**CONTRACT TERMS AND CONDITIONS**

**These are the university’s standard contract terms and conditions that are referenced on every Service Purchase Contract, standard contract, or purchase order. Contractors must agree to these terms and conditions in order to enter into a contract with the university.**

[**RFP & IFB**](http://www.passhe.edu/inside/legal/Documents/bb.htm)

[**Service Purchase Contract - (STD-274) Standard Contract Terms and Conditions**](http://www.cheyney.edu/business-support/documents/std274tc.pdf)

[**Performers and Speakers**](http://www.passhe.edu/partners/Documents/71_K_180_SAP.pdf)

**PROHIBITED CONTRACT CLAUSES**

**According to the PASSHE manual for preparing and processing contracts for goods and services the following are prohibited contracts**

A. [Employee-Employer Relationship](http://www.cheyney.edu/business-support/employee-employer)

B.[Contracts for the Purchase of Insurance](http://www.cheyney.edu/business-support/contracts)

C. [Attorney Services](http://www.cheyney.edu/business-support/attorney)

D. [Reciprocal Limitations Act](http://www.cheyney.edu/business-support/reciprocal)

E. [After the Fact Contracts](http://www.cheyney.edu/business-support/after-fact)

**A. Employee-Employer Relationship**

**While contracts may be entered into for the Professional Services of consultants, contracts cannot be used to create an employee-employer relationship. Employees must be placed on the university’s payroll in appropriate classifications. Failure to do so leads to serious legal problems regarding such matters as withholding state, federal and local income taxes, workers compensation, unemployment compensation, the Commonwealth’s obligation to defend suits brought against employees, etc. Also, there are compliance issues in regards to collective bargaining agreements.**

**Several factors are considered to determine when a contract constitutes the creation of an independent contractor relationship or an employer-employee relationship. The presence of the following factors, in one combination or another, tends to indicate an employee-employer relationship:**

**1. The individual is paid on a per diem basis, rather than being paid a flat fee.
2. Work is performed during regularly scheduled work hours.
3. Work is performed under supervision of a university employee who controls the manner in which the work is done.
4. The university furnishes the individual’s equipment or supplies.
5. The individual performs duties as assigned by the university on a task-by-task basis.
6. The individual contracts regularly throughout the fiscal year with the university to provide the same services over and over again.
7. The duties are performed on university-owned or university-leased premises.
8. The university has the right to discharge the person by giving advance written notice.
9. The individual performs the same duties as one holding a position in university service.**

**Each contract for services to be performed must be reviewed and a determination made as to the status of the individual to be engaged or services to be performed under a contract. These individuals under contract must be deemed independent contractors for the contract to be approved.**

**B. Contracts for the Purchase of Insurance**

**The university itself does not have the statutory authority to purchase insurance. The Department of General Services (DGS), through the Bureau of Risk and Insurance Management (BRIM), has the authority to administer the Commonwealth Self-Insurance Program. If the contractor requests the university to purchase casualty, loss or liability insurance for the contractor’s benefit, it cannot be done. As an alternative, contractors may provide or supplement their own insurance and factor it into the cost of their bid submission for the proposed contract. However, there are limited exceptions to this provision. Collision insurance may be procured by the university when a vehicle is rented for a university purpose. It is BRIM’s position that it will not cover property damages to or resulting from the operation of a rented vehicle. BRIM advises the purchasing of insurance as a part of any car rental agreement. Furthermore, BRIM does carry specialized insurance policies that universities can purchase in unique circumstances. For example, BRIM provides insurance for fine works of art. Because the University cannot purchase insurance and the Commonwealth is self insured, it cannot provide a traditional “certificate of insurance” which is available to non-self insured entities. In the event that a request for proof of insurance is requested by a contracting party, a response letter may be a sufficient explanation of the University’s status.**

**C. Attorney Services**

**Contracts with attorneys for legal services require approval from the OGC through the Office of Chief Counsel for the State System and cannot be entered into at the university level. No agency can independently retain an attorney for any legal issue, nor a non-attorney who engages in work substantially similar to that of work engaged in by legal counsel (i.e., legal action for the collection of debts, representation at real estate closings, litigation and legal advice of any kind). Any questions as to this issue should be immediately directed to university legal counsel.**

**D. Reciprocal Limitations Act**

**In the event that the lowest responsive bidder is an out-of-state vendor and the contract in question is in excess of $10,000.00 for construction or supplies, the university should consult the Reciprical Limitations Act. This practice is necessitated when the vendor’s resident state limits procurement opportunities for businesses located within the Commonwealth.**

**Prior to awarding a contract or rejecting a bid which involves an out-of-state entity, the university should consult with university legal counsel.**

**E. After-the-Fact Contracts**

**After-the-fact contracts occur when a university attempts to process a contract in a nonemergency situation after goods and services have been delivered and then, an attempt is made to initiate a purchase order/contract or use and after-the-fact order to pay the supplier invoice. This is impermissible.**

**After-the-Fact purchase transactions create significant payment and supplier relationship problems for Cheyney University. In many cases, these transactions:**

**o    Place Cheyney  University at financial risk and result in higher than necessary costs paid for products and services**

**o    Create unnecessary administrative effort within the procurement department and other administrative offices**

**o    Violate purchasing policies**

**o    Lack of competitive bids for transactions where required based on the current formal competitive threshold.**

**o    Result in supplier contracts with unfavorable terms and conditions signed by unauthorized Cheyney University personnel**

**o    Could result in duplicate payments to the supplier**

**University legal counsel, OAG and 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 a settlement agreement that requires the approval of the Chief Counsel and OAG or by having the contractor file an action with the Pennsylvania Board of Claims.**