

Annual Performance Audit

Institutions of Higher Education

The Lack of Expertise in Food Service Contracting, Combined with a Lack of Guidance From the Higher Education Policy Commission, Leaves Institutions Vulnerable to Poorly Defined Requirements In Contracts, and Food Service Providers Imposing Their Own Standards

Lack of Monitoring After Institutions of Higher Education Have Established Food Service Contracts With Vendors

The Legislative Auditor, Through the Assistance of the Department of Agriculture Inspector, Found Inadequacies in Food Quality and Safety of Food Served at Institutions

The Extension of Fairmont's Food Service Contract Denies Competitive Bidding for Two Additional Years



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Executive Summary

Issue 1: The Lack of Expertise in Food Service Contracting, Combined with a Lack of Guidance From the Higher Education Policy Commission, Leaves Institutions Vulnerable to Poorly Defined Requirements In Contracts, and Food Service Providers Imposing Their Own Standards.

The Legislative Auditor reviewed food service contracts with outside food service vendors developed by Concord University, Glenville College, West Liberty College, Fairmont University, and West Virginia State University. These institutions have students in residence and require that students purchase board contracts for dining on campus (see Table 1). The food service vendors are Aramark, Aladdin Food Management Services, Wood/Sodexho, and AVI Foodsystems.

Institution	Concord	Glenville	West Liberty	Fairmont	WV State
FY 2005	\$1,367	\$1,280	\$1,058	\$1,402	\$1,260

Outsourcing of auxiliary services is a traditional way for institutions to decrease expenses and increase revenues as they try to minimize the impact of decreasing funds from state sources.

As a result of the review of food service contracts, the Legislative Auditor found that the institutions lack expertise in food service contracting and have not received guidance from the Higher Education Policy commission in drafting Requests For Proposals (RFPs) for food service.

As a result of the review of food service contracts, the Legislative Auditor found that the institutions lack expertise in food service contracting and have not received guidance from the Higher Education Policy commission in drafting Requests For Proposals (RFPs) for food service. There are significant differences and some omissions in the resulting agreements with vendors. Some institutions incorporated outdated health inspection standards in their RFPs, or did not adequately describe food quality requirements. These differences leave institutions vulnerable to poor food quality, poor employee food safety training, and poor planning should the vendor cease operations at the institution. In addition, institutions are sometimes reliant on the vendor to establish quality and standards.

Issue 2: There is a Lack of Monitoring After Institutions of Higher Education Have Established Food Service Contracts With Vendors.

The protection of the legal and financial interests of the state, and the persons using the services provided by the vendor are at risk through the lack of contract monitoring.

The five institutions with food service contracts are not providing oversight of the food service vendors through financial auditing and contract monitoring. Consequently, important areas such as the vendors' financial practices (and calculation of commission payments to the institutions), the vendors' personnel practices, the vendors' food handling safety procedures, the vendors' county health department sanitation reports and the vendors' food quality are not being objectively and routinely assessed. The reasons for this lack of monitoring may be attributed to administrative confusion in terms of contract responsibility, the desire of the institution to be a partner with the food service vendor and the assumption that the food service vendor is responsible for the food service. However, in contracting for a food service vendor, **only the performance of the function can be contracted; the actual responsibility for the food service remains with the institution.** The protection of the legal and financial interests of the state, and the persons using the services provided by the vendor are at risk through the lack of contract monitoring. The five institutions have not fulfilled their responsibility under state law to review the contracts in terms of compliance, or to coordinate periodic detailed operational and financial audits.

Issue 3: The Legislative Auditor, Through the Assistance of a Department of Agriculture Inspector, Found Inadequacies in Food Quality and Safety of Food Served at Institutions.

The examination found labeling violations of some food products, operation of soft service ice cream machines without operating permits and food products being served that did not meet state safety standards.

The Legislative Auditor's Office teamed with the Department of Agriculture to examine some food products served under contract at the five institutions, and to evaluate the requirements for food quality in the food contracts. The examination found labeling violations of some food products, operation of soft service ice cream machines without operating permits and food products being served that did not meet state safety standards. Also, some food products did not meet food quality requirements established in food service contracts. These findings reinforce earlier conclusions in the first two issues of this report that institutions need assistance to develop requirements for certain aspects of their food service, and that regular monitoring of the food service needs to be implemented by each institution.

Issue 4: The Extension of Fairmont’s Food Service Contract Denies Competitive Bidding for Two Additional Years.

Fairmont extended its food service contract one year after the contract had been signed.

This informational issue deals with two things; an apparent loop hole in state code that has the effect of allowing purchases of over \$25,000 without competitive bids, and the lack of oversight of higher education purchasing contracts. Fairmont extended its food service contract one year after the contract had been signed. It did this by adding two additional renewal year options to the existing contract. This was approved by the Attorney General’s Office which later noted that there is nothing in state code regarding the addition of renewal options to existing contracts. Also, there is now no centralized requirement or procedure to ensure that contracts are reviewed and that the actions taken by higher education institutions are guided by law and policy. Changes to the law in 2004 restricted the Attorney General’s Office to review of only a few types of higher education contracts. In addition, the Higher Education Policy Commission only reviews construction contracts, and does not have a mechanism to enforce purchasing compliance except through periodic purchasing and compliance audits.

Recommendations

1. *The Higher Education Policy Commission should develop a comprehensive model Request For Proposal to include all standard elements and language for inclusion in food service vendor contracts. Such standard elements should include identification of areas subject to monitoring and a description of the monitoring and auditing process; requirements to protect institutions such as provision of food service operations in the event of food service contract termination and performance bonding; and other expectations such as recycling and waste disposal.*
2. *The Higher Education Policy Commission should require that all institutions with contracted food service operations develop a schedule and procedures to document operational and financial monitoring of the food service to include all areas of legal compliance specified in the contract, all personnel practices of the vendor, food safety procedures, food quality and sanitation requirements stated in the contract.*

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3. *The Higher Education Policy Commission should require the training of institutional food service contract administrators through a recognized training program in food service contract administration.*
 4. *The Higher Education Policy Commission should develop a standardized set of minimum food quality specifications considered adequate for all institutions of higher education.*
 5. *Food quality specifications in future agreements with food service vendors at all institutions should incorporate the same standardized minimum specifications developed and approved by the Higher Education Policy Commission.*
 6. *Each institution with a food service contract should consider having the Department of Agriculture assist them in monitoring the contract in terms of assessing food quality and food safety through an annual inspection of food quality.*
 7. *The Higher Education Policy Commission should establish a procedure that would provide oversight of all contracts, and changes to contracts to ensure that such contracts conform with internal purchasing policies, and state code.*
 8. *Fairmont State University should re-bid the food service contract at the end of the original five year period, in 2005.*
 9. *The Legislative should consider changes to state code to address change orders involving the addition of renewal options within state contracts in order to avoid an apparent circumvention of purchasing rules.*

Review Objective, Scope and Methodology

Under the West Virginia Higher Education Law, Chapter 18B, Article 5, Section 4(n) the Legislative Auditor is responsible for conducting an independent performance audit of purchasing functions and duties at institutions of higher education each fiscal year. Eight institutions of higher education were evaluated for this second performance audit. They are West Liberty College, Glenville College, Fairmont State University, Shepherd University, Concord University, West Virginia State University, West Virginia Northern Community College and Eastern West Virginia Community and Technical College.

Objective

This review was conducted to confirm that procurement officers at each institution of higher education are following the procurement policies and procedures established by the Higher Education Policy Commission. As part of this review, the Legislative Auditor evaluated the food service contracting process at institutions with residential students. The following five institutions were reviewed regarding their food service contracts: West Liberty, Glenville, Fairmont, West Virginia State and Concord.

Scope

This review covers fiscal years 2003-2005. Some contracts that were reviewed were developed prior to 2003.

Methodology

This report was developed from personal interviews and site visits to all eight of the institutions. Food service contracting became an area of focus when it was learned during initial interviews that institutions did not conduct routine monitoring activities to ensure contract compliance. The Legislative Auditor examined documents provided by each institution, the National Association of College and University Food Services, the United States General Accounting Office, and the Council of Higher Education Management Associations. The Legislative Auditor obtained opinions from the Legislative Services legal staff, and accompanied a regulatory officer from the West Virginia Department of Agriculture for food testing. The Legislative Auditor also received assistance from the Division of Health in obtaining health inspection reports for the institutions, and gaining an understanding of food safety standards and practices. The food service assessment included a review of the five institutions' food service Requests For Proposals, and the resulting contracts. Food service employees were surveyed in regard to training that they had received from the

food service vendors. Food service invoices from food suppliers for March, 2004 were reviewed. Food testing was conducted by the Department of Agriculture at their laboratory facilities at the Guthrie Center in Charleston, West Virginia. Every aspect of this evaluation complied with **Generally Accepted Government Auditing Standards (GAGAS)**.

Issue 1

The Lack of Expertise in Food Service Contracting, Combined with a Lack of Guidance From the Higher Education Policy Commission, Leaves Institutions Vulnerable to Poorly Defined Requirements In Contracts, and Food Service Providers Imposing Their Own Standards.

Issue Summary

The Legislative Auditor reviewed food service contracts developed by Concord University, Glenville College, West Liberty College, Fairmont University, and West Virginia State University. These institutions all require food service for resident populations of between 400 and 1,000 students. The Legislative Auditor finds that these institutions lack expertise in food service contracting and have not received guidance from the Higher Education Policy Commission in drafting Requests For Proposals (RFPs) for food service. As a result, there are significant differences and some omissions in the resulting agreements with food service vendors. These differences leave the institutions vulnerable to poor food quality, poor employee food safety training, poor planning to continue food service should the vendor cease operations at the institution, and in one case, reliant on the food service vendor to decide on food quality and training standards. In addition, lacking precise and adequate descriptions of standards leaves institutions without a way to identify and fix problems with food service performance should they arise. Variations and omissions were found in the following areas:

Lacking precise and adequate descriptions of standards leaves institutions without a way to identify and fix problems with food service performance should they arise.

1. Food quality specifications
2. Staff Training on Health and Food Handling Standards
3. Adherence to Sanitation Inspection Standards
4. Requiring Vendor to Have Performance Bonds
5. Access to Vendor Records and Record Retention
6. Termination Requirements & Providing for Continued Service during Replacement of Vendor
7. Objective Review Requirements of Vendor Performance

The first six of the preceding areas are specific to the food service's operation and standards. The seventh area allows the vendor to understand the objective criteria used to evaluate the food service performance, and the frequency of such evaluations during the length of the contract. Lacking precise and adequate descriptions of standards leaves institutions without a way to identify and fix problems with food service performance should they arise.

While all institutions incorporated the major components of food service operation in their contractual agreements, there was a lack of precise description in the requirements by some institutions. In addition to the lack of precision, some institutions made requirements that reflected outdated standards. This was seen when several institutions required a level of performance in health inspection reports of 90% or an “A” rating, which is not used in current health inspections. In addition, some requirements reflected a lack of understanding of the institution’s needs. This was seen when an institution required that all meat be “prime” which is the most expensive meat grade available.

Failing to specify the objective criteria by which the vendor will be judged in operation can have a significant effect on the vendor’s performance and the level and quality of services received by the institution.

Finally, no institution provided for periodic objective reviews of its food service operations. Failing to specify the objective criteria by which the vendor will be judged in operation can have a significant effect on the vendor’s performance and the level and quality of services received by the institution. Depending on the area that is overlooked, the institution could risk disruption to its food service, suffer monetary loss or have difficulty improving a vendor’s unsatisfactory performance.

HEPC Central to Institutions of Higher Education Purchasing

Changes in state code in the past few years mean that institutions of higher education no longer purchase through the centralized purchasing division of the state. Instead, the Higher Education Policy Commission (HEPC) is charged with the development, establishment and implementation of policies for the purchasing procedures to be followed by institutions in the higher education system. The HEPC provides a purchasing manual for institutions of higher education.

Changes in state code in the past few years mean that institutions of higher education no longer purchase through the centralized purchasing division of the state.

However, unlike the state purchasing division, the HEPC does not provide any standardized model for the Request For Proposal (RFP) issued when institutions initiate the process of vendor selection for a complex purchase of goods or services over \$25,000. Therefore, institutions have to obtain similar documents from other institutions or national organizations to serve as a guide for developing their own document when a specific competitive purchase is contemplated. Such documents from other locations may not prove adequate or provide complete descriptions. **Consequently, the descriptions of the operational standards do not always provide the necessary level of service for the institution and can not always be used objectively in evaluating the vendor’s performance. Further, some documents do not**

provide necessary safeguards for the institution. Food service RFPs developed by state institutions had omissions, outdated standards, and a lack of knowledge of the institutions' needs in specific areas such as food quality.

Differences and Omissions Among Institutions

The RFP identifies the services required, the standards of operation and the form of compensation that the institution expects.

The Legislative Auditor reviewed the initial document or RFP used in the food service contracting process by Concord, Glenville, West Liberty, Fairmont and West Virginia State to determine what each institution **required** of food service vendors making proposals. The RFP identifies the services required, the standards of operation and the form of compensation that the institution expects. It is incorporated into the final agreement and contract with the food service vendor, and becomes an important document to assess the food service operations over the length of the food service agreement. The Legislative Auditor found that standards required by each institution varied in detail and description. Some requirements were inappropriate or used outdated standards, and some institutions made no requirements in certain areas, leaving them vulnerable to vendor imposed standards.

One of the five institutions reviewed, Fairmont State University, omits **any** description of expectations in the areas of food service operation and standards, food quality, employee training, and health department inspection standards in its request for proposal for a food service vendor. **This allows a shift of control from the institution to the vendor, leaving the institution reliant on the food service vendor to decide food quality and employee training standards.** In Fairmont's resulting contract with a vendor, standards of operation are supplied in the vendor's proposal, including a food quality statement of the quality and grade of food to be provided by the vendor. The vendor's proposal also incorporates a description of employee training.

The Legislative Auditor reviewed seven areas of specifications within institutions' food service agreements.

National Organizations' Standards

The Legislative Auditor reviewed seven areas of specifications within institutions' food service agreements. These are standard areas that should be found in all food service RFPs. The Council of Higher Education Management Associations (CHEMA) notes that institutions seeking food service vendors should establish the standard for food quality that must be met, and determine a set of standards for public health and sanitation to which a vendor will be held. Further, the institution should specify how it will monitor dining services' performance against these standards. CHEMA also observes that if the institution wants to terminate the contract without cause, there should be a turnover or transition plan already in place in order to maintain food service

continuity.

The National Association of College and University Food Services explains that in addition to defining the operating requirements and specifying how the institution will assess the contractor's performance, the RFP should address human resource management issues including the training development that the contractor must provide for management and non-management personnel.

The United States General Accounting Office observes that in the purchasing process, RFPs set forth all terms, conditions and evaluation criteria as well as the scope of the work required.

