



# Workers' Compensation Board

## COMPETITIVE PROCUREMENT FOR:

### RFP C140397 – WORKERS' COMPENSATION ON-CALL PERFORMANCE AND OPERATIONAL CLAIMS REVIEW SERVICES

**REVISED 06/29/20**

PROCUREMENT WEBSITE: [HTTP://WWW.WCB.NY.GOV/PROCUREMENTS.JSP](http://www.wcb.ny.gov/procurements.jsp)

#### DESIGNATED CONTACT FOR INQUIRIES AND SUBMISSIONS

Tonya Sanderson, Associate WC Examiner  
Alternate Contact: Colleen VanWormer, Financial Analyst 2

RFP related questions must be submitted via electronic mail using the Inquiries Template (Attachment 2) to the designated contact for this RFP at [WCBContracts@wcb.ny.gov](mailto:WCBContracts@wcb.ny.gov)

**No other method of inquiries will be accepted. Administrative issues pertaining to sending/receiving email through the designated mailbox may be reported at (518) 402-6190.**

#### ADDRESS FOR PROPOSAL DELIVERIES

NYS Workers' Compensation Board  
ATTENTION: Tonya Sanderson  
Room 331-71  
328 State St.  
Schenectady, NY 12305

Use the above address for US Postal Service, UPS, FedEx service, or hand delivery to the front desk.

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**1.0 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 to those who are injured or ill, and by promoting compliance with the law, including the provisions relating to Workers’ Compensation benefits, Disability 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 because 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.

In addition, the Workers’ Compensation Board administers various special funds established under law. Administration includes, but is not limited to, ensuring that injured workers promptly receive the appropriate amount of benefits permitted by law, and that medical treatment is medically necessary, causally related, authorized timely, and paid correctly. There may be a need to utilize workers’ compensation professionals for on-call performance and operational claims review specialists to assist in examining or valuing portions of these funds.

This Request for Proposal (RFP), and the appendices and attachments referenced herein, provide specific service requirements and other pertinent information related to the engagement of vendors to provide workers’ compensation specialists in the area of performance and operational claim review services to the WCB. The specifications for the engagement and the terms and conditions set forth in this RFP will be incorporated into any resulting contract entered between the WCB and the selected Bidder(s).

**1.2 SUMMARY OF SCOPE OF SERVICES**

The WCB is seeking two qualified firms authorized to do business in New York State to provide professional workers’ compensation services for performance and operational claims review. One qualified firm will serve as the primary contractor (the highest composite score) and the other as the secondary contractor (the next highest composite score). The WCB is seeking “on-call” qualified Contractors to provide these professional services.

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The individual requests for services may involve any self-insurer, fund, and/or group of workers’ compensation, volunteer firefighter benefits, volunteer ambulance worker benefits, disability benefits, or paid family leave benefits claims (hereinafter “claims”) managed or overseen by the Board, or by a third-party administrator under contract with the Board, that the Board wishes to have reviewed, in whole or in part. The nature of the services requested will be on an as-needed basis. These services may include, but may not be limited to:

Contractor may be asked to analyze, evaluate, and report on the efficiency of the claims and fund administration. Contractor may be asked to compare claims and fund administration practices and outcomes against industry standards, highlighting any deviations from recognized best practices and pointing out any noted errors or omissions. When evaluating fund or administrator performance, Contractor will be expected to recognize and quantify discrepancies, losses, accuracy, and efficiency levels; potentially providing data in summary, percentage, chart, graph, or other format as requested by the Board. Contractor may also be asked to review and evaluate the compliance and performance of other entities registered with or providing services for the Board.

The Contractor will be required to prepare a comprehensive written report, prefaced with an executive summary, detailing the findings of each review performed. These reports and findings may be used for litigation purposes.

More specific details concerning the scope of services and service requirements can be found in Section 3 of this RFP, “Contractor and Service Requirements.”

### **1.3 ANTICIPATED CONTRACT TERM AND RENEWAL**

In accordance with Section 6.1 of this RFP, the contract term will be for a period of three (3) years, commencing upon the approval of the New York State Office of the State Comptroller (OSC). The Contract will provide for two (2) optional one (1) - year extensions, to be exercised at the WCB’s sole discretion, subject to the approval of OSC.

## **2.0 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 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

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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 6. 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 6 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 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.

## **2.2 ADMINISTRATIVE REQUIREMENTS AND INFORMATION**

### **2.2.1 Issuing Office**

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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 contractor does not receive a timely response from the Board’s Issuing Officer or Alternate, please contact the Board’s Office of General Counsel, in writing, at 328 State Street, 4<sup>th</sup> Floor, Schenectady, NY 12305-2318.

