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September 2017

Philip J. Roche, Chairman  
Board of Directors  
Steuben County Industrial Development Agency  
7234 Route 54N  
P.O. Box 393  
Bath, NY 14810

Report Number: S9-15-67

Dear Chairman Roche and Members of the Board of Directors:

A top priority of the Office of the State Comptroller is to help local officials manage their 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 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 governance. Audits can also identify strategies to reduce costs and to strengthen controls intended to safeguard assets.

In accordance with these goals, we conducted an audit of six Industrial Development Agencies (IDAs) throughout New York State. The objective of our audit was to determine whether the IDA Board of Directors provides effective oversight of the IDA's projects. We included the Steuben County IDA (Agency) in this audit. Within the scope of this audit, we examined the Agency policies and procedures and reviewed records and project files for the audit period January 1, 2014 through May 31, 2015. For selected projects, we expanded the audit period back to January 1, 1997. This audit was conducted pursuant to Article X, Section 5 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law.

This draft report of examination letter contains our findings and recommendations specific to the Agency. We discussed the findings and recommendations with Agency officials and considered their comments, which are included in Appendix B, in preparing this report. Agency officials generally agreed with our recommendations and indicated they plan to initiate corrective action. At the completion of our audit of the six IDAs, we prepared a global report that summarizes the significant issues we identified at the IDAs audited.

## Summary of Findings

We found the Board of Directors (Board) could do more to provide effective oversight of the Agency's operations. While the Board used a standard project application, it did not develop project selection criteria and did not require applicant information to be verified or confirmed before it approved a project for financial assistance. Although the use of project selection criteria was not required at the time of our audit, the Board adopted project selection criteria in March 2016.

We reviewed the project selection process for five projects<sup>1</sup> and found that Agency officials could not provide criteria that was used to evaluate these projects. Board members used their collective personal knowledge and experiences to evaluate the applicant's cost estimates and job creation goals. For the period 2007 to 2014, these projects have collectively received tax abatements of almost \$5.6 million and tax exemptions of \$1.5 million. Officials did not maintain records supporting tax abatements project owners received prior to 2007. All projects that have been presented to the Board were approved during our scope period. Without criteria for evaluating project applications, there was limited assurance that Agency benefits were awarded through a fair and consistent process.

The Board did not monitor approved projects and had not developed or implemented monitoring policies and procedures for the Agency to follow. While not required, monitoring of projects allows Agency officials to identify and address performance shortfalls and ensure the community is receiving the expected benefits from the financial assistance provided to projects.

In addition, the information submitted by project owners was not verified. Although Agency officials were not required by statute to verify submitted project information, Agency officials should ensure that the submitted information reflects the actual results of project activity. The Board did not require project owners to provide documentation to support the number of jobs or salaries the projects were expected to create or retain. We reviewed 38 approved projects and found 22 project owners reported they created and retained the jobs indicated in their project agreements, but there was no documentation to support these assertions. The remaining 16 project owners reported that they did not meet their job goals. Of the 3,382 jobs expected to be created or retained, 2,494 (74 percent) were reported as created or retained.

While the Board adopted a Uniform Tax Exemption Policy (UTEP), as required, which included provisions for the recapture or "claw-back" of financial assistance when project goals are not met, the Board had not established procedures for the Agency to follow to implement a claw-back. In addition, the UTEP did not clearly state when financial assistance should be recovered or terminated. Officials said the provisions were not specifically defined so that the decision to recapture financial assistance could be evaluated on a case-by-case basis. The Board has never implemented a claw-back or terminated a project for poor performance. The Board approved a revised UTEP in March 2016 and it complies with the new legislation requirements.

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<sup>1</sup> We selected projects that should have created and retained jobs detailed in the project agreements. The projects included in our review were approved in June 1997, October 1997, October 1997, March 1998 and March 2001

We also found the Board has not developed adequate policies and procedures to report reliable project information. As a result, statutory information the Agency must provide to the Authorities Budget Office and the Office of the State Comptroller is not always reliable.

## **Background and Methodology**

An IDA is an independent public benefit corporation whose purpose is to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing industrial, manufacturing, warehousing, commercial, research and recreation and certain other facilities. The overall goal of an IDA is to advance the job opportunities, health, general prosperity and economic welfare of the people of the State.

IDAs are authorized to provide financial assistance for certain types of projects. Financial assistance includes the issuance of bonds by the IDA to finance construction of a project and straight-lease transactions. Since the property and activities of IDAs are tax exempt, the IDA may pass the benefits of certain tax exemptions (e.g., real property, sales and mortgage recording taxes) to the private entities that undertake the projects. The loss of revenue associated with these tax exemptions can be offset with an agreement for payments in lieu of taxes (PILOTs), under which the private entity agrees to pay all or a portion of the taxes that would otherwise have been imposed had the project not been an IDA project. The role of the IDA is not just to act as the conduit for financial assistance, but also to monitor the success, progress and cost-benefit of projects, including whether projects are honoring their commitments and agreements.

