

**CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
STATEMENT OF INVESTMENT POLICY**

**FOR**

**NEUTRALITY TRIAL RESPONSIBLE CONTRACTOR PROGRAM**

**February 16, 2010**

*This Policy is effective immediately upon adoption and supersedes all previous Responsible Contractor policies for parties subject to this Policy.*

**I. PURPOSE**

This document sets forth the investment policy ("the Policy") for the Responsible Contractor Program ("the Program"). The design of this Policy ensures that contractors, investors, managers, consultants, or other participants selected by The California Public Employees' Retirement System ("CalPERS") take prudent and careful action while managing the Program. Additionally, use of this Policy provides assurance that there is sufficient flexibility in controlling investment risks and returns while using contractors.

**II. INTRODUCTION**

CalPERS has a deep interest in the condition of workers employed by CalPERS and its Managers and Delegates (as defined in the next section). CalPERS, through the Policy set forth in this document, supports and encourages fair wages and 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 CalPERS real estate and infrastructure investments.

CalPERS endorses small business development, market competition, and control of operating costs. CalPERS 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 CalPERS real estate and infrastructure investments. CalPERS believes that an adequately compensated and trained worker delivers a higher quality product and service. This Policy shall complement and in no manner detract from existing CalPERS policies regarding disabled veteran business enterprises. The Policy includes provisions for transition, monitoring, and enforcement. This Policy is consistent with the advice CalPERS has received from its own counsel, its fiduciary counsel, and other outside counsel.

### III. DEFINITIONS

Capitalized terms used in this Policy have the following meanings for purposes of this Policy:

- A. **Board** – The CalPERS Board of Administration or the committee thereof to which the Board has delegated the function in question.
- B. **CalPERS** – The California Public Employees' Retirement System.
- C. **Delegate/Sub-Delegate** – A person or entity that a Manager or other Delegate retains (other than pursuant to an Exempt Contract) to provide services with respect to an RCP Investment. When a Delegate hires another Delegate, the latter is the former's "Sub-Delegate." Delegates and Sub-Delegates are collectively referred to as "Delegates" in this Policy unless the context indicates otherwise. For example, the general partner of a partnership that owns an office building that is an RCP Investment normally would be the Manager. The Property Manager that the Manager hires to manage the building would be a Delegate. In turn, if that Delegate hires another firm, e.g., a janitorial services company, to provide services with respect to the property, the janitorial services company would be the Property Manager's Sub-Delegate. If that Sub-Delegate, in turn, subcontracts with another firm, the subcontractor would be the Sub-Delegate of the janitorial services firm, and so on. However, any person or entity in such a delegation chain that performs services pursuant to an Exempt Contract would not be a Delegate or Sub-Delegate with respect to those services, nor would any person or entity it retains or subcontracts with to provide those services.
- D. **Exempt Contract** – An RCP Investment-related construction or property services contracts (1) for professional services (e.g., architect, legal, or engineering services) or (2) for less than \$100,000. This threshold is applied both at the contract level and the subcontract level. For example, a \$1 million maintenance contract normally would not be an Exempt Contract, but a \$40,000 subcontract under it would be an Exempt Contract. Any contract in effect when a property first becomes an RCP Investment also shall be an Exempt Contract, but this exemption shall lapse at the end of the contract's term (including any extensions the contract permitted before the investment became an RCP Investment).
- E. **Fiduciary Duty Requirement** – The duty of the CalPERS Board, Staff, and Managers to be loyal and prudent, and achieve a competitive return, as set forth in Section IV.A.-C. To the extent a Delegate has been delegated the discretion to make business decisions affecting RCP Investments, CalPERS expects the Delegate to make sensible business decisions.

- F. **Manager** – A person or entity that directly contracts with CalPERS to manage or otherwise control an RCP Investment, such as an investment manager or the general partner of a partnership in which CalPERS directly invests.
- G. **Policy** – The policy set forth in this document, as amended from time to time. Except to the extent that the Staff determines otherwise, an amendment to this Policy made after a person or entity becomes a Manager shall apply to the Manager.
- H. **Property Manager** – A person or entity that manages the day-to-day operations of a building, including such things as leasing, tenant improvements, guard and janitorial services, or performs similar functions.
- I. **RCP Contract** – An RCP Investment-related contract (other than an Exempt Contract) for (a) building or construction-related services (including tenant improvements unless paid for by the tenant), and (b) property-related services (such as cleaning maintenance, security, food and beverage service, and other services provided within the property that are specific to the nature of that asset, e.g., senior living operations, hotel operations, transportation assets, hospitals, etc.).
- J. **RCP Investment** – An investment Section VI.A. designates as an RCP Investment, generally real estate and infrastructure investments more than 50 percent owned by CalPERS. RCP Investment determinations only will be made when CalPERS first contracts with the person or entity who would be the Manager, or when CalPERS subsequently enters into a new contract with the person or entity. For example, if CalPERS, at the time of the first contract, will not own more than 50% of a real estate or infrastructure investment, subsequent CalPERS investments in that real estate or infrastructure investment that cause it to be more than 50% CalPERS-owned will not make it an RCP Investment, nor cause the person or entity managing it to become a Manager.
- K. **Responsible Contractor** – A business that pays workers a fair wage and a fair benefit (see Section VI.G.), as evidenced by payroll and employee records, and that complies with the CalPERS Disabled Veteran Business Enterprise policy.
- L. **Staff** – The CalPERS Investment Office staff.