**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.

	<b>Event</b>	<b>Day</b>	<b>Date</b>	<b>Time</b>
1	Release of RFP	Monday	05/18/20	
2	Filing Notice of Intent to Bid	Monday	06/15/20	2:00 PM (EST)
3	Submission of Written Questions Due	Monday	06/15/20	2:00 PM (EST)
4	Official Response to Questions Due	Wednesday	06/24/20	
5	Closing Date for Receipt of Proposals	Friday	07/24/20	2:00 PM (EST)
6	Selection of Prospective Contractors	Friday	08/07/20	
8	Contract Negotiations Close with Prospective Contractors	Monday	09/07/20	
9	Estimated Contract Term Begins	Friday	11/06/20	

**2.2.3 Notice of Intent to Bid**

A Notice of Intent to Bid should be submitted to indicate Bidder’s intention to further participate in this procurement. The format for the Notice of Intent to Bid is included in Attachment 1 – Notice of Intent to Bid. This form should be submitted to the WCB’s Issuing Officer or Alternate at the address or email listed on the Cover Page of this RFP. The WCB should receive this notice by the date specified in Section 2.2.2, RFP Calendar.

**2.2.4 Submission of Written Questions**

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

The Board has provided an Inquiries Template, Attachment 2, which provides the format/content vendors are requested to use when submitting questions. Inquiries submitted after the date and

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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 their proposals. All Bidders are cautioned to verify the content of their proposal before submitting it to the Board. All exceptions and deviations must be noted in Bidder’s proposals and no adjustments may be made after an award is issued.

The Board shall 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. Except for material received from a Bidder in response to a request by the Board, the Board shall not accept amendments or additions to a proposal after the Closing Date for Receipt of Proposals indicated in Section 2.2.2, RFP Calendar.

The Board shall 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 no later than the Closing Date for Receipt of Proposals indicated in Section 2.2.2, RFP Calendar.

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 in Section 2.2.2, RFP Calendar, shall be considered at the sole discretion of 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 identified in Section 2.2.2, RFP Calendar. If a proposed contract with the successful Bidder is not approved by the NYS Comptroller within the 180-day period, Bidder’s offer shall remain firm and binding beyond the 180-day period and until the proposed contract is either approved or rejected by the NYS Comptroller, unless the Bidder withdraws its proposal in writing.

**2.2.7 Award Criteria**

The Board will award contracts 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 the requirements

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

Due to the unpredictable nature of the timing of services needed, the potential for conflicts of interest to arise, and the uncertainty regarding how many on-call services will be needed (and the exact scope of each), the Board expects to exercise its right to award contracts for as needed services to two qualified Contractors for each lot; one Contractor will serve as the Primary Contractor (the highest composite score) and other as the Secondary Contractor (the next highest composite score) for each lot.

The Primary Contractor shall be given first opportunity to accept an assignment, unless one of the conditions listed below applies. There is no commitment by the WCB that the Secondary Contractor will be assigned any work under the contract. The WCB will award assignments to the Secondary Contract under the following conditions:

- The Primary Contractor has an actual or potential conflict of interest that, in the sole determination of the WCB, could prevent the Contractor from satisfactorily or ethically performing the required services;
- The WCB determines that the Primary Contractor cannot undertake or complete an assignment or make appropriate staff available within the necessary timeframes for the established costs;
- The WCB and Primary Contractor are unable to come to agreement on the requirements and/or costs to complete an assignment; or
- The Primary Contractor and the WCB mutually agree that the work on a specific project be performed by a Secondary Contractor.

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. Once an award has been made, Bidders may submit a written request for a debriefing as to why their bid did not result in an award. The written request must be received by the Board’s Issuing Officer or Alternate, identified on the Cover Page of this RFP, no later than fifteen (15) calendar days from the date of the award announcement. The purpose of the debriefing is to provide information to the Bidder about the scoring and evaluation of the requesting Bidder’s proposal. The Board will not provide a Bidder with information about another Bidder’s proposal.

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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 shall provide all information, responses to questions, and communications concerning the solicitation in writing by electronic mail to all vendors who submitted a Notice of Intent to Bid. 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 established a procurement website for disseminating information relating to this procurement and vendors are encouraged to monitor this website. 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 NYS Comptroller, if required.

**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 **Attachment 17, Extraneous Terms Template**.
- 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

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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 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 agency’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;
- 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 agency’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 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 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.

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**2.2.13 Procurement Record**

The Board shall 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 the Office of the State Comptroller and, as applicable, to the 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 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/or 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 couriers.

**2.2.15 Minority- and Women-Owned Business Enterprises**

**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). 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

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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.

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 as evidence of compliance with the foregoing:

- A. An MWBE Utilization Plan (Attachment 7) 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

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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.

The successful respondent will be required to submit a quarterly M/WBE 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 OR Authority equivalent to Appendix A]. 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 9), 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.

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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.**

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

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.

#### **I. Contract Goals**

A. The 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 (see clause IV below).

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**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 10) with their bid.

