

OFFICE OF THE NASSAU COUNTY COMPTROLLER



**Limited Review of the
Nassau County Industrial
Development Agency
Operations and Internal
Financial Controls**

DECEMBER 28, 2020

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COMPTROLLER**

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OFFICE OF THE NASSAU COUNTY COMPTROLLER NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY

WHY WE DID THIS REPORT

This report was initiated to review the Nassau County Industrial Development Agency's (NCIDA) operations, management and internal controls. The NCIDA is an independent public benefit corporation which spurs economic development by helping businesses stay in Nassau County, move to the County, relocate, expand operations and/or provide financing for new investments. The benefits offered by the NCIDA for qualified projects include real property tax abatements or Payment in Lieu of Taxes (PILOTS), sales tax exemptions, federally tax-exempt and taxable revenue bonds and mortgage recording tax exemptions. An IDA is an important mechanism to promote the economic welfare and prosperity of Nassau County through economic development and the creation of jobs.

Our audit reviewed actions taken by the NCIDA to initiate new projects, create and expand new businesses, whether past projects achieved the agreed upon employment and other benefits to the County, and if recapture provisions were enacted for those projects that did not meet required goals. We also reviewed cash receipts, disbursements, payroll, procurement and related party receipts and disbursements, in addition to determining if the audit recommendations from the Comptroller's previous audit of the NCIDA issued in 2011 were implemented. The audit period covered was January 1, 2015 through June of 2019.

WHAT WE FOUND

Auditors found that while all projects sampled provided an economic benefit, such as the development or renovation of commercial property used for business and residential housing, in many of the projects managed by the previous NCIDA leadership, employment goals were not always being met, employment goals were limited, job reporting was inaccurate and was not properly monitored. Auditors also found problems related to third-party consultant economic impact reports, questionable activity with vendors, a potential ethics violation and weaknesses in internal controls

Major findings include:

- 69% of the projects reviewed had not achieved their employment goals in one or more years as required by NCIDA agreements, including six projects where employment goals were not met for all four years of the term.
- Employment goals were limited (zero to 13 full time jobs) in almost 50% of the projects tested, representing tax revenue of \$112.8 million being abated.
- The NCIDA failed to recapture benefits and disburse funds to the taxing jurisdictions within 30 days as required, taking as long as 16 months to complete the recapture process.
- The NCIDA was not reviewing the accuracy of the number of employees listed on required job confirmation forms submitted by project recipients, for example one project recipient reported 543 jobs to the NCIDA but only reported five jobs to NYS for the same time period. By not obtaining and verifying job support, the previous leadership of the NCIDA relied on incomplete and potentially inaccurate job information presented by project applicants to evaluate the employment performance.
- Problems with third-party consultant economic impact analysis reports by the previous NCIDA leadership were identified. These reports provide important information to the NCIDA Board and the public about a project's proposed benefits to ensure an informed decision making process and were implemented in response to the prior audit of the NCIDA that was issued by the Nassau County Comptroller in 2011. Findings related to these reports include:
 - the reports for 30% of the projects reviewed were prepared *after* the public hearing, which impacts an informed decision making process;
 - the timeframe for report preparation for 45% of the projects reviewed could not be determined, it was therefore unclear if they were prepared before the public hearings;
 - the reports for 18 projects did not show the impact of tax abatement to affected jurisdictions, including Nassau County, towns, school districts and/or other municipalities;
 - no evidence was found that the NCIDA monitored or verified the capital investment amounts on the reports and project applications;
 - no evidence was found that the NCIDA calculated or identified the estimated cost benefit ratios for proposed projects.
- \$556,250 was paid to a consultant for a non-performing contract to attract cyber companies to the County - there was no indication that any new companies moved to the County, and the consultant was paid to induce a company in which he was a partner.



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NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY
REPORT SUMMARY ~ CONTINUED

Major findings (continued):

- The previous leadership of the NCIDA “flowed through” \$375,000 for the NCIDA’s advertising campaign through an existing contract to other firms in order to avoid the RFP process. Auditors found that 87% of the advertising funds were targeted within Nassau County, which is counter-productive to bringing new firms to the County.
- Internal controls were inadequate resulting in weaknesses in various accounting, disbursement, and documentation practices, including: improper use of petty cash, no written petty cash policy, a tax identification number on IRS Form 1099 was incorrect and the auto mileage log was inadequately maintained.
- Under previous NCIDA leadership, NCIDA board members held a \$1,600 holiday dinner paid for by using mileage reimbursement funds. This “mileage for dinner” swap did not have written Board authorization.
- The former NCIDA officer may have violated the NCIDA Code of Ethics by residing in an NCIDA project, and the Agency’s Code of Ethics needs improvements.

WHAT WE RECOMMENDED

- The NCIDA should develop written procedures to monitor project performance for job compliance, document actions taken when projects are not in compliance with job goals and ensure that employment benefits are significant to support the financial benefits projects receive.
- The NYS-45 forms should be used as a confirmation tool to verify the number of full-time jobs reported by projects annually as required under the PILOT and Lease agreements.
- Revise the Third-Party Consultant Economic Impact Analysis Reports to include the impact of tax abatement to the County and other affected jurisdictions, develop benefit cost ratio(s) to use as a measurement to extend financial assistance and develop procedures to monitor project performance on capital investments.
- Prepare the Economic Impact Analysis Reports prior to the public hearings to ensure an informed decision-making process.
- Establish clear and defined deliverables for consultant services to be achieved, before payments are made.
- Perform a Requests for Proposal (RFP) to ensure an open and transparent advertising process.
- Delegate the Ethics Officer responsibilities to someone other than the Executive Director and investigate if the NCIDA’s former Executive Director violated the NCIDA’s Ethics Code. Consider amending the NCIDA Ethics Code to require the filing of an annual financial disclosure form by employees.
- Remit recapture benefits within 30 days of receipt to New York State and the affected jurisdictions.
- Ensure that all salary increases and vacation and sick time payments to employees are approved by the Board according to the Agency’s Employee Compensation Policy.
- Establish adequate internal controls over financial functions to ensure that payments are correctly classified on the accounting records, and management reviews are dated. Also, ensure that Petty Cash amounts are authorized and not used for recurring operating expenses and request fully completed W-9 forms from all contractors.

WHAT WAS THE RESPONSE?

Under new leadership, the NCIDA has agreed with most of the Comptroller’s recommendations and either is, or has, undertaken corrective action. Specifically, the NCIDA:

- Has adopted more stringent protocols related to employment goals and project benefits including negotiating to reduce PILOTs, increase job covenants, and when applicable, increase the amount of workforce housing to be created by projects.
- Is actively monitoring job creation compliance and where requirements are not met, takes appropriate action.
- Has stated it will take appropriate action to pursue termination and / or recapture of benefits as required.



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NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY
REPORT SUMMARY ~ CONTINUED

What was the response (continued):

The NCIDA:

- Has required that a cost-benefit analysis for each proposed project is prepared, that each municipality (including each school district) is contacted and provided information on proposed projects located within its jurisdiction, and is notified of all relevant public hearings and provided an opportunity to inquire about and comment on the project.
- Typically selects vendors through the request for proposal process.
- Will review its Code of Ethics.
- Has implemented new policies and procedures which are reviewed by management and staff and approved by the Board on an annual basis, hired a new Chief Financial Officer and purchased a new accounting program to address any weaknesses in the Agency's financial and or internal controls and overall operations.
- Has amended its policy to prevent any issues with termination payments, require all termination payments be approved by the Board, and if a termination payment amount exceeds \$20,000, the Board may require that it be paid out over a three-year period.

WHY IS THIS REPORT IMPORTANT?

The NCIDA's mission and public purpose is to support and promote economic development and job growth in Nassau County by helping businesses stay in Nassau County, relocate to the County, expand operations and/or to finance new investments. This report provides important information to educate the public about the NCIDA's operations and provide the Agency with recommendations for improvement, including implementation of best practices. Of note:

- All Nassau residents and taxpayers deserve a return on their investments (i.e. tax abatements) and can benefit from an IDA which brings jobs and prosperity to Nassau County, which operates transparently, is open to public input and respects public concerns.
- Benchmarking of IDAs statewide showed that in 2018, the NCIDA was the first of all counties in NY State in total tax exemptions granted, second in the amount of net tax exemptions granted, but third in claimed net jobs gains. The NCIDA's current leadership can improve these metrics.
- Projects that receive financial assistance from the NCIDA generate short and/or long-term employment benefits to the County, which is critical to the financial condition of the County especially now as the national and local economy has suffered from the impacts of COVID-19,

This audit and the audit process provide a critical check to assure that the NCIDA monitors compliance to ensure that all benefits agreed to in the PILOT and Lease agreements are achieved by the projects.

Executive Summary

Purpose:

- Examine whether past projects have achieved the agreed upon benefits to the County, including employment goals.
- Review internal financial controls for compliance with State Laws, Agency policies and governance.
- Review internal controls over cash receipts, disbursements, payroll, procurement policies and related party receipts and disbursements.
- Review Agency's operations and management to determine if the agency has taken action to initiate new projects, create and expand new business.
- Review if the Agency is recapturing benefits if agreed upon goals (i.e. employment goals) are not achieved.
- Follow-up on Nassau County Comptroller audit finding recommendations from the 2011 Audit of the Nassau County Industrial Development Agency.

Introduction:

In 1969, New York State General Municipal Law (“GML”), Article 18-A, enacted the New York State Industrial Development Agency Act (“the Act”)¹ that created independent public benefit agencies to promote the economic welfare, recreation opportunities and prosperity of its inhabitants through governmental action for the purpose of preventing unemployment and economic deterioration. The Law granted the Industrial Development Agencies (“IDAs”) specific power, including the power to hold and dispose of real and personal property by taking title, possession or control by lease, license or otherwise.² The IDAs may execute contracts and leases, issue tax exempt debt, provide exemptions for sales and mortgage taxes and tax exemptions to industrial or commercial properties under contractual payment in lieu of taxes (“PILOTS”) agreements. The IDAs are not required to pay taxes on any property acquired by it or under its jurisdiction in accordance with the Law³.

The Nassau County Industrial Development Agency (“Nassau County IDA”) was established by the Act, Title 2, Section 922⁴ with a mission and public purpose to support and promote the economic development and job growth in Nassau County⁵ by helping businesses to relocate to the County, expand operations and/or finance new investments. Projects that receive Nassau County

¹ General Municipal Law, Article 18-A, Industrial Development Title I, Agencies, Organization and Powers, Section 852. Policy and purposes of article.

² Ibid. Section 854 (14) Financial assistance.

³ Ibid. Section 874. Tax exemptions.

⁴ Ibid. Title 2, Section 922. Nassau County Industrial Development Agency.

⁵ Nassau County IDA Mission Statement and Performance Measurements as of June 14, 2010, page 1.

Executive Summary

IDA benefits generally involve acquisition, construction or major renovation of buildings which generate short and/or long-term employment.

The Summary of Findings and Recommendations as a result of this audit can be found below and on the next two pages.

Summary of Audit Findings and Recommendations	
Audit Finding	Audit Recommendation(s)
1 69% of Projects Reviewed Had Not Achieved All Their Employment Goals in One or More Years as Required by IDA Agreements	We recommend that the NCIDA: a) develop written procedures to monitor project performance for job compliance; and b) document project performance and actions taken when projects are not compliant with job goals.
2 Employment Goals Were Limited in Almost 50% of Projects Tested, Representing Tax Revenue of \$112.8 Million Being Abated	We recommend that the NCIDA: a) ensure that the employment benefits are significant to support the financial assistance granted to the projects; b) require salaries of the jobs retained and created be specified in the agreements; and c) ensure that project performance for financial investments or revitalization objectives are monitored and documented.
3 In 57% of the Test Cases, Backup Provided to the NCIDA to Support Project Job Confirmation Numbers Did Not Always Match or Was Not Provided	We recommend that the NCIDA implement a procedure that requires the review of the NYS-45s to ensure compliance with the Job Confirmation form data required under the PILOT and Lease agreements.
4 Review of Third-Party Consultant's Economic Impact Analysis Reports Found that the Reports Did Not Show the Impact of Tax Abatements to Affected Jurisdictions, Capital Investments Were Not Monitored and Benefit Cost Ratios Were Not Calculated	We recommend that the NCIDA: a) revise the Third-Party Consultant Economic Impact Analysis Reports to include the impact of the tax abatement to the County, towns, school districts, and other affected jurisdictions; b) develop benefit cost ratio(s) that are appropriate and reasonable to use as measurement guidelines for financial assistance eligibility; and c) develop procedures to monitor and verify project performance by requiring projects to report quarterly detailed data on capital investments and to follow-up when information is not received from projects.
5 The Third-Party Consultant Economic Impact Analysis Reports Were Prepared After the Public Hearing Therefore The Public/Stakeholders Could Not Make an Informed Decision On The Project	We recommend that the NCIDA: a) revise its procedures to require that Third-Party Consultant Economic Impact Analysis Reports must be prepared before public hearings are held; and b) revise the Third-Party Consultant Economic Impact Analysis Report to include the exact date the report is prepared, not just the month and year in order to assure an informed decision making process.

Executive Summary

Summary of Audit Findings and Recommendations	
Audit Finding	Audit Recommendation(s)
<p>6 NCIDA Paid a Consultant \$ 556,250 Over Five Years on a Non-Performing Contract to Attract Cyber Companies to Nassau County - Auditors Found No New Cyber Companies Moved to Nassau County</p>	<p>We recommend that the NCIDA should:</p> <ul style="list-style-type: none"> a) conduct research on projects that require a large magnitude of work and establish requirements for the projects including a verification of the Consultant's qualifications before signing a contract; and b) develop clear and defined deliverables which include a time period to evaluate the performance of their contractors while services are in progress and before payments amounting to thousands of dollars are made.
<p>7 NCIDA Utilized an Existing Public Relations Firm to "Flow Through" the NCIDA's Advertising Campaign to Another Firm in Order to Avoid the RFP/Procurement Process</p>	<p>We recommend that before proceeding with any advertising campaigns, the NCIDA should:</p> <ul style="list-style-type: none"> a) cease from requesting current vendors to act as a "flow through" firm to pay unapproved vendors; b) begin a Request for Proposal Process and speak with various advertising firms to develop a targeted plan of where to attract businesses from; c) select an advertising firm in an open and transparent manner; d) detail the specifications into a contract for services that protects the NCIDA's interests; and e) conduct advertising campaigns outside of Nassau County to attract companies to come into the County.
<p>8 NCIDA Former Officer May Have Violated the NCIDA Code of Ethics; NCIDA Code of Ethics Needs Improvement</p>	<p>We recommend that the NCIDA:</p> <ul style="list-style-type: none"> a) delegate the Ethics Officer responsibilities to someone other than the Executive Director; b) request the Nassau County Board of Ethics investigate if the NCIDA's former Executive Director violated the NCIDA's Ethics Code regarding a perceived conflict of interest; and c) consider amending their Ethics Code to require the filing of an annual financial disclosure form by employees.
<p>9 One Project Exceeded Maximum Sales Tax Exemption Amount and Time Limit of Exemption</p>	<p>We recommend that the NCIDA:</p> <ul style="list-style-type: none"> a) develop and implement a written procedure to monitor the usage and time frame of sales and use tax exemptions granted to projects to ensure benefits are used for specific purposes within the required time frames; and b) recoup the sales tax amount that exceeded the exemption limit from the project.
<p>10 The NCIDA Failed to Recapture Benefits and Disburse Funds to the Taxing Districts Within 30 days of Receipt as Required by NYS General Municipal Law</p>	<p>We recommend that the NCIDA develop written monitoring procedures to ensure that:</p> <ul style="list-style-type: none"> a) recapture benefits are remitted to New York State and the affected jurisdictions within 30 days of receipt; and b) prompt action is taken to recapture benefits when projects fail to meet job goals, are terminated or go bankrupt.

Executive Summary

Summary of Audit Findings and Recommendations	
Audit Finding	Audit Recommendation(s)
11 The NCIDA Board Did Not Approve the 2018 Payments to Employees for Vacation and Sick Time Totaling \$350,216	We recommend that the NCIDA Board take corrective action to ensure that all vacation and sick time payouts to employees, are provided to the Board and approved by a Board resolution prior to payment according to the Agency's Employee Compensation Policy.
12 Former NCIDA Board was Not Adequately Monitoring Salary Increases	We recommend that the NCIDA Board implement written procedures that require: a) all increases or changes to salaries for each employee be submitted for Board approval before payment is made to employees, according to the Agency's Employee Compensation Policy; and b) payroll records be independently reviewed on a periodic basis.
13 NCIDA Lacks Adequate Internal Controls; Auditors Found Weaknesses in Various Accounting Practices	We recommend that the NCIDA: a) establish a written Petty Cash policy that states the use and authorized amount permitted and to ensure recurring operating expenses are not paid with Petty Cash; b) record auto and commercial liability expenses to the correct account in the accounting records; c) review the recording and classification of accounts to ensure that the financial statement is accurately presented; d) during its management review of cash disbursements and bank reconciliations, date the documents examined to show that the tasks were performed on a timely basis; e) request properly completed W-9s from all its contractors and vendors; f) require staff to complete all the requested information on the vehicle log to document that the vehicle is used only for business operations; and g) revise the vehicle log to include the name of the individual using the vehicle and approval by management for the usage.
14 NCIDA Board Members Paid for a \$1,600 Holiday Dinner by Using Mileage Reimbursement Funds	We recommend that the Board of the NCIDA: a) document all approvals in the Board Minutes to ensure b) submit mileage reimbursement in the year of occurrence; and c) provide support documents for reimbursement of Board member expenses.

The matters covered in this report have been discussed with the officials of the Nassau County Industrial Development Agency. On October 23, 2020 we submitted a draft report to the Nassau County Industrial Development Agency for their review. The Nassau County Industrial Development Agency provided their response on November 16, 2020. Their response and our follow up to their response are included at the end of this report.

Table of Contents

	<u>Page</u>
INTRODUCTION.....	1
Background	1
Audit Scope, Objectives and Methodology	13
FINDINGS AND RECOMMENDATIONS	15
(1) 69% of Projects Reviewed Had Not Achieved All Their Employment Goals in One or More Years as Required by IDA Agreements.....	15
(2) Employment Goals Were Limited in Almost 50% of Projects Tested, Representing Tax Revenue of \$112.8 Million Being Abated	20
(3) In 57% of the Test Cases, Backup Provided to the NCIDA to Support Project Job Confirmation Numbers Did Not Always Match or Was Not Provided	23
(4) Review of Third-Party Consultant’s Economic Impact Analysis Reports Found that the Reports Did Not Show the Impact of Tax Abatements to Affected Jurisdictions, Capital Investments Were Not Monitored and Benefit Cost Ratios Were Not Calculated	25
(5) The Third-Party Consultant Economic Impact Analysis Reports Were Prepared After the Public Hearing Therefore The Public/Stakeholders Could Not Make an Informed Decision On The Project	28
(6) NCIDA Paid a Consultant \$ 556,250 Over Five Years on a Non-Performing Contract to Attract Cyber Companies to Nassau County - Auditors Found No New Cyber Companies Moved to Nassau County	30
(7) NCIDA Utilized an Existing Public Relations Firm to “Flow Through” the NCIDA’s Advertising Campaign to Another Firm in Order to Avoid the RFP/Procurement Process.....	32
(8) NCIDA Former Officer May Have Violated the NCIDA Code of Ethics; NCIDA Code of Ethics Needs Improvement	33
(9) One Project Exceeded Maximum Sales Tax Exemption Amount and Time Limit of Exemption.....	35
(10) The NCIDA Failed to Recapture Benefits and Disburse Funds to the Taxing Districts Within 30 days of Receipt as Required by NYS General Municipal Law	36
(11) The NCIDA Board Did Not Approve the 2018 Payments to Employees for Vacation and Sick Time Totaling \$350,216	38
(12) Former NCIDA Board was Not Adequately Monitoring Salary Increases	39
(13) NCIDA Lacks Adequate Internal Controls; Auditors Found Weaknesses in Various Accounting Practices	41
(14) NCIDA Board Members Paid for a \$1,600 Holiday Dinner by Using Mileage Reimbursement Funds.....	45

Table of Contents

SCOPE LIMITATION..... 46

NCIDA Did Not Provide Auditors with the Staff Review of Application Forms 46

APPENDIX A – NCIDA Projects Selected..... 47

APPENDIX B - Auditors’ Follow Up Comments on NCIDA Responses 49

APPENDIX C– NCIDA Response..... 64

Introduction

Background

The Nassau County Industrial Development Agency (“NCIDA” or “Agency”) is an independent public benefit corporation established in 1975, pursuant to New York State General Municipal Law Title 1, Article 18-A, §922. The Agency is a component unit of Nassau County and its financial results are reported in the County’s annual Comprehensive Annual Financial Report (“CAFR”). The NCIDA’s mission is to promote the economic welfare and prosperity of Nassau County by helping businesses to move to the County, relocate, expand operations and/or finance new investments.

