



# Contract Award Notification

<b>Title</b>	<b>: Group 20020 – Serials and Database Access (Statewide)</b> <b>Classification Code(s): 55 &amp; 83</b>
<b>Award Number</b>	<b>: <a href="#">23044</a></b>
<b>Contract Period</b>	<b>: January 1, 2017 – December 31, 2021</b>
<b>Bid Opening Date</b>	<b>: November 1, 2016</b>
<b>Date of Issue</b>	<b>: January 1, 2017</b>
<b>Specification Reference</b>	<b>: As Incorporated Herein</b>
<b>Contractor Information</b>	<b>: Appears on Page 2 of this Award</b>

## Address Inquiries To:

State Agencies & Vendors		Political Subdivisions & Others	
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**Procurement Services values your input.**  
**Complete and return "Contract Performance Report" at end of document.**

## Description

NOTICE: THIS CONTRACT AWARD NOTIFICATION CONTAINS A SUBSET OF INFORMATION FROM THE SOLICITATION. CONTRACTS RESULTING FROM SOLICITATION 23044 HAVE BEEN EXECUTED BY CONTRACT AWARD LETTER. THE CONTRACT AWARD LETTER SETS FORTH THE ORDER OF PRECEDENCE FOR THE TERMS AND CONDITIONS OF THE EXECUTED CONTRACTS. COMPLETE CONTRACT DETAILS INCLUDING TERMS AND CONDITIONS CAN BE FOUND IN THE SOLICITATION DOCUMENT DATED REVISED OCTOBER 20, 2016.

This contract provides Authorized Users with a means of acquiring Serials and Database Access Products and Services. The contract contains a total of two (2) Lots: Lot 1 - Serials and Lot 2 - Database Access. **Lot 1 Serials - Included:** Print Periodicals and Newspapers; Electronic Magazines and Journals; Annuals (reports, yearbooks, etc.); Continuing directories; Proceedings and transactions; Numbered monographic series cataloged separately; Subscription based eBooks; and Optional Products and Services, including but not limited to: Stamps, call numbers or routing labels, bar-coding, and security strips, Processing of journals including affixing date and property, Shipment Consolidation, MARC (Machine Readable Cataloging) records and updates, and Serials management solutions. **Lot 2 Database Access – Included:** Library Databases; Full Text Databases; Numeric Databases; Meta-Databases; General Interest Databases; Discipline Specific Databases; Subject Specific Databases; Streaming Video Databases; Database Files; and Optional Products and services, including but not limited to: Database Management Systems (DBMS), Hard copy records, Mailing labels, Batching, and Reporting

This Contract Award Notification contains MWBE goals of 0% MBE and 0% WBE.

PR #23044

23044a

<u>CONTRACT #</u>	<u>CONTRACTOR</u>	<u>FED.IDENT. #</u>	<u>NYS VENDOR #</u>
PC67658	Alini Magazine Service LLC	20-5704842	1000044379
PC67660	Cengage Learning, Inc.	59-2124491	1000009563
PC67659	COX Subscriptions Inc. DBA WT COX	56-1352557	1000018262
PC67661	EBSCO Industries Inc.	63-6014186	1000041128
PC67662	Elsevier B.V.	98-0389477	1000056131
PC67666	License Monitor Inc.	13-4187405	1000056944
PC67667	LM Information Delivery	23-2724782	1100043737
PC67668	Otto Harrassowitz GmbH & Co. KG	98-0423753	1000009840
PC67671	Richard O. Emmons DBA Magazine Subscription Services Agency	59-3720494	1000032379
PC67672 SB	Robert Levine DBA Island Magazine Service	04-3800091	1000034031
PC67673	Scholastic, Inc.	13-1824190	1000006121
PC67674	Scholastic Library Publishing Inc.	06-1226353	1000036529
PC67675 SB	Subscription Services of America Inc.	11-2642821	1000011811

For complete Contractor contract information and Pricing information for this Award, please see the Contractor Information page located on the OGS Website at: <http://www.ogs.ny.gov/purchase/spg/awards/2002023044Can.htm>

Cash Discount and/or Early Payment Discount, If Shown, Should be Given Special Attention.

**INVOICES MUST BE SENT DIRECTLY TO THE ORDERING AGENCY FOR PAYMENT.**

**(See "INVOICING AND PAYMENT" in this document.)**

AGENCIES SHOULD NOTIFY PROCUREMENT SERVICES PROMPTLY IF THE CONTRACTOR FAILS TO MEET DELIVERY OR OTHER TERMS OF THIS CONTRACT. PRODUCTS WHICH DO NOT COMPLY WITH THE SPECIFICATIONS OR ARE OTHERWISE UNSATISFACTORY TO THE AGENCY SHOULD ALSO BE REPORTED TO THE PROCUREMENT SERVICES.

#### SMALL, MINORITY AND WOMEN-OWNED BUSINESSES:

The letters SB listed under the Contract Number indicate the contractor is a NYS small business. Additionally, the letters MBE and WBE indicate the contractor is a Minority-owned Business Enterprise and/or Woman-owned Business Enterprise.

#### RECYCLED, REMANUFACTURED AND ENERGY EFFICIENT PRODUCTS:

The Procurement Services supports and encourages the purchase of recycled, remanufactured, energy efficient and "energy star" products. If one of the following codes appears as a suffix in the Award Number or is noted under the individual Contract Number(s) in this Contract Award Notification, please look at the individual awarded items for more information on products meeting the suffix description.

RS,RP,RA	Recycled
RM	Remanufactured
SW	Solid Waste Impact
EE	Energy Efficient
E*	EPA Energy Star
ES	Environmentally Sensitive

**NOTE TO AUTHORIZED USERS:**

When placing purchase orders under the contract(s), the authorized user should be familiar with and follow the terms and conditions governing its use which usually appears at the end of this document. The authorized user is accountable and responsible for compliance with the requirements of public procurement processes. The authorized user must periodically sample the results of its procurements to determine its compliance. In sampling its procurements, an authorized user should test for reasonableness of results to ensure that such results can withstand public scrutiny.

The authorized user, when purchasing from OGS contracts, should hold the contractor accountable for contract compliance and meeting the contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, authorized users are encouraged to seek improved pricing whenever possible. Authorized users have the responsibility to document purchases, particularly when using OGS multiple award contracts for the same or similar product(s)/service(s), which should include:

- a statement of need and associated requirements,
- a summary of the contract alternatives considered for the purchase,
- The reason(s) supporting the resulting purchase (e.g., show the basis for the selection among multiple contracts at the time of purchase was the most practical and economical alternative and was in the best interests of the State).

**ORDER OF PRECEDENCE:**

The list of documents below address clarifications agreed to by the Contractor and the Office of General Services (OGS) and resolved by the parties and set forth herein in an order of precedence for the Contract award. The documents listed below were included in Solicitation #23044 or provided by the Contractor. Unless otherwise set forth in the procurement or contract documents, conflicts among documents shall be resolved in the following order of precedence:

1. Appendix A (January 2014), Standard Clauses for NYS Contracts (previously provided);
2. Contract Award Letter;
3. Revisions and Clarifications to Bid Specifications dated October 3, 2016 and October 20, 2016 (previously provided);
4. Solicitation #23044 (Revised October 20, 2016) including all Appendices and Attachments referenced therein (previously provided);
5. Contractor's Bid Prices as stated in Attachment 1 – Pricelist
6. Contractor's Bid

**OVERVIEW:**

This Contract provides Authorized Users with a means of acquiring Serials and Database Access Products and Services by New York State Agencies and Non-State agencies, including political subdivisions, school districts and others authorized by law (See Section 5.48, *Non-State Agencies Participation in Centralized Contracts* and Section 5.50, *Extension of Use*).. Products for purchase by all Authorized Users are described in the Section titled, *Scope*.

Procurement Instructions describing requirements for Authorized Users to purchase from the Centralized Contract are found in the Section titled, *Procurement Instructions*.

**ESTIMATED QUANTITIES:**

All quantities or dollar values listed within this Contract are estimates. No specific quantities or volumes are represented or guaranteed and the State provides no guarantee of individual Authorized User participation. The Contractor(s) must furnish all quantities or dollar values actually ordered. The anticipated dollar value of the award for this Solicitation, based on historical purchases under previous awards was approximately \$55,000,000.00 annually for Lot 1 and \$20,000,000.00 annually for Lot 2. The individual value of each resultant Contract is indeterminate and will depend upon the number of Contracts issued and the competitiveness of the pricing offered. Authorized Users will be encouraged to purchase from Contractors who offer the Products and pricing that best meets their needs in the most practical and economical manner. See Appendix B, §28, *Estimated/Specific Quantity Contracts* and §25, *Participation in Centralized Contracts*.

Numerous factors could cause the actual value of the Contract to vary substantially from the historical value. Such factors include, but are not limited to, the following:

- The Contract is a nonexclusive Contract;
- There is no guarantee of volume to be purchased, nor is there any guarantee that demand will continue in any manner consistent with previous purchases;
- The individual value of the Contract is indeterminate and will depend upon actual Authorized User demand, and actual quantities ordered during the Contract period; and,
- The State reserves the right to terminate the Contract for cause or convenience prior to the end of the term pursuant to the terms and conditions of the Contract.

In Procurement Service's experience, depending on the price of a particular item, the actual volume of purchases for that item could be substantially in excess of, or substantially below, estimated volumes. Specifically, if actual Contract pricing is lower than anticipated or historical pricing, actual quantities purchased could be substantially greater than the estimates; conversely, if actual contract pricing is higher than anticipated or historical pricing, actual quantities purchased could be substantially lower than the estimates. Contractor acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the Contract could vary substantially from the estimates/historical values provided in this Contract.

**DEFINITIONS:**

Terms used in the IFB documents that have a capitalized first letter shall be defined in accordance with Appendix B, §2 *Definitions*, which is hereby incorporated by reference. The following definitions shall apply:

<b>Term</b>	<b>Definition</b>
Active Request	Refers to an End User submitted search request transaction to the licensor's online service that has not yet received a response from the licensor's system.
Aggregator	A bibliographic service that provides online access to the digital full-text of Periodicals published by different Publishers. See also Database Publisher.
Back File Access	The ability to access information within a resource before a subscription period begins.
Business Day	Monday through Friday from 8:00 AM – 5:00 PM ET, excluding New York State and federal holidays.
Concurrent Users	Specified number of simultaneous End Users accessing an Electronic Publication or Database.
Concurrent Sessions	Concurrent User is interpreted to include any End User station device which, at the point in time of measurement, has established a logical session path to the licensor's online service, enabling an immediate search request to be made directly to the licensor's search software. This is the common meaning of such expressions as being "signed on" or "logged on" to the online service. Under this definition, any signed on terminal or End User station device is counted as part of the concurrent use total, regardless of whether the End User is at the End

<b>Term</b>	<b>Definition</b>
	User station; formulating a new search request; waiting for the licensor's system to respond to a search request; or digesting the results of a previous request.
Concurrent Use License	Where licensing of Electronic Publications is based upon "Concurrent Users" the Contractor shall obtain from the publisher the right of the Authorized User to obtain license rights to the specified number of Concurrent Users actually executing the licensed programs, without reference to location or named End Users.
Continuing Directory	A list of people, companies, institutions, organizations, etc., in alphabetical or classified order, providing contact information (names, addresses, phone/fax numbers, etc.) and other pertinent details (affiliations, conferences, publications, membership, etc.) in brief format, often published serially (i.e. Continuing resources (not complete as first issued and intended to be ongoing, though not necessarily indefinitely).
Customization	Changes to the function, layout and/or appearance of a Database which does not alter the Database content.
Database	A large, regularly updated file of digitized information (bibliographic records, abstracts, full-text documents, directory entries, images, statistics, etc.) related to a specific subject or field, consisting of records of uniform format organized for ease and speed of search and retrieval and managed with the aid of database management system (DBMS) software. Content is created by the Database producer, which usually publishes a print version and leases the content to one or more Database vendors that provide electronic access to the data after it has been converted to machine-readable form, usually on CD-ROM or online via the Internet, using proprietary search software.
Database Management System (DBMS)	A computer application designed to control the storage, retrieval, security, integrity, and reporting of data in the form of uniform records organized in a large searchable file called a Database. The range of available DBMS software extends from simple systems intended for personal computers to highly complex systems designed to run on mainframes.
Database Publisher	Company that uses specialized techniques to generate documents from source data and provide to End Users through a Database. See also Aggregator.
Discipline Specific Database	Information provided is focused on a discipline or area, however may include information from multiple related subject areas.
Electronic Journal	A digital version of a print journal, or a journal-like Electronic Publication with no print counterpart, made available via the World Wide Web, e-mail, or other means of Internet access. Some web-based Electronic Journals are graphically modeled on the print version. Synonymous with E-journal. Compare with electronic magazine.
Electronic Magazine	A digital version of a print magazine, or a magazine-like electronic publication with no print counterpart, made available via the World Wide Web, e-mail, or other means of Internet access. Some Web-based electronic magazines are graphically modeled on the print version. Synonymous with e-zine and Webzine. Compare with Electronic Journal.
Electronic Publication	A work in digital form capable of being read or otherwise perceived, distributed to the public electronically. Includes Electronic Journals and e-prints, Electronic Magazines and newspapers, electronic books, Web sites, Weblogs, etc. Some Electronic Publications are online versions of print publications; others are born digital. Synonymous with e-publication.
End User	Shall mean those persons who are permitted by the Authorized User to have access to an Electronic Publication or Database.
Fair Use	Shall mean acceptable use under the Copyright Revision Act 1976 as amended subsequently provided that such rights are exercised in accordance with Section 108 of the Act and with the guidelines developed by the National Commission

<b>Term</b>	<b>Definition</b>
	on New Technological Uses of Copyrighted Works (CONTU Guidelines) and published in U.S. Copyright Office Circular 21.
Full Text Database	Contains the complete text of any documents (e.g. books, Journals, newspapers, magazines).
Full Time Equivalent End User (FTE)	For State agencies and Authorized Users not otherwise identified, the number of full time employees shall be the number of FTEs; for a higher educational institution, it shall refer to the student enrollment expressed as the number of full time students; for K-12 educational institutions, each student shall be considered one (1) FTE; for public libraries, the census population served shall be deemed to be the number of FTEs.
International Standard Serial Number (ISSN)	A unique eight-digit standard number assigned by the International Serials Data System (ISDS) to identify a specific serial title. The ISSN is usually given in the masthead of each issue or on the copyright page of each volume or part of a series. When a continuing resource undergoes a title change, a new ISSN is assigned.
Journal	A Periodical devoted to disseminating original research and commentary on current developments in a specific discipline, sub-discipline, or field of study, usually published in quarterly, bimonthly, or monthly issues sold by subscription. Journal articles are usually written by the person (or persons) who conducted the research. Longer than most magazine articles, they almost always include a bibliography or list of works cited at the end. In Journals in the sciences and social sciences, an abstract usually precedes the text of the article, summarizing its content. Most scholarly Journals are peer-reviewed. Scholars often use a current contents service to keep abreast of the Journal literature in their fields of interest and specialization.
Library Database	A large catalog or index of organized information.
Licensing Agreement	A formal written contract between a library and a vendor for the lease of one or more proprietary (copyrighted) bibliographic databases or online resources, usually for a fixed period of time in exchange for payment of an annual subscription fee or per-search charge. Vendors typically charge libraries on a sliding scale based on number of registered borrowers or FTE enrollment, number of institutions or facilities served, and number of simultaneous users.
List Price	The undiscounted price at which a new publication is offered for sale to the public, established by the publisher at the time the edition is issued. The List Price is quoted in the Publisher's catalog and printed on the front flap of the dust jacket in hardcover editions and usually on the back cover in softcover editions. Discounts offered to libraries, booksellers, and jobbers are computed as a percentage off List Price. In library cataloging, the List Price of an item is indicated (when available) in the standard number and terms of availability area of the bibliographic description (field 020 or 022 of the MARC record). Synonymous with published price, retail price, and sticker price.
Magazine	A popular interest Periodical usually containing articles on a variety of topics, written by various authors in a nonscholarly style. Most magazines are heavily illustrated, contain advertising, and are printed on glossy paper. Articles are usually short (less than five pages long), frequently unsigned, and do not include a bibliography or list of references for further reading. Most magazines are issued monthly or weekly for sale at newsstands, in bookstores, and by subscription.
Metadata Database	Information about data itself, including size, origination or other descriptors.
MWBE	A business certified with NYS Empire State Development (ESD) as a Minority and/or Women-owned Business Enterprise.

<b>Term</b>	<b>Definition</b>
N/A	A common abbreviation for <i>not applicable</i> or <i>not available</i> , used to indicate when information in a certain field on a table is not provided, either because it does not apply to a particular case in question or because it is not available.
National Public Entities	Defined as State Governments, the Federal Government, Local Governments, cities, towns, school districts, libraries, police and fire departments, and other political subdivisions
Net Price	List Price less all applicable discounts or inclusive of Service Charges; the price paid by Authorized Users of the resultant Contract.
Newspaper	A Serial publication, usually printed on newsprint and issued daily, on certain days of the week, or weekly, containing news, editorial comment, regular columns, letters to the editor, cartoons, advertising, and other items of current and often local interest to a general readership.
NYS Vendor ID	Refers to the ten-character identifier issued by New York State when a vendor is registered on the Vendor File.
Numerical Data Database	This includes statistical and other numerical data.
Optional Products and Services	Refer to supplementary Products and services that enhance or support the provision of Serials and/or Database Access Products identified to be within scope. For example: under Lot 1 that may include things such as stamps; call numbers or routing label; bar-coding; security strips; processing of journals including affixing date and property; shipment consolidation, MARC (Machine Readable Cataloging) records and updates; and Serials management solutions; under Lot 2 that may include things such as Database Management Systems (DBMS), hard copy records, mailing labels, batching, and reporting.
Periodical	A Serial publication with its own distinctive title, containing a mix of articles, editorials, reviews, columns, short stories, poems, or other short works written by more than one contributor, issued in softcover more than once, generally at regular stated intervals of less than a year, without prior decision as to when the final issue will appear. Although each issue is complete in itself, its relationship to preceding issues is indicated by enumeration, usually issue number and volume number printed on the front cover. Content is controlled by an editor or editorial board. Includes magazines, sold on subscription and at newsstands; journals, sold on subscription and/or distributed to members of scholarly societies and professional associations; and newsletters, but not proceedings or the other regular publications of corporate bodies as they relate primarily to meetings.
Procurement Services	Formerly known as NYSPRO or Procurement Services Group (PSG), Procurement Services shall mean a division of the New York State Office of General Services which is authorized by law to issue centralized, statewide Contracts for use by New York agencies, political subdivisions, schools, libraries and others authorized by law to participate in such Contracts.
Publication	Refers to a work capable of being read or otherwise perceived (e.g. book, audiorecording, videorecording, CD-ROM, etc.), issued by a Publisher for sale to the general public, usually in multiple copies and sometimes in multiple editions.
Publisher	A person or corporate entity that prepares and issues printed materials for public sale or distribution, normally on the basis of a legal contract in which the publisher is granted certain exclusive rights in exchange for assuming the financial risk of publication and agreeing to compensate the author, usually with a share of the profits.

<b>Term</b>	<b>Definition</b>
Reseller	Any model for distribution of Product other than direct from the Contractor. Resellers include but are not limited to approved value added resellers (VARs), distributors, dealers, sales agents, and alternate channel partners.
Subject Specific Database	This includes information from academic or scholarly Journals and trade or professional publications.
Serial	Publication in any medium issued under the same title in a succession of discrete parts, usually numbered (or dated) and appearing at regular or irregular intervals with no predetermined conclusion. Serials may be purchased individually, in combination with other titles, or as large collections of titles (particularly when purchased electronically).
Server	Shall mean the computer system(s) on which Electronic Publications or Databases reside and through which End Users gain access to the Electronic Publications or Databases.
Service Charge	A fee charged by a Subscription Agent for filling orders for Periodical subscriptions, usually 5 to 10 percent of the total annual amount paid by the library for subscriptions.
Subscription Agent	A company in the business of providing centralized Serial subscription or Database Access services to Authorized Users such as libraries to relieve them of the time consuming task of dealing with Publishers individually.

In addition to the above definitions, the following terms are defined as follows regardless of whether they are or are not capitalized:

May	Denotes the permissive in a Contract clause or specification. Refers to items or information that the State has deemed are worthy of obtaining, but not required or obligatory. Also see “Should”.
Must	Denotes the imperative in a Contract clause or specification. Means required - being determinative/mandatory, as well as imperative. Also see “Shall” and “Mandatory”.
Shall	Denotes the imperative in a Contract clause or specification. Means required - being determinative/mandatory, as well as imperative. Also see “Must” and “Mandatory”.
Should	Denotes the permissive in a Contract clause or specification. Refers to items or information that the State has deemed are worthy of obtaining, but not required or obligatory. Also see “May”.

#### SCOPE:

These contracts are to provide Authorized Users with a means of acquiring Serials and Database Access Products and Services. There are a total of two (2) Lots: Lot 1 – Serials, and Lot 2 - Database Access.

Products for Lot 1 - Serials include, but may not be limited to:

1. Print Periodicals and Newspapers
2. Electronic Magazines and Journals
3. Annuals (reports, yearbooks, etc.)
4. Continuing directories
5. Proceedings and transactions
6. Numbered monographic series cataloged separately
7. Subscription based eBooks
8. Optional Products and Services, including but not limited to:
  - a. Stamps, call numbers or routing labels, bar-coding, and security strips
  - b. Processing of journals including affixing date and property
  - c. Shipment Consolidation



- d. MARC (Machine Readable Cataloging) records and updates
- e. Serials management solutions, such as:
  - (i) Link resolvers
  - (ii) A to Z lists
  - (iii) Information discovery tools
  - (iv) Subscription management tools
  - (v) Electronic resource management (ERM) tools

Products for Lot 2 – Database Access include, but may not be limited to:

- 1. Library Databases
- 2. Full Text Databases
- 3. Numeric Databases
- 4. Meta-Databases
- 5. General Interest Databases
- 6. Discipline Specific Databases
- 7. Subject Specific Databases
- 8. Streaming Video Databases
- 9. Database Files
- 10. Optional Products and services, including but not limited to:
  - a. Database Management Systems (DBMS)
  - b. Hard copy records
  - c. Mailing labels
  - d. Batching
  - e. Reporting

Exclusions: The following Products are not within scope:

- 1. Products currently offered under the OGS Books and Non-Print Library Materials and other Related Ancillary Services contract (Group 20060)
- 2. Products and services currently offered under the OGS E-Learning Training/Distance Services contract (Group 73016), which includes web-based, computer based, online and internet based training
- 3. Standalone Software unrelated to the provision of Serials or Database Access
- 4. Hardware of any kind
- 5. Database services offered under the Contract shall not allow the Contractor to access the personal, private, or confidential information of any Authorized User or End User

It is the Contractor's responsibility to ensure that only Products and services that meet the scope of the Contract are purchased through the Contract. Questions concerning items covered under the resultant Contract should be addressed to the OGS Procurement Services contract manager designated on the Contract Award Notification prior to accepting the order.

If a Contractor sells Products that are excluded under this Contract as set forth above, such Contractor's Contract may be suspended or terminated.

**LIST OF CONTRACTORS AND AWARDED LOTS**

Please refer to each Contractor's Information page and Pricelist for more information.

<b>Bidder</b>	<b>Lot 1 Serials</b>	<b>Lot 2 Database Access</b>
Alini Magazine Services LLC	x	
Cengage Learning Inc.	x	x
COX Subscriptions Inc. DBA WT COX Subscriptions	x	
EBSCO Industries Inc.	x	x
Elsevier B.V.	x	x
License Monitor Inc.		x
LM Information Delivery	x	
Otto Harrassowitz GmbH & Co. KG	x	
Richard O. Emmons DBA Magazine Subscription Services Agency	x	
Robert Levine DBA Island Magazine Service	x	
Scholastic Inc.	x	
Scholastic Library Publishing Inc.		x
Subscription Services of America Inc.	x	

**PROCUREMENT INSTRUCTIONS TO AUTHORIZED USERS:**

1. The Contracts resulting from this Solicitation will be centralized Contracts issued under a multiple award structure. Products offered under the Contracts, pricing, and other Contract information will be posted to the OGS website or the awarded Contractors' dedicated NYS websites. Authorized Users shall procure Products that best meet their form, function and utility requirements.
2. Before proceeding with a purchase, Authorized Users shall check the list of Preferred Source offerings. Authorized Users are reminded that they must comply with State Finance Law §162, which requires that agencies afford first priority to the commodities of Preferred Source suppliers such as Correctional Industries (Corcraft), NYS Preferred Source Program for People Who are Blind (NYSPSP), and NYS Industries for the Disabled (NYSID), when such commodities meet the form, function and utility of the Authorized User.
3. Where products are not available from Preferred Source suppliers in the form, function and utility required by the Authorized User, Authorized Users shall purchase from the centralized Contracts awarded under this Solicitation. The basis for selection among multiple contracts at the time of purchase shall be the most practical and economic alternative and shall be in the best interests of the State. Therefore, Authorized Users are strongly encouraged to obtain quotes from at least three (3) Contractors prior to issuing a purchase order, in order to ensure that the Authorized User is receiving the best possible pricing.
4. When placing Purchase Orders under the Contract(s), the Authorized User should be familiar with and follow the terms and conditions governing its use. The Authorized User is accountable and responsible for compliance with the requirements of public procurement processes. The Authorized User, when purchasing from OGS Contracts, should hold the Contractor accountable for Contract compliance and meeting the Contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, Authorized Users are encouraged to seek improved pricing whenever possible. Authorized Users have the responsibility to document purchases which should include:
  - statement of need and associated requirements;
  - obtaining all necessary prior approvals;
  - a summary of the Contract alternatives considered for the purchase; and
  - the reason(s) supporting the resulting purchase (e.g., show that basis for the selection among multiple Contracts at the time of purchase was the most practical and economical alternative and was in the best interests of the State).

5. Authorized Users will issue purchase orders directly to the Contractor or the Contractor's authorized Reseller (if applicable), as specified by the Contractor, and specifying any shipping/delivery requirements and/or statements of work for services (if applicable).
6. Upon Authorized User acceptance of Products itemized on the purchase order, Contractor will invoice Authorized User for any portion of Products accepted, and accordingly, Authorized User will arrange for payment. Contractor shall provide itemized invoicing for all Products.
7. ***Contractor must disclose any forms, "click through", "shrink wrap" or other pass-through or licensing/subscription terms and conditions or other order information that Contractor will attach to orders or require to be completed with Authorized User purchases. Documents which contain additional terms or conditions, such as library maintenance agreements or Licensing Agreements must receive pre-approval by the Authorized User prior to ordering Products and services. Any additional licensing terms agreed to by the Authorized User shall not conflict with Appendix A, this Solicitation, any resultant Contract, or Appendix B. Any such conflicting terms shall be void and unenforceable.***

**PRICE:**

Price shall include all customs duties and charges and be net, F.O.B. destination to any point in New York State as designated by the Authorized User and shall include all transportation charges and inside delivery for print medium. Inside deliveries are to be delivered to the ordering Authorized User's stockroom or office location.

The Bidder's price should include all costs associated with selling the Product. No shipping charges are allowed EXCEPT on printed foreign publications shipped directly to the Authorized User from an address outside the 48 contiguous US states including the District of Columbia. Foreign shipping costs shall be prepaid by the Contractor and added to the invoice and all such orders shall be shipped on F.O.B. destination by the most economical method. There shall be no increase in Contract prices for freight, shipping, fuel or other surcharges, FPT (Freight Pass Through), etc. during the term of the Contract.

**FOR LOT 1 ONLY: Authorized Users may be charged additional fees charged by the Publishers which include licensing fees, platform fees etc. in excess of the base subscription fee. However, any additional fees shall only be those charges passed on by the Publishers and shall not include any additional fees charged by the Contractors for such services. The Contractor shall only charge fees based on List Prices charged by Publishers. The Authorized User must be notified of all such fees at the time of purchase. Fees that are not told to the Authorized User at the time of purchase shall be paid by the Contractor.**

Contractor's pricing information is included in the posted Pricelist linked from the Contractor Information page.

**PRICING BASED ON GSA PRICING:**

Authorized Users shall be entitled to all associated discounts enumerated in the GSA Supply Schedule (including, but not limited to discounts for additional sites and volume discounts), as well as any other pricing or discount terms as are expressly enumerated in this NYS Contract or GSA schedule, when calculating the Contract price.

GSA pricing incorporates a sum referred to as the "GSA Industrial Funding Fee (IFF)". Contract prices will be reduced by an amount equivalent to the IFF. The NYS Price will be calculated by reducing the published GSA price, after the discounts, if any, downward by the amount of the Industrial Funding Fee, currently set at .75%.

**VOLUME DISCOUNTS:**

Contractor may offer volume discounts using the thresholds listed on each Contractor's Information Page.

**PREPAYMENT PLAN DISCOUNTS:**

Contractor may offer Prepayment Plan Discounts using the thresholds listed on each Contractor's Information Page.

**PROMPT PAYMENT DISCOUNTS:**

Contractor may offer prompt payment discounts at the transaction level. Please refer to the Contractor's Information Page.

**CENTRALIZED CONTRACT MODIFICATION:**

1. OGS, an Authorized User, or the Contractor may suggest modifications to the Centralized Contract or its Appendices. Except as specifically provided herein, modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the Parties. Modifications may take the form of an update or an amendment. "Updates" are changes that do not require a change to the established Centralized Contract terms and conditions. A request to add new Products at the same or better price level is an example of an update. "Amendments" are any changes that are not specifically covered by the terms and conditions of the Centralized Contract, but inclusion is found to be in the best interest of the State. A request to change a contractual term and condition is an example of an amendment.
2. Updates to the Centralized Contract and the Appendices may be made in accordance with the contractual terms and conditions to incorporate new products or services, make price level revisions, delete Products or services, or to make such other updates to the established Centralized Contract terms and conditions, not resulting in a change to such terms and conditions, which are deemed to be in the best interest of the State.
3. OGS reserves the right to consider modifications which are not specifically covered by the terms of the Centralized Contract, but are judged to be in the best interest of the State. Such modifications are deemed amendments to the Centralized Contract and may require negotiations between Contractor and OGS before execution.
4. All modifications proposed by Contractor, shall be processed in accordance with Appendix C, Contract Modification Procedure. The Contractor shall submit all requests in the form and format contained in Appendix C, Contract Modification Procedure. The form contained within Appendix C is subject to change at the sole discretion of OGS.
5. Modifications proposed by OGS or an Authorized User, including updates and amendments, shall be processed in accordance with the terms of the Centralized Contract and Appendix B, §26, *Modification of Contract Terms*.

**CONTRACT PRICELIST UPDATE PROCEDURES:**

The procedures below outline how Contract pricelist updates will be handled under this Contract. If awarded more than one Lot, Contractor shall submit pricelist updates for each Lot simultaneously pursuant to the requirements of this section. **NOTE: THE FOLLOWING PROCEDURES ARE NOT APPLICABLE TO CONTRACTOR PROPOSED CHANGES TO CONTRACT TERMS AND CONDITIONS.** Any implied or express request for changes in or additions to existing Contract terms and conditions, including new terms and conditions associated with a specific product line being added to the Contract for the first time, requires a formal Contract amendment and requires the approval of OGS. New or revised Contract terms and conditions are subject to the restrictions set forth in Appendix B, §26, *Modification of Contract Terms*.

**Lot 1 - Serials Pricelist Updates****Adding and Deleting Item Categories (Other than Optional Products and Services)**

1. No decrease in discounts: The Bidder's discount may increase at any time, but shall not decrease during the term of the Contract. Service Charges bid may decrease at any time, but shall not increase during the term of the Contract.
2. Adding or Deleting Item Categories: Bidder may add or delete Item Categories to its Price List pursuant to this Section and at the discretion of OGS. Any new Item Categories added to the Contract shall be subject to a reasonableness of price review pursuant to Section 5.3, *Reasonableness of Price*, of the Solicitation.

3. First Year: In the first year of the Contract, the Contractor shall be allowed to update the pricelist once to add/delete Item Categories.
4. Subsequent Years: Commencing with the second year of the Contract, the Contractor may add or delete Item Categories within thirty (30) calendar days after the anniversary date of the Contract. The thirty (30) calendar days includes the anniversary date of the Contract.

#### **Optional Products and Services**

1. Adding or deleting Optional Products and Services: Bidder may add or delete Optional Product and Services offerings pursuant to this section and at the discretion of OGS. Any new Optional Products and Services offered shall be subject to a reasonableness of price review pursuant to Section 5.3, *Reasonableness of Price*.
2. First Year: In the first year of the Contract, the Contractor shall be allowed to update the pricelist once to add or delete Optional Products and Services.
3. Subsequent Years: Commencing with the second year of the Contract, the Contractor may add or delete Optional Products and Services within thirty (30) calendar days after the anniversary date of the Contract. The thirty (30) calendar days includes the anniversary date of the Contract.

#### **Price Adjustments for Lot 1 Optional Products and Services**

All prices for Optional Products and Services may be adjusted annually following the first year of the Contract on the basis of the Not Seasonally Adjusted Consumer Price Index – All Urban Consumers, U.S. City Average, All Items Less Food, Series ID: CUUR0000SA0L1, published monthly by the US Department of Labor Bureau of Labor Statistics. There shall be no price adjustments during the first year of the Contract. The adjustment shall be established as follows. Following the first year of the Contract and annually thereafter, the Contractor may make a formal request for a price adjustment in the succeeding Contract year. This request must be made in writing to the contract manager identified on the front page of the resultant Contract Award Notification; thirty (30) calendar days after the anniversary date of the Contract. The thirty (30) calendar days includes the anniversary date of the Contract. If the Contractor fails to submit a written request, he/she forfeits its opportunity to receive a price adjustment in the succeeding Contract year.

Price adjustments for monetary amounts for Optional Products and Services shall begin with the second year of the start date of the Contract and annually thereafter. The adjustment shall be based on the percentage of increase or decrease in the above referenced index in the preceding twelve months ending three months prior to the effective date of the adjustments. In no case shall price increases exceed five percent (5%) annually. All adjusted prices will be rounded up or down to the nearest whole cent. The Office of General Services shall notify all parties of the price adjustments through the issuance of written notification by the Procurement Services.

Below is an example calculation. Values used are for illustrative purposes only.

CPI for current period	193.676
Less CPI for previous period	188.326
Equals Index point change	5.350
Divided by previous period CPI	188.326
Equals	0.028
Result multiplied by 100	0.028 x 100
Equals percent change	2.8

Should the referenced CPI become discontinued during the course of the contract, it will be replaced by the Not Seasonally Adjusted Consumer Price Index – All Urban Consumers, U.S. City Average, All Items, Series Id: CUUR0000SA0, and adjustments will be calculated based on the same methodology as outlined above, but with data from the new replacement index.

**Submitting Price List Changes**

Contractor is required to submit Contract pricelist updates electronically in an unprotected Microsoft Excel (2013 or lower version) spreadsheet either on CD or via e-mail to the OGS Procurement Services contract manager. The pricelist must be dated and the format shall be consistent with the format of the Contractor's approved Contract pricelist. The pricelist shall separately include and identify (e.g., by use of separate worksheets or by using highlighting, italics, bold and/or color fonts) Item Categories added/deleted; Optional Products and Services added/deleted; and any price increases/decreases.

Contractors shall submit their updated Contract pricelist to the OGS Procurement Services contract manager pursuant to the requirements of this section for review and written approval prior to issuing to Authorized Users. All approved pricelist updates shall apply prospectively upon approval by OGS. Any request for a pricelist update not received in accordance with this section shall be deemed denied.

**Lot 2 – Database Access Pricelist Updates**

1. General: Any new Products or services added to the Contract shall be subject to a reasonableness of price review. The Bidder's discount may increase at any time, but shall not decrease during the term of the Contract.
2. First Year: In the first year of the Contract, the Contractor shall be allowed to update the pricelist once to add/delete Products or services as established by the Contractor in their normal course of business. There shall be no price increases allowed for existing Products or services during the first year of the Contract.
3. Subsequent Years: Commencing with the second year of the Contract, the Contractor may update the pricelist annually to reflect Contractor price changes and the addition/deletion of Products and services as established by the Contractor in their normal course of business; thirty (30) calendar days after the anniversary date of the Contract. The thirty (30) calendar days includes the anniversary date of the Contract.

In a single year of the Contract the total request for price increases shall not exceed the lesser of:

1. three (3%) percent annually, or
2. the percent increase in the latest available National Consumer Price Index - All Urban Consumers (CPI-U), Not Seasonally Adjusted, U.S. City Average, All Items (Series Id: CUUR0000SA0, CUUS0000SA0); as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 2012. CPI-U data may be obtained at [www.bls.gov](http://www.bls.gov).

The following example illustrates the computation of percent change:

CPI for current period	230.000
Less CPI for previous period	225.000
Equals index point change	5.000
Divided by previous period CPI	225.000
Equals	0.022
Result multiplied by 100	0.022 x 100
Equals percent change	2.2

The "CPI for current period" shall be the index in effect at the time the Contract pricelist update request is received; "CPI for previous period" shall be the index in effect when the Contract pricelist was last updated.

Contractor is required to submit Contract pricelist updates electronically in an unprotected Microsoft Excel (2013 or lower version) spreadsheet either on CD or via e-mail to the OGS Procurement Services contract manager. The pricelist must be dated and the format shall be consistent with the format of the Contractor's approved Contract pricelist. The pricelist shall separately include and identify (e.g., by use of separate worksheets or by using highlighting, italics, bold and/or color fonts) Products and services being added/deleted and any price increases/decreases.

In connection with any Contract pricelist update, OGS reserves the right to request additional information; reject Contract updates; remove Products and services from Contracts; remove Products and services from Contract updates; and request additional discounts for new or existing Products and services.

**PERFORMANCE REQUIREMENTS – LOT 1 – SERIALS:****Orders, Renewals, and Cancellations**

1. The Authorized User may specify that the subscription begin with current issue, first issue of the current volume, first issue of the current year, or first issue of the next volume. Subscriptions shall begin on the effective date specified on the purchase order.
2. The Contractor shall notify the Authorized User as soon as possible but no later than thirty (30) calendar days if unable to supply a new order. Contractor shall also provide a reasonable explanation in writing for non-fulfillment.
3. The Contractor shall provide address, publication, merger, and title change services, etc.
4. The Contractor shall make arrangements with publishers for all regularly purchased subscription orders and renewals within sufficient time to avoid any interruption in receipt of issues.
5. The Contractor shall cancel subscriptions as requested by the Authorized User and shall issue a credit if allowed by the publisher.
6. The Contractor shall provide pro-rated refunds or substituted titles for titles which cease publication prior to expiration if provided by the publisher. OGS reserves the right to resolve any issues that may arise between an Authorized User and the Contractor with regards to refunds or substituted titles.
7. The Contractor shall provide a common expiration date for subscriptions (if requested by the Authorized User) unless prohibited by the publisher.
8. At the Authorized User's request the Contractor shall renew subscriptions automatically on a date selected by the Authorized User; or at the option of the Authorized User, shall provide a list of titles to be renewed by the Contractor for the Authorized User's approval prior to the issuance of the annual renewal invoice. Authorized User may change automatic renewal status at any time and for no additional charge.
9. The Contractor may provide two, or three-year renewal periods, but must at a minimum offer a one-year renewal period.
10. The Contractor may enter orders for back files, special issues, supplements, extra volumes, and cumulative indexes, if requested to do so by the Authorized User.
11. All orders, renewals, and cancellations between the Contractor and the Authorized User shall be in writing, or shall be electronically transmitted.
12. In lieu of individual order forms, Contractor shall be able to accept a purchase or letter order to which is appended a list of titles.

**Invoicing and Payments**

1. The Contractor may offer an early prepayment discount. Annually, the Contractor shall specify the percentages of discount offered and the deadlines for early payment. Subscriptions may be prepaid for up to three years for Authorized Users legally empowered to make advance payments.
2. The Contractor shall provide annual renewal invoice(s) and indicate if such invoices are available electronically.
3. The Contractor shall provide supplemental invoices for "bill as" published titles, for "bill later" titles, for new orders, etc., based on agreement with Authorized User.
4. The Contractor shall provide up to three copies of all invoices if requested by an Authorized User.
5. All invoices shall provide the following information or other "identifier," if applicable:
  - a. Name, address and Federal Identification Number of Contractor.
  - b. Authorized User address and account number.
  - c. Invoice date and number.
  - d. Purchase order number.
  - e. Contract number.
  - f. Titles listed in alphabetical order or in an order specified by Authorized User.
  - g. International Standard Serial Numbers (ISSNs).

- h. Price for each subscription period.
- i. Subscription period.
- j. Description, quantity, unit price and extended price of all items.
- k. Information indicating if charge is an added optional service charge. An explanation is required.
- l. The discount or Service Charge, as requested by the Authorized User, on a line-by-line basis.
6. Increases in subscription price shall be allowed if correction in cost is required due to publisher's change in price.
7. Decreases in subscription price shall be refunded or credited, as specified, to the Authorized User promptly.
8. The Contractor shall, upon request from the Authorized User, provide proof of Publisher List Prices and increases or decreases in Publisher List Prices for specific titles.
9. Additional fees which are passed on by the publishers, e.g. licensing fees, shall be listed separately on invoices.

**Optional**

If available and/or possible, Contractor to advise Authorized Users if the following may be provided:

1. Authorized User fund code.
2. Information indicating if charge is for a renewal or new order.
3. Information identifying "bill later" or "bill as" published titles.
4. On supplemental invoices, the original invoice number.
5. Availability of title in electronic format.
6. Customized Invoicing

**Claims**

1. The Contractor shall be responsible for claiming all issues reported as not received or received damaged or defective by the Authorized User.
2. The Contractor shall promptly process claim notices in a timely manner not to exceed the claim period permitted by the Publisher.
3. The Contractor shall provide claim reports no less frequently than bimonthly.
4. Claim reports shall provide the following information:
  - a. Date of claim report.
  - b. Title(s) being claimed.
  - c. Issue(s) being claimed.
  - d. Date(s) of prior claim(s).
  - e. Publisher's response, if any.
5. The Contractor may accept and respond to claims by U.S. mail, facsimile, electronic mail, courier service, or online.

**Conversion to New Contractor by Authorized Users**

1. Renewal orders requested by Authorized Users shall be placed at least two months before expiration of current subscriptions.
2. If an interruption in service results from a change in a Contractor, any issues not received shall be obtained by the Contractor who received payment for that period at no additional cost to the Authorized User. Delivery to the Authorized User shall be made by the original Contract delivery and at no extra cost to the Authorized User.
3. If duplicate issues are received as a result of change in Contractors and the Publisher required their return, the Contractor shall be responsible for resolving the problem and shall absorb any associated costs.

**Reports**

1. The Contractor may send the Authorized User a monthly statement showing the date and amount of each outstanding invoice and credit memorandum.
2. The Contractor shall notify the Authorized User of title changes and discontinued titles and provide information on titles that are slow, delayed, or irregular, either as they occur or on a monthly basis.
3. At the Authorized User's request the Contractor shall provide a printed customized list of titles arranged alphabetically or according to specifications defined by the Authorized User.



4. Upon request, the Contractor may be required to provide the Authorized User with a price analysis report showing a 1-3 year Publisher List Price comparison of titles ordered. This report can be arranged by title, country of publication, or by codes defined by the Authorized User.
5. If available, Contractor may provide an industry-wide summary of statistical data and analyses.
6. Upon request, the Contractor shall provide a report showing changes in Publisher subscription periods, quantities ordered, and publishers' new requirements.
7. All reports between the Contractor and the Authorized User shall be in writing, and may be electronically transmitted.

**Licensing Terms and Conditions for Electronic Publication****Authorized User Access to Electronic Publications**

1. Access: Access to the Electronic Publications by Authorized Users shall be either via electronic media or the Internet. If access is provided via the Internet, the Contractor shall ensure that the Electronic Publications are highly stable and usable (including average response time of less than 5 seconds, and uptime, except for scheduled maintenance, of 96.9%), and shall ensure that the Web server(s) is (are) fully capable of serving Authorized Users. Access shall be controlled by Internet Protocol (IP) addresses, passwords or other appropriate authentication technology.
2. If the license rights are based on a named user model, an Authorized User will prepare and submit to the Contractor a list of End Users that shall include name, address, and contact information.
3. License Scope: The Contractor and the State agree that the license for the Electronic Publications shall be governed as set forth below:
  - a. Authorized User is granted a non-exclusive, transferable, term license to access and use the electronic publications in accordance with this Contract. The license term for the Electronic Publications license shall commence upon the license effective date.
  - b. It shall be the obligation of the Authorized User to review and comply with the terms and conditions of the License Agreement if one is required by the publisher to use the Electronic Publication or electronic content to the extent that they do not conflict with the terms of Appendix A, Appendix B, this Solicitation or any resultant Contract.
  - c. Permitted License Transfers: As Authorized User's business operations may be altered, expanded or diminished, Electronic Publication licenses may be transferred or combined for use at an alternative or consolidated site not originally specified in the license, including transfers between Authorized Users and/or their End Users ("permitted license transfers"). Contractor shall have the discretion to issue new login credentials when a license transfer takes place.
  - d. Concurrent Use License: Where licensing of Electronic Publications is based upon "Concurrent Users," Contractor hereby grants license rights to the specified number of Concurrent Users actually executing the licensed programs, without reference to location or named End Users (hereinafter "Concurrent Users").

**Contractor's Performance Obligations**

1. The Contractor will provide and maintain help files and other appropriate user documentation for the Electronic Publications to be accessible to all Authorized Users free of charge.
2. The Contractor will offer reasonable levels of continuing support to assist Authorized Users and their End Users in their use of the Products. Contractor will make its personnel available by email, phone or fax during regular Business Days.

**Authorized User Performance Obligations**

Authorized Users acknowledge that the copyright and title to the information content and organization of the Electronic Publications are and remain with the publisher. Authorized User shall use reasonable efforts to inform its End Users and walk-in patrons of any restrictions on the use of the Electronic Publications. Authorized User shall use reasonable efforts to protect the Electronic Publications from any use that is not permitted under this agreement. Authorized Users and/or End users may make all use of the Electronic Publications as is consistent with the Fair Use Provisions of United States and international copyright laws and the Bidder's/Contractor's

terms and conditions for use of its online services, provided that they do not conflict with the terms of Appendix A, this Solicitation or any resultant Contract, or Appendix B,. In addition, the Electronic Publications may be used as follows:

1. Authorized Users and End Users may display, download, copy and/or print portions of the Electronic Publications for use in research, education, or other non-commercial purposes.
2. Authorized Users and End Users may use a reasonable portion of the Electronic Publications in the preparation of educational materials.
3. Authorized Users may fulfill occasional requests from other institutions, a practice commonly called Interlibrary Loan. Authorized Users agrees to maintain records respecting End User's use of materials in such Interlibrary Loan and to provide such records to the Contractor upon request.

**Specific Restrictions on Use of Electronic Publications**

Authorized User may not utilize the Electronic Publications for commercial purposes, including but not limited to the sale of the Electronic Publications, fee-for-service use of the Electronic Publications, or bulk reproduction or distribution of the Electronic Publications in any form; nor may Authorized User impose special charges for use of the Electronic Publications beyond reasonable printing or administrative costs.

**Licensing Terms and Conditions**

Bidders are advised to review all terms and conditions carefully; particularly the licensing terms and conditions for Electronic Publications. If license agreement, shrink-wrap or click wrap agreements are associated with Electronic Publications, it is the responsibility of the potential Bidder/Contractor to offer only those Serials in electronic format that satisfy the license terms and conditions of the Solicitation. License terms that conflict with the terms of Appendix A, Appendix B, this Solicitation or any resultant Contract shall not be enforceable.

**PERFORMANCE REQUIREMENTS – LOT 2 – DATABASE ACCESS:****System Availability**

Databases shall be functional at least 99% of the time.

**Scheduled Maintenance**

Contractor must notify Authorized Users at least 48 hours prior to scheduled maintenance that interrupts End User access to Databases. OGS requests that scheduled maintenance **NOT** be performed during normal Business Days.

**RSS Feeds**

Contractors shall indicate on their Pricelist if RSS Feeds are allowed, and if so, if they are included in the price of the resource.

**CONTRACT PERIOD AND RENEWAL:**

The Contract(s) shall commence after all necessary approvals by both parties, and shall become effective upon mailing of the final Contract Award Notice by OGS (see Appendix B, §22, Contract Creation/Execution). The Contract(s) shall be in effect for five (5) years beginning on the date of approval of the first contract awarded as a result of the IFB, and shall end conterminously five (5) years from the approval of the first contract awarded as a result of the IFB. If mutually agreed between OGS and the Contractor, the Contract may be renewed under the same terms and conditions for up to two (2) additional years. Discount reduction will not be allowed and is specifically excluded from the terms and conditions of the Invitation for Bid and resultant Contract. Price decreases or discount increases are permitted at any time.

**SHORT TERM EXTENSION:**

In the event a replacement Contract has not been issued, any Contract let and awarded hereunder by the State, may be extended unilaterally by the State for an additional period of up to one (1) month upon notice to the Contractor with the same terms and conditions as the original Contract including, but not limited to, quantities (prorated for such one month extension), prices, and delivery requirements. With the concurrence of the Contractor, the extension

may be for a period of up to three (3) months in lieu of one (1) month. However, this extension terminates should a replacement Contract be issued in the interim.

**PERIODIC RECRUITMENT:**

The State reserves the right to add Contractors beginning in the second year of the Contract and at one year intervals thereafter. The State will formally announce when the bid is reissued, at the discretion of the State. Bidders shall be required to submit such Bid documentation as required by OGS, which may include additional applicable statutory requirements currently in effect at the time of the new Bid solicitation. Once awarded a Contract, a Contractor may not resubmit a Bid for future consideration. In addition, if a Bid is deemed non-responsive or is rejected under periodic recruitment, a Bidder cannot reapply for a future Contract until the next periodic recruitment period. For Contracts that are awarded under periodic recruitment, the Contract term will commence upon OGS approval in accordance with §22, *Contract Creation/Execution* of Appendix B and will terminate on the then current end date of the Contract or at the end of any approved extension or renewal period.

Bidders shall be required to submit this original bid document which may include additional applicable statutory requirements currently in effect at the time of the new bid solicitation. Bidders are advised to review the "Qualification of Bidders" clause before submitting a bid under periodic recruitment to ensure they can meet all bid requirements.

**CONTRACT ADVERTISING:**

In addition to the requirements set forth in Appendix B §21, *Contract Publicity*, any Contractor advertisements, promotional literature and/or Contract description(s) of Contract awards must be reviewed and approved by Procurement Services prior to issuance.

**MINIMUM ORDER:**

There is no minimum order requirement.

**NEW YORK STATE PURCHASING CARD:**

See "Purchasing Card" in Appendix B, §15, *Purchasing Card*. Contractors indicated on their Contractor's Information Page if they will accept the NYS Purchasing Card for orders not to exceed \$85,000. For all purchases executed using a New York State Purchasing Card, Contractor shall provide an itemized receipt with each delivery. Contractor shall state the discount offered when using the NYS Purchasing Card on each Contractor's Information page.

**CONTRACT ORDERS:**

Contractor shall be capable of accepting orders manually, via facsimile, and, electronically via email. As an option, Contractor may also accept orders electronically via the Internet through a web-based ordering system. Contractor shall be required to provide written quotes to Authorized Users who request them prior to placing an order, which quote details the SKU corresponding with the approved product list, List Price, discount, and Net Price, as applicable.

The web-based ordering system, if offered, shall allow Authorized Users to enter orders and have full order inquiry capabilities. All orders (manual, fax, electronic) shall reference requisition and/or purchase order number as required. If offering a web-based ordering system, the Bidder represents and warrants that it is the sole owner of the software product used for its ordering system, or, if not the owner, has received all proper authorizations from the owner to license the software product, and has the full right and power to grant the rights contained in any Contract resulting from this Invitation for Bids and as described further in Appendix B. Bidder further warrants and represents that the software product is of original development, and/or that the package and its use will not violate or infringe upon any patent, copyright, trade secret or other property right of any other person/company.

The web-based ordering system\*, if offered, shall be capable of processing, controlling, documenting, and reporting on the following minimum data elements:

- Contractor Name and Address
- Agency/Facility/Political Subdivision, etc.
- Contract Number
- Purchase Order/Requisition Numbers
- Contact (individual placing order)
- SKU/PN & Product Description
- Net Price
- Extended and Total Amounts

\*Comparable systems meeting the intent of the specifications may be considered.

If offering a web-based ordering system, the Contractor shall provide any necessary software (excluding communication software) and training guides/manuals or online support in the use of the web-based ordering system at no additional cost to all Authorized Users capable of placing orders electronically. Samples of software and training guides/manuals may be required. If requested, Bidder must demonstrate its system at an Albany, NY area location designated by the State.

#### INTERNET WEBSITES:

The State encourages successful Bidders to provide a designated NYS Contract website for Authorized Users' direct access. This website will be listed under the Contractor information. The purpose of a dedicated website is to provide Authorized Users with access to Contract pricing and Product offerings and the option of online ordering. It is the Contractor's responsibility to ensure that Contract and related information is accurately and completely posted, maintained and displayed in an objective and timely manner which renders it clearly distinguishable from other, non-contract offerings at Contractor's web site. Changes in Products or pricing must be approved by the Office of General Services, Procurement Services in accordance with any terms included in this Solicitation and resultant Contract prior to addition to the website. Hard copy catalog and pricelists, either in paper format or electronic format, must be available to all Authorized Users who either do not have Internet access or prefer the optional format.

#### PURCHASE ORDERS AND INVOICING:

All Purchase Orders and invoices shall include the Contract number and a line by line listing of separate charges. Order confirmation shall mean that the Contractor has received the purchase order, has reviewed it for compatibility with the Item currently on Contract, has resolved any non-compatibility problems with the Authorized User, and has entered the order, assigned an order number with anticipated delivery date.

##### **Purchase Orders**

Purchase orders are to include the following information:

1. Contract number
2. Contractor name
3. ISSN and Product/service description
4. Net Price

##### **Invoices**

Authorized Users are instructed not to process invoices that do not include the required information set forth below. Invoices must be detailed and include in the body of the invoice or an attachment to the invoice all of the following items. Failure to comply may result in lengthy payment delays. Original invoices must follow the billing instructions contained in the purchase order. Invoices shall include, at a minimum, the following information:

1. Contract number
2. Contractor name
3. NYS Vendor Identification Number
4. Purchase Order number
5. ISSN and Product/service description
6. Line item breakdown of all charges to include Net Price of each Product/service

Note that additional information is required for invoices for Lot 1 – Serials Products in accordance with Section *Performance Requirements – Lot 1 - Serials*.

Business units or branch offices within an Authorized User may require separate invoicing as specified by each Authorized User. The Contractor's billing system must be flexible enough to meet the needs of varying accounting systems in use by different Authorized Users.

**SOFTWARE:**

Software offered must be in a format that does not require any conversion by the Authorized User and shall:

1. be available as part of the Contractor's standard commercial offerings; and
2. be directly related to the operational function of the Products offered under the contract.

Any Software currently on the NYS Miscellaneous Software Catalog contract Prohibited List is excluded from purchase under this Contract, except when the Software is pre-loaded on equipment at the time of purchase. The Prohibited List may be accessed on the OGS website:

<http://www.ogs.ny.gov/purchase/snt/awardnotes/79518Prohibited.pdf>.

**RELATED THIRD PARTY PRODUCTS:**

Third Party Products which meet and comply with all of the following criteria may be authorized for sale under this Contract:

1. The Third Party Product is available as part of the Contractor's standard commercial offerings.
1. The Third Party Product fits the scope of and is directly related to the operation of Products that fit the scope of the Contract.
2. If the Third Party Product is available on another NYS Contract, such item will only be approved for inclusion on this Contract in accordance with Section titled, *Overlapping Contract Items*. If the Third Party Product is not available on another NYS Contract, then price reasonableness must be established in order for such item to be added to the Contract.

**USE OF RESELLERS/DISTRIBUTORS/ALTERNATE CHANNEL PARTNERS:**

Contractor must provide service, sales and support staff to service Authorized Users geographically located at multiple purchasing locations throughout New York State. Contractor shall ensure that sufficient resources are available directly, or through authorized Resellers to ensure maximum service capability throughout the State. The State agrees to permit Contractor to utilize approved, designated value added resellers (VARs), distributors, dealers, and sales agents to participate as alternate channel partners (collectively referred to as "Resellers") for Contractor. Such participation is subject to the following conditions:

1. Designation of Reseller(s): Contractor shall specify whether orders must be placed directly with Contractor, or may be placed directly with designated Reseller(s). When Reseller(s) are submitted for approval, Contractor must provide the State, in advance, with all necessary ordering information, billing addresses, Federal Identification Numbers, and NYS Vendor Identification Numbers in the format requested in Reseller Directory. Failure to accurately provide all required information may result in processing delays.
2. Conditions of Participation: Reseller(s) must be approved in advance by the State as a condition of eligibility under the Contract. The State also reserves the right to rescind any such participation or request that Contractor name additional Resellers, in the best interests of the State, at the State's sole discretion, at any time. Contractor shall have the right to qualify Reseller(s) and their participation as fulfillment agents under this Contract by product line, contracting program (e.g., government/educational sales), geographic region, size/sales volume, technical training or other criteria ("qualifying criteria"), provided that: i) such qualifying criteria are uniformly applied to all potential Resellers based upon Contractor's established, neutrally applied commercial/governmental program criteria, and not to a particular procurement; ii) all general categories of qualifying criteria must be disclosed by the Contractor to the State, in advance, at the beginning of the Contract

- term; iii) those qualifying criteria met by the Reseller must be identified on the form provided in Reseller Directory at the time that Reseller approval is requested under this paragraph; and iv) immediate advance notice is provided to OGS in the event that a change in Reseller's status occurs during the Contract term.
3. All Resellers who have been approved in accordance with the foregoing paragraph shall be eligible to quote lower than Contract pricing for procurements under this Contract which meet their qualifying criteria. Except as otherwise set forth in Reseller Directory, Contractor warrants and represents that it shall not, directly or indirectly, by agreement, communication or any other means, restrict any Reseller's participation or ability to quote a particular order. Reseller Directory updates will be allowed no more than twice annually. On the first business day of the month following the sixth and twelfth months of each contract year, Contractors shall be given an opportunity to submit revised Reseller Directories electronically. When submitting Reseller Directory updates, Contractors shall be required to separately specify additions, deletions, and/or any other changes to the directory in an accompanying communication submitted with the request in order to facilitate a more expeditious review; failure to do so may result in the rejection of the request.
  4. Responsibility for Reporting/Performance: Contractor shall be fully liable for Reseller(s)' performance and compliance with all Contract terms and conditions. Product purchased through Reseller(s) must be reported by Contractor in the required monthly reports to the State as a condition of payment. In addition to inclusion of Reseller(s) volume in the Contractor's monthly reporting obligation to the State, at the request of Authorized User, Reseller(s) shall provide Authorized User with quarterly reports of the individual Authorized User's Contract activity with Reseller.
  5. Applicability of Contract Terms: Product ordered directly through Reseller(s) shall be limited to Products currently approved for inclusion under this Contract and shall be subject to all terms and conditions of this Contract as a condition of Reseller participation.

**CANCELLATION OF PURCHASE ORDERS:**

Cancellation of orders in part or whole for unavailable Products shall be made by means of appropriate notations and adjustments on orders returned by Contractor to the Authorized User. Contractors shall make no shipments of canceled Products except on the basis of a new order. Products not supplied by the Contractor may be purchased from any other Contract source.

**CONTRACT PAYMENTS:**

Payments cannot be processed by Authorized Users until the items have been delivered and accepted. Payment will be based on any invoice used in the Contractor's normal course of business. However, such invoice must contain all requirements in Section *Purchase Orders and Invoicing*.

**CONTRACT ADMINISTRATOR:**

Contractor must provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Contractor must notify OGS within five (5) Business Days if its Contract Administrator changes, and provide an interim contact person until the position is filled. Changes to Contractor contact information, including the designation of a new Contract Administrator, shall be submitted electronically via e-mail to the OGS Contract Management Specialist.

**TOLL-FREE NUMBER/AUTHORIZED USER ASSISTANCE:**

A Bidder must provide a toll-free telephone number for the Authorized User assistance under any Contract or purchase order resulting from this Solicitation. Bidder must staff this toll-free number at a minimum from 8:00 a.m. to 5:00 p.m. ET Monday through Friday, excluding NYS holidays. If Bidder does not currently maintain a toll-free number, the Bidder must be willing to establish one prior to award of Contract. Bidders may also offer online assistance, such as email or chat assistance.

**INSURANCE REQUIREMENTS:**

The Contractor shall with the Insurance Requirements of the bid solicitation. Within thirty (30) days after renewal or replacement of any policy required by any Contract resulting from this solicitation, or within three (3) business

days of request, Bidders and Contractors shall supply OGS with updated replacement Certificates of Insurance, and amendatory endorsements.

**REPORT OF CONTRACT SALES:**

Contractor shall furnish a report semiannually of all Products purchased under the Contract during each semiannual period, no later than the 15th of the month following the close of each six month period. Purchases by Non-state agencies, political subdivisions and others authorized by law shall be reported in the same report and indicated as required. If resellers are utilized, the Contractor shall be responsible for consolidating all contract purchases into a single report. A template for such report is included in Attachment 9 - *Report of Contract Sales*. All fields of information shall be accurate and complete. The report is to be submitted electronically via electronic mail utilizing the template provided in Microsoft Excel 2013, or lower version (or as otherwise directed by OGS), to the attention of the OGS contract manager and shall reference the Group Number, Award Number, Contract Number, and Sales Period. OGS reserves the right to amend the report template during the Contract term.

Contractor shall specify if any resellers are NYS Certified Minority and/or Women-Owned Business Enterprises (MWBEs) within the Report of Contract Sales document. Contractor shall refer to Section *Contractor Requirements and Procedures for Business Participation Opportunities for New York State Certified Minority and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women* for information on how to verify certified status.

**AUTHORIZED USER SALES REPORT:**

Upon written request by an Authorized User, the Contractor shall furnish to such Authorized User, on a monthly basis, a report listing the following: name of products purchased, quantity purchased, unit price and total dollar volume of purchases.

**CONTRACTOR REQUIREMENTS AND PROCEDURES FOR EQUAL EMPLOYMENT AND BUSINESS PARTICIPATION OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND NEW YORK STATE CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES:****Policy Statement**

The New York State Office of General Services (“OGS”), as part of its responsibility, recognizes the need to promote the employment of minority group members and women and to ensure that certified minority- and women-owned business enterprises have opportunities for maximum feasible participation in the performance of OGS contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority- and women-owned business enterprises had a full and fair opportunity to participate in State contracting. The findings of the study were published on April 29, 2010, under the title “The State of Minority- and Women-Owned Business Enterprises: Evidence from New York” (the “Disparity Study”). The Disparity Study found evidence of statistically significant disparities between the level of participation of minority- and women-owned business enterprises in State procurement contracting versus the number of minority- and women-owned business enterprises that were ready, willing and able to participate in State procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the Statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that OGS establish goals for maximum feasible participation of New York State certified minority- and women-owned business enterprises (“MWBE”) and the employment of minority groups members and women in the performance of New York State contracts.

**General Provisions**

OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for

labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.

The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State certified minority- and women-owned business enterprises (“MWBEs”). Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, State or local laws.

The Contractor further agrees to be bound by the provisions of Article 15-A and the MWBE Regulations. If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.

Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility, breach of contract, withholding of funds, suspension or termination of the Contract and/or such other actions or enforcement proceedings as allowed by the Contract.

#### **Equal Employment Opportunity (EEO)**

Contractor shall comply with the provisions of Article 15-A set forth below. These provisions apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000, for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting State agency (the “Work”) except where the Work is for the beneficial use of the Contractor.

1. Contractor and subcontractors shall undertake or continue existing EEO 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, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate or distinct from the Contract; or (ii) employment outside New York State.
2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor’s equal employment opportunity policy.

#### **Form EEO 100 – Staffing Plan**

To ensure compliance with this section, the Contractor agrees to submit or has submitted with the Bid a staffing plan on Form EEO 100 to OGS to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.

#### **Form EEO - 101 - Workforce Utilization Reporting Form (Commodities and Services) (“Form EEO-101-Commodities and Services”)**

The Contractor shall submit, and shall require each of its subcontractors to submit, a Form EEO-101-Commodities and Services to OGS to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Form EEO-101-Commodities and Services must be submitted electronically to OGS at [EEO\\_CentCon@ogs.ny.gov](mailto:EEO_CentCon@ogs.ny.gov) on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January. Separate forms shall be completed by Contractor and any subcontractor.



If Contractor's EEO Form 100 - Staffing Plan provides that Contractor is unable to separate out the actual workforce utilized in the performance of the Contract from its total workforce, the following clause shall apply: Contractor and OGS agree that Contractor is unable to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce and that the information provided on the previously submitted Staffing Plan is Contractor's total workforce during the subject time frame, not limited to work specifically under the Contract.

Contractor shall comply with the provisions of the Human Rights Law, all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall 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 and conviction and prior arrest.

**Contract Goals**

For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers and suppliers to Contractor. Contractor is, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528> Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

**Good Faith Efforts**

Pursuant to 5 NYCRR § 142.8, evidence of good faith efforts shall include, but not be limited to, the following:

1. A list of the general circulation, trade and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers and copies of such solicitations and any responses thereto.
2. A list of the certified MWBEs appearing in the Empire State Development MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
3. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with or obtaining supplies from certified MWBEs.
4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
5. Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
6. Other information deemed relevant to the request.

ALL FORMS ARE AVAILABLE AT: <http://www.ogs.ny.gov/MWBE/Forms.asp>

**NEW YORK STATE FINANCIAL SYSTEM (SFS):**

New York State is currently operating on an Enterprise Resource Planning (ERP) system, Oracle PeopleSoft software, referred to as the Statewide Financial System (SFS). SFS is currently on PeopleSoft Financials version 9.2 Bundle 18, operating on PeopleTools version 8.49.33. SFS supports requisition-to-payment processing and financial management functions.

The State is also implementing an eProcurement application that supports the requisitioning process for State Agencies to procure goods and services in SFS. This application provides catalog capabilities. Vendors with Centralized Contracts have the ability to provide a “hosted” or “punch-out” catalog that integrates with SFS and is available to Authorized Users via a centralized eMarketplace website. There are no fees required for a Vendor’s participation in the catalog site development or management. Upon completion and activation of an on-line catalog, State Agencies will process their orders through the SFS functionality and other Authorized Users can access the catalog site to fulfill orders directly.

The State is also implementing the PeopleSoft Inventory module in the near future to track inventory items within the item master table. Further information regarding business processes, interfaces, and file layouts may be found at: [www.sfs.ny.gov](http://www.sfs.ny.gov) and <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

#### USE OF RECYCLED OR REMANUFACTURED MATERIALS:

New York State supports and encourages vendors to use recycled, remanufactured or recovered materials in the manufacture of products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the product or packaging unless such use is precluded due to health or safety requirements or product specifications contained herein. Refurbished or remanufactured components or products are required to be restored to original performance and regulatory standards and functions and are required to meet all other requirements of this Contract. Warranties on refurbished or remanufactured components or products must be identical to the manufacturer's new equipment warranty or industry's normal warranty when remanufacturer does not offer new equipment. See Appendix B, §38, *Repaired or Replaced Products, Parts or Components*.

#### BULK DELIVERY AND ALTERNATE PACKAGING:

New York State encourages the use of innovative packaging that reduces the weight of packaging and the generation of packaging waste. A contractor is encouraged to use reusable materials and containers and to utilize packaging configurations that take advantage of storage containers designed to be part of the product for the shipment of multi-unit purchases. New York State recognizes that these packaging methods are in the development stage and may not be currently available. Authorized Users are urged to inquire about these programs at the time of purchase and determine the best solution for their needs.

#### SURPLUS/TAKE-BACK/RECYCLING:

1. A State agency is reminded of its obligation to comply with the NY State Finance Law §§167, Transfer and Disposal of Personal Property, and 168, The Management of Surplus Computer Equipment, regarding transfer and disposal of surplus personal property before utilizing take-back, recycling, or other options for disposition of equipment that is still in operable condition.
2. If Contractor offers a take-back/recycling program, then Contractor shall provide a record of disposition to each Authorized User who participates in the take-back/recycling program for units transferred for disposition. Contractor shall provide documentation that the units were disposed of in an environmentally sound manner in compliance with applicable local, state and federal laws. See Section 3 below for specific requirements governing electronic equipment recycling.
3. The NYS Department of Environmental Conservation (DEC) Electronic Equipment Recycling and Reuse Act (“Act”) (Environmental Conservation Law, Article 27, Title 26, Electronic Equipment Recycling and Reuse), requires manufacturers to establish a convenient system for the collection, handling, and recycling or reuse of electronic waste. If Contractor is a manufacturer of electronic equipment covered by the Act, Contractor agrees to comply with the requirements of the Act. More information regarding the Act can be found on the DEC website at: <http://www.dec.ny.gov/chemical/65583.html>.
4. If a Contractor offers a take-back/recycling program or offers an electronic equipment recycling program pursuant to the Act, and an Authorized User participates in same, then the Authorized User shall ensure the destruction of all data from any hard drives surrendered with the machines/covered electronic equipment. Contractor shall not require an Authorized User to surrender the hard drive, as an Authorized User may wish

to retain the hard drive for security purposes. Contractor shall advise the Authorized User in advance if the retention of the hard drive results in additional fees or reduction in trade-in value. It is recommended that an Authorized User use a procedure for ensuring the destruction of confidential data stored on hard drives or other storage media that meets or exceeds the National Institute of Standards and Technology (NIST) Guidelines for Media Sanitation as found in NIST Special Publication 800-88.

