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# RESPONSIBLE CONTRACTOR

## Introduction

The New York State Common Retirement Fund ("CRF" or the "Fund") has a deep interest in the condition of workers employed on behalf of the CRF and its advisors. The CRF, through this Responsible Contractor Policy ("Policy" or "RCP") supports fair wages and fair benefits for workers employed by its contractors and subcontractors, subject at all times to fiduciary principles concerning the duties of loyalty and prudence, both of which further require competitive returns on the CRF's real estate and infrastructure investments. The CRF endorses small business development, market competition, and control of operating costs. The CRF supports many of the ideals espoused by labor unions and welcomes participation by labor unions and their signatory contractors in the development and management of the CRF's real estate and infrastructure investments. The CRF believes that an adequately compensated and trained worker delivers a higher quality product and service. This Policy is intended to ensure that contractors will be selected based upon demonstrated ability to provide high quality services, and thereby enhance the value of real estate properties and infrastructure investments, as evidenced by their record of compliance with applicable statutes and payment of fair wages and benefits to employees, as well as by their experience, reputation, responsiveness, fees, and dependability.

## Applicable Investments

This Policy applies to equity real estate and infrastructure investments entered into after the effective date of the Policy ("RCP Investments").

Sections I through VII of this Policy shall apply to all RCP Investments entered into after the effective date of this Policy. The entire Policy, including the reporting, monitoring and administration requirements set out in Section VIII of this policy shall apply to all RCP investments entered into after the effective date of this Policy where the CRF has greater than 50% ownership of the investment ("RCP Investments Subject to Reporting" or "RCPI SR").

CRF staff will also encourage voluntary compliance by its managers of RCP investments where the CRF owns 50% or less and with respect to contracts entered into by the manager after the effective date of the Policy in the management of investments made before the effective date of the Policy. The CRF shall provide all current CRF equity real estate and infrastructure investment managers with a copy of this Policy and any changes thereto.

Provided, however, that Policy does not apply to mezzanine debt, hybrid debt, international investments, secondary funds, indirect, specialty, and mortgage investments that lack equity features and their respective advisors ("Non-RCP Investments").

## **Due Diligence Review**

Consistent with the Comptroller's fiduciary responsibilities to act in the best interest of the members, retirees and beneficiaries of the Retirement System and with the CRF's role as a prudent long term investor, the following will be required:

- A. The CRF shall provide all potential RCP investment managers and advisors with a copy of this Policy and any changes thereto.
- B. Regardless of the percentage of ownership proposed for the CRF, the due diligence phase of all potential RCP investments will include review and consideration of the responsible contracting policies and practices of the manager.
- C. The written investment recommendations of CRF staff with respect to all potential RCP investments will address, along with the evaluation of other relevant investment factors, the manager's responsible contracting policies and practices, focusing on the risks and standards relevant to the investment under consideration. That analysis will be weighed with other investment factors in the investment decision making process.

## **Definition of a Responsible Contractor**

A Responsible Contractor, as used in this Policy, is a contractor or subcontractor who (1) pays workers a fair wage and fair benefits as evidenced by payroll and employee records and (2) is not debarred by and whose principal officer is not debarred by a municipal, state or federal government.

A "fair wage" includes all compensation required by applicable law. "Fair benefits" may include, but are not limited to, employer-paid family health care coverage, pension benefits, including defined benefit pension benefits, employee safety training and apprenticeship programs. What constitutes a "fair wage" and a "fair benefit" depends on the wages and benefits paid on comparable real estate or infrastructure projects, based upon local market factors, which include the nature of the project (e.g., residential or commercial; public or private), comparable job or trade classifications, and the scope and complexity of services provided.

For real estate or infrastructure projects that include local, state or federal financing that triggers prevailing wage laws, the CRF supports and requires investment managers to pay such prevailing wages.

## Initial Requirements of the Responsible Contracting Policy

- A. Duty of Loyalty:** Notwithstanding any other considerations, all CRF assets shall be managed for the exclusive benefit of the participants and the beneficiaries of the CRF.
- B. Prudence:** The CRF Trustee, staff, and advisors are charged with the fiduciary duty to exercise the care, skill, prudence and diligence appropriate to the task.
- C. Competitive Return:** To comply with duties of loyalty and prudence, all investments and services must be made and managed in a manner that produces a competitive risk-adjusted return.
- D. Local, State and National Laws:** All investment managers, advisors, property managers, contractors and their subcontractors shall observe all local, state and federal laws (including by way of illustration those pertaining to insurance, withholding taxes, minimum wage, labor, anti-discrimination, environmental, occupational health and safety and the right to organize).

