

SUPPLEMENTAL CONTRACT AWARD NOTIFICATION

Title	:	Group 20020 - SERIALS (Domestic & Foreign Periodicals, Magazines, Etc.) (Statewide) Classification Code(s): 55
Award Number	:	<u>21681</u> (Replaces Award 3341-G)
Contract Period	:	January 1, 2011 to December 31, 2015 with option to renew
Bid Opening Date	:	April 8, 2010 and (Periodic Recruitment June 14, 2012)
Date of Issue	:	December 31, 2010 (Issued February 1, 2013)
Specification Reference	:	As Incorporated In The Invitation for Bids and Purchasing Memoranda Dated December 21, 2009, January 26, 2010, March 10, 2010, March 15, 2010 and March 31, 2010
Contractor Information	:	Appears on Pages 2-3 of this Award

Address Inquiries To:

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

Description

Serials in all formats, including but not limited to print, CDs/DVDs, electronic journals and publications, electronic journal packages, electronic journal collections, microform, law materials, and back issues are available (See SCOPE clause for further details).

**ELECTRONIC ON-LINE DATABASES ARE EXCLUDED FROM THIS CONTRACT
Authorized users are directed to Group 79100 contracts for the procurement of databases**

NOTE: See individual contract items to determine actual awardees.

<u>CONTRACT #</u>	<u>CONTRACTOR & ADDRESS</u>	<u>TELEPHONE #</u>	<u>FED.IDENT.#/ NYS VENDOR I.D. #</u>
PC65964	DISCOUNT MAGAZINE SUBSCRIPTION SERVICE, INC. PO Box 60114 Ft. Meyers, FL 33906	800/999-5070 239/274-6868 Jason Bell Fax No.: 239/225-1557 E-mail: discountmagazine@yahoo.com Web Site: www.discountmagazine.web.com	112593517 1000011775
PC65965 MBE WBE	WOLPER SUBSCRIPTION SERVICES, INC. D/B/A WOLPER INFORMATION SERVICES 360 Northhampton St. Easton, PA 18042	800/459-5999 610/559-9550 Traci Schiffert Fax No.: 610/559-9898 E-Mail: tschiffert@wolper.com Web Site: www.wolper.com	232724782 1100043737

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

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

(See "Contract Payments" and "Contract Billings And Payments" in this document.)

AGENCIES SHOULD NOTIFY THE PROCUREMENT SERVICES GROUP 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 THE PROCUREMENT SERVICES GROUP.

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.

NOTE TO AUTHORIZED USERS:

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

The authorized user, when purchasing from OGS contracts, should hold the contractor accountable for contract compliance and meeting the contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, authorized users are encouraged to seek improved pricing whenever possible.

Authorized users have the responsibility to document purchases, particularly when using OGS multiple award contracts for the same or similar product(s)/service(s), which should include:

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

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ANNOUNCEMENT OF CONTRACT AWARD:

OGS distributes email notification to registered customers announcing the resultant contract award. The email includes a hyperlink to the posted award on the OGS website and is sent via the OGS Purchaser Notification Service (PNS) to registered authorized users. Authorized users may register for the PNS at the following URL address: <http://www.ogs.state.ny.us/PNS/default.asp>. All subsequent contract updates are also sent out via the PNS. Authorized users of the contract submit purchase orders or other such order documents directly to the contractor. See Appendix B Clause 44. Purchase Orders.

SCOPE:

This contract is for subscription services for serials. The subscription agent (contractor) is the provider of periodical subscriptions of serials offered at a percentage of subscription list price.

The Office of General Services has established contracts with multiple qualified contractors for the provision of serials in all formats, including but not limited to print, CDs/DVDs, electronic journals and publications, electronic journal packages, electronic journal collections, microform, law materials, and back issues.

The Office of General Services uses the definition of serials as defined by the Online Dictionary for Library and Information Science (ODLIS), which are publications 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. Serial publications include print periodicals and newspapers, electronic magazines and journals, annuals (reports, yearbooks, etc.), continuing directories, proceedings and transactions, and numbered monographic series cataloged separately.

Electronic Online Databases as defined below are EXCLUDED from this contract.

SCOPE (Cont'd):

Except for those services labeled as "optional," the contractor is required to provide all the performance requirements which are identified in the "PERFORMANCE REQUIREMENTS" clause and the terms and conditions of this Contract Award Notification.

Authorized users of the contract shall select one or more contractors from those awarded contracts on the basis of price, extent of services offered, and quality of service provided. Authorized Users are encouraged to solicit best and final offers at time of purchase to determine the most practical and economical in the best interests of the state.

