



Village of Fairport Industrial Development Agency Board Governance

Report of Examination

Period Covered:

October 1, 2012 — March 12, 2015

2015M-195



Thomas P. DiNapoli

Table of Contents

	Page
AUTHORITY LETTER	1
EXECUTIVE SUMMARY	2
INTRODUCTION	4
Background	4
Objective	5
Scope and Methodology	5
Comments of Agency Officials and Corrective Action	6
BOARD GOVERNANCE	7
Governance Structure	8
Authorized Activities and Financial Assistance	10
Commingled Accounts and Records	14
Recommendations	19
APPENDIX A Response From Agency Officials	21
APPENDIX B OSC Comments on the FIDA's Response	27
APPENDIX C Audit Methodology and Standards	30
APPENDIX D How to Obtain Additional Copies of the Report	32
APPENDIX E Local Regional Office Listing	33

State of New York Office of the State Comptroller

Division of Local Government and School Accountability

March 2016

Dear Agency Officials:

A top priority of the Office of the State Comptroller is to help local officials manage government resources efficiently and effectively and, by so doing, provide accountability for public dollars spent to support government operations. The Comptroller oversees the fiscal affairs of local governments and certain other public entities 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 governmental assets.

Following is a report of our audit of the Village of Fairport Industrial Development Agency, entitled Board Governance. This audit was conducted pursuant to the State Comptroller's authority as set forth in Article X, Section 5 of the State Constitution and Article 3 of the New York State General Municipal Law.

This audit's results and recommendations are resources for agency 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

An industrial development agency (IDA) is an independent public benefit corporation established by a special act of the New York State Legislature for the benefit of a municipality and its residents. The purpose of an IDA is to promote, develop, encourage and assist in acquiring, constructing, improving, maintaining, equipping and furnishing industrial, manufacturing, warehousing, commercial, research and recreation facilities. The overall goal of an IDA is to advance job opportunities and the health, general prosperity and economic welfare of the people of the State. The Village of Fairport Industrial Development Agency (FIDA) is a public benefit corporation created by State legislation in 1976. The FIDA is governed by a Board of Directors (Board) whose five members are appointed by the Village Board. The Board is ultimately responsible for protecting FIDA assets and ensuring the prudent and economical use of its moneys.

The FIDA offers assistance, including commercial loans and exemption from certain taxes, to attract, retain and expand businesses within the Village of Fairport (Village). The FIDA has taken ownership of various properties, which it leases to businesses establishing or expanding business activities in the Village. The FIDA also operates in conjunction with the Village of Fairport Urban Renewal Agency (FURA) and the Village of Fairport Local Development Company (FLDC). These three entities have been termed the Village of Fairport Office of Community and Economic Development (OCED).

The FIDA's Executive Director (Director) is also the Director of the FURA and the FLDC. The Director is responsible for directing operations related to the execution of Board policy, planning, finances and personnel. For the fiscal year ended September 30, 2014, the FIDA had total expenses of approximately \$510,000 and revenues totaling \$335,000.

Scope and Objective

The objective of our audit was to evaluate the propriety of the FIDA's financial and operational activities for the period October 1, 2012 through March 12, 2015. Our audit addressed the following related question:

- Did the Board and Director implement a sound governance structure and manage the FIDA's operations consistently with governing statutes?

Audit Results

The Board and Director did not manage FIDA operations within the authority provided by law. The FIDA's governance structure was highly inappropriate and not consistent with applicable legislation

for IDAs. The Board manages the FIDA as if it is a department of the OCED – an overarching umbrella in name only – which includes the separate and distinct corporate entities of the FIDA, the FURA and the FLDC. Each of these entities has its own distinct statutory purposes, responsibilities, powers and duties. This governance structure inappropriately gives the appearance that the three entities are affiliates of each other or subsidiaries of the OCED.

This intertwined governance structure has caused the FIDA to act outside its statutory authority. At the end of 2014, the FIDA's unrestricted net assets totaled approximately \$2.2 million, which was more than six times its 2014 budget of approximately \$343,000. The FIDA accumulated this large balance by retaining additional rent payments from long-term lease agreements that were executed prior to statutory amendments that require IDAs to return such funds to the affected taxing jurisdictions.¹ In 2014, the FIDA made an annual contribution to the Village totaling \$42,240 but had no basis for the budgeted amount or contract stipulating services to be covered by this contribution. The FIDA inappropriately gifted assets and made advances for commercial loans to the FLDC totaling approximately \$824,000. The FIDA also made commercial loans of its own moneys without statutory authority; it had two questionable outstanding loans with balances totaling \$187,000 as of November 30, 2014. In addition, the FIDA inappropriately subsidized the FURA by a total of \$250,000 from 2010 through 2014 and inappropriately recorded \$350,000 as due to the FURA to make it appear that it had outstanding debt. Furthermore, these improper governance practices have led to inappropriately commingled bank accounts and combined and inaccurate accounting records for the three OCED entities, as well as significantly misstated annual financial statements.

Comments of Agency Officials

The results of our audit and recommendations have been discussed with Agency officials and their comments, which appear in Appendix A, have been considered in preparing this report. Agency officials disagreed with certain aspects of our audit findings and recommendations but indicated their intent to implement corrective action for many of them. Appendix B contains OSC's comments on the issues raised in the Agency's response.

¹ See the section titled *Lease and PILOT Agreements* for a more detailed explanation.

Introduction

Background

An industrial development agency (IDA) is an independent public benefit corporation created to promote, develop, encourage and assist in acquiring, constructing, improving, maintaining, furnishing or equipping certain 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 General Municipal Law (GML). Typically, projects that receive IDA financial assistance involve the acquisition, construction or major renovations of buildings and equipment and generate short-term and long-term employment in jobs related to construction and operations.

The Village of Fairport IDA (FIDA) was created in 1976 by an act of the New York State Legislature for the benefit of the Village of Fairport (Village) and its inhabitants by accomplishing any or all of the purposes specified in GML for IDAs. The benefits available to businesses that receive financial assistance from the FIDA include exemptions from mortgage, recording, sales and real property taxes and financing through the proceeds of IDA bonds.² The FIDA also collaborates with the Village on various projects and property improvements that often include FIDA funding and municipal grants through the Village. For the fiscal year ended September 30, 2014, the FIDA reported total expenses of approximately \$510,000 and revenues totaling \$335,000. The FIDA's revenues are derived primarily from lease agreements, loan repayments and associated interest.

The FIDA's Board of Directors (Board) is composed of five directors who are appointed by the Village Board. The Board is responsible for the general management and control of the FIDA's financial and operational affairs. The FIDA's day-to-day operations are the responsibility of its Executive Director (Director).³ The FIDA operates as part of the Village of Fairport Office of Community and Economic Development (OCED). The OCED acts as an umbrella organization⁴ that oversees the operations of the FIDA, the Village of

² Often low-interest or tax exempt

³ The Executive Director of OCED (as listed on the FURA's page of the OCED website) is shared between the three OCED entities. However, her salary is only allocated between the FURA and the FIDA.

⁴ The OCED is not a corporate entity or a Village department; however, it acts like it is governing three separately incorporated entities. This structure gives the appearance that the FURA, the FIDA and the FLDC are legally affiliated with each other or subsidiaries or departments of the OCED when, in fact, they are separate corporate entities. The OCED's website previously referred to itself as a non-profit organization that is overseeing three different programs.