Generally, projects which receive IDA benefits involve the acquisition, construction or major renovation of buildings which generate short and/or long-term employment. The NCIDA offers financial assistance to qualified applicants, provides guidance in economic development matters and analyzes the economic activity generated by the projects, including jobs created and retained.

The benefits offered by the NCIDA for qualified projects include the following:

- Federally tax-exempt and taxable revenue bonds or the refinancing of existing bonds;
- Sales and use tax exemptions for the purchase or lease of building materials, fixtures, furnishings and equipment;
- Mortgage recording tax exemptions;
- Real property tax abatements or Payment in Lieu of Taxes (PILOT).

The NCIDA Board consists of seven members who are appointed by the Nassau County Executive, subject to confirmation by the Nassau County Legislature. Board members do not receive remuneration for their services. New York State law provides that the NCIDA is subject to audit by the Office of the Nassau County Comptroller.⁶ The NCIDA currently has seven full-time staff members. Where the County consents, the NCIDA may utilize County agents, employees and facilities paying to the County any agreed upon portion of the compensation or cost incurred⁷.

The Agency’s primary revenue source is fee and service income from the entities receiving financial assistance. Material expenses include salaries and fringe benefits, professional services, economic development/marketing expenses and event and tourism marketing. During the audit period, the Agency’s annual financial statements were audited by the CPA firm of Albrecht, Viggiano, Zureck & Company, P.C. (AVZ). Exhibit I on the next page summarizes NCIDA’s revenues and expenses for 2015, 2016, 2017 and 2018.

⁶ Pursuant to General Municipal Law §922.

⁷ New York State General Municipal Law, Section 858(6).

Introduction

Exhibit I

Nassau County Industrial Development Agency Statements of Revenues and Expenses Years Ended December 31, 2015, 2016, 2017 and 2018				
	2015	2016	2017	2018
Operating Revenues				
Fee and Service Income	\$ 2,482,380	\$ 1,146,301	\$ 1,625,922	\$ 2,776,455
Other Income	74,818	45,192	27,199	55,004
Total Operating Revenues	<u>\$ 2,557,198</u>	<u>\$ 1,191,493</u>	<u>\$ 1,653,121</u>	<u>\$ 2,831,459</u>
Operating Expenses				
Salaries and Fringe Benefits	\$ 781,789	\$ 884,963	\$ 892,905	\$ 729,083
Professional Services	537,124	444,332	428,918	1,160,566
Economic Development & Marketing	279,137	438,830	150,515	103,823
Administrative Expenses	147,264	111,894	110,247	113,582
Event and Tourism Marketing	122,294	155,784	93,919	79,247
Rent Expense	24,000	24,000	24,000	24,000
Depreciation	7,409	13,532	15,183	13,165
Office Supplies and Equipment	7,547	19,532	10,264	17,433
Conference and Travel	15,595	12,192	9,901	16,407
Dues and Subscriptions	4,660	6,304	3,025	4,285
Total Operating Expenses	<u>\$ 1,926,819</u>	<u>\$ 2,111,363</u>	<u>\$ 1,738,877</u>	<u>\$ 2,261,591</u>
Net Operating Income (Loss)	<u>\$ 630,379</u>	<u>\$ (919,870)</u>	<u>\$ (85,756)</u>	<u>\$ 569,868</u>

Source of Data: NCIDA's 2016, 2017 and 2018 Audited Financial Statements. Amounts above do not include non-operating revenues of approximately \$7,184, \$7,325, \$9,357 and \$18,206, for the years ended December 31, 2015, 2016, 2017 and 2018, respectively.

Fee Income

The NCIDA collects fees from project applicants⁸ to support its operations. It does not receive support from the County, State or Federal government. During the audit period fees collected were as follows:

- Initial non-refundable Application fee of \$1,000 and \$1,000 per year thereafter.
- Initial Agency's Transaction/Bond Counsel fees and expenses ("Counsel Fee Deposit") of \$3,500.
- Initial Cost/Benefit Analysis of \$2,500.⁹

⁸ Application for Financial Assistance shows the initial application and bond issue fees that are charged to each project, page 1 and 26.

⁹ The cost/benefit analysis report is currently performed once during the term of the project (unless there is an amendment) by a Third-Party Consultant. The cost/benefit analysis report shows the benefits the project brings to the County such as estimated sales tax revenue and number of jobs.

Introduction

- Real Property Tax Valuation Analysis of \$500.¹⁰
- Fee for Taxable Bond Issues - 6/10 of 1% for the first \$20 million dollars of total project costs, and 2/10 of 1% for any additional amounts in excess of \$20 million.
- Fee for Tax-Exempt Bond Issues - 6/10 of 1% of total project costs.
- General Counsel Fee -1/10 of 1% of total project costs, with a minimum fee of \$2,000.

A review of cash receipts was completed to evaluate the internal controls over the processing of receipts and to determine whether receipts were deposited and recorded in the accounting records correctly. Our review of cash receipts totaling \$1,367,272 for 2015, \$804,834 for 2016, \$1,209,113 for 2017 and \$404,657 from January 1, 2018 to March 31, 2018 found there was adequate segregation of duties, and receipts were deposited and accurately classified in the accounting records.

Summary of Policies and Procedures

NCIDA's Uniform Tax Exemption Policy¹¹

NCIDA's Uniform Tax Exemption Policy ("UTEP") describes the Agency's purpose and responsibilities and the procedures that project properties are to follow to be eligible to receive financial assistance. The policy provides criteria for the evaluation and selection of projects that are granted sales and use tax exemptions, mortgage recording tax exemptions and real property tax abatements. Projects receiving abatements from real property tax are required to execute a Payment in Lieu of Tax Agreement ("PILOT") that includes a recapture of benefit clause when projects fail to achieve material items in the agreements.

Completion of Application for Financial Assistance by Project Owner

The Project owner submits an Application for Financial Assistance along with the application fees. The Application includes the following:

- Applicant's Name, Address, Type of Business;
- Proposed Project - Type of Financial Assistance Requested & Type of Proposed Project;
- Capital Cost of the Project - Construction Cost Breakdown;
- Cost/Benefit Analysis with current annual payroll and average salaries projected to be retained/created in Nassau County as a result of the proposed Project;
- Project Schedule completion, Environmental Impact, etc.;
- An initial employment plan, etc.; and
- Applicant's Financial Statements.

¹⁰ The Real Property Tax Valuation Analysis is currently performed by Standard Valuation Services that shows the estimated projection of real property tax assessment used to develop equitable PILOT payments on the project property.

¹¹ Section 874 (4)(a). The agency shall establish a uniform tax exemption policy... and shall provide guidelines for the claiming of real property, mortgage recording and sales tax exemptions.

Introduction

Evaluation Criteria Used by the NCIDA to Review Applications for Financial Assistance

The Project owners or their representative present their proposal to the Agency staff. The staff reviews the documents and present their findings to the members of the Board as to the criteria for the evaluation and selection of the project. The Agency's staff evaluates the particular type of project to determine whether the project is eligible to receive financial assistance based on the following criteria stated in the NCIDA's Uniform Tax Exemption Policy:

- The extent to which it will create or retain permanent jobs;
- The extent to which it will create construction jobs;
- The estimated value of tax exemption to be provided;
- The amount of private sector investment generated by the Project;
- The project completed time frame;
- The new revenue that would be provided to affected tax jurisdictions as a result of the Project;
- The impact of the Project on existing and proposed businesses and economic development projects in the vicinity;
- The demonstrated public support for the Project;
- Effect of the Project on the environment;
- Project additional service requirements; including but not limited to educational, transportation, police, emergency, medical or fire services; and
- Any other miscellaneous public benefits that might result from the Project.

Type of Financial Assistance Provided

The NCIDA is authorized to provide financial assistance to qualified project owners or companies and provides guidance in economic development matters. Benefits offered by the NCIDA for qualified projects include the following:

- Tax-exempt or taxable revenue bonds or the refinancing of existing bonds;
- Sales and use tax exemptions for construction materials and equipment;
- Mortgage recording tax exemptions; and
- Payment in Lieu of Taxes (PILOT)¹² agreements, provided with the cooperation of the county, towns, cities, villages and school districts.

The projects we reviewed that received financial assistance through PILOTs agreed to provide employment benefits to the County by hiring construction workers and/or hiring and retaining full and part-time personnel. When projects fail or are unable to perform its intended goals or is terminated, the tax exemptions may be subject to recapture based on the Recapture Schedule¹³ in accordance with the NCIDA's Uniform Tax Exemption Policy

¹² PILOT payments shall be equal to the amount, or a portion of, the property taxes that would have been levied by or on behalf of an affected tax jurisdiction (local or school district) if the project was not tax exempt in accordance with the New York State General Municipal Law, Article 18-A, Section 854(17).

¹³ The Recaptured Schedule is based on a percentage of the benefits and the year of occurrence as required by the Uniform Tax Exemption Policy dated April 4, 2017, page 17.

Introduction

Prerequisites to Providing Financial Assistance Required by NYS General Municipal Law

The Agency must adopt a resolution describing the project and financial assistance with respect to the Project that is consistent with the uniform tax exemption policy pursuant to Section 859-a of the Law.¹⁴

The Agency must hold a public hearing with respect to the project and the proposed financial assistance being contemplated by the Agency at the Project's proposed location. The public hearing notice must be published at least ten days prior to hearing, state the time and location and provide notice to the Chief Executive Officer of each affected tax jurisdiction. The notice of the hearing must state a general and functional description of the project, location of project, identity of the initial owner, and generally describe the financial assistance contemplated by the Agency.

At the public hearing interested parties must be provided reasonable opportunity, both orally and in writing to present their views with respect to the project.

After the public hearing the Agency will approve a project based on its evaluation of the project's ability to provide economic benefit by construction or renovation of buildings or residential property and to preserve or increase the overall number of permanent, private sector jobs in the County.

Approval of the Project as Required in the Uniform Tax Exemption Policy

In conformity with its procedures and in compliance with the applicable Laws, the Agency's Board may approve a Project by adopting an Inducement Resolution and thereafter proceed to closing on such Project in accordance with the NCIDA's Uniform Tax Exemption Policy.¹⁵ The Policy provides the Agency's Board with the procedural guidelines to make project approvals or denials and to provide financial assistance. If the project is approved, the Agency can acquire ownership or control of the property through a deed or straight lease transaction¹⁶, and then the Agency transfers the title back to the Project owner at the conclusion of the project in accordance with Section 874 of the Law¹⁷.

Tax Exemption Procedures

The Agency shall consider such factors as they deem relevant set forth in Section 874(4)(a)¹⁸ of the Law when Projects are granted financial assistance. The Agency's Uniform Tax Exemption policy provides a description and procedures that are to be followed for the exemptions listed below.

¹⁴ New York General Municipal Law, Article 18-A, Industrial Development, Title 1, Section 859-a. Additional prerequisites to the provisions of financial assistance.

¹⁵ Nassau County IDA Uniform Tax Exemption Policy, page 3.

¹⁶ New York State General Municipal Law, Article 18-A, Industrial Development, Title 1, Section 854(15), "Straight-lease transaction."

¹⁷ New York State General Municipal Law, Article 18-A, Industrial Development Title 1, Section 874. Tax exemptions.

¹⁸ Ibid, Section 874(4)(a). The agency shall establish a uniform tax exemption policy... and shall provide guidelines for the claiming of real property, mortgage recording and sales tax exemptions.

Introduction

- Sales and Use Tax Exemption – Personal Property includes building materials, fixtures, furnishings and equipment. Project applicants must file with the New York State Department of Taxation an annual statement of value of all sales and use taxes exemptions claimed as required by Section 874(8) of the Law.¹⁹
- Mortgage Recording Tax Exemption – on all project related financing and may permit exemptions on non-project related financings (e.g. second mortgages on the project) as required by Section 874(4)(a) of the Law.²⁰
- Abatement of Real Property Taxes- each project that received real property tax abatement is required to execute and deliver a Payment in Lieu of Tax Agreement with a schedule of the amount, duration and timing of the contractually determined tax payments to the Treasurer of Nassau County who will distribute the monies to the affected tax jurisdictions within 30 days of receipt as required by Section 874 (3) of the Law.²¹

Recapture Clause

The agreements include a “recapture clause” that requires the Agency to recoup the tax benefits granted to projects that do not meet its intended goals or are terminated.

- Prior to termination, the parties may try to renegotiate the terms of the agreement, but if it is not possible, then the project will be terminated by either the owner or the NCIDA.
- The recaptured monies are based on the sales and mortgage tax exemptions and real property benefits based on a percentage of these benefits and the year of occurrence.
- The NCIDA’s Uniform Tax Exemption Policy states “unless otherwise provided for by Applicable law, upon the collection of a recapture of benefits from an Applicant, the Agency shall redistribute or cause to be redistributed such recapture Benefits to the appropriate affected tax jurisdiction(s), unless agreed to otherwise by any local taxing jurisdiction.”²²
- New York State General Municipal Law, Section 859-a (6) (f)²³ provides “for the return of all or a part of financial assistance provided for the project, including all or part of the amount of any tax exemptions, which shall be redistributed to the appropriate affected tax jurisdiction, as provided for in policies developed by the agency pursuant to section eight hundred seventy-four of this title, unless agreed to otherwise by any local taxing jurisdiction or jurisdictions.”
- Prior to June 2016, the Agency was not required to return funds, but was instructed by law to “consider such issues as...whether affected tax jurisdictions shall be reimbursed by the

¹⁹ Ibid. Section 874(8). Project operators shall annually file a statement with the state department of taxation and finance, on the value of all sales and use tax exemptions claimed.

²⁰ Ibid. Section 874(4)(a). The agency shall establish a uniform tax exemption policy... and shall provide guidelines for the claiming of real property, mortgage recording and sales tax exemptions.

²¹ Ibid. Section 874 (3). Payments in lieu of taxes received are remitted to each affected tax jurisdiction within 30 days of receipt.

²² Nassau County IDA Uniform Tax Exemption Policy dated April 4, 2017, page 19.

²³ New York State General Municipal Law, Article 18-A, Industrial Development, Title 1, Agencies, Organization and Powers, Section 859-a (6)(f) Additional prerequisites to the provisions of financial assistance, effective June 2016.

Introduction

project occupant if the project does not fulfill the purpose for which an exemption was provided.”²⁴

PILOT Agreement in Exhibit A Restrictive Clause Tax Certiorari Filing

The PILOT Agreements include a restrictive tax certiorari clause that the Applicant in recognition of the benefits provided under PILOT and Lease Agreement waive the right to institute judicial or other review of an assessment of the real property with respect to the project property pursuant to the provisions of Article 7 of the Real Property Tax Law. The Applicant shall have the right to file a tax certiorari on the property during the last years of the Agreement term.

Deviation from PILOT

The Agency has the right to deviate from the PILOT schedules in terms of duration, amounts and phase-in of such PILOT, as stated in the NCIDA’s Uniform Exemption Policy.

Application for Real Property Tax Exemption

For each project granted a PILOT agreement the Agency is required to file an “Application for Real Property Tax Exemption”²⁵ with the Nassau County Board of Assessors and provide copies of such application to the chief elected official of each school district, city, county, town and village where the project is located. Such application must include copy of any agreement relating to the project or an extract of the terms related to payments to be made to the municipalities and termination of the agreement.

NCIDA’s Project Monitoring and Compliance Policy

According to the NCIDA’s Project Monitoring and Compliance Policy:

“Section 874 of the New York State General Municipal Law, as amended, requires the Agency to at least annually assess the progress of projects for which bonds or notes remain outstanding or for which straight-lease transactions have not terminated, or which continue to receive financial assistance or are otherwise active, toward achieving investment, job retention or creation, or other objectives of the project set forth in the Agency’s transaction documents with respect to such project.”

The NCIDA requires that each Project complete an annual questionnaire on material requirements that may include capital investments, job retention, job creation and such other requirements established by the Agency.

The Agency has the right to conduct further audits, inquires, investigations and inspections such as on-site investigations of each project to ensure compliance with applicable law and the Agency’s policies and procedures. On-site visits to determine whether projects complied with the terms in the PILOT agreements may also be conducted, which may confirm if the businesses were

²⁴ New York State General Municipal Law, Article 18-A, Industrial Development, Title 1, Section 874 (4)(a). The agency shall establish a uniform tax exemption policy.

²⁵ Real Property Tax Law, Section 412-a, Application for property tax exemption.

Introduction

open and operating, parking facilities were filled with cars during business hours and employees were present.

As per the NCIDA Monitoring Policy, if the Executive Director of the Agency determines that the Project is not in compliance with the requirements of the Agreements, the Agency must:

- Notify the Project owner and other applicable parties of such non-compliance;
- Give the Project owner the opportunity, if applicable, to cure such non-compliance;
- To the extent applicable, seek additional information/explanation from the Project owner as to the reasons for such non-compliance, including, without limitation, an explanation of the economic or natural factors that led to such non-compliance and provide the owner the opportunity to meet with the Agency's Board members; and
- Notify the appropriate New York State agencies of the Project's failure to comply with applicable reporting requirements, if applicable.

With respect to material requirements that are numerical in nature (e.g., job retention, job creation, capital investment), the Executive Director is authorized to waive or otherwise address non-compliance by the Project without action by the Agency's Board members if the Project is within ten percent (10%) of the goal of such minimum requirement. If non-compliance is greater than ten percent (10%) of the goal of such material requirement, the consent of the Agency's Board members is required to waive or otherwise address such non-compliance.

Our review noted that NCIDA's Uniform Tax Exemption Policy contained a criteria to evaluate the proposed projects, including terms for recapture to claw-back financial assistance when projects goals are not met; and to perform cost/benefit analysis prior to granting of financial assistance. If a deviation from the policy is identified, the NCIDA shall notify the affected tax jurisdictions of the proposed deviation and the applicable reasons.²⁶

Prior Audit

A previous audit of the NCIDA was issued by the Office of the Nassau County Comptroller on May 3, 2011 for the period January 1, 2009 through March 31, 2010.²⁷ The audit found that the NCIDA:

- did not perform an independent cost benefit analysis of projects, or verify that the benefits projected by the applicants, such as job creation, had been achieved;
- had weaknesses in their accounting practices and inadequate internal controls over cash receipt and disbursements, bank reconciliations, and travel and conference expenses;
- had weaknesses in the Agency's administrative and personnel practices;
- often failed to obtain Requests for Proposal for various marketing and advertising

²⁶ Nassau County Industrial Development Agency Uniform Tax Exemption Policy Re-Adopted April 4, 2017, Deviation From PILOT page 15 &16.

²⁷ Limited Review of the Nassau County Industrial Development Agency for the Period from January 1, 2009 to March 31, 2010, issued May 3, 2011.

Introduction

contracts; and

- had job descriptions which were inconsistent with employees' actual responsibilities.

During the current review of the NCIDA the prior audit findings were examined to determine whether the items were corrected. Findings from the prior report that were not rectified are mentioned in this report.

Findings from Audits by the NYS Comptroller of 11 Other IDAs in Counties, Towns, Cities Compared with the Findings in this Report

Auditors compared the NCIDA to the New York State Comptroller's Audit Reports for 11 IDAs²⁸ of Counties, Towns, and Cities from 2015 to 2018. This review compared the findings of the IDAs' reports to the NCIDA's Board oversight of the operations of its Agency, the process for evaluation, awarding and monitoring of projects to ensure goals are met, and action taken when goals were not achieved.

The comparison for all 11 IDAs noted several similar audit issues which are listed below and cited in our report findings.

- the Agency did not monitor project performance for financial investment or revitalization goals;
- the cost analysis reports did not show the detail tax revenue loss (gain) impact to affected school districts and municipalities;
- there was no evidence that the benefit cost ratios were calculated to measure the value of the benefits given to the projects' proposed investments;
- the Board did not provide effective oversight in its review of office procedures relating to employee salary increases and office functions; and
- the lack of monitoring of project job goals in 2015 and 2016.

IDA Reporting to New York State

Industrial Development Agencies ("IDA") are required to submit an annual report through the New York State reporting system, PARIS²⁹, for every project receiving financial assistance. The annual report for each project must show the estimated value of any tax exemptions received by the project, the project's total amount of outstanding debt, the estimated number of projected jobs each project would create or retain at the start of the project and the net number of job gains or losses to date. The tax incentives are normally spread over a period of 10, 15 or 20 years and the number of jobs retained or created varies by project.

²⁸ The eleven IDAs reviewed are the City of Albany, the Town of Hempstead, Syracuse, Cattaraugus, Seneca Counties and the IDAs' Board Governance for Auburn, Bethlehem, Erie, Hempstead, Orange and Steuben.

