Office of the New York State Comptroller

Division of Local Government
& School Accountability

County of Orleans Industrial Development Agency

Project Approval and Monitoring

Report of Examination

Period Covered:

January 1, 2013 — October 10, 2014

2014M-345

Thomas P. DiNapoli

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State of New York
Office of the State Comptroller

Division of Local Government
and School Accountability

April 2015

Dear Agency Officials:

A top priority of the Office of the State Comptroller is to help local officials manage government 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 Board governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard governmental assets.

Following is a report of our audit of the County of Orleans Industrial Development Agency, entitled Project Approval and Monitoring. This audit was conducted pursuant to the State Comptroller's authority as set forth in Article X, Section 5 of the State Constitution and Article 3 of the New York State General Municipal Law.

This audit's results and recommendations are resources for agency 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

EXECUTIVE SUMMARY

Industrial development agencies (IDAs) are independent public benefit corporations whose purpose is to promote, develop and assist industrial, manufacturing, warehousing, commercial, research and recreation facilities. The overall goal of IDAs is to advance the job opportunities, general prosperity and economic welfare of the people of New York State. The County of Orleans Industrial Development Agency (COIDA) was created under New York State General Municipal Law (GML).

COIDA is the sole IDA for Orleans County (County). The COIDA Board (Board) comprises seven members appointed by the County Legislature. The Board is responsible for the general management and control of COIDA's financial and operational affairs. The Board appoints one individual as the chief executive officer/chief financial officer who, along with management, is responsible for day-to-day operations. COIDA funds its operations with fees charged for processing applications, State grants, County and town contributions and other miscellaneous income.

Scope and Objective

The objective of our audit was to review COIDA's process for evaluating, approving and monitoring projects for the period January 1, 2013 through October 10, 2014. We also analyzed related documents for certain projects initially sponsored as early as 1998 that were still active during our audit period and were exceptions[1] in our testing.

Our audit addressed the following related question:

- Does the Board properly evaluate and award projects, and subsequently monitor the performance of the businesses that received financial benefits?

Audit Results

We found deficiencies in COIDA's evaluation and approval of businesses seeking IDA benefits, its determination of agreement terms with approved businesses and its subsequent monitoring of the businesses for compliance.

The Board and management did not formally document and adopt procedures for calculations of cost-benefit ratios and the determination of contractual time periods for businesses seeking financial assistance. As a result, evaluation criteria may not be consistently applied, and the basis for approval

[1] Exceptions in our testing were projects for which the payments in lieu of taxes (PILOT) billing schedule did not agree with the PILOT agreement schedule on file, or were terminated before the end of the PILOT period.

or rejection of businesses is not clear. Further, none of the open projects' PILOT[2] agreements we reviewed contained a "recapture of benefits" clause holding businesses accountable for delivering promised benefits to the community in exchange for COIDA tax abatements. Therefore, businesses can terminate their agreements without any financial consequences. One business closed its operations after three years on a 10-year PILOT agreement, having made PILOT payments of approximately $99,000 while receiving a net of nearly $605,000 in tax abatements; however, it was not held accountable for reimbursing those funds to the community.

In addition, COIDA officials billed one business using a PILOT billing schedule different from the Board-approved schedule, resulting in the under-billing of $246,000 in the 12 years since the PILOT agreement inception. If not corrected, this will increase to a projected $635,000 over the 20-year PILOT period. Finally, COIDA officials did not require periodic reporting of necessary information from businesses or verify the information that was provided, and therefore did not adequately monitor projects to ensure they meet promised goals. As a result, taxpayers do not have assurance that their interests are being protected.

Comments of Agency Officials

The results of our audit and recommendations have been discussed with Agency officials and their comments, which appear in Appendix B, have been considered in preparing this report. Agency officials generally agreed with our recommendations and indicated that they plan to take corrective action.

[2] PILOTs are amounts paid for certain tax-exempt parcels in lieu of real property taxes that would otherwise have been paid, had the property not been tax-exempt.

