

**Nassau County
Office of the Comptroller
Field Audit Bureau**



**Limited-Scope Financial Review
of the
Economic Development Vertical**

HOWARD S. WEITZMAN
Comptroller

FA01-04

January 20, 2004

NASSAU COUNTY
OFFICE OF THE COMPTROLLER

HOWARD S. WEITZMAN
Comptroller

Jane R. Levine
Chief Deputy Comptroller

Manuel Mosquera
*Deputy Comptroller
for Audits and Special Projects*

Susan D. Wagner
*Deputy Comptroller
for Operations*

Randy Ghisone
*Deputy Comptroller
For Accounting*

Allen M. Morrison
Director of Communications

Bruce G. Kubart
Assistant Director of Field Audit

Joshua G. Fensterstock
Legal Assistant

Audit Staff

Douglas Hutter
Field Audit Supervisor

Michael Grunwald
Field Auditor

Susan Cohen
Field Auditor

Douglas Landsman
Field Auditor

Theresa Dankenbrink
Field Auditor

EXECUTIVE SUMMARY

Background

The Nassau County Economic Development Vertical (“the Vertical,” “EDV”) was created by Nassau County Executive Thomas R. Suozzi soon after he took office in 2002, as part of a reorganization of county government. Mr. Suozzi organized county departments and agencies that perform related functions into “verticals,” each overseen by a Deputy County Executive. He designated then-Deputy County Executive Peter Sylver to oversee the Economic Development Vertical.

The Vertical includes departments, agencies and related independent corporations whose mission includes furthering the economic growth and community development of Nassau County. The Vertical includes: the Planning Department; the Office of Housing and Intergovernmental Affairs (“OHIA”); the Nassau County Economic Development Corporation (“EDC”), the Nassau County Local Development Corporation (“LDC”); the Nassau County Industrial Development Agency (“IDA”); the Nassau County Public Utility Agency (“NCPUA”); the Office of Minority Affairs; the Coordinating Agency for Spanish Americans (“CASA”); and the Nassau County Human Rights Commission.

OHIA was included in the Nassau County Comptroller’s 2004 Audit Plan. In view of Mr. Sylver’s resignation in December 2003 and the discovery that financial transactions were conducted by OHIA outside the Nassau County internal control process, the Comptroller decided to conduct the audit immediately and expand its scope to include all units within the Vertical.

Audit Objective, Scope and Methodology

The objective of the audit was to determine, throughout the Vertical, whether:

- expenses were subject to appropriate reviews and controls;
- goods and services were procured properly and with appropriate approvals, and provided in compliance with contractual terms;
- revenues were properly controlled and accounted for, received in accordance with contractual terms, and deposited on a timely basis;
- time and leave was subject to appropriate controls; and
- payroll expenses were properly authorized, incurred, and charged to the appropriate program.

The scope of the audit for each entity within the Vertical differed depending on the risk associated with the financial transactions. Transactions processed by county departments, using normal county procedures, are of lower risk because they are subject to standard county reviews and controls. Transactions processed outside of those controls may be of higher risk, because the controls may be undocumented, uncertain or nonexistent, and there may be insufficient segregation of duties. The scope of examination was limited, with certain exceptions, to transactions not processed through established Nassau County control procedures.

EXECUTIVE SUMMARY

Auditors obtained bank statements, general ledgers, audited financial statements, board minutes, cash receipts and disbursement books, credit card statements, grant claims, contracts, and billing documentation supporting receipts. Disbursements, revenues and their supporting documentation were reviewed and selected for testing at the auditors' discretion. Time and leave records for each department were reviewed for compliance with county requirements and entry into the county's payroll system, known as the Nassau Unified Human Resource System ("NUHRS"). For individuals paid outside the county payroll system, salary authorizations and time and leave records were reviewed.

This audit was conducted in accordance with generally accepted government auditing standards. These standards require that the audit be planned and performed to obtain reasonable assurance that the audited information is free of material misstatements. An audit includes examining documents and other available evidence that would substantiate the accuracy of the information tested, including all relevant records and contracts. It includes testing for compliance with applicable laws and regulations, and any other auditing procedures necessary to complete the examination. We believe that the audit provides a reasonable basis for the audit findings and recommendations.

Summary of Significant Audit Findings

Auditors observed a pattern of mismanagement, negligence and lack of normal governmental and financial controls throughout the Vertical, which operated as if it were exempt from county procedures with respect to revenues, expenses, and time and leave records. Although some of the observed problems were apparently inherited by, and predated, the Suozzi administration, the new administration failed to implement financial and managerial controls in the Vertical where there were none in place.

Our examination of the Vertical included the following major findings:

- Without any authority to do so, county employees opened corporate checking and credit card accounts in the name of Nassau County OHIA. Misstatements were made on the applications for the checking and credit card accounts. The manner in which the accounts were opened and operated was at best negligent, and at worst a deliberate attempt to circumvent county controls. The account was closed on January 15, 2004. We have referred the matter to the Commissioner of Investigations and the District Attorney for further investigation.
- During 2000-2001, the Board of the IDA approved over one hundred thousand dollars in expenditures for golf outings, parties, attendance at fund-raising events, and charitable contributions. In approving these expenditures, the IDA did not state their economic development purpose, or how the expenditures were within the authority granted to the IDA by its state enabling legislation. In March 2002, the IDA Board authorized its Executive Director to incur expenses and spend funds as long as they are within the budget, without requiring Board approval for

EXECUTIVE SUMMARY

individual expenditures.¹ A number of post-March 2002 expenditures were made either without conducting a competitive procurement process; appeared to be primarily for the benefit of a different department or corporation within the Vertical; or, in some instances, appeared to lack an economic development purpose.

- The component agencies commingled their expenses, even though three of the agencies are not-for-profit public corporations that are fiscally independent of the county and of each other. Expenses should be allocated and apportioned to the proper entities.
- The LDC, NCPUA and the newly-formed EDC kept no accounting books at all.
- At some agencies within the Vertical there was a failure to follow procurement policies; at others there was *no* procurement policy.
- The independent corporations have no effective conflict of interest policies.
- The Vertical leased automobiles in a manner that was not cost-effective. OHIA leases 11 Ford Tauruses at \$518 per month and one Crown Victoria for \$725 per month for use by its employees. Although the vehicles were properly procured through the county purchasing department, more economical alternatives should have been pursued.
- Outside legal counsel was selected, according to county documents, based on the firm's "broad knowledge and expertise," without evidence of any competitive procurement process. The same law firm retained by OHIA, Crowe, Deegan, also did work for the three independent corporations, with a similar lack of evidence of competitive procurement. Billings totaled more than \$707,000. With respect to the procurement of personal services contractors such as law firms, county rules generally require that at least three firms be considered prior to a contract award. A better practice, however, is the issuance of a request for proposals. With respect to OHIA, there is no evidence that three firms were considered before Crowe, Deegan was hired; with respect to the corporate entities, they have no rules in place governing such procurement.
- Throughout the Vertical, we found a lack of internal controls over expenditures. Questionable expenditures included:
 - Various charges to the OHIA credit card, authorized by the Deputy County Executive. These included \$707 related to window tinting on Mr. Sylvester's county-leased automobile; \$940 for a computer monitor and

¹ Res. No. 2003-07 (Jan. 29, 2003) (authorizing both the Chairman and the Executive Director to incur expenses).

EXECUTIVE SUMMARY

printer that should have been purchased through the county's Information Technology department; a \$944 charge for a hotel suite for one day that was never used, but not cancelled; business meals incurred without documented justification; and various purchases for other EDV units, including the independent corporations, that should have been paid for by those units.

- OHIA expenses paid by check that were inappropriate and/or not subject to normal financial controls. These included \$5,176 for office furniture for the executive director of EDC; \$126 for softball equipment that was apparently neither used nor donated; and meals for which insufficient justification was provided.
- Unjustified IDA expenditures, including:
 - Approximately \$25,000 for golf outings authorized during 2000 and 2001 by the IDA Board. The Board minutes did not mention the purpose of these expenditures, the anticipated economic development benefits, or the authorized attendees.
 - Also in 2000-2001, IDA spent approximately \$8,800 on holiday and retirement parties for its employees.
 - Between 2000 and 2001, the IDA Board authorized payments of approximately \$85,000 for charitable contributions and sponsorships of not-for-profit organizations, again with no supporting justification or explanation as to the economic development purpose.
- IDA also made the following purchases on behalf of other units within the Vertical:
 - \$10,384 on office construction to be used by, or shared with, the Deputy County Executive, the Director of Planning; the Deputy Director of Planning; the Special Assistant to the Director of OHIA and the Director of NCPUA. A significant portion of the work performed was not competitively bid.
 - \$10,000 for the purchase of used furniture from an investment banking firm, and an additional cost of \$24,143 – 2.5 times the purchase price – to move it to Nassau County. There was no evidence that IDA obtained bids for the purchase or performed any analysis to determine whether the total acquisition cost was reasonable. The amount of furniture purchased, including 18 desks and credenzas, 256 chairs, 4 loveseats, a couch, and 102 file

EXECUTIVE SUMMARY

cabinets, is far in excess of that needed for a public benefit corporation with only six employees.

- \$3,462 for the Deputy County Executive to attend a conference in London entitled “Modernising Criminal Justice” that had little apparent connection to the IDA’s mission. This amount included \$820 of expenses reimbursed to Mr. Sylver for the cost of his wife’s conference registration as a spouse, and for an additional three-night stay in London after the conference ended. Mr. Sylver reimbursed the IDA for the total expense in January 2004.
 - \$6,747 for the purchase and installation of a digital plasma television for the County Executive’s conference room at 1 West Street, rather than in the IDA offices at 400 County Seat Drive. If this equipment was primarily for the use of the administration, it should have been purchased using the county’s procurement process, with sufficient justification provided.
 - The IDA hired consultants without any discernable procurement process and, in some cases, with no contracts. Some of the “consultants” appear to have really been employees. The IDA may have circumvented IRS regulations by treating the individuals as consultants.
- There is an absence of internal controls over revenues and cash receipts throughout the Vertical.
 - Revenues deposited into OHIA’s outside checking account were not subject to proper accounting controls and were not deposited in a timely manner. OHIA was unable to provide the contractual agreements upon which the revenues were based.
 - The IDA showed revenue of \$749,000 in 2003 (11 months), \$537,000 in 2002, \$321,000 in 2001 and \$224,000 in 2000. Revenue has been enhanced through increased activities and fee initiatives in recent years. However, the agency has no comprehensive record of amounts earned or billed. No fees were collected in 2000, and almost none in 2001.
 - In their examination of salaries and time and leave, auditors observed instances of sloppy or non-existent timekeeping, unauthorized leave, or leave taken but not posted to the county’s payroll system, in every unit in the Vertical.
 - OHIA had no auditable time and leave records; standard county timesheets were not used; and the agency’s own records were poorly maintained or in

EXECUTIVE SUMMARY

some cases nonexistent.

- One employee was absent for 13 days, apparently due to an injury sustained in a car accident, but no leave time was used. The employee's paychecks showed the time recorded as regular time worked.
 - Another OHIA employee was paid for a five-day workweek at a salary of \$45,000, but in reality had worked three days a week since September 2003. When the Comptroller's Office notified OHIA that the employee's paycheck might be held to recoup the overpayments, OHIA responded by authorizing a 67-percent pay increase for this employee retroactive to September 2, bringing the annual salary to \$75,000 and, concurrently, reducing the employee's work schedule to three days a week, also retroactive to September 2. In so doing, OHIA frustrated efforts by the Comptroller's Office to recoup money owed to the county.
 - Another employee listed on OHIA's time sheets is actually employed by the EDC as Assistant to the Executive Director. The employee's salary should be charged to EDC, but is instead being charged to the county.
 - Within the county Human Rights Commission, the Minority Affairs Office and the independent corporations, auditors noted failures to enter absences into the county payroll system, and/or employees who work for one unit but are paid by another. Prior to 2002, the IDA did not have its own employees; instead it used county employees who were paid stipends above their county salaries. No records of hours worked were maintained.
- The IDA pays only \$300 per month to lease office space from the county. EDC and NCPUA pay no rent to the county, despite an allocation in EDC's budget for annual rent payments of \$24,000.
 - NCPUA is a reseller of power that is discounted relative to the rates charged by the Long Island Power Authority (LIPA). The Agency has an allocation of five megawatts of power, which it re-sells to seven businesses currently under contract. Auditors found that the agency does not maintain basic accounting records. The NCPUA Board authorized the imposition of a 4 percent fee for all its customers on March 13, 2003, but provision for the fee is not included in its contracts. NCPUA and the county should examine the feasibility of using NCPUA-provided energy to reduce county energy costs.

On January 15, 2004, as is customary with Comptroller's audits, we submitted a draft report to the Deputy County Executive for Finance with a request for comments. Although comments were received, nor formal written response was submitted for inclusion in this report.

