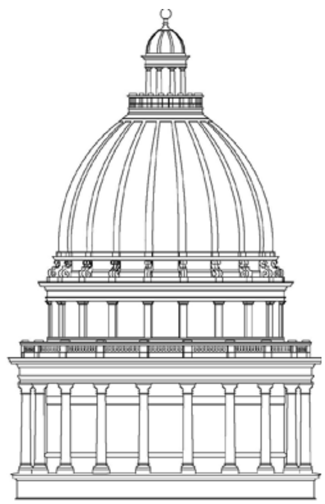
REPORT TO THE

UTAH LEGISLATURE

Number 2016-07



A Performance Audit of the Economic Development Corporation of Utah

October 2016

Office of the
LEGISLATIVE AUDITOR GENERAL
State of Utah

STATE OF UTAH

Office of the Legislative Auditor General

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AUDITOR GENERAL

October 18, 2016

TO: THE UTAH STATE LEGISLATURE

Transmitted herewith is our report, **A Performance Audit of the Economic Development Corporation of Utah** (Report #2016-07). A digest is found on the blue pages located at the front of the report. The objectives and scope of the audit are explained in the Introduction.

We will be happy to meet with appropriate legislative committees, individual legislators, and other state officials to discuss any item contained in the report in order to facilitate the implementation of the recommendations.

Sincerely,

John M. Schaff

John M. Schaff, CIA
Auditor General

JMS/lm

Digest of
A Performance Audit of the
Economic Development Corporation of Utah

Chapter I
Introduction

The Economic Development Corporation of Utah (EDCU) is a contractor for the Governor's Office of Economic Development (GOED) that assists with the recruitment of companies to Utah. Over 60 percent of EDCU's revenues come from state and local taxpayer funds. EDCU's $900,000 contract with GOED makes the State of Utah its largest contributor. EDCU employees have established a valuable network with business recruitment professionals from other states. We believe that EDCU has provided a valuable service to the State of Utah. Unfortunately, the organization's successes in its operations are coupled with problematic practices in its financial management and governance.

Chapter II
Improper and Questionable Expenses Have Occurred at EDCU

Improper Credit Card Purchases Were Linked to a Former EDCU Executive. A review of financial transactions at EDCU revealed two groups of improper credit card transactions that were made by a former EDCU executive. The first group was $2,783 of expenses that were made with a corporate credit card but were not business related, which the former EDCU executive who made the charges was allowed to identify. Due to the extent of missing documentation for the former executive's other questionable credit card purchases, we are concerned that the amount of improper purchases identified by the former executive is low. The second group consisted of $3,005 in computer hardware that is missing and lacked receipts. The former executive's improper purchases were not reimbursed to EDCU, but rather were deducted from a significant severance package that included a vehicle, multiple months of pay, health insurance, and electronic equipment. We strongly question the severance agreement's generous terms in light of the improper purchases.

Poor Documentation and Unclear Business Purposes Call into Question Many Purchases. In addition to purchases that we believe are clearly improper, other credit card charges made by the former executive are questionable because they lack documentation. Receipts were missing for half of the former executive's credit card transactions, which were worth $46,496. In addition, statements justifying each purchase's legitimate business purpose were lacking and had to be recreated. Since sufficient transaction detail was still lacking, we consider several travel purchases and other items questionable.

Providing Gifts and Meals to GOED Employees Is Risky Behavior. Going back to at least June 2013, EDCU routinely provided 76 meals worth $9,514 to GOED employees during contract update meetings, and EDCU's former executive allegedly took individual GOED employees to lunch an additional 70 times worth $2,003. In addition, EDCU gave $867 in gifts to four directors who oversaw its contract and left GOED. The timing of meals in particular was concerning, occurring when GOED was in the process of soliciting bids and renewing its contract with EDCU. By providing gifts and lunches to state employees, EDCU has engaged in behavior that is risky at a minimum and could be in violation of the Utah Public Officers' and Employees' Ethics Act or other provisions of law.

Chapter III
EDCU's Financial Governance Has Been Unacceptable

EDCU's Financial Policies and Procedures Were Inadequate. EDCU did not have a set of financial policies and procedures that guide how financial situations should be handled. For example, insufficient guidance regarding credit card purchases allowed problematic transactions to occur. In addition, other internal control processes were poorly designed or operated ineffectively. Therefore, the problematic transactions discussed in Chapter II were less likely to be identified and addressed in a timely manner.

Noncompliance with Financial Reporting Prompted Critical Organizational Changes. Responsibility for EDCU's noncompliance with these requirements rests with management and the board of trustees. Addressing this noncompliance resulted in significant organizational changes, including the creation of a finance committee for the board of trustees and changes to the management structure. We believe that these changes should bring a renewed emphasis on and fresh perspective to EDCU's financial governance.

Chapter IV
EDCU's Weak Financial Oversight Resulted in Its Tax-Exempt Status Being Revoked

Poor Financial Management Led to Revocation of EDCU's Tax-Exempt Status. After failing to file federal tax returns for three years, EDCU had its tax-exempt status revoked by the Internal Revenue Service (IRS). Nearly two years after tax-exempt status revocation, EDCU's management and board of directors became aware of the problem. EDCU's failure to complete and file financial reports resulted from poor financial oversight by EDCU management, which included unresponsiveness to independent auditors' requests for information and poor communication of issues among EDCU staff.

EDCU Should Report Financial Information to the State Auditor's Office. EDCU receives significant amounts of state and local funds and has recently dealt with concerning financial governance issues. Unfortunately, until June 2016, an audit of EDCU financials has not been completed since fiscal year 2011. We believe EDCU should provide its financial reports to the State Auditor's Office to increase transparency and accountability.

REPORT TO THE
UTAH LEGISLATURE

Report No. 2016-07

A Performance Audit of the
Economic Development Corporation of Utah

October 2016

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Chapter I
Introduction

The Economic Development Corporation of Utah (EDCU) is a contractor for the Governor's Office of Economic Development (GOED) that assists with the recruitment of companies to Utah. Over 60 percent of funding for EDCU's operations comes from state and local taxpayer funds. In addition to large contracts, the state, counties, and cities also make additional contributions to EDCU. GOED's contractual relationship with EDCU began in September 2005 when it sought to privatize its role in recruiting out-of-state businesses. In recent years, while EDCU has been a contractor for GOED, it has failed to file its federal tax returns. EDCU's inability to produce these returns when we requested them caused our audit of its operations to be initiated.

EDCU Operations Are Largely Funded with State and Local Funds

Over 60 percent of EDCU funds are generated through contributions and contracts with public entities. The State of Utah is by far the largest contributor through GOED's contract ($900,000 for fiscal year 2015) and significant additional funds that EDCU receives to pay for various receptions setup by GOED ($52,349 for fiscal year 2015). In total, revenues from government entities totaled about $2.1 million in fiscal year 2015, which accounted for 66 percent of EDCU's total revenues. While EDCU generates funds from private and public sources, it has commingled its revenues to pay for its expenditures. Therefore, all expenditures are considered to have public funds associated with them, and specific operations are not attributable to public funds.

EDCU received $952,349 in state funding from GOED in fiscal year 2015.

State and Local Governments Are EDCU's Largest Funding Source

While EDCU's operations are funded in part by contributions from private businesses, over 60 percent of its revenues each year come from state and local taxpayer funds. These government revenues include membership dues, contracts for services, and payments for

Over 60 percent of revenues that EDCU receives each year are state and local taxpayer funds.

additional services rendered to GOED. Figure 1.1 shows the relative percentages of government and private revenues collected by EDCU.

Figure 1.1 Government Entities Are the Largest Contributor to EDCU. In addition to EDCU's state contract, local governments also contribute significant funds to EDCU.

Fiscal Year	Government Revenues	Private Revenues	Total Revenues	Percent Government Revenues
2015	$ 2,086,974	$ 1,091,971	$ 3,178,945	66%
2014	$ 1,621,207	$ 1,024,082	$ 2,645,289	61%
2013	$ 1,622,290	$ 1,042,456	$ 2,664,746	61%
2012	$ 1,781,071	$ 1,015,781	$ 2,796,851	64%
2011	$ 1,487,415	$ 854,586	$ 2,342,001	64%

Source: EDCU Revenue Accounts in Its Accounting System

As Figure 1.1 shows, revenues from government entities have consistently represented over 60 percent of total revenues for the past five years. The vast majority (94 percent) of government support for fiscal year 2015 came through membership dues and contracts with government entities, including GOED, Salt Lake and Utah counties, and Salt Lake City. Please note that EDCU's initial 990 forms sent to the IRS contain different revenue figures, which EDCU acknowledges are incorrect and intends to file amended returns.

In addition to contributions, EDCU receives revenues to fund specific activities, such as its annual meeting.

In addition to contributions, EDCU also generates revenues to fund specific activities. For example, EDCU charges a fee to attend its annual meeting. Therefore, the $161,000 in revenue that was generated during fiscal year 2015 from meeting revenue was used to cover the $144,000 in costs associated with its annual meeting. Other activity-specific revenues include those generated from EDCU's annual golf tournament and trade shows.

GOED Gives EDCU Additional Funds Beyond Its Contractual Amount

EDCU's contract with GOED was increased from $525,000 to $900,000 for fiscal year 2015.

Since fiscal year 2006, the largest single source of EDCU funding has come from its contract with GOED. The contract has paid a maximum of $525,000 per year for various recruitment tasks and deliverables specified in the contract. Beginning in fiscal year 2015, the value of this contract was significantly increased to $900,000 per year, which is the current contract governing their relationship when this audit was released.

In addition to contract funds, EDCU also received multiple supplemental payments from GOED for receptions. These receptions were coordinated with trade shows and events with high profile site selectors who assist large businesses as they decide where to relocate their operations. The following figure shows the number of receptions that EDCU was paid for, the total value of those payments, and the largest sum that was paid for each year.

GOED has also reimbursed EDCU for receptions and luncheons that have exceeded $30,000.

Figure 1.2 GOED Paid EDCU to Host Receptions. Each year, GOED paid EDCU to host multiple receptions to attract businesses to Utah.

Fiscal Year	Total Payments	Number of Payments	Largest Single Payment
2015	$ 52,349	5	$ 30,000
2014	$ 32,200	2	$ 29,000
2013	$ 109,143	7	$ 25,000
2012	$ 85,116	6	$ 36,810
2011	$ 23,600	4	$ 15,000

Source: Division of Finance's FINET Data Warehouse

As Figure 1.2 shows, EDCU received significant additional funds from GOED for receptions. For fiscal year 2013 in particular, EDCU received three payments of $25,000 for receptions and a fourth payment for $22,400.

GOED's largest reception for each year in Figure 1.2 was its annual site selector luncheon at Deer Valley Resort. A member of GOED's staff is listed as the responsible party for the event. However, the bill is sent to and paid for by EDCU, and after receiving the bill, GOED reimburses EDCU for the costs. For fiscal year 2015, the luncheon costs from Deer Valley Resort were $27,252, and included the following components:

The most expensive luncheon includes a $48 per person buffet at Deer Valley Resort.

- a $48 per person buffet for 220 guests,
- beverages (water, soft drinks, beer, and wine),
- assorted desserts,
- and audio visual equipment rental.

We reviewed the invoices for the events hosted in 2012 through 2015, and all of them had a similar arrangement that was reimbursed by GOED.

EDCU claims that paying for these receptions is a separate service from its GOED contract.

EDCU's contracts with GOED required it to annually attend various trade shows and host a site selector event. EDCU's chief financial officer explained to us that the receptions GOED paid for, which were associated with these events, were additional services that EDCU provided. Thus, the organization was not compensated for them in the contract. Since GOED is EDCU's largest contributor, we believe it is appropriate to disclose the nature of all significant state funding streams that EDCU receives from GOED in this chapter.

EDCU Commingles Public and Private Funds Used for Operations

EDCU commingles its private and public funds and does not separately account for expenses covered with public funds.

While EDCU receives public and private funds for its operations, it has not accounted for them separately. Instead, funds are commingled and used for covering all of the organization's expenses. Therefore, all of the expenses made by EDCU were to some extent made with public funds. Therefore, we had full access to review all expenditures.

The only exception to this practice was in regards to alcohol purchases, for which state contracts require separate accounting. EDCU staff were aware of this requirement, and established a specific account that is intended to track all of the alcohol purchases made by EDCU.

EDCU's Significant State Funding Was A Result of Privatization

EDCU's contractual relationship with GOED resulted from GOED's desire to privatize business recruitment.

Prior to September 2005, the role of recruiting out-of-state businesses was carried out by GOED. Since then, GOED has privatized these efforts through a contract with EDCU. The following statement from request-for-proposal documentation shows the intent of the contract:

> GOED's mission is to diversify Utah's economy and create better-paying jobs for its citizens by supporting and helping to grow existing Utah businesses, as well as recruiting and attracting new businesses to the State. GOED seeks to privatize the function for recruitment of out-of-state businesses.

By awarding the contract to EDCU, the state's business recruitment efforts were consolidated with EDCU's existing efforts, which have been ongoing since its inception in 1987. As a result, GOED staff has been able to focus on administering Economic Development Tax Increment Financing (EDTIF) incentives, which are a very important part of business recruitment.

For fiscal year 2015, the value of EDCU's contract with the state of Utah was increased from $525,000 to $900,000. The increase required additional deliverables in the form of recruitment efforts focused on proactive identification of target companies. According to GOED and through our observations, EDCU appears to be delivering on the terms of its contract.

Based on statements from business recruitment professionals in other states and our review of contract deliverables, we believe that EDCU has provided a valuable service to the State of Utah. EDCU employees have established a valuable recruitment network with business recruitment professionals from other states. Unfortunately, the organization's successes in its operations are coupled with problematic practices in its financial management and governance.

Despite concerns with its financial oversight, EDCU appears to provide a valuable service to the state.

Audit Scope and Objectives

This audit began as a special project looking at whether a few key nonprofit organizations that the state does business with had filed their tax returns. Tax filings for a few of these organizations were quickly made available. However, EDCU did not follow this same response pattern.

In early October 2015, we placed phone calls and left voicemails requesting EDCU's 990 tax returns. Finally, on October 13, 2015, we sent an email to EDCU with our request and received their 2010 tax return. In addition, we were told we would receive the 2011 and 2012 tax returns that week. After a month, EDCU's office manager provided copies of requested 990s after a call from the Auditor General reminded them we had not received these documents.

A full audit of EDCU's finances was authorized after we encountered delays obtaining its tax returns.

Based on our observations during the risk assessment period of the audit, the Legislative Audit Subcommittee prioritized a full audit of EDCU. The audit was focused on reviewing:

- Improper and questionable transactions (Chapter II)
- Financial controls and governance (Chapter III)
- Compliance with financial reporting requirements (Chapter IV)

These objectives were completed while a financial audit by EDCU's independent auditor was simultaneously occurring. The financial audit was completed in June 2016 and expressed concerns similar to some issues raised in this report.

Chapter II
Improper and Questionable Expenses Have Occurred at EDCU

The Economic Development Corporation of Utah (EDCU) has suffered from an unacceptably low level of financial oversight and accountability. As a result, the following instances of improper and questionable activities were observed.

A former executive made improper and questionable purchases that lack sufficient documentation.

- A former EDCU executive, who left the organization during the audit, made improper credit card purchases ($5,788), which we are concerned could be fraudulent in nature.
- Over 33 months of credit card transactions worth $89,290 by the same former executive had their business purpose recreated during the audit, and $46,496 of those charges lacked a receipt. We believe some of these purchases are questionable.
- Gifts ($867) and lunches ($11,517) purchased over a three-year period by EDCU for Governor's Office of Economic Development (GOED) employees administering EDCU's contract are questionable and risky in that they may have violated various state statutes.

Over at least a three-year period, the former executive engaged in improper transactions, which include personal purchases, missing computer hardware, and gifts and lunches for state employees. In addition, questionable purchases that may also be improper were identified among the credit card charges that lacked a stated legitimate business purpose, a receipt, or both.

Over 60 percent of EDCU contributions come from public funds, which are required to have adequate controls in place.

We are very concerned that EDCU has not ensured that taxpayer funds have been spent appropriately. Since over 60 percent of EDCU contributions come from public funds, it is essential that adequate controls be implemented to safeguard those funds. Because of the extent of problematic expenses observed, discussion of this issue is separated into two chapters. This chapter highlights concerning transactions, while Chapter III provides recommendations to improve EDCU's control framework.

Improper Credit Card Purchases Linked to a Former EDCU Executive

A former executive used his business credit card to make improper purchases and bought computer hardware that is missing.

A review of financial transactions at EDCU revealed improper, potentially fraudulent, transactions on a former EDCU executive's credit card. The former executive left EDCU during the course of our audit. Specifically, two groups of improper purchases were observed during our review of EDCU's finances. The first group consisted of improper expenses that the former executive charged to his corporate credit card. These expenses were identified by the former executive, and he offered to assume responsibility for them because he could not recall each expense's business purpose. We are concerned that the former executive under-reported improper items purchased on his credit card. The second group of improper credit card purchases was computer hardware that is missing, which we identified after the executive left the organization with a severance agreement. Because these hardware purchases lacked receipts, backup copies had to be requested from the vendor so we could match serial numbers on equipment.

Rather than having the former executive pay EDCU back for improper purchases, the amount was deducted from a significant severance package.

