



Supplemental Contract Award Notification

Title	: Group 20070 - Books, Serials, Databases, and Library Resource Management Products Classification Code(s): 55 & 83
Award Number	: 23260 (Replaces Awards 22868 & 23044)
Contract Period	: June 6, 2023 to August 31, 2027
Bid Opening Date	: May 31, 2022
Date of Issue	: June 6, 2023
Specification Reference	: As Incorporated Herein
Contractor Information	: Appears on Page 2 of this Award

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 23260 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 MAY 13, 2022.

This contract provides Authorized Users with a means of acquiring Books, Serials, Databases, and Library Resource Management Products and Services.

Lot 1 – Printed Publications and Non-Print Library Materials, including books, non-serial publications, print periodicals, non-print library materials, and related optional Products and services.

Lot 2 – Electronic Publications, including electronic periodicals, eBooks, streaming audio and video content, datasets, and related optional Products and services.

Lot 3 – Databases, including databases, subscription online resources, and related optional Products and services.

Lot 4 – Library Resource Management and Research Support Products, including holdings management products, electronic resource management systems, resource sharing or document delivery request systems, products designed to support the research and data needs of libraries, and related optional Products and services.

This Award has 0% MBE, 0% WBE, and 0% SDVOB goal requirements.

PR #23260

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<u>CONTRACT #</u>	<u>CONTRACTOR</u>	<u>FED.IDENT.#</u>	<u>NYS VENDOR ID#</u>
PC70054	Benchmark Education Company LLC	13-3996703	1100025074
PC70055	Enformion LLC	94-3359257	1100274400
PC70056	InfoUSA Marketing, Inc. (A subsidiary of Data Axle, Inc.)	47-0794710	1000040828
PC69926	Insignia Software Corporation	98-0379116	1100275087
PC69942	Prenax, Inc.	94-3342517	1100176364
PC69949	Superior Text LLC	84-1708761	1100170101

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For complete Contractor contract information and Pricing information for this Award, please see the Contractor Information page located on the OGS Website at:
<http://online.ogs.ny.gov/purchase/spg/awards/2007023260Can.htm>

Cash Discount, If Shown, Should be Given Special Attention.

**INVOICES MUST BE SENT DIRECTLY TO THE ORDERING AGENCY FOR PAYMENT.
(See "Contract Payments" and "Electronic Payments in this document.)**

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

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 appear 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).

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ORDER OF PRECEDENCE:

The list of documents below addresses 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 23260 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 (October 2019), Standard Clauses for NYS Contracts (previously provided);
2. Contract Award Letter;
3. Clarifications to Bid documents dated May 13, 2022 (previously provided);
4. Solicitation #23260;
5. Appendix B (April 2016), General Specifications;
6. Attachment 1 – Pricing;
7. Attachment 4 – Insurance Requirements;
8. Appendix D – Federal Funding Agencies Mandatory Terms and Conditions;
9. Appendix C – Primary Security and Privacy Mandates;
10. Attachment 8 – Report of Contract Usage;
11. All other appendices and attachments to the Solicitation;
12. Contractor's Bid Prices for the Products and services awarded under the above-referenced contract number;
13. Contractor's Bid.

OVERVIEW:

This Contract is issued by the New York State ("NYS") Office of General Services ("OGS"), Procurement Services for Books, Serials, Databases, and Library Resource Management Products as specified herein for all Authorized Users eligible to purchase through this Contract. References to the State and its Agencies or Non-State Agencies as Authorized Users under this Contract encompass and include all such entities within the definition of "Authorized User" set forth in State Finance Law §163(1)(k). 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 to Authorized Users*.

ESTIMATED QUANTITIES:

All quantities or dollar values listed within this Contract are estimates. No specific quantities are represented or guaranteed and the State provides no guarantee of individual Authorized User participation. The Contractor must furnish all quantities actually ordered at or below the Contract prices. The anticipated dollar value of the award for this contract award, based on historical purchases under previous awards, is approximately \$130,000,000 annually. 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 meet their needs in the most practical and economical manner. See Appendix B, *Estimated/Specific Quantity Contracts and Participation in Centralized Contracts*.

Numerous factors could cause the actual quantities of Products purchased under a Contract to vary substantially from the estimates. Such factors include, but are not limited to, the following:

- Such Contracts may be non-exclusive Contracts.
- There is no guarantee of quantities to be purchased, nor is there any guarantee that demand will continue in any manner consistent with previous purchases.
- The individual value of each Contract is indeterminate and will depend upon actual Authorized User demand and actual quantities ordered during the contract period.
- The State reserves the right to terminate any Contract for cause or convenience prior to the end of the term pursuant to the terms and conditions of the Contract.
- Contract pricing that is lower than anticipated could result in a higher quantity of purchases by Authorized Users than anticipated.

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- Contract pricing that is higher than anticipated could result in a lower quantity of purchases by Authorized Users than anticipated.

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 Contract 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
Aggregator	A bibliographic service that provides online access to the digital full-text of library materials, including Periodicals, monographs, and media, published by different Publishers. See also, Database Publisher.
Authorized User Agreement	Authorized User Agreement shall mean the Purchase Order and/or such other documents memorializing the Contractor's obligations with respect to a given transaction issued by an Authorized User.
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 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 (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 that 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 who 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, using proprietary search software.

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Term	Definition
Database Publisher	Company that uses specialized techniques to generate documents from source data and provide to End Users through a Database. See also, Aggregator.
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, and websites. 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 Sections 107 and 108 of the Act.
Full Text Database	Contains the complete text of any documents (e.g., books, Journals, Newspapers, Magazines).
Full Time Equivalent (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 Book Number (ISBN)	A unique ten or thirteen-digit numerical commercial book identifier assigned to identify each edition or manifestation of a work.
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.
Licensing Agreement	An agreement between an Authorized User and a Contractor for the use of a product, usually for a fixed period of time, in exchange for payment.
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. Synonymous with published price, suggested retail price, and sticker price.

