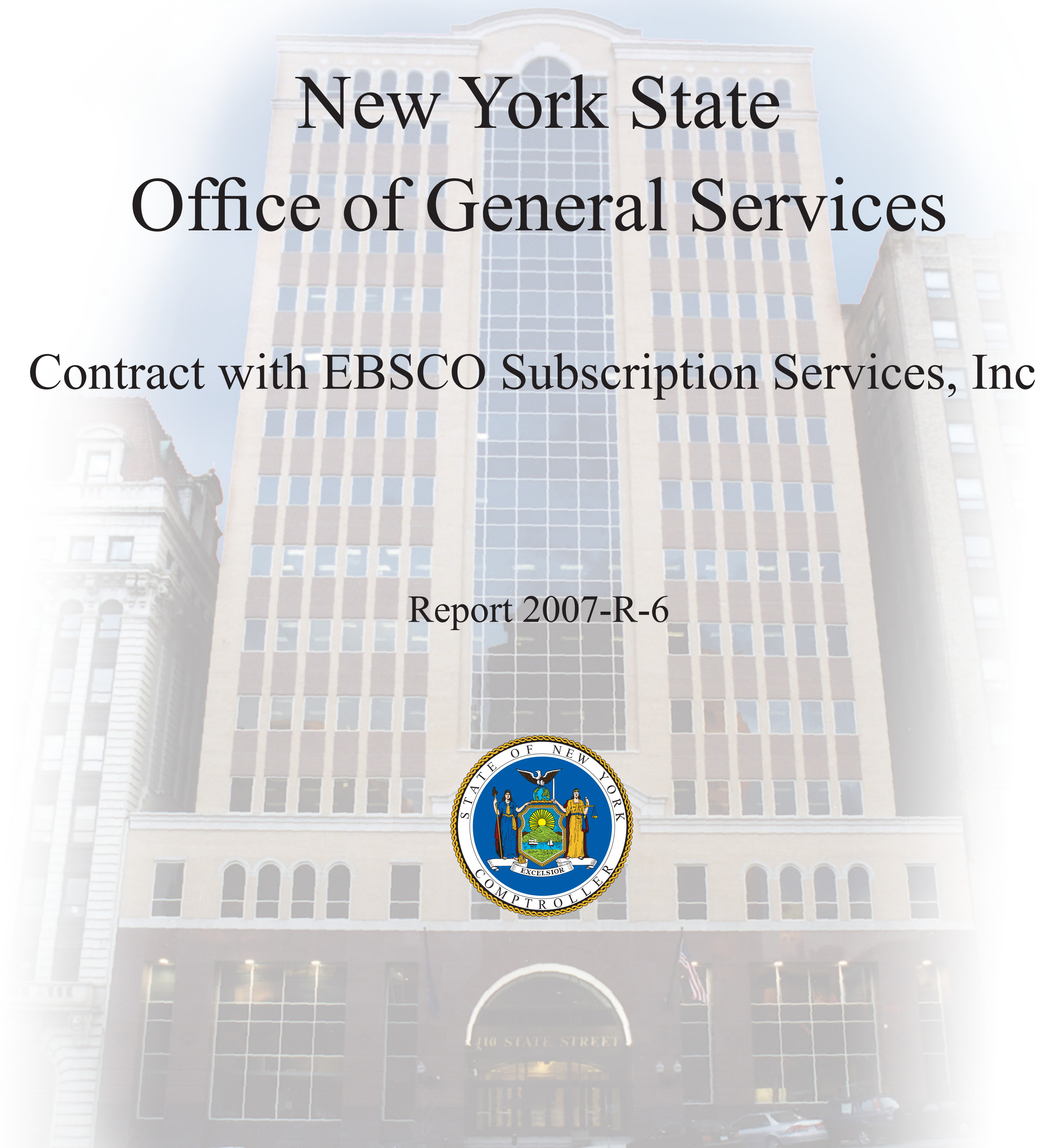

# New York State Office of General Services

## Contract with EBSCO Subscription Services, Inc.

Report 2007-R-6

Thomas P. DiNapoli

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# State of New York
# Office of the State Comptroller

**Division of State Government Accountability**

August 12, 2010

Mr. John C. Egan
Commissioner
Office of General Services
Corning Tower
Albany, New York 12242

Dear Mr. Egan:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of contract PC53575 awarded by the Office of General Services to EBSCO Subscription Services, Inc. This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Office of the State Comptroller
Division of State Government Accountability

State of New York
Office of the State Comptroller

# EXECUTIVE SUMMARY

## Audit Objective

A joint audit/investigation was conducted by the Offices of the New York State Comptroller's Division of State Government Accountability and its Investigations Unit (State Comptroller) and the New York State Inspector General (Inspector General). The objective was to determine whether EBSCO Subscription Services, Inc. (EBSCO) charged user agencies appropriate prices in compliance with contract terms. The Comptroller's Investigations Unit and Inspector General focused on whether EBSCO or its officers and officials had intentionally provided inaccurate information and documentation to conceal contract breaches.

## Summary

The Office of General Services (OGS) was created in 1960 to provide essential support services for the operation of State government. One OGS responsibility is the awarding of State-wide contracts servicing common purchasing needs of all State agencies and other authorized government entities.

On June 14, 1998, OGS set up contract group 20020 with multiple subscription service providers to provide books, journals, magazines and other literary materials (Titles) in all formats (e.g., print, CD-ROM, electronic journals, etc.) to State agencies, political subdivisions and other authorized entities. EBSCO Subscription Services, Inc. (EBSCO) is the largest provider in this contract group. State agency purchases from the EBSCO contract (PC53575) average over $10 million annually, aggregating to over $115 million since the contract's inception through December 31, 2008.

The EBSCO contract establishes a set price for each individual Title sold, and allows for EBSCO to apply a percentage service charge to recover processing costs. Under the terms of its contract with the State, this service charge may not exceed the lesser of five percent of the Title price or $35 per Title.

All EBSCO invoices billed to 13 State University of New York-related user agencies (EBSCO's major customers) for the 2006-07 and 2007-08 school years were selected to determine whether EBSCO was billing agencies in compliance with contract terms. The total dollar value of the sampled invoices was $11.6 million.

It was determined that EBSCO's practice has been to report its service charges as one lump sum on each invoice. Therefore, user agencies cannot determine whether any of the individual service charges for specific Titles were accurate or exceeded the agreed upon service charge limits.

After EBSCO officials were asked for the detailed billing information (individual Title prices and service charges) for each of the sampled invoices, it was determined that the $35 cap on service charges contained in the contract was not being applied. Instead, EBSCO assessed the agreed upon service charge percentage on each Title without limit. For example, one user agency had invoices that totaled $2,066,668 before the service charge. Despite the fact that the actual service charge for this user agency should have totaled $20,822 based on the prices of the individual Titles and applying the $35 cap, EBSCO billed the agency $29,925 as a result of applying a range of service charges that averaged about 1.45 percent on each Title listed on the invoice.

After comparing the actual service charges billed to each of our sampled agency invoices to the detailed billing information subsequently supplied by EBSCO, total overbillings for the sampled invoices amounted to approximately $105,000, an average of about nine tenths of one percent of the total sampled billings ($105,000 / $11.6 million).

In response to these findings, EBSCO officials offered various explanations. One EBSCO official responded that "there is no actual service charge cap applied to each Title," while another official explained "the advent of electronic Titles and 'packaging' of Titles in discount packages render the service charge cap obsolete."

If the calculated overbillings on the sampled invoices are consistent with EBSCO's statewide billings since contract inception in 2005 ($115 million), statewide overbillings would approximate $1 million.