As part of the departure, the CEO and the former executive entered into a severance agreement, which scripted the terms of the departure in return for compensation. The former executive's improper purchases were not reimbursed to EDCU, but rather were deducted from a significant severance package that included a vehicle, multiple months of pay, health insurance, and electronic equipment. However, the missing hardware we identified was not included in the severance agreement. In fact, EDCU did not know it was missing until after the severance agreement was already in effect. We strongly question the severance agreement's generous terms in light of the fact that it benefited someone who potentially committed fraud involving taxpayer funds.

A Former Executive Identified Improper Charges to be Repaid

The former executive self-identified the purchases that would be reimbursed to EDCU.

A former executive at EDCU, who left the organization during the audit, consistently failed to document the business purpose for his credit card transactions. Working with EDCU's newly hired chief financial officer (CFO), the former executive reviewed his credit card charges over a 33-month period and identified a business purpose for each transaction. While doing so, he also identified $2,783 in credit card charges that he would reimburse because he allegedly could not recall their business purpose. According to the CFO, the former executive claimed each of these transactions had a business purpose, but he could not recall the purpose and would therefore pay for the charge. The following purchases are those he agreed to pay for:

- A traffic ticket issued by Iron County Justice Court: $148
- An online traffic school course: $48
- Two Apple iPhones: $425
- Two Golf Outings: $173
- An undocumented purchase at Walmart: $317
- An undocumented purchase at a pottery studio: $207
- Undocumented purchases at a Marriott: $237
- Meal purchases from various vendors: $1,227

Based on the recreated business purpose statements for these transactions, it is clear that not all of the purchases had a business purpose and some were personal purchases. For example, the pottery studio charge was marked "inadvertent charge to be charged back," meaning the former executive accidently used the business card rather than his personal card. According to the CFO, other charges, such as the traffic ticket and traffic school, were claimed by the former executive to be business related because he was driving to a business event when the citation occurred. However, the former executive's justification was rejected by the new CFO and was included as a transaction to be repaid.

We do not believe that all improper transactions were identified and reported by the former executive, and the problem is more serious than EDCU has reported. Specifically, the business purposes recreated by the former executive lacked pertinent details, like who benefited from an activity or meal and the business objective being accomplished. Therefore, we could not independently assess whether the purchases were truly business or personal. The next two sections raise other concerns that caused us to conclude that the possibility exists that all of the former executive's personal expenses were not identified.

A lack of detail stating the business purpose of transactions prevented us from independently identifying personal purchases.

The Former Executive Was Allowed to Identify Charges That Would Be Reimbursed. As an example of missing documentation, charges at a Marriott hotel for $237 lacked a receipt and a description of the business purpose for the charge. Without supporting documentation for the charge, EDCU relied on the former executive to identify expenses that would be reimbursed because he could not recall their business purpose. Similar to the pottery studio charge discussed on the prior page, the CFO noted that the former executive claimed the Marriott charges were an "inadvertent charge" to the business credit card rather than his personal card. As will be discussed later, we identified other questionable charges that either lacked receipts, business purpose statements, or both.

The limited time period that improper purchases were made raises concern that all improper purchases were not identified.

The Former Executive Only Identified Reimbursed Charges During Half of the Period under Review. All of the expenses to be reimbursed by the former executive occurred between August 2013 and December 2014, a period of 17 months. However, the expenses reviewed by the CFO covered mid-June 2013 to mid-March 2016. No improper expenditures were identified for the last 15 months of credit card charges. We are concerned that not all of the former executive's improper expenses were identified.

We believe the $4,000 identified as "undocumented credit card charges" is a considerably low valuation.

When EDCU's CEO notified us of the former executive's departure, he explained that the amount to be reimbursed (or deducted from the severance package) was increased to ensure EDCU was fully reimbursed. Instead of the $2,783 that the former executive identified, the CEO told us that the amount was increased to $4,000 to ensure all "undocumented credit card charges" were covered. However, based on our observations in this section and the following sections, we believe that even the $4,000 amount is a considerably low valuation of improper expenses in this chapter.

The Former Executive Purchased Computer Hardware That Is Missing

After the CEO apprised us of EDCU's evaluation of the former executive's credit card statements, we conducted our own review. One test we conducted was to validate 15 transactions between July 2013 to December 2014 of more than $200 each that totaled $14,534. During our evaluation, we encountered multiple challenges because of poor record keeping and documentation. We are concerned that some of the missing computer hardware was inappropriately taken.

Less than Half of the Transactions Had Receipts. As an example of the former executive's poor documentation, only 6 of the 15 transactions had receipts available for our review. In an attempt to identify what was purchased, we requested that EDCU's office manager collect additional receipts from the vendor (The Apple Store). We obtained seven additional receipts; receipts for two purchases could no longer be retrieved from the vendor's system.

Only 6 of the 15 purchases over $200 from a computer vendor had a receipt, so missing receipts were requested from the vendor.

EDCU's Inventory Control Records for Devices Were Incomplete and Inaccurate. When we asked for the location of computer devices listed on the receipts, the office manager provided an incomplete and inaccurate sheet of Apple devices assigned to staff. For example, the original sheet indicated that the serial numbers for iPads assigned to the CEO, the former executive, and chief marketing officer were unknown. After a week of working on identifying devices, the office manager provided an updated copy of the device tracking sheet. The new copy contained serial numbers for the CEO and chief marketing officer but still lacked a number for the former executive. Because his tablet and phone were part of the severance agreement, the serial numbers for this equipment were never confirmed.

EDCU's hardware asset tracking sheet was incomplete and inaccurate.

Several Devices Bought with the Former Executive's Credit Card Could Not Be Found. We worked with EDCU's office manager to identify the 15 devices purchased by the former executive. Using various means, including checking EDCU's device tracking sheet, searching the office, contacting the former executive, and reviewing his severance agreement, we found 11 of the 15 devices purchased on the former executive's card. Nine devices were eventually identified through various EDCU documents. As mentioned earlier, an iPhone and an iPad were given to the former executive in the severance agreement to be discussed in the following section. Four devices could not be located; Figure 2.1 details the cost of these missing items.

In addition to two devices given to the former executive, four additional devices could not be located.

Figure 2.1 Purchased Devices That Are Missing with No Documentation. Four devices were not found during our hardware review. We are concerned that these items may have been purchased for personal use. EDCU has not been fully reimbursed for these items.

Purchase Date	Item	Supplemental Purchase	Price
10/24/2013	iPhone 5S	Device Only	$ 426.33
1/22/2014	iPad	Device & Protection Plan	750.98
6/30/2014	iMac Computer	Device & Protection Plan	1,467.05
12/24/2014	iPad Mini	Device & Cover	361.10
Total			**$ 3,005.46**

Source: Receipts Obtained Directly from the Vendor

According to EDCU's cellular service provider records, one of the missing devices was assigned to the former executive's family member.

During our test, we were unable to confirm the location of the four devices listed in Figure 2.1. For example, the former executive told EDCU the iPad mini might have been used as a giveaway in EDCU's golf tournament, but the office manager refuted this explanation. In addition, according to carrier records for EDCU's mobile device account, the missing iPhone 5S was assigned to a family member of the former executive.

The computer hardware in Figure 2.1 could not be identified at EDCU. If EDCU had received documentation of these purchases via receipts and approved them, the organization would bear responsibility for the missing hardware. Because the former executive did not provide receipts, we believe that the former executive is responsible for them. Therefore, the lack of receipts and missing hardware are reasonable justification that the former executive should reimburse EDCU for the items.

In addition to improper expenses, other questionable purchases that lacked documentation are discussed later in this chapter.

Other expenses are discussed later in this chapter that also lacked receipts and statements about their business purposes. Without documentation, we could not confirm whether these additional purchases were appropriate or improper. Therefore, we classified them as questionable.

Severance Agreement Details Are Needed to Clarify EDCU Statements

One of the key provisions in the severance agreement signed by the CEO and former executive is confidentiality about the details of the agreement. However, within the paragraph that discusses confidentiality, an exception is granted for government audits. Specifically, the paragraph includes the following statement:

> This paragraph shall not apply to any information or records [EDCU] is required to provide by subpoena or in response to any lawsuits, government audits, investigations or inquiries of any kind. Otherwise, the Parties agree to reveal only that any dispute between them has been resolved.

The confidentiality provision in the former executive's severance agreement includes an exemption for government audits.

In the same confidentiality paragraph, the parties agreed to create a script regarding the matter, specifically for ". . . speaking with other employees, members and outside organizations . . . ." As government auditors, we believe it is our responsibility to ensure that such scripted statements are accurate and do not distort the facts.

We believe clarification is necessary for EDCU statements that the former executive repaid "undocumented charges." Specifically, EDCU's CEO provided the following response to their independent auditor's concern about undocumented charges: "Those employees with undocumented expenses have fully reimbursed the company."

The CEO claimed in his response to an independent audit that undocumented expenses have been reimbursed.

We believe this statement is misleading because the former executive did not reimburse the company. Instead, the improper expenses identified by the former executive were deducted from the severance agreement that included a vehicle, multiple months of pay, paid health insurance, and electronic equipment. We believe that it is questionable to further enrich an individual who already improperly benefitted from personal charges with a company credit card. With over 60 percent of EDCU funding coming from state and local taxpayer funds, this action by EDCU is strongly questionable. The next section of the report discusses additional purchases that, because of missing receipts and unclear business purposes, are questionable.

We believe it is misleading to claim reductions to a substantial severance package as fully reimbursing the company.

Poor Documentation and Unclear Business Purposes Call into Question Many Purchases

While the prior section discussed expenses that we believe are clearly improper, other credit card charges made by the former executive that lack documentation are questionable. Receipts were missing for over half of the former executive's credit card transactions, which were worth $46,496. In addition, statements that justified a legitimate business purpose were lacking and had to be recreated. Because sufficient transaction detail was still lacking, we considered several travel purchases and other items questionable and were unable

Over half of the former executive's credit card purchases lacked a receipt and most required recreated business purposes.

to conclude which purchases were appropriate. The lack of documentation necessitates significant changes to financial oversight at EDCU.

Over Half of the Former Executive's Credit Card Purchases Lacked Receipts

EDCU's employee manual establishes the expectation that expenses should have receipts and legitimate business purposes.

EDCU's employee manual establishes the expectation that reasonable and appropriate business expenses shall be reimbursed with original receipts. This expectation applies to credit cards. However, EDCU was not following this policy. Over the 33-month period from mid-June 2013 to mid-March 2016, the former executive made 1,084 charges on his credit card worth $89,290. As shown in Figure 2.2, a majority of the transactions had no submitted receipts.

Figure 2.2 A Majority of the Former Executive's Credit Card Transactions Lacked Receipts. Receipts showing what was purchased with his credit card were not included in EDCU's supporting documentation.

Status	Transactions	Percent	Amount	Percent
Receipt	493	45%	$ 42,794	48%
No Receipt	591	55%	$ 46,496	52%
Total	**1,084**	**100%**	**$ 89,290**	**100%**

Source: EDCU Records for the Former Executive's Company Credit Card

Credit card purchases that were lacking receipts totaled $46,496, which accounts for over half of transactions.

As Figure 2.2 shows, over half of the credit card transactions by the former executive (55 percent) and over half of the dollar volume (52 percent) lacked receipts showing what was purchased. With the context of improper purchases discussed earlier in this chapter, the sheer volume of missing receipts was alarming. For example, Figure 2.3 shows travel expenses where EDCU's new CFO noted that receipts were missing and assumed the former executive's assistant could document them, which ended up not being the case.

Figure 2.3 Undocumented Travel Expenses Assumed to be Retained by the Former Executive's Assistant. While the former executive claimed his assistant had the documentation for these travel expenses, she provided us with no receipts.

Category	Transactions	Amount	Largest Charge
Airfare	47	$ 11,132.20	$ 1,726.39
Hotel	9	3,971.99	1,078.92
Rental Car	5	1,306.28	728.65
Total	**61**	**$ 16,410.47**	**Not Applicable**

Source: EDCU Credit Card Transaction Details with CFO Notes

This group of 61 transactions accounts for over a third (35 percent) of the value of transactions lacking receipts. Our primary concern involves the large value of some individual transactions. Specifically, a $1,079 charge for a hotel was made via the website *hotels.com*, which gave us minimal information to follow up on because a receipt was missing. When we asked the assistant for the receipts for the purchases in Figure 2.3, she told us that she did not have them.

Large travel-related expenses, such as a $1,079 hotel stay, lack receipts.

Other transactions worth $24,339 were also lacking receipts, and included a wide variety of items, such as:

Additional purchases lacking a receipt include expenses for meals, computer equipment, gas, parking expenses, and golf outings.

- meals with staff, clients, and GOED employees,
- computer hardware and peripherals,
- gas purchases,
- parking expenses, and
- a golf outing

Missing receipts makes determining the appropriateness of purchases difficult. As was discussed earlier, missing receipts concealed missing computer hardware purchases until an inventory check was performed. Because it is unclear what exactly was acquired by these purchases, it was difficult for us to determine whether each purchase was appropriate. Some other transactions with no receipt included monthly services, such as data plans and a satellite radio subscription, which accounted for $5,746 (12 percent) of transactions with no receipt. Since not retaining receipts for subscriptions is an office-wide practice, we did not focus on these expenses.

Meals and Other Purchases Lacked Details about Their Business Purpose

Problems with financial oversight were not limited to one employee. From a limited sample of other employees' credit card statements, we found at least one other employee whose transactions lacked adequate documentation. However, the former executive was responsible for much of the business recruitment and made a significant number of transactions. We question whether all purchases on the former executive's credit care were prudent uses of tax payer funds. The following sections detail some credit card charges that we found questionable.

The former executive purchased $244 worth of clothing allegedly for guests, which exceeds EDCU's $50 limit for gifts.

Clothing Was Purchased, Allegedly for EDCU Guests. Two of the former executive's charges were at a Las Vegas men's clothing store. According to the two receipts, three items were purchased. Excluding Nevada sales tax, the three items cost $135, $68, and $41. The receipt did not indicate who received these items. When the CFO and former executive reviewed the charges, he indicated that these purchases were for a company representative attending a recruiting visit hosted by EDCU. While we cannot confirm who received the merchandise, giving gifts to someone in excess of $50 conflicts with EDCU's gift acceptance policy.

The former executive purchased, $173 worth of golf equipment, which the CEO said he approved, although his approval is not documented.

Golf Equipment Was Purchased with the Credit Card. During a trip to Las Vegas in May 2014, the former executive purchased items from a golf shop totaling $173. A store receipt indicated that a golf glove, golf balls and a $110 pair of golf shoes were purchased as supplies for a golf tournament. EDCU's CEO confirmed that the equipment was purchased to participate in a golf activity during a tradeshow. However, we question the need for the organization rather than the former executive to cover the cost of equipment, which we assume was kept by the employee.

The former executive paid $1,649 for 65 lunches with his staff near EDCU offices with the company credit card.

Business Development Staff Were Allegedly Taken to Lunch. In addition to weekly lunches purchased during contract updates with GOED and other lunches with individual GOED employees (discussed more in the next section), the former executive reported allegedly taking his own staff to lunch 65 times, which cost $1,649. Most of these meals (54) were at locations within a quarter mile of EDCU offices in downtown Salt Lake City. Due to missing details about who attended them and what business objective was accomplished, we could not confirm the business nature of these lunches. Thus, we consider the purchases a questionable use of funds as they lack adequate detail about their business purpose.

After Hours Food Purchases Were Made at a Store Close to the Former Executive's Home. Another questionable purchase involves multiple take-and-bake pizzas purchased from Papa Murphy's. EDCU offices lack an oven, making both the timing and proximity of the purchase questionable. Specifically, the pizza was purchased at 6:00 pm near the former executives' home, which is several miles from EDCU offices.

While staff lunches and individual purchases for pizza, golf equipment, and men's clothing may not individually raise concern, their cumulative effect illustrates the extent of questionable expenses we observed. In addition, we believe that the expenses are concerning because taxpayer funds were used. EDCU management needs to review what is and is not an appropriate use of publicly funded corporate resources.

While individual purchases may not be concerning, the cumulative effect of many questionable and undocumented charges is concerning.

Travel Combining Vacations and Business Were Not Documented

One of the concerns expressed to us during this audit was whether inappropriate expenses were covered during trips when the former executive combined vacation and business. During our review of the former executive's credit card charges, we noted multiple instances where one or more of the following typical expenses were omitted from a trip: lodging, transportation, or meals. For example, the following charges in Figure 2.4 were made during a vacation to California in August 2014, which excluded hotels and included only a single meal.

Trips combining business and personal leave raised concerns whether the charges with the EDCU credit card were appropriate.

Figure 2.4 Transportation Charges without Lodging and Meal Expenses Was Concerning. Trips by the former executive that combined vacation and business purposes raised concerns about whether inappropriate expenses were covered by EDCU.

Date	Vendor	Location	Amount
7/30/2014	Chevron	Mesquite, Nevada	$63.84
7/30/2014	Chevron	Westminster, California	$108.40
7/30/2014	Barnes and Noble	Huntington Beach, California	$22.36
8/8/2014	Simmzy's	Long Beach, California	$121.64
8/9/2014	76 Fuel - MGM	Westminster, California	$74.71
8/9/2014	76 Fuel - MGM	Westminster, California	$29.09
8/9/2014	Loves Country	Las Vegas, Nevada	$81.12
8/10/2014	Maverik	Salt Lake City, Utah	$100.10
8/27/2014	Enterprise	Salt Lake City, Utah	$1,019.98
Total			**$1,621.24**

Source: EDCU Credit Card Statements September 2014

As Figure 2.4 shows, nearly all of the charges were related to transportation, with the exception of the charge at Barnes and Noble and Simmzy's in Long Beach, California. When we asked the CEO about these purchases, he provided the following response in an email clarifying their verbal agreement:

The CEO explained that he and the former executive never documented their verbal agreement of allowable expenses during these trips.

