

**Performance Audit**

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**Institutions of Higher Education**

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**Bluefield State College and Concord College are Utilizing Statewide Purchasing Contracts for Employment of Temporary Workers and are not Following the Terms and Conditions of these Contracts, Risking Liability for State Retirement and Insurance Benefits**





**OFFICE OF THE LEGISLATIVE AUDITOR**

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# Executive Summary

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## **Issue 1: Two Institutions of Higher Education Utilizing Statewide Purchasing Contracts for Employment of Temporary Workers are not Following the Terms and Conditions of these Contracts, Risking Liability for State Retirement and Insurance Benefits.**

Under §18B-5-4(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. Four institutions in the southern part of West Virginia were chosen for the first performance audit. They are Bluefield State College, Concord College, West Virginia School of Osteopathic Medicine and Southern West Virginia Community and Technical College.

The Legislative Auditor examined the use of statewide temporary services workers contracts at the colleges and found that the two colleges using the temporary contracts employed temporary workers for longer periods of time than allowed under the contracts. Bluefield and Concord employed 60 temporary workers using statewide contracts during the fiscal year 2003. Both colleges employed temporary workers for longer than the annual limit of 1,000 hours allowed by the statewide contracts, placing these colleges at risk for liability for state retirement and insurance benefits. At Bluefield, nine temporary workers were employed longer than 1,000 hours. Concord employed two temporary workers longer than 1,000 hours.

The colleges using statewide temporary employment contracts were using contracts that were determined to be incomplete. One college contract did not have the change order in which the State limited worker employment to 1,000 hours annually. There was no external monitoring by the State Purchasing Division of the statewide contracts, and there was a lack of awareness at the colleges and at the Higher Education Policy Commission of the potential risks associated with non-compliance to the contract time limits.

## **Recommendations**

- 1. The Higher Education Policy Commission should assist the institutions by providing information and guidance on the proper use of specialized statewide temporary workers contracts.*

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2. *Institutions using the statewide temporary services contracts should coordinate with their human resources departments to assist in the implementation and monitoring of the contract terms and conditions.*

3. *Institutions using the statewide temporary workers contracts should develop and implement a mechanism to track employment hours of each temporary worker used, adhering to the contract definition that a temporary worker is employed to meet a temporary need.*

4. *All agencies, institutions and governmental entities eligible to use statewide contracts should be informed by the State Purchasing Division when any significant risks or liability to the State could result from improper use of any statewide contract.*

5. *All statewide contracts in their entirety should be accessible at the State Purchasing Division website.*

6. *The Legislature should consider legislation to specify the responsibilities of all users of any statewide contracts and create possible penalties for misuse of any statewide contracts.*

# Review Objective, Scope and Methodology

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Under §18B-5-4(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. Four institutions in the southern part of West Virginia were evaluated to examine the implementation of their purchasing functions for the first performance audit. They are Bluefield State College, Concord College, West Virginia School of Osteopathic Medicine and Southern West Virginia Community and Technical College.

## Objective

This review was conducted to confirm that the Chief 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 assessed the procurement of temporary services using contracts developed by the State Purchasing Division.

## Scope

This review covers the period from fiscal year 2001-2003. The Legislative Auditor examined documents provided by each institution, the Higher Education Policy Commission, the Attorney General's Office, the Division of Personnel, the Division of Purchasing and two vendors of temporary services workers.

## Methodology

This report was developed from personal interviews and site visits, institution documentation of agreements, time sheets and payments to vendors, a review of statewide temporary services contracts, and vendor records of time worked by temporary workers. The use of statewide contracts for temporary workers became an area of focus when it was learned that two institutions were purchasing the services of 60 temporary employees in fiscal year 2003. Every aspect of this evaluation complied with **Generally Accepted Government Auditing Standards (GAGAS)**.





