



# Workers' Compensation Board

## NYS WORKERS' COMPENSATION BOARD (WCB) Competitive Procurement For: e-Discovery and Managed Document Review Services, C140396

### CONTACT FOR INQUIRIES AND SUBMISSIONS

Issuing Officer – Courtney Souza, Supervising Budgeting Analyst

Alternate – Karen Meyer, Contract Management Specialist II

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All questions regarding this Request for Proposals (RFP) must be submitted via electronic mail to the Issuing Officer or Alternate at [WCBContracts@wcb.ny.gov](mailto:WCBContracts@wcb.ny.gov)

**Neither phone nor fax inquiries will be accepted.** Administrative issues pertaining to sending/receiving email through the designated mailbox may be reported at (518) 388-1456.

The WCB procurement website address:  
<http://www.wcb.ny.gov/procurements.jsp>

For all methods of delivery:  
US Post Office Mailings –standard and overnight  
UPS and FedEx express delivery overnight and ground service  
Hand deliveries

Address to:  
NYS Workers' Compensation Board  
Attention: Courtney Souza  
328 State Street, Room 331-69,  
Schenectady, NY 12305

### CALENDAR OF EVENTS

	Event	Day	Date	Time
1	Release of RFP	Friday	March 13, 2020	
2	Request Date for Notice of Intent to Bid	Friday	March 27, 2020	4:00 pm (EST)
3	Submission of Written Questions Due	Friday	March 27, 2020	4:00 pm (EST)
4	Official Response to Questions Due	Wednesday	April 8, 2020	
5	Closing Date for Receipt of Proposals	Monday	May 4, 2020	2:00 pm (EST)
6	Selection of Prospective Contractor	Wednesday	May 20, 2020	
7	Contract Negotiations End with Prospective Contractors		ASAP	
8	Estimated Contract Term Begins	Wednesday	August 12, 2020	12:00 am (EST)

## Table of Contents

SECTION 1 - OVERVIEW .....	5
1.1 OBJECTIVE OF REQUEST FOR PROPOSAL .....	5
1.2 SUMMARY OF SCOPE OF SERVICES.....	6
1.3 ANTICIPATED CONTRACT TERM AND RENEWAL.....	6
SECTION 2 - PROCUREMENT PROCESS .....	6
2.1 PROCUREMENT LOBBYING.....	6
2.2 ADMINISTRATIVE REQUIREMENTS AND INFORMATION .....	8
SECTION 3 - REQUIREMENTS .....	18
3.1 MINIMUM BIDDER ELIGIBILITY REQUIREMENTS.....	18
3.2 SERVICE REQUIREMENTS .....	19
3.2.1 E-DISCOVERY .....	19
3.2.2 MANAGED DOCUMENT REVIEW .....	35
SECTION 4 – RESPONSE REQUIREMENTS.....	37
4.1 GENERAL PROCEDURES .....	37
4.2 COVER LETTER.....	38
4.3 ADMINISTRATIVE VOLUME (VOLUME I).....	39
4.4 TECHNICAL VOLUME (VOLUME II).....	40
4.5 COST VOLUME (VOLUME III).....	42
SECTION 5 – METHOD OF EVALUATION .....	48
5.1 AWARD OBJECTIVES .....	48
5.2 EVALUATION AND SELECTION COMMITTEES.....	49
5.3 PROPOSAL EVALUATION PROCESS .....	49
SECTION 6 – TERMS AND CONDITIONS .....	50
6.1 CONTRACT TERM .....	50
6.2 MODIFICATION OF CONTRACT .....	51
6.3 EXECUTORY PROVISION/CONTRACT FORMATION .....	51
6.4 GOVERNING LAW .....	51
6.5 INTEGRATION, MERGER AND ORDER OF PRECEDENCE .....	51
6.6 CONTRACTOR RESPONSIBILITIES AND QUALIFICATIONS.....	52
6.7 CONTRACTOR RESPONSIBILITY AS DEFINED BY STATE FINANCE LAW .	52
6.8 INDEPENDENT CONTRACTOR .....	53

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

6.9	CONTRACTOR PERSONNEL.....	53
6.10	NOTICE OF SUBSTANTIAL CHANGE IN CONTRACTOR STATUS.....	53
6.11	VENDOR RESPONSIBILITY .....	54
6.12	SUBCONTRACTORS.....	54
6.13	COOPERATION WITH THIRD PARTIES .....	56
6.14	COOPERATION WITH INVESTIGATIONS, AUDITS, AND LEGAL PROCEEDINGS .....	56
6.15	WORK OUTSIDE THE SCOPE OF THIS CONTRACT.....	56
6.16	NOTICE OF CIRCUMSTANCES EXPECTED TO ADVERSELY AFFECT CONTRACTOR'S PERFORMANCE.....	56
6.17	NOTIFICATION.....	56
6.18	PRICING, BILLING AND PAYMENT .....	57
6.19	ELECTRONIC PAYMENT REQUIREMENT FOR WCB .....	58
6.20	WARRANTIES.....	58
6.21	INDEMNIFICATION AND LIMITATION OF LIABILITY.....	59
6.22	COMPLIANCE WITH LAWS .....	60
6.23	SUSPENSION OF WORK .....	60
6.24	TERMINATION .....	61
6.25	DEFAULT.....	62
6.26	FORCE MAJEURE.....	63
6.27	DISPUTE RESOLUTION .....	63
6.28	GENERAL PROVISION AS TO REMEDIES.....	63
6.29	TRANSITION.....	64
6.30	INSURANCE.....	65
6.31	TAXES .....	69
6.32	OUTSTANDING TAX LIABILITIES .....	70
6.33	SECURITY, NON-DISCLOSURE/CONFIDENTIALITY, PRESS RELEASES .....	70
6.34	CONFIDENTIALITY OF WORKERS' COMPENSATION AND DISABILITY BENEFITS CLAIMS INFORMATION .....	72
6.35	COMPLIANCE WITH HIPPA (HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996) AND HI-TECH (HEALTH INFORMATION TECHNOLOGY FOR ECONOMIC AND CLINICAL HEALTH ACT OF 2009)....	72
6.36	PUBLIC INFORMATION AND FREEDOM OF INFORMATION LAW (FOIL) ...	73
6.37	LEGAL REQUESTS AND RELEASE OF STATE DATA OR INFORMATION TO THIRD PARTIES PROHIBITED.....	73

**NYS WORKERS' COMPENSATION BOARD**  
**e-Discovery and Managed Document Review Services**

6.38	INFORMATION SECURITY BREACH AND NOTIFICATION ACT .....	73
6.39	COMPLIANCE WITH NYS INFORMATION SECURITY POLICIES AND STANDARDS .....	74
6.40	RIGHT TO INSPECTION .....	74
6.41	ACCESSIBILITY .....	75
6.42	ETHICS COMPLIANCE .....	75
6.43	MOST FAVORABLE TERMS.....	75
6.44	TRANSFER/ASSIGNMENT OF CONTRACT .....	75
6.45	PIGGYBACKING.....	76
6.46	WAIVER.....	76
6.47	CONFLICT OF INTEREST .....	76
6.48	REQUIRED PROVISIONS FOR OUTSIDE COUNSEL CONTRACTS .....	76
6.49	CAPTIONS .....	77
6.50	SEVERABILITY .....	77

APPENDIX A – STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

APPENDIX B – EXTRANEOUS TERMS FORM

ATTACHMENT A – NOTICE OF INTENT TO BID FORM

ATTACHMENT B – INQUIRIES TEMPLATE

ATTACHMENT C – FORMS AND INFORMATION

ATTACHMENT D – MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES –  
EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

ATTACHMENT E – SDVOB 100 UTILIZATION PLAN

ATTACHMENT F – MWBE 100G MWBE UTILIZATION PLAN

ATTACHMENT G – EEO 100G EQUAL EMPLOYMENT OPPORTUNITY STAFF PLAN

ATTACHMENT H – EO177 CERTIFICATION

ATTACHMENT I – PERFORMANCE METRICS WORKSHEET

ATTACHMENT J – DESIRED TASKS/DELIVERABLES WORKSHEET

ATTACHMENT K – FEE PROPOSAL

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

**SECTION 1 - OVERVIEW**

**1.1 OBJECTIVE OF REQUEST FOR PROPOSAL**

The New York State Workers' Compensation Board ("WCB" OR "Board") is responsible for protecting the rights of employees and employers by ensuring the proper delivery of benefits and by promoting compliance with the law, including the provisions relating to Workers' Compensation benefits ("WC"), Disability benefits ("DB"), Paid Family Leave ("PFL") benefits, Volunteer Firefighters' benefits, and Volunteer Ambulance Workers' benefits.

Workers' compensation benefits provide weekly cash payments and the cost of full medical treatment, including rehabilitation, for covered employees who become disabled as a result of a disease or injury connected with their employment. Benefits may also be paid to qualified dependents of workers who died as a result of their compensable injury or illness. Disability benefits are paid when covered employees become disabled as a result of a disease or injury that is not connected to their employment. Paid Family Leave benefits are paid when an employee is out of work due to the birth, adoption or fostering of a child, or to care for a family member with a serious health condition, or to provide care due to a qualifying exigency under the Family and Medical Leave Act when a family member is on active military duty or about to be deployed. Volunteer Firefighters' and Volunteer Ambulance Workers' law provide cash benefits and/or medical care for volunteer members who are injured or become ill in the line of duty.

New York State employers are required to provide coverage for these benefits to their employees. The New York State Workers' Compensation Law ("WCL") states that employers may provide this coverage in one of the following ways: (1) by insuring and keeping insured the payment of such compensation from the State Insurance Fund; (2) by insuring and keeping insured the payment of such compensation with any insurance carrier authorized to transact such business in New York State; or (3) by becoming self-insured.

Joining a self-insured group trust (Group) is an alternative to carrier or State Fund coverage for employers who may not be able to self-insure on an individual basis. A 2010 law mandated that Groups that do not meet strict financial criteria become inactive effective December 31, 2011. Notwithstanding their inactive status, these Groups remained liable for the workers' compensation claims that accrued prior to their inactive status and they must continue to demonstrate the financial strength to self-insure the benefits required under the WCL.

The WCL requires the uninterrupted flow of benefit payments to injured employees regardless of the insolvency of a self-insurer. Groups that failed to maintain appropriate funding levels were deemed insolvent by the Board's Office of Self Insurance. In such event the Board assumed the administration of that Group's assets and liabilities, and all accrued workers' compensation claims of the Group were transferred to the Board.

The Litigation Division protects the Board's interest in all litigation impacting the agency, including litigation relating to the group self-insurance program.

**Revised April 24, 2020**

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

In furtherance of its mission of ensuring the proper delivery of benefits and promoting compliance with the law, the Board's Litigation Unit has been tasked with commencing litigation to recoup deficit monies associated with the insolvency of various group self-insurance trusts.

The WCB is seeking to engage a qualified vendor to provide a hosted e-discovery platform using Relativity 10.1 (or higher) software ("Relativity") to efficiently and reliably store and process stored information for litigation discovery. The selected vendor will also be required to provide Managed Document Review Services, as requested by the WCB, to assist with the review and coding of the discovery materials for various case files.

**1.2 SUMMARY OF SCOPE OF SERVICES**

The WCB is seeking proposals from qualified vendors, authorized to do business in New York State (NYS), to provide hosted e-discovery services using Relativity 10.1 (or higher) and to provide Managed Document Review Services in accordance with the specifications set forth in this RFP.

The selected vendor will assist the Board in identifying, preserving, processing, analyzing, reviewing and producing records to allow for efficient and reliable disclosure of e-discovery materials for multiple litigation matters from a single source of incoming data.

This RFP, and the appendices and attachments referenced herein, provide specific service requirements, experience requirements, and other pertinent information. The specifications for the engagement and the terms and conditions set forth in this RFP will be incorporated into any resulting contract entered into between WCB and the selected vendor.

**1.3 ANTICIPATED CONTRACT TERM AND RENEWAL**

The contract term will be for a period of three (3) years, with two (2) optional one (1) year extension periods. Said optional extensions are exercisable at the sole discretion of WCB by giving notice to the Contractor in accordance with the Notice provisions of RFP section 6.17. The Contract, and any optional extension periods, shall take effect and commence upon approval of the Agreement by the New York State Office of the State Comptroller ("OSC" or "Comptroller").

**SECTION 2 - PROCUREMENT PROCESS**

**2.1 PROCUREMENT LOBBYING**

Pursuant to State Finance Law §§ 139-j and 139-k, added pursuant to §§ 13 and 14, respectively, of Chapter 1 of the Laws of 2005, effective January 1, 2006, this RFP includes notification of the statutory restrictions on communications between the Board and the Bidder during the procurement process. A vendor is prohibited from making impermissible contacts during the "restricted period," which extends from the posting of this solicitation in the NYS Contract Reporter through the final award and approval of the procurement contract by the Board and, when applicable, approval by OSC and the Attorney General. Impermissible contacts are those

**Revised April 24, 2020**

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

communications which a reasonable person would infer are intended to influence the governmental procurement. The vendor is referred to State Finance Law § 139-j (3) for a description of those contacts which are permissible during the restricted period. As provided by statute, regulation and/or policy, Board employees will obtain certain information when contacted during the restricted period and make entries in the procurement record with respect to all contacts and other information related to the governmental procurement.

Pursuant to State Finance Law § 139-j (2)(a), the Board has designated a person or persons who may be contacted by vendors relative to this procurement. See Cover Page of this RFP.

As part of any proposal submitted in response to this RFP, the vendor shall affirm in writing that the vendor understands and agrees to comply with the statutes [State Finance Law §§ 139-j (3) and 139-k (6)(b)] and the Board's procedures relating to permissible contacts during the procurement process. The vendor shall also disclose any prior findings of non-responsibility. The affirmation and disclosure forms, along with the vendor's certification form, are included as part of ATTACHMENT C. Any member, officer or employee of the Board who becomes aware that a vendor has violated the provisions of State Finance Law § 139-j (3) with regard to permissible contacts during the procurement process, shall immediately refer the matter to the Board's General Counsel, who shall cause an investigation to be made. If there exists sufficient cause to believe that a violation has occurred, the vendor shall be given notice of the alleged violation and any ongoing investigation and an opportunity to be heard in response to the allegation prior to the imposition of sanctions set forth in State Finance Law § 139-j (10)(b).

State Finance Law § 139-j (7) requires that the Board make a determination of responsibility of the proposed Contractor. It is incumbent upon the vendor to disclose any prior determination of non-responsibility made within the previous four years by any governmental entity where such prior finding of non-responsibility was due to a violation of State Finance Law § 139-j or the intentional provision of false or incomplete information to a governmental entity. See State Finance Law § 139-k (2) and (3). A disclosure form is included as part of ATTACHMENT C for that purpose. Failure to disclose prior findings of non-responsibility or to timely provide accurate and complete information shall be considered by the Board in its determination of the responsibility of the vendor.

In the event it is found that the vendor knowingly and willfully violated State Finance Law §§ 139-j (3) and 139-k (2), there will be a determination of non-responsibility. A finding of non-responsibility will result in no contract award to the vendor unless the award to the vendor is necessary to protect public property, health or safety and the vendor is the only source who can provide the commodity, etc., within the necessary time frame. Determinations of non-responsibility are reported to the New York State Office of General Services. A prior determination of non-responsibility within the preceding four-year period will result in the ineligibility of the vendor to submit proposals or be awarded a contract for four years from the date of the most recent determination of non-responsibility.

**Revised April 24, 2020**

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

**2.2 ADMINISTRATIVE REQUIREMENTS AND INFORMATION**

**2.2.1 Issuing Office**

The Board's Issuing Officer and any applicable Alternate, for this procurement, are listed as the Designated Contact and Alternate on the Cover Page of this RFP.

If a prospective Bidder does not receive a timely response from the Board's Issuing Officer or Alternate, please contact the Board's Office of General Counsel, by email, to [OfficeofGeneralCounsel@wcb.ny.gov](mailto:OfficeofGeneralCounsel@wcb.ny.gov).

**2.2.2 RFP Calendar**

The RFP Calendar is listed below. The Board reserves the right, in its sole discretion, to modify any event, time, or date contained in the RFP Calendar. The Board will notify all prospective Bidders of any changes to the RFP Calendar.

	Event	Day	Date	Time
1	Release of RFP	Friday	March 13, 2020	
2	Request Date for Filing Notice of Intent to Bid	Friday	March 27, 2020	4:00 pm (EST)
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8	Estimated Contract Term Begins	Wednesday	August 12, 2020	12:00 am (EST)

**2.2.3 Notice of Intent to Bid**

Filing of a Notice of Intent to Bid, ATTACHMENT A, is recommended for this Procurement. Bidders electing to submit a Notice of Intent to bid must submit this form to the Board's Issuing Officer or Alternate at the mailing or email address listed on the Cover Page of this RFP, by the date specified in the RFP Calendar. Submission of a Notice of Intent to Bid does not obligate a vendor to submit a bid.

**2.2.4 Submission of Written Questions**

All inquiries concerning this RFP should be sent to the following email address:  
[WCBContracts@wcb.ny.gov](mailto:WCBContracts@wcb.ny.gov).

**Revised April 24, 2020**

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

The Board has provided an Inquiries Template Form, ATTACHMENT B, which provides the format/content vendors are requested to use in submitting questions. Inquiries submitted after the date and time set forth in the RFP Calendar may not be answered. Bidders are strongly encouraged to submit inquiries as early as possible.

Administrative issues pertaining to sending/receiving email through the designated mailbox may be reported at the telephone number identified on the Cover Page of this RFP.

Any questions related to this RFP or requests for clarification must be submitted via electronic mail to the Board's Issuing Officer or Alternate listed on the Cover Page of the RFP by the date and time specified in the RFP Calendar. Neither phone nor fax inquiries will be accepted.

**2.2.5 Accuracy of Proposal Contents**

Bidders are responsible for the accuracy of the content contained in their bids. All Bidders are cautioned to verify the content of their proposal before submitting it to the Board.

The Board will accept amendments and/or additions to a Bidder's proposal from the Bidder if such request is made in writing and received by the Board prior to the Closing Date for Receipt of Proposals indicated in Section 2.2.2, RFP Calendar. The Board shall not accept amendments or additions to a proposal after the Closing Date for Receipt of Proposals, unless such amendments or additions are received in response to a request from a Board.

The Board will only accept one proposal from each Bidder. Bidder's proposal shall consist of the original proposal and any amendments and/or additions to Bidder's proposal received prior to the Closing Date for Receipt of Proposals.

All Proposals submitted become the property of the Board. A Bidder's request to withdraw a proposal after the Closing Date for Receipt of Proposals shall be considered at the sole discretion of the Board.

**2.2.6 Firm Offer**

Each Bidder must hold its offer firm and binding for a period of at least 180 days from the Closing Date for Receipt of Proposals. In the event that a proposed contract with the successful Bidder is not approved by the Comptroller within the 180-day period, Bidders' offers shall remain firm and binding beyond the 180-day period and until the proposed contract is either approved or rejected by the Comptroller, unless the Bidder withdraws its proposal in writing.

**2.2.7 Award Criteria**

The Board will award a contract based on Best Value. A Best Value award is one that optimizes quality, cost, and efficiency and typically applies to complex services and technology contracts. The Board will evaluate responsive and responsible Bidders' Proposals for all of the requirements

**Revised April 24, 2020**

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

specified in this RFP, in accordance with the evaluation criteria set forth in Section 5, Method of Evaluation.