**ENVIRONMENTAL ATTRIBUTES AND NYS EXECUTIVE ORDER NUMBER 4:**

New York State is committed to environmental sustainability and endeavors to procure products with reduced environmental impact. One example of this commitment may be found in Executive Order No. 4 (Establishing a State Green Procurement and Agency Sustainability Program), which imposes certain requirements on state agencies, authorities, and public benefit corporations when procuring commodities, services, and technology. More information on Executive Order No. 4, including specifications for offerings covered by this Contract, may be found at: <http://ogs.ny.gov/EO/4/Default.asp>. State entities subject to Executive Order No. 4 are advised to become familiar with the specifications that have been developed in accordance with the Order, and to incorporate them, as applicable, when making purchases under this Contract.

**PREFERRED SOURCE PRODUCTS:**

Section 162 of the State Finance Law requires that agencies, including Executive Agencies, afford first priority to the products of preferred source suppliers such as Corcraft (the marketplace name for the NYS Department of Corrections and Community Supervision, Division of Industries), New York State Preferred Source Program for People who are Blind (NYSPSP), and New York State Industries for the Disabled (NYSID), and others determined by law, when such products meet the form, function and utility of the agency. Some products in the resultant Contract(s) may be available from one or more preferred sources. An Authorized User must determine if a particular commodity or service is approved for a Preferred Source and follow the requirements of State Finance Law Section 162(3) or (4)(b), respectively, before engaging the Contractor.

**NEW YORK STATE VENDOR RESPONSIBILITY:**

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS 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.

The Commissioner of OGS or her designee, her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when 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 Commissioner of OGS or her designee issues a written notice authorizing a resumption of performance under the Contract. The Contractor agrees that if it is found by the State that the Contractor's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Contract.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Contract may be terminated by the Commissioner of OGS or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of OGS or her designee to be non-responsible. In such event, the Commissioner of OGS 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.

In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

**NEW YORK STATE TAX LAW SECTION 5-A:**

Tax Law Section 5-a requires certain Contractors awarded state Contracts for commodities, services and technology valued at more than \$100,000 to certify to NYS Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to Contracts where the total amount of such Contractors' sales delivered into New York State is in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

Contractors may consult with DTF's website at <http://www.tax.ny.gov/> for additional information and frequently asked questions.

**OVERLAPPING CONTRACT ITEMS:**

Products available in the resulting Contract may also be available from other New York State Contracts. Authorized Users will be advised to select the most cost effective procurement alternative that meets their program requirements and to maintain a procurement record documenting the basis for this selection.

**NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS:**

New York State political subdivisions and others authorized by New York State law may participate in contracts. These include, but are not limited to local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See Appendix B, §25, *Participation in Centralized Contracts*. For purchase orders issued by the Port Authority of New York and New Jersey (or any other authorized entity that may have delivery locations adjacent to New York State), the terms of the "Price" clause shall be modified to include delivery to locations adjacent to New York State.

Upon request, all eligible non-State agencies must furnish contractors with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. A list of categories of eligible entities is available on the OGS web site ([www.ogs.state.ny.us](http://www.ogs.state.ny.us)). Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to OGS Procurement Services' Customer Services at 518-474-6717.

**NOTE TO ALL NON-STATE AGENCIES AND BIDDERS:**

All such participating non-State agencies and Bidders understand, acknowledge and agree that the primary responsibility in regard to performance of the Contract, of any obligation, covenant, condition or term thereunder by either such party thereto shall be borne and is expressly assumed by the participating non-State agencies and Contractor and not by the State. In the event of a failure or breach in performance of any such Contract by a non-State Agency or Contractor, the State specifically and expressly disclaims any and all liability for such defective performance or breach, and the eligible participating non-State agencies and Contractor guarantee to save the State, its officers, agents and employees harmless from any liability that may be or is imposed by the failure of either party to perform in accordance with its obligations, covenants and the terms and conditions of the State Centralized Contract.

**EXTENSION OF USE:**

The contract may be extended to additional States or governmental jurisdictions upon mutual written agreement between New York State (the lead contracting State) and the Contractor. Political subdivisions and other authorized entities within each participating State or governmental jurisdiction may also participate in any resultant Contract if such State normally allows participation by such entities. New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

**CONTRACTOR PERFORMANCE:**

Authorized Users should notify the Procurement Services Contract administrator promptly if the Contractor fails to meet the requirements of this Contract. Performance which is otherwise unsatisfactory to the Authorized User should also be reported to Procurement Services.

**MERCURY-ADDED CONSUMER PRODUCTS:**

Contractor agrees that it will not sell or distribute fever thermometers containing mercury or any products containing elemental mercury for any purpose under this Contract.

**UNANTICIPATED EXCESSIVE PURCHASE:**

The State reserves the right to negotiate lower pricing, or to advertise for bids, any unanticipated excessive purchase. An “unanticipated excessive purchase” is defined as an unexpected order for a Contract product(s) totaling more than \$50,000.00.

**AMERICANS WITH DISABILITIES ACT (ADA):**

The Federal ADA Act, signed into law July 26, 1990, bars employment discrimination and requires all levels of Government to provide necessary and reasonable accommodations to qualified workers with disabilities.

Contractors are required to identify and offer any software or hardware products they manufacture or adapt which may be used or adapted for use by visually, hearing, or any other physically impaired individuals. Although it is not mandatory for Contractors to have this equipment in order to receive an award, it is necessary to identify any such equipment offered they have which falls into the above category.

**ADDITIONAL REQUIREMENTS:****1. NO DRUGS OR ALCOHOL**

For reasons of safety and public policy, in any Contract resulting from this procurement, the use of illegal drugs and/or alcoholic beverages by the Contractor or its personnel shall not be permitted while performing any phase of the work herein specified.

**2. TRAFFIC INFRACTIONS**

The State will not be liable for any expense incurred by the Contractor for any parking fees or as a consequence of any traffic infraction or parking violations attributable to employees of the Contractor.

**WEBSITE ACCESSIBILITY:**

Responsibility for Content: Contractor is solely responsible for administration, content, intellectual property rights and all materials at Contractor’s website. Contractor is solely responsible for its actions and those of its agents, employees, resellers, Sub-Contractors or assigns, and agrees that neither Contractor nor any of the foregoing has any authority to act or speak on behalf of the State. As applicable, Contractor agrees to comply with the Office of Information Technology Services f/k/a Office for Technology policy NYS-P08-005 Accessibility of Web-Based Information and Applications, as may be amended, the stated purpose of which is to make State Agency web-based Intranet and Internet information accessible for persons with disabilities. In accordance with such policy, the following language is incorporated into any Contract resulting from this procurement:

Any web-based information and applications development, or programming delivered pursuant to the contract or procurement, 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 (state agency name, contractor or other) and the results of such testing must be satisfactory to (state agency name) before web-based information and applications will be considered a qualified deliverable under the contract or procurement.

## LICENSE AGREEMENTS:

An Authorized User looking to acquire Products and services under a Contract resulting from this Contract must review the contractual terms and conditions. The Authorized User must ask the Contractor if “click through”, “shrink wrap” or other pass-through or licensing/subscription terms and conditions are present, and if so, the Authorized User is responsible for reviewing and approving such terms and conditions prior to ordering the Products and services. If the terms and conditions are not acceptable to the Authorized User, it is the responsibility of such Authorized User to negotiate any needed amendments. ***Any additional licensing terms agreed to by the Authorized User shall not conflict with Appendix A, this Solicitation, any resultant Contract, or Appendix B. Any such conflicting terms shall be void and unenforceable.***

## APPENDIX A

Appendix A, Standard Clauses For New York State Contracts, dated January 2014 is hereby expressly made a part of this Contract as fully as if set forth at length herein.

## APPENDIX B

Appendix B, Office of General Services General Specifications, dated May 2015 is hereby expressly made a part of this Contract as fully as if set forth at length herein and shall govern any situations not covered by the bid document or Appendix A.

**NOTICE: THIS CONTRACT AWARD NOTIFICATION CONTAINS A SUBSET OF INFORMATION FROM THE SOLICITATION. CONTRACTS RESULTING FROM SOLICITATION 23044 HAVE BEEN EXECUTED BY CONTRACT AWARD LETTER. THE CONTRACT AWARD LETTER SETS FORTH THE ORDER OF PRECEDENCE FOR THE TERMS AND CONDITIONS OF THE EXECUTED CONTRACTS. COMPLETE CONTRACT DETAILS INCLUDING TERMS AND CONDITIONS CAN BE FOUND IN THE SOLICITATION DOCUMENT DATED REVISED OCTOBER 20, 2016.**

**State of New York  
Office of General Services  
Procurement Services  
Contract Performance Report**

Please take a moment to let us know how this contract award has measured up to your expectations. If reporting on more than one Contractor or product, please make copies as needed. This office will use the information to improve our contract award, where appropriate. **Comments should include those of the product's end user.**

**Contract No.:** \_\_\_\_\_ **Contractor.** \_\_\_\_\_

**Describe Product\* Provided (Include Item No., if available):** \_\_\_\_\_

**\*Note:** "Product" is defined as a deliverable under any Bid or Contract, which may include commodities (including printing), services and/or technology. The term "Product" includes Licensed Software.

	Excellent	Good	Acceptable	Unacceptable
• Product meets your needs				
• Product meets contract specifications				
• Pricing				

**CONTRACTOR**

	Excellent	Good	Acceptable	Unacceptable
• Timeliness of delivery				
• Completeness of order (fill rate)				
• Responsiveness to inquiries				
• Employee courtesy				
• Problem resolution				

Comments: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_(over)

Agency: \_\_\_\_\_ Prepared by: \_\_\_\_\_

Address: \_\_\_\_\_ Title: \_\_\_\_\_

\_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_ Phone: \_\_\_\_\_

\_\_\_\_\_ E-mail: \_\_\_\_\_

**Please detach or photocopy this form & returned to:**

OGS Procurement Services  
Customer Services, 38th Floor  
Corning 2<sup>nd</sup> Tower - Empire State Plaza  
Albany, New York 12242  
customer.service@ogs.ny.gov

\* \* \* \* \*



# Supplemental Contract Award Notification

PAGE 32

<b>Title</b>	<b>: Group 20020 – Serials and Database Access (Statewide)</b> <b>Classification Code(s): 55 &amp; 83</b>
<b>Award Number</b>	<b>: <a href="#">23044</a></b>
<b>Contract Period</b>	<b>: January 12, 2017 – December 31, 2021</b>
<b>Bid Opening Date</b>	<b>: November 1, 2016</b>
<b>Date of Issue</b>	<b>: January 12, 2017</b>
<b>Specification Reference</b>	<b>: As Incorporated Herein</b>
<b>Contractor Information</b>	<b>: Appears on Page 2 of this Award</b>

## Address Inquiries To:

State Agencies & Vendors		Political Subdivisions & Others	
Name :	Shrilata Nath	Procurement Services	
Title :	Contract Management Specialist	Customer Services	
Phone :	518-474-3034	Phone :	518-474-6717
E-mail :	Shrilata.Nath@ogs.ny.gov	E-mail :	customer.services@ogs.ny.gov

**Procurement Services values your input.****Complete and return "Contract Performance Report" at end of document.**

## Description

NOTICE: THIS CONTRACT AWARD NOTIFICATION CONTAINS A SUBSET OF INFORMATION FROM THE SOLICITATION. CONTRACTS RESULTING FROM SOLICITATION 23044 HAVE BEEN EXECUTED BY CONTRACT AWARD LETTER. THE CONTRACT AWARD LETTER SETS FORTH THE ORDER OF PRECEDENCE FOR THE TERMS AND CONDITIONS OF THE EXECUTED CONTRACTS. COMPLETE CONTRACT DETAILS INCLUDING TERMS AND CONDITIONS CAN BE FOUND IN THE SOLICITATION DOCUMENT DATED REVISED OCTOBER 20, 2016.

This contract provides Authorized Users with a means of acquiring Serials and Database Access Products and Services. The contract contains a total of two (2) Lots: Lot 1 - Serials and Lot 2 - Database Access. **Lot 1 Serials - Included:** Print Periodicals and Newspapers; Electronic Magazines and Journals; Annuals (reports, yearbooks, etc.); Continuing directories; Proceedings and transactions; Numbered monographic series cataloged separately; Subscription based eBooks; and Optional Products and Services, including but not limited to: Stamps, call numbers or routing labels, bar-coding, and security strips, Processing of journals including affixing date and property, Shipment Consolidation, MARC (Machine Readable Cataloging) records and updates, and Serials management solutions. **Lot 2 Database Access – Included:** Library Databases; Full Text Databases; Numeric Databases; Meta-Databases; General Interest Databases; Discipline Specific Databases; Subject Specific Databases; Streaming Video Databases; Database Files; and Optional Products and services, including but not limited to: Database Management Systems (DBMS), Hard copy records, Mailing labels, Batching, and Reporting

This Contract Award Notification contains MWBE goals of 0% MBE and 0% WBE.

PR #23044

23044sa01



**CONTRACT #** PC67677 **CONTRACTOR** Prenax, Inc. DBA Basch Subscriptions

**FED.IDENT. #** 94-3342517

**NYS VENDOR #** 1100176364

For complete Contractor contract information and Pricing information for this Award, please see the Contractor Information page located on the OGS Website at: <http://www.ogs.ny.gov/purchase/spg/awards/2002023044Can.htm>

Cash Discount and/or Early Payment Discount, If Shown, Should be Given Special Attention.

**INVOICES MUST BE SENT DIRECTLY TO THE ORDERING AGENCY FOR PAYMENT.**

**(See "INVOICING AND PAYMENT" in this document.)**

AGENCIES SHOULD NOTIFY PROCUREMENT SERVICES PROMPTLY IF THE CONTRACTOR FAILS TO MEET DELIVERY OR OTHER TERMS OF THIS CONTRACT. PRODUCTS WHICH DO NOT COMPLY WITH THE SPECIFICATIONS OR ARE OTHERWISE UNSATISFACTORY TO THE AGENCY SHOULD ALSO BE REPORTED TO THE PROCUREMENT SERVICES.

#### SMALL, MINORITY AND WOMEN-OWNED BUSINESSES:

The letters SB listed under the Contract Number indicate the contractor is a NYS small business. Additionally, the letters MBE and WBE indicate the contractor is a Minority-owned Business Enterprise and/or Woman-owned Business Enterprise.

#### RECYCLED, REMANUFACTURED AND ENERGY EFFICIENT PRODUCTS:

The Procurement Services supports and encourages the purchase of recycled, remanufactured, energy efficient and "energy star" products. If one of the following codes appears as a suffix in the Award Number or is noted under the individual Contract Number(s) in this Contract Award Notification, please look at the individual awarded items for more information on products meeting the suffix description.

RS,RP,RA	Recycled
RM	Remanufactured
SW	Solid Waste Impact
EE	Energy Efficient
E*	EPA Energy Star
ES	Environmentally Sensitive

#### NOTE TO AUTHORIZED USERS:

When placing purchase orders under the contract(s), the authorized user should be familiar with and follow the terms and conditions governing its use which usually appears at the end of this document. The authorized user is accountable and responsible for compliance with the requirements of public procurement processes. The authorized user must periodically sample the results of its procurements to determine its compliance. In sampling its procurements, an authorized user should test for reasonableness of results to ensure that such results can withstand public scrutiny.

The authorized user, when purchasing from OGS contracts, should hold the contractor accountable for contract compliance and meeting the contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, authorized users are encouraged to seek improved pricing whenever possible. Authorized users have the responsibility to document purchases, particularly when using OGS multiple award contracts for the same or similar product(s)/service(s), which should include:

- a statement of need and associated requirements,
- a summary of the contract alternatives considered for the purchase,

- The reason(s) supporting the resulting purchase (e.g., show the basis for the selection among multiple contracts at the time of purchase was the most practical and economical alternative and was in the best interests of the State).

**ORDER OF PRECEDENCE:**

The list of documents below address clarifications agreed to by the Contractor and the Office of General Services (OGS) and resolved by the parties and set forth herein in an order of precedence for the Contract award. The documents listed below were included in Solicitation #23044 or provided by the Contractor. Unless otherwise set forth in the procurement or contract documents, conflicts among documents shall be resolved in the following order of precedence:

1. Appendix A (January 2014), Standard Clauses for NYS Contracts (previously provided);
2. Contract Award Letter;
3. Revisions and Clarifications to Bid Specifications dated October 3, 2016 and October 20, 2016 (previously provided);
4. Solicitation #23044 (Revised October 20, 2016) including all Appendices and Attachments referenced therein (previously provided);
5. Contractor's Bid Prices as stated in Attachment 1 – Pricelist
6. Contractor's Bid

**OVERVIEW:**

This Contract provides Authorized Users with a means of acquiring Serials and Database Access Products and Services by New York State Agencies and Non-State agencies, including political subdivisions, school districts and others authorized by law (See Section 5.48, *Non-State Agencies Participation in Centralized Contracts* and Section 5.50, *Extension of Use*).. Products for purchase by all Authorized Users are described in the Section titled, *Scope*.

Procurement Instructions describing requirements for Authorized Users to purchase from the Centralized Contract are found in the Section titled, *Procurement Instructions*.

**ESTIMATED QUANTITIES:**

All quantities or dollar values listed within this Contract are estimates. No specific quantities or volumes are represented or guaranteed and the State provides no guarantee of individual Authorized User participation. The Contractor(s) must furnish all quantities or dollar values actually ordered. The anticipated dollar value of the award for this Solicitation, based on historical purchases under previous awards was approximately \$55,000,000.00 annually for Lot 1 and \$20,000,000.00 annually for Lot 2. The individual value of each resultant Contract is indeterminate and will depend upon the number of Contracts issued and the competitiveness of the pricing offered. Authorized Users will be encouraged to purchase from Contractors who offer the Products and pricing that best meets their needs in the most practical and economical manner. See Appendix B, §28, *Estimated/Specific Quantity Contracts* and §25, *Participation in Centralized Contracts*.

Numerous factors could cause the actual value of the Contract to vary substantially from the historical value. Such factors include, but are not limited to, the following:

- The Contract is a nonexclusive Contract;
- There is no guarantee of volume to be purchased, nor is there any guarantee that demand will continue in any manner consistent with previous purchases;
- The individual value of the Contract is indeterminate and will depend upon actual Authorized User demand, and actual quantities ordered during the Contract period; and,
- The State reserves the right to terminate the Contract for cause or convenience prior to the end of the term pursuant to the terms and conditions of the Contract.

In Procurement Service's experience, depending on the price of a particular item, the actual volume of purchases for that item could be substantially in excess of, or substantially below, estimated volumes. Specifically, if actual

Contract pricing is lower than anticipated or historical pricing, actual quantities purchased could be substantially greater than the estimates; conversely, if actual contract pricing is higher than anticipated or historical pricing, actual quantities purchased could be substantially lower than the estimates. Contractor acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the Contract could vary substantially from the estimates/historical values provided in this Contract.

#### DEFINITIONS:

Terms used in the IFB documents that have a capitalized first letter shall be defined in accordance with Appendix B, §2 *Definitions*, which is hereby incorporated by reference. The following definitions shall apply:

<b>Term</b>	<b>Definition</b>
Active Request	Refers to an End User submitted search request transaction to the licensor's online service that has not yet received a response from the licensor's system.
Aggregator	A bibliographic service that provides online access to the digital full-text of Periodicals published by different Publishers. See also Database Publisher.
Back File Access	The ability to access information within a resource before a subscription period begins.
Business Day	Monday through Friday from 8:00 AM – 5:00 PM ET, excluding New York State and federal holidays.
Concurrent Users	Specified number of simultaneous End Users accessing an Electronic Publication or Database.
Concurrent Sessions	Concurrent User is interpreted to include any End User station device which, at the point in time of measurement, has established a logical session path to the licensor's online service, enabling an immediate search request to be made directly to the licensor's search software. This is the common meaning of such expressions as being "signed on" or "logged on" to the online service. Under this definition, any signed on terminal or End User station device is counted as part of the concurrent use total, regardless of whether the End User is at the End User station; formulating a new search request; waiting for the licensor's system to respond to a search request; or digesting the results of a previous request.
Concurrent Use License	Where licensing of Electronic Publications is based upon "Concurrent Users" the Contractor shall obtain from the publisher the right of the Authorized User to obtain license rights to the specified number of Concurrent Users actually executing the licensed programs, without reference to location or named End Users.
Continuing Directory	A list of people, companies, institutions, organizations, etc., in alphabetical or classified order, providing contact information (names, addresses, phone/fax numbers, etc.) and other pertinent details (affiliations, conferences, publications, membership, etc.) in brief format, often published serially (i.e. Continuing resources (not complete as first issued and intended to be ongoing, though not necessarily indefinitely).
Customization	Changes to the function, layout and/or appearance of a Database which does not alter the Database content.
Database	A large, regularly updated file of digitized information (bibliographic records, abstracts, full-text documents, directory entries, images, statistics, etc.) related to a specific subject or field, consisting of records of uniform format organized for ease and speed of search and retrieval and managed with the aid of database management system (DBMS) software. Content is created by the Database producer, which usually publishes a print version and leases the content to one or more Database vendors that provide electronic access to the data after it has been converted to machine-readable form, usually on CD-ROM or online via the Internet, using proprietary search software.
Database Management System (DBMS)	A computer application designed to control the storage, retrieval, security, integrity, and reporting of data in the form of uniform records organized in a large searchable file called a Database. The range of available DBMS software

<b>Term</b>	<b>Definition</b>
	extends from simple systems intended for personal computers to highly complex systems designed to run on mainframes.
Database Publisher	Company that uses specialized techniques to generate documents from source data and provide to End Users through a Database. See also Aggregator.
Discipline Specific Database	Information provided is focused on a discipline or area, however may include information from multiple related subject areas.
Electronic Journal	A digital version of a print journal, or a journal-like Electronic Publication with no print counterpart, made available via the World Wide Web, e-mail, or other means of Internet access. Some web-based Electronic Journals are graphically modeled on the print version. Synonymous with E-journal. Compare with electronic magazine.
Electronic Magazine	A digital version of a print magazine, or a magazine-like electronic publication with no print counterpart, made available via the World Wide Web, e-mail, or other means of Internet access. Some Web-based electronic magazines are graphically modeled on the print version. Synonymous with e-zine and Webzine. Compare with Electronic Journal.
Electronic Publication	A work in digital form capable of being read or otherwise perceived, distributed to the public electronically. Includes Electronic Journals and e-prints, Electronic Magazines and newspapers, electronic books, Web sites, Weblogs, etc. Some Electronic Publications are online versions of print publications; others are born digital. Synonymous with e-publication.
End User	Shall mean those persons who are permitted by the Authorized User to have access to an Electronic Publication or Database.
Fair Use	Shall mean acceptable use under the Copyright Revision Act 1976 as amended subsequently provided that such rights are exercised in accordance with Section 108 of the Act and with the guidelines developed by the National Commission on New Technological Uses of Copyrighted Works (CONTU Guidelines) and published in U.S. Copyright Office Circular 21.
Full Text Database	Contains the complete text of any documents (e.g. books, Journals, newspapers, magazines).
Full Time Equivalent End User (FTE)	For State agencies and Authorized Users not otherwise identified, the number of full time employees shall be the number of FTEs; for a higher educational institution, it shall refer to the student enrollment expressed as the number of full time students; for K-12 educational institutions, each student shall be considered one (1) FTE; for public libraries, the census population served shall be deemed to be the number of FTEs.
International Standard Serial Number (ISSN)	A unique eight-digit standard number assigned by the International Serials Data System (ISDS) to identify a specific serial title. The ISSN is usually given in the masthead of each issue or on the copyright page of each volume or part of a series. When a continuing resource undergoes a title change, a new ISSN is assigned.
Journal	A Periodical devoted to disseminating original research and commentary on current developments in a specific discipline, sub-discipline, or field of study, usually published in quarterly, bimonthly, or monthly issues sold by subscription. Journal articles are usually written by the person (or persons) who conducted the research. Longer than most magazine articles, they almost always include a bibliography or list of works cited at the end. In Journals in the sciences and social sciences, an abstract usually precedes the text of the article, summarizing its content. Most scholarly Journals are peer-reviewed. Scholars often use a current contents service to keep abreast of the Journal literature in their fields of interest and specialization.
Library Database	A large catalog or index of organized information.

<b>Term</b>	<b>Definition</b>
Licensing Agreement	A formal written contract between a library and a vendor for the lease of one or more proprietary (copyrighted) bibliographic databases or online resources, usually for a fixed period of time in exchange for payment of an annual subscription fee or per-search charge. Vendors typically charge libraries on a sliding scale based on number of registered borrowers or FTE enrollment, number of institutions or facilities served, and number of simultaneous users.
List Price	The undiscounted price at which a new publication is offered for sale to the public, established by the publisher at the time the edition is issued. The List Price is quoted in the Publisher's catalog and printed on the front flap of the dust jacket in hardcover editions and usually on the back cover in softcover editions. Discounts offered to libraries, booksellers, and jobbers are computed as a percentage off List Price. In library cataloging, the List Price of an item is indicated (when available) in the standard number and terms of availability area of the bibliographic description (field 020 or 022 of the MARC record). Synonymous with published price, retail price, and sticker price.
Magazine	A popular interest Periodical usually containing articles on a variety of topics, written by various authors in a nonscholarly style. Most magazines are heavily illustrated, contain advertising, and are printed on glossy paper. Articles are usually short (less than five pages long), frequently unsigned, and do not include a bibliography or list of references for further reading. Most magazines are issued monthly or weekly for sale at newsstands, in bookstores, and by subscription.
Metadata Database	Information about data itself, including size, origination or other descriptors.
MWBE	A business certified with NYS Empire State Development (ESD) as a Minority and/or Women-owned Business Enterprise.
N/A	A common abbreviation for <i>not applicable</i> or <i>not available</i> , used to indicate when information in a certain field on a table is not provided, either because it does not apply to a particular case in question or because it is not available.
National Public Entities	Defined as State Governments, the Federal Government, Local Governments, cities, towns, school districts, libraries, police and fire departments, and other political subdivisions
Net Price	List Price less all applicable discounts or inclusive of Service Charges; the price paid by Authorized Users of the resultant Contract.
Newspaper	A Serial publication, usually printed on newsprint and issued daily, on certain days of the week, or weekly, containing news, editorial comment, regular columns, letters to the editor, cartoons, advertising, and other items of current and often local interest to a general readership.
NYS Vendor ID	Refers to the ten-character identifier issued by New York State when a vendor is registered on the Vendor File.
Numerical Data Database	This includes statistical and other numerical data.
Optional Products and Services	Refer to supplementary Products and services that enhance or support the provision of Serials and/or Database Access Products identified to be within scope. For example: under Lot 1 that may include things such as stamps; call numbers or routing label; bar-coding; security strips; processing of journals including affixing date and property; shipment consolidation, MARC (Machine Readable Cataloging) records and updates; and Serials management solutions; under Lot 2 that may include things such as Database Management Systems (DBMS), hard copy records, mailing labels, batching, and reporting.
Periodical	A Serial publication with its own distinctive title, containing a mix of articles, editorials, reviews, columns, short stories, poems, or other short works written

<b>Term</b>	<b>Definition</b>
	by more than one contributor, issued in softcover more than once, generally at regular stated intervals of less than a year, without prior decision as to when the final issue will appear. Although each issue is complete in itself, its relationship to preceding issues is indicated by enumeration, usually issue number and volume number printed on the front cover. Content is controlled by an editor or editorial board. Includes magazines, sold on subscription and at newsstands; journals, sold on subscription and/or distributed to members of scholarly societies and professional associations; and newsletters, but not proceedings or the other regular publications of corporate bodies as they relate primarily to meetings.
Procurement Services	Formerly known as NYSPRO or Procurement Services Group (PSG), Procurement Services shall mean a division of the New York State Office of General Services which is authorized by law to issue centralized, statewide Contracts for use by New York agencies, political subdivisions, schools, libraries and others authorized by law to participate in such Contracts.
Publication	Refers to a work capable of being read or otherwise perceived (e.g. book, audiorecording, videorecording, CD-ROM, etc.), issued by a Publisher for sale to the general public, usually in multiple copies and sometimes in multiple editions.
Publisher	A person or corporate entity that prepares and issues printed materials for public sale or distribution, normally on the basis of a legal contract in which the publisher is granted certain exclusive rights in exchange for assuming the financial risk of publication and agreeing to compensate the author, usually with a share of the profits.
Reseller	Any model for distribution of Product other than direct from the Contractor. Resellers include but are not limited to approved value added resellers (VARs), distributors, dealers, sales agents, and alternate channel partners.
Subject Specific Database	This includes information from academic or scholarly Journals and trade or professional publications.
Serial	Publication in any medium issued under the same title in a succession of discrete parts, usually numbered (or dated) and appearing at regular or irregular intervals with no predetermined conclusion. Serials may be purchased individually, in combination with other titles, or as large collections of titles (particularly when purchased electronically).
Server	Shall mean the computer system(s) on which Electronic Publications or Databases reside and through which End Users gain access to the Electronic Publications or Databases.
Service Charge	A fee charged by a Subscription Agent for filling orders for Periodical subscriptions, usually 5 to 10 percent of the total annual amount paid by the library for subscriptions.
Subscription Agent	A company in the business of providing centralized Serial subscription or Database Access services to Authorized Users such as libraries to relieve them of the time consuming task of dealing with Publishers individually.

In addition to the above definitions, the following terms are defined as follows regardless of whether they are or are not capitalized:

May	Denotes the permissive in a Contract clause or specification. Refers to items or information that the State has deemed are worthy of obtaining, but not required or obligatory. Also see "Should".
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Must	Denotes the imperative in a Contract clause or specification. Means required - being determinative/mandatory, as well as imperative. Also see “Shall” and “Mandatory”.
Shall	Denotes the imperative in a Contract clause or specification. Means required - being determinative/mandatory, as well as imperative. Also see “Must” and “Mandatory”.
Should	Denotes the permissive in a Contract clause or specification. Refers to items or information that the State has deemed are worthy of obtaining, but not required or obligatory. Also see “May”.

**SCOPE:**

These contracts are to provide Authorized Users with a means of acquiring Serials and Database Access Products and Services. There are a total of two (2) Lots: Lot 1 – Serials, and Lot 2 - Database Access.

Products for Lot 1 - Serials include, but may not be limited to:

1. Print Periodicals and Newspapers
2. Electronic Magazines and Journals
3. Annuals (reports, yearbooks, etc.)
4. Continuing directories
5. Proceedings and transactions
6. Numbered monographic series cataloged separately
7. Subscription based eBooks
8. Optional Products and Services, including but not limited to:
  - a. Stamps, call numbers or routing labels, bar-coding, and security strips
  - b. Processing of journals including affixing date and property
  - c. Shipment Consolidation
  - d. MARC (Machine Readable Cataloging) records and updates
  - e. Serials management solutions, such as:
    - (i) Link resolvers
    - (ii) A to Z lists
    - (iii) Information discovery tools
    - (iv) Subscription management tools
    - (v) Electronic resource management (ERM) tools

Products for Lot 2 – Database Access include, but may not be limited to:

1. Library Databases
2. Full Text Databases
3. Numeric Databases
4. Meta-Databases
5. General Interest Databases
6. Discipline Specific Databases
7. Subject Specific Databases
8. Streaming Video Databases
9. Database Files
10. Optional Products and services, including but not limited to:
  - a. Database Management Systems (DBMS)
  - b. Hard copy records
  - c. Mailing labels
  - d. Batching
  - e. Reporting

Exclusions: The following Products are not within scope:

1. Products currently offered under the OGS Books and Non-Print Library Materials and other Related Ancillary Services contract (Group 20060)
2. Products and services currently offered under the OGS E-Learning Training/Distance Services contract (Group 73016), which includes web-based, computer based, online and internet based training
3. Standalone Software unrelated to the provision of Serials or Database Access
4. Hardware of any kind
5. Database services offered under the Contract shall not allow the Contractor to access the personal, private, or confidential information of any Authorized User or End User

It is the Contractor's responsibility to ensure that only Products and services that meet the scope of the Contract are purchased through the Contract. Questions concerning items covered under the resultant Contract should be addressed to the OGS Procurement Services contract manager designated on the Contract Award Notification prior to accepting the order.

If a Contractor sells Products that are excluded under this Contract as set forth above, such Contractor's Contract may be suspended or terminated.



**LIST OF CONTRACTORS AND AWARDED LOTS**

**Please refer to each Contractor's Information page and Pricelist for more information.**

<b>Bidder</b>	<b>Lot 1 Serials</b>	<b>Lot 2 Database Access</b>
Prenax Inc. DBA basch Subscriptions	X	

**PROCUREMENT INSTRUCTIONS TO AUTHORIZED USERS:**

1. The Contracts resulting from this Solicitation will be centralized Contracts issued under a multiple award structure. Products offered under the Contracts, pricing, and other Contract information will be posted to the OGS website or the awarded Contractors' dedicated NYS websites. Authorized Users shall procure Products that best meet their form, function and utility requirements.
2. Before proceeding with a purchase, Authorized Users shall check the list of Preferred Source offerings. Authorized Users are reminded that they must comply with State Finance Law §162, which requires that agencies afford first priority to the commodities of Preferred Source suppliers such as Correctional Industries (Corcraft), NYS Preferred Source Program for People Who are Blind (NYSPSP), and NYS Industries for the Disabled (NYSID), when such commodities meet the form, function and utility of the Authorized User.
3. Where products are not available from Preferred Source suppliers in the form, function and utility required by the Authorized User, Authorized Users shall purchase from the centralized Contracts awarded under this Solicitation. The basis for selection among multiple contracts at the time of purchase shall be the most practical and economic alternative and shall be in the best interests of the State. Therefore, Authorized Users are strongly encouraged to obtain quotes from at least three (3) Contractors prior to issuing a purchase order, in order to ensure that the Authorized User is receiving the best possible pricing.
4. When placing Purchase Orders under the Contract(s), the Authorized User should be familiar with and follow the terms and conditions governing its use. The Authorized User is accountable and responsible for compliance with the requirements of public procurement processes. The Authorized User, when purchasing from OGS Contracts, should hold the Contractor accountable for Contract compliance and meeting the Contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, Authorized Users are encouraged to seek improved pricing whenever possible. Authorized Users have the responsibility to document purchases which should include:
  - statement of need and associated requirements;
  - obtaining all necessary prior approvals;
  - a summary of the Contract alternatives considered for the purchase; and
  - the reason(s) supporting the resulting purchase (e.g., show that basis for the selection among multiple Contracts at the time of purchase was the most practical and economical alternative and was in the best interests of the State).
5. Authorized Users will issue purchase orders directly to the Contractor or the Contractor's authorized Reseller (if applicable), as specified by the Contractor, and specifying any shipping/delivery requirements and/or statements of work for services (if applicable).
6. Upon Authorized User acceptance of Products itemized on the purchase order, Contractor will invoice Authorized User for any portion of Products accepted, and accordingly, Authorized User will arrange for payment. Contractor shall provide itemized invoicing for all Products.
7. ***Contractor must disclose any forms, "click through", "shrink wrap" or other pass-through or licensing/subscription terms and conditions or other order information that Contractor will attach to orders or require to be completed with Authorized User purchases. Documents which contain additional terms or conditions, such as library maintenance agreements or Licensing Agreements must receive pre-approval by the Authorized User prior to ordering Products and services. Any additional licensing terms agreed to by the***

*Authorized User shall not conflict with Appendix A, this Solicitation, any resultant Contract, or Appendix B. Any such conflicting terms shall be void and unenforceable.*

**PRICE:**

Price shall include all customs duties and charges and be net, F.O.B. destination to any point in New York State as designated by the Authorized User and shall include all transportation charges and inside delivery for print medium. Inside deliveries are to be delivered to the ordering Authorized User's stockroom or office location.

The Bidder's price should include all costs associated with selling the Product. No shipping charges are allowed EXCEPT on printed foreign publications shipped directly to the Authorized User from an address outside the 48 contiguous US states including the District of Columbia. Foreign shipping costs shall be prepaid by the Contractor and added to the invoice and all such orders shall be shipped on F.O.B. destination by the most economical method. There shall be no increase in Contract prices for freight, shipping, fuel or other surcharges, FPT (Freight Pass Through), etc. during the term of the Contract.

**FOR LOT 1 ONLY: Authorized Users may be charged additional fees charged by the Publishers which include licensing fees, platform fees etc. in excess of the base subscription fee. However, any additional fees shall only be those charges passed on by the Publishers and shall not include any additional fees charged by the Contractors for such services. The Contractor shall only charge fees based on List Prices charged by Publishers. The Authorized User must be notified of all such fees at the time of purchase. Fees that are not told to the Authorized User at the time of purchase shall be paid by the Contractor.**

Contractor's pricing information is included in the posted Pricelist linked from the Contractor Information page.

**PRICING BASED ON GSA PRICING:**

Authorized Users shall be entitled to all associated discounts enumerated in the GSA Supply Schedule (including, but not limited to discounts for additional sites and volume discounts), as well as any other pricing or discount terms as are expressly enumerated in this NYS Contract or GSA schedule, when calculating the Contract price.

GSA pricing incorporates a sum referred to as the "GSA Industrial Funding Fee (IFF)". Contract prices will be reduced by an amount equivalent to the IFF. The NYS Price will be calculated by reducing the published GSA price, after the discounts, if any, downward by the amount of the Industrial Funding Fee, currently set at .75%.

**VOLUME DISCOUNTS:**

Contractor may offer volume discounts using the thresholds listed on each Contractor's Information Page.

**PREPAYMENT PLAN DISCOUNTS:**

Contractor may offer Prepayment Plan Discounts using the thresholds listed on each Contractor's Information Page.

**PROMPT PAYMENT DISCOUNTS:**

Contractor may offer prompt payment discounts at the transaction level. Please refer to the Contractor's Information Page.

**CENTRALIZED CONTRACT MODIFICATION:**

1. OGS, an Authorized User, or the Contractor may suggest modifications to the Centralized Contract or its Appendices. Except as specifically provided herein, modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the Parties. Modifications may take the form of an update or an amendment. "Updates" are changes that do not require a change to the established Centralized Contract terms and conditions. A request to add new Products at the same or better price level is an example of an update. "Amendments" are any changes that are not specifically covered by the terms and conditions of the Centralized Contract, but inclusion is found to be in the best interest of the State. A request to change a contractual term and condition is an example of an amendment.

2. Updates to the Centralized Contract and the Appendices may be made in accordance with the contractual terms and conditions to incorporate new products or services, make price level revisions, delete Products or services, or to make such other updates to the established Centralized Contract terms and conditions, not resulting in a change to such terms and conditions, which are deemed to be in the best interest of the State.
3. OGS reserves the right to consider modifications which are not specifically covered by the terms of the Centralized Contract, but are judged to be in the best interest of the State. Such modifications are deemed amendments to the Centralized Contract and may require negotiations between Contractor and OGS before execution.
4. All modifications proposed by Contractor, shall be processed in accordance with Appendix C, Contract Modification Procedure. The Contractor shall submit all requests in the form and format contained in Appendix C, Contract Modification Procedure. The form contained within Appendix C is subject to change at the sole discretion of OGS.
5. Modifications proposed by OGS or an Authorized User, including updates and amendments, shall be processed in accordance with the terms of the Centralized Contract and Appendix B, §26, *Modification of Contract Terms*.

**CONTRACT PRICELIST UPDATE PROCEDURES:**

The procedures below outline how Contract pricelist updates will be handled under this Contract. If awarded more than one Lot, Contractor shall submit pricelist updates for each Lot simultaneously pursuant to the requirements of this section. NOTE: THE FOLLOWING PROCEDURES ARE NOT APPLICABLE TO CONTRACTOR PROPOSED CHANGES TO CONTRACT TERMS AND CONDITIONS. Any implied or express request for changes in or additions to existing Contract terms and conditions, including new terms and conditions associated with a specific product line being added to the Contract for the first time, requires a formal Contract amendment and requires the approval of OGS. New or revised Contract terms and conditions are subject to the restrictions set forth in Appendix B, §26, *Modification of Contract Terms*.

**Lot 1 - Serials Pricelist Updates****Adding and Deleting Item Categories (Other than Optional Products and Services)**

1. No decrease in discounts: The Bidder's discount may increase at any time, but shall not decrease during the term of the Contract. Service Charges bid may decrease at any time, but shall not increase during the term of the Contract.
2. Adding or Deleting Item Categories: Bidder may add or delete Item Categories to its Price List pursuant to this Section and at the discretion of OGS. Any new Item Categories added to the Contract shall be subject to a reasonableness of price review pursuant to Section 5.3, *Reasonableness of Price*, of the Solicitation.
3. First Year: In the first year of the Contract, the Contractor shall be allowed to update the pricelist once to add/delete Item Categories.
4. Subsequent Years: Commencing with the second year of the Contract, the Contractor may add or delete Item Categories within thirty (30) calendar days after the anniversary date of the Contract. The thirty (30) calendar days includes the anniversary date of the Contract.

**Optional Products and Services**

1. Adding or deleting Optional Products and Services: Bidder may add or delete Optional Product and Services offerings pursuant to this section and at the discretion of OGS. Any new Optional Products and Services offered shall be subject to a reasonableness of price review pursuant to Section 5.3, *Reasonableness of Price*.
2. First Year: In the first year of the Contract, the Contractor shall be allowed to update the pricelist once to add or delete Optional Products and Services.

3. Subsequent Years: Commencing with the second year of the Contract, the Contractor may add or delete Optional Products and Services within thirty (30) calendar days after the anniversary date of the Contract. The thirty (30) calendar days includes the anniversary date of the Contract.

**Price Adjustments for Lot 1 Optional Products and Services**

All prices for Optional Products and Services may be adjusted annually following the first year of the Contract on the basis of the Not Seasonally Adjusted Consumer Price Index – All Urban Consumers, U.S. City Average, All Items Less Food, Series ID: CUUR0000SA0L1, published monthly by the US Department of Labor Bureau of Labor Statistics. There shall be no price adjustments during the first year of the Contract. The adjustment shall be established as follows. Following the first year of the Contract and annually thereafter, the Contractor may make a formal request for a price adjustment in the succeeding Contract year. This request must be made in writing to the contract manager identified on the front page of the resultant Contract Award Notification; thirty (30) calendar days after the anniversary date of the Contract. The thirty (30) calendar days includes the anniversary date of the Contract. If the Contractor fails to submit a written request, he/she forfeits its opportunity to receive a price adjustment in the succeeding Contract year.

Price adjustments for monetary amounts for Optional Products and Services shall begin with the second year of the start date of the Contract and annually thereafter. The adjustment shall be based on the percentage of increase or decrease in the above referenced index in the preceding twelve months ending three months prior to the effective date of the adjustments. In no case shall price increases exceed five percent (5%) annually. All adjusted prices will be rounded up or down to the nearest whole cent. The Office of General Services shall notify all parties of the price adjustments through the issuance of written notification by the Procurement Services.

Below is an example calculation. Values used are for illustrative purposes only.

CPI for current period	193.676
Less CPI for previous period	188.326
Equals Index point change	5.350
Divided by previous period CPI	188.326
Equals	0.028
Result multiplied by 100	0.028 x 100
Equals percent change	2.8

Should the referenced CPI become discontinued during the course of the contract, it will be replaced by the Not Seasonally Adjusted Consumer Price Index – All Urban Consumers, U.S. City Average, All Items, Series Id: CUUR0000SA0, and adjustments will be calculated based on the same methodology as outlined above, but with data from the new replacement index.

**Submitting Price List Changes**

Contractor is required to submit Contract pricelist updates electronically in an unprotected Microsoft Excel (2013 or lower version) spreadsheet either on CD or via e-mail to the OGS Procurement Services contract manager. The pricelist must be dated and the format shall be consistent with the format of the Contractor's approved Contract pricelist. The pricelist shall separately include and identify (e.g., by use of separate worksheets or by using highlighting, italics, bold and/or color fonts) Item Categories added/deleted; Optional Products and Services added/deleted; and any price increases/decreases.

Contractors shall submit their updated Contract pricelist to the OGS Procurement Services contract manager pursuant to the requirements of this section for review and written approval prior to issuing to Authorized Users. All approved pricelist updates shall apply prospectively upon approval by OGS. Any request for a pricelist update not received in accordance with this section shall be deemed denied.

**Lot 2 – Database Access Pricelist Updates**

1. **General:** Any new Products or services added to the Contract shall be subject to a reasonableness of price review. The Bidder's discount may increase at any time, but shall not decrease during the term of the Contract.
2. **First Year:** In the first year of the Contract, the Contractor shall be allowed to update the pricelist once to add/delete Products or services as established by the Contractor in their normal course of business. There shall be no price increases allowed for existing Products or services during the first year of the Contract.
3. **Subsequent Years:** Commencing with the second year of the Contract, the Contractor may update the pricelist annually to reflect Contractor price changes and the addition/deletion of Products and services as established by the Contractor in their normal course of business; thirty (30) calendar days after the anniversary date of the Contract. The thirty (30) calendar days includes the anniversary date of the Contract.

In a single year of the Contract the total request for price increases shall not exceed the lesser of:

1. three (3%) percent annually, or
2. the percent increase in the latest available National Consumer Price Index - All Urban Consumers (CPI-U), Not Seasonally Adjusted, U.S. City Average, All Items (Series Id: CUUR0000SA0,CUUS0000SA0); as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 2012. CPI-U data may be obtained at [www.bls.gov](http://www.bls.gov).

The following example illustrates the computation of percent change:

CPI for current period	230.000
Less CPI for previous period	225.000
Equals index point change	5.000
Divided by previous period CPI	225.000
Equals	0.022
Result multiplied by 100	0.022 x 100
Equals percent change	2.2

The "CPI for current period" shall be the index in effect at the time the Contract pricelist update request is received; "CPI for previous period" shall be the index in effect when the Contract pricelist was last updated.

Contractor is required to submit Contract pricelist updates electronically in an unprotected Microsoft Excel (2013 or lower version) spreadsheet either on CD or via e-mail to the OGS Procurement Services contract manager. The pricelist must be dated and the format shall be consistent with the format of the Contractor's approved Contract pricelist. The pricelist shall separately include and identify (e.g., by use of separate worksheets or by using highlighting, italics, bold and/or color fonts) Products and services being added/deleted and any price increases/decreases.

In connection with any Contract pricelist update, OGS reserves the right to request additional information; reject Contract updates; remove Products and services from Contracts; remove Products and services from Contract updates; and request additional discounts for new or existing Products and services.

**PERFORMANCE REQUIREMENTS – LOT 1 – SERIALS:****Orders, Renewals, and Cancellations**

1. The Authorized User may specify that the subscription begin with current issue, first issue of the current volume, first issue of the current year, or first issue of the next volume. Subscriptions shall begin on the effective date specified on the purchase order.
2. The Contractor shall notify the Authorized User as soon as possible but no later than thirty (30) calendar days if unable to supply a new order. Contractor shall also provide a reasonable explanation in writing for non-fulfillment.
3. The Contractor shall provide address, publication, merger, and title change services, etc.

4. The Contractor shall make arrangements with publishers for all regularly purchased subscription orders and renewals within sufficient time to avoid any interruption in receipt of issues.
5. The Contractor shall cancel subscriptions as requested by the Authorized User and shall issue a credit if allowed by the publisher.
6. The Contractor shall provide pro-rated refunds or substituted titles for titles which cease publication prior to expiration if provided by the publisher. OGS reserves the right to resolve any issues that may arise between an Authorized User and the Contractor with regards to refunds or substituted titles.
7. The Contractor shall provide a common expiration date for subscriptions (if requested by the Authorized User) unless prohibited by the publisher.
8. At the Authorized User's request the Contractor shall renew subscriptions automatically on a date selected by the Authorized User; or at the option of the Authorized User, shall provide a list of titles to be renewed by the Contractor for the Authorized User's approval prior to the issuance of the annual renewal invoice. Authorized User may change automatic renewal status at any time and for no additional charge.
9. The Contractor may provide two, or three-year renewal periods, but must at a minimum offer a one-year renewal period.
10. The Contractor may enter orders for back files, special issues, supplements, extra volumes, and cumulative indexes, if requested to do so by the Authorized User.
11. All orders, renewals, and cancellations between the Contractor and the Authorized User shall be in writing, or shall be electronically transmitted.
12. In lieu of individual order forms, Contractor shall be able to accept a purchase or letter order to which is appended a list of titles.

**Invoicing and Payments**

1. The Contractor may offer an early prepayment discount. Annually, the Contractor shall specify the percentages of discount offered and the deadlines for early payment. Subscriptions may be prepaid for up to three years for Authorized Users legally empowered to make advance payments.
2. The Contractor shall provide annual renewal invoice(s) and indicate if such invoices are available electronically.
3. The Contractor shall provide supplemental invoices for "bill as" published titles, for "bill later" titles, for new orders, etc., based on agreement with Authorized User.
4. The Contractor shall provide up to three copies of all invoices if requested by an Authorized User.
5. All invoices shall provide the following information or other "identifier," if applicable:
  - a. Name, address and Federal Identification Number of Contractor.
  - b. Authorized User address and account number.
  - c. Invoice date and number.
  - d. Purchase order number.
  - e. Contract number.
  - f. Titles listed in alphabetical order or in an order specified by Authorized User.
  - g. International Standard Serial Numbers (ISSNs).
  - h. Price for each subscription period.
  - i. Subscription period.
  - j. Description, quantity, unit price and extended price of all items.
  - k. Information indicating if charge is an added optional service charge. An explanation is required.
  - l. The discount or Service Charge, as requested by the Authorized User, on a line-by-line basis.
6. Increases in subscription price shall be allowed if correction in cost is required due to publisher's change in price.
7. Decreases in subscription price shall be refunded or credited, as specified, to the Authorized User promptly.
8. The Contractor shall, upon request from the Authorized User, provide proof of Publisher List Prices and increases or decreases in Publisher List Prices for specific titles.
9. Additional fees which are passed on by the publishers, e.g. licensing fees, shall be listed separately on invoices.

**Optional**

If available and/or possible, Contractor to advise Authorized Users if the following may be provided:

1. Authorized User fund code.
2. Information indicating if charge is for a renewal or new order.
3. Information identifying “bill later” or “bill as” published titles.
4. On supplemental invoices, the original invoice number.
5. Availability of title in electronic format.
6. Customized Invoicing

**Claims**

1. The Contractor shall be responsible for claiming all issues reported as not received or received damaged or defective by the Authorized User.
2. The Contractor shall promptly process claim notices in a timely manner not to exceed the claim period permitted by the Publisher.
3. The Contractor shall provide claim reports no less frequently than bimonthly.
4. Claim reports shall provide the following information:
  - a. Date of claim report.
  - b. Title(s) being claimed.
  - c. Issue(s) being claimed.
  - d. Date(s) of prior claim(s).
  - e. Publisher's response, if any.
5. The Contractor may accept and respond to claims by U.S. mail, facsimile, electronic mail, courier service, or online.

**Conversion to New Contractor by Authorized Users**

1. Renewal orders requested by Authorized Users shall be placed at least two months before expiration of current subscriptions.
2. If an interruption in service results from a change in a Contractor, any issues not received shall be obtained by the Contractor who received payment for that period at no additional cost to the Authorized User. Delivery to the Authorized User shall be made by the original Contract delivery and at no extra cost to the Authorized User.
3. If duplicate issues are received as a result of change in Contractors and the Publisher required their return, the Contractor shall be responsible for resolving the problem and shall absorb any associated costs.

**Reports**

1. The Contractor may send the Authorized User a monthly statement showing the date and amount of each outstanding invoice and credit memorandum.
2. The Contractor shall notify the Authorized User of title changes and discontinued titles and provide information on titles that are slow, delayed, or irregular, either as they occur or on a monthly basis.
3. At the Authorized User's request the Contractor shall provide a printed customized list of titles arranged alphabetically or according to specifications defined by the Authorized User.
4. Upon request, the Contractor may be required to provide the Authorized User with a price analysis report showing a 1-3 year Publisher List Price comparison of titles ordered. This report can be arranged by title, country of publication, or by codes defined by the Authorized User.
5. If available, Contractor may provide an industry-wide summary of statistical data and analyses.
6. Upon request, the Contractor shall provide a report showing changes in Publisher subscription periods, quantities ordered, and publishers' new requirements.
7. All reports between the Contractor and the Authorized User shall be in writing, and may be electronically transmitted.

**Licensing Terms and Conditions for Electronic Publication****Authorized User Access to Electronic Publications**

1. Access: Access to the Electronic Publications by Authorized Users shall be either via electronic media or the Internet. If access is provided via the Internet, the Contractor shall ensure that the Electronic Publications are highly stable and usable (including average response time of less than 5 seconds, and uptime, except for scheduled maintenance, of 96.9%), and shall ensure that the Web server(s) is (are) fully capable of serving Authorized Users. Access shall be controlled by Internet Protocol (IP) addresses, passwords or other appropriate authentication technology.
2. If the license rights are based on a named user model, an Authorized User will prepare and submit to the Contractor a list of End Users that shall include name, address, and contact information.
3. License Scope: The Contractor and the State agree that the license for the Electronic Publications shall be governed as set forth below:
  - a. Authorized User is granted a non-exclusive, transferable, term license to access and use the electronic publications in accordance with this Contract. The license term for the Electronic Publications license shall commence upon the license effective date.
  - b. It shall be the obligation of the Authorized User to review and comply with the terms and conditions of the License Agreement if one is required by the publisher to use the Electronic Publication or electronic content to the extent that they do not conflict with the terms of Appendix A, Appendix B, this Solicitation or any resultant Contract.
  - c. Permitted License Transfers: As Authorized User's business operations may be altered, expanded or diminished, Electronic Publication licenses may be transferred or combined for use at an alternative or consolidated site not originally specified in the license, including transfers between Authorized Users and/or their End Users ("permitted license transfers"). Contractor shall have the discretion to issue new login credentials when a license transfer takes place.
  - d. Concurrent Use License: Where licensing of Electronic Publications is based upon "Concurrent Users," Contractor hereby grants license rights to the specified number of Concurrent Users actually executing the licensed programs, without reference to location or named End Users (hereinafter "Concurrent Users").

**Contractor's Performance Obligations**

1. The Contractor will provide and maintain help files and other appropriate user documentation for the Electronic Publications to be accessible to all Authorized Users free of charge.
2. The Contractor will offer reasonable levels of continuing support to assist Authorized Users and their End Users in their use of the Products. Contractor will make its personnel available by email, phone or fax during regular Business Days.

**Authorized User Performance Obligations**

Authorized Users acknowledge that the copyright and title to the information content and organization of the Electronic Publications are and remain with the publisher. Authorized User shall use reasonable efforts to inform its End Users and walk-in patrons of any restrictions on the use of the Electronic Publications. Authorized User shall use reasonable efforts to protect the Electronic Publications from any use that is not permitted under this agreement. Authorized Users and/or End users may make all use of the Electronic Publications as is consistent with the Fair Use Provisions of United States and international copyright laws and the Bidder's/Contractor's terms and conditions for use of its online services, provided that they do not conflict with the terms of Appendix A, this Solicitation or any resultant Contract, or Appendix B,. In addition, the Electronic Publications may be used as follows:

1. Authorized Users and End Users may display, download, copy and/or print portions of the Electronic Publications for use in research, education, or other non-commercial purposes.
2. Authorized Users and End Users may use a reasonable portion of the Electronic Publications in the preparation of educational materials.



3. Authorized Users may fulfill occasional requests from other institutions, a practice commonly called Interlibrary Loan. Authorized Users agrees to maintain records respecting End User's use of materials in such Interlibrary Loan and to provide such records to the Contractor upon request.

**Specific Restrictions on Use of Electronic Publications**

Authorized User may not utilize the Electronic Publications for commercial purposes, including but not limited to the sale of the Electronic Publications, fee-for-service use of the Electronic Publications, or bulk reproduction or distribution of the Electronic Publications in any form; nor may Authorized User impose special charges for use of the Electronic Publications beyond reasonable printing or administrative costs.

**Licensing Terms and Conditions**

Bidders are advised to review all terms and conditions carefully; particularly the licensing terms and conditions for Electronic Publications. If license agreement, shrink-wrap or click wrap agreements are associated with Electronic Publications, it is the responsibility of the potential Bidder/Contractor to offer only those Serials in electronic format that satisfy the license terms and conditions of the Solicitation. License terms that conflict with the terms of Appendix A, Appendix B, this Solicitation or any resultant Contract shall not be enforceable.

**PERFORMANCE REQUIREMENTS – LOT 2 – DATABASE ACCESS:****System Availability**

Databases shall be functional at least 99% of the time.

**Scheduled Maintenance**

Contractor must notify Authorized Users at least 48 hours prior to scheduled maintenance that interrupts End User access to Databases. OGS requests that scheduled maintenance **NOT** be performed during normal Business Days.

**RSS Feeds**

Contractors shall indicate on their Pricelist if RSS Feeds are allowed, and if so, if they are included in the price of the resource.

**CONTRACT PERIOD AND RENEWAL:**

The Contract(s) shall commence after all necessary approvals by both parties, and shall become effective upon mailing of the final Contract Award Notice by OGS (see Appendix B, §22, Contract Creation/Execution). The Contract(s) shall be in effect for five (5) years beginning on the date of approval of the first contract awarded as a result of the IFB, and shall end conterminously five (5) years from the approval of the first contract awarded as a result of the IFB. If mutually agreed between OGS and the Contractor, the Contract may be renewed under the same terms and conditions for up to two (2) additional years. Discount reduction will not be allowed and is specifically excluded from the terms and conditions of the Invitation for Bid and resultant Contract. Price decreases or discount increases are permitted at any time.

**SHORT TERM EXTENSION:**

In the event a replacement Contract has not been issued, any Contract let and awarded hereunder by the State, may be extended unilaterally by the State for an additional period of up to one (1) month upon notice to the Contractor with the same terms and conditions as the original Contract including, but not limited to, quantities (prorated for such one month extension), prices, and delivery requirements. With the concurrence of the Contractor, the extension may be for a period of up to three (3) months in lieu of one (1) month. However, this extension terminates should a replacement Contract be issued in the interim.

**PERIODIC RECRUITMENT:**

The State reserves the right to add Contractors beginning in the second year of the Contract and at one year intervals thereafter. The State will formally announce when the bid is reissued, at the discretion of the State. Bidders shall be required to submit such Bid documentation as required by OGS, which may include additional applicable statutory requirements currently in effect at the time of the new Bid solicitation. Once awarded a Contract, a Contractor may

not resubmit a Bid for future consideration. In addition, if a Bid is deemed non-responsive or is rejected under periodic recruitment, a Bidder cannot reapply for a future Contract until the next periodic recruitment period. For Contracts that are awarded under periodic recruitment, the Contract term will commence upon OGS approval in accordance with §22, *Contract Creation/Execution* of Appendix B and will terminate on the then current end date of the Contract or at the end of any approved extension or renewal period.

Bidders shall be required to submit this original bid document which may include additional applicable statutory requirements currently in effect at the time of the new bid solicitation. Bidders are advised to review the "Qualification of Bidders" clause before submitting a bid under periodic recruitment to ensure they can meet all bid requirements.

**CONTRACT ADVERTISING:**

In addition to the requirements set forth in Appendix B §21, *Contract Publicity*, any Contractor advertisements, promotional literature and/or Contract description(s) of Contract awards must be reviewed and approved by Procurement Services prior to issuance.

**MINIMUM ORDER:**

There is no minimum order requirement.

**NEW YORK STATE PURCHASING CARD:**

See "Purchasing Card" in Appendix B, §15, *Purchasing Card*. Contractors indicated on their Contractor's Information Page if they will accept the NYS Purchasing Card for orders not to exceed \$85,000. For all purchases executed using a New York State Purchasing Card, Contractor shall provide an itemized receipt with each delivery. Contractor shall state the discount offered when using the NYS Purchasing Card on each Contractor's Information page.

**CONTRACT ORDERS:**

Contractor shall be capable of accepting orders manually, via facsimile, and, electronically via email. As an option, Contractor may also accept orders electronically via the Internet through a web-based ordering system. Contractor shall be required to provide written quotes to Authorized Users who request them prior to placing an order, which quote details the SKU corresponding with the approved product list, List Price, discount, and Net Price, as applicable.

The web-based ordering system, if offered, shall allow Authorized Users to enter orders and have full order inquiry capabilities. All orders (manual, fax, electronic) shall reference requisition and/or purchase order number as required. If offering a web-based ordering system, the Bidder represents and warrants that it is the sole owner of the software product used for its ordering system, or, if not the owner, has received all proper authorizations from the owner to license the software product, and has the full right and power to grant the rights contained in any Contract resulting from this Invitation for Bids and as described further in Appendix B. Bidder further warrants and represents that the software product is of original development, and/or that the package and its use will not violate or infringe upon any patent, copyright, trade secret or other property right of any other person/company.

The web-based ordering system\*, if offered, shall be capable of processing, controlling, documenting, and reporting on the following minimum data elements:

- Contractor Name and Address
- Agency/Facility/Political Subdivision, etc.
- Contract Number
- Purchase Order/Requisition Numbers
- Contact (individual placing order)
- SKU/PN & Product Description
- Net Price
- Extended and Total Amounts

\*Comparable systems meeting the intent of the specifications may be considered.

If offering a web-based ordering system, the Contractor shall provide any necessary software (excluding communication software) and training guides/manuals or online support in the use of the web-based ordering system at no additional cost to all Authorized Users capable of placing orders electronically. Samples of software and training guides/manuals may be required. If requested, Bidder must demonstrate its system at an Albany, NY area location designated by the State.

#### INTERNET WEBSITES:

The State encourages successful Bidders to provide a designated NYS Contract website for Authorized Users' direct access. This website will be listed under the Contractor information. The purpose of a dedicated website is to provide Authorized Users with access to Contract pricing and Product offerings and the option of online ordering. It is the Contractor's responsibility to ensure that Contract and related information is accurately and completely posted, maintained and displayed in an objective and timely manner which renders it clearly distinguishable from other, non-contract offerings at Contractor's web site. Changes in Products or pricing must be approved by the Office of General Services, Procurement Services in accordance with any terms included in this Solicitation and resultant Contract prior to addition to the website. Hard copy catalog and pricelists, either in paper format or electronic format, must be available to all Authorized Users who either do not have Internet access or prefer the optional format.

#### PURCHASE ORDERS AND INVOICING:

All Purchase Orders and invoices shall include the Contract number and a line by line listing of separate charges. Order confirmation shall mean that the Contractor has received the purchase order, has reviewed it for compatibility with the Item currently on Contract, has resolved any non-compatibility problems with the Authorized User, and has entered the order, assigned an order number with anticipated delivery date.

##### **Purchase Orders**

Purchase orders are to include the following information:

1. Contract number
2. Contractor name
3. ISSN and Product/service description
4. Net Price

##### **Invoices**

Authorized Users are instructed not to process invoices that do not include the required information set forth below. Invoices must be detailed and include in the body of the invoice or an attachment to the invoice **all** of the following items. Failure to comply may result in lengthy payment delays. Original invoices must follow the billing instructions contained in the purchase order. **Invoices shall include, at a minimum, the following information:**

1. Contract number
2. Contractor name
3. NYS Vendor Identification Number
4. Purchase Order number
5. ISSN and Product/service description
6. Line item breakdown of all charges to include Net Price of each Product/service

Note that additional information is required for invoices for Lot 1 – Serials Products in accordance with Section *Performance Requirements – Lot 1 - Serials*.

Business units or branch offices within an Authorized User may require separate invoicing as specified by each Authorized User. The Contractor's billing system must be flexible enough to meet the needs of varying accounting systems in use by different Authorized Users.

#### SOFTWARE:

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Software offered must be in a format that does not require any conversion by the Authorized User and shall:

1. be available as part of the Contractor's standard commercial offerings; and
2. be directly related to the operational function of the Products offered under the contract.

Any Software currently on the NYS Miscellaneous Software Catalog contract Prohibited List is excluded from purchase under this Contract, except when the Software is pre-loaded on equipment at the time of purchase. The Prohibited List may be accessed on the OGS website:

<http://www.ogs.ny.gov/purchase/snt/awardnotes/79518Prohibited.pdf>.

#### RELATED THIRD PARTY PRODUCTS:

Third Party Products which meet and comply with all of the following criteria may be authorized for sale under this Contract:

1. The Third Party Product is available as part of the Contractor's standard commercial offerings.
1. The Third Party Product fits the scope of and is directly related to the operation of Products that fit the scope of the Contract.
2. If the Third Party Product is available on another NYS Contract, such item will only be approved for inclusion on this Contract in accordance with Section titled, *Overlapping Contract Items*. If the Third Party Product is not available on another NYS Contract, then price reasonableness must be established in order for such item to be added to the Contract.

#### USE OF RESELLERS/DISTRIBUTORS/ALTERNATE CHANNEL PARTNERS:

Contractor must provide service, sales and support staff to service Authorized Users geographically located at multiple purchasing locations throughout New York State. Contractor shall ensure that sufficient resources are available directly, or through authorized Resellers to ensure maximum service capability throughout the State. The State agrees to permit Contractor to utilize approved, designated value added resellers (VARs), distributors, dealers, and sales agents to participate as alternate channel partners (collectively referred to as "Resellers") for Contractor. Such participation is subject to the following conditions:

1. Designation of Reseller(s): Contractor shall specify whether orders must be placed directly with Contractor, or may be placed directly with designated Reseller(s). When Reseller(s) are submitted for approval, Contractor must provide the State, in advance, with all necessary ordering information, billing addresses, Federal Identification Numbers, and NYS Vendor Identification Numbers in the format requested in Reseller Directory. Failure to accurately provide all required information may result in processing delays.
2. Conditions of Participation: Reseller(s) must be approved in advance by the State as a condition of eligibility under the Contract. The State also reserves the right to rescind any such participation or request that Contractor name additional Resellers, in the best interests of the State, at the State's sole discretion, at any time.  
Contractor shall have the right to qualify Reseller(s) and their participation as fulfillment agents under this Contract by product line, contracting program (e.g., government/educational sales), geographic region, size/sales volume, technical training or other criteria ("qualifying criteria"), provided that: i) such qualifying criteria are uniformly applied to all potential Resellers based upon Contractor's established, neutrally applied commercial/governmental program criteria, and not to a particular procurement; ii) all general categories of qualifying criteria must be disclosed by the Contractor to the State, in advance, at the beginning of the Contract term; iii) those qualifying criteria met by the Reseller must be identified on the form provided in Reseller Directory at the time that Reseller approval is requested under this paragraph; and iv) immediate advance notice is provided to OGS in the event that a change in Reseller's status occurs during the Contract term.
3. All Resellers who have been approved in accordance with the foregoing paragraph shall be eligible to quote lower than Contract pricing for procurements under this Contract which meet their qualifying criteria. Except as otherwise set forth in Reseller Directory, Contractor warrants and represents that it shall not, directly or indirectly, by agreement, communication or any other means, restrict any Reseller's participation or ability to quote a particular order. Reseller Directory updates will be allowed no more than twice annually. On the first business day of the month following the sixth and twelfth months of each contract year, Contractors shall be given an opportunity to submit revised Reseller Directories electronically. When submitting Reseller Directory

updates, Contractors shall be required to separately specify additions, deletions, and/or any other changes to the directory in an accompanying communication submitted with the request in order to facilitate a more expeditious review; failure to do so may result in the rejection of the request.

4. Responsibility for Reporting/Performance: Contractor shall be fully liable for Reseller(s)' performance and compliance with all Contract terms and conditions. Product purchased through Reseller(s) must be reported by Contractor in the required monthly reports to the State as a condition of payment. In addition to inclusion of Reseller(s) volume in the Contractor's monthly reporting obligation to the State, at the request of Authorized User, Reseller(s) shall provide Authorized User with quarterly reports of the individual Authorized User's Contract activity with Reseller.
5. Applicability of Contract Terms: Product ordered directly through Reseller(s) shall be limited to Products currently approved for inclusion under this Contract and shall be subject to all terms and conditions of this Contract as a condition of Reseller participation.

#### **CANCELLATION OF PURCHASE ORDERS:**

Cancellation of orders in part or whole for unavailable Products shall be made by means of appropriate notations and adjustments on orders returned by Contractor to the Authorized User. Contractors shall make no shipments of canceled Products except on the basis of a new order. Products not supplied by the Contractor may be purchased from any other Contract source.

#### **CONTRACT PAYMENTS:**

Payments cannot be processed by Authorized Users until the items have been delivered and accepted. Payment will be based on any invoice used in the Contractor's normal course of business. However, such invoice must contain all requirements in Section *Purchase Orders and Invoicing*.

#### **CONTRACT ADMINISTRATOR:**

Contractor must provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Contractor must notify OGS within five (5) Business Days if its Contract Administrator changes, and provide an interim contact person until the position is filled. Changes to Contractor contact information, including the designation of a new Contract Administrator, shall be submitted electronically via e-mail to the OGS Contract Management Specialist.

