DIVISION OF LOCAL GOVERNMENT AND SCHOOL ACCOUNTABILITY

REPORT OF EXAMINATION | 2021M-151

St. Lawrence County Industrial Development Agency

Project Approval and Monitoring

DECEMBER 2021

OFFICE OF THE NEW YORK STATE COMPTROLLER

Thomas P. DiNapoli, State Comptroller

Contents

Report Highlights

St. Lawrence County Industrial Development Agency

Audit Objective

Determine whether the St. Lawrence County Industrial Development Agency (SLCIDA) Board appropriately evaluated projects before approval and subsequently monitored the performance of businesses that received financial benefits.

Key Findings

For the 10 projects we reviewed the Board appropriately evaluated the projects before approval. However, project monitoring efforts should be improved.

The Board and SLCIDA officials did not:

- Establish adequate procedures to ensure the reliability of job information. They did not verify the number of current employees for six of the 10 proposed projects we reviewed before approval or verify actual employment results for one of the 10 projects after approval.
- Obtain sufficient capital investment information for 10 approved projects to monitor actual vs. proposed investment.

Key Recommendations

- Develop procedures to ensure current employment information provided in project applications is supported by adequate documentation.
- Ensure that reported employment levels are verified and supported and capital investment information is reported and compared to project goals.

SLCIDA officials generally agreed with our recommendations and indicated they planned to initiate corrective action.

Background

SLCIDA is an independent public benefit corporation established in 1971.

All seven members of SLCIDA's Board are appointed by the St. Lawrence County Legislature. The Board is responsible for SLCIDA's general management and financial and operational affairs.

The Board appoints a chief executive officer (CEO) and chief financial officer (CFO) who are responsible for day-to-day operations.

SLCIDA funds its operations primarily with application fees charged to applicants seeking financial assistance. SLCIDA annually reports information for approved projects, including granted tax exemptions, payments in lieu of taxes (PILOT) and project employment.

2020 Quick Facts	
Projects	22
Tax Exemptions Granted	$2.1 million
PILOT Payments	$364,062

Audit Period

June 15, 2016 – April 30, 2021

Project Approval and Monitoring[1]

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:

IDAs must develop uniform project agreements that describe the terms and conditions under which financial assistance will be provided to project owners.

Project Application and Approval – IDAs are required to develop a standard application form that must 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 the IDA board needs to assist in evaluating the project.

Further, an IDA must develop uniform criteria to assess all material information included 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, before 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 a timely project completion and extent of additional sources of revenue the project will provide for surrounding local governments and school districts. The IDA board should also ensure that each CBA contains meaningful information on what the analysis indicates.

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 PILOT agreements to require increased payments under specified circumstances (e.g., material violations of the terms and conditions of a project agreement) and recapturing all or part of financial assistance approved for a project (i.e., "claw-back" provisions).

At a minimum, agreements must describe the projects, the amounts and types of financial assistance to be provided and the IDA's purpose to be achieved for the projects. Also, IDAs must complete and submit a New York State (NYS) IDA appointment of project operator or agent for sales tax purposes form (ST-60 form)

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

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.

The Board Appropriately Evaluated Projects Before Approval but Officials Did Not Adequately Verify Applicant Job Information

We reviewed the Board approved project applications for all 10 projects, totaling $76 million, started after June 15, 2016. We found that the Board's project evaluation process was generally adequate, but officials could improve the process by verifying the applicant's number of current employees for proposed projects that have job retention and creation goals.

<u>Project Application and Approval</u> – The Board adopted a project evaluation criteria policy (evaluation policy) that identified eligible project types and the criteria it used (e.g., jobs to be created, capital investment and additional revenue sources for municipalities) to evaluate all projects under consideration. Also, the Board established its Uniform Tax Exemption Policy (UTEP), which described the types of projects eligible for assistance and the levels of tax abatements and exemptions available.

The UTEP allowed deviations, which required approval from both the Board and the affected local taxing jurisdictions (ATJ). These policies were specific and clearly articulated project goals and abatement schedules.

We reviewed all 10 projects and found that each application was complete and contained the necessary information to address UTEP criteria and the evaluation policy. Additionally, we reviewed Board minutes applicable to these projects, which routinely evidenced the Board's discussion and evaluation of various criteria including jobs to be created and retained, new construction and redevelopment, equipment to be acquired, tax exemptions sought and reasons why IDA assistance was necessary.

Board members told us they considered all criteria under the UTEP and project evaluation criteria policy when evaluating an applicant. Also, the Board considered each company's response in the application regarding whether there was a likelihood that the project would not have been undertaken without the financial assistance provided, or otherwise why SLCIDA should undertake the project. One of the projects we reviewed deviated from the standard PILOT schedule and we determined the Board obtained approval from the ATJs before granting this deviation.

