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ANNUAL PURCHASING PERFORMANCE AUDIT
**INSTITUTIONS FOR HIGHER EDUCATION
WVU-PARKERSBURG**

AUDIT OVERVIEW

WVU-Parkersburg's Food Services Contract Violates the State's Constitution and State Law

WVU-Parkersburg Needs to Strengthen Its Purchasing Internal Controls to Lower the Risk of Loss or Misuse of the Institution's Resources

WVU-Parkersburg Should Consider the Appearances and Potential Purchasing Violations in Accepting Donations From Vendors With Whom It Has a Regular Business Relationship



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EXECUTIVE SUMMARY

This purchasing performance review is the final report on WVU-Parkersburg as authorized by West Virginia Code §18B-5-4(r). The purpose of this audit was to assess WVU-Parkersburg's food services contract, its internal purchasing controls, and its acceptance of substantial gifts from vendors who regularly do business with the college.

Overview

Overall, WVU-P needs stronger adherence to the Higher Education Policy Commission purchasing guidelines. Moreover, WVU-P needs to have greater sensitivity to guard against practices that restrict competition. In addition, the Higher Education Policy Commission needs to provide more guidance to all higher education institutions for purchasing in complex situations such as food service contracting.

Issue 1: WVU-Parkersburg's Food Services Contract Violates the State's Constitution and State Law.

- WVU-Parkersburg did not submit its food services contract to the Attorney General for review and approval. Consequently the food service contract has provisions that violate the state constitution and commit the college to a repayment of \$235,808 over a 10-year period.

Issue 2: WVU-Parkersburg Needs to Strengthen Its Purchasing Internal Controls to Lower the Risk of Loss or Misuse of the Institution's Resources.

- WVU-Parkersburg does not segregate purchasing, receiving and inventory job functions.
- WVU-Parkersburg does not store its credit card numbers in a locked space. As a result there is an increased risk that someone could obtain the numbers and misuse them.
- WVU-Parkersburg does not annually conduct an inventory of its assets.

Issue 3: WVU-Parkersburg Should Consider the Appearances and Potential Purchasing Violations in Accepting Donations From Vendors With Whom It Has a Regular Business Relationship.

- WVU-Parkersburg accepts substantial donations from vendors who sell goods and services to the institution on a regular basis.

- In one instance, WVU-Parkersburg accepted a donation of \$25,000 from a vendor when a price quote for flooring material was lowered from \$50,000 to \$25,000. The college then purchased its flooring material from this vendor without receiving bids from any other vendors. The donation by the vendor had the effect of eliminating competition for the sale to WVU-Parkersburg.

Recommendations

1. *The Higher Education Policy Commission should provide greater guidance in the preparation of food services contracts by developing a comprehensive model Request for Proposal.*
2. *WVU-Parkersburg should ensure its repayment schedule reflects the actual invested amount.*
3. *WVU-Parkersburg should segregate job duties to avoid having the same staff members responsible for procuring, receiving and inventorying purchased items.*
4. *WVU-Parkersburg should ensure the physical security of its purchase card records.*
5. *WVU-Parkersburg should consider adding all highly pilferable items including computers purchased at a cost of \$500 or greater to the institution's physical inventory.*
6. *The Higher Education Policy Commission and the Council for Community and Technical College Education should consider adopting the Purchasing Division's requirement that all computers purchased at a cost of \$500 or greater be added to the spending unit's physical inventory.*
7. *WVU-Parkersburg should conduct an annual audit of its physical inventory as required by the Higher Education Policy Commission's procedural rule §133-30 instead of biennially.*
8. *WVU-Parkersburg should avoid accepting donations from vendors with whom it has a regular business relationship.*
9. *The Legislature should also consider prohibiting state agencies from receiving significant donations from vendors with whom they regularly transact business.*

OVERVIEW

West Virginia Code §18B-5-4(r) requires an annual independent performance audit be conducted by the Joint Committee on Government and Finance on the purchasing functions of higher education institutions, excluding Marshall University and West Virginia University. The Legislative Auditor's Office has been given the responsibility to conduct the performance audit by the Joint Committee. WVU-Parkersburg (WVU-P) is the subject of this year's performance audit. The Legislative Auditor has completed a broad analysis of WVU-P's purchases, procurement procedures, internal controls and compliance with state code and the Higher Education Purchasing Procedures Manual for the period from July 1, 2008 through June 30, 2011. This current report is the second and final of two reports issued by the Legislative Auditor on WVU-P. The first report was issued in July 2011.

The Legislative Auditor's overall conclusion for the two reports is that purchasing at WVU-P needs stronger adherence to the Higher Education Policy Commission purchasing guidelines. The Legislative Auditor observed instances in which there was a breakdown in following state code, and higher education purchasing procedures. Moreover, WVU-P needs to have greater sensitivity and cognizance against practices that restrict competition. In addition, there is a need for the Higher Education Policy Commission to provide more guidance to all higher education institutions for purchasing in complex situations such as food service contracting.

