

# California State Teachers' Retirement System

## Responsible Contractor Policy

February 6, 2015

### I. INTRODUCTION

The California State Teachers' Retirement System has a deep interest in the condition of workers employed by CalSTRS and its advisors. CalSTRS, through the Responsible Contractor Policy described below, supports and encourages fair wages and fair benefits for workers employed by its contractors and subcontractors, subject to fiduciary principles concerning duties of loyalty and prudence, both of which further require competitive returns on CalSTRS' investments. CalSTRS endorses small business development, market competition, and control of operating costs. CalSTRS supports many of the ideals espoused by labor unions and encourages participation by labor unions and their signatory contractors in the development and management of CalSTRS' investments. CalSTRS believes that an adequately compensated and trained worker delivers a higher quality product and service.

### II. DEFINITION OF A RESPONSIBLE CONTRACTOR

A responsible contractor, as used in this policy, is a contractor or subcontractor who pays workers a "fair wage" and a "fair benefit" as evidenced by payroll and employee records. Fair benefits are defined as including, but are not limited to, employer-paid family health care coverage, pension benefits, and apprenticeship programs. What constitutes a fair wage and fair benefit depends on the wages and benefits paid on comparable investment projects, based upon local market factors, that include the nature of the project (for example, residential or commercial; public or private), comparable job or trade classifications, and the scope and complexity of services provided.

### III. INITIAL REQUIREMENTS OF THE RESPONSIBLE CONTRACTING POLICY

- A. **Duty of Loyalty:** Notwithstanding any other considerations, assets shall be managed for the exclusive benefit of the participants and the beneficiaries of CalSTRS. CalSTRS' as well as its advisors', duty to the participants and their beneficiaries shall take precedence over any other duty.
- B. **Prudence:** CalSTRS Board, 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. **Competitive Bidding:** Contractors and their subcontractors for construction, maintenance, and services shall be selected through a competitive bidding and selection process. The purpose of this provision is to encourage fair competition and to actively seek bids from all qualified sources within an area, particularly those identified as responsible contractors. Advisors and their subcontractors shall create a bidding process that includes notification

and invitations to bid, and is distributed to a broad spectrum of potential bidders, particularly those identified as responsible contractors. The 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, safety record, and the adherence to the Responsible Contracting Policy).

- E. **Local, state and national laws.** All advisors, property managers, contractors, and their subcontractors shall observe all local, state, and national laws (including by way of illustration those pertaining to insurance, withholding taxes, minimum wage, labor relations, health, and occupational safety).

#### **IV. SELECTION PREFERENCE OF A RESPONSIBLE CONTRACTOR**

If the requirements in Section III are satisfied, CalSTRS expresses a strong preference that responsible contractors be hired.

#### **V. TRANSITION, ENFORCEMENT, MONITORING, AND ADMINISTRATION**

- A. **Applicable Investments and Phasing:** This policy shall apply to all applicable real estate and infrastructure investments. The policy shall not apply to investments such as hybrid debt, opportunity funds, ventures with public companies, and other investments where CalSTRS does not have greater than 50 percent ownership and/or full control of the investment. However, in those instances where CalSTRS does not have greater than 50 percent ownership and/or full control of the investment, staff will make reasonable attempts to encourage partners to comply with the spirit and practice of responsible contracting.
- B. **Notification:** CalSTRS shall provide all applicable current and prospective advisors with a copy of this policy, including investments where CalSTRS has greater than 50 percent ownership and/or full control of the investment.
- C. **Solicitation Documents:** All requests for proposal and invitations to bid covered by this policy shall include the terms of this policy and a copy of the Certification of the Responsible Contractor Status form (Appendix A). Responses by bidders shall include information to assist the staff in evaluating a bid.
- D. **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 require compliance with this policy.
- E. **Responsibilities:** The responsibilities of CalSTRS' staff, advisors, property managers, contractors and unions are defined as follows:
  - a. **Staff:** CalSTRS staff shall have the responsibility for the following:
    - i. Review the advisors' annual certification statement regarding compliance with the policy.

