

Town of Amherst Industrial Development Agency

Project Approval and Monitoring

SEPTEMBER 2021



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

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Report Highlights

Town of Amherst Industrial Development Agency

Audit Objective

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

Key Findings

The Board did not properly approve and monitor projects.

- The Board did not ensure its project approvals were based on project applications that were completed and supported with applicable supplemental documentation and an adequate cost-benefit analysis (CBA).
- The Board and officials did not properly monitor to ensure the annual report filed with the New York State Authorities Budget Office (ABO) and the Office of the State Comptroller (OSC) was accurate with respect to job performance, sales tax exemptions and payment in lieu of taxes (PILOT) information for current and active projects.

Key Recommendations

- Ensure project applications are properly completed and supported with applicable supplemental documentation and that CBAs contain meaningful summaries and are accurately calculated based on the correct sales tax amounts.
- Establish adequate procedures to review and verify that all data in the annual report is accurate and complete.

IDA officials generally disagreed with our findings; however, they generally agreed with our recommendations. Appendix C includes our comment on issues raised in the IDA's response letter.

Background

AIDA is an independent public benefit corporation established in 1973 at the request of the Town of Amherst in Erie County.

The Board is composed of seven members, who are appointed by the Town of Amherst Board, and is responsible for AIDA's general management and financial and operational affairs. The Board appoints a Chief Executive Officer (CEO) and a Director of Administrative Services (Director) to supervise and control all administrative functions of AIDA.

AIDA funds its operations primarily with application and project closing fees charged to applicants seeking financial assistance. AIDA annually reports information for approved projects. The 2018 annual report included 63 projects approved between 1994 and 2017. The Board approved 14 project applications between June 15, 2016 and June 30, 2019. AIDA offers financial assistance for projects including tax exemptions.

2018 Quick Facts

Projects	63
Tax Exemptions	\$8.4 million
PILOTs	\$3.6 million

Audit Period

June 15, 2016 – August 27, 2020

Project Approval and Monitoring¹

How Should IDA Projects Be Properly Approved?

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

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

Also, an IDA can require applicants to submit supplemental information with their applications. This could include supporting documents and information provided by or on behalf of the applicant to further assist the IDA board in evaluating the project and ensuring the application data is reasonably reliable for use in the IDA board's project approval process. An IDA must develop, adopt by resolution and post to its website, uniform criteria to assess all material information included in connection with the project application to afford a reasonable basis for the board's decision to provide financial assistance for each category of projects.

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

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

At a minimum, an agreement must describe the project and the amount and type of financial assistance to be provided and the IDA's purpose to be achieved for the project. Also, agreements must require project owners to indicate the FTE (a

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

calculation used to convert the hours worked by several part-time employees into the hours worked by full-time employees) jobs retained and created as a result of the financial assistance and indicate averages or ranges for employees' salaries and fringe benefits.

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

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

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

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

In addition, each project's approved project agreement and PILOT agreement, along with all attachments and relevant records, must be posted on the website. IDAs also must post on their website documentation of their board's annual assessment of each project's progress for all projects that receive financial assistance.²

The Board Did Not Properly Approve Projects

The Board approved project applications for 14 projects totaling \$77 million after June 15, 2016. We reviewed the Board's project approval process and identified certain improvement opportunities.

² Refer to the How Should IDA Projects Be Properly Monitored? section for further information on annual project assessments.

Project Application – Effective June 17, 2016, the Board authorized revisions to its uniform project application and agreement forms and adopted additional written policies to address project evaluation and the recapture of previously authorized financial assistance as required by the 2015 IDA reform legislation.

We reviewed all 14 projects and found that all had a uniform project application and project agreement that included all the required updates, including provisions for suspension, discontinuance and recapture of financial assistance, which were generally consistent with the reform legislation.

However, none of the applications were supported by any supplemental information or documentation, such as initial capital project plans or pre-project employee headcount and payroll information. Officials indicated that they did not want to make the project application process more difficult than was required. As a result, AIDA officials could not ensure that the application information was complete and reasonably reliable for the Board to properly evaluate and approve the projects and then subsequently have sufficient information to properly monitor project progress.

