

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Agreements and Contracts

NUMBER: 5:3

The South Dakota Board of Regents has the power to make contracts for service, erection of buildings, purchase of lands, materials, and supplies needed by the institutions, with the exception of supplies and equipment and services that are under the jurisdiction of the Bureau of Administration.

To promote the efficient operation of the institutions under its control, the Board has categorized the contracts commonly made on behalf of the institutions and delegated its authority to enter into certain of these contracts as set forth in this article.

1. Contracts Requiring Board Action

- A. All employment contracts shall be submitted to the Board for approval on the established Personnel Action Report form.
 - 1) Provided that the contracts used are standard form contracts approved by the general counsel,
 - 2) Board approval of the salary offered shall constitute acceptance.
- B. Leases of real property (land and generally whatever is erected, growing upon or affixed in a permanent or semi-permanent manner to the land) involving acquisition or conveyance of interests lasting more than five years and exceeding \$50,000 per year. Renewal of interest in property for subsequent periods requires Board approval.
- C. Equipment leases exceeding \$100,000 per year, excluding master lease agreements that have been executed by a designee in the Board office and have had legal counsel review.
- D. Joint powers agreements.
- E. Interstate agreements.
- F. Affiliation agreements and other agreements that provide for joint sponsorship of educational programming for which credit shall be awarded.
- G. Contracts and agreements relating to the creation and operation of off-campus

instructional sites that are intended to operate for one academic year or more.

- H. Contracts that arise in connection with the issuance of revenue bonds.
- I. Contracts regarded by institutional chief executive officers as having significant policy implications.

2. Contracts Requiring Action by the Executive Director

- A. Any contract other than Leases of Real Property (see section 1B above) having a term greater than five years and an annual cost exceeding \$50,000, or an annual cost of more than \$250,000 per year.
- B. Articulation agreements or other agreements that provide assurances that credits for academic work granted or certified by other institutions shall be accepted for transfer credit.
- C. Capital improvement contract documents.
- D. Contracts on behalf of the system.
- E. Contracts arising in connection with organizational entities administered by the Executive Director.

3. Contracts Acted Upon by Institutional Chief Executive Officer

- A. All other contracts and agreements may be entered into by the institutional chief executive officer or his/her designee.

4. Legal Review of Contract Terms

- A. Where an institution initiates a contract, it shall assume responsibility for securing legal review of the draft contract. Where an institution routinely enters into contracts of like kind or subject matter, it shall assume responsibility for development of a standard form contract or contract rider acceptable to the general counsel. Provisions of other contracts may be accepted if they conform to provisions previously approved by the General Counsel. Otherwise, the institution proposing to accept the contract should secure a legal opinion concerning the unapproved provision.

5. Procedures

- A. Each institution shall develop a process for the internal review/approval of all contracts.

- B. Procedures shall be established by each institution to enable the institution to reconcile the amount of any contract with the amount actually expended at any given date. This policy pertains to all contracts being held at the institution in accordance with the procedure for records retention established by the Bureau of Administration.
- C. Copies of any contracts entered into by an institution must be submitted upon request to the Board's General Counsel.
- D. The Executive Director and the institutional chief executive officers may delegate the power granted hereunder to subordinates as is consistent with sound administrative practices. Such delegation shall not change the requirement that the necessary supporting documentation be assembled and approved prior to execution of a contract. No contract entered into shall become effective until executed by the Board, Executive Director, institutional Chief Executive Officer, or by a person exercising powers delegated hereunder.
- E. All contracts for Consulting Services shall be sent to the Office of the State Auditor per Administrative Rule 03:05:05:04.
- F. Each written contract in an amount of \$10,000 or more must be recorded on the SD Open Records website as required by SDCL 1:27-46. Contracts funded with externally funded research are exempt from this requirement.
- G. Each contract shall be reviewed and monitored for compliance with conflict of interest per SDCL 5-18A-17 and Board policy 4:35.
- H. A central filing system for all consultant contracts and 1099 reportable contracts utilizing Banner Account Codes 744XXX (Consulting or Contractual) shall be maintained by each institution under the Board of Regents.

6. Additional Contract Sources

Refer to the following BOR policies for additional contract requirements:

- 2:12 – Distance Education
- 2:13 – Third Party Requests for academic Credit
- 5:17 – Instructional Funding
- 5:4 – Purchasing
- 5:5:3 – Tuition and Fees: Special Course Types

SOURCE: SDCL §§ 13-49-15, 13-49-16 and chapters 5-18A, B & D; Revised, June 1989; Sept. 1991; May 1993; June 2002; August 2002; March 2006; August 2012; December 2013.