As a result of our audit testing and interviews with EBSCO officials, it is evident that EBSCO is not complying with contract billing terms. While the documentation provided to the Comptroller at the inception of this audit contained misleading data related to the cap on surcharges, it could not be definitively determined that the information was presented to deceive the auditors. OGS officials generally agree with these findings and have been working with EBSCO officials to redesign the contract language for future periods and to discuss reimbursement.

Our audit report contains three recommendations.

This report, dated August 12, 2010, is available on our website at: http://www.osc.state.ny.us.
Add or update your mailing list address by contacting us at (518) 474-3271 or
Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236

# Introduction

**Background**

The Office of General Services (OGS) was created in 1960 to provide essential support services for the operation of State government. OGS services include property management, design and construction, information technology, and procurement services. OGS is responsible for awarding many State-wide contracts servicing common purchasing needs of all State agencies and other authorized government entities. These Statewide contracts are designed to provide assurance that reasonable prices will be charged for the respective goods and services offered.

On June 14, 1998, OGS set up contract group 20020 with multiple subscription service providers, to provide books, journals, magazines and other literary materials (Titles) in all formats (e.g., print, CD-Rom, electronic journals, etc.) to State agencies, political subdivisions and other authorized entities. Subscription ordering and billing activities take place directly between the subscription service provider (provider) and user agencies. Prices for each subscription Title are set by the publisher, and each provider is permitted to apply an agreed upon service charge calculated as a set percentage of the publisher's price. Under the EBSCO agreement, EBSCO agreed that its service charge would not exceed the lesser of five percent of the cost of each individual Title or $35 for any individual Title.

The contract requires provider invoices to include sufficient data, such as the contract number, description/quantity of items purchased, the price per item, and service charge, to allow user agencies the opportunity to review the propriety and accuracy of billings.

EBSCO Subscription Services, Inc. (EBSCO) is the largest provider in this contract group. State agency purchases from the EBSCO contract (PC53575) average over $10 million annually, aggregating to over $115 million since the contract's inception through December 31, 2008.

**Audit Scope, Methodology and Authority**

The objectives of this joint audit/investigation were to determine whether EBSCO has been charging user agencies appropriate prices in compliance with contract terms for the period January 1, 2005 through December 31, 2008, and if EBSCO or its officers and officials had intentionally provided inaccurate information and documentation to conceal contract breaches. To accomplish our objectives, interviews were conducted of OGS and EBSCO officials and staff and records pertaining to the contract were reviewed, including selected purchasing documentation and EBSCO invoices, as well as summary expenditure reports from OGS and EBSCO. The audit testing included a comparison of prices charged by EBSCO to a sample of SUNY-related user agencies selected invoices to contract pricing and service charge specifications. The Comptroller's Investigations Unit and the New York State Office of the Inspector General focused on areas of potential impropriety based on a suspicion that EBSCO regional Vice President and General Manager Carl Teresa had intentionally provided false information and documentation to conceal his office's breach of the 2005 contract terms specific to the $35.00 cap on service charges.

The State Comptroller's audit staff conducted the performance audit portion of this review according to generally accepted government auditing standards. Those standards require that auditors plan and conduct the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for their findings and conclusions based on the audit objectives. It is believed that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The examination was conducted pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law, as well as New York State Executive Law Article 4-A which establishes the Office of the New York State Inspector General and outlines its duty and authority to investigate allegations of corruption, criminal activity, conflicts of interest or abuse in state agencies. The Inspector General further has the duty to review and examine the policies and procedures of agencies regarding the prevention of misconduct and to recommend remedial action to prevent or eliminate such abuses.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

**Reporting Requirements**

A draft copy of this report was provided to Office of General Services and EBSCO officials for their review and comment. Their comments were considered in preparing this final report.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Office of General Services shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

**Contributors to the Report**

Major contributors to this report include OSC staff members Frank Patone, Michael Solomon, Brian Lotz, Adrian Wiseman, Anthony Calabrese, Melissa Davie, and Stephanie Kelly, and Inspector General staff members Sherry Amarel and Daniel Sullivan.

# Audit Findings and Recommendations

The State Comptroller and the Inspector General found that EBSCO was overcharging certain user agencies by not complying with contract pricing terms. If the rate of overbilling determined from our audit sampling is consistent throughout EBSCO's billing practices statewide since contract inception, then overcharges to all user State agencies would approximate $1 million. While the documentation provided to the Comptroller at the inception of this audit contained misleading data related to the cap on surcharges, it could not be definitively determined that the information was presented to deceive the auditors.

**Service Charge Overbillings**

The EBSCO contract establishes a set price for each individual Title sold, and allows for EBSCO to apply a service charge to recover processing costs. The service charge is applied as a percentage of the individual Title price and varies based on user agency volume (e.g., a lower percentage service charge for high-volume user agencies). In all cases, the service charge percentage is not to exceed the lesser of five percent or $35 per individual Title. Pursuant to the contract, for billing purposes, EBSCO invoices may reflect a service charge for each individual Title, or aggregate the service charge dollars into one lump sum.

All EBSCO invoices billed to 13 SUNY-related user agencies (EBSCO's largest State customers), for the 2006-07 and 2007-08 school years, were selected in order to determine whether EBSCO was billing the agencies in compliance with contract pricing terms. The total dollar value of the sampled invoices was $11.6 million.

Records revealed that EBSCO reported its service charges as one lump sum on each invoice. As such, user agencies could not determine whether any of the individual service charges for specific Titles were accurate or exceeded the agreed upon service charge limits. Agencies were permitted by the contract to request detailed invoices from EBSCO; however, this request was never made.

EBSCO Vice President and General Manager, Carl Teresa, who was the regional manager in charge of sales and service in New York State, was contacted at the beginning of the audit to determine how EBSCO applied its service charges and how the $35 cap was implemented. Teresa told officials that EBSCO's computer system was configured with a "customer control line," which he explained as an encoded feature in the mainframe to prevent the service charge from exceeding $35 for all New York state customers purchasing from the OGS contract.

The Inspector General visited one of the sampled SUNY user agencies, SUNY Binghamton, to review its EBSCO invoices. The Director of Libraries told the Inspector General that his staff reviewed EBSCO's recent billings and determined that EBSCO was charging a flat rate of 4.5% service charge for each title, which he believed was consistent with the terms of the EBSCO contract. The Director of Libraries admitted he had no knowledge of the $35 maximum service charge stipulated in the contract.

Based on the records the State Comptroller received from the sampled SUNY agencies and SUNY Binghamton's invoices obtained by the Inspector General, each of which contained a one-lump sum service fee, a request was made to EBSCO Vice President Teresa to provide a copy of SUNY Binghamton's invoice to determine how the $35 cap was implemented. Teresa provided an invoice containing remarkable differences with the invoice SUNY Binghamton had provided investigators. The invoice Teresa provided referenced a $35 service charge cap for specific titles whereas Binghamton's record noted a lump-sum service charge. As a result, the audit/investigative team conducted an on-site meeting at EBSCO's Regional Office in Tenafly, NY, with Teresa to seek clarification.

During the visit, Teresa admitted he was aware of the terms of the OGS contract, referring to the $35 cap. When asked about the copious discrepancies between the Binghamton invoice he recently sent to the Comptroller and the invoice obtained directly from Binghamton, Teresa admitted he modified the statement he sent to the Comptroller because he purportedly believed the Comptroller requested the data in a specific format applying the $35 service charge cap to each title and did not request a copy of the original billing invoice sent to SUNY Binghamton. Teresa claimed that although EBSCO sometimes limits its per Title service charges to $35, he negotiated several new written terms with each SUNY entity, contrary to the OGS contract terms, in favor of a lower standard service charge rate. The new rate allegedly resulted in a better deal for the SUNY entity; however, under these arrangements the $35 cap on service charges would not apply. A request was made for copies of these written proposals of new terms but our review found that none were signed by any user agencies or incorporated into a contract.

