

Special Report

Capitol Cafeteria

**The State Did Not Have Its Capitol
Cafeteria Vendor Under Contract
for the Past Eight Years**



October 2006
PE 06-20-393

JOINT COMMITTEE ON GOVERNMENT ORGANIZATION

Senate

Edwin J. Bowman
Chair

Billy Wayne Bailey, Jr.
Vice Chair

Walt Helmick

Donna J. Boley

Sarah M. Minear

Citizen Members

Dwight Calhoun

John Canfield

James Willison

W. Joseph McCoy
(Vacancy)

House Of Delegates

J.D. Beane
Chair

Timothy R. Ennis
Vice Chair

Joe Talbott

Craig P. Blair

Otis Leggett

Scott G. Varner, Ex
Officio Non-Voting
Member



OFFICE OF THE LEGISLATIVE AUDITOR

Aaron Allred
Legislative Auditor

John Sylvia
Director

Denny Rhodes
Research Manager

Annamarie Short
Research Analyst

Performance Evaluation and Research Division
Building 1, Room W-314
State Capitol Complex
Charleston, West Virginia 25305
(304) 347-4890

WEST VIRGINIA LEGISLATURE
Performance Evaluation and Research Division

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



John Sylvia
Director

October 15, 2006

The Honorable Edwin J. Bowman
State Senate
129 West Circle Drive
Weirton, West Virginia 26062

The Honorable J.D. Beane
House of Delegates
Building 1, Room E-213
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0470

Dear Chairs:

Pursuant to the West Virginia Sunset Law, we are transmitting a Special Report on the Capitol Cafeteria, which will be presented to the Joint Committee on Government Operations on Sunday, October 15, 2006. The issue covered herein is "The State Did Not Have Its Capitol Cafeteria Vendor Under Contract for the Past Eight Years."

We transmitted a draft copy of the report to the Department of Administration on October 12, 2006. The Department of Administration opted not to have an exit conference. We received the agency response from the Department of Administration on October 13, 2006.

Let me know if you have any questions.

Sincerely,

Handwritten signature of John Sylvia in cursive script.
John Sylvia

JS/tlc

Joint Committee on Government and Finance

Contents

Executive Summary	5
Review Objective, Scope and Methodology	9
Issue 1: The State Did Not Have Its Capitol Cafeteria Vendor Under Contract for the Past Eight Years.....	11
 List Of Tables	
Table 1: Survey Results of State Capitol Cafeterias.....	16
Table 2: Annual Cafeteria Revenue to States via Private Vendors FY 2005.....	17
 List Of Appendices	
Appendix A: Transmittal Letter to Agency.....	23
Appendix B: Contract.....	25
Appendix C: Department of Administration’s Response.....	35

Executive Summary

Issue 1: The State Did Not Have Its Capitol Cafeteria Vendor Under Contract for the Past Eight Years.

The former vendor did not pay rent or make any payments for utilization of the space to run the cafeteria.

While reviewing the General Services Division, the Legislative Auditor was informed that the most recent vendor - Carl Frame - operating the cafeteria in the basement of the Capitol building was not formally under contract with the State of West Virginia. The contract had a renewal provision for two successive three-year periods; however, for unknown reasons, the contract was not renewed. Instead, the vendor was allowed to operate the cafeteria without a renewed contract until the cafeteria's closing on September 29, 2006. According to a legal opinion from Legislative Services, the cafeteria vendor should have been under contract.

In addition, the Secretary verified that the former vendor did not pay rent or make any payments for utilization of the space to run the cafeteria. During this time, the State provided for the vendor at no cost: new equipment, maintenance, garbage disposal, utilities and many additional services rather than requiring the vendor to pay for these services.

In essence, the former Capitol cafeteria vendor received free space and utilities from the State of West Virginia to operate a restaurant business.

In essence, the former Capitol cafeteria vendor received free space and utilities from the State of West Virginia to operate a restaurant business. Without a contract in place, West Virginia has not specified what benefits it expects from the vendor or how it will determine if it is receiving those benefits. **Thus, the Legislative Auditor finds that any vendor operating a cafeteria in the State Capitol should be doing so under a contract with the Department of Administration.**

The Legislative Auditor created an eight-question survey that was electronically sent to 47 states. Alaska and Hawaii were not included. The Legislative Auditor received a response from 31 states for a 66% response rate. Twenty-seven of the 31 states that completed the survey have a cafeteria that provides prepared meal service, excluding vending machines. The results show that 10 cafeterias are operated by the state and 17 are operated by a private vendor.

All 17 of the states that are vendor-operated have contracts with the state.

All 17 of the states that are vendor-operated have contracts with the state. Seventy-one percent of these vendors make some form of payments to the State for the privilege of operating the cafeteria. The contracts address contract renewal, food quality, pricing, maintenance of appliances, health inspection violations and specify payment arrangements. There are various arrangements made by states and private vendors concerning payment including: fixed rent, profit sharing, and incentives

for upgraded services. The average annual payments made to the states by private vendors is approximately \$41,416. **The Legislative Auditor is concerned that West Virginia may be experiencing undo expenses associated with operating a restaurant business and missing out on a source of revenue while most other states have contractual agreements concerning payments.**

A contract between the Department of Administration and a new Capitol cafeteria vendor would assure economical, efficient, and quality services.