CBA – All 14 of the project applications were supported by the required CBA; however, none contained a conclusion or a meaningful summary of what it indicated. Also, the amount of sales tax exemptions in the CBA prepared by AIDA officials for 11 of these projects was different from the amount of sales tax exemptions requested in the project application. Although the Board received both the project application and the CBA as part of its review of the proposed projects, there was no indication in the Board’s meeting minutes that Board members were aware of the discrepancies. Sales tax exemption amounts were \$1.1 million less in ten CBAs as compared to the project applications and one additional project’s CBA included \$200,000 more in sales tax exemptions than the project application. Combined, the discrepancies totaled approximately \$1.3 million.

The 11 CBAs did not contain the same sales tax information as the project application and, while not required, none of the project applications were supported by any supplemental information to ensure reasonable reliability. Consequently, the Board could not properly assess the potential community costs and benefits of the proposed projects before its approval.

While it was not documented in the Board’s meeting minutes or AIDA’s project records, AIDA officials, including the Board Chairman, told us the Board was aware of the sales tax exemption variances between the project applications and the CBAs. Officials asserted that the variances were due to incorrect sales tax rate calculations in the software used to generate the CBAs. After we informed AIDA officials regarding these variances, they contacted the software company to address the issue.

Although the Board received both the project application and the CBA ... there was no indication in the...minutes that Board members were aware of the discrepancies... [which] totaled approximately \$1.3 million.

Approval Resolutions and Forms – The Board generally³ properly indicated its approvals for the 14 projects in its meeting minutes resolutions and ensured that the sales tax exemption amounts it approved in the project agreements were properly transmitted to the NYSTF on ST-60 forms.

Transparency – AIDA officials did not post the project applications for three of the 14 projects, totaling \$9.6 million to AIDA’s website, as required. Further, none of the supporting supplemental documentation, such as the CBAs, was posted to the website in the project records files for any of the 14 projects. While officials did post CBAs for the 14 projects, the files were posted within the Board’s meeting agenda material. Consequently, it is not conspicuously posted in the same location on the website as the completed project applications and agreements. As a result, the transparency of the project approval process was diminished.

AIDA officials posted the remaining three applications on the website during our audit fieldwork after we informed them and indicated this was an oversight.

How Should IDA Projects Be Properly Monitored?

Annually, IDA officials must assess the progress of each project which continues to receive financial assistance or is otherwise active toward achieving the investment, job retention or creation or other objectives of the project listed in the project application and approved in the project agreement, and provide this assessment to the Board. The Board’s assessment of each project’s progress must be maintained on the IDA’s website while the project continues to receive financial assistance.

Projects approved after June 15, 2016 are required, per their project agreement, to annually file duplicate copies of any and all statements filed with NYS agencies with the IDA, which includes a quarterly wage report (Form NYS-45 Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance Return) and an annual sales and use tax exemptions claimed report (Form ST-340) as of December 31.

Each year, IDAs must annually report and certify certain information for approved projects, including, but not limited to, the types of projects, applicant information, granted tax exemptions, PILOTs and project employment figures to the ABO and OSC.

Reported information should be supported by source documents, including quarterly wage reports and/or sales and use tax claim forms. Before the

³ We discussed certain minor deficiencies with AIDA officials during our audit fieldwork.

IDA submits its annual report, the Board and IDA officials should review the information to ensure its accuracy.

The Board Did Not Properly Monitor Projects

Annually, the Board assesses the progress of each project by reviewing the sales tax exemption amounts, PILOTs and the employment information for each active project in an annual portfolio report. This annual portfolio report is prepared by the Director after AIDA's annual questionnaire process with project owners is complete and is provided to Board members to review and assess. Subsequently, the Director then uses the information from this assessment to complete and submit AIDA's annually required report to the ABO and OSC. However, we identified the following areas in which the Board can continue to improve its monitoring efforts.

Annual Questionnaire – Annually, the Director sends out questionnaires to project owners of active projects which required a reply with certain key project progress information. We reviewed the 2018 questionnaires and responses submitted by six⁴ of the 14 projects. We found that while all six returned the questionnaire, four did not return the quarterly wage reports (NYS-45) as required by their project agreements. Those four projects total \$25.6 million.

AIDA officials indicated that they were aware that the NYS-45 was required by their own project agreement, but they did not require the project owners to return this required documentation, and they did not follow up with the project owners to request it when it was not submitted. Without the supporting documentation, the Board could not verify the accuracy of the actual job creation and/or retention numbers that these four project owners reported on the questionnaire. Consequently, the unverified and unsupported employment information for these four projects that AIDA reports to the ABO and OSC on its annual report may not be accurate. As a result, the Board cannot properly monitor those projects to ensure the progress is adequate or not.