- ii. Develop and maintain contact lists for all CalSTRS' properties and provide a copy to inquiring parties.
  - iii. Insert appropriate contract language where applicable.
  - iv. In those instances where CalSTRS does not have greater than 50 percent ownership and/or full control of an investment, make reasonable attempts to encourage partners to comply with the spirit and practice of Responsible Contracting.
- b. **Advisors/Joint Ventures and Similar Business Partners:** Advisors/joint ventures and similar business partners will have responsibility for the following:
- i. Communicate the policy to all property managers.
  - ii. Review a contract listing for each property prepared by each property manager.
  - iii. Maintain a simplified bid summary for each applicable contract. The summary should include identifying contract, successful bidder, and bidder's status as responsible contractor.
  - iv. Maintain an annual report in their home office, describing their own efforts as well as those by property managers and their contractors.
  - v. Monitor and enforce the policy including investigation of potential violations.
  - vi. Annually, the signatory to the CalSTRS contract will file a certification statement that their firm complied with the Responsible Contractor Policy for the preceding year and upon request will provide written substantiation of such compliance. This provision will be subject to periodic audits.
  - vii. When selecting contractors, utilize industry best practices when reviewing their pre-qualifications; oversee efforts by contractors to assure industry best practices are utilized when selecting subcontractors.
- c. **Property Managers:** Property managers will have responsibility for the following:
- i. Communicate in bid documents the Responsible Contractor Policy to contractors seeking to secure construction or building service contracts.
  - ii. Communicate the policy to any interested party.
  - iii. Ensure there is a competitive bidding process that is inclusive of potentially eligible responsible contractors.

- iv. Require bidders to provide to property manager a responsible contractor self-certification on a form approved by CalSTRS.
  - v. Prepare and send to advisors a contract listing for applicable service contracts for each property under management. The building trades and service trades and other potential bidders will have access to this list.
  - vi. Provide advisors with a simplified bid summary for each contract.
  - vii. Provide property level annual report information to advisor.
  - viii. Maintain documentation for successful bidders.
  - ix. Seek from trade unions/service unions input in the development of responsible contractor lists.
  - x. Maintain list of any interested responsible contractors. (Names, addresses and telephone numbers).
  - xi. When selecting contractors, utilize industry best practices when reviewing their pre-qualifications; oversee efforts by contractors to assure industry best practices are utilized when selecting subcontractors.
- d. **Contractors:** Contractors will have the responsibility for the following:
- i. Submit to property manager a responsible contractor self-certification on a form approved by CalSTRS.
  - ii. Communicate to subcontractors the Responsible Contractor Policy.
  - iii. Provide to property manager responsible contractor documentation.
  - iv. Utilize industry best practices when selecting subcontractors.
- e. **Unions:** Trade unions/service unions shall be asked to perform the following tasks:
- i. Deliver to the property manager or advisor lists of names and phone numbers of responsible contractors.
  - ii. Refer interested and qualified responsible contractors to the property manager.
  - iii. Continually monitor the local labor markets to update the lists.
  - iv. Provide technical input as appropriate.
- F. **Outreach:** CalSTRS staff will develop and maintain a list of all CalSTRS greater than 50 percent owned and/or fully controlled properties. The list will include the property name, address, advisor and property manager, and phone number of the property

manager and real estate advisors. The CalSTRS' staff will provide this list to anyone who requests a copy. Actual contract expiration inquiries will be referred to the property level. Property managers shall provide solicitation documents to any potential contractor who has, in writing, expressed an interest in bidding for relevant contract.

- G. **Minimum Contract Size:** The policy shall absolutely apply to all contracts of a minimum size of \$100,000, individually or annually as applicable. Minimum contract size refers to the total project value of the work being contracted for and not to any desegregation 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. Desegregation designed to evade the requirements of the policy is not permitted.
- H. **Applicable Expenditures Categories:** The policy shall apply to tenant improvements, capital expenditures, and operational service contracts (such as cleaning).
- I. **Fair Wage, Fair Benefits, and Training:** The policy avoids a narrow definition of fair wage, fair benefits, and training that might not be practical in all markets. Furthermore, the policy does not require a "prevailing wage", as defined by government surveys. 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.

In place of a prevailing wage standard, the policy requires a broad outreach and competitive bidding program, as described in Section III.D, and V.F and J. This program is premised upon the availability of a list of responsible contractors in every market in which CalSTRS directly owns a property. While advisors and their property managers and contractors are responsible for gathering and analyzing information relevant to identifying and hiring a responsible contractor, compilation of this list does not depend solely on the advisors, property managers, or contractor. This policy instead invites the various local trades to suggest contractors, which in their view qualify as responsible contractors. Sources of information include local building and service trade councils, builders association, and governments.

