# EXHIBIT 2

# DRAFT CONTRACT, MODULE 2

# SEC AND CORPORATE GOVERNANCE COUNSEL



BY AND BETWEEN

THE COMPTROLLER OF THE STATE OF NEW YORK, AS TRUSTEE

OF THE COMMON RETIREMENT FUND

AND

[FIRM NAME]

CONTRACT NUMBER: #ICM XXXX

**This Agreement** (“Agreement”) is by and between the Comptroller of the State of New York (the “Comptroller”), as Trustee of the Common Retirement Fund (the “CRF” or the “Fund”) whose principal office is located at 110 State Street, Albany, New York 12236, and [FIRM NAME], a professional association organized and existing under the laws of Delaware (“Counsel”) located at [Firm Address].

# W I T N E S S E T H

**WHEREAS**, the Comptroller is responsible for investing the monies of the Fund for the exclusive benefit of the New York State and Local Retirement System’s (the “System”) members, retirees and beneficiaries, and is authorized to manage and invest a portion of such assets in certain securities pursuant to the New York Retirement and Social Security Law; and

**WHEREAS**, the Comptroller, on [Date], pursuant to a Request for Proposals for Corporate Governance Counsel for the Fund (“RFP”), attached hereto as Exhibit A, sought to identify a pool of qualified law firms to serve from time to time as corporate governance counsel in connection with the Fund’s portfolio companies and corporate governance matters generally; and

**WHEREAS**, Counsel submitted a proposal and signed attachments (“Proposal”) to the RFP by the required date of [DATE], and attached hereto as Exhibit B; and

**WHEREAS**, based on the evaluation of the various proposals submitted in response to the RFP, the Comptroller has determined that Counsel possesses the skills and experience necessary to provide the corporate governance services described in the RFP (“Services”) and deems it to be in the best interest of the Fund to retain Counsel to perform such Services, if and when needed, in accordance with the RFP and the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

# ENTIRE AGREEMENT AND ORDER OF PRECEDENCE

This Agreement shall be deemed inclusive of the following documents. Only documents expressly mentioned below shall be deemed a part of this Agreement. Conflicts between these documents shall be resolved in the following order of precedence:

* 1. Appendix A – Standard Clauses for Contracts Entered Into By the Comptroller of the State of New York as Trustee of the New York State Common Retirement Fund;
	2. The Agreement – this document, including Appendices B through H as herein described:
* Appendix B – OSC Policy Statement on Discrimination and Harassment, Including Sexual Harassment;
* Appendix C – OSC Executive Order on Procurement Integrity and OSC Procurement Integrity Procedures;
* Appendix D – Insurance Regulations;
	1. Exhibit A – the RFP0005, including the Official Responses to Questions, and any and all amendments and addenda to the RFP;
	2. Exhibit B – the Proposal (Exhibits B1 – Technical Proposal, B2 – Cost Proposal, and B3 – Administrative Proposal), as modified by any clarifications thereto, and including all Attachments completed Appendices E, F, G, and H;
* Appendix E – Contractor’s Certifications/Acknowledgements;
* Appendix F – CRF Vendor Responsibility and Conflict of Interest Disclosure Form;
* Appendix G – Proposer’s Disclosure of Prior Non-Responsibility Determinations; and
* Appendix H – Material Conflicts of Interest Statement; and
	1. An **Executed Retainer**, if any.

This Agreement shall not be changed, modified or altered in any manner except by an instrument in writing executed by authorized representatives of Counsel and the Comptroller.

# ENGAGEMENT OF COUNSEL

In reliance on Counsel’s representations, warranties, and covenants set forth herein, the Comptroller hereby engages Counsel. Counsel accepts such engagement and agrees to perform its duties and fulfill its obligations with respect thereto upon the terms, and subject to the conditions, set forth herein.

# TERM

This Agreement shall commence upon the date of execution by the CRF and will continue for a period of four years (“Initial Term”). The CRF, at its sole discretion, shall have the option to extend the Agreement under the same terms for two additional one-year periods (“Extended Term”) (collectively, the Initial and Extended Terms are the “Term”).

# SERVICES

 Counsel shall perform the following services as described in Exhibit A [Module 2] at the request of Counsel to the

 Comptroller:

* 1. Provide legal research, analysis, advice, and counsel with respect to corporate and securities laws;
	2. Review and analyze corporate bylaws, charters, and certificates of incorporation;
	3. Analyze legal and regulatory requirements and prevailing corporate governance best practices;
	4. Consult with and advise with respect to drafting and submitting shareholder proposals;
	5. Review, analyze, and respond to no action requests made to the SEC by which companies seek to omit Comptroller-sponsored or co-sponsored shareholder proposals from corporate proxy materials;
	6. Draft, review, and render advice on press releases and shareholder communications;
	7. Provide advice regarding exempt solicitations, proxy voting, other proxy matters, and general annual meeting matters;
	8. Assist the in drafting comments responding to regulatory releases;
	9. Provide opinions and advice with respect to state and federal laws, rules promulgated by the SEC, and other regulatory agencies and stock exchanges;
	10. Represent the Comptroller and the Fund in administrative or judicial proceedings in corporate governance matters as directed;
	11. Provide full updates of all activity in all administrative or judicial proceedings, including all strategic decisions in any matter in which the Proposer represents the Comptroller and the Fund. Provide copies of all written documents and correspondence in the matter for review and approval in advance of release or filing. In addition, Proposers provide copies of opposing parties’ written documents and correspondence as soon as possible after receipt by the Proposer;
	12. Schedule periodic meetings and conference calls to discuss developments and strategies with respect to any matter in which the Proposer represents the Comptroller or the Fund; and
	13. Provide other legal services related to the Fund’s Corporate Governance work and its SEC filings, as requested.

Counsel is a member of a member of a pool of law firms and may or may not be appointed by the Fund to represent the Fund in any specific transaction or matter.

All decisions regarding commencing and pursuing corporate governance initiatives shall be made solely by the Comptroller or the Comptroller’s designated representative.

# COUNSEL REPRESENTATIONS, WARRANTIES & COVENANTS

Counsel hereby represents, warrants, and covenants that:

* 1. **Skill and Expertise**. Counsel possesses a high degree of skill and expertise with respect to the Services. Counsel will perform the Services in good faith and in a timely, competent and professional manner in accordance with applicable professional standards. Counsel, and its staff assigned to perform the Services, maintains and shall maintain throughout the Term hereof, the necessary qualifications, training, and licenses as may be required within the jurisdiction where the Services are to be performed and shall be legally entitled to work in such jurisdiction.
	2. **Compliance with Applicable Law**. Counsel, its partners, officers, directors, shareholders, and staff will comply with the standards set forth in the New York State Department of Financial Services (“DFS”) Regulations applicable to Counsel. Counsel must promptly notify the Fund of the commencement of any governmental investigation, enforcement action (or settlement action in lieu thereof), prosecution, proceeding, or governmental (criminal or civil) litigation against the Counsel or any staff assigned to provide the Services to the Fund (excluding, in the case of a staff member, any family court matters or non-felony traffic offenses). In addition, Counsel must notify the Fund of the commencement of any civil action reasonably likely to have a material adverse effect on Counsel or the Services.
	3. **Staff**. Counsel possesses the staff, resources, and ability to perform the Services, as requested at the reasonable direction and convenience of the Comptroller and the Fund. Counsel will make reasonable efforts to assign work to the least costly staff member with appropriate skill and experience. References to Counsel’s staff herein include other counsel, affiliates, entities, and firms assigned by Counsel to provide any of the services for which Counsel is retained.
	4. **Conflicts of Interest**. Counsel presently is not aware of any conflicts of interest with respect to Services and any other client representation, contract, or employment. Counsel shall promptly advise the Counsel to the Comptroller whenever it becomes aware of any situation that involves or appears to involve such a conflict of interest or potential conflict.
	5. **Prohibited Benefits**. Counsel represents and warrants that neither Counsel nor its staff has received or paid, or entered into an agreement to receive or pay, any compensation, fees, or any other benefit from or to any third party, including any subcontractor, in connection with the indirect or direct procurement of this Agreement.
	6. **Not Affiliated**. Counsel and its staff are not affiliated (as defined in Appendix D - Insurance Regulations) with the Comptroller, the New York State Office of the State Comptroller (“OSC”), the System, or the Fund.

# FIDUCIARY OBLIGATION

Counsel shall act as a fiduciary to the Comptroller and the Fund. In that regard, Counsel shall, in the discharge of its duties and the exercise of its powers hereunder and pursuant to the terms of any Executed Retainer:

1. act with the care, skill, prudence, and diligence that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and
2. be governed by the highest duty of care imposed by:
	1. the fiduciary standards in effect from time to time under federal and state law that apply to persons and entities serving in a similar capacity with respect to the Comptroller or CRF (including, without limitation, the standards set forth in the Regulations of the New York State Department of Financial Services (11 NYCRR Subpart 136-2), as they may be amended from time to time or any successor provisions);
	2. Sections 404 and 406 of Employee Retirement Income Security Act of 1974, as it may be amended (“ERISA”) (as if the Fund were an employee benefit plan subject to ERISA, including Title I thereof, and not a governmental plan within the meaning of section 3(32) of ERISA); and
	3. any other federal or state law affecting the Comptroller or CRF that may impose a higher or comparable standard.

# AUTHORITY OF COUNSEL

Counsel shall at all appropriate times make clear to the courts and other counsel that Counsel is not authorized to impinge on the authority of the New York State Attorney General to issue formal opinions construing the statutes or Constitution of the State of New York or to appear in court on behalf of the people of the State of New York or to represent the Comptroller in any capacity other than as provided herein.

Opinions prepared by Counsel construing the statutes or Constitution of the State of New York do not constitute the opinion of the State of New York unless the prior written approval of the Attorney General is obtained. Requests for said approval shall be submitted to the following:

Solicitor General

Appeals and Opinions Bureau

Department of Law

State Capitol

Albany, New York 12224

Counsel will not represent the Comptroller in judicial litigation or in any other proceeding related to the Services to be provided under this Agreement except where such services are specifically approved by the Counsel to the Comptroller. Such approval must be provided separately for each matter to be litigated and must be received prior to the commencement of services therefor.

# PUBLIC COMMUNICATION

1. **Public Statements**. Counsel shall not make any public statement regarding any matter in which it represents the Comptroller and any of the Services. Prohibited statements include, but are not limited to, communicating with the media, issuing public statements or press releases, and disclosing publicly any facts involving or relating to the Services [including litigation or other matters and/or the settlement thereof], without prior approval of the Comptroller’s designated representative. Counsel will fully cooperate with the Comptroller’s press office regarding requests for information and will assist in the preparation of documents relating to the Services as requested by the Comptroller’s designated representative or the Comptroller’s press office.
2. **Name and Seal.** Unless specifically authorized in writing by the Comptroller on a case-by-case basis, Counsel shall not use the name of the Comptroller, the Fund or the State of New York, its officials or employees, or the seal of the State of New York or seal of the New York State Office of the State Comptroller in any manner, including but not limited to: (i) in any advertisement, publication, press release or promotion; or (ii) as an express or implied endorsement of any such person or entity.