ISSUE 1

WVU-Parkersburg's Food Services Contract Violates the State's Constitution and State Law.

Issue Summary

The Legislative Auditor reviewed WVU-Parkersburg's (WVU-P) 2009 food service contract to determine whether purchasing rules had been followed. The Legislative Auditor finds that the contract with AVI Foodsystems, Inc. violates state code, similar to violations identified in a 2005 legislative purchasing performance audit of higher education institutions conducted by the Legislative Auditor's Office. The violations of the contract are listed below.

- The food services contract violates the state constitution. It obligates WVU-Parkersburg to a loan of \$177,000. With repayment at six percent interest, WVU-Parkersburg has agreed to repay \$235,808 to the food service vendor.
- The food services contract was not submitted to or approved by the Attorney General (AG) as required by §18B-5-4(m).

The Legislative Auditor submitted the contract to the AG. According to the AG, the "loan" portion of the AVI contract is not standard language approved by the AG. The AG further said it has repeatedly advised higher education procurement officers that the AG will not approve food service contracts providing for renovations in the form of a loan that the community college repays the vendor. In 2003 and 2010 the AG's office notified higher education institutions of their responsibility to submit contracts to the AG for review and approval. Moreover, when the Legislative Auditor identified similar violations of the state constitution in 2005 the Higher Education Policy Commission (Commission) did not develop a model for a food service contract as recommended which may have avoided the illegal contract WVU-Parkersburg developed in 2009.

WVU-Parkersburg's food service contract violates the state constitution. It obligates WVU-Parkersburg to a loan. WVU-Parkersburg has agreed to repay \$235,808 to the food service vendor.

The AG repeatedly advised higher education procurement officers that the AG will not approve food service contracts providing for renovations in the form of a loan.

Food Service Vendor Renovated Dining Area

As the WVU-P food services contract was about to expire in 2009, the community college sought bids for a new contract. The community college wanted to renovate its dining area and change it from a cafeteria to a more modern food service/student union area. The solicitation for bids asked that the vendor winning the bid renovate the community

college's dining area as well as provide food services. AVI Foodsystems, Inc. (AVI) was awarded the contract for food services and carried out the renovation. Vending machines were relocated, a stage was constructed, existing dividers were removed and the dining area was repainted. New tables and chairs were a part of the renovation. Renovations took place mainly in December 2009. Before-and-after pictures of the dining area are shown below.

Photo 1

WVU-P dining area before renovations.



Photo provided by WVU-Parkersburg

Photo 2

WVU-P dining area after renovations.



Photo obtained from Parillo Builders webpage <http://www.parillobuilders.com>

WVU-P calculated that it will not earn any commissions during the 10-year life of the contract as a result of the repayment agreement.

WVU-P Improperly Entered Into a Loan Agreement for Renovations

The new 10-year food service contract had no parameters for the amount of money the community college expected the vendor to invest towards renovations. Also, the solicitation of bids did not express whether or not the community college would compensate the food service vendor for the renovation. Two vendors responded to the solicitation of bids. Both vendors expected to be compensated for the renovation investment. **AVI was awarded the contract in August 2009 with an agreement to loan WVU-P \$177,000 at six percent interest for the renovation of the dining area. The community college is scheduled to repay a total of \$235,808.** The contract allowed AVI to provide all labor and materials for the renovations. WVU-P did not know how much money it would be paying for the renovation until after it awarded the contract to AVI because the percentage of interest was not agreed to until the contract was written. The agreed-upon terms in the contract are that WVU-P is repaying the loan through the commissions it normally would have been paid by the food service vendor. **WVU-P calculated that it will not earn any commissions during the 10-year life of the contract as a result of the repayment agreement.**

The Attorney General Would Not Have Approved the Contract Had It Been Submitted

The dining facility capital investment represents a long-term financial obligation on WVU-P's part. If the contract is terminated prior to the loan amount being paid in full, WVU-P is liable for any amount remaining. **If WVU-P cannot pay the unpaid balance, the balance could become an unexpected expense for the Legislature. State institutions are prohibited from incurring debt.** The West Virginia Constitution, Article 10, Section 4 states:

No debt shall be contracted by this state, except to meet casual deficits in the revenue, to redeem a previous liability of the State, suppress insurrection, repel invasion or defend the State in time of war

West Virginia Code §18B-5-4(m) requires higher education institutions to submit contracts to the AG for approval to determine if they conform to the state constitution and state code. **The WVU-Parkersburg contract was not submitted to the AG for review and approval as to form.** The loan language in WVU-P's food service contract was not standard language already approved by the AG. The AG notified higher education procurement officers in April 2003 and again in April 2010 that contracts are to be submitted to and approved by the AG when the language is not standard language previously approved. WVU-P was notified of its responsibility and of provisions that would not be permitted but irrespective of both commenced its contract with non-standard language and without AG approval.