- J. **Annual Reports:** Advisors must file a Responsible Contractor Annual Report with CalSTRS. Advisors will complete a reporting template provided by CalSTRS. They shall also provide certification of their ongoing efforts in areas such as competitive bidding, under the policy requirements, following each fiscal year. This annual review will ensure that advisors are adhering to the requirements as stated in the policy.
- K. **Competitive Bidding:** Property managers and contractors should give notice for applicable bids in 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 must ensure that there is a competitive bidding process, which 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 or advisor lists of names and phone numbers of responsible contractors including those responsible contractors who have expressed any 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

- L. **Neutrality:** CalSTRS recognizes the rights of employees to representation, and supports and strongly 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 CalSTRS owned property.

Resolution of any inter-jurisdictional trade disputes 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 the advisors, property managers, or contractors in inter-jurisdictional trade disputes.

- M. **Enforcement:** If staff becomes aware of non-compliance, CalSTRS will place a non-complying advisor or property manager on a probation watch list. If the advisor or property manager does not modify this pattern of conduct even after discussions with CalSTRS' staff, CalSTRS will consider this pattern of conduct along with other information when it reviews the advisor or property manager contract for possible renewal. The key indicator is a pattern of conduct that is inconsistent with the provisions of the policy. CalSTRS reserves the right to cancel its contract with an advisor that has violated this policy, or the right to encourage the reevaluation of an advisors' contract with property managers or contractors who violate this policy.

- N. **Complaints:** Formal complaint(s) may be submitted to CalSTRS per the attached Complaint Process (Appendix B).

Staff will address Responsible Contractor Policy compliance as part of the annual review and rating of managers.

APPENDIX A

Responsible Contractor Program Policy

CERTIFICATION OF RESPONSIBLE CONTRACTOR STATUS

<b>GENERAL INFORMATION</b>		
<b>Company Name</b>		
Address		
City	State	Zip Code
Telephone Number ( )		Fax Number ( )
Ownership Structure ( <i>Please check one</i> )		
<input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Joint Venture <input type="checkbox"/> Other _____		
Description of Service(s) Provided		
<b>Contractor's License #</b>		
<b>RESPONSIBLE CONTRACTOR STATUS</b> <i>(Refer to definitions and worksheet on pages 3 and 4 of this Appendix)</i>		

Please check one of the following boxes:

- Meets all Responsible Contractor requirements
- Meets none of the Responsible Contractor requirements
- Meets certain of the Responsible Contractor requirements (provide explanation below)

If you have checked box 3 above, please provide an explanation below. (Attach additional pages if necessary.)

Explanation: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

4. In the last 18 months, has your firm been fined, suffered an adverse judgment, incurred a penalty, or had to change its employment policies because of violations of State or Federal labor laws, including but not limited to the National Labor Relations Act, or the Civil Rights Act of 1964 (e.g. sexual harassment or discrimination violations)? If yes, please explain. (Attach additional pages if necessary.)

Explanation: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. In the last 18 months, have any complaints been filed against your firm with any agency enforcing labor or employment laws? If yes, please explain. (An affirmative answer will not necessarily disqualify you from being the successful bidder. It just will be a factor that will be taken into account in determining to whom the contract will be awarded.

Explanation: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**CERTIFICATION OF RESPONSIBLE CONTRACTOR STATUS**

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

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

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

This form was prepared for use in compliance with the Responsible Contractor Program Policy of the California State Teachers' Retirement System. Any contractor or subcontractor with a minimum contract size of \$100,000 should complete this form.



## **INTRODUCTION:**

The California State Teachers' Retirement System has a deep interest in the condition of workers employed by CalSTRS and its advisors. CalSTRS, through the Responsible Contracting Policy, supports and encourages fair wages and fair benefits for workers employed by its contractors and subcontractors, subject to fiduciary principles concerning duties of loyalty and prudence, both of which further require competitive returns on CalSTRS' investments. CalSTRS endorses small business development, market competition and control of operating costs. CalSTRS supports many of the ideals espoused by labor unions and encourages participation by labor unions and their signatory contractors in the development and management of CalSTRS' investments. CalSTRS believes that an adequately compensated and trained worker delivers a higher-quality product and service. This policy is intended to complement and in no manner detract from existing policy regarding service-disabled California veteran-owned business enterprises.

## **DEFINITIONS:**

**Responsible Contractor:** A contractor or subcontractor who pays workers a fair wage and a fair benefit as evidenced by payroll and employee records. Fair benefits are defined as including, but not limited to, employer-paid family health care coverage, pension benefits, and apprenticeship programs. What constitutes a fair wage and fair benefit depends on the wages and benefits paid on comparable investment projects based upon local market factors that include the nature of the project (for example: residential or commercial, public or private) comparable job or trade classifications, and the scope and complexity of the services provided.