# RELATIONSHIP BETWEEN THE PARTIES

* 1. **Attorney-Client Relationship**. The relationship of Counsel to the Fund under this Agreement is that of an attorney serving a client, as an independent contractor.
	2. **Independent Contractor**. As an independent contractor, Counsel covenants and agrees that its staff will not hold themselves out as employees of the Fund or the State of New York, and that they will not make any claim, demand, or application for any right or privilege applicable to any employee of the Fund or the State of New York, including but not limited to, Workers’ Compensation coverage, Social Security coverage, or System benefits. Counsel shall be fully responsible to the Fund for the acts and omissions of Counsel (and its staff) in connection with the performance of Services and adherence to all Agreement terms and conditions.
	3. **Subcontracting Must be Pre-Approved by the Fund**. In the event that Counsel proposes to use other counsel or affiliates, participates in any agreement to share work, or otherwise engages any external entity or firm to provide services on a matter for which Counsel is retained, Counsel agrees that the Comptroller shall have the right to approve or disapprove, after appropriate review and/or interview(s), any such subcontractors or entities, prior to their performance of any Services.

# FEE AND EXPENSES

# Fees. Counsel will be compensated on an hourly basis for the Services, in accordance with the following fee schedule.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | **Discounted Hourly Rate Year One** | **Discounted Hourly Rate Year Two** | **Discounted Hourly Rate Year Three** | **Discounted Hourly Rate Year Four** | **Discounted Hourly Rate Year Five****(if extended)** | **Discounted Hourly Rate Year Six****(if extended)** |
| **Partners** | **$** | **$** | **$** | **$** | **$** | **$** |
| **Associates** | **$** | **$** | **$** | **$** | **$** | **$** |
| **Staff Attorneys** | **$** | **$** | **$** | **$** | **$** | **$** |
| **Of Counsels** | **$** | **$** | **$** | **$** | **$** | **$** |
| **Paralegals** | **$** | **$** | **$** | **$** | **$** | **$** |

**Expenses.** Reimbursement for expenses, whether reimbursement is pursuant to a contingency fee arrangement or otherwise, shall be limited to those actual and necessary expenses as described below. “Actual” expenses are at actual cost to Counsel and are in all cases net of any discounts by the provider to Counsel. The Fund will not reimburse any submissions deemed to be a part of Counsel’s overhead. Counsel’s hourly rates are inclusive of any and all clerical or support personnel and online database research charges such as LexisNexis and Westlaw. These items shall not be billed as reimbursable expenses. The Fund will audit all expenses.

* + - 1. **Eligible Expense Submission**. Expenses that are reimbursable must be separately itemized and accompanied by receipts. Any expense that is anticipated to exceed five hundred dollars ($500.00) must be pre-approved in writing by the Comptroller or the Comptroller’s designated representative. Court approval may be required before certain expenses are reimbursed. Reimbursable expenses will be limited to the following unless written authorization to exceed the specified limits or to bill for other items of expense is obtained in advance:
1. Travel: Travel expense reimbursements will be made in accordance with guidelines established by OSC. (See Office of the State Comptroller Travel Manual, available at [http://www.osc.state.ny.us/agencies/travel/manual.pdf).](http://www.osc.state.ny.us/agencies/travel/manual.pdf.%29) For current per diem reimbursement rates only, visit the GSA Domestic Per Diem Page (currently available at [http://www.gsa.gov/travel/plan-book/per-diem-rates),](%20http%3A//www.gsa.gov/travel/plan-book/per-diem-rates%29%2C%20) as such rates may be amended from time to time. Air travel will be reimbursed at coach rates. (Travel expenses are those actual costs incurred while traveling out of town in the performance of the Services.)
2. Express delivery charges; photocopying/reproduction charges performed by a third-party; court costs; deposition transcripts costs; and pre-approved costs associated with electronic discovery platforms
3. Pre-approved fees for experts, claims administrators, consultants, and other professionals
	* + 1. **Time Spent in Travel**. Travel time will be compensated at 50% of the above hourly fees. Counsel shall not bill the Fund for time spent in travel if such time is spent engaged in work for another client or clients.

# PAYMENT AND INVOICES

* + 1. **Payment**. In cases in which Counsel is compensated on an hourly basis, fees and expenses will be payable by the Fund in the ordinary course of business upon the Fund’s receipt of Counsel’s approved invoice.
		2. **Invoicing**.Invoices must be submitted monthly unless the total invoice amount covering a billing period of one month is less than $1,000, in which event that amount may be submitted on the following month’s invoice. All invoices must include:
1. A detailed itemization of requested fees. Billing for services not separately delineated (commonly known as “block billing”) is not acceptable.
2. The Agreement #ICM XXXX and Counsel’s taxpayer identification number.
3. The name, title and billing rate of each individual performing services, the date(s) each billed service was rendered, a detailed description of each such service, and the amount of time (delineated in tenth of an hour increments) devoted to each such service, and a summary of the total number of hours of services performed by each person, in tenth of an hour increments.
4. Services for different matters should be invoiced on separate invoices.
5. A list of all reimbursable expenses, including travel, itemized by category with receipts, including copies of all bills submitted by third parties for services rendered to Counsel on behalf of the Comptroller.
6. The total invoice amount.
7. The beginning and ending dates of the billing period to which the invoice applies.]
	* 1. **Submission**. All invoices must be submitted to:

Office of the State Comptroller

Legal Services Division

110 State Street, 14th Floor

Albany, NY 12236

ATTN: Secretary to the Counsel to the Comptroller

# NOTICES

Except as otherwise expressly set forth herein, or as otherwise required by applicable law with respect to any legal notices, demands, requests, or other communications in connection with any legal, judicial or quasi-judicial, action, claim, matter or proceeding, any notice required or which may be given hereunder must be in writing and delivered personally or sent by certified, registered, or express mail, postage prepaid, but in all cases will be deemed given when actually received at the following addresses:

# TO THE COMPTROLLER:

Name: Nelson R. Sheingold

Title: Counsel to the Comptroller

Address: Office of the State Comptroller

 110 State Street, 14th Floor

 Albany, NY 12236

Telephone: (518) 474-3444

# TO COUNSEL:

Name:

Title:

Address:

Telephone:

E-mail:

Either party, by notice in writing served upon the other as herein, may designate from time to time a different mailing address or a different or additional person to which all such notices or demands to that party thereafter are to be addressed.

# CONFIDENTIALITY

1. **Fund Confidential Information**. Counsel shall take all appropriate measures to protect the confidentiality of all information supplied to it or developed by it during the course of its performance hereunder (“Confidential Information”).
2. **Counsel Obligation**. Counsel’s obligation to the Fund shall be that of attorney and client and shall be subject to Counsel’s duty of confidentiality to its clients. Counsel shall maintain the confidentiality of all Confidential Information to the maximum extent permitted by law, and safeguard Confidential Information with at least the same level of care and security, using all reasonable and necessary security measures, devices, and procedures, that Counsel uses to maintain its own confidential information. Counsel represents and warrants that it has developed, implemented, and shall maintain comprehensive data security, disaster recovery, and business continuity programs (together, the “Security Programs”) reasonably designed to protect information and conduct its business in accordance with current industry standards and applicable law. Counsel further represents and warrants that it will monitor its Security Programs and audit such Security Programs at least annually. Counsel agrees to adjust its Security Programs as necessary in accordance with the results of such audits [and to make its audit reports available to the Fund upon request].
3. **Unauthorized Access, Use, or Disclosure**. Counsel must immediately notify the Fund in the event of any unauthorized access, use, or disclosure of Confidential Information (including any breach or compromise of Counsel’s computer data, applications, networks or devices or the applications, networks, or devices of Counsel’s contractors or service providers that access, store, process, or otherwise interact with Fund Confidential Information), or in the event of Counsel’s receipt of a valid order or mandatory request from a judicial, administrative, or governmental agency having jurisdiction over it, for Confidential Information. Notice to the Fund under this Section C. Unauthorized Access, Use, or Disclosure will be made by:
	* + Contacting OSC’s Information Security Office by telephone at 518-474-9487 and by email to: iso@osc.ny.gov; and
		+ Contacting the Fund’s Director of Operations, Michael Kelly, by telephone at 518-375-8151 and by email at mkelly@osc.ny.gov (or such other contact which the Fund may provide in writing).
4. **Transmission**. The parties agree to use a secure method of and/or product for transmission and sharing of confidential Fund data and documents to facilitate the Services. Such method and/or product and appropriate security requirements, such as encryption requirements, limits on access to Confidential Information and ability to download Confidential Information, and restrictions on storage and retention of Confidential Information are subject to the prior written approval of the Fund. Reasonable costs associated with such transmission and sharing will be the responsibility of Counsel.
5. **Destruction**. Promptly after the termination or conclusion of the Agreement, Counsel must sanitize Fund data so as to protect that data (except where Counsel is required to retain Fund data pursuant to professional standards or applicable law). After such sanitization, Counsel must certify to the Fund that such destruction has been completed in accordance with the Office of Information Technology Services Policy for Sanitization/Secure Disposal in NYS-S13-003 or successor policy.

# BACKGROUND INVESTIGATIONS

* 1. **Counsel Investigation of Staff**.Background investigations must be conducted by Counsel on its non-attorney employees [and by Counsel affiliates and subcontractors on their non-attorney employees] who will provide any of the Services or who will have access to Fund confidential information (“Covered Employees”).
		1. **Background Investigation Certification.** Counsel certifies that it [and its affiliates and subcontractors] has or will conduct a background investigation on Covered Employees prior to the Covered Employee’s commencement of Services. Counsel must obtain, unless prohibited by applicable law, the consent of such Covered Employees to allow the Office of the State Comptroller Inspector General to audit the results of these background investigations, and (i) to review unredacted background investigation records, including supporting documentation, and (ii) to conduct its own background investigation. The Fund reserves the right to prohibit any Covered Employees from providing Services if they do not provide such consent when requested by the IG. Counsel agrees to undertake a background investigation of any new/replacement Covered Employees during the Term of the Agreement. Only Covered Employees who have passed the background investigation shall be assigned to provide Services.
		2. **Background Investigation Requirements**. At a minimum, background investigations shall include a review/evaluation of the following:
* identity verification, including Social Security Number or national identity number search, as applicable;
* employment eligibility, including verification of U.S. citizenship or legal immigration status, where appropriate;
* sanctions and OFAC search (including SEC information sheet);
* criminal history/court records (Federal, state and local for the past five years), as permitted under applicable law;
* work experience/history for the past five years;
* pertinent skills, qualifications, and education/professional credential verification; and
* references.

* 1. **Subcontracts.** The Consultant agrees to incorporate into any subcontracts permitted by this Agreement, and require any subcontractor or affiliates to incorporate into each of their subcontracts, the same obligations imposed herein upon Consultant with regard to the above background investigation obligations, and expressly accrue those obligations directly to the benefit of the Fund.