> On several occasions over the years of his employment at EDCU, [the former executive] and I discussed the idea of using some of his time during his annual family vacations to Southern California and other locations to make some business calls on companies or site selectors in that area. He and I agreed that in exchange for taking one of two days of his vacation for this, the company would cover the cost of his rental car during his trip. I justified this based on the greater cost of sending him on a separate business trip to the area, which would include airfare, hotel, meals and rental car. Another factor was getting time in his very busy schedule to take the time to go there on his own whereas he could do so while he was already there for another purpose. This circumstance applies to the rental car charges in August 2013 and August 2014.

Unfortunately, this agreement between the CEO and former executive was never formalized in writing to specify what would and would not be covered. In addition, no records showed what companies or site selectors were contacted during this trip. Because of the lack of documentation, we could not determine whether the charges were appropriate, thus we consider them questionable.

Similar scenarios combining vacation and business were also observed. Specifically, the following were identified where only rental cars, lodging, or both were paid for during the former executive's trip:

- Southern California (August 2013)
- St. George, Utah (October 2014)
- St. George, Utah and Southern California (January 2016)

No records were provided showing the business that was conducted during these trips.

Without documentation, we did not feel satisfied relying on the CEO to explain that he approved these expenditures. No lists of contacts made or other justifiable business purpose were provided by the former executive. Because the CEO documented his approval after the fact, it remains unclear to us the extent to which legitimate business objectives were achieved during these trips.

Overall, we are concerned with the inadequate documentation associated with transactions. Because EDCU receives state taxpayer funds, we believe that better stewardship is needed. As part of the audit, we requested receipts, which had to be obtained from vendors, and the legitimate business purposes had to be explained after the fact rather than with written explanations when purchases occurred. Therefore, in addition to rectifying a lack of policies, there needs to be better adherence to existing policies. Improved financial oversight is needed by EDCU's management and board of trustees.

We believe that stewardship of taxpayer funds necessitates better documentation of expenses.

Providing Gifts and Meals to GOED Employees Is Risky Behavior

By providing gifts and lunches to state employees, EDCU has engaged in behavior that is unadvisable. After reviewing the gifts and meals EDCU provided to GOED employees, legislative attorneys issued a legal opinion warning that EDCU's actions could be in violation of the Utah Public Officers' and Employees' Ethics Act or other provisions of state law. At a minimum, the opinion (see Appendix) states that EDCU's behavior is clearly risky.

Going back to at least June 2013, EDCU routinely provided meals to GOED employees and occasionally gave gifts to directors who oversaw their contract. As those directors left GOED, EDCU provided gifts between $100 and $300. The timing of meals in particular was concerning, occurring when GOED was in the process of soliciting bids and renewing its contract with EDCU, which increased from $525,000 to $900,000 per year. The practice of giving gifts (and state employee's accepting gifts) creates, at a minimum, the appearance of impropriety. Therefore, we recommend that EDCU's board review the practices of providing meals and other gifts to public employees and establish a policy that ensures compliance with statute and protects against the appearance of impropriety.

EDCU engaged in risky behavior by providing meals and gifts to GOED employees.

EDCU Gave Gifts and Meals to GOED Employees

Because of insufficient record keeping, information about specific meal recipients was not available.

Based on our best estimation, EDCU provided routine lunches to state employees that amounted to a significant amount of money to any one employee. Because EDCU's record keeping and financial management were severely lacking, we could not accurately specify who received each gift and meal. Of necessity, we relied on EDCU's newly hired CFO's classification of expenses based on her interviews with the former executive and other EDCU employees. To the extent possible we validated the information and determined that the following benefits were awarded to GOED employees:

- Gifts given to outgoing GOED directors
- Meals purchased during contract updates with GOED
- Meals purchased for individual GOED employees
- A golf outing purchased for a board member

The following sections provide additional detail regarding the amount and frequency of meals and gifts that were involved. It is also important to remember that EDCU commingles all its funds and over 60 percent of those funds are from taxpayers. GOED officials reported that they are rewriting policies to more clearly inform employees of practices that are not acceptable.

EDCU purchased gifts ranging from $100 to $300 that were intended for outgoing GOED directors.

EDCU Bought Gifts for Outgoing GOED Directors. During our review of the former executive's credit card records, multiple purchases were identified as recognition gifts for directors who were leaving GOED. Figure 2.5 shows the value of gifts bought for four directors.

Figure 2.5 EDCU Purchased Gifts for Directors as They Left GOED. According to the records recreated by EDCU's CFO and former executive, he purchased gifts for four GOED directors.

Director	Purchase Date(s)	End of Employment	Amount
A	June 11, 2014	June 24, 2014	$ 111.60
B	June 19 & 20, 2014	July 7, 2014	$ 174.65
C	September 15, 2014	September 15, 2014	$ 285.67
D	December 17, 2014	January 2, 2015	$ 294.64
Total			**$ 866.56**

Source: EDCU Credit Card Documentation and Department of Human Resource Management Data

As Figure 2.5 shows, the former executive purchased over $100 in gifts for each director. According to available receipts, the gifts included articles of clothing, designer sunglasses, and other items. While we could not confirm that these items were conferred to the directors before their employment terminated, GOED did host a farewell event for each director that EDCU staff were invited to attend. According to Figure 2.5, the gifts intended for each director were purchased before each director left GOED employment.

EDCU Purchased Meals for Contract Update Meetings. According to its contract with GOED, EDCU's recruitment lead (the former executive) would meet weekly or biweekly to discuss recruitment efforts and outcomes with GOED. There is no provision in the contract for meals to be part of those meetings, but EDCU provided GOED staff with lunch.

EDCU purchased meals for GOED employees during weekly or biweekly contract update meetings.

From mid-April 2015 to mid-April 2016, we estimate that each GOED employee received about $330 worth of lunches. During these 12 months, $3,309 of meals were purchased, and according EDCU staff, about 10 individuals usually attended these update meetings. These updates were regularly attended by EDCU's business development team (approximately six members) and the following individuals from GOED's Corporate Recruitment and Business Services unit:

During a 12-month period, we estimate that each GOED employee received $330 in meals during contractual updates.

- the managing director,
- the incentives manager,
- the incentives coordinator, and
- an intern

These meals appear to be a longstanding tradition. For the 33-month period we reviewed (July 2013 through April 2016), EDCU provided 76 meals worth $9,514. According to GOED, the intern was an infrequent meeting participant. Therefore, GOED's share of these lunches would be approximately one-third of the cost or $3,171 over three years.

EDCU's Former Executive Allegedly Bought Additional Meals for Individual GOED Employees. In addition to meals provided during contract update meetings, EDCU's former executive indicated that he also took individual GOED employees to meals. From June 2013 to February 2016, 70 meals worth $2,003 were purchased for undisclosed GOED employees. The vast majority of these meals were at restaurants located in the City Creek Mall's food court, which is connected to the same building as GOED's offices.

In addition to contract update meals, 70 meals worth $2,003 were purchased for individual GOED employees.

Combining these lunches with the contract update lunches shows that, during some weeks, EDCU's former executive had weeks where he reported having lunch with a GOED employee every day. The justification for using EDCU funds was poorly documented. Therefore, we consider many of these meals to be improper given their frequency, proximity to EDCU and GOED offices, and the contractual relationship.

EDCU's former executive also paid for a GOED board member to participate in a $400 golf tournament.

EDCU's Former Executive Paid for a Golf Tournament for a Board Member. Another questionable charge that we identified on the former executive's credit card involved $400 in fees associated with a golf tournament fundraiser for a local high school. The entrance fees for the tournament were purchased in September 2014, and the participants included the former executive, a current member of the Board of Business and Economic Development, and a third individual who appears to have ties to the former executive outside his role at EDCU.

The board member who participated in the golf tournament was a former GOED director. This individual was the intended recipient of some gifts in Figure 2.5 and participated in the lunches provided during contract updates. In addition, this individual was identified as participating in the additional lunches paid by the former executive. Therefore, this individual was one of the primary benefactors of EDCU's meals and gifts given to GOED employees.

GOED Awarded EDCU An Updated Contract

Since September 2005, EDCU and GOED have had a contractual relationship for business recruitment services. In February 2014, a new updated contract was signed by EDCU's former executive and GOED's former managing director of Corporate Recruitment and Business Services. Both individuals were involved in the questionable gifts and meals discussed in the prior section.

We are concerns about the meals that occurred during the solicitation period for EDCU's current contract.

The contract was the result of a request for proposal (RFP) process facilitated by the Division of Purchasing. We are concerned about the appropriateness of meals purchased for GOED employees during the RFP solicitation period and the other meals and gifts previously discussed. The next section discusses how this risky conduct gives the appearance of impropriety and may have violated statute.

Meals and Gifts May Have Violated Statute

The risks associated with exchanging gifts are acknowledged in EDCU's gift acceptance policy in its employee manual. Specifically, the policy states:

> [EDCU] is a high-profile corporation, which enjoys the public's trust. Thus, to avoid the appearance of impropriety, [EDCU] employees must exercise care in accepting any gift, gratuity, favor, entertainment, reward, or any other item of monetary value that might influence or appear to influence the judgment or conduct of the employee in the performance of his or her job.

EDCU's gift policy acknowledges its need for the public's trust and the importance of avoiding the appearance of impropriety.

We believe that this policy emphasizes the point that EDCU is a steward of taxpayer funds. Therefore, the conduct of its employees must reflect a high standard. Specifically, the intent of this policy is to "avoid the appearance of impropriety." We believe that this standard has not been upheld. Based on our consultation with legislative attorneys in the office of Legislative Research and General Counsel, providing meals and gifts to GOED employees may be a violation of state statute.

After providing legislative attorneys with documentation that we obtained during the audit, we asked whether the meals and gifts provided by EDCU to GOED employees violated statute. In response, legislative attorneys provided the legal opinion found in this report's appendix. In summary, the following answer was provided:

Legislative attorneys provided us with a legal opinion (see Appendix) that considers these meals and gifts risky.

> By providing meals and other gifts to employees of GOED and a member of the Board of Business and Economic Development, EDCU engaged in risky conduct that *may* constitute a violation of the Utah Public Officers' and Employees' Ethics Act or other provisions of state law.

Considering that EDCU and GOED may have violated statute, we recommend that both entities reconsider their policies and practices regarding gifts and meals. We acknowledge that the recruitment of businesses considering relocation in Utah necessitates showcasing Utah, which may include providing meals and experiences unique to Utah. However, it appears that statute expects that an entirely different standard applies to the contractual relationship between EDCU and GOED.

The opinion from legislative attorneys specifically evaluated whether three statutes were violated. Each statute establishes a different set of criteria and exclusions that define when a violation occurs. For example, the Utah Public Officials' and Employees' Ethics Act allows for occasional gifts that do not exceed $50. Regarding the meals provided by EDCU to GOED employees, legislative attorneys gave the following analysis:

While the Employee Ethics Act allows occasional gifts, the exchanges between EDCU and GOED could be argued to be regular and frequent.

> Accepting or providing a gift more often than occasionally or of a value in excess of $50 creates a circumstance in which the motives of the employee and the giver of the gift might be called into question. A meal is a gift, and the frequency with which EDCU provided meals to GOED employees could easily be argued to be more than occasional. Indeed, an argument could be made that the meals were given regularly and frequently.

In isolation, any one gift or lunch may not rise to the level of concern. However, the frequency, totality, and timing of gifts and lunches discussed throughout this section calls into question the relationship between EDCU and GOED. Certainly, we were concerned as we reviewed the documentation and circumstances of the activity.

Throughout this chapter, we have discussed improper purchases, which we consider to be potential fraud, as well as questionable meals and gifts exchanged between EDCU and GOED. As part of their analysis of each statute, legislative attorneys included two important caveats. First was that "a prosecutor would need to determine whether the filing of charges was warranted." Second, the outcome of a proceeding would necessitate ". . . a fact-specific analysis by [a jury] to determine whether a violation has occurred."

Therefore, it is important to acknowledge that the role of this audit has been to point out the improper and questionable transactions and exchanges that took place involving taxpayer funds. Ultimately, if any legal action were to be considered, the decision to do so would necessitate additional analysis by those charged to conduct such.

Recommendations to correct the poor financial control and oversight at EDCU can be found at the end of Chapter III

Chapter III
EDCU's Financial Governance Has Been Unacceptable

The Economic Development Corporation of Utah (EDCU) has not adhered to financial standards expected of Utah nonprofit organizations. First, EDCU has not had adequate financial policies and internal controls in place to prevent the improper, questionable, and risky transactions detailed in Chapter II. Second, EDCU's financial oversight has been insufficient, as EDCU did not comply with financial reporting requirements to be outlined in Chapter IV. These omissions spurred a series of organizational changes that were long overdue. Specifically, EDCU hired a chief financial officer (CFO) who brings experience and a fresh perspective that will be essential as the organization addresses its poor financial governance. Adherence to adequate financial policies and procedures will be critical as EDCU corrects the weak financial oversight that has impaired the organization.

Adequate financial policies were not adopted, and financial oversight has been unacceptable.

EDCU's Financial Policies and Procedures Were Inadequate

Financial policies and procedures provide guidance to staff. Unfortunately, EDCU did not have a set of financial policies and procedures that guide how financial situations should be handled. For example, insufficient guidance regarding purchases allowed the organization's credit cards to be the mechanism whereby problematic transactions were made. In addition, other internal control processes were poorly designed or operated ineffectively. Therefore, the problematic transactions discussed in Chapter II were less likely to be identified and addressed in a timely manner.

Purchasing policies and internal controls were poorly designed and operating ineffectively.

The Lack of Financial Policies Is Contrary to Standards

During our discussions with EDCU's office manager, she indicated that the organization lacked a comprehensive written financial policy manual. However, a financial policy regarding business expense documentation was included in EDCU's outdated employee manual. The omission of more extensive policies runs contrary to sound

While EDCU had a few basic financial policies, it lacked a comprehensive financial policy manual.

business practices and the standards adopted for other Utah nonprofit organizations. In its *Standards of Ethics for Nonprofit Organizations*, the Utah Nonprofits Association (UNA) recommends the adoption of the following written policies:

Figure 3.1 EDCU Lacked Essential Financial Policies. The Utah Nonprofits Association recommends that purchasing practices, internal controls and whistleblower policies should be adopted.

Standard	Auditor Observation
1. An ethical nonprofit organization has written financial policies in a financial policy manual governing: a. investment of its assets; b. internal control procedures; c. purchasing practices; d. reserve funds; and e. others as required. 2. An ethical nonprofit organization provides employees and others with a confidential means to report suspected financial impropriety or misuse of its resources.	**Not Compliant.** EDCU lacks a comprehensive financial policies and procedures manual, which has resulted in poor internal controls. Consequently, improper and wasteful transactions have occurred.

Source: Utah Nonprofits Association's Standards of Ethics for Nonprofit Organizations

The policies suggested in Figure 3.1 provide a framework for good financial operations and were mostly missing at EDCU. In Chapter II, problematic transactions by a former executive were the result of poor travel and purchasing practices. Creating and implementing financial policies gives EDCU an opportunity to avoid future problems.

Some essential policies were missing, while others were not adhered to, which rendered them ineffective.

In the following sections, we also discuss purchasing practices and internal controls that should be improved at EDCU. Existing policies, such as expenditure reviews by supervisors, were not adhered to or were ineffective. Therefore, we recommend that EDCU enforce existing policies and adopt additional financial policies and procedures that include the policies listed in Figure 3.1. A similar recommendation was made by EDCU's independent auditor in recognition of the omission of financial policies as a significant deficiency to be addressed by EDCU's board of trustees. While EDCU is in the process of drafting and implementing new policies, they were not in place during the field work of our audit, therefore an evaluation of their effectiveness could not be performed.

Credit Card Purchasing Practices Illustrate Multiple Deficiencies

Chapter II detailed problematic expenses that were facilitated by inadequate reviews of credit card purchases. The inadequate reviews resulted from not adhering to EDCU's business expense policy in its employee manual. Specifically, that policy stipulates the following:

EDCU policy requires supporting documentation for expenses and supervisory approval.

> Reasonable and appropriate business expenses, including mileage reimbursement, incurred by an employee representing [EDCU] shall be reimbursed. Submit a reimbursement form with original receipts or trip records to your supervisor for approval.

This policy sets the expectation that expenses should have 1) documentation in the form of a receipt or trip record and 2) a legitimate business purpose. This supporting documentation should be reviewed by a supervisor before expenditures are approved. However, during our review we frequently observed three deviations from this policy.

Approval of expenditures and supporting documentation has been inadequate.

- Credit cards issued to individual staff were setup with an autopay feature that bypassed the typical approval process.
- Payments on EDCU's gas card were consistently late and incurred late fees that were approved by EDCU's CEO.
- Some mileage logs for EDCU's vehicles were missing, which provided no insight as to whether their use was for business or personal use.

These scenarios illustrate that approval of expenditures has been inadequate, and supporting documentation to facilitate those reviews have been insufficient. By improving EDCU's review process and enforcing its documentation requirements for expenditures, EDCU can avoid many of the issues identified here and in Chapter II.

Autopay Feature on Credit Cards Bypassed Approval Process. EDCU's typical process for expensing funds includes review by the CEO as well as review of supporting documentation before two authorized individuals sign a check. However, credit cards issued to individual EDCU employees do not follow this approval process.