Due to the misleading billing statement from Teresa which provided auditors with faulty information, the Inspector General subpoenaed from EBSCO detailed billing information (individual Title prices and service charges) for each of the 13 sampled invoices. Upon receipt of the detailed documentation, OSC auditors determined that in none of the sampled invoices was the $35 per Title cap applied as required. Instead, EBSCO assessed the approved service charge percentage on each Title without limit resulting in certain more expensive Titles warranting service charges that far exceeded $35.

For example, for one of our sampled user agencies, the invoices for the selected 2006-07 school year period totaled $2,066,668 before adding on the approved service charge. The aggregate service charges on the selected invoices totaled $29,925. The actual service charges for this user agency should have totaled $20,822 based on the prices of the individual Titles included on these invoices and the $35 cap.

After comparing the actual service charges billed to each of our sampled agency invoices to the detailed billing information subsequently supplied by EBSCO, the calculated total overbillings for the sampled invoices amounted to approximately $105,000, an average of nine tenths of one percent of the total sampled billings ($105,000 / $11.6 million).

The audit/investigation findings were shared with senior EBSCO central office officials who stated that they were unaware of the $35 service charge limit in the contract and conceded to the inappropriate billing in some instances by Teresa and agreed to reconcile the difference. EBSCO officials requested an opportunity to review the detailed billing data we had previously obtained from Vice President Teresa and subsequently, several weeks later, provided their own explanation as to how the service charges were allocated among individual Titles on an invoice. The newly submitted data reflected service charges being allocated evenly among each of the Titles on a given invoice. For example, an invoice with 100 Titles and an aggregate service charge of $1,000 showed each Title with a $10 service charge. This approach resulted in many individual Titles on the invoice having a service charge that exceeded the agreed upon service charge percentage limit of five percent - and in some cases - exceeded the actual price of the illustrated Title.

EBSCO central office officials further stated that they had determined that the current contract's $35 service charge limit is not always appropriate with the advent of electronic Titles and "Title packaging." Title packaging provides user agencies with discounted Title fees when purchasing several Titles at one time and also results in a reduced service charge since the service charge percentage is only applied once to the discounted price - and not on each individual Title. Although EBSCO officials were able to show examiners that they were packaging Titles to our sampled agencies for the 2008-09 school year (after our audit scope period), they could not provide any evidence of such discounting on the sampled invoices.

Based on audit testing and investigative interviews with EBSCO officials, it is clear that EBSCO has not been complying with contract billing terms. Specifically, under Teresa's supervision, EBSCO violated its contract with the state by offering its state customers a guaranteed rate program which was contrary to the terms of the OGS contract. As such, if the calculated percentage overbillings on the sampled invoices are consistent with EBSCO's state-wide billings since contract inception in 2005 ($115 million), state-wide overbillings would approximate $1 million. The investigation determined that while Teresa's explanation of why he provided the requested information in a misleading format strains credulity, it could not be determined that this was done with the intention to deceive auditors. The reasonableness of this conclusion is confirmed based on the fact that Teresa provided accurate information to SUNY Binghamton after the audit was commenced, where it could be reasonably assumed that that information would find its way into the hands of OSC auditors.

OGS officials generally agree with these findings and stated that OGS did not approve any action to amend contract billing terms and that they were not aware that EBSCO had made such a determination. They also noted that they have been working with EBSCO officials to redesign the contract language for future periods.

**Recommendations**

1. Follow up with EBSCO on the overbilling practices identified in this audit and determine the extent of recovery that is appropriate.
2. Work with the agencies to monitor EBSCO billing practices and to help ensure the practices comply with contract terms.
3. Continue to work with EBSCO to determine what amendments are necessary to existing contracts, or what provisions are necessary for any new contract, to ensure an appropriate billing methodology is in place for service charges.

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
OFFICE OF GENERAL SERVICES
MAYOR ERASTUS CORNING 2ND TOWER
THE GOVERNOR NELSON A. ROCKEFELLER EMPIRE STATE PLAZA
ALBANY, NEW YORK 12242

DAVID A. PATERSON
GOVERNOR

JOHN C. EGAN
COMMISSIONER

CARLA CHIARO
DEPUTY COMMISSIONER
INFORMATION TECHNOLOGY AND
PROCUREMENT SERVICES

June 1, 2010

Mr. Frank Patone, CPA
Audit Director
Office of State Comptroller
Division of State Government Accountability
123 William Street, 21st Floor
New York, New York 10038

Dear Mr. Patone:

I am writing in response to your draft audit report 2007-R-6 regarding EBSCO Subscription Services, Inc. – Contract PC53575. The Office of General Services ("OGS") appreciates the considerable efforts of the Office of State Comptroller ("OSC") auditors and staff, together with auditors and counsel from the New York State Office of Inspector General ("OIG") which went into this audit. In addition, OGS would like to recognize the joint efforts of all involved who joined with staff of OGS in the Procurement Services Group, Internal Audit and Legal Services to review compliance with the centralized contract PC53575 with EBSCO Subscription Services, Inc. ("EBSCO").

The Contract and Audit Background

OGS Statewide Contract PC53575, commenced on June 14, 1998, allows EBSCO and several other vendors as part of a set of multiple contract awards to provide to State agencies, political subdivisions and other authorized entities, subscription services which includes sales of books, journals, magazines and other literary materials in all formats including print, CD-ROM, and electronic journals. EBSCO is the largest provider of subscription services under this set of multiple contracts providing approximately $133,000,000.00 dollars in sales to State Agencies, and a total of approximately $600 million to all state agencies and non state authorized entities combined from June 14, 1998 through March 31, 2010.

The EBSCO contract uses a pricing metric with a percentage of list price for each subscription and they are the sole contractor to provide a maximum charge of $35 per title. It allows EBSCO to charge a percentage service charge that ranged over the years from 86% to 106.5% for various types of publications and customers to recover processing costs and the costs of maintaining the clients' inventory of publication lists, billing and shipping needs. EBSCO in its bid for Contract PC53575 provided a maximum service charge that would not exceed $35.00 per title. For example, a title with a list price of $10,000.00 with a category allowing a 5% service charge or $10,500.00 would be limited to a total charge of $10,035.00.

OSC began its audit to determine whether EBSCO was in compliance with the contract terms as set forth in Contract PC53575. The OSC audit commenced approximately in November 2007 when OSC staff requested data from some of the largest users of subscription services including the SUNY campuses and hospitals. EBSCO staff was then contacted by OSC in EBSCO's facility in New Jersey and asked to provide data to support the service charges including the $35.00 service charge cap. A problem immediately arose when the data provided by EBSCO indicating the application of the $35.00 service charge cap did not match the amounts provided on the vouchers from the State campuses. EBSCO personnel continued to indicate to OSC auditors that the $35.00 service charge cap was in place; however the data from EBSCO simply did not match the actual state vouchers which OSC had obtained during the audit process.

A face to face meeting was held with EBSCO personnel and OSC auditors on 5/20/08 in Tenafly, New Jersey. At this meeting EBSCO personnel admitted that the data submitted to OSC in January 2008 was altered and further claimed that EBSCO believed that OSC wanted to see what the data would look like with the $35.00 cap. EBSCO further claimed that it gave schools a better deal than what the contract offered and indicated EBSCO would provide supporting documentation for such a position. Ongoing lack of cooperation from the EBSCO Tenafly Offices, however, resulted in the issuance of a subpoena from the OIG seeking EBSCO billing support for the years 2005, 2006, 2007 and 2008. At this point OSC auditors and staff, OGS staff and the OIG were all involved in the matter to determine the extent of the issues with EBSCO and whether EBSCO had been involved in extensive overcharges.

