

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

## **Operational Review**

# **Tompkins County Industrial Development Agency**

**June 15, 2018**

**OR-2017-03**

---

---

## Table of Contents

---

---

Topics	Page Number
Executive Summary	ES
Introduction and Background	1
Compliance Review Objectives	2
Compliance Review Scope and Methodology	2
Review Results	3
Accountability and Transparency of Operations	3
Board Meetings are Open and Transparent	3
Cost-benefit Analyses are Not Always Complete and Accurate	3
Public Hearings are Generally Publicized and Held as Required	4
Project Agreements are Prepared for All Projects	5
The Recapture Policy is Not Being Followed	5
Some Data is Being Reported Inaccurately	8
Potential Conflicts of Interest Should be Disclosed	9
Board Committees are Not Established or Not Comprised as Required	9
FOIL Requests are Handled Appropriately	10
Most Required Information is Posted on the Agency's Web Site	10
Recommendations	11
Agency Response to Draft Report	12
Authorities Budget Office Comments	17
Appendix A – Web Site Review	A-1

---

---

## Executive Summary

---

---

### **Purpose and Authority:**

The Authorities Budget Office (ABO) is authorized by Title 2 of 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 to assist 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 Tompkins County Industrial Development Agency (Agency) was performed between November 2017 and March 2018 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 assess the transparency and accountability of the Agency's operations.

### **Background Information:**

The Tompkins County Industrial Development Agency (Agency) was established by Section 895-b of General Municipal Law to provide financial assistance to businesses and industry. The Agency is comprised of a seven-member board of directors appointed by the Tompkins County Legislature. The board is responsible for overseeing the general management of the Agency's finances and operations. The Agency does not have any employees, but contracts with a not-for-profit corporation, Tompkins County Area Development, Inc. (TCAD)<sup>1</sup>, to perform administrative services. The Agency paid TCAD \$262,000 in 2016 and \$314,000 in 2017 for these services.

The Agency reported that it had 54 active projects receiving financial assistance in 2016. It reported that 30 of these projects received \$7.3 million in property tax exemptions and paid approximately \$4.4 million in payments in lieu of taxes (PILOTs). It also reported 12 of these projects were financed with Industrial Development Revenue Bonds and that the total debt outstanding for these projects was \$188.3 million as of December 2016. The Agency reported that the remaining 12 projects received a total of \$615,874 in financial assistance in the form of sales tax and

---

<sup>1</sup> While TCAD is a not-for-profit corporation, it meets the definition of a local authority in accordance with Section 2 (2) of Public Authorities Law, and is required to comply with the same reporting requirements as the Agency. However, TCAD has refused to acknowledge that it is a local public authority and has failed to submit reports to the Office of the State Comptroller and the ABO as required by Public Authorities Law. Throughout this report, "Agency staff" refers to TCAD employees.

mortgage recording tax exemptions. The Agency reported that the 54 projects were expected to create and retain a total of 5,456 jobs, and as of December 2016 the projects had created and retained a total of 6,393 jobs. The Agency approved an additional 11 projects in 2017 that were expected to create and retain 230 jobs.

**Results:**

Our review found that the Agency is generally transparent in its operations. It appropriately provides public notices of its upcoming meetings and hearings, and provides access to the information presented during those meetings. The Agency also prepares board meeting minutes to reflect the discussion and actions of the board, and posts those minutes on its web site. The Agency appropriately establishes project agreements with all approved projects. We found that the Agency has posted a majority of the information related to its finances and operations on its web site, and that it adequately responded to a freedom of information request that it received during our review period.

However, we also identified areas where the Agency can improve the transparency and accountability of its operations. The Agency needs to ensure that information provided in its cost-benefit analyses of potential projects is complete and accurate. Nine of the 14 cost-benefit analyses prepared for projects approved by the Agency in 2016 and 2017 were inaccurate or missing information. Some cost-benefit analyses were missing the amount of requested tax exemptions, some had incorrect job creation and retention expectations, and some had incorrect property tax exemption amounts. As a result, the board is basing its decision regarding whether to approve financial assistance for these projects on inaccurate information.

We also found that the Agency is not evaluating all projects to determine whether the projects are complying with the terms of the project agreements, and it is not taking action to recapture tax benefits provided to projects that have material violations of the terms. Although the Agency reported 54 active projects that received financial assistance in 2016, Agency staff only analyzed 27 of the projects for presentation to the board. There was no indication why the other projects were excluded from the board presentation. Further, Agency staff indicated that only 21 projects were expected to create or retain jobs although other projects were reported as expecting to create jobs. For example, the Transonic Systems project received proceeds from tax exempt bonds and \$136,000 in tax exemptions in 2016. The Agency reported this project had 116 full-time equivalent (FTE) jobs prior to receiving financial assistance but only had 91 FTEs at the end of 2016; a loss of 25 FTEs. Yet, Agency staff indicated this project was not linked to job creation requirements and did not include the project in its presentation to the board. In the presentation to the board, Agency staff concluded that 12 projects had failed to meet the job creation expectations. Although some of these projects appear to meet the

criteria established by the board for recapturing benefits, the Agency decided to not attempt to recapture any benefits and did not provide any basis for this decision.

We also found the Agency's Audit Committee and Governance Committee was not comprised of the required number of board members as stipulated in its by-laws, and that even though the Agency issues debt it has not established a Finance Committee as required by Public Authorities Law. Further, although two of the Agency's board members are also members of TCAD's board of directors, there was no disclosure of this potential conflict of interest when the Agency's board voted to approve the contract with TCAD.