Instead, the credit cards' autopay feature was activated, and the full balance was automatically paid every month.

Automatic payment of credit cards allowed a former executive to avoid providing receipts for his credit card purchases.

While the office manager asked for supporting documentation each month, she was not empowered by the CEO to adhere to the policy and stop payment until all supporting documentation is collected. As was discussed in Chapter II, this practice resulted in 55 percent of a former executive's credit card transactions lacking receipts, which accounted for $46,496 worth of purchases. Because credit cards were set for automatic payment, and the office manager was not given the authority to hold payment until all supporting documentation was provided, EDCU's policy requiring supporting documentation became ineffective. Therefore, management needs to ensure that existing policies are being enforced.

EDCU's gas card is not set up for automatic payment and requires CEO approval.

EDCU's CEO Consistently Approved Late Fees on Gas Card Payments. Purchase approvals are intended to avoid unnecessary and improper charges. Unlike individual employee credit cards that are setup for autopay, EDCU's gas card is paid via check each month and goes through the traditional approval process. However, the CEO's consistent approval of late fees on the organization's gas card illustrates how the role of approvals can become diminished. Figure 3.2 shows the most recent 12 billing cycles for EDCU's gas card.

Figure 3.2 Late Fees Were Assessed to the Last 12 Months of Gas Card Statements. Late fee charges have been consistently assessed for delinquent payments and approved by EDCU's CEO.

Billing Date	Gas Charges	Late Fee	CEO Approved
4/13/16	$ 327.06	$ 75	Yes
3/13/16	148.64	75	Yes
2/13/16	274.99	75	Yes
1/13/16	122.44	75	Yes
12/13/15	310.53	75	Yes
11/13/15	254.03	75	Yes
10/13/15	181.87	75	Yes
9/13/15	255.12	75	No
8/13/15	270.13	75	Yes
7/13/15	156.29	75	Yes
6/13/15	407.64	75	No
5/13/15	62.04	75	Yes
12- Month Total	**$ 2,770.78**	**$ 900**	**10 of 12**

Source: EDCU Gas Card Statements

As Figure 3.2 shows, a $75 late fee was assessed for delinquent payment of the prior month's bill. Relative to the purchases, these late fees amount to a 32 percent increase in the cost of buying gas for EDCU's vehicles. The disappointing part of this practice was that the CEO approved 10 of the 12 bills for payment, and the practice persisted. These weak approvals have not been only a recent phenomenon; 25 of the last 32 statements with gas charges incurred a $75 late fee, amounting to $1,875.

EDCU's CEO continually approved the late payment of gas card charges, which raises concerns about whether approvals are effective.

All of these late fees were either approved by the CEO or did not show a signed approval on the statement. This pattern illustrates approvals did not correct the wasteful behavior. As such, approvals appear to have become routine, and the risk to EDCU is that other expenditures approved by the CEO have been "rubber stamped."

Missing Mileage Logs Impaired Management's Ability to Track Personal Use of Vehicles. In addition to late fees on gas cards, mileage logs associated with EDCU's vehicles were also missing. When we requested logs for EDCU's vehicles, EDCU's office manager provided logs for two vehicles that were missing records for extended periods of use.

- 2008 Suburban - Mileage logs were missing for use that occurred from August 2012 to October 2014, which covered odometer readings from 77,625 to 92,549.

- 2011 Toyota Avalon – Mileage logs could not be provided until April 2016, which covered 53,653 unrecorded miles.

According to the office manager, the missing logs were discarded by the former executive. These missing logs are problematic, because EDCU is unable to track the purpose of each vehicle's use.

Missing mileage logs are problematic as EDCU tries to accurately attribute personal mileage to employees.

Personal use of vehicles and subsequent reporting of the benefit on employee's W-2s was an issue that EDCU's independent auditor reported. Management's response to the issue was as follows:

> Mileage logs have been in use in all company vehicles for some time and require the disclosure of any personal use of company vehicles including commuting. Those miles will be added to W-2 compensation for those employees.

We find management's response questionable as significant portions of mileage logs are missing. Without that data, accurately billing employees for personal use mileage is problematic.

While EDCU has a policy for documenting and approving expenditures, it needs to be more effective.

These missing mileage logs are another illustration of how the record keeping at EDCU has been inadequate to perform necessary financial tasks, including the approval of expenditures. Since EDCU already had a policy regarding documentation standards for expenses, a change in financial governance is necessary. The culture of the organization needs to change so adopted policies are enforced rather than ignored. Later in this chapter, changes to the organizational structure will be discussed. We hope that these changes will be sufficient to address the lack of policy enforcement that has occurred.

Internal Control Procedures Are Poorly Designed and Ineffective

Similar to adequate purchasing practices, internal controls are also necessary to safeguard the organization's resources. Unfortunately, some internal controls at EDCU have not enhanced its financial governance structure. Specifically, we highlight the following four deficiencies that were observed during our review:

- Segregation of duties has not been implemented as all financial duties have been assigned to one individual.
- The CEO signs his own check reimbursements.
- Processes to ensure the receipt of goods and services have been insufficient.
- Tracking of property and equipment, including computers, tablets, and phones, has been insufficient.

Insufficient controls do not provide adequate safeguards to protect EDCU's resources.

These insufficient controls do not provide reasonable assurance that the organization's resources are used appropriately. For example, the last two insufficient controls contributed to the untimely recognition of missing equipment discussed in Chapter II and incomplete tax returns and audited financial statements to be discussed in Chapter IV. Despite paying for these items and services, EDCU did not follow through and ensure they received them. Therefore, we believe that the renewed efforts by EDCU to improve its financial governance should include various improvements in the design and effectiveness of its internal control environment.

Assigning All Financial Duties to One Individual Is a Segregation of Duties Problem. EDCU's office manager has several key financial duties assigned, which include the following:

- Manage all aspects of EDCU's accounting
- Serve as signatory on checks
- Review, analyze and prepare monthly financial reports
- Prepare annual budgets
- Prepare office financials and procedures for an annual audit

One individual was given responsibility for EDCU's accounting functions and financial reporting.

The concentration of financial responsibilities given to a single individual presents the opportunity for improper activity to occur and go undetected. To add to the concerns, the office manager was also not given the authority to enforce policies. Consequently, improper activity was allowed to take place by others in the organization. Based on recommendations from its independent auditor, EDCU has begun addressing this concern by contracting with a part-time chief financial officer (CFO). We recommend that EDCU's new financial policies and procedures manual define the relationship between these two essential roles and ensure that both are given adequate authority to enforce policies.

The CEO and one of his staff members signed $10,000 and $6,000 reimbursements to himself.

The CEO Signed His Own Check Reimbursements. During our expenditure review, large reimbursement checks to the CEO were identified for which he signed the check. Two specific reimbursements for $10,365.82 and $6,031.27 were signed by him and the office manager, which was identified as an issue in the prior section on segregation of duties. Three EDCU employees are authorized to sign checks at EDCU, including the CEO, a staff member who reports directly to him, and the office manager, who also reported directly to the CEO. We believe that these individuals authorized to sign checks does not allow for adequate scrutiny.

To ensure adequate review and authorization of the CEO's reimbursements, EDCU should consider having another member of management or a board member assist with check signing. Specifically, reimbursements to the CEO, which can be for high dollar amounts, should be reviewed by someone other than the CEO and one of his subordinates.

EDCU told the IRS that, because it paid its accounting firm for tax work, the organization thought its returns were filed.

Controls Are Needed to Ensure Receipt of Goods and Services. In EDCU's request to the IRS for retroactive reinstatement of its tax-exempt status, they gave the following justification for its tax returns not being filed:

> Because [EDCU] had been billed by its prior accounting firm for work performed with respect to the Corporation's IRS Forms 990s for those years, the organization thought the returns had been filed.

We find this statement problematic as EDCU paid for something without ensuring it received the final product. In this scenario, staff should have required a complete tax filing and audited financial statements before making payment, if they believed they were paying for the completed service.

We are concerned that EDCU is making payments without ensuring it receives deliverables, such as completed tax forms.

Similarly, making payments without verifying receipt of merchandise was the problem with the missing computer hardware in Chapter II. Because no one verified what was being purchased with one of the organization's credit cards, the purchase and disposition of computer hardware purchased with the card was untracked. Therefore, we recommend that EDCU consider adopting procedures whereby the receipt of goods and services are verified before payments or reimbursements are made.

Better Tracking of Property and Equipment Is Needed to Minimize Loss. Similar to ensuring receipt of goods and services, EDCU needs better processes to track property and equipment. As we performed our review of computer hardware purchased by one employee, the records of computer hardware were unreliable. Specifically, the following inaccuracies were identified:

EDCU tracking of computer hardware and devices is incorrect and inadequate.

- All applicable devices and employees were not on the report
- Devices were assigned to the wrong employee
- Disposal of devices was not being tracked

Because of these inaccuracies, tracking down computer hardware and devices was a difficult task. In situations where the custody of such property needs to be known, such as for an audit or in case of loss, accurate records need to be kept. Therefore, we recommend that EDCU improve its current processes for tracking property and equipment purchased with state and local taxpayer funds.

Noncompliance with Financial Reporting Prompted Critical Organizational Changes

Nonprofit organizations are expected to comply with financial reporting requirements. Responsibility for EDCU's noncompliance with these requirements rests with management and the board of trustees. Addressing this noncompliance resulted in significant organizational changes, including the creation of a finance committee for the board of trustees and changes to the management structure. We believe that these changes should bring a renewed emphasis on and fresh perspective to the organization's financial governance. These steps were necessary as EDCU changes its attitude toward financial governance by enforcing existing policies and reinforcing its control environment.

Poor oversight by management and the board enabled noncompliance with financial reporting requirements.

Management and The Board Are Responsible for Reporting Breakdowns

Nonprofit organizations, like EDCU, are expected to comply with various financial reporting requirements as well as provide internal financial reports on a timely basis. Such expectations are consistent with the standards established by the Utah Nonprofits Association.

Figure 3.3 EDCU Has Not Adhered to Financial Reporting Standards. Utah nonprofit organizations are expected to provide internal and external financial reports in a timely manner.

Standard	Compliance with Standard
1. An ethical nonprofit organization is aware of and complies with all applicable federal, state, and local laws. This may include, but is not limited to: complying with laws and regulations related to fundraising; licensing; financial accountability; human resources; lobbying and political advocacy; and taxation. 2. An ethical nonprofit organization creates and maintains financial reports on a timely basis that accurately portray its financial status and activities. 3. An ethical nonprofit organization makes its annual financial reports available to the public.	**Not Compliant.** Since EDCU did not properly manage its annual audit and tax filing processes, it has not complied with federal tax laws, and incomplete audits allowed inadequate financial policies and practices to persist.
4. An ethical nonprofit provides timely internal financial statements to all board members. Internal financial statements identify and explain any material variation between actual and budgeted revenues and expenses.	**Compliant.** Internal financial statements showing budgeted and actual expenditures were presented at most board meetings.

Source: Utah Nonprofits Association's Standards of Ethics for Nonprofit Organizations

EDCU did not comply with external financial reporting requirements but did provide internal reports to the board.

While EDCU staff provided the board with monthly internal financial reports involving budgets, EDCU has struggled with completing and filing external financial reports, which is discussed in Chapter IV. Failure to comply with financial reporting requirements primarily rests with management, which is responsible to ensure this work is performed and reports are filed. In addition, the board of trustees is responsible as they should ensure that such work is completed.

EDCU's 35-member executive committee served as its finance committee charged with financial oversight.

According to EDCU's bylaws, the board's 35-member executive committee served as the finance committee. The American Institute of Certified Public Accountants (AICPA) has laid out in its *Audit Committee Tool Kit: Not-for-Profit Entities* the responsibilities for audit committees and finance committees. Specifically, finance committees are charged with the following oversight duties:

- Budget
- Internal controls
- Accounting policies
- Financial reporting

With the important role that EDCU's executive committee assumes as the finance committee, EDCU's bylaws require monthly meetings, whereas the whole board of trustees is only required to meet quarterly. Consequently, the shortfalls in internal controls, purchasing practices, and financial reporting discussed in this report were enabled by weak governance by this committee.

As the only EDCU employee who is also a member of the executive committee, the CEO has taken responsibility for the noncompliance with financial reporting requirements. In EDCU's letter seeking retroactive reinstatement of its tax-exempt status from the Internal Revenue Service (IRS), the letter says "the CEO takes full responsibility for the oversight." As the CEO is a member of the executive committee, we believe it is appropriate that he take full responsibility for the oversight of all the financial issues documented in this report.

In EDCU's letter to the IRS, the CEO stated that he ". . . takes full responsibility for the oversight."

EDCU's Board Responded by Creating a Finance Committee

In response to the inadequate financial governance provided by the executive committee, the board of trustees amended its bylaws to create a separate finance committee. In EDCU's letter to the IRS, the organization stated that this change was intended to ". . . better address financial oversight of the Corporation, and to ensure its future compliance with its Form 990 filing requirements." We believe that this move is beneficial as it signifies that the board understands a problem exists and has finally organized a reasonably sized group of individuals to address serious issues facing the organization.

EDCU has created a separate six-member finance committee to focus on financial oversight.

EDCU's new finance committee consists of six members from the executive committee. The new finance committee draws from the same board members that allowed the issues at EDCU to persist. However, the committee's smaller size and composition of highly qualified financial professionals should allow significant work to be accomplished.

We believe that one of the first duties the new finance committee should perform is to independently validate and ensure that all problems and concerns in this report are identified and corrected. To accomplish this task, the finance committee should hire a qualified firm to review all accounts, functions, activities, business relationships, and any other pertinent areas. We believe this step is necessary because the concerns and weak controls identified at EDCU could be indicative of other improper and unadvisable activities occurring at EDCU.

The board's 35-member executive committee, which served as its finance committee, was larger than the average nonprofit board.

According to EDCU's bylaws, EDCU's full board of trustees consists of up to 80 voting board members. According to *BoardSource* the average board size in 2007 was 16 members. EDCU's executive committee alone was over twice that size with 35. While no perfect formula exists to determine the optimal board size, we do believe that a more reasonably sized board and committee is beneficial.

Effective on August 31, 2016, EDCU's bylaws were amended and changed the structure of the board of trustees and its committees. Specifically, the board of trustees was reduced to 35 members, which initially will consist of the trustees who were serving on the executive committee. In addition, the executive committee has been reduced to seven voting members. We believe that these changes are a move in the right direction for greater focus on EDCU's financial oversight problems and implementation of corrective actions.

The Management Structure Has Been Reorganized

When this audit began, EDCU's management team consisted of two members, the president/CEO and the former executive. In regards to financial operations, the CEO provided approvals for the organization's purchasing, while the former executive was tasked with overseeing the financial reporting. As discussed in Chapters II and IV, the former executive was involved in the many of the issues with improper and questionable purchasing as well as failure to respond to independent auditor's requests for information. Ultimately, the former executive resigned during this audit and entered into a severance agreement with EDCU.

In addition, EDCU has taken a positive step toward correcting its financial governance issues by hiring a CFO. The CFO was recommended by EDCU's independent auditors based on the lack of financial expertise exhibited by the organization. We agree that the new management structure, which shifts financial duties from the former executive's position to the CFO, should be a positive change. However, this position must be given adequate authority to enforce policies, which has not been the case for EDCU's office manager. As such, we believe that the expertise of the new CFO, based on her prior experience and certified public accountant license, should be consulted as improvements are made to the various deficiencies discussed in this report. The finance committee must also ensure these deficiencies do not arise again.

EDCU created a CFO position to oversee its financial duties, which must be given adequate authority to enforce policies.

Recommendations

1. We recommend that EDCU management evaluate its use of autopay features for credit cards, and ensure that, if they are used, adequate approvals occur.

2. We recommend that EDCU management and the finance committee of the board supplement its purchasing policies with enforcement provisions that ensure expenses and equipment use, such as vehicles, are properly documented with purposes and receipts.

3. We recommend that EDCU perform a comprehensive evaluation of its internal control environment that includes, but is not limited to, segregation of duties, check signing procedures, receipt of goods and services, and logs of property and equipment.

4. We recommend that EDCU's new CFO position be strategically utilized to strengthen internal controls, correct purchasing deficiencies, and ensure compliance with financial reporting requirements.

5. We recommend that the finance committee at EDCU hire a qualified firm to review all accounts, processes, functions, activities, business relationships, and any other pertinent areas at EDCU to ensure that all improper and unadvisable activities at EDCU are identified and corrected.

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Chapter IV
EDCU's Weak Financial Oversight Resulted in Its Tax-Exempt Status Being Revoked

The Economic Development Corporation of Utah (EDCU) has failed in its responsibility to comply with some federal financial reporting requirements. EDCU did not file required federal tax documents for three years, resulting in EDCU's tax-exempt status being revoked. Of great concern, EDCU's chief executive officer (CEO) and board were not aware until two years after the tax-exempt status had been revoked that tax returns had not been filed.

EDCU was not aware that its tax-exempt status had been revoked by the IRS for two years.

EDCU poorly managed the process of having its finances audited and taxes filed. Each year, EDCU contracts with an independent certified public accountant (CPA) firm to complete this work. The following observations illustrate how this work was poorly overseen by EDCU management. First, EDCU engaged its CPA firm after its tax filings and audited financial statements were already late. Second, EDCU staff was unresponsive for multiple months to information requests from the CPA firm. Lastly, the lack of communication caused the firm to cease the work necessary to complete the audit. As a result, EDCU did not file its federal tax returns and lost its tax-exempt status. In addition, we believe EDCU should submit its financial reports to the State Auditor's Office to increase transparency and accountability.