#### **TOLL-FREE NUMBER/AUTHORIZED USER ASSISTANCE:**

A Bidder must provide a toll-free telephone number for the Authorized User assistance under any Contract or purchase order resulting from this Solicitation. Bidder must staff this toll-free number at a minimum from 8:00 a.m. to 5:00 p.m. ET Monday through Friday, excluding NYS holidays. If Bidder does not currently maintain a toll-free number, the Bidder must be willing to establish one prior to award of Contract. Bidders may also offer online assistance, such as email or chat assistance.

#### **INSURANCE REQUIREMENTS:**

The Contractor shall with the Insurance Requirements of the bid solicitation. Within thirty (30) days after renewal or replacement of any policy required by any Contract resulting from this solicitation, or within three (3) business days of request, Bidders and Contractors shall supply OGS with updated replacement Certificates of Insurance, and amendatory endorsements.

#### **REPORT OF CONTRACT SALES:**

Contractor shall furnish a report semiannually of all Products purchased under the Contract during each semiannual period, no later than the 15th of the month following the close of each six month period. Purchases by Non-state agencies, political subdivisions and others authorized by law shall be reported in the same report and indicated as required. If resellers are utilized, the Contractor shall be responsible for consolidating all contract purchases into a single report. A template for such report is included in Attachment 9 - *Report of Contract Sales*. All fields of information shall be accurate and complete. The report is to be submitted electronically via electronic mail utilizing

the template provided in Microsoft Excel 2013, or lower version (or as otherwise directed by OGS), to the attention of the OGS contract manager and shall reference the Group Number, Award Number, Contract Number, and Sales Period. OGS reserves the right to amend the report template during the Contract term.

Contractor shall specify if any resellers are NYS Certified Minority and/or Women-Owned Business Enterprises (MWBEs) within the Report of Contract Sales document. Contractor shall refer to Section *Contractor Requirements and Procedures for Business Participation Opportunities for New York State Certified Minority and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women* for information on how to verify certified status.

#### AUTHORIZED USER SALES REPORT:

Upon written request by an Authorized User, the Contractor shall furnish to such Authorized User, on a monthly basis, a report listing the following: name of products purchased, quantity purchased, unit price and total dollar volume of purchases.

#### CONTRACTOR REQUIREMENTS AND PROCEDURES FOR EQUAL EMPLOYMENT AND BUSINESS PARTICIPATION OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND NEW YORK STATE CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES:

##### **Policy Statement**

The New York State Office of General Services (“OGS”), as part of its responsibility, recognizes the need to promote the employment of minority group members and women and to ensure that certified minority- and women-owned business enterprises have opportunities for maximum feasible participation in the performance of OGS contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority- and women-owned business enterprises had a full and fair opportunity to participate in State contracting. The findings of the study were published on April 29, 2010, under the title “The State of Minority- and Women-Owned Business Enterprises: Evidence from New York” (the “Disparity Study”). The Disparity Study found evidence of statistically significant disparities between the level of participation of minority- and women-owned business enterprises in State procurement contracting versus the number of minority- and women-owned business enterprises that were ready, willing and able to participate in State procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the Statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that OGS establish goals for maximum feasible participation of New York State certified minority- and women-owned business enterprises (“MWBE”) and the employment of minority groups members and women in the performance of New York State contracts.

##### **General Provisions**

OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.

The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State certified minority- and women-owned business enterprises (“MWBEs”). Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, State or local laws.

The Contractor further agrees to be bound by the provisions of Article 15-A and the MWBE Regulations. If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.

Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility, breach of contract, withholding of funds, suspension or termination of the Contract and/or such other actions or enforcement proceedings as allowed by the Contract.

#### **Equal Employment Opportunity (EEO)**

Contractor shall comply with the provisions of Article 15-A set forth below. These provisions apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000, for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting State agency (the “Work”) except where the Work is for the beneficial use of the Contractor.

1. Contractor and subcontractors shall undertake or continue existing EEO 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, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate or distinct from the Contract; or (ii) employment outside New York State.
2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor’s equal employment opportunity policy.

#### **Form EEO 100 – Staffing Plan**

To ensure compliance with this section, the Contractor agrees to submit or has submitted with the Bid a staffing plan on Form EEO 100 to OGS to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.

#### **Form EEO - 101 - Workforce Utilization Reporting Form (Commodities and Services) (“Form EEO-101-Commodities and Services”)**

The Contractor shall submit, and shall require each of its subcontractors to submit, a Form EEO-101-Commodities and Services to OGS to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Form EEO-101-Commodities and Services must be submitted electronically to OGS at [EEO\\_CentCon@ogs.ny.gov](mailto:EEO_CentCon@ogs.ny.gov) on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January. Separate forms shall be completed by Contractor and any subcontractor.

If Contractor’s EEO Form 100 - Staffing Plan provides that Contractor is unable to separate out the actual workforce utilized in the performance of the Contract from its total workforce, the following clause shall apply: Contractor and OGS agree that Contractor is unable to separate out the workforce utilized in the performance of the Contract from Contractor’s and/or subcontractor’s total workforce and that the information provided on the previously submitted Staffing Plan is Contractor’s total workforce during the subject time frame, not limited to work specifically under the Contract.

Contractor shall comply with the provisions of the Human Rights Law, all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall 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 and conviction and prior arrest.

**Contract Goals**

For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers and suppliers to Contractor. Contractor is, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528> Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

**Good Faith Efforts**

Pursuant to 5 NYCRR § 142.8, evidence of good faith efforts shall include, but not be limited to, the following:

1. A list of the general circulation, trade and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers and copies of such solicitations and any responses thereto.
2. A list of the certified MWBEs appearing in the Empire State Development MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
3. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with or obtaining supplies from certified MWBEs.
4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
5. Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
6. Other information deemed relevant to the request.

ALL FORMS ARE AVAILABLE AT: <http://www.ogs.ny.gov/MWBE/Forms.asp>

**NEW YORK STATE FINANCIAL SYSTEM (SFS):**

New York State is currently operating on an Enterprise Resource Planning (ERP) system, Oracle PeopleSoft software, referred to as the Statewide Financial System (SFS). SFS is currently on PeopleSoft Financials version 9.2 Bundle 18, operating on PeopleTools version 8.49.33. SFS supports requisition-to-payment processing and financial management functions.

The State is also implementing an eProcurement application that supports the requisitioning process for State Agencies to procure goods and services in SFS. This application provides catalog capabilities. Vendors with Centralized Contracts have the ability to provide a "hosted" or "punch-out" catalog that integrates with SFS and is available to Authorized Users via a centralized eMarketplace website. There are no fees required for a Vendor's participation in the catalog site development or management. Upon completion and activation of an on-line catalog, State Agencies will process their orders through the SFS functionality and other Authorized Users can access the catalog site to fulfill orders directly.



The State is also implementing the PeopleSoft Inventory module in the near future to track inventory items within the item master table. Further information regarding business processes, interfaces, and file layouts may be found at: [www.sfs.ny.gov](http://www.sfs.ny.gov) and <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

**USE OF RECYCLED OR REMANUFACTURED MATERIALS:**

New York State supports and encourages vendors to use recycled, remanufactured or recovered materials in the manufacture of products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the product or packaging unless such use is precluded due to health or safety requirements or product specifications contained herein. Refurbished or remanufactured components or products are required to be restored to original performance and regulatory standards and functions and are required to meet all other requirements of this Contract. Warranties on refurbished or remanufactured components or products must be identical to the manufacturer's new equipment warranty or industry's normal warranty when remanufacturer does not offer new equipment. See Appendix B, §38, *Repaired or Replaced Products, Parts or Components*.

**BULK DELIVERY AND ALTERNATE PACKAGING:**

New York State encourages the use of innovative packaging that reduces the weight of packaging and the generation of packaging waste. A contractor is encouraged to use reusable materials and containers and to utilize packaging configurations that take advantage of storage containers designed to be part of the product for the shipment of multi-unit purchases. New York State recognizes that these packaging methods are in the development stage and may not be currently available. Authorized Users are urged to inquire about these programs at the time of purchase and determine the best solution for their needs.

**SURPLUS/TAKE-BACK/RECYCLING:**

1. A State agency is reminded of its obligation to comply with the NY State Finance Law §§167, Transfer and Disposal of Personal Property, and 168, The Management of Surplus Computer Equipment, regarding transfer and disposal of surplus personal property before utilizing take-back, recycling, or other options for disposition of equipment that is still in operable condition.
2. If Contractor offers a take-back/recycling program, then Contractor shall provide a record of disposition to each Authorized User who participates in the take-back/recycling program for units transferred for disposition. Contractor shall provide documentation that the units were disposed of in an environmentally sound manner in compliance with applicable local, state and federal laws. See Section 3 below for specific requirements governing electronic equipment recycling.
3. The NYS Department of Environmental Conservation (DEC) Electronic Equipment Recycling and Reuse Act ("Act") (Environmental Conservation Law, Article 27, Title 26, Electronic Equipment Recycling and Reuse), requires manufacturers to establish a convenient system for the collection, handling, and recycling or reuse of electronic waste. If Contractor is a manufacturer of electronic equipment covered by the Act, Contractor agrees to comply with the requirements of the Act. More information regarding the Act can be found on the DEC website at: <http://www.dec.ny.gov/chemical/65583.html>.
4. If a Contractor offers a take-back/recycling program or offers an electronic equipment recycling program pursuant to the Act, and an Authorized User participates in same, then the Authorized User shall ensure the destruction of all data from any hard drives surrendered with the machines/covered electronic equipment. Contractor shall not require an Authorized User to surrender the hard drive, as an Authorized User may wish to retain the hard drive for security purposes. Contractor shall advise the Authorized User in advance if the retention of the hard drive results in additional fees or reduction in trade-in value. It is recommended that an Authorized User use a procedure for ensuring the destruction of confidential data stored on hard drives or other storage media that meets or exceeds the National Institute of Standards and Technology (NIST) Guidelines for Media Sanitation as found in NIST Special Publication 800-88.

**ENVIRONMENTAL ATTRIBUTES AND NYS EXECUTIVE ORDER NUMBER 4:**

New York State is committed to environmental sustainability and endeavors to procure products with reduced environmental impact. One example of this commitment may be found in Executive Order No. 4 (Establishing a

State Green Procurement and Agency Sustainability Program), which imposes certain requirements on state agencies, authorities, and public benefit corporations when procuring commodities, services, and technology. More information on Executive Order No. 4, including specifications for offerings covered by this Contract, may be found at: <http://ogs.ny.gov/EO/4/Default.asp>. State entities subject to Executive Order No. 4 are advised to become familiar with the specifications that have been developed in accordance with the Order, and to incorporate them, as applicable, when making purchases under this Contract.

**PREFERRED SOURCE PRODUCTS:**

Section 162 of the State Finance Law requires that agencies, including Executive Agencies, afford first priority to the products of preferred source suppliers such as Corcraft (the marketplace name for the NYS Department of Corrections and Community Supervision, Division of Industries), New York State Preferred Source Program for People who are Blind (NYSPSP), and New York State Industries for the Disabled (NYSID), and others determined by law, when such products meet the form, function and utility of the agency. Some products in the resultant Contract(s) may be available from one or more preferred sources. An Authorized User must determine if a particular commodity or service is approved for a Preferred Source and follow the requirements of State Finance Law Section 162(3) or (4)(b), respectively, before engaging the Contractor.

**NEW YORK STATE VENDOR RESPONSIBILITY:**

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS 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.

The Commissioner of OGS or her designee, her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when 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 Commissioner of OGS or her designee issues a written notice authorizing a resumption of performance under the Contract. The Contractor agrees that if it is found by the State that the Contractor's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Contract.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Contract may be terminated by the Commissioner of OGS or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of OGS or her designee to be non-responsible. In such event, the Commissioner of OGS 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.

In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

**NEW YORK STATE TAX LAW SECTION 5-A:**

Tax Law Section 5-a requires certain Contractors awarded state Contracts for commodities, services and technology valued at more than \$100,000 to certify to NYS Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to Contracts where the total amount of such Contractors' sales delivered into New York State is in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

Contractors may consult with DTF's website at <http://www.tax.ny.gov/> for additional information and frequently asked questions.

**OVERLAPPING CONTRACT ITEMS:**

Products available in the resulting Contract may also be available from other New York State Contracts. Authorized Users will be advised to select the most cost effective procurement alternative that meets their program requirements and to maintain a procurement record documenting the basis for this selection.

**NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS:**

New York State political subdivisions and others authorized by New York State law may participate in contracts. These include, but are not limited to local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See Appendix B, §25, *Participation in Centralized Contracts*. For purchase orders issued by the Port Authority of New York and New Jersey (or any other authorized entity that may have delivery locations adjacent to New York State), the terms of the "Price" clause shall be modified to include delivery to locations adjacent to New York State.

Upon request, all eligible non-State agencies must furnish contractors with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. A list of categories of eligible entities is available on the OGS web site ([www.ogs.state.ny.us](http://www.ogs.state.ny.us)). Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to OGS Procurement Services' Customer Services at 518-474-6717.

**NOTE TO ALL NON-STATE AGENCIES AND BIDDERS:**

All such participating non-State agencies and Bidders understand, acknowledge and agree that the primary responsibility in regard to performance of the Contract, of any obligation, covenant, condition or term thereunder by either such party thereto shall be borne and is expressly assumed by the participating non-State agencies and Contractor and not by the State. In the event of a failure or breach in performance of any such Contract by a non-State Agency or Contractor, the State specifically and expressly disclaims any and all liability for such defective performance or breach, and the eligible participating non-State agencies and Contractor guarantee to save the State, its officers, agents and employees harmless from any liability that may be or is imposed by the failure of either party to perform in accordance with its obligations, covenants and the terms and conditions of the State Centralized Contract.

**EXTENSION OF USE:**

The contract may be extended to additional States or governmental jurisdictions upon mutual written agreement between New York State (the lead contracting State) and the Contractor. Political subdivisions and other authorized entities within each participating State or governmental jurisdiction may also participate in any resultant Contract if such State normally allows participation by such entities. New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

**CONTRACTOR PERFORMANCE:**

Authorized Users should notify the Procurement Services Contract administrator promptly if the Contractor fails to meet the requirements of this Contract. Performance which is otherwise unsatisfactory to the Authorized User should also be reported to Procurement Services.

**MERCURY-ADDED CONSUMER PRODUCTS:**

Contractor agrees that it will not sell or distribute fever thermometers containing mercury or any products containing elemental mercury for any purpose under this Contract.

**UNANTICIPATED EXCESSIVE PURCHASE:**

The State reserves the right to negotiate lower pricing, or to advertise for bids, any unanticipated excessive purchase. An “unanticipated excessive purchase” is defined as an unexpected order for a Contract product(s) totaling more than \$50,000.00.

**AMERICANS WITH DISABILITIES ACT (ADA):**

The Federal ADA Act, signed into law July 26, 1990, bars employment discrimination and requires all levels of Government to provide necessary and reasonable accommodations to qualified workers with disabilities.

Contractors are required to identify and offer any software or hardware products they manufacture or adapt which may be used or adapted for use by visually, hearing, or any other physically impaired individuals. Although it is not mandatory for Contractors to have this equipment in order to receive an award, it is necessary to identify any such equipment offered they have which falls into the above category.

**ADDITIONAL REQUIREMENTS:****1. NO DRUGS OR ALCOHOL**

For reasons of safety and public policy, in any Contract resulting from this procurement, the use of illegal drugs and/or alcoholic beverages by the Contractor or its personnel shall not be permitted while performing any phase of the work herein specified.

**2. TRAFFIC INFRACTIONS**

The State will not be liable for any expense incurred by the Contractor for any parking fees or as a consequence of any traffic infraction or parking violations attributable to employees of the Contractor.

**WEBSITE ACCESSIBILITY:**

Responsibility for Content: Contractor is solely responsible for administration, content, intellectual property rights and all materials at Contractor’s website. Contractor is solely responsible for its actions and those of its agents, employees, resellers, Sub-Contractors or assigns, and agrees that neither Contractor nor any of the foregoing has any authority to act or speak on behalf of the State. As applicable, Contractor agrees to comply with the Office of Information Technology Services f/k/a Office for Technology policy NYS-P08-005 Accessibility of Web-Based Information and Applications, as may be amended, the stated purpose of which is to make State Agency web-based Intranet and Internet information accessible for persons with disabilities. In accordance with such policy, the following language is incorporated into any Contract resulting from this procurement:

Any web-based information and applications development, or programming delivered pursuant to the contract or procurement, 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 (state agency name, contractor or other) and the results of such testing must be satisfactory to (state agency name) before web-based information and applications will be considered a qualified deliverable under the contract or procurement.

**LICENSE AGREEMENTS:**

An Authorized User looking to acquire Products and services under a Contract resulting from this Contract must review the contractual terms and conditions. The Authorized User must ask the Contractor if “click through”, “shrink wrap” or other pass-through or licensing/subscription terms and conditions are present, and if so, the Authorized User is responsible for reviewing and approving such terms and conditions prior to ordering the Products and services. If the terms and conditions are not acceptable to the Authorized User, it is the responsibility of such Authorized User to negotiate any needed amendments. ***Any additional licensing terms agreed to by the Authorized User shall not conflict with Appendix A, this Solicitation, any resultant Contract, or Appendix B. Any such conflicting terms shall be void and unenforceable.***

**APPENDIX A**

Appendix A, Standard Clauses For New York State Contracts, dated January 2014 is hereby expressly made a part of this Contract as fully as if set forth at length herein.

**APPENDIX B**

Appendix B, Office of General Services General Specifications, dated May 2015 is hereby expressly made a part of this Contract as fully as if set forth at length herein and shall govern any situations not covered by the bid document or Appendix A.

**NOTICE: THIS CONTRACT AWARD NOTIFICATION CONTAINS A SUBSET OF INFORMATION FROM THE SOLICITATION. CONTRACTS RESULTING FROM SOLICITATION 23044 HAVE BEEN EXECUTED BY CONTRACT AWARD LETTER. THE CONTRACT AWARD LETTER SETS FORTH THE ORDER OF PRECEDENCE FOR THE TERMS AND CONDITIONS OF THE EXECUTED CONTRACTS. COMPLETE CONTRACT DETAILS INCLUDING TERMS AND CONDITIONS CAN BE FOUND IN THE SOLICITATION DOCUMENT DATED REVISED OCTOBER 20, 2016.**

**State of New York  
Office of General Services  
Procurement Services  
Contract Performance Report**

Please take a moment to let us know how this contract award has measured up to your expectations. If reporting on more than one Contractor or product, please make copies as needed. This office will use the information to improve our contract award, where appropriate. **Comments should include those of the product's end user.**

**Contract No.:** \_\_\_\_\_ **Contractor.** \_\_\_\_\_

**Describe Product\* Provided (Include Item No., if available):** \_\_\_\_\_

**\*Note:** "Product" is defined as a deliverable under any Bid or Contract, which may include commodities (including printing), services and/or technology. The term "Product" includes Licensed Software.

	Excellent	Good	Acceptable	Unacceptable
• Product meets your needs				
• Product meets contract specifications				
• Pricing				

**CONTRACTOR**

	Excellent	Good	Acceptable	Unacceptable
• Timeliness of delivery				
• Completeness of order (fill rate)				
• Responsiveness to inquiries				
• Employee courtesy				
• Problem resolution				

**Comments:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_(over)

**Agency:** \_\_\_\_\_ **Prepared by:** \_\_\_\_\_

**Address:** \_\_\_\_\_ **Title:** \_\_\_\_\_

\_\_\_\_\_ **Date:** \_\_\_\_\_

\_\_\_\_\_ **Phone:** \_\_\_\_\_

\_\_\_\_\_ **E-mail:** \_\_\_\_\_

**Please detach or photocopy this form & returned to:**

OGS Procurement Services  
Customer Services, 38th Floor  
Corning 2<sup>nd</sup> Tower - Empire State Plaza  
Albany, New York 12242  
customer.service@ogs.ny.gov  
\* \* \* \* \*



## 2nd Supplemental Contract Award Notification

PAGE 63

<b>Title</b>	<b>: Group 20020 – Serials and Database Access (Statewide)</b> <b>Classification Code(s): 55 &amp; 83</b>
<b>Award Number</b>	<b>: <a href="#">23044</a></b>
<b>Contract Period</b>	<b>: January 27, 2017 – December 31, 2021</b>
<b>Bid Opening Date</b>	<b>: November 1, 2016</b>
<b>Date of Issue</b>	<b>: January 27, 2017</b>
<b>Specification Reference</b>	<b>: As Incorporated Herein</b>
<b>Contractor Information</b>	<b>: Appears on Page 2 of this Award</b>

### Address Inquiries To:

State Agencies & Vendors		Political Subdivisions & Others	
Name :	Shrilata Nath	Procurement Services	
Title :	Contract Management Specialist	Customer Services	
Phone :	518-474-3034	Phone :	518-474-6717
E-mail :	Shrilata.Nath@ogs.ny.gov	E-mail :	customer.services@ogs.ny.gov

**Procurement Services values your input.**

**Complete and return "Contract Performance Report" at end of document.**

### Description

NOTICE: THIS CONTRACT AWARD NOTIFICATION CONTAINS A SUBSET OF INFORMATION FROM THE SOLICITATION. CONTRACTS RESULTING FROM SOLICITATION 23044 HAVE BEEN EXECUTED BY CONTRACT AWARD LETTER. THE CONTRACT AWARD LETTER SETS FORTH THE ORDER OF PRECEDENCE FOR THE TERMS AND CONDITIONS OF THE EXECUTED CONTRACTS. COMPLETE CONTRACT DETAILS INCLUDING TERMS AND CONDITIONS CAN BE FOUND IN THE SOLICITATION DOCUMENT DATED REVISED OCTOBER 20, 2016.

This contract provides Authorized Users with a means of acquiring Serials and Database Access Products and Services. The contract contains a total of two (2) Lots: Lot 1 - Serials and Lot 2 - Database Access. **Lot 1 Serials - Included:** Print Periodicals and Newspapers; Electronic Magazines and Journals; Annuals (reports, yearbooks, etc.); Continuing directories; Proceedings and transactions; Numbered monographic series cataloged separately; Subscription based eBooks; and Optional Products and Services, including but not limited to: Stamps, call numbers or routing labels, bar-coding, and security strips, Processing of journals including affixing date and property, Shipment Consolidation, MARC (Machine Readable Cataloging) records and updates, and Serials management solutions. **Lot 2 Database Access – Included:** Library Databases; Full Text Databases; Numeric Databases; Meta-Databases; General Interest Databases; Discipline Specific Databases; Subject Specific Databases; Streaming Video Databases; Database Files; and Optional Products and services, including but not limited to: Database Management Systems (DBMS), Hard copy records, Mailing labels, Batching, and Reporting

This Contract Award Notification contains MWBE goals of 0% MBE and 0% WBE.

PR #23044

**CONTRACT #** CONTRACTOR  
PC67664 InfoUSA Marketing Inc.

**FED.IDENT. #**  
47-0794710

**NYS VENDOR #**  
1000040828

For complete Contractor contract information and Pricing information for this Award, please see the Contractor Information page located on the OGS Website at: <http://www.ogs.ny.gov/purchase/spg/awards/2002023044Can.htm>

Cash Discount and/or Early Payment Discount, If Shown, Should be Given Special Attention.  
**INVOICES MUST BE SENT DIRECTLY TO THE ORDERING AGENCY FOR PAYMENT.**  
(See "INVOICING AND PAYMENT" in this document.)

AGENCIES SHOULD NOTIFY PROCUREMENT SERVICES PROMPTLY IF THE CONTRACTOR FAILS TO MEET DELIVERY OR OTHER TERMS OF THIS CONTRACT. PRODUCTS WHICH DO NOT COMPLY WITH THE SPECIFICATIONS OR ARE OTHERWISE UNSATISFACTORY TO THE AGENCY SHOULD ALSO BE REPORTED TO THE PROCUREMENT SERVICES.

#### SMALL, MINORITY AND WOMEN-OWNED BUSINESSES:

The letters SB listed under the Contract Number indicate the contractor is a NYS small business. Additionally, the letters MBE and WBE indicate the contractor is a Minority-owned Business Enterprise and/or Woman-owned Business Enterprise.

#### RECYCLED, REMANUFACTURED AND ENERGY EFFICIENT PRODUCTS:

The Procurement Services supports and encourages the purchase of recycled, remanufactured, energy efficient and "energy star" products. If one of the following codes appears as a suffix in the Award Number or is noted under the individual Contract Number(s) in this Contract Award Notification, please look at the individual awarded items for more information on products meeting the suffix description.

RS,RP,RA	Recycled
RM	Remanufactured
SW	Solid Waste Impact
EE	Energy Efficient
E*	EPA Energy Star
ES	Environmentally Sensitive

#### NOTE TO AUTHORIZED USERS:

When placing purchase orders under the contract(s), the authorized user should be familiar with and follow the terms and conditions governing its use which usually appears at the end of this document. The authorized user is accountable and responsible for compliance with the requirements of public procurement processes. The authorized user must periodically sample the results of its procurements to determine its compliance. In sampling its procurements, an authorized user should test for reasonableness of results to ensure that such results can withstand public scrutiny.

The authorized user, when purchasing from OGS contracts, should hold the contractor accountable for contract compliance and meeting the contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, authorized users are encouraged to seek improved pricing whenever possible. Authorized users have the responsibility to document purchases, particularly when using OGS multiple award contracts for the same or similar product(s)/service(s), which should include:

- a statement of need and associated requirements,
- a summary of the contract alternatives considered for the purchase,



- The reason(s) supporting the resulting purchase (e.g., show the basis for the selection among multiple contracts at the time of purchase was the most practical and economical alternative and was in the best interests of the State).

**ORDER OF PRECEDENCE:**

The list of documents below address clarifications agreed to by the Contractor and the Office of General Services (OGS) and resolved by the parties and set forth herein in an order of precedence for the Contract award. The documents listed below were included in Solicitation #23044 or provided by the Contractor. Unless otherwise set forth in the procurement or contract documents, conflicts among documents shall be resolved in the following order of precedence:

1. Appendix A (January 2014), Standard Clauses for NYS Contracts (previously provided);
2. Contract Award Letter;
3. Revisions and Clarifications to Bid Specifications dated October 3, 2016 and October 20, 2016 (previously provided);
4. Solicitation #23044 (Revised October 20, 2016) including all Appendices and Attachments referenced therein (previously provided);
5. Contractor's Bid Prices as stated in Attachment 1 – Pricelist
6. Contractor's Bid

**OVERVIEW:**

This Contract provides Authorized Users with a means of acquiring Serials and Database Access Products and Services by New York State Agencies and Non-State agencies, including political subdivisions, school districts and others authorized by law (See Section 5.48, *Non-State Agencies Participation in Centralized Contracts* and Section 5.50, *Extension of Use*).. Products for purchase by all Authorized Users are described in the Section titled, *Scope*.

Procurement Instructions describing requirements for Authorized Users to purchase from the Centralized Contract are found in the Section titled, *Procurement Instructions*.

**ESTIMATED QUANTITIES:**

All quantities or dollar values listed within this Contract are estimates. No specific quantities or volumes are represented or guaranteed and the State provides no guarantee of individual Authorized User participation. The Contractor(s) must furnish all quantities or dollar values actually ordered. The anticipated dollar value of the award for this Solicitation, based on historical purchases under previous awards was approximately \$55,000,000.00 annually for Lot 1 and \$20,000,000.00 annually for Lot 2. The individual value of each resultant Contract is indeterminate and will depend upon the number of Contracts issued and the competitiveness of the pricing offered. Authorized Users will be encouraged to purchase from Contractors who offer the Products and pricing that best meets their needs in the most practical and economical manner. See Appendix B, §28, *Estimated/Specific Quantity Contracts* and §25, *Participation in Centralized Contracts*.

Numerous factors could cause the actual value of the Contract to vary substantially from the historical value. Such factors include, but are not limited to, the following:

- The Contract is a nonexclusive Contract;
- There is no guarantee of volume to be purchased, nor is there any guarantee that demand will continue in any manner consistent with previous purchases;
- The individual value of the Contract is indeterminate and will depend upon actual Authorized User demand, and actual quantities ordered during the Contract period; and,
- The State reserves the right to terminate the Contract for cause or convenience prior to the end of the term pursuant to the terms and conditions of the Contract.

In Procurement Service's experience, depending on the price of a particular item, the actual volume of purchases for that item could be substantially in excess of, or substantially below, estimated volumes. Specifically, if actual

Contract pricing is lower than anticipated or historical pricing, actual quantities purchased could be substantially greater than the estimates; conversely, if actual contract pricing is higher than anticipated or historical pricing, actual quantities purchased could be substantially lower than the estimates. Contractor acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the Contract could vary substantially from the estimates/historical values provided in this Contract.

**DEFINITIONS:**

Terms used in the IFB documents that have a capitalized first letter shall be defined in accordance with Appendix B, §2 *Definitions*, which is hereby incorporated by reference. The following definitions shall apply:

<b>Term</b>	<b>Definition</b>
Active Request	Refers to an End User submitted search request transaction to the licensor's online service that has not yet received a response from the licensor's system.
Aggregator	A bibliographic service that provides online access to the digital full-text of Periodicals published by different Publishers. See also Database Publisher.
Back File Access	The ability to access information within a resource before a subscription period begins.
Business Day	Monday through Friday from 8:00 AM – 5:00 PM ET, excluding New York State and federal holidays.
Concurrent Users	Specified number of simultaneous End Users accessing an Electronic Publication or Database.
Concurrent Sessions	Concurrent User is interpreted to include any End User station device which, at the point in time of measurement, has established a logical session path to the licensor's online service, enabling an immediate search request to be made directly to the licensor's search software. This is the common meaning of such expressions as being "signed on" or "logged on" to the online service. Under this definition, any signed on terminal or End User station device is counted as part of the concurrent use total, regardless of whether the End User is at the End User station; formulating a new search request; waiting for the licensor's system to respond to a search request; or digesting the results of a previous request.
Concurrent Use License	Where licensing of Electronic Publications is based upon "Concurrent Users" the Contractor shall obtain from the publisher the right of the Authorized User to obtain license rights to the specified number of Concurrent Users actually executing the licensed programs, without reference to location or named End Users.
Continuing Directory	A list of people, companies, institutions, organizations, etc., in alphabetical or classified order, providing contact information (names, addresses, phone/fax numbers, etc.) and other pertinent details (affiliations, conferences, publications, membership, etc.) in brief format, often published serially (i.e. Continuing resources (not complete as first issued and intended to be ongoing, though not necessarily indefinitely).
Customization	Changes to the function, layout and/or appearance of a Database which does not alter the Database content.
Database	A large, regularly updated file of digitized information (bibliographic records, abstracts, full-text documents, directory entries, images, statistics, etc.) related to a specific subject or field, consisting of records of uniform format organized for ease and speed of search and retrieval and managed with the aid of database management system (DBMS) software. Content is created by the Database producer, which usually publishes a print version and leases the content to one or more Database vendors that provide electronic access to the data after it has been converted to machine-readable form, usually on CD-ROM or online via the Internet, using proprietary search software.
Database Management System (DBMS)	A computer application designed to control the storage, retrieval, security, integrity, and reporting of data in the form of uniform records organized in a large searchable file called a Database. The range of available DBMS software

<b>Term</b>	<b>Definition</b>
	extends from simple systems intended for personal computers to highly complex systems designed to run on mainframes.
Database Publisher	Company that uses specialized techniques to generate documents from source data and provide to End Users through a Database. See also Aggregator.
Discipline Specific Database	Information provided is focused on a discipline or area, however may include information from multiple related subject areas.
Electronic Journal	A digital version of a print journal, or a journal-like Electronic Publication with no print counterpart, made available via the World Wide Web, e-mail, or other means of Internet access. Some web-based Electronic Journals are graphically modeled on the print version. Synonymous with E-journal. Compare with electronic magazine.
Electronic Magazine	A digital version of a print magazine, or a magazine-like electronic publication with no print counterpart, made available via the World Wide Web, e-mail, or other means of Internet access. Some Web-based electronic magazines are graphically modeled on the print version. Synonymous with e-zine and Webzine. Compare with Electronic Journal.
Electronic Publication	A work in digital form capable of being read or otherwise perceived, distributed to the public electronically. Includes Electronic Journals and e-prints, Electronic Magazines and newspapers, electronic books, Web sites, Weblogs, etc. Some Electronic Publications are online versions of print publications; others are born digital. Synonymous with e-publication.
End User	Shall mean those persons who are permitted by the Authorized User to have access to an Electronic Publication or Database.
Fair Use	Shall mean acceptable use under the Copyright Revision Act 1976 as amended subsequently provided that such rights are exercised in accordance with Section 108 of the Act and with the guidelines developed by the National Commission on New Technological Uses of Copyrighted Works (CONTU Guidelines) and published in U.S. Copyright Office Circular 21.
Full Text Database	Contains the complete text of any documents (e.g. books, Journals, newspapers, magazines).
Full Time Equivalent End User (FTE)	For State agencies and Authorized Users not otherwise identified, the number of full time employees shall be the number of FTEs; for a higher educational institution, it shall refer to the student enrollment expressed as the number of full time students; for K-12 educational institutions, each student shall be considered one (1) FTE; for public libraries, the census population served shall be deemed to be the number of FTEs.
International Standard Serial Number (ISSN)	A unique eight-digit standard number assigned by the International Serials Data System (ISDS) to identify a specific serial title. The ISSN is usually given in the masthead of each issue or on the copyright page of each volume or part of a series. When a continuing resource undergoes a title change, a new ISSN is assigned.
Journal	A Periodical devoted to disseminating original research and commentary on current developments in a specific discipline, sub-discipline, or field of study, usually published in quarterly, bimonthly, or monthly issues sold by subscription. Journal articles are usually written by the person (or persons) who conducted the research. Longer than most magazine articles, they almost always include a bibliography or list of works cited at the end. In Journals in the sciences and social sciences, an abstract usually precedes the text of the article, summarizing its content. Most scholarly Journals are peer-reviewed. Scholars often use a current contents service to keep abreast of the Journal literature in their fields of interest and specialization.
Library Database	A large catalog or index of organized information.

<b>Term</b>	<b>Definition</b>
Licensing Agreement	A formal written contract between a library and a vendor for the lease of one or more proprietary (copyrighted) bibliographic databases or online resources, usually for a fixed period of time in exchange for payment of an annual subscription fee or per-search charge. Vendors typically charge libraries on a sliding scale based on number of registered borrowers or FTE enrollment, number of institutions or facilities served, and number of simultaneous users.
List Price	The undiscounted price at which a new publication is offered for sale to the public, established by the publisher at the time the edition is issued. The List Price is quoted in the Publisher's catalog and printed on the front flap of the dust jacket in hardcover editions and usually on the back cover in softcover editions. Discounts offered to libraries, booksellers, and jobbers are computed as a percentage off List Price. In library cataloging, the List Price of an item is indicated (when available) in the standard number and terms of availability area of the bibliographic description (field 020 or 022 of the MARC record). Synonymous with published price, retail price, and sticker price.
Magazine	A popular interest Periodical usually containing articles on a variety of topics, written by various authors in a nonscholarly style. Most magazines are heavily illustrated, contain advertising, and are printed on glossy paper. Articles are usually short (less than five pages long), frequently unsigned, and do not include a bibliography or list of references for further reading. Most magazines are issued monthly or weekly for sale at newsstands, in bookstores, and by subscription.
Metadata Database	Information about data itself, including size, origination or other descriptors.
MWBE	A business certified with NYS Empire State Development (ESD) as a Minority and/or Women-owned Business Enterprise.
N/A	A common abbreviation for <i>not applicable</i> or <i>not available</i> , used to indicate when information in a certain field on a table is not provided, either because it does not apply to a particular case in question or because it is not available.
National Public Entities	Defined as State Governments, the Federal Government, Local Governments, cities, towns, school districts, libraries, police and fire departments, and other political subdivisions
Net Price	List Price less all applicable discounts or inclusive of Service Charges; the price paid by Authorized Users of the resultant Contract.
Newspaper	A Serial publication, usually printed on newsprint and issued daily, on certain days of the week, or weekly, containing news, editorial comment, regular columns, letters to the editor, cartoons, advertising, and other items of current and often local interest to a general readership.
NYS Vendor ID	Refers to the ten-character identifier issued by New York State when a vendor is registered on the Vendor File.
Numerical Data Database	This includes statistical and other numerical data.
Optional Products and Services	Refer to supplementary Products and services that enhance or support the provision of Serials and/or Database Access Products identified to be within scope. For example: under Lot 1 that may include things such as stamps; call numbers or routing label; bar-coding; security strips; processing of journals including affixing date and property; shipment consolidation, MARC (Machine Readable Cataloging) records and updates; and Serials management solutions; under Lot 2 that may include things such as Database Management Systems (DBMS), hard copy records, mailing labels, batching, and reporting.
Periodical	A Serial publication with its own distinctive title, containing a mix of articles, editorials, reviews, columns, short stories, poems, or other short works written

<b>Term</b>	<b>Definition</b>
	by more than one contributor, issued in softcover more than once, generally at regular stated intervals of less than a year, without prior decision as to when the final issue will appear. Although each issue is complete in itself, its relationship to preceding issues is indicated by enumeration, usually issue number and volume number printed on the front cover. Content is controlled by an editor or editorial board. Includes magazines, sold on subscription and at newsstands; journals, sold on subscription and/or distributed to members of scholarly societies and professional associations; and newsletters, but not proceedings or the other regular publications of corporate bodies as they relate primarily to meetings.
Procurement Services	Formerly known as NYSPRO or Procurement Services Group (PSG), Procurement Services shall mean a division of the New York State Office of General Services which is authorized by law to issue centralized, statewide Contracts for use by New York agencies, political subdivisions, schools, libraries and others authorized by law to participate in such Contracts.
Publication	Refers to a work capable of being read or otherwise perceived (e.g. book, audiorecording, videorecording, CD-ROM, etc.), issued by a Publisher for sale to the general public, usually in multiple copies and sometimes in multiple editions.
Publisher	A person or corporate entity that prepares and issues printed materials for public sale or distribution, normally on the basis of a legal contract in which the publisher is granted certain exclusive rights in exchange for assuming the financial risk of publication and agreeing to compensate the author, usually with a share of the profits.
Reseller	Any model for distribution of Product other than direct from the Contractor. Resellers include but are not limited to approved value added resellers (VARs), distributors, dealers, sales agents, and alternate channel partners.
Subject Specific Database	This includes information from academic or scholarly Journals and trade or professional publications.
Serial	Publication in any medium issued under the same title in a succession of discrete parts, usually numbered (or dated) and appearing at regular or irregular intervals with no predetermined conclusion. Serials may be purchased individually, in combination with other titles, or as large collections of titles (particularly when purchased electronically).
Server	Shall mean the computer system(s) on which Electronic Publications or Databases reside and through which End Users gain access to the Electronic Publications or Databases.
Service Charge	A fee charged by a Subscription Agent for filling orders for Periodical subscriptions, usually 5 to 10 percent of the total annual amount paid by the library for subscriptions.
Subscription Agent	A company in the business of providing centralized Serial subscription or Database Access services to Authorized Users such as libraries to relieve them of the time consuming task of dealing with Publishers individually.

In addition to the above definitions, the following terms are defined as follows regardless of whether they are or are not capitalized:

May	Denotes the permissive in a Contract clause or specification. Refers to items or information that the State has deemed are worthy of obtaining, but not required or obligatory. Also see "Should".
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Must	Denotes the imperative in a Contract clause or specification. Means required - being determinative/mandatory, as well as imperative. Also see “Shall” and “Mandatory”.
Shall	Denotes the imperative in a Contract clause or specification. Means required - being determinative/mandatory, as well as imperative. Also see “Must” and “Mandatory”.
Should	Denotes the permissive in a Contract clause or specification. Refers to items or information that the State has deemed are worthy of obtaining, but not required or obligatory. Also see “May”.

**SCOPE:**

These contracts are to provide Authorized Users with a means of acquiring Serials and Database Access Products and Services. There are a total of two (2) Lots: Lot 1 – Serials, and Lot 2 - Database Access.

Products for Lot 1 - Serials include, but may not be limited to:

1. Print Periodicals and Newspapers
2. Electronic Magazines and Journals
3. Annuals (reports, yearbooks, etc.)
4. Continuing directories
5. Proceedings and transactions
6. Numbered monographic series cataloged separately
7. Subscription based eBooks
8. Optional Products and Services, including but not limited to:
  - a. Stamps, call numbers or routing labels, bar-coding, and security strips
  - b. Processing of journals including affixing date and property
  - c. Shipment Consolidation
  - d. MARC (Machine Readable Cataloging) records and updates
  - e. Serials management solutions, such as:
    - (i) Link resolvers
    - (ii) A to Z lists
    - (iii) Information discovery tools
    - (iv) Subscription management tools
    - (v) Electronic resource management (ERM) tools

Products for Lot 2 – Database Access include, but may not be limited to:

1. Library Databases
2. Full Text Databases
3. Numeric Databases
4. Meta-Databases
5. General Interest Databases
6. Discipline Specific Databases
7. Subject Specific Databases
8. Streaming Video Databases
9. Database Files
10. Optional Products and services, including but not limited to:
  - a. Database Management Systems (DBMS)
  - b. Hard copy records
  - c. Mailing labels
  - d. Batching
  - e. Reporting

Exclusions: The following Products are not within scope:

1. Products currently offered under the OGS Books and Non-Print Library Materials and other Related Ancillary Services contract (Group 20060)
2. Products and services currently offered under the OGS E-Learning Training/Distance Services contract (Group 73016), which includes web-based, computer based, online and internet based training
3. Standalone Software unrelated to the provision of Serials or Database Access
4. Hardware of any kind
5. Database services offered under the Contract shall not allow the Contractor to access the personal, private, or confidential information of any Authorized User or End User

It is the Contractor's responsibility to ensure that only Products and services that meet the scope of the Contract are purchased through the Contract. Questions concerning items covered under the resultant Contract should be addressed to the OGS Procurement Services contract manager designated on the Contract Award Notification prior to accepting the order.

If a Contractor sells Products that are excluded under this Contract as set forth above, such Contractor's Contract may be suspended or terminated.

**LIST OF CONTRACTORS AND AWARDED LOTS**

Please refer to each Contractor's Information page and Pricelist for more information.

<b>Bidder</b>	<b>Lot 1 Serials</b>	<b>Lot 2 Database Access</b>
InfoUSA Marketing Inc.		X

**PROCUREMENT INSTRUCTIONS TO AUTHORIZED USERS:**

1. The Contracts resulting from this Solicitation will be centralized Contracts issued under a multiple award structure. Products offered under the Contracts, pricing, and other Contract information will be posted to the OGS website or the awarded Contractors' dedicated NYS websites. Authorized Users shall procure Products that best meet their form, function and utility requirements.
2. Before proceeding with a purchase, Authorized Users shall check the list of Preferred Source offerings. Authorized Users are reminded that they must comply with State Finance Law §162, which requires that agencies afford first priority to the commodities of Preferred Source suppliers such as Correctional Industries (Corcraft), NYS Preferred Source Program for People Who are Blind (NYSPSP), and NYS Industries for the Disabled (NYSID), when such commodities meet the form, function and utility of the Authorized User.
3. Where products are not available from Preferred Source suppliers in the form, function and utility required by the Authorized User, Authorized Users shall purchase from the centralized Contracts awarded under this Solicitation. The basis for selection among multiple contracts at the time of purchase shall be the most practical and economic alternative and shall be in the best interests of the State. Therefore, Authorized Users are strongly encouraged to obtain quotes from at least three (3) Contractors prior to issuing a purchase order, in order to ensure that the Authorized User is receiving the best possible pricing.
4. When placing Purchase Orders under the Contract(s), the Authorized User should be familiar with and follow the terms and conditions governing its use. The Authorized User is accountable and responsible for compliance with the requirements of public procurement processes. The Authorized User, when purchasing from OGS Contracts, should hold the Contractor accountable for Contract compliance and meeting the Contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, Authorized Users are encouraged to seek improved pricing whenever possible. Authorized Users have the responsibility to document purchases which should include:
  - statement of need and associated requirements;
  - obtaining all necessary prior approvals;
  - a summary of the Contract alternatives considered for the purchase; and
  - the reason(s) supporting the resulting purchase (e.g., show that basis for the selection among multiple Contracts at the time of purchase was the most practical and economical alternative and was in the best interests of the State).
5. Authorized Users will issue purchase orders directly to the Contractor or the Contractor's authorized Reseller (if applicable), as specified by the Contractor, and specifying any shipping/delivery requirements and/or statements of work for services (if applicable).
6. Upon Authorized User acceptance of Products itemized on the purchase order, Contractor will invoice Authorized User for any portion of Products accepted, and accordingly, Authorized User will arrange for payment. Contractor shall provide itemized invoicing for all Products.
7. *Contractor must disclose any forms, "click through", "shrink wrap" or other pass-through or licensing/subscription terms and conditions or other order information that Contractor will attach to orders or require to be completed with Authorized User purchases. Documents which contain additional terms or conditions, such as library maintenance agreements or Licensing Agreements must receive pre-approval by the Authorized User prior to ordering Products and services. Any additional licensing terms agreed to by the*



*Authorized User shall not conflict with Appendix A, this Solicitation, any resultant Contract, or Appendix B. Any such conflicting terms shall be void and unenforceable.*

**PRICE:**

Price shall include all customs duties and charges and be net, F.O.B. destination to any point in New York State as designated by the Authorized User and shall include all transportation charges and inside delivery for print medium. Inside deliveries are to be delivered to the ordering Authorized User's stockroom or office location.

The Bidder's price should include all costs associated with selling the Product. No shipping charges are allowed EXCEPT on printed foreign publications shipped directly to the Authorized User from an address outside the 48 contiguous US states including the District of Columbia. Foreign shipping costs shall be prepaid by the Contractor and added to the invoice and all such orders shall be shipped on F.O.B. destination by the most economical method. There shall be no increase in Contract prices for freight, shipping, fuel or other surcharges, FPT (Freight Pass Through), etc. during the term of the Contract.

**FOR LOT 1 ONLY: Authorized Users may be charged additional fees charged by the Publishers which include licensing fees, platform fees etc. in excess of the base subscription fee. However, any additional fees shall only be those charges passed on by the Publishers and shall not include any additional fees charged by the Contractors for such services. The Contractor shall only charge fees based on List Prices charged by Publishers. The Authorized User must be notified of all such fees at the time of purchase. Fees that are not told to the Authorized User at the time of purchase shall be paid by the Contractor.**

Contractor's pricing information is included in the posted Pricelist linked from the Contractor Information page.

**PRICING BASED ON GSA PRICING:**

Authorized Users shall be entitled to all associated discounts enumerated in the GSA Supply Schedule (including, but not limited to discounts for additional sites and volume discounts), as well as any other pricing or discount terms as are expressly enumerated in this NYS Contract or GSA schedule, when calculating the Contract price.

GSA pricing incorporates a sum referred to as the "GSA Industrial Funding Fee (IFF)". Contract prices will be reduced by an amount equivalent to the IFF. The NYS Price will be calculated by reducing the published GSA price, after the discounts, if any, downward by the amount of the Industrial Funding Fee, currently set at .75%.

**VOLUME DISCOUNTS:**

Contractor may offer volume discounts using the thresholds listed on each Contractor's Information Page.

**PREPAYMENT PLAN DISCOUNTS:**

Contractor may offer Prepayment Plan Discounts using the thresholds listed on each Contractor's Information Page.

**PROMPT PAYMENT DISCOUNTS:**

Contractor may offer prompt payment discounts at the transaction level. Please refer to the Contractor's Information Page.

**CENTRALIZED CONTRACT MODIFICATION:**

1. OGS, an Authorized User, or the Contractor may suggest modifications to the Centralized Contract or its Appendices. Except as specifically provided herein, modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the Parties. Modifications may take the form of an update or an amendment. "Updates" are changes that do not require a change to the established Centralized Contract terms and conditions. A request to add new Products at the same or better price level is an example of an update. "Amendments" are any changes that are not specifically covered by the terms and conditions of the Centralized Contract, but inclusion is found to be in the best interest of the State. A request to change a contractual term and condition is an example of an amendment.

2. Updates to the Centralized Contract and the Appendices may be made in accordance with the contractual terms and conditions to incorporate new products or services, make price level revisions, delete Products or services, or to make such other updates to the established Centralized Contract terms and conditions, not resulting in a change to such terms and conditions, which are deemed to be in the best interest of the State.
3. OGS reserves the right to consider modifications which are not specifically covered by the terms of the Centralized Contract, but are judged to be in the best interest of the State. Such modifications are deemed amendments to the Centralized Contract and may require negotiations between Contractor and OGS before execution.
4. All modifications proposed by Contractor, shall be processed in accordance with Appendix C, Contract Modification Procedure. The Contractor shall submit all requests in the form and format contained in Appendix C, Contract Modification Procedure. The form contained within Appendix C is subject to change at the sole discretion of OGS.
5. Modifications proposed by OGS or an Authorized User, including updates and amendments, shall be processed in accordance with the terms of the Centralized Contract and Appendix B, §26, *Modification of Contract Terms*.

**CONTRACT PRICELIST UPDATE PROCEDURES:**

The procedures below outline how Contract pricelist updates will be handled under this Contract. If awarded more than one Lot, Contractor shall submit pricelist updates for each Lot simultaneously pursuant to the requirements of this section. NOTE: THE FOLLOWING PROCEDURES ARE NOT APPLICABLE TO CONTRACTOR PROPOSED CHANGES TO CONTRACT TERMS AND CONDITIONS. Any implied or express request for changes in or additions to existing Contract terms and conditions, including new terms and conditions associated with a specific product line being added to the Contract for the first time, requires a formal Contract amendment and requires the approval of OGS. New or revised Contract terms and conditions are subject to the restrictions set forth in Appendix B, §26, *Modification of Contract Terms*.

**Lot 1 - Serials Pricelist Updates****Adding and Deleting Item Categories (Other than Optional Products and Services)**

1. No decrease in discounts: The Bidder's discount may increase at any time, but shall not decrease during the term of the Contract. Service Charges bid may decrease at any time, but shall not increase during the term of the Contract.
2. Adding or Deleting Item Categories: Bidder may add or delete Item Categories to its Price List pursuant to this Section and at the discretion of OGS. Any new Item Categories added to the Contract shall be subject to a reasonableness of price review pursuant to Section 5.3, *Reasonableness of Price*, of the Solicitation.
3. First Year: In the first year of the Contract, the Contractor shall be allowed to update the pricelist once to add/delete Item Categories.
4. Subsequent Years: Commencing with the second year of the Contract, the Contractor may add or delete Item Categories within thirty (30) calendar days after the anniversary date of the Contract. The thirty (30) calendar days includes the anniversary date of the Contract.

**Optional Products and Services**

1. Adding or deleting Optional Products and Services: Bidder may add or delete Optional Product and Services offerings pursuant to this section and at the discretion of OGS. Any new Optional Products and Services offered shall be subject to a reasonableness of price review pursuant to Section 5.3, *Reasonableness of Price*.
2. First Year: In the first year of the Contract, the Contractor shall be allowed to update the pricelist once to add or delete Optional Products and Services.

3. Subsequent Years: Commencing with the second year of the Contract, the Contractor may add or delete Optional Products and Services within thirty (30) calendar days after the anniversary date of the Contract. The thirty (30) calendar days includes the anniversary date of the Contract.

**Price Adjustments for Lot 1 Optional Products and Services**

All prices for Optional Products and Services may be adjusted annually following the first year of the Contract on the basis of the Not Seasonally Adjusted Consumer Price Index – All Urban Consumers, U.S. City Average, All Items Less Food, Series ID: CUUR0000SA0L1, published monthly by the US Department of Labor Bureau of Labor Statistics. There shall be no price adjustments during the first year of the Contract. The adjustment shall be established as follows. Following the first year of the Contract and annually thereafter, the Contractor may make a formal request for a price adjustment in the succeeding Contract year. This request must be made in writing to the contract manager identified on the front page of the resultant Contract Award Notification; thirty (30) calendar days after the anniversary date of the Contract. The thirty (30) calendar days includes the anniversary date of the Contract. If the Contractor fails to submit a written request, he/she forfeits its opportunity to receive a price adjustment in the succeeding Contract year.

Price adjustments for monetary amounts for Optional Products and Services shall begin with the second year of the start date of the Contract and annually thereafter. The adjustment shall be based on the percentage of increase or decrease in the above referenced index in the preceding twelve months ending three months prior to the effective date of the adjustments. In no case shall price increases exceed five percent (5%) annually. All adjusted prices will be rounded up or down to the nearest whole cent. The Office of General Services shall notify all parties of the price adjustments through the issuance of written notification by the Procurement Services.

Below is an example calculation. Values used are for illustrative purposes only.

CPI for current period	193.676
Less CPI for previous period	188.326
Equals Index point change	5.350
Divided by previous period CPI	188.326
Equals	0.028
Result multiplied by 100	0.028 x 100
Equals percent change	2.8

Should the referenced CPI become discontinued during the course of the contract, it will be replaced by the Not Seasonally Adjusted Consumer Price Index – All Urban Consumers, U.S. City Average, All Items, Series Id: CUUR0000SA0, and adjustments will be calculated based on the same methodology as outlined above, but with data from the new replacement index.

**Submitting Price List Changes**

Contractor is required to submit Contract pricelist updates electronically in an unprotected Microsoft Excel (2013 or lower version) spreadsheet either on CD or via e-mail to the OGS Procurement Services contract manager. The pricelist must be dated and the format shall be consistent with the format of the Contractor's approved Contract pricelist. The pricelist shall separately include and identify (e.g., by use of separate worksheets or by using highlighting, italics, bold and/or color fonts) Item Categories added/deleted; Optional Products and Services added/deleted; and any price increases/decreases.

Contractors shall submit their updated Contract pricelist to the OGS Procurement Services contract manager pursuant to the requirements of this section for review and written approval prior to issuing to Authorized Users. All approved pricelist updates shall apply prospectively upon approval by OGS. Any request for a pricelist update not received in accordance with this section shall be deemed denied.

**Lot 2 – Database Access Pricelist Updates**

1. **General:** Any new Products or services added to the Contract shall be subject to a reasonableness of price review. The Bidder's discount may increase at any time, but shall not decrease during the term of the Contract.
2. **First Year:** In the first year of the Contract, the Contractor shall be allowed to update the pricelist once to add/delete Products or services as established by the Contractor in their normal course of business. There shall be no price increases allowed for existing Products or services during the first year of the Contract.
3. **Subsequent Years:** Commencing with the second year of the Contract, the Contractor may update the pricelist annually to reflect Contractor price changes and the addition/deletion of Products and services as established by the Contractor in their normal course of business; thirty (30) calendar days after the anniversary date of the Contract. The thirty (30) calendar days includes the anniversary date of the Contract.

In a single year of the Contract the total request for price increases shall not exceed the lesser of:

1. three (3%) percent annually, or
2. the percent increase in the latest available National Consumer Price Index - All Urban Consumers (CPI-U), Not Seasonally Adjusted, U.S. City Average, All Items (Series Id: CUUR0000SA0, CUUS0000SA0); as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212. CPI-U data may be obtained at [www.bls.gov](http://www.bls.gov).

The following example illustrates the computation of percent change:

CPI for current period	230.000
Less CPI for previous period	225.000
Equals index point change	5.000
Divided by previous period CPI	225.000
Equals	0.022
Result multiplied by 100	0.022 x 100
Equals percent change	2.2

The "CPI for current period" shall be the index in effect at the time the Contract pricelist update request is received; "CPI for previous period" shall be the index in effect when the Contract pricelist was last updated.

Contractor is required to submit Contract pricelist updates electronically in an unprotected Microsoft Excel (2013 or lower version) spreadsheet either on CD or via e-mail to the OGS Procurement Services contract manager. The pricelist must be dated and the format shall be consistent with the format of the Contractor's approved Contract pricelist. The pricelist shall separately include and identify (e.g., by use of separate worksheets or by using highlighting, italics, bold and/or color fonts) Products and services being added/deleted and any price increases/decreases.

In connection with any Contract pricelist update, OGS reserves the right to request additional information; reject Contract updates; remove Products and services from Contracts; remove Products and services from Contract updates; and request additional discounts for new or existing Products and services.

**PERFORMANCE REQUIREMENTS – LOT 1 – SERIALS:****Orders, Renewals, and Cancellations**

1. The Authorized User may specify that the subscription begin with current issue, first issue of the current volume, first issue of the current year, or first issue of the next volume. Subscriptions shall begin on the effective date specified on the purchase order.
2. The Contractor shall notify the Authorized User as soon as possible but no later than thirty (30) calendar days if unable to supply a new order. Contractor shall also provide a reasonable explanation in writing for non-fulfillment.
3. The Contractor shall provide address, publication, merger, and title change services, etc.

4. The Contractor shall make arrangements with publishers for all regularly purchased subscription orders and renewals within sufficient time to avoid any interruption in receipt of issues.
5. The Contractor shall cancel subscriptions as requested by the Authorized User and shall issue a credit if allowed by the publisher.
6. The Contractor shall provide pro-rated refunds or substituted titles for titles which cease publication prior to expiration if provided by the publisher. OGS reserves the right to resolve any issues that may arise between an Authorized User and the Contractor with regards to refunds or substituted titles.
7. The Contractor shall provide a common expiration date for subscriptions (if requested by the Authorized User) unless prohibited by the publisher.
8. At the Authorized User's request the Contractor shall renew subscriptions automatically on a date selected by the Authorized User; or at the option of the Authorized User, shall provide a list of titles to be renewed by the Contractor for the Authorized User's approval prior to the issuance of the annual renewal invoice. Authorized User may change automatic renewal status at any time and for no additional charge.
9. The Contractor may provide two, or three-year renewal periods, but must at a minimum offer a one-year renewal period.
10. The Contractor may enter orders for back files, special issues, supplements, extra volumes, and cumulative indexes, if requested to do so by the Authorized User.
11. All orders, renewals, and cancellations between the Contractor and the Authorized User shall be in writing, or shall be electronically transmitted.
12. In lieu of individual order forms, Contractor shall be able to accept a purchase or letter order to which is appended a list of titles.

**Invoicing and Payments**

1. The Contractor may offer an early prepayment discount. Annually, the Contractor shall specify the percentages of discount offered and the deadlines for early payment. Subscriptions may be prepaid for up to three years for Authorized Users legally empowered to make advance payments.
2. The Contractor shall provide annual renewal invoice(s) and indicate if such invoices are available electronically.
3. The Contractor shall provide supplemental invoices for "bill as" published titles, for "bill later" titles, for new orders, etc., based on agreement with Authorized User.
4. The Contractor shall provide up to three copies of all invoices if requested by an Authorized User.
5. All invoices shall provide the following information or other "identifier," if applicable:
  - a. Name, address and Federal Identification Number of Contractor.
  - b. Authorized User address and account number.
  - c. Invoice date and number.
  - d. Purchase order number.
  - e. Contract number.
  - f. Titles listed in alphabetical order or in an order specified by Authorized User.
  - g. International Standard Serial Numbers (ISSNs).
  - h. Price for each subscription period.
  - i. Subscription period.
  - j. Description, quantity, unit price and extended price of all items.
  - k. Information indicating if charge is an added optional service charge. An explanation is required.
  - l. The discount or Service Charge, as requested by the Authorized User, on a line-by-line basis.
6. Increases in subscription price shall be allowed if correction in cost is required due to publisher's change in price.
7. Decreases in subscription price shall be refunded or credited, as specified, to the Authorized User promptly.
8. The Contractor shall, upon request from the Authorized User, provide proof of Publisher List Prices and increases or decreases in Publisher List Prices for specific titles.
9. Additional fees which are passed on by the publishers, e.g. licensing fees, shall be listed separately on invoices.

**Optional**

If available and/or possible, Contractor to advise Authorized Users if the following may be provided:

1. Authorized User fund code.
2. Information indicating if charge is for a renewal or new order.
3. Information identifying “bill later” or “bill as” published titles.
4. On supplemental invoices, the original invoice number.
5. Availability of title in electronic format.
6. Customized Invoicing

**Claims**

1. The Contractor shall be responsible for claiming all issues reported as not received or received damaged or defective by the Authorized User.
2. The Contractor shall promptly process claim notices in a timely manner not to exceed the claim period permitted by the Publisher.
3. The Contractor shall provide claim reports no less frequently than bimonthly.
4. Claim reports shall provide the following information:
  - a. Date of claim report.
  - b. Title(s) being claimed.
  - c. Issue(s) being claimed.
  - d. Date(s) of prior claim(s).
  - e. Publisher's response, if any.
5. The Contractor may accept and respond to claims by U.S. mail, facsimile, electronic mail, courier service, or online.

**Conversion to New Contractor by Authorized Users**

1. Renewal orders requested by Authorized Users shall be placed at least two months before expiration of current subscriptions.
2. If an interruption in service results from a change in a Contractor, any issues not received shall be obtained by the Contractor who received payment for that period at no additional cost to the Authorized User. Delivery to the Authorized User shall be made by the original Contract delivery and at no extra cost to the Authorized User.
3. If duplicate issues are received as a result of change in Contractors and the Publisher required their return, the Contractor shall be responsible for resolving the problem and shall absorb any associated costs.

**Reports**

1. The Contractor may send the Authorized User a monthly statement showing the date and amount of each outstanding invoice and credit memorandum.
2. The Contractor shall notify the Authorized User of title changes and discontinued titles and provide information on titles that are slow, delayed, or irregular, either as they occur or on a monthly basis.
3. At the Authorized User's request the Contractor shall provide a printed customized list of titles arranged alphabetically or according to specifications defined by the Authorized User.
4. Upon request, the Contractor may be required to provide the Authorized User with a price analysis report showing a 1-3 year Publisher List Price comparison of titles ordered. This report can be arranged by title, country of publication, or by codes defined by the Authorized User.
5. If available, Contractor may provide an industry-wide summary of statistical data and analyses.
6. Upon request, the Contractor shall provide a report showing changes in Publisher subscription periods, quantities ordered, and publishers' new requirements.
7. All reports between the Contractor and the Authorized User shall be in writing, and may be electronically transmitted.

**Licensing Terms and Conditions for Electronic Publication****Authorized User Access to Electronic Publications**

1. Access: Access to the Electronic Publications by Authorized Users shall be either via electronic media or the Internet. If access is provided via the Internet, the Contractor shall ensure that the Electronic Publications are highly stable and usable (including average response time of less than 5 seconds, and uptime, except for scheduled maintenance, of 96.9%), and shall ensure that the Web server(s) is (are) fully capable of serving Authorized Users. Access shall be controlled by Internet Protocol (IP) addresses, passwords or other appropriate authentication technology.
2. If the license rights are based on a named user model, an Authorized User will prepare and submit to the Contractor a list of End Users that shall include name, address, and contact information.
3. License Scope: The Contractor and the State agree that the license for the Electronic Publications shall be governed as set forth below:
  - a. Authorized User is granted a non-exclusive, transferable, term license to access and use the electronic publications in accordance with this Contract. The license term for the Electronic Publications license shall commence upon the license effective date.
  - b. It shall be the obligation of the Authorized User to review and comply with the terms and conditions of the License Agreement if one is required by the publisher to use the Electronic Publication or electronic content to the extent that they do not conflict with the terms of Appendix A, Appendix B, this Solicitation or any resultant Contract.
  - c. Permitted License Transfers: As Authorized User's business operations may be altered, expanded or diminished, Electronic Publication licenses may be transferred or combined for use at an alternative or consolidated site not originally specified in the license, including transfers between Authorized Users and/or their End Users ("permitted license transfers"). Contractor shall have the discretion to issue new login credentials when a license transfer takes place.
  - d. Concurrent Use License: Where licensing of Electronic Publications is based upon "Concurrent Users," Contractor hereby grants license rights to the specified number of Concurrent Users actually executing the licensed programs, without reference to location or named End Users (hereinafter "Concurrent Users").

**Contractor's Performance Obligations**

1. The Contractor will provide and maintain help files and other appropriate user documentation for the Electronic Publications to be accessible to all Authorized Users free of charge.
2. The Contractor will offer reasonable levels of continuing support to assist Authorized Users and their End Users in their use of the Products. Contractor will make its personnel available by email, phone or fax during regular Business Days.

**Authorized User Performance Obligations**

Authorized Users acknowledge that the copyright and title to the information content and organization of the Electronic Publications are and remain with the publisher. Authorized User shall use reasonable efforts to inform its End Users and walk-in patrons of any restrictions on the use of the Electronic Publications. Authorized User shall use reasonable efforts to protect the Electronic Publications from any use that is not permitted under this agreement. Authorized Users and/or End users may make all use of the Electronic Publications as is consistent with the Fair Use Provisions of United States and international copyright laws and the Bidder's/Contractor's terms and conditions for use of its online services, provided that they do not conflict with the terms of Appendix A, this Solicitation or any resultant Contract, or Appendix B,. In addition, the Electronic Publications may be used as follows:

1. Authorized Users and End Users may display, download, copy and/or print portions of the Electronic Publications for use in research, education, or other non-commercial purposes.
2. Authorized Users and End Users may use a reasonable portion of the Electronic Publications in the preparation of educational materials.

3. Authorized Users may fulfill occasional requests from other institutions, a practice commonly called Interlibrary Loan. Authorized Users agrees to maintain records respecting End User's use of materials in such Interlibrary Loan and to provide such records to the Contractor upon request.

**Specific Restrictions on Use of Electronic Publications**

Authorized User may not utilize the Electronic Publications for commercial purposes, including but not limited to the sale of the Electronic Publications, fee-for-service use of the Electronic Publications, or bulk reproduction or distribution of the Electronic Publications in any form; nor may Authorized User impose special charges for use of the Electronic Publications beyond reasonable printing or administrative costs.

**Licensing Terms and Conditions**

Bidders are advised to review all terms and conditions carefully; particularly the licensing terms and conditions for Electronic Publications. If license agreement, shrink-wrap or click wrap agreements are associated with Electronic Publications, it is the responsibility of the potential Bidder/Contractor to offer only those Serials in electronic format that satisfy the license terms and conditions of the Solicitation. License terms that conflict with the terms of Appendix A, Appendix B, this Solicitation or any resultant Contract shall not be enforceable.

**PERFORMANCE REQUIREMENTS – LOT 2 – DATABASE ACCESS:****System Availability**

Databases shall be functional at least 99% of the time.

**Scheduled Maintenance**

Contractor must notify Authorized Users at least 48 hours prior to scheduled maintenance that interrupts End User access to Databases. OGS requests that scheduled maintenance **NOT** be performed during normal Business Days.

**RSS Feeds**

Contractors shall indicate on their Pricelist if RSS Feeds are allowed, and if so, if they are included in the price of the resource.

**CONTRACT PERIOD AND RENEWAL:**

The Contract(s) shall commence after all necessary approvals by both parties, and shall become effective upon mailing of the final Contract Award Notice by OGS (see Appendix B, §22, Contract Creation/Execution). The Contract(s) shall be in effect for five (5) years beginning on the date of approval of the first contract awarded as a result of the IFB, and shall end conterminously five (5) years from the approval of the first contract awarded as a result of the IFB. If mutually agreed between OGS and the Contractor, the Contract may be renewed under the same terms and conditions for up to two (2) additional years. Discount reduction will not be allowed and is specifically excluded from the terms and conditions of the Invitation for Bid and resultant Contract. Price decreases or discount increases are permitted at any time.

**SHORT TERM EXTENSION:**

In the event a replacement Contract has not been issued, any Contract let and awarded hereunder by the State, may be extended unilaterally by the State for an additional period of up to one (1) month upon notice to the Contractor with the same terms and conditions as the original Contract including, but not limited to, quantities (prorated for such one month extension), prices, and delivery requirements. With the concurrence of the Contractor, the extension may be for a period of up to three (3) months in lieu of one (1) month. However, this extension terminates should a replacement Contract be issued in the interim.

**PERIODIC RECRUITMENT:**

The State reserves the right to add Contractors beginning in the second year of the Contract and at one year intervals thereafter. The State will formally announce when the bid is reissued, at the discretion of the State. Bidders shall be required to submit such Bid documentation as required by OGS, which may include additional applicable statutory requirements currently in effect at the time of the new Bid solicitation. Once awarded a Contract, a Contractor may



not resubmit a Bid for future consideration. In addition, if a Bid is deemed non-responsive or is rejected under periodic recruitment, a Bidder cannot reapply for a future Contract until the next periodic recruitment period. For Contracts that are awarded under periodic recruitment, the Contract term will commence upon OGS approval in accordance with §22, *Contract Creation/Execution* of Appendix B and will terminate on the then current end date of the Contract or at the end of any approved extension or renewal period.

Bidders shall be required to submit this original bid document which may include additional applicable statutory requirements currently in effect at the time of the new bid solicitation. Bidders are advised to review the "Qualification of Bidders" clause before submitting a bid under periodic recruitment to ensure they can meet all bid requirements.

**CONTRACT ADVERTISING:**

In addition to the requirements set forth in Appendix B §21, *Contract Publicity*, any Contractor advertisements, promotional literature and/or Contract description(s) of Contract awards must be reviewed and approved by Procurement Services prior to issuance.

