Republic of the Philippines
Department of Budget and Management
PROCUREMENT SERVICE –
PHILIPPINE GOVERNMENT ELECTRONIC PROCUREMENT SYSTEM
BIDS AND AWARDS COMMITTEE

PROCUREMENT
SERVICE

Supplemental Bulletin No. 1
28 November 2022

Selection of Fulfillers for the Provision of Microsoft Software and Licenses for Government Agencies and Academic Institutions

This Supplemental Bulletin No. 1 is being issued to clarify and/or amend certain provisions in the Selection Documents for this Project, considering the issues raised and clarifications made by the interested Fulfillers during the **Pre-Selection Conference** held on **24 November 2022;** and to respond to the Fulfillers' written queries received on 25 November 2022.

A.   AMENDMENT/S

REFERENCE	BASES FOR AMENDMENT/ INCLUSION
Section I. Request for Proposals	
XXX 2. The schedule of the selection proceedings activities is as follows: XXX | Deadline for Submission and Opening of Proposals	~~04~~ 05 December 2022, 10:00 AM | XXX	*To give ample time for the Fulfillers to prepare their proposals.*
Section II. Instruction to Fulfillers	
3. Corrupt, Fraudulent, Collusive, ~~and~~ Coercive Practices and Conflict of Interest **Page No. 7** XXX For purposes of this provision, the terms set forth below as follows:	

XXX **(v) "Conflict of Interest" means having conflicting interests with another Fulfiller in any of the events described in paragraphs (a) through (c) below and a general conflict of interest in any of the circumstances set out in paragraphs (d) through (g) below:** (a) **A Fulfiller has controlling shareholders in common with another Fulfiller;** (b) **A Fulfiller receives or has received any direct or indirect subsidy from any other Fulfiller;** (c) **A Fulfiller has the same legal representative as that of another Fulfiller for purposes of this selection process;** (d) **A Fulfiller has a relationship, directly or through third parties, that puts them in a position to have access to information about or influence on the proposal of another Fulfiller or influence the decisions of the PS-DBM regarding this selection process;** (e) **A Fulfiller submits more than one proposal in this selection process;** (f) **A Fulfiller who participated as a consultant in the preparation of the Terms of Reference for this selection process; or** (g) **A Fulfiller who lends, or temporarily seconds, its personnel to firms or organizations which are engaged in consulting services for the preparation related to procurement for or implementation of the project, if the personnel would be involved in any capacity on the same project.** XXX	*To include Conflict of Interest circumstances.*
10. Proposal Value / Criterion **Page No. 12** XXX 10.6 PS-DBM shall impose a four percent (4%) service fee based on the ~~Fulfiller's price~~ **Net Buy Price from Microsoft,** exclusive of taxes, for every purchase made by end-user agencies. XXX	*To clarify the requirement.*

19. Signing of the Contract	
Page No. 15	
xxx	
19.1. Prior to the execution of the Consignment Contract, the Selected LSP and Selected VLD shall submit the Performance Securing Declaration in the form provided under ~~Annex "G"~~ **"Annex H"** of Section IV of the Selection Documents.	*To correct the requirement due to typographical error.*
19.2 PS-DBM shall enter into Consignment Contract with the Selected LSP and Selected VLD, following the template provided under ~~Annex "H"~~ **Annex "I"** of Section IV of the Selection Documents, within ten (10) calendar days from the approval by the PS-DBM Executive Director or the duly authorized approving authority of the BAC recommendation to award and execute the Consignment Contract.	
xxx	
Section III. Terms of Reference	
IV. DELIVERY PERIOD	
The Consignor shall have a period of ~~fifteen (15)~~ thirty (30) calendar days upon receipt of the Order Form/s to deliver and/or install the ordered MS Software and Licenses to the end-user agency.	*To amend the delivery period.*
Section IV. Checklist of Technical and Financial Documents	
Page No. 23	
xxx	
Annex "A"	
Proposal Form (FOR LICENSING SOLUTION PROVIDERS)	
Date: _____ ~~Reference No: _____~~	
xxx	*To amend the form to be used. Please refer to revised form labeled as "Appendix A"*
Breakdown of Fulfiller's Net Margin Percentage	
Fulfiller's Margin (% of net buy price from Microsoft) _____%	
Less: Fulfiller's Discount	
(at least 1% of the net buy price from Microsoft) _____%	
NET MARGIN PERCENTAGE _____%	
xxx	

xxx

Annex "B"