Fairport Urban Renewal Agency (FURA)⁵ and the Village of Fairport Local Development Corporation (FLDC).⁶ A FURA employee enters daily financial transactions for all OCED entities. The OCED has also contracted with an external accountant to separate the activities of the three entities into three general ledgers.

As part of the Public Authorities Reform Act of 2009, the State created an oversight body known as the Authorities Budget Office (ABO) to monitor the operations of authorities. As part of its oversight responsibilities, the ABO receives annual reports⁷ from State and local authorities and contacts the authorities as deemed necessary. The ABO is charged with verifying the existence of authorities listed in State law. In October 2011, the ABO informed the FIDA that it no longer met the provisions of Section 882 of GML,⁸ which meant that – absent any outstanding debt – the FIDA should no longer be in operation.⁹

Objective

The objective of our audit was to evaluate the propriety of the FIDA’s financial and operational activities. Our audit addressed the following related question:

- Did the Board and Director implement a sound governance structure and manage the FIDA’s operations consistent with governing statutes?

Scope and Methodology

We examined the FIDA’s financial and operational activities for the period October 1, 2012 through March 12, 2015. We extended our scope for certain financial information back to the 2007-08 fiscal year for trend analysis and to review significant information regarding the FIDA’s existence.

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). More information on such

⁵ The FURA was established by an act of the New York State Legislature in 1965.

⁶ The FLDC was incorporated as a local development corporation in April 2012 under New York State Not-For-Profit Corporation Law.

⁷ The Public Authorities Reporting Information System report to the ABO provides a summary of the FIDA’s annual financial information.

⁸ According to Section 882 of GML (at the time of the ABO’s letter to the FIDA), when “all the bonds or notes issued by the agency have been redeemed or cancelled, the agency shall cease to exist.” In 2012, Section 882 was amended to provide that an IDA shall cease to exist when all of its bond or notes have been redeemed or cancelled “and all straight-lease transactions have been terminated...”

⁹ To the extent that the ABO has questioned the FIDA’s existence and the issue remains open, the FIDA should resolve this issue with the ABO. However, for purposes of the audit, we have presumed that the IDA is a going concern. The Director also indicated that the FURA had received similar correspondence from the ABO.

standards and the methodology used in performing this audit are included in Appendix B of this report. Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the intent to project the results onto the entire population. Where applicable, information is presented concerning the value and/or size of the relevant population and the sample selected for examination.

**Comments of
Agency Officials and
Corrective Action**

The results of our audit and recommendations have been discussed with Agency officials, and their comments, which appear in Appendix A, have been considered in preparing this report. Agency officials disagreed with certain aspects of our audit findings and recommendations but indicated their intent to implement corrective action for many of them. Appendix B contains our comments on the issues raised in the Agency's response.

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 FIDA's office.

Board Governance

The Board is ultimately responsible for ensuring that the FIDA's operations are efficient and effective and within the FIDA's statutory authority. The Director is responsible for overseeing the FIDA's day-to-day operations, including executing Board policies, leading operations and guiding personnel. Together, the Board and Director (Management) can achieve these responsibilities by implementing a corporate governance structure – including rules, policies and management practices – to help the FIDA conduct business consistent with its corporate and public responsibilities. These governance principles establish the culture, values, organizational structure and control systems that promote accountability and integrity; set a standard of ethical behavior; support comprehensive, accurate and transparent reporting; and provide an objective review of financial practices. When followed, effective corporate governance contributes to public confidence in the organization's performance and decision making.

We found that Management did not implement a sound governance structure or adequately oversee and manage the FIDA's operations. While the Board was involved in overseeing FIDA operations, we found that its governance structure was highly inappropriate and not consistent with the statutory scheme governing IDAs. The Board manages the FIDA as if it is a department of OCED – an overarching umbrella organization in name only – which includes the separate and distinct corporate entities of the FIDA, the FURA and the FLDC.

The FIDA and the FURA are public benefit corporations while the FLDC is incorporated under Not-For-Profit Corporation Law. Each of these entities has its own distinct statutory purposes, responsibilities, powers and duties. This governance structure gives the appearance that the three entities are legally affiliated with each other or subsidiaries of the OCED, which runs counter to the statutory scheme for establishment and operation of the FIDA, the FURA and the FLDC as separate corporate entities. This governance structure also violates the Public Authorities Accountability Act of 2005,¹⁰ which prescribes various reporting and governance requirements for “every” local authority, not a single requirement for several local authorities acting as a consolidated entity.

¹⁰ New York State Public Authorities Law (PAL) Section 2(2); L 2005, ch 766, as amended

This intertwined governance structure has caused the FIDA to act outside its statutory authority or pursue unconventional and potentially inequitable activities or projects. Because the FIDA retains additional rent payments from businesses it provides assistance to instead of returning these funds to the affected taxing jurisdictions, the FIDA has accumulated a large net asset balance. At the end of 2014, its unrestricted net assets totaled approximately \$2.2 million, which was more than six times its 2014 budget of approximately \$343,000. The FIDA made an annual contribution to the Village which totaled \$42,240 for the 2014 fiscal year without a basis for the budgeted amount or contract stipulating services to be covered by this contribution.

The FIDA made unauthorized gifts totaling approximately \$824,000 to the FLDC. The FIDA also made commercial loans of its own money without statutory authority; it had two questionable outstanding loans with balances totaling \$187,000 as of November 30, 2014. In addition, the FIDA inappropriately subsidized the FURA by a total of \$250,000 from 2010 through 2014 and inappropriately recorded \$350,000 as due to the FURA to make it appear that it had outstanding debt. Management's improper practices also have led to inappropriately commingled bank accounts and combined and inaccurate accounting records for the three OCED entities, as well as significantly misstated annual financial statements.

Governance Structure

The FIDA and the FURA were established by special acts of the New York State Legislature in 1976 and 1965, respectively. They are local authorities¹¹ that are set up to be separate public benefit corporations, with separately appointed governing boards and separate and distinct purposes, powers and duties. By statutory design, they are independent from each other and the Village. The FLDC was incorporated as a private not-for-profit corporation in April 2012.

All three entities are essentially managed and operated by the same people,¹² under the same policies and with commingled accounting records and bank and investment accounts. The Village Board appoints the same individuals to the five-member Board of Directors for each of the three OCED entities. In 2012, the Village Board appointed the newest member to what the Village's minutes referred to as the OCED Board rather than specifically to the FIDA Board. The fact that the same Board members manage three separate corporate entities raises

¹¹ For purposes of PAL

¹² The same OCED staff handle the operations of all three entities, with the exception of three FURA employees whose assigned duties strictly relate to the Section 8 Housing Program, and all are officially employed by the FURA.

question as to their independence and ability to objectively manage each separate entity in its best interests.¹³

PAL provides that Board members of local authorities must, among other things, “apply independent judgment in the best interest of the authority, its mission and the public” and that each execute an acknowledgement to the effect that he or she “understands his or her duty of loyalty and care to the organization and commitment to the authority’s mission and the public interest.” These functions are targeted to each separate local authority, and there is no implication that a single oversight entity could perform these functions on behalf of several local authorities. PAL also requires each local authority to establish its own audit and governance committees comprised of independent members. However, here it is the OCED, not the FIDA itself, which has created a single audit committee and governance committee for all three entities. Furthermore, the policies that have been developed and adopted by the Board are identified as policies of the OCED, not of the separate entities.¹⁴

The Board entered into a contract between the FIDA and the FURA¹⁵ for leased employee services that provided for three FURA employees¹⁶ to work for the FIDA, with the employees’ time and wages allocated between the two entities.¹⁷ However, the employee lease agreement allocated the shared staff and Director’s employment costs based on a time study that was performed in July 2010, prior to the creation of the FLDC. Therefore, the agreement does not accurately reflect current time demands and is not equitable. Additionally, the part-time administrative assistant’s employment costs were allocated 50 percent to the FIDA when the time study indicated it should have been 91 percent. The OCED completed an updated time study in January 2015, but still excluded the FLDC from the study.¹⁸ We reviewed

¹³ It is within the jurisdiction of the New York State Attorney General’s Office to issue opinions regarding the compatibility of offices, which warrants resolution related to the various Board members and their service as Board members for the other entities.

