

Government Operations and Audit Committee

Report of the Operations of the Governor's Office of Economic Development

House Concurrent Resolution 1010

November 28, 2014

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November 28, 2014

Members of the South Dakota Legislature

I submit to you herein, the report called for in House Concurrent Resolution (HCR) 1010 from the 2014 Legislative Session. The report summarizes the results of hearings conducted by the Government Operations and Audit Committee (GOAC) regarding the operations of the Governor's Office of Economic Development (GOED) pursuant to directions contained in the resolution.

The report contains two sections. The first section provides a summary of GOAC activities relating to the GOED for each GOAC hearing conducted during the 2014 interim. The second section contains various supporting exhibits containing selected documents reviewed by the GOAC during its hearings.

The first of GOAC's hearings focused on reviewing the reports resulting from engagements conducted by independent accounting firms and the Department of Legislative Audit. These reports contained many important recommendations for improving the GOED's and state government's system of internal controls. A subsequent hearing involved testimony from the GOED and other state officials concerning plans for implementation of the recommendations from the auditors' reports. The GOAC is satisfied that the recommendations from these reports either have been or will be implemented by the GOED and other State agencies.

The GOAC will be introducing legislation during the 2015 session to address concerns expressed by one of the audit findings contained in the Department of Legislative Audit's report. This legislation will amend two state laws and provide a "cooling off" period by prohibiting state government officers and employees from entering into contracts with the state within one year of leaving state government employment.

The GOAC considered but decided against issuing subpoenas to any person. However, the GOAC's final two hearings regarding the GOED involved reviewing written responses to GOAC questions posed to Governor Daugaard, former Governor Rounds and Mr. Joop Bollen. Upon reviewing this written testimony, the GOAC determined no further action was necessary.

As a result of its hearings, the GOAC believes the events that occurred concerning the GOED that precipitated the adoption of HCR 1010 were the result of inappropriate actions taken by former state official Richard Benda. The GOAC further believes that implementation of the auditors' various recommendations will improve the oversight of GOED programs and internal control over related transactions resulting in a significant reduction in the risk of such events occurring in the future.

The GOAC wishes to thank all of the parties providing testimony for their cooperation and assistance. I would also like to thank all members of the GOAC for their diligence and the professional manner in which the hearings were conducted.

Sincerely,

A handwritten signature in black ink, reading "Larry Tidemann". The signature is written in a cursive, flowing style with a large initial "L" and a long, sweeping underline.

Senator Larry Tidemann, Chair
Government Operations and Audit Committee

Government Operations and Audit Committee Members

Senator Larry Tidemann, Chair

Senator Phyllis Heineman

Senator Jean Hunhoff

Senator Blake Curd

Senator Larry Lucas

Representative Dan Dryden, Vice Chair

Representative Melissa Magstadt

Representative Justin Cronin

Representative Mark Mickelson

Representative Susan Wismer

Summary of Government Operations and Audit Committee activities relating to the Governor's Office of Economic Development

Background

The Governor's Office of Economic Development (GOED) was contacted by federal investigators inquiring into matters occurring in the Department of Tourism and State Development during Richard Benda's tenure as Secretary. As a result of the federal inquiry, on April 8, 2013, Governor Daugaard requested that Attorney General Marty Jackley initiate a state investigation into the matter.

The Attorney General released his findings in a letter to Governor Daugaard on November 21, 2013. The findings indicated evidence of double billing and double recovery by Richard Benda on two sets of travel reimbursement vouchers. The Attorney General also disclosed financial concerns related to a one million dollar Future Fund grant to assist Northern Beef L.P. and that \$550,000 of the grant was redirected from its intended purpose and purportedly used to pre-pay EB-5 loan monitoring fees for the South Dakota Regional Center, Inc. (SDRC). In response to these investigations, Governor Daugaard directed the GOED to take proactive steps to ensure the accountability of its funds and the existence of adequate internal controls and ordered three separate engagements conducted by independent accounting firms and the Department of Legislative Audit.

After the announcement of the Attorney General's findings, the 2014 Legislature passed House Concurrent Resolution 1010, which requested that the Government Operations and Audit Committee conduct hearings relating to the operations of the GOED.

Review of Reports

The first hearing was held on March 7, 2014 to review the three separate reports. Representatives from each firm and the Department of Legislative Audit were in attendance to go through each report and answer Committee questions. Significant items from each report were contained in the following paragraphs.

Internal controls examination completed by Eide Bailly LLP (see exhibit 2, page 8)

The scope of this engagement was to: 1) review and evaluate the policies and procedures currently in place for internal control weaknesses over the GOED's accounting and cash management functions, 2) conduct internal controls examination interviews of individuals that oversee the various GOED programs and 3) provide a report of identified breakdowns in accounting processes, internal control weaknesses and recommendations.

The report noted that the GOED was not completing background checks on all new hires. The Legislature responded with the passage of Senate Bill 168, during the 2014 session, which authorized criminal background checks for certain officers and employees of the GOED.

The GOAC was concerned that an employee was able to double bill travel costs. The report noted that employee expense reimbursements are not required to be submitted within a set period of time after the expense is incurred. Employees could submit expenses for reimbursement that were already reimbursed if there are significant time delays in the submission. The State Auditor initiated and the Rules Review Committee approved amendments to Administrative Rules requiring

travel reimbursement requests be made within 60 days of the employee's travel. The GOAC was satisfied with this change in Administrative Rule.

There were other findings and recommendations that the GOAC reviewed of less significant matters. The GOAC reviewed the corrective actions described for all of the recommendations in the report and followed up on their implementation at the July 29, 2014 meeting.

Agreed-upon procedures engagements (Future Fund, Dakota Seed and Proof of Concept) completed by Stulken, Petersen, Lingle, Walti and Jones, LLP (see exhibits 3 and 4, pages 17 and 21)

The scope of the engagements were for the independent firm to: 1) verify each payment in the disbursements register had a corresponding file, 2) verify each file contained a properly authorized agreement, 3) verify each file contained sufficient supporting documentation as required by the agreement and 4) that the payments made matched the documents in the file. Payments from January 1, 2009 through September 30, 2013 were reviewed.

The report on the Future Fund payments noted that there was missing documentation in 19 out of 302 files reviewed. The report on the Dakota Seed and Proof of Concept payments noted that there was missing documentation in 43 out of 215 files reviewed. The GOED testified that it has gone back and requested and received required documentation. The GOAC followed up on the corrective actions, at the July 29, 2014 meeting. The GOED reported that internal control documents had been updated to specify what constitutes acceptable supporting documents and future agreements will include the specific documentation to evidence the fulfillment of the grant requirements. The GOAC was satisfied with the corrective actions that were implemented with respect to the missing documentation.

There were other findings and recommendations that the GOAC reviewed of less significant matters. The GOAC reviewed the corrective actions described for all of the recommendations in the report and followed up on their implementation at the July 29, 2014 meeting.

Audit of the governmental funds of the GOED completed by the Department of Legislative Audit (see exhibit 5, page 24)

The primary objective of the audit was to express an opinion on whether the financial statements of the governmental funds of the GOED were fairly stated as of June 30, 2013 and for the four fiscal years then ended. The objectives also included reporting on the internal controls related to the financial statements and compliance with laws, regulations, contracts and grant agreements, and other matters, noncompliance with which could have a material effect on the financial statements.

The GOAC was particularly concerned about the audit finding regarding the inadequate monitoring of the SDRC, Inc. contract to administer the EB-5 program. The GOED testified that the contract with SDRC, Inc. was terminated in September 2013 and the GOED now administers the EB-5 regional center. The GOED is not marketing or promoting the EB-5 program and will not be involved in the management of foreign investment dollars. The individual projects will be responsible for hiring a consultant to perform these services. In addition, the GOED will validate the balances and the activity in the two accounts called for in the terminated contract, on a periodic basis. The balances in the two accounts will be included in the State's Comprehensive Annual Financial Report. There was no opposition from GOAC with the GOED's go forward management plan for the EB-5 program.

Legislative Audit noted that Richard Benda had a conflict of interest when he amended two grant agreements on December 23, 2010. The auditor's recommendation was that the GOED implement a formal written ethics and conflict of interest policy and related procedures document. The GOED has since completed this policy for all employees to sign. The GOED has also implemented a new policy for completing background checks prior to being employed to key positions in the GOED. In addition, GOAC will be proposing amendments to South Dakota Codified Laws 5-18A-17 and 3-16-7 (see exhibit 7, page 33). If passed, the amended laws would prohibit a state officer or employee from having an interest in a contract with the State of South Dakota that is within the scope of the officer's or employee's official duties. This prohibition ends one year after the state officer or employee terminates his or her office or employment with the state. The amendments were agreed to by all members of the Committee at the September 24, 2014 and November 13, 2014 meetings and will be introduced during the 2015 session.

Legislative Audit noted that the GOED did not have adequate documentation of the follow-up activities associated with Future Fund grants. The auditor's recommendation was that the GOED implement policies to ensure that the follow-up activities are adequately documented. The GOED reported at the July 29, 2014 meeting that the existing loan database had been updated to include a follow-up reporting system to better track and monitor grant agreements. As an additional action by the GOAC, information was requested on the outcomes of all Future Fund grants issued during calendar years 2012 and 2013 (see exhibit 8, page 35). The GOED reported the purpose of each grant, the location of the grant and the amount of each grant and the GOAC was satisfied with the information provided and no further recommendations were made by the GOAC.

Questioning of State Officials and Others

The GOAC asked the Attorney General to appear at the July 29, 2014 meeting to answer various legal questions relating to the federal EB-5 program. The Attorney General, in his opening remarks, briefed the GOAC on the chronological order of events that led to the decision made by the Governor to request the completion of the internal controls examination, the agreed-upon procedures engagement and the audit of the governmental funds of the GOED. He also explained to the GOAC his legal authority to assist the Legislature in legal matters. He provided his legal opinion as to GOAC's authority as it relates to the federal EB-5 program. He added that the EB-5 program is a federal immigration program and many of the responsibilities for the program belong to the federal government. He told GOAC that his investigator files were turned over to the federal authorities. Based upon the Attorney General's legal advice, the GOAC did not choose to exercise the Committee's powers to summon witnesses and issue subpoenas in conducting hearings of the EB-5 program; not wishing to compromise the federal investigation. The GOAC did receive written testimony from GOAC questions posed to GOED, Governor Daugaard, former Governor Rounds and Mr. Joop Bollen (see exhibit 9, page 39). The GOAC did not pursue further information.

The GOAC reviewed written testimony to learn about the management of the EB-5 program and the appropriateness of past actions relating to the program. Based upon the written answers provided by former Governor Rounds, he received regular updates on ongoing economic development projects and other state and federal programs. Project details, such as contractual matters, were the responsibilities of the state agency officials. Written testimony provided by former Governor Rounds indicates that, beyond his authorization of the \$1 million Future Fund grant to NBP, he had no knowledge of the misdirected \$550,000, as reported by Attorney General Jackley. The Attorney General has indicated that, other than Richard Benda, he did not find probable cause to charge any current or former state official with a crime. The GOAC found no

evidence that any state official, other than Richard Benda, knew of the prepaid loan monitoring fees from NBP to SDRC, Inc. totaling \$550,000.

The GOAC reviewed written testimony provided by Mr. Joop Bollen about his involvement with the EB-5 program. The GOAC specifically asked Mr. Bollen about his knowledge of the \$1 million dollar Future Fund grant to NBP. Except for amounts received from EB-5 investors, Mr. Bollen stated that he didn't know any details about monies that Northern Beef was getting as far as other grants or loans. When asked about the \$550,000 loan monitoring fee collected by Richard Benda from NBP, Mr. Bollen stated that he had no specific knowledge of Richard Benda collecting the loan monitoring fee. The GOAC considered obtaining records from SDRC, Inc. Since the Department of Legislative Audit had audited the balances in three accounts called for in the contract between the State and SDRC, Inc., the GOAC did not pursue additional records from SDRC, Inc. because it is a private entity and in the opinion of the Committee, was outside the scope of the GOAC's authority.

At the September 24, 2014 meeting, members raised concerns about the potential liability to the state as a result of arbitration action brought by Darley International LLC. This case involved a contract dispute arising from an overseas investor recruiting agreement relating to the EB-5 program. Each year, the Bureau of Finance and Management evaluates numerous legal proceedings for the purpose of disclosing the significant cases in the Comprehensive Annual Financial Report (CAFR). Members of the Committee observed that this case was disclosed in the fiscal years 2010 and 2011 CAFR, but not disclosed subsequent to fiscal year 2011. The determination of what litigation should be disclosed in the CAFR comes from evaluations made by the state's legal counsel as to the probable unfavorable outcome of each individual case. For years subsequent to fiscal year 2011, the risk of a reportable unfavorable outcome that could have a material impact on the State's General Fund continued to decline and the disclosure of this case was not made. On September 29, 2014 the arbitrator ruled in favor of the state and the case was dismissed. The GOAC asked the Commissioner of the GOED if the State of South Dakota was a party to any other lawsuits involving any of the projects or their investors. The Commissioner stated that he is not aware of any lawsuits with the State of South Dakota. The GOAC found no evidence of state liabilities relating to litigation associated with the EB-5 program.

In an attempt to find out information on the status of any federal EB-5 investigations being conducted, the GOAC invited Mr. Brendan Johnson, U.S. Attorney to the September 24, 2014 meeting. Following is an excerpt from the reply of the U.S. Department of Justice: *"The Department does not generally comment on the status or existence of any ongoing or potential law enforcement investigations, including providing information about investigations regarding a particular subject matter or individual that does not result in public charges. This policy serves to protect the integrity of the criminal justice process, including the confidentiality and privacy interest that are important to our law enforcement efforts. Please be assured that the Department takes allegations of criminal conduct very seriously. Individuals who believe that they have personal knowledge of conduct that would violate federal law should be encouraged to contact their local Federal Bureau of Investigation office."* On October 20, 2014, the GOAC sent the U.S. Attorney one more request that information be provided on the status of any federal EB-5 investigations being conducted and received a similar response from the U.S. Department of Justice.

Summary and conclusions

As a result of its hearings, the GOAC believes the events that occurred concerning the GOED that precipitated the adoption of House Concurrent Resolution 1010 were the result of inappropriate actions taken by former state official Richard Benda. The GOAC further believes that implementation of the auditor's various recommendations will improve the oversight of GOED programs and internal control over related transactions resulting in a significant reduction in the risk of such events occurring in the future. Lastly, the GOAC will introduce Legislation to help prevent the professional and personal interests of management and staff from influencing the performance of their duties on behalf of the state.

Exhibit 1

House Concurrent Resolution No. 1010

A CONCURRENT RESOLUTION, Requesting the Committee on Government Operations and Audit to conduct hearings relating to the operations of the Governor's Office of Economic Development.

WHEREAS, economic development programs and policies are crucial to the future of all South Dakotans; and

WHEREAS, the South Dakota Legislature has made strides in recent years toward more transparency and openness in programs relating to such initiatives; and

WHEREAS, all our citizens and policymakers share an interest in maintaining the integrity of our economic development programs and in looking for ways to correct or improve current policies:

NOW, THEREFORE, BE IT RESOLVED, by the House of Representatives of the Eighty-Ninth Legislature of the State of South Dakota, the Senate concurring therein, that the South Dakota Legislature requests the Joint Committee on Government Operations and Audit to conduct hearings on issues related to the Governor's Office of Economic Development, beginning this 89th Legislative Session upon receipt of three independent audits. Hearings may include a review of all available audits and other information, ordering of additional audits, questioning of persons involved in related economic development projects, and opportunities for public testimony. The committee's powers to summon witnesses and issue subpoenas may be exercised as necessary. Within thirty days of the final hearings and before December 1, 2014, GOAC is requested to make a report of its findings to the full Legislature and also to make any recommendations deemed necessary.

Adopted by the House of Representatives, February 4, 2014
Concurred in by the Senate, February 10, 2014

Brian Gosch
Speaker of the House

Arlene Kvislen
Chief Clerk of the House

Matt Michels
President of the Senate

Jeannette Schipper
Secretary of the Senate

Exhibit 2

Recommendations from the internal controls examination completed by Eide Bailly LLP:

Eide Bailly identified the following potential fraud risks during the interviews and has provided internal controls recommendations for areas that appear most vulnerable to fraud, waste or abuse. The areas of concern are provided to make GOED aware of its potential fraud-related risks.

GOED should review the following areas of concern and corresponding recommendations to determine if the benefit of changing the current process in place to reduce fraud risk exceeds the associated costs.

General Concerns

1. Area of Concern

The Bureau of HR's employee handbook fails to adequately discuss employee fraud and its consequences.

Potential Risk

Employees may not know what constitutes fraud. Lack of fraud awareness can inherently increase fraud risk within an organization.

Recommendation

The Bureau of HR should include a fraud awareness section within the employee handbook. This section should address what constitutes fraud in the workplace and the consequences of fraud. Management should communicate this policy to its employees on a periodic basis to increase the perception of detection among employees. A sample fraud policy created by the Association of Certified Fraud Examiners ("ACFE") has been provided.

Response from the Bureau of Human Resources (BHR)

BHR relies on South Dakota Codified Law and the Administrative Rules of discipline regarding what constitutes fraud in the workplace. BHR utilizes and communicates all statutes and administrative rules in disciplinary actions toward employees and in training for supervisors. Supervisors are required to attend such training every three years. BHR agrees to include a reference to such laws as stated below in the employee handbook and to include a section that addresses fraud and its consequences. Further BHR will include a link on the BHR intranet website to the Administrative Rules that govern the conduct of state employees.

SDCL 3-6D-22. Grievance for retaliation against whistleblower. An employee may file a grievance with the Civil Service Commission if the employee believes that there has been retaliation because of reporting a violation of state law through the chain of command of the employee's department or to the attorney general's office or because the employee has filed a suggestion pursuant to this section.

SDCL 3-8-3. Salaried state officer retaining money received as theft. Any officer receiving a salary from the state who shall keep or retain any money, emolument, fee, or perquisite, paid to or received by him for the performance of any duty or duties connected with his office, or in any manner paid to him as such officer or by reason of his holding such office is

guilty of theft. It is the intent and meaning of this section that no officer receiving a salary from the state shall keep or retain any money, emolument, fee, or perquisite paid to him by reason of his holding such office, other than the annual salary payable to such officer as provided by the Constitution.

SDCL 3-8-4. Dual salaries prohibited. Except as provided in SDCL 3-8-4.1 to 3-8-4.3, inclusive, no person receiving a salary payable out of the state treasury or from the funds of any state institution or department, may, during the period for which such salary has been or is to be paid, receive any other salary from the state or any institution or department thereof.

ARSD 55:10:01:07. Dual compensation for state duties prohibited. Except as provided in SDCL 3-8-4.1 to 3-8-4.3, inclusive, an employee may not receive dual compensation during the employee's performance of official state duties.

ARSD 55:10:01:06. Outside employment. An employee may take outside employment with the approval of the employee's appointing authority if there is no conflict with working hours, the employee's work efficiency, or the interest of state government. An employee may not engage in outside business or personal activities while on duty, nor may government property be used for anything but government functions.