#### IV. **PRINCIPAL REQUIREMENTS OF THE NEUTRALITY TRIAL RESPONSIBLE CONTRACTOR PROGRAM POLICY**

- A. **Duty of Loyalty** – Notwithstanding any other considerations, assets shall be managed for the exclusive benefit of CalPERS participants and beneficiaries. CalPERS and its Managers' duty to the participants and their beneficiaries shall take precedence over any other duty.

- B. **Prudence** – CalPERS and its Managers are charged with the fiduciary duty of exercising 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** – Managers and Delegates shall select contractors and their subcontractors for RCP Contracts through a competitive bidding and selection process. The purpose of this provision is to encourage fair competition and to seek bids actively from all qualified sources within an area, particularly those identified as Responsible Contractors. See Section VI.I. for more information on the competitive bidding requirement.
- E. **Local, State, and National Laws** – All Managers, Delegates and the contractors and subcontractors they hire, while performing services with respect to RCP Investments, shall observe all local, state, and national laws (including, by way of illustration, those pertaining to insurance, withholding taxes, minimum wage, and health and occupational safety).
- F. **Disabled Veteran Business Enterprise (DVBE) Policy** – Managers must adhere to the CalPERS Disabled Veteran Business Enterprise policy to the extent their agreements with CalPERS require them to do so.
- G. **Delegation Requirement** – Managers must require their Delegates to comply with this Policy, and Delegates must require their Sub-Delegates to comply with this Policy. CalPERS will hold Managers responsible for Delegate noncompliance to the extent a Manager permits or causes a Delegate to violate this Policy or fails to take appropriate remedial action after learning of a violation. In a like manner, each Delegate is responsible for its Sub-Delegate’s noncompliance with this Policy to the greatest extent reasonable and prudent in light of all circumstances and factors at that time.

## V. SELECTION PREFERENCE OF A RESPONSIBLE CONTRACTOR

If the requirements in Section IV. are satisfied, CalPERS strongly prefers Managers and Delegates to hire Responsible Contractors to provide services to RCP Investments. As to non-RCP Investments, Staff shall give a strong preference to investment managers, advisors, partners and the equivalent that have internal responsible contractor policies that are consistent with this Policy, subject to the Fiduciary Duty Requirement.

## VI. TRANSITION, ENFORCEMENT, MONITORING, AND ADMINISTRATION

- A. **RCP Investments** – This Policy shall only apply with respect to RCP Investments. An RCP Investment is (1) a real estate investment, or (2) an

infrastructure investment to which the CalPERS infrastructure policy makes this Policy apply, in either case, including one owned by a business entity (such as a joint venture, limited liability company, or partnership), in which CalPERS owns a greater than 50% ownership interest. RCP Investments do not include any other types of investments, including commingled funds, opportunity funds, mezzanine debt, hybrid debt, international investments, indirect investments, specialty investments, and mortgage investments lacking equity features.

Housing Development Partnerships exempted from this Policy in the past shall remain exempt, but voluntary compliance is strongly recommended, subject to the Fiduciary Requirement. and bearing in mind that Responsible Contractor status is determined based on local market factors that include the nature of the project (e.g., residential or commercial) among other factors. Hence, for example, a contractor doing work on a single family housing project might still be a Responsible Contractor even though it pays lower wages than a Responsible Contractor in the area pays for commercial office building construction, if that is consistent with locally prevailing labor practices.

The practicality, schedule, and method of extending this Policy in the future beyond RCP Investments depends on factors that include the structure of the investment and the degree of control CalPERS can exercise.

When the Policy is not applicable by its terms, investment advisors, general partners, and other similar entities managing CalPERS real estate or infrastructure investments are encouraged to make a good faith effort to comply with the spirit of the policy, consistent with the Fiduciary Duty Requirement. Good faith efforts may include, but are not limited to, encouraging the use of and advocating for Responsible Contractors, supplying timely information on bidding opportunities to interested Responsible Contractors, and facilitating meetings with organized labor.

- B. **Notification** – CalPERS shall provide a copy of this Policy to all current and prospective Managers of RCP Investments.
- C. **Solicitation Documents** – Except for Exempt Contracts, all requests for proposal and invitations to bid relating to RCP Investments (including both those CalPERS issues for Managers and those Managers or Delegates issue for Delegates) shall both describe the terms of this Policy (or include a copy of it) and include a copy of the Responsible Contractor Self-Certification Form (Appendix 1). Responses by bidders shall include information to assist CalPERS, the Manager, or Delegate (whichever is applicable) in evaluating a bid. CalPERS reserves the right to disclose the contents of the Self-Certification Form at its discretion or the discretion of

the applicable Manager or Delegate. Disclosure also may be required by applicable law.

- D. **Contracts and Renewals** – Except for Exempt Contracts, all contracts that retain Managers or Delegates with respect to RCP Investments shall require compliance with this Policy. CalPERS will take compliance with this Policy into account in considering contract renewals. The Staff will report non-compliance to the Board on a timely basis or at a minimum annually. Unless a Manager agrees to be bound by this Policy restatement, a contract entered into before the date this Policy restatement was adopted shall remain subject to the terms of the Policy in effect when the contract was entered into. The preceding sentence will apply to renewals pursuant to the contract’s renewal provisions, but it will cease to apply if the contract is otherwise extended.
- E. **Responsibilities** – The responsibilities of the Staff, Managers, and Delegates, and the role of unions under this Policy are as follows:
1. The Staff shall have the following responsibilities:
    - a. Reviewing Managers’ annual reports regarding compliance with the Policy.
    - b. Developing and maintaining Manager contact information and making it available to inquiring parties.
    - c. Reporting periodically to the Investment Committee on Managers’ and Delegates’ compliance with the Policy, making recommendations for, or taking, corrective or enforcement action as necessary, and describing any enforcement actions it has taken.
  2. Managers shall have the following responsibilities; the performance of which (but not the responsibility for which) they may delegate to, e.g., Property Managers:
    - a. Communicating the Policy to all Delegates.
    - b. Reviewing a list prepared by each Delegate of current and pending RCP Contracts.
    - c. Maintaining a simplified bid summary for each RCP Contract. The summary shall identify the contract, the successful bidder, and its Responsible Contractor status.
    - d. Providing an annual report to the Staff, describing its and its Delegates’ efforts to comply with this Policy.