²⁹ The Public Authorities Reporting Information System (PARIS) is the online reporting system that allows public authorities to enter their information and submit their reports to both the Authorities Budget Office and the Office of the State Comptroller (OSC), as required by law.

Introduction

NCIDA Projects Compared to the Long Island Region and Other IDAs Statewide in 2018

Examination of the 2018 New York State Performance reports covering all IDAs in the State revealed that the NCIDA ranked:

- 1st of all counties in Total Tax Exemptions of \$101.9 million;
- 2nd statewide in the amount of net tax exemptions granted (Total Tax Exemptions minus Total PILOTs); and
- 3rd statewide in claimed net job gains of 12,779, although Auditors found that not all their claimed jobs could be supported (see Finding #3).

As shown in Exhibit II below, in 2018 the NCIDA ranked number 2 statewide (after New York City) with \$58.6 million net tax exemptions. For the Long Island region, the NCIDA also had the highest dollar increase in net tax exemptions of \$17.8 million or 43.6% from 2015 to 2018.

Exhibit II

Analysis of the Long Island Region IDAs' Net Tax Exemptions Compared to New York City and Statewide Fiscal Years Ending 2015, 2016, 2017 and 2018						
Name of IDA	in Dollars				2018 vs 2015	
	2015	2016	2017	2018	\$ Inc (Dec)	% Inc (Dec)
Nassau County	\$ 40.8	\$ 43.6	\$ 49.2	\$ 58.6	\$ 17.8	43.6%
Town of Hempstead	\$ 66.7	\$ 28.2	\$ 43.8	\$ 39.6	\$(27.1)	-40.6%
Town of Islip	\$ 19.6	\$ 16.8	\$ 16.3	\$ 21.3	\$ 1.7	8.7%
Town of Brookhaven	\$ 10.6	\$ 9.6	\$ 12.4	\$ 12.6	\$ 2.0	18.9%
Suffolk County	\$ 8.0	\$ 7.0	\$ 12.0	\$ 11.6	\$ 3.6	45.0%
Town of Babylon	\$ 11.0	\$ 14.0	\$ 11.9	\$ 16.8	\$ 5.8	52.7%
City of Glen Cove	\$ 2.3	\$ 3.1	\$ 4.7	\$ 7.9	\$ 5.6	243.5%
Town of Riverhead	\$ 1.6	\$ 2.4	\$ 2.9	\$ 3.0	\$ 1.4	87.5%
Total Long Island	160.6	124.7	153.2	\$171.4	10.8	6.7%
New York City	85.6	141.0	99.4	124.2	38.6	45.1%
Statewide	694.7	714.7	750.9	783.9	89.2	12.8%
Net Tax Exemption in Nassau County and the Long Island Region Compared to Statewide						
Nassau County to Statewide	5.9%	6.1%	6.6%	7.5%		
Long Island to Statewide	23.1%	17.4%	20.4%	21.9%		

Source: NYS Comptroller's Annual Performance Report 2015, 2016, 2017 and 2018.

The NYS Annual Performance Report in 2018, reported that approximately 45,874 people were hired by commercial businesses, residence housing developments, auto, entertainment, retail and

Introduction

storage facilities, and other projects that were granted financial assistance by the eight IDAs in Long Island. **The NCIDA accounted for 7.1% and the Long Island region accounted for approximately 25.6% of the 179,057 jobs claimed to be created statewide in New York State by IDAs.**

In terms of job gains in 2018, the NCIDA ranked number 3 statewide with 12,779 claimed jobs from 181 projects. Exhibit III below shows the number of net job gains and change in jobs gains for 2015-2018.

Exhibit III

Number of NCIDA Job Gains Compared to the Long Island Region and Statewide in 2018

Analysis of the Long Island Region IDAs Net Job Gains Compared to New York City and Statewide Fiscal Year Ending 2015, 2016, 2017 and 2018						
IDA	Number of Jobs				2018 vs 2015	
	2015	2016	2017	2018	Qty Inc (Dec)	% Inc (Dec)
Suffolk County	12,976	15,342	15,836	12,881	(95)	-0.7%
Nassau County	6,414	14,478	11,828	12,779	6,365	99.2%
Town of Babylon	6,071	6,758	6,010	6,842	771	12.7%
Town of Brookhaven	5,349	5,401	4,892	4,699	(650)	-12.2%
Town of Islip	4,451	2,899	3,115	3,749	(702)	-15.8%
Town of Hempstead	3,374	5,629	3,729	3,360	(14)	-0.4%
Town of Riverhead	986	984	1,253	1,383	397	40.3%
City of Glen Cove	63	141	197	181	118	187.3%
Total Long Island	39,684	51,632	46,860	45,874	6,190	15.6%
New York City	33,956	39,885	29,582	29,598	(4,358)	-12.8%
Statewide	224,734	208,707	198,522	179,057	(45,677)	-20.3%
Net Job Gains in Nassau County and the Long Island Region Compared to Statewide						
Nassau County to Statewide	2.9%	6.9%	6.0%	7.1%		
Long Island to Statewide	17.7%	24.7%	23.6%	25.6%		
Source: NYS Comptroller's Annual Performance Report 2015, 2016, 2017 and 2018.						

Introduction

NCIDA Compared to Suffolk and Westchester Counties

In 2018, the Nassau County IDA approved 181 projects with a total project value of \$3.9 billion and granted \$101.9 million in total tax exemptions to businesses. Exhibit IV summarizes specific data noted by the Auditors that revealed the following:

- Nassau County IDA recovered only 42% of the exemptions through the Payment-In-Lieu-Of-Taxes (PILOT) agreements with projects, approximately 17% and 25%, respectively less than the percentages recovered by Suffolk (59%) and Westchester (67%) Counties.
- The \$58.6 million in net tax exemptions (Total Tax Exemptions minus Total PILOTs) granted to projects by the NCIDA was far greater than the \$11.6 million granted by Suffolk and \$12.6 million granted by Westchester.
- Nassau County reported that, through tax breaks given to projects, 12,779 net jobs were created, which was less than the 12,881 net jobs created in Suffolk, but more than the 5,310 net jobs created in Westchester County.
- Nassau County IDA granted \$4,586 in net exemptions per job compared to \$4,378 statewide in 2018.

Exhibit IV

NCIDA Audit									
Comparison of Nassau County IDA to Suffolk and Westchester County IDAs									
Fiscal Year Ending 2018									
		<i>in millions</i>							<i>in millions</i>
County Name	Project Count	Total Project Values	Total Tax Exemptions	Total PILOTs	Net Tax Exemptions	% of Exemption Recovered from PILOTs		Net Jobs Gained	Net Tax Exemption \$ per Job
Nassau	181	\$ 3,886	\$ 101.9	\$ 43.3	\$ 58.6	42%		12,779	\$ 4,586
Westchester	68	\$ 2,944	\$ 38.0	\$ 25.3	\$ 12.6	67%		5,310	\$ 2,373
Suffolk	137	\$ 2,203	\$ 28.6	\$ 17.0	\$ 11.6	59%		12,881	\$ 901
State wide	4,289	\$ 105,547	\$ 1,453.2	\$ 669.4	\$ 783.9	46%		179,057	\$ 4,378

Source: NYS Comptroller's Annual Performance Report on NYS IDAs for Fiscal Year Ending 2018

A review of the state report for 2018 also revealed that Total Tax Exemptions for Nassau County was the highest of any County in the state at \$101.9 million. The second highest was Rensselaer County with \$51.9 million.

Introduction

NCIDA Data From Prior Years New York State Performance Reports

Auditors reviewed other NYS reports and found that the Nassau County IDA was cited in several:

- For years 2014 and 2015, the NYS reports featured charts of the “Five Highest Paid IDA Employees” for all employees working at the state’s 109 IDAs. Nassau County IDA had the second highest salary in the state, for its former Executive Director at \$191,000.
- For years 2016, 2017 and 2018, the NYS reports featured charts of the “Ten IDAs with the “Highest Conduit Debt Outstanding” and Nassau County was highlighted on these. Conduit debt consists of Bonds issued by the IDA’s to finance projects.

Audit Scope, Objectives and Methodology

The time period covered by the review was January 1, 2015 to June 2019.

The objectives of the review included the following:

- To review NCIDA operations and management in order to determine if the agency has taken action to initiate new projects and encourage the creation and expansion of new businesses.
- To examine whether past projects have achieved the agreed upon benefits to the County, including employment goals and assess if recapture provisions were implemented if benefits were not achieved.
- To assess the adequacy of internal financial controls to ensure compliance with State Laws, Agency policies and governance.
- To review internal controls over cash receipts, disbursements, payroll, procurement policies and related party receipts and disbursements.
- To follow-up on Nassau County Comptroller audit finding recommendations from the 2011 Audit of the Nassau County Industrial Development Agency.

We reviewed the applicable State Laws and the NCIDA’s operating and personnel policies and procedures, including its Code of Ethics and Anti-Nepotism policy.

We reviewed Board Minutes for significant developments and decisions.

We performed compliance and substantive tests of agency fees, procurement and purchases, payroll, professional services and travel and conference expenses.

We reviewed and analyzed the Agency’s decision making and oversight processes when offering financial assistance to qualified applicants and the monitoring of progress of the corresponding performance requirements.

Introduction

We reviewed the NCIDA's compliance with the terms of its lease with the County for its office space.

We reviewed the audit findings from the previous Audit Report to assess whether actions were taken by the NCIDA to address the prior audit recommendations.

We believe our review provides a reasonable basis for the findings and recommendations contained herein.

Findings and Recommendations

AUDIT FINDING (1)

(1) 69% of Projects Reviewed Had Not Achieved All Their Employment Goals in One or More Years as Required by IDA Agreements

Our review of job compliance for 26 projects of 181 ongoing projects found that 18 projects or 69.2% of the test sample, were not in compliance with the number of jobs required in the lease agreements for one or more years during the period 2015 to 2018. The corresponding PILOT payments for the life of the 18 projects totaled \$107,998,729 compared to the property taxes we estimate would have been \$152,967,523, or \$44,968,795 less in property taxes³⁰ which would have been paid.

Exhibit V on the next page lists the 18 projects by name and shades in grey the non-compliance information by year. An IDA agreement often includes employment goals for more than one year.

Exhibit V shows that:

- Six projects' employment goals were not met for all four years from 2015 to 2018 with total PILOT payments of \$17,961,983 for the life of the projects;
- Three projects' employment goals were not met for three years from 2015 to 2018 with total PILOT payments of \$4,571,044 for the life of the projects;
- Nine projects' employment goals were not met for one or two years from 2015 to 2018 with total PILOT payments of \$85,465,702; and
- In total for these 18 projects, PILOT payments total \$107,998,728 compared to property taxes for the same period of time, which we estimate would have been \$152,967,523, or *\$44,968,795 less in property taxes paid*, as an incentive to create jobs and other economic benefits.

³⁰ Calculation of estimated tax is based on the Nassau County Land Record Lookup website, Savings Due to Exemption amount (code 18020) plus a 2% yearly increase. The amount represents the tax that would have been paid by the property if there were no exemptions per Assessment. The NCIDA's third-party consultant uses the same 2% yearly increase methodology when comparing proposed PILOT payments to projected property taxes. The code 18020 in the New York State Assessor's Manual, Volume 4, Exemption Administration states property owned or under the control of a municipal industrial development agency is exempt from taxation. The estimated property tax does not include village taxes. The village tax is billed and collected by the village per Assessment.

Findings and Recommendations

Exhibit V

Nassau County IDA - Projects Selected 2015 - 2018 Projects That Did Not Comply With the Required Number Jobs on the Lease Agreement								
Project Identification	Number of Jobs							
	12/31/15		12/31/16		12/31/17		12/31/18	
	Retained per Lease	Actual FTE per Job Confirm	Retained per Lease	Actual FTE per Job Confirm	Retained per Lease	Actual FTE per Job Confirm	Retained per Lease	Actual FTE per Job Confirm
2200 Northern Steel LLC	517	543	671	764	671	787	671	619
5-9 Grace Ave					2	0	2	2
615 South Street	112	107	112	124	112	153	112	161
Avanti	69	34	69	41	69	45		
Blue Cassel	1	1	1	0	1	41	1	1
Cox & Company, Inc. dba Plainview Steel, LLC	185	184	185	201	185	204	185	200
Designatronics Inc.	237	202	237	181	247	156	257	161
Display Technologies	57	54	59	51	59	41	59	44
Litigation Settlement Adm Corp. dba 801 Bway	11	3	13	2	13	7	13	11
M.P.A. Owners LLC	1	0	1	0	1	0	1	1
Mela Shopping Mall	60	16	85	<i>Note 1</i>	125	76	175	82
Prospect Realty Holding Company, LLC	880	930	880	482.5	880	1047	880	1043
Stoneridge B, C & D dba Prospect Ave Apts	1.5	1	1.5	1	1.5	1	1.5	1
The Hain Celestial Group, Inc.	260	253	270	242	285	263.5	300	257
The Loft at 231 Main Street			3	0	7	0.5	13	0.5
We're Associates Co. dba 4 Ohio Drive LLC							250	54
839 Management LLC					7	2	7	2.5
Nassau Events Center LLC (NY Islanders) <i>Note 2</i>							570	369.5

Note 1: NCIDA could not locate the Job confirmation for 12/31/16.
 Note 2: Nassau Events Center LLC does not have a PILOT agreement and is required to have 570 jobs in NYS for 2018.
 Source: Nassau County IDA's Annual Job Confirmation Reports for 2015, 2016, 2017 and 2018.

Findings and Recommendations

Exhibit VI summarizes the monitoring performed by the NCIDA for the 18 projects from 2015 to 2018.

Exhibit VI

Summary of NCIDA Follow-up for Job Non-Compliance Nassau County IDA - Projects Selected 2015 - 2018		
#	Project	Job Non-Compliance Follow-up
1	2200 Northern Steel LLC	2018: The NCIDA did not provide the Job Confirmation Schedule to show the actions taken by Agency to resolve job issues.
2	5-9 Grace Ave	2017: In 2/26/18, the Executive Director granted the project an extension to have 2 jobs by 5/1/18, due to project construction delays. As of 5/1/18, the Job Confirmation form showed 2 jobs with average salary \$500.
3	615 South Street	2015: The Executive Director waived the project's non-compliance since it was only 4.5% off the job covenant. The Executive Director recommended waiting to check job compliance for 12/31/16.
4	Avanti	2015: The NCIDA sent a default notice to the project in 9/19/16. 2016 & 2017: The project was terminated in 8/9/17 by the Board. Outstanding personal injury claims delayed the ability to terminate the project earlier. The job default occurred during a 0% recapture period, therefore no recapture money was collected.
5	Blue Cassel	2016: The 2016 Job Confirmation Schedule showed 37 jobs, compared to the actual Job Confirmation form that had zero and the NYS-45 form showed an employer named NHE Management Assoc. LLC with 36 jobs.
6	Cox & Company, Inc. dba Plainview Steel, LLC	2015: The Executive Director decided no action would be taken since the project was only short one job.
7	Designatronics Incorporated	2015 & 2016: There was no evidence provided by NCIDA that follow-up was performed. 2017: The Project requested a 1 year extension to comply with the job requirements which would be discussed at the next Board meeting to approve. 2018: The NCIDA did not provide the Job Confirmation Schedule to show actions taken by Agency to resolve job issues.
8	Display Technologies	2015: There was no evidence provided by NCIDA that a follow-up was performed. 2016: The NCIDA is in process of negotiation to amend or recapture benefits. 2017: In 8/20/18, the NCIDA demanded the recapture of benefits from the project and to decide whether to commence a law suit against the project's owner. 2018: In 6/24/19, the NCIDA was in the process of calculating recapture benefits.
9	Litigation Settlement Administrative Corp. dba 801 Bway	2015 & 2016: The NCIDA was in negotiation to amend the agreement or to recapture benefits. 2017: The NCIDA will discuss the matters with the Board in 11/8/18. 2018: In 12/2018, the Board granted a 60 day extension to the project. In 4/10/19, a letter from LSAC's stated the project was actively attempting to comply. In 7/2019, the staff recommended to the Board to amend the agreement or to recapture benefits.

Findings and Recommendations

Exhibit VI (Continued)

Summary of NCIDA Follow-up for Job Non-Compliance Nassau County IDA - Projects Selected 2015 - 2018		
#	Project	Job Non-Compliance Follow-up
10	M.P.A. Owners LLC	2015, 2016 & 2017: There was no evidence provided by NCIDA that a follow-up was performed.
11	Mela Shopping Mall	2015: There was no evidence provided by the NCIDA that a follow-up was performed. 2016: The NCIDA was in the process of negotiation to amend the agreement or to recapture benefits. 2017: As per the amendment dated 12/29/17, the project was to maintain not less than 235 jobs. 2018: The NCIDA did not provide the 2018 Job Confirmation Schedule that shows the actions taken by Agency to resolve job issues.
12	Prospect Realty Holding Co., LLC	2016: There was no evidence provided by the NCIDA that a follow-up was performed.
13	Stoneridge B, C & D dba Prospect Ave Apts	2015 & 2016: There was no evidence provided by the NCIDA that a follow-up was performed. 2017: In 10/5/18 the Executive Director waived the shortage of one half full time employee. The project was required to have 1.5 jobs, only had 1 job. 2018: The NCIDA did not provide the 2018 Job Confirmation Schedule to show the actions taken by the Agency to resolve job issues.
14	The Hain Celestial Group, Inc.	2015: The Executive Director decided not to take further action since the job non-compliance was only 2.7% short. 2016: There was no evidence provided by NCIDA that a follow-up was performed. 2017: In 3/16/18, the Executive Director waived the job non-compliance since it was only 1 job short. In the 2017 Job Confirmation form it showed 283.5 jobs compared to the required 285 jobs. The auditor's calculated 263.5 total jobs for 2017. The difference in the number of jobs is 21.5 divided by 285 (required jobs) which equals to 7.5%. 2018: NCIDA did not provide the 2018 Job Confirmation Schedule to show actions taken by Agency to resolve job issues.
15	The Loft at 231 Main Street	2016 & 2017: There was no evidence provided by the NCIDA that a follow-up was performed. 2018: NCIDA did not provide the 2018 Job Confirmation Schedule to show actions taken by the Agency to resolve job issues.
16	We're Associates Co. dba 4 Ohio Drive LLC	2018: The NCIDA did not provide the 2018 Job Confirmation Schedule to show actions taken by Agency to resolve job issues.
17	839 Management LLC	2017: There was no evidence provided by NCIDA that a follow-up was done. 2018: The NCIDA did not provide the 2018 Job Confirmation Schedule to show actions taken by Agency to resolve job issues.
18	Nassau Events Center LLC (NY Islanders)	2018: The NCIDA did not provide the 2018 Job Confirmation Schedule to show actions taken by Agency to resolve job issues.
Source: Nassau County IDA's Annual Job Confirmation Reports and excel worksheets for 2015, 2016 and 2017.		

Findings and Recommendations

Exhibit VII summarizes the number of follow-ups performed by the NCIDA to resolve the job non-compliance for the 18 projects from 2015 to 2018 by year. The number of follow-ups not performed by the NCIDA on projects for job non-compliance decreased to three in 2017 from six in 2015 and eight in 2016.

According to the NCIDA’s Project Monitoring and Compliance Policy, each project is required to submit an annual questionnaire on requirements that may include capital investment, job retention or creation and other requirements established by the Agency. The policy states the Agency has a right to conduct audits, inquires, investigations, inspections and includes procedures when projects are not compliant. The policy did not have the detailed procedures on how the NCIDA monitors the requirements for each project. For 2018 the Auditors were not able to determine whether follow-ups were performed on nine projects sampled since the NCIDA did not provide the 2018 Job Confirmation schedule that would show the action taken to resolve projects that did not meet the required job goals. Follow-ups for two projects to recapture or to grant extra time to resolve the non-compliance were performed by the NCIDA in 2018.

The monitoring of project benefits by the NCIDA is necessary to ensure that projects that receive financial assistance achieve the agreed upon employment goals which benefit the County and the taxpayers.

Exhibit VII

Nassau County IDA Number of Follow-Ups Performed for Job Non-Compliance Projects Selected 2015 to 2018						
Year	Follow-Ups Done	Follow-Ups Not Done	Not Required or Project Ended	Follow-Up Not Determined for 2018	Jobs Goals Met	Total
2015	4	6	5		3	18
2016	3	8	4		3	18
2017	8	3	2		5	18
2018	2		1	9	6	18
Total	17	17	12	9	17	72

Source: Nassau County IDA's Annual Job Confirmation Reports and Excel Worksheets for 2015, 2016 and 2017.