ARSD 55:10:07:04. Causes for disciplinary action. Disciplinary action under this section may be taken for conduct within or outside the scope of employment. Disciplinary action may be taken for just cause as reported to the commissioner, including the just causes listed in this section:

(1) The employee admitted to committing, or has committed based on reasonable grounds, or was convicted of a felony, any sex offense, or any crime involving illegal drugs or illegal use of legal drugs, whether the felony, offense, or crime occurred prior to or during employment with the state;

(2) The employee has committed or contributed to any act of brutality, cruelty, or abuse to an inmate, prisoner, resident, or patient of an institution, to a person in custody, or to other persons, whether the conduct occurred prior to or during the course of employment, provided the act committed was not necessarily or lawfully done in self-defense, to protect the lives of others, or to prevent the escape of a person lawfully in custody;

(3) The employee has violated any of the provisions of SDCL chapter 3-6D or this article;

(4) The employee has violated any department, division, bureau, or institution regulation, policy, or order or failed to obey any oral or written directions given by a supervisor or other person in authority;

(5) The employee has consumed alcohol or other intoxicants or unauthorized controlled substances while on duty or is impaired while on duty or while operating state equipment or has unlawfully manufactured, distributed, dispensed, possessed, or used a controlled substance in the workplace;

(6) The employee is guilty of insubordination;

- (7) The employee disrupts the efficiency or morale of the department;
- (8) The employee is careless or negligent with the money or other property of the state or property belonging to any person receiving services from the state or has stolen or attempted to steal money or property of the state or property belonging to any person receiving services from the state;
- (9) The employee has used, threatened to use, or attempted to use personal influence or political influence in securing employment, promotion, leave of absence, transfer, change of pay rate, or change in character of work for the employee or others;
- (10) The employee has induced or has attempted to induce an officer or employee of the state to commit an unlawful act or to act in violation of any department, division, bureau, or institution regulation or order;
- (11) The employee, in the course of work or in connection with it, has taken from any person for personal use a fee, gift, or other valuable thing when the fee, gift, or other valuable thing is given in the hope or expectation of receiving a favor or better treatment than that accorded other persons;
- (12) The employee has engaged in outside business or personal activities on government time or has used state property for those activities in violation of ARSD 55:10:01:06;
- (13) The employee has failed to maintain a satisfactory attendance record based on the established working hours or has had unreported or unauthorized absences;
- (14) The employee made a false or misleading statement or omitted relevant information during the application and selection process;
- (15) The employee has misused or abused leave;
- (16) The employee has intentionally falsified a state record or document;
- (17) The employee failed to maintain the minimum requirements for appointment as established by a law enforcement agency;
- (18) The employee has harassed another person in the course of employment;
- (19) The employee has violated statutes or standard work rules established for the safe, efficient, or effective operation of the agency;
- (20) The employee discriminated against another person in the course of employment on the grounds contained in SDCL 20-13-10 or has taken wrongful actions against another person that affect the vicarious or imputed responsibility of the state or any other state employee;
- (21) The employee has failed to notify the appointing authority within five days after a conviction of a violation of a criminal drug statute occurring in the workplace;

(22) The employee has failed to obtain, renew, or maintain a license or certification necessary to perform the duties of the employee's position;

(23) The employee failed or refused to take a drug test administered pursuant to SDCL chapter 3-6F or 49 CFR Part 382 (December 1, 1995);

(24) The employee has failed to complete the counseling program outlined in ARSD 55:10:02:10;

(25) The employee has been found unacceptable as a result of an employment screening conducted by the appointed authority, the Bureau of Human Resources, or an authorized representative; or

(26) The employee has engaged in conduct, either prior to or during employment with the state that reflects unfavorably on the state, destroys confidence in the operation of state services, or adversely affects the public trust in the state.

2. Area of Concern

Employees are not aware of the available channels for reporting employee theft and fraud.

Potential Risk

If employees are not aware of how to report employee theft and fraud, suspicious activity or known instances of fraud may go unreported. This can result in delayed detection of a fraud scheme and increased losses.

Recommendation

All employees should be made aware of the available channels for reporting employee theft and fraud. The ability of employees to report fraud anonymously to a third-party is important to reduce and employee's fear of retaliation.

Response from the BHR

BHR relies on South Dakota Codified Law 3-6D-22. The statute provides the proper chain of command for reporting a violation of state law to either the chain of command in the employees department or to the attorney general's office. This statute also provides for protection against the whistleblower. Human Resource Manager's within BHR communicate this to the agencies for which they are assigned. BHR agrees to include a SDCL 3-6D-22 in the employee handbook and will include a section to address fraud and its consequences.

SDCL 3-6D-22. Grievance for retaliation against whistleblower. An employee may file a grievance with the Civil Service Commission if the employee believes that there has been retaliation because of reporting a violation of state law through the chain of command of the employee's department or to the attorney general's office or because the employee has filed a suggestion pursuant to this section.

3. Area of Concern

Background checks are not performed on all new hires at GOED.

Potential Risk

Employment application forms can contain false information about experience, education, and ability to perform functions required of the position.

Recommendation

The Bureau of HR should review whether a policy regarding the job function and the necessity of employment background checks should be implemented for GOED. Performing checks on potential new hires decreases the risk of employee fraud in the workplace.

Response from the BHR

BHR would support GOED in the question of performing background checks on potential new hires. A number of agencies have advocated for this in State government and BHR has been supportive of such action.

Response from the GOED

GOED is looking into the legality and process for requiring and obtaining background checks on certain new hires at GOED.

Employee Expense Reimbursements**1. Area of Concern**

It appears that employee expense reimbursements and directly billed travel expenses are not compared when approving and processing employee reimbursements.

Potential Risk

Employees could submit an expense for reimbursement that was directly billed and paid for by GOED therefore being reimbursed for expenses already paid by GOED.

Recommendation

Employee expense reimbursements and directly billed travel expenses should be compared for duplicates during the approval and processing completed by GOED when employees submit their expenses. Or, the State Auditor's Office should consider a procedure to review for duplicates when they process all employee expense reimbursements. This will reduce the risk of employees being reimbursed for expenses paid by GOED/the State of South Dakota.

Response from the Office of the State Auditor

Thank you for the opportunity to discuss the findings of Eide Bailly's review of internal control policies and procedures at the Governor's Office of Economic Development (GOED) as it pertains to the employee reimbursement process. The concerns expressed by Eide Bailly are clearly valid, and any qualified recommendations and input that can lead to a more secure expense process are certainly worthwhile.

I wanted to use this opportunity to provide information relating to administrative rules currently in place that guide our office in the employee reimbursement process. The Travel Warrant Disbursements (3:05:03) chapter in the Administrative Rules of South Dakota help our office deter the possibility of reimbursing an employee for an expense that was directly billed to the agency by requiring that actual receipts and proof of payment be presented by the employee. In particular, please note the three rules below:

3:05:03:01. Lodging receipt required. An employee traveling on state business who is away from his home station for one or more nights, shall have a bona fide lodging receipt. Hotel or motel receipts shall be the original receipt or that receipt which each specific hotel or motel regularly gives to a customer. Such receipts shall indicate that they

are paid. When the receipt is not a regular folio type, such receipt shall carry the signature of the hotel or motel owner or clerk.

Source: SL 1975, ch 16, 1; transferred from 5:01:03:05, 2 SDR 23, effective September 29, 1975; 11 SDR 51, effective October 18, 1984.

General Authority: SDCL 3-9-8, 4-9-1.1

Law Implemented: SDCL 3-9-2, 3-9-8, 4-9-1.1

3:05:03:02. Conference, seminar, or workshop attendance. In addition to other requirements for filing travel vouchers, those persons attending conferences, seminars, or workshops shall attach to their voucher;

(1) A copy of the program or official letter which give the dates and location of the conference, seminar or workshop;

(2) A receipt for any registration fee paid.

Source: SL 1975, ch 16, 1; transferred from 5:01:03:17, 2 SDR 23, effective September 29, 1975.

General Authority: SDCL 4-9-1.1

Law Implemented: SDCL 3-9-8, 4-9-1.1

3:05:03:10 Receipts of expenditures required. Original copies of receipts of expenditures in excess of one dollar except in cases of taxi fares under five dollars, including lodgin but excluding meals, shall be submitted in support of claims for reimbursements. When the vendor requires the original copy for his files, the second copy shall be accepted by the auditor.

Source: SL 1975, ch 16, 1; transferred from 5:01:03:02, 2 SDR 23, effective September 29, 1975; 11 SDR 51, effective October 18, 1984.

General Authority: SDCL 4-9-1.1

Law Implemented: SDCL 3-9-8

2. Area of Concern

Employee expense reimbursements are not required to be submitted within a set period of time after the expense is incurred.

Potential Risk

Employees could submit expenses for reimbursement that were already reimbursed to the individual and the authorizing employee may not recall the purpose of the expense if there are significant time delays in the submission.

Recommendation

Employees should be required to submit expense reimbursements within a certain number of days (to be determined and implemented by the GOED/State Auditor's Office). This will reduce the risk of employees submitting expenses that were previously reimbursed or for unauthorized expenses.

Response from the Office of the State Auditor

Another area of concern identified deals with a potential time delay between the dates an expense is incurred by an employee and when the voucher is ultimately submitted. Our office is in the process of finalizing language for an Administrative Rule proposal which would impose a 60-day limit for an employee to submit a voucher after the last day of their travel. The rule would then impose additional guidelines that must be met if the employee fails to meet the time limit.

Payroll

1. Area of Concern

The Director of Administration adds and removes employees from the accounting system as well as processes employee payroll.

Potential Risk

Allowing one (1) employee access to numerous payroll functions increases the opportunity for fraudulent payroll disbursements through unauthorized rate changes and/or fictitious/ghost employees.

Recommendation

The duties of adding and removing employees from the system as well as processing payroll should be segregated by not allowing an employee to perform more than one (1) of these duties. The Bureau of HR does verify that new employees added have a legitimate social security number; however an employee could still set up an unauthorized employee with a legitimate social security number. Only an individual independent of the payroll process should be authorized to add new employees to the system. At a minimum, an individual independent of the payroll processes (i.e. the Deputy Commissioner/Director of Finance) should be tasked with reviewing GOED's payroll.

Response from the BHR

BHR does have an audit function in the GHR payroll system that segregates duties from the Director of Administration. BHR would ask that Eide Bailly research this process further through BHR to better understand the segregation of duties within the GHR payroll system.

An example of a separation of duties from GOED's Director of Administration:

GOED's Director of Administration would load the new hire, rehire, transfer, or pay increase in the GHR payroll system. Any of these actions would work through a process flow (hard copy and electronic) to Ms. Flottmeyer, BHR Human Resource Specialist. Ms. Flottmeyer would then review and approve or return with questions to the GOED's Director of Administration. Once approved by Ms. Flottmeyer the payroll change becomes an updated record in with the GHR payroll system.

Response from the GOED

GOED setup an additional procedural step in its payroll process, which automatically generates and distributes a payroll distribution register to the Commissioner and Deputy Commissioner at the close of each pay period. The payroll distribution register lists each employee and their respective pay for that period, affording an additional control to safeguard the integrity of the payroll process.

Special Events

1. Area of Concern

The sale of shirts and hats for the Governor's Hunt are not formally reconciled to the cash and checks that are received.

Potential Risk

Individuals could take shirt or hat inventory and/or cash and checks received and no one would be aware of the shortage.

Recommendation

Shirt and hat inventory should be reconciled with the cash and checks received by an employee independent of the access/handling of inventory and cash/check receipts after the Governor's Hunt. The occurrence of this reconciliation should be communicated to individuals before they assist with the handling/sale process. This will increase the perception of detection and reduce the risk of individuals misappropriating inventory and/or cash and check.

Response from the GOED

GOED has implemented a process for tracking and logging the inventory and sales which will be reconciled to the cash and checks received.

Program Specific

1. Area of Concern

A small percentage of future fund grants lack adequate third party supporting documentation to evidence the fulfillment of the grant requirements.

Potential Risk

Allowing the grant recipients to provide internally prepared documentation to support expenses paid increases the risk of the recipients using grant funds for unauthorized purposes.

Recommendation

Grant recipients should be required to provide third party documentation such as invoices, bank statements and cancelled checks when submitting for reimbursement. This will reduce the risk of funds being used for unauthorized purposes.

Response from the GOED

GOED's Future Fund Internal Control Document has been updated to specify what constitutes acceptable supporting documentation. Additionally, agreements will include the specific documentation required to evidence the fulfillment of the grant requirements.

2. Area of Concern

Community Development Block Grant and Ethanol Infrastructure Incentive Program vouchers are prepared by the Grant Administrator and then approved by the Director of Administration. The approved vouchers go back to the Grant Administrator to send to the State Auditor's Office.

Potential Risk

Allowing an approved voucher to be returned to the preparer before being sent for payment increases the risk of the voucher being modified after approval.

Recommendation

Approved vouchers should be sent to the State Auditor's Office directly by the Director of Administration or by an individual independent of the process. This will reduce the risk of the Grant Administrator modifying the vouchers after they are approved.

Response from the GOED

GOED confirmed that once the vouchers are approved by the Director of Administration the amount to be paid is locked in the system and cannot be changed, negating the potential for the Grant Administrator to further alter the payment. Nonetheless, GOED adjusted its procedures to ensure someone other than the Grant Administrator sends the approved voucher to the State Auditor's Office.

Exhibit 3

Findings from the agreed-upon procedures engagement completed by Stulken, Petersen, Lingle, Walti and Jones LLP (Futures Fund):

We requested the disbursements register for the Future Fund for January 1, 2009 through September 30, 2013 from the Bureau of Finance and Management (BFM). Upon receiving the register:

1. We verified that each payment in the disbursements register had a corresponding file.
 - *Each payment had a corresponding file.*
2. We verified that each file contained a properly authorized agreement.
 - *Each file contained a properly authorized agreement or contract.*
3. We verified that each file contained sufficient supporting documentation as required by the agreement.
 - *We noted 19 out of 302 files were missing some form of supporting documentation required by the agreement or the documentation included in the file was insufficient to meet the requirements in the agreement. Our specific findings are as follows:*
 1. *Nine files were noted for not containing sufficient documentation to support the expense reimbursement that occurred per the agreement as noted in letters a.-d. below:*
 - a. *One file contained an invoice from the grantee to the GOED for marketing expenses incurred instead of providing copies of the actual invoices that were paid by the grantee for said expenses.*

Response from the GOED: GOED accepted the invoice from grantee as satisfactory evidence of the marketing expenses incurred. GOED has since attempted to contact the grantee to request third party invoices confirming the marketing expenses; however, the grantee is no longer in business so no additional supporting documentation was available.

Corrective Action: GOED's Internal Control Document has been updated to specify what constitutes acceptable supporting documentation (i.e. requiring invoices for work completed from the third party vendor). Additionally, each agreement will include the specific documentation required to evidence the fulfillment of the grant requirements.
 - b. *One file contained an invoice from the grantee on the GOED for salary, travel, and administrative expenses incurred without providing copies of receipts or payroll records for said expenses.*

Response from the GOED: GOED accepted the invoice from grantee as satisfactory evidence of the expenses incurred. GOED has since contacted the grantee and received payroll ledgers which support the expenses contained in the grantee's invoice.

Corrective Action: GOED's Internal Control Document has been updated to specify what constitutes acceptable supporting documentation (i.e. requiring payroll ledger or a copy of pay checks from grantee). Additionally, each agreement will include the specific documentation required to evidence the fulfillment of the grant requirements.
 - c. *One file contained an invoice from the grantee to the GOED for legal expenses incurred instead of providing copies of the actual invoices that were paid by the grantee for said expenses.*

Response from the GOED: GOED accepted the invoice from grantee as satisfactory evidence of the legal expenses incurred. GOED has since contacted the grantee and received the third party invoices for legal fees which support the expenses contained in the grantee's invoice.

Corrective Action: GOED's Internal Control Document has been updated to specify what constitutes acceptable supporting documentation (i.e. requiring invoices for work completed from the third party vendor). Additionally, each agreement will include the specific documentation required to evidence the fulfillment of the grant requirements.

- d. *One file did not contain sufficient invoice documentation to support the full amount of the reimbursement for computer hardware.*

Response from the GOED: GOED inadvertently accepted an invoice from grantee that contained duplicate itemizations. GOED subsequently received the corrected invoice directly from the manufacturer which accurately reflected the itemization and provided satisfactory evidence of the purchases for which the grantee was paid. The payment issued to the grantee was correct.

Corrective Action: GOED's Internal Control Document has been updated to specify what constitutes acceptable supporting documentation. Additionally, agreements will include the specific documentation required to evidence the fulfillment of the grant requirements.

- e. *Five files contained letters or reports from the grantee to the GOED evidencing expenses incurred instead of providing documentation of the actual expenditures such as receipts, bank statements, payroll records, or invoices.*

Response from the GOED: GOED accepted the letters or reports from grantees as satisfactory evidence of the expenses incurred. GOED has since requested and received adequate supporting documentation to evidence the expenses contained in the grantee letters and reports.

Corrective Action: GOED's Internal Control Document has been updated to specify what constitutes acceptable supporting documentation. Additionally, agreements will include the specific documentation required to evidence the fulfillment of the grant requirements.

- II. *Eight files were noted for having either missing or incomplete follow up documentation as noted in letters a.-f. below:*

- a. *One file did not contain a copy of the mortgage satisfaction as was required by the agreement.*

Response from the GOED: This was an oversight on the part of GOED. The mortgage was in fact satisfied, but a copy of the satisfaction was not included in the file. GOED has since received copy of the satisfaction.

Corrective Action: GOED updated its existing loan database to include a follow-up reporting system to better track grants. This change will allow GOED to populate detailed monthly reports specifying the documentation or reports due on each grant file that month.

- b. *Three files did not contain copies of monthly, quarterly, or annual progress reports as required by the agreement.*

Response from the GOED: This was an oversight on the part of GOED. GOED has since requested and received follow-up reports from 2 of the 3 grantees. The third grantee is no longer in operation, and as such, the follow-up reports could not be obtained.

Corrective Action: GOED updated its existing loan database to include a follow-up reporting system to better track grants. This change will allow GOED to

populate detailed monthly reports specifying the documentation or reports due on each grant file that month.

- c. *One file did not contain client intake forms or new client lists as was required by the agreement.*

Response from the GOED: This was an oversight on the part of GOED. GOED contacted the grantee to request the forms; however, the grantee has left South Dakota and the documents could not be obtained.

Corrective Action: GOED updated its existing loan database to include a follow-up reporting system to better track grants. This change will allow GOED to populate detailed monthly reports specifying the documentation or reports due on each grant file that month.

- d. *One file did not contain an amendment to the agreement for the purchase of laptop computers which were not an approved expenditure in the original agreement. The file did not contain an approval via email for the purchase of the laptop computers.*

Response from the GOED: As indicated in the finding, GOED consented to the amendment via email, but a formal amendment to the agreement was not prepared.

Corrective Action: Formal amendments are now required for all changes to grant agreements.

- e. *One file did not contain complete copies of every employment contract for each employee hired as required by the agreement. The file did contain the signature page of the employment contract for each employee hired.*

Response from the GOED: GOED accepted the signed signature page of the employment contract for each employee hired as sufficient evidence in lieu of requiring production of each employment agreement in its entirety. GOED has since requested and received copies of all employment contracts from grantee.

Corrective Action: GOED's Internal Control Document has been updated to specify what constitutes acceptable supporting documentation. Additionally, each agreement will include the specific documentation required to evidence the fulfillment of the grant requirements.

- f. *One file required the grantee to provide the GOED with documentation of additional funds raised by the end of the first quarter. No documentation was included in the file to support that these funds had been raised.*

Response from the GOED: The grantee raised the required funds; however, the documentation evidencing the raise was located in another GOED file pertaining to the same grantee. The documentation evidencing the raise has since been photocopied and is included in both files.

Corrective Action: GOED updated its existing loan database to include a follow-up reporting system to better track grants. This change will allow GOED to populate detailed monthly reports specifying the documentation or reports due on each grant file that month.

III. *Two files were noted for not containing sufficient documentation of required contribution commitments as noted in letters a. and b. below:*

- a. *The agreement in one file called for documentation for a certain amount of contribution commitments to be raised for the project prior to the disbursement of funds from the GOED. The grantee included loan proceeds and a consulting contract that was not documented as an in kind contribution in its total amount of contributions committed for the project.*

Response from the GOED: GOED intended to include the loan proceeds and consulting contract as the match required by the agreement.