In June 2016, new legislation became effective to increase the accountability and improve the efficiency and transparency of IDA operations.<sup>2</sup> For new projects, the law requires standard application forms for requests for financial assistance, uniform criteria for the evaluation and selection for each category of projects for which financial assistance is provided, uniform project agreements, annual assessments on project progress including job creation and retention, as well as policies to recapture, discontinue or modify financial assistance or tax exemptions.

The Agency, created in 1972, is governed by a Board composed of seven members who are appointed by the County Legislature. The Board is responsible for the general management and control of the Agency. A Board member's role and responsibilities include executing direct oversight of the Agency's officers; understanding, reviewing and monitoring financial controls and operating decisions; adopting organizational policies; and performing their duties "in good faith and with the degree of diligence, care and skill which an ordinary prudent person in a like position would use under similar circumstances."<sup>3</sup> An Executive Director and administrative assistant manage the Agency's day-to-day operations.

For calendar year 2014, the Agency's annual report included 45 active projects including one active bond, 43 active PILOT agreements and one tax exemption. The Agency had approximately \$951,600 in expenditures in 2014, funded primarily with fees charged for processing project applications and for administering benefits granted to projects it approves.

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<sup>2</sup> Chapter 563 of the Laws of 2015.

<sup>3</sup> New York State Public Authorities Law, Section 2824

To complete our objective, we interviewed Board members and Agency officials and examined Agency records and project files for the period January 1, 2014 through May 31, 2015. For selected projects, we expanded the audit period back to January 1, 2000.

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 is included in Appendix C 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.

## **Project Approval**

The Board is responsible for reviewing the merits of each project and then making project approval or denial decisions. Because tax benefits granted by the Board to approved projects result in a cost to the community, it is important for the Board to evaluate the merit of each project and the benefits the community should realize from the Agency's investment. Promoting the use of a standard application when project owners request financial assistance from the Agency can help ensure consistent project evaluation. Although not required at the time of our audit, the Board should adopt uniform criteria for the evaluation and selection of each category of projects (e.g., manufacturing, wholesale, distribution, retail, tourism and housing) for which financial assistance would be provided. Such practices should also include documenting the rationale for approving financial assistance and verifying information provided in the application.

As a matter of good business practice, a standard application should include, among other things:

- A description of the proposed project, including the amount and type of financial assistance requested and an estimate of the capital costs of the project;
- The number of and estimates of salary and fringe benefits for full-time equivalent jobs that would be retained or created if the financial assistance is provided and the projected timeframes for creation of new jobs;
- A statement acknowledging the submission of any knowingly false or misleading information may lead to immediate termination of any financial assistance and reimbursement of an amount equal to all or part of any tax exemptions claimed as a result of the project;
- A statement that the information is true under penalty of perjury;
- A statement that Agency assistance is necessary to undertake the project; and
- A statement that the project owner is in substantial compliance with all laws, rules and regulations.

Good business practices also promote that an IDA's uniform evaluation criteria should, at a minimum, require that prior to approval of any financial assistance, the IDA should verify and

evaluate all material information provided with the application. It should also undertake a written cost-benefit analysis that identifies the extent to which a project will create or retain permanent, private sector investment generated or likely to be generated by the proposed project, the likelihood of accomplishing the proposed project in a timely manner, and the extent to which the proposed project will provide additional revenue for municipalities and school districts.

We found that the Board uses a standard project application. Although not required during our audit period, the Board did not develop uniform project selection criteria, and it did not document its rationale for awarding financial assistance. However, on March 24, 2016 the Board adopted uniform project selection criteria for each project type it offers financial assistance. We also found that, although the application includes a description of the project, cost and performance estimates and other pertinent information, the Board does not require information such as retention estimates to be verified or confirmed before the Board votes on awarding financial assistance to the applicant. Board members use their collective personal knowledge to evaluate the applicant’s cost estimates and job creation goals.

In addition, the standard application did not include a description of the type of financial assistance applied for or statements that information is accurate under penalty of perjury, false information can lead to termination of financial assistance, IDA assistance is necessary to complete the project and the applicant is compliant with all laws and regulations. While this information was not required to be part of a project agreement at the time of our audit, it is required under the new legislation for new projects. As a result, on March 24, 2016 the Board adopted a revised standard application which contains the new legislation’s requirements.

