• *Accountability*
• *Transparency*
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Operational Review

Fulton County Industrial Development Agency and Related County Economic Development Activities

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Executive Summary

Purpose and Authority: The Authorities Budget Office (ABO) is authorized by Title 2 of the Public Authorities Law to review and analyze the operations, practices and reports of public authorities, to assess compliance with various provisions of Public Authorities Law and other relevant State statutes, and to make recommendations concerning the reformation and structure of public authorities. This includes rendering conclusions and opinions regarding the performance of public authorities and assisting these authorities improve management practices and the procedures by which their activities and financial practices are disclosed to the public. Our operational review of the Fulton County Industrial Development Agency (IDA) was performed between July and October of 2010 and was conducted in accordance with our statutory authority and compliance review protocols which are based on generally accepted professional standards. The purpose of our review was to examine the role of the IDA in promoting economic development initiatives, understand the relationship between the IDA, Fulton County, and the Fulton County Economic Development Corporation, and determine how its policies and practices influence the County's economic development program. This report also recommends actions to improve the IDA's business practices.

Background Information: Fulton County's economic development approach includes the County's Planning Department, the IDA, and the not-for-profit Fulton County Economic Development Corporation (FCEDC). As part of this approach, the IDA plays a subordinate role, limiting its involvement primarily to financing projects and offering other forms of financial assistance authorized in statute. The County contracts with the FCEDC to serve as the primary economic development agency for the County. It is the responsibility of the FCEDC to take the lead and manage countywide job creation and economic development activities. The IDA also contracts with the FCEDC to primarily provide marketing services for its industrial and business parks. The FCEDC has also created a real estate affiliate, the Crossroads Incubator Corporation (CIC), to manage properties that the FCEDC develops pursuant to leases it has with the IDA. In 2009, the FCEDC's contracts with the County and the IDA totaled $64,850.

Results: The economic development activities of the County carried out by the IDA and the FCEDC focus on building, developing and marketing industrial and business parks. The properties within these parks are generally purchased by the FCEDC or CIC, and leased back to the IDA, which holds title interest for the purpose of providing financial assistance in the form of tax exemptions and low-interest financing. We found that this arrangement initially helped to reduce the County's unemployment rate from a high of 14 percent in 1985 to 4.4 percent by December 2000. During this time, 16 new and existing businesses were provided financial assistance to locate in the industrial parks to create and retain 1,567 jobs in the County. However, over the past ten years, this success has not been sustained. From December 2000 to December 2009 the County's unemployment rate rose to 10.4 percent, driven by a loss of 900 jobs, while the available workforce increased by 700 individuals. While this increase in the unemployment rate is generally associated with the recent national recession that has stymied economic growth in upstate New York, the impact in Fulton County has been greater than that experienced in neighboring counties.

Based on the limited public information from FCEDC, we found that it appears economic development activity outside the industrial and business parks consists primarily of providing loans to businesses through various revolving loan pools administered by FCEDC. However, it appears that the FCEDC's loan portfolio is not very active and has had limited success. Although the FCEDC does not readily make information on its operations available to the public, in 1989 the FCEDC reported that it provided five loans to businesses for the purpose of creating jobs, or expanding or improving existing operations. Of those five businesses only two continue to operate in Fulton County. In its 2009 report, the FCEDC indicated that it provided loans to only six businesses.

This report also concludes that the County's economic development approach appears to serve the financial self-interest of the FCEDC, at the expense of the County as a whole, and that the IDA has little influence over the FCEDC or any significant decision regarding economic development in Fulton County. The County and the IDA have allowed the FCEDC to be responsible for economic development in the County. Yet, the County and the IDA have acquiesced in this relationship and appear reluctant to hold the FCEDC accountable, even though the decisions made by the FCEDC involve public funds, tax exemptions and other forms of taxpayer assistance.

Furthermore, the County and the IDA have limited information in regards to FCEDC's economic development activities, based on the limited communication the FCEDC has with the County and the fact that the FCEDC does not provide the IDA with its marketing plans, as required by its agreement.

We found that this relationship has resulted in lost revenue, overpayments and loss of businesses subsequent to the expiration of financial assistance. For example, we identified over $160,000 in lost revenue to the IDA and the City of Johnstown, and overpayments to the FCEDC totaling $68,000. We also found examples of businesses accepting financial assistance only to vacate a property before that assistance ends and the property is restored to the tax rolls.

