

## Procurement Definitions

**Definitions:** The following definitions are provided to assist the user in better understanding some of the requirements needed to purchase goods and services as a state agency.

1. Act 57 – The Commonwealth Procurement Code. Dictates how Commonwealth entities purchase goods and services.
2. Adverse Interest: Against the interest of some other person, usually so as to benefit one's own interest.
3. After the fact: No university personnel other than those indicated in the Contracting Authority Delegation document (Figure 23 – Contracting Authority Delegation, KU Policy A&F-0012) are authorized to request a vendor provide a good or a service without the benefit of using a fully executed purchase order, contract, or purchasing card. Any individual other than those authorized who request a vendor to proceed without one of the above will be required to complete an After the Fact Act 57 Violation form. This form must be signed by the person's complete reporting hierarchy.

An after the fact transaction is a violation of Act 57 of 1998, Title 62, 543 (a) "Irrespective of the type of contract, no contract shall be effective until executed by all necessary Commonwealth officials as provided by law." University legal counsel, Office of Attorney General (OAG) and the Office of General Counsel (OGC) will not sign any after the fact contracts or contracts where services have commenced but are not yet completed. In such circumstances, Commonwealth monies can only be disbursed via an after the fact settlement agreement that requires the approval of the Chief Counsel and OAG or by having the supplier file an action with the Pennsylvania Board of Claims <http://www.boc.state.pa.us/>.

4. Bonds are typically requested for only the food service contract and engineering & construction related services.
5. Commodity – something that is bought and sold; a tangible item.
6. Conflict of Interest: A situation in which the regard of one duty leads to the disregard of another or might be reasonably be expected to do so.
7. Contract – A type of written agreement, regardless of what it may be called, for the procurement or disposal of supplies, services or construction. The maximum length of a contract is five (5) years unless prior approval is given by the Chancellor's Office.
8. Contracting Officer – A person authorized to enter into and administer contracts and authority either directly from Act 188 or from written delegation by a person authorized to have and delegate this authority.
9. Emergency Contracts - are permissible if the **public health, safety and welfare are at risk** or circumstances outside of the control of the agency create an urgency of need which necessitates the suspension of normal bidding and review requirements. University Legal Counsel must be notified, and guidance is sought at the onset of the process so that work can begin while the legal contracting process is being followed. Under no circumstances will poor planning be considered an "emergency".
10. Maximum time period for a contract is five years including renewals. In special circumstances, exceptions may be granted through Commonwealth Legal.
11. Memorandum of Understanding (MOU) – Agreement between KU and other state Agencies. Must be reviewed by University Legal Council.
12. Payment in Advance – Prohibited except as justified in writing and approved by VP for Finance and Administration or his delegate.
13. Printing Services that are not for design do not require a contract. A requisition needs to be entered for this purchase.
14. Prohibited Contracts:

- a. *Employee/Employer Relationships*
  - b. *Contracts for the purchase of insurance* – exception is for collision insurance for rental vehicles
  - c. *Attorney Services*
15. Prohibited Contract Clauses:
- a. *Assignment* – no assignment without prior written consent of the University.
  - b. *Jurisdiction of Law* – The laws of Pennsylvania must govern the contract or agreement.
  - c. *Attorney Fees, Court Costs, Entry of Judgment* – The University may not voluntarily pay the contractor's court costs or legal fees nor may it allow a contractor to confess judgment on its behalf.
  - d. *Indemnity and Hold Harmless* – Removed from every Commonwealth contract because it compromises the greatest protection afforded the Commonwealth entities: sovereign immunity.
  - e. *Arbitration* – Resolution of disputes by binding arbitration in contracts for goods and services are prohibited. The Board of Claims has exclusive jurisdiction.
16. Purchase of Insurance – State System universities may not purchase insurance. Vehicle rentals are an exception.
17. Purchase Order - A purchase order (PO) is a type of contract document issued by a buyer to a seller, indicating types, quantities, and agreed prices for the purchase of products. Acceptance of a purchase order by a seller forms a contract between the buyer and seller, so no contract exists until the purchase order is accepted. The first step of the Purchase to pay process.
18. Purchasing Card – Is a commercial credit card issued by the University to an authorized individual for the purpose of procuring necessary goods for the University and paid for directly by the University.
19. Renewals: No changes in contract terms and conditions except for negotiated escalation clause, University Legal Counsel Approval is needed depending on the dollar threshold.
20. Requisition - A requisition is not a legally binding document. It is the recognition of a need for a good or service within a department. Approval of a requisition by the budget holder is an agreement that the funds are available and the need should be met. Approved requisitions are authorization to the Purchasing Office to purchase the good or service.
21. Right to Know – Copies of purchase orders and contracts in excess of \$5,000 must be electronically sent to the PA Dept of Treasury within 10 days of the execution date (Summary & Detail)
22. Service – Labor or other action performed by a contractor; an intangible item.
23. Signature Authority: The only University personnel authorized to exercise contracting officer signature authority under Act 57 to the purchase of goods or services is clearly indicated in Figure 23 - Contracting Authority Delegation, Kutztown University Policy A&F-0012.
24. Sole Source implies that there is only one person or company that can provide the contractual services needed. A bid process would result in that one person or company able to meet the need.
25. Zero dollar contracts, MOU's and LOA's require review by University Legal Counsel.