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Term	Definition
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.
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, 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	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; Dr. Martin Luther King, Jr. Day; Washington's Birthday (observed); Memorial Day; Juneteenth; Independence Day; Labor Day; Columbus Day; Veterans' Day; Thanksgiving Day; and Christmas Day.
NYS Vendor ID	Refers to the unique ten-character identifier issued by the NYS Office of the State Comptroller (OSC) when the vendor is registered on the Vendor File System.
Optional Products and Services	Refer to supplementary Products and services that enhance or support the provision of library materials identified to be within scope. This may include stamps; call numbers or routing labels; barcoding; security strips; processing of library materials or Journals, including affixing date and property; shipment consolidation, and MARC (Machine-Readable Cataloging) records and updates.

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Term	Definition
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.
Preferred Source Products	Those Products that have been approved in accordance with New York State Finance Law § 162.
Preferred Source Program	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 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).
Procurement Services	Business unit of OGS, formerly known as New York State Procurement ("NYSPPro") and Procurement Services Group ("PSG").
Publication	Refers to a work capable of being read or otherwise perceived (e.g., book, audio recording, video recording, 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 digital or print 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.
Request For Quotation (RFQ)	As defined in Section 2 of Appendix B.
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).

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Term	Definition
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.
SDVOB	A NYS-certified Service-Disabled Veteran-Owned Business.
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.
Trade Book	An edition produced by a trade publisher in hardcover and/or paperback publisher's binding for sale to quality booksellers and libraries. Trade editions are published for the general reader, rather than a specific segment of the market.

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."
Shall	Denotes the imperative in a Contract clause or specification. Means required - being determinative/mandatory, as well as imperative. Also, see "Must."
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 Books, Serials, Databases, and Library Resource Management Products.

This Solicitation contains a total of four (4) Lots:

Lot 1 – Printed Publications and Non-Print Library Materials

Lot 2 – Electronic Publications

Lot 3 – Databases

Lot 4 – Library Resource Management and Research Support Products

Lot 1 - Printed Publications and Non-Print Library Materials

- Books and Non-Periodical Serial Publications, including, but not limited to: domestic and foreign Publications; textbooks; books in print; books out-of-print; pre-bound books; Braille books; Large print books; rare books; legal books and materials; business/economics/finance books; social science/humanities books; science/engineering books; medical books; academic books; encyclopedias; continuations; ephemeral Publications; pamphlets (bound and unbound); government documents; annuals (reports, yearbooks, etc.); Continuing Directories; proceedings and transactions; numbered and unnumbered monographic series and sets; musical scores; and sheet music. Print materials may be purchased via blanket order or standing order. Printed Publications may be bundled with Electronic Publications if the Contractor has been awarded both Lots 1 and 2.

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2. Print Periodicals, including, but not limited to: Newspapers, Magazines, and Journals. Print materials may be bundled with electronic materials if the Contractor has been awarded both Lots 1 and 2.
3. Non-Print Library Materials, including, but not limited to: abridged and unabridged audiobooks, CD/DVD and MP3/MP4 format; microforms; DVD and Blu-ray (i.e., motion pictures, videos); compact discs; CD-ROMs (no online services); microcomputer software (educational); maps/globes/atlas/chart; video games; and audio visual materials.
4. Related Optional Products and Services, including supplementary value-added services, such as: cataloging and processing (including shelf-ready items); stamps; call numbers; routing labels; spine labels; barcode labels; security strips; Machine-Readable Cataloging (MARC) records and updates; binding and rebinding; shipment consolidation; mylar covers; due date slip/circulation cards and pockets; and reading program labels.

Lot 2 - Electronic Publications

1. Electronic Periodicals, including, but not limited to: Newspapers; Magazines; Journals; and Journal packages. Electronic materials may be bundled with print materials if the Contractor has been awarded both Lots 1 and 2.
2. eBooks, including, but not limited to: subscription-based and perpetual access purchases. eBooks may be purchased via blanket order or standing order. Electronic Publications may be bundled with Printed Publications if the Contractor has been awarded both Lots 1 and 2.
3. Streaming Audio and Video Content, including, but not limited to: subscription-based, time-defined license, and perpetual access purchases.
4. Datasets.
5. Related Optional Products and Services, including supplementary value-added services, such as: cataloging and processing; Machine-Readable Cataloging (MARC) records and updates; and hosting fees.

Lot 3 - Databases

1. Databases and Subscription Online Resources, including, but not limited to: Full-Text Databases; abstracting & indexing Databases; numeric Databases; general interest Databases; Subject Specific Databases and online resources; Database files; eBook databases; streaming audio and video Databases; and subscription online resources offering library subscriptions.
2. Related Optional Products and Services, including supplementary value-added services, such as: hosting fees, Database Customization, or Machine-Readable Cataloging (MARC) records and updates.

Lot 4 - Library Resource Management and Research Support Products

1. Holdings Management Products, including, but not limited to: Integrated Library Systems; Library Services Platforms; Discovery tools; and cataloging subscriptions.
2. Electronic Resource Management Systems, including, but not limited to: authentication systems and link resolvers; Electronic Resource Management (ERM) tools; Serials and scholarly Publication ranking services and Publication management systems; systems to manage and feature Publications, including repositories, scholarly management solutions, and faculty Publication profile management solutions; usage and analysis tools; and A-Z lists.
3. Resource Sharing or Document Delivery Request Systems, Providers, and Networks.

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4. Products designed to facilitate efficient delivery of library services and to support the research and data needs of libraries.
5. Related Optional Products and Services, including supplementary value-added services, such as: enhanced support and hosting fees.

PROCUREMENT INSTRUCTIONS TO AUTHORIZED USERS:

The Contracts are centralized Contracts issued under a multiple-award structure. Products offered under the Contracts, pricing, and other Contract information are 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.