We believe that the County and the IDA need to re-examine the roles they play in promoting economic development and whether the financial relationships they have with the FCEDC are in their mutual interests and provide sufficient oversight of the FCEDC and its subsidiary, given that the activities of the FCEDC appear to constitute a public governmental function.

Introduction and Background

Fulton County follows a multi-organizational approach to economic development, which includes the County's Planning Department, the Fulton County Industrial Development Agency (IDA), and the not-for-profit Fulton County Economic Development Corporation (FCEDC). This approach was initiated in the mid 1980s. Under this arrangement, the FCEDC was given primary responsibility for promoting job creation and economic growth within the County, and is considered the lead entity for all economic development functions. This includes recruiting new business and negotiating and preparing applications for financial assistance, as well as providing loans from the County's economic development funds. The County Planning Department assists local municipalities with developing planning documents and manages the County's capital projects. The IDA serves primarily as a financing institution that owns or holds lease interests in property in order to provide financial assistance to businesses in the form of tax exemptions. The IDA also issues debt for low-interest financing.

The IDA is a public benefit corporation established pursuant to Section 895-C of General Municipal Law to promote job opportunities and the economic welfare of the residents in Fulton County. The IDA is governed by a seven member Board of Directors, each appointed by the County Board of Supervisors. As such, the Board of Supervisors has some oversight of the IDA's operations. The daily operations of the IDA are managed by the Director of the County Planning Department, who also serves as the IDA's Executive Director. Salary and benefits of the Planning Director are paid by the County, and the IDA pays the Director an additional $18,000 for his services. The IDA has no full time staff. It contracts with another Planning Department employee to handle its finances. There is no written agreement between the County and the IDA for these arrangements. For 2009, the IDA operated at a total cost of approximately $37,000.

As of December 31, 2009, the IDA owned property valued at approximately $2.1 million, and had approximately $11.8 million of conduit debt outstanding. The primary sources of revenue for the IDA are sales of property, project application fees, and interest income, although for 2009 its only reported revenue was $7,000 of interest income.

As indicated, the FCEDC has been the lead economic development entity for the County since the mid 1980s. At that time, the County decided that it would revive an existing not-for-profit organization that had been dormant for years and finance its operations in exchange for the FCEDC managing the County's economic development program. This financial assistance has continued annually, increasing from an initial amount of $42,000 to over $74,000 for 2009.

The FCEDC is responsible for marketing the County to prospective businesses, recommending economic development projects and programs for financing, managing the County's loan programs, providing low interest loans to businesses, identifying and obtaining State and federal funds for economic development, and serving as the primary developer for the County. The IDA also contracts with the FCEDC to actively market the property owned by the IDA, identify appropriate businesses for financial assistance and submit the necessary applications to the IDA for approval. The FCEDC has created a real estate management affiliate, the Crossroads Incubator Corporation (CIC), to manage the properties held by the IDA.

Although it is expected to act as the County's economic development entity, the County exercises little oversight or control over the FCEDC. The FCEDC is governed by a 15 member board of directors elected by its membership. As a not-for-profit corporation that claims to be outside the scope and jurisdiction of Public Authorities Law, the FCEDC makes little financial and operating information available to the public, and discussions and decisions of the FCEDC have not been subject to public input and disclosure. The limited financial data available indicates that for 2009 the FCEDC had operating costs in excess of $1.3 million, but only $16,400 was spent on marketing the County as an economic development destination – the primary purpose for which it receives funding from the County. The FCEDC also reported total income of $463,000 for 2009, and indicated that $28,500 of this total was revenue from its membership.

Since the mid 1980s, the County's primary economic development activities have been focused on developing and marketing two industrial parks and a business park. The County has also made capital improvements to its infrastructure to encourage economic development activity, including improvements to the landfill, waste-water treatment plant, airport, and water systems. The first industrial park, Crossroads Industrial Park, was developed in the mid 1980s. A combination of County, IDA, State and federal funds were used to purchase the property and develop the necessary infrastructure, such as roads, electricity, water and sewer connections. Subsequently, the City of Johnstown acquired approximately 175 acres of land to develop the Johnstown Industrial Park. In the 1990s the City of Gloversville and other public entities combined funds with the IDA and FCEDC to purchase land and develop infrastructure for the Crossroads Business Park. Ownership of all three parks was acquired by the IDA so that it would be able to provide property tax exemptions to eligible businesses that located in the parks.

