



- *Accountability*
- *Transparency*
- *Integrity*

Governance Review

Seneca County Industrial Development Agency

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Table of Contents

Topics	Page Number
Executive Summary	ES
Introduction and Background of the Authority	1
Compliance Review Objectives	3
Compliance Review Scope and Methodology	3
Compliance Review Results:	
- Governance and Oversight	
• Board Duties	4
• Public Meetings	6
• Conflicts of Interest	8
• Financial Disclosure	9
• Committees	9
• Training	10
- Management Practices	
• Uniform Tax Exemption Policy	11
• Annual Report	12
• Public Access	12
• Internal Control Assessment	13
• Property Disposition	13
• Procurement Guidelines	14
• Investment Guidelines	14
• Required Reporting	15
• Budget Report	15
Compliance Issues Summary	16
Good Governance Recommendations	17
Attachment 1	
• Board Resolution for Compliance with Public Authorities Accountability Act	A-1

Executive Summary

Purpose and Authority:

The Authority Budget Office (ABO) is authorized by Section 27 of the Public Authorities Accountability Act (Act) to review and analyze the operations, practices and reports of public authorities and to assess compliance with various provisions of Public Authorities Law and other relevant State statutes. 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. Our governance review of the Seneca County Industrial Development Agency was performed in November and December 2007 and 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 provide an objective determination of the extent of the Agency's statutory compliance.

Background Information:

The Seneca County Industrial Development Agency (Agency) was created in 1973 as a public benefit corporation pursuant to Article 18A Title 2 of General Municipal Law. The Law authorized the Agency to promote, develop and assist in acquiring and developing facilities for economic development. The Agency is authorized to have up to nine board members appointed by the County Board of Supervisors and is managed by an Executive Director. Primary sources of capital for programs and projects are service fees and County and State funds. The Authority received over \$1.1 million in revenue for the year ended December 31, 2006, and had operating expenses of over \$600,000.

Results:

Our review found that, on certain occasions, the Agency has taken the initiative to comply with the requirements of various State laws and that it was aware of the need to adopt and revise additional policies so as to comply with the Public Authorities Accountability Act. This review also found examples where the Board may not have acted in adherence with Open Meetings law, did not fully adhere to its by-laws and resolutions, signed or relied on documents that were incomplete or inaccurate, did not make all relevant material available to the public, or did not thoroughly document the basis for its actions. These findings

indicate the need for the Board to take additional steps to improve oversight and transparency, consistent with the intent of the Public Authorities Accountability Act.

The Agency, based on the advice of counsel, views the “good governance principles” that form the basis of the Public Authorities Accountability Act as “aspirational goals” that the Agency is not required by statute to meet. The Authority Budget Office disagrees with this position. The Authority Budget Office does not believe that minimal compliance with a narrow interpretation of existing laws or a minimal application of the principles inherent in the Public Authorities Accountability Act was the intent of the Act. Despite this difference of opinion, the Agency accepted the governance recommendations made in this report and indicated that they would take action to improve their operations and procedures.

Introduction and Background of the Authority

The Seneca County Industrial Development Agency (Agency) was established in 1973 as a public benefit corporation pursuant to Section 893-A of General Municipal Law. The Agency is responsible for attracting economic development to Seneca County and encouraging the creation of employment opportunities that enhance the quality of life for County residents. The Agency is primarily responsible for the redevelopment and reuse of the Seneca Army Depot, which comprises over 7,000 acres of land.

In general, IDAs offer financial incentives to attract, retain, and expand businesses within their jurisdiction. The assistance granted to these businesses can include issuing low interest Industrial Development Revenue Bonds to finance the costs of a project, as well as granting exemptions from real property taxes, mortgage recording taxes and sales and use taxes. A portion of the local real property tax exemption is often recaptured in the form of payments in lieu of taxes (PILOTS) made by the assisted business to the impacted taxing district. When Industrial Development Revenue Bonds are issued, the project is leased to the business for a period of time equal to the term of the bond issue. The lease payments are then typically set at an amount sufficient to pay the annual principal and interest on the bonds. Once the outstanding bonds have been paid, the business has the option to purchase the project from the IDA for a nominal fee.

The Agency's fiscal year begins on January 1, and as of December 31, 2006, the Agency reported \$7.9 million in assets and \$2.02 million in long-term debt. Revenue received by the Agency for 2006 was over \$1.1 million, while operating expenses were over \$600,000. During 2007 the Agency had 22 active projects; the most recent was initiated in 2007. Four of the projects had been financed with Industrial Development Revenue Bonds totaling \$79.8 million, and 18 projects were provided other financial assistance. Nine of these projects were required to make PILOTS in 2006, totaling \$692,567. The Agency collected over \$98,000 in administrative fees during 2006 for its project assistance efforts.

The Agency was established with a seven-member Board of Directors, which is appointed by and serves at the pleasure of the Seneca County Board of Supervisors. Legislation was passed on August 28, 2007, which increased the Board to a maximum of nine members. However, due to a resignation in July 2007, there were only six active board members at the time of our review; another member resigned in December 2007. As a result, the Board of Supervisors nominated and appointed additional board members in December 2007 to fill the current vacancies and expanded Board.

