

RFP No. 2023-04

INDEPENDENT AUDITING SERVICES

DATE DUE: February 22, 2023 at 2:00 pm



By: Charles Hergenraeder
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Date: February 3, 2023

MERCED COMMUNITY COLLEGE DISTRICT

NOTICE

**REQUEST FOR PROPOSALS 2023-04
INDEPENDENT AUDITING SERVICES**

NOTICE IS HEREBY GIVEN that the Merced Community College District, hereinafter referred to as the District, will receive up to, but not later than 2:00 p.m. on Wednesday, February 22, 2023 sealed proposals for the award of a contract for independent auditing services.

All proposals shall be submitted in the format specified by the District. Proposals shall be delivered and addressed to the Merced Community College District, Director, Purchasing & Risk Management, 3600 M Street, Merced, California 95348, and shall be labeled **“Independent Auditing Services”**, **RFP # 2023-04 by 2:00 p.m. on February 22, 2023.**

Any Independent Auditing firm or partnership who wishes their proposal to be considered is responsible for making certain that their proposal is received in the Purchasing Office by the proper time. Proposals received after the scheduled Submittal Deadline will be returned unopened. The receiving time in the Purchasing Office will be the governing time for acceptability of proposals. Proposals must be clearly labeled and submitted in a sealed envelope or box, bearing the name of the Independent Auditor, RFP #2023-04, and Submittal Deadline. Proposals must bear original signatures and figures.

The District reserves the right to reject any or all proposals, to accept or to reject any one or more items on a proposal, or to waive any irregularities or informalities in the proposal or in the bidding process.

Specifications The Request for Proposal Specifications may be examined and obtained from the Purchasing Office, or on the District website at:

<http://www.mccd.edu/offices/purchasing/bids.html>

If you have questions regarding the proposal or timeline, please contact Chuck Hergenraeder at (209) 384-6300 or charles.hergenraeder@mccd.edu

**BY THE ORDER OF THE GOVERNING BOARD OF THE
MERCED COMMUNITY COLLEGE DISTRICT**

Chris Vitelli, Ed.D. Superintendent/President
Merced Community College District Merced
County, California

Section 1

**SCOPE OF WORK FOR
INDEPENDENT AUDITING SERVICES**

DESCRIPTION OF DISTRICT:

The Merced Community College District was established on July 1, 1963. Its territories encompass portions of Merced, Madera, and Fresno counties. The District consists of one community college campus in the City of Merced and a center in the City of Los Banos.

The District's total Full Time Equivalent Students (FTES) for 2021-22 were 8,619. The

District uses the following funds in its operation:

<u>Fund Type</u>	<u>Number of Individual Funds</u>
General Fund	5
Debt Service Funds	2
Special Revenue Funds	2
Capital Projects Fund	3
Enterprise Funds	1
Internal Service Funds	1
Trust Funds	4

The General Fund budget for Fiscal Year Ending 2023 is:

Revenues	\$ 86,526,813
Expenses	\$ 83,746,203
Fund Balance	\$ 16,236,958

As of June 30, 2022 the District reported \$39.8 million in general obligation bond debt, which is comprised of four separate issuances.

The District's Foundation financial activities for the fiscal year 2022 were as follows:

Revenues	\$ 2,506,958
Expenses	\$ 2,389,821
Net Assets	\$10,084,923

The District also is a member of the Valley Insurance Program Joint Powers Agency (VIPJPA), Schools Excess Liability Fund (SELF), and Self-Insured Schools of California (SISC III).

GENERAL REQUIREMENTS:

Sections 84404 of the Education Code of the State of California require that the community college districts shall provide for an annual financial audit of the financial records and statements and the audit shall include all funds of the District, including the student body, cafeteria funds and accounts, and any other funds under the control or jurisdiction of the District for compliance with the Standards and Procedures for Audits of California Community College Local Educational Agencies issued by the State Controller's Office.

In addition, Article 13A, Section 1(b) (3) of the California Constitution (Proposition 39) requires that the District shall provide for a separate annual performance compliance audit and an annual financial audit of the financial proceeds from bonds issued through voter approved Measures H and J.

The financial and compliance audits shall be made in accordance with:

- Government Auditing Standards,
- Office of Management and Budget (OMB) Uniform Grant Guidance (UGG) Part 200, Subpart F; and
- Contracted District Audit Manual issued by the Chancellor's Office of the California Community Colleges.