# INDEMNIFICATION AND LIABILITY

* 1. **Counsel Liability and Indemnification**. Subject to the applicable New York State laws and standards with respect to attorney malpractice, Counsel shall be fully liable for any act or omission of Counsel, its staff and its subcontractors, and shall fully indemnify, defend, and hold harmless the Comptroller, the Fund, and the System, and their officials, agents and employees (“OSC Indemnitees”), without limitation, from charges, claims, investigations, suits, or proceedings, damages, and costs (including reasonable attorneys’ fees and expenses) without limitation, as a result of: (i) the negligence, willful misconduct, fraud, bad faith, or violation of applicable law or regulation by Counsel or any of its staff; or (ii) the breach by Counsel (or any of its affiliates or subcontractors) of any of the representations, warranties, or obligations set forth in this Agreement; provided however that Counsel shall not be liable or obligated to indemnify for that portion of any claim, loss, or damage arising hereunder due to the negligence or willful misconduct of the Comptroller or the Fund.
	2. **Third Party Claims**. For third party claims, the Comptroller shall give the Litigation Counsel:
1. prompt written notice of any action, claim, suit, proceeding, or threat of such action for which Litigation Counsel is required to indemnify the OSC Indemnitees;
2. the opportunity to take over, settle, or defend any such action, claim, suit, or proceeding at Counsel’s sole expense; and
3. reasonable assistance in the defense of any such action, claim, suit or proceeding at the expense of Counsel.
	1. **Right to Join**. Notwithstanding the foregoing, the OSC Indemnitees reserve the right to join such action, claim, suit, or proceeding at its sole expense, if it determines there is an issue involving a significant fiduciary interest.
	2. **Force Majeure**. None of Litigation Counsel, the Comptroller, the Fund, or the System shall be liable for any delay or failure in performance beyond its control resulting from acts of war, hostility or sabotage; act of nature; electrical, internet, or telecommunications outage that is not caused by the obligated party; or government restrictions, or other force majeure. The parties shall use reasonable efforts to eliminate or minimize the effect of such force majeure events upon performance of their respective duties under this Agreement. If such event continues for more than 90 days, either party may terminate all or any agreed upon portion of the Services immediately upon written notice. This Section does not excuse either party’s obligation to take reasonable steps to follow its normal disaster recovery procedures, or the Fund’s obligation to pay for Services provided by Counsel which have been approved by the Fund.
	3. **Liability Limitations**. Notwithstanding the above, neither party shall be liable for any consequential, indirect, or special damages of any kind which may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by the Fund, Counsel, or by others. Neither the Comptroller nor the Fund, nor any officer, employee, or agent thereof, will have any personal liability, directly or indirectly, under or in connection with this Agreement or any agreement made or entered into pursuant to the terms hereof.
	4. **Set Off**. The Comptroller may, in addition to other legal remedies available retain from amounts otherwise due Counsel such monies as may be necessary to satisfy any claim for damages the Comptroller, the Fund or the System may have against Counsel.

# TERMINATION AND SUSPENSION

1. **Fund Termination or Suspension With 15 Days’ Notice**. The Comptroller reserves the right to terminate or suspend this Agreement and any Executed Retainer, or terminate or suspend the services with respect to a specific matter or matters, with or without cause, upon 15 days’ prior written notice.
2. **Immediate Fund Termination or Suspension**. The Comptroller reserves the right to terminate or suspend this Agreement, and any Executed Retainer, or to terminate or suspend the services with respect to a specific matter or matters, immediately upon written notice to Counsel, if the Comptroller deems Counsel’s performance unsatisfactory at any time during the term of this Agreement, in the Comptroller’s sole discretion.
3. **Effect of Termination or Suspension**. In the event of termination, Counsel shall be entitled to compensation for services performed through the date of termination which are acceptable to the Comptroller, in the Comptroller’s sole discretion. In the event of suspension, Counsel shall be entitled to compensation for non-suspended services which are acceptable to the Comptroller, in the Comptroller’s sole discretion.
4. **Transition**. In the event of termination or conclusion of this Agreement, Counsel agrees to perform such transition services as the Counsel to the Comptroller may reasonably request in connection with the transfer of any pending matters, including all draft pleadings and the results of all research not yet shared with the Comptroller, to a successor law firm. Counsel agrees to reasonably cooperate with any successor law firm to facilitate such transition.

# MISCELLANEOUS PROVISIONS

1. **Review**. Counsel shall submit to a review by, and respond in writing to any inquiry or request for information, the New York State Department of Financial Services concerning fees paid and services rendered hereunder.
2. **Waiver**. The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other subsequent default or breach.
3. **Severability**. The terms, clauses and provisions of this Agreement are intended to be severable, and the unconstitutionality, illegality or unconscionability of any term, clause or provision shall in no way affect the enforcement of any other term, clause or provision.
4. **Counterparts**. This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which, when taken together, shall constitute one instrument.
5. **Ethics Compliance**. Counsel certifies that:
	1. Counsel, and those assigned by Counsel to perform Services under this Agreement have read and understand the provisions of Public Officers Law §§73 and 74 including without limitation:
		1. the provisions of §73 (subd 5) which provides that, (i) no statewide elected official, state officer or employee, individual whose name has been submitted by the governor to the senate for confirmation to become a state officer or employee, member of the legislature or legislative employee shall, directly indirectly solicit, accept or receive any gift having more than a nominal value, whether in the form of money, service, loan, travel, lodging, meals, refreshments, entertainment, discount, forbearance or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him or her, or could reasonably be expected to influence him or her, in the performance of his or her official duties or was intended as a reward for any official action on his or her part; and (ii) no person shall, directly or indirectly, offer or make any such gift to a statewide elected official, or any State officer or employee, member of the legislature or legislative employee under such circumstances (clauses (i) and (ii) collectively, the “Gift Restrictions”).
		2. the provisions of §73 (subd 8), which sets out (i) a two-year bar on a State employee from appearing before his or her former agency after leaving State service, and (ii) a lifetime bar on a State employee from rendering services on any matters with respect to which he or she was directly concerned during State service and in which he or she personally participated, or which was under his or her active consideration during State service.
	2. Counsel, and those assigned by Counsel to perform Services under the Agreement shall not: (i) offer or provide any gift or hospitality to a State employee in violation of said Gift Restrictions, (ii) assign any former State employee to appear before OSC, the System or the CRF to perform Services in violation of the two-year bar, or (iii) assign any former State employee to the render Services in violation of the lifetime bar.
	3. Counsel will include these ethics restrictions in its policies.
	4. Counsel will promptly report to the Fund any non-compliance with the above requirements to:

Office of the State Comptroller

 110 State Street – 14th Floor

Albany, New York 12236

Attn: Special Counsel for Ethics

and

Office of the State Comptroller

110 State Street – 14th Floor

Albany, New York 12236

Attn: CRF Director of Compliance

This certification is material to the Agreement and the Fund intends to rely on it. Failure to comply may result in termination of the Agreement and/or other civil or criminal proceedings as required by law.

1. **Survival.** The provisions of Sections XII Confidentiality, XIII Indemnification and Liability, and XIV Termination and Suspension, and Appendix A shall survive the expiration or termination of this Agreement.

# REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement.

In addition to the acceptance of this Agreement, the CRF and Counsel signatures on this page also certify that originals of this signature page will be attached to all other originals of this Agreement.

|  |
| --- |
| **Contract Number: ICM XXXX** |
| **[FIRM NAME]** | **Comptroller of the State of New York****As Trustee of the Common Retirement Fund** |
|  |  |
| **Signature** | **Signature** |
|  | **Nelson Sheingold**  |
| **Printed Name** | **Printed Name** |
|  | **Counsel to the Comptroller**  |
| **Title** | **Title** |
|  |  |
| **Date** | **Date** |
| **COUNSEL’S ACKNOWLEDGEMENT****STATE OF }** **} SS.:** **COUNTY OF }**On the day of in the year 20 , before me personally appeared , known to me to be the person who executed the foregoing instrument, who, acknowledged to me that he/she maintains an office at , and further that he/she is the of , the business described in the foregoing instrument; that he/she is authorized to execute the foregoing instrument on behalf of the business for the purposes set forth therein; and that, pursuant to that authority, he/she executed the foregoing instrument in the name of and on behalf of the business as the act and deed of the business. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**Notary Public****Registration No.**  |

**APPENDIX A**

**STANDARD CLAUSES FOR CONTRACTS ENTERED INTO BY THE COMPTROLLER OF THE STATE OF NEW YORK AS TRUSTEE OF THE**

**NEW YORK STATE COMMON RETIREMENT FUND**

The parties to the attached contract, license, lease, amendment, or other agreement of any kind (the “**Contract**”) agree to be bound by the following clauses, which are hereby made a part of the Contract. As used in this Appendix A, the term “**Contracting Party**” refers to any party to the Contract other than the Comptroller of the State of New York (the “**Comptroller**”) as Trustee of the New York State Common Retirement Fund (the “**Fund**”), or the Fund itself.

**1. NON-ASSIGNMENT CLAUSE.** Neither the Contract nor any of the Contracting Party’s right, title, or interest herein may be assigned, transferred, subcontracted, conveyed, sublet, or otherwise disposed of without the prior written consent of the Fund, and any attempts to assign the Contract without the Fund’s written consent shall be null and void.

**2. NON-DISCRIMINATION REQUIREMENTS.** The Contracting Party will comply with all applicable State and Federal statutory and constitutional anti-discrimination provisions relating to employment.

**3. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the New York State Labor Law, or a building service contract covered by Article 9 thereof, neither the Contracting Party’s employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Department of Labor. Furthermore, the Contracting Party and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rate for overtime pay, as determined by the State Department of Labor in accordance with the Labor Law.

**4. INTERNATIONAL BOYCOTT PROVISIONS.** The Contracting Party agrees, if the Contract exceeds $5,000, as a material condition of the Contract, that neither the Contracting Party nor any substantially owned or affiliated person, firm, partnership, or corporation has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979 (50 USC App. Sections 2401, et seq.) or any successor act thereto, as amended from time to time, or regulations promulgated thereunder. If such Contracting Party, or any of the aforesaid affiliates of the Contracting Party, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the Contract’s execution, the Contract shall be rendered forfeit and void. The Contracting Party shall so notify the Comptroller within five (5) business days of such conviction, determination or disposition of appeal.

**5. RECORDS.** The Contracting Party shall establish and maintain complete and accurate books, records, documents, accounts, and other evidence directly pertinent to performance under the Contract (collectively, the “Records”). The Records must be kept for the balance of the calendar year in which they are created and for six (6) additional calendar years thereafter. The Fund, or, at the sole discretion of the Comptroller, the Attorney General or any other person or entity authorized by the Comptroller to conduct an examination, shall have access to the Records during normal business hours at an office of the Contracting Party within the State of New York, or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing, and copying. The Fund shall take reasonable steps to protect from public disclosure any of the Records that are exempt from disclosure under Section 87 of the Public Officers Law (the “Statute”), provided that: (i) the Contracting Party timely informs an appropriate official, in writing, that the Records should not be disclosed; (ii) the Records are sufficiently identified; and (iii) designation of the Records as exempt under the Statute is appropriate as determined by the Comptroller. The Contracting Party hereby consents to: (i) submit to a review by the Superintendent of the New York State Department of Financial Services of fees paid by the Fund to the Contracting Party and services rendered by the Contracting Party to the Fund; and (ii) respond in writing to any inquiry or request for information by the Superintendent of the New York State Department of Financial Services concerning fees paid by the Fund to the Contracting Party and services rendered by the Contracting Party to the Fund, in each case, pursuant to the terms of the Contract. Nothing contained herein shall diminish, or in any way adversely affect, the Fund’s right to discovery in any pending or future litigation.

**6. NON-DISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND.** If the Contracting Party has business operations in Northern Ireland, it shall take lawful steps in good faith to conduct those business operations in accordance with the MacBride Fair Employment Principles relating to non-discrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland and, upon the request of the Comptroller, shall permit independent monitoring of the Contracting Party’s compliance with such principles.

**7. CONFLICTING TERMS.** In the event of a conflict between the terms of the Contract (including any and all attachments thereof) and the terms of this Appendix A, the terms of Appendix A shall control.

