



## **Review of Project Monitoring and Reporting Practices**

**Colonie Industrial Development Agency**

**April 22, 2015**

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## Authorities Budget Office

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### Introduction

The Authorities Budget Office (ABO) is authorized by Section 6 of Title 2 of Public Authorities Law to review and analyze the operations, practices and reports of public authorities. This includes rendering conclusions and opinions regarding the performance of public authorities and to assist these authorities improve management practices and the procedures by which their activities and financial practices are disclosed to the public.

The ABO first conducted a compliance review of the Colonie Industrial Development Agency (IDA) in April 2008. That report found that the IDA board was actively involved in reviewing projects for financial assistance, but less involved with operational and fiscal oversight of the IDA. As a result, the IDA had consistently failed to meet reporting requirements, had not established required policies and guidelines, and its records management and retention practices were inadequate. Once the IDA approved a project for financial assistance, it failed to monitor projects to ensure that expected job creation targets were met, and did not publicly report on statutorily required project data. In response to the 2008 report, the IDA agreed to revise and implement procedures in order to fully comply with statutory reporting requirements and improve project management and oversight.

In accordance with Section 2800 of Public Authorities Law and Section 859 of General Municipal Law, the IDA is required to submit annual reports of its operations and financial activity, including information on projects which receive financial assistance. The IDA submitted its 2009 annual report that included project data for 20 active projects. The number of active projects reported by the IDA declined to four in 2010; two in 2011; and only one in 2012. In its 2013 annual report, initially submitted in March 2014, the IDA reported that it had no active projects receiving financial assistance during 2013.

The ABO's current review was initiated in January 2015, after a series of news articles highlighted persistent deficiencies at the IDA which resulted in the failure to disclose financial assistance awarded to active IDA projects and other reporting inconsistencies. In response to the news articles, the IDA contacted the ABO for assistance in correcting its failure to report required data.

The IDA is governed by a seven-member board of directors, which is appointed by the Town of Colonie (Town) Board of Supervisors. Two of these board members remain from 2008, while the other five members have been appointed since our prior review in 2008. The IDA has no employees, but authorizes the Town Department of Planning and Economic Development and the Town Comptroller to perform administrative and financial services for the IDA under an annual administrative agreement. The IDA also has a contract for legal services with a private law firm. For 2013 and 2014, the IDA paid more than \$114,000 to the Town and more than \$18,000 for legal services.

## Review Results

Our review found that the IDA has implemented several of the improvements recommended in our 2008 review and agreed to by the IDA board. However, the IDA has not improved its monitoring of approved projects. Subsequent to providing financial assistance, the IDA took no action to obtain tax exemption or job related data from the projects, and was unable to report this information. Instead, the IDA opted to not report any data on active projects. We determined that there were a total of seven active projects during 2012 although the IDA only reported information on one project. Further, there were seven active projects in 2013, but the IDA reported that there were no active projects. It was not until this lack of reporting was made public did the IDA take steps to obtain this data.

In addition, we found that the IDA's relationship with the Town has resulted in the IDA funding some of the Town's costs for projects that do not appear to be germane to the IDA's public purpose.

As part of our review, we met with Colonie Industrial Development Agency (IDA) board members and Town staff contracted by the IDA, reviewed board meeting minutes and project documents maintained by the IDA, as well as reviewed additional information obtained by the IDA during our review. We also assisted IDA staff to determine the accurate number of active IDA projects and develop a process to collect employment and financial assistance data for projects for the 2013 and 2014 reporting years. As a result of our assistance, the IDA has corrected and submitted its 2013 and 2014 reports.

The role and responsibilities of board members are stipulated in Section 2824 of Public Authorities Law and include executing direct oversight of the authority's officers; understanding, reviewing and monitoring financial controls and operating decisions; adopting organizational policies and performing their duties "in good faith and with that degree of diligence, care and skill which an ordinarily prudent person in like position would use under similar circumstances. This report found instances where the board's actions did not appear to meet these governance standards.