The Agency has established two affiliated organizations which are incorporated as local development corporations: the Seneca County Economic Development Corporation and the Seneca Knit Development Corporation. These affiliates are

overseen by separate boards of directors, although both share some common board members with the Agency. The Agency provides the staff and services for these affiliates.

During 2006 and 2007, the Agency had six staff, consisting of four salaried employees, one part-time employee and one individual working on a stipend. In addition, two County employees provide services to the Agency. The Agency's Executive Director is responsible for Agency operations. The Agency employs the services of a law firm to assist in the project application and approval process, and the execution of bonds and leases for projects. The current Executive Director has been in the position since November 2007, replacing an interim Executive Director who held the position for seven months.

Compliance Review Objectives

The Authority Budget Office (ABO) is authorized by Section 27 of the Public Authorities Accountability Act (Act) to conduct reviews and analyses of the operations, practices, and reports of public authorities to assess compliance with provisions of the Act, Public Authorities Law, and other statutes. Our governance review was conducted to provide an objective determination of the Agency's compliance with applicable provisions of the Act, Public Authorities Law and General Municipal Law.

Compliance Review Scope and Methodology

Our compliance review was conducted in November and December of 2007, and covered selected Agency operations for the period January 2006 through December 2007. Our review focused on the effectiveness of the governing Board and Agency management. Specifically, we reviewed:

- Board duties and committee involvement
- Board member participation in State-approved training
- 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
- Procurement, contracting, cash and investments, and asset management practices
- Independent financial audits and other reporting
- Adherence with reporting requirements
- Project review and approval processes

In addition to reviewing financial and organizational documents and records, we interviewed management staff, board members and counsel; attended a Board meeting; and performed other testing we considered necessary to achieve our objectives. Our report contains recommendations to ensure the Agency's compliance with the Public Authorities Law, General Municipal Law and other applicable laws. In addition, we have included recommendations for improving corporate governance practices. The results and recommendations of our compliance review were discussed with Agency management and their comments have been considered and are reflected in this report where appropriate.

Compliance Review Results

Governance and Oversight

Board Duties

Section 2824 of Public Authorities Law stipulates that public authority board members should execute direct oversight of senior management in the administration of the authority and understand, review, and monitor the implementation of fundamental financial and management controls and operational decisions of the authority. Good governance principles also dictate that public authority board members act in good faith and in the authority's best interest, and perform their oversight function consistent with the mission of the public authority and the public's interests. In addition, authorities should conduct business in an environment that fosters transparency and enhanced public disclosure, focuses on accountability, and supports external oversight.

Agency management provides board members with an agenda and meeting materials consisting of prior meeting minutes, financial information, drafts of proposed resolutions, and other relevant material about one week in advance of Board meetings. In addition, summary information regarding project-related matters and Agency operations is also distributed to board members a day or two in advance of the Board meetings in the form of 'confidential briefing memos'. These briefing memos provide the board members with an outline of the meeting agenda as well as additional details and concerns from management on agenda items. The information packets and briefing memos allow the Board to provide some degree of oversight and understand and review management decisions and activities.

However, to fully review and monitor the implementation of financial and management controls and understand the operating decisions of the Agency, it is important that the Board establish formal operating policies and practices. The primary purpose of the Agency is to attract economic development to Seneca County, but we found that the Board has not established a well documented and structured process for reviewing and evaluating potential economic development projects. The Board indicated that, given the complexity and diversity of economic development projects, it agrees with the need to develop a process that brings consistency to how these projects are evaluated.

When a business is interested in developing a project within the County, it will begin informal discussions with a board member or Agency staff. Agency management will then work with the interested business to identify potential financial assistance options and begin evaluating the feasibility of the project. In the absence of a formal process, however, there is no requirement that Agency

management present and update information on potential projects to the Board members at the monthly public board meetings. Instead, Agency management indicated that informal discussions are held with individual board members to present information on potential projects. Additionally, management could provide no documentation to show that the Board formally reviewed management's progress in developing economic projects prior to formal resolutions being adopted. As a result, there is little indication in the public record that the Board, acting as a whole, provides formal direction or oversight of economic development activities initiated by management.

Good governance practices suggest that public authority board members adopt a uniform application for the purpose of receiving, reviewing and approving requests for financial assistance from companies based on standard, objective criteria. We found that Agency management has developed a standard application for businesses to complete when seeking financial assistance for a proposed project within the County. This application does request such information as a project description, a cost-benefit analysis in terms of jobs to be created or retained and financial assistance being sought, potential conflicts of interest, and assurance that the project will not relocate jobs from elsewhere in the County or State. This standard application and the information it requires could be used to objectively evaluate prospective projects.

We reviewed information on four active projects, and found that the approved project applications for three of the projects were incomplete or had inaccurate information (the Agency did not provide the application for the fourth project.) For example, one project application did not provide information on the jobs to be created, while another application did not provide a cost-benefit analysis or indicate the amount of financial assistance being requested. The Agency acknowledged that some of the applications contained inaccurate information or were incomplete, but the Board still relied on these applications when considering financial assistance. Accordingly, it appears the Agency approved projects without obtaining all of the information required to be filed on its own application form. Although the Board stated that they were updated by management and project applicants throughout the process, there was no updated information contained within the Agency's records.