**8. GOVERNING LAW.** Unless otherwise expressly agreed to by the Parties, the Contract shall be administered, construed, and enforced according to the laws of the State of New York (without regard to any conflict of laws provisions) to the extent such laws have not been preempted by applicable federal law. Any action at law, suit in equity, or other judicial proceeding for the enforcement of the Contract or any provisions thereof shall be instituted only in the courts of the State of New York. Any suit for money damages against the Fund must comply with the New York State Court of Claims Act.

**9. NO ARBITRATION.** Disputes involving the Contract, including the breach or alleged breach thereof, shall not be submitted to binding arbitration.

**10. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules, the Contracting Party hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon the Contracting Party’s actual receipt of process or upon the Fund’s receipt of the return thereof by the United States Postal Service as refused or undeliverable. The Contracting Party must promptly notify the Fund, in writing, of each and every change of address to which service of process can be made. Service by the Fund to the last known address shall be sufficient. The Contracting Party will have thirty (30) calendar days after service hereunder is completed in which to respond.

**11. CONFLICTS DISCLOSURE.** If this is a Contract for investment management services, investment advisory services, or any related service or product, the Contracting Party represents and covenants that it (i) does not have any conflict of interest not previously disclosed to the Fund in writing that could reasonably be expected to impair its ability to provide unbiased and objective investment advice or decisions, (ii) will promptly disclose in writing to the Fund any such conflict that it may have hereafter, and (iii) will annually file a statement with the Fund that it is in compliance with these requirements, which statement shall include the following language:

“[THE CONTRACTING PARTY] ACKNOWLEDGES THAT IT OWES THE COMPTROLLER AND THE COMMON RETIREMENT FUND A FIDUCIARY DUTY. THIS MEANS THAT, AMONG OTHER THINGS, [THE CONTRACTING PARTY] MUST DISCLOSE TO THE COMPTROLLER INFORMATION ABOUT MATERIAL CONFLICTS OF INTEREST. [THE CONTRACTING PARTY] ACKNOWLEDGES THAT FAILURE TO TRUTHFULLY COMPLETE THIS STATEMENT MAY RESULT IN CRIMINAL OR CIVIL LIABILITY.”

**12. POLITICAL CONTRIBUTIONS.** If this is a Contract for investment management or investment advisory services, the Contracting Party represents that neither it nor any of its Covered Associates (as defined in the Investment Advisers Act of 1940, as amended (the “Advisers Act”)) has made any political contributions that would be in violation of Rule 206(4)-5 or Rule 204-2 under the Advisers Act with respect to the Contract.

**13. CERTAIN REQUIREMENTS.** The Contracting Party will take no action (or fail to take a required action) (a) in violation of any relevant anti-money laundering legislation, rule, regulation, or order administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury, including Subtitle B, Chapter V of Title 31 of the U.S. Code of Federal Regulations, in each case as amended from time to time, or (b) enter into any transaction or activity with (i) any Person appearing on the Specially Designated Nationals and Blocked Persons List of the Office of Foreign Assets Control in the United States Department of the Treasury, (ii) any other Person with whom a transaction is prohibited by Executive Order 13224, the USA PATRIOT Act, the Trading with the Enemy Act, or the foreign asset control regulations of the United States Treasury Department, in each case as amended from time to time, (iii) any Person known by the Contracting Party (after reasonable inquiry) to be controlled by any Person described in the foregoing items (i) or (ii), or (iv) any Person having its principal place of business, or the majority of its business operations (measured by revenues), located in any country described in the foregoing item (ii). The Contracting Party also agrees that it will not make any payment to any Person in violation of the U.S. Foreign Corrupt Practices Act (as amended from time to time), or any other applicable anti-money laundering or anti-terrorism statute or regulation. For the purposes of this provision, the term “Person” includes any individual, partnership, firm, corporation, limited-liability company, joint venture, association, trust, unincorporated organization, nation, government, territory, or other political or governmental agency, authority, or unit.

**14. MWBE STRATEGY.** Pursuant to Retirement and Social Security Law Section 423-C, the Comptroller has established a Minority- and Women-Owned Business Enterprise (“MWBE”) asset management and financial institution strategy (“strategy”) which includes tracking and reporting on the identity and participation of MWBE entities that do business with the Fund. In accordance with the strategy, the Contracting Party will cooperate with the Comptroller or his representatives who seek information needed to determine the minority and women composition of the Contracting Party’s owners and managers.

**15. NO INDEMNIFICATION.** The Fund will not indemnify nor hold harmless the Contracting Party from suits, damages, costs, or attorney fees in actions brought by third parties against the Contracting Party.

**16. PRIOR NON-RESPONSIBILITY DETERMINATIONS.** By signing the Contract, the Contracting Party certifies that within the past four years it has not been found to be non-responsible based on [i] impermissible Contacts or other violations of New York State law, or [ii] the intentional provision of false or incomplete information to a governmental entity. If this certification is intentionally false or intentionally incomplete, the Comptroller may exercise his right to terminate the Contract; in that event the Contract shall be deemed terminated and of no further force and effect within five (5) days from the date the Comptroller provides written notification to the Contracting Party of such termination. If the Contracting Party cannot certify as to the above, prior to signing the Contract it must disclose such finding(s) of non-responsibility and explain the circumstances that led to such findings. If such disclosure and/or explanation is/are intentionally false or intentionally incomplete, the Comptroller may exercise his right to terminate the Contract as stated above.

**17. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS**. To the extent applicable to the Contract, the Contracting Party shall comply with the provisions of General Business Law Sections 899-aa and 899-bb (Stop Hacks and Improve Electronic Data Security Act); State Technology Law Section 208, as each such provision may hereafter be amended.

**18. Prohibited Benefits Relating to the Contract**. By signing the Contract, the Contracting Party certifies that neither it, nor any affiliate, any predecessor company or entity, nor any owner, any director, any officer, or any key person of it, nor any of its staff, has received or paid, or entered into an agreement to receive or pay, any compensation, fees, or any other benefit from or to any third party, including any subcontractor, to influence the outcome in connection with the direct or indirect procurement of this Contract.

February 15, 2022

**APPENDIX B**

**OSC POLICY STATEMENT ON DISCRIMINATION AND HARASSMENT,**

**INCLUDING SEXUAL HARASSMENT**

**DISCRIMINATION AND HARASSMENT**

It is the policy of the Office of the State Comptroller (“OSC”) to provide a workplace that is free of discrimination and harassment based on race, color, sex (including sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender), creed or religion, age, national origin, disability, marital status, military or veteran status, predisposing genetic characteristics, domestic violence victim status or any other classification protected by state or federal law, rule or regulation or executive order.

Discrimination is defined as the failure or refusal to hire, promote, or train an individual or treat that individual equally with respect to compensation, terms, conditions or privileges of employment because of that individual’s membership in any one of the above classes. Harassment based upon a person’s membership in any of the above classes is included within the definition of discrimination.

In keeping with its policies, OSC reaffirms that it will not tolerate such discrimination or harassment in its workplace and that it will take appropriate action to prevent and stop the occurrence of such conduct in its workplace. OSC employees and any third parties who interact with OSC employees in the workplace are expected to avoid any behavior or conduct that could be interpreted as discrimination/harassment based on membership in any of the above classes.

Examples of conduct that may constitute harassment based upon membership in one of the above classes include, but are not limited to:

* kidding or teasing related to membership in, or characteristic of one of the above classes, such as laughing at or mimicking someone’s physical or mental impairment, foreign accent, etc.;
* using ethnic or racial slurs;
* conduct that denigrates or shows hostility toward an individual because of protected class status, and that has the purpose or effect of creating an intimidating, hostile or offensive environment; and
* telling jokes that belittle a member or members of one of the above classes.

**SEXUAL HARASSMENT**

Sexual harassment, a form of discrimination, is defined as unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual’s sex when:

* such conduct is made either explicitly or implicitly a term or condition of employment;
* submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual’s employment; or
* such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive work environment, even if the complaining individual is not the intended target of the sexual harassment.

Examples of sexual harassment include, but are not limited to, sexual innuendo; suggestive comments; sexually-oriented kidding, teasing or practical jokes; jokes about gender-specific traits; jokes about sexual orientation, or perceived masculinity or femininity of individuals; foul or obscene language or gestures; display of foul, obscene or sexually suggestive printed or visual material; physical conduct such as touching or patting; sexually-oriented email or phone mail messages; suggestive or obscene letters, notes, or invitations; inappropriate discussions of a person’s physical appearance; or unwelcome gifts and attention.

A perpetrator of harassment can be a superior, subordinate, co-worker or anyone in the workplace, including an independent contractor, contract worker, vendor, client, customer or visitor.

Questions about what behavior constitutes discrimination or harassment, including sexual harassment, or requests for OSC Executive Orders and policies on such matters may be directed to the OSC Division of Diversity Management at (518) 473-1368.

August 31, 2021

**APPENDIX C**

**OSC EXECUTIVE ORDER ON** **PROCUREMENT INTEGRITY**

Whereas, it is the policy of the Office of the State Comptroller (OSC) and the New York State Common Retirement Fund (CRF) to procure goods and services in a fair, equitable and open manner and to protect the procurement process from improper influences; and

Whereas, procurement lobbying activities must be monitored and documented to assure the integrity of the procurement process;

Now, therefore, I, Thomas P. DiNapoli, Comptroller of the State of New York, in consideration of the foregoing, do hereby order as follows;

1. Applicability. This executive order applies to determinations by OSC or CRF to award a contract for the acquisition of any goods, services, or information technology. Decisions to invest or disinvest CRF assets in securities, properties, or other investment vehicles, and selections of investment advisors or managers whose services are integral to the administration of CRF investments, remain subject to the Comptroller’s fiduciary responsibility to administer the CRF prudently to increase and preserve CRF assets on behalf of its beneficiaries. In addition, selection of counsel to represent the CRF in transactional, investment or litigation matters remain subject to the Comptroller’s fiduciary responsibilities. Although such CRF investment decisions and selections are not subject to this executive order, they shall be made in a fair and equitable manner, in accordance with the Comptroller’s fiduciary responsibilities.
2. General Counsel. The General Counsel shall have general responsibility for the prevention of improper influence relative to all procurement contracts awarded by OSC or CRF. The General Counsel shall form such committees or draw upon OSC staff as needed to fulfill this responsibility.
3. Procedural Controls. The General Counsel shall develop, in consultation with the executive staff of OSC, procedural controls in the form of written Procurement Integrity Procedures. Such procedures shall:
	1. require that decisions made on the award of procurement contracts shall be made in accordance with Article 11 of the State Finance Law, free from any improper influence;
	2. require that any OSC employee who has direct knowledge of any improper influence or attempted improper influence shall immediately make a record of the improper influence or attempted improper influence relating to a bid, proposal or a procurement contract and notify the General Counsel or appropriate Division of Legal Services staff designated by the General Counsel;
	3. prohibit contact relating to a bid or proposal, during the procurement process, between all OSC personnel involved in the determination of the procurement contract award and any employee, agent, or consultant of a bidder or proposer competing for the contract, except for contacts authorized by the procedures established pursuant to this executive order;
	4. establish procedures for appropriate contacts between OSC personnel involved in the determination of a procurement contract award and the employees, agents or consultants of a bidder or proposer for the purpose of clarifying a bid or proposal. Such authorized contacts shall only be for the purpose of providing information to OSC personnel to assist them in understanding and assessing the qualities, characteristics and anticipated performance of a product or service offered by a bidder or proposer, and shall occur only at such times and in such manner as have been authorized by the procedures established pursuant to this executive order;
	5. provide for appropriate contacts between OSC personnel and the employees, agents or consultants of a proposer for the purpose of negotiating contract terms after the evaluation of bids or proposals and selection of a contractor have been completed;
	6. establish a process for the review by the General Counsel of any allegations of improper influence or attempted improper influence, and for the imposition of sanctions if such improper activity has been found to exist.
4. Incorporation of Procedural Controls in Contract Documents. The Procurement Integrity Procedures required by this executive order shall be incorporated into all OSC and CRF procurement solicitations and contracts.
5. Periodic Review. The General Counsel shall periodically review the Procurement Integrity Procedures with OSC personnel in order to ascertain potential areas of exposure to improper influence and to adopt desirable revisions for more effective avoidance of improper influences.
6. Sanctions. Any OSC employee who violates the Procurement Integrity Procedures may be subject to disciplinary action. Any vendor who violates the Procurement Integrity Procedures may be found to be a non-responsible vendor, and on the basis of such finding, may be ineligible to receive a contract award.