The review did find that the IDA board continues to be actively involved in reviewing projects requesting IDA financial assistance and engages in discussion about the merits of proposed projects. The board also exercises discretion in the types of financial assistance the IDA provides and is often conservative about approving certain types of financial assistance such as property tax exemptions for projects.

However, after projects are approved the IDA board has no policies to monitor projects to ensure that job creation goals are met and projects adhere to written agreements. The board also exercises no oversight over the collection and reporting of project data. Based on our discussion with board members, it does not appear that the board had reviewed any of the statutorily required reports to verify that the information was

accurate and correct prior to the reports being submitted. These results are consistent with the findings of our prior report.

**The IDA failed to publicly disclose and report, as required by statute, that it provided financial assistance to seven projects in 2013.**

In its 2013 annual report to the ABO, the IDA reported that it had no active projects and that the report had been discussed and approved by the IDA board. However, the ABO's review determined that seven projects received IDA financial assistance during 2013. These seven projects were approved to create or retain a total of 96 jobs. Three of these projects were financed with Industrial Development Revenue Bonds which had been issued between 1993 and 2010. One of the bonded projects retired its debt in 2013, while the other two projects had total debt outstanding of over \$6.5 million as of December 31, 2013. The IDA entered into a payment in lieu of taxes (PILOT) agreement for one of the seven projects which received \$273,304 in property tax exemptions and generated \$25,000 in PILOTs during 2013. The remaining three projects received a total of \$1,414,324 in sales tax exemptions during 2013.

Four of the seven projects the ABO identified as active in 2013 were also active during 2011 and three of the projects were approved in 2012, but the IDA only reported two projects as active in 2011, one in 2012 and none in 2013. The IDA indicated that the failure to properly file reports was simply an error. It is reasonable to expect that these projects should have been known to the board. The failure to include these projects in the IDA's annual reports suggests that the board's oversight of projects and the reporting of project performance data was inadequate, at best, or non-existent. There were no records in project files regarding the amount of exemptions received or jobs created by the projects for 2011, 2012 or 2013. Although the administrative agreement with the Town indicates that Town staff are responsible for obtaining annual project updates, this was not done.

As a result of our current review, the Town Director of Planning and Economic Development (serving as the IDA's executive director) assisted by the IDA's legal counsel (not a Town employee) drafted and sent out surveys in December 2014 to obtain updated employment and exemptions data from project owners for 2013 and 2014. The IDA's legal counsel was also involved in the process of preparing the information for PARIS reporting. As a result, the IDA will be incurring additional legal costs for functions that are expected to be provided under the agreement with the Town.

**The IDA board has not established policies and procedures to monitor project performance to ensure that projects are receiving the appropriate financial assistance they are entitled to and meeting intended employment goals.**

Although the IDA's application for financial assistance and approved agreements require project owners to provide any information requested by the IDA, Town staff contracted by the IDA do not require project owners to provide data to monitor the performance of projects to verify financial assistance received by projects or track jobs.

The IDA board's tacit expectation is that the Town staff will exercise oversight of IDA projects under the administrative agreement. However, we found that in general there is no Town oversight of IDA projects after IDA board approval. The Director of Planning and Economic Development told us that he is responsible for attracting businesses to the Town and encouraging development through the planning and zoning process. He indicated that once a project has obtained a certificate of occupancy, then his planning and economic development role is completed and he is not responsible for the ongoing operations of the project. Serving as the executive director of the IDA, he also identifies potential projects, negotiates and recommends financial assistance, and ensures that the project gets completed as planned. However, in this role he has not initiated ongoing monitoring of project performance to determine the actual amount of tax exemptions claimed by the project or the number of jobs created or retained as a result of the project. Further, the Town Comptroller's office maintains the financial records of the IDA, but does not obtain ongoing project performance data or determine the actual amount of tax exemptions used. The IDA's administrative agreement with the Town stipulates that annual updates are to be obtained from project clients and used for required reporting. The IDA paid the Town more than \$57,000 in 2013 and in 2014 for the services provided by the Town. Since the ongoing monitoring of projects was not being done, it appears that the board makes no effort to ensure that services it pays for are actually being provided.