The United States General Accounting Office observes that in the purchasing process, RFPs set forth all terms, conditions and evaluation criteria as well as the scope of the work required. These requirements must be agreed upon by agency officials and *precisely described*. **General or incomplete specifications in RFPs will undermine the quality of final products.**

Comparison of Areas Within Food Service Agreements

The Legislative Auditor reviewed the following areas of specification within the institutions' food service agreements:

1. Food quality
2. Health and Food Safety Training for Staff
3. Adherence to Sanitation Inspection Standards
4. Performance Bond Requirements
5. Access and Retention of Vendor's Records
6. Termination Criteria and Continued Service Requirements
7. Objective Review Requirements of Vendor Performance.

The Legislative Auditor found that some areas of specification in the food service agreements had omissions and lacked safeguards to protect the institution while including outdated requirements such as health department inspection standards, and food quality specifications that do not reflect the budget or needs of the typical institution.

The Legislative Auditor found that some areas of specification in the food service agreements had omissions and lacked safeguards to protect the institution while including outdated requirements such as health department inspection standards, and food quality specifications that do not reflect the budget or needs of the typical institution. Individual agreements had criteria that varied from detailed descriptions to vague, or non-specific requirements. **None of the institutions described objective evaluations to assess the food vendor performance over the life of the contract.**

The five state institutions had the following requirements:

1. Food Quality Requirements.

Food service vendors are responsible for providing the food on campus. Menu composition and food quality contribute to the finished product which is the daily provision of healthy and nutritious food for students and visitors to the institutions.

Food service vendors are responsible for providing the food on campus. Menu composition and food quality contribute to the finished product which is the daily provision of healthy and nutritious food for students and visitors to the institutions. Glenville, Concord, West Virginia State and West Liberty described their requirements for food quality. West Liberty required “prime meat” which is the most expensive grade possible. When one vendor suggested that the designation be changed to USDA Choice, the college responded *All foods are to be the best quality available* and did not change the requirement for prime meats. Here is how food quality requirements were outlined by the institutions:

- **Glenville.** Requires freshness and “high quality” finished products in meats, with beef being prime or choice grades and pork being #1 grade. All fresh fruits and vegetables are required to be top grade (extra fancy), with frozen foods being inspected by United States Department of Agriculture (USDA) grade AA or A. All eggs are required to be strictly fresh and to be grade A large. When fresh eggs, due to marketing conditions are not available, frozen whole eggs certified by USDA may be substituted. This institution is equally specific about its poultry, seafood, canned foods (and conditions of the cans), and dairy products.
- **West Liberty State College.** Makes only a two sentence statement about food quality:

All foods are to be of the best quality available. Meat is to be prime, all pork is to be number one (No. 1) cured, all poultry is to be grade A, as is the seafood and dairy products.

- **Concord.** Provides a list of minimum food specifications to be established and maintained. Foods listed include beef and veal USDA choice; pork and lamb USDA # 1; poultry, USDA grade A, eggs and dairy products, USDA grade A; frozen foods, USDA grade A fancy; fresh produce, USDA #1 quality and canned goods, USDA grade A fancy.
- **West Virginia State.** Repeats the same minimum food specifications as issued by Concord, using identical language.
- **Fairmont.** No food quality requirements were issued by this institution

when it sought food service vendors in 2001.

An institution may not remain satisfied with its food if the quality standards are minimal, or the vendor is allowed to propose the quality that it will provide.

An institution may not remain satisfied with its food if the quality standards are minimal, or the vendor is allowed to propose the quality that it will provide. Vendors are paid through the profit they realize in the food service operation after any commissions or profit-sharing is paid to the institution. Therefore, vendors try to control all costs, including food quality, in order to maximize profits. Further, while all institutions have some mechanism to receive feedback on the subjective response of customers such as students and faculty, and their enjoyment of the food being served, enough criteria regarding food quality and standards of freshness need to be included to provide the basis for objective assessment of the food being served. Such an assessment might take the form of an annual food audit with a review of food supplier invoices, and inspection of existing food stores.

2. Staff Training on Health and Food Handling Standards.

Staff training was incorporated in all of the final agreements or contracts with food vendors, although the institutions' requests for proposals varied and in some instances did not specify health and food handling.

Staff training was incorporated in all of the final agreements or contracts with food vendors, although the institutions' requests for proposals varied and in some instances did not specify health and food handling. The following training requirements were made by the institutions:

- **Concord.** This is the oldest contract reviewed. It requires the vendor to provide training for all staff on a regular and recurring basis with mandatory topics to include Food Borne Illness, Sanitation, Personal Hygiene and Safety (lifting, working with equipment, knives, breaking down equipment and proper cleaning). It also requires the vendor to schedule and conduct an on-going employee training program “*which will ensure that all employees perform their jobs with the highest standards of efficiency, courtesy and sanitation.*” Concord makes a further training requirement for student workers stating that the vendor should describe in the proposal a plan of operation to develop, train and document employment performance for as many student workers as possible, setting forth a variety and progression of student work positions leading over a period of several semesters to a student supervisory position.
- **West Liberty.** Requires the vendor to offer training programs to all employees on a monthly basis. Does not specify what type of training, although “*public relations, appearance and deportment will always be stressed.*”

- **Glenville.** Using the same language as Concord, in addition requires all employees to attend a comprehensive training and development program offered by the vendor at the institution. Requires each food service manager to attend one development seminar each year, with the senior manager to attend two seminars annually. Requires the vendor to submit sample material in the proposal outlining the training and development programs for all hourly, supervisory and management employees.
- **West Virginia State.** Also uses the same language as Concord. In addition, the university requires the vendor to schedule and conduct an on-going employee training program “*which will ensure that all employees perform their jobs with the highest standards of efficiency, courtesy and sanitation.*”
- **Fairmont.** No training requirements were issued when this institution sought a food service vendor in 2001.

Lacking a specific statement of the area in which training is to be given, the institution may have difficulty assessing whether food service employees are receiving appropriate training for their responsibilities.

Lacking a specific statement of the area in which training is to be given, the institution may have difficulty assessing whether food service employees are receiving appropriate training for their responsibilities. Further, should a problem arise, requiring the vendor to change the scope of its training might be difficult.

Finally, an informal survey of the employee’s food service training at the preceding locations indicates that Wood Dining Service (at West Liberty) , Aramark (at Concord) and AVI (at West Virginia State) hold regular monthly meetings in which food safety is discussed. Employees of Aramark at Glenville, and Aladdin at Fairmont do not report having regular monthly training meetings and discussions.

From the documents that were reviewed, the Legislative Auditor concludes that the institutions expect high standards of sanitation.

3. Adherence to Sanitation Inspection Standards

Sanitation in food service encompasses three areas: food handling, personal hygiene and the physical environment including the equipment, and physical surroundings in which food is prepared. From the documents that were reviewed, the Legislative Auditor concludes that the institutions expect high standards of sanitation. Local health departments are charged with making periodic inspections of all of these operations, so the Legislative Auditor reviewed the health department standards that the institutions wanted the vendors to attain, and tried to compare the requirements with the most recent performance of the vendors. **Such a comparison was not possible for two reasons: rating**

requirements imposed by three of the institutions do not exist¹ in current inspection forms, and the other two institutions did not require health inspection standards.

- **Concord.** Requires a health department rating of 90 or above to be maintained at all times, and that any health or sanitation violations be remedied within 24 hours. [*Such a rating schedule is no longer seen on current inspection forms due to a change in the Legislative Rule in 2000.*] The Mercer County Health Department provided food establishment inspection reports for the cafeteria and snack bar, made in December 2003, and April 2004. The cafeteria, had eight non-critical violations in December, and 12 in April, two of which were repeated from the earlier inspection. In the snack bar inspection, there were two non-critical violations in December, and three in April. One of the April violations was repeated from December.
- **West Virginia State.** Requires that a health department grade “A” rating must be maintained at all times. [*Such a rating schedule is no longer seen on current inspection forms.*] The most recent food establishment inspection report (June 2004) from the Kanawha-Charleston Health Department showed four non-critical violations in sanitation, design and maintenance.
- **Glennville.** Requires a health department rating of 90 or above to be maintained at all times, and that any health or sanitation violations be remedied within 24 hours. [*Such a rating schedule is no longer seen on current inspection forms.*] The most recent food establishment inspection report (September 2003) from the Gilmer County Health Department noted **two critical violations**, one for the snack bar and the other for food preparation for the dining room. There were also five non-critical violations. The state requires that critical violations be corrected within 10 calendar days.
- **Fairmont. No health department review standard is specifically required.** The Marion County Department of Health provided food establishment inspection reports for October 2003 and June 2004. In October the vendor had ten violations, **four** of which were critical. A re-inspection in December showed that all violations had been

¹ *Current food establishment inspection reports show the number of critical and noncritical violations cited at the food establishment. These forms were changed in 2000 when the Division of Health revised Title 64 of the Legislative Rules pertaining to food establishments.*

corrected. However, the June inspection again showed ten violations, **one critical**. The critical violation was one of the same as the previous October, and four of the non-critical violations were also the same.

- **West Liberty. No health department review standard is specifically required.** The most recent food establishment inspection report (December 2003) by the Wheeling-Ohio County Department of Health found three non-critical violations in equipment and storage.

Three of the five institutions required a certain standard to be maintained by the food service vendor during health inspections.

Three of the five institutions required a certain standard to be maintained by the food service vendor during health inspections. Two of the institutions that required a specific rating, Concord and Glenville, wrote their requirements prior to the Legislative Rule change in July 2000, and did not amend their agreements when the health department inspection standards changed in 2000. The third institution, West Virginia State, developed its requirements three years **after** the rule change, and still required an outdated rating as a health inspection standard. Because this standard is not measured in present health inspection reports, compliance to such a standard cannot be evaluated. The Legislative Auditor concludes that this problem would not exist if a contract administrator, familiar with the health inspection requirements of the contract, routinely reviewed the actual health inspection reports. Present inspections focus on critical and non-critical violations. Therefore, a standard to be set might incorporate whether the institution would tolerate critical violations.

4. Performance Bond Requirements.

The requirement of food contract performance bonds is inconsistent. Of the five institutions reviewed for this requirement, only three required performance bonds:

- **Concord.** Requires a \$300,000 performance bond each year.
- **West Liberty State College.** Required an initial \$1.5 million performance bond, with a continuing \$500,000 bond each year.
- **Glenville.** Requires a \$250,000 performance bond.
- **West Virginia State. No performance bond requirement.**
- **Fairmont. No performance bond requirement.**

The purpose of performance bonds is to protect the institution from

loss by an action of the contractor such as termination of services prior to the end of the contract.

5. Records Access and Retention and Audit Requirements.

An examination of institutional requirements shows that all of the institutions have specific time requirements for records retention, although the time requirements vary.

Records access and retention requirements are important to the institution because they provide a basis for monitoring the contract. An examination of institutional requirements shows that all of the institutions have specific time requirements for records retention, although the time requirements vary:

- **West Virginia State.** Requires the vendor to retain records for **two** years. The vendor may be audited with or without notice at any time during working hours.
- **Concord.** Requires the vendor to retain records for **two** years. The vendor may be audited with or without prior notice at any time during working hours.
- **Glenville.** Requires the vendor to retain all books, records and other documents for a period of **five years after final payment** to vendor, or after an audit, whichever comes first.
- **West Liberty State.** Requires the vendor to maintain all sales records on-site at the college for the **life of the contract, and three years beyond** the end of the contract.
- **Fairmont.** Requires the vendor to keep full and accurate accounts and records in connection with the food service and retain the records for **two years**.

All of the institutions refer to the possibility of a records audit but make no specific requirement that such an activity will take place. Even the **type** of records audit, whether food quality or financial, **is not defined**. Further, none of the institutions address a specific auditing schedule to lessen any operational impact on the food service vendor.

6. Termination And Continued Service Requirements.

Another area that is not uniform is termination and continued service requirements. If the food vendor or the institution cancels the contract without a turnover plan in place, students, faculty, staff and other customers are likely to suffer from reduced service. In addition, such a disruption can adversely affect the institution's reputation. While all of the contracts have some requirements

If the food vendor or the institution cancels the contract without a turnover plan in place, students, faculty, staff and other customers are likely to suffer from reduced service.

regarding contract termination, not all contracts have safeguards to provide for continuing food service coverage. For example:

- **Concord.** Requires that if the food service contractor terminates the contract for any reason, the contractor must continue the operation of food services (up to six months) until a new contractor can be selected. **This contract also requires notification if either party considers terminating the agreement, and good faith discussion to avoid terminating the contract.** If problems are not resolved, this contract then requires a 60-day notice of intent to terminate. Failure to keep insurance coverages in place would result in immediate termination and action upon the contract performance bond.
- **West Virginia State.** Requires that the vendor continue food service operations until other satisfactory arrangements are completed. West Virginia State also specifies grounds for termination of the contract if the vendor fails to maintain insurance coverages or shows poor performance with no corrective actions. Either the institution or the vendor can terminate the contract for no cause with 30 days notice.
- **Glenville.** Requires that the vendor continue food service operations until other arrangements are made by the college. The agreement can be terminated by either party without cause after giving 60 days written notice to the other party.
- **West Liberty. There is no required turnover coverage in place to protect the institution.** The contract allows West Liberty to terminate for any reason upon 60 days prior written notice to the vendor. After one year, the food service vendor can also terminate at any time for any reason upon 60 days written notice. If material provisions of the agreement are breached, there is only a ten-day period to remedy the problem before termination.
- **Fairmont. There is no required turnover coverage specified for the institution's protection.** Fairmont allows either party to terminate the food service agreement by giving the other party 30 days written notice of their intention to terminate. The notice must be sent by certified mail.

Plans to resolve problems in order to avoid contract termination prior to the term of the contract and provide continuing food service **if the contract is terminated** protect the institution and mitigate the effects of such a problem if it develops. Such a plan should be incorporated in the contract. Fairmont

and West Liberty presently have no such plan in place to protect themselves.

Objective Review Requirements of Vendor Performance

Criteria for the objective assessment of the food vendor's performance vary among the institutions. At some of the institutions the stated standards are not complete enough to provide the basis for an objective assessment of whether the food vendor is meeting these standards. Objective standards should be specific and measurable. They let the vendor know the specific standards of food quality, health, safety, training and performance required. Well-defined standards also allow the institution to determine whether the vendor is meeting the terms and conditions of the food service contract.

The institutions do not require that the vendor meet any objective assessment of the food service performance.

In addition, while none of the institutions describe objective evaluations that will be incorporated in the contracts, several institutions reserve the right of inspection or access to the food service facilities and list the areas which may be inspected. However, the institutions do not require that the vendor meet any objective assessment of the food service performance. It is important that institutions incorporate a proposed **schedule of evaluation** into their initial requirement of food service vendors because of the following benefits:

Requirements built into the initial document soliciting proposals for food service vendors ensure that such assessments will be implemented, and that the institution will obtain ongoing information about the service vendor's performance.

- The vendor knows that it will be held to standards listed in the contract.
- Avoids disruption of the food service operations while undergoing such operational assessments.
- Assists the institution in identifying and promptly dealing with any problems.
- Assists with preventing problems.

Further, requirements built into the initial document soliciting proposals for food service vendors ensure that such assessments will be implemented, and that the institution will obtain ongoing information about the service vendor's performance. Such evaluations provide the institution with the necessary information to verify that the food service agreement is being honored, and that the institution's standards are being met.