- e. Monitoring and enforcing the Policy as to its Delegates, including the investigation of potential violations.
  - f. The Manager shall sign and deliver, on its company's letterhead, an annual Certification stating the following:  
  
"I certify that for the fiscal year ending June 30, 20XX \_\_\_\_\_ (Manager Name) and its Delegates and their Sub-Delegates (as defined in the Neutrality Trial Responsible Contractor Program Policy) have complied, to the best of my knowledge, with the Responsible Contractor Policy."
  - g. The Manager shall notify (or cause a Delegate to notify) a national contact at trade/service unions (see Section VI E.4.b.) if the Manager is expanding RCP Investments into new areas so that trade/service unions can provide the Manager contact information of local trade councils and union halls in the market where expansion is occurring.
  - h. Any other responsibilities this Policy assigns to Managers.
3. Delegates (or Managers, to the extent they undertake these functions) shall have the following responsibilities:
- a. Communicating this Policy in RCP Contract bid documents.
  - b. Communicating about the Policy to any interested party.
  - c. Ensuring there is a competitive bidding process for RCP Contracts, inclusive of potentially eligible Responsible Contractors.
  - d. Requiring that bidders for RCP Contracts provide the Delegate a Responsible Contractor self-certification on a form approved by CalPERS.
  - e. Preparing and sending to Managers a listing of current and pending RCP Contracts for each RCP Investments with which the Delegate is involved. The building trades and service trades and other potential bidders will have access to this list.
  - f. Providing Managers with a simplified bid summary for each RCP Contract.

- g. Providing property level annual report information to Managers.
  - h. Maintaining documentation for successful bidders on RCP Contracts.
  - i. Seeking from trade unions/service unions input in the development of Responsible Contractor lists.
  - j. Maintaining a list of any interested Responsible Contractors and local trade councils and union halls in all markets in which the Policy is applicable. (Names, addresses and telephone numbers).
  - k. Any other responsibilities this Policy assigns to Delegates.
4. Trade unions/service unions are expected to undertake the following tasks:
- a. Delivering to Managers and Delegates lists of names and telephone numbers of Responsible Contractors.
  - b. Providing a national contact person/address/e-mail address where current information and notifications of expansions into new areas can be sent.
  - c. Providing contact information (address, e-mail address, phone number and contact person) of local trade councils and union halls in all markets in which this Policy is applicable to the Manager or Delegate.
  - d. Referring interested and qualified Responsible Contractors to the Manager.
  - e. Monitoring the local labor markets continually to update the lists.
  - f. Providing technical input as appropriate.
- F. **Outreach** – Managers must use reasonable methods to timely notify potential contractors of bidding opportunities for RCP Contracts. Managers and Delegates shall provide RCP Contract solicitation documents to any potential contractor who, has in writing, expressed an interest in bidding for the contract.
- G. **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 concerning 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.

The definition of fair benefits generally includes, but is 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 or infrastructure projects. Fair wages and fair benefits are based upon local market factors, that include the nature of the project (e.g., residential or commercial and public or private), comparable job or trade classifications, and the scope and complexity of services provided.

In determining fair wages and fair benefits concerning 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 Sections IV. D, and VI. This program is premised upon the availability of a list of Responsible Contractors in every market in which CalPERS directly owns a property. While Managers and Delegates are responsible for gathering and analyzing information relevant in identifying and hiring a Responsible Contractor, compilation of this list does not depend solely on them. Instead, this Policy 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 associations, and governments.

- H. **Annual Review and Data Forms** – Managers must file a Responsible Contractor annual report with CalPERS. The annual review of Managers compliance with the Policy shall coincide with reviews of compliance with the CalPERS Disabled Veteran Business Enterprise policy, if applicable. Managers shall present summary data in a format described and approved by CalPERS. They shall include evidence showing that they have made good faith efforts to monitor their Delegates for compliance with this Policy and undertaken appropriate steps to correct or deal with violations, and to cause each Delegate to do the same with respect to its Sub-Delegates.

The annual review shall determine whether each Manager or Delegate conducted a good faith outreach program and a competitive bidding process that includes Responsible Contractors. A Manager or Delegate will not be faulted merely because a Responsible Contractor does not

respond to the invitation to bid. For each bidder, the Manager or Delegate is obliged to gather appropriate responsible contractor information and make a judgment concerning the principal requirements described in Section IV. CalPERS shall focus on a Manager's and its Delegates' overall pattern of conduct and not any one specific incident.

- I. **Competitive Bidding** – Managers and Delegates shall create a bidding process for RCP Contracts that includes notification and invitations to bid distributed to a broad spectrum of potential bidders, particularly those identified as Responsible Contractors. This obligation will be deemed satisfied if bids are solicited on a publicly accessible web site, but CalPERS encourages Managers and Delegates using this approach to include a feature in their web sites permitting potential bidders to sign up for automatic e-mail notification of projects open for bidding.

