

THE CITADEL
The Military College of South Carolina
171 Moultrie Street
Charleston, SC 29409

MEMORANDUM
NUMBER 2-001

26 OCTOBER 2020

CONTRACTING AUTHORITY AND PROCEDURES

1. EXECUTIVE SUMMARY

The President of The Citadel and the Vice President for Finance and Business shall execute contracts, financial documents, and other official documents necessary for the conduct of the College's business. No person is authorized to execute such documents on behalf of the College unless authority is delegated in writing by the President or the Vice President for Finance and Business.

2. PURPOSE

As a State government entity, The Citadel is subject to certain legal requirements and restrictions impacting its ability to accept certain contract terms. The South Carolina Consolidated Procurement Code requires all state agencies adopt procedures for procurement of goods and services, including contracting processes. All contracts for the purchase of goods and services must also comply with South Carolina law governing procurement. It is the policy of The Citadel to comply with state law governing the negotiation and signing of contracts. All College contracts shall be reviewed and executed via this Policy.

This Policy clarifies the source of all College signature authority, responsibilities of those individuals to whom signature authority is delegated, and the consequences of signing contracts without appropriate signature authority. It further outlines The Citadel's policy and associated procedures on entering into procurement contracts with vendors and other business contracts with third parties seeking to engage in business with the College.

3. REFERENCE

South Carolina Consolidated Procurement Code, S.C. Code Ann. § 11-35-10, *et. seq.*
South Carolina State Budget and Control Board, Chapter 19-445, Consolidated Procurement Code.

4. DEFINITIONS

“Contract” Any document legally binding The Citadel to another party, including any agreement where either party promises to take specific actions, or refrain from certain actions. A contract can be called an agreement, memorandum of understanding (MOU), terms and conditions, letter of agreement, purchase order, or similar labels. A contract

might or might not involve the payment of money. Online terms and conditions accepted prior to using a product or service are considered a Contract under this Policy.

“Contracting” Entering into any type of contract or Agreement on behalf of The Citadel, or any of its departments or divisions, under which the College is obligated to pay any sum of money, or provide any type of goods or services, for any reason.

“Signing a Contract” Affixing any personal identifier to a hardcopy, electronic version, or other form of contract with the intent to agree to the obligations therein. Signing includes, but is not limited to, a handwritten signature, a digital signature, typing a name or initials, or clicking an “I Agree” or similar box online or as part of a digital form.

5. POLICY

- A. All previous delegations or appointments of authority to sign contracts, checks, vouchers, and agreements, or to negotiate and accept contracts and grants binding upon the College are rescinded, and all previous General Orders, Special Orders, or Memoranda delegating such authority are revoked.
- B. The President of The Citadel and the Vice President for Finance and Business are the primary contracting officers with authority to sign contracts and agreements binding the College. No contract or agreement shall become binding upon the College unless such contract or agreement is in writing and has the signature of the President, the Vice President for Finance and Business, or properly delegated official.
- C. Campus departments shall route all contracts to Procurement Services so documents enter the College’s contract review process, excepting Construction Management contracts issued through the Office of the State Engineer. Procurement Services will review all terms ensuring compliance with South Carolina law and initiate negotiations with the vendor to bring non-conforming terms into compliance. If the contract contains more complex terms, or if difficulties are encountered during negotiations, Procurement Services shall consult the General Counsel, who will engage with the vendor and/or advise Procurement Services on bringing the contract into compliance
- D. If compliance with Appendix B requirements is not possible, the General Counsel and/or Procurement Services can recommend abandoning the contract. The College recognizes certain agreements are required to continue operations, and has adopted the Contract Advisory Form (Appendix C) for this purpose. The Procurement Services Division will work with departments to confirm the contract is essential, outline potential risks, identify noncompliant contract terms, define why they are noncompliant, and indicate risk. If the department desires to continue the Contract, it shall complete the Contact Advisory Forms for acceptance of risk. Thereafter, the department must return the completed form to Procurement Services with appropriate indexes and signatures.
- E. The President and Vice President for Finance and Business delegate to other campus officials limited authority to sign contracts and certain other documents

as agents of the College. No person is authorized to execute such documents on behalf of the College unless delegated in writing by the President or the Vice President for Finance and Business. Contracting authority is hereby delegated to the following officials detailed in Appendix A. These officials may only execute such contracts as previously reviewed, negotiated, and approved by Procurement Services in accordance with South Carolina law, and completion of the Contract Checklist (Appendix B).