Proposal Form
(FOR VOLUME LICENSE DISTRIBUTORS)

Date: _____
~~Reference No:~~ _____

xxx

Breakdown of Fulfiller's Net Margin Percentage

Fulfiller's Margin (% of net buy price from Microsoft) _____ %

Less: Fulfiller's Discount

(at least 1% of the net buy price from Microsoft) _____ %

NET MARGIN PERCENTAGE _____ %

xxx

To amend the form to be used. Please refer to revised form labeled as "Appendix B"

Section IV. Checklist of Technical and Financial Documents

Annex I. Consignment Contract

4.5. The CONSIGNOR shall pay a service fee equivalent to four percent (4%) based on the CONSIGNOR's <u>net buy price from Microsoft</u>, exclusive of taxes, for each and every purchase made by end-user agencies. 6.1 The CONSIGNOR shall have a period of <u>thirty (30)</u> ~~fifteen (15)~~ calendar days upon receipt of the Order Form/s to deliver and/or install the ordered MS Software and Licenses to the end-user agency. 6.2 <u>In case the CONSIGNOR fails to deliver and/or install the ordered MS Software and Licenses to the end-user agency within the period specified, inclusive of duly granted time extensions, PS-DBM shall deduct from the remittance proceeds, as liquidated damages, the applicable rate of one tenth (1/10) of one percent (1%) of the price of ordered MS Software and Licenses, per Order Form, for every day of delay until actual delivery and/or installation.</u> 7.2 <u>Remittance shall be made promptly by PS-DBM within sixty (60) calendar days after submission of the Statement of Account by the CONSIGNOR and confirmation of the delivery and/or installation of MS Software and Licenses by the concerned end-user agency.</u> 8.8 <u>The obligation for the warranty, as stated in the Terms of Reference, shall be covered by retention money in an amount equivalent to one percent (1%) of every remittance of collections. The retention money shall only be released after the lapse of the three (3) month period from actual delivery and/or installation; provided, however, that the delivered MS Software and Licenses are free from defects and all the conditions imposed under this Contract have been fully met.</u> <u>Please see Appendix C for the revised Consignment Contract form.</u>	*To include additional terms and requirements during contract implementation.*

B. CLARIFICATIONS/ REQUESTS

ITEM NO.	REFERENCE	CONCERN/REQUEST	CLARIFICATION / RESOLUTION
1.	Section III. Terms of Reference 'I. Introduction	It is our understanding that PS-DBM is following the Revised IRR of Republic Act 9184 as stated in the Introduction of the Terms of Reference.	*Consignment arrangement or project cannot be considered as procurement because of the difference in the essential features of the two contracts. The former does not involve acquisition of goods and disbursement of public funds, which are vital features of a procurement contract.[1] Considering this, the selection process shall not be governed by the 2016 revised IRR of RA 9184. However, the competitive screening procedures using a non-discretionary "pass/fail" criterion under the 2016 revised IRR of RA 9184 shall be adopted.*
2.	Section II. Instruction to Fulfillers Paragraph 4. Eligible Fulfillers	Request to reconsider the inclusion of foreign entities as prescribed under RA 9184 to provide the government more options in terms of pricing and support that will be beneficial and more advantageous to the government.	*The nationality requirement for eligible fulfillers in the selection documents is maintained.*
3.	Section III. Terms of Reference IV. Delivery Period	Request to change the delivery period from fifteen (15) calendar days to thirty (30) calendar days.	*The delivery period is revised to thirty (30) calendar days. Please refer to Appendix C.*

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[1] Page 49 of the Manual of Procedures for the Procurement of Goods, Volume 2 issued by the Government Procurement Policy Board.

