

SOUTH DAKOTA BOARD OF REGENTS

Budget and Finance
Consent

AGENDA ITEM: 6 – H
DATE: July 31 – August 2, 2023

SUBJECT

New BOR Policy 4:50 – Sanction, Exclusion, and Debarment Screening; and Revised BOR Policies 4:47 – Background Checks, 4:48 – Export Controls, and 5:4 – Purchasing (Second Reading)

CONTROLLING STATUTE, RULE, OR POLICY

[BOR Policy 4:47](#) – Background Checks
[BOR Policy 4:48](#) – Export Controls
[BOR Policy 5:4](#) – Purchasing
[SDCL 5-18A](#) – Public Agency Procurement – General Provisions
[SDCL 5-18D-12](#) – Suspension of Debarment of Business for Cause
[2 CFR § 180, Subpart C](#) – Responsibilities of Participants Regarding Transactions Doing Business with Other Persons

BACKGROUND / DISCUSSION

Campus implementation in the areas of background checks, export controls, and procurement indicated the need for a common policy regarding screening potential employees, vendors, contractors, and other affiliated entities for prohibited status such as appearance on the federal or state sanction and debarment lists. The associated updates will also ensure the Board and its institutions are thoroughly vetting entities, including foreign corporate and governmental entities, and therefore have the necessary knowledge about who it is accepting money from and doing business with.

The proposed new policy on sanctions, exclusion, and debarment screening set forth in Attachment I details the necessary steps for an adequate review of the state and federal resources that indicate an entity’s prohibited status prior to establishing a contractual or employment relationship with an entity, as well as appropriately assigning the oversight for the screening functions to the applicable campus office or department. Revisions to other applicable policies in Attachments II-IV are a clean-up of relevant policies to ensure

(Continued)

DRAFT MOTION 2023731_6-H:

I move to approve the second and final reading of new BOR Policy 4:50 – Sanction, Exclusion, and Debarment Screening, repeal and replacement of BOR Policy 4:47, and revisions to BOR Policies 4:48 and 5:4, as presented.

the new policy is implemented consistently, which includes repealing and replacing BOR Policy 4:47 in its entirety.

IMPACT AND RECOMMENDATIONS

The proposed Sanction, Exclusion, and Debarment Screening policy and associated revisions to Background Check, Export Control, and Procurement Policies will provide a consistent protocol and process across the system for monitoring entities for prohibited status prior to establishing an employment or contractual relationship.

There have been no additional revisions since the first reading of this policy at the June 2023 BOR meeting.

Staff recommends approval.

ATTACHMENTS

Attachment I – Proposed New BOR Policy 4:50 – Sanction, Exclusion, and Debarment Screening

Attachment II – BOR Policy 4:47 – Background Checks

Attachment III – BOR Policy 4:48 – Export Controls

Attachment IV – BOR Policy 5:4 – Procurement

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Sanction, Exclusion, and Debarment Screening

NUMBER: 4:50

A. PURPOSE

To support efforts to ensure satisfaction of federal and state requirements that the BOR and the institutions it governs do not employ or contract with individuals and entities who are under state or federal exclusion, debarment, or suspension, or with entities owned or controlled by prohibited foreign nationals, entities, or governments.

B. DEFINITIONS

1. **Affiliated Research Personnel:** any individual employed by a non-BOR entity involved in research for a Regental institution.
2. **Vendor:** any organization or individual providing goods or services to the BOR or an institution, excluding refunds and reimbursements.
3. **Contractor:** any individual or other legal entity that enters into a contract or agreement for goods and services with the BOR or an institution equal to or exceeding \$25,000.
4. **Sanction Check:** the process of verifying that an individual or entity is not under state or federal exclusion, debarment, or suspension, or is not an entity owned or controlled by prohibited foreign nationals, entities, or governments.
5. **Background Check:** As defined in BOR Policy 4:47.

C. POLICY

1. The BOR and its Institutions exercise due diligence in hiring and screening employees, Vendors, Contractors, and affiliates. Employees, Vendors, Contractors, and appropriate affiliated individuals must be checked against appropriate governmental exclusion, debarment, and suspension lists to ensure eligibility for hire and to participate in BOR and Institutional programs.
 - 1.1 Employees, Vendors, Contractors, and covered affiliates subject to this policy have an affirmative duty to notify the Institution or BOR designated official if they are under federal exclusion, debarment, or otherwise on a federal or state sanctions list. If an individual has been excluded from participation in a federally or state funded, or if a finalist is unwilling to submit required documents or to submit to a background or sanctions check, they may not be considered for employment, placement, or perform any services for or on behalf of the BOR or its governed institutions.

