

### **After the Fact Transactions** (Goods or Services delivered without a contract / purchase order)

After-the-fact contracts occur when a university attempts to process a contract in a non-emergency situation after goods and services have been delivered. 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/> .

After-the-fact contracts (*i.e.*, contracts submitted after the goods and services have been provided) will be rejected unless the contract meets the strict statutory requirements of an emergency contract. This is extremely important because the OAG will not give legal approval to late contracts and neither can university legal counsel. Additionally, since no Commonwealth agency can pay on an unlawful contract, the contractor's only alternative is to proceed against the university through the Pennsylvania Board of Claims. This is particularly undesirable for the university because the Legislature has directed agencies to pay interest on debts more than forty-five (45) days old and has authorized the Board of Claims to assess counsel's fees against Commonwealth agencies.

Emergency procurements are permissible if the **public health, safety and welfare are at risk** or circumstances outside the control of the agency create an urgency of need which necessitates the suspension of normal bidding and review requirements. In an emergency procurement, the contract is submitted after the procurement is completed. It is only under these circumstances where an after-the-fact contract will be accepted. Legal counsel's position is that under no circumstances will poor planning constitute an emergency.