The Department of Administration closed the Capitol cafeteria indefinitely due to 18 critical health violations discovered by the Kanawha-Charleston Health Department on Friday, September 29, 2006. These violations included roach infestation and other cleanliness issues. A contract could stipulate that a specified number of health code violations could cause closure of the cafeteria or termination of the contract.

A contract between the Department of Administration and a new Capitol cafeteria vendor would assure economical, efficient, and quality services. In developing the contract, the Department of Administration should address the following issues within a contract: food quality; food menu; pricing; kitchen and serving area; and dining room appearance. Legal staff from Legislative Services also recommend addressing several other issues before awarding a contract. The Legislative Auditor recommends that the Legislature and Department of Administration consider addressing the following issues before finalizing a new contract:

- Refinement of current Division of Purchasing laws;
- Constitutional authority of providing rent-free space;
- Involvement of Division of Vocational Rehabilitation in food service offerings as required by West Virginia Code §18-10G-3;
- Submission of cafeteria vendor financial statements;
- Liability for food related illness.

Recommendations

1. *The Legislative Auditor recommends that the next vendor providing food services in the Capitol building be selected through the competitive bidding process similar to the requirement for all other commodities and services provided to state agencies.*

-
2. *The Legislative Auditor recommends that the West Virginia Legislature consider refining existing Purchasing regulations to clarify that vendors providing commodities and services for the public through a state agency fall under Division of Purchasing guidelines.*
 3. *The Legislative Auditor recommends that the Department of Administration consider the following issues in detail when drafting a new food service vendor contract: food quality; food menu; pricing; and the appearance of kitchen, serving area, and dining room facilities.*
 4. *The Legislative Auditor recommends that the following issues should be addressed by the Legislature and the Department of Administration: constitutional authority of providing rent-free space; the involvement of the Division of Vocational Rehabilitation; submission of vendor financial statements; and disclaiming liability of the State for vendor food service.*

Review Objective, Scope and Methodology

This Special Report on the Department of Administration Capitol Cafeteria is authorized by §4-2-5, as amended. The potential issue was discovered during the audit process for several recent Special Reports on the General Services Division.

Objective

The objective of this report is to review the lack of a contract between the Department of Administration and the previous vendor operating the Capitol Cafeteria.

Scope

The scope of this report considers activities that occurred between 1995 and 2006.

Methodology

Information used in this report was compiled from the Department of Administration, a legal opinion from Legislative Services, a survey of other states, and observations and conclusions of the Legislative Auditor. Every aspect of this review complied with Generally Accepted Government Auditing Standards (GAGAS), with the exception of providing the report to the agency in a timely manner.

Issue 1

Issue 1: The State Did Not Have Its Capitol Cafeteria Vendor Under Contract for the Past Eight Years.

Issue Summary

The vendor which was operating the cafeteria in the basement of the West Virginia State Capitol building until September of 2006 had not been under contract since 1998. The Legislative Auditor surveyed 47 states and found that all states operating a capitol cafeteria with a private vendor have contracts in place. The Legislative Auditor recommends that the Department of Administration follow proper purchasing procedures to ensure that any future vendor operating a cafeteria in the Capitol building is under a contract. Seventy-one percent of the states surveyed receive payments from the private vendors for operating a cafeteria, but West Virginia under its previous arrangement did not. The Legislative Auditor recommends that the Legislature and the Department of Administration should consider addressing reimbursement to the State and other issues before subletting the Capitol cafeteria to any future vendor.

According to the Secretary of the Department of Administration, the contract with the vendor expired September 30, 1998.

The Vendor Recently Operating the Capitol Cafeteria Had Not Been Under Contract Since 1998.

While reviewing the General Services Division, the Legislative Auditor was informed that the most recent vendor - Carl Frame - operating the cafeteria in the basement of the Capitol building was not formally under contract with the State of West Virginia. According to the Secretary of the Department of Administration, the contract with the vendor expired September 30, 1998. The previous contract with the vendor addressed various issues including (see Appendix B for full contract):

- hours of operation
- use of facilities for catering
- health requirements
- maintenance and custodial responsibilities
- equipment
- food service program
- cafeteria renovations (prior to opening)
- Capitol Cafeteria Committee

The vendor was under contract with the Department of Administration in 1998. The contract had a renewal provision for two successive three-year periods; however, for unknown reasons, the contract was not renewed. Instead, the vendor was allowed to operate the cafeteria without a renewed contract until the cafeteria's closing on September 29, 2006. **The Secretary of the Department of Administration stated that following the original contract expiration that there was no formal contract between the State and the vendor.** According to a legal opinion from Legislative Services, the cafeteria vendor should have been under contract. The legal opinion states:

The Secretary of the Department of Administration stated that following the original contract expiration that there was no formal contract between the State and the vendor.

