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|  | State of Rhode Island and Providence Plantations  Office of Management and Budget  OFFICE OF INTERNAL AUDIT  One Capitol Hill  Providence, Rhode Island 02908-5889  TEL #: (401) 574-8170  www.audits.ri.gov |

September 26, 2019

Mr. Jesse Saglio

President

Rhode Island Commerce Corporation

315 Iron Horse Way, Suite 101

Providence, RI 02908

Dear Mr. Saglio:

The Office of Internal Audit has completed its limited scope performance audit of the Rhode Island Industrial Facilities Corporation (RIIFC). OIA reviewed RIIFC’s compliance with the Quasi-Public Corporations Accountability and Transparency Act as well as the efficiency and effectiveness of operations. The audit was conducted in conformance with the Institute of Internal Auditors (IIA) International Standards for the Professional Practice of Internal Auditing and by the authority given to the unit as stated in accordance with Rhode Island General Laws (RIGL) § 35-7.1-2(a) – Establishment of office of internal audit. The recommendations included herein have been discussed with members of management, and we considered their comments in the preparation of this report.

RIGL § 35-7.1-10(d), entitled Annual and interim reports, states that, “Within twenty (20) calendar days following the date of the issuance of the management-response copy of the draft audit report, the head of the department, agency, public body, or private entity audited shall respond, in writing, to each recommendation made in the audit report.” Accordingly, management submitted its response to the audit findings and recommendations on September 24, 2019, and such response is included in this report. Pursuant to this statute, the OIA may follow up regarding recommendations included in this report within one year following the date of issuance.

We would like to express our sincere appreciation to the RIIFC staff for the cooperation and courtesy extended to the members of our team during this audit.

Respectfully yours,

Dorothy Z. Pascale, CPA

Chief

c—Honorable William J. Conley Jr., Chairperson, Senate Committee on Finance

Honorable Marvin Abney, Chairperson, House Finance Committee

Internal Audit Advisory Group

Steven Whitney, Senate Fiscal Office

David Trembly, Senate Fiscal Office

John Ward, Chairman, Rhode Island Industrial Facilities Corporation Board of Directors

**To Strengthen Controls, the Rhode Island Industrial Facilities Corporation should:**

**Audit Executive Summary**

**Why the Office of Internal Audit Did This Review**

Rhode Island General Law 42-155-7, Audit of quasi-public corporations, requires the Office of Internal Audit (OIA) to conduct a performance audit of all quasi-public corporations once every five years. This audit of the Rhode Island Industrial Facilities Corporation (RIIFC) was performed in compliance with the statue.

The OIA conducted a limited scope audit of the RIIFC to review its compliance with the Quasi-Public Corporations Accountability and Transparency Act as well as evaluate whether operations were being administered efficiently and effectively and in accordance with applicable rules and regulations.

**Background Information**

The Rhode Island Industrial Facilities Corporation (RIIFC) is a public body corporate of the State of Rhode Island and obtained this designation and authority from Section 45-37.1 of the Rhode Island General Laws.

The purpose of the RIIFC is to act as the issuer of tax-exempt and taxable revenue bonds, which are sold to private or public investors, on behalf of Rhode Island companies seeking financing. The role of the RIIFC is to act as a conduit in a company’s efforts to obtain financing from sources other than the Corporation. The Corporation is utilized to foster economic growth within the State.

* Ensure competitive pricing is obtained for each private placement bond.
* Comply with requirements of Quasi-Public Corporations Accountability and Transparency Act.
* Develop a formal policy to govern bond issuance and monitoring processes.

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# Introduction

The Rhode Island Industrial Facilities Corporation (RIIFC) is a public body corporate created in 1956 and obtained this designation and authority from Section 45-37.1 of the Rhode Island General Laws (RIGL). Its purpose upon creation was to induce, encourage facilities industrial development by acquiring, constructing, financing, or leasing industrial projects. The RIIFC is utilized to foster economic growth within the State and may act as a conduit[[1]](#footnote-1) in a public company’s efforts to obtain financing from sources other than the RIIFC.

The RIIFC is governed by a Board of Directors (Board) and the Rhode Island Commerce Corporation (“Commerce RI”) provides administrative support and office space to the Rhode Island Industrial Recreational Building Authority. It manages the administration, business and policy decisions of the financial service program to assure compliance with board actions and policies.

The purpose of the RIIFC is to act as the issuer of tax-exempt and taxable revenue bonds on behalf of Rhode Island companies seeking financing for manufacturing projects with a $20 million total cost cap per project. The bonds are sold to private or public investors. It is permissible for the bond to absorb up to 100% of the manufacturing project cost; including land, new machinery and equipment, building costs and certain eligible “soft” costs[[2]](#footnote-2). These bonds have interest rates which are tax exempt and determined by the market at time of issuance.