## Responsible Contractor Worksheet

Company Name: \_\_\_\_\_

This worksheet has been provided to assist you with answering questions on the Certification of Responsible Contractor Status form. The Responsible Contractor program encourages fair wages and benefit, consistent with local market practices. Please take a few minutes to complete the following questions about your firm and the marketplace in which you operate.

### Wages

1. Considering the wages paid by your competitors in this market, the nature of this project, and the size and scope of this contract, do you believe that your firm will pay local market wages for your employees on this job?  
 Yes    No

### Benefits

1. For your employees on this job, will your firm provide employer-paid health insurance for the employee or the employee and his or her family?  
 Yes    No
2. For your employees on this job, will your firm provide pension, 401(k), or a similar retirement savings or deferred compensation program?  
 Yes    No
3. For your employees on this job, will your firm provide access to apprenticeship programs for skilled trades?  
 Yes    No
4. Are there any other benefits that you will provide to your employees on this job that you would like to describe (e.g. paid vacation, sick leave, etc.)? If so, please describe:  
\_\_\_\_\_  
\_\_\_\_\_
5. Considering your answers above, the benefits your competitors in this market provide to their employees, the size and scope of this contract, and the nature of this project, do you believe your firm will provide benefits consistent with local market practices to your employees on this job?  
 Yes    No

*Please attach additional pages if you would like to elaborate on any of the answers you provided above.*

## APPENDIX B

### RESPONSIBLE CONTRACTOR POLICY: COMPLAINT PROCESS

Responsible Contractor Program, RCP, complaints shall be addressed in the following manner:

#### **Step 1 – Notification of Complaint**

A complaint is required to be in writing and include:

- Name of parties involved, including but not limited to, the non-compliant party, investment manager (or their agent), and the relationship of the parties to CalSTRS.
- Statement of specific complaint including: documentation of the specific allegation(s), the provision(s) in the Responsible Contractor Policy that is alleged to be violated, the property address, CalSTRS ownership position in the asset, date of violation, and any other information that may be relevant to the matter.

All complaints should be sent to CalSTRS at the following address:

California State Teachers' Retirement System  
Investment Office, Responsible Contractor Policy  
100 Waterfront Place, MS-4  
West Sacramento, CA 95605

#### **Step 2 – Information Gathering**

Staff may contact the complaining party or others to gather additional information to fully understand the nature of the complaint(s). Also, upon receipt of a complaint, CalSTRS may, in its discretion, disclose to the party against which the complaint has been filed or parties related to the property such as the investment manager, the nature of the complaint, and may provide a copy of the written complaint to any of the parties involved.

#### **Step 3 – Registration of Complaint**

Upon receipt of a written complaint, staff will register the written complaint into the Responsible Contractor Complaint Log. After the written complaint has been logged into the Responsible Contractor Complaint Log, staff will notify the complaining party in writing within five business days to acknowledge registration.

#### **Step 4 – Analysis**

Staff will work with the investment manager who oversees the affected property to fully understand the matter. Such investigation may include, but not be limited to, comparing the complaint to the requirements of the RCP, review of certification of contractor who is a party to the complaint, and an analysis of market conditions as they relate to the complaint. Staff will contact the complaining party before completion of the investigation process to make sure it fully understands the complaint and charges and to attempt to clear up any factual disputes in evidence. During the analysis phase, staff will determine if the property in question is subject to the RCP. If the RCP does not apply to the property related to the complaint, staff will notify the complaining party that the complaint is not valid and further efforts to address the complaint will not be undertaken by staff. Staff will forward its findings to the RCP Review Committee.

**Step 5 – Determination and Resolution**

Staff will make a recommendation to the RCP Review Committee. Members of the committee include a director and a portfolio manager in the Investment office. The RCP Review Committee will make a determination on the complaint. The determination may outline steps to remedy the complaint or find the complaint without merit. Findings on any potential action will be communicated to the parties involved in writing.

**Step 6 – Appeal**

The complaining party may file an appeal of the RCP Review Committee's decision. The appeal must be in writing and present the basis for the disagreement. Appeals may be presented to the RCP Appeals Committee for additional consideration.

**Step 7 – Closure**

If staff deems it necessary, a meeting may also be arranged with the complaining party to address any other outstanding concerns. Appropriate parties involved in the matter may attend the meeting that may include: CalSTRS staff, CalSTRS legal staff, investment, manager or operating partner, complaining party, and non-compliant party.