

**RFP C140392 - Forensic Accounting Services  
Official Responses to Questions**

Question #	RFP Section	Inquiry	Response
1	General	Is an organizational chart available for the organization or for those departments/employees involved in the business processes of each audit areas as described within the RFP? Can you provide a list of employee titles and a brief description of their responsibilities?	A chart is not available. After the selected vendor is given an assignment, 2-3 WCB Office of Self Insurance staff will be assigned to serve as liaisons to the selected vendor for such purposes as review and approval of audit plans, budget, and status of the review.
2	General	Are approved policies in place pertaining to the audit areas?	General audit objectives are documented in the RFP. The selected vendor will design procedures as needed.
3	General	What is the name of the financial software package utilized by NYS WCB and GSIT? Are other software package utilized for various purposes integrated with the financial software package?	There is no standard software used. The vendor will not need to access any software maintained by the WCB.
4	General	Please confirm that NYS WCB plans to make multiple vendor awards for this solicitation?	Yes. Per Section 2.2.7, "Award Criteria," "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 forensic review 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 (2) qualified vendors; one vendor will serve as the Primary Contractor (the highest composite score) and other as the Secondary Contractor (the next highest composite score) ...."
5	General	Is/are there (a) incumbent Forensic Accountant service provider(s)? If so, who provided such services in the prior year? Will the current firm(s) be allowed to bid on this RFP?	Yes. Forensic Accounting services have been previously performed for the WCB under contract C140262 with Lumsden & McCormick, LLP; and C140265A with Ferraro, Amodio & Associates, LLC. There are no firms precluded from bidding on RFP C140392.
6	General	Internally, who at NYS-WCB is responsible for working with the forensic accounting firm in directing and overseeing these audits?	The selected vendor will work under the direction of, and in cooperation with, the WCB Office of Self-Insurance.
7	General	What has been the volume of Forensic Accountant work (in terms of billed hours) over the last two years? What were the hours and fees to perform such services?	During 2018 and 2019, approximately 750-850 hours were billed for services performed under contracts C140262 and C140265A; however, such hours do not represent hours spent performing forensic review services. Rather, such hours were for services performed in connection with litigation related to previously completed forensic reviews of defaulted GSITs. The average hours spent completing a forensic review under C140262 and C140265A was approximately 2100 hours. No GSITs have defaulted during the last three (3) years. Pricing information contained in C140262 and C140265A can be obtained by making a Freedom of Information Law (FOIL) request.
8	General	Do you have an approved budget for this project?	The Board has the necessary budgetary approvals.

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9	General	Will the NYS-WCB consider blended billing rates in the cost proposal?	As provided in Section 4.5.2, "Cost Components," cost proposals must include a completed Fee Proposal, which includes all of the required cost components in the format provided in Attachment J of this RFP, "Fee Proposal." Failure to propose rates in the required format may result in the Bidder's proposal being deemed non-responsive which would result in the Bidder being removed from further consideration.
10	General	When was this audit been conducted previously? For what period? If yes, will the report be made available to the proposers?	Every GSIT that has defaulted has been audited and additional audits of such previously defaulted GSITs will not be necessary. The completed reports will not be made available as part of the procurement process.
11	General	Do you have a preference how the proposal document is structured and formatted? Should the proposal document include copies of all the forms/attachments?	Please refer to Section 4, "Response Requirements," for the "standard format and prescribed content required for responses to this RFP." Each proposal must comply with the response requirements provided in Section 4. Proposals that fail to meet these requirements may be deemed non-responsive and the Bidder will be removed from further consideration.
12	General	Will the pertinent records be available in electronic format and viewable remotely?	When pertinent records exist in electronic format, such records will be provided to the selected vendor in electronic format. Currently, the documents maintained by the Board are in electronic format; however, the Board cannot guarantee that all documents maintained by GSIT administrators or other key agents are available in electronic format. If pertinent documents exist only in hard copy, the selected vendor must make arrangements to review those documents in-person.
13	General	Will the NYS-WCB allow the forensic accounting services to be conducted 100% on a remote basis or hybrid approach?	In general, the selected vendor is not expected or intended to perform services on-site at a Board location. However, if circumstances require the selected vendor to be on-site at another location for satisfactory performance of any portion of the services to be provided, the selected vendor will be required to perform such portion of the services on-site. For example, if pertinent documents exist only in hard copy, the selected vendor must make arrangements to review those documents in-person.
14	General	Have there been any incidents of fraud? If so, could you please describe the nature of the incidents?	Previous forensic reviews have occasionally documented instances where conduct appeared to be fraudulent; however, such occurrences have been rare. An example of fraud suspected and reported during previous forensic reviews is forged signatures on documents.
15	General	Can the WCB clarify the intended requirements for executing the work on-site vs. remotely? In light of the COVID-19 pandemic and the associated social distancing protocols, many organizations are currently encouraging and/or requiring remote work for the foreseeable future.	The Board does not foresee any issues with allowing work to be performed remotely so long as the services can be performed efficiently and in accordance with all contractual requirements, including all security, confidentiality and non-disclosure provisions. The selected vendor shall be responsible for ensuring that all individuals responsible for the provision of services under the resulting contract have sufficient internet access, backup capabilities and security measures in place. The officers and employees, subcontractors or agents of the selected vendor, who will be performing services under the resulting contract, may be required to sign a non-disclosure agreement.