WVU-Parkersburg Did Not Monitor Renovation Costs

AVI was supposed to furnish WVU-P with documents that substantiated the amount spent by AVI on the renovation. **However, WVU-P did not request or receive any documentation of the cost of the renovation until the Legislative Auditor asked for documentation.** Upon the Legislative Auditor's request, AVI provided WVU-P a list, as shown in Table 1, of the vendors it used in the renovation, the amount paid to each and, a brief description of services rendered and materials acquired. WVU-P does not have itemized invoices, or know how many hours of labor were put into the renovation, the hourly rate at which workers were paid, or whether the individual cost of furnishings and materials were competitively priced.

WVU-P was notified of its responsibility and of provisions that would not be permitted but irrespective of both commenced its contract with non-standard language and without AG approval.

WVU-P does not have itemized invoices, or know how many hours of labor were put into the renovation, the hourly rate at which workers were paid, or whether the individual cost of furnishings and materials were competitively priced.

Vendor	Description of Items Purchased	Amount Paid
HQSC	Grind and Brew	\$200.00
HQSC	Oven	\$7,078.63
HQSC	Coffee Bean Grinder	\$20.00
Bunn	Espresso Machine	\$9,641.00
A & N Restaurant	36" Undercounter Cooler	\$1,611.40
Parillo Builders	Payment 1 of Food Court Renovations	\$37,467.75
BOF	Chairs, Loveseat, Coffee and End Tables	\$3,024.00
Contract Source	Chairs, Tables, and Bases	\$10,008.00
Parillo Builders	Payment 2 of Food Court Renovations	\$42,771.11
VIVO Brothers	Cabinets and Counters	\$45,000.00
Leff Electric	Lighting	\$39.30
Leff Electric	Lighting	\$161.94
Leff Electric	Lighting	\$236.01
VIVO Brothers	RFC #1 Solid Surface Cutting Board, Shelf, shroud w/ stand offs	\$1,051.49
Leff Electric	Freight for lighting	\$14.14
Leff Electric	Freight for lighting	\$42.09
Parillo Builders	Payment 2 of Food Court Renovations <i>[sic]</i>	\$3,121.22
VIVO Brothers	RFC #1 – Stage Panels	\$1,200.00
Leff Electric	Lighting	\$56.28
VIVO Brothers	Used Mobile Cashier Stand Relaminated	\$511.33
Leff Electric	Lighting	\$1,331.70
Softmart	Printer	\$120.35
Parillo Builders	Add'l work required for 2 nd cashier stand	\$529.45
Total		\$165,237.19

Source: Information from AVI provided to the Legislative Auditor by WVU-Parkersburg.

Furthermore, based on Table 1, the Legislative Auditor calculated AVI had expended \$165,237 on the renovation. **This is \$11,763 less than the amount of the loan which WVU-Parkersburg is paying back to AVI.** WVU-P needs to reconcile the difference between the amount AVI has invested and the amount WVU-P is repaying AVI.

WVU-P needs to reconcile the difference between the amount AVI has invested and the amount WVU-P is repaying AVI.

Poorly Written Request for Proposal Resulted in a Deficient Contract

The food service procurement process was initiated by soliciting bids through a Request for Proposal (RFP). RFPs are used by state

spending units when a complex purchase of goods or services cost a large amount, typically over \$250,000. An RFP for food service is meant to identify services required, the standards of operation and the form of compensation that the institution expects. The RFP is incorporated into the final agreement and forms a contract between the two parties. Thus, the RFP is an important document to assess the operations over the length of the agreement.

WVU-P's RFP was vague and open-ended. The RFP stated:

*Since this is a ten year contract, [WVU-P] expects that the awarded Vendor will make a **considerable investment** into the physical layout and upgrade of the student dining area. We especially want proposers to tell us what they intend to do over the life of the contract that meets our needs and expectations and **what they anticipate the financial outlay of the physical upgrade will be.** [emphasis added]*

The RFP

- did not specify the amount of money the vendor was expected to invest for renovating the WVU-P dining area,
- did not indicate whether the vendor would, or would not, recover the investment amount, and
- did not specify whether WVU-P or the food services vendor would be responsible to direct the renovation.

These important areas left out of the initial requirements were also omitted when the final contract was developed. When WVU-P's food services contract was developed, it gave AVI the responsibility of providing labor, equipment, materials and furnishings without ensuring that the renovations would be performed in compliance with West Virginia law.

As WVU-P's expectations were not clearly stated in detail, the vendor was not fully informed about areas of accountability to the institution. Should either party dispute the contract's terms, the important areas omitted from the contract could create legal problems. Specifically, language to monitor the vendor was not included. The language should have been included in the RFP and was not incorporated in the final contract. Documentation provided by the community college indicates WVU-P did not monitor AVI's renovation of the food service area.

