

Division of Local Government & School Accountability

Genesee County Industrial Development Agency

Project Approval and Monitoring

Report of Examination

Period Covered:

January 1, 2012 — January 27, 2014

2014M-66



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of Local Government and School Accountability

May 2014

Dear Agency Officials:

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

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

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

Respectfully submitted,

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



State of New York Office of the State Comptroller 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 the State. The Genesee County Industrial Development Agency (GCIDA)¹ was created under General Municipal Law.

GCIDA is the sole IDA for Genesee County (County). The GCIDA Board (Board) consists of seven members, who are appointed by the County Legislature. The Board is responsible for the general management and control of GCIDA's financial and operational affairs. The Board appoints the President and Chief Executive Officer who together with management are responsible for day-to-day operations. GCIDA funds its operations with fees charged for processing applications, State grants, County contributions and other miscellaneous income.

Scope and Objective

The objective of our audit was to review GCIDA's process for evaluating, approving and monitoring projects for the period of January 1, 2012 through January 27, 2014. Our audit addressed the following related question:

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

Audit Results

We found that GCIDA was effective in its efforts to promote, develop and assist in economic development projects in Genesee County. However, we identified some opportunities for GCIDA to improve its controls and accountability. While the GCIDA Board has adopted a Uniform Tax Exemption Policy (UTEP), it has not formalized some of the critical procedures and policies that are used as criteria in the project evaluation processes. GCIDA officials did not consistently apply the guidelines or criteria, or both, when evaluating applications, such as input factors for the computation of cost-benefit analysis ratios. Finally, GCIDA does not verify the numbers given by businesses/firms when applying for financial assistance or annual reported data that is used to evaluate project performance. Without assurance that reported job numbers represent actual jobs created and/or retained, the Board cannot be sure that the community is receiving the expected benefits.

¹ Doing business as (DBA) Genesee County Economic Development Center

Comments of Agency Officials

The results of our audit and recommendations have been discussed with Agency officials and their comments, which appear in Appendix A, have been considered in preparing this report. Agency officials agreed with the findings and recommendations and indicated they would be taking corrective action.

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 the State. The Genesee County Industrial Development Agency (GCIDA)² was created under General Municipal Law.

IDA economic incentives to companies 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, or both, 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, as the property is considered tax-exempt IDA property.

GCIDA is the sole IDA for Genesee County (County). The GCIDA Board (Board) consists of seven members, who are appointed by the County Legislature. The Board is responsible for the general management and control of GCIDA's financial and operational affairs. The Board appoints the President and Chief Executive Officer who together with management are responsible for day-to-day operations. GCIDA funds its operations with fees charged for processing applications, State grants, County contributions and other miscellaneous income.

The County is located between the Cities of Buffalo and Rochester and its county seat is the City of Batavia. The County has a significant amount of farmland and consequently its local economy is largely based on agricultural sales and dairy farming. To attract investment to the community, GCIDA officials' strategy is to create "shovel-ready sites," (see Figure 1), where the IDA addresses all major permitting issues, prior to a business expressing interest in a location. This advance work allows for construction to begin rapidly and results in cost savings for the business and job opportunities for local residents.

² Doing business as (DBA) Genesee County Economic Development Center

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.



Figure 1 - Agri-Business and Food Processing Park – "shovel-ready site" – 2011

GCIDA has seven "shovel-ready sites" that have either been developed or are under development, that include among others, Agri-Business and Food Processing Park (see Figures 1, 2 and 3) and the Western New York Science Technology and Advanced Manufacturing Park (WNY STAMP). The WNY STAMP site, located in the Town of Alabama, is currently under infrastructure development and when completed is expected to attract nano-technology manufacturing including semiconductor, flat panel, photovoltaic, advanced manufacturing and bio-manufacturing.

The Agri-Business and Food Processing Park has been fully developed. GCIDA has successfully attracted two anchor food processing companies that will not only bring jobs to the community but will support the County's leading economic engine, dairy farming. The two companies will be buying local milk and processing it into yogurt. Total capital investment by the two companies is \$224 million (see Figure 3). One company officially commissioned its manufacturing plant in September 2012, followed by the other company in June 2013, with a commitment to create 50 and 186 jobs, respectively, within three years.

According to its annual reporting, as of December 31, 2012, GCIDA had a total of 101 "active projects" totaling more than \$600 million in reported capital investment. For 2011 and 2012 a total of 22 projects were approved by the Board for financial assistance, and capital investment committed by the businesses/firms was \$310 million. For 2013, 13 projects were approved with a capital commitment of \$24 million.