Pursuant to State Finance Law § 163(10)(c), at the time of purchase, Authorized Users must base their selection among multiple Contracts upon which is the most practical and economical alternative that is in the best interests of the State.

1. 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 (NYSPPSP), and NYS Industries for the Disabled (NYSID) when such commodities meet the form, function and utility of the Authorized User.
2. 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 should obtain quotes from at least three (3) Contractors prior to issuing a Purchase Order for contract purchases to ensure that the Authorized User is receiving the best possible pricing. When soliciting RFQs from Contractors or submitting Purchase Orders, Authorized User should specify any federal and state laws, rules and regulations, policies, standards, and guidelines that the Contractor is required to comply with under a resultant purchase pursuant to Appendix C, Primary Security and Privacy Mandates.
3. When placing 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. Any federal and state laws, rules and regulations, policies, standards, and guidelines that the Contractor is required to comply with pursuant to Appendix C, Primary Security and Privacy Mandates, should be specified in the Authorized User Agreement. Additionally, 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).

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4. Authorized Users will issue Purchase Orders directly to the Contractor, specifying any shipping/delivery requirements and/or Statements of Work (if applicable).
5. 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.
6. *Pursuant to Product Performance Requirements, Contractor is required to 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. Authorized User should review such information during the RFQ process or prior to ordering Products and services. Documents that contain additional terms or conditions, such as library maintenance agreements or Licensing Agreements, must be disclosed to the Authorized User during the RFQ process or at the time of order submission and 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 shall 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 printed Publications. Upon mutual agreement, delivery locations may be expanded per the "Extension of Use" clause.

The Contractor'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. Contractor shall be required to quote shipping costs for foreign Publications upon request by the Authorized User prior to order placement. There shall be no increase in Contract prices for freight, shipping (foreign shipments excepted as noted above), fuel or other surcharges, FPT (Freight Pass Through), etc. during the term of the Contract.

Authorized Users may be charged additional fees, which include licensing fees, platform fees, etc. in excess of the base subscription fee for Electronic Publications. 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 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.

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.

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MINIMUM ORDER:

The minimum order for Lot 1 items on this Contract shall be \$100.00. Contractor may elect to honor orders for less than the minimum order; however, no additional charges shall be allowed. There is no minimum order requirement for Lots 2, 3, or 4.

PURCHASING CARD:

If the Contractor accepts orders using the State's Purchasing Card (see Appendix B, Purchasing Card), also referred to as the Procurement Card, the Contractor shall not charge or bill the Authorized User for any additional charges related to the use of the Purchasing Card, including but not limited to processing charges, surcharges or other fees.

ORDERS:

Purchase Orders shall be made in accordance with the terms set forth in Appendix B, *Purchase Orders*. Authorized Users may submit orders over the phone, and, if available, may submit orders electronically via web-based ordering, e-mail, or facsimile at any time. Orders submitted shall be deemed received by Contractor on the date submitted.

All orders shall reference Contract number, requisition, and/or Purchase Order number (if applicable). Upon Contractor's receipt of an order, confirmation is to be provided to the Authorized User electronically or via facsimile. Order confirmation should be sufficiently detailed, and include, at a minimum, purchase price, date of order, delivery information (if applicable), Authorized User name, and sales representative (if applicable).

WEB-BASED ORDERS:

The State encourages the Contractor to establish and maintain a dedicated NYS website specifically for the resulting Contract that has a web-based ordering system with the capability of receiving electronic orders from over 5,000 Authorized Users via the internet. The web-based ordering system shall have full order inquiry capabilities and shall acknowledge receipt of an Authorized User's order. Contractor shall be required to post a copy of Contract Pricing, in both Excel and PDF formats on the website. The website link(s) will be listed under the Contractor information on the OGS website. The Contractor's website will be the responsibility of the Contractor to maintain and keep updated. The State reserves the right to request demonstrations of the Contractor's website.

The web-based ordering system should be capable of controlling, documenting, and reporting on the following minimum data elements:

- Contractor Name and Address
- Contract Number
- Ordering Agency/Facility/Political Subdivision, etc. and Address
- Purchase Order/Requisition Numbers
- Contact (individual placing order)
- Delivery Location
- Delivery Instructions
- Stock Number
- Manufacturer
- Description
- Unit of Measure
- List Price (unit)
- Net Price (unit)

PRODUCT DELIVERY:

Delivery of all Contract Products shall be made in accordance with Appendix B, *Product Delivery and Shipping/Receipt of Product*.

(continued)

BACKORDERING:

Backordering shall be permissible only when authorized by the ordering Authorized User. Contractor shall make commercially reasonable efforts to complete orders within the guaranteed delivery period offered.

PACKING SLIPS:

A legible packing slip and/or Purchase Order copy must accompany each shipment of printed Books and Non-Print library materials. The carton containing packing slip must be so marked.

LABELING

Number of packages in a single shipment of printed Books and Non-Print library materials must be marked on outside of each carton. Purchase Order numbers, where required by the ordering Authorized User, must appear on the outside of each carton delivered.

RETURNS AND EXCHANGES:

In addition to the provisions of Appendix B, *Title and Risk of Loss, Product Substitution, and Rejected Product*, Products returned or exchanged due to quality problems, duplicated shipments, outdated Product, incorrect Product shipped, Contractor errors otherwise not specified, or Products returned or exchanged due to Authorized User errors, shall be replaced with specified Products or the Authorized User shall be credited or refunded for the full purchase price.

Contractor shall make commercially reasonable efforts to replace Products within 10 Business Days of written notification to the Contractor of the Authorized User's intent to return or exchange the Product. Contractor can charge only a restocking fee for Product returned or exchanged due to Authorized User error that is determined not to be suitable for resale; the restocking fee cannot exceed the Net Price of the returned or exchanged Product.