 /s/

Thomas P. DiNapoli

Comptroller, State of New York

Last Revised Date: March 14, 2007

Original Date: February 14, 2002

**OSC PROCUREMENT INTEGRITY PROCEDURES**

In order to ensure that procurements of goods or services[[1]](#footnote-1) by the Office of the State Comptroller (OSC) or the Common Retirement Fund (CRF) are conducted in a fair, equitable and open manner, the procedures set forth below shall apply to the procurement process.

The General Counsel to the Comptroller shall have general responsibility for the prevention of improper influence relative to all procurement contracts awarded by OSC or CRF.

A copy of these Procurement Integrity Procedures will be given to every OSC employee, consultant, or other person assigned to any task related to an OSC or CRF procurement. A copy of these procedures will be incorporated into every Request for Information (RFI), Request for Proposals (RFP) or Invitation for Bids (IFB) issued by OSC or CRF.

Any OSC employee who violates these procedures may be subject to disciplinary action, such as a reprimand, suspension, demotion, or dismissal. Any vendor who violates these procedures may, after notice and an opportunity to be heard, be determined to be a non-responsible vendor, and on the basis of such a determination may be ineligible to receive a contract award.

Every reasonable effort will be made to assure compliance with these procedures, but a minor deviation from these procedures that does not impair the fairness and integrity of the procurement process will not require the invalidation of a contract award.

1. OSC employees must provide every interested vendor[[2]](#footnote-2) with an equal opportunity to compete. No information may be given to one vendor without being made available to all other interested vendors. Vendors should be asked to submit every substantive question[[3]](#footnote-3) concerning the procurement in writing not later than the date specified by OSC for such questions; and a copy of each question, together with OSC’s written answer, should be supplied to all interested vendors and included in the procurement record.
2. Unless otherwise directed by the General Counsel to the Comptroller, OSC’s Assistant Comptroller for Administration or a designee will serve as the coordinator for all procurement-related contacts between OSC personnel and vendor personnel. All telephone calls, correspondence, and meeting requests must be routed to: Assistant Comptroller for Administration, Office of the State Comptroller, 110 State Street – 13th Floor, Albany, NY 12236, telephone: (518) 474-7574, Fax: (518) 473-9377, Email: RFP@osc.state.ny.us. OSC’s Assistant Comptroller for Administration, or a designee, will maintain a record of all such contacts.
3. A vendor may not exert or attempt to exert any improper influence[[4]](#footnote-4) relating to the vendor’s bid or proposal. Any OSC employee who has direct knowledge of any improper influence or attempt to exert an improper influence concerning a procurement contract shall immediately make a record of the improper influence or attempted improper influence and notify the General Counsel to the Comptroller. The General Counsel to the Comptroller shall thereupon cause an investigation to be made and shall recommend such action, if any, as may be necessary.
4. Unless otherwise directed by the General Counsel to the Comptroller, OSC’s Assistant Comptroller for Administration or a designee will be responsible for approving and scheduling all contacts between OSC employees and vendor personnel concerning procurements.
5. Vendors are expected to obtain information relating to an OSC or CRF procurement only from an OSC employee or other person designated by OSC. Vendors who seek information from other sources are cautioned that they rely on such information at their own risk.
6. Every IFB and RFP shall require vendors to identify in their bids or proposals the persons authorized to represent the vendor by name, address, telephone number, place of principal employment and occupation. This requirement applies not only to vendor employees involved in the submission of the vendor’s bid or proposal but also to every individual or organization employed or designated by the vendor to attempt to influence the procurement process[[5]](#footnote-5). If, after submission of a bid or proposal, a vendor retains an individual or organization to attempt to influence the procurement process, then the name, address, telephone number, place of principal employment and occupation of such individual or organization shall be disclosed in writing to OSC or CRF prior to any contact with OSC or CRF and such disclosure shall be included in the procurement record. IFBs and RFPs shall require that vendors indicate in their bids or proposals or subsequent disclosures whether each contact individual or organization has a financial interest in the procurement.
7. All contacts between OSC personnel and vendor personnel during which a procurement-related matter is discussed in any way must be by telephone, in writing, or in person at the place of business of OSC or the vendor or at a place designated by OSC. Written documentation of all such discussions must be filed by the Assistant Comptroller for Administration or designee in the procurement record.
8. During the procurement process no lunch, dinner, or other meal shall be accepted by a member of the OSC staff from an interested vendor, except that a presentation, interview or similar session occurring at the place of business of OSC or a vendor or at a place designated by OSC may include a refreshment break.
9. The evaluations of competing bids or proposals and the recommendations and deliberations of OSC evaluation or selection committees shall be based solely on the merits of the bids or proposals, free from any improper influence.
10. Prior to the public release by OSC or CRF of an Invitation for Bids (IFB) or Request for Proposals (RFP), no OSC employee may disclose the contents of any portion of an IFB or RFP to any person not employed by OSC or any other person not authorized by the Assistant Comptroller for Administration or designee unless such disclosure is specifically authorized by the Assistant Comptroller for Administration, who shall only authorize such disclosure if he or she determines that such disclosure will not impair the fairness and integrity of the procurement process.
11. The evaluation of competing bids or proposals shall be conducted strictly in accordance with the detailed evaluation and selection procedures documented in the procurement record prior to the initial receipt and opening of the bids or proposals. The Assistant Comptroller for Administration or a designee shall issue the detailed evaluation and selection procedures to the members of the evaluation and selection committees prior to the distribution of the bids or proposals to the committee members for evaluation.
12. During the evaluation and selection phases of the procurement process, no OSC employee may disclose any part of a bid or proposal to any other person, except that (i) a member of an evaluation or selection committee may discuss a proposal with another member of the same committee, and (ii) a member of an evaluation or selection committee may disclose a proposal or a portion of a proposal to a person assigned to assist in the evaluation or selection process, as described below.
13. With the approval of the Assistant Comptroller for Administration or designee, evaluation or selection committees may appoint OSC employees or other experts to provide supporting services or information to assist in the evaluation of proposals and the selection of a contractor.
14. At the discretion of the Assistant Comptroller for Administration or a designee, any person to whom a bid or a proposal or a portion of a bid or a proposal is disclosed may be required to comply with a written non-disclosure or confidentiality agreement setting forth the terms and conditions under which such person is entrusted with the bid or proposal or portion thereof.

October 11, 2011

**APPENDIX D**

**INSURANCE REGULATIONS**

**(11 NYCRR Part 136)**

**OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK**

**TITLE 11. INSURANCE**

**CHAPTER IV. FINANCIAL CONDITION OF INSURER AND REPORTS TO SUPERINTENDENT**

**SUBCHAPTER F. PUBLIC RETIREMENT SYSTEMS**

**PART 136. PUBLIC RETIREMENT SYSTEMS**

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**§136-2.1 Purpose**

(a) [Section 314(b) of the Insurance Law](https://advance.lexis.com/document/?pdmfid=1000516&crid=e012edfb-98cf-411f-ba1d-6955ef4fefc3&pddocfullpath=%2Fshared%2Fdocument%2Fadministrative-codes%2Furn%3AcontentItem%3A5WYW-NFT1-JSJC-X1P9-00009-00&pdtocnodeidentifier=AALAAFAAGAACAADAAC&ecomp=26vck&prid=49bf0cf7-61bf-4aa5-85cf-5ccbc62469c2) authorizes the Superintendent of Financial Services to promulgate certain standards with respect to the public retirement and pension systems of the State of New York or of a municipality thereof. Specifically, subsection (b) states as follows:

“(b) Notwithstanding any other provision of law to the contrary, the superintendent shall have, in addition to any other powers conferred upon him by law, the following authority with respect to any system: \*\*\*

(2) to promulgate and amend from time to time, after consultation with the administrative heads of systems and after a public hearing, standards with respect to actuarial assumptions, accounting practices, administrative efficiency, discharge of fiduciary responsibilities, investment policies and financial soundness...”

(b) This Subpart establishes standards for the management of the New York State and Local Employees’ Retirement System and the New York State and Local Police and Fire Retirement System (hereinafter, collectively, “the Retirement System”), and the New York State Common Retirement Fund (hereinafter “the Fund”). These standards are intended to assure that the conduct of the business of the Retirement System and the Fund, and of the State Comptroller (as administrative head of the Retirement System and as sole trustee of the Fund) are consistent with the following principles:

(1) the retirement system and the fund shall operate under a strong governance framework with a rigorous system of internal controls;

(2) the retirement system and the fund shall maintain a high level of operational transparency;

(3) the Comptroller shall adhere to and manage the retirement system and the fund with the highest ethical, professional and conflict of interest standards;

(4) the Comptroller shall have a fiduciary responsibility to act for the sole benefit of the retirement system’s members and beneficiaries; and

(5) the retirement system and the fund shall be managed in the most efficient and effective manner possible.

**§136-2.2 Definitions**

The following words and phrases, as used in this Subpart, unless a different meaning is plainly required by the context, shall have the following meanings:

(a) Retirement system shall mean the New York State and Local Employees’ Retirement System and the New York State and Local Police and Fire Retirement System.

(b) Fund shall mean the New York State Common Retirement Fund, a fund in the custody of the Comptroller as trustee, established pursuant to Section 422 of the Retirement and Social Security Law, which holds the assets of the retirement system.

(c) Comptroller shall mean the Comptroller of the State of New York in his capacity as administrative head of the Retirement System and the sole trustee of the fund.

(d) OSC shall mean the Office of the State Comptroller.

(e) Consultant or advisor shall mean any person (other than an OSC employee) or entity retained by the fund to provide technical or professional services to the fund relating to investments by the fund, including outside investment counsel and litigation counsel, custodians, administrators, broker dealers, and persons or entities that identify investment objectives and risks; assist in the selection of investment managers, securities, or other investments; or monitor investment performance.

(f) Investment manager shall have the meaning set forth in [Retirement and Social Security Law section 424-a(2)(a)](https://advance.lexis.com/document/documentslider/?pdmfid=1000516&crid=4be74a4d-6d6a-46c4-971d-3d15ddcf6f98&pdistocdocslideraccess=true&config=&pddocfullpath=%2Fshared%2Fdocument%2Fadministrative-codes%2Furn%3AcontentItem%3A62Y5-GRH1-JN6B-S51H-00009-00&pdcomponentid=237259&pdtocnodeidentifier=AALAAFAAGAACAADAAD&ecomp=4sfyk&prid=e012edfb-98cf-411f-ba1d-6955ef4fefc3).