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16	General	Is the WCB currently experiencing an increase in defaulted GSITs due to the COVID-19 pandemic? Is the WCB expecting an increase in defaults in the future due to the pandemic?	No. There have been no GSIT defaults during the last 3 years, and there are currently no GSITs that require a forensic review. COVID-19 is not expected to have an impact on the need for services being procured via this solicitation.
17	General	What would be the most important attributes of a Contractor serving the Board under this contract?	Bidders will be evaluated based on (1) the pricing provided in Bidder's cost proposal, and (2) Bidder's approach to performing the desired services, Bidder's experience and qualifications, and the experience and qualifications of Bidder's staff, as presented in Bidder's technical proposal. See also Section 5, "Method of Evaluation," of the RFP.
18	General	If a vendor is currently performing forensic review services for the WCB, what is the average number of FTEs working on these reviews in a given year? If there is no vendor, what is the average number of FTEs that the WCB anticipates needing to perform these reviews in a given year?	The requested information is not available. See also the Response to Questions #5 and #7.
19	General	If the work is being done internally, how many FTEs and at which staffing level, are assigned to reviewing the defaulted GSIT on a weekly, monthly, and annual basis?	This work is not done internally; all prior reviews have been performed by contracted vendors.
20	General	Has the WCB identified specific companies that they would like investigated?	Currently, there are no defaulted GSITs that require a forensic review.
21	General	Based on previous years' experience, does the WCB have an estimated number of entities they expect to investigate each year?	No, the Board is unable to predict future defaults.
22	General	Will you share previous qualified and secondary contractor firms' proposal files and workpapers with bidders?	No. Such documents will not be made available as part of the procurement process as they are not necessary for vendors to be able to appropriately respond to this solicitation. Such information can be obtained by making a Freedom of Information Law (FOIL) request.
23	General	Is subcontracting for specialized skill sets like actuarial services permitted?	Yes; however, all provisions of this RFP regarding subcontractors will apply and must be complied with, including, but not limited to, Section 6.12, "Subcontractors."
24	General	What are the key factors, outside of pricing, you will consider in making your selection?	See response to Question #17.
25	General	In the COVID-19 environment, would you support remote work and access to workpapers?	See responses to questions #12, #13, and #15.
26	General	Since the reports are being compiled in anticipation of litigation will each report be addressed to the WCB Counsel?	Past reports have been addressed to the Director of Self-Insurance.

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27	General	Can you please provide details at what point that the secondary contractor will be asked to forensic review services? For example, if the primary contractor is concurrently working on two forensic review assignments, if a third one is introduced is that the point when the secondary contractor will be engaged? What is the trigger for the secondary contractor to be engaged?	<p>Section 2.2.7, "Award Criteria," provides the following:  <i>"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 Contractor under the following conditions:</i></p> <ol style="list-style-type: none"> <li><i>1. 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;</i></li> <li><i>2. The Secondary Contractor has a demonstrated expertise that, in the sole determination of the WCB, is superior to that of the Primary Contractor for the purposes of a particular assignment;</i></li> <li><i>3. 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;</i></li> <li><i>4. The WCB and Primary Contractor are unable to come to agreement on the requirements and/or costs to complete an assignment; or</i></li> <li><i>5. The Primary Contractor and the WCB mutually agree that the work on a specific project be performed by a Secondary Contractor."</i></li> </ol> <p>The primary vendor will be offered each assignment. However, the secondary vendor will be offered the assignment in the event of a conflict or timing constraints regarding the primary vendor.</p>
28	General	Do legal document summaries exist and will they be shared with the firm that wins the proposal? E.g., trust agreements, by-laws, etc.	Pertinent documents will be shared with the selected vendor.
29	General	Will the WCB provide a list of fiduciary and contractual obligations and regulations that it believes is applicable to each?	The New York Codes, Rules and Regulations, Part 317, "Group Self-Insurance," sets forth the obligations and responsibilities of approved GSITs (See 12 NYCRR Section 317).
30	General	Given the work will be on an "as needed" basis, how much lead time will we receive from the service request to the start date of a service?	There will be a month or more lead time for an assignment.
31	General	Will this work be conducted under privilege?	Yes. Materials are prepared in anticipation of litigation; the privileges of attorney client and attorney work product will be invoked as applicable.
32	General	Can you please share a range of the number of hours that were incurred on audits last year? i.e.. what was the smallest and what was the biggest?	See response to question to #7.
33	General	Can an Intent to Bid be submitted after the indicated due date of January 27th?	Submission of an Intent to Bid was recommended for this procurement, but it is not a prerequisite for submitting a bid. Accordingly, vendors may submit a proposal in response to this solicitation even if the vendor did not submit an intent to bid.
34	1.2 Summary of Scope of Services	Where is the information stored for each GSIT?	Information for each GSIT is stored at the WCB and/or with the GSIT's administrator.
35	1.2 Summary of Scope of Services	Where will the project be performed?	The majority of the work may be performed at the selected vendor's office.