Further delays in providing billing data resulted in a direct request to EBSCO headquarters in Birmingham, Alabama for resolution. The first set of data arrived from EBSCO in March 2009. On June 11, 2009 EBSCO senior personnel met with OSC auditors and counsel, OGS staff and counsel and OIG counsel in Albany, N.Y. The resulting discussions over the next several months provided an explanation from EBSCO staff and auditors for some apparent overcharges as well as critical interpretations of the contract as drafted in 1998 with an industry that was largely a paper oriented subscription company but began to evolve after the last decade.

<u>The OSC Audit and EBSCO Response</u>

As set forth in the OSC Audit Report 2007-R-6, OSC reviewed 13 State University related user agencies for the 2006-07 and 2007-08 school years. OSC analyzed approximately $11.6 million worth of invoices and found a potential $105,000.00 in overcharges on service charges. The overcharged total therefore reflected an overcharge amount of 9/10$^{th}$ of one percent that when multiplied by state wide agency billings of $115 million totaled approximately $1 million in overbillings.

On July 8, 2009, EBSCO responded to the OSC proposed audit by focusing on two customers and providing extensive detail as to the service charges set forth in the invoices. A copy of the Letter from EBSCO to Brian Lotz, OSC Audit Supervisor, is annexed hereto as Exhibit "A". Without delving into hundreds, if not thousands of lines of invoice detail, the thrust of EBSCO's argument was that the subscription industry had changed substantially during the term of the contract. EBSCO argued that the per title service charge limitation of $35.00 applied to each single title and that the subscriptions had later been repackaged to include groups of title which were both hard copy, print and online versions. In addition, the publishers would provide back copies of electronic titles for numerous years. As stated in the July 8th EBSCO Letter:

> "For Stony Brook and Binghamton we have recalculated the service charge taking into account package and print plus online individual title components. Additionally, for these two customers we have identified categories of items which do not seem to fit the "individual title" definition and are either specifically excluded or not addressed by the New York State contract. These include site licenses, licenses for archives which cover many years of back files and databases. It is our view that the $35 limit should not apply to these items and our analysis reflects this accordingly."

Although EBSCO in the July 8th letter drastically reduced the overcharges claimed by OSC it did admit a valid overcharge range of 5.4 to 5.7% of the original $1 million dollar overcharge amount.

Following this presentation by EBSCO, OGS responded in a letter to Allen Powell, President of EBSCO Information Services, dated August 4, 2009. A copy of said Letter is annexed hereto as Exhibit "B". The OGS Letter found fault with EBSCO's unilateral admission that it was selling titles outside of the state contract, charging for those titles and arbitrarily making a decision that the sale of certain titles was outside of the contract. The OGS Letter specifically expressed the concern of OGS that the comparison of EBSCO to the OSC audit was "post facto" and that by use of electronic copies of titles, packaged titles and site licenses charged by publishers for said titles, there could be a reduction of the calculation of the total service charge. An additional issue set forth in the Letter was that there were still overcharges remaining after the reductions presented by EBSCO.

EBSCO responded to the OGS Letter by forwarding a Letter to OGS dated August 18, 2009, a copy of which is annexed as Exhibit "C". The second EBSCO Letter indicated that EBSCO calculations may have not applied the $35.00 service charge limit, but was in the spirit and intent of the original contract which was changed by the electronic era of publishing which included packaging of titles, electronic versions of titles and electronic copies of back issues.

While EBSCO had presented an explanation about the charges on its invoices, several critical concerns were not explained: (1) why did EBSCO not communicate with OGS and explain the industry changes and the products being offered especially with regard to the electronic packaging and delivery of its products, (2) why did it take a "post facto" analysis to reduce the overcharges determined by OSC, and (3) how could OSC or OGS ever determine proper service charges for the term of the contract from 1998-2010; particularly when extensive "electronic" access to journals and publications as we know it was not available until approximately 2005.

The OGS Responsibility Meeting with EBSCO on May 6, 2010

Following the issuance of the OSC draft Audit on April 9, 2010, OGS requested that EBSCO come to Albany, N.Y. and more fully explain its position in light of the draft audit findings.

EBSCO's representatives set forth their positions as described in their Letters dated July 8, 2009 and August 18, 2009 (attached as Exhibits "A" and "C" respectively). EBSCO acknowledged the improper actions of its representative in providing misleading information when requested by OSC in 2008, and advised OGS that said individual had been terminated from employment. EBSCO argued that its position regarding overcharges had been consistent since the central office in Birmingham, Alabama had been involved. The accounting spreadsheets prepared by EBSCO's accountants were reviewed at the meeting and EBSCO's position remained that the OGS centralized contract should be interpreted such that the $35.00 service charge cap applied to each *individual* title. Therefore when subscriptions were sold by publishers they include charges for hard copy titles, electronic copies, as well as, back issues provided electronically. The bundling and packaging of various combinations of the above types of titles lead to EBSCO's conclusions that the OSC audit had overstated the amount of overcharges.

EBSCO's explanations, while somewhat plausible, still were explanations which were made after the commencement of the OSC audit. EBSCO explained that with the exception of the first several years of the first subscription contract from 1991 to 1998, EBSCO made an effort to apply the $35.00 per title service charge. Following this time period, EBSCO simply did not have a bookkeeping method for checking on the service charge limitation of $35.00 per title when the bookkeeping system became computerized in the late 1990s.

OGS is currently reviewing its position regarding the responsibility of EBSCO, and EBSCO has provided a series of backup documents after the responsibility meeting to further support it position as well as explain any shortcomings. EBSCO has provided correspondence with supporting documents explaining their position including a package regarding the audit which was sent to OSC on May 5, 2010 and copied to OGS, together with packages to OGS on May 13, 2010 and May 18, 2010.

OSC Audit Recommendations

OSC and OGS are working to resolve any outstanding issues with EBSCO. The experience with EBSCO has given OGS an opportunity to review with EBSCO, as well as with other subscription vendors, the changing landscape of the subscription industry as it has evolved from paper to electronic services. The present IFB issued by OGS for Subscription Services on April 8, 2010 has resolved many of the service, delivery, and billing issues involved in the EBSCO audit. OGS, in light of the three (3) recommendations in the OSC audit is actively pursuing the following solutions:

1. OGS is working with EBSCO to determine a good faith resolution of overcharges taking into account the OSC Proposed Audit findings as well as review of calculations presented by EBSCO auditors and OGS Internal Audit.

2. OGS has in the present IFB which opened on April 8, 2010, resolved many of the service, delivery, and billing issues so that companies such as EBSCO can comply with proper billing practices and sell products which are within the scope of the contract. OGS has insisted that billing be transparent in the future with sufficient detail to guarantee that the appropriate percentages are being applied.

3. OGS and EBSCO have agreed that any and all possible issues regarding contract interpretation will be resolved by ongoing communication and any issues on scope, product offerings and billing will be resolved to allow for the best value to New York State authorized users of this contract.

OGS welcomes the auditors' recommendations and the opportunity to refine its procurement processes and services to its customers. I would like to thank the auditors for their efforts and for working with OGS for a more efficient and transparent public procurement process.