¹⁴ Except that most of the FLDC’s policies are specific to that entity; only the FLDC’s online banking and real property acquisition policies are shared with the other OCED entities.

¹⁵ The FURA employs four full-time and two part-time employees.

¹⁶ The three employee titles included in the contract were Executive Director, IDA specialist and administrative assistant. It is unclear why the FURA would have had an IDA specialist on its payroll, but we understand this individual recorded financial transactions for all entities.

¹⁷ For purposes of this report, we have assumed that there is underlying statutory authority for this employee sharing agreement between the FIDA and the FURA (but see OSC Opinion Number 2011-1; compare GML Section 119-o).

¹⁸ On March 12, 2015 the Director told us that the Board is being careful about how to handle the FLDC due to retirement benefit implications. FLDC employees are not public employees and cannot, in that capacity, belong to the New York State and Local Employees Retirement System. The Director said they may end up contracting out the FLDC work.

payroll and expense allocation records and confirmed that there is no sound, clearly documented basis on which the OCED's shared staff employment costs are equitably allocated among the three entities.

In addition, the OCED selects and begins projects that it feels are beneficial to the community but often does not determine which entity should manage, report and finish the projects until the projects are well underway. Maintaining commingled cash and accounting records for the entities enables the OCED to incur costs for new projects before deciding which entity will "own" them. The OCED has, on various occasions, transferred projects to other entities without recouping costs initially incurred by the FIDA. Because each entity is statutorily created for specific purposes and to undertake specific types of projects, the tendency to pursue or begin a project without first deciding which entity will be the "lead agency" demonstrates disregard for the legal intent of and restrictions on the statutory authority of these local authorities.

We found that this governance structure is not appropriate. It is not consistent with the statutory scheme requiring each entity to act separately and have independent boards and committees making decisions in the best interest of their own corporation and to have independent accounting and reporting structures. Additionally, this confused and commingled governance structure, including the extra layer of the OCED, has led to inappropriate financial and accounting transactions and significantly inaccurate accounting records and financial reports.

Authorized Activities and Financial Assistance

It is a general rule that public benefit corporations, such as IDAs, have only those powers which are conferred expressly by the State Legislature or which are necessarily implied. An IDA is authorized to provide "financial assistance" for certain types of projects and may acquire, construct, reconstruct, improve, maintain, equip or furnish certain projects to advance job opportunities, health, general prosperity and economic welfare. The term "financial assistance" is defined to include the proceeds of IDA bonds, "straight-leases" or exemptions from taxes resulting from a project's status as an IDA project. 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.

Agreements for payments in lieu of taxes (PILOT) are typically negotiated as part of the financial assistance offered. These payments are generally passed through to the affected taxing jurisdictions to help offset the lost tax revenue.¹⁹ An IDA's revenues are generally

¹⁹ GML defines "affected tax jurisdictions" as any municipality or school district in which an IDA project is located which will fail to receive real property tax payments or other tax payments that would otherwise be due, except for the tax exempt status of the IDA involved in a project.

derived from the leasing, sale or other disposition of a project to pay off IDA bonds. In return for the financial assistance, the businesses generally agree to provide job growth within their companies, which ultimately helps the economic stability of the municipalities in which they reside.

We found that the FIDA's "projects" are not handled in this manner. The projects do not include financial assistance as defined by GML. The FIDA does not equitably distribute PILOT payments to taxing jurisdictions or ensure that its projects generate job growth.

Lease and PILOT Agreements – GML was amended in 1992 and 1993 to require IDAs to remit PILOT payments equitably to the affected taxing jurisdictions. Projects receiving assistance per an IDA agreement executed prior to 1992 are exempt from these provisions, but the Board is not precluded from, and thus should consider, including such provisions when amending project agreements. A memo attached to the 1992 bill stated that an IDA's withholding of PILOTs and retaining the interest "is inequitable in that it denies (municipalities) expedient utilization of revenues desperately needed, while unjustly enriching the IDA with funds that can be spent by the agency indiscriminately for almost any purpose." This memo clearly reflected the Legislature's intent when adopting these amendments to ensure municipalities that lost tax revenues as the result of IDA projects are more equitably remunerated.

The FIDA maintains two lease agreements with local businesses that originated in 1987 and 1982²⁰ and, therefore, may be exempt from PILOT allocation requirements.²¹ In accordance with the lease agreements, the businesses make basic monthly rental payments in addition to quarterly payments referred to as additional rent. The additional rent²² is to be equal to or a portion of the amount of real property taxes²³ that would have been payable had the parcels not been tax exempt.²⁴ The FIDA received and retained \$212,000 and \$185,000 from these businesses in the 2012-13 and 2013-14

²⁰ Both lease agreements originally had 50-year terms and were amended multiple times, including in 1995 when the terms were extended through 2045, increasing the total terms to 58 and 63 years, respectively.

²¹ The laws requiring that the payments be turned over to the affected taxing jurisdictions were put into effect in 1992 and 1993. Both agreements were amended in 1995, with extended terms, but did not contain provisions to share related revenues with taxing jurisdictions.

²² These payments are, however, referred to as PILOT payments on the FIDA's PARIS report.

²³ Depending on the time period and which (of several) contract amendments were then in effect

²⁴ The FIDA executed one lease agreement in 2002 which requires the business to make PILOT payments directly to the taxing jurisdictions.

fiscal years, respectively. Most IDAs maintain more recent PILOT agreements with shorter terms and are thus required to turn these moneys over to the local municipalities, but the FIDA retains them. This annual revenue stream has allowed the FIDA to accumulate a large net asset balance. At the end of 2014, the FIDA's unrestricted net assets totaled approximately \$2.2 million, which was more than six times its 2014 budget of approximately \$343,000.

The FIDA made an annual contribution to the Village that originated at the Village's request and amounted to \$42,240²⁵ for the 2014 fiscal year. The Director said this payment is intended to cover plowing, utilities and other services that are part of the routine maintenance of Village Hall, but that there was no real basis for the budgeted amount and no contract which stipulated services to be covered by this contribution. The Director also told us that, initially, this contribution was loosely based on the Village's lost revenue that resulted from the FIDA's active projects, but the amount has been negotiated in more recent years. None of the other affected taxing jurisdictions²⁶ have approached the FIDA requesting remuneration and are, therefore, not equitably compensated for the loss of revenue resulting from the FIDA's projects.