For the 10 projects, the applications included the estimated capital investment with itemized estimates for cost of site acquisition, construction, renovations, and equipment purchases. The applicant also reported the current number of

… [E]ach application was complete and contained the necessary information to address UTEP criteria and the evaluation policy.

jobs before the start of the project, the estimated number of jobs that would be retained or created upon project completion and the average salary for all jobs to be retained or created.

SLCIDA staff routinely obtained supplemental supporting documentation, such as detailed site plans, construction estimates and quotes for equipment purchases to verify the reasonableness of the investment goals listed on the applications.

However, SLCIDA officials did not establish adequate procedures to ensure the reliability of job information data included on the applications for six of the 10 projects. For these six projects, applicants included job retention goals in their applications that promised to retain a total of 346 existing jobs with annual wages totaling approximately $24.5 million.

… SLCIDA officials did not establish adequate procedures to ensure the reliability of job information data included on the applications. ...

The CEO told us SLCIDA staff compared the dollar amount paid to current employees in the application to the payroll expenditures reported in the applicant's submitted financial statements for reasonableness and may visually confirm employees when conducting an on-site visit before approval of these projects. However, officials did not provide us with any information showing that SLCIDA officials or staff confirmed the number of jobs listed on the applications by project owners at the time of application.

While SLCIDA officials took some action to verify the pre-project staffing levels, these steps were not always sufficient particularly when the project owner had many employees or employees who worked in other locations unrelated to the project. Also, SLCIDA did not require these six applicants to provide supplemental information or documentation to support the number of current jobs before project approval or to enable SLCIDA staff to verify this information. As a result, a reliable base line was not established.

When material information, especially related to job goals, cannot be verified to establish a reliable base line, there is a risk that information is inaccurate and that applicants may obtain exemptions they are not entitled to. Without verifying existing jobs, the information necessary to measure job creation and retention could be inaccurate. For example, if an applicant understated current job numbers in an application and SLCIDA officials did not identify this error, the reported number of new jobs created in future years could be inaccurately reported.

<u>CBA</u> – All 10 project applications were supported by the required CBA and considered such factors as the estimated exemptions the project would likely receive (costs to the community), the creation or retention of jobs, generation of private sector capital investment, and additional sources of revenues that would result because of the project (benefits to the community). The CBA for each applicant showed that the estimated benefits to the community exceeded the cost of the requested assistance.

Uniform Project Agreements – All 10 projects had uniform project agreements. Specifically, each project contained a signed project agreement that described the project and financial assistance provided and included provisions for annually reporting project progress. Also, each project owner signed a separate recapture agreement with “claw-back” provisions in case project goals were not met. SCLIDA staff completed and submitted the ST-60 form for each project owner approved for sales tax exemptions to NYSTF.

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 capital investment, job retention or creation or other objectives of the project listed in the project application and approved in the project agreement. IDA officials must then submit the assessments to their board.

According to SLCIDA agreements, project owners must annually submit to SLCIDA duplicate copies of all statements the projects filed with State agencies, which includes the project’s quarterly wage reports (NYS-45 form, quarterly combined withholding, wage reporting and unemployment insurance return) and an annual sales and use tax exemptions claimed report (ST-340 form).

The Board Can Improve Its Monitoring of Projects

SLCIDA included provisions in its project agreements that require project owners to submit an annual certification report if they are receiving financial assistance. These reports provided SLCIDA officials with information for monitoring projects, including but not limited to the total number of full and part-time employees at the project location as of the end of the calendar year, and the sales tax and mortgage recording tax exemptions received during the year.

The CEO entered the current employee count from these reports into a spreadsheet to compare to the job goals for each project. The spreadsheet included other information such as tax exemptions, PILOT payments and miscellaneous notes describing the status of the projects. Annually, the CEO submitted this information to the Board, which identified companies that were meeting, or exceeding job creation and retention commitments, and those that were not.

While the Board and officials had procedures in place to monitor sales tax exemptions and number of jobs, they could improve upon their process for verifying the job creation and/or retention numbers reported by project owners and their actual capital investments.

NYS-45 Form – Project owners submitted NYS-45 forms each quarter to SLCIDA as supporting documentation for the annual certification report, which listed employees and showed gross wages paid and number of employees, including those employees working full- and part-time. The CFO told us she reviewed the NYS-45 forms to provide a "reasonableness check" for the number of employees reported by the project owner in the annual report.