Sincerely,

Carla Chiaro

Carla Chiaro

cc. John C. Egan, Commissioner

EXHIBIT A

EBSCO
INFORMATION SERVICES

Allen Powell
President

July 8, 2009

Brian J. Lotz, CGFM
Audit Supervisor
110 State Street – 11th Floor
Albany, NY 12236-0001

Dear Brian:

Pursuant to our meeting in Albany, NY on June 11, 2009, we have performed further analysis on EBSCO invoice data for subscription year 2008. Specifically, we analyzed two of the most significant New York State customers with whom we did business for the subscription year 2008. These two customers were SUNY Stony Brook and SUNY Binghamton. You had presented exhibits on these two customers which supported your initial conclusion from your audit. To keep things consistent we analyzed these two customers. These two customers together represent 45% of the invoiced amount of $9M on which we provided detail earlier and 29% of the $14M you indicated EBSCO invoiced NY State entities for 2008. We believe focusing our analysis on these two customers to be a reasonable approach to reaching an expeditious conclusion to this matter.

Before summarizing the results of our analysis, I offer a little background, much of which I shared in Albany, that I hope is helpful. The original NY state contract on which EBSCO was included was awarded for the contract period June 14, 1991 to June 13, 1994. It was EBSCO's original bid in 1991 that contained the language "maximum fixed service charge per single title: $35.00." Subsequent to this original award, the NY state contract has been extended multiple times over various time frames. During the 17 years since the NY state contract was first awarded the information subscription business has changed substantially. Seventeen years ago libraries ordered individual magazines and journals that were placed on shelves for patrons. Only one patron at a time could use the material. For this reason institutions would sometimes order multiple copies of the most used titles.

In recent times the landscape has changed dramatically. Back in 1991 our customers ordered essentially no online content. Today well over 65% of our sales revenue is from information purchased by our customers in an electronic format. Likewise over the past 17 years the information industry has seen consolidation with many publishers merging. The result of both publisher consolidation and emergence of the electronic dissemination of information has been the re-packaging of content. No longer is the norm one title sitting on a shelf that can only be used one person at a time. Now we have packages of many individual titles. We have virtually hundreds of titles available due to site licenses and other multi-simultaneous user offerings. Hundreds of titles which were previously not ordered are now purchased via online archives that provide many additional titles going back dozens of years.

All of these facts and more indicate that a flat amount per individual title does not fit the current situation. I highlighted this during our Albany meeting. Indeed, as early as 1997 it appears a former

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EBSCO manager recognized the dynamics were beginning to change. In response to a request from New York to extend the contract, Mr. Alan Block, in a letter of February 19, 1997, proposed changing the $35 amount to $50. He was told that this represented a change and it was not allowed. He eventually agreed to keep the $35 limit in place for one year or until a new contract was issued, whichever came first. I was told the same thing recently in order to extend the current contract for one year. In Albany I agreed to do so provided I was given verbal assurances that the contract extension would be for no more than one year.

As agreed in our meeting in Albany, we have identified the underlying pricing of the individual titles which are included in package and combination listings as these were omitted from the original NYS audit methodology used to calculate "service charge per title." We then allocated the package price to individual titles included in the package for purposes of computing a service charge amount per title. For Stony Brook and Binghamton we have recalculated the service charge taking into account package and print plus online individual title components. Additionally, for these two customers we have identified categories of items which do not seem to fit the "individual title" definition and are either specifically excluded or not addressed by the NY state contract. These include site licenses, licenses for archives which cover many years of back files and databases. It is our view that the $35 limit should not apply to these items and our analysis reflects this accordingly. The results of our analysis of Stony Brook and Binghamton are included on the attached Excel file.

A summary of our findings for the main invoices (document type INV) for Stony Brook and Binghamton is as follows:

A. Stony Brook

| | |
|---|---|
| $3,216,466.23 | 2008 Publisher Retail |
| $14,868.63 | Stipulated overcharge of service charge per NYS audit methodology |
| $45,656.64 | Original EBSCO service charge |
| $35,942.49 | Recalculated SC including package components and print and online combos |
| $9,714.15 | Remainder |
| $8,868.45 | Service charge on site licenses for multi-user access and licenses for multiple years |
| $845.70 | Balance |
| 5.7% | Percentage of the original NYS stipulated overcharge |

B. Binghamton

| | |
|---|---|
| $805,232.49 | 2008 Publisher Retail |
| $12,837.00 | Stipulated overcharge of service charge per NYS audit methodology |
| $33,758.44 | Original EBSCO service charge |
| $24,973.50 | Recalculated SC including package components and print and online combos |
| $8,784.93 | Remainder |
| $8,087.99 | Service charge on site licenses for multi-user access and licenses for multiple years |
| $696.94 | Balance |
| 5.4% | Percentage of the original NYS stipulated overcharge |

The analysis of these two customers was quite extensive and required hundreds of hours of time. Our conclusion as a result of this research is that while EBSCO has potentially overcharged some NY state contract customers, the State of New York's original communication to us in the Albany meeting of the potential overcharge amount is significantly overstated. Accordingly, we would like to discuss this with you via phone once you have had the opportunity to review the enclosed data.

Sincerely,

Allen Powell
President
EBSCO Information Services

cc: Rick Bozzelli - Vice President & Chief Financial Officer, EBSCO Industries, Inc.
Darrell Mayes - Corporate Auditor, EBSCO Industries, Inc.

EXHIBIT B

DAVID A. PATERSON
GOVERNOR

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
OFFICE OF GENERAL SERVICES
MAYOR ERASTUS CORNING 2ND TOWER
THE GOVERNOR NELSON A. ROCKEFELLER EMPIRE STATE PLAZA
ALBANY, NEW YORK 12242

JOHN C. EGAN
COMMISSIONER

HOWARD L. ZWICKEL
DEPUTY COMMISSIONER AND COUNSEL

August 4, 2009

Allen Powell, President
EBSCO Information Services
P.O. Box 1943
Birmingham, AL 35201-1943

Dear Mr. Powell:

Re: Group 20020 Serials (Domestic & Foreign Periodicals, Magazines, Etc.)
EBSCO Subscription Services, Contract PC53575

The New York State Office of General Services (OGS) is in receipt of your Letter dated July 8, 2009, directed to Brian J. Lotz at the Office of the State Comptroller (OSC), together with the spreadsheet analyzing EBSCO invoices at the state campuses at both Stony Brook and Binghamton.

We appreciate your efforts to provide some explanation of the overcharges which have been uncovered in the current OSC audit, however, OGS notes some significant difficulties with the explanations as presented. In your letter you state:

> For Stony Brook and Binghamton we have recalculated the service charge taking into account package and print plus online individual title components. **Additionally, for these two customers we have identified categories of items which do not seem to fit the "individual title" definition and are either specifically excluded or not addressed by the NY state contract. These include site licenses, licenses for archives which cover many years of back files and databases.** It is our view that the $35 limit should not apply to these items and our analysis reflects this accordingly. (Emphasis added.)

The problem with this statement in your letter is threefold as it regards the OGS contract, namely, (i) you have breached the terms of the contract by selling items, such as online individual title components, which are not included, nor considered part of the contract, (ii) you have admitted breach of the terms of the contract by charging for items either specifically excluded or not addressed by the New York state contract, and

(iii) you breached the terms of the contract by charging for site licenses, licenses for archives which cover years of back files and databases which are outside of the contract and it is your "view that the $35 limit should not apply to these items."

As set forth in the Contract Award Notification for the EBSCO contract PC 53575 dated July 9, 1998 (revised June 30, 2009) it states:

"This contract award covers the purchase of serials in all formats, including but not limited to print, CD-ROMS, electronic journals, microform, law materials and back issues, **On-line databases are EXCLUDED from this contract.** SERIALS include periodicals, magazines, journals, newspapers, annuals, law materials, memoirs, as well as proceedings and transactions of societies, and monographic series. "

The EBSCO spreadsheet, therefore, provides an analysis of items sold which were not authorized by the contract, and include both print and online/electronic items. The spreadsheet, which is still under review by OSC and OGS auditors, presents a calculation of the $35.00 service charge based on an allocation of price between print and online/electronic items as separate items with separate charges. Such allocation of price between print and online was never envisioned by either the State or apparently EBSCO for that matter. To make the issue even more confusing, EBSCO charges an additional service charge for site licenses and archive access beyond the original service charge of $35.00 which is nowhere authorized under PC53575. Furthermore, the acquisition of database products are expressly excluded from the scope of PC53575.