---

---

## Introduction and Background

---

---

The Tompkins County Industrial Development Agency (Agency) was established as a public benefit corporation pursuant to Section 895-b of General Municipal Law. The Agency's mission is to provide economic incentives to business and industry to diversify and strengthen Tompkins County's tax base and enhance community vitality. The Agency does this by supporting job creation, business and industrial development, and community revitalization. The Agency also strives to develop the local economy in an organized, sustainable and environmentally beneficial manner.

The Agency is comprised of a seven-member board of directors appointed by the Tompkins County Legislature. Currently four of the board members are also County Legislators. The board is responsible for overseeing the general management of the Agency's finances and operations. The Agency has no employees, but contracts with a not-for-profit corporation called Tompkins County Area Development, Inc. (TCAD)<sup>2</sup>, to carry out its mission and perform administrative services. The Agency paid TCAD \$262,088 in 2016 and \$314,000 in 2017 for these services. TCAD is responsible for providing technical and administrative services including organizing board meetings, taking board meeting minutes, maintaining files, distributing documents appropriately, complying with the reporting requirements of Public Authorities Law, responding to questions about projects, monitoring projects, implementing the recapture policy and compiling information for the annual audit.

The Agency has the statutory authority to offer financial incentives to attract, retain, and expand businesses within Tompkins County. This financial assistance includes low interest financing through the issuance of Industrial Development Revenue Bonds, and exemptions from mortgage recording taxes and sales and use taxes. In addition, real property owned by the Agency is exempt from real property taxes. Assisted businesses can transfer title to property they own to the Agency and these exemptions are then passed through to the businesses through a lease agreement with the Agency. In return, a portion of the foregone property taxes is recaptured via a payment in lieu of taxes (PILOT) made by the assisted business to affected taxing jurisdictions such as local governments and school districts.

As of December 2016, the Agency reported that it had 55 active projects. However, one project was reported as active although it had not yet begun to receive any financial assistance during 2016. Therefore, there were 54 active projects that were receiving financial assistance. It reported that 30 of these projects received \$7.3 million in property tax exemptions and paid approximately \$4.4 million in PILOTs. Twelve of the projects were financed with Industrial Development Revenue Bonds. The Agency reported total debt outstanding of \$188.3 million associated with those bonds. The Agency reported that the remaining 12 projects received a total of \$615,874 in financial assistance in the form of sales tax and mortgage recording tax exemptions. The Agency reported that the 54

---

<sup>2</sup> While TCAD is a not-for-profit corporation, it meets the definition of a local authority in accordance with Section 2 (2) of Public Authorities Law, and is required to comply with the same reporting requirements as the Agency. However, TCAD has refused to acknowledge that it is a local public authority and has failed to submit reports to the Office of the State Comptroller and the ABO as required by Public Authorities Law. Throughout this report, "Agency staff" refers to TCAD employees.

projects were estimated to create and retain a total of 5,456 jobs and had created and retained a total of 6,393 jobs through December 2016. The Agency approved an additional 11 projects in 2017, which were expected to create and retain a total of 230 jobs.

### **Compliance Review Objectives**

The Authorities Budget Office (ABO) is authorized by Title 2 of 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 determine whether the Agency is being transparent and accountable to the public.

### **Compliance Review Scope and Methodology**

Our compliance review was conducted between November 2017 and March 2018. The review assessed the Agency's operations for the period January 1, 2016 through December 31, 2017. To perform our review, we relied on the following documentation and data sources:

- Agency financial records
- Project applications, project agreements and related documents
- Policies and procedures indicative of good governance practices
- Annual reports required by the Public Authorities Law
- Board meeting minutes and board meeting packets

In addition to reviewing documents and records, we attended a board meeting, interviewed Agency staff, board members, and City of Ithaca and Tompkins County employees. We also performed other testing we considered necessary to achieve our objectives. Our report contains recommendations to improve the Agency's operations and strengthen board governance and oversight.

Our office also received a complaint from the public in June 2017 regarding the adequacy of board transparency in relation to a specific project. This complaint alleged that a public hearing on a proposed project was held, but that the actual amount of financial assistance subsequently approved by the Agency board was significantly higher than the amount of assistance presented at the public hearing. We considered the issues raised in this complaint as part of our review of the Agency's operations. The results and recommendations of our review were provided to and discussed with Agency officials, and their responses are reflected in this report where appropriate.

---

---

## **Review Results**

---

---

### **Accountability and Transparency of Operations**

Our review found that the Agency is generally transparent in its operations. It appropriately provides public notice of its meetings and hearings, and provides access to the information presented during those meetings. The Agency posts information on its web site regarding its operations and the projects it provides financial assistance, and adequately responded to the one freedom of information request it received during our review period.

However, we also found that the cost-benefit analyses prepared by Agency staff are not always accurate, which results in the board relying on inaccurate information when determining whether a project application should be approved. Our review also found that the Agency is not being fully accountable regarding project results since it does not initiate recapture provisions for projects that fail to meet expected objectives, as indicated in its recapture policy. The Agency also needs to improve the accuracy of the data that it reports in the Public Authorities Reporting Information System, clearly disclose board conflicts with its technical and administrative services provider, and appropriately establish required committees.

### **Board Meetings are Open and Transparent**

Article 7 of Public Officers Law is known as the Open Meetings Law and addresses the requirements for meetings held by public bodies, such as the Agency board. Open Meetings Law stipulates that every meeting of a public body shall be open to the public, and requires that public notice of meetings be made at least one week prior to the meeting; that records planned to be presented and discussed during the meeting should be posted to the web site prior to the meeting; and that minutes of the meetings are to be made available to the public.

