

**ECONOMIC DEVELOPMENT ACTIVITIES
ADMINISTERED BY THE HARDEE COUNTY INDUSTRIAL
DEVELOPMENT AUTHORITY, HARDEE COUNTY
ECONOMIC DEVELOPMENT AUTHORITY AND HARDEE
COUNTY BOARD OF COUNTY COMMISSIONERS**

Follow-Up on Operational Report 2013-102

**PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT**

SUMMARY

This report provides the results of our audit to determine the extent to which the Hardee County Industrial Development Authority (IDA), Hardee County Economic Development Authority (EDA), and Hardee County Board of County Commissioners (BCC) had taken, or were in the process of taking, corrective actions to address the 12 findings included in our report No. 2013-102. Our follow-up procedures to determine the IDA's, EDA's, and the BCC's progress in addressing the findings and recommendations contained in report No. 2013-102 disclosed that, as of the completion of our follow-up procedures in August 2015, the entities' actions had adequately corrected 8 findings (Nos. 1, 5, 6, 7, 8, 10, 11, and 12) and partially corrected 2 findings (Nos. 3 and 9); however, the entities had no occasion to correct 2 findings (Nos. 2 and 4).

FINDINGS AND RECOMMENDATIONS

HARDEE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY

Finding 1: Compliance with Chapter 159, Florida Statutes

Previously Reported

The purposes for which a technology grant of \$2,657,813 was awarded by the IDA did not appear to be consistent with the definition of a "project" as defined in the Florida Industrial Development Act,¹ and the grantee had not been sufficiently determined, in accordance with State law,² to be financially responsible and fully capable of fulfilling its obligations under the grant. Also, the IDA did not include in the grant agreement a timeline for the grantee to relocate to Hardee County to ensure that the project provided economic gains to the County.

We recommended that the IDA only finance projects authorized by State law.³ Additionally, we recommended that, prior to entering into future funding agreements for projects, the IDA: (1) require documentation from the business to demonstrate that it is financially responsible and fully capable and willing to fulfill its obligations under the financing agreement as required by State law; (2) only consider

¹ Chapter 159, Part II, Florida Statutes.

² Section 159.29(2), Florida Statutes.

³ Chapter 159, Parts II and III, Florida Statutes.

such an agreement if it will potentially further the economic growth of Hardee County as required by State law;⁴ and (3) consider the deficiencies discussed in finding Nos. 2 and 3 when drafting such an agreement.

Results of Follow-Up Procedures

The IDA's actions corrected this finding. In March 2013, the IDA requested an Attorney General opinion addressing whether the IDA had authority to finance economic development projects that were not expressly defined in State law.⁵ Attorney General Opinion No. 2013-12, issued June 6, 2013, indicated that the IDA would appear to have authority to enter into contracts to foster economic development of the County aside from, or without regard to, the financing or refinancing of a project defined in State law. During the period March 2013 through April 2015, the IDA did not award any new grants.

Finding 2: Grant Agreement Design

Previously Reported

The grant agreement used by the IDA for the technology grant discussed in finding No. 1 did not contain sufficient project descriptions of deliverables, such as measurable outcomes to be accomplished within established time frames, which would demonstrate grantee performance and provide a basis for funding. Additionally, in the event the company was sold, the grant agreement did not contain sufficient protections or remedies for the IDA to ensure achievement of grant objectives or allow for the recovery of funds advanced to the company.

We recommended that for future grants, the IDA design agreements to provide measurable deliverables with established time frames to ensure that grantee performance under the agreement may be determined. Additionally, grant agreements should provide a reporting mechanism so that funding under the grant is dependent upon the grantee providing deliverables within the established time frames.

Results of Follow-Up Procedures

The IDA had no occasion to correct this finding. As noted in Finding 1, during the period March 2013 through April 2015, the IDA did not award any new grants.

Finding 3: Grant Monitoring

Previously Reported

The IDA did not demonstrate of record that it adequately monitored the technology grant discussed in finding No. 1 because, contrary to the grant agreement, it failed to establish required detailed reports for the grantee to submit and did not provide written reports and recommendations to the IDA Board.

