs than projected. The December 31, 2012 employee population for the GPSDC project was 442. The Draft Report criticizes the DC IDA for not “enforcing agreed-upon job expectations.” In other words, the Draft Report criticizes the DC IDA for not providing for recapture in the event GPSDC failed to meet a job creation goal at any time during the 20 year term of the



project, even if it exceeded that number in prior years. Such a policy is unrealistic because:

- a. GPSDC would never have risked over \$150 million in investments into the Dutchess County site if the DC IDA had insisted upon a recapture of PILOT payments if job goals were not met in any single year. Undoubtedly, it would have finalized its arrangements in Pennsylvania.
- b. The December 31, 2012 “snapshot” of the employee population for a business that experiences seasonal fluctuation is not a proper measure of the employee population. Moreover, no credit is given for prior years when the project exceeded its job creation goals.
- c. This 1999 project is being tested now, during a time of historic unemployment and while we are in the throes of a major recession.
- d. New York State law has never required recapture of real property tax PILOTs. In fact, the first New York law requiring recapture: (i) became effective in March, 2013; (ii) applies only to projects approved after that date; (iii) refers only to State sales and use tax benefits granted; and (iv) does NOT require recapture for failure to meet job creation goals.
- e. Job creation goals are the sole factor tested in the Draft Report when there are many factors which must be considered in determining the success of a project. For this project, please examine the following:
  - i. Unique economic multipliers exist in this case because of the high number of truckers attracted by the facility.
  - ii. The positive impact of redevelopment of a site with obsolete buildings and PILOT payments which far exceed the taxes that were being generated at the site prior to construction must be recognized.
  - iii. The construction of over 2 million square feet of warehouse space was the largest of its type in the country at the time, generating a very large number of construction jobs.
  - iv. The amount and type of the tax benefits given to the applicant must be measured against all of the economic benefits the project generates. Here, the benefits given were relatively small since the PILOT payments paid by GPSDC far exceeded the taxes on the property before the project was built.

In any fair analysis, the GPSDC project remains an economic development success for Dutchess County.

2. The Astor Learning Center Project. The Astor Learning Center’s 1999 application to the DC IDA for this project listed the employee population for the entire Astor Services

for Children and Families in Dutchess County (439) while the jobs reported as of December 31, 2012 listed only those connected to the actual project, The Astor Learning Center construction in 1999. The actual number of jobs that should have been listed on the application was 40, correctly stating those jobs that were related solely to the Astor Learning Center Project. Accordingly, the Astor Learning Center Project DID meet its employment goals.

See  
Note 2  
Page 26

3. Mechtronics Corporation Project. In 2010, the owners of this small manufacturing company invested \$5.1 million in constructing a 64,000 square foot addition to its existing facility. During 2011 and 2012 the construction encountered problems that affected the company's ability to use the additional space. Mechtronics is in arbitration with the local builder because of alleged building defects. To date, Mechtronics has a temporary Certificate of Occupancy for 19,000 square feet of the 64,000 square feet of newly constructed space and the remaining 45,000 cannot be utilized. Also, the company experiences employment fluctuations based upon seasonality and was strongly impacted by the recession. The DC IDA treasures manufacturing jobs and the retention of the existing manufacturing jobs for those persons was a major factor in supporting this project. The ten-year real property tax PILOT negotiated with the consent of the City of Beacon and the Beacon City School District calls for the full payment of taxes on the existing facility and gradually increasing the payments on the new construction by 10% per year until full taxes are paid.

4. St. Francis Hospital and Health Centers. While the employment data in the Draft Report are accurate as listed, limitations in the PARIS reports prevent St. Francis from being credited with the 400 full-time per diem wage earners that St. Francis employs. If credited with these per diem employees St. Francis would have far exceeded the job goals provided.

See  
Note 3  
Page 26

5. Columbia SFH, LLC. This project involves a real property tax PILOT covering the Atrium building at St. Francis Hospital which is occupied in part by the tax exempt hospital and in part by private health service providers. Each year, on December 31, the hospital occupancy and the private occupancy are measured. The PILOT schedule is then applied to only the private occupied portion of the Atrium. The PILOT agreement is thereby self-adjusting, i.e., as the number of private employees is reduced, they occupy less space and then receive less of a PILOT benefit. Accordingly, the benefits given are reduced as the number of employees decreases.