# Issue 1

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## **Two Institutions of Higher Education Utilizing Statewide Purchasing Contracts for Employment of Temporary Workers are not Following the Terms and Conditions of these Contracts, Risking Liability for State Retirement and Insurance Benefits.**

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*Chief Procurement Officers at institutions of Higher Education are allowed to purchase goods and services from a variety of sources including statewide contracts developed by the Division of Purchasing.*

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*The utilization of contracts to purchase the services of temporary workers requires adherence to the terms and conditions of the contract in order to avoid the risk of liability to the agency, institution or governmental entity using the contract.*

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*In one twelve month period, the two schools combined employed 60 temporary workers with eleven of these workers exceeding the annual time limit of 1,000 hours.*

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### **Issue Summary**

Chief Procurement Officers at institutions of Higher Education are allowed to purchase goods and services from a variety of sources including contracts developed by the individual institution, contracts developed by other institutions of Higher Education, WV Net contracts, statewide contracts developed by the Division of Purchasing, and federal contracts. This flexibility allows for convenience and lower prices. In some instances, price structure on existing contracts is used for local vendors to match or beat the price to allow for local purchasing at the best price available. The use of such contracts is straightforward when purchasing commodities from any existing contract. However, the utilization of contracts to purchase the services of temporary workers requires adherence to the terms and conditions of the contract in order to avoid the risk of liability to the agency, institution or governmental entity using the contract.

Two of the four colleges examined by the Legislative Auditor employed temporary workers for longer periods of time than allowed by the statewide contracts, consequently placing the colleges at risk for liability for state retirement and insurance benefits. In one twelve month period, the two schools combined employed 60 temporary workers with eleven of these workers exceeding the annual time limit of 1,000 hours. Appropriate use of the statewide contracts may be hindered due to individual colleges having incomplete contracts and no mechanism to determine that the contracts are missing changes. In addition, there is no external contract monitoring by the State. Finally, there is a lack of awareness of the potential risks associated with non-compliance to the contract time limits. Information regarding the use of temporary workers, and the need to adhere to the contract time limits has not been uniformly communicated to the numerous authorities allowed to use these contracts.

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## **Bluefield State and Concord Colleges Use Statewide Purchasing Contracts For Employment of Temporary Workers**

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*In FY 2003, Bluefield employed 50 workers using contracts with Saunders Employment Services and Kelly Services. During the same time period, Concord employed 10 temporary workers.*

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Of the four institutions of Higher Education examined by the Legislative Auditor, two colleges employ temporary workers utilizing the statewide purchasing contracts developed by the State Purchasing Division. In FY 2003, Bluefield employed 50 workers using contracts with Saunders Employment Services and Kelly Services. During the same time period, Concord employed 10 temporary workers. Nine of the temporary workers were employed using the Saunders Employment Services statewide contract, and one worker was employed using a separate agreement with Saunders for pay at a higher rate than that specified in the statewide contract. For fiscal year 2004, Concord again developed separate agreements with Saunders, and made agreements with two workers to be paid a higher rate than specified in the statewide contract. West Virginia School of Osteopathic Medicine and Southern West Virginia Community and Technical College did not employ personnel using any statewide temporary contracts.

At West Virginia School of Osteopathic Medicine the need for temporary workers is minimal, and filled by students. Southern West Virginia Community and Technical College is too far away to utilize the services of temporary agencies, and therefore employs temporary workers through its human resources department. The Human Resources Manager noted that Southern follows the wage scale for the position classification developed by the Higher Education Policy Commission. Temporary workers at Southern are monitored to ensure that they are not employed for enough hours to accrue eligibility for health and retirement benefits.

## **The Statewide Contracts, Terms and Conditions**

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*The state has 19 separate temporary service workers contracts for the six positions of accounting clerk, data entry clerk, casual laborer, general office personnel, typist and word processing personnel, from entry to advanced levels.*

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The statewide temporary services employment contracts have specific conditions designed to protect the state from liability for health and retirement benefits. Temporary workers are supposed to be employed to meet a temporary workforce need, and are therefore not to work the number of hours that would qualify them for such benefits.

