

**TEACHERS' RETIREMENT SYSTEM OF THE CITY OF  
NEW YORK  
STATEMENT OF INVESTMENT POLICY  
FOR  
RESPONSIBLE CONTRACTOR POLICY  
MAY 2017**

*This Policy is effective immediately upon adoption, supersedes all previous Responsible Contractor Policies and shall apply on a prospective basis to all Applicable Investments, as defined in Section II below.*

**I. INTRODUCTION**

This Responsible Contractor Policy ("the Policy") is designed to ensure that contractors, investors, managers, consultants, or other participants selected by the Teachers' Retirement System of the City of New York ("the System" or "TRS") take prudent and careful action in accordance with the Policy, as described herein. TRS, through the Responsible Contractor Policy, supports and encourages fair wages and fair benefits for workers employed by its managers, contractors and subcontractors, subject to fiduciary principles concerning duties of loyalty and prudence, both of which further require competitive returns on TRS real estate and infrastructure investments. Use of this Policy also provides assurance that there is sufficient flexibility in controlling investment risks and returns while using responsible contractors.

TRS has a deep interest in the condition of workers employed by its managers, contractors and subcontractors. TRS endorses small business development, market competition and control of operating costs. Consistent with the ideals espoused by labor unions and other advocates for workers' rights, the System believes that a diverse, adequately compensated, and trained workforce delivers a higher quality product and service, thereby providing the System with a better opportunity for long-term security of its investments, along with a better opportunity for long-term growth and investment return. Adequate compensation includes fair wages and benefits, including healthcare and retirement plans. The System encourages contract issuers to provide unionized contractors with the opportunity to bid on projects.

**II. APPLICABLE INVESTMENTS AND PHASING**

"Applicable Investments" are domestic equity investments (and associated advisor or partner and subcontractor contracts and bids arising out of those investments) in the private real estate and private infrastructure asset classes, including partnerships, joint ventures and direct investments entered into after the effective date of this Policy. This Policy, in its entirety, shall apply to all Applicable Investments where TRS, whether singly or when its holdings aggregated with those of any other New York City pension system that has adopted a similar Responsible Contractor Policy (collectively, "NYCRS"), owns

a greater than 50% ownership interest. For those Applicable Investments in which the aggregate holdings of the NYCRC are less than or equal to a 50% ownership interest, only Articles I through VII shall apply, although the System strongly encourages all managers to comply with the entire policy.

This Policy specifically excludes all other types of investments, including mezzanine debt, hybrid debt, international investments, secondary funds, and indirect, specialty and mortgage investments lacking equity features, and their respective advisors. The practicality, schedule, and method of extending this Policy in the future, beyond those investments and contracts described herein, shall depend on factors that include the structure of the investment and the degree of control TRS can exercise.

### **III. DEFINITION OF A RESPONSIBLE CONTRACTOR**

A Responsible Contractor, as used in this Policy, is a contractor or subcontractor who pays workers fair wages and benefits as evidenced by payroll and employee records. "Fair benefits" may include, but are not limited to, employer-supported family health care coverage, pension benefits and apprenticeship training programs. "Fair wages" and "Fair benefits" are based on relevant market factors that include the nature and location of the project, comparable job or trade classifications, and the scope and complexity of services provided.

### **IV. INITIAL REQUIREMENTS OF THE RESPONSIBLE CONTRACTOR POLICY**

- A. **Duty of Loyalty** - Notwithstanding any other considerations, assets will be managed for the exclusive benefit of and with loyalty, honesty, good faith and fairness toward the Applicable Investments and all holders of the ownership interests in such Applicable Investments, including, without limitation, plan participants and beneficiaries.
- B. **Prudence** - The Trustees, the Comptroller's Office Staff ("Staff"), and Managers and Advisors are charged with the fiduciary duty to exercise the care, skill, prudence, and diligence appropriate to the task.
- C. **Competitive Return** - All investments and services must be made and managed in a manner that produces a competitive, risk-adjusted rate of return.
- D. **Local, State, and National Laws** – Managers, contractors and subcontractors shall observe all local, state, and national laws (including, by way of illustration, those related to insurance, withholding taxes, labor, anti-discrimination, environmental, occupational health and safety, and the right to organize unions).