WVU-P's food services contract gave AVI the responsibility of providing labor, equipment, materials and furnishings without ensuring that the renovations would be performed in compliance with West Virginia law.

Higher Education Policy Commission Has Not Provided Institutions Adequate Guidance for Developing Food Service RFPs

In 2005, the Legislative Auditor identified four higher education institutions that incorporated similar property investment loans into their food service contracts. Three of these colleges properly submitted the contracts to the AG. The AG required modifications to two of them so they could be actualized in compliance with the law. The fourth college failed to submit its contract to the AG for review and approval. A legal opinion from the AG at that time stated this final contract was void of any legal force because it had not been submitted to the AG for review. In the 2005 audit the Legislative Auditor recommended the Commission develop a model RFP for the development of food service contracts. The Commission's response stated it would facilitate creating a comprehensive RFP model to assist institutions in the process of soliciting proposals for food service. However, the Commission informed the Legislative Auditor that because institutions were not interested it did not create such a model. If the Commission does not stress this violation to the institutions there is the likelihood that other institutions will commit the State to debt.

In 2005 the Legislative Auditor recommended the Commission develop a model RFP for the development of food service contracts. The Commission informed the Legislative Auditor that because institutions were not interested in completing a comprehensive RFP model it did not create such a model.

Conclusion

WVU-Parkersburg's current food service contract obligates the college to repay over \$235,000 in renovation debt over a ten-year period. Placing the community college in debt is in direct violation of the state constitution. In addition, the food service contract was not reviewed by the Attorney General's Office, which violates state code. WVU-P, along with other higher education institutions, was notified twice over the past several years that contracts had to be reviewed for approval by the Attorney General. Moreover in those same notifications, the AG also informed colleges that food services contracts that incurred debt for the college would not be approved. It is not clear whether WVU-P disregarded proper procedure or lacked understanding. However, it is clear that the Higher Education Policy Commission has not provided adequate supervision in this type of contracting, given a similar occurrence in 2005. WVU-P is scheduled to pay AVI nearly \$12,000 more than the company invested in the renovations because WVU-P did not request documentation from AVI. The community college needs to reconcile this discrepancy.

Recommendations

1. *The Higher Education Policy Commission should provide greater guidance in the preparation of food services contracts by developing a comprehensive model Request for Proposal.*
2. *WVU-Parkersburg should ensure its repayment schedule reflects the actual invested amount.*

ISSUE 2

WVU-Parkersburg Needs to Strengthen Its Purchasing Internal Controls to Lower the Risk of Loss or Misuse of the Institution's Resources.

Issue Summary

The Legislative Auditor finds that WVU-P's procurement procedures have a few internal controls that need to be strengthened to lower the risk of impropriety in the purchasing process, and to guard against the loss or misuse of the college's resources. Specific procurement procedures where internal controls need to be strengthened are described below.

- WVU-Parkersburg does not segregate procurement, receiving and inventory job functions to different staff members.
- WVU-Parkersburg does not secure its purchasing card records.
- WVU-Parkersburg does not inventory highly pilferable items.

The segregation of purchasing duties is important to prevent the same person from ordering and receiving purchases. The Legislative Auditor recognizes that segregating responsibilities is a challenge for a procurement unit of only three personnel; however, WVU-P should restrict as much as possible the occurrences of purchasing and receiving being done by the same person. Although WVU-P places in inventory acquisitions priced at \$5,000 or more as required by the HEPC Purchasing Manual, the community college should consider adding to its inventory computers and other technology equipment regardless of the price. State agencies are required by the Purchasing Division to inventory all computers with a price of \$500 or more. Moreover, WVU-P's purchasing manual allows the discretion to inventory pilferable items regardless of price. The community college should consider using this discretion given the recent purchases of computer equipment totaling over \$1.2 million.

Segregation of Duties Is Needed in the Procurement Process

WVU-P's procurement unit employees have job responsibilities that include purchasing, receiving and inventory. Since these duties are

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WVU-P's procurement unit employees have job responsibilities that include purchasing, receiving and inventory. Since these duties are not separated, the risk is heightened of mistakes or misconduct occurring and not being detected.

not separated, the risk is heightened of mistakes or misconduct occurring and not being detected. A best practice would be for different employees to perform each of these responsibilities. According to the *Standards for Internal Control in the Federal Government (Federal Standards)* key duties and responsibilities need to be divided or segregated among different people to reduce the risk of error or fraud. As indicated in *Federal Standards* this would include separating the responsibilities for authorizing transactions, processing and recording them, reviewing the transactions, and handling any related assets.