Our review found that the Agency generally provides notice of upcoming board meetings and provides an agenda and meeting packet on its web site approximately one week before each board meeting. The meeting packet consists of the documents and records scheduled for discussion during the meeting. In addition, the Agency prepares board meeting minutes to reflect the discussions and actions of the board, and posts these minutes on its web site.

### **Cost-benefit Analyses are Not Always Complete and Accurate**

Agency staff indicated that if a business owner is interested in obtaining financial assistance for a proposed project, the business owner will meet with staff to discuss the project. If the project conforms to the Agency's Uniform Tax Exemption Policy (UTEP), then staff work with the business owner to complete a project application which is submitted to the Agency's board for review and approval. A cost-benefit analysis of the project is submitted as part of the project application. If the board approves of the project and the total financial assistance to be provided exceeds \$100,000 a public hearing is scheduled. The results of the public hearing are shared with the board prior to final approval of a project.



Section 859-a (5) of General Municipal Law requires a written cost-benefit analysis for each project be prepared before any financial assistance is provided to the project. The cost-benefit analysis is to identify the extent of job creation or retention, the estimated value of exemptions to be provided, the amount of private sector investment likely by project, the likelihood of timely completion of the project, the extent the project would provide additional revenue for municipalities and school districts, and any other public benefits that would occur should the project be approved.

The Agency approved a total of 15 projects during 2016 and 2017, one of which was an extension of a previously approved project and did not have a cost-benefit analysis prepared. However, we found that only five of the cost-benefit analyses were complete and accurate. As such, the board is relying upon incorrect information in determining whether to approve proposed projects. For example, the cost-benefit analyses for five projects (The Computing Center, Enfield 1, Delaware River Solar I, Delaware River Solar II, Delaware River Solar III) did not include sales tax or mortgage recording tax exemptions although these exemptions were requested and approved. Two other cost-benefit analyses had incorrect job creation and retention information: one project application (Cargill Cayuga Mine) indicated that 187 jobs were to be created and retained, but the cost-benefit analysis identified 204 jobs. The other project application (Hotel Ithaca Lenroc) indicated that 99 jobs were to be created and retained, but the cost-benefit analysis identified 92 jobs.

The cost-benefit analyses for the other two projects contained misleading property tax abatement data. The cost-benefit analysis for one project (City Centre Associates) indicated a property tax exemption of \$3.1 million, although the actual property tax abatement requested by the project was more than \$7.3 million. It appears that staff inappropriately identified the amount of the proposed PILOT as the total property tax exemptions. Agency officials indicated that this error was disclosed during the meeting, and the board based its decision on the correct tax exemption amount. However, meeting minutes do not reflect this disclosure.

The cost-benefit analysis for the other project (Harold's Holding LLC) identified a property tax abatement of more than \$3.6 million. While this was initially correct, changes were subsequently made to the project to meet energy efficiency measures that were recently established by the Agency and the total amount of financial assistance was increased in accordance with the new program. Four months later the board approved property tax abatements for more than \$4.8 million for the project, an increase of 34 percent, but it did not require a revised cost-benefit analysis to be prepared.

Agency officials responded that they agree the cost benefit analysis should be complete and accurate and that they are reviewing the systems to determine how to improve the document review process.

### **Public Hearings are Generally Publicized and Held as Required**

Section 859-a (2) of General Municipal Law states that the board of the Agency shall schedule and hold a public hearing and solicit public comment on projects that receive more than \$100,000 in financial assistance that are to be considered by the board. The Agency board must then consider the public comments made regarding financial assistance offered to these projects. Of the 15 projects approved by the Agency in 2016

and 2017, 13 received more than \$100,000 in benefits and public hearings were required to be held for those projects. Our review found that for all 13 projects, the notice of the public hearing was advertised in the local paper at least 10 days prior to the public hearing. Minutes of the comments made were taken at each public hearing and provided to the Agency's board members for consideration. Generally, the public hearing minutes were attached to the board agenda packets and available to the public on the Agency's web site approximately one week prior to the board meeting. For public hearings held within a week of the scheduled board meeting, the public hearing minutes were made available at the Agency board meeting.

However, for one project the proposed financial assistance to be provided to the project that was presented at the public hearing differed significantly from the financial assistance approved by the Agency. As indicated, changes were made to the project resulting in a 34 percent increase in the financial assistance provided. However, at the public hearing the Agency presented the original information requested by the project. This discrepancy between the information presented during the public hearing and the amount that was approved by the board was the basis for the complaint sent to the ABO.

Agency officials responded that greater transparency is a worthwhile goal, but that additional public hearings are not needed when the Agency changes the amount of incentives provided to a project. However, the ABO believes that improved transparency and accountability is achieved by holding additional public hearings when significant changes are made to a project scope or financial assistance provided.

### **Project Agreements are Prepared for All Projects**

Section 859-a (6) of General Municipal Law requires that a uniform project agreement be used by the Agency. The uniform project agreement is to describe the project, the amount and type of financial assistance to be provided and the purpose to be achieved by the project. The project agreement is also to require the project owner to report annually on job creation and retention data; indicate the dates and estimated amount of PILOT payments; stipulate that financial assistance will be suspended, discontinued or modified or recovered in accordance with the uniform tax exemption policy; and require the project owner to certify that it is in compliance with applicable laws. We found that all projects approved by the Agency during 2016 and 2017 had appropriate project agreements.

### **The Recapture Policy is Not Being Followed**

The Agency's mission is to deliver economic incentives to businesses to diversify and strengthen Tompkins County's tax base by supporting job creation, business development, and community revitalization. Job creation and retention is a tool used to measure the success of a project, and is reviewed by the Agency's board to determine the effectiveness of these projects as well as their ability to meet the Agency's mission. The Agency board reviews job creation and retention through the annual job report provided by staff. However, Agency staff do not include projects that receive only benefits from bond issuances or sales and mortgage tax exemptions in the annual job report to the board.