Compliance Review Objectives

The Authorities Budget Office (ABO) is authorized by Title 2 of the Public Authorities Law to review and analyze the operations, practices and reports of public authorities, to assess compliance with various provisions of Public Authorities Law and other relevant State statutes, and to make recommendations concerning the reformation and structure of public authorities. Our operational review was conducted to evaluate the economic development program of Fulton County and the effectiveness of the IDA in supporting this mission and its public purpose.

Compliance Review Scope and Methodology

Our compliance review was conducted between July and October 2010, and covered select IDA operations for the period 1988 through 2010. Our review focused on the economic development projects within the industrial parks, but also included projects that are located outside the industrial parks. Specifically, we reviewed:

- Contractual agreements between the FCEDC and the County and IDA
- Effectiveness of the IDA's Board and its operations
- Board and committee meeting minutes
- Project documentation and land sales
- Project review and approval processes
- Revenues, expenditures and outstanding bond obligations
- Independent financial audits and other reports
- Adherence with reporting requirements and adequacy of reporting
- Policies and procedures required under the Act, Public Authorities Law, General Municipal Law, and Public Officers Law
- Policies and procedures indicative of good governance practices

In addition to reviewing documents and records, we interviewed IDA management and Board members and select Fulton County officials; attended an IDA Board meeting; reviewed available public FCEDC documents; and performed other testing we considered necessary to achieve our objectives. Our report contains recommendations to improve the effectiveness of the operations of the IDA and economic development in the County. The results and recommendations of our review were discussed with appropriate officials and their comments have been considered and are reflected in this report where appropriate.

Review Results

Economic Development Results

The effectiveness of the Fulton County economic development model appears to have diminished over time and may no longer serve the interests of the County or businesses outside the industrial and business parks. When Fulton County initiated its current approach to economic development in the mid 1980s, the unemployment rate in the County was reported as among the worst in the State, peaking at 14.6 percent, far in excess of the statewide unemployment rate of 6.6 percent. To address this, a new economic development structure was established that made the Fulton County Economic Development Corporation (FCEDC) the primary economic development agency for the County. The goal at that time was to attract new business to the County by developing industrial parks and constructing new facilities within these parks. This economic development strategy appears to have been successful. By December 2000, a total of 16 businesses had located to the parks with the expectation of creating 1,567 new jobs, and the County unemployment rate had fallen to 4.4 percent. However, this initial success has ebbed. In the past decade, only six additional businesses have located to the parks, with the expectation of creating an additional 203 jobs.

Moreover, in its initial report to the County the FCEDC stated that employers already located within Fulton County account for a significant portion of all new jobs being created, and that it would work closely with these businesses. Based on the limited information available from the FCEDC, it appears that the economic development activity outside of the industrial and business parks consists primarily of providing loans to businesses under the various revolving loan pools administered by FCEDC. Since the FCEDC does not provide complete information on its operations to the public, there is very little information available on its economic development activity throughout the rest of the County. The available information appears to indicate that very little job growth has taken place. For example, in its 1989 report to the County, the FCEDC indicated that it provided loans to five different businesses to create jobs, make improvements or expand operations. Of the five businesses that received loans, two continue to operate in Fulton County; two others have gone out of business, and the fifth has moved out of the County. Twenty years later, in its 2009 report, the FCEDC indicated that it provided similar loans to only six businesses during the year.

Although the County unemployment rate has improved from its record high in the 1980's, the job growth and reduced unemployment that was reflected in the early development of the industrial parks has not been sustained. As indicated in the table below, the number of jobs in the County increased by 1,200 from 1990 to 2000, but has declined by 900 since 2000. Over the same period, the total size of the available workforce has increased by 500. As a result, the County's unemployment rate had increased to 10.4 percent in December 2009.