If Bidder's solution includes subcontractors, the Board will consider the Bidder the Prime Contractor and the Bidder shall assume full responsibility for all aspects of the project. The Board reserves the right to approve (or disapprove) any or all subcontractors and the work performed by them as part of the contract with the Prime Contractor.

**2.2.8 Notification of Award and Opportunity for Debriefing**

The tentative awardee(s) will be advised of selection by the Board through the issuance of a formal written correspondence indicating a proposed award. All Bidders will be notified, in writing, of the selection or rejection of their bids.

Pursuant to Section 163(9)(c) of the State Finance Law, any unsuccessful Bidder may request a debriefing regarding the reasons that the Bid submitted by the Bidder was not selected for award. Requests for a debriefing must be made within 15 calendar days of notification by the Board that the Bid submitted by the Bidder was not selected for award. Requests should be submitted in writing to the Board's Issuing Officer or Alternate, identified on the Cover Page of this RFP.

The purpose of the debriefing is to provide information to the Bidder about the scoring and evaluation of the requesting offeror's proposal. The Board will not provide a Bidder with information about another Bidder's proposal.

Should the Board and a tentative awardee be unable to reach agreement as to the terms of the Contract within a reasonable time, as determined by the Board, the Board may withdraw the award and proceed to the next highest scoring Bidder.

**2.2.9 Information from Workers' Compensation Board to Vendors**

The Board will provide all information, responses to questions, and communications concerning the solicitation in writing by electronic mail to all vendors who submitted the Notice of Intent to Bid (ATTACHMENT A). Such information will include, but may not be limited to, answers to Bidder inquiries; RFP clarifications and amendments; and clarification of process rules. The Board has dedicated a section of its website for the purpose of disseminating information relating to this procurement and vendors are encouraged to monitor this section. The website URL is provided on the Cover Page of this RFP.

**2.2.10 Costs Incurred Prior to Contract Approval**

The State of New York and the Board will not be held liable for any cost incurred by the Bidder for work performed in the preparation and production of a bid or for any work performed prior to the formal execution of a Contract or approval by the Comptroller, if required.

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

**2.2.11 Extraneous Terms**

Proposals must conform to the terms set forth in this RFP. Material deviations may render the proposal non-responsive and may result in the rejection of the proposal. Therefore, extraneous terms and conditions are proposed solely at the Bidder's risk.

Proposed additional, supplemental, "or equal" or alternative terms ("extraneous term(s)") may only be considered by the State to the extent that such extraneous term(s) constitute non-material deviations from the requirements set forth in the RFP. If the bidder proposes to include Extraneous Terms in its official proposal, the bidder must meet all of the following requirements:

- A. Each proposed Extraneous Term shall be specifically enumerated in a separate section of the applicable submission (ex. Technical, Cost, etc.) using the template attached hereto as **APPENDIX B. "Extraneous Terms Form."**
- B. The "Extraneous Terms" section must be in writing prepared by the Bidder and shall not include any pre-printed literature or vendor forms;
- C. The writing shall identify by part, section and title the particular RFP requirement (if any) affected by the extraneous term; and
- D. The Bidder shall specify the proposed extraneous term, and the reasons therefore.

Only those terms meeting the above requirements (A) through (D) shall be considered as having been submitted as part of the formal offer.

Extraneous Term(s) submitted on standard, pre-printed forms (including but not limited to: product literature, order forms, manufacturer's license agreements, standard contracts or other pre-printed documents), which are physically attached or summarily referenced in the proposal, or that, in the State's sole judgment, have not been submitted in compliance with the above requirements, (A) through (D), shall not be considered as having been submitted with or intended to be incorporated as part of the official offer contained in the proposal, but rather shall be deemed by the State to have been included by bidder for informational or promotional purposes only.

Only extraneous terms accepted by the Board in writing shall be expressly incorporated into the Contract. Acceptance and/or processing of a proposal shall not constitute acceptance of extraneous terms. The Board will not entertain any exceptions to Appendix A - Standard Clauses for New York State Contracts.

**2.2.12 General Reservation of Rights**

In addition to any and all other rights set forth herein, the Board reserves the right to:

- A. Reject any or all proposals received in response to the RFP;
- B. Withdraw the RFP at any time, at the WCB's sole discretion;
- C. Make an award under the RFP in whole or in part;
- D. Disqualify any Bidder whose conduct and/or proposal fails to conform to the requirements of the RFP;

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

- E. Seek clarifications and revisions of proposals;
- F. Use proposal information obtained through site visits, management interviews and the State's investigation of a Bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the Bidder in response to the WCB's request for clarifying information in the course of evaluation and/or selection under the RFP;
- G. Prior to the bid opening, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available;
- H. Prior to the bid opening, direct Bidders to submit proposal modifications addressing subsequent RFP amendments;
- I. Change any of the scheduled dates;
- J. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective Bidders;
- K. Waive any requirements that are not material;
- L. Negotiate with the successful Bidder within the scope of the RFP in the best interest of the State;
- M. Conduct contract negotiations with the next responsible Bidder, should the agency be unsuccessful in negotiating with the selected Bidder;
- N. Utilize any and all ideas submitted in the proposals received;
- O. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Bidder's proposal and/or to determine a Bidder's compliance with the requirements of the solicitation;
- P. Waive minor irregularities and/or omissions in proposals if in the best interest of the State; and
- Q. In its sole discretion, reject illegible, incomplete, or vague proposals.

**2.2.13 Procurement Record**

The Board will maintain a Procurement Record which documents all decisions regarding the procurement process, particularly the quantification of criteria used to determine an award based on Best Value; or where not quantifiable, the justification that demonstrates that Best Value will be achieved pursuant to State Finance Law § 163 (9)(g). The Procurement Record will be forwarded to OSC and, as applicable, to the New York State Office of Attorney General in support of their respective evaluation activity.

**2.2.14 Important Building Access Procedures for Visitors and Hand Deliveries**

To access 328 State Street, Schenectady, all visitors must check in by presenting photo identification at the Security Desk and must comply with all Board security procedures. Bidders who intend to hand deliver bids should allow extra time to comply with these procedures. Please be advised that building access procedures may change or be modified at any time.

**Bidders that plan to hand deliver their proposals should contact the Board's Issuing Officer or Alternate designated on the Cover Page of this RFP 48 hours beforehand to arrange for**

**Revised April 24, 2020**

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

**delivery and receipt.** Upon arrival at the Board, Bidders seeking to hand deliver bids should ask the Security Desk to contact the Board's Issuing Officer or Alternate designated on the Cover Page of this RFP. **Late and incomplete proposals will not be considered.**

Please note that the information provided in this section also applies to Bidders who use independent courier services. Bidders assume all risks for timely, properly submitted hand deliveries, including deliveries made by independent courier services.

**2.2.15 Contractor Requirements and Procedures for Participation by New York State-Certified Minority and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women**

**New York State Law**

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations, the Workers' Compensation Board (WCB) is required to promote opportunities for the maximum feasible participation of New York State-certified Minority and Women-owned Business Enterprises ("MWBEs") and the employment of minority group members and women in the performance of WCB contracts.

**Business Participation Opportunities for MWBEs**

For purposes of this solicitation, the WCB hereby establishes an overall goal of 30% for MWBE participation, 15% for New York State-certified Minority-owned Business Enterprise ("MBE") participation and 15% for New York State-certified Women-owned Business Enterprise ("WBE") participation (based on the current availability of MBEs and WBEs). Scoring will reflect a weighted technical score for proposed MWBE participation, at no more than 10% of the technical score. A Contractor ("Contractor") on any contract resulting from this procurement ("Contract") must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this RFP, the respondent agrees that the WCB may withhold payment pursuant to any Contract awarded as a result of this RFP pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how the WCB will evaluate a Contractor's "good faith efforts," refer to 5 NYCRR § 142.8.

The respondent understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25% of the total value of the contract.

In accordance with 5 NYCRR § 142.13, the respondent further acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in a Contract resulting from this RFP, such finding constitutes a breach of contract and the WCB may withhold payment as liquidated damages.

**Revised April 24, 2020**

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, a respondent agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof through the New York State Contract System ("NYSCS"), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a respondent may arrange to provide such evidence via a non-electronic method by contacting the WCB's Issuing Officer of this RFP.

Additionally, a respondent will be required to submit the following documents and information with their bid as evidence of compliance with the foregoing:

- A. An MWBE Utilization Plan on Form MWBE 100G (ATTACHMENT F) with their bid or proposal. Any modifications or changes to an accepted MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to the WCB for review and approval.

The WCB will review the submitted MWBE Utilization Plan and advise the respondent of the WCB's acceptance or issue a notice of deficiency within 30 days of receipt.

- B. If a notice of deficiency is issued, the respondent will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to the WCB, via email to [WCBContracts@wcb.ny.gov](mailto:WCBContracts@wcb.ny.gov), a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by the WCB to be inadequate, the WCB shall notify the respondent and direct the respondent to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

The WCB may disqualify a respondent as being non-responsive under the following circumstances:

- a) If a respondent fails to submit an MWBE Utilization Plan;
- b) If a respondent fails to submit a written remedy to a notice of deficiency;
- c) If a respondent fails to submit a request for waiver; or
- d) If the WCB determines that the respondent has failed to document good faith efforts.

The successful respondent will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to the WCB but must be made no later than prior to the submission of a request for final payment on the Contract.

**Revised April 24, 2020**

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

The successful respondent will be required to submit a quarterly MWBE Contractor Compliance & Payment Report to the WCB, by the 10<sup>th</sup> day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

**Equal Employment Opportunity Requirements**

By submission of a bid or proposal in response to this solicitation, the respondent agrees with all of the terms and conditions of Appendix A – Standard Clauses for All New York State Contracts including Clause 12 - Equal Employment Opportunities for Minorities and Women. The respondent is required to ensure that it and any subcontractors awarded a subcontract for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of the respondent, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

The respondent will be required to submit a Minority and Women-owned Business Enterprise and Equal Employment Opportunity Policy Statement, ATTACHMENT D, to the WCB with its bid or proposal.

If awarded a Contract, respondent shall submit a Workforce Utilization Report and shall require each of its subcontractors to submit a Workforce Utilization Report, in such format as shall be required by the WCB on a quarterly basis during the term of the Contract.

Pursuant to Executive Order #162, contractors and subcontractors will also be required to report the gross wages paid to each of their employees for the work performed by such employees on the contract utilizing the Workforce Utilization Report on a quarterly basis.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and subcontractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

**Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.**

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

**2.2.16 Service-Disabled Veteran-Owned Businesses**

**New York State Law**

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (SDVOB), thereby further integrating such businesses into New York State's economy. The Workers' Compensation Board (WCB) recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of WCB contracts.

In recognition of the service and sacrifices made by Service-Disabled Veterans and in recognition of their economic activity in doing business in New York State, Bidders are expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles. Scoring will reflect a weighted technical score for proposed SDVOB participation, at no more than 10% of the technical score.

**I. Contract Goals**

- A. WCB hereby establishes an overall goal of 6% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the bidder should reference the directory of New York State Certified SDVOBs found at <https://ogs.ny.gov/Veterans/>. Questions regarding compliance with SDVOB participation goals should be directed to [WCBContracts@wcb.ny.gov](mailto:WCBContracts@wcb.ny.gov). Additionally, following contract execution, contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veterans' Business Development at (518) 474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss additional methods of maximizing participation by SDVOBs on the contract.
- B. Contractor must document "good faith efforts" to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the contract.

**II. SDVOB Utilization Plan**

- A. In accordance with 9 NYCRR §252.2 (i), Bidders are required to submit a completed SDVOB Utilization Plan on Form SDVOB 100 (ATTACHMENT E) with their bid.
- B. The Utilization Plan shall list the SDVOBs the Bidder intends to use to perform the contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known an estimate of the percentage of contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

- result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the contract award and during the term of the contract must be reported on a revised SDVOB Utilization Plan and submitted to the WCB.
- C. The WCB will review the submitted SDVOB Utilization Plan and advise the contractor of the WCB's acceptance or issue a notice of deficiency within 20 days of receipt.
  - D. If a notice of deficiency is issued, contractor agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to the WCB a written remedy in response to the notice of deficiency. If the written remedy submitted is not timely or is found by the WCB to be inadequate, the WCB shall notify the contractor and direct the contractor to submit, within five business days of notification by the WCB, a request for a partial or total waiver of SDVOB participation goals on Form SDVOB 200, Application for Waiver of SDVOB Participation Goal
  - E. The WCB may disqualify a Bidder's proposal as being nonresponsive under the following circumstances:
    - a. If a Bidder fails to submit an SDVOB Utilization Plan;
    - b. If a Bidder fails to submit a remedy to a notice of deficiency;
    - c. If a Bidder fails to submit a request for waiver; or
    - d. If the WCB determines that the Bidder has failed to document good faith efforts.
  - F. If awarded a contract, contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the contract pursuant to the prescribed SDVOB contract goals set forth above.
  - G. Contractor further agrees that a failure to use SDVOBs as agreed in the SDVOB Utilization Plan shall constitute a material breach of the terms of the contract. Upon the occurrence of such a material breach, the WCB shall be entitled to any remedy provided herein, including but not limited to, a finding of contractor non-responsibility.

**III. Request for Waiver**

- A. **Prior to submission of a request for a partial or total waiver, contractor shall speak to the Contracts Office at the WCB for guidance. Waiver requests must be sent to the WCB at [WCBContracts@wcb.ny.gov](mailto:WCBContracts@wcb.ny.gov).**
- B. In accordance with 9 NYCRR §252.2 (m), a contractor that is able to document good faith efforts to meet the goal requirements, as set forth in Section IV. Required Good Faith Efforts, may submit a request for a partial or total waiver on Form SDVOB 200, Application for Waiver of SDVOB Participation Goal accompanied by supporting documentation. A contractor may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by the WCB at that time, the provisions of II. SDVOB Utilization Plan (C), (D), and (E) above will apply. If the documentation included with the contractor's waiver request is complete, the WCB shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.
- C. The contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the contract. Requests for a partial

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

or total waiver of established goal requirements made subsequent to contract award may be made at any time during the term of the contract to the WCB, but must be made no later than prior to the submission of a request for final payment on the contract.

- D. If the WCB, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report Form SDVOB 101 determines that the contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regard to such noncompliance, the WCB may issue a notice of deficiency to the contractor. The contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for a partial or total waiver of SDVOB contract goals.

**IV. Required Good Faith Efforts**

In accordance with 9 NYCRR §252.2 (n), contractors must document their good faith efforts toward utilizing SDVOBs on the contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

- A. Copies of solicitations to SDVOBs and any responses thereto.
- B. Explanation of specific reasons each SDVOB that responded to contractor's solicitation was not selected.
- C. Dates of any pre-bid, pre-award or other meetings attended by the contractor, if any, scheduled by the WCB with certified SDVOBs whom the WCB determined were capable of fulfilling the SDVOB goals set in the contract.
- D. Information describing the specific steps undertaken to reasonably structure the contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
- E. Other information deemed relevant to the waiver request.

**V. Monthly SDVOB Contractor Compliance Report**

In accordance with 9 NYCRR §252.2 (q), the contractor is required to report SDVOB Contractor Compliance monthly, to the WCB, during the term of the contract for the preceding month's activity, documenting progress made toward achieving the contract SDVOB goals. This information must be submitted using form SDVOB 101 and should be completed by the contractor and submitted to the WCB by the 10<sup>th</sup> day of each month during the term of the contract for the preceding month's activity to [WCBContracts@wcb.ny.gov](mailto:WCBContracts@wcb.ny.gov).

**SECTION 3 - REQUIREMENTS**

**3.1 MINIMUM BIDDER ELIGIBILITY REQUIREMENTS**

1. Bidder must be authorized to do business in NYS;
2. Bidder must be a Relativity Certified Partner; and
3. Bidder must propose a solution using Relativity software.

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

**3.2 SERVICE REQUIREMENTS**

**3.2.1 E-DISCOVERY**

The WCB currently uses hosted e-discovery services, which utilizes Relativity, to efficiently and reliably process, store, and disclose electronic data for litigation discovery. This allows the Board to identify, preserve, process, analyze, review and produce records for multiple cases from a single source of incoming data. The contract between the WCB and the vendor that hosts the WCB's data on Relativity is expiring, and the WCB is desirous of procuring similar services.

**3.2.1.1 General System Requirements**

The Board's native electronic files consist of data compiled from various Microsoft operating systems and adobe files. Specifically:

- Microsoft Server 2008 R2 network operating system in a Windows and TCP/IP networked environment;
- Microsoft Windows 7 desktop operating systems (both 32 and 64 bit); and
- Microsoft Office 2010 and 2013.

The files have previously been scanned, converted and imported into a Relativity 10.1 based system. The Board's data files consist of approximately 8.3 million documents and 3TB of data ("Master File"). The Contractor shall upload and store the 3 TB of native files (NSF and Standard Native Files) which have already been formatted for use in Relativity. The initial data transfer will include the Master file and previously generated workspaces for approximately 6 cases which will need to be maintained/archived pending resolution of these cases. The Contractor shall store and maintain the Master File and the initial workspaces uploaded, as well as any additional workspaces (up to 14 additional workspaces) required based on the litigation needs of the Board.

The Relativity 10.1 system (or higher) must be hosted on a web-based hosted solution for review by the Board's litigation unit staff and/or the Contractor's document reviewers. The solution must be browser-independent (not Internet Explorer specific). The Contractor shall scan, convert, and/or import additional material into the Master File, as requested by the Board.

The Contractor shall provide all necessary maintenance and support for the Relativity software to ensure proper use and operation of the solution. Contractor shall provide the Board with any new software releases and/or software updates or revisions.

All new software releases and software upgrades must be tested and proven in a comparable environment prior to implementation and will be subject to a minimum ninety-day warranty period after implementation. This warranty period will be in addition to the warranty period offered by the Contractor on commercially available versions of the software at the beginning of the term of this contract.

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

**3.2.1.2 Functional Requirements**

The WCB is requiring that the Contractor use Relativity (10.1 or higher) for the provision of the hosting and e-discovery services being sought, because Relativity offers the functionality required and desired by the WCB. However, utilization of some of the required and/or desired functionality or Relativity will require intervention on the part of the Contractor. Contractor shall provide support and any intervention necessary to fully utilize and/or implement the features and functionality of Relativity. The following subsection provides a general narrative of the tasks and deliverables that must be provided under the contract which results from this procurement. The tasks and deliverables must be met by through the use of Relativity, either inherently or in combination with Contractor intervention, or by Contractor. Contractor shall be fully responsible for meeting the tasks and deliverable described in the tables below. In the tables, the first column denotes the unique requirement number for that specific requirement (ID); the second column describes the task to be met by the contractor and the third column denotes the priority, which is either **Mandatory** or **Desired**.

**Mandatory** – The Board deems these requirements to be necessary for satisfactory performance of the services described in this RFP. If a requirement is identified as “Mandatory,” the Contractor *must* meet the requirement. Failure to meet any of the Mandatory requirements during the term of the Contract may result in termination of the Contract. By submitting a proposal in response to this RFP, the Bidder warrants that it is capable of meeting, and will meet, all Mandatory requirements.