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36	1.2 Summary of Scope of Services	What is the average length and number of GSIT written policies that need to be reviewed?	The requested information is not available. The length and number of written policies that will need to be reviewed will vary from GSIT to GSIT, because trust documents are unique to each GSIT.
37	1.2 Summary of Scope of Services	What is the average number of individuals to be interviewed per GSIT?	The number of individuals that will need to be interviewed during the performance of a forensic review will vary from GSIT to GSIT, depending on the size and complexities of the GSIT.
38	1.2 Summary of Scope of Services	Are these individuals expected to be interviewed with legal counsel?	The interviewees may choose to have legal counsel present during interviews; however, it is not required or expected that the selected vendor has any legal counsel present during interviews.
39	1.2 Summary of Scope of Services	What is the expectation regarding communications with relevant parties?	It is expected that the selected vendor will conduct interviews and communicate with relevant parties as necessary to satisfactorily perform the services in accordance with the terms of the contract.
40	1.2 Summary of Scope of Services	Is there an anticipated written update(s) required during these communications?	The selected vendor will present preliminary findings to the WCB in accordance with an agreed-upon schedule, and will provide a final report upon the conclusion of the forensic review, as outlined in Section 3.2.4 of the RFP, "Reporting."
41	1.2 Summary of Scope of Services	Has a detailed assessment of the GSITs in default been completed, and can it be shared?	See response to Question #20.
42	1.2 Summary of Scope of Services	Can you please provide a list of active GSITS, currently insolvent GSITS, and liquidated GSITs? Please indicate if the GSIT is currently under review.	The forensic review services being procured by this RFP will only need to be performed if inactive GSITs default. Currently, there are 21 GSITs that are inactive, but not in default.
43	1.2 Summary of Scope of Services	Are there GSITs identified as being in danger of default within the next two years? If so, how many?	Currently, WCB is monitoring the 21 inactive GSITs, but none are in default.
44	1.2 Summary of Scope of Services	Can you please provide a schedule of the number of GSITs and related claims under review per year for the past three years?	There have been no new defaults in the past 3 years.
45	1.2 Summary of Scope of Services	Will actuarial reports be made available for which original assumptions were made for claims and reserves by GSIT?	The actuarial reports will be provided; however, if more information is needed regarding the assumptions, the selected vendor should speak with the actuary that prepared the report.
46	1.2 Summary of Scope of Services	Did each fund utilize the same protocols and parameters set forth by the state regulator, and if so may we have a copy?	See Response to Question #29
47	1.2 Summary of Scope of Services	If GSITs were allowed to deviate from set protocols, was the state notified, and what mechanism was used to notify the GSIT?	The New York Codes, Rules and Regulations, Part 317, "Group Self-Insurance," sets forth the obligations and responsibilities of approved GSITs (See 12 NYCRR Section 317). Compliance with the provisions set forth in 12 NYCRR Section 317 is required, without deviation.
48	1.2 Summary of Scope of Services	Which defense firms are representing the GSITs under review?	Currently, there are no defaulted GSITs under review.
49	1.2 Summary of Scope of Services	Were preferred legal firms used or recommended, and what was criteria for selection?	The WCB has not, and cannot, recommend preferred legal firms.

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50	1.3 Anticipated Contract Term and Renewal	Is there an existing contract for these services, or was there in the past? If so, what was the average number of forensic reviews required each year of the contract term?	See response to Questions #5 and #7.
51	2.2.15	Can a New York Certified Woman Owned Business or a New York State Certified Minority Owned Business alone satisfy the entire 30% minority woman owned business participation goal or must the proposer meet the 30% goal with a mixture of 15% participation from NYS Certified Woman Owned business and 15% participation from a NYS Certified Minority Owned business?	The participation goals for this procurement have been established as 15% for Minority-Owned Businesses and 15% for Women-Owned Businesses; any variation from the established goals will require a waiver to be submitted by the bidder for review and approval.
52	2.2.15	If a firm is dual certified as a NYS Minority Woman Owned business, would that firm's participation satisfy the entire 30% goal?	No, a dual certified vendor can only satisfy one of the goals: the Minority-Owned Business goal or the Women-Owned Business goal.
53	2.2.7 Award Criteria	What constitutes a conflict of interest that would prevent the Primary Contractor from performing the engagement?	Whether or not an actual or potential conflict of interest exists will be determined solely by the WCB. Any relationship which would prevent the selected vendor from being able to perform the required forensic review services objectively and without bias will be deemed a conflict of interest. An example of a conflict of interest that may prevent the primary vendor from being given an assignment would be if the vendor was a key agent of a GSIT under review. Please note that Section 6.47 of the RFP, "Conflict of Interest", requires that "[i]f 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."
54	2.2.9 Information from Workers' Compensation Board to Vendors	How many bidders have submitted a Notice of Intent to Bid (Attachment A)?	WCB has received 16 ITBs; however, while submission of an ITB was recommended, it was not required for this procurement.
55	2.2.9 Information from Workers' Compensation Board to Vendors	Can you share the names of the bidders?	No. The Board does not disclose the names of the Bidders who have submitted an Intent to Bid as part of the procurement process.
56	2.2.9 Information from Workers' Compensation Board to Vendors	Can you share all questions & answers submitted by bidders?	In accordance with Section 2.2.9 of the RFP, "Information from Workers' Compensation Board to Vendors," the Board's official responses to vendor inquiries will be (1) provided to all vendors who submitted an Intent to Bid, via electronic mail; (2) posted on the Board's dedicated procurement website; and (3) posted in the NYS Contract Reporter.
57	2.2.11 Extraneous Terms	Can Appendix B "Extraneous Terms Form" be used to propose alternative terms pertaining to RFP Section 6 - Terms and Conditions? Please refer to our questions regarding Section 6.21.	<p>The agreement that results from this procurement, between the WCB and the Successful Offeror, shall <b>substantially</b> contain the terms and conditions set forth in Section 6, "Terms and Conditions." Vendors may propose revisions to the terms and conditions contained in Section 6 using Appendix B, "Extraneous Terms Form."</p> <p>Any proposed revisions must be submitted with the vendor's proposal. If a vendor, who has proposed extraneous terms, is issued a tentative contract award, those proposed revisions will be subject to negotiation. If the WCB and the vendor cannot reach agreement, the WCB will go to the next highest scoring bidder.</p> <p>Please note that changes cannot be made to Appendix A and any changes to Section 6 will be subject to approval by the WCB and the control agencies, the Office of the Attorney General and the Office of the State Comptroller. Material deviations from the requirements set forth in the RFP 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.</p>