Number of Jobs						
	1990	**2000**	**Increase 1990 - 2000**	**2009**	**Increase 2000 - 2009**	**Increase 1990 - 2009**
In the Parks	305	1,753	1,448	1,600	(153)	1,295
Outside the Parks	23,495	23,247	(248)	22,500	(747)	(995)
Totals	***23,800***	***25,000***	***1,200***	***24,100***	***(900)***	***300***
Workforce						
Totals	***26,400***	***26,200***	***(205)***	***26,900***	***700***	***500***

IDA officials responded that the effectiveness of the County's economic development program has not been diminished; rather the downturn in employment is the result of a deep, severe recession experienced throughout the State and the country since 2007. The IDA cited NYS Labor statistics to point out that the County's total employment grew from 25,000 in 2000 to 25,600 in 2007, an increase of 600 jobs in seven years. Since 2007, however, employment has fallen from 25,600 to 24,100, a loss of 1,500 jobs. We acknowledge that New York State, particularly upstate, was not immune to the problems occurring throughout the national economy. Some job losses in Fulton County were inevitable under these conditions. Nevertheless, the loss of jobs in Fulton County has been more severe than that experienced in other neighboring counties. As of January 2010, the County's unemployment rate had increased to 11.2 percent, an 83.6 percent increase from January 2007. This compares to an average increase of 59.4 percent in the unemployment rates of the four counties bordering Fulton County over the same period. Although the County's unemployment rate has grown faster than its neighboring counties, there is no evidence to show that the economic development strategy was fundamentally changed to address this problem.

Despite the measurable decline in job creation and retention experienced since 2007, neither Fulton County nor the IDA has stepped in to assume greater responsibility for managing a balanced economic development strategy – instead continuing to rely on FCEDC to take the lead. In its defense, IDA officials have indicated that the unemployment rate is only one aspect of economic development and that new businesses also increase property values and generate increased property taxes. The current assessed value of the 22 projects in the three parks is $77 million. Based on 2009 tax rates, these properties could generate tax revenue of approximately $3.7 million annually, if fully taxable. However, these potential tax revenues are mitigated to some extent by the property tax abatements provided by the IDA. The IDA also indicated that it contributes to the County's economic development strategy through several economic summit meetings held to assess the status of the County's economy and to develop an economic development strategy. We found that two summits were held -- one in 1997 and the most recent in 2007. It is reasonable to argue, however, that two meetings held 10 years apart is insufficient opportunity for the IDA to have any meaningful input into a countywide economic development strategy. Moreover, no County entity is designated to oversee implementation of this strategy and the FCEDC is neither reporting this information to the County nor to the IDA as required under its agreement

It appears that the FCEDC has a financial incentive to place its own interests ahead of the overall economic development goals of the County. We believe that the County's delegation of its responsibility to the FCEDC, the lack of oversight exercised by the County over the FCEDC, and the secondary role played by the IDA have resulted in the County's economic development interests not always being appropriately represented. Based on our review of IDA records we found instances where the FCEDC appeared to act in its own self interest simply to generate revenue for itself, rather than focusing on long-term job creation. For example, one local business worked with the FCEDC to submit an application to the IDA to purchase property and construct a building in one of the industrial parks in exchange for tax exemptions on the property. The IDA Board rejected the application, since the project would not create any additional jobs, but would only relocate existing jobs to the industrial park. However, the FCEDC coordinated tax exemptions for the company through the Empire Zone program, which it administers, and negotiated for the company to purchase the lot from the IDA. As a result of this transaction, the FCEDC received a portion of the proceeds from the lot sale and the business received tax exemptions without creating additional jobs.

The IDA generally negotiates lease agreements for a 20 year period, during which the value of the land is fully taxable while the project's property improvements are tax exempt. In return, PILOT agreements are established that require the project owner to make payments to the taxing jurisdictions according to a standard schedule. Generally the schedule requires payments for the first seven years that equate only to the value of the taxes based on the purchase price of the vacant land, with increasing amounts for the next three years on the value of the property improvements until the amount of the PILOT equals the total property tax. The amount of this payment remains constant for the final ten years of the agreement. At the end of the 20 year period the property returns to the tax rolls as a fully taxable property. Since the FCEDC and CIC perform development and construction management functions in the County, the IDA typically sells and leases back the properties to the CIC, which then subleases the property to the business that promises the jobs. The IDA does not negotiate lease agreements directly with the business. Based on the subleases we were able to review in IDA records, it appears that the CIC typically enters ten year subleases with these tenants, with options to renew. Since the terms of the sublease are shorter than the terms of the CIC's lease with the IDA, there is reduced assurance that the initial project expectations will be met.