Table of Contents

	Page Number
Introduction	1
Overview of the Nassau County Economic Development Vertical	1
Objective, Methodology and Scope of Audit	7
<u>Findings and Recommendations</u>	10
Office of Housing and Intergovernmental Affairs Checking Account	10
Office of Housing and Intergovernmental Affairs Unauthorized Credit Card	12
Nassau County Industrial Development Agency Board of Directors – Approval of Expenditures	13
Conflict of Interest Policy	14
Automobile Leases	15
Outside Counsel	16
Rental Charges	17
Cash Disbursements:	18
Office of Housing and Intergovernmental Affairs:	18
Credit Card Charges	
Non-NIFS Bank Account Purchases	20
Local Development Corporation:	22
Engagement of Counsel	22
Office Furniture	22
Internal Controls	22
Economic Development Corporation:	23
Engagement of Counsel	23
Engagement of Accountants	24
EDC Operating Budget for 2003	24
Computer Equipment	24
Application Fees	25
Accounting Records	25
Nassau County Industrial Development Agency:	25
Office Construction	25

Table of Contents

	Page Number
Furniture	26
Deputy County Executive Trip to London	26
Payment to Church	27
Plasma Television	27
Consultants/Lobbyists	28
Collection Fees	30
Check Issuance	30
Advertising	31
Petty Cash	31
Holiday/Retirement Parties	32
Golf Outings	32
Charitable Contributions/Sponsorship	33
Revenues and Cash Receipts:	35
Office of Housing and Intergovernmental Affairs	35
Industrial Development Agency	36
Salary Administration/Time and Leave:	38
Office of Housing and Intergovernmental Affairs	38
Other EDV Units	40
Independent Corporations Within EDV	44
Nassau County Public Utility Agency:	46
Background	46
Accounting Records	46
Advance and Loan Repayment	47
Administrative Fees	48
Contractual Agreements	48
Nassau County Energy Requirements	48
Application Fees	49

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

Introduction

The Office of Housing and Intergovernmental Affairs (OHIA) was included in the Nassau County Comptroller's 2004 Audit Plan. In view of the resignation of Deputy County Executive for Economic Development Peter Sylver in December 2003 and the discovery that financial transactions were conducted by OHIA outside the Nassau County internal control process, the Comptroller decided to conduct the audit immediately and expand its scope to include all units within the Economic Development Vertical.

An Overview of the Nassau County Economic Development Vertical

When he took office in 2002, County Executive Thomas R. Suozzi organized county departments and agencies that performed related functions into "verticals," each overseen by a Deputy County Executive. Pursuant to the County Charter, the County Executive may appoint a Deputy County Executive to perform administrative duties assigned to the County Executive.² County Executive Suozzi designated then-Deputy County Executive Peter Sylver to perform the administrative duties for the Economic Development Vertical (the "Vertical").

The Vertical was arranged to include all departments, agencies and related independent corporations whose mission includes furthering the economic growth and community development of Nassau County. The agencies currently included in the Vertical are: the Planning Department; the Office of Housing and Intergovernmental Affairs (the "OHIA"); the Nassau County Economic Development Corporation (the "EDC"), the Nassau County Local Development Corporation (the "LDC"); the Nassau County Industrial Development Agency (the "IDA"); the Nassau County Public Utility Agency (the "NCPUA"); the Office of Minority Affairs; the Coordinating Agency for Spanish Americans ("CASA"); and the Nassau County Human Rights Commission.

The Planning Department

The Planning Department, established by the Charter, is headed by the Planning Commission, which consists of nine members appointed by the County Executive.² The Department employs (within the budgetary limits set by the Legislature) a Director of Planning, planners, engineers, architects, and clerical assistance.³ The Director of Planning is Patricia Bourne.

The Planning Department's Charter mission is threefold. First, the Department must advise and report on county planning matters with the goal of achieving physically harmonious, economically sound, and socially beneficial development.⁴ The Department also performs administrative duties related to county demography, land use and transportation; files master plans, zoning ordinances, maps, plats and subdivisions

² Nassau County, N.Y., Charter § 205 (1999).

³ Nassau County, N.Y., Charter § 1602 (1999).

⁴ *Id.* at § 1603 (a).

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

approved by the Commission.⁵ Finally, the Department must consult with local planning boards to coordinate development plans.⁶

The Office of Housing and Intergovernmental Affairs (“OHIA”)

The OHIA was first established in the late 1970’s by the County Executive. The FY-1977 Nassau County Budget designated budget code number 139 to the County Executive’s Office of Federal and State Aid;⁷ however, budget code number 139 for the FY-1978 Nassau County Budget was assigned to the OHIA.⁸ Both offices performed essentially the same function for County Executive Francis T. Purcell: to secure federal and state grant moneys for Nassau County. As an office established under the auspices of the County Executive, there is no Charter or Administrative Code provision establishing its authority or duties.

Michelle Marquez is OHIA’s executive director. The Office acts as Nassau County’s agent in securing grants from the United States Department of Housing and Urban Development (“HUD”) and New York State. OHIA must abide by HUD regulations⁹ and grant terms in administering the grants it receives.

The Nassau County Economic Development Corporation (“EDC”) and the Nassau County Local Development Corporation (“LDC”)

The EDC is a not-for-profit corporation established on January 30, 2003. The executive director of the EDC is Raffaella Petrasek. It is distinct from the Nassau County Local Development Corporation (“LDC”), a similar independent not-for-profit corporation created on September 24, 1976. Both the EDC and the LDC were established pursuant to Section 1411 of the New York State Not-For-Profit Corporation Law that governs local development corporations

operated for the exclusively charitable or public purposes of relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities, instructing or training individuals to improve or develop their capabilities for such jobs, carrying on scientific research for the purpose of aiding a community or geographical area by attracting new industry to the community or area or by encouraging the development of, or retention of, an industry in the community or area, and lessening the burdens of government and acting in the public interest.¹⁰

⁵ Id. at § 1603 (b).

⁶ Id. at § 1603 (c).

⁷ Nassau County, N.Y., Ord. No. 1-1977 (Jan. 10, 1977).

⁸ Nassau County, N.Y., Ord. No. 1-1978 (Jan. 4, 1978).

⁹ See, 24 C.F.R. §§ 85.1-.52 (2004); 24 C.F.R. §§ 570 .1-.913 (2004).

¹⁰ N.Y. Not-For-Profit Corp. Law § 1411 (McKinney 2004).

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

EDC and LDC have among their powers the ability to act as a liaison between Nassau County and the state and federal governments.¹¹ The county has applied for and received federal grant funds, and the county has contracted with EDC (but not LDC) to act as a subrecipient of these funds.¹² EDC must comply with all relevant HUD guidelines¹³ when acting as a subrecipient, including regulations concerning the use of Community Development Block Grant (“CDBG”) funds.¹⁴ Additionally, EDC must comply with the general administrative requirements for all HUD grants.¹⁵ Local development corporations may also apply for funds from New York State for entrepreneurial support centers and export trade development projects.¹⁶

Nassau County Industrial Development Agency (“IDA”)

The IDA is an independent public benefit corporation established by New York State statute in 1975.¹⁷ The statute provides that the IDA is an industrial development agency, to be known as the Nassau county industrial development agency, whose members are appointed by the County Executive subject to confirmation by the Legislature.¹⁸ In 1988, the County Comptroller was granted the authority to audit the agency’s accounts, contracts, books and records.¹⁹ The purpose of the IDA is to “promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities”²⁰

To achieve the IDA’s purpose, the State Legislature has granted the IDA specific powers, including the power to hold and dispose of personal property for its corporate purposes.²¹ Real property, easements, or other rights to real property necessary for the purposes of the IDA may be purchased, granted, leased, donated, sold, mortgaged, conveyed, pledged, disposed of, or exchanged by the IDA at its discretion.²² The IDA may make by-laws for the management and regulation of its affairs and the use of its projects.²³ Where the county consents, the IDA may use county agents, employees and

¹¹ Id. at § 1411 (c).

¹² See, e.g., Cmty. Dev. Block Grant Contract Made by and between the County of Nassau and the Nassau County Economic Development Corporation, ¶ I (A), at 1 (Mar. 27, 2003).

¹³ Id.

¹⁴ See, 24 C.F.R. §§ 570 .1-.913 (2004).

¹⁵ See, supra, n. 12, ¶ VII (A), at 4; see, also, 24 C.F.R. §§ 85.1-.52 (2004).

¹⁶ N.Y. Econ. Dev. Law §§ 212, 221 (McKinney 2003).

¹⁷ 1975 N.Y. Laws 674 (adding section 922 to the General Municipal Law). Its operations and activities are governed by the provisions of title 1 of article 18-A of chapter 23.

¹⁸ N.Y. Gen. Mun. Law § 922, post (McKinney 2004).

¹⁹ 1988 N.Y. Laws 474 (adding subsection (l) to section 577 of the County Law, and amending section 922 of the General Municipal Law); see, also, Celeste Hadrick, “Comptroller Gets Legal OK to Audit,” Newsday, Aug. 4, 1988, at 30 (explaining that the legislation was passed in response to then-Comptroller Peter King’s criticism of irregularities in the IDA’s Mitchel Field loans and the questionable charges incurred by its vice-chairman, including a one-hour massage).

²⁰ N.Y. Gen. Mun. Law § 858 (McKinney 2004).

²¹ Id. at § 858 (3).

²² Id. at § 858 (4).

²³ Id. at § 858 (5).

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

facilities so long as it pays the county an agreed upon portion of the compensation or costs incurred by the county.²⁴

The IDA may also act as an independent employer. It may appoint officers, agents and employees, and fix their compensation to be paid out of the IDA's funds.²⁵ Joseph Gioino is the Executive Director of the IDA. The IDA may also appoint an attorney (who may be the County Attorney), and it may retain other consultants and professionals, including separate bond counsel.²⁶

The IDA may execute contracts, leases and other necessary instruments,²⁷ and has broad discretion to manage projects.²⁸ To further its purposes, the IDA may accept gifts, loans, grants, or contributions.²⁹ It may borrow money and issue bonds;³⁰ and grant options to renew any lease or buy any of its projects.³¹ The IDA may designate the financial institutions in which it deposits its funds.³²

The IDA is exempt from taxes or assessments on property within its control or supervision.³³ Generally, the IDA has the authority to enter into agreements with the county that set forth the terms for making payments in lieu of taxes ("PILOTs"), which reimburse the county for the revenue lost by the IDA's real property tax exemption.³⁴ The county has a right to receive PILOTs within thirty days of the IDA's receipt of the funds.³⁵ Interest accrues when PILOT payments are late,³⁶ and the county may commence legal action against the IDA if it has failed to make PILOTs.³⁷

The IDA's fiscal year is in the IDA's discretion.³⁸ The IDA may "do all things necessary or convenient to carry out its purposes and exercise the powers expressly given [it]."³⁹ The IDA, however, must procure goods and services pursuant to the provisions of section 104-b of the General Municipal Law.⁴⁰ Similarly, sections 10 and 11 of the

²⁴ Id. at § 858 (6).

²⁵ N.Y. Gen. Mun. Law § 858 (7) (McKinney 2004).

²⁶ Id. at § 858 (8).

²⁷ Id. at § 858 (9).

²⁸ Id. at § 858 (10).

²⁹ Id. at § 858 (11).

³⁰ Id. at § 858 (12).

³¹ Id. at § 858 (13).

³² Id. at § 858 (14).

³³ Id. at § 858 (15); see, also, N.Y. Gen. Mun. Law § 874 (1) (McKinney 2004).

³⁴ N.Y. Gen. Mun. Law § 858 (15) (McKinney 2004); Hudson Falls Cent. Sch. Dist. v. Saratoga County Indust. Dev. Agency, 217 A.D.2d 330, 332, 634 N.Y.S.2d 559, 560 (3d Dep't 1995), aff'd mem., 88 N.Y.2d 1026, 1028 (1996) (holding that because the primary purpose for PILOTs is to reimburse affected taxing jurisdictions for the revenues lost due to the real property tax exemptions for IDA projects, a jurisdiction that would not receive any of the revenue from the real property tax is not entitled to receive any PILOT's from the IDA).

³⁵ N.Y. Gen. Mun. Law § 874 (3) (McKinney 2004).

³⁶ Id. at § 874 (5).

³⁷ Id. at § 874 (6).

³⁸ N.Y. Gen. Mun. Law § 858 (16) (McKinney 2004).

³⁹ Id. at § 858 (17).

⁴⁰ N.Y. Gen. Mun. Law § 858-a (2) (McKinney 2004).

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

General Municipal Law govern the deposits and investments of IDA funds, respectively.⁴¹

The Nassau County Public Utility Agency (“NCPUA”)

As a result of state legislation, NCPUA was established in 1984, as a public utility service that acts as a purchasing consortium on behalf of eligible consumers in Nassau County for gas and electrical power.⁴² The nine members of NCPUA include the County Executive or his designee (who serves as the Chair), a Deputy County Executive, the County Attorney, three members appointed by the County Executive, and three members appointed by the Legislature.⁴³ Any action of NCPUA requires an affirmative majority vote with six members required for a quorum.⁴⁴

NCPUA has the power to “establish, construct, lease, purchase, own, acquire, use and/or operate facilities within or without . . . Nassau County for the purpose of furnishing to itself or for compensation to its inhabitants any service similar to that furnished by any public utility company [(i.e., gas or electric corporations)]”⁴⁵ It may also purchase power.⁴⁶ NCPUA may enter into a lease or other agreement with the Long Island Power Authority (“LIPA”) “to use the electrical transmission distribution system of [LIPA] . . . and of any other utilities as are necessary to deliver such electrical service.”⁴⁷ Finally, NCPUA may sell the power it purchases to eligible consumers in Nassau County so long as Nassau County does not profit from such a sale.⁴⁸

The Office of Minority Affairs

The Office of Minority Affairs was created at the same time as the Legislature.⁴⁹ The Office has an Executive Director appointed by the County Executive and approved by the Legislature;⁵⁰ John H. Moye is the Executive Director.

Pursuant to the Charter, the Office’s purpose is to further economic, employment, business and cultural opportunities for the county’s minority residents and improve and stabilize economically deprived areas of the county. The Office is to coordinate county-funded and county-assisted agencies or offices related to those purposes.⁵¹ In addition, the Office is to provide the County Executive and Legislature with “Minority Community Impact” assessments on budgetary actions and policies, and access and opportunity for

⁴¹ N.Y. Gen. Mun. Law § 858-a (3) (McKinney 2004).

⁴² N.Y. Gen. Mun. Law § 360 (McKinney 2004); Nassau County, N.Y., Local Law No. 23-1984 § 1 (Feb. 27, 1984); see, also, Nassau County, N.Y., Admin. Code § 21-110.0 (1994), as amended.

⁴³ Nassau County, N.Y., Admin. Code § 21-110.2 (1994), as amended.