Pursuant to the ELECTRONIC ONLINE DATABASES Clause on Page 16 of the Contract Award Notification, there is a separate OGS contract for databases under GROUP 79100 from which authorized users may purchase databases. If an authorized user seeks to purchase an item that is not covered under the Serials contract, the contractor shall not accept the order under the Serials contract; such items not covered by the contract should be purchased through other OGS centralized contracts or on the open market as appropriate in accordance with an authorized user's statutory requirements and purchasing guidelines.

It is the contractor's responsibility to ensure that only products that meet the Scope of the contract are purchased through this contract. Questions concerning items covered under the resultant contract should be addressed to the OGS Procurement Services Group Purchasing Officer designated on the Contract Award Notification prior to accepting the order.

NOTE: If a Contractor sells items that are excluded under this Contract Award Notification, such Contractor's contract may be suspended or terminated.

PRICE:

Price includes all customs duties and charges and be net, F.O.B. destination any point in New York State as designated by the authorized user and shall include all transportation charges and inside delivery for print medium. Inside deliveries will be delivered to the ordering authorized user's stockroom or office location. The bidder's price will include all costs associated with selling the product. Shipping and handling charges, if necessary, must be included as part of the bidder's percentage of list.

A percentage of publishers' list prices is offered by the contractors. This may include a range consisting of a lower limit and an upper limit (e.g., 95% to 104%). For example, 95% would be a 5% discount from list; 104% would be list price plus a 4% service charge; 100% would be list price without a discount or service charge. This range shall be applied to publishers' list prices.

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The Publishers' list price is the current list price at time of order as published and distributed by the publishers. The subscription agent's discount may increase at anytime, but will not decrease during the term of the contract. The subscription agent's service charge may decrease at anytime, but will not increase during the term of the contract. The discounts and service charges applied to individual authorized users may move up or down within the contract percentage range from year to year based on the items a particular authorized user decides to purchase as it is understood that their final price is typically based on the mix of titles ordered, discounts allowed by the publishers for the items ordered and the level of service offered; however the percentage of publishers' list prices being charged by the contractor must never exceed the percentage of list range upper limit bid for the respective Item Categories.

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

Authorized users may be charged additional fees charged by the publishers which include licensing fees, platform fees etc. in excess of the base subscription fee. However, any additional fees will only be those charges passed on by the publishers and will not include any additional fees charged by the contractors for such services. The contractor will only charge fees based on list prices charged by publishers.

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PRICE (Cont'd):

New York State anticipates that the State shall be treated as a single entity and that prices for such services reflect volume aggregated discounts commensurate with the statewide volume. Contractors are encouraged to offer their best possible pricing; additionally, contractors may negotiate better pricing with authorized users at any time throughout the contract period. (See "Best Pricing Offer" in Appendix B, OGS General Specifications).

The State reserves the right after award to solicit from successful contractors, aggregate buys of certain subscriptions during the contract period and to make such volume discounts available to all authorized users.

All monetary amounts for optional services may be adjusted annually following the first year of the contract on the basis of the Not Seasonally Adjusted Consumer Price Index – All Urban Consumers, U.S. city average, All items less food, Series ID: CUUR0000SA0L1, CUUS0000SA0L1 published monthly by the US Department of Labor Bureau of Labor Statistics. There will be no price adjustments during the first year of the contract. The adjustment will be established as follows. Following the first year of the contract and annually thereafter, the contractor may make a formal request for a price adjustment in the succeeding contract year. This request must be made in writing to the Purchasing Officer identified on the front page of the Contract Award Notification and such request must be received by no later than three months preceding the annual effective date of adjustment. If the contractor fails to submit a written request by such date, he/she forfeits its opportunity to receive a price adjustment in the succeeding contract year.

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

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

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

Should the referenced CPI become discontinued during the course of the contract, it will be replaced by the Not Seasonally Adjusted Consumer Price Index – All Urban Consumers, U.S. city average, All items, Series Id: CUUR0000SA0, CUUS0000SA0 and adjustments will be calculated based on the same methodology as outlined above, but with data from the new replacement index.

CONTRACTOR: DISCOUNT MAGAZINE SUBSCRIPTION SERVICE, INC. (PC65964)

<u>ITEM NO.</u>	<u>ITEM CATEGORY - LIBRARY TYPE</u>	<u>PERCENT OF LIST</u>
1.	ACADEMIC LIBRARIES	50% - 95%
2.	HEALTH SCIENCE LIBRARIES	50% - 95%
3.	LAW LIBRARIES	50% - 95%
4.	SCHOOL (Secondary, Elementary) LIBRARIES	50% - 95%
5.	PUBLIC ("City", regional) LIBRARIES	50% - 95%
6.	OTHER LIBRARIES (Authorized users not defined above, such as state agencies, etc.)	50% - 95%

Contractor accepts the New York State Procurement Card for orders not to exceed \$15,000.

Contractor can provide annual invoices & any supplementary invoices electronically via email or through the Internet.

