



Allegany County Industrial Development Agency

Internal Controls Over Selected Financial Activities

Report of Examination

Period Covered:

January 1, 2008 — August 31, 2012

2012M-244



Thomas P. DiNapoli

Table of Contents

	Page
AUTHORITY LETTER	2
EXECUTIVE SUMMARY	3
INTRODUCTION	5
Background	5
Objective	5
Scope and Methodology	6
Comments of Local Officials and Corrective Action	6
COMPENSATION	7
Recommendations	9
INFRASTRUCTURE PROJECT	10
Recommendation	12
CONSTRUCTING COUNTY OFFICE BUILDING	13
Recommendation	14
APPENDIX A Response From Local Officials	15
APPENDIX B OSC Comments on the IDA’s Response	20
APPENDIX C Audit Methodology and Standards	23
APPENDIX D How to Obtain Additional Copies of the Report	25
APPENDIX E Local Regional Office Listing	26

State of New York Office of the State Comptroller

Division of Local Government and School Accountability

May 2013

Dear Agency Officials:

A top priority of the Office of the State Comptroller is to help local government officials manage government resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of local governments statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and Board governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard local government assets.

Following is a report of our audit of the Allegany County Industrial Development Agency, entitled *Internal Controls Over Selected Financial Activities*. This audit was conducted pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the General Municipal Law.

This audit's results and recommendations are resources for local government officials to use in effectively managing operations and in meeting the expectations of their constituents. If you have questions about this report, please feel free to contact the local regional office for your county, as listed at the end of this report.

Respectfully submitted,

*Office of the State Comptroller
Division of Local Government
and School Accountability*



State of New York Office of the State Comptroller

EXECUTIVE SUMMARY

Industrial Development Agencies (IDAs) are independent public benefit corporations whose overall goal is to advance the job opportunities, health, general prosperity, and economic welfare of the people of the State. The Allegany County Industrial Development Agency (ACIDA) was established in 1973 and is governed by a Board of Directors (Board) which comprises five members who are appointed by the Allegany County Legislature. The Board is responsible for the general management and control of ACIDA's financial and operational affairs. The Board, in cooperation with the Legislature, appointed the County Director of Development as the ACIDA Executive Director (Director), responsible for the day-to-day management of operations. The Board also appointed the confidential secretary to the Director of Development, who is also a County employee, as the Chief Financial Officer (CFO), responsible for the ACIDA's financial accounting and reporting.

Scope and Objective

The objective of our audit was to examine the ACIDA's internal controls over employee compensation and the approval and monitoring process for certain projects from January 1, 2008, to August 31, 2012. We extended our review of the County building construction project back to November 30, 2007. Our audit addressed the following related questions:

- Are internal controls over employee compensation appropriately designed and operating effectively to ensure that payments are for work not otherwise compensated by another entity?
- Did the ACIDA use appropriate evaluation criteria when approving and monitoring a project for the purchase of land and the installation of a water line?
- Did the ACIDA use appropriate evaluation criteria when approving a project for the design and construction of facilities specifically built for the purpose of leasing office space to various County departments?

Audit Results

Internal controls over employee compensation were not properly designed and operating effectively. Several individuals received compensation from both the ACIDA and the County including the ACIDA CFO and Director, and the County Planner. However, there were no written job duties for the ACIDA Director. As such, it was not always clear when he was acting on behalf of the ACIDA or the County. Furthermore, the job description for the CFO does not indicate the normal work hours for that position. It is unclear whether services compensated for by the ACIDA were provided at times other than those for which these individuals were compensated as County employees.

The Board was unable to demonstrate it had adequately evaluated the impact on the ACIDA and its bond holder, the County, before approving a \$3.5 million speculative project involving the purchase of land and installation of a water line. As of April 17, 2013, no improvements have been initiated by the developer. If the project does not move forward, the ACIDA will not have a revenue stream from which to make required bond payments to the County or repay the nearly \$500,000 disbursed to date. In addition, although the ACIDA may turn the property over to the County, the County does not have an immediate use for it. As a result, there is a risk that County taxpayers could bear the costs incurred thus far for the project and/or acquire unneeded land.

The Board failed to use appropriate evaluation criteria before it approved the construction of a \$760,000 facility with the apparent sole function of housing the Allegany County Departments of Aging and Veterans Affairs. There is no authority in General Municipal Law for an IDA to construct a building to be used for County office space.

Comments of Local Officials

The results of our audit and recommendations have been discussed with ACIDA officials and their comments, which appear in Appendix A, have been considered in preparing this report. IDA officials disagreed with certain aspects of our findings and recommendations in our report, but indicated they planned to implement some of our recommendations. Appendix B includes our comments to issues raised in the IDA's response letter.