Figure 2 – Construction – 2012

⁴ Projects that are within the exempt period, which is usually 10 years for the PILOTs, and one to two years for sales tax exemption.

Includes two large projects with committed investments of \$206 million and \$57 million



Figure 3 – Completed Businesses – 2013

Objective

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

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

Scope and Methodology

We examined GCIDA's records and project files for the period January 1, 2012 through January 27, 2014. We also analyzed related documents for projects initially sponsored as early as 2003 that were still active during our audit period.

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 B 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 A, have been considered in preparing this report. Agency officials agreed with the findings and recommendations and indicated they would be taking 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. To the extent practicable, implementation of the CAP must begin by the end of the next fiscal year. 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.

Project Approval and Monitoring

General Municipal Law (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 IDAs result in a cost to the community, it is important for IDAs 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 IDA 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 IDA officials should ensure that all project applications are measured against the same 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 of a cost-benefit analysis and the periodic monitoring of project performance. The IDA should also establish procedures to monitor performance, in an economically quantifiable and easily comparable measurement, to ensure that the community is benefiting from the firm or business activities, as stated in the application. Other factors to consider when awarding projects are the creation or retention of a certain number of jobs and certain wage levels and related employee benefits. Additionally, although not required by law, the IDA should incorporate recapture or claw-back provisions in project agreements to allow the IDA to recoup previously granted benefits if job creation or retention or other economic goals or other terms of the agreements are not met. It is also important for the IDA to ensure that all PILOTs are received.

We found that GCIDA was effective in its efforts to promote, develop and assist in economic development projects in Genesee County. However, we identified some opportunities for GCIDA to improve its controls and accountability. While the Board has adopted a Uniform Tax Exemption Policy (UTEP), it has not formalized some of the critical procedures and policies that are used as criteria in the project evaluation processes. GCIDA officials did not consistently apply the guidelines or criteria, or both, when evaluating applications, such as input factors for the computation of cost-benefit analysis ratios. Finally, GCIDA does not verify the numbers given by businesses/firms when applying for financial assistance or annual reported data that is used to evaluate project performance. Without assurance that reported job numbers represent actual jobs created or retained, the Board cannot be sure that the community is receiving the expected benefits

Project Review and Approval

IDAs are required by GML to establish a UTEP which provides the 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 has a comprehensive UTEP which includes written factors that the Board and GCIDA officials should consider in determining whether a project is eligible for assistance. Some of the UTEP factors considered are nature of the project, enabling legislation, nature of the property, economic condition of the area, jobs to be created or retained, value of tax exemptions and the impact of the exemptions on the taxing jurisdictions. The business seeking benefits is required to complete a project application detailing the project, capital investment, jobs to be created or retained and financial assistance applied for. The application is reviewed by GCIDA officials to ensure that it meets the policy criteria and is 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 under consideration when evaluating an application for financial assistance. We found that GCIDA officials primarily rely on a decision-process flow chart for other criteria considerations, which has not been adopted by the Board despite its importance in the evaluation process. Evaluation criteria for other factors such as cost-benefit analysis, information verification, type of jobs and related employee benefits, and monitoring and reporting are equally important factors. Therefore, the evaluation criteria for other factors must be formalized by the Board to ensure a consistent approach, objective evaluation process and appropriate performance appraisals.

For the audit period there were 101 open projects that were receiving assistance from GCIDA. We examined the applications for 24 of these projects, which received or were projected to receive over \$26 million in benefits in return for capital investment of \$212 million. In general, GCIDA officials properly evaluated the project application, consistent with the UTEP and other informal guidelines. However, we found that in some instances the guidelines or criteria were not consistently applied when the cost-benefit analysis ratio was computed, which can be a major determinant in accepting or rejecting a project applicant. The cost-benefit analysis ratio measures the direct community cost⁶ against the community benefits⁷ resulting from the proposed investment by the business.

⁶ Direct community cost includes property, sales and mortgage taxes exemptions.

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

The standard minimum cost-benefit analysis ratio accepted by GCIDA has been informally set at 1:10.8 It appears from the data components included in the analysis that every project would meet the established minimum rate of return. Some of the projects had a ratio as high as 1:3,000. Because there is no data or basis to demonstrate how GCIDA established its minimum cost-benefit analysis ratio, it is unclear if projects with projected high returns are good performers, or that standards were set too low, or that the community was receiving a reasonable rate of return for any project. While the ratio in the State regulations is assumed over a three-year period, GCIDA assumes a 10-year period. As such, the ratio might not be the most appropriate evaluation factor for GCIDA. Further, it is unclear whether one ratio is appropriate for the variety of projects that are awarded benefits. However, we did find that newer projects' files contained more detailed cost-benefit analysis work sheets, compared to the older projects, thus providing the Board with more comprehensive information critical for making sound decisions.