## V. RECOMMENDED PRACTICES

The System supports and strongly encourages:

- A. The use of qualified contractors certified as **Minority and Women-Owned Business Enterprises (“M/WBEs”)** by New York City’s Department of Small Business Services or otherwise certified as M/WBEs by a governmental entity in the local market in which the contractor operates.
- B. 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, or services at a System-owned property or asset in an Applicable Investment, and strongly encourages managers, property or asset managers and contractors to similarly take a position of neutrality in such an event. To remain “neutral” means not taking any action or making any statement that will directly or indirectly state or imply any support for or opposition to the selection by employees of a collective bargaining agent, or preference or opposition to any particular union as a bargaining agent. Nothing in this Policy obligates or prohibits a manager, property or asset manager or contractor from entering into private neutrality, labor peace or other lawful agreements with a labor organization seeking to represent or who currently represents workers at an Applicable Investment.

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

- C. 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. A **competitive bidding and selection process** when retaining contractors and subcontractors unaffiliated with a building manager to provide construction, maintenance and services. The purpose of this provision is to encourage fair competition and to actively seek bids from all qualified sources within an area, including those identified as Responsible Contractors.

## VI. SELECTION PREFERENCE OF A RESPONSIBLE CONTRACTOR

If Initial Requirements A through D in Section IV above are satisfied, the System expresses a strong preference that Responsible Contractors be hired.

## VII. INVESTMENT POLICY RESTRICTIONS

The System will not entertain proposals that have the potential of eliminating public sector jobs and will seek investments in which the manager, advisor or partner demonstrates a commitment to standards of good conduct, and will reject investments that would pose a reputational risk to the System or bring public or regulatory scrutiny.

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THE FOLLOWING ARTICLE APPLIES SOLELY TO APPLICABLE INVESTMENTS IN WHICH NYCRRS OWNS A GREATER THAN 50% OWNERSHIP INTEREST

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## VIII. TRANSITION, ENFORCEMENT, MONITORING AND ADMINISTRATION

- A. **Notification** - The System and/or the Staff shall provide a copy of this policy to all current and prospective real estate and infrastructure managers of Applicable Investments.
- B. **Solicitation Documents** - All requests for proposal and invitations to bid relating to Applicable Investments shall describe the terms of this Policy and include a copy of the Responsible Contractor Self-Certification Form (Appendix A). Responses by bidders shall include information provided to the manager or contractor (whichever is applicable) in evaluating a bid.
- C. **Contracts and Renewals** - All contracts entered into after the effective date of this Policy and pertaining to Applicable Investments, including renewals of such contracts, shall reference this Policy. TRS will take into account compliance with this policy in considering manager contract renewals.
- D. **Responsibilities** - The responsibilities of Staff, consultants, managers, property or asset managers and contractors are defined as follows:
  - 1. The Staff and/or consultants shall have the following responsibilities:
    - a. Review the managers' annual reports regarding compliance with the Policy.
    - b. Report to the System's Board of Trustees on incidents of non-compliance of Applicable Investments with the Policy and make recommendations for corrective action as necessary.
    - c. Develop and maintain contact lists for all the System's properties in Applicable Investments.
  - 2. Managers of Applicable Investments shall have the following responsibilities:

- a. Communicate the Policy to all property or asset managers.
  - b. Review a contract listing for each property or asset prepared by each property or asset manager.
  - c. Maintain a simplified bid summary for each applicable contract. The summary shall identify the contract, the successful bidder, and the bidder's status as a Responsible Contractor.
  - d. Provide an annual report to the Comptroller's Office Staff, describing their own efforts as well as those by property or asset managers and their subcontractors.
  - e. Monitor and enforce the Policy, including the investigation of potential violations.
  - f. Annually, the signatory to the System contract will file a certification statement that their firm complied with the Policy for the preceding year and upon request will provide written substantiation of compliance. This provision will be subject to periodic audits.
  - g. Select contractors, and encourage contractors to select subcontractors, in a manner consistent with this Policy.
3. Property or asset managers of Applicable Investments shall have the following responsibilities:
- a. Communicate in bid documents the Responsible Contractor Policy to contractors seeking to secure construction or building service contracts.
  - b. Communicate the Policy to any interested party.
  - c. Ensure there is a competitive bidding process, inclusive of potentially eligible Responsible Contractors. Provide managers with a simplified bid summary for each contract and maintain documentation for successful bidders.
  - d. Require that bidders provide to the property or asset manager a Responsible Contractor self-certification on a form approved by the System.
  - e. Provide a listing for applicable service and construction contracts available for bid for each property or asset under management to all interested parties via prompt electronic notification (a website, email distribution, or other suitable technology). All potential bidders, building and service trade unions and councils, will have access to such electronic notification.
  - f. Provide property or asset level annual report information to managers.
  - g. Invite input from trade unions/service unions in the development of Responsible Contractor lists.
  - h. Maintain a list of any interested Responsible Contractors (including names, addresses

