

How to Use the eDiscovery Services Statewide Contract

Contract #: ITS51DesignatedITD Contract Duration: 12/20/2012 to 12/31/2017
MMARS #: ITS51DesignatedITD* Options to renew: 1 option for 1 year
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This contract contains Supplier Diversity Office SDO Contractors

Last change date: December 04, 2014

Contract Summary

This contract is the primary statewide contract for eDiscovery-related services. The services provided under this statewide contract cover the entire Electronic Discovery Reference Model (“**EDRM**”). More information on the EDRM is available at the [EDRM website \(http://www.edrm.net/resources/edrm-stages-explained\)](http://www.edrm.net/resources/edrm-stages-explained). In addition, the services provided under this agreement can be used for any agency projects involving electronic document search, retrieval, segregation, analysis and production, including without limitation investigations, administrative litigation, and public records requests. The services include, but are not limited to, information management, identification, data preservation, collection, processing, searching, culling, production, data hosting, report writing, and staffing in connection with contracted services.

Benefits and Cost Savings

- Covers a broad array of services
- Competitive pricing
- Ability to hire eDiscovery vendors on shorter timeframes to have a better chance of being responsive to court-ordered eDiscovery requirements, meeting public records law deadlines and the requirements of administrative litigation, and meeting agency needs for conducting investigations.

Who Can Use This Contract?

All eligible public entities within the Commonwealth of Massachusetts, including without limitation the Office of the Attorney General (“**AGO**”), the Executive Agencies of the Commonwealth, and the other eligible entities as listed below (the AGO, Executive Agencies and such other eligible entities, each a “**User**”).

Applicable Procurement Law: MGL c. 7, § 22; c. 30, § 51, § 52; 801 CMR 21.00

Eligible Entities:

01. Cities, towns, districts, counties and other political subdivisions
02. Executive, Legislative and Judicial Branches, including all Departments and elected offices therein;
03. Independent public authorities, commissions and quasi-public agencies;
04. Local public libraries, public school districts and charter schools;
05. Non-profit, UFR-certified organizations that are doing business with the Commonwealth;
06. Other states and territories with no prior approval by the State Purchasing Agent required;
07. Public hospitals owned by the Commonwealth;
08. Public purchasing cooperatives; and
09. Other entities when designated in writing by the State Purchasing Agent.

Pricing

Purchase Options: Purchases made through this contract will be services. Services can be rate-based (e.g., hourly rate, per gigabyte processed, per page processed) or fixed price. Outright purchase of pure software or software services (e.g., Software-as-a-Service) is not available through this contract. However, eDiscovery services may include remote hosting of documents on a vendor's platform or similar services for a specific litigation matter or investigation.

Using a vendor's website to obtain pricing is NOT allowable. Each vendor's entry on COMMBUYS includes the pricing it submitted in connection with its response to the statewide contract (or updated current pricing if the vendor subsequently lowers pricing in accordance with the terms of the statewide contract). The vendor may, of course, offer better pricing in its response to a User's RFQ or solicitation.

Ordering

Ordering: In order to engage the services of the vendors pursuant to this statewide contract:

- With limited exceptions, when establishing a contract for a case or for consulting services related to eDiscovery under this statewide contract each contracting User that is subject to OSD's procurement rules **must** solicit responses via a Request for Quote ("**RFQ**") posted to COMMBUYS. The User may elect to conduct the solicitation via email only if the solicitation documents posted to COMMBUYS for the services relating to the case/consulting services would disclose sensitive information or material that is not yet, and should not yet be, public. If the User elects to conduct the solicitation via email, it must send its RFQ to at least three (3) vendors on this statewide contract.

- Each contracting User that is **not** subject to OSD's procurement rules **must** follow its procurement guidelines to solicit services under this statewide contract, including making a determination of whether the solicitation contains sensitive information or material that should not be posted publicly (e.g., to COMMBUYS) but instead emailed or communicated directly to vendors on this statewide contract. In the event that the solicitation contains sensitive information or material and must be emailed or communicated directly to vendors, we require, as a condition to using this statewide contract, that you contact at least three (3) vendors on this statewide contract.