As a result of our current review, the IDA indicated that it has developed procedures to monitor the performance of IDA projects that are receiving financial assistance.

**The IDA has not established adequate procedures to obtain reliable data from projects.** We found that the information reported by projects to the IDA in the December 2014 surveys may indicate that excessive tax exemptions are being obtained by projects. For example, one project (Shelter Cove Living, LLC), requested \$640,000 in sales tax exemptions. The board approved up to \$7,757,576 in purchases to be exempt from sales taxes equating to \$620,606 in estimated sales tax exemptions for the period December 2012 through June 2014. However, the project reported that it used \$644,000 in sales tax exemptions in 2013 and \$304,544 in sales tax exemptions in 2014, exceeding the amount approved by the board by \$327,938. There was no documentation that the IDA board received or approved a revised request, and no support was provided to explain the difference between the amount requested and the amount approved.

As a result of our review, in 2015 the IDA obtained an explanation for why the sales tax exemptions claimed in 2013 exceeded the amount approved. The IDA indicated that the project owner told IDA staff that it erred in reporting \$644,000 in sales tax exemptions on the ST-340 for 2013 since it only claimed \$290,000 in sales tax exemptions for that year.

Another project (Restaurant Depot) requested \$70,000 in sales tax exemptions to construct a new food distribution warehouse. The board approved up to \$600,000 in

purchases equating to \$48,000 in estimated sales tax exemptions for the period October 2012 through June 2013. However, the project reported that it claimed \$95,000 in sales tax exemptions in 2012, almost twice the amount approved by the board. Again, the IDA could produce no record to support why the actual sales tax exemptions exceeded the original amount requested. IDA officials indicated that the project potentially underestimated project costs at the time the project application was submitted. However, the IDA could not provide documentation to support this position. Only as a result of our review did the IDA obtain an explanation from the project owner as to why the sales tax exemptions claimed in 2012 exceeded the amount approved. The IDA was told that the project's equipment costs were higher than originally estimated, and the IDA accepted this explanation.

Businesses are required to report the total amount of sales tax exemptions used during a year to the state Department of Taxation and Finance on form ST-340. However, the IDA does not require projects to provide it with a copy of the ST-340, but simply requests projects to report the amount of sales tax exemptions claimed. Requiring businesses to provide a copy of the ST-340 would provide greater assurance that the amount reported is accurate. As a result of our review, the IDA has begun requesting copies of form ST-340 from projects.

**The IDA has not established appropriate procedures to ensure that projects meet the agreed to job creation goals or to recapture financial assistance provided when projects fail to meet employment goals.** In general, IDAs provide financial assistance to projects in exchange for creating or retaining jobs. By law, IDAs may adopt policies and procedures that authorize actions to recover all or a portion of the financial assistance provided when job creation goals are not met by projects. This review found no evidence that the IDA had adopted or implemented such policies.

One IDA project (Shop Rite Supermarkets) involved building a new supermarket and gas station, and relocating an existing car dealership to a new location. The project application stated that 335 jobs would be created as a result of the project. The project reported in the December 2014 survey that 211 jobs existed in 2013 and 203 jobs existed in 2014. The IDA staff made no attempts to reach out to the project to obtain an explanation as to why the project was unable to meet its target of 335 jobs, and could therefore not determine whether the IDA should attempt to recover a portion of the assistance provided to the project. As a result of our review, the IDA indicated that this shortfall in meeting job targets was discussed by the board at the IDA's March 16, 2015 board meeting, and that the board authorized the IDA's Governance Committee to review options for recapture policies