⁴⁴ Id.

⁴⁵ Id. at § 21-110.3 (1).

⁴⁶ Id. at § 21-110.3 (2).

⁴⁷ Id. at § 21-110.3 (3). LIPA is the successor of the Long Island Lighting Company (“LILCO”) that was established in 1986. See, Long Island Power Authority Act, 1986 N.Y. Laws 517.

⁴⁸ Nassau County, N.Y., Admin. Code § 21-110.3 (4) (1994).

⁴⁹ See, Nassau County, N.Y., Local Law No. 11-1994 § 3 (Sept. 8, 1994).

⁵⁰ Nassau County, N.Y., Charter § 2112 (1) (1999).

⁵¹ Id. at § 2112 (2).

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

minority participation in the county's contract and procurement processes;⁵² establish Women and Minority Business Enterprise programs to afford greater public bidding opportunities;⁵³ and provide assistance in implementing Affirmative Action programs in county government employment.⁵⁴

The Coordinating Agency for Spanish Americans (“CASA”)

CASA was created in 1994, at the same time as the creation of the County Legislature.⁵⁵ Pursuant to the Charter, the County Executive appoints CASA's 15-member advisory board, and its Executive Director.⁵⁶ CASA is to develop and coordinate programs for the Spanish American community.⁵⁷ The Executive Director of CASA is Marianela Jordan.

The Nassau County Human Rights Commission

The county Human Rights Commission was established in 1963.⁵⁸ The Commission consists of 15 uncompensated members appointed by the County Executive and confirmed by the Legislature.⁵⁹ Renaire Frierson is the Director, appointed by the County Executive, upon recommendation of the Commission and confirmation by the Legislature.⁶⁰ The functions of the Commission are fourfold: (1) to foster mutual understanding and respect among religious, ethnic and racial groups; (2) to encourage equality in treatment, and prevent discrimination; (3) to cooperate with other agencies that perform similar functions; and (4) to conduct studies and investigations to further its purpose.⁶¹

⁵² Id. at § 2112 (3)(c).

⁵³ Nassau County, N.Y., Charter § 2112 (3)(d) (1999); see, also, Nassau County, N.Y., Misc. Laws, tit. 53, (2003); Nassau County, N.Y., Local Law No. 14-2002 (Oct. 9, 2002).

⁵⁴ Nassau County, N.Y., Charter § 2112 (3)(f) (1999).

⁵⁵ See, supra, n. 49.

⁵⁶ Nassau County, N.Y., Charter § 205-a (1999).

⁵⁷ Id.

⁵⁸ Nassau County, N.Y., Admin. Code § 21-9.0 (1994); Nassau County, N.Y., Local Law No. 5-1963 § 1 (Apr. 8, 1963).

⁵⁹ Nassau County, N.Y., Admin. Code § 21-9.1 (1994).

⁶⁰ Id. at § 21-9.5.

⁶¹ Id. at § 21-9.3.

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

Audit Objective

The objective of the audit was to determine:

- whether goods and services were procured properly and with appropriate approvals, and whether they were provided in compliance with contractual terms;
- whether cash receipts were in accordance with contractual terms, properly controlled, and deposited on a timely basis; and
- whether payroll expenses were properly authorized, incurred, and charged to the appropriate program.

Audit Scope

The scope of the audit for each entity within the Economic Development Vertical differed depending upon the risk associated with the financial transactions. Transactions processed by Nassau County departments, using normal county procedures, are of lower risk because they are subject to standard county reviews and controls. Transactions processed outside of those controls may be of higher risk because the controls may be undocumented, uncertain and there may be insufficient segregation of duties. The scope of examination was limited, with certain exceptions, to transactions that were not processed through established Nassau County control procedures.

This audit was conducted in accordance with generally accepted government auditing standards. These standards require that the audit be planned and performed to obtain reasonable assurance that the audited information is free of material misstatements. An audit includes examining documents and other available evidence that would substantiate the accuracy of the information tested, including all relevant records and contracts. It includes testing for compliance with applicable laws and regulations, and any other auditing procedures necessary to complete the examination. We believe that the audit provides a reasonable basis for the audit findings and recommendations.

Audit Methodology

In order to achieve our audit objectives, we obtained bank statements, general ledgers, audited financial statements, board minutes, cash receipts and cash disbursements books and credit card statements. The disbursements were scanned and items were selected, at the auditors' discretion, for testing. We reviewed supporting documentation, including vendor invoices and contracts. Similarly, we reviewed financial records and selected cash receipts at the auditors' discretion for testing. We reviewed grant claims, contracts and billing documentation supporting the receipts.

We reviewed time and leave records maintained by each department for compliance with county requirements and entry of such into the Nassau Unified Human

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

Resource System (“NUHRS”). For individuals who are paid outside of the county human resource process, we reviewed authorizations for salary amounts and the proper maintenance of time and leave records.

Office of Housing and Intergovernmental Affairs - Scope of Audit

The audit scope for OHIA was limited to cash transactions made through a bank account at City National Bank of New Jersey that was not recorded within the Nassau Integrated Financial System (“NIFS”). NIFS is the general ledger system used to record and maintain the financial records of the county. The examination covered the period from the opening of the account, May 19, 2003, through November 28, 2003, the closing date of the last bank statement received.

Normally, county departments make disbursements by means of claims submitted to the Comptroller’s Office for review and approval. Cash receipts and disbursements through the City National Bank of New Jersey account, however, did not flow through normal Nassau County processes and controls and therefore were not subject to review by the Treasurer or Comptroller. Additionally, OHIA utilized a credit card account for which then Deputy County Executive Peter Sylver was the sole signatory. The credit card charges incurred were paid by debits to the bank account, which were approved by telephone. We reviewed the circumstances surrounding the establishment of the accounts, internal controls over expenditures and receipts flowing through the account and examined documentary support to determine the propriety of the expenditures.

Nassau County Industrial Development Agency – Scope of Audit

The IDA, an independent public benefit corporation, established pursuant to State law, is not subject to normal county control. Consequently, its receipts and expenditures are not reviewed by the Comptroller’s Office. Transactions are conducted through a bank account not recorded in NIFS. Our audit scope covered cash receipts and disbursements for the years 2000 through 2003. We reviewed the internal controls over expenditures and receipts and examined documentary support to determine the propriety of the expenditures.

Nassau County Economic Development Corporation – Scope of Audit

The EDC is an independent, not-for-profit corporation and maintains a non-NIFS bank account. EDC's sole source of funding, however, is through contracts with Nassau County. The EDC obtains funds pursuant to those contracts by filing claims with the Comptroller's Office. In order for claims to be paid, EDC must demonstrate that its expenditures are in compliance with contract terms. We have reviewed the expenditures and receipts of the EDC since its inception on January 30, 2003.

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

Nassau County Local Development Corporation – Scope of Audit

The LDC is also an independent not-for-profit corporation. It maintains a bank account, opened on April 7, 2003, the transactions of which are not recorded in NIFS. The account's funding source represents the proceeds of a certificate of deposit. The Certificate of Deposit has been renewed semi-annually since at least October 1995, according to LDC documents. We were informed that these funds represent the proceeds of fees the LDC had earned through the New York State Job Development Agency. Our audit scope included only the expenditures made from the bank account.

Nassau County Public Utilities Agency – Scope of Audit

NCPUA maintained a bank account, the transactions of which are not recorded in NIFS, but which is under the control of the Treasurer's Office. Canceled checks are not returned by the bank and therefore not available for review. The Agency does not maintain a general ledger or journals. Our scope was therefore limited to a review of contracts and Board minutes.

Payrolls and Time and Leave – Scope of Audit

We audited payrolls and time and leave for all component offices within the Vertical. Payroll records were examined for those employees who are paid through NUHRS, the county payroll and human resource system, which is also used to record employee leave entitlements and usage. Auditors reviewed whether appropriate time and leave records were maintained and to determine if federal grant monies were used to fund salaries for grant activities only.

The outside corporations employ individuals who are not county employees; their salaries and benefits are not administered through NUHRS. Auditors determined whether proper time and leave records were maintained for these employees, whether their salaries were properly authorized, and whether their benefits were reasonable as compared with Nassau County's.

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

Office of Housing and Intergovernmental Affairs Checking Account

Audit Finding (1):

The OHIA opened a bank account without the knowledge or approval of the County Treasurer (“Treasurer”). The Treasurer is the custodian of all money belonging to the county and only the Treasurer has the authority to open bank accounts on behalf of the county.⁶² The Treasurer’s Office informed us that it neither authorized nor had knowledge of the opening of this account.

Joseph Gioino, Executive Director of the IDA, was a signatory on the OHIA account. The Executive Director is not a county employee and should not have been a check signer. OHIA has no supervisory control over, and pays no compensation to, the IDA Executive Director. Even if the account had been properly authorized, there appears to be no authority for the IDA Executive Director to have had access to it.

In 2003, the OHIA had budgeted revenues of \$25.2 million. The audit determined that during the period May 19, 2003 to November 25, 2003, income from OHIA-administered programs in the amount of \$82,446 was diverted from the normal process of deposit (through the Treasurer’s Office) and deposited into this account. Resolution 254-1999, dated November 22, 1999, states, “it is the policy of the county that all monies collected by an officer or employee of the county shall be immediately transferred to the County Treasurer except as otherwise provided by law.” As of November 28, 2003, approximately \$39,546 was disbursed from this account, leaving a balance of \$42,900. The account was closed on January 15, 2004.⁶³

We examined supporting documentation for all transactions in this account and found that:

- internal controls over receipts and disbursements from this account were inadequate;
- there were certain questionable expenditures disbursed from this account;
- Deputy County Executive Sylver, whose resignation became effective December 2, 2003, was still maintained on the account as an authorized check signer as of January 8, 2004.

OHIA opened the account by corporate resolution signed by OHIA Executive Director Michelle Marquez and OHIA Technical Director Kevin Crean, using Nassau County’s Federal Tax Identification Number. OHIA, however, is not a corporation and has no authorization to issue corporate resolutions. Section 5–1.0 of the Administrative Code allows the Treasurer to deposit county funds in banks approved by resolution of the

⁶² N.Y. County Law § 550 (2) (McKinney 2004).

⁶³ After the closure of the account, the balance was transferred to a new account under the control of the County Treasurer. Only Treasurer’s Office personnel have signing authority on this account.

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

legislature.⁶⁴ OHIA provided the bank with an account application and “resolution” without a corporate seal.⁶⁵

The bank appears to have failed to have inquired as to whether officials of the Vertical were authorized to open a bank account on behalf of Nassau County. The bank accepted an incomplete “corporate” bank account form without a “corporate” seal, and apparently did not question whether OHIA had the authority to issue this “resolution.”

The bank provided the auditors with neither the original, bank-issued corporate resolution form, nor the bank’s standard “New Account Information” sheet. Bank officials did supply a faxed copy of the corporate resolution they had received from OHIA. In addition, the bank did not obtain a required “New Account Information” sheet from OHIA.

The Corporate Authorization Resolution states that Deputy County Executive Peter Sylver was the Secretary (clerk) of the corporation “Nassau County Office of Housing and Intergovernmental Affairs,” organized under the laws of New York State, and provided Nassau County’s federal tax identification number. It also stated, “I further certify that the Board of Directors of this corporation has, and at the time of adoption of this resolution had, full power and lawful authority to adopt the foregoing resolutions and to confer the powers granted to the persons named who have full power and lawful authority to exercise the same.” The OHIA did not have a Board of Directors. The individuals who signed the certification, Michelle Marquez and Kevin Crean, had no authority to sign.

Recommendations:

We have referred the matter to the Commissioner of Investigations and the District Attorney for further investigation.

A firm of certified public accountants, Albrecht, Viggiano, Zureck and Company, P.C. (“Albrecht”) has been hired by the administration to opine on the propriety of each expense relative to the federal grants. The county should seek restitution for any expenditures made that the firm deems to be non-reimbursable under federal grants.

⁶⁴ Nassau County, N.Y., Admin. Code § 5-1.0 (1994).

⁶⁵ When questioned as to whether a corporate seal was required to open an account, the Assistant Branch Manager of the bank at first responded that a seal was required, but later qualified the answer to indicate that the seal was at the option of the bank.

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

Office of Housing and Intergovernmental Affairs Unauthorized Credit Card

Audit Finding (2):

Similar to the previous finding, OHIA opened a credit card account with Peter Sylver as the authorized signer. Only the County Treasurer has the authority to open a credit card account, and then, only with the oversight of the County Comptroller. The Treasurer “is the custodian of all money belonging to the county or in which the county has an interest and shall keep a true account of all receipts and the expenditures in the books provided by him at the expense of the county.”⁶⁶ It is the Comptroller’s duty to “examine and approve all contracts, purchase orders, and other documents by which the county incurs financial obligations. . . .”⁶⁷

Although the credit card account was to be a county account, the credit card application was completed as if Mr. Sylver was to be the credit cardholder, listing his home address, number of dependents, drivers’ license and Social Security numbers, and OHIA as his “employer.”

In order to obtain the card, Mr. Sylver completed a business loan application in the amount of \$5,000, identifying the business as OHIA and providing Nassau County's federal tax identification number. Mr. Sylver also identified on the application the name of an accounting firm, Callaghan, Nawrocki, LLP (“Callaghan”), referred to as “the independent public accounting firm for Nassau County OHIA.” The firm, however, is used by OHIA to prepare required HUD reports; it is not the independent accountant for Nassau County. That firm is Deloitte & Touche.

Callaghan provided to the bank a letter of reference for OHIA. It stated, in part, “This letter will confirm that Callaghan. . . is the independent public accounting firm for the Nassau County Office of Housing and Intergovernmental Affairs. . . and has served in this function since 1987.” It went on to state, “Based on my firm’s excellent credit experience with the Nassau County OHIA, I would highly recommend the approval of Mr. Peter Sylver’s credit card application with City National Bank.” By providing the credit reference, the accountants assisted OHIA in opening an account it had no legal authority to open.