4.	Section III. Terms of Reference V. Warranty and Support Service	Request to consider changing the statement to *basic troubleshooting or Level 1 support*. In the event that the fulfiller cannot resolve the issue within 24 hours, the issue will be raised to Microsoft Support or to Microsoft Premier Support Service if such support contract is in place with the affected government agencies.	*The current requirement is maintained.*
5.	Section III. Terms of Reference V. Warranty and Support Service	Request to include options for remote or virtual meetings and events instead of pure face-to-face activities.	*The current requirement is maintained.*
6.		Is the discount of at least 1% of the net buy price from Microsoft a required input on the Proposal Form?	*Yes, the discount of at least 1% from the fulfiller is a required input in the Proposal Form.*
7.	Section IV. Checklist of Technical and Financial Documents Annex A	Rationale for the Discount	*The discount indicated in the Proposal Form is the discount to be offered by the Fulfiller aside from the discount that Microsoft Philippines can offer to the end-user agency during the implementation of the Consignment Contract. The purpose of requiring the discount is to achieve the best possible pricing for the government.*
8.	Section IV. Checklist of Technical and Financial Documents Annex D	Clarification if this can be answerable by stating the word "COMPLIANT".	*Yes, "Comply/Compliant" is acceptable.*
9.	Section IV. Checklist of Technical and Financial Documents, Article 4 Sec. 4.5	May we request your good office to illustrate how the processing fee will be deducted for every transaction? Is it from the Net Buy Price from Microsoft or the Fulfiller's Price?	*The 4% service fee shall be computed on the Net Buy Price from Microsoft, exclusive of taxes, for each and every purchase made by end-user agencies. Please refer to the amended Clause 10.6 of Section II. Instruction to Fulfillers, and Section 4.5 of Appendix C - Consignment Contract.*

10.	Section III. Terms of Reference III. Scope of Agreement	Will the Enrolment for Education Solution (EES) and Cloud Solutions Provider- Perpetual (CSP-P) be included? If yes, under which programs?	*EES AND CSP-P are not included in the Scope of Agreement under Section III. Terms of Reference.*
11.	Section I. Request for Proposal Clause 2	Request to extend the deadline for submission of proposals for at least five (5) working days.	*The deadline for submission of proposals is extended to December 5, 2022. Please refer to the above amendment.*

All other related provisions in the Selection Documents that may be affected by these amendments are likewise deemed amended to conform to this Supplemental Bulletin.

Amendments made herein shall be considered an integral part of the Selection Documents.

ENGR. JAIME M. NAVARRETE JR.
Chairperson, Bids and Awards Committee III

For the purpose of this Bulletin and for better understanding of its contents, the following rules shall apply: (a) Double Strike out – denotes deletion; (b) Underline – denotes inclusion or new item/requirement; and "xxx" – denotes separation of phrase/s being amended from the rest of the main text.

Proposal Form

(FOR LICENSING SOLUTION PROVIDERS)

Date: _____

To: PS-DBM BAC III
     Chairperson Procurement
     Service

     PS Complex, RR Road
     Cristobal St., Paco,
     Manila

Gentlemen and/or Ladies:

Having examined the Selection Documents, including the corresponding Supplemental Bulletins, if any, the receipt of which is hereby duly acknowledged, we, the undersigned, offer the below net margin percentage for the provision of Microsoft Software and License in conformity with the said Selection Documents.

Breakdown of Fulfiller's Net Margin Percentage

Fulfiller's Margin (% of net buy price from Microsoft)   _____%

Less: Fulfiller's Discount (at least 1% of the net buy price from Microsoft)   _____%

NET MARGIN PERCENTAGE   _____%

__ __ . _____%

Net Margin Percentage Offer – Government Agencies and Academic Institutions

Note: For purposes of evaluation, Fulfillers are directed to use two (2) decimal places in setting up their net margin percentage proposal.

We hereby state that the proposal entered above represents the lowest net margin percentage tendered to PS-DBM and shall remain valid for one hundred twenty (120) calendar days from the date of proposal opening.

Dated this_____day of _____20_____.

[signature]   *[in the capacity of]*

Duly authorized to sign Proposal for and on behalf of _____

Proposal Form

(FOR VOLUME LICENSE DISTRIBUTORS)

Date: _____

To: *PS-DBM BAC III*
Chairperson Procurement
Service

PS Complex, RR Road
Cristobal St., Paco,
Manila

Gentlemen and/or Ladies:

Having examined the Selection Documents, including the corresponding Supplemental Bulletins, if any, the receipt of which is hereby duly acknowledged, we, the undersigned, offer the below net margin percentage for the provision of Microsoft Software and License in conformity with the said Selection Documents.