The scope of the audit shall not be limited to that provided in the aforementioned publications in the event the particular circumstances warrant extension thereof. The Audit shall include all funds of the District, including but not limited to District General Fund, Capital Project Fund, Debt Service Fund, Enterprise Fund, Trust and Agency Funds, General Fixed Assets Fund, General Long-Term Obligation Fund, Financial Aid Fund, Student Body Funds, and all other funds under the control of the Governing Board of the District.

The scope of the audit shall also include a comprehensive financial and compliance audit of the Merced College Foundation 501(c)(3), an discretely presented auxiliary fund of the District, and related tax return.

The scope of the separate performance and financial audits as required by Article 13A, Section 1(b) (3) of the California Constitution shall be limited to the financial proceeds from bonds issued through Measures H and J.

At the conclusion of the annual audit, the Independent Auditor is required to provide the following in published report:

1. Audited Comprehensive Financial Statements, with accompanying notes.
2. Auditor's Opinion on the Comprehensive Financial Statements and notes.
3. Required Supplementary Information, with accompanying notes.
4. Supplementary Information.
5. Auditors' Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance

with Government Auditing Standards.

6. Auditor's Report on Compliance for Each Major Program and on Internal Control Over Compliance Required by the Uniform Guidance.
7. Auditor's Report on Compliance with Applicable Requirements in Accordance with the Contracted District Audit Manual.
8. Schedule of Audit findings and questioned cost.
9. Status Report on Prior-Year's Findings and Recommendations.
10. Audited Financial Statements for Measures H and J Funds, with accompanying notes.
11. Independent Auditor's Report on the Financial Statements for Measures H and J Funds
12. Auditors' Report on Compliance and on Internal Control over Financial Reporting Based on an Audit of Financial Statements on Measures H and J Performed in Accordance with Government Auditing Standards.
13. Auditor's Report on Proposition 39 and Measures H and J Performance Audit Performed in Accordance with Government Auditing Standards.
14. Any other State or Federal requirement in effect at the time of the audit
15. Conduct an exit audit conference at the conclusion of each audit with appropriate personnel of the District.
16. Seven (7) copies of each draft audit report to be reviewed with the District's Audit Committee.
17. Twenty (20) copies of the final audit report and one electronic version 10 days prior to the appropriately scheduled Board of Trustees meeting at which the audit report will be presented.
18. Present the audit report to the Board of Trustees.
19. Send the audit report to the appropriate agencies as required by regulation or statute.

The independent auditor shall retain audit documentation and work papers for a period of seven (7) years after issuance of the audit report, unless otherwise specified in writing by the District. Such working papers shall be available for review and audit by the District, representatives of the federal and/or state governments, and other individuals with relevant knowledge and experience to understand the audit designated by the District.

EVALUATION PROCESS

A District selection committee will evaluate the proposals. The selection committee may also contact and evaluate the Independent Auditor's references; contact any Independent Auditor to clarify any response; contact any current users of an Independent Auditor's services; solicit information from any available source concerning any aspect of a proposal; and seek and review any other information deemed pertinent to the evaluation process. The selection committee shall not be obligated to accept the lowest price, but shall make an award in the best interests of the District.

Presentations may, at the District's option, be conducted with responsible auditing firms who submit proposals determined to be reasonably susceptible of being selected for an award. Presentations may be for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Independent Auditors shall be accorded fair and equal treatment with respect to any opportunity for discussion and written revision of proposals. Revisions may be permitted after submissions and before award for obtaining best and final proposals. In conducting presentation, the District will not disclose information derived from proposals submitted by competing Independent Auditors.

A Notification of Intent to Award may be sent to any Independent Auditor selected. Award is contingent upon the successful negotiation of final contract terms. Negotiations shall be confidential and not subject to disclosure to competing firms unless an agreement is reached. If contract negotiations cannot be concluded successfully, the District may negotiate a contract with the next highest scoring Independent Auditing firm or withdraw the RFP.

AWARD OF PROPOSAL Award will be made to the Independent Auditors offering the most advantageous proposal after consideration of the Evaluation Criteria set forth below. The District will establish an Evaluation Committee. The Committee will evaluate all proposals received in accordance with the Evaluation Criteria. The District shall not be obligated to accept the lowest priced proposal, but will make an award in the best interests of the District after all factors have been evaluated.