We judgmentally selected five projects with project costs totaling about \$56 million to review the project selection process (Figure 1).

**Figure 1: Summary of Five Projects Reviewed**

<b>Project Approval Date</b>	<b>Description</b>	<b>Project Cost</b>
Corning Headquarters Expansion (10/17/1997)	Expand and equip the company’s headquarters and build a related parking garage	\$25,000,000
Gunlocke Company (3/26/1998)	Rehabilitate and expand the existing structure including additional machinery and equipment	\$10,000,000
Corning Decker Parking Garage (3/29/2001)	Construct a 75,000 square-foot multi-story 700-space parking garage	\$9,800,000
Corning Photonics Facility (6/26/1997)	Expand the 204,000 square-foot facility to 384,000 square foot	\$7,600,000
Corning Center for Fiber Optic Testing (10/16/1997)	Construct and equip a center for fiber optic testing and related office and research laboratory space	\$4,000,000

Agency officials could not provide criteria that was used to evaluate the five projects, and the Board did not document how it arrived at its decision to approve these projects. Board minutes reflected only that the projects were approved to receive assistance or extensions. Figure 3 in Appendix A provides additional details on the tax exemptions received by these projects.

## **Project Monitoring**

A significant Board responsibility is to monitor and evaluate the performance of projects receiving financial assistance to determine whether they are meeting the goals included in their applications, such as the number of jobs to be created. The Board should evaluate each project's performance to ensure the project fulfills the commitments made to the residents in exchange for the financial assistance awarded. Although not required at the time of our audit, a uniform project agreement between the IDA and the project owners receiving financial assistance should be in place and used to monitor and evaluate projects' performance. In addition, Agency officials should also use each project's required annual status report to assist in monitoring project performance. Without effective monitoring, the community may not receive the expected benefits from the financial assistance provided.

The Board uses a uniform project agreement, including a UTEP, but does not actively monitor projects and has not developed or implemented monitoring policies and procedures which would be useful for assessing results. For example, the Board has not established an adequate process to obtain or verify employment numbers reported by project owners. A policy was adopted by the Board in March 2015 incorporating recapture language in new project agreements as a requirement. As of August 13, 2015, no projects have been approved with the recapture language requirement. With the exception of when a project owner requests a project extension, Board minutes contain no discussions pertaining to projects meeting or not meeting job goals. The Board has neither requested nor been provided with reports detailing the job creation and/or retaining status for its active projects. In March 2015, the Agency also created a project job tracking system that will be used in the future to create such reports.

Project Agreements – To properly monitor projects, IDAs should adopt and use uniform project agreements. Although not required at the time of our audit, a uniform project agreement should, at a minimum, include:

- The Agency purpose to be achieved by the project;
- A description of the project and the financial assistance to be provided;
- A requirement for an annual certification by the project owner, occupant or operator of full-time equivalent jobs created and retained as a result of the financial assistance;
- The dates when PILOT payments are to be made and estimates of the amounts or formulas by which these amounts are calculated;
- A provision for the suspension or discontinuance of financial assistance, or for the modification of any PILOT agreement to require increased payments, for certain defined performance shortfalls;
- A provision for the return of all or a part of the financial assistance provided for in accordance with Agency policy; and

- A provision that the business certify, under penalty of perjury, that it is in substantial compliance with all laws, rules and regulations.

The Agency's project agreement contains most of the best practice components. However, for our sample of five projects, we found the project agreements were missing components that could help the Agency more effectively monitor the projects. For example, the agreements do not state the Agency's purpose to be achieved, require the annual certification of jobs created and retained, or state under penalty of perjury that the project owner is compliant with all laws and regulations. The Board adopted a new uniform project agreement on March 24, 2016; it contains all of the new legal requirements.

Job Performance – At the time of our audit, the Board did not require project owners to provide documentation to support the number of jobs or salaries associated with the jobs they purportedly created or retained. While this documentation was not required during our audit, it would have provided Agency officials with information to assess whether each project's stated goals are being met. The Board and Agency officials relied on the project owner's integrity to ensure the number of jobs created and retained were accurately reported. As a result, the Agency did not know whether promised jobs were actually created or retained or whether the employees were paid at rates stated in the project application. However, the Board adopted a Project Progress Assessment and Employment Verification Policy on March 24, 2016. This policy requires project owners to provide documentation to support their job creation and retention figures and for the project owners to certify this information is accurate and reliable.

We reviewed 38<sup>4</sup> projects to determine whether approved projects created and retained the number of jobs specified in their project agreements. We found 22 project owners agreed to create and/or retain 2,728.5 jobs and they reported they created and retained 3,616 jobs. However, the remaining 16 project owners reported they did not (Figure 2). For example, these projects should have created or retained 3,382 jobs. The 2014 annual reports for the projects indicate that 2,494 jobs were created or retained, a shortfall of 888 (26 percent).

