

# **NEW YORK COMMON RETIREMENT FUND**

## **Contractor Selection Program**

**June, 1996**

### **Investment Policy**

#### **I. Introduction**

The New York Common Retirement Fund (the "Fund") has a deep interest in the condition of workers employed by the Fund and its advisors. The Fund, through the Contractor Selection Policy ("Policy") described below, supports fair wages and fair benefits for workers employed by its contractors and subcontractors, subject at all times to fiduciary principles concerning duties of loyalty and prudence, both of which further require competitive returns on the Fund's real estate investments. The Fund endorses small business development, market competition, and control of operating costs. The Fund 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 Fund's real estate investments. The Fund 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 minority and women owned business enterprises or interrupt existing contractual relationships. The Policy is consistent with the recommendations of fiduciary counsel in a letter to the Fund's General Counsel.

#### **II. Definition of a Program Contractor**

A Program 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 and who complies with the Fund's minority and women business (M/W/BE) policy. "Fair benefits" may include, but are not limited to, employer-paid family health care coverage, pension benefits, and apprenticeship programs. What constitutes a "fair wage" and a "fair benefit" depends on the wages and benefits paid on comparable real estate projects, based upon local market factors, that 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.

### **III. Initial Requirements of the Program 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 the Fund. The Fund's, as well as its advisors', duty to the participant and their beneficiaries shall take precedence over any other duty.
- B.** Prudence: The Fund's 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.** 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, including those identified as Program Contractors. Advisors and their subcontractors shall create a bidding process that includes notification and invitation to bid, distributed to a broad spectrum of potential bidders, including those identified as Program 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, M/W/BE policy, and the adherence to the Policy).
- E.** Local, state, and national laws: All advisors and their subcontractors shall observe all local, state and national laws (including by way of illustration those pertaining to insurance, withholding taxes, minimum wage, health and occupational safety), and the Fund's policy with regard to minority and women business enterprises.

#### **IV. Selection Preference of a Program Contractor**

If Initial Requirements A through E (see Section III, above) are satisfied, the Fund expresses a strong preference that Program Contractors be hired.

#### **V. Transition, Enforcement, Monitoring, and Administration**

- A.** Applicable Investments: This Policy shall apply to all applicable direct equity real estate advisors and associated advisor and subcontractor contracts and bids arising out of those investments. This Policy specifically excludes all indirect, specialty, and mortgage investments that lack equity features and their respective advisors.
- B.** Notification: The Fund shall provide all applicable current and prospective real estate advisors with a copy of this Policy and any changes thereto.
- C.** 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 advisor in evaluating a bid.
- D.** Contracts and Renewals: All contracts entered into after the effective date of this Policy and pertaining to applicable real estate investments, including renewals of such contracts (other than extensions and permissive renewals), shall include the terms of this policy.
- E.** Responsibilities: The responsibilities of the Fund's staff, property managers, and contractors are defined as follows:
1. Staff. The Fund's staff shall have the following responsibilities:
    - a. Review the advisor's annual reports regarding compliance with the Policy.
    - b. Develop and maintain contact lists for all Fund properties and provide a copy to Advisors.

- c. Annually report to the Deputy Comptroller for Investments and Cash Management on these findings and make recommendations for corrective action as necessary.
2. Advisors. Advisor responsibilities shall include:
  - a. Communicating the Policy to all the property managers.
  - 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 include identifying contract, successful bidder, and bidder's status as Program Contractor.
  - e. Provide annual report to the Fund's staff, describing their own efforts as well as those by property managers and their subcontractors.
  - f. Monitor and enforce the Policy including investigation of potential violations.
3. Property Managers. Property managers will have responsibility for the following:
  - a. Communicate in bid documents the 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 which is inclusive of potentially eligible Program Contractors.
  - d. Send a project bid Notification Form to the Real Estate Management Tracking System (REMATS) maintained by participating national unions. Such notice shall be sent as soon as practical prior to the bid due date.
  - e. Require bidders to provide to property manager a Program Contractor self-certification on a form approved by the Fund.
  - f. Prepare and send to advisors a contract listing for applicable service contracts for each property under management. (All potential bidders will have access to this list).
  - g. Provide advisors with a simplified bid summary for each contract.
  - h. Provide property level annual report information to advisor.

- i. Maintain documentation for successful bidders.
  - j. Maintain list of any interested Program Contractors. (Names, addresses and telephone numbers).
4. Contractors. Contractors will have the responsibility for the following:
- a. Submit to property manager a Program Contractor self-certification on a form approved by the Fund.
  - b. Communicate to subcontractors the Program Contractor Policy.
  - c. Provide to property managers Program Contractor documentation.
5. Unions: Trade unions/Service unions shall be asked to perform the following tasks:
- a. Deliver to the property manager or advisor lists of names and phone numbers of Program Contractors.
  - b. Refer interested and qualified Program Contractors to the property manager.
  - c. Continually monitor the local labor markets to update the lists.
  - d. Provide technical input as appropriate.
  - e. Maintain Real Estate Management Tracking System (REMATs) to alert local unions and contractors about upcoming bids and forward Program Contractors to property managers.
- F.** Outreach: The Fund's staff will develop and maintain a list of all Fund properties. The list will include the property name, address, real estate advisors and property manager. The Fund's staff will provide this list to all Advisors which will deliver a copy to anyone who requests such a list. Actual contract 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 the relevant contract.
- G.** Minimum Contract Size: The Policy shall absolutely apply to all contracts of a minimum size of \$25,000. 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.