**Desired** – The Board deems these requirements to be beneficial to the performance of the services described in this RFP. The Board will evaluate and score each contractor’s responses to **Desired** tasks as part of the evaluation process as described in Section 4. The contractor’s ability to demonstrate how they will meet the Desired requirements will result in a higher score.

<b>ID</b>	<b>Tasks/ Deliverables</b>	<b>Priority</b>
	<b>Engagement Initiation</b>	
1	The hosting provider must provide 20 document reviewers to assist with the engagement initiation.	Mandatory
2	The hosting provider must upload 3 TB of native files (NSF and Standard Native Files) which have already been formatted for use in Relativity. This data transfer will include previously generated workspaces for approximately 6 cases which will need to be maintained/archived pending resolution of these cases.	Mandatory
3	The review solution must be able to maintain the Master File and create/maintain up to 20 different workspaces generated from the Master File. The hosting provider shall setup the template or input a previously created template, as requested by WCB.	Mandatory

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

4	The review solution must be able to use keywords and filtering provided by the Board to create additional workspaces from the Master File. There will be document overlap between the cases. The Board will provide assistance revising the tagging buttons for each new workspace. The hosting provider shall run keyword searches, as requested by WCB.	Mandatory
5	Hosting provider shall set up case specific review coding templates or workflows in the review solution to ensure that case team review activities are not allowed to impact the review activities of any other workspace (i.e., folders, saved searches, and issue codes must be unique per matter).	Mandatory
6	It is preferred that the hosting provider have a mechanism to run federated searches across multiple cases.	Desired

ID	Tasks/ Deliverables	Priority
	<b>General Data Ingestion</b>	
7	<b>Incoming Data Batch ID</b> – the hosting provider must maintain a unique identifier for each set of data that the Board presents to the service for ingestion.	Mandatory
8	<b>Ingestion Report</b> – the hosting provider must maintain a record, per data ingestion set, of the volume of the data presented by the WCB, the custodians provided for ingestion, the number of files provided, the number of searchable documents loaded, the number of non-searchable documents loaded, the date of presentation, and the date the data was ready for review.	Mandatory
9	<b>Ingestion Report Distribution Cycle</b> – The hosting provider must provide the ingestion report to WCB when requested, and after each data load.	Mandatory
10	<b>Data Load Folder</b> – The hosting provider should place all the documents of a specific incoming batch into the same virtual folder and name that folder based on the unique batch identifier.	Desired
11	<b>No Content Identification</b> – The review solution must be able to identify and segregate documents with no searchable content at ingestion time.	Mandatory
12	<b>Linear Review Folder</b> – the hosting provider must create a second folder to hold all documents that contain no searchable content. This folder must be called "Linear Review".	Mandatory
13	<b>Data Filtering Search at Ingestion</b> – the hosting provider must be prepared to run keyword and data filtering criteria provided by WCB and place the result set into a review folder.	Mandatory
14	<b>Unique DOCID</b> – At ingestion time, the review solution must assign each document with a unique document identifier that is searchable and does not change for the duration of the case.	Mandatory

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

15	<b>Workflow Folders</b> – the hosting provider should be prepared to break each set of newly ingested documents into workflow folders based on document volume as requested by the WCB.	Desired
16	<b>Automatic Image File OCR</b> – The hosting provider must have an automatic process in place, at the time of ingestion, for OCRing documents with no searchable text, which reasonable OCR would produce searchable text.	Mandatory

<b>ID</b>	<b>Tasks/ Deliverables</b>	<b>Priority</b>
	<b>Native File Data Ingestion</b>	
17	<b>Reviewable File Format List</b> – the hosting provider must provide a list of all file formats that, when ingested into the review solution, will provide searchable text.	Mandatory
18	<b>Automatic Image File OCR</b> – the hosting provider must provide an OCR feature to create searchable text from image data when the native file is presented as an image file type.	Mandatory
19	<b>Extract Native File Text</b> – the review solution must extract the text directly from the native file for all file types that contain text.	Mandatory
20	<b>Custodian Metadata Applied</b> – the hosting provider must associate the native files, with the appropriate custodian information, based on the information provided by WCB. The end result must enable the WCB to search for documents and e-mails collected from a given custodian in the database.	Mandatory
21	<b>Metadata Fields</b> – the review solution must present native file metadata.	Mandatory
22	<b>Post Ingestion No Content Report</b> – the hosting provider must provide a list of all files that failed to provide searchable text.	Mandatory

<b>ID</b>	<b>Tasks/ Deliverables</b>	<b>Priority</b>
	<b>Paper Production Data Ingestion</b>	
23	<b>Document Scanning</b> – The hosting provider must provide scanning services or contract with a third-party scanning vendor for the provision of required scanning services.	Mandatory
24	<b>Document Separation</b> - Paper production may require the hosting provider or its subcontractor to prepare a box of documents to be scanned. In this scenario the Board will have provided a box of paper and performed no document separation. The Board would be requesting that reasonable document breaks are made by the hosting provider or its subcontractor. The hosting provider or its subcontractor must look at each page and make a best guess on where one document ends, and another document begins.	Mandatory

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

25	<b>Subjective Document Separation</b> - Paper Production may require that the hosting provider or its subcontractor use paper clips and staples, and/or paper folders as the official document separators. This would require the hosting provider or its subcontractor to remove these separators prior to scanning the documents. Additionally, the WCB requires that pages be re-stapled, re-paper clipped and placed back into the folders after scanning.	Mandatory
26	<b>Document Separated by Separator Sheets</b> - A paper production may be provided to the hosting provider with colored document separator sheets placed between the various documents; the hosting provider or its subcontractor must be able to scan the documents into separate files based on the separations indicated by the document separator sheets.	Mandatory
27	<b>Oversized Paper</b> – the hosting provider or its subcontractor must be able to scan oversized paper.	Mandatory
28	<b>Color Scanning</b> - the hosting provider or its subcontractor must be able to scan color documents.	Mandatory
29	<b>OCRing Documents</b> – The hosting provider or its subcontractor must be able to OCR paper documents.	Mandatory
30	<b>Loading Production</b> – the hosting provider or its subcontractor must be able to turn a paper production into a valid load production in the form of Tiff, Text and Metadata.	Mandatory

ID	Tasks/ Deliverables	Priority
	<b>Static Production Data Ingestion</b>	
31	<b>Load Static Production Data</b> - The hosting provider must provide an option to load static productions (tiff, text, and metadata) as either EDRM XML loads or Concordance formatted load sets.	Mandatory
32	<b>Link Tiff, Text, and Metadata</b> – the review solution must be able to link the tiff with the text and the metadata and present it to the reviewer as one document.	Mandatory
33	<b>Metadata Problem Resolution</b> - the hosting provider must be able to identify metadata productions that do not match the standards. The hosting provider must be able to produce a report of any records that do not match the standard.	Mandatory

ID	Tasks/ Deliverables	Priority
	<b>De-duplication of Data</b>	
34	<b>Hash Value De-duplication</b> – the review solution must provide a mechanism of de-duplication of native files based on MD5, or SHA (Secure Hash Algorithms) values.	Mandatory

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

35	<b>E-mail De-duplication</b> – the review solution must provide a mechanism of e-mail de-duplication based on the following fields: message id, subject, sender, recipients, and date sent. If an alternative method of e-mail de-duplication is used on a document, the method used must be provided. The review solution must include the option to control the precision of the e-mail sent time stamp. Reducing the precision often increases the number of duplicated emails.	Mandatory
36	<b>De-duplication Report</b> - the hosting provider must provide a list of all the documents removed as duplicate data.	Mandatory
37	<b>Custodian Field Maintained Post De-duplication</b> – the review solution must maintain a list of multiple custodians who presented the same document, as well as the multiple original file locations of the duplicate data.	Mandatory
38	<b>De-Nist Report</b> – the review solution must de-NIST all data and report the documents that were removed based on a NIST match.	Mandatory
39	<b>Baseline MD5 Removal</b> - The hosting provider should allow the WCB to provide a list of MD5 values for the files that exist after a standard computer install. This list is similar to the NIST list to remove system files. These documents should be identified in a report at the time of data ingestion similar to the de-nist report.	Desired

ID	Tasks/ Deliverables	Priority
	<b>Document Redaction</b>	
40	<b>Text Search Redaction</b> - The review solution must have the ability to run text searches and then either automatically redact all matching text (and associated image) in the document or allow the reviewer to click through the hits and determine if the specific text should be redacted based on content.	Mandatory
41	<b>Regular Expression Redaction</b> - The review solution must allow for regular expression pattern matching and redact standard content like social security numbers or phone numbers. (i.e. If the redaction search string for a document were ###-##-#### then all social security numbers in the document would be redacted).	Mandatory
42	<b>Redaction of Metadata</b> - The review solution must have the ability to redact portions of the document metadata. For example, if a name is identified as a sender or recipient and the name needs to be redacted then the metadata that contains the text must be identified so it can be redacted at export.	Mandatory

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

<b>ID</b>	<b>Tasks/ Deliverables</b>	<b>Priority</b>
	<b>Document Review</b>	
43	<b>No Searchable Content Identification</b> - The review solution must categorize documents with no searchable text in appropriate containers.	Mandatory
44	<b>Issue Coding of Ingestion Errors</b> - The review solution should have a feature that issue codes on loading document ingestion errors such as but not limited to: encrypted documents, unknown file type and no content.	Desired

<b>ID</b>	<b>Tasks/ Deliverables</b>	<b>Priority</b>
	<b>Discovery Productions</b>	
45	<b>Electronic Productions</b> --the hosting provider must timely produce e-discovery productions to all parties directed to per the WCB. The hosting provider must assist all parties in accessing the e-discovery productions.	Mandatory

<b>ID</b>	<b>Tasks/ Deliverables</b>	<b>Priority</b>
	<b>Advanced Document Analysis Review Features</b>	
46	<b>Find Similar</b> - The review solution should provide a mechanism for identifying documents that are similar to a selected document.	Desired
47	<b>Document Clusters</b> – At the time of ingestion, the review solution should create document clusters based on common textual themes within the documents.	Desired
48	<b>E-mail Thread Review</b> - The review solution should provide a mechanism for selecting all e-mails in an e-mail thread and reviewing them.	Mandatory
49	<b>Near Duplicate</b> - The review solution should provide a mechanism for determining near duplicate documents. The document should be identified as a pivot document and variations.	Mandatory
50	<b>Predictive Coding</b> - The review solution must provide a defensible form of predictive coding. The predictive coding will be used for relevancy review.	Mandatory
51	<b>Predictive Coding Seed Sets</b> - The review solution must provide a mechanism for providing seed sets to the predictive coding engine.	Mandatory
52	<b>Predictive Coding Random Sampling</b> – The review solution must have the ability to add a random set of homogenized documents to the predictive coding engine.	Mandatory
53	<b>Predictive Coding Engine Court Defensibility Document</b> - The hosting provider must supply references, and documentation about	Mandatory

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

	how their predictive coding mechanism was defended successfully in court.	
54	<b>Predictive Coding Analysis Reports</b> - The hosting provider should provide the analysis reports that show how the predictive coding has determined a set of documents to be relevant, and non-relevant.	Desired
55	<b>Ability to Verify Predictive Coding Training Sets to Audit Junior Reviewers</b> – The review solution should have the ability to verify predictive coding training sets to audit junior reviewers. The predictive coding process involves up front work for senior reviewers. The predictive coding engine should preserve the documents that were tagged used as the exemplars by the senior reviewer. This set of documents should be capable of being made available as a training set to new reviewers so WCB can test whether the reviewers are applying tags accurately.	Desired

<b>ID</b>	<b>Tasks/ Deliverables</b>	<b>Priority</b>
	<b>Auditing\Reports</b>	
56	<b>Reviewer Event Report</b> - The review solution must provide a daily work summary report. This report would tally the following document events per reviewer, and report on the count per event: loaded, issue coding, foldering, commenting, opening, searching, review self-printing, redactions performed, and/or PDF exports. The report would also record the total amount of time each reviewer spends in the review solution.	Mandatory
57	<b>Load Summary Report</b> – The hosting provider must provide a load summary report that describes the volume of data to be ingested into the system, the volume de-duplicated, the total number of unique documents being loaded, the number of non-searchable documents loaded, any error documents that could not be loaded, and any documents excluded based on a MD5 NIST value.	Mandatory
58	<b>Privilege Log Report</b> - The review solution must include a "Document Privileged" report. This report must include the review solution document id, a production id, with the following metadata fields as appropriate per document: Document Type (E-mail, Attachment, Loose File), From, To, CC, BCC, Subject, Date Sent, Time Sent, Filename, File Title, Author, All applied Privilege Codes, all Document Summary Comments.	Mandatory
59	<b>Redaction Log Report</b> - The review solution should include a "Document Redacted" report, which should include the review solution document id, a production id, with the following metadata fields as appropriate per document: Document Type (E-mail, Attachment, Loose File), From, To, CC, BCC, Subject, Date Sent, Time Sent, Filename, File Title, Author, All applied Privilege Codes, all Document Summary Comments.	Desired

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

60	<b>Export Production Report</b> – The review solution must include an export production batch report, which includes the number of documents being exported, the production ids exported, the date and time of the export, a detailed list of any export errors, and a description of the rules used to identify the export documents (ex. All documents returned by a specific query). When the WCB requests an export production, the hosting provider must create a unique export production Batch ID and an export production batch report.	Mandatory
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ID	Tasks/ Deliverables	Priority
	<b>Search Features</b>	
61	<b>Boolean Operators</b> – The review solution must have the ability to run searches using the following Boolean operators: AND, OR, NOT, XOR. In addition the review solution must provide the ability to control order of operation by placing clauses inside parentheses “( )”.	Mandatory
62	<b>Proximity Search</b> – The review solution must use some form of Proximity Search, such that the first term is within X words of Y.	Mandatory
63	<b>Boolean Combination of Saved Searches</b> – The review solution must provide the ability to Combine Searches using Boolean operators. For example, ‘Search A AND Search B’ would produce only documents in which both Search A and Search B were true.	Mandatory
64	<b>Save Searches</b> – The review solution must have the ability to <b>Save Searches</b> for individual re-use, or for collaborative use by others. These saved searches must provide an opportunity for placing the searches in folders that could be nested. The review solution should also provide the ability to provide a description of the search to make it more easily identified in the future.	Mandatory
65	<b>Saved Search Permissions</b> – The review solution must provide a mechanism to apply Permissions on Shared Searches to allow the reviewer the ability to share specific searches with specific personnel.	Mandatory
66	<b>Document Comment Searching</b> – The review solution must provide a mechanism to search on Reviewers Document Comments. The review solution must provide a mechanism for finding all documents that have a comment and those that do not have a comment.	Mandatory
67	<b>Issue Code Searching</b> - The review solution must provide a mechanism for searching on issue codes. This search mechanism must provide the ability to perform Boolean operations to fine tune the issue code results.	Mandatory
68	<b>Specific Reviewer Issue Code Search</b> - The review solution must provide a way of searching for documents based on specific issue codes. The review solution must also have the ability to further refine the result to issue codes applied by specific reviewers.	Mandatory

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

69	<b>Stemming</b> – The review solution must provide the ability to perform stemmed searches of English words. In the context of information retrieval Stemming is the process for reducing inflected (or sometimes derived) words to their stem, base or root form—generally a written word form. The stem need not be identical to the morphological root of the word. For example, if the user wanted to find the stemmed results for ‘swam’ the review solution would also search for swum, swimming, swims, swimmer, and swimmers. The review solution would also display the stemmed variations back to the reviewer so they can determine which variations are appropriate.	Mandatory
70	<b>“Is Like” Searching</b> – The review solution should have the ability to perform “is like” searching. In the context of information retrieval, an “is like” search feature is required to dictate semantic manifestations of metadata in the indexing of content objects.	Desired
71	<b>Wildcard Searching</b> – The review solution must have the ability to perform Wildcard Searching, which is a search that substitutes one or more characters in a search query for a wildcard character such as an asterisk.	Mandatory
72	<b>Fuzzy Searching</b> – The review solution must have the ability to perform Fuzzy Searching, which is the technique of finding strings that match a pattern approximately (rather than exactly). Fuzzy searching can be most effective when a document is OCR'd. At a minimum, the review solution must provide fuzzy searching such that a word matches on character transposition and phonetic variations.	Mandatory
73	<b>Regular Expression - Pattern matching.</b> The review solution must provide a mechanism for searching on keywords based on standard regular expression syntax.	Mandatory
74	<b>Zero Click Tagging</b> -The review solution must have Zero Click Tagging, which is the technique of allowing the reviewer to construct a query in which the results are automatically bulk issue coded or bulk folderized whenever new documents are added to the indexed corpus. This removes the requirement that a reviewer would have to re-run critical searches each time data is loaded into the system.	Mandatory
75	<b>Find Similar Documents</b> – The review solution should have a Find Similar Documents search, which is the ability of the review solution to find documents that have a statistical similarity based on content. This functionality is useful when the reviewer finds an exemplar document and wants to return all near variations.	Desired
76	<b>Search Reports</b> – The review solution must provide the ability to export Search Reports. The reports must contain a breakdown of all search terms in a query and the number of documents returned from the indexed document set. The report must also contain: who ran the search; when they ran the search; and, how many documents were in the collection at the time of the search.	Mandatory

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

77	<b>Federated Searches</b> – The review solution must provide Federated Searches Across Cases. This functionality will allow the reviewer to construct one search and then run that search against selected cases. The resulting documents must then be either comingled or remain separated depending on the reviewer needs.	Mandatory
78	<b>Paragraph Page Proximity Search</b> – The review solution should provide syntax to allow for proximity searching within a paragraph or within a page.	Desired
79	<b>Numbers Punctuation Searching</b> – The review solution must have the ability to search for numbers, and standard punctuation.	Mandatory

ID	Tasks/ Deliverables	Priority
	<b>Document Production</b>	
80	<p><b>Static Production</b> – ESI can be produced in an image, or near paper, format. Rendering an image is the process of converting ESI or scanning paper into a non-editable digital file. During this process a “picture” is taken of the file as it exists or would exist in paper format. Based on the print settings in the document, the printer or the computer, data can be altered or missing from the image. The imaging process must allow for bates stamping, and text endorsing of documents. The print productions must be produced in bates sequential order and the ability to interleave colored document separator sheets should be available. Image files are named based on their production bates number.</p> <p>A static production also contains the text of each document. Documents with no text must be identified. Text files are named based on their beginning production bates number.</p> <p>A static production also contains a folder for files that could not be imaged, and or spreadsheet files. These native files must be produced with their beginning production bates number.</p> <p>A static production must also contain the metadata of each document in a valid delimited load format. At a minimum the review solution must be able to produce, concordance, summation, ring tail load formats.</p>	Mandatory
81	<p><b>Native Production</b> - An outgoing production format where the files are produced in the native form, they were collected in. In a native production, MS Word documents are produced as .doc or .docx files, MS Excel files are produced as .xls or .xlsx files, and Adobe files are produced as .pdf files, etc.</p> <p>A native production may also require the metadata of the incoming</p>	Mandatory

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

	<p>document as a valid export load format.</p> <p>A native production requires document Hashing prior to production to avoid issues regarding authenticity. Commonly used hashing algorithms include MD5 and SHA1.</p> <p>A native production requires Tracking Produced Materials.</p> <p>A native production must have all files set to Read Only.</p>	
82	<p><b>EDRM XML Production</b> –The review solution must be able to import and export using the EDRM XML standard, which is a specialized form of metadata load file that includes, tagging information, document comments, and metadata information as described by the EDRM XML standard.</p>	Mandatory
83	<p><b>Technical Support for Production</b> – The hosting provider shall provide technical support to Board attorneys and opposing counsel to access and download any electronic documents productions and/or private logs.</p>	Mandatory