Section 874 of General Municipal Law requires the Agency to develop a policy to address the recapture of any financial assistance provided to a project that has a material violation of the terms and conditions of the project agreement, and requires the Agency to annually

assess the progress of each active project toward achieving its objectives, including job retention or creation.

To comply with Section 874 of General Municipal Law the Agency adopted a recapture policy in June 2016. This policy provides the Agency with the discretion to suspend, discontinue or recapture financial assistance provided to a project under various scenarios, including if there is a material violation of the terms and conditions of a project agreement such as material shortfalls in job creation and retention projections. The policy states that the Agency will annually assess the progress of each project toward achieving job retention or creation and the board shall then determine whether to recapture financial assistance if any material violations have occurred. The policy also identifies four factors to consider in determining whether there is a valid explanation for the project's failure to achieve the expected benefits: natural disaster; the project is in an industry that has a declining market; the project has experienced the loss of a major supplier or customer; and new technology has resulted in the need for fewer employees.

The Agency requires project owners to submit an employment verification report annually. Agency staff use these employment verification reports to prepare an annual job report, which is provided to the board for discussion. However, of the 54 active projects for 2016, Agency staff indicated that only 27 projects were analyzed for the job report that was presented to the board. There was no indication as to why the other 27 active projects were not included in the job report presented to the board. Of the 27 projects presented, Agency staff indicated that only 21 were expected to create jobs and that 12 of those 21 did not meet the job creation goals.

We found that Agency staff are not presenting all appropriate projects to the board for evaluating whether financial assistance should be recaptured or suspended. For example, the Agency reported that one project (Transonic Systems) was approved in 2010 and was provided with proceeds from tax exempt bonds, as well as \$136,000 in tax exemptions in 2016. The Agency reported that this project had 116 full-time equivalent (FTE) jobs prior to receiving financial assistance and was expected to create an additional 20 jobs, for a total 136 jobs expected. The Agency reported that the project had only 91 FTEs at the end of 2016, a loss of 25 FTEs. However, Agency staff did not include this project in its assessment presented to the board, instead indicating that the project was not expected to create jobs.

In response to our draft report Agency officials provided additional information regarding the Transonic project. Officials indicate that the Agency did not seek recapture because there was no financial assistance to recover. Officials indicated that incentives were never provided to Transonic, but were only a back-up in case incentives provided through New York's Empire Zone Program were stopped, and were never implemented. However, this contradicts what the Agency reported. The Agency reported that a total of \$262,162 in property and sales tax exemptions were provided to the company in 2011 and that \$136,825 in property tax exemptions were provided to the company in 2016. Further, Agency officials also indicated that the lack of financial assistance was the reason they decided not to pursue recapture. However, as indicated, this project was never presented to the board for consideration.

It appears that the Agency opts not to recapture or suspend financial assistance for projects that significantly fail to meet employment goals, rather than apply the provisions stated in its recapture policy. As indicated, Agency staff reported to the board that 12 of

the 21 projects that were expected to create jobs had failed to meet the job creation expectations for 2016. Yet the Agency decided to not commence recapture or suspension provisions for any of the projects, although some of these projects appear to meet the criteria for actions specified in the Agency's policy, and did not provide any basis for its decision to not pursue recapture provisions.

Agency officials responded that they disagree that the Agency evades recapturing financial assistance from projects, and cited an example from 2009 when it recaptured financial assistance provided to a project that had relocated out of the county and another project that is identified as in default of the project agreement in 2018. However the Agency failed to take action for any of the 12 projects that failed to meet job creation expectations in 2016 although some of the projects appear to meet the Agency's criteria.

For example, one project (Blinders AutoDesk/Moldflow) was initially approved by the Agency in 2001, received \$54,400 in tax exemptions and was to make \$48,400 in PILOTs for a net exemption of approximately \$6,000 in 2016. This project did not have any jobs before receiving financial assistance from the Agency and was expected to create 15 jobs. It appears that the financial assistance was given to a developer, rather than directly to the business that would be creating the jobs. The Agency reported that since 2007 this project had received more than \$510,000 in total tax exemptions and made almost \$350,000 in PILOTs, for total net exemptions of more than \$160,000. Although the Agency reported that this project had created 20 jobs by the end of 2016, Agency staff reported to the board that the tenant never reached the job creation goals. Agency staff also reported that early in 2017 the tenant terminated its lease, and moved to California. The Agency's recapture policy states that if a company shifts production activity to a facility outside Tompkins County and as a result fails to achieve the projected economic benefits, then the Agency will declare the agreement to be in default and require the financial assistance provided to be repaid. However, the Agency took no action to recover the tax exemptions provided to the developer.

In response to our draft report Agency officials provided additional information regarding this project. They indicated that the financial assistance was provided to the developer in exchange for renovating a building and offering below market rates to attract tenants. They also indicated that the tenant moving out would not trigger recapturing property tax incentives from the developer and therefore they did not seek to recapture benefits provided because the developer was not in default of the project agreement. However, the project agreement with the developer does call for the creation of 15 jobs in return for the financial assistance provided. By failing to create those jobs, the project is in material violation of the terms and conditions of the project agreement. By failing to follow its project recapture policy, the Agency has opted to allow the developer to disregard the terms of its agreement with the Agency. Further, the Agency's recapture policy does not include provisions that exempt developers from meeting job creation expectations due to the loss of a tenant.