Findings and Recommendations

Audit Recommendations:

We recommend that the NCIDA:

- a) develop written procedures to monitor project performance for job compliance; and
- b) document project performance and actions taken when projects are not compliant with job goals.

AUDIT FINDING (2)

(2) Employment Goals Were Limited in Almost 50% of Projects Tested, Representing Tax Revenue of \$112.8 Million Being Abated

Our review of a test sample of 26 projects out of 181 ongoing projects that were granted financial assistance by the NCIDA revealed that while approximately \$112,835,982 in taxes were abated over the life of projects, employment goals were either non-existent or minimal.

Businesses and developers are granted economic assistance in return for building or renovation of commercial property or to relocate to Nassau County and retain or expand employment. In recent years the IDAs in Nassau and Suffolk counties have granted financial aid to residential and senior housing developments, automobile dealerships and suppliers, and self-storage facilities that create few permanent jobs with low salaries.

Auditors noted that while **all the 26 projects reviewed provided an economic benefit** such as the development or renovation of commercial property used for business and residential housing, and 12 of the 26 projects, or 46%, only required that a small number (zero to 13) of full time equivalent jobs be retained or created relative to the benefits granted, with no salary requirements specified in the PILOT agreements. Examples of no or low employment goals include the following:

- The Loft at 231 Main Street³¹ and at 285 Eastern Parkway only required a half a person at each project with no minimum salaries required (#15 & #18);
- Blue Cassel Site A required only one full-time employee (#10);
- Stoneridge dba Prospect Avenue Apartments required at least 1.5 full-time employees (#19);
- Safeguard Self Storage dba PPF SS 6000 Sunrise required 2 full-time employees (#14); and
- Lynbrook Theatre was not required to have any full-time jobs (#12).

³¹ Excludes subtenants to create a total of 12 full-time jobs within 3 years after December 31, 2015 (Scheduled Completion Date).

Findings and Recommendations

The tax revenue abatements from PILOT agreements granted to the 26 projects are shown in Exhibit VIII.

Exhibit VIII

Calculation of Property Tax Revenue Gain (Loss) from PILOT Agreements				
Ct	Project Name	PILOT Payments Per Agreement	Estimated Taxes Before PILOT *	Revenue Gain (Loss)
1	Long Island Industrial Portfolio	\$ 66,458,995	\$ 101,313,494	\$ (34,854,500)
2	Altice USA Inc.	\$ 31,535,467	\$ 32,322,162	\$ (786,695)
3	2200 Northern Steel LLC	\$ 27,145,069	\$ 33,128,984	\$ (5,983,914)
4	We're Associates Company	\$ 20,880,065	\$ 16,247,698	\$ 4,632,367
5	Prospect Realty Holding Company, LLC	\$ 15,234,685	\$ 27,421,604	\$ (12,186,919)
6	Deutsche Lufthansa	\$ 9,125,570	\$ 9,345,510	\$ (219,939)
7	615 South Street, LLC	\$ 8,497,524	\$ 11,281,467	\$ (2,783,943)
8	The Hain Celestial Group	\$ 6,395,828	\$ 8,870,193	\$ (2,474,365)
9	Adams Court	\$ 5,568,558	\$ 17,071,441	\$ (11,502,883)
10	Blue Cassel Site A	\$ 4,887,686	\$ 14,440,899	\$ (9,553,214)
11	Designatronics Incorporated	\$ 4,873,560	\$ 6,194,609	\$ (1,321,049)
12	Lynbrook Theatre Group & Regal Cinemas Inc.	\$ 4,590,137	\$ 2,201,759	\$ 2,388,378
13	Cox & Company, Inc.	\$ 4,573,914	\$ 6,371,435	\$ (1,797,521)
14	Safeguard Self Storage dba PPF SS 6000 Sunrise	\$ 4,111,531	\$ 9,257,730	\$ (5,146,199)
15	The Loft at 231 Main Street	\$ 3,203,630	\$ 5,495,546	\$ (2,291,916)
16	5-9 Grace Ave	\$ 3,072,903	\$ 3,683,003	\$ (610,100)
17	Mela Shopping Mall	\$ 2,750,905	\$ 4,579,587	\$ (1,828,682)
18	The Loft at 285 Eastern Pkwy	\$ 2,667,079	\$ 3,177,380	\$ (510,301)
19	Stoneridge B,C &D	\$ 2,532,727	\$ 8,307,270	\$ (5,774,543)
20	Luxottica US Holdings Corp.	\$ 1,761,927	\$ 1,617,901	\$ 144,026
21	839 Management LLC	\$ 1,173,856	\$ 2,316,072	\$ (1,142,216)
22	Display Technologies	\$ 1,105,990	\$ 1,269,059	\$ (163,069)
23	Avanti	\$ 699,822	\$ 1,385,561	\$ (685,739)
24	M.P.A. Owners LLC	\$ 667,592	\$ 1,115,565	\$ (447,973)
25	Litigation Settlement Admin. Corp. dba 801 Bway	\$ 302,973	\$ 858,970	\$ (555,997)
26	Nassau Events Center LLC (New York Islanders) **	\$ -	\$ -	\$ -
Total		\$ 233,817,992	\$ 329,274,899	\$ (95,456,907)

Source: PILOT Lease Agreements and the Nassau County Land Record Lookup, Savings Due to Exemption.
 * Calculated Taxes based on the Nassau County Record Lookup Savings Due to Exemption amounts and a 2% yearly increase on taxes.
 ** Project does not have a PILOT agreement.

Findings and Recommendations

Auditors compared the total required PILOT payments over the life of the 26 projects of \$233,817,992 to the calculated estimated property tax payments³² that would have been paid of \$329,274,899 had no property tax exemptions been granted and determined that the estimated reduction of property tax revenue would be \$95,456,907. In addition, the maximum sales tax exemption granted to the 26 projects totaled \$17,379,075, resulting in a total tax revenue reduction of approximately \$112,835,982. As shown in Exhibit IX, the County portion of the sales tax reduction would be \$8,563,602.

Exhibit IX

Nassau County IDA Nassau County Portion of Sales Tax Loss		
Jurisdiction	Sales Tax %	Amount
County	4.250	\$ 8,563,602.17
New York State	4.000	\$ 8,059,860.87
MTA	0.375	\$ 755,611.96
Total Sales Tax Rate	<u>8.625</u>	<u>\$ 17,379,075.00</u>
MTA : Metropolitan Transit Authority		

Auditors also noted that project performance for financial investments or revitalization objectives were not monitored by the NCIDA. See Finding 4 for additional information on investments that were not monitored.

In May 2019 the New York State Comptroller urged taxpayers to examine the tax incentives given to businesses to create and retain jobs and determine whether it was worth the loss of tax revenue to the communities.³³ Auditors noted the following public discussion at an NCIDA Board Meeting related to IDA projects:

- In December 2018 the NCIDA approved the renewal of financial assistance to Luxottica U.S. Holdings Corp. and Southern Glazers Wine and Spirits, LLC, Syosset Partners, LLC. The Roslyn and Syosset School Districts, respectively, opposed the additional PILOT agreements.

³² Calculation of estimated tax is based on the Nassau County Land Record Lookup website, Savings Due to Exemption amount (code 18020) plus a 2% yearly increase. The amount represents the tax that would have been paid by the property if there were no exemptions per Assessment. The NCIDA's third-party consultant uses the same 2% yearly increase methodology when comparing proposed PILOT payments to projected property taxes. The code 18020 in the New York State Assessor's Manual, Volume 4, Exemption Administration states property owned or under the control of a municipal industrial development agency is exempt from taxation. The estimated property tax does not include village taxes. The village tax is billed and collected by the village per Assessment.

³³ Newsday Article, "Impact of tax breaks" dated May 31, 2019.

Findings and Recommendations

- Third party consultant reports did not detail the impact of tax abatements to the school districts
- In 2019 there was public criticism from union employees regarding Lufthansa's request for financial assistance by the NCIDA³⁴.

Audit Recommendations:

We recommend that the NCIDA:

- a) ensure that the employment benefits are significant to support the financial assistance granted to the projects;
- b) require salaries of the jobs retained and created be specified in the agreements; and
- c) ensure that project performance for financial investments or revitalization objectives are monitored and documented.

AUDIT FINDING (3)

(3) In 57% of the Test Cases, Backup Provided to the NCIDA to Support Project Job Confirmation Numbers Did Not Always Match or Was Not Provided

Companies receiving IDA benefits annually complete and submit "Job Confirmation Forms" to the IDA which provide details about the jobs created related to the project. Auditors reviewed the IDA's Job Confirmation Forms and found that for 15 of the 26 projects reviewed (57%), the number of employees reported on the required support documents did not agree nor support the number of jobs listed on the Job Confirmation Forms.

The NCIDA's Application for Financial Assistance requires that the PILOT Applicant provide Job Confirmation Forms³⁵ to the Agency on or before February 11 of the succeeding year, together with employment verification information, including the New York State Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance Returns ("NYS-45").³⁶

For the 26 projects reviewed, Auditors compared the number of jobs on the NCIDA's Job Confirmation Form to the NYS-45s that support the employment amounts for 2015 and 2016. Auditors identified nine projects in 2015 and 2016 that had employees listed on the NYS-45s that did not match the number of jobs on the IDA's Job Confirmation forms, as shown in Exhibit X.

³⁴ Newsday Article, "IDA fields criticism from union, residents on proposed tax breaks," dated May 14, 2019.

³⁵ Each Project is required to complete an annual questionnaire on material requirements that may include capital investments, job retention, job creation and such other requirements established by the Agency.

³⁶ Form NYS-45 is also known as the "Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return" that shows the number of employees employed at a company on a quarterly basis.

Findings and Recommendations

Exhibit X

Nassau County IDA Summary of Differences Between Annual Job Confirmation and NYS-45 Returns Projects Selected 2015 - 2016				
Project Name	2015		2016	
	No. of Jobs per Job Confirm	No. of Jobs per NYS-45	No. of Jobs per Job Confirm	No. of Jobs per NYS-45
Prospect Realty Holding Co. LLC	930	<i>Note 1</i>	483	<i>Note 1</i>
2200 Northern Steel LLC	543	5	764	212
The Hain Celestial Group, Inc.	253	443	242	305
Luxottica US Holdings Corp.	240	345	269	344
Deutsche Lufthansa	215	293	215	204
Designatronics Incorporated	202	207	181	185
Cox & Company, Inc. (Plainview	184	<i>Note 2</i>	201	<i>Note 2</i>
615 South Street, LLC (WAC Lighting)	107	9	124	156
Display Technologies	54	51	51	49
Avanti (New Hyde Realty Group LLC)	34	<i>Note 2</i>	41	44
Mela Shopping Mall	16	11	<i>Note 3</i>	
Blue Cassel Site A	1	38	0	36
M.P.A. Owners LLC	0	0	43	<i>Note 2</i>
Safeguard Self Storage (PPF SS 6000	<i>Note 4</i>	60	2	<i>Note 3</i>
The Loft at 231 Main Street	<i>Note 4</i>	-	0	<i>Note 2</i>
<u>Notes:</u>				
Note 1 - Employees not listed				
Note 2 - Project did not provide				
Note 3 - NCIDA could not locate				
Note 4 - No job requirement				
Note 5 - Exhibit does not include 4 projects in which the number of jobs on the NYS-45s and the Job Confirmation agree and 7 projects that did not require jobs at the time.				
Source: Job Confirmations and NYS-45 Tax Returns (which are New York State's Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance Returns).				

It appears that, at the time, the NCIDA was not reviewing the accuracy of the number of employees listed on the Job Confirmation forms sent to them by the project recipients (PILOT recipient's businesses). Examples of issues found with the Job Confirmation Forms include the following:

Findings and Recommendations

- In 2015, the 2200 Northern Steel LLC project listed 543 jobs on the Job Confirmation form compared to only five employees on the NYS-45;
- There were two projects in 2015 and three projects in 2016 that did not provide the NYS-45s as required;
- For one project in 2016, the NCIDA could not locate the NYS-45; and
- Some NYS-45 forms were submitted without employees listed, such as the Prospect Realty Holding Company, LLC project for 2015 & 2016.

By not obtaining and verifying job support, the NCIDA has relied on incomplete and potentially inaccurate job information presented by project applicants to evaluate the employment performance reported to the Authorities Budget Office and the Office of the State Comptroller.

Audit Recommendations:

We recommend that the NCIDA implement a procedure that requires the review of the NYS-45s to ensure compliance with the Job Confirmation form data required under the PILOT and Lease agreements.

AUDIT FINDING (4)

(4) Review of Third-Party Consultant's Economic Impact Analysis Reports Found that the Reports Did Not Show the Impact of Tax Abatements to Affected Jurisdictions, Capital Investments Were Not Monitored and Benefit Cost Ratios Were Not Calculated

The NCIDA Board may not have had all the necessary and relevant data to make project approval or denial decisions or to provide assurance that benefits were awarded through an objective process and the assistance granted has provided adequate benefits to the affected jurisdictions.

A project that submits an application for financial assistance is required to pay for an independent third-party consultant to perform a cost benefit analysis report³⁷. This requirement was implemented in response to the prior audit of the NCIDA that was issued by the Office of the Nassau County Comptroller on May 3, 2011 for the period January 1, 2009 through March 31, 2010³⁸. The prior audit found that the NCIDA did not perform an independent analysis to verify the economic assumptions made by the applicants, evaluate the benefits to the County and the proposed property tax exemptions. The selection of the Third-Party Consultant for the audit period 2015-2018 was done through a Request for Qualifications and approved by the Board.

³⁷ NCIDA Uniform Criteria for Processing/Evaluation of Projects, page 3 and 4.

³⁸ Limited Review of the Nassau County Industrial Development Agency for the Period from January 1, 2009 to March 31, 2010, issued May 3, 2011, Finding 1, pages 1-3.

Findings and Recommendations

Detailed Financial Impact Missing

Our review revealed that that a “Third-Party Consultant Economic Impact Analysis Report” was performed for 21 of the 26³⁹ projects, however for 18 of the 21 projects, the impact of loss tax revenue to the County, Towns, affected school districts and other municipalities was not included. Two reports did include the school, general and village tax impact and for one report, the project did not have a PILOT.

Auditors also noted that the Third-Party Consultant Economic Impact Analysis Report was not performed for 5 of the 26 projects because their start dates were before the NCIDA’s Uniform Exemption Policy (“UTEP”) which required the economic impact analysis. As a result, the Auditors did not have any estimated benefits to the County at the start of these five projects for comparison by the Auditors with the financial assistance granted.

The Third-Party Consultant Economic Impact Analysis Report documents the:

- evaluation of the economic assumptions made by the applicant;
- estimate of the benefits to the County for each project; and
- justification for the proposed property tax exemptions and financial assistance to be given.

The Third-Party Consultant Economic Impact Analysis Reports are utilized by the NCIDA Board to determine which projects to approve. These Reports take into consideration the savings granted to the applicant in PILOTs (if any) and other financial assistance compared to the benefits the County receives from the project, such as the number of jobs, affordable housing or economic development of a community. The eighteen reports reviewed did not specifically compute and analyze the impact of gain (loss) tax revenue on the County, towns, affected school districts and other municipalities, but included the type of information listed below:

- construction phase jobs, earnings, earnings per employee;
- mortgage recording tax and sales tax exemption, loss (gain) of property tax revenue (comparison of property tax payment without project to PILOT payment); and
- sales tax revenue during construction phase and annual sales tax revenue during operating and maintenance phase.

Capital Investments Not Monitored

The Auditors found no evidence that the NCIDA monitored or verified the capital investment amounts on the Economic Impact Analysis Reports and project applications. The itemized capital construction costs are required on the applications for financial assistance. The Job Confirmation forms starting in 2016 required project investment information such as receipts, contracts, invoices, etc. An e-mail was sent to the NCIDA requesting support that shows project goals for capital investment and revitalization were met for the 26 projects tested. To date, the NCIDA has not responded to our request.

³⁹ Of the 21 projects, the analysis was done from the start date of the project and for one project the analysis was done based on the amended project date.

Findings and Recommendations

It is essential that the NCIDA develop a method of monitoring and verifying capital investments to ensure the affected jurisdictions receive the expected benefits of these investments.

The Third-Party Consultant Economic Impact Analysis Reports for all 21 projects stated the County would benefit from the projects in terms of the retention and creation of businesses, housing and employment opportunities for the community. The Auditors noted that the reports detailed the benefit/ (loss) between the PILOT payments and estimated property taxes. **The reports showed that the benefits provided by all the projects exceeded the financial assistance granted to the projects.** Listed below is the information shown in the Third-Party Consultant Economic Impact Analysis Report for 5 of the 21 projects auditors sampled.

- 2200 Northern Steel LLC, renovation & occupation of a commercial facility, 20 year project, 309 on-site jobs, annual earnings of \$21,305,000, net tax exemption from PILOT⁴⁰ of \$4,455,280, sales tax and mortgage recording tax exemption of \$1,140,000;
- 615 South Street LLC, renovation and & sublease, 15-year project, 108 on-site jobs, annual earnings of \$8,190,000, net tax exemption from PILOT of \$749,111, sales tax and mortgage recording tax exemption of \$135,000;
- Cox & Company Inc. dba Plainview Steel, LLC⁴¹, expansion & renovation of commercial building, 14 year project extension, 30 on-site jobs, annual earnings of \$2,711,221, net tax exemption from PILOT of \$1,434,474 and sales tax exemption of \$73,313;
- Long Island Industrial Portfolio, renovation & equipment of industrial/office building, 15-year project, 467 on-site jobs, annual earnings of \$16,705,602, net tax exemption from PILOT of \$2,442,700 and sales tax exemption of \$700,000; and
- The Hain Celestial Group, Inc., renovation & equipping of commercial facility, 16-year project, 300 on-site jobs, annual earnings of \$45,546,300, net tax exemption from PILOT of \$1,213,199 and sales tax exemption of \$603,750.

The combined data for the 5 projects listed above shows that the projects were estimated to generate 1,214 site jobs with annual earnings totaling \$94,458,123, which would exceed the net tax exemption from PILOT of \$12,946,827.

For the 21 projects reviewed, the Third-Party Consultant Economic Impact Analysis Reports showed the projects would create an estimated 6,361 of on-site jobs with annual earnings totaling \$356,674,867, which would surpass the net tax exemption from PILOT of \$15,893,873. These reports also consistently stated that the estimated benefits to the County justified the financial assistance granted to the projects.

⁴⁰ The “net tax exemption from PILOT” is the difference between the estimated PILOT payments and estimated property taxes being waived for the term of the agreement.

⁴¹ The Third-Party Consultant Cost/Benefit Analysis report dated January 2017 was for the amended Cox & Company agreement.

Findings and Recommendations

Benefit Cost Ratios Not Calculated

While there was a completed Economic Impact Analysis Reports for each of the 21 projects, there was no evidence provided to the Auditors that the NCIDA calculated or identified the estimated cost to the estimated benefit ratio or explained what an acceptable ratio would be. A benefit cost ratio⁴² is a valuable tool that measures the proposed total cash benefit such as capital investments, PILOT payments, wages and employee benefits resulting from the investment by the project against the proposed total cost such as total real property tax, sales and mortgage tax exemptions.

The Auditors calculated the benefit cost ratio using the estimated annual earnings and PILOT payments divided by the cost amounts in the Economic Impact Analysis Reports for 2200 Northern Steel, LLC and 615 South Street LLC and found the ratios were 1.6 and 1.8. A project that has a benefit cost ratio greater than 1.0 is expected to deliver a positive result.⁴³ The benefit cost ratio is an indicator that shows the relationship between the relative costs and benefits of a proposed project, expressed in monetary terms that may be used to determine whether a project is eligible for assistance.

The NCIDA could have calculated the benefit cost ratios based on verified information to use as added support to evaluate the project's eligibility for financial assistance by its Board.

Audit Recommendations:

We recommend that the NCIDA:

- a) revise the Third-Party Consultant Economic Impact Analysis Reports to include the impact of the tax abatement to the County, towns, school districts, and other affected jurisdictions;
- b) develop benefit cost ratio(s) that are appropriate and reasonable to use as measurement guidelines for financial assistance eligibility; and
- c) develop procedures to monitor and verify project performance by requiring projects to report quarterly detailed data on capital investments and to follow-up when information is not received from projects.

AUDIT FINDING (5)

(5) The Third-Party Consultant Economic Impact Analysis Reports Were Prepared After the Public Hearing Therefore The Public/Stakeholders Could Not Make an Informed Decision On The Project

The Third-Party Consultant Economic Impact Analysis Reports for 30% of the projects were prepared after the public hearing and for 45%, the timeframe of the reports relative to the hearing dates, could not be determined. The Economic Impact Analysis Reports are used to evaluate the cost of the projects in relation to the benefits to the County and, for the Board to make an informed

⁴² The benefit-cost ratio formula is the discounted value of the project's benefits divided by the discounted value of the project's costs.