The Legislative Auditor examined the use of statewide temporary employment services contracts at the two colleges that used this type of contract from July 2002 through June 30, 2003. The state has 19 separate temporary

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services workers contracts for the six positions of accounting clerk, data entry clerk, casual laborer, general office personnel, typist and word processing personnel, from entry to advanced levels. Each position has an hourly billing rate for the region. All the contracts have the same specific terms and conditions that must be followed by the vendor and the contract user. The conditions start with a definition of hiring for temporary services stating:

*The hiring of a temporary services individual shall be limited to a period of the need and in no event shall a temporary services vendor continue to provide the same temporary employee or consecutive temporary employees to provide the same temporary duties for more than twelve (12) consecutive months in any twelve month period.*

Agencies that need to have a temporary worker for a longer period of time can receive approval on a case-by-case basis from the Division of Personnel.

Other conditions in the contracts include compensation (including overtime and holiday pay); transportation and parking expenses; fee adjustments if the Federal minimum wage changes; time cards; the responsibility of the vendor for the conduct and management of personnel; normal work hours; holidays; meal and break policies; smoke and drug free environments; notice if an employee is replaced; indemnification against claims against the state; confidentiality; ethics; compliance with immigration laws; equal opportunity employment; quarterly reports to the Purchasing Division for verification that payroll taxes, wages, unemployment insurance and worker's compensation premiums are paid timely; and exceptions for purchases greater than \$10,000.

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*In March 2001, a significant change was made to all existing temporary services contracts to ensure that persons employed through these contracts would meet the definition of a temporary worker as determined by the Division of Personnel.*

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### **The 1,000 Hour Requirement**

There is also an annual time limit requirement for the contract user that was added **after** the original contracts were developed. In March 2001, a significant change was made to all existing temporary services contracts to ensure that persons employed through these contracts would meet the definition of a temporary worker as determined by the Division of Personnel. This was included in a change order that was added to the existing contracts, and mailed to all contract users. The requirement stated:

**For all temporary procurement, a conditional limit of 1,000 hours per individual per year is added to the contract.**

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*The 1,000 hours is a variable established by the Division of Personnel and is one 40 hour work week below the 1,040 hour threshold for qualifying for retirement and insurance benefits.*

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The 1,000 hours is a variable established by the Division of Personnel and is one 40 hour work week below the 1,040 hour threshold for qualifying for retirement and insurance benefits. It was added at a time when the Division of Personnel was attempting to identify and minimize potential liability to the state for class action suits by independent contractors for employee benefits. Such a suit cost Microsoft corporation millions of dollars when employees were mis-classified as “independent contractors.” In March, 2002 the Division of Personnel developed an informational pamphlet to inform state agencies of the significant risks and severe penalties if employees are incorrectly classified as independent contractors. In addition to the liability for benefits, employers also risk penalties from the Internal Revenue Service reclassifying workers that it determines to be employees. Much of this determination can hinge on the right to control and direct the worker.

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*1,040 hours is also the number of hours at which an employee of Higher Education qualifies for and becomes eligible for all applicable benefits.*

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A senior personnel specialist in Employee Relations for the Division of Personnel noted that the 1,000 hour variable increases in significance as the employing agency’s control over the means, method and manner of the provision of services increases. He emphasized, “For statewide temporary employment services contracts, the 1,000 hour limit is of greatest importance as the agency is totally in control of the means, method and manner variables.”

While the 1,000 hour requirement would keep a temporary worker below the qualifying number of 1,040 hours for retirement and insurance benefits in the state system, 1,040 hours is also the number of hours at which an employee of Higher Education qualifies for and becomes eligible for all applicable benefits. Although 1,040 hours is a portion of a full time working year, it is considered slightly over 50% and therefore qualifies a worker for prorated benefits.