Introduction

Background

Industrial Development Agencies (IDAs) are independent public benefit corporations whose purpose is to promote, develop, and assist industrial, manufacturing, warehousing, commercial, research, and recreation facilities. The overall goal of IDAs is to advance the job opportunities, health, general prosperity, and economic welfare of the people of the State. The powers and duties of IDAs are set forth under Article 18-A of the General Municipal Law (GML). Typically, projects that receive IDA benefits involve the acquisition, construction, or major renovation of buildings or other structures and generate short-term and long-term employment in construction and operations related jobs.

The Allegany County Industrial Development Agency (ACIDA) was established in 1973 and is governed by a Board of Directors (Board) which comprises five members who are appointed by the Allegany County Legislature (Legislature). The Board is responsible for the general management and control of ACIDA's financial and operational affairs. The Board, in cooperation with the Legislature, appointed the County Director of Development as the ACIDA Executive Director (Director). The Board has also appointed the confidential secretary to the County Director of Development, as the Chief Financial Officer (CFO) of the ACIDA, responsible for financial accounting and reporting. The Director indicated that, prior to 2001, the Allegany County Office of Development and ACIDA were managed by separate individuals. According to the Director, this consolidation of positions and departments was done in an attempt to increase the overall effectiveness of both the ACIDA and the Office of Development and to increase the cost effectiveness of both.

Objective

The objective of our audit was to examine the ACIDA's internal controls over employee compensation and the approval and monitoring process of certain projects. Our audit addressed the following related questions:

- Are internal controls over employee compensation appropriately designed and operating effectively to ensure that payments are for work not otherwise compensated by another entity?
- Did the ACIDA use appropriate evaluation criteria when approving and monitoring a project for the purchase of land and the installation of a water line?

- Did the ACIDA use appropriate evaluation criteria when approving a project for the design and construction of facilities specifically built for the purpose of leasing office space to various County departments?

**Scope and
Methodology**

We examined internal controls over employee compensation and the approval and monitoring process of certain projects of the Agency from January 1, 2008, to August 31, 2012. We extended our review of the building construction project back to November 30, 2007.

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit are included in Appendix C of this report.

**Comments of
Local Officials and
Corrective Action**

The results of our audit and recommendations have been discussed with ACIDA officials and their comments, which appear in Appendix A, have been considered in preparing this report. IDA officials disagreed with certain aspects of our findings and recommendations in our report, but indicated they planned to implement some of our recommendations. Appendix B includes our comments to issues raised in the IDA's response letter.

The Board has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and forwarded to our office within 90 days, pursuant to Section 35 of the General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Board to make this plan available for public review in the Secretary's office.

Compensation

ACIDA policy states that “The officers [and] employees...of the Agency shall serve at the pleasure of the Agency at such compensation levels as may be approved by the Board from time to time...” Given that ACIDA officials are also employed and compensated by the County, it is imperative that the Board establish controls to ensure the ACIDA does not compensate these officials for the same hours for which they are compensated by the County. Adequate internal controls should include written job descriptions for their ACIDA duties and detailed time records to identify the work performed for each entity.

Internal controls over compensation paid to ACIDA officials were not properly designed and operating effectively. The Board failed to adopt written policies or procedures specifically designed to ensure that ACIDA officials were not compensated by the ACIDA for the same hours that they were working for the County.¹ There were no written job duties for the ACIDA Director. As such, it was not always clear when he was acting on behalf of the ACIDA or the County. Furthermore, the job description for the CFO does not indicate the normal work hours for that position.

In April 2012, the Board authorized a \$5,000 payment² to the Director and a \$2,500 payment to the County Planner for “extra duties performed on behalf of the ACIDA.” When asked, neither the Director nor the CFO could provide any documentation to support what these extra duties were or when they were performed. Therefore, it is unclear whether these “extra duties” were performed during times when the Director and Planner were also being compensated by the County. Subsequent to the completion of fieldwork, we were provided with an invoice from the County Planner, dated March 16, 2012, that indicated the services provided to the ACIDA.³ This invoice did not indicate

¹ According to the ACIDA’s external auditors, based on estimates initially received from the CFO, approximately 30 percent of the Director’s and 50 percent of the Confidential Secretary’s compensation paid by the County is attributable to ACIDA activities. However, the County job description for Confidential Secretary and our conversations with the County Human Resources Department indicated that the County should not be compensating this individual for any IDA activities.

² The minutes refer to the payments as “stipends.” A stipend is a fixed or regular amount paid as a salary or allowance for services rendered. In this report, we refer to the stipends as compensation.

³ The invoice included the following descriptions:

29 hours - “Environmental reviews, meetings with IDA Board, Other Mtgs, GIS related services” at \$75 per hour.

10 hours - “Updates to the IDA Website” at \$32.50 per hour.

when these services were actually provided. As such, it is unclear whether these services were provided at times other than those for which the County Planner was compensated as a County employee.