Higher Education Policy Commission (HEPC) Responsibility

Chapter 18B-5-4 addresses the purchase or acquisition of materials, supplies, equipment, services and printing for all state institutions of higher

Since the provision of food service on institutional campuses is a highly complex operation encompassing a variety of elements such as vendor record-keeping, vendor purchasing, vendor employment, and vendor compliance to health and safety regulations, institutions need guidance and standards for completeness when initiating requirements for a food service vendor.

education. The Higher Education Policy Commission (HEPC) is responsible for not only adopting rules governing acquisitions and purchase, but also establishing and prescribing **specifications** for materials, supplies, equipment, **services** and printing to be purchased. Since the provision of food service on institutional campuses is a highly complex operation encompassing a variety of elements such as vendor record-keeping, vendor purchasing, vendor employment, and vendor compliance to health and safety regulations, institutions need guidance and standards for completeness when initiating requirements for a food service vendor. This could be accomplished by the development of a model Request For Proposal form, specifically for use when soliciting food service vendors. Such a model could incorporate:

- special terms and conditions such as bid and performance bonds, insurance requirements, license requirements, and no debt affidavits; and
- general terms and conditions such as vendor relationship (as employer), indemnification, contract provisions (stating precedence of contract, RFP and vendor proposal), governing law, compliance with state laws and regulations with emphasis on vendor purchasing from in-state suppliers, subcontracts, term of contract and renewals, non-appropriation of funds, contract termination, contract changes, invoices, record retention (access and confidentiality).

In addition, elements of good food service performance could be included such as food handling training requirements, health inspection standards, minimum food quality standards, and provisions for continued service in the event of termination. Such a model would assist the individual institutions in developing requirements for food service vendors, and ensure that all elements of a modern, well-performing food service operation are required of the vendor prior to the start of operations.

Conclusion

It is clear that contracts for the provision of food service do not incorporate language that is either adequate to hold the vendor to a standard of performance and quality, or consistent with present sanitation inspections. Two factors have contributed to the inconsistent standards in food service agreements. The first is that institutions contracting for food services lack knowledge of important elements of food service operations. The second is a lack of guidance from the Higher Education Policy Commission in developing food service contract specifications. The HEPC has not developed either specifications, or a model request for proposal to assist smaller institutions in

the contracting process with food service vendors.

The HEPC should assist the institutions by developing a model that contains all of the safeguards necessary to adequately describe the expected service and protect the institutions in the event of problems arising.

Smaller state institutions of higher education spend extensive time and effort individually drafting the initial documents to request proposals for food service despite a lack of knowledge of the food service industry. The HEPC should assist the institutions by developing a model that contains all of the safeguards necessary to adequately describe the expected service and protect the institutions in the event of problems arising. Certain areas within such a document can be individualized for the institution, but other elements should be standardized.

When institutional expectations are not clearly stated in detail, the vendor is not fully informed about areas of accountability to the institution. Should the institution become dissatisfied, it may have a difficult time improving the vendor's performance, or proving that the vendor has not fully performed. Protections for the institutions are inconsistent in termination clauses and performance bonds. Monitoring the vendor can be overlooked when it is not scheduled as the result of expectations initially stated when soliciting proposals from vendors.

Without a comprehensive model that incorporates all areas, provides clear language and adequately describes operations, standards and quality, procurement officers may duplicate other institutions' mistakes or outdated standards, while overlooking important areas to be required from the food service vendor.

Institutions need a comprehensive model to assist them in the process of soliciting proposals for food service. Without a comprehensive model that incorporates all areas, provides clear language and adequately describes operations, standards and quality, procurement officers may duplicate other institutions' mistakes or outdated standards, while overlooking important areas to be required from the food service vendor. When important areas are left out of initial requirements, they could be omitted or provided to a minimum standard by the vendor, when the final contract is developed.

Recommendation

1. *The Higher Education Policy Commission should develop a comprehensive model Request For Proposal to include all standard elements and language for inclusion in food service vendor contracts. Such standard elements should include identification of areas subject to monitoring and a description of the monitoring and auditing process; requirements to protect institutions such as provision of food service operations in the event of food service contract termination and performance bonding; and other expectations such as recycling and waste disposal.*

There is a Lack of Monitoring After Institutions of Higher Education Have Established Food Service Contracts With Vendors.

Issue Summary

The Legislative Auditor reviewed the food service contracts established between 1995 and 2003 for food service operations at five smaller institutions of higher education. Each contract includes financial agreements in which institutions receive commissions or share profits with the contractor. In addition, the contracts list individual operational and quality standards required by the institution. Some of these, such as sanitation, food safety and operational safety constitute critical areas of operation. Other requirements are that the food service vendors must meet state and federal legal mandates in employee hiring and promotion practices.

It is the institution's responsibility to administer the food service contracts, and determine that the institution is receiving what it has contracted for under the terms and conditions of the individual contract.

It is the institution's responsibility to administer the food service contracts, and determine that the institution is receiving what it has contracted for under the terms and conditions of the individual contract. **However, the five institutions with contracts were unable to provide any documentation of formal assessments or audits being made of the financial or operational standards and requirements in the contracts.** Consequently, important oversight of the food service operation in areas such as the financial statements (used to calculate commissions or profits paid to the institutions), personnel practices, safety procedures, sanitation and food quality is relinquished, resulting in the possibility that the food service contractor is not meeting the terms and conditions of the contract. Depending on the condition that is not met, the institution may lose commission money, experience a general customer dissatisfaction with its food service, or incur liability if the contractor fails to meet state or federal legal requirements.

Responsibility For Adherence to Contract Standards

When establishing a contract for food services, the institution develops a comprehensive description of the type of service, quality of service, legal requirements, financial responsibilities and operational details that it requires for its institution. Following the contract's award, the institution has a responsibility to ensure that its terms and conditions are completely achieved so that the institution receives all of the contracted service and the financial remuneration that it has negotiated to receive.

The state requires documentation of an effective system of internal controls. Chapter 5A-8-9 states in part:

“The head of each agency shall:

(b) Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency’s activities.”

This requires the agency head to have in place an effective system of internal controls in the form of policies and procedures set up to ensure the agency operates in compliance with the laws, rules and regulations which govern it.

Each contract with a food vendor contains operational and quality standards, and the requirement to adhere to state and federal laws in addition to the individual financial arrangements negotiated by the institution.

Types of Requirements in Food Service Contracts

Each contract with a food vendor contains operational and quality standards, and the requirement to adhere to state and federal laws in addition to the individual financial arrangements negotiated by the institution. Operational and quality standards found in contracts include:

- **Food quality.** United States Department of Agriculture (USDA) grades for food; standards for freshness as opposed to prepared or frozen products; on-premises baking; progressive or same-day cooking.
- **Menu composition.** The number and types of entrees, meats, juices, fruits, vegetables, salads, breads, cereals, pastries, beverages, and condiments available for each meal; types of food available between meals; week-end meals; special event meals and final week meals and snacks.
- **Sanitation.** Vendor obligations for health department inspection standards; hygiene standards of employees; food safety training sessions for employees; conditions to be maintained for food preparation and the food preparation equipment and the areas of receiving, storage, preparation and service of food; grease disposal.

State and federal legal requirements include personnel areas such as hiring and promotion with specific regard to women, minorities, the disabled and veterans. The retention and treatment of existing state employees is in

State and federal legal requirements include personnel areas such as hiring and promotion with specific regard to women, minorities, the disabled and veterans.

contracts where the institution changed from self-operation to a contracted food service vendor. Personnel standards found in contracts include:

- **Certification** as an equal opportunity employer.
- **Staffing.** The amount and level of the vendor’s managerial staff, and the number of annual on-site visits from regional management staff; staffing levels for the food service throughout the day; priority hiring of students for part-time employment.
- **Development training** both for staff and managers.
- **Food handler’s permits.**
- **Institutional control** in the process of approving and removing employees, including the vendor’s managers.
- **Incentive awards** programs.
- **Operation** within the standards of the state personnel system for all state employees employed by the vendor.

The financial agreements explain the obligations between the institution and the vendor. The terms and conditions vary among the contractors and incorporate the following areas:

- **Sliding scale payments to vendor.** Concord and Glenville, the two institutions contracting with Aramark use a sliding scale to pay the vendor. As the number of students in the residence halls decreases, the cost to the institution per student per day rises and the contractor is paid more per student.
- **Fixed amount payments to vendor.** Fairmont, West Liberty and West Virginia State negotiate a fixed price per residential student for a one or two year period.
- **Fixed and percentage commissions.** All aspects of food service - cash sales, catering sales and “flex dollar” sales- may be subject to a commission paid to the institution by the vendor. These commissions range from 5 to 15 % on net sales depending on the institution. Some institutions also have a set annual fixed dollar commission amount on net sales.
- **Profit sharing.** Only Fairmont has a profit sharing arrangement with the food vendor after certain costs and payments have been made.
- **Annual fixed maintenance,** or cleaning expenditures made by the vendor.
- **Catering allowances** for the President’s catering budget.
- **Scholarships.**
- **Free meals** used for a variety of purposes by the institutions.
- **Vendor payments** for permits, licenses and sales tax.

No Documentation of Food Service Contract Monitoring

Food service vendors must conform to state and federal laws, meet specific requirements for grades of food served and provide financial compensation to the institution. The Legislative Auditor asked each institution to supply copies of any documents prepared during the life of the dining service contracts to include any audits of the financial statements of the vendor (submitted to the institution to justify the payments made to the institution) and any audits of the food vendor's food procurement.

The Legislative Auditor asked each institution to supply copies of any documents prepared during the life of the dining service contracts to include any audits of the financial statements of the vendor (submitted to the institution to justify the payments made to the institution) and any audits of the food vendor's food procurement.

Institutions noted in responses to the Legislative Auditor that they are involved in assessment of the food service provision through management and budget meetings, customer and staff interactions and internal student/staff monitoring through the utilization of the food service's operations. In addition, one institution has a food services manager who is a state employee, while another institution recently employed a consultant to evaluate its food service. However, no documents of monitoring or audits from any of the five institutions were submitted. Contract administrators made the following statements:

However, no documents of monitoring or audits from any of the five institutions were submitted.

There is no formalized process or documentation for monitoring compliance with the terms of the food service contract. - Glenville

As stated...documentation is initiated when and if the University becomes aware of, or has been informed of, any service or contractual compliance difficulties. To date, there is no record of compliance or performance irregularity. - West Virginia State

We have not completed any audits of the food service vendor's financial statements or food procurement information since the inception of the contract. - Fairmont

There are no documents related to contract compliance monitoring nor have there been any audits of the contractor. - Concord

No regular audits of the vendor's food procurement practices. - West Liberty State

Factors That Contribute to a Lack of Contract Monitoring

There are several reasons that food service contract monitoring is not being undertaken by the institutions. They include the structure of the contract, the perception of monitoring by the contract administrator, the confusion created

Statements by institutional contract administrators indicate that they do not perceive the need for formal contract monitoring and that they are not aware of the requirement under code to establish monitoring procedures and documentation.

by the complexity of the service provision and the confusion created when more than one person has responsibilities in regard to food service. While the five contracts (and associated Requests for Proposals) include a statement to “reserve the right to periodically review all invoices to ensure ...specifications are being met,” none of the contracts develop a more specific system, such as a schedule or frequency to monitor and audit the vendor. Statements by institutional contract administrators indicate that they do not perceive the need for formal contract monitoring and that they are not aware of the requirement under code to establish monitoring procedures and documentation. There is also administrative confusion in several areas: the role of the institution; what constitutes monitoring and who is in charge of monitoring when more than one person is responsible for aspects of the vendor’s performance.

Duties of the Food Service Contract Administrator Unclear at Institutions

While several staff members may be responsible for aspects of the food service and the contract, the monitoring process has not been identified by the institution or clearly assigned to executive staff.

The institutions reviewed have more than one executive staff member involved with food service. **The duties of the respective staff members in regard to contract compliance and monitoring are not clearly defined internally.** While several staff members may be responsible for aspects of the food service and the contract, the monitoring process has not been identified by the institution or clearly assigned to executive staff. Daily contact and communication with the contracted food service director is often the responsibility of the vice president for student affairs, while the financial officer or the procurement officer of the institution is named as the contract administrator. Both the vice president for student affairs and the procurement officer are considered the contract administrators at Glenville. At Concord the procurement officer is the contract administrator, but the financial officer is actively involved with the contract. At West Virginia State the assistant vice president for student affairs is the contract administrator but a state employee in the role of food services manager functions as the daily contact person for the food service vendor.

The contract administrator for the institutional food service contract directs a serious business venture on the part of the institution. While the vendor is responsible for the daily operation, the contract administrator must ensure that the food program serves the needs of the campus and also complies with the specifications within the contract. The broad scope of the contracted areas of operational, legal and financial requirements provide a number of areas to monitor for compliance.

According to the National Association of College and University Food Services (NACUFS), the trade association for food service professionals at 650 institutions of higher education, the duties of the food service contract administrator include:

1. **Overseeing and monitoring the contract from development through the term of the contract.**
2. Coordinating food service objectives and strategic, marketing and financial plans.
3. **Monitoring operational and financial management of the contract.**
4. **Coordinating periodic detailed operational and financial audits.**
5. Coordinating links between the contractor and the campus departments such as human resources.
6. **Monitoring contract performance.** (Emphasis added in lines 1,3,4 and 6.)

Contract Structure

All food service contracts that were reviewed specified the records that the vendor must keep, the length of time such records are to be kept and the access to these records that the institution is to be granted.

All food service contracts that were reviewed specified the records that the vendor must keep, the length of time such records are to be kept and the access to these records that the institution is to be granted. However, none of the contracts describe procedures and schedules for monitoring and auditing activities. Thus record examination becomes an unusual event, rather than part of the institutional expectation when the contract is negotiated. For example, when the Legislative Auditor requested some of these records (food invoices paid by the vendor), one contract administrator expressed concern about making the request to the vendor since the institution had not made such a request during the six years of the contract.

When the Legislative Auditor requested some of these records, one contract administrator expressed concern about making the request to the vendor since the institution had not made such a request during the six years of the contract.

According to NACUFS, agreements and amendments for contracted services should specify the management responsibilities of the contractor, the role of the institution in overseeing and monitoring the contracted operation and the lines of authority and responsibility allowing the contractor to carry out the terms of the agreement with the support of the institution and without undue management interference by the institution's administration, faculty or student groups. **Contracts should also specify how the institution assesses the performance of the contracted operator formally and informally.**

Perception of Need to Monitor

Several contract administrators do not perceive either the need or the requirement under state code to monitor the food service vendor. The West Virginia State contract administrator stated that when deficiencies are brought to the attention of the institution by outside consumers or regulators (such as the state health inspector) this would require intervention or correction. At Concord, the contract administrator stated:

With the limited specifics within the contract, there is not anything to audit.

Despite a consultant's recommendation, the Fairmont contract administrator stated:

Fairmont contracted with a food service consultant in May, 2003 to evaluate its food service. The consultant recommended that auditing begin as soon as possible.

While the contract permits for this there is no requirement for us to do this that I am aware of.