Large numbers of bidders do not necessarily assure inclusion. Property Managers must take care in ensuring that bidders include potentially eligible Responsible Contractors. Managers and Delegates may choose a reasonable number of contractors to invite to bid from the list of Responsible Contractors or other would-be bidders. Given the time and expense required to solicit and evaluate bids, it is not essential to invite all potential bidders.

Although the Policy does not require hiring union workers, Managers and Delegates must invite trade unions (through web site postings or other means) whose members work in the region where the work is to be performed to participate in the following:

1. Deliver to the Manager or Delegate lists of names and telephone numbers of Responsible Contractors and local trade councils and union halls in the region, including Responsible Contractors who expressed any interest in bidding.
2. Continually monitor the local markets, updating the lists.

Managers and Delegates shall maintain these lists supplied by the trade unions.

The review of the bids shall include consideration of loyalty, prudence, and competitive risk-adjusted returns, compliance with the CalPERS Disabled Veteran Business Enterprise policy, and adherence to this Policy.

An extension permitted by the terms of an RCP Contract is not subject to the competitive bidding requirement this section imposes. However, a new RCP Contract with an existing contractor to replace an expiring contract is subject to this requirement unless the contractor was a Responsible Contractor under the expiring contract and will remain one under the new contract.

- J. **Neutrality** – CalPERS will itself remain neutral, and it supports Manager neutrality, in the event a labor organization lawfully attempts to organize workers providing construction, maintenance, operation, or services at a RCP Investment. To remain “neutral” means not to take any action or make 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 Managers or Delegates from entering into private neutrality, labor peace or other lawful agreements with a labor organization seeking to represent or who currently represents workers at a RCP Investment.

Appendix 3 requires Manager and Delegate neutrality in certain situations.

Resolution of any interjurisdictional trade disputes shall be the responsibility of the unions (e.g., trades and the various state and national building trades councils). This Policy does not call for any involvement by Managers or Delegates in interjurisdictional trade disputes.

- K. **Enforcement** – This Policy is an important CalPERS policy. The Board expects the Staff to diligently monitor Managers for compliance with the Policy, just as it expects Managers to diligently monitor their Delegates and Sub-Delegates for compliance. If the Staff determines that a Manager has materially violated the Policy, either directly or by failing to take appropriate steps to prevent or remedy material Delegate or Sub-Delegate Policy violations, the Staff is to consider all reasonably available remedies and implement any appropriate ones that it determines will best address the violation in a manner that satisfies the Staff’s Fiduciary Duty Requirement, or recommend that the Board take such actions. For example, to the extent that CalPERS has the right to cancel its contract with a Manager that has violated this Policy, or to the extent the Manager has the right to cancel its contract with a Delegate that has violated this Policy or require a Delegate to cancel a contract with a Sub-Delegate that has violated this Policy, Staff may cancel the CalPERS contract with the Manager or request the Manager to secure cancellation of the Delegate or Sub-Delegate contract but only if doing so would not violate the Fiduciary Duty Requirement.

Unless a Manager promptly corrects a material Policy violation, the Staff shall place the non-complying Manager on a probation watch list. If the Manager does not modify this pattern of conduct, even after discussions with the Staff, CalPERS shall consider this pattern of conduct along with other information when it reviews the Manager for possible renewal. The key indicator is a pattern of conduct that is inconsistent with the provisions of the Policy.

CalPERS does not require that Managers of Delegates use any particular system for compliance. However, from time to time, the Staff may disseminate information and suggestions regarding efficient ways for complying with this Policy.

- L. **Complaints** – Formal complaint(s) may be submitted to CalPERS per the attached Complaint, Investigation and Resolution Process Regarding Potential Violations of the CalPERS Neutrality Trial Responsible Contractor Program Policy (Appendix 2).

Approved by the Policy Subcommittee:	September 11, 1998
Approved by the Investment Committee:	September 14, 1998
Revised by the Policy Subcommittee:	September 12, 2003
Approved by the Investment Committee:	October 14, 2003
Revised by the Policy Subcommittee:	March 12, 2004
Approved by the Investment Committee:	April 19, 2004
Revised by the Policy Subcommittee:	March 11, 2005
Approved by the Investment Committee:	April 18, 2005
Revised by the Policy Subcommittee:	June 10, 2005
Approved by the Investment Committee:	August 15, 2005
Revised by the Policy Subcommittee:	March 17, 2008
Approved by the Investment Committee:	April 21, 2008
First reading approved by Policy Subcommittee	June 15, 2009
Approved by the Investment Committee:	February 16, 2010

**APPENDIX 1**

**NEUTRALITY TRIAL RESPONSIBLE CONTRACTOR PROGRAM POLICY**

**CERTIFICATION OF RESPONSIBLE CONTRACTOR STATUS**

**GENERAL INFORMATION**

Company Name
Address
City
Telephone Number (    )                              Fax Number (    )
Ownership Structure (Please check one)
<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
Contractor's License #
<b>RESPONSIBLE CONTRACTOR STATUS <i>(Refer to definitions on reverse)</i></b>
Please check one of the following boxes:
1. <input type="checkbox"/> Meets all Responsible Contractor requirements
2. <input type="checkbox"/> Meets none of the Responsible Contractor requirements
3. <input type="checkbox"/> Meets certain of the Responsible Contractor requirements <i>(provide explanation below)</i>
If you have checked box 3 above, please provide an explanation below <i>(attach additional pages if necessary)</i> .
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 <i>(attach additional pages if necessary)</i> .
Explanation: _____
_____
5. Are you aware of any pending complaints that have been filed with your firm or 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 <i>(attach additional pages if necessary)</i> : _____
_____
<b>TARGETED VENDOR STATUS <i>(refer to definitions on reverse)</i></b>
Does your firm meet the definition of Service-Disabled Veteran Business Enterprise?
<input type="checkbox"/> Yes <input type="checkbox"/> No

**NEUTRALITY TRIAL PROGRAM COMPLIANCE**

Is your firm subject to the Neutrality Trial Program?