EDCU poorly managed the process to have audit and tax work completed by its CPA firm.

Poor Financial Management Led to Revocation of EDCU's Tax-Exempt Status

After failing to file federal tax returns for three years, EDCU's tax-exempt status was revoked. Nearly two years after its tax-exempt status was revoked, EDCU management and its board became aware of this problem when we began asking for EDCU's prior tax filings. Figure 4.1 (see page 41) provides a timeline of events regarding the revocation of EDCU's tax-exempt status. Specifically, the timeline marks tax filing due dates, dates when EDCU requested audit work, dates when significant delays by EDCU occurred, and events leading up to reinstatement of EDCU's tax-exempt status.

Unfiled Tax Returns Led to Revocation of EDCU's Tax-Exempt Status

EDCU's tax-exempt status was revoked on November 15, 2013.

According to the Internal Revenue Service (IRS), a nonprofit organization's tax-exempt status is automatically revoked when tax returns are not filed for three consecutive years. For EDCU, automatic revocation took place on November 15, 2013, which is in the middle of the timeline of Figure 4.1 on the next page. Based on EDCU's revocation date, EDCU had not filed tax returns for tax years 2010, 2011, and 2012. Returns for the 2011 and 2012 tax years were filed with the IRS in November 2015, and the 2010 tax return was filed in February 2016. Based on the dates these returns were filed, the three returns were 48, 36, and 24 months late, which is shown at the bottom of Figure 4.1.

EDCU tax returns for 2010, 2011 and 2012 were 48, 36, and 24 months late respectively when the tax returns were filed.

In addition to the three returns that led to tax-exempt status revocation, a fourth return for the 2013 tax year was also delinquent, and a fifth return for the 2014 tax year was nearing the standard filing deadline of November 15, 2015. After EDCU became aware of its tax problems, its new CPA firm filed a three-month extension for the 2014 tax return that extended the due date to February 15, 2016, which EDCU was able to comply with.

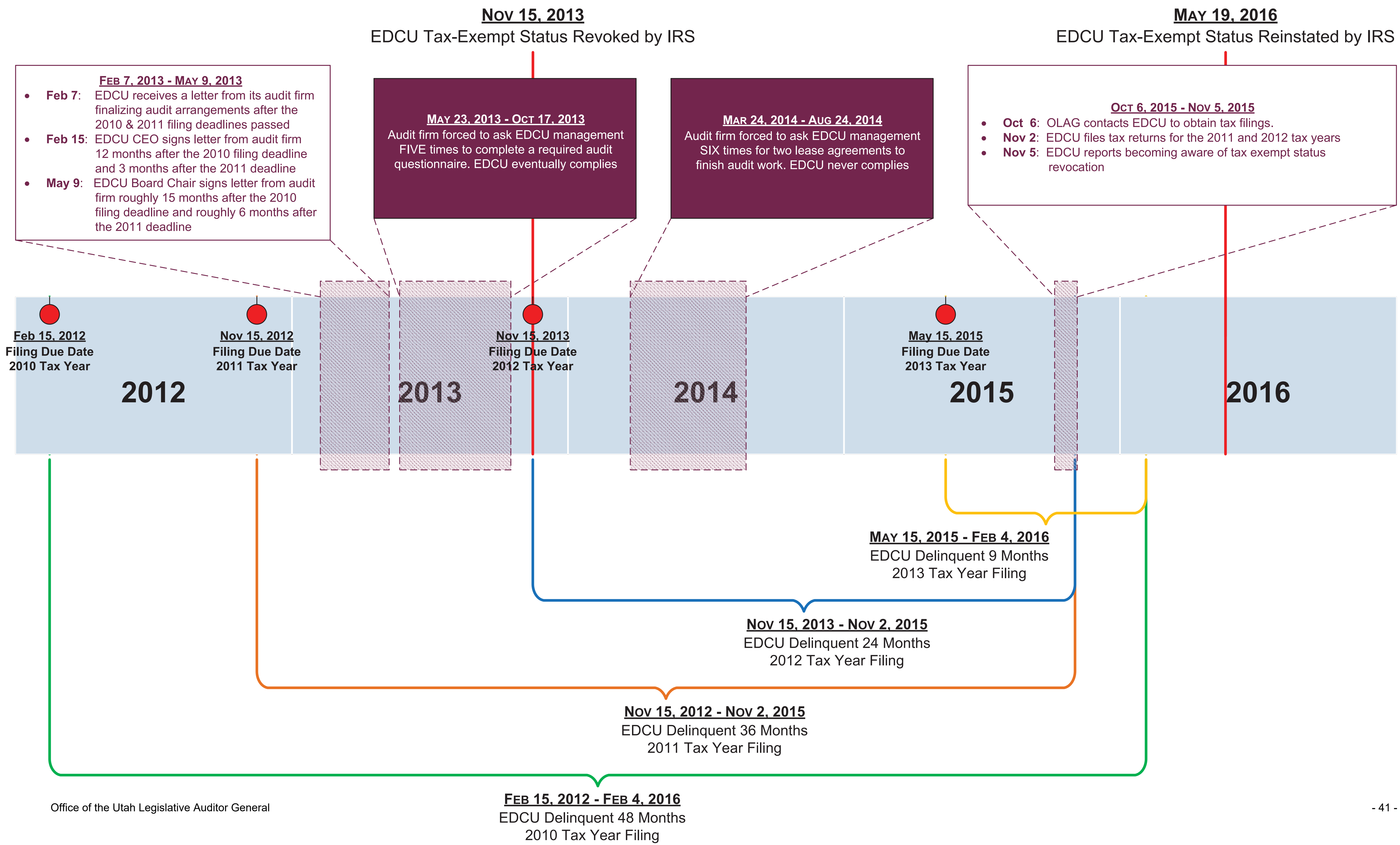
Financial Reporting Problems Were Recognized When This Audit Began

EDCU did not respond to our initial requests for their prior tax returns.

According to the timeline presented by EDCU's President & CEO to EDCU's board of trustees, EDCU staff began to recognize the extent of financial reports that were missing after our initial request for its tax returns. As part of our initial work on this audit, we made multiple phone calls to EDCU requesting their 990 tax returns. After our attempts to contact EDCU by phone failed, we requested the tax returns via email on October 13, 2015.

Finally, that same day, EDCU provided its 2010 tax return, which represents the fiscal year that ended June 30, 2011. In addition, EDCU notified us that its 2011 and 2012 tax returns would be provided the following week. Instead, over one month later on November 18, 2015, EDCU finally sent us its 2011 and 2012 tax returns. During that month, EDCU management realized the major missteps that it made regarding its financial reporting. Specifically, the President & CEO told the EDCU board's executive committee the following:

Figure 4.1 EDCU Failed to Submit Tax Returns for Four Consecutive Tax Years. EDCU's lack of financial oversight led to delinquent tax return submittals, and the revocation of EDCU's tax exempt status



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- Management learned from an outside source in late October 2015 that its 2011 through 2014 filings had not been done.

- Its prior accounting firm produced 2011 and 2012 tax forms that were filed on November 2, 2015.

- Management learned on November 5, 2015 that EDCU's tax-exempt status had been revoked since November 2013.

EDCU finally received and filed its 2011 and 2012 tax returns in November 2015 after we requested them.

For nearly two years, management was unaware that its tax-exempt status had been revoked. We believe that this level of oversight is unacceptable. In addition to EDCU's 2011 through 2014 tax filings being incomplete, EDCU later learned that its 2010 return had been completed but never filed. Based on this information, EDCU's executive committee and management realized the predicament facing the organization and initiated multiple corrective actions.

In an attempt to show responsiveness, EDCU took several actions to remedy the situation. Specifically, EDCU hired a new accounting firm to complete its tax filings and corresponding audits for the 2013 and 2014 tax years. In addition, management hired a law firm to petition the IRS for retroactive reinstatement of its tax-exempt status and abatement of penalties. While we acknowledge these actions by EDCU were necessary, their timing confirms the inadequate oversight that persisted for multiple years.

EDCU also hired a new CPA firm to begin working on its 2013 and 2014 tax returns.

EDCU's Management of Audit and Tax Work Was Unacceptable

Management's failure to complete and file the financial reports discussed earlier in this chapter results from poor oversight of its relationship with its independent CPA firm. Specifically, we observed the following problems regarding the preparation of EDCU's financial reports for its fiscal year ending June 30, 2012, which affected the following two fiscal years as well:

- Management engaged its CPA firm after its tax returns should have been filed with the IRS.

- EDCU's former executive and the office manager were unresponsive to the CPA firm's multiple requests for information.

EDCU's late hiring of its CPA firm and unresponsiveness to data requests caused its returns to be late and incomplete.

- Issues regarding financial reporting were reportedly never communicated to EDCU's CEO, but were communicated to the former executive and office manager.

These problems contributed to the delinquent financial reporting we observed when this audit began. Conversely, EDCU's request for retroactive reinstatement of its tax-exempt status did not disclose these problems. Instead, their analysis presented the organization as one that 'in good faith and only inadvertently failed to file its returns." We believe statements like this are disingenuous and distort the extent to which EDCU's financial oversight has been unacceptable.

EDCU Requested Accounting Work After Some Financial Reports Were Already Due

When EDCU hired its CPA firm to perform audit and tax work, its tax returns were already late.

EDCU's 2011 tax year, which ended June 30, 2012, was the first tax return that accounting work was never completed. Problems completing for which work started before EDCU's CPA firm even began looking at EDCUs books. Specifically, EDCU management hired a CPA firm after the filing deadlines for its tax returns and audited financial statements had already passed. Unless filing an exemption, tax returns for nonprofit organizations are due "on the 15th day of the fifth month following their fiscal year end." Therefore, EDCU's tax return for the 2011 tax year was due on November 15, 2012.

With this deadline, nonprofit organizations should schedule their audit and tax work that needs to be completed by an independent CPA firm soon after the end of their fiscal year. Instead, the engagement letter that EDCU received from its prior CPA firm was dated February 7, 2013, which was after its tax returns and audited financial statements were already late. After receiving the engagement letter, EDCU's CEO signed the agreement a week later on February 15, 2013, and the chairman of EDCU's board signed the agreement three months later on May 9, 2013. The late engagement of its former CPA firm and the delayed acceptance of the letter by the board were indicative of EDCU's poor management of ensuring this necessary accounting work was completed. In addition to the late hiring of its CPA firm, the next section discusses how EDCU was unresponsive to requests for information.

EDCU's Unresponsiveness Left Accounting Work Incomplete

Despite having a signed engagement letter by May 2013, EDCU's prior CPA firm did not complete the majority of its audit and tax work until March 2014. According to EDCU's prior CPA firm, delays getting the work started and completed were caused by the former executive's and office manager's unresponsiveness to information requests. In Figure 4.1, two specific periods of extensive delays are marked by the dark purple boxes in the middle of that figure.

EDCU's former CPA firm had to ask EDCU management five times to respond to a questionnaire before EDCU responded.

After EDCU's board chairman signed the engagement letter on May 9, 2013, EDCU's prior CPA firm requested preliminary information from management, which was the first significant delay. Specifically, the CPA firm sent a questionnaire on May 23, 2013 to be filled out by management members describing the organization and its internal controls. When the firm did not receive a response, it made four more requests over a five-month period to EDCU for responses to its questionnaire. In response to one of these requests, EDCU's office manager explained that they were working on EDCU's budget and would get to the audit in a week. However, the audit work did not commence for months.

EDCU's former CPA firm made six attempts to collect lease information necessary to finalize its audit. EDCU never did provided the required information.

The CPA firm also encountered a second significant delay obtaining documentation on two leases that were needed to complete EDCU's financial statements. After an initial request on March 24, 2014 that was not answered, the firm made five additional requests for information regarding the leases. With the sixth attempt to collect information needed for finalizing its audit were made, the accounting firm sent an email to EDCU's former executive and office manager on August 24, 2014, a portion of which follows:

> I never heard back from my April email regarding getting your 2012 and 2013 audit completed. As such, we have never issued our audit opinion and final report and therefore you do not yet have final audited financial statements for that time period. Is that something that [EDCU] wants us to finish up? We are happy to but need some help from your group to do so.

The former executive and office manager were aware the audit work was not complete.

Neither the former executive nor the office manager responded to the email or documentation requests. Therefore, the audit work corresponding with EDCU's tax filings for 2011, 2012, and subsequent years were not complete when this audit began.

EDCU's CEO Claims That Problems Were Not Communicated to Him

EDCU's prior CPA firm sent emails to the CEO's secondary email account, which is used for media releases.

While some staff at EDCU were clearly aware of the issues completing EDCU's audit and tax returns, the CEO claims he was unaware of the problems. Based on EDCU staff's awareness of the issues that were taking place, we question why his staff did not apprise him of the situation. In contrast, the CEO has focused his frustration on the fact that he did not receive phone calls or emails from the CPA firm regarding these issues. One of the communication problems, which the former CPA firm acknowledged, was that they had sent emails to the CEO's secondary email account, which the CEO used for media releases and not routine correspondence. Therefore, the CEO's claim that the CPA firm never made him personally aware of the situation may hold some merit.

While the CEO may not have received emails from the CPA firm, we are concerned that his staff never notified him of the problems getting accounting work finished.

However, we are equally concerned and perplexed that the former executive (who was given charge for overseeing the CPA work), the office manager, and other staff who were aware of the issue reportedly never discussed these problems with their boss. In addition, it is unclear why the CEO never requested a status report on the work.

In its letter to the IRS about why its tax returns had not been filed, EDCU made the statement "The CEO takes full responsibility for this oversight." We believe that this statement also applies to the lack of communication. While the former CPA firm's practices may have contributed to this issue, the CEO who is ultimately accountable did not provide adequate oversight.

EDCU's Statements to the IRS Are Inconsistent with Our Observations

EDCU avoided all penalties when the IRS reinstated its tax-exempt status.

Once EDCU's tax-exempt status was revoked, the organization had to petition the IRS for reinstatement. In particular, EDCU applied for retroactive reinstatement, which allowed the organization to avoid all penalties associated with its non-compliance. On May 19, 2016, EDCU's application for retroactive reinstatement of its tax-exempt status was approved by the IRS. As a result, EDCU avoided all penalties associated with its delinquent tax returns, and its tax-exempt status was retroactively reinstated to November 15, 2013.

While EDCU has been fortunate in resolving its tax-exempt status with the IRS, we believe that EDCU's poor financial governance was a more significant issue than was presented in its letter to the IRS. As part of that application, EDCU had to document reasonable cause why its reports were not filed. In its application letter, EDCU made the following statements regarding why its returns were not filed:

EDCU made multiple statements that tried to minimize its role in failing to file its tax returns.

- "The Corporation's board and staff were shocked that returns had not been filed and that the [IRS] had revoked the Corporation's tax-exempt status."
- "Had the Corporation been aware [that] any one of the missing returns had not been filed, it would have taken immediate steps to have the missing return filed."
- "Because the Corporation had been billed by its prior accounting firm for work performed with respect to the Corporation's IRS Forms 990s for those years, the organization thought the returns had been filed."
- "The Corporation operated in good faith and only inadvertently failed to file its returns."
- "[EDCU] has a long history and track record of compliance."

Based on the late engagement of the CPA firm, the unresponsiveness to requests for information, and the lack of communication between the CEO and his staff, we question the validity of these statements. Based on our observations, EDCU staff were clearly far more aware of what was going on than these statements portray.

Multiple corrective actions by EDCU were also presented to the IRS.

In its application letter to the IRS, EDCU cited multiple corrective actions it had taken. Among them were two that were specifically focused on improving the financial oversight at EDCU. First was the creation of a separate finance committee for its board of trustees. Historically, the executive committee has bundled financial oversight with its other operational duties. Second the organization has enhanced management's financial oversight by hiring a chief financial officer. This position takes over the financial reporting duties that were previously assigned to the former executive who resigned in April. These corrective actions are discussed in greater detail in Chapter III, which focuses on the structure of financial governance at

EDCU. Recommendations to improve the weak financial governance of EDCU are also addressed in Chapter III.

EDCU Should Report Financial Information to the State Auditor's Office

EDCU receives significant amounts of state and local funds and has recently dealt with concerning financial governance issues. We believe EDCU should provide its financial reports to the State Auditor's Office to increase transparency and accountability. Unfortunately, until June 2016, an audit of EDCU financials has not been completed since fiscal year 2011.

We believe EDCU should provide its financial reports to the State Auditor's Office to increase transparency and accountability.

Utah nonprofit organizations that receive public funds are subject to ***Utah Code*** 51-2a, which is the Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act. Specific requirements of this statute changed with the passage of Senate Bill 132 during the 2015 Legislative General Session. The applicability of the new requirements based on EDCU's revenue sources is unclear. However, we believe EDCU should report to the State Auditor's office for transparency reasons, especially in light of recent financial oversight weaknesses and incomplete audits in previous years. EDCU agrees and is planning on sending all of its financial audits to the State Auditor's Office, which serves as a repository for these reports.

EDCU's practice has been to have annual audits and tax returns prepared by an independent CPA. Audits by an independent CPA are the most rigorous financial report required in the statute. Therefore, as long as EDCU's audits are completed we believe they should be submitted to the State Auditor's Office. Even more, the State Auditor's Office for the last two years has asked EDCU every six months to file their financial information with them. We believe that taxpayers should expect accountability for public funds, and having the information available on the State Auditor's website is one way to achieve that accountability and transparency.