There was no authority for a state agency to provide for space, utilities and other services for a private entity to operate the food service at the capitol cafeteria without a contract approved by the purchasing director.

Furthermore, the former vendor had no lease or payment agreement with the State for the privilege of operating the Capitol cafeteria. The former vendor did not make any form of payment to the State and operated independently from any state agency. The Secretary of the Department of Administration stated that the expired contract:

...does not contain a provision which requires Mr. Frame to pay rent. Rather, the bargained-for consideration is services.

The Secretary verified that the former vendor did not pay rent or make any payments for utilization of the space to run the cafeteria.

In addition, the Secretary verified that the former vendor did not pay rent or make any payments for utilization of the space to run the cafeteria. The expired contract indicated that if the former vendor catered off-campus, then the former vendor was required to get written approval from the Director of Purchasing or his/her designee and to pay the state 3% of gross sales for the catering activity. The Secretary of Administration stated:

There are no records within the Department of Administration indicating that Mr. Frame catered off campus during October 1995 through September 1998. The State did not receive any money from Mr. Frame for any off campus catering functions.

Furthermore, since the contract expired in September 1998, the Department of Administration has not received any payments for catering services from the former vendor. Thus, the former vendor has not been required to make any form of payment to the State during the tenure of

operating the facility. During this time, the State provided for the vendor at no cost: new equipment, maintenance, garbage disposal, utilities and many additional services rather than requiring the vendor to pay for these services. **In essence, the former Capitol cafeteria vendor received free space and utilities from the State of West Virginia to operate a restaurant business.** By allowing the vendor to operate without reimbursement, the State may have been in conflict with a 1977 West Virginia Supreme Court ruling. In the *State Building Commission of West Virginia v. Patrick Casey, Judge, Circuit Court of Kanawha County*, the West Virginia Supreme Court of Appeals stated that providing rent-free use of state property to a private corporation for the operation of food services was an unconstitutional grant of the credit of the State to, or in aid of, a corporation.

The West Virginia Supreme Court of Appeals stated that providing rent-free use of state property to a private corporation for the operation of food services was an unconstitutional grant of the credit of the State to, or in aid of, a corporation.

The State of West Virginia made a significant investment in the former vendor to provide cafeteria services to state officials, employees, and visitors to the Capitol Complex. Although a survey by the Legislative Auditor shows that other states do not require any payment from the vendor, those states do have their vendor under contract specifying the benefits the vendor is expected to provide. Without a contract in place, West Virginia has not specified what benefits it expects from the vendor or how it will determine if it is receiving those benefits. **Thus, the Legislative Auditor finds that any vendor operating a cafeteria in the State Capitol should be doing so under a contract with the Department of Administration.**

The Legislative Auditor Surveyed Other States to Inquire How Their Cafeterias Operate.

The Legislative Auditor created an eight-question survey that was electronically sent to 47 states. Alaska and Hawaii were not included. The Legislative Auditor received a response from 31 states for a 66% response rate. The purpose of the survey was to determine whether or not the current lack of a contract between Mr. Frame and the State of West Virginia is common among other states. Completion of the survey indicated if the state has a cafeteria in its Capitol building, whether or not the cafeteria is state or privately operated and gave details concerning contractual issues. Twenty-seven of the 31 states that completed the survey have a cafeteria that provides prepared meal service, excluding vending machines. The results show that 10 cafeterias are operated by the state and 17 are operated by a private vendor. The full survey questions along with results are shown below.

Without a contract in place, West Virginia has not specified what benefits it expects from the vendor or how it will determine if it is receiving those benefits.

Capitol Cafeteria Survey

1a. *Does the state capitol have a cafeteria that provides prepared meal service (excluding the operation of vending machines)?*

26 YES

5 NO

1b. *Is it operated by the State or private vendor?*

17 PRIVATE VENDOR

10 STATE

2. *If operated by a private vendor, is the vendor under contract with the State?*

17 YES

0 NO

3. *Are there any payments made by the vendor to the State?*

12 YES

5 NO

4. *What was the total amount paid to the state by the vendor during fiscal year 2005?*

See Table 2 on page 17 for results.