Yes

No

If your firm is subject to Neutrality Trial Program, have you complied with it in all respects?

Yes  No (if no, attach explanation)

**OWNER'S 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 that 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 with the Neutrality Trial Responsible Contractor Program Policy of CalPERS. Any contractor or subcontractor with a minimum contract size of \$100,000 should complete this form. CalPERS reserves the right to disclose the contents of this Self-Certification Form at its or its Manager's or Delegate's discretion.

**INTRODUCTION:**

The California Public Employees' Retirement System ("CalPERS") has a deep interest in the condition of workers employed by CalPERS and its Managers and Delegates. CalPERS, through the Statement of Investment Policy for the Neutrality Trial Responsible Contractor Program ("Responsible Contractor 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 CalPERS real estate and infrastructure investments. CalPERS endorses small business development, market competition and control of operating costs. CalPERS 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 CalPERS real estate and infrastructure investments. CalPERS 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 CalPERS policies regarding Disabled Veteran Business Enterprises contract participation.

**DEFINITIONS:**

**Responsible Contractor:** A business that pays workers a fair wage and a fair benefit as evidenced by payroll and employee records and who complies with the CalPERS Disabled Veteran Business Enterprise policy. The definition of fair benefits includes, but is 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 or infrastructure projects. Fair wages and fair benefits are based upon local market factors, that include the nature of the project (e.g. residential or commercial and public or private) comparable job or trade classifications, and the scope and complexity of services provided.

**Disabled Veteran Business Enterprise (DVBE) Policy:** CalPERS contractors shall make a good faith effort to comply with CalPERS annual contract participation goals by directing 3% of their CalPERS-related purchases of goods and services to Disabled Veteran Business Enterprises.

**Disabled Veteran Business Enterprise:** A business enterprise that is certified by the State of California, Office of Small Business & DVBE Services of the Department of General Services as meeting all of the following: (1) it is a business enterprise which is at least 51% owned by one or more Disabled Veterans, (2) the management and control of the daily business operations are controlled by one or more Disabled Veterans (the Disabled Veterans who exercise management and control are not required to be the same Disabled Veterans as the owners of the business concern), and (3) its home office is located in the United States and it is not a branch or subsidiary of a foreign corporation, foreign firm or other foreign-based business.

**Disabled Veteran:** A veteran of the military, naval or air services of the United States with a service-connected disability of at least 10 percent who is a resident of the State of California.

## **Appendix 2**

### **Complaint, Investigation and Dispute Resolution Process Regarding Potential Violations of the CalPERS Neutrality Trial Responsible Contractor Program Policy**

All complaints must be in writing and sent to CalPERS at the following address:

**California Public Employees' Retirement System  
Investment Office, Real Estate Unit  
400 Q Street, Suite E4800  
Sacramento, California 95814  
Attention: Senior Investment Officer, Real Estate  
Tel: 916-795-3400  
Fax: 916-795-3965**

The following outlines the complaint, investigation and resolution process:

**Step 1** - The complaining party contacts CalPERS Staff in writing, stating the complaint. The written complaint must document the specific allegation(s), the specific provision(s) in the RCP that is alleged to be violated, the property address, date, and parties involved. Please include any other information that may be pertinent to the matter.

**Step 2** - Staff will log the written complaint into the Responsible Contractor Complaint/Concern Log. The Complaint/Concern Log is maintained by the Staff. After the written complaint has been filed and logged into the Responsible Contractor Complaint/Concern Log, the complaining party may request in writing a copy of that contractor's completed Self-Certification Form.

**Step 3** - The Staff will contact the complaining party to gather additional information to fully understand the nature of the complaint(s). Also, upon receipt of a complaint, CalPERS may, in its discretion, disclose to the Manager or Delegate against which the complaint has been filed, the nature of the complaint, may provide a copy of the written complaint to the Manager or Delegate in question and may disclose the Delegate's Self-Certification Form to the complaining party.



**Step 4** - The Staff will work with the Manager that oversees the affected property (the subject of the complaint), to fully understand the matter. Such investigation may include, but not be limited to, determining whether the alleged conduct violates the RCP, and reviewing payroll and employee records, responsible contractor certifications and the alleged violator's conduct. CalPERS 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.

**Step 5** - Upon completion of the investigation, the Staff will issue a decision on the matter. If a violation of the RCP is deemed to have occurred, that finding will be communicated to the parties involved.

**Step 6** - If the Staff deems it necessary, a meeting may also be arranged with the complaining party to address any other outstanding concerns or to better inform the complaining party on how it can be more pro-active in increasing Responsible Contractor bidding on CalPERS related contracts. Appropriate parties involved in the matter will be invited to attend the meeting, including: CalPERS real estate staff, CalPERS legal staff, the affected Manager and the complaining party.