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Conflict of Interest

NUMBER: 4:35

1. Persons employed full-time by the South Dakota Board of Regents in professional capacities, whether as faculty members, extension agents, administrators with authority over organizational units, programs, supervision of personnel or purchasing or other contract approval on behalf of the Board or the institution, together with civil service staff who make effective recommendations for purchasing shall devote their best professional efforts to the service of the institution to which they are assigned.
 - A. The duty to devote the best professional efforts to the service of the employing institution means that professional employees shall apply themselves to the proper work entrusted to them in order to achieve in the most effective and efficient manner the goals that have been set for them.
 1. Professional employees who serve the Board full-time in professional capacities may not simultaneously be employed full-time by other employers; provided that this provision shall not apply to persons appointed as faculty members by the medical school but employed full-time by other employers.
 - B. Professional employees should avoid entering into outside employments, occupations or endeavors for profit of any kind that may reasonably be thought to influence the decisions that they make in their capacity as Board employees, the degree of thought and effort that they devote to their responsibilities as Board employees or, in any other manner, the loyalty and diligence with which they pursue the best interests of the Board and of the students and citizens who rely upon the Board and its employees.
 1. In addition to the Investigator Financial Disclosure requirements contained in Board Policy No. 4:32, professional employees shall certify compliance with this policy annually by disclosure of outside employments, occupations or endeavors for profit, including investments or ownership interests held by immediate family members, that may reasonably be thought to influence, either directly or indirectly, institutional business, research or other decisions in matters in which the employee or immediate family member has a significant financial interest. If circumstances arise that suggest to the institutional chief executive officer, or that person's designee, that such outside interests have caused their work for the university to suffer or have given rise to an appearance of conflict of interest, the institutional chief executive officer, or that person's designee, may inquire into such activities, and the professional employees

shall cooperate fully by disclosing such additional information as the institutional chief executive officer may request.

- a. For purposes of this policy, financial interests are significant and reasonably thought to influence, whether directly or indirectly, institutional business, research or other decisions that the professional employee makes on behalf of the Board and the institution when an outside entity:
 - i. employs the professional employee, or an immediate family member,
 - ii. or retains such a person as a consultant, or in any other compensated capacity, or
 - iii. when the professional employee or immediate family members, either individually or in aggregate, own equity in the outside entity in such amounts as would be reportable under federal regulations governing investigator conflicts of interest. (At the time of the 2005 negotiations, these sums would equal 5% of the equity issued by the entity or at least \$10,000 of ownership interests in the outside entity.
 - b. For purposes of this policy, “immediate family” includes a spouse, a common law spouse, or any other adult with whom the professional employee lives and commingles assets, unemancipated natural or adopted children, persons over whose affairs the professional employee or spouse exercises the responsibilities of guardian.
 - c. Disclosures required under this section shall be made to the institutional chief executive officer, or that person’s designee, and shall be treated as confidential material to be retained in personnel files, but without being subject to disclosure during promotion, tenure or continuing appointment reviews.
 - d. The duty to disclose conflicts shall be continuing. Each professional employee shall have an obligation to supplement the annual disclosure within one month of the time that the employee or immediate family member acquires employments or other business or financial interests that would be reportable under the policy; provided that immediate disclosure is required if the professional employee is actively participating in decision-making in a project or other endeavor involving the outside employer, contractor or entity.
2. When requesting additional information under this policy, the institutional chief executive officer, or that person’s designee, will indicate the circumstances that gave rise to the request.
 3. Faculty members may engage in private consulting on such terms and conditions as provided herein and under Board Policy No. 4:19 or, for members of the faculty bargaining unit, under § 9.5 of the collective bargaining agreement between the Council of Higher Education and the Board.