5a. *Is the State or the vendor responsible for maintenance of the space operated by the vendor?*

14 STATE

3 VENDOR

5b. *Does the maintenance include repairs to equipment, plumbing, ventilation system, etc.?*

15 YES

2 NO

Table 1		
Survey Results of State Capitol Cafeterias		
State	Cafeteria?	State or Privately Operated
Alabama	Yes	Private Vendor
Arizona	Yes	State
Arkansas	Yes	Private Vendor
California	Yes	Private Vendor
Delaware	Yes	State
Idaho	Yes	State
Indiana	Yes	Private Vendor
Iowa	Yes	State
Maine	Yes	State
Massachusetts	Yes	Private Vendor
Michigan	No	
Minnesota	Yes	Private Vendor
Mississippi	No	
Missouri	Yes	State
Montana	Yes	Private Vendor
Nebraska	Yes	Private Vendor
Nevada	Yes	State
New Hampshire	Yes	Private Vendor
New York	Yes	Private Vendor
North Carolina	Yes	State
North Dakota	Yes	Private Vendor
Ohio	Yes	Private Vendor
Oklahoma	No	
Oregon	Yes	Private Vendor
South Carolina	No	
South Dakota*	No	Private Vendor
Tennessee	Yes	Private Vendor
Utah	Yes	Private Vendor
Vermont	Yes	Private Vendor
Washington	Yes	State
Wisconsin	Yes	State
<i>*South Dakota has no current vendor, but has had a private vendor in the past.</i>		
<i>Source: Legislative Auditor's survey.</i>		

All 17 of the states that are vendor-operated have contracts with the state. Seventy-one percent of these vendors make some form of payments to the State for the privilege of operating the cafeteria. The contracts address contract renewal, food quality, pricing, maintenance of appliances, health inspection violations and specify payment arrangements. There are various arrangements made by states and private vendors concerning payment including: fixed rent, profit sharing, and incentives for upgraded services. Annual payments from the vendors to the respective states range from \$2,365 to \$130,000. **The average annual payments made to the states by private vendors is approximately \$41,416.** Table 2 indicates the cafeterias operated by private vendors, which are under contract, and which states receive payment from private vendors.

All 17 of the states that are vendor-operated have contracts with the state.

Table 2 Annual Cafeteria Revenue to States via Private Vendors FY 2005		
States	Contract	Total Revenue to State
Alabama	Yes	No revenue
Arkansas	Yes	\$6,000
California	Yes	\$2,365
Indiana	Yes	\$130,000
Massachusetts	Yes	\$90,000
Minnesota	Yes	\$21,408
Montana	Yes	No revenue
Nebraska	Yes	\$16,800
New Hampshire	Yes	No revenue
New York	Yes	\$38,000
North Dakota	Yes	\$48,000
Ohio	Yes	\$83,000
Oregon	Yes	\$20,000
South Dakota	Yes	No revenue
Tennessee	Yes	No revenue
Utah*	Yes	\$-12,000
Vermont**	Yes	\$0
*Utah provides payment to the vendor if a loss is incurred, resulting in negative income.		
**Vermont began receiving payments for FY 2006.		
Source: Legislative Auditor's survey.		

The average annual payments made to the states by private vendors is approximately \$41,416.

The Department of Administration closed the Capitol cafeteria indefinitely due to 18 critical health violations.

The Legislative Auditor is concerned that West Virginia may be experiencing undo expenses associated with operating a restaurant business and missing out on a source of revenue while most other states have contractual agreements concerning payments. There are various arrangements made by states and private vendors concerning payment. One example is a payment arrangement made from the private vendor to the State of California. In this arrangement, California is paid rent of 0.5% of the total gross sales of the vendor's restaurant operations. Massachusetts is also paid a percentage of gross register receipts, but is also paid commissions for both state and non-state catering activities provided by the vendor.

Nebraska contracts a fixed amount of \$1,400 per month for profit sharing. Indiana offers an incentive to the private vendor by reducing rent in order for the vendor to offer discounts or other benefits to customers. Utah and Minnesota offer reimbursement to the vendor if a loss is incurred. For 2005, Utah provided \$12,000 to the vendor because the vendor incurred a loss. Utah will provide funding to make up for any loss incurred by the private vendor. However, in Utah if the cafeteria's private vendor begins making profit, then the private vendor is responsible for profit sharing.

A contract could stipulate that a specified number of health code violations could cause closure of the cafeteria or termination of the contract.

Capitol Cafeteria Closed by Department of Administration as a Result of Health Code Violations.

Although there was no formal contractual agreement, the Department of Administration closed the Capitol cafeteria indefinitely due to 18 critical health violations discovered by the Kanawha-Charleston Health Department on Friday, September 29, 2006. These violations included roach infestation and other cleanliness issues. A contract may have given the cafeteria vendor requirements which could allow the Department of Administration to inspect the premises for cleanliness. In addition, a contract could stipulate that a specified number of health code violations could cause closure of the cafeteria or termination of the contract.

It is also unclear as to who will operate the cafeteria when it reopens. Indication has been made that a new vendor will be selected. The cafeteria space is undergoing renovations, and a consultant has been selected to assist the Department of Administration in determining the direction to take with the cafeteria. Also, the West Virginia Parkways Authority has been in discussions about operating a food service facility not only in the

Capitol building but also in the Cultural Center.

The Legislature and Department of Administration Should Review Several Issues Before Selecting the Next Capitol Cafeteria Vendor.

A contract between the Department of Administration and a new Capitol cafeteria vendor would assure economical, efficient, and quality services.