We reviewed all 22 of the IDA's projects that involved land sales and leases with the FCEDC and CIC. As indicated, we found that the economic development strategy had initial success locating new businesses and creating jobs in the County, but that same success has not been realized in recent years. In addition, we also found instances where the strategy resulted in a lack of transparency and accountability over projects managed and controlled by the FCEDC and CIC.

For one project in 1989, CIC was provided over $1.2 million in tax exempt financing and a 20 year PILOT agreement for tax exemptions in exchange for the creation of 98 manufacturing jobs by the CIC's tenant. The IDA entered a 20 year lease with the CIC, corresponding to the repayment provisions of the debt and the PILOT agreement, in accordance with the IDA's general practices. However, the company vacated the project facility after 10 years. Since there was debt associated with the project, CIC was obligated to make lease payments to meet the debt service, and was therefore under significant pressure to locate a new tenant. Another business relocated to this building from another location in the State, and remained there for seven years, until its sublease with CIC expired. Generally, IDAs are prohibited from providing financial assistance to companies that relocate from elsewhere in the State, but since the sublease was between CIC and the company, there was no information on the number of jobs provided or other company information provided to the IDA. The CIC then sublet the building to a company that provides recycling services, in exchange for providing 35 jobs. Again, since the sublease was between CIC and the company, the IDA did not intervene to enforce the original terms and conditions of its lease with CIC, nor did it alter the terms of its financial assistance to reflect the potentially different needs of new tenants or the difference in the number of jobs to be provided by the new tenants. IDA officials indicated that these violations of the lease terms were only short term since the new tenant purchased the building within a month, thereby negating the terms of the lease.

For another project, in 1995 the IDA approved an estimated total of $1.1 million in tax exemptions under a 20 year PILOT agreement to a business in exchange for 120 new jobs. However, after three years, the business closed and vacated the building. A different company had been negotiating for financial assistance from the IDA to construct a new building in exchange for creating 116 new jobs. This company instead opted to lease the vacated building from CIC beginning in 1998. Since this transaction occurred between the company and CIC, no information on the company was provided to the IDA. There is no indication as to how many of the 116 jobs were actually created. Yet, the company was able to utilize the tax exemptions provided to the original company in 1995. This business also vacated the building, and in 2001 a third business moved in, also benefitting from the tax exemptions provided in 1995 and without making any job creation commitments.

We identified another business for which the IDA approved financing in 2000 to purchase specialized equipment in addition to granting a 20 year PILOT agreement for tax exemptions. In exchange, the business was to relocate from an existing building in Johnstown, retain 32 jobs and create 20 new jobs. However, after two years, the business abandoned the location, leaving behind the equipment. The building was vacant until a new business moved in more than a year later. Again, this business negotiated strictly with the CIC to assume the terms of the original sublease, and the IDA was not provided with information regarding how many jobs were to be created, even as the business received tax exemptions. For 2008 and 2009, this business received the equivalent of an 83 percent exemption on its property taxes.

For another project in 1998, the IDA approved an estimated total of $479,000 in tax exemptions under a 20 year PILOT agreement in exchange for relocating an existing business into one of the IDA's industrial parks. The project application indicated that the business would expand its operations and create 13 additional jobs. However, ten years after moving into the industrial park, only 6 new jobs had been created.

Lastly, in 1988 the IDA approved a 20 year PILOT agreement for tax exemptions for a business to construct a 60,000 square foot building, and in 1998 the company opted to purchase the facility, terminating the PILOT agreement and placing the property fully on the tax rolls. However, five years later the company exchanged this building with CIC for CIC's lease with the IDA on a larger building that had been abandoned by another business. This exchange was beneficial to the CIC, since it was making payments for the larger building under its lease with the IDA, even though it had no tenant. The company was able to use tax exemptions worth 50 percent of its property taxes as an incentive to relocate to a FCEDC and CIC controlled property. As a result, the company received an additional $85,000 in tax exemptions without creating any additional jobs.