and telephone numbers).

4. Contractors of Applicable Investments shall have the following responsibilities:
  - a. Submit -- to the property or asset manager -- a Responsible Contractor self-certification on a form acceptable to the Comptroller's Office Staff.
  - b. Communicate the Responsible Contractor Policy to subcontractors.
  - c. Provide the property or asset manager with Responsible Contractor documentation.
  - d. Select subcontractors in a manner consistent with this Policy.
- E. **Minimum Contract Size** - The Policy shall apply to all Applicable Investment-related contracts of a minimum size of \$100,000. Minimum contract size refers to the total project value of the work contracted for and not to any disaggregation by trade or task. For example, a \$100,000 contract to paint two buildings in a single office complex would not be treated as two \$50,000 contracts, each less than the minimum contract size. Disaggregation designed to evade the requirements of the Policy is not permitted.
- F. **Applicable Expenditures Categories** - The Policy shall apply to tenant improvements, capital expenditures, and operational service contracts (such as cleaning and security) related to Applicable Investments.
- G. **Fair Wage, Fair Benefits, and Training** – In determining "fair wages" and "fair benefits" (as required in Section III) concerning a specific contract in a specific market, items that may be considered include existing wage practices, state laws, prevailing wages, labor market conditions, and other items.

In place of a prevailing wage standard, the Policy requires a broad outreach and competitive bidding program, as described in Section I below.

This Policy is premised upon the availability of a list of Responsible Contractors in every market in which the System owns a property or asset through an Applicable Investment. While managers, their property managers and contractors are responsible for gathering and analyzing information relevant in identifying and hiring a Responsible Contractor, compilation of this list does not depend solely on the managers, property managers, or contractors. This Policy invites the various local trade unions to suggest contractors, which in their view, qualify as Responsible Contractors. Sources of information include local building and service trade unions and/or councils, builders associations, and governments.
- H. **Annual Review and Data Forms** – Managers of Applicable Investments must file a Responsible Contractor annual report with BAM and present summary data in a format described and approved by TRS. The annual review shall determine whether each manager, property or asset manager, and contractor conducted a good faith outreach program and a competitive bidding process that

included Responsible Contractors. A manager, property or asset manager or contractor will not be faulted merely because a Responsible Contractor does not respond to the invitation to bid. The Staff's review of the managers, property or asset managers, or contractors shall focus on the overall pattern of conduct and not any one specific incident.

- I. **Competitive Bidding** - Property or asset managers and contractors shall give notice for invitations to bid related to Applicable Investments based on local market practices (such as providing notice in local trade publications, on bulletin boards, and via union building trades councils). Property or asset managers may seek input from building trades councils for developing lists of responsible contractors for inclusion in the bidding process.

Contractors shall not be permitted to bid on projects if the contractor or its principals or senior executives have been debarred by the City or State of New York for failure to pay prevailing wages or benefits on any prior job for which it was required by law.

Trade unions/service unions are encouraged to deliver to the manager, property or asset manager, or contractor, lists of and contact information for (1) Responsible Contractors and (2) local trade councils and union halls in all markets in which the Responsible Contractor Policy is applicable to the manager, property or asset manager, or contractor. They are also encouraged to provide a national contact person/address where current information can be sent, as well as notifications of trade/service union expansions into new areas. In addition, they may refer interested and qualified Responsible Contractors to the property or asset manager, monitor the local labor markets continually to update the lists and provide technical input as appropriate.