Most other services provided to the State by outside vendors are required to go through the proper contract and bidding process. Thus, the Legislative Auditor questions why a cafeteria vendor should be any different. A contract between the Department of Administration and a new Capitol cafeteria vendor would assure economical, efficient, and quality services. Before contracting with a new vendor to operate the Capitol cafeteria, the Legislative Auditor recommends that the Department of Administration consider following some of the examples of states surveyed. In developing the contract, the Department of Administration should address the following issues within a contract: food quality; food menu; pricing; kitchen and serving area; and dining room appearance.

In addition, legal staff from Legislative Services also recommend addressing several other issues before awarding a contract. The Legislative Auditor recommends that the Legislature and Department of Administration consider addressing the following issues before finalizing a new contract:

- **Refinement of current Division of Purchasing laws** - Cafeteria services are provided for Capitol complex employees and visitors. Existing Division of Purchasing regulations are designed primarily to control purchases of commodities and services for a state agency, rather than a commodity or service provided to the public. Since the cafeteria was operated by a private vendor and the services were directed to the public rather than to a state agency, the scenario does not fit neatly into existing purchasing laws.
- **Constitutional authority of providing rent-free space** - As stated previously, the use by the vendor of the cafeteria space, free rent of and utility payments, may have been in conflict with a 1977 Supreme Court of Appeals decision. The Court ruled that providing rent-free use of state property to a private corporation for the operation of food services was an unconstitutional grant of credit or aid by the State to a corporation.

The Court ruled that providing rent-free use of state property to a private corporation for the operation of food services was an unconstitutional grant of credit or aid by the State to a corporation.

It should be addressed whether the Division of Vocational Rehabilitation's operation of the Capitol's East Wing snack bar precludes additional food services being offered in the Capitol building.

A future contract should disclaim the State from any liabilities due to the vendor's food offerings.

- **Involvement of Division of Vocational Rehabilitation in food service offerings as required by West Virginia Code §18-10G-3** - This statute requires that any governmental agency proposing operation of a food service facility in a public building shall offer the Division of Vocational Rehabilitation the first opportunity to provide the food service. The Division has the option to decline and the governmental agency may also make the determination that the Division may be unable to provide the service. In addition, if the Division chooses to operate the food service, the governmental agency shall not operate a food service facility in the building or permit any other person or entity to do so. Thus, it should be addressed whether the Division of Vocational Rehabilitation's operation of the Capitol's East Wing snack bar precludes additional food services being offered in the Capitol building.
- **Submission of cafeteria vendor financial statements** - The previous vendor was not required to provide financial statements regarding operation of the cafeteria to the State. Providing financial statements would have been beneficial in determining the value of both the cafeteria space and cafeteria operations. Future consideration of a vendor should include the requirement to provide sufficient financial data to allow the Department of Administration to make responsible decisions for providing food service. Submission of financial statements could also assure to the Department of Administration that the vendor is in compliance with tax, workers' compensation, and unemployment compensation requirements.
- **Liability for food related illness** - In response to the recent *e. coli* contamination, the liability for any illness as a result of food served in the cafeteria should be addressed. A future contract should disclaim the State from any liabilities due to the vendor's food offerings.

Conclusion

The Legislative Auditor recognizes the benefit the employees and visitors at the Capitol Complex receive by having food service available. Issues need to be addressed before a new vendor is selected for operation of the Capitol cafeteria space. Most importantly, the new vendor should be selected through the competitive bidding process, and be placed under contract. **The most recent vendor operating the Capitol cafeteria was**

not under contract for approximately 8 years, from 1998 - 2006. The Legislative Auditor surveyed 31 of 47 states and found that 17 states that have a private cafeteria vendor in their Capitol buildings are under contracts. The results of the survey also show that 12 of the 17 private vendors make payments to the state for utilization of the space, but West Virginia's former vendor did not. The Legislative Auditor recommends that payment to the state and other issues need to be addressed before awarding the next vendor to provide food services in the Capitol building.

Recommendations

1. *The Legislative Auditor recommends that the next vendor providing food services in the Capitol building be selected through the competitive bidding process similar to the requirement for all other commodities and services provided to state agencies.*
2. *The Legislative Auditor recommends that the West Virginia Legislature consider refining existing Purchasing regulations to clarify that vendors providing commodities and services for the public through a state agency fall under Division of Purchasing guidelines.*
3. *The Legislative Auditor recommends that the Department of Administration consider the following issues in detail when drafting a new food service vendor contract: food quality; food menu; pricing; and the appearance of kitchen, serving area, and dining room facilities.*
4. *The Legislative Auditor recommends that the following issues should be addressed by the Legislature and the Department of Administration: constitutional authority of providing rent-free space; the involvement of the Division of Vocational Rehabilitation; submission of vendor financial statements; and disclaiming liability of the State for vendor food service.*

Appendix A: Transmittal Letter

WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

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



John Sylvia
Director

October 12, 2006

Mr. Robert W. Ferguson Jr., Cabinet Secretary
Department of Administration
1900 Kanawha Blvd., East
Building 1, Room E-119
Charleston, WV 25305-0120

Dear Secretary Ferguson:

This is to transmit a draft copy of the Special Report on the Capitol Cafeteria. This report is scheduled to be presented during the October 15, 2006 interim meeting of the Joint Committee on Government Operations at 1:00 pm in the House Government Organization Committee Room (E-215). It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committee may have.