There is no better example of the inconsequential role the County and the IDA play in economic development decisions than the CIC's sale of properties to the Single Tenant Acquisition Group (STAG) in 2007. The FCEDC and CIC agreed to sell 12 properties to STAG that the CIC owned or leased from the IDA for a total of $31 million. CIC reported a profit of over $7 million from this transaction. The IDA continues to provide tax exemptions and other financial assistance for these properties. Fulton County and other local taxing jurisdictions realized no additional jobs or investment from the sale. A $31 million property transaction was completed without the participation or approval of either County officials or the IDA. Moreover, the sale resulted in no new jobs or properties being returned to the tax rolls, but certain individuals involved in the sale and associated with the FCEDC and CIC profited handsomely. The IDA agreed that the sale of these properties did not result in new jobs but also indicated that the affected properties will eventually return to the tax rolls as originally intended. County officials agreed that the sale of the properties to STAG took place without the involvement of the County and only limited oversight by the IDA, but stated that this transaction continues to be under scrutiny. County officials also indicated that they agree that the accountability and openness of the FCEDC and its work must be improved. Yet they have little pressure over their economic development partner to effect those changes or demand that FCEDC board members be replaced, even as they agree that the actions of the FCEDC and its management were inappropriate.

<u>Lack of Oversight and Adherence to Policies and Agreements</u>

The IDA is not provided marketing reports and quarterly updates on the services provided by the FCEDC, as required by its agreement. The agreement between the IDA and the FCEDC states that the FCEDC is to actively market all of the IDA owned land at the Johnstown Industrial Park, Crossroads Industrial Park, and Crossroads Business Park. The FCEDC is to incorporate marketing of these locations into its overall corporate marketing plan. The plan is to include specific activities for the marketing of each park, and the FCEDC is to provide the IDA with marketing reports as well as updates on a quarterly basis. However, we found that the FCEDC has not provided marketing reports or quarterly updates to the IDA. Instead, IDA officials indicated that FCEDC officials attend Board meeting and present projects as they are developed. The agreement also requires the FCEDC to develop advertising material for these industrial parks; however no materials have been presented to the IDA Board for its review. As a result, the IDA is not provided with routine and formal updates as to the marketing activity being done to advertise its remaining properties for economic development, and whether those properties are being marketed in the best interest of the County. IDA officials indicated that they were aware of the marketing being done by FCEDC through its public website and that they felt this was sufficient to provide the Board with information as to the FCEDC's marketing activities.

The IDA has overpaid the FCEDC $68,000 in fees. The IDA's agreement with the FCEDC stipulates that the IDA will annually pay the FCEDC $5,000 for professional economic development services. In addition, as an incentive to develop the industrial parks, the FCEDC will also be paid a percentage of the amount received from lot sales. The amount of the payment to FCEDC depends on several factors, such as when the sale occurs and whether realtors are used. For example, from 1991 to 1998 the agreement provided that the FCEDC would receive ten percent of the land sale proceeds if a realtor was used, but only two percent of the proceeds if realtors were not used. Subsequent agreements were revised to remove the two percent restriction. We reviewed all 20 of the property transactions from 1988 to 2010 and determined that the IDA has paid the FCEDC a total of $267,523 under the terms of this agreement. However, we found that this was $68,000 more than what was allowed under the terms of the agreements. These overpayments were due to FCEDC claiming the higher rate for using a realtor for five of the transactions that occurred between 1991 and 1998, although there was no indication or documentation supporting that realtors were used. Although IDA officials responded that the original 1991 Marketing Agreement provided only for a lot sale payment of ten percent to the FCEDC, they were unable to provide a signed copy of the original agreement to support this, and other documents the IDA provided to us indicate that the two percent provision was in effect during that time period.

The IDA and the City of Johnstown were not paid in accordance with their agreement for development of the Johnstown Industrial Park. When the City of Johnstown acquired the property for the Johnstown Industrial Park and provided the property to the IDA for development, it negotiated an agreement with the IDA regarding property sales in this park. This agreement stipulates that when the property is sold the IDA is to receive seven percent of the gross revenues generated from the sale with the remainder to be paid to the City. We reviewed documents for 14 lot sales in the Johnstown Industrial Park and found that the IDA was underpaid by the FCEDC in the amount of $11,778 and the City of Johnstown was underpaid $137,231 under the terms of this agreement. These underpayments generally occurred because the IDA allowed the FCEDC to reduce the gross revenues by the amount of its marketing fee. The IDA responded that in 1991 the City officials consented to have the IDA enter into the marketing agreement with FCEDC, were aware of the wording of the marketing agreements, and that it did not require amending the City's agreement with the IDA. The IDA further indicated that the City has been aware of the payments to the FCEDC and never raised objection or concern.

