

February 17, 2020

The Honorable Thomas P. DiNapoli
Office of the New York State Comptroller
110 State Street
Albany, New York 12236

RE: 180-Day Response to the New York State Office of Comptroller Audit Report 2017-S-60 Concerning the Oversight of Select High-Technology Projects

Dear Comptroller DiNapoli:

In accordance with Section 170 of the Executive Law, this letter shall serve as Empire State Development's ("ESD") 180-day update of its compliance with the findings and recommendations identified in the Office of the State Comptroller ("OSC") final audit report 2017-S-60 – Oversight of Select High-Technology Projects ("high-tech projects") dated August 21, 2020. The stated purpose of the audit was to determine whether ESD adequately monitors select high-tech projects it oversees and whether these projects are achieving their intended employment goals. The audit covered the period from January 1, 2013, through April 30, 2019.

I. Background

A. ESD's Oversight Role of SUNY Poly and its Affiliates Pre-September 2016

ESD administered state-appropriated grants for economic development projects led by SUNY Polytechnic Institute ("SUNY Poly") and its affiliates, including the non-profit entities Fort Schuyler Management Corporation ("FSMC") and Fuller Road Management Corporation ("FRMC"). SUNY Poly economic development projects, through FSMC and FRMC, involved constructing and equipping high-tech facilities, which were then leased to private companies in exchange for economic and other commitments. Prior to September 2016, FRMC and FSMC were responsible for almost all aspects of their projects, i.e., originating the company agreements, negotiating the contracts, applying for funding, and reviewing bills. ESD's role was limited to funding certain projects, approving payments, and providing funding for eligible expenses. ESD was not a party to any related procurement contracts or industrial partner project agreements, and FRMC and FSMC were responsible for complete oversight of such matters.

B. ESD's Oversight Role of SUNY Poly and its Affiliates Post-September 2016

After September 2016, ESD assumed an active role in SUNY Poly-led projects, which included receiving and reviewing the underlying project agreements, participating in discussions and decision-making, and planning future expenditures. Thereafter, FRMC and FSMC bylaws were modified to allow ESD to take a formal role in governing FRMC and FSMC by adding the ESD CEO (or his or her designee) as a non-voting board member to each board and requiring ESD's consent to certain board appointments. As of the date that ESD stepped in, FRMC and FSMC had several existing binding legal contracts and committed expenditures for the high-tech projects. Although ESD did not have the legal authority to void existing contracts, ESD, in consultation with FSMC and FRMC, cancelled certain projects where there was no binding contract, and renegotiated more favorable terms on others.

II. ESD's Response to OSC's Recommendations

Recommendation #1: *Conduct comprehensive assessments of the risks, costs, and economic benefits of projects before funding decisions are made to determine if projects should receive State investment.*

Response: ESD has complied with this recommendation in that it already performs Benefit-Cost Evaluations (BCEs) for all discretionary projects. However, as stated in our prior response, BCEs are not performed for non-discretionary projects that are funded via a specific appropriation and/or where the Assembly, Senate, or Executive has requested the project. For such projects, ESD is not empowered to independently override the projects identified by democratically elected legislators by simply opting not to implement a project. In such cases, ESD's role is limited to ensuring that the grantee has implemented the project in accordance with the relevant appropriations and meets ESD grant requirements, and that reimbursed expenditures fall within those grant requirements—and nowhere in the audit did OSC identify expenditures that did not meet these criteria.

Recommendation #2: *Develop standard performance metrics and then evaluate projects to determine their actual economic benefits compared with the State investment.*

Response: ESD has complied with this recommendation in that ESD already employs standardized performance metrics for its projects. While OSC auditors alleged that ESD failed to perform project monitoring sufficiently, the report failed to outline any standard by which ESD's oversight responsibilities and project monitoring duties should be judged and failed to identify any specifically prescribed responsibilities or duties that ESD did not perform to allow ESD to make any adjustment to its current processes.

Recommendation #3: *Standardize the public reporting of projects to eliminate discrepancies and provide the public with accurate information on project costs, statuses, and economic benefits using a clear and consistent method.*

Response: ESD has complied with this recommendation. ESD's Annual Reports are statutorily mandated, publicly available, and meet all the statutory information requirements. In addition, ESD is in the process of creating a Database of Economic Incentives that will provide a publicly available searchable database of ESD's projects, giving further transparency to projects. ESD anticipates work on the database to be completed shortly.

III. Conclusion

ESD has given, and will continue to give, strong support to its enhanced role in the oversight of FSMC and FRMC high-tech projects. ESD disagreed with several of OSC's findings because they mischaracterized ESD's initial role regarding these projects and ignored significant changes that were implemented when ESD assumed enhanced oversight of the identified projects. ESD's prior role in administering funds to defined, pre-identified State projects entailed significantly different ESD oversight functions than ESD's own high-tech programs for which it is statutorily and contractually accountable (e.g., NYSTAR, Innovate NY and the Innovation Venture Capital Fund), which OSC found ESD to have effective monitoring procedures. Finally, and most importantly, the audit made no findings that any actual expenditures for these projects were inappropriate.

If you have any questions with respect to this response, please don't hesitate to contact me.

Yours truly,

Felisa R. Hochheiser

Felisa R. Hochheiser
Director of Compliance

cc:

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Senator Andrea Stewart-Cousins
Senator Robert G. Ort
Senator Liz Krueger
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Assemblymember Crystal B. Peoples-Stokes
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