ID	Tasks/ Deliverables	Priority
	<b>User Administration</b>	
84	<p><b>Creation of User Groups</b> - The hosting provider must provide a security mechanism that limits specific document access, and event actions for groups of reviewers.</p>	Mandatory
85	<p><b>Limit the Ability to Apply Tags</b> -The review solution must permit limitation of a group of reviewers' abilities to apply certain tags to documents. For example, a group of reviewers may have a responsibility for relevance review but not for privilege. The review solution must be able to prevent the reviewers from applying privileged tags.</p>	Mandatory
86	<p><b>Active Directory Authentication</b> - The review solution should integrate with the Board's Active Directory server to allow Board users to authenticate using the same user account information they would internally.</p>	Desired
87	<p><b>Active Directory Group Integration</b> - The review solution should integrate with the Board's Active Directory (AD) server so the Board AD groups can be mapped to the review solution reviewer security groups. The purpose of this solution is to reduce the amount of duplicate administration that is required for managing groups of reviewers.</p>	Desired
88	<p><b>Limit Document Visibility</b> - The review solution must be able to prevent groups of reviewers from viewing specific documents. These</p>	Mandatory

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

	hidden documents must be identified by specific tags, or specific folders, and/or specific queries.	
89	<b>Removing Documents from Folders</b> - The review solution should permit limitation of a group of reviewers from being able to post documents to specific folders. For example, a folder may be created to hold documents for further review. Privileged reviewers should be able to add and remove documents from this folder, but non-privileged reviewers should not be able to remove documents from this folder.	Desired
90	<b>Tagging Hierarchy</b> – The review solution should be able to provide a mechanism to prevent junior reviewers from changing issue codes that have been applied by senior reviewers.	Desired
91	<b>Limiting Production Requests</b> - The hosting provider must have a mechanism to prevent not privileged staff from requesting productions, and document blowbacks.	Mandatory
92	<b>Limit the Ability to Folder Actions</b> -The review solution must permit limitation of a group of reviewers from being able to create folders and/or place documents in folders. For example, a group of reviewers may have a responsibility for reviewing documents but not performing complex document analysis. This group of reviewers would only need the ability to apply specific issue codes from various workflow folders.	Mandatory
93	<b>Ease of User Administration</b> - The review solution should allow for administration of reviewer groups based on spreadsheets. Modifying case reviewer security permissions should not require administering reviewers one at a time. A spreadsheet should provide a method of applying reviewer group rights in a more automated manner.	Desired
94	<b>Case Project Manager</b> - The hosting provider must provide a document of roles and responsibilities of a case project manager. These activities must include but are not limited to: reviewer role assignment, template creation, document load management, outgoing production management, problem resolution and advanced query support.	Mandatory

ID	Tasks/ Deliverables	Priority
	<b>Training &amp; Support</b>	
95	<b>On-Site Training</b> - The hosting provider must provide onsite training programs for case administrators, junior reviewers, senior reviewers, and senior management.	Mandatory
96	<b>Video Tutorials</b> - The hosting provider must provide a basic and advanced video tutorial for the following topics: case administration, review solution overview, document searching, document issue coding, document foldering, document production, document printing, case administration, audit reports, and predictive coding.	Mandatory
97	<b>Technical Support</b> - The hosting provider must provide a minimum list of client requirements and a recommended list of client	Mandatory

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

	requirements. The hosting provider must provide guidelines for any Active-X, Browser Add-Ins, or client workstation administration. The hosting provider must provide a set of requirements for secure network access to and from the site. The hosting provider must provide two free user accounts that will be used by technical staff for validating that the remote solution is connecting correctly. These accounts will be used for technical troubleshooting only and not for document review.	
98	<b>On-Line Training</b> - The hosting provider must provide the option for Online Training for case administrators, junior reviewers, senior reviewers, and senior management.	Mandatory
99	<b>Solution Upgrade Training</b> - The hosting provider should provide additional training if upgrades impact the solutions user interface.	Desired
100	<b>User and Technical Guides</b> - The hosting provider must provide PDF and printed copies of the solution user and administration guides. There must be a section on advanced search techniques, including all metadata fields.	Mandatory
101	<b>Quick Start User Guides</b> - A shorter version of the user guides must be made available to get beginner users up to speed quickly. Quick start guides for searching, issue coding, redaction, and production must be created.	Mandatory
102	<b>Keyboard Shortcut Guides</b> -The review solution must make available keyboard shortcuts to improve the speed of review. A guide of these shortcuts should be provided by the hosting provider.	Mandatory

ID	Tasks/ Deliverables	Priority
	<b>Maintenance</b>	
103	<b>Database Backup</b> --The hosting provider must backup the review database nightly. These backups must be stored in a secure offsite location for disaster recovery purposes.	Mandatory
104	<b>Data Repository</b> - The hosting provider must backup the data repository nightly. These backups must be stored in a secure offsite location for disaster recovery purposes.	Mandatory
105	<b>Snapshots</b> - The hosting provider must have the ability to provide case snapshots for the purpose of recovering the data and coding to a specific point in time should a catastrophic event, system failure and/or power outage occur during a data backup.	Mandatory
106	<b>Offsite Data Destruction Cycle</b> - Data that is being held offsite is meant to be used in the event of disaster. This data must be destroyed on a schedule, such that no nightly backup data remains offsite for a period of more than 30 days.	Mandatory

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

<b>ID</b>	<b>Tasks/ Deliverables</b>	<b>Priority</b>
	<b>Database &amp; SDK Access</b>	
107	<b>Read-only Access to the Database</b> - Site should have the ability to perform SQL read-only queries against document metadata.	Desired
108	<b>Software Development</b> - Site should have the ability to allow for additional software development of the review solution.	Desired
109	<b>Software Developer</b> - The hosting provider should be able to develop additional features based on a reviewer's request. For example, a reviewer may find that if a document is tagged 'hot' a link to that document is e-mailed to the legal case manager.	Desired

<b>ID</b>	<b>Tasks/ Deliverables</b>	<b>Priority</b>
	<b>Disengagement Activities</b>	
110	<b>Project Manager</b> - The hosting provider must provide a project manager to oversee all disengagement activities, including the export of all hosted data. The project manager shall ensure that all hosted data has been accurately and completely exported in accordance with the requirements set forth in this RFP.	Mandatory
111	<b>Data Export</b> – The hosting provider must provide an export of all data back to the Board within 30 (thirty) business days of contract expiration. The export must be in the form of an EDRM XML export. The export must contain the native version of the document and the text of the document. The export must include WCB reviewer work product including all document comments, all document issue codes and all document folder sets that were applied to the documents while they were in the care of the hosting provider. Additionally, the export must include tag values, file locations, custodian information, document comments, and folder values. There must also be a reporting mechanism for capturing saved searches.	Mandatory
112	<b>Signed Affidavit</b> – upon completion of the data export, the hosting provider must provide a signed affidavit stating that the data export has been completed in accordance with the requirements set forth in this RFP.	Mandatory

**3.2.1.3 Data Ownership**

The Board will remain the owner of all data stored in the hosting environment. In the event of contract termination, selected contractor must provide an export of all data back to the Board within 10 (ten) business days of contract termination. The export must be in the form of an EDRM XML export. The export must contain the native version of the document and the text of the document. The export must contain all document comments, all document issue codes and all document folder sets that were applied to the documents while they were in the care of the selected

**NYS WORKERS' COMPENSATION BOARD**  
**e-Discovery and Managed Document Review Services**

contractor. Selected contractor must also provide written proof of destruction of any copies of data both physical and virtual documents within 30 (thirty) business days of contract termination.

**3.2.1.4 Security/Compliance Requirements**

All data provided by the Board must remain encrypted while in motion or at rest with a minimum of 256-bit AES encryption. WCB will submit data in an encrypted format to selected contractor. Selected contractor will need to accept and comply with all New York State security regulations.

The system shall allow only authorized users to access the application and data, and shall allow different levels of authorized user access. The system shall enable the user to determine whether audio or text files (if the system contains a note-taking utility) have been edited or otherwise changed since they were created.

Selected contractor warrants, covenants and represents that it will comply fully with all security procedures of the Authorized User(s) in performance of the Contract including but not limited to physical, facility, documentary and cyber security rules, procedures and protocols.

**3.2.1.5 Auditing Requirements**

Due to the highly sensitive information of this data all access to facility and data must be documented and retained for auditing purposes. WCB or higher courts at any time may request an Audit log. Selected contractor must comply with such request and keep an audit trail for a minimum of the contract term.

**3.2.1.6 Data Backups**

The e-discovery data will need to be backed up regularly to support recoverability. Proposal must include a solution for scheduled backup of this data. Backups should be taken daily, at a minimum. Incremental or differential backup with periodic full backup is an acceptable solution. Full backups should be taken, at a minimum, on a monthly basis. Monthly full backups should be retained for no less than 3 months. Backups can be stored on any media, provided that media is secured, encrypted, and available for local recovery purposes. Backups for the purpose of disaster recovery must be moved to and held in an offsite location. Backups in transit, whether through physical movement or data transmission, must be secured. Offsite storage of backups must have the logical and physical controls required for compliance.

**3.2.1.7 Business Continuity/ Disaster Recovery**

Selected contractor may use and copy the Master File, Workspace and/or Productions and related Documentation in connection with:

- i) reproducing a reasonable number of copies of the Master File, Workspaces, and/or Productions for archival backup and disaster recovery procedures in the event of destruction or corruption of the Master File, Workspaces and/or Productions or disasters or emergencies which require Contractor to restore backup(s) or to initiate disaster recovery procedures for its platform or operating systems;
- ii) reproducing a reasonable number of copies of the Master File, Workspaces and/or Productions and related Documentation for cold site storage. "Cold Site" storage shall be defined as a restorable back-up copy of the Master File,

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

- Workspaces and/or Productions not to be installed until and after the declaration by the Contractor of a disaster;
- iii) reproducing a back-up copy of the Master File, Workspaces and/or Productions to run for a reasonable period of time in conjunction with a documented consolidation or transfer otherwise allowed herein. "Disaster Recovery" shall be defined as the installation and storage of the Master File, Workspaces and/or Productions in ready-to-execute, back-up computer systems prior to disaster or breakdown which is not used for active production or development.

WCB requires the selected contractor to provide for continued operation in the event of a partial or complete disruption of operations at the selected location. The contractor must have controls in effect to minimize the likelihood of a disruption (UPS, dual routing, redundant circuits, etc.) as well as provisions to restore all services. WCB recovery time objective (RTO) is 24 hours with a recovery point in time (RPO) of no more than 24 hours prior to the event. The contractor's location for both primary and recovery site should not be within a 100-mile radius of WCB Schenectady, NY location but must be located within the United States.

### **3.2.2 MANAGED DOCUMENT REVIEW**

Selected contractor shall provide managed document review services for material related to the litigation, as provided by the WCB. Selected contractor shall provide document reviewers to assist in the review of documents for relevancy and/or privileged content. The document reviewers must have the necessary knowledge and expertise to satisfactorily review and analyze the content of each document for relevance and/or privileged content. Reviewers should have a minimum of six months experience using Relativity and be a law school graduate or a licensed attorney.

Upon request of WCB, selected contractor shall provide an appropriate number of document reviewers who will be full-time, exclusively dedicated to performing managed document review services related to the litigation. Full-time shall mean 8-hour workdays, Monday-Friday. The document reviewers and review manager dedicated to this project will, at all times, act under the guidance and direct supervision of WCB attorneys.

**The Managed Document Review services shall include:**

#### **3.2.2.1 Phase I – Review Project Planning & Setup**

Contractor shall:

- Work with case team to conduct knowledge transfer to understand background, objectives, and schedule;
- Work with WCB to finalize keyword/date searches to create unique workspaces from the Master File as appropriate;
- Configure review workspace (custom coding fields, views, layouts, searches) consistent with review objectives and planned work streams;

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

- Assist with preparation of training materials (review guidelines, and, as required, exemplar documents);
- Perform candidate CV review and telephone/live interviews to select team of contract review attorneys;
- Coordinate start of review and initial training session with case team; and
- Organize document universe via search/analytics to assist with review prioritization, quality, and speed.

**3.2.2.2 Phase II – Active Review**

Contractor shall:

- Conduct Day-1 training (including Relativity platform training);
- Develop and implement review work streams; identify sub-teams by activity (iterative); and
- Monitor progress and quality; facilitate communication of questions and instructions; perform quality control of team's work product; communicate progress and quality through daily reports to case team.

**3.2.2.3 Phase III – Post-Review Support**

Contractor shall:

- Develop potential Second Level ("2L") (external) review work stream with associated workspace configuration for case team;
- Organize content, prepare additional work product including key event timeline, etc.; and
- As requested, prepare document export(s) per case team's instructions following 2L review.

**3.2.3 CONTRACTOR AND STAFF EXPERIENCE**

The contractor must have recent experience, within the past year, providing a hosted e-discovery solution and managed document review services, which are similar to the services described in this RFP, and possess the experience and skills necessary to satisfactorily fulfill all of the service requirements of this RFP in accordance with the terms and conditions set forth herein. The selected contractor must provide the quality and quantity of staff necessary to satisfactorily perform the services described in this RFP and to produce all required deliverables; contractor staff shall possess any necessary and/or required skills and experience.

**3.2.4 CONTRACTOR PERFORMANCE REQUIREMENTS**

The selected contractor shall meet all requirements and provide all deliverables specified in this RFP, including any referenced appendices and attachments. Selected contractor shall perform all of the activities and tasks required to achieve all of the objectives, functions, outputs and performance criteria stated therein, in a manner that is appropriate and acceptable to the Board's management.

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

The Board is imposing performance metrics as a means of continuously monitoring the contractor to ensure compliance with the agreed upon contract. The contractor shall be required to meet agreed upon performance metrics as set forth in the Contractor's proposal at the time the contract is executed. Should the Board determine that the desired performance standards are not being met, the selected contractor must increase staffing levels to meet those standards. Failure to remedy performance standard issues to the satisfaction of the Board may be grounds for terminating the contract.

If the contractor's proposal includes work to be performed by sub-contractors, the contractor will be the prime contractor and, as such, will retain full responsibility for all aspects of the project and will be the sole contact with regard to all services performed under the contract. All services must be consistent with state and federal laws and regulations.

Submission of a proposal is an affirmation by the contractor that its organization complies with all requirements and qualifications set forth in this RFP and that its organization is capable of performing the services required in a manner consistent with the terms of this RFP. The contractor is solely responsible for meeting all requirements of this RFP.

## **SECTION 4 – RESPONSE REQUIREMENTS**

### **4.1 GENERAL PROCEDURES**

To facilitate the evaluation process and ensure fairness to each Bidder, this section defines a standard format and prescribed content for required responses to this RFP. Each proposal must comply with the following response requirements; proposals that fail to meet these requirements may be deemed non-responsive and the Bidder will be removed from further consideration:

- Bidder must deliver proposal to the WCB Issuing Office no later than 2:00 PM EST on the Closing Date for Receipt of Proposals, specified in Section 2.2.2, RFP Calendar. Bidders choosing to mail proposals should allow sufficient mail delivery time to ensure timely receipt of their proposals. WCB will not accept faxed or e-mailed proposals;
- Bidder must submit a Cover Letter as specified in Section 4.2 of this RFP;
- Bidder must submit a separate Administrative Volume as specified in Section 4.3 of this RFP;
- Bidder must submit a separate Technical Volume as specified in Section 4.4 of this RFP;
- Bidder must submit a separate Cost Volume as specified in Section 4.5 of this RFP; and
- Bidder must submit one USB thumb drive containing the Cover Letter, Administrative Volume, Technical Volume and Cost Volume files in an envelope labeled with the Bidder's name and *NYS Workers' Compensation Board, E-Discovery and Managed Document Review Services RFP, C140396*.

By submitting a proposal, Bidder is affirming the following:

- Bidder's acceptance of the procedures, evaluation criteria and other administrative instructions set forth in this RFP;
- Bidder's organization complies with all requirements and qualifications set forth in this RFP; and

**NYS WORKERS' COMPENSATION BOARD**  
**e-Discovery and Managed Document Review Services**

- Bidder's organization is capable of performing the required services in a manner consistent with the terms of this RFP.

## **4.2 COVER LETTER**

The Bidder must submit a pdf of the Cover Letter on official business letterhead on the thumb drive, as referenced in Section 4.1, General Procedures.

4.2.1 Format – the Cover Letter must include the following components:

- Name and address of the Bidder;
- Corporate profile and description of the Bidder and proposed subcontractors (including nature of business, types of services provided, size of client base for each type of service and length of time providing those services);
- Corporate structure identifying any parent company and affiliates for the Bidder (including number and location of offices, number and type of staff at each office and organizational structure/chart for each location);
- Name, title, address, e-mail address, telephone number, and fax number of the Bidder's official representative for its proposal;
- Signature of an official authorized to bind the Bidder to its provisions as part of its proposal;
- Statement certifying that the proposal remains valid for at least 180 days from the Closing Date of Receipt of Proposals specified in Section 2.2.2, RFP Calendar;
- Statement certifying that, if awarded the contract, the Bidder will comply with all the requirements set forth in this RFP, including the contract terms and conditions in Section 3 and Section 6, the attached standard clauses for all NYS contracts and State Finance Law 139-j and 139-k, except as may be hereinafter modified and accepted by WCB; and
- Statement of Integrity stating whether any principal, officer, or member of the firm has ever been convicted of a crime of fraud or dishonesty, or whether any such person is currently under indictment for a crime of fraud or dishonesty. The Bidder may, if desired, provide an attestation as to the business and personal integrity of their firm or any principal or member of the firm.

4.2.2 Trade Secrets – Proposals and supporting material submitted to WCB in response to this RFP are subject to the Freedom of Information Law (Public Officers Law [POL], Article 6; hereinafter "FOIL"). Pursuant to POL § 87(2)(d) of FOIL, records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise" may be exempt from disclosure. In addition, pursuant to POL § 87(2)(i), records or portions thereof that "if disclosed would jeopardize the capacity of an agency or an entity that has shared information with an agency to guarantee the security of its information technology assets, such assets encompassing both electronic information systems and infrastructures" may be exempt from disclosure.

A Bidder must identify any information that it reasonably believes falls under the exemptions set forth in POL § 87(2)(d) (the "trade secrets" exemption) and/or POL § 87(2)(i) (the "critical infrastructure" exemption) in the Cover Letter. Specifically, the Cover Letter must specify by page number, line or other appropriate designation, that information which is alleged to fall under

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

these two FOIL exemptions. The Cover Letter must provide an explanation of (i) why the disclosure of the identified information would cause substantial injury to the competitive position of the Bidder under POL § 87(2)(d), and/or (ii) why the information constitutes critical infrastructure information that should be exempted from disclosure under POL § 87(2)(i). Where such claimed material is embedded in the Proposal, it shall be the responsibility of the Bidder, at its sole cost and expense, to submit redacted versions of the proposal within ten (10) days of a request by the WCB.

Acceptance of the identified information by WCB does not constitute a determination that the information is exempt from disclosure under FOIL. A determination as to whether the materials or information may be withheld from disclosure will be made in accordance with FOIL at the time a request for such information is received by the WCB.