Any credit or refund shall be applied against the next bill/invoice submitted by the Contractor to the Authorized User. If no credit or refund, or only a partial credit or refund, is made in such fashion, the Contractor shall pay to the Authorized User the amount of such credit or refund or portion thereof still outstanding, within 30 calendar days of demand.

INVOICING AND PAYMENT:

Invoicing and payment shall be made in accordance with the terms set forth in Appendix B, *Contract Invoicing*.

The invoice must include detailed line-item information to allow Authorized Users to verify that pricing at point of receipt matches the Contract price on the original date of order. At a minimum, the following fields must be included on each invoice:

- Contractor Name
- NYS Vendor ID
- NYS Contract Number
- Authorized User name
- Authorized User's Purchase Order Number (if applicable)
- Description of Products and Services
- Invoice Date
- Invoice Number
- Unit Price(s)
- Invoice Amount
- Payment terms being offered, if other than Net 30
- Any other information or substantiating documentation the Authorized User may reasonably require.

Cost centers or branch offices within an Authorized User may require separate invoicing as specified by each Authorized User. The Contractor's billing system shall be flexible enough to meet the needs of

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varying ordering systems in use by different Authorized Users. Visit the following link for further guidance for vendors on invoicing: <https://bsc.ogs.ny.gov/nys-vendors>.

Printed and Electronic Serials Invoicing and Payments

The following terms and conditions apply to Printed and Electronic Serials Products:

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. Increases in subscription price shall be allowed if correction in cost is required due to Publisher's change in price.
6. Decreases in subscription price shall be refunded or credited, as specified, to the Authorized User promptly.
7. 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.
8. 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

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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 because of a 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.

All reports between the Contractor and the Authorized User shall be in writing and may be electronically transmitted.

CANCELLATION OF PURCHASE ORDERS FOR PRINTED PUBLICATIONS:

Cancellation of orders in part or whole for unavailable materials or for “out of stock,” “out of print,” and “not yet published” Publications 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 materials except on the basis of a new order. Titles not supplied by the Contractor may be purchased from any other Contract source.

CONTRACT PRICELIST UPDATE PROCEDURES:

Contractor may update their pricelist as follows:

Commencing with the first-anniversary date of the Bid opening, and annually thereafter, the Contractor may update the pricelist to reflect Contractor price changes and the addition/deletion of Products and services.

The Contractor shall provide OGS with one electronic copy of the updated pricing. No Price Updates will be granted to any Contractor who has outstanding Sales Reports, Proof of Insurance or any other documentation that is required under the Contract.

Contractors shall be permitted to reduce their pricing at any time during the contract term.

Any new Products and services added to pricelists shall have a discount structure consistent with existing Products and services on the Contractor's pricelist that are comparable in scope. Contractors shall submit their updated pricelist to the OGS Procurement Services contract administrator pursuant to the requirements of this section for review and written approval prior to issuing to Authorized Users or posting to the Contractor's dedicated New York State website. The State reserves the right to request copies of existing contracts or pricelists to ensure that the prices offered to the State are reasonable and commensurate with similar purchasers.

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All approved pricelist updates shall apply prospectively upon approval by OGS. Total price increases for pricelist updates in a single year of the Contract shall not exceed the escalation cap as set forth in the *Maximum Price Increase/Escalation Cap* subdivision, below. All percentage discounts shall either remain firm (unchanged) or they may increase for the duration of the Contract.

If new Products and services are to be added, the Contractor must demonstrate that the Products and services meet the scope as defined in the Scope and that Products and services will be delivered at a reasonable price as determined by OGS Procurement Services. "Reasonable prices" may be determined by reviewing percentage discounts and Net Prices offered to GSA, NASPO, prices on any previously awarded NYS Contract, pricing offered by other Contractors, contracts with other state or government entities, etc. Discount(s) on the Products and services must be equal to or better than those currently offered on Products and services similar in scope.

Pricelist Format

Contractor is required to submit Contract pricelist updates electronically in an unprotected Microsoft Excel (2016 or lower version) spreadsheet on USB flash drive or via e-mail to the OGS Procurement Services contract administrator. 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):

- Price increases;
- Price decreases;
- Products being added; and
- Products being deleted.

Contractor's Submission of Contract Updates

In connection with any Contract pricelist update, OGS reserves the right to:

- Request additional information;
- Reject Contract updates;
- Remove Products from Contracts;
- Remove Products from Contract updates; and
- Request additional discounts for new or existing Products.

Maximum Price Increase/Escalation Cap

In a single year of the Contract, the maximum price increase for each individual item on contract shall not exceed 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 Less Food and Shelter (Series Id: CUUR0000SA0L12); as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212. CPI data may be obtained at www.bls.gov.

The following example illustrates the computation of percent change:

CPI for current period	235.000
Less CPI for previous period	225.000
Equals index point change	10.000
Divided by previous period CPI	225.000
Equals	0.044
Result multiplied by 100	<u>0.044 x 100</u>
Equals percent change	4.4

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. Increases are not cumulative. Price increases are limited to the prior year prices only.

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Cover Letters

All Contract pricelist updates shall be accompanied by a cover letter describing the nature and purpose of the update (e.g., update requested to reflect a recently approved GSA Schedule or WSCA Contract pricing update, to add/delete Products, etc., subject to any applicable caps).

PRICE STRUCTURE:

If, during the Contract Term, the Contractor is unable or unwilling to meet contractual requirements in whole or in part based on the price structure of the Contract, it shall immediately notify the Office of General Services, Procurement Services in writing. Such notification shall not relieve the Contractor of its responsibilities under the Contract. The State may, but is not required to, consider an equitable adjustment in the Contract terms and/or pricing in the circumstances outlined in Appendix B, Savings/Force Majeure.