Loans and Gifts – Authorized IDA “financial assistance” does not expressly encompass direct loans of the IDA's money. Moreover, while an IDA is expressly permitted to accept gifts, grants, loans and contributions from various sources and to use such money for its corporate purposes, GML contains no corresponding authority for IDAs to make loans of their own money.²⁷ In contrast, IDAs may participate in federal loan programs and make loans using money originating from federal sources such as the Department of Housing and Urban Development, consistent with the terms of the federal program.²⁸

Over the years, the FIDA has been receiving monthly payments on commercial loans that it has issued from its surplus money. However, IDAs have no statutory authority to issue commercial loans to businesses. Soon after the FIDA was notified by the ABO regarding its questionable existence, the Board worked with the

²⁵ This equates to 80 percent of the total (\$52,800) paid to the Village by the OCED, with the balance paid by the FURA.

²⁶ Including the Town and School District

²⁷ OSC Opinion Numbers 99-4, 82-360; Attorney General Formal Opinion Number 2014-F1; Authorities Budget Office Policy Guidance No. 15-01; see also OSC Opinion Number 2011-1, cited in Attorney General Formal Opinion Number 2014-F1, concerning the authority for an IDA to do things “necessary or convenient” to carry out its purposes and exercise its powers under GML

²⁸ OSC Opinion Numbers 82-360, 79-784; GML section 858(11); see also *Kradjian v City of Binghamton*, 104 AD2d 16 appeal dismissed 64 NY2d 1039

Village to incorporate a local development company (LDC). An LDC is a non-profit corporation, not a public corporation. The FLDC was established to take over the FIDA's unauthorized revolving loan fund.²⁹ Therefore, in May 2013, the FIDA transferred the value of seven outstanding commercial loans totaling \$505,669 to the FLDC. First, the FIDA does not have the authority to gift its assets to a non-profit corporation without receiving adequate consideration in return. Secondly, the LDC is not statutorily authorized to issue loans with money from the IDA.

Despite their knowledge that loans are prohibited, the FIDA and the FLDC Boards have continued to issue commercial loans, which were all actually funded by the FIDA, as the new FLDC lacked assets to lend. The FIDA Board approved the transfer of \$175,000 from the FIDA to the FLDC as "contributed capital" to cover two new FLDC loans that began in early 2014.³⁰ The FIDA's Board minutes indicated that these funds did not need to be repaid. We believe this constitutes an improper gift of FIDA money.

In addition to funding the FLDC's loans, the FIDA has provided funding and support for a FLDC project for renovations of the Veterans Memorial at Potter Park. The OCED had estimated the project would cost about \$200,000. A local community organization had raised about \$45,000 in private donations to contribute toward this project and agreed to transfer these moneys to the FLDC. Therefore, the FLDC had to cover an additional \$155,000 in expenses to complete the project. Due to the FLDC's lack of financial resources, the FIDA Board approved a transfer of up to \$200,000 from the FIDA to the FLDC as "contributed capital" that did not need to be repaid. As of February 6, 2015,³¹ the FIDA has transferred \$143,000 to the FLDC to cover project expenses. The FLDC did not provide the FIDA with any consideration for these funds. Therefore, it was inappropriate for the FIDA to simply give \$143,000 to the FLDC. The combined total of inappropriate transactions with the FLDC amounted to approximately \$824,000.

As of November 30, 2014, the FIDA also had two questionable outstanding loans of its own funds totaling approximately \$187,000. For example, the FIDA Board chose to enter into a commercial loan for \$125,000, even though the Director made it clear that she understood that the ABO has taken the position³² that issuing commercial loans

²⁹ Issuing commercial loans to businesses in the Village of Fairport or those moving to the Village of Fairport

³⁰ January and February

³¹ The project was not fully completed by the end of our audit fieldwork.

³² In a January 2015 Policy Guidance memo in which it cited opinions of the New York State Attorney General and Comptroller. See Footnote 27.

is not within the statutory authority of an IDA. When we spoke to the Director about this continued issuance of loans, she stated “We’re just going to keep doing what we’re doing.” This “tone at the top” has resulted in continued and blatant circumvention of the FIDA’s statutory authority.

Commingled Accounts and Records

As an independent public corporation, the FIDA must manage its operations and maintain and account for its assets and resources separately from any other organization, in the absence of statutory authority to act otherwise. We are aware of no statutory authority for the FIDA to combine its assets and operations with other entities. Thus, the Board must ensure that the Director keeps all FIDA assets separate and accounted for. This includes accurately accounting for and depositing all cash assets in the FIDA’s own bank or investment accounts, maintaining a separate and complete set of accurate accounting records, accurately recording only FIDA receipts and expenses in the records, providing accurate and timely reports to the Board and filing an annual Public Authorities Reporting Information System (PARIS)³³ report with the ABO. The PARIS report provides a summary of the FIDA’s annual financial information, which should agree with and be supported by the accounting records. In addition, the FIDA does not have the authority to subsidize operations of other agencies.

The Board did not ensure that the Director kept all FIDA assets separate from other agencies and accurately accounted for. The staff and the contracted accounting company (Company) maintained combined records and bank accounts for the FURA and the FIDA and then developed very complex and inappropriate methods to attempt to allocate transactions to produce separate quarterly and annual reports. These egregious methods, described further, resulted in the following significant unauthorized activities:

Inappropriate Subsidy – All expenses are initially paid by and charged against the FIDA. The Company records an additional expense, “Interprogram Transfer,” for the FIDA and a revenue, “Interprogram Income,” for the FURA in the amount of the expenses that have been paid by the FIDA but should be allocated to the FURA.³⁴ However, Interprogram Income is not a revenue because the FURA has done nothing to earn it, and it is not a FIDA expense. As a result, the FIDA is being charged twice for the FURA’s expenses. This “expense” is actually a subsidy which has amounted to nearly \$250,000 for

³³ PARIS is the online, electronic data entry and collection system used by authorities to annually report required information to the ABO.

³⁴ This is due to the FIDA paying all the FURA expenses because FURA (with the exception of the Section 8 Housing Program) did not have its own general ledger cash account or bank account.

the period 2010 through 2014. There is no authority for the FIDA to gratuitously subsidize the FURA's operations. This has resulted in ongoing and significant misstatements of the FIDA's (and the FURA's) financial position.³⁵

Unsubstantiated Promissory Note – The FIDA's 2014 audited financial statements included a liability due to the FURA of approximately \$350,000. We determined that this should have been classified as the FURA's cash balance. This occurred because the OCED does not have a separate bank account or general ledger cash account for the FURA. Therefore, OCED staff deposit the FURA's loan receipts into the FIDA's project expenditures account and record them as a "due to the FURA" on the FIDA's general ledger, and a "due from the FIDA" on the FURA's general ledger (with corresponding credits to the loan receivable and interest revenue accounts).

The Director told us that the improper practice of recording what should be the FURA's cash balance as a "due to the FURA" serves, in part, as an attempt to show that the FIDA has outstanding debt. In October 2011, the ABO informed Management that the FIDA no longer met the provisions of Section 882 of GML³⁶ and should no longer be in operation.³⁷ In response to this letter, Management formalized a promissory note between the FIDA and the FURA in the amount recorded at year-end as due to the FURA on the FIDA's annual reports, even though this amount really approximates what should be recorded and reported as FURA cash³⁸ and is not truly a debt.