OHIA issued a “Resolution” on May 14, 2003 authorizing the opening of the credit card account. Both the Executive Director, Michelle Marquez, and the Technical Director, Kevin Crean, signed the resolution. OHIA has no authority to issue such a resolution.

Recommendations:

We have referred the opening and use of this account to the Commissioner of Investigations and the District Attorney for further investigation.

⁶⁶ See, *supra*, n. 62.

⁶⁷ Nassau County, N.Y., Charter § 402 (3) (1999).

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

IDA Board of Directors Approval of Expenditures

Audit Finding (3):

The IDA Board of Directors passed a resolution on March 21, 2002 authorizing the Executive Director of the IDA to incur expenses and to otherwise expend funds of the IDA in accordance with the budget.⁶⁸ Prior to this authorization, the Board approved individual expenditures on an item-by-item basis. A review of expenditures from 2000 to 2003 indicated that many expenditures – including numerous expenditures approved by the IDA Board of Directors during 2000-2001 – lacked any documentation justifying their relationship to the IDA's and the county's economic development mission; they include charitable contributions, sponsorships of golf outings and fund-raising events, and holiday parties.

We believe that oversight and the control over these expenditures was and is insufficient. Prior to March 21, 2002, the Board of Directors approved expenditures at Board meetings, but its approvals were often for questionable items. Currently, once budgetary limitation approval has been obtained, spending decisions rest in the hands of a single individual (the Executive Director).

Recommendation:

We recommend that, at a minimum, the Board of Directors promulgate directives governing appropriate IDA expenditures, and then either approve discretionary spending itself or require the IDA Executive Director to provide regular expense reports and audit those reports. In no event should a single IDA official have the authority to approve expenditures.

Documentation of discretionary spending, such as personal services contracts, advertising, and conventions, should include the following: the IDA project or initiative to which the expenditure relates; a description of the expected benefits resulting from the expenditure; how the expenditure supports the mission of the IDA; and, if relevant, the names of all participants.

⁶⁸ Res. No. 2003-07 (Jan. 29, 2003) (authorizing both the Chairman and the Executive Director to incur expenses).

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

Conflict of Interest Policy

Audit Finding (4):

All Nassau County employees must comply with the County's conflict of interest policy. Non-county employees in the Economic Development Vertical and Board Members/ "holders of record of certificates of membership" in a position to influence the decision-making process are not similarly bound by the county policy even though initiatives undertaken by the Economic Development Vertical have the potential of benefiting property and business owners.

The co-chairman of EDC's Board of Directors is the Deputy County Executive for Finance and Budget. Government officials often serve on boards of not-for-profit entities related to their government service in their ex-officio capacities, and conflict of interest issues do not generally arise from such service. We noted, however, a potentially confusing provision in the county/ EDC CDBG contract, Section VI. GENERAL CONDITIONS subsection H, which states that no EDC director shall be "(i) deemed a county employee, (ii) commit the County to any obligation, or (iii) hold itself, himself, or herself out as a county employee or person with the authority to commit the County to any obligation."⁶⁹

Recommendation:

Formal conflict of interest policies should be established by each of the boards of the independent corporations, and all officers, trustees, and/or board members, and policy-making staff employed in these corporations should be required to abide by these policies. These individuals should be required to complete annual disclosure statements describing all their all business holdings and investments. Any of these individuals who have interests in properties or businesses affected or potentially affected by economic development programs should disclose their interests and recuse themselves from the decision-making process to avoid even the appearance of a conflict of interest.

The county attorney should consider modifying the noted EDC contract language to reflect the presence on the EDC Board of individuals who also hold positions in the county government. The county and the EDC should ensure that the presence of a county official on the EDC Board creates no conflicts of interest.

⁶⁹ See, supra, n. 12, ¶ VI (H), at 4.

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

Automobile Leases

Audit Finding (5):

Within OHIA, automobiles are not provided in the most cost-effective manner. OHIA leases eleven 2003 Ford Tauruses at \$518 per month and one Crown Victoria at \$725 per month for use by its employees. Although the vehicles were properly procured through the county purchasing department, more cost-effective alternatives should have been pursued.

We found that OHIA leased the vehicles under 24-month leases, including maintenance and 30,000 miles. The cost of 24-month leases should have been compared to the cost of 36-month leases (60,000 miles).

	<u>Crown Victoria</u>	<u>Taurus⁷⁰</u>
Cost of 24 Month Lease	\$17,400	\$12,432
Cost of 36 Month Lease	\$15,804	\$14,259
Incremental Cost (Savings)	\$(1,596)	\$ 1,827
Outright Purchase	\$18,889	\$15,487 (2004 model)

While the 36-month leases do not include maintenance, the cost of maintenance during the first three years of ownership should not be significant and would mostly be covered by the manufacturer's warranty.

As can be seen above, OHIA could have saved \$1,596 by leasing the Crown Victoria for three years rather than for two years. The Tauruses could have been used for an additional year for only \$1,827 more per vehicle.

As compared with the 24-month lease, the county could have purchased each Taurus for only \$3,055 more, and the Crown Victoria for only \$1,489 more than the rental cost. The County could have purchased the vehicles and recovered the costs through federal grants. OHIA is permitted to recover the cost through federal grants because, according to OMB Circular A-87, "...the costs of a service organization that provides automobiles to user governmental units at a mileage or fixed rate and/or provided vehicle maintenance, inspection, and repair service are allowable."⁷¹ This would be a cost-effective alternative to leasing because the cars could be used for longer than two years before they are replaced.

Recommendation:

OHIA should consider using county-owned vehicles or entering into other, more cost-effective arrangements.

⁷⁰ The three-year lease quote was for a Taurus station wagon, which typically is more expensive than a sedan.

⁷¹ Office of Mgmt. and Budget, Circular No. A-87, Attachment B ¶ 31 (Aug. 29, 1997).

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

Outside Counsel

Audit Finding (6):

During the period of our audit, entities within the Vertical paid Crowe, Deegan, Dickson & Benrubi, LLP (“Crowe, Deegan”) a combined total of \$633,788 and incurred additional charges of \$73,784. The firm was selected, according to county documents, based on its “broad knowledge and expertise,” without evidence of any competitive procurement process.

The amounts spent by each entity are:

	<u>Paid</u>	<u>Unpaid</u>	<u>Total</u>
OHIA	\$250,000	\$31,250	\$281,250
IDA	305,546		305,546
EDC	65,686	\$42,534	108,220
LDC	12,556		12,556
	<u>\$633,788</u>	<u>\$73,784</u>	<u>\$707,572</u>

Nassau County had a contract with Crowe, Deegan that expired December 31, 2003, with a spending limit of \$250,000. The full \$250,000 was spent; we were told, however, that a bill was outstanding in the amount of \$31,250. We asked to see this bill, but it was not provided. OHIA had no contractual authorization to incur charges beyond the \$250,000 limit.

The IDA entered into a letter agreement with Crowe, Deegan that had no spending cap or expiration date. Also, for a short period of time (approximately three months), the IDA employed the spouse of a partner of this firm. We found no evidence that this employee had any role in the hiring of the law firm, or that Crowe, Deegan influenced the hiring of this employee. However, the IDA failed to conduct or document any competitive process prior to hiring the firm, or to require the disclosure or vetting of any potential conflict of interest or the appearance of same.

The IDA also expended \$228,398 during 2002-2003 on the services of another law firm, Phillips, Lytle, to serve as bond counsel. There was no evidence that any competitive procurement process was used to select this firm either.

Recommendations:

The IDA should promulgate policies and procedures for the competitive selection of personal services contractors, including attorneys.

OHIA should comply with the county’s procurement policies and procedures for the selection of personal services contractors, including attorneys, and should not incur charges beyond those authorized by contract. It should seek a contract amendment to enable it to pay for the services rendered.

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

Rental Charges

Audit Finding (7):

The independent corporations are not paying their fair share for the county-owned space that they occupy.

- The IDA is paying the county only \$300 per month for rent;
- There was no written lease agreement in force between the IDA and the County; and
- EDC does not pay any rent, even though the 2003 budget of the EDC calls for paying a rent of \$24,000. (The actual budget indicated a rent of \$240,000, however the Executive Director told us that this was an error, and the actual amount was the \$24,000.)

Most of these entities have external funding sources that could be utilized to help the county recover the cost of providing office space to the entities.

Recommendation:

The independent corporations and the county should negotiate lease agreements wherein the county is reimbursed at least its costs, if not the fair market value, of the space provided.

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

Cash Disbursements

Audit Findings (8):

Governmental units are responsible for the efficient utilization of funds through the application of sound management practices. We reviewed the expenditures incurred by the Economic Development Vertical and paid through the use of non-NIFS accounts. We found that there was a severe lack of basic internal controls within the Vertical. Basic policies and procedures covering procurement, receiving and payment authorizations have not been promulgated and segregation of duties, which is essential to ensuring fiscal integrity, is absent from the Vertical's purchasing/disbursement function. Our findings with respect to each individual entity were as follows:

OHIA – Credit Card Charges

There was a lack of control over credit card expenditures. Deputy County Executive Peter Sylver, as the only authorized signatory, incurred all of the charges. No evidence of review or approval prior to payment was found. The bank was authorized to debit by telephone OHIA's non-NIFS account for the amount of the monthly credit card bills.

Prior to the audit, the administration raised questions regarding the propriety of a number of charges incurred through the credit card. Mr. Sylver voluntarily reimbursed expenditures incurred in the amount of \$1,057. In a November 23, 2003 letter addressed to the Chief Financial Officer of OHIA (the individual's actual title is "Fiscal Analyst"), Mr. Sylver wrote, "While I believe that all of the credit card charges are permissible under the HUD regulations, I have voluntarily offered to reimburse those expenses that fall into gray areas. . . . where I either did not have a receipt or those that while were clearly legal and permissible, could be considered impolitic." Reimbursed items included a staff appreciation gift (\$40), a birthday gift for an employee (\$35), a parting gift for an employee (\$100), a gift to a presenter (\$136), and restaurant, supermarket and drug store charges that were not supported by receipts.

Charges on the credit card that Mr. Sylver did not reimburse include:

- Business Meals

Business meal expenses were incurred without documented justification. Although a number of these expenses (but not all) would appear to be legitimate county business expenses (but not necessarily expenses related to OHIA HUD grants), existing county procedures require that employees document justifications prior to the payment of these types of expenditures.

Examples during a two-week period in July 2003 included:

7/15/03 HUB Stakeholders Meeting/OHIA and Planning Department	\$ 267
7/15/03 HUB Stakeholders Meeting/OHIA and Planning Department	\$ 368
7/20/03 Dinner Meeting for Minority Affairs Council	\$ 138

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

7/22/03 ED Plan Update Meeting	\$ 90
7/23/03 Food for Public Meeting in Oyster Bay	\$ 65
7/31/03 Staff Meeting /luncheon	\$ 318

Ordinance 94-1985 requires that claim vouchers be submitted for breakfast, lunch or dinner meetings certifying the persons in attendance and their business.⁷² This requirement was not met. The credit card receipts did not indicate the purpose of the meeting or who attended. There was no evidence that the charges were reasonable and proper in connection with the administration of federal awards.

- Window Tinting

OHIA incurred charges of \$707 for window tinting on a 2003 vehicle leased for two years for use by the Deputy County Executive. The manufacturer provided factory tinted glass on the vehicle; on July 17, 2003, however, OHIA incurred a charge of \$245 to apply additional tinting to the same vehicle's windows. On July 29, 2003, OHIA paid \$353 to a window tinting company for "full removal and detail" of the tinting applied two weeks before. Then, on October 14, 2003, another charge in the amount of \$109 was incurred at a window tinting company; no supporting invoice was attached. Mr. Sylver reimbursed the second and third charges, but did not reimburse the initial tinting.

- Computer Equipment

Purchases of computer equipment are to be made through the County's Information Technology department. However, OHIA purchased a computer monitor on July 9, 2003 for \$640 and a printer on June 9, 2003 for \$300 by using the credit card. We were informed that the equipment had been removed from the premises by the Nassau County Information Technology Department. We requested that the purchased equipment be shown to us. We were able to verify the existence of the computer monitor, but Information Technology could not locate the printer.

- Hotel Suite

OHIA incurred an expense of \$944, representing the daily rate for a hotel suite reserved for Mr. Sylver for a conference in Washington D.C. Mr. Sylver reserved the room for three days but did not attend the conference and failed to cancel the reservation, resulting in an unnecessary one-day charge of \$944. We question both the reasonableness and necessity of this charge. According to the Federal Office of Management and Budget Circular A-87, which sets forth principles and standards for purchases under programs funded by Federal grants, "a cost is reasonable if, in its nature and amount, it does not exceed the amount that would be incurred by a prudent person under the circumstances prevailing at

⁷² Nassau County, N.Y., Ord. No. 94-1985 §§ 1 (c), 3 (Mar. 11, 1985).

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

the time the decision was made to incur the cost.”⁷³ It is unreasonable if it represents a significant deviation from the practices of the government unit that unjustifiably increases the federal award’s cost. Even if such a suite was shown to be necessary for a county business purpose related to OHIA’s HUD grants, it was negligent of the Deputy County Executive not to have cancelled, or arranged for the cancellation of, the reservation, thereby avoiding the charge. Hotel policy allows cancellations without charge up to 3 p.m. one day prior to arrival.

- Non-OHIA Related Expenses

We also found that expenses were incurred using the OHIA credit card for non-OHIA expenses. OHIA should not extend credit to the independent corporations in the Vertical or charge federal grants for expenses of the independent corporations. While some of these expenses were reimbursed by other independent corporations within the Vertical, others were not. For example, \$674 in expenses were incurred on behalf of the EDC, \$246 were incurred on behalf of the IDA and \$292 was incurred that should have been charged to an EPA Grant.