- 1.2 Inquiries into sanctions status associated with the BOR and Institutions will be handled in compliance with all applicable federal and state laws.
- 1.3 All individuals who have matching names to those found through the sanctions checks process shall have the right to review, deny, or provide clarification regarding any such finding. The individual may provide information to clarify their identity as other than that of the listed individual and shall otherwise cooperate with the designated officials responsible for the checks, including executing any and all required consents and certifications. Upon determination that a name appears on a sanctions list, the designated officials will:
 - 1.3.1. Ensure that the sanction report is accurate by verifying the identity of the individual on the report;
 - 1.3.2. Present the individual with the findings;
 - 1.3.3. Consider the individual's response to the sanction finding;
 - 1.3.4. Confirm admission, denial, or clarification through the utilization of a third-party sanction check application or with the responsible government entity named in the report;
 - 1.3.5. File for the record denial if the sanction is accurate;
 - 1.3.6. Discuss with the designated BOR or institutional representative the confirmed sanction for decision making;
 - 1.3.7. Inform of action and determination.
- 1.4 Nothing in this policy abrogates or serves as a substitute for any requirement for an individual background check required by federal or state law, or by other applicable BOR policies.
2. Ongoing screening of applicable databases for Employees, Vendors, Contractors, and affiliated individuals will be managed as set forth herein.
3. As applicable to the institution, nature of duties, and engagement with programs, BOR and Institutional employees, Vendors, Contractors, and appropriate affiliated individuals are checked against, but not limited to, the following federal and state exclusion, debarment, and suspension lists or successor lists as applicable:
 - 3.1. Office of Inspector General's (OIG) List of Excluded Individuals/Entities (LEIE);
 - 3.2. General Services Administration's (GSA) System for Award Management (SAM) Excluded Parties List System (EPLS);
 - 3.3. U.S. Food and Drug Administration's (FDA) Debarment List and Disqualified/Totally Restricted List for Clinical Investigators;
 - 3.4. U.S. Department of the Treasury, Office of Foreign Asset Control's (OFAC) Specially Designated Nationals (SDN) & Blocked Persons List, Consolidated Sanctions List (Non-SDN sanctions, including Foreign Sanctions Evaders);

- 3.5. U.S. Department of Commerce (DOC), Bureau of Industry and Security's (BIS) Denied Persons List, Entity List, and Unverified List;
 - 3.6. U.S. Department of State's (DOS), Directorate of Defense Trade Control's List of Statutorily Debarred Parties and List of Administratively Debarred Parties; and
 - 3.7. South Dakota Bureau of Administration debar and suspension list and any other state-level sanctions or restrictions applicable to Employees, Vendors, Contractors, and covered affiliates subject to this policy.
4. Vendors and Contractors who are personally providing services may be subject to criminal background checks prior to providing services if the duties would require a criminal record check under BOR Policy 4:47. Vendors and Contractors may be required to certify their compliance with employee screening where their employees provide similar personal services.
 5. The sanction check screening process includes identification and verification of an individual/entity name of a prospective employee, employee, prospective Vendor, Vendor, prospective Contractor, Contractor, or affiliated individual that potentially matches a sanctioned individual/entity name identified on an applicable governmental exclusion, debarment, or suspension list. The sanction check screening process also includes determining if the identified name is a positive match and if the individual/entity is eligible for hire and/or participation in programs. The sanction check screening process includes initial screenings for prospective employees, Vendors, Contractors, or affiliated individuals, as well as subsequent checks for maintenance of continued employment, contracts, grants, or other applicable agreements to ensure continued eligibility. Verification of an employee, Vendor, Contractor, or other affiliated entity as appearing on an applicable governmental exclusion, debarment, or suspension list during any sanction check screening, initial or subsequent, will result in that individual/entity being ineligible for employment, placement, or performance of any services for or on behalf of the BOR or its governed institutions. The verification procedures, system user instructions, and associated certification forms will be managed by an institutional designated official.
 6. Sanction check screening will be facilitated through systems managed by the BOR Accounts Payable Shared Service Center for procurements, Vendors, Contractors, and affiliated individuals; through Human Resources offices for employees; and through designated Research and/or Grants and Contracts offices for affiliated research personnel project reviews.

These offices are responsible for administering and overseeing the BOR and Institutional sanction check protocols, including but not limited to the following:

- 6.1 BOR Accounts Payable Shared Service Center:
 - 6.1.1 Review and renew the BOR contract or agreement with the third-party vendor for sanction check services provided, including an online searchable database system.
 - 6.1.2 Serve as the system administrator for the sanction check online searchable database system and train any designated users how to use the system.

- 6.1.3 Maintain the sanction check procedures and serve as the subject matter expert, in conjunction with the BOR' General Counsel and other Institutional compliance officials, on federal and state agency exclusion and debarment requirements.
 - 6.1.4 Receive regular sanction check screening logs from BOR and Institution designated officials of current and incoming Vendors and Contractors to ensure compliance with BOR Policy 5:4.
 - 6.1.5 Maintain ongoing sanction check screening of all active Vendors and Contractors and notify BOR or Institutional designated representatives of flagged individuals or entities.
- 6.2 Designated Human Resources offices:
- Ensure a sanction check screening is completed for all new BOR and institutional employees for verification of employment eligibility prior to hire date in accordance with BOR Policy 4:47 as part of the candidate's criminal history check, if a sanctions check is determined to be necessary based on the employee duties and responsibilities. The applicable Human Resources office is responsible for maintaining supporting documentation of sanction check screenings, reverification of individuals, and for reporting confirmed positive matches to responsible officials.
- 6.3 Designated Research and/or Grants and Contracts Offices:
- Conduct sanction check screening of affiliated research personnel, participating students, entities, and subcontractors and subrecipients for projects in accordance with BOR Policy 4:48 to ensure eligibility to participate in BOR or institutional research programs. Checks will occur, at a minimum, at proposal and subaward phases, during the life of projects, and if there are changes in responsible individuals. Research or Grants and Contracts may collaborate with Shared Services of Human Resources for sanction check processing. The designated research office is responsible for maintaining supporting documentation and reporting confirmed positive matches to Shared Services or Human Resources or other designated officials.