(g) Placement agent or intermediary shall have the meaning set forth in [Retirement and Social Security Law section 424-a(2)(b)](https://advance.lexis.com/document/documentslider/?pdmfid=1000516&crid=4be74a4d-6d6a-46c4-971d-3d15ddcf6f98&pdistocdocslideraccess=true&config=&pddocfullpath=%2Fshared%2Fdocument%2Fadministrative-codes%2Furn%3AcontentItem%3A62Y5-GRH1-JN6B-S51H-00009-00&pdcomponentid=237259&pdtocnodeidentifier=AALAAFAAGAACAADAAD&ecomp=4sfyk&prid=e012edfb-98cf-411f-ba1d-6955ef4fefc3).

(h) Investment policy statement shall mean a written document that, consistent with law, sets forth a framework for the investment program of the fund.

(i) Third party administrator shall mean any person or entity that contractually provides administrative services to the retirement system, including receiving and recording employer and employee contributions, maintaining eligibility rosters, verifying eligibility for benefits or paying benefits and maintaining any other retirement system records. Administrative services do not include services provided to the fund relating to fund investments.

(j) Unaffiliated Person shall mean any person other than: (1) the Comptroller or a family member of the Comptroller, (2) an officer or employee of OSC, (3) an individual or entity doing business with OSC or the fund, or (4) an individual or entity that has a substantial financial interest in an entity doing business with OSC or the fund. For the purpose of this paragraph, the term “substantial financial interest” shall mean the control of the entity, whereby control means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the entity, whether through the ownership of voting securities, by contract (except a commercial contract for goods or non-management services) or otherwise; but no individual shall be deemed to control an entity solely by reason of his being an officer or director of such entity. Control shall be presumed to exist if any individual directly or indirectly owns, controls or holds with the power to vote ten percent or more of the voting securities of such entity.

(k) Family member shall mean any person living in the same household as the Comptroller, and any person related to the Comptroller within the third degree of consanguinity or affinity.

**§136-2.3 Fiduciary Responsibilities**

(a) The Comptroller is a fiduciary and as such shall act solely in the interests of the members and beneficiaries of the retirement system. At all times the Comptroller shall perform his or her responsibilities with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

(b) The fund shall at all times be under the control of the Comptroller, who shall adopt an investment policy statement and any amendments to such as needed. Key elements of an investment policy statement shall include, without limitation:

(1) investment purpose;

(2) investment objectives;

(3) roles and responsibilities of the Comptroller, and the Comptroller’s staff and committees, with respect to investments of the assets of the fund;

(4) investment guidelines and limits encompassing all types of investments;

(5) asset allocation targets, including procedures for rebalancing;

(6) standards for measuring investment performance and evaluating investment risk; and

(7) any other guidelines adopted by the Comptroller with respect to specific investment related issues, including, but not limited to, securities lending, proxy voting, brokerage, and securities litigation.

(c) No investment or loan transaction shall be made by the fund unless the same has been approved in writing by the Comptroller. The Comptroller may delegate his or her powers of investment to a committee or agent of the Comptroller in accordance with the fund’s investment policy statement. Such committee or agent shall render timely written reports of its activities to the Comptroller under a schedule to be established by the Comptroller, and shall render special reports whenever requested by the Comptroller. The Comptroller shall furnish any such reports promptly upon the request of the superintendent.

(d) In respect to the delegation of investment powers, the Comptroller shall regularly review:

(1) the present holdings in the investment account;

(2) any material changes in the account during the preceding period;

(3) the reasons for such changes and the results achieved thereby;

(4) the investment activity in the account including the rate of turnover; and

(5) any other factors that the Comptroller considers pertinent to an analysis of financial performance and planning, consistent with his or her obligation as a fiduciary.

(e) The Comptroller shall adopt, as shall be deemed necessary, such mortality, service and other tables recommended by the retirement system’s actuary and certify the rates of deduction from compensation and ascertain contributions by the employers computed to be necessary to pay the benefits authorized under the provisions of law. The Comptroller shall also submit to the superintendent, in writing, the reasons for the decision not to adopt such recommendations presented by the retirement system’s actuary.

(f) The Comptroller shall not reverse, reject, or unduly delay the adoption of the recommendations of the retirement system’s medical board in the performance of its statutory duty, unless such rejection, reversal or delay is supported by objective reasons stated, in writing, by the Comptroller.

(g) The Comptroller shall ascertain when contributions to the retirement system are due and institute appropriate procedures to enforce prompt payment thereof. Contributions for a fiscal year that are more than three months overdue shall be reported to the superintendent by a schedule appended to the annual statement filed with the Department of Financial Services.

(h) Neither the Comptroller, nor any consultant or advisor, investment manager, agent or employee, shall:

(1) deal in the assets of the retirement system or the fund for his or her own account;

(2) act in any capacity in any transaction involving the retirement system or the fund on behalf of a party whose interests are adverse to the retirement system or the fund;

(3) receive any consideration from any party other than OSC, the retirement system or the fund in connection with a transaction involving the retirement system or the fund; or

(4) own or maintain any indicia of ownership or personal interest in any assets of the retirement system or the fund other than an interest in the retirement system as a member or beneficiary.

(i) The Comptroller shall require proper minutes of meetings of any committee established by law, regulation or the Comptroller. The Comptroller shall furnish such minutes promptly upon the request of the superintendent.

(j) The Comptroller shall be responsible for ensuring that all members of any committees established by law or regulation or by the Comptroller to assist in the management of the retirement system or in the investment of the assets of the fund have been, (1) provided with appropriate information pertaining to their duties and their fiduciary and ethical responsibilities and (2) provided training with respect to discharge of their fiduciary duties and responsibilities to the fund.

**§136-2.4 Governance Responsibilities and Ethics Provisions**

(a) Committees.

(1) The Comptroller shall appoint committees required by statute, regulation, or executive order of the Comptroller, including but not limited to, the Investment Advisory Committee and the Real Estate Advisory Committee (also known as the Mortgage Advisory Committee) required by [Section 423 of the Retirement and Social Security L](https://advance.lexis.com/document/documentslider/?pdmfid=1000516&crid=2cbf7444-d9d5-4b4a-a730-d63f971137cc&pdistocdocslideraccess=true&config=&pddocfullpath=%2Fshared%2Fdocument%2Fadministrative-codes%2Furn%3AcontentItem%3A62Y5-GRH1-JN6B-S51D-00009-00&pdcomponentid=237259&pdtocnodeidentifier=AALAAFAAGAACAADAAF&ecomp=4sfyk&prid=a8f60f8e-d004-4489-ba24-cef599b3f7ba)aw. The Comptroller shall establish and administer written ethical standards applicable to the members of such committees. The ethical standards shall establish a financial disclosure and conflicts of interest process designed to ensure that decisions are made for the benefit of the retirement system members and beneficiaries. Such ethical standards shall be published on the OSC public website.

(2) The Comptroller shall authorize the investment advisory committee to review the investment policy statement and offer advice regarding amendments to the investment policy statement as needed.

(3) The Comptroller shall develop a process to receive and investigate complaints from any source, or upon his or her own initiative, concerning allegations of corruption, fraud, criminal activity, conflicts of interest or abuse by a committee member. The process shall be set forth in written guidelines and such guidelines shall be published on the OSC public website.

(b) Employees.

(1) All employees of OSC who have responsibility for matters related to the fund are subject to the applicable provisions of the Public Officers Law.

(2) All employees of OSC who have responsibility for matters related to the fund shall be provided training with respect to discharge of their duties and responsibilities to the fund.

(3) The Comptroller shall develop a process to receive and investigate complaints from any source, or upon his or her own initiative, concerning allegations of corruption, fraud, criminal activity, conflicts of interest or abuse in OSC by a State officer or employee relating to his or her office or employment. The process shall be set forth in written guidelines and such guidelines shall be published on the OSC public website.

(c) Investment managers, and consultants or advisors.

(1) The Comptroller shall require that investment managers, and consultants or advisors:

(i) promptly disclose to the fund in writing any conflict of interest the investment manager or consultant or advisor may have which could reasonably be expected to impair the investment manager’s, or consultant or advisor’s ability to render unbiased and objective advice; and

(ii) file annually with the fund a statement acknowledging that they are aware of and that they are in compliance with the above standard. Such statement shall contain the following language:

“ALL INVESTMENT MANAGERS, AND CONSULTANTS OR ADVISORS OWE THE COMPTROLLER A FIDUCIARY DUTY. THIS MEANS THAT INVESTMENT MANAGERS, OR CONSULTANTS OR ADVISORS MUST DISCLOSE TO THE COMPTROLLER INFORMATION ABOUT MATERIAL CONFLICTS OF INTEREST. FAILURE TO TRUTHFULLY COMPLETE THIS STATEMENT MAY RESULT IN CRIMINAL OR CIVIL LIABILITIES”.

(2) The Comptroller shall establish transparent procurement guidelines and procedures with respect to procurement of all investment managers, and consultants or advisors. Such guidelines and procedures shall be published on the OSC public website. The method of selection of investment managers, and consultants or advisors shall be documented in writing, in a procurement record.

(3) The Comptroller shall develop a process to receive and investigate complaints from any source, or upon his or her own initiative, concerning allegations of corruption, fraud, criminal activity, conflicts of interest or abuse by a person or entity having business dealings with the fund relating to such dealings. The process shall be set forth in written guidelines and such guidelines shall be published on the OSC public website.

(d) Placement agents or intermediaries. In order to preserve the independence and integrity of the fund, to prevent potential conflicts of interest, and to assist the Comptroller in fulfilling his or her duties as a fiduciary to the fund, the fund shall not engage, hire, invest with, or commit to an investment manager that is using the services of a placement agent or intermediary to assist such investment manager in obtaining investments by the fund, nor shall the fund engage, hire, invest with, or commit to an investment manager without obtaining from such investment manager a certification in the form and manner prescribed by the fund stating that such investment manager has not used the services of a placement agent or other intermediary to assist such investment manager in obtaining investments by the fund.

(e) Audit committee. Consistent with his or her obligations as a fiduciary, the Comptroller shall establish an audit committee for the retirement system and the fund comprised exclusively of unaffiliated persons, one of whom shall reflect the interests of public employees and one of whom shall reflect the interests of public employers. The Comptroller shall:

(1) develop and audit committee charter for the committee;

(2) establish written standards for the selection of audit committee members;

(3) authorize the audit committee to review and report to the Comptroller on the internal audit plans and the internal audit and regulatory examination reports related to the retirement system and the fund;

(4) authorize the audit committee to review and report to the Comptroller on the procurement of external auditor services by the retirement system and the fund;

(5) authorize the audit committee to review and report to the Comptroller on the annual audit process related to the retirement system and the fund and the Comprehensive Annual Financial Report, which shall include meeting with external auditors to review the adequacy of internal controls and significant findings and recommendations; and

(6) authorize the audit committee to develop quarterly progress reports to the Comptroller that, at a minimum, discuss:

(i) the audits of the retirement system and the fund scheduled to be conducted, along with the scope of the audits;

(ii) the audits of the retirement system and the fund completed; and

(iii) significant audit findings and recommendations related to the retirement system and the fund.