The CFO is paid by the County on a part-time hourly basis as Confidential Secretary to the Director. Based upon the time sheets submitted to the County, we noted that the Confidential Secretary was compensated for an average of about 100 hours per month over the period examined (January 1, 2008, through August 31, 2012). Her County time records included notations where ACIDA tasks were being performed while she was being compensated by the County.⁴ The CFO attended ACIDA Board meetings during part of the workday for which she submitted hours to, and was compensated by, the County. As an example, on February 10, 2011, the ACIDA minutes noted that the CFO attended a Board meeting from 10:00 until 11:20 AM and was responsible for taking the minutes. No ACIDA time was noted on her calendar for that date. However, her time sheet submitted to the County noted that she worked from 9:00 until 5:00 that day and was compensated at the rate of \$20.05 per hour, for those hours. Therefore, time spent, apparently on ACIDA tasks, was paid for by the County.

The ACIDA also compensates the CFO \$10,000 annually.⁵ This compensation is not based on a set number of hours to be worked for the ACIDA. Subsequent to the completion of fieldwork, we were provided calendars indicating the hours the CFO worked for the ACIDA. For all the dates where hours were listed, there was no notation indicating what work was performed by the CFO. While the work hours listed on the calendars did not overlap with the hours noted on her County timesheets, it is unclear what duties the CFO performed for the ACIDA, since she documented many ACIDA activities on her County time sheet.

Having both entities compensating the same individuals for work hours and duties that are not clearly delineated creates a risk of double charging. This could be avoided by having one entity pay each individual a salary. Each of the employees should be required to document the services performed and the hours worked for the other entity to support a reimbursement from the other entity. In this way, compensation would be fixed and the cost would be allocated between the County and IDA, based upon time worked for each entity. When proper internal controls are not established, the likelihood of improper payments, fraud, or errors and irregularities occurring and not being detected and corrected is substantially increased.

⁴ Her County time records included notations such as “IDA Banking” and “IDA meeting.”

⁵ From July 2008 to May 2012, the CFO received compensation totaling \$42,500.

Recommendations

1. The Board should adopt written policies and procedures governing compensation paid to officers and employees to prevent the double-payment of compensation and ensure that all payments made have proper supporting documentation.
2. The Board should review compensation previously paid to ensure it was for work performed outside of these individuals' County job duties and hours. Compensation that was improperly paid for time charged to both the County and IDA should be recovered, if possible.
3. The IDA and County officials should establish a process where one entity handles payroll and allocates costs for reimbursement by the other entity, based upon hours worked.

Infrastructure Project

IDAs may provide “financial assistance” for certain types of projects and may acquire, construct, lease, maintain, equip or furnish certain projects in order to advance job opportunities, health, general prosperity and economic welfare. IDA officials should ensure that decisions are based on reasonable plans and that the impacts of the decisions are considered in the event projects do not move forward.

The Board was unable to demonstrate it had adequately evaluated the impact on the ACIDA and its bond holder, Allegany County (County), before approving a \$3.5 million speculative project involving the purchase of land and the installation of a water line. If potential commercial development does not progress, the ACIDA likely will not have a revenue stream from which to make required bond payments to the County or repay the nearly \$500,000 disbursed through July 31, 2012. As a result, there is a risk that County taxpayers could bear at least some of the costs incurred thus far for the project.

On January 12, 2012, the Board adopted a resolution authorizing the sale of \$3.5 million in ACIDA bonds⁶ for the purchase of 18.5 acres of land and the construction of a water line to this property. The parcel purchased by the ACIDA is on County Route 20, adjacent to Interstate 86, in the Town of Amity and is leased by the ACIDA to a private development corporation. As part of the lease agreement dated December 16, 2011, the corporation is expected to develop this property, including the construction of retail shops, a restaurant, and a hotel with banquet and meeting facilities. These development plans are contingent upon the developer receiving the necessary financing for the project and the ACIDA supplying water to the property. To provide the water, the County entered into a water supply agreement with the neighboring Town of Friendship. The ACIDA Board passed a resolution on January 12, 2012, reportedly authorizing the transfer of this agreement from the County to the ACIDA. We found that on June 10, 2010, approximately a year-and-a-half prior to that resolution, the ACIDA had formed the Allegany Crossroads Local Development Corporation (ACLDC) with the same officers as the ACIDA. The ACLDC was established to develop, own, and lease the water line. Minutes from an IDA board meeting indicate that this arrangement would eliminate the need for the creation of a water district, which would require the State Comptroller’s determination of whether the public interest would be served by establishment of the district and

⁶ Allegany County is the only bondholder for the entire \$3.5 million ACIDA obligation.

whether the cost would be an undue burden on the properties within the district.⁷

In addition, although a notice was published and public hearings on this project were held by the ACIDA in October 2011, the notice and hearings only addressed the County seeking grant funding for the water line. The notice did not describe the project, that bond financing was proposed by the ACIDA, or the amount of financing needed for the project. Moreover, although the ACIDA minutes from other meetings include discussion and resolutions relative to the project, the rationale for this project was never identified.