The spreadsheet accompanying your letter provides support for a contract which is quite simply not PC53575. In your words it includes "categories of items which do not seem to fit the "individual title" definition and are either specifically excluded or not addressed by the NY state contract." This leads to the conclusion that EBSCO has charged whatever it elects for whatever it chooses, in direct contravention of the contractual terms and conditions. EBSCO by acting outside the authorized scope of the contract has created a post facto analysis in its spreadsheets in support for the charges made to both Stony Brook and Binghamton. Indeed to refute the overcharge analysis of the OSC audit, EBSCO claims charges in excess of $16,000.00 for site licenses for multi-user access and licenses for multiple years. Nowhere are these types of charges authorized in the PC53575 contract and the only contractual reference is a **prohibition** from sales.

In order to assist OGS in its understanding of your analysis, please provide a written response to the following questions:

1. Does EBSCO present in its spreadsheet an analysis where separate service charges to the limit of $35.00 are presented separately for both print and online/ electronic items? If not, why not?

2. How does EBSCO arrive at the allocated price for both charges of print and online/electronic charges?

3. How did EBSCO market to authorized users the availability of "online databases" when they are excluded from the contract?

4. How is the service charge on site licenses for multi-user access and licenses for multiple years determined? Why are these charges in excess of the $35.00 service charge cap?

5. With the spreadsheet presented by EBSCO why are overcharges still present if EBSCO was following a defined methodology for charges to its customers?

6. Are there other EBSCO charges billed under this contract that are not within the % of list or the $35.00 per title charge?

7. How will EBSCO avoid sales of "online databases" under this contract in the future? What modifications to EBSCO sales practices will be made to avoid this problem of non-contract sales in the future? Please provide copies of the specific direction and any final documentation exchanged with EBSCO Publishing Services, which holds the centralized contract for electronic on-line databases (PS63618).

Please respond to this letter and provide any additional detail which will further clarify your position. If you have any questions please do not hesitate to contact me at (518) 474-0571.

Sincerely,

Kieran Broderick
Senior Attorney

c: Monica Wilkes
Lisa Fox

EXHIBIT C

EBSCO
INFORMATION SERVICES

Allen Powell
President

August 18, 2009

Kieran Broderick, Senior Attorney
OGS Legal Services, State of New York
Mayor Erastus Corning 2nd Tower
Rockefeller Empire State Plaza
Albany, NY 12242

RE: Group 2002 Serials Contract PC 53575

Dear Mr. Broderick:

In response to your letter of August 4th and as a follow up to our telephone conversation of August 10th, below is the following: (A) responses to the questions in your August 4th letter, (B) a brief history of the evolution of the serials information industry over the past ten years and (C) comments and language which are intended to help you as you finalize your contract for serials for next year.

(A) August 4th Questions and Answers

1) Question: Does EBSCO present in its spreadsheet an analysis where separate service charges to limit of $35.00 are presented separately for both print and online / electronic items? If not, why not?

Answer: EBSCO does provide in its spreadsheet a calculation to limit service charge to print and online to $35 (see Column Y of the spreadsheet provided to Brian Lotz on July 8 via e-mail attachment). EBSCO's position is that print and online are two separate and distinct products or titles, since they are delivered and consumed via two distinct methods (print and electronic), and may contain varied content in some cases. In order to properly account for two separate titles to calculate the service charge maximum of $35 per title for each print and online, it was necessary to expand the spreadsheet to determine the allowable service charge recoverable for any order consisting of both print plus online titles.

2) Question: How does EBSCO arrive at the allocated price for both charges of print and online/electronic charges?

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Answer: The publisher sets the price EBSCO is to charge for the requested publications. Given the industry changes over the past few years, many publishers offer their products now in different formats (ex: print or online). In addition to setting an individual price for both print and online, the publisher also offers a combination package that includes both products (print and online). The publisher sets a price for this combination offering. The publishers who offer both print and online combinations may offer a lesser price for the combo package (print and online) than if the customer purchased individually the separate print and online products.

To arrive at the allocated price shown for print and online listed on the spreadsheet that EBSCO provided Brian Lotz on July 8, we first had to pull from the EBSCO Title File for Publishers' Pricing the related retail pricing as per the publisher's authorization for EBSCO to sell both individual products (print and online). The associated price for each of these two products "print" and "online" are listed respectively in columns "AA" and "AD". If the retail price (column "P") for the combination package (both print and online) that our New York customers purchased is less than the sum of both columns "AA" and "AD" then it was necessary for spreadsheets to allocate the purchase price paid for the combination (two products – "print" and online") in a proportional method (i.e. if the individual price for print equaled 60% of the total price for a separate purchase of both the print and online products, then 60% of the combination price (print plus online) would be brought forward to the print allocated price column "AB" and the remaining 40% of the combination price would be input into the online allocated price column "AE."). Once the appropriate allocated price was determined, the contracted service charge percentage could be applied to the respective allocated price for both the print component and the online component. Since both print and online are separate titles each is entitled to a service charge not to exceed $35 per title as listed in the contract between EBSCO and NYS OGS.

3) Question: How did EBSCO market to authorized users the availability of "online databases" when they are excluded from the contract?

Answer: Because of the their knowledge of their industry, authorized purchasers have for some time been fully aware of the electronic information offerings that have emerged (including online titles from publishers that are put together into groupings, sometimes called "packages," "collections" or "online databases") and, in order to provide the resources their patrons need and want, have sought to purchase these resources. EBSCO has not marketed these individual resources in order to encourage authorized users act outside the New York Contract, but has provided evolving services and products as the delivery of information as evolved. As discussed during our telephone conversation last week, the information marketplace has evolved dramatically since the original New York State Contract was signed in 1998. Please see the explanation of this evolution in the way information is delivered and the effect on our business at item (B) below. As we discussed in this regard, our contention has been, and is, that the $35 per title cap did not apply to e-databases as these were specifically excluded from the contract pricing.

Further, with regard to marketing the availability of online databases, EBSCO does what it has always done and that is to list as many serials as possible in its print and online catalogs. Our online catalog is called "EBSCONET." EBSCO is an information subscription agent who handles the acquisition and management of serials. For decades we have defined a "serial" as anything that is regularly published without regard to frequency or format. This could include print magazines and journals, CD ROMs, electronic journals, e-journal packages, databases, microfilm, microfiche, newspapers, continuations, directories, etc. Essentially, anything published on an ongoing basis without regard to frequency or format can be handled by EBSCO as long as the publisher of the information allows EBSCO to be a channel.

EBSCO markets itself as a "one-stop shop" for the acquisition and management of information in all formats and frequencies. We do this via attendance at trade shows, direct selling efforts by field sales representatives, catalogs, our website, and other normal methods of marketing. Our goal is to handle everything that our customers wish to buy that fits within the definition of a "serial." We are now also handling books on a limited basis. We market ourselves as an acquisition and management firm also known as an information or subscription agent. The value of our services is the key and not the price of the individual items which are purchased since the publisher set these prices. Quite simply, we make the process better. We improve performance and reduce costs for both sides of the equation (publisher and customer). This has been the selling value proposition of agents for decades. Our customers are generally sophisticated and educated buyers who understand and appreciate this value proposition.