## **Bluefield and Concord Have Temporary Workers That Exceed 1,040 Hours**

The Legislative Auditor examined records from the two vendors providing temporary services workers to Bluefield and Concord Colleges. Of the combined schools’ 60 temporary workers employed in FY 2003, 11 workers exceeded the statewide contract requirement of 1,000 hours by working more than 1,040 hours during the fiscal year. See Table 1:

Table 1 FY 2003 Temporary Workers At Concord and Bluefield Exceeding 1,000 Hour Time Limit			
College	Contract	Worker	Number of Hours
Concord	Saunders Employment Services	1	2,059
Concord	Saunders Employment Services	2	1,347.25
Bluefield	Saunders Employment Services	3	1,514.50
Bluefield	Saunders Employment Services	4	1,074.25
Bluefield	Saunders Employment Services	5	1,686.50
Bluefield	Saunders Employment Services	6	1,726
Bluefield	Saunders Employment Services	7	1,645
Bluefield	Kelly Services	8	1,740.50
Bluefield	Kelly Services	9	1,364
Bluefield	Kelly Services	10	1,704.50
Bluefield	Kelly Services	11	1,055.50

This examination of hours worked, taken from records of both of the companies providing temporary workers to Bluefield and Concord, shows that the worker with the least amount of time over the 1,000 hour requirement was actually 55.5 hours over, while the worker with the most amount of time was 1,059 hours over the contract requirement for one year. The total number of hours worked **over the contract limit** was 5,917 hours in FY 2003.

### **Monetary Effect Of Non-Compliance**

The Legislative Auditor is concerned about the possible financial impact to the State and the individual institutions in the event that benefits should be awarded to all 11 employees. Since the actual rates paid to the employees were not available, two calculations of fringe benefits were made. Both calculations were based on the 35% rate used by the State Budget Office to calculate fringe benefits. The first calculation used the highest hourly rates paid to the vendors. Using the highest rate, the total additional cost for benefits would have been \$92,369.33 for FY 2003. At the lowest rate, the total benefits cost would be \$74,737.90. **These amounts are hypothetical, but illustrate the added monetary burden to the institutions in the event that benefits**

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**should be paid to the temporary workers.** These calculations could not include the higher costs of penalties in the event of an Internal Revenue Service reclassification, and additional damages in the event of a class action suit by the employees. It is possible that if the institutions found themselves in the position of paying back benefit amounts to the workers, they would also be involved in settling lawsuits and paying Federal penalties.

## **Chief Procurement Officers Responsible For Compliance With Contract Terms**

The Higher Education Policy Commission Purchasing Procedures Manual specifically charges the Chief Procurement Officer at each institution to comply with state law. However, the purchasing officer at Bluefield using two statewide temporary worker's contracts did not monitor the contract usage in a way that would reveal that the 1,000 hour limit had been exceeded. Concord College established separate agreements in fiscal 2003, and 2004 with the vendor in order to employ workers at a higher rate of pay than allowed under the statewide contract. Both purchasing officers followed institutional procedures to allow purchase orders for payment to each vendor. Since both colleges are quite small, the purchasing officers were familiar with at least some of the individuals employed long term by the college.

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*The Chief Procurement Officer at Bluefield stated that he monitored the contracts to ensure that the rates paid were correct, but noted that he was not aware of the time limitations in the contracts and therefore did not monitor the duration of time worked by each worker employed under the statewide contracts.*

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The Chief Procurement Officer at Bluefield stated that he monitored the contracts to ensure that the rates paid were correct, but noted that he was not aware of the time limitations in the contracts and therefore did not monitor the duration of time worked by each worker employed under the statewide contracts.

At Concord College the Chief Procurement Officer was aware of the time limitations but two temporary workers in FY 2003 exceeded the 1,000 hour limit. Concord established separate agreements or contracts with the vendor in order to pay a higher hourly rate to temporary employees. In 2003 one of these workers exceeded the 1,000 hours requirement by over 1,059 additional hours. Despite the separate agreement, employing temporary workers for over 1,040 hours constitutes full time eligibility for benefits, and places the college at risk in the event of a legal action.

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*The manner in which institutions receive the original documents and subsequent changes from the Division of Purchasing allows omissions to the integrity of the document to occur.*

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## **Factors That Contributed To Lack Of Compliance**

Several factors contributed to the lack of compliance with the statewide employment contracts. The manner in which institutions receive the original documents and subsequent changes from the Division of Purchasing **allows omissions to the integrity of the document** to occur. A lack of monitoring

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by the State Division of Purchasing may also have been a factor of non-compliance. A final factor may have been a lack of awareness of the potential risks due to a lack of communication between the Division of Personnel and the Higher Education Policy Commission. The following are the elements that added to non-compliance by the purchasing directors:

### **Incomplete contracts**

Statewide contracts are listed with the contract number on the Purchasing website, but further information is not available online. The colleges request statewide contracts and the contracts are mailed in paper form to the purchasing officer. Any change, renewal or other update information is also mailed *as it occurs*.