We recommended that the IDA develop procedures and methodologies to sufficiently demonstrate in its public records that it met its stewardship responsibilities regarding grant monitoring. Such procedures,

⁴ Section 159.46, Florida Statutes.

⁵ Chapter 159, Parts II and III, Florida Statutes.

at a minimum, should include obtaining supporting invoices, preparing required reports of the project's progression, and presenting the results of reviews of the company's financial activity to the IDA Board.

Results of Follow-Up Procedures

The IDA's actions partially corrected this finding. As discussed in finding No. 1 of our report No. 2013-102, in October 2011, the IDA awarded a technology grant to a company (grantee) to develop a Web-based solution to be marketed to the public and supported by customer service personnel located in Hardee County. In September 2012, the grantee, located in Hillsborough County, sold its interest in the Web-based application to another company (located in Pasco County) and an officer of the grantee at the time of the original grant award was the Chairman, President, Vice President, and Treasurer of the company that purchased the Web-based application. Subsequently, the IDA entered into an assignment and modification agreement (modification agreement) with the company to continue the technology grant.

As of January 2014, the IDA had disbursed the total \$7.25 million contemplated under the original grant and modification agreements. Our follow-up procedures included a review of IDA grant monitoring activities related to the modification agreement and an examination of draw requests totaling \$3.1 million made during the period March 2013 through April 2015 and, as discussed in the following paragraphs, we noted monitoring activity deficiencies. Subsequent to the issuance of our report No. 2013-102 in February 2014, the IDA engaged a CPA firm to perform some technology grant monitoring and the Grand Jury of the Tenth Judicial Circuit issued a presentment on its investigation into activities related to the technology grant. The draft examination report prepared by the CPA firm and the presentment issued by the Grand Jury of the Tenth Judicial Circuit noted significant matters and findings that warranted the attention of the IDA.

Monitoring Activities. During the November 13, 2012, IDA Board meeting, the Board introduced the Executive Director of the Hardee County Chamber of Commerce as the IDA's project manager for the technology grant. IDA staff indicated that the project manager was the direct contact for administering the grant, and was responsible for reviewing draw requests, verifying project progress or deficiencies on a monthly basis, and making monthly reports to the IDA Board. However, IDA records did not evidence that the project manager verified documentation, such as time sheets or other payroll records and vendor invoices, to support the draw requests or reviewed monthly reports to evaluate project progress or deficiencies.

Although the modification agreement included certain new provisions for the company to follow, the agreement lacked certain essential provisions and IDA records did not always evidence appropriate monitoring. Specifically:

- Section 4.7 of the modification agreement required the company to initially create 25 jobs that varied by class and job title. To monitor these new jobs, IDA staff indicated that they conducted company site visits and the company provided monthly reports to the IDA Board. However, the agreement contained no provisions to limit funding or impose other penalties for failure to meet the job creation requirement. Additionally, company staff, IDA staff, and the project manager indicated that no more than 15 jobs were created as of October 2013, and IDA records did not evidence documented site visits or review of the company's payroll records to confirm the extent, if any, that the company created the 15 jobs. Without provisions to reduce funding or other penalties for not creating the required number of jobs and documented verifications of the jobs created, the agreement's job creation requirement has limited use.

- Section 4.8 of the modification agreement required the company to provide the IDA a monthly draw request that identified funding needs by expense category. Our review of the draw requests totaling approximately \$3.1 million submitted to the IDA during the period March 2013 through January 2014, indicated that the requests were generally only supported by invoices issued by the company and two other entities with the same President as the company. While the draw requests were sometimes accompanied by various expense spreadsheets and credit card Web page printouts, such spreadsheets and printouts were not substantiated by vendor invoices or other supporting documentation, nor was it apparent how such support reconciled to the amounts included on the draw requests.
- Section 4.9 of the modification agreement required the company to provide details of accomplishments at monthly IDA Board meetings and the company provided these updates until January 2014. The company's presentations to the IDA provided the status of various elements of the project, such as product development, employees hired, and revenue projections; however, IDA records did not evidence documentation substantiating the information included in these presentations.