Introduction

Background

Industrial development agencies (IDAs) are independent public benefit corporations whose purpose is to promote, develop and assist industrial, manufacturing, warehousing, commercial, research and recreation facilities. The overall goal of IDAs is to advance the job opportunities, general prosperity and economic welfare of the people of New York State. The County of Orleans Industrial Development Agency (COIDA) was created under New York State General Municipal Law (GML).

IDA economic incentives to businesses include sales and mortgage tax exemptions and real property tax abatement. In return, many of the projects that benefit from IDA assistance have agreements to create new jobs or to retain existing jobs in the community and provisions for payments in lieu of taxes (PILOTs)[3] to help offset the loss of revenues from the tax exemptions provided. PILOT agreements typically address only the increased value of the property. An IDA generally enters into a lease or lease-back agreement for the property owned or leased by the business, which allows the IDA to offer such benefits because the property is considered tax-exempt IDA property. COIDA handles the annual billing for, and collection of, payments by the businesses and forwards the payments to the local taxing jurisdictions according to a predetermined schedule agreement with each business.

COIDA is the sole IDA for Orleans County (County). The COIDA Board (Board) comprises seven members who are appointed by the County Legislature. The Board is responsible for the general management and control of COIDA's financial and operational affairs. The Board appoints one individual as the chief executive officer/chief financial officer who, along with management, is responsible for day-to-day operations. COIDA funds its operations with fees charged for processing applications, State grants, County and town contributions and other miscellaneous income.

Objective

The objective of our audit was to review COIDA's process for evaluating, approving and monitoring projects. Our audit addressed the following related question:

- Does the Board properly evaluate and award projects, and subsequently monitor the performance of the businesses that received financial benefits?

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[3] PILOTs are amounts paid for certain tax-exempt parcels in lieu of real property taxes that would otherwise have been paid, had the property not been tax-exempt.

Scope and Methodology

We examined COIDA's records and project files for the period January 1, 2013 through October 10, 2014. We also analyzed related documents for certain projects initially sponsored as early as 1998 that were still active during our audit period and were exceptions[4] in our testing.

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 is included in Appendix C of this report.

Comments of Agency Officials and Corrective Action

The results of our audit and recommendations have been discussed with Agency officials and their comments, which appear in Appendix B, have been considered in preparing this report. Agency officials generally agreed with our recommendations and indicated that they plan to take corrective action.

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 Board Secretary's office.

[4] Exceptions in our testing were projects for which the PILOT billing schedule did not agree with the PILOT agreement schedule on file, or which were terminated before the end of the PILOT period.

Project Approval and Monitoring

GML provides that certain types of projects are eligible for IDA economic assistance to promote, develop and assist industrial, manufacturing, warehousing, commercial, research and recreation facilities. Because tax benefits granted by an IDA result in a cost[5] to the community, it is important for an IDA to consider more than just eligibility and develop project evaluation criteria, which should be consistently applied when making project evaluation and selection decisions. The Board and COIDA officials should also consider whether a business that would open in the community, or an existing business, would relocate if it did not receive financial assistance.

The Board and COIDA officials should ensure that all project applications are measured against consistent standards to reduce the risk of subjective approvals and denials not based on economic factors. Board-adopted policies should address the verification of information on the project applications; the preparation, review and determination of a cost-benefit analysis; and the periodic monitoring of project performance. COIDA should also establish procedures to monitor performance, using an economically quantifiable and easily comparable measurement, to ensure the community is benefiting from the business activities as stated in the application. Other project evaluation factors to consider are the creation or retention of a certain number of jobs and certain wage levels and related employee benefits. Further, recapture provisions in project agreements would allow COIDA to recoup previously granted benefits if job creation or retention, or other economic goals or agreement terms, are not met. It is also important for COIDA to ensure that all PILOTs are billed and received according to agreements.