FORMS / APPENDICES:

None

SOURCE:

BOR August 2023.

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Employment Background Checks

NUMBER: 4:47

A. PURPOSE

To promote a safe and secure environment for its faculty, staff, students, volunteers, and visitors. The Board will take reasonable steps to ensure hiring decisions effectively contribute to reduced risk.

Furthermore, this policy is intended to support the verification of credentials, criminal history, credit status, and other information related to employment decisions that assist the University, Special School, or Board of Regents in meeting its commitments.

B. DEFINITIONS

1. **Background Check:** The process of acquiring records regarding a final candidate that are used to determine suitability for employment. Components of a background check may include the following:
 - 1.1. "Credit history check" means checking the credit history of the selected applicant or employee. (Federal laws prohibit discrimination against an applicant or employee as a result of bankruptcy.)
 - 1.2. "Criminal history check" means verifying that the selected applicant or employee does not have any undisclosed criminal history in every jurisdiction where the applicant or employee currently resides, has resided, or has been employed.
 - 1.3. "Educational verification" means ensuring that the selected applicant or employee possesses the educational credentials beyond high school listed on the application, resume, or cover letter or otherwise cited by the candidate that qualify the individual for the position sought.
 - 1.4. "Employment verification" means ensuring that the selected applicant or employee actually worked in the positions listed on the application, resume, or cover letter or otherwise cited by the candidate that qualify the individual for the position sought, as well as all employment during a period of at least seven (7) years immediately preceding application. This verification should include dates of employment and reasons for leaving each position.
 - 1.5. "License verification" means ensuring that the selected applicant or employee possesses all the licenses listed on the application, resume, or cover letter or

otherwise cited by the candidate that qualify the individual for the position sought and verification of any license required for the position, including verification of the disposition of such licenses. This includes any motor vehicle drivers licenses required for the associated position.

- 1.6. "Limited criminal history check" means verifying that the selected applicant or employee does not have any undisclosed criminal history in the jurisdiction where the applicant or employee currently resides or has been previously employed, or where the applicant or employee last resided, if the applicant or employee only recently moved to a location near the institution or location working.
- 1.7. "Limited sex and violent offender registry check" means verifying that the selected applicant or employee does not have undisclosed convictions of certain sex and violent crimes in the jurisdiction where the applicant or employee currently resides, or where the applicant or employee last resided, if the applicant or employee only recently moved to a location near the institution or location working.
- 1.8. "Sex and violent offender registry check" means verifying that the selected applicant or employee does not have undisclosed convictions of certain sex and violent crimes in every jurisdiction where the applicant or employee currently or has resided.
- 1.9. "Sanction check" means verifying that the selected applicant or employee is not debarred or on a sanction list identified in Regents Policy X:XX
2. **Fair Credit Reporting Act:** The federal law that regulates collection, dissemination, and use of consumer credit information.
3. **Employee:** is defined as any person employed by the Regental system, including full-time, part-time, temporary, graduate assistant, and student employee statuses.
4. **Favorable Background Check:** A background check that does not indicate any criminal record, information inaccuracies or discrepancies, or other position-related concerns.
5. **Institution:** Black Hills State University, Dakota State University, Northern State University, South Dakota School of Mines & Technology, South Dakota State University, South Dakota School for the Blind and the Visually Impaired, South Dakota Services for the Deaf, University of South Dakota, and the Office of the Executive Director.
6. **Personally Identifiable Information:** Information that can be used to distinguish or trace an individual's identify or, when combined with other personal or identifying information, is linked or linkable to a specific individual.
7. **Final Candidates:** Includes the internal or external applicant(s) identified as the finalist, or finalists, for the position.

C. POLICY

1. Certain positions require credential, criminal, and other background information verified as a condition of employment, volunteer status, or as required in BOR Policy 1:35 – Minors on Campus.
2. Background checks may be conducted by law enforcement agencies, credit reporting agencies, or designated employees of the Board of Regents and its institutions.
3. Law enforcement agency checks are required by statute for certain positions.
4. The Board or institutions will require credit, criminal, education, employment reporting, or other background verifications for positions as required or deemed necessary, in which case, a reporting agency selected or approved by the Executive Director will be used.
5. The Board reserves the prerogative to conduct independent background checks of prospective employees using Board or institutional personnel, and such checks may include the review of information accessible by the public through the Internet.
6. As a condition of employment or appointment as a volunteer, the Board performs the following background check components on positions with the following responsibilities in conformity with applicable laws, regulations, and standards:
 - 6.1. The Board will perform Criminal History Checks, Sex and Violent Offender Registry Checks, or combinations thereof for all positions that entail:
 - 6.1.1. Direct access to, or responsibility for, controlled substances.
 - 6.1.2. Direct access to, or responsibility for, hazardous materials or hazardous biological agents.
 - 6.1.3. Access to, or control of confidential data files, essential electronic information resources, confidential information, Personally Identifiable Information, or combinations thereof.
 - 6.1.4. Master key access to multiple buildings or large amount of space, or control of Board of Regents facilities.
 - 6.1.5. Authority for committing financial resources, or direct assets to cash.
 - 6.1.6. Direct responsibility for care, safety, or security of human beings, including also vulnerable individuals, minors, or disabled persons.
 - 6.1.7. All Senior administrators.
 - 6.1.8. Operation of a vehicle or motorized equipment as an essential function of the position.
 - 6.1.9. Any other positions funded by a contract which lawfully requires a background check.
 - 6.2. The Board will perform educational, licensure and employment background verifications where the assigned work requires specific education, experience and or licensures or certifications.