- a. Notwithstanding any other provision of Board policy or of a collective bargaining agreement, absent the specific written consent of the chief executive officer of the employing institution, no faculty member may serve as an expert witness on behalf of a party pursuing a claim against the Board, an institution under its control, or an officer, agent or employee of the Board, where the matters at issue involve deliberative or evaluative processes of the institution and the prospective expert witness participated in such deliberations or evaluations and helped to develop the institutional position with respect to such matters.
 - i. This restriction may not be construed as an effort to prevent such employees from testifying in other capacities as to unprivileged matters within their personal knowledge.
 4. Exempt staff, classified staff and extension agents who serve the Board full-time in professional capacities may engage in private consulting, in the manner, under such conditions and to the extent permitted under SDCL ch 3-8 and this policy.
 - a. Notwithstanding any other provision of Board policy, absent the specific written consent of the chief executive officer of the employing institution, no exempt staff member, classified staff member or extension agent may serve as an expert witness on behalf of a party pursuing a claim against the Board, an institution under its control, or an officer, agent or employee of the Board, where the matters at issue involve deliberative or evaluative processes of the institution and the prospective expert witness participated in such deliberations or evaluations and helped to develop the institutional position with respect to such matters.
 - i. This restriction may not be construed as an effort to prevent such employees from testifying in other capacities as to unprivileged matters within their personal knowledge.
 - b. Extension agents and extension specialists may not enter into consulting contracts to be performed within their assigned areas.
 - c. Extension agents and extension specialists may not contract to serve as expert witnesses as to matters related to the expertise that they exercise as part of their employment.
 5. Professional employees shall be subject to the Investigator Financial Disclosure policy contained in Board Policy No. 4:32.
- C. Absent prior consent, professional employees shall not engage in service businesses or enter into contracts to provide services where
1. The services to be provided by the businesses or under the contracts are also made available to the public by Board institutions, and

2. The professional employees are expected to provide such services on behalf of the Board as part of their regular assignments.

The prior approval requirement stated in this section shall not apply to activities undertaken by professional employees with nine month, ten month or eleven month contracts outside the dates of active contractual service; except that any agreement to provide instructional service or consulting services of any kind to postsecondary institutions not governed by the Board, whether or not the course of instruction or services are offered by Board institutions, and whether or not the services are provided outside the dates of active contractual service, must receive prior approval.

- D. Professional employees who hire or engage junior colleagues, subordinates, or students for purposes unrelated to the activities of the institution
 1. May not use their institutional positions to induce such junior colleagues, subordinates or students to accept such employment or engagements, and
 2. May not permit disputes arising from an outside employment or engagement to influence decisions that the professional employees make on behalf of the Board about the performance of the junior colleagues, subordinates or students.
- E. Outside businesses in which faculty members, administrators and extension agents who serve the Board full-time in professional capacities have direct or indirect financial interests may be subject to the prohibitions contained in the South Dakota Codified Laws when bidding on contracts offered by Board institutions or other state agencies.
- F. Faculty members are subject to the specific prohibition stated in S.D. Const. art. VIII, § 17 against profiting from the sale of books or apparatus that they have authored, invented or manufactured to students attending any public K-12 school, vocational institute or university located in the State of South Dakota.
- G. When engaged in outside employments, occupations or endeavors for profit, professional employees shall indicate that they are acting in their private capacities and not as employees or agents of the Board or its institutions.
 1. Professional employees may disclose their institutional affiliation to the extent that it may be customary to do so in order to inform another individual of one's credentials.
 - a. Professional employees who have obtained licenses on terms and conditions approved by the Board may use the name of the Board or of their employing institutions, or any logo, insignia or marks associated with them, for advertising purposes.
- H. No professional employee may use for any purpose unrelated to the discharge of official duties any confidential information acquired by virtue of or in the course of his or her employment by the Board.

1. The prohibition stated in this section precludes the use for private purposes of information regarded as confidential by extramural organizations. Particular care must be taken to safeguard such confidences reported by students who acquired the information through service in institutionally sponsored internships or comparable placements.
- I. Professional employees may not use for any purpose unrelated to the discharge of official duties supplies, equipment or staff provided by virtue of or in the course of their employment by the Board; except that, such use may be permitted where:
 1. The use has been authorized in furtherance of approved consulting or private research, and appropriate arrangements have been made to reimburse the employing institution for such use, or
 2. The use has been authorized as de minimis and consistent with the effective operation of the public work place and does not increase the cost of the resource to the state.
 - J. Professional employees may not solicit or accept for personal use, or for the use of others, any gift, favor, loan, gratuity, reward, promise of future employment or any other thing of monetary value that might influence or appear to influence the judgment or conduct of the employee in matters involving institutional business activities or academic decisions. Professional employees may accept occasional unsolicited courtesy gifts or favors provided that the gifts or favors are customary in the industry and not of substantial value, and will not influence or appear to influence the judgment or conduct of the employee in matters involving institutional business activities, research or service endeavors or academic decisions. Ordinarily, no permitted gift or gratuity will have a value exceeding two hundred (\$200). If an otherwise proper gift or gratuity has a value exceeding that sum, acceptance of the gift or gratuity shall be disclosed to the professional employee's immediate supervisor. Notwithstanding the foregoing, upon prior written approval of the institutional chief executive officer, professional employees may accept a business trip paid for by a prospective vendor for purposes reasonably related to the evaluation of equipment, goods or services for possible acquisition by the institution.
 1. Any disclosure made under this section shall be in writing and receipt of the same shall be acknowledged in writing. Such writings shall be treated as confidential material to be retained in personnel files, but without being subject to disclosure during promotion, tenure or continuing appointment reviews.
 - K. Professional employees may accept honoraria from government or nonprofit organizations in recognition of services provided as a professional expert pursuant to Board Policy No. 4:19 (4), unless:
 1. The person, company, or organization offering the honorarium wants, or could reasonably be expected to want, to sell goods or services to the institution or to the