## Recommended Practices of Responsible Contractor

- A. MWBE and Service Disabled Veteran Owned Businesses:** The CRF supports and encourages participation by and shall give equal consideration to service disabled veteran owned businesses (SDVOB) and minority owned and controlled firms, firms owned and controlled by women and ventures involving those same firms that would meet the selection criteria for contractors and services providers, and the CRF expects such equal consideration by its investment managers, advisors, property managers and contractors.
- B. Neutrality:** The CRF supports and encourages a position of neutrality in the event there is a legitimate attempt by a labor organization to organize workers employed in the construction, maintenance, operation, and services at a property owned by an entity in which the CRF is invested.

Resolution of any inter-jurisdictional trade dispute will be the responsibility of the trades and the various state and national building trades councils. This Policy does not call for any involvement by investment managers, advisors, property managers, and contractors in inter-jurisdictional trade disputes.

- C. Employer Paid Safety Training:** The CRF supports and encourages the provision of employer paid safety training by contractors to ensure that all employees have the skills and legal certifications necessary to perform assigned work safely.
- D. Competitive Bidding and Selection Process:** The CRF supports and encourages the selection of contractors and their subcontractors for construction, maintenance, and services through a competitive bidding and selection process. The purpose of this requirement is to obtain best value for the CRF, to encourage fair competition and to actively seek bids from all qualified sources within an area. The bidding process shall include notification and invitation to bid, and shall be distributed to a broad spectrum of potential bidders, including those identified as Responsible Contractors and MWBE or SDVOB contractors. Review of the bids shall include consideration of loyalty, prudence, and competitive risk-adjusted returns (factors to be considered include experience, reputation for honesty, integrity, timeliness, dependability, fees, MWBE or SDVOB status and the adherence to the Policy).

## Selection Preference of a Responsible Contractor

If Initial Requirements A through D of Section V above are satisfied, the CRF expresses a strong preference that Responsible Contractors be hired.

## Reporting, Monitoring and Administration on RCP Investments Over 50% CRF Owned

The provisions of this section shall apply to RCP investments where the CRF has greater than 50% ownership of the investment ("RCP Investments Subject to Reporting" or "RCPIISR").

- A. Bid Solicitation Documents:** All requests for proposals and invitations to bid covered by this Policy shall include the terms of this Policy. Responses by bidders shall include information to assist the investment manager, advisor or property manager in evaluating a bid.
- B. Contracts and Renewals:** All contracts for RCPIISR Investments entered into after the effective date of this Policy, including renewals of such contracts (other than extensions and permissive renewals), shall include the terms of this Policy.
- C. Responsibilities:** It is the duty of the CRF, staff, investment managers and advisors to be loyal and prudent and to achieve a competitive return, as set forth in Section V. The CRF expects that property managers and contractors will also make prudent decisions when making business decisions affecting RCP Investments. The responsibilities of the CRF's staff, property managers, and contractors with respect to RCPIISR are defined more specifically as follows:
  - 1. **Staff:** The CRF's staff shall have the following responsibilities:
    - a. Review the investment manager's or advisors annual reports regarding compliance with the Policy.
    - b. Maintain relevant data on CRF investment managers and advisors and projects covered by this Policy.
    - c. Assist investment managers with Policy implementation and facilitate communication regarding Policy objectives with interested parties.
    - d. Receive, investigate and review complaints alleging conduct inconsistent with the provisions of the Policy.
    - e. Timely report to the Deputy Comptroller for Pension Investment and Cash Management (Deputy Comptroller) on noncompliance with the Policy and make recommendations for corrective action as necessary.
    - f. Annually report to the Comptroller on compliance with the provisions of the Policy.

2. Investment Managers and Advisors: Responsibilities of investment managers and advisors shall include:
  - a. Communicate the Policy to all property managers, construction managers/general contractors and development partners
  - b. Review a contract listing for each property prepared by each property manager.
  - c. Maintain contact lists for applicable properties and provide a copy to inquiring parties.
  - d. Maintain a simplified bid summary for each applicable contract. The summary should identify the contract, the successful bidder, and bidder's status as Responsible Contractor.
  - e. Monitor and enforce the Policy, including responding to inquiries from the CRF and investigating potential violations.
  - f. Annually provide to the CRF a Report on its Responsibilities under the Policy and a Certificate of Compliance with the Policy covering the preceding year in a form approved by the CRF; upon request, and for purposes of periodic audit, provide written substantiation of such compliance.
  