Table 2 compares segregation of duties under a sound procurement practice to WVU-P’s duty structure. The table shows that sound practices are not followed by WVU-P by virtue of individual staff members having responsibilities over several aspects of the procurement process. Procurement unit staff who purchase, including those who contact vendors and issue purchase orders, should not perform receiving activities as well. At present, the risk of errors, misuse, or fraud occurring and going undetected is heightened.

Table 2 Best Practice Segregation of Duties and WVU-P Job Responsibilities	
Sound Practice	WVU-Parkersburg Practice
Procurement staff members <i>authorize and issue</i> payment. The staff does not receive items and cannot review or approve invoices.	Procurement staff members <i>authorize and issue</i> payment. The procurement staff receives items. The staff can review or approve invoices.
Transactions generally are not processed by the same individual responsible for recording or reporting the transaction.	Most transactions are processed by the same individual responsible for recording or reporting the transaction.
<i>Receiving staff does not authorize</i> or issue payment. The staff receives items and cannot review or approve invoices.	<i>Receiving staff authorizes</i> and issues payment. The staff receives items and can review or approve invoices.
Custody of assets is separate from purchasing or recording the transaction.	Custody of assets is not separated from purchasing or recording the transaction.
<i>Ordering staff does not authorize</i> or issue payment and cannot receive items. The ordering staff can review and approve invoices.	<i>Ordering staff can authorize</i> and issue payment and can receive items. The ordering staff reviews and approves invoices.
<i>Source: Legislative Auditor analysis of Governmental Accounting Office Internal Control Management and Evaluation Tool and WVU-P information.</i>	

The Legislative Auditor recognizes that WVU-P will be challenged to segregate duties because its procurement unit only has three personnel. Possible considerations for reassignment include rotating procurement duties. Another possibility is greater involvement of the Chief Financial Officer who has supervisory responsibility over the procurement unit. These are only suggestions; however, WVU-P should examine ways to reduce the occurrences of purchasing and receiving being done by the same person to lessen the present level of risk.

WVU-P should examine ways to reduce the occurrences of purchasing and receiving being done by the same person to lessen the present level of risk.

State Purchase Card Records Not Secured

In *Federal Standards*, access to resources and records should be limited to authorized individuals, and accountability for their custody and use should be assigned and maintained. For instance, the State Auditor's Purchasing Card Policies and Procedures Manual requires that the spending unit provide and maintain internal controls to ensure physical security of purchase card records. Records must be stored in a secure location where only authorized individuals have access. The Legislative Auditor observed that some of WVU-P's purchase card records are stored in the community college's enclosed loading dock area. Three years of purchase card records are kept in cardboard boxes on open shelves in this space. This area can be accessed from two interior doors as well as from the exterior doors that allow loading and unloading of trucks. These interior and exterior entries allow access to the boxes of the purchase card records to unauthorized individuals. WVU-P should provide greater security over these records by relocating them to a place where unauthorized individuals do not have access. The credit limits for WVU-P's seven purchase cards range from \$3,000 to \$300,000; therefore, large unauthorized purchases could be made with card number information.

WVU-P's purchase card records are stored in the community college's enclosed loading dock area. WVU-P should relocate them to a place where unauthorized individuals do not have access.

Consideration Should Be Given to Inventory Technology Equipment

Inventories of physical assets constitute an internal control over the existence, location and use of the institution's property. A comprehensive and timely inventory reduces the risk of asset loss. Higher education institutions are required to inventory acquisitions that have a purchase price of \$5,000 or greater. WVU-P is in compliance with this requirement. However, computers and other technology equipment usually cost less than \$5,000 and are easy to pilfer. The loss or misuse of such acquisitions can go undetected by the college.

As stated in the Higher Education Purchasing Procedures Manual 9.3.1,

The purpose of inventory and inventory management is to track and account for the monies spent for equipment and furnishings so as to protect the assets of the institution.

While WVU-P is not required to inventory acquisitions with a purchase price of less than \$5,000, it is not precluded from inventorying these acquisitions. The community college's own purchasing procedures manual discusses inventorying highly pilferable items (items that require close scrutiny and additional security). WVU-P's purchasing manual states that at the discretion of the chief procurement officer (CPO), highly pilferable items, regardless of purchase price, can be tagged. The Legislative Auditor recommends that WVU-P consider placing pilferable computer equipment into its physical inventory.

The state Purchasing Division requires that other state spending units inventory all computers with an acquisition cost of \$500 or more. The Commission and the Council should consider adopting the Purchasing Division's inventory policy for computers.

Higher education institutions are required to conduct an annual audit of their physical inventory and keep the inventory current at all times. WVU-P annually counted its physical assets through April 2007. The next audit that WVU-P conducted was in 2010.