Contractor offers products manufactured from recycled materials (Contact Contractor for further details).

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CONTRACTOR: WOLPER SUBSCRIPTION SERVICES, INC. D/B/A WOLPER INFORMATION SERVICES

(PC65965)

<u>ITEM NO.</u>	<u>ITEM CATEGORY - LIBRARY TYPE</u>	<u>PERCENT OF LIST</u>
1.	ACADEMIC LIBRARIES	95% - 105 %***
2.	HEALTH SCIENCE LIBRARIES	95% - 105 %***
3.	LAW LIBRARIES	95% - 105%***
4.	SCHOOL (Secondary, Elementary) LIBRARIES	80% - 101%***
5.	PUBLIC ("City", regional) LIBRARIES	85% - 102%***
6.	OTHER LIBRARIES (Authorized users not defined above, such as state agencies, etc.)	85% - 105%***
7.	OTHER CATEGORIES (e-journal; e-book & e-journal package & print subscriptions; e-resource management tools & related services for all types of libraries and research organizations)	85% - 105%***

***Contractor offers net pricing that is equal to or better than GSA pricing for the same titles.

Contractor accepts the New York State Procurement Card for orders not to exceed \$15,000.00

Volume Pricing may be available (Contact Contractor for further details).

Contractor can provide annual invoices & any supplementary invoices electronically via email or through the Internet.

Contractor offers products manufactured from recycled materials (Contact Contractor for further details).

OPTIONAL SERVICES:

Full suite of Subscription Management Services including:

Online subscription management tools (WOLPERweb®) WOLPERweb® provides a web-based suite of subscription management tools to assist in management of print and electronic subscriptions throughout the life cycle of the subscription. – (no additional charge)

Rights Management Services – (no additional charge)

Online check-in, back issue service (subject to availability) – (contact contractor for details)

Consolidation service - receive, check-in, process, claim, and ship journals Average cost \$29 per single subscription order (contact contractor for details)

Electronic Resource Management tools including A-Z, Link Resolver, License Module, Search and Discovery tools,

Usage statistics (contact contractor for details)

Electronic journal access setup and management

Pre-payment discounts and management of supplemental invoices (contact contractor for details)

E-book collections from multiple STM publishers

Expedited Delivery and Rush Order services provided (contact contractor for details)

Books – (contact contractor for details)

Customized management reports at no additional charge

MARC records (contact contractor for details)

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REQUEST FOR CHANGE:

Any request by the agency or contractor regarding changes in any part of the contract must be made in writing to the Office of General Services, Procurement Services Group, prior to effectuation.

CONTRACT PAYMENTS:

Payments cannot be processed by State facilities until the contract products have been delivered in satisfactory condition or services have been satisfactorily performed. Payment will be based on any invoice used in the supplier's normal course of business. However, such invoice must contain sufficient data including but not limited to contract number, description of product or service, quantity, unit and price per unit as well as federal identification number.

State facilities are required to forward properly completed vouchers to the Office of the State Comptroller for audit and payment. All facilities are urged to process every completed voucher expeditiously giving particular attention to those involving cash discounts for prompt payment.

If the contract terms indicate political subdivisions and others authorized by law are allowed to participate, those entities are required to make payments directly to the contractor. Prior to processing such payment, the contractor may be required to complete the ordering non-State agency's own voucher form.

CONTRACT BILLINGS AND PAYMENTS:

a. Billings. Contractor and the dealers/distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Billing invoices submitted to an Authorized User must contain all information required by the Contract and the State Comptroller or other appropriate fiscal officer. Submission of an invoice and payment thereof shall not preclude the Commissioner from requesting reimbursement or demanding a price adjustment in any case where the Product delivered is found to deviate from the terms and conditions of the Contract or where the billing was inaccurate.

Contractor shall provide, upon request of the Commissioner, any and all information necessary to verify the accuracy of the billings. Such information shall be provided in the format requested by the Commissioner and in a media commercially available from the Contractor. The Commissioner may direct the Contractor to provide the information to the State Comptroller or to any Authorized User of the Contract.

b. Payment of Contract purchases made by an Authorized User when the State Comptroller is responsible for issuing such payment. The Authorized User and Contractor agree that payments for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payments shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller website at www.osc.state.ny.us, by e-mail at epunit@osc.state.ny.us, or by telephone at 518-474-4032. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract that are payable by the State Comptroller if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

c. Payment of Contract purchases made by an Authorized User when the State Comptroller is not responsible for issuing such payment. The Authorized User and Contractor agree that payments for such Contract purchases shall be billed directly by Contractor on invoices/vouchers, together with complete and accurate supporting documentation as required by the Authorized User. Such payments shall be as mandated by the appropriate governing law from the receipt of a proper invoice. Such Authorized User and Contractor are strongly encouraged to establish electronic payments.

