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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

May 13, 2013

RoAnn M. Destito
Commissioner
Office of General Services
Empire State Plaza, Corning Tower
Albany, NY 12242

Re: Contract with EBSCO Subscription
Services, Inc.
Report 2012-F-32

Dear Commissioner Destito:

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, we have followed up on the actions taken by the Office of General Services (OGS) to implement the recommendations contained in our audit report, *New York State Office of General Services: Contract with EBSCO Subscription Services, Inc.* (Report 2007-R-6), issued August 10, 2010.

Background, Scope and Objective

The Office of General Services was created in 1960 to provide essential support services for the operation of State government. OGS is responsible for awarding many statewide 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 various 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. Its current five year contract is valued at \$140 million and expires December 31, 2015.

Under these contracts, 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. In accordance with the contract in place at the time of our initial audit, EBSCO's service charge should not have exceeded

the lesser of \$35 or five percent of the cost of each Title. The contract required provider invoices to include sufficient data, including the price and service charge per item, to allow user agencies the opportunity to review the propriety and accuracy of billings.

Our initial report focused on payments to EBSCO for the period January 1, 2005, through December 31, 2008 and on determining whether EBSCO charged user agencies appropriate prices in compliance with contract terms. The objective of our follow-up was to determine the implementation status, as of March 29, 2013, of the three recommendations included in our initial report.

Summary Conclusions and Status of Audit Recommendations

We determined that OGS officials have implemented all three recommendations made in our audit report.

Follow-up Observations

Recommendation 1

Follow up with EBSCO on the overbilling practices identified in this audit and determine the extent of recovery that is appropriate.

Status - Implemented

Agency Action - Our prior audit found that EBSCO overbilled the State by not limiting its service charges to \$35 per Title when required. In addressing the findings with EBSCO, OGS was cooperative in reviewing documentation and assessing the impact of the evolving technologies on how service charges should be applied. OGS officials and EBSCO representatives agreed to a settlement of \$550,000 in restitution in a letter dated August 23, 2010 from OGS to EBSCO. In their response to our draft report, EBSCO representatives pointed out the industry has changed significantly since the beginning of the contract in 1998. At that time, less than one percent of all periodicals and serials were in electronic format, which allowed for the \$35.00 service charge cap per Title to serve as an appropriate and fair cost control. As the industry changed and electronic format became the norm, publishers began selling options that bundled multiple Titles in discounted packages, as well as access to publisher websites that required the purchase of licenses. As a result, the \$35.00 service charge cap per Title became obsolete.

Recommendation 2

Work with the agencies to monitor EBSCO billing practices and to help ensure the practices comply with contract terms.

Status - Implemented

Agency Action - OGS officials included more detailed instructions for authorized users in the new contract. They include a requirement for authorized users to sample the results of their procurements and determine if the contractor is living up to the terms of the contract. The purchaser is also instructed to compare prices among the vendors included in the contract to obtain the most reasonable prices.

Recommendation 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.

Status - Implemented

Agency Action - At the conclusion of the fieldwork in our prior audit, OGS and EBSCO exchanged views on the technological advances in the subscription industry. Subsequently, OGS modified the current subscription services contract to address these changes. A review of the current contract shows specific mention of various types of electronic media, in addition to print media, and that the \$35 service charge cap has been eliminated.

Major contributors to this report were Brian Lotz and Don Collins.

We thank the management and staff of the Office of General Services for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Walter Irving
Audit Manager

cc: Robert Curtin, Office of General Services
Thomas Lukacs, Division of the Budget