Examples of these expenses include:

EDC Copies and binding for a NETS/Nassau Coliseum Deal	\$ 121
EDC Planning Meeting NETS/Nassau Coliseum Deal	\$ 52
EDC Planning Meeting NETS/Nassau Coliseum Deal	\$ 40
EDC Book – Sports Deals in the U.S.	\$ 370
EDC Academic Medicine Development Company Luncheon	\$ 26

OHIA - Non-NIFS Bank Account Purchases

OHIA made numerous purchases paid for by checks written on their non-NIFS bank account.

Internal controls were inadequate over these expenditures:

- Purchases of equipment and supplies were not made using required Nassau County procedures;
- Purchase orders were not utilized to obtain pre-approval for purchases;
- There were no receiving reports indicating that goods and services purchased were received;
- Invoices were not cancelled to prevent duplicate payment; and
- Invoices were not approved for payment.

⁷³ See, supra, n.71, at Attachment A ¶ C (2).

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

Goods and services were paid with program income funds that were for the benefit of other units or grants within the Economic Development Vertical. For example, OHIA paid:

- \$228 for credit reports on applicants for Section 8 grants. This expense should have been paid for with Section 8 funds.
- \$2,500 to co-sponsor the 2003 Minority/Woman Business Enterprise Awards Networking Reception. This would appear to be a function of the Office of Minority Affairs.
- \$5,176 for office furniture used by the EDC Executive Director and the Communications employee of EDC. EDC should have paid these expenses. Supporting documentation indicates that EDC was to make reimbursement. To-date, this has not occurred.

OHIA paid \$3,000 for an appraisal of a property in Uniondale. We requested information on the procurement process used to select the appraiser, Bradley & Company, Appraisers Inc. OHIA provided no explanation as to how the appraiser was selected. We requested the Assessment Review Commission (ARC), a county department familiar with typical fee structures for similar appraisals, to assess whether the \$3,000 fee was reasonable. ARC responded that a reasonable fee for such an appraisal would have been \$1,700 - \$2,000, 33%-43% less than OHIA was charged. OHIA may have saved money had it used a competitive process to select an appraiser.

Other questionable expenditures included:

- OHIA paid \$126 for softball equipment in August 2003, to be presented to a softball team. Even if one were to assume that a purchase of softball equipment was a legitimate federal grant purchase, as of December 2003 the equipment was stored in a closet in OHIA's offices.
- Similar to our finding with respect to credit card charges for business meetings, OHIA paid for meals through the checking account without having to submit necessary documentation justifying the expenditures. Examples include:

9/12/03	Delicatessen	Office Meeting	\$ 205
10/17/03	Pizza	Nets and Faith Based	\$ 14
10/17/03	Pizza	Nets and Faith Based	\$ 73
10/17/03	Stationery Store	Candy	\$ 11

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

Local Development Corporation

Engagement of Counsel

The LDC, through its own non-NIFS bank account, paid Crowe, Deegan \$12,556 for services rendered. There was no evidence that the LDC had conducted any procurement process prior to retaining this law firm. LDC should have obtained and reviewed proposals. A resolution was prepared "...authorizing and approving payment of the legal fees . . . for professional services rendered to date." However, this resolution is unnumbered, unsigned and undated. Crowe, Deegan's fees are billed at an hourly rate of \$175, which is consistent with the firm's contractual agreement with the OHIA.

Crowe, Deegan's bill included a notation for a \$140 item unrelated to the LDC but related to the establishment of the Economic Development Corporation: "Worked on Certificate of Incorporation for Nassau County Economic Development Corporation. . . "

Office Furniture

An invoice in the amount of \$4,426, dated November 3, 2003, was paid by the LDC for the purchase of office furniture for Peter Sylver's office. There was no documentation of any review or approval of this purchase, and the check was signed solely by Mr. Sylver, the only authorized signer on the account. Bids were not obtained for this purchase. A memorandum to OHIA Executive Director Michelle Marquez noted that the furniture was purchased from the vendor "...as they were the lowest bidder on previously purchased furniture for EDC." Because the office furniture was to be used by Peter Sylver in his role as Deputy County Executive for the entire Vertical, the entire Vertical benefited from the expenditure. The purchase price should have been apportioned within the Vertical.

Internal Controls

Policies and procedures have not been put into place for internal control of corporate purchases. These policies should include: prior approval and authorization; evidence of review; evidence of receipt of goods/services; and an indication of payment.

While the IDA requires checks over \$5,000 to have two signatures, the LDC does not. If any officer of the corporation benefits indirectly/ directly from a purchase he/she should not provide the lone approval for its purchase. Corporations should maintain basic accounting records, such as a general ledger, general journal, and cash receipts and disbursements books. The LDC does not maintain such records.

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

Economic Development Corporation

Engagement of Counsel

The EDC paid Crowe, Deegan \$65,686 for services rendered. EDC's board minutes of March 14, 2003 state that "the chairman discussed the corporation's current and continuing need for legal and financial services, until a request for proposal ("RFP") process can be concluded. An intent to complete said process as soon as practicable was expressed. The minutes also resolve that, "...the president is authorized to hire at will persons and/or firms to provide legal and financial services for the corporation until the RFP process can be concluded." We were provided with an unsigned and undated scope of work memorandum by the administration, which "...represents the parameters of the law firm's engagement." Even acknowledging that the EDC may have had an immediate need to obtain legal services prior to completing the RFP process, it should have conducted at least a minimal competitive procurement process, rather than simply engage OHIA's attorneys, who were similarly hired without the completion of a competitive process. The law firm's fees are billed at an hourly rate of \$175, which is consistent with its contractual agreement with the OHIA.

The total paid to Crowe, Deegan, \$65,686, represents a partial payment towards the total of approximately \$108,000 that the firm has billed for 2003. Payment to EDC to cover this balance is still pending approval by the Comptroller's Office. However, according to the 2003 Operating Budget submitted with the EDC CDBG contract, the budgeted line for legal expenses was only \$100,000. According to section VII, ADMINISTRATIVE REQUIREMENTS subsection C.1. of the contract, "The COUNTY and the SUBRECIPIENT may mutually agree to revise said budget from time to time in accordance with existing County and/or HUD policies."⁷⁴ No revision of the county contract has been made to allow for the payment of the \$8,000 in excess charges.

We noted that the invoice appeared to include items, which although on their face involved county economic development matters, are matters that have been the subject of work conducted through OHIA. This suggests that these EDC legal expenses might have been legal expenses incurred on behalf of OHIA, for which OHIA did not have sufficient funds in its legal services contract. These included:

6/05/03	Meeting at opening of I-park at I-park	\$ 525
7/30/03	I-park bio-tech meeting	\$ 438
7/31/03	Attend meeting to discuss possible affordable housing projects	\$ 70

OHIA is a participant in the I-Park initiative, a biotech center in Lake Success, and has an employee on-site. Similarly, affordable housing projects would appear to fall under the purview of OHIA.

⁷⁴ See, supra, n. 12, ¶ VII (C) (1), at 6.

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

The completion of the RFP process and a formal contract for services could have established a cap on the amount billed and would have enabled EDC to stay within its budgeted line for legal services.

Engagement of Accountants

Payments were made to Albrecht totaling \$3,800 for services rendered. There was no evidence that the EDC had conducted a procurement process prior to retaining this firm. EDC should have first obtained and reviewed proposals from accountants, established their rate of pay and obtained an engagement letter from the accountants. A fee limit should have been imposed to restrict billings to a reasonable amount.

We requested the two invoices that comprise the \$3,800 paid to the accountants. EDC did not provide an invoice covering the first charge of \$1,650 and instead provided a vendor statement lacking details other than the date, invoice number and amount. An invoice for \$2,150, dated August 15, 2003, provided a description of the work performed, but did not provide the dates of the work or the hours charged. We question the EDC's ability to properly review these charges for reasonableness without detailed information.

EDC's Operating Budget for 2003

Pursuant to contract Section VII. ADMINISTRATIVE REQUIREMENTS subsection C.1. "Upon execution of the Agreement, the SUBRECIPIENT will, before payment by the County to SUBRECIPIENT of any CDBG funds hereunder, submit a detailed CDBG funds budget in such form and as reasonably prescribed by the COUNTY."⁷⁵ An operating budget was submitted detailing the proposed expenditure of the entire grant amount of \$650,000. Although the term of the contract is from March 1, 2003 to February 28, 2005, the budget was for 2003 only. This would indicate that no funds would be available after 2003 without a contract amendment for additional funding. We also noted that a budget line of \$240,000 was established for the payment of rent to the county. According to EDC's Executive Director, Raffaella Petrasek, this amount was recorded in error and should read \$24,000. The \$216,000 overstatement of rent expense could indicate that another budget line was understated or that the 2003 budget is higher than necessary.

Computer Equipment

EDC submitted a claim under its contract for reimbursement for the purchase of computer equipment. A faxed statement of account dated from the vendor was included with the claim as supporting documentation indicating that there were two invoices outstanding for a total of \$3,559. However, no vendor's invoices were provided to provide descriptive details of the items purchased. Without these specifics, we cannot verify the location of these computers.

⁷⁵ See, supra, n. 12, ¶ VII (C) (1), at 6.

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

Application Fees

The EDC has developed application forms for potential clients to submit. We noted that while the IDA charges an application fee of \$1,000, the EDC charges no fees.

Accounting Records

Program expenses are reimbursed through payments processed through the county's NIFS system. The EDC, however, does not maintain basic accounting records and no interim financial statements have been prepared.

Nassau County Industrial Development Agency

Despite the State law requirement that the IDA abide by GML 104-b,⁷⁶ the IDA has no written policies covering the purchasing of goods and services. The current Board, through budget approval, authorizes the Chairman and Executive Director of the IDA to spend within budget limits. Our review of expenditures made by the current IDA, as well as the IDA as it existed under the previous county administration, found instances of spending that were questionable as to necessity and/or procurement process. These include:

Office Construction

The IDA retained a contractor, Don Garvey, Inc., for the alleged purpose of constructing conference and other space for use by the IDA Board, its chair and staff. In reality, however, the contractor constructed office space to be used also for Deputy County Executive Peter Sylver (who had management responsibilities for the entire Vertical), the Director of Planning, Patricia Bourne; the Deputy Director of Planning, Michael Levine; the Special Assistant to the Director of OHIA, Oscela Pope; and the Director of NCPUA, Kathy Todd. The contractor invoiced the EDC on April 15, 2003; the payment, however, was made with IDA funds. The IDA should not have paid entirely for this construction because the office space was not to be used solely –or apparently even primarily--by IDA employees.

The contractor submitted the lowest bid proposal of \$6,800, which was in conformity with bid specifications. This proposal was dated April 11, 2003. However, the contractor's invoice was dated four days subsequent for a total due of \$10,384. This invoice included \$3,584 for an "additional work order" to cover added labor and materials provided. The total due of \$10,384 was paid from IDA funds May 9, 2003.

The additional work order was not included in the bidding process to ensure the lowest bid for the entire construction cost. Based upon a legislator's April 17, 2003 inquiry to the Comptroller, the Comptroller's office requested that the Economic Development Vertical respond to the legislator's questions. The Economic Development Vertical's response stated that it offered the work to the outside contractor offering the lowest

⁷⁶ See, *supra*, n. 40.

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

estimate. However, our review indicates that the final construction cost, including the additional work, was 53 percent higher than the work originally bid. It would appear that a significant portion of the work performed was not bid.

Furniture

The IDA purchased used furniture on March 22, 2002 from Morgan Stanley, an investment banking firm in New York City. The purchase price was \$10,000, however the IDA incurred an additional cost of \$24,143 (2.5 times the purchase price) to move the furniture to Nassau County. There was no evidence that IDA obtained bids for the furniture purchase or performed any analysis or appraisal to determine whether the total acquisition cost of \$34,143 represented a reasonable cost for the furniture.

The purchase included, among other items, 14 wooden desks and credenzas, 4 mahogany desks, 256 chairs, 4 loveseats, a couch, and 102 file cabinets. The invoice was not marked to indicate that all the items invoiced were received. Inventory controls that should be standard for such fixed assets were not maintained. Joseph Gioino, the Executive Director of the IDA, informed us that he would be unable to identify where all the furniture purchased was located.

The amount of furniture purchased is far in excess of that needed for a public benefit corporation with only six employees. Other county departments and entities in the Vertical are using the furniture. However, the IDA has absorbed the entire cost of this furniture. The receiving departments did not record the furniture in fixed asset records. Similar to the IDA's payment for construction, this has resulted in the IDA improperly making purchases, not for its own use but for the county's, without the county having to budget for the expenditures or follow appropriate procurement procedures.

Deputy County Executive Trip To London

Peter Sylver attended a conference in London, England entitled "Modernising Criminal Justice" sponsored by New Scotland Yard and the John Jay College of Criminal Justice. The conference was held June 18 to June 20, 2003 and resulted in an expense of \$3,462.

The Deputy County Executive apparently registered for the conference on or before March 15, 2002 to obtain a less expensive "early bird" registration rate. He registered for the conference using the title of professor and paid an academic rate of \$410.

A travel authorization request was completed for the conference on July 1, 2002, 10 days after the conference ended, and approved by a Department Head (signature illegible). This request indicated that the conference would be charged to a grant fund and that the expense would be 100 percent federally reimbursable. It indicated that the reason for attendance was:

Awareness of crime prevention/elimination through code enforcement. Techniques of crime prevention in areas

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

where drug trafficking is prevalent (i.e. Roosevelt). Economic Dev. and Planning will be part of overall Emergency Preparedness for County, as well.

We were informed that this request was withdrawn prior to obtaining County Executive approval.

Based upon the reason for attendance provided, the conference does not appear to be within IDA's scope to "promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing industrial, manufacturing, warehousing, commercial, research and recreation facilities...."⁷⁷ The IDA should not have paid for the trip.