Should the Commissioner in his or her sole discretion determine during the Contract Term that (i) the Contract price structure is unworkable, detrimental, or injurious to the State, or (ii) the Contract price structure results in prices which are unreasonable, excessive, or not truly reflective of current market conditions, and no adjustment in the Contract terms and/or pricing is mutually agreeable, the State may terminate the Contract upon 10 Business Days written notice mailed to the Contractor.

BEST PRICING OFFER:

During the Contract term, if the Commissioner becomes aware that the Contractor is selling substantially the same or a smaller quantity of a Product outside of this Contract upon the same or similar terms and conditions as that of this Contract at a lower price to a federal, state or local governmental entity, the price under this Contract, after consultation with the Contractor, may be reduced to a lower price on a prospective basis at the discretion of the Commissioner. The Commissioner reserves the right to request information to verify pricing for the purposes of this clause

PRODUCT PERFORMANCE REQUIREMENTS:

A. Lot 1 – Printed Publications and Non-Print Library Materials

1. Print Books and Non-Print Library Materials Product/Performance Requirements

a. General:

Contractors offer various types of books, Non-Print library materials, and related services as set forth in *Scope*. Bindings are to meet or exceed requirements established by the National Information Standards Organization (NISO) and the Library Binding Committee (LBC) of the Book Manufacturers' Institute (LBC). The latest library standard issued by NISO and LBC is ANSI/NISO/LBI Library Binding Standard, Z39.78-2000 (R2018), unless otherwise amended. This standard is available at <http://www.niso.org/publications/z3978-2000-r2018>. Cloth bindings for hardcover Publications shall be the Publisher's standard binding. Library bindings for hardcover Publications shall be reinforced and include reinforced juvenile Publications.

Contractor must identify services and costs, which must be expressed in specific monetary amounts. Contractors must include any additional service pricing that may apply.

b. Substitutions:

Substitutions and/or additions of titles or editions shall not be permitted without prior written authorization from the ordering Authorized User. All unauthorized substitutions and/or additions shall be returned to the Contractor at the Contractor's expense. Contractor is expected to furnish the total number of copies of any one individual title in one shipment and to fill orders for multi-volume sets in one shipment to the extent possible; however, it is permissible to ship large-volume orders from publishers in batches as they are received from the publisher.

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- c. Cancellation of Purchase Orders:
Cancellation of orders in part or whole for unavailable materials or for "out of stock," "out of print," and "not yet published" Publications 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 materials except on the basis of a new order. Titles not supplied by the Contractor may be purchased from any other Contract source.
- d. Status Report:
A statement for each shipment must be provided to include a listing of unavailable products and/or a listing of titles out of print (OP), titles out of stock indefinitely (OI), titles out of stock temporarily (OS) and titles not to be supplied for other reasons. Statements may be provided in either hardcopy or digital form via email.
2. Print Periodicals Performance Requirements
- a. Orders, Renewals, and Cancellations:
- i. Subscriptions shall begin on the date specified in Contractor's order forms, based on date of submission by Authorized User and Contractor's processing date.
 - ii. 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.
 - iii. The Contractor shall provide address, Publication, merger, and title change services, etc.
 - iv. 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.
 - v. The Contractor shall cancel subscriptions as requested by the Authorized User and shall issue a credit if allowed by the Publisher.
 - vi. The Contractor shall provide pro-rated refunds or substituted titles for titles that 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.
 - vii. The Contractor shall provide a common expiration date for subscriptions (if requested by the Authorized User) unless prohibited by the Publisher.
 - viii. 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 Users may change automatic renewal status at any time and for no additional charge.
 - ix. The Contractor may provide two or three-year renewal periods but must at a minimum offer a one-year renewal period. Renewal periods may survive the expiration of this Contract, with the terms and conditions of this Contract applying to the renewal periods.
 - x. 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.
 - xi. All orders, renewals, and cancellations between the Contractor and the Authorized User shall be in writing or shall be electronically transmitted.
 - xii. 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.
 - xiii. Multi-Year Licenses: Contractor may offer multi-year licenses.

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b. Contractor Licensing Terms and Conditions:

If Licensing Agreement, shrink-wrap or click-wrap agreements are associated with Printed Publications and Non-Print Library Materials, it is the responsibility of the Contractor to offer only those Printed Publications and Non-Print Library Materials 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.

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, during the RFQ process or prior to ordering. Documents that contain additional terms or conditions, such as library maintenance agreements or Licensing Agreements, must be disclosed to the Authorized User during the RFQ process or at the time of order submission and receive pre-approval by the Authorized User prior to ordering Products and services.

B. Lot 2 - Electronic Publication Performance Requirements

1. Authorized User Access to Electronic Publications:

- a. 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 99%), 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. Contractor must notify Authorized Users at least 48 hours prior to scheduled maintenance that interrupts End User access.
- b. 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.
- c. License Scope: The Contractor and the State agree that the license for the Electronic Publications shall be governed as set forth below:
 - i. 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 and may survive the expiration of this Contract, with the terms and conditions of this Contract applying throughout the license term.
 - ii. It shall be the obligation of the Authorized User to review and comply with the terms and conditions of the Licensing 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.
 - iii. 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.
 - iv. 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").
 - v. Multi-Year Licenses: Contractor may offer multi-year licenses.

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2. Contractor's Performance Obligations:

- a. 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.
- b. 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.

3. 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 they do not conflict with the terms of Appendix A, the Solicitation or any resultant Contract, or Appendix B. Additionally, the Electronic Publications may be used as follows:

- a. 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.
- b. Authorized Users and End Users may use a reasonable portion of the Electronic Publications in the preparation of educational materials.
- c. Authorized Users may fulfill occasional requests from other institutions, a practice commonly called Interlibrary Loan. Authorized Users agree to maintain records respecting End User's use of materials in such Interlibrary Loan and to provide such records to the Contractor upon request.