Corrective Action: GOED will specify in future agreements what is allowed to count towards the match.

- b. *The agreement in one file called for documentation for a certain amount of contribution commitments to be raised for the project prior to the disbursement of funds from the GOED. The file did not contain documentation for the full amount of contribution commitments required by the agreement.*

Response from the GOED: The required match was raised; however, GOED did not have the proper documentation in the file. This was an oversight on the part of GOED. GOED subsequently requested and received the documentation evidencing the full amount of contribution commitments.

Corrective Action: GOED's Internal Control Document has been updated to specify what constitutes acceptable supporting documentation. Additionally, each agreement will include the specific documentation required to evidence the fulfillment of the grant requirements.

4. We verified that the payments made matched the documents in the file.
- *Each disbursement was consistent with the dollar amount and payee authorized by the applicable agreement.*

Exhibit 4

Findings from the agreed-upon procedures engagement completed by Stulken, Petersen, Lingle, Walti and Jones LLP (Dakota Seeds and Proof of Concept):

We requested the disbursements register for the Dakota Seeds and Proof of Concept for January 1, 2009 through September 30, 2013 from South Dakota State University (SDSU) and the Bureau of Finance and Management (BFM) respectively. Upon receiving the registers:

1. We verified that each payment in the disbursements register had a corresponding file.
 - *Each payment had a corresponding file.*
2. We verified that each file contained a properly authorized agreement.
 - *Each file contained a properly authorized agreement or contract.*
3. We verified that each file contained sufficient supporting documentation as required by the agreement.
 - *We noted 43 out of 215 files were missing some form of supporting documentation required by the agreement. Our specific findings are as follows:*
 - a. *Four files were noted for not containing copies of quarterly progress reports as required by the agreement.*

Response from the GOED: GOED's initial proof of concept agreements contained language requiring quarterly progress reports. Given the short timeframes of the agreements GOED determined that quarterly reports were not appropriate; however, the existing agreements were not formally amended to remove the requirement.

Corrective Action: GOED eliminated the quarterly report requirement. Given the short timeframes of the agreements it's more appropriate to have one report due at the conclusion of the agreement.
 - b. *Seven files were noted for interns working outside of the approved date range included in the agreement. The employment reports contained in these files covered the term of the agreement, but they also included follow-on employment for the intern which extended beyond the term of the agreement.*

Response from the GOED: GOED accepted the employment reports as satisfactory evidence of the employer's fulfillment of the terms of the agreements. The intent of the program is to entice and promote the hiring of interns. As indicated in the finding, the employment reports covered the term of the agreement, in addition to follow-on employment, and they also demonstrated that the necessary wages were paid to the interns, satisfying the core requirements of the program. Given the foregoing, GOED did not deem it necessary to either amend the agreements to cover the exact term shown by the employment agreement or to require the employer to resubmit the employment report covering only the term shown in the agreement.

Corrective Action: GOED will change its agreement to build in more flexibility for both the employer and intern, while also including the provisions necessary to ensure compliance with the core requirements of the program.
 - c. *One file was noted for reimbursing two months' worth of wages twice. The company was reimbursed earlier than they should have been as a result. However, the company was not reimbursed more than the annual limit per the agreement as the student's total wages exceeded the reimbursement cap.*

Response from the GOED: GOED inadvertently accepted the same wage report for two different months. However, as indicated in the finding, the wages were in fact paid and the correct amounts were paid to the employer.

Corrective Action: Adequate controls were already in place to reduce the likelihood of this type of error. Each payment request is required to be reviewed by both the Grant Administrator at GOED and a staff member of SDSU. Requiring two separate individuals to review and approve payment requests greatly reduces the potential for oversight, but mistakes can still happen, as was the case in this instance.

- d. *Thirty-one files were noted for not containing the student completion reports required to be submitted on the Dakota Seeds website per the agreements.*

Response from the GOED: The student reports are gathered by GOED to collect demographic data for reporting and tracking purposes. While the student reports are listed as a requirement in the agreement, the students submit the report and the students are not a party to the agreement. Consequently, GOED lacks the ability to require the students to submit the report and it was incorrect to have this requirement listed in the agreements.

Corrective Action: The student report requirement has been removed from the agreement. The employers are encouraged to have their interns submit the report but it's no longer required under the agreement.

4. We verified that the payments made matched the documents in the file.

- *Each disbursement was consistent with the dollar amount and payee authorized by the applicable agreement with two exceptions.*

- a. *We noted one disbursement in the amount of \$4,042.91 that was issued by SDSU to an entity other than the grantee. The payee was a sister company of the grantee.*

Response from the GOED: As indicated in the finding, SDSU inadvertently issued payment to a sister company of the grantee and not the grantee. The error was corrected internally by the company and GOED secured documentation indicating the correction was made and the grantee received the payment.

Corrective Action: Adequate controls were already in place to reduce the likelihood of this type of error. Each payment request is required to be reviewed by both the Grant Administrator at GOED and a staff member of SDSU. Requiring two separate individuals to review and approve payment requests greatly reduces the potential for oversight, but mistakes can still happen, as was the case in this instance.

- b. *We noted one file where there was a disbursement in excess of 50% of the compensation provided to the student. Per the agreement, the company was supposed to be reimbursed up to 50% of the student's wages, not to exceed \$2,000. In this instance, the company was reimbursed for 50% of the company's collective expense for the two interns, instead of each intern individually, resulting in an overpayment of \$189.96.*

Response from the GOED: Student 1 reported earnings of \$4,379.92 and student 2 reported earnings of \$2,517.72. The company was reimbursed for 50% of the total wages paid, or \$3,448.82, resulting in the company receiving in excess of \$2,000 for student 1. The company should have been reimbursed for each student separately which would have resulted in a reimbursement of \$2,000 for student 1 instead of \$2,189.86 and \$1,258.86 for student 2, which was the amount paid, for a total of \$3,258.86. Consequently, the company received \$189.96 more than it should have received.

Corrective Action: Adequate controls were already in place to reduce the likelihood of this type of error. Each payment request is required to be reviewed by both the Grant Administrator at GOED and a staff member of SDSU. Requiring two separate individuals to review and approve payment requests greatly reduces the potential for oversight, but mistakes can still happen, as was the case in this instance.

Exhibit 5

Findings and recommendations from the audit of the governmental funds of the South Dakota Governor's Office of Economic Development completed by the Department of Legislative Audit:

Finding No. 2013-001:

The former Department of Tourism and State Development (DTSD) and the current Governor's Office of Economic Development's (GOED) policies and procedures were inadequate for the monitoring of the contract with the SDRC Inc.

Analysis:

The state of South Dakota was approved as a Regional Center under the Immigrant Investor Pilot Program (EB-5 program) by the U.S. Citizenship and Immigration Services (CIS). As a part of the application process the boundaries and parameters for the industries that qualify under the EB-5 program were established. The Department of Tourism and State Development entered into a contract with the SDRC Inc. (SDRC) on December 22, 2009 which was later amended and restated on June 4, 2010, establishing the SDRC as the administrator of the Regional Center and the EB-5 program. Under the contract, the SDRC was responsible for all aspects of the EB-5 program including preparing requests for project approval from CIS, filing reports and notifications, responding to CIS inquiries, maintaining all records as required by 8 CFR 204.6, and collecting and depositing fees into specified accounts. The SDRC was also required to provide notice of fee payments to the state and copies of books, records and reports that are required to be provided to CIS not less than monthly. The state's responsibility was to approve the projects, to authorize transactions associated with two of the funds created under the contract; Indemnification Fund One and the Expense Fund, and, to approve the disbursements from the Expense Fund.

Three funds were established under the SDRC contract; 1) Expense Fund, 2) Indemnification Fund One, and 3) Indemnification Fund Two. Upon termination of contract or the SDRC, the Expense Fund and Indemnification Fund One are to eventually be paid over to the DTSD and Indemnification Fund Two will be paid over to the shareholders of the SDRC. Fees established under the contract were to be collected and deposited into Indemnification Fund One. Monies were to be swept from Indemnification Fund One to the Expense Fund as directed in writing by the DTSD. Indemnification Fund One was to be used for satisfying the obligations of the SDRC to indemnify the DTSD for items which are not paid by the SDRC's insurance coverage or Indemnification Fund Two and the Expense fund was to be used for paying current and future expenses incurred by the DTSD and others in providing information concerning projects undertaken by SDRC and in promoting and monitoring the EB-5 program.

The former DTSD and the current GOED should have had accountability for Indemnification Fund One and the Expense Fund. At the time fees were paid into Indemnification Fund One, the SDRC was to provide notice of the payment to DTSD and copies of records reasonably acceptable to DTSD verifying the amount collected by SDRC. The following deficiencies were noted:

- Although the SDRC was providing to the DTSD a monthly e-mail containing a report and the balances in the two funds, the report was not sufficient to ascertain that the correct amounts were being collected and deposited and copies of bank statements did not accompany the e-mail to corroborate the balances being reported.

- Documentation was not adequate to determine whether the DTSD or the GOED was receiving the copies of books, records and reports that were required to be provided to the CIS by the SDRC.
- Inadequate internal controls existed over the payment of expenses from the Expense Fund. Five disbursements were made from the Expense Fund totaling \$67,259.97. The invoices were signed by the former Secretary of the DTSD and the DSTD's Administration Director. The invoices identified the expenses as being for meals, lodging and transportation. Other than the information contained in the invoices, there was no supporting documentation retained to evidence that the expenses were incurred, who incurred the expenses, or the purpose of the expenses.
- The DTSD and GOED did not report Indemnification Fund One and the Expense Fund in the State's Comprehensive Annual Financial Reports for FY2010 through FY2012.

As a result, there existed a potential for the loss of assets and two funds were not properly reported in the State's Comprehensive Annual Financial Report.

RECOMMENDATIONS:

1. We recommend GOED improve its policies and procedures to ensure that all contracts are properly monitored.
2. We recommend GOED improve its internal controls to ensure accountability over all funds of the GOED.
3. We recommend GOED properly report all funds for which it has accountability in the State's Comprehensive Annual Financial Report.

Corrective Action Plan:

1. GOED updated its existing loan database to include a follow up reporting system to better track and monitor contracts. This change will allow GOED to populate detailed monthly reports specifying the documentation or reports due on each contract that month.
2. GOED's Internal Control Document has been updated to specify what constitutes acceptable supporting documentation. Additionally, contracts will include the specific documentation required to evidence the fulfillment of the requirements contained therein.
3. Given the third-party origin of the Expense Fund and Indemnification Fund One and the contractual restrictions imposed upon the same, GOED did not report the funds on the State's Comprehensive Annual Financial Report. GOED intended to audit the funds and account for the contributions and distributions if and when the funds were reverted to the State.

Finding No. 2013-002:

The former Department of Tourism and State Development (DTSD) and the current Governor's Office of Economic Development (GOED) did not have a formal written policy and related procedures addressing ethics and potential conflicts of interest other than what is already provided in the employee handbook.

Analysis:

The purpose of an ethics and conflict of interest policy is to prevent the professional and personal interests of the management and staff of the GOED from influencing the performance of their duties on behalf of the GOED. The DTSD and GOED did not have such written policy and related procedures in place for the period covered by our audit.

On December 2, 2010 Secretary Benda discussed a draft employment contract between Secretary Benda and the SDRC Inc. or a related entity for providing loan monitoring services related to NBP. On December 23, 2010, Secretary Benda amended two Future Fund grant agreements with the South Dakota Development Corporation (SDDC) for the purpose of making loans to Northern Beef Packers LP (NBP) which increased the aggregate total of the two agreements by \$600,000 (from \$1,450,000 to \$2,050,000). On February 1, 2011, \$1,200,000 of these funds was disbursed to NBP by the SDDC. \$850,000 was returned to the Future Fund.

Secretary Benda's employment with the State of South Dakota ended on January 8, 2011. On January 13, 2011, subsequent to his employment by state government, Mr. Benda was notified by e-mail that he could pick up a check written by the State of South Dakota to NBP for payment of a \$1,000,000 grant to NBP for reimbursement of construction costs. This check was deposited by NBP on January 26, 2011.

The GOED should have had a policy in place that would have required Secretary Benda to disclose his future employment plans and remove himself from involvement in subsequent matters relating to NBP. The lack of a formal written policy and related procedures by DTSD and GOED regarding ethics and conflicts of interest increases the risk that the personal interests of employees may compromise the public interests of the GOED.

RECOMMENDATION:

We recommend that in addition to existing state policy, GOED implement a formal written ethics and conflict of interest policy and related procedures document.

Corrective Action Plan:

GOED implemented the attached Policy on Ethics and Conflicts of Interest.

**South Dakota
Governor's Office of Economic Development**

POLICY ON ETHICS AND CONFLICTS OF INTEREST

A. General Policy Statement. All GOED staff shall act ethically, including the avoidance of conflicts of interest, and exhibit good character.

B. Conflicts of Interest. A person has a conflict of interest if the person has a direct personal or financial interest in the matter under consideration. No GOED staff may participate in, vote on, or be involved in a matter in which that individual has a conflict of interest.

C. Ethical Behavior. All GOED staff must act ethically and exhibit good moral character. The following are examples of unethical behavior; GOED staff may not:

- (1) Self-deal;
- (2) Own an equity interest in a business that has received or is applying to receive financing from GOED or any of the boards or entities for which GOED provides administration or staff services. This prohibition includes equity ownership at any time during the term of the loan or within 6 months prior to the loan application;
- (3) Knowingly misrepresent or make a false statement to GOED;
- (4) Engage in conduct reflecting a lack of business integrity or honesty; or
- (5) Fail to disclose a conflict of interest or circumstances which give the appearance of a conflict of interest.

D. Enforcement. Authority to enforce the terms of this policy is vested in the Commissioner of the Governor's Office of Economic Development, to include without limitation, the ability to terminate an individual for violating the terms hereof in the manner provided for by applicable law.



J. Pat Costello
 Commissioner
 Governors Office of Economic
 Development

The undersigned employee of the Governor's Office of Economic Development acknowledges, understands and agrees to comply with the foregoing Policy on Ethics and Conflict of Interest.

Dated this ____ day of _____, 20__.

Employee Signature: _____

Employee Print Name: _____

Finding No. 2013-003:

Internal controls were inadequate over the processing of travel vouchers resulting in duplicate and unsupported travel payments.

Analysis:

We tested all travel vouchers submitted during the period of FY2010 through FY2013 by the former Secretary of the Department of Tourism and State Development as a result of duplicate payments being identified to us by management. We found that three duplicate payments were made for airline tickets totaling \$5,559.80. The duplicate payments occurred on vouchers paid on 1/6/10 and 3/18/10 for two airline tickets in the amounts of \$982.90 and \$3,740.60, and vouchers paid on 3/18/10 and 4/29/10 for one airline ticket in the amount of \$836.30.

We also noted six invoices included for reimbursement in the travel vouchers that were identified as having been for translation services. These services involved having legal documents and seminar documents associated with the EB-5 program translated into other languages. All six invoices indicated that the payment on the invoice was to be made in cash. Five of the payments totaling \$13,500.00 were associated with invoices from an individual that had handwritten on them "only invoice available" and the instruction on the invoice was to "pay by cash when next trip". One invoice for \$1,200.00 was on the letterhead of a Philippine hotel and had handwritten on it four names, "USD Cash \$1,200.00", "translation and interpretation", and "only invoice available". No receipts were included with the travel vouchers to support that payment was tendered for the services provided on the invoices. As a result, \$14,700.00 in expenditures paid from the General Fund was not properly supported.

RECOMMENDATION:

We recommend internal controls be strengthened to ensure that proper payments are made from state funds.

Corrective Action Plan:

GOED updated its internal reimbursement policy to require two individuals to review reimbursement requests and supporting documentation. Requiring duplicate review provides an additional control to safeguard the integrity of the reimbursement process.

Finding No. 2013-004:

The former Department of Tourism and State Development (DTSD) and the current Governor's Office of Economic Development (GOED) did not have adequate documentation of the follow-up activities associated with Future Fund grants.

Analysis:

SDCL 61-5-29.1 states:

There is hereby created in the state treasury a special revenue fund to be known as the employer's investment in South Dakota's future fund. Such fund shall be used for purposes related to research and economic development for the state.

The GOED provides workforce development and technical assistance grants from the Future Fund to organizations in the state to promote economic development. We selected a sample of forty-eight grants issued between July 1, 2009 and June 30, 2013 to test for documentation relating to follow-up activities associated with the grants. The following deficiencies were noted:

1. We noted three grants were made to the South Dakota Development Corporation (SDDC) for the purposes of making loans to businesses. The loans were not made to the businesses and the money was ultimately returned to the Future Fund. For these three grants the money was returned to the Future Fund twenty-two months later, fourteen months later and thirteen months later. We noted one additional grant that was not part of our sample, which was returned to the Future Fund thirty-one months later. The money was not returned to the Future Fund on a timely basis resulting in lost interest income in the Future Fund.
2. Eleven grants tested were made to the SDDC, totaling \$8,491,000, for the purposes of making loans or providing other forms of financial assistance to companies. Of the eleven

grants to SDDC, four letters of agreement called for copies of the loan documents to be provided to the GOED. These documents were not in the grant files. One letter of agreement called for four monthly activity progress reports to be provided to the GOED. These progress reports were not in the grant file. One letter of agreement called for a final report to be provided to the GOED. This final report was not in the grant file. One letter of agreement called for copies of the term sheet to be provided to the GOED. The term sheet was not in the grant file. Of the eleven grants to SDDC, ten letters of agreement were silent as to what happened to the funds after the loan or financial assistance was repaid to the SDDC.

3. A workforce development grant for \$47,000 was given to a company with four plants in the U.S. and Canada. One of those four plants is in South Dakota. There was inadequate documentation in the grant file to show the grant was used for training associated with the employees of the South Dakota plant.
4. We reviewed the grant files to determine if there had been follow-up with the grantee after the grant was made. For eighteen of the forty-eight grants tested, totaling \$10,396,406, there was no documentation in the grant files that there had been follow-up after the grant was made.

As a result, there was not adequate documentation of the follow-up activities associated with the Future Fund grant program.

RECOMMENDATION:

We recommend that policies be implemented to ensure that the follow-up activities are adequately documented.

Corrective Action Plan:

1. GOED updated its existing loan database to include a follow up reporting system to better track and monitor grant agreements. This change will allow GOED to populate detailed monthly reports specifying the documentation or reports due on each grant agreement that month.
2. GOED's Internal Control Document has been updated to specify what constitutes acceptable supporting documentation. Additionally, grant agreements will include the specific documentation required to evidence the fulfillment of the requirements contained therein.

Finding No. 2013-005:

Internal controls were inadequate over the cash receipting process.

Analysis:

SDCL 4-3-4.2 states:

All money, emoluments, and perquisites other than personal salary received by any officer or employee of this state shall be remitted to the state treasury by the end of the working day following the day money is received or as specified by the state treasurer. The state treasurer shall establish rules and regulations to assure accountability.

Administrative Rule 6:03:01:01 states:

Funds destined for the state treasurer's office may be held for more than one working day if the amount to be remitted is under \$500. However, all funds held by an agency shall be remitted every Thursday.

Miscellaneous revenues, typically in the form of checks, are received in the mail by the Governor's Office of Economic Development (GOED). The mail is opened by a secretary and the checks are distributed to GOED personnel for further processing. A listing of the checks is not made at the time the mail is opened. As a result, internal controls were not adequate to ensure that checks are returned for deposit and deposits are made intact and on a timely basis. Our testing also identified that receipts of over \$500 were not deposited within one day as required by SDCL 4-3-4.2.

RECOMMENDATION:

We recommend internal controls be strengthened to ensure that receipts are deposited timely and intact.

Corrective Action Plan:

GOED updated its internal controls to require the receptionist opening mail to record the check/cash receipts in the incoming check/cash log, which is printed and signed daily. The receptionist then delivers the receipts to the accounting assistant, who is responsible for endorsing and depositing the receipts in compliance with SDCL 4-3-4.2.

