

# SOUTH DAKOTA BOARD OF REGENTS

## Policy Manual

**SUBJECT:** Agreements and Contracts

**NUMBER:** 5:3

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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 for data processing equipment, systems and services that are under the jurisdiction of the Bureau of Administration.

Contracts to deliver instruction are addressed in Policy 2:12 (Distance Education ), Policy 2:13 (Third Party Requests for Academic Credit) Policy 5:5:3(Tuition and Fees:Special Course Types) and 5:17 (Instructional Funding). Contracts for purchases of supplies and of data processing equipment, systems and services are addressed in Policy 5:4 (Purchasing). Other contracts are subject to the bid law provisions and exclusions of SDCL chapter 5-18.

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. Employment contracts for permanent non-Career Service Act employees.
  - 1. Provided that the contracts used are standard form contracts approved by the general counsel, 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 three years and exceeding \$20,000 per year. Renewal of interest in property for subsequent periods requires approval.
- C. Equipment leases exceeding \$100,000 per year.
- 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 other contract having a term greater than five years and an annual cost exceeding \$20,000. Renewal of interest in property for subsequent periods requires approval.
- B. Articulation agreements or other agreements that provide assurances that credits or academic work granted or certified by other institutions shall be accepted for transfer credit.
- C. Research and development grants or contracts.
- D. Capital improvement contract documents.
- E. Equipment leases exceeding \$50,000 per year.
- F. Contracts on behalf of the system.
- G. Contracts arising in connection with organizational entities administered by the Executive Director.

## **3. Contracts Acted Upon by Institutional Chief Executive Officer**

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

## **4. Supporting Documentation**

No contract may be executed until the supporting documentation has been assembled and approved. Each institution shall develop procedures to document the prior internal review and approval of contracts.

- A. Statement of business or educational rationale.
- B. Identification of funding source.
- C. Completed legal screening checklist on form approved by the general counsel.
- D. Alternative legal screening process:  
Legal screening may be reduced when a standard contract form approved by the general counsel is employed. Where the standard contract form has been properly completed and none of its terms have been modified, review may be limited to:
  - 1. Contract type proper for transaction;
  - 2. Bid law compliance;
  - 3. Compliance with Board policy;
  - 4. Parties properly identified;
  - 5. Execution by the proper party.
- E. Review and monitor for compliance with conflict of interest per SDCL 5-23-14.2 and Board policy 4:35.

## **5. Legal Review of Contract Terms**

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.

## **6. A Central Filing System**

A central filing system for all contracts, all sources of funding, awarded under state account code 0400 (Consulting or Contractual) shall be maintained by each institution under the Board of Regents.

## **7. Procedures**

- A. Procedures shall also 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.
- B. Copies of any contracts entered into by an institution must be submitted upon request to the Board's General Counsel.
- C. The Executive Director and the institutional chief executive officers may delegate so much of the power granted hereunder to subordinates as is consistent with sound administrative practice. 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 Executive Director or an institutional chief executive officer or by a person exercising powers delegated hereunder.

**SOURCE: SDCL §§ 1-14-12.1 through 1-14-12.18, 13-49-15, 13-49-16 and chapters 5-18 and 5-23; Revised, BOR, June 1989; BOR, Sept. 1991; BOR, May, 1993; BOR, June 2002; BOR, August 2002; BOR, March 2006.**