The Board and management have not formalized certain critical procedures and policies that are used as criteria in the project evaluation process. Although COIDA officials use cost-benefit analysis (CBA) ratios in evaluating projects, these procedures have not been documented and adopted by the Board. The Board has adopted a Uniform Tax Exempt Policy (UTEP), as required, that includes a recapture-of-benefits clause. However, none of the open projects' PILOT agreements we reviewed contained this clause. This has allowed businesses to terminate their agreements without any financial consequences or penalties; for example, one business closed its operations after three years on a 10-year PILOT agreement. This closure occurred after the business benefitted by receiving tax abatements of $605,000 and paying PILOTs of $98,900.

[5] Property, sales and mortgage tax exemptions and related opportunity costs

COIDA officials also billed one of the businesses using a PILOT billing schedule different from the Board-approved schedule. This resulted in the under-billing of $246,000 in the 12 years since the inception of the agreement, which we project will increase to $635,000 over the 20-year PILOT period if not corrected. Finally, COIDA officials did not adequately monitor projects to ensure the businesses made reasonable progress toward their job and investment projections or other goals stated in their applications.

Project Review and Approval

GML requires IDAs to establish a UTEP which provides an IDA board with detailed procedural guidelines to make project approval or denial decisions. The UTEP should include specific criteria for evaluating each project application based on the community's needs. The Board should also document and adopt all evaluation criteria not covered in the UTEP to provide guidance to management and to ensure consistent application in the evaluation process.

The Board has adopted a UTEP which includes written factors that the Board and COIDA officials should consider in determining whether a project is eligible for assistance. These include the nature of the project or property, enabling legislation, economic condition of the area, jobs to be created or retained, value of tax exemptions and the impact on the taxing jurisdictions. The business seeking benefits is required to complete an application detailing the project, projected capital investment, jobs to be created or retained and financial assistance applied for. The application is reviewed by COIDA officials to ensure it meets the policy criteria and then forwarded to the Board for review and approval or denial.

We found that, while the Board has adopted a UTEP, it has not established and adopted a policy addressing the other factors considered when evaluating an application for financial assistance. Evaluation criteria such as CBA, information verification, jobs and employee benefits paid, and monitoring and reporting are equally important factors. The Board should formalize these criteria and processes to ensure a consistent approach, objective evaluation process and appropriate performance appraisals.

We examined the applications for all 22 open projects during the audit period which received financial benefits in return for proposed capital investments totaling $134 million.[6] In general, COIDA officials' evaluation of the project applications was consistent with the UTEP. However, in some instances the policy criteria and other informal criteria were not consistently applied, such as the CBA ratio, PILOT periods and a recapture-of-benefits clause. Some of these factors are major determinants in accepting or rejecting a project applicant. The

[6] Of the 22 projects, one project accounted for $89 million of the capital investment.

CBA ratio measures the direct community cost[7] against the direct community benefits[8] resulting from the proposed investment by the business.

Cost-Benefit Ratios – The COIDA standard minimum acceptable CBA ratio has been set at 1:10.[9] COIDA officials were able to provide documented CBA ratios for six projects, but not for the other 16. Lack of consistent computing of the CBA for all projects can lead to selective inclusion and exclusion of these ratios by management, potentially creating an advantage or disadvantage for an applicant. This selective information could result in the Board improperly accepting or rejecting a project. For the six projects with ratio analyses calculated, one project met the minimum ratio of 1:10, and the remaining ratios exceeded the minimum, at 1:12, 1:17, 1:24, 1:33 and 1:51. However, because there is no data or basis to demonstrate how COIDA established its minimum CBA ratio it is unclear whether projects with projected high returns are actually good performers or standards may have been set too low, or whether the community was receiving a reasonable rate of return. Further, it is unclear whether one ratio is appropriate for the variety of projects that are awarded benefits; COIDA-sponsored projects are diverse in nature, including agricultural entities, manufacturing, retail and ethanol processing. Therefore, it is important for officials to determine ratios that are relevant to the respective industries.