- F. Officials may only execute employment contracts previously reviewed and approved by the General Counsel, unless the employment contract is generated from a previously-approved unmodified template. Completed employment contracts shall be provided to Human Resources. Positions listed in Appendix A only are delegated to sign contracts.
- G. Special ventures, exchanges and agreements to provide academic services are deemed contracts, and shall be routed through the Provost for review prior to execution.
- H. With the exception of personnel and Construction Management Facilities & Engineering (F&E) contracts, all signed contracts shall be scanned, uploaded, and maintained by Procurement Services in the College's enterprise content management system.
- I. All signed personnel contracts shall be forwarded to Human Resources, and included in the individual's personnel file. F&E contracts exempted from this policy by the Office of General Counsel shall be maintained in the Construction Management Office.

6. COMPLIANCE

The Citadel does not recognize contracts signed by College employees or agents as binding on the College unless the employee has delegated signature authority. Employees signing Contracts purporting to bind the College without authority as described in this Policy may be held personally liable under the contract. Failure to comply with this policy may result in disciplinary action up to and including termination.

7. NOTES

A. Dates of official enactment and amendments:

Submitted by the Director of Executive Operations 26 October 2020

B. Responsible Department:

Office of the President

C. Cross References

College Regulations

8. RESCISSION

Memorandum 2-001 dated 30 November 2015 and all previous versions are rescinded.

9. REVIEW

Review this policy on a biennial basis.

OFFICIAL

//signed //
GLENN M. WALTERS
General, USMC (Retired)
President

APPENDIX A-SIGNATURE AUTHORITY

CAMPUS OFFICIALS AUTHORIZED TO SIGN CONTRACTS AND OTHER OFFICIAL DOCUMENTS ON BEHALF OF THE CITADEL

CONTRACT TYPE	CAMPUS OFFICIAL	DOLLAR LIMIT
All Contracts	President in consultation with the respective VP	\$500,000
All Contracts	VP for Finance & Business in consultation with the respective VP	\$500,000
Academic Contracts		
<ul style="list-style-type: none"> Academic contracts not involving the purchase of goods/services, e.g. academic personnel, student exchange, academic, clinical and internship placements, articulation agreements Agreements with accreditation bodies such as SACS-COC, CAEP, ABET, etc. Academic Cooperation Agreements, Memoranda of Understanding, and Cohort Agreements that do not involve tuition discounting or the purchase of goods/services 	Provost	N/A
Athletic Contracts		
<ul style="list-style-type: none"> Athletic Department contracts for engaging coaches for athletic teams Engaging the College to participate in intercollegiate athletic contests Engaging sponsors and/or advertisers for The Citadel's NCAA intercollegiate athletics teams or contests Agreements granting permission to use the College's names, logos, and other trademarks related to Athletics operations 	Director of Athletics	\$50,000
Commandant Office Contracts		
<ul style="list-style-type: none"> Agreements engaging individuals to serve as TAC (Teach, Advise, Coach) Officers for the Corps of Cadets 	Commandant	\$50,000
Communications and Marketing Contracts		
<ul style="list-style-type: none"> Agreements to provide advertising services for the College, (a) in professional journals, 	VP for Communications & Marketing	\$50,000

publications, newspapers, radio, and television, and (b) in coordination with the Director of Procurement Services, other media		
Employment Related Contracts		
Faculty Members:		
<ul style="list-style-type: none"> • Employment Contracts 	Provost in consultation with Chief Human Resources Officer (CHRO)	N/A
<ul style="list-style-type: none"> • Separation and Release Agreements 	Provost in consultation with CHRO and General Counsel	N/A
<ul style="list-style-type: none"> • Telework Agreements 	Provost with approval by CHRO	N/A
Non-Faculty Employees:		
<ul style="list-style-type: none"> • Employment Contracts 	Respective VP who can have contract employees (e.g. Athletics) in consultation with CHRO	N/A
<ul style="list-style-type: none"> • Separation and Release Agreements; 	Respective VP in consultation with CHRO and General Counsel	N/A
<ul style="list-style-type: none"> • Telework Agreements 	Respective VP with approval by CHRO	N/A
Information Technology Services Contracts		
<ul style="list-style-type: none"> • Software license agreements and subsequent renewals • COTS and single-user license software agreements • Contracts to engage with companies and individuals for IT related services • Contracts involving PCI compliance requirements 	Chief Information Officer in consultation with appropriate VP	\$50,000
Law Enforcement Contracts		
<ul style="list-style-type: none"> • Mutual aid agreements with other law enforcement agencies • Employment of off-duty officer agreements with the Charleston Police Department and Charleston County Deputy Sheriff Office for special events on campus 	SVP for Operations & Administration in consultation with CHRO for employment of off-duty officer agreements	\$50,000