B. The Utilization Plan shall list the SDVOBs that 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 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 that is submitted is not timely or is found by the WCB to be inadequate, the WCB shall notify the Bidder/Contractor and direct the Bidder/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 SDVOB 200. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

E. The WCB may disqualify a Bidder’s bid or proposal as being non-responsive under the following circumstances:

- (a) If a Bidder fails to submit an SDVOB Utilization Plan;
- (b) If a Bidder fails to submit a written 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 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.

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**III. Request for Waiver**

**A. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall email the WCB at [WCBContracts@wcb.ny.gov](mailto:WCBContracts@wcb.ny.gov) for guidance.**

B. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form SDVOB 200, accompanied by supporting documentation. A Bidder/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 clauses II (C), (D) & (E) will apply. If the documentation included with the Bidder’s/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. 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 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 (SDVOB 101) determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued regarding such non-compliance, 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 partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to the WCB.

**IV. Required Good Faith Efforts**

In accordance with 9 NYCRR § 252.2(n), Bidders/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:

- (1) Copies of solicitations to SDVOBs and any responses thereto.
- (2) Explanation of the specific reasons each SDVOB that responded to Bidder’s/Contractor’s solicitation was not selected.
- (3) Dates of any pre-bid, pre-award or other meetings attended by Bidder/Contractor, if any, scheduled by the WCB with certified SDVOBs whom the WCB determined can fulfill the SDVOB goals set in the Contract.

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(4) Information describing the specific steps undertaken to reasonably structure the Contract scope of work for subcontracting with, or obtaining supplies from, certified SDVOBs.

(5) Other information deemed relevant to the waiver request.

**V. Monthly SDVOB Contractor Compliance Report**

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report Monthly SDVOB Contractor Compliance to the WCB during the term of the Contract for the preceding month’s activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form SDVOB 101 available on the WCB’s website and should be completed by the Contractor and submitted to the WCB, by the 10th 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).

**VI. Breach of Contract and Damages**

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.

**3.0 CONTRACTOR AND SERVICE REQUIREMENTS**

**3.1 MINIMUM BIDDER ELIGIBILITY REQUIREMENTS**

To be eligible for award, Bidders must meet the minimum eligibility requirements set forth below. In addition to the requirements listed below, Bidder must be licensed with the Department of State to conduct business in NYS. Failure to meet all the requirements below will result in Bidder’s proposal deemed non-responsive and eliminated from consideration.

1. Bidder’s staffing roster must include, at a minimum, one (1) licensed NYS workers’ compensation claims adjuster who has at least three (3) years of New York State workers’ compensation claims handling experience, including adjusting and reserving.

2. Bidder must possess a minimum of five (5) years of experience delivering claims auditing services for New York State workers’ compensation claims that are similar in scope to the auditing services described in this RFP, and such services must have been delivered within the past five (5) years.

3. Bidder must have the capacity to perform comprehensive auditing services of multiple administrators engaged in administering upwards of 25,000 active workers’ compensation claims.

**3.2 SERVICE REQUIREMENTS**

Section 3.2.1 provides a description of the service requirements (tasks and deliverables) that the vendor will be required to meet/fulfill. Each service requirement is a mandatory contract

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requirement, which the vendor will be required to meet/fulfill as part of performance under a resulting contract.

### 3.2.1 Tasks and Deliverables

It is important to note that assignments under the contract will vary and may arise quickly and, in most cases, the WCB will rely on the Contractor’s ability to provide assistance, guidance, or analysis relating to the assignment in a short time frame. The deliverables expected from the Contractor may vary from assignment to assignment depending on the nature of the assignment.

At the onset of an assignment, the Contractor and the WCB will prepare a statement of work, which details the services and deliverables that Contractor will be required to provide under the direction of the WCB. The WCB expects that assistance will be required on several assignments per year, and these assignments may run concurrently.

The Contractor may be asked for an independent written report or assessment, including findings and recommendations. In addition, the Contractor may be asked to supplement WCB staff in performing work required and to develop joint recommendations.

### **Workers’ Compensation On-Call Performance and Operational Claims Review Services Tasks**

Unless audit scope is expressly limited, Contractor shall, as directed by the WCB, be responsible for performing all industry appropriate actions involved in auditing claims and fund administration, including but not limited to, the following (all listed tasks that involve the review of individual claims may be achieved by review of a sample of claims selected in accordance with industry standards):

- A. Review record-keeping and reporting electronic claims system (as applicable) and determine whether it sufficiently meets all applicable law and policy requirements, including privacy protections;
- B. Review financial accounts created for claims or fund administration to ensure they are set up and being managed in accordance with Board specifications, proper business practices, and legal requirements;
- C. Evaluate staffing rosters to ensure employees are qualified and meet Board experience, licensing, and training requirements;
- D. Compare the monthly and quarterly invoices submitted to the Board by the administrator or fund, to the internal records and data kept by such administrator or fund and highlight any inconsistencies or inaccuracies contained within such records and invoices;
- E. Determine whether claims administration and/or claims management tasks were handled in accordance with WCB requirements, written policy requirements, industry standards, and all applicable laws. Such tasks may include, but not be limited to, making of indemnity payments, medical bill review and review of requests for