CONTRACT FOR AUDIT

The District and Independent Auditor are both responsible for fulfilling contractual obligations for audits. The contract between the District and Independent Auditor should include, at a minimum:

1. Period for which financial statements are to be examined.
2. Purpose of examination.
3. Scope of examination, including review of internal controls systems and review of compliance with state and federal regulatory provisions, as applicable.
4. Reference that the audit will be conducted and distributed in accordance with requirements contained in the Contracted District Audit Manual applicable to the audit of California Community College Districts.
5. Provision that the auditor will issue a management letter that points out areas of material weaknesses in internal control systems; comments on areas of possible improvements in systems, procedures, and management practices of the District; and identifies areas of possible violations of financial- and accounting-related regulatory provisions.
6. Contracted maximum or fixed cost of the audit for the year ending June 30, 2023, through the year ending June 30, 2025 and the optional years ending through June, 2027.

The District shall provide the Independent Auditor with working space. Request for space shall be directed to the Director of Business and Fiscal Services three (3) weeks prior to the time the space will be required. The request shall include an estimate of the time the space will be required.

Copies of prior years' financial statements, income and expenditure reports, general ledgers, budgets, and copies of the prior years' audit reports are available and shall be provided to the Independent Auditor.

Copies of these reports are available in the office of the Director of Business and Fiscal Services, (209) 384-6209.

End of Section 1

Section 2

INSTRUCTIONS TO BIDDER

ACCEPTANCE PERIOD Proposals are firm for a period of ninety (90) days unless otherwise specified.

ADDENDA ACKNOWLEDGMENT Each proposal shall include specific acknowledgment in the space provided of receipt of all addenda issued during the solicitation period. Failure to so acknowledge may result in the proposal being rejected as not responsive.

AUTHORIZED SIGNATURES Every proposal must be signed by the person or persons legally authorized to bind the Independent Auditor to a contract for the execution of the work. Upon request of the District, any agent submitting a proposal on behalf of an Independent Auditor shall provide a current power of attorney certifying the agent's authority to bind the Auditor.

AWARD SELECTION PROCESS Selection of qualified Independent Auditor will be based on the following: quality and completeness of submitted proposal; understanding of project objectives; project approach; experience and expertise with school districts and references and cost.

If required, interviews will be held with the most qualified respondents. The proposal and contract will be submitted to the District's Board of Trustees for approval. The Independent Auditor selected will enter into a contract with the Trustees.

CANCELLATION OF SOLICITATION The District may cancel this solicitation at any time.

COMPLIANCE WITH LAWS All proposals shall comply with current federal, state, and other laws relative thereto.

CONTRACT DOCUMENTS, EXAMINATION OF It is the responsibility of the Independent Auditor to thoroughly examine and be familiar with legal and procedural documents, general conditions, all forms, specifications, plans, and addenda (if any), hereinafter referred to as Contract Documents. The Independent Auditor shall satisfy him/herself as to the character, quantity, and quality of work to be performed, equipment and appurtenances necessary to perform the work as specified by the Contract Documents. The failure of the Independent Auditor to examine the Contract Documents shall in no way relieve him/her from any obligations with respect to the solicitation or contract. The submission of a proposal shall constitute an acknowledgment upon which the District may rely on that the Independent Auditor has thoroughly examined and is familiar with the contract documents. The failure or neglect of an Independent Auditor to receive or examine any of the contract documents shall in no way relieve him/her from any obligations with respect to the Proposal. No claim will be allowed for additional compensation that is based upon a lack of knowledge of any solicitation document.

COST OF SERVICES The Proposer must provide a total all-inclusive maximum price proposal which shall include all direct and indirect costs. The Proposer shall also state the firm's fixed hourly rates for all categories for proposers' employees by titles, i.e., partner, manager, senior auditor, staff auditor, etc., who will be providing the services described within the RFP. The firm's fixed hourly rates must include all out-of-pocket and travel expenses.

DEFINITION OF TERMS For the purposes of this Request for Proposal (RFP), the following definitions will be used:

- a. **Contractor.** Same as Successful Independent Auditor or Auditing firm.
- b. **Evaluation Committee.** A committee established by the District to review, evaluate, and to recommend the award to the Independent Auditing firm that submitted the proposal that was determined to be in the best interest of the District.
- c. **May.** Indicates something that is not mandatory but permissible.
- d. **Must/Shall.** Indicates a mandatory contractual agreement requirement.
- e. **Independent Auditor.** The person or auditing firm making the offer.
- f. **Proposal.** The offer presented by the Independent Auditing firm.
- g. **RFP.** Acronym for Request for Proposals.
- h. **Should.** Indicates something that is recommended but not mandatory.
- i. **Submittal Deadline.** The date and time when all proposals must be submitted.

