



STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
OFFICE OF MANAGEMENT AND BUDGET

March 21, 2013

TO: ALL STATE AGENCIES, SCHOOL DISTRICTS, MUNICIPALITIES, VOLUNTEER  
FIRE COMPANIES AND POLITICAL SUBDIVISIONS

FROM: WILLIAM W. PICKRUM  
DEPUTY DIRECTOR, GOVERNMENT SUPPORT SERVICES  
302-857-4501

SUBJECT: **AWARD NOTICE**  
**CONTRACT NO. GSS13150-MAGAZINE**  
**Magazines and Periodicals**

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**OF**  
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**GOVERNMENT SUPPORT SERVICES – CONTRACTING**  
100 ENTERPRISE PLACE – SUITE 4 – DOVER, DE 19904-8202  
PHONE: (302) 857-4550 – FAX: (302) 739-3779 – GSS.OMB.DELAWARE.GOV

## **KEY CONTRACT INFORMATION**

### **1. MANDATORY USE CONTRACT:**

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- a. **REF: Title 29, Chapter 6911(d) Delaware Code.** Every state department and agency within the Executive Branch and Judicial Branch of the state government shall procure all material, equipment and nonprofessional services through the statewide contracts administered by Government Support Services, Office of Management and Budget. Delaware State University, Delaware Technical and Community College, the operations funded by Public School Districts, Delaware Transit Corporation, the Legislative Branch and the Board of Pension Trustees and their consultants are specifically exempted from the requirements of this subsection.
- b. Under Title 29 §6933, the State of Delaware is authorized to participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of materiel or nonprofessional services with 1 or more public procurement units either within the State or within another state in accordance with an agreement entered into between the participants. Government Support Services, Office of Management and Budget has entered into a cooperative agreement with the State of New York for the procurement of magazines and periodicals.

### **2. SCOPE:**

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- a. 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 State of New York's 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.
- b. The definition of serials 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.**
- c. 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.
- d. Agencies shall select one or more contractors from those awarded contracts on the basis of price, extent of services offered, and quality of service provided. Agencies 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.
- e. 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 Government Support Services' State Contract Procurement Officer.

### **3. CONTRACT PERIOD:**

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Each contractor's contract shall be valid through December 31, 2015. Each contract may be renewed for five (5) additional one (1) year period through negotiation between the contractor, State of New York and Government Support Services. Negotiation may be initiated no later than ninety (90) days prior to the

termination of the current agreement. If the State of New York exercises the option, Delaware will provide written notice to Contractor prior to the end of the current term.

**4. VENDORS:**

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<p><b>GSS13150-MAGAZINEV01</b>          New York State Contract # PC65234          FSF Vendor ID: 0000022159          Avanti Enterprises, Inc.          P. O. Box 3563          Oak Brook, IL 60522-3563          Attn: Sudhir Kumar or Sandy Jones          Phone: 630-968-3727 or 800-799-6464          Fax: 630-968-3728 or 877-799-6474          Email: <a href="mailto:kumar@avantiusa.com">kumar@avantiusa.com</a> or  <a href="mailto:sales@avantiuse.com">sales@avantiuse.com</a>          Website: <a href="http://www.avantiusa.com">www.avantiusa.com</a></p>	<p><b>GSS13150-MAGAZINEV03</b>          New York State Contract # PC65236          FSF Vendor ID: 0000031989          Cox Subscriptions, Inc.          d/b/a W. T. Cox Subscriptions          201 Village Rd          Shallotte, NC 28470-4441          Attn: Debra M. Knox          Phone: 910-754-3145, Ext 215 or 800-571-9554          Fax: 910-755-6274 or 877-755-6274          Email: <a href="mailto:dknox@wtcox.com">dknox@wtcox.com</a>          Website: <a href="http://www.wtcox.com">www.wtcox.com</a></p>
<p><b>GSS13150-MAGAZINEV02</b>          New York State Contract # PC65964          FSF Vendor ID: 0000002161          Discount Magazine Subscription Service, Inc.          P. O. Box 60114          Ft. Myers, FL 33906-6114          Attn: Jason Bell          Phone: 239-274-6868 or 800-999-5070          Fax: 239-225-1557          Email: <a href="mailto:discountmagazine@yahoo.com">discountmagazine@yahoo.com</a>          Website: <a href="http://www.discountmagazine.web.com">www.discountmagazine.web.com</a></p>	<p><b>GSS13150-MAGAZINEV04</b>          New York State Contract # PC65243          FSF Vendor ID: 0000002168          Subscription Services of America, Inc.          P. O. Box 820          2163 Jackson Pl          Bellmore, NY 11710-0763          Attn: Richard Diamond          Phone: 631-368-2016 o          Fax: 888-241-5612          Email: <a href="mailto:nancy.gerrard@proquest.com">nancy.gerrard@proquest.com</a>          Website: <a href="http://www.proquest.com">www.proquest.com</a></p>