NOTE TO CONTRACTOR:

This Contract Award Notification is not an order. Do not take any action under this contract except on the basis of purchase order(s) from the agency or agencies.

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DEBRIEFING:

A bidder will be accorded fair and equal treatment with respect to its opportunity for debriefing. Prior to contract award, OGS shall, upon request, provide a debriefing which would be limited to review of that bidder's proposal or bid. After contract award, OGS shall, upon request, provide a debriefing to any unsuccessful bidder that responded to the solicitation, regarding the reason that the proposal or bid submitted by such bidder was not selected for a contract award. The post-award debriefing should be requested in writing within 30 days of posting of the contract award on the OGS website.

IRAN DIVESTMENT ACT:

As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a new provision has been added to the State Finance Law (SFL), § 165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) will be developing a list (prohibited entities list) of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law). Pursuant to SFL § 165-a(3)(b), the initial list is expected to be issued no later than 120 days after the Act's effective date, at which time it will be posted on the OGS website.

By entering into this Contract, Contractor (or any assignee) certifies that once the prohibited entities list is posted on the OGS website, it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list.

Additionally, Contractor agrees that after the list is posted on the OGS website, should it seek to renew the Contract, it will be required to certify at the time the Contract is renewed or assigned that it or its assignee is not included on the prohibited entities list.

During the term of the Contract, should OGS receive information that a person is in violation of the above-referenced certification, OGS will offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then OGS shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

OGS reserves the right to reject any request for assignment for an entity that appears on the prohibited entities list prior to the award of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the prohibited entities list after contract award.

DISPUTE RESOLUTION POLICY:

It is the policy of the Office of General Services' Procurement Services Group (PSG) to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to PSG bid solicitations or contract awards. PSG encourages vendors to seek resolution of disputes through consultation with PSG staff. All such matters will be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of PSG's Dispute Resolution Procedures for Vendors may be obtained by contacting the person shown on the front of this Invitation for Bids or through the OGS website (www.ogs.ny.gov).

PROCUREMENT LOBBYING TERMINATION:

OGS reserves the right to terminate this contract in the event it is found that the certification filed by the Offerer/bidder in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, OGS may exercise its termination right by providing written notification to the Offerer/bidder in accordance with the written notification terms of this contract.

MERCURY-ADDED CONSUMER PRODUCTS:

Offerers are advised that effective January 1, 2005, Article 27, Title 21 of the Environmental Conservation Law bans the sale or distribution free of charge of fever thermometers containing mercury except by prescription written by a physician and bans the sale or distribution free of charge of elemental mercury other than for medical pre-encapsulated dental amalgam, research, or manufacturing purposes due to the hazardous waste concerns of mercury. The law further states that effective July 12, 2005, manufacturers are required to label mercury-added consumer products that are sold or offered for sale in New York State by a distributor or retailer. The label is intended to inform consumers of the presence of mercury in such products and of the proper disposal or recycling of mercury-added consumer products. Offerers are encouraged to contact the Department of Environmental Conservation, Bureau of Solid Waste, Reduction & Recycling at (518) 402-8705 or the Bureau of Hazardous Waste Regulation at 1-800-462-6553 for questions relating to the law. Offerers may also visit the Department's web site for additional information: <http://www.dec.ny.gov/chemical/8512.html>.

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

In accordance with Article 15-A of the New York State Executive Law (Participation by Minority Group Members and Women with Respect to State Contracts) and in conformance with the Regulations promulgated by the Minority and Women’s Business Development Division of the New York State Department of Economic Development set forth at 5 NYCRR Parts 140-144, the Offerer/Contractor agrees to be bound by the following to promote equality of economic opportunities for minority group members and women, and the facilitation of minority and women-owned business enterprise participation on all covered OGS contracts.

a. **Equal Employment Opportunity Requirements**

By submission of a bid or proposal in response to this solicitation, the Offerer agrees with all of the terms and conditions of Appendix A including Clause 12 - Equal Employment Opportunities for Minorities and Women. The contractor is required to ensure that the provisions of Appendix A clause 12 – Equal Employment Opportunities for minorities and women, are included in every subcontract in such a manner that the requirements of these provisions will be binding upon each subcontractor as to work in connection with the State contract.

b. **Participation Opportunities for New York State Certified Minorities and Women-Owned Businesses**

Authorized Users are encouraged to make every good faith effort to promote and assist the participation of New York State Certified Minority and Women-owned Business Enterprises (M/WBE) as subcontractors and suppliers on this contract for the provision of services and materials. To locate New York State Certified M/WBEs, the directory of Certified Businesses can be viewed at:
http://www.empire.state.ny.us/Small_and_Growing_Businesses/mwbe.asp

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NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS:

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

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

EXTENSION OF USE:

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

ELECTRONIC ONLINE DATABASES:

Electronic Online Databases are excluded from this contract. For the purposes of this bid, a database, as defined by the Online Dictionary for Library and Information Science (ODLIS), is a large, regularly updated file of digitized information (bibliographic records, abstracts, full-text documents, directory entries, images, statistics, etc.) related to a specific subject or field, consisting of records of uniform format organized for ease and speed of search and retrieval and managed with the aid of database management system (DBMS) software. Content is created by the database producer, which usually publishes a print version and leases the content to one or more database vendors that provide electronic access to the data after it has been converted to machine-readable form, usually on CD-ROM or online via the Internet, using proprietary search software. This definition is used to distinguish the products offered under the OGS electronic database contract (Group 79100) and the serials contract.

OGS administers separate contracts for Electronic Online Databases, Group 79100 and awards contracts under a continuous recruitment process. The directions for downloading and submitting the electronic database access contract template are contained under the OGS Continuous and Periodic Recruitment Bids Page, Group 79100, Electronic Online Databases.

If a vendor is interested in participating in the database award process, please follow the OGS web page link, scroll down to Group 79100, and click on the link to obtain the instructions, qualifications and template document: <http://www.ogs.state.ny.us/purchase/continuousbid.asp>. Bidders/Contractors must clearly offer their products under the proper contracts, either database or serials as defined herein. Failure to properly segment contract offerings under the proper definitions set forth herein will lead to unauthorized products sold to authorized users and may result in contract suspension or termination. Current online database contractors should verify their database offerings and update their contract as necessary.

MINIMUM ORDER:

There is no minimum order requirement.

DELIVERY:

Delivery is expressed in number of calendar days required to make delivery after receipt of a purchase order. Delivery shall be made in accordance with instructions on Purchase Order from each authorized user. Contractor guarantees delivery of subscriptions with no disruption in service. If there is a discrepancy between the purchase order and information listed on the contract, it is the contractor's obligation to seek clarification from the ordering authorized user and, if applicable, from the Office of General Services, Procurement Services Group.

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ESTIMATED QUANTITIES:

Each contract shall be for the quantities or dollar values actually ordered during the contract period. Authorized users will be encouraged to purchase from contractors who offer the supplies, services, and pricing that best meet their needs in the most practical and economical manner. See "Estimated/Specific Quantity Contracts" and "Participation in Centralized Contracts" in Appendix B, OGS General Specifications.

CONTRACT PERIOD AND RENEWALS:

It is the intention of the State to enter into a contract for a five year term as stated on the Invitation for Bids and in accordance with clause 38, CONTRACT CREATION / EXECUTION of Appendix B. Percentage of List Prices quoted may decrease at any time but may not increase for the entire contract period. Discount increases are permitted at any time.

If mutually agreed between the Procurement Services Group and the contractor, the contract may be renewed under the same terms and conditions for additional period(s) of up to five years.

SHORT TERM EXTENSION:

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

CANCELLATION FOR CONVENIENCE:

The State of New York retains the right to cancel this contract, in whole or in part without reason provided that the Contractor is given at least sixty (60) days notice of its intent to cancel. This provision should not be understood as waiving the State's right to terminate the contract for cause or stop work immediately for unsatisfactory work, but is supplementary to that provision. Any such cancellation shall have no effect on existing Agency agreements, which are subject to the same 60 day discretionary cancellation or cancellation for cause by the respective user Agencies.

PERIODIC RECRUITMENT:

The State reserves the right to add contractors during the term of the contract and will formally announce when the bid is reissued at such dates at the discretion of the State. It is anticipated that there will be a minimum of one periodic recruitment solicitation during each five year term, as deemed necessary by the State. Bidders shall be required to submit this original bid document, which may include additional applicable statutory requirements currently in effect at the time of the new bid solicitation. Bidders are advised to review the "Qualification of Bidders" clause before submitting a bid under periodic recruitment to ensure they can meet all bid requirements. Under periodic recruitment, bidder must have achieved a minimum of \$100,000.00 in verifiable national public entity sales of serials for any combination of twelve months during the prior eighteen month period preceding the bid opening date for the solicitation.

Required proof of sales will be in the form of a summary of the total sales reported, which shall include the names of the public entity purchasers and the total amount of sales by purchaser. Required proof of sales should be submitted at the time of bid opening. Copies of invoices may be required for verification or clarification if deemed necessary by the Office of General Services. Failure to submit proof of sales as requested may result in rejection of bid.