If you would like to schedule an exit conference to discuss any concerns you may have with the report, please notify us by close of business on October 12, 2006. We need your written response by noon on October 13, 2006 in order for it to be included in the final report. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at 340-3192 by Thursday, October 12, 2006 to make arrangements.

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

Sincerely,

A handwritten signature in cursive script that reads "John Sylvia".

John Sylvia

_____ *Joint Committee on Government and Finance* _____

Appendix B: Contract



STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION
State Capitol
Charleston, WV 25305

Gaston Caperton
Governor

Chuck Polen
Cabinet Secretary

COPY

C O N T R A C T

This agreement consisting of 9 pages, constitutes the acceptance of a contract made by and between the State of West Virginia Purchasing Division for and on behalf of the State of West Virginia Building Commission (hereinafter called "State") and Carl Frame, ~~Owner~~ Operator (hereinafter called "Vendor").

^{CF} Purpose of this contract is to provide a complete quality "set down" food service program in the capitol cafeteria (hereinafter called "cafe") which is located in Building #1 of the main capitol complex. The vendor must operate the facility and provide service which is in compliance with all federal, state, and local laws and regulations which govern this type of operation. Service must also be provided in accordance with the specifications, terms, and conditions which are attached on the following pages.

In Witness whereof to the content and intent of this contract, we by our signatures below, declare that we have a meeting of the minds.

A P P R O V E D:

Ron Riley 9-8-95
Ron Riley, Director
Purchasing Division
Department Of Administration

Carl Frame
Carl Frame, ~~Manager~~ Operator
Capitol Cafeteria ^{CF}

E.E.O./AFFIRMATIVE ACTION EMPLOYER

Hours of Operation:

The cafe shall be open for business according to the posted schedule outside of the cafe in the hall. Such serving times may be adjusted upon mutual consent of the vendor and the State due to seasonal changes, customers demand, or any other valid reason. The recommended minimum schedule is 7:30 A.M. till 10:00 A.M. for breakfast, and 10:30 A.M. till 2:00 P.M. for lunch Monday through Friday. It is the vendor's option to increase the hours or days of operation depending on customer demand and approval of the Director of Purchasing of his/her designee.

Health Requirements:

Employees:

The Vendor will cause all of its employees assigned to duty at the cafe to submit to periodic health examinations, blood test, x-rays, or any other precautionary health requirements that are stipulated by the Kanawha County Department of Health, or State law. The vendor will maintain satisfactory evidence of compliance with all state and county health regulations and upon request, submit evidence of compliance of the same to the State.

The Vendor is responsible for establishing policies to guarantee sanitary working areas. If a person's illness is diagnosed as being food borne, and the person has worked or dined in the cafe during the incubation period of the illness, the Vendor will bear all responsibility while the State is held harmless. The Vendor must notify the State immediately of any health hazard that affects the food service operation.

Facilities:

The Vendor must submit a copy of all state or county health department inspection reports immediately to the Sate. The Vendor must operate the food storage, preparation, service, and eating areas in a sanitary method which is in compliance with all State/County Health Department rules and regulations, and the established practices and procedures of the industry for an operation of this type.

FACILITIES & EQUIPMENT:

Facilities:

The vendor shall have exclusive use of the space area know as the cafe which includes the areas for storage, preparation, and dining area during the full term of this contract. The vendor

Page #3 of 9
September 8, 1995

shall also have exclusive use of all the State's equipment located within the cafe. The vendor must restrict the use of the cafe to preparation of food to be served in the cafe, or on the capitol complex campus. Any catering of events off the campus must have the expressed written approval of the Director of Purchasing or his/her designee. The State will be paid 6% of gross sales for any catering function that is off campus to offset utilities.

CF 3/10/95

Equipment:

The vendor shall have exclusive use of the State's equipment located in the cafe. The State will not be responsible for repair or replacement of any equipment in connection with the operation of the cafe. Upon expiration of this contract the vendor will return to the State all equipment and State property in the condition in which it was received except for ordinary use.

The State will provide an initial inventory of trays, ash trays, salt, pepper, sugar, glassware, flatware, cook ware, and other small utensils necessary for preparation and service of food in the cafe. The vendor shall maintain the inventory, and be responsible for replacement to the original level.