Annual Public Authorities Reporting Information System (PARIS) Report⁵ – The December 31, 2018 annual PARIS report, which was prepared by the Director and reviewed and certified by the CEO, was incomplete. We identified the following exceptions:

⁴ While our audit sample was composed of the 14 projects that had project applications approved by the Board after June 15, 2016, only six were included in the 2018 annual questionnaire process. The remaining eight projects were not included. This is because these project applications were either approved after December 31, 2018 or the projects were terminated by project owners after the Board approved the project application but before the project agreement approvals were complete.

⁵ PARIS is the online reporting system that allows public authorities to enter their information and submit their reports to both the ABO and OSC, as required by law.

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- Job Performance – We reviewed the job performance data AIDA reported on its 2018 annual report for all 63 projects totaling \$552 million. As of December 31, 2018, AIDA reported that these 63 projects were expected to create or retain a total of approximately 10,600 FTEs upon project completion. AIDA reported that net FTEs across all 63 projects totaled over 12,100, or approximately 1,500 more than expected. However, within these 63 projects were 20 projects totaling approximately \$126 million which estimated that FTEs would total 2,635 upon project completion. The actual FTEs reported for these 20 projects totaled 1,305, or 1,330 less to date. We brought these apparent job creation/retention shortages to the Board Chairman’s attention. The Board Chairman subsequently indicated that the Board was aware but could not take any action against these companies because these projects were approved before⁶ the Board adopted an updated recapture policy in June 2016.
 - Sales Tax – AIDA officials obtained the ST-340 forms as required for the six projects from our sample of 14⁷ that were required to be submitted in the 2018 annual questionnaire process. However, for three of these projects, which totaled \$22 million, AIDA did not report sales tax exemptions totaling approximately \$385,000 in the 2018 annual report. AIDA officials indicated that that this omission was an oversight because the PARIS report requires a lot of information to be entered.
 - PILOTS – In the 2018 annual report, AIDA reported 56 projects had real property tax exemptions totaling approximately \$6 million and PILOTS totaling approximately \$3.6 million which were billed and collected. Except for some minor discrepancies, which we discussed with AIDA officials during our fieldwork, these PILOT billings were properly calculated, billed, monitored and reported.

As of December 31, 2018, AIDA reported that... 20 projects totaling approximately \$126 million... estimated that FTEs would total 2,635 upon project completion. The actual FTEs reported totaled 1,305, or 1,330 less to date.

However, when we compared the 2018 annual report to the 2017 real property tax roll, we identified five additional parcels of property that were exempted by AIDA from real property tax exemptions. Upon further review, we found that these exemptions were properly approved on PILOT agreements in five additional AIDA projects the Board had previously approved. While these five projects received approximately \$720,000 in real property tax exemptions and properly paid PILOTS due totaling approximately \$364,000, they were not reported for 2018, as required. AIDA officials indicated it was an oversight.

While two Board members attended recent IDA-related training which included updates on the reform legislation, the remaining Board members and AIDA

⁶ The earliest of these 20 projects was approved in 1994.

⁷ See footnote 4.

officials did not. By attending or receiving additional training, the remaining Board members and AIDA officials could better ensure they are fully aware of their roles and responsibilities as they relate to IDA project management and fulfilling statutory requirements. Additionally, the implementation of adequate written policies and procedures may have helped the Board and AIDA officials identify these errors and omissions and helped ensure accurate project information was provided to the Board for its assessment and subsequently reported to the ABO and OSC.

What Do We Recommend?

The Board and AIDA officials should:

1. Ensure project applications are properly completed and supported with applicable supplemental documentation, such as initial capital project plans or pre-project employee headcounts and payroll information so that the Board, during its review, can ensure application data is reasonably reliable.
2. Ensure CBAs contain meaningful summaries of what the analyses indicate and are accurately calculated based on correct sales tax amounts.
3. Post approved project applications and supporting documentation in a transparent manner, including but not limited to the CBAs on AIDA's website.
4. Ensure all active projects are properly monitored, at least annually, to determine whether projects are meeting performance estimates and goals.
5. Enforce the terms in the project agreements, such as requesting the quarterly wage report and the annual sales tax exemption report from project owners.
6. Establish adequate procedures to review and verify that all data in the annual report is accurate and complete prior to certifying the data.
7. Periodically attend training regarding oversight responsibilities and learn about updated IDA-related statutory requirements.
8. Develop and adopt comprehensive written policies and procedures to help ensure accurate project information is provided to the Board for its assessment and subsequently reported to the ABO and OSC.