Breakdown of Fulfiller's Net Margin Percentage

Fulfiller's Margin (% of net buy price from Microsoft)   _____%

Less: Fulfiller's Discount (at least 1% of the net buy price from Microsoft)   _____%

NET MARGIN PERCENTAGE   _____%

__ __ . ____%

Net Margin Percentage Offer – Government Agencies and Academic Institutions

Note: For purposes of evaluation, Fulfillers are directed to use two (2) decimal places in setting up their net margin percentage proposal.

We hereby state that the proposal entered above represents the lowest net margin percentage tendered to PS-DBM and shall remain valid for one hundred twenty (120) calendar days from the date of proposal opening.

Dated this_____day of _____20_____.

[signature]   *[in the capacity of]*

Duly authorized to sign Proposal for and on behalf of _____

CONSIGNMENT CONTRACT

KNOW ALL MEN BY THESE PRESENTS:

This Consignment Contract ("Contract") made and entered into by and between:

PROCUREMENT SERVICE-DEPARTMENT OF BUDGET AND MANAGEMENT, a government agency created by virtue of Letter of Instructions No. 755 dated 18 October 1978 with office address at PS Complex, Cristobal Street, Paco, Manila, represented by its **Executive Director V, Dennis S. Santiago**, hereinafter referred to as **"PS-DBM / CONSIGNEE"**;

-and-

_____, an entity duly organized and existing under the laws of the Republic of the Philippines and a _____ Partner of Microsoft Philippines, Inc., having its principal office at _____, represented by its_____, _____, hereinafter referred to as **"FULFILLER / CONSIGNOR"**;

-and-

PS-DBM and the Fulfiller are collectively referred to as **"PARTIES"** to this Contract.

WITNESSETH THAT:

WHEREAS, PS-DBM and Microsoft Philippines, Inc. entered into a Memorandum of Agreement for the provision of Microsoft Licenses, Software, and Subscription Services (MS Software and Licenses) for National Government Agencies, Government Financial Institutions, Government-Owned and Controlled Corporations, State Universities and Colleges, and Local Government Units ("Government Agencies");

WHEREAS, PS-DBM invited all Microsoft certified and authorized domestic Licensing Solution Provider (LSPs) and Volume Licensing Distributor (VLDs) to participate in the selection process;

WHEREAS, after the conduct of the selection process, _____, a domestic partner of Microsoft and authorized provider of MS Software and Licenses classified as LSP/VLD, was determined to have submitted the lowest LSP/VLD proposal;

WHEREAS, the Notice to Execute Consignment Contract was issued to _____ on _____;

NOW, THEREFORE, for and in consideration of the foregoing premises, the parties hereby mutually stipulate and agree as follows;

ARTICLE 1
DURATION OF THE CONTRACT

1.1.   The duration of this Contract shall be for two (2) years from the date of execution. Upon expiration of the period, the terms of this Contract shall not be automatically extended or renewed unless otherwise agreed in writing by the parties hereto.

1.2.   Notwithstanding any provisions in this Contract to the contrary, any party may cause the pre-termination of this Contract by furnishing the other party a written notice at least two (2) months prior to the date of termination.

1.3.   Termination of this Contract shall not affect any existing licensing agreement for Microsoft Software and Licenses entered into between Government Agencies and the applicable Microsoft Entity ("Licensing Agreement(s)") subject to the said parties' adherence to the terms and conditions of Licensing Agreement.

1.4.   In case the **CONSIGNOR** causes the early termination of this Contract, the **CONSIGNOR** shall serve all remaining Order Forms submitted within the above-mentioned two (2) month period until the date of effectivity of the termination.

ARTICLE 2
SCOPE AND COVERAGE OF THE CONTRACT

2.1.   This Contract shall cover the Consignment of MS Software and Licenses, listed in the Electronic Catalogue in accordance with GPPB Resolution No. 11-2019, between **PS-DBM** and the **CONSIGNOR**.

ARTICLE 3
OWNERSHIP

3.1   Use rights and ownership of MS Software and Licenses covered by this Contract shall be subject to the terms of the applicable Licensing Agreement. **PS-DBM** hereby acknowledges that it takes possession of the consigned MS Software and Licenses only on a consignment basis and it does not acquire any property right or security interest in such consigned MS Software and Licenses.