Maintenance and Custodial Services Responsibility

The State:

The State will be responsible for the following services:

1. Provide the vendor with adequate facilities together with such utilities (excluding telephone) required for efficient operation of the food service at no charge during the initial contract period. Utilities provided at no charge to the vendor shall be air conditioning, heat, water, electricity, gas, and sewage.
2. Provide building maintenance services for the premises exterior. If the vendor requests the State to make repairs within the cafe, the vendor shall be billed for the services requested.
3. Provide for disposal of trash and garbage not processed through the garbage disposal. The State will be responsible for removal of the trash and garbage from the main capitol complex dumpster only.
4. Provide adequate extermination services throughout the entire food service facility.

Food Service Program

Staffing and Food Quantities:

The vendor will at all times maintain an adequate staff of employees on duty to assure efficient preparation and delivery of food service. The vendor shall assure:

1. All items shall be prepared and served according to the highest standards of quality. They shall be fresh, attractive, appropriately seasoned, and served at proper temperatures without excessive waiting.
2. All items listed on the menu as will be available throughout the posted serving hours of the time period advertised.
3. The salad buffet or specialty hot bar shall at all times be adequately stocked with each item listed on the menu and kept clean.
4. Clean dry trays, glasses, flatware, dishes, and other eating utensils will be adequately stocked as to not delay patrons and cause them to waiting for the items to be restocked.
5. Beverage dispensers shall at all times contain a supply equal to the demand.
6. Tables, chairs, and floors will be kept clean at all times and clear of wet spots, and food spills. Tables shall be wiped between each use.
7. Salt and pepper will be provided on each table.

Menu:

Breakfast shall be available during the posted service hours. The Vendor shall offer a complete variety of breakfast foods.

Lunch shall also be offered and available during the posted service hours. The vendor shall offer a complete variety of lunch type foods. The vendor shall also provide for lunch meals that are prepared to be low or no fat.

Leftovers:

The vendor shall not have any item returned to the steam serving line after the initial day the item is served. All leftover items must be presented in some other form as long as the item remains fresh. and appetizing in appearance and texture.

Food Service Program

Staffing and Food Quantities:

The vendor will at all times maintain an adequate staff of employees on duty to assure efficient preparation and delivery of food service. The vendor shall assure:

1. All items shall be prepared and served according to the highest standards of quality. They shall be fresh, attractive, appropriately seasoned, and served at proper temperatures without excessive waiting.
2. All items listed on the menu as will be available throughout the posted serving hours of the time period advertised.
3. The salad buffet or specialty hot bar shall at all times be adequately stocked with each item listed on the menu and kept clean.
4. Clean dry trays, glasses, flatware, dishes, and other eating utensils will be adequately stocked as to not delay patrons and cause them to waiting for the items to be restocked.
5. Beverage dispensers shall at all times contain a supply equal to the demand.
6. Tables, chairs, and floors will be kept clean at all times and clear of wet spots, and food spills. Tables shall be wiped between each use.
7. Salt and pepper will be provided on each table.

Menu:

Breakfast shall be available during the posted service hours. The Vendor shall offer a complete variety of breakfast foods.

Lunch shall also be offered and available during the posted service hours. The vendor shall offer a complete variety of lunch type foods. The vendor shall also provide for lunch meals that are prepared to be low or no fat.

Leftovers:

The vendor shall not have any item returned to the steam serving line after the initial day the item is served. All leftover items must be presented in some other form as long as the item remains fresh. and appetizing in appearance and texture.

Page #6 of 9
September 8, 1995

Example: Corn, peas and carrots served on the steam line in its original form may be served the second day in soups, ala king, or potpies. Roast beef may be served the second day in the form of chili, pot roast with vegetables, or creamed chipped beef over toast.

The vendor must dispose of the any item remaining after the second day (alternate form) of being on the steam line.

Security:

The facilities occupied by the vendor shall be secured by a security lock with keys which can not be duplicated. The state shall bear the expense of changing locks or re-keying in order to provide reasonable security for the vendor's inventory and equipment. The State shall have a key for access, but will not enter the cafe except for an emergency without the approval of the vendor. The State shall also take precautions to insure the security and access to the State held key.

Special Groups:

The vendor is encourage to cater special events, and to accommodate special groups but the vendor must arrange for service to the patrons of the cafe first. Special groups, or catered events should be arranged at alternate times and avoid the peak lunch time of 11:30 A.M. through 1:00 P.M.

Capitol Cafeteria Committee:

The vendor or his designee shall meet with the State Capitol Cafeteria (CCC) to discuss the cafeteria food service operation on a regular basis. The CCC shall meet a minimum of one per quarter but may request meetings as often as deemed necessary. The vendor shall be responsive to reasonable requests and suggestions presented by the committee.

The CCC shall in conjunction with the vendor conduct a continuing program of inquiry into patron needs and attitudes toward the food service as it pertains to service, price, and quality. The vendor should be receptive to the information provided in the survey. The vendor may install a customer service suggestion box to supplement the customer service program in addition to the surveys.