6. Adams Fairacre Farms. This employer is also affected by seasonal adjustments to its employee population. The December 31 "snapshot" is not an accurate measurement of its general employee population.

7. Southeastern Container. In 2005, the DC IDA was requested by the New York State Department of Economic Development to administer its grant to a bottle manufacturer to install a recycled water cooling system to greatly reduce the adverse environmental impacts of its manufacturing operation. None of the four types of tax benefits the IDA



typically grants was given to the applicant. The State's grant program required that the DC IDA ensure that the manufacturing operation continue for a seven year period (and it did) but did not impose any employment requirements upon the applicant. The DC IDA administered the State's program precisely as requested.

See  
Note 4  
Page 26

8. Baptist Home – Arbor Ridge at Brookmeade. This independent living facility was constructed in order to provide financial assistance to the Baptist Home, an affiliated nursing home on the same campus. The negotiated PILOT (involving the Town of Rhinebeck and the Rhinebeck Central School District) resulted in Arbor Ridge paying approximately the full amount of the town and county taxes as PILOT payments and a fixed lower sum for school taxes, since there would be no school age children occupying the site. Very little was given the applicant in real property tax exemptions. Tax exempt IDA revenue bonds were issued and construction jobs were created. And indeed, the benefit of assisting the struggling nursing home on the campus was a major factor in the IDA's decision to grant the assistance.

9. Baptist Home – Brookview. This companion project to Arbor Ridge involved the construction of an assisted living facility on the Baptist Home campus. In this case, the applicant was entitled to a real property tax exemption anyway, so the PILOT agreement acknowledging that no real estate payments are due merely eliminated the annual filing requirement for the applicant. IDA revenue bonds were issued and construction jobs were created. And again, this facility provided assistance to the adjacent nursing home.

10. Beacon Land LLC. This project involved the redevelopment of a City of Beacon site with the construction of a \$17.1 million state-of-the-art recycling facility. The existing land and building received no tax benefits as only the new construction qualified for the real property tax PILOT. In fact, the PILOT schedule followed the NY RPTL 485-b schedule available in many municipalities and consistent with the DC IDA UTEP. The applicant also received a sales tax exemption on the new construction. The applicant did produce 42 jobs and remains at the forefront of using innovative technologies to improve the environment.

Each of the above-cited projects was monitored by the DC IDA and has been a successful economic development when comparing the amount of benefits granted to the overall economic benefits derived, including construction jobs, per diem jobs, the amount of property taxes generated and economic multipliers. We believe that to focus solely on whether a job goal has been achieved on a single date is misplaced. The types and amount of the tax benefits granted must be measured against the investment the company is making, the new real property taxes it will generate and, not only the number of new job created, but the number of local jobs retained by the company.

The Draft Report also mentions two real property tax PILOTs involving IBM Corporation. The 2011 IBM Poughkeepsie PILOT. In 2011, the Town of Poughkeepsie requested the DC IDA to help implement a negotiated settlement of a series of tax certiorari proceedings that would have had a drastic impact on the Town's and School District's tax structure had IBM

succeeded in the litigation. In return for its assistance in implementing the real property tax PILOT, the DC IDA required that IBM commit to invest at least \$50 million in its infrastructure in the succeeding 5 years as a way of ensuring that IBM would maintain a presence at its Poughkeepsie facility. The DC IDA does monitor the investments made by IBM as required by the PILOT agreement.

The 2012 IBM East Fishkill PILOT. In 2012, the Town of East Fishkill requested the DC IDA to help implement an extension of an expiring New York State PILOT at IBM's manufacturing facility in East Fishkill. Again, in return for its assistance in implementing the real property tax PILOT, the DC IDA required that IBM commit to invest at least \$50 million in its infrastructure in the succeeding 5 years as a way of ensuring that IBM would maintain a presence at its East Fishkill facility. The DC IDA does monitor the investments made by IBM as required by the PILOT agreement.