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<sup>4</sup> When a project has multiple phases, the Agency combines job creation and retention numbers and reports them as a single project. Five project owners have multiple projects.

<b>Figure 2: Projects Falling Short of Job Creation and Retention Goals</b>			
<b>Project Approval Date</b>	<b>Job Creation and Retention Figures</b>		<b>Variance</b>
	<b>Project Agreement</b>	<b>2014 Annual Report</b>	
Corning Photonics (6/26/1997)	1000	555	<b>(445)</b>
The Gunlocke Company (3/26/1998)	850	679	<b>(171)</b>
Corning Diesel Expansion (6/20/2013)	750	669	<b>(81)</b>
Corning Integrated Die Manufacturing (10/21/2010)	150	95	<b>(55)</b>
Pulteney Plaza Project (6/20/2013)	80	27	<b>(53)</b>
Corning Glass Research (8/26/2010)	20	0	<b>(20)</b>
BLW Properties (5/19/2005)	72	55	<b>(17)</b>
Corning SP Renovation and New (9/27/2007)	300	290	<b>(10)</b>
Southern Tier Library (8/9/2001)	21	11	<b>(10)</b>
Wyckoff Gas Storage (6/22/2006)	12	5	<b>(7)</b>
Corning Refractories (10/16/1997)	7	1	<b>(6)</b>
26-23 Bridge Street, LLC (6/20/2013)	100.5	95	<b>(5.5)</b>
Hampton Inn (2/28/2013)	15	12	<b>(3)</b>
CFA Apartments (6/19/2014)	2.5	.25	<b>(2.25)</b>
Corning War Memorial Apartments (12/6/2012)	1	0	<b>(1)</b>
NYSEG Corning Valley (4/29/2010)	1	0	<b>(1)</b>
<b>Totals</b>	<b>3,382</b>	<b>2,494.25</b>	<b>887.75</b>

Although the Board adopted a UTEP which includes provisions for the recapture or claw-back of financial assistance when project goals are not met, the Board did not established UTEP implementation procedures and has never recaptured financial assistance or terminated a project for poor performance. In addition, the UTEP did not clearly state when financial assistance should be recovered or terminated. Agency officials said the provisions were not specifically defined so that the decision to recapture financial assistance could be evaluated on a case-by-case basis. Agency officials also said the variances between expected and actual jobs created and retained can likely be attributed to things like investment in automation and change in use.



By not adequately monitoring ongoing projects or verifying reported employment data, the Board would not know whether project owners are fulfilling their job goal commitments. As a result, an increased risk existed that projects received tax benefits and Agency financing without fulfilling their commitments to the community.

## **Annual Reporting**

IDAs are required to maintain specific information on all projects for which they approve financial assistance. While the project owner is responsible for providing project information to the IDA, the IDA is responsible for collecting and reporting the data. IDAs use this information to submit an annual report of their operations and financial activity, including information on projects which receive financial assistance, to the Authorities Budget Office and the Office of the State Comptroller. Before the Agency submits its annual report, the Board should review the information for accuracy. The Agency's chief financial officer (CFO) must then certify that it is complete and accurate. Good business practices require the Board to establish policies and procedures for obtaining and reporting reliable project information.

To develop the annual report, the Agency sends a letter to each project owner requesting updated project information, including current employment numbers. To determine whether the Agency correctly reported project information, we compared its 2014 annual report, which included 45 projects, to project documentation maintained by Agency officials. We found numerous errors with the information included in the annual report. For example:

- Thirteen projects had incorrect job creation and retention figures. For example, the Agency has consistently reported the Corning, Inc. Decker Parking Garage project would create 350 jobs and also retain 54 jobs. However, the project application does not have a goal for retained jobs.
- Two active projects were erroneously omitted from the report on the ABO website. However, these projects correctly appeared on the annual report the Agency posted on its website.

The administrative assistant is responsible for collecting and tracking the project information received from project owners. The Executive Director performs a review of the information prior to certifying the report. Although the Executive Director certified the annual report, the Agency's review did not identify the erroneous project information. We believe the errors were caused, in part, because the Board has not established adequate policies and procedures to report reliable project information. The implementation of adequate policies and procedures and a review of the information by the Board prior to the Executive Director's certification of the annual report might have identified these errors and helped ensure accurate project information was publicly reported.