- H.** Applicable Expenditures Categories: The Policy shall apply to tenant improvements, capital expenditures, and operational service contracts (such as cleaning).
- I.** M/W/BE Policy: Satisfaction of the Fund's M/W/BE policy is a necessary condition before the Fund, acting through its contractors, hires a Program Contractor. Advisors and contractors should provide a certification statement of M/W/BE compliance, or documentation of good faith efforts. Advisors shall collect and retain adequate data that documents their compliance with this Policy and shall be prepared to produce this data for review by the Fund's staff when requested.
- J.** 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. 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 including 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 Sections III. D, and V.F and V.L. This Policy is premised upon the availability of a list of Program Contractors, compilation of this list does not depend solely on the advisors, property managers, or contractors. This Policy instead invites the various local trades to suggest contractors which in their view qualify as Program Contractors. Sources of information include local building and service trade councils, builders' associations, and governments.

- K.** Annual Review and Data Forms: A proposed Program Contracting annual report is included with this Policy. The annual review of advisors' compliance with the Policy will be coincident with the M/W/BE review, and Advisors shall present summary data in a format described and approved by the Fund. The annual review of advisors compliance shall provide the Fund's staff with good faith

evidence of monitoring and enforcement. The annual review will seek to determine whether each advisor, property manager, and contractor conducted a good faith outreach program and a competitive bidding process that included Program Contracting. If a potential Program Contractor does not respond to the invitation to bid, then the advisor, property manager or contractor has acted properly. For each bidder, the advisor, property manager or contractor is obliged to gather appropriate Program Contracting information and make a judgment with regard to the five initial Requirements described in Section III. If there are instances in which an advisor, property manager, or contractor has failed to comply with this Policy, the Fund's review of the advisor, property manager, or contractors will focus on the overall pattern of conduct and not any one specific incident.

- L. Competitive Bidding: Property managers and contractors should give notice for applicable bidders in local trade publications, bulletin boards and union building trades councils. Property managers should seek input from building trades councils to develop lists of Program Contractors for inclusion in the bidding process.

Property managers may choose from the list of Program 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 Program Contractors. Inclusion is not necessarily assured by large numbers of bidders. Care must be taken that bidders include potentially eligible Program 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 Program Contractors including those Program 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.

- M. Neutrality: The Fund supports 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 the Fund.

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 the advisors, property managers, and contractors in inter-jurisdictional trade disputes.

- N.** Enforcement: The Fund will place a non-complying advisor or property manager on a probation watch list. If the advisors or property managers do not modify this pattern of conduct even after discussion with the Fund's staff, the Fund will consider this pattern of conduct along with other information when it reviews the advisor's or property manager's contract for possible renewal. The key indicator is a pattern of conduct which is inconsistent with the provisions of the Policy.

Advisors, property managers, and contractors which have not hired Program Contractors in the past may still bid for contracts. However, after the award of such contracts the Fund will review compliance with the Policy. The Fund does not require that the advisors, property managers, and contractors use any particular system for compliance. However, from time to time, the Fund's staff may disseminate information and suggestions regarding efficient ways to comply with the Policy.

**New York Common Retirement Fund  
Annual Program Contractor Reporting  
Advisor Consolidated Report for the Year Ended: 19XX  
Advisor: Name**

**A: Operational Contracts**

Property Name	Payments to Program Contractors, \$	Total Qualified Operating Expenditures, \$	Payments as a Percent of Total Qualified Operating Expenditures, %
Big Deal Tower			
High Yield Park			
One Responsible Way			
Variance Villa			
Cash Cow Park			
Loss Leader Mall			
One Leverage Lane			
TOTAL			
GRAND TOTAL			

**B. Tenant Improvement and Capital Expenditures**

Property Name	Payments to Program Contractors, \$	Total Qualified Property T.I.s and Capital Expenditures, \$	Payments as a Percent of Total Qualified T.I.s and Capital Improvements, %
Big Deal Tower			
High Yield Park			
One Responsible Way			
Variance Villa			
Cash Cow Park			
Loss Leader Mall			
One Leverage Lane			
TOTAL			

**Advisor Property Level Report for the Year Ended: 19XX**  
**Advisor: Name**

**A: Operational Contracts**

Project	Payments to Program Contractors, \$	Total Qualified Operating Expenditures, \$	Payments as a Percent of Total Qualified Operating Expenditures, %
Big Deal Tower			
High Yield Park			
One Responsible Way			
Variance Villa			
Cash Cow Park			
Loss Leader Mall			
One Leverage Lane			
TOTAL			
GRAND TOTAL			

**B. Tenant Improvement and Capital Expenditures**

Project	Payments to Program Contractors, \$	Total Qualified Property T.I.s and Capital Expenditures, \$	Payments as a Percent of Total Qualified T.I.s and Capital Improvements, %
Big Deal Tower			
High Yield Park			
One Responsible Way			
Variance Villa			
Cash Cow Park			
Loss Leader Mall			
One Leverage Lane			
TOTAL			