### **Recapture Provisions**

The Draft Report endorses recapture of benefits granted to businesses for failure to meet project goals. While the DC IDA does require businesses to comply with the terms of its agreements, it does not generally sanction recapture for failure to meet job creation goals for several reasons:

- a. The DC IDA provides assistance only to companies making significant financial investments in a project. The businesses are risking significantly more than the tax benefits conferred.
- b. Real property tax PILOTs are limited to the same schedule as in NY RPTL 485-b unless the local taxing jurisdictions consent to a more generous schedule. Thus, the DC IDA grants limited assistance while securing the long term benefits of increasing real property taxes garnered from the new construction.
- c. The job creation goals are often speculative and the failure to achieve those goals is often related to the vagaries of the market place. Indeed, the recent long-lasting recession has affected job creation greatly.
- d. As highly regulated as IDAs are, New York State law has never required that IDAs require businesses that receive tax benefits to return them if there is a shortfall in job creation.
- e. Finally, as aptly pointed out in the Draft Report (p.9), the DC IDA is very prudent in granting tax benefits to businesses. The DC IDA strives to recruit new businesses to Dutchess County. Recruitment would be severely hampered if a business is expected to risk huge sums of money on a new venture and, if unsuccessful, not only lose its investment but repay the tax benefits received.

The experience in the ten cited cases of "failure to meet job creation goals" is instructive. In none of those cases would the DC IDA conceive of requiring any recapture since each of these



projects has made significant contributions to the Dutchess County economy and to job creation here. However, the DC IDA continues to analyze the effectiveness of its policies and, in the proper case, may well require recapture of benefits for failure to meet job creation goals.

### **Payments in Lieu of Taxes (PILOT)**

The Draft Report enumerates several instances where the DC IDA had relied on local taxing jurisdictions to bill and collect PILOT payments. While the local assessors and tax collectors are typically most capable of performing this service, the DC IDA should and will now ensure that all PILOT bills are timely and correctly generated and that PILOT payments are timely received. Moreover, the DC IDA has already arranged with its independent auditors to track the billing and payments as an additional safeguard.

The cited PILOT overpayment of \$57,717 was the initial School PILOT payment under the 2012 IBM East Fishkill PILOT project. The payment was made prior to the December 1, 2012 PILOT agreement and the parties had agreed to apply the overpayment to the next School PILOT.

The cited underpayment was due to personnel changes in the City of Beacon which did not timely generate a bill. The bill was generated and payment was then promptly made. As stated above, the DC IDA will now track all PILOT bills and all PILOT payments and its independent auditors also will do so.

## **II. Annual Reports**

The Draft Report states that the 2012 Annual Report of the DC IDA was neither accurate nor complete. As explained more fully below, most of the indicated errors were due to the Agency's attempts to provide more accurate information. Your auditors did identify some errors in the annual PARIS report, but it is important to note that the annual PARIS report requires the submission of voluminous information in a standardized format that allows no supplemental explanation. Again, the indicated errors were due to the Agency's attempts to provide more accurate information.

### **Financial Reporting**

The Draft Report, while acknowledging that the DC IDA accurately reported the amounts of expenditures for certain services, disputes the accounting classifications selected for some services in the Agency's financial reporting.

Before 2012, the DC IDA had referred to its contracts with certain non-profit entities contributing to economic development in Dutchess County as "grants." In response to what we believed to be an unwarranted criticism from the ABO for providing "grants," for example, to

the DC EDC to provide staff services to the DC IDA, we clarified the nomenclature by referring to the arrangements as professional service contracts. We believe each of these professional service contracts contain performance goals and deliverables to the IDA and are properly classified. References to “matching grants” are actually requirements that the service contractor obtain additional revenue sources from other entities as a condition of the IDA providing full funding to the service contractor. In some instances, unfortunately the nomenclature has not yet been changed and retains the confusing reference to “grants.” However, that does not change the nature of the services performed.