In addition, for three of the 24 projects, the benefits attributed to employment (total wages plus employee benefits) were computed using total employees of a business, which included employees already employed rather than using newly hired employees or created positions resulting from the additional investment under GCIDA sponsorship. Such inconsistent application of the data used to compute critical ratios can result in approvals for projects that do not meet GCIDA requirements.

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

GCIDA officials did not adequately monitor IDA-sponsored projects to ensure that they achieved, or made reasonable progress toward, targeted capital investment, employment projections or other goals stated in their applications. In addition, GCIDA officials do not verify information submitted by the businesses as part of their initial application process and annual reporting to the IDA.⁹

<u>Capital Investment</u> — The amount of capital investment that a business intends to make is included as part of the project application

Monitoring

⁸ GCIDA officials indicated that the cost-benefit analysis ratio of 1:10 might have been based on the New York State Empire Zone regulations and guidance.

⁹ This data is subsequently reported to the Authorities Budget Office.

and cost-benefit analysis 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 GCIDA 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 cost-benefit analysis.

GCIDA officials do not adequately monitor businesses' capital investments. Although businesses/firms indicate on their application the intended capital investment, they are not required to, nor do they, submit periodic progress reports or any other documentation to evidence their capital investments. As such, GCIDA officials have no assurance that the businesses/firms are meeting their investment goals. Capital investment by a business in buildings and machinery can be an indication of its long-term commitment to the local community. 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. While capital investment might be apparent for a large project, it is much less so with smaller or expansion projects.

Job Performance — When businesses apply for benefits, they are required to project the number of jobs that will be retained or created, or both, and related salaries and employee benefits that will be paid. Employee benefits are included in the cost-benefit analysis ratio calculation. This is one of the determining factors in accepting or rejecting a project. GCIDA officials rely on the salary and benefits information presented by a business, without any verification, when the business applies for sponsorship. Although that may be sufficient initially for a new business, once the business is operational the data needs to be verified.

Businesses are required to annually report to GCIDA full-time equivalent employment data and related salaries. However, GCIDA officials rely on unverified reported data presented by businesses to appraise the performance of the projects. Furthermore, the job report form used to obtain the information was deficient as it did not include all the data requirements needed by GCIDA officials to properly evaluate job performance. The form also does not require the businesses to separately report existing and new employees and the related compensation.

The businesses also do not consistently report comprehensive employee salary and benefit information to GCIDA. Certain businesses included Form NYS-45¹⁰ with their job report; however, this appears to be done on a voluntary basis. Even in instances where Form NYS-45 is provided, it reports only the gross quarterly wages of all employees of the business, and not salaries and pay rates for newly hired employees resulting from IDA sponsorship. The businesses generally do not report on the employee benefits provided. In instances where businesses do report, GCIDA does not verify the reported information.

We reviewed the annual job reports for the 24 businesses and compared to projected employment numbers as of December 31, 2012. We found that, overall, the businesses did not meet their goals for retaining or creating jobs. The 24 businesses were projected to retain or create 1,717 jobs. However, the businesses reported 1,407 jobs, a shortfall of 310 jobs. Thirteen businesses reported that they did not achieve their projections by a total of 364 jobs and 11 businesses reported that they exceeded their projections by a total of 54 jobs. The most significant shortfall was a business approved for financial assistance totaling \$134,000 for rehabilitating an existing building which was to result in the creation of 100 jobs. However, the business has not been able to execute its business plan. The business has not created any jobs and continues to receive financial assistance. However, it is up to date with its PILOT.

Without appropriate job and benefit information the Board and GCIDA officials cannot effectively monitor the projects to ensure that the community is getting an appropriate return on its investment, as identified in the application, and that the business should continue to receive benefits.

Recapture Clause — The UTEP addresses but does not require the inclusion of a recapture of benefit clause. We found that a recapture clause was not included in all the agreements we reviewed. GCIDA officials indicated that inclusion of such a clause would discourage potential business interests. They also stated that an attempt at recapture or termination of benefits would only worsen the financial situation of an already struggling business and may result in bankruptcy, as well as the loss of PILOT payments and potential future taxes and jobs.