3. Property Managers or Development Partner "Delegate": Property managers and their "delegates" (persons or entities retained by the manager to provide services with respect to a RCPI SR) will have responsibility for the following:
  - a. Communicate the Policy in bid documents to contractors and subcontractors seeking to secure construction or building service contracts.
  - b. Communicate the Policy to any interested party.
  - c. Ensure there is a competitive bidding process which is inclusive of potentially eligible Responsible Contractors, including eligible MWBE and SDVOB contractors.
  - d. Send a project bid Notification Form to the Real Estate Management Tracking System (REMATs) maintained by participating national trades unions. Such notice shall be sent as soon as practical prior to the bid due date.
  - e. Where a project will be undertaken within New York State, send a project bid notification to the New York State Building and Construction Trades Council and the applicable local Building and Construction Trades Council.
  - f. Send a project bid notification to a national network that maintains and provides data on bidding and other information on construction projects, such as McGraw-Hill Construction (Dodge) or Construction Market Data (Reed).
  - g. Provide solicitation documents to any potential contractor who has, in writing, expressed an interest in bidding for the relevant contract.
  - h. Require bidders to provide to property manager a Responsible Contractor self-certification on a form approved by the CRF.
  - i. Prepare and send to investment managers or advisors a contact listing for applicable service contracts for each property under management. (All potential bidders will have access to this list).

- j. Provide investment managers or advisors with a simplified bid summary for each contract.
  - k. Provide property level annual report information to investment manager or advisor.
  - l. Maintain documentation for successful bidders.
  - m. Maintain a list of any interested Responsible Contractors. (Names, addresses and telephone numbers.)
  - n. Monitor and enforce the Policy, including responding to inquiries from the CRF, the investment manager or advisor, and investigating potential violations.
4. Contractors: Contractors will have the responsibility for the following:
- a. Submit to property manager a Responsible Contractor self-certification on a form approved by the CRF and provide documentation.
  - b. Submit to property manager a Responsible Contractor self-certification for each subcontractor on a form approved by the CRF and provide documentation
  - c. Communicate to subcontractors the Responsible Contractor Policy.

**D. Unions:** Trade unions/Service unions are asked to perform the following tasks:

- 1. Deliver to the investment manager, advisor or property manager lists of names and phone numbers of Responsible Contractors.
- 2. Refer interested and qualified Responsible Contractors to the property manager.
- 3. Continually monitor the local labor markets to update the lists.
- 4. Provide technical input as appropriate.
- 5. Maintain Real Estate Management Tracking System (REMATS) to alert local unions and contractors about upcoming bids and forward Responsible Contractors to property managers.
- 6. Send project notifications to applicable Local Building Trades Councils.

**E. Applicable Expenditures and Categories of Contracts Covered:** The Section shall apply to contracts valued over \$100,000 for tenant improvements, capital expenditures, and operational service contracts (such as cleaning and security) on RCPI SR. This minimum contract size refers to the total project value of the work being contracted for and not to any disaggregation by trade or task. Disaggregation designed to evade the requirements of the Policy is not permitted.

**F. Fair Wage. Fair Benefits. Training:** The Policy avoids a narrow definition of "fair wage", "fair benefits", and "training" that might not be practical in all markets. The Policy does not require a "prevailing wage", as defined by government surveys, except with respect to infrastructure or real estate investments where the participation of a state or federal partner triggers prevailing wage requirements. Instead, the Policy looks to local practices with regard to type of trade and type of project. The Policy recognizes that practices and labor market conditions vary across the country and that flexibility in its implementation is very important.

In determining "fair wages" and "fair benefits" with regard to a specific contract in a specific market, items that may be considered include local wage practices, state laws, prevailing wages, labor market conditions, and other items.

The Policy requires a broad outreach and competitive bidding program, as described in Sections VI. D, and VIII.H. This Policy is premised upon the availability of a list of Responsible Contractors. Compilation of this list does not depend solely on the investment managers, advisors, property managers, or contractors; rather this Policy invites the various local trades to suggest contractors, including MWBE and SDVOB contractors that in their view qualify as Responsible Contractors. Sources of information include local building and service trade councils, builders' associations and governments.

- G. Annual Report to CRF; Compliance Certification; Review:** Each investment manager or advisor will annually provide to the CRF on forms approved by the CRF: (i) a Report on Compliance with the Responsible Contracting Policy and (ii) a Certificate of Compliance with the Policy covering the preceding year.