Absent penalty clauses to enforce performance and documented verifications of the agreement provisions, the IDA's risk increases that grant reimbursements for unauthorized expenditures may not be detected.

Grand Jury Presentment. In 2014, the Office of the State Attorney, Tenth District (State Attorney) conducted a criminal investigation into activities related to the technology grant. Based on the State Attorney's investigation, the Grand Jury for the Tenth Judicial Circuit initiated an inquiry into the matter and, on January 7, 2015, issued a presentment summarizing its findings. While the Grand Jury did not return an indictment, the presentment included several findings of fact that indicated a lack of IDA monitoring and questionable company expenditures. For example, the Grand Jury presentment noted that:

- In awarding the grant, the IDA accepted certain verbal representations from representatives of the original grant applicant without properly vetting such information. For instance, representatives indicated that there would be at least 10,000 users upon product completion and projected that, by 2014, there would be 400,000 users that would generate \$26.4 million in revenues. However as of December 2014, the majority of the company's revenues were received from the IDA, not individual users.
- From 2011 through 2013, the owner of the company and his wife personally received over \$1.44 million of grant funds for salaries, consulting fees, and other fees.
- From 2011 through 2014, grant funds were used to pay salaries totaling \$4 million to 54 total employees who were not residents of Hardee County; however, 15 employees who were residents of Hardee County only received \$357,000. Additionally, of the 15 Hardee County employees initially hired by the company, 10 were no longer with the company.
- Training and mentoring expenditures totaling \$858,838 over a 14-month period were not appropriately monitored. For example, in October 2012, the IDA paid the company \$183,190 for training and mentoring; however, at that time, no employees had been hired.

The Grand Jury also made recommendations to completely revamp the IDA's process for grant applications, approval, and monitoring, and recommended that future grants awarded by the IDA require that open positions created by the grantee be advertised and priority be given to Hardee County residents. During a special meeting held in March 2015, the IDA Board approved an official response to the Grand Jury presentment findings and recommendations.

Certified Public Accounting (CPA) Firm Report. In June 2014, the IDA engaged a CPA firm (firm) to perform an examination review of the technology grant in accordance with *AICPA Professional Standards* for attestation engagements. The engagement letter indicated that the objective of the examination review was the expression of an opinion as to whether draw requests were fairly stated, in all material respects, based on the original grant and modification agreements.

A draft report of the results of the examination review was delivered and discussed before the IDA Board at its December 2014 meeting. Based on the draft report, the firm reviewed seven draw requests totaling \$3.1 million, or 43 percent of the \$7.25 million in total grant awards made under the original grant and modification agreements. The draft report indicated that the schedule of draw requests was fairly stated. However, the report also communicated significant matters noted during the examination that warranted the attention of the IDA. Such matters included \$194,093 (6 percent) in questioned costs for expenditures paid by the grantees and numerous related-party contracts. During the February 2015 IDA Board meeting, there was a discussion about the questioned costs and, during this discussion, the firm indicated that the grantee provided it a financial statement compilation and bank statements showing that the grantee received non-IDA financial contributions totaling more than the questioned costs. The Board voted to accept the non-IDA investment of funds as an offset to the questioned costs noted in the draft report. As of September 24, 2015, the firm had not issued a final report.

Recommendation: For future grants, the IDA should enhance monitoring procedures to sufficiently demonstrate in the public record that the IDA met its stewardship responsibilities for grant monitoring. Such procedures, at a minimum, should include documenting site visits and, when applicable, reviewing grantee payroll records to confirm the creation of new jobs; obtaining invoices to support draw requests; and maintaining records of other specific monitoring efforts. For any questioned costs identified, the IDA should require the grantee to provide documentation evidencing the allowability of the costs or ensure that grant funds are returned to the IDA.

Finding 4: Acquisition of Building for Technology Center

Previously Reported

The IDA entered into an agreement with a utility company for the provision of a dedicated backup power source for an IDA-owned building. However, the IDA did not perform an analysis to determine whether acquisition of the backup power source was a more efficient and cost-effective option than other available and reliable sources of backup power. Further, the IDA did not take steps to ensure that the agreement was in the IDA's best interest.