Further, board members indicated to us that they do not use standard criteria to evaluate and approve projects, but instead rely heavily on their own individual assessment of the project, in addition to input from Counsel and Agency management.

Good governance practices suggest that public authority board member duties and responsibilities should be clearly defined, so that board members understand their roles and are better able to effectively perform their governance responsibilities consistent with the mission of the public authority. We found that the Agency has by-laws that identify the

responsibilities and duties of members and officers, and identify the procedures for scheduling meetings. The by-laws were adopted in 1996 and amended in December 2006. By-laws, by definition, are the rules adopted by an organization to govern its affairs and the conduct of its members.

However, we found one example where the Board acted inconsistent with its by-laws. The Agency's by-laws stipulate that the Treasurer is to sign all checks, with a counter-signature by the Chair, Vice-Chair, or Executive Director. Yet, in both 2006 and 2007, the Board authorized the Secretary to act as a signatory for Agency checks, in addition to the individuals stipulated in the by-laws. This is contrary to the rules and procedures adopted and in effect for the Agency.

Further, the by-laws do not sufficiently address how the Agency should carry out its economic development responsibilities, and could be more specific to prohibit the granting of loans or the extension of credit to members, officers and employees of the agency. Also, given the recent expansion of the Agency's Board, the Agency should amend its by-laws to reflect the change in composition of the Board, as well as the duties of Board committees.

Section 2824(1) of Public Authorities Law requires Board members to establish policies regarding the salary and compensation of senior management, adopt a code of ethics, establish a whistleblower protection policy, and adopt a defense and indemnification policy. In December 2006, the Board adopted a single resolution approving more than ten amendments and policies, consistent with various requirements of Public Authorities Law. These policies included a Code of Ethics, Compensation and Reimbursement Policy, Defense and Indemnification Policy, and a Whistleblower Policy. However, a review of the resolution indicated that it contains blank fields where certain information was meant to be inserted, such as the number of committee members and the Agency's name. The resolution requires the filing of annual financial disclosure forms with the Board of Ethics of the County of Seneca, even though the County does not have a Board of Ethics. This resolution also requires the Board to submit an annual report pursuant to Section 2800 of Public Authorities Law, with the first report due by March 31, 2007 (See Attachment 1). The Agency could not provide documentation that it was in full compliance with its own adopted resolution.

Public Meetings

Sections 100 and 103 of Public Officers Law state that it is essential for public business to be performed in an open and public manner, that citizens are fully informed, and that every meeting of a public body should be open to the general public, except that of executive session. During the scope of our review, a total of 23 regular Board meetings were held. In general, the Agency appropriately advertised the dates and locations of these meetings, and provided for public attendance. During our review period, there was at least

one executive session held at every regular Board meeting. Further, on average more than half of the total meeting time consisted of executive sessions. There were also two special meetings called in 2007 that were exclusively held in executive session.

According to Agency officials, the details of specific projects are generally discussed in executive session and not in open meetings because there is concern that, should details become public, surrounding counties may attempt to steer existing and prospective businesses away from the County. They believe that by keeping discussions private, there is less of a chance that this will occur, and indicated that they enter executive session at the advice of counsel. By doing so, the Board believes that it is acting in the economic interests of Seneca County. But this approach, in addition to the Board's reliance on informal procedures and undocumented updates, is inconsistent with the intent of the Open Meetings law, which stipulates that public business be conducted in an open and public manner.

Section 105 of Public Officers Law limits the purposes for which a public body may conduct an executive session. Such purposes include discussions regarding proposed, pending, or current litigation; the medical, employment, or financial history of a particular person or corporation; or the proposed acquisition, sale, or lease of real property when publicity would substantially affect the value of such property. In its response to this report, the Agency stated that it complied with all requirements of the Open Meetings law. We reviewed the proposed subject for executive sessions as presented in the briefing memos and found that when executive sessions were held for the purpose of discussing current litigation, the criteria for holding executive sessions were met.

However, based on the information in the briefing memos, the agenda for some executive sessions did not sufficiently address the reason for the executive session. For example, a January 2006 briefing memo indicated that an executive session would be held to discuss the Agency's work program for 2006. A February 2006 briefing memo indicated that an executive session would be held to discuss opportunities for gas drilling at the Seneca Army Depot. In addition, an August 2006 briefing memo indicated that an executive session would be held to discuss the Agency's role in securing a proposed ethanol plant to be built at the Depot.

In each of these cases, the documentation appears insufficient to justify meeting in executive session, and for all three examples, the Board minutes cited 'potential real estate transactions' as the basis for the executive session. During our exit conference, the Board members state that the February and August 2006 sessions involved a discussion of potential litigation and, therefore, were appropriately referred to executive session. This apparent contradictory

information demonstrates the need for the Agency to document more fully and accurately the reasons for adjourning to executive session and to explain, in open session, why an executive session was necessary. Such improved documentation should indicate the specific project or issue being discussed, as well as citing the exemption criteria that applies to that project or issue. Further, it should be noted that the Committee on Open Government has opined that a public body may not use executive session based on a fear that an action it takes may lead to litigation, but that its use of executive session is limited to a discussion of its strategy as it relates to proposed, pending or current litigation.