⁴³ <https://www.investopedia.com/terms/b/bcr.asp>, Benefit Cost Ratio.

Findings and Recommendations

decision. The Reports should be prepared before the public hearings are held so that the public and all stakeholders can review the financial impact of the project on its taxpayers and the affected jurisdictions. The Third-Party Consultant Economic Impact Analysis Report is ordered upon receipt of the Application and must be distributed to all members of the Agency. The Agency schedules and conducts a public hearing as stated in the NCIDA's Criteria for Processing/Evaluation of Projects Memorandum.

We compared the dates of the Third-Party Consultant Economic Impact Analysis Reports to the public hearing dates for the 20 projects to determine whether the Reports were dated prior to the related public hearings. The Auditors noted the Reports only showed the month and year and not the exact date the report was prepared. Our review of the 20 projects found the following:

- Six projects, or 30% of the Reports, were dated **after** the month the related hearings were held;
- Eight projects, or 40% of the Reports, were dated in the same month the related hearings were held, however without the exact day of the month the reports were prepared, the timeframe of each report relative to the hearing date could not be determined;
- For one project, or 5% of the Reports, the page with the report date was missing so the timeframe of the report relative to the hearing dated could not be determined; and
- Five projects, or 25% of the Reports, were dated before the month the related hearings were held.

We also compared the date of the published hearing notices to the corresponding hearing date and found the notices were published at least ten days before the hearing for 18 projects and two projects were not in the archived newspaper due to age. Public notices are to be given at least 10 days prior to the hearing as required by Section 859-a of the Law.⁴⁴

Audit Recommendations:

We recommend that the NCIDA:

- a) revise its procedures to require that Third-Party Consultant Economic Impact Analysis Reports must be prepared before public hearings are held; and
- b) revise the Third-Party Consultant Economic Impact Analysis Report to include the exact date the report is prepared, not just the month and year in order to assure an informed decision making process.

⁴⁴ New York State General Municipal Law Section 859-a 2 & 3 Additional Prerequisites to the Provisions of Financial Assistance.

AUDIT FINDING (6)

(6) NCIDA Paid a Consultant \$ 556,250 Over Five Years on a Non-Performing Contract to Attract Cyber Companies to Nassau County - Auditors Found No New Cyber Companies Moved to Nassau County

A consultant was paid **\$556,250, over five years, 2013-2017**, to induce companies in the Security Sector (Cyber Defense and Information Assurance) to expand their operations in Nassau County (or to relocate to the County), and to identify new opportunities at the Morrelly Homeland Security Center located in Bethpage.⁴⁵

The Auditors reviewed Board Minutes from 2014 to 2017 to determine whether the contractor fulfilled the terms of the agreement with the NCIDA. **Our review of the Board Minutes found no indication that the contractor had persuaded businesses to develop or relocate to Nassau County.**

In mid-2015, the former County Executive issued a press release announcing the NCIDA had authorized the “New York Institute of Technology to establish an Information Assurance/Cyber Defense Research Facility...to serve the nation’s need for Cyber Security.”⁴⁶ The NCIDA former Executive Director stated the establishment of the facility will spur the growth of cyber security companies and bring more high paying jobs to the County. However, in documents obtained by the Comptroller’s Office, the Institute’s Chief of Staff sent an email on July 21, 2016 to the NCIDA, with a copy to the Consultant, stating that the Institute was “not in a position to accept the NCIDA’s offer of rent-free space in Bethpage to establish a Cyber Security Center.” The Institute stated it “cannot in good conscience invest several million dollars in capital renovation if the Start Up NY program remains in limbo” and indicated the Institute would “establish a Cyber R&D Facility on its Old Westbury campus.”

In the attachment to the January 11, 2017 invoice, the Consultant mentions the County won the bid⁴⁷ and will be the new owner of the Homeland Security Center in Bethpage and still made reference to the Educational Institute that had notified the NCIDA six months earlier that they were no longer involved.

Documents attached to the Consultant’s June 12, 2017 **invoice acknowledged that the Institute was no longer interested in the proposed space since it did not have educational institution support.** The next two Consultant invoices on July 12, 2017 and August 14, 2017 mentioned talks with two other institutions.

⁴⁵ The Morrelly Homeland Security Center is located at 510 Grumman Road West, Bethpage. It is in a complex of buildings which was previously the Grumman Lunar area and currently houses a variety of businesses and commercial areas. Nassau County occupies #2, and has some County offices there, including the County’s Office of Emergency Management (OEM).

⁴⁶ “Mangano Announces New NYIT Cyber Security Research Facility in Partnership with the National Security Agency” press release, June 30, 2015.

⁴⁷ Nassau County was the only bidder to purchase the Morrelly Homeland Security Center for \$4,020,000 in Bethpage on January 10, 2017, from a business that defaulted on its mortgage.

Findings and Recommendations

In January 2017, a news account covered Nassau County's purchase of this building for \$6.4 million, a three-story Security Center in Bethpage, that had been foreclosed on. The former County Executive stated the purchase ensures that County police and emergency services "can continue without disruption in event of a man-made or natural disaster."

NCIDA Consultant

During the audit period, the NCIDA did not have adequate internal controls over the Taxpayer Identification Numbers on the Vendors' Forms 1099 that report other income besides wages and tips and did not use many "Best Practices" (see Finding # 13 for more information). During cash disbursement testing, Auditors found that the NCIDA was not requesting the IRS Form W-9 from its vendors. As a result, NCIDA in fact hired a Consultant whose 1099 in 2015 listed his Taxpayer Identification Number as 111-11-1111. On April 18, 2017, the NCIDA received a notice from the IRS stating that it was not a valid Taxpayer Identification Number.

Based on our review of documents provided by NCIDA, Auditors noted that many of the monthly invoices submitted by the Consultant for payment (2013 to mid-2015) had repetitive descriptions of the work performed the month before. The invoices listed who consultations were with and other efforts. Examples include consultations with the following:

- US Embassy, Pakistan
- US Embassy, Libya
- NSA
- CIA
- Federal Reserve Bank
- Dodd-Frank Legislation
- Goldman Sacks
- US Government "unstructured data" issues

This Consultant received three payments in 2013 and one in 2014 before the Board, on April 10, 2014, had approved the Resolution authorizing the procurement of services pursuant to a Request for Qualifications ("RFQ") approval of the 2014 IDA paperwork. The Consultant was to provide Targeted Homeland Security Services.

In mid-2015, a press release from the former County Executive stated that the NCIDA was working with a local Long Island College/New York Institution on a Cyber Defense research facility. It further stated that a real estate company would be donating the space. (This real estate company was the recipient of a PILOT project that was given tax incentives, "tax breaks"). The NCIDA also authorized the above Consultant to work in conjunction with the Institution on the project. The newspaper coverage⁴⁸ on this press release stated that this idea of a Cybersecurity Center was a key platform in the County Executive's 2013 re-election campaign.

In 2016 the Consultant presented 11 of 12 invoices which listed as part of his consulting work "introduced to the NCIDA the Nova Venture company." **Auditors do not know if the Consultant advised the NCIDA that he was a partner in the NOVA Venture Company (the Consultant**

⁴⁸ Newsday, July 2, 2015, Cybersecurity research center for Nassau, James T Madore.

Findings and Recommendations

was listed on NOVA's website as a partner), and the Consultant was essentially paid to induce business to his own business.

An article published in a newspaper January 20, 2019⁴⁹, cited the Consultant as saying that the work for the NCIDA involved trying to attract tech business to Long Island *"with the tax breaks and incentives that were being offered through Nassau County. But in a lot of the companies...they were just very comfortable in staying where they were at the time....Some of the stuff didn't materialize."* It is unclear if anything materialized from this Consultant's work.

Audit Recommendations:

We recommend that the NCIDA should:

- a) conduct research on projects that require a large magnitude of work and establish requirements for the projects including a verification of the Consultant's qualifications before signing a contract; and
- b) develop clear and defined deliverables which include a time period to evaluate the performance of their contractors while services are in progress and before payments amounting to thousands of dollars are made.

AUDIT FINDING (7)

(7) NCIDA Utilized an Existing Public Relations Firm to "Flow Through" the NCIDA's Advertising Campaign to Another Firm in Order to Avoid the RFP/Procurement Process

The Comptroller's Office received information that the NCIDA had circumvented the RFP/Procurement Process by "flowing through" funding to one approved vendor to distribute to other vendors. The Office obtained documents, interviewed several relevant parties and determined the following facts:

- In November 2015, the NCIDA's Director of Business Development approached the NCIDA's contracted Public Relations firm and asked its President to help execute an Advertising Campaign. **The documents indicated that NCIDA's Director of Business Development told the President of the contracted Public Relations firm that it is easier for the government to procure services through a current vendor than to hire a new vendor.**
- The NCIDA Director of Business Development **asked the President of the contracted Public Relations firm to pay certain advertisers who the NCIDA had already made arrangements with to do the Advertising Campaign.** This arrangement applied to three contracts that the NCIDA entered into with its Public Relations firm for advertising and other media services and a total of **\$375,000 was passed through to these vendors.**

⁴⁹ Newsday, Oyster Bay Town Board members call for new inspector general to resign.

Findings and Recommendations

- **The support for a \$175,000 payment in connection with the 2016 Advertising Program was a plain piece of paper without any letterhead** which listed that the \$175,000 was spent as follows:
 - Nassau Cablevision \$97,988
 - Nassau Fios \$55,035
 - NJ & CT Cablevision \$17,775
 - London \$4,202

If NCIDA's goal was to attract business into Nassau County, it is unclear why 87% of the advertising would be within Nassau County.

- All checks written by the NCIDA were made payable to its contracted Public Relations firm although this firm did not profit from these payments but merely created other checks for the exact same amounts payable to the advertising firms who performed the actual work.

Audit Recommendations:

We recommend that before proceeding with any advertising campaigns, the NCIDA should:

- a) cease from requesting current vendors to act as a “flow through” firm to pay unapproved vendors;
- b) begin a Request for Proposal Process and speak with various advertising firms to develop a targeted plan of where to attract businesses from;
- c) select an advertising firm in an open and transparent manner;
- d) detail the specifications into a contract for services that protects the NCIDA's interests;
and
- e) conduct advertising campaigns outside of Nassau County to attract companies to come into the County.

AUDIT FINDING (8)

(8) NCIDA Former Officer May Have Violated the NCIDA Code of Ethics; NCIDA Code of Ethics Needs Improvement

The Nassau County IDA has their own Ethic's policy entitled “Code of Ethics and Conflicts of Interest Policy.” This document lists its purpose as “**to protect the credibility and reputation of the Agency by ensuring high standards of honesty, integrity, and conduct on the part of its Representatives.**” During the audit, Auditors became aware of a perceived conflict of interest

Findings and Recommendations

involving the former Executive Director who was appointed to the position from June 2010 to January 2019.

The policy defines a conflict of interest as:

“a situation in which the financial, familial, or personal interests of a Representative of the Agency come into actual or perceived conflict with their duties and responsibilities to the Agency. Perceived conflicts of interest are situations where there is the appearance that a Representative can personally benefit from actions or decisions made in their official capacity, or where a Representative may be influenced to act in manner that does not represent the best interests of the Agency.”

The NCIDA Code of Ethics states that “the members of the Agency shall designate a member, officer or employee of the Agency to serve as the Ethics Officer of the Agency.” The NCIDA appointed the former Executive Director of the NCIDA as the Ethics Officer of this Agency that was made up of six to seven employees during the audit period.

However, it appears that there may have been a perceived conflict of interest involving the former Executive Director / NCIDA Ethics Officer for which no action has been taken. Soon after he was appointed, news stories arose that his residence was in Kentucky. The news article⁵⁰ stated a spokesman for the former NCIDA Executive Director was a resident of Westbury. The Office confirmed that in 2019 the former NCIDA Executive Director had both a residence in Nassau and in Kentucky.

The perceived conflict comes from the addresses shown on the former Executive Director’s W-2s for 2018, which **shows his address is listed as “Luxury Rentals in downtown Mineola,” which was then a current NCIDA project.**

Auditors also noted that having the NCIDA former Executive Director also serving as the Ethics Officer could be perceived as a conflict.

Conflicts of interest such as this can be detected or discovered through the use of financial disclosure forms. For example, the Nassau County Board of Ethics collects financial disclosure forms for all elected officials, political candidates, department heads and policy makers in order to determine if there are conflicts of interest in the County. The NCIDA Code of Ethics and Conflicts of Interest Policy (Section IV Disclosure Procedure) states a Representative who has or believes it has a financial interest in the outcome of any decision made by the Agency, shall publicly disclose, in writing such interest and material facts to the Governance Committee and/or the Agency’s Ethics Officer. The Policy does not state however, that it annually collects financial disclosure information from its employees.

Audit Recommendation:

We recommend that the NCIDA:

- a) delegate the Ethics Officer responsibilities to someone other than the Executive Director;

⁵⁰ Long Island Press “Questions Arises About New Nassau Deputy’s Kentucky Ties” dated February 3, 2011.

Findings and Recommendations

- b) request the Nassau County Board of Ethics investigate if the NCIDA's former Executive Director violated the NCIDA's Ethics Code regarding a perceived conflict of interest; and
- c) consider amending their Ethics Code to require the filing of an annual financial disclosure form by employees.

AUDIT FINDING (9)

(9) One Project Exceeded Maximum Sales Tax Exemption Amount and Time Limit of Exemption

We reviewed the 26 projects in our test sample to determine whether the sales tax exemption amounts granted by the NCIDA were used by the projects in accordance with the exemption expiration dates stated in the lease agreements from 2015 to 2018. Exemption from paying sales tax is a benefit provided by the IDA to applicants, which results in lower sales tax revenue collections to Nassau County and other jurisdictions. (See Finding 2 for more information).

We compared the expiration dates of sales tax exemptions on the lease agreements to the annual Sales Tax Exemption Form(s), ST-340, submitted by each project, which specify the amount of sales tax exemptions utilized. For this project, the maximum exemption limit of \$127,500 through April 15, 2016 was exceeded both in total dollars exempted and by the time limit: the project's sales tax exemptions totaled \$383,472 from 2015 to 2017.

The NCIDA did not monitor the time frame or the amount of the sales tax exemptions granted to this one project from 2015 to 2017, which is a violation of the project's agreement with the NCIDA. Sales and use tax exemptions granted to projects need to be monitored to prevent any misuse in the amount of the exemptions that are used within the required time frame of the agreement.

Audit Recommendation:

We recommend that the NCIDA:

- a) develop and implement a written procedure to monitor the usage and time frame of sales and use tax exemptions granted to projects to ensure benefits are used for specific purposes within the required time frames; and
- b) recoup the sales tax amount that exceeded the exemption limit from the project.

Findings and Recommendations

AUDIT FINDING (10)

(10) The NCIDA Failed to Recapture Benefits and Disburse Funds to the Taxing Districts Within 30 days of Receipt as Required by NYS General Municipal Law

Auditor testing found that the NCIDA did not always act promptly to recapture monies from projects that defaulted or violated the performance of any material items in the PILOT agreements and did not remit recaptured funds timely. When a PILOT property fails to achieve the benefits that were granted in the IDA applications and contracts, the IDA may recapture the sales, mortgage and real property tax exemptions granted to the property in accordance with the Agreement Recapture Schedule⁵¹ in the NCIDA's Uniform Tax Exemption Policy.⁵²

Recapturing benefits from projects is important to ensure IDA benefit recipients are aware of the consequences when projects fail to meet employment objectives, default or violate the performance of any material covenant in the agreements with the NCIDA. Per NYS Law, these recapture funds should be promptly paid back to the affected jurisdictions within thirty days⁵³. Auditor testing found that the NCIDA did not always act promptly to recapture monies, and recaptured monies received by the NCIDA were not always remitted to the affected jurisdictions within the required 30-days.

As of December 31, 2018, the NCIDA had 181 projects. Auditors requested a list of recaptured PILOT projects and recapture monies remitted from 2015 to May 2019. The NCIDA provided a list of 7 projects with recapture payments received totaling \$1,291,531 of which 17 payments totaling \$1,221,472 were remitted either to New York State or to the affected municipality and \$70,059 were retained by the NCIDA.⁵⁴

Auditors reviewed these seven projects to determine whether the NCIDA had taken prompt and timely action to recapture monies when businesses did not achieve the required employment goals, voluntarily and non-voluntarily terminated or were bankrupt. Auditors also reviewed whether recapture monies were remitted to New York State and the affected municipalities within the required 30-day time frame.

Auditors found seven of the seventeen payments totaling \$813,381, or 41.2% of the recaptured remitted payments took from 1.5 to 18 months for the NCIDA to remit the monies to Nassau County or to New York State. The seven remitted payments were not paid within 30 days of

⁵¹ The Recapture Schedule is based on a percentage of the benefits and the year of occurrence.

⁵² The Agency established a uniform tax exemption policy that provided guidelines for real property, mortgage recording and sales tax exemptions and whether affected tax jurisdictions shall be reimbursed by the project occupant if a project does not fulfill the purposes for which the exemption was provided.

⁵³ General Municipal Law, Article 18-A, Industrial Development Title 1, Agencies, Organization and Powers, Section 874 (3). Payments in lieu of taxes received by the agency shall be remitted to each affected tax jurisdiction within thirty days of receipt.

⁵⁴ Prior to 2016, the NCIDA was not required to distribute funds collected from a recapture. New York State GML, Section 874(4) Tax Exemptions states the agency shall consider such issues as "... whether affected tax jurisdictions shall be reimbursed by the project occupant if a project does not fulfill the purposes for which an exemption was provided..."

Findings and Recommendations

receipt as required by the New York General Municipal Law (Section 859-a. 6 (f),⁵⁵ Section 874 (3)⁵⁶ and Section 875 (3) (c)⁵⁷) during 2015 to May 2019.

For the seven projects reviewed, we compared either the receipt dates of the Job Confirmation form, letter of termination, letter to request changes to the agreement or the bankruptcy filing documents, to the date the recapture funds were received by the NCIDA. We found that the NCIDA took from 1.9 to 16.4 months to process and complete the recapture of funds as required by the NCIDA's Uniform Tax Exemption Policy.

The NCIDA sent default notices to projects that did not meet the job requirements to resolve the non-compliance, however they did not take prompt action to recapture three of seventeen payments remitted totaling \$3,167 that failed to meet the job compliance goals in 2013, 2014 and 2016.

- Auditors found that there was a time lag between the date the Job Confirmation form was received by the NCIDA to the date the default notice was sent to the Applicant of an undetermined number of months for 2013 and 2014 and 9.6 months for 2016.
- The Administrative Director stated no official default notice was required to be sent to the project for the 2013 and 2014 job non-compliance, since it was stated in the projects' 3rd lease amendment dated May 1, 2013.
- The Auditors noted that default notices were sent to the same project owners who did not comply with job requirements for 2016 and 2017. Also, there was no evidence provided to the Auditors that the recapture benefits of \$974 were collected for the project's non-compliance in jobs for 2015.
- The Auditors noted that a recapture payment check of \$1,278 dated December 13, 2017 was not deposited until February 15, 2018 for job non-compliance in 2016.

There were two projects totaling \$132,155 that voluntarily terminated which took 5.7 to 8.2 months to complete the recapture of funds and for two other projects totaling \$273,166 that negotiated the recapture amounts it took 6.2 to 9.2 months.

The NCIDA could not provide sufficient documents for the Titan Realty and Aceto recapture and as a result the Auditors could not determine whether there was a time lag between the initial date of recapture to when the NCIDA took action to resolve the issue.

⁵⁵ General Municipal Law, Article 18-A, Industrial Development Title 1, Agencies, Organization and Powers, Section 859-a. 6 (f) Additional prerequisites to the provisions of financial assistance, effective June 2016.

⁵⁶ Ibid, Section 874(3) Payment in lieu of taxes received by the agency shall be remitted to each affected tax jurisdiction within thirty days of receipt.

⁵⁷ Ibid, Section 875 (3) (c), Special provisions applicable to state sales and compensating use taxes and certain types of facilities, states if an IDA recovers, recaptures, receives, or otherwise obtains, any amount of state sales and use tax exemption benefits from an agency, project operator or other person or entity, the IDA shall within thirty days of coming into possession of such amount, remit it to the commissioner, together with such information and report that the commissioner deems necessary to administer payment over of such amount, effective March 28, 2013.

Findings and Recommendations

Audit Recommendations:

We recommend that the NCIDA develop written monitoring procedures to ensure that:

- a) recapture benefits are remitted to New York State and the affected jurisdictions within 30 days of receipt; and
- b) prompt action is taken to recapture benefits when projects fail to meet job goals, are terminated or go bankrupt.