Included in the \$3,462 reimbursement to the Deputy County Executive was \$820 of expenses unrelated to his conference attendance. The reimbursement included:

- The conference charge of \$280 for an accompanying person (spouse) at the conference;
- The cost of staying in London for three days after the end of the conference. The conference ended on June 20, however he stayed until June 23 and charged the additional three days room charge of \$540 including room service and telephone charges.

On January 2, 2004, Peter Sylver reimbursed the IDA for the cost of the conference. His letter accompanying this payment stated that "By this payment, I in no way admit or agree that at least part of the expenses were not properly reimbursable by the County."

Payment to Church

A check in the amount of \$650, issued February 6, 2003, was paid to a church in Westbury for 10 seats at a dinner "to celebrate the 4th Pastoral Anniversary of our Pastor." The Pastor was also the president of the Unified New Cassel Community Revitalization Corporation. The check, however, was made out to the church rather than to the New Cassel Community Revitalization Corporation. This payment, if in fact to the church and not to the community revitalization corporation as the beneficiary of the expenditure, would appear to be in violation of the IDA's corporate purposes as well as raising First Amendment issues.

Plasma Television

The IDA purchased a digital plasma television in 2003 at a cost of \$6,747, including an "E-box" for \$800, and had the vendor install it in the County Executive's conference room at 1 West Street, rather than in the IDA offices at 400 County Seat Drive. The IDA informed us that such a display was necessary because digital capability is needed to

⁷⁷ See, *supra*, n. 20.

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

display GIS maps. The purchase price included a \$500 installation fee. Once the TV was installed, the IDA paid a local appliance/electronics store \$400 to uninstall the TV and move it to a different wall in the same room. Assuming this was a legitimate IDA expense and not primarily for the use of the administration, the purchase still should have been subject to a procurement process, and the \$400 moving fee could have been avoided by proper planning. If the purchase was primarily for the use of the administration, it should have been made using the county's procurement procedures.⁷⁸

Consultants/Lobbyists

Lewis Yevoli, the Chairman of the IDA, issued a letter on January 22, 2003 to a lobbyist, Murray Lewinter, giving authority to lobby on behalf of the IDA before appropriate New York governmental agencies or entities for an agreed upon monthly fee of \$1,500. There was no evidence that any formal procurement process had been followed, nor did the letter agreement state a minimum number of hours to be worked each month or require activity or progress reports to be filed.

The IDA provided us with a listing of items to be addressed by the lobbyist. This list included lobbying the U.S. Treasury Department for a revision to a provision in the IRS code detrimental to Research and Development facilities, pertaining to the amount of non-manufacturing space permitted. Although this issue seems a reasonable one for the IDA to address, the IDA's authorization to the lobbyist was to conduct state, not federal, lobbying.

The IDA did not issue a Form 1099 to the lobbyist. It indicated that the lobbyist was a corporation, and therefore a Form 1099 was not necessary. The letter authorizing the lobbying, however, was issued to an individual rather than a corporation, and the IDA did not have a form W-9 "Request for Taxpayer Identification Number and Certification" on file to indicate that no 1099 was necessary.

We also noted that the IDA employed consultants who might be construed by the IRS as employees. If that were to occur, the IDA could be liable for employment taxes and employee benefits. One consultant was employed for a period that included eight 35-hour workweeks, ending February 27, 2003. On that same date, the consultant, Katherine Schwab, started working full time in the Planning Department. At the IDA, her billings were primarily for public meeting preparation as well as implementation of meeting action items. The apparent method of her hiring – there was no procurement process or contractual agreement – was more in accord with the hiring of an employee than a consultant. Based upon the work description and hours, it would appear that Ms. Schwab was an employee, not a consultant.

Another consultant, R.M.S Associates, was paid a monthly retainer of \$7,583 beginning on March 10, 2002, for an annualized total of \$91,000. A consulting agreement was drafted by the consultant on the consultant's stationery, but was unsigned by the IDA. The scope of services was to "evaluate current economic development data and

⁷⁸ See, e.g., Op. St. Compt. No. 99-4 (Mar. 27, 1999).

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

operations to develop and implement a Plan of Action that will integrate the following economic development components: Commerce and Industry, IDA, Affordable Housing, Sports-Entertainment Tourism. . . .” It states for “purposes of establishing an organizational identity the title to be used by (the consultant) will be Special Advisor to the Deputy County Executive for Economic Development. The title will in no way affect the tasks assigned and will be developed mutually.” This unsigned agreement called for the consultant to work “. . . a minimum of 40 hrs/wk 5 days/wk and 2,000 hrs/yr. to 60 hrs/wk 5 days/wk and 3,000 hrs/yr.”

The consulting agreement required the consultant to “Prepare an assessment of various economic development tools and present an Action Plan.” There was no evidence that this work was performed. We requested a copy of any work product provided by the consultant. The IDA provided copies of letters and memoranda written by the consultant, but only covered the period February 25, 2002 through May 19, 2002. The IDA continued to pay the consultant through December, expending \$80,000 on the contract, but we did not see any work product after May 19.

Some of the work product did not appear commensurate with expectations from a consultant paid \$91,000 per annum. One report described the result of a tour of the Cradle of Aviation Museum and an interview with the Museum Director. The information contained in the report could have been readily obtained by the IDA directly from the Parks Department. Another report indicated “Reviewing NY/NJ/NYC web sites: awaiting office and computer to review on line.” It would be reasonable to expect the consultant to own or have access to a personal computer with Internet access.

We noted that one of the reports addressed the issue of reconstituting the Public Utility Agency. This work was justifiably chargeable to NCPUA and should not have been paid for by the IDA.

We also noted that the IDA issued a Federal Form 1099 (“1099”) for payments made under this agreement; however, the 1099 understated the amount paid during the year. The consultant was paid \$79,888 in 2002, however the 1099 issued reflected only \$74,713. Apparently two payments made in December 2002 totaling \$5,175 were not included in the 1099.

Given the indications that strongly suggest an employer-employee relationship, rather than a consultant-client relationship, including required hours of work and a required title to be used by the consultant, it appears likely that this consultant, as well as Ms. Schwab, could be construed as an employee by the IRS.⁷⁹ If these individuals were to be deemed employees, the IDA might be liable for employment taxes and employee benefits.⁸⁰

⁷⁹ See, Nationwide Mut. Ins. Co. v. Darden, 503 U.S. 318, 324 (1992) (quoting NLRB v. United Ins. Co. of Am., 390 U.S. 254, 258 (1968), where holding that common law principles of agency law should be used to determine whether a worker is an independent contractor or an employee); see, also, Rev. Rul. 87-41, 1987-1 C.B. 296 (listing twenty factors to be considered when determining if a worker is an independent contractor or an employee).

⁸⁰ Id.

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

A contract dated September 19, 2002 with a third consultant, Gerald D. Harris, called for Mr. Harris to be paid \$20,000 per year to perform such economic development consulting services as the Executive Director and/or the Chairman of the IDA shall determine from time to time. Under the agreement the consultant “agrees to devote at least one (1) full business day or equivalent to providing the services required of (the consultant) under this contract.”⁸¹ This consultant was paid a total of \$21,538.

We requested work product for this consultant and were provided with a letter dated December 8, 2003 describing the work performed. The letter indicated that the consultant worked for the IDA and the EDC; however, there was no allocation of charges to the EDC.

Collection Fees

The IDA had a contract with an advertising agency, Garvan Communications, to run ads in various media. The advertising agency encountered financial difficulties, and some \$34,630 of advertising paid for in advance was not run. On March 14, 2003, the IDA paid a 10 percent collection fee of \$3,460 to its attorney, Crowe, Deegan, (engaged to represent the IDA on its projects, not to provide collection services) for recovering the \$34,630 in fees paid in advance. The attorneys did not provide the number of hours worked on their invoice, and there was no evidence that the fees charged were reasonable or delineated in advance in the law firm’s engagement letter.

Check Issuance

A scan of disbursements revealed several instances that suggest a lack of internal controls over the issuance of checks:

- A check was made out on May 19, 2003, to the Aladdin Hotel in Las Vegas and signed by the Deputy County Executive with the payment amount left blank (the check later cleared for \$547). The check was written so that an employee attending a conference at the hotel could make payment. All checks should include a specific amount prior to signing. Had the check been lost or stolen, the IDA exposure would then be limited to the payment amount authorized;
- The IDA requires two signatures on all checks over \$5,000. However, we found that one check, dated August 1, 2003, in the amount of \$6,563, was signed only by Peter Sylver. The lack of a second signature circumvented basic segregation of duties and should not have been honored by the bank;
- Peter Sylver signed a check on April 10, 2003, made out in his own name in the amount of \$250. The check covered two business meetings. One restaurant

⁸¹ Under these terms, after devoting one full day, the contractor could claim he has fulfilled the terms of the agreement and request the full \$20,000. Hopefully, the intent of the contract was for the consultant to work one day a week for a year.

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

receipt had the notation “Nassau County Trip to NYC EDC,” but did not list the attendees or the business purpose. Besides insufficient documentation to justify the expense, checks made out to employees should be signed by someone other than the payee.

A check dated June 17, 2002, was made out for \$750 payable to a county employee, apparently as reimbursement for items purchased by the employee to be distributed by the county to its employees’ children on “Bring Your Daughter to Work Day.” Documentary support for the payment was an invoice from a sport and trophy company for \$740, \$10 less than the check. The merchandise invoiced was indicated as “20,3 color print, 200 at \$3.70”. The county’s participation in “Bring Your Daughter to Work Day,” however laudable, does not appear to be IDA-related and should not have been paid for by the IDA.

Advertising

The IDA entered into a “Letter Agreement” with Garvan Communications for marketing communications activities. The agreement, Section VII A, had no effective date, and stated that it would continue in force for one year from a date that was left blank on the agreement.

The agreement had no spending cap. The IDA paid \$470,089 to this vendor through January 30, 2002, with \$295,899 paid more than one year after the signing date of the agreement. The IDA should have conducted an appropriate procurement process and entered into a contract to cover the services rendered after the expiration of the original contract.

Petty Cash

We noted two checks drawn payable to petty cash in the amount of \$149 on November 14, 2001 and \$142 on October 3, 2002. There was no supporting documentation for these payments. The IDA informed us that the petty cash fund has not been counted and balanced in months.

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

Holiday/Retirement Parties

During 2000-2001, the IDA Board authorized approximately \$8,850 in payments by the IDA for a number of parties, including:

<u>Check</u>		
<u>Date</u>	<u>Amount</u>	<u>Function</u>
1/11/00	\$2,791	Holiday Party
1/11/00	\$ 324	Gifts for Party
12/20/01	\$ 632	Holiday Party
11/06/00	\$2,617	Retirement Party for Chairman
12/19/00	\$2,484	Holiday Party

Holiday parties and retirement parties should not have been paid for with IDA funds that should be used for economic development.

Golf Outings

Our review of the IDA cash disbursements was based upon a selection of items made during a scan of the cash disbursement listings. During the years 2000 and 2001, the IDA Board authorized the payment of almost \$25,000 in IDA funds for a substantial number of golf outings. No mention was made in the Board minutes as to the purpose of these expenditures, the anticipated economic development benefits of the golf outings, or the authorized attendees. These outings included:

<u>Check</u>		
<u>Date</u>	<u>Cost</u>	<u>Description</u>
4/4/00	\$1,500	Foursome June 19
5/2/00	\$1,600	Sponsor four players at a Golf Outing
7/5/00	\$1,400	Sponsor foursome
8/1/00	\$3,000	Golf Sponsorship
8/1/00	\$3,500	Golf Sponsorship, full-page ad and Green Sponsorship
4/10/01	\$1,300	Golf Outing Sponsorship, Four Players
4/11/01	\$2,150	Sponsor Golf Outing
4/11/01	\$1,800	Sponsor Golf and Tennis Outing
5/17/01	\$2,500	Sponsor four players at a Golf Outing
5/17/01	\$1,600	Sponsor four players at a Golf Outing
6/04/01	\$1,600	Sponsor four players at a Golf Outing
8/02/01	\$1,500	Sponsor four players at a Golf Outing and signage
8/02/01	\$1,200	Sponsor four players at a Golf Outing

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

Charitable Contributions/Sponsorships

Our review also indicated that during 2000 and 2001, the IDA Board authorized payments of over \$85,000 for numerous charitable contributions and sponsorships for not-for-profit organizations. These included:

<u>Date</u>	<u>Amount</u>	<u>Description</u>
2/25/00	\$ 4,500	Gala and full-page advertisement in journal
4/4/00	\$ 3,750	10 seats at an awards dinner
5/09/00	\$ 1,000	Luncheon
5/30/00	\$ 5,000	Table for 10 and full page journal ad
9/21/00	\$ 5,400	Nine tickets for a gala event
3/27/01	\$ 6,000	Table at the Galaxy Gala 2001
3/28/01	\$ 6,000	Donation to a camp
3/28/01	\$ 6,000	Donation to eliminate Lyme disease
8/31/01	\$ 3,000	Sponsor annual luncheon including journal ad
9/24/01	\$10,000	Table for 10 at annual awards dinner and journal ad
9/24/01	\$10,000	Film series for select group of Long Islanders
11/08/01	\$25,000	Construction of computer center at a school residence

In approving these contributions, the IDA did not state their economic development purpose, or how the expenditures were within the authority granted to the IDA by its state enabling legislation. In addition, the \$5,400 purchase of nine tickets for a gala event included \$2,400 for tickets for four spouses of IDA directors. Even if payments for the attendance by IDA officials was somehow appropriate, New York State law places prohibitions on payments for spouses. An IDA may not pay for convention expenses incurred by the spouse of a member; nor is the IDA authorized to reimburse members of the agency or its executive director on behalf of spouses.⁸²

Recommendations:

OHIA

All expenditures of OHIA should be processed through the existing Nassau County financial system.