#### **4.3 ADMINISTRATIVE VOLUME (VOLUME I)**

The Bidder must submit a pdf of Volume I, on the thumb drive, as referenced in Section 4.1, General Procedures. This volume must contain complete and thorough responses to the requests for information set forth below, in Section 4.3.2.

4.3.1 Format – Volume I must comply with the following requirements:

- The Volume I pdf must be named “*Administrative Volume (Volume I)*”;
- Volume I must include a Title Page identifying the RFP for which the proposal is being submitted, and the name, location, and contact person(s) for the Bidder firm;
- Volume I must include a Table of Contents that reflects the areas identified within Volume I. The Table of Contents should identify each major section of the Bidder’s proposal along with its initial page number; and
- Volume I contents, including any supporting illustrations and photographs, must be printable on standard 8.5x11-inch white paper and be reproducible in black and white without obscuring any distinctive information.

4.3.2 Required Materials – Volume I must include a pdf of the following required materials, completed by the individual(s) who signed the Cover Letter and are authorized to contractually bind the Bidder:

- Affirmation of Understanding of and Agreement pursuant to State Finance Law § 139-j (3) and § 139-j (6) (b);
- Bidder’s Certification of Compliance with State Finance Law § 139-k(5);
- Bidder Disclosure of Prior Non-Responsibility Determinations;
- Minority and Women-Owned Business Enterprises – Equal Employment Opportunity Policy Statement (ATTACHMENT D);
- SDVOB Utilization Plan (ATTACHMENT E);
- MWBE Utilization Plan (ATTACHMENT F);
- EEO Staffing Plan (ATTACHMENT G); and
- EO 177 Certification (ATTACHMENT H).

**NYS WORKERS' COMPENSATION BOARD**  
**e-Discovery and Managed Document Review Services**

**4.4 TECHNICAL VOLUME (VOLUME II)**

The Bidder must submit a pdf of Volume II on the thumb drive, as referenced in Section 4.1, General Procedures. This volume must contain complete and thorough responses to the requests for information set forth below, in Section 4.4.2.

4.4.1 Format – Volume II must comply with the following formatting requirements:

- The Volume II pdf must be named “*Technical Volume (Volume II)*”;
- Volume II must include a Title Page identifying the RFP for which the proposal is being submitted, and the name, location, and contact person(s) for the Bidder firm;
- Volume II must include a Table of Contents that reflects the areas identified in Volume II. The Table of Contents should identify each major section of the Bidder’s proposal along with its initial page number;
- Volume II must clearly identify any attachments or other documents with the Bidder’s name and the words *NYS Workers’ Compensation Board, E-Discovery and Managed Document Review Services RFP, C140396 – Technical Volume (Volume II)*; and
- Volume II contents, including any supporting illustrations and photographs, must be printable on standard 8.5x11-inch white paper and be reproducible in black and white without obscuring any distinctive information.

4.4.2 Service Requirements - Volume II must include responses to each of the following requests for information, which correspond with the requirements set forth in Section 3.2 of this RFP:

- Provide a description of Bidder’s business including: ownership, history, client overview, organization, number of employees available for the provision of review services, business headquarters, and satellite locations. Include any client service promotional material. All work must be performed in the United States;
- Describe your organization’s experience hosting an e-discovery solution;
- Describe your organization’s experience providing Managed Document Review Services;
- Describe the minimum level of qualifications that your organization’s reviewers must meet, if any;
- Describe the volume of reviews, by type of review, that your organization currently handles, as well as the volume of cases that your organization is capable of handling. Please provide the number of cases handled by your organization in the past 5 years, categorized by year;
- Provide a description of Bidder’s training procedures, including a description of Bidder’s process for training and educating staff about updated or newly enacted laws or policies which are relevant to the provision of services;
- Provide a description of Bidder’s quality assurance processes (i.e. supervisory reviews, key performance indicators, internal/external procedural audits, quality controls, etc.);
- Provide examples of conflicts of interest which may arise, and explain how such conflicts will be identified and resolved by the Bidder;
- Provide at least three (3) references for entities for whom Bidder has performed services similar to those required herein in the last five (5) years. Each reference should contain the following information:

**NYS WORKERS' COMPENSATION BOARD**  
**e-Discovery and Managed Document Review Services**

- Entity Name;
- Contact Name;
- Street Address;
- City, State, Zip Code;
- Telephone Number;
- Email Address;
- Term of Engagement, including the beginning and end date; and
- Description of Engagement

Failure to provide sufficient information, or if WCB is unable to obtain a reference from one or more of the listed entities, will negatively impact the Bidder's score.

- Indicate whether your organization has provided e-Discovery or Managed Document Review services for, or on behalf of, governmental entities, if so, please describe the nature of such cases and provide contact information.
- Describe the technological capabilities of your organization, including your organization's electronic case management system (i.e. ability to accept documents electronically, to access Board information, security access measures, etc.).
- Describe the proposed operational structure and oversight of your organization.
- Describe your organization's process for auditing cases.
- Describe your organization's ability to maintain compliance with the State's Information Technology Services (ITS) privacy and security protocols (available at <https://its.ny.gov/tables/technologypolicyindex>).
- Describe your organization's ability to provide customer service to the WCB.
- Provide a description of your organization's Data Backup Solution.
- Provide resumes for staff who will be dedicated to this project. Staff should be trained professionals who have worked with the hosted e-discovery solution. The project manager should have a minimum of two years' experience working with the hosted e-discovery solution.
- Describe Bidder's ability to scan using the colored document separator sheets as referenced in Requirement #26.
- Provide the dimensions of the maximum size of paper that Bidder can scan.
- Provide a high-level technical description of how the Bidder will utilize the review solution for the ingesting of new data and the distribution of work across multiple servers. Address whether loading new data interferes with existing data being worked on by reviewers. Clearly identify which functions can be work-balanced across server farms, and which are bound to single servers. Include whether the review solution allows for splitting a case document index across multiple servers for faster document lookup. This list should include but is not limited to Document OCR, Page Imaging, Document Indexing, TAR Processing, Redaction Processing, Pre and Post Processing functions, Case Backups, Case Imports, Mass Tagging, Reporting.
- Provide a description of the impact adding new reviewers has on the system's performance for the existing reviewers.

**NYS WORKERS' COMPENSATION BOARD**  
**e-Discovery and Managed Document Review Services**

- Provide a description of the impact ingesting new data has on the performance of current data being reviewed.
- Provide a description of the impact on system availability and performance should a new state agency be added to the review solution.
- Provide a description of the Bidder's ability to distribute the processing of Tiff images to decrease production time without impacting the performance on the current system.
- Provide a description of the Bidder's ability to distribute the processing of their OCR engine to decrease production time without impacting the performance on the current system.
- Provide a description of the Bidder's levels of support available, including hours of operation, premier support options, and all other optional support offered.
- Provide a description of the Bidder's disaster recovery operational plans that will be implemented to maintain an operational solution in the event of a disaster. Include the addresses of both the primary and recovery sites.
- With reference to Requirement #105, Bidder must provide an explanation of how often case snapshots will be scheduled for backup, and the impact the snapshot feature has on the performance of the review solution.
- Provide a description of the Bidder's proposed procedure and frequency of destruction of all offsite data.
- Provide a completed Excel file of Attachment I – Performance Metrics to indicate time proposed to complete each of the tasks listed.
- Provide a completed pdf of Attachment J to respond to the Desired Tasks from Section 3.2.1.2 Functional Requirements.

#### **4.5 COST VOLUME (VOLUME III)**

The Bidder must submit a pdf of Volume III as well as the Excel file on the thumb drive, as referenced in Section 4.1, General Procedures.

4.5.1 Format – Volume III must comply with the following formatting requirements:

- Volume III must include a completed Fee Proposal that includes the required cost components (in the format of ATTACHMENT K of this RFP); and
- The Volume III excel file must be named "*Cost Volume (Volume III)*".

4.5.2 Cost Components – Volume III must include cost components as indicated in Attachment K:

The Bidder must propose pricing for all cost components for which Bidder will be charging a fee and must guarantee all proposed costs for the full contract term. The sole compensation under the contract shall be payment based on pricing indicated within Attachment K. All functionality that the Bidder has stated as a provided service must be accounted for in the Bidder's detailed cost proposal. Bidder shall be responsible for fulfillment of all service requirements, in accordance with the terms and conditions set forth in this RFP, based on the rates proposed in Bidder's proposal. Any cost component for which Bidder does not provide pricing shall be presumed to be \$0.

**NYS WORKERS' COMPENSATION BOARD**  
**e-Discovery and Managed Document Review Services**

If the WCB chooses to extend the term of the agreement, a fee adjustment of 2% or CPI, whichever is less, may be allowed for each of the one-year renewals if requested by the Contractor with greater than thirty (30) days' advance written notice.

The pricing structure is broken down into the following **separate and distinct pricing components**:

**A. Engagement Initiation:** Itemized costs associated with the intake of initial data and the initial need for a separation of data into various cases.

- 1) Cost to develop a standard case template, in collaboration with WCB, that will be used for all WCB cases. The template must include the standard case tags, standard folder structure, standard reviewer roles and their associated permissions, standard incoming document metadata standards, all standard metadata reviewer options, production export criteria, production export specifications, and standard reports (auditing and work product).
- 2) Cost for deduplication of the initial data at the custodian level.
- 3) Cost for separation and loading of the Master File plus 6 cases.
- 4) Cost for any project manager fees.
- 5) Any other costs associated with the performance of this service component, in accordance with the terms and conditions set forth herein, which are not specifically listed above.

**B. Case Creation:** Itemized costs associated with any new cases that are defined after the initial case organization has been completed.

- 1) Cost for creating new instances, excluding the initial cases of Engagement Initiation, of the WCB Case Template for new case.
- 2) Cost for editing of the WCB case template; such edits may include, but not limited to custom case related issued codes or folders.
- 3) Cost for assigning users to their various roles.
- 4) Cost for writing up specific technical requirements to ensure that all subpoenaed data is presented in a manner that can be ingested most effectively into the hosting providers review solution.
- 5) Cost for any project manager fees.
- 6) Any other costs associated with the performance of this service component, in accordance with the terms and conditions set forth herein, which are not specifically listed above.

**NYS WORKERS' COMPENSATION BOARD**  
**e-Discovery and Managed Document Review Services**

**C. Monthly Hosting:** Fees associated with the monthly hosting services, which will be incurred on a monthly basis:

- 1) Cost per reviewer license.
- 2) Cost for the same reviewer working in multiple cases, if any.
- 3) Costs for hosting data (per GB), performing backups, and maintaining the appropriate off-site solutions for disaster recovery.
- 4) Cost for any administration and/or Project manager fees that would be incurred, per case.
- 5) Cost for providing monthly reporting such as, but not limited to: incoming data loaded, reviewer activity, outgoing productions, maintenance support calls, project manager activity, and any other reports, as requested by the WCB.
- 6) Cost for maintenance and technical support.
- 7) Any other costs associated with the performance of this service component, in accordance with the terms and conditions set forth herein, which are not specifically listed above.

**D. Data Loading:** Itemized fees that the WCB would incur for loading of standard and non-standard data. WCB may provide keywords and date filters that will limit the data being loaded in a case.

- 1) Cost for any preprocessing work required (per GB), such as but not limited to deduplication, OCR, data problem identification and resolution, metadata mapping, data filtering and de-nesting.
- 2) Cost for loading NSF data (per GB).
- 3) Cost for loading standard Office Native files (per GB).
- 4) Costs for loading Standard Concordance Formatted load data (per GB).
- 5) Cost for generation of data load reports, including, but not limited to: list of all new unique records loaded, list of all data not loaded based on NIST values or deduplication, and list of all data not loaded because it did not match WCB filtering requirements.
- 6) Cost for generation of a data load report that contains: count of files provided, GB provided, count of individual items provided, count of unique items loaded, count of deduplicated items, count of de-nested items, count of items excluded by filtering, count of indexing error items, count of load error items and total indexed GB.
- 7) Cost for any project manager fees.

**NYS WORKERS' COMPENSATION BOARD**  
**e-Discovery and Managed Document Review Services**

- 8) Any other costs associated with the performance of this service component, in accordance with the terms and conditions set forth herein, which are not specifically listed above.
- E. Outgoing Productions:** Itemized costs for creating outgoing productions. Outgoing productions will be based on a list of documents that WCB identifies in a specific folder or as a specific query.
- 1) Cost for making a static production of all documents (Text, Metadata).
  - 2) Cost for making a static production of all documents (Tiff and OCR'g).
  - 3) Cost for making a native production per document (Native File, Text, Metadata).
  - 4) Cost for making an EDRM XML per document (Native File, Text, Tiff, Metadata in XML format).
  - 5) Cost for physical DVD-R.
  - 6) Cost for physical 54 GB Flash Drive.
  - 7) Cost for physical 500 GB External Drive.
  - 8) Cost for physical 1 TB External Drive.
  - 9) Cost for making additional copies of the outgoing production, if duplicate production is requested by the WCB.
  - 10) Cost for application of standard and specialty endorsements. Standard endorsement should be review solution document ID on the lower left, and the outgoing production sequential bates number on the lower right.
  - 11) Cost for redacting files that can't be dynamically turned into a tiff image.
  - 12) Cost for outgoing production reports, including, but not limited to: Privilege log, Production Report, Redaction log, and Document Request Cross Reference Report.
  - 13) Cost for making a print production.
  - 14) Cost for any project manager fees.
  - 15) Any other costs associated with the performance of this service component, in accordance with the terms and conditions set forth herein, which are not specifically listed above.
- F. Training:** Itemized costs for training activities. The cost proposal should identify any free training opportunities. The WCB may elect to pick and choose from the training options based on the option that best meets the needs of a specific case or the organization.
- 1) Any training administration fees.

**NYS WORKERS' COMPENSATION BOARD**  
**e-Discovery and Managed Document Review Services**

- 2) Cost for Onsite Training for review solution. The WCB will provide the training facilities for up to 15 trainees. The hosting provider must provide the Onsite trainer.
- 3) Cost for Onsite Technical and Administrative training.
- 4) Cost for printed or PDF documentation including, but not limited to: User, Administrator, Getting Started, Keyboard Shortcuts, Redaction, Production, Technology Assisted Review, Search Syntax, and the Upgrade List.
- 5) Cost for instructor led Online Training for up to 15 trainees.
- 6) Cost for Online Tutorials.
- 7) Cost for Technical Software Development training.
- 8) Cost for any project manager fees.
- 9) Any other costs associated with the performance of this service component, in accordance with the terms and conditions set forth herein, which are not specifically listed above.

**G. Technology Assisted Review (TAR):** Itemized costs for helping WCB use any predictive coding functionality.

- 1) Cost for Legal Documentation that would help WCB successfully defend the use of the review solution's implementation of this technology.
- 2) Cost for a more detailed analysis of the review solution's implementation of this technology, if court ordered.
- 3) Cost for assistance with identifying and creating seed sets.
- 4) Cost for assistance with running the TAR document training features, should such assistance be requested.
- 5) Cost for use of any advanced review features.
- 6) Cost for any project manager fees.
- 7) Any other costs associated with the performance of this service component, in accordance with the terms and conditions set forth herein, which are not specifically listed above.

**H. Dis-Engagement Activities:** Itemized costs associated with the discontinue services.

- 1) Cost for outgoing production in EDRM XML form.
- 2) Cost for disengagement within one year of starting service, if requested.

**NYS WORKERS' COMPENSATION BOARD**  
**e-Discovery and Managed Document Review Services**

- 3) Cost for disengagement activities affidavit. Disengagement activities must include an affidavit that all live, archived, offsite, and physical case related data has been deleted or returned.
- 4) Cost for any project manager fees.
- 5) Any other costs associated with the performance of this service component, in accordance with the terms and conditions set forth herein, which are not specifically listed above.

**I. Scanning:**

- 1) The cost for identifying objective, and subjective document breaks.
- 2) Cost for Non-Standard page sizes.
- 3) Cost for Color scanning.
- 4) Cost for OCRing all pages and providing one Text file per document.
- 5) Cost for Tiffing all pages.
- 6) Cost for removing staples, folders, paper clips prior to scanning.
- 7) Cost for replacing staples, folders, paper clips after scanning.
- 8) Cost for turning the paper production into a valid Concordance Formatted production set.
- 9) Any specialty costs associated with transportation of paper productions.
- 10) Cost for any project management fees.
- 11) Any other costs associated with the performance of this service component, in accordance with the terms and conditions set forth herein, which are not specifically listed above.

**J. Miscellaneous\Ad-hoc:** Daily and/or special activity fees that do not fit into the other components.

- 1) Case Closeout - Cost for administrative tasks associated with closing out a case.
- 2) Case Closeout - Cost for case closeout reports, including: report of all outgoing productions, report of all documents tagged, report of any document not tagged, report of the monthly charges for the case, report of all incoming data for the case, all data load reports, and all specialty project reports.
- 3) Case Closeout - Cost for case closeout affidavit. Must include an affidavit that all live data, archived data, and offsite data has been deleted.

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

- 4) Case Closeout - Cost for the Return/Destroy of all physical data preserved at the hosting provider, as part of case closeout, if requested.
- 5) Data Analysis - Cost for assistance constructing special complex search queries that are much more complex than first level technical support can provide. It is expected that this service would include analysis of the keyword hit reports, and an identification of how to better construct the required search based on the review solution search syntax.
- 6) Any other costs associated with the performance of this service component, in accordance with the terms and conditions set forth herein, which are not specifically listed above.

**K. Managed Document Review:**

Shall be proposed as a single, blended, hourly rate inclusive of contract attorney costs and review management fees. Review management includes standard review management activities performed by dedicated, onsite review management professionals during active review period, along with pre-review preparation activities (candidate selection, preparation of training materials and review center). Hourly rate includes monthly Relativity user access charges for contract attorneys, and all per-seat technology and review center costs. Includes standard first-level responsiveness and privilege review along with baseline quality control rereview, not to exceed 15% of total documents first-level reviewed. Additional activities, including rereview for other, independent objectives - e.g., full re-review of all responsive docs (beyond baseline Quality Control), deposition prep review, privilege log preparation, etc. – will incur separate hourly charges equal to the rate quoted; Reviewer activities are limited to the manual coding of up to 25 unique review decisions/choices; Review to be performed within Relativity and with English-language licensed attorneys (any jurisdiction).

**SECTION 5 – METHOD OF EVALUATION**

**5.1 AWARD OBJECTIVES**

This is a competitive procurement that will result in the award of a contract for e-Discovery and Managed Document Review Services. The objective of the evaluation is to ensure that:

- The Bidder(s) selected represent the Best Value for WCB; and
- The Bidder(s) selected has the experience and personnel necessary to successfully provide the services as described in this RFP.

WCB will award this contract based upon Best Value. A Best Value award is one that optimizes quality, cost, and efficiency and typically applies to complex services and technology contracts. WCB will evaluate responsive and responsible Bidders' proposals for all the requirements specified in this RFP.

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

The following weighting criteria will be applied to each proposal:

Technical Volume	60%
Cost Volume	40%

**5.2 EVALUATION AND SELECTION COMMITTEES**

Two WCB committees, the Technical Evaluation Committee (TEC) and the Cost Evaluation Committee (CEC), will conduct the evaluation of the proposals. The TEC will evaluate the Technical Volume (Volume II), while the CEC will evaluate the Cost Volume (Volume III). WCB personnel with knowledge/expertise in functional areas covered by the proposal will staff these committees. Each committee will conduct a separate evaluation.