Furthermore, we found that between the beginning of our risk assessment in April 2014 and our return for the audit in November 2014, the amounts on the promissory notes going back to 2011 had been changed and new notes had been issued back to 2008 to make it appear that legitimate notes had been in place. We also found that

³⁵ The Company also recorded these disbursements backward in the FURA's records by inappropriately offsetting the expense with a credit (increase) to an "Interprogram Income" revenue account instead of the necessary decrease to assets (cash).

³⁶ At that time, Section 882 of GML stated that, when "all the bonds or notes issued by the agency have been redeemed or canceled, the agency shall cease to exist." In 2012, Section 882 was amended to provide that an IDA shall cease to exist when all of its bonds or notes have been redeemed or canceled "and all straight-lease transactions have been terminated..."

³⁷ To the extent that the ABO has questioned the FIDA's existence and the issue remains open, the FIDA should resolve this issue with the ABO. However, for purposes of the audit, we have presumed that the FIDA is a going concern. The Director also indicated that the FURA had received similar correspondence from the ABO.

³⁸ Excluding the additional reduction in the cash balance that should have resulted if FURA expenses had been properly recorded

money was never exchanged between the two entities and the notes specifically state that no interest will be charged. However, a new note is signed every year with an updated amount reflecting the change in the “due to the FURA” account balance. These promissory notes do not represent true debt, and the recording and reporting of amounts due from and to the two agencies is simply an inappropriate and unnecessary accounting tactic to make it appear that the FIDA has outstanding debt.

Bank Accounts – The Board did not require the Director and the Company to maintain the FIDA’s cash assets in separate bank accounts independent of the other OCED entities. The OCED maintains combined bank accounts with commingled cash of the FIDA and the FURA: a project expenditures account used for all disbursements, two money market/savings accounts and a combined investment account. Neither the FURA’s employees nor the Company keep ledger accounts to track the portion of each bank account balance that belongs to each entity. All of the shared bank accounts are reported by the FIDA. FURA staff make all disbursements for the FIDA and the FURA out of the FIDA checking account. Thus, the FURA’s annual financial reports do not include cash balances.

Financial Records and Reports – The Company maintains the FIDA’s general ledger. A FURA employee³⁹ enters daily transactions for the FIDA and other OCED entities and provides transaction reports to the Company. The Director is responsible for ensuring that the employee and the Company properly perform the basic accounting functions.

The Board did not require the Director and the Company to maintain the FIDA’s accounting records independently of the other OCED entities or in an accurate and complete manner as prescribed by the State Comptroller.⁴⁰ Management considered the Company’s records to be the FIDA’s official accounting records. These records did not provide Management with an accurate depiction of the financial activity that belonged to the FIDA because of inappropriate accounting methods used. Additionally, the information was not timely. The Company recorded its cost allocations and other transactions on a quarterly basis but did not provide the general ledger reports to Management until six weeks after the quarter had ended.⁴¹ Additionally, the PARIS reports and audited financial statements did not agree to the FIDA’s accounting records. The Company did not see any value in posting external auditor adjustments and providing Management with a final general ledger that agreed to the PARIS report and audited financial statements. As a result of many improper accounting practices, the

³⁹ This is the individual referred to as the IDA specialist in the leased employee services agreement.

⁴⁰ As required by GML

⁴¹ One Board member told us she had never seen these reports.

Board does not have and has not filed an accurate report of the FIDA's financial position.

Because FURA staff make all disbursements for the FIDA and the FURA out of the FIDA checking account, they also inappropriately charge all expenses against the FIDA in the FIDA's accounting records and record nothing in the FURA's records at that time.⁴² Furthermore, they do not adequately code or separate expenses by entity when making disbursements and, thus, have no true and accurate record or measure of the expenses attributable to the FIDA versus the other entities. Therefore, when the Company makes adjustments on a quarterly basis, its allocations are not representative of actual expenses. For most of the audit period, the Company allocated expenses quarterly to the FURA based on 25 percent of the FURA's portion of the OCED budget.

Beginning in June 2014, Management directed the Company to change its allocation method to record actual expenses to each OCED entity – but only for individual payments of \$500 or more – and charge all other expenses to the FIDA. Therefore, the only expenses recorded on the FURA general ledger during the last two months of 2014 were for payroll and related taxes. This expense allocation method further understates the FURA's operating costs and overstates the FIDA's.⁴³

In addition, the only expenses the FLDC had recorded in its general ledger from incorporation to January 2014 were \$282 of bank charges. For the fiscal year that ended September 30, 2013, the other expenses incurred by the FLDC were recorded as a due to the FIDA from the FLDC in the amount of \$33,393. During the 2014 fiscal year, the FLDC began using its own bank accounts more frequently. However, the due to the FIDA balance still increased by \$4,157.⁴⁴ Furthermore, during 2014 the FLDC became the lead agency on a \$200,000 project, yet it incurred no recorded payroll costs.

Investment Accounts – PAL⁴⁵ requires the Board to adopt and annually review a comprehensive investment policy to establish procedures

⁴² Notwithstanding the impropriety of maintaining combined bank accounts for two separate public authorities, when using combined bank accounts, staff must charge each expenditure against the actual applicable entity in its own general ledger expenditure and cash accounts (with shared costs such as a utility bill being split equitably between the entities) when the disbursement is made.

⁴³ During a meeting with the Director on March 12, 2015, she indicated that if an expense clearly belongs to the FURA, she is instructing the Company to record it as such even if it is below \$500.

⁴⁴ Subsequent to our audit fieldwork, the FLDC Board adopted a resolution to pay the FIDA for the amount of the due to. This totaled \$37,550. However, due to the fact that all of the FLDC's assets were inappropriately given to it by the FIDA or the FURA, the FIDA essentially repaid itself with its own money.

⁴⁵ PAL Section 2925

and instructions for depositing and investing the FIDA's money in a manner that complies with statutory requirements and safeguards public funds. GML and PAL⁴⁶ authorize IDAs to temporarily invest moneys not required for immediate use in FDIC-insured deposit accounts in, or certificates of deposit issued by, a bank or trust company located and authorized to do business in the State, or in obligations of the State or the United States government or certain obligations of which the principal and interest are guaranteed by the State or United States government.

The Board adopted an investment policy that, prior to a January 20, 2015 amendment, properly restricted authorized investments to those allowed by law. However, the Board ignored its policy when making investments and ultimately updated it to allow for improper investments. We found that OCED staff invested the FIDA's money in combined accounts with the FURA's money, without statutory authority to do so, and had improper investments with an investment brokerage firm. As of October 31, 2014, the combined FIDA and FURA investment account had approximately \$911,000 improperly invested in bonds of local governments and government-sponsored enterprises⁴⁷ not guaranteed by the federal government (in addition to allowable investments totaling approximately \$819,000).

According to the FIDA's audited financial statements, \$1,394,000 of the total investments belonged to the FIDA, which included at least a portion of the improper investment holdings. Improper investments put FIDA moneys at risk and could result in a loss of principal. For example, the September 30, 2014 audited financial statements indicated that there was a (\$10,653) change in the market value of the account. Although the account had an overall gain on investments during the year, due to interest and dividends, the drop in the account's market value shows the market volatility of the principal balance. This is a primary reason GML does not allow public entities to invest moneys in unguaranteed investments.