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- authorization of medical treatment. Where mismanagement is found, qualify which standards of management were breached and how, and quantify the effect of the breach;
- F. Report instances where benefits (i.e. indemnity, medical, etc.) were incorrectly, untimely, or otherwise improperly paid and, to the extent practicable, determine the cause and impact of the error(s);
  - G. Review and report on all instances where penalties were assessed, which were related to, could impact or have impacted an administrator’s or fund’s provision of services to the Board, and provide an opinion as to the immediate and root causes of such errors or omissions which resulted in the penalties;
  - H. Determine whether claims were properly reserved, including claims and age-related reserve adjustments. Where claims were improperly reserved, qualify what standards of reserving were breached and how, and quantify the effect of the breach;
  - I. Review, evaluate, and document claim closure practices, back-to-work programs, fraud procedures, and other cost prevention measures, report on the frequency with which these practices and procedures are followed and applied, and report the associated success rate;
  - J. Review and evaluate the administrator’s or fund’s utilization of subcontractors or specialized services. Report on whether investigative, legal, bill review, Independent Medical Examiner (IME), Medicare Set-Aside, and any other such specialized claims administration services (regardless of whether these are performed by administrator or fund or a subcontractor on behalf of such administrator or fund) are being utilized in every appropriate instance, including whether there is over- or under-utilization, and evaluate the efficiency and success rate associated with such utilization;
  - K. Determine whether all appropriate third-party recoveries were actively pursued and received (special funds, excess coverage, and other third-party actions). Where third-party recoveries were not properly and actively pursued, state the resulting impact of the failure to actively pursue the recoveries (i.e. whether due diligence and/or adherence to industry standards would have resulted in a recovery being received);
  - L. Analyze and reconcile any other pertinent data/documentation related to the claims handling;
  - M. Perform advisory services regarding claims management, prevention of loss development and cost containment;
  - N. Review and evaluate the compliance and performance of other entities registered with or providing services for the Board, including Board-registered IME entities, to ensure compliance with applicable laws and regulations;
  - O. Deliver presentations to the various stakeholders which describe the approach to and results of the various reviews performed; and
  - P. Provide status updates as outlined in each individual scope of work; status updates shall be bi-weekly, at a minimum, unless the Board agrees that less frequent updates are sufficient to meet the requirements of the individual assignment.

Timeframes for completion of an assignment will vary depending on the type and depth of review required. For any anticipated delay outside of the agreed upon scope of work, the Contractor shall be prepared to adjust staffing levels to complete the required tasks within the timeframes established.

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**3.3 CONTRACTOR KEY PERSONNEL**

The Contractor shall provide any staff necessary to provide the services described in this RFP, in accordance with the requirements set forth herein. It is expected that key staff will include various professional levels, as described below; however, Contractor shall perform the required services, using the minimum appropriate staffing level necessary to perform the services in accordance with the requirements of this RFP.

A. Partner/Principal shall:

- be responsible for providing firm leadership;
- be responsible for the execution, oversight, coordination and management of all aspects of the assignment, including but not limited to the project plan, schedule and resource management; and
- have the authority to act on behalf of the Contractor.

B. Manager shall:

- be responsible for the overall planning, organizing, staffing, managing and reviewing project tasks and deliverables.

C. Team Lead shall:

- be considered the subject matter expert; individuals at this level shall play a critical role in performing and/or reviewing all significant components of the various assignments.

D. Staff shall:

- be responsible for the detailed analysis, documentation, and preparation of various reports, schedules, work papers, and related work products.

E. Administrative Support/Clerical shall:

- be responsible for all administrative and/or clerical duties related to the reviews performed (including scheduling meetings, copying documents, report distribution, etc.).

The Board requires the Contractor to provide for the continuity of key personnel for the duration of the contract. Replacements for such key personnel cannot be made without Board approval. Should it become necessary to replace personnel, the Contractor shall provide replacement staff with equal or superior skills and qualifications.

**3.4 CONTRACTOR PERFORMANCE REQUIREMENTS**

The Contractor shall perform all services and provide all deliverables described in this RFP, along with all referenced appendices and attachments, in a manner that satisfies the service requirements set forth in this RFP. All required activities and tasks shall be performed in a manner which achieves all of the objectives, functions, outputs and performance criteria stated herein, in a manner

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that is appropriate and acceptable to the Board’s management. If the Board determines that the desired performance standards are not being met, the Contractor shall increase staffing levels to meet those standards. All services shall be provided in a manner which is consistent with state and federal laws and regulations.