4. Electronic Periodicals Performance Requirements

- a. Orders, Renewals, and Cancellations:
 - i. Subscriptions shall begin on the date specified in Contractor's order forms, based on date of submission by Authorized User and Contractor's processing date.
 - ii. 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.
 - iii. The Contractor shall provide address, Publication, merger, and title change services, etc.
 - iv. 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.
 - v. The Contractor shall cancel subscriptions as requested by the Authorized User and shall issue a credit if allowed by the Publisher.
 - vi. The Contractor shall provide pro-rated refunds or substituted titles for titles that 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 regard to refunds or substituted titles.
 - vii. The Contractor shall provide a common expiration date for subscriptions (if requested by the Authorized User) unless prohibited by the Publisher.
 - viii. 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 Users may change automatic renewal status at any time and for no additional charge.

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- ix. The Contractor may provide two or three-year renewal periods but must at a minimum offer a one-year renewal period. Renewal periods may survive the expiration of this Contract, with the terms and conditions of this Contract applying to the renewal periods.
- x. 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.
- xi. All orders, renewals, and cancellations between the Contractor and the Authorized User shall be in writing or shall be electronically transmitted.
- xii. 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.
- xiii. Multi-Year Licenses: Contractor may offer multi-year licenses.

b. 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.

c. Contractor Licensing Terms and Conditions:

If Licensing Agreement, shrink-wrap or click-wrap agreements are associated with Electronic Publications, it is the responsibility of the Contractor to offer only those Electronic Publications in electronic format that satisfy the license terms and conditions of this Award. License terms that conflict with the terms of Appendix A, Appendix B, the Solicitation, or any resultant Contract shall not be enforceable.

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, during the RFQ process or prior to order. Documents that contain additional terms or conditions, such as library maintenance agreements or Licensing Agreements, must be disclosed to the Authorized User during the RFQ process or at the time of order submission and receive pre-approval by the Authorized User prior to ordering Products and services.

C. Lot 3 - Database Performance Requirements

1. System Availability:

Databases shall be functional at least 99% of the time

2. 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.

3. Contractor's Performance Obligations:

a. The Contractor will provide and maintain help files and other appropriate user documentation for the Databases to be accessible to all Authorized Users free of charge.

b. 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.

c. Multi-Year Licenses: Contractor may offer multi-year licenses.

d. Contractor Licensing Terms and Conditions:

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If Licensing Agreements, shrink-wrap or click-wrap agreements are associated with Database purchases, it is the responsibility of the Contractor to offer only those Databases that are within the scope of this Award and that satisfy the terms and conditions of the Award.

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, during the RFQ process or prior to order. Documents that contain additional terms or conditions, such as library maintenance agreements or Licensing Agreements, must be disclosed to the Authorized User during the RFQ process or at the time of order submission and receive pre-approval by the Authorized User prior to ordering Products and services.

If Contractors have terms or fees associated with Databases, including, but not limited to, Back File Access or Database Customizations (changes to the function, layout, and/or appearance of a Database which does not alter the Database content), Contractor shall include the pricing methodology and Net Price on their price list. Any such fees shall be listed separately on invoices.

Upon termination of the Contract, all terms and conditions shall survive in accordance with their terms as to procurements made or individual licenses granted to Authorized Users prior to such termination.

Terms that conflict with the terms of Appendix A, the Solicitation, Appendix B, or any resultant Contract shall not be enforceable.

D. Lot 4 - Library Resource Management and Research Support Products Performance Requirements

1. General Performance:
Contractor shall furnish Products as specified and in accordance with Authorized User performance requirements. Multi-Year Licenses: Contractor may offer multi-year licenses.
2. System Availability
Library Resource Management and Research Support Products shall be functional at least 99% of the time.
3. Scheduled Maintenance
Contractor must notify Authorized Users at least 48 hours prior to scheduled maintenance that interrupts End User access to Library Resource Management and Research Support Products. OGS requests that scheduled maintenance NOT be performed during normal Business Days.
4. Contractor Licensing Terms and Conditions:
If Licensing Agreements, shrink-wrap or click-wrap agreements are associated with Library Resource Management and Research Support Products, it is the responsibility of the Contractor to offer only those Library Resource Management and Research Support Products that satisfy the license terms and conditions of the Award. License terms that conflict with the terms of Appendix A, Appendix B, the Solicitation, or any resultant Contract shall not be enforceable.

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, during the RFQ process or prior to order. Documents that contain additional terms or conditions, such as library maintenance agreements or Licensing Agreements, must be disclosed to the Authorized User during the RFQ process or at the time of order submission and receive pre-approval by the Authorized User prior to ordering Products and services.

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CONTRACT TERM AND EXTENSIONS:

- A. Base Term: The base Contract term shall begin on the later of The later of (i) September 1, 2022, or (ii) the date of OSC approval of the final, executed contract documents and consistent with the MOU, and shall continue through and including August 31, 2027. All OGS Centralized Contracts shall have a co-terminus end date, including those Contracts awarded during any subsequent periodic recruitment.
- B. Extensions: At the State's option, and subject to the approval of OSC and consistent with the MOU, the Contract may be extended for five (5) years, in increments as deemed to be in the best interest of the State. Whether the optional extensions are exercised is at the sole discretion of the State. A Contractor shall retain the right to decline a Contract extension offered under this section. Any Contract extension will be under the same terms and conditions, subject to any additional applicable statutory and policy requirements. Any extensions provided under this section shall apply in addition to any rights set forth in Appendix B, Section 23, *Contract Term – Extension*.
- C. The Contract term provided for in this section shall extend six months beyond its termination date only for Authorized Users whose contracts must be registered with the Office of the New York City Comptroller. During the six-month period, the definition of Authorized User shall be deemed to refer only to Authorized Users whose contracts must be registered with the Office of the New York City Comptroller. This extension is in addition to any other extensions available under the Contract. The extension provided for in this paragraph shall be upon the then-existing terms and conditions; provided, however, during such extension an Authorized User, as defined in this paragraph, may agree to amend such terms and conditions solely to comply with changes in statutory requirements (e.g., changes in minimum, prevailing or living wages, or regulated services).