Another project (Plastisol) was initially approved by the Agency in 2007, received \$71,900 in total exemptions and was to make \$62,800 in PILOT payments, for a net exemption of approximately \$9,100 in 2016. This project had 1 FTE before it received financial assistance from the Agency and was expected to create 27 new jobs. Although Agency staff indicated that there were no employees at the project for 2016 and that the company had likely vacated the premises at the end of 2015, the Agency took no action to recover the tax exemptions.

However, the Agency also had reported that there were no employees at the project for 2015. It appears the project failed to make the required PILOT payments for 2016, and when county officials notified the Agency in February 2016, it was determined the facility was vacant and telephone and e-mail connections had been disconnected. The Agency reported that since 2008 this project had received more than \$660,000 in total tax exemptions and made almost \$250,000 in PILOTs, for total net exemptions of more than \$400,000. Yet there was no action taken by the Agency to recover these tax exemptions after the project failed to create the number of jobs expected. In response to our draft report Agency officials provided additional information regarding this project. They indicated that since the parent company is located overseas it would not be practical to pursue recapture.

Based on our review of the 12 projects identified by Agency staff as not meeting their job creation and retention commitments, five projects were not appropriate for recapturing financial assistance provided: three projects had only been approved within three years and may not have yet reached full employment capability and two projects met at least one of the factors established by the Agency for being exempt from recapture. However, Agency staff did not recommend recapture of funds from any of the other seven projects and the board accepted staff's recommendation to not recapture funds from any projects.

### **Some Data is Being Reported Inaccurately**

Section 2800 of Public Authorities Law requires public authorities to submit reports on their finances and operations annually to the appropriate local government officials as well as the ABO and the Office of the State Comptroller. The ABO and the State Comptroller have jointly developed and maintain a web-based application, the Public Authorities Reporting and Information System (PARIS), to enable public authorities to report the required information in an easy to use electronic format. The Agency is required to certify that the data being reported is complete and accurate. However, we identified instances where the data reported by the Agency is inaccurate. As indicated previously, Tompkins County officials notified the Agency that a project failed to make the required PILOT payments for 2016. Yet the Agency certified that this project paid the required \$62,837 PILOT for 2016. The Agency is required to report both the amount of the PILOT expected to be paid per the PILOT agreement, as well as the actual amount paid. It appears that the Agency did not receive verification of the PILOT amount paid by the project, and raises questions as to the accuracy of PILOT payments reported by the Agency for other projects.

Agency officials responded that the reason for this apparent inaccuracy is that PARIS information needs to be reported before the verification of actual payments made is received. However, this is not accurate. The Agency received notice from County officials in February 2016 that the PILOT was not made. However, the Agency reported in PARIS on March 31, 2017, over a year later, that the PILOT had been paid. Information is reported in PARIS a minimum of 90 days after a transaction occurs. Agency officials also indicated that PARIS does not allow for reporting of the PILOT amount that was billed. While the reporting field in PARIS is not labeled "Amount Billed", it does require the Agency to report the PILOT "Amount Due per Agreement". It is expected that the amount due per the PILOT agreement would equal the amount that is billed.

## **Potential Conflicts of Interest Should be Disclosed**

Section 2824 (1) (d) of Public Authorities Law requires the board to adopt a code of ethics that at a minimum includes the standards of conduct established in Section 74 of Public Officers Law. These standards include rules that address real and appearances of conflicts of interest, including prohibition of transactions with business entities in which the individual has a direct or indirect financial interest that might reasonably tend to conflict with the individual's official duties. Further, the acknowledgment of fiduciary duty signed by each board member requires board members to disclose to the board any conflicts, or the appearance of a conflict, of a personal, financial, ethical, or professional nature that could inhibit the board member from performing their duties in good faith and with due diligence and care. The Agency's board members have a duty to act in the Agency's best interest.

The Agency has established a code of ethics which does address conflicts. However, conflicts identified within the code of ethics are restricted to instances of employment, direct payment for services or investments in transactions which creates a conflict, but do not address situations which can result in an appearance of a conflict of interest. The Agency's code of ethics specifically prohibits direct conflicts, but does not address procedures to follow when such perceived conflicts of interest may exist.

We found that some members of the Agency's board are also on the board of directors for TCAD. For 2016 two members of the Agency's board were also TCAD board members, one of which approved the \$262,000 contract with TCAD for technical and administrative services. Yet these individuals did not disclose this as a perceived conflict. And in 2017 two members of the Agency's board did not disclose that they were also TCAD board members when they approved the \$314,000 contract with TCAD.

Agency officials responded that they will consult counsel and update the conflict of interest policy to address the appearance of perceived conflicts of interests if necessary.

## **Board Committees are Not Established or Not Comprised as Required**

Section 2824 of Public Authorities Law requires public authorities to establish an Audit Committee and a Governance Committee and states that each committee be comprised of not less than three independent members. The Audit Committee is to recommend the hiring of a certified independent accounting firm, set the compensation for the accounting firm and provide direct oversight of the performance of the independent audit. The Governance Committee is to keep the board informed of current best governance practices, examine ethical and conflict of interest issues, perform board self-evaluations and recommend by-laws.

The Agency has adopted by-laws that require the Audit and Governance committees be comprised of at least three board members. We found that the Agency has established both an Audit Committee and a Governance Committee as required, but that both committees were comprised of only two board members during 2016 and 2017. Since neither committee was established in accordance with the by-laws, they were unable to officially act during these years. For 2018 an additional board member was appointed to the Audit Committee, but no additional appointments have been made to the Governance Committee.