In addition, although the investment account includes money that belongs to the FURA, FURA staff recorded all of the investment activity in the FIDA's general ledger. Furthermore, OCED staff do not allocate any interest and dividend income or investment gains and losses to the FURA as required. Therefore, the FIDA is receiving more investment income and a larger share of investment gains and losses than it is entitled to, and Management does not have accurate cash balances for the FIDA or the FURA.

⁴⁶ PAL Section 2927

⁴⁷ Such as the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation and Federal Farm Credit Banks

Accounting for the three OCED entities in such a combined and convoluted manner gives the appearance that each of these entities function together as one, or as legally affiliated entities or subsidiaries of OCED, and are not separate and distinct entities. It also makes it impossible to determine the true financial position of each separate entity. As a result, the FIDA's actual revenues and expenses are not easily distinguishable from those of the other entities. Therefore, the FIDA likely paid for expenses it was not responsible for and retained revenues that did not belong to it.

Recommendations

The Village Board should:

1. Appoint different Board members for each of the three OCED entities to ensure that all entities are governed individually.

The FIDA Board should:

2. Direct the FIDA's operations as a separate and independent entity with its own governance structure and separate and distinct accounting records.
3. Adopt its own policies including code of ethics, bill payment, deposits and investments.
4. Contact the Attorney General's Office to obtain an opinion regarding the compatibility of offices for the various Board members of each OCED entity.
5. Consider amending the FIDA's lease and PILOT agreements from the 1980s to reflect an equitable distribution of additional rent/PILOT payments to the affected taxing jurisdictions consistent with current statutory requirements.
6. Finalize a written agreement with the Village specifying appropriate consideration the FIDA will pay for the services the Village provides.
7. Seek reimbursement of the commercial loans it transferred to the FLDC, as well as the commercial loans the FLDC issued using the FIDA's moneys.
8. Cease making commercial loans directly or through the FLDC using FIDA moneys.
9. Seek reimbursement of the FIDA's "contributed capital" from the FLDC and cease providing gratuitous cash payments to the FLDC.

10. Consult with legal counsel to ensure transactions are within the FIDA's statutory authority.
11. Adopt an investment policy for the FIDA that complies with legal requirements.
12. Only invest the FIDA's funds as statutorily authorized.

FIDA officials should:

13. Complete a new time study that includes the FLDC and use the actual results as the basis for allocating employees' time to the three entities.
14. Stop issuing fictitious promissory notes.
15. Maintain the FIDA's accounting records in OSC's prescribed format.
16. Maintain the FIDA's accounting records and bank accounts separately and distinctly from the FURA and the FLDC.
17. Only use the FIDA's cash for the payment of the FIDA's expenses and not those of other entities.
18. Only record FIDA transactions in the FIDA general ledger.

The FIDA Board and officials should:

19. Cease portraying the FIDA under the umbrella agency of the OCED, implying that the FIDA is not an independent corporate entity.
20. Make decisions for the FIDA independently from the other entities, in the best interest of the public and the FIDA, and within the FIDA's mission.

APPENDIX A

RESPONSE FROM AGENCY OFFICIALS

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



January 22, 2016

Mr. Edward V. Grant, Jr., Chief Examiner
Local Government and School Accountability
Office of the State Comptroller
The Powers Building
16 West Main Street, Suite 522
Rochester, New York 14614

RE: Audit Response
Village of Fairport Industrial Development Agency
Audit Report Title: Board Governance, Report of Examination
Audit Report Period: October 1, 2012 – March 12, 2015
Audit Report Number: 2015M-195

Dear Mr. Grant:

Please accept this letter as the Village of Fairport Industrial Development Agency's ("FIDA") response to the Draft Audit Report referenced above ("Report"). We appreciate the external audit of our board's governance structure and acknowledge the usefulness of certain findings and recommendations contained therein for further improvement of our operations. However, as explained below we take exception to the broad characterization that FIDA's governance structure was highly inappropriate and not consistent with applicable legislation for IDAs. Furthermore, we find the tone of the Report and the inclusion of certain subjective comments to serve no purpose other than to sensationalize the Report.

See
Note 1
Page 27

The Village of Fairport is strongly committed to creating a vibrant and healthy local economy. Toward that end, the Village (i) pursuant to the General Municipal Law organized the FIDA and the Fairport Urban Renewal Agency ("FURA") and (ii) pursuant to the Not-For-Profit Corporations Law incorporated the Fairport Local Development Corporation ("FLDC"). All three entities are the creation of the Village and, in accordance with New York State law, all three boards are appointed by the Village. The missions and purposes of all three entities are substantially similar in that they promote and encourage private enterprises to invest in the Village in order to advance the opportunities and general prosperity of its inhabitants. In order to coordinate services and provide for "one-stop" shopping in a cost effective manner, the Village utilized a model deployed by the State of New York in the delivery of its economic development services.

See
Note 2
Page 27

Industrial Development Agency
Urban Renewal Agency
Section 8 Housing Program
Local Development Corporation

31 South Main Street
Fairport, New York 14450
· 585.223.0313
· 585.223.5466
www.fairportoced.org

Similar to the marketing nomenclature of Empire State Development, which is simply a name assigned to the joint management and marketing of the NYS Department of Economic Development and the Urban Development Corporation, the Village appointed the same individuals to the boards of each entity and the same individual as the director of each. In order to market the “one-stop” shopping for the coordinated services of all three entities, the Village created the term the Village of Fairport Office of Community and Economic Development (“OCED”).

See
Notes 2 and 3
Page 27

The Report states the governance structure gives the appearance that the three entities are legally affiliated with each other, which runs counter to the statutory scheme for the establishment and operation of the FIDA, FURA and FLDC as separate corporate entities. However, the FIDA, FURA and FLDC are, in fact, affiliated with each other since all three entities are the creation of the Village and all three boards are appointed by the Village. Nevertheless, all three entities properly follow the corporate formalities of separately meeting, adopting resolutions, adopting policies, appointing committees, keeping minutes and records, and complying with the reporting requirements of Public Authorities Accountability Act of 2005, as amended (“PAAA”).

See
Note 2
Page 27

See
Note 4
Page 27

The Report incorrectly states that OCED and not FIDA created a single audit committee and governance committee for all three entities. To the contrary, all three entities appointed their own audit and governance committees that are comprised of the same individuals. In addition, the Report incorrectly states that policies are identified as policies of the OCED and not of the three separate entities. Although the marketing name of OCED appears on all the policies, certain documents that are unique to an entity (e.g. By-Laws) are clearly identified as such. In addition, the policies that are shared among all three entities clearly identify the three separate entities, which such policies apply to. The Report goes on to state that this governance structure is highly inappropriate and not consistent with the statutory scheme governing IDAs. The Report concludes that this structure violates the PAAA. We strongly disagree that by utilizing an efficient structure involving (i) shared management, (ii) the same individuals serving on three different boards and (iii) a single marketing name is “highly inappropriate” or “not consistent with the statutory scheme governing IDAs” or “violates the PAAA.” We are not aware of any statutory provision that would prevent such a structure or that would deem holding such board and management positions to be incompatible, and none were cited in the Report other than broad brushed generalities. Nevertheless, FIDA will consider initiatives to more clearly distinguish the entities under the OCED umbrella.