We recommended that the IDA implement procedures to ensure that an analysis of all alternatives is performed prior to entering into similar agreements. Additionally, we recommended that the IDA ensure its interests are protected within such agreements with clearly defined terms and remedies.

Results of Follow-Up Procedures

The IDA had no occasion to correct this finding. During the period March 2013 through April 2015, the IDA did not enter into any similar agreements.

Finding 5: IDA Financial Reporting

Previously Reported

Prior to December 2011, the IDA had not filed required annual financial reports with the Florida Department of Financial Services or provided for annual financial audits. We recommended that the IDA ensure that it timely complies with applicable financial reporting and audit requirements pursuant to State law.⁶

Results of Follow-Up Procedures

The IDA's actions corrected this finding. The IDA timely complied with the annual financial reporting and audit requirements for the 2012-13 and 2013-14 fiscal years.

Finding 6: Independent Auditor's Findings

Previously Reported

The IDA had not taken full corrective actions in response to financial reporting and internal control findings reported by its independent auditor as material weaknesses and other deficiencies. We recommended that the IDA continue efforts to address material weaknesses and other internal control deficiencies reported by the independent auditors.

Results of Follow-Up Procedures

The IDA's actions corrected this finding. The management letter prepared by the IDA's independent auditor in connection with the 2012-13 fiscal year audit indicated that all previously reported material weaknesses and other control deficiencies were corrected. Although, in connection with the 2012-13 fiscal year audit, the independent auditor reported two new significant deficiencies related to the lack of formal written policies over information technology and untimely repayment of due to and due from accounts, the IDA's independent auditor for the 2013-14 fiscal year audit reported that these deficiencies had been corrected.

Finding 7: IDA Bank Accounts

Previously Reported

The IDA had not timely removed its former treasurer from the list of authorized signers on its bank accounts and two bank accounts required only one signature to initiate transactions. Subsequent to our inquiry, the IDA updated the banking agreements to remove the former treasurer's signature authorization and require two authorized signers on the accounts.

We recommended that the IDA implement procedures to ensure that it timely amends bank agreements for personnel changes.

⁶ Sections 218.32 and 218.39(1), Florida Statutes, respectively.

Results of Follow-Up Procedures

The IDA's actions corrected this finding. Our review of banking agreements in effect during the period March 2013 through April 2015 disclosed that the agreements were timely updated for personnel and IDA Board member changes.

Finding 8: IDA Staffing

Previously Reported

The IDA did not have a written agreement with the Economic Development Council (EDC) regarding a staff arrangement whereby the EDC provided staff to the IDA to perform financial, accounting, and administrative functions. Such an agreement was necessary to establish, at a minimum, staff responsibilities and educational requirements, descriptions of services to be provided, supervisory responsibilities, and an indemnification provision.

We recommended that the IDA develop a written agreement with the EDC that contains, at a minimum, the elements described above.

Results of Follow-Up Procedures

The IDA's actions corrected this finding. As of April 2015, the IDA continued to utilize EDC staff for all administrative functions with no written staffing agreement between the IDA and EDC. The BCC approved two resolutions⁷ revising the IDA Board membership and requiring IDA Board members to also be members of the EDC Board. IDA staff indicated that because the Board members and officers of each organization were now the same, a written agreement between the two entities was unnecessary as the agreement would be signed by the same person, the Board chair.

Finding 9: IDA Construction of Speculative Building

Previously Reported

The IDA did not comply with State law⁸ when selecting a construction management entity (CME) to oversee the construction of a speculative (spec) building and other deficiencies were noted with the IDA's administration of the project. Such deficiencies included inadequate review of subcontractor bid awards and charges, failure to establish completion dates and provisions for liquidated damages, lack of timely evidence of a payment and performance bond, failure to take advantage of sales tax savings for direct material purchases, and inadequate support for general condition charges.