#### **4.0 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 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 WCB Issuing Officer or Alternate no later than 2:00 PM EST on the Closing Date for Receipt of Proposals specified in Section 2.2.2, RFP Calendar. Proposals received after the date and time specified in the RFP Calendar will be rejected. Bidders mailing proposals should allow sufficient mail delivery time to ensure timely receipt of their proposals. WCB will not accept faxed or emailed 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 their proposal either:
  - 1) On a 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, Workers’ Compensation On-Call Performance and Operational Claims Review Services RFP, C140397; or
  - 2) Via an electronic copy of the Cover Letter, Administrative Volume, Technical Volume, and Cost Volume files via email to [WCBContracts@wcb.ny.gov](mailto:WCBContracts@wcb.ny.gov); the subject line must be titled Workers’ Compensation On-Call Performance and Operational Claims Review Services RFP, C140397.

The Cover Letter, Administrative Volume, and Technical Volume must be submitted in .pdf format. The Cost Volume must be submitted in the Excel format of Attachment 3.

Submission of a proposal will be construed by the WCB as the following:

- Bidder’s acceptance of the procedures, evaluation criteria, and other administrative instructions set forth in this RFP;
- Bidder’s affirmation that its organization complies with all requirements and qualifications set forth in this RFP; and
- Bidder’s affirmation that its organization can perform the required services in a manner consistent with the terms of this RFP.

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## **4.2 COVER LETTER**

The Bidder must submit one (1) USB thumb drive containing an electronic version, or send an electronic version via email to [WCBCContracts@wcb.ny.gov](mailto:WCBCContracts@wcb.ny.gov), in .pdf format, of the Cover Letter on official business letterhead as referenced in Section 4.1, General Procedures.

### **4.2.1 Format** – The Cover Letter must comply with the following requirements:

- The Cover Letter .pdf must be named C140397 – Cover Letter – Bidder’s Name and include the following components:
  - Name and address of the Bidder;
  - Date and place of incorporation, where registered, licensed as applicable, corporate headquarters, and other background information, etc.;
  - Corporate profile and description of the Bidder and any 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 Bidder and any subcontractors (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 of the requirements set forth in this RFP, including the Contract Terms and Conditions in Sections 3 and 6, Appendix A (Standard Clauses for all New York State Contracts), and State Finance Law 139-j and 139-k, except as may be hereinafter modified and accepted by the WCB;
  - Statement certifying that Bidder knows of no factors existing at time of bid submission, or which are anticipated to arise during the procurement or contract term, which would constitute a potential conflict of interest in successfully meeting the contractual obligations set forth in this RFP and the proposal hereby submitted, including but not limited to:
    1. No potential for conflict of interest on the part of the Bidder or any subcontractor due to prior, current or proposed contracts, engagements, or affiliations; and/or
    2. No potential conflicts in the sequence or timing of the proposed award under this procurement relative to the timeframe for service delivery, or personnel or financial resource commitments of Bidder or proposed subcontractors to other projects; 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

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desired, provide an attestation as to the business and personal integrity of their 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 “if disclosed, would jeopardize an agency’s capacity 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 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 State.

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.

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

The Bidder must submit one (1) USB thumb drive containing an electronic version, or send an electronic version via email to [WCBContracts@wcb.ny.gov](mailto:WCBContracts@wcb.ny.gov), in .pdf format, of Volume I 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 C140397 – Administrative Volume – Bidder’s Name;
- 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;

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- Volume I must include a Table of Contents that reflects the areas identified in 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 content including any illustrations, supporting illustrations and photographs, must be able to be printed 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 the following required materials, which must be completed by the individual(s) who signed the cover letter and are authorized to contractually bind the Bidder:

- Attachment 4 – Vendor Responsibility Questionnaire For-Profit Business Entity. A hardcopy may be submitted, or Bidder can go online at [http://www.osc.state.ny.us/vendrep/form\\_ac3290s.htm](http://www.osc.state.ny.us/vendrep/form_ac3290s.htm). The WCB highly recommends Bidders to complete the Vendor Responsibility Questionnaire online;
- Attachment 5 – NYS Required Certifications;
- Attachment 6 – Lobbying Forms;
- Attachment 7 – M/WBE Utilization Plan;
- Attachment 8 – Equal Employment Opportunity Staffing Plan;
- Attachment 9 – MWBE EEO Policy Statement;
- Attachment 10 – SDVOB Utilization Plan;
- Attachment 11 – EO 177 – Prohibiting Contracts with Entities that Support Discrimination;
- Attachment 12 – Encouraging Use of NYS Business in Contract Performance; and
- Attachment 17 – Extraneous Terms Template – only to be submitted if Bidder is proposing extraneous terms.

If awarded the contract, the following forms must be submitted to the WCB:

- Attachment 13 – Nondisclosure Agreement;
- Attachment 14 – Consultant Disclosure Forms – Winning bidder will be required to complete and return Form A with the contract signature pages;
- Attachment 15 – ST-220-CA Contractor Certification – must be completed, signed, and notarized ([http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)); and
- Attachment 16 – Proof of Workers’ Compensation and Disability Benefits Insurance.