By attending or receiving additional training, the remaining Board members and AIDA officials could better ensure they are fully aware of their roles and responsibilities as they relate to IDA project management and fulfilling statutory requirements.

Appendix A: Purpose, Powers and Duties of an IDA

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

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

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

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

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

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

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

⁸ New York State General Municipal Law (GML), Section 858

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

¹⁰ GML, Section 874(1)

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

Appendix B: Response From IDA Officials

David S. Mingoia
Executive Director



March 30, 2021

Mr. Jeffrey D. Mazula
Chief Examiner, Local Government and School Accountability
Office of the New York State Comptroller
Buffalo Regional Office
295 Main Street, Suite 1032
Buffalo, New York 14203

RE: Response to Draft Audit Report
Report of Examination – 2020M-148

Dear Mr. Mazula:

This letter is submitted in response to the above-referenced draft audit report (“Draft Report”) of the Office of the New York State Comptroller (“OSC”) examining the project approval and monitoring practices and procedures of the Town of Amherst Industrial Development Agency (“AIDA” or the “Agency”) for the audit period of June 15, 2016 to March 13, 2020.

The stated purpose of the audit was to determine whether the AIDA Board properly approved and monitored projects. We have reviewed the OSC’s draft findings as set forth in the Draft Report. As outlined below, the Agency acknowledges that the Draft Report identified items for improvement with respect to Agency project approval and monitoring processes and procedures, some of which, as noted in the Draft Report, were implemented during the course of the OSC’s audit of the Agency. However, as also detailed below, the Agency disagrees with several of the draft findings and requests that the OSC reconsider those findings in view of the information presented in this response.

Response Regarding Project Approvals

The Draft Report states that the Board did not properly approve projects. The Agency disagrees with this statement as overly broad particularly when viewed in light of the specific criticisms relied upon for this draft finding. The statement suggests to a casual reader that the Agency’s Board did not comply with legal requirements when approving projects. However, a careful reading of the Draft Report reveals this was not a finding made by the OSC.

See Note 1 Page 15

*Amherst Industrial Development Agency
Amherst Development Corporation*

Project Application. After acknowledging that the Agency adopted a project application and took the required actions to implement the 2015 IDA Reform legislation, the Draft Report takes issue with the Agency for failing to require applicants to provide supplemental information or documentation along with their project application. This criticism is largely unsupported. The Agency’s electronic project application is a comprehensive 21-page document that solicits from applicants a significant amount of information and documentation. The application was specifically developed in response to the 2015 IDA Reform legislation, which mandated what information must be gathered in a project application. It is noteworthy that the OSC made no finding that the project application itself is deficient—in fact, the project application is fully compliant with the legislation. By criticizing the Agency for not seeking out supplemental information or documentation, the OSC is implying the Agency violated a legal requirement where no such requirement exists. The example of supplemental information or documentation identified by the OSC (capital project plans, pre-project employee headcounts and payroll information) are not required by law.

See Note 1 Page 15

Notwithstanding, the Agency acknowledges that there are circumstances where additional information or documentation is needed from applicants. In those instances, Agency staff has sought information and documentation from applicants and will continue to do so. But, as noted in the Draft Report, the Agency is also cognizant of the burden upon applicants. The Agency’s project review process, as explained below, also serves to supplement the information in the project application.

The Agency’s project review process is thorough and actively engages Agency staff, the Board and the applicant. The initial application is processed by Agency staff, and applicants meet with Agency staff to discuss the project and to refine the application. The Agency’s Executive Committee and Board are briefed on projects at monthly meetings. The Board is engaged in the process in advance of the public hearing, which the Board members attend. Applicants are required to present the project during public hearings and respond to inquiries from Board members. This process often generates supplemental information which is included in the record and helps Board members make informed decisions about projects. The Agency’s Executive Committee then considers the project before it is advanced to the Board for a vote on the project. These additional steps of review and approval provide Board members the opportunity to inquire directly with the applicant and request additional information regarding the project. From a transparency perspective, all hearings and meetings are streamed for public view and the videos are recorded and archived online for viewing by Board members and the public at any time.