We recommended that the IDA implement procedures to competitively select the most qualified firm for construction projects in accordance with State law. In addition, we recommended that the IDA ensure that the subcontractor selection process is properly monitored, and implement procedures requiring construction contracts to contain appropriate penalty clauses for noncompliance and receipt of evidence of adequate payment and performance bonds prior to commencing work. We also recommended that the IDA seek sales tax exemption status and enhance procedures to ensure that general condition items

⁷ Resolution No. 12-18, dated September 6, 2012, and No. 15-12, dated March 19, 2015.

⁸ Section 287.055, Florida Statutes.

and subcontractor charges are supported by payroll records, invoices, or other appropriate documentation.

Results of Follow-Up Procedures

The IDA's actions partially corrected this finding. During the period March 2013 through April 2015, the EDA awarded grants totaling \$5.6 million to the IDA for construction of a spec building and the purchase and renovation of an existing building (renovation project). Work performed for the spec building was in three phases and the renovation project was in two phases. The guaranteed maximum price (GMP) contracts for the spec building and renovation project were \$4.3 million and \$730,000, respectively. Our evaluation of the IDA's administration of these projects disclosed:

- ***Selection of CME.*** State law⁹ limits the use of continuing contracts to projects that individually have estimated construction costs that do not exceed \$2 million. While both projects were administered pursuant to continuing contracts and subject to the State law competitive selection process, the IDA did not use a competitive selection process to select the CME for either project and continued to use the same CME for all IDA projects. While the IDA could have used a CME firm engaged under a continuing contract for the renovation project, the firm utilized was not selected pursuant to State law.¹⁰ Without use of the required competitive selection process, IDA records did not evidence that the most highly qualified firm was selected for these projects.
- ***Subcontractor Bidding Process.*** We obtained subcontractor bid tabulation sheets for the two largest phases of the spec building project and each of the two phases of the renovation project. These bid tabulation sheets included 43 work items with costs totaling \$2.4 million. Our review of documentation for 26 selected work items totaling \$2.1 million disclosed that the items were supported by detailed bidding documentation and generally matched amounts included on the final GMP for the project. IDA staff indicated that all subcontractor bids were opened in the IDA offices with IDA staff present; however, IDA records did not evidence who was in attendance for the bid openings. Documented IDA staff attendance and evaluation of this process decreases the risk of compromising the subcontractor selection process.
- ***GMP/Substantial Completion Date/Liquidated Damages.*** The CME agreements (agreements) required construction phase commencement and substantial completion dates be included in the GMP proposals and provided that, should the CME fail to substantially complete the work within the required time period, the IDA was entitled to assess liquidated damages for each calendar day thereafter until substantial completion was achieved. The liquidated damages amounts were to be established in the GMP proposals submitted by the CME.

The GMP proposals submitted to the IDA for the two largest phases of the spec building and the two phases of the renovation project did not include liquidated damages amounts. Consequently, the agreements provided no financial penalty for untimely completion of the projects and both phases of the renovation project were completed 14 and 68 days after the dates established in the respective GMP proposals. Financial penalties provide the IDA with a means to hold the CME responsible, thereby increasing the CME's incentive to complete the project by a specified date.

- ***Payment and Performance Bonds.*** The agreements required the CME to provide a payment and performance bond and IDA records evidenced payment and performance bonds in the full amount of the GMP proposals.

⁹ Section 255.103(4), Florida Statutes.

¹⁰ Section 287.055(4), Florida Statutes.

- *Direct Material Purchases.* The IDA obtained sales tax exemption status effective February 26, 2013, and our test of 15 project expenditures totaling \$414,735 disclosed that the IDA utilized its sales tax exemption.
- *Support for General Conditions and Subcontractor Charges.* Our review of pay applications totaling \$1.5 million for the largest phase of the spec building project and each of the two phases of the renovation project disclosed that the IDA generally obtained support for all general conditions scheduled costs and subcontractor charges.

Recommendation: The IDA should implement procedures to competitively select, in accordance with State law, the most qualified firm for construction projects. In addition, the IDA should further enhance procedures to require IDA staff attendance at bid openings be documented and to ensure that liquidated damages amounts are established for untimely project completion.