Section 2824 (8) of Public Authorities Law also requires public authorities that issue debt to establish a Finance Committee. The Agency issues conduit debt to provide financing for projects, but the Agency has not established a Finance Committee.

Agency officials responded that deficiencies in committee membership will be corrected, and a Finance Committee will be established at the next Agency board meeting.

### **FOIL Requests are Handled Appropriately**

Sections 84 to 90 of Public Officers Law, known as the Freedom of Information Law (FOIL), provides a process for members of the public to request and review records of public entities. FOIL generally requires public entities to respond to such requests within specified time frames, and to provide the requested information unless the information falls within specific exceptions. During the period of our review, the Agency received one FOIL request in June 2017 regarding information pertaining to a specific project. We found that the Agency appropriately acknowledged receipt of the request in a timely manner, and provided all related records within 20 business days.

### **Most Required Information is Posted on the Agency's Web Site**

Section 2800 of Public Authorities Law requires public authorities to make documents pertaining to their mission, current activities, annual financial reports, budgets and independent audit reports accessible to the public on the authority's web site. To assist public authorities meet their disclosure and reporting obligations, the ABO has issued Policy Guidance No. 10-03: "Posting and Maintaining Reports on Public Authority Web Sites". This guidance provides a checklist of policies, reports and other information that the authority should maintain online in accordance with the requirements of Public Authorities Law.

We reviewed the Agency's web site between February 5 and March 1, 2018 to determine whether the required information is posted. We found that the Agency has posted most of the required information on its web site, but that additional improvements are necessary to improve transparency and accountability. For example, the Agency does not provide notices and agendas for planned committee meetings, and does not post meeting minutes for its Governance Committee. In addition, the Agency does not post a list of its procurement contracts indicating the payments it makes to vendors.

Agency officials responded that the recommendations for improving the web site will be reviewed and corrections will be made to improve transparency, the availability of information, and its ease of use.

The web site review is attached as Appendix A.

---

---

## Recommendations

---

---

1. The board should ensure that all cost-benefit analyses are complete and accurate by including the correct amount of all types of financial assistance requested and accurate job creation and retention expectations.
2. The board should require that cost-benefit analyses are updated when significant changes are made to proposed projects including the amount of financial assistance being provided.
3. The board should hold additional public hearings for projects when significant changes are made to proposed projects, including significant changes in the amount of financial assistance being provided, subsequent to the original public hearing.
4. The board must ensure that all active projects are appropriately evaluated for compliance with the terms and conditions of the project agreement.
5. The board should initiate recapture proceedings in accordance with its recapture policy when a material violation of project terms and conditions of the project agreement exists.
6. The board should establish appropriate procedures to verify that all information reported in PARIS is complete and accurate.
7. The board should update its code of ethics policy to include procedures to follow when a potential or perceived conflict of interest exists.
8. Board members should publicly disclose any situation that presents a conflict or the appearance of a potential conflict of interest.
9. The board should ensure that committees are comprised of the appropriate members in accordance with the Agency's by-laws.
10. The board should establish a finance committee as required by Public Authorities Law.
11. The Agency should improve accountability and transparency by posting all required information on its web site, including notices and agendas of committee meetings, all committee meeting minutes and an annual report of procurement transactions.



# Tompkins County Industrial Development Agency

---

ADMINISTRATION PROVIDED BY 

May 3, 2018

Michael Farrar  
Director, Compliance Review  
State of New York  
Authorities Budget Office  
P.O. Box 2076  
Albany, N.Y. 12220-0076

Re: Response to Draft Audit of Tompkins County Industrial Development Agency

Dear Mr. Farrar:

The Tompkins County Industrial Development Agency (TCIDA) appreciates the opportunity to submit this response to the draft audit report. As the time for response was limited to less than 30 days, we submit this response without the benefit of a complete review by our legal counsel. Accordingly, we hope you will allow us a further opportunity to comment if this letter does not satisfactorily address any issues raised in the draft audit report.

Generally, we appreciate the recommendations in the draft report, many of which will be implemented to strengthen our organization. While it is sometimes difficult to read an audit report, we recognize that there are positive changes we can bring to our operations. However, we note that many of the recommendations in the report have never formally been presented as best practices by the ABO or any other State agency, nor are they found in any State laws that govern IDAs. It would be unfortunate if, as a result of this report, the TCIDA were perceived as not following best practices or State law.

### **Background**

We wish to clarify one aspect of the relationship between the TCIDA and Tompkins County Area Development (TCAD). The TCIDA annually enters into a Memorandum of Understanding for TCAD to provide not only administrative services to the TCIDA but also general countywide economic development services that support the Tompkins County economy. These services include providing direct services and technical assistance to businesses, strategic planning, and various initiatives.

**Note  
1**

### **Recommendations**

We wish to respond to each of the recommendations and will do so in the same order as in the Draft Audit Report. For ease of reference, I am including the original recommendation.

1. The board should ensure that all cost-benefit analyses are complete and accurate by including the correct amount of all types of financial assistance requested and accurate job creation and retention expectations.

# Tompkins County Industrial Development Agency

---

We agree that the cost benefit analysis should be complete and accurate. The TCIDA has already undertaken an examination of its systems, including how we can improve our document review process. We do wish to hold ourselves to a higher standard of accountability.

We wish to note that in accordance with the TCIDA's Uniform Evaluation Policy, the TCIDA "undertakes an assessment of ALL material information included in connection with the Application for Financial Assistance as necessary to afford a reasonable basis for the decision by the TCIDA to provide financial assistance." The Board uses the cost benefit analysis along with the full application and any other materials submitted by the applicant to base a financial decision so there is a full review of all documentation provided.

