



**Office of the Washington State Auditor**  
**Pat McCarthy**

**Whistleblower Investigation Report**  
**Central Washington University**

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July 17, 2017

James Gaudino, President  
Central Washington University

**Report on Whistleblower Investigation**

Attached is the official report on Whistleblower Case No. WB 17-006 at the Central Washington University.

The State Auditor's Office received an assertion of improper governmental activity at the University. This assertion was submitted to us under the provisions of Chapter 42.40 of the Revised Code of Washington, the Whistleblower Act. We have investigated the assertion independently and objectively through interviews and by reviewing relevant documents. This report contains the result of our investigation.

If you are a member of the media and have questions about this report, please contact Assistant Director for Communications Kathleen Cooper at (360) 902-0470. Otherwise, please contact Whistleblower Manager Jim Brownell at (360) 725-5352.

Sincerely,

Pat McCarthy  
State Auditor  
Olympia, WA

cc: Governor Jay Inslee  
Linda Schactler, Chief of Staff  
Kate Reynolds, Executive Director, Executive Ethics Board  
Jacque Hawkins-Jones, Investigator

# WHISTLEBLOWER INVESTIGATION REPORT

## Assertion and results

Our Office received a complaint alleging a Central Washington University (University) Interim Vice President (subject), a contracted employee, used his position to influence the awarding of University contracts to his employer.

We found no reasonable cause to believe an improper governmental action occurred.

## Background

In 2009, the University contracted with a vendor to provide consulting services for a technology upgrade. In 2010, the subject began work at the University as the consultant.

In 2013, the University entered into a contract with the vendor to provide the University an interim assistant vice president for information services and chief information officer. The subject was placed in these positions, while remaining an employee of the vendor. According to the contract, the subject would hold this position for 12 months, and the vendor would bill the University for his salaries. The University extended the contract four times, with the final terms ending December 31, 2016.

In November 2015, the University appointed the subject to the position of interim vice president of operations. According to his appointment letter, the subject was to remain in this position until June 2016. The University extended the appointment until December 31, 2016. This position was in addition to the other two positions already filled by the subject. The subject remained an employee of the vendor with no changes to the contract.

## About the Investigation

Because the Whistleblower Act only permits investigations involving asserted improper governmental actions of state employees and not contractors, our Office had to make a determination whether the University was treating the subject as a state employee.

To make that determination we reviewed documents and interviewed witnesses. We found the University had created a position description form for the subject, setting out his duties. During the course of the investigation we found, as stated above, the subject was holding three University positions. In these positions, he supervised University employees, to include scheduling, approving leave and timesheets, training, hiring, and conducting performance evaluations and disciplinary investigations. The subject was also responsible for overseeing portions of the University's budget. Additionally, the University set out the subject's work hours. In addition to his duties as a supervisor, the subject worked under the University's vice president of operations when he held his first two positions.

According to the statement of work, the University accepted responsibility to reimburse for lodging, per diem, mileage, car rentals, airfare, tolls and any other mode of transportation the subject used to get to the “client” – the University.

In an email to our Office, the University’s chief of staff said the subject was “[t]emporarily, fulfilling the responsibilities of a state employee, but is an employee of [the vendor].”

Although the subject received his pay directly from the vendor, the vendor billed the University for the funds.

Based on the responsibilities assigned to the subject, and the University’s control over the subject and his work, we found the University was treating the subject as a state employee. Therefore, we had authority to investigate the issue brought to our Office: Was the subject using his influence at the University to direct contracts to the vendor?

We interviewed witnesses to determine whether the subject attempted to influence the awarding of contracts to the vendor. According to witnesses, the subject was a member of the Enterprise Information Systems Committee (committee), which has the responsibility to link University technology related decision making to the University’s strategic planning process, by making recommendations to the President’s Cabinet.

Information on the University’s website indicates that the vice president of operations also sits on the President’s Cabinet.

Because of the potential for a conflict of interest considering the subject’s relationship to the vendor and his dual position as a member of a committee that recommends contracts and his position on the cabinet that decides which contract to accept, we requested his conflict of interest form from the University.

In his form, he stated that he had no conflicts of interest, with the exception of one:

“I am an employee of [the vendor] which provides consulting services to the University under a master services contract.”

Notwithstanding the conflict the subject highlighted in his form, the one witness who had served on the committee since the subject became a committee member stated the subject did not attempt to influence the awarding of contracts to the vendor.

In a review of contracts awarded to the vendor, we found the University entered into only one contract with the vendor after the subject was appointed to the University positions. Our review found the University followed state contracting procedures in that instance.

Therefore, we found no reasonable cause to believe an improper governmental action occurred.

## **State Auditor's Office Concluding Remarks**

We thank University officials and personnel for their assistance and cooperation during the investigation.

## WHISTLEBLOWER INVESTIGATION CRITERIA

We came to our determination in this investigation by evaluating the facts against the criteria below:

### RCW 42.52.030 - Financial interests in transactions.

(1) No state officer or state employee, except as provided in subsection (2) of this section, may be beneficially interested, directly or indirectly, in a contract, sale, lease, purchase, or grant that may be made by, through, or is under the supervision of the officer or employee, in whole or in part, or accept, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in the contract, sale, lease, purchase, or grant.

(2) No state officer or state employee may participate in a transaction involving the state in his or her official capacity with a person of which the officer or employee is an officer, agent, employee, or member, or in which the officer or employee owns a beneficial interest, except that an officer or employee of an institution of higher education or the \*Spokane intercollegiate research and technology institute may serve as an officer, agent, employee, or member, or on the board of directors, board of trustees, advisory board, or committee or review panel for any nonprofit institute, foundation, or fund-raising entity; and may serve as a member of an advisory board, committee, or review panel for a governmental or other nonprofit entity.

### RCW 42.52.040 - Assisting in transactions.

(1) Except in the course of official duties or incident to official duties, no state officer or state employee may assist another person, directly or indirectly, whether or not for compensation, in a transaction involving the state:

(a) In which the state officer or state employee has at any time participated; or

(b) If the transaction involving the state is or has been under the official responsibility of the state officer or state employee within a period of two years preceding such assistance.

(3) A business entity of which a state officer or state employee is a partner, managing officer, or employee shall not assist another person in a transaction involving the state if the state officer or state employee is prohibited from doing so by subsection (1) of this section.

RCW 42.52.160 Use of persons, money, or property for private gain.

(1) No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another.