The Board's Issuing Officer or Alternate will prepare a recommendation document for the Executive Director or their designee. The Executive Director, or their designee, will make the final selection and authorize the commencement of negotiations with the selected Bidder.

**5.3 PROPOSAL EVALUATION PROCESS**

WCB will evaluate proposals that are complete and received prior to the Closing Date for Receipt of Proposals, specified in Section 2.2.2, RFP Calendar using the evaluation process described herein.

5.3.1 Proposal Receipt The WCB's Issuing Officer or Alternate must receive all proposals at the designated address by 2:00 PM EST on the Closing Date for Receipt of Proposals, specified in Section 2.2.2, RFP Calendar. Any proposal received after this date/time will be deemed non-responsive and the Bidder will be notified in writing of their elimination. It is the sole responsibility of the Bidder to verify that its proposal has been received.

5.3.2 Proposal Pre-Screen The WCB's Issuing Officer or Alternate will pre-screen all remaining responsive proposals relative to the format specified in Section 4.1 of this RFP. Any proposal not in this format may be deemed non-responsive and the Bidder will be notified in writing of their elimination.

5.3.3 Minimum Eligibility Requirements Review The WCB's Issuing Officer or Alternate will review all remaining responsive proposals relative to the Minimum Bidder Eligibility Requirements specified in Section 3.1 of this RFP. Any proposal that does not meet these requirements will be deemed non-responsive and the Bidder will be notified in writing of their elimination.

5.3.4 Technical and Cost Volume Evaluations The TEC and CEC will conduct separate evaluations of all remaining responsive proposals.

The TEC will evaluate the Technical Volume using a methodology to be determined by the WCB prior to submission of proposals and set forth in the evaluation criteria that will become part of the

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

procurement record. The TEC will determine the Technical Volume Score for each proposal and submit a written report to the Board's Issuing Officer or Alternate.

The CEC will evaluate the Cost Volume using a methodology to be determined by WCB prior to submission of proposals and set forth in the evaluation criteria that will become part of the procurement record. The CEC will determine the Cost Volume Score for each proposal and submit a written report to the Board's Issuing Officer or Alternate.

WCB may ask Bidders to clarify the contents of their proposals. Other than responses made to requests by WCB for clarification of such contents, no Bidder will be permitted to alter its proposal or add new information after 2:00 PM EST on the Closing Date for Receipt of Proposals, specified in Section 2.2.2, RFP Calendar.

When the Technical and Cost Volume evaluations are complete, the Technical Volume score will be added to the Cost Volume score to develop a composite score.

5.3.5 Selection Recommendation The Board's Issuing Officer or Alternate will review the written evaluation reports and calculate the Composite Score by adding the Technical Volume Score and the Cost Volume Score; all Bidders will then be ranked in descending order of Composite Score. The Board's Issuing Officer or Alternate will recommend the award of the contract to the highest-ranked Bidder, to the Executive Director or their designee.

The Executive Director or their designee, will make the final selection and authorize negotiations with the selected Bidder to begin. The final contract is subject to approval by the Office of the Attorney General and the OSC and is not binding until such approval is received.

## **SECTION 6 – TERMS AND CONDITIONS**

The Procurement, the Bidder's Proposal and the contract award that results from this Procurement are subject to and incorporate the following terms and conditions. Additionally, the agreement that results from the Procurement ("Contract") between WCB and the Successful Bidder ("Contractor"), collectively referred to herein as the Parties, shall substantially contain the terms and conditions set forth here in this Section 6 of the RFP:

### **6.1 CONTRACT TERM**

The term of the Contract shall be for three (3) years, with two (2) optional one (1) year extension periods. Said optional extensions are exercisable at the sole discretion of WCB by giving notice to the Contractor in accordance with the Notice provisions of RFP section 6.17. The Contract, and any optional extension periods, shall take effect and commence upon the approval of the Contract by the OSC.

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

**6.2 MODIFICATION OF CONTRACT**

The State reserves the right to renegotiate the terms and conditions of the Contract in the event applicable NYS or Federal laws, statutes, rules, regulations, policies and/or guidelines are altered from those existing at the time the Contract is approved by the Comptroller in order to be in continuous compliance therewith. The Contract is subject to amendment only upon mutual consent of the Parties, reduced to writing and approved by the State's Attorney General and Comptroller.

**6.3 EXECUTORY PROVISION/CONTRACT FORMATION**

The State Finance Law of the State of New York, § 112, requires that any contract made by a State Agency which exceeds fifty thousand dollars (\$50,000) in amount be first approved by the OSC before becoming effective. Execution by the Successful Bidder shall not be deemed final execution of the Contract. The Parties recognize that the Contract is wholly executory until and unless approved by OSC. The Contract will be deemed executed upon and will not be considered fully executed and binding until, receipt of approval by the Attorney General and OSC. The State of New York is not liable for any cost incurred by the Bidder in preparation for or prior to the approval of an executed contract by OSC. Additionally, no cost will be incurred by the State for the Bidder's participation in any pre-contract award activity.

**6.4 GOVERNING LAW**

The laws of the State of New York shall govern the Contract and actions or proceedings arising therefrom shall be heard in a court of competent jurisdiction in the State of New York. APPENDIX A, "Standard Clauses for New York State Contracts" is attached hereto and expressly incorporated herein. In the event that there is an inconsistency or a conflict between a term contained in APPENDIX A and other terms of this Contract, such inconsistency or conflict shall be resolved by giving precedence to the term as contained in APPENDIX A.

**6.5 INTEGRATION, MERGER AND ORDER OF PRECEDENCE**

The Contract shall be deemed inclusive of the following documents. In the event of any inconsistency in or conflict among the document elements of the Agreement or Contract identified herein, such inconsistency or conflict shall be resolved by giving precedence to the document elements in the following order:

1. First: APPENDIX A. "Standard Clauses for All NYS Contracts";
2. Second: Any Amendments to the Contract;
3. Third: The Execution Document;
4. Fourth: WCB Request for Proposal No. C140396, entitled, "E-Discovery and Managed Document Review Services," including any amendment(s) thereto and any clarification or change to the RFP made through the Question and Answer process; and

Revised April 24, 2020

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

5. Fifth: Contractor's Proposal, comprised of the Technical Volume (Volume II), and Cost Volume (Volume III), including any clarifications requested by WCB.

Only documents expressly enumerated above shall be deemed a part of the Contract, and references contained in those documents to additional Contractor documents not enumerated above, shall be of no force and effect.

All prior agreements, representations, statements, negotiations and undertakings are superseded. All statements made by the State shall be deemed to be representations and not warranties.

The terms, provisions, representations, and warranties contained in the Contract shall survive performance hereunder.

**6.6 CONTRACTOR RESPONSIBILITIES AND QUALIFICATIONS**

A. Responsibilities

The Contractor is responsible for providing Services in accordance with the specifications set forth in the Contract, and for meeting all Contract obligations set forth in the Contract, including all Exhibits, and any subsequent amendments to the Contract.

B. Qualifications

Contractor acknowledges that the Contract is being entered into by the State in reliance on Contractor's pricing and its representations concerning the particular qualifications, experience, management and technical expertise of the Contractor and its personnel.

**6.7 CONTRACTOR RESPONSIBILITY AS DEFINED BY STATE FINANCE LAW**

Contractor must remain responsible, as defined by State Finance Law, relevant case law and applicable guidelines, throughout the term of the Contract. Failure to do so may result in suspension or termination of the Contract.

Contractor must present evidence of its continuing legal authority to do business in NYS, its integrity, experience, ability, prior performance, and organizational and financial capacity, upon request by the State.

The State reserves the right to suspend any or all activities under this Contract, at any time if it discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension and must comply with the terms of the suspension order. Contract activity may resume at such time as the State issues a written notice lifting the suspension order.

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

**6.8 INDEPENDENT CONTRACTOR**

Contractor is an independent contractor, and its officers, employees, subcontractors and agents are not and shall not act as State employees in the performance of the Contract. Contractor, its officers, employees, subcontractors and agents are not entitled to any of the benefits associated with employment by the State. The Contractor agrees, during the term of this Contract, to maintain at Contractor's expense those benefits to which its employees would otherwise be entitled by law, including health benefits and all necessary insurance for its employees, including workers' compensation, disability and unemployment insurance, and to provide the State with certification of such insurance upon request. The Contractor remains responsible for all applicable federal, state and local taxes, and all FICA contributions.

**6.9 CONTRACTOR PERSONNEL**

All Contractor officers and employees, subcontractors or agents performing work under the Contract must meet or exceed the technical and training qualifications set forth in the RFP or the Proposal, whichever is higher, and must comply with all security and administrative requirements of WCB. WCB reserves the right to conduct a security background check, including fingerprinting, or otherwise approve any employee or agent furnished by Contractor or its subcontractors. WCB in its sole discretion reserves the right to reject or bar from any WCB facility any employee or agent of the Contractor or its subcontractors. Such action by WCB shall not relieve the Contractor of the obligation to perform all work in compliance with the Contract terms.

**6.10 NOTICE OF SUBSTANTIAL CHANGE IN CONTRACTOR STATUS**

In addition to the requirements of NYS Finance Law § 138 (requiring the State's approval of subcontractors and assignments and/or conveyances), the Contractor shall notify the State of any substantial change in the ownership or financial viability of the Contractor, its Affiliates, subsidiaries or divisions, or partners, in writing immediately upon occurrence. "Substantial change" means: (i) sales, acquisitions, mergers or takeovers of the Contractor, its Affiliates, subsidiaries, divisions, or partners that result in a change in the controlling ownership or assets of such entity after the submission of the Bid; (ii) entry of an order for relief under Title 11 of the United States Code; (iii) the making of a general assignment for the benefit of creditors; (iv) the appointment of a receiver of Contractor's business or property or that of its Affiliates, subsidiaries or divisions, or partners; or action by Contractor, its Affiliates, subsidiaries or divisions, or partners under any State insolvency or similar law for the purposes of its bankruptcy, reorganization, or liquidation; or (v) court ordered liquidation of Contractor, its Affiliates, subsidiaries or divisions, or partners.

Upon the State's receipt of such notice, the State shall have thirty (30) business days from the date of notice to review the information. The Contractor may not transfer the Contract to or among Affiliates, subsidiaries or divisions, or partners, or to any other person or entity, without the express written consent of the State. In addition to any other remedies available at law or equity, the State shall have the right to cancel the Contract, in whole or in part, for cause, if it finds, in its sole

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

judgment, that such substantial change adversely affects the delivery of Services or is otherwise not in the best interests of the State.

**6.11 VENDOR RESPONSIBILITY**

- A. Continuing Vendor Responsibility The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Executive Director of WCB or his or her designee, to present evidence of its continuing legal authority to do business in NYS, integrity, experience, ability, prior performance, and organizational and financial capacity.
- B. Suspension of Work (for Non-Responsibility) The Executive Director of WCB or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Executive Director of WCB or his or her designee issues a written notice authorizing a resumption of performance under the Contract.
- C. Termination (for Non-Responsibility) Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate WCB officials or staff, the Contract may be terminated by the Executive Director of WCB or his or her designee at the Contractor's expense where the Contractor is determined by the Executive Director of WCB or his or her designee to be non-responsible. In such event, the Executive Director of WCB or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

**6.12 SUBCONTRACTORS**

The Contractor is selected based on the experience, ability, and reputation of the Contractor and its staff. Accordingly, a Contractor shall not assign, convey, transfer, or subcontract any of its duties and responsibilities under this Agreement without the prior written consent of the WCB. In the event that one of Contractor's subcontractors' further subcontracts, prior written consent of WCB is also required. A subcontractor shall be defined as any firm engaged or assigned by the Contractor to perform work under the Contract, or any person so engaged or assigned who is not an employee of the Contractor.

The requirement of prior approval of any contract by WCB does not apply to individual employer-employee contracts, or to management incentives for employer-employee contracts, or to subcontracts that are executed prior to the date of release of the RFP. Any existing pertinent subcontracts must be identified in the Response to the RFP, and a copy of any subcontract must be attached to the Response.

**Revised April 24, 2020**

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

Any approved subcontract of a Contractor's duties and obligations under this Agreement shall be in writing and contain provisions that are consistent with the provisions of this Agreement. All agreements between the Contractor and its subcontractors shall be by bona fide written contract.

Contractor shall include in all subcontracts related to the Contract, in such a manner that they will be binding upon each subcontractor with respect to work performed in connection with the Contract, provisions specifying:

- That the work performed by the subcontractor must be in accordance with the terms and conditions of this Contract including, but not limited to, APPENDIX A;
- That nothing contained in such subcontract shall impair the rights of WCB or the State;
- That nothing contained in such subcontract shall create any contractual relationship between any subcontractor and WCB or the State;
- That subcontractors shall maintain all records with respect to work performed under the subcontract in the same manner as required of the Contractor;
- That the State and/or WCB shall have the same authority to audit the records of all subcontractors as it does those of the Contractor; and
- That subcontractor shall cooperate with any investigation, audit, or other inquiry related to the Procurement or the resulting Contract or any litigation relating thereto.

A copy of any subcontract, once approved by the WCB and executed by the Contractor and the subcontractor, shall be furnished to the WCB within thirty (30) days of execution.

In addition to furnishing the WCB with a copy of any proposed subcontract for prior approval, the Contractor shall also furnish to the WCB the following:

- A description of the supplies or services to be provided under the proposed subcontract;
- Identification of the proposed subcontractor;
- The proposed subcontract price; and
- Any other pertinent information or documentation requested by the WCB.

Contractor shall be fully responsible to WCB for the acts and omissions of, and the performance of Project Services by, all subcontractors and/or persons either directly or indirectly employed by such subcontractors. The Contractor shall not be relieved in any way of any responsibility, duty, or obligation of this Contract by the award of any subcontract.

The Contractor shall give the WCB immediate notice in writing of any legal action or suit filed, and prompt notice of any claim made, against the Contractor by any subcontractor or contractor if such claim may result in litigation related in any way to this Contract or may affect the performance of duties under this Contract.

The Contractor shall indemnify and save harmless the WCB, its officers, employees, agents, and assigns from all claims against the Contractor. Nothing in this Contract shall create or give to third

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

parties any claim or right of action against the Contractor or the State of New York beyond such as may legally exist irrespective of this Contract.

**6.13 COOPERATION WITH THIRD PARTIES**

The Contractor shall be responsible for fully cooperating with any third party, including but not limited to other State agencies, contractors or subcontractors of the State, relating to delivery of Product or coordination of Services.

**6.14 COOPERATION WITH INVESTIGATIONS, AUDITS, AND LEGAL PROCEEDINGS**

Upon the request of WCB, the Contractor shall cooperate with the State in any investigation, audit, or other inquiry related to the Procurement or the resulting Contract or any litigation relating thereto, at no cost to WCB or the State. This provision shall survive the termination of the Contract.

**6.15 WORK OUTSIDE THE SCOPE OF THIS CONTRACT**

The Contractor shall refrain from performing work outside the scope of the Contract unless such work is authorized by a properly executed, Comptroller-approved written amendment to the Contract. Any work not so authorized will not be compensated.

**6.16 NOTICE OF CIRCUMSTANCES EXPECTED TO ADVERSELY AFFECT CONTRACTOR'S PERFORMANCE**

The Contractor shall immediately notify WCB upon learning of any situation that can reasonably be expected to adversely affect the delivery of Services under the Contract. If such notification is verbal, the Contractor shall submit written notice to WCB, as required by Section 6.17 of this RFP, describing the situation and a proposed recommendation for its resolution within three (3) calendar days of learning of the situation.

**6.17 NOTIFICATION**

All notices permitted or required hereunder shall be in writing and shall be transmitted either:

- (a) Via certified or registered United States mail, return receipt requested;
- (b) By facsimile transmission;
- (c) By personal delivery;
- (d) By expedited delivery service; or
- (e) By e-mail.

Such notices shall be addressed as follows or to such different addresses as the parties may from time-to-time designate:

**Revised April 24, 2020**

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

For the WCB:

NYS Workers' Compensation Board  
ATTN: Courtney Souza  
328 State Street, Room 331-69  
Schenectady, NY 12305  
Telephone Number: (518) 388-1456  
Facsimile: (518) 486-9561  
Email Address: [WCBContracts@wcb.ny.gov](mailto:WCBContracts@wcb.ny.gov)

For Contractor:

[Name]  
[Title]  
[Street Address]  
[City, State, Zip code]  
Telephone Number: ( )  
Facsimile: ( )  
E-mail Address:

Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

The parties may, from time to time, specify any new or different address in the United States as their address for purposes of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

**6.18 PRICING, BILLING AND PAYMENT**

The sole compensation for the Contractor under the Contract shall be payment based on the rates set forth in the Contractor's Cost Proposal. Contractor shall invoice the WCB monthly, in arrears, for all Services rendered to WCB with appropriate detailed invoices in a form agreed to and as directed by WCB.

The Office of General Services' Business Services Center (BSC) Accounts Payable (AP) Unit is responsible for processing and paying vendor invoices on behalf of the WCB. The Contractor shall bill the WCB by submitting invoices electronically to [AccountsPayable@ogs.ny.gov](mailto:AccountsPayable@ogs.ny.gov).

Revised April 24, 2020

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

Invoices can alternatively be sent by mail to:

NYS Workers' Compensation Board, Unit ID: 3560000  
c/o NYS OGS BSC Accounts Payable  
Building 5, Floor 5  
1220 Washington Ave.  
Albany, NY 12226-1900

Invoices will be paid in accordance with Article XI-a of the NYS Finance Law.

Any fees paid, for which it is subsequently determined that a Contractor was not entitled, must be reimbursed to the WCB. The WCB may recover such fees by subtracting such fees from any future payments which become due to the Contractor under the Contract. Further, in the event that any required services are delivered in an untimely or substandard manner, the Contractor shall be subject to performance penalties as set forth in Contractor's technical proposal.

#### **6.19 ELECTRONIC PAYMENT REQUIREMENT FOR WCB**

Contractor shall provide complete and accurate billing invoices to WCB in order to be eligible for payment. Billing invoices submitted to WCB must contain all information and supporting documentation required by the Agreement, WCB, and the Comptroller. Payment for invoices submitted by Contractor shall be rendered electronically unless payment by paper check is expressly authorized by WCB, in WCB's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary NYS procedures and practices. Contractor shall comply with the Comptroller's procedures to authorize electronic payments. Authorizing forms are available at the Comptroller's site at [www.osc.state.ny.us/epay/index.htm](http://www.osc.state.ny.us/epay/index.htm), by email at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us), or by telephone at (518) 474-4032. Contractor acknowledges that it will not be eligible for payment on any invoices submitted under this Agreement if it does not comply with the Comptroller's electronic payment procedures, except where WCB has expressly authorized payment by paper checks as set forth above.

#### **6.20 WARRANTIES**

A. Contract Deliverables

Contractor warrants and represents that the Services required by the RFP and the Contract shall be performed or provided in accordance with all the terms and conditions, covenants, statements, and representations contained in the Contract.

B. Compliance with Laws

Contractor warrants and represents that, throughout the term of the Contract and any extensions, and in the performance of obligations under the Contract, it will: (i) comply with all applicable laws, ordinances, rules and regulations of any governmental entity; (ii) pay, at its sole expense, all applicable permits, licenses, tariffs, tolls and fees; and (iii) give all notices required by any laws, ordinances, rules, and regulations of any governmental entity.