## Recommendations

The Board of Directors should:

1. Continue to use the new uniform project selection criteria and document the rationale for awarding financial assistance to project owners.
2. Require financial assistance application information to be verified and confirmed before the Board approves new projects.
3. Use the new project monitoring policies and procedures to determine whether project owners are meeting the goals included in their agreements, such as job creation and retention goals.
4. Use the new UTEP implementation policies and procedures, including but not limited to, clawing-back benefits when warranted.
5. Develop and implement policies and procedures for reporting reliable project information for the Agency's annual report.
6. Ensure the annual report filed with the Authorities Budget Office and the Office of the State Comptroller is accurate.

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 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 Board Secretary's office.

Our office is available to assist you upon request. If you have any further questions, please contact Ann Singer, Chief Examiner of the Statewide and Regional Projects Unit, at (607) 721-8306.

We thank Agency officials and staff for the courtesies and cooperation extended to our auditors during this audit.

Sincerely,

Gabriel F. Deyo  
Deputy Comptroller

## APPENDIX A

### TAX EXEMPTIONS PROVIDED TO PROJECTS

<b>Figure 3: Tax Exemptions Provided to Projects</b>					
<b>Project Approval Date</b>	<b>Property Tax Abatement<sup>a</sup></b>		<b>Tax Exemptions</b>		<b>Total</b>
	<b>Received<sup>c</sup> 2007 – 2014</b>	<b>Pending<sup>b</sup></b>	<b>Sales and Use</b>	<b>Mortgage Recording</b>	
The Gunlocke Company (3/26/1998)	\$2,070,666	\$811,396	\$30,000	None	\$2,912,062
Corning, Inc. Headquarters Expansion (10/17/1997)	\$1,888,319	\$547,928	Not specified	None	\$2,436,247
Photonics Facility (6/27/1997)	\$1,048,240	\$587,815	\$480,000	\$200,000	\$2,316,055
Decker Parking Garage (3/29/2001)	\$509,997	\$217,739	\$400,000	None	\$1,127,736
Center for Fiber Optic Testing (10/16/1997)	\$70,471	\$9,848	\$347,360	None	\$427,679
<b>Total</b>	<b>\$5,587,693</b>	<b>\$2,174,726</b>	<b>\$1,257,360</b>	<b>\$200,000</b>	<b>\$9,219,779</b>

<sup>a</sup> Amounts were calculated using records from the Agency.  
<sup>b</sup> Assumes a 2 percent annual tax rate increase.  
<sup>c</sup> Agency officials were only able to provide partial property tax abatement figures. The Agency does not have sufficient records to determine the property tax abatements the project owners received prior to 2007.

## **APPENDIX B**

### **RESPONSE FROM AGENCY OFFICIALS**

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

April 19, 2017

State of New York  
Office of the State Comptroller  
Binghamton Regional Office  
H. Todd Eames, Chief Examiner  
State Office Building, Suite 1702  
44 Hawley Street  
Binghamton, NY 13901-4417

Office of New York State Comptroller  
Division of Local Government & School Accountability  
PSU-CAP Submission  
110 State Street, 12<sup>th</sup> Floor  
Albany, New York 12236

Re: Steuben County IDA Oversight Audit Response and Corrective Action Plan  
Report Number: S9-15-67

Dear Mr. Eames:

Please accept this letter of formal response to the draft Oversight Audit performed by your office in August of 2015 and received by the Steuben County IDA on March 23, 2017. In addition to serving as our response to the draft audit, this letter will also serve as our corrective action plan as required by your office.

The Steuben County IDA Board of Directors and staff take oversight seriously and continuously look for ways to improve the agencies' operations to support our mission of economic growth in Steuben County. In advance of the audit period, the agency Executive Director was engaged in the development of the Comptroller's reform package which was approved in December of 2015. As a result, our board was actively discussing policy changes throughout the latter half of the year in anticipation of the new legislation.

Once the legislation was passed, the IDA quickly adopted the measures outlined in the reform package serving as a leader in State to implement these best practices. In March of 2016, before the audit was completed the board had approved and adopted all policies, procedures, and forms. These actions, in advance of completion of the audit, addressed five of the six recommendations outlined in the audit report.

The sixth recommendation, to ensure accuracy in our reporting, is primarily a result of discrepancies in data between the application phase of the projects and how the information was confirmed by the company and reported by the IDA. This process was undertaken when mandatory reporting was implemented by the State with little direction on how to confirm data that was submitted prior to the implementation of the PARIS system. Furthermore, the PARIS system does not allow for modification of data once the projects are set up in the system. While

early discrepancies in reporting may still exist because of this, this has not impacted the economic impact of these projects to the community. Since mandatory reporting was implemented, the IDA has established procedures to assure accuracy in its reporting including verification of project data at time of application.