#### **4.4 TECHNICAL VOLUME II**

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The Bidder must submit one (1) USB thumb drive containing an electronic version, or send an electronic version via email to [WCBContracts@wcb.ny.gov](mailto:WCBContracts@wcb.ny.gov), in .pdf format, of Volume II 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 C140397 – Technical Volume – Bidder’s Name;
- Volume II must include a completed Requirements Traceability Matrix that identifies where in the proposal each requirement is addressed in the format of Attachment 18 of this RFP;
- 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’s 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; and
- Volume II content, including any illustrations, supporting illustrations and photographs, must be able to be printed on standard 8.5x11-inch white paper and be reproducible in black and white without obscuring any distinctive information.

**4.4.2 Tasks and Deliverables**

Volume II of the Bidder’s proposal shall include a description of the Bidder’s approach/methodology to the tasks and deliverables identified in Section 3.2 of the RFP.

**Task Description – Approach/Methodology**

This section of the Bidder's proposal must include a description of the Bidder's approach to providing the various tasks and deliverables, set forth in Section 3.2 of this RFP, in a governmental setting, which demonstrates an understanding of the requirements in the context of NYS workers’ compensation environment. In addition, this description should demonstrate an understanding of the regulatory role of the WCB and knowledge of NYS specific workers’ compensation issues. Since the specific nature of each project is unknown at this time, Bidders should describe their qualifications noting why they are best to perform such general services. The description provided will be evaluated based upon (1) how well it indicates the Bidder's understanding of the service requirements, and (2) how well it depicts Bidder’s ability to meet the service requirements.

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1. Provide a statement, and any relevant supporting documentation, that demonstrates that the Bidder meets the minimum requirements in Section 3.1.
2. Provide a description of the Bidder’s organization, including a description of the firm’s size and the services the firm provides.
3. Describe Bidder’s approach to performance and operational claims review services, as described in Section 3.2.1 of this RFP.

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4. Indicate the Bidder’s approach to staffing for individual assignments and describe Bidder’s ability to provide timely services and deliverables.
5. Describe the Bidder’s capacity and flexibility regarding acceptance of assignment requests, including assignments with overlapping completion timeframes.
6. Provide specific examples of the key components of a record-keeping and reporting electronic claims system that Bidder would deem necessary for the system to be determined sufficient for proper administration (ex. duplicate payment alerts, data back-up practices, etc.).
7. Provide a general explanation and description of the auditing practices employed by Bidder to compare reported data to the raw data and information contained in other internal or external systems.
8. Indicate if and how information reported within an administrator or fund system will be checked by Bidder for authenticity.
9. Provide a general explanation and description of Bidder’s process for evaluating the efficiency of claims administration. Specify whether each claim is reviewed individually, and what aspects of a claim are deemed relevant when performing such review.
10. Explain how penalties, improper or untimely payments, duplicate payments and other potentially unreported errors or omissions will be discovered by Bidder.
11. Provide examples of factors that Bidder will review to determine whether claims have been administered and reserved correctly and accurately.
12. Describe the process Bidder will use for determining whether loss transfer recovery was properly pursued.
13. Describe the level of experience Bidder’s partner/principal, manager, team lead, and auditing staff possess that will be involved in the delivery of the services under the contract and who will appear on the staffing roster. The profiles shall include the following information:
  - Name, with professional associations and certifications;
  - Brief biographies and areas of expertise/technical qualifications;
  - Proposed role on the contract; and
  - Number of years’ experience in the role.
14. Describe Bidder’s internal training practices including, but not limited to, ensuring all staff have the most recent information about legal and procedural updates.
15. Describe the process by which Bidder will evaluate medical bill payment accuracy, medical treatment guidelines conformance, and the existence and efficiency of any cost containment steps taken by the entity being audited.
16. Provide a five (5) page sample from an audit report prepared by Bidder within the past five (5) years that involved an audit of the performance of one (1) or more of the factors contained in Section 3.2.1 of this RFP. It is preferred that the sample report pages come from an audit performed of a NYS Workers’ Compensation Administrator.
17. Demonstrate relevant experience by providing up to three (3) examples of the Bidder’s prior workers’ compensation on-call performance and operational claims review services experience on behalf of a government or private entity. The following information must be provided for each example:
  - Name of the organization;
  - Type of client [government entity (local, State, Federal), private entity];

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- Description of assignment;
  - Duration of assignment, including start and end dates;
  - Number of Bidder’s staff (FTEs or PTEs) involved in the provision of services related to the assignment; and
  - Any other information regarding the project that will assist the WCB in determining success experienced by the client.
18. Provide references for two (2) recent engagements that were completed within the past five (5) years who can comment on the Bidder’s performance of delivering claims auditing services for New York State workers’ compensation claims. It is preferred that references be provided for projects referenced in item #17 above. The following information must be provided for each reference:
- Name of the organization;
  - Type of client [government entity (local, State, Federal), private entity];
  - Contact name;
  - Contact title;
  - Business address;
  - Contact email address; and
  - Contact telephone number.