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58	3.1 Minimum Bidder Eligibility Requirements	Please clarify how you define "public accounting"	An independent third party responsible for assessing a company's financial reporting by examining its financial statements and other documentation; providing accounting expertise, such as auditing and tax services, to organizations.
59	3.1	The Minimum Bidder Eligibility Requirements indicate that the bidder must have at least five (5) years of experience in providing public accounting experience. Our firm is not a public accounting firm, but is a consulting firm that has provided forensic accounting services for more than five (5) years. Most of our forensic accountants are CPAs licensed in NYS and have prior experience at public accounting firms. Will our firm be considered eligible as a bidder for this RFP?	In order to be considered eligible to be awarded a contract resulting from this procurement, a Bidder must meet the Minimum Bidder Eligibility Requirements set forth in Section 3.1 of this RFP. No modifications will be made to these requirements.
60	3.2 - Service Requirements	The RFP states that "There is no guarantee of work under a contract resulting from this procurement. Work will be assigned as the need for such work arises. Such need is contingent upon the default of a GSIT." To be most responsive to this RFP and to meet the expectations of the WCB, please provide estimates regarding the volume, such as a range of expected requests, even if that range is large. Providing a range will help ensure that the successful Contractor can secure qualified resources to perform forensic review services. If the WCB cannot provide a range, will the WCB commit to a minimum number of defaulted GSITs to be reviewed weekly, monthly, or annually? If yes, what minimum can be committed?	WCB has previously had over 25 forensic reviews performed of GSITs that have defaulted. Currently, there are 21 GSITs that are in run off, and WCB continues to monitor their financial condition. It is difficult to predict if and when any GSIT will default. Accordingly, there is no commitment that any minimum volume of work will be assigned to a selected vendor under a contract resulting from this procurement.
61	3.2	How many GSIT's might the selected vendor potentially examine?	Typically, a selected vendor would only examine one GSIT at a time; however, it depends on the timing of any default(s).
62	3.2	How many members do each of the potential assigned GSIT's have?	GSIT membership varies from GSIT to GSIT; membership ranges from 5 to approximately 3,000 members.
63	3.2	How soon could the selected vendor expect to receive an assignment and begin an examination?	See response to Questions #20, #21, & #30.
64	3.2	Have the defaulted GSIT's been subject to similar reviews as outlined in this RFP? Are the prior reports if completed available for the selected vendor for review?	Forensic reviews have already been conducted on all GSITs that previously defaulted. Only one forensic review is conducted on a defaulted GSIT. The forensic review services being procured by this RFP will only need to be performed if inactive GSITs default. Previously completed reports will not be made available as part of the procurement process.
65	3.2	Will prior management, brokers and other professional of the defaulted GSIT be available for interviews for this project?	The selected vendor(s) will be expected to make every attempt to interview these individuals, with the understanding that cooperation will vary.
66	3.2	How many NYS GSITs are currently in default and how many GSITs are anticipated to be reviewed as part of this RFP?	Forensic reviews have already been conducted on all GSITs that previously defaulted. The forensic review services being procured by this RFP will only need to be performed if inactive GSITs default. The WCB is currently monitoring the financial conditions of 21 inactive GSITs; however, the WCB is unable to predict if and when an inactive GSIT will default.
67	3.2	Would NYWCB provide us with the identities of all claim administration vendors (i.e., third party claim adjusters or "TPAs") by those Trusts that were licensed?	Upon assignment, all relevant information will be provided.