It should also be noted, the audit period for this review was January 1, 2014 through May 31<sup>st</sup> 2015 which was in advance of approval of the reform legislation. During the review period, the Steuben County IDA, its Board of Directors, and staff followed all applicable rules and were in compliance with IDA statute.

Outlined below is a summary of the actions that were taken, in advance of the audit completion, which address the recommendations of the audit and the reform legislation. The IDA Board of Directors and staff have reviewed these recommendations and will use this as an opportunity to further address any outstanding concerns that have been raised as a result of this review to assure continued compliance.

**Summary Actions:**

1. Continue to use the new uniform project selection criteria and document the rationale for awarding financial assistance to project owners.

**Policy Adopted and Implemented March 24, 2016**

2. Require financial assistance application information to be verified and confirmed before the Board approves new projects.

**Policy Adopted and Implemented March 24, 2016**

3. Use the new project monitoring policies and procedures to determine whether project owners are meeting the goals included in their agreements, such as job creation and retention goals.

**Policy Adopted and Implemented March 24, 2016**

4. Use the new UTEP implementation policies and procedures, including clawing-back benefits when warranted.

**Policy Adopted and Implemented March 24, 2016**

5. Develop and implement policies and procedures for reporting reliable project information for the Agency's annual report.

**Policy Adopted and Implemented March 24, 2016**

6. Ensure the annual report filed with the Authorities Budget Office and the Office of the State Comptroller is accurate.

**The recommendation is a result of discrepancies in data between the application phase of the projects and how the information was confirmed by the company and reported by the IDA. The IDA has established procedures to assure accuracy in its reporting, including verification of project data at time of application, annual verification of project data and annual staff and board review of project performance against project data at time of application.**

The Steuben County IDA and its Board of Directors takes compliance and project performance seriously. As stated previously, six of the seven recommendations were approved and

implemented prior to completion of the audit report as a result of the impending approval of the recent reform legislation. The seventh recommendation to ensure accuracy in reporting is a continuous goal of the organization but accurate reporting is made difficult due to the lack of early guidance from the State and the continued inability to update the State reporting system when an error is identified.

In response to the audit report and the summary offered above, we also offer the following detail of the organizations actions.

#### **Detailed Actions:**

1. Continue to use the new uniform project selection criteria and document the rationale for awarding financial assistance to project owners.

**At its March 24<sup>th</sup> 2016 meeting the Steuben County IDA Board of Directors adopted a standard application, a uniform Project Evaluation policy and a project evaluation matrix which outlines evaluation criteria and establishes material terms for approval based on project type. Since 2012 the Steuben County IDA has contracted with the Center for Governmental Research to utilize informANALYTICS to conduct a written\_cost benefit analysis of each project under consideration.**

**The board evaluates each project being considered for benefits using the criteria listed below:**

- **Extent to which a project will create or retain permanent jobs**
- **Estimated Value of Tax Exemptions to be provided**
- **Amount of private sector investment**
- **Likelihood of project being accomplished in a timely fashion**
- **The extent of new revenue provided to local taxing jurisdictions**
- **Any other miscellaneous public benefits that might occur**

**In addition, the Steuben County IDA, at the time of project review, takes into consideration material terms which will be used to determine if a project applicant has met the obligations required for the approval of incentives set by the board. These terms will be utilized by the board in setting and monitoring project benchmarks during the term of the incentives for the purposes of administering the IDA's Policy for termination of benefits.**

**It is understood that the review will vary depending on project type and project specifics. The IDA has adopted specific "Evaluative Criteria" to be considered when reviewing each project type.**

**These criteria are adopted to provide board guidance when reviewing project applications. The board reserves the right to use additional measures and to gather additional information or data relating to evaluative criteria specific to individual projects.**

**See Attached Table for Suggested Project Types, Material Terms and Evaluative Criteria:**

2. Require financial assistance application information to be verified and confirmed before the Board approves new projects.

**At its March 24<sup>th</sup> 2016 meeting, the Steuben County IDA Board of Directors adopted a standard application, a uniform Project Evaluation policy and a project evaluation matrix which outlines evaluation criteria and establishes material terms for approval based on project type.**

**The application includes:**

- **A description of the proposed project, including the amount and type of financial assistance requested and an estimate of the capital costs of the project;**
- **The number of and estimates of salary and fringe benefits for full-time equivalent jobs that would be retained or created if the financial assistance is provided and the projected timeframes for creation of new jobs;**
- **A statement acknowledging the submission of any knowingly false or misleading information may lead to immediate termination of any financial assistance and reimbursement of an amount equal to all or part of any tax exemptions claimed as a result of the project;**
- **A statement that the information is true under penalty of perjury;**
- **A statement that Agency assistance is necessary to undertake the project; and**
- **A statement that the project owner is in substantial compliance with all laws, rules and regulations.**

**Upon receipt of the application, staff meet with the project sponsor to verify and evaluate all material information provided with the application. Staff also performs a written cost-benefit analysis that identifies the extent to which a project will create or retain permanent, private sector investment generated or likely to be generated by the proposed project, the likelihood of accomplishing the proposed project in a timely manner, and the extent to which the proposed project will provide additional revenue for municipalities and school districts.**

**The board evaluates the project based on the information provided in the application and staff review and verification process against the evaluation criteria referenced above.**

3. Continue to use the new project monitoring policies and procedures to determine whether project owners are meeting the goals included in their agreements, such as job creation and retention goals.