WVU-Ps Inventory Procedure Does Not Comply With the Commission's Annual Audit Requirements

CPOs of higher education institutions are required by the Higher Education Policy Commission's Purchasing Rule (§133-30-13) to conduct an annual audit of their physical inventory and keep the inventory current at all times. WVU-P annually counted its physical assets and then compared the count to control records through April 2007. WVU-P changed its annual inventory procedure in its purchasing department handbook dated January 2008 stating ". . . a physical inventory will [sic] conducted every other year. This physical inventory should be conducted by June 30th of the year in which due. . . ." The next audit that WVU-P conducted was in 2010. The Legislative Auditor does not know why this change was made by WVU-P. The Commission did not direct WVU-P to make this change in its inventory procedure. The Commission has not changed its procedural rule or its purchasing manual and continues to require an annual inventory. Therefore, WVU-P is not in compliance with the Commission manual and the Commission procedural rule.

Conclusion

The Legislative Auditor concludes that WVU-Parkersburg has a few internal controls that need to be strengthened. Of primary concern is the need to segregate procurement responsibilities. Procedures need to be established to prevent purchasing agents to also receive the purchases they make. Management should also enhance security of purchase card records. Finally, WVU-Parkersburg should also consider placing into inventory pilferable items, particularly computers and other technology equipment.

Recommendations

3. *WVU-Parkersburg should segregate job duties to avoid having the same staff members responsible for procuring, receiving and inventorying purchased items.*
4. *WVU-Parkersburg should ensure the physical security of its purchase card records.*
5. *WVU-Parkersburg should consider adding all highly pilferable items including computers purchased at a cost of \$500 or greater to the institution's physical inventory.*
6. *The Higher Education Policy Commission and the Council for Community and Technical College Education should consider adopting the Purchasing Division's requirement that all computers purchased at a cost of \$500 or greater be added to the spending unit's physical inventory.*
7. *WVU-Parkersburg should conduct an annual audit of its physical inventory as required by the Higher Education Policy Commission's procedural rule §133-30 instead of biennially.*

ISSUE 3

WVU-Parkersburg Should Consider the Appearances and Potential Purchasing Violations in Accepting Donations From Vendors With Whom It Has a Regular Business Relationship.

Issue Summary

WVU-P has accepted donations from vendors with whom it does frequent business. While a legal opinion indicates there is nothing in law prohibiting a state agency from accepting gifts from businesses, state agencies must use discernment when donations are made by companies that do routine business with the agency. Receiving donations from vendors can give the appearance of restricting business to preferred vendors. In addition, receiving donations from vendors can create purchasing violations. In WVU-P's case, one vendor that made an initial price quote on a flooring project of \$50,000, lowered the price quote to \$25,000 so that WVU-P could legally choose the vendor and not consider others. The flooring project was publicized as being made possible by a donation from the vendor. WVU-P should consider the appearance and potential problems with receiving donations from vendors that the community college has a regular business relationship. The Legislature should also consider prohibiting state agencies from receiving significant donations from vendors with whom they regularly transact business.

State agencies must use discernment when donations are made by companies that do routine business with the agency.

Acceptance of Vendor Donations Can Give Appearance of Restricting Competition

WVU-P accepts donations from vendors to whom it gives frequent, routine and substantial business. Table 3 shows items and value of some items donated by vendors.

Table 3 Value and Description of Donations		
Vendor	Value	Description
Architectural Interior Products	\$25,000	Multi-purpose room floor
Davis Pickering & Co. and Pro Comm Technologies, LLC.	\$2,935	42" LCD HDTV and installation materials
Parkersburg Office Supply	\$28,096	Chairs, tables, bookcase, podium, cabinets
State Electric Supply	\$2,012.47	Lighting fixtures and materials
<i>Source: Information provided by WVU-Parkersburg.</i>		

WVU-P did not pay for the items received as donations. Statute does not expressly prohibit donations made to public entities. However, higher education institutions are expressly prohibited from accepting anything of value from vendors if a financial interest in the vendor exists. In this series of donations from vendors, the Legislative Auditor has no documentation to suggest WVU-P’s governing board or employees hold a financial interest in the vendors who donated the items to the community college.

In Table 4 the total dollar amount of monies WVU-P has paid to these five donating vendors in FY 2009, 2010 and 2011 can be seen.

Table 4 WVU-P Vendor Payments FY 2009, 2010, 2011							
	FY 2009		FY 2010		FY 2011		Total
	\$	# Transactions	\$	# Transactions	\$	# Transactions	
Architectural Interior Products	\$74,292	26	\$23,509	17	\$79,491	47	\$177,292
Davis Pickering & Co.	\$93,772	12	\$134,379	5	\$75,008	12	\$303,159
Parkersburg Office Supply	\$151,412	172	\$102,482	431	\$148,946	317	\$402,840
ProComm Technologies, LLC	\$93,743	60	\$94,324	63	\$285,384	126	\$473,451
State Electric Supply	\$41,260	106	\$83,716	54	\$168,032	113	\$293,008
Total							\$1,649,750
<i>Source: WV Department of Administration Financial Information Management System</i>							

The donations by State Electric Supply; Parkersburg Office Supply; ProComm Technologies LLC and Davis Pickering & Co. were all for the same room. One day prior to the ProComm Technologies donation of the television, WVU-Parkersburg paid ProComm Technologies, LLC \$995 for a different television and accessories for the same room. There is no evidence these donations were made in consideration of future business or in conjunction with a purchase.