Once awarded a contract, a bidder may not resubmit a bid for future consideration. In addition, if a bid is deemed non-responsive under periodic recruitment, a bidder cannot reapply for a future contract until the next periodic recruitment period. For bids that are awarded under periodic recruitment, the contract term will commence one business day following Office of the State Comptroller approval in accordance with clause 38, CONTRACT CREATION / EXECUTION of Appendix B and will terminate on the then current end date of the contract or at the end of any approved extension or renewal period

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CONTRACT MIGRATION:

State Agencies or any other authorized user holding individual contracts with contractors under this centralized contract shall be able to migrate to this contract award with the same contractor, effective on the contract begin date (retroactively, if applicable). Migration by an agency or any other authorized user to the centralized contract shall not operate to diminish, alter or extinguish any right that the agency or other authorized user otherwise had under the terms and conditions of their original contract.

PROCUREMENT CARD TRANSACTIONS:

Please refer to Appendix B Clause 27. PROCUREMENT CARD for a detailed explanation on the Procurement Card program.

REPORT OF CONTRACT PURCHASES:

Contractor shall furnish quarterly reports containing total sales for both New York State agency and authorized non-state agency contract purchases no later than forty-five (45) days after the close of each calendar quarter.

In addition to contractor direct sales, if applicable, contractor shall submit sales information for all resellers, dealers, distributors or other authorized distribution channels, where such contract sales are provided by other than the contractor. Contractors shall verify if each alternate vendor is a NYS Certified Minority (MBE) or Women (WBE) Owned Businesses. Contractors shall verify such status through the Empire State Development Minority and Women Owned Businesses Database web site at: <http://www.nylovesmwbe.ny.gov/cf/search.cfm>. A separate report shall be provided detailing the following information for each authorized distribution channel.

<u>Item/ SubItem Number</u>	<u>Product Description</u>	<u>Name of Agency/Non- State Agency</u>	<u>Total Quantity Shipped to State Agencies</u>	<u>Total Quantity Shipped to <u>Authorized</u> Non-State Agencies</u>	<u>Total Sales State Agencies</u>	<u>Total Sales Authorized Non-State Agencies</u>
					\$	\$
				Grand Total Sales State and Non-State Agencies		\$

The report is to be submitted electronically in Microsoft Excel 2003 or lower format to the Office of General Services, Procurement Services Group, Tower Bldg., Empire State Plaza, Albany, NY 12242, to the attention of the individual shown on the front page of the Contract Award Notification and shall reference the Group Number, the Award Number, Contract Number, sales period, and contractor's (or other authorized agent) name.

The outlined sales report is the minimum information required. Additional related sales information, such as monthly reports, and/or detailed user purchases may be required and must be supplied upon request.

Sales reports shall be used to ensure that aggregate volume discounts offered by the contractor for agency or statewide aggregate purchases are passed along to the state. It is the contractor's responsibility to advise when aggregate volume sales are met to trigger increased discounts applicable to future state sales.

ASSOCIATED PRODUCTS / OPTIONAL SERVICES:

Acceptance, prior or subsequent to award, of any or all of the items or optional services offered for inclusion shall be at the sole discretion of the state, with the exception of additions, changes, or deletions to subscription titles that do not require the Office of General Services approval. As new types of products and/or optional services become available; contractor shall notify the Office of General Services, Procurement Services Group. Subsequent to award, consideration may be given to the addition of these to the contract, if such types of products and/or optional services are:

- included in the same type of classification or similar to those already awarded,
- required by an authorized user, and/or
- priced reasonably and commensurate with other products and/or services awarded.

Prior approval from the Office of General Services and the Office of The State Comptroller is required for the addition of these items.

(continued)

"OGS OR LESS" GUIDELINES APPLY TO THIS CONTRACT:

Purchases of the products included in the Invitation For Bids and related Contract Award Notification are subject to the "OGS or Less" provisions of Section 163.3.a.v., Article XI, of the New York State Finance Law. 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 Comptroller's Office and competitive bidding of requirements exceeding the discretionary bid limit. State agencies should refer to Procurement Council Guidelines section "OGS or Less Purchases" for complete procedural and reporting requirements.

<http://www.ogs.state.ny.us/procurecounc/pdfdoc/guidelines.pdf>

INTERNET WEBSITES:

The State recommends that contractors have a designated New York State contract website for authorized users' direct access. This website will be listed under the Contractor information. The purpose of a dedicated website is to provide authorized users with access to contract pricing and product offerings and the option of online ordering. It is the contractor's responsibility to ensure that contract and related information is accurately and completely posted, maintained and displayed in an objective and timely manner which renders it clearly distinguishable from other, non-contract offerings at contractor's web site. Hard copy catalog and price lists, either in paper format or electronic format, must be available to all authorized users who either do not have web access or prefer the optional format.