Failure to provide sufficient information, or if the WCB is unable to obtain a reference from one or more of the listed entities, Bidder’s score may be negatively impacted.

The proposal will be evaluated on how well it demonstrates (1) the Bidder’s understanding of the service requirements set forth in Section 3.2.1 of this RFP, and (2) the Bidder’s ability to meet the service requirements.

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

The Bidder must submit one (1) USB thumb drive containing an electronic version, or send an electronic version via email to [WCBContracts@wcb.ny.gov](mailto:WCBContracts@wcb.ny.gov), in the Excel format of Attachment 3, Cost Proposal, of Volume III as referenced in Section 4.1, General Procedures.

Attachment 3 provides the format required for submission of the cost data. As shown, the Board has identified key staffing categories, and the Bidder must identify a corresponding hourly rate for each of the three (3) years of the contract period. Failure to submit hourly rates for each of the staffing categories listed, for each of the three (3) years of the contract term will result in the Bidder’s proposal being deemed non-responsive, and the Bidder will be removed from further consideration. Except for travel expenses, the hourly rates quoted must include overhead, profit, and all other costs related to reviews performed across the State.

Travel expenses incurred in the delivery of services will be reimbursed at the State rate which can be found at <https://osc.state.ny.us/agencies/travel/travel.htm>. All travel must be preapproved by the WCB.

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The hourly rates submitted will be used to score and rank the Cost Volume using a methodology to be determined by the Board prior to submission of proposals. Such methodology will be set forth in the evaluation criteria that will become part of the procurement record. In addition, the hourly rates quoted will be used when awarding any contracts pursuant to this RFP.

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

- The Volume III Excel file must be named C140397 – Cost Volume – Bidder’s Name;
- The Cost Proposal must include all required cost components in the format provided in Attachment 3; and
- Volume III content, including any illustrations, supporting illustrations and photographs, must be able to be printed on white paper and be reproducible in black and white without obscuring any distinctive information.

**4.5.2 Cost Component Definitions** – Volume III must include all cost components as indicated in Attachment 3, Cost Proposal. The Bidder must guarantee all proposed costs for the full contract term; 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.

**5.0 METHOD OF EVALUATION**

**5.1 AWARD OBJECTIVES**

This is a competitive procurement that will result in the award of multiple contracts for Workers’ Compensation On-Call Performance and Operational Claims Review Services. The objective of the evaluation is to ensure that:

- The Bidders selected represents the best value for WCB; and
- The Bidders selected has the experience and personnel necessary to successfully provide the services as described in the RFP.

The Board will award this contract based upon best value. A best value award is one that optimizes quality, cost, and efficiency. The Board will evaluate responsive and responsible Bidder’s proposals for all the requirements specified in this RFP. Due to the unpredictable nature of the timing of services needed, the potential for conflicts of interest to arise, and the uncertainty regarding how many on-call services will be needed (and the exact scope of each), the Board expects to exercise its right to award contracts for as needed services to two qualified firms. One qualified firm will serve as the primary contractor (the highest Final Composite Score) and the other will serve as the secondary contractor (the next highest Final Composite Score).

The following weighting criteria will be applied to each proposal:

Technical Volume – 70%  
Cost Volume – 30%

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There will be no points awarded to the Administrative Proposal.

**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 staff 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, who will make the final selection and authorize the commencement of negotiations with the selected Bidders.

**5.3 PROPOSAL EVALUATION PROCESS**

Proposals that are complete and received no later than the Closing Date for Receipt of Proposals, specified in Section 2.2.2 of this RFP, will be evaluated 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 no later than 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 TEC 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 provided written notification of their elimination.

**5.3.4 Technical and Cost Volume Evaluations**

The TEC and CEC will conduct separate evaluations of all remaining responsive proposals.

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The TEC will evaluate the Technical Volume using a methodology to be determined by the WCB prior to submission of proposals. Such methodology will be set forth in the evaluation criteria that will become part of the 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. Such methodology will be 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 revise its proposal after 2:00 PM EST on the Closing Date for Receipt of Proposals, specified in Section 2.2.2 of this RFP.

When the Technical and Cost Volume evaluations are complete, the Board’s Issuing Officer or Alternate will add the Technical Volume score to the Cost Volume score to develop a Final Composite Score. All Bidders will then be ranked in descending order based on their Final Composite Score.

### **5.3.5 Selection Recommendation**

The Board’s Issuing Office or Alternate will review the written evaluation reports and the Final Composite Scores and will make its recommendations regarding the award of the contracts to the Executive Director or their designee.

