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STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

March 4, 2008

Mr. Patrick J. Foye  
Commissioner  
Empire State Development Corporation  
633 Third Avenue  
New York, NY 10017

Re: Report 2007-F-51

Dear Mr. Foye:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1, of the State Constitution; and Article II, Section 8, of the State Finance Law, we have followed up on the actions taken by officials of the Empire State Development Corporation to implement the recommendations contained in our audit report, *Oversight of Subsidiary Operations* (Report 2005-S-6).

**Background, Scope and Objective**

The Empire State Development Corporation (ESDC) was established in 1995 to act as an umbrella organization for three public benefit corporations that were created in the 1960s: the Urban Development Corporation (UDC), the Job Development Authority (JDA), and the Science and Technology Foundation (the Foundation was subsequently abolished in January 2000). Both UDC and JDA are authorized by law to create other subsidiary corporations to oversee and perform specific economic development activities.

Our initial report, issued on May 15, 2006, examined ESDC's oversight of its subsidiary operations. The audit concluded that ESDC has an appropriate process in place to control and authorize the creation of subsidiary corporations, and it actively monitors subsidiaries that are responsible for managing ongoing large-scale economic development projects. However, the audit also found that ESDC does not adequately oversee the status of many of its other subsidiaries, and rarely dissolves subsidiaries once their purpose has been achieved and they are no longer needed. As a result, ESDC has lost track of the status, and even existence, of many of its subsidiaries and failed to move in a timely manner to dissolve subsidiaries whose functions have concluded. We recommended that significant improvements be made in ESDC's recordkeeping for and control over subsidiary operations. We further recommended that unneeded subsidiaries be dissolved on an ongoing basis, and the large backlog of unneeded subsidiaries be dissolved.

The objective of our follow-up, which was conducted in accordance with generally accepted government auditing standards, was to assess the extent of implementation as of February 13, 2008, of the six recommendations included in our initial report.

### **Summary Conclusions and Status of Audit Recommendations**

We found that ESDC officials have made progress in correcting the problems we identified. However, additional improvements are needed. Of the six prior audit recommendations, one recommendation has been implemented, four recommendations have been partially implemented, and one has not been implemented.

### **Follow-up Observations**

#### **Recommendation 1**

*Determine the status of the 98 corporations listed in Exhibits A and B and dissolve all those that can legally be dissolved (i.e., those that are inactive and have no continuing rights or obligations).*

Status - Partially Implemented

Agency Action - ESDC officials indicate that 32 of 98 subsidiaries listed in Exhibits A (inactive subsidiaries) and B (subsidiaries that appear to be inactive) were either dissolved or merged into a new subsidiary created by ESDC for the purpose of consolidation. We reviewed supporting certificates of dissolution and merger forms and received independent confirmation from the Department of State for each dissolution. ESDC officials indicated that they will continue to review the remaining subsidiaries contained in Exhibits A and B.

#### **Recommendation 2**

*Periodically determine the status of all subsidiary corporations. As part of this review, identify each subsidiary's recent achievements, estimated time remaining before its legal purpose is achieved, and contractual agreements with third-parties. If it is determined that a corporation's legal purpose has been achieved, determine whether the corporation has any continuing rights or obligations, and if not, promptly initiate the process of dissolving the corporation. Develop written policies and procedures to guide these actions.*

Status - Partially Implemented

Agency Action - As indicated in the above agency actions regarding recommendation 1, ESDC is still in the process of reviewing the status of its subsidiary corporations. Written policies and procedures have not been developed.

#### **Recommendation 3**

*Develop a complete and accurate management information system for subsidiary operations. The system should identify all existing subsidiaries, note their status, and provide summary information about their purpose and history.*

Status - Partially Implemented

Agency Action - ESDC officials indicate that preliminary steps regarding the development of a management information system (MIS) have begun. They provided us with a sample page of a subsidiary database that they plan to use as the MIS template.

**Recommendation 4**

*Make a senior Manager responsible for (a) overseeing the operations of all subsidiary corporations, (b) ensuring that a periodic review is performed to determine the status of all subsidiary corporations, (c) ensuring that unneeded subsidiaries are dissolved without delay, (d) ensuring that corporate files are kept up to date, and (e) overseeing the development and maintenance of a management information system for subsidiary operations.*

Status - Not Implemented

Agency Action - Oversight responsibility for the subsidiary operations has remained basically unchanged since our audit. ESDC officials have not designated a senior Manager to oversee all its subsidiaries. A managerial-level employee has oversight responsibility for six of the more active subsidiaries. The Legal Department is responsible for maintaining corporate files, and to the extent of available resources, reviews the viability of the subsidiaries.

**Recommendation 5**

*Ensure that all existing subsidiary corporations are identified in the annual financial report to OSC.*

Status - Partially Implemented

Agency Action - ESDC officials indicate they have carefully reviewed the list of subsidiary corporations identified in the 2007 annual financial report to OSC and, to the best of their knowledge, the list is accurate and complete. We found, however, that one of the subsidiaries included in this list - Governors Island Redevelopment Corporation - had been dissolved by the ESDC Board on August 15, 2002. In addition, our audit identified 103 subsidiaries that have been neither dissolved nor merged by ESDC, but were not included in the 2007 annual financial report to OSC. We determined that 95 of the 103 subsidiaries are housing corporations. These 95 include 70 listed in Exhibit C of our original report, in which we found that all 70 were active because their mortgages had not been paid off. ESDC officials indicate that they no longer have the corporate records verifying the legal existence of any housing companies. However, as cited in the original report, they do maintain other records pertaining to the mortgages for these companies, which attest to their continued existence. Therefore, these subsidiary housing companies should be included in the annual financial report to OSC. The remaining eight subsidiaries comprise various legal types; again, none of these has been dissolved or merged.

**Recommendation 6**

*Work with the Department of State and Department of Taxation and Finance to better identify ESDC subsidiaries and prevent their dissolution by proclamation.*

Status - Implemented

Agency Action - ESDC officials told us they have always clearly identified all of their subsidiaries when filing certificates of incorporation or amendments with the Department of State. The General Counsel of ESDC received assurance from the Department of Taxation and Finance that all ESDC subsidiaries will henceforth be identified as tax-exempt, which should thereby prevent their dissolution by proclamation.

Major contributors to this report were Myron Goldmeer, Jeremy Mack, and Margarita Ledezma.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We also thank the management and staff of ESDC for the courtesies and cooperation extended to our auditors during this process.

Very truly yours,

John F. Buyce  
Audit Manager

cc: Ms. Anita W. Laremont, Senior Vice President, Legal and General Counsel  
Ms. Lisa Ng, Division of the Budget