AUDIT FINDING (11)

(11) The NCIDA Board Did Not Approve the 2018 Payments to Employees for Vacation and Sick Time Totaling \$350,216

Payments for unused sick and vacation time were made to employees in January 2018 without prior or post Board approval as required by the Agency's Employee Compensation Policy adopted March 4, 2017 which states that:

“the compensation and/or benefits of any officer or employee of the Agency may be modified during the fiscal year upon adoption of a resolution of the members of the Agency approving such modification.”

On January 4, 2018, five NCIDA full-time staff employees received payments for unused vacation and sick time totaling \$350,216. On July 19, 2018, the Chief Financial Officer stated to the Auditors that the payments are based on the NCIDA's Benefit Policy⁵⁸ and is the result of the change of administration that is consistent with prior Agency practice.

It is noted that according to the Agency, these payments were calculated in accordance with the Employee Handbook regarding termination pay, however, none of the employees who received the January 4, 2018 payments were terminated.

On May 8, 2019 the Chief Financial Officer provided an undated “Employee Payout (2018)” memorandum from the prior Chairman that stated he was advised by the staff of the accumulated leave payouts in January 2018, and no formal Board resolution was required because the payouts were made pursuant to the approved Employee Handbook and within budget.

In the Comptroller's prior audit issued May 3, 2011, in a finding on weaknesses in the NCIDA's administrative and personnel practices,⁵⁹ it was noted in the December 2009 Board minutes, that the NCIDA Board authorized payment of unused sick days and vacation time to employees and the amount to be paid would be determined by the external audit firm. The gross amount of the

⁵⁸ The NCIDA's Employee Benefit Handbook Resolution No. 2010-25, Effective January 1, 2011, Section 2.5 (a) Termination Pay.

⁵⁹

https://www.nassaucountyny.gov/DocumentCenter/View/3808/FINALREPORT_LimitedReviewoftheNassauCountyIDA_5_3_2011?bidId=, page 19 & 20.

Findings and Recommendations

payout was \$68,330. That audit also found there was a lack of Board approval on the methodology used for the payout.

We examined payroll records to determine whether salaries to employees were accurately recorded in the accounting records and properly approved by the Executive Director. We selected two payroll periods totaling \$40,231 in 2015, \$44,066 in 2017 and \$394,282 from January 1, 2018 to March 31, 2018 and three payroll periods totaling \$64,950 in 2016. The payroll periods examined were correctly recorded and approved by management except for the payout on January 4, 2018.

Audit Recommendations:

We recommend that the NCIDA Board take corrective action to ensure that all vacation and sick time payouts to employees, are provided to the Board and approved by a Board resolution prior to payment according to the Agency's Employee Compensation Policy.

AUDIT FINDING (12)

(12) Former NCIDA Board was Not Adequately Monitoring Salary Increases

The NCIDA has an Employment Compensation Policy that states the Agency's Audit Committee prepares an annual proposed preliminary budget for employee compensation for review and approval by the Board no later than November 15th of each year. Auditors requested information on staff increases and the Chief Financial Officer provided salary increase information for 2014 and 2016. We compared the budgeted salary increases to the actual amounts paid to the staff for each year and found the following:

2014 Additional Salary Increases Were Not Approved by the Board

As shown in Exhibit XI, four employees received salary increases in 2014 that totaled \$91,000. The Board had approved a total salary increase of only \$75,000 for the 2014 budget on December 18, 2013. The salary increases did not show the detail increase by employee as cited in our previous audit report. There was no evidence that the Board was aware of the \$16,000 additional salary increase amount paid to staff.

Findings and Recommendations

Exhibit XI

NCIDA				
2014 Salary Increases				
Employee Title	2014 Annual Salary Prior to Increase	2014 Increase	2014 Annual Salary After Increase	% Increase
Executive Director	\$ 152,000	\$ 39,000	\$ 191,000	26%
Chief Financial Officer	105,000	14,500	119,500	14%
Director of Business Development	75,000	24,000	99,000	32%
Administrative Director	80,000	13,500	93,500	17%
Total	<u>\$ 412,000</u>	<u>\$ 91,000</u>	<u>\$ 503,000</u>	22%
Budgeted for 2014 (<i>Note 1</i>)		<u>75,000</u>		
Excess over Budget (<i>Note 2</i>)		<u>\$ 16,000</u>		

Note 1 - Board Resolution #2013-83 dated 12/18/2013 approved an expense line item budget which included a proposed salary increase of \$75,000 for 2014.

Note 2 - The line item expense budget approved on 12/18/13 (Note 1) also included two lines, directly beneath the salary increase line, for employer taxes of \$6,000 and pension expense of \$9,000, both of which stated they related to the salary increase.

An email on July 9, 2018 from the Chief Financial Officer stated “*the salary increase of \$91,000 for 2014 was reviewed and approved by the Audit Committee and full Board in 2014. The increase was approved as the amount in the 2014 Salary and Benefits Budget line was large enough to cover the salary increase of \$91,000.*” The Auditors noted that adjustments to the salary and benefit expenses were recorded separately in the accounting records and in the budget. Therefore, any changes in the amounts to one expense does not cover another expense line.

2016 Additional Salary Increase did not agree to the NCIDA Budget and were Paid Before Approval by the Board

The Board had approved a total salary increase of \$12,480 or 4% for three staff employees in the 2016 budget on January 29, 2016.

On August 4, 2016, three employees received a 3.5% raise totaling \$8,855 and one employee received a 21.2% raise of \$21,000. The total salary increase of \$29,855 was not the amount initially approved in the 2016 budget.

The Chief Financial Officer (“CFO”) stated that the difference between the actual and the budgeted total salary increase of \$17,375 was not approved by the Board. Later in an e-mail dated July 9, 2018, the CFO sent the Board Governance Resolution and the Board Approval dated September

Findings and Recommendations

27, 2016 for the additional salary increase. **The Auditors noted employees were paid the adjusted salary increases before Board approval was granted on Resolution No. 2016-60.** The September 2016 Resolution did show the employees and the adjusted salary increases.

Lack of Board Approval is a Repeat Finding From Previous Audit Report

The Comptroller's prior audit issued May 3, 2011, included the finding "Salary Increase Was Improperly Granted Without Board Approval"⁶⁰ noting that there was no evidence in the Board minutes to indicate the Board was aware that the former Executive Director had declined his full raise in 2009, or of the increase in his base salary to \$140,000 in the following year. A lack of Board approval existed for both the adjusted salary increases paid in 2014 and 2016 to employees. A detailed list of employees that show salary increases approved by the Board ensures there is proper oversight and controls on compensation to employees.

Audit Recommendations:

We recommend that the NCIDA Board implement written procedures that require:

- a) all increases or changes to salaries for each employee be submitted for Board approval before payment is made to employees, according to the Agency's Employee Compensation Policy; and
- b) payroll records be independently reviewed on a periodic basis.

AUDIT FINDING (13)

(13) NCIDA Lacks Adequate Internal Controls; Auditors Found Weaknesses in Various Accounting Practices

An adequate internal control environment is the result of a process whereby management evaluates their operations and sets controls to help prevent fraud, theft, and abuse; identify and resolve discrepancies; and ensure the entity's mission and objectives are met. Auditors identified a number of accounting practice weaknesses at the NCIDA, which together indicate a fiscal environment where larger accounting issues could develop and go undetected. Auditors found the following areas of concern:

Improper Use of Petty Cash and No Written Petty Cash Policy

Our review of the Petty Cash check register found that the Petty Cash Account was used improperly to pay recurring operating expenses such as toners purchased for the printer at the

⁶⁰

https://www.nassaucountyny.gov/DocumentCenter/View/3808/FINALREPORT_LimitedReviewoftheNassauCountyIDA_5_3_2011?bidId=, page 10.

Findings and Recommendations

former Executive Director's Kentucky home in 2015 and 2017 which may have been prevented if a Petty Cash Policy existed.

The NCIDA did not have a Petty Cash Policy. Petty Cash is maintained by the Chief Financial Officer and is used for refreshments for meetings, cleaning and gas for the office truck and small purchases of supplies with a set limit of \$150. We reviewed Petty Cash to determine whether payments were properly approved, recorded and replenished in the accounting records and not used for operating expenses.

Our review of Petty Cash expenses totaling \$701 for 2015, \$596 for 2016 and \$652 for 2017 found that payments were made for legitimate and non-operating expenses, properly authorized and supported except for the items cited above.

A written Petty Cash Policy establishes the guidelines and sets limits on the type and amount of expenses that are paid using Petty Cash funds. The policy ensures there are internal controls over cash to prevent or detect possible irregularities.

Expenses Coded to Inaccurate Accounts

We reviewed the coding of expenses to the accounting records to ensure that expenses are classified accurately in the financial statement for the years ended 2015, 2016 and 2017. Auditors found expenses incorrectly classified and inconsistently coded from year to year.

Our review found that auto and commercial liability expenses were included with salary and benefits and office equipment and supplies in the financial statements and not classified as administrative expenses. As a result, salary and benefit costs were overstated by \$1,753 in 2015, \$739 in 2016 and \$5,958 in 2017 and office equipment and supplies were overstated by \$6,444 in 2016 and administrative expenses were understated for the same years and amounts.

The Chief Financial Officer stated that auto insurance was budgeted to office equipment and supplies and was incorrectly recorded in 2015 and 2017 and the commercial liability was budgeted and posted to salary and benefits account in the accounting records.

The correct classification and coding of expenses in the accounting records ensures financial statements are accurately reported. The auto and commercial liability expenses are administrative expenses and therefore need to be recorded and budgeted to this account.

Cash Disbursements - Approval Date of Supervisor Missing

Our review of the cash disbursements found that the invoices were signed by the former Executive Director but not dated to show when the invoice was approved. The invoice approval date by management is evidence that bills are paid and is used to determine if payments were made on a timely basis. Invoices are stamp dated upon receipt and entered on an Invoice Approval Form with the invoice attached by the Administrative Assistant or the Director, then reviewed and approved by the former Executive Director and entered into the accounting records by the Administrative Director. A check is prepared, signed by either the Chairman, Vice Chairman, Treasurer, Assistant Treasurer, Chief Financial Officer and former Executive Director if less than \$3,000, and two signatures are required for checks greater than \$3,000.

Findings and Recommendations

We reviewed the cash disbursements totaling \$861,150 in 2015, \$488,074 in 2016, \$504,809 in 2017 and \$213,844 from January 1, 2018 to March 31, 2018 to determine whether internal controls over the cash disbursement process were adequate. Auditors reviewed if disbursements were made only upon proper authorization of management, for valid business purposes and to determine if all disbursements are properly recorded and in accordance with NCIDA's Statement of Procurement Policy and Procedures pursuant to Section 104-b of the New York State GML and the Travel and Meal Allowance Reimbursement Policy Guidebook.

Our review found that cash disbursements were legitimate expenses, properly supported with contracts in accordance with the Agency's policies and procedures and internal controls over the disbursement process were segregated and adequate except for the item cited above.

Incorrect Taxpayer Identification Number on Vendor's 1099

During our review of cash disbursements, it was noted that one contractor did not provide their Taxpayer Identification ("ID") Number to the NCIDA for use on the Form 1099⁶¹. Instead, the Taxpayer ID Number was listed as 111-11-1111. This was corrected after the IRS notified the NCIDA, which then obtained the correct Taxpayer ID Number and supplied it to the Internal Revenue Service.

On June 27, 2019 the Director of Field Audit spoke with the Administrative Director and found that the NCIDA neglected to request Taxpayer ID Numbers on IRS Form W-9 (Request for Taxpayer Identification Number and Certification) during most of the audit period 2015 to 2018 and only started at the end of 2018. The W-9s are required by the Internal Revenue Service from vendors to verify their name and Taxpayer Identification Number.

Bank Reconciliations Missing Date of Supervisor's Signature

Our review of the monthly bank reconciliations found that the date of the supervisor's signature was missing on the reconciliation and to evidence receipt of the bank statement, which was cited in our prior audit report. The signature dates are evidence that the supervisory reviews are performed in a timely manner.

The NCIDA has an operating and money market bank account held in two separate bank accounts. The bank accounts are reconciled by the Chief Financial Officer and reviewed by the former Executive Director and receipt of the monthly bank statements are opened and stamped dated by the Administrative Assistant and reviewed by the Administrative Director.

Our review of bank reconciliations was to determine whether there was proper segregation of duties, monthly reconciliations are performed within 5 to 7 days of each month, cash receipt deposits and payment of checks are correctly recorded in the accounting records and reconciled.

We reviewed six bank reconciliations totaling \$6,697,720 in 2015, seven totaling \$5,517,789 in 2016, eight totaling \$4,974,511 in 2017 and eight totaling \$4,389,129 in 2018, and found there were adequate internal controls over the bank reconciliation process and reconciliations were performed timely and recorded accurately, except for the items cited above.

⁶¹ Form 1099 is required by the Internal Revenue Service to report various types of income other than wages, salaries, and tips.

Findings and Recommendations

Automobile Mileage Log was Inadequately Maintained

Our review of the NCIDA's automobile mileage log found several weaknesses. The log did not show the following: the name of the person using the vehicle; the full address of the travel destination; reason for the travel; supervisor's approval authorizing travel; and the year of travel. Auditors reviewed travel logs for 8 months from November 30, 2015 to January 3, 2019 to determine whether the vehicle was used solely for business purposes and approved by management.

The Auditors were unable to verify if the usage of the vehicle was strictly used for business since the logs were not properly maintained. The NCIDA has a Fleet Vehicle Policy pursuant to Section 2824(1) of the New York State Public Authorities Law that requires the member of the NCIDA to adopt, understand, review and monitor the implementation of fundamental financial and management controls. The Fleet Vehicle log that was maintained by the Administrative Director only required the start and end odometer reading, usage date and reason and destination for the vehicle use.

Properly documented vehicle logs prevent the misuse of the asset and ensures the vehicle is used for business operations.

Audit Recommendations:

We recommend that the NCIDA:

- a) establish a written Petty Cash policy that states the use and authorized amount permitted and to ensure recurring operating expenses are not paid with Petty Cash;
- b) record auto and commercial liability expenses to the correct account in the accounting records;
- c) review the recording and classification of accounts to ensure that the financial statement is accurately presented;
- d) during its management review of cash disbursements and bank reconciliations, date the documents examined to show that the tasks were performed on a timely basis;
- e) request properly completed W-9s from all its contractors and vendors;
- f) require staff to complete all the requested information on the vehicle log to document that the vehicle is used only for business operations; and
- g) revise the vehicle log to include the name of the individual using the vehicle and approval by management for the usage.

Findings and Recommendations

AUDIT FINDING (14)

(14) NCIDA Board Members Paid for a \$1,600 Holiday Dinner by Using Mileage Reimbursement Funds

During Auditors' review of cash disbursements, a memo was found dated December 14, 2017, that stated the Board members had voted to *“forgo their mileage reimbursements to and from the Board meetings from March 9, 2011 through November 16, 2017 and use the funds to pay for a holiday dinner for the staff and the Board members.”*

The holiday dinner bill of \$1,600 was paid on January 16, 2018 and showed there were approximately ten entrees ordered but did not list the people who attended. The IRS requires meal expenses be documented with the list of attendees and the business purpose of the meeting.

The Auditors asked the NCIDA whether the Board had approved the use of the mileage reimbursement for the holiday party, since Auditors did not find approval in the Board minutes. The Administrative Director stated this was a verbal approval from the Board and the mileage was only for the NCIDA and not the Nassau County LEAC⁶² Board, as stated in the memo.

There is no documented approval of this “mileage for dinner swap” in the minutes and it lacks transparency when Board approvals are verbal and not documented in the Board Minutes. Documented Board approvals provide oversight of the management and financial operation of the Agency to ensure assets are safeguarded to prevent misappropriation of funds from occurring.

The invoice for the holiday dinner had a schedule of the Board members' mileage that showed the date, name, miles and amount for the travel from 2011 to 2017 and did not have any support for the mileage claimed, as required by the NCIDA's Travel Policy. The NCIDA's By- Laws adopted March 4, 2017, state that Board members may be reimbursed for expenses reasonably incurred by them in the performance of their duties, subject to applicable law and the Agency's policies and procedures. **Therefore, for mileage reimbursement to be allowable it needed to be submitted with proper support in the year of occurrence and correctly recorded in the accounting records.**

Audit Recommendations:

We recommend that the Board of the NCIDA:

- a) document all approvals in the Board Minutes to ensure transparency;
- b) submit mileage reimbursement in the year of occurrence; and
- c) provide support documents for reimbursement of Board member expenses.

⁶² NCLEAC is the Nassau County Local Economic Development Corporation.

Findings and Recommendations

SCOPE LIMITATION

NCIDA Did Not Provide Auditors with the Staff Review of Application Forms

Pursuant to the New York State General Municipal Law, Article 18-A, Title 2, Section 922 concerning Municipal Industrial Development Agencies, *“all of the agency’s accounts, contracts, books and records shall be subject to audit by the county comptroller.”* Accordingly, the Auditors requested the “Staff Review of Application” forms and any other supporting documents for the 26 projects reviewed to determine which projects were selected to receive financial assistance and the amount of the assistance granted. In response to our request the Administrative Director of the NCIDA stated “the Staff Review of Application forms are internal documents and therefore will not be provided to your office.”

The Auditors were therefore not able to access the reasons why financial assistance was granted for the 26 projects. We believe that this is a scope limitation, as it restricts our ability to fully review the justification for granting of the 26 projects reviewed.

In the NCIDA’s Uniform Criteria for Processing/Evaluation of Projects Memorandum dated April 4, 2017, the Staff Review of Application form is prepared by the NCIDA Staff and then given to the Board members for their review before Inducement/ Approval of a project.

The internal form includes the following applicant information:

- project description;
- job covenant;
- capital investment;
- value of requested benefits;
- total estimated PILOT payments;
- total estimated taxes;
- the net benefit to the company;
- estimated economic impact analysis;
- environmental impact analysis;
- community analysis;
- project/applicant analysis; and
- recommendation of the project.

While we understand that some internal documents may be kept confidential, the current NCIDA management needs to operate in a transparent manner when Auditors request these documents to perform an independent review of their work. State Law concerning IDAs makes it clear that these documents are subject to review by the County Comptroller.

Appendix A – NCIDA Projects Selected

NCIDA - Projects Selected 2014 - 2016			
#	Selected Project	Property Address	Property Description
1	2200 Northern Steel LLC	2200 Northern Boulevard, East Hills	Renovation & occupation of a commercial facility - 20 years project
2	5-9 Grace Ave	5-9 Grace Avenue, Great Neck Plaza	Mixed-use housing & commercial development - 15 years project
3	615 South Street, LLC (WAC Lighting)	44 Harbor Park Drive, Port Washington	Renovation and sub-lease to related entity - 15 years project
4	Adams Court dba Grove Street LP	Grove St., Franklin St., Linden Pl, Evans Ave., & Maple, Hempstead	Renovation of building for multifamily affordable housing - 30 years project
5	Avanti dba New Hyde Realty Group LLC	75 Nassau Terminal Road, New Hyde Park	Expansion of existing property - 10 years project
6	Blue Cassel Site A	701 Prospect Avenue, New Cassel	Mixed-use residential & commercial development - 30 years project
7	Cox & Company, Inc. dba Plainview Steel, LLC	1650 Old Country Road Plainview	Expansion & renovation of commercial building - 14 years extension
8	Deutsche Lufthansa AG	1640 Hempstead Turnpike, East Meadow	Existing commercial building - 10 years project
9	Designatronics Incorporated	250 Duffy Avenue, Hicksville	Renovation of industrial/manufacturing building - 15 years project
10	Litigation Settlement Administrative Corp.	801 South Broadway, Hicksville	Renovation & equipping of office building - 10 years project
11	Long Island Industrial Portfolio	230 Duffy Avenue, Hicksville	Renovation & equipping of industrial /office Building - 13 project facility properties - 15 years project
12	Luxottica US Holdings Corp.	12 Harbor Park Drive, Port Washington	Renovation & equipping of industrial /office building - affects only 30,065 sq ft - 15 years project
13	M.P.A. Owners LLC	157-161 Post Avenue, Westbury	Construction of retail /apartment building - 10 years project
14	Mela Shopping Mall	217 Bethpage Road, Hicksville	Renovation & equipping of commercial facility - 10 years project
15	Prospect Realty Holding Company, LLC	102-110 Duffy Avenue, Hicksville	Renovation of office building - 20 years project
16	Safeguard Self Storage dba PPF SS 6000 Sunrise Highway LLC	6000 Sunrise Highway, Massapequa	Construction of storage facility - 15 years project
17	Stoneridge B,C &D dba Prospect Ave Apartments	735 Prospect Avenue, Westbury	Residential apartments - 30 years project
18	The Hain Celestial Group, Inc.	1111 Marcus Avenue, New Hyde Park	Renovation & equipping of commercial facility - 16 years project

Continued on next page.