As of April 17, 2013, no improvements have been initiated by the developer. The terms of the lease allow the ACIDA to terminate the lease agreement if improvements were not begun by September 1, 2012. There was no indication that the Board adopted a reasonable plan regarding repayment on the bond to the County in the event that the proposed development does not progress. Provisions were included in the bond purchase and disbursing agreement stipulating that repayment to the County would be made solely from the revenues received by the ACIDA from the project. According to the Director, the ACIDA will not use the bond proceeds to construct the water line, estimated to cost approximately \$3 million, unless a signed commitment is in place with the developer, indicating that the developer has received the needed financing for the project from other sources, and work for the project is initiated by the developer.⁸ The Director indicated that if the developer does not initiate the project, the ACIDA will return the remaining bond proceeds⁹ to the County and either sell the land to repay the remaining portion of the debt or turn the property over to the County.

We question the reasonableness of this repayment plan. Both the ACIDA Board and the County Legislature approved the purchase of the approximate 18.5 acres of vacant land for \$286,500. In addition to the land, the ACIDA disbursed another \$206,000 as of July 31, 2012, for professional services and fees, including \$35,000 to the ACIDA for managing this project. As a result, if the project does not move forward, the ACIDA will not have a revenue stream from which to repay the County the nearly \$500,000 in bond proceeds it has already disbursed. If the land cannot be sold for an amount close to what the

⁷ The County applied for but did not receive the Comptroller's approval for the establishment of a county water district for this area.

⁸ The bond purchase agreement includes a provision requiring a determination be made by the ACIDA "... that a sufficient number of users will be available to repay the Bond ... with documentation showing sufficient revenue."

⁹ The residual bond proceeds of \$3 million reside in two bank accounts in the ACIDA's name. Disbursements from these accounts must be approved by the ACIDA and the County. The County Treasurer is the signatory.

ACIDA paid for it, the County may suffer a loss on its investment in ACIDA bonds.

Recommendation

4. When considering a project where the proceeds of ACIDA bonds, purchased by the County, are used to fund infrastructure improvements intended to facilitate future private commercial development, the Board should ensure that there is a reliable plan in place to generate revenues for repayment of the bonds.

Constructing County Office Building

As noted, IDAs may acquire and construct certain types of facilities in order to advance job opportunities, health, general prosperity and economic welfare. To fulfill these purposes, the Board of an IDA is authorized to acquire, construct, lease, maintain, equip or furnish projects, which are statutorily¹⁰ defined and do not include a building to be used solely for County office space.

The Board failed to use appropriate evaluation criteria to ensure that an authorized IDA purpose was furthered before it approved the construction of a facility with the sole function of housing various departments of County government. According to Board minutes from November 2007, “a proposal was presented for a partnership with Houghton Foundation and an offer was made for \$600,000 with an in-kind amount of \$200,000 from the Foundation, for a net cost to the IDA of \$400,000. This proposal would include a 7-year lease from Allegany County at \$100,000 per year with the understanding to build a 7,600 square foot addition for the Senior Center and an additional 6,000 square feet for the Office of Aging and Veteran’s Office. A floor plan was distributed designed by MRB Engineering Group.”

ACIDA officials, after meeting with County officials, made a purchase offer on the property where the ACIDA’s offices were located. Included in this proposal was the understanding that the ACIDA would construct a new facility specifically designed to house the two County departments. On April 27, 2009, a resolution concerning the lease agreement was approved stating that the County would occupy the new facility the day construction was complete. The lease agreement¹¹ included monthly rental payments from the County to the IDA of \$8,500.¹² After receiving financing of approximately \$760,000 on December 21, 2010, the IDA constructed the new facility, which is now occupied by only County departments. As such, this is not the type of IDA project permitted by statute.

In addition, although building construction may increase employment opportunities through the creation of temporary construction jobs, simply relocating existing government jobs that would exist without IDA involvement to a newly constructed facility does not fulfill the IDA’s job development objective. Therefore, the Board failed in its

¹⁰ GML Sections 854 and 858; Opinions of the State Comptroller No. 91-13

¹¹ Dated March 23, 2009, prior to the County Legislature’s resolution authorizing the lease agreement

¹² Through May 31, 2014

oversight role of ensuring its projects have the potential to create new permanent employment opportunities.

Recommendation

5. The Board should establish written procedures to ensure that the review and approval of each project is for a permissible IDA project and adequately identifies the potential for achieving authorized goals of the IDA.

APPENDIX A

RESPONSE FROM LOCAL OFFICIALS

The local officials' response to this audit can be found on the following pages.