Exhibit 6

GOED AUDIT UPDATE					
Audit		Audit Finding	Agency	Corrective Action	Status
Lingle-Future Fund	3.la-e	Insufficient Documentation to support the expense reimbursement	GOED	GOED's Internal Control Document and the Grant Agreement Template have been updated to specify what constitutes acceptable supporting documentation.	Completed ✓
Lingle-Future Fund	3.la-f	Missing or Incomplete Follow-up Documentation	GOED	GOED updated its existing loan database to include a follow-up reporting system to track grant reporting. This allows staff to populate detailed reports on any missing documentation or follow up items.	Completed ✓
		Missing amendment to expired grant agreement	GOED	All grant agreements are amended through a formal agreement, no amendments are allowed through email measures.	Completed ✓
Lingle-Future Fund	3.III a and b	Missing Sufficient Documentation for Contribution Commitments	GOED	GOED's Internal Control Document and the Grant Agreement Template have been updated to specify what constitutes acceptable supporting documentation	Completed ✓
Lingle-Dakota Seeds and Proof of Concept	3.a	Four Proof of Concept Files were missing quarterly progress reports as required by the agreement	GOED	GOED eliminated the reporting requirement. Given the short timeframes of the agreements, it is more appropriate to have one report due at the conclusion of the agreement.	Completed ✓
Lingle-Dakota Seeds and Proof of Concept	3.b	Seven files were noted for interns working outside of the approved date range included in the agreement.	GOED	GOED changed its agreement template to build in more flexibility for both the employer and the intern, while also including provisions necessary to ensure compliance with the core requirements of the program.	Completed ✓
Lingle-Dakota Seeds and Proof of Concept	3.c	One file was noted for reimbursing two month's worth of wages twice	GOED	Adequate controls were in place as each payment request is reviewed by a GOED staff member and SDSU staff member. This was simply a mistake.	Completed ✓
Lingle-Dakota Seeds and Proof of Concept	3.d	Thirty-one files were noted for not containing the student completion reports required to be submitted on the Dakota Seeds website per the agreements.	GOED	The student report requirement was removed from the agreement. The demographic information can be obtained from the employee, but since the student is not a party to the grant agreement, they cannot be required to submit this report.	Completed ✓
Lingle-Dakota Seeds and Proof of Concept	4.a	One disbursement was issued by SDSU to an entity other than the grantee. The payee was a sister company of the grantee. The payment was confirmed as received by the grantee.	GOED	Adequate controls were in place as each payment request is reviewed by a GOED staff member and SDSU staff member. This was simply a mistake.	Completed ✓
Lingle-Dakota Seeds and Proof of Concept	4.b	One file contained a disbursement in excess of 50% of the compensation provided to the student. The overpayment was \$189.96.	GOED	Adequate controls were in place as each payment request is reviewed by a GOED staff member and SDSU staff member. This was simply a mistake. GOED has received payment in the amount of \$189.96, which was deposited back into the Dakota Seeds account.	Completed ✓

GOED AUDIT UPDATE (Continued)

Audit		Audit Finding	Agency	Corrective Action	Status
Eide Bailly	General Concern 1	The Bureau of Human Resource's employee handbook fails to adequately discuss fraud and its consequences	BHR	BHR added a reference to Administrative Rule and SD Codified Law in their handbook referencing rules of discipline regarding what constitutes fraud.	Completed ✓
Eide Bailly	General Concern 2	Employees are not aware of the appropriate channels for reporting employee theft and fraud	BHR	BHR added a reference to Administrative Rule and SD Codified Law in their handbook referencing rules of discipline regarding what constitutes fraud.	Completed ✓
Eide Bailly	General Concern 3	Background Checks are not performed on all new hires at GOED	BHR/GOED	GOED has implemented policies and procedures to perform background checks for potential employees.	Completed ✓
Eide Bailly	Employee Expense Reimbursement #1	It appears that employee expense reimbursement and directly billed travel expenses are not compared when approving and processing employee reimbursements	State Auditor	State Auditors office referenced the Administrative Rule chapter (3:05:03) that governs this process.	Completed ✓
Eide Bailly	Employee Expense Reimbursement #2	Employee expense reimbursements are not required to be submitted within a set period of time after the expense is incurred	State Auditor	State Auditors office implemented a new rule effective May 27th, 2014, that imposes a 60 day limit after the last day of travel for an employee to submit a voucher.	Completed ✓
Eide Bailly	Payroll Concern	The Director of Administration adds and removes employees from the accounting system as well as processes employees payroll	GOED	GOED set up an additional procedure step in its payroll process, which now automatically generates and distributes a payroll distribution register to the Commissioner and Deputy Commissioner for review at the close of each pay period.	Completed ✓
Eide Bailly	Special Events	The sale of shirts and hats for the Governor's Hunt are not formally reconciled to the cash and checks that are received	GOED	GOED has implemented a tracking and reconciliation process for this years Hunt sales. The cash and checks received will be reconciled to the inventory sales each year after the event.	Completed ✓
Eide Bailly	Program Specific Concern #1	A small percentage of future fund grants lack adequate third party supporting documentation to evidence the fulfillment of the grant requirements	GOED	GOED updated its existing loan database to include a follow-up reporting system to also track grant reporting. This allows staff to populate detailed reports on any missing documentation or follow up items.	Completed ✓
Eide Bailly	Program Specific Concern #2	CDBG and Ethanol Infrastructure Incentive Program vouchers are prepared by the Grant Administrator and then approved by the Director of Administration. The approved vouchers go back to Grant Administrator to send to State Auditors Office	GOED	GOED verified that once the Director of Administration approves the voucher amount in the system, the amount to be paid is locked and cannot be revised by GOED Grant Administrator. Nonetheless, GOED adjusted its procedures so that the fiscal assistant sends the approved voucher to the State Auditor's Office.	Completed ✓
Legislative Audit	Finding No. 2013-001	GOED policies and procedures were inadequate for the monitoring of the contract with the SDRC Inc.	GOED	GOED updated its existing loan database to include a follow-up reporting system to also track grant reporting. This allows staff to populate detailed reports on any missing documentation or follow up items. GOED's Internal Control Document has been updated to specify what constitutes acceptable reporting documentation. Additionally, contracts will include the specific documentation required to evidence the fulfillment of the requirements contained therein. GOED did not report the funds on the State's CAFR. GOED has requested Legislative Audit to validate the balances including all activity in this account for FY 2014. A FY 2013 validation was already completed by Legislative Audit.	Completed ✓
Legislative Audit	Finding No. 2013-002	GOED did not have a conflict of interest policy	GOED	GOED implemented a policy on ethics and conflicts of interest and all employees must sign. Every new employee receives and acknowledges this policy during orientation with BHR.	Completed ✓
Legislative Audit	Finding No. 2013-003	Internal Controls were inadequate over the processing of travel vouchers resulting in duplicate and unsupported travel payments	GOED	GOED updated its internal reimbursement policy to require two individuals to review reimbursement requests and supporting documentation. The travel vouchers cannot be reviewed and processed by the same person, and must also be approved by immediate supervisor.	Completed ✓
Legislative Audit	Finding No. 2013-004	GOED did not have adequate documentation in place for pre-award and post-award activities associated with the Future Fund grants.	GOED	SDDC contracted with Eide Bailly to prepare year-end audited financials, so these transactions will need to be conducted within the same 12 month period.	Completed ✓
		Loan documents were missing from the grant file folders.		For those loans missing documentation, copies of the loan agreement , which were already on file for other GOED programs, have been placed in applicable Future Fund files. Copies of the loan agreement will be filed for each new loan in the future.	Completed ✓
		The future fund agreements to SDDC are silent on what happens to the funds after the loans are repaid.		SDDC's practice has been that monies stay in the SDDC account to revolve out for further economic development loans or investments.	Completed ✓
		Follow up documentation missing in workforce development and future fund files.		GOED updated its existing loan database to include a follow up reporting system to better track and monitor grant agreements.	Completed ✓
Legislative Audit	Finding No. 2013-005	Internal Controls were inadequate over the cash receipting process.	GOED	GOED updated its internal controls to require the receptionist opening the mail to record the check/cash receipts in the incoming checks/cash log, which is printed and signed daily. The receptionist endorses and delivers the checks to the accounting assistant, who is responsible for depositing the checks in compliance with SDCL 4-3-4.2.	Completed ✓

State of South Dakota

NINETIETH SESSION
LEGISLATIVE ASSEMBLY, 2015

171W0004

SENATE BILL NO. _____

Introduced by: _____

1 FOR AN ACT ENTITLED, An Act to prohibit a state officer or employee from having an
2 interest in any contract that the state employee or officer approved, awarded, or administered
3 for one calendar year following termination of state employment.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 5-18A-17 be amended to read as follows:

6 5-18A-17. No state officer or employee who approves, awards, or administers a contract
7 involving the expenditure of public funds or the sale or lease of property, may have an interest
8 in a contract that is within the scope of the officer's or employee's official duties. This
9 prohibition includes any state officer or employee who, in his or her official capacity,
10 recommends the approval or award of the contract or who supervises a person who approves,
11 awards, or administers the contract. This prohibition is in effect for one calendar year after the
12 state officer or employee terminates his or her office or employment with the state. This
13 prohibition does not include any state officer who serves without compensation or who may be
14 paid per diem pursuant to § 4-7-10.4. Any contract made in violation of this section is void. Any
15 ~~state officer or employee~~ person who knowingly violates this section is guilty of a Class 2
16 misdemeanor.



State of South Dakota

Draft Print: 09/25/2014

NINETIETH SESSION
LEGISLATIVE ASSEMBLY, 2015

991W0037

HOUSE BILL NO. _____

Introduced by: _____

1 FOR AN ACT ENTITLED, An Act to prohibit an officer or employee of the state from having
2 an interest in a contract.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 3-16-7 be amended to read as follows:

5 3-16-7. No public state officer or employee who is authorized to sell or lease any property;
6 or make any contract in the officer's official capacity may become voluntarily interested
7 individually in any sale, lease, or contract, directly or indirectly with such entity may have an
8 interest in a contract with the State of South Dakota, including all agencies and subdivisions,
9 that is within the scope of the officer's or employee's official duties. Any contract made in
10 violation of this section is void. This prohibition includes any state officer or employee who,
11 in his or her official capacity, recommends the approval or award of the contract or who
12 supervises a person who approves, awards, or administers the contract. This prohibition on an
13 officer's or employee's interest in any sale or lease of property, or any contract ends one year
14 after the state officer or employee terminates his or her office or employment with the state. A
15 knowing violation of this section by a state officer or employee is a Class 2 misdemeanor unless
16 the act is exempted by law.

170 copies were printed on recycled paper by the South Dakota
Legislative Research Council at a cost of \$.098 per page.



Insertions into existing statutes are indicated by underscores.
Deletions from existing statutes are indicated by ~~overstrikes~~.

Exhibit 8 Futures Fund grants from January 1, 2012 to December 31, 2013

Future Fund Assistance 2012-2013

January 1-December 31, 2012

<u>Grant Number</u>		<u>Location</u>	<u>Amount</u>	<u>Month Awarded</u>
<u>Grants to Other State Agencies</u>				
1479	Department of Labor & Regulation--Funds were made available for a statewide advertising campaign supporting Dakota Roots.	Statewide	\$ 139,800	January
<u>University Assistance</u>				
1485	South Dakota State University--Matching funds for OSHA.	Brookings	\$ 55,000	April
<u>Technical Institute Assistance</u>				
2104	Lake Area Technical Institute--Funds were made available to purchase welding equipment and material for CTE as well as develop distance learning curriculum.	Watertown	\$ 194,000	January
2103	Mitchell Technical Institute--Funds were made available to purchase welding and machining equipment and material for CTE.	Mitchell	\$ 582,180	February
			\$ 776,180	
<u>Other Technical Assistance</u>				
1483	Bel Brands USA, Inc.--Manufacturer of Baby Bel cheese snacks. Funds were made available to reimburse eligible construction costs.	Brookings	\$ 1,000,000	February
1484	South Dakota Development Corporation--Funds were made available to provide a loan to Bel Brands USA, Inc.	Brookings	\$ 2,000,000	February
1425	Sitting Bull Monument (amended)--Funds were made available to assist with monument site improvements.	Mobridge	\$ 35,000	March
1486	South Dakota Chamber of Commerce--Funds were made available for sponsorship match in support of Giant Vision competition over a 3-year period.	Statewide	\$ 120,000	March
1478	South Dakota Science & Tech Authority (amended)--Funds were made available for building and equipment improvements.	Lead	\$ 617,000	May
1489	CHR Solutions--Funds were made available to reimburse equipment costs based on new jobs created.	Mitchell/Sioux Falls	\$ 500,000	May
1491	Custom Touch Homes--Manufacturer of off-site built housing units. Funds were made available to reimburse building expansion costs.	Madison	\$ 100,000	June
1492	South Dakota Development Corporation--Funds were made available to provide a loan to Pure Pulp Products, LLC.	Plankinton	\$ 60,000	August
1493	South Dakota Ellsworth Development Authority--Funds were made available to promote and retain EAFB and related industries.	Ellsworth	\$ 150,000	August
1361	I-29 Corridor Task Force (amended)--Funds were made available for marketing and promoting rural economic development opportunities.	Statewide	\$ 25,000	September
1462	Lakota Fund (amended)--Funds were made available to capitalize RLF for making microloans on the reservation.	Eagle Butte	\$ 25,000	September
1494	Brookings Economic Development Corporation--Funds were made available to reimburse eligible construction costs for BEDC's Agricultural Technology Center for Rural Enterprise.	Brookings	\$ 100,000	September
1461	AKG (amendment)--Company manufactures heat exchangers for industrial, ag, mining, and construction applications. Funds were made available for reimbursing expansion costs.	Mitchell	\$ 175,000	October
1469	South Dakota Ellsworth Development Authority (amended)--Funds were made available to assist with hiring consultants.	Ellsworth	\$ 335,250	November
1495	Planning Districts--Funds were made available to support various community planning and development services offered by the six districts; \$15,000 per district.	Statewide	\$ 90,000	November
1498	Dakota Resources--Funds were made available to support Dakota Rising program and entrepreneurial ecosystem.	Madison	\$ 100,000	December
			\$ 5,432,250	

Future Fund Assistance 2012-2013 (Continued)

January 1-December 31, 2012 (Continued)

<u>Grant Number</u>	<u>Industry</u>	<u>Location</u>	<u>Amount</u>	<u>Month Awarded</u>
Workforce Development				
3531 3M	Manufacturing	Aberdeen	\$ 35,008	January
3532 Stengel Oil	Value added ag	Milbank	\$ 7,457	January
3533 L&S Teleservices	Call center	Sioux Falls	\$ 3,500	January
3534 DocuTap	IT	Sioux Falls	\$ 160,000	February
3535 Bright Planet	IT	Sioux Falls	\$ 15,000	February
3538 Masaba Mining Equipment	Manufacturing	Vermillion	\$ 70,000	February
3539 Wildcat Manufacturing Co.	Manufacturing	Freeman	\$ 5,000	February
3537 EDCO Group, Inc.	Professional	Sioux Falls	\$ 30,000	March
3540 Persona, Inc.	Manufacturing	Watertown/Madison	\$ 4,180	March
3541 Applied Engineering	Professional	Yankton	\$ 4,050	March
3542 Roger Freels and Associates, Inc.	Professional	Rapid City	\$ 6,000	March
3543 ESCO Manufacturing	Manufacturing	Webster	\$ 4,121	March
3544 TCF National Bank	Finance	Sioux Falls	\$ 200,000	March
3545 Blend Interactive	IT	Sioux Falls	\$ 14,000	March
3546 Minnesota Rubber Company	Manufacturing	Watertown	\$ 168,000	March
3547 Persona, Inc.	Manufacturing	Watertown	\$ 3,230	May
3548 Angus Palm Industries	Manufacturing	Watertown	\$ 109,000	May
3549 Renew Energy Maintenance	Energy	Sioux Falls	\$ 20,000	June
3550 DT-Trak	Professional	Miller	\$ 36,000	June
3552 Bel Brands USA, Inc.	Value added ag	Brookings	\$ 400,000	August
3553 Baldwin Filters	Manufacturing	Yankton	\$ 63,000	August
3554 Custom Touch Homes	Manufacturing	Madison	\$ 75,000	August
3555 Rural Manufacturing Company, Inc.	Manufacturing	Freeman	\$ 8,000	August
3556 Integra Plastics	Manufacturing	Brandon/Madison	\$ 50,000	September
3559 Counterpart, Inc.	Manufacturing	Brookings	\$ 1,053	November
			<u>\$ 1,491,599</u>	
		Total in 2012	<u>\$ 7,894,829</u>	

January 1-December 31, 2013

<u>Grant Number</u>	<u>Location</u>	<u>Amount</u>	<u>Month Awarded</u>
Contractual Services			
1528 Funds were made available to promote and market CNBC's ranking South Dakota as the number one state for business.	Statewide	\$ 586,275	December
Grants to Other State Agencies			
1510 South Dakota Department of Transportation--Funds were made available to assist with hiring a consultant for strategic planning of railway expansion.	Statewide	\$ 400,000	May
1511 South Dakota Department of Transportation--Funds were made available to assist with costs of Cedar Shore bank stabilization.	Statewide	\$ 200,000	May
1508 South Dakota Housing Development Authority--Funds were made available to increase energy efficiency standards for the Governor's House Program.	Statewide	\$ 85,718	June
		<u>\$ 685,718</u>	
University Assistance			
1503 University of South Dakota--Funds were made available for development and support of Information Technology Consultant Academy.	Vermillion	\$ 212,500	February
1506 University of South Dakota--Funds were made available for design and estimating for Good Manufacturing Practices facility.	Vermillion	\$ 25,000	March
1505 Dakota State University, Center for Theoretical Underground Physics--Funds were made available to assist with identifying additional opportunities at the Sanford Lab.	Madison	\$ 15,000	May
1516 South Dakota State University, Engineering Extension Office--Funds were made available to support an intern for the OSHA program.	Brookings	\$ 10,000	July
1520 University of South Dakota, Good Manufacturing Practices--Funds were made available to reimburse construction costs.	Vermillion	\$ 732,000	October
		<u>\$ 994,500</u>	

Future Fund Assistance 2012-2013 (Continued)

January 1-December 31, 2013 (Continued)