Finding 10: IDA Construction of Broadband Network

Previously Reported

In March 2010, the IDA entered into an agreement with a company to govern the construction, maintenance, and ownership of a broadband infrastructure network. The agreement term was 3 years and the agreement required a \$2 million investment by the company. While IDA records indicated that the project was fully constructed by August 2011, the agreement's expiration date was March 2013. Our review of activities through September 2012 indicated that the IDA did not adequately monitor the company's performance under the agreement. The IDA did not, for example, determine the company's compliance with the matching investment requirement, establish performance requirements, verify the company's compliance with insurance requirements, or obtain required annual compliance certificates from the company. Additionally, the IDA did not capitalize project costs, contrary to generally accepted accounting principles (GAAP) or maintain required insurance coverages.

We recommended that the IDA determine the company's proportional investment in the project, create a schedule to establish performance requirements, ensure evidence that insurance coverage was maintained for each site and location, capitalize project costs in accordance with GAAP, and obtain the required compliance certifications. We also recommended that, for future agreements, the IDA obtain evidence of required insurance coverage prior to beginning new projects.

Results of Follow-Up Procedures

The IDA's actions corrected this finding. As noted in our report No. 2013-102, the project had been fully constructed by August 2011 and the agreement's expiration date was March 2013. Our review of applicable actions taken by the IDA disclosed:

- *Matching Investment.* IDA records did not evidence that the company complied with the agreement's matching investment requirement by contributing \$2 million in cash, equipment, and services to the network project (project). However, in March 2013, the IDA contracted with a CPA firm (firm) to perform certain agreed-upon procedures related to the project, including a review of the company's compliance with the matching investment requirement. In June 2013, the firm reported that the company met the matching requirement.
- *Site Agreement Insurance Coverage.* Although IDA records did not evidence that the required site insurance coverages were maintained, the agreed-upon procedures conducted by the firm included a review of the insurance coverages. The firm's report indicated that the company and

the IDA obtained and maintained the required property and casualty insurance coverages during the project period.

- *Capitalization of Project Expenditures.* The IDA's 2011-12 fiscal year financial statements included the capitalization of project costs totaling \$1,999,009. The agreement between the IDA and the company included a provision stipulating that, upon expiration of the agreement, if the company substantially satisfied the requirements of the agreement, title to and ownership of equipment purchased for the project would transfer from the IDA to the company. In October 2013, the IDA Board approved transfer of the assets to the company and the assets were removed from IDA accounting records.

HARDEE COUNTY ECONOMIC DEVELOPMENT AUTHORITY

Finding 11: Hangar and Broadband Projects

Previously Reported

The EDA did not ensure that grant reimbursement requests for two grants were adequately supported in accordance with the grant agreements and only included expenditures related to the applicable project. We recommended that the EDA implement procedures to ensure that expenditures submitted for reimbursement pertain to the grant award and that reimbursement requests be adequately supported in accordance with the grant requirements.

Results of Follow-Up Procedures

The EDA's actions corrected this finding. EDA management indicated that enhanced staff training and procedures were instituted to correct the deficiencies noted. Our test of 9 grant reimbursements totaling \$3.1 million and made during the period March 2013 through April 2015 disclosed that the grant reimbursements were adequately supported, included only expenditures related to applicable projects, and were made in accordance with applicable grant agreements.

HARDEE COUNTY BOARD OF COUNTY COMMISSIONERS

Finding 12: BCC Financial Reporting

Previously Reported

The County's financial statements did not report the IDA as a component unit, contrary to governmental accounting and financial reporting standards. We recommended that, in accordance with the Governmental Accounting Standards Board's accounting and financial reporting standards, the County report the financial activities of the IDA as a discretely presented component unit in its 2011-12 fiscal year basic financial statements.

Results of Follow-Up Procedures

The BCC's actions corrected this finding. The County reported the financial activities of the IDA as a discretely presented component unit within its 2011-12, 2012-13, and 2013-14 fiscal year financial statements in accordance with governmental accounting and financial reporting standards.

End of Preliminary and Tentative Audit Findings.