Conflicts of Interest

Section 803 of General Municipal Law states any municipal officer or employee who has, will have or later acquires an interest in any actual or proposed contract with the municipality of which he or she is an officer or employee shall publicly disclose the nature and extent of such interest in writing to the governing body, and that this written disclosure should be made part of the official record of the proceedings. Furthermore, board members must disclose any relationship prior to the authority considering doing business with a vendor, and the board member should be recused from any board discussion or decision on such transactions.

During our review period, two board members were employed by businesses that had projects approved by the Agency; during 2006 these two businesses combined received over \$1 million in tax exemptions from the Agency, and there was no written disclosure of these business relationships. It is the Agency's position that these board members did not have a conflict of interest pursuant to Section 802 of General Municipal Law, and therefore were not required to make any disclosure, as required by Section 803 of General Municipal Law when matters came before the Board that concerned these businesses. We believe that it is the duty of board members to disclose any direct or indirect interests in projects or transactions, and such disclosure should be included as part of the written record to avoid any appearance of impropriety. Both of these members have since resigned from the Board, and Agency management states that all current members of the Agency are now independent.

In addition, we found instances where board members abstained from voting on projects, but there was not consistent written disclosure in the Board meeting minutes indicating why any of the Board members abstained. The Board agreed that they could improve the documentation of their minutes to better reflect the actions taken in public meetings.

To facilitate disclosing potential conflicts of interest, the Agency's counsel drafted a form for board members and employees to use to disclose any potential independence issues or to certify that no conflicts of interest exist. However, a typographical error in this form stated the individual has used their position in the

Agency to obtain unwarranted privileges, and has engaged in transactions with businesses in which they have a direct financial interest (emphasis added). Even though these apparent errors resulted in implying the exact opposite of what the statement intended, there is no evidence that the errors were identified or questioned, and five of the Board members signed the forms upon the recommendation of counsel.

Financial Disclosure

Section 2825(3) of the Public Authorities Law requires board members, officers, and employees of local public authorities to follow financial disclosure policies established by the county board of ethics for the county in which the local public authority has its primary offices. Seneca County has not adopted a local law governing financial disclosure, nor is it required to do so, since it has a population of less than 50,000. Accordingly, board members are not statutorily required to file financial disclosure reports under the Public Authorities Accountability Act. However, in April 2006 the County Attorney, in recognition of the financial disclosure provisions of the Act, advised the Agency that all board members, officers and employees were required to file annual financial disclosure forms with the Clerk of the County Board of Supervisors by May 15th. Though the Agency did not have a formal policy or procedure in place to ensure financial disclosures were submitted by the deadline, Agency management notified members in 2006 that they were required to submit financial disclosures. However, we found that only two of the board members submitted financial disclosure forms in 2006, and no staff completed their financial disclosures.

Subsequently, in December 2006 the Board adopted a resolution requiring members, officers, and employees to file financial disclosures with the County. The financial disclosure form adopted by the Board was completed by all staff and five of the board members. The two board members that did not complete a financial disclosure form both resigned from the Board during 2007. Additionally, we found that these forms were not submitted to the Clerk of the County Board of Supervisors, or to a County Board of Ethics, but are only kept on file with the Agency, in contradiction of the County Attorney's directive and the Board resolution.

Committees

Section 2824(4) of Public Authorities Law requires authorities to establish an audit committee and a governance committee. The audit committee is responsible for recommending a certified independent accounting firm, establishing the independent auditor's compensation and providing direct oversight of the execution of the authority's independent audit. The governance committee is responsible for reviewing corporate governance trends, keeping the Board informed of best governance practices, updating the authority's corporate

governance principles and advising appointing authorities on the skills and experiences required of potential board members. The formal establishment of the audit and governance committees helps a public authority to improve oversight and accountability within the organization and to assist the board of directors in making better decisions.

To comply with the Act, Agency management indicated that a two-member Audit Committee was established at the beginning of 2007, with both members having a substantial financial background. The Audit Committee meeting minutes indicate that the Committee met twice in 2007 and met with the independent auditor after the completion of the audit to ask questions and obtain a summary of the Agency's financial statements.

Agency management provided us with an Audit Committee Charter, although there was no evidence that it was adopted by the Board. We reviewed this Charter and found that it was inadequate, since it refers to requirements for a school board, rather than an industrial development agency. After we pointed this out to Agency management, they proposed a new Audit Committee Charter that was adopted by the Board in December 2007.

During our review the Agency did not have a functioning Governance Committee. This was brought to the attention of management. Two board members have since been appointed to the Governance Committee, and a Governance Committee charter was adopted in December 2007.

Training

Section 2824(2) of Public Authorities Law requires all individuals appointed to the board of a public authority to participate in State-approved training regarding their legal, fiduciary, financial and ethical responsibilities as directors of an authority within one year of appointment to the Board. At the time of our review the Agency had six board members, and all of them had served on the Board for at least one year. Five of the Agency Board members attended the required State-approved training in November 2007, and the remaining board member resigned shortly thereafter. Due to the Agency's recent increase in the size of its Board, we encourage all newly appointed members to participate in the required training within one year of appointment. In addition, it is important for all new board members to understand their role and responsibilities regarding public accountability and disclosure, fiduciary duties, compliance and enhanced oversight of management.