**As a best practice, the agency has required all projects to complete project reporting documentation annually to comply with State reporting requirements. This process was formalized at the IDA's March 24th 2016 meeting, where the Board of Directors adopted a Project Progress Assessment and Employment Verification Policy and standardized project progress verification report which assess and requires verification of project performance.**

**The policy directs Steuben County IDA staff to annually assess project progress toward achieving investment, job creation, retention or other objectives of the project applicant. To achieve this, the Steuben County IDA will annually collect a certified**



statement and documentation verifying the information provided in the application related to full time equivalent jobs to be retained and created as a result of the financial assistance is still accurate. If the information is not still accurate, the IDA requires the company provide a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created.

The information will be collected as part of the PARIS reporting requirements annually and the data gathered will be reviewed by IDA staff for completeness. If the data is incomplete or the company demonstrates it has not met its project goals, IDA staff will meet with the company to assess project performance and the company's ability to fulfill the original project goals.

Data on all individual projects will be compiled and submitted to the IDA Board of Directors for review. In the case where project goals cannot be met, IDA staff will report back to the board the findings of the individual company outreach and a determination will be made as to whether the IDA's recapture policy should be implemented.

Employment verification requires submission of a copy of the NYS 45 form for the project location. If the NYS 45 form is not available for the specific project location or the form does not accurately reflect the full time jobs created an internal report verifying the total jobs by employment category as outlined above at the location is required with the company's annual submission.

Compliance with this reporting is also part of the standardized project agreement requirements referenced above.

4. Use the new UTEP implementation policies and procedures, including but not limited to, clawing-back benefits when warranted.

At its March 24, 2016 meeting, the Board of Directors updated its policy and procedures for implementation by adopting an enhanced recapture policy. If after annual reporting and staff review a company is found to be non-compliant with the material factors outlined during the course of the benefit period, the IDA shall undertake the following:

- a. The IDA shall notify the company in writing that, in the Agency's determination, it has violated a Material Factor.
- b. The company shall be given an opportunity to remedy the violation.
- c. If it is unable to remedy the violation, the IDA shall seek additional information/explanation from the company as to why a Material Factor was not achieved. These may include economic or natural factors that led to the default. These factors should be discussed and predetermined to the extent possible by the Board and may include items such as, natural disaster, industry dynamics, unfair competition or economic events that were outside the control of the company.
- d. The company shall be provided the opportunity to present to the agency any information as outlined above regarding why the Material Factor was not achieved.

**Board Actions:**

Decisions to keep benefits in place, reduce, terminate, or recapture financial assistance will be made by the IDA Board. The following options are recommended when considering Material Factor compliance or violations of terms and conditions of project agreements.

- a. Upon a review of the facts regarding a non-compliance determination, the IDA Board may determine that the cause of the non-compliance was a valid reason for not meeting the Material Factor and may consider the matter closed without further action, or set a specific time period to give the opportunity for the company to achieve compliance. This may also be accompanied by a period of increased reporting. (i.e.: Review violated Material Factor(s) quarterly until remedied.)
- b. If a company is ultimately unable to meet a Material Factor or is in continued violation of the terms and conditions as set forth in the project agreement, the IDA Board will determine if the violation will result in the reduction, suspension, termination or recapture of financial assistance.

**Reduction of Financial Assistance:** At the discretion of the IDA Board, it may consider a reduction in assistance as an appropriate action to take in the event of a Material Factor or project agreement non-compliance. The reduction may be set at the sole discretion of the board.

**Termination of Financial Assistance:** In addition to the typical reasons why an IDA may act to terminate financial assistance such as, closure, change of use, change of ownership etc., the IDA Board may elect to terminate any ongoing financial assistance to a company. Reasons for termination should be explicit and may include continued violation of the terms and conditions of the Project Agreement, failure to comply with ongoing reporting or compliance requirements of the agency.