<u>Grant Number</u>		<u>Location</u>	<u>Amount</u>	<u>Month Awarded</u>
<u>Technical Institute Assistance</u>				
1507	Western Dakota Technical Institute--Funds were made available to make a loan to WDTI for the purpose of financing architect and design fees for a building expansion.	Rapid City	\$ 150,000	August
<u>Other Technical Assistance</u>				
1499	Small Business Development Center/Small Business Innovation Research--Funds were made available to support ongoing operations.	Statewide	\$ 430,076	January
1500	Procurement Technical Assistance Center--Funds were made available to support ongoing operations.	Statewide	\$ 107,685	January
1501	South Dakota Manufacturing and Technology Solutions--Funds were made available to support ongoing operations.	Statewide	\$ 161,000	January
1502	Small Business Administration, Federal and State Technology--Funds were made available as match for the FAST grant program.	Statewide	\$ 40,000	January
1497	Faulkton Development Corporation--Funds were made available for FDC to participate in Regional Systems Engagement Pilot Program	Faulkton	\$ 10,000	February
1504	Absolutely Aberdeen--Funds were made available for AA to participate in Regional Systems Engagement Pilot Program.	Aberdeen	\$ 10,000	February
1509	Lakota Funds--Funds were made available to capitalize RLF for making microloans on the reservation.	Pine Ridge	\$ 25,000	May
1425	Sitting Bull Monument (amended)--extension of time.	Mobridge	\$ 35,000	June
1514	SmithCo Manufacturing, Inc.--Funds were made available to make a forgivable loan to SCM. Loan is to reimburse construction of new HQ and forgivable upon job creation.	Elk Point	\$ 90,000	July
1494	Brookings Economic Development Corporation (amended)--extension of time.	Brookings	\$ 100,000	July
1365	Hunkpati Investments (amended)--Funds were made available to capitalize RLF for making microloans on the reservation.	Crow Creek	\$ 25,000	July
1517	Planning Districts--Funds were used to support various community planning and development services offered by the six districts; \$15,000 per district.	Statewide	\$ 90,000	July
1518	South Dakota Ellsworth Development Authority--Funds were made available to promote and retain EAFB and related industries.	Rapid City	\$ 150,000	July
1383	South Dakota Enterprise Institute (amended)--Funds were made available to assist with establishing a Regional Angel Investor Network.	Statewide	\$ 82,500	August
1513	Baldwin Filters--Funds were used to replace funds anticipated by Baldwin due to non-renewal of 10-45B.	Yankton	\$ 236,000	August
1519	South Dakota Science & Technology Authority--Funds were made available to assist with the costs of constructing the Sanford Education Center at the Black Hills State University and Visitors' Center at the Sanford Underground Laboratory at Homestake Campus.	Lead	\$ 2,000,000	October
1521	National Park Service--Funds were used to keep Mount Rushmore operating during the federal government shutdown.	Keystone	\$ 152,000	October
1522	Dakota Resources--Funds were made available to support Dakota Rising program and entrepreneurial ecosystem.	Statewide	\$ 100,000	December
1523	Bel Brands USA, Inc.--Funds were used to replace funds anticipated by Bel Brands due to non-renewal of 10-45B.	Brookings	\$ 4,661,800	December
1525	South Dakota Manufacturing and Technology Solutions--Funds were made available to support ongoing operations.	Statewide	\$ 161,000	December
1526	Procurement Technical Assistance Center--Funds were made available to support ongoing operations.	Statewide	\$ 113,421	December
1527	Small Business Development Center/Small Business Innovation Research--Funds were made available to support ongoing operations.	Statewide	\$ 430,076	December
			<u>\$ 9,210,558</u>	

Future Fund Assistance 2012-2013 (Continued)

January 1-December 31, 2013 (Continued)

<u>Grant Number</u>	<u>Workforce Development</u>	<u>Industry</u>	<u>Location</u>	<u>Amount</u>	<u>Month Awarded</u>
3557	Spartan ERV	Manufacturing	Brandon	\$ 17,040	January
3498	Adams Thermal Systems, Inc.	Manufacturing	Canton	\$ 150,000	January
3561	ASI, Inc.	Call center	Rapid City	\$ 14,000	January
3562	Dakota Arms, Inc.	Manufacturing	Sturgis	\$ 4,000	January
3565	Counterpart, Inc.	Manufacturing	Brookings	\$ 25,000	February
3566	Central States Manufacturing	Manufacturing	Hartford	\$ 70,000	February
3563	CIGNA, Inc.	Insurance	Sioux Falls	\$ 100,000	April
3569	Counterpart, Inc.	Manufacturing	Brookings	\$ 500	April
3568	Equity Trust Company	Finance	Sioux Falls	\$ 7,500	April
3551	Falcon Plastics	Manufacturing	Brookings	\$ 25,000	April
3575	Sand Creek Post & Beam	Manufacturing	North Sioux City	\$ 20,000	May
3572	Black Hills Fiberglass, LLC	Manufacturing	Bell Fourche	\$ 15,000	May
3576	AmeriPharm, Inc. dba MedVantx	Health care	Sioux Falls	\$ 46,000	May
3570	Molded Fiber Glass	Manufacturing	Aberdeen	\$ 60,000	May
3574	Lectrus Corporation	Manufacturing	Tea	\$ 8,500	May
3571	Navigant Consulting	Professional	Vermillion	\$ 125,000	June
3573	Navigant Consulting	Professional	Mitchell/Plankinton	\$ 8,000	June
3579	Lewis and Clark Hydraulic Company	Manufacturing	Yankton	\$ 2,000	June
3581	Hydro-Klean, LLC	Services	Sioux Falls	\$ 25,000	August
3578	Allied Solutions	Finance	Dakota Dunes	\$ 37,500	August
3580	Molded Fiber Glass	Manufacturing	Aberdeen	\$ 160,000	September
3582	Marmen Energy Co.	Manufacturing	Brandon	\$ 250,000	September
3583	Malloy Electric	Services	Sioux Falls	\$ 1,500	October
3564	Capital One Financial Corporation	Finance	Sioux Falls	\$ 200,000	October
3585	Vermeer Freeman Manufacturing, Inc.	Manufacturing	Freeman	\$ 5,000	December
3584	Personal Group, Inc.	Services	Rapid City	\$ 30,000	December
3586	VRC Metal Systems	Manufacturing	Rapid City	\$ 10,000	December
				<u>\$ 1,416,540</u>	
			Total in 2013	<u>\$ 13,043,591</u>	

Exhibit 9

Responses to GOAC Questions from GOED, Governor Daugaard, Former Governor Rounds and Joop Bollen

The GOED provided the following answers to GOAC questions:

How many jobs has EB-5 created in South Dakota? How do you know? Where is the documentation?

Response from the GOED

Based on reporting submitted by U.S. Immigration Services, covering fiscal year 2004 through fiscal year 2013, South Dakota has received a total of more than \$620 million in direct investments through the EB-5 program, adding at least 5,658 jobs to the American economy. The Commissioner believes these numbers are overstated because this is a federal program and they are concerned about jobs created in the United States, not just one particular state.

How many jobs were created for workers who were citizens of the state before they took the jobs?

Response from the GOED

We simply do not track where the employees came from for any of the programs.

What is the average pay of the jobs created by the turkey plant in Huron and of the dairy employees?

Response from the GOED

Legal counsel has advised the GOED that those pay rates are confidential and cannot be disclosed.

Why was the contract between SDRC, Inc. and the GOED cancelled?

Response from the GOED

The contract was cancelled with cause and because of the threat of litigation this also cannot be discussed in further detail.

Please describe the State's monitoring responsibilities and process for each project as prescribed by the agreement between USCIS and the State. Which of those responsibilities were retained by the State? Which responsibilities were assigned to SDRC, Inc.? Which responsibilities were carried out by SDRC, Inc. and which were not?

Response from the GOED

The State's role and responsibilities have not changed and do not change depending on the project. The GOED exercised oversight of SDRC and retained the approval authority of individual projects. The SDRC, Inc. then recruited and screened potential EB-5 investors using the EB-5 application process and any paperwork necessary to place the investment for approved applicants. SDRC, Inc. was also expected to monitor the EB-5 investments and file any required reports on behalf of the State to USCIS. So under the contract, the State remained in control of approving any projects that came through and then relied on SDRC, Inc. to administer every other component of the program. The GOED maintained the ability to approve or reject any project but there was guidelines already laid out on what did and did not qualify as an EB-5 project.

Where is the paperwork evaluating each investor and his/her integrity as required by USCIS?

Response from the GOED

Because the EB-5 program is a federal program, the USCIS administers the petition review process, which includes the evaluation of the investors and their suitability for the program so that is not something the GOED would have access to. The GOED would have copies of the

applications and paperwork but the GOED would not have performed any investigative work on those applicants.

Discuss the Huron turkey plant EB-5 funding and why EB-5 was used after its construction. Does this fall within the parameters of the EB-5 funding guidelines? If so, how?

Response from the GOED

State statute requires us to keep certain business information private, so discussing the factors of the timing of the EB-5 program investments is not allowed. However, all South Dakota EB-5 investments were reviewed and approved by the USCIS and, therefore, the USCIS decided that funding for the Huron turkey plant was within their guidelines.

How many foreign investors invested in projects in total?

Response from the GOED

Through the end of fiscal year 2013 our annual reports with the USCIS indicate that the USCIS has approved 967 petitions for foreign investors for EB-5 visas related to South Dakota projects. However, it is possible that some of these investors may have chosen not to place their investments in the State. The Commissioner explained that each investor would have been issued a visa so the number of visas approved would be the same number of investors.

How many of those investors lost their money and how much did they lose in bankrupt projects?

Response from the GOED

The USCIS requires that the investments be considered at risk before approving investors, so some projects result in a loss. The specifics on investors who have lost money would be a matter between the investors and the businesses they are invested in.

Is the State of South Dakota a party to any lawsuits involving any of the projects or their investors? If so, please list the titles and dates of filing and status of the suits.

Response from the GOED

The Commissioner stated that he is not aware of any lawsuits with the State of South Dakota or that any former employees of the State of South Dakota are involved in any lawsuits.

How many of those investors achieved valid green card status by virtue of their investment?

Response from the GOED

All USCIS approved EB-5 investors, making an initial investment in South Dakota, receive a conditional green card status. The USCIS then reviews the EB-5 investor after two years to determine whether to convert their conditional status to a permanent green card. According to the GOED's records, through the end of fiscal year 2013 the USCIS approved 304 petitions to remove the conditional status of South Dakota EB-5 investors. The GOED is not involved in the decision whether to award the conditional or permanent green card to a foreign investor. This decision is made by the USCIS.

How many of the investors did not achieve valid green card status because jobs were not created?

Response from the GOED

The GOED records indicate that through fiscal year 2013 the USCIS denied 1%, or 4 out of 308, of all the petitions reviewed, seeking the removal of the EB-5's conditional green card status.

Is the GOED tasked with the management of investor's money or facilitating the capital and at what point they sever ties with the project?

Response from the GOED

The Commissioner stated that the go forward plan is basically to work with projects and if they are interested in the federal EB-5 program we will certify to the USCIS that their project falls within our

industries need and falls within the regional center. After that point, all the money handling, pooling the loans, and soliciting the investments are the responsibilities of the project. They will hire a consultant to facilitate that for them. The State does not have a role in that aspect of it.

What is the status of the EB-5 program nationally?

Response from the GOED

The Commissioner stated that the program was reauthorized by the U.S. Senate in 2012 by unanimous consent and the House passed it by voice vote of 412 to 3. The program has a significant amount of congressional support. There have been challenges across the country, but it has evolved from when it started to now. The USCIS is trying to continue to refine it, but the evidence is that it is a good program. The State of South Dakota doesn't promote it, but it is available. The Commissioner added that the GOED is basically inactive when it comes to the EB-5 program. The GOED administers the regional center now but has a much smaller role than the SDRC, Inc. had. If a project wants to take part in the federal EB-5 program the GOED will just certify that they qualify and then it is up to the project to take the next steps.

Are regional centers across the nation run the way South Dakota now runs the regional center or the way the program was run when SDRC, Inc. ran the regional center?

Response from the GOED

The Commissioner stated that he believes that most are run the way SDRC, Inc. ran the program versus how the State of South Dakota now runs the program.

Governor Daugaard provided the following answers to GOAC questions:

Where is the \$550,000 from the \$1 million state grant that Mike Rounds cabinet secretary Richard Benda allegedly stole from Northern Beef Packers?

Response from Governor Daugaard

The \$1 million grant was made to Northern Beef Packers in 2010, to be paid to reimburse NBP for construction and equipment expenses they had incurred. Independent auditors, including the Department of Legislative Audit, verified that NBP provided necessary documentation that it had incurred at least \$1 million in construction and equipment expenses, and the grant was issued to and received by NBP.

Although state and federal investigators may know more, I have no first-hand knowledge as to what happened to those funds once they were received by NBP. Specifically, you would need to enquire with state or federal investigators as to any specific allegation that Benda stole these funds.

Who in state government did the Northern Beef CEO talk to ahead of time to feel comfortable giving Benda a check for \$550,000 upon his delivery of the \$1,000,000 Future Funds grant?

Response from Governor Daugaard

The NBP CEO did not talk to anyone in my administration about any arrangement he may have had with Richard Benda. The attorney general has indicated that, other than Benda, he did not find probable cause to charge any current or former state official with a crime.

Who in the Rounds Administration approved the \$1 million Future Funds grant for construction reimbursement to Northern Beef Processors (The check Benda ended up securing in physical form as a member of the private sector)?

Response from Governor Daugaard

Your letter indicated that the Department of Legislative Audit has provided you with an answer to this question.

Was Richard Benda working alone when he allegedly stole the state's money?

Response from Governor Dugaard

As I said in response to Question #2, the attorney general has indicated that, other than Benda, he did not find probable cause to charge any current or former state official with a crime.

I directed GOED to undertake three separate, independent audits and reviews, none of which found any wrongdoing beyond what was already known. You would need to enquire with state or federal investigators as to any specific allegation that Benda stole these funds or for other questions about what their investigations found.

How is it possible that Benda allegedly stole the \$550,000 state grant money without conspiring with either state officials, Northern Beef Packing plant employees or SDRS Inc. President Joop Bollen?

Response from Governor Dugaard

I would refer you to my answers to Questions #1 and #4. Beyond that, this question is best directed to state or federal investigators.

How close did Mike Rounds work with Richard Benda & Joop Bollen on the EB5 program?

Response from Governor Dugaard

This is a question best directed to Governor Rounds.

Did Mike Rounds know the intended purpose of the \$1 million grant he approved for his departing cabinet secretary Richard Benda?

Response from Governor Dugaard

Documents indicate that the purpose of the grant was to reimburse Northern Beef for their construction and equipment expenses. Beyond that, this question is best directed to Governor Rounds.

Why is Governor Dennis Dugaard pointing the finger at the Rounds administration but former Governor Mike Rounds says the check is the Dugaard administration's fault?

Response from Governor Dugaard

There is no finger-pointing. With any state payment, the official authorizing payment directs whether the payment is to be made electronically, by a mailed check, or by a hand-delivered check. Before he left his position as Secretary, Richard Benda personally authorized the issuance of the \$1 million check to NBP, and directed that the check be held for him so that he could deliver it personally. The State Auditor's office processed the request for payment according to Benda's instructions.

How did Joop Bollen get the contract to privately manage the EB5 visa program for the state of South Dakota? Was there a public bidding process?

Response from Governor Dugaard

This occurred in 2009 and is a question best directed to state officials who were involved at that time.

Why did Mike Rounds think it was ok to grant a no-bid contract to a state employee for the lucrative EB5 contract?

Response from Governor Dugaard

This is a question best directed to Governor Rounds.

What were the full terms of Joop Bollen's contract to manage the EB5 program?

Response from Governor Daugaard

Your letter indicated that the Department of Legislative Audit will be providing a copy of the contract.

Who determined the terms of Joop Bollen's contract to privately manage the EB5 program?

Response from Governor Daugaard

This occurred in 2009 and is a question best directed to state officials who were involved at that time.

Who wrote the contract to privatize the EB5 program for Joop Bollen?

Response from Governor Daugaard

This occurred in 2009 and is a question best directed to state officials who were involved at that time.

Who else was earning money from the state's privatization of the EB5 program?

Response from Governor Daugaard

SDRC had a management contract to administer the EB5 program on behalf of the state. As SDRC is a private business, questions about its finances are best directed to SDRC officers.

Did any beneficiaries of the EB5 program make political contributions to elected officials, and/or their party committees, who oversaw the EB5 program?

Response from Governor Daugaard

It is not apparent what "beneficiaries" this question references. Of course, contributions to state and federal candidates are reported online and are available for public review.

Is there any information you can provide the Committee regarding the results of the investigation being done by the private attorney to pursue the possible recover of the \$550,000 that was allegedly misappropriated by the late Richard Benda?

Response from Governor Daugaard

I take the potential loss of any state funds very seriously, and began late last year to consider the possibility of a civil claim. GOED has retained Paul Bachand as outside counsel to evaluate the possibility of a civil claim. Bachand cooperated with the attorney general to obtain a court order to gain access to information from the attorney general's investigation, and an additional court order allowing Bachand to use accountants from the Department of Legislative Audit to aid in his review of the file. Bachand has not yet concluded his evaluation of the case and has not offered any conclusions or legal advice.

1. *As a state employee, Joop Bollen granted SDRC Inc, a private company he owned, the contract to administer the EB5 program on January 15, 2008.*

a. *When did Mike Rounds approve this contract?*

b. *Why did Bollen sign the contract on behalf of the State when he incorporated and owned SDRC, Inc.?*

c. *Have you requested or reviewed a copy of Bollen's deposition transcript in the Darley arbitration where Bollen discusses the transactions between the State, his own company, Darley International LLC and Hanul Law Corporation?*

d. *Did you know Bollen was asked at deposition "why didn't you sign on behalf of SDRC, Inc." and he responded "it would look silly"?*

e. *Was this transaction (the contract signed on January 15, 2008) between the State and SDRC, Inc. reviewed by an attorney acting on behalf of the State? Who?*

f. *Do you know if anyone else had an ownership interest in SDRC, Inc. besides Bollen when he signed this agreement on behalf of the State 5 days after forming his company in January 2008?*

g. *Did you know Bollen did not resign from the State until December 21, 2009?*

Response from Governor Daugaard

In regard to subparts (a)-(g), these questions are best directed to state officials who were involved at that time. As the Darley lawsuit is being defended by the Board of Regents, questions about that lawsuit are best directed to the Regents' general counsel.

h. *Did you know Bollen took all the EB5 records with him on December 21, 2009 without permission from NSU? Do you know if anyone from the State gave him permission? Do you know whether the State has copies of those EB 5 files now?*

Response from Governor Daugaard

In regard to subpart (h), the first two questions are best directed to state officials who were involved at that time. In regard to the third question, following the termination of the SDRC management contract, GOED received records from SDRC relating to SDRC's administration of the EB-5 program and individual investors that applied for EB-5 visas. SDRC has stated that these were all of the records it had under its control.

i. *Did you know that Bollen, on behalf of South Dakota, was requesting recognition of SDRC, Inc. (his own company) by U.S. Immigration Services while he was a state employee?*

Response from Governor Daugaard

In regard to subpart (i), this question is best directed to state officials who were involved at that time.

j. *Did you know that the foreign investors must invest the proper amount of capital in a business, called a new commercial enterprise, which will create or preserve at least 10 full-time jobs, for qualifying U.S. workers, within 2 years of receiving conditional permanent residency? Do you know if there is a listing of jobs created with each project in the state that received EB5 funds?*

Response from Governor Daugaard

In regard to subpart (j), I am aware generally that foreign investors under the federal EB-5 program are required to make investments of a certain size under certain terms. I believe the reports submitted to the United States Citizenship and Immigration Service (USCIS) by SDRC would reflect the estimated number of jobs projected to be created by each EB-5 project.

k. *Do you know how much in fees has been received by the State under the Agreement with SDRC, Inc.? How much SDRC, Inc. received?*

Response from Governor Daugaard

In regard to subpart (k): The 2009 agreement between the state and SDRC did not entitle the state to receive fees. The only funds the state received were through Indemnification Fund One and the Expense Fund. More information about those funds is available in the management contract and in the Department of Legislative Audit's audit report, which was submitted to GOAC during the legislative session.

l. *When did you first learn about this contract? Did you read it? Ask an attorney to review? Distribute?*

Response from Governor Daugaard

In regard to subpart (l), this contract was negotiated by a Board of Regents employee, and the Darley lawsuit is being defended by the Board of Regents. I do not recall being aware of this contract prior to recent press reports.

2. Clause 6 of the same contract signed between SDIBI and SDRC, Inc. on January 15, 2008, states "SDRC, Inc. shall indemnify, defend, and hold harmless SDIBI, SDIBI/SDRC, the state of South Dakota and its officers and employees from liability and any claims, suits, judgments, and damages arising as a result of SDRC, Inc. acts and/or omissions performed under this agreement." South Dakota had multiple opportunities to protect taxpayers:

a. Who selected the attorneys to represent the States' interests in these matters?

b. Who are the primary State contacts with the attorneys representing the State's interests in the Darley arbitration?

c. Didn't some of the attorneys representing the State in the above-described matters have an affiliation with Hanul Law Corporation who is a defendant in the Darley arbitration?