The Legislative Auditor obtained copies of the specific statewide contracts as used by both colleges in FY 2003 for the purchase of services of temporary workers, and compared them to the original contracts filed at the Purchasing Division. The contracts negotiated by the state in September 2000, had five changes attached. **Both colleges had contracts that were incomplete, with Bluefield missing an important change to the original contract.**

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*Both colleges had contracts that were incomplete, with Bluefield missing an important change to the original contract.*

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Bluefield used Kelly Services and Saunders Employment Services contracts. The Kelly contract was missing change orders 1, 2, 3 and 5. The Saunders contract was missing change orders 1,3 and 5. **The significant change that was made to this type of contract by the Division of Personnel was contained in change order 3 which was not contained in the Bluefield contracts.** Concord used only Saunders Employment Services, which was missing change orders 1, 4 and 5. It is unclear why the contracts used by the two colleges were incomplete. While changes to statewide contracts are mailed to users, there is no system employed by the Division of Purchasing to track information mailed. The information may not have been mailed, or it may have been mis-directed or lost in the mail. Further, the colleges are responsible for filing changes with the contracts. Information may have been misfiled.

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*Since contracts are not scanned into the Purchasing Division website, there is no quick, centralized way to determine if the statewide contract being used by the purchasing officer is fully complete.*

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### **Contract Overview Not Available**

The purchasing officer does not have a mechanism to determine if the contract which he has is complete, or if changes have been made to the contract. Since contracts are not scanned into the Purchasing Division website, there is no quick, centralized way to determine if the statewide contract being used by the purchasing officer is fully complete.

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## External Monitoring Not Occurring

The Division of Purchasing does not monitor statewide contracts for compliance on the part of vendors and users due to the lack of staff. Even if such contract monitoring were to occur, the Director stated that “we would likely not review compliance on the part of institutions of Higher Education since they do not fall under our authority.” Even though the institutions do not fall under the authority of the Division of Purchasing, the Director noted that he is unaware of any reason that the institutions are not required to comply with the terms and conditions of the statewide contracts.

## Higher Education Policy Commission Not Informed

At the time that the Division of Personnel was informing state agencies of the risks involving contract workers and disseminating a pamphlet that outlined criteria for determining a worker’s status, the Higher Education Policy Commission was not informed. Neither Human Resources nor Purchasing at the Commission provided any direction on the use of statewide temporary services workers contracts.

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*The Legislative Auditor is concerned about the use of separate agreements to hire specific individuals from the temporary employment agencies.*

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## Additional Concerns Of The Legislative Auditor

The Legislative Auditor is concerned about the use of separate agreements to hire **specific individuals** from the temporary employment agencies. Instead of being an agreement between the individual providing services and the institution, which is the usual form of the agreement, this use involves the employment agency (vendor) and then names a specific individual. Thus, the **individual** is being brokered, rather than the services provided. The agreement form used (Agreement WV 48) is a standard form that may be used to set forth a simple agreement between an institution and a vendor for **services**. However, once a specific individual is named on the agreement form the institution has entered into an employment contract **for this individual**. Close monitoring of the individual’s hours of service must occur to prevent eligibility for full time benefits.

In the case of Concord College, two agreements have been made with the employment service to hire two temporary workers at rates higher than the rates contained in the state contracts. One of these temporary workers exceeded the 1,000 hours requirement. This worker actually worked in two separate settings at Concord, one for an hourly rate and the other in which he was paid a flat fee of several hundred dollars a week to work at special institutional



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events at certain times of the year. In both positions, this individual is an employee of the temporary services agency, not of the college. This raises a further concern of the violation of federal and state wage and hour laws due to overtime hours worked. If the institution wants to hire a specific individual, and retain them on a long-term basis, it should offer the individual, not the temporary agency, a contract for services.