PILOT Payments

When an IDA grants a real property tax exemption for an approved project, it may recapture a portion of the real property tax in the form of PILOTs. The business pays these amounts for certain tax exempt

A quarterly form required to be filed by employers with the NYS Department of Taxation and Finance and the NYS Department of Labor for tax withholding and unemployment insurance purposes

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 24 projects and computed payments due for 2012 totaling \$1.2 million. We compared them with the actual payments made to the local taxing jurisdictions to ensure that PILOT billings were accurate, complied with the agreements and were paid timely. We found that the billings were accurate and complied with the agreements. One business that is going through bankruptcy failed to pay a PILOT in the amount of \$1,000. The business was in its third year of a 10-year PILOT agreement, with a 100 percent exemption for the first two years. The PILOT billing and payments are verified annually by GCIDA officials with the local taxing jurisdictions.

We commend GCIDA for its ongoing efforts to strengthen the County's economy by investing in and improving infrastructures, such as "shovel-ready sites," thereby reducing investment costs to attract new businesses to the area. This has led to major retail and manufacturing plants opening in the area, providing valuable services to the residents in their own community, as well as jobs. However, we identified some opportunities for GCIDA to continue its successful efforts, while also improving controls and accountability.

Recommendations

- 1. The Board should establish and formally adopt all policies and procedures critical to project evaluation, and define applicable criteria to ensure consistent application.
- 2. The Board should ensure that GCIDA officials consistently use employee benefits attributed to newly created jobs in the costbenefit analysis.
- 3. GCIDA should formally develop a cost-benefit analysis ratio or ratios that meet its needs, is reflective of its economic environment and is an appropriate and reasonable measurement.
- 4. The Board should develop procedures to monitor and ensure that businesses' actual capital investments are consistent with those specified on the applications and used in the cost-benefit analysis.
- 5. GCIDA should develop a job report form that adequately captures all data elements needed to appropriately monitor performance.

APPENDIX A

RESPONSE FROM AGENCY OFFICIALS

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



May 8, 2014

Mr. Jeffrey Mazula, Chief Examiner Office of the State Comptroller Division of Local Government and School Accountability 295 Main St., Suite 1032 Buffalo, New York 14203-2510

Dear Mr. Mazula:

This letter will serve as our formal response to your draft audit report titled Genesee County Industrial Development Agency Project Approval and Monitoring Report of Examination for the period of January 1, 2012 - January 27, 2014.

The Genesee County Industrial Development Agency, D/B/A the Genesee County Economic Development Center (GCEDC) has reviewed the draft report of the aforementioned audit with management and the board, and undergone an exit conference with the Comptroller's staff.

We are extremely pleased with your findings regarding the GCEDC's effectiveness to promote, develop, and assist economic development projects in Genesee County. We also appreciate your acknowledgement that the creation of "shovel-ready" sites leads to fast permitting times, cost savings for businesses, and an increase in job opportunities for our local residents.

We also appreciate your acknowledgement that our Uniform Tax Exemption Policy (UTEP) is comprehensive and that our board properly evaluates project applications consistent with the GCEDC's UTEP. We were also glad that you confirmed the accuracy of project PILOT payments and found them to be in compliance with agreements in place.

We appreciate the time your staff spent conducting the audit of the GCEDC. We will be drafting our Corrective Action Plan (CAP) to enhance and strengthen our policies related to the evaluation of projects, re-evaluate the cost-benefit analysis process for applications, and more robustly monitor projects, jobs, and capital investments based on your recommendations.

Again, thank you for your time and for the opportunity to respond to your draft audit findings. We would like to commend your staff for their professionalism and suggestions for improvements during the audit process.

Sincerely,

Steven G. Hyde President & CEO Wolcott T. Hinchey Chairman of Board

APPENDIX B

AUDIT METHODOLOGY AND STANDARDS

The objective of our audit was to review the approving and monitoring of projects sponsored by GCIDA that were active for the year ending December 31, 2012. For selected projects we extended our audit period back to the date of inception/sponsorship. To achieve our audit objective and obtain valid audit evidence, we performed the following audit procedures:

- We interviewed the Board and GCIDA officials and staff to understand and assess GCIDA's processes and procedures.
- We reviewed GCIDA's policies, including the UTEP, in order to identify written criteria outlining an applicant's eligibility for sponsorship and the benefits that are offered.
- We judgmentally selected 24 projects for further review and testing.
- We reviewed the annual reporting by businesses to evaluate whether the Board and GCIDA 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 they were accurate and complied with the agreements.

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.

APPENDIX C

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