ARTICLE 4
PRICES

4.1.   The price for the MS Software and Licenses shall be in accordance with the proposal/offer submitted to and approved by **PS-DBM**. The net margin percentage committed for this arrangement by the **CONSIGNOR** is attached hereto as Annex "A" and made an integral part of this Contract.

4.2.   The **CONSIGNOR** shall obtain the government price list for MS Software and Licenses from Microsoft Corporation, on a monthly basis. The price list issued by the **CONSIGNOR,** which is understood to be inclusive of the net margin percentage, taxes

and other applicable incidental costs, shall be made available to **PS-DBM** at the beginning of each month. The prices of MS Software and Licenses shall be based on the monthly pricing scheme of Microsoft Corporation converted at US Dollar – Philippines Peso exchange rate at the last working day of the immediately preceding month. Requisitions shall be made through an Order Form to be issued by **PS-DBM** and shall bear the prices indicated in the **CONSIGNOR'S** price list as revised on a monthly basis.

4.3.   For purposes of foreign currency exchange in this Contract, the conversion rates posted in the website of the Bangko Sentral ng Pilipinas, as described in the immediately preceding section, shall be made as the official reference.

4.4.   The net margin percentage quoted by the **CONSIGNOR** shall be fixed for the duration of this Consignment Contract and shall not be subject to variation or percentage escalation.

4.5.   The **CONSIGNOR** shall pay a service fee equivalent to four percent (4%) based on the **CONSIGNOR**'s net buy price from Microsoft, exclusive of taxes, for each and every purchase made by end-user agencies.

4.6.   The prices being provided to **PS-DBM** for the MS Software and Licenses are guaranteed by the **CONSIGNOR** to be the lowest prices available in the market.

ARTICLE 5
ISSUANCE OF ORDER FORM/S

5.1.   **PS-DBM** shall issue Order Form/s based on the quantity of licenses indicated in the Agency Procurement Requests (APRs) for MS Software and Licenses every 15th and 30th of the month or as often as the need arises.

5.2.   The quantity and data provided in the Order Form/s shall also be the basis of the **CONSIGNOR** in the delivery of the MS Software and Licenses to the concerned government agencies.

5.3.   For purposes of counting the delivery period, the Order Form/s shall be deemed received by the **CONSIGNOR** as soon as the same is transmitted through electronic mail and the receipt thereof is confirmed by any representative of the **CONSIGNOR** either through electronic mail acknowledgment receipt or verbal confirmation.

ARTICLE 6
DELIVERY PERIOD

6.1   The **CONSIGNOR** shall have a period of thirty (30) calendar days upon receipt of the Order Form/s to deliver and/or install the ordered MS Software and Licenses to the end-user agency.

6.2   In case the CONSIGNOR fails to deliver and/or install the ordered MS Software and Licenses to the end-user agency within the period specified, inclusive of duly granted time extensions, PS-DBM shall deduct from the remittance proceeds, as liquidated damages, the applicable rate of one tenth (1/10) of one percent (1%) of the price of

ordered MS Software and Licenses, per Order Form, for every day of delay until actual delivery and/or installation.

ARTICLE 7
REMITTANCE OF COLLECTIONS

7.1. Remittance of collections for the purchases made by end-user agencies of the consigned MS Software and Licenses shall be made by **PS-DBM** to the **CONSIGNOR,** after submission of its Statement of Account and deducting the 4% service fee, subject to pertinent accounting and auditing rules and regulations.

7.2. Remittance shall be made promptly by PS-DBM within sixty (60) calendar days after submission of the Statement of Account by the CONSIGNOR and confirmation of the delivery and/or installation of MS Software and Licenses by the concerned end-user agency.

7.3. The currency of the proceeds to be remitted to the **CONSIGNOR** under this Contract shall be in Philippine Peso.

ARTICLE 8
RIGHTS AND RESPONSIBILITIES

8.1.   **PS-DBM** shall designate a dedicated workspace and shall provide for the needed facilities and resources to the representative/s of the **CONSIGNOR,** who shall receive the Order Forms issued pursuant to this Contract and shall act as the account manager for the delivery and installation of MS Software and Licenses.