See  
Note 5  
Page 26

### **Supplemental Schedules**

The Draft Report states that five out of 10 projects were not included in the PARIS report. That is not an accurate statement. All 10 projects were listed in the PARIS report filed by the DC IDA. Five of those projects involved PILOT payments that were billed by the taxing authorities and paid directly to them. (While the DC IDA implements the PILOT agreements, the beneficiaries of the PILOT agreements are the taxing authorities. The DC IDA never retains any portion of any PILOT payments.) Since the DC IDA never received those funds, we reasoned that the amount of those PILOT payments should not have been included in that portion of the PARIS report related to the project. The DC IDA accepts your guidance and will now report those amounts in subsequent PARIS reports.

See  
Note 6  
Page 26

The DC IDA acknowledges the error in reporting only the base amount of the Poughkeepsie Grand Hotel PILOT. That error is being corrected.

### **Employment Statistics**

The Draft Report identifies inconsistencies between the employment statistics contained in the DC IDA files and those listed in the PARIS report, claiming these were mostly due to DC IDA officials not looking back to the source materials each year when completing the PARIS reports. However, we believe the inconsistencies were due mostly to well-intended but inaccurate source information provided by applicants and/or attempts by DC IDA officials to provide more accurate information on the PARIS report.

For example, the Draft Report cites one project owner’s listing 438 jobs before IDA assistance. (This is the Astor Learning Center Project.) The DC IDA reported that there were only 49 jobs<sup>2</sup> before DC IDA assistance. The Draft Report improperly assumes the accuracy of the Source Documents, viz. the original application submitted by Astor. However, that application, submitted in 1998, provided employment information for the entire Astor Services for Children and Families, rather than the Astor Learning Center. For the sake of accuracy, the Agency reported the correct data, as verified by Astor, in its PARIS report.

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<sup>2</sup> Actually, the DC IDA reported 40 jobs existing before DC IDA assistance, not 49 jobs.



Often, DC IDA applicants have sought financial assistance for multiple projects. Some of those projects are company-wide and some involve only a portion of the company. If the DC IDA reported all or some of the same employees on the PARIS reports, it would be overstating the number of employees the company has. For the sake of accuracy, the DC IDA chose to report those employees only once. The PARIS reporting system does not permit inclusion of explanatory information but only allow the input of statistical data.

The DC IDA submits that the Tables 2 and 3 of the Draft Report (p. 14) inaccurately summarize the data and improperly assumes the accuracy of the source documents. Table 2 of the Draft Report summarizes the Jobs Created for 20 projects (other than HealthQuest) and provides a misleading conclusion that the total Jobs Created, either through the Source Documents or the PARIS reports, decreased over the years. In fact, aside from IBM, Southeastern Container and St. Francis Hospital, the remaining 17 companies increased their job numbers to a total of between 3,952 and 3,955 jobs. As stated above (pp. 4 and 5 herein), Southeastern Container was not a conventional IDA project, but a State grant project, and the St. Francis employment data omits the 400 reported per diem employees. IBM presents a unique case which highlights the difficulty in reducing complex data to simple tables. IBM, still the largest private employer in Dutchess County, has suffered steadily declining employment since 1990. The numbers reported prior to DC IDA assistance provided company-wide employment figures dating to a 1992-1993 application. However, the project entailed only the Global Services Division of IBM and should have been adjusted accordingly. IBM job losses over the entire company should not be considered in the report since DC IDA assistance was given only to one distinct division of the company for job retention purposes.

See  
Note 7  
Page 26

In Table 3, the Draft Report confuses the 2012 Health Quest Systems PILOT for a new Medical Office Building and the Vassar Brothers Medical Facility Bonds Series 2011. The PILOT closed in October, 2012 and the building was not yet complete, so none of the anticipated jobs was yet created as of the December 31, 2012 PARIS reporting. The building was not yet constructed so there were no jobs in existence at this site before DC IDA assistance. The 2011 Bonds were a refinance of existing debt and the 1,707 Vassar Hospital jobs at the time of the issuance of the original bond were properly reported on PARIS.

See  
Note 8  
Page 26

The DC IDA's corrective action plan will reconcile all of the data and provide revisions to the source documents verified by each company where necessary.