Fairmont contracted with a food service consultant in May, 2003 to evaluate its food service. The consultant recommended that auditing begin as soon as possible, stating:

1. *Institute a new, professional auditing program for both the existing and future new facilities.*
2. *Institute a monthly quality services and facilities walk-through audit conducted by selected University administrators. Check quality, service levels, sanitation and promotional upgrades in all areas.*

West Liberty is aware that its food service vendor has contracted for twice-a-year independent audits to determine how well the food service department is meeting NSF standards. However, the contract administrator does not receive copies of these audits nor does he have a copy of the NSF standards that are used to evaluate the food service.

Fairmont did not provide evidence to the Legislative Auditor that it had followed the auditing recommendations made by the consultant.

West Liberty is aware that its food service vendor has contracted for twice-a-year independent audits to determine how well the food service department is meeting NSF standards. However, the contract administrator does not receive copies of these audits nor does he have a copy of the NSF standards that are used to evaluate the food service. The contract administrator noted:

(The) Contract doesn't require vendor to provide it, or, for that matter provide results from the independent audit. If I needed more paperwork to pour over, I'm sure I'd have no trouble getting self-audits and action reports

from vendor...

West Liberty added that the contract does allow the institution to access all of these documents if necessary.

Administrative Confusion

One vice president for student life remarked that the institution is not worried about what is going on because it has purchased the protocols for food handling and it is up to the vendor to perform appropriately.

Because the food service vendor is employed to provide professional food service, institutions are concerned that they create a partnership that does not hamper the efforts of the vendor. One vice president for student life remarked that the institution is not worried about what is going on because it has purchased the protocols for food handling and it is up to the vendor to perform appropriately. Further, several RFPs reviewed state the intent of various institutions to develop a partnership with the food service provider. Allowing the vendor to perform is how the institution perceives its responsibility to the vendor. Enforcement of rules, regulations or contract provisions is not part of the institution's perception of its role. **However, the institution is in fact the vendor's customer and not its partner.**

The assumption on the part of the institutions is that communication with the food service vendor, and the receipt of information prepared by the vendor in conjunction with eating in the dining facility and receiving feedback from students, fulfills the function of monitoring the food service vendor.

What constitutes monitoring of the contract is another area of confusion. All of the institutions meet with the food services vendor either regularly, or periodically. They also receive financial statements from the vendor on a regular basis. The assumption on the part of the institutions is that communication with the food service vendor, and the receipt of information prepared by the vendor in conjunction with eating in the dining facility and receiving feedback from students, fulfills the function of monitoring the food service vendor. However, monitoring requires ongoing, systematic and concrete evaluation and documentation for compliance of the vendor with all of the areas within the food service contract.

In a recent performance audit, the state of Georgia defined contract monitoring as a **system** incorporating:

...the structure, policies, and procedures used to ensure that the objectives of the contract are accomplished and vendors meet their responsibilities. (Emphasis added.)

None of the five institutions reviewed in West Virginia conduct food service contract monitoring that is ongoing, systematic and documented.

None of the five institutions reviewed in West Virginia conduct food service contract monitoring that is ongoing, systematic and documented. There are no financial audits of the food contractor. There is no annual review of the food purchased and supplied by the food service contractor. There is no procedure to document and monitor compliance in terms of the menu requirements and food preparation. No institutions receive a direct report from

the county health department sanitarian and none state that they routinely review the sanitation reports. There is no annual review of compliance with state and federal regulations for personnel practices.

According to the Georgia state auditor, the purpose of developing an effective contract monitoring system is to mitigate the probability of an event or action having an adverse effect on a state agency.

According to the Georgia state auditor, the purpose of developing an effective contract monitoring system is to mitigate the probability of an event or action having an adverse effect on a state agency. Lacking the information that would be developed through contract monitoring, the institutions do not know whether they are receiving what they have contracted to receive from the food services vendor, and they may be at risk for the development of a serious problem.

Potential Risks of Not Monitoring Contracts

Without monitoring, the institution doesn't know whether it is getting what it has contracted for in terms of food quality and standards of operation.

When institutions fail to identify areas to monitor in food service contracts and do not develop monitoring and auditing processes through the establishment of an on-going monitoring schedule, important oversight of such areas as financial return, food quality, personnel practice, safety procedures, and sanitation is relinquished. This can result in the possibility that the food contractor is not meeting the terms and conditions of the contract. Without monitoring, the institution doesn't know whether it is getting what it has contracted for in terms of food quality and standards of operation. Possible consequences for a failure to monitor include:

- **Financial.** The institution may receive less in commission and/or profit-sharing than it is entitled to receive. Accounting practices may mean that the food vendor's expenses are less than reflected in financial statements. For example, food rebates remitted to the food vendor at the end of the year from the food supplier may mean that the food vendor paid less for food than is reflected in the financial statements submitted to the institution.
- **Food Quality.** The institution may not receive the food quality specified in the contract. A lower, or different standard in food may actually be presented to the students and staff. Food invoices for food orders in March 2004 indicated that Glenville was being served eggs that did not meet the standard specified in the food service contract. The fresh eggs were of a smaller size than specified in the contract. While Glenville requires strictly fresh eggs be served, the food invoices show a number of frozen and boiled, peeled eggs being ordered by the food service vendor.
- **Food Safety.** Operational standards may not be followed,

An effective contract monitoring system would mitigate the risk associated with these activities of the vendor.

compromising the wholesomeness of food served at the institution. A recent survey in the Mid-Atlantic states of over 500 food service employees indicated that over 90% had not been exposed to a structured general food safety education course. Such a program should cover four major topics: 1) The extent and causes of food borne illness; 2) The food flow process, and the importance of time and temperature; 3) Contamination and cross-contamination; and 4) Personal hygiene and sanitation. According to the Food and Drug Administration, an estimated 76 million illnesses, 400,000 hospitalizations and 5,000 deaths are attributable to food borne illness in the United States each year. An informal survey of food service employees at the five institutions indicated that most employees who were not managers had not received a structured course from the vendor, but had received on-the-job training and were familiar with implementing the four topics of a structured training program. Monthly meetings and discussions were used by three vendors to reinforce proper procedures.

- **Personnel.** Hiring and promotional practices of the vendor, required to conform to state and federal laws, may not be followed in regard to the vendor's own employees. Food service vendors typically operate the food service with a "mix" of state employees and their own employees. The institution may find itself responsible as a "co-employer" for actions of the vendor in regard to its employees located on campus.

An effective contract monitoring system would mitigate the risk associated with these activities of the vendor. The probability of an event or action of the food vendor having an adverse effect on the institution would be significantly lessened.

Contract Monitoring Is Essential

Poor management of service contracts at the federal level has caused the United States General Accounting Office to study how businesses in the private sector manage and control their service contracts.

Wharton School of Business researchers Ravi Aron and Jitendra Singh, in a research article on operations management, note that "Disorder and entropy in an unmeasured or unmonitored system will always increase." Poor management of service contracts at the federal level has caused the United States General Accounting Office to study how businesses in the private sector manage and control their service contracts. Both the private and the public sector conclude that contract monitoring is essential to assure not only that the contracting entity receives what it has paid for, but also to maintain the desired level of service.

Dining Insights, a trade publication, agrees that contract administrators must monitor and manage their food service in order to maintain the quality of

the food service, and keep costs from escalating. While smaller institutions may feel that they lack the expertise to monitor and manage food service contracts, NACUFS sponsors an annual training seminar and publishes a best practices manual. The seminar teaches higher education institutional staff how to administer a food services contract. The manual is entitled Professional Practices in College & University Food Services and addresses the philosophy, planning, contracting process, contract compliance, controls and assessment of food service contracts.

Conclusion

Dining services are a complex business enterprise embedded in the institution's campus. They must serve and please a diverse customer base. When the institution contracts with a food vendor, the institution may assume that it is shifting the responsibility for the service to the contractor. Because the contractor is performing the function of providing food service, the contractor may be assumed to be responsible for the food service. **However, only the performance of the function can be contracted; the responsibility for the food service remains with the institution.**

Because the contractor is performing the function of providing food service, the contractor may be assumed to be responsible for the food service. However, only the performance of the function can be contracted; the responsibility for the food service remains with the institution.

The five institutions with food service contracts have not fulfilled their responsibility under state law to review the overall contract in terms of compliance, or to coordinate periodic detailed operational and financial audits. They are also not conforming to national best practices. The protection of the legal and financial interests of the state, and the persons using the services provided by the vendor are at risk through the lack of contract monitoring.

The protection of the legal and financial interests of the state, and the persons using the services provided by the vendor are at risk through the lack of contract monitoring.

Recommendations

2. *The Higher Education Policy Commission should require that all institutions with contracted food service operations develop a schedule and procedures to document operational and financial monitoring of the food service to include all areas of legal compliance specified in the contract, all personnel practices of the vendor, food safety procedures, food quality and sanitation requirements stated in the contract.*
3. *The Higher Education Policy Commission should require the training of institutional food service contract administrators through a recognized training program in food service contract administration.*

Issue 3

The Legislative Auditor, Through the Assistance of a Department of Agriculture Inspector, Found Inadequacies in Food Quality and Safety of Food Served at Institutions.

Issue Summary

The Legislative Auditor entered into a Memorandum of Agreement with the West Virginia Department of Agriculture to evaluate requirements for food quality in the five contracts with food service vendors at institutions of higher education, and to test certain food products being served to students. The Department of Agriculture tested ground meat, milk, fresh eggs and soft serve ice cream to determine compliance with labeling and state safety standards.

The evaluation found labeling violations of ground meat, operation of soft ice cream machines without permits, and food products that did not meet state safety standards.

The evaluation found labeling violations of ground meat, operation of soft ice cream machines without permits, and food products that did not meet state safety standards. Food service vendors were not serving ground beef that conformed to some institutions' standards of quality, and fresh eggs did not always conform to the institutions' food quality requirements. Fruit was seen that did not conform to quality requirements in some contracts. Some vendors accepted dented cans in food shipments, and one institution, as a result of our inspection, discarded several five pound cans which were dented and appeared to have compromised seals.

These findings reinforce earlier conclusions in Issues I and II of this report that institutions need assistance to develop requirements for certain aspects of their food service, and that regular monitoring of food service needs to be implemented by each institution.

These findings reinforce earlier conclusions in Issues I and II of this report that institutions need assistance to develop requirements for certain aspects of their food service, and that regular monitoring of food service needs to be implemented by each institution.

Condition and Adherence of Food to Quality Standards

The Legislative Auditor sought the assistance of the Department of Agriculture to determine the condition and quality of the food being provided to students at the five smaller institutions with food service vendors. Representatives from both offices made unannounced visits to all five institutions in November 2004. Ground meat and dairy products were tested to determine whether they conformed to labels on the packaging of the products. Fresh eggs in shells were examined to determine their size and condition. Where soft serve ice cream was provided to students, the institutions were asked if they had obtained an operating permit. Such a permit is required to operate a soft serve machine in West Virginia. Samples of the soft serve ice cream were taken and tested.

The Legislative Auditor found the following:

- **West Liberty College.** The ground meat was labeled correctly for lean/fat content, with samples of ground beef and ground turkey being obtained and tested. The ground beef was found to have almost 25% fat which matched the labeling. **According to the United States Department of Agriculture most ground beef is not graded, which would mean that the ground beef is not in conformance with the college's meat grade requirement that "all meats be prime."** No grade information was seen on the label from which the ground beef sample was taken. **The contract did not make any specification regarding fresh eggs of any form. The vendor chose to serve only frozen liquid eggs, a standard food product.** Since fresh eggs were not served by the vendor, there were no fresh eggs to be tested. Soft serve ice cream is not served, so there was no soft serve ice cream to be tested. Milk was labeled properly. The tested milk was 2% reduced fat milk. Fruits and vegetables appeared fresh and mature with the exception of the oranges which did not appear to be adequately ripened. The food service vendor did not state it had a policy regarding dented cans. Four five-pound cans of black bean garlic sauce were found with dents so severe that they possibly compromised the hermetic seals. As a result of this inspection, the vendor removed the cans from dry storage and disposed of them.
- **Fairmont State University.** The ground beef was labeled correctly for lean/fat content but is not in conformance with the quality specifications issued by the vendor that beef will be USDA prime and choice grade, since most ground beef is not graded, and no grade information was found on the label. **The fresh eggs, while conforming to the vendor's quality specifications of size and grade, were tested and found not to meet state safety standards in terms of shell conditions. This was possibly a fault of the egg processing plant or distributor, not the vendor, and does not reflect handling at the institution.** As a result of our review, and during the onsite inspection, the vendor disposed of over nine dozen eggs. Low fat chocolate milk was tested, and labeling was found to be correct. The university does have a soft serve ice cream machine and current operating permit, but the machine was not in operation at the time of the inspection. No samples of soft serve ice cream were tested. All fruits and vegetables appeared to be fresh and mature. Dented cans were found in the dry storage, but none had dents that appeared to compromise the cans' seals.

-
- **Glenville State College.** The ground beef was labeled correctly for lean/fat content, but did not conform to the contract requirement that “*ground beef not exceed 20% of fat content.*” The ground beef was labeled 75% lean/25% fat, and testing found that the ground beef was at 25.11% fat. The tested milk was 2% reduced fat milk and was labeled properly. The contract requires that whole milk is to contain at least 3.5% butter fat but there is no mention of milk with reduced fat. **The fresh eggs passed state safety standards but did not conform to the contract requirement of US Grade A large.** The tested eggs were Grade AA medium, a higher grade than the minimum grade required by the contract, but a smaller size egg. The college does have a soft serve ice cream machine with a current operating permit. **Two of the samples of the soft serve ice cream violated state health safety standards for coliform bacteria counts.** There will be a re-inspection of the soft serve ice cream. Oranges were observed that appeared old and moldy, in violation of the contract specifications that “*all fresh fruits and vegetables shall be top grade.*” The vendor at this college stated that its policy regarding dented cans is to not accept any dented cans from the food supplier. There were no dented cans found on the shelves in dry storage.
 - **West Virginia State University.** Ground beef and ground turkey samples were tested. **The ground beef was not labeled correctly for lean/fat content. It was labeled 80/20 but found to have 16.86% fat instead of 20 % on the label. The test results were outside the +/- 2% tolerance level. This was a fault of the food processor, not the vendor or the university.** The university contract requires that all beef be “choice.” Since most ground beef is not graded, and there was no meat grade on the ground beef label, the ground beef is not in conformance with the minimum requirements of the food service contract. Milk tested within fat content limits and was labeled properly. Eggs were labeled properly as Grade AA medium, and were above the minimum Grade A required by the university. The university has a soft serve ice cream machine and serves this dairy dessert to its students. **The university was found not to have an operating permit, and the samples of the soft serve ice cream from the machine had high amounts of coliform bacteria and did not meet state safety standards.** There will be a re-inspection of the soft serve ice cream. A variety of fresh fruits and vegetables appeared fresh and mature. There were no dented cans in dry storage, although the vendor did not state a specific policy of refusing all dented cans received from the

food supplier.