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

## **6.0 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

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any optional extension periods, shall take effect and commence upon the approval of the Contract by the Office of the State Comptroller of the State of New York (“OSC” or “Comptroller”).

**6.2 MODIFICATION OF CONTRACT**

The State reserves the right to renegotiate the terms and conditions of the Contract in the event applicable New York State 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**

The State Finance Law of the State of New York, Section 112, requires that any contract made by a State Agency which exceeds fifty thousand dollars (\$50,000) in amount be first approved by the Office of the State Comptroller (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;

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4. Fourth: WCB Request for Proposal No. C140397, entitled, “Workers’ Compensation On-Call Performance and Operational Claims Review Services,” including any amendment(s) thereto and any clarification or change to the RFP made through the Question and Answer process; and
5. Fifth: Contractor’s Proposal, 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 CONTRACT 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.

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**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

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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 New York State, 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 subcontractor's 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.

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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

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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 THE 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 §6.17, 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:

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For the New York State Workers’ Compensation Board:

NYS Workers’ Compensation Board  
ATTN: Tonya Sanderson  
328 State Street, Room 331-71  
Schenectady, NY 12305  
Telephone Number: (518) 402-6190  
Facsimile: (518) 486-9561  
Email Address: 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 purpose 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 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.

Fees paid, for which it is subsequently determined that a contractor was not entitled, must be reimbursed to the Board. The Board may do so by subtracting such fees from any payments that later become due to the contractor under this Agreement

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**6.19 PAYMENT PROCEDURE**

The Contractor shall bill the WCB by submitting invoices electronically to [accounts@wcb.ny.gov](mailto:accounts@wcb.ny.gov).

Invoices can alternatively be sent by mail to:

Workers’ Compensation Board  
c/o Finance  
328 State Street  
3<sup>rd</sup> Floor  
Schenectady, NY 12305

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

**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.
- 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.

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**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, 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 its 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

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(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 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

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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 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 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

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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 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

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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.

**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 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;

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- 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/expiry (“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.

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 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

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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 New York State; 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 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

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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.

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 due to the actions of the Contractor which results in unauthorized access to confidential data. Said insurance shall be maintained in the following limits, as applicable:

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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="http://www.its.ny.gov/tables/technologypolicyindex.htm">http://www.its.ny.gov/tables/technologypolicyindex.htm</a> for additional information relating to risk categories. 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;
- 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: Sections 57 and 220 of the New York State Workers’ Compensation Law 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,

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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 New York State Workers’ Compensation Board. **An ACORD form is not acceptable proof of New York State 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 New York State Workers’ Compensation Board’s website (<http://www.wcb.ny.gov>);
- Form C-105.2 (9/07), *Certificate of Workers’ Compensation Insurance*, sent to WCB by the Contractor’s insurance carrier upon request, or if coverage is provided by the New York State 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 New York State Workers’ Compensation Board’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 New York State Workers’ Compensation Board’s website (<http://www.wcb.ny.gov>);
- 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 New York State Workers’ Compensation Board’s Self-Insurance Office.

An instruction manual clarifying the New York State Workers’ Compensation Law requirements is available for download at the New York State Workers’ Compensation Board’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.

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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.

Section 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 New York State and local sales and compensating use taxes, if the Contractor made sales delivered by any means to locations within New York State 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 New York State 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 New York State 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.

**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, NONDISCLOSURE/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

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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 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, information that falls into any of the following categories shall not be considered Confidential Information:

1. information that is previously rightfully known to the receiving party without restriction on disclosure;
2. 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. information that is independently developed by Contractor without use of Confidential Information of the State.

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 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.

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**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 New York State Agency information directly to that New York State 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. 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  
BENEFIT CLAIMS INFORMATION**

The Contractor, its officers, agents, and employees 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 New York State and Federal laws.

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Workers’ Compensation Law (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 and employees 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, and employees shall not disclose, show, or otherwise make available any portion of the materials or their contents to anyone other than its officers, agents, and employees 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) AN 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.

**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.

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**6.37 LEGAL REQUEST AND RELEASE OF STATE DATA TO THIRD PARTIES  
PROHIBITED**

Except as otherwise required by law, Contractor shall not disclose State data 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 above.

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 above, 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

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- 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 INSPECT**

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.

#### **6.41 ACCESSIBILITY**

Any web-based information and applications development, or programming delivered pursuant to the Contract will comply with New York State 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 New York State 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 State codes, rules and regulations establishing ethical standards for the conduct of business with New York State. Failure to comply with these provisions may result in termination of the Contract and/or other civil or criminal proceedings as required by law.

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**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 New York State Comptroller.

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 New York State agencies, the United States Government or any other state, with the concurrence of the Office of the State Comptroller 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.

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**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 New York State employee as its own employee or as an independent Contractor because of such employee’s knowledge of New York State 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 State 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 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.

**6.49 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.