SHORT-TERM EXTENSION:

This section shall apply in addition to any rights set forth in Appendix B, Section 23, *Contract 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 30 calendar days upon notice to the Contractor with the same terms and conditions as the original Contract and any approved modifications. With the concurrence of the Contractor, the extension may be for a period of up to 90 calendar days in lieu of 30 calendar days. However, this extension automatically terminates should a replacement Contract be issued in the interim.

PERIODIC RECRUITMENT:

This Contract allows for periodic recruitment of additional Contractors during the term of the Contract. Recruitment periods are optional at the discretion of the State. Additional recruitment periods will be advertised in the NYS Contract Reporter. Bidder must register with the New York State Contract Reporter at <https://www.nyscr.ny.gov> in order to receive notifications regarding any periodic recruitments under this Award. Bids shall be evaluated under substantially the same terms and conditions as the original Bids. Bidders shall also be required to submit necessary documentation for any additional applicable statutory requirements in effect at the time of the new Solicitation.

Once awarded a Contract, a Contractor may not resubmit a Bid for future consideration for Lots covered by the scope of the awarded Contract. In addition, if a Bid is deemed non-responsive during the initial Solicitation or any recruitment period, a Bidder cannot reapply for a future Contract until the next recruitment period.

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REQUEST TO ADD A LOT TO AN EXISTING CONTRACT:

Contractors may request to add a Lot to their existing Contract by submitting a written request to OGS on company letterhead. A request to add a Lot(s) must be accompanied by all information required in this Solicitation or most recent Periodic Solicitation, specifically the Bidder Qualifications and Method of Award sections for the respective Lot(s) the Contractor would like to add. Contractor shall not quote or offer Products or services that are the subject of a request to add a Lot until receipt of approval from OGS. Please note: The timeframe for proof of verifiable sales shall be shifted accordingly. Contractors must demonstrate the minimum verifiable sales during the 36-month period preceding the date the add request was submitted.

ACCESSIBILITY OF WEB-BASED INFORMATION AND APPLICATIONS POLICY:

Contractor is solely responsible for administration, content, intellectual property rights and all materials on Contractor's website. Contractor is solely responsible for its actions and those of its agents, employees, Subcontractors 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 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. The following language is incorporated into any Contract resulting from this Solicitation:

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. Quality assurance testing may be conducted by the State and the results of such testing, if performed, must be satisfactory to the State before web-based information and applications will be considered a qualified deliverable under the Contract or procurement.

CONTRACT ADMINISTRATION:

The Contractor shall provide a sufficient number of Customer Service employees who are knowledgeable and responsive to Authorized User needs and who can effectively service the Contract. Contractor shall also provide an Emergency Contact in the event of an emergency occurring after business hours or on weekends/holidays.

Contractor shall provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Contractor must notify OGS within five Business Days if its Contract Administrator, Emergency Contact, or Customer Service employees change, and provide an interim contact person until the position is filled. Changes shall be submitted electronically via e-mail to the OGS Contract Management Specialist.

INSURANCE REQUIREMENTS:

The Contractor shall maintain in force at all times during the terms of the Contract, policies of insurance pursuant to the requirements outlined in Attachment 4 – *Insurance Requirements*.

REPORT OF CONTRACT USAGE:

Contractor shall submit Attachment 8 – *Report of Contract Usage*, including total sales to Authorized Users of this Contract *no later than 15 days after the close of each six-month period*. If the Contract period begins or ends in a fractional portion of a reporting period, only the actual Contract sales for this fractional period should be included in the biannual report.

The report is to be submitted electronically via e-mail in Microsoft Excel to OGS Procurement Services, to the attention of the individual listed on the front page of the Contract Award Notification and shall reference the Contract Group Number, Award Number, Contract Number, Sales Period, and Contractor's name. If bundled Products are sold, the report shall include the individual breakdown of Products that make up the bundle, including the Net Pricing for the Products.

(continued)

The report in Attachment 8 – *Report of Contract Usage* contains the minimum information required. Additional related sales information, such as detailed user purchases may be required by OGS and must be supplied upon request. Failure to submit reports on a timely basis may result in Contract suspension and/or cancellation and designation of Contractor as non-responsible.

AUTHORIZED USER SALES REPORTS:

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

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

New York State Law

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (“NYCRR”), the New York State Office of General Services (“OGS”) is required to promote opportunities for the maximum feasible participation of New York State-certified Minority- and Women-Owned Business Enterprises (“MWBEs”) and the employment of minority group members and women in the performance of OGS 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 and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for 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.

Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, a finding of 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 and applicable law.

Equal Employment Opportunity (EEO)

The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall 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.

(continued)

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. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.

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")**

1. 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.
2. Separate forms shall be completed by Contractor and all subcontractors.
3. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.

Contractor shall comply with the provisions of the Human Rights Law and 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.

(continued)

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, or 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.newycontracts.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, copies of such solicitations, and any responses thereto.
2. A list of the certified MWBEs appearing in the Empire State Development ("ESD") 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.

Fraud

Any suspicion of fraud, waste, or abuse involving the contracting or certification of MWBEs shall be immediately reported to ESD's Division of Minority and Women's Business Development at (855) 373-4692.

ALL FORMS ARE AVAILABLE AT: <https://ogs.ny.gov/MWBE>

PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESSES:

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

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders/Contractors are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract.

(continued)

Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <https://ogs.ny.gov/Veterans/>

Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veteran's Business Development at 518-474-2015 or VeteranDevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on the Contract.