**5. SHIPPING TERMS:**

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F.O.B. destination; freight pre-paid. Responsibility and liability for loss or damage will remain with contractor until final inspection and acceptance when responsibility will pass to the Buyer except as to latent defects, fraud, and Contractor's warranty obligations. Any portion of a full order originally shipped without transportation charges (that failed to ship with the original order, thereby becoming back-ordered) will also be shipped without transportation charges.

**6. DELIVERY AND PICKUP:**

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Purchasing entities reserve the right to inspect Goods provided under this Agreement at all reasonable times and places during the term of the Master Price Agreement and Participating Addendum. If any of the Goods do not conform to Master Price Agreement, as amended by the participating Addendum and Order, requirements, the Purchasing Entity will require Manufacturer, directly or through its Distributor, to promptly provide the Goods again in conformity with the Master Price Agreement, as amended by the Participating Addendum and Order, requirements, at no additional cost to the Purchasing Entity. This remedy shall in no way limit the remedies available to the Purchasing Entity in other provisions of the Master Price Agreement, the Participating Addendum, or remedies otherwise available in equity or at law,

including the Uniform Commercial Code (“UCC”), all of which may be exercised by the Purchasing Entity, at its option, in lieu of or in conjunction with the preceding measures.

**7. PRICING:**

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- a. Price includes all customs duties and charges and be net, F.O.B. destination and shall include all transportation charges and inside delivery for print medium. Inside deliveries will be delivered to the ordering agency’s stockroom or office location. Shipping and handling charges, if necessary, must be included as part of the bidder’s percentage of list.
- b. A percentage of publishers’ list prices are offered by the contractors. This may include a range consisting of a lower limit and an upper limit (e.g., 85% t 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.
- c. 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.
- d. 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.
- e. 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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**CONTRACTOR: AVANTI ENTERPRISES, INC. (PC65234)**

<u>ITEM NO.</u>	<u>ITEM CATEGORY – LIBRARY TYPE</u>	<u>PERCENT OF LIST</u>
1.	ACADEMIC LIBRARIES	93.5% - 99.5%
2.	HEALTH SCIENCE LIBRARIES	93.5% - 99.5%
3.	LAW LIBRARIES	97.5% - 100.5%
4.	SCHOOL (Secondary, Elementary) LIBRARIES	80.5% - 95.5%
5.	PUBLIC ("City", regional) LIBRARIES	80.5% - 95.5%
6.	OTHER LIBRARIES (Authorized users not defined above, such as state agencies, etc.	83.5% - 100.5%
7.	OTHER CATEGORIES (All Suppliers)	95.5% - 99.5%

Prepayment Plan Discounts (for each year of contract):

<u>Payment received between:</u>	<u>Receive a Credit of:</u>
March 1 – 31	3.50%

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April 1 – 30	3.00%
May 1 – 31	2.75%
June 1 – 30	2.50%
July 1 – 31	2.00%
August 1 – 31	1.50%
September 1 – 30	1.00%

Early Renewal Program Discounts (Note – All renewals in excess of \$10,000.00 – renewed by June 15):

<u>Renewal List returned by:</u>	<u>Receive a Credit of:</u>
June 15	1.00%
July 15	0.75%
August 15	0.50%

	<u>Dollar Range</u>	<u>Percentage</u>
VOLUME PRICE DISCOUNTS AGENCY SPECIFIC PER ORDER. For an agency's purchase order in dollars.	\$10,000	1.0%
	\$100,000	1.5%
	\$1,000,000 or more	2.0%
VOLUME PRICE DISCOUNTS AGENCY AGGREGATE. For an agency's aggregate contract purchases in dollars.	\$10,000	1.0%
	\$100,000	1.5%
	\$1,000,000 or more	2.0%
VOLUME PRICE DISCOUNTS STATEWIDE. For aggregate contract purchases in dollars statewide.	\$10,000	1.0%
	\$100,000	1.5%
	\$1,000,000 or more	2.0%

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

Contractor offers a Subscription Management Service (Contact contractor for details).