(continued)

LICENSING TERMS AND CONDITIONS FOR ELECTRONIC JOURNALS

DEFINITIONS:

Concurrent Users shall mean the number of end users that have access to an electronic journal at a given point in time and can mean either of the following:

- **Concurrent Sessions Definition:** Under this definition, concurrent user is interpreted to include any user station device which, at the point in time of measurement, has established a logical session path to the licensor's online service, enabling an immediate search request to be made directly to the licensor's search software. This is the common meaning of such expressions as being "signed on" or "logged on" to the online service. Under this definition, any signed on terminal or user station device is counted as part of the concurrent use total, regardless of whether the user is at the user station; formulating a new search request; waiting for the licensor's system to respond to a search request; or digesting the results of a previous request.
- **Active Request Definition:** Under this definition, only users who have submitted a search request transaction to the licensor's online service and have not yet received a response from the licensor's system are considered to be active users.
- **End User** shall mean those persons who are permitted by the authorized user to have access to the electronic journal.

Fair Use shall mean acceptable use under the Copyright Revision Act 1976 as amended subsequently provided that such rights are exercised in accordance with Section 108 of the Act and with the guidelines developed by the National Commission on New Technological Uses of Copyrighted Works (CONTU Guidelines) and published in U.S. Copyright Office Circular 21. Server shall mean the computer system(s) on which the electronic journals reside and through which Authorized users gain access to the electronic journals.

ACCESS TO ELECTRONIC JOURNALS; AUTHORIZED USERS:

- A. **Access:** Access to the electronic journals by Authorized Users shall be either via electronic media or the World Wide Web. If access is provided from the World Wide Web, the contractor shall ensure that the electronic journals are highly stable and usable (including average response time of less than 5 seconds, and uptime, except for scheduled maintenance, of 96.9%), and shall ensure that the Web server(s) is (are) fully capable of serving authorized users. Access shall be controlled by Internet Protocol (IP) addresses, passwords or other appropriate authentication technology.
- 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 hours, Monday through Friday for feedback, problem solving, or general questions free of charge.
- C. **License Scope:**
 - (1) License: The contractor and the State agree that the license for the electronic journal shall be governed as set forth below.
 - a) Authorized user is granted a non-exclusive, transferable, term license to access and use the electronic journals in accordance with the publisher's terms and conditions for the license. The license term for the electronic journals license will commence with the license effective date.
 - b) It shall be the obligation of the authorized user to review and comply with the terms and conditions of the license agreement if one is required by the publisher to use the electronic journal or electronic content.
 - c) Permitted License Transfers: As authorized user's business operations may be altered, expanded or diminished, electronic journal 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 ("permitted license transfers").

D. Concurrent Use License:

Where licensing of electronic journals 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 users (hereinafter "concurrent users").

(continued)

LICENSING TERMS AND CONDITIONS FOR ELECTRONIC JOURNALS (Cont'd)

CONTRACTOR'S PERFORMANCE OBLIGATIONS:

- A. The contractor will provide and maintain help files and other appropriate user documentation for the electronic journals 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 hours, Monday through Friday for feedback, problem solving, or general questions free of charge.

AUTHORIZED USER PERFORMANCE OBLIGATIONS:

Authorized users acknowledge that the copyright and title to the information content and organization of the electronic journals 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 journals. Authorized user shall use reasonable efforts to protect the electronic journals from any use that is not permitted under this agreement. End users may make all use of the electronic journals as is consistent with the Fair Use Provisions of United States and international copyright laws. In addition, the electronic journals may be used as follows:

- (1) End users may display, download, copy and/or print portions of the electronic journals for use in research, education, or other non-commercial purposes.
- (2) End users may use a reasonable portion of the electronic journals in the preparation of educational materials. End users may use a reasonable portion of the electronic journals in the preparation of educational materials.
- (3) End user may fulfill occasional requests from other institutions, a practice commonly called Interlibrary Loan. End user agrees to maintain records respecting end user's use of materials in such Interlibrary Loan and to provide such records to the contractor upon request.

SPECIFIC RESTRICTIONS ON USE OF ELECTRONIC JOURNALS:

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

(continued)

PERFORMANCE REQUIREMENTS

ORDERS, RENEWALS, AND CANCELLATIONS:

- a. The authorized user may specify that the subscription begin with current issue, first issue of the current volume, first issue of the current year, or first issue of the next volume. Subscriptions shall begin on the effective date specified on the purchase order.
- b. The contractor shall notify the authorized user as soon as possible but no later than thirty (30) days if unable to supply a new order. Contractor shall also provide a reasonable explanation in writing for non-fulfillment.
- c. The contractor shall provide address, publication, merger, and title change services, etc.
- d. 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.
- e. The contractor shall cancel subscriptions as requested by the authorized user and shall issue a credit if allowed by the publisher.
- f. The contractor shall provide pro-rated refunds or substituted titles for titles which cease publication prior to expiration if provided by the publisher. OGS reserves the right to resolve any issues that may arise between an authorized user and the contractor with regards to refunds or substituted titles.
- g. The contractor shall provide a common expiration date for subscriptions (if requested by the authorized user) unless prohibited by the publisher.
- h. 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.
- i. The contractor may provide two, or three-year renewal periods, but must at a minimum offer a one-year renewal period.
- j. 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.
- k. All orders, renewals, and cancellations between the contractor and the authorized user shall be in writing, or shall be electronically transmitted.
- l. In lieu of individual order forms, contractor shall be able to accept a purchase or letter order to which is appended a list of titles.