Management Practices

Uniform Tax Exemption Policy

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 if the project does not meet its intended purpose, the impact on existing businesses, and whether the project has public support. Agencies are also required to establish a procedure for deviating from the uniform tax exemption policy.

We found that the Agency has a Uniform Tax Exemption Policy and Guidelines (Guidelines). The standard policy provides for a tax exemption for up to 20 years, at a value of up to 100 percent, with a graduated schedule of abatement, for all projects allowed by law. However, this policy provides no guidance to the Board or management concerning how the policy should be applied. The policy also indicates that if the Agency does not deviate from its standard policy, the Agency is not required to consider such factors as the extent to which jobs will be created or retained, whether the project will generate additional revenues for local governments and school districts, whether affected municipalities will be required to make additional investments in public services, the impact on existing businesses, and whether the project has public support. The exclusion of such factors denies affected entities important information that could be used to assess the value and viability of the proposed project. Equally important, not considering these factors as a matter of routine also denies information that the Board should have in order to make a fully informed decision. This lack of specificity and uniformity in how the standard policy is applied can also subject the Agency to potential criticism regarding unfairness in granting exemptions to different projects and allegations of favoritism.

Further, the Guidelines stipulate that sales tax exemptions will not be granted for operating and maintenance expenses. One of the project applications we reviewed identified maintenance expenses as proposed project expenditures in support of the request for sales tax exemptions. There was no evidence that the Board questioned this apparent discrepancy, and the total amount of sales tax exemptions requested was provided to the project.

Section 874(4) of General Municipal Law requires procedures for payments in lieu of taxes (PILOTS) be included in the uniform tax exemption policy. Good governance practices would also suggest that formal procedures be adopted to monitor adherence with the PILOT agreement.

The Agency has a formula for distributing PILOTS to the affected tax jurisdictions in its Guidelines. However, the Agency has not established policies and procedures for monitoring PILOTS and assuring that the correct PILOT amount is paid by the project. For example, of the four active projects we reviewed, two required PILOTS during 2006, yet one of the two payments made was for an incorrect amount. According to the project's PILOT agreement, the PILOT should have increased by two percent for 2006, but the Agency's report does not show that the increased payment was made. There was no evidence that the Board was aware of this discrepancy.

Annual Report

Section 2800(2) of Public Authorities Law requires authorities to prepare an annual report disclosing information related to their operations, management, and finances, and to submit this report within 90 days of the end of the fiscal year. The Agency adopted a resolution in December 2006 to comply with the reporting requirements of Section 2800 of Public Authorities Law, (see Attachment 1) but did not prepare or submit an Annual Report for 2006. This report was due by March 31, 2007. Management indicated that the Agency will now comply with this requirement and make its required submission using the Public Authorities Reporting Information System (PARIS).

Public Access

Section 2800(2)(b) of Public Authorities Law requires local authorities to make information regarding its mission, current activities, and financial data accessible to the public to the extent practicable through the use of Internet web sites. We found that the Agency has a web site, but the web site only provides limited information on the Agency's operations, in addition to information on the financial assistance tools and other services offered by the Agency to facilitate economic development in Seneca County. The website does not present information on the Agency's current projects, leases and properties. The web site also does not make financial information available, such as audited financial records or annual budgets, as required by law.

To improve accountability and transparency, this web site should be used to make public such information as board meeting schedules, minutes of public meetings, and commercial sites available for development. Agency staff stated that they intend to recruit a consultant to update and significantly improve the content of the web site, and board members stated that they have approved a budget item for this work in 2008.

Internal Control Assessment

Section 2800(2) of Public Authorities Law requires authorities to assess and report on the effectiveness of their internal control structure and procedures. We found that the Agency does not conduct a self-evaluation or on-going management assessment of its internal control structure and procedures. Rather, Agency management is made aware of internal control issues that exist via the management letter that is prepared by its independent auditor. For example, the management letter accompanying the 2006 audit identified certain control deficiencies within the Agency. Agency management indicated that specific controls were put in place to correct some of these deficiencies. In addition, Agency management indicated that they are looking to establish a more formal process for assessing internal controls.

Property Disposition

Section 2896 of Public Authorities Law requires public authorities to adopt guidelines regarding the use, awarding, monitoring, and reporting of contracts for the disposal of real property. The guidelines should also designate an officer responsible for the execution of real property contracts, and are to be annually reviewed and approved by the Board and provided to the Office of the State Comptroller by March 31.

We found the Agency's guidelines for property disposition comply with the requirements of the Act, including the provision that property should not be disposed of for less than fair market value. We reviewed one property transaction, and found that the process followed by Agency staff was reasonable to determine fair market value for the property, and complied with the provisions of its property disposition guidelines.