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**CONTRACTOR: COX SUBSCRIPTIONS, INC. D/B/A  
 W.T. COX SUBSCRIPTIONS**

**(PC65236)**

<u>ITEM NO.</u>	<u>ITEM CATEGORY – LIBRARY TYPE</u>	<u>PERCENT OF LIST</u>
1.	ACADEMIC LIBRARIES	96.50% - 103.3%
2.	HEALTH SCIENCE LIBRARIES	98.25% - 103.3%
3.	LAW LIBRARIES	98.25% - 103.3%
4.	SCHOOL (Secondary, Elementary) LIBRARIES	82.00% - 101.5%
5.	PUBLIC ("City", regional) LIBRARIES	84.50% - 103.3%
6.	OTHER LIBRARIES (Authorized users not defined above, such as state agencies, etc.)	94.50% - 103.3%

Contractor offers the following services as part of basic service and at no additional cost: Annual Renewal Lists; *CoxNet* (this free online account management tool is a "real time" system that allows an authorized user to review their most current account information as well as allowing the user to see up-to-the-minute information on titles, claims, title changes, orders, plus a variety of reports. Authorized users may search by title, publisher or ISSN number. This interactive system gives all authorized users the ability to administer and manage their account via the Internet. This innovative program allows authorized users to order (with administrative approval capabilities), claim, perform subscription check-in, and retrieve various details of titles. Database access is available 24 hours a day, 7 days a week);

Customized Management Reports; Access to the W.T. Cox Subscriptions Replacement Issue Library; Annual Catalog; No obligation service proposal; and Personal Account Manager.

Optional Services:

*Journal Finder* – W.T. Cox Journal File Pricing, September 1, 2010. Includes A to Z module, a Link Resolver and an ERM module and aids patrons and staff in accessing all electronic resources regardless of format or vendor. It also tracks licensing and contacts for the Library Administrator as well being a source for usage stats. Contact the contractor for a copy of pricelist.

Contractor accepts the Delaware 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: 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 Delaware 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).

**CONTRACTOR: SUBSCRIPTION SERVICES OF AMERICA, INC. (PC65243)**

<u>ITEM NO.</u>	<u>ITEM CATEGORY – LIBRARY TYPE</u>	<u>PERCENT OF LIST</u>
4.	SCHOOL (Secondary, Elementary) LIBRARIES	69.5% - 109.5%
6.	OTHER LIBRARIES (Authorized users not defined above, such as state agencies, etc.	69.5% - 109.5%

Contractor accepts the Delaware 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 a Subscription Management Service (Contact contractor for details).

**ADDITIONAL TERMS AND CONDITIONS**

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**8. BILLING:**

- a. Billings. Contractor and the dealers/distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to each Agency User in order to receive payment. Billing invoices submitted to an Agency User must contain all information required by the Contract.
- b. **The successful vendor is required to "Bill as Shipped" to the respective ordering agency(s). Ordering agencies shall provide at a minimum the contract number, ship to and bill to address, contract name and phone number.**

**9. PAYMENT:**

- a. The agencies or school districts involved will authorize and process for payment each invoice within thirty (30) days after the date of receipt. The contractor or vendor must accept full payment by procurement (credit) card and/or conventional check and/or other electronic means at the State's option, without imposing any additional fees, costs or conditions.
- b. The Manufacturer, its designated Distributor or agent shall accept a government issued or "P-Card" or any similar payment instrument, as an accepted method of purchase and payment against the Master Price Agreement.

**10. PRODUCT SUBSTITUTION:**

All items delivered during the life of the contract shall be of the same type and manufacture as specified unless specific approval is given by Government Support Services to do otherwise. Substitutions may require the submission of written specifications and product evaluation prior to any approvals being granted.