Response from Governor Daugaard

In regard to subparts (a)-(c), these questions are best directed to state officials who were involved at that time. As the Darley lawsuit is being defended by the Board of Regents, questions about that lawsuit are best directed to the Regents' general counsel.

d. When did you first learn about potential issues with the administration of EB5 issues? Didn't Attorney Rich Williams in the SD AG's office receive notice of EB5 issues several years before the contract with SDRC, Inc. was finally terminated?

Response from Governor Daugaard

In regard to subpart (d), I know that, in 2012, GOED Commissioner Pat Costello became increasingly concerned with SDRC's administration of EB-5 under the management contract, and took steps to remedy those issues. This culminated with our termination of the SDRC contract in 2013, following a briefing from the attorney general about the progress of his investigation. I am not aware that Rich Williams raised any issues, as you referenced in the second question.

e. What was your participation in EB5 investor recruiting? Trips? Discussions? Correspondence?

Response from Governor Daugaard

In regard to subpart (e), I have had no personal participation in recruiting EB-5 investors.

3. Did you inquire whether there was any ongoing litigation that the Board of Regents was engaged in?

4. When did you become aware of the Darley International LLC litigation in California court?

Response from Governor Daugaard

I was not aware of the Darley litigation until I took office as governor in 2011. After taking office, I was briefed on the litigation, but I do not specifically remember when that was.

5. In September 2013, you cancelled the EB5 contract with SDRC, Inc.; however, SDRC, Inc. continues to earn money managing existing EB5 loans. Why didn't you rescind the right to manage old EB5 loans when you cancelled the right to manage new loans?

Response from Governor Daugaard

As I understand it, the fees that SDRC is collecting result from private business relationships the company has with EB-5 investors and projects. According to state attorneys, the state cannot rescind SDRC's ability to continue these private business relationships.

6. Did Attorney General Marty Jackley inform you that as a state employee, Joop Bollen formed limited liability partnerships that managed EB5 loans?

Response from Governor Daugaard

No

7. *If you were indeed aware of the ongoing Darley International lawsuit concerning Joop Bollen and the EB5 program, why was this information not provided by Commissioner Pat Costello to the Government Operations and Audit Committee earlier this year?*

Response from Governor Daugaard

The Darley lawsuit has been disclosed to GOAC at least twice, in the state's annual audit reports for Fiscal Years 2010 and 2011. For those who have been following this matter in the media, reporters have written about the Darley lawsuit in November 2013 and again in April 2014.

At the GOAC hearing, Commissioner Costello fielded a question about pending litigation involving EB-5. He understood this question to be about pending lawsuits against GOED, of which there are none. The Darley matter had already been disclosed in the audit reports, and as the Board of Regents is handling this matter, I would direct questions about that status of the case to the Regents general counsel.

8. *When you asked Attorney General Marty Jackley to investigate the EB5 program in the spring of 2013 in response to federal grand jury subpoenas, did Jackley remind you about the substance of the ongoing Darley International lawsuit?*

Response from Governor Daugaard

My request to Attorney General Jackley was to investigate allegations of wrongdoing against Richard Benda. I would refer you to the attorney general for questions about his investigation.

9. *Why didn't you rescind the right for SDRC, Inc. to manage existing EB5 loans when you cancelled the right for SDRC, Inc. to manage the EB5 program in September of 2013?*

Response from Governor Daugaard

I would refer you to my answer to question #5.

Former Governor Rounds provided the following answers to GOAC questions:

Where is the \$550,000 from the \$1 million state grant that Mike Rounds cabinet secretary Richard Benda allegedly stole from Northern Beef Packers?

Response from Former Governor Rounds

This issue was the subject of independent state and federal investigations. As I stated to the attorney general as part of his investigation, I had no knowledge of the funds that Richard Benda allegedly diverted for personal use.

Who in state government did the Northern Beef CEO talk to ahead of time to feel comfortable giving Benda a check for \$550,000 upon his delivery of the \$1,000,000 Futures Fund grant?

Response from Former Governor Rounds

Based upon press reports, the alleged transaction occurred in late January 2011. I was no longer governor. Mr. Benda was no longer a state employee.

I am not aware of any discussion between anyone in state government and Northern Beef Processors concerning this transaction.

Who in the Rounds Administration approved the \$1 million Futures Fund grant for construction reimbursement to Northern Beef Processors (the check Benda ended up securing in physical form as a member of the private sector)?

Response from Former Governor Rounds

Provided – The Letter of Agreement authorizing the \$1 million grant was signed by Governor Rounds. This information was obtained by the South Dakota Department of Legislative Audit as part of their audit of the governmental funds of the Governor's Office of Economic Development.

Was Richard Benda working alone when he allegedly stole the state's money?

Response from Former Governor Rounds

Based on press reports, the attorney general has conducted an extensive investigation and concluded that there were no other state officials involved.

How is it possible that Benda allegedly stole the \$550,000 state grant money without conspiring with either state officials, Northern Beef Packing plant employees or SDRC, Inc. President Joop Bollen?

Response from Former Governor Rounds

See #4

How close did Mike Rounds work with Richard Benda & Joop Bollen on the EB-5 program?

Response from Former Governor Rounds

The federal EB-5 program was only one of the many financing tools available for private economic development projects. Governors, including me, receive regular updates on projects utilizing Future Funds, Rural Economic Development Initiative Funds, Community Development Block Grants, bonding authority activity, Small Business Administration loans and other state and federal programs.

As governor, I received regular updates on ongoing economic development projects. While serving as governor, the state created 28,000 new jobs despite the greatest national recession since the great depression. The federal EB-5 program was a tool that, as reported, helped create more than 5000 jobs and \$600 million in capital investment in South Dakota. Yes, job creation was a focus during my time as governor, regular updates – provided by staff – were an obvious component.

There are successful federal EB-5 projects located throughout South Dakota. Many of your constituents likely have employment because of that focus on job creation in the private sector. Counties throughout both eastern and western South Dakota have jobs today – ranging from ag processing, wind energy, resorts, utility and dairies. These projects are operating and employing people today because of the federal EB-5 program.

No amount of political defamation will change that.

Did Mike Rounds know the intended purpose of the \$1 million grant he approved for his departing cabinet secretary Richard Benda?

Response from Former Governor Rounds

The premise of the question appears incorrect and defamatory. I did not approve a \$1 million grant for Richard Benda.

As the committee knows and as has been reported publically, I approved the Future Fund grant request for reimbursement of construction infrastructure costs, up to \$1 million, by Northern Beef Processors (NBP). That requirement had been met by NBP. And, as reported, a check was issued after I left office to NBP for reimbursement for construction costs.

Why is Governor Dennis Daugaard pointing the finger at the Rounds administration but former Governor Mike Rounds says the check is the Daugaard administrations fault?

Response from Former Governor Rounds

The question appears incorrect on both points. As has been reported, the “check” is a product of NBP meeting their requirement set forth in the contract. The chronology or date of the check

leaving state government and the manner in which it was delivered – I cannot speak to – as I was in the private sector and no longer governor.

How did Joop Bollen get the contract to privately manage the EB-5 visa program for the State of South Dakota? Was there a public bidding process?

KELO reported that Mike Rounds sliced Joop Bollen's pay in half for managing the state's EB-5 program to grant Bollen the lucrative EB-5 contract through a no bid process.

Response from Former Governor Rounds

My understanding is that the contract was negotiated between the state agency and SDRC. Since the contract was less than \$50,000 *state law* did not require a bid.

Follow up on Keloland story: Why did Mike Rounds think it was ok to grant a no-bid contract to a state employee for the lucrative EB-5 contract?

Response from Former Governor Rounds

See #9. In fact, state law governs contract matters.

What were the full terms of Joop Bollen's contract to manage the EB-5 program?

Response from Former Governor Rounds

Provided – That contract has been made available to the public (see attached copy)

Who determined the terms of Joop Bollen's contract to privately manage the EB-5 program?

Response from Former Governor Rounds

I did not participate in those specific transactional details. The contract was between a state agency and the contractor.

The press has reported that Mr. Benda and Mr. Bollen negotiated the contract.

Who wrote the contract to privatize the EB-5 program for Joop Bollen?

Response from Former Governor Rounds

The contract was between a state agency and the contractor. Each state agency would normally handle those specific transactional details – not unlike the thousands of contracts state agencies engage in every year.

The press has reported that private attorneys for the parties drafted the agreement based on the terms they negotiated.

Who else was earning money from the state's privatization of the EB-5 program?

Response from Former Governor Rounds

To my knowledge, the only financial obligation the state had is articulated in the contract. SDRC, Inc. is a private business. State government would not necessarily have or know that information.

Did any beneficiaries of the EB-5 program make political contributions to elected officials, and/or their party committees, who oversaw the EB-5 program?

Response from Former Governor Rounds

The “beneficiaries” of the federal EB-5 program number in the tens of thousands. As reported, 5000+ jobs, \$600 million in capital investment, local property tax payers, schools, 27 or more projects in almost as many different communities, utility users, investors, indirect jobs created, service providers, and spin-off businesses. Where, precisely, should we draw the line with “beneficiaries”?

If the questioner has a specific person in mind, political contributions are public information for both state and federal candidates.

How many people, who have participated in the EB-5 program, have come to South Dakota and have become contributing citizens to the State of South Dakota?

Response from Former Governor Rounds

I am not aware of this information. This is a federal program – I suggest you contact the federal agency that administers the program.

1. *As a state employee, Joop Bollen granted SDRC Inc, a private company he owned, the contract to administer the EB5 program on January 15, 2008.*

a. *When did you approve this contract?*

Response from Former Governor Rounds

I did not approve this contract. This contract was under the supervision of Northern State University and the Board of Regents (BOR). See previous comments and organizational chart provided to GOAC on June 16, 2008.

b. *Why did Bollen sign the contract on behalf of the State when he incorporated and owned SDRC, Inc.?*

Response from Former Governor Rounds

I had no knowledge of the contract. Did GOAC?

c. *Have you requested or reviewed a copy of Bollen's deposition transcript in the Darley arbitration where Bollen discusses the transactions between the State, his own company, Darley International LLC and Hanul Law Corporation?*

Response from Former Governor Rounds

No

d. *Did you know Bollen was asked at deposition "why didn't you sign on behalf of SDRC, Inc." and he responded "it would look silly"?*

Response from Former Governor Rounds

No

e. *Was this transaction (the contract signed on January 15, 2008) between the State and SDRC, Inc. reviewed by an attorney acting on behalf of the State? Who?*

Response from Former Governor Rounds

This contract was under the supervision of Northern State University and the Board of Regents. See previous comments and organizational chart provided to GOAC on June 16, 2008.

f. *Do you know if anyone else had an ownership interest in SDRC, Inc. besides Bollen when he signed this agreement on behalf of the State 5 days after forming his company in January 2008?*

Response from Former Governor Rounds

No. I had no knowledge of the contract. Did GOAC?

g. *Did you know Bollen did not resign from the State until December 21, 2009?*

Response from Former Governor Rounds

I was generally aware of the transition to privatize the program. I was not aware of any personnel activities within the BOR. This contract was under the supervision of Northern State University and the Board of Regents. See previous comments and organizational chart provided to GOAC on June 16, 2008.

h. Did you know Bollen took all the EB5 records with him on December 21, 2009 without permission from NSU? Do you know if anyone from the State gave him permission? Do you know whether the State has copies of those EB 5 files now?

Response from Former Governor Rounds

No. No. No.

i. Did you know that Bollen, on behalf of South Dakota, was requesting recognition of SDRC, Inc. (his own company) by U.S. Immigration Services while he was a state employee?

Response from Former Governor Rounds

I was generally aware of the transition to privatize the program. I was not aware of personnel actions within the BOR.

j. Did you know that the foreign investors must invest the proper amount of capital in a business, called a new commercial enterprise, which will create or preserve at least 10 full-time jobs, for qualifying U.S. workers, within 2 years of receiving conditional permanent residency? Do you know if there is a listing of jobs created with each project in the state that received EB5 funds?

Response from Former Governor Rounds

Yes, I am aware of the general parameters of this federal program. I am aware that the federal government reports jobs created.

k. Do you know how much in fees has been received by the State under the Agreement with SDRC, Inc.? How much SDRC, Inc. received?

Response from Former Governor Rounds

No. No.

l. When did you first learn about this contract? Did you read it? Ask an attorney to review? Distribute?

Response from Former Governor Rounds

If you are referring to the January 2008 contract, I read about it in recent press reports. See 1a.

2. Clause 6 of the same contract signed between SDIBI and SDRC, Inc. on January 15, 2008, states "SDRC, Inc. shall indemnify, defend, and hold harmless SDIBI, SDIBI/SDRC, the state of South Dakota and its officers and employees from liability and any claims, suits, judgments, and damages arising as a result of SDRC, Inc. acts and/or omissions performed under this agreement." South Dakota had multiple opportunities to protect taxpayers:

a. Who selected the attorneys to represent the States' interests in these matters?

Response from Former Governor Rounds

This contract was under the supervision of Northern State University and the Board of Regents. See previous comments and organizational chart provided to GOAC on June 16, 2008 – six months after the contract you are questioning.

b. Who are the primary State contacts with the attorneys representing the State's interests in the Darley arbitration?

Response from Former Governor Rounds

I am not aware. As the attorney general has publically stated, this question should be directed to the BOR.

c. Didn't some of the attorneys representing the State in the above-described matters have an affiliation with Hanul Law Corporation who is a defendant in the Darley arbitration?

Response from Former Governor Rounds

I am not aware.

d. When did you first learn about potential issues with the administration of EB5 issues? Didn't Attorney Rich Williams in the SD AG's office receive notice of EB5 issues several years before the contract with SDRG, Inc. was finally terminated?

Response from Former Governor Rounds

October, 2013. I am not aware. This question should be directed to the SD Attorney General's Office.

e. What was your participation in EB5 investor recruiting? Trips? Discussions? Correspondence?

Response from Former Governor Rounds

I was not directly involved in recruiting. See question #6 on separate questionnaire for additional information.

3. *Once you, Attorney General Larry Long, and the South Dakota Board of Regents were made aware of the Darley International lawsuit, did you fully brief state legislative leadership or members of the joint appropriations committee of this ongoing legal matter?*

Response from Former Governor Rounds

The South Dakota Board of Regents is the party that is handling the matter on behalf of the State. The Department of Legislative Audit and Bureau of Finance and Management publically disclosed this arbitration action in the annual financial reports of the State for 2010 and 2011. If GOAC read the reports, there are numerous items that are publically reported. Each agency would normally handle these specific legal details – not unlike the hundreds of legal issues state agencies engage in every year.

4. *Did you provide the authority for Joop Bollen to sign the contract granting SDRS, Inc. the right to administer the EB5 program on January 15, 2008, since the South Dakota Board of Regents did not grant such authority?*

Response from Former Governor Rounds

No. Did GOAC entertain the same question, when you received the June 16, 2008 management and organization structure explanation from the BOR?

5. *When you were served legal matters of the Darley petition in July of 2009 to force South Dakota into arbitration because of Joop Bollen's actions, why didn't you fire Joop Bollen and why didn't you initiate legal action against SDRC, Inc. which had pledged to hold harmless and indemnify the state of South Dakota?*

Response from Former Governor Rounds

The governor's office "was not served". The BOR was. See #3 and the letter to GOAC dated June 16, 2008 regarding your personnel questions.

Mr. Joop Bollen provided the following answers to GOAC questions:

November 10, 2014
Via email to tim.flannery@state.sd.us

Senator Larry Tidemann, Chair
Government Operations and Audit Committee
251 Indian Hills Road
Brookings, SD 57006-3650

Tim Flannery
Department of Legislative Audit
427 S. Chapelle
Pierre, SD 57501

Dear GOAC Members:

Since GOAC initially asked me to answer questions, a lot of information has been made available to which you have access. For instance, the State was successful in the California arbitration matter in a decision dated September 29, 2014 and issued October 6, 2014. Then the final decision was issued October 31, 2014. After that time, the Board of Regents website published not only the California decision, but also James Parks' deposition and exhibits, my deposition and exhibits, as well as transcripts from the hearing. Much of the information you requested can be found in those documents.

As Attorney General Marty Jackley has previously indicated, the U.S. Attorney and the Department of Justice have primary authority over the EB-5 program. I fully cooperated with 2 FBI requests for interviews in 2013. During those interviews, I was told that Richard Benda was the target of the investigation. I was very open with the FBI about the relationships among the South Dakota EB-5 entities. I provided requested documents to the FBI as well. An FBI spokesman recently indicated that a federal probe into the EB-5 program and SDRC, Inc. is active. Knowing that they are the subject of an active FBI investigation limits what I can say, but I wanted this Committee to be aware of my previous cooperation with the FBI.

Before I answer your questions and set forth the general background of the EB-5 program, I want to make note of the political and media shark-like feeding frenzy that has taken place. There seems to be a complete lack of interest for the truth unless it benefits one's own political agenda and aspiration, or their version of the story. The only "scandal" is that a fabulous economic development tool, which raised over \$350 million of cash investments for South Dakota projects, and based on US Department of Commerce numbers created well over 7000 jobs, has been decimated as a result of the political and media insanity that has prevailed in South Dakota over the last many months. I simply cannot imagine how the Regional Center can recuperate from the slew of negative press that has been published. This is especially true when so much of what has been published is inaccurate and misleading, such as Ms. Ross's articles in the Mitchell newspaper and Mr. Mercer's articles in the Aberdeen American News. Many facts are either ignored or made up by these reporters.

In addition to the misleading and inaccurate information carrying over into the political ads leading up to the November election, it has also carried over into the questions you pose to me. Many of them contain false assumptions of facts which are clearly politically driven. As I understand it, many of the questions were put together by Senator Lucas. I believe he derived most of his information/questions from bias allegations made by the plaintiff in the California matter, a plaintiff who ultimately was found to have no viable claims.

Despite these false assumptions of fact, I have endeavored to lay forth a clear background of the EB-5 program in South Dakota and how it came to be managed by SDRC, Inc. I have also answered all questions that are not already known from reading the documents on the Board of Regents website and to which I believe this committee has a right to inquire.

EB-5 BACKGROUND INFORMATION

United States Citizenship and Immigration Services (USCIS) administer EB-5, which was created by Congress in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign investors. The relevant statute is 8 U.S.C. § 1153(b)(5). Under a pilot immigration program first enacted in 1992 and regularly reauthorized since, certain EB-5 visas also are set aside for investors in Regional Centers designated by USCIS based on proposals for promoting economic growth.

Under the program, if an individual invests in an approved U.S. business and creates or preserves at least 10 jobs, directly or indirectly, that investor, along with his or her immediate family receives permanent resident alien status/green cards. The minimum qualifying investment is \$500,000.

According to the USCIS website, as of October 1, 2014, USCIS had approved approximately 588 Regional Centers. To my knowledge, before the State canceled its contract with SDRC, Inc. in 2013 to manage the Regional Center, there was only one center managed by a public or state entity, Vermont. All others were managed by private organizations.

TIMELINE/FACTUAL BACKGROUND

January 1994 – I was hired by NSU to set up an international outreach program to assist GOED in enhancing exports from SD.

May 1994 – I worked with NSU to propose a charter for SDIBI, which was approved by the Board of Regents.

1995 – The export services developed & implemented by SDIBI were successful and led Governor Janklow to subcontract out all State export promotion services to SDIBI on an annual renewable contract.

June 1995 – Northern Plains International Incorporated (NPII) was formed as a domestic non-profit. NPII was controlled by Northern. The formation of NPII allowed there to be an entity to sign contracts with speakers and other entities. It also created a fund of monies for Northern to use to enhance its international academic business program. NPII was used for the export promotion side of international business. Later, SDRC Inc. was created to mirror NPII for the foreign direct investment side of SDIBI.