DISQUALIFICATION OF INDEPENDENT AUDITOR If there is reason to believe that collusion exists among the Independent Auditors, the District may refuse to consider proposals from participants in such collusion. No person, firm, or corporation under the same or different name, shall make, file, or be interested in more than one proposal for the same work unless alternate proposals are called for. Reasonable ground for believing that any Independent Auditor is interested in more than one Proposal for the same work will cause the rejection of all Proposals for the work in which an Independent Auditor is interested. If there is reason to believe that collusion exists among the Independent Auditors, the District may refuse to consider Proposals from participants in such collusion.

EXECUTION OF CONTRACT Time is of the essence of this contract. The Successful Independent Auditor shall execute the contract, including but not limited to signing all necessary documents and submitting all required evidences of insurance, within ten (10) days after personal delivery of the notice or within fifteen (15) days after such notice has been deposited in the United States mail. One copy of the contract will be returned to the Independent Auditor after the District executes the contract. In case of failure of the Independent Auditor to execute and return the contract and all required documents within the time allowed, the District may consider that the Independent Auditor has abandoned the contract. After the contract has been executed, including the insurance documents, audit work can commence at the agreed upon date.

EXPERIENCE AND COMPETENCY The Successful Independent Auditor shall be skilled in accordance with the auditing standards generally accepted in the United States and the standards for financial and compliance audits contained in the Government Auditing Standards, issued by the Comptroller General of the United States. The Successful Independent Auditor shall also have no less than **five years (5)** experience in the magnitude and character of the work proposal. It is the intention of the District to award a contract to an Independent Auditor who furnishes satisfactory evidence that he/she has the requisite experience, ability, sufficient capital, and facilities to enable him/her to prosecute the work successfully and properly, and to complete it within the time specified in the contract. To determine the degree of responsibility to be credited to the Independent Auditor, the District will weigh any evidence that the Auditor has performed satisfactorily other contracts of like nature, magnitude, and comparable difficulty. In selecting the lowest responsive and responsible Independent Auditor, consideration will be given not only to the financial standing but also to the general competency of the Independent Auditor for the performance of the work specified in the contract documents.

FIRM PRICE PERIOD Independent Auditors' offer shall remain open and firm for a period of not less than ninety (90) calendar days from the Submittal Deadline.

INFORMED INDEPENDENT AUDITOR Independent Auditors are expected to fully inform themselves as to the conditions, requirements, and specifications before submitting proposals. Failure to do so will be at Independent Auditors' own risk and they cannot secure relief on the plea of error.

INK OR TYPEWRITTEN All information, prices, notations, signatures, and corrections must be in ink or typewritten. Mistakes may be crossed out and corrections typed or printed adjacent to the mistake and initialed in ink by the person signing the proposal.

INTERPRETATION OF CONTRACT DOCUMENTS If any person is in doubt as to the true meaning of any part of the specifications or other contract documents, or finds discrepancies or omissions in the specifications, they may submit to the District a written request for an interpretation or correction. Requests for interpretations shall be made by email: charles.hergenraeder@mccd.edu, No later than **February 13, 2023 by 2:00 p.m.** The requesting party is responsible for prompt delivery of any requests. When the District considers interpretations necessary, interpretations will be in the form of an addendum to the contract documents, and when issued, will be sent as promptly as is practical to all parties recorded by the District as having received contract documents.

All such addenda shall become a part of the contract. Oral and other interpretations or clarifications shall be without legal or contractual effect. It is the responsibility of each Auditor to ensure the District has his/her correct business name and address on file. Any prospective Independent Auditing firm who obtained a set of contract documents from anyone other than the District is responsible for advising the District that they have a set of contract documents and wish to receive subsequent Addenda.

NOMENCLATURES The terms Successful Contractor and Contractor may be used interchangeably in these specifications and shall refer exclusively to the Independent Auditing firm with whom the District enters into a contract because of this solicitation.

OFFERS OF MORE THAN ONE PRICE Independent Auditors are NOT allowed to submit more than one proposal.

PRICES All Proposals shall give the prices proposed, both in writing and in figures, shall give all other information requested herein, and shall be signed by the Independent Auditor's authorized representative.

Proposal prices shall include everything necessary for the completion of the contract including, but not limited to, furnishing all services and management required to complete the work in accordance with the contract documents. Any items described in the specifications that are not specifically listed in the proposal item are to be considered included in the proposal item and no additional compensation will be allowed. The total amount of the proposal will be the sum of the total prices of all items in the proposal schedule.