**11. ORDERING PROCEDURE:**

Successful contractors are required to have either a local telephone number within the (302) area code, a toll free (800) number, or agree to accept collect calls. Each agency is responsible for placing their orders and may be accomplished by written purchase order, telephone, fax or computer on-line systems. The contractor or vendor must accept full payment by procurement (credit) card and/or conventional check and/or other electronic means at the State's option, without imposing any additional fees, costs or conditions.

**12. 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:

- 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").

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 agency users free of charge.
- b. The contractor will offer reasonable levels of continuing support to assist agency 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.

**AGENCY USER PERFORMANCE OBLIGATIONS:**

Agency users acknowledge that the copyright and title to the information content and organization of the electronic journals are and remain with the publisher. Agency user shall use reasonable efforts to inform its end users and walk-in patrons of any restrictions on the use of the electronic journals. Agency 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:

- a. End users may display, download, copy and/or print portions of the electronic journals for use in research, education, or other non-commercial purposes.
- b. End users may use a reasonable portion of the electronic journals in the preparation of educational materials.
- c. 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:**

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.

**13. ORDERS, RENEWALS, AND CANCELLATIONS:**

- a. The agency 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 agency 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 agency 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.

**14. CLAIMS:**

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

**15. CONVERSION TO NEW CONTRACTOR BY AGENCY 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 Agency user. Delivery to the agency user shall be made by the original contract delivery and at no extra cost to the agency 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.

**16. REPORTS:**

- a. The contractor may send the agency user a monthly statement showing the date and amount of each outstanding invoice and credit memorandum.
- b. The contractor shall notify the agency 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 agency user's request the contractor shall provide a printed customized list of titles arranged alphabetically or according to specifications defined by the agency user.
- d. Upon request, the contractor may be required to provide the agency 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 agency 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 agency user shall be in writing, and may be electronically transmitted.

**17. 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 agency user account who shall respond to inquiries within two working days.

**18. SAFETY NOTIFICATIONS:**

- a. Manufacturer shall notify all purchasing entities that have placed Orders pursuant to the Participating Addendum against the Master Price Agreement, of recall notices, warranty replacements, safety notices, or any other applicable notice regarding the Goods being sold under the Master Price Agreement or the Participating Addendum. Such notice shall be given in writing within fifteen (15) calendar days of the date the Manufacturer becomes aware of, or issues, such notices.
- b. Manufacturer shall notify all purchasing entities by phone immediately of any recall, safety notice, warranty replacements, or issues regarding the Goods that relate to the safety of the goods and/or officers. Such phone notification shall be followed by written notification from Manufacturer to all Purchasing Entities within fifteen (15) calendar days of the date the Manufacturer becomes aware of, or issues, such notices.

**19. WARRANTIES:**

- a. Panel Warranty: The bullet- or stab-resistant protective panel portion of the Goods sold under the Master Price Agreement and Participating Addendum or Order shall be warranted by the Manufacturer for a minimum of five (5) years, from the date of delivery to the purchasing entity, to meet the threat level of protection at which it was found by the NIJ to comply with the NIJ 0101.06 requirements for Bullet-Resistant Body Armor and/or the NIJ Standard-0115.0, Stab Resistance of Personal Body Armor (whichever, or both if dual certified, as applicable). This warranty assumes the Good has not been subject to misuse, abuse, unauthorized repair or alteration, or damage. The bullet- or stab-resistant protective panel portion of the Goods sold under the Master Price Agreement and the Participating Addendum and Order shall be warranted by the Manufacturer to be free from defects in materials and workmanship for a period of five (5) years from the date of delivery to the Purchasing Entity. Any Good that fails to meet this warranty shall be replaced by the Manufacturer, at no cost to the Purchasing Entity.
- b. Carrier Warranty: The carrier portion of the Goods sold under the Master Price Agreement and any Participating Addendum or Order shall be warranted by the Manufacturer for a minimum of one (1) year, from the date of delivery to the Purchasing Entity, to be free from defects in materials and workmanship. This warranty assumes the Good has not been subject to misuse, abuse, unauthorized repair or alteration, or damage. Any Good that fails to meet this warranty shall be replaced by the Manufacturer, at no cost to the Purchasing Entity.
- c. General: All goods furnished under the Master Price Agreement and the Participating Addendum shall be new and in good working order, free from defects in materials or workmanship, installed properly and in accordance with Manufacturers' recommendations or other industry standards and will function in a failure-free manner. Manufacturer shall repair or replace, at its option, any Goods that fail to satisfy this warranty.