**MINIMUM ORDER:**

There is no minimum order requirement.

**NEW YORK STATE PURCHASING CARD:**

See "Purchasing Card" in Appendix B, §15, *Purchasing Card*. Contractors indicated on their Contractor's Information Page if they will accept the NYS Purchasing Card for orders not to exceed \$85,000. For all purchases executed using a New York State Purchasing Card, Contractor shall provide an itemized receipt with each delivery. Contractor shall state the discount offered when using the NYS Purchasing Card on each Contractor's Information page.

**CONTRACT ORDERS:**

Contractor shall be capable of accepting orders manually, via facsimile, and, electronically via email. As an option, Contractor may also accept orders electronically via the Internet through a web-based ordering system. Contractor shall be required to provide written quotes to Authorized Users who request them prior to placing an order, which quote details the SKU corresponding with the approved product list, List Price, discount, and Net Price, as applicable.

The web-based ordering system, if offered, shall allow Authorized Users to enter orders and have full order inquiry capabilities. All orders (manual, fax, electronic) shall reference requisition and/or purchase order number as required. If offering a web-based ordering system, the Bidder represents and warrants that it is the sole owner of the software product used for its ordering system, or, if not the owner, has received all proper authorizations from the owner to license the software product, and has the full right and power to grant the rights contained in any Contract resulting from this Invitation for Bids and as described further in Appendix B. Bidder further warrants and represents that the software product is of original development, and/or that the package and its use will not violate or infringe upon any patent, copyright, trade secret or other property right of any other person/company.

The web-based ordering system\*, if offered, shall be capable of processing, controlling, documenting, and reporting on the following minimum data elements:

- Contractor Name and Address
- Agency/Facility/Political Subdivision, etc.
- Contract Number
- Purchase Order/Requisition Numbers
- Contact (individual placing order)
- SKU/PN & Product Description
- Net Price
- Extended and Total Amounts

\*Comparable systems meeting the intent of the specifications may be considered.

If offering a web-based ordering system, the Contractor shall provide any necessary software (excluding communication software) and training guides/manuals or online support in the use of the web-based ordering system at no additional cost to all Authorized Users capable of placing orders electronically. Samples of software and training guides/manuals may be required. If requested, Bidder must demonstrate its system at an Albany, NY area location designated by the State.

#### INTERNET WEBSITES:

The State encourages successful Bidders to provide a designated NYS Contract website for Authorized Users' direct access. This website will be listed under the Contractor information. The purpose of a dedicated website is to provide Authorized Users with access to Contract pricing and Product offerings and the option of online ordering. It is the Contractor's responsibility to ensure that Contract and related information is accurately and completely posted, maintained and displayed in an objective and timely manner which renders it clearly distinguishable from other, non-contract offerings at Contractor's web site. Changes in Products or pricing must be approved by the Office of General Services, Procurement Services in accordance with any terms included in this Solicitation and resultant Contract prior to addition to the website. Hard copy catalog and pricelists, either in paper format or electronic format, must be available to all Authorized Users who either do not have Internet access or prefer the optional format.

#### PURCHASE ORDERS AND INVOICING:

All Purchase Orders and invoices shall include the Contract number and a line by line listing of separate charges. Order confirmation shall mean that the Contractor has received the purchase order, has reviewed it for compatibility with the Item currently on Contract, has resolved any non-compatibility problems with the Authorized User, and has entered the order, assigned an order number with anticipated delivery date.

##### **Purchase Orders**

Purchase orders are to include the following information:

1. Contract number
2. Contractor name
3. ISSN and Product/service description
4. Net Price

##### **Invoices**

Authorized Users are instructed not to process invoices that do not include the required information set forth below. Invoices must be detailed and include in the body of the invoice or an attachment to the invoice **all** of the following items. Failure to comply may result in lengthy payment delays. Original invoices must follow the billing instructions contained in the purchase order. **Invoices shall include, at a minimum, the following information:**

1. Contract number
2. Contractor name
3. NYS Vendor Identification Number
4. Purchase Order number
5. ISSN and Product/service description
6. Line item breakdown of all charges to include Net Price of each Product/service

Note that additional information is required for invoices for Lot 1 – Serials Products in accordance with Section *Performance Requirements – Lot 1 - Serials*.

Business units or branch offices within an Authorized User may require separate invoicing as specified by each Authorized User. The Contractor's billing system must be flexible enough to meet the needs of varying accounting systems in use by different Authorized Users.

**SOFTWARE:**

Software offered must be in a format that does not require any conversion by the Authorized User and shall:

1. be available as part of the Contractor's standard commercial offerings; and
2. be directly related to the operational function of the Products offered under the contract.

Any Software currently on the NYS Miscellaneous Software Catalog contract Prohibited List is excluded from purchase under this Contract, except when the Software is pre-loaded on equipment at the time of purchase. The Prohibited List may be accessed on the OGS website:

<http://www.ogs.ny.gov/purchase/snt/awardnotes/79518Prohibited.pdf>.

**RELATED THIRD PARTY PRODUCTS:**

Third Party Products which meet and comply with all of the following criteria may be authorized for sale under this Contract:

1. The Third Party Product is available as part of the Contractor's standard commercial offerings.
1. The Third Party Product fits the scope of and is directly related to the operation of Products that fit the scope of the Contract.
2. If the Third Party Product is available on another NYS Contract, such item will only be approved for inclusion on this Contract in accordance with Section titled, *Overlapping Contract Items*. If the Third Party Product is not available on another NYS Contract, then price reasonableness must be established in order for such item to be added to the Contract.

**USE OF RESELLERS/DISTRIBUTORS/ALTERNATE CHANNEL PARTNERS:**

Contractor must provide service, sales and support staff to service Authorized Users geographically located at multiple purchasing locations throughout New York State. Contractor shall ensure that sufficient resources are available directly, or through authorized Resellers to ensure maximum service capability throughout the State. The State agrees to permit Contractor to utilize approved, designated value added resellers (VARs), distributors, dealers, and sales agents to participate as alternate channel partners (collectively referred to as "Resellers") for Contractor. Such participation is subject to the following conditions:

1. Designation of Reseller(s): Contractor shall specify whether orders must be placed directly with Contractor, or may be placed directly with designated Reseller(s). When Reseller(s) are submitted for approval, Contractor must provide the State, in advance, with all necessary ordering information, billing addresses, Federal Identification Numbers, and NYS Vendor Identification Numbers in the format requested in Reseller Directory. Failure to accurately provide all required information may result in processing delays.
2. Conditions of Participation: Reseller(s) must be approved in advance by the State as a condition of eligibility under the Contract. The State also reserves the right to rescind any such participation or request that Contractor name additional Resellers, in the best interests of the State, at the State's sole discretion, at any time. Contractor shall have the right to qualify Reseller(s) and their participation as fulfillment agents under this Contract by product line, contracting program (e.g., government/educational sales), geographic region, size/sales volume, technical training or other criteria ("qualifying criteria"), provided that: i) such qualifying criteria are uniformly applied to all potential Resellers based upon Contractor's established, neutrally applied commercial/governmental program criteria, and not to a particular procurement; ii) all general categories of qualifying criteria must be disclosed by the Contractor to the State, in advance, at the beginning of the Contract term; iii) those qualifying criteria met by the Reseller must be identified on the form provided in Reseller Directory at the time that Reseller approval is requested under this paragraph; and iv) immediate advance notice is provided to OGS in the event that a change in Reseller's status occurs during the Contract term.
3. All Resellers who have been approved in accordance with the foregoing paragraph shall be eligible to quote lower than Contract pricing for procurements under this Contract which meet their qualifying criteria. Except as otherwise set forth in Reseller Directory, Contractor warrants and represents that it shall not, directly or indirectly, by agreement, communication or any other means, restrict any Reseller's participation or ability to quote a particular order. Reseller Directory updates will be allowed no more than twice annually. On the first business day of the month following the sixth and twelfth months of each contract year, Contractors shall be

given an opportunity to submit revised Reseller Directories electronically. When submitting Reseller Directory updates, Contractors shall be required to separately specify additions, deletions, and/or any other changes to the directory in an accompanying communication submitted with the request in order to facilitate a more expeditious review; failure to do so may result in the rejection of the request.

4. Responsibility for Reporting/Performance: Contractor shall be fully liable for Reseller(s)' performance and compliance with all Contract terms and conditions. Product purchased through Reseller(s) must be reported by Contractor in the required monthly reports to the State as a condition of payment. In addition to inclusion of Reseller(s) volume in the Contractor's monthly reporting obligation to the State, at the request of Authorized User, Reseller(s) shall provide Authorized User with quarterly reports of the individual Authorized User's Contract activity with Reseller.
5. Applicability of Contract Terms: Product ordered directly through Reseller(s) shall be limited to Products currently approved for inclusion under this Contract and shall be subject to all terms and conditions of this Contract as a condition of Reseller participation.

#### CANCELLATION OF PURCHASE ORDERS:

Cancellation of orders in part or whole for unavailable Products shall be made by means of appropriate notations and adjustments on orders returned by Contractor to the Authorized User. Contractors shall make no shipments of canceled Products except on the basis of a new order. Products not supplied by the Contractor may be purchased from any other Contract source.

#### CONTRACT PAYMENTS:

Payments cannot be processed by Authorized Users until the items have been delivered and accepted. Payment will be based on any invoice used in the Contractor's normal course of business. However, such invoice must contain all requirements in Section *Purchase Orders and Invoicing*.

#### CONTRACT ADMINISTRATOR:

Contractor must provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Contractor must notify OGS within five (5) Business Days if its Contract Administrator changes, and provide an interim contact person until the position is filled. Changes to Contractor contact information, including the designation of a new Contract Administrator, shall be submitted electronically via e-mail to the OGS Contract Management Specialist.

#### TOLL-FREE NUMBER/AUTHORIZED USER ASSISTANCE:

A Bidder must provide a toll-free telephone number for the Authorized User assistance under any Contract or purchase order resulting from this Solicitation. Bidder must staff this toll-free number at a minimum from 8:00 a.m. to 5:00 p.m. ET Monday through Friday, excluding NYS holidays. If Bidder does not currently maintain a toll-free number, the Bidder must be willing to establish one prior to award of Contract. Bidders may also offer online assistance, such as email or chat assistance.

#### INSURANCE REQUIREMENTS:

The Contractor shall with the Insurance Requirements of the bid solicitation. Within thirty (30) days after renewal or replacement of any policy required by any Contract resulting from this solicitation, or within three (3) business days of request, Bidders and Contractors shall supply OGS with updated replacement Certificates of Insurance, and amendatory endorsements.

#### REPORT OF CONTRACT SALES:

Contractor shall furnish a report semiannually of all Products purchased under the Contract during each semiannual period, no later than the 15th of the month following the close of each six month period. Purchases by Non-state agencies, political subdivisions and others authorized by law shall be reported in the same report and indicated as required. If resellers are utilized, the Contractor shall be responsible for consolidating all contract purchases into a single report. A template for such report is included in Attachment 9 - *Report of Contract Sales*. All fields of

information shall be accurate and complete. The report is to be submitted electronically via electronic mail utilizing the template provided in Microsoft Excel 2013, or lower version (or as otherwise directed by OGS), to the attention of the OGS contract manager and shall reference the Group Number, Award Number, Contract Number, and Sales Period. OGS reserves the right to amend the report template during the Contract term.

Contractor shall specify if any resellers are NYS Certified Minority and/or Women-Owned Business Enterprises (MWBEs) within the Report of Contract Sales document. Contractor shall refer to Section *Contractor Requirements and Procedures for Business Participation Opportunities for New York State Certified Minority and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women* for information on how to verify certified status.

#### AUTHORIZED USER SALES REPORT:

Upon written request by an Authorized User, the Contractor shall furnish to such Authorized User, on a monthly basis, a report listing the following: name of products purchased, quantity purchased, unit price and total dollar volume of purchases.

#### CONTRACTOR REQUIREMENTS AND PROCEDURES FOR EQUAL EMPLOYMENT AND BUSINESS PARTICIPATION OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND NEW YORK STATE CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES:

##### **Policy Statement**

The New York State Office of General Services (“OGS”), as part of its responsibility, recognizes the need to promote the employment of minority group members and women and to ensure that certified minority- and women-owned business enterprises have opportunities for maximum feasible participation in the performance of OGS contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority- and women-owned business enterprises had a full and fair opportunity to participate in State contracting. The findings of the study were published on April 29, 2010, under the title “The State of Minority- and Women-Owned Business Enterprises: Evidence from New York” (the “Disparity Study”). The Disparity Study found evidence of statistically significant disparities between the level of participation of minority- and women-owned business enterprises in State procurement contracting versus the number of minority- and women-owned business enterprises that were ready, willing and able to participate in State procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the Statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that OGS establish goals for maximum feasible participation of New York State certified minority- and women-owned business enterprises (“MWBE”) and the employment of minority groups members and women in the performance of New York State contracts.

##### **General Provisions**

OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.

The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State certified minority- and women-owned business enterprises (“MWBEs”). Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination

provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, State or local laws.

The Contractor further agrees to be bound by the provisions of Article 15-A and the MWBE Regulations. If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.

Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility, breach of contract, withholding of funds, suspension or termination of the Contract and/or such other actions or enforcement proceedings as allowed by the Contract.

**Equal Employment Opportunity (EEO)**

Contractor shall comply with the provisions of Article 15-A set forth below. These provisions apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000, for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting State agency (the “Work”) except where the Work is for the beneficial use of the Contractor.

1. Contractor and subcontractors shall undertake or continue existing EEO 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, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate or distinct from the Contract; or (ii) employment outside New York State.
2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor’s equal employment opportunity policy.

**Form EEO 100 – Staffing Plan**

To ensure compliance with this section, the Contractor agrees to submit or has submitted with the Bid a staffing plan on Form EEO 100 to OGS to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.

**Form EEO - 101 - Workforce Utilization Reporting Form (Commodities and Services) (“Form EEO-101-Commodities and Services”)**

The Contractor shall submit, and shall require each of its subcontractors to submit, a Form EEO-101-Commodities and Services to OGS to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Form EEO-101-Commodities and Services must be submitted electronically to OGS at [EEO\\_CentCon@ogs.ny.gov](mailto:EEO_CentCon@ogs.ny.gov) on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January. Separate forms shall be completed by Contractor and any subcontractor.

If Contractor’s EEO Form 100 - Staffing Plan provides that Contractor is unable to separate out the actual workforce utilized in the performance of the Contract from its total workforce, the following clause shall apply: Contractor and OGS agree that Contractor is unable to separate out the workforce utilized in the performance of the Contract from Contractor’s and/or subcontractor’s total workforce and that the information provided on the previously submitted Staffing Plan is Contractor’s total workforce during the subject time frame, not limited to work specifically under the Contract.

Contractor shall comply with the provisions of the Human Rights Law, all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall 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 and conviction and prior arrest.

**Contract Goals**

For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers and suppliers to Contractor. Contractor is, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528> Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

**Good Faith Efforts**

Pursuant to 5 NYCRR § 142.8, evidence of good faith efforts shall include, but not be limited to, the following:

1. A list of the general circulation, trade and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers and copies of such solicitations and any responses thereto.
2. A list of the certified MWBEs appearing in the Empire State Development MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
3. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with or obtaining supplies from certified MWBEs.
4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
5. Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
6. Other information deemed relevant to the request.

ALL FORMS ARE AVAILABLE AT: <http://www.ogs.ny.gov/MWBE/Forms.asp>

**NEW YORK STATE FINANCIAL SYSTEM (SFS):**

New York State is currently operating on an Enterprise Resource Planning (ERP) system, Oracle PeopleSoft software, referred to as the Statewide Financial System (SFS). SFS is currently on PeopleSoft Financials version 9.2 Bundle 18, operating on PeopleTools version 8.49.33. SFS supports requisition-to-payment processing and financial management functions.

The State is also implementing an eProcurement application that supports the requisitioning process for State Agencies to procure goods and services in SFS. This application provides catalog capabilities. Vendors with Centralized Contracts have the ability to provide a "hosted" or "punch-out" catalog that integrates with SFS and is available to Authorized Users via a centralized eMarketplace website. There are no fees required for a Vendor's participation in the catalog site development or management. Upon completion and activation of an on-line catalog, State Agencies will process their orders through the SFS functionality and other Authorized Users can access the catalog site to fulfill orders directly.

The State is also implementing the PeopleSoft Inventory module in the near future to track inventory items within the item master table. Further information regarding business processes, interfaces, and file layouts may be found at: [www.sfs.ny.gov](http://www.sfs.ny.gov) and <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

**USE OF RECYCLED OR REMANUFACTURED MATERIALS:**

New York State supports and encourages vendors to use recycled, remanufactured or recovered materials in the manufacture of products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the product or packaging unless such use is precluded due to health or safety requirements or product specifications contained herein. Refurbished or remanufactured components or products are required to be restored to original performance and regulatory standards and functions and are required to meet all other requirements of this Contract. Warranties on refurbished or remanufactured components or products must be identical to the manufacturer's new equipment warranty or industry's normal warranty when remanufacturer does not offer new equipment. See Appendix B, §38, *Repaired or Replaced Products, Parts or Components*.

**BULK DELIVERY AND ALTERNATE PACKAGING:**

New York State encourages the use of innovative packaging that reduces the weight of packaging and the generation of packaging waste. A contractor is encouraged to use reusable materials and containers and to utilize packaging configurations that take advantage of storage containers designed to be part of the product for the shipment of multi-unit purchases. New York State recognizes that these packaging methods are in the development stage and may not be currently available. Authorized Users are urged to inquire about these programs at the time of purchase and determine the best solution for their needs.

**SURPLUS/TAKE-BACK/RECYCLING:**

1. A State agency is reminded of its obligation to comply with the NY State Finance Law §§167, Transfer and Disposal of Personal Property, and 168, The Management of Surplus Computer Equipment, regarding transfer and disposal of surplus personal property before utilizing take-back, recycling, or other options for disposition of equipment that is still in operable condition.
2. If Contractor offers a take-back/recycling program, then Contractor shall provide a record of disposition to each Authorized User who participates in the take-back/recycling program for units transferred for disposition. Contractor shall provide documentation that the units were disposed of in an environmentally sound manner in compliance with applicable local, state and federal laws. See Section 3 below for specific requirements governing electronic equipment recycling.
3. The NYS Department of Environmental Conservation (DEC) Electronic Equipment Recycling and Reuse Act ("Act") (Environmental Conservation Law, Article 27, Title 26, Electronic Equipment Recycling and Reuse), requires manufacturers to establish a convenient system for the collection, handling, and recycling or reuse of electronic waste. If Contractor is a manufacturer of electronic equipment covered by the Act, Contractor agrees to comply with the requirements of the Act. More information regarding the Act can be found on the DEC website at: <http://www.dec.ny.gov/chemical/65583.html>.
4. If a Contractor offers a take-back/recycling program or offers an electronic equipment recycling program pursuant to the Act, and an Authorized User participates in same, then the Authorized User shall ensure the destruction of all data from any hard drives surrendered with the machines/covered electronic equipment. Contractor shall not require an Authorized User to surrender the hard drive, as an Authorized User may wish to retain the hard drive for security purposes. Contractor shall advise the Authorized User in advance if the retention of the hard drive results in additional fees or reduction in trade-in value. It is recommended that an Authorized User use a procedure for ensuring the destruction of confidential data stored on hard drives or other storage media that meets or exceeds the National Institute of Standards and Technology (NIST) Guidelines for Media Sanitation as found in NIST Special Publication 800-88.

**ENVIRONMENTAL ATTRIBUTES AND NYS EXECUTIVE ORDER NUMBER 4:**

New York State is committed to environmental sustainability and endeavors to procure products with reduced environmental impact. One example of this commitment may be found in Executive Order No. 4 (Establishing a



State Green Procurement and Agency Sustainability Program), which imposes certain requirements on state agencies, authorities, and public benefit corporations when procuring commodities, services, and technology. More information on Executive Order No. 4, including specifications for offerings covered by this Contract, may be found at: <http://ogs.ny.gov/EO/4/Default.asp>. State entities subject to Executive Order No. 4 are advised to become familiar with the specifications that have been developed in accordance with the Order, and to incorporate them, as applicable, when making purchases under this Contract.

**PREFERRED SOURCE PRODUCTS:**

Section 162 of the State Finance Law requires that agencies, including Executive Agencies, afford first priority to the products of preferred source suppliers such as Corcraft (the marketplace name for the NYS Department of Corrections and Community Supervision, Division of Industries), New York State Preferred Source Program for People who are Blind (NYSPSP), and New York State Industries for the Disabled (NYSID), and others determined by law, when such products meet the form, function and utility of the agency. Some products in the resultant Contract(s) may be available from one or more preferred sources. An Authorized User must determine if a particular commodity or service is approved for a Preferred Source and follow the requirements of State Finance Law Section 162(3) or (4)(b), respectively, before engaging the Contractor.

**NEW YORK STATE VENDOR RESPONSIBILITY:**

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS 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.

The Commissioner of OGS or her designee, her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when 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 Commissioner of OGS or her designee issues a written notice authorizing a resumption of performance under the Contract. The Contractor agrees that if it is found by the State that the Contractor's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Contract.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Contract may be terminated by the Commissioner of OGS or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of OGS or her designee to be non-responsible. In such event, the Commissioner of OGS 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.

In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

**NEW YORK STATE TAX LAW SECTION 5-A:**

Tax Law Section 5-a requires certain Contractors awarded state Contracts for commodities, services and technology valued at more than \$100,000 to certify to NYS Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to Contracts where the total amount of such Contractors' sales delivered into New York State is in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

Contractors may consult with DTF's website at <http://www.tax.ny.gov/> for additional information and frequently asked questions.

**OVERLAPPING CONTRACT ITEMS:**

Products available in the resulting Contract may also be available from other New York State Contracts. Authorized Users will be advised to select the most cost effective procurement alternative that meets their program requirements and to maintain a procurement record documenting the basis for this selection.

**NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS:**

New York State political subdivisions and others authorized by New York State law may participate in contracts. These include, but are not limited to local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See Appendix B, §25, *Participation in Centralized Contracts*. For purchase orders issued by the Port Authority of New York and New Jersey (or any other authorized entity that may have delivery locations adjacent to New York State), the terms of the "Price" clause shall be modified to include delivery to locations adjacent to New York State.

Upon request, all eligible non-State agencies must furnish contractors with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. A list of categories of eligible entities is available on the OGS web site ([www.ogs.state.ny.us](http://www.ogs.state.ny.us)). Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to OGS Procurement Services' Customer Services at 518-474-6717.

**NOTE TO ALL NON-STATE AGENCIES AND BIDDERS:**

All such participating non-State agencies and Bidders understand, acknowledge and agree that the primary responsibility in regard to performance of the Contract, of any obligation, covenant, condition or term thereunder by either such party thereto shall be borne and is expressly assumed by the participating non-State agencies and Contractor and not by the State. In the event of a failure or breach in performance of any such Contract by a non-State Agency or Contractor, the State specifically and expressly disclaims any and all liability for such defective performance or breach, and the eligible participating non-State agencies and Contractor guarantee to save the State, its officers, agents and employees harmless from any liability that may be or is imposed by the failure of either party to perform in accordance with its obligations, covenants and the terms and conditions of the State Centralized Contract.

**EXTENSION OF USE:**

The contract may be extended to additional States or governmental jurisdictions upon mutual written agreement between New York State (the lead contracting State) and the Contractor. Political subdivisions and other authorized entities within each participating State or governmental jurisdiction may also participate in any resultant Contract if such State normally allows participation by such entities. New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

**CONTRACTOR PERFORMANCE:**

Authorized Users should notify the Procurement Services Contract administrator promptly if the Contractor fails to meet the requirements of this Contract. Performance which is otherwise unsatisfactory to the Authorized User should also be reported to Procurement Services.

**MERCURY-ADDED CONSUMER PRODUCTS:**

Contractor agrees that it will not sell or distribute fever thermometers containing mercury or any products containing elemental mercury for any purpose under this Contract.

**UNANTICIPATED EXCESSIVE PURCHASE:**

The State reserves the right to negotiate lower pricing, or to advertise for bids, any unanticipated excessive purchase. An “unanticipated excessive purchase” is defined as an unexpected order for a Contract product(s) totaling more than \$50,000.00.

**AMERICANS WITH DISABILITIES ACT (ADA):**

The Federal ADA Act, signed into law July 26, 1990, bars employment discrimination and requires all levels of Government to provide necessary and reasonable accommodations to qualified workers with disabilities.

Contractors are required to identify and offer any software or hardware products they manufacture or adapt which may be used or adapted for use by visually, hearing, or any other physically impaired individuals. Although it is not mandatory for Contractors to have this equipment in order to receive an award, it is necessary to identify any such equipment offered they have which falls into the above category.

**ADDITIONAL REQUIREMENTS:****1. NO DRUGS OR ALCOHOL**

For reasons of safety and public policy, in any Contract resulting from this procurement, the use of illegal drugs and/or alcoholic beverages by the Contractor or its personnel shall not be permitted while performing any phase of the work herein specified.

**2. TRAFFIC INFRACTIONS**

The State will not be liable for any expense incurred by the Contractor for any parking fees or as a consequence of any traffic infraction or parking violations attributable to employees of the Contractor.

**WEBSITE ACCESSIBILITY:**

Responsibility for Content: Contractor is solely responsible for administration, content, intellectual property rights and all materials at Contractor’s website. Contractor is solely responsible for its actions and those of its agents, employees, resellers, Sub-Contractors or assigns, and agrees that neither Contractor nor any of the foregoing has any authority to act or speak on behalf of the State. As applicable, Contractor agrees to comply with the Office of Information Technology Services f/k/a Office for Technology policy NYS-P08-005 Accessibility of Web-Based Information and Applications, as may be amended, the stated purpose of which is to make State Agency web-based Intranet and Internet information accessible for persons with disabilities. In accordance with such policy, the following language is incorporated into any Contract resulting from this procurement:

Any web-based information and applications development, or programming delivered pursuant to the contract or procurement, 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 (state agency name, contractor or other) and the results of such testing must be satisfactory to (state agency name) before web-based information and applications will be considered a qualified deliverable under the contract or procurement.

## LICENSE AGREEMENTS:

An Authorized User looking to acquire Products and services under a Contract resulting from this Contract must review the contractual terms and conditions. The Authorized User must ask the Contractor if “click through”, “shrink wrap” or other pass-through or licensing/subscription terms and conditions are present, and if so, the Authorized User is responsible for reviewing and approving such terms and conditions prior to ordering the Products and services. If the terms and conditions are not acceptable to the Authorized User, it is the responsibility of such Authorized User to negotiate any needed amendments. ***Any additional licensing terms agreed to by the Authorized User shall not conflict with Appendix A, this Solicitation, any resultant Contract, or Appendix B. Any such conflicting terms shall be void and unenforceable.***

## APPENDIX A

Appendix A, Standard Clauses For New York State Contracts, dated January 2014 is hereby expressly made a part of this Contract as fully as if set forth at length herein.

## APPENDIX B

Appendix B, Office of General Services General Specifications, dated May 2015 is hereby expressly made a part of this Contract as fully as if set forth at length herein and shall govern any situations not covered by the bid document or Appendix A.

**NOTICE: THIS CONTRACT AWARD NOTIFICATION CONTAINS A SUBSET OF INFORMATION FROM THE SOLICITATION. CONTRACTS RESULTING FROM SOLICITATION 23044 HAVE BEEN EXECUTED BY CONTRACT AWARD LETTER. THE CONTRACT AWARD LETTER SETS FORTH THE ORDER OF PRECEDENCE FOR THE TERMS AND CONDITIONS OF THE EXECUTED CONTRACTS. COMPLETE CONTRACT DETAILS INCLUDING TERMS AND CONDITIONS CAN BE FOUND IN THE SOLICITATION DOCUMENT DATED REVISED OCTOBER 20, 2016.**

**State of New York  
Office of General Services  
Procurement Services  
Contract Performance Report**

Please take a moment to let us know how this contract award has measured up to your expectations. If reporting on more than one Contractor or product, please make copies as needed. This office will use the information to improve our contract award, where appropriate. **Comments should include those of the product's end user.**

**Contract No.:** \_\_\_\_\_ **Contractor.** \_\_\_\_\_

**Describe Product\* Provided (Include Item No., if available):** \_\_\_\_\_

**\*Note:** "Product" is defined as a deliverable under any Bid or Contract, which may include commodities (including printing), services and/or technology. The term "Product" includes Licensed Software.

	Excellent	Good	Acceptable	Unacceptable
• Product meets your needs				
• Product meets contract specifications				
• Pricing				

**CONTRACTOR**

	Excellent	Good	Acceptable	Unacceptable
• Timeliness of delivery				
• Completeness of order (fill rate)				
• Responsiveness to inquiries				
• Employee courtesy				
• Problem resolution				

**Comments:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_(over)

**Agency:** \_\_\_\_\_ **Prepared by:** \_\_\_\_\_

**Address:** \_\_\_\_\_ **Title:** \_\_\_\_\_

\_\_\_\_\_ **Date:** \_\_\_\_\_

\_\_\_\_\_ **Phone:** \_\_\_\_\_

\_\_\_\_\_ **E-mail:** \_\_\_\_\_

**Please detach or photocopy this form & returned to:**

OGS Procurement Services  
Customer Services, 38th Floor  
Corning 2<sup>nd</sup> Tower - Empire State Plaza  
Albany, New York 12242  
customer.service@ogs.ny.gov

\* \* \* \* \*



## 3<sup>rd</sup> Supplemental Contract Award Notification

PAGE 94

Title	:	Group 20020 – Serials and Database Access (Statewide) Classification Code(s): 55 & 83
Award Number	:	<a href="#">23044</a>
Contract Period	:	February 9, 2017 – December 31, 2021
Bid Opening Date	:	November 1, 2016
Date of Issue	:	February 9, 2017
Specification Reference	:	As Incorporated Herein
Contractor Information	:	Appears on Page 2 of this Award

### Address Inquiries To:

State Agencies & Vendors		Political Subdivisions & Others	
Name	: Shrilata Nath	Procurement Services	
Title	: Contract Management Specialist	Customer Services	
Phone	: 518-474-3034	Phone	: 518-474-6717
E-mail	: Shrilata.Nath@ogs.ny.gov	E-mail	: <a href="mailto:customer.services@ogs.ny.gov">customer.services@ogs.ny.gov</a>

**Procurement Services values your input.  
Complete and return "Contract Performance Report" at end of document.**

### Description

NOTICE: THIS CONTRACT AWARD NOTIFICATION CONTAINS A SUBSET OF INFORMATION FROM THE SOLICITATION. CONTRACTS RESULTING FROM SOLICITATION 23044 HAVE BEEN EXECUTED BY CONTRACT AWARD LETTER. THE CONTRACT AWARD LETTER SETS FORTH THE ORDER OF PRECEDENCE FOR THE TERMS AND CONDITIONS OF THE EXECUTED CONTRACTS. COMPLETE CONTRACT DETAILS INCLUDING TERMS AND CONDITIONS CAN BE FOUND IN THE SOLICITATION DOCUMENT DATED REVISED OCTOBER 20, 2016.

This contract provides Authorized Users with a means of acquiring Serials and Database Access Products and Services. The contract contains a total of two (2) Lots: Lot 1 - Serials and Lot 2 - Database Access. **Lot 1 Serials - Included:** Print Periodicals and Newspapers; Electronic Magazines and Journals; Annuals (reports, yearbooks, etc.); Continuing directories; Proceedings and transactions; Numbered monographic series cataloged separately; Subscription based eBooks; and Optional Products and Services, including but not limited to: Stamps, call numbers or routing labels, bar-coding, and security strips, Processing of journals including affixing date and property, Shipment Consolidation, MARC (Machine Readable Cataloging) records and updates, and Serials management solutions. **Lot 2 Database Access – Included:** Library Databases; Full Text Databases; Numeric Databases; Meta-Databases; General Interest Databases; Discipline Specific Databases; Subject Specific Databases; Streaming Video Databases; Database Files; and Optional Products and services, including but not limited to: Database Management Systems (DBMS), Hard copy records, Mailing labels, Batching, and Reporting

This Contract Award Notification contains MWBE goals of 0% MBE and 0% WBE.

PR #23044

**CONTRACT #** CONTRACTOR  
PC67663 Encyclopaedia Britannica, Inc..

**FED.IDENT. #**  
36-2063569

**NYS VENDOR #**  
1000040643

For complete Contractor contract information and Pricing information for this Award, please see the Contractor Information page located on the OGS Website at: <http://www.ogs.ny.gov/purchase/spg/awards/2002023044Can.htm>

Cash Discount and/or Early Payment Discount, If Shown, Should be Given Special Attention.  
**INVOICES MUST BE SENT DIRECTLY TO THE ORDERING AGENCY FOR PAYMENT.**  
(See "INVOICING AND PAYMENT" in this document.)

AGENCIES SHOULD NOTIFY PROCUREMENT SERVICES PROMPTLY IF THE CONTRACTOR FAILS TO MEET DELIVERY OR OTHER TERMS OF THIS CONTRACT. PRODUCTS WHICH DO NOT COMPLY WITH THE SPECIFICATIONS OR ARE OTHERWISE UNSATISFACTORY TO THE AGENCY SHOULD ALSO BE REPORTED TO THE PROCUREMENT SERVICES.

#### SMALL, MINORITY AND WOMEN-OWNED BUSINESSES:

The letters SB listed under the Contract Number indicate the contractor is a NYS small business. Additionally, the letters MBE and WBE indicate the contractor is a Minority-owned Business Enterprise and/or Woman-owned Business Enterprise.

#### RECYCLED, REMANUFACTURED AND ENERGY EFFICIENT PRODUCTS:

The Procurement Services supports and encourages the purchase of recycled, remanufactured, energy efficient and "energy star" products. If one of the following codes appears as a suffix in the Award Number or is noted under the individual Contract Number(s) in this Contract Award Notification, please look at the individual awarded items for more information on products meeting the suffix description.

RS,RP,RA	Recycled
RM	Remanufactured
SW	Solid Waste Impact
EE	Energy Efficient
E*	EPA Energy Star
ES	Environmentally Sensitive

#### NOTE TO AUTHORIZED USERS:

When placing purchase orders under the contract(s), the authorized user should be familiar with and follow the terms and conditions governing its use which usually appears at the end of this document. The authorized user is accountable and responsible for compliance with the requirements of public procurement processes. The authorized user must periodically sample the results of its procurements to determine its compliance. In sampling its procurements, an authorized user should test for reasonableness of results to ensure that such results can withstand public scrutiny.

The authorized user, when purchasing from OGS contracts, should hold the contractor accountable for contract compliance and meeting the contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, authorized users are encouraged to seek improved pricing whenever possible. Authorized users have the responsibility to document purchases, particularly when using OGS multiple award contracts for the same or similar product(s)/service(s), which should include:

- a statement of need and associated requirements,
- a summary of the contract alternatives considered for the purchase,

- The reason(s) supporting the resulting purchase (e.g., show the basis for the selection among multiple contracts at the time of purchase was the most practical and economical alternative and was in the best interests of the State).

**ORDER OF PRECEDENCE:**

The list of documents below address clarifications agreed to by the Contractor and the Office of General Services (OGS) and resolved by the parties and set forth herein in an order of precedence for the Contract award. The documents listed below were included in Solicitation #23044 or provided by the Contractor. Unless otherwise set forth in the procurement or contract documents, conflicts among documents shall be resolved in the following order of precedence:

1. Appendix A (January 2014), Standard Clauses for NYS Contracts (previously provided);
2. Contract Award Letter;
3. Revisions and Clarifications to Bid Specifications dated October 3, 2016 and October 20, 2016 (previously provided);
4. Solicitation #23044 (Revised October 20, 2016) including all Appendices and Attachments referenced therein (previously provided);
5. Contractor's Bid Prices as stated in Attachment 1 – Pricelist
6. Contractor's Bid

**OVERVIEW:**

This Contract provides Authorized Users with a means of acquiring Serials and Database Access Products and Services by New York State Agencies and Non-State agencies, including political subdivisions, school districts and others authorized by law (See Section 5.48, *Non-State Agencies Participation in Centralized Contracts* and Section 5.50, *Extension of Use*).. Products for purchase by all Authorized Users are described in the Section titled, *Scope*.

Procurement Instructions describing requirements for Authorized Users to purchase from the Centralized Contract are found in the Section titled, *Procurement Instructions*.

**ESTIMATED QUANTITIES:**

All quantities or dollar values listed within this Contract are estimates. No specific quantities or volumes are represented or guaranteed and the State provides no guarantee of individual Authorized User participation. The Contractor(s) must furnish all quantities or dollar values actually ordered. The anticipated dollar value of the award for this Solicitation, based on historical purchases under previous awards was approximately \$55,000,000.00 annually for Lot 1 and \$20,000,000.00 annually for Lot 2. The individual value of each resultant Contract is indeterminate and will depend upon the number of Contracts issued and the competitiveness of the pricing offered. Authorized Users will be encouraged to purchase from Contractors who offer the Products and pricing that best meets their needs in the most practical and economical manner. See Appendix B, §28, *Estimated/Specific Quantity Contracts* and §25, *Participation in Centralized Contracts*.

Numerous factors could cause the actual value of the Contract to vary substantially from the historical value. Such factors include, but are not limited to, the following:

- The Contract is a nonexclusive Contract;
- There is no guarantee of volume to be purchased, nor is there any guarantee that demand will continue in any manner consistent with previous purchases;
- The individual value of the Contract is indeterminate and will depend upon actual Authorized User demand, and actual quantities ordered during the Contract period; and,
- The State reserves the right to terminate the Contract for cause or convenience prior to the end of the term pursuant to the terms and conditions of the Contract.

In Procurement Service's experience, depending on the price of a particular item, the actual volume of purchases for that item could be substantially in excess of, or substantially below, estimated volumes. Specifically, if actual



Contract pricing is lower than anticipated or historical pricing, actual quantities purchased could be substantially greater than the estimates; conversely, if actual contract pricing is higher than anticipated or historical pricing, actual quantities purchased could be substantially lower than the estimates. Contractor acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the Contract could vary substantially from the estimates/historical values provided in this Contract.

#### DEFINITIONS:

Terms used in the IFB documents that have a capitalized first letter shall be defined in accordance with Appendix B, §2 *Definitions*, which is hereby incorporated by reference. The following definitions shall apply:

<b>Term</b>	<b>Definition</b>
Active Request	Refers to an End User submitted search request transaction to the licensor's online service that has not yet received a response from the licensor's system.
Aggregator	A bibliographic service that provides online access to the digital full-text of Periodicals published by different Publishers. See also Database Publisher.
Back File Access	The ability to access information within a resource before a subscription period begins.
Business Day	Monday through Friday from 8:00 AM – 5:00 PM ET, excluding New York State and federal holidays.
Concurrent Users	Specified number of simultaneous End Users accessing an Electronic Publication or Database.
Concurrent Sessions	Concurrent User is interpreted to include any End User station device which, at the point in time of measurement, has established a logical session path to the licensor's online service, enabling an immediate search request to be made directly to the licensor's search software. This is the common meaning of such expressions as being "signed on" or "logged on" to the online service. Under this definition, any signed on terminal or End User station device is counted as part of the concurrent use total, regardless of whether the End User is at the End User station; formulating a new search request; waiting for the licensor's system to respond to a search request; or digesting the results of a previous request.
Concurrent Use License	Where licensing of Electronic Publications is based upon "Concurrent Users" the Contractor shall obtain from the publisher the right of the Authorized User to obtain license rights to the specified number of Concurrent Users actually executing the licensed programs, without reference to location or named End Users.
Continuing Directory	A list of people, companies, institutions, organizations, etc., in alphabetical or classified order, providing contact information (names, addresses, phone/fax numbers, etc.) and other pertinent details (affiliations, conferences, publications, membership, etc.) in brief format, often published serially (i.e. Continuing resources (not complete as first issued and intended to be ongoing, though not necessarily indefinitely).
Customization	Changes to the function, layout and/or appearance of a Database which does not alter the Database content.
Database	A large, regularly updated file of digitized information (bibliographic records, abstracts, full-text documents, directory entries, images, statistics, etc.) related to a specific subject or field, consisting of records of uniform format organized for ease and speed of search and retrieval and managed with the aid of database management system (DBMS) software. Content is created by the Database producer, which usually publishes a print version and leases the content to one or more Database vendors that provide electronic access to the data after it has been converted to machine-readable form, usually on CD-ROM or online via the Internet, using proprietary search software.
Database Management System (DBMS)	A computer application designed to control the storage, retrieval, security, integrity, and reporting of data in the form of uniform records organized in a large searchable file called a Database. The range of available DBMS software

<b>Term</b>	<b>Definition</b>
	extends from simple systems intended for personal computers to highly complex systems designed to run on mainframes.
Database Publisher	Company that uses specialized techniques to generate documents from source data and provide to End Users through a Database. See also Aggregator.
Discipline Specific Database	Information provided is focused on a discipline or area, however may include information from multiple related subject areas.
Electronic Journal	A digital version of a print journal, or a journal-like Electronic Publication with no print counterpart, made available via the World Wide Web, e-mail, or other means of Internet access. Some web-based Electronic Journals are graphically modeled on the print version. Synonymous with E-journal. Compare with electronic magazine.
Electronic Magazine	A digital version of a print magazine, or a magazine-like electronic publication with no print counterpart, made available via the World Wide Web, e-mail, or other means of Internet access. Some Web-based electronic magazines are graphically modeled on the print version. Synonymous with e-zine and Webzine. Compare with Electronic Journal.
Electronic Publication	A work in digital form capable of being read or otherwise perceived, distributed to the public electronically. Includes Electronic Journals and e-prints, Electronic Magazines and newspapers, electronic books, Web sites, Weblogs, etc. Some Electronic Publications are online versions of print publications; others are born digital. Synonymous with e-publication.
End User	Shall mean those persons who are permitted by the Authorized User to have access to an Electronic Publication or Database.
Fair Use	Shall mean acceptable use under the Copyright Revision Act 1976 as amended subsequently provided that such rights are exercised in accordance with Section 108 of the Act and with the guidelines developed by the National Commission on New Technological Uses of Copyrighted Works (CONTU Guidelines) and published in U.S. Copyright Office Circular 21.
Full Text Database	Contains the complete text of any documents (e.g. books, Journals, newspapers, magazines).
Full Time Equivalent End User (FTE)	For State agencies and Authorized Users not otherwise identified, the number of full time employees shall be the number of FTEs; for a higher educational institution, it shall refer to the student enrollment expressed as the number of full time students; for K-12 educational institutions, each student shall be considered one (1) FTE; for public libraries, the census population served shall be deemed to be the number of FTEs.
International Standard Serial Number (ISSN)	A unique eight-digit standard number assigned by the International Serials Data System (ISDS) to identify a specific serial title. The ISSN is usually given in the masthead of each issue or on the copyright page of each volume or part of a series. When a continuing resource undergoes a title change, a new ISSN is assigned.
Journal	A Periodical devoted to disseminating original research and commentary on current developments in a specific discipline, sub-discipline, or field of study, usually published in quarterly, bimonthly, or monthly issues sold by subscription. Journal articles are usually written by the person (or persons) who conducted the research. Longer than most magazine articles, they almost always include a bibliography or list of works cited at the end. In Journals in the sciences and social sciences, an abstract usually precedes the text of the article, summarizing its content. Most scholarly Journals are peer-reviewed. Scholars often use a current contents service to keep abreast of the Journal literature in their fields of interest and specialization.
Library Database	A large catalog or index of organized information.

<b>Term</b>	<b>Definition</b>
Licensing Agreement	A formal written contract between a library and a vendor for the lease of one or more proprietary (copyrighted) bibliographic databases or online resources, usually for a fixed period of time in exchange for payment of an annual subscription fee or per-search charge. Vendors typically charge libraries on a sliding scale based on number of registered borrowers or FTE enrollment, number of institutions or facilities served, and number of simultaneous users.
List Price	The undiscounted price at which a new publication is offered for sale to the public, established by the publisher at the time the edition is issued. The List Price is quoted in the Publisher's catalog and printed on the front flap of the dust jacket in hardcover editions and usually on the back cover in softcover editions. Discounts offered to libraries, booksellers, and jobbers are computed as a percentage off List Price. In library cataloging, the List Price of an item is indicated (when available) in the standard number and terms of availability area of the bibliographic description (field 020 or 022 of the MARC record). Synonymous with published price, retail price, and sticker price.
Magazine	A popular interest Periodical usually containing articles on a variety of topics, written by various authors in a nonscholarly style. Most magazines are heavily illustrated, contain advertising, and are printed on glossy paper. Articles are usually short (less than five pages long), frequently unsigned, and do not include a bibliography or list of references for further reading. Most magazines are issued monthly or weekly for sale at newsstands, in bookstores, and by subscription.
Metadata Database	Information about data itself, including size, origination or other descriptors.
MWBE	A business certified with NYS Empire State Development (ESD) as a Minority and/or Women-owned Business Enterprise.
N/A	A common abbreviation for <i>not applicable</i> or <i>not available</i> , used to indicate when information in a certain field on a table is not provided, either because it does not apply to a particular case in question or because it is not available.
National Public Entities	Defined as State Governments, the Federal Government, Local Governments, cities, towns, school districts, libraries, police and fire departments, and other political subdivisions
Net Price	List Price less all applicable discounts or inclusive of Service Charges; the price paid by Authorized Users of the resultant Contract.
Newspaper	A Serial publication, usually printed on newsprint and issued daily, on certain days of the week, or weekly, containing news, editorial comment, regular columns, letters to the editor, cartoons, advertising, and other items of current and often local interest to a general readership.
NYS Vendor ID	Refers to the ten-character identifier issued by New York State when a vendor is registered on the Vendor File.
Numerical Data Database	This includes statistical and other numerical data.
Optional Products and Services	Refer to supplementary Products and services that enhance or support the provision of Serials and/or Database Access Products identified to be within scope. For example: under Lot 1 that may include things such as stamps; call numbers or routing label; bar-coding; security strips; processing of journals including affixing date and property; shipment consolidation, MARC (Machine Readable Cataloging) records and updates; and Serials management solutions; under Lot 2 that may include things such as Database Management Systems (DBMS), hard copy records, mailing labels, batching, and reporting.
Periodical	A Serial publication with its own distinctive title, containing a mix of articles, editorials, reviews, columns, short stories, poems, or other short works written

<b>Term</b>	<b>Definition</b>
	by more than one contributor, issued in softcover more than once, generally at regular stated intervals of less than a year, without prior decision as to when the final issue will appear. Although each issue is complete in itself, its relationship to preceding issues is indicated by enumeration, usually issue number and volume number printed on the front cover. Content is controlled by an editor or editorial board. Includes magazines, sold on subscription and at newsstands; journals, sold on subscription and/or distributed to members of scholarly societies and professional associations; and newsletters, but not proceedings or the other regular publications of corporate bodies as they relate primarily to meetings.
Procurement Services	Formerly known as NYSPRO or Procurement Services Group (PSG), Procurement Services shall mean a division of the New York State Office of General Services which is authorized by law to issue centralized, statewide Contracts for use by New York agencies, political subdivisions, schools, libraries and others authorized by law to participate in such Contracts.
Publication	Refers to a work capable of being read or otherwise perceived (e.g. book, audiorecording, videorecording, CD-ROM, etc.), issued by a Publisher for sale to the general public, usually in multiple copies and sometimes in multiple editions.
Publisher	A person or corporate entity that prepares and issues printed materials for public sale or distribution, normally on the basis of a legal contract in which the publisher is granted certain exclusive rights in exchange for assuming the financial risk of publication and agreeing to compensate the author, usually with a share of the profits.
Reseller	Any model for distribution of Product other than direct from the Contractor. Resellers include but are not limited to approved value added resellers (VARs), distributors, dealers, sales agents, and alternate channel partners.
Subject Specific Database	This includes information from academic or scholarly Journals and trade or professional publications.
Serial	Publication in any medium issued under the same title in a succession of discrete parts, usually numbered (or dated) and appearing at regular or irregular intervals with no predetermined conclusion. Serials may be purchased individually, in combination with other titles, or as large collections of titles (particularly when purchased electronically).
Server	Shall mean the computer system(s) on which Electronic Publications or Databases reside and through which End Users gain access to the Electronic Publications or Databases.
Service Charge	A fee charged by a Subscription Agent for filling orders for Periodical subscriptions, usually 5 to 10 percent of the total annual amount paid by the library for subscriptions.
Subscription Agent	A company in the business of providing centralized Serial subscription or Database Access services to Authorized Users such as libraries to relieve them of the time consuming task of dealing with Publishers individually.

In addition to the above definitions, the following terms are defined as follows regardless of whether they are or are not capitalized:

May	Denotes the permissive in a Contract clause or specification. Refers to items or information that the State has deemed are worthy of obtaining, but not required or obligatory. Also see "Should".
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Must	Denotes the imperative in a Contract clause or specification. Means required - being determinative/mandatory, as well as imperative. Also see “Shall” and “Mandatory”.
Shall	Denotes the imperative in a Contract clause or specification. Means required - being determinative/mandatory, as well as imperative. Also see “Must” and “Mandatory”.
Should	Denotes the permissive in a Contract clause or specification. Refers to items or information that the State has deemed are worthy of obtaining, but not required or obligatory. Also see “May”.

**SCOPE:**

These contracts are to provide Authorized Users with a means of acquiring Serials and Database Access Products and Services. There are a total of two (2) Lots: Lot 1 – Serials, and Lot 2 - Database Access.

Products for Lot 1 - Serials include, but may not be limited to:

1. Print Periodicals and Newspapers
2. Electronic Magazines and Journals
3. Annuals (reports, yearbooks, etc.)
4. Continuing directories
5. Proceedings and transactions
6. Numbered monographic series cataloged separately
7. Subscription based eBooks
8. Optional Products and Services, including but not limited to:
  - a. Stamps, call numbers or routing labels, bar-coding, and security strips
  - b. Processing of journals including affixing date and property
  - c. Shipment Consolidation
  - d. MARC (Machine Readable Cataloging) records and updates
  - e. Serials management solutions, such as:
    - (i) Link resolvers
    - (ii) A to Z lists
    - (iii) Information discovery tools
    - (iv) Subscription management tools
    - (v) Electronic resource management (ERM) tools

Products for Lot 2 – Database Access include, but may not be limited to:

1. Library Databases
2. Full Text Databases
3. Numeric Databases
4. Meta-Databases
5. General Interest Databases
6. Discipline Specific Databases
7. Subject Specific Databases
8. Streaming Video Databases
9. Database Files
10. Optional Products and services, including but not limited to:
  - a. Database Management Systems (DBMS)
  - b. Hard copy records
  - c. Mailing labels
  - d. Batching
  - e. Reporting

Exclusions: The following Products are not within scope:

1. Products currently offered under the OGS Books and Non-Print Library Materials and other Related Ancillary Services contract (Group 20060)
2. Products and services currently offered under the OGS E-Learning Training/Distance Services contract (Group 73016), which includes web-based, computer based, online and internet based training
3. Standalone Software unrelated to the provision of Serials or Database Access
4. Hardware of any kind
5. Database services offered under the Contract shall not allow the Contractor to access the personal, private, or confidential information of any Authorized User or End User

It is the Contractor's responsibility to ensure that only Products and services that meet the scope of the Contract are purchased through the Contract. Questions concerning items covered under the resultant Contract should be addressed to the OGS Procurement Services contract manager designated on the Contract Award Notification prior to accepting the order.

If a Contractor sells Products that are excluded under this Contract as set forth above, such Contractor's Contract may be suspended or terminated.

### **LIST OF CONTRACTORS AND AWARDED LOTS**

**Please refer to each Contractor's Information page and Pricelist for more information.**

<b>Bidder</b>	<b>Lot 1 Serials</b>	<b>Lot 2 Database Access</b>
Encyclopaedia Britannica, Inc.		X

### **PROCUREMENT INSTRUCTIONS TO AUTHORIZED USERS:**

1. The Contracts resulting from this Solicitation will be centralized Contracts issued under a multiple award structure. Products offered under the Contracts, pricing, and other Contract information will be posted to the OGS website or the awarded Contractors' dedicated NYS websites. Authorized Users shall procure Products that best meet their form, function and utility requirements.
2. Before proceeding with a purchase, Authorized Users shall check the list of Preferred Source offerings. Authorized Users are reminded that they must comply with State Finance Law §162, which requires that agencies afford first priority to the commodities of Preferred Source suppliers such as Correctional Industries (Corcraft), NYS Preferred Source Program for People Who are Blind (NYSPSP), and NYS Industries for the Disabled (NYSID), when such commodities meet the form, function and utility of the Authorized User.
3. Where products are not available from Preferred Source suppliers in the form, function and utility required by the Authorized User, Authorized Users shall purchase from the centralized Contracts awarded under this Solicitation. The basis for selection among multiple contracts at the time of purchase shall be the most practical and economic alternative and shall be in the best interests of the State. Therefore, Authorized Users are strongly encouraged to obtain quotes from at least three (3) Contractors prior to issuing a purchase order, in order to ensure that the Authorized User is receiving the best possible pricing.
4. When placing Purchase Orders under the Contract(s), the Authorized User should be familiar with and follow the terms and conditions governing its use. The Authorized User is accountable and responsible for compliance with the requirements of public procurement processes. The Authorized User, when purchasing from OGS Contracts, should hold the Contractor accountable for Contract compliance and meeting the Contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, Authorized Users are encouraged to seek improved pricing whenever possible. Authorized Users have the responsibility to document purchases which should include:
  - statement of need and associated requirements;
  - obtaining all necessary prior approvals;

- a summary of the Contract alternatives considered for the purchase; and
  - the reason(s) supporting the resulting purchase (e.g., show that basis for the selection among multiple Contracts at the time of purchase was the most practical and economical alternative and was in the best interests of the State).
5. Authorized Users will issue purchase orders directly to the Contractor or the Contractor's authorized Reseller (if applicable), as specified by the Contractor, and specifying any shipping/delivery requirements and/or statements of work for services (if applicable).
6. Upon Authorized User acceptance of Products itemized on the purchase order, Contractor will invoice Authorized User for any portion of Products accepted, and accordingly, Authorized User will arrange for payment. Contractor shall provide itemized invoicing for all Products.
7. ***Contractor must disclose any forms, "click through", "shrink wrap" or other pass-through or licensing/subscription terms and conditions or other order information that Contractor will attach to orders or require to be completed with Authorized User purchases. Documents which contain additional terms or conditions, such as library maintenance agreements or Licensing Agreements must receive pre-approval by the Authorized User prior to ordering Products and services. Any additional licensing terms agreed to by the Authorized User shall not conflict with Appendix A, this Solicitation, any resultant Contract, or Appendix B. Any such conflicting terms shall be void and unenforceable.***

**PRICE:**

Price shall include all customs duties and charges and be net, F.O.B. destination to any point in New York State as designated by the Authorized User and shall include all transportation charges and inside delivery for print medium. Inside deliveries are to be delivered to the ordering Authorized User's stockroom or office location.

The Bidder's price should include all costs associated with selling the Product. No shipping charges are allowed EXCEPT on printed foreign publications shipped directly to the Authorized User from an address outside the 48 contiguous US states including the District of Columbia. Foreign shipping costs shall be prepaid by the Contractor and added to the invoice and all such orders shall be shipped on F.O.B. destination by the most economical method. There shall be no increase in Contract prices for freight, shipping, fuel or other surcharges, FPT (Freight Pass Through), etc. during the term of the Contract.

**FOR LOT 1 ONLY: Authorized Users may be charged additional fees charged by the Publishers which include licensing fees, platform fees etc. in excess of the base subscription fee. However, any additional fees shall only be those charges passed on by the Publishers and shall not include any additional fees charged by the Contractors for such services. The Contractor shall only charge fees based on List Prices charged by Publishers. The Authorized User must be notified of all such fees at the time of purchase. Fees that are not told to the Authorized User at the time of purchase shall be paid by the Contractor.**

Contractor's pricing information is included in the posted Pricelist linked from the Contractor Information page.

**PRICING BASED ON GSA PRICING:**

Authorized Users shall be entitled to all associated discounts enumerated in the GSA Supply Schedule (including, but not limited to discounts for additional sites and volume discounts), as well as any other pricing or discount terms as are expressly enumerated in this NYS Contract or GSA schedule, when calculating the Contract price.

GSA pricing incorporates a sum referred to as the "GSA Industrial Funding Fee (IFF)". Contract prices will be reduced by an amount equivalent to the IFF. The NYS Price will be calculated by reducing the published GSA price, after the discounts, if any, downward by the amount of the Industrial Funding Fee, currently set at .75%.

**VOLUME DISCOUNTS:**

Contractor may offer volume discounts using the thresholds listed on each Contractor's Information Page.

**PREPAYMENT PLAN DISCOUNTS:**

Contractor may offer Prepayment Plan Discounts using the thresholds listed on each Contractor's Information Page.

**PROMPT PAYMENT DISCOUNTS:**

Contractor may offer prompt payment discounts at the transaction level. Please refer to the Contractor's Information Page.

**CENTRALIZED CONTRACT MODIFICATION:**

1. OGS, an Authorized User, or the Contractor may suggest modifications to the Centralized Contract or its Appendices. Except as specifically provided herein, modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the Parties. Modifications may take the form of an update or an amendment. "Updates" are changes that do not require a change to the established Centralized Contract terms and conditions. A request to add new Products at the same or better price level is an example of an update. "Amendments" are any changes that are not specifically covered by the terms and conditions of the Centralized Contract, but inclusion is found to be in the best interest of the State. A request to change a contractual term and condition is an example of an amendment.
2. Updates to the Centralized Contract and the Appendices may be made in accordance with the contractual terms and conditions to incorporate new products or services, make price level revisions, delete Products or services, or to make such other updates to the established Centralized Contract terms and conditions, not resulting in a change to such terms and conditions, which are deemed to be in the best interest of the State.
3. OGS reserves the right to consider modifications which are not specifically covered by the terms of the Centralized Contract, but are judged to be in the best interest of the State. Such modifications are deemed amendments to the Centralized Contract and may require negotiations between Contractor and OGS before execution.
4. All modifications proposed by Contractor, shall be processed in accordance with Appendix C, Contract Modification Procedure. The Contractor shall submit all requests in the form and format contained in Appendix C, Contract Modification Procedure. The form contained within Appendix C is subject to change at the sole discretion of OGS.
5. Modifications proposed by OGS or an Authorized User, including updates and amendments, shall be processed in accordance with the terms of the Centralized Contract and Appendix B, §26, *Modification of Contract Terms*.

**CONTRACT PRICELIST UPDATE PROCEDURES:**

The procedures below outline how Contract pricelist updates will be handled under this Contract. If awarded more than one Lot, Contractor shall submit pricelist updates for each Lot simultaneously pursuant to the requirements of this section. **NOTE: THE FOLLOWING PROCEDURES ARE NOT APPLICABLE TO CONTRACTOR PROPOSED CHANGES TO CONTRACT TERMS AND CONDITIONS.** Any implied or express request for changes in or additions to existing Contract terms and conditions, including new terms and conditions associated with a specific product line being added to the Contract for the first time, requires a formal Contract amendment and requires the approval of OGS. New or revised Contract terms and conditions are subject to the restrictions set forth in Appendix B, §26, *Modification of Contract Terms*.

**Lot 1 - Serials Pricelist Updates****Adding and Deleting Item Categories (Other than Optional Products and Services)**

1. No decrease in discounts: The Bidder's discount may increase at any time, but shall not decrease during the term of the Contract. Service Charges bid may decrease at any time, but shall not increase during the term of the Contract.
2. Adding or Deleting Item Categories: Bidder may add or delete Item Categories to its Price List pursuant to this Section and at the discretion of OGS. Any new Item Categories added to the Contract shall be subject to a reasonableness of price review pursuant to Section 5.3, *Reasonableness of Price*, of the Solicitation.



3. First Year: In the first year of the Contract, the Contractor shall be allowed to update the pricelist once to add/delete Item Categories.
4. Subsequent Years: Commencing with the second year of the Contract, the Contractor may add or delete Item Categories within thirty (30) calendar days after the anniversary date of the Contract. The thirty (30) calendar days includes the anniversary date of the Contract.

#### **Optional Products and Services**

1. Adding or deleting Optional Products and Services: Bidder may add or delete Optional Product and Services offerings pursuant to this section and at the discretion of OGS. Any new Optional Products and Services offered shall be subject to a reasonableness of price review pursuant to Section 5.3, *Reasonableness of Price*.
2. First Year: In the first year of the Contract, the Contractor shall be allowed to update the pricelist once to add or delete Optional Products and Services.
3. Subsequent Years: Commencing with the second year of the Contract, the Contractor may add or delete Optional Products and Services within thirty (30) calendar days after the anniversary date of the Contract. The thirty (30) calendar days includes the anniversary date of the Contract.

#### **Price Adjustments for Lot 1 Optional Products and Services**

All prices for Optional Products and Services may be adjusted annually following the first year of the Contract on the basis of the Not Seasonally Adjusted Consumer Price Index – All Urban Consumers, U.S. City Average, All Items Less Food, Series ID: CUUR0000SA0L1, published monthly by the US Department of Labor Bureau of Labor Statistics. There shall be no price adjustments during the first year of the Contract. The adjustment shall be established as follows. Following the first year of the Contract and annually thereafter, the Contractor may make a formal request for a price adjustment in the succeeding Contract year. This request must be made in writing to the contract manager identified on the front page of the resultant Contract Award Notification; thirty (30) calendar days after the anniversary date of the Contract. The thirty (30) calendar days includes the anniversary date of the Contract. If the Contractor fails to submit a written request, he/she forfeits its opportunity to receive a price adjustment in the succeeding Contract year.

Price adjustments for monetary amounts for Optional Products and Services shall begin with the second year of the start date of the Contract and annually thereafter. The adjustment shall be based on the percentage of increase or decrease in the above referenced index in the preceding twelve months ending three months prior to the effective date of the adjustments. In no case shall price increases exceed five percent (5%) annually. All adjusted prices will be rounded up or down to the nearest whole cent. The Office of General Services shall notify all parties of the price adjustments through the issuance of written notification by the Procurement Services.

Below is an example calculation. Values used are for illustrative purposes only.

CPI for current period	193.676
Less CPI for previous period	188.326
Equals Index point change	5.350
Divided by previous period CPI	188.326
Equals	0.028
Result multiplied by 100	0.028 x 100
Equals percent change	2.8

Should the referenced CPI become discontinued during the course of the contract, it will be replaced by the Not Seasonally Adjusted Consumer Price Index – All Urban Consumers, U.S. City Average, All Items, Series Id: CUUR0000SA0, and adjustments will be calculated based on the same methodology as outlined above, but with data from the new replacement index.

#### **Submitting Price List Changes**

Contractor is required to submit Contract pricelist updates electronically in an unprotected Microsoft Excel (2013 or lower version) spreadsheet either on CD or via e-mail to the OGS Procurement Services contract manager. The pricelist must be dated and the format shall be consistent with the format of the Contractor's approved

Contract pricelist. The pricelist shall separately include and identify (e.g., by use of separate worksheets or by using highlighting, italics, bold and/or color fonts) Item Categories added/deleted; Optional Products and Services added/deleted; and any price increases/decreases.

Contractors shall submit their updated Contract pricelist to the OGS Procurement Services contract manager pursuant to the requirements of this section for review and written approval prior to issuing to Authorized Users. All approved pricelist updates shall apply prospectively upon approval by OGS. Any request for a pricelist update not received in accordance with this section shall be deemed denied.

## **Lot 2 – Database Access Pricelist Updates**

1. General: Any new Products or services added to the Contract shall be subject to a reasonableness of price review. The Bidder's discount may increase at any time, but shall not decrease during the term of the Contract.
2. First Year: In the first year of the Contract, the Contractor shall be allowed to update the pricelist once to add/delete Products or services as established by the Contractor in their normal course of business. There shall be no price increases allowed for existing Products or services during the first year of the Contract.
3. Subsequent Years: Commencing with the second year of the Contract, the Contractor may update the pricelist annually to reflect Contractor price changes and the addition/deletion of Products and services as established by the Contractor in their normal course of business; thirty (30) calendar days after the anniversary date of the Contract. The thirty (30) calendar days includes the anniversary date of the Contract.

In a single year of the Contract the total request for price increases shall not exceed the lesser of:

1. three (3%) percent annually, or
2. the percent increase in the latest available National Consumer Price Index - All Urban Consumers (CPI-U), Not Seasonally Adjusted, U.S. City Average, All Items (Series Id: CUUR0000SA0, CUUS0000SA0); as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 2012. CPI-U data may be obtained at [www.bls.gov](http://www.bls.gov).

The following example illustrates the computation of percent change:

CPI for current period	230.000
Less CPI for previous period	225.000
Equals index point change	5.000
Divided by previous period CPI	225.000
Equals	0.022
Result multiplied by 100	0.022 x 100
Equals percent change	2.2

The "CPI for current period" shall be the index in effect at the time the Contract pricelist update request is received; "CPI for previous period" shall be the index in effect when the Contract pricelist was last updated.

Contractor is required to submit Contract pricelist updates electronically in an unprotected Microsoft Excel (2013 or lower version) spreadsheet either on CD or via e-mail to the OGS Procurement Services contract manager. The pricelist must be dated and the format shall be consistent with the format of the Contractor's approved Contract pricelist. The pricelist shall separately include and identify (e.g., by use of separate worksheets or by using highlighting, italics, bold and/or color fonts) Products and services being added/deleted and any price increases/decreases.

In connection with any Contract pricelist update, OGS reserves the right to request additional information; reject Contract updates; remove Products and services from Contracts; remove Products and services from Contract updates; and request additional discounts for new or existing Products and services.

## PERFORMANCE REQUIREMENTS – LOT 1 – SERIALS:

**Orders, Renewals, and Cancellations**

1. The Authorized User may specify that the subscription begin with current issue, first issue of the current volume, first issue of the current year, or first issue of the next volume. Subscriptions shall begin on the effective date specified on the purchase order.
2. The Contractor shall notify the Authorized User as soon as possible but no later than thirty (30) calendar days if unable to supply a new order. Contractor shall also provide a reasonable explanation in writing for non-fulfillment.
3. The Contractor shall provide address, publication, merger, and title change services, etc.
4. The Contractor shall make arrangements with publishers for all regularly purchased subscription orders and renewals within sufficient time to avoid any interruption in receipt of issues.
5. The Contractor shall cancel subscriptions as requested by the Authorized User and shall issue a credit if allowed by the publisher.
6. The Contractor shall provide pro-rated refunds or substituted titles for titles which cease publication prior to expiration if provided by the publisher. OGS reserves the right to resolve any issues that may arise between an Authorized User and the Contractor with regards to refunds or substituted titles.
7. The Contractor shall provide a common expiration date for subscriptions (if requested by the Authorized User) unless prohibited by the publisher.
8. At the Authorized User's request the Contractor shall renew subscriptions automatically on a date selected by the Authorized User; or at the option of the Authorized User, shall provide a list of titles to be renewed by the Contractor for the Authorized User's approval prior to the issuance of the annual renewal invoice. Authorized User may change automatic renewal status at any time and for no additional charge.
9. The Contractor may provide two, or three-year renewal periods, but must at a minimum offer a one-year renewal period.
10. The Contractor may enter orders for back files, special issues, supplements, extra volumes, and cumulative indexes, if requested to do so by the Authorized User.
11. All orders, renewals, and cancellations between the Contractor and the Authorized User shall be in writing, or shall be electronically transmitted.
12. In lieu of individual order forms, Contractor shall be able to accept a purchase or letter order to which is appended a list of titles.

**Invoicing and Payments**

1. The Contractor may offer an early prepayment discount. Annually, the Contractor shall specify the percentages of discount offered and the deadlines for early payment. Subscriptions may be prepaid for up to three years for Authorized Users legally empowered to make advance payments.
2. The Contractor shall provide annual renewal invoice(s) and indicate if such invoices are available electronically.
3. The Contractor shall provide supplemental invoices for "bill as" published titles, for "bill later" titles, for new orders, etc., based on agreement with Authorized User.
4. The Contractor shall provide up to three copies of all invoices if requested by an Authorized User.
5. All invoices shall provide the following information or other "identifier," if applicable:
  - a. Name, address and Federal Identification Number of Contractor.
  - b. Authorized User address and account number.
  - c. Invoice date and number.
  - d. Purchase order number.
  - e. Contract number.
  - f. Titles listed in alphabetical order or in an order specified by Authorized User.
  - g. International Standard Serial Numbers (ISSNs).
  - h. Price for each subscription period.
  - i. Subscription period.
  - j. Description, quantity, unit price and extended price of all items.
  - k. Information indicating if charge is an added optional service charge. An explanation is required.

1. The discount or Service Charge, as requested by the Authorized User, on a line-by-line basis.
6. Increases in subscription price shall be allowed if correction in cost is required due to publisher's change in price.
7. Decreases in subscription price shall be refunded or credited, as specified, to the Authorized User promptly.
8. The Contractor shall, upon request from the Authorized User, provide proof of Publisher List Prices and increases or decreases in Publisher List Prices for specific titles.
9. Additional fees which are passed on by the publishers, e.g. licensing fees, shall be listed separately on invoices.