Recommendations

1. We recommend that EDCU submit its most recent audited financial statements to the State Auditor's Office.

Appendix

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Office of Legislative Research and General Counsel

Michael E. Christensen
Director

John L. Fellows
General Counsel

Tim Bereece, Audit Supervisor
Office of the Legislative Auditor General
W315 House Building
Utah State Capitol Complex
Salt Lake City, UT 84114

July 5, 2016

Dear Tim:

Question

This memorandum responds to an inquiry regarding whether the provision of meals and other gifts by the Economic Development Corporation of Utah (EDCU) to employees of the Governor's Office of Economic Development (GOED) and a member of the Board of Business and Economic Development violate the Utah Public Officers' and Employees' Ethics Act or other provisions of state law.

Short Answer

By providing meals and other gifts to employees of GOED and a member of the Board of Business and Economic Development, EDCU engaged in risky conduct that *may* constitute a violation of the Utah Public Officers' and Employees' Ethics Act or other provisions of state law.

Statement of Facts

The facts relied upon for the analysis made, and the conclusions drawn, in this memorandum were provided by the Office of the Legislative Auditor General. This memorandum does not rely on any independent factual research conducted by the drafter of this memorandum. The facts relied upon are as follows:

1. From July 1, 2013, through April 5, 2016, EDCU provided 76 "update lunches" to certain employees of GOED, at a total cost of $9,514.07. The employees of GOED who regularly attended these meetings were
    - the Managing Director of Corporate Recruitment and Business Services,
    - the Incentives Manager,
    - the Incentives Coordinator, and
    - an intern.
2. In addition to the lunches described in paragraph 1, EDCU provided 70 lunches to GOED staff for a total cost of $2003.30.

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84114-5210
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3. The lunches described in paragraphs 1 and 2 were provided during periods when
   - EDCU was under contract to provide services to GOED,
   - EDCU was in the process of contract negotiations with GOED, and/or
   - GOED was conducting an RFP that resulted in the award of a contract to EDCU.
4. Details regarding contract 106200 between EDCU and GOED include the following:
   - RFP published – July 1, 2009;
   - RFP award – September 8, 2009;
   - Initial contract term – September 10, 2009, through June 30, 2011;
   - 1st contract extension term – July 1, 2011, through June 30, 2012;
   - 2nd contract extension term – July 1, 2012, through June 30, 2013;
   - 3rd contract extension term – June 30, 2012, through September 9, 2013; and
   - 4th contract extension term – September 9, 2013, through February 9, 2014.
5. Details regarding contract 146361 between EDCU and GOED include the following:
   - RFP published – December 4, 2013;
   - RFP award – January 8, 2014; and
   - Contract term – February 1, 2014, through January 31, 2019.
6. EDCU provided gifts to certain employees of GOED when the employees left GOED employment. It is unclear whether these gifts were provided before or after the actual date and time of termination. On at least two occasions, these gifts exceeded $50 in value.
7. In September of 2014, EDCU paid for a member of the Board of Business and Economic Development to participate in a golf tournament.

Analysis

Utah Public Officers' and Employees' Ethics Act

Title 67, Chapter 16, the Utah Public Officers' and Employees' Ethics Act (the Act) directly prohibits public officers and public employees from engaging in certain conduct and provides for criminal penalties for public officers or employees who violate certain provisions of the Act. Though the Act does not directly address conduct of an individual or entity who is not a public officer or public employee, conduct by such an individual or entity that encourages, requests, or aids a public officer or public employee to commit an offense[1], or that constitutes a criminal conspiracy[2], is also a crime.

The Utah Public Officers' and Employees' Ethics Act provides, in pertinent part, as follows:

> It is an offense for a public officer or public employee to knowingly receive, accept, take, seek, or solicit, directly or indirectly for himself or another a gift of substantial value or a substantial economic benefit tantamount to a gift:
> (a) that would tend improperly to influence a reasonable person in the person's position to depart from the faithful and impartial discharge of the person's public duties;
> (b) that the public officer or public employee knows or that a reasonable person in that position should know under the circumstances is primarily for the purpose of rewarding the public officer or public employee for official action taken; or
> (c) if the public officer or public employee recently has been, is now, or in the near future may be involved in any governmental action directly affecting the donor or lender, unless a disclosure of the gift, compensation, or loan and other relevant information has been made in the manner provided in Section 67-16-6.
> *Utah Code Subsection 67-16-5(2).*

The Act further provides that the foregoing provisions of law do not apply to:

> (a) an occasional nonpecuniary gift, having a value of not in excess of $50;
> (b) an award publicly presented in recognition of public services;
> (c) any bona fide loan made in the ordinary course of business; or

---

[1] Utah Code Section 76-2-202 provides that "[e]very person, acting with the mental state required for the commission of an offense who directly commits the offense, who solicits, requests, commands, encourages, or intentionally aids another person to engage in conduct which constitutes an offense shall be criminally liable as a party for such conduct."

[2] Utah Code Section 76-4-201 provides that "[f]or purposes of this part a person is guilty of conspiracy when he, intending that conduct constituting a crime be performed, agrees with one or more persons to engage in or cause the performance of the conduct and any one of them commits an overt act in pursuance of the conspiracy, except where the offense is a capital felony, a felony against the person, arson, burglary, or robbery, the overt act is not required for the commission of conspiracy."

> (d) a political campaign contribution.
> *Utah Code Subsection 67-16-5(3).*

Utah Code Subsections 67-16-5(2)(a) and (b) require a fact-specific analysis by an impartial trier of fact (i.e. a jury) to determine whether a violation has occurred.[3] Under the circumstances, I cannot opine on the intent of EDCU in providing meals and other gifts to GOED employees, nor can I opine on the effect that the gifts may or may not have had on the employees who received the gifts.

The safest course of conduct for a public employee (and a person who gives a gift to a public employee) is to ensure that the gifts are given only *occasionally* and that they do not exceed $50 in value. *Utah Code Subsection 67-16-5(3).* Accepting or providing a gift more often than *occasionally* or of a value in excess of $50 creates a circumstance in which the motives of the employee and the giver of the gift might be called into question. A meal is a gift, and the frequency with which EDCU provided meals to GOED employees could easily be argued to be more than *occasional*. Indeed, an argument could be made that the meals were given *regularly* and *frequently*.

The gifts provided by EDCU, exceeding $50 in value, to employees of GOED at the time the employees left employment may also be problematic. However, it is unclear whether the recipients of these gifts received the gifts before or after the actual date and time that their employment terminated. If the gifts were provided after termination from employment, the provisions of the Utah Public Officers' and Employees' Ethics Act probably do not apply. Further, EDCU could argue that these gifts comply with the portion of the statute that exempts "an award publicly presented in recognition of public services." *Utah Code Subsection 67-16-5(3)(b).* This exemption, however, does not apply to other provisions of law, discussed below, that potentially address this conduct.

Utah Code Subsection 67-16-5(2)(c) is less subjective than the other provisions of Subsection (2). This provision prohibits a public officer or public employee from accepting a gift:

> if the public officer or public employee recently has been, is now, or in the near future may be involved in any governmental action directly affecting the donor or lender, unless a disclosure of the gift,

[3] Of course, before such an analysis could take place, a prosecutor would need to determine whether the filing of charges was warranted.

compensation, or loan and other relevant information has been made in the manner provided in Section 67-16-6.[4]

EDCU provided multiple meals to GOED employees in key decision-making positions during periods of time when EDCU was under contract to provide services to GOED, or was in the process of contract negotiations with GOED, or when GOED was conducting an RFP that resulted in the award of a contract to EDCU. If any of these meals were provided to individuals who made decisions directly affecting EDCU (examples may include the decision to award a contract, a decision relating to the terms and conditions of a contract, or a decision relating to enforcing or verifying contract compliance) and those meals were not disclosed in the manner provided in Section 67-16-6, the provision of those meals may constitute a violation of Utah Code Subsection 67-16-5(2)(c).

Bribery

Utah Code Subsection 76-8-103(1) provides that “[a] person is guilty of bribery or offering a bribe if that person promises, offers, or agrees to give or gives, directly or indirectly, any benefit to another with the purpose or intent to influence an action, decision, opinion, recommendation, judgment, vote, nomination, or exercise of discretion of a public servant[5], party official, or voter.”[6] This provision of law requires

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[4] Utah Code Section 67-16-6 requires the public officer or public employee to file a sworn, written statement with the head of the officer or employee's own agency, the agency head of the agency with which the transaction is being conducted, and the state attorney general, that contains:

- the name and address of the public officer or public employee involved;
- the name of the public officer's or public employee's agency;
- the name and address of the person or business entity being or to be assisted; and
- a brief description of the transaction as to which service is rendered or is to be rendered and the nature of the service performed or to be performed.

The public officer or employee is required to file the statement “within 10 days after the date of any agreement between the public officer or public employee and the person or business entity being assisted or the receipt of compensation, whichever is earlier.” Utah Code Subsection 67-16-6(3).

[5] Utah Code Subsection 76-8-101(5)(a) provides that "public servant" means “any officer or employee of the state or any political subdivision of the state, including judges, legislators, consultants, and persons otherwise performing a governmental function.”

[6] Utah Code Subsection 76-8-103(2) provides that “[i]t is not a defense to a prosecution under this statute that:

(a) the person sought to be influenced was not qualified to act in the desired way, whether because the person had not assumed office, lacked jurisdiction, or for any other reason;

(b) the person sought to be influenced did not act in the desired way; or

(c) the benefit is not conferred, solicited, or accepted until after:

(i) the action, decision, opinion, recommendation, judgment, vote, nomination, or exercise of discretion, has occurred; or

(ii) the public servant ceases to be a public servant.”

a fact-specific analysis by an impartial trier of fact (i.e. a jury) to determine whether a violation has occurred.[7] Under the circumstances, I cannot opine on the intent of EDCU in providing meals and other gifts to employees, or recent employees, of GOED or to members of government boards. However, provision of these meals and other gifts, especially during a period when a request for proposals or contract negotiations are taking place, is extremely risky.

Utah Procurement Code

During the procurement period in question, the Utah Procurement Code provided, in pertinent part, as follows:[8]

> (3) (a) Except as provided in Subsection (6) or (7), it is unlawful for an interested person[9] to give, offer, or promise to give a gratuity[10] to:
> (i) a procurement participant; or
> (ii) an individual who the person knows is a family member of a procurement participant.
>
> . . .
>
> (c) Except as provided in Subsection (6) or (7), it is unlawful for a contractor[11] to give a gratuity to:
> (i) a contract administrator of the contractor's contract; or
> (ii) an individual who the contractor knows is a family member of a contract administrator of the contractor's contract.

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[7] Of course, before such an analysis could take place, a prosecutor would need to determine whether the filing of charges was warranted.

[8] Utah Code Section 63G-6a-2303 was repealed and replaced by Utah Code Section 63G-6a-2404 on March 29, 2014.

[9] At the time in question, "interested person" was defined as "a person who is interested in any way in the sale of a procurement item or insurance to a public entity." *Utah Code Subsection 63G-6a-2304.5(1)(f)*.

[10] At the time in question, "gratuity" was defined as "anything of value, including:
(i) money;
(ii) a loan at an interest rate below the market rate or with terms that are more advantageous to the person receiving the loan than terms offered generally on the market;
(iii) an award;
(iv) employment;
(v) admission to an event;
(vi) a meal;
(vii) lodging;
(viii) travel; or
(ix) entertainment for which a charge is normally made.
Utah Code Subsection 63G-6a-2304.5(1)(c).

[11] At the time in question, "contractor" was defined as "a person who is awarded a contract with a procurement unit." *Utah Code Subsection 63G-6a-103(9)*.

. . .

(4) (a) It is unlawful for a person to give, offer, or promise to give a kickback[12] to a procurement participant or to another person for the benefit of a procurement participant.

. . .

(c) It is unlawful for a person to give a kickback to a contract administrator, or to another person for the benefit of a contract administrator.

. . .

(6) A person is not guilty of a violation of Subsection (3) for giving, offering, promising to give, receiving, or accepting a hospitality gift[13] if, as it relates to a procurement participant or a contract administrator:
(a) the total value of all hospitality gifts given, offered, or promised to, or received or accepted by, the procurement participant or contract administrator in relation to a particular procurement or contract is less than $10; and
(b) the total value of all hospitality gifts given, offered, or promised to, or received or accepted by, the procurement participant or contract administrator from any one person, vendor, bidder, responder, or contractor in a calendar year is less than $50.

Utah Code Section 63G-6a-2304.5.

This provision of law required a fact-specific analysis by an impartial trier of fact (i.e. a jury) to determine whether a violation occurred.[14] However, this provision of law was less subjective than the bribery statute. At the time in question, a *gratuity* was expressly defined to include a meal and a *hospitality gift* was expressly defined to not include a meal. Thus, if any of the GOED employees to whom EDCU provided meals were a procurement participant at the time the meal was provided, or were a

[12] At the time in question, "kickback" was defined as “a gratuity given in exchange for favorable treatment in a pending procurement or the administration of a contract.” *Utah Code Subsection 63G-6a-2304.5(1)(g)*.

[13] At the time in question, "hospitality gift" was defined as “a promotional or hospitality item, including, a pen, pencil, stationery, toy, pin, trinket, snack, nonalcoholic beverage, or appetizer. *Utah Code Subsection 63G-6a-2304.5(1)(e)(i)*. At the time in question, "hospitality gift" expressly did “not include money, a meal, a ticket, admittance to an event, entertainment for which a charge is normally made, travel, or lodging.” *Utah Code Subsection 63G-6a-2304.5(1)(e)(ii)*.

[14] Of course, before such an analysis could take place, a prosecutor would need to determine whether the filing of charges was warranted.

contract administrator of an EDCU contract at the time the meal was provided, EDCU was in violation of Utah Code Section 63G-6a-2304.5.

Conclusion

EDCU provided multiple meals and other gifts to GOED employees, or recent GOED employees, during periods when EDCU was under contract to provide services to GOED or was in the process of contract negotiations with GOED, or while GOED was conducting an RFP that resulted in the award of a contract to EDCU. EDCU also paid for a member of the Board of Business and Economic Development to participate in a golf tournament. Determining whether these actions by EDCU constitute criminal conduct requires a fact-specific analysis by an impartial trier of fact (i.e. a jury) to determine EDCU's intent.[15] Additional factual investigation would also be necessary to reach conclusions regarding some potential criminal conduct. However, based on the factual information provided by the Office of the Legislative Auditor General to the drafter of this memorandum, it is clear that EDCU engaged in risky conduct that *may* constitute a violation of the Utah Public Officers' and Employees' Ethics Act or other provisions of state law, as discussed above.

Thomas R. Vaughn
Associate General Counsel
Office of Legislative Research and General Counsel

[15] Of course, before such an analysis could take place, a prosecutor would need to determine whether the filing of charges was warranted.

Agency Responses

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Economic Development Corporation of Utah
201 S Main Street, Suite 2150
Salt Lake City, UT 84111

October 6, 2016

Mr John Schaff
Office of the Legislative Auditor General
W315 State Capital Complex
Salt Lake City, UT 84114

Dear Mr Schaff,

Please find our attached Response to the Utah Office of the Legislative Auditor General's Performance Audit of the Economic Development Corporation of Utah (EDCUtah).

Although this has been a difficult, at times uncomfortable process we appreciate the professionalism, dedication and integrity your staff has demonstrated throughout. Kade Minchey, Tim Bereece and Derek Olson have performed a tremendous service for EDCUtah and we will be a much stronger organization for having gone through this process.

We look forward to the Audit Committee hearing and the opportunity to provide additional details on the many improvements that have been made at EDCUtah over the past 12 months. Thank you for your public service.

Sincerely,

Jeff Edwards
President & CEO

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Digest of the EDCUtah Response to the
Office of the Utah Legislative Auditor General Performance Audit

Chapter 1
EDCUtah Introduction

The Economic Development Corporation of Utah (EDCUtah) was founded in 1987 by a group of 100 business and local government leaders. Its mission was to be a catalyst for new job growth and capital investment in Utah by helping existing businesses to expand and recruiting new businesses to the state. EDCUtah's funding model leverages state-wide public and private investment for the betterment of all. This buy-in and support from both sectors is unique to Utah and provides the state with a tremendous competitive advantage.

For nearly 30 years, EDCUtah has been producing exceptional results for Utah. During that time, EDCUtah client companies have announced projects with the potential to create more than 140,000 jobs and capital investment of nearly $14B.

In 2005, the state reorganized its economic development programs with the creation of the Governor's Office of Economic Development (GOED). At that time, EDCUtah won a competitive bid for a contract with GOED designating EDCUtah as the business development arm responsible for lead generation and project management.

In 2014, GOED made the decision to put a new RFP out to bid for additional "Proactive Recruiting Services." Again, EDCUtah was selected as the vendor. In fulfillment of the expanded contract, EDCUtah created the Global Strategy & Outreach (GS&O) Program. In the two-plus years since the GS&O Program's creation, EDCUtah has been successful in proactively identifying, targeting and generating leads and projects with more than 100 companies. The GS&O program, combined with EDCUtah's already significant expertise in traditional corporate recruitment project management, Site Selection Consultant intelligence, and targeted corporate recruitment-focused research and marketing, represents a significant value for Utah.