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68	3.2	Will the Service Agreements/Contracts for the TPAs and/or Trust Administrators be made available?	The selected vendor will be responsible for requesting these documents from the GSIT administrator.
69	3.2	Did the Trusts select various defense counsel for litigated Workers' Compensation claims or was the selection delegated to the TPAs?	Generally, the defense of the workers' comp claims, themselves, was part of the duties of the TPA; however, this can vary from Trust to Trust.
70	3.2	Will we be permitted access to files and or materials maintained by independent defense attorneys in instances where the attorneys were engaged by the Third-Party Claim Administrators and/or Trusts?	We have not seen an occasion where this would be necessary.
71	3.2	Will we be permitted access to all in-place excess insurance policies for the fund years under examination?	The selected vendor will be responsible for requesting these documents from the GSIT administrator.
72	3.2	Are audited financial statements available for the defaulted Group Self-Insured Trusts ("GSIT") available to review for the years subject to the forensic review?	Yes. All relevant GSITs' financial statements, actuarial reports and other filings, maintained by the WCB, will be made available to the selected vendor.
73	3.2	Are the actuarial reports available for the GSIT's for each year subject to the forensic review?	Yes
74	3.2	Where are the operations, books and records physically located for the defaulted GSIT's?	The books and records will be with the GSIT's administrator. The administrators are generally located in NYS.
75	3.2	What firms or individuals are providing consulting and legal services to the WCB for litigation and oversight of the defaulted GSIT's subject to this RFP?	The WCB uses their internal Litigation department for oversight and has two contracted vendors to provide legal assistance as needed, Contract C140291 with Rupp, Baase, Pfalzgraf Cunningham LLC and C140292 with Hinman Straub PC.
76	3.2 - Service Requirements	The RFP states that "There is no guarantee of work under a contract resulting from this procurement. Work will be assigned as the need for such work arises. Such need is contingent upon the default of a GSIT." Is the WCB currently expecting to assign work to the primary vendor upon the execution of a contract? If yes, what is the timing of the first statement of work? Will these forensic review services be expected on a regular basis for the duration of the contract? For staffing purposes, what is the approximate length and size of the projects in terms of FTE hours or the number of defaulted GSITs expected?	Forensic reviews have already been conducted on all GSITs that previously defaulted. Only one forensic review is conducted on a defaulted GSIT. The forensic review services being procured by this RFP will only need to be performed if inactive GSITs default. The WCB is currently monitoring the financial conditions of 21 inactive GSITs; however, the WCB is unable to predict if and when an inactive GSIT will default. For previously conducted forensic reviews, the average number of hours needed to complete the forensic review was 2100 hours.
77	3.2 - Service Requirements	Will the selected vendor work alongside the Board's legal counsel and other reviewers at the WCB as needed? If yes, how many full-time reviewers will be assigned to reviewing the defaulted GSITs at the WCB? Does the WCB expect to hire more resources to be able to complete reviews?	All work will be performed by the selected vendor. The WCB will be available to answer questions about issues or alternative areas of review dependent on findings.
78	3.2 - Service Requirements	Does the WCB already have documented procedures for performing forensic review services that it would like the selected vendor to continue using?	The selected vendor will be responsible for reviewing the areas outlined in the RFP and developing its own procedures, or additional areas of review, dependent on the findings.



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79	3.2 - Service Requirements	How will the defaulted GSITs be selected for review?	WCB has a forensic review conducted on every GSIT that defaults.
80	3.2 - Service Requirements	To help avoid conflicts of interest or other matters affecting the selected vendors, will the Board or alternative vendor be able to review a portion of the defaulted GSITs as needed?	<p>Section 2.2.7., " Award Criteria," provides the following:  <i>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 forensic review 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 (2) qualified vendors; one vendor will serve as the Primary Contractor (the highest composite score) and other as the Secondary Contractor (the next highest composite score) for each lot.</i></p> <p><i>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 Contractor 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..."</i></p> <p>See also Section 5.1, "Award Objectives."</p>
81	3.2 - Service Requirements	Are there any data transmission or environmental constraints that the Bidder should be aware of while considering its approach to these potential services? Will the Contractor be granted access to pertinent data in the WCB environment deemed necessary for the requested services?	The selected vendor will be required to operate in a properly secure internet environment. Access to all Board and/or claims data must comply with all contract requirements, including all security, nondisclosure and confidentiality provisions. The selected vendor will be granted access to information relevant to the requested review.
82	3.2 - Service Requirements	For any data access needs for the requested services, may the Contractor access the data on their own machines or does the work need to be performed within the WCB data environment?	There are no systems that the vendor would need to access. See response to question #12.
83	3.2 - Service Requirements	Have all forensic review services described on pages 19-22 of the RFP been performed in the past, either by the WCB or a vendor? If no, which ones have not yet been performed?	Forensic vendors have performed all review services on each GSIT that has defaulted.
84	3.2 - Service Requirements	Which of the forensic review services described on pages 19-22 of the RFP does the WCB see the greatest need from a Contractor once the contract is executed?	The selected vendor will be responsible for performing all of the review services for completion of each assignment.
85	3.2 - Service Requirements	Section 3.2.1.A lists analysis of the GSIT's financial condition as a task. Beyond a loss reserve estimate, does the WCB have specific expectations for this task? Are there specific criteria that the vendor would test against?	No. See also Section 3.2.1(B) and Section 3.2.1(C) of the RFP.
86	3.2 - Service Requirements	Section 3.2.1.C mentions a comparison of GSIT rates to industry standards. Does the WCB envision a comparison against insurance company rate filings?	No. The rates of the GSIT should be compared to the rates published by NYCIRB.
87	3.2 Service Requirements	Is there an expected time range within which the vendor is expected to perform the duties listed in the RFP?	Since each GSIT is unique, a timeframe will be established between the WCB and the selected vendor at the time an assignment is made. A typical forensic review can take between 6 to 18 months to complete.
88	3.2.1 Forensic Deficit Reconstruction	What is the volume of contributions and expenditures for GSIT per year?	Each GSIT is unique and the annual volume of contributions and expenditures will vary from GSIT to GSIT.