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*At Bluefield, three professional workers were employed through the temporary agencies. All three earned over \$25,000 in FY 2003 but did not participate in a competitive selection process as required by the Higher Education Policy Commission.*

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At Bluefield, three professional workers were employed through the temporary agencies. They were not hired according to a separate agreement, but they should have been because they are professional technical employees. Only one of these workers exceeded the 1,000 hour rule. However, all three earned over \$25,000 in FY 2003 but did not participate in a competitive selection process as required by the Higher Education Policy Commission. It is questionable whether they should have been hired through the temporary agency.

## **Conclusion**

Higher Education institutions have different purchasing rules than state agencies but are allowed to purchase from statewide contracts. This privilege carries a responsibility to fulfill all of the requirements and terms of the contracts. Purchases made by the institutions are not monitored by the Division of Purchasing, despite the fact that its contracts are being used, because the institutions fall outside the responsibility of the State Purchasing Director to monitor. This does not absolve the institutions from following the requirements of the contracts, but also does not provide a mechanism for oversight and enforcement of the proper use of the statewide contracts. When specialized contracts, such as the temporary services workers contracts, are used violations of the contract requirements can place the institutions and the State at risk for substantial liability payments in health and retirement benefits, and possible penalties from the Internal Revenue Service.

## **Recommendations**

- 1. The Higher Education Policy Commission should assist the institutions by providing information and guidance on the proper use of specialized statewide temporary workers contracts.*
- 2. Institutions using the statewide temporary services contracts should coordinate with their human resources departments to assist in the implementation and monitoring of the contract terms and conditions.*

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3. *Institutions using the statewide temporary workers contracts should develop and implement a mechanism to track employment hours of each temporary worker used, adhering to the contract definition that a temporary worker is employed to meet a temporary need.*

4. *All agencies, institutions and governmental entities eligible to use statewide contracts should be informed by the State Purchasing Division when any significant risks or liability to the State could result from improper use of any statewide contract.*

5. *All statewide contracts in their entirety should be accessible at the State Purchasing Division website.*

6. *The Legislature should consider legislation to specify the responsibilities of all users of any statewide contracts and create possible penalties for misuse of any statewide contracts.*

# Appendix A: Concord College Response

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PROCUREMENT OFFICE



PHONE (304)384-5233 FAX(304)384-9044

January 7, 2003

John Sylvia, Director  
West Virginia Legislature  
Performance Evaluation and Research Division  
Building 1, Room W-314  
1900 Kanawha Boulevard, East  
Charleston, WV 25305



Dear Mr. Sylvia:

In response to your letter of December 30, 2003 concerning the temporary employee issue, we agree with the draft report. However, we wish to clarify one point and address the recommendations relevant to Concord.

For clarification, the Purchasing Office at Concord was unaware of the 1,000 hour contract time limitation until it was brought to our attention by the auditor. We agree that compliance is hindered by the manner in which contracts and change orders are received from the Division of Purchasing. We also agree that it would help if the Division of Purchasing had statewide contracts available on their website. Vendor compliance is also an issue.

We have taken the following steps to implement the recommendations that are relevant to practices at Concord:

- Item (2) Effective immediately, Concord Purchasing Office will require that any department requiring temporary services will have to coordinate their requirements with the Human Resources Department.
- Item (3) The vendor receives all documents related to a contract and therefore should have been well aware of the 1,000 hour clause. Concord has been in contact with our vendor and will work with them to implement a mechanism to monitor hours worked. The Purchasing Office will develop a policy related to contracts for temporary employees to ensure that departments are aware of requirements related to using state and/or College contracts for temporary services. The same 1,000 hour language used in the statewide contracts will be incorporated into any contracts done by Concord.

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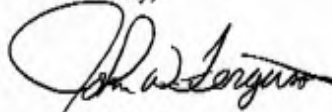
P. O. Box 1000 ~ Athens, West Virginia ~ 24712

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Status of the two temporary employees noted at Concord: One of the employees is no longer serving the College; the second, who was covered by a separate contract, is still serving the college, however, we are in the process of making this a full time College position.