INDUSTRIAL DEVELOPMENT AGENCY
Crossroads Commerce & Conference Center
6987 State Route 19 N – Suite 100
Belmont, NY 14813-1039

1-800-893-9484
585-268-7472
585-268-7473 Fax
development@alleganyco.com

April 29, 2013

Robert E. Meller
Chief Examiner of Local Government and School Accountability
State of New York Office of the State Comptroller
Buffalo Regional Office
295 Main Street, Suite 1032
Buffalo, NY 14203-2510

Dear Mr. Meller:

We have reviewed the updated Draft Audit of the Allegany County Industrial Development Agency (the “ACIDA” or the “Agency”) prepared by the Office of the State Comptroller (OSC). We appreciate the effort the staff has made to respond to the ACIDA’s concerns and the suggestions made to improve the Agency’s internal controls. We write to note a few factual errors and points of clarification, which we are prepared to discuss at your convenience.

Turning to each of the three areas highlighted in the report.

I. Stipend Payments

Over the years the ACIDA has been largely staffed by County personnel. This has included the position of the Confidential Secretary, who acts as the Agency’s Chief Financial Officer (“CFO”). As the Agency’s financial health has improved, the Agency has attempted to expand its financing of certain activities to relieve pressure on taxpayer resources, particularly of expanded duties necessary to meet state imposed filing requirements such as the PARIS system. The ACIDA will not draw back from that effort, but will review its procedures with its auditor to ensure proper procedures are in place.

The audit suggests the County does not pay for ACIDA work done by the CFO, but in fact the CFO’s County job description includes some of the CFO’s duties, for example “Maintains office accounts - payables and revenues, completes office payroll via employee time sheets received,” – the office in which she is employed is the ACIDA office too. The County job description includes interaction with state officials and notes she is repository for the records. Contrary to the notation in the draft audit, we spoke with the County Administrator and the County Human Resources Department and confirmed that the CFO activities (including those noted in the footnotes) are consistent with those listed in the job description and have been funded for many years by the County.

See
Note 1
Page 20

The draft report inaccurately alleges that “Internal controls over compensation paid to ACIDA officials were not properly designed and operating effectively.” This is an inaccurate statement that fails to recognize that the ACIDA has very few financial transactions and employees and that the Board members and Executive Director are well aware of the activities of the employees. We concur that written job duties should be prepared, but the failure of the OSC to recognize the dual and often overlapping roles of the Executive Director on behalf of the ACIDA and County apparently generates

the audit’s misdirected belief that these are separate positions. The ACIDA will not surrender the cost savings that results from this dual execution of the positions. In evaluating internal controls, the size of an entity and its ability to cost effectively implement controls must be acknowledged.

See
Note 2
Page 20

Accordingly, we would like to discuss with you your recommendation that the “The IDA and County officials should establish a process where one entity handles payroll and allocates costs for reimbursement by the other entity, based upon hours worked,” as the duties are often mixed. We believe the current arrangement creates the savings from shared services that the Governor and Comptroller frequently call upon public entities to embrace, and the ACIDA will amend its procedures to the extent any confusion remains about compensation.

Another error is the assertion that the job description for the CFO is deficient because it does not indicate the normal work hours for that position. We are unaware of any legal requirement to dictate specific hours, and note that the ACIDA and County taxpayers have benefitted from the countless hours of weekend and evening work the CFO has provided. Frankly, we are at a loss to understand why the OSC would suggest limiting the potential members of the workforce who could assume this position by unnecessary dictation of specific working times rather than the flexible approach currently employed. We are open to discuss this with you further so we can understand the OSC’s opposition to flexible time schedules and the employment opportunities and cost savings they present.

See
Note 3
Page 20

See
Note 4
Page 20

Also inaccurate, are the comments that the extra duties of the staff were undocumented, as – and, again remembering the small size of this Agency - these were known to the Board. For example, the Planning Director was paid for extra environmental studies for the Crossroads water line and for maintaining the ACIDA website. These were documented by a separate invoice, as acknowledged in the audit. Since the payment was in the ACIDA records compiled by the CFO, and the Executive Director approved the invoice based on his knowledge of the above two tasks – and the Board itself had knowledge of the environmental reports and the changes in the web site - the assertion that there was no evidence of the work is inaccurate.

See
Note 5
Page 20

We request the following sentence be deleted. The draft report inaccurately states “When asked, neither the Director nor the CFO could provide any documentation to support what these extra duties were or when they were performed.” Later in the same paragraph you note the invoice was provided on what the ACIDA knows to have been the first actual request for it. The inclusion of this sentence creates a conflict between OSC staff and the Agency staff as to when the invoice was requested that seems unnecessary in regard to your eventual conclusions and recommendations. We, therefore, request its deletion - unless of course you have some written proof you could share with us that this request was made? The ACIDA does acknowledge the need to clearly demonstrate that such work was not done while the employee was compensated by the County – as was confirmed in this case by the Executive Director – and will work with our auditor to put more formal procedures in place. But it is not acceptable to criticize the Agency based on the personal memory of the OSC staff but then fault the Agency by discounting the personal knowledge of the Agency staff.