**APPENDIX 3**

**CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
STATEMENT OF INVESTMENT POLICY  
FOR  
NEUTRALITY TRIAL RESPONSIBLE CONTRACTOR PROGRAM POLICY  
  
NEUTRALITY TRIAL PROGRAM**

**February 16, 2010**

*This Policy is effective immediately, and shall expire on the second anniversary of its effective date.*

**I. PURPOSE**

This document establishes a special two-year Neutrality Trial Program (NTP) to determine whether it would be appropriate to modify CalPERS Neutrality Trial Responsible Contractor Program (RCP) to require certain Managers, Delegates, and Sub-Delegates to remain neutral when employees or labor organizations seek to organize employees who provide certain services to CalPERS RCP Investments. The NTP supplements but does not supersede the RCP except to the extent it requires Core Real Estate Program Managers, Delegates, and Sub-Delegates participating in the NTP to remain neutral with respect to such organizing efforts. Thus, for example, complaints about NTP violations should be made in accordance with the RCP's complaint procedures. Capitalized terms that are not defined elsewhere in the text of this document generally are defined in NTP Section IV.

Before implementing the NTP, CalPERS conducted an extensive investigation to determine whether requiring neutrality would affect investment performance, but the evidence was insufficient to make such a determination with certainty. To further enhance CalPERS knowledge and understanding of these matters, CalPERS adopted the NTP to give it an opportunity to make such a determination with respect to a significant but limited number of its RCP Investments.

## II. NTP TERMS

- A. **Managers, Delegates, and Sub-Delegates Subject to the NTP** – Because existing contracts generally prevent CalPERS from unilaterally requiring existing Real Estate Program Managers to participate in the NTP, the NTP only applies to Core Real Estate Program Managers who (a) voluntarily agree to be bound by the NTP, or (b) are initially retained by CalPERS while the NTP is in effect. Such Managers shall require their Delegates and Sub-Delegates retained on or after the NTP's effective date to agree to be bound by it, subject to the exceptions set forth in the NTP (e.g., for Exempt Contracts). Subject to those NTP exceptions, Managers shall encourage their then-existing Delegates and Sub-Delegates as of the NTP's effective date to voluntarily agree to be bound by the NTP. Exhibit I to this Policy is a rider form that Managers must use to secure a Delegate's or Sub-Delegate's agreement to be bound by the NTP. Managers may add other provisions or make minor changes to the rider, in either case if they are not materially inconsistent with it. Neutrality exceptions or limitations may not be added to the rider.
- B. **Neutrality** – If a labor organization lawfully attempts to organize a Manager's, Delegate's, or Sub-Delegate's employees, or if such employees themselves lawfully attempt to organize, their employer shall remain neutral, as set forth below. If that employer is a Delegate, the Manager that hired the Delegate also shall remain neutral. If that employer is a Sub-Delegate, the Delegate that hired the Sub-Delegate and the Manager that hired the Delegate also shall remain neutral.

Neutrality only is required as to employees of an employer subject to the NTP who provide maintenance, operation, or other property-related services (e.g., food services) at an RCP Investment pursuant to an RCP Contract that is not an Exempt Contract. Neutrality is not required as to employees providing professional services (e.g., accounting or property management services) or construction services.

For example, if a Manager's own employees provide maintenance services at an RCP Investment, the Manager would have to remain neutral if they attempt to organize. The Exempt Contract exception, by its own terms, would not apply.

A Manager, Delegate, or Sub-Delegate shall remain neutral at all times while it is subject to the neutrality requirement. However, prior to the commencement of any organizing efforts, a minor, unintentional violation of the neutrality requirement will not violate the NTP.

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To remain “neutral” means not to take any action or make 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 Managers or Delegates to enter, or prohibits them from entering, into private neutrality, labor peace or other lawful agreements with a labor organization representing or seeking to represent workers at a RCP Investment.

A Manager, Delegate, or Sub-Delegate shall notify employees with respect to whom the NTP requires it to remain neutral that it has agreed to be neutral, by providing the following notice to such employees in writing in any reasonable manner: “As required by our contract to provide [type of service] at [name of building], [name of contractor] has agreed to remain neutral if our employees who provide such services choose to join or form a union. This means that [name of contractor] will not do or say anything that either supports or opposes employee selection of a union.”

Resolution of any interjurisdictional trade disputes shall be the responsibility of the unions (e.g., trades and the various state and national building trades councils). This Policy does not call for any involvement by Managers, Delegates, or Sub-Delegates in interjurisdictional trade disputes.

- C. **Neutrality Requirement Exceptions** – If at the time a contract is entered into, a Manager, based on reasonable evidence, believes that requiring neutrality would materially adversely affect an RCP Investment (e.g., that its financial performance would suffer by more than the lesser of \$50,000 or a 10% increase in contract cost), the neutrality requirement shall not apply. An exception normally may be granted only after competitive bidding has failed to result in an acceptable bid because of the neutrality requirement. However, if it is virtually certain that competitive bidding would not produce an acceptable bid if neutrality were required, an exception may be granted without competitive bidding, e.g., when only one contractor could do the work because of proprietary software or equipment, and that contractor would not agree to neutrality. If a contract has been entered into requiring neutrality, but the Manager, based on reasonable evidence, believes that requirement should be waived for the reasons set forth in the preceding sentences, it may grant a neutrality exception.

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Within 30 days after granting a neutrality exception, the Manager shall send a written report to Staff explaining its decision. The form attached as Exhibit II to this document shall be used for making such reports. Staff may revise this form as Staff deems appropriate. Staff shall prepare an analogous report for exceptions it grants. Subject to reasonable limitations established by Staff, copies of exception reports will be sent by e-mail to labor representatives and Managers that have asked to be included in an exception report e-mail group.

If Staff, based on the information it obtains in these exception reports or otherwise, determines that a Manager has a practice of granting neutrality exceptions improperly (i.e., in a manner not permitted by the first paragraph of this section), it shall cancel the Manager's right to grant neutrality exceptions in the future. Thereafter, the Manager must request exceptions from the Staff, which shall be deemed granted unless rejected in writing by the Staff within two business days after receipt.