7. Where a background check must be conducted by a consumer credit agency, the Board will contract for such services through the third-party vendor as identified by the system office of human resources.
8. Human resources may determine additional background checks are required for a position not designated in this Policy in conformity with applicable law and SDBOR policy.
9. Notices and advertisements for open positions must provide notification that final candidates are subject to this policy.
10. A final candidate's failure to submit to a required background check will result in withdrawal of the conditional offer of employment or volunteer designation.
11. All offers are contingent upon successful completion of the background check. All offers of employment, oral or written, must include a statement that indicates this contingency.
12. The human resources office at each University, Special School, and Board Office will determine which of the components of the background check it will perform based on job duties.
 - 12.1. In accordance with BOR Policy X:XX, the human resources office at each university, special school, or board office will determine whether a sanctions check is necessary based on the employee job duties and responsibilities. If the human resources office determines a sanctions check is necessary, the institution will ensure a sanction check screening is completed for the candidate as part of their background check and for verification of employment eligibility prior to hire date. When a new employee is not subject to a background check under this policy, Shared Services is responsible for sanction check screening if necessary as dictated by the employee job duties and responsibilities.
13. If the background check indicates that there are debarments, sanctions list, convictions or other anomalies, the third party vendor will inform human resources. The approved third party vendor will supply the report to the applicant.
14. If the background check reveals convictions which the individual disclosed in the application, human resources will review the report in light of the position duties. Human resources and the hiring department will evaluate each incident, including any additional information that the individual provides, before the offer of employment is confirmed or withdrawn.
 - 14.1. The existence of a conviction does not automatically disqualify an individual from employment. Relevant considerations may include, but are not limited to, the nature and number of the convictions, the dates of convictions, and the relationship that a conviction has to the duties and responsibilities of the position.
 - 14.2. Any decision to accept or reject an individual with a conviction is solely at the discretion of the University, Special School, or Board of Regents. (All related information will be treated as confidential, and protected as such.)
15. If unreported debarments, sanctions list, or convictions are revealed in the background check, the offer of employment may be withdrawn and, if employed, the individual could be subject to discipline, unless the individual shows that the report is in error. The

decision to reject or discipline an individual with an unreported debarment, sanctions list, or conviction is solely at the discretion of the University, Special School, or Board of Regents.

16. In the event that the results of the background check influence a decision to withdraw an employment offer or terminate employment, human resources will inform the hiring department and the individual.
17. All results of a background check are considered confidential and will be maintained in confidential files by the approved third-party vendor.
18. Human resources maintains the confidential records of a the background check results as a part of, but separate from, the personnel file.
19. Violations of policies, including providing false or misleading information used for any of the above background checks, will be handled in accordance with applicable institution or BOR policies and procedures; which may include disciplinary actions up to and including termination from employment.
20. If the employee is terminated as the result of an unreported conviction, sanction list, or debarment the employee may appeal the termination pursuant to Board of Regents policy and procedures.

FORMS / APPENDICES:

None

SOURCE:

BOR December 2010; BOR October 2011; BOR August 2023.

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Export Controls

NUMBER: 4:48

1. Preamble Purpose

The South Dakota Board of Regents and the institutions under its control and management encourage the exchange of research and technology consistent with United States national security and nonproliferation objectives. Export control laws and regulations are in place to protect not only the economic vitality of the United States, but also to thwart international criminal activity and to protect national security. United States (U.S.) export control regulations impact a wide range of university functions, including human resources, student affairs, international affairs, purchasing and procurement, international travel, information technologies, technology transfer, and research. While most of the activities occurring at the governed institutions are exempt from U.S. export control regulations, the Board recognizes the importance of these regulations and is committed to full compliance.

2. Definitions

- A. Controlled Activity:** An activity involving the export, reexport or deemed export of controlled technology, or an activity that due to its nature or the parties involved is otherwise subject to export controls, embargo or trade sanctions under the jurisdiction of the U.S. Departments of State, Commerce, Treasury, or any other U.S. government agency with export control responsibilities.
- B. Controlled Technology:** Any item, component, material, software, source code, object code, or other commodity subject to export controls. This term also includes enabling information to the extent required by the applicable export control regulations.
- C. Deemed Export:** The release or transfer of controlled technology to foreign nationals in the U.S.
- D. Employee:** For purposes of this policy, employees include full-time and parttime classified staff members, student employees, exempt staff members, faculty members, graduate assistants and associates, and persons with “no-salary” appointments. Visiting faculty members, postdoctoral appointees or other academic professionals who engage in controlled activity at a system institution

will also be deemed employees, unless there is an agreement providing otherwise. Undergraduate or graduate students who are not otherwise student employees, but who engage in a controlled activity that is sponsored or directed by the Board, one of its institutions or employees, shall be deemed gratuitous employees and encompassed within the definition of employee for purposes of this policy.