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89	3.2.1 Forensic Deficit Reconstruction	In exercises performed in the past, what format were the available records in? hard copy, live-electronic, pdf, etc.?	See response to Question #12.
90	3.2.1 Forensic Deficit Reconstruction	What is the accounts receivable balance for GSIT?	The WCB has determined that the requested information is not relevant for purposes of responding to this solicitation.
91	3.2.2 Performance and Operational Reviews	How many parties will the winning vendor be interviewing?	The number of interviews necessary to complete a forensic review of a defaulted GSIT will vary from assignment to assignment as the number of key agents and members will vary from GSIT to GSIT.
92	3.2.3 Claims Handling Reviews	How many claims are handled per year?	The number of claims handled annually varies from GSIT to GSIT.
93	3.2.3 Claims Handling Reviews	How many claims and what percentage of total claims were sampled and audited by the prior forensic accounting team during the last audit?	The percentage of total claims sampled and audited by a forensic review has varied depending on the volume of claims and issues identified. A mutually agreeable sample size will be determined during the review.
94	3.2.4 Reporting	Is there an expected timeframe for when the audit results must be delivered to NYS-WCB?	See response to Questions #40 and #87.
95	3.2.4 Reporting	What is the process to review audit observations and report? Is this done solely by the NYS-WCB or other Departments that are subject to audit?	Generally, only WCB offices will review the final report; however, reports may be shared with other NYS agencies, if required.
96	3.2.4 Reporting	Will the winning vendor present the forensic accounting results to the Board?	The vendor will present preliminary findings to the WCB in accordance with an agreed-upon schedule, and provide a final written report upon completion to the WCB and at a general membership meeting of the group members.
97	3.2.1, 3.2.2, 3.2.1	Will member records for assigned GSIT's be available to the selected vendor in electronic format?	See response to Question #12.
98	3.2.1, 3.2.2, 3.2.1	Will WCB provide to selected vendor its relevant GSIT records and documents in electronic format?	Yes. The documents maintained by the WCB are in electronic format.
99	3.2.1, 3.2.2, 3.2.1	For GSIT's whose member and other records are in paper format, will such records be sent to the successful vendors offices for examination or will the successful vendor be required to visit another location to review and copy/scan these records? If the later, where are the GSIT's offices located?	See response to Question #12. In the event that documentation maintained by the GSIT administrator or other key agent is only available in paper format, the vendor will need to make arrangements to view the documents. GSIT administrators and key agents are generally located in New York State.

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100	3.2.1, 3.2.2, 3.2.1	Will the selected vendor need to retain an actuarial consultant or have access to WCB's on-call actuarial review services consultants under C140400 for actuarial-related questions or consultation?	The selected vendor will need to retain its own actuarial consultant; the selected vendor will not be able to utilize C140400 for actuarial consultation.
101	3.3E	Does the Legal Analyst/NYS Licensed Attorney need to have specific workers compensation law experience or is legal experience in business law, corporate governance or corporate compliance law acceptable?	As per RFP Section 3.3, it is only required that the attorney is "admitted to practice law in the State of New York". Please note also that in Section 4.4.2 Response Requirements, Section D – Staff Experience and Qualifications "The staff experience will be evaluated based upon how well such experience indicates the Bidder's ability to perform the forensic review services described in Section 3.2 of the RFP."
102	3.3E	Is it acceptable to contract with more than one Legal Analyst/NYS Licensed Attorney in the event of a conflict on their end?	Yes; however, only one rate may be proposed for the "Legal/Attorney" Key Staff title in Attachment J, "Fee Proposal." Reimbursement for services performed by a "Legal Analyst/NYS Licensed Attorney" cannot exceed the rate proposed in the Fee Proposal for the "Legal/Attorney" title.
103	3.2.2 Performance and Operational Reviews: B. Determining whether the objectives of the GSIT as defined in the trust documents (trust agreement, by-laws, etc.) were met, and where not met, quantify effect of failure to meet objectives	Please provide more information on the contents of the trust agreements or provide an example of a sample trust document.	Each trust is required to have a trust agreement that outlines how the individual trust should operate. A trust agreement generally includes guidelines for how to handle membership, deficits, closure, etc. A sample document is not available.
104	3.2.2 Performance and Operational Reviews: C. Documenting any factors inhibiting the GSIT's satisfactory performance;	Does NYS WCB have pre-established key performance indicators or factors it uses to measure satisfactory performance?	See response to Question #29.
105	3.2.3 Claims Handling Reviews	What is the average volume of monthly claims received by NYS WCB?	When a GSIT defaults, all of its claims are transferred to a State contracted TPA. Each transfer depends on how many claims the GSIT has, which can vary significantly.