Legal Affairs Documents		
<ul style="list-style-type: none"> • College Pleadings • Consent Orders • Other similar court related or governmental agency related documents • Insurance applications 	General Counsel	N/A
Permission to Use College Name, Marks, Symbols and Copyright		
<ul style="list-style-type: none"> • Use of software and other works of copyright for which The Citadel owns the copyright license and will generate revenues beyond direct cost recovery • Operation of the College’s Trademark Licensing Program to include Registration with the U.S. Patent and Trademark Office • Contracts with an agent for the licensing of The Citadel signs, symbols, and distinguishing marks • Agreements granting permission to use the College’s names, logos, and other trademarks 	Provost General Counsel	\$50,000
<ul style="list-style-type: none"> • Permission to use copyrighted works such as text, graphics, photography, and similar copyrighted material 	VP for Communications & Marketing	\$50,000
Procurement Contracts & Documents		
<ul style="list-style-type: none"> • Contracts for the purchase of goods and services • Agreements with vendors that will result in revenue generated for the College • Completed Contract Advisory documents • Sole Source and Emergency Procurement requests 	Director of Procurement Services	\$100,000
Settlement Agreements		
<ul style="list-style-type: none"> • Those related to Employees where litigation is involved • Those related to Employees where no money and no litigation is involved 	VP for Finance & Business	\$500,000
<ul style="list-style-type: none"> • Those related to Faculty where litigation is involved • Those related to Faculty where no money and no litigation is involved 	Provost	\$50,000

Special Business Agreements		
<ul style="list-style-type: none"> • Design Service, Construction Management, and Construction contracts and addenda negotiated by Facilities & Engineering (F&E) through the Office of the State Engineer of South Carolina • Contracts to engage contractors to begin, modify, or complete construction work on campus • Agreements to purchase other goods or services in furtherance of the mission of F&E or Construction Management, provided such contracts do not exceed delegated authority, or are entered into due to an emergency* <p>*Emergency purchase delegation is only granted in the absence of the VP for Finance and Business, and pursuant to a declaration of an emergency by the President or the SVP for Operations and Administration.</p>	VP for Facilities & Engineering (F&E) Alternate: <ul style="list-style-type: none"> • Director of Construction Management; • Director of Facilities Engineering 	\$100,000
<ul style="list-style-type: none"> • Insurance applications and proof of loss forms 	VP for Finance & Business	\$500,000
<ul style="list-style-type: none"> • Outside counsel agreements for retaining attorneys and law firms 	General Counsel	\$50,000
Standard Form Agreements		
<ul style="list-style-type: none"> • Event management contracts for events on The Citadel campus • Summerall Chapel wedding and ceremony contracts • Citadel Beach House event contracts • Citadel summer camp contracts 	Assistant/Associate VP for Auxiliary Enterprises	\$50,000

APPENDIX B-CONTRACT CHECKLIST

Every contract presented to The Citadel is required by South Carolina law to comply with the following terms and conditions (T&Cs) before signature. Departments reviewing contracts should verify all terms are in compliance as listed below, and note those not in compliance for follow-on negotiation. While departments may negotiate directly with the vendor, it is preferred Procurement Services discuss necessary edits with the vendor. Regardless, all contracts purchasing goods and services require review by Procurement Services prior to signature.

Questions regarding the review process or the T&Cs listed below should be addressed to Procurement Services at procurement@citadel.edu.

The following details common prohibited terms found in Contracts. Procurement Services shall review every contract ensuring these T&C or any other adverse terms are present.