INVOICING AND PAYMENTS:

- a. 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.
- b. The contractor shall provide annual renewal invoice(s) and indicate if such invoices are available electronically.
- c. 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.
- d. The contractor shall provide up to three copies of all invoices if requested by an authorized user.

(continued)

PERFORMANCE REQUIREMENTS (Cont'd)

INVOICING AND PAYMENTS: (Cont'd)

- e. All invoices shall provide the following information or other "identifier," if applicable:
 - 1) Name, address and Federal Identification Number of contractor.
 - 2) Authorized user address and account number.
 - 3) Invoice date and number.
 - 4) Purchase order number.
 - 5) Contract number.
 - 6) Titles listed in alphabetical order or in an order specified by authorized user.
 - 7) International Standard Serial Numbers (ISSNs).
 - 8) Price for each subscription period.
 - 9) Subscription period.
 - 10) Description, quantity, unit price and extended price of all items.
 - 11) Information indicating if charge is an added optional service charge. An explanation is required.
 - 12) The discount or service charge, as requested by the authorized user, on a line-by-line basis.

- f. Increases in subscription price shall be allowed if correction in cost is required due to publisher's change in price.

- g. Decreases in subscription price shall be refunded or credited, as specified, to the authorized user promptly.

- h. 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.

- i. 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 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:

- a. The contractor shall be responsible for claiming all issues reported as not received or received damaged or defective by the authorized user.

- b. The contractor shall promptly process claim notices in a timely manner not to exceed the claim period permitted by the publisher.

- c. The contractor shall provide claim reports no less frequently than bimonthly.

- d. Claim reports shall provide the following information:
 - 1. Date of claim report.
 - 2. Title(s) being claimed.
 - 3. Issue(s) being claimed.
 - 4. Date(s) of prior claim(s).
 - 5. Publisher's response, if any.

- e. The contractor may accept and respond to claims by U.S. mail, facsimile, electronic mail, courier service, or online.

(continued)

PERFORMANCE REQUIREMENTS (Cont'd)

CONVERSION TO NEW CONTRACTOR BY AUTHORIZED USERS:

- a. Renewal orders requested by authorized users shall be placed at least two months before expiration of current subscriptions.
- b. If an interruption in service results from a change in a contractor, any issues not received shall be obtained by the contractor who received payment for that period at no additional cost to the authorized user. Delivery to the authorized user shall be made by the original contract delivery and at no extra cost to the authorized user.
- c. If duplicate issues are received as a result of change in contractors and the publisher required their return, the contractor shall be responsible for resolving the problem and shall absorb any associated costs.

SUBSCRIPTION CHARGES OR DISCOUNTS, ETC.:

A contractor must state its range of percentage of list price charges.

PACKAGED SUBSCRIPTIONS:

Contractor shall indicate the subscription fee pricing format for packaged titles; for example, priced as a package or priced separately for each title within the package.

CATALOG OF TITLES:

If available, and upon request, the contractor shall provide a comprehensive listing of subscription titles with bid. The listing may include for each title, the contractor's title number, ISSN where available, frequency, availability of indexes and title page, where title is indexed, volume number and date of current subscription period, and current list price.

REPORTS:

- a. The contractor may send the authorized user a monthly statement showing the date and amount of each outstanding invoice and credit memorandum.
- b. 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.
- c. 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.
- d. 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.
- e. If available, contractor may provide an industry-wide summary of statistical data and analyses.
- f. Upon request, the contractor shall provide a report showing changes in publisher subscription periods, quantities ordered, and publishers' new requirements.
- g. All reports between the contractor and the authorized user shall be in writing, and may be electronically transmitted.

(continued)

PERFORMANCE REQUIREMENTS (Cont'd)

MISCELLANEOUS:

- a. The contractor shall provide a toll-free telephone number. (Note: Foreign companies, located outside of North America may be exempt from the toll-free number requirement, upon request.)
- b. The contractor shall assign a qualified and properly trained account representative to service the authorized user account who shall respond to inquiries within two working days.

(continued)

**State of New York
Office of General Services
PROCUREMENT SERVICES GROUP
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 by FAX to 518/474-2437 or mail to:

OGS PROCUREMENT SERVICES GROUP
 Customer Services, 37th Floor
 Corning 2nd Tower - Empire State Plaza
 Albany, New York 12242

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