**Optional**

If available and/or possible, Contractor to advise Authorized Users if the following may be provided:

1. Authorized User fund code.
2. Information indicating if charge is for a renewal or new order.
3. Information identifying "bill later" or "bill as" published titles.
4. On supplemental invoices, the original invoice number.
5. Availability of title in electronic format.
6. Customized Invoicing

**Claims**

1. The Contractor shall be responsible for claiming all issues reported as not received or received damaged or defective by the Authorized User.
2. The Contractor shall promptly process claim notices in a timely manner not to exceed the claim period permitted by the Publisher.
3. The Contractor shall provide claim reports no less frequently than bimonthly.
4. Claim reports shall provide the following information:
  - a. Date of claim report.
  - b. Title(s) being claimed.
  - c. Issue(s) being claimed.
  - d. Date(s) of prior claim(s).
  - e. Publisher's response, if any.
5. The Contractor may accept and respond to claims by U.S. mail, facsimile, electronic mail, courier service, or online.

**Conversion to New Contractor by Authorized Users**

1. Renewal orders requested by Authorized Users shall be placed at least two months before expiration of current subscriptions.
2. If an interruption in service results from a change in a Contractor, any issues not received shall be obtained by the Contractor who received payment for that period at no additional cost to the Authorized User. Delivery to the Authorized User shall be made by the original Contract delivery and at no extra cost to the Authorized User.
3. If duplicate issues are received as a result of change in Contractors and the Publisher required their return, the Contractor shall be responsible for resolving the problem and shall absorb any associated costs.

**Reports**

1. The Contractor may send the Authorized User a monthly statement showing the date and amount of each outstanding invoice and credit memorandum.
2. The Contractor shall notify the Authorized User of title changes and discontinued titles and provide information on titles that are slow, delayed, or irregular, either as they occur or on a monthly basis.
3. At the Authorized User's request the Contractor shall provide a printed customized list of titles arranged alphabetically or according to specifications defined by the Authorized User.
4. Upon request, the Contractor may be required to provide the Authorized User with a price analysis report showing a 1-3 year Publisher List Price comparison of titles ordered. This report can be arranged by title, country of publication, or by codes defined by the Authorized User.

5. If available, Contractor may provide an industry-wide summary of statistical data and analyses.
6. Upon request, the Contractor shall provide a report showing changes in Publisher subscription periods, quantities ordered, and publishers' new requirements.
7. All reports between the Contractor and the Authorized User shall be in writing, and may be electronically transmitted.

**Licensing Terms and Conditions for Electronic Publication****Authorized User Access to Electronic Publications**

1. Access: Access to the Electronic Publications by Authorized Users shall be either via electronic media or the Internet. If access is provided via the Internet, the Contractor shall ensure that the Electronic Publications are highly stable and usable (including average response time of less than 5 seconds, and uptime, except for scheduled maintenance, of 96.9%), and shall ensure that the Web server(s) is (are) fully capable of serving Authorized Users. Access shall be controlled by Internet Protocol (IP) addresses, passwords or other appropriate authentication technology.
2. If the license rights are based on a named user model, an Authorized User will prepare and submit to the Contractor a list of End Users that shall include name, address, and contact information.
3. License Scope: The Contractor and the State agree that the license for the Electronic Publications shall be governed as set forth below:
  - a. Authorized User is granted a non-exclusive, transferable, term license to access and use the electronic publications in accordance with this Contract. The license term for the Electronic Publications license shall commence upon the license effective date.
  - b. It shall be the obligation of the Authorized User to review and comply with the terms and conditions of the License Agreement if one is required by the publisher to use the Electronic Publication or electronic content to the extent that they do not conflict with the terms of Appendix A, Appendix B, this Solicitation or any resultant Contract.
  - c. Permitted License Transfers: As Authorized User's business operations may be altered, expanded or diminished, Electronic Publication licenses may be transferred or combined for use at an alternative or consolidated site not originally specified in the license, including transfers between Authorized Users and/or their End Users ("permitted license transfers"). Contractor shall have the discretion to issue new login credentials when a license transfer takes place.
  - d. Concurrent Use License: Where licensing of Electronic Publications is based upon "Concurrent Users," Contractor hereby grants license rights to the specified number of Concurrent Users actually executing the licensed programs, without reference to location or named End Users (hereinafter "Concurrent Users").

**Contractor's Performance Obligations**

1. The Contractor will provide and maintain help files and other appropriate user documentation for the Electronic Publications to be accessible to all Authorized Users free of charge.
2. The Contractor will offer reasonable levels of continuing support to assist Authorized Users and their End Users in their use of the Products. Contractor will make its personnel available by email, phone or fax during regular Business Days.

**Authorized User Performance Obligations**

Authorized Users acknowledge that the copyright and title to the information content and organization of the Electronic Publications are and remain with the publisher. Authorized User shall use reasonable efforts to inform its End Users and walk-in patrons of any restrictions on the use of the Electronic Publications. Authorized User shall use reasonable efforts to protect the Electronic Publications from any use that is not permitted under this agreement. Authorized Users and/or End users may make all use of the Electronic Publications as is consistent with the Fair Use Provisions of United States and international copyright laws and the Bidder's/Contractor's terms and conditions for use of its online services, provided that they do not conflict with the terms of Appendix

A, this Solicitation or any resultant Contract, or Appendix B,. In addition, the Electronic Publications may be used as follows:

1. Authorized Users and End Users may display, download, copy and/or print portions of the Electronic Publications for use in research, education, or other non-commercial purposes.
2. Authorized Users and End Users may use a reasonable portion of the Electronic Publications in the preparation of educational materials.
3. Authorized Users may fulfill occasional requests from other institutions, a practice commonly called Interlibrary Loan. Authorized Users agrees to maintain records respecting End User's use of materials in such Interlibrary Loan and to provide such records to the Contractor upon request.

**Specific Restrictions on Use of Electronic Publications**

Authorized User may not utilize the Electronic Publications for commercial purposes, including but not limited to the sale of the Electronic Publications, fee-for-service use of the Electronic Publications, or bulk reproduction or distribution of the Electronic Publications in any form; nor may Authorized User impose special charges for use of the Electronic Publications beyond reasonable printing or administrative costs.

**Licensing Terms and Conditions**

Bidders are advised to review all terms and conditions carefully; particularly the licensing terms and conditions for Electronic Publications. If license agreement, shrink-wrap or click wrap agreements are associated with Electronic Publications, it is the responsibility of the potential Bidder/Contractor to offer only those Serials in electronic format that satisfy the license terms and conditions of the Solicitation. License terms that conflict with the terms of Appendix A, Appendix B, this Solicitation or any resultant Contract shall not be enforceable.

**PERFORMANCE REQUIREMENTS – LOT 2 – DATABASE ACCESS:****System Availability**

Databases shall be functional at least 99% of the time.

**Scheduled Maintenance**

Contractor must notify Authorized Users at least 48 hours prior to scheduled maintenance that interrupts End User access to Databases. OGS requests that scheduled maintenance **NOT** be performed during normal Business Days.

**RSS Feeds**

Contractors shall indicate on their Pricelist if RSS Feeds are allowed, and if so, if they are included in the price of the resource.

**CONTRACT PERIOD AND RENEWAL:**

The Contract(s) shall commence after all necessary approvals by both parties, and shall become effective upon mailing of the final Contract Award Notice by OGS (see Appendix B, §22, Contract Creation/Execution). The Contract(s) shall be in effect for five (5) years beginning on the date of approval of the first contract awarded as a result of the IFB, and shall end conterminously five (5) years from the approval of the first contract awarded as a result of the IFB. If mutually agreed between OGS and the Contractor, the Contract may be renewed under the same terms and conditions for up to two (2) additional years. Discount reduction will not be allowed and is specifically excluded from the terms and conditions of the Invitation for Bid and resultant Contract. Price decreases or discount increases are permitted at any time.

**SHORT TERM EXTENSION:**

In the event a replacement Contract has not been issued, any Contract let and awarded hereunder by the State, may be extended unilaterally by the State for an additional period of up to one (1) month upon notice to the Contractor with the same terms and conditions as the original Contract including, but not limited to, quantities (prorated for such one month extension), prices, and delivery requirements. With the concurrence of the Contractor, the extension may be for a period of up to three (3) months in lieu of one (1) month. However, this extension terminates should a replacement Contract be issued in the interim.

**PERIODIC RECRUITMENT:**

The State reserves the right to add Contractors beginning in the second year of the Contract and at one year intervals thereafter. The State will formally announce when the bid is reissued, at the discretion of the State. Bidders shall be required to submit such Bid documentation as required by OGS, which may include additional applicable statutory requirements currently in effect at the time of the new Bid solicitation. Once awarded a Contract, a Contractor may not resubmit a Bid for future consideration. In addition, if a Bid is deemed non-responsive or is rejected under periodic recruitment, a Bidder cannot reapply for a future Contract until the next periodic recruitment period. For Contracts that are awarded under periodic recruitment, the Contract term will commence upon OGS approval in accordance with §22, *Contract Creation/Execution* of Appendix B and will terminate on the then current end date of the Contract or at the end of any approved extension or renewal period.

Bidders shall be required to submit this original bid document which may include additional applicable statutory requirements currently in effect at the time of the new bid solicitation. Bidders are advised to review the "Qualification of Bidders" clause before submitting a bid under periodic recruitment to ensure they can meet all bid requirements.

**CONTRACT ADVERTISING:**

In addition to the requirements set forth in Appendix B §21, *Contract Publicity*, any Contractor advertisements, promotional literature and/or Contract description(s) of Contract awards must be reviewed and approved by Procurement Services prior to issuance.

**MINIMUM ORDER:**

There is no minimum order requirement.

**NEW YORK STATE PURCHASING CARD:**

See "Purchasing Card" in Appendix B, §15, *Purchasing Card*. Contractors indicated on their Contractor's Information Page if they will accept the NYS Purchasing Card for orders not to exceed \$85,000. For all purchases executed using a New York State Purchasing Card, Contractor shall provide an itemized receipt with each delivery. Contractor shall state the discount offered when using the NYS Purchasing Card on each Contractor's Information page.

**CONTRACT ORDERS:**

Contractor shall be capable of accepting orders manually, via facsimile, and, electronically via email. As an option, Contractor may also accept orders electronically via the Internet through a web-based ordering system. Contractor shall be required to provide written quotes to Authorized Users who request them prior to placing an order, which quote details the SKU corresponding with the approved product list, List Price, discount, and Net Price, as applicable.

The web-based ordering system, if offered, shall allow Authorized Users to enter orders and have full order inquiry capabilities. All orders (manual, fax, electronic) shall reference requisition and/or purchase order number as required. If offering a web-based ordering system, the Bidder represents and warrants that it is the sole owner of the software product used for its ordering system, or, if not the owner, has received all proper authorizations from the owner to license the software product, and has the full right and power to grant the rights contained in any Contract resulting from this Invitation for Bids and as described further in Appendix B. Bidder further warrants and represents that the software product is of original development, and/or that the package and its use will not violate or infringe upon any patent, copyright, trade secret or other property right of any other person/company.

The web-based ordering system\*, if offered, shall be capable of processing, controlling, documenting, and reporting on the following minimum data elements:

- Contractor Name and Address
- Agency/Facility/Political Subdivision, etc.
- Contract Number

- Purchase Order/Requisition Numbers
- Contact (individual placing order)
- SKU/PN & Product Description
- Net Price
- Extended and Total Amounts

\*Comparable systems meeting the intent of the specifications may be considered.

If offering a web-based ordering system, the Contractor shall provide any necessary software (excluding communication software) and training guides/manuals or online support in the use of the web-based ordering system at no additional cost to all Authorized Users capable of placing orders electronically. Samples of software and training guides/manuals may be required. If requested, Bidder must demonstrate its system at an Albany, NY area location designated by the State.

#### INTERNET WEBSITES:

The State encourages successful Bidders to provide a designated NYS Contract website for Authorized Users' direct access. This website will be listed under the Contractor information. The purpose of a dedicated website is to provide Authorized Users with access to Contract pricing and Product offerings and the option of online ordering. It is the Contractor's responsibility to ensure that Contract and related information is accurately and completely posted, maintained and displayed in an objective and timely manner which renders it clearly distinguishable from other, non-contract offerings at Contractor's web site. Changes in Products or pricing must be approved by the Office of General Services, Procurement Services in accordance with any terms included in this Solicitation and resultant Contract prior to addition to the website. Hard copy catalog and pricelists, either in paper format or electronic format, must be available to all Authorized Users who either do not have Internet access or prefer the optional format.

#### PURCHASE ORDERS AND INVOICING:

All Purchase Orders and invoices shall include the Contract number and a line by line listing of separate charges. Order confirmation shall mean that the Contractor has received the purchase order, has reviewed it for compatibility with the Item currently on Contract, has resolved any non-compatibility problems with the Authorized User, and has entered the order, assigned an order number with anticipated delivery date.

##### **Purchase Orders**

Purchase orders are to include the following information:

1. Contract number
2. Contractor name
3. ISSN and Product/service description
4. Net Price

##### **Invoices**

Authorized Users are instructed not to process invoices that do not include the required information set forth below. Invoices must be detailed and include in the body of the invoice or an attachment to the invoice **all** of the following items. Failure to comply may result in lengthy payment delays. Original invoices must follow the billing instructions contained in the purchase order. Invoices shall include, at a minimum, the following information:

1. Contract number
2. Contractor name
3. NYS Vendor Identification Number
4. Purchase Order number
5. ISSN and Product/service description
6. Line item breakdown of all charges to include Net Price of each Product/service

Note that additional information is required for invoices for Lot 1 – Serials Products in accordance with Section *Performance Requirements – Lot 1 - Serials*.



Business units or branch offices within an Authorized User may require separate invoicing as specified by each Authorized User. The Contractor's billing system must be flexible enough to meet the needs of varying accounting systems in use by different Authorized Users.

**SOFTWARE:**

Software offered must be in a format that does not require any conversion by the Authorized User and shall:

1. be available as part of the Contractor's standard commercial offerings; and
2. be directly related to the operational function of the Products offered under the contract.

Any Software currently on the NYS Miscellaneous Software Catalog contract Prohibited List is excluded from purchase under this Contract, except when the Software is pre-loaded on equipment at the time of purchase. The Prohibited List may be accessed on the OGS website:

<http://www.ogs.ny.gov/purchase/snt/awardnotes/79518Prohibited.pdf>.

**RELATED THIRD PARTY PRODUCTS:**

Third Party Products which meet and comply with all of the following criteria may be authorized for sale under this Contract:

1. The Third Party Product is available as part of the Contractor's standard commercial offerings.
1. The Third Party Product fits the scope of and is directly related to the operation of Products that fit the scope of the Contract.
2. If the Third Party Product is available on another NYS Contract, such item will only be approved for inclusion on this Contract in accordance with Section titled, *Overlapping Contract Items*. If the Third Party Product is not available on another NYS Contract, then price reasonableness must be established in order for such item to be added to the Contract.

**USE OF RESELLERS/DISTRIBUTORS/ALTERNATE CHANNEL PARTNERS:**

Contractor must provide service, sales and support staff to service Authorized Users geographically located at multiple purchasing locations throughout New York State. Contractor shall ensure that sufficient resources are available directly, or through authorized Resellers to ensure maximum service capability throughout the State. The State agrees to permit Contractor to utilize approved, designated value added resellers (VARs), distributors, dealers, and sales agents to participate as alternate channel partners (collectively referred to as "Resellers") for Contractor. Such participation is subject to the following conditions:

1. Designation of Reseller(s): Contractor shall specify whether orders must be placed directly with Contractor, or may be placed directly with designated Reseller(s). When Reseller(s) are submitted for approval, Contractor must provide the State, in advance, with all necessary ordering information, billing addresses, Federal Identification Numbers, and NYS Vendor Identification Numbers in the format requested in Reseller Directory. Failure to accurately provide all required information may result in processing delays.
2. Conditions of Participation: Reseller(s) must be approved in advance by the State as a condition of eligibility under the Contract. The State also reserves the right to rescind any such participation or request that Contractor name additional Resellers, in the best interests of the State, at the State's sole discretion, at any time. Contractor shall have the right to qualify Reseller(s) and their participation as fulfillment agents under this Contract by product line, contracting program (e.g., government/educational sales), geographic region, size/sales volume, technical training or other criteria ("qualifying criteria"), provided that: i) such qualifying criteria are uniformly applied to all potential Resellers based upon Contractor's established, neutrally applied commercial/governmental program criteria, and not to a particular procurement; ii) all general categories of qualifying criteria must be disclosed by the Contractor to the State, in advance, at the beginning of the Contract term; iii) those qualifying criteria met by the Reseller must be identified on the form provided in Reseller Directory at the time that Reseller approval is requested under this paragraph; and iv) immediate advance notice is provided to OGS in the event that a change in Reseller's status occurs during the Contract term.
3. All Resellers who have been approved in accordance with the foregoing paragraph shall be eligible to quote lower than Contract pricing for procurements under this Contract which meet their qualifying criteria. Except

as otherwise set forth in Reseller Directory, Contractor warrants and represents that it shall not, directly or indirectly, by agreement, communication or any other means, restrict any Reseller's participation or ability to quote a particular order. Reseller Directory updates will be allowed no more than twice annually. On the first business day of the month following the sixth and twelfth months of each contract year, Contractors shall be given an opportunity to submit revised Reseller Directories electronically. When submitting Reseller Directory updates, Contractors shall be required to separately specify additions, deletions, and/or any other changes to the directory in an accompanying communication submitted with the request in order to facilitate a more expeditious review; failure to do so may result in the rejection of the request.

4. Responsibility for Reporting/Performance: Contractor shall be fully liable for Reseller(s)' performance and compliance with all Contract terms and conditions. Product purchased through Reseller(s) must be reported by Contractor in the required monthly reports to the State as a condition of payment. In addition to inclusion of Reseller(s) volume in the Contractor's monthly reporting obligation to the State, at the request of Authorized User, Reseller(s) shall provide Authorized User with quarterly reports of the individual Authorized User's Contract activity with Reseller.
5. Applicability of Contract Terms: Product ordered directly through Reseller(s) shall be limited to Products currently approved for inclusion under this Contract and shall be subject to all terms and conditions of this Contract as a condition of Reseller participation.

#### CANCELLATION OF PURCHASE ORDERS:

Cancellation of orders in part or whole for unavailable Products shall be made by means of appropriate notations and adjustments on orders returned by Contractor to the Authorized User. Contractors shall make no shipments of canceled Products except on the basis of a new order. Products not supplied by the Contractor may be purchased from any other Contract source.

#### CONTRACT PAYMENTS:

Payments cannot be processed by Authorized Users until the items have been delivered and accepted. Payment will be based on any invoice used in the Contractor's normal course of business. However, such invoice must contain all requirements in Section *Purchase Orders and Invoicing*.

#### CONTRACT ADMINISTRATOR:

Contractor must provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Contractor must notify OGS within five (5) Business Days if its Contract Administrator changes, and provide an interim contact person until the position is filled. Changes to Contractor contact information, including the designation of a new Contract Administrator, shall be submitted electronically via e-mail to the OGS Contract Management Specialist.

#### TOLL-FREE NUMBER/AUTHORIZED USER ASSISTANCE:

A Bidder must provide a toll-free telephone number for the Authorized User assistance under any Contract or purchase order resulting from this Solicitation. Bidder must staff this toll-free number at a minimum from 8:00 a.m. to 5:00 p.m. ET Monday through Friday, excluding NYS holidays. If Bidder does not currently maintain a toll-free number, the Bidder must be willing to establish one prior to award of Contract. Bidders may also offer online assistance, such as email or chat assistance.

#### INSURANCE REQUIREMENTS:

The Contractor shall with the Insurance Requirements of the bid solicitation. Within thirty (30) days after renewal or replacement of any policy required by any Contract resulting from this solicitation, or within three (3) business days of request, Bidders and Contractors shall supply OGS with updated replacement Certificates of Insurance, and amendatory endorsements.

**REPORT OF CONTRACT SALES:**

Contractor shall furnish a report semiannually of all Products purchased under the Contract during each semiannual period, no later than the 15th of the month following the close of each six month period. Purchases by Non-state agencies, political subdivisions and others authorized by law shall be reported in the same report and indicated as required. If resellers are utilized, the Contractor shall be responsible for consolidating all contract purchases into a single report. A template for such report is included in Attachment 9 - *Report of Contract Sales*. All fields of information shall be accurate and complete. The report is to be submitted electronically via electronic mail utilizing the template provided in Microsoft Excel 2013, or lower version (or as otherwise directed by OGS), to the attention of the OGS contract manager and shall reference the Group Number, Award Number, Contract Number, and Sales Period. OGS reserves the right to amend the report template during the Contract term.

Contractor shall specify if any resellers are NYS Certified Minority and/or Women-Owned Business Enterprises (MWBEs) within the Report of Contract Sales document. Contractor shall refer to Section *Contractor Requirements and Procedures for Business Participation Opportunities for New York State Certified Minority and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women* for information on how to verify certified status.

**AUTHORIZED USER SALES REPORT:**

Upon written request by an Authorized User, the Contractor shall furnish to such Authorized User, on a monthly basis, a report listing the following: name of products purchased, quantity purchased, unit price and total dollar volume of purchases.

**CONTRACTOR REQUIREMENTS AND PROCEDURES FOR EQUAL EMPLOYMENT AND BUSINESS PARTICIPATION OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND NEW YORK STATE CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES:****Policy Statement**

The New York State Office of General Services (“OGS”), as part of its responsibility, recognizes the need to promote the employment of minority group members and women and to ensure that certified minority- and women-owned business enterprises have opportunities for maximum feasible participation in the performance of OGS contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority- and women-owned business enterprises had a full and fair opportunity to participate in State contracting. The findings of the study were published on April 29, 2010, under the title “The State of Minority- and Women-Owned Business Enterprises: Evidence from New York” (the “Disparity Study”). The Disparity Study found evidence of statistically significant disparities between the level of participation of minority- and women-owned business enterprises in State procurement contracting versus the number of minority- and women-owned business enterprises that were ready, willing and able to participate in State procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the Statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that OGS establish goals for maximum feasible participation of New York State certified minority- and women-owned business enterprises (“MWBE”) and the employment of minority groups members and women in the performance of New York State contracts.

**General Provisions**

OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.

The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State certified minority- and women-owned business enterprises (“MWBEs”). Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, State or local laws.

The Contractor further agrees to be bound by the provisions of Article 15-A and the MWBE Regulations. If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.

Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility, breach of contract, withholding of funds, suspension or termination of the Contract and/or such other actions or enforcement proceedings as allowed by the Contract.

**Equal Employment Opportunity (EEO)**

Contractor shall comply with the provisions of Article 15-A set forth below. These provisions apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000, for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting State agency (the “Work”) except where the Work is for the beneficial use of the Contractor.

1. Contractor and subcontractors shall undertake or continue existing EEO 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, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate or distinct from the Contract; or (ii) employment outside New York State.
2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor’s equal employment opportunity policy.

**Form EEO 100 – Staffing Plan**

To ensure compliance with this section, the Contractor agrees to submit or has submitted with the Bid a staffing plan on Form EEO 100 to OGS to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.

**Form EEO - 101 - Workforce Utilization Reporting Form (Commodities and Services) (“Form EEO-101-Commodities and Services”)**

The Contractor shall submit, and shall require each of its subcontractors to submit, a Form EEO-101-Commodities and Services to OGS to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Form EEO-101-Commodities and Services must be submitted electronically to OGS at [EEO\\_CentCon@ogs.ny.gov](mailto:EEO_CentCon@ogs.ny.gov) on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January. Separate forms shall be completed by Contractor and any subcontractor.

If Contractor’s EEO Form 100 - Staffing Plan provides that Contractor is unable to separate out the actual workforce utilized in the performance of the Contract from its total workforce, the following clause shall apply:

Contractor and OGS agree that Contractor is unable to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce and that the information provided on the previously submitted Staffing Plan is Contractor's total workforce during the subject time frame, not limited to work specifically under the Contract.

Contractor shall comply with the provisions of the Human Rights Law, all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall 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 and conviction and prior arrest.

**Contract Goals**

For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers and suppliers to Contractor. Contractor is, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528> Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

**Good Faith Efforts**

Pursuant to 5 NYCRR § 142.8, evidence of good faith efforts shall include, but not be limited to, the following:

1. A list of the general circulation, trade and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers and copies of such solicitations and any responses thereto.
2. A list of the certified MWBEs appearing in the Empire State Development MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
3. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with or obtaining supplies from certified MWBEs.
4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
5. Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
6. Other information deemed relevant to the request.

ALL FORMS ARE AVAILABLE AT: <http://www.ogs.ny.gov/MWBE/Forms.asp>

**NEW YORK STATE FINANCIAL SYSTEM (SFS):**

New York State is currently operating on an Enterprise Resource Planning (ERP) system, Oracle PeopleSoft software, referred to as the Statewide Financial System (SFS). SFS is currently on PeopleSoft Financials version 9.2 Bundle 18, operating on PeopleTools version 8.49.33. SFS supports requisition-to-payment processing and financial management functions.

The State is also implementing an eProcurement application that supports the requisitioning process for State Agencies to procure goods and services in SFS. This application provides catalog capabilities. Vendors with

Centralized Contracts have the ability to provide a “hosted” or “punch-out” catalog that integrates with SFS and is available to Authorized Users via a centralized eMarketplace website. There are no fees required for a Vendor’s participation in the catalog site development or management. Upon completion and activation of an on-line catalog, State Agencies will process their orders through the SFS functionality and other Authorized Users can access the catalog site to fulfill orders directly.

The State is also implementing the PeopleSoft Inventory module in the near future to track inventory items within the item master table. Further information regarding business processes, interfaces, and file layouts may be found at: [www.sfs.ny.gov](http://www.sfs.ny.gov) and <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

#### USE OF RECYCLED OR REMANUFACTURED MATERIALS:

New York State supports and encourages vendors to use recycled, remanufactured or recovered materials in the manufacture of products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the product or packaging unless such use is precluded due to health or safety requirements or product specifications contained herein. Refurbished or remanufactured components or products are required to be restored to original performance and regulatory standards and functions and are required to meet all other requirements of this Contract. Warranties on refurbished or remanufactured components or products must be identical to the manufacturer's new equipment warranty or industry's normal warranty when remanufacturer does not offer new equipment. See Appendix B, §38, *Repaired or Replaced Products, Parts or Components*.

#### BULK DELIVERY AND ALTERNATE PACKAGING:

New York State encourages the use of innovative packaging that reduces the weight of packaging and the generation of packaging waste. A contractor is encouraged to use reusable materials and containers and to utilize packaging configurations that take advantage of storage containers designed to be part of the product for the shipment of multi-unit purchases. New York State recognizes that these packaging methods are in the development stage and may not be currently available. Authorized Users are urged to inquire about these programs at the time of purchase and determine the best solution for their needs.

#### SURPLUS/TAKE-BACK/RECYCLING:

1. A State agency is reminded of its obligation to comply with the NY State Finance Law §§167, Transfer and Disposal of Personal Property, and 168, The Management of Surplus Computer Equipment, regarding transfer and disposal of surplus personal property before utilizing take-back, recycling, or other options for disposition of equipment that is still in operable condition.
2. If Contractor offers a take-back/recycling program, then Contractor shall provide a record of disposition to each Authorized User who participates in the take-back/recycling program for units transferred for disposition. Contractor shall provide documentation that the units were disposed of in an environmentally sound manner in compliance with applicable local, state and federal laws. See Section 3 below for specific requirements governing electronic equipment recycling.
3. The NYS Department of Environmental Conservation (DEC) Electronic Equipment Recycling and Reuse Act (“Act”) (Environmental Conservation Law, Article 27, Title 26, Electronic Equipment Recycling and Reuse), requires manufacturers to establish a convenient system for the collection, handling, and recycling or reuse of electronic waste. If Contractor is a manufacturer of electronic equipment covered by the Act, Contractor agrees to comply with the requirements of the Act. More information regarding the Act can be found on the DEC website at: <http://www.dec.ny.gov/chemical/65583.html>.
4. If a Contractor offers a take-back/recycling program or offers an electronic equipment recycling program pursuant to the Act, and an Authorized User participates in same, then the Authorized User shall ensure the destruction of all data from any hard drives surrendered with the machines/covered electronic equipment. Contractor shall not require an Authorized User to surrender the hard drive, as an Authorized User may wish to retain the hard drive for security purposes. Contractor shall advise the Authorized User in advance if the retention of the hard drive results in additional fees or reduction in trade-in value. It is recommended that an Authorized User use a procedure for ensuring the destruction of confidential data stored on hard drives or other storage media that meets or exceeds the National Institute of Standards and Technology (NIST) Guidelines for

Media Sanitation as found in NIST Special Publication 800-88.

**ENVIRONMENTAL ATTRIBUTES AND NYS EXECUTIVE ORDER NUMBER 4:**

New York State is committed to environmental sustainability and endeavors to procure products with reduced environmental impact. One example of this commitment may be found in Executive Order No. 4 (Establishing a State Green Procurement and Agency Sustainability Program), which imposes certain requirements on state agencies, authorities, and public benefit corporations when procuring commodities, services, and technology. More information on Executive Order No. 4, including specifications for offerings covered by this Contract, may be found at: <http://ogs.ny.gov/EO/4/Default.asp>. State entities subject to Executive Order No. 4 are advised to become familiar with the specifications that have been developed in accordance with the Order, and to incorporate them, as applicable, when making purchases under this Contract.

**PREFERRED SOURCE PRODUCTS:**

Section 162 of the State Finance Law requires that agencies, including Executive Agencies, afford first priority to the products of preferred source suppliers such as Corcraft (the marketplace name for the NYS Department of Corrections and Community Supervision, Division of Industries), New York State Preferred Source Program for People who are Blind (NYSPSP), and New York State Industries for the Disabled (NYSID), and others determined by law, when such products meet the form, function and utility of the agency. Some products in the resultant Contract(s) may be available from one or more preferred sources. An Authorized User must determine if a particular commodity or service is approved for a Preferred Source and follow the requirements of State Finance Law Section 162(3) or (4)(b), respectively, before engaging the Contractor.

**NEW YORK STATE VENDOR RESPONSIBILITY:**

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS 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.

The Commissioner of OGS or her designee, her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when 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 Commissioner of OGS or her designee issues a written notice authorizing a resumption of performance under the Contract. The Contractor agrees that if it is found by the State that the Contractor's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Contract.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Contract may be terminated by the Commissioner of OGS or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of OGS or her designee to be non-responsible. In such event, the Commissioner of OGS 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.

In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

**NEW YORK STATE TAX LAW SECTION 5-A:**

Tax Law Section 5-a requires certain Contractors awarded state Contracts for commodities, services and technology valued at more than \$100,000 to certify to NYS Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to Contracts where the total amount of such Contractors' sales delivered into New York State is in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

Contractors may consult with DTF's website at <http://www.tax.ny.gov/> for additional information and frequently asked questions.

**OVERLAPPING CONTRACT ITEMS:**

Products available in the resulting Contract may also be available from other New York State Contracts. Authorized Users will be advised to select the most cost effective procurement alternative that meets their program requirements and to maintain a procurement record documenting the basis for this selection.

**NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS:**

New York State political subdivisions and others authorized by New York State law may participate in contracts. These include, but are not limited to local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See Appendix B, §25, *Participation in Centralized Contracts*. For purchase orders issued by the Port Authority of New York and New Jersey (or any other authorized entity that may have delivery locations adjacent to New York State), the terms of the "Price" clause shall be modified to include delivery to locations adjacent to New York State.

Upon request, all eligible non-State agencies must furnish contractors with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. A list of categories of eligible entities is available on the OGS web site ([www.ogs.state.ny.us](http://www.ogs.state.ny.us)). Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to OGS Procurement Services' Customer Services at 518-474-6717.

**NOTE TO ALL NON-STATE AGENCIES AND BIDDERS:**

All such participating non-State agencies and Bidders understand, acknowledge and agree that the primary responsibility in regard to performance of the Contract, of any obligation, covenant, condition or term thereunder by either such party thereto shall be borne and is expressly assumed by the participating non-State agencies and Contractor and not by the State. In the event of a failure or breach in performance of any such Contract by a non-State Agency or Contractor, the State specifically and expressly disclaims any and all liability for such defective performance or breach, and the eligible participating non-State agencies and Contractor guarantee to save the State, its officers, agents and employees harmless from any liability that may be or is imposed by the failure of either party to perform in accordance with its obligations, covenants and the terms and conditions of the State Centralized Contract.

**EXTENSION OF USE:**

The contract may be extended to additional States or governmental jurisdictions upon mutual written agreement between New York State (the lead contracting State) and the Contractor. Political subdivisions and other authorized entities within each participating State or governmental jurisdiction may also participate in any resultant Contract if such State normally allows participation by such entities. New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.



**CONTRACTOR PERFORMANCE:**

Authorized Users should notify the Procurement Services Contract administrator promptly if the Contractor fails to meet the requirements of this Contract. Performance which is otherwise unsatisfactory to the Authorized User should also be reported to Procurement Services.

**MERCURY-ADDED CONSUMER PRODUCTS:**

Contractor agrees that it will not sell or distribute fever thermometers containing mercury or any products containing elemental mercury for any purpose under this Contract.

**UNANTICIPATED EXCESSIVE PURCHASE:**

The State reserves the right to negotiate lower pricing, or to advertise for bids, any unanticipated excessive purchase. An “unanticipated excessive purchase” is defined as an unexpected order for a Contract product(s) totaling more than \$50,000.00.

**AMERICANS WITH DISABILITIES ACT (ADA):**

The Federal ADA Act, signed into law July 26, 1990, bars employment discrimination and requires all levels of Government to provide necessary and reasonable accommodations to qualified workers with disabilities.

Contractors are required to identify and offer any software or hardware products they manufacture or adapt which may be used or adapted for use by visually, hearing, or any other physically impaired individuals. Although it is not mandatory for Contractors to have this equipment in order to receive an award, it is necessary to identify any such equipment offered they have which falls into the above category.

**ADDITIONAL REQUIREMENTS:****1. NO DRUGS OR ALCOHOL**

For reasons of safety and public policy, in any Contract resulting from this procurement, the use of illegal drugs and/or alcoholic beverages by the Contractor or its personnel shall not be permitted while performing any phase of the work herein specified.

**2. TRAFFIC INFRACTIONS**

The State will not be liable for any expense incurred by the Contractor for any parking fees or as a consequence of any traffic infraction or parking violations attributable to employees of the Contractor.

**WEBSITE ACCESSIBILITY:**

Responsibility for Content: Contractor is solely responsible for administration, content, intellectual property rights and all materials at Contractor’s website. Contractor is solely responsible for its actions and those of its agents, employees, resellers, Sub-Contractors or assigns, and agrees that neither Contractor nor any of the foregoing has any authority to act or speak on behalf of the State. As applicable, Contractor agrees to comply with the Office of Information Technology Services f/k/a Office for Technology policy NYS-P08-005 Accessibility of Web-Based Information and Applications, as may be amended, the stated purpose of which is to make State Agency web-based Intranet and Internet information accessible for persons with disabilities. In accordance with such policy, the following language is incorporated into any Contract resulting from this procurement:

Any web-based information and applications development, or programming delivered pursuant to the contract or procurement, 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 (state agency name, contractor or other) and the results of such testing must be satisfactory to (state agency name) before web-based information and applications will be considered a qualified deliverable under the contract or procurement.

**LICENSE AGREEMENTS:**

An Authorized User looking to acquire Products and services under a Contract resulting from this Contract must review the contractual terms and conditions. The Authorized User must ask the Contractor if “click through”, “shrink wrap” or other pass-through or licensing/subscription terms and conditions are present, and if so, the Authorized User is responsible for reviewing and approving such terms and conditions prior to ordering the Products and services. If the terms and conditions are not acceptable to the Authorized User, it is the responsibility of such Authorized User to negotiate any needed amendments. ***Any additional licensing terms agreed to by the Authorized User shall not conflict with Appendix A, this Solicitation, any resultant Contract, or Appendix B. Any such conflicting terms shall be void and unenforceable.***

**APPENDIX A**

Appendix A, Standard Clauses For New York State Contracts, dated January 2014 is hereby expressly made a part of this Contract as fully as if set forth at length herein.

**APPENDIX B**

Appendix B, Office of General Services General Specifications, dated May 2015 is hereby expressly made a part of this Contract as fully as if set forth at length herein and shall govern any situations not covered by the bid document or Appendix A.

**NOTICE: THIS CONTRACT AWARD NOTIFICATION CONTAINS A SUBSET OF INFORMATION FROM THE SOLICITATION. CONTRACTS RESULTING FROM SOLICITATION 23044 HAVE BEEN EXECUTED BY CONTRACT AWARD LETTER. THE CONTRACT AWARD LETTER SETS FORTH THE ORDER OF PRECEDENCE FOR THE TERMS AND CONDITIONS OF THE EXECUTED CONTRACTS. COMPLETE CONTRACT DETAILS INCLUDING TERMS AND CONDITIONS CAN BE FOUND IN THE SOLICITATION DOCUMENT DATED REVISED OCTOBER 20, 2016.**

**State of New York  
Office of General Services  
Procurement Services  
Contract Performance Report**

Please take a moment to let us know how this contract award has measured up to your expectations. If reporting on more than one Contractor or product, please make copies as needed. This office will use the information to improve our contract award, where appropriate. **Comments should include those of the product's end user.**

**Contract No.:** \_\_\_\_\_ **Contractor.** \_\_\_\_\_

**Describe Product\* Provided (Include Item No., if available):** \_\_\_\_\_

**\*Note:** "Product" is defined as a deliverable under any Bid or Contract, which may include commodities (including printing), services and/or technology. The term "Product" includes Licensed Software.

	Excellent	Good	Acceptable	Unacceptable
• Product meets your needs				
• Product meets contract specifications				
• Pricing				

**CONTRACTOR**

	Excellent	Good	Acceptable	Unacceptable
• Timeliness of delivery				
• Completeness of order (fill rate)				
• Responsiveness to inquiries				
• Employee courtesy				
• Problem resolution				

Comments: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_(over)

Agency: \_\_\_\_\_ Prepared by: \_\_\_\_\_

Address: \_\_\_\_\_ Title: \_\_\_\_\_

\_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_ Phone: \_\_\_\_\_

\_\_\_\_\_ E-mail: \_\_\_\_\_

**Please detach or photocopy this form & returned to:**

OGS Procurement Services  
Customer Services, 38th Floor  
Corning 2<sup>nd</sup> Tower - Empire State Plaza  
Albany, New York 12242  
customer.service@ogs.ny.gov  
\* \* \* \* \*



# 4th Supplemental Contract Award Notification

PAGE 124

<b>Title</b>	<b>: Group 20020 – Serials and Database Access (Statewide)</b> <b>Classification Code(s): 55 &amp; 83</b>
<b>Award Number</b>	<b>: <a href="#">23044</a></b>
<b>Contract Period</b>	<b>: March 6, 2017 – December 31, 2021</b>
<b>Bid Opening Date</b>	<b>: November 1, 2016</b>
<b>Date of Issue</b>	<b>: March 6, 2017</b>
<b>Specification Reference</b>	<b>: As Incorporated Herein</b>
<b>Contractor Information</b>	<b>: Appears on Page 2 of this Award</b>

## Address Inquiries To:

State Agencies & Vendors		Political Subdivisions & Others	
Name :	Shrilata Nath	Procurement Services	
Title :	Contract Management Specialist	Customer Services	
Phone :	518-474-3034	Phone :	518-474-6717
E-mail :	Shrilata.Nath@ogs.ny.gov	E-mail :	customer.services@ogs.ny.gov

**Procurement Services values your input.****Complete and return "Contract Performance Report" at end of document.**

## Description

NOTICE: THIS CONTRACT AWARD NOTIFICATION CONTAINS A SUBSET OF INFORMATION FROM THE SOLICITATION. CONTRACTS RESULTING FROM SOLICITATION 23044 HAVE BEEN EXECUTED BY CONTRACT AWARD LETTER. THE CONTRACT AWARD LETTER SETS FORTH THE ORDER OF PRECEDENCE FOR THE TERMS AND CONDITIONS OF THE EXECUTED CONTRACTS. COMPLETE CONTRACT DETAILS INCLUDING TERMS AND CONDITIONS CAN BE FOUND IN THE SOLICITATION DOCUMENT DATED REVISED OCTOBER 20, 2016.

This contract provides Authorized Users with a means of acquiring Serials and Database Access Products and Services. The contract contains a total of two (2) Lots: Lot 1 - Serials and Lot 2 - Database Access. **Lot 1 Serials - Included:** Print Periodicals and Newspapers; Electronic Magazines and Journals; Annuals (reports, yearbooks, etc.); Continuing directories; Proceedings and transactions; Numbered monographic series cataloged separately; Subscription based eBooks; and Optional Products and Services, including but not limited to: Stamps, call numbers or routing labels, bar-coding, and security strips, Processing of journals including affixing date and property, Shipment Consolidation, MARC (Machine Readable Cataloging) records and updates, and Serials management solutions. **Lot 2 Database Access – Included:** Library Databases; Full Text Databases; Numeric Databases; Meta-Databases; General Interest Databases; Discipline Specific Databases; Subject Specific Databases; Streaming Video Databases; Database Files; and Optional Products and services, including but not limited to: Database Management Systems (DBMS), Hard copy records, Mailing labels, Batching, and Reporting

This Contract Award Notification contains MWBE goals of 0% MBE and 0% WBE.

PR #23044

23044sa04

<u>CONTRACT #</u>	<u>CONTRACTOR</u>	<u>FED.IDENT. #</u>	<u>NYS VENDOR #</u>
PC67669	ProQuest LLC	39-2053855	1000040727
PC67676	West Publishing dba West, A Thomson Reuters Business	41-1426973	1000004857

For complete Contractor contract information and Pricing information for this Award, please see the Contractor Information page located on the OGS Website at: <https://www.ogs.ny.gov/purchase/spg/awards/2002023044Can.htm>

Cash Discount and/or Early Payment Discount, If Shown, Should be Given Special Attention.

**INVOICES MUST BE SENT DIRECTLY TO THE ORDERING AGENCY FOR PAYMENT.**

**(See "INVOICING AND PAYMENT" in this document.)**

AGENCIES SHOULD NOTIFY PROCUREMENT SERVICES PROMPTLY IF THE CONTRACTOR FAILS TO MEET DELIVERY OR OTHER TERMS OF THIS CONTRACT. PRODUCTS WHICH DO NOT COMPLY WITH THE SPECIFICATIONS OR ARE OTHERWISE UNSATISFACTORY TO THE AGENCY SHOULD ALSO BE REPORTED TO THE PROCUREMENT SERVICES.

#### SMALL, MINORITY AND WOMEN-OWNED BUSINESSES:

The letters SB listed under the Contract Number indicate the contractor is a NYS small business. Additionally, the letters MBE and WBE indicate the contractor is a Minority-owned Business Enterprise and/or Woman-owned Business Enterprise.

#### RECYCLED, REMANUFACTURED AND ENERGY EFFICIENT PRODUCTS:

The Procurement Services supports and encourages the purchase of recycled, remanufactured, energy efficient and "energy star" products. If one of the following codes appears as a suffix in the Award Number or is noted under the individual Contract Number(s) in this Contract Award Notification, please look at the individual awarded items for more information on products meeting the suffix description.

RS,RP,RA	Recycled
RM	Remanufactured
SW	Solid Waste Impact
EE	Energy Efficient
E*	EPA Energy Star
ES	Environmentally Sensitive

#### NOTE TO AUTHORIZED USERS:

When placing purchase orders under the contract(s), the authorized user should be familiar with and follow the terms and conditions governing its use which usually appears at the end of this document. The authorized user is accountable and responsible for compliance with the requirements of public procurement processes. The authorized user must periodically sample the results of its procurements to determine its compliance. In sampling its procurements, an authorized user should test for reasonableness of results to ensure that such results can withstand public scrutiny.

The authorized user, when purchasing from OGS contracts, should hold the contractor accountable for contract compliance and meeting the contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, authorized users are encouraged to seek improved pricing whenever possible. Authorized users have the responsibility to document purchases, particularly when using OGS multiple award contracts for the same or similar product(s)/service(s), which should include:

- a statement of need and associated requirements,
- a summary of the contract alternatives considered for the purchase,

- The reason(s) supporting the resulting purchase (e.g., show the basis for the selection among multiple contracts at the time of purchase was the most practical and economical alternative and was in the best interests of the State).

**ORDER OF PRECEDENCE:**

The list of documents below address clarifications agreed to by the Contractor and the Office of General Services (OGS) and resolved by the parties and set forth herein in an order of precedence for the Contract award. The documents listed below were included in Solicitation #23044 or provided by the Contractor. Unless otherwise set forth in the procurement or contract documents, conflicts among documents shall be resolved in the following order of precedence:

1. Appendix A (January 2014), Standard Clauses for NYS Contracts (previously provided);
2. Contract Award Letter;
3. Revisions and Clarifications to Bid Specifications dated October 3, 2016 and October 20, 2016 (previously provided);
4. Solicitation #23044 (Revised October 20, 2016) including all Appendices and Attachments referenced therein (previously provided);
5. Contractor's Bid Prices as stated in Attachment 1 – Pricelist
6. Contractor's Bid

**OVERVIEW:**

This Contract provides Authorized Users with a means of acquiring Serials and Database Access Products and Services by New York State Agencies and Non-State agencies, including political subdivisions, school districts and others authorized by law (See Section 5.48, *Non-State Agencies Participation in Centralized Contracts* and Section 5.50, *Extension of Use*).. Products for purchase by all Authorized Users are described in the Section titled, *Scope*.

Procurement Instructions describing requirements for Authorized Users to purchase from the Centralized Contract are found in the Section titled, *Procurement Instructions*.

**ESTIMATED QUANTITIES:**

All quantities or dollar values listed within this Contract are estimates. No specific quantities or volumes are represented or guaranteed and the State provides no guarantee of individual Authorized User participation. The Contractor(s) must furnish all quantities or dollar values actually ordered. The anticipated dollar value of the award for this Solicitation, based on historical purchases under previous awards was approximately \$55,000,000.00 annually for Lot 1 and \$20,000,000.00 annually for Lot 2. The individual value of each resultant Contract is indeterminate and will depend upon the number of Contracts issued and the competitiveness of the pricing offered. Authorized Users will be encouraged to purchase from Contractors who offer the Products and pricing that best meets their needs in the most practical and economical manner. See Appendix B, §28, *Estimated/Specific Quantity Contracts* and §25, *Participation in Centralized Contracts*.

Numerous factors could cause the actual value of the Contract to vary substantially from the historical value. Such factors include, but are not limited to, the following:

- The Contract is a nonexclusive Contract;
- There is no guarantee of volume to be purchased, nor is there any guarantee that demand will continue in any manner consistent with previous purchases;
- The individual value of the Contract is indeterminate and will depend upon actual Authorized User demand, and actual quantities ordered during the Contract period; and,
- The State reserves the right to terminate the Contract for cause or convenience prior to the end of the term pursuant to the terms and conditions of the Contract.

In Procurement Service's experience, depending on the price of a particular item, the actual volume of purchases for that item could be substantially in excess of, or substantially below, estimated volumes. Specifically, if actual

Contract pricing is lower than anticipated or historical pricing, actual quantities purchased could be substantially greater than the estimates; conversely, if actual contract pricing is higher than anticipated or historical pricing, actual quantities purchased could be substantially lower than the estimates. Contractor acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the Contract could vary substantially from the estimates/historical values provided in this Contract.

**DEFINITIONS:**

Terms used in the IFB documents that have a capitalized first letter shall be defined in accordance with Appendix B, §2 *Definitions*, which is hereby incorporated by reference. The following definitions shall apply:

<b>Term</b>	<b>Definition</b>
Active Request	Refers to an End User submitted search request transaction to the licensor's online service that has not yet received a response from the licensor's system.
Aggregator	A bibliographic service that provides online access to the digital full-text of Periodicals published by different Publishers. See also Database Publisher.
Back File Access	The ability to access information within a resource before a subscription period begins.
Business Day	Monday through Friday from 8:00 AM – 5:00 PM ET, excluding New York State and federal holidays.
Concurrent Users	Specified number of simultaneous End Users accessing an Electronic Publication or Database.
Concurrent Sessions	Concurrent User is interpreted to include any End User station device which, at the point in time of measurement, has established a logical session path to the licensor's online service, enabling an immediate search request to be made directly to the licensor's search software. This is the common meaning of such expressions as being "signed on" or "logged on" to the online service. Under this definition, any signed on terminal or End User station device is counted as part of the concurrent use total, regardless of whether the End User is at the End User station; formulating a new search request; waiting for the licensor's system to respond to a search request; or digesting the results of a previous request.
Concurrent Use License	Where licensing of Electronic Publications is based upon "Concurrent Users" the Contractor shall obtain from the publisher the right of the Authorized User to obtain license rights to the specified number of Concurrent Users actually executing the licensed programs, without reference to location or named End Users.
Continuing Directory	A list of people, companies, institutions, organizations, etc., in alphabetical or classified order, providing contact information (names, addresses, phone/fax numbers, etc.) and other pertinent details (affiliations, conferences, publications, membership, etc.) in brief format, often published serially (i.e. Continuing resources (not complete as first issued and intended to be ongoing, though not necessarily indefinitely).
Customization	Changes to the function, layout and/or appearance of a Database which does not alter the Database content.
Database	A large, regularly updated file of digitized information (bibliographic records, abstracts, full-text documents, directory entries, images, statistics, etc.) related to a specific subject or field, consisting of records of uniform format organized for ease and speed of search and retrieval and managed with the aid of database management system (DBMS) software. Content is created by the Database producer, which usually publishes a print version and leases the content to one or more Database vendors that provide electronic access to the data after it has been converted to machine-readable form, usually on CD-ROM or online via the Internet, using proprietary search software.
Database Management System (DBMS)	A computer application designed to control the storage, retrieval, security, integrity, and reporting of data in the form of uniform records organized in a large searchable file called a Database. The range of available DBMS software

Term	Definition
	extends from simple systems intended for personal computers to highly complex systems designed to run on mainframes.
Database Publisher	Company that uses specialized techniques to generate documents from source data and provide to End Users through a Database. See also Aggregator.
Discipline Specific Database	Information provided is focused on a discipline or area, however may include information from multiple related subject areas.
Electronic Journal	A digital version of a print journal, or a journal-like Electronic Publication with no print counterpart, made available via the World Wide Web, e-mail, or other means of Internet access. Some web-based Electronic Journals are graphically modeled on the print version. Synonymous with E-journal. Compare with electronic magazine.
Electronic Magazine	A digital version of a print magazine, or a magazine-like electronic publication with no print counterpart, made available via the World Wide Web, e-mail, or other means of Internet access. Some Web-based electronic magazines are graphically modeled on the print version. Synonymous with e-zine and Webzine. Compare with Electronic Journal.
Electronic Publication	A work in digital form capable of being read or otherwise perceived, distributed to the public electronically. Includes Electronic Journals and e-prints, Electronic Magazines and newspapers, electronic books, Web sites, Weblogs, etc. Some Electronic Publications are online versions of print publications; others are born digital. Synonymous with e-publication.
End User	Shall mean those persons who are permitted by the Authorized User to have access to an Electronic Publication or Database.
Fair Use	Shall mean acceptable use under the Copyright Revision Act 1976 as amended subsequently provided that such rights are exercised in accordance with Section 108 of the Act and with the guidelines developed by the National Commission on New Technological Uses of Copyrighted Works (CONTU Guidelines) and published in U.S. Copyright Office Circular 21.
Full Text Database	Contains the complete text of any documents (e.g. books, Journals, newspapers, magazines).
Full Time Equivalent End User (FTE)	For State agencies and Authorized Users not otherwise identified, the number of full time employees shall be the number of FTEs; for a higher educational institution, it shall refer to the student enrollment expressed as the number of full time students; for K-12 educational institutions, each student shall be considered one (1) FTE; for public libraries, the census population served shall be deemed to be the number of FTEs.
International Standard Serial Number (ISSN)	A unique eight-digit standard number assigned by the International Serials Data System (ISDS) to identify a specific serial title. The ISSN is usually given in the masthead of each issue or on the copyright page of each volume or part of a series. When a continuing resource undergoes a title change, a new ISSN is assigned.
Journal	A Periodical devoted to disseminating original research and commentary on current developments in a specific discipline, sub-discipline, or field of study, usually published in quarterly, bimonthly, or monthly issues sold by subscription. Journal articles are usually written by the person (or persons) who conducted the research. Longer than most magazine articles, they almost always include a bibliography or list of works cited at the end. In Journals in the sciences and social sciences, an abstract usually precedes the text of the article, summarizing its content. Most scholarly Journals are peer-reviewed. Scholars often use a current contents service to keep abreast of the Journal literature in their fields of interest and specialization.
Library Database	A large catalog or index of organized information.



Term	Definition
Licensing Agreement	A formal written contract between a library and a vendor for the lease of one or more proprietary (copyrighted) bibliographic databases or online resources, usually for a fixed period of time in exchange for payment of an annual subscription fee or per-search charge. Vendors typically charge libraries on a sliding scale based on number of registered borrowers or FTE enrollment, number of institutions or facilities served, and number of simultaneous users.
List Price	The undiscounted price at which a new publication is offered for sale to the public, established by the publisher at the time the edition is issued. The List Price is quoted in the Publisher's catalog and printed on the front flap of the dust jacket in hardcover editions and usually on the back cover in softcover editions. Discounts offered to libraries, booksellers, and jobbers are computed as a percentage off List Price. In library cataloging, the List Price of an item is indicated (when available) in the standard number and terms of availability area of the bibliographic description (field 020 or 022 of the MARC record). Synonymous with published price, retail price, and sticker price.
Magazine	A popular interest Periodical usually containing articles on a variety of topics, written by various authors in a nonscholarly style. Most magazines are heavily illustrated, contain advertising, and are printed on glossy paper. Articles are usually short (less than five pages long), frequently unsigned, and do not include a bibliography or list of references for further reading. Most magazines are issued monthly or weekly for sale at newsstands, in bookstores, and by subscription.
Metadata Database	Information about data itself, including size, origination or other descriptors.
MWBE	A business certified with NYS Empire State Development (ESD) as a Minority and/or Women-owned Business Enterprise.
N/A	A common abbreviation for <i>not applicable</i> or <i>not available</i> , used to indicate when information in a certain field on a table is not provided, either because it does not apply to a particular case in question or because it is not available.
National Public Entities	Defined as State Governments, the Federal Government, Local Governments, cities, towns, school districts, libraries, police and fire departments, and other political subdivisions
Net Price	List Price less all applicable discounts or inclusive of Service Charges; the price paid by Authorized Users of the resultant Contract.
Newspaper	A Serial publication, usually printed on newsprint and issued daily, on certain days of the week, or weekly, containing news, editorial comment, regular columns, letters to the editor, cartoons, advertising, and other items of current and often local interest to a general readership.
NYS Vendor ID	Refers to the ten-character identifier issued by New York State when a vendor is registered on the Vendor File.
Numerical Data Database	This includes statistical and other numerical data.
Optional Products and Services	Refer to supplementary Products and services that enhance or support the provision of Serials and/or Database Access Products identified to be within scope. For example: under Lot 1 that may include things such as stamps; call numbers or routing label; bar-coding; security strips; processing of journals including affixing date and property; shipment consolidation, MARC (Machine Readable Cataloging) records and updates; and Serials management solutions; under Lot 2 that may include things such as Database Management Systems (DBMS), hard copy records, mailing labels, batching, and reporting.
Periodical	A Serial publication with its own distinctive title, containing a mix of articles, editorials, reviews, columns, short stories, poems, or other short works written

<b>Term</b>	<b>Definition</b>
	by more than one contributor, issued in softcover more than once, generally at regular stated intervals of less than a year, without prior decision as to when the final issue will appear. Although each issue is complete in itself, its relationship to preceding issues is indicated by enumeration, usually issue number and volume number printed on the front cover. Content is controlled by an editor or editorial board. Includes magazines, sold on subscription and at newsstands; journals, sold on subscription and/or distributed to members of scholarly societies and professional associations; and newsletters, but not proceedings or the other regular publications of corporate bodies as they relate primarily to meetings.
Procurement Services	Formerly known as NYSPRO or Procurement Services Group (PSG), Procurement Services shall mean a division of the New York State Office of General Services which is authorized by law to issue centralized, statewide Contracts for use by New York agencies, political subdivisions, schools, libraries and others authorized by law to participate in such Contracts.
Publication	Refers to a work capable of being read or otherwise perceived (e.g. book, audiorecording, videorecording, CD-ROM, etc.), issued by a Publisher for sale to the general public, usually in multiple copies and sometimes in multiple editions.
Publisher	A person or corporate entity that prepares and issues printed materials for public sale or distribution, normally on the basis of a legal contract in which the publisher is granted certain exclusive rights in exchange for assuming the financial risk of publication and agreeing to compensate the author, usually with a share of the profits.
Reseller	Any model for distribution of Product other than direct from the Contractor. Resellers include but are not limited to approved value added resellers (VARs), distributors, dealers, sales agents, and alternate channel partners.
Subject Specific Database	This includes information from academic or scholarly Journals and trade or professional publications.
Serial	Publication in any medium issued under the same title in a succession of discrete parts, usually numbered (or dated) and appearing at regular or irregular intervals with no predetermined conclusion. Serials may be purchased individually, in combination with other titles, or as large collections of titles (particularly when purchased electronically).
Server	Shall mean the computer system(s) on which Electronic Publications or Databases reside and through which End Users gain access to the Electronic Publications or Databases.
Service Charge	A fee charged by a Subscription Agent for filling orders for Periodical subscriptions, usually 5 to 10 percent of the total annual amount paid by the library for subscriptions.
Subscription Agent	A company in the business of providing centralized Serial subscription or Database Access services to Authorized Users such as libraries to relieve them of the time consuming task of dealing with Publishers individually.

In addition to the above definitions, the following terms are defined as follows regardless of whether they are or are not capitalized:

May	Denotes the permissive in a Contract clause or specification. Refers to items or information that the State has deemed are worthy of obtaining, but not required or obligatory. Also see "Should".
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Must	Denotes the imperative in a Contract clause or specification. Means required - being determinative/mandatory, as well as imperative. Also see “Shall” and “Mandatory”.
Shall	Denotes the imperative in a Contract clause or specification. Means required - being determinative/mandatory, as well as imperative. Also see “Must” and “Mandatory”.
Should	Denotes the permissive in a Contract clause or specification. Refers to items or information that the State has deemed are worthy of obtaining, but not required or obligatory. Also see “May”.

**SCOPE:**

These contracts are to provide Authorized Users with a means of acquiring Serials and Database Access Products and Services. There are a total of two (2) Lots: Lot 1 – Serials, and Lot 2 - Database Access.

Products for Lot 1 - Serials include, but may not be limited to:

1. Print Periodicals and Newspapers
2. Electronic Magazines and Journals
3. Annuals (reports, yearbooks, etc.)
4. Continuing directories
5. Proceedings and transactions
6. Numbered monographic series cataloged separately
7. Subscription based eBooks
8. Optional Products and Services, including but not limited to:
  - a. Stamps, call numbers or routing labels, bar-coding, and security strips
  - b. Processing of journals including affixing date and property
  - c. Shipment Consolidation
  - d. MARC (Machine Readable Cataloging) records and updates
  - e. Serials management solutions, such as:
    - (i) Link resolvers
    - (ii) A to Z lists
    - (iii) Information discovery tools
    - (iv) Subscription management tools
    - (v) Electronic resource management (ERM) tools

Products for Lot 2 – Database Access include, but may not be limited to:

1. Library Databases
2. Full Text Databases
3. Numeric Databases
4. Meta-Databases
5. General Interest Databases
6. Discipline Specific Databases
7. Subject Specific Databases
8. Streaming Video Databases
9. Database Files
10. Optional Products and services, including but not limited to:
  - a. Database Management Systems (DBMS)
  - b. Hard copy records
  - c. Mailing labels
  - d. Batching
  - e. Reporting

Exclusions: The following Products are not within scope:

1. Products currently offered under the OGS Books and Non-Print Library Materials and other Related Ancillary Services contract (Group 20060)
2. Products and services currently offered under the OGS E-Learning Training/Distance Services contract (Group 73016), which includes web-based, computer based, online and internet based training
3. Standalone Software unrelated to the provision of Serials or Database Access
4. Hardware of any kind
5. Database services offered under the Contract shall not allow the Contractor to access the personal, private, or confidential information of any Authorized User or End User

It is the Contractor's responsibility to ensure that only Products and services that meet the scope of the Contract are purchased through the Contract. Questions concerning items covered under the resultant Contract should be addressed to the OGS Procurement Services contract manager designated on the Contract Award Notification prior to accepting the order.

If a Contractor sells Products that are excluded under this Contract as set forth above, such Contractor's Contract may be suspended or terminated.

### **LIST OF CONTRACTORS AND AWARDED LOTS**

**Please refer to each Contractor's Information page and Pricelist for more information.**

<b>Bidder</b>	<b>Lot 1 Serials</b>	<b>Lot 2 Database Access</b>
ProQuest LLC		X
West Publishing Corporation dba West, A Thomson Reuters Business		X

### **PROCUREMENT INSTRUCTIONS TO AUTHORIZED USERS:**

1. The Contracts resulting from this Solicitation will be centralized Contracts issued under a multiple award structure. Products offered under the Contracts, pricing, and other Contract information will be posted to the OGS website or the awarded Contractors' dedicated NYS websites. Authorized Users shall procure Products that best meet their form, function and utility requirements.
2. Before proceeding with a purchase, Authorized Users shall check the list of Preferred Source offerings. Authorized Users are reminded that they must comply with State Finance Law §162, which requires that agencies afford first priority to the commodities of Preferred Source suppliers such as Correctional Industries (Corcraft), NYS Preferred Source Program for People Who are Blind (NYSPSP), and NYS Industries for the Disabled (NYSID), when such commodities meet the form, function and utility of the Authorized User.
3. Where products are not available from Preferred Source suppliers in the form, function and utility required by the Authorized User, Authorized Users shall purchase from the centralized Contracts awarded under this Solicitation. The basis for selection among multiple contracts at the time of purchase shall be the most practical and economic alternative and shall be in the best interests of the State. Therefore, Authorized Users are strongly encouraged to obtain quotes from at least three (3) Contractors prior to issuing a purchase order, in order to ensure that the Authorized User is receiving the best possible pricing.
4. When placing Purchase Orders under the Contract(s), the Authorized User should be familiar with and follow the terms and conditions governing its use. The Authorized User is accountable and responsible for compliance with the requirements of public procurement processes. The Authorized User, when purchasing from OGS Contracts, should hold the Contractor accountable for Contract compliance and meeting the Contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, Authorized Users are encouraged to seek improved pricing whenever possible. Authorized Users have the responsibility to document purchases which should include:
  - statement of need and associated requirements;

- obtaining all necessary prior approvals;
  - a summary of the Contract alternatives considered for the purchase; and
  - the reason(s) supporting the resulting purchase (e.g., show that basis for the selection among multiple Contracts at the time of purchase was the most practical and economical alternative and was in the best interests of the State).
5. Authorized Users will issue purchase orders directly to the Contractor or the Contractor's authorized Reseller (if applicable), as specified by the Contractor, and specifying any shipping/delivery requirements and/or statements of work for services (if applicable).
  6. Upon Authorized User acceptance of Products itemized on the purchase order, Contractor will invoice Authorized User for any portion of Products accepted, and accordingly, Authorized User will arrange for payment. Contractor shall provide itemized invoicing for all Products.
  7. ***Contractor must disclose any forms, "click through", "shrink wrap" or other pass-through or licensing/subscription terms and conditions or other order information that Contractor will attach to orders or require to be completed with Authorized User purchases. Documents which contain additional terms or conditions, such as library maintenance agreements or Licensing Agreements must receive pre-approval by the Authorized User prior to ordering Products and services. Any additional licensing terms agreed to by the Authorized User shall not conflict with Appendix A, this Solicitation, any resultant Contract, or Appendix B. Any such conflicting terms shall be void and unenforceable.***

**PRICE:**

Price shall include all customs duties and charges and be net, F.O.B. destination to any point in New York State as designated by the Authorized User and shall include all transportation charges and inside delivery for print medium. Inside deliveries are to be delivered to the ordering Authorized User's stockroom or office location.

The Bidder's price should include all costs associated with selling the Product. No shipping charges are allowed EXCEPT on printed foreign publications shipped directly to the Authorized User from an address outside the 48 contiguous US states including the District of Columbia. Foreign shipping costs shall be prepaid by the Contractor and added to the invoice and all such orders shall be shipped on F.O.B. destination by the most economical method. There shall be no increase in Contract prices for freight, shipping, fuel or other surcharges, FPT (Freight Pass Through), etc. during the term of the Contract.

**FOR LOT 1 ONLY: Authorized Users may be charged additional fees charged by the Publishers which include licensing fees, platform fees etc. in excess of the base subscription fee. However, any additional fees shall only be those charges passed on by the Publishers and shall not include any additional fees charged by the Contractors for such services. The Contractor shall only charge fees based on List Prices charged by Publishers. The Authorized User must be notified of all such fees at the time of purchase. Fees that are not told to the Authorized User at the time of purchase shall be paid by the Contractor.**

Contractor's pricing information is included in the posted Pricelist linked from the Contractor Information page.

**PRICING BASED ON GSA PRICING:**

Authorized Users shall be entitled to all associated discounts enumerated in the GSA Supply Schedule (including, but not limited to discounts for additional sites and volume discounts), as well as any other pricing or discount terms as are expressly enumerated in this NYS Contract or GSA schedule, when calculating the Contract price.

GSA pricing incorporates a sum referred to as the "GSA Industrial Funding Fee (IFF)". Contract prices will be reduced by an amount equivalent to the IFF. The NYS Price will be calculated by reducing the published GSA price, after the discounts, if any, downward by the amount of the Industrial Funding Fee, currently set at .75%.

**VOLUME DISCOUNTS:**

Contractor may offer volume discounts using the thresholds listed on each Contractor's Information Page.

**PREPAYMENT PLAN DISCOUNTS:**

Contractor may offer Prepayment Plan Discounts using the thresholds listed on each Contractor's Information Page.

**PROMPT PAYMENT DISCOUNTS:**

Contractor may offer prompt payment discounts at the transaction level. Please refer to the Contractor's Information Page.

**CENTRALIZED CONTRACT MODIFICATION:**

1. OGS, an Authorized User, or the Contractor may suggest modifications to the Centralized Contract or its Appendices. Except as specifically provided herein, modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the Parties. Modifications may take the form of an update or an amendment. "Updates" are changes that do not require a change to the established Centralized Contract terms and conditions. A request to add new Products at the same or better price level is an example of an update. "Amendments" are any changes that are not specifically covered by the terms and conditions of the Centralized Contract, but inclusion is found to be in the best interest of the State. A request to change a contractual term and condition is an example of an amendment.
2. Updates to the Centralized Contract and the Appendices may be made in accordance with the contractual terms and conditions to incorporate new products or services, make price level revisions, delete Products or services, or to make such other updates to the established Centralized Contract terms and conditions, not resulting in a change to such terms and conditions, which are deemed to be in the best interest of the State.
3. OGS reserves the right to consider modifications which are not specifically covered by the terms of the Centralized Contract, but are judged to be in the best interest of the State. Such modifications are deemed amendments to the Centralized Contract and may require negotiations between Contractor and OGS before execution.
4. All modifications proposed by Contractor, shall be processed in accordance with Appendix C, Contract Modification Procedure. The Contractor shall submit all requests in the form and format contained in Appendix C, Contract Modification Procedure. The form contained within Appendix C is subject to change at the sole discretion of OGS.
5. Modifications proposed by OGS or an Authorized User, including updates and amendments, shall be processed in accordance with the terms of the Centralized Contract and Appendix B, §26, *Modification of Contract Terms*.

**CONTRACT PRICELIST UPDATE PROCEDURES:**

The procedures below outline how Contract pricelist updates will be handled under this Contract. If awarded more than one Lot, Contractor shall submit pricelist updates for each Lot simultaneously pursuant to the requirements of this section. **NOTE: THE FOLLOWING PROCEDURES ARE NOT APPLICABLE TO CONTRACTOR PROPOSED CHANGES TO CONTRACT TERMS AND CONDITIONS.** Any implied or express request for changes in or additions to existing Contract terms and conditions, including new terms and conditions associated with a specific product line being added to the Contract for the first time, requires a formal Contract amendment and requires the approval of OGS. New or revised Contract terms and conditions are subject to the restrictions set forth in Appendix B, §26, *Modification of Contract Terms*.

**Lot 1 - Serials Pricelist Updates****Adding and Deleting Item Categories (Other than Optional Products and Services)**

1. No decrease in discounts: The Bidder's discount may increase at any time, but shall not decrease during the term of the Contract. Service Charges bid may decrease at any time, but shall not increase during the term of the Contract.
2. Adding or Deleting Item Categories: Bidder may add or delete Item Categories to its Price List pursuant to this Section and at the discretion of OGS. Any new Item Categories added to the Contract shall be subject to a reasonableness of price review pursuant to Section 5.3, *Reasonableness of Price*, of the Solicitation.