Independent Corporations

The findings regarding the cash disbursements of the independent corporations result from a lack of internal controls. The control weaknesses evidenced by our audit should be addressed by promulgating and enforcing written policies and procedures.

The EDC's budget should be amended to properly allocate program funds for the entire term of the contract and to reflect correct budgeted lines.

⁸² See, Op. State Compt. No. 92-51 (Dec. 28, 1992).

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

EDC should consider imposing an application fee similar to the fee charged by the IDA.

Contracts should be reviewed before signing to ensure that they document the intention and requirement of all parties.

Policies and procedures should be formalized and should cover, at a minimum, the following areas:

- 1) Procurement policies and procedures for personal service contracts, goods and construction;
- 2) Policies on discretionary spending, including required approvals and budgetary controls;
- 3) Procedures for receiving and inventorying purchased items;
- 4) Approval path for disbursements, including purchase order and invoice payment approvals and required check signatories;
- 5) Cancellation of documents to prevent duplicate payment;
- 6) Personnel administration, including hiring and salary authorization and Time and Leave Administration;
- 7) Financial record-keeping and reporting requirements;
- 8) Cash receipts--billings and collections;
- 9) Segregation of duties;
- 10) Allocation/apportionment of expenses/revenues to proper entities; and
- 11) Annual independent audits.

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

Revenues and Cash Receipts

Audit Findings (9):

OHIA

Our audit scope included a review of internal controls over the cash receipts deposited into the non-NIFS account. The deposits totaled \$82,446 and consisted of the following items:

Three quarterly loan payments of \$16,252	\$48,755
Receipt from Mortgage Loan Disbursement Account	30,000
Loan repayment	2,448
Application Fees	225
Refund for Deputy County Executive	<u>1,018</u>
	<u>\$82,446</u>

We found internal controls lacking over these receipts. We requested that OHIA provide documentary evidence that would enable us to determine that the cash receipts related to the loan repayments and the mortgage loan disbursement account were for the correct amounts and received on a timely basis. OHIA was unable to provide any underlying documentation. Without such documentation, OHIA cannot be assured that the cash receipts were received in a timely manner and for the correct amounts.

We found that the checks were not deposited on a timely basis. Of the 14 checks examined, the difference between the date of the check and the date of deposit was, on average, 32 days. The County Charter states:

All sums received or collected by any department, institution, office or agency of the County, including sums received as above, shall be paid without deduction to the County treasurer at such times and under such conditions as he may prescribe, but in no instance less frequently than once per week. . . . No officer or employee of the County shall be entitled to receive any salary as long as their remains in his possession any money belonging to the County. . . .⁸³

Recommendations:

All OHIA cash receipts should be deposited with the County Treasurer's Office at least once per week.

OHIA should review all transactions for which it earns fees or for which loan payments are owed. A record should be established of amounts to be paid along with the due dates

⁸³ Nassau County, N.Y., Charter § 2205 (1999).

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

of the payments. These amounts and dates should be compared to the source documents to confirm their accuracy. This accounting control should be maintained so that OHIA can assure itself that all amounts owed are collected on a timely basis and that past due amounts are followed up for collection.

Audit Findings (10):

Industrial Development Agency

The IDA collected revenue of \$749,000 in 2003 (11 months), \$537,000 in 2002, \$321,000 in 2001 and \$224,000 in 2000. Revenue has been enhanced through increased activities and fee initiatives under the current administration.

The IDA's 2001-2002 audited financial statements state, "The Agency's revenues are derived from one-time administrative fees as follows: .5% on tax exempt bonds and taxable bonds, and a straight-lease fee of .5% on up to \$20,000,000 and .1% over \$20,000,000. For taxable bonds and straight-lease transactions, the minimum fee is based on the amount of bonds, the amount of the total project costs, or the amount of increased value of the assets under a straight-lease plus the amount of all anticipated capital improvements and/or equipment to be purchases for which the applicant receives benefits from the agency. The agency charges an annual fee of \$1,000 during the term of the bonds or straight lease. This non-refundable annual fee is paid at the end of the year for the current year. . . .The fee is subject to periodic review and can be adjusted at the discretion of the Agency."

IDA charges a fee of \$1,000 for any application coming before the Board. Beginning in 2002, IDA imposed a compliance fee of \$2,500 at closing, plus a bond counsel fee of 0.1% of the bond principal or straight lease transaction to defray bond counsel costs.

We reviewed the IDA cash receipts to determine if it was collecting and depositing the proper fees.

The IDA prepared lists for the years 2002 and 2003 of agency fees billed. We compared the list of fees billed to the fees received to ensure that all fees billed were collected. A control weakness existed because the fees billed each year are not controlled by recording an account receivable on the general ledger. The recognition of accounts receivable balances would facilitate the follow up on unpaid fees.

The IDA also collects closing fees, which are paid at the closing of the bond issuance. The invoice for these closing fees is typically prepared by the bond counsel. The Agency prepares an annual indebtedness statement, filed with The New York State Comptroller, listing, by client, the closing date and amount of bonds outstanding. We compared on a test basis the closing fees received to this indebtedness statement to determine that the fee amounts were correct. The Agency has not yet prepared the 2003 annual indebtedness statement, and as an alternative, IDA monthly reports were used to identify the closings. Our findings were as follows:

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

2003

There were eight projects on the 2003 billing list for which agency fees have not been collected. These projects represent \$7,022 in income. There was no evidence that second requests had been sent to ensure collection. There was one deposit on May 7, 2003 that was not recorded in the IDA's books.

We found that one client remitted a closing fee check in the amount of \$3,640, payable to the IDA, that should have been paid to a bank. The amount was recorded as income by the IDA.

2002

There were five agency fees collected that were not on the IDA listing of fees billed. We also found one agency fee on the billing list that was not received.

We noted that the IDA collected a closing fee of \$103,310 on July 1, 2002. Our verification of this fee amount showed that the fee should have been \$102,810. The \$500 over-billing was not refunded.

2000 and 2001

We found that while a few administrative fees were collected in 2001, none were collected in 2000. There was no evidence that follow-up had been performed to collect these unpaid fees in all cases. For one client, the IDA collected three years of prior fees in 2003.

The Agency does not have a comprehensive record of amounts earned and amounts billed. Management indicated that it inherited incomplete billing records related to the years 2001 and prior.

We were unable to readily determine if application fees had been collected from all applicants. We were also unable to determine if the agency billing sheets included all transactions for which annual fees are due. The annual indebtedness statement is not required to include information as to the principal amount on straight-lease transactions.

Recommendations:

The IDA should establish a control sheet listing all transactions for which there are outstanding balances and determine if the appropriate fees have been collected on each transaction. Those clients who are not current on payments should be required to remit past due amounts.

Fees earned but not collected should be controlled through a general ledger account, periodically aged, and followed up for collection. Overpayments to the IDA should be refunded.

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

Salary Administration/Time and Leave

Audit Findings (11):

Time and leave administration of all units in the Economic Development Vertical, other than for the employees of the independent corporations, should be maintained in accordance with policies and procedures promulgated by the county. We found, in general, that the Vertical was not in compliance with these procedures. The independent corporations, other than the IDA, did not have written policies and procedures covering salary administration or time and leave. Our audit scope for time and leave included a test of the period September through December 2003.

Due to time constraints, and the number of individual agencies in the Vertical, our audit includes only findings to date. We expect to conduct a follow-up audit to test the compliance of each unit in greater detail, including a test of the allocation of salary charges to units within the Vertical. Our findings to date, relative to the agencies that use the Nassau Unified Human Resources System (NUHRS) are as follows:

OHIA

The OHIA time and leave records were poorly maintained or nonexistent. It was not until after the commencement of the audit that required timesheets (Form 3024) were used. Prior to December 8, 2003, employees did not use the standard timesheets to record their daily time. Instead, the department used its own sign-in sheet. These unauthorized timesheets contained the following deficiencies:

- The sign-in sheet was not preprinted with employee names. Without preprinted names it is difficult to readily determine who has signed in and who has not;
- The lack of preprinted names makes it difficult to determine who is assigned to each department;
- There was no documentation on the sign-in sheet as to who was out and the reason for absence;
- Employees are to sign the sheet and enter their time in out. We noted, however, that employees failed to complete information, including the time in and/or, the time out, or failed to sign at all.

Once these daily sign-in sheets were completed, they were essentially ignored. The timekeeper would enter 9:00 to 4:45 for all employees who had not submitted a request for leave, no matter what time was entered on the daily sign-in sheet. It is possible that an individual who was out, and failed to submit a leave request form, would not be charged for leave.

OHIA's management employees maintained no timesheets.

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

These failures to follow required policies placed a severe limitation on our ability to verify that employees were credited only for those hours actually worked and were properly charged for leave taken.

Kathy Todd, the Acting Director of the Nassau County Public Utility Agency, has been included in OHIA's payroll since July 2003. The Acting Director of NCPUA has indicated that her responsibilities are one-third business retention through the EDC, one-third NCPUA-related and one-third Economic Development Vertical Office/Facility Manager and Web-site development. These units have not been charged for a proportionate share of the Acting Director's salary and benefits.

OHIA Section 8

Similar to OHIA, Section 8 used a daily sign-in sheet rather than the required Comptroller's timesheet. However, in this case the daily Section 8 sheet was preprinted with the roster of employee names. The timekeeper recorded 9:00 to 4:45 for all employees who had signed in and not submitted a leave slip, as we had observed in OHIA. Employees certified a form similar to the Form 3024 timesheet, even though the hours entered disagreed with the daily sign-in sheet.

The section is still using a daily sign in/out sheet, but as of the December 11, 2003 pay period, the section is reporting the actual time worked on the Form 3024.

Failure to Charge for Leave Used

There was a failure to charge an employee for the use of 13 ½ days of entitlements. We reviewed the timesheets from August 29, 2003 to December 25, 2003 for an employee. According to the timesheet for the pay period of August 22, 2003 to September 4, 2003, the employee was involved in a car accident the afternoon of Tuesday, September 2. The code for "Injured on Duty" was entered for September 3-4. "Out" was entered for September 5-19. The employee was absent for 13 ½ days; however, a review of the employee's time utilization in NUHRS showed that no entitlements were charged. A review of paychecks showed payment for the period as regular time worked. There was no record in NUHRS that a workers compensation claim had been filed or that the employee received any compensation other than normal pay. In the case of an accident caused by a third party the county's ability to recover the wages paid may be impaired.

Full Pay for a 60-Percent Work Week

An OHIA employee was paid for a five-day workweek even though the employee worked only three days per week. The employee was hired in January 2002 as a full-time program coordinator at an annual salary of \$45,000. A review of the department's timesheets showed that the employee was only working three days per week. An inquiry with department personnel disclosed that the employee had been working on a reduced schedule since September 2003, when the employee elected to attend school two days per

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

week. The employee was paid for full weeks, and no charges were made against leave entitlements.

The Comptroller's Payroll Department notified the Executive Director, Michelle Marquez, that the employee's payroll check might be held to recoup the overpayments. On January 5, 2004, she requested the Payroll Department not to withhold the employee's pay. On January 6, 2004, the Executive Director presented the Comptroller's Office with two documents:

- A form, dated January 6, 2004 and signed by Deputy County Executive Anthony Cancellieri, authorizing OHIA's Executive Director to be a signatory on all personnel documents;
- An authorization form (CS39) signed by the Executive Director and the Civil Service Commission on January 6, 2004, authorizing a retroactive 67-percent pay increase for the employee, from \$45,000 to \$75,000, beginning September 2, 2003, and a reduction in the employee's work schedule to 60 percent, also retroactive to September 2, 2003.

These actions resulted in no recovery of funds for the county. The employee is now authorized to work three days per week at the same pay earned for five days.

Time and Leave in Other EDV Units

Noncompliance with county procedures and inadequate time and leave records were found to be prevalent in the other units within the Vertical as well.

Among the findings:

- The Planning Department only began to use the Comptroller's Timesheet Form 3024 to record employee hours in December 2003 after our audit began. Previously, the department used forms similar to the format of the Form 3024, but which did not require the timekeeper to attest to each day's entries and required no certification as to the accuracy of the daily and total time.
- The Director of Planning did not complete a timesheet until early December 2003. A NUHRS inquiry revealed that the Director has not used any vacation, sick, or personal time since her employment began in March 2002. The Director stated that no time was ever used.
- We found notations on the timesheet regarding the earning and usage of compensatory time. We were informed that department employees were told that they are not to officially earn compensatory time and have been instructed to maintain their own record of compensatory time earned and used. There were notations on the timesheet indicating that compensatory time was used on an hour-for-hour basis.

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

- We noted that three Department of Planning employees are on the Department of Information Technology Budget and perform GIS functions for the department. A review of NIFS revealed that there was no chargeback for these salaries in 2003 to allocate the employee's cost to Planning. We also noted that there are six ordinance employees who are on Planning's timesheet, but who are listed in NUHRS under OHIA. These employees' salaries and budget lines should also be identified with the appropriate county departments.
- In an examination of time and leave records for the Human Rights Commission's seven employees, we found that:
 - none of them were initialed by the timekeeper or certified by a supervisor; employees sign the timesheet in advance. On December 29, the timesheet covering December 26, 2003 to January 8, 2004 had already been signed by four employees;
 - The Executive Director is on a separate timesheet that is not approved by anyone;
 - One employee did not sign eight of the nine timesheets obtained;
 - Leave usage is not entered into NUHRS on a timely basis. As of January 5, 2004, there were no entries for leave used subsequent to October 24, 2003. Under this condition an employee could take leave without any accrued leave balance.
 - We noted instances where it appeared that employees were not charged with leave entitlements used.
 - There is an absence of segregation of duties in that the timekeeper also enters leave usage into NUHRS. During the period August 22, 2003 to November 12, 2003, the timesheets indicated that the timekeeper utilized 22 leave days. None of them were entered into NUHRS as of January 9, 2004, although the timekeeper entered other employee's usage into NUHRS for this period. We also noted, that for one day, the timesheet indicated that the timekeeper worked a full day, but a day of leave was entered into NUHRS. We question prior postings of time usage for this employee because she has maximum vacation time accrued, and NUHRS indicates that she did not use a single vacation, sick, or personal day for the 12-month period from August 2001 to July 2002.
 - We also noted that there were two pay periods where the timesheet for the timekeeper showed less hours worked than necessary to receive full pay.