PILOT Period – The UTEP does not include specific PILOT periods for projects receiving financial benefits, but rather leaves it up to the Board to determine after consideration of certain factors. Further, COIDA does not have a Board-adopted policy or procedures to determine the PILOT period. The project evaluation documents and PILOT agreements we reviewed did not show evidence of quantifiable factors considered by management or the Board for setting the PILOT period for each project. The UTEP indicates that some of factors to be considered for a PILOT period include significant economic impact on the community, nature of the project, economic condition of the area, jobs to be created and the amount of private investments. However, the UTEP lacks specifics on how these factors apply in determining the PILOT period. The 22 projects' PILOT periods ranged from 10 to 30 years, with the majority (12) having a 10-year period. The remaining 10 PILOT periods were 15 years (six projects), 20 years (two projects), 25 years (one project)

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[7] Direct community cost includes property, sales and mortgage tax exemptions.

[8] Direct community benefits include capital investment, PILOT payments, wages and employee benefits.

[9] COIDA officials indicated that the cost-benefit analysis ratio of 1:10 was adopted from New York State's Empire State Development regulations and guidance.

and 30 years (one project). Management could not explain the basis for the varying PILOT periods. Without detailed documentation or guidelines for determining agreement terms, there is limited assurance that the PILOT periods are appropriate to each project. Inconsistent application and exclusion of factors used to evaluate projects can result in approvals for projects that do not meet COIDA requirements or do not maximize benefits to the community.

Monitoring

A significant responsibility of an IDA is to monitor and evaluate the performance of businesses receiving financial assistance to determine whether they are meeting the goals stated in their project applications and are held accountable. Without effective monitoring, an IDA will not be in a position to identify and address business performance shortfalls and the community may not receive the expected benefits from investments.

The Board and COIDA officials do not adequately monitor projects to ensure that the businesses are held accountable and are achieving, or making progress toward, job and investment goals. In addition, COIDA officials do not verify information submitted by the businesses as part of their initial application process and annual reporting to COIDA.[10] As a result, current projects with capital investments estimated at $134 million were awarded based on unverified data in applications. Moreover, COIDA officials do not verify the data submitted annually by the businesses or require them to periodically report actual investments. As such, they do not have reliable information to adequately monitor these projects and assess the businesses' performance.

Recapture-of-Benefits Clause – Penalties for non-performance, a shortfall in job creation, premature termination of a PILOT agreement or other promised benefits could take various forms. For example, a business could be prohibited from reapplying for an incentive program, or a recapture policy could require the business to return all or part of the tax exemptions received. Although COIDA's UTEP includes a recapture-of-benefits clause, it was not included in any of the 22 projects we reviewed.

The UTEP indicates that the use of the clause will be at the discretion of the Board after a case-by-case review of the circumstances. Therefore, if the Board included the clause in the agreement, failure of a business to meet performance benchmarks will not automatically result in a default to recapture of benefits. Such a clause would be an

[10] COIDA is required to report annual activity for each project, including tax abatements, job information and PILOT payments, to the New York State Authorities Budget Office.

added incentive for the businesses to deliver the projected benefits and, further, would provide assurance to the taxpayers that their interests are protected. COIDA officials stated that including the recapture clause in the agreement will put them at a competitive disadvantage in their attempt to attract businesses.

In 2010, COIDA entered into a 10-year PILOT agreement with a business to renovate a call center and retain 750 jobs. The PILOT agreement allowed tax abatements of 100 percent in the first year and an annual 10 percent decrease thereafter until real property tax payments resume at 100 percent in 2021. However, in September 2013 (six and a half years before the end of the PILOT period), the business terminated the agreement. Since the agreement did not include a recapture-of-benefits clause, COIDA could not recoup any of the benefits that had been extended to the business. In the three and half years the business (a large multinational bank) paid a total of approximately $98,900 in PILOT payments as shown in Figure 1.