Appendix A – NCIDA Projects Selected

NCIDA - Projects Selected 2014 - 2016			
#	Selected Project	Property Address	Property Description
19	The Loft at 231 Main Street (SPA 79 E L.P.)	231-245 Main Street, Farmingdale	Demolition and construction of multi-use building - 20 years project
20	The Loft at 285 Eastern Parkway	285 Eastern Parkway, Hauppauge	Acquisition and construction of a residential facility - 20 years project
21	We're Associates Company dba 4 Ohio Drive LLC	4 Ohio Drive, Lake Success	Renovation & equipping of industrial/office building - 10 years
22	839 Management LLC	839 Prospect Ave, Westbury	Renovation of retail/apartment building - 22 years project
23	Altice USA Inc.	1111 Stewart Ave, Bethpage	Renovation of Office Building - 10 years project
24	Display Technologies	1111 Marcus Avenue, New Hyde Park	Renovation and equipping of commercial office facility - 10 years project
25	Nassau Events Center LLC (New York Islanders)	1255 Hempstead Tpke. Uniondale	Renovation of existing Nassau Coliseum - 34 years project (with option for 3*5-
26	Lynbrook Theatre Group & Regal Cinemas Inc.	321 Merrick Road, Lynbrook	Construction of movie theater facility -20 years project

Appendix B contains an analysis of the Nassau County Industrial Development Agency’s (NCIDA) Responses to the Draft Audit report and the Auditors’ Follow Up Comments. NCIDA’s full response letter as submitted is included in Appendix C.

AUDIT FINDING (1)

(1) 69% of Projects Reviewed Had Not Achieved All Their Employment Goals in One or More Years as Required by IDA Agreements

Audit Recommendations:

We recommend that the NCIDA:

- a) develop written procedures to monitor project performance for job compliance; and
- b) document project performance and actions taken when projects are not compliant with job goals.

NCIDA’s Response to Recommendation 1

“While these prior Payments in Lieu of Taxes (“PILOT”) agreements will remain on the books, the current IDA Board and management have adopted more stringent protocols for the future.

We ensure that each project is assessed on an individual basis, understanding that whether a business is small, mid-sized, or large, it may need financial assistance to realize its project goals. As such, the employment goals reflect this, and may call for the maintenance or creation of just a few full-time equivalent employees (“FTEs”) or hundreds, given the circumstances.

The Agency actively monitors the job creation generated by projects, and where requirements are not met, takes appropriate action. Where appropriate, the Agency has and will pursue termination and / or recapture.

In recent applications, the agency has negotiated to reduce PILOTs, increase job covenants, and when applicable, increase the amount of workforce housing to be created by the project. Moreover, it is the Agency’s practice when granting financial assistance in the form of a PILOT to generally not reduce real estate taxes to an amount below current real estate taxes, thus protecting the tax base.

The Agency follows the timing and reporting procedures to monitor project performance for job compliance as designated by the ABO.”

Appendix B– Auditors’ Follow Up Comments on NCIDA Responses

Auditors’ Follow Up Comments to NCIDA’s Responses to Recommendation 1

We concur with the NCIDA Board and management’s plan to adopt more stringent protocols in the future regarding benefits granted and jobs created. We concur with the NCIDA’s plan to actively monitor jobs created by the projects and, where requirements are not achieved, to take appropriate actions. While the Agency states that they follow the timing and reporting procedures to monitor project performance for job compliance as designated by the New York State Public Authorities Budget Office (ABO), we reiterate that the NCIDA should:

- a) develop its own written procedures for how they monitor project performance for job compliance; and
- b) document project performance.

AUDIT FINDING (2)

(2) Employment Goals Were Limited in Almost 50% of Projects Tested, Representing Tax Revenue of \$112.8 Million Being Abated

Audit Recommendations:

We recommend that the NCIDA:

- a) ensure that the employment benefits are significant to support the financial assistance granted to the projects;
- b) require salaries of the jobs retained and created be specified in the agreements; and
- c) ensure that project performance for financial investments or revitalization objectives are monitored and documented.

NCIDA’s Response to Recommendation 2

“While these prior Payments in Lieu of Taxes (“PILOT”) agreements will remain on the books, the current IDA Board and management have adopted more stringent protocols for the future.

We ensure that each project is assessed on an individual basis, understanding that whether a business is small, midsized, or large, it may need financial assistance to realize its project goals. As such, the employment goals reflect this, and may call for the maintenance or creation of just a few full-time equivalent employees (“FTEs”) or hundreds, given the circumstances.

The Agency actively monitors the job creation generated by projects, and where requirements are not met, takes appropriate action. Where appropriate, the Agency has and will pursue termination and / or recapture.

Appendix B– Auditors’ Follow Up Comments on NCIDA Responses

In recent applications, the agency has negotiated to reduce PILOTs, increase job covenants, and when applicable, increase the amount of workforce housing to be created by the project. Moreover, it is the Agency's practice when granting financial assistance in the form of a PILOT to generally not reduce real estate taxes to an amount below current real estate taxes, thus protecting the tax base

The Agency follows the timing and reporting procedures to monitor project performance for job compliance as designated by the ABO.”

Auditors’ Follow Up Comments to NCIDA’s Response

- a) We concur with the NCIDA’s plan to increase job covenants and when applicable, increase the amount of workforce housing created by the project in its recent applications. We reiterate that the NCIDA should ensure that the employment benefits are significant to support the financial assistance granted to the projects.
- b) We reiterate that the NCIDA needs to require salaries of jobs retained or created be stated in the agreements.
- c) We reiterate that NCIDA should monitor and document project performance for financial investments or revitalization.

AUDIT FINDING (3)

(3) In 57% of the Test Cases, Backup Provided to the NCIDA to Support Project Job Confirmation Numbers Did Not Always Match or Was Not Provided

Audit Recommendations:

We recommend that the NCIDA implement a procedure that requires the review of the NYS-45s to ensure compliance with the Job Confirmation form data required under the PILOT and Lease agreements.

NCIDA’s Response to Recommendation 3

“Under new leadership, the Agency has taken efforts to improve upon its prior record-keeping. Our present Agency staff takes great effort to obtain all appropriate and required job confirmation information and reports. Moreover, it works diligently with the State's ABO, to report this information on an annual basis.”

Auditors’ Follow Up Comments to NCIDA’s Response

We concur with the NCIDA in its efforts to improve upon its record keeping and to obtain all appropriate and required job confirmation information.

We reiterate that the NCIDA implement a procedure to review the NYS 45s to support the Job Confirmation form data as required under the PILOT and lease agreements.

AUDIT FINDING (4)

(4) Review of Third-Party Consultant’s Economic Impact Analysis Reports Found that the Reports Did Not Show the Impact of Tax Abatements to Affected Jurisdictions, Capital Investments Were Not Monitored and Benefit Cost Ratios Were Not Calculated

Audit Recommendations:

We recommend that the NCIDA:

- a) revise the Third-Party Consultant Economic Impact Analysis Reports to include the impact of the tax abatement to the County, towns, school districts, and other affected jurisdictions;
- b) develop benefit cost ratio(s) that are appropriate and reasonable to use as measurement guidelines for financial assistance eligibility; and
- c) develop procedures to monitor and verify project performance by requiring projects to report quarterly detailed data on capital investments and to follow-up when information is not received from projects.

NCIDA’s Response to Recommendation 4

“Once again, we must reiterate that the past practices of the Agency management are no longer in use. The current Board demands that the Agency performs a cost-benefit analysis for each proposed project. Moreover, each municipality (including each school district) is contacted and provided information on proposed projects located within its jurisdiction, and is notified of all relevant public hearings and provided an opportunity to inquire about and comment on the project. Further, the Agency Chair has undertaken a policy to personally contact the chief executive of each affected municipality, and the superintendent of each affected school district, to make certain the municipality is aware of the project, and has an opportunity to learn more about and comment on it.

As stated above, we also note that the now existing, applicable State law and regulation requiring the preparation of a cost benefit analysis was not in place for part of the time period covered by the review. However, the law and regulation now in place does require such an analysis, but it does not require the analysis to specifically break-down the impact of tax abatements to each effected tax jurisdiction. Instead, it requires an analysis of the estimated value of any tax exemptions to be provided. We will consider the utility of obtaining a break-down of the impact of tax abatements to each affected tax jurisdiction for future projects.

We further note, it is the Agency's practice when granting financial assistance in the form of a PILOT to generally not reduce real estate taxes to an amount below current real estate taxes. With respect to new construction transactions, the Agency's tax abatement typically provides for the payment of full land taxes and a phased in increment on account of the additional tax value created by the new improvement. In these cases, given the underlying assumption that the project would not happen but for the Agency's assistance, the abatement does not result in

Appendix B– Auditors’ Follow Up Comments on NCIDA Responses

loss of tax revenue to the affected tax jurisdictions. This may be the reason why several of the reviewed cost benefit analysis reports did not state an amount of tax loss.

With respect to the monitoring of capital investments, we note that the Agency requires the annual submission of a compliance certificate by all active projects. The certificates require a statement as to the amount of project investment for the prior year. Further, the certificate requires a statement that no defaults exist under the project's underlying Project Agreement. Each Project Agreement contains a representation as to the amount of the total project cost. Accordingly, an understatement of the project costs in an application would result in a subsequent default under the Project Agreement, risking recapture and termination. An overstatement of the project costs in an application would result in a subsequent default under the Project Agreement, risking recapture and termination and would subject the applicant to higher Agency fees (which are project cost based) at closing.

As indicated above, we note that during the time period of the review and at present time, applicable State law (and regulation) does not require the preparation of a cost benefit analysis calculation or the statement of ratio of the estimated costs to benefits of a project. We will consider the utility of preparing such a calculation for future projects.”

Auditors’ Follow Up Comments to NCIDA’s Response

- a) We acknowledge the NCIDA’s plan to consider providing a break-down of the impact of tax abatements to each affected tax jurisdiction.
- b) We acknowledge the NCIDA’s plan to consider using cost benefit ratios as a guide to aid in granting financial assistances for future projects.
- c) We acknowledge the NCIDA’s statement regarding use of the compliance certificate to monitor capital investments, we believe that it would be beneficial to develop procedures requiring projects to report quarterly detailed data on capital investments and to follow-up when information is not received.

AUDIT FINDING (5)

(5) The Third-Party Consultant Economic Impact Analysis Reports Were Prepared After the Public Hearing Therefore The Public/Stakeholders Could Not Make an Informed Decision On The Project

Audit Recommendations:

We recommend that the NCIDA:

- a) revise its procedures to require that Third-Party Consultant Economic Impact Analysis Reports must be prepared before public hearings are held; and
- b) revise the Third-Party Consultant Economic Impact Analysis Report to include the exact date the report is prepared, not just the month and year in order to assure an informed decision making process.

NCIDA’s Response to Recommendation 5

“Under the current Agency Board, Executive Director, and staff, all such reports are prepared prior to the relevant public hearing, and are furnished upon request to the affected taxing jurisdiction. We will discuss with the Agency’s consultant the possibility of including the exact date of the Economic Impact Analysis Report.

We note that since the time period covered by the review, every prepared Economic Impact Analysis Report was completed in advance of the applicable project public hearing, and the Agency fully intends to continue this practice. Nonetheless, we note that applicable State law and regulation only requires the preparation of a written cost-benefit analysis prior to the approval of the provision of financial assistance, rather than prior to the public hearing.

Demonstrative of this Agency’s commitment to transparency and public disclosure was the great effort undertaken to execute a hybrid (in-person and remote attendees) public hearing for the Engel Burman project for more than four-hundred units of residential housing on the site commonly referred to as the “Superblock” within the City of Long Beach. In spite of the current pandemic and having to reschedule the hearing due to Hurricane Isaias, this Agency conducted a successful hearing which heard comments from residents and City officials alike.”

Auditors’ Follow Up Comments to NCIDA’s Response

- a) We concur with the current NCIDA Board and management’s statement that all Economic Impact Analysis Reports be prepared prior to the public hearing.
- b) We concur with the current NCIDA Board and management’s statement to discuss with the Third-Party Consultant the possibility of including the exact date of the reports.

AUDIT FINDING (6)

(6) NCIDA Paid a Consultant \$ 556,250 Over Five Years on a Non-Performing Contract to Attract Cyber Companies to Nassau County - Auditors Found No New Cyber Companies Moved to Nassau County

Audit Recommendations:

We recommend that the NCIDA should:

- a) conduct research on projects that require a large magnitude of work and establish requirements for the projects including a verification of the Consultant’s qualifications before signing a contract; and
- b) develop clear and defined deliverables which include a time period to evaluate the performance of their contractors while services are in progress and before payments amounting to thousands of dollars are made.

NCIDA’s Response to Recommendation 6

“This consultancy contract proved to be a very poor expenditure by the prior Agency Board and Executive Director. Moreover, the lack of transparency in engaging this consultant is contrary to the approach of our present Board and management.

The paid consultant described in your audit finding no. 6 ceased providing their services to the Agency prior to the implementation of the new Board and management. Moreover, vendors are now typically selected through a request for qualification process. Further, the Agency has undertaken a process of periodically reviewing and, as needed, reissuing requests for a qualification, to engage qualified vendors in a transparent manner.

At this time, the Agency is not engaged with any vendor or consultant for any services related to cybersecurity.”

Auditors’ Follow Up Comments to NCIDA’s Response

- a) We concur with the current NCIDA Board and management decision to select vendors through a request for qualification and to periodically review and reissue requests for qualifications. We reiterate that the NCIDA conduct research on projects that require a large magnitude of work and establish requirements for the projects including a verification of the Consultant’s qualifications before signing a contract.
- b) We reiterate that the NCIDA should develop defined deliverables that include time periods to evaluate performance of services before payments are made.

Appendix B– Auditors’ Follow Up Comments on NCIDA Responses

AUDIT FINDING (7)

(7) NCIDA Utilized an Existing Public Relations Firm to “Flow Through” the NCIDA’s Advertising Campaign to Another Firm in Order to Avoid the RFP/Procurement Process

Audit Recommendations:

We recommend that before proceeding with any advertising campaigns, the NCIDA should:

- a) cease from requesting current vendors to act as a “flow through” firm to pay unapproved vendors;
- b) begin a Request for Proposal Process and speak with various advertising firms to develop a targeted plan of where to attract businesses from;
- c) select an advertising firm in an open and transparent manner;
- d) detail the specifications into a contract for services that protects the NCIDA’s interests; and
- e) conduct advertising campaigns outside of Nassau County to attract companies to come into the County.

NCIDA’s Response to Recommendation 7

“The current Agency Board, Executive Director, and staff have no connections to these specific circumstances.

The Agency does, from time-to-time, purchase paid media in furtherance of its mission through approved and contracted marketing and communications vendors as per their contracted services with the Agency. Utilization of these marketing and communications vendors buying services ensures best pricing and the most effective media mix and placement to reach targeted audience.”

Auditors’ Follow Up Comments to NCIDA’s Response

- a) The current Board and management stated they have no connection with the “flow through” payments made by the prior IDA management to another firm to avoid the procurement process.
- b, c) We concur with the NCIDA’s statement to use approved and contracted marketing and communication vendors, in an open and transparent manner, through a request for qualification as stated in response to Finding 6.
- d) We reiterate that the NCIDA should detail the specifications into a contract for services that protects the NCIDA’s interests.
- e) We reiterate that the NCIDA conduct advertising campaigns outside of Nassau County to attract companies to come into the County.

AUDIT FINDING (8)

(8) NCIDA Former Officer May Have Violated the NCIDA Code of Ethics; NCIDA Code of Ethics Needs Improvement

Audit Recommendations:

We recommend that the NCIDA:

- a) delegate the Ethics Officer responsibilities to someone other than the Executive Director;
- b) request the Nassau County Board of Ethics investigate if the NCIDA’s former Executive Director violated the NCIDA’s Ethics Code regarding a perceived conflict of interest; and
- c) consider amending their Ethics Code to require the filing of an annual financial disclosure form by employees.

NCIDA’s Response to Recommendation 8

“The described officer is no longer employed by the Agency, and the current Agency Board, Executive Director, and staff has no connections with the circumstances described.

The Agency requires all members, officers, and staff to complete and file an Annual Statement of Financial Disclosure.

The Agency has previously confirmed with the Nassau County Board of Ethics that it is not required to file our financial disclosure forms with it.

The Agency will review its Code of Ethics policy when it undertakes its annual review of all policies and procedures in the first quarter.”

Auditors’ Follow Up Comments to NCIDA’s Response

- a, b) The NCIDA investigate if the NCIDA’s former Executive Director actions violated the NCIDA’s Ethics Code and if so, ensure that such a violation does not happen in the future.
- c) We concur with the NCIDA to require all members, officers and staff to complete and file an Annual Statement of Financial Disclosure and will review its Code of Ethics policy during its annual review in the first quarter of the year.

AUDIT FINDING (9)

(9) One Project Exceeded Maximum Sales Tax Exemption Amount and Time Limit of Exemption

Audit Recommendation:

We recommend that the NCIDA:

- a) develop and implement a written procedure to monitor the usage and time frame of sales and use tax exemptions granted to projects to ensure benefits are used for specific purposes within the required time frames; and
- b) recoup the sales tax amount that exceeded the exemption limit from the project.

NCIDA’s Response to Recommendation 9

“As stated above, the current Agency management and staff have made significant efforts to monitor projects, and to enforce covenants when appropriate and necessary. This includes monitoring the utilization of financial assistance, to make certain they are in keeping with the relevant transaction documents and related covenants.

Specifically with regards to the noted project, upon investigation of the finding and discussion with client attorney the Agency received the following response; "Yes, actually I was just informed by my client that the \$327,000 figure on the 2016 ST-340 represented total purchases NOT sales tax and that his book-keepers are working to correct the error and provide updated/accurate information for IDA records. I hope that this information is satisfactory for the time being. I will let you know when I have more information and will work with client to get the IDA what it needs. "

The Agency will work with client counsel to amend and correct all relevant documents and reports.”

Auditors’ Follow Up Comments to NCIDA’s Response

- a) We concur with the current NCIDA management and staff in its efforts to monitor the projects use of financial assistance and to enforce covenants agreements. We reiterate that the NCIDA should develop written procedures to monitor the use and time frame of sales and use tax exemptions.
- b) With respect to the NCIDA recouping the sales tax amount that exceeded the exemption limit, after the end of our field work, we were informed by the NCIDA’s project attorney that the \$327,000 on the 2016 Sales Tax Exemption Form ST-340 represented total purchases and not the sales tax exemption amount.

AUDIT FINDING (10)

(10) The NCIDA Failed to Recapture Benefits and Disburse Funds to the Taxing Districts Within 30 days of Receipt as Required by NYS General Municipal Law

Audit Recommendations:

We recommend that the NCIDA develop written monitoring procedures to ensure that:

- a) recapture benefits are remitted to New York State and the affected jurisdictions within 30 days of receipt; and
- b) prompt action is taken to recapture benefits when projects fail to meet job goals, are terminated or go bankrupt.

NCIDA’s Response to Recommendation 10

“As stated above, the Agency actively monitors job creation, and where requirements are not met, takes appropriate action. However, where appropriate, it has and will pursue termination and / or recapture.”

Auditors’ Follow Up Comments to NCIDA’s Response

- a) We reiterate that the NCIDA should remit recapture benefits to New York State and the affected jurisdiction within 30 days of receipt.
- b) We concur with the NCIDA’s statement to actively monitor job creation and act where appropriate to terminate or recapture when job goals or requirements are not met.

AUDIT FINDING (11)

(11) The NCIDA Board Did Not Approve the 2018 Payments to Employees for Vacation and Sick Time Totaling \$350,216

Audit Recommendations:

We recommend that the NCIDA Board take corrective action to ensure that all vacation and sick time payouts to employees, are provided to the Board and approved by a Board resolution prior to payment according to the Agency’s Employee Compensation Policy.

NCIDA’s Response to Recommendation 11

“The noted payments totaling \$350,216 were made with the January 4, 2018 payroll having been approved in December 2017 by the then Agency Chair, Executive Director and CFO.

With regard to termination payments, the Agency has amended its policy to prevent the described circumstances. Under the amended policy, ALL termination payments must now be approved by the Agency Board, and if a termination payment amount exceeds \$20,000, the Board may require that it be paid out over a three-year period.

Appendix B– Auditors’ Follow Up Comments on NCIDA Responses

The Agency further revised its policy to amend the provisions relevant to the accumulation of paid time off from work for working in excess of an employee's required work hours in a work week.”