Staff shall review neutrality exceptions for appropriateness, with the assistance of experts and consultants if Staff determines that would be helpful. Staff shall report on neutrality exceptions in its RCP Policy Annual Report or more frequently as the Investment Policy Subcommittee requests.

- D. **Safe Harbor** – Because this is a trial program, Managers, Delegates, and Sub-Delegates will not be subject to termination for NTP violations unless they are flagrant, intentional, or repetitive. However, each Manager subject to the NTP shall make commercially reasonable, good faith efforts to prevent its Delegates and Sub-Delegates from violating the NTP, to remedy NTP violations when possible, and to warn or discipline Delegates and Sub-Delegates for NTP violations as appropriate. These efforts may involve communicating with affected labor unions or seeking their participation in remedial efforts.
- E. **Monitoring and Enforcing the NTP, and Reporting Results** – Managers and their Delegates and Sub-Delegates subject to the NTP shall file written reports on NTP compliance and consequences on a form provided by Staff and at the time it prescribes, e.g., every three months. Among other things, this report shall require information as to (1) organizing efforts at RCP Investments, (2) how, if any, the NTP has affected investment performance of individual RCP Investments, (3) whether Delegates or Sub-Delegates who have agreed to neutrality have abandoned or threatened to abandon contracts when organizing efforts commenced or appeared imminent, and (4) suggestions for making the neutrality requirement more appropriate or effective.

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Approximately every six months, Staff will schedule a meeting with Managers subject to the NTP and representatives of interested labor organizations to discuss NTP compliance and consequences. If significant NTP issues arise, Staff will notify the Board's Investment Policy Subcommittee and present recommendations for addressing those issues. The Staff will report on NTP compliance and consequences in the RCP Policy Annual Report.

In advance of these semi-annual meetings, CalPERS encourages unions that have an interest in the NTP to file written reports on their experiences under the NTP, how, if at all, it has affected CalPERS investments, and suggestions for making the neutrality requirement more appropriate or effective.

- F. **Underlying RCP** – The RCP as set forth in the document adopted on February 16, 2010 shall apply to all entities subject to the NTP while the NTP is in effect. The RCP, as in effect before the NTP was adopted, shall not apply. If changes are made to that RCP, a Manager subject to the NTP may elect to have those new terms apply.
- G. **Unforeseen Issues** – If unforeseen issues arise in the implementation, administration, or evaluation of the NTP, the Investment Committee shall have the power to take any actions it determines to be appropriate to deal with or resolve those issues. If there is insufficient time to secure such Investment Committee action, Staff shall have the power to take any actions it determines to be appropriate to deal with or resolve unforeseen issues. Staff shall promptly report any such actions it takes to the Investment Committee.

### III. EVALUATING NTP RESULTS

As to each Affected RCP Investment in isolation, its Manager shall (as part of the reporting required by NTP Section II.E.) advise CalPERS whether neutrality resulted in (a) reasonably quantifiable differences in investment return, and what they were, (b) the same, greater, or lesser labor risks, and (c) reasonably non-quantifiable investment performance impacts that in the aggregate were positive, neutral, or negative.

Within 60 days after each reporting period and at the end of the NTP's two-year trial period, Staff shall determine how, if any, the NTP's neutrality requirement affected investment performance of each Affected RCP Investment, taking an allocable portion of Incremental Costs into account, affected labor risks, or otherwise affected the investment).

At the end of the NTP trial period, Staff will report back to the Investment Committee with recommendations for going forward.

If considered for permanent inclusion, Staff shall make recommendations to the Board's Investment Policy Subcommittee on modifying the RCP to include a neutrality requirement as to the appropriate (but not yet determined) universe of RCP Investments, along with appropriate monitoring and enforcement mechanisms, e.g., ones that will not materially increase Incremental Cost.

If the Staff determines before the end of the NTP's two-year trial period that the NTP will be a success or failure, Staff shall notify the Investment Policy Subcommittee and shall recommend, in the case of NTP success, the immediate extension of a neutrality requirement to the appropriate universe of RCP Investments, with appropriate monitoring and enforcement mechanisms or, in the event of NTP failure, the immediate termination of the NTP.

Determinations of success or failure will be made in accordance with these guidelines, as reasonably interpreted and supplemented by Staff.

#### IV. DEFINITIONS

- A. **Affected RCP Investments** – RCP Investments with RCP Contracts subject to the NTP, subject to any sensible limitations the Staff may elect to establish. Managers and labor organizations will be asked to identify the Affected RCP Investments.
- B. **Delegate/Sub-Delegate** – A person or entity that a Manager or other Delegate retains (other than pursuant to an Exempt Contract) to provide services with respect to an RCP Investment. When a Delegate hires another Delegate, the latter is the former's "Sub-Delegate." Delegates and Sub-Delegates are collectively referred to as "Delegates" in the NTP unless the context indicates otherwise. For example, the general partner of a partnership that owns an office building that is an RCP Investment normally would be the Manager. The property manager that the Manager hires to manage the building would be a Delegate. In turn, if that Delegate hires another firm, e.g., a janitorial services company, to provide services with respect to the property, the janitorial services company would be the property manager's Sub-Delegate. If that Sub-Delegate, in turn, subcontracts with another firm, the subcontractor would be the Sub-Delegate of the janitorial services firm, and so on. However, any person or entity in such a delegation chain that performs services pursuant to an Exempt Contract would not be a Delegate or Sub-Delegate with respect to those services, nor would any person or entity it retains or subcontracts with to provide those services.