- E. Empowered Official:** A person that is not a foreign national who is directly employed by the Board or one of its institutions who is legally empowered to execute license applications or other requests for approval on behalf of the Board and each of its institutions and who has the delegated authority to: (i) inquire into any aspect of a proposed export, temporary import, or other export related activity by any institution; (ii) verify the legality of any transaction and the accuracy of the information to be submitted; and (iii) refuse to sign any license application or other request for approval without prejudice or other adverse recourse (See ITAR 120.25).
- F. Export:** Shipment or transmission of items, materials or information out of the United States. This includes the actual physical movement of items across the border. Technology and software may also be exported or reexported physically and electronically through personal conversations, meetings, engineering manuals, blueprints, plans, diagrams, formulae, email, telephone conversations, fax, posting on the internet, and a variety of other non-physical means.
- G. Export Controls:** Restrictions and other limitations imposed by the U.S. government on controlled technology and controlled activity.
- H. Export Control Analysis:** An analysis conducted by an institution's export control officer to determine if an activity or technology is subject to export controls. If the activity or technology is controlled, the assessment shall include a determination of the applicable export control restrictions, the restrictions on access by foreign nationals required, and any other relevant requirements to engage in a controlled activity in accordance with applicable export control regulations.
- I. Export Control Regulations:** These include the Export Administration Regulations, International Traffic in Arms Regulations, embargoes and trade sanctions administered by the Office of Foreign Assets Control, U.S. Department of the Treasury, and any other U.S. imposed regulations governing exports.
- J. Foreign National:** Individuals who are not U.S. citizens, permanent residents ("Green Card" holders) or political asylum holders. Hence, any individual who is present in the U.S. on a temporary immigrant visa status, including but not limited to H1B, J, F, B-visa persons, is a foreign national.

- K. Foreign Entity:** A foreign entity is any corporation, business or other entity that is not incorporated in the U.S. This includes foreign institutions, international organizations, foreign governments or any agency of a foreign government.
- L. Fundamental Research:** Basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community, as distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons.
- M. Institution Export Control Officer:** The officer, agent or employee who has authority on behalf of the institution to manage, administer and oversee export control matters at the institution.
- N. License:** The approval documentation issued by a proper U.S. government agency with export control responsibilities authorizing the recipient to proceed with an export, deemed export or other regulated activity as specified in a license application.
- O. System Export Control Officer:** The officer, agent or employee who has authority on behalf of the Board to manage, administer and oversee export control matters within the System.
- P. Technology Control Plan:** A document that sets forth the specific physical, electronic and procedural controls that will be taken to prevent unauthorized access to controlled technology.

3. Application of Export Control Regulations

U.S. export control regulations govern what materials, data, technologies, software, instruments, and equipment can be accessed by foreign nationals studying, visiting, or working in the United States, as well as what items can be transferred abroad to restricted destinations. These regulations have significant ramifications for international travel; transfers of material, equipment or information; purchasing; and contracting. While other federal agencies have some export control oversight in limited instances, there are three primary federal agencies charged with regulating and enforcing export control laws and regulations: 1) the U.S. Department of Commerce through the Export Administration Regulations (EAR) (See: <http://www.bis.doc.gov/>), which govern the export of dual use items and other technologies; 2) the U.S. Department of State through the International Traffic in Arms Regulations (ITAR) (See: <http://www.pmddtc.state.gov/>), which apply to munitions, or defense articles and services; and 3) the U.S. Treasury Department through its Office of Foreign Assets Control (OFAC) (see <http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx>), which oversees trade sanctions, embargoes and travel restrictions.

The EAR and ITAR govern the shipment or transfer, physically, verbally or in writing, of controlled technologies outside of the United States, as well as deemed exports. In addition, OFAC regulations impose sanctions and embargoes on transactions or exchanges with designated countries, entities and individuals. In practice, these regulations have a direct impact on the utilization of controlled technologies, at our institutions and abroad. Additionally, these regulations have the potential to affect the institutional partners with which we collaborate, how and to whom we disseminate research findings, and the ability of our employees to engage in a controlled activity or travel abroad.

4. Export Controlled Activities

Before engaging in research activities, an institution's employees must identify and understand any potential export control implications. When export control implications are identified, the institution must conduct an export control analysis prior to engaging in the controlled activity. In some cases, an institution may decide not to engage in the controlled activity, including but not limited to when there is insufficient time to obtain a license or to implement the controls necessary to safeguard the controlled technology or the costs associated therewith outweigh the benefit obtained from engaging in the controlled activity.

If the controlled activity is not subject to an exemption or exclusion and it involves a foreign national or foreign entity, a license from one or more U.S. government agencies may be required to carry out the controlled activity. If a license is required, it must be obtained prior to the foreign national or foreign entity engaging in the controlled activity. Any negotiations or agreements entered into prior to receiving the required license must be contingent upon the ability to successfully obtain the same. Application for licensure must be coordinated and facilitated through the System Export Control Officer. Additionally, contracts to procure controlled technologies or to engage in controlled activities must be reviewed and approved for export controlled compliance purposes by the institution's export control officer prior to execution of the contract.