Auditors’ Follow Up Comments to NCIDA’s Response

We concur with the NCIDA in its amendment of the Employee Compensation Policy to require that all termination payments must be approved by the NCIDA’s Board to prevent any unauthorized payouts. We reiterate that all employee payouts be approved by a Board resolution prior to payment according to the Agency’s Employee Compensation Policy.

AUDIT FINDING (12)

(12) Former NCIDA Board was Not Adequately Monitoring Salary Increases

Audit Recommendations:

We recommend that the NCIDA Board implement written procedures that require:

- a) all increases or changes to salaries for each employee be submitted for Board approval before payment is made to employees, according to the Agency’s Employee Compensation Policy; and
- b) payroll records be independently reviewed on a periodic basis.

NCIDA’s Response to Recommendation 12

“As mentioned above, the agency has a new staff and the staff members have been engaged at terms appropriate to their duties and the marketplace. In accordance with the Employee Compensation Policy, all employee increases must be approved by both the Audit and Governance Committees.”

Auditors’ Follow Up Comments to NCIDA’s Response

- a) We concur with the NCIDA’s statement that all employee increases must be approved by both the Audit and Governance Committees as required in the Agency’s Employee Compensation Policy.
- b) We reiterate that the NCIDA Board should have written procedures that require payroll records be independently reviewed on a periodic basis.

AUDIT FINDING (13)

(13) NCIDA Lacks Adequate Internal Controls; Auditors Found Weaknesses in Various Accounting Practices

Audit Recommendations:

We recommend that the NCIDA:

- a) establish a written Petty Cash policy that states the use and authorized amount permitted and to ensure recurring operating expenses are not paid with Petty Cash;
- b) record auto and commercial liability expenses to the correct account in the accounting records;
- c) review the recording and classification of accounts to ensure that the financial statement is accurately presented;
- d) during its management review of cash disbursements and bank reconciliations, date the documents examined to show that the tasks were performed on a timely basis;
- e) request properly completed W-9s from all its contractors and vendors;
- f) require staff to complete all the requested information on the vehicle log to document that the vehicle is used only for business operations; and
- g) revise the vehicle log to include the name of the individual using the vehicle and approval by management for the usage.

NCIDA’s Response to Recommendation 13

“The Agency has implemented new policies and procedures over the last two years. These policies are reviewed by management and staff and approved by the Board on an annual basis. As stated earlier, the Agency has also hired a new CFO and purchased a new accounting program to address any weaknesses in the Agency's financial and or internal controls and overall operations.”

Auditors’ Follow Up Comments to NCIDA’s Response

We acknowledge that the NCIDA hired a new Chief Financial Officer and purchased new accounting software to address any weaknesses in the Agency’s financial and or internal controls and overall operations. Our follow-up comments to the specific recommendations are as follows:

- a) We reiterate that the NCIDA should establish a written Petty Cash policy that states the use and authorized amount permitted and to ensure recurring operating expenses are not paid with Petty Cash.

Appendix B– Auditors’ Follow Up Comments on NCIDA Responses

- b) We reiterate that the NCIDA should record auto and commercial liability expenses to the correct account in the accounting records.
- c) We reiterate that the NCIDA review the recording and classification of accounts to ensure that the financial statement is accurately presented.
- d) We reiterate that during its management review of cash disbursements and bank reconciliations, the date the documents were examined should be noted to show that the tasks were performed on a timely basis.
- e) We reiterate that properly completed W-9s are requested from all its contractors and vendors.
- f,g) The recommendations for the vehicle log are no longer applicable since the vehicle owned by the NCIDA was sold at auction. Should another vehicle be purchased or leased, we reiterate the importance of the recommendations.

AUDIT FINDING (14)

(14) NCIDA Board Members Paid for a \$1,600 Holiday Dinner by Using Mileage Reimbursement Funds

Audit Recommendations:

We recommend that the Board of the NCIDA:

- a) document all approvals in the Board Minutes to ensure transparency;
- b) submit mileage reimbursement in the year of occurrence; and
- c) provide support documents for reimbursement of Board member expenses.

NCIDA’s Response to Recommendation 14

“It was the prior Agency Board and Executive Director which paid for a \$1,600 holiday dinner by using mileage reimbursement funds

Further, the Agency has adjusted its internal controls, and the circumstances stated in this audit finding will not happen under the current Agency Board, Executive Director, and staff.”

Appendix B– Auditors’ Follow Up Comments on NCIDA Responses

Auditors’ Follow Up Comments to NCIDA’s Response

We are pleased that the NCIDA has adjusted their internal controls to help prevent this type of occurrence under the current Board and management. Our follow-up comments to NCIDA’s response to our specific recommendations are as follows:

- a) We reiterate that the Board document all approvals in the Board Minutes.
- b) We reiterate that the Board ensure that their internal controls include that mileage reimbursement be submitted with support in the year of occurrence.
- c) We reiterate that the Board members provide support documents for reimbursement of expenses.

Appendix C– NCIDA Response



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November 16, 2020

VIA EMAIL

Hon. Jack Schnirman
Nassau County Comptroller
Office of the Nassau County Comptroller
240 Old Country Road
Mineola, New York 11501

Dear Comptroller Schnirman:

As Chief Executive Officer of the Nassau County Industrial Development Agency (“Agency”), I am in receipt of the Exit Letter dated October 23, 2020, along with the draft report providing a Limited Review of the Agency’s Operations and Internal Financial Controls. We have carefully reviewed your report, and wish to note that its analysis of operations is for the fiscal years 2015 through 2018, which took place under a prior Agency Board, Executive Director, and staff. By this letter, I wish to respond to it.

First, I thank you for providing a draft copy of your report and for the thorough and diligent analysis of the Agency’s operations to provide suggestions to assist it in fulfilling its public purpose. This is valuable as we endeavor to always improve our operations in fulfillment of the Agency’s mission of supporting and promoting economic development and job growth within Nassau County (“County”) by attracting new companies and industries to the County in furtherance of and to advance the job opportunities, health, general prosperity and economic welfare of the people of the County. As I know you are aware, the Agency seeks to fulfill this mission and purpose primarily by facilitating job growth and through these efforts during 2019 the following was accomplished;

- 4,972 jobs were created consisting of:
 - ✓ 2,158 Permanent Applicant Jobs
 - ✓ 44 Permanent Household Spending Jobs
 - ✓ 2,616 Permanent Indirect Jobs
 - ✓ 93 Direct Construction Jobs, and
 - ✓ 61 Indirect Construction Jobs

Appendix C– NCIDA Response

Hon. Jack Schnirman
November 13, 2020
Page 2

In the same vein as the purpose of your report, the Agency's new Board, Executive Director, and staff have already taken steps upon assuming the leadership and oversight of the Agency which address many of your primary suggestions. These include the following already enacted policies and procedures.

- **Transparency –**
 - ✓ Transaction Committee, a previous closed-door committee, was eliminated with all transaction discussions now occurring in open meetings.
 - ✓ Preliminary Inducements have been added to Agency board meetings for all projects seeking Agency benefits, to (among other things) provide the public a greater opportunity to learn about and comment on proposed projects.
 - ✓ Public hearings for each project seeking Agency benefits are held within the smallest taxing jurisdiction within which the project is to be located and the jurisdiction elected officials (County, Town, Village, and School District) are notified by certified letter.
 - ✓ The Agency Chair has undertaken a policy to personally contact the chief executive of each affected municipality, and the superintendent of each affected school district, to make certain the municipality is aware of the project, and has an opportunity to learn more about and comment on it.

- **Accountability –**
 - ✓ By board resolution, the Agency no longer accepts applications for Agency benefits from auto dealerships and self-storage projects, which (although being important services for County residents) are not a significant job creator.
 - ✓ The Agency disposed of, via auction sale, the sole vehicle it previously had under ownership.
 - ✓ The Employee Benefits Handbook was thoroughly revised and the changes approved by Board resolution, which (among other changes) amended the provisions relevant to termination pay (that is, Section 2.17(d)), as follows – “Notwithstanding any other terms and provisions stated in this 2.17, no termination payment may be made under this Handbook unless and until first reported to and acknowledged by the members of the Agency. Moreover, in the event the termination payment amount exceeds Twenty Thousand & XX/100 (\$20,000.00) Dollars, the members of the Agency may require that the termination payment be made over a three (3) year period.”
 - ✓ The Employee Benefits Handbook revisions also amended the provisions relevant to the accumulation of paid time off from work for working in excess of an employee's required work hours in a work week.

- **Operations –**
 - ✓ Six of seven Agency staff were hired within the previous twenty-four months.
 - ✓ Financial operations have been restructured and improved with the addition of a new Chief Financial Officer (“CFO”) hired February 2020, the implementation of

Appendix C– NCIDA Response

Hon. Jack Schnirman
November 13, 2020
Page 3

- a new financial system (QuickBooks), and a review of accounting & finance policies and procedures.
- ✓ The Agency now utilizes the review services of an independent third-party non-profit consultant (National Development Council) to review all housing related projects to ensure there is not undue enrichment to the developer.

In addition, this Agency is in good standing with both the Office of the New York State Comptroller and the New York State Authorities Budget Office (“ABO”).

Again, the Agency very much appreciates the thoroughness of your review. In furtherance of it, we provide the following in response to your recommendations.

Audit Findings 1 and 2 -

(1) 69% of Projects Reviewed Had Not Achieved All Their Employment Goals in One or More Years as Required by IDA Agreements

(2) Employment Goals Were Limited in Almost 50% of Projects Tested, Representing Tax Revenue of \$112.8 Million Being Abated

Agency response:

While these prior Payments in Lieu of Taxes (“PILOT”) agreements will remain on the books, the current IDA Board and management have adopted more stringent protocols for the future.

We ensure that each project is assessed on an individual basis, understanding that whether a business is small, midsized, or large, it may need financial assistance to realize its project goals. As such, the employment goals reflect this, and may call for the maintenance or creation of just a few full-time equivalent employees (“FTEs”) or hundreds, given the circumstances.

The Agency actively monitors the job creation generated by projects, and where requirements are not met, takes appropriate action. Where appropriate, the Agency has and will pursue termination and / or recapture.

In recent applications, the agency has negotiated to reduce PILOTs, increase job covenants, and when applicable, increase the amount of workforce housing to be created by the project. Moreover, it is the Agency’s practice when granting financial assistance in the form of a PILOT to generally not reduce real estate taxes to an amount below current real estate taxes, thus protecting the tax base

The Agency follows the timing and reporting procedures to monitor project performance for job compliance as designated by the ABO.

Appendix C– NCIDA Response

Hon. Jack Schnirman
November 13, 2020
Page 4

Audit Finding 3 -

(3) In 57% of the Test Cases, Backup Provided to the NCIDA to Support Project Job Confirmation Numbers Did Not Always Match or Was Not Provided

Agency response:

Under new leadership, the Agency has taken efforts to improve upon its prior record-keeping. Our present Agency staff takes great effort to obtain all appropriate and required job confirmation information and reports. Moreover, it works diligently with the State's ABO, to report this information on an annual basis.

Audit Finding 4 -

(4) Review of Third-Party Consultant's Economic Impact Analysis Reports Found that the Reports Did Not Show the Impact of Tax Abatements to Affected Jurisdictions, Capital Investments Were Not Monitored and Benefit Cost Ratios Were Not Calculated

Agency response:

Once again, we must reiterate that the past practices of the Agency management are no longer in use. The current Board demands that the Agency performs a cost-benefit analysis for each proposed project. Moreover, each municipality (including each school district) is contacted and provided information on proposed projects located within its jurisdiction, and is notified of all relevant public hearings and provided an opportunity to inquire about and comment on the project. Further, the Agency Chair has undertaken a policy to personally contact the chief executive of each affected municipality, and the superintendent of each affected school district, to make certain the municipality is aware of the project, and has an opportunity to learn more about and comment on it.

As stated above, we also note that the now existing, applicable State law and regulation requiring the preparation of a cost benefit analysis was not in place for part of the time period covered by the review. However, the law and regulation now in place does require such an analysis, but it does not require the analysis to specifically break-down the impact of tax abatements to each effected tax jurisdiction. Instead, it requires an analysis of the estimated value of any tax exemptions to be provided. We will consider the utility of obtaining a break-down of the impact of tax abatements to each affected tax jurisdiction for future projects.

We further note, it is the Agency's practice when granting financial assistance in the form of a PILOT to generally not reduce real estate taxes to an amount below current real estate taxes. With respect to new construction transactions, the Agency's tax abatement typically provides for the payment of full land taxes and a phased in increment on account of the additional tax value created by the new improvement. In these cases, given the underlying assumption that the project would not happen *but for* the Agency's assistance, the abatement does not result in loss of tax revenue to the affected tax jurisdictions. This may be the reason why several of the reviewed cost benefit analysis reports did not state an amount of tax loss.

Appendix C– NCIDA Response

Hon. Jack Schnirman
November 13, 2020
Page 5

With respect to the monitoring of capital investments, we note that the Agency requires the annual submission of a compliance certificate by all active projects. The certificates require a statement as to the amount of project investment for the prior year. Further, the certificate requires a statement that no defaults exist under the project's underlying Project Agreement. Each Project Agreement contains a representation as to the amount of the total project cost. Accordingly, an understatement of the project costs in an application would result in a subsequent default under the Project Agreement, risking recapture and termination. An overstatement of the project costs in an application would result in a subsequent default under the Project Agreement, risking recapture and termination and would subject the applicant to higher Agency fees (which are project cost based) at closing.

As indicated above, we note that during the time period of the review and at present time, applicable State law (and regulation) does not require the preparation of a cost benefit analysis calculation or the statement of ratio of the estimated costs to benefits of a project. We will consider the utility of preparing such a calculation for future projects.

Audit Finding 5 -

(5) The Third-Party Consultant Economic Impact Analysis Reports Were Prepared After the Public Hearing Therefore The Public/Stakeholders Could Not Make an Informed Decision On The Project

Agency response:

Under the current Agency Board, Executive Director, and staff, all such reports are prepared *prior* to the relevant public hearing, and are furnished upon request to the affected taxing jurisdiction. We will discuss with the Agency's consultant the possibility of including the exact date of the Economic Impact Analysis Report.

We note that since the time period covered by the review, every prepared Economic Impact Analysis Report was completed in advance of the applicable project public hearing, and the Agency fully intends to continue this practice. Nonetheless, we note that applicable State law and regulation only requires the preparation of a written cost-benefit analysis prior to *the approval of the provision of financial assistance*, rather than prior to the public hearing.

Demonstrative of this Agency's commitment to transparency and public disclosure was the great effort undertaken to execute a hybrid (in-person and remote attendees) public hearing for the Engel Burman project for more than four-hundred units of residential housing on the site commonly referred to as the "Superblock" within the City of Long Beach. In spite of the current pandemic and having to reschedule the hearing due to Hurricane Isaias, this Agency conducted a successful hearing which heard comments from residents and City officials alike.

Appendix C– NCIDA Response

Hon. Jack Schnirman
November 13, 2020
Page 6

Audit Finding 6 -

(6) NCIDA Paid a Consultant \$ 556,250 Over Five Years on a Non-Performing Contract to Attract Cyber Companies to Nassau County - Auditors Found No New Cyber Companies Moved to Nassau County

Agency response:

This consultancy contract proved to be a very poor expenditure by the prior Agency Board and Executive Director. Moreover, the lack of transparency in engaging this consultant is contrary to the approach of our present Board and management.

The paid consultant described in your audit finding no. 6 ceased providing their services to the Agency prior to the implementation of the new Board and management. Moreover, vendors are now typically selected through a request for qualification process. Further, the Agency has undertaken a process of periodically reviewing and, as needed, reissuing requests for a qualification, to engage qualified vendors in a transparent manner.

At this time, the Agency is not engaged with any vendor or consultant for any services related to cybersecurity.

Audit Finding 7 -

(7) NCIDA Utilized an Existing Public Relations Firm to “Flow Through” the NCIDA’s Advertising Campaign to Another Firm in Order to Avoid the RFP/Procurement Process

Agency response:

The current Agency Board, Executive Director, and staff have no connections to these specific circumstances.

The Agency does, from time-to-time, purchase paid media in furtherance of its mission through approved and contracted marketing and communications vendors as per their contracted services with the Agency. Utilization of these marketing and communications vendors buying services ensures best pricing and the most effective media mix and placement to reach targeted audience.

Audit Finding 8 -

(8) NCIDA Former Officer May Have Violated the NCIDA Code of Ethics; NCIDA Code of Ethics Needs Improvement

Agency response:

The described officer is no longer employed by the Agency, and the current Agency Board, Executive Director, and staff has no connections with the circumstances described.

The Agency requires all members, officers, and staff to complete and file an Annual Statement of Financial Disclosure.

Appendix C– NCIDA Response

Hon. Jack Schnirman
November 13, 2020
Page 7

The Agency has previously confirmed with the Nassau County Board of Ethics that it is not required to file our financial disclosure forms with it.

The Agency will review its Code of Ethics policy when it undertakes its annual review of all policies and procedures in the first quarter.

Audit Finding 9 -

(9) One Project Exceeded Maximum Sales Tax Exemption Amount and Time Limit of Exemption

Agency response:

As stated above, the current Agency management and staff have made significant efforts to monitor projects, and to enforce covenants when appropriate and necessary. This includes monitoring the utilization of financial assistance, to make certain they are in keeping with the relevant transaction documents and related covenants.

Specifically with regards to the noted project, upon investigation of the finding and discussion with client attorney the Agency received the following response; *“Yes, actually I was just informed by my client that the \$327,000 figure on the 2016 ST-340 represented total purchases NOT sales tax and that his book-keepers are working to correct the error and provide updated/accurate information for IDA records. I hope that this information is satisfactory for the time being. I will let you know when I have more information and will work with client to get the IDA what it needs.”*

The Agency will work with client counsel to amend and correct all relevant documents and reports.

Audit Finding 10 -

(10) The NCIDA Failed to Recapture Benefits and Disburse Funds to the Taxing Districts Within 30 days of Receipt as Required by NYS General Municipal Law

Agency response:

As stated above, the Agency actively monitors job creation, and where requirements are not met, takes appropriate action. However, where appropriate, it has and will pursue termination and / or recapture.

Audit Finding 11 -

(11) The NCIDA Board Did Not Approve the 2018 Payments to Employees for Vacation and Sick Time Totaling \$350,216

Appendix C– NCIDA Response

Hon. Jack Schnirman
November 13, 2020
Page 8

Agency response:

The noted payments totaling \$350,216 were made with the January 4, 2018 payroll having been approved in December, 2017 by the then Agency Chair, Executive Director and CFO.

With regard to termination payments, the Agency has amended its policy to prevent the described circumstances. Under the amended policy, ALL termination payments must now be approved by the Agency Board, and if a termination payment amount exceeds \$20,000, the Board may require that it be paid out over a three-year period.

The Agency further revised its policy to amend the provisions relevant to the accumulation of paid time off from work for working in excess of an employee's required work hours in a work week.

Audit Finding 12 -

(12) Former NCIDA Board was Not Adequately Monitoring Salary Increases

Agency response:

As mentioned above, the agency has a new staff, and the staff members have been engaged at terms appropriate to their duties and the marketplace. In accordance with the Employee Compensation Policy, all employee increases must be approved by both the Audit and Governance Committees.

Audit Finding 13 -

(13) NCIDA Lacks Adequate Internal Controls; Auditors Found Weaknesses in Various Accounting Practices

Agency response:

The Agency has implemented new policies and procedures over the last two years. These policies are reviewed by management and staff and approved by the Board on an annual basis. As stated earlier, the Agency has also hired a new CFO and purchased a new accounting program to address any weaknesses in the Agency's financial and or internal controls and overall operations.

Audit Finding 14 -

(14) NCIDA Board Members Paid for a \$1,600 Holiday Dinner by Using Mileage Reimbursement Funds

Agency response:

It was the prior Agency Board and Executive Director which paid for a \$1,600 holiday dinner by using mileage reimbursement funds

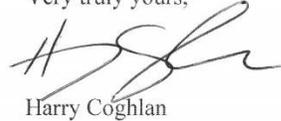
Appendix C– NCIDA Response

Hon. Jack Schnirman
November 13, 2020
Page 9

Further, the Agency has adjusted its internal controls, and the circumstances stated in this audit finding will not happen under the current Agency Board, Executive Director, and staff.

In summary, the Agency has reviewed the prepared report, and appreciates the suggestions made. In that spirit and in accordance with Nassau County Executive Laura Curran's pledge to reform this Agency, the Agency has already taken and continues to take measures toward improvements where appropriate, as described above, which largely address the suggestions in your report and demonstrates the Agency's action to cease the types of activities conducted previously. That said, as always, the Agency stands ever ready to work with your office to continuously improve operations now and in the future.

Very truly yours,



Harry Coghlan

Cc: Richard Kessel, Chair – NCIDA via email to rkessel@richardkessel.com