Property or asset managers and contractors may choose a reasonable number of contractors to invite to bid from the list of responsible contractors, as well as from other sources. Given the time and expense required to solicit and evaluate bids, it is not essential to invite all potential bidders.

The property or asset manager must ensure that there is a competitive bidding process, inclusive of potentially eligible responsible contractors, and take care to ensure bidders include such contractors. Large numbers of bidders does not necessarily assure inclusion. Review of bids shall include consideration of loyalty, prudence, competitive risk-adjusted returns and adherence to this Policy.

#### **J. Enforcement –**

1. If the Staff receives complaints alleging a violation of this Policy, it shall gather information relating to the complaint and forward it, as appropriate, to the Board. Complaints will be taken seriously. Staff will expect managers to provide prompt communication and full information.
2. If the Staff becomes aware of a formal determination by a law enforcement or regulatory agency or a court, that a manager, property or asset manager or contractor of an Applicable 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 constitutes a violation of this Policy, then:
  - a. The Staff will consider all reasonably available remedies and recommend to the Board any appropriate ones that they believe will address the violation in a manner that satisfies the

Board's fiduciary duties of loyalty and prudence; and

- b. The Board shall place the manager on a watch list. If the manager, even after discussions with the Staff and/or consultants, does not modify its pattern of conduct, and/ or cause its property or asset manager(s) or contractor(s) to modify their conduct, the Board shall consider this pattern of conduct along with other information when it reviews the manager's contract for possible renewal, or when considering investment in a subsequent fund or partnership of the manager. The key indicator is a pattern of conduct that is inconsistent with the provisions of the Policy.

Incidents of non-compliance will be reported to the System's Board of Trustees on a timely basis, and no less than quarterly.



APPENDIX A

Certification of Responsible Contractor Status

<b>GENERAL INFORMATION</b>	
Name of Firm	
Address	
City	
Telephone Number (    )	Fax Number (    )
Ownership Structure (Please check one)  ___ Sole Proprietorship    ___ Partnership    ___ Corporation    ___ Joint Venture    ___ Other	
Description of Service(s) Provided	
Contractor's License Number	
<b>RESPONSIBLE CONTRACTOR STATUS</b>	
Please check one of the following boxes:  1. ___ Meets all Responsible Contractor requirements  2. ___ Meets no Responsible Contractor requirements  3. ___ Meets certain of the Responsible Contractor requirements (provide explanation below)  Explanation:	

4. Has your firm ever been fined, received an adverse judgment, penalty, or received any mandated changes to its corporate policy in the past 18 months resulting from violations of local, state, or federal labor laws, including but not limited to, the National Labor Relations Board, Equal Employment Opportunity Commission (e.g. sexual harassment and/or discrimination violations), or Occupational Safety & Health Administration (OSHA)? If yes, please explain.

Explanation:

5. In connection with the violations referenced in question 4 above, are you aware of any *pending* complaints or other actions that have been filed in connection with your firm? If yes, please explain. (Affirmative answer(s) to the question will not necessarily disqualify the vendor from being the successful bidder. The level of investigation of the complaints listed in response to the question will be left to the judgment of the investment partner.)

Explanation:

#### **TARGETED VENDOR STATUS**

Does your firm meet the definition of a Minority and Women-Owned Business Enterprise?

☐ Yes ☐ No

A Minority and Women-Owned Business Enterprise shall be defined herein as a business enterprise which is certified as a minority/women-owned business enterprise by the New York City Department of Small Business Services, or otherwise certified as a minority/women-owned business enterprise by a government entity in the local market in which the business enterprise operates.

#### **OWNER'S CERTIFICATION OF RESPONSIBLE CONTRACTOR STATUS**

On behalf of the above-named firm, the undersigned certifies that the information and response provided herein are true, complete and accurate as of this date, and he/she is aware that any intentionally misrepresented or falsified information may result in disqualification from future contracting opportunities.

Signature \_\_\_\_\_ Date \_\_\_\_\_

Name (please print) \_\_\_\_\_ Title \_\_\_\_\_