We reviewed the 2020 annual certification reports for the 10 approved projects to determine whether the number of employees reported were adequately supported by NYS-45 forms or other documentation provided by the project owner. We found that for nine of the 10 projects the number of employees reported in the annual certification reports were adequately supported. However, officials did not obtain NYS-45 forms from one project owner.

SLCIDA officials explained that they did not receive NYS-45 forms from the project owner because its forms would show all employees and salaries from multiple locations within the State. In lieu of NYS-45 forms, SLCIDA officials obtained quarterly reports from the project owner showing the total number of employees designated as full-time equivalent, full-time temporary and seasonal, and part-time for each month of the quarter.

However, based on our review of these reports, they did not provide a sufficient level of detail (e.g., list of employees and payroll amounts) to help enable officials to verify the job numbers reported by the project owner. Without assurance that reported job numbers represent actual jobs created or retained, the Board cannot ensure that the community is receiving the expected benefits.

Capital Investment – SLCIDA officials did not obtain sufficient information from any of the 10 project owners to support their capital investment that would have enabled officials to evaluate whether the actual investment agreed with the application amount and CBA for any of these projects. The project agreements contained an exhibit, provided as an example, of an annual certification report that project owners were required to submit to SLCIDA.

Although this exhibit asked project applicants for the amounts spent on capital investment (e.g., real estate, construction, machinery, and equipment), the annual certification reports completed and submitted by project owners did not ask for this information.

The CEO told us that the certification reports before 2019 asked for capital investment information. However, when updates were made to the forms the request for capital investment information was erroneously deleted. He told us SLCIDA officials monitor capital investment through discussions with project representatives and on-site visits.

SLCIDA officials did not obtain sufficient information from any of the 10 project owners to support their capital investment that would have enabled officials to evaluate whether the actual investment agreed with the application amount and CBA . …

SLCIDA officials maintained contact logs documenting their communication and follow-up on projects (e.g., phone, email) and discussions on routine on-site visits pertaining to financial operations and observations of any new construction or equipment. However, this did not allow SLCIDA officials to verify that the level of capital investment was consistent with the amounts included in the application and the amounts used by SLCIDA in the CBAs when the projects were considered for approval.

The amount of capital investment could eventually impact the assessed value of a project's real property and affect the amount of taxes that the ATJs will receive after the facility is constructed or renovated and no longer exempt from taxes. Therefore, it is important that SLCIDA officials verify the amount of capital that the project applicants invest.

Job Performance – The Board considered there to be a job shortfall if a project owner did not meet 100 percent of projected total jobs after the project was complete. SLCIDA's recapture agreement and recapture policy allowed the Board to recapture the value of real property, sales, and mortgage recording tax benefits if the project owner did not meet its total job commitment for jobs to be created and retained.

Of the 13 projects reviewed,[2] 10 project owners reported they met or exceeded their estimated job goals and three did not reach their estimated job goals. Project owners of 10 projects estimated a total of 524 jobs and reported that they created and retained 574 jobs, 50 (9.5 percent) more jobs than initially estimated.

For the remaining three projects, project owners fell nine jobs short of meeting their combined job goals. We found that SLCIDA staff documented their follow-up with these project owners in contact logs, and the reasons for the shortfalls. Further, the CEO documented the reasons for the job shortfalls in a spreadsheet that he annually provided to the Board to show job performance for each project. A Board member told us the Board considered the reasons for the shortfalls to be satisfactory and therefore no recapture was warranted.

Sales Tax Exemptions – Because the value of the sales tax exemption benefits claimed by the project owner must not exceed the amount on the ST-60 form, the CFO tracked the value of tax exemptions (from ST-60 forms) for each project owner and the actual sales tax savings each year (from ST-340 forms). She compared the total tax savings received over the project term to the amount authorized in the ST-60 form to identify those companies that are close to reaching their limit, or those who exceeded the authorized amount. The CFO told us she sent reminder letters, as a courtesy, to inform project owners when they are close to reaching their sales tax exemption limit.

2 Refer to Appendix C for information on our sampling methodology.

For the 10 projects we reviewed, eight received sales tax exemptions. According to the ST-340 forms submitted by these project owners, combined these eight projects received $753,855 in actual sales tax savings. None of these companies exceeded their authorized sales tax exemption.

What Do We Recommend?

The Board and SLCIDA officials should:

1. Develop procedures to ensure current employment information provided in project applications is supported by adequate documentation.

2. Ensure that reported employment levels are verified and supported by NYS-45 forms or other documentation.

3. Develop procedures to ensure capital investment information is reported in annual certification reports and is verified and supported. This information should be provided to the Board for evaluation and compared to project goals as stated in applications.