1. **INDEMNIFICATION:** The South Carolina Constitution prohibits the State from agreeing to indemnification clauses. The S.C. Attorney General's office has repeatedly made clear that state agencies, such as The Citadel, cannot sign contracts requiring the college to "indemnify" or "hold harmless" any person or entity. The Citadel may only be responsible for negligent acts of its employees while carrying out official college duties. When striking the Indemnification clause, The Citadel may insert this statement: "The Citadel carries \$1,000,000 combined single limit including bodily injury and property damage liability insurance, per occurrence, to cover the negligent acts of its employees while carrying out their official duties."
2. **"GOVERNING LAW"** and governing **"FORUM"** must read: State of South Carolina.
3. **TAXES, INTEREST, LIQUIDATED DAMAGES, PENALTY FEES OR CANCELLATION CHARGES, LITIGATION COSTS, OR ATTORNEY'S FEES: ATTORNEY'S FEES/ LITIGATION COSTS.** The Citadel cannot agree to pay these costs; such a payment would be a violation of the constitutional indemnity clause.
DAMAGES. The Citadel cannot agree to pay any amount as "liquidated damages," nor can it agree to "consequential damages," "special damages," or any other type of "direct" or "indirect" or "incidental" damages. Further, The Citadel cannot agree to any clause under which the vendor "disclaims" or otherwise denies liability for "consequential damages," "special damages," or any other type of "direct" or "indirect" or "incidental" damages.
INTEREST. With the exception of the standard MULTI-YEAR Agreement (which is an installment purchase agreement), The Citadel will not agree to pay interest.
LATE PAYMENT/CANCELLATION CHARGES. The Citadel cannot agree to pay late payment or cancellation (for example, hotel room cancellation) charges.
TAXES. The State is exempt from most taxes and generally will not agree to contract language requiring the payment of taxes. The Citadel will not agree to reimburse vendors for tax payment. The Citadel will agree to language that "The Citadel will pay taxes lawfully imposed upon it."
4. **FORCE MAJEURE CLAUSE, a/k/a "ACT OF GOD" or "IMPOSSIBILITY OF PERFORMANCE" CLAUSE:** These clauses must be reciprocal, i.e. they should apply equally to both sides, or be null and void for both sides.

5. **SUBROGATION LANGUAGE** (ie “Waiver of Subrogation”): The Citadel can not agree to waive its right to subrogation, therefore these clauses must be deleted.
6. **CONFIDENTIALITY / FREEDOM OF INFORMATION**: The Citadel is a state agency subject to the South Carolina Freedom of Information Act, S.C. Code Ann. 30-4-10, *et. seq.*, and therefore, unable to sign contracts requiring confidentiality. The Freedom of Information Act requires the college to release information when requested.
7. **ARBITRATION**: The Citadel cannot waive its right to a trial, therefore this clause must be deleted.
8. **ANY PROVISION REQUIRING THE CITADEL TO BE BOUND BY TERMS AND CONDITIONS THAT ARE UNKNOWN AT THE TIME OF SIGNING THE AGREEMENT**. Unknown obligations may violate various laws such as the prohibition against pledges of the State’s credit and the prohibition against gratuities by the State. As a practical matter, entering into contracts calling for an unspecified sum of money to change hands make it extremely difficult to budget. Such provisions in a contract are void as a matter of law, and should be avoided.
9. **REQUIREMENTS THAT PROVIDE FOR ENDORSEMENT OR MARKETING OF A PRIVATE ENTITY BY THE CITADEL**. The mission of The Citadel is to educate principled leaders by instilling the core values of the college in a disciplined and intellectually challenging environment. Endorsing a particular entity’s product may be counter to the mission. The faculty must be free – and *appear* to be free - to reach independent conclusions and publish opinions free from corporate influence.
10. **ANY PROVISION REQUIRING EXCLUSIVITY IN A CONTRACTUAL ARRANGEMENT**. State agencies must comply with competitive bidding/purchasing statutes in the South Carolina Procurement Code. Certain sponsored research agreements, such as teaming agreements, may have limited exclusivity provisions, provided exclusivity is restricted to the lowest possible level (i.e., Project Director, Lab, School, etc.). However, any prospective exclusivity agreement must be approved by the Office of Procurement and the Office of General Counsel.
11. **CONTRACTUAL CLAUSES THAT REQUIRE THE CITADEL TO PURCHASE INSURANCE POLICIES OR PROVIDE COVERAGE FOR THIRD PARTIES**. State law requires the Insurance Reserve Fund to provide most insurance policies for State entities. The Citadel, as a state agency, has limited authority to purchase commercial insurance. Neither the IRF nor The Citadel may procure additional insurance for third parties, provide insurance for third parties, nor can they name third parties as “additional insureds.” Further, The Citadel is covered by the Tort Claims Act, which provides additional protection to The Citadel, and may limit the ability of third parties to recover from The Citadel or other governmental agencies.
12. **PROVISIONS THAT PROHIBIT A CONTRACTOR’S EMPLOYEE FROM ACCEPTING A POSITION WITH THE CITADEL OR PROVISIONS WHICH REQUIRE THE CITADEL TO COMPLY WITH CONTRACTOR REGULATIONS (INCLUDING UNION RULES)**. The State of South Carolina is a “right to work” state. See S.C. Code Ann. 41-7-10, *et. seq.* These statutes allow individuals to refuse to participate in labor organizations or refrain from certain affiliations. They also prohibit anyone, including the State, from excluding anyone from applying for a job with any State Agency.
13. **AUTHORIZED REPRESENTATIVE / ACCEPTANCE OF LIABILITY**: Delete the statement: “Person signing contract for The Citadel accepts liability for the contract.”