See
Note 5
Page 27

See
Note 4
Page 27

We take exception to the Report’s implication that FIDA’s projects are not proper because two lease agreements dating back to 1982 and 1987 do not distribute pro-rata Payments-in-Lieu-of-Taxes (“PILOTS”) to the affected taxing jurisdictions. The 1993 act that amended section 858 of the GML requiring a pro-rata distribution (the “Act”) clearly and explicitly provides that such Act does not apply to leases executed prior to the date on which the Act became a law whether or not such leases are thereafter modified¹. Therefore, the law clearly exempts these two leases and their subsequent modifications from the pro-rata distribution requirement of the Act. As such, we question the relevancy of the inclusion in the Report that “FIDA’s unrestricted net assets totaled approximately \$2.2 million, which was more than six times its 2014 budget of approximately \$343,000.”

See
Note 6
Page 27

See
Note 7
Page 28

¹ Chapter 356 of the Laws of 1993. The Report references a Memorandum of Support in interpreting the intent of the NYS Legislature in adopting this legislation. While we do not dispute the interpretation, we question why the Auditor did not give more weight to the express text of the legislation to arrive at a position that the intent was not only to more fairly distribute payments to municipalities but also to protect payments currently made to IDAs. This more accurate and thorough interpretation would call for the entire section of the Report addressing equitable distributions to be removed.

The FIDA considered and declined to voluntarily distribute such PILOT proceeds, determining that it was within the best interest of the FIDA for such funds to be used to advance the mission of the agency. FIDA has earmarked more than \$1.7 million in unrestricted net assets for future major projects (as noted in FIDA’s audited financial statements) that will benefit the community and spur economic development. Lastly, we take exception to the implication that (i) lease terms longer than what your office considers typical and (ii) requiring PILOT payments to be made directly to the taxing jurisdictions, are in some fashion not proper. Again, we are not aware of any statute that prohibits such actions and none were cited in the Report. Therefore, we question the relevancy of why this is included.

The FIDA disagrees with the Report’s finding that FIDA did not accurately account for its assets and that such information was not timely. The FIDA, FURA and FLDC accounting records are prepared independently, as evidenced by the quarterly separate financial statements and are timely reviewed by the boards of each entity as well as the fiscal year end reports. The FIDA believes its accounting records are accurate as reflected in its independently audited financial statements, for which the FIDA received an unqualified opinion. Although the FIDA and FURA did not maintain separate bank accounts, there was separate accountability for each entity, reflective of a common practice used by local governments. The Report is highly critical of a bookkeeping process, which utilized an allocation method for expenses and revenues since the entities shared a bank account and all expenses were initially paid by the FIDA. This process was utilized as a simple method to keep track of the expenses. The proper adjustments were made and the expenses were accurately reported quarterly by the independent auditors in the financial reports. The audited financials were used for PAAA reporting and therefore matched what was submitted to the Authorities Budget Office’s electronic information reporting system known as PARIS. Therefore, the financial position of FIDA was not misstated on the audited financials and matched the PARIS system. Nevertheless, FIDA accepted the Report’s recommendation and has established its own bank account and changed its bookkeeping method.

The FIDA objects to the Report’s characterization of FIDA’s \$350,000 obligation to FURA as “unsubstantiated” and “fictitious”. FIDA’s obligation to FURA is the result of it collecting on FURA’s outstanding loans. Until such time as FIDA turns the collected funds over to FURA, the obligation remains and changes every year based upon the amount collected. FIDA and FURA decided to memorialize this obligation by a written promissory note. Nevertheless, the need for this obligation has been eliminated through the establishment of the separate bank accounts and the changed bookkeeping process. Additionally, there is absolutely no basis for the Report to question FIDA’s legal existence regardless of whether FIDA had this note outstanding or not. Chapter 373 of the Laws of 2012 that amended section 882 of the GML preventing a termination of an agency when straight-lease transactions are in existence clearly states that such provision is deemed to have been in full force and effect on and after January 1, 2002. Again, we question why this is in the Report.

The FIDA acknowledges that its investment policy and certain investments were not in accordance with the requirements of the GML. The FIDA has already divested itself of a portion of these investments and will continue to work with its investment advisor to divest itself of the remainder. In addition, the FIDA will update its investment policy accordingly. However, it should be noted that it is unlikely that the principal amount of these investments would be lost if such investments were held to maturity, since the majority of the local government and authority bonds acquired by the FIDA were rated in the highest bond rating category and/or were insured, thereby minimizing the risk to the FIDA.

See
Note 7
Page 28

See
Note 8
Page 28

See
Note 9
Page 28

See
Note 10
Page 28

See
Note 11
Page 28

See
Note 12
Page 28

See
Note 13
Page 28

Given the absence of express language in the GML prohibiting gifts and loans, the FIDA undertook certain activities that it believed were authorized. The FIDA now acknowledges the Report's finding and will establish a corrective action plan that balances the strict confines of the law and the economic activity generated as a result of the loans in question. It is noted, however, that the Report incorrectly states that FIDA made a contribution to the Village in 2014 and 2015. The contribution was in 2014 for the reimbursement of services rendered for which the Report took issue due to a lack of a written contract with specified consideration and services. The FIDA no longer makes these types of reimbursements to the Village; however, in the event it does in the future, it will be pursuant to a written contract. The Report also incorrectly states that Local Development Corporations ("LDCs") do not have the authority to lend their own funds citing Attorney General Opinion 2014-F1 issued September 9, 2014. LDC's have all the powers contained in the Not-for-Profit Law, in addition to the powers specifically enumerated in section 1411, which clearly authorize LDC's to make loans². Attorney General Opinion 2014-F1 only addresses the ability of IDAs to make grants and loans; it did not address LDCs.

See
Note 14
Page 29

See
Note 15
Page 29

The FIDA is proud of its success in advancing its mission and believes the current structure is an effective and efficient model for the delivery of economic development services within the Village. Recent examples of this success include the "Residences at Canalside", whereby the FIDA acquired a vacant abandoned parcel on the Erie Canal, transformed it into a shovel-ready site and facilitated a \$17.5 million dollar construction project that compliments a \$1.5 million public boat and dock promenade. The FIDA also facilitated a project known as the "High View Senior Apartments" consisting of a \$9.5 million dollar investment in much needed senior housing, which was constructed on previously vacant lands within the Village. The FIDA's success is the direct result of its dedicated staff and board members. The Village is pleased that with a population of approximately 5,300 people it is able to find highly qualified civic-minded individuals willing to volunteer to serve on the boards of these three entities. These board members fully understand that the FIDA, FURA and the FLDC are separate legal entities as evidenced by their separate meetings. The boards do not see a need to create different PAAA mandated policies for each entity, especially since each entity separately adopted the policies and are each named therein. Nevertheless, FIDA will take into consideration the Report's recommendation to more clearly distinguish the operations of the entities under the OCED umbrella. The FIDA also believes that its financial accounting was properly separated and accurate based upon independent financial audits. However, FIDA respects the Report's recommendations for separate bank accounts, which it has already implemented as well as a new bookkeeping process. The FIDA has an updated employee time study and will base its reimbursement rates on such. In the event the FLDC will remain staffed by the FURA, the time study will be updated accordingly. The FIDA acknowledges its restrictions on investments and will update its investment policy and investments accordingly. Lastly, the FIDA acknowledges its restrictions on grants and loans and will establish a corrective action plan.

² NYS Not-for-Profit Corporations Law §202.