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

- We found that there was a part-time employee who was paid for six days on which no work hours were recorded on the timesheet. This pay included a holiday for which the employee was not entitled to pay. The timesheet also indicated that the employee used four days of leave, but was not charged in NUHRS for any of them.
- No leave has been posted to NUHRS for any of the seven employees of the Office of Minority Affairs (OMA) since April 30, 2003. The nine bi-weekly timesheets examined (September to December) indicated that five employees had used a total of 21 days leave; however, no one was charged for leave used.
- We noted that four OMA employees failed to indicate time worked on the timesheets for a total of eight days. No leave was charged for the days where no hours were recorded.
- All of the OMA timesheets reviewed appear to have been completed by one individual for all employees. The timekeeper did not sign any of the sheets.
- We requested the timesheets for this department for the period August 22, 2003 to December 25, 2003. The Director refused to sign the timesheet for August 22 to September 4, 2003 because of a dispute with an employee. The employee took a bereavement day on August 22 (a Friday) and failed to return to work until a week later. The Director claimed that the leave was not authorized. The employee was paid for five days unauthorized leave, no leave was charged to the employee, and there was no adjustment to the employee's anniversary date.
- CASA is using an unauthorized compensatory time system. Entries were made on timesheets reflecting employees' (including the Executive Director's) use of compensatory time, however no compensatory time was recorded in the NUHRS time and leave records for these individuals.
- CASA has a part-time program coordinator who is on a 19-hour-per-week schedule. The entries made on the unit's timesheet do not agree with those in NUHRS. We found that on certain days, more hours were entered into NUHRS than worked, on other days less hours were entered than worked, and on some days hours were entered into NUHRS when there were no hours recorded on the timesheet. NUHRS is the official record and should be in agreement with the timesheets. We also noted that this employee was unofficially earning and using compensatory time.
- Although the Assistant to the Executive Director of the Economic Development Corporation is working full time for the EDC, according to the Executive Director, he is not listed on EDC's employee or Board of Directors roster. Instead, the employee records his time and leave on OHIA's timesheets, and OHIA's Executive Director signs and approves them. The salary costs of an employee who works 100 percent for the EDC should be charged to that

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

corporation, and the employee's timesheets should be maintained and approved by the corporation.

Recommendations:

County departments within the Vertical should comply with county policies and procedures. A full audit was not possible within the condensed time frame of this audit, and we expect to conduct full time and leave audits in the near future. In the interim, the following should be addressed:

- The Comptroller's timesheet should be used in each department;
- Employees should fill in their own entries on the timesheets;
- A segregation of duties should be enforced between the timekeeping function and the NUHRS input function;
- Time and leave should be entered timely for all employees;
- Adjustments should be made for prior absences not entered in NUHRS;
- Each unit head should be required to periodically certify to the comptroller that their unit has fully complied with promulgated policy and procedure;
- The apparent irregularities in the records maintained by the timekeeper of the Human Rights Commission should be investigated further by appropriate county officials;
- Employees should be transferred to the responsibility center for which they work;
- Work hours of part time employees should be documented;
- Records of compensatory time earned and utilized should be recorded in NUHRS.

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

Time, Leave and Salary Administration at the Independent Corporations

Audit Findings (12):

The independent corporations in the Vertical are not bound by county policies. We noted a lack of control from the failure to promulgate written policies and procedures. There were no written salary authorizations for the employees; we therefore could not determine if they were paid correct amounts.

Employees who work for one unit are paid by another. For example, the payroll costs of Kathy Todd, the Acting Director of the Nassau County Public Utility Agency, were reimbursed by NCPUA. However this reimbursement was not properly calculated. An analysis of amounts paid indicates that the IDA had been under-reimbursed by about \$35,000 (before allocations as discussed below).

This is comprised of:

- Year 2002 Salary \$20,231
- FICA \$ 4,785
- Health Insurance \$13,778
- Year 2003 Over reimbursement (\$ 3,846)

We were informed by Ms. Todd that her time is divided equally between work for the Public Utility Agency, OHIA, and as office manager for the entire Vertical. Given these responsibilities, her salary should be a prorated amount charged to all three units. The independent corporations had no written agreements to document these arrangements.

Prior to 2002, the IDA did not have its own employees. County employees who worked for the IDA were paid stipends and issued Form 1099s. One employee was paid \$3,000, \$17,000 and \$12,000 for the years 2000, 2001 and 2002, respectively.

- These individuals should have been treated as employees for tax purposes, and not as independent contractors. The IDA may be liable for payroll taxes and benefits for these employees;
- These employees were theoretically working at the IDA after their normal county work hours. No records of hours worked were maintained, however, that would enable us to determine that they were not paid by the county and the IDA for the same hours. We could not determine that the rates of pay were reasonable because we could not determine the number of hours worked.

Beginning in 2002, the IDA had its own payroll. We noted employees who were on the IDA and Nassau County payrolls simultaneously.

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

These included:

	<u>IDA Date of Hire</u>	<u>IDA Date of Termination</u>	<u>Nassau County Date of Hire</u>	<u>Nassau County Department</u>
Employee A	12/26/02	12/23/03	12/11/02	County Attorney (Chargeback to Planning)
Employee B	1/01/03	12/23/03	9/06/02	OHIA
Employee C	7/01/03	11/19/03	9/09/02	Housing
			11/20/03	Transfer to Budget

There were no records to substantiate that these employees worked for the IDA during hours that they were not on duty for the county.

The IDA appears to have hired an individual on a short-term basis until his hiring could be approved by the Civil Service System and he could be placed on the County payroll. This employee was hired by the IDA on July 7, 2003, terminated on October 30, 2003, and then hired by OHIA on November 14, 2003.

Recommendations:

The independent corporations should promulgate and enforce salary, benefits, and time and leave policies and procedures similar to those of the county. The Executive Directors, with the approval of the applicable Board of Directors, should authorize salary levels in writing. In those instances where an employee works for more than one unit within the Vertical, formal agreements should be drawn covering the allocation of the employee's time to each unit and the allocation and reimbursement of cost.

The IDA should be reimbursed for salaries paid on behalf of OHIA and NCPUA for the Director of NCPUA.

The IDA should not treat employees as independent contractors. These individuals who are employees under IRS definitions, should be included in the IDA's payroll and payroll taxes and applicable benefits should be paid.⁸⁴

Employees should not be on both the IDA and county payrolls simultaneously; employees working solely for the county should not be on the IDA payroll and vice-versa; and where employees split their time, allocations can be used to properly charge each unit for the related time spent. Time, leave and benefits are easier to control with one payroll location and the possibility of paying excess FICA can be avoided.

⁸⁴ See, *supra*, n. 79.

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

Nassau County Public Utility Agency

Background

NCPUA is a reseller of power that is discounted relative to the rates charged by the Long Island Power Authority (LIPA). NCPUA has an allocation of five megawatts of power, which it re-sells to seven businesses currently under contract. The power is transmitted thru LIPA lines. According to the contract, LILCO (LIPA) is responsible for the meter readings and for the preparation of monthly billing statements that are sent to NCPUA. These statements provide an individual accounting for each customer. NCPUA then sends a monthly invoice to each customer.

Kathy Todd, the Acting Director, indicated that the end users' savings in electrical costs are approximately 30-35 percent when compared to LIPA. Natural gas can also be provided to individuals at a reduced rate, but NCPUA does not have any contracts to provide gas.

Audit Findings (13):

Information regarding NCPUA was not received until January 6, 2004. As a result, time did not permit us to perform a detailed audit. We interviewed the Acting Director to obtain an understanding of the operation, but did not perform detailed testing. As a result of our review, we have the following findings and recommendations:

Accounting Records

NCPUA does not maintain basic accounting records, such as a general ledger, general journal, cash receipts book and cash disbursements book. It maintains a checkbook; however, the balance has not been reconciled to the bank back to at least April 2002.⁸⁵

Section 21-110.3 (4) "Powers and Duties" of Local Law No. 1984 grants NCPUA the power

to enter into agreements to sell the power it purchases from the Power Authority of the State of New York, or any other entity as authorized hereby...at a price not to exceed the cost of such electric power, ...and the administrative costs that may be incurred by Nassau County in the purchase and sale of such power but in no case shall the price to the consumer provide for a profit to Nassau County.⁸⁶

Without proper financial records, it cannot readily be determined if NCPUA is in violation of the law by earning a profit.

⁸⁵ The checking account is a non-NIFS account that is under the control of the Treasurer's Office.

⁸⁶ Nassau County, N.Y., Admin. Code § 21-110.3 (4) (1994); see, also, supra, n. 42.

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

Advance and Loan Repayment

Pursuant to Ordinance No. 13-1986, the County Treasurer provided NCPUA with \$150,000 to set up a

special fund ...to enable the Nassau County Public Utility Agency to meet its monthly obligation to the New York Power Authority in a timely manner, thereafter to be replenished by a like amount to be received by the Nassau County Public Utility Agency from the Long Island Lighting Company.⁸⁷

The ordinance included that this fund should be administered by NCPUA through a checking account.⁸⁸

Ordinance No. 483-1986 amends this aforementioned ordinance by adding a new Section 2 as follows:

That the County Treasurer be and he hereby is, authorized to accept periodic reimbursements by the Nassau County Public Utility Agency from the special fund, which reimbursements shall be calculated to effect a decrease in the One Hundred Fifty Thousand (\$150,000.00) Dollars previously furnished by the County Treasurer, until such time as the full amount of One Hundred Fifty Thousand (\$150,000.00) Dollars has been reimbursed in its entirety, it being understood that no specific time frame is contemplated to effect such reimbursement.⁸⁹

According to the Acting Director, all but \$10,000 of the \$150,000 advance has been repaid. She provided a list of so-called repayments, which were made by the former administration. This information was obtained via check stubs from the checkbook. The list included:

- \$45,000 paid to the Nassau County Treasurer on March 22, 1990;
- \$10,000 paid to the IDA on October 16, 1995;
- \$10,000 paid to an energy consultant on September 30, 1998; and

⁸⁷ Nassau County, N.Y., Ord. No. 13-1986 § 1 (Jan. 6, 1986).

⁸⁸ Id.

⁸⁹ Nassau County, N.Y., Ord. No. 483-1986 § 1 (Nov. 17, 1986).

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

- \$75,000 paid to an energy consultant (Columbia Group, Inc.) between December 29, 2000 and September 26, 2001.

We question NCPUA's classification of payments to the IDA and various consultants as repayments to the county.

The Acting Director was able to supply the related bank statements for each of these payments. However, she was only able to produce the cancelled check (dated March 22, 1990) paid to the County Treasurer, indicating that "cancelled checks are no longer offered with the bank account, so I am unable to supply them to you." Therefore, we were unable to verify the payees.

Administrative Fees

NCPUA currently charges its customers a 4 percent administrative fee to defray its operating costs. The Acting Director told us that this fee is similar to that charged by Westchester, Suffolk and New York City, and that permission from NYPA was obtained before charging the fee. However, provision for these fees was not included in the contracts with the customers. Letters were sent to the customers, informing them that the fees would be imposed. We were informed that at the Board Meeting of March 13, 2003 the Board authorized the imposition of the 4 percent fee. To date, however, the customer contracts have not been amended to reflect the administrative fees.

Contractual Agreements

NCPUA's contracts with customers are long-term and non-cancelable by the county except in the case of customer default. The combination of a limited power allocation and long-term, non-cancelable contracts gives NCPUA very limited flexibility. We were provided and examined six of the seven contractual agreements. One dated as far back as 1989 (the agreement runs until June 30, 2003 and can be extended until December 31, 2006, for a total of 17 years) and the other five began between 1995 and 2002, with contract term periods averaging approximately 10 years. The Acting Director indicated that NCPUA is examining whether its clients actually meet the program criteria, and, if they do not, whether NCPUA has any legal recourse.

The Board directed the Acting Director to discuss the county government's electrical needs with the County Facilities Manager. It may be beneficial for the county to participate in these arrangements, however the existence of long-term contracts may impair NCPUA's ability to provide the county with maximum savings.

Nassau County Energy Requirements

The NCPUA Board of Directors, at a meeting held on March 13, 2003, discussed the possibility of the county using NCPUA as its energy source. The minutes state "Kathy Todd to focus on County Energy Requirements with the assistance of the County

FINANCIAL REVIEW OF THE ECONOMIC DEVELOPMENT VERTICAL

Facilities Manager, NCPUA should continue to focus on the possibility of availing Nassau County with discounted energy.”

Application Fees

As noted earlier in this report, the IDA charges potential clients application fees in order for them to consider financing proposals. NCPUA charges no such fee.

Recommendations:

NCPUA should establish a complete set of accounting records and produce periodic financial statements for the Board of Directors. It should determine if it is in compliance with the prohibition on earning a profit, and take proper steps if it is not.

NCPUA should attempt to obtain copies of the unavailable cancelled checks from the bank. It should consult with the County Attorney and the Comptroller regarding the status of payments made to the IDA and to consultants that were classified as loan repayments. It should be determined if there was any authorization from the county, or any legal basis to consider these payments as loan repayments. The remaining liability should be given accounting recognition by NCPUA.

NCPUA contracts should be amended to include the 4 percent administrative fee.

NCPUA should consider contracts of shorter duration.

NCPUA should research whether it is authorized to impose reasonable application fees.

NCPUA and Nassau County should examine the feasibility of using NCPUA-provided energy to reduce the county's costs.