**20. MEASUREMENT AND FIT:**

Each Body Armor product shall be manufactured to fit a specific individual following professional measurement. Manufacturer-authorized measurement and fit protocols shall be professionally conducted by manufacturer-designated distributors, dedicated sales representatives or agents. Body armor sample vests may be used to assist in establishing initial size and fit for individual officers, however, sample vests may not be used for final fittings. All sizing, measurements, and final fitting shall be done at no expense to the purchasing entity. Body armor improperly fitted to an individual wearer shall be adjusted or

replaced and returned to the individual within thirty (30) days by the contractor at no expense to the purchasing entity.

**21. INSTRUCTION:**

The Manufacturers Agent shall offer instruction or provide presentations as requested by individual law enforcement and/or correctional agencies regarding the care, usage, and limitation of bullet-resistant and stab-resistant armor. Briefings to training academy classes regarding proper fit, care, and maintenance during fitting and measurement visits may also be required.

**22. DISIGNATED DISTRIBUTOR/AGENT RESPONSIBILITIES:**

Designated Body Armor manufacturer distributors/agents are expected to stay current with manufacturer products, pricing, and award requirements.

**23. HOLD HARMLESS:**

The contractor agrees that it shall indemnify and hold the State of Delaware and all its agencies harmless from and against any and all claims for injury, loss of life, or damage to or loss of use of property caused or alleged to be caused, by acts or omissions of the contractor, its employees, and invitees on or about the premises and which arise out of the contractor's performance, or failure to perform as specified in the Agreement.

**24. NON-PERFORMANCE:**

In the event the contractor does not fulfill its obligations under the terms and conditions of this contract, the ordering agency may purchase equivalent product on the open market. Any difference in cost between the contract prices herein and the price of open market product shall be the responsibility of the contractor. Under no circumstances shall monies be due the contractor in the event open market products can be obtained below contract cost. Any monies charged to the contractor may be deducted from an open invoice.

**25. FORCE MAJEURE:**

Neither the contractor nor the ordering agency shall be held liable for non-performance under the terms and conditions of this contract due, but not limited to, government restriction, strike, flood, fire, or unforeseen catastrophe beyond either party's control. Each party shall notify the other in writing of any situation that may prevent performance under the terms and conditions of this contract.

**26. AGENCY'S RESPONSIBILITIES:**

The Agency shall:

- a. Examine and review in detail all letters, reports, drawings and other documents presented by the Contractor to the Agency and render to the Contractor in writing, findings and decisions pertaining thereto within a reasonable time so as not to delay the services of Contractor.
- b. Give prompt written notice to the Contractor whenever the Agency observes or otherwise becomes aware of any development that affects the scope or timing of the Contractor's services.
- c. When an ordering agency first experiences a relatively minor problem or difficulty with a vendor, the agency will contact the vendor directly and attempt to informally resolve the problem. This includes failure to perform by the date specified and any unacceptable difference(s) between the purchase

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order and the merchandise received. Ordering agencies should stress to vendors that they should expedite correction of the differences because failure to reply may result in an unfavorable rating in the execution of the awarded contract.

- d. The state has several remedies available to resolve non-performance issues with the contractor. The Agency should refer to the Contract Terms and Conditions to view these remedies. When a default occurs, the Agency should first review the contract to confirm that the issue is a part of the contract. If the issue is not covered by the contract, the state cannot expect the contractor to perform outside the agreement. If the issue is a part of the contract, the Agency or GSS - Contracting must then contact the contractor, discuss the reasons surrounding the default and establish a date when the contractor will resolve the non-performance issue.
- e. If there is a performance deficiency, a Corrective Action Report (CAR) may be used. Complete this form to report concerns with vendors or commodities. Be sure to furnish as much detail as possible. <http://gss.omb.delaware.gov/divisionwide/forms.shtml>.