The FIDA does, however, object to the inclusion of the following within the Report (as set forth in more detail above) and request that they be removed as such lacks relevance, gives an impression of impropriety, and lacks any helpful guidance:

- (i) References inferring that FIDA does not legally exist;
- (ii) References to the FIDA's organizational structure as "inappropriateness", "violation of PAAA" and "not consistent with the statutory scheme governing IDAs";
- (iii) Reference to the 1982 and 1987 leases in its entirety as well the reference to FIDA's total net assets being a multiple of its 2014 budget.

We are thankful for the identification of certain legitimate issues raised in the Report for which the FIDA will address, if it has not already done so. However, we are disappointed by the inclusion of inflammatory rhetoric and innuendos that do nothing more than unnecessarily raise the specter of some form of impropriety. We hope you will take our comments into consideration by correcting the inaccuracies, removing irrelevant information and adjusting the inflammatory tone.

Sincerely,

H. Kevin Clark, Chairman
Fairport Industrial Development Agency

See
Note 1
Page 27

See
Note 13
Page 28

See
Note 2
Page 27

See
Notes 6 and 7
Pages 27 and 28

APPENDIX B

OSC COMMENTS ON THE AGENCY'S RESPONSE

Note 1

On December 29, 2015, we held an exit conference with FIDA officials. A primary purpose of the exit conference is to allow officials an opportunity to refute findings or provide additional information. FIDA officials shared only one concern about how our pre-1992 lease agreement finding was summarized in the Executive Summary. Therefore, we clarified the language in the final report.

Note 2

The FIDA, the FURA and the FLDC are separate corporate entities with separate and distinct purposes, powers, duties and fiduciary responsibilities. They are not legally affiliated with each other. By statutory design, these entities are independent from each other and from the Village. While it may be effective to coordinate the activities of the three, they remain independent and distinct entities.

Note 3

In 1995, the New York State Department of Economic Development and the Urban Development Corporation were consolidated into one State agency – Empire State Development.

Note 4

While the three entities have separate meeting minutes and adopt resolutions and policies, they generally adopted one OCED policy which indicated “the FIDA, FURA and LDC will be collectively referred to as the Village of Fairport Office of Community [and] Economic Development (OCED).” Thus, officials apply these policies to all three entities, instead of developing separate policies that address each entity’s individual needs.

Note 5

While the audit and governance committees were appointed in the separate minutes of each entity, the committees are clearly indicated as the OCED’s Board committees on the OCED’s website. Further, the Audit Committee Charter “was adopted by the Board of Directors of OCED on March 20, 2007.”

Note 6

Our report clearly described the statutory amendments and exceptions for the old lease agreements. These lease agreements warranted discussion for the benefit of readers who may be familiar with more traditional IDAs and unsure how such substantial assets would be generated.

Note 7

Financial information such as net assets and annual revenues and expenditures is relevant to any audit of financial operations. Our report also described current legislative requirements governing IDAs. This financial and legislative information illustrates the resources available to support recommendation number 5 in the report, which was for the FIDA to amend the agreements to equitably distribute PILOT payments to affected taxing jurisdictions. Doing so will reduce the burden on taxpayers.

Note 8

The accounting records are not prepared independently. FURA staff records all transactions into one transaction log. Because these are separate entities, all transactions always should be initially recorded in separate accounting records for the applicable entity. There should be no need to allocate expenses, or record amounts owed, to another entity. Furthermore, even the separate quarterly reports prepared by the Company (to separate the combined records into individual records) did not report cash balances for each entity.

Note 9

A Board member told us that she had never seen the quarterly reports (as discussed in footnote 41 in the report).

Note 10

There is no separate accountability, the allocation methods used to separate transactions by entity were not equitable and adjustments made were significantly flawed. This resulted in significantly misstated financial reports. As described in detail in the report, there was nothing “simple” or “common” about the accounting practices used.

Note 11

The allocation method used resulted in the FURA never being charged for its own expenses and the FIDA being charged for both the FURA’s and the FIDA’s expenses. In addition, the new allocation method used beginning in June 2014 further understates the FURA’s operating costs and overstates the FIDA’s costs. These misstated expenses were included in the audited financial statements and the PARIS report to the ABO.

Note 12

The FIDA should not be collecting the FURA’s revenues and should never have recorded the FURA’s cash balance or its revenues from outstanding loans in the FIDA accounting records.

Note 13

We did not question the FIDA’s legal existence. We referred to the fact that the ABO had questioned the FIDA’s existence. We did so because FIDA officials brought this to our attention and told us this was the reason they recorded the promissory notes: to show that the FIDA had outstanding debt.

Note 14

The contribution was made in 2014 and budgeted to be made in 2015. After we completed fieldwork in March 2015, FIDA officials apparently decided not to make the budgeted 2015 payment, as noted in the FIDA's response. Therefore, we have removed 2015 from the finding in the report.

Note 15

We appreciate that you brought this error to our attention and we have corrected it in our final report.

APPENDIX C

AUDIT METHODOLOGY AND STANDARDS

The objective of our audit was to evaluate the propriety of the FIDA's financial and operational activities for the period October 1, 2012 through March 12, 2015. To achieve our audit objective and obtain valid audit evidence, we performed the following audit procedures.

- We interviewed FIDA officials and Board members and reviewed the FIDA's policies, bylaws and Board meeting minutes to gain a general understanding of how the FIDA operates.
- We reviewed communication between the FIDA and the ABO.
- We identified the various loans and projects managed by the FIDA and the respective funding sources. We reviewed loan and project files and related agreements. We identified the total number and dollar amount of outstanding loans, the bank accounts the loan funds were issued from, the entity that originally approved the loans and the entity currently holding the loans.
- We reviewed general ledger activity, PARIS reports and audited financial statements.
- We assessed whether the FIDA has the authority to operate under the current governance structure or to perform the various gifting, lending and payment activities, based on our review of the pertinent statutes, Opinions of the State Comptroller and a recent Opinion of the Attorney General. We also reviewed guidance published by the ABO and consulted with OSC legal staff.
- We identified and reviewed various transactions between the FIDA and the Village.
- We evaluated the propriety of the FIDA's accounting records in conjunction with FURA and FLDC records and the combined investment activities based on pertinent statutes.
- We reviewed the various expense allocation methods utilized during our audit period.
- We reviewed the documented promissory notes and discussed them with FIDA officials.
- We tested 50 claims transactions: 42 were from two randomly selected months (December 2012 and May 2014) and eight were judgmentally selected (payments to FIDA officials, Board members, employees or relatives, unusual vendors or amounts, or the purchase of items that appear to be excessive or unusually high). The selections were made from bank statements and canceled check images. We reviewed the claims for appropriate approvals, adequate support and reasonableness.
- We scheduled payroll costs for the three FURA employees shared by the FIDA for three months (October to December 2013) and tested payroll cost allocations in comparison to the contract for leased employee services.

- We assessed the FIDA's handling of PILOTs based on our review of pertinent statutes and the relevant lease agreements.
- We analyzed fund balance for the 2008-09 through 2013-14 fiscal years.

We conducted this performance audit in accordance with 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
Gabriel F. Deyo, Deputy Comptroller
Tracey Hitchen Boyd, 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,
Otsego, Schoharie, Sullivan, Tioga, Tompkins Counties

BUFFALO REGIONAL OFFICE

Jeffrey D. Mazula, 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