See
Note 6
Page 20

II. Infrastructure Projects

The powers of an industrial development agency are outlined in General Municipal Law Section 858. In its opening paragraph the audit confuses financial assistance to private companies with facilities constructed and operated by an agency itself, and for which the applicable procedures are different. From this initial error flows a torrent of misunderstanding. Other errors appear to flow from a misunderstanding of the Project’s actual status.

See
Note 7
Page 21

This is not the only legal error. The audit asserts a local development corporation will own the facilities, when, by state law, a transportation corporation (yet to be formed) is required.

See
Note 8
Page 21

And as to that Crossroads review, we respectfully disagree with OSC's conclusion, and note that OSC staff:

- did not speak to the ACIDA's financial advisor – one of the most respected in the State - who recommended the project in a public County Legislative session, and who was involved in establishing the repayment regime.

See
Note 9
Page 21

- did not acknowledge the County Bond Counsel's review.

See
Note 10
Page 21

- did not interview the engineer on the Project and thus the review fails to note that the preliminary reviews are still on-going, and therefore any comments on the failure to move forward inaccurately states that it is due to the failure of the designated developers.

See
Note 11
Page 21

- did not inquire as to the status of the inter-municipal agreements or the establishment, with the approval of the Public Service Corporation of the transportation corporation. The Draft report inaccurately states that State approval is not required.

- made no inquiry as to the other sources of revenues available. The Executive Director disputes the comment made as to "that if the developer does not initiate the project, the ACIDA will return the remaining bond proceeds to the County, and either sell the land to repay the remaining portion of the debt or turn the property over to the County." The actual question posed was "what happens if nothing happens;" thus the reply ignored the various alternatives that the ACIDA has. In fact, the ACIDA already has one \$150,000 grant in hand (which receives no mention), has other grant sources available, and is not locked into just one developer (which developer has informed the ACIDA it has signed up a hotel as lead tenant).

See
Note 12
Page 21

The OSC has every right to offer its opinion on the plan, but we request that it re-evaluate its opinion based on the correct application of New York law (and thus which procedures are applicable) and the actual facts of the Project.

III. Expansion of Crossroads Commerce & Conference Center

The ACIDA respectfully disagrees with your conclusion that the expansion of the Commerce & Conference Center was an inappropriate ACIDA activity, because

See
Note 13
Page 21

1. The project is a work force development project.
2. There is high degree of importance in the retention and creation of private employment in Allegany County to have a fully functioning Office of the Aging and Veteran affairs.
3. The IDA statute includes as a purpose both the creation and retention of employment.
4. The construction of the office creates a centralized, convenient and efficient Office of the Aging and Veteran affairs. It will result in better service to the workers in Allegany County, and, therefore, will assist in retention and creation of private employment in Allegany County.
5. The construction of the office complex will also assist in the employment levels of the County workforce.

See
Note 14
Page 22

See
Note 15
Page 22

6. Any increase in efficiencies may lessen the tax burden, thereby making the economic development climate better in Allegany County.
7. The Crossroads Project is in part an effort to build up a hamlet area, and at the time of the construction, there was a restaurant and medical center at the Crossroads area and private and public businesses regularly using the Center.

The OSC is entitled to its opinion, but this has been a successful investment in Allegany County's growth.

In summary, the ACIDA will incorporate those recommendations which will forward our mission to the public and appreciates OSC's efforts to help it do so.

Thank you for your attention to this matter.

Regards,

ALLEGANY COUNTY INDUSTRIAL DEVELOPMENT AGENCY

CHARLES O. JESSUP
Chairman

APPENDIX B

OSC COMMENTS ON THE IDA'S RESPONSE

Note 1

As indicated in the report, there are written job descriptions for both the Secretary to the Director of Development, a county position, as well as the IDA Chief Fiscal Officer, an ACIDA position.

We obtained the suggested job duties submitted by the ACIDA Director when the position of Secretary to the Director of Development was created, and the final version of the job description. All references concerning IDA-specific activities that were in the proposed version were removed from the final job description.

Note 2

The same person holds two separate positions and is referred to as the Director of Development, a County position, and the Executive Director of the ACIDA.

Note 3

Generally, compensation is based upon an expected amount of work to be performed. We are not referring to any legal requirement here.

Note 4

As we indicate in the report, work hours and duties that are not clearly delineated create a risk of double charging. We are recommending that work hours be documented, not dictating what the work hours should be.

Note 5

While the hours worked may or may not have been known by the Board, they were not documented, as we indicate in our report.

Note 6

On September 26, 2012, the ACIDA Director told us that proper records to substantiate the payments for extra work performed were not maintained.

After field work was completed, IDA officials forwarded a copy of an invoice prepared by the County Planner to us to substantiate the payment made to him for extra work. We described this document in the report.