Figure 1: PILOT Payments vs. Tax Abatements After Early Termination

Year	Full Taxes	Abatement %	PILOT Payments	Net Tax Abatements
2011	$187,045	100%	n/a	$187,045
2012	186,523	90%	$18,652	167,871
2013	188,773	80%	37,755	151,018
2014	141,529[a]	70%	42,459	99,070
Total	**$703,870**		**$98,866**	**$605,004**

[a] The business terminated the agreement in September 2013; therefore, the taxes of $141,529 consist of $68,215 for the Village of Albion and $73,313 for the Albion Central School District for fiscal year 2013-14. The last billing for the County and Town of Albion was for fiscal year 2013.

Without tax abatements the business would have paid taxes totaling over $703,800. Instead, it paid PILOTs of $98,900, netting tax abatements of $605,000 which were not reimbursed to the community. A recapture policy not only provides added incentive for project owners to meet their goals but also gives the taxpayers added assurance that their interests are being protected.

<u>PILOT Payments</u> – When an IDA grants a real property tax exemption for an approved project, it may recapture a portion of the real property taxes in the form of a PILOT. The business pays these amounts for certain tax-exempt parcels in lieu of real property taxes that would otherwise have been paid if the property, or a portion thereof, were not tax-exempt.

We reviewed the PILOT agreements for the 22 projects and computed payments due for 2013 totaling more than $2 million. We compared them with the actual payments made to the local taxing jurisdictions to ensure that PILOT billings were accurate and complied with the agreements, and that payments were timely. We found that, with the exception of one project, the billings and payments were accurate and complied with the agreements.

In 1998, COIDA entered into a 20-year PILOT agreement with a manufacturing business, with PILOT payments scheduled to start in 2002. The agreement contained fixed PILOT payments based on predetermined assessment values. We computed the PILOT billing for 2013 according to the agreement on file and compared it to the actual billing and payment received and found that, although the business should have been billed $117,000, it was instead billed $73,100 (an under-billing of $43,900). This occurred because COIDA officials used a different schedule than was on file and therefore applied incorrect assessment amounts and abatement percentages. In the 12 years since the inception of the agreement, COIDA under-billed this business a total of $246,300. We project that if these billings are not corrected, it will cost the taxing jurisdictions over $635,000 during the 20-year life of the PILOT agreement. Although COIDA officials indicated that the agreement was amended, they were unable to provide us with an amended agreement.

Capital Investment – The amount of capital investment that a business intends to make is included as part of the project application and CBA, where applicable. The amount of capital investment will eventually influence the assessed value of the new building or major renovations, and directly affects the amount of taxes that the local taxing jurisdictions will receive after the facility is constructed or renovated. Therefore, it is important that COIDA officials verify the amount of capital that the project applicants invest to ensure that the actual investments agree with the amount on the application and in the CBA. Further, capital investment by a business in buildings and machinery can be an indication of its long-term commitment to the local community.

COIDA officials do not adequately monitor businesses' capital investments. Although businesses indicate on their application the intended capital investment, they do not submit periodic progress reports or any other documentation of actual capital investments, and are not required to do so. Therefore, COIDA officials have no assurance that the businesses are meeting their investment goals. Additionally, if businesses do not invest their own capital funds to the extent indicated in the application, the project's success may be at risk and may lead to a business requesting additional benefits.

Job Performance – When businesses apply for benefits, they are required to project the number of jobs that will be retained or created and related salaries and employee benefits that will be paid. Employee benefits are included in the CBA ratio calculation. This is one of the determining factors in accepting or rejecting a project. However, COIDA officials do not verify the salary and benefits information presented by a business when it applies for sponsorship. Although this may be initially sufficient for a new business, once the business is operational the data should be periodically verified.

Businesses are required to annually report to COIDA full-time equivalent (FTE) employment data and related salaries. We found that COIDA officials use this reported data to appraise the performance of the projects without verifying it. Furthermore, the job report form did not include all the data needed by COIDA officials to properly evaluate job performance because it requires businesses to report only FTE employment data and not related salaries and employee benefits. Without this information COIDA officials cannot conduct a comprehensive performance appraisal of the businesses.