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. 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 Products in SFS. This application provides catalog capabilities. Contractors 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. Additional information may be found at: <https://ogs.ny.gov/procurement/emarketplace>

There are no fees required for a Contractor's participation in the catalog site development or management. Upon completion and activation of an online 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 may be implementing additional PeopleSoft modules in the near future. Further information regarding business processes, interfaces, and file layouts currently in place may be found at: <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 Contractors 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 Solicitation. 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, *Remanufactured, Recycled, Recyclable or Recovered Materials*.

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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 III 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 of, 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 Products. More information on Executive Order No. 4, including specifications for offerings covered by this Contract, may be found at <https://ogs.ny.gov/greenny/>. 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.

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CONSUMER PRODUCTS CONTAINING MERCURY:

Contractor shall comply with the requirements of Title 21 of Article 27 of the NYS Environmental Conservation Law regarding restrictions on the sale, purchasing, labeling and management of any products containing elemental mercury under this Contract.

OVERLAPPING CONTRACT PRODUCTS:

Products available under 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.

PREFERRED SOURCE PRODUCTS:

Section 162 of the State Finance Law requires that Authorized Users 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 Authorized User. Some Products in the resultant Contract may be available from one or more Preferred Sources. An Authorized User must determine if a particular Product is approved for a Preferred Source and follow the requirements of State Finance Law § 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, 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, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of OGS issues a written notice authorizing a resumption of performance under the Contract.

The Contractor agrees that if it is found by the State that 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 at the Contractor's expense where the Contractor is determined by the Commissioner of OGS to be non-responsible. In such event, the Commissioner of OGS 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.

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NEW YORK STATE TAX LAW SECTION 5-A:

Tax Law § 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.

A Contractor is required to file the completed and notarized Form ST-220-CA with the Bid to OGS certifying that the Contractor filed the ST-220-TD with DTF. Only Form ST-220-CA is required to be filed with OGS. The ST-220-CA can be found at https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf. The ST-220-TD can be found at https://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf. Contractor should complete and return the certification forms within five (5) Business Days of request (if the forms are not completed and returned with Bid submission). Failure to make either of these filings may render a Contractor non-responsive and non-responsible. Contractor shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law. The ST-220-TD only needs to be filed once with DTF, unless the information changes for the Contractor, its affiliates, or its Subcontractors.

Vendors may call DTF at 518-485-2889 with questions or visit the DTF website at <https://www.tax.ny.gov/> for additional information.

“OGS OR LESS” GUIDELINES

Purchases of the Products included in the Contract are subject to the “OGS or Less” provisions of State Finance Law § 163(3)(a)(v). This means that State Agencies can purchase Products from sources other than the Contractor provided that such Products are substantially similar in form, function or utility to the Products herein and are (1) lower in price and/or (2) available under terms which are more economically efficient to the State Agency (e.g. delivery terms, warranty terms, etc.).

Agencies are reminded that they must provide the State Contractor an opportunity to match the non-Contract savings at least two Business Days prior to purchase. In addition, purchases made under “OGS or Less” flexibility must meet all requirements of law including, but not limited to, advertising in the New York State Contract Reporter, prior approval of the Office of the State Comptroller and competitive bidding of requirements exceeding the discretionary threshold. State Agencies should refer to Procurement Council Guidelines for additional information.

NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS:

New York State political subdivisions and others authorized by New York State law may participate in Centralized 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, *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 website (<https://online.ogs.ny.gov/purchase/snt/othersuse.asp>). Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to NYS Procurement Services Customer Services at 518-474-6717.

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EXTENSION OF USE:

The Contract may be extended to additional States or governmental jurisdictions upon mutual written agreement between New York 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.

NEW ACCOUNTS:

Contractor may ask State Agencies and other Authorized Users to provide information in order to facilitate the opening of a customer account, including documentation of eligibility to use New York State Contracts, agency code, name, address, and contact person. State Agencies shall not be required to provide credit references.

CENTRALIZED CONTRACT MODIFICATIONS:

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 or services 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.

Updates to the Centralized Contract and the Appendices may be made in accordance with the contractual terms and conditions to incorporate new Products and services, make price level revisions, delete Products, 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.

OGS reserves the right to consider modifications that 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.

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, *Modification of Contract Terms*.

SOFTWARE/FIRMWARE UPDATES:

Contractor shall provide at no charge all updates to any embedded software or firmware in the Product offered to customers generally.

COMPLIANCE WITH FEDERAL, STATE, AND LOCAL REGULATIONS:

If required within the Authorized User Agreement, Contractor will provide verification of compliance with specific Federal, State and local regulations, laws and IT standards that the Authorized User is required to comply with. See Appendix C – Primary Security and Privacy Mandates.

SEVERABILITY

If any one or more of the provisions of this Contract shall for any reason be declared unenforceable under the laws or regulations in force, such provision will not have any effect on the validity of the remainder of this Contract, which shall then be construed as if such unenforceable provision had never been written or was never contained in this Contract.

UNANTICIPATED EXCESSIVE PURCHASE:

The State reserves the right to negotiate lower pricing or to advertise for Bids, for any unanticipated excessive purchase.

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AMERICANS WITH DISABILITIES ACT (ADA):

The federal ADA bars employment discrimination and requires all levels of government to provide necessary and reasonable accommodations to qualified workers with disabilities. Contractor is required to identify and offer any Products it manufactures or adapts that may be used or adapted for use by persons with visual, hearing, or any other physical disabilities. Although it is not mandatory for Bidder to have these Products in order to receive an award, it is necessary to identify any such Products offered that fall into the above category.

NOTICE: THIS CONTRACT AWARD NOTIFICATION CONTAINS A SUBSET OF INFORMATION FROM THE SOLICITATION. CONTRACTS RESULTING FROM SOLICITATION 23260 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 MAY 13, 2022.

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**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 & return via e-mail to katherine.jezik@ogs.ny.gov or mail to:

NYS Office of General Services
 Procurement Services
 Katie Jezik, 38th Floor
 Corning Tower - Empire State Plaza
 Albany, New York 12242
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