Chapter 2
Response to "Improper and Questionable Expenses Have Occurred at EDCUtah"

EDCUtah acknowledges that one former executive failed to provide sufficient documentation to justify all of the purchases made on their company-issued credit card over a three-year period. We also acknowledge that a number of the undocumented charges appear to have been personal in nature. EDCUtah management has reviewed the questionable charges in detail and believes that the majority of the charges, although poorly documented, were for legitimate business purposes. To ensure this can no longer occur, EDCUtah has adopted a Credit Card Policy and will only maintain two company credit cards, with expenses being approved by the CFO.

Additionally, EDCUtah acknowledges that internal financial controls and governance were lacking at the organization for several years. We recognize that this lack of control may have allowed the situation with the former executive to continue for longer than it would have otherwise. To ensure this situation never occurs again, EDCUtah has overhauled all aspects of its internal financial controls and governance.

EDCUtah acknowledges that meals were bought for GOED employees during the course of its contractual update meetings. Having these update meetings over the lunch hour proved to be the most convenient scheduling option available and EDCUtah strenuously objects to any inference that these lunches were purchased in an attempt to influence behavior of decision makers within GOED.

EDCUtah also acknowledges that gifts were purchased for outgoing GOED Directors as a thank you for their service to the state and in conjunction with going-away events. However, EDCUtah would like to reiterate that the gifts were not given with any intent to influence decision making. The gifts were given as a token of appreciation to individuals who had dedicated several years to public service, and who no longer had any decision making authority over our contract.

Chapter 3

Response to "EDCUtah's Financial Governance has been Unacceptable"

EDCUtah acknowledges that financial policies and procedures were lacking and/or inadequate, that deficiencies in policies and procedures allowed undocumented charges to occur, and that a lack of proper internal controls existed at the company for several years. To ensure this situation never occurs again, EDCUtah has enacted the following changes:

- The establishment of a Board Finance Committee with deep financial expertise to oversee all financial governance of the organization.
- The hiring of a Chief Financial Officer with broad nonprofit experience and CPA certification to provide in-house expertise.
- The revision of numerous financial policies and procedures initiated by the Finance Committee.
- The adoption of a revised Financial Policies and Procedures manual.
- Amended bylaws and restructured the Board of Trustees to allow for more oversight and governance.
- The adoption of charters for subcommittees of the Board of Advisors, including a newly created Audit Committee to focus on compliance issues.

Chapter 4

Response to "EDCUtah's Weak Financial Oversight Resulted in its Tax-Exempt Status Being Revoked"

EDCUtah acknowledges that poor financial oversight and governance existed at the organization for several years. Our failure to complete annual audits in a timely fashion, and to file appropriate tax forms with the IRS, led to the revocation of our non-profit status. The Office of the Legislative Auditor General Performance Audit of EDCUtah has been very helpful in driving the numerous improvements we have made as an organization over the past six months. EDCUtah would like to thank Legislative Auditor General staff for their assistance in identifying problems and for the recommendations they have made throughout this process.

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CHAPTER 1: EDCUTAH INTRODUCTION
A. EDCUtah's Formation and History

The Economic Development Corporation of Utah (EDCUtah) was founded in 1987 by a group of 100 business and local government leaders. Its mission was to be a catalyst for new job growth and capital investment in Utah by helping existing businesses to expand and recruiting new businesses to the state. The founders felt strongly that this program must be statewide, not just for the Wasatch Front. The guiding principle has always been that high levels of cooperation ensure success, and that success in one part of the state benefits the entire state.

For the last 30 years, EDCUtah has produced exceptional results for Utah. During that time, EDCUtah client companies have announced projects with the potential to create more than 140,000 jobs and capital investment of nearly $14B. Our success has been noted nationally and our organizational model has been copied by many other states and regions in the US. Just recently, the Pollina Report, a well-respected publication that provides advice to corporate real estate executives, said this:

> ***"Considerable credit for [Utah] achieving the #1 rank [Pro Business State] and holding it for four consecutive years must be given to the highly-regarded Economic Development Corporation of Utah.*** *Governor Herbert and his administration should be commended for their efforts to remain competitive in this highly competitive region, as they have clearly worked consistently over time to preserve the tools that Utah needs to remain the most pro-business state in the country."*

B. EDCUtah's Business Model is Sound

EDCUtah was one of the first private economic development organizations in the country. The founders established a novel funding model of both public and private investment for the betterment of all. Each of EDCUtah's 300+ member organizations contributes based on its size (population, revenues, number of Utah employees, etc). Our diverse membership base has enabled EDCUtah to have strong relationships all over the state, and to have a network of expertise that we can call upon to assist with projects. Specialties within EDCUtah's membership base include legal, staffing, real estate, taxation, utilities, workforce, training, public education, finance and dozens of other areas. This private sector support for EDCUtah's mission is unique to Utah and provides the state with a tremendous competitive advantage. We are regularly told by client companies that "nobody else does economic development like Utah" in reference to our ability to bring together such a diverse set of interests in support of a communal cause. EDCUtah is also connected closely to its public investors, which helps us understand their targeted industries, development plans, available project sites and local initiatives. This model gives us a strategic advantage in creating comprehensive responses to opportunities for recruitment.

C. EDCUtah-GOED Relationship (2005-2014)

Prior to 2005, EDCUtah's funding came from local government and the private sector with no state involvement. In 2005, the state reorganized its economic development programs with the creation of the Governor's Office of Economic Development (GOED) and set out to better define roles and responsibilities. The result of those discussions was a competitively bid contract between GOED and EDCUtah that designated EDCUtah as the business development arm responsible for lead generation and project management. GOED retained management of corporate incentives, economic cluster development and other programs. The contract provided state funds to assist in the expansion of EDCUtah's efforts to support all communities in the state and to increase its research and recruiting capabilities.

The 2005 contract set the stage for what has become an outstanding partnership and an example of public-private collaboration that has produced exceptional results. For this past fiscal year alone this includes the forecasted creation of more than 13,000 new jobs and $925M in new capital investment in Utah. These results do not happen by accident. They are largely the result of the seamless experience client companies have when being hosted by "Team Utah." This team extends throughout the state and includes both the public and private sectors.

D. EDCUtah-GOED Relationship (2014-present)

In 2014, EDCUtah and GOED began discussing how the recruiting process could be improved. Up to this time, Utah had been fortunate in that many opportunities were coming its way due to the momentum created by the great success in the preceding 10 years. All parties now felt it important to develop ways to more proactively reach out to companies to make them aware of Utah as an expansion destination. Initiatives with a similar goal had been attempted a number of times in the past, including having economic development representatives stationed on the east and west coasts, and hiring third-party lead generation firms to act on behalf of the state. These efforts had produced limited results and the belief was that a renewed attempt was in order. GOED made the decision in early 2014 to put a new RFP out to bid for additional "Proactive Recruiting Services," for which EDCUtah provided a response.

Through the state procurement process, GOED selected EDCUtah as the vendor for the new Proactive Recruiting initiative, and based on lessons learned over the previous decade, EDCUtah created the Global Strategy & Outreach (GS&O) Program. It would consist of a team of researchers, database managers, marketing strategists, and a senior leader to pull together the tools and resources to execute an internal lead generation effort. It would also require a considerably expanded travel budget, research services and software tools. Based on this model, the contract deliverables were rewritten to include this new effort and the contract amount was increased.

In the two-plus years since the GS&O Program's creation, EDCUtah has been successful in identifying, targeting and generating leads and projects with more than 100 companies. The GS&O team has executed more than a dozen targeted recruiting trips, and supported the execution of more than a dozen additional recruiting initiatives (trade shows, conferences, trade missions, etc).

Additionally, the process that has been developed and tested for the past two years is internal to EDCUtah and therefore highly flexible. It can be scaled up, or down, as demand dictates and gives Utah a tremendous competitive advantage over neighboring states and economic development groups.

The GS&O program, combined with EDCUtah's already significant expertise in traditional corporate recruitment project management, Site Selection Consultant intelligence and targeted corporate recruitment-focused research and marketing, represents a significant value for Utah. Additionally, that fact that more than 80% of our total revenue goes directly to our core mission of quality job and capital investment creation validates that we execute on this mission in an efficient and effective manner.

CHAPTER 2: RESPONSE TO IMPROPER AND QUESTIONABLE EXPENSES HAVE OCCURRED AT EDCUtah

Improper Credit Card Purchases Linked to a Former EDCUtah Executive

Report Found: A Former Executive Identified Improper Charges to be Repaid
EDCUtah Response: EDCUtah acknowledges that one former executive failed to provide sufficient documentation to justify all of the purchases made on their company issued credit card over a three-year period. We also acknowledge that a number of the undocumented charges appear to have been personal in nature, and in no way related to company activity. Due to the large number of charges, and the lack of documentation, we are unable to determine the exact amounts.

EDCUtah reviewed the expenses in question to determine an amount for repayment. All credit card expenses were reviewed and those that had documentation were verified. For those that were missing documentation, the CFO, former executive and assistant to the former executive compared unverified charges against the former executive's business calendar. The CFO also met with the CEO regarding the expenses to determine, in the absence of firm documentation, which expenses were business related. The CEO's conclusion was the vast majority were business related.

To ensure that personal charges, or undocumented charges, can no longer occur, EDCUtah will cease the use of company-issued credit cards with the exception of two. One which will require authorization for use from the CFO and one which will be used exclusively for trade shows and events. A Credit Card Policy has been adopted by the Finance Committee and will be followed. In addition, the "auto pay" feature that has been used in the past will be eliminated.

Employees will need to submit receipts with documentation for reimbursement of business expenses. Lack of receipt, or improper documentation, will result in expense reimbursement requests being declined.

Report Found: The Former Executive Purchased Computer Hardware That Is Missing
EDCUtah Response: EDCUtah acknowledges that inventory controls related to computers, phones and other technology were lacking at EDCUtah at the time of the Office of the Legislative Auditor General's (OLAG) review. As a result, purchases made by the former executive could not be adequately tracked and verified. EDCUtah again acknowledges that the former executive made some improper purchases on their company credit card, including several at the Apple Store. Due to poor inventory control, and the lack of documentation around many of the former executive's company credit card purchases, EDCUtah was unaware of the extent of the problem at the time of their departure.

To ensure this situation never occurs again, EDCUtah has adopted a Property and Equipment policy which includes: "A Fixed Asset Log is maintained by the Finance & Operations Manager including date of purchase, asset description, purchase/donation information, cost/fair market value, donor/funding source, identification number and life of asset. The Log will be managed by the CFO. Annually, a physical inspection and inventory will be taken of all fixed assets and reconciled to the general ledger balances. Asset tags will be used to easily identify assets."

Report Found: Severance Agreement Details Are Needed to Clarify EDCUtah Statements*
*("*Those employees with undocumented expenses have fully reimbursed the company.")*
EDCUtah Response: The former executive's severance agreement was executed in the midst of the OLAG field work. Based on the information we had available at that time, the CEO believed that it was an accurate representation of amounts owed. Based on information now in our possession, we acknowledge that we may have proceeded differently with respect to the severance agreement.

<u>Poor Documentation and Unclear Business Purposes Call into Question Many Purchases</u>

Report Found: Over Half of the Former Executive's Credit Card Purchases Lacked Receipts
EDCUtah Response: EDCUtah acknowledges that internal financial controls and governance were lacking at the organization for several years. We recognize that this lack of control may have allowed the situation with the former executive to continue for longer than it would have otherwise. To ensure this situation never occurs again, EDCUtah will cease the use of company-issued credit cards with the exception of two. One which will require authorization for use from the CFO and one which will be used exclusively for trade shows and events. A Credit Card Policy has been adopted by the Finance Committee and will be followed. In addition, the "auto pay" feature that has been used in the past will be eliminated.

Report Found: Meals and Other Purchases Lacked Details about Their Business Purpose
EDCUtah Response: EDCUtah acknowledges that the former executive appears to have made several purchases that lack a clear business purpose. In regard to some of the specific items outlined in the Performance Audit (clothing, golf, after hours food purchases) we cannot verify their business purpose due to the poor record-keeping exercised by the former executive. EDCUtah does not condone or approve of this practice.

EDCUtah would respectfully contend, however, that the purchase of some meals for staff is appropriate. The practice of taking an employee to lunch where business is discussed, a performance review is held, or a simple "thank you" is given for outstanding performance is commonplace, and not outside the bounds of accepted business practices. If sixty-five meals were given over a 33-month period, that would equate to less than two meals per month, which we feel is not unreasonable for a manager with several employees.

EDCUtah would also like to reiterate that the questionable spending identified throughout this report was limited to a single, former executive. As part of the audit process, shortcomings in EDCUtah's bookkeeping outside of the former executive were identified. In these limited instances, legitimate business expenses were missing appropriate documentation. When possible, valid receipts were retrieved from vendors and provided to EDCUtah management and OLAG audit staff. When it was not possible to retrieve receipts, documentation by EDCUtah staff was provided on the nature of the expense, the legitimate business purpose, and the reason no receipt was available. Lack of appropriate documentation does not always equate to misappropriation of funds. We are not defending the actions of the former executive, but we also want to draw a distinction between the two circumstances.

To ensure that personal charges, or undocumented charges, can no longer occur, EDCUtah will cease the use of company-issued credit cards with the exception of two. One which will require authorization for use from the CFO and one which will be used exclusively for trade shows and events. A Credit Card Policy has been adopted by the Finance Committee and will be followed. In addition, the “auto pay” feature that has been used in the past will be eliminated.

Employees will need to submit receipts with documentation for reimbursement of business expenses. Lack of receipt, or improper documentation, will result in expense reimbursement requests being declined.

Report Found: Travel Combining Vacations and Business Was Not Documented
EDCUtah Response: Over nearly 30 years of corporate recruiting, EDCUtah has learned that developing personal relationships with key Site Selectors and Corporate Real Estate Executives is one of the best ways to get Utah involved in more corporate expansion and relocation projects. One of the limiting factors to building these relationships is time, as there are nearly 700 consultants compared to less than a dozen EDCUtah staff with business development responsibilities. We regularly travel to their offices, to conferences, and to other venues where we might have the ability to get 30 minutes of their time to update them on the state, recent projects we have won, and recognition we have received. As a way to create more opportunities for meeting with these key clients, the former executive began the process of adding a day or two to personal vacations where meetings could be scheduled with Site Selectors. EDCUtah acknowledges that the record keeping and documentation of this practice was lacking on the part of the former executive. We maintain, however, that the intent of the activity was sound.

To eliminate any questions about the efficacy of these activities going forward, staff will be required to receive prior written authorization for any business travel combined with personal travel, including the nature of the business to take place, who the meetings are with, and the benefit to the organization. Additionally, staff will be required to log the results of the additional travel prior to any expenses being reimbursed.

<u>Providing Gifts and Meals to GOED Employees Is Risky Behavior</u>

Report Found: EDCUtah Gave Gifts and Meals to GOED Employees
EDCUtah Response: EDCUtah acknowledges that meals were bought for GOED employees during the course of its contractual update meetings. These lunches were borne out of necessity, given that the schedules of those involved left a lunch-time meeting as one of the only feasible meeting times each week. Because these lunches were a situational event and nominal in value, EDCUtah strenuously objects to any inference that these lunches were purchased in an attempt to influence behavior of decision makers within GOED, particularly given the lack of evidence of intent as defined by the statute. Regardless, EDCUtah has ceased purchasing lunch for the weekly contractual updates.

EDCUtah also acknowledges that gifts were purchased for outgoing GOED Directors as a thank you for their service to the state and in conjunction with going-away events. However, EDCUtah would like to reiterate that the gifts were not given with any intent to influence decision making. The gifts were given as a token of appreciation to individuals who had dedicated several years to public service, and who no longer had any decision making authority over our contract. However, EDCUtah has undertaken a review of this practice and has elected to cease the same.

EDCUtah is unable to speak with any specificity regarding the former executive’s claims regarding additional lunches purchased for GOED employees. The allegation that these lunches were purchased for GOED employees is based on statements from the former executive and the location of the lunches. It is important to note that the location of the lunches is not particularly significant given the proximity of the lunches to EDCUtah's offices. Assuming that these additional lunches were in fact purchased for GOED employees, EDCUtah reiterates that they were all nominal in value and likely in the context of a business discussion.

With respect to the participation in a golf tournament and payment of entrance fees for a GOED Board Member, EDCUtah again objects to the inference that a one-time payment and participation in a high school golf tournament was based on an intent to influence behavior. This is a leap we do not feel is supported by law or fact. Regardless, this is not a practice that EDCUtah has continued, nor intends to participate in going forward.

Report Found: GOED Awarded EDCUtah An Updated Contract
EDCUtah Response: EDCUtah acknowledges that GOED awarded EDCUtah an updated contract for proactive recruiting services. As the report found, EDCUtah participated in a request for proposal (RFP) process and was awarded the contract. Further, the increased contract was based on the significant additional deliverables required by EDCUtah. EDCUtah not only performed on each of the deliverables, but in some cases exceeded the same.

Report Found: Meals and Gifts May Have Violated Statute
EDCUtah Response: EDCUtah recognizes that an analysis from the Office of Legislative Research and General Counsel suggests that the meal purchases constituted "risky behavior" and a potential violation of statute. However, it is difficult for EDCUtah to opine on the possible violation of statute or the potential legality of the same, as we could not share this report with our attorney for legal review and analysis. Once again, EDCUtah ***strongly objects*** to the inference that the purchase of meals was based on an intent to influence behavior. These meals were nominal in value and the practice began out of scheduling necessity. The allegation that box lunches may amount to bribery is highly questionable, and sets an extraordinarily dangerous precedent for government vendors or those that enter government contracts, with the potential of a chilling effect for future government vendors or contracts. Finally, lunches continued after the contract was awarded and updated. Accordingly, this undermines any argument that the lunches were purchased in an attempt to influence decision-makers, or their behavior.