- **Concord State University.** A ground beef sample was tested and found to meet the label specifications of 75/25 lean to fat. Since most ground beef is not graded, and there was no grade on the label, the ground beef did not conform to the contract grade specification of choice beef. A milk sample of 2% reduced fat milk was tested and found to be labeled correctly. Eggs were tested and found to meet state safety standards. They also conformed to contract specifications of Grade A. Although the university has had a soft serve ice cream machine for 14 years, it didn't have an operating permit because the food service was not aware that it needed one. Samples of soft serve ice cream were tested and found to meet state safety standards. Fruit and vegetables appeared fresh and wholesome. There were no dented cans in the dry storage area due to the vendor's policy of refusing dented cans from the food supplier.

In addition to taking food samples, other conditions affecting the preparation of food were noted. They were:

- **Incorrect food storage.** Incorrect storage of raw and cooked meat products was seen at Fairmont. This involved the placement of raw meat next to and above cooked meat in the meat locker. **It appears this type of incorrect storage is an on-going problem at this institution.** This was the same type of critical violation that had been noted during a health department sanitation inspection on October 17, 2003, and corrected on a re-inspection on December 2, 2003.
- **Dented cans.** The dented cans that were identified and removed at West Liberty were severely dented, and one can appeared to have contents which had oozed from the seal and dried at the bottom of the can. These cans had been listed on the inventory since August 2004 and should have been removed from storage, properly disposed of, and destroyed.
- **Equipment problem.** At Glenville, a food storage locker (scheduled to be replaced in 2005) was found to have a product stored near the door of the locker, allowing mildew to grow on the exterior packaging. Apparently a leaking door seal allowed moisture into the air. The food product appeared to be completely sealed, and the mildew was on an outer wrapping of plastic-coated paper over the container. The food service director indicated that this product was not used very often,

and that he would sanitize the container prior to use. The inspector from the Department of Agriculture did not consider it necessary to remove this food product from the shelves.

- **Lack of operating permits.** Two institutions did not have operating permits for their soft serve ice cream machines, and had never had their soft serve ice cream inspected. At one of these institutions, West Virginia State, soft serve ice cream samples with very high amounts of coliform bacteria were discovered. Since samples of the product placed into the machine showed no such problem, the cleaning procedures and sanitizing operation for the machine are presumed to be the cause. However, no inspections had been made to assist the institution with sanitizing procedures and monitoring the ice cream for purity. The Department of Agriculture was not aware that West Virginia State and Concord had soft serve units in operation. **Individuals with compromised immune systems are at risk for illness from such high levels of bacteria.**

Minimum Food Quality Specifications

The Department of Agriculture also evaluated the institutions' food specifications in the food service contracts, and provided a basic list of minimum specifications. In addition to the Agriculture list, based on the actual food observed being prepared and served, institutions should provide specifications about ground beef (lean/fat content) and fresh eggs. The following are minimum food specifications:

- **Beef.** Beef should be USDA Choice with 1/4 inch trim on cuts. This will allow for a consistent yield grade. The Department of Agriculture noted that prime cuts are very expensive and perhaps not the best use of budget dollars.
- **Veal.** Veal should be USDA Choice with 1/4 inch trim on cuts. Veal standards also usually include the color of lean tissue, ranked from 1 to 3.
- **Pork and Lamb.** USDA "1"
- **Poultry.** USDA Grade A.
- **Eggs.** USDA Grade A.
- **Fish.** USDA Grade A
- **Milk and Milk products.** USDA Grade A, Vitamin D enriched.
- **Canned Fruits and Vegetables.** US Fancy or US Grade A.
- **Frozen Fruits and Vegetables.** US Fancy or US Grade A.

-
- **Fresh Vegetables.** US Number 1 or US Fancy.
 - **Fresh Fruits.** US Extra Fancy, US Number 1, US Extra Number 1 (Depending on the fruit).

All five institutions have contract variations in their food specifications, and none include all of the minimums detailed by the Department of Agriculture.

The November 2004 visits to the kitchens of the five smaller institutions with food service vendors uncovered contract violations and a variety of problems.

Such problems and contract violations could have been avoided with regular monitoring by the institution's contract administrator, appropriate descriptions of food quality using Department of Agriculture guidelines, and a comprehensive model request for proposal developed by the Higher Education Policy Commission when institutions are seeking food service vendors.

All five institutions have contract variations in their food specifications, and none include all of the minimums detailed by the Department of Agriculture. The Legislative Auditor noted that two colleges, West Liberty and Glenville, require prime cuts of beef despite the cost. West Liberty makes this an absolute requirement for all meat. Only Glenville specifically addresses ground beef by requiring a lean/fat content. **Since ground beef is frequently served at all of the institutions, this should be addressed by all institutions as a meat specification.** None of the institutions require a 1/4 inch trim on beef and veal cuts, although this is the best way to ensure a consistent grade. In addition, veal color is not mentioned by any institution although this is a quality indicator for veal. Four of the institutions require Grade A eggs as a minimum, although only Glenville specifically requires fresh eggs. West Liberty does not make any requirement for its eggs. Such variations and omissions can be avoided by utilization of the food expertise of such agencies as the Department of Agriculture and the Division of Health.

Conclusion

The November 2004 visits to the kitchens of the five smaller institutions with food service vendors uncovered contract violations and a variety of problems. Problems with food included labeling violations from food processors, food in the form of shell eggs and soft serve ice cream which did not meet state safety standards and could be potentially unsafe, and defective cans on one institution's storage shelves which may have lost their hermetic seals and could be potentially unsafe. Contract violations of food specifications were found at all five institutions, with four of the institutions specifying only beef grades and not describing specifications for ground beef. An equipment problem with a food storage locker door seal allowed the growth of mold and mildew on the exterior of packaging. Finally, a problem with food handling involved the repetition of an earlier meat storage problem which constitutes a "critical violation" when health department inspections are made. Such problems and contract violations could have been avoided with regular monitoring by the institution's contract administrator, appropriate descriptions of food quality using Department of Agriculture guidelines, and a comprehensive model request for proposal developed by the Higher Education Policy Commission when institutions are seeking food service vendors. In addition, the Department of Agriculture has qualified experts who can assist the institutions in evaluating their food service products.

Recommendations

4. *The Higher Education Policy Commission should develop a standardized set of minimum food quality specifications considered adequate for all institutions of higher education.*
5. *Food quality specifications in future agreements with food service vendors at all institutions should incorporate the same standardized minimum specifications developed and approved by the Higher Education Policy Commission.*
6. *Each institution with a food service contract should consider having the Department of Agriculture assist them in monitoring the contract in terms of assessing food quality and food safety through an annual inspection of food quality.*

Issue 4:

The Extension of Fairmont’s Food Service Contract Denies Competitive Bidding for Two Additional Years.

Issue Summary

Chapter 18B-5-4 of West Virginia code requires that institutions of higher education must advertise for bids on all purchases exceeding twenty-five thousand dollars. In 2001, Fairmont State University conducted a bid process in order to secure a vendor for its campus food service operations. Four vendors responded and Aladdin Food Management Services was awarded the contract. However, the following year Fairmont changed the length of the contract by adding additional renewal options. This extended the contractual relationship with Aladdin from five to seven years. Fairmont’s addition of two renewal periods to the contract, without bid, is not in compliance with the requirement to solicit bids for purchases over \$25,000.

Fairmont’s addition of two renewal periods to the contract, without bid, is not in compliance with the requirement to solicit bids for purchases over \$25,000.

Institutions of higher education manage their contracts and determine what actions are appropriate under state law, the higher education purchasing rule and the higher education purchasing manual without direct oversight by the Higher Education Policy Commission. The HEPC has no mechanism to enforce compliance with state law, rules or policies, and does not require institutions to seek guidance prior to taking actions in regard to food service contracts. There is no record of whether the institution sought guidance from the HEPC before extending the contract.

Since Fairmont took an action that violated §18B-5-4, this might result in the contract being considered invalid and rendered void under state code.

Since Fairmont took an action that violated §18B-5-4, this might result in the contract being considered invalid and rendered void under state code. If the contract were considered void, this has the potential to disrupt the provision of food service to the institution. Other vendors who were denied the opportunity to compete for the additional two years of the food service contract could perceive this action as a way to circumvent the bid process and take legal action against the institution. However, under existing state code this extension was legal and approved by the Attorney General’s Office. Presently, the state code does not address renewal periods, or the addition of renewal periods to an existing contract. Consequently, the addition of renewal periods was approved by the Attorney General’s Office.

Contract Extension

In June 2001, the vice president for administration and finance at Fairmont signed a contract for Aladdin Food Management Services to provide

the management of the food service programs at the institution. This agreement followed the original solicitation of food service vendors for a five year period (a one year contract with four renewal options). Four national and regional food service vendors responded to this solicitation. The 2001 contract with Aladdin anticipated circumstances at Fairmont that might require some adjustment or inconvenience to the vendor, and that the financial terms of the contract would then be subject to an adjustment to the board rate. Instead, Fairmont extended the contract renewal options to compensate the vendor for any inconveniences.

When Fairmont decided to relocate the dining hall due to the construction of a new student activities facility on campus, the procurement officer added two additional one year renewal options to the contract.

When Fairmont decided to relocate the dining hall due to the construction of a new student activities facility on campus, the procurement officer added two additional one year renewal options to the contract. In a memorandum to Aladdin Food Management Services Inc., dated September 23, 2002, the director of procurement stated:

As you know, the College will be relocating the Dining Hall due to the construction of a new Student Activities Center. As a result, the College would like to add two (2) additional one (1) year renewal options to your contract. The renewals would be in accordance with the terms and conditions of the original contract.

The food service vendor agreed to accept the two additional renewal periods, and signed and returned the memorandum to the Fairmont procurement officer.

If you agree to adding two additional one year renewal options, please sign, date and return to me as soon as possible.

The food service vendor agreed to accept the two additional renewal periods, and signed and returned the memorandum to the Fairmont procurement officer. The memorandum is included with the contract and a change order to renew the contract for an additional year, in accordance with the terms and condition of the original contract (Effective August 1, 2002 to July 31, 2003). The change order also adds two additional one year renewal options to the contract. On the face of the change order it is noted:

*Original number of renewals available: 4
Additional renewals added per CO #1: 2
Renewals used: 1
Renewals remaining: 5*

The vice president for administrative and fiscal affairs gave this explanation about why Fairmont made this decision:

This contract was extended for two years because the transition years to get to the new facility will create unfavorable conditions for the vendor operating out of a facility that is an interim solution.

While the institution had a reason to compensate the vendor for the possible monetary loss caused by the temporary relocation of the food service operation, the action that the university took by extending the food service contract is not in compliance with state code.

While the institution had a reason to compensate the vendor for the possible monetary loss caused by the temporary relocation of the food service operation, the action that the university took by extending the food service contract is not in compliance with state code. **Fairmont advertised for bids for a five year provision of food services, not for seven years.** Either the longer period of time should have been incorporated at the time of the solicitation for bids, or the additional two years should have been competitively bid. **By adding additional years to the contract, the institution denied vendors an opportunity to bid for the two additional years.**

Requirements to Advertise for Purchases Over \$25,000

Chapter 18B-5-4 of West Virginia code requires that all institutions of higher education must advertise for bids on all purchases exceeding twenty-five thousand dollars.

Chapter 18B-5-4 of West Virginia code requires that all institutions of higher education must advertise for bids on all purchases exceeding twenty-five thousand dollars. This is also stated in the procedural rule for purchasing issued by the Higher Education Policy Commission which states:

8.11.1 Competitive sealed bidding is the preferred method for purchase and acquisition of materials, supplies, equipment, services, construction and printing greater than \$25,000.

In addition, section 5.4 of the March 2004 edition of the WV Higher Education Purchasing Procedures manual also requires competitive bidding for all purchases greater than \$25,000.

Further, violations of the higher education procedural rule for purchasing are treated under §133-3015 which states:

15.1 Any person who authorizes or approves a purchase contract in a manner in violation of the West Virginia Code, this rule, or any policy or procedure adopted by the Commission, and the Governing Board, shall be personally liable for the cost of such purchase or contract. Purchases or contracts violating the West Virginia Code and/or this rule shall be void and of no effect.

However, nothing in the higher education purchasing code addresses the addition of renewal year options once the contract is bid. **The addition of such renewals allows purchases without competitive bidding, and is unfair to vendors who had an expectation to bid on the contract at the end of the award period.**

When the change order to the original Fairmont contract was reviewed by the Attorney General's Office in 2002, the addition in the change order of two renewal periods was approved.

Attorney General's Approval

When the change order to the original Fairmont contract was reviewed by the Attorney General's Office in 2002, the addition in the change order of two renewal periods was approved. The Legislative Auditor spoke to a representative of the Attorney General's Office regarding this extension approval. Since the approval had occurred in 2002, there was no specific information about the purchase order approval. It may be that the approval was granted as part of the process, and the renewal periods were overlooked. It may also be that since there is nothing in state code prohibiting the extension of renewal periods to existing contracts, it would be difficult for the Attorney General's Office to reject a contract for this reason.

Possible Disruption of Food Service Provision

If the food service contract is considered void, it could have the following consequences for the institution and its employees:

- **Disruption of the provision of food** to the residential students, and daily campus visitors (off campus students, faculty, staff and other visitors);
- **Actions against the institution** by vendors who may perceive this extension as a way to circumvent the bid process and initiate legal action as the result of being denied the opportunity to bid on the additional two years of food service.

There is no centralized requirement or procedure to ensure that contracts are reviewed, and that the actions taken by institutions are guided by law, and policy.

Higher Education Policy Commission Oversight

There is no centralized requirement or procedure to ensure that contracts are reviewed, and that the actions taken by institutions are guided by law, and policy. Changes in state code in the past few years mean that institutions of higher education no longer purchase through the centralized purchasing division of the state. Review of contract purchase orders by the division of purchasing

is no longer required. In addition, in 2004 the review of contracts as to form and sufficiency of execution by the attorney general's office was no longer required for most contracts, with these exceptions:

- contracts for legal services;
- contract, or change order changes that would make substantive changes to terms and conditions or standardized forms previously approved by the attorney general;
- lease-purchase agreements for capitol improvements (including equipment) which total more than \$100,000 over the life of the agreement;
- and leases which exceed \$100,000 annually in rental payments.

Instead, the Higher Education Policy Commission (HEPC) is charged with the development, establishment and implementation of the policies for the purchasing procedures to be followed by institutions in the higher education system. However, with the exception of construction projects, the HEPC does not review other contracts established by the institutions of higher education. The assistant director of facilities for the HEPC noted that under the higher education purchasing system, the institutions manage their contracts and determine what is appropriate. He also stated:

Of course, they are to follow state law, the higher education purchasing rule and the Purchasing Manual in making their determination.

The only mechanism that the HEPC has to enforce compliance with these requirements is through periodic purchasing performance and compliance audits.

The only mechanism that the HEPC has to enforce compliance with these requirements is through periodic purchasing performance and compliance audits. When asked about the Fairmont contract extension, the HEPC official could not recall whether he had given any verbal advice regarding the appropriateness of the contract extension through the additional renewal years. He was unable to find any written record of a consultation or conversation with the procurement officer at the university.

Conclusion

A food service contract is a legally binding agreement between a contractor and the educational institution. However, there is minimal oversight by the state to ensure that proper purchasing procedures are followed by institutions of higher education, and that these institutions follow the state code. When Fairmont sought to provide compensation to its food service vendor for disruption to the food service operation and a possible monetary loss, the university extended its food service contract for two additional renewal years.