### **Inappropriate Use of IDA funds**

**The IDA's relationship with the Town has resulted in the IDA expending over \$521,000 to fund Town projects that are not germane to the IDA's public purpose.** While benefiting town residents, we believe these projects are secondary to the core economic development purposes for which IDAs are formed. For example,

the IDA paid \$330,592 to demolish a town wastewater treatment plant and develop a new 12 acre passive town park at that site; the new park connects to the town's existing bike path. In another instance, the IDA paid \$84,920 to build a bridge to add access to the town's bike path from a local neighborhood and \$14,631 to make the town swimming pool handicap accessible. While these improvements would likely benefit town residents, these transactions appear to subsidize capital project costs of the Town and may provide financial relief to Town government. In addition, in 2013 the IDA granted the Town \$491,000 for a project to construct new sidewalks in the town. Of this amount, \$400,000 was returned to the IDA in 2014 but the IDA paid \$91,000 for the town's share of expenses for this project. IDA officials indicate that General Municipal Law does enable industrial development agencies to provide financial assistance to recreational projects, and that each of these projects improve recreational opportunities in the Town.

However, the New York State Attorney General has opined (Formal Opinion No. 2014-F1) that an IDA does not have the statutory power to provide grants or loans from its own funds to public or private interests. Further, according to Opinion 99-4 issued by the New York State Comptroller, an IDA may not make a gift of its moneys to a town. It may, however, expend moneys to make improvements to municipal facilities, at no cost to the municipality, when those improvements are incidental to the undertaking of a proper IDA project and are intended primarily for the benefit of that project. However, each of these projects consist of making improvements to Town-owned properties and facilities, and are not tied to traditional IDA projects. Since the IDA funded the improvements to the municipal facilities, and those improvements were not undertaken as part of a proper IDA project, we believe the IDA paying for these Town projects is inappropriate. While IDA officials believe that it is questionable whether these are appropriate projects, they agreed to discontinue funding town projects going forward.

There is also an existing conflict of interest related to these Town projects because a Town employee serving as the IDA's executive director is bringing forward and presenting potential Town projects to the IDA board, approval of which results in a financial benefit for the Town.

We also noted that in 2012 the IDA board approved spending \$5,600 for the Town's membership in a local heritage area, due to fiscal constraints encountered by the Town, although it appears that the payment was not made. The IDA also considered making this payment for the Town in 2013, but tabled the decision.

The IDA board should review the IDA's involvement in such undertakings and determine whether such activities best serve to advance economic development and job growth in the Town of Colonie. The board should also adopt a policy indicating that the use of IDA funds to provide grants to another entity is prohibited.

## **Conclusion**

Our findings lead to the conclusion that the problems identified in 2008 have not been fully addressed. We have concerns that these management deficiencies and reporting errors could reoccur without direct corrective action being taken by the board. As a first step, the board should review the terms and conditions of its agreement with the Town, assess whether the Town is satisfactorily fulfilling its contractual obligations, and consider whether alternative options should be explored.

Our review concludes that the IDA board needs to be more actively involved in ensuring the IDA meets its mission and adheres to statutory reporting requirements. The board has an obligation to exercise appropriate financial and management oversight of the IDA's activities to ensure that financial assistance in the form of tax exemptions are used as intended, that project performance is monitored, required project information is accurately collected and reported, and that anticipated employment benefits are realized.

To accomplish this, the IDA board should develop and implement procedures to monitor the performance of projects after approval and determine whether the projects are meeting job creation goals in accordance with authorized project agreements. The board should adopt policies to obtain required information from all projects until the terms of financial assistance agreements have been met and financial assistance is no longer being provided.

In addition, the board should review and verify that data reported in PARIS is accurate and supported by source documents, such as project applications and ST-340 forms from businesses receiving sales tax exemptions. The board should also establish procedures to ensure that the amount of sales tax exemptions used by a project do not exceed the amount authorized by the board.

Furthermore, the board should ensure that expenditure of IDA funds are for operations and projects that are germane to the IDA's public purpose and serve the IDA's mission of advancing economic development and job growth in the Town of Colonie. IDA funds should not be used to subsidize the Town's capital costs or for Town projects. The board should also adopt a policy indicating that the use of IDA funds to provide grants to another entity is prohibited.