CHAPTER 3: RESPONSE TO EDCUtah'S FINANCIAL GOVERNANCE HAS BEEN UNACCEPTABLE

EDCUtah's Financial Policies and Procedures Were Inadequate

Report Found: The Lack of Financial Policies Is Contrary to Standards
EDCUtah Response: EDCUtah acknowledges that financial policies and procedures were lacking and/or inadequate. In an effort to remedy this situation a Finance Committee, made up of seven experienced financial professionals, was established in December 2015 to oversee all financial governance of the organization. A local audit firm, known for their nonprofit experience, was retained in December 2015 to begin auditing the records of the organization. A Chief Financial Officer, a CPA with nonprofit experience, was added to EDCUtah's team in April to assist in implementing new policies and procedures, as well as to allow for proper separation of duties and additional oversight. A comprehensive revision of all financial policies and procedures was approved by both the Finance Committee and Board of Trustees in August 2016. EDCUtah is committed to continuing to improve the existing policies and procedures, with additional policies pending approval prior to the end of the calendar year.

Report Found: Credit Card Purchasing Practices Illustrate Multiple Deficiencies
EDCUtah Response: EDCUtah acknowledges the deficiencies in policies and procedures that allowed undocumented charges to occur and continue. To ensure that personal charges, or undocumented charges, can no longer occur, EDCUtah will cease the use of company-issued credit cards with the exception of two. One which will require authorization for use from the CFO and one which will be used exclusively for trade shows and events. A Credit Card Policy has been adopted by the Finance Committee and will be followed. In addition, the "auto pay" feature that has been used in the past will be eliminated.

Employees will need to submit receipts with documentation for reimbursement of business expenses. Lack of receipt, or improper documentation, will result in expense reimbursement requests being declined.

Report Found: Internal Control Procedures Are Poorly Designed and Ineffective
EDCUtah Response: EDCUtah acknowledges that there was a lack of proper internal controls for several years. Since the OLAG audit began, new Accounting Policies and Procedures have been adopted by the organization. The new policies include division of responsibilities to provide for separation of duties, proper authorization of transactions, documentation maintenance and retention, and ongoing monitoring of procedures.

Noncompliance with Financial Reporting Prompted Critical Organizational Changes

Report Found: Management and The Board Are Responsible for Reporting Breakdowns
EDCUtah Response: EDCUtah management acknowledges that reporting deficiencies were present during the period of failure. As stated in the report, the EDCUtah bylaws designated the organization's Board Executive Committee to act as the de facto Finance Committee, an arrangement that worked well for many years. However, due to circumstances which occurred in 2011 (e.g., changes in audit firms and internal financial management responsibility), shortcomings with this arrangement were magnified. The report correctly identifies the CEO as the person ultimately responsible for ensuring that all of these items occurred on time. The CEO takes personal responsibility for these shortcomings and apologizes for allowing them to occur.

Report Found: EDCUtah's Board Responded by Creating a Finance Committee
EDCUtah Response: As indicated in the report, a smaller committee tasked with financial governance and oversight is preferable to the previous structure of the 35 member executive committee. EDCUtah recognized this opportunity to improve and responded quickly to execute on it. The new, seven-person Finance Committee has met several times and has proven to be a much better method of ensuring timely financial governance and oversight.

Report Found: The Management Structure Has Been Reorganized
EDCUtah Response: In addition to adding a CFO position, the Board of Trustees amended the bylaws to create a smaller Board, which strengthens governance and fiduciary responsibility. Both a Finance Committee and an Audit Committee were established to provide oversight and ensure compliance with both regulating authorities and current best practices.

Recommendations
1. We recommend that EDCUtah management evaluate its use of auto-pay features for credit cards, and ensure that if they are used, adequate approvals occur.
EDCUtah Response: **IN PROCESS**
EDCUtah will no longer provide company-issued credit cards to staff. Two company cards will be retained. One will be maintained by the Manager of Marketing & Events and used exclusively for trade shows and events. The second will be overseen by the company's CFO. All transactions will be approved prior to purchase and no payment will be submitted until all appropriate documentation has been provided. The "auto pay" feature which has been used in the past, will be discontinued.

2. We recommend that EDCUtah management and the finance committee of the board supplement its purchasing policies with enforcement provisions that ensure expenses and equipment use, such as vehicles, are properly documented with purposes and receipts.
EDCUtah Response: **IN PROCESS**
EDCUtah will revisit the policy of company-owned vehicles. Based on past experience we know that one company owned vehicle provides the organization with both financial, and logistical benefits, but we also acknowledge that proper documentation surrounding its use was lacking over a period of several years. We are confident that with the new financial controls in place, and with more rigorous oversight, we can ensure that these tools are properly utilized. With the elimination of individual company credit cards for staff, any additional purchases of equipment will be overseen by the company CFO, appropriately documented and approved.

3. We recommend that EDCUtah perform a comprehensive evaluation of its internal control environment that includes, but is not limited to, segregation of duties, check signing procedures, receipt of goods and services, and logs of property and equipment.
EDCUtah Response: **IMPLEMENTED**
Accounting Policies and Procedures have been rewritten and approved by both the Finance Committee and Board of Trustees. They have also been reviewed by EDCUtah's audit firm. New policies and procedures include Division of Responsibilities, Chart of Accounts and General Ledger, Cash Receipts, Inter-Account Bank Transfers, Cash Disbursements & Expenses, Credit Card Policy and Charges, Accruals, Bank Account Reconciliations, Petty Cash Fund, Property and Equipment, Personnel Records, Payroll Processing, End of Month and Fiscal Year-End Close, Financial Reports and Fiscal Policy Statements.

4. We recommend that EDCUtah's new CFO position be strategically utilized to strengthen internal controls, correct purchasing deficiencies, and ensure compliance with financial reporting requirements.

EDCUtah Response: **IMPLEMENTED**

New policies and procedures strategically utilize this additional position to create more separation of duties, add an additional level of oversight, and ensure financial reporting is completed timely and accurately. The CFO will participate in Finance Committee meetings and present any issues to the committee.

5. We recommend that the finance committee at EDCUtah hire a qualified firm to review all accounts, processes, functions, activities, business relationships, and any other pertinent areas at EDCUtah to ensure that all improper and unadvisable activities at EDCUtah are identified and corrected.

EDCUtah Response: **IN PROCESS**

The Finance Committee will seek a qualified firm to conduct a complete performance audit of the financial processes outlined in the OLAG report. This will be undertaken as soon as practical in this fiscal year, to give adequate time to ensure the new systems are working effectively.

CHAPTER 4: RESPONSE TO EDCUtah'S WEAK FINANCIAL OVERSIGHT RESULTED IN ITS TAX-EXEMPT STATUS BEING REVOKED

Poor Financial Management Led to Revocation of EDCUtah's Tax Exempt Status

Report Found: Unfiled Tax Returns Led to Revocation of EDCUtah's Tax Exempt Status
EDCUtah Response: EDCUtah acknowledges that poor financial oversight and governance existed at the organization for several years. Our failure to complete annual audits in a timely fashion, and to file appropriate tax forms with the IRS, led to the revocation of our tax exempt status. To ensure this situation never occurs again, EDCUtah's Board of Trustees has amended the bylaws of the organization to reduce the size of the Board, which strengthens governance and fiduciary responsibility. Both a Finance Committee and an Audit Committee were established to provide oversight and ensure compliance with both regulating authorities and current best practices. The Finance Committee will oversee budgeting and monthly financial reporting. The Audit Committee will oversee selection of an audit firm, the audit engagement and filing of Form 990s. EDCUtah's Accounting Policies and Procedures include the following: "At the end of the fiscal year, the CFO or outside CPA will prepare the annual Return for Organization Exempt from Income Tax (IRS Form 990). The return will be presented to the CEO, the Board of Trustees Finance Committee, and the Board Chair for their review and approval. The CFO will then file the return with the Internal Revenue Service by the annual deadline, or extended deadline if applicable. All other appropriate government filings including those required by the state tax board and attorney general's office will be completed and filed with the appropriate agency."

Report Found: Financial Reporting Problems Were Recognized When This Audit Began
EDCUtah Response: The OLAG Performance Audit of EDCUtah has been very helpful in driving the numerous improvements we have made as an organization over the past six months. Those changes include:

- The establishment of a Board Finance Committee to oversee all financial governance of the organization. The committee is comprised of seven experienced financial professionals from both the public and private sectors including Goldman Sachs, Wells Fargo Bank, Workers Compensation Fund, Westminster College, Utah County and Zions Bank.
- The hiring of a Chief Financial Officer with broad nonprofit experience and CPA certification to provide in-house expertise.
- The revision of numerous financial policies and procedures initiated by the Finance Committee.
  The adoption of a Conflict of Interest policy by the Board of Trustees.
- The adoption of a new, revised, financial policies and procedures manual.
- Amended bylaws and restructured Board of Trustees to allow for more oversight and governance.
- Adopted charters for subcommittees of larger board, including a newly created Audit Committee to focus on compliance issues.
- Outsourced Payroll and Human Resource Functions to third party, Resource Management Inc., allowing for greater expertise in employment compliance issues.

EDCUtah would like to thank the OLAG staff for their assistance in identifying problems and for the recommendations they have made throughout the Performance Audit report.

EDCUtah's Management of Audit and Tax Work Was Unacceptable

Report Found: EDCUtah Requested Accounting Work After Some Financial Reports Were Already Due
EDCUtah Response: EDCUtah acknowledges that there was a lack of clear responsibility between staff positions that left uncertainty as to who should engage the audit firm and manage the audit and tax return preparation. The new Board Finance Committee and Audit Committee will oversee these functions in the future. The addition of a CFO and Accounting Policies and Procedures which clearly outline responsibilities is intended to ensure these mistakes do not happen again.

Report Found: EDCUtah's Unresponsiveness Left Accounting Work Incomplete
EDCUtah Response: EDCU acknowledges that there was a lack of clear responsibility between staff positions that led to requests for information being unanswered. The new CFO position allows for one contact within the organization to manage information requests. Accounting Policies and Procedures further outline responsibilities and are intended to ensure timely responses going forward.

Report Found: EDCUtah's CEO Claims That Problems Were Not Communicated to Him
EDCUtah Response: EDCUtah acknowledges that there were multiple breakdowns in communication, both internally and externally, between staff and EDCUtah's external financial auditors. There were multiple reasons for these breakdowns, but the responsibility ultimately rests with EDCUtah. EDCUtah's CEO was not aware of the full extent of the compliance problems, and would have taken more immediate action had he been better informed. Once the full extent of the problem became known, EDCUtah management enacted a series of changes to resolve the problem. Additionally, more robust controls have been enacted to ensure these communication breakdowns do not occur in the future.

Report Found: EDCUtah's Statements to the IRS Are Inconsistent with Our Observations
EDCUtah Response: The CEO was unaware of the IRS suspension of its tax exempt status until he was notified in late 2015. He, along with the Board of Trustees, took immediate steps to correct the problem including the completion of outstanding audits and tax filings. EDCUtah believes its reinstatement without penalty resulted from its long track record of compliance, coupled with the immediate response to bring missing filings up-to-date. EDCUtah also believes that the structural changes made to improve governance and financial oversight demonstrated to the IRS the seriousness with which EDCUtah was treating the problem, and its dedication to making significant improvements.

Recommendations
1. We recommend that EDCUtah submit its most recent audited financial statements to the State Auditor's Office.
EDCUtah Response: **IMPLEMENTED**
EDCUtah has uploaded the three most recent audited Financial Statements to the State Auditor's online portal, including Fiscal Year 2016, which ended June 30, 2016. The State Auditor's Office has acknowledged receipt of all requested information.

EDCUTAH CONCLUDING STATEMENTS

1. Leveraging GOED's investment in EDCUtah with local and private sector investments has created tremendous value for Utah.
As set forth above, the model for economic development practiced by EDCUtah has not only been very successful, it has been used as a model for other states in creating similar organizations. EDCUtah is able to do the work previously housed within GOED for a fraction of the cost by leveraging state investment with local government and private sector funds. Therefore, there can be little doubt that EDCUtah is an effective and cost efficient model for corporate recruitment.

2. GOED's investment in EDCUtah has generated a significant ROI for Utah.
Not only is EDCUtah's current model extraordinarily cost efficient, it is also very successful. In nearly 30 years, EDCUtah has managed projects that have committed to create nearly 140,000 jobs and over $14 billion in capital investment. The impact this work has had on the State of Utah cannot be understated.

3. EDCUtah acknowledges that the method in which our operation was managed between FY2010-11 and FY 2015-16 was unacceptable.
There is no doubt that serious mistakes were made in the management of the organization. The lack of financial controls and processes was a contributing factor to other issues within the organization. EDCUtah acknowledges the gravity of these matters, and has undertaken robust efforts to ensure that each is remedied in a timely and comprehensive manner. As set forth above, nearly all recommendations made in the report have already been addressed and implemented, with the remainder currently in process. We would like to reiterate that EDCUtah is committed to its mission and to the good work it does for the State of Utah.

4. EDCUtah's performance on its mission of corporate recruitment and retention between FY2010-11 and FY2015-16 was exceptional.
Despite the issues with management of the organization during this time period, EDCUtah had record years of corporate recruitment and retention between FY2010-11 and FY2015-16. Specifically, EDCUtah managed nearly 200 projects with total jobs commitments of over 63,000 and new capital investment commitments of nearly $6 billion. EDCUtah's business model is sound and successful. With the recent changes and improvements to the management and governance structure of the organization, we expect that the successes will be even greater in the years to come.

5. EDCUtah would like to thank OLAG for their exhaustive examination of the organization and for their recommendations.
OLAG has demonstrated exceptional professional courtesy and diligence. Although this has been a difficult process, EDCUtah will be a stronger organization for having undergone this performance audit. This process has ensured that EDCUtah can continue to serve the state and its citizens for years to come.

Governor's Office of Economic Development

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State of Utah

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Lieutenant Governor

Q. VAL HALE
Executive Director

THERESA FOXLEY
Deputy Director

Sept. 29, 2016

Office of Legislative Auditor General
W315 House Building
State Capitol Complex
Salt Lake City, UT 84114

Dear Auditors,

Over a decade ago, the state of Utah recognized a partnership with an established organization, focused on business expansion, would amplify the state's economic development efforts. That realization resulted in a contractual relationship between the Economic Development Corporation of Utah (EDCUtah) and the Governor's Office of Economic Development (GOED). GOED contracts with EDCUtah to assist the state in managing processes and projects related to corporate recruitment and expansion.

EDCUtah's mission of bringing new jobs and capital investment into Utah compliments GOED's mission to improve quality of life by increasing and diversifying the state's revenue base. EDCUtah has executed on its mission well and, as the Audit Report indicates, has delivered under the terms of its contract with GOED. EDCUtah played a key role in several marquee corporate recruitment successes including Adobe, Boeing, Goldman Sachs and dozens of others.

We appreciate the opportunity to respond to the Performance Audit of EDCUtah and the good work of the Office of Legislative Auditor General auditors. Despite EDCUtah's successful execution of its mission and the deliverables under the contract, it is clear EDCUtah lacked certain necessary organizational structures and financial controls. Although addressing the audit findings around EDCUtah's organizational structures and controls are largely EDCUtah's responsibility, as those organizational issues became apparent to GOED, our leadership team worked with EDCUtah to improve its governance structure. We chose to engage in this process of improvement because we believe in the value of independent, public-private partnerships as part of our statewide efforts. Further, GOED has clarified and enhanced the language in our contract with EDCUtah to address some of the concerns raised throughout the audit process to ensure the state has the flexibility and control it needs in administering this contract in the future.

Having responded generally to EDCUtah's organizational issues, we would like to respond to a few specific sections of the Audit Report, including its characterization of casual working lunches and recognition given to departing employees. We are troubled at the insinuation that casual working lunches or gifts were used by EDCUtah in an effort to influence GOED's contract administration.

As the Audit Report notes, EDCUtah is contractually obligated to provide GOED a weekly update on its activities. For the sake of efficiency, EDCUtah hosted weekly update meetings at its office and

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provided a casual take-out lunch to both organizations' employees involved in the meetings. GOED never considered these casual, agenda-driven working lunches, which were under $10.00 per person, to be an offer of "quid pro quo," and EDCUtah never intimated it was expecting anything from GOED in return. Nor did the lunches affect the management or oversight of GOED's contract with EDCUtah. We believe the audit report misconstrued the purpose of these working lunches. Additionally, it does not stand to reason that farewell gifts given in recognition of public service to outgoing public servants would be given with the intent to influence GOED's contract administration.

Although we take exception to the Audit Report's characterization of working lunches, we are keenly interested in conducting our business to the highest standards. While we found increased efficiency in conducting agenda-driven working lunches, to avoid any potential appearance of impropriety, lunchtime updates have ceased. Additionally, GOED reviewed and updated its policies, procedures, and employee trainings to ensure that all employees are familiar with their legal and ethical obligations as public employees.

We hope EDCUtah can continue to improve as an organization and earn the trust of its members, legislators, stakeholders and the public. The state has benefitted from its contractual relationship with EDCUtah, and we hope that relationship can continue through its term by EDCUtah's improvement.

Very truly yours,

Q. Val Hale

Q. Val Hale
Executive Director
Governor's Office of Economic Development