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106	3.2.3 Claims Handling Reviews: C. Determining whether claims were managed properly, and where improperly managed, quantifying what standards of claims management were breached, how breached and quantifying effect of breach; AND D. Determining whether claims were properly reserved, and reserves were adjusted appropriately as cases matured, and where improperly reserved, quantifying what standards of reserving were breached, how breached and quantifying effect of breach;	Does the NYS WCB have standard claims management and reserving practices/guidelines for adjusters/TPAs?	Third party administrators are licensed by the Board (see Workers' Compensation Law Section 50) and operate according to their contracts, while providing industry standard claims management services.
107	3.3 Contractor Key Staff	Will it be expected that key staff be on site for the duration of the engagement?	Generally, key staff will not be required to be onsite at WCB offices. See also response to question #13.
108	3.3 Contractor Key Staff	Is it permissible to staff more than one individual in the "Key Staff" Role? For example, more than one manager may be required depending on the volume of work needed.	Yes; however, only one rate may be proposed for each Key Staff title listed in Attachment J, "Fee Proposal," and that proposed rate shall apply to all individuals who perform services in that role.
109	3.3 Contractor Key Staff	Are all staff on the project de facto "Key Staff", or is it permissible to have both Key Staff and flexible staff?	Yes, flexible staff are allowed.
110	3.3 Contractor Key Staff	Will the projects be performed under the direction of legal counsel?	No. The selected vendor will work under the direction of, and in cooperation with, the WCB Office of Self-Insurance.
111	4.1 - General Procedures	The RFP states that the "Bidder must submit one USB thumb drive containing the Cover Letter, Administrative Volume, Technical Volume and Cost Volume files in an envelope labeled with the Bidder's name and NYS Workers' Compensation Board, Forensic Accounting Services RFP, C140392." Will the WCB accept electronic submissions of proposal documentation?	The Board has determined that Bidders must submit proposals in response to this procurement either on a USB thumb drive or in electronic format, via email. The RFP will be amended to reflect this.
112	4.5 - Cost Volume (Volume III)	We understand the request for rates per level, but what is the total dollar value budgeted for these services each contract year? Is there a minimum annual budget allocated for this work? Is there a maximum annual budget?	There is not an annual budget established for these services; the budget will be determined based upon the number of forensic reviews needed and the scope of each review.
113	5.3 - Proposal Evaluation Process	Section 4.5 of the RFP states "The TEC will evaluate the Technical Volume using a methodology to be determined by the WCB prior to submission of proposals and set forth in the evaluation criteria that will become part of the procurement record." Given that the methodology will be set forth in the evaluation criteria that will become part of the procurement record, will the WCB publish the methodology for the bidders to review before proposals are due?	No. The Board does not publish the evaluation criteria or methodology as part of the procurement process.

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114	5.3 - Proposal Evaluation Process	Does the WCB expect to assign a lower weight to the "Partner/Principal" or "Legal Analyst/NYS Licensed Attorney" levels when scoring the Cost Volume given that these resources are likely to charge a higher rate while incurring fewer far hours relative to the other levels? If yes, what is the approximate percentage?	The estimated volume of hours for each Key Staff title, provided in Attachment J, "Fee Proposal," serves as the weight for each title for evaluation purposes. The percentage weight for each Key Staff title are as follows: 1. Partner/Principal (24hrs/600hrs) - 4% ; 2. Manager (54hrs/600hrs) - 9%; 3. Team Lead (168hrs/600hrs) - 20%; 4. Staff (180hrs/600hrs) - 30%; 5. Claims Reviewer (60hrs/600hrs) - 10%; 6. Legal/Attorney (30hrs/600hrs) - 5%; 7. Administrative/Clerical (72hrs/600hrs) - 12%; and 8. Expert Witness (12hrs/600hrs) - 2%.
115	5.3 - Proposal Evaluation Process	Does the WCB expect to assign a lower weight to the "Administrative Support/Clerical" level when scoring the Cost Volume? If yes, what is the approximate percentage?	See the response to Question #114.
116	4.1 General Procedures	Is the proposal delivery time 2:00pm EST or 4:00pm EST on Fri., March 12, 2021? The calendar of events lists 4:00pm EST, but 4.1 lists 2:00pm EST.	This error was corrected the day of the RFP release, January 11, 2021, at 10:07 AM. Please return to the New York State Contract Reporter website (NYSCR.ny.gov) or the NYS WCB's Procurements website (www.wcb.ny.gov/procurements) for the correct document.
117	6.21 Indemnification and Limitation of Liability	Does the indemnity clause exclude all indirect and consequential damages? If no, is it permissible to include this provision in Appendix B - Extraneous Terms?	Section 6.21, "Indemnification and Limitation of Liability," provides: <i>"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."</i> (Continued next page)

