

CONFLICT WAIVER DECISION MATRIX

SDCL 5-18A-17 to 5-18A-17.6

DO I NEED TO REQUEST A WAIVER?

This matrix is designed to assist current and past employees of the Board of Regents or one of its institutions determining whether it is necessary to seek a waiver in accordance with SDCL 5-18A-17 to 5-18A-17.6 in order to be a party to or benefit from a contract with a state agency, which includes the Board of Regents. This matrix is designed to be utilized in conjunction with the accompanying instructions, review of the statute and contact with your supervisor. Additionally, this matrix and the requirements set forth in the foregoing statutes does not supersede or otherwise alleviate compliance with more stringent conflict of interest requirements under other policies or regulations.

NOTE that South Dakota law prohibits state officers and employees (which includes BOR employees) from soliciting or accepting any gift, favor, reward or promise or reward, including any promise of future employment, in exchange for recommending, influencing or attempting to recommend or influence the award of a state contract. This prohibition is absolute and cannot be waived. This matrix is intended as a general guide only and is not by itself determinative of whether a conflict of interest exists. You are encouraged to contact legal counsel at your institution or general counsel for the Board with any questions.

The questions in this matrix may not address your specific situation. When in doubt as to the answer to any of the questions below, you are encouraged to choose “yes” for the purposes of completing the matrix and deciding whether you need to ask for assistance.

As used in this matrix, except as used in question #2 below, the term “contract” means a contract between a state agency (which includes the BOR and its institutions) and a person or entity outside state government.

1. Am I now, or within the past year was I, an officer or employee of the South Dakota Board of Regents, one of its institutions or the state of South Dakota?

If YES, proceed to next question.

If NO, SDCL 5-18A-17 to 5-18A-17.6 is not applicable to you and no waiver is needed.

2. Have you entered into, or are you thinking of entering into, a contract or other business transaction (other than a contract of employment) with the Board of Regents, one of its institutions or a state agency? (NOTE that an agreement need not always be writing to be considered a contract.)

If YES, you must request a waiver.

If NO, proceed to next question.

3. Did I have any role in recommending the award of a contract?

If YES, proceed to question 7.

If NO, proceed to next question.

4. Did I have any role in approving or awarding a contract?

If YES, proceed to question 7.

If NO, proceed to next question.

5. Do or did I administer the contract, meaning do or did I have any decision-making authority, or substantive influence on decision-making by others, concerning the manner, method or means of the contract's performance or enforcement, such as the ability to terminate, suspend, change terms or evaluate the outside party's performance under the contract?

If YES, proceed to question 7.

If NO, proceed to next question.

6. Am I or was I in the chain of supervisors above a person who approved or awarded a state contract to an outside person or entity, or am I or was I in the chain of supervisors above a person who can or does exercise decision-making or substantive influence on decision making by others concerning the manner, method or means of the contract's performance or enforcement?

If YES, proceed to question 7.

If NO, no waiver is needed.

7. Will or do I, my spouse or any other person with whom I live and commingle assets fit into any of the following categories vis-à-vis the contract or the contracting person or entity: (a) have a five percent or more ownership or other interest (such as being a creditor) of the contracting person or entity; (b) will earn or receive a salary, commission or other income from the contracting person or entity or directly as a result of the contract; (c) acquire anything under the contract?

If YES, you must request a waiver.

If NO, proceed to question 8.

8. Do I, my spouse or any other person with whom I live and commingle assets serve on the board of directors of a for-profit entity that benefits from the contract?

If YES, you must request a waiver.

If NO, no waiver is needed.