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

C. Workmanship Warranty

Contractor warrants and represents that all Services and deliverables shall meet the completion criteria set forth in the Contract, and that Services will be provided in a professional and workmanlike manner in accordance with the highest applicable industry standards.

D. Personnel Eligible for Employment

Contractor warrants and represents that all personnel performing Services under the Contract are eligible for employment in the United States and shall remain so throughout the term of the Contract and any extensions. Contractor shall provide such proof of compliance as is required by WCB.

E. Service Guarantee

Contractor's failure to satisfy performance standards or requirements set forth herein may result in a credit or chargeback in an amount pre-determined by the parties. The Chargeback shall be paid to WCB in the form of a credit to WCB against the Contractor's invoice submitted to WCB immediately following the month in which the Contractor failed to satisfy the standard or requirement.

F. Survival of Warranties

All warranties contained in the Contract shall survive the termination of the Contract.

**Limitations:** THE WARRANTIES SET FORTH IN THE CONTRACT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## **6.21 INDEMNIFICATION AND LIMITATION OF LIABILITY**

Neither Party shall be liable for any delay or failure in performance resulting from a Force Majeure Event, as defined in Section 6.26 of this RFP. The Parties shall use all reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties under the Contract.

Contractor shall be fully liable for the actions of its agents, employees, partners, or subcontractors, if any, and shall fully indemnify and save harmless the State and WCB from suits, actions, damages, and costs of every name and description relating to death or personal injury and damage to real or personal property caused by Contractor, its agents, employees, partners, or subcontractors, if any, without limitation; provided however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the negligent act or negligent failure to act of the State.

Contractor shall indemnify, defend, and hold the State harmless, without limitation, from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments,

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

liabilities, and costs which may be finally assessed against the State in any action for infringement of a United States Letter Patent with respect to the Products furnished, or of any copyright, trademark, trade secret, or other third-party proprietary right in relation to the Products furnished or utilized, provided that the State shall give Contractor: (i) prompt written notice of any action, claim, or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense; and (iii) assistance in the defense of any such action at the expense of Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the State may require Contractor, at is sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Executive Director shall require. This paragraph shall not apply to that portion of any infringement claim which results from a material modification by WCB, without Contractor's approval, of any Product provided by Contractor pursuant to this Contract.

For all other claims against the Contractor where liability is not otherwise set forth in the Contract as being "without limitation," and regardless of the basis on which the claim is made, Contractor's liability under the Contract for direct damages shall be limited to the greater of the following: (i) \$1,000,000 (ONE MILLION DOLLARS); or (ii) two (2) times the amounts paid to the Contractor under the Contract during the twelve (12) months of the contract term which precedes the giving of notice of the claim by the State. For this purpose, amounts paid shall include, but not be limited to, payments made electronically, by check, by offset, or by the application of credits from the Contractor to the State. Unless otherwise specifically enumerated herein, neither Party shall be liable to the other for special, indirect, or consequential damages, including lost data or records (unless the Contractor is required to back-up the data or records as part of the work), even if the Party has been advised of the possibility of such damages. Neither Party shall be liable for lost profits, lost revenue, or lost institutional operating savings.

The State may, in addition to other remedies at law or equity, and upon notice to the Contractor, retain such monies from amounts due to Contractor as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against the State.

The State does not agree to any indemnification provisions that require the State to indemnify or save harmless Contractor or third parties.

## **6.22 COMPLIANCE WITH LAWS**

The Contractor shall comply with all present and future applicable laws, codes, ordinances, statutes, rules and regulations with respect to any of the duties or responsibilities of the Contractor arising from the Contract.

## **6.23 SUSPENSION OF WORK**

WCB reserves the right to suspend any or all activities under the Contract, at any time, in the best interests of the State or WCB. In the event of such suspension, the Contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a budget freeze on State spending, declaration of

**NYS WORKERS' COMPENSATION BOARD**  
**e-Discovery and Managed Document Review Services**

emergency, or other such circumstances. Upon issuance of such notice, the Contractor shall comply with the suspension order. Contractor shall be paid for services performed prior to suspension in accordance with the Contract. Activity may resume at such time as WCB issues a formal written notice authorizing a resumption of work.

**6.24 TERMINATION**

A. For Convenience

The State retains the right to cancel the Contract without cause, provided that Contractor is given at least thirty (30) calendar days' notice of the State's intent to cancel without penalty to the State or imposition of other early termination charges. This provision should not be understood as waiving the State's right to terminate the Contract for cause or stop work immediately for unsatisfactory work but is supplementary to that provision. In the event of cancellation without cause by the State, the State agrees to negotiate a payment for Services performed by the Contractor prior to termination.

B. For Cause

For any material breach or failure of performance of the Contract by the Contractor, the State may provide written notice of such breach or failure. The State may terminate the Contract if the Contractor does not cure such breach or failure within thirty (30) calendar days after the giving of written notice to cure.

No delay or omission to exercise any right, power, or remedy accruing to the State or the WCB upon breach or default by the Contractor under the Contract shall impair any such right, power or remedy, or shall be construed as a waiver of any such breach or default, or any similar breach or default thereafter occurring nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or if, due to a default that remains uncured for the period provided herein, a third party shall commence to perform Contractor's obligations under the Contract, the State shall thereafter be released from all obligations to Contractor hereunder, including any obligation to make payment to Contractor, provided however that the State shall continue to be obliged to pay for any and all Services provided prior to any such date. If the State employs a third party to perform Contractor's obligations under the Contract, Contractor shall be liable for the payment of any cost differential that the State incurs as a result of having to employ such third party to cure or resolve the issue.

C. For Suspension or Delisting of Contractor's Securities

If the Contractor's securities are suspended or delisted by the New York Stock Exchange, the American Stock Exchange, or the NASDAQ, as applicable, if the Contractor ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets or avails itself of or becomes subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, the State, in its sole discretion, may terminate the Contract in accordance with

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

the Contract or exercise such other remedies as shall be available under the Contract, at law and/or equity.

**D. For Vendor Responsibility Related Findings**

WCB may, in its sole discretion, terminate the Contract if it finds at any time during the term of the Contract that the Contractor is non-responsible, or that any information provided in the Vendor Responsibility Questionnaire submitted with Contractor's Proposal was materially false or incomplete, or if the Contractor fails to timely or truthfully comply with WCB's request to update its Vendor Responsibility Questionnaire.

**E. Termination Notice**

Notices required by this section shall be delivered to the other party in writing, pursuant to the Notice provisions of the Contract.

**F. Termination Date**

In the event a notice of termination is issued for convenience, the Contract termination date shall be thirty (30) calendar days from the date notice is given in accordance with the Notice provisions of this Contract. The termination date for material breach or failure of performance shall be the date notice is given in accordance with the Notice provisions of this Contract.

**G. Mitigation of Costs**

The Contractor shall not undertake any additional or new contractual obligations on or after the receipt of notice of termination without the prior written approval of the State. On or after the receipt of notice of termination and during the termination notice period, the Contractor shall take all commercially reasonable and prudent actions to close out unnecessary outstanding, existing obligations as economically as possible for the State.

**6.25 DEFAULT**

- A.** If either party breaches a material provision of the Contract, which breach remains uncured for a period of thirty (30) days after written notice thereof from the other party specifying the breach (or if such breach cannot be completely cured within the thirty (30) day period, such longer period of time provided that the breaching party proceeds with reasonable diligence to completely cure the breach) or if Contractor shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets or shall avail itself of or become subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, then and in any such event, the other party may, at its option, terminate the Contract upon ten (10) days written notice and exercise such other remedies as shall be available under the Contract, at law and/or equity.
- B.** No delay or omission to exercise any right, power or remedy accruing to either party upon breach or default by the other under the Contract shall impair any such right, power or remedy, or shall be construed as a waiver of any such breach or default, or any similar

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

breach or default thereafter occurring nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. All waivers must be in writing.

- C. If, due to default that remains uncured for the period provided herein, a third party shall commence to perform Contractor's obligations under this Contract, the State shall thereafter be released from all obligations to Contractor hereunder, including any obligation to make payment to Contractor, provided however that the State shall continue to be obliged to pay for any and all Services provided prior to any such date, and if any lump-sum payment has been made, the State shall be entitled to a pro-rata refund of such payment.

**6.26 FORCE MAJEURE**

In the event that either Party is unable to perform any of its obligations under the Contract because of natural disaster, any act of God, war, civil disturbance, court order, or labor dispute, or any other acts beyond the reasonable control of either Party (hereinafter referred to as a "Force Majeure Event"), the Party that has been so affected shall immediately give notice to the other Party, and shall exercise every commercially reasonable effort to resume performance, and an extension of the time for performance shall be granted for a period to be agreed to in writing by the State and Contractor. Any delay in performance by either Party resulting from a Force Majeure Event shall not be considered a breach or default under the Contract.

**6.27 DISPUTE RESOLUTION**

The Contractor and the State agree that it is important to resolve any disputes regarding the performance of Services, or otherwise arising under the Contract, expeditiously. In the event a dispute is not resolved through the escalation process, if any, established by the Parties, the Parties agree to notify the other in accordance with Section 6.17 of this RFP and to meet in good faith to resolve any disputes. In the event that any dispute cannot be promptly resolved at the operational level through agreed upon escalation procedures, either Party may request a meeting with senior management of the other Party (higher than that specified in the escalation procedures). Meetings between the Parties shall be held within three (3) business days or sooner in the event a dispute threatens the performance of a material portion of the Service. During the course of a dispute, Contractor shall continue to provide Services according to the Contract until such dispute is resolved.

Contractor shall remit all credits and rebates prior to initiation of its rights under this paragraph. Nothing in this paragraph shall diminish the State's right to terminate the Contract pursuant to Section 6.24 of this RFP.

**6.28 GENERAL PROVISION AS TO REMEDIES**

The Parties may exercise their respective rights and remedies at any time, in any order, to any extent, and as often as deemed advisable, without regard to whether the exercise of one right or remedy precedes, concurs with or succeeds the exercise of another. A single or partial exercise of a remedy shall not preclude a further exercise of the right or remedy or the exercise of another

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

right or remedy from time to time. No delay or omission in exercising a right or remedy, or delay, inaction, or waiver of any event of default, shall exhaust or impair the right or remedy or constitute a waiver of, or acquiescence to, an event otherwise constituting a breach or default under the Contract.

In addition to any other remedies available to WCB under the Contract, WCB has additional remedies which may include, but are not limited to, the following:

- A. Terminate or Suspend the Contract in whole, or in part;
- B. Suspend, in whole or in part, payments due to Contractor under the Contract;
- C. Pursue equitable remedies to compel Contractor to perform;
- D. Apply Service Credits against amounts due and owing by WCB under the Contract;
- E. Require Contractor to cure deficient performance or failure to meet any requirements of the RFP or Contract at no charge to the State.

**6.29 TRANSITION**

The State may require the Contractor to provide uninterrupted Services after Contract termination/expiration (“Transition Services”) as the State deems reasonable and necessary for the State to comply with all of the legal requirements for establishing a new contract and transitioning to a replacement Contractor. If the State elects to invoke this provision, Contractor shall execute a contract extension, extending the terms of this contract to the period of transition which extends beyond the termination/expiration of the contract. Such extension shall be subject to OSC’s approval.

A. Transition Period

The State shall determine the transition period in consultation with the Contractor and shall notify the Contractor in writing. The State reserves the right to amend the transition period subsequently, upon thirty (30) days’ advance written notice to the Contractor.

B. No Interruption in Service

At all times during the transition period, and unless directed otherwise in writing by the State, the Contractor shall continue its contractual obligations set forth in the Contract until such time as the services provided under the contract have been transitioned to a successor contractor, the State, or a third party designated by the State. The Contractor shall be required to meet its contractual obligations pursuant to this paragraph notwithstanding the issuance of a termination for cause or convenience by the State.

C. Transition Plan

Within fifteen (15) days of receipt of a notice of termination or three (3) months prior to the end of the term of the Contract, whichever event occurs first, the Contractor shall

**NYS WORKERS' COMPENSATION BOARD**  
**e-Discovery and Managed Document Review Services**

submit to the State for the State's review and approval a detailed written plan for transition (Transition Plan) that outlines, at a minimum, the tasks, milestones, and deliverables associated with a smooth transition of Services.

D. Contractor Transition Services

Transition Services shall include the performance of Contractor's responsibilities as outlined in the Contract, and also the transferring of those responsibilities to a successor contractor, the State, or a third party designated by the State in accordance with the Transition Plan agreed upon by the Parties. Contractor shall maintain the same level of service during the transition period as is set forth in the Contract until specific tasks or services are transitioned to or assumed by a successor contractor, the State, or a third party designated by the State.

E. Compensation for Transition Services

Contractor shall be reimbursed for Transition Services performed at the rates set forth in the Contract.

F. Cooperation

Contractor shall cooperate with the State to facilitate a smooth and orderly transition. Periodic project review meetings shall be held with representatives of the Contractor, a successor contractor, the State, or a third party designated by the State.

**6.30 INSURANCE**

The Contractor shall furnish WCB with Certificates of Insurance evidencing compliance with all insurance requirements of this Section. Such Certificates shall be in a form and substance acceptable to WCB, and WCB may also ask to review the insurance policies to check that the coverage afforded by the policies matches the Contractor-provided Certificates of Insurance. Acceptance of Certificates of Insurance by WCB shall not diminish any of Contractor's obligations, responsibilities or liabilities under the Contract. All insurance required by the Contract shall be specifically and exclusively for the performance of Contractor's obligations under the Contract, and shall be obtained at the sole cost and expense of the Contractor; shall be maintained with insurance carriers licensed to do business in NYS; shall be primary and non-contributing to any insurance or self-insurance maintained by WCB and/or the State of New York; shall be endorsed to provide that written notice be given to WCB at least thirty (30) days prior to the cancellation, non-renewal, or material alteration of such policy or policies, which notice, evidenced by return receipt of United States Certified Mail, shall be sent to WCB.

The insurance policy(ies) shall name the State of New York, its officers, agents, and employees as additional insureds thereunder (General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number **CG 20 26 11 85**). The additional insured requirement does not apply to Workers' Compensation or Disability coverage. The Contractor shall be solely responsible for the payment of all deductibles and self-insured retentions to which such policies are subject. Each insurance carrier must be rated at least "A-" Class "VII" in the most recently published Best's Insurance Report. If, during the term of the policy, a carrier's

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

rating falls below "A-" Class "VII," the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to the State and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report. The Contractor shall cause all insurance to be in full force and effect as of the commencement date of this Contract and to remain in full force and effect throughout the term of the Contract and as further required by this Contract. The Contractor shall not take any action or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect. Not less than thirty (30) days prior to the expiration date or renewal date, the Contractor shall supply WCB with updated replacement Certificates of Insurance, and amendatory endorsements.

The Contractor, throughout the term of this Contract, or as otherwise required by the Contract, shall obtain and maintain in full force and effect, the following insurance with limits not less than those described below and as required by the terms of the Contract, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

1. Commercial General Liability Insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the aggregate per annum. Such liability shall be written on the ISO occurrence form CG 0001, or a substitute form providing equivalent coverages and shall cover liability arising from premises operations, independent Contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage.
2. Comprehensive Business Automobile Liability Insurance covering liability arising out of any automobile used in connection with performance under the Contract, including owned, leased, hired and non-owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Laws of the State of New York to bear, license plates. Such policy shall have a combined single limit for Bodily Injury and Property Damage of at least \$2,000,000.00 each accident. The limits may be provided through a combination of primary and umbrella liability policies.

In the event that the Contractor does not own, lease or hire any automobiles used in connection with performance under the Contract, the Contractor does not need to obtain Comprehensive Business Automobile Liability Insurance, but must attest to the fact that the Contractor does not own, lease or hire any automobiles used in connection with performance under the Contract. If, however, during the term of the Contract, the Contractor acquires, leases or hires any automobiles that will be used in connection with performance under the Contract, the Contractor must obtain Comprehensive Business Automobile Liability Insurance that meets all of the requirements of this section and provide proof of such coverage to WCB in accordance with the insurance requirements of the Contract.

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

In the event that the Contractor does not own or lease any automobiles used in connection with performance under the Contract, but the Contractor does hire and/or utilize non-owned automobiles in connection with performance under the Contract, the Contractor must: (i) obtain Comprehensive Business Automobile Liability Insurance as required by this Contract, except that such insurance may be limited to liability arising out of hired and/or non-owned automobiles, as applicable; and (ii) attest to the fact that the Contractor does not own or lease any automobiles used in connection with performance under the Contract, on a form provided by WCB. If, however, during the term of the Contract, the Contractor acquires or leases any automobiles that will be used in connection with performance under the Contract, the Contractor must obtain Comprehensive Business Automobile Liability Insurance that meets all of the requirements of this section and provide proof of such coverage to WCB in accordance with the insurance requirements of the Contract.

3. Data Breach and Privacy/Cyber Liability Insurance covering failure to protect confidential information and failure of the security of the Contractor's computer systems, or the computer systems of Contractor's subcontractor, due to the actions of the Contractor or Contractor's subcontractor, which results in unauthorized access to confidential data. Said insurance shall be maintained in the following limits, as applicable:

Data Breach and Privacy/Cyber Liability		
Software	\$1,000,000	
Hardware	\$1,000,000	
Cloud *	Low Risk	\$2,000,000
	Moderate Risk	\$5,000,000
	High Risk	\$10,000,000
Implementation	\$1,000,000	
<p>* See NYS-S14-002 Information Classification Standard or successor available at <a href="https://its.ny.gov/sites/default/files/documents/Enterprise_Information_Classification_v3_1.pdf">https://its.ny.gov/sites/default/files/documents/Enterprise_Information_Classification_v3_1.pdf</a> for additional information relating to risk categories.</p> <p>Contractor must maintain minimum insurance coverage for the level of risk for which Contractor provides Products and submit documentation in accordance with the terms of this Contract.</p>		

Said insurance shall provide coverage for damages arising from, but not limited to the following:

- Breach of duty to protect the security and confidentiality of nonpublic proprietary corporate information;
- Personally, identifiable nonpublic information (e.g., medical, financial, or personal in nature in electronic or non-electronic form);
- Privacy notification costs;

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

- Regulatory defense and penalties;
- Website media liability; and
- Cyber theft of customer's property, including but not limited to money and securities.

If the policy is written on a claims made basis, Contractor must submit to WCB an Endorsement providing proof that the policy provides the option to purchase an Extended Reporting Period ("tail coverage") providing coverage for no less than one (1) year after work is completed in the event that coverage is cancelled or not renewed. This requirement applies to both primary and excess liability policies, as applicable.