See Note 1 Page 15

Cost-Benefit Analysis. The Draft Report focuses narrowly on discrete elements of the Agency’s project approval process. This approach does not account for the overall project approval process utilized by the Agency, which as outlined above is transparent and results in informed decision-making by its Board. This is particularly true with respect to the comments in the Draft Report relating to the cost benefit analysis report (CBA). The CBA is one of many factors that the Board reviews in evaluating a project. The detailed analysis is performed with software developed by the Center for Governmental Research and is utilized by 38 industrial

development agencies in New York State. A written synopsis of the CBA generated by the software for each project is provided to Board members in all Board meeting packets, which are also posted on the Agency's website.

As noted on page 4 of the Draft Report, one purpose of a CBA is to provide an "estimated value of any tax exemptions to be provided". There are four other purposes served by the CBA as noted on page 4 of the Draft Report, none of which were found to be lacking in the Draft Report. The Draft Report notes that the amount of the sales tax exemption in the CBA for 11 of the 14 projects that the OSC reviewed differs from what the applicant requested in the project application. We have acknowledged these variances and implemented corrective action with the software provider with respect to the software. We disagree however, that these variances had a material impact on the Board's ability to properly evaluate projects. In particular, we would note that the resolutions adopted by the Board specifically identifies the amount of the estimated sales tax benefit. The resolution serves as the formal, final Board action on the project.

See Note 1 Page 15

The Draft Report also commented that the CBA synopsis does not contain a conclusion or a meaningful summary of what is indicated. The Agency will take this comment under advisement and examine how it may improve this particular aspect of the synopsis report.

Approval Resolutions and Forms. The Agency was pleased with OSC's confirmation that the Board generally properly indicated its approvals for the 14 projects in its meeting minute resolutions and ensured that the sales tax exemption amounts it approved in the project agreements were properly transmitted to the NYS Department of Taxation and Finance on ST-60 forms. The Agency believes that a foundation of good governance with respect to project approvals is for the actions taken by the Board to be accurately reflected in Board resolutions and in the meeting minutes. All fourteen projects were approved by a majority of the membership of the Agency acting at a public meeting with a quorum present, as required by law.

Transparency. The Agency Board strongly supports transparency in Agency operations. All public hearings and meetings are streamed for public view and the videos are recorded and archived online for viewing by Board members and the public at any time. Each Agency Board meeting includes a public comment period that permits any member of the public to comment on a project or other matter relating to the Agency. The Agency's website contains relevant project information and documents, and all policies and operations information are posted required by law. The Agency acknowledges the oversight of not posting three of the fourteen project applications on its website and corrected this during the audit. The Agency is discussing solutions to introduce redundancy into its website posting processes. In addition, as requested by OSC, the Agency will begin adding the CBA to the project files on the website.

Response Regarding Project Monitoring

The Draft Report includes several comments relating to Board monitoring of approved projects. The Agency acknowledges that areas of improvement exist with respect to this aspect of its operations, but also notes that overall, the Board exercises appropriate oversight of this function.

Annually, Agency officials assess the progress of each project that is receiving financial assistance toward its goal of achieving investment, job retention and/or creation and other objectives. The AIDA developed a *Portfolio Report*, which is an easy to read spreadsheet of all of the projects under annual review. The *Portfolio Report* lists for each project all tax benefits received that year, PILOT payments made, the jobs to be created and retained at application, and the current number of jobs. The *Portfolio Report* also identifies projects that subject to recapture provisions that were required for projects as part of the 2015 IDA Reform legislation. The *Portfolio Report* is updated annually and provided to the Board as part of its annual review of Agency's Mission Statement and Performance Review and is posted on the Agency website.

Annual Questionnaire. Annually, AIDA staff surveys companies listed in the *Portfolio Report* on its employment, which historically included a returned document executed by a company representative. Starting in 2016, the Agency included the requirement for the annual survey to also include a copy of the most recent quarterly NYS-45 form covering withholding, wages and unemployment information. Project operators are also required to provide a copy of the ST-340 sales tax exemption reporting form.