Our benefits are many and include a single ordering method for hundreds or thousands of items from hundreds or thousands of publishers; easy order placement (mail, email, fax, formal PO, web, EDI, etc.); common expiration; annual combined renewal lists; single contact versus hundreds or thousands of contacts; avoidance of publisher renewal notices; fast and accurate order entry with publishers; handling of standing order and bill-later orders; 100% proof-of-purchase; advance payment of publishers; electronic invoices; invoices tailored to specific client needs including invoicing by fund code, ship-to, institution, etc.;

expedited claiming; online claiming system; online order history and subscription management system; multiple reporting options including summary of publications, historical price analysis, and other collection development and assessment reports, electronic journal and publisher package reports; missing copy bank; and notification of serials changes, to name a few.

In summary, the job of a subscription agent is to make the process better, improve quality, and reduce costs for the institution.

4) Question: How is the service charge on site licenses for multi-user access and licenses for multiple years determined? Why are these charges in excess of the $35.00 service charge cap?

Answer: The service charge levied on site licenses for multi-user access and licenses for multiple years is based on the service charge percentage negotiated with the customer. These service charges are within the New York State parameters (i.e.; for Academic customers between 99% and 105% of publisher's list price). As indicated in previous conversations and during the meeting held in Albany, our view is the $35.00 service charge cap should not be applied to items which are not individual titles but which have, during the term of the agreement, migrated to packages, collections, databases, site licenses, etc.

5) Question: With the spreadsheet presented by EBSCO why are overcharges still present if EBSCO was following a defined methodology for charges to its customers?

Answer: The spreadsheet and defined methodology was an effort to reconstruct what charges should have been levied based on the spirit and intent of the contract when taken in context with the evolution of this business since the inception of the New York State Contract. At the beginning of this contract period very few, if any, titles would have been electronic. At that time electronic packages, collections, site licenses, etc. were virtually nonexistent. In 1998 less than one half of one percent of our business was from electronic journals, e-packages, e-collections, site licenses, etc. Therefore, the $35.00 per title would have been easy to accommodate. As the business has changed and electronic information has become the norm and as publishers have continued to put multiple titles into packages, databases and site licenses the $35.00 per title is a much more difficult concept to manage. As a result, we concede that it may not have been applied 100% as originally intended and our spreadsheet was an attempt to quantify where we may have overcharged based on the spirit and intent of the original "$35.00 per title" offer.

6) Question: Are there other EBSCO charges billed under this contract that are not within the % of list or the $35.00 per title charge?

Answer: I am not aware of other EBSCO charges billed under this contract that are not within the percent of list or which would exceed $35.00 per title.

7) Question: How will EBSCO avoid sales of "online databases" under this contract in the future? What modifications to EBSCO sales practices will be made to avoid this problem of non-contract sales in the future? Please provide copies of the specific direction and any final documentation exchanged with EBSCO Publishing Services, which hold the centralized contract for electronic on-line databases (PS63618).

Answer: As noted above, the information marketplace has evolved dramatically over the last decade so that a tremendous amount of information is now delivered to our customers and consumed by their patrons in electronic format, whether as a single electronic title, or a bundle of electronic titles known as packages, collections or databases. Avoiding sales of online databases to the State of New York would mean that the New York State libraries would no longer have resources that are today commonplace. We believe electronic information, whether published as a single electronic title or as a package or database, fits within the intent of the New York State Contract since the content is the same that was ordered prior to electronic bundling (i.e., the format or "package" is simply different today). As we agreed during our phone conversation, the contract that is currently in place may not adequately meet the needs of New York nor reflect the reality of information delivery and consumption in this new era of online information in the 21st Century.

(B) History of the Industry

The serials information agent was born out of a need to make the process of acquiring serial information easier and less costly. Prior to subscription agents, a customer (typically a library or library system) might have to deal with hundreds or thousands of publishers. The result was the daunting task of keeping up with contact names, addresses, phone numbers, and other information on a multitude of publishers necessary to acquire and service subscriptions. This would often result in a customer having many staff whose job it was to try to manage this process. Likewise, publishers would have to keep track of hundreds or thousands of customers' orders. This would mean maintaining a vast database with contact and ordering information. Orders and payments received directly from customers would often be incomplete, have an incorrect payment amount, or be lacking information to help service the order. All of this resulted in time and expense. It was out of this need that over 100 years ago the subscription agent was conceived. Simply put, the subscription agent reduces many to one. Instead of having to deal with multiple points of contact a subscription agent enables a "one stop shop." Agents have a single catalog which attempts to list all serial publications that may be ordered without regard to format or frequency. Additionally, if the agent's catalog does not contain the serial that is needed the agent has the expertise to locate it and obtain a price in an expedited manner. Thus the publisher has access to many customers through one conduit or channel called the agent. Instead of dealing with hundreds of invoices, making hundreds of payments, sending hundreds of purchase orders, and dealing with hundreds of contacts, a customer can now deal with one point of contact, have only a few invoices, and deal with one professional who is an expert in the serials information agency and in the needs of the specific customer. The role of the agent is to make the process better for both the publisher and the customer thereby reducing costs and improving quality.

Publishers set the prices for their information. The service of the agent is paid for via two methods: a discount from the publisher and a service charge to the customer. The publisher provides a discount off of the publisher list price. This discount recognizes the cost savings, quality improvements, and channel benefits provided by an agent. If the publisher discount is not sufficient to provide the subscription agent with enough revenue to cover its costs and make a reasonable profit, a service charge may be levied to the customer. This service charge is expressed as a percentage of the publisher's list price. Generally, customers make an assessment of the subscription agent's service charge and services as compared to those of other subscription agents. For instance, if service charge percentages of two agents are similar, customers generally choose the agent who provides the best customer service for that price. Customer service is often measured in terms of responsiveness, expertise, additional products and services provided, reporting, etc. In short, customers regularly and routinely evaluate vendor subscription agent services to determine which agent offers the best value from both a qualitative and quantitative view.

In addition to reducing the number of transactions and contact points agents provide other services and products including a single ordering method for hundreds or thousands of items from hundreds or thousands of publishers; easy order placement (mail, email, fax, formal PO, web, EDI, etc.); common expiration; annual combined renewal lists; single knowledgeable contact versus hundreds or thousands of contacts; avoidance of publisher renewal notices; fast and accurate order entry with publishers; handling of standing order and bill-later orders; 100% proof-of-purchase; advance payment of publishers; electronic invoices; invoices tailored to specific client needs including invoicing by fund code, ship-to, institution, etc.; expedited claiming; online claiming system; online order history and subscription management system; multiple reporting options including summary of publications, historical price analysis, and other collection development and assessment reports, electronic journal and publisher package reports; missing copy bank; and notification of serials changes, to name a few.

For decades, serial information was consumed was via printed journals and magazines. Libraries of all shapes and sizes (public libraries, corporate libraries, academic libraries, medical libraries, etc.) would order those publications that were necessary to support their corporate or academic mandate. In academia, the mandate would be to acquire those journals necessary to support a university's undergraduate and graduate studies. Under this model a serial periodical would be housed on a shelf in the library and then under the doctrine of "fair use" patrons of that library would be able to retrieve the journal from the shelf when needed. This resulted in a single user at a time accessing the information. Very often larger institutions such as universities might order multiple copies of the same periodical if that periodical was deemed important and multiple access points were needed. For instance, multiple copies might be ordered to distribute to key professors or researchers in a specific field of study. Universities with multiple campuses or with multiple libraries on campus might need multiple copies of the same journal for these various locations. It was under these parameters that the current model of a service charge limited to $35.00 was born. We note that it was instituted as early as 1991 for the State of New York Contract and was reaffirmed for 1998.