**§136-2.5 Transparency and Financial Reporting**

(a) All records, including work papers for the preparation of the annual statement filed with the superintendent, shall be available to the Department’s examiners and be maintained in accordance with the requirements of 11 NYCRR Part 243 (Regulation No. 152).

(b) The comptroller shall require that all agreements with consultants or advisors, investment managers, or third party administrators include provisions that require the person or entity to:

(1) submit to a review by the superintendent concerning fees paid by the fund and services rendered to the fund; and

(2) respond in writing to any inquiry or request for information by the superintendent concerning fees paid by the fund and services rendered to the fund.

(c) Books of account and records of the retirement system and of the fund shall be maintained by fiscal year for which the retirement system files reports.

(d) The comptroller shall maintain a classification of its accounts, numbered and titled, together with an accurate description of the content of each account by debit and credit. The classification of accounts shall be consistent with the requirements of the accounting and financial reporting standards of the Governmental Accounting Standards Board and of any other reporting requirement judged to be necessary by the superintendent.

(e) The comptroller shall maintain records that set forth the expenses incurred by the retirement system and the fund on their behalf in the course of operations.

(f) The comptroller shall have on his or her staff an internal auditor who shall report to the comptroller and shall submit regular reports of the audits of the retirement system’s and fund’s records, accounting procedures, and investment operations, including recommendations for improvement and correction. The comptroller shall require the internal auditor to conduct audits on an annual basis based on risk assessment criteria of the operations of the retirement system and the fund, including audits of business relationships with the retirement system and the fund. The comptroller shall share all internal and external audit reports related to the retirement system and the fund with the audit committee. The comptroller shall furnish any such reports promptly upon the request of the superintendent.

(g) The comptroller shall:

(1) file with the superintendent an annual statement in the format prescribed by [section 307 of the Insurance Law](https://advance.lexis.com/document/documentslider/?pdmfid=1000516&crid=6983f370-a98c-4ab3-ab08-ed4fe8b70dae&pdistocdocslideraccess=true&config=&pddocfullpath=%2Fshared%2Fdocument%2Fadministrative-codes%2Furn%3AcontentItem%3A62Y5-GRH1-JN6B-S528-00009-00&pdcomponentid=237259&pdtocnodeidentifier=AALAAFAAGAACAADAAG&ecomp=4sfyk&prid=2cbf7444-d9d5-4b4a-a730-d63f971137cc), including the retirement system’s financial statement, together with an opinion of an independent certified public accountant on the financial statement;

(2) file with the superintendent the Comprehensive Annual Financial Report within the time prescribed by law, but no later than the time it is published on the OSC public website;

(3) disclose on the OSC public website, on at least an annual basis, all fees paid by the fund to investment managers, consultants or advisors, and third party administrators;

(4) disclose on the OSC public website the fund’s investment policies and procedures; and

(5) require fiduciary and conflict of interest reviews of the fund every three years by a qualified unaffiliated person.

**§136-2.6 Financial Soundness and Actuarial Principles**

(a) Consistent with his or her obligations as a fiduciary, the Comptroller shall establish an actuarial committee comprised exclusively of unaffiliated persons that have expertise and experience in actuarial science.

(b) The Comptroller shall:

(1) develop an actuarial committee charter for the committee;

(2) establish written standards for the selection of actuarial committee members;

(3) authorize the actuarial committee to make recommendations to the retirement system actuary regarding actuarial assumptions and methodologies; and

(4) authorize the actuarial committee to review and report to the Comptroller on the financial soundness of the retirement system.

**§136-2.7 Implementation**

**(**a) Failure to implement provisions of applicable law or regulation shall be regarded as a breach of fiduciary responsibility.

(b) The Comptroller, any officer or employee of OSC, or any other person or entity having a fiduciary responsibility to the fund, who willfully violates or knowingly participates in a violation of any fiduciary standard promulgated pursuant to [Section 314 of the Insurance Law](https://advance.lexis.com/document/documentslider/?pdmfid=1000516&crid=a6ebbd21-f4dc-4850-811b-ad14e7b74293&pdistocdocslideraccess=true&config=&pddocfullpath=%2Fshared%2Fdocument%2Fadministrative-codes%2Furn%3AcontentItem%3A5WYW-NFM1-JKPJ-G1C9-00009-00&pdcomponentid=237259&pdtocnodeidentifier=AALAAFAAGAACAADAAI&ecomp=4sfyk&prid=0caa6155-821a-41b4-8267-1991dff27575) or other applicable law or regulation, shall be guilty of a breach of fiduciary responsibility.

(c) In the event the superintendent determines that there is reasonable cause to believe that the breach has occurred, the superintendent shall, after providing notice to the Comptroller or his or her designee, and to the subject officer or employee of OSC or such other person or entity having a fiduciary responsibility to the fund, transmit a notice of reasonable cause to: the Temporary President of the Senate and the Speaker of the Assembly, if the notice relates to the Comptroller; or to the Comptroller, if the notice relates to an officer or employee of OSC or to any other person or entity having a fiduciary responsibility to the fund.

(d) In any case where the superintendent determines that there is reasonable cause to believe that a breach by the Comptroller, an officer or employee of OSC, or any other person or entity having a fiduciary responsibility to the fund, has resulted in a depletion of the fund, the superintendent, after providing notice to the Comptroller or the Comptroller’s designee, may transmit a copy of his or her determination to the Attorney General or any other appropriate civil or criminal law enforcement authorities for any appropriate further action.

(e) In any case where the superintendent’s transmittal results in an adjudication that the fund has been depleted by reason of any breach, the adjudication will be published on the OSC public website.

(f) This Subpart shall take effect upon publication in the State Register, and will apply to all contracts related to the management of the Fund entered into or renewed by the Comptroller subsequent to that date.

*Amended 6/09/21*

**APPENDIX E**

**Contractor’s CertificationS/Acknowledgements**

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| --- |
| **SIGNATURE AUTHORITY** |
| The Contractor\* and the person signing on behalf of the Contractor certify that such person is authorized to sign on behalf of the Contractor and has the express authority to contractually bind the Contractor.  |
| **ACKNOWLEDGEMENT OF RECEIPT OF OSC’S POLICY STATEMENT ON DISCRIMINATION AND HARASSMENT, INCLUDING SEXUAL HARASSMENT** |
| The Contractor and the person signing on behalf of the Contractor acknowledge receipt of the OSC Policy on Discrimination and Harassment, Including Sexual Harassment (Appendix B), and each agrees to abide by the terms of Appendix B. |
| **CERTIFICATION OF COMPLIANCE WITH STATE FINANCE LAW § 139(L) REGARDING SEXUAL HARASSMENT POLICY AND ANNUAL TRAINING** |
| “By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of section two hundred one-g of the labor law.” |
| **NON-COLLUSIVE BIDDING CERTIFICATION** |
| “By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of [such persons] knowledge and belief:1. The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other competitor;
2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder, directly or indirectly, to any other competitor; and
3. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.”
 |
| **CONTRACTOR’S ACKNOWLEDGEMENT OF RECEIPT AND UNDERSTANDING OF OSC EXECUTIVE ORDER ON PROCUREMENT INTEGRITY** |
| The Contractor and the person signing on behalf of the Contractor acknowledge receipt of the OSC Executive Order on Procurement Integrity and OSC Procurement Integrity Procedures (Appendix C). By submission of this bid, the Contractor and the person signing on behalf of the Contractor each affirms, under penalty of perjury, that they understand and will comply with the terms of Appendix C.  |
| \* All reference to “bidders” within this Appendix E includes proposers and Contractors. Reference to “bids” includes proposals and other responses to solicitations. **THE SIGNATURE(S) BELOW INDICATES AGREEMENT WITH EACH OF THE ABOVE CERTIFICATIONS/ ACKNOWLEDGEMENTS** |
|  |  |  |
| **Proposer Name** |  | **Joint Proposer Name (if any)** |
|  |  |  |
| **Signature** |  | **Signature** |
|  |  |  |
| **Printed or Typed Name** |  | **Printed or Typed Name** |
|  |  |  |
| **Title** |  | **Title** |
|  |  |  |
| **Date** |  | **Date** |
| *Add additional signature lines below for additional Joint Proposers, as necessary.*October 24, 2023 |

**APPENDIX F**

**CRF VENDOR RESPONSIBILITY AND CONFLICT OF INTEREST DISCLOSURE FORM**

Answer all questions completely. Failure to respond to any question could lead to disqualification. As to Conflicts of Interest questions, responses should address current conflicts, if any, as asked for below, and potential conflicts generated by various business activities that may arise in connection with the provision of the Services. In each case, how those conflicts are mitigated must be described with specificity.

*The person completing this form must be knowledgeable about the Vendor’s business and operations. The person signing this form on Vendor’s behalf must certify, under oath, all responses given are true to the best of the person’s knowledge.*

**For each Yes response, Vendor must:**

* Attach a separate sheet and describe the issue/provide the information requested. Identify the relevant date for each issue.
* Identify actions taken or currently being implemented to ensure that the issue will not occur again.
* State whether the staff and/or organizational component involved in the identified issue(s) will be assigned to provide services to the CRF.
* State whether the issue will affect Vendor’s financial or organizational ability to provide services to the CRF.
* Provide copies of relevant documents or any other information that would assist the CRF in its vendor responsibility evaluation.

|  |
| --- |
| **Vendor Information** |
| Vendor Name | Federal Vendor ID/EIN #/NYS ID |
| Vendor Address |
| Vendor Email | Vendor Phone |

**I hereby certify that all of the attached responses to the CRF Vendor Responsibility and Conflict of Interest Disclosure Form are complete, true and accurate to the best of my knowledge after diligent inquiry.**

|  |  |  |
| --- | --- | --- |
|  |  |  |
| Authorized Signature |  | Date |
|  |  |  |
| Name and Title of Authorized Signatory |  |  |

|  |
| --- |
| ***Vendor includes any affiliate, any predecessor company or entity, owner, director, officer or key person*** |
| **Questions**  |
| 1. Is Vendor, or does Vendor employ any officers, directors or key persons, affiliated\* with New York State, the New York State and Local Retirement System, or the Common Retirement Fund?

*If yes*, on a separate sheet list all affiliations and identify whether any of the officers, directors, or key persons directly own interest of 10% or more of Vendor’s business. | ☐ **YES** | ☐ **NO** |
| 1. Have there been any major corporate changes at Vendor in the past year (e.g., legal status, equity ownership, business model, management)?
 | ☐ **YES** | ☐ **NO** |
| 1. Is Vendor currently in violation of any federal or state securities law or regulation?
 | ☐ **YES** | ☐ **NO** |
| 1. Does Vendor use, or has it used in the past 5 years, any other business name, FEIN, or d/b/a other than that provided to the Fund?
 | ☐ **YES** | ☐ **NO** |
| 1. Does Vendor have data breach/cyber liability insurance?

