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

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.

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. Research and development grants or contracts.

D. Capital improvement contract documents.

E. Equipment leases with a cost from $50,000 to $100,000 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

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.