We reviewed the annual job reports for the 22 businesses and compared them to projected employment numbers as of December 31, 2013. We found that overall the businesses did not meet their goals for retaining and/or creating jobs. This was primarily the result of the two businesses that closed operations in 2013. The 22 businesses were projected to retain or create 2,118 jobs, but reported 1,348 jobs, a shortfall of 770. Eight businesses reported that they did not achieve their projections by a total of 1,048 jobs and 14 businesses reported that they met or exceeded their projections by a total of 278 jobs. The most significant shortfall was that of the bank that terminated its PILOT agreement in the third year, which closed a call center that employed 750 people. Another manufacturing business that employed 130 people relocated at the end of a 15-year PILOT period to a neighboring county.[11]

Without complete job and benefit information, the Board and COIDA officials cannot monitor the projects to ensure an appropriate return on the community's investment, as identified in the application, and to determine whether the business should continue to receive benefits.

Recommendations

The Board and COIDA officials should work in conjunction to:

1. Adopt all policies and procedures critical to project evaluation and define applicable criteria to ensure consistent application.

2. Develop, adopt and document CBA ratios that meet community needs, reflect the economic environment and provide for an

[11] This company did not directly receive incentive benefits from the neighboring county IDA, but leased its new location from a corporation that is receiving incentives.

appropriate and reasonable measurement of each applicant's performance.

3. Adopt a policy to define the basis for the time periods awarded in PILOT agreements and document how they are calculated for each project.

4. Consider including a recapture-of-benefits clause in agreements to protect the community and taxpayers.

5. Ensure that all PILOT billing and payments are made in accordance with agreements.

6. Consult with legal counsel and, if feasible, pursue the recovery of under-billed PILOTs and subsequently remit the money to the affected taxing jurisdictions.

7. Develop procedures to monitor and ensure businesses' actual capital investments are consistent with those specified on the applications and used in the CBA.

8. Develop a job report form that adequately captures all data elements needed to appropriately monitor and evaluate businesses performance, and verify all information provided.

9. Periodically verify the accuracy and completeness of employment and capital investment information, as provided by the businesses, that is reported to the New York State Authorities Budget Office.

APPENDIX A

COIDA ACTIVE PROJECTS

A list of COIDA's certified active projects as of December 31, 2013 (certification date of October 2, 2014) is shown in Figure 2.

Figure 2: COIDA Active Projects as of December 31, 2013 (COIDA Certified on October 2, 2014)[a]

Project Name	Project Amount	Exemptions	PILOT Payments	Net Employment Change
ACE/Zor	$850,000	$11,949	$5,386	20
Associated Brands - 1998	$2,400,000	$187,989	$73,235	282
BMP America	$1,500,000	$46,738	$31,082	38
Brunner International - Bond	$13,000,000	$0	$0	0
Brunner International - 1996	$1,512,063	$32,884	$19,011	132
CRFS - Sales Tax 2011	$990,000	$0	$0	150
Empire Fruit	$2,350,000	$36,428	$29,973	(18)
Falls Railroad	$2,195,000	$74,777	$20,000	(5)
Hinsperger Poly Industries - 2001	$217,500	$72,067	$45,973	55
Howitt Enterprises	$252,000	$107,363	$107,063	3
JP Morgan-Chase[b]	$4,017,300	$50,497	$10,099	(100)
Lake Ridge Fruit Company - 2010	$3,000,000	$29,833	$17,020	3
Liberty Fresh Farms	$1,350,000	$16,187	$9,353	6
M.A.G.C.	$1,000,000	$61,033	$61,033	26
Maple Ridge, LLC (Trek)(b)	$900,000	$5,189	$4,298	(13)
Pickle Office - Sales Tax 2011	$125,000	$0	$0	0
Precision Packaging - 2002	$1,200,000	$115,814	$57,951	105
Precision Packaging Products -2010	$1,300,000	$43,589	$24,401	0
Saint Gobain - 2004	$2,800,000	$133,140	$133,140	82
Saint Gobain/Scannell - 2007	$3,667,202	$97,288	$77,830	0
Save-A-Lot-Holley	$1,200,000	$15,739	$15,739	12
Tillman's Village Inn	$150,000	$1,449	$1,377	(29)
Village Inn - Sales Tax 2012	$325,000	$0	$0	3
Western New York Energy	$89,000,000	$1,221,421	$1,221,421	50
TOTALS	**$135,301,065**	**$2,361,374**	**$1,965,385**	**802**