In the last ten years, serial information has begun to be disseminated electronically. Indeed, our business has changed dramatically in the last ten years. Please see the attached chart which provides a summary of how the format of business we have handled has changed. No longer are individual print journals the primary way serial information is consumed. Now information is consumed electronically. This only makes sense as instead of a single point of information dissemination whereby you must enter a building to get access to information, libraries can now enable multiple patrons to look at the same information at the same time from almost any place in the world. In order to ensure that the doctrine of "fair use" continues and that information is not made available free to the world, publishers now require signed licenses or click-through licenses in order to limit information to a customer site or sites. Previously, "fair use" could be governed by the personnel at the front desk of the library ensuring that a magazine was not carried out of the library. In the world of "E" where information can spread across the world in seconds, the only way the publisher can stop this is to have customers agree to certain licensing parameters which limit the use of the material.

Journals are now bundled together in packages from publishers. These packaged e-journals may be referred to as e-journal packages, e-journal collections, e-journal database, site licenses, etc. These are all ways to connote multiple titles for a single publisher being grouped under a single orderable item. Now, instead of a library possibly purchasing multiple copies of the same journal, they buy that journal once, either alone or in a package, and execute a license to limit the access to the material. In cases where a customer used to purchase multiple copies publishers may base the list price of an electronic journal for a particular institution based on the historic spend of that institution. Similarly, as publishers try to entice customers to purchase more of their electronic content they may determine the price of groups of their electronic journal content based on the historic spend of that institution rather than on a single title by title price. All this makes for a somewhat cryptic publisher pricing landscape when it comes to the manner in which publishers are charging for their content. Often times we must obtain specific quotes for content for specific customers. We have seen cases where two institutions within the same state purchasing the same content be quoted two different prices by publishers based on a number of factors including the value of that site's historic spend with a publisher, the number of full-time equivalent students, whether the customer desires a full back file or back file limited in term, etc.

In summary, the industry has dramatically changed in the last ten years. The industry continues to change as publishers are now faced with customers who desire to closely look at the usage of material. Packages and collections may be broken up in the near future. Now that information is consumed electronically it is possible for customers to more accurately determine the usage of content. This usage information, coupled with the price of the individual titles that comprise the content, should help customers make improved title selection and de-selection decisions. In this regard EBSCO has developed and is developing tools to assist customers in measuring cost per use in this electronic environment. This is another benefit that a subscription agent brings to customers. In this rapidly changing electronic environment, our job remains the same as it was historically – to make the process easier and to reduce costs for customers and publishers and improve the quality of the acquisition process.

(C) Comments and Language to Consider for the Future Contract

As mentioned on the telephone, the contract for serials (domestic and foreign), periodicals, and magazines, etc. should, in our view, not be viewed only as a straight commodity purchase. We believe this has been recognized by the State of New York OGS based on the way the contract has been previously written. For example, the majority of the pricing for all information agents contained in the award refers to a price (service charge) quoted as a "percent of list." This is reasonable and makes sense based on the industry norms as publishers provide a "publisher list price" which does not vary by agent. This is the starting point for the pricing of all agents. All agents should be charging the publisher's list price (which is easily verifiable) and then provide either a service charge or discount off of this list price. Therefore, this award is in essence not pricing for a commodity (serial) but rather pricing for the service to acquire that commodity.

The following language could be used in the Description for the Serials Contract: *This contract award covers agency services for the purchase of* *serials in all formats including, but not limited to, print, print plus online, electronic journals, electronic journal packages, electronic journal collections, online databases, CD-ROMs, microfilm and microform. Serials include anything published on an ongoing basis regardless of format or frequency including periodicals, magazines, journals, newspapers, annuals, law materials, memoirs, proceedings and transactions of societies, and monographic series.*

I would further stipulate that the publisher list price should be clearly indicated for each ordered item and that the agency discount or service charge should be expressed as a percentage of this publisher list price. It appears the current contract language does stipulate this adequately. The key point is all agents should start with publisher list price as this is easy to audit.

Based on PS63618, it appears certain database awards are made based on specific database publisher. Therefore it looks like each database award will be specific to each publisher. This makes sense as these databases tend to have unique content that only one publisher may have and also interface uniqueness that may be preferred by a customer. As an example, some of the EBSCO Publishing databases contain content that is not present in the databases of the other secondary database aggregators. Additionally, the EBSCO Publishing search and retrieval system called EBSCOhost contains functionality that is also unique. This functionality differentiates it from other database aggregators and provides customers with an improved search and retrieval experience.
For the reasons above, I believe it is appropriate for the OGS contract to continue to list the specific database publisher in the Title line. For the Description field, one suggestion would be to again name the specific database publisher and simply reference the attached list of databases and products.

I hope the information above is helpful as we seek to reach resolution to this situation. If you have any questions, please do not hesitate to contact me at (205) 991-1495.

Sincerely,

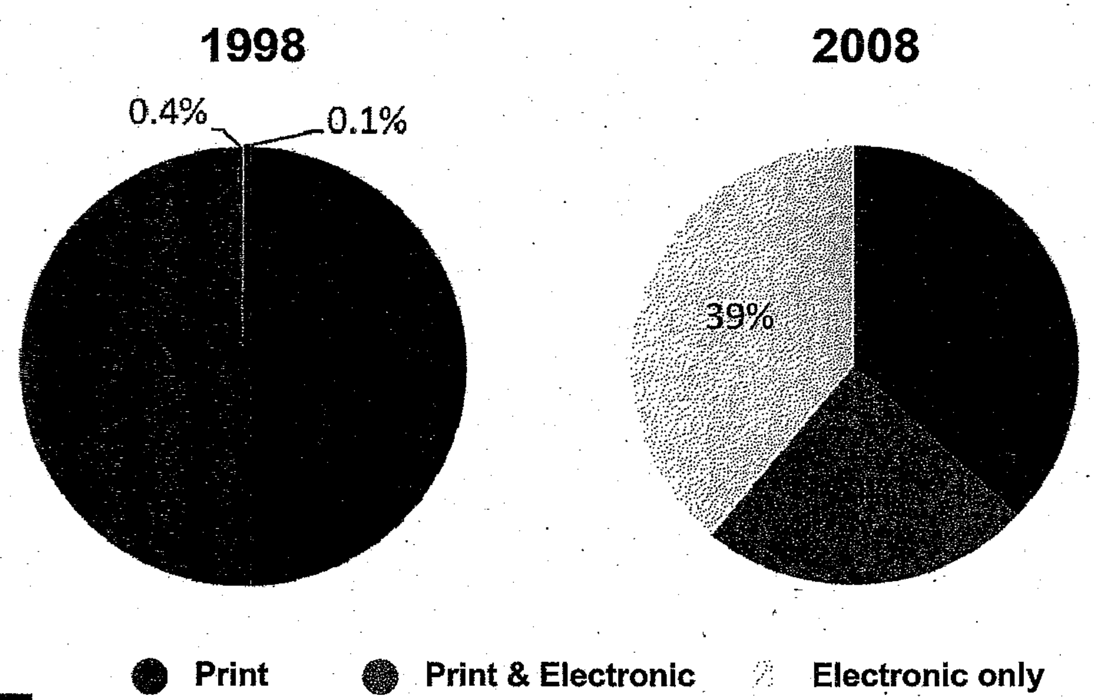
Allen Powell
President
EBSCO Information Services

cc: Monica Wilkes – OGS, Procurement Services Group, State of New York
Rick Bozzelli – EBSCO
Darrell Mayes - EBSCO

## EBSCO Information Services

# Format Trends

### The Growing Importance of E-content

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