This was not in compliance with the legal requirement to provide competitive bids for purchases over \$25,000. However, the renewal periods were approved by the Attorney General.

The Legislative Auditor concludes that the Higher Education Policy Commission should establish a mechanism to require oversight of all higher education purchasing contracts and contract changes to ensure that contracts and changes are made in compliance with policy, procedure and state code.

Recommendations

7. *The Higher Education Policy Commission should establish a procedure that would provide oversight of all contracts, and changes to contracts to ensure that such contracts conform with internal purchasing policies, and state code.*

8. *Fairmont State University should re-bid the food service contract at the end of the original five year period, in 2005.*

9. *The Legislative should consider changes to state code to address change orders involving the addition of renewal options within state contracts in order to avoid an apparent circumvention of purchasing rules.*

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

December 29, 2004

Dr. J. Michael Mullen, Chancellor
Higher Education Policy Commission
1018 Kanawha Blvd., East, Suite 700
Charleston, WV 25301-2827

Dear Dr. Mullen:

Pursuant to §18B-5-4(n) of the West Virginia code, this is to transmit a draft copy of the completed report for 2004 of the Legislative Auditor's review of the purchasing functions at higher education institutions. This report concerns the food service contracts at West Liberty, Glenville, Fairmont, West Virginia State and Concord. Draft copies of the report have also been submitted to these five institutions. We are scheduled to present this report on January 10, 2005 to the Legislative Oversight Committee on Education Accountability at the 4-6 p.m. meeting.

We would like to schedule an exit conference with you at your convenience on Tuesday, January 4, 2005 to discuss any concerns you may have with the report. Please contact Gail Higgins to set up the meeting time and location. We plan to exit only with the Higher Education Policy Commission, and not with individual institutions' administrations. Therefore, we expect that the HEPC will gather institutional responses and comments for the agency's written response. We will need a copy of your written response by noon on Thursday, January 6, 2005 for it to be included in the final report.

Thank you for your cooperation.

Sincerely,

Handwritten signature of John Sylvia in cursive script.
John Sylvia

Joint Committee on Government and Finance

Appendix B:

MEMORANDUM OF UNDERSTANDING

RECEIVED
OCT 28 2004

PERFORMANCE EVALUATION AND
RESEARCH DIVISION

This document serves as a Memorandum of Understanding between the West Virginia Legislative Auditor's Office and the West Virginia Department of Agriculture concerning assistance requested by the Legislative Auditor from the Commissioner of Agriculture.

The Legislative Auditor is conducting a performance evaluation of all purchasing functions performed at public institutions under the Higher Education Policy Commission, in accordance with W.Va. Code §18B-5-4. Specifically, the development and application of food service contracts is being reviewed at the following institutions: West Virginia State University, Glenville College, Fairmont University, West Liberty State College and Concord University. The evaluation is scheduled to be completed by January 5, 2005. The Legislative Auditor requests that the Commissioner of Agriculture provide technical assistance to the Legislative Auditor's staff. The assistance is needed during the period of October 30 through December 23, 2004.

The Commissioner of Agriculture agrees to provide sufficient personnel to assist the Legislative Auditor's staff in its performance evaluation of the Higher Education Policy Commission. The personnel will, consistent with their agricultural training and areas of expertise assist the Legislative Auditor's staff by:

- Providing a critique of language in food service contracts regarding food quality, grades specified, and applicability to institutional needs;
- Sampling the ground beef at each of the aforementioned institutions to determine the total composition of the ground beef (the fat content, the amount and type of any filler present and the amount of meat);
- Checking the fresh fruit in each of the food service facilities and providing general observations and grade information as specified on packages;
- Inspecting eggs at each of the food service facilities to determine what is actually present according to package information, form (fresh, frozen or pre-cooked), and storage conditions;
- Inspecting canned goods, opening some cans to determine if the description on the label matches the contents of the can, and indicating the grades as specified on the labels and the can conditions;
- Noting any general sanitation concerns while present in the facilities;
- Inspecting dairy products, noting what is there according to package information and examining milk for fat content and expiration dates;
- Inspecting any soft serve ice cream machines for sanitary conditions and determining if

Page 1 of 2

proper permits were obtained from the Department of Agriculture; and

- Reporting on poultry and pork package information, and how poultry is handled;

The specific dates of assistance will be mutually agreed to by October 30, 2004.

In return for the assistance outlined above, the Legislative Auditor agrees to reimburse the West Virginia Department of Agriculture for travel expenses, reimbursable under the Department of Agriculture's travel rules, incurred by employees of the Department of Agriculture in providing the assistance. The amount of the expenses to be reimbursed may not exceed \$2,500.00.

The Legislative Auditor recognizes that personnel provided by the West Virginia Department of Agriculture are qualified to perform specific tasks within the purview of the Department of Agriculture, and therefore will assist the Legislative Auditor by providing information and technical assistance at the institutions within the limitation of their agricultural training and areas of expertise.

Agreed to this 27 day of October, 2004:



Gus R. Douglass

Commissioner of Agriculture



Aaron Allred

Legislative Auditor



State of West Virginia
DEPARTMENT OF AGRICULTURE
Gus R. Douglass, Commissioner

Janet L. Fisher
Deputy Commissioner

Steve Hannah
Deputy Commissioner

Legislative Auditor's Office/WV Department of Agriculture
College Food Service Audit

Institution: Glenville State College

Address: 200 High St., Glenville, WV 26351

Telephone: 304-462-4108

Date: November 16, 2004, 2:30 – 4:40 PM

Person Contacted/Title: Steve Shattuck, Director, Dining Services

Ground beef, poultry and pork

- Sysco ground beef, label showed 75/25 (75% lean/25% fat): analysis found 25.11% fat (results within tolerance of +/- 2%, therefore non-violative).
- Sysco ground turkey, no fat claim: analysis showed 20.61%.
- All products from approved sources.
- Cooler 39F (maximum is 41F), freezer -5F (maximum is 0F).
- Distributor is Sysco, Harmony, PA.

Dairy products

- United 2% reduced fat milk: analysis showed 2.0% milkfat – non-violative.
- Standard Plate Count and Coliform Count were non-violative.
- Cooler 39F (maximum is 41F).
- Distributor is United Dairy, Inc., Fairmont, WV.

Shell eggs

- 15 dozen Sysco USDA Grade AA Medium White, 91%AA, 3%A, 5% checks, 1% blood – pass.
- Cooler 39F (current WVDA rule maximum is 45F but will be amended to 41F).
- Distributor is Sysco, Harmony, PA.

Glenville State College
200 High Street
Glenville, WV 26351
November 16, 2004
Page 2

Soft serve

- Vanilla and chocolate light ice cream mixes and finished products of vanilla, chocolate and swirl light ice cream analyzed by Standard Plate Count and Coliform Count. Mixes and chocolate light ice cream were non-violative. Vanilla light ice cream and swirl light ice cream had coliform counts of 11 and 41, respectively (limit is 10). Standard Plate Counts were non-violative. Firm will be contacted for resamples.
- Cooler 34F (maximum is 41F).
- Mix distributor is Sysco, Harmony, PA.

Storage temperatures

- Meat 39F, Dairy and shell eggs 39F, Produce 38F, Soft serve mix 34F, Freezer -5F, Dry 68F.

Fresh fruit

- Variety of fruits and vegetables, most fresh and mature. Oranges appeared old, one moldy orange observed in storage cooler and removed.
- Cooler 38F (storage temperatures vary depending on product).
- Distributor is Sysco, Harmony, PA.

Canned goods

- All dry storage products on shelves.
- All dented cans are returned to Sysco per contract.
- Opened can of Sysco cut sweet potatoes – product as labeled.
- Storage temperature 68F (recommended range is 50 – 70F).

Misc.

- Contractor is Aramark.
- No HACCP system.
- Daily in-house temperature logs kept for refrigerated storage units, hot and cold foods on serving line.
- Food service areas undergoing remodeling. Prep kitchen and serving area on different floors of dining hall. Access by elevator. Main storage cooler and freezer are free standing units outside approximately 20 ft. from prep kitchen.
- Cluttered prep kitchen due to remodeling.

Firm#: 2802 Sample#: 6369

FROZEN DESSERT SAMPLE REPORT

Time: 4:30:00 PM Date: 11/16/2004 Phone: 462-4108
 200 High Street
 Address: Harmony, PA
 Address: Harmony, PA
 Address: Harmony, PA

13. 1/2 Gallons
 Amount Mix in Stock
 Person Contacted (Name and Title)
 Cindy Phares

Glennville State College
 Firm Name
 Sysco Food Services of Pittsburgh
 Mix Distributor
 34 F
 Cooler Temp.

SAMPLE DATA: Mix sample(s) collected from previously unopened container(s). Mix container(s) were sanitized and agitated prior collection. A small amount was drawn from freezer unit(s) prior to collection of sample(s).

Sub Sample	Machine Number	Product Sampled	Plant Number	Date Code	SPC	Laboratory Analysis		Temperature Control at	
						Test Completion Date/Time	Collform Bacteria	Violative	Test Completion Date/Time
A		Vanilla Light Ice Cream Mix	21-031	Dec 29	<25,000	11/19/04 11:20 a	<1	<input type="checkbox"/>	4/1/1123 10:20 a
B	1	Vanilla Light Ice Cream			<25,000	11/19/04 11:20 a	11*	<input checked="" type="checkbox"/>	4/1/1123 10:20 a
C		Chocolate Light Ice Cream Mix	21-031	Jan 10	<25,000	11/19/04 11:20 a	<1	<input type="checkbox"/>	4/1/1123 10:20 a
D	1	Chocolate Light Ice Cream			<25,000	11/19/04 11:20 a	9	<input type="checkbox"/>	4/1/1123 10:20 a
E	1	Vanilla/Chocolate Light Ice Cream Swirl			<25,000	11/19/04 11:20 a	41*	<input checked="" type="checkbox"/>	4/1/1123 10:20 a

Kim Sykes
 Regulatory Officer
 > : Greater Than
 < : Less Than

SPC: Standard Plate Count
 (Bacteria counts in colonies per gram)
 SPC Limit <50,000 Collform Limit <10
 Certified Mail#: 70031010000543389198

FIRST NOTICE: Sample(s) are adulterated because the standard plate count or collform bacteria counts (as noted by *s) exceed the limits set by Section 8 of the Frozen Dessert Rule. Guidelines for cleaning and sanitizing your unit are attached. If you would like a Regulatory Officer to review proper cleaning and sanitizing procedures with you, please call the Regulatory Protection Division at (304) 558-2227 for an appointment.

Disposition Date: 11/29/2004

Receiving Date/Time: 11/17/04 8:00 a
 Date/Time Test Initiated: 11/17/04 8:00 a
 Analyst(s): TLS, RCN

Dispositioned by Charles B. Dransfield
 Regulatory Protection Division, West Virginia Department of Agriculture, 1900 Kanawha Blvd., E. Charleston, WV 25305; (304) 558-2227
 04-F085 (revised 6/99)

**West Virginia Department of Agriculture
Regulatory Protection Division
Individual Sample History Report for Meat on a Date**

11-30-2004

1083 Glenville State College
200 High Street
Glenville, WV 26351

<u>Collection#</u>	<u>Amt. Size Collected</u>	<u>Date Collected</u>	<u>Date Rec'd</u>	<u>Condition Rec'd</u>	<u>Product Name</u>	<u>Lot Code</u>	<u>Cooler Temperature</u>	<u>Fats</u>
10730	1. lb.	11/16/2004	11/18/2004	Good	Ground Beef 75/25 Distributor: Sysco Harmony, PA	1017/04	39 F	25.11%
	Processor: Sysco Houston, TX THE SAMPLE IS NON-VIOLATIVE.							
10731	1.0 lb.	11/16/2004	11/18/2004	Good	Ground Turkey Distributor: Sysco Harmony, PA	4233	-5 F Freezer	20.61%
	Processor: Sysco Houston, TX THE SAMPLE IS NON-VIOLATIVE.							

Regulator/Officer: Kim Sykes Firm Representative: Steve Shattuck Dispositioned by Charles B. Dransfield

**West Virginia Department of Agriculture
Regulatory Protection Division**

Individual Sample History Report For Dairy Product Distributors on a Date

29-Nov-04

Dairy Product Distributor

282 United Dairy, Inc.
Rt. 3, Box 133 Winefield Road
Fairmont, WV

<u>WVRP #</u>	<u>S. Rpt. No.</u>	<u>Sample Date</u>	<u>Product Category</u>	<u>Product type</u>	<u>Product Name</u>	<u>Violative</u>	<u>Lot, Code</u>	<u>Plant</u>	<u>Cooler</u>	<u>Coliform</u>	<u>Fats</u>	<u>SPC</u>
1232	10732	11/16/2004	Dairy Product	Milk	United 2% Milk	<input type="checkbox"/>	Nov 20	54-40	38 F	<1	2.0	<2,500
1231	10057	11/16/2004	Dairy Product	Milk	United Lo Fat Chocolate Milk	<input type="checkbox"/>	Nov 29	54-40	40 F	<1	1.10	<2,500

Regulator/Officer: Kim Sykes

Firm Representative: Steve Shattuck

Dispositioned by

Charles B. Dransfield

Disposition: THE SAMPLE IS NON-VIOLATIVE.



State of West Virginia
DEPARTMENT OF AGRICULTURE
Gus R. Douglass, Commissioner

Janet L. Fisher
Deputy Commissioner

Steve Hannah
Deputy Commissioner

Legislative Auditor's Office/WV Department of Agriculture
College Food Service Audit

Institution: WV State University

Address: 301 Washington Ave., Institute, WV 25112

Telephone: 304-766-3358

Date: November 17, 9:30 – 11:30 AM

Person Contacted/Title: Roderick Martin, Resident Director

Ground beef, poultry and pork

- Fire River Farms ground beef, label shows 80/20 (80% lean/20% fat): analysis showed 16.86% fat (results outside +/- 2% tolerance, therefore violative – resample will be collected).
- Sysco ground turkey, no fat claim: analysis showed 13.11% fat.
- All products from approved sources.
- Cooler 38F (maximum is 41F).
- Distributor is Sysco, Cincinnati, OH.

Dairy products

- United Vitamin D Milk (whole milk): analysis showed 3.30% milkfat (minimum milkfat is 3.25%, therefore non-violative).
- Standard Plate Count and Coliform Count were non-violative.
- Cooler 40F (maximum is 41F).
- Distributor is United Dairy, Inc., Charleston, WV.

Shell eggs

- 180 dozen Sysco USDA Grade AA Medium White, 91% AA, 2% A, 7% checks – pass.
- Cooler 40F (current WVDA rule maximum is 45F but will be amended to 41F).
- Distributor is Sysco, Cincinnati, OH.

WV State University
301 Washington Avenue
Institute, WV 25112
November 17, 2004
Page 2

Soft serve

- Vanilla reduced fat ice cream mix and finished products of vanilla, strawberry and swirl reduced fat ice cream analyzed by Standard Plate Count and Coliform Count. Mix was non-violative. Finished products were violative in both tests – resamples will be collected.
- Cooler 40F (maximum is 41F).
- Mix distributor is US Foodservice, Hurricane, WV.
- Firm did not have current Frozen Desserts Manufacturer Permit – application given to Mr. Martin. Permit issued on 24 Nov 04.