system, and the employee is in a position to influence the decision to acquire that type of good or service;

2. The person offering the honorarium is regulated by the institution or the system, and the employee is in a position to participate in the regulation;
 3. The person offering the honorarium:
 - a. is seeking or opposing or is reasonably likely to seek or oppose enactment of legislation or adoption of administrative rules or actions, or policy changes by the institution or the system; and
 - b. the employee may participate in the enactment or adoption;
or
 4. The payment would be classified as a conflict of interest under other provisions of this policy if it were made by a for-profit entity.
 5. "Honoraria," as used in this policy, means money or a thing of value offered to an institutional employee for a speech, appearance, article, or similar item or activity in connection with the employee's official role. Honoraria may include money or a thing of value offered to employees serving on scholarly or advisory bodies related to their academic work, public commissions, boards of philanthropic organizations, review panels or accreditation teams, or similar activities.
2. Institutional chief executive officers or their designees may direct professional employees to curtail or to abandon outside business endeavors, or they may, in their sole discretion, reassign the professional employees to duties that do not entail conflicts of interest, if professional employees have failed to observe limitations specified in this policy or have otherwise acted in a fashion, not otherwise expressly addressed hereunder, that compromises the interests that this policy seeks to protect.
- A. Where the institutional chief executive officers or their designees believe that a professional employee has violated or departed from the public policies adopted herein, they shall:
1. Give the affected professional employee written notice of the facts and circumstances that ground such concerns and advising them of the actions that the institution will require;
 2. Meet with the affected professional employee within ten working days after the initial notice was sent. The purpose of the meeting will be to discuss the factual basis for the institution's concern and the actions that the institution will require;
 3. Within five working days after the meeting, give the affected professional employee written notice of those actions that he or she must take in response to the institution's concerns.

B. Professional employees must comply with the directives given to them.

3. Insofar as any determination of the institutional chief executive officers or their designees might give rise to a grievance within the meaning of applicable collective bargaining agreements or policies, professional employees may invoke their respective grievance procedures to challenge such determinations.

4. The chief executive officers of the institutions and the Executive Director and CEO of the Board of Regents are subject to sections 1 through 3 of this policy to the same extent as are any other professional employees of the Board. The provision of this section state additional, substantive requirements applicable to the chief executive officers of the institutions and the Executive Director and CEO, and they establish procedures to be followed whenever a chief executive officer or the Executive Director and CEO is required to disclose a potential conflict, to obtain permission, or to accept direction in such matters. This section also allows for limited review of decisions affecting chief executive officers or the Executive Director and CEO rights under these policies.

A. The institutional chief executive officers and the Executive Director and CEO shall not accept without prior authorization, any outside appointment to the board of a for-profit entity, whether compensated or not, that might reasonably be thought to influence the discharge of their executive duties on behalf of the particular school, university or system.

1. Any request for permission to serve on a for-profit board shall specify the number of meetings per year and days per meeting that will be required for such service.

a. Authorization to accept an appointment to a for-profit board, whether compensated or not, does not authorize the use of institutional time, equipment, personnel, facilities or resources for such purposes. Appropriate leave must be taken for absences of one day or more for purposes of the for-profit board.

2. The Board President or the Executive Director and CEO may authorize acceptance of appointment to a for-profit board if the annual compensation for the directorship is less than the total compensation approved by the Board for its most highly compensated executive; a directorship involving greater compensation may be accepted only with prior authorization by the Board.

3. The Board may make exceptions to the standards and practices ordinarily required under this policy where, in its discretion, circumstances justify such departures to serve what it deems to be the best interests of the particular school or university or the system.

B. Whenever this policy requires a chief executive officer or professional employee to make a disclosure or to request permission, institutional chief executive officers shall submit

the required disclosure to the Executive Director and CEO, and the Executive Director and CEO shall submit the required disclosure or request to the President of the Board.

