

# COLLEGE of CHARLESTON

## OFFICIAL POLICY

2.3.1.1

**Authority to Contract and Required Review of Contracts**

2/15/16

### **Policy Statement**

This Policy sets forth the nature and extent of the contracting authority of the College of Charleston (hereafter, the "College") and how it may be exercised. This Policy applies whenever the College is party to a Contract. The term "Contract" means all types of agreements (regardless of content or what they may be called) where there is a mutual exchange of promises or undertakings. Contracts may include, but are not limited to: Agreements, Grants, Cooperative Agreements, Leases, Licenses, Memoranda of Understanding or Memoranda of Agreement, Purchase Orders, a consulting or other revenue-generating agreement, operational or program agreements, renewals, contractor/vendor agreements, and other agreements of any kind whether verbal or written. Certain conditions and requirements apply to all College Contracts, particularly as a result of the College's status as a state agency.

**This policy supersedes any and all previous policies and delegations of authority to contract.**

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### **Policy Manager and Responsible Department or Office**

The Director of Procurement and the Office of Legal Affairs shall be jointly responsible for the periodic review and maintenance of this Policy.

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### **Purpose/Reason for the Policy**

The purpose of this Policy is to set forth Contract signatory authority and Contract review requirements for Contracts entered into on behalf of the College. This Policy is intended

to promote good business practices, to help ensure the College's compliance with legal and state law requirements and to avoid unintended obligations that are not in the best interests of the College. Specifically, this policy addresses who may enter Contracts on behalf of the College and describes the necessary review and approval of Contracts prior to execution.

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### **Departments/Offices Affected by the Policy**

This Policy applies to all members of the College community, including faculty, administrators, staff, employees, student organizations, students, and all third parties who consider entering into a Contract with or on behalf of the College.

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### **Procedures Related to the Policy**

#### **I. Signatory Authority**

All prior policies regarding signatory authority are rescinded, effective immediately, and all previous delegations of authority are revoked, unless otherwise provided herein.

The operation and administration of the College has been delegated to the President by the Board of Trustees. Therefore, the President is the only person at the College who has the legal authority to enter into any Contract on behalf of the College. The President has been specifically given the power to delegate some of his authority in writing to members of the administration to maintain and ensure a smooth administrative process in the overall operation of the institution. In addition, the College General Counsel, upon consultation by the President or the EVP for Business Affairs, may sign agreements, under authority from the South Carolina Attorney General, to procure the services of outside legal counsel.

No other faculty member, staff member, student, or other member of the of the College community shall sign any Contract, or make any other agreement, intending to legally bind the College to do something, or refrain from doing something, unless such an individual has a written delegation of authority from the President to execute that type of Contract, for the dollar amount of the contemplated transaction (if specified), on behalf of the College. A person's written authority to execute a Contract on behalf of the College must be obtained in advance of that person's execution of the Contract. For a written delegation to be effective to permit an individual to execute a contract on behalf of the College, it must be signed by the President with an effective date after August 7, 2015, and it must be filed with the Office of Legal Affairs and the Director of Procurement.

**ANY CONTRACT SIGNED BY AN INDIVIDUAL WITHOUT DULY DELEGATED**

**AUTHORITY SHALL NOT BE BINDING UPON THE COLLEGE AND MAY RESULT IN PERSONAL LIABILITY FOR THE INDIVIDUAL SIGNING. EMPLOYEES WHO SIGN CONTRACTS PURPORTING TO BIND THE COLLEGE WITHOUT AUTHORITY PROPERLY DELEGATED UNDER THIS POLICY MAY BE SUBJECT TO COLLEGE DISCIPLINARY ACTION, UP TO AND INCLUDING DISMISSAL.**

**II. Required Review of Certain Contracts by the College General Counsel and Required Approval of Certain Contracts by the Executive Vice President for Business Affairs and the President Prior to Execution**