Storage temperatures

- Meat and produce 38F, Dairy and shell eggs 40F, Dry 69F.

Fresh fruit

- Variety of fresh fruits and vegetables, all fresh and mature.
- Cooler 38F (storage temperatures vary depending on product).
- Distributor is Corey Brothers, Charleston, WV.

Canned goods

- All dry storage products on shelves.
- No dented cans.
- Opened can of Sysco whole white potatoes 60-90 count – product as labeled.
- Storage temperature 69F (recommended range is 50 – 70F).

Misc.

- Contractor is AVI Foodsystems.
- No HACCP system.

**West Virginia Department of Agriculture
Regulatory Protection Division
Individual Sample History Report for Meat on a Date**

11-30-2004

1082 West Virginia State University

301 Washington Avenue
Institute, WV 25112

Collection#	Amt. Size Collected	Date Collected	Date Rec'd	Condition Rec'd	Product Name	Lot Code	Cooler Temperature	Fats
10734	1 lb.	11/17/2004	11/18/2004	Good	Ground Turkey Distributor: Sysco Cincinnati, OH	8-26-04	38 F	13.11%
	Processor: Sysco Houston, TX THE SAMPLE IS NON-VIOLATIVE.							
10733	1.0 lb.	11/17/2004	11/18/2004	Good	Ground Beef Distributor: Sysco Cincinnati, OH	11/1/04	40 F	16.86%
	Processor: Fire River Farms Institute, WV THE SAMPLE IS NON-VIOLATIVE.							

Regulator/Officer: Kim Sykes

Firm Representative: Roderick Martin

Dispositioned by Charles B. Dransfield

Firm#: 3130 Sample#: 6409

FROZEN DESSERT SAMPLE REPORT

Time: 11:15:00 AM Date: 11/17/2004 Phone: 304-766-3358
 301 Washington Ave. Box 1000 Institute, WV 25112

AVI Foodsystems, Inc. Address: Roderick Martin
 US Foodservice Address: Hurricane, WV
 Mix Distributor Address: Roderick Martin
 43 F 8 Gallons

Person Contacted (Name and Title)
 Amount Mix in Stock

Cooler Temp. Roderick Martin
 SAMPLE DATA: Mix sample(s) collected from previously unopened container(s). Mix container(s) were sanitized and agitated prior collection. A small amount was drawn from freezer unit(s) prior to collection of sample(s).

Temperature Control at		
Collection	Receiving	Testing
18 F	+3.8 C	+3.9 C

Sub Sample	Machine Number	Product Sampled	Plant Number	Date Code	Laboratory Analysis			Test Completion Date/Time	Violative	Test Completion Date/Time
					SPC	Coliform Bacteria	Test Date/Time			
A		Vanilla Reduced Fat Ice Cream Mix	39-13	Nov 24	25,000	<25,000	11/23/04 10:35 a	<1	<input type="checkbox"/>	11/24/04 10:40 a
B	1	Vanilla Reduced Fat Ice Cream			860,000*	>140*	11/23/04 10:35 a	>140*	<input checked="" type="checkbox"/>	11/24/04 10:40 a
C	1	Vanilla/Strawberry Reduced Fat Ice Cream Swirl			670,000*	>320*	11/23/04 10:35 a	>320*	<input checked="" type="checkbox"/>	11/24/04 10:40 a
D	1	Strawberry Reduced Fat Ice Cream			340,000*	11*	11/23/04 10:35 a	11*	<input checked="" type="checkbox"/>	11/24/04 10:40 a
Kim Sykes		Roderick Martin	11/18/04 8:00 a		11/19/04 2:30 p		Date/Time		Test Initiated	
Regulatory Officer		Firm Representative	Receiving Date/Time		Date/Time		Test Initiated		Analyst(s)	
									TLS, RCN	

> : Greater Than
 < : Less Than
 SPC: Standard Plate Count
 (Bacteria counts in colonies per gram)
 SPC Limit <50,000 Coliform Limit <10
 Certified Mail#: Sample(s) are adulterated because the standard plate count or coliform bacteria counts (as noted by *s) exceed the limits set by Section 8 of the Frozen Dessert Rule. Guidelines for cleaning and sanitizing your unit are attached. If you would like a Regulatory Officer to review proper cleaning and sanitizing procedures with you, please call the Regulatory Protection Division at (304) 558-2227 for an appointment.
 Disposition Date: 12/14/2004

Dispositioned by Charles B. Dransfield
 Regulatory Protection Division, West Virginia Department of Agriculture, 1900 Kanawha Blvd., E. Charleston, WV 25305; (304) 558-2227
 04-F085 (revised 6/99)

**West Virginia Department of Agriculture
Regulatory Protection Division**

Individual Sample History Report For Dairy Product Distributors on a Date

29-Nov-04

Dairy Product Distributor

431 United Dairy, Inc.
508 Roane Street
Charleston, WV

<u>WVRP #</u>	<u>S. Rpt. No.</u>	<u>Sample Date</u>	<u>Product Category</u>	<u>Product type</u>	<u>Product Name</u>	<u>Violative</u>	<u>Lot. Code</u>	<u>Plant</u>	<u>Cooler</u>	<u>Coliform</u>	<u>Fats</u>	<u>SPC</u>
1235	10735	11/17/2004	Dairy Product	Milk	United Vitamin D Milk	<input type="checkbox"/>	Nov 28	54-40	40 F	<1	3.30	<2,500

Regulator/Officer: Kim Sykes

Firm Representative: Roderick Martin

Dispositioned by

Charles B. Dransfield

Disposition: THE SAMPLE IS NON-VIOLATIVE.



State of West Virginia
DEPARTMENT OF AGRICULTURE
Gus R. Douglass, Commissioner

Janet L. Fisher
Deputy Commissioner

Steve Hannah
Deputy Commissioner

Legislative Auditor's Office/WV Department of Agriculture
College Food Service Audit

Institution: Fairmont St. University

Address: 1201 Locust Ave., Fairmont, WV 26554

Telephone: 304-367-4366

Date: November 16, 2004, 8:20 – 11:00 AM

Person Contacted/Title: John Kellar, General Manager

Ground beef, poultry and pork

- Sysco ground beef, label showed 81/19 (81% lean/19% fat): analysis found 18.92% fat (results within tolerance of +/- 2%, therefore non-violative).
- All products from approved sources.
- Cooler 41F (maximum is 41F), freezer -6F (maximum is 0F).
- Distributor is Sysco, Harmony, PA.

Dairy products

- United lowfat chocolate milk (lowfat descriptor indicates 1% milkfat): analysis showed 1.1% milkfat (results within tolerance of +/- 0.25%, therefore, non-violative).
- Standard Plate Count and Coliform Count were non-violative.
- Cooler 40F (maximum is 41F).
- Distributor is United Dairy, Inc., Fairmont, WV

Shell eggs

- 9.5 dozen Sysco USDA Grade AA Large White, 80% AA, 7% A, 13% checks – fail. Eggs embargoed due to excessive checks and were disposed in dumpster.
- Cooler 40F (current WVDA rule maximum is 45F but will be amended to 41F).
- Distributor is Sysco, Harmony, PA.

State Capitol • 1900 Kanawha Boulevard, East • Charleston, WV 25305-0170 • (304) 558-3550

Fairmont State University
1201 Locust Avenue
Fairmont, WV 26554
November 16, 2004
Page 2

Soft serve

- Unit not in operation.
- Firm has current Frozen Desserts Manufacturer Permit.
- Mix distributor is United Dairy, Inc., Fairmont, WV.

Storage temperatures

- Production Kitchen: Meat 41F, Dairy and shell eggs 40F, Produce 39F, Dry 64F, Freezer -6F.
Finish Kitchen: Cooler 41F, Freezer -5F.

Fresh fruit

- Variety of fruits and vegetables, all fresh and mature.
- Cooler 39F (storage temperatures vary depending on product).
- Distributor is Jebbia's Market, Inc., Wheeling, WV.

Canned goods

- All dry storage products on shelves and racks.
- Dented cans in stock. These defects did not appear to have an adverse affect on the hermetic seals.
- Opened can of Sysco cut sweet potatoes – product as labeled.
- Storage temperature 64F (recommended range is 50 – 70F).

Misc.

- No HACCP system.
- Attempt at daily in-house refrigerated storage temperature monitoring has been unsuccessful. Temperature logs posted on 20 May 04 at two of the six refrigerated units had no entries.
- Incorrect storage of raw and cooked products in production kitchen meat cooler: 1) cooked chicken stored adjacent to raw ground beef meat loaves; and 2) raw ground beef meatballs stored on shelf above cooked uncovered beef roasts. Items were moved to proper places during inspection.

**West Virginia Department of Agriculture
Regulatory Protection Division
Individual Sample History Report for Meat on a Date**

11-30-2004

1084 Fairmont State University

1201 Locust Avenue
Fairmont, WV 26554

<u>Collection#</u>	<u>Amt. Size Collected</u>	<u>Date Collected</u>	<u>Date Rec'd</u>	<u>Condition Rec'd</u>	<u>Product Name</u>	<u>Lot Code</u>	<u>Cooler Temperature</u>	<u>Fats</u>
10056	1.0 lb.	11/16/2004	1/18/2004	Good	Ground Beef 81/19 Distributor: Sysco Harmony, PA	Oct 23, 04	41 F	18.92%

Processor: Sysco Houston, TX

THE SAMPLE IS NON-VIOLATIVE.

Regulator/Officer: Kim Sykes

Firm Representative: John Kellar

Dispositioned by Charles B. Dransfield

**West Virginia Department of Agriculture
Regulatory Protection Division**

Individual Sample History Report For Dairy Product Distributors on a Date

29-Nov-04

Dairy Product Distributor

282 United Dairy, Inc.
Rt. 3, Box 133 Winefield Road
Fairmont, WV

<u>WVRP #</u>	<u>S. Rpt. No.</u>	<u>Sample Date</u>	<u>Product Category</u>	<u>Product type</u>	<u>Product Name</u>	<u>Violative</u>	<u>Lot Code</u>	<u>Plant</u>	<u>Cooler</u>	<u>Coliform</u>	<u>Fats</u>	<u>SPC</u>
1232	10732	11/16/2004	Dairy Product	Milk	United 2% Milk	<input type="checkbox"/>	Nov 20	54-40	38 F	<1	2.0	<2,500
1231	10057	11/16/2004	Dairy Product	Milk	United Lo Fat Chocolate Milk	<input type="checkbox"/>	Nov 29	54-40	40 F	<1	1.10	<2,500

Regulator/Officer: Kim Sykes

Firm Representative: Steve Shattuck

Disposed by

Charles B. Dransfield

Disposition: THE SAMPLE IS NON-VIOLATIVE.



State of West Virginia
DEPARTMENT OF AGRICULTURE
Gus R. Douglass, Commissioner

Janet L. Fisher
Deputy Commissioner

Steve Hannah
Deputy Commissioner

Legislative Auditor's Office/WV Department of Agriculture
College Food Service Audit

Institution: West Liberty State College

Address: Box 175, West Liberty, WV 26074

Telephone: 304-336-8445

Date: November 9, 2004, 8:30 – 11:00 AM

Person Contacted/Title: John McDermitt, General Manager

Ground beef, poultry and pork

- Excel beef pattie mix, label showed 75/25 (75% lean/25% fat): analysis found 24.52% fat (results within tolerance of +/-2%, therefore non-violative).
- Jennie-O ground turkey, label showed 90/10 (90% lean/10% fat): analysis found 8.22% fat (results within tolerance of +/- 2%, therefore non-violative).
- All products from approved sources.
- Cooler 40F (maximum is 41F), freezer -5F (maximum is 0F).
- Distributor is Gordon Food Service, Springfield, OH.

Dairy products

- Schneider's Dairy 2% reduced fat milk: analysis showed 2.0% milkfat, therefore non-violative.
- Standard Plate Count and Coliform Count were non-violative.
- Cooler 39F (maximum is 41F).
- Distributor is Schneider's Dairy, Inc., Pittsburgh, PA.

Shell eggs

- No shell eggs.

West Liberty State College
Box 175
West Liberty, WV 26074
November 9, 2004
Page 2

Soft serve

- No soft serve. Firm has hard ice cream.

Storage temperatures

- Meat 40F, Dairy 39F, Produce 40F, Meat freezer -5F, Dry 70F.

Fresh fruit

- Variety of fruits and vegetables, all fresh and mature except oranges.
- Cooler 40F (storage temperatures vary depending on product).
- Distributor is Paragon/Monteverde Fresh Produce, Pittsburgh, PA

Canned goods

- All dry storage products on shelves.
- Some dented cans on shelves. Four cans of Lee Kum Kee black bean garlic sauce with dents possibly affecting hermetic seal removed from storage and disposed.
- Opened can of sliced bamboo shoots – product as labeled.
- Storage temperature 70F (recommended range is 50 – 70F).

Misc.

- Contractor is Sodexo.
- HACCP system.
- Nutrition information brochures.

**West Virginia Department of Agriculture
Regulatory Protection Division
Individual Sample History Report for Meat on a Date**

11-30-2004

1081 West Liberty State College
Box 175
West Liberty, WV 26074

<u>Collection#</u>	<u>Amt. Size Collected</u>	<u>Date Collected</u>	<u>Date Rec'd</u>	<u>Condition Rec'd</u>	<u>Product Name</u>	<u>Lot Code</u>	<u>Cooler Temperature</u>	<u>Fats</u>
10055	1.0 lb.	11/9/2004	11/9/2004	Good	Ground Turkey	3 Nov 04	40 F	7.22%
Processor: Jernie O Turkey Store, Inc. Willmar, MN Distributor: Gordon Food Service Springfield, OH THE SAMPLE IS NON-VIOLATIVE.								
10054	1.0 lb.	11/9/2004	11/9/2004	Good	Ground Beef	10/20/04	40 F	24.52%
Processor: Excel Corporation Wichita, KS Distributor: Gordon Food Service Springfield, OH THE SAMPLE IS NON-VIOLATIVE.								

Regulator/Officer: Kim Sykes Firm Representative: John McDermitt Dispositioned by Charles B. Dransfield

**West Virginia Department of Agriculture
Regulatory Protection Division**

Individual Sample History Report For Dairy Product Distributors on a Date

16-Nov-04

Dairy Product Distributor

273 Schneider Dairy, Inc.
726 Frank Street
Pittsburgh, PA

<u>WVRP #</u>	<u>S. Rpt. No.</u>	<u>Sample Date</u>	<u>Product Category</u>	<u>Product type</u>	<u>Product Name</u>	<u>Violative</u>	<u>Lot, Code</u>	<u>Plant</u>	<u>Cooler</u>	<u>Coliform</u>	<u>Fats</u>	<u>SPC</u>
1230	10053	11/9/2004	Dairy Product	Milk	Schneider's Dairy 2% RF Milk	<input type="checkbox"/>	Nov 18	42-205	39 F	<1	2.0	<2500

Regulator/Officer: Kim Sykes

Firm Representative: John McDermitt

Dispositioned by

Charles B. Dransfield

Disposition: THE SAMPLE IS NON-VIOLATIVE.