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- C. **Exempt Contract** – An RCP Investment-related contract (1) for professional services (e.g., architect, legal, or engineering services) or (2) for less than \$100,000. This threshold is applied both at the contract level and the subcontract level. For example, a \$1 million maintenance contract normally would not be an Exempt Contract, but a \$40,000 subcontract under it would be an Exempt Contract. Neither the NTP nor the RCP shall apply to an Exempt Contract.
- D. **Incremental Cost** – This is the cost of administering the NTP. It includes all NTP administration costs (including internal and external consulting, legal, and staff costs) that would not have been incurred under the basic RCP (Incremental Cost). It does not include (a) amounts already taken into account in determining Affected RCP Investments' return on investment, (b) the cost of establishing the NTP, (c) the cost of periodic stakeholder meetings and activities conducted pursuant to NTP Section II.E., and (d) the cost of analyzing its results or reporting on them to the Board or Board committees. Incremental Cost will include NTP enforcement costs.
- E. **Manager** – A person or entity that directly contracts with CalPERS to manage or otherwise control an RCP Investment, such as an investment manager or the general partner of a partnership in which CalPERS directly invests.
- F. **RCP Contract** – An RCP Investment-related contract (other than an Exempt Contract) for property-related services (such as cleaning maintenance, security, food and beverage service, and other services provided within the property that are specific to the nature of that asset, e.g., senior living operations, hotel operations, transportation assets, hospitals, etc.).
- G. **RCP Investment** – An RCP Investment, as defined in RCP Section III.J.
- H. **Staff** – The CalPERS Investment Office staff.



**EXHIBIT I**

**MODEL DELEGATE/SUB-DELEGATE  
CONTRACT RIDER  
AGREEING TO BE BOUND BY NTP**

**RIDER # \_\_\_\_\_  
TO CONTRACT DATED \_\_\_\_\_  
BETWEEN \_\_\_\_\_ AND  
\_\_\_\_\_ (CONTRACTOR))  
REQUIRING LABOR NEUTRALITY**

Services under the contract identified above (Contract) will be provided with respect to real estate beneficially owned by the California Public Employees' Retirement System (CalPERS). CalPERS has established a Neutrality Trial Program (NTP) to determine the potential impact on investments of requiring employer neutrality as to union or employee organizing efforts. By signing below, Contractor will be agreeing to be bound by the NTP while it remains in effect, which will be until \_\_\_\_\_, 2012, unless CalPERS terminates it sooner. The provisions of the NTP that apply to Contractor are as follows:

**1. Obligation to Remain Neutral**

If a labor organization lawfully attempts to organize Contractor's or its subcontractor's employees providing maintenance, operation, or property-related services at CalPERS-owned real estate listed below (RCP Investments), or if such employees themselves attempt to organize, [Name of entity retaining Contractor] and all parties to any such subcontract shall remain "neutral," as explained in the next paragraph. Neutrality only is required as to employees who service an RCP Investment.

To remain "neutral" means not to take any action or make 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 rider obligates Contractor to or prohibits 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 a RCP Investment.

Contractor shall notify employees with respect to whom it is to remain neutral that it has agreed to be neutral by providing the following notice to such employees in writing in any reasonable manner: "As required by our contract to provide [type of service] at [name of building], [name of contractor] has agreed to remain neutral if our employees who provide such services choose to join or form a union. This means that [name of contractor] will not do or say anything that either supports or opposes employee selection of a union."

Resolution of any interjurisdictional trade disputes shall be the responsibility of the unions (e.g., trades and the various state and national building trades councils). Subcontractor is not required to become involved in interjurisdictional trade disputes.

**2. Obligation to Require Subcontractors to Agree to Similar Rider**

If Contractor subcontracts any part of the Contract after signing this Rider, the subcontractor must agree to a rider similar to this one if the subcontract is worth at least \$100,000. Contact [name of Manager representative] at \_\_\_ for assistance in preparing an appropriate rider. If Contractor has already subcontracted part of this Contract and the subcontract is worth at least \$100,000, Subcontractor must promptly encourage its existing subcontractors to agree to such a rider. Contact [name of Manager representative] at \_\_\_ if Contractor believes that insisting on such a rider or enforcing such a rider will have adverse consequences.

**3. RCP Investments**

The RCP Investments at which Contractor will or may be performing services are:

- [Insert list]
- Any other investment [Name of entity retaining Contractor] designates in writing

**4. Obligation to Provide Information**

Contractor must provide information about the effects of requiring neutrality, as requested by [Name of entity retaining Contractor].

Agreed to this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
[NAME OF ENTITY  
RETAINING CONTRACTOR]

\_\_\_\_\_  
CONTRACTOR

**EXHIBIT II**

**CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
RCP NEUTRALITY TRIAL PROGRAM**

**NEUTRALITY EXCEPTION REPORT**

A Manager participating in the RCP Neutrality Trial Program must file this form with \_\_\_\_\_, at \_\_\_\_\_ within 30 days after it grants a neutrality exception under Section II.C. of the Neutrality Trial Program.

1. **Manager's Name:**
2. **Person to Contact at Manager for More Information (include contact information):**
3. **Date neutrality exception granted:**
4. **Date report filed with CalPERS:**
5. **Affected property:**
6. **Delegate/Sub-delegate granted exception:**
7. **Excepted contract (include description of covered work):**
8. **Value of excepted contract:**
9. **Reason for granting exception (include reasonable evidence showing that requiring neutrality would materially adversely affect the investment (e.g., describe how its financial performance would suffer by more than the lesser of \$50,000 or a 10% increase in contract cost)):**
10. **Additional information CalPERS should consider:**