**A. Contracts that Require Legal Review and Approval by the Executive Vice President for Business Affairs Prior to Execution**

Subject to the requirements of Section A. above, **prior** to execution by an individual with signatory authority, all of the following Contracts must receive legal review by the General Counsel (or his/her designee) **and** the approval of the Executive Vice President for Business Affairs or the President (or his/her designee):

1. Contracts with a total value in excess of \$25,000, with the exception of employment agreements;
2. Contracts that involve real property, including all actions for the purchase, sale, rental, lease, license, construction, renovation, or improvement of real property (except for those contracts involving real property outlined below that require the approval of both the President (or his/her designee) and the Executive Vice President for Business Affairs (or his/her designee));
3. Contracts involving employee benefit programs;
4. Contracts that are intended for the President's signature, or that affect the President or the Office of the President, other than Contracts of a routine nature required in the normal course of business operations (e.g., office supplies and equipment);
5. Contracts for third party audits or reviews; and
6. Contracts that are determined by an Executive Vice President or the General Counsel, in the exercise of their discretion, to require review, whether on an exceptional basis or by category of supplies or services being procured.
7. Contracts that involve agreements with other state agencies and/or academic institutions;
8. Settlement or waiver of claims or liability; and
9. Novations or amendments of contracts which required approval or which the amendment or novation increases the value of the contract in excess of \$25,000.

**B. Contracts that Require Legal Review Prior to Execution**

Subject to the requirements of Section A. above, **prior** to execution by an individual with signatory authority, **all** of the following Contracts **must** receive legal review by the General Counsel (or his/her designee) or the President (or his/her designee):

1. Contracts that involve the intellectual property of the College (e.g., use or licensing of innovations, patents, trademarks and copyrights);
2. Contracts that contain provisions affected by requirements specific to state agencies or Contracts that could potentially expose the College to liability even if there is no direct expenditure of funds (for example, a

Contract that contains an indemnification provision, a Contract that contains a limitation of liability or otherwise allocates liability among the parties; or a Contract that states that the laws of a state other than South Carolina govern);

3. Contracts that involve license agreements;
4. Contracts that involve minors or individuals requiring legal guardianship;
5. Settlement agreements and/or release forms where the College is compensated for damage to real property, personal injury, breach of contract, or other matters;
6. Contracts with third parties for presentations, performances, speeches, concerts, and other events of any nature on the College campus or any of its properties; and
7. Confidentiality or non-disclosure agreements.

**Questions about whether a Contract requires prior review should be directed to the General Counsel for further guidance in advance of Contract execution.**

**C. Contracts that Require Approval by the Executive Vice President for Business Affairs and the President Prior to Execution**

Subject to the requirements of Section A. above, **prior** to execution by an individual with signatory authority, **all** of the following must receive approval by the President (or his/her designee) and the Executive Vice President for Business Affairs (or his/her designee):

1. Any offer letters, employment contracts, letter of appointment, or other document(s) modifying the terms or conditions of employment (including, but not limited to, specific parking spaces, moving expenses, sabbaticals, or benefits of employment beyond the last day of on the job attendance) for anyone with Vice President, Provost, or Counsel in their title;
2. Any document which transfers a staff employee to a faculty position;
3. Any contract for the acquisition, sale, or disposal of any land and/or buildings; and
4. Any real property leases through the South Carolina General Services Division.

Notwithstanding any provisions hereof, all appointments or contracts for anyone with Dean in their title must have the approval of the President of the College. In addition, any document which amends any offer letter, contract or appointment letter for a faculty member serving in an administrative capacity must have the approval of the President if it changes the compensation, benefits, or terms of employment from those that existed at the time the faculty member was offered and accepted the administrative appointment.

**III. Procurement**

Any procurement where the total cumulative value of the goods and services is \$2,500 or less, and a purchasing card is used shall be exempt from all College Procurement Policies **except** for the conditions outlined in the Purchasing Card Manual (see <http://procurement.cofc.edu/documents/PCardManual-10.2014.pdf>).