CRF staff will annually review reporting by investment managers and advisors with the Policy to determine overall compliance with the Policy. Failure of a Responsible Contractor to respond to an invitation to bid shall not suggest a lack of good faith on the part of an advisor, property manager or contractor. For each bidder, the investment manager, advisor, property manager or contractor is obliged to gather appropriate Responsible Contracting information and make a judgment with regard to the four initial Requirements described in Section V. If there are instances of non-compliance with this Policy, the CRF's review of the investment manager and advisor reports will focus on the overall pattern of conduct and not any one specific incident.

Staff will provide an annual report to the Comptroller on compliance with the provisions of the Responsible Contractor Policy.

- H. Competitive Bidding:** Property managers, developers and contractors should give notice for applicable bidders on a national service that maintains and provides data on bidding and other information on construction (e.g., Dodge Report or Reed Report) local trade publications, bulletin boards and union building trades councils. Property managers should seek input from building trades councils to develop lists of Responsible Contractors for inclusion in the bidding process.

Property managers may choose from the list of Responsible Contractors a reasonable number of contractors to be invited to bid. Given the time and expense required to solicit and evaluate bids, it is not essential that advisors, property managers, and contractors invite all potential bidders.

The property manager and developers must ensure that there is a competitive bidding process that is inclusive of potentially eligible Responsible Contractors. Inclusion is not necessarily assured by large numbers of bidders. Care must be taken that bidders include potentially eligible Responsible Contractors. Although the Policy does not require hiring union workers, the trade unions will be invited to (1) deliver to the property manager, investment manager or advisor lists of names and phone numbers of Responsible Contractors including those Responsible Contractors who have expressed an interest in bidding, and (2) continually monitor the local markets to update the lists. Property managers shall maintain these lists supplied by the trade unions.

**I. Enforcement:** CRF staff are expected to monitor investment managers for compliance with this Policy, and CRF expects that investment managers will monitor compliance by property managers, advisors and delegates. If staff becomes aware of a compliance issue, either through the monitoring process or as a result of a complaint, the following process will be followed.

1. If staff receives a complaint alleging conduct by an investment manager or advisor, property manager or contractor with respect to a CRF RCPIISR that would be substantially inconsistent with the provisions of the Policy, such complaint will be logged in and reviewed as follows:
  - a. A request will be made to the relevant investment manager or advisor to engage with the complainant in a good faith effort to resolve the matter or pursue the matter with other appropriate parties and report back to the CRF on whether and how the matter was resolved.
  - b. Complainant will be advised of the contact with the investment manager or advisor. Staff may request that the complainant share any determination from a regulatory entity that might be relevant.
  - c. Staff will track resolution of complaints.
2. If staff becomes aware of a formal determination by a law enforcement or regulatory agency or a court that a property manager or contractor of a RCPIISR Investment has violated applicable labor laws, regulations or standards, either directly or by failing to take appropriate steps to prevent or remedy violations and that conduct also constitutes a violation of this Policy, then staff will contact the relevant investment manager or advisor and ask that it pursue the matter with the property manager or contractor. Where appropriate, staff may request that the investment manager or advisor consider all reasonably available remedies and take such actions with respect to the property manager or contractor as will address the violation in a manner that satisfies the CRF's fiduciary duties, including termination of the contract where that remedy is available and appropriate.
3. If staff becomes aware of a formal determination by a law enforcement or regulatory agency or a court that an investment manager or advisor of an RCPIISR Investment has violated applicable labor laws, regulations or standards, either directly or by failing to take appropriate steps to prevent or remedy violations and that conduct also constitutes a violation of this Policy, staff will contact the investment manager or advisor to pursue the matter. If the investment manager or advisor does not modify this conduct even after discussion with the CRF's staff, then staff will place such a non-complying investment manager or advisor a probation watch list and the CRF will consider this pattern of conduct along with other information when it reviews the investment manager's or advisor's contract for possible renewal or when considering investment in a subsequent fund or partnership of the investment manager or advisor. The key indicator is a pattern of conduct which is inconsistent with the provisions of the Policy.
4. Incidents of non-compliance will be reported to the Deputy Comptroller on a timely basis.



**J. Annual Report by CRF:** Consistent with the treatment of information regarding investments across the CRF portfolio, communications and evaluations in the course of administering this Policy between/among CRF staff and other interested persons are part of the proprietary investment and investment management process and, as such, documents containing those communications and evaluations are not available to third parties or to the public. The RCPI SR process will be summarized, by investment, indicating contract values and level of responsible contractor use reported, and will be included in an annual report to the Comptroller, which will be a public document.

## **Effective Date**

This Policy shall take effect on January 1, 2018 and shall apply to investments entered into on or after that date.