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 New York State General Municipal Law (GML).[3]

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 agreement[4] 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,[5] 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. SLCIDA 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.

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

4 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.

5 GML, Section 874(1)

The amount and frequency of PILOT payments are stated in uniform project agreements[6] established between the IDA and the businesses. The agreements themselves are governed by the IDA's UTEP.

6 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

ST. LAWRENCE COUNTY
INDUSTRIAL DEVELOPMENT AGENCY

Ernest J. LaBaff Industrial Building ~ 19 Commerce Lane, Suite 1 ~ Canton, New York 13617
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December 10, 2021

Ms. Rebecca Wilcox
Chief Examiner
Syracuse Regional Office
Office of the State Comptroller
Division of Local Government and School Accountability

Dear Ms. Wilcox:

Please accept this letter as our response to the draft *Project Approval and Monitoring* audit prepared by your office for the St. Lawrence County Industrial Development Agency.

First, we would like to acknowledge the professionalism of the members of your field staff as they conducted the audit. The ongoing Covid pandemic has brought challenges and impacts to the way we all do our work, and we appreciate the flexibility and responsiveness of your staff in what continue to be unique times for your office and ours.

We do not disagree with the recommendations in the draft audit and will provide a corrective action plan to address these recommendations. The recommendations, in our opinion, will be addressed with easily incorporated adjustments to our application and monitoring processes.

It is our belief that the reason the recommendations can be readily addressed is due to the significant effort our staff and board already dedicate to ensure that our projects are properly reviewed, monitored, and reported. This is work we prioritize and take pride in as an organization. For these reasons, we feel the framing of the draft audit, including the highlighted sections and bold texted headings, appears to be disproportionately negative in relation to the actual findings and recommendations within the report. As a result, a reader may struggle to see that this is an audit with numerous positives and very few deficiencies.

If you have any further questions or recommendations for us, please contact our office.

Sincerely,

Ernest J. LaBaff
Vice Chairman

Appendix C: 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 SLCIDA officials and Board members and reviewed SLCIDA's UTEP, policies and Board minutes to gain an understanding of the project approval process.
- We obtained an understanding of how SLCIDA tracks and monitors the performance of each project receiving benefits and we identified the types of performance shortfalls and the parameters used by the Board when deciding whether to initiate recapture.
- We identified all 17 projects that SLCIDA approved from 2011 through 2020, which were granted tax exemptions, and were still active (receiving benefits) as of December 31, 2020.
- We used our professional judgment to select all 10 of the 17 projects that were started after June 15, 2016 and were still active as of December 31, 2020. We reviewed the application file for these projects to determine whether the application was complete, contained the information necessary to address the criteria in the UTEP and project evaluation criteria policy, included verification of the intended capital investment, and whether SLCIDA officials completed a cost-benefit analysis for each project. We also reviewed Board meeting minutes applicable to these projects to help determine whether evaluation criteria was consistently applied.
- We reviewed the job creation and retention performance for 13 of the 17 active projects to identify whether projects owners met job commitments as of December 31, 2020. We evaluated whether any of the projects reviewed were subject to recapture of benefits for job shortfalls pursuant to the UTEP and the recapture policy. For those projects not meeting job goals, we reviewed contact logs prepared by SLCIDA staff documenting the follow-up with each project owner, and the reasons for the shortfall. We did not test four projects because two were not yet complete as of December 31, 2020, and two projects' job goals and actual results were reported within a prior project.
- For all 10 projects that were approved after June 15, 2016, we compared approved sales tax exemption amounts on ST-60 forms to actual exemptions reported to determine whether any projects had exceeded the approved exemption amounts as of December 31, 2020.

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 SLCIDA's office.

Appendix D: Resources and Services

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

Cost-Saving Ideas – Resources, advice and assistance on cost-saving ideas
www.osc.state.ny.us/local-government/publications

Fiscal Stress Monitoring – Resources for local government officials experiencing fiscal problems
www.osc.state.ny.us/local-government/fiscal-monitoring

Local Government Management Guides – Series of publications that include technical information and suggested practices for local government management
www.osc.state.ny.us/local-government/publications

Planning and Budgeting Guides – Resources for developing multiyear financial, capital, strategic and other plans
www.osc.state.ny.us/local-government/resources/planning-resources

Protecting Sensitive Data and Other Local Government Assets – A non-technical cybersecurity guide for local government leaders
www.osc.state.ny.us/files/local-government/publications/pdf/cyber-security-guide.pdf

Required Reporting – Information and resources for reports and forms that are filed with the Office of the State Comptroller
www.osc.state.ny.us/local-government/required-reporting

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

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