Other report recommendations cannot be addressed by Concord College.

Sincerely,



John W. Ferguson  
Chief Procurement Officer

cc: Dr. Jerry Beasley, President  
James L. Cannon, CFO

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PROCUREMENT OFFICE



PHONE (304)384-5233 FAX(304)384-9044

January 9, 2004

John Sylvia, Director  
West Virginia Legislature  
Performance Evaluation and Research Division  
Building 1, Room W-314  
1900 Kanawha Boulevard, East  
Charleston, WV 25305



Dear Mr. Sylvia:

Following further evaluation of the issue concerning temporary employees, we wish to point out that the employee with 2,059 hours was not on a state contract and was not therefore subject to the 1,000 hour provision. That employee was under a Concord College contract governed by the Higher Education Policy Commission purchasing guidelines that do not have an hour limitation. Reference to the hours worked by this temporary should be deleted for the report.

Sincerely,

A handwritten signature in black ink, appearing to read "John W. Ferguson".

John W. Ferguson  
Chief Procurement Officer

cc: Dr. Jerry Beasley, President  
James L. Cannon, CFO

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P. O. Box 1000 ~ Athens, West Virginia ~ 24712

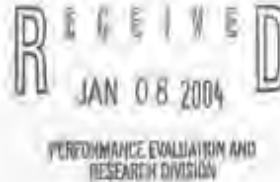


# Appendix B: Bluefield State College Response



January 8, 2004

West Virginia Legislature  
Performance Evaluation and Research Division  
ATTN: Mr. John Sylvia, Director  
Building 1, Room W-314  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0610



Dear Mr. Sylvia:

My staff and I appreciated the opportunity to speak with you yesterday in regard to the first issue of the Legislative Auditor's review and the professionalism extended by you and your staff. As stated, Bluefield State College will continue to abide by all policies, procedures, and guidelines set forth by the State of West Virginia. We will also take immediate steps to correct our procedures that are inconsistent with the 2001 change in the state contract for temporary services regarding the 1,000 hour limit within one year for a temporary help employee.

As referenced in your document, "Several factors contributed to the lack of compliance with the statewide employment contracts. The manner in which institutions received the original documents and subsequent change orders from the Division of Purchasing **allows omissions to the integrity of the document** to occur. A lack of monitoring by the State Division of Purchasing may also have been a factor of non-compliance. A final factor may have been a lack of awareness of the potential risks due to a lack of communication between the Division of Personnel and the Higher Education Policy Commission." I would strongly encourage, prior to the release of this document, that discussion and development of a process for notification and monitoring of state contracts, i.e. temporary contracts, be implemented.

My staff and I are extremely concerned that your findings of the performance audit and their distribution to LOCEA do not appear to be in line with HB2224. HB2224 (page 56, line 4 to 6) states "conduct a performance audit of the policies, procedures and results of the procurement of goods and services by the state institutions of higher education." Also, HB2224 (page 56, line 11 to 17) states "to make a comprehensive report to the legislative oversight commission on education accountability by the first day of December, two thousand three, on the results of the performance audit, together with any recommendations for additional actions that might be taken to improve the efficiency.

#### BLUEFIELD CAMPUS

219 Rock Street Bluefield, WV 24701 (304) 327-4000 (304) 325-7747 (fax)  
TOLL-FREE IN WV (800) 344-8892 IN VA, DC, OH, NC, KY AND PARTS OF MD, TN (800) 654-7798

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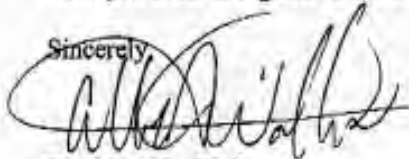
effectiveness and economy of the administrative operations of the state institutions of higher education and the commission.”

At this point in time, only four institutions have been partially audited by your division. We understand that other institutions are being audited by vendors contracted by HEPC and are in no way comparable to our performance audit in the amount of time it is taking or the processes being reviewed. Therefore, it could not be a “comprehensive report” of all state institutions, or a “comprehensive report” of Bluefield State College since, as stated yesterday, there are more areas for your division to review. There could also be the perception that Bluefield State and Concord Colleges are being “singled out” by not providing to LOCEA a “comprehensive report” as stated in HB2224. Additionally, we are concerned of the legal ramifications to not providing each institution an individual report.