CONTRACT TERMS AND CONDITIONS

Term of Contract/Renewals:

This contract becomes effective on October 1, 1995 and extends for a period of thirty six (36) months. The vendor may request renewal within thirty (30) days prior to the date of expiration. Such renewal shall be in accordance with the terms and conditions contained in the original contract with the exception of rent and utility fees, and catering fees, and shall be limited to two (2) successive three (3) year periods. Any future renewal must be upon mutual consent of both parties, and may include renegotiation of fee for utilities, and rent or other factors of production.

Cancellation:

The Director of Purchasing reserves the right to cancel this contract immediately upon written notice to the vendor if the commodities or services supplied are of inferior quality or do not conform with the terms and conditions of operation of the cafe. Such action shall not be taken unless all other attempts to resolve the issues have failed.

Assignment/Subletting:

The vendor shall not at any time sell, convey, transfer, mortgages, pledge or assign this contract, either in part or in whole, not to any of its rights, title, interests or privileges hereunder, nor sublease any of the facilities or any part thereof.

Waiver:

It is expressly understood and mutually agreed that no waiver granted on account of violation of any covenant, term or condition of this contract shall constitute or be construed in any manner as a waive of the covenant, term or condition of the right to enforce the same as to any other or future violation.

Liability and Indemnification:

It is expressly understood and agreed that the vendor is an independent contractor engage in transacting its own business on its own accounts in the facilities furnished to the vendor. Said vendor does hereby expressly agree to pay for the cost of merchandise, services, and any other expenses in connection with the operation of this business and to indemnify and hold harmless the State from and against any and all claims and demands whatsoever of any kind or nature, that may be brought against the State by reason of any matter arising out of, acting, or concerning the food service operations of the vendor and not occasioned through the fault of the State.

The vendor hereby expressly relieves the State from all responsibility for any destruction, damage to, loss or theft, of the vendor's equipment, supplies, raw food, or any other material in the facility belonging to the vendor and for injury to any of the vendor's members, or employees, howsoever occurring and covenants that it will indemnify and save harmless the State from any and all manner of actions, liabilities, and claims of other on account thereof and on account of any and all other actions, liabilities and claims arising out of or incident to the use of the facilities or the exercise by the vendor of any of the rights acquired by it under the terms of this contact.

Insurance:

The vendor shall procure and maintain during the full term of the contract insurance coverage for comprehensive (including products, bodily injury, and property damage liability). The vendor shall/has provided the Department of Administration, Purchasing Division, proof in the form of a certificate of insurance from an surety authorized by of the West Virginia Insurance Commissioner, verifying that the vendor does carry such liability insurance as defined.

All insurance policies and certificates shall contain a covenant by the surety issuing the same that the policies will not be cancelled by the issuing company unless a thirty (30) day written notice of cancellation is first given to the State. The cost of all insurance shall be sole responsibility of the vendor.

Workers Compensation:

The vendor is required to comply with all rules and regulations prorogated by the West Virginia Bureau of Employment Programs, Workers Compensation Division, and must provide a certificate from the Workers Compensation Division that verifies compliance.

Cafeteria Renovations:

The agrees to provide renovations, cleaning, and extermination services according to the following schedule for start up:

September 30, and October 1, 1995 bug extermination of the facility.

October 2 through October 15, 1995:

- A. Remove carpeting from the south and west walls within the cafeteria.
- B. Install wall board, and paint. (vendor's choice of color)

Page #9. of 9
September 8, 1995

- C. Paint all existing walls within the dining area including the columns the color selected by the vendor.
- D. Paint the entire kitchen, food preparation, and serving areas the color selected by the vendor:
- E. Clean all ceiling tiles in the facility.
- F. Clean the carpet and floors in the entire facility.
- G. Build an enclosed half wall smoking area on the south wall cold air return with planters on top that should be approximately 25% of the table area.
- H. Reopen the facility October 16, 1995 or as soon thereafter as the work as defined can be completed.

Appendix C: Department of Administration's Response



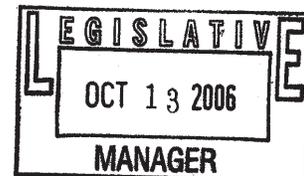
JOE MANCHIN III
GOVERNOR

STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION
OFFICE OF THE CABINET SECRETARY

ROBERT W. FERGUSON, JR.
CABINET SECRETARY

October 12, 2006

John Sylvia
West Virginia Legislature
Building 1, Room W-314
State Capitol Complex
1900 Kanawha Blvd., East
Charleston, WV 25305



Dear Mr. Sylvia:

Thank you for the opportunity to respond in writing regarding any concerns of the Department of Administration with the Special Report on the Capitol Cafeteria and the side-wing snowplow issue.

Please be aware that we have no comment at this time.

Very truly yours,

ROBERT W. FERGLSON, JR.
Cabinet Secretary

RWFjr;jkj

1900 KANAWHA BOULEVARD, EAST • BUILDING 1, ROOM E-119 • CHARLESTON, WEST VIRGINIA 25305-0120 • 304.558.4331 • FAX: 304.558.2999

WWW.STATE.WV.US/ADMIN

EQUAL OPPORTUNITY EMPLOYER