The IDA has not received proceeds from one lot sale in the Crossroads Industrial Park. We found that in 1987 the IDA donated 5.17 acres of land in the Crossroads Industrial Park to the FCEDC, with an understanding that if the land were to be transferred or sold, the IDA would expect payment for the lot. FCEDC sold this property in 2007 for $2.5 million, but did not make payment to the IDA. As a result of our review, IDA officials sent a letter to the CIC requesting payment and are working with the CIC to resolve this matter.

The IDA has failed to collect over $20,000 in fees from project applicants as required by its Uniform Tax Exemption Policy. The IDA's Uniform Tax Exemption Policy (UTEP) was established in 1993, and states that a $300 fee is to be paid by a project applicant when submitting an application for tax exemptions. The UTEP also requires a $100 annual maintenance fee for each year the PILOT agreement is in effect, and requires a late payment penalty of one percent per month to be paid to the IDA on any delinquent PILOTs. However, we found that the application fee was not collected for 17 of the 19 projects that applied for tax exemptions and that maintenance fees were not collected for any of the 13 projects that had PILOT agreements. The lost revenue totaled $20,900. In addition, two projects that had delinquent PILOTs in 2009 failed to pay a penalty to the IDA. The IDA Board became aware in 2003 that these fees were not being collected but has taken no action to recover the lost revenue. The IDA responded that its policy allows for the IDA to charge fees; however it has elected not to do so. The IDA did not provide any explanation for why the application fee was charged for the two projects.

Project owners are not reporting employment data to the IDA. The IDA established a practice that requires project applicants to certify that they will comply with reporting requirements of the IDA or be subject to suspension or termination of tax exemptions. We believe that this could be a best practice for IDAs in general and is commendable. The IDA requires businesses to annually report the amount of the PILOT payments they make, the number of employees they have, and the salary range associated with those jobs. However, we found that although two projects did not report the required information for 2008, no loss of exemptions occurred as a result of the lack of reporting. The IDA agreed that it did not enforce its policy and indicated that it will review its policies and assess what, if any, penalties should be assessed to a project owner for failing to comply with any requirements or conditions of a lease or PILOT agreement.

Compliance and Business Improvement Issues

We reviewed the operations of the IDA to determine whether it is in compliance with the requirements of Public Authorities Law and other applicable statutes, and to identify areas for improving operations.

Section 105 of Public Officers Law limits the use of executive session to specific instances. We found that the IDA Board uses executive session appropriately at times. However, we found that IDA Board frequently entered executive session to discuss potential projects that were seeking financial assistance. Meeting notes from executive sessions of the Board show that the executive sessions were used to receive presentations and updates from FCEDC officials on proposed projects or the status of current projects. IDA management indicated that this was done with the advice of counsel, since there is concern that, should details become public, competition may attempt to steer existing and prospective businesses away from the County. In addition, the IDA stated that another reason for using executive session is that prospective companies that the FCEDC, CIC and IDA work with often require the execution of confidentiality agreements that stipulate that there can be no public discussion or disclosure of the name of the company or its project plans. However these reasons do not satisfy any of the specific exceptions cited in Public Officers Law as an appropriate basis for executive session, and do not promote accountability and transparency of the project approval process.

Section 859 of General Municipal Law requires industrial development agencies to submit data to the State Comptroller including project name, tax exemptions, and job information. For purposes of collecting this data the State Comptroller has worked with the Authorities Budget Office to create the Public Authorities Reporting Information System (PARIS). Our review identified 19 projects that should have been reported in PARIS by the IDA for 2009, since they were straight lease projects that had PILOT agreements in effect. However, the IDA only reported six of these projects. IDA management indicated that it was advised by the State Comptroller's Office that the IDA did not need to report projects that were paying 100 percent of their property taxes. However, two of the 13 projects that were omitted were making PILOT payments that were less than the amount of assessed taxes. Also, since the IDA held title to the property for all 19 projects for the purposes of providing tax exemptions and PILOT agreements, each project is defined as a straight lease project, and is required to be reported in PARIS. IDA officials indicated that they will revise the PARIS submission to appropriately reflect all projects.