PROPOSAL FORMS

- a. Copies. One original and three (3) copies must be submitted on or before the Submittal Deadline. Independent Auditors shall submit one (1) original proposal marked "MASTER" and all required identical copies. Envelopes containing the original and the copies should be marked in accordance with the directions found elsewhere in these instructions.
- b. Discrepancies. If discrepancies are found between the copies, or between the original and copy or copies, the original "MASTER" will provide the basis for resolving such discrepancies. If one document is not clearly marked "MASTER," the Merced Community College District reserves the right to use the original as the Master.

PROPOSAL CONTENT

The RFP should conform to the following format to simplify and to expedite the review process and to obtain the maximum degree of information for the respondent. The contents of the proposal should include a clear and complete identification of the material submitted by section and page number.

1. Transmittal

Summarize your understanding of the work to be done. Indicate the names of the persons who will be authorized to make representations on the part of your firm, their titles, addresses and telephone numbers. The person and/or persons who are authorized to execute the contract on the part of your firm shall sign the transmittal letter.

2. Profile

A company profile should include:

- a. Company ownership. If incorporated, the state in which the company is incorporated and the date of incorporation.
- b. Location of the company offices.
- c. Number of employees both locally and nationally.
- d. Location(s) from which employees will be assigned.
- e. Company background/history and why Independent Auditor is qualified to provide the services described in this RFP.
- f. Length of time Independent Auditor has been providing services described in this RFP. Please provide a brief description.

3. Staffing

Respondents should provide names of personnel who will be assigned to the audit and include the following:

- a. Describe the audit experience of the assigned staff, including the partner and manager in charge of the audit engagement; also include the level of personnel assigned.
- b. Specifically describe recent community college district auditing experience (Preferably in California) of those staff assigned to this audit.
- c. Describe education, including continuing education, of staff in the related areas of auditing community college districts.
- d. A list of personnel, by classification, who will be assigned to this audit, indicating the estimated number of hours for 2023-2027, the rate per hour, the total cost, and the number of years auditing community college districts for each classification

4. Other Audits

- a. List other audits performed in the educational area by the firm. List only those audits conducted by the office that will be assigned to this engagement.
- b. List other governmental agency audits performed by the firm. List only those audits performed by the assigned office.

5. Computer Audits

Describe the experience in performing audits of on-line and integrated computerized financial systems. Specifically, describe the experience in this area of those staff members who will be assigned to the audit.

6. References

List of references, including name, title, and telephone number of five (5) college districts, which the firm has audited in the past six (6) years. At a minimum, two (2) of the districts must be a COMMUNITY COLLEGE district. At least two (2) of the references must be from prior audit clients for whom the firm is no longer performing services.

7. Audit Plan

Submit a work plan to accomplish the scope defined in the RFP. The work plan should include a timetable of proposed beginning and completion dates of major audit areas, estimated hours and the staff level to be assigned.

8. Costs of Services

State the maximum annual cost for the audit of all funds and account groups under the jurisdiction and control of the District for the first three years of service and the anticipated costs for a two-year extension. Costs specified in this section shall be based upon the scope of work specified herein. Separate Cost Proposal required for District Audit and Measure H & J Bonds.

Proposals should be straightforward and concise. Emphasis should be concentrated on conforming to the RFP instructions, responding to the RFP requirements, and providing a complete and clear description of the offer. If a complete response cannot be provided without referencing supporting documentation, you must provide such documentation with the proposal indicating where the supplemental information can be found.

The District is not liable for any costs incurred by Independent Auditors before entering into a formal contract. Costs of developing the proposals or any other such expenses incurred by the Independent Auditor in responding to the RFP, are entirely the responsibility of the Independent Auditor, and shall not be reimbursed in any manner by the District.

PROPOSAL DEADLINE Proposals may be submitted any time before the Submittal Deadline. Proposals that do not arrive by the Submittal Deadline will be late and will be returned to the Independent Auditor unopened.

PROPOSAL MODIFICATIONS Any Independent Auditor who wishes to make modifications to a proposal already received by the District must withdraw his/her proposal in order to make the modifications. Withdrawals must be made in accordance with the terms and conditions of this solicitation. All modifications must be made in ink, properly initialed by Independent Auditor's authorized representative, executed, and submitted in accordance with the terms and conditions of this solicitation. It is the responsibility of the Independent