5. Exclusions and Exceptions

The exclusions and exceptions available under the export control regulations are fact specific and may be triggered or voided with the slightest of subtleties. As such, employees intending to rely on one of the exclusions or exceptions available under the EAR and ITAR regulatory provisions must confer with their institution's export control officer to confirm the applicability of the exclusion or exception prior to engaging in the controlled activity.

Common exclusions frequently used by institutions of higher education under the regulatory provisions of the EAR and ITAR relate to those engaged in fundamental research. Generally, the fundamental research exclusions (FRE) apply only to the results of research performed as fundamental research. No license is needed to share these results,

even if they relate to a controlled technology. However, the FRE applies only to the dissemination of research data and information, and not the transmission of controlled technology in general. Additionally, the FRE is lost if the institution accepts any contract clause that forbids the participation of foreign nationals or entities; gives the sponsor a right to approve publications resulting from the research; or otherwise operates to restrict participation in research or access to and disclosure of research results. Consequently, institutions should take care in negotiating agreements that are free of access and publication restrictions and export control requirements, when appropriate, as the inclusion of such terms will serve to void the fundamental research exclusion and subject the research to coverage under export control regulations. Additionally, for U.S. and state government-sponsored research, institutions are encouraged, when appropriate, to include contract terms specifically identifying the research as “fundamental research.”

6. Security and Technology Control Plans

Institutions governed by the Board that possess controlled technologies are responsible for providing and maintaining the appropriate security of the controlled technologies. Institutions should create technology control plans (TCP) to ensure secure access of controlled technologies. A TCP should include: the person(s) responsible for maintaining the controlled technology and monitoring compliance with the TCP; the appropriate location, security, access and disposition of the controlled technology; a description of the controlled technology; security measures to be taken with regard to the controlled technology, to include the appropriate location to house the controlled technology, access restrictions required and disposition of the controlled technology; and the level of training required and provided to each individual with access to the controlled technology. The System Export Control Officer shall be notified by the institution’s export control officer in the event of the implementation or expiration of a TCP.

7. International Travel

Institutions shall screen all employees participating in university sponsored international travel to ensure compliance with export control regulations. If applicable, the screening shall identify any license or special documentation required to engage in the controlled activity or to transport the controlled technology abroad.

8. Foreign Employees, Students, Collaborating Scholars and Visitors

Foreign Employees

All foreign nationals must be screened by their hiring institution in accordance with BOR Policy X:XX prior to their employment start date to ensure compliance with export control regulations. Any offer made in advance of the required screening must be contingent upon the individual providing the information necessary to screen against the appropriate restricted party lists and satisfactory screening results. Additionally, if an export license is needed to hire an employee, such offer shall be contingent upon the ability of the institution to obtain such license.

Foreign Students

All foreign national students must be screened by their enrolling institution in accordance with BOR Policy X:XX prior to engaging in a controlled activity or obtaining access to a controlled technology. In the event that a student appears on a restricted party list but is not prohibited from enrolling at the institution, the institution's export control officer shall contact the System Export Control Officer to assist in creating a plan to ensure the student does not engage in a controlled activity or gain access to the university's controlled technology, and if necessary, to obtain a license.

Foreign Institutions, Scholars and Visitors

All foreign nationals and foreign entities visiting our institutions shall be screened against the restricted party lists in accordance with BOR Policy X:XX prior to engaging in a controlled activity or obtaining access to a controlled technology. If a visiting foreign national or foreign entity appears on any of the restricted party lists but is not prohibited from engaging in the desired activity, the institution's export control officer shall contact the System Export Control Officer to assist in creating a plan to ensure the visiting foreign national or foreign entity does not gain access to controlled technologies, and if necessary, to obtain a license.

9. Education and Awareness

Training on export control regulations shall be provided by each institution to its employees, as necessitated by their level of exposure to export controlled activities. Each institution must maintain records of the training provided and the individuals who have received such training. Formal communication to employees about export control regulations and related policies and procedures shall be provided annually.

10. Recordkeeping Requirements

Export control regulations include specific recordkeeping requirements. Each institution must retain copies of all export related documentation, including classification determinations, prohibited party screenings, financial records, shipping documents, electronic communication, research logs, and appropriate certifications in their research project files for a minimum of five (5) years after the date of the export or from the date of the termination of a TCP or license, whichever is later.

11. System Export Control Officer

The Board shall employ or designate a System Export Control Officer who shall be authorized as the Empowered Official for the System. The System Export Control Officer will be responsible for the coordination and submission of export license requests, formal commodity jurisdiction requests, and other direct contact with federal licensing agencies on behalf of the system. The System Export Control Officer may exercise any power reserved or delegated herein to an institution's export control officer and may execute on

its behalf such filings, instruments or papers as may be necessary to properly and faithfully exercise such powers.

12. Institutional Responsibility

Each institution shall develop, implement and administer specific policies and procedures as necessary to comply with this policy and the requirements of federal law. Such policies and procedures shall be maintained on the institution's website and available to all employees and students of the institution. Additionally, each institution shall designate an institution export control officer. The institution's export control officer shall notify the System Export Control Officer immediately in the event of an incident involving a violation or threatened violation of export control regulations.