Concord University
Box 1000
Vermillion Street
Athens, WV 24712
November 17, 2004
Page 2

Soft serve

- Vanilla and chocolate ice cream mixes, and finished products of vanilla, chocolate and swirl were non-violative.
- Cooler 38F (maximum is 41F).
- Mix distributor is Valley Rich Dairy, Bluefield, VA.
- Firm did not have current Frozen Desserts Manufacturer Permit – application give to Mr. Keaton. Permit issued on 29 Nov 04.

Storage temperatures

- Meat 30F, Dairy and Eggs 38F, Freezer 21F (on defrost – products examined and found to be frozen solid), Produce 38F, Dry 70F.

Fresh fruit

- Variety of fresh fruits and vegetables, all acceptable condition.
- Cooler 38F (storage temperatures vary depending on product).
- Distributor is Sysco, Harrisonburg, VA.

Canned goods

- All dry storage products on shelves.
- All dented cans are returned to Sysco per contract.
- Storage temperature 70F (recommended range is 50 – 70F).

Misc.

- Contractor is Aramark.
- No HACCP system.

Concord University
Box 1000
Vermillion Street
Athens, WV 24712
November 17, 2004
Page 2

Soft serve

- Vanilla and chocolate ice cream mixes, and finished products of vanilla, chocolate and swirl were non-violative.
- Cooler 38F (maximum is 41F).
- Mix distributor is Valley Rich Dairy, Bluefield, VA.
- Firm did not have current Frozen Desserts Manufacturer Permit – application give to Mr. Keaton. Permit issued on 29 Nov 04.

Storage temperatures

- Meat 30F, Dairy and Eggs 38F, Freezer 21F (on defrost – products examined and found to be frozen solid), Produce 38F, Dry 70F.

Fresh fruit

- Variety of fresh fruits and vegetables, all acceptable condition.
- Cooler 38F (storage temperatures vary depending on product).
- Distributor is Sysco, Harrisonburg, VA.

Canned goods

- All dry storage products on shelves.
- All dented cans are returned to Sysco per contract.
- Storage temperature 70F (recommended range is 50 – 70F).

Misc.

- Contractor is Aramark.
- No HACCP system.

Firm#: 3132 Sample#: 6408

FROZEN DESSERT SAMPLE REPORT

Time: 4:45:00 PM Date: 11/17/2004 Phone: 384-5313

Concord University
 Firm Name
 Valley Rich Dairy
 Mix Distributor
 38 F
 Box 1000 Vermillion Street Athens, WV 24712
 Address
 Bluefield, VA
 Address
 Randy Keaton

Amount Mix in Stock

Person Contacted (Name and Title)
 Randy Keaton
 Amount Mix in Stock
 26 1/2 Gallons

Cooler Temp.
 SAMPLE DATA: Mix sample(s) collected from previously unopened container(s). Mix container(s) were sanitized and agitated prior collection. A small amount was drawn from freezer unit(s) prior to collection of sample(s).

Temperature Control at		
Collection	Receiving	Testing
16 F	+3.8 C	+3.9 C

Sub Sample	Machine Number	Product Sampled	Plant Number	Date Code	SPC	Test Completion Date/Time	Colliform Bacteria	Violative	Test Completion Date/Time	Analyst(s)
A		Vanilla Ice Cream Mix	51-4116	Nov 27	<25,000	11/23/04 10:35 a	<1	<input type="checkbox"/>	11/19/04 10:50 a	
B	1	Vanilla Ice Cream			<25,000	11/23/04 10:35 a	<1	<input type="checkbox"/>	11/19/04 10:50 a	
C		Chocolate Ice Cream Mix	51-4116	Nov 25	<25,000	11/23/04 10:35 a	<1	<input type="checkbox"/>	11/19/04 10:50 a	
D	1	Chocolate Ice Cream			<25,000	11/23/04 10:35 a	<1	<input type="checkbox"/>	11/19/04 10:50 a	
E	1	Vanilla/Chocolate Ice Cream Swirl			<25,000	11/23/04 10:35 a	<1	<input type="checkbox"/>	11/19/04 10:50 a	
Kim Sykes Regulatory Officer		Randy Keaton Firm Representative		11/18/04 8:00 a		11/18/04 2:30 p				TLS, RCN, JAC

> : Greater Than
 < : Less Than
 SPC: Standard Plate Count
 (Bacteria counts in colonies per gram)
 SPC Limit <50,000 Colliform Limit <10
 Certified Mail#:
 SAMPLES ARE NON-VIOLATIVE.
 Disposition Date: 11/30/2004

Dispositioned by Charles B. Dransfield

Regulatory Protection Division, West Virginia Department of Agriculture, 1900 Kanawha Blvd., E. Charleston, WV 25305; (304) 558-2227

04-0005 (revised 6/00)

**West Virginia Department of Agriculture
Regulatory Protection Division
Individual Sample History Report for Meat on a Date**

11-30-2004

1085 Concord University
Box 1000 Vermillion Street
Athens, WV 24712

<u>Collection#</u>	<u>Amt. Size Collected</u>	<u>Date Collected</u>	<u>Date Rec'd</u>	<u>Condition Rec'd</u>	<u>Product Name</u>	<u>Lot Code</u>	<u>Cooler Temperature</u>	<u>Fats</u>
11105	4 patties	11/17/2004	11/18/2004	Good	Ground Beef Patties 75/25 Distributor: Sysco Harrisonburg, VA	10 18 04	30 F	2510.00%

Processor: Fire River Farms , WV
THE SAMPLE IS NON-VIOLATIVE.

Regulator/Officer: Kim Sykes Firm Representative: Randy Keaton Dispositioned by Charles B. Dransfield

**West Virginia Department of Agriculture
Regulatory Protection Division**

Individual Sample History Report For Dairy Product Distributors on a Date

29-Nov-04

Dairy Product Distributor

776 Valley Rich Dairy
Route 3 South College Drive
Bluefield, VA 24605

<u>WVRP #</u>	<u>S. Rpt. No.</u>	<u>Sample Date</u>	<u>Product Category</u>	<u>Product type</u>	<u>Product Name</u>	<u>Violative</u>	<u>Lot Code</u>	<u>Plant</u>	<u>Cooler</u>	<u>Coliform</u>	<u>Fats</u>	<u>SPC</u>
1233	0	11/17/2004	Dairy Product	Milk	Valley Rich 2% RF Milk	<input type="checkbox"/>	Nov 27	51-4116	39 F	<1	1.95	<2,500

Regulator/Officer: Kim Sykes **Firm Representative:** Randy Keaton **Dispositioned by:** Charles B. Dransfield

Disposition: THE SAMPLE IS NON-VIOLATIVE.



State of West Virginia
DEPARTMENT OF AGRICULTURE
Gus R. Douglass, Commissioner

Janet L. Fisher
Deputy Commissioner

Steve Hannah
Deputy Commissioner

December 20, 2004

Ms. Gail Higgins
Research Analyst
Legislative Auditor's Office
State Capitol, Room W-314
1900 Kanawha Blvd. East
Charleston, WV 25305-0610

Dear Gail,

Enclosed please find my comments relative to the foodservice contracts for West Liberty College, West Virginia State University, Concord University, Fairmont State University, and Glenville State College.

Due to the fact that I am not a Registered Dietician, I cannot make comments regarding whether the meals do or do not meet any nutritive guidelines. I would suggest that any meal plans follow the USDA Food Pyramid guidelines.

I will be away from my office beginning Wednesday, December 22, 2004, and will return on Monday, January 3, 2005. Please feel free to call me at 558-2210 if I can provide any further assistance.

Sincerely Yours,

A handwritten signature in cursive script, appearing to read "Jean Smith".

Jean Smith
Director
Marketing and Development Division

State Capitol • 1900 Kanawha Boulevard, East • Charleston, WV 25305-0170 • (304) 558-3550

Foodservice Audit

All institutions should be required to have foodservice staff complete HACCP/Serve Safe Training.

Institutions food specifications should be at a minimum:

Beef - USDA Choice with $\frac{1}{4}$ inch trim on cuts. This will allow for consistent yield grade. PRIME cuts are very expensive and perhaps not the best use of budget dollars.

Veal - USDA Choice $\frac{1}{4}$ trim on cuts. Veal standards also usually include the color of lean tissue—ranked from 1 to 3. (May wish to include this—but I seriously question how often these institutions serve veal.)

Pork and Lamb-USDA “1” is acceptable

Poultry—USDA Grade A is acceptable

Eggs—USDA Grade A

Fish –USDA Grade A

Milk and Milk Products- USDA Grade A Vitamin D enriched

Canned Fruits and Vegetables –US Fancy or US Grade A

Frozen Fruits and Vegetables - US Fancy or US Grade A

Fresh Vegetables-- US No 1 or US Fancy

Fresh Fruits—US Extra Fancy, US No 1, US Extra No 1—depending on the fruit

IN SOME CASES FRUITS AND VEGETABLES ARE GRADED DIFFERENTLY. YOU MAY WANT TO CONSULT THE WEBSITE: www.ams.usda.gov/standards.

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

December 30, 2004

Steve Hannah, Deputy Commissioner
West Virginia Department of Agriculture
State Capitol, Room E-28
1900 Kanawha Blvd, East
Charleston, WV 25305-0170

Dear Deputy Commissioner Hannah:

This is to transmit a draft copy of Issue 3 of the Legislative Auditor's 2004 review of the purchasing functions at higher education institutions. This issue concerns food quality and safety of food served at higher education institutions, and it was developed with the assistance of your agency's staff. Please review the draft, and provide us with any comments, concerns or amendments so we can amend the issue accordingly. In addition, we would like to receive from you a brief written statement indicating that the contents of Issue 3 fairly and accurately reflect the information provided to us by the Department of Agriculture. In order to make changes and to include this statement, we need your responses by Tuesday, January 4, 2005.

Kim Sykes of your agency has reviewed an earlier draft copy. We intend to publish in appendices of the report her reports, together with the list of food specifications developed by Jean Smith. We are scheduled to present this report on January 10, 2005 to the Legislative Oversight Committee on Education Accountability at the 4-6 p.m. meeting.

We appreciate the assistance of your agency and we feel the results of these inspections are valuable to the institutions.

Sincerely,

Handwritten signature of John Sylvia in cursive script.
John Sylvia



State of West Virginia
DEPARTMENT OF AGRICULTURE
Gus R. Douglass, Commissioner

Janet L. Fisher
Deputy Commissioner

Steve Hannah
Deputy Commissioner

January 4, 2005

Mr. John Sylvia, Director
Performance Evaluation and Research Division
Legislative Auditor's Office
Building 1, Box W-314
1900 Kanawha Blvd., East
Charleston, WV 25305

Dear Mr. Sylvia:

We received your copy of Issue 3 of the Legislative Auditor's 2004 review of the purchasing functions and food quality and safety of food served at higher education institutions. We feel it fairly and accurately reflects the information we provided you during our visits to these institutions.

The Department of Agriculture does not regularly visit this type of establishment; however, after learning several of these institutions serve soft serve frozen dessert, we plan to survey the remaining institutions and license those with soft serve units.

We appreciate the opportunity to work with your agency. If we may be of assistance in the future, please call.

Sincerely,

Herma Johnson, Director
Regulatory and Environmental Affairs
West Virginia Department of Agriculture

State Capitol • 1900 Kanawha Boulevard, East • Charleston, WV 25305-0170 • (304) 558-3550

Appendix C: Agency Response

West Virginia Higher Education Policy Commission
Written Response to Legislative Auditor Purchasing Report
Food Service Contracts

RECEIVED
JAN 06 2005

PERFORMANCE EVALUATION AND
RESEARCH DIVISION

Issue 1: The Lack of Expertise in Food Service Contracting, Combined with a Lack of Guidance From the Higher Education Policy Commission, Leaves Institutions Vulnerable to Poorly Defined Requirements In Contracts, and Food Service Providers Imposing Their Own Standards.

- The institutions and the Higher Education Policy Commission (HEPC) agree that it would be beneficial to have a model Request for Proposal with uniform standards, format and language. This would enhance the institutions' ability to monitor the vendor's performance and manage the contracts. The HEPC will serve as a coordinator in this effort.
- One institution took exception to the implication that the institutions' RFPs were inferior and resulted in deficient contracts. This institution used the State Purchasing Division to prepare, bid, and write the contract. This contract was used as a model by some of the other institutions.
- Many of the institutions that responded stated that while contracts can always be improved upon, critical issues are dealt with promptly:
 - food quality and food safety have not suffered and are monitored by each institution;
 - inspections are conducted and any violations are corrected promptly;
 - training, while perhaps not adequately specified within contracts, is conducted.

Issue 2: There is a Lack of Monitoring After Institutions of Higher Education Have Established Food Service Contracts With Vendors.

- The HEPC and the institutions agree that the food service contracts can be improved upon with more required documentation. However, the institutions took exception to the implication that there was a lack of monitoring of contracts.
- The HEPC agrees with the recommendation that detailed procedures would be helpful in providing more documentation that contracts are adequately monitored. HEPC would be more than willing to assist in this joint collaboration.
- The HEPC agrees that training is important for *any* contract administrator, not just food contract administrators and again, would be willing to coordinate this effort.

Issue 3: The Legislative Auditor, Through the Assistance of a Department of Agriculture Inspector, Found Inadequacies in Food Quality and Safety of Food Served at Institutions.

- The HEPC and the institutions agree with the recommendations that standardization with minimum specifications would be helpful.
- Requesting assistance from the Department of Agriculture is also a good recommendation.
- The institutions and the HEPC takes exception to the conclusions drawn that the food quality and safety is inadequate. In one instance the legislative auditor listed a potential problem that the Department of Agriculture inspector did not consider a problem. In other instances food quality was actually *higher* than contract requirements: higher grade of eggs and lower fat content in ground beef. Again any serious findings were dealt with immediately by the institutions.

Issue 4: The Extension of Fairmont's Food Service Contract Denies Competitive Bidding for Two Additional Years.

- The HEPC has procedures in place including periodic performance audits to ensure that institutions conform to purchasing policies and state code.
- Fairmont consulted with and received approval from the attorney general regarding the change order to the food service contract. Even the legislative auditor agrees that this extension did not violate any existing state code. Fairmont states that it would create a hardship on the vendor's and the institution's relationship to break the contract extension and re-bid the food service contract.

General comments regarding the audit findings:

- This audit was extensive and took over a year to complete. The audit findings were submitted to both the HEPC and the institutions mid-morning of December 30, 2004. An exit interview was requested by the auditors on Tuesday, January 4th, only with the HEPC, not the institutions. A formal written response was required by January 6, 2005 for inclusion in the report to be given to LOCEA on January 10th. Allowing only four workdays for a written response (and even less for an exit interview) was unrealistic and did not give adequate time for preparing thorough responses.
- The bolded audit findings in this report seem to set an overly negative tone that food safety and quality is poor, when in reality there were very few serious findings. This comment is not intended to negate some of the auditors' good recommendations and the institutions and the HEPC will certainly work towards ensuring that food services and contract management continue to improve for *all* of higher education institutions.