The RFQ or solicitation should include information (if available and applicable) such as:

- a description of the case/consulting services;
- the number of agencies involved (if any);
- the specific services it anticipates needing under the resulting contract; and
- any additional privacy, security or legal requirements that were not included in the vendor's response (see Annex 1 and Annex 2 in COMMBUYS) and also any requirements that are specific to that contracting User.

Agency procurement rules. This contract user guide does not override procurement rules that your agency, municipality or other organization has in place or is subject to. Please check with your organization's purchasing group if you are not familiar with the quoting requirements for your organization.

COMMBUYS Category

COMMBUYS Category: If the RFQ is posted to COMMBUYS, please check the Attachments tab for the appropriate COMMBUYS category to ensure notification of the vendors. The current COMMBUYS category(ies) under which the RFQ should be posted is: **"Information Technology - Related Equipment, Services & Supplies / SERVICES- All Other Not Shown or Combinations"**

Contract Documents

Contract Documents: The User is responsible for executing its own contracts and/or purchase orders and paying its own invoices for goods and/or services acquired from this statewide contract.

All vendors agreed to a form of "**Services Contract**" in the Master Agreement associated with this contract. A copy of the Services Contract are located in the Attachments tab in COMMBUYS (as "Exhibit A" for each vendor). That form of Services Contract should be used to engage the vendor and incorporates the terms and conditions of the RFR, Standard Contract Form and Terms and Conditions. To ensure ease of contracting, vendors have agreed that additional legal terms favoring the vendor cannot be added absent the consent of the User and the General Counsel's Office of the Office of Information Technology ("MassIT"). If for some reason a User does not want to use the

Services Contract, the User should contact MassIT's General Counsel's office for permission to use a different contract, which must, at a minimum, specify that: "All of the terms and conditions of the Statewide Contract ITS51DesignedITD are incorporated herein and made a part hereof. Conflicting or additional terms, conditions or agreements included in or attached to this form shall be considered to be superseded and void."

Users who enter a contract with a vendor through a solicitation or RFQ under this statewide contract may not use a purchase order to procure additional services from that vendor that are not related to the case/consulting services/public records request/investigation for which the contract was established and must instead issue a new solicitation or RFQ for such additional services. No such limitation exists for additional services procured under a purchase order where such services are related to the case/consulting services for which the contract was established.

"Emergency" or Unanticipated Solicitations

"Emergency" or Unanticipated Solicitations: In the event of an emergency, unanticipated need for eDiscovery services, a User may notify MassIT in writing of this emergency, unanticipated need and hire a vendor directly from the statewide contract without posting to COMMBUYS or soliciting three (3) vendors via email. Because this selection is from vendors on a competitively bid statewide contract, such a purchase differs from and is not subject to the "Emergency" procurement regulations pursuant to G.L. c. 7, § 22(3) and 801 CMR 21.05(3) or G.L. c. 30B, § 8 (which includes later publication of the record regarding the emergency procurement), as applicable.

Solicitations in Conjunction with the Office of the Attorney

General

Solicitations in Conjunction with the Office of the Attorney General: If the AGO is handling litigation on behalf of a User, the AGO and that User shall decide whether the AGO or that User will issue the RFQ or solicitation for eDiscovery services. If the User is subject to OSD procurement guidelines, the sections of this Contract User Guide relating to entities that are subject to OSD procurements shall apply regardless of whether the AGO or the User issues the procurement. Regardless of which entity issues the RFQ or solicitation, at least one representative from each of the AGO and the User must sit on the strategic sourcing services team for that RFQ or solicitation, unless such representation is waived by the party who is not issuing the RFQ or solicitation (e.g., the User and/or AGO). In addition, when the AGO is handling litigation on behalf of a User, regardless of which entity issues the RFQ or solicitation and enters the Services Contract with the vendor, the AGO will be the entity that directs the services that such vendor provides, except for instances of joint defense. When the AGO is handling litigation on behalf of a User, the AGO must consult with the User about the cost and scope of the services, and the User may require the AGO to use a less expensive provider or otherwise set limitations on the cost and scope of the services.

No User represented by the AGO in litigation against the Commonwealth may use this statewide contract to order services related to litigation against the Commonwealth until they contact Diane E. Barry, Special AAG / eDiscovery Attorney– Office of the Attorney General, (617) 963-2120, Diane.E.Barry@State.MA.US, to discuss its eDiscovery requirements prior to issuing its RFQ or solicitation.