Section 2896 of Public Authorities Law requires authorities to maintain adequate inventory controls and accountability systems for property under its control. The Agency indicates that it owns several parcels of land that total approximately 7,000 acres at the Seneca Army Depot (the Depot) and eight lots in a recently developed industrial park. The Agency provided descriptions for the eight lots within the industrial park, showing their location and number of acres per lot. The Agency was also able to provide us with documents that identify the land it owns within the Depot. However, the Agency does not maintain an adequate inventory system that enables it to effectively account for its property. The Agency agreed that it needs to develop an inventory tracking system, and to better organize its records related to real property.

Procurement Guidelines

Section 104(b) of General Municipal Law requires goods and services to be procured pursuant to competitive bidding in a manner that assures the prudent and economical use of public moneys, and requires the Board to identify a purchasing officer and annually review the procurement policy.

We found that while the Agency adopted procurement guidelines that include all the requirements of the Law, these guidelines were not always followed. For example, the Guidelines require that written or verbal quotes be obtained for procurements of goods and services under \$20,000, to help ensure that prices are reasonable. We reviewed three such procurements for which verbal or written quotes should have been obtained, but found no evidence that for two of these procurements the required verbal or written quotes were obtained.

Section 2824 of Public Authorities Law requires the Board to review and monitor the financial and management controls of the authority.

An inventory of Agency contracts and agreements is an essential management control. We found that the Agency does not maintain a list of all the contracts or written agreements it has with businesses and organizations. We requested that Agency management provide us a list of all contracts that were active during our review period. They were unable to do so.

Section 103 of General Municipal Law requires that all public work contracts in excess of \$20,000 be competitively bid.

Although the Agency does not maintain a list of all contracts, they provided us with one contract that exceeded \$20,000 and required competitive bidding. We reviewed the contract documents and found that competitive bids were requested by the Agency.

Investment Guidelines

Section 2925 of Public Authorities Law requires all authorities to establish guidelines to govern investment practices. These guidelines should instruct officers regarding the investing, monitoring and reporting of funds, require that an independent audit of investments be done annually, and require that it be reviewed annually by the Board.

We found that the Agency adopted an investment policy in December 2006, which is generally consistent with General Municipal Law. However, the policy does not comply with all the requirements of Section 2925 of Public Authorities Law. For example, the Agency's investment policy does not require an annual audit of the investments and does not include provisions for reporting on investments. In addition, the policy is lacking details specific to the Agency's investment operations. For example, the guidelines do not indicate the financial institutions that can be used by the Agency and, although the policy indicates that investments will be diversified, it does not indicate how diversification will be achieved, either by type of investment or by financial institution.

Required Reporting

Section 859(1) of General Municipal Law requires agencies to prepare a financial statement within 90 days of the end of their fiscal year, to be submitted to the State Comptroller. The statement is to include schedules for straight-lease and bond transactions, as well as information on variable interest rates for bonds; amount of tax exemptions and number of jobs created and retained for projects. The Agency had its 2006 Annual Financial Report completed and audited within the ninety day timeframe. The Report included financial data and information on bonds and straight-leases. However, the information did not include the value of tax exemptions for one project and the number of jobs created for another project.

Budget Report

Section 2801 of Public Authorities Law requires local authorities to submit budget information to several entities sixty days prior to the start of their fiscal year. We found that the Agency's adopted budget report displays proposed receipts and expenditures for its operations for the next fiscal year. Additionally, the Agency has established a budgetary cycle that provides specific timeframes for completing the annual budget. The Agency presents its preliminary budget to the Board in October, and submitted this information for 2007 and 2008 in a timely manner to the ABO.

Compliance Issues Summary

Conflicts of Interest

The reasons for board member abstentions were not always reduced to writing for retention by the Agency as required by Section 803 of General Municipal Law.

Governance Committee

The Agency had not established a functioning Governance Committee, as required by Section 2824(4) of Public Authorities Law, during the period of our review .

Annual Report

The Agency did not submit an Annual Report to the Authority Budget Office, as required by Section 2800 of Public Authorities Law.

Public Access

The Agency is not posting information on its current projects or financial data on its public web site as required by Section 2800(2)(b) of Public Authorities Law.

Disposition of Property

The Agency does not maintain an adequate inventory control system for all property under its control as required by Section 2896(2)(a) of Public Authorities Law.

Investment Guidelines

The Agency's Investment Guidelines are not in full compliance with the auditing and reporting requirements of Section 2925 of Public Authorities Law.

Good Governance Recommendations

1. Agency management should document the procedures followed for identifying potential projects and reviewing applications for financial assistance.
2. The conduct of the Agency should be more transparent, consistent with the legislative intent of the Public Authorities Accountability Act. This would include public discussions of project applications and reviews.
3. The Board should better document the reasons for executive sessions to indicate the specific project or issue being discussed, as well as citing the specific exemption to the Open Meetings Law.
4. The Board should ensure that all project applications are complete and accurate, so that the information provided in the application can be used as a basis for project review.
5. The Board should review its operations and by-laws to ensure that its business practices and procedures are consistent with its adopted rules.
6. The Board should update its by-laws to reflect the powers and purpose of the Agency; specifically prohibit the granting of loans or credit to members, officers and employees; reflect the change in board composition; and include the duties of the established committees.
7. The Agency should ensure that any personal or financial interests board members have with actual or proposed contracts or projects are publicly disclosed in writing.
8. Board members should recuse themselves from any Board meeting, discussion or decision where an actual or perceived conflict of interest exists, not just abstain from voting.
9. The Board should formalize a procedure to guide members and staff in timely submission of financial disclosure forms to the Clerk of the County Board of Supervisors, and correct the inappropriate reference to the County Board of Ethics.
10. Agency management should revise the Uniform Tax Exemption Policy to provide greater guidance to board members in their decision-making process. The Guidelines should require that factors, such as the extent to which jobs will be created or retained, whether the project will generate additional revenues for local governments and school districts, whether affected municipalities will be required to make additional investments in