The College's Procurement Office is the central authority for the procurement of goods and services required by any College department or operating unit. Unless specifically exempted, or excluded, all procurements must be made in accordance with the South Carolina Consolidated Procurement Code, rules and regulations, and those College policies and procedures prescribed by the Director of Procurement. Such College policies

and procedures include, but are not limited to, the Procurement Services and Supply Manual (see <http://procurement.cofc.edu/procurement-manual/index.php>) and all other guidelines, forms, policies, and procedures on the Procurement website (see <http://procurement.cofc.edu>).

The following procurements are exempt from the application of the South Carolina Consolidated Procurement Code and from all College Procurement Policies;

1. Agreements between two or more units, divisions or departments of the College;
2. Procurements made with certain Federal funds, but only to the extent provided for in S.C. Code Ann. §11- 35-40(3);
3. Gifts and the issuance of grants<sup>1</sup> and scholarships by the College;
4. Other supplies as may, from time to time, be exempted under the Procurement Code and College Procurement Policies

Notwithstanding the exclusion described in the first sentence of this Section C. (dealing with Contracts of \$2,500 or less), the Office of Procurement reserves the right to review any Contract, on a case by case basis, regardless of the dollar amount.<sup>2</sup>

#### **IV. Specific Exemptions from Central Purchasing Authority**

These supplies and services listed below may be made by the employee who is serving in the position listed next to each item:

- Copyrighted Print and Non-Print Library Materials (Dean of Libraries)
- Travel, under Travel Authorization (Controller)
- Bookstore Resale Items (Bookstore Contractor)
- Campus Shops Resale Items (Shop Manager)
- Classified and Unclassified Employee Costs (Director of Human Resources)

#### **V. Contract Execution and Monitoring**

Contract form, content, and monitoring **must** comply with the South Carolina Consolidated Procurement Code and rules and regulations promulgated under that statute. The Contract execution process must include a business review to determine the appropriateness of the acquisition and a procurement review to assess risk and compliance with controlling regulations. In addition, as indicated under Section B., certain types of Contracts may **also** require **prior legal review**.

#### **VI. Contract Retention**

All original signed Contracts **must** be maintained by the Office that generates the Contract. In addition, the individual responsible for signing a Contract also shall provide an electronic copy of the fully executed Contract to the Office of Legal Affairs within Three (3) days of execution. The Office of Legal Affairs shall retain all original Contracts or duplicate originals as the case may be to which the College is a party; provided, however, the Office of Research and Grants shall be the repository of all research and researchrelated Contracts.

#### **VII. Conflicts of Interest and Compliance with Other Laws**

College officials with Contract signature authority must exercise that authority in a manner consistent with the College's Ethics Policy and the South Carolina Ethics Code and Rules of Conduct. Additionally, signature authority requires the holder to comply with all other applicable laws or policy, including but not limited to any provision of the South Carolina Consolidated Procurement Code, or rules and regulations promulgated under that statute.

#### **VIII. Conflicts**

Should any authorization herein conflict with any other procedure or policies or create an

ambiguity said conflict and/or ambiguity shall be interpreted to require the approval of the President or his/her specific designee prior to execution.

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**Related Policies, Documents or Forms**

Presidential Delegation of Signatory Authority for Execution of Contracts  
9.1.9 Ethics Policy

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**Issue Date:8/7/2015<sup>1</sup>**  
**Date of Policy Revision:2/15/16<sup>2</sup>**

**Next Review Date:10/15/2020**

**POLICY APPROVAL**

**(For use by the Office of the Board of Trustees or the Office of the President)**

Policy Number: 2.3.1.1

President or  
Chairman, Board of Trustees



Date: 2-2-17

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<sup>1</sup> Approved by vote of the College of Charleston Board of Trustees, August 7, 2015.

<sup>2</sup> No substantive revisions made, consistent with the revised College of Charleston policy template.