I would like to comment on the statement that two projects contained 'misleading property tax abatement data.' First, the City Centre project estimated property tax exemption was indeed an error. It was transposed with the estimated taxes abated. This transposition was pointed out at the meeting, so it was discussed and the TCIDA deliberated and made its decision with the correct figures in mind. There was no intent to mislead the TCIDA.

Second, the tax abatement amount presented in the cost benefit analysis for Harold's Holding was accurate at the time the application and cost benefit analysis were presented to the TCIDA. The TCIDA did use this information as a basis to assess incentives and actually negotiated a higher incentive amount after discussions with the applicant regarding enhanced energy incentives. Again, we believe the cost benefit analysis was used appropriately, and there was no intent to mislead.

2. The board should require that cost-benefit analyses are updated when significant changes are made to proposed projects.

We appreciate the recommendation that the cost benefit analyses should be updated when changes are made to proposed projects. This is a regular practice. For example, if the use of the building changes or the square footage changes in such a way that project costs increase by 10% or more. The TCIDA currently uses the analyses as required by law as part of our decision to provide incentives and does use its discretion in determining if a higher level of incentive should be provided without requiring the analysis to be updated after approval. If the ABO is proposing that we update the cost benefit analysis if the TCIDA changes the incentive level, we would like that recommendation confirmed.

If the ABO has guidance on thresholds that could be used to help build an appropriate definition of "significant change" we would benefit from receiving this assistance. If our guidance at a 10% percent change in value is appropriate, we would appreciate confirmation.

3. The Board should hold additional public hearings for projects when significant changes are made to proposed projects subsequent to the original public hearing.

While the TCIDA is in compliance with State law regarding public hearings, we agree that greater transparency is a worthwhile goal. As a rule of thumb, the Board does require an additional public hearing if a proposed project changes significantly. For example, if the use of

# Tompkins County Industrial Development Agency

---

the building changes or the square footage changes in such a way that project costs increase by 10% or more. The public hearing notices are intentionally silent on the amount of incentive being contemplated as that can be part of an ongoing negotiation and can change. We have discussed this with counsel, and feel that a change in incentive amount does not necessitate a new public hearing nor is it required by law.

4. The Board should require that uniform project agreements are prepared and approved for all projects as required by General Municipal Law.

The TCIDA adopted a Uniform Project Agreement in June 2016 to comply with new State regulations. The TCIDA requires a signed agreement prior to the delivery of any incentive and does have a tracking system in place to ensure compliance. We did have signed agreements in office for the four projects you noted in the Draft Audit Report that the auditors were unable to find. As these are working projects, we believe, that the Project Agreements were being used for some administrative work, and therefore, may not have been in the files at the time you were doing your review. If the auditors had brought this to the attention of the staff, I believe they would have furnished them.

**Note  
2**

We would be happy to provide copies if you want to review them. However, in further response to this recommendation, we agree that in reviewing our systems, one of the areas where we wish to improve systems is with file maintenance.

5. The board must ensure that all active projects are appropriately evaluated for compliance with the terms and conditions of the project agreement.

Staff monitors compliance and any failure is reported to the board. As an example, during the first quarter of 2018, a project was presented to the board, which approved sending a legal notice of default for failure to meet the material conditions in the project agreement. The board is actively considering termination and recapture of those funds. We believe this function of the TCIDA is functioning properly. However, if the ABO recommends a more formal reporting protocol, the board will implement one.

**Note  
3**

6. The Board should initiate recapture proceedings in accordance with its recapture policy when a material violation of project terms and conditions of the project agreement exists.

The Board does formally review job creation goals and formally acts on whether to commence a recapture proceeding for each project that does not meet job creation goals. The Recapture Policy does provide for some discretion in determining whether to suspend, discontinue or recapture on a case by case basis. The TCIDA does take into account reasons for underperforming each year and makes a decision based on what's best for the community.

With respect, we disagree with your statement that the Agency evades recapturing financial assistance for projects that significantly fail to meet employment goals.

Staff does provide a jobs report for those projects that are required to create or retain jobs. There were 54 active projects, but not all would be responsible for job creation because of the

# Tompkins County Industrial Development Agency

---

way they are counted in PARIS. The PARIS reporting system often has multiple entries for what we would consider one project. For example, Nut Brown Realty is listed as a PILOT project and Ithaca Beer Company is listed as a sales tax exemption project – two projects in PARIS. However, we would consider this one project – Ithaca Beer Company is the tenant and Nut Brown is the holding company. Ithaca Beer Company would be creating the jobs. Nut Brown is the legal owner of the property and thus would receive the property tax abatement. There would be no reason to submit Nut Brown Realty for review and recapture due to failure to meet job requirements. If our reporting into PARIS does not make these joined projects clear, please advise if you have a recommendation on an improvement to the process for entering this information into PARIS.

**Note  
4**

The board receives a memo and full report and recommendation on recapture for each project that has failed to meet job creation goals. The board discusses and votes on whether to recapture and does have the discretion to decide not to recapture. For example, if a company goes out of business there is no company or funds to recapture. In fact, the TCIDA has used its recapture policy in the past where a company has significantly failed to meet project goals and there is an actual entity to recover funds from. When Emerson Power Transmission moved its operations out of our community, we recaptured 100% of the incentives that had been provided – totaling over \$300,000 – and distributed them back to the taxing jurisdictions.

The draft audit cites failure to recapture with Transonic Systems, Plastisol, and AutoDesk/Moldflow. We did use our discretion and decided not to recapture for various reasons. We would be happy to provide you with more background information as to why we decided not to recapture funds in these instances should you wish to better understand our process. But I do wish to be clear that the TCIDA does perform this critical ongoing review of projects as they perform.