3. First Year: In the first year of the Contract, the Contractor shall be allowed to update the pricelist once to add/delete Item Categories.
4. Subsequent Years: Commencing with the second year of the Contract, the Contractor may add or delete Item Categories within thirty (30) calendar days after the anniversary date of the Contract. The thirty (30) calendar days includes the anniversary date of the Contract.

#### **Optional Products and Services**

1. Adding or deleting Optional Products and Services: Bidder may add or delete Optional Product and Services offerings pursuant to this section and at the discretion of OGS. Any new Optional Products and Services offered shall be subject to a reasonableness of price review pursuant to Section 5.3, *Reasonableness of Price*.
2. First Year: In the first year of the Contract, the Contractor shall be allowed to update the pricelist once to add or delete Optional Products and Services.
3. Subsequent Years: Commencing with the second year of the Contract, the Contractor may add or delete Optional Products and Services within thirty (30) calendar days after the anniversary date of the Contract. The thirty (30) calendar days includes the anniversary date of the Contract.

#### **Price Adjustments for Lot 1 Optional Products and Services**

All prices for Optional Products and Services may be adjusted annually following the first year of the Contract on the basis of the Not Seasonally Adjusted Consumer Price Index – All Urban Consumers, U.S. City Average, All Items Less Food, Series ID: CUUR0000SA0L1, published monthly by the US Department of Labor Bureau of Labor Statistics. There shall be no price adjustments during the first year of the Contract. The adjustment shall be established as follows. Following the first year of the Contract and annually thereafter, the Contractor may make a formal request for a price adjustment in the succeeding Contract year. This request must be made in writing to the contract manager identified on the front page of the resultant Contract Award Notification; thirty (30) calendar days after the anniversary date of the Contract. The thirty (30) calendar days includes the anniversary date of the Contract. If the Contractor fails to submit a written request, he/she forfeits its opportunity to receive a price adjustment in the succeeding Contract year.

Price adjustments for monetary amounts for Optional Products and Services shall begin with the second year of the start date of the Contract and annually thereafter. The adjustment shall be based on the percentage of increase or decrease in the above referenced index in the preceding twelve months ending three months prior to the effective date of the adjustments. In no case shall price increases exceed five percent (5%) annually. All adjusted prices will be rounded up or down to the nearest whole cent. The Office of General Services shall notify all parties of the price adjustments through the issuance of written notification by the Procurement Services.

Below is an example calculation. Values used are for illustrative purposes only.

CPI for current period	193.676
Less CPI for previous period	188.326
Equals Index point change	5.350
Divided by previous period CPI	188.326
Equals	0.028
Result multiplied by 100	0.028 x 100
Equals percent change	2.8

Should the referenced CPI become discontinued during the course of the contract, it will be replaced by the Not Seasonally Adjusted Consumer Price Index – All Urban Consumers, U.S. City Average, All Items, Series Id: CUUR0000SA0, and adjustments will be calculated based on the same methodology as outlined above, but with data from the new replacement index.

#### **Submitting Price List Changes**

Contractor is required to submit Contract pricelist updates electronically in an unprotected Microsoft Excel (2013 or lower version) spreadsheet either on CD or via e-mail to the OGS Procurement Services contract manager. The pricelist must be dated and the format shall be consistent with the format of the Contractor's approved

Contract pricelist. The pricelist shall separately include and identify (e.g., by use of separate worksheets or by using highlighting, italics, bold and/or color fonts) Item Categories added/deleted; Optional Products and Services added/deleted; and any price increases/decreases.

Contractors shall submit their updated Contract pricelist to the OGS Procurement Services contract manager pursuant to the requirements of this section for review and written approval prior to issuing to Authorized Users. All approved pricelist updates shall apply prospectively upon approval by OGS. Any request for a pricelist update not received in accordance with this section shall be deemed denied.

## **Lot 2 – Database Access Pricelist Updates**

1. General: Any new Products or services added to the Contract shall be subject to a reasonableness of price review. The Bidder's discount may increase at any time, but shall not decrease during the term of the Contract.
2. First Year: In the first year of the Contract, the Contractor shall be allowed to update the pricelist once to add/delete Products or services as established by the Contractor in their normal course of business. There shall be no price increases allowed for existing Products or services during the first year of the Contract.
3. Subsequent Years: Commencing with the second year of the Contract, the Contractor may update the pricelist annually to reflect Contractor price changes and the addition/deletion of Products and services as established by the Contractor in their normal course of business; thirty (30) calendar days after the anniversary date of the Contract. The thirty (30) calendar days includes the anniversary date of the Contract.

In a single year of the Contract the total request for price increases shall not exceed the lesser of:

1. three (3%) percent annually, or
2. the percent increase in the latest available National Consumer Price Index - All Urban Consumers (CPI-U), Not Seasonally Adjusted, U.S. City Average, All Items (Series Id: CUUR0000SA0, CUUS0000SA0); as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 2012. CPI-U data may be obtained at [www.bls.gov](http://www.bls.gov).

The following example illustrates the computation of percent change:

CPI for current period	230.000
Less CPI for previous period	225.000
Equals index point change	5.000
Divided by previous period CPI	225.000
Equals	0.022
Result multiplied by 100	0.022 x 100
Equals percent change	2.2

The "CPI for current period" shall be the index in effect at the time the Contract pricelist update request is received; "CPI for previous period" shall be the index in effect when the Contract pricelist was last updated.

Contractor is required to submit Contract pricelist updates electronically in an unprotected Microsoft Excel (2013 or lower version) spreadsheet either on CD or via e-mail to the OGS Procurement Services contract manager. The pricelist must be dated and the format shall be consistent with the format of the Contractor's approved Contract pricelist. The pricelist shall separately include and identify (e.g., by use of separate worksheets or by using highlighting, italics, bold and/or color fonts) Products and services being added/deleted and any price increases/decreases.

In connection with any Contract pricelist update, OGS reserves the right to request additional information; reject Contract updates; remove Products and services from Contracts; remove Products and services from Contract updates; and request additional discounts for new or existing Products and services.



## PERFORMANCE REQUIREMENTS – LOT 1 – SERIALS:

**Orders, Renewals, and Cancellations**

1. The Authorized User may specify that the subscription begin with current issue, first issue of the current volume, first issue of the current year, or first issue of the next volume. Subscriptions shall begin on the effective date specified on the purchase order.
2. The Contractor shall notify the Authorized User as soon as possible but no later than thirty (30) calendar days if unable to supply a new order. Contractor shall also provide a reasonable explanation in writing for non-fulfillment.
3. The Contractor shall provide address, publication, merger, and title change services, etc.
4. The Contractor shall make arrangements with publishers for all regularly purchased subscription orders and renewals within sufficient time to avoid any interruption in receipt of issues.
5. The Contractor shall cancel subscriptions as requested by the Authorized User and shall issue a credit if allowed by the publisher.
6. The Contractor shall provide pro-rated refunds or substituted titles for titles which cease publication prior to expiration if provided by the publisher. OGS reserves the right to resolve any issues that may arise between an Authorized User and the Contractor with regards to refunds or substituted titles.
7. The Contractor shall provide a common expiration date for subscriptions (if requested by the Authorized User) unless prohibited by the publisher.
8. At the Authorized User's request the Contractor shall renew subscriptions automatically on a date selected by the Authorized User; or at the option of the Authorized User, shall provide a list of titles to be renewed by the Contractor for the Authorized User's approval prior to the issuance of the annual renewal invoice. Authorized User may change automatic renewal status at any time and for no additional charge.
9. The Contractor may provide two, or three-year renewal periods, but must at a minimum offer a one-year renewal period.
10. The Contractor may enter orders for back files, special issues, supplements, extra volumes, and cumulative indexes, if requested to do so by the Authorized User.
11. All orders, renewals, and cancellations between the Contractor and the Authorized User shall be in writing, or shall be electronically transmitted.
12. In lieu of individual order forms, Contractor shall be able to accept a purchase or letter order to which is appended a list of titles.

**Invoicing and Payments**

1. The Contractor may offer an early prepayment discount. Annually, the Contractor shall specify the percentages of discount offered and the deadlines for early payment. Subscriptions may be prepaid for up to three years for Authorized Users legally empowered to make advance payments.
2. The Contractor shall provide annual renewal invoice(s) and indicate if such invoices are available electronically.
3. The Contractor shall provide supplemental invoices for "bill as" published titles, for "bill later" titles, for new orders, etc., based on agreement with Authorized User.
4. The Contractor shall provide up to three copies of all invoices if requested by an Authorized User.
5. All invoices shall provide the following information or other "identifier," if applicable:
  - a. Name, address and Federal Identification Number of Contractor.
  - b. Authorized User address and account number.
  - c. Invoice date and number.
  - d. Purchase order number.
  - e. Contract number.
  - f. Titles listed in alphabetical order or in an order specified by Authorized User.
  - g. International Standard Serial Numbers (ISSNs).
  - h. Price for each subscription period.
  - i. Subscription period.
  - j. Description, quantity, unit price and extended price of all items.
  - k. Information indicating if charge is an added optional service charge. An explanation is required.

1. The discount or Service Charge, as requested by the Authorized User, on a line-by-line basis.
6. Increases in subscription price shall be allowed if correction in cost is required due to publisher's change in price.
7. Decreases in subscription price shall be refunded or credited, as specified, to the Authorized User promptly.
8. The Contractor shall, upon request from the Authorized User, provide proof of Publisher List Prices and increases or decreases in Publisher List Prices for specific titles.
9. Additional fees which are passed on by the publishers, e.g. licensing fees, shall be listed separately on invoices.

**Optional**

If available and/or possible, Contractor to advise Authorized Users if the following may be provided:

1. Authorized User fund code.
2. Information indicating if charge is for a renewal or new order.
3. Information identifying "bill later" or "bill as" published titles.
4. On supplemental invoices, the original invoice number.
5. Availability of title in electronic format.
6. Customized Invoicing

**Claims**

1. The Contractor shall be responsible for claiming all issues reported as not received or received damaged or defective by the Authorized User.
2. The Contractor shall promptly process claim notices in a timely manner not to exceed the claim period permitted by the Publisher.
3. The Contractor shall provide claim reports no less frequently than bimonthly.
4. Claim reports shall provide the following information:
  - a. Date of claim report.
  - b. Title(s) being claimed.
  - c. Issue(s) being claimed.
  - d. Date(s) of prior claim(s).
  - e. Publisher's response, if any.
5. The Contractor may accept and respond to claims by U.S. mail, facsimile, electronic mail, courier service, or online.

**Conversion to New Contractor by Authorized Users**

1. Renewal orders requested by Authorized Users shall be placed at least two months before expiration of current subscriptions.
2. If an interruption in service results from a change in a Contractor, any issues not received shall be obtained by the Contractor who received payment for that period at no additional cost to the Authorized User. Delivery to the Authorized User shall be made by the original Contract delivery and at no extra cost to the Authorized User.
3. If duplicate issues are received as a result of change in Contractors and the Publisher required their return, the Contractor shall be responsible for resolving the problem and shall absorb any associated costs.

**Reports**

1. The Contractor may send the Authorized User a monthly statement showing the date and amount of each outstanding invoice and credit memorandum.
2. The Contractor shall notify the Authorized User of title changes and discontinued titles and provide information on titles that are slow, delayed, or irregular, either as they occur or on a monthly basis.
3. At the Authorized User's request the Contractor shall provide a printed customized list of titles arranged alphabetically or according to specifications defined by the Authorized User.
4. Upon request, the Contractor may be required to provide the Authorized User with a price analysis report showing a 1-3 year Publisher List Price comparison of titles ordered. This report can be arranged by title, country of publication, or by codes defined by the Authorized User.
5. If available, Contractor may provide an industry-wide summary of statistical data and analyses.

6. Upon request, the Contractor shall provide a report showing changes in Publisher subscription periods, quantities ordered, and publishers' new requirements.
7. All reports between the Contractor and the Authorized User shall be in writing, and may be electronically transmitted.

### **Licensing Terms and Conditions for Electronic Publication**

#### **Authorized User Access to Electronic Publications**

1. Access: Access to the Electronic Publications by Authorized Users shall be either via electronic media or the Internet. If access is provided via the Internet, the Contractor shall ensure that the Electronic Publications are highly stable and usable (including average response time of less than 5 seconds, and uptime, except for scheduled maintenance, of 96.9%), and shall ensure that the Web server(s) is (are) fully capable of serving Authorized Users. Access shall be controlled by Internet Protocol (IP) addresses, passwords or other appropriate authentication technology.
2. If the license rights are based on a named user model, an Authorized User will prepare and submit to the Contractor a list of End Users that shall include name, address, and contact information.
3. License Scope: The Contractor and the State agree that the license for the Electronic Publications shall be governed as set forth below:
  - a. Authorized User is granted a non-exclusive, transferable, term license to access and use the electronic publications in accordance with this Contract. The license term for the Electronic Publications license shall commence upon the license effective date.
  - b. It shall be the obligation of the Authorized User to review and comply with the terms and conditions of the License Agreement if one is required by the publisher to use the Electronic Publication or electronic content to the extent that they do not conflict with the terms of Appendix A, Appendix B, this Solicitation or any resultant Contract.
  - c. Permitted License Transfers: As Authorized User's business operations may be altered, expanded or diminished, Electronic Publication licenses may be transferred or combined for use at an alternative or consolidated site not originally specified in the license, including transfers between Authorized Users and/or their End Users ("permitted license transfers"). Contractor shall have the discretion to issue new login credentials when a license transfer takes place.
  - d. Concurrent Use License: Where licensing of Electronic Publications is based upon "Concurrent Users," Contractor hereby grants license rights to the specified number of Concurrent Users actually executing the licensed programs, without reference to location or named End Users (hereinafter "Concurrent Users").

#### **Contractor's Performance Obligations**

1. The Contractor will provide and maintain help files and other appropriate user documentation for the Electronic Publications to be accessible to all Authorized Users free of charge.
2. The Contractor will offer reasonable levels of continuing support to assist Authorized Users and their End Users in their use of the Products. Contractor will make its personnel available by email, phone or fax during regular Business Days.

#### **Authorized User Performance Obligations**

Authorized Users acknowledge that the copyright and title to the information content and organization of the Electronic Publications are and remain with the publisher. Authorized User shall use reasonable efforts to inform its End Users and walk-in patrons of any restrictions on the use of the Electronic Publications. Authorized User shall use reasonable efforts to protect the Electronic Publications from any use that is not permitted under this agreement. Authorized Users and/or End users may make all use of the Electronic Publications as is consistent with the Fair Use Provisions of United States and international copyright laws and the Bidder's/Contractor's terms and conditions for use of its online services, provided that they do not conflict with the terms of Appendix A, this Solicitation or any resultant Contract, or Appendix B,. In addition, the Electronic Publications may be used as follows:

1. Authorized Users and End Users may display, download, copy and/or print portions of the Electronic Publications for use in research, education, or other non-commercial purposes.
2. Authorized Users and End Users may use a reasonable portion of the Electronic Publications in the preparation of educational materials.
3. Authorized Users may fulfill occasional requests from other institutions, a practice commonly called Interlibrary Loan. Authorized Users agrees to maintain records respecting End User's use of materials in such Interlibrary Loan and to provide such records to the Contractor upon request.

**Specific Restrictions on Use of Electronic Publications**

Authorized User may not utilize the Electronic Publications for commercial purposes, including but not limited to the sale of the Electronic Publications, fee-for-service use of the Electronic Publications, or bulk reproduction or distribution of the Electronic Publications in any form; nor may Authorized User impose special charges for use of the Electronic Publications beyond reasonable printing or administrative costs.

**Licensing Terms and Conditions**

Bidders are advised to review all terms and conditions carefully; particularly the licensing terms and conditions for Electronic Publications. If license agreement, shrink-wrap or click wrap agreements are associated with Electronic Publications, it is the responsibility of the potential Bidder/Contractor to offer only those Serials in electronic format that satisfy the license terms and conditions of the Solicitation. License terms that conflict with the terms of Appendix A, Appendix B, this Solicitation or any resultant Contract shall not be enforceable.

**PERFORMANCE REQUIREMENTS – LOT 2 – DATABASE ACCESS:****System Availability**

Databases shall be functional at least 99% of the time.

**Scheduled Maintenance**

Contractor must notify Authorized Users at least 48 hours prior to scheduled maintenance that interrupts End User access to Databases. OGS requests that scheduled maintenance **NOT** be performed during normal Business Days.

**RSS Feeds**

Contractors shall indicate on their Pricelist if RSS Feeds are allowed, and if so, if they are included in the price of the resource.

**CONTRACT PERIOD AND RENEWAL:**

The Contract(s) shall commence after all necessary approvals by both parties, and shall become effective upon mailing of the final Contract Award Notice by OGS (see Appendix B, §22, Contract Creation/Execution). The Contract(s) shall be in effect for five (5) years beginning on the date of approval of the first contract awarded as a result of the IFB, and shall end conterminously five (5) years from the approval of the first contract awarded as a result of the IFB. If mutually agreed between OGS and the Contractor, the Contract may be renewed under the same terms and conditions for up to two (2) additional years. Discount reduction will not be allowed and is specifically excluded from the terms and conditions of the Invitation for Bid and resultant Contract. Price decreases or discount increases are permitted at any time.

**SHORT TERM EXTENSION:**

In the event a replacement Contract has not been issued, any Contract let and awarded hereunder by the State, may be extended unilaterally by the State for an additional period of up to one (1) month upon notice to the Contractor with the same terms and conditions as the original Contract including, but not limited to, quantities (prorated for such one month extension), prices, and delivery requirements. With the concurrence of the Contractor, the extension may be for a period of up to three (3) months in lieu of one (1) month. However, this extension terminates should a replacement Contract be issued in the interim.

**PERIODIC RECRUITMENT:**

The State reserves the right to add Contractors beginning in the second year of the Contract and at one year intervals thereafter. The State will formally announce when the bid is reissued, at the discretion of the State. Bidders shall be required to submit such Bid documentation as required by OGS, which may include additional applicable statutory requirements currently in effect at the time of the new Bid solicitation. Once awarded a Contract, a Contractor may not resubmit a Bid for future consideration. In addition, if a Bid is deemed non-responsive or is rejected under periodic recruitment, a Bidder cannot reapply for a future Contract until the next periodic recruitment period. For Contracts that are awarded under periodic recruitment, the Contract term will commence upon OGS approval in accordance with §22, *Contract Creation/Execution* of Appendix B and will terminate on the then current end date of the Contract or at the end of any approved extension or renewal period.

Bidders shall be required to submit this original bid document which may include additional applicable statutory requirements currently in effect at the time of the new bid solicitation. Bidders are advised to review the "Qualification of Bidders" clause before submitting a bid under periodic recruitment to ensure they can meet all bid requirements.

**CONTRACT ADVERTISING:**

In addition to the requirements set forth in Appendix B §21, *Contract Publicity*, any Contractor advertisements, promotional literature and/or Contract description(s) of Contract awards must be reviewed and approved by Procurement Services prior to issuance.

**MINIMUM ORDER:**

There is no minimum order requirement.

**NEW YORK STATE PURCHASING CARD:**

See "Purchasing Card" in Appendix B, §15, *Purchasing Card*. Contractors indicated on their Contractor's Information Page if they will accept the NYS Purchasing Card for orders not to exceed \$85,000. For all purchases executed using a New York State Purchasing Card, Contractor shall provide an itemized receipt with each delivery. Contractor shall state the discount offered when using the NYS Purchasing Card on each Contractor's Information page.

**CONTRACT ORDERS:**

Contractor shall be capable of accepting orders manually, via facsimile, and, electronically via email. As an option, Contractor may also accept orders electronically via the Internet through a web-based ordering system. Contractor shall be required to provide written quotes to Authorized Users who request them prior to placing an order, which quote details the SKU corresponding with the approved product list, List Price, discount, and Net Price, as applicable.

The web-based ordering system, if offered, shall allow Authorized Users to enter orders and have full order inquiry capabilities. All orders (manual, fax, electronic) shall reference requisition and/or purchase order number as required. If offering a web-based ordering system, the Bidder represents and warrants that it is the sole owner of the software product used for its ordering system, or, if not the owner, has received all proper authorizations from the owner to license the software product, and has the full right and power to grant the rights contained in any Contract resulting from this Invitation for Bids and as described further in Appendix B. Bidder further warrants and represents that the software product is of original development, and/or that the package and its use will not violate or infringe upon any patent, copyright, trade secret or other property right of any other person/company.

The web-based ordering system\*, if offered, shall be capable of processing, controlling, documenting, and reporting on the following minimum data elements:

- Contractor Name and Address
- Agency/Facility/Political Subdivision, etc.
- Contract Number

- Purchase Order/Requisition Numbers
- Contact (individual placing order)
- SKU/PN & Product Description
- Net Price
- Extended and Total Amounts

\*Comparable systems meeting the intent of the specifications may be considered.

If offering a web-based ordering system, the Contractor shall provide any necessary software (excluding communication software) and training guides/manuals or online support in the use of the web-based ordering system at no additional cost to all Authorized Users capable of placing orders electronically. Samples of software and training guides/manuals may be required. If requested, Bidder must demonstrate its system at an Albany, NY area location designated by the State.

#### INTERNET WEBSITES:

The State encourages successful Bidders to provide a designated NYS Contract website for Authorized Users' direct access. This website will be listed under the Contractor information. The purpose of a dedicated website is to provide Authorized Users with access to Contract pricing and Product offerings and the option of online ordering. It is the Contractor's responsibility to ensure that Contract and related information is accurately and completely posted, maintained and displayed in an objective and timely manner which renders it clearly distinguishable from other, non-contract offerings at Contractor's web site. Changes in Products or pricing must be approved by the Office of General Services, Procurement Services in accordance with any terms included in this Solicitation and resultant Contract prior to addition to the website. Hard copy catalog and pricelists, either in paper format or electronic format, must be available to all Authorized Users who either do not have Internet access or prefer the optional format.

#### PURCHASE ORDERS AND INVOICING:

All Purchase Orders and invoices shall include the Contract number and a line by line listing of separate charges. Order confirmation shall mean that the Contractor has received the purchase order, has reviewed it for compatibility with the Item currently on Contract, has resolved any non-compatibility problems with the Authorized User, and has entered the order, assigned an order number with anticipated delivery date.

##### **Purchase Orders**

Purchase orders are to include the following information:

1. Contract number
2. Contractor name
3. ISSN and Product/service description
4. Net Price

##### **Invoices**

Authorized Users are instructed not to process invoices that do not include the required information set forth below. Invoices must be detailed and include in the body of the invoice or an attachment to the invoice **all** of the following items. Failure to comply may result in lengthy payment delays. Original invoices must follow the billing instructions contained in the purchase order. Invoices shall include, at a minimum, the following information:

1. Contract number
2. Contractor name
3. NYS Vendor Identification Number
4. Purchase Order number
5. ISSN and Product/service description
6. Line item breakdown of all charges to include Net Price of each Product/service

Note that additional information is required for invoices for Lot 1 – Serials Products in accordance with Section *Performance Requirements – Lot 1 - Serials*.

Business units or branch offices within an Authorized User may require separate invoicing as specified by each Authorized User. The Contractor's billing system must be flexible enough to meet the needs of varying accounting systems in use by different Authorized Users.

**SOFTWARE:**

Software offered must be in a format that does not require any conversion by the Authorized User and shall:

1. be available as part of the Contractor's standard commercial offerings; and
2. be directly related to the operational function of the Products offered under the contract.

Any Software currently on the NYS Miscellaneous Software Catalog contract Prohibited List is excluded from purchase under this Contract, except when the Software is pre-loaded on equipment at the time of purchase. The Prohibited List may be accessed on the OGS website:

<https://www.ogs.ny.gov/purchase/snt/awardnotes/79518Prohibited.pdf>.

**RELATED THIRD PARTY PRODUCTS:**

Third Party Products which meet and comply with all of the following criteria may be authorized for sale under this Contract:

1. The Third Party Product is available as part of the Contractor's standard commercial offerings.
1. The Third Party Product fits the scope of and is directly related to the operation of Products that fit the scope of the Contract.
2. If the Third Party Product is available on another NYS Contract, such item will only be approved for inclusion on this Contract in accordance with Section titled, *Overlapping Contract Items*. If the Third Party Product is not available on another NYS Contract, then price reasonableness must be established in order for such item to be added to the Contract.

**USE OF RESELLERS/DISTRIBUTORS/ALTERNATE CHANNEL PARTNERS:**

Contractor must provide service, sales and support staff to service Authorized Users geographically located at multiple purchasing locations throughout New York State. Contractor shall ensure that sufficient resources are available directly, or through authorized Resellers to ensure maximum service capability throughout the State. The State agrees to permit Contractor to utilize approved, designated value added resellers (VARs), distributors, dealers, and sales agents to participate as alternate channel partners (collectively referred to as "Resellers") for Contractor. Such participation is subject to the following conditions:

1. Designation of Reseller(s): Contractor shall specify whether orders must be placed directly with Contractor, or may be placed directly with designated Reseller(s). When Reseller(s) are submitted for approval, Contractor must provide the State, in advance, with all necessary ordering information, billing addresses, Federal Identification Numbers, and NYS Vendor Identification Numbers in the format requested in Reseller Directory. Failure to accurately provide all required information may result in processing delays.
2. Conditions of Participation: Reseller(s) must be approved in advance by the State as a condition of eligibility under the Contract. The State also reserves the right to rescind any such participation or request that Contractor name additional Resellers, in the best interests of the State, at the State's sole discretion, at any time. Contractor shall have the right to qualify Reseller(s) and their participation as fulfillment agents under this Contract by product line, contracting program (e.g., government/educational sales), geographic region, size/sales volume, technical training or other criteria ("qualifying criteria"), provided that: i) such qualifying criteria are uniformly applied to all potential Resellers based upon Contractor's established, neutrally applied commercial/governmental program criteria, and not to a particular procurement; ii) all general categories of qualifying criteria must be disclosed by the Contractor to the State, in advance, at the beginning of the Contract term; iii) those qualifying criteria met by the Reseller must be identified on the form provided in Reseller Directory at the time that Reseller approval is requested under this paragraph; and iv) immediate advance notice is provided to OGS in the event that a change in Reseller's status occurs during the Contract term.
3. All Resellers who have been approved in accordance with the foregoing paragraph shall be eligible to quote lower than Contract pricing for procurements under this Contract which meet their qualifying criteria. Except

as otherwise set forth in Reseller Directory, Contractor warrants and represents that it shall not, directly or indirectly, by agreement, communication or any other means, restrict any Reseller's participation or ability to quote a particular order. Reseller Directory updates will be allowed no more than twice annually. On the first business day of the month following the sixth and twelfth months of each contract year, Contractors shall be given an opportunity to submit revised Reseller Directories electronically. When submitting Reseller Directory updates, Contractors shall be required to separately specify additions, deletions, and/or any other changes to the directory in an accompanying communication submitted with the request in order to facilitate a more expeditious review; failure to do so may result in the rejection of the request.

4. Responsibility for Reporting/Performance: Contractor shall be fully liable for Reseller(s)' performance and compliance with all Contract terms and conditions. Product purchased through Reseller(s) must be reported by Contractor in the required monthly reports to the State as a condition of payment. In addition to inclusion of Reseller(s) volume in the Contractor's monthly reporting obligation to the State, at the request of Authorized User, Reseller(s) shall provide Authorized User with quarterly reports of the individual Authorized User's Contract activity with Reseller.
5. Applicability of Contract Terms: Product ordered directly through Reseller(s) shall be limited to Products currently approved for inclusion under this Contract and shall be subject to all terms and conditions of this Contract as a condition of Reseller participation.

#### **CANCELLATION OF PURCHASE ORDERS:**

Cancellation of orders in part or whole for unavailable Products shall be made by means of appropriate notations and adjustments on orders returned by Contractor to the Authorized User. Contractors shall make no shipments of canceled Products except on the basis of a new order. Products not supplied by the Contractor may be purchased from any other Contract source.

#### **CONTRACT PAYMENTS:**

Payments cannot be processed by Authorized Users until the items have been delivered and accepted. Payment will be based on any invoice used in the Contractor's normal course of business. However, such invoice must contain all requirements in Section *Purchase Orders and Invoicing*.

#### **CONTRACT ADMINISTRATOR:**

Contractor must provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Contractor must notify OGS within five (5) Business Days if its Contract Administrator changes, and provide an interim contact person until the position is filled. Changes to Contractor contact information, including the designation of a new Contract Administrator, shall be submitted electronically via e-mail to the OGS Contract Management Specialist.

#### **TOLL-FREE NUMBER/AUTHORIZED USER ASSISTANCE:**

A Bidder must provide a toll-free telephone number for the Authorized User assistance under any Contract or purchase order resulting from this Solicitation. Bidder must staff this toll-free number at a minimum from 8:00 a.m. to 5:00 p.m. ET Monday through Friday, excluding NYS holidays. If Bidder does not currently maintain a toll-free number, the Bidder must be willing to establish one prior to award of Contract. Bidders may also offer online assistance, such as email or chat assistance.

#### **INSURANCE REQUIREMENTS:**

The Contractor shall with the Insurance Requirements of the bid solicitation. Within thirty (30) days after renewal or replacement of any policy required by any Contract resulting from this solicitation, or within three (3) business days of request, Bidders and Contractors shall supply OGS with updated replacement Certificates of Insurance, and amendatory endorsements.



**REPORT OF CONTRACT SALES:**

Contractor shall furnish a report semiannually of all Products purchased under the Contract during each semiannual period, no later than the 15th of the month following the close of each six month period. Purchases by Non-state agencies, political subdivisions and others authorized by law shall be reported in the same report and indicated as required. If resellers are utilized, the Contractor shall be responsible for consolidating all contract purchases into a single report. A template for such report is included in Attachment 9 - *Report of Contract Sales*. All fields of information shall be accurate and complete. The report is to be submitted electronically via electronic mail utilizing the template provided in Microsoft Excel 2013, or lower version (or as otherwise directed by OGS), to the attention of the OGS contract manager and shall reference the Group Number, Award Number, Contract Number, and Sales Period. OGS reserves the right to amend the report template during the Contract term.

Contractor shall specify if any resellers are NYS Certified Minority and/or Women-Owned Business Enterprises (MWBEs) within the Report of Contract Sales document. Contractor shall refer to Section *Contractor Requirements and Procedures for Business Participation Opportunities for New York State Certified Minority and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women* for information on how to verify certified status.

**AUTHORIZED USER SALES REPORT:**

Upon written request by an Authorized User, the Contractor shall furnish to such Authorized User, on a monthly basis, a report listing the following: name of products purchased, quantity purchased, unit price and total dollar volume of purchases.

**CONTRACTOR REQUIREMENTS AND PROCEDURES FOR EQUAL EMPLOYMENT AND BUSINESS PARTICIPATION OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND NEW YORK STATE CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES:****Policy Statement**

The New York State Office of General Services (“OGS”), as part of its responsibility, recognizes the need to promote the employment of minority group members and women and to ensure that certified minority- and women-owned business enterprises have opportunities for maximum feasible participation in the performance of OGS contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority- and women-owned business enterprises had a full and fair opportunity to participate in State contracting. The findings of the study were published on April 29, 2010, under the title “The State of Minority- and Women-Owned Business Enterprises: Evidence from New York” (the “Disparity Study”). The Disparity Study found evidence of statistically significant disparities between the level of participation of minority- and women-owned business enterprises in State procurement contracting versus the number of minority- and women-owned business enterprises that were ready, willing and able to participate in State procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the Statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that OGS establish goals for maximum feasible participation of New York State certified minority- and women-owned business enterprises (“MWBE”) and the employment of minority groups members and women in the performance of New York State contracts.

**General Provisions**

OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.

The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State certified minority- and women-owned business enterprises (“MWBEs”). Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, State or local laws.

The Contractor further agrees to be bound by the provisions of Article 15-A and the MWBE Regulations. If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.

Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility, breach of contract, withholding of funds, suspension or termination of the Contract and/or such other actions or enforcement proceedings as allowed by the Contract.

**Equal Employment Opportunity (EEO)**

Contractor shall comply with the provisions of Article 15-A set forth below. These provisions apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000, for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting State agency (the “Work”) except where the Work is for the beneficial use of the Contractor.

1. Contractor and subcontractors shall undertake or continue existing EEO 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, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate or distinct from the Contract; or (ii) employment outside New York State.
2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor’s equal employment opportunity policy.

**Form EEO 100 – Staffing Plan**

To ensure compliance with this section, the Contractor agrees to submit or has submitted with the Bid a staffing plan on Form EEO 100 to OGS to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.

**Form EEO - 101 - Workforce Utilization Reporting Form (Commodities and Services) (“Form EEO-101-Commodities and Services”)**

The Contractor shall submit, and shall require each of its subcontractors to submit, a Form EEO-101-Commodities and Services to OGS to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Form EEO-101-Commodities and Services must be submitted electronically to OGS at EEO\_CentCon@ogs.ny.gov on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January. Separate forms shall be completed by Contractor and any subcontractor.

If Contractor’s EEO Form 100 - Staffing Plan provides that Contractor is unable to separate out the actual workforce utilized in the performance of the Contract from its total workforce, the following clause shall apply: Contractor and OGS agree that Contractor is unable to separate out the workforce utilized in the performance of

the Contract from Contractor's and/or subcontractor's total workforce and that the information provided on the previously submitted Staffing Plan is Contractor's total workforce during the subject time frame, not limited to work specifically under the Contract.

Contractor shall comply with the provisions of the Human Rights Law, all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall 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 and conviction and prior arrest.

**Contract Goals**

For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers and suppliers to Contractor. Contractor is, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528> Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

**Good Faith Efforts**

Pursuant to 5 NYCRR § 142.8, evidence of good faith efforts shall include, but not be limited to, the following:

1. A list of the general circulation, trade and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers and copies of such solicitations and any responses thereto.
2. A list of the certified MWBEs appearing in the Empire State Development MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
3. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with or obtaining supplies from certified MWBEs.
4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
5. Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
6. Other information deemed relevant to the request.

ALL FORMS ARE AVAILABLE AT: <https://www.ogs.ny.gov/MWBE/Forms.asp>

**NEW YORK STATE FINANCIAL SYSTEM (SFS):**

New York State is currently operating on an Enterprise Resource Planning (ERP) system, Oracle PeopleSoft software, referred to as the Statewide Financial System (SFS). SFS is currently on PeopleSoft Financials version 9.2 Bundle 18, operating on PeopleTools version 8.49.33. SFS supports requisition-to-payment processing and financial management functions.

The State is also implementing an eProcurement application that supports the requisitioning process for State Agencies to procure goods and services in SFS. This application provides catalog capabilities. Vendors with Centralized Contracts have the ability to provide a "hosted" or "punch-out" catalog that integrates with SFS and is

available to Authorized Users via a centralized eMarketplace website. There are no fees required for a Vendor's participation in the catalog site development or management. Upon completion and activation of an on-line catalog, State Agencies will process their orders through the SFS functionality and other Authorized Users can access the catalog site to fulfill orders directly.

The State is also implementing the PeopleSoft Inventory module in the near future to track inventory items within the item master table. Further information regarding business processes, interfaces, and file layouts may be found at: [www.sfs.ny.gov](http://www.sfs.ny.gov) and <https://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

#### USE OF RECYCLED OR REMANUFACTURED MATERIALS:

New York State supports and encourages vendors to use recycled, remanufactured or recovered materials in the manufacture of products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the product or packaging unless such use is precluded due to health or safety requirements or product specifications contained herein. Refurbished or remanufactured components or products are required to be restored to original performance and regulatory standards and functions and are required to meet all other requirements of this Contract. Warranties on refurbished or remanufactured components or products must be identical to the manufacturer's new equipment warranty or industry's normal warranty when remanufacturer does not offer new equipment. See Appendix B, §38, *Repaired or Replaced Products, Parts or Components*.

#### BULK DELIVERY AND ALTERNATE PACKAGING:

New York State encourages the use of innovative packaging that reduces the weight of packaging and the generation of packaging waste. A contractor is encouraged to use reusable materials and containers and to utilize packaging configurations that take advantage of storage containers designed to be part of the product for the shipment of multi-unit purchases. New York State recognizes that these packaging methods are in the development stage and may not be currently available. Authorized Users are urged to inquire about these programs at the time of purchase and determine the best solution for their needs.

#### SURPLUS/TAKE-BACK/RECYCLING:

1. A State agency is reminded of its obligation to comply with the NY State Finance Law §§167, Transfer and Disposal of Personal Property, and 168, The Management of Surplus Computer Equipment, regarding transfer and disposal of surplus personal property before utilizing take-back, recycling, or other options for disposition of equipment that is still in operable condition.
2. If Contractor offers a take-back/recycling program, then Contractor shall provide a record of disposition to each Authorized User who participates in the take-back/recycling program for units transferred for disposition. Contractor shall provide documentation that the units were disposed of in an environmentally sound manner in compliance with applicable local, state and federal laws. See Section 3 below for specific requirements governing electronic equipment recycling.
3. The NYS Department of Environmental Conservation (DEC) Electronic Equipment Recycling and Reuse Act ("Act") (Environmental Conservation Law, Article 27, Title 26, Electronic Equipment Recycling and Reuse), requires manufacturers to establish a convenient system for the collection, handling, and recycling or reuse of electronic waste. If Contractor is a manufacturer of electronic equipment covered by the Act, Contractor agrees to comply with the requirements of the Act. More information regarding the Act can be found on the DEC website at: <https://www.dec.ny.gov/chemical/65583.html>.
4. If a Contractor offers a take-back/recycling program or offers an electronic equipment recycling program pursuant to the Act, and an Authorized User participates in same, then the Authorized User shall ensure the destruction of all data from any hard drives surrendered with the machines/covered electronic equipment. Contractor shall not require an Authorized User to surrender the hard drive, as an Authorized User may wish to retain the hard drive for security purposes. Contractor shall advise the Authorized User in advance if the retention of the hard drive results in additional fees or reduction in trade-in value. It is recommended that an Authorized User use a procedure for ensuring the destruction of confidential data stored on hard drives or other storage media that meets or exceeds the National Institute of Standards and Technology (NIST) Guidelines for Media Sanitation as found in NIST Special Publication 800-88.

**ENVIRONMENTAL ATTRIBUTES AND NYS EXECUTIVE ORDER NUMBER 4:**

New York State is committed to environmental sustainability and endeavors to procure products with reduced environmental impact. One example of this commitment may be found in Executive Order No. 4 (Establishing a State Green Procurement and Agency Sustainability Program), which imposes certain requirements on state agencies, authorities, and public benefit corporations when procuring commodities, services, and technology. More information on Executive Order No. 4, including specifications for offerings covered by this Contract, may be found at: <https://ogs.ny.gov/EO/4/Default.asp>. State entities subject to Executive Order No. 4 are advised to become familiar with the specifications that have been developed in accordance with the Order, and to incorporate them, as applicable, when making purchases under this Contract.

**PREFERRED SOURCE PRODUCTS:**

Section 162 of the State Finance Law requires that agencies, including Executive Agencies, afford first priority to the products of preferred source suppliers such as Corcraft (the marketplace name for the NYS Department of Corrections and Community Supervision, Division of Industries), New York State Preferred Source Program for People who are Blind (NYSPSP), and New York State Industries for the Disabled (NYSID), and others determined by law, when such products meet the form, function and utility of the agency. Some products in the resultant Contract(s) may be available from one or more preferred sources. An Authorized User must determine if a particular commodity or service is approved for a Preferred Source and follow the requirements of State Finance Law Section 162(3) or (4)(b), respectively, before engaging the Contractor.

**NEW YORK STATE VENDOR RESPONSIBILITY:**

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS 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.

The Commissioner of OGS or her designee, her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when 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 Commissioner of OGS or her designee issues a written notice authorizing a resumption of performance under the Contract. The Contractor agrees that if it is found by the State that the Contractor's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Contract.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Contract may be terminated by the Commissioner of OGS or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of OGS or her designee to be non-responsible. In such event, the Commissioner of OGS 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.

In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

**NEW YORK STATE TAX LAW SECTION 5-A:**

Tax Law Section 5-a requires certain Contractors awarded state Contracts for commodities, services and technology valued at more than \$100,000 to certify to NYS Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to Contracts where the total amount of such Contractors' sales delivered into New York State is in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

Contractors may consult with DTF's website at <https://www.tax.ny.gov/> for additional information and frequently asked questions.

**OVERLAPPING CONTRACT ITEMS:**

Products available in the resulting Contract may also be available from other New York State Contracts. Authorized Users will be advised to select the most cost effective procurement alternative that meets their program requirements and to maintain a procurement record documenting the basis for this selection.

**NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS:**

New York State political subdivisions and others authorized by New York State law may participate in contracts. These include, but are not limited to local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See Appendix B, §25, *Participation in Centralized Contracts*. For purchase orders issued by the Port Authority of New York and New Jersey (or any other authorized entity that may have delivery locations adjacent to New York State), the terms of the "Price" clause shall be modified to include delivery to locations adjacent to New York State.

Upon request, all eligible non-State agencies must furnish contractors with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. A list of categories of eligible entities is available on the OGS web site ([www.ogs.ny.gov](http://www.ogs.ny.gov)). Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to OGS Procurement Services' Customer Services at 518-474-6717.

**NOTE TO ALL NON-STATE AGENCIES AND BIDDERS:**

All such participating non-State agencies and Bidders understand, acknowledge and agree that the primary responsibility in regard to performance of the Contract, of any obligation, covenant, condition or term thereunder by either such party thereto shall be borne and is expressly assumed by the participating non-State agencies and Contractor and not by the State. In the event of a failure or breach in performance of any such Contract by a non-State Agency or Contractor, the State specifically and expressly disclaims any and all liability for such defective performance or breach, and the eligible participating non-State agencies and Contractor guarantee to save the State, its officers, agents and employees harmless from any liability that may be or is imposed by the failure of either party to perform in accordance with its obligations, covenants and the terms and conditions of the State Centralized Contract.

**EXTENSION OF USE:**

The contract may be extended to additional States or governmental jurisdictions upon mutual written agreement between New York State (the lead contracting State) and the Contractor. Political subdivisions and other authorized entities within each participating State or governmental jurisdiction may also participate in any resultant Contract if such State normally allows participation by such entities. New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

**CONTRACTOR PERFORMANCE:**

Authorized Users should notify the Procurement Services Contract administrator promptly if the Contractor fails to meet the requirements of this Contract. Performance which is otherwise unsatisfactory to the Authorized User should also be reported to Procurement Services.

**MERCURY-ADDED CONSUMER PRODUCTS:**

Contractor agrees that it will not sell or distribute fever thermometers containing mercury or any products containing elemental mercury for any purpose under this Contract.

**UNANTICIPATED EXCESSIVE PURCHASE:**

The State reserves the right to negotiate lower pricing, or to advertise for bids, any unanticipated excessive purchase. An “unanticipated excessive purchase” is defined as an unexpected order for a Contract product(s) totaling more than \$50,000.00.

**AMERICANS WITH DISABILITIES ACT (ADA):**

The Federal ADA Act, signed into law July 26, 1990, bars employment discrimination and requires all levels of Government to provide necessary and reasonable accommodations to qualified workers with disabilities.

Contractors are required to identify and offer any software or hardware products they manufacture or adapt which may be used or adapted for use by visually, hearing, or any other physically impaired individuals. Although it is not mandatory for Contractors to have this equipment in order to receive an award, it is necessary to identify any such equipment offered they have which falls into the above category.

**ADDITIONAL REQUIREMENTS:****1. NO DRUGS OR ALCOHOL**

For reasons of safety and public policy, in any Contract resulting from this procurement, the use of illegal drugs and/or alcoholic beverages by the Contractor or its personnel shall not be permitted while performing any phase of the work herein specified.

**2. TRAFFIC INFRACTIONS**

The State will not be liable for any expense incurred by the Contractor for any parking fees or as a consequence of any traffic infraction or parking violations attributable to employees of the Contractor.

**WEBSITE ACCESSIBILITY:**

Responsibility for Content: Contractor is solely responsible for administration, content, intellectual property rights and all materials at Contractor’s website. Contractor is solely responsible for its actions and those of its agents, employees, resellers, Sub-Contractors or assigns, and agrees that neither Contractor nor any of the foregoing has any authority to act or speak on behalf of the State. As applicable, Contractor agrees to comply with the Office of Information Technology Services f/k/a Office for Technology policy NYS-P08-005 Accessibility of Web-Based Information and Applications, as may be amended, the stated purpose of which is to make State Agency web-based Intranet and Internet information accessible for persons with disabilities. In accordance with such policy, the following language is incorporated into any Contract resulting from this procurement:

Any web-based information and applications development, or programming delivered pursuant to the contract or procurement, 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 (state agency name, contractor or other) and the results of such testing must be satisfactory to (state agency name) before web-based information and applications will be considered a qualified deliverable under the contract or procurement.

## LICENSE AGREEMENTS:

An Authorized User looking to acquire Products and services under a Contract resulting from this Contract must review the contractual terms and conditions. The Authorized User must ask the Contractor if “click through”, “shrink wrap” or other pass-through or licensing/subscription terms and conditions are present, and if so, the Authorized User is responsible for reviewing and approving such terms and conditions prior to ordering the Products and services. If the terms and conditions are not acceptable to the Authorized User, it is the responsibility of such Authorized User to negotiate any needed amendments. ***Any additional licensing terms agreed to by the Authorized User shall not conflict with Appendix A, this Solicitation, any resultant Contract, or Appendix B. Any such conflicting terms shall be void and unenforceable.***

## APPENDIX A

Appendix A, Standard Clauses For New York State Contracts, dated January 2014 is hereby expressly made a part of this Contract as fully as if set forth at length herein.

## APPENDIX B

Appendix B, Office of General Services General Specifications, dated May 2015 is hereby expressly made a part of this Contract as fully as if set forth at length herein and shall govern any situations not covered by the bid document or Appendix A.

**NOTICE: THIS CONTRACT AWARD NOTIFICATION CONTAINS A SUBSET OF INFORMATION FROM THE SOLICITATION. CONTRACTS RESULTING FROM SOLICITATION 23044 HAVE BEEN EXECUTED BY CONTRACT AWARD LETTER. THE CONTRACT AWARD LETTER SETS FORTH THE ORDER OF PRECEDENCE FOR THE TERMS AND CONDITIONS OF THE EXECUTED CONTRACTS. COMPLETE CONTRACT DETAILS INCLUDING TERMS AND CONDITIONS CAN BE FOUND IN THE SOLICITATION DOCUMENT DATED REVISED OCTOBER 20, 2016.**



**State of New York  
Office of General Services  
Procurement Services  
Contract Performance Report**

Please take a moment to let us know how this contract award has measured up to your expectations. If reporting on more than one Contractor or product, please make copies as needed. This office will use the information to improve our contract award, where appropriate. **Comments should include those of the product's end user.**

**Contract No.:** \_\_\_\_\_ **Contractor.** \_\_\_\_\_

**Describe Product\* Provided (Include Item No., if available):** \_\_\_\_\_

**\*Note:** "Product" is defined as a deliverable under any Bid or Contract, which may include commodities (including printing), services and/or technology. The term "Product" includes Licensed Software.

	Excellent	Good	Acceptable	Unacceptable
• Product meets your needs				
• Product meets contract specifications				
• Pricing				

**CONTRACTOR**

	Excellent	Good	Acceptable	Unacceptable
• Timeliness of delivery				
• Completeness of order (fill rate)				
• Responsiveness to inquiries				
• Employee courtesy				
• Problem resolution				

**Comments:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_(over)

**Agency:** \_\_\_\_\_ **Prepared by:** \_\_\_\_\_

**Address:** \_\_\_\_\_ **Title:** \_\_\_\_\_

\_\_\_\_\_ **Date:** \_\_\_\_\_

\_\_\_\_\_ **Phone:** \_\_\_\_\_

\_\_\_\_\_ **E-mail:** \_\_\_\_\_

**Please detach or photocopy this form & returned to:**

OGS Procurement Services  
Customer Services, 38th Floor  
Corning 2<sup>nd</sup> Tower - Empire State Plaza  
Albany, New York 12242  
customer.service@ogs.ny.gov  
\* \* \* \* \*



## 5th Supplemental Contract Award Notification

PAGE 154

<b>Title</b>	<b>: Group 20020 – Serials and Database Access (Statewide)</b> <b>Classification Code(s): 55 &amp; 83</b>
<b>Award Number</b>	<b>: <a href="#">23044</a></b>
<b>Contract Period</b>	<b>: May 22, 2017 – December 31, 2021</b>
<b>Bid Opening Date</b>	<b>: November 1, 2016</b>
<b>Date of Issue</b>	<b>: May 22, 2017</b>
<b>Specification Reference</b>	<b>: As Incorporated Herein</b>
<b>Contractor Information</b>	<b>: Appears on Page 2 of this Award</b>

### Address Inquiries To:

State Agencies & Vendors		Political Subdivisions & Others	
Name :	Shrilata Nath	Procurement Services	
Title :	Contract Management Specialist	Customer Services	
Phone :	518-474-3034	Phone :	518-474-6717
E-mail :	Shrilata.Nath@ogs.ny.gov	E-mail :	customer.services@ogs.ny.gov

**Procurement Services values your input.****Complete and return "Contract Performance Report" at end of document.**

### Description

NOTICE: THIS CONTRACT AWARD NOTIFICATION CONTAINS A SUBSET OF INFORMATION FROM THE SOLICITATION. CONTRACTS RESULTING FROM SOLICITATION 23044 HAVE BEEN EXECUTED BY CONTRACT AWARD LETTER. THE CONTRACT AWARD LETTER SETS FORTH THE ORDER OF PRECEDENCE FOR THE TERMS AND CONDITIONS OF THE EXECUTED CONTRACTS. COMPLETE CONTRACT DETAILS INCLUDING TERMS AND CONDITIONS CAN BE FOUND IN THE SOLICITATION DOCUMENT DATED REVISED OCTOBER 20, 2016.

This contract provides Authorized Users with a means of acquiring Serials and Database Access Products and Services. The contract contains a total of two (2) Lots: Lot 1 - Serials and Lot 2 - Database Access. **Lot 1 Serials - Included:** Print Periodicals and Newspapers; Electronic Magazines and Journals; Annuals (reports, yearbooks, etc.); Continuing directories; Proceedings and transactions; Numbered monographic series cataloged separately; Subscription based eBooks; and Optional Products and Services, including but not limited to: Stamps, call numbers or routing labels, bar-coding, and security strips, Processing of journals including affixing date and property, Shipment Consolidation, MARC (Machine Readable Cataloging) records and updates, and Serials management solutions. **Lot 2 Database Access – Included:** Library Databases; Full Text Databases; Numeric Databases; Meta-Databases; General Interest Databases; Discipline Specific Databases; Subject Specific Databases; Streaming Video Databases; Database Files; and Optional Products and services, including but not limited to: Database Management Systems (DBMS), Hard copy records, Mailing labels, Batching, and Reporting

This Contract Award Notification contains MWBE goals of 0% MBE and 0% WBE.

PR #23044

23044sa05

<u>CONTRACT #</u>	<u>CONTRACTOR</u>	<u>FED.IDENT. #</u>	<u>NYS VENDOR #</u>
PC67665	LexisNexis Risk Solutions FL Inc. DBA LexisNexis Risk Solutions	41-1815880	1100007031
PC67670	RELX Inc. DBA LexisNexis, a division of RELX Inc.	52-1471842	1000004904

For complete Contractor contract information and Pricing information for this Award, please see the Contractor Information page located on the OGS Website at: <http://www.ogs.ny.gov/purchase/spg/awards/2002023044Can.htm>

Cash Discount and/or Early Payment Discount, If Shown, Should be Given Special Attention.

**INVOICES MUST BE SENT DIRECTLY TO THE ORDERING AGENCY FOR PAYMENT.**

(See "INVOICING AND PAYMENT" in this document.)

AGENCIES SHOULD NOTIFY PROCUREMENT SERVICES PROMPTLY IF THE CONTRACTOR FAILS TO MEET DELIVERY OR OTHER TERMS OF THIS CONTRACT. PRODUCTS WHICH DO NOT COMPLY WITH THE SPECIFICATIONS OR ARE OTHERWISE UNSATISFACTORY TO THE AGENCY SHOULD ALSO BE REPORTED TO THE PROCUREMENT SERVICES.

#### SMALL, MINORITY AND WOMEN-OWNED BUSINESSES:

The letters SB listed under the Contract Number indicate the contractor is a NYS small business. Additionally, the letters MBE and WBE indicate the contractor is a Minority-owned Business Enterprise and/or Woman-owned Business Enterprise.

#### RECYCLED, REMANUFACTURED AND ENERGY EFFICIENT PRODUCTS:

The Procurement Services supports and encourages the purchase of recycled, remanufactured, energy efficient and "energy star" products. If one of the following codes appears as a suffix in the Award Number or is noted under the individual Contract Number(s) in this Contract Award Notification, please look at the individual awarded items for more information on products meeting the suffix description.

RS,RP,RA	Recycled
RM	Remanufactured
SW	Solid Waste Impact
EE	Energy Efficient
E*	EPA Energy Star
ES	Environmentally Sensitive

#### NOTE TO AUTHORIZED USERS:

When placing purchase orders under the contract(s), the authorized user should be familiar with and follow the terms and conditions governing its use which usually appears at the end of this document. The authorized user is accountable and responsible for compliance with the requirements of public procurement processes. The authorized user must periodically sample the results of its procurements to determine its compliance. In sampling its procurements, an authorized user should test for reasonableness of results to ensure that such results can withstand public scrutiny.

The authorized user, when purchasing from OGS contracts, should hold the contractor accountable for contract compliance and meeting the contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, authorized users are encouraged to seek improved pricing whenever possible. Authorized users have the responsibility to document purchases, particularly when using OGS multiple award contracts for the same or similar product(s)/service(s), which should include:

- a statement of need and associated requirements,
- a summary of the contract alternatives considered for the purchase,

- The reason(s) supporting the resulting purchase (e.g., show the basis for the selection among multiple contracts at the time of purchase was the most practical and economical alternative and was in the best interests of the State).

**ORDER OF PRECEDENCE:**

The list of documents below address clarifications agreed to by the Contractor and the Office of General Services (OGS) and resolved by the parties and set forth herein in an order of precedence for the Contract award. The documents listed below were included in Solicitation #23044 or provided by the Contractor. Unless otherwise set forth in the procurement or contract documents, conflicts among documents shall be resolved in the following order of precedence:

1. Appendix A (January 2014), Standard Clauses for NYS Contracts (previously provided);
2. Contract Award Letter;
3. Revisions and Clarifications to Bid Specifications dated October 3, 2016 and October 20, 2016 (previously provided);
4. Solicitation #23044 (Revised October 20, 2016) including all Appendices and Attachments referenced therein (previously provided);
5. Contractor's Bid Prices as stated in Attachment 1 – Pricelist
6. Contractor's Bid

**OVERVIEW:**

This Contract provides Authorized Users with a means of acquiring Serials and Database Access Products and Services by New York State Agencies and Non-State agencies, including political subdivisions, school districts and others authorized by law (See Section 5.48, *Non-State Agencies Participation in Centralized Contracts* and Section 5.50, *Extension of Use*).. Products for purchase by all Authorized Users are described in the Section titled, *Scope*.

Procurement Instructions describing requirements for Authorized Users to purchase from the Centralized Contract are found in the Section titled, *Procurement Instructions*.

**ESTIMATED QUANTITIES:**

All quantities or dollar values listed within this Contract are estimates. No specific quantities or volumes are represented or guaranteed and the State provides no guarantee of individual Authorized User participation. The Contractor(s) must furnish all quantities or dollar values actually ordered. The anticipated dollar value of the award for this Solicitation, based on historical purchases under previous awards was approximately \$55,000,000.00 annually for Lot 1 and \$20,000,000.00 annually for Lot 2. The individual value of each resultant Contract is indeterminate and will depend upon the number of Contracts issued and the competitiveness of the pricing offered. Authorized Users will be encouraged to purchase from Contractors who offer the Products and pricing that best meets their needs in the most practical and economical manner. See Appendix B, §28, *Estimated/Specific Quantity Contracts* and §25, *Participation in Centralized Contracts*.

Numerous factors could cause the actual value of the Contract to vary substantially from the historical value. Such factors include, but are not limited to, the following:

- The Contract is a nonexclusive Contract;
- There is no guarantee of volume to be purchased, nor is there any guarantee that demand will continue in any manner consistent with previous purchases;
- The individual value of the Contract is indeterminate and will depend upon actual Authorized User demand, and actual quantities ordered during the Contract period; and,
- The State reserves the right to terminate the Contract for cause or convenience prior to the end of the term pursuant to the terms and conditions of the Contract.

In Procurement Service's experience, depending on the price of a particular item, the actual volume of purchases for that item could be substantially in excess of, or substantially below, estimated volumes. Specifically, if actual

Contract pricing is lower than anticipated or historical pricing, actual quantities purchased could be substantially greater than the estimates; conversely, if actual contract pricing is higher than anticipated or historical pricing, actual quantities purchased could be substantially lower than the estimates. Contractor acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the Contract could vary substantially from the estimates/historical values provided in this Contract.

#### DEFINITIONS:

Terms used in the IFB documents that have a capitalized first letter shall be defined in accordance with Appendix B, §2 *Definitions*, which is hereby incorporated by reference. The following definitions shall apply:

Term	Definition
Active Request	Refers to an End User submitted search request transaction to the licensor's online service that has not yet received a response from the licensor's system.
Aggregator	A bibliographic service that provides online access to the digital full-text of Periodicals published by different Publishers. See also Database Publisher.
Back File Access	The ability to access information within a resource before a subscription period begins.
Business Day	Monday through Friday from 8:00 AM – 5:00 PM ET, excluding New York State and federal holidays.
Concurrent Users	Specified number of simultaneous End Users accessing an Electronic Publication or Database.
Concurrent Sessions	Concurrent User is interpreted to include any End User station device which, at the point in time of measurement, has established a logical session path to the licensor's online service, enabling an immediate search request to be made directly to the licensor's search software. This is the common meaning of such expressions as being "signed on" or "logged on" to the online service. Under this definition, any signed on terminal or End User station device is counted as part of the concurrent use total, regardless of whether the End User is at the End User station; formulating a new search request; waiting for the licensor's system to respond to a search request; or digesting the results of a previous request.
Concurrent Use License	Where licensing of Electronic Publications is based upon "Concurrent Users" the Contractor shall obtain from the publisher the right of the Authorized User to obtain license rights to the specified number of Concurrent Users actually executing the licensed programs, without reference to location or named End Users.
Continuing Directory	A list of people, companies, institutions, organizations, etc., in alphabetical or classified order, providing contact information (names, addresses, phone/fax numbers, etc.) and other pertinent details (affiliations, conferences, publications, membership, etc.) in brief format, often published serially (i.e. Continuing resources (not complete as first issued and intended to be ongoing, though not necessarily indefinitely).
Customization	Changes to the function, layout and/or appearance of a Database which does not alter the Database content.
Database	A large, regularly updated file of digitized information (bibliographic records, abstracts, full-text documents, directory entries, images, statistics, etc.) related to a specific subject or field, consisting of records of uniform format organized for ease and speed of search and retrieval and managed with the aid of database management system (DBMS) software. Content is created by the Database producer, which usually publishes a print version and leases the content to one or more Database vendors that provide electronic access to the data after it has been converted to machine-readable form, usually on CD-ROM or online via the Internet, using proprietary search software.
Database Management System (DBMS)	A computer application designed to control the storage, retrieval, security, integrity, and reporting of data in the form of uniform records organized in a large searchable file called a Database. The range of available DBMS software

<b>Term</b>	<b>Definition</b>
	extends from simple systems intended for personal computers to highly complex systems designed to run on mainframes.
Database Publisher	Company that uses specialized techniques to generate documents from source data and provide to End Users through a Database. See also Aggregator.
Discipline Specific Database	Information provided is focused on a discipline or area, however may include information from multiple related subject areas.
Electronic Journal	A digital version of a print journal, or a journal-like Electronic Publication with no print counterpart, made available via the World Wide Web, e-mail, or other means of Internet access. Some web-based Electronic Journals are graphically modeled on the print version. Synonymous with E-journal. Compare with electronic magazine.
Electronic Magazine	A digital version of a print magazine, or a magazine-like electronic publication with no print counterpart, made available via the World Wide Web, e-mail, or other means of Internet access. Some Web-based electronic magazines are graphically modeled on the print version. Synonymous with e-zine and Webzine. Compare with Electronic Journal.
Electronic Publication	A work in digital form capable of being read or otherwise perceived, distributed to the public electronically. Includes Electronic Journals and e-prints, Electronic Magazines and newspapers, electronic books, Web sites, Weblogs, etc. Some Electronic Publications are online versions of print publications; others are born digital. Synonymous with e-publication.
End User	Shall mean those persons who are permitted by the Authorized User to have access to an Electronic Publication or Database.
Fair Use	Shall mean acceptable use under the Copyright Revision Act 1976 as amended subsequently provided that such rights are exercised in accordance with Section 108 of the Act and with the guidelines developed by the National Commission on New Technological Uses of Copyrighted Works (CONTU Guidelines) and published in U.S. Copyright Office Circular 21.
Full Text Database	Contains the complete text of any documents (e.g. books, Journals, newspapers, magazines).
Full Time Equivalent End User (FTE)	For State agencies and Authorized Users not otherwise identified, the number of full time employees shall be the number of FTEs; for a higher educational institution, it shall refer to the student enrollment expressed as the number of full time students; for K-12 educational institutions, each student shall be considered one (1) FTE; for public libraries, the census population served shall be deemed to be the number of FTEs.
International Standard Serial Number (ISSN)	A unique eight-digit standard number assigned by the International Serials Data System (ISDS) to identify a specific serial title. The ISSN is usually given in the masthead of each issue or on the copyright page of each volume or part of a series. When a continuing resource undergoes a title change, a new ISSN is assigned.
Journal	A Periodical devoted to disseminating original research and commentary on current developments in a specific discipline, sub-discipline, or field of study, usually published in quarterly, bimonthly, or monthly issues sold by subscription. Journal articles are usually written by the person (or persons) who conducted the research. Longer than most magazine articles, they almost always include a bibliography or list of works cited at the end. In Journals in the sciences and social sciences, an abstract usually precedes the text of the article, summarizing its content. Most scholarly Journals are peer-reviewed. Scholars often use a current contents service to keep abreast of the Journal literature in their fields of interest and specialization.
Library Database	A large catalog or index of organized information.

Term	Definition
Licensing Agreement	A formal written contract between a library and a vendor for the lease of one or more proprietary (copyrighted) bibliographic databases or online resources, usually for a fixed period of time in exchange for payment of an annual subscription fee or per-search charge. Vendors typically charge libraries on a sliding scale based on number of registered borrowers or FTE enrollment, number of institutions or facilities served, and number of simultaneous users.
List Price	The undiscounted price at which a new publication is offered for sale to the public, established by the publisher at the time the edition is issued. The List Price is quoted in the Publisher's catalog and printed on the front flap of the dust jacket in hardcover editions and usually on the back cover in softcover editions. Discounts offered to libraries, booksellers, and jobbers are computed as a percentage off List Price. In library cataloging, the List Price of an item is indicated (when available) in the standard number and terms of availability area of the bibliographic description (field 020 or 022 of the MARC record). Synonymous with published price, retail price, and sticker price.
Magazine	A popular interest Periodical usually containing articles on a variety of topics, written by various authors in a nonscholarly style. Most magazines are heavily illustrated, contain advertising, and are printed on glossy paper. Articles are usually short (less than five pages long), frequently unsigned, and do not include a bibliography or list of references for further reading. Most magazines are issued monthly or weekly for sale at newsstands, in bookstores, and by subscription.
Metadata Database	Information about data itself, including size, origination or other descriptors.
MWBE	A business certified with NYS Empire State Development (ESD) as a Minority and/or Women-owned Business Enterprise.
N/A	A common abbreviation for <i>not applicable</i> or <i>not available</i> , used to indicate when information in a certain field on a table is not provided, either because it does not apply to a particular case in question or because it is not available.
National Public Entities	Defined as State Governments, the Federal Government, Local Governments, cities, towns, school districts, libraries, police and fire departments, and other political subdivisions
Net Price	List Price less all applicable discounts or inclusive of Service Charges; the price paid by Authorized Users of the resultant Contract.
Newspaper	A Serial publication, usually printed on newsprint and issued daily, on certain days of the week, or weekly, containing news, editorial comment, regular columns, letters to the editor, cartoons, advertising, and other items of current and often local interest to a general readership.
NYS Vendor ID	Refers to the ten-character identifier issued by New York State when a vendor is registered on the Vendor File.
Numerical Data Database	This includes statistical and other numerical data.
Optional Products and Services	Refer to supplementary Products and services that enhance or support the provision of Serials and/or Database Access Products identified to be within scope. For example: under Lot 1 that may include things such as stamps; call numbers or routing label; bar-coding; security strips; processing of journals including affixing date and property; shipment consolidation, MARC (Machine Readable Cataloging) records and updates; and Serials management solutions; under Lot 2 that may include things such as Database Management Systems (DBMS), hard copy records, mailing labels, batching, and reporting.
Periodical	A Serial publication with its own distinctive title, containing a mix of articles, editorials, reviews, columns, short stories, poems, or other short works written

<b>Term</b>	<b>Definition</b>
	by more than one contributor, issued in softcover more than once, generally at regular stated intervals of less than a year, without prior decision as to when the final issue will appear. Although each issue is complete in itself, its relationship to preceding issues is indicated by enumeration, usually issue number and volume number printed on the front cover. Content is controlled by an editor or editorial board. Includes magazines, sold on subscription and at newsstands; journals, sold on subscription and/or distributed to members of scholarly societies and professional associations; and newsletters, but not proceedings or the other regular publications of corporate bodies as they relate primarily to meetings.
Procurement Services	Formerly known as NYSPRO or Procurement Services Group (PSG), Procurement Services shall mean a division of the New York State Office of General Services which is authorized by law to issue centralized, statewide Contracts for use by New York agencies, political subdivisions, schools, libraries and others authorized by law to participate in such Contracts.
Publication	Refers to a work capable of being read or otherwise perceived (e.g. book, audiorecording, videorecording, CD-ROM, etc.), issued by a Publisher for sale to the general public, usually in multiple copies and sometimes in multiple editions.
Publisher	A person or corporate entity that prepares and issues printed materials for public sale or distribution, normally on the basis of a legal contract in which the publisher is granted certain exclusive rights in exchange for assuming the financial risk of publication and agreeing to compensate the author, usually with a share of the profits.
Reseller	Any model for distribution of Product other than direct from the Contractor. Resellers include but are not limited to approved value added resellers (VARs), distributors, dealers, sales agents, and alternate channel partners.
Subject Specific Database	This includes information from academic or scholarly Journals and trade or professional publications.
Serial	Publication in any medium issued under the same title in a succession of discrete parts, usually numbered (or dated) and appearing at regular or irregular intervals with no predetermined conclusion. Serials may be purchased individually, in combination with other titles, or as large collections of titles (particularly when purchased electronically).
Server	Shall mean the computer system(s) on which Electronic Publications or Databases reside and through which End Users gain access to the Electronic Publications or Databases.
Service Charge	A fee charged by a Subscription Agent for filling orders for Periodical subscriptions, usually 5 to 10 percent of the total annual amount paid by the library for subscriptions.
Subscription Agent	A company in the business of providing centralized Serial subscription or Database Access services to Authorized Users such as libraries to relieve them of the time consuming task of dealing with Publishers individually.

In addition to the above definitions, the following terms are defined as follows regardless of whether they are or are not capitalized:

May	Denotes the permissive in a Contract clause or specification. Refers to items or information that the State has deemed are worthy of obtaining, but not required or obligatory. Also see "Should".
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Must	Denotes the imperative in a Contract clause or specification. Means required - being determinative/mandatory, as well as imperative. Also see “Shall” and “Mandatory”.
Shall	Denotes the imperative in a Contract clause or specification. Means required - being determinative/mandatory, as well as imperative. Also see “Must” and “Mandatory”.
Should	Denotes the permissive in a Contract clause or specification. Refers to items or information that the State has deemed are worthy of obtaining, but not required or obligatory. Also see “May”.

**SCOPE:**

These contracts are to provide Authorized Users with a means of acquiring Serials and Database Access Products and Services. There are a total of two (2) Lots: Lot 1 – Serials, and Lot 2 - Database Access.

Products for Lot 1 - Serials include, but may not be limited to:

1. Print Periodicals and Newspapers
2. Electronic Magazines and Journals
3. Annuals (reports, yearbooks, etc.)
4. Continuing directories
5. Proceedings and transactions
6. Numbered monographic series cataloged separately
7. Subscription based eBooks
8. Optional Products and Services, including but not limited to:
  - a. Stamps, call numbers or routing labels, bar-coding, and security strips
  - b. Processing of journals including affixing date and property
  - c. Shipment Consolidation
  - d. MARC (Machine Readable Cataloging) records and updates
  - e. Serials management solutions, such as:
    - (i) Link resolvers
    - (ii) A to Z lists
    - (iii) Information discovery tools
    - (iv) Subscription management tools
    - (v) Electronic resource management (ERM) tools

Products for Lot 2 – Database Access include, but may not be limited to:

1. Library Databases
2. Full Text Databases
3. Numeric Databases
4. Meta-Databases
5. General Interest Databases
6. Discipline Specific Databases
7. Subject Specific Databases
8. Streaming Video Databases
9. Database Files
10. Optional Products and services, including but not limited to:
  - a. Database Management Systems (DBMS)
  - b. Hard copy records
  - c. Mailing labels
  - d. Batching
  - e. Reporting

Exclusions: The following Products are not within scope:

1. Products currently offered under the OGS Books and Non-Print Library Materials and other Related Ancillary Services contract (Group 20060)
2. Products and services currently offered under the OGS E-Learning Training/Distance Services contract (Group 73016), which includes web-based, computer based, online and internet based training
3. Standalone Software unrelated to the provision of Serials or Database Access
4. Hardware of any kind
5. Database services offered under the Contract shall not allow the Contractor to access the personal, private, or confidential information of any Authorized User or End User

It is the Contractor's responsibility to ensure that only Products and services that meet the scope of the Contract are purchased through the Contract. Questions concerning items covered under the resultant Contract should be addressed to the OGS Procurement Services contract manager designated on the Contract Award Notification prior to accepting the order.