4. Workers' Compensation Insurance & Disability Benefits Coverage §§ 57 and 220 of the WCL require the heads of all municipal and state entities to ensure that businesses applying for contracts have appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals. **Failure to provide proper proof of such coverage or a legal exemption will result in a rejection of any contract renewal.** Proof of workers' compensation and disability benefits coverage, or proof of exemption must be submitted to WCB at the time of policy renewal, contract renewal and upon request. Proof of compliance must be submitted on one of the following forms designated by the WCB. **An ACORD form is not acceptable proof of NYS workers' compensation or disability benefits insurance coverage.**

Proof of Compliance with the Workers' Compensation Coverage Requirements:

- Form CE-200, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required*, which is available on the NYS Workers' Compensation Board's website (<http://www.wcb.ny.gov>);
- Form C-105.2, *Certificate of Workers' Compensation Insurance*, sent to WCB by the Contractor's insurance carrier upon request, or if coverage is provided by the NYS Insurance Fund, they will provide Form U-26.3 to WCB upon request from the Contractor; or
- Form SI-12, *Certificate of Workers' Compensation Self-Insurance*, available from the WCB's Self-Insurance Office, or Form GSI-105.2, *Certificate of Participation in Workers' Compensation Group Self-Insurance*, available from the Contractor's Group Self-Insurance Administrator.

Proof of Compliance with the Disability Benefits Coverage Requirements:

- Form CE-200, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required*, which is available on the WCB's website (<http://www.wcb.ny.gov>);

Revised April 24, 2020

**NYS WORKERS' COMPENSATION BOARD**  
**e-Discovery and Managed Document Review Services**

- Form DB-120.1, *Certificate of Disability Benefits Insurance*, sent to WCB by the Contractor's insurance carrier upon request; or
- Form DB-155, *Certificate of Disability Benefits Self-Insurance*, available from the WCB's Self-Insurance Office.

An instruction manual clarifying the WCL requirements is available for download at the WCB's website, <http://www.wcb.ny.gov>. Once on the site, click on the Employers/Businesses tab and then click on Employers' Handbook.

### **6.31 TAXES**

WCB represents that the purchases on behalf of the State of New York are not subject to any state or local sales or use taxes, or to federal excise taxes.

Contractor remains liable and solely responsible without exemption for social security, unemployment insurance, workers' compensation and other taxes and obligations to which Contractor may be subject to by law.

§ 5-a of the New York Tax Law requires that any contract valued at more than \$100,000 entered into by a State Agency shall not be valid, effective, or binding against the Agency unless the Contractor certifies to the Department of Taxation and Finance that it is registered to collect NYS and local sales and compensating use taxes, if the Contractor made sales delivered by any means to locations within NYS of tangible personal property or taxable services having a cumulative value in excess of \$300,000, measured over a specified period. In addition, the Contractor must certify to the Department of Taxation and Finance that each affiliate and subcontractor of such Contractor exceeding such sales threshold during a specified period is registered to collect NYS and local sales and compensating use taxes. For the purpose of this requirement, "affiliate" means a person or organization which, through stock ownership or any other affiliation, directly, indirectly, or constructively controls another person or organization, is controlled by another person or organization, or is, along with another person or organization, under the control of a common parent. The Contractor also must certify to the procuring state entity that it filed the certification with the Department of Taxation and Finance and that the certification is correct and complete. Accordingly, in the event the value of this Contract exceeds \$100,000 and Contractor's sales delivered by any means to locations within NYS of tangible personal property or taxable services have a cumulative value in excess of \$300,000, measured over a specific period, the Contractor must file a properly completed Form ST-220-CA with WCB and a properly completed Form ST-220-TD with the Department of Taxation and Finance before the Contract may take effect. In addition, after the Contract has taken effect, the Contractor must file a properly completed Form ST-220-CA with WCB if the Contract's term is renewed. Further, a new Form ST-220-TD must be filed with the Department of Taxation and Finance if no ST-220-TD has been filed by the Contractor or if a previously filed Form ST-220-TD is no longer correct and complete. Further information about this requirement is available at <http://www.osc.state.ny.us/agencies/gbull/g222.htm>. Contractor agrees to cooperate fully with the State in administering these requirements.

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

**6.32 OUTSTANDING TAX LIABILITIES**

Contractor warrants that there are no outstanding tax liabilities against the Contractor in favor of the State of New York, or in the event that such liabilities exist, a payment schedule has been arranged for their speedy satisfaction.

**6.33 SECURITY, NON-DISCLOSURE/CONFIDENTIALITY, PRESS RELEASES**

The Contract may be terminated by the State for cause for a material breach of this section by Contractor.

A. Security Procedures

Contractor shall comply fully with all security procedures and policies of the State, including but not limited to fingerprinting and background check procedures, which are communicated to the Contractor by the State during the performance of the Contract. WCB may, at its sole discretion, require any Contractor employee or subcontractor to execute a confidentiality agreement. Contractor shall indemnify and hold the State harmless from any loss or damage to the State resulting from the violation by the Contractor, its officers, agents, employees, and subcontractors, if any, of such security procedures or policies resulting from any criminal acts committed by such officers, agents, employees, and subcontractors, if any while providing Services under the Contract.

B. Nondisclosure & Confidentiality

Except as may be required by applicable law or a court of competent jurisdiction, the Contractor, its officers, agents, employees, and subcontractors, if any, shall maintain strict confidence with respect to any Confidential Information to which the Contractor, its officers, agents, employees, and subcontractors, if any, have access. This requirement shall survive termination of the Contract. For purposes of the Contract, all State data or information of which Contractor, its officers, agents, employees, and subcontractors, if any, becomes aware during the course of performing services for the State shall be deemed to be confidential information (oral, visual or written). Notwithstanding the foregoing, data or information that falls into any of the following categories shall not be considered Confidential Information:

1. Data or information that is previously rightfully known to the receiving party without restriction on disclosure;
2. Data or information that becomes, from no act or failure to act on the part of the receiving party, generally known in the relevant industry or is in the public domain; and
3. Data or information that is independently developed by Contractor without use of Confidential Information of the State.

**NYS WORKERS' COMPENSATION BOARD**  
**e-Discovery and Managed Document Review Services**

Contractor shall indemnify and hold the State harmless from any loss or damage to the State resulting from the disclosure by the Contractor, its officers, agents, employees, and subcontractors, if any, of such confidential information.

Contractor employees and subcontractors may be required to sign Confidentiality and Non-Disclosure Agreements either before or upon arrival at the work site or prior to providing services under the Contract.

C. Press Releases

Contractor agrees that no brochure, news/media/press release, public announcement, memorandum or other information of any kind regarding the Contract shall be disseminated in any way to the public, nor shall any presentation be given regarding the Contract without the prior written approval by the Executive Director or his/her designee, which written approval shall not be unreasonably withheld or delayed provided, however, that Contractor shall be authorized to provide copies of the Contract and answer any questions relating thereto to any State or Federal regulators or, in connection with its financial activities, to financial institutions for any private or public offering.

D. Federal or State Requirements

Contractor will comply with federal and state law and regulations regarding personal, private and sensitive data.

In the event that it becomes necessary for Contractor to receive Confidential Information, which Federal or State statute or regulation prohibits from disclosure, Contractor hereby agrees to return or destroy all such Confidential Information that has been received from the State when the purpose that necessitated its receipt by Contractor has been completed. In addition, Contractor agrees not to retain any Confidential Information which Federal or State statute or regulation prohibits from disclosure after termination of the Contract.

Notwithstanding the foregoing, if the return or destruction of the Confidential Information is not feasible, Contractor agrees to extend the protections of the Contract for as long as necessary to protect the Confidential Information and to limit any further use or disclosure of that Confidential Information. If Contractor elects to destroy Confidential Information, it shall use reasonable efforts to achieve the same and notify the State accordingly. Contractor agrees that it will use all appropriate safeguards to prevent any unauthorized use or unauthorized disclosure of Confidential Information, which Federal or State statute or regulation prohibits from disclosure.

Contractor agrees that it shall immediately report to the State the discovery of any unauthorized use or unauthorized disclosure of such Confidential Information of any NYS Agency information directly to that NYS Agency. The State may terminate the Contract if it determines that Contractor has violated a material term of this section. The terms of this section shall apply equally to Contractor, its agents and subcontractors, if any.

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

Contractor agrees that all subcontractors, if any and agents shall be made aware of and shall agree to the terms of this section.

E. Off Shore Restrictions

Confidential Information accessed by or provided to Contractor during the course of performing services for the State must not be stored or accessed outside of the continental United States.

**6.34 CONFIDENTIALITY OF WORKERS' COMPENSATION AND DISABILITY BENEFITS CLAIMS INFORMATION**

The Contractor, its officers, agents, employees and subcontractors, if any, shall treat all workers' compensation and disability benefit documents and information that are obtained from the Board as confidential information to the extent required by the laws of the State of New York and the United States and any regulations promulgated there under. Unauthorized disclosure of personal, confidential, and/or medical information may result in civil and/or criminal penalties under NYS and Federal laws.

WCL § 110-a prohibits any oral description of any Board record as well as the dissemination, release, disclosure, duplication, or publication of Board claim files except in certain limited situations as set forth therein. Pursuant to WCL § 110-a (5), any person found in violation of this statute may be subject to criminal and civil prosecution, and fines, and such violation may form the basis for termination of the contractual arrangement between the Contractor and the Board.

All individually identifiable information relating to any claimant, employer, or insurance carrier shall be held confidential and shall not be disclosed by the Contractor, its officers, agents, employees and subcontractors, if any, without the prior written approval of the Executive Director of the Board or a designee.

The use of information obtained by the Contractor in the performance of its duties to the Board shall be limited to purposes directly connected with such duties. The Contractor agrees that its officers, agents, employees and subcontractors, if any, shall not disclose, show, or otherwise make available any portion of the materials or their contents to anyone other than its officers, agents, employees, subcontractors, if any, in connection with the performance of its duties to the Board. The Contractor shall advise the Board of all requests made to the Contractor for information described in this Agreement within twenty-four (24) hours of receipt of such request.

**6.35 COMPLIANCE WITH HIPPA (HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996) AND HI-TECH (HEALTH INFORMATION TECHNOLOGY FOR ECONOMIC AND CLINICAL HEALTH ACT OF 2009)**

To the extent Contractor or its subcontractor(s) create, receive, maintain, or transmit protected health information on behalf of the State pursuant to their responsibilities under this Contract, Contractor and such subcontractors must comply with HIPAA and HI-TECH.

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

**6.36 PUBLIC INFORMATION AND FREEDOM OF INFORMATION LAW (FOIL)**

Disclosure of information related to this procurement and the resulting Contract shall be permitted consistent with the laws of the State of New York and specifically FOIL. WCB shall take reasonable steps to protect from public disclosure any records or portions thereof relating to this procurement that are exempt from disclosure under FOIL. Information constituting trade secrets or critical infrastructure information for purposes of FOIL must be clearly marked and identified as such by the Contractor upon submission in accordance with the RFP provisions. If the Contractor intends to request an exemption from disclosure under FOIL for trade secret materials or critical infrastructure information, the Contractor shall at the time of submission, request the exemption in writing and provide an explanation of (i) why the disclosure of the identified information would cause substantial injury to the competitive position of the Contractor, or (ii) why the information constitutes critical infrastructure information which should be exempted from disclosure pursuant to § 87(2) of FOIL. Acceptance of the identified information by WCB does not constitute a determination that the information is exempt from disclosure under FOIL. Determinations as to whether the materials or information may be withheld from disclosure will be made in accordance with FOIL at the time a request for such information is received by WCB.

**6.37 LEGAL REQUESTS AND RELEASE OF STATE DATA OR INFORMATION TO THIRD PARTIES PROHIBITED**

Except as otherwise required by law, Contractor shall not disclose State data or information to a third party. Except where expressly prohibited by law, Contractor shall promptly notify the State of any subpoena, warrant, judicial, administrative or arbitral order of an executive or administrative agency or other governmental authority of competent jurisdiction (a "Demand") that it receives, and which relates to or requires production of the information or data Contractor is processing or storing on WCB's behalf. If Contractor is required to produce information or data in response to a Demand, Contractor will provide the State with the information or data in its possession that it plans to produce in response to the Demand prior to production of such information or data. Except as otherwise required by law, Contractor shall provide the State reasonable time to assert its rights with respect to the withholding of such information or data from production. If the State is required to produce information or data in response to a Demand, Contractor will, at the State's request and unless expressly prohibited by law, produce to the State any information or data in its possession that may be responsive to the Demand and shall provide assistance as is reasonably required for the State to respond to the Demand in a timely manner. The State acknowledges that Contractor has no responsibility to interact directly with the entity making the Demand. The parties agree that the State's execution of this agreement, does not constitute consent to the release or production of State data or information.

**6.38 INFORMATION SECURITY BREACH AND NOTIFICATION ACT**

Contractor shall comply in all respects with NYS General Business Law (GBL) § 899-aa, "*Notification; person without valid authorization has acquired private information.*" Any notice required to be given to WCB pursuant to GBL § 899-aa(3) shall be given by Contractor to WCB, as provided in Section 6.17 of this RFP.

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

In the event that Contractor is advised by a law enforcement agency pursuant to GBL § 899-aa(4) to delay the notice under GBL § 899-aa(3), Contractor shall provide the notice under GBL § 899-aa(3) to the WCB, as provided in Section 6.17 of this RFP, not more than twenty-four hours after Contractor has been advised by the law enforcement agency that notice under GBL § 899-aa(3) can be provided.

**6.39 COMPLIANCE WITH NYS INFORMATION SECURITY POLICIES AND STANDARDS**

Contractor shall comply fully with the requirements of the Information Security procedures and policies of the State including but not limited to the following:

- Acceptable Use of Information Technology Resources Policy
- Information Security Policy
- Security Logging Standard
- Information Security Risk Management Standard
- Information Security Controls Standard
- Sanitization/Secure Disposal Standard
- Mobile Device Security Standard
- Remote Access Standard
- Secure System Development Life Cycle Standard
- Secure Configuration Standard
- Secure Coding Standard

ITS Security Policies and Standards may be found at  
<http://www.its.ny.gov/tables/technologypolicyindex.htm/security>

**6.40 RIGHT TO INSPECTION**

The State has the right to review Contractor's procedures, practices and controls related to the security of State data and information assets. Upon request, Contractor will make available for review policies, procedures, practices and documentation related to the protection of State data and information assets, including but not limited to, information related to security governance, network security, risk and compliance management policies and procedures, personnel security background screening/checks and vetting procedures, secure systems/software development protocols, change/release management, testing, quality assurance, vulnerability management, secure disposal/sanitization and documentation. Contractor may be asked to provide a recent independent audit report on security controls prior to formal awarding of any contract resulting from this RFP or at any time during the Contract term. The State shall have the right to send its officers and employees to inspect Contractor's facilities and operations used to provide Contract services. On the basis of such inspection, the State may require Contractor to implement corrective measures where the Contractor is found to be noncompliant with Contract provisions.

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

**6.41 ACCESSIBILITY**

Any web-based information and applications development, or programming delivered pursuant to the Contract will comply with NYS Enterprise IT Policy NYS-P08-005, Accessibility of Web-Based Information and Applications as such policy may be amended, modified or superseded, which requires that State Agency web-based information and applications are accessible to persons with disabilities. Web-based information and applications must conform to NYS Enterprise IT Policy NYS-P08-005 as determined by quality assurance testing. Such quality assurance testing will be conducted by Contractor and the results of such testing must be satisfactory to WCB before web-based information and applications will be considered a qualified deliverable under the Contract or Procurement.

**6.42 ETHICS COMPLIANCE**

Contractor, its officers, employees, agents and subcontractors (if any) shall comply with the requirements of Public Officers Law § 73 and § 74, and other NYS codes, rules and regulations establishing ethical standards for the conduct of business with NYS. Failure to comply with these provisions may result in termination of the Contract and/or other civil or criminal proceedings as required by law.

**6.43 MOST FAVORABLE TERMS**

Contractor agrees that all fees, terms, warranties and benefits provided by the Contractor under the Contract are substantially similar to the best equivalent terms being offered by the Contractor to any present governmental agency for services of similar size, scope and complexity. If during the term of the Contract, the Contractor enters into an arrangement with any other government customer for services of similar size, scope and complexity as the services provided pursuant to the Contract that provides greater benefits or more favorable terms than those under the Contract, then Contractor agrees to amend the Contract to provide the same to WCB.

**6.44 TRANSFER/ASSIGNMENT OF CONTRACT**

WCB may transfer/assign the Contract to another State Agency or entity at its sole discretion by informing Contractor in writing of such a transfer. Contractor shall execute any documents required to accomplish the transfer/assignment of the Contract. Contractor shall comply with any instructions from WCB to accomplish the transfer/assignment of the Contract at no additional cost to the State.

The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the Agreement or its right, title, or interest therein, other than its right to receive payment; the right to receive payment may be assigned with the prior written consent of the Board. Prior to an assignment of the right to receive payment pursuant to this Agreement becoming effective, the contractor shall file a written notice of such assignment simultaneously with the Board and the Comptroller.

**Revised April 24, 2020**

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

All provisions contained in this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of the parties hereto to the same extent as if each such successor or assign were named a party hereto.

**6.45 PIGGYBACKING**

Contractor acknowledges and agrees that, pursuant to State Finance Law § 163(10)(e), the New York State Office of General Services may authorize and approve purchases from contracts let by Contractor to other NYS agencies, the United States Government or any other state, with the concurrence of the OSC and under appropriate circumstances.

**6.46 WAIVER**

No term or provision of the Contract shall be deemed waived and no breach excused, unless such waiver or consent is in writing and signed by the Party claimed to have waived or consented. No consent by a Party to, or waiver of, a breach under the Contract shall constitute consent to, a waiver of, or excuse for any other, different or subsequent breach. The rights, duties and remedies set forth in the Contract shall be in addition to, and not in limitation of, rights and obligations otherwise available at law or equity.

**6.47 CONFLICT OF INTEREST**

If during the term of the Agreement and any extension thereof, a Contractor becomes aware of an actual or potential relationship that may be considered a conflict of interest, the Contractor shall notify the Board in writing immediately. Should the Contractor engage any current or former NYS employee as its own employee or as an independent Contractor because of such employee's knowledge of NYS finances or operations, or any current or former State employee who in the course of his or her State employment had frequent contact with management-level contractor employees, the Contractor shall immediately notify the Board in writing. Should the Board thereafter determine that such employment is inconsistent with NYS or Federal Law, the Board shall so advise the Contractor, in writing, specifying its basis for so determining, and may request that the employee's or independent contractor's relationship be terminated with respect to the Contractor's relationship with the Board.

In addition, a Contractor shall not offer any Board employee or agent of the Board any gratuity or benefit without prior written approval of the Board.

**6.48 REQUIRED PROVISIONS FOR OUTSIDE COUNSEL CONTRACTS**

- A. Opinions prepared by retained attorneys or law firms construing the statutes or Constitution of the State of New York do not constitute the opinion of the State unless the prior written approval of the Attorney General is obtained. Requests for said approval shall be submitted to the Solicitor General, Appeals and Opinions Bureau, Department of Law, State Capitol, Albany, New York.

**Revised April 24, 2020**

**NYS WORKERS' COMPENSATION BOARD  
e-Discovery and Managed Document Review Services**

- B. The retained attorney or law firm will represent the State of New York in judicial litigation related to the services to be provided under this agreement only when such services are specifically requested by the State agency's counsel and approved by the Attorney General. Such approval must be requested separately for each matter to be litigated and must be received prior to the commencement of services therefor.

**6.49 CAPTIONS**

The captions contained in this Contract are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

**6.50 SEVERABILITY**

In the event that one or more of the provisions of the Contract shall for any reason be declared unenforceable by a court of competent jurisdiction under the laws or regulations in force, such provision(s) shall have no effect on the validity of the remainder of the Contract, which shall then be construed as if such unenforceable provision(s) was never contained in the Contract.