[a] As listed in the COIDA annual project report to the New York State Authorities Budget Office. The total number of projects listed exceeds the 22 in our audit because the COIDA report erroneously included two projects that were no longer active.
[b] Closed operations during the 2013 reporting year

APPENDIX B

RESPONSE FROM AGENCY OFFICIALS

The Agency's response to this audit can be found on the following pages.

March 27, 2015

[redacted]
Chief Examiner
Office of the State Comptroller
Division of Local Government and School Accountability
295 Main Street, Suite 1032
Buffalo, New York 14203-2510

Dear [redacted]

This letter will serve as our formal response to your draft audit report titled County of Orleans Industrial Development Agency Project Approval and Monitoring Report of Examination for the Period of January 1, 2013 – October 10, 2014 (the "Draft Audit Report").

The Draft Audit Report has been reviewed by the staff and Board of Directors of the County of Orleans Industrial Development Agency ("COIDA") and representatives of COIDA participated in the exit conference portion of the audit process with staff of the Comptroller's office.

We are pleased to note that, based on the sampling conducted, no discrepancies were found in COIDA's purchasing, payroll records, cash receipts or cash disbursements.

The focus of the Draft Audit Report is a review of COIDA's policies and procedures for project approval and monitoring. In that regard, we appreciate this opportunity to provide clarification on some of the issues raised in the Draft Audit Report as follows:

1. PILOT Period. With respect to COIDA's Uniform Tax Exemption Policy ("UTEP"), the Draft Audit Report states "[t]he UTEP does not include specific PILOT periods for projects receiving financial benefits, but rather leaves it up to the Board to determine after consideration of certain factors." The COIDA UTEP provides that "the Agency's general policy is to grant applicants real property tax abatement equal those provided by Section 485-b of the Real Property Tax Law . . . ". This provides for a basic PILOT Period of ten (10) years with exemptions starting at fifty percent (50%) of the "value added" by the Project with the percentage of exemption declining by five percent (5%) per year. The Draft Audit Report notes that the majority of projects reviewed had a 10-year PILOT period, consistent with the UTEP. The UTEP does allow the Board a certain degree of flexibility to provide enhanced benefits with respect to manufacturing facilities and with respect to vacant facilities without constituting a deviation from the UTEP. Notwithstanding this language, it is the current practice of COIDA to treat any PILOT arrangement which deviates from the ten (10) year abatement schedule as a deviation from the UTEP, requiring notice to the taxing jurisdictions and a specific

justification for the non-standard PILOT arrangement, which are incorporated into COIDA's authorizing resolutions.

2. Recapture-of-Benefits Clause. The Draft Audit Report notes that the UTEP provides for use of a recapture-of-benefits clause at the discretion of the Board on a case-by-case basis. The report states however that "none of the open projects' PILOT agreements we reviewed contain this clause." Commencing in August, 2013, the standard form of Lease Agreement used with respect to COIDA projects contains a provision which permits COIDA, in its discretion, to recapture sales tax and real property tax benefits received in the event of a material breach of any of the terms of the Project documents or in the event of a material alteration in the use of the Project, the closure of the Project or a reduction in operations at the Project to such an extent that, in COIDA's judgment, the economic benefit to be derived from the Project had been substantially impaired. This language, which is contained in the Agency Lease Agreement, is consistent with the recapture provisions set forth in the UTEP. It should also be noted that the Lease Agreement executed in connection with a sales tax transaction listed in Figure 2 to the Draft Audit Report contained a specific requirement for recapture of sales tax benefits in the event the company relocated certain jobs to a location outside of Orleans County during a specified recapture period. This, and the language contained in COIDA's standard lease, evidences the willingness of COIDA's Board to impose recapture provisions in appropriate circumstances.