I would respectfully request the removal of the last two sentences under “Monetary Effect of Non-Compliance”, “These calculations could not include the higher costs of penalties in the event of an Internal Revenue Service reclassification, and additional damages in the event of a class action suit by the employees. It is possible that if the institutions found themselves in the position of paying back benefit amounts to the workers, they would also be involved in settling lawsuits and paying Federal penalties.” My staff and I realize that the document contains the information that would lead to this conclusion, but would prefer that specific direction not be given to the employees when the document is available to the public.

I would like to thank you for the opportunity to provide our comment and suggestions to your report. Should you have any further questions or comments, please do not hesitate to contact me (327-4030) or Shelia Johnson (327-4040). I look forward to a response from you soon in regards to our concerns.

Sincerely,



Dr. Albert L. Walker  
President

cc: Shelia Johnson  
Chancellor  
Michael Mullen

Attachment



1 (1) In assuring the fiscal integrity of processes implemented  
2 under this section, at a minimum, the commission has the following  
3 responsibilities: *perform audit*

4 (1) To conduct a performance audit of the policies, procedures  
5 and results of the procurement of goods and services by the state  
6 institutions of higher education;

7 (2) To make progress reports on the implementation of this  
8 section to the legislative oversight commission on education  
9 accountability throughout the two thousand three interim meetings  
10 period;

11 (3) To make a comprehensive report to the legislative  
12 oversight commission on education accountability by the first day  
13 of December, two thousand three, on the results of the performance  
14 audit, together with any recommendations for additional actions  
15 that might be taken to improve the efficiency, effectiveness and  
16 economy of the administrative operations of the state institutions  
17 of higher education and the commission.

18 (m) The commission shall report annually to the legislative  
19 oversight commission on education accountability regarding any  
20 savings achieved by implementing the provisions of this section.

21 **ARTICLE 6. ADVISORY COUNCILS.**

22 **§18B-6-4b. Institutional classified employee council.**

23 (a) For the purposes of this section the following words have  
24 the specified meanings unless the context clearly indicates a  
25 different meaning:

26 (1) "Council" or "staff council" means the advisory group of  
27 classified employees formed on each campus of state institutions of



# Appendix C: Higher Education Response



Post-it® Fax Note	7671	Date		# of copies
To	Sylvia	From	James Winter	
Company	PERD	Co.		
Phone #		Phone #		
Fax #	347-7939	Fax #		

January 9, 2004

Mr. John Sylvia  
 Director  
 Performance and Research Division  
 West Virginia Legislature  
 Building 1, Room W-314  
 Charleston, WV 25305-0610

**RECEIVED**  
 JAN 09 2004  
 PERFORMANCE EVALUATION AND  
 RESEARCH DIVISION

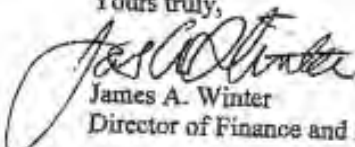
Dear Mr. Sylvia:

Thank you for your letter dated December 30, 2003, regarding the draft copy of the first issue of the Legislative Auditor's review of the purchasing function for Higher Education institutions. It is our understanding that both Concord College and Bluefield State College have previously filed responses and comments to the above referenced report.

Recommendation one was specifically addressed to the Commission office and states that "The Higher Education Policy Commission should assist the institutions by providing guidance on the proper use of specialized statewide temporary worker contracts." We would concur with this recommendation and will follow-up accordingly.

We look forward to working with you in regard to finalizing these purchasing performance audits. By February, Suttle & Stalnaker will have completed the purchasing performance audits for all higher education institutions with the exception of the four institutions which the Legislative Auditor has under review. I would suggest that we meet again in February to discuss the audits completed to date and develop follow-up plans.

Let me know if you have questions or need additional information.

Yours truly,  
  
 James A. Winter  
 Director of Finance and Facilities