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			<p><i>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. <b><u>Unless otherwise specifically enumerated herein, neither Party shall be liable to the other for special, indirect, or consequential damages, including lost data or records (unless the Contractor is required to back-up the data or records as part of the work), even if the Party has been advised of the possibility of such damages.</u></b> Neither Party shall be liable for lost profits, lost revenue, or lost institutional operating savings.</i></p> <p><i>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.</i></p> <p>"The State does not agree to any indemnification provisions that require the State to indemnify or save harmless Contractor or third parties."</p> <p>The agreement that results from this procurement, between the WCB and the Successful Bidder, shall substantially contain the terms and conditions set forth in Section 6, "Terms and Conditions." Vendors may propose revisions to the terms and conditions contained in Section 6 using Appendix B, "Extraneous Terms Form."</p> <p>Any proposed revisions must be submitted with the vendor's proposal. If a vendor, who has proposed extraneous terms, is issued a tentative contract award, those proposed revisions will be subject to negotiation. If the WCB and the vendor cannot reach agreement, the WCB will go to the next highest scoring bidder.</p> <p>Please note that changes cannot be made to Appendix A and any changes to Section 6 will be subject to approval by the WCB and the control agencies, the Office of the Attorney General and the Office of the State Comptroller. Material deviations from the requirements set forth in the RFP 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.</p>

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118	6.21 Indemnification and Limitation of Liability	Is the indemnity clause limited to fees charged? If no, is it permissible to include this provision in Appendix B - Extraneous Terms?	<p>No. Section 6.21, "Indemnification and Limitation of Liability," provides:</p> <p><i>"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.</i></p> <p><b><u>Contractor shall be fully liable</u></b> for the actions of its agents, employees, partners, or subcontractors, if any, and <b><u>shall fully indemnify and save harmless</u></b> 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, <b><u>without limitation</u></b>; 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.</p> <p><b><u>Contractor shall indemnify, defend, and hold the State harmless, without limitation</u></b>, 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.</p> <p><b><u>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.</u></b> 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. <b><u>Unless otherwise specifically enumerated herein, neither Party shall be liable to the other for special, indirect, or consequential damages, including lost data or records (unless the Contractor is required to back-up the data or records as part of the work), even if the Party has been advised of the possibility of such damages.</u></b> Neither Party shall be liable for lost profits, lost revenue, or lost institutional operating savings.</p> <p>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." (Continued on next page)</p>

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			<p><i>"The State does not agree to any indemnification provisions that require the State to indemnify or save harmless Contractor or third parties."</i></p> <p>The agreement that results from this procurement, between the WCB and the Successful Bidder, shall substantially contain the terms and conditions set forth in Section 6, "Terms and Conditions." Vendors may propose revisions to the terms and conditions contained in Section 6 using Appendix B, "Extraneous Terms Form."</p> <p>Any proposed revisions must be submitted with the vendor's proposal. If a vendor, who has proposed extraneous terms, is issued a tentative contract award, those proposed revisions will be subject to negotiation. If the WCB and the vendor cannot reach agreement, the WCB will go to the next highest scoring bidder.</p> <p>Please note that changes cannot be made to Appendix A and any changes to Section 6 will be subject to approval by the WCB and the control agencies, the Office of the Attorney General and the Office of the State Comptroller. Material deviations from the requirements set forth in the RFP 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.</p> <p>Notwithstanding the foregoing, the WCB cannot agree to limit a Contractor's liability for 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.</p>
119	Attachment J	How many assignments of forensic review services are the estimated volume of hours based on? / Is there a basis for the estimated volume of hours presented in Attachment J – Fee Proposal?	The estimated volume of hours used in Attachment J, "Fee Proposal," is an average yearly total of hours billed in 2018 & 2019 against the primary-award Forensic Accounting contract used at that time; however, such hours do not represent hours spent performing forensic review services. Rather such hours were for services performed in connection with litigation related to previously completed forensic reviews of defaulted GSITs. The average hours spent completing a forensic review under the previous contracts for forensic review services (C140262 and C140265A) was approximately 2100 hours.
120	Attachment J	Are we beholden to the number of hours and the allocation of those hours as presented in Attachment J – Fee Proposal?	As noted on Attachment J, "Estimated Volume is for evaluation purposes and is not guaranteed. The actual volume of work may vary."
121	Attachment J	Could you please provide Attachment J - Fee Proposal, and any additional information regarding the fee proposal requirements? Attachment J does not appear to be included in the forms attached to the RFP.	All RFP documents are available on the New York State Contract Reporter website (NYSCR.ny.gov), as well as the NYS WCB's Procurements website ( <a href="http://www.wcb.ny.gov/procurements">www.wcb.ny.gov/procurements</a> ). Please contact the Designated Contact listed in the RFP regarding any issues opening these documents.