Note 7

It is not clear that this project will be constructed and operated by the IDA itself inasmuch as the minutes of IDA Board meetings indicate that the ACLDC will develop, own, and lease the water lines. Nonetheless, we have deleted the reference to statutory public hearing requirements since the primary focus of the comment is economic risks, rather than legal compliance with public hearing requirements.

Note 8

Minutes from IDA Board meetings of February 10, 2011, and August 18, 2011, indicate that the ACLDC will own the water line. A resolution passed at a later Board meeting, on March 29, 2012, requested the creation of a transportation corporation.

Note 9

Since the County purchased the IDA bond as an investment, it might have been prudent for the County to consult with its own advisor.

Note 10

Since the IDA, not the County, was the issuer, the purpose of the County's bond counsel review is unclear.

Note 11

Minutes from the County Planning and Economic Development Committee meeting of February 20, 2013, indicate that the Director stated a key component in the delay has been the financing.

Note 12

Our mention of "State approval" was intended as a reference to the requirement for obtaining the State Comptroller's approval of the establishment of County water districts, when the issuance of County debt is proposed and the cost to the typical property exceeds the annual cost threshold. We amended the report to cite Board minutes from August 18, 2011, which indicate that the use of the ACLDC "eliminates the need" for the Comptroller's approval of a County water district.

Note 13

We disagree that our conclusion was inappropriate. IDAs fulfill their statutory purposes by providing financial assistance for, or constructing, "projects," as defined in GML. A building constructed for use solely for County office space does not fit within any of the listed types of permissible IDA "projects," even if the facility arguably contributes to workforce development, job retention or creation, or is part of a larger overall development plan. In particular, a county office building is not suitable for "manufacturing, warehousing, research, commercial, industrial or for any other purposes listed within the definition of "project."

At the exit conference, it was suggested that the IDA statute previously included “civic facilities” within the definition of IDA “project.” “Civic facility” was defined as a facility “owned or occupied by a not-for-profit corporation.” The definition of “civic facility” expressly excluded “any public facility for use by a municipality in the performance of its governmental functions.” The “civic facility” provision has expired and the IDA’s attorney argued that the effect of the expiration of the express prohibition against financing a municipal facility as a “civic facility” was to make it permissible for an IDA to finance a municipal facility. We do not agree. The impact of the expiration of the “civic facility” provision is that IDAs can no longer finance projects “owned or operated by a not-for-profit corporation,” unless the project fits within some other listed category of IDA “project.” The expiration of the authority for IDAs to finance “civic facilities” projects in no way implies that IDAs now have affirmative authority to finance facilities, such as office buildings, used by municipalities in the performance of their governmental activities.

Note 14

We are aware of no separate grant of authority for an IDA to undertake a “workforce development” project outside the context of the definition of “project” in GML.

Note 15

While the project may have furthered the retention or creation of jobs, centralized, increased efficiencies in, and improved the delivery of County services, or contributed to the economic growth of the County, it does not, by itself, make this venture a proper IDA project.

APPENDIX C

AUDIT METHODOLOGY AND STANDARDS

Our overall goal was to assess the adequacy of the internal controls put in place by officials to safeguard assets and monitor the financial activities of the ACIDA. To accomplish this, we performed an initial assessment of the internal controls so that we could design our audit to focus on those areas most at risk.

During the initial assessment, we interviewed ACIDA officials, performed limited tests of transactions, and reviewed pertinent documents such as ACIDA applications, policies and procedures, Board minutes, and financial records and reports. After reviewing the information gathered during our initial assessment, we determined where weaknesses existed, and evaluated those weaknesses for the risk of potential fraud, theft and/or professional misconduct. We then decided upon the reported objective and scope by selecting for audit those areas most at risk. We selected stipend payments and the approval and monitoring process of certain projects for further testing.

To accomplish the objective of this audit and obtain valid audit evidence, our procedures included the following steps:

For compensation we:

- Interviewed local officials to gain an understanding of the practices and procedures for employee compensation
- Examined cancelled checks to determine the compensation paid
- Reviewed the CFO's monthly financial reports to determine if payments made were recorded and reported to the Board properly
- Reviewed meeting minutes and interviewed local officials to determine if payments made were approved by the Board
- Reviewed time records to determine if the hours worked by the CFO were submitted to the County for payment or if evidence of the "extra duties" performed by the Director and County planner was documented.

For the infrastructure project we:

- Reviewed Board minutes and documented estimated project costs
- Reviewed meeting minutes and development contracts and interviewed ACIDA officials to document the purpose of the project and whether an appraisal was done prior to the purchase of the land
- Researched the average selling price per acre for vacant land in Allegany County

- Reviewed meeting minutes and cancelled checks to document the land purchase
- Reviewed the purpose of disbursements from the account established for debt proceeds
- Reviewed the bond sale documents to determine repayment terms
- Reviewed the “Ground Lease” agreement between the ACIDA and the developer
- Requested ACIDA Board members and officials complete conflict of interest forms to determine if any have private business interests with construction companies or service vendors for the project
- Interviewed ACIDA officials to determine if construction was started by the developer and debt repayment plans if the development does not progress.