- public services, the impact on existing businesses, and whether the project has public support, be considered for every project.
11. Agency management should develop formal procedures to better track and monitor PILOT payments.
 12. Agency management should submit the Annual Report required under Section 2800 of Public Authorities Law.
 13. Agency management should provide information on its mission, current projects, and financial data on its public web site, as well as other public information such as the project application, public hearing notices, Board meeting calendar and minutes, information on current projects, leases and properties and policy information.
 14. Agency management should establish a formal procedure for assessing and reporting on the effectiveness of the Agency's internal control structure and procedures as required by Section 2800(2)(a)(9).
 15. Agency management should maintain detailed property inventory records to effectively manage Agency property.
 16. Agency management should comply with its procurement policy regarding obtaining quotes for goods and services.
 17. Agency management should maintain an updated list of all its contracts, leases and agreements.
 18. Agency management should revise its investment guidelines to include instructions for reporting investments, provisions for an annual audit, and ensure that the guidelines are reviewed and approved annually.

Attachment 1

Board Resolution for compliance with Public Authorities Accountability Act

RESOLUTION

(Public Authorities Accountability Act of 2005)

A regular meeting of the Seneca County Industrial Development Agency was convened on December 7, 2006, at 12:00 p.m.

The following resolution was duly offered and seconded, to wit:

Resolution No. 2006-19

RESOLUTION OF THE SENECA COUNTY INDUSTRIAL DEVELOPMENT AGENCY ADOPTING CERTAIN POLICIES, STANDARDS AND PROCEDURES IN CONNECTION WITH THE PUBLIC AUTHORITIES ACCOUNTABILITY ACT OF 2005

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law ("GML") of the State of New York (the "State"), as amended, and Chapter 63 of the Laws of 1972 and Chapter 90 of the Laws of 1973 of the State, (hereinafter collectively called the "Act"), the **SENECA COUNTY INDUSTRIAL DEVELOPMENT AGENCY** (hereinafter called the "Agency") was created as a public benefit corporation of the State; and

WHEREAS, the Public Authorities Accountability Act of 2005 (the "PAAA"), which was signed into law on January 13, 2006 as Chapter 766 of the Laws of 2005, was enacted by the New York State Legislature to insure greater accountability and openness of public authorities throughout the State; and

WHEREAS, pursuant to Section 2 of the Public Authorities Law ("PAL") of the State, the provisions of the PAAA apply to certain defined "local authorities", including the Agency; and

WHEREAS, the Agency desires to adopt certain policies, standards and procedures necessary to comply with the provisions of the PAAA.

NOW, THEREFORE, BE IT RESOLVED by the members of the Board of the Agency (the "Board") as follows:

Section 1. Pursuant to subdivision 3 of Section 2824 of the PAL, no Board member, including the Chairperson, shall serve as the Agency's chief executive officer, executive director, chief financial officer, comptroller, or hold any other equivalent position while also serving as a member of the Board.

Section 2. The By-Laws of the Agency, as presented at this meeting as **Exhibit A**, are hereby amended to implement subdivision 3 of Section 2824 of the PAL as described in section 1 above.

Section 3. Pursuant to subdivision 2 of Section 2824 of the PAL, any members of the Board appointed on or after January 13, 2006 shall participate in State-approved training regarding their legal, fiduciary, financial and ethical responsibilities as directors within one (1) year of their appointment to the Agency. Further, each Board member appointed after January 13, 2006 shall execute a certificate of independence pursuant to subdivision 2 of Section 2825 of the PAL. Such certificate shall be executed in substantially the form attached hereto as **Exhibit B**.

Section 4. Pursuant to subdivision 2 of Section 2824 of the PAL, all members of the Board shall participate in such continuing training as may be required to remain informed of best practices, regulatory and statutory changes relating to the effective oversight of the management and financial activities of public authorities and to adhere to the highest standards of responsible governance.

Section 5. Pursuant to subdivision 3 of Section 2825 of the PAL, on or before May 15 of each year, all Agency Board members, officers and employees shall file annual financial disclosure statements with the Board of Ethics of the County of Seneca (the "County") pursuant to Article 18 of the GML of the State. The annual financial disclosure statements so filed shall be substantially in the form attached hereto as **Exhibit C**, or such other form of statement as may be adopted and approved by the County.



Section 6. Pursuant to subdivision 4 of Section 2824 of the PAL, an Audit Committee is hereby formed, being comprised of _____ for the purpose of recommending to the Board the hiring of a certified independent accounting firm, establishing the compensation to be paid to the accounting firm and providing direct oversight of the performance of the independent audit to be performed on or after fiscal year ending on December 31, 2007 by the accounting firm hired for such purposes.