- C. The Executive Director and CEO shall exercise the authority provided for under § 2, above, with respect to curtailment or termination of endeavors undertaken by chief executive officers, and the President of the Board shall exercise such authority over the Executive Director and CEO.
- D. If a chief executive officer or the Executive Director and CEO believes that a directive issued under ¶ C of this section misapplies, misinterprets or violates a specific term or condition of Board policy, he or she may submit the matter to the President of the Board, who may attempt informal resolution of the complaint. If the President of the Board elects not to attempt an informal resolution, or if an informal resolution cannot be reached, the President shall appoint a hearing officer to review the dispute and to forward a recommendation to the Board for final action.

SOURCE: BOR, June 1997; BOR, December 2002; BOR, June 2005; BOR, March 2006; BOR, October 2010.

BOARD POLICY NO. 4:35 REPORTING REQUIREMENTS

- Each person employed full-time in administrative, faculty or other professional positions must file an annual disclosure report.
- Financial interests are subject to disclosure if the duties of the professional employee involve decisions that involve a business or organization in which the employee holds significant financial interests.
- Under the policy, financial interests must be reported if the outside business or organization:
 - i. employs the professional employee, or an immediate family member,
 - ii. retains such a person as a consultant, or in any other compensated capacity, or
 - iii. when the professional employee or immediate family members, either individually or in aggregate, own equity in the outside entity equal to 5% of the equity issued by the entity or at least \$10,000 of ownership interests in the outside entity.
- “Immediate family” includes a spouse, a common law spouse, or any other adult with whom the professional employee lives and commingles assets, unemancipated natural or adopted children, persons over whose affairs the professional employee or spouse exercises the responsibilities of guardian.
- The duty to disclose conflicts is continuing, and this disclose must be supplemented within one month of the time that the employee or immediate family member acquires employments or other business or financial interests that would be reportable under the policy.
- Immediate disclosure is required if the professional employee is actively participating in decision-making in a project or other endeavor involving the outside employer, contractor or entity.
- Approval is required before accepting any instructional appointment to any institution not governed by the Board of Regents.
- Approval is required before a professional employee agrees (i) to provide services to the public through a business or organization, (ii) while under active contract to the employing institution, if (iii) the arrangement involves the same services that the employee provides on behalf of the employing institution.

SOUTH DAKOTA BOARD OF REGENTS CONFLICTS OF INTEREST DISCLOSURE SHORT FORM

EMPLOYEE INFORMATION

Name _____

Institution & School/Department _____

Position Title _____

Campus Phone No. _____

Email address _____

Institution ID No. _____

DISCLOSURE AND CERTIFICATION:

Do you or any immediate family members have financial interests in outside entities that are subject to reporting under Board Policy No. 4:35?

NO

YES*

Do you anticipate entering into agreements to teach for a non-Regental institution during the coming year or to provide to the public through an outside entity services that you provide while under contract with your employing institution?

NO

YES¹

I certify the accuracy of the foregoing statements, and I acknowledge that it is my responsibility to disclose new reportable financial interests with the times allowed under Board Policy No. 4:35.

Employee's Signature (full legal name):

Date: _____

PRESIDENT (SUPERINTENDENT) ACKNOWLEDGEMENT:

Signature _____

Date: _____

* Please attach an Addendum Form identifying the reportable financial interests.

**ADDENDUM TO
SOUTH DAKOTA BOARD OF REGENTS
CONFLICTS OF INTEREST DISCLOSURE**

EMPLOYEE INFORMATION

Name _____

Institution & School/Department _____

Position Title _____

Campus Phone No. _____

Email address _____

Institution ID No. _____

OUTSIDE EMPLOYMENT: List each outside employer:

Employee: _____

Immediate Family Member: _____

OUTSIDE COMPENSATION: List each consultant contract or other compensated activity.

Employee: _____

Immediate Family Member: _____

OWNERSHIP INTERESTS: List each company (including professional practice, for-profit farming or sole proprietorships) that does business with the institution and in which you and your immediate family members, in aggregate, own equity equal to 5% of the equity issued by the entity or at least \$10,000 of ownership interests.

Employee: _____

Immediate Family Member: _____

CONFLICTING SERVICE COMMITMENTS: List each outside businesses or organizations seeking instructional or other services that the employee provides through the employing institution:

I certify the accuracy of the foregoing statement, and I acknowledge that it is my responsibility to disclose new reportable financial interests with the times allowed under Board Policy No. 4:35.

Employee's Signature (full legal name):

DATE: _____