3. Call Center Project. The Draft Audit Report contains a discussion of a specific call center project operated by a large multi-national bank which was terminated after three and a half years of operation by the company. The Draft Audit Report notes that the documents executed with respect to this transaction did not include a recapture provision. The UTEP allows for, but does not mandate, the inclusion of a recapture provision, with a determination to be made by COIDA on a case-by-case basis. The project at issue involved the acquisition of the call center facility by the multi-national bank in connection with its acquisition of the assets of another bank as a result of the financial crisis. Subsequent to this asset acquisition, the bank performed an analysis of the operations acquired to determine which facilities would be maintained and which would be closed. The Orleans County facility was in competition with other locations and local officials were faced with the real possibility that the facility would be closed, resulting in a significant loss of employment. With the focus on providing competitive incentives in order to retain the facility, a recapture provision was not included in the project documents. Although a further retrenchment in the banking industry did ultimately result in the closure of the call center facility, COIDA assisted in the acquisition of the building by a local businessman and the leasing of the facility to a local company which had expanded and was exploring relocating its operations outside of New York State. This project led to the retention of this company within Orleans County and the current employment at this site of 657 individuals.

4. PILOT Payments. The Draft Audit Report notes a discrepancy between PILOT billings on a manufacturing project and the payments in lieu of taxes calculated based on the schedule contained in the original PILOT Agreement executed in 1998. As noted in the report, COIDA staff advised that the payment in lieu of tax schedule was modified by agreement between COIDA and the company; however COIDA staff was unable to locate the amended agreements. Upon discovering that its file was incomplete, COIDA took steps to ratify the prior amendment. To address the missing documentation, COIDA and the company have entered into amendments to re-document the agreed-upon changes to the PILOT and lease terms so that the project documentation and PILOT billing schedule are consistent. This was an isolated occurrence and COIDA will continue its practice of documenting any modifications to its project documents and will work to ensure that all modifications are properly maintained and accessible.

We appreciate the time your staff spent in conducting the audit of COIDA and your recommendations on how COIDA can enhance its evaluation of projects, its cost benefit analysis process and its monitoring of employment and capital investments. We will submit a Corrective Action Plan to address your recommendations, as appropriate.

Thank you again for this opportunity to respond to the Draft Audit Report.

Very truly yours,

COUNTY OF ORLEANS INDUSTIRAL DEVELOPMENT AGENCY

By: ______________________________
Paul Hendel, Chairman

APPENDIX C

AUDIT METHODOLOGY AND STANDARDS

The objective of our audit was to review the approving and monitoring of projects sponsored by COIDA that were active for the period January 1, 2013 through October 10, 2014. We also analyzed related documents for certain projects initially sponsored as early as 1998 that were still active during our audit period and were exceptions[12] in our testing. To achieve our audit objective and obtain valid audit evidence, we performed the following audit procedures:

- We interviewed COIDA officials and staff to understand and assess COIDA's processes and procedures.
- We reviewed COIDA's Board meeting minutes and policies, including the UTEP, to identify written criteria outlining an applicant's eligibility for sponsorship and the benefits that may be offered.
- We reviewed application and project files for all 22 projects that were open as of December 31, 2013.
- We reviewed the annual reporting by businesses to evaluate whether the Board and COIDA officials were getting adequate information to assess the businesses' performance.
- We compared the reported actual job numbers by the businesses to projected jobs on the application.
- We reviewed the PILOT agreements and payments to ensure that payments were accurate, complied with the agreements and were made in a timely manner.

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.

[12] Exceptions in our testing were projects for which the PILOT billing schedule used did not agree with the PILOT agreement schedule on file, or which were terminated before the end of the PILOT period.

APPENDIX D

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APPENDIX E

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