8.2   The **CONSIGNOR** shall guarantee that the Licensing Service Agreement (LSA) to be issued to and signed by end-user agencies shall be the prescribed LSA of Microsoft Corporation.

8.3   The **CONSIGNOR** shall allow Microsoft Philippines, Inc. to provide to **PS-DBM** the government price list for MS Software and Licenses to enable PS-DBM to verify if the base price used during the consignment period is consistent with the Microsoft Corporation provided government price list.

8.4   The **CONSIGNOR** shall be responsible for the provision, delivery, installation, and configuration of the MS Software and Licenses to the end-user agencies.

8.5   **PS-DBM** shall be responsible for the verification and checking of the loading and installation of the ordered MS Software and Licenses to the end-user agencies.

8.6.   The **CONSIGNOR** shall provide technical support and solutions to client agencies in all regions throughout the duration of the subscription pursuant to Section III. Terms of Reference.

8.7.   The **CONSIGNOR** warrants faithful compliance with the obligations set forth in this Contract, including the provisions in the Selection Documents and Supplemental Bulletins, if any.

8.8   The obligation for the warranty, as stated in the Terms of Reference, shall be covered by retention money in an amount equivalent to one percent (1%) of every remittance of collections. The retention money shall only be released after the lapse of the three (3) month period from actual delivery and/or installation; provided, however, that the delivered MS Software and Licenses are free from defects and all the conditions imposed under this Contract have been fully met.

8.9.   The **CONSIGNOR** shall not assign any of their rights, or delegate the performance of any of the obligations or duties hereunder, without the prior written consent of **PS-DBM;** and any attempt or act by the **CONSIGNOR** to assign, transfer, and subcontract any rights, duties, or obligations arising under this Contract shall be void and of no force and effect.

ARTICLE 9
MISCELLANEOUS PROVISIONS

9.1.   This Contract shall be governed by the applicable laws of the Republic of the Philippines.

9.2   The provisions in the Selection Documents and Supplemental Bulletin, if any, shall be deemed incorporated to this Contract and made an integral part thereof.

ARTICLE 10
ARBITRATION

10.1. The Parties shall, as often as practicable, mutually consult with each other with respect to the performance of their respective obligations under this Contract. The Parties shall exert their best efforts to properly resolve any differences or disagreement with respect to any dispute that may arise in connection with this Contract. All disputes under this Contract shall be settled by arbitration pursuant to the provisions of Alternative Dispute Resolution under Republic Act No. 9285. Arbitration may be commenced at any time by any party hereto giving written notice to the other party to a dispute that such dispute has been referred to arbitration. Any award rendered by the arbitrator shall be conclusive and binding upon the parties hereto. However, if such agreements or differences persist despite efforts of the parties to settle the same, it is mutually agreed that the dispute shall be resolved, exclusively, by the appropriate courts of the City of Manila.

ARTICLE 11
SEVERABILITY

11.1   If any provision or part of this Contract shall be held to be illegal, invalid, or unenforceable, such provisions shall be fully severable, and this Contract shall be construed and enforced as if such illegal, invalid or unenforceable provision had never been part of this Contract; and, the remaining provisions of this Contract shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto affixed their signatures this _____ day of _____2022 in _____, Philippines.

_____

PROCUREMENT SERVICE-DEPARTMENT OF BUDGET AND MANAGEMENT (PS-DBM)

_____

Authorized Representative, _____

SIGNED IN THE PRESENCE OF:

_____

_____

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ACKNOWLEDGMENT

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REPUBLIC OF THE PHILIPPINES)

_____) S.S.

BEFORE ME, a Notary Public for and in the _____, this __ day of _____ 20___ appeared the following persons presenting to me their respective identifications, to wit:

Name   **Competent Evidence of Identity and Validity Date**

_____   _____

_____   _____

known to me and to me known to be the same persons who executed and voluntarily signed the foregoing Contract which they acknowledged before me as their own free and voluntary act and deed and with full authority to sign in that capacity.

This instrument refers to the Consignment Contract and consists of _____ pages including this page where the Acknowledgment is written, duly signed by the parties and their instrumental witnesses thereof.

       WITNESS MY HAND AND SEAL on the date and place above-written.

Doc.   ;
Page   ;
Book   ;
Series of 2022.