13. Individual Responsibility

Employees are individually responsible for compliance with export control regulations. All employees must be aware of and are responsible for the export control implications of their work. While each institution will provide assistance to its employees in assessing the applicability of export control regulations; primary responsibility for export control compliance rests with the individuals involved in the export.

14. Penalties for Non-Compliance

Failure to comply with export control regulations subjects the employee to disciplinary action in accordance with BOR Policy 4:14. Additionally, non-compliance with export control regulations exposes both the individual and the institution to severe criminal and civil penalties (fines and prison sentences) as well as administrative sanctions (loss of research funding and export privileges). Civil and criminal sanctions can apply to both the individual and the institution, with fines ranging from \$50,000 to \$1,000,000 per violation, and prison sentences of up to 20 years.

SOURCE: BOR, December 2015; June 2023.

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Purchasing

NUMBER: 5:4

A. PURPOSE

To ensure all South Dakota Codified Laws, South Dakota administrative rules, South Dakota Board of Regents policies and United States government requirements and regulations are adhered to when purchasing equipment, supplies and services for institutions and offices under the control of the South Dakota Board of Regents.

B. DEFINITIONS

- 1. Capital Assets** – Any moveable equipment with an expected life of one year or more and a single unit purchase cost of \$5,000 or more.
- 2. Competitive Bids:** A formal process used to solicit competitive pricing from multiple suppliers. Methods include Invitation for Bid (IFB) and Request for Proposals (RFP).
- 3. Competitive Quotes:** An informal process used to solicit competitive pricing from multiple suppliers.
- 4. South Dakota Codified Law (SDCL):** South Dakota Codified Laws pertaining to the acquisition of equipment, supplies and services including 5-18A, B & D.
- 5. SDezBuy:** The South Dakota Board of Regents eProcurement System.
- 6. Shared Services:** Purchasing departments at SDBOR institutions that have been assigned certain commodities for managing on behalf of all SDBOR institutions.
- 7. Supplies:** Any property, including equipment, supplies, materials, and printing.

C. POLICY

SDCL §13-49-15 and §13-49-16 provide the Board with power to purchase equipment, supplies, and services, as long as such purchases are in accordance with SDCL §5-18A, B & D.

The Board has delegated authority to enter into contracts for the purchase of equipment, supplies, and services by the institution except as delineated otherwise in this policy. All purchases shall be made in accordance with the following policy.

Institutions may at their discretion, apply more restrictive procedures than those listed in policy 5:4.

1. State Contracts

The State of South Dakota through the Office of Procurement Management maintains various contracts. The contracts are bid by the State of South Dakota or are national contracts the state participates in. These contracts must be utilized as the first source unless it is more cost effective to purchase the items from other sources.

2. Shared Services

Purchasing Shared Service Centers shall exist to create efficiencies in the purchasing process through Purchasing Specialists. Purchasing Specialists shall manage assigned commodities in an effort to reduce costs and to provide expertise to departments. A complete list of commodity assignments is available from the SDezBuy procurement system.

3. Supply Purchases under \$4,000

Orders for supplies with a total cost of less than \$4,000 shall be obtained by using sound business practices in the best interest of the institution. The following methods may be used for the acquisition of these items; purchase requisition/purchase order, direct pay invoice, procurement card payment or employee reimbursement.

4. Supply Purchases between \$4,000 and \$25,000

According to SDCL §5-18A-11, any order with a total cost exceeding \$4,000 and less than \$25,000, requires a minimum of three competitive quotes unless the item(s) is available from existing contracts; are considered exempt as outlined in SDCL 5:18A-22 and Section 6 below; or are justifiably a sole source. Orders for any non-exempt item(s) must be approved by Office of Procurement Management unless the item(s) is available from a contract recognized by the State of South Dakota. The purchasing department will be responsible for obtaining competitive quotes and approval from the Office of Procurement Management if applicable. Orders in excess of \$4,000 must be submitted on a purchase requisition.

5. Supply Purchases exceeding \$25,000

Supplies with a total cost exceeding \$25,000 must be bid by the Office of Procurement Management unless the item(s) is available from existing contracts; is considered exempt as outlined in SDCL 5:18A-22 and Section 6 below; or is justifiably a sole source. All sole source requests must be submitted on the standard sole source request form and requires approval by the Office of Procurement Management. Bids for non-exempt items must be coordinated with the Office of Procurement Management, through the Purchasing Department. Orders in excess of \$25,000 must be submitted on a purchase requisition.

6. Exempt Items

SDCL §5-18A-22 provides an exemption from competitive bidding requirements for supplies referenced in this section (see 6.1–6.10 below). Exempt supplies shall be purchased using sound business practices and in the best interest of the institution. The Purchasing department shall review exempt orders to determine if competitive quotes should be solicited. Applicable federal bidding requirements if funded from federal funds must be adhered to.