2000 – NSU's President Hilpert requested SDIBI develop a closer relationship with GOED. SDIBI submitted a proposal to assume foreign direct investment (FDI) activities for the State. SDIBI submitted the proposal and the annually renewable contract was expanded to include an FDI component. Prior to this time, my work with SDIBI was essentially limited to export promotion.

2003 – SDIBI had been successful in recruiting several Dutch/UK/Canadian dairy farmers who all came in on non-immigrant E-2 visas which had many negative aspects associated with it. SDIBI searched for an alternative and discovered the Regional Center Pilot program for which it applied in 2004. South Dakota was one of the first three to be created in the US under the new program. The designation provided more security for farmers relocated to SD on E-2 visas, and provided a unique comparative advantage for SD over other states such as Iowa, Ohio, and Michigan which also courted dairy farmers but could not offer immigrant status without regional center designation. I was surprised by the inquiries from Asia where people wanted to invest in a dairy farm in order to obtain an immigrant visa. SDIBI capitalized on this opportunity by coupling SD general partners with EB-5 limited partners to build state-of-the-art large dairy farms along the I-29 corridor. Approximately \$30 million cash from EB-5 investors was combined with bank financing and local equity to build more than \$90 million of new dairies.

March 2005 – One of the ongoing renewable letters of agreement is signed between South Dakota Department of Tourism and State Development (TSD) and NSU in regard to export promotion activities and foreign direct investment activities. The agreement is signed between Patrick Schloss, President of NSU and Jim Hagen, Secretary of TSD.

2006 – Our Regional Center success was duplicated by others. Many new Regional Centers applied for and received Regional Center status. The result was that SD was no longer the only player and that SD dairy investments became uncompetitive due to Regional Centers located in states like New York and Hawaii which offered larger, more appealing projects. SDIBI searched for a larger project and was persuaded by Richard Benda to have EB-5 investors inject equity into NBP.

July 1, 2006 – The letter of agreement between NSU and TSD indicates SDIBI would nurture its relationship with Hanul. Both TSD and Northern knew about Hanul's extensive involvement with the EB-5 program. Hanul was a foreign law firm that worked with SDIBI to recruit investors and to assist those investors with the immigration process, mainly in Korea.

January 2007 – The letters of agreement between TSD and SDIBI regarding export promotion and FDI activities always directed my duties with SDIBI. This particular letter of agreement for January 2007 mandated that SDIBI continue to nurture its relationship with Hanul Law Firm and that SDIBI attempt to expand EB-5 recruiting efforts into China and Taiwan. The agreement

further indicated that SDIBI was currently identifying potential partners for this venture in China. This agreement was later amended and indicated that SDIBI would identify additional relationships in other provinces to recruit Chinese investors for meat processing and that this work would be done with Hanul. The agreement between TSD and NSU also indicated that SDIBI, with Hanul, would develop a website to recruit investors for EB-5 projects.

July 1, 2007 – This letter of agreement between TSD and NSU provides that SDIBI will work “exclusively” with Hanul for submission of the I-526 petitions and again states that SDIBI, with Hanul, will develop a website to recruit investors worldwide for EB-5 projects.

2007 – Up to this time all EB-5 investments had to be made as equity investments into the Job Creating Entity (JCE). USCIS changed the program so that a foreign investor could inject money into a separate entity/partnership, which would then make a loan to the JCE. This was a major change in the program, which made the investments more attractive to foreign investors. Morrie Berez, head of the EB-5 program with USCIS, strongly suggested we follow the new loan model.

A project to create tilapia fish farms was intended to be the first project under the new model. Because it was projected to create so many jobs, there was room for investors to finance the entire cost of the project. Thus, no additional bank financing was needed as had been true in previous cases. This created a vacuum of anyone fully vetting the project since banks were no longer involved to fully vet the project, which is obviously a bank’s practice before it loans its own money.

October 2007 – Hanul signs a contract with Darley, to which SDIBI was not a party, regarding overseas recruiting efforts in China for EB-5 projects in South Dakota. The first project for which investors were sought was the tilapia fish project. It became apparent that the project had not been vetted properly and would endanger the reputation of the South Dakota EB-5 program. By the end of 2007, it was clear that the Regional Center was going to miss out on investment opportunities due to Darley and Hanul not being able to work together. Additionally, this contract dispute froze the progress of investor recruitment, bringing it to a standstill.

November 2, 2007 – There is nothing secret about South Dakota’s EB-5 program. On this date, the Wall Street Journal ran an article regarding the EB-5 program and the article specifically mentioned that “The program, administered by USCIS, essentially encourages wealthy foreigners to buy their way into the U.S. Put in place in the early 1990s, it is widely regarded as a response to efforts by Canada and Australia in the late 1980s to attract investors keen to immigrate. But the U.S. program is considered the most stringent because it requires proof that the investment has produced new jobs before permanent residency is granted.” SDIBI is specifically discussed in the article. Everyone at TSD and NSU were pleased with the media attention on the program.

December 31, 2007 – My monthly report to GOED indicates that SDIBI was working on a separate legal entity that would do a credit analysis on each of the proposed EB-5 projects. This is in reference to the formation of SDRC, Inc., a duplication attempt of NPII and a direct result

of the need to fix the problems that surfaced in tilapia project as well as a direct result of the new loan model available under the USCIS rules for EB-5 projects.

January 2008 – This agreement entered into between TSD and SDIBI regarding export promotion and FDI indicates that SDIBI would develop and implement a better structure to select and monitor EB-5 projects. This is clearly referring to the formation and use of SDRC, Inc. The agreement also indicates that SDIBI would identify additional relationships in South America and China for better foreign investor recruitment and that this work would be done with Hanul. It specifically indicates that SDIBI would continue to work exclusively with Hanul for submission of the I-526 petitions and management of the Regional Center.

SDRC Inc. was created with the intention to mirror NPPI on the export promotion side. Like NPPI, SDRC Inc. would be available to sign contracts with outside parties such as overseas recruiting agents. Also like NPPI, SDRC Inc. would create a fund of monies for NSU to use. Further, due to the new loan model of investing, there needed to be a separate entity that could work with the partnerships made up of foreign investors that would be loaning money to various EB-5 projects. SDRC Inc. was also then available to vet the projects. SDRC Inc. was not intended for my benefit.

SDRC Inc. was essentially a shell until April 2009 when investor monies began to arrive for the turkey plant project in Huron. During my time at SDIBI, I never took any money out of the SDRC Inc. account with the exception of paying typical bills.

January 7/8, 2008 – TSD and Benda were well aware of the Darley contract between Darley and Hanul and the problems stemming from the same. Darley communicates directly with me *and* Mr. Benda from TSD regarding their concerns/problems in regard to the Hanul/Darley contract, marketing in China and the tilapia project. I reply and copy Mr. Benda.

January 15, 2008 – MOU signed between SDIBI and SDRC, Inc. The sole purpose of this document was to comply with USCIS requirements that we inform them that there was a new entity involved with the Regional Center. As set forth above, SDRC Inc. was not intended to be my company. Thus, this MOU, which I never viewed as a contract, but something detailing the relationship between the 2 entities, is not a “no-bid contract with my own company” that has been repeatedly discussed in the media and political ads. Further as TSD later asserted ownership over the Regional Center, as opposed to being owned by the Board of Regents, NSU or SDIBI, SDRC Inc. could not have enforced this MOU absent consent from the Regional Center.

July 1, 2008 – This letter of agreement signed between TSD and SDIBI regarding export promotion and FDI indicates that SDIBI would continue to conduct investor recruitment events with Hanul in China and South Korea. This agreement no longer indicates that SDIBI should explore a better structure for the EB-5 program since that structure was now in place under SDRC, Inc. This letter of agreement covered July 1, 2008 to June 30, 2009.

August 2008 – Currently, I am aware that in August 2008 there was a federal lawsuit in California to try and compel arbitration with SDIBI. At that time, I was not aware it was a

lawsuit or that SDIBI was party to the suit. I was told by Hanul that they would handle the matter and there was nothing to be concerned about. I thought I would only be involved as a possible witness in arbitration. My later declaration supports these statements.

August 22, 2008 – A brief was filed with my name on it in federal court opposing the petition to compel SDIBI to arbitrate. I was not aware it was a lawsuit at the time. I did work with Hanul to create a Statement of Facts but was unaware that I was somehow representing SDIBI in federal court *pro se*. This lawsuit was ultimately dismissed as the federal court did not have jurisdiction. When the State later became aware of the lawsuit and asserted this lack of jurisdiction issue, Darley voluntarily dismissed the case and then refiled in California state court in July 2009. The State was fully and properly defended by legal counsel at that time.

January 2009 – It was finally revealed to me that SDIBI could have some liability in the California matter. This was in clear contrast to what I had been told before by Hanul. I then informed John Meyer, NSU attorney.

February 6, 2009 – Board of Regents General Counsel Jim Shekleton requested and Dr. Perry agreed to have Shelly Anderson perform an internal audit of the records of SDIBI. He believed the results would be useful in connection with the California arbitration involving SDIBI.

February 10, 2009 – Shelly Anderson contacts me indicating she had been requested by Jim Shekleton and Dr. Perry to perform a review over SDIBI as soon as possible and that her review would consist of obtaining an understanding of SDIBI and SDRC, Inc.

March 10, 2009 – Conference call regarding internal audit. Jim Smith, the new president for NSU was on the conference call.

March 10, 2009 – As a result of the audit and at the direction of NSU, I disassociate myself completely from SDRC, Inc.

March 17, 2009 – I was communicating with John Meyer at NSU. Prior to this time, the Regional Center had worked with Hanul to recruit foreign investors for the turkey plant in Huron, SD. The investments for the turkey plant project were going to be arriving very soon. It was communicated to me by Mr. Meyer that GOED didn't want to get involved in facilitating the investment flows into the turkey plant project. It was still uncertain at that time whether SDRC, Inc. would be used as a conduit or not.

March 30, 2009 – An Ithaca, NY attorney, Stephen Yale-Loehr contacts me, copying Richard Benda and Tim Engel. He had been hired to provide GOED an opinion of the structure and operation of the Regional Center. This was a result of wanting to switch to a loan model (vs. equity).

April 2, 2009 – I am informed by John Meyer that he has not heard from Pierre about the Dakota Provisions (turkey plant) structure since my withdrawal from SDRC, Inc. Meyer suggested I alert Benda that something needs to get going promptly if the money is going to start coming in. Meyer also informed me that attorney Tim Engel was looking at the situation.

April 3, 2009 – Meyer suggested that I suggest to Benda that NPII assert ownership of SDRC, Inc. NSU would have control as we did with NPII and that it could possibly be reorganized as a nonprofit. Meyer indicated he would do his best to convince the Board of Regents if I could convince Benda. Neither one of us wanted the project to run into trouble. Meyer thought that would be the simplest immediate solution. Ultimately, both TSD and NSU declined to keep SDRC Inc.

April 2009 – Attorney Stephen Yale-Loehr's with Miller Mayer, LLP in Ithaca, NY provides legal opinions regarding the EB-5 program to GOED. First, it affirms that a loan model for EB-5 and immigrant investor offerings is acceptable. Second, he states his questions concerning the "somewhat confusing" relationship among the South Dakota Board of Regents, NSU, SDIBI, the Regional Center and SDRC, Inc. He indicated it would be helpful to clarify the relationships among the entities and perhaps set up a "new outside entity to run the Regional Center if the state government decides it does not want to be formally involved with the Regional Center." The letter goes on to indicate that there were a variety of ways that an EB-5 Regional Center can be structured and administered and that he would be happy to work with Benda and me to set up a structure that works both for South Dakota and me. This letter is copied to Tim Engel and me.

June 2009 – SDRC, Inc. Articles are amended.

June 1, 2009 – At this time I first consider myself an owner of SDRC, Inc. as negotiations have gone far enough with the state that it is apparent that neither the State/GOED/TSD nor NSU are going to run the Regional Center and that it will have to be privatized if the program is going to continue. However, even at this time the State could have chosen to keep SDRC, Inc. in house.

June 11, 2009 – There is a proposal for SDRC, Inc. and SDIBI cooperation and housing in Graham Hall since according to information received from Pierre by SDIBI, because of liability concerns, the Board of Regents no longer has an appetite for SDRC's activities and therefore desires to move SDIBI to TSD. The proposal was being reviewed by TSD's attorneys. I proposed for NSU to house SDRC, Inc., the private corporation, and that NSU would continue its international business outreach service which would continue SDIBI's current activities except for EB-5 activities which would be handled by SDRC, Inc. SDRC, Inc. would contract with TSD regarding the Regional Center and that I would resign from NSU and resume EB-5 activity with SDRC, Inc. This draft was shared with Don Erlenbusch on June 11, 2009.

June 22, 2009 – Don Erlenbusch indicates that he and John Meyer met with Dr. Smith and they wanted to meet with me and Benda on June 30. At this meeting everyone decides that SDRC Inc. will be a private entity that contracts with the State to run the Regional Center.

July 2009 – I believe that Richard Benda was checking my contacts to determine if the State could run the Regional Center as a state entity. At the same time, my attorney and Tim Engel, attorney for TSD, are also working on a contract for privatization. Benda ultimately determined the State would be unable to run the regional center and remain competitive.

July 21, 2009 – I contacted John Meyer. I indicated that in regard to SDRC, Inc., I would now be the one owning and running that entity if there was no disagreement between TSD, the Board of Regents and NSU. I reminded Mr. Meyer that my initial intention for SDRC, Inc. was to create an income stream for SDIBI but based on the information I received from Pierre, it appeared that the Board of Regents had no appetite for this. I was thus under the assumption that taking SDRC, Inc. private and entering into an agreement with TSD to manage the Regional Center was the only viable solution. I asked if my assumption was correct. I requested clear direction and action from NSU to ensure that the EB-5 program does not derail. I asked for updates on NSU's position in regard to SDIBI, whether it belonged to TSD or if NSU still wanted to own SDRC, Inc. through NPPI and did NSU object to my latest proposal for me to resign and manage the Regional Center. I asked how NSU wanted to proceed and asked to be advised since I needed to make a decision on how best to proceed.

July 22, 2009 – Mr. Meyer responded to my question indicating all of the options and considerations had been “kicked upstairs.” He asked me not to take any actions or make any assumptions without informing and checking with all concerned parties and he would inform me when a decision had been reached regarding these matters. His email was not only to me but copied to Jim Shekelton and attorney Jeff Hallem.

July 28, 2009 – I emailed John Meyer and reminded him that SDRC, Inc. was created only because of the tilapia fiasco caused by inadequate due diligence by Hanul and Darley and after it was clear that both parties were preventing SDIBI from taking advantage of the opportunities that existed in China while the two parties continued their bickering. SDIBI had notified both Hanul and Darley that SDRC, Inc. would be created if they did not clear up their disagreements. SDRC, Inc. was set up to move forward in a more constructive manner. SDRC, Inc. was created to strengthen the EB-5 program.

July 29, 2009 – Email from attorney Tim Engel to my attorney with copies to me and Richard Benda indicating “This document does contain the broad outline of what we'd like to see – SDRC, Inc., as a separate, private entity administering the Regional Center for DTSD.”

July 31, 2009 – I email John Meyer at NSU that SDRC, Inc. was set up as a shell on January 10, 2008. The email also notes the first agreement signed with Chinese agents was March 4, 2008. I inform Mr. Meyer that the intent of SDRC, Inc. was for us to manage our own agency relationships as Hanul did a poor job with the Darley relationship and to allow us to hire professional services such as banks, industry consultants, attorneys, and accountants to make sure the tilapia fiasco would not happen again.

August 3, 2009 – I met with Richard Benda and my attorney and the attorney for the State to discuss the Regional Center going forward.

August 24, 2009 – Tim Engel emails my attorney indicating he's sending a draft agreement between TSD and SDRC, Inc., that Richard Benda had reviewed it and approved the terms. The email indicates that the draft had been reviewed and approved by Richard Benda but would be subject to final review and approval by Neil before Richard would sign it.

August 25, 2009 – I email Benda and copy my attorney and Tim Engel on what to do in regard to several issues. I specifically asked what to do with the files in the current office including the equity projects and files for each investor. I indicate I could transfer the entire cabinet to TSD or keep them all with SDRC, Inc. This clearly contradicts the defamatory statements of NSU's Dr. Smith that have been repeated time and time again that I took/stole files from NSU without permission. Smith never had a right to make the statement since NSU never owned the files.

August 25, 2009 – I reiterated to John Meyer that I did not know there was a lawsuit and was distressed that in the California matter SDIBI attorneys asserted that I did know about the lawsuit and concealed that fact. Meyer responded that he has told everyone that I trusted Hanul and was misled by my faith in Hanul from the outset. Meyer believed that I did what was best for South Dakota. I indicated that taking SDRC, Inc. private was never my intention but rather it was supposed to create an income stream from FDI activities for SDIBI just like NPPI did in regard to export promotion. I indicated that it appeared that NSU and the state system didn't seem to have the stomach to accept the liabilities that were associated with the entrepreneurial activities they asked for and encouraged me to establish and for which I was hired. I indicated that at this point, taking SDRC, Inc. private appeared to be the only way to save the EB-5 program. I also addressed the issue of whether NSU was accepting TSD's claim that it was the owner of the Regional Center. I asked NSU if SDRC, Inc. could sign an agreement with TSD to manage the Regional Center. I wanted to make sure NSU was fine with the new arrangements so that future misunderstandings could be avoided.

December 22, 2009 – The agreement is signed between the State and SDRC, Inc. to run the Regional Center. The only reason SDRC, Inc. became private and was given the contract to manage the Regional Center is because the State could not run the center and remain competitive for the benefit of economic development in South Dakota. The State was well within their rights up until that time to use SDRC, Inc. in any way they wanted to administer the EB-5 program.

I believe this decision to privatize the EB-5 program was made in order to better compete with the other Regional Centers across the country. At that time, there were only two state government-managed Regional Centers, Vermont and South Dakota. Privatization helped South Dakota compete at the national level. The State was not able to set up partnerships in which the foreign investors could participate, but a private entity could set up those partnerships and compete with the other regional centers in the country.

During my tenure at SDIBI, all my annual reviews with NSU indicate that I meet, exceed, or substantially exceed all expectations of my position.

December 2010 – I was in the process of looking for a loan monitor for NBP, which was required under the loan agreement. I had explored alternatives that were quite expensive. Upon hearing that Benda will not be retained by Governor Daugaard, I approached him regarding being the loan monitor for NBP beginning in January 2011. He agreed to the proposal. He was the best qualified and least expensive alternative.

February 2013 - Benda's job as loan monitor ends because the construction was coming to an end, the plant was operational, and the foreign investors voted to end his duties as loan monitor.

In addition, White Oak was now involved in NBP and would be handling any type of loan monitoring. Benda continuing as loan monitor would have been a duplication of efforts.

March 2013 – Again, the EB-5 program is not “secret.” The Washington Post publishes an article regarding the EB-5 program indicating it is booming in popularity driven by a struggling U.S. economy in which developers are searching for new sources of capital. The article notes that the program has broad bipartisan support in Congress.

March 18, 2013 – As I have read in the press, GOED receives federal subpoena.

April 8, 2013 – The Governor’s office sends a letter to Attorney General Jackley requesting an investigation regarding travel vouchers.

October 11, 2013 – Potential grand jurors receive notice of a grand jury proceeding to begin the 28th. The subject of the grand jury was going to be potential theft charges against Richard Benda.

October 22, 2013 – Law enforcement officers respond to Richard Benda’s death.

November 20, 2013 – Benda’s death is ruled a suicide.