Vendor Information

Vendor Information: Cost information, privacy laws with which the vendor says it can comply and security laws with which the vendor says it can comply, along with other information, will be found on COMMBUYS. See “[Locating Information on COMMBUYS](#)” to find these documents.

The vendors on this RFR are (in alphabetical order):

- AccessData Group LLC
 - Contact: Kate Paslin, General Counsel
 - (801) 377-5410
- Merrill Communications LLC
 - Project Manager: Jason Interrante, Managing Director, Client Services
 - (617) 535-1663, jason.interrante@merrillcorp.com
- Navigant Consulting, Inc.
 - Contact: Steve McNew, Managing Director
 - (936) 232-9994, steve.mcnew@navigant.com
- Rational Enterprise (formerly Rational Retention)
 - Project Manager: John Fobare, Vice President of Professional Services (518) 489-3000, ext. 22 or (518) 527-7965 (cell), JFobare@rationalenterprise.com
- *Target Litigation Consulting, Inc.
 - Contact: Michael Flaherty, Marketing and Business Development Representative
 - (617) 542-0880, mflaherty@targetlitigation.com

*Small Business Certified

Vendor Core Competencies

Vendor Core Competencies: In accordance with the terms of the statewide contract, the strategic sourcing services team evaluated vendors for services offered for the various eDiscovery stages identified in the EDRM. The statewide contract has as one of its goals to provide vendors who can perform services on the left hand side of the EDRM (Information Management, Identification, Preservation, Collection) (“**LH Side EDRM**”); the right hand side of the EDRM (Processing, Review, Analysis, Production, Presentation)

(“**RH Side EDRM**”) and across the whole of the EDRM (i.e., both the LH Side EDRM and the RH Side EDRM) (“**Whole EDRM**”).

While the winning vendors all offer services for multiple aspects of the EDRM, each had core competencies or areas where its competencies were strongest. The below chart represents one opinion of where each vendor is has the strongest core competencies.

Vendor	LH Side EDRM	RH Side EDRM	Whole EDRM
AccessData Group LLC	X		
Merrill Communications LLC	X	X	X
Navigant Consulting, Inc.	X	X	X
Rational Enterprise	X	X	X
*Target Litigation Consulting, Inc.		X	

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Regardless of the above opinion on a vendor’s strengths, each User should form its own opinion on which vendor will provide it with the best services. A User may order services from the vendors on this statewide contract from any stage of the EDRM, regardless of whether it is identified as a “strength.”

Vendor Prompt Pay Discounts

Vendor Prompt Pay Discounts: The vendors have agreed to the following Prompt Pay Discounts for payments issued by a User within the corresponding number of days:

Vendor	10 days	15 days	20 days	30 days
AccessData Group LLC	4.0%	3.0%	2.0%	1.0%
Merrill Communications LLC	1.0%	0.5%	0.5%	0.5%
Navigant Consulting, Inc.	2.0%	2.0%	-	-
Rational Retention LLC	3.0%	2.5%	2.0%	1.5%
*Target Litigation Consulting, Inc.	2.0%	2.0%	1.0%	1.0%

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Locating Information on COMMBUYS

Go to [the COMMBUYS website \(http://www.commbuys.com\)](http://www.commbuys.com)

1. Click on “Contract & Bid Search”, then
2. Click the “Contract/Blankets” radio button, then
3. Enter ITS51DesignatedITD in the “Contract/Blanket Description field” (NOT the Contract/Blanket # field) (without the quotes), then
4. Select “Statewide Contract” from the Type Code pull-down menu, then
5. Click “Find It” (note: hitting Enter won’t work, you have to click Find It). The system will then return files for the statewide contract and all associated vendor contracts.

Strategic Sourcing Services Team Members

Name	Email Address	State Entity
Rob Ditzion (SSST Lead)	Robert.Ditzion@State.MA.US	MassIT
Diane E. Barry	Diane.E.Barry@State.MA.US	Office of the Attorney General
Kevin Coluci	Kevin.Coluci@State.MA.US	Office of the Attorney General
Linda Hamel (non-voting member)	Linda.Hamel@State.MA.US	MassIT
William Saltzman (non-voting member)	William.Saltzman@State.MA.US	Department of Corrections