Agency staff acknowledges that several projects failed to provide the NYS-45 Form from 2016-2018 and corrected this for the 2019 annual survey of its projects. All ST-340 forms were collected as well. Of note is that the Draft Report indicated that the information provided by the company may not be accurate, but failed to provide any example of any information in an annual survey that was received by the Agency that did not match information New York State would have collected during the same reporting period.

PARIS Report. The Agency recognizes that a few projects were inadvertently left off the Public Authorities Reporting Information System ("PARIS") Report, although these projects were reflected in the Agency's *Portfolio Report*. Staff is working on report review and redundancy to ensure that all projects and tax exemptions are reported annually in PARIS.

In 2018, the AIDA reported on 63 projects totaling 13,215 jobs, which exceeded employment goals across all projects by 2,520 jobs. A number of projects did not meet employment projections, but in the aggregate the total number of jobs far exceeded estimates. The twenty projects not meeting employment estimates highlighted in the Draft Report were approved nearly a decade or more ago before any recapture provisions were in place. All projects approved after June 2016 are required to meet employment goals as a material factor for the continuation of tax benefits.

Board Training. Providing information and training to the Board of Directors is required by law, but it is also a good suggestion to provide further training opportunities to better ensure that statutory requirements are being met. Several Board Members recently completed mandatory training and we will continue to make them aware of future training classes.

Thank you for the opportunity to submit this response. We look forward to a continuing dialogue with OSC regarding the audit.

Sincerely,

Carlton N. Brock, Jr.
Chairman

David S. Mingoia
Executive Director/CEO

cc: Amherst IDA Board of Directors

Appendix C: OSC Comment on the IDA's Response

Note 1

AIDA raises a number of issues, disagreements and concerns in its response letter that primarily relate to our audit findings regarding project approval. When we discussed these findings with AIDA officials during our audit fieldwork, they did not indicate objections to them.

We agree with AIDA that there is no legal requirement for applicants to provide supplemental information during the project application process. However, good business practices generally are not defined in statute, and without supplemental information, AIDA officials could not ensure that the application information was complete and reasonably reliable. Instead, AIDA officials rely on a statutorily required project applicant signature to certify the application data is accurate.

As a result, without detailed supplemental information to substantiate project applications, AIDA officials cannot ensure they properly evaluated and approved a project.

Of particular note, during our audit period, AIDA approved 14 projects totaling approximately \$77 million. These projects result in significant community benefits (e.g., new and retained jobs) and community costs (e.g., properties removed from the taxable section of the real property tax roll during project activity) and should be properly evaluated to ensure projects are properly approved based on reasonably reliable project application information.

Appendix D: Audit Methodology and Standards

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

- We interviewed the Board and AIDA officials and reviewed AIDA's written policies and procedures to gain an understanding of the project approval and monitoring process.
- We inquired to determine whether the Board and AIDA officials have had training regarding their responsibilities and IDA statutory requirements, including the 2015 IDA reform legislation.
- We reviewed Board meeting minutes and 2016, 2017 and 2018 annual PARIS reports to identify active projects that were approved after the 2015 IDA reform legislation became effective on June 15, 2016. We identified 14 applicable projects totaling approximately \$77 million approved from June 15, 2016 through June 30, 2019. We reviewed all 14 projects and related records to assess whether they were properly approved and monitored. Of these 14 projects, six totaling approximately \$22 million were approved after December 31, 2018 and as such were excluded from the monitoring portion of audit testing.
- We reviewed AIDA's December 31, 2018 annual PARIS report, which included 63 active projects, in conjunction with AIDA's records to assess whether all active projects were properly monitored and subsequently reported accurately and included all required information.
- Of the 63 projects totaling \$552 million, 56 had a PILOT agreement and payments reported on AIDA's 2018 annual PARIS report totaling \$3.6 million. We reviewed all 56 PILOT agreements, recalculated the PILOT billing and compared it to the PARIS report and to respective payments made by the project owners to the ATJs to determine whether they were properly monitored, billed and reported.

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

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

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

Appendix E: Resources and Services

Regional Office Directory

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Contact

Office of the New York State Comptroller
Division of Local Government and School Accountability
110 State Street, 12th Floor, Albany, New York 12236

Tel: (518) 474-4037 • Fax: (518) 486-6479 • Email: localgov@osc.ny.gov

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

Local Government and School Accountability Help Line: (866) 321-8503

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