APPENDIX C-CONTRACT ADVISORY

The Citadel Contract Advisory

COMPLETE THE INDEX AND UNIT INFORMATION ON THE LAST PAGE AND RETURN THIS FORM TO THE CITADEL'S PROCUREMENT SERVICES DIVISION.

Vendor:

Description of acquisition: Provide a complete description of the contract, the business justification to proceed, and any other pertinent facts.

The contract described above contains one or more provisions normally unacceptable to The Citadel. These provisions are unacceptable because: (a) potentially impose liability on The Citadel beyond what is deemed appropriate for a state agency; (b) limit the vendor's normal liability for its own breach or other wrongdoing; (c) violate a provision of The Citadel's policy or South Carolina contracting law; (d) do all of or a combination of the above. Negotiations with the Vendor to remove the provisions have been unsuccessful.

Neither the General Counsel nor Procurement Services recommend proceeding. Therefore, it is the department's responsibility to review and evaluate risks associated with the assumption of the following items. The specific paragraph(s) in question, based on the General Counsel's guidance, include:

Describe issues and terms in violation of code or counter to Citadel policy; include financial impacts for each in case of damages. Insert the contract term for each issue.

Summarize how the determination to proceed was reached.

Total potential financial impact: \$ _____

The Attorney General of South Carolina provides written advice recommending such terms be deleted and The Citadel's General Counsel concurs.

The decision to assume risks of contractor non-performance, default, defect, and other liabilities is left to the applicable Vice President requesting the product or service in conjunction with Vice President of Finance and Business approval.

By signing below, the unit/department indicates its desire to enter the contract without deleting provision(s) identified as normally unacceptable. Any damages or costs incurred from these clauses in the contract are to be paid from the unit's budget. The unit acknowledges a business risk analysis on monetary exposure under the above identified contract terms was undertaken, and the unit accepts the potential for the maximum monetary liability.

This Contract Advisory is an internal Citadel document intended to build awareness of risks in agreeing to identified clause(s), and alert the unit to potential impacts on its budget. In no way is it intended to make any individual personally liable.

Contract Advisory questions or specifics regarding the attached contract should be routed to the Director of Procurement Services.

After reviewing the preceding advice, the affected unit requests Procurement Services proceed with the contract as attached. The unit acknowledges possible losses or damages as described.

Should damages or costs be incurred by the College due to these provisions, the fund source used to make payment: **Index #:**_____.

Name of Unit seeking the Product or Service:_____

Unit Contact and Phone:_____

Unit VP Signature and Date:_____

Unit VP Printed Name:_____

VPFB Signature and Date:_____

VPFB Printed Name:_____

(Director of Procurement has delegated authority to sign Advisories with potential damages not exceeding \$50,000 on behalf of the VPFB.)