- 6.1. Any contract for the purchase of supplies from the United States or its agencies or any contract issued by the General Services Administration;
- 6.2. Any purchase of supplies or services, other than professional services, by purchasing agencies from any active contract that has been awarded by any government entity by competitive sealed bids or competitive sealed proposals or from any contract that was competitively solicited and awarded within the previous twelve months;
- 6.3. Any equipment repair contract;
- 6.4. Any procurement of electric power, water, or natural gas; chemical and biological products; laboratory apparatus and appliances; published books, maps, periodicals and technical pamphlets; works of art for museum and public display; medical supplies; communications technologies, computer hardware and software, peripheral equipment, and related connectivity; tableware or perishable foods;
- 6.5. Any supplies, services, and professional services required for externally funded research projects at institutions under the control of the Board of Regents;
- 6.6. Any property or liability insurance or performance bonds, except that the actual procurement of any insurance or performance bonds by any department of the state government, state institution, and state agency shall be made under the supervision of the Bureau of Administration;
- 6.7. Any printing involving student activities conducted by student organizations and paid for out of student fees;
- 6.8. Any purchase of surplus property from another purchasing agency;
- 6.9. Any animals purchased;
- 6.10. Any seeds, fertilizers, herbicides, pesticides, feeds, and supplies used in the operation of farms by institutions under the control of the Board of Regents.

7. Technology Purchases

- 7.1. All orders for technology related items (computer hardware, software and audio visual) must be approved in accordance with the Institution's IT approval process.
- 7.2. In addition, technology purchases are subject to the Board of Regents Policy 7:6 – Technology Purchases.

8. Executive Director and Board Approval

- 8.1. Purchases of capital assets with a per-unit cost between \$250,000 and \$500,000 must be approved by the Executive Director of the Board of Regents prior to a purchase order being issued.
- 8.2. Purchases of capital assets with a per-unit cost exceeding \$500,000 that are not funded by a grant or donation must be approved by the Board of Regents prior to a purchase order being issued.

- 8.3. Purchases of capital assets with a per-unit cost between \$500,000 and \$1,000,000 that are fully funded by a grant or donation must be approved by the Executive Director of the Board of Regents prior to a purchase order being issued.
- 8.4. All capital asset requests must be submitted to the Board of Regents for approval on the standard Capital Asset Request form https://www.sdbor.edu/administrative-offices/finance-administration/forms/Documents/Capital_Asset_Purchase_Request_Form.pdf
- 8.5. Refer to the BOR meeting calendar at <https://www.sdbor.edu/the-board/schedule/Pages/default.aspx> for meeting schedules. Questions should be referred to the campus Purchasing Department.

9. Printing Projects

- 9.1. Per Bureau of Administration Administrative Rule 10:02:03:01 any publication, pamphlet, flyer, or brochure with a total cost exceeding \$100 and for distribution to the public at large, must bear an inscription indicating the number of copies made, the approximate cost per copy, and the name of the printer. Refer to the following link for more detail: <http://legis.state.sd.us/rules/index.aspx>.
- 9.2. An exemption to this requirement has been granted to all Board of Regents institutions for the following items:
 - Materials used for the recruitment of students
 - Materials used for recognition of students and employees including graduation programs, diplomas and certificates of recognition
 - Programs for athletic events that are sold to the general public.

10. Environmentally Preferred Products

Bureau of Administration Administrative Rules 10:02:05:01 through 10:02:05:15 pertain to the use of environmentally preferred products when purchasing printing projects, paper stock, and cleaning and maintenance equipment and supplies. Refer to these rules when purchasing these items. If the total cost of recycled paper exceeds the cost of virgin stock by 5% or more, virgin stock may be used.

11. Non-Professional Services

- 11.1. Any contract for non-professional services in excess of \$25,000 must be awarded through a competitive bid process, unless the service is considered a sole source. This process may include a IFB or RFP. Non-professional services include services which are typically physical or manual in nature, examples include: bussing contracts, snow removal, garbage contracts, etc.
- 11.2. Any contract in excess of \$250,000 requires approval from the SDBOR Executive Director.

12. Professional Services

- 12.1. Any contract for professional services in excess of \$50,000 must be awarded through a Request for Proposal process unless such services are considered

exempt. The requirements listed in SDCL §5-18D-17 through §5-18D-22 shall be followed.

- 12.2. Professional services are classified as: services arising out of a vocation, calling, occupation, or employment involving specialized knowledge, labor, or skill, and the labor or skill involved is predominantly mental or intellectual, rather than physical or manual.
 - 12.3. Any contract in excess of \$250,000 requires approval from the SDBOR Executive Director.
13. Construction and public improvement projects are not considered services and are governed by Board of Regents Policy 6.4 and 6.6 as well as SDCL 5:18-B.
 14. **Debarred and/or Suspended Vendors**

Institutions shall comply with BOR Policy X:XX to ensure that vendors or contractors are checked against appropriate governmental exclusion, debarment, and suspension lists. Per federal law, any purchase made from federal funds exceeding \$25,000 may not be made from a vendor that has been debarred or suspended from doing business with the federal government. Any purchase order meeting this requirement shall be certified by checking the following website: www.sam.gov and a copy of the results attached to the purchase order.

FORMS / APPENDICES:

[Capital Asset Request Form](#)

SOURCE:

BOR October 1991; BOR October 1992; BOR March 1995; BOR January 1999; BOR March 2003; BOR March 2005; BOR October 2007; BOR December 2009; BOR April 2010; BOR June 2010; BOR June 2011; BOR October 2017; BOR December 2020; January 2021 (Clerical).