RIIFC also offers taxable bonds for businesses that want to expand to commercial enterprise. The taxable bonds are similar to tax-exempt bonds; however, these bonds are intended for financing fixed commercial assets; such as land, building, machinery and equipment, and related “soft” costs. The limit per project is usually established by the bond purchaser or credit enhancer[[3]](#footnote-3).

# Recommendations and Management’s Responses

## Ensure Competitive Pricing is Obtained for each Private Placement Bond

An essential member of a governmental issuer’s bond financing team is bond counsel. Bond counsel renders an opinion on the validity of the bond offering, the security for the offering, and whether and to what extent interest on the bonds is exempt from income and other taxation. The opinion of bond counsel provides assurance both to issuers and to investors who purchase the bonds that all legal and tax requirements relevant to the matters covered by the opinion are met. An issuer should assure itself that its bond counsel has the necessary expertise to provide an opinion that can be relied on and will be able to assist the issuer in completing the transaction in a timely manner.

Government Finance Officers Association recommends as a best practice, that issuers select bond counsel on the basis of merit using a competitive process and review those relationships periodically. A competitive process using a request for proposals (RFP) or request for qualifications (RFQ) permits issuers to compare qualifications of firms and select a firm or firms that best meets the needs of their community and the type of financing being undertaken. The RFP or RFQ should clearly describe the scope of services desired, the length of the engagement, evaluation criteria, and the selection process. Issuers should have a clear understanding of their service needs (single transaction, multiple transaction, or establishment of a qualified pool of firms) and develop the RFP/RFQ to meet these needs.

Throughout the term of the engagement, the performance of bond counsel should be evaluated in relation to the stated scope of services and any areas where service needs to be improved should be communicated to the lead attorney. Ongoing contracts should be reviewed regularly and subjected to competitive selection periodically.

In a sample of five private placement bonds[[4]](#footnote-4) issued, there was no documentation of an RFP process to show RIIFC obtained several offers for bond counsels and purchasers prior to issuing the bonds. Management of RIIFC utilizes a bond counsel that is local and has experience with conduit bond issuance requirements. This legal firm also serves as general counsel for RI Commerce Corporation, Small Business Loan Corporation, RI Industrial Facilities Corporation and the RI Industrial Recreational Building Authority for at least the last five years. However, there are other bond counsel opportunities and the best pricing available for each private placement bond may not be obtained without soliciting bid proposals.

#### Recommendations:

1. Ensure competitive pricing is obtained for each private placement bond or on a regularly scheduled basis.

*Management’s Response:* Legal counsel for the RICC has informed RIIFC Staff that RFPs for legal counsel are not required. It should be noted that Bond Counsel for RIIFC has historically been performed by RIIFC General Counsel as a cost savings measure eliminating the need for two separate legal firms to document and review bond documents. General Counsel for RIIFC also states that staff is not required to issue RFPs for bond counsel. As such, no RFP for bond counsel has been necessary. Additionally, the legislation governing RIIFC does not require an RFP be issued. A prospective bond recipient may already have a bank financing their operation. As the bond issue is a private activity bond, the borrow does have the right to select the bond buyer. This has been the case for the most of the RIIFC bond issues. As is the case for public bond issues, the Financial Services staff does issue RFP’s for underwriters. Should a RIIFC bond be issued in the public market, an RFP would be issued for underwriters.

*Responsible Party: General Counsel for RICC and RIIFC state that this is not applicable.*

#### Anticipated Completion Date: Not applicable.

## Comply with Requirements of the Quasi-Public Corporations Accountability and Transparency Act

RIGL §42-155 Quasi-Public Corporations Accountability and Transparency Act establishes requirements that quasi-public corporations must follow to increase transparency of operations. The RIIFC is included as an entity subject to the Quasi-Public Corporations Accountability and Transparency Act. Therefore, amongst others, it must adhere to the following requirements:

* Adopting a list of performance measures
* Publishing a self-evaluation based on performance measurements at least once every three years
* Providing certain information directly, or via direct link, on its website.

The RIIFC did not provide documentation of identified performance measures for its mission as required by the Act. Further, there was no documentation provided to support a self-evaluation based on established measurements.