For the building construction project we:

- Reviewed Board minutes for evidence of project evaluation criteria used for the approval of the new building project and to document the purpose of building construction
- Reviewed General Municipal Law Article 18-a and consulted with our Legal Division regarding allowable IDA projects
- Reviewed Board minutes and mortgage notes to document the amount of debt issued for the building project
- Reviewed the signed lease agreement between the ACIDA and the County to document the current residents of the new building and expected lease payments
- Requested ACIDA Board members and officials complete conflict of interest forms to determine if any have private business interests with construction companies or service vendors for the project.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

APPENDIX D

HOW TO OBTAIN ADDITIONAL COPIES OF THE REPORT

To obtain copies of this report, write or visit our web page:

Office of the State Comptroller
Public Information Office
110 State Street, 15th Floor
Albany, New York 12236
(518) 474-4015
<http://www.osc.state.ny.us/localgov/>

APPENDIX E
OFFICE OF THE STATE COMPTROLLER
DIVISION OF LOCAL GOVERNMENT
AND SCHOOL ACCOUNTABILITY

Andrew A. SanFilippo, Executive Deputy Comptroller
Nathalie N. Carey, Assistant Comptroller

LOCAL REGIONAL OFFICE LISTING

BINGHAMTON REGIONAL OFFICE

H. Todd Eames, Chief Examiner
Office of the State Comptroller
State Office Building - Suite 1702
44 Hawley Street
Binghamton, New York 13901-4417
(607) 721-8306 Fax (607) 721-8313
Email: Muni-Binghamton@osc.state.ny.us

Serving: Broome, Chenango, Cortland, Delaware,
Osego, Schoharie, Sullivan, Tioga, Tompkins Counties

BUFFALO REGIONAL OFFICE

Robert Meller, Chief Examiner
Office of the State Comptroller
295 Main Street, Suite 1032
Buffalo, New York 14203-2510
(716) 847-3647 Fax (716) 847-3643
Email: Muni-Bufferalo@osc.state.ny.us

Serving: Allegany, Cattaraugus, Chautauqua, Erie,
Genesee, Niagara, Orleans, Wyoming Counties

GLENS FALLS REGIONAL OFFICE

Jeffrey P. Leonard, Chief Examiner
Office of the State Comptroller
One Broad Street Plaza
Glens Falls, New York 12801-4396
(518) 793-0057 Fax (518) 793-5797
Email: Muni-GlensFalls@osc.state.ny.us

Serving: Albany, Clinton, Essex, Franklin,
Fulton, Hamilton, Montgomery, Rensselaer,
Saratoga, Schenectady, Warren, Washington Counties

HAUPPAUGE REGIONAL OFFICE

Ira McCracken, Chief Examiner
Office of the State Comptroller
NYS Office Building, Room 3A10
250 Veterans Memorial Highway
Hauppauge, New York 11788-5533
(631) 952-6534 Fax (631) 952-6530
Email: Muni-Hauppauge@osc.state.ny.us

Serving: Nassau and Suffolk Counties

NEWBURGH REGIONAL OFFICE

Tenneh Blamah, Chief Examiner
Office of the State Comptroller
33 Airport Center Drive, Suite 103
New Windsor, New York 12553-4725
(845) 567-0858 Fax (845) 567-0080
Email: Muni-Newburgh@osc.state.ny.us

Serving: Columbia, Dutchess, Greene, Orange,
Putnam, Rockland, Ulster, Westchester Counties

ROCHESTER REGIONAL OFFICE

Edward V. Grant, Jr., Chief Examiner
Office of the State Comptroller
The Powers Building
16 West Main Street – Suite 522
Rochester, New York 14614-1608
(585) 454-2460 Fax (585) 454-3545
Email: Muni-Rochester@osc.state.ny.us

Serving: Cayuga, Chemung, Livingston, Monroe,
Ontario, Schuyler, Seneca, Steuben, Wayne, Yates Counties

SYRACUSE REGIONAL OFFICE

Rebecca Wilcox, Chief Examiner
Office of the State Comptroller
State Office Building, Room 409
333 E. Washington Street
Syracuse, New York 13202-1428
(315) 428-4192 Fax (315) 426-2119
Email: Muni-Syracuse@osc.state.ny.us

Serving: Herkimer, Jefferson, Lewis, Madison,
Oneida, Onondaga, Oswego, St. Lawrence Counties

STATEWIDE AUDITS

Ann C. Singer, Chief Examiner
State Office Building - Suite 1702
44 Hawley Street
Binghamton, New York 13901-4417
(607) 721-8306 Fax (607) 721-8313