## Appendix B

We note that on Table 4 (Draft Report, p. 17), Item Number 7, improperly lists IBM 2008 as a project receiving Real Property Tax Exemptions. This project should be removed from Table 4 in Appendix B.

See  
Note 9  
Page 27

Tenneh Blamah, Chief Examiner

December 4, 2013

Page 10

**Conclusion**

The DC IDA appreciates your comments and guidance in helping improve the DC IDA's performance. Most of the suggestions that we agree with have already been implemented. We look forward to working with you to provide clear, accurate information of the very important work we perform.

Very truly yours,

Charles Daniels, III  
Chairman

## APPENDIX B

### OSC COMMENTS ON THE IDA'S RESPONSE

#### Note 1

We audited DCIDA performance to determine if the number of FTE jobs to be created per the applications had been achieved according to the latest annual filing, and if policies and procedures were in place to hold those businesses accountable if those job creation expectations were not met. While businesses may have created economic benefits, they received tax benefits even though they did not meet the overall job creation goal.

#### Note 2

We were not provided any additional documentation to support the 40 jobs created that were reported on the PARIS report. We used the only available documentation, the original application. In addition, no addendums were attached to the application disputing or revising the application data.

#### Note 3

Even though the PARIS report does not have a specific line for per diem wages, the DCIDA can calculate FTEs and include that information in the report.

#### Note 4

Based on the information provided on the application, the applicant projected the creation of jobs. We tested against that projection.

#### Note 5

The External Marketing Council and the Trade Show Grant Program should have been classified as grants, not professional service contracts.

#### Note 6

The term "projects" was changed to "payments" in the report.

#### Note 7

No additional documentation was provided that shows the source documents were not accurate. Absent of any documentation or verbal assertion to negate the source documents, we used the source documents provided.

#### Note 8

We revised the table to reflect the PARIS reporting of the two projects under the same owner.

Note 9

We added a footnote explaining that IBM 2008 is a Sales Tax Transfer Agreement.

## APPENDIX C

### AUDIT METHODOLOGY AND STANDARDS

During this audit, we evaluated the Agency's operations in general, and specifically 12 approved projects that received DCIDA benefits during the period January 1, 2012 through May 31, 2013. For selected projects, we expanded the audit period back to October 1986 to include all project activities from the date of the projects' inception.

We examined project applications and the approval and monitoring process for all ten businesses receiving property tax exemptions during our audit period (as indicated in Table 4).

| #  | Business Name   |
|----|---|
| 1  | Adams Fairacre  |
| 2  | Arbor Ridge   |
| 3  | Columbia SFH  |
| 4  | Davies South Terrace  |
| 5  | GAP   |
| 6  | Hudson Baylor   |
| 7  | IBM 2008 <sup>a</sup>                                       |
| 8  | IBM 2011  |
| 9  | IBM 2012  |
| 10 | Poughkeepsie Grand Hotel ( Bonura and DiBrizzi Enterprises) |

<sup>a</sup> Sales Tax Transfer Agreement

To gain an understanding of DCIDA project monitoring process:

- We interviewed Agency officials to determine if procedures have been implemented for timely reporting of employment data.
- We documented what actions were taken by officials to monitor active projects.

To determine if DCIDA actively monitors approved projects to ensure fulfillment of proposed benefits or objectives:

- We determined if number of FTE promised on applications (benefit to taxpayers) had been achieved according to the latest annual filing.



- We determined if PILOT payments were made in accordance with applications and agreements.
- We determined if DCIDA has a recapture agreement, and whether sanctions or penalties are imposed for unfulfilled promises.

To determine if DCIDA properly completes the annual report in accordance to OSC prescribed uniform classification of accounts, is submitted timely and all required supplemental reports are accurate and complete:

- We compare the 2012 bank statements and DCIDA's financial records to the PARIS report to determine the accuracy and completeness of the financial information submitted for FYE 2012.
- We compared the original application and the 2012 employment reports to the PARIS report to determine the accuracy and completeness of the employment statistics submitted in the report.

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.

## APPENDIX D

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