7. The board should establish appropriate procedures to verify that all information reported in PARIS is complete and accurate.

The TCIDA does have a PILOT verification process in place. However, there is a timing issue. We rely on the County to provide the projected payment amounts. The verification of actual payment doesn't happen until payments are actually received, which is after the PARIS information is due. This is a check and balance system that enables us to make sure payments are accurate. With that said, it would be helpful if we were able to make changes in the PARIS system to correct inaccurate data, or at the very least, if PARIS were modified to allow for input of billed amounts and received amounts. The lack of a "billed" category creates a gray area in how information should be entered.

**Note  
5**

The Audit Committee of the Board implemented new practices during the 2017 audit process to provide checks and balances between audit documents and PARIS reports. We will continue to review this issue to determine if further improvements can be made.

8. The board should update its code of ethics policy to include procedures to follow when a potential or perceived conflict of interest exists.

# Tompkins County Industrial Development Agency

---

The Board will consult counsel and update our conflict of interest policy to address the appearance of perceived conflicts of interest that are not financial in nature if necessary.

9. Board members should publicly disclose any situation that presents a conflict or the appearance of a potential conflict of interest.

Board members currently are required to publicly disclose any situation that presents a conflict or the appearance of a potential conflict as it pertains to financial conflicts of interest. As noted in recommendation 8, above, we will consult counsel and update our conflict of interest policy should it be warranted.

10. The Board should ensure that committees are comprised of the appropriate members in accordance with the Agency's by-laws.

The Board will correct these deficiencies in its committee membership.

11. The Board should establish a finance committee as required by the Public Authorities Law.


The Board is planning to establish such a committee at its next meeting and will also task the Governance Committee with reviewing and amending the by-laws to require a standing Finance Committee.

12. The Agency should improve accountability and transparency by posting all required information on its web site, including notices and agendas of committee meetings, all committee meeting minutes and an annual report of procurement transactions.

The Board will review all the noted recommendations for improving our website and make corrections to improve transparency, the availability of information, and ease of use.

In closing, the TCIDA appreciates the guidance and recommendations of the ABO. We are committed to transparency and accountability and continually strive to improve our operations. If there is further information we may provide or questions we may address, please do not hesitate to contact me.

Regards,



Richard John  
Chair, Tompkins County Industrial Development Agency

---

---

## Authorities Budget Office Comments

---

---

1. TCAD may provide other economic development services that are not part of its responsibility to administer the Agency.
2. The final report was revised to reflect additional information provided by the Agency in response to the draft report.
3. The Agency's response does not address the issue raised in the report, that all active projects be appropriately evaluated for compliance with the terms and conditions of the project agreement.
4. The Agency's response indicates that the PARIS reporting system often has multiple entries for what the Agency would consider one project. PARIS reflects the data that is reported by the Agency, and if multiple entries are made for a single project that is due to the Agency reporting a single project as multiple projects. In addition, the Agency's response indicates that the Ithaca Beer Company would be creating jobs, and Nut Brown would receive the property tax abatement. However, the Agency reported in PARIS that Ithaca Beer Company would create no jobs, and Nut Brown Realty expects to create 8 jobs.
5. The Agency's response that payments are received after the PARIS information is due is incorrect. PARIS reporting is done after the fact, and reflects transactions and activity that occurred a minimum of 90 days prior to the reporting deadline established in Public Authorities Law.



## Appendix A

### Review of Tompkins County Industrial Development Agency Web site

Information To Be Posted on Public Authority's Web site	Posted on Web site (Yes/No)
Authority Mission Statement	Yes
Authority Enabling Statute	No
Authority By-laws	Yes
Authority Code of Ethics	Yes
Authority Organization Chart – posting, at a minimum, the IDA's executive structure	No
Report on Operations and Accomplishments	Yes
List of IDA Board Members, including appointing entity, appointment dates, term and professional experience and background of each member and officer	Yes, but appointment dates and appointing entity not listed
Executive Management Team - including professional background and qualifications	Yes, but no background
Authority Performance Measures	Yes
Authority Performance Measures Report	Yes
Authority Schedule of Debt (including conduit debt)	Yes, included in audit report
Management's Assessment of the Authority's Internal Control Structure and Procedures - including a description of operating and financial risks	No
Board meeting agendas and meeting minutes	Yes
Schedule and notices of all board meetings	Yes
List of Committees and Committee Members	Yes
Committee meeting notices and agendas	No
Committee meeting minutes	Yes, but no Governance Committee minutes
Annual Budget Report and details of 4-year financial plan	Yes, but no 4-year financial plan
Annual Independent Certified Financial Audit	Yes
Independent Auditor's Report on Internal Controls over Financial Reporting	Yes
Independent audit management letter	Yes
Uniform Tax Exemption Policy	Yes
List of active IDA projects, including project application information and current year's financial assistance (tax exemptions received and PILOT payments made)	Yes
List of Real Property owned by the Authority	Yes
Property Acquisition and Disposition Policies	No
Personal and Real Property Transactions	Yes
Policies for the procurement of all goods and services	Yes
Annual Procurement Report - post the reports generated from the PARIS Procurement Report, and include name of the Authority's Procurement Officer	No
Investment Policies	No
Annual Investment Report, including the investment audit results and management letter, record of investment income of the authority and a list of fees paid for investment services	No
Fee Schedules (if applicable) - list of any service or administrative fees charged	Yes
Current Year Official Statements (including conduit debt)	N/A

\*Review conducted by the Authorities Budget Office between February 05, 2018 and March 01, 2018