**Recapture of Financial Assistance:** The IDA Board may take action to recapture a portion or all of the financial assistance provided to a company. Actions to recapture shall be made by decision of the IDA Board and shall be reserved for continued and/or severe violations of Material Factors or the terms and conditions of the Project Agreement. An event leading to recapture may include: an applicant knowingly providing false information on an application or a compliance/monitoring report IDA Board finding that the company did not make a good faith effort or have any intention of meeting a Material Factor or a term and condition of the Project Agreement; the company ceases operations and/or relocates prior to fulfilling the length of term for a Material Factor; the company demonstrates a wanton disregard for state and or local laws or regulations.

In the event the IDA is successful in receiving Recaptured Financial Assistance, such funds shall be returned to the appropriate affected taxing jurisdictions unless otherwise agreed upon by the local taxing jurisdiction.

5. Develop and implement policies and procedures for reporting reliable project information for the Agency's annual report.

As a best practice, the agency has required all projects to complete project reporting documentation annually to comply with State reporting requirements. This process was formalized at the IDA's March 24th 2016 meeting, where the Board of Directors adopted a Project Progress Assessment and Employment Verification Policy and

standardized project progress verification report which assess and requires verification of project performance.

The policy directs Steuben County IDA staff to annually assess project progress toward achieving investment, job creation, retention or other objectives of the project applicant. To achieve this, the Steuben County IDA will annually collect a certified statement and documentation verifying the information provided in the application related to full time equivalent jobs to be retained and created as a result of the financial assistance is still accurate and if not require the company provide a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created.

Employment verification requires submission of a copy of the NYS 45 form for the project location. If the NYS 45 form is not available for the specific project location or the form does not accurately reflect the full time jobs created an internal report verifying the total jobs by employment category as outlined above at the location is required with the company's annual submission.

The information will be collected as part of the PARIS reporting requirements annually and the data gathered will be reviewed by IDA staff for completeness. If the data is incomplete or the company demonstrates it has not met its project goals, IDA staff will meet with the company to assess project performance and the company's ability to fulfill the original project goals.

Once the information is compiled the board will review the compiled data and authorize submission of the agencies annual report at its March board meeting. Due to the fact that the PARIS reporting system does not allow for a draft report to be printed in advance of final submission a complete copy is reviewed by the agency and presented to the Board for review at a subsequent meeting.

Should the system change to allow for a copy to be printed before submission the IDA Board of Directors would review the complete copy in advance.

6. Ensure the annual report filed with the Authorities Budget Office and the Office of the State Comptroller is accurate.

The recommendation is a result of discrepancies in data between the application phase of the projects and how the information was confirmed by the company and reported by the IDA. The IDA has established procedures to assure accuracy in its reporting including verification of project data at time of application, annual verification of project data and annual staff and board review of project performance against project data at time of application.

The IDA will review the details from the audit to do an internal review of its existing policies and procedures to ensure accuracy in reporting and implement any necessary changes identified. Accurate reporting is made difficult due to the lack of early guidance from the State and the continued inability to update the State reporting system when an error is identified.

Thank you for the opportunity to reply to the audit findings. While any opportunity to review our procedures is welcome, I believe as has been demonstrated in this letter, the Steuben County IDA was in compliance when the projects were approved and the data was reported.

Furthermore, the IDA was in the process of implementing the audit recommendations as best practices in advance of the audit occurring and completed these actions before the audit was released to the organization.

As previously stated the agency and its board take its obligations seriously. This response will serve to clarify the board's actions and compliance with the statute at the time of those actions. In addition, this response will serve as the Agency's Corrective Action Plan in response to the audit findings.

Sincerely,

Philip J Roche  
Chair

## **APPENDIX C**

### **AUDIT METHODOLOGY AND STANDARDS**

The objective of our audit was to determine if the Agency's Board was providing effective oversight responsibilities of the Agency's operations for the period January 1, 2014 through May 31, 2015. For selected projects, we extended our audit period back to the date of their inception.

To achieve our audit objective and obtain valid evidence, we performed the following procedures:

- We interviewed the Board and Agency officials to understand and assess the Agency's processes and procedures.
- We reviewed Agency policies, including the UTEP, to identify written criteria outlining an applicant's eligibility for sponsorship and the benefits that are offered.
- We judgmentally selected five projects to obtain a sample of various sizes and types of projects for further review and testing. This testing included, among other things, comparing amounts projected to be spent and amounts actually spent, comparing the reported actual job numbers by the businesses to projected jobs on the application and reviewing PILOT agreements and payments to ensure that they were accurate and complied with the agreements.
- We reviewed Board minutes to identify project monitoring or job creation discussions and reports to the Board regarding projects failing to achieve project goals.
- We reviewed the Agency's project application, project agreements and any applicable evaluation criteria and compared them to the new legislation.

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.