*If yes*, attach a certificate *of* coverage. | ☐ **YES** | ☐ **NO** |
| 1. Has Vendor been a victim of a cyber breach within the past 5 years?
 | ☐ **YES** | ☐ **NO** |

\* As used herein, affiliated means:

(1) the Comptroller or a family member of the Comptroller;

(2) an officer or employee of New York State Office of the State Comptroller (OSC);

(3) an individual or entity doing business with OSC or the Common Retirement Fund (CRF); or

(4) an individual or entity that has a substantial financial interest in an entity doing business with OSC, the CRF or the New York State Retirement System.[[6]](#footnote-6)

|  |
| --- |
| **Question** |
| 1. DoesVendor have a process for determining compliance with gift and entertainment policies applicable to government contracts?
 | ☐ **YES** | ☐ **NO** |
| 1. Has Vendor, its affiliates, officers, directors, key persons or employees offered, made, or provided any gift or hospitality to a New York State employee in violation of the New York State gift restrictions?\*\*
 | ☐ **YES** | ☐ **NO** |
| 1. Does Vendor agree to notify the CRF in the event Vendor becomes aware of any violation of the gift restrictions?
 | ☐ **YES** | ☐ **NO** |

\*\* New York State Public Officers Law provides that:

(1) No Statewide elected official, state officer or employee, individual whose name has been submitted by the Governor to the Senate for confirmation to become a State officer or employee, member of the Legislature or Legislative employee shall, directly or indirectly solicit, accept or receive any gift having more than a nominal value, whether in the form of money, service, loan, travel, lodging, meals, refreshments, entertainment, discount, forbearance or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence the State Employee, or could reasonably be expected to influence the State Employee, in the performance of the State Employee’s official duties or was intended as a reward for any official action on the State Employees part; and

(2) No person shall, directly or indirectly, offer or make any such gift to a Statewide elected official, or any State officer or employee, member of the Legislature or Legislative employee under such circumstances.

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| --- |
| **Is Vendor or at any time within the past 5 years has Vendor been:** |
| 1. the subject of or participated in litigation involving the New York State and Local Retirement System, the CRF, or the Comptroller?
 | ☐ **YES** | ☐ **NO** |
| 1. the subject of a criminal indictment, judgment, conviction or a grant of immunity, including pending actions?
 | ☐ **YES** | ☐ **NO** |
| 1. named in, been the subject of, or agreed to a settlement or judgment in a civil matter that (i) could substantially impact the financial integrity of the firm or its capacity to provide services to the CRF, or (ii) involves any of the same personnel the firm will assign to provide services to the CRF?
 | ☐ **YES** | ☐ **NO** |
| 1. the subject of an enforcement action, sanction, fine, citation, or other disciplinary action or proceeding by the SEC, FINRA, NASD, or bar association, stock exchange, regulatory or professional oversight entity where such was not dismissed with prejudice or did not result in a finding of no responsibility?
 | ☐ **YES** | ☐ **NO** |
| 1. the subject of a material finding; had fines or penalties assessed; been censured; had an unsatisfied judgment, injunction, or lien (including judgments for taxes owed) obtained by; or agreed to a settlement with any federal, state or local governmental or regulatory entity?
 | ☐ **YES** | ☐ **NO** |
| 1. the subject of or party to any charge, claim, investigation, suit, or proceeding pending, threatened or ongoing, before or by any court or regulatory agency (or represented a party to such) that would have a material adverse effect upon Vendor’s services to the CRF or on Vendor’s firm?
 | ☐ **YES** | ☐ **NO** |
| 1. the subject of a civil suit alleging breach of fiduciary duty, fraud, etc?
 | ☐ **YES** | ☐ **NO** |
| 1. required to pay penalties or compensate any of its clients upon termination of services?
 | ☐ **YES** | ☐ **NO** |
| 1. the subject of a government suspension, debarment or rejection of any bid or disapproval of any contract, including pending actions, for (i) lack of responsibility, (ii) impermissible contacts or other violations of New York State law, (iii) denial or revocation of prequalification, (iv) a voluntary exclusion agreement, or (v) intentional provision of false or incomplete information to a governmental entity?
 | ☐ **YES** | ☐ **NO** |
| 1. the subject of a federal, state, or local government contract suspension or termination for cause prior to the completion of the term of a contract or been the subject of an administrative proceeding or civil action seeking specific performance or restitution in connection with any federal, state, or local government contract?
 | ☐ **YES** | ☐ **NO** |

1. List the regulatory bodies having oversight of Vendor.

|  |  |  |
| --- | --- | --- |
| ☐ | **NA** |  |
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| --- |
| **Questions** |
| 1. Is Vendor or its affiliate(s) an SEC-registered investment adviser?
 | ☐ **YES** | ☐ **NO** |
| 1. Does Vendor and/or its affiliate(s) provide both (i) investment management or advisory services and (ii) fiduciary review services (regardless of whether such services are provided to the CRF)?

*If yes…** Answer Questions 22(a) – 22(b) below.
 | ☐ **YES** | ☐ **NO** |

22(a). LINES OF BUSINESS:

List all business lines from which Vendor has derived revenue during the past 5 years and the approximate percentage of total revenue represented by each line (e.g., consulting, asset management, broker dealer). Add rows as necessary.

|  |  |
| --- | --- |
| Business Line | Percentage of Total Revenue |
|  |  |
|  |  |
|  |  |
|  |  |

22(b). Describe Vendor’s process to identify potential conflicts of interest (or attach documentation of such).

|  |
| --- |
|  |

22(c). Describe whether clients of the investment management/investment advisory business include institutional investors or whether clients strictly limited to retail investors.

|  |
| --- |
|  |

22(d). State whether any members of the Project Team provide services for the Vendor’s investment management/investment advisory business. If applicable, provide details such as the name of the Project Team member that provides such services, the investment management/investment advisory services the Project Team member performs, and the amount of time spent providing investment management/investment advisory services.

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22(e). Describe measures (if any) the Vendor and its affiliate(s) undertake to separate its investment management/investment advisory business from its fiduciary review business.

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| --- |
| **Conflicts of Interest** |
| 1. Has Vendor identified any potential conflicts of interest with the New York State and Local Retirement System, the CRF or the Comptroller?

Potential conflicts may relate to: economic or financial interests; fee or other compensation arrangements with sponsors (or affiliates) of private investment funds, other investment advisors, investment companies, broker dealers, municipal securities dealers, and any other person or entity that could, or could be reasonably perceived to, conflict with the Vendor’s ability to provide unbiased and objective advice to the CRF.For example:* Vendor currently represents or provides services to a client whose interests have been, are, or may be adverse to the interests of the CRF;
* Vendor has interests that conflict with or may be perceived to conflict with Vendor’s ability to provide unbiased and objective advice to the CRF;
* Vendor has within the previous 5 years, represented or provided services to a client whose interests were, or may have been, adverse to CRF interests.
 | ☐ **YES** | ☐ **NO** |

1. Listand describe Vendor’s business relationships involving New York State including its agencies, the New York State and Local Retirement System, the CRF, and the Comptroller during the past 5 years.

|  |  |  |  |
| --- | --- | --- | --- |
| ☐ | **NA** |  |  |
| New York State Entity | Relationship |
|  |  |
|  |  |
|  |  |
|  |  |

1. Identify persons with substantial ownership interests in the Vendor; its key principals; its key personnel to be assigned to provide the Services; and its Chief Compliance Officer (or person serving in a similar capacity) (“Covered Persons”).

|  |  |  |
| --- | --- | --- |
| Name  | Email address | Title and Capacity  |
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**APPENDIX G**

**CRF PROPOSER’S DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS**

1. Has the Proposer been found by any governmental entity to be non-responsible within the past four years from the date of this proposal due to either:
	1. impermissible contacts or other violations of New York State Law; or

 [ ]  Yes [ ]  No

* 1. intentional provision of false or incomplete information to a governmental entity?

 [ ]  Yes [ ]  No

If your answer to either of the above is “Yes,” please attach a written explanation, indicating the date of such finding, the entity that found non-responsibility, and the circumstances surrounding such finding (including any written finding of non-responsibility issued by such entity).

 Signature

 Printed or Typed Name

 Title

 Procurement Number/Name

 Date

February 29, 2012

**APPENDIX H**

**MATERIAL CONFLICTS OF INTEREST STATEMENT**

As provided in Part 136-2.4(c) of Chapter IV of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York, investment managers, and consultants or advisors shall promptly disclose to the Common Retirement Fund in writing any conflict of interest the investment manager or consultant or advisor may have which could reasonably be expected to impair the investment manager’s, or consultant’s or advisor’s ability to render unbiased and objective advice.

Investment managers, and consultants or advisors hereby acknowledge that they are aware of and in compliance with the above standard, and agree as follows:

**ALL INVESTMENT MANAGERS, AND CONSULTANTS OR ADVISORS OWE THE COMPTROLLER AND THE COMMON RETIREMENT FUND A FIDUCIARY DUTY. THIS MEANS THAT INVESTMENT MANAGERS, OR CONSULTANTS OR ADVISORS MUST DISCLOSE TO THE COMPTROLLER INFORMATION ABOUT MATERIAL CONFLICTS OF INTEREST. FAILURE TO TRUTHFULLY COMPLETE THIS STATEMENT MAY RESULT IN CRIMINAL OR CIVIL LIABILITIES.**

|  |
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| **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| **Signature** |
| **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| **Name** |
| **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| **Title** |
| **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| **Date** |

STATE OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

) ss.:

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

On the day of in the year 20 , before me personally appeared , known to me to be the person who executed the foregoing instrument, who, acknowledged to me that he/she/they maintain an office at , is the of , the business described in the foregoing instrument, is authorized to execute the foregoing instrument on behalf of the business for the purposes set forth therein, and, pursuant to that authority, has executed the foregoing instrument in the name of and on behalf of the business as the act and deed of the business.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Notary Public**

**Registration No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** Revised May 18, 2015

1. These procedures apply to determinations by OSC or CRF to award a contract for the acquisition of any goods, services, or information technology, except that they do not apply to (i) decisions to invest or disinvest CRF assets in securities, properties, or other investment vehicles, (ii) selections of investment advisors or managers whose services are integral to the administration of CRF investments, and (iii) selection of counsel to represent the CRF in transactional, investment or litigation matters. Such CRF investment decisions and selections remain subject to the Comptroller’s fiduciary responsibilities, and are to be made in a fair and equitable manner in accordance with those responsibilities. [↑](#footnote-ref-1)
2. For the purposes of these procedures, the term “interested vendor” means a person or firm that has received or requested a Request for Information (RFI), an RFP, or an IFB issued by OSC or CRF. [↑](#footnote-ref-2)
3. For the purposes of these procedures, the term “substantive question” means an inquiry concerning a material requirement of the procurement process, such as a technical specification or a financial prerequisite. The term does not apply to ministerial matters, such as the time and place or manner of submitting a bid or proposal. [↑](#footnote-ref-3)
4. For the purposes of these procedures, the term “improper influence” means any attempt to achieve preferential, unequal, or favored consideration of a bid or proposal based on considerations other than the merits of the proposal, including but not limited to, any conduct prohibited by the Ethics in Government Act, as set forth in Public Officers Law sections 73 and 74. [↑](#footnote-ref-4)
5. For the purposes of these procedures, the term “attempt to influence the procurement process” means any attempt to influence any determination by OSC or CRF by a person other than an OSC employee with respect to (i) the solicitation, evaluation or award of a procurement contract; or (ii) the preparation of specifications or request for submissions of bids or proposals for a procurement contract. [↑](#footnote-ref-5)
6. For the purpose of this paragraph, the term substantial financial interest shall mean the control of the entity, whereby control means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the entity, whether through the ownership of voting securities, by contract (except a commercial contract for goods or non-management services) or otherwise; but no individual shall be deemed to control an entity solely by reason of his being an officer or director of such entity. Control shall be presumed to exist if any individual directly or indirectly owns, controls or holds with the power to vote 10 percent or more of the voting securities of such entity. [↑](#footnote-ref-6)