Section 7. Pursuant to subdivision 7 of Section 2824 of the PAL, a Governance Committee is hereby formed, being comprised of _____ for the purpose of keeping the Board informed of current best governance practices, to review corporate governance trends; to update the Agency's corporate governance principles; and to advise appointing the Agency on skills and experiences required of potential Board members.



Section 8. Pursuant to subdivision 2(a) of Section 2800 of the PAL, the Board shall submit to the chief executive officer, the chief fiscal officer and the chairperson of the legislative body of the County, and the New York State Authority Budget Office within ninety (90) days after the end of the Agency's fiscal year (with the first report due by March 31, 2007 for fiscal year ending December 31, 2006), a complete and detailed report (the "Annual Report") that shall contain:



- (a) the Agency's operations and accomplishments;
- (b) the Agency's receipts and disbursements, or revenues and expenses, during such fiscal year in accordance with the categories or classifications

- established by the Agency for its own operating and capital outlay purposes;
- (c) the Agency's assets and liabilities at the end of its fiscal year including the status of reserve, depreciation, special or other funds and including the receipts and payments of these funds;
 - (d) a schedule of the Agency's bonds and notes outstanding at the end of its fiscal year, together with a statement of the amounts redeemed and incurred during such fiscal year as part of a schedule of debt issuance that includes the date of issuance, term, amount, interest rate and means of repayment. Additionally, the debt schedule shall also include all refinancings, calls, refundings, defeasements and interest rate exchange or other such agreements, and for any debt issued during the reporting year, the schedule shall also include a detailed list of costs of issuance for such debt;
 - (e) a compensation schedule that shall include, by position, title and name of the person holding such position or title, the salary, compensation, allowance and/or benefits provided to any officer, director or employee in a decision making or managerial position of such authority whose salary is in excess of one hundred thousand dollars;
 - (f) the projects undertaken by such authority during the past year;
 - (g) a listing of (i) all real property of such authority having an estimated fair market value in excess of fifteen thousand dollars that the authority intends to dispose of; (ii) all such property held by the authority at the end of the period covered by the report; and (iii) all such property disposed of during such period. The report shall contain an estimate of fair market value for all such property held by the authority at the end of the period and the price received by the authority and the name of the purchaser for all such property sold by the authority during such period;
 - (h) the Agency's code of ethics; and
 - (i) an assessment of the effectiveness of its internal control structure and procedures.

Once completed, and prior to submission, the chief executive officer and the chief fiscal officer of the Agency shall certify that the financial information contained in the Annual Report is accurate, correct and does not contain any untrue statements. The certification executed shall be in substantially the form attached hereto as **Exhibit D**.

Section 9. Pursuant to subdivision 2 of Section 2801 of PAL, on or before November 1, 2006, the Agency will submit to the Chairman of the Board of Supervisors and County Treasurer of the County of Seneca (the "County"), along with the New York State Authority Budget Office, the Agency's budget for fiscal year ending December 31, 2007.

Section 10. For the Agency fiscal year ending December 31, 2007 and each year thereafter, the Agency will abide by the following rules relating to audit services:

- (a) the certified independent public accounting firm performing the Agency's audit will be prohibited from providing audit services if the lead (or coordinating) audit partner responsible for reviewing the audit, has performed audit services for the Agency in each of the five previous fiscal years;
- (b) the certified independent public accounting firm performing the audit shall be prohibited from performing any non-audit services to the Agency contemporaneously with the audit, unless receiving previous written approval by the audit committee including: (i) bookkeeping or other services related to the accounting records or financial statement of the Agency, (ii) financial information systems design and implementation, (iii) appraisal or valuation services, fairness opinions, or contribution-in-kind reports, (iv) actuarial services, (v) internal audit outsourcing services, (vi) management functions or human services, (vii) broker or dealer, investment advisor, or investment banking services and (viii) legal services and expert services unrelated to the audit; and
- (c) it shall be prohibited for any certified independent public accounting firm to perform for such Agency any audit service if the chief executive officer, comptroller, chief financial officer, chief accounting officer, or any other person serving in an equivalent position for the Agency, was employed by that certified independent public accounting firm and participated in any capacity in the audit of the Agency during the one (1) year period preceding the date of the initiation of the audit.

Section 11. The following policies, as presented at this meeting, are hereby adopted and approved:

- (a) The Compensation, Reimbursement and Attendance Policy, and the Travel Policy, which are contained within the Administrative Guidelines & Procedures attached hereto as **Exhibit E**;
- (b) The Code of Ethics attached hereto as **Exhibit F**;
- (c) The Whistleblower Policy attached hereto as **Exhibit G**;
- (d) the Investment Policy attached hereto as **Exhibit H**;
- (e) The Disposition of Property Guidelines, attached hereto as **Exhibit I**, is hereby ratified and approved along with the appointment of the Executive Director as the "Contracting Officer" of the Agency.
- (f) The Procurement Policy attached hereto as **Exhibit J**; and
- (g) The Defense and Indemnification Policy attached hereto as **Exhibit K**.

Section 11. This resolution shall take effect immediately.