If a Contractor sells Products that are excluded under this Contract as set forth above, such Contractor's Contract may be suspended or terminated.

### **LIST OF CONTRACTORS AND AWARDED LOTS**

**Please refer to each Contractor's Information page and Pricelist for more information.**

<b>Bidder</b>	<b>Lot 1 Serials</b>	<b>Lot 2 Database Access</b>
LexisNexis Risk Solutions FL Inc. DBA LexisNexis Risk Solutions		X
RELX Inc. DBA LexisNexis, a division of RELX Inc.		X

**Please refer to the special instructions below before you use the LexisNexis Risk Solutions FL Inc. and RELX Inc. contracts.**

#### **PROCUREMENT INSTRUCTIONS TO AUTHORIZED USERS:**

1. The Contracts resulting from this Solicitation will be centralized Contracts issued under a multiple award structure. Products offered under the Contracts, pricing, and other Contract information will be posted to the OGS website or the awarded Contractors' dedicated NYS websites. Authorized Users shall procure Products that best meet their form, function and utility requirements.
2. Before proceeding with a purchase, Authorized Users shall check the list of Preferred Source offerings. Authorized Users are reminded that they must comply with State Finance Law §162, which requires that agencies afford first priority to the commodities of Preferred Source suppliers such as Correctional Industries (Corcraft), NYS Preferred Source Program for People Who are Blind (NYSPSP), and NYS Industries for the Disabled (NYSID), when such commodities meet the form, function and utility of the Authorized User.
3. Where products are not available from Preferred Source suppliers in the form, function and utility required by the Authorized User, Authorized Users shall purchase from the centralized Contracts awarded under this Solicitation. The basis for selection among multiple contracts at the time of purchase shall be the most practical and economic alternative and shall be in the best interests of the State. Therefore, Authorized Users are strongly encouraged to obtain quotes from at least three (3) Contractors prior to issuing a purchase order, in order to ensure that the Authorized User is receiving the best possible pricing.
4. When placing Purchase Orders under the Contract(s), the Authorized User should be familiar with and follow the terms and conditions governing its use. The Authorized User is accountable and responsible for compliance with the requirements of public procurement processes. The Authorized User, when purchasing from OGS Contracts, should hold the Contractor accountable for Contract compliance and meeting the Contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations

over time, Authorized Users are encouraged to seek improved pricing whenever possible. Authorized Users have the responsibility to document purchases which should include:

- statement of need and associated requirements;
  - obtaining all necessary prior approvals;
  - a summary of the Contract alternatives considered for the purchase; and
  - the reason(s) supporting the resulting purchase (e.g., show that basis for the selection among multiple Contracts at the time of purchase was the most practical and economical alternative and was in the best interests of the State).
5. Authorized Users will issue purchase orders directly to the Contractor or the Contractor's authorized Reseller (if applicable), as specified by the Contractor, and specifying any shipping/delivery requirements and/or statements of work for services (if applicable).
  6. Upon Authorized User acceptance of Products itemized on the purchase order, Contractor will invoice Authorized User for any portion of Products accepted, and accordingly, Authorized User will arrange for payment. Contractor shall provide itemized invoicing for all Products.
  7. *Contractor must disclose any forms, "click through", "shrink wrap" or other pass-through or licensing/subscription terms and conditions or other order information that Contractor will attach to orders or require to be completed with Authorized User purchases. Documents which contain additional terms or conditions, such as library maintenance agreements or Licensing Agreements must receive pre-approval by the Authorized User prior to ordering Products and services. Any additional licensing terms agreed to by the Authorized User shall not conflict with Appendix A, this Solicitation, any resultant Contract, or Appendix B. Any such conflicting terms shall be void and unenforceable.*
  8. The RELX Inc. (PC67665) and LexisNexis Risk Solutions FL Inc. (PC67670) contracts replace LexisNexis Contract #PS64284 under Electronic On-Line Database Group 79122-Award 20770. The products currently offered under Contract #PS64284 with LexisNexis will be split between Contract #PC67665 with RELX Inc. and Contract #PC67670 with LexisNexis Risk Solutions FL Inc. If you currently use Contract #PS64284 with LexisNexis, please contact your LexisNexis account representative as soon as possible to transition from the current contract to the new contracts.

#### PRICE:

Price shall include all customs duties and charges and be net, F.O.B. destination to any point in New York State as designated by the Authorized User and shall include all transportation charges and inside delivery for print medium. Inside deliveries are to be delivered to the ordering Authorized User's stockroom or office location.

The Bidder's price should include all costs associated with selling the Product. No shipping charges are allowed EXCEPT on printed foreign publications shipped directly to the Authorized User from an address outside the 48 contiguous US states including the District of Columbia. Foreign shipping costs shall be prepaid by the Contractor and added to the invoice and all such orders shall be shipped on F.O.B. destination by the most economical method. There shall be no increase in Contract prices for freight, shipping, fuel or other surcharges, FPT (Freight Pass Through), etc. during the term of the Contract.

**FOR LOT 1 ONLY: Authorized Users may be charged additional fees charged by the Publishers which include licensing fees, platform fees etc. in excess of the base subscription fee. However, any additional fees shall only be those charges passed on by the Publishers and shall not include any additional fees charged by the Contractors for such services. The Contractor shall only charge fees based on List Prices charged by Publishers. The Authorized User must be notified of all such fees at the time of purchase. Fees that are not told to the Authorized User at the time of purchase shall be paid by the Contractor.**

Contractor's pricing information is included in the posted Pricelist linked from the Contractor Information page.

**PRICING BASED ON GSA PRICING:**

Authorized Users shall be entitled to all associated discounts enumerated in the GSA Supply Schedule (including, but not limited to discounts for additional sites and volume discounts), as well as any other pricing or discount terms as are expressly enumerated in this NYS Contract or GSA schedule, when calculating the Contract price.

GSA pricing incorporates a sum referred to as the “GSA Industrial Funding Fee (IFF)”. Contract prices will be reduced by an amount equivalent to the IFF. The NYS Price will be calculated by reducing the published GSA price, after the discounts, if any, downward by the amount of the Industrial Funding Fee, currently set at .75%.

**VOLUME DISCOUNTS:**

Contractor may offer volume discounts using the thresholds listed on each Contractor’s Information Page.

**PREPAYMENT PLAN DISCOUNTS:**

Contractor may offer Prepayment Plan Discounts using the thresholds listed on each Contractor’s Information Page.

**PROMPT PAYMENT DISCOUNTS:**

Contractor may offer prompt payment discounts at the transaction level. Please refer to the Contractor’s Information Page.

**CENTRALIZED CONTRACT MODIFICATION:**

1. OGS, an Authorized User, or the Contractor may suggest modifications to the Centralized Contract or its Appendices. Except as specifically provided herein, modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the Parties. Modifications may take the form of an update or an amendment. “Updates” are changes that do not require a change to the established Centralized Contract terms and conditions. A request to add new Products at the same or better price level is an example of an update. “Amendments” are any changes that are not specifically covered by the terms and conditions of the Centralized Contract, but inclusion is found to be in the best interest of the State. A request to change a contractual term and condition is an example of an amendment.
2. Updates to the Centralized Contract and the Appendices may be made in accordance with the contractual terms and conditions to incorporate new products or services, make price level revisions, delete Products or services, or to make such other updates to the established Centralized Contract terms and conditions, not resulting in a change to such terms and conditions, which are deemed to be in the best interest of the State.
3. OGS reserves the right to consider modifications which are not specifically covered by the terms of the Centralized Contract, but are judged to be in the best interest of the State. Such modifications are deemed amendments to the Centralized Contract and may require negotiations between Contractor and OGS before execution.
4. All modifications proposed by Contractor, shall be processed in accordance with Appendix C, Contract Modification Procedure. The Contractor shall submit all requests in the form and format contained in Appendix C, Contract Modification Procedure. The form contained within Appendix C is subject to change at the sole discretion of OGS.
5. Modifications proposed by OGS or an Authorized User, including updates and amendments, shall be processed in accordance with the terms of the Centralized Contract and Appendix B, §26, *Modification of Contract Terms*.

**CONTRACT PRICELIST UPDATE PROCEDURES:**

The procedures below outline how Contract pricelist updates will be handled under this Contract. If awarded more than one Lot, Contractor shall submit pricelist updates for each Lot simultaneously pursuant to the requirements of this section. NOTE: THE FOLLOWING PROCEDURES ARE NOT APPLICABLE TO CONTRACTOR PROPOSED CHANGES TO CONTRACT TERMS AND CONDITIONS. Any implied or express request for changes in or additions to existing Contract terms and conditions, including new terms and conditions associated

with a specific product line being added to the Contract for the first time, requires a formal Contract amendment and requires the approval of OGS. New or revised Contract terms and conditions are subject to the restrictions set forth in Appendix B, §26, *Modification of Contract Terms*.

### **Lot 1 - Serials Pricelist Updates**

#### **Adding and Deleting Item Categories (Other than Optional Products and Services)**

1. **No decrease in discounts:** The Bidder's discount may increase at any time, but shall not decrease during the term of the Contract. Service Charges bid may decrease at any time, but shall not increase during the term of the Contract.
2. **Adding or Deleting Item Categories:** Bidder may add or delete Item Categories to its Price List pursuant to this Section and at the discretion of OGS. Any new Item Categories added to the Contract shall be subject to a reasonableness of price review pursuant to Section 5.3, *Reasonableness of Price*, of the Solicitation.
3. **First Year:** In the first year of the Contract, the Contractor shall be allowed to update the pricelist once to add/delete Item Categories.
4. **Subsequent Years:** Commencing with the second year of the Contract, the Contractor may add or delete Item Categories within thirty (30) calendar days after the anniversary date of the Contract. The thirty (30) calendar days includes the anniversary date of the Contract.

#### **Optional Products and Services**

1. Adding or deleting Optional Products and Services: Bidder may add or delete Optional Product and Services offerings pursuant to this section and at the discretion of OGS. Any new Optional Products and Services offered shall be subject to a reasonableness of price review pursuant to Section 5.3, *Reasonableness of Price*.
2. First Year: In the first year of the Contract, the Contractor shall be allowed to update the pricelist once to add or delete Optional Products and Services.
3. Subsequent Years: Commencing with the second year of the Contract, the Contractor may add or delete Optional Products and Services within thirty (30) calendar days after the anniversary date of the Contract. The thirty (30) calendar days includes the anniversary date of the Contract.

#### **Price Adjustments for Lot 1 Optional Products and Services**

All prices for Optional Products and Services may be adjusted annually following the first year of the Contract on the basis of the Not Seasonally Adjusted Consumer Price Index – All Urban Consumers, U.S. City Average, All Items Less Food, Series ID: CUUR0000SA0L1, published monthly by the US Department of Labor Bureau of Labor Statistics. There shall be no price adjustments during the first year of the Contract. The adjustment shall be established as follows. Following the first year of the Contract and annually thereafter, the Contractor may make a formal request for a price adjustment in the succeeding Contract year. This request must be made in writing to the contract manager identified on the front page of the resultant Contract Award Notification; thirty (30) calendar days after the anniversary date of the Contract. The thirty (30) calendar days includes the anniversary date of the Contract. If the Contractor fails to submit a written request, he/she forfeits its opportunity to receive a price adjustment in the succeeding Contract year.

Price adjustments for monetary amounts for Optional Products and Services shall begin with the second year of the start date of the Contract and annually thereafter. The adjustment shall be based on the percentage of increase or decrease in the above referenced index in the preceding twelve months ending three months prior to the effective date of the adjustments. In no case shall price increases exceed five percent (5%) annually. All adjusted prices will be rounded up or down to the nearest whole cent. The Office of General Services shall notify all parties of the price adjustments through the issuance of written notification by the Procurement Services.

Below is an example calculation. Values used are for illustrative purposes only.

CPI for current period	193.676
Less CPI for previous period	188.326
Equals Index point change	5.350
Divided by previous period CPI	188.326
Equals	0.028

Result multiplied by 100	0.028 x 100
Equals percent change	2.8

Should the referenced CPI become discontinued during the course of the contract, it will be replaced by the Not Seasonally Adjusted Consumer Price Index – All Urban Consumers, U.S. City Average, All Items, Series Id: CUUR0000SA0, and adjustments will be calculated based on the same methodology as outlined above, but with data from the new replacement index.

#### **Submitting Price List Changes**

Contractor is required to submit Contract pricelist updates electronically in an unprotected Microsoft Excel (2013 or lower version) spreadsheet either on CD or via e-mail to the OGS Procurement Services contract manager. The pricelist must be dated and the format shall be consistent with the format of the Contractor's approved Contract pricelist. The pricelist shall separately include and identify (e.g., by use of separate worksheets or by using highlighting, italics, bold and/or color fonts) Item Categories added/deleted; Optional Products and Services added/deleted; and any price increases/decreases.

Contractors shall submit their updated Contract pricelist to the OGS Procurement Services contract manager pursuant to the requirements of this section for review and written approval prior to issuing to Authorized Users. All approved pricelist updates shall apply prospectively upon approval by OGS. Any request for a pricelist update not received in accordance with this section shall be deemed denied.

#### **Lot 2 – Database Access Pricelist Updates**

1. General: Any new Products or services added to the Contract shall be subject to a reasonableness of price review. The Bidder's discount may increase at any time, but shall not decrease during the term of the Contract.
2. First Year: In the first year of the Contract, the Contractor shall be allowed to update the pricelist once to add/delete Products or services as established by the Contractor in their normal course of business. There shall be no price increases allowed for existing Products or services during the first year of the Contract.
3. Subsequent Years: Commencing with the second year of the Contract, the Contractor may update the pricelist annually to reflect Contractor price changes and the addition/deletion of Products and services as established by the Contractor in their normal course of business; thirty (30) calendar days after the anniversary date of the Contract. The thirty (30) calendar days includes the anniversary date of the Contract.

In a single year of the Contract the total request for price increases shall not exceed the lesser of:

1. three (3%) percent annually, or
2. the percent increase in the latest available National Consumer Price Index - All Urban Consumers (CPI-U), Not Seasonally Adjusted, U.S. City Average, All Items (Series Id: CUUR0000SA0, CUUS0000SA0); as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212. CPI-U data may be obtained at [www.bls.gov](http://www.bls.gov).

The following example illustrates the computation of percent change:

CPI for current period	230.000
Less CPI for previous period	225.000
Equals index point change	5.000
Divided by previous period CPI	225.000
Equals	0.022
Result multiplied by 100	0.022 x 100
Equals percent change	2.2

The "CPI for current period" shall be the index in effect at the time the Contract pricelist update request is received; "CPI for previous period" shall be the index in effect when the Contract pricelist was last updated.

Contractor is required to submit Contract pricelist updates electronically in an unprotected Microsoft Excel (2013 or lower version) spreadsheet either on CD or via e-mail to the OGS Procurement Services contract manager. The pricelist must be dated and the format shall be consistent with the format of the Contractor's approved Contract pricelist. The pricelist shall separately include and identify (e.g., by use of separate worksheets or by using highlighting, italics, bold and/or color fonts) Products and services being added/deleted and any price increases/decreases.

In connection with any Contract pricelist update, OGS reserves the right to request additional information; reject Contract updates; remove Products and services from Contracts; remove Products and services from Contract updates; and request additional discounts for new or existing Products and services.

#### PERFORMANCE REQUIREMENTS – LOT 1 – SERIALS:

##### **Orders, Renewals, and Cancellations**

1. The Authorized User may specify that the subscription begin with current issue, first issue of the current volume, first issue of the current year, or first issue of the next volume. Subscriptions shall begin on the effective date specified on the purchase order.
2. The Contractor shall notify the Authorized User as soon as possible but no later than thirty (30) calendar days if unable to supply a new order. Contractor shall also provide a reasonable explanation in writing for non-fulfillment.
3. The Contractor shall provide address, publication, merger, and title change services, etc.
4. The Contractor shall make arrangements with publishers for all regularly purchased subscription orders and renewals within sufficient time to avoid any interruption in receipt of issues.
5. The Contractor shall cancel subscriptions as requested by the Authorized User and shall issue a credit if allowed by the publisher.
6. The Contractor shall provide pro-rated refunds or substituted titles for titles which cease publication prior to expiration if provided by the publisher. OGS reserves the right to resolve any issues that may arise between an Authorized User and the Contractor with regards to refunds or substituted titles.
7. The Contractor shall provide a common expiration date for subscriptions (if requested by the Authorized User) unless prohibited by the publisher.
8. At the Authorized User's request the Contractor shall renew subscriptions automatically on a date selected by the Authorized User; or at the option of the Authorized User, shall provide a list of titles to be renewed by the Contractor for the Authorized User's approval prior to the issuance of the annual renewal invoice. Authorized User may change automatic renewal status at any time and for no additional charge.
9. The Contractor may provide two, or three-year renewal periods, but must at a minimum offer a one-year renewal period.
10. The Contractor may enter orders for back files, special issues, supplements, extra volumes, and cumulative indexes, if requested to do so by the Authorized User.
11. All orders, renewals, and cancellations between the Contractor and the Authorized User shall be in writing, or shall be electronically transmitted.
12. In lieu of individual order forms, Contractor shall be able to accept a purchase or letter order to which is appended a list of titles.

##### **Invoicing and Payments**

1. The Contractor may offer an early prepayment discount. Annually, the Contractor shall specify the percentages of discount offered and the deadlines for early payment. Subscriptions may be prepaid for up to three years for Authorized Users legally empowered to make advance payments.
2. The Contractor shall provide annual renewal invoice(s) and indicate if such invoices are available electronically.
3. The Contractor shall provide supplemental invoices for "bill as" published titles, for "bill later" titles, for new orders, etc., based on agreement with Authorized User.
4. The Contractor shall provide up to three copies of all invoices if requested by an Authorized User.
5. All invoices shall provide the following information or other "identifier," if applicable:

- a. Name, address and Federal Identification Number of Contractor.
- b. Authorized User address and account number.
- c. Invoice date and number.
- d. Purchase order number.
- e. Contract number.
- f. Titles listed in alphabetical order or in an order specified by Authorized User.
- g. International Standard Serial Numbers (ISSNs).
- h. Price for each subscription period.
- i. Subscription period.
- j. Description, quantity, unit price and extended price of all items.
- k. Information indicating if charge is an added optional service charge. An explanation is required.
- l. The discount or Service Charge, as requested by the Authorized User, on a line-by-line basis.
6. Increases in subscription price shall be allowed if correction in cost is required due to publisher's change in price.
7. Decreases in subscription price shall be refunded or credited, as specified, to the Authorized User promptly.
8. The Contractor shall, upon request from the Authorized User, provide proof of Publisher List Prices and increases or decreases in Publisher List Prices for specific titles.
9. Additional fees which are passed on by the publishers, e.g. licensing fees, shall be listed separately on invoices.

**Optional**

If available and/or possible, Contractor to advise Authorized Users if the following may be provided:

1. Authorized User fund code.
2. Information indicating if charge is for a renewal or new order.
3. Information identifying "bill later" or "bill as" published titles.
4. On supplemental invoices, the original invoice number.
5. Availability of title in electronic format.
6. Customized Invoicing

**Claims**

1. The Contractor shall be responsible for claiming all issues reported as not received or received damaged or defective by the Authorized User.
2. The Contractor shall promptly process claim notices in a timely manner not to exceed the claim period permitted by the Publisher.
3. The Contractor shall provide claim reports no less frequently than bimonthly.
4. Claim reports shall provide the following information:
  - a. Date of claim report.
  - b. Title(s) being claimed.
  - c. Issue(s) being claimed.
  - d. Date(s) of prior claim(s).
  - e. Publisher's response, if any.
5. The Contractor may accept and respond to claims by U.S. mail, facsimile, electronic mail, courier service, or online.

**Conversion to New Contractor by Authorized Users**

1. Renewal orders requested by Authorized Users shall be placed at least two months before expiration of current subscriptions.
2. If an interruption in service results from a change in a Contractor, any issues not received shall be obtained by the Contractor who received payment for that period at no additional cost to the Authorized User. Delivery to the Authorized User shall be made by the original Contract delivery and at no extra cost to the Authorized User.
3. If duplicate issues are received as a result of change in Contractors and the Publisher required their return, the Contractor shall be responsible for resolving the problem and shall absorb any associated costs.



**Reports**

1. The Contractor may send the Authorized User a monthly statement showing the date and amount of each outstanding invoice and credit memorandum.
2. The Contractor shall notify the Authorized User of title changes and discontinued titles and provide information on titles that are slow, delayed, or irregular, either as they occur or on a monthly basis.
3. At the Authorized User's request the Contractor shall provide a printed customized list of titles arranged alphabetically or according to specifications defined by the Authorized User.
4. Upon request, the Contractor may be required to provide the Authorized User with a price analysis report showing a 1-3 year Publisher List Price comparison of titles ordered. This report can be arranged by title, country of publication, or by codes defined by the Authorized User.
5. If available, Contractor may provide an industry-wide summary of statistical data and analyses.
6. Upon request, the Contractor shall provide a report showing changes in Publisher subscription periods, quantities ordered, and publishers' new requirements.
7. All reports between the Contractor and the Authorized User shall be in writing, and may be electronically transmitted.

**Licensing Terms and Conditions for Electronic Publication****Authorized User Access to Electronic Publications**

1. Access: Access to the Electronic Publications by Authorized Users shall be either via electronic media or the Internet. If access is provided via the Internet, the Contractor shall ensure that the Electronic Publications are highly stable and usable (including average response time of less than 5 seconds, and uptime, except for scheduled maintenance, of 96.9%), and shall ensure that the Web server(s) is (are) fully capable of serving Authorized Users. Access shall be controlled by Internet Protocol (IP) addresses, passwords or other appropriate authentication technology.
2. If the license rights are based on a named user model, an Authorized User will prepare and submit to the Contractor a list of End Users that shall include name, address, and contact information.
3. License Scope: The Contractor and the State agree that the license for the Electronic Publications shall be governed as set forth below:
  - a. Authorized User is granted a non-exclusive, transferable, term license to access and use the electronic publications in accordance with this Contract. The license term for the Electronic Publications license shall commence upon the license effective date.
  - b. It shall be the obligation of the Authorized User to review and comply with the terms and conditions of the License Agreement if one is required by the publisher to use the Electronic Publication or electronic content to the extent that they do not conflict with the terms of Appendix A, Appendix B, this Solicitation or any resultant Contract.
  - c. Permitted License Transfers: As Authorized User's business operations may be altered, expanded or diminished, Electronic Publication licenses may be transferred or combined for use at an alternative or consolidated site not originally specified in the license, including transfers between Authorized Users and/or their End Users ("permitted license transfers"). Contractor shall have the discretion to issue new login credentials when a license transfer takes place.
  - d. Concurrent Use License: Where licensing of Electronic Publications is based upon "Concurrent Users," Contractor hereby grants license rights to the specified number of Concurrent Users actually executing the licensed programs, without reference to location or named End Users (hereinafter "Concurrent Users").

**Contractor's Performance Obligations**

1. The Contractor will provide and maintain help files and other appropriate user documentation for the Electronic Publications to be accessible to all Authorized Users free of charge.
2. The Contractor will offer reasonable levels of continuing support to assist Authorized Users and their End Users in their use of the Products. Contractor will make its personnel available by email, phone or fax during regular Business Days.

**Authorized User Performance Obligations**

Authorized Users acknowledge that the copyright and title to the information content and organization of the Electronic Publications are and remain with the publisher. Authorized User shall use reasonable efforts to inform its End Users and walk-in patrons of any restrictions on the use of the Electronic Publications. Authorized User shall use reasonable efforts to protect the Electronic Publications from any use that is not permitted under this agreement. Authorized Users and/or End users may make all use of the Electronic Publications as is consistent with the Fair Use Provisions of United States and international copyright laws and the Bidder's/Contractor's terms and conditions for use of its online services, provided that they do not conflict with the terms of Appendix A, this Solicitation or any resultant Contract, or Appendix B,. In addition, the Electronic Publications may be used as follows:

1. Authorized Users and End Users may display, download, copy and/or print portions of the Electronic Publications for use in research, education, or other non-commercial purposes.
2. Authorized Users and End Users may use a reasonable portion of the Electronic Publications in the preparation of educational materials.
3. Authorized Users may fulfill occasional requests from other institutions, a practice commonly called Interlibrary Loan. Authorized Users agrees to maintain records respecting End User's use of materials in such Interlibrary Loan and to provide such records to the Contractor upon request.

**Specific Restrictions on Use of Electronic Publications**

Authorized User may not utilize the Electronic Publications for commercial purposes, including but not limited to the sale of the Electronic Publications, fee-for-service use of the Electronic Publications, or bulk reproduction or distribution of the Electronic Publications in any form; nor may Authorized User impose special charges for use of the Electronic Publications beyond reasonable printing or administrative costs.

**Licensing Terms and Conditions**

Bidders are advised to review all terms and conditions carefully; particularly the licensing terms and conditions for Electronic Publications. If license agreement, shrink-wrap or click wrap agreements are associated with Electronic Publications, it is the responsibility of the potential Bidder/Contractor to offer only those Serials in electronic format that satisfy the license terms and conditions of the Solicitation. License terms that conflict with the terms of Appendix A, Appendix B, this Solicitation or any resultant Contract shall not be enforceable.

**PERFORMANCE REQUIREMENTS – LOT 2 – DATABASE ACCESS:****System Availability**

Databases shall be functional at least 99% of the time.

**Scheduled Maintenance**

Contractor must notify Authorized Users at least 48 hours prior to scheduled maintenance that interrupts End User access to Databases. OGS requests that scheduled maintenance **NOT** be performed during normal Business Days.

**RSS Feeds**

Contractors shall indicate on their Pricelist if RSS Feeds are allowed, and if so, if they are included in the price of the resource.

**CONTRACT PERIOD AND RENEWAL:**

The Contract(s) shall commence after all necessary approvals by both parties, and shall become effective upon mailing of the final Contract Award Notice by OGS (see Appendix B, §22, Contract Creation/Execution). The Contract(s) shall be in effect for five (5) years beginning on the date of approval of the first contract awarded as a result of the IFB, and shall end conterminously five (5) years from the approval of the first contract awarded as a result of the IFB. If mutually agreed between OGS and the Contractor, the Contract may be renewed under the same terms and conditions for up to two (2) additional years. Discount reduction will not be allowed and is specifically excluded from the terms and conditions of the Invitation for Bid and resultant Contract. Price decreases or discount increases are permitted at any time.

**SHORT TERM EXTENSION:**

In the event a replacement Contract has not been issued, any Contract let and awarded hereunder by the State, may be extended unilaterally by the State for an additional period of up to one (1) month upon notice to the Contractor with the same terms and conditions as the original Contract including, but not limited to, quantities (prorated for such one month extension), prices, and delivery requirements. With the concurrence of the Contractor, the extension may be for a period of up to three (3) months in lieu of one (1) month. However, this extension terminates should a replacement Contract be issued in the interim.

**PERIODIC RECRUITMENT:**

The State reserves the right to add Contractors beginning in the second year of the Contract and at one year intervals thereafter. The State will formally announce when the bid is reissued, at the discretion of the State. Bidders shall be required to submit such Bid documentation as required by OGS, which may include additional applicable statutory requirements currently in effect at the time of the new Bid solicitation. Once awarded a Contract, a Contractor may not resubmit a Bid for future consideration. In addition, if a Bid is deemed non-responsive or is rejected under periodic recruitment, a Bidder cannot reapply for a future Contract until the next periodic recruitment period. For Contracts that are awarded under periodic recruitment, the Contract term will commence upon OGS approval in accordance with §22, *Contract Creation/Execution* of Appendix B and will terminate on the then current end date of the Contract or at the end of any approved extension or renewal period.

Bidders shall be required to submit this original bid document which may include additional applicable statutory requirements currently in effect at the time of the new bid solicitation. Bidders are advised to review the "Qualification of Bidders" clause before submitting a bid under periodic recruitment to ensure they can meet all bid requirements.

**CONTRACT ADVERTISING:**

In addition to the requirements set forth in Appendix B §21, *Contract Publicity*, any Contractor advertisements, promotional literature and/or Contract description(s) of Contract awards must be reviewed and approved by Procurement Services prior to issuance.

**MINIMUM ORDER:**

There is no minimum order requirement.

**NEW YORK STATE PURCHASING CARD:**

See "Purchasing Card" in Appendix B, §15, *Purchasing Card*. Contractors indicated on their Contractor's Information Page if they will accept the NYS Purchasing Card for orders not to exceed \$85,000. For all purchases executed using a New York State Purchasing Card, Contractor shall provide an itemized receipt with each delivery. Contractor shall state the discount offered when using the NYS Purchasing Card on each Contractor's Information page.

**CONTRACT ORDERS:**

Contractor shall be capable of accepting orders manually, via facsimile, and, electronically via email. As an option, Contractor may also accept orders electronically via the Internet through a web-based ordering system. Contractor shall be required to provide written quotes to Authorized Users who request them prior to placing an order, which quote details the SKU corresponding with the approved product list, List Price, discount, and Net Price, as applicable.

The web-based ordering system, if offered, shall allow Authorized Users to enter orders and have full order inquiry capabilities. All orders (manual, fax, electronic) shall reference requisition and/or purchase order number as required. If offering a web-based ordering system, the Bidder represents and warrants that it is the sole owner of the software product used for its ordering system, or, if not the owner, has received all proper authorizations from the owner to license the software product, and has the full right and power to grant the rights contained in any Contract resulting from this Invitation for Bids and as described further in Appendix B. Bidder further warrants and

represents that the software product is of original development, and/or that the package and its use will not violate or infringe upon any patent, copyright, trade secret or other property right of any other person/company.

The web-based ordering system\*, if offered, shall be capable of processing, controlling, documenting, and reporting on the following minimum data elements:

- Contractor Name and Address
- Agency/Facility/Political Subdivision, etc.
- Contract Number
- Purchase Order/Requisition Numbers
- Contact (individual placing order)
- SKU/PN & Product Description
- Net Price
- Extended and Total Amounts

\*Comparable systems meeting the intent of the specifications may be considered.

If offering a web-based ordering system, the Contractor shall provide any necessary software (excluding communication software) and training guides/manuals or online support in the use of the web-based ordering system at no additional cost to all Authorized Users capable of placing orders electronically. Samples of software and training guides/manuals may be required. If requested, Bidder must demonstrate its system at an Albany, NY area location designated by the State.

#### INTERNET WEBSITES:

The State encourages successful Bidders to provide a designated NYS Contract website for Authorized Users' direct access. This website will be listed under the Contractor information. The purpose of a dedicated website is to provide Authorized Users with access to Contract pricing and Product offerings and the option of online ordering. It is the Contractor's responsibility to ensure that Contract and related information is accurately and completely posted, maintained and displayed in an objective and timely manner which renders it clearly distinguishable from other, non-contract offerings at Contractor's web site. Changes in Products or pricing must be approved by the Office of General Services, Procurement Services in accordance with any terms included in this Solicitation and resultant Contract prior to addition to the website. Hard copy catalog and pricelists, either in paper format or electronic format, must be available to all Authorized Users who either do not have Internet access or prefer the optional format.

#### PURCHASE ORDERS AND INVOICING:

All Purchase Orders and invoices shall include the Contract number and a line by line listing of separate charges. Order confirmation shall mean that the Contractor has received the purchase order, has reviewed it for compatibility with the Item currently on Contract, has resolved any non-compatibility problems with the Authorized User, and has entered the order, assigned an order number with anticipated delivery date.

##### **Purchase Orders**

Purchase orders are to include the following information:

1. Contract number
2. Contractor name
3. ISSN and Product/service description
4. Net Price

##### **Invoices**

Authorized Users are instructed not to process invoices that do not include the required information set forth below. Invoices must be detailed and include in the body of the invoice or an attachment to the invoice **all** of the following items. Failure to comply may result in lengthy payment delays. Original invoices must follow the billing instructions contained in the purchase order. Invoices shall include, at a minimum, the following information:

1. Contract number
2. Contractor name

3. NYS Vendor Identification Number
4. Purchase Order number
5. ISSN and Product/service description
6. Line item breakdown of all charges to include Net Price of each Product/service

Note that additional information is required for invoices for Lot 1 – Serials Products in accordance with Section *Performance Requirements – Lot 1 - Serials*.

Business units or branch offices within an Authorized User may require separate invoicing as specified by each Authorized User. The Contractor's billing system must be flexible enough to meet the needs of varying accounting systems in use by different Authorized Users.

#### SOFTWARE:

Software offered must be in a format that does not require any conversion by the Authorized User and shall:

1. be available as part of the Contractor's standard commercial offerings; and
2. be directly related to the operational function of the Products offered under the contract.

Any Software currently on the NYS Miscellaneous Software Catalog contract Prohibited List is excluded from purchase under this Contract, except when the Software is pre-loaded on equipment at the time of purchase. The Prohibited List may be accessed on the OGS website:

<http://www.ogs.ny.gov/purchase/snt/awardnotes/79518Prohibited.pdf>.

#### RELATED THIRD PARTY PRODUCTS:

Third Party Products which meet and comply with all of the following criteria may be authorized for sale under this Contract:

1. The Third Party Product is available as part of the Contractor's standard commercial offerings.
1. The Third Party Product fits the scope of and is directly related to the operation of Products that fit the scope of the Contract.
2. If the Third Party Product is available on another NYS Contract, such item will only be approved for inclusion on this Contract in accordance with Section titled, *Overlapping Contract Items*. If the Third Party Product is not available on another NYS Contract, then price reasonableness must be established in order for such item to be added to the Contract.

#### USE OF RESELLERS/DISTRIBUTORS/ALTERNATE CHANNEL PARTNERS:

Contractor must provide service, sales and support staff to service Authorized Users geographically located at multiple purchasing locations throughout New York State. Contractor shall ensure that sufficient resources are available directly, or through authorized Resellers to ensure maximum service capability throughout the State. The State agrees to permit Contractor to utilize approved, designated value added resellers (VARs), distributors, dealers, and sales agents to participate as alternate channel partners (collectively referred to as "Resellers") for Contractor. Such participation is subject to the following conditions:

1. Designation of Reseller(s): Contractor shall specify whether orders must be placed directly with Contractor, or may be placed directly with designated Reseller(s). When Reseller(s) are submitted for approval, Contractor must provide the State, in advance, with all necessary ordering information, billing addresses, Federal Identification Numbers, and NYS Vendor Identification Numbers in the format requested in Reseller Directory. Failure to accurately provide all required information may result in processing delays.
2. Conditions of Participation: Reseller(s) must be approved in advance by the State as a condition of eligibility under the Contract. The State also reserves the right to rescind any such participation or request that Contractor name additional Resellers, in the best interests of the State, at the State's sole discretion, at any time. Contractor shall have the right to qualify Reseller(s) and their participation as fulfillment agents under this Contract by product line, contracting program (e.g., government/educational sales), geographic region, size/sales volume, technical training or other criteria ("qualifying criteria"), provided that: i) such qualifying

criteria are uniformly applied to all potential Resellers based upon Contractor's established, neutrally applied commercial/governmental program criteria, and not to a particular procurement; ii) all general categories of qualifying criteria must be disclosed by the Contractor to the State, in advance, at the beginning of the Contract term; iii) those qualifying criteria met by the Reseller must be identified on the form provided in Reseller Directory at the time that Reseller approval is requested under this paragraph; and iv) immediate advance notice is provided to OGS in the event that a change in Reseller's status occurs during the Contract term.

3. All Resellers who have been approved in accordance with the foregoing paragraph shall be eligible to quote lower than Contract pricing for procurements under this Contract which meet their qualifying criteria. Except as otherwise set forth in Reseller Directory, Contractor warrants and represents that it shall not, directly or indirectly, by agreement, communication or any other means, restrict any Reseller's participation or ability to quote a particular order. Reseller Directory updates will be allowed no more than twice annually. On the first business day of the month following the sixth and twelfth months of each contract year, Contractors shall be given an opportunity to submit revised Reseller Directories electronically. When submitting Reseller Directory updates, Contractors shall be required to separately specify additions, deletions, and/or any other changes to the directory in an accompanying communication submitted with the request in order to facilitate a more expeditious review; failure to do so may result in the rejection of the request.
4. Responsibility for Reporting/Performance: Contractor shall be fully liable for Reseller(s)' performance and compliance with all Contract terms and conditions. Product purchased through Reseller(s) must be reported by Contractor in the required monthly reports to the State as a condition of payment. In addition to inclusion of Reseller(s) volume in the Contractor's monthly reporting obligation to the State, at the request of Authorized User, Reseller(s) shall provide Authorized User with quarterly reports of the individual Authorized User's Contract activity with Reseller.
5. Applicability of Contract Terms: Product ordered directly through Reseller(s) shall be limited to Products currently approved for inclusion under this Contract and shall be subject to all terms and conditions of this Contract as a condition of Reseller participation.

#### CANCELLATION OF PURCHASE ORDERS:

Cancellation of orders in part or whole for unavailable Products shall be made by means of appropriate notations and adjustments on orders returned by Contractor to the Authorized User. Contractors shall make no shipments of canceled Products except on the basis of a new order. Products not supplied by the Contractor may be purchased from any other Contract source.

#### CONTRACT PAYMENTS:

Payments cannot be processed by Authorized Users until the items have been delivered and accepted. Payment will be based on any invoice used in the Contractor's normal course of business. However, such invoice must contain all requirements in Section *Purchase Orders and Invoicing*.

#### CONTRACT ADMINISTRATOR:

Contractor must provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Contractor must notify OGS within five (5) Business Days if its Contract Administrator changes, and provide an interim contact person until the position is filled. Changes to Contractor contact information, including the designation of a new Contract Administrator, shall be submitted electronically via e-mail to the OGS Contract Management Specialist.

#### TOLL-FREE NUMBER/AUTHORIZED USER ASSISTANCE:

A Bidder must provide a toll-free telephone number for the Authorized User assistance under any Contract or purchase order resulting from this Solicitation. Bidder must staff this toll-free number at a minimum from 8:00 a.m. to 5:00 p.m. ET Monday through Friday, excluding NYS holidays. If Bidder does not currently maintain a toll-free number, the Bidder must be willing to establish one prior to award of Contract. Bidders may also offer online assistance, such as email or chat assistance.

**INSURANCE REQUIREMENTS:**

The Contractor shall with the Insurance Requirements of the bid solicitation. Within thirty (30) days after renewal or replacement of any policy required by any Contract resulting from this solicitation, or within three (3) business days of request, Bidders and Contractors shall supply OGS with updated replacement Certificates of Insurance, and amendatory endorsements.

**REPORT OF CONTRACT SALES:**

Contractor shall furnish a report semiannually of all Products purchased under the Contract during each semiannual period, no later than the 15th of the month following the close of each six month period. Purchases by Non-state agencies, political subdivisions and others authorized by law shall be reported in the same report and indicated as required. If resellers are utilized, the Contractor shall be responsible for consolidating all contract purchases into a single report. A template for such report is included in Attachment 9 - *Report of Contract Sales*. All fields of information shall be accurate and complete. The report is to be submitted electronically via electronic mail utilizing the template provided in Microsoft Excel 2013, or lower version (or as otherwise directed by OGS), to the attention of the OGS contract manager and shall reference the Group Number, Award Number, Contract Number, and Sales Period. OGS reserves the right to amend the report template during the Contract term.

Contractor shall specify if any resellers are NYS Certified Minority and/or Women-Owned Business Enterprises (MWBEs) within the Report of Contract Sales document. Contractor shall refer to Section *Contractor Requirements and Procedures for Business Participation Opportunities for New York State Certified Minority and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women* for information on how to verify certified status.

**AUTHORIZED USER SALES REPORT:**

Upon written request by an Authorized User, the Contractor shall furnish to such Authorized User, on a monthly basis, a report listing the following: name of products purchased, quantity purchased, unit price and total dollar volume of purchases.

**CONTRACTOR REQUIREMENTS AND PROCEDURES FOR EQUAL EMPLOYMENT AND BUSINESS PARTICIPATION OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND NEW YORK STATE CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES:****Policy Statement**

The New York State Office of General Services (“OGS”), as part of its responsibility, recognizes the need to promote the employment of minority group members and women and to ensure that certified minority- and women-owned business enterprises have opportunities for maximum feasible participation in the performance of OGS contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority- and women-owned business enterprises had a full and fair opportunity to participate in State contracting. The findings of the study were published on April 29, 2010, under the title “The State of Minority- and Women-Owned Business Enterprises: Evidence from New York” (the “Disparity Study”). The Disparity Study found evidence of statistically significant disparities between the level of participation of minority- and women-owned business enterprises in State procurement contracting versus the number of minority- and women-owned business enterprises that were ready, willing and able to participate in State procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the Statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that OGS establish goals for maximum feasible participation of New York State certified minority- and women-owned business enterprises (“MWBE”) and the employment of minority groups members and women in the performance of New York State contracts.

**General Provisions**

OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.

The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State certified minority- and women-owned business enterprises (“MWBEs”). Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, State or local laws.

The Contractor further agrees to be bound by the provisions of Article 15-A and the MWBE Regulations. If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.

Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility, breach of contract, withholding of funds, suspension or termination of the Contract and/or such other actions or enforcement proceedings as allowed by the Contract.

**Equal Employment Opportunity (EEO)**

Contractor shall comply with the provisions of Article 15-A set forth below. These provisions apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000, for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting State agency (the “Work”) except where the Work is for the beneficial use of the Contractor.

1. Contractor and subcontractors shall undertake or continue existing EEO 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, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate or distinct from the Contract; or (ii) employment outside New York State.
2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor’s equal employment opportunity policy.

**Form EEO 100 – Staffing Plan**

To ensure compliance with this section, the Contractor agrees to submit or has submitted with the Bid a staffing plan on Form EEO 100 to OGS to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.

**Form EEO - 101 - Workforce Utilization Reporting Form (Commodities and Services) (“Form EEO-101-Commodities and Services”)**

The Contractor shall submit, and shall require each of its subcontractors to submit, a Form EEO-101-Commodities and Services to OGS to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The



Form EEO-101-Commodities and Services must be submitted electronically to OGS at EEO\_CentCon@ogs.ny.gov on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January. Separate forms shall be completed by Contractor and any subcontractor. If Contractor's EEO Form 100 - Staffing Plan provides that Contractor is unable to separate out the actual workforce utilized in the performance of the Contract from its total workforce, the following clause shall apply: Contractor and OGS agree that Contractor is unable to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce and that the information provided on the previously submitted Staffing Plan is Contractor's total workforce during the subject time frame, not limited to work specifically under the Contract.

Contractor shall comply with the provisions of the Human Rights Law, all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall 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 and conviction and prior arrest.

**Contract Goals**

For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers and suppliers to Contractor. Contractor is, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528> Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

**Good Faith Efforts**

Pursuant to 5 NYCRR § 142.8, evidence of good faith efforts shall include, but not be limited to, the following:

1. A list of the general circulation, trade and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers and copies of such solicitations and any responses thereto.
2. A list of the certified MWBEs appearing in the Empire State Development MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
3. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with or obtaining supplies from certified MWBEs.
4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
5. Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
6. Other information deemed relevant to the request.

ALL FORMS ARE AVAILABLE AT: <http://www.ogs.ny.gov/MWBE/Forms.asp>

**NEW YORK STATE FINANCIAL SYSTEM (SFS):**

New York State is currently operating on an Enterprise Resource Planning (ERP) system, Oracle PeopleSoft software, referred to as the Statewide Financial System (SFS). SFS is currently on PeopleSoft Financials version

9.2 Bundle 18, operating on PeopleTools version 8.49.33. SFS supports requisition-to-payment processing and financial management functions.

The State is also implementing an eProcurement application that supports the requisitioning process for State Agencies to procure goods and services in SFS. This application provides catalog capabilities. Vendors with Centralized Contracts have the ability to provide a “hosted” or “punch-out” catalog that integrates with SFS and is available to Authorized Users via a centralized eMarketplace website. There are no fees required for a Vendor’s participation in the catalog site development or management. Upon completion and activation of an on-line catalog, State Agencies will process their orders through the SFS functionality and other Authorized Users can access the catalog site to fulfill orders directly.

The State is also implementing the PeopleSoft Inventory module in the near future to track inventory items within the item master table. Further information regarding business processes, interfaces, and file layouts may be found at: [www.sfs.ny.gov](http://www.sfs.ny.gov) and <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

#### USE OF RECYCLED OR REMANUFACTURED MATERIALS:

New York State supports and encourages vendors to use recycled, remanufactured or recovered materials in the manufacture of products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the product or packaging unless such use is precluded due to health or safety requirements or product specifications contained herein. Refurbished or remanufactured components or products are required to be restored to original performance and regulatory standards and functions and are required to meet all other requirements of this Contract. Warranties on refurbished or remanufactured components or products must be identical to the manufacturer's new equipment warranty or industry's normal warranty when remanufacturer does not offer new equipment. See Appendix B, §38, *Repaired or Replaced Products, Parts or Components*.

#### BULK DELIVERY AND ALTERNATE PACKAGING:

New York State encourages the use of innovative packaging that reduces the weight of packaging and the generation of packaging waste. A contractor is encouraged to use reusable materials and containers and to utilize packaging configurations that take advantage of storage containers designed to be part of the product for the shipment of multi-unit purchases. New York State recognizes that these packaging methods are in the development stage and may not be currently available. Authorized Users are urged to inquire about these programs at the time of purchase and determine the best solution for their needs.

#### SURPLUS/TAKE-BACK/RECYCLING:

1. A State agency is reminded of its obligation to comply with the NY State Finance Law §§167, Transfer and Disposal of Personal Property, and 168, The Management of Surplus Computer Equipment, regarding transfer and disposal of surplus personal property before utilizing take-back, recycling, or other options for disposition of equipment that is still in operable condition.
2. If Contractor offers a take-back/recycling program, then Contractor shall provide a record of disposition to each Authorized User who participates in the take-back/recycling program for units transferred for disposition. Contractor shall provide documentation that the units were disposed of in an environmentally sound manner in compliance with applicable local, state and federal laws. See Section 3 below for specific requirements governing electronic equipment recycling.
3. The NYS Department of Environmental Conservation (DEC) Electronic Equipment Recycling and Reuse Act (“Act”) (Environmental Conservation Law, Article 27, Title 26, Electronic Equipment Recycling and Reuse), requires manufacturers to establish a convenient system for the collection, handling, and recycling or reuse of electronic waste. If Contractor is a manufacturer of electronic equipment covered by the Act, Contractor agrees to comply with the requirements of the Act. More information regarding the Act can be found on the DEC website at: <http://www.dec.ny.gov/chemical/65583.html>.
4. If a Contractor offers a take-back/recycling program or offers an electronic equipment recycling program pursuant to the Act, and an Authorized User participates in same, then the Authorized User shall ensure the destruction of all data from any hard drives surrendered with the machines/covered electronic equipment.

Contractor shall not require an Authorized User to surrender the hard drive, as an Authorized User may wish to retain the hard drive for security purposes. Contractor shall advise the Authorized User in advance if the retention of the hard drive results in additional fees or reduction in trade-in value. It is recommended that an Authorized User use a procedure for ensuring the destruction of confidential data stored on hard drives or other storage media that meets or exceeds the National Institute of Standards and Technology (NIST) Guidelines for Media Sanitation as found in NIST Special Publication 800-88.

**ENVIRONMENTAL ATTRIBUTES AND NYS EXECUTIVE ORDER NUMBER 4:**

New York State is committed to environmental sustainability and endeavors to procure products with reduced environmental impact. One example of this commitment may be found in Executive Order No. 4 (Establishing a State Green Procurement and Agency Sustainability Program), which imposes certain requirements on state agencies, authorities, and public benefit corporations when procuring commodities, services, and technology. More information on Executive Order No. 4, including specifications for offerings covered by this Contract, may be found at: <http://ogs.ny.gov/EO/4/Default.asp>. State entities subject to Executive Order No. 4 are advised to become familiar with the specifications that have been developed in accordance with the Order, and to incorporate them, as applicable, when making purchases under this Contract.

**PREFERRED SOURCE PRODUCTS:**

Section 162 of the State Finance Law requires that agencies, including Executive Agencies, afford first priority to the products of preferred source suppliers such as Corcraft (the marketplace name for the NYS Department of Corrections and Community Supervision, Division of Industries), New York State Preferred Source Program for People who are Blind (NYSPSP), and New York State Industries for the Disabled (NYSID), and others determined by law, when such products meet the form, function and utility of the agency. Some products in the resultant Contract(s) may be available from one or more preferred sources. An Authorized User must determine if a particular commodity or service is approved for a Preferred Source and follow the requirements of State Finance Law Section 162(3) or (4)(b), respectively, before engaging the Contractor.

**NEW YORK STATE VENDOR RESPONSIBILITY:**

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS 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.

The Commissioner of OGS or her designee, her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when 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 Commissioner of OGS or her designee issues a written notice authorizing a resumption of performance under the Contract. The Contractor agrees that if it is found by the State that the Contractor's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Contract.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Contract may be terminated by the Commissioner of OGS or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of OGS or her designee to be non-responsible. In such event, the Commissioner of OGS 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.

In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

**NEW YORK STATE TAX LAW SECTION 5-A:**

Tax Law Section 5-a requires certain Contractors awarded state Contracts for commodities, services and technology valued at more than \$100,000 to certify to NYS Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to Contracts where the total amount of such Contractors' sales delivered into New York State is in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

Contractors may consult with DTF's website at <http://www.tax.ny.gov/> for additional information and frequently asked questions.

**OVERLAPPING CONTRACT ITEMS:**

Products available in the resulting Contract may also be available from other New York State Contracts. Authorized Users will be advised to select the most cost effective procurement alternative that meets their program requirements and to maintain a procurement record documenting the basis for this selection.

**NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS:**

New York State political subdivisions and others authorized by New York State law may participate in contracts. These include, but are not limited to local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See Appendix B, §25, *Participation in Centralized Contracts*. For purchase orders issued by the Port Authority of New York and New Jersey (or any other authorized entity that may have delivery locations adjacent to New York State), the terms of the "Price" clause shall be modified to include delivery to locations adjacent to New York State.

Upon request, all eligible non-State agencies must furnish contractors with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. A list of categories of eligible entities is available on the OGS web site ([www.ogs.state.ny.us](http://www.ogs.state.ny.us)). Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to OGS Procurement Services' Customer Services at 518-474-6717.

**NOTE TO ALL NON-STATE AGENCIES AND BIDDERS:**

All such participating non-State agencies and Bidders understand, acknowledge and agree that the primary responsibility in regard to performance of the Contract, of any obligation, covenant, condition or term thereunder by either such party thereto shall be borne and is expressly assumed by the participating non-State agencies and Contractor and not by the State. In the event of a failure or breach in performance of any such Contract by a non-State Agency or Contractor, the State specifically and expressly disclaims any and all liability for such defective performance or breach, and the eligible participating non-State agencies and Contractor guarantee to save the State, its officers, agents and employees harmless from any liability that may be or is imposed by the failure of either party to perform in accordance with its obligations, covenants and the terms and conditions of the State Centralized Contract.

**EXTENSION OF USE:**

The contract may be extended to additional States or governmental jurisdictions upon mutual written agreement between New York State (the lead contracting State) and the Contractor. Political subdivisions and other authorized entities within each participating State or governmental jurisdiction may also participate in any resultant Contract if such State normally allows participation by such entities. New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

**CONTRACTOR PERFORMANCE:**

Authorized Users should notify the Procurement Services Contract administrator promptly if the Contractor fails to meet the requirements of this Contract. Performance which is otherwise unsatisfactory to the Authorized User should also be reported to Procurement Services.

**MERCURY-ADDED CONSUMER PRODUCTS:**

Contractor agrees that it will not sell or distribute fever thermometers containing mercury or any products containing elemental mercury for any purpose under this Contract.

**UNANTICIPATED EXCESSIVE PURCHASE:**

The State reserves the right to negotiate lower pricing, or to advertise for bids, any unanticipated excessive purchase. An “unanticipated excessive purchase” is defined as an unexpected order for a Contract product(s) totaling more than \$50,000.00.

**AMERICANS WITH DISABILITIES ACT (ADA):**

The Federal ADA Act, signed into law July 26, 1990, bars employment discrimination and requires all levels of Government to provide necessary and reasonable accommodations to qualified workers with disabilities.

Contractors are required to identify and offer any software or hardware products they manufacture or adapt which may be used or adapted for use by visually, hearing, or any other physically impaired individuals. Although it is not mandatory for Contractors to have this equipment in order to receive an award, it is necessary to identify any such equipment offered they have which falls into the above category.

**ADDITIONAL REQUIREMENTS:****1. NO DRUGS OR ALCOHOL**

For reasons of safety and public policy, in any Contract resulting from this procurement, the use of illegal drugs and/or alcoholic beverages by the Contractor or its personnel shall not be permitted while performing any phase of the work herein specified.

**2. TRAFFIC INFRACTIONS**

The State will not be liable for any expense incurred by the Contractor for any parking fees or as a consequence of any traffic infraction or parking violations attributable to employees of the Contractor.

**WEBSITE ACCESSIBILITY:**

Responsibility for Content: Contractor is solely responsible for administration, content, intellectual property rights and all materials at Contractor’s website. Contractor is solely responsible for its actions and those of its agents, employees, resellers, Sub-Contractors or assigns, and agrees that neither Contractor nor any of the foregoing has any authority to act or speak on behalf of the State. As applicable, Contractor agrees to comply with the Office of Information Technology Services f/k/a Office for Technology policy NYS-P08-005 Accessibility of Web-Based Information and Applications, as may be amended, the stated purpose of which is to make State Agency web-based Intranet and Internet information accessible for persons with disabilities. In accordance with such policy, the following language is incorporated into any Contract resulting from this procurement:

Any web-based information and applications development, or programming delivered pursuant to the contract or procurement, 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 (state agency name, contractor or other) and the results of such testing must be satisfactory to (state agency name) before web-based information and applications will be considered a qualified deliverable under the contract or procurement.

## LICENSE AGREEMENTS:

An Authorized User looking to acquire Products and services under a Contract resulting from this Contract must review the contractual terms and conditions. The Authorized User must ask the Contractor if “click through”, “shrink wrap” or other pass-through or licensing/subscription terms and conditions are present, and if so, the Authorized User is responsible for reviewing and approving such terms and conditions prior to ordering the Products and services. If the terms and conditions are not acceptable to the Authorized User, it is the responsibility of such Authorized User to negotiate any needed amendments. ***Any additional licensing terms agreed to by the Authorized User shall not conflict with Appendix A, this Solicitation, any resultant Contract, or Appendix B. Any such conflicting terms shall be void and unenforceable.***

## APPENDIX A

Appendix A, Standard Clauses For New York State Contracts, dated January 2014 is hereby expressly made a part of this Contract as fully as if set forth at length herein.

## APPENDIX B

Appendix B, Office of General Services General Specifications, dated May 2015 is hereby expressly made a part of this Contract as fully as if set forth at length herein and shall govern any situations not covered by the bid document or Appendix A.

**NOTICE: THIS CONTRACT AWARD NOTIFICATION CONTAINS A SUBSET OF INFORMATION FROM THE SOLICITATION. CONTRACTS RESULTING FROM SOLICITATION 23044 HAVE BEEN EXECUTED BY CONTRACT AWARD LETTER. THE CONTRACT AWARD LETTER SETS FORTH THE ORDER OF PRECEDENCE FOR THE TERMS AND CONDITIONS OF THE EXECUTED CONTRACTS. COMPLETE CONTRACT DETAILS INCLUDING TERMS AND CONDITIONS CAN BE FOUND IN THE SOLICITATION DOCUMENT DATED REVISED OCTOBER 20, 2016.**

**State of New York  
Office of General Services  
Procurement Services  
Contract Performance Report**

Please take a moment to let us know how this contract award has measured up to your expectations. If reporting on more than one Contractor or product, please make copies as needed. This office will use the information to improve our contract award, where appropriate. **Comments should include those of the product's end user.**

**Contract No.:** \_\_\_\_\_ **Contractor.** \_\_\_\_\_

**Describe Product\* Provided (Include Item No., if available):** \_\_\_\_\_

**\*Note:** "Product" is defined as a deliverable under any Bid or Contract, which may include commodities (including printing), services and/or technology. The term "Product" includes Licensed Software.

	Excellent	Good	Acceptable	Unacceptable
• Product meets your needs				
• Product meets contract specifications				
• Pricing				

**CONTRACTOR**

	Excellent	Good	Acceptable	Unacceptable
• Timeliness of delivery				
• Completeness of order (fill rate)				
• Responsiveness to inquiries				
• Employee courtesy				
• Problem resolution				

Comments: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_(over)

Agency: \_\_\_\_\_ Prepared by: \_\_\_\_\_

Address: \_\_\_\_\_ Title: \_\_\_\_\_

\_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_ Phone: \_\_\_\_\_

\_\_\_\_\_ E-mail: \_\_\_\_\_

**Please detach or photocopy this form & returned to:**

OGS Procurement Services  
Customer Services, 38th Floor  
Corning 2<sup>nd</sup> Tower - Empire State Plaza  
Albany, New York 12242  
customer.service@ogs.ny.gov  
\* \* \* \* \*



## 6th Supplemental Contract Award Notification

184

<b>Title</b>	<b>:</b>	<b>Group 20020 – Serials and Database Access (Statewide)</b> <b>Classification Code(s): 55 &amp; 83</b>
<b>Award Number</b>	<b>:</b>	<a href="#">23044prb</a>
<b>Contract Period</b>	<b>:</b>	<b>July 12, 2018 – December 31, 2021</b>
<b>Bid Opening Date</b>	<b>:</b>	<b>February 1, 2018 (Periodic Recruitment)</b>
<b>Date of Issue</b>	<b>:</b>	<b>July 12, 2018</b>
<b>Specification Reference</b>	<b>:</b>	<b>As Incorporated Herein</b>
<b>Contractor Information</b>	<b>:</b>	<b>Appears on Page 2 of this Award</b>

### Address Inquiries To:

State Agencies & Vendors		Political Subdivisions & Others	
<b>Name</b>	Shrilata Nath	Procurement Services	
<b>Title</b>	Contract Management Specialist	Customer Services	
<b>Phone</b>	518-474-3034	<b>Phone</b>	518-474-6717
<b>E-mail</b>	<a href="mailto:Shrilata.Nath@ogs.ny.gov">Shrilata.Nath@ogs.ny.gov</a>	<b>E-mail</b>	<a href="mailto:customer.services@ogs.ny.gov">customer.services@ogs.ny.gov</a>

**Procurement Services values your input.**

**Complete and return "Contract Performance Report" at end of document.**

### Description

NOTICE: THIS CONTRACT AWARD NOTIFICATION CONTAINS A SUBSET OF INFORMATION FROM THE SOLICITATION. CONTRACTS RESULTING FROM SOLICITATION 23044 HAVE BEEN EXECUTED BY CONTRACT AWARD LETTER. THE CONTRACT AWARD LETTER SETS FORTH THE ORDER OF PRECEDENCE FOR THE TERMS AND CONDITIONS OF THE EXECUTED CONTRACTS. COMPLETE CONTRACT DETAILS INCLUDING TERMS AND CONDITIONS CAN BE FOUND IN THE SOLICITATION DOCUMENT DATED REVISED OCTOBER 20, 2016.

This contract provides Authorized Users with a means of acquiring Serials and Database Access Products and Services. The contract contains a total of two (2) Lots: Lot 1 - Serials and Lot 2 - Database Access. **Lot 1 Serials - Included:** Print Periodicals and Newspapers; Electronic Magazines and Journals; Annuals (reports, yearbooks, etc.); Continuing directories; Proceedings and transactions; Numbered monographic series cataloged separately; Subscription based eBooks; and Optional Products and Services, including but not limited to: Stamps, call numbers or routing labels, bar-coding, and security strips, Processing of journals including affixing date and property, Shipment Consolidation, MARC (Machine Readable Cataloging) records and updates, and Serials management solutions. **Lot 2 Database Access – Included:** Library Databases; Full Text Databases; Numeric Databases; Meta-Databases; General Interest Databases; Discipline Specific Databases; Subject Specific Databases; Streaming Video Databases; Database Files; and Optional Products and services, including but not limited to: Database Management Systems (DBMS), Hard copy records, Mailing labels, Batching, and Reporting

This Contract Award Notification contains MWBE goals of 0% MBE and 0% WBE.

PR #23044



<b><u>CONTRACT #</u></b>	<b><u>CONTRACTOR</u></b>	<b><u>FED.IDENT. #</u></b>	<b><u>NYS VENDOR #</u></b>
PC68180	Dun & Bradstreet, Inc. DBA D&B	22-3582360	1000030581

For complete Contractor contract information and Pricing information for this Award, please see the Contractor Information page located on the OGS Website at: <http://www.ogs.ny.gov/purchase/spg/awards/2002023044Can.htm>

Cash Discount and/or Early Payment Discount, If Shown, Should be Given Special Attention.  
**INVOICES MUST BE SENT DIRECTLY TO THE ORDERING AGENCY FOR PAYMENT.**  
 (See "INVOICING AND PAYMENT" in this document.)

AGENCIES SHOULD NOTIFY PROCUREMENT SERVICES PROMPTLY IF THE CONTRACTOR FAILS TO MEET DELIVERY OR OTHER TERMS OF THIS CONTRACT. PRODUCTS WHICH DO NOT COMPLY WITH THE SPECIFICATIONS OR ARE OTHERWISE UNSATISFACTORY TO THE AGENCY SHOULD ALSO BE REPORTED TO THE PROCUREMENT SERVICES.

#### SMALL, MINORITY AND WOMEN-OWNED BUSINESSES:

The letters SB listed under the Contract Number indicate the contractor is a NYS small business. Additionally, the letters MBE and WBE indicate the contractor is a Minority-owned Business Enterprise and/or Woman-owned Business Enterprise.

#### RECYCLED, REMANUFACTURED AND ENERGY EFFICIENT PRODUCTS:

The Procurement Services supports and encourages the purchase of recycled, remanufactured, energy efficient and "energy star" products. If one of the following codes appears as a suffix in the Award Number or is noted under the individual Contract Number(s) in this Contract Award Notification, please look at the individual awarded items for more information on products meeting the suffix description.

RS,RP,RA	Recycled
RM	Remanufactured
SW	Solid Waste Impact
EE	Energy Efficient
E*	EPA Energy Star
ES	Environmentally Sensitive

#### NOTE TO AUTHORIZED USERS:

When placing purchase orders under the contract(s), the authorized user should be familiar with and follow the terms and conditions governing its use which usually appears at the end of this document. The authorized user is accountable and responsible for compliance with the requirements of public procurement processes. The authorized user must periodically sample the results of its procurements to determine its compliance. In sampling its procurements, an authorized user should test for reasonableness of results to ensure that such results can withstand public scrutiny.

The authorized user, when purchasing from OGS contracts, should hold the contractor accountable for contract compliance and meeting the contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, authorized users are encouraged to seek improved pricing whenever possible. Authorized users have the responsibility to document purchases, particularly when using OGS multiple award contracts for the same or similar product(s)/service(s), which should include:

- a statement of need and associated requirements,
- a summary of the contract alternatives considered for the purchase,

- The reason(s) supporting the resulting purchase (e.g., show the basis for the selection among multiple contracts at the time of purchase was the most practical and economical alternative and was in the best interests of the State).

**ORDER OF PRECEDENCE:**

The list of documents below address clarifications agreed to by the Contractor and the Office of General Services (OGS) and resolved by the parties and set forth herein in an order of precedence for the Contract award. The documents listed below were included in Solicitation #23044 or provided by the Contractor. Unless otherwise set forth in the procurement or contract documents, conflicts among documents shall be resolved in the following order of precedence:

1. Appendix A (January 2014), Standard Clauses for NYS Contracts (previously provided);
2. Contract Award Letter;
3. Revisions and Clarifications to Bid Specifications dated January 19, 2018 (previously provided);
4. Solicitation #23044prb including all Appendices and Attachments referenced therein (previously provided);
5. Contractor's Bid Prices as stated in Attachment 1 – Pricelist
6. Contractor's Bid

**OVERVIEW:**

This Contract provides Authorized Users with a means of acquiring Serials and Database Access Products and Services by New York State Agencies and Non-State agencies, including political subdivisions, school districts and others authorized by law (See Section 5.43, *Non-State Agencies Participation in Centralized Contracts* and Section 5.45, *Extension of Use*). Products for purchase by all Authorized Users are described in the Section titled, *Scope*.

Procurement Instructions describing requirements for Authorized Users to purchase from the Centralized Contract are found in the Section titled, *Procurement Instructions*.

**ESTIMATED QUANTITIES:**

All quantities or dollar values listed within this Contract are estimates. No specific quantities or volumes are represented or guaranteed and the State provides no guarantee of individual Authorized User participation. The Contractor(s) must furnish all quantities or dollar values actually ordered. The anticipated dollar value of the award for this Solicitation, based on historical purchases under previous awards was approximately \$55,000,000.00 annually for Lot 1 and \$20,000,000.00 annually for Lot 2. The individual value of each resultant Contract is indeterminate and will depend upon the number of Contracts issued and the competitiveness of the pricing offered. Authorized Users will be encouraged to purchase from Contractors who offer the Products and pricing that best meets their needs in the most practical and economical manner. See Appendix B, §28, *Estimated/Specific Quantity Contracts* and §25, *Participation in Centralized Contracts*.

Numerous factors could cause the actual value of the Contract to vary substantially from the historical value. Such factors include, but are not limited to, the following:

- The Contract is a nonexclusive Contract;
- There is no guarantee of volume to be purchased, nor is there any guarantee that demand will continue in any manner consistent with previous purchases;
- The individual value of the Contract is indeterminate and will depend upon actual Authorized User demand, and actual quantities ordered during the Contract period; and,
- The State reserves the right to terminate the Contract for cause or convenience prior to the end of the term pursuant to the terms and conditions of the Contract.

In Procurement Service's experience, depending on the price of a particular item, the actual volume of purchases for that item could be substantially in excess of, or substantially below, estimated volumes. Specifically, if actual Contract pricing is lower than anticipated or historical pricing, actual quantities purchased could be substantially

greater than the estimates; conversely, if actual contract pricing is higher than anticipated or historical pricing, actual quantities purchased could be substantially lower than the estimates. Contractor acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the Contract could vary substantially from the estimates/historical values provided in this Contract.

#### DEFINITIONS:

Terms used in the IFB documents that have a capitalized first letter shall be defined in accordance with Appendix B, §2 *Definitions*, which is hereby incorporated by reference. The following definitions shall apply:

Term	Definition
Active Request	Refers to an End User submitted search request transaction to the licensor's online service that has not yet received a response from the licensor's system.
Aggregator	A bibliographic service that provides online access to the digital full-text of Periodicals published by different Publishers. See also Database Publisher.
Back File Access	The ability to access information within a resource before a subscription period begins.
Business Day	Monday through Friday from 8:00 AM – 5:00 PM ET, excluding New York State and federal holidays.
Concurrent Users	Specified number of simultaneous End Users accessing an Electronic Publication or Database.
Concurrent Sessions	Concurrent User is interpreted to include any End User station device which, at the point in time of measurement, has established a logical session path to the licensor's online service, enabling an immediate search request to be made directly to the licensor's search software. This is the common meaning of such expressions as being "signed on" or "logged on" to the online service. Under this definition, any signed on terminal or End User station device is counted as part of the concurrent use total, regardless of whether the End User is at the End User station; formulating a new search request; waiting for the licensor's system to respond to a search request; or digesting the results of a previous request.
Concurrent Use License	Where licensing of Electronic Publications is based upon "Concurrent Users" the Contractor shall obtain from the publisher the right of the Authorized User to obtain license rights to the specified number of Concurrent Users actually executing the licensed programs, without reference to location or named End Users.
Continuing Directory	A list of people, companies, institutions, organizations, etc., in alphabetical or classified order, providing contact information (names, addresses, phone/fax numbers, etc.) and other pertinent details (affiliations, conferences, publications, membership, etc.) in brief format, often published serially (i.e. Continuing resources (not complete as first issued and intended to be ongoing, though not necessarily indefinitely).
Customization	Changes to the function, layout and/or appearance of a Database which does not alter the Database content.
Database	A large, regularly updated file of digitized information (bibliographic records, abstracts, full-text documents, directory entries, images, statistics, etc.) related to a specific subject or field, consisting of records of uniform format organized for ease and speed of search and retrieval and managed with the aid of database management system (DBMS) software. Content is created by the Database producer, which usually publishes a print version and leases the content to one or more Database vendors that provide electronic access to the data after it has been converted to machine-readable form, usually on CD-ROM or online via the Internet, using proprietary search software.
Database Management System (DBMS)	A computer application designed to control the storage, retrieval, security, integrity, and reporting of data in the form of uniform records organized in a large searchable file called a Database. The range of available DBMS software extends from simple systems intended for personal computers to highly complex systems designed to run on mainframes.