Finally, the RIIFC did not publish to its website all required information per the RIGL §42-155-6. The following is not posted:

* Quarterly financial statements
* Capital improvement plans
* Strategic plan

The RIIFC did not maintain required documentation stipulated in the RIGL and does not have all required transparency information available to the public. As a result, the RIIFC is not fully adhering to the Quasi-Public Transparency Act requirements.

#### Recommendations:

1. Identify performance measures and establish monitoring procedures.
2. Publicly post all required information to comply with RIGL §42-155-6.

*Management’s Response:* At a meeting of the RIIFC Board of Directors held on March 19, 2015 the board reviewed the Quasi-Public Transparency Act and adopted policies relating to the Act, including performance measures. Results of the performance of the program are contained within the “Listing of Revenue Bonds and Notes and Agreed-Upon Procedures Report” on an annual basis which is posted on the website of the RI Commerce Corporation as RIIFC does not maintain a website on which to publish information requested in the Act. It would be cost prohibitive for the Corporation to maintain a website.

RIIFC does not, and will not, have any activity to report regarding capital improvement plans or quarterly contracting. RIIFC also does not prepare quarterly independent financial statements as the Accounting Department for the Rhode Island Commerce Corporation does not have the staffing capacity to compile and generate financial statements.

Going forward, RIIFC can work with the Rhode Island Commerce Corporation to create a link on its website to post information required by the Act relating to RIIFC or indicate that it does not have any activity to report. RIIFC’s annual audited financial statements are currently listed on the Rhode Island Commerce Corporation’s website.

*Responsible Party: RIIFC staff will work with RICC staff to post information required by the Act on the RICC website.*

#### Anticipated Completion Date: 12/31/19

## Develop Formal Policy to Govern Bond Issuance and Monitoring Processes

The RIIFC policy manual is established to define and reflect current operational processes. The policy manual is reviewed and approved by the Board. The RIIFC does have several procedural documents to direct the bond approval process, and eligibility requirements are documented within their bylaws. Additionally, all decisions made by Management for bond issuance are reviewed and approved by the Board prior to accepting the project and bond issuance. However, RIIFC has no formal policy document that governs the bond issuance and monitoring processes.

Although these other documents and approvals help mitigate risk associated with a lack of policies, formal policies are needed because they establish a general plan of action used to guide outcomes and serve as a fundamental guideline to help make decisions and ensure continuity for succession planning.

#### Recommendations:

1. Develop a formal policy to govern bond issuance and monitoring processes.
2. Ensure policy is approved by the board.

*Management’s Response:* RIIFC Staff has compiled and submitted a draft policy manual on 9-17-2019 to the State’s auditors.

*Responsible Party: Not applicable.*

#### Anticipated Completion Date: Completed.

# Objective and Scope

The Office of Internal Audit (OIA) conducted a limited scope audit of the Rhode Island Industrial Facilities Corporation for the period of January 1, 2018 through March 31, 2019. OIA reviewed RIIFC’s compliance with the Quasi-Public Corporations Accountability and Transparency Act and with policies and procedures pertinent to the eligibility and monitoring of bonds issued by the RIIFC. The objective of the audit was to determine if the RIIFC complies with the requirements of the Quasi-Public Corporations Accountability and Transparency Act as well as determine if bond issuance is properly administered and monitored.

# Methodology

As part of our audit work, the OIA gained an understanding of the RIIFC and its operations. To address our audit objective, we performed the following:

* Requested information required under the Quasi-Public Act
* Searched website for adequate transparency disclosures
* Reviewed procedures for bond issuance process
* Reviewed bond application and issuance process and tested a sample of bonds for compliance with eligibility and approval requirements
* Evaluated bond issuance costs against industry standards

The results of this limited scope audit are communicated within this report. The OIA used an external audit firm, CliftonLarsonAllen, LLP (CLA), to supplement its staff during the performance of this audit. CLA performed the detailed audit work and was selected using a competitive bidding process.

1. A conduit issuer is an organization, usually a government agency, that issues municipal securities to raise capital for revenue-generating projects where the funds generated are used by a third party (known as the “conduit borrower”) to make payments to investors. [↑](#footnote-ref-1)
2. Soft cost is a term used for an expense item that is not considered a direct construction cost. Examples of soft costs include architectural, engineering, financing, and legal fees, and other pre- and post- construction expenses. [↑](#footnote-ref-2)
3. Credit Enhancer means a government sponsored enterprise that at any time, directly or indirectly, purchases the Borrower Loan or provides credit enhancement with respect to the Borrower Loan. [↑](#footnote-ref-3)
4. Although the audit scope was January 1, 2018 through March 31, 2019, the sample was selected from the population of all outstanding bonds, which was a total of 11. [↑](#footnote-ref-4)