November 21, 2013 – As I have read in the press, the Attorney General’s Office sends a letter to the Governor regarding its investigation into travel vouchers which revealed double billing and payment for travel expenses totaling a little more than \$5,500. The investigation also addresses the concern regarding \$550,000 of loan monitoring fees being paid out of a \$1 million future fund grant paid to Northern Beef.

In regard to the loan monitoring fees, Attorney Rory King, who was the attorney for Northern Beef, has repeatedly indicated he did not believe there was any theft in regard to the loan monitoring fees. His recorded interviews can be found at dakotareporter.com. He also wrote a letter to the editor published in October 2014 indicating the same. Mr. King has indicated that Richard Benda put in the time and did the work for which he was compensated under the loan monitoring contract. NPB viewed the hiring of Richard Benda as legitimate and viewed the payment as legitimate. They did not feel threatened or defrauded. They understood the concerns regarding NPB solvency and the reason for the upfront payment of the loan monitoring fees. Mr. King maintains that media reports are not accurate that Benda stole approximately \$500,000 from Northern Beef. I completely agree with Mr. King’s assessment.

While the press may question whether Benda engaged in the unauthorized increase of grants to NBP, it is clear that the payment from NBP for loan monitoring fees was legitimate.

February 2014 – Legislature issues a resolution requesting GOAC to conduct hearings relating to the operations of GOED.

September 2014 – Once again, the Washington Post publishes an article regarding the EB-5 program. It notes it is being maxed out by Chinese applicants with commentators noting that the program deserves to be expanded because it’s a four-way win. A win for the U.S. taxpayers

because it brings in foreign money at no cost to the taxpayer, a win for U.S. workers because it creates jobs, a win for U.S. project developers because it allows them to get money for projects they may not otherwise get and usually at very low interest rates, and a win for the foreign investors because they get a green card.

The article also notes that the EB-5 program enjoys bipartisan support. Unfortunately, due to the political and media frenzy in South Dakota, our state will likely not be able to continue to benefit from this program.

As I already noted, a lot of information has come to light since the Committee first posed the following questions. As a result, much of the information is now available to the public. Many of the answers are also set forth above. Numerous questions contain false assumptions of fact or ask for confidential business information to which this Committee is not entitled. All of this combined with the active FBI investigation and the potential for an appeal in the California Darley matter, make it difficult to answer all of the questions. Again, however, I have endeavored to provide this Committee with all the information it needs to prepare its report.

1. Did the initial contract and any renewals of the State's contract with SDRC comply with the State's third-party contracting requirements (bid, supervisor sign-off)?

ANSWER: I assume you are referring to the agreement between SDRC, Inc. and the State to manage the EB-5 program starting December 22, 2009. I am unaware of the State's third party contracting requirements and suggest that you ask attorney Tim Engel who was working with my attorney to negotiate the contract in question.

2. How many times, if any, has SDRC or its affiliates been a party to a civil lawsuit?

ANSWER: See answer to #3.

3. Briefly describe the parties, the court of jurisdiction and the alleged subject matter in the civil litigation?

ANSWER: Federal lawsuit 4:11-CV-04148 brought by Zhang Zhen et al vs. SDRC, Inc., SD Investment Fund, LLC 6 and me. Henry Tongzhao USA Consulting, Inc. appeared as an interested party. Numerous plaintiffs voluntarily dismissed their claims before I was even able to answer the lawsuit. SDRC, Inc., Joop Bollen and SDIF LLC 6 counterclaimed against some of them and then also brought a third-party complaint against Henry Zou and Henry Global Consulting Group. The case was ultimately voluntarily dismissed in March 2012.

The Darley arbitration in California. The California arbitrator found no liability against the Board of Regents or SDIBI, and found them to be prevailing parties. My understanding is Darley has 100 days to appeal. Until any appeal is finalized, the matter would still be pending.

Federal petition 14-MC-125 brought by Jeff Barth against me is pending. There are corresponding cases found at 14-MC-118 and 14-MC-130 involving other parties.

4. Describe the nature of the commercial relationship between SDRC and its investors? I.E. Investor invests \$500,000 and is charged a one-time fee of xxx and an annual fee of yyy? What was the range of potential financial return marketed to the investors? What, if anything, did they receive as collateral?

ANSWER: SDRC Inc. does not have investors. The EB-5 projects have investors who pool their money in loans to the projects. There are several private companies set up to operate under the directives of the EB-5 program. As a result, they are under the authority of the U.S. Attorney and the Department of Justice. They are not under the supervision or control of GOAC. However, we did open our books, to the extent required, to the state auditor who, like you, was operating under the authority of House Concurrent Resolution No. 1010 in regard to GOED. We also shared requested documents with the FBI. Without waiving any objections that I have to answering this question, I would note that each project receives a full \$500,000. Each investor pays additional one time fees of \$30,000 to \$60,000. These one time fees go almost exclusively to foreign attorneys and recruiters.

5. Describe the nature of the commercial relationship between SDRC and the projects in which it invested? I.E. Project receives xxx and is charged a one-time fee of yyy and an annual fee of zzz?

ANSWER: See Answer 4. SDRC Inc. does not invest in projects. Again, each project receives \$500,000 from each foreign investor in a pooled loan. The project then pays interest to the partnerships made up of foreign investors.

6. List the projects SDRC raised EB-5 money for, year raised, amount of money raised, jobs created and current status of the project?

ANSWER: All this information has been provided to GOED and/or USCIS.

7. How many investors obtained immigrant visas through SDRC EB-5 program? How many invested and did not receive visas through EB-5 program?

ANSWER: The Regional Center is no longer managed by SDRC, Inc. GOED has all of this information available.

8. How much, when and in what capacity did SDRC compensate Mr. Benda either as an employee or as a contractor or consultant?

ANSWER: See Answer 4. Mr. Benda was paid pursuant to the terms of a contract for loan monitoring the NBP project, which was required under the loan with NBP. The terms of the contract contain private business information.

9. What amounts, if any, did SDRC provide as compensation to any state employee at any time?

ANSWER: None that I am aware of.

10. Provide a chronology of the EB-5 program from the start of the program to the present time, including your role in this timeline.

ANSWER: See factual background and timeline set forth above.

11. When did the contract, signed in January 2008, become fully functional?

ANSWER: The reason for the MOU was to comply with USCIS requirements to inform the USCIS of any entities that were involved in the program. As the committee should be aware from other documents that it reviewed, such as the June 2008 letter from USCIS to me as Director of SDIBI, specifically page 8 of that letter and paragraph #12, "It is incumbent on each USCIS approved and designated regional center, in order to remain in good standing, to notify the USCIS within 15 days of any change of address or occurrence of any material change in the name and contact information of the responsible official, the management and administration of the regional center, the regional center structure, contact information for the regional center, the scope of the regional center operations in focus, the regional center business plan, any new, reduced, or expanded delegation of authority, MOU, agreement, contract with another party, the economic focus of the regional center or any material change relating to the regional center's basis." See Answer 69 for further information.

12. Who participated in the EB-5 program and has now become a South Dakota resident?

ANSWER: I assume you are referring to investors. I am not aware of any foreign investors who became South Dakota residents.

13. Initially the EB-5 program focused on expanding the dairy numbers in South Dakota. When did the focus change and why?

ANSWER: See Timeline and Factual Background above.

14. How did these new ventures of EB-5 fit into the regulations of the Federal program?

ANSWER: All EB-5 projects complied with the regulations of the program.

15. How did Richard Benda come to be employed by SDRC, Inc.?

ANSWER: After the 2010 election when it became clear that Richard Benda would not be retained as Department Secretary under Daugaard's administration, I asked if he would consider being the loan monitor on the beef project because of his experience and knowledge of the project and his abilities. Further, he was the least expensive of the loan monitor alternatives.

16. What were the terms of his employment, including salary and start and end dates?

ANSWER: Benda acted as a loan monitor, reviewing all work done at the plant and all invoices and payments to be made. Benda had an office at the plant and was there on a daily basis. Benda worked from January 2011 to February 2013. See also Answer 8.

17. What was the nature of the services provided to Northern Beef Packers by Benda? What were his duties? Did he perform those duties? Did he provide any written or verbal report as he carried out those duties?

ANSWER: His duties were as a loan monitor. He did perform those duties. Based on Rory King's recorded interview, I believe Mr. King, attorney for Northern Beef Packers, feels Benda did a good job. Benda regularly prepared written and verbal reports.

18. Who paid Benda's salary? Where did those funds come from?

ANSWER: The funds came from Northern Beef Packers as was required under the loan and were put into an escrow account and he was paid on a monthly basis.

19. Why did Northern Beef Packers have to have a loan monitor and pay loan monitoring fees?

ANSWER: It was required by the loan agreement.

20. How and why was Benda involved in collecting the loan monitoring fee?

ANSWER: I have no specific knowledge of that, but I know that NBP and I did feel then, and continue to feel today, that the payment was appropriate.

21. What did you know about the \$1 million Future Fund grant and the \$1.2 million South Dakota Development Corporation loan to Northern Beef? How did you learn that information?

ANSWER: I didn't know any details about monies that Northern Beef was getting as far as other grants or loans. Most of the information I learned came from the media.

22. Was there a loan monitor on any other EB-5 projects? If so, which loans were subject to monitoring? Who were the monitors on each, their salaries, and how were they paid?

ANSWER: Yes, but this is confidential business information.

23. See Exhibit 2. Who else besides you has an ownership interest in SDRC, Inc. before the articles of incorporation were amended on June 1, 2009?

ANSWER: I didn't have an ownership interest before June 2009. See factual background above.

24. See Exhibit 3. Who drafted the memorandum of understanding between South Dakota International Business Institute and South Dakota Regional Center, Inc.?

ANSWER: James Park, based on documents he reviewed that had been used by other regional centers employing the loan model.

25. See Exhibit 3. Provide the names of any attorneys who reviewed this contract.

ANSWER: See Answer 24.

26. See Exhibit 3. Why does the signature line on page 5 of 5 list "South Dakota Regional Center, Inc." instead of SDRC, Inc.?"

ANSWER: This is a typographical error. There is no entity called South Dakota Regional Center, Inc. The correct name of the entity is SDRC, Inc.

27. See Exhibit 3. The agreement makes numerous references to "SDRC, Inc.". Do you own SDRC, Inc.?

ANSWER: At the time I did not own SDRC, Inc. See Answer 24.

28. See Exhibit 3. Is there an entity named South Dakota Regional Center, Inc.?

ANSWER: See Answer 26.

29. See Exhibit 3. Was this an agreement between the State/SDIBI and your own company, SDRC, Inc.?

ANSWER: No. At the time SDRC, Inc. was not meant to be my company. See Answer 24.

30. See Exhibit 3. Did you sign this MOU on behalf of the State/SDIBI with your own company SDRC, Inc.?

ANSWER: See Answer 29.

31. See Exhibit 3. Was any State official aware of your ownership interest in SCRC, Inc. at the time of signing?

ANSWER: See Answer 29.

32. See Exhibit 3. Did you ever inform any State official of your ownership interest in SDRC, Inc.?

ANSWER: Yes. As set forth in timeline above, it was not until June 2009 that I felt SDRC, Inc. would ultimately be my company. And as set forth above, I did inform state officials at that time that I believed SDRC Inc. to be my company. However, until the agreement between the State and SDRC, Inc. was signed in December 2009, the State could have kept SDRC, Inc. See Factual Background above.

33. See Exhibit 3. Why did James J. Park sign on behalf of South Dakota Regional Center, Inc.?

ANSWER: This topic was discussed in my deposition, which is available on the Board of Regents website.

34. See Exhibit 3. Did James Park have an ownership interest in SDRC, Inc.?

ANSWER: Until June 2009, I am unaware of who would be considered to have ownership. No ownership shares had been issued. This may be a question that requires a legal opinion.

35. See Exhibit 3. Was any State official aware of James Park signing this MOU at the time of execution?

ANSWER: Not that I am aware of.

36. See Exhibit 3. Did you ever inform any State official of James Park having an ownership interest in SDRC, Inc.?

ANSWER: See Answer 34.

37. See Exhibit 3. Was James J. Park a partner at the Hanul Law Corporation for both the Los Angeles and South Korean offices at the same time he signed this agreement?

ANSWER: This would be a question better directed to James J. Park. As I understand it, his deposition is on the Board of Regents website.

38. Will you provide the transcript for the deposition you gave under oath in the Darley International LLC via Hanul Law Corporation/SDIBI arbitration?

ANSWER: A copy of the transcript is available on the Board of Regents website.

39. Have you reviewed your deposition transcript in the Darley International LLC via Hanul Law Corporation/SDIBI arbitration and signed same?

ANSWER: No, I never reviewed my deposition transcript.

40. See Exhibit 3. Did you sign this agreement on behalf of the State with SDRC, Inc. – your own company – five days after you formed SDRC, Inc.?

ANSWER: See Answers 27, 29 and 32.

41. See Exhibit 4 paragraph 2. You stated in your declaration that SDIBI is part of Northern State University and the South Dakota Board of Regents system and has no independent status. Is that true?

ANSWER: My understanding is those statements are true. This is a question better directed toward SDIBI, or towards current State officials or the attorney currently representing SDIBI in the Darley matter.

42. See Exhibit 5. Did you sign and file a brief on behalf of the State in federal court case 2:08-cv-05034-DDP-PLA on August 22, 2008?

ANSWER: I was unaware that there was an actual lawsuit pending in California. My impression was that Darley was attempting to get us to participate in arbitration and that I, on behalf of SDIBI, could be called as a witness. My understanding was never anything more than that until Austin Kim indicated there could be some liability on behalf of SDIBI. I immediately informed State officials at that point. This subject is discussed in my deposition which is posted on the Board of Regents website.

43. See Exhibit 5. Did any attorney from Siegel, Barnett & Schutz LLP help you write this brief?

ANSWER: No.

44. See Exhibit 5. Did any attorney review this brief?

ANSWER: I assume the attorney who wrote the brief reviewed it.

45. See Exhibit 5. Did you have the permission of SD Attorney General Lawrence Long to file the brief on August 22, 2008?

ANSWER: No.

46. See Exhibit 5. Did you have permission from any State official to file the brief on August 22, 2008?

ANSWER: No.

47. See Exhibit 9 paragraph 5. Is it true that that you did not tell any State official or State attorneys about the pending federal lawsuit until after the federal court compelled the SDIBI to participate in the Darley arbitration?

ANSWER: See Answer 42.

48. See Exhibit 9. Why did you wait so long to inform a State official about the Darley International LLC arbitration naming the State as a party?

ANSWER: See Answer 42.

49. See Exhibit 10. Were you an employee of the State getting state paychecks until December 21, 2009?

ANSWER: Yes.

50. See Exhibit 10. Why did you take “virtually all records in [your] office relating to [your] EB-5 activities” without permission from NSU?

ANSWER: I didn't. I was directed to take the records by the rightful owner of the records and they were returned to the rightful owner upon their request. See Answer 74.

51. See Exhibit 10. Provide an index of all EB-5 records you removed from NSU.

ANSWER: See Answer 74.

52. See Exhibit 10. Did any State official give you permission to remove records from NSU?

ANSWER: Yes. See Answer 74.

53. See Exhibit 10. Has any state official asked you to return or provide copies of these records?

ANSWER: See Answer 74.

54. See Exhibit 11. Is it true that your company – SDRC, Inc. – created its own website which asserted that it was the overarching management company that operated and managed South Dakota's EB-5 program while you were a State employee?

ANSWER: As set forth in the factual background above, I was directed to set up a website and SDRC Inc. was not my own company at the time. The State was aware of a separate legal entity's involvement with the Regional Center. When it was first formed it was never intended to be my company. Later, the State, represented by its own separate counsel, and SDRC, Inc., represented by its own separate counsel, entered into a contract to manage the EB-5 program.

55. See Exhibit 11. What was Austin Kim's involvement in the negotiations between Darley International, LLC and Hanul Professional Law Corporation?

ANSWER: I don't know. The California Darley Arbitration has been concluded with the exception of a potential appeal. My deposition along with James Parks' deposition and hearing transcripts are available on the Board of Regents website.

56. During the time that you were both the Director for SDIBI and owner of SDRC, Inc. between 1/15/2008 and 12/21/2009, what other third parties did SDRC, Inc. have recruitment contracts with?

ANSWER: I was not the owner until June 2009. SDRC Inc. entered into recruitment agreements with various Chinese recruiters.

57. See Exhibit 12. What State official authorized you to submit the MOU with your own company – SDRC, Inc. – to USCIS?

ANSWER: See Answer 69.

58. See Exhibit 12. Did you inform any State official or USCIS that you owned SDRC, Inc. at the time of submission?

ANSWER: I did not own SDRC, Inc. at the time of submission to USCIS.

59. See Exhibit 12. Did you inform any State official that your company – SDRC, Inc. – would receive a 1% ownership interest in each project for acting as general partner at the time of submission?

ANSWER: Nobody gets an ownership interest in any EB-5 project. SDRC, Inc. was not my company nor did I own it at the time of the Exhibit 12 submission.

60. See Exhibit 13. How many corporations did you establish to administer EB-5 funds before December 21, 2009 when you were a State employee? Identify each of these corporations.

ANSWER: It appears based on the exhibits you attached to the questions provided to me that you are aware of all such corporations. Further these records are available from the Secretary of State's office.

61. See Exhibit 13. How many corporations did you establish to administer EB-5 funds after December 21, 2009? Identify each of these corporations.

ANSWER: See Answer 60.

62. See Exhibit 13. Provide an accounting of fees collected by each corporation where you have an ownership interest that managed EB-5 funds from 2008 to present.

ANSWER: See Answer 4.

63. See Exhibit 13. Provide a listing of any other owners for each corporation where you have an ownership interest that managed EB-5 funds from 2008-present.

ANSWER: See Answer 4. This is private and confidential business information. However, I am willing to state there are no other owners who have ever been or currently are residents of South Dakota.

64. Who performed SDRC, Inc. bookkeeping from 2008-present?

ANSWER: See Answer 69.

71. See Exhibit 3. Did any State official(s) grant you the authority to sign this contract? Please name the State official(s).

ANSWER: See Answer 69.

72. See Exhibit 3. Did Governor Mike Rounds grant you the authority to sign this contract?

ANSWER: See Answer 69.

73. See Exhibit 3. What attorney wrote this contract?

ANSWER: James Park.

74. See Exhibit 10. Will you return the records you removed without permission from NSU?

ANSWER: No records were removed without permission from NSU. All of the records taken from the NSU location were the property of GOED or TSD, not NSU. I had a contract with GOED/TSD to run the Regional Center. All of the records that were removed were returned to GOED/TSD after the contract to run the Regional Center was canceled in 2013. As set forth in the timeline above, prior to transferring the files to the SDRG Inc office, I emailed others about how to handle the records.

75. See Exhibit 5. What attorney wrote this brief?

ANSWER: I assume it was an attorney with the Hanul Law Firm.

In summary, the State was well aware of the existence of SDRG Inc. long before any significant activity took place with that entity. As a state employee, I did not enter into a secret no-bid contract with my own company. Further, I took no records without permission. In regard to the Darley dispute in California, TSD was well aware of Darley's complaints in January 2008. I have fully explained that I did not understand Darley filed a federal lawsuit until January 2009. At that time, I informed state officials. This lawsuit was dismissed without any adverse effects to the State. Once suit was properly filed in State court against SDIBI, it was fully represented by counsel under the authority of the Attorney General's office.

Respectfully submitted,

Joop Bollen

Public testimony

The Committee heard public testimony at two interim meetings; the March 7, 2014 and September 24, 2014 meetings. There was no public testimony received at the March 7, 2014 meeting and the following individuals testified at the September 24, 2014 meeting:

- Tom Fischbach, Brown County Commissioner informed the Committee that Brown County had adopted a resolution urging the South Dakota Banking Commission to investigate EB-5 related potential tax evasion and money lending.
- Michael Meyers, an independent candidate for South Dakota Governor made general comments relating to the GOAC hearings.