The same cannot be said of the donation made by Architectural Interior Products, Inc (AIP). AIP quoted WVU-P a \$50,000 price to replace the community college's multipurpose room floor. WVU-P told AIP that it was required to competitively bid purchases costing more than \$25,000. AIP then offered to sell the floor to WVU-P for \$25,000 and "donate" the other \$25,000. WVU-P accepted AIP's offer and paid AIP \$25,000 for flooring material in July 2008. It is clear to the Legislative Auditor that the purpose in accepting the lowered price on flooring was to facilitate a non-competitive sale of flooring.

AIP quoted WVU-P a \$50,000 price to replace the community college's multipurpose room floor. WVU-P told AIP that it was required to competitively bid purchases costing more than \$25,000. AIP offered to sell the floor to WVU-P for \$25,000 and "donate" the other \$25,000.

Higher education rules contain provisions that competition and fairness are to be ensured. Purchasing law prohibits state spending units from agreements with vendors that result in eliminating competition. As stated in §5A-3-31,

*It shall be unlawful for any person to corruptly combine, collude or conspire with one or more other persons **with respect to the purchasing** . . . if the purpose or effect of such combination, collusion or conspiracy is either to (1) **lessen competition among prospective vendors**, or (2) cause the state to pay a higher price for such commodities or printing than would be or would have been paid in the absence of such combination, collusion or conspiracy, or (3) **cause one prospective vendor or vendors to be preferred over one or more other prospective vendor or vendors**. . . . (emphasis added)*

The community college does not know if the price it paid for the flooring was competitive, high, or low because it did not consider other vendors.

WVU-P chose to eliminate any other vendor from consideration for the flooring. The community college does not know if the price it paid for the flooring was competitive, high, or low because it did not consider other vendors.

Conclusion

Given the findings of this issue and the findings of the July 2011 report on the college, the Legislative Auditor concludes that WVU-P has shown susceptibility to restricting competition. WVU-P needs to heighten its sensitivity to actions that exclude prospective vendors from business consideration. Although WVU-P was able to have flooring done at \$25,000, the college does not know if the flooring could have been done for less because it did not consider other vendors. Clearly, the college should have been aware that the flooring vendor's \$25,000 "donation" was intended to restrict other vendors from being considered. Although

WVU-P has shown susceptibility to restricting competition.

accepting donations from vendors is not prohibited, WVU-P should consider the appearance of bias towards vendors who made donations to the community college.

Recommendations

8. *WVU-Parkersburg should avoid accepting donations from vendors with whom it has a regular business relationship.*
9. *The Legislature should also consider prohibiting state agencies from receiving significant donations from vendors with whom they regularly transact business.*

Appendix A: Transmittal Letter

WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610
(304) 347-4890
(304) 347-4939 FAX



John Sylvia
Director

October 14, 2011

James L. Skidmore, Chancellor
Council for Community and Technical College Education
1018 Kanawha Blvd. East, Suite 700
Charleston WV 25301

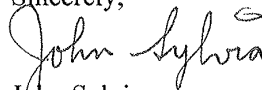
Dear Chancellor Skidmore:

This is to transmit a draft copy of the second and final Purchasing Performance Review of WVU-Parkersburg. This report is scheduled to be presented during the November 14-16, 2011 interim meeting of the Joint Committee on Government Organization and the Joint Committee on Government Operations. We will inform you of the exact time and location once the information becomes available. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any committee questions.

Please contact us by October 19, 2011 to schedule an exit conference to discuss any concerns you may have with the report. We need your written response by noon on Thursday, November 3, 2011 in order for it to be included in the final report. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at (304) 340-3192 by Tuesday, November 8, 2011 to make arrangements.

We request that your personnel not disclose the report to anyone not affiliated with your agency. Thank you for your cooperation.

Sincerely,


John Sylvia

C: Dr. Vincent Mensah, Chief Financial Officer, WVU-Parkersburg
Sampath Nagraj, Director of Procurement, WVU-Parkersburg

Joint Committee on Government and Finance

Appendix B: Objective, Scope & Methodology

The West Virginia Higher Education Law, Chapter 18B, Article 5, Section 4(r) requires the Legislative Auditor to conduct a purchasing performance audit of higher education institutions each fiscal year. This is the second and final report of purchasing functions and procedures at WVU-Parkersburg.