<b>Term</b>	<b>Definition</b>
Database Publisher	Company that uses specialized techniques to generate documents from source data and provide to End Users through a Database. See also Aggregator.
Discipline Specific Database	Information provided is focused on a discipline or area, however may include information from multiple related subject areas.
Electronic Journal	A digital version of a print journal, or a journal-like Electronic Publication with no print counterpart, made available via the World Wide Web, e-mail, or other means of Internet access. Some web-based Electronic Journals are graphically modeled on the print version. Synonymous with E-journal. Compare with electronic magazine.
Electronic Magazine	A digital version of a print magazine, or a magazine-like electronic publication with no print counterpart, made available via the World Wide Web, e-mail, or other means of Internet access. Some Web-based electronic magazines are graphically modeled on the print version. Synonymous with e-zine and Webzine. Compare with Electronic Journal.
Electronic Publication	A work in digital form capable of being read or otherwise perceived, distributed to the public electronically. Includes Electronic Journals and e-prints, Electronic Magazines and newspapers, electronic books, Web sites, Weblogs, etc. Some Electronic Publications are online versions of print publications; others are born digital. Synonymous with e-publication.
End User	Shall mean those persons who are permitted by the Authorized User to have access to an Electronic Publication or Database.
Fair Use	Shall mean acceptable use under the Copyright Revision Act 1976 as amended subsequently provided that such rights are exercised in accordance with Section 108 of the Act and with the guidelines developed by the National Commission on New Technological Uses of Copyrighted Works (CONTU Guidelines) and published in U.S. Copyright Office Circular 21.
Full Text Database	Contains the complete text of any documents (e.g. books, Journals, newspapers, magazines).
Full Time Equivalent End User (FTE)	For State agencies and Authorized Users not otherwise identified, the number of full time employees shall be the number of FTEs; for a higher educational institution, it shall refer to the student enrollment expressed as the number of full time students; for K-12 educational institutions, each student shall be considered one (1) FTE; for public libraries, the census population served shall be deemed to be the number of FTEs.
International Standard Serial Number (ISSN)	A unique eight-digit standard number assigned by the International Serials Data System (ISDS) to identify a specific serial title. The ISSN is usually given in the masthead of each issue or on the copyright page of each volume or part of a series. When a continuing resource undergoes a title change, a new ISSN is assigned.
Journal	A Periodical devoted to disseminating original research and commentary on current developments in a specific discipline, sub-discipline, or field of study, usually published in quarterly, bimonthly, or monthly issues sold by subscription. Journal articles are usually written by the person (or persons) who conducted the research. Longer than most magazine articles, they almost always include a bibliography or list of works cited at the end. In Journals in the sciences and social sciences, an abstract usually precedes the text of the article, summarizing its content. Most scholarly Journals are peer-reviewed. Scholars often use a current contents service to keep abreast of the Journal literature in their fields of interest and specialization.
Library Database	A large catalog or index of organized information.
Licensing Agreement	A formal written contract between a library and a vendor for the lease of one or more proprietary (copyrighted) bibliographic databases or online resources,

Term	Definition
	usually for a fixed period of time in exchange for payment of an annual subscription fee or per-search charge. Vendors typically charge libraries on a sliding scale based on number of registered borrowers or FTE enrollment, number of institutions or facilities served, and number of simultaneous users.
List Price	The undiscounted price at which a new publication is offered for sale to the public, established by the publisher at the time the edition is issued. The List Price is quoted in the Publisher's catalog and printed on the front flap of the dust jacket in hardcover editions and usually on the back cover in softcover editions. Discounts offered to libraries, booksellers, and jobbers are computed as a percentage off List Price. In library cataloging, the List Price of an item is indicated (when available) in the standard number and terms of availability area of the bibliographic description (field 020 or 022 of the MARC record). Synonymous with published price, retail price, and sticker price.
Magazine	A popular interest Periodical usually containing articles on a variety of topics, written by various authors in a nonscholarly style. Most magazines are heavily illustrated, contain advertising, and are printed on glossy paper. Articles are usually short (less than five pages long), frequently unsigned, and do not include a bibliography or list of references for further reading. Most magazines are issued monthly or weekly for sale at newsstands, in bookstores, and by subscription.
Metadata Database	Information about data itself, including size, origination or other descriptors.
MWBE	A business certified with NYS Empire State Development (ESD) as a Minority and/or Women-owned Business Enterprise.
N/A	A common abbreviation for <i>not applicable</i> or <i>not available</i> , used to indicate when information in a certain field on a table is not provided, either because it does not apply to a particular case in question or because it is not available.
National Public Entities	Defined as State Governments, the Federal Government, Local Governments, cities, towns, school districts, libraries, police and fire departments, and other political subdivisions
Net Price	List Price less all applicable discounts or inclusive of Service Charges; the price paid by Authorized Users of the resultant Contract.
Newspaper	A Serial publication, usually printed on newsprint and issued daily, on certain days of the week, or weekly, containing news, editorial comment, regular columns, letters to the editor, cartoons, advertising, and other items of current and often local interest to a general readership.
NYS Holidays	Refers to the legal holidays for State employees in the classified service of the executive branch, as more particularly specified on the website of the NYS Department of Civil Service. This includes the following: New Year's Day; Martin Luther King Day; Washington's Birthday (observed); Memorial Day; Independence Day; Labor Day; Columbus Day; Veteran's Day; Thanksgiving Day; and Christmas Day.
NYS Vendor ID	Refers to the ten-character identifier issued by New York State when a vendor is registered on the Vendor File.
Preferred Source Products	Refers to those Products that have been approved in accordance with State Finance Law § 162.
Preferred Source Program	Refers to the special social and economic goals set by New York State in State Finance Law § 162 that require a governmental entity purchase select Products from designated organizations when the Products meet the "form, function and utility" requirements of the governmental entity. Under State Finance Law § 163, purchases of Products from Preferred Sources are given the highest priority and are exempt from the competitive bidding requirements. The New York State Preferred Sources include: The Correctional Industries Program of the

<b>Term</b>	<b>Definition</b>
	Department of Corrections and Community Supervision (“Corcraft”); New York State Preferred Source Program for People Who Are Blind (“NYSPSP”); and the New York State Industries for the Disabled (“NYSID”). These requirements apply to state agencies, political subdivisions and public benefit corporations (including most public authorities).
Numerical Data Database	This includes statistical and other numerical data.
Optional Products and Services	Refer to supplementary Products and services that enhance or support the provision of Serials and/or Database Access Products identified to be within scope. For example: under Lot 1 that may include things such as stamps; call numbers or routing label; bar-coding; security strips; processing of journals including affixing date and property; shipment consolidation, MARC (Machine Readable Cataloging) records and updates; and Serials management solutions; under Lot 2 that may include things such as Database Management Systems (DBMS), hard copy records, mailing labels, batching, and reporting.
Periodical	A Serial publication with its own distinctive title, containing a mix of articles, editorials, reviews, columns, short stories, poems, or other short works written by more than one contributor, issued in softcover more than once, generally at regular stated intervals of less than a year, without prior decision as to when the final issue will appear. Although each issue is complete in itself, its relationship to preceding issues is indicated by enumeration, usually issue number and volume number printed on the front cover. Content is controlled by an editor or editorial board. Includes magazines, sold on subscription and at newsstands; journals, sold on subscription and/or distributed to members of scholarly societies and professional associations; and newsletters, but not proceedings or the other regular publications of corporate bodies as they relate primarily to meetings.
Procurement Services	Formerly known as NYSPRO or Procurement Services Group (PSG), Procurement Services shall mean a division of the New York State Office of General Services which is authorized by law to issue centralized, statewide Contracts for use by New York agencies, political subdivisions, schools, libraries and others authorized by law to participate in such Contracts.
Publication	Refers to a work capable of being read or otherwise perceived (e.g. book, audiorecording, videorecording, CD-ROM, etc.), issued by a Publisher for sale to the general public, usually in multiple copies and sometimes in multiple editions.
Publisher	A person or corporate entity that prepares and issues printed materials for public sale or distribution, normally on the basis of a legal contract in which the publisher is granted certain exclusive rights in exchange for assuming the financial risk of publication and agreeing to compensate the author, usually with a share of the profits.
Reseller	Any model for distribution of Product other than direct from the Contractor. Resellers include but are not limited to approved value added resellers (VARs), distributors, dealers, sales agents, and alternate channel partners.
Subject Specific Database	This includes information from academic or scholarly Journals and trade or professional publications.
Serial	Publication in any medium issued under the same title in a succession of discrete parts, usually numbered (or dated) and appearing at regular or irregular intervals with no predetermined conclusion. Serials may be purchased individually, in combination with other titles, or as large collections of titles (particularly when purchased electronically).

<b>Term</b>	<b>Definition</b>
Server	Shall mean the computer system(s) on which Electronic Publications or Databases reside and through which End Users gain access to the Electronic Publications or Databases.
Service Charge	A fee charged by a Subscription Agent for filling orders for Periodical subscriptions, usually 5 to 10 percent of the total annual amount paid by the library for subscriptions.
Subscription Agent	A company in the business of providing centralized Serial subscription or Database Access services to Authorized Users such as libraries to relieve them of the time consuming task of dealing with Publishers individually.

In addition to the above definitions, the following terms are defined as follows regardless of whether they are or are not capitalized:

May	Denotes the permissive in a Contract clause or specification. Refers to items or information that the State has deemed are worthy of obtaining, but not required or obligatory. Also see “Should”.
Must	Denotes the imperative in a Contract clause or specification. Means required - being determinative/mandatory, as well as imperative. Also see “Shall” and “Mandatory”.
Shall	Denotes the imperative in a Contract clause or specification. Means required - being determinative/mandatory, as well as imperative. Also see “Must” and “Mandatory”.
Should	Denotes the permissive in a Contract clause or specification. Refers to items or information that the State has deemed are worthy of obtaining, but not required or obligatory. Also see “May”.

#### SCOPE:

These contracts are to provide Authorized Users with a means of acquiring Serials and Database Access Products and Services. There are a total of two (2) Lots: Lot 1 – Serials, and Lot 2 - Database Access.

Products for Lot 1 - Serials include, but may not be limited to:

1. Print Periodicals and Newspapers
2. Electronic Magazines and Journals
3. Annuals (reports, yearbooks, etc.)
4. Continuing directories
5. Proceedings and transactions
6. Numbered monographic series cataloged separately
7. Subscription based eBooks
8. Optional Products and Services, including but not limited to:
  - a. Stamps, call numbers or routing labels, bar-coding, and security strips
  - b. Processing of journals including affixing date and property
  - c. Shipment Consolidation
  - d. MARC (Machine Readable Cataloging) records and updates
  - e. Serials management solutions, such as:
    - (i) Link resolvers
    - (ii) A to Z lists
    - (iii) Information discovery tools
    - (iv) Subscription management tools
    - (v) Electronic resource management (ERM) tools

Products for Lot 2 – Database Access include, but may not be limited to:

1. Library Databases
2. Full Text Databases

3. Numeric Databases
4. Meta-Databases
5. General Interest Databases
6. Discipline Specific Databases
7. Subject Specific Databases
8. Streaming Video Databases
9. Database Files
10. Optional Products and services, including but not limited to:
  - a. Database Management Systems (DBMS)
  - b. Hard copy records
  - c. Mailing labels
  - d. Batching
  - e. Reporting

Exclusions: The following Products are not within scope:

1. Products currently offered under the OGS Books and Non-Print Library Materials and other Related Ancillary Services contract (Group 20060)
2. Products and services currently offered under the OGS E-Learning Training/Distance Services contract (Group 73016), which includes web-based, computer based, online and internet based training
3. Standalone Software unrelated to the provision of Serials or Database Access
4. Hardware of any kind
5. Database services offered under the Contract shall not allow the Contractor to access the personal, private, or confidential information of any Authorized User or End User

It is the Contractor's responsibility to ensure that only Products and services that meet the scope of the Contract are purchased through the Contract. Questions concerning items covered under the resultant Contract should be addressed to the OGS Procurement Services contract manager designated on the Contract Award Notification prior to accepting the order.

If a Contractor sells Products that are excluded under this Contract as set forth above, such Contractor's Contract may be suspended or terminated.

### **LIST OF CONTRACTORS AND AWARDED LOTS**

**Please refer to each Contractor's Information page and Pricelist for more information.**

<b>Bidder</b>	<b>Lot 1 Serials</b>	<b>Lot 2 Database Access</b>
Dun and Bradstreet Inc. DBA D&B		X

**Please refer to the special instructions below before you use this contract.**

#### **PROCUREMENT INSTRUCTIONS TO AUTHORIZED USERS:**

1. The Contracts resulting from this Solicitation will be centralized Contracts issued under a multiple award structure. Products offered under the Contracts, pricing, and other Contract information will be posted to the OGS website or the awarded Contractors' dedicated NYS websites. Authorized Users shall procure Products that best meet their form, function and utility requirements.
2. Before proceeding with a purchase, Authorized Users shall check the list of Preferred Source offerings. Authorized Users are reminded that they must comply with State Finance Law §162, which requires that agencies afford first priority to the commodities of Preferred Source suppliers such as Correctional Industries (Corcraft), NYS Preferred Source Program for People Who are Blind (NYSPSP), and NYS Industries for the Disabled (NYSID), when such commodities meet the form, function and utility of the Authorized User.



3. Where products are not available from Preferred Source suppliers in the form, function and utility required by the Authorized User, Authorized Users shall purchase from the centralized Contracts awarded under this Solicitation. The basis for selection among multiple contracts at the time of purchase shall be the most practical and economic alternative and shall be in the best interests of the State. Therefore, Authorized Users are strongly encouraged to obtain quotes from at least three (3) Contractors prior to issuing a purchase order, in order to ensure that the Authorized User is receiving the best possible pricing.
4. When placing Purchase Orders under the Contract(s), the Authorized User should be familiar with and follow the terms and conditions governing its use. The Authorized User is accountable and responsible for compliance with the requirements of public procurement processes. The Authorized User, when purchasing from OGS Contracts, should hold the Contractor accountable for Contract compliance and meeting the Contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, Authorized Users are encouraged to seek improved pricing whenever possible. Authorized Users have the responsibility to document purchases which should include:
  - statement of need and associated requirements;
  - obtaining all necessary prior approvals;
  - a summary of the Contract alternatives considered for the purchase; and
  - the reason(s) supporting the resulting purchase (e.g., show that basis for the selection among multiple Contracts at the time of purchase was the most practical and economical alternative and was in the best interests of the State).
5. Authorized Users will issue purchase orders directly to the Contractor or the Contractor's authorized Reseller (if applicable), as specified by the Contractor, and specifying any shipping/delivery requirements and/or statements of work for services (if applicable).
6. Upon Authorized User acceptance of Products itemized on the purchase order, Contractor will invoice Authorized User for any portion of Products accepted, and accordingly, Authorized User will arrange for payment. Contractor shall provide itemized invoicing for all Products.
7. *Contractor must disclose any forms, "click through", "shrink wrap" or other pass-through or licensing/subscription terms and conditions or other order information that Contractor will attach to orders or require to be completed with Authorized User purchases. Documents which contain additional terms or conditions, such as library maintenance agreements or Licensing Agreements must receive pre-approval by the Authorized User prior to ordering Products and services. Any additional licensing terms agreed to by the Authorized User shall not conflict with Appendix A, this Solicitation, any resultant Contract, or Appendix B. Any such conflicting terms shall be void and unenforceable.*
8. The Dun & Bradstreet Inc. DBA D&B contract (PC68180) replaces Dun& Bradstreet LexisNexis Contract #PS64205 under Electronic On-Line Database Group 79103-Award NEG-21094. If you currently use Contract #PS64205 with Dun & Bradstreet, please contact your Dun & Bradstreet account representative as soon as possible to transition from the current contract to the new contract.

**PRICE:**

Price shall include all customs duties and charges and be net, F.O.B. destination to any point in New York State as designated by the Authorized User and shall include all transportation charges and inside delivery for print medium. Inside deliveries are to be delivered to the ordering Authorized User's stockroom or office location.

The Bidder's price should include all costs associated with selling the Product. No shipping charges are allowed EXCEPT on printed foreign publications shipped directly to the Authorized User from an address outside the 48 contiguous US states including the District of Columbia. Foreign shipping costs shall be prepaid by the Contractor and added to the invoice and all such orders shall be shipped on F.O.B. destination by the most economical method. There shall be no increase in Contract prices for freight, shipping, fuel or other surcharges, FPT (Freight Pass Through), etc. during the term of the Contract.

**FOR LOT 1 ONLY: Authorized Users may be charged additional fees charged by the Publishers which include licensing fees, platform fees etc. in excess of the base subscription fee. However, any additional**

**fees shall only be those charges passed on by the Publishers and shall not include any additional fees charged by the Contractors for such services. The Contractor shall only charge fees based on List Prices charged by Publishers. The Authorized User must be notified of all such fees at the time of purchase. Fees that are not told to the Authorized User at the time of purchase shall be paid by the Contractor.**

Contractor's pricing information is included in the posted Pricelist linked from the Contractor Information page.

#### PRICING BASED ON GSA PRICING:

Authorized Users shall be entitled to all associated discounts enumerated in the GSA Supply Schedule (including, but not limited to discounts for additional sites and volume discounts), as well as any other pricing or discount terms as are expressly enumerated in this NYS Contract or GSA schedule, when calculating the Contract price.

GSA pricing incorporates a sum referred to as the "GSA Industrial Funding Fee (IFF)". Contract prices will be reduced by an amount equivalent to the IFF. The NYS Price will be calculated by reducing the published GSA price, after the discounts, if any, downward by the amount of the Industrial Funding Fee, currently set at .75%.

#### VOLUME DISCOUNTS:

Contractor may offer volume discounts using the thresholds listed on each Contractor's Information Page.

#### PREPAYMENT PLAN DISCOUNTS:

Contractor may offer Prepayment Plan Discounts using the thresholds listed on each Contractor's Information Page.

#### PROMPT PAYMENT DISCOUNTS:

Contractor may offer prompt payment discounts at the transaction level. Please refer to the Contractor's Information Page.

#### CENTRALIZED CONTRACT MODIFICATION:

1. OGS, an Authorized User, or the Contractor may suggest modifications to the Centralized Contract or its Appendices. Except as specifically provided herein, modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the Parties. Modifications may take the form of an update or an amendment. "Updates" are changes that do not require a change to the established Centralized Contract terms and conditions. A request to add new Products at the same or better price level is an example of an update. "Amendments" are any changes that are not specifically covered by the terms and conditions of the Centralized Contract, but inclusion is found to be in the best interest of the State. A request to change a contractual term and condition is an example of an amendment.
2. Updates to the Centralized Contract and the Appendices may be made in accordance with the contractual terms and conditions to incorporate new products or services, make price level revisions, delete Products or services, or to make such other updates to the established Centralized Contract terms and conditions, not resulting in a change to such terms and conditions, which are deemed to be in the best interest of the State.
3. OGS reserves the right to consider modifications which are not specifically covered by the terms of the Centralized Contract, but are judged to be in the best interest of the State. Such modifications are deemed amendments to the Centralized Contract and may require negotiations between Contractor and OGS before execution.
4. All modifications proposed by Contractor, shall be processed in accordance with Appendix C, Contract Modification Procedure. The Contractor shall submit all requests in the form and format contained in Appendix C, Contract Modification Procedure. The form contained within Appendix C is subject to change at the sole discretion of OGS.
5. Modifications proposed by OGS or an Authorized User, including updates and amendments, shall be processed in accordance with the terms of the Centralized Contract and Appendix B, §26, *Modification of Contract Terms*.

**CONTRACT PRICELIST UPDATE PROCEDURES:**

The procedures below outline how Contract pricelist updates will be handled under this Contract. If awarded more than one Lot, Contractor shall submit pricelist updates for each Lot simultaneously pursuant to the requirements of this section. NOTE: THE FOLLOWING PROCEDURES ARE NOT APPLICABLE TO CONTRACTOR PROPOSED CHANGES TO CONTRACT TERMS AND CONDITIONS. Any implied or express request for changes in or additions to existing Contract terms and conditions, including new terms and conditions associated with a specific product line being added to the Contract for the first time, requires a formal Contract amendment and requires the approval of OGS. New or revised Contract terms and conditions are subject to the restrictions set forth in Appendix B, §26, *Modification of Contract Terms*.

**Lot 1 - Serials Pricelist Updates****Adding and Deleting Item Categories (Other than Optional Products and Services)**

1. **No decrease in discounts:** The Bidder's discount may increase at any time, but shall not decrease during the term of the Contract. Service Charges bid may decrease at any time, but shall not increase during the term of the Contract.
2. **Adding or Deleting Item Categories:** Bidder may add or delete Item Categories to its Price List pursuant to this Section and at the discretion of OGS. Any new Item Categories added to the Contract shall be subject to a reasonableness of price review pursuant to Section 5.3, *Reasonableness of Price*, of the Solicitation.
3. **First Year:** In the first year of the Contract, the Contractor shall be allowed to update the pricelist once to add/delete Item Categories.
4. **Subsequent Years:** Commencing with the second year of the Contract, the Contractor may add or delete Item Categories within thirty (30) calendar days after the anniversary date of the Contract. The thirty (30) calendar days includes the anniversary date of the Contract.

**Optional Products and Services**

1. Adding or deleting Optional Products and Services: Bidder may add or delete Optional Product and Services offerings pursuant to this section and at the discretion of OGS. Any new Optional Products and Services offered shall be subject to a reasonableness of price review pursuant to Section 5.3, *Reasonableness of Price*.
2. First Year: In the first year of the Contract, the Contractor shall be allowed to update the pricelist once to add or delete Optional Products and Services.
3. Subsequent Years: Commencing with the second year of the Contract, the Contractor may add or delete Optional Products and Services within thirty (30) calendar days after the anniversary date of the Contract. The thirty (30) calendar days includes the anniversary date of the Contract.

**Price Adjustments for Lot 1 Optional Products and Services**

All prices for Optional Products and Services may be adjusted annually following the first year of the Contract on the basis of the Not Seasonally Adjusted Consumer Price Index – All Urban Consumers, U.S. City Average, All Items Less Food, Series ID: CUUR0000SA0L1, published monthly by the US Department of Labor Bureau of Labor Statistics. There shall be no price adjustments during the first year of the Contract. The adjustment shall be established as follows. Following the first year of the Contract and annually thereafter, the Contractor may make a formal request for a price adjustment in the succeeding Contract year. This request must be made in writing to the contract manager identified on the front page of the resultant Contract Award Notification; thirty (30) calendar days after the anniversary date of the Contract. The thirty (30) calendar days includes the anniversary date of the Contract. If the Contractor fails to submit a written request, he/she forfeits its opportunity to receive a price adjustment in the succeeding Contract year.

Price adjustments for monetary amounts for Optional Products and Services shall begin with the second year of the start date of the Contract and annually thereafter. The adjustment shall be based on the percentage of increase or decrease in the above referenced index in the preceding twelve months ending three months prior to the effective date of the adjustments. In no case shall price increases exceed five percent (5%) annually. All adjusted prices will be rounded up or down to the nearest whole cent. The Office of General Services shall notify all parties of the price adjustments through the issuance of written notification by the Procurement Services.

Below is an example calculation. Values used are for illustrative purposes only.

CPI for current period	193.676
Less CPI for previous period	188.326
Equals Index point change	5.350
Divided by previous period CPI	188.326
Equals	0.028
Result multiplied by 100	0.028 x 100
Equals percent change	2.8

Should the referenced CPI become discontinued during the course of the contract, it will be replaced by the Not Seasonally Adjusted Consumer Price Index – All Urban Consumers, U.S. City Average, All Items, Series Id: CUUR0000SA0, and adjustments will be calculated based on the same methodology as outlined above, but with data from the new replacement index.

### **Submitting Price List Changes**

Contractor is required to submit Contract pricelist updates electronically in an unprotected Microsoft Excel (2013 or lower version) spreadsheet either on CD or via e-mail to the OGS Procurement Services contract manager. The pricelist must be dated and the format shall be consistent with the format of the Contractor's approved Contract pricelist. The pricelist shall separately include and identify (e.g., by use of separate worksheets or by using highlighting, italics, bold and/or color fonts) Item Categories added/deleted; Optional Products and Services added/deleted; and any price increases/decreases.

Contractors shall submit their updated Contract pricelist to the OGS Procurement Services contract manager pursuant to the requirements of this section for review and written approval prior to issuing to Authorized Users. All approved pricelist updates shall apply prospectively upon approval by OGS. Any request for a pricelist update not received in accordance with this section shall be deemed denied.

### **Lot 2 – Database Access Pricelist Updates**

1. General: Any new Products or services added to the Contract shall be subject to a reasonableness of price review. The Bidder's discount may increase at any time, but shall not decrease during the term of the Contract.
2. First Year: In the first year of the Contract, the Contractor shall be allowed to update the pricelist once to add/delete Products or services as established by the Contractor in their normal course of business. There shall be no price increases allowed for existing Products or services during the first year of the Contract.
3. Subsequent Years: Commencing with the second year of the Contract, the Contractor may update the pricelist annually to reflect Contractor price changes and the addition/deletion of Products and services as established by the Contractor in their normal course of business; thirty (30) calendar days after the anniversary date of the Contract. The thirty (30) calendar days includes the anniversary date of the Contract.

In a single year of the Contract the total request for price increases shall not exceed the lesser of:

1. three (3%) percent annually, or
2. the percent increase in the latest available National Consumer Price Index - All Urban Consumers (CPI-U), Not Seasonally Adjusted, U.S. City Average, All Items (Series Id: CUUR0000SA0, CUUS0000SA0); as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 2012. CPI-U data may be obtained at [www.bls.gov](http://www.bls.gov).

The following example illustrates the computation of percent change:

CPI for current period	230.000
Less CPI for previous period	225.000
Equals index point change	5.000
Divided by previous period CPI	225.000
Equals	0.022
Result multiplied by 100	0.022 x 100
Equals percent change	2.2

The “CPI for current period” shall be the index in effect at the time the Contract pricelist update request is received; “CPI for previous period” shall be the index in effect when the Contract pricelist was last updated.

Contractor is required to submit Contract pricelist updates electronically in an unprotected Microsoft Excel (2013 or lower version) spreadsheet either on CD or via e-mail to the OGS Procurement Services contract manager. The pricelist must be dated and the format shall be consistent with the format of the Contractor’s approved Contract pricelist. The pricelist shall separately include and identify (e.g., by use of separate worksheets or by using highlighting, italics, bold and/or color fonts) Products and services being added/deleted and any price increases/decreases.

In connection with any Contract pricelist update, OGS reserves the right to request additional information; reject Contract updates; remove Products and services from Contracts; remove Products and services from Contract updates; and request additional discounts for new or existing Products and services.

## PERFORMANCE REQUIREMENTS – LOT 1 – SERIALS:

### **Orders, Renewals, and Cancellations**

1. The Authorized User may specify that the subscription begin with current issue, first issue of the current volume, first issue of the current year, or first issue of the next volume. Subscriptions shall begin on the effective date specified on the purchase order.
2. The Contractor shall notify the Authorized User as soon as possible but no later than thirty (30) calendar days if unable to supply a new order. Contractor shall also provide a reasonable explanation in writing for non-fulfillment.
3. The Contractor shall provide address, publication, merger, and title change services, etc.
4. The Contractor shall make arrangements with publishers for all regularly purchased subscription orders and renewals within sufficient time to avoid any interruption in receipt of issues.
5. The Contractor shall cancel subscriptions as requested by the Authorized User and shall issue a credit if allowed by the publisher.
6. The Contractor shall provide pro-rated refunds or substituted titles for titles which cease publication prior to expiration if provided by the publisher. OGS reserves the right to resolve any issues that may arise between an Authorized User and the Contractor with regards to refunds or substituted titles.
7. The Contractor shall provide a common expiration date for subscriptions (if requested by the Authorized User) unless prohibited by the publisher.
8. At the Authorized User’s request the Contractor shall renew subscriptions automatically on a date selected by the Authorized User; or at the option of the Authorized User, shall provide a list of titles to be renewed by the Contractor for the Authorized User’s approval prior to the issuance of the annual renewal invoice. Authorized User may change automatic renewal status at any time and for no additional charge.
9. The Contractor may provide two, or three-year renewal periods, but must at a minimum offer a one-year renewal period.
10. The Contractor may enter orders for back files, special issues, supplements, extra volumes, and cumulative indexes, if requested to do so by the Authorized User.
11. All orders, renewals, and cancellations between the Contractor and the Authorized User shall be in writing, or shall be electronically transmitted.
12. In lieu of individual order forms, Contractor shall be able to accept a purchase or letter order to which is appended a list of titles.

### **Invoicing and Payments**

1. The Contractor may offer an early prepayment discount. Annually, the Contractor shall specify the percentages of discount offered and the deadlines for early payment. Subscriptions may be prepaid for up to three years for Authorized Users legally empowered to make advance payments.
2. The Contractor shall provide annual renewal invoice(s) and indicate if such invoices are available electronically.

3. The Contractor shall provide supplemental invoices for “bill as” published titles, for “bill later” titles, for new orders, etc., based on agreement with Authorized User.
4. The Contractor shall provide up to three copies of all invoices if requested by an Authorized User.
5. All invoices shall provide the following information or other "identifier," if applicable:
  - a. Name, address and Federal Identification Number of Contractor.
  - b. Authorized User address and account number.
  - c. Invoice date and number.
  - d. Purchase order number.
  - e. Contract number.
  - f. Titles listed in alphabetical order or in an order specified by Authorized User.
  - g. International Standard Serial Numbers (ISSNs).
  - h. Price for each subscription period.
  - i. Subscription period.
  - j. Description, quantity, unit price and extended price of all items.
  - k. Information indicating if charge is an added optional service charge. An explanation is required.
  - l. The discount or Service Charge, as requested by the Authorized User, on a line-by-line basis.
6. Increases in subscription price shall be allowed if correction in cost is required due to publisher's change in price.
7. Decreases in subscription price shall be refunded or credited, as specified, to the Authorized User promptly.
8. The Contractor shall, upon request from the Authorized User, provide proof of Publisher List Prices and increases or decreases in Publisher List Prices for specific titles.
9. Additional fees which are passed on by the publishers, e.g. licensing fees, shall be listed separately on invoices.

**Optional**

If available and/or possible, Contractor to advise Authorized Users if the following may be provided:

1. Authorized User fund code.
2. Information indicating if charge is for a renewal or new order.
3. Information identifying “bill later” or “bill as” published titles.
4. On supplemental invoices, the original invoice number.
5. Availability of title in electronic format.
6. Customized Invoicing

**Claims**

1. The Contractor shall be responsible for claiming all issues reported as not received or received damaged or defective by the Authorized User.
2. The Contractor shall promptly process claim notices in a timely manner not to exceed the claim period permitted by the Publisher.
3. The Contractor shall provide claim reports no less frequently than bimonthly.
4. Claim reports shall provide the following information:
  - a. Date of claim report.
  - b. Title(s) being claimed.
  - c. Issue(s) being claimed.
  - d. Date(s) of prior claim(s).
  - e. Publisher's response, if any.
5. The Contractor may accept and respond to claims by U.S. mail, facsimile, electronic mail, courier service, or online.

**Conversion to New Contractor by Authorized Users**

1. Renewal orders requested by Authorized Users shall be placed at least two months before expiration of current subscriptions.

2. If an interruption in service results from a change in a Contractor, any issues not received shall be obtained by the Contractor who received payment for that period at no additional cost to the Authorized User. Delivery to the Authorized User shall be made by the original Contract delivery and at no extra cost to the Authorized User.
3. If duplicate issues are received as a result of change in Contractors and the Publisher required their return, the Contractor shall be responsible for resolving the problem and shall absorb any associated costs.

**Reports**

1. The Contractor may send the Authorized User a monthly statement showing the date and amount of each outstanding invoice and credit memorandum.
2. The Contractor shall notify the Authorized User of title changes and discontinued titles and provide information on titles that are slow, delayed, or irregular, either as they occur or on a monthly basis.
3. At the Authorized User's request the Contractor shall provide a printed customized list of titles arranged alphabetically or according to specifications defined by the Authorized User.
4. Upon request, the Contractor may be required to provide the Authorized User with a price analysis report showing a 1-3 year Publisher List Price comparison of titles ordered. This report can be arranged by title, country of publication, or by codes defined by the Authorized User.
5. If available, Contractor may provide an industry-wide summary of statistical data and analyses.
6. Upon request, the Contractor shall provide a report showing changes in Publisher subscription periods, quantities ordered, and publishers' new requirements.
7. All reports between the Contractor and the Authorized User shall be in writing, and may be electronically transmitted.

**Licensing Terms and Conditions for Electronic Publication****Authorized User Access to Electronic Publications**

1. Access: Access to the Electronic Publications by Authorized Users shall be either via electronic media or the Internet. If access is provided via the Internet, the Contractor shall ensure that the Electronic Publications are highly stable and usable (including average response time of less than 5 seconds, and uptime, except for scheduled maintenance, of 96.9%), and shall ensure that the Web server(s) is (are) fully capable of serving Authorized Users. Access shall be controlled by Internet Protocol (IP) addresses, passwords or other appropriate authentication technology.
2. If the license rights are based on a named user model, an Authorized User will prepare and submit to the Contractor a list of End Users that shall include name, address, and contact information.
3. License Scope: The Contractor and the State agree that the license for the Electronic Publications shall be governed as set forth below:
  - a. Authorized User is granted a non-exclusive, transferable, term license to access and use the electronic publications in accordance with this Contract. The license term for the Electronic Publications license shall commence upon the license effective date.
  - b. It shall be the obligation of the Authorized User to review and comply with the terms and conditions of the License Agreement if one is required by the publisher to use the Electronic Publication or electronic content to the extent that they do not conflict with the terms of Appendix A, Appendix B, this Solicitation or any resultant Contract.
  - c. Permitted License Transfers: As Authorized User's business operations may be altered, expanded or diminished, Electronic Publication licenses may be transferred or combined for use at an alternative or consolidated site not originally specified in the license, including transfers between Authorized Users and/or their End Users ("permitted license transfers"). Contractor shall have the discretion to issue new login credentials when a license transfer takes place.
  - d. Concurrent Use License: Where licensing of Electronic Publications is based upon "Concurrent Users," Contractor hereby grants license rights to the specified number of Concurrent Users actually executing the licensed programs, without reference to location or named End Users (hereinafter "Concurrent Users").

**Contractor's Performance Obligations**

1. The Contractor will provide and maintain help files and other appropriate user documentation for the Electronic Publications to be accessible to all Authorized Users free of charge.
2. The Contractor will offer reasonable levels of continuing support to assist Authorized Users and their End Users in their use of the Products. Contractor will make its personnel available by email, phone or fax during regular Business Days.

**Authorized User Performance Obligations**

Authorized Users acknowledge that the copyright and title to the information content and organization of the Electronic Publications are and remain with the publisher. Authorized User shall use reasonable efforts to inform its End Users and walk-in patrons of any restrictions on the use of the Electronic Publications. Authorized User shall use reasonable efforts to protect the Electronic Publications from any use that is not permitted under this agreement. Authorized Users and/or End users may make all use of the Electronic Publications as is consistent with the Fair Use Provisions of United States and international copyright laws and the Bidder's/Contractor's terms and conditions for use of its online services, provided that they do not conflict with the terms of Appendix A, this Solicitation or any resultant Contract, or Appendix B,. In addition, the Electronic Publications may be used as follows:

1. Authorized Users and End Users may display, download, copy and/or print portions of the Electronic Publications for use in research, education, or other non-commercial purposes.
2. Authorized Users and End Users may use a reasonable portion of the Electronic Publications in the preparation of educational materials.
3. Authorized Users may fulfill occasional requests from other institutions, a practice commonly called Interlibrary Loan. Authorized Users agrees to maintain records respecting End User's use of materials in such Interlibrary Loan and to provide such records to the Contractor upon request.

**Specific Restrictions on Use of Electronic Publications**

Authorized User may not utilize the Electronic Publications for commercial purposes, including but not limited to the sale of the Electronic Publications, fee-for-service use of the Electronic Publications, or bulk reproduction or distribution of the Electronic Publications in any form; nor may Authorized User impose special charges for use of the Electronic Publications beyond reasonable printing or administrative costs.

**Licensing Terms and Conditions**

Bidders are advised to review all terms and conditions carefully; particularly the licensing terms and conditions for Electronic Publications. If license agreement, shrink-wrap or click wrap agreements are associated with Electronic Publications, it is the responsibility of the potential Bidder/Contractor to offer only those Serials in electronic format that satisfy the license terms and conditions of the Solicitation. License terms that conflict with the terms of Appendix A, Appendix B, this Solicitation or any resultant Contract shall not be enforceable.

**PERFORMANCE REQUIREMENTS – LOT 2 – DATABASE ACCESS:****System Availability**

Databases shall be functional at least 99% of the time.

**Scheduled Maintenance**

Contractor must notify Authorized Users at least 48 hours prior to scheduled maintenance that interrupts End User access to Databases. OGS requests that scheduled maintenance **NOT** be performed during normal Business Days.

**RSS Feeds**

Contractors shall indicate on their Pricelist if RSS Feeds are allowed, and if so, if they are included in the price of the resource.

**CONTRACT PERIOD AND RENEWAL:**

The Contract(s) shall commence after all necessary approvals by both parties, and shall become effective upon mailing of the final Contract Award Notice by OGS (see Appendix B, §22, Contract Creation/Execution). The



Contract(s) shall be in effect for five (5) years beginning on the date of approval of the first contract awarded as a result of the IFB, and shall end conterminously five (5) years from the approval of the first contract awarded as a result of the IFB. If mutually agreed between OGS and the Contractor, the Contract may be renewed under the same terms and conditions for up to two (2) additional years. Discount reduction will not be allowed and is specifically excluded from the terms and conditions of the Invitation for Bid and resultant Contract. Price decreases or discount increases are permitted at any time.

**SHORT TERM EXTENSION:**

In the event a replacement Contract has not been issued, any Contract let and awarded hereunder by the State, may be extended unilaterally by the State for an additional period of up to one (1) month upon notice to the Contractor with the same terms and conditions as the original Contract including, but not limited to, quantities (prorated for such one month extension), prices, and delivery requirements. With the concurrence of the Contractor, the extension may be for a period of up to three (3) months in lieu of one (1) month. However, this extension terminates should a replacement Contract be issued in the interim.

**PERIODIC RECRUITMENT:**

The State reserves the right to add Contractors beginning in the second year of the Contract and at one year intervals thereafter. The State will formally announce when the bid is reissued, at the discretion of the State. Bidders shall be required to submit such Bid documentation as required by OGS, which may include additional applicable statutory requirements currently in effect at the time of the new Bid solicitation. Once awarded a Contract, a Contractor may not resubmit a Bid for future consideration. In addition, if a Bid is deemed non-responsive or is rejected under periodic recruitment, a Bidder cannot reapply for a future Contract until the next periodic recruitment period. For Contracts that are awarded under periodic recruitment, the Contract term will commence upon OGS approval in accordance with §22, *Contract Creation/Execution* of Appendix B and will terminate on the then current end date of the Contract or at the end of any approved extension or renewal period.

Bidders shall be required to submit this original bid document which may include additional applicable statutory requirements currently in effect at the time of the new bid solicitation. Bidders are advised to review the "Qualification of Bidders" clause before submitting a bid under periodic recruitment to ensure they can meet all bid requirements.

**CONTRACT ADVERTISING:**

In addition to the requirements set forth in Appendix B §21, *Contract Publicity*, any Contractor advertisements, promotional literature and/or Contract description(s) of Contract awards must be reviewed and approved by Procurement Services prior to issuance.

**MINIMUM ORDER:**

There is no minimum order requirement.

**NEW YORK STATE PURCHASING CARD:**

See "Purchasing Card" in Appendix B, §15, *Purchasing Card*. Contractors indicated on their Contractor's Information Page if they will accept the NYS Purchasing Card for orders not to exceed \$85,000. For all purchases executed using a New York State Purchasing Card, Contractor shall provide an itemized receipt with each delivery. Contractor shall state the discount offered when using the NYS Purchasing Card on each Contractor's Information page.

**CONTRACT ORDERS:**

Contractor shall be capable of accepting orders manually, via facsimile, and, electronically via email. As an option, Contractor may also accept orders electronically via the Internet through a web-based ordering system. Contractor shall be required to provide written quotes to Authorized Users who request them prior to placing an order, which quote details the SKU corresponding with the approved product list, List Price, discount, and Net Price, as applicable.

The web-based ordering system, if offered, shall allow Authorized Users to enter orders and have full order inquiry capabilities. All orders (manual, fax, electronic) shall reference requisition and/or purchase order number as required. If offering a web-based ordering system, the Bidder represents and warrants that it is the sole owner of the software product used for its ordering system, or, if not the owner, has received all proper authorizations from the owner to license the software product, and has the full right and power to grant the rights contained in any Contract resulting from this Invitation for Bids and as described further in Appendix B. Bidder further warrants and represents that the software product is of original development, and/or that the package and its use will not violate or infringe upon any patent, copyright, trade secret or other property right of any other person/company.

The web-based ordering system\*, if offered, shall be capable of processing, controlling, documenting, and reporting on the following minimum data elements:

- Contractor Name and Address
- Agency/Facility/Political Subdivision, etc.
- Contract Number
- Purchase Order/Requisition Numbers
- Contact (individual placing order)
- SKU/PN & Product Description
- Net Price
- Extended and Total Amounts

\*Comparable systems meeting the intent of the specifications may be considered.

If offering a web-based ordering system, the Contractor shall provide any necessary software (excluding communication software) and training guides/manuals or online support in the use of the web-based ordering system at no additional cost to all Authorized Users capable of placing orders electronically. Samples of software and training guides/manuals may be required. If requested, Bidder must demonstrate its system at an Albany, NY area location designated by the State.

#### **INTERNET WEBSITES:**

The State encourages successful Bidders to provide a designated NYS Contract website for Authorized Users' direct access. This website will be listed under the Contractor information. The purpose of a dedicated website is to provide Authorized Users with access to Contract pricing and Product offerings and the option of online ordering. It is the Contractor's responsibility to ensure that Contract and related information is accurately and completely posted, maintained and displayed in an objective and timely manner which renders it clearly distinguishable from other, non-contract offerings at Contractor's web site. Changes in Products or pricing must be approved by the Office of General Services, Procurement Services in accordance with any terms included in this Solicitation and resultant Contract prior to addition to the website. Hard copy catalog and pricelists, either in paper format or electronic format, must be available to all Authorized Users who either do not have Internet access or prefer the optional format.

#### **PURCHASE ORDERS AND INVOICING:**

All Purchase Orders and invoices shall include the Contract number and a line by line listing of separate charges. Order confirmation shall mean that the Contractor has received the purchase order, has reviewed it for compatibility with the Item currently on Contract, has resolved any non-compatibility problems with the Authorized User, and has entered the order, assigned an order number with anticipated delivery date.

##### **Purchase Orders**

Purchase orders are to include the following information:

1. Contract number
2. Contractor name
3. ISSN and Product/service description
4. Net Price

**Invoices**

Authorized Users are instructed not to process invoices that do not include the required information set forth below. Invoices must be detailed and include in the body of the invoice or an attachment to the invoice **all** of the following items. Failure to comply may result in lengthy payment delays. Original invoices must follow the billing instructions contained in the purchase order. Invoices shall include, at a minimum, the following information:

1. Contract number
2. Contractor name
3. NYS Vendor Identification Number
4. Purchase Order number
5. ISSN and Product/service description
6. Line item breakdown of all charges to include Net Price of each Product/service

Note that additional information is required for invoices for Lot 1 – Serials Products in accordance with Section *Performance Requirements – Lot 1 - Serials*.

Business units or branch offices within an Authorized User may require separate invoicing as specified by each Authorized User. The Contractor's billing system must be flexible enough to meet the needs of varying accounting systems in use by different Authorized Users.

**SOFTWARE:**

Software offered must be in a format that does not require any conversion by the Authorized User and shall:

1. be available as part of the Contractor's standard commercial offerings; and
2. be directly related to the operational function of the Products offered under the contract.

Any Software currently on the NYS Miscellaneous Software Catalog contract Prohibited List is excluded from purchase under this Contract, except when the Software is pre-loaded on equipment at the time of purchase. The Prohibited List may be accessed on the OGS website:

<http://www.ogs.ny.gov/purchase/snt/awardnotes/79518Prohibited.pdf>.

**RELATED THIRD PARTY PRODUCTS:**

Third Party Products which meet and comply with all of the following criteria may be authorized for sale under this Contract:

1. The Third Party Product is available as part of the Contractor's standard commercial offerings.
1. The Third Party Product fits the scope of and is directly related to the operation of Products that fit the scope of the Contract.
2. If the Third Party Product is available on another NYS Contract, such item will only be approved for inclusion on this Contract in accordance with Section titled, *Overlapping Contract Items*. If the Third Party Product is not available on another NYS Contract, then price reasonableness must be established in order for such item to be added to the Contract.

**USE OF RESELLERS/DISTRIBUTORS/ALTERNATE CHANNEL PARTNERS:**

Contractor must provide service, sales and support staff to service Authorized Users geographically located at multiple purchasing locations throughout New York State. Contractor shall ensure that sufficient resources are available directly, or through authorized Resellers to ensure maximum service capability throughout the State. The State agrees to permit Contractor to utilize approved, designated value added resellers (VARs), distributors, dealers, and sales agents to participate as alternate channel partners (collectively referred to as "Resellers") for Contractor. Such participation is subject to the following conditions:

1. Designation of Reseller(s): Contractor shall specify whether orders must be placed directly with Contractor, or may be placed directly with designated Reseller(s). When Reseller(s) are submitted for approval, Contractor must provide the State, in advance, with all necessary ordering information, billing addresses, Federal

Identification Numbers, and NYS Vendor Identification Numbers in the format requested in Reseller Directory. Failure to accurately provide all required information may result in processing delays.

2. Conditions of Participation: Reseller(s) must be approved in advance by the State as a condition of eligibility under the Contract. The State also reserves the right to rescind any such participation or request that Contractor name additional Resellers, in the best interests of the State, at the State's sole discretion, at any time. Contractor shall have the right to qualify Reseller(s) and their participation as fulfillment agents under this Contract by product line, contracting program (e.g., government/educational sales), geographic region, size/sales volume, technical training or other criteria ("qualifying criteria"), provided that: i) such qualifying criteria are uniformly applied to all potential Resellers based upon Contractor's established, neutrally applied commercial/governmental program criteria, and not to a particular procurement; ii) all general categories of qualifying criteria must be disclosed by the Contractor to the State, in advance, at the beginning of the Contract term; iii) those qualifying criteria met by the Reseller must be identified on the form provided in Reseller Directory at the time that Reseller approval is requested under this paragraph; and iv) immediate advance notice is provided to OGS in the event that a change in Reseller's status occurs during the Contract term.
3. All Resellers who have been approved in accordance with the foregoing paragraph shall be eligible to quote lower than Contract pricing for procurements under this Contract which meet their qualifying criteria. Except as otherwise set forth in Reseller Directory, Contractor warrants and represents that it shall not, directly or indirectly, by agreement, communication or any other means, restrict any Reseller's participation or ability to quote a particular order. Reseller Directory updates will be allowed no more than twice annually. On the first business day of the month following the sixth and twelfth months of each contract year, Contractors shall be given an opportunity to submit revised Reseller Directories electronically. When submitting Reseller Directory updates, Contractors shall be required to separately specify additions, deletions, and/or any other changes to the directory in an accompanying communication submitted with the request in order to facilitate a more expeditious review; failure to do so may result in the rejection of the request.
4. Responsibility for Reporting/Performance: Contractor shall be fully liable for Reseller(s)' performance and compliance with all Contract terms and conditions. Product purchased through Reseller(s) must be reported by Contractor in the required monthly reports to the State as a condition of payment. In addition to inclusion of Reseller(s) volume in the Contractor's monthly reporting obligation to the State, at the request of Authorized User, Reseller(s) shall provide Authorized User with quarterly reports of the individual Authorized User's Contract activity with Reseller.
5. Applicability of Contract Terms: Product ordered directly through Reseller(s) shall be limited to Products currently approved for inclusion under this Contract and shall be subject to all terms and conditions of this Contract as a condition of Reseller participation.

#### CANCELLATION OF PURCHASE ORDERS:

Cancellation of orders in part or whole for unavailable Products shall be made by means of appropriate notations and adjustments on orders returned by Contractor to the Authorized User. Contractors shall make no shipments of canceled Products except on the basis of a new order. Products not supplied by the Contractor may be purchased from any other Contract source.

#### CONTRACT PAYMENTS:

Payments cannot be processed by Authorized Users until the items have been delivered and accepted. Payment will be based on any invoice used in the Contractor's normal course of business. However, such invoice must contain all requirements in Section *Purchase Orders and Invoicing*.

#### CONTRACT ADMINISTRATOR:

Contractor must provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Contractor must notify OGS within five (5) Business Days if its Contract Administrator changes, and provide an interim contact person until the position is filled. Changes to Contractor contact information, including the designation of a new Contract Administrator, shall be submitted electronically via e-mail to the OGS Contract Management Specialist.

**TOLL-FREE NUMBER/AUTHORIZED USER ASSISTANCE:**

A Bidder must provide a toll-free telephone number for the Authorized User assistance under any Contract or purchase order resulting from this Solicitation. Bidder must staff this toll-free number at a minimum from 8:00 a.m. to 5:00 p.m. ET Monday through Friday, excluding NYS holidays. If Bidder does not currently maintain a toll-free number, the Bidder must be willing to establish one prior to award of Contract. Bidders may also offer online assistance, such as email or chat assistance.

**INSURANCE REQUIREMENTS:**

The Contractor shall with the Insurance Requirements of the bid solicitation. Within thirty (30) days after renewal or replacement of any policy required by any Contract resulting from this solicitation, or within three (3) business days of request, Bidders and Contractors shall supply OGS with updated replacement Certificates of Insurance, and amendatory endorsements.

**REPORT OF CONTRACT SALES:**

Contractor shall furnish a report semiannually of all Products purchased under the Contract during each semiannual period, no later than the 15th of the month following the close of each six month period. Purchases by Non-state agencies, political subdivisions and others authorized by law shall be reported in the same report and indicated as required. If resellers are utilized, the Contractor shall be responsible for consolidating all contract purchases into a single report. A template for such report is included in Attachment 9 - *Report of Contract Sales*. All fields of information shall be accurate and complete. The report is to be submitted electronically via electronic mail utilizing the template provided in Microsoft Excel 2013, or lower version (or as otherwise directed by OGS), to the attention of the OGS contract manager and shall reference the Group Number, Award Number, Contract Number, and Sales Period. OGS reserves the right to amend the report template during the Contract term.

Contractor shall specify if any resellers are NYS Certified Minority and/or Women-Owned Business Enterprises (MWBEs) within the Report of Contract Sales document. Contractor shall refer to Section *Contractor Requirements and Procedures for Business Participation Opportunities for New York State Certified Minority and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women* for information on how to verify certified status.

**AUTHORIZED USER SALES REPORT:**

Upon written request by an Authorized User, the Contractor shall furnish to such Authorized User, on a monthly basis, a report listing the following: name of products purchased, quantity purchased, unit price and total dollar volume of purchases.

**CONTRACTOR REQUIREMENTS AND PROCEDURES FOR EQUAL EMPLOYMENT AND BUSINESS PARTICIPATION OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND NEW YORK STATE CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES:****Policy Statement**

The New York State Office of General Services (“OGS”), as part of its responsibility, recognizes the need to promote the employment of minority group members and women and to ensure that certified minority- and women-owned business enterprises have opportunities for maximum feasible participation in the performance of OGS contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority- and women-owned business enterprises had a full and fair opportunity to participate in State contracting. The findings of the study were published on April 29, 2010, under the title “The State of Minority- and Women-Owned Business Enterprises: Evidence from New York” (the “Disparity Study”). The Disparity Study found evidence of statistically significant disparities between the level of participation of minority- and women-owned business enterprises in State procurement contracting versus the number of minority- and women-owned business enterprises that were ready, willing and able to participate in State procurements. As a result of these findings, the Disparity Study made

recommendations concerning the implementation and operation of the Statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that OGS establish goals for maximum feasible participation of New York State certified minority- and women-owned business enterprises (“MWBE”) and the employment of minority groups members and women in the performance of New York State contracts.

**General Provisions**

OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.

The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State certified minority- and women-owned business enterprises (“MWBEs”). Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, State or local laws.

The Contractor further agrees to be bound by the provisions of Article 15-A and the MWBE Regulations. If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.

Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility, breach of contract, withholding of funds, suspension or termination of the Contract and/or such other actions or enforcement proceedings as allowed by the Contract.

**Equal Employment Opportunity (EEO)**

Contractor shall comply with the provisions of Article 15-A set forth below. These provisions apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000, for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting State agency (the “Work”) except where the Work is for the beneficial use of the Contractor.

1. Contractor and subcontractors shall undertake or continue existing EEO 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, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate or distinct from the Contract; or (ii) employment outside New York State.
2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor’s equal employment opportunity policy.

**Form EEO 100 – Staffing Plan**

To ensure compliance with this section, the Contractor agrees to submit or has submitted with the Bid a staffing plan on Form EEO 100 to OGS to document the composition of the proposed workforce to be utilized in the

performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.

**Form EEO - 101 - Workforce Utilization Reporting Form (Commodities and Services) (“Form EEO-101-Commodities and Services”)**

The Contractor shall submit, and shall require each of its subcontractors to submit, a Form EEO-101-Commodities and Services to OGS to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Form EEO-101-Commodities and Services must be submitted electronically to OGS at EEO\_CentCon@ogs.ny.gov on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January. Separate forms shall be completed by Contractor and any subcontractor.

If Contractor’s EEO Form 100 - Staffing Plan provides that Contractor is unable to separate out the actual workforce utilized in the performance of the Contract from its total workforce, the following clause shall apply: Contractor and OGS agree that Contractor is unable to separate out the workforce utilized in the performance of the Contract from Contractor’s and/or subcontractor’s total workforce and that the information provided on the previously submitted Staffing Plan is Contractor’s total workforce during the subject time frame, not limited to work specifically under the Contract.

Contractor shall comply with the provisions of the Human Rights Law, all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall 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 and conviction and prior arrest.

**Contract Goals**

For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers and suppliers to Contractor. Contractor is, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528> Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women’s Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

**Good Faith Efforts**

Pursuant to 5 NYCRR § 142.8, evidence of good faith efforts shall include, but not be limited to, the following:

1. A list of the general circulation, trade and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers and copies of such solicitations and any responses thereto.
2. A list of the certified MWBEs appearing in the Empire State Development MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
3. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with or obtaining supplies from certified MWBEs.
4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.

5. Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
6. Other information deemed relevant to the request.

ALL FORMS ARE AVAILABLE AT: <http://www.ogs.ny.gov/MWBE/Forms.asp>

**NEW YORK STATE FINANCIAL SYSTEM (SFS):**

New York State is currently operating on an Enterprise Resource Planning (ERP) system, Oracle PeopleSoft software, referred to as the Statewide Financial System (SFS). SFS is currently on PeopleSoft Financials version 9.2 Bundle 18, operating on PeopleTools version 8.49.33. SFS supports requisition-to-payment processing and financial management functions.

The State is also implementing an eProcurement application that supports the requisitioning process for State Agencies to procure goods and services in SFS. This application provides catalog capabilities. Vendors with Centralized Contracts have the ability to provide a “hosted” or “punch-out” catalog that integrates with SFS and is available to Authorized Users via a centralized eMarketplace website. There are no fees required for a Vendor’s participation in the catalog site development or management. Upon completion and activation of an on-line catalog, State Agencies will process their orders through the SFS functionality and other Authorized Users can access the catalog site to fulfill orders directly.

The State is also implementing the PeopleSoft Inventory module in the near future to track inventory items within the item master table. Further information regarding business processes, interfaces, and file layouts may be found at: [www.sfs.ny.gov](http://www.sfs.ny.gov) and <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

**USE OF RECYCLED OR REMANUFACTURED MATERIALS:**

New York State supports and encourages vendors to use recycled, remanufactured or recovered materials in the manufacture of products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the product or packaging unless such use is precluded due to health or safety requirements or product specifications contained herein. Refurbished or remanufactured components or products are required to be restored to original performance and regulatory standards and functions and are required to meet all other requirements of this Contract. Warranties on refurbished or remanufactured components or products must be identical to the manufacturer's new equipment warranty or industry's normal warranty when remanufacturer does not offer new equipment. See Appendix B, §38, *Repaired or Replaced Products, Parts or Components*.

**BULK DELIVERY AND ALTERNATE PACKAGING:**

New York State encourages the use of innovative packaging that reduces the weight of packaging and the generation of packaging waste. A contractor is encouraged to use reusable materials and containers and to utilize packaging configurations that take advantage of storage containers designed to be part of the product for the shipment of multi-unit purchases. New York State recognizes that these packaging methods are in the development stage and may not be currently available. Authorized Users are urged to inquire about these programs at the time of purchase and determine the best solution for their needs.

**SURPLUS/TAKE-BACK/RECYCLING:**

1. A State agency is reminded of its obligation to comply with the NY State Finance Law §§167, Transfer and Disposal of Personal Property, and 168, The Management of Surplus Computer Equipment, regarding transfer and disposal of surplus personal property before utilizing take-back, recycling, or other options for disposition of equipment that is still in operable condition.
2. If Contractor offers a take-back/recycling program, then Contractor shall provide a record of disposition to each Authorized User who participates in the take-back/recycling program for units transferred for disposition. Contractor shall provide documentation that the units were disposed of in an environmentally sound manner in compliance with applicable local, state and federal laws. See Section 3 below for specific requirements governing electronic equipment recycling.
3. The NYS Department of Environmental Conservation (DEC) Electronic Equipment Recycling and Reuse Act



(“Act”) (Environmental Conservation Law, Article 27, Title 26, Electronic Equipment Recycling and Reuse), requires manufacturers to establish a convenient system for the collection, handling, and recycling or reuse of electronic waste. If Contractor is a manufacturer of electronic equipment covered by the Act, Contractor agrees to comply with the requirements of the Act. More information regarding the Act can be found on the DEC website at: <http://www.dec.ny.gov/chemical/65583.html>.

4. If a Contractor offers a take-back/recycling program or offers an electronic equipment recycling program pursuant to the Act, and an Authorized User participates in same, then the Authorized User shall ensure the destruction of all data from any hard drives surrendered with the machines/covered electronic equipment. Contractor shall not require an Authorized User to surrender the hard drive, as an Authorized User may wish to retain the hard drive for security purposes. Contractor shall advise the Authorized User in advance if the retention of the hard drive results in additional fees or reduction in trade-in value. It is recommended that an Authorized User use a procedure for ensuring the destruction of confidential data stored on hard drives or other storage media that meets or exceeds the National Institute of Standards and Technology (NIST) Guidelines for Media Sanitation as found in NIST Special Publication 800-88.

#### ENVIRONMENTAL ATTRIBUTES AND NYS EXECUTIVE ORDER NUMBER 4:

New York State is committed to environmental sustainability and endeavors to procure products with reduced environmental impact. One example of this commitment may be found in Executive Order No. 4 (Establishing a State Green Procurement and Agency Sustainability Program), which imposes certain requirements on state agencies, authorities, and public benefit corporations when procuring commodities, services, and technology. More information on Executive Order No. 4, including specifications for offerings covered by this Contract, may be found at: <http://ogs.ny.gov/EO/4/Default.asp>. State entities subject to Executive Order No. 4 are advised to become familiar with the specifications that have been developed in accordance with the Order, and to incorporate them, as applicable, when making purchases under this Contract.

#### PREFERRED SOURCE PRODUCTS:

Section 162 of the State Finance Law requires that agencies, including Executive Agencies, afford first priority to the products of preferred source suppliers such as Corcraft (the marketplace name for the NYS Department of Corrections and Community Supervision, Division of Industries), New York State Preferred Source Program for People who are Blind (NYSPSP), and New York State Industries for the Disabled (NYSID), and others determined by law, when such products meet the form, function and utility of the agency. Some products in the resultant Contract(s) may be available from one or more preferred sources. An Authorized User must determine if a particular commodity or service is approved for a Preferred Source and follow the requirements of State Finance Law Section 162(3) or (4)(b), respectively, before engaging the Contractor.

#### NEW YORK STATE VENDOR RESPONSIBILITY:

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS 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.

The Commissioner of OGS or her designee, her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when 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 Commissioner of OGS or her designee issues a written notice authorizing a resumption of performance under the Contract. The Contractor agrees that if it is found by the State that the Contractor's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Contract.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Contract may be terminated by the Commissioner of OGS or her designee at the Contractor's expense

where the Contractor is determined by the Commissioner of OGS or her designee to be non-responsible. In such event, the Commissioner of OGS 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.

In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

**NEW YORK STATE TAX LAW SECTION 5-A:**

Tax Law Section 5-a requires certain Contractors awarded state Contracts for commodities, services and technology valued at more than \$100,000 to certify to NYS Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to Contracts where the total amount of such Contractors' sales delivered into New York State is in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

Contractors may consult with DTF's website at <http://www.tax.ny.gov/> for additional information and frequently asked questions.

**OVERLAPPING CONTRACT ITEMS:**

Products available in the resulting Contract may also be available from other New York State Contracts. Authorized Users will be advised to select the most cost effective procurement alternative that meets their program requirements and to maintain a procurement record documenting the basis for this selection.

**NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS:**

New York State political subdivisions and others authorized by New York State law may participate in contracts. These include, but are not limited to local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See Appendix B, §25, *Participation in Centralized Contracts*. For purchase orders issued by the Port Authority of New York and New Jersey (or any other authorized entity that may have delivery locations adjacent to New York State), the terms of the "Price" clause shall be modified to include delivery to locations adjacent to New York State.

Upon request, all eligible non-State agencies must furnish contractors with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. A list of categories of eligible entities is available on the OGS web site ([www.ogs.state.ny.us](http://www.ogs.state.ny.us)). Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to OGS Procurement Services' Customer Services at 518-474-6717.

**NOTE TO ALL NON-STATE AGENCIES AND BIDDERS:**

All such participating non-State agencies and Bidders understand, acknowledge and agree that the primary responsibility in regard to performance of the Contract, of any obligation, covenant, condition or term thereunder by either such party thereto shall be borne and is expressly assumed by the participating non-State agencies and Contractor and not by the State. In the event of a failure or breach in performance of any such Contract by a non-State Agency or Contractor, the State specifically and expressly disclaims any and all liability for such defective performance or breach, and the eligible participating non-State agencies and Contractor guarantee to save the State, its officers, agents and employees harmless from any liability that may be or is imposed by the failure of either party to perform in accordance with its obligations, covenants and the terms and conditions of the State Centralized Contract.

**EXTENSION OF USE:**

The contract may be extended to additional States or governmental jurisdictions upon mutual written agreement between New York State (the lead contracting State) and the Contractor. Political subdivisions and other authorized

entities within each participating State or governmental jurisdiction may also participate in any resultant Contract if such State normally allows participation by such entities. New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

**CONTRACTOR PERFORMANCE:**

Authorized Users should notify the Procurement Services Contract administrator promptly if the Contractor fails to meet the requirements of this Contract. Performance which is otherwise unsatisfactory to the Authorized User should also be reported to Procurement Services.

**MERCURY-ADDED CONSUMER PRODUCTS:**

Contractor agrees that it will not sell or distribute fever thermometers containing mercury or any products containing elemental mercury for any purpose under this Contract.

**UNANTICIPATED EXCESSIVE PURCHASE:**

The State reserves the right to negotiate lower pricing, or to advertise for bids, any unanticipated excessive purchase. An “unanticipated excessive purchase” is defined as an unexpected order for a Contract product(s) totaling more than \$50,000.00.

**AMERICANS WITH DISABILITIES ACT (ADA):**

The Federal ADA Act, signed into law July 26, 1990, bars employment discrimination and requires all levels of Government to provide necessary and reasonable accommodations to qualified workers with disabilities. Contractors are required to identify and offer any software or hardware products they manufacture or adapt which may be used or adapted for use by visually, hearing, or any other physically impaired individuals. Although it is not mandatory for Contractors to have this equipment in order to receive an award, it is necessary to identify any such equipment offered they have which falls into the above category.

**ADDITIONAL REQUIREMENTS:****1. NO DRUGS OR ALCOHOL**

For reasons of safety and public policy, in any Contract resulting from this procurement, the use of illegal drugs and/or alcoholic beverages by the Contractor or its personnel shall not be permitted while performing any phase of the work herein specified.

**2. TRAFFIC INFRACTIONS**

The State will not be liable for any expense incurred by the Contractor for any parking fees or as a consequence of any traffic infraction or parking violations attributable to employees of the Contractor.

**WEBSITE ACCESSIBILITY:**

Responsibility for Content: Contractor is solely responsible for administration, content, intellectual property rights and all materials at Contractor's website. Contractor is solely responsible for its actions and those of its agents, employees, resellers, Sub-Contractors or assigns, and agrees that neither Contractor nor any of the foregoing has any authority to act or speak on behalf of the State. As applicable, Contractor agrees to comply with the Office of Information Technology Services f/k/a Office for Technology policy NYS-P08-005 Accessibility of Web-Based Information and Applications, as may be amended, the stated purpose of which is to make State Agency web-based Intranet and Internet information accessible for persons with disabilities. In accordance with such policy, the following language is incorporated into any Contract resulting from this procurement:

Any web-based information and applications development, or programming delivered pursuant to the contract or procurement, 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 (state agency name, contractor or other) and

the results of such testing must be satisfactory to (state agency name) before web-based information and applications will be considered a qualified deliverable under the contract or procurement.

**LICENSE AGREEMENTS:**

An Authorized User looking to acquire Products and services under a Contract resulting from this Contract must review the contractual terms and conditions. The Authorized User must ask the Contractor if “click through”, “shrink wrap” or other pass-through or licensing/subscription terms and conditions are present, and if so, the Authorized User is responsible for reviewing and approving such terms and conditions prior to ordering the Products and services. If the terms and conditions are not acceptable to the Authorized User, it is the responsibility of such Authorized User to negotiate any needed amendments. *Any additional licensing terms agreed to by the Authorized User shall not conflict with Appendix A, this Solicitation, any resultant Contract, or Appendix B. Any such conflicting terms shall be void and unenforceable.*

**APPENDIX A**

Appendix A, Standard Clauses For New York State Contracts, dated January 2014 is hereby expressly made a part of this Contract as fully as if set forth at length herein.

**APPENDIX B**

Appendix B, Office of General Services General Specifications, dated May 2015 is hereby expressly made a part of this Contract as fully as if set forth at length herein and shall govern any situations not covered by the bid document or Appendix A.

**NOTICE: THIS CONTRACT AWARD NOTIFICATION CONTAINS A SUBSET OF INFORMATION FROM THE SOLICITATION. CONTRACTS RESULTING FROM SOLICITATION 23044 HAVE BEEN EXECUTED BY CONTRACT AWARD LETTER. THE CONTRACT AWARD LETTER SETS FORTH THE ORDER OF PRECEDENCE FOR THE TERMS AND CONDITIONS OF THE EXECUTED CONTRACTS. COMPLETE CONTRACT DETAILS INCLUDING TERMS AND CONDITIONS CAN BE FOUND IN THE SOLICITATION DOCUMENT DATED REVISED FEBRUARY 1, 2018.**

**State of New York  
Office of General Services  
Procurement Services  
Contract Performance Report**

Please take a moment to let us know how this contract award has measured up to your expectations. If reporting on more than one Contractor or product, please make copies as needed. This office will use the information to improve our contract award, where appropriate. **Comments should include those of the product's end user.**

**Contract No.:** \_\_\_\_\_ **Contractor.** \_\_\_\_\_

**Describe Product\* Provided (Include Item No., if available):** \_\_\_\_\_

**\*Note:** "Product" is defined as a deliverable under any Bid or Contract, which may include commodities (including printing), services and/or technology. The term "Product" includes Licensed Software.

	Excellent	Good	Acceptable	Unacceptable
• Product meets your needs				
• Product meets contract specifications				
• Pricing				

**CONTRACTOR**

	Excellent	Good	Acceptable	Unacceptable
• Timeliness of delivery				
• Completeness of order (fill rate)				
• Responsiveness to inquiries				
• Employee courtesy				
• Problem resolution				

Comments: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_(over)

Agency: \_\_\_\_\_ Prepared by: \_\_\_\_\_

Address: \_\_\_\_\_ Title: \_\_\_\_\_

\_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_ Phone: \_\_\_\_\_

\_\_\_\_\_ E-mail: \_\_\_\_\_

**Please detach or photocopy this form & returned to:**

OGS Procurement Services  
Customer Services, 38th Floor  
Corning 2<sup>nd</sup> Tower - Empire State Plaza  
Albany, New York 12242  
customer.service@ogs.ny.gov

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