We also reviewed the data in PARIS for the six projects reported, and found that the data was inaccurate for all but one, since the number of jobs expected to be created did not match the data in the project application. For example, the application for one project indicated that 72 jobs would be created, yet the IDA reported in PARIS that 55 jobs were to be created. We could not determine the basis for this discrepancy.

We also noted that other data was reported inaccurately in PARIS. For example, the IDA is required to annually report purchases for goods or services in the amount of $5,000 or more. Our review found that for 2009 the Authority paid its independent audit firm $10,000 and paid FCEDC $5,000; however the IDA reported that it had no such procurements or contracts in 2009.

Section 2800(2)(b) of Public Authorities law requires each local authority to make information regarding its mission, current activities, and financial data accessible to the public through its official or shared internet web sites. We found the IDA does not have a web site and has not utilized the County's web site to provide information on its activities as required by the law. The Executive Director indicated that he is working with the County to establish a shared web site; however no agreement has been reached.

Section 874(4) of General Municipal Law requires agencies to establish a uniform tax exemption policy and to provide guidelines for claiming real property, mortgage recording, and sales tax exemptions. The guidelines are to include the period and percentage of tax exemptions; and types of projects to receive exemptions. The policy should consider factors such as the extent to which jobs will be created or retained, the estimated value of tax exemptions, whether exemptions will be reimbursed by the project occupant if the project does not meet its intended purpose for which exemptions were provided and the project's impact. We noted that the IDA's uniform tax exemption policy could be improved by including provisions to recover the benefits provided to companies that leave the area before the full term of the project expires. These provisions would provide an additional incentive for potential businesses to provide long-term employment in the County, as well as allow taxing jurisdictions to recover lost property tax revenues when businesses fail to provide the expected jobs. The IDA indicated that the Board will review its existing policy and consider what, if any, changes or improvements to the policy are appropriate or necessary.

Recommendations

To the County Board of Supervisors:

1. The County should reassess its reliance on the FCEDC, given the FCEDC's lack of transparency and public accountability. If the County is to continue using the FCEDC as its primary economic development entity, it should improve its oversight and monitoring of the FCEDC to assure that the FCEDC conducts its business consistent with the public interest and in a manner appropriate for an entity acting as a representative of the County.

2. The County, the IDA, the FCEDC, and the CIC should meet regularly to improve communications and to coordinate economic development strategies, business recruitment practices, and financial assistance decisions so that such actions reflect a common purpose and support the County's economic goals.

To the IDA Board:

1. The IDA should review and approve subleases between the CIC and businesses to ensure that provisions for financial assistance are being met.

2. The IDA should approve any changes in subleases between the CIC and businesses that may occur during the project lease term, and require any new tenant to submit an application for financial assistance to obtain tax exemptions or assume PILOT agreements.

3. The IDA Board should evaluate whether its agreement with the FCEDC continues to be beneficial to the IDA.

4. The IDA should require the FCEDC to provide regular marketing reports and updates in accordance with its agreements.

5. The IDA should receive the gross proceeds from all property sales to ensure that payments are made to all involved parties in accordance with the terms of the established agreements.

6. The IDA should ensure that FCEDC is paid the appropriate amount for its services, as governed by the terms of its marketing agreement, and based on appropriate supporting documentation.

7. The IDA should ensure that the CIC pays for the value of the property that it had initially donated for development, as CIC officials have agreed to do.

8. The IDA should invoice and collect appropriate fees as established by its Uniform Tax Exemption Policy.

9. The IDA should assess penalties in accordance with its agreements when all project owners do not report employment and salary data, as required.

10. The IDA Board should meet in executive session only for those purposes specified in Open Meetings Law.

11. The IDA should establish a public web site as required by Public Authorities Law Section 2800(2)(b) and post appropriate information on its operations and accomplishments.

12. The IDA should ensure that all active projects and contracts are correctly and accurately reported in PARIS.

13. The IDA's uniform tax exemption policy should be improved to include provisions for recovering benefits provided to project occupants if the project does not meet its intended purpose.