Objective

The purpose of this audit was to determine if WVU-Parkersburg's food services contract had been approved by the Attorney General, if its internal purchasing controls were sufficient, and if it had violated purchasing laws when it accepted substantial gifts from regular vendors.

Scope

The scope of this audit is July 1, 2008 to June 2011. Until July 1, 2008 WVU-Parkersburg was a regional campus of West Virginia University. On this date legislation became effective separating WVU-Parkersburg from West Virginia University. WVU-Parkersburg continued using the name West Virginia University but is an independent community college. It is accredited separately and has its own Board of Governors.

Methodology

This audit was developed from personal interviews and site visits to WVU-Parkersburg between January 6, 2011 and May 18, 2011. The Legislative Auditor compared procurement controls at WVU-Parkersburg to *Standards for Internal Control in the Federal Government*. Purchasing control requirements were taken from the Higher Education Policy Commission's purchasing manual, higher education purchasing law, the State Auditor's Purchasing Card Policies and Procedures Manual and practices of the Department of Administration's Division of Purchasing. Documents obtained from WVU-Parkersburg were examined including

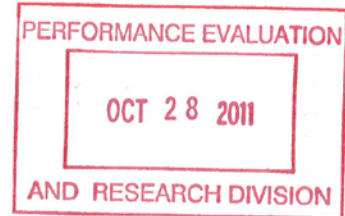
the institution's contract for food services. This contract was reviewed for its compliance with law and procurement policies. The Legislative Auditor consulted with the Attorney General's Office and attorneys in the Legislative Auditor's Legislative Services Division with respect to this food services contract and the acceptance of vendor donations. The number of transactions and total dollar amounts paid in FY 2009, 2010 and 2011 to five vendors who made donations to WVU-Parkersburg was obtained from the West Virginia Financial Information Management System. Every aspect of this review complied with the Generally Accepted Governmental Auditing Standards (GAGAS) as set forth by the Comptroller General of the United States.

Appendix C: Agency Response



October 26, 2011

John Sylvia
Director, Performance Evaluation and Research Division
Building 1, Room W-314
1900 Kanawha Blvd., East
Charleston, WV 25305-0610



Dear Mr. Sylvia,

This is to transmit our response to your recommendations regarding the Purchasing Performance Review conducted this year. At Mr. Midkiff's request, we are sending the response under our letterhead.

Recommendation:

1. The college will defer to The Higher Education Policy Commission (HEPC) for guidance and the development of a comprehensive model for material and/or services not purchased frequently, such as food services, land and building purchases, etc..
2. AVI Foodsystems, Inc. will provide West Virginia University at Parkersburg (WVUP) with a new amortization schedule, before the end of the week that reflects the actual expenditure for renovation and material purchases equaling \$165,237.19. The reason for the discrepancy is that the card system with card access registers was not purchased at the time of the agreement because West Virginia University at Parkersburg's Information System was not ready for that transition. The transition will be addressed at a later date.
3. Small colleges have limited resources to segregate duties. However, WVU at Parkersburg will incorporate some of the recommendations proposed by the auditors, including involving other personnel in the Business office.
4. This recommendation has already been implemented. The Purchasing Card records that need to be retained (current year minus 5 years), have been moved from cardboard boxes and into lockable filing cabinets. These cabinets are maintained in the Purchasing Department.

West Virginia University at Parkersburg
300 Campus Drive; Parkersburg, WV 26104-8647; (304) 424-8000 FAX (304) 424-8315
E-mail: WVUPInfo@mail.wvu.edu
www.wvup.edu
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5. WVU at Parkersburg maintains a spread sheet within the IT department with all the pertinent information regarding every desktop and laptop computers. If agreed to, adding a physical inventory number can be incorporated.

6. It is up to HEPC/CTC (Council for Community and Technical College) to take this recommendation under consideration. WVU at Parkersburg will adhere to the decision reached by this body.

7. The physical inventory audit was changed at the request of West Virginia University, who assigned odd and even year inventory to the satellite institutions reporting to it (physical inventory records for WVU at Parkersburg is maintained at WVU). As WVU at Parkersburg is transitioning as a separate institution under HEPC/CTC, we will return to conducting annual physical inventory.

8. WVU at Parkersburg will encourage potential donors to make donations to its Foundation.

9. We understand that the Legislative Audit Group at its discretion can make this recommendation to the Legislature.

We will see all of you in Charleston on November 3, 2011 at 2:00 p.m. for the exit interview.

Sincerely,

A handwritten signature in blue ink that reads 'Sam Nagraj'.

Sam Nagraj

c: James L. Skidmore, Chancellor
Dr. Marie Gnage, President, WVU at Parkersburg
Dr. Vincent Mensah, Chief Financial Officer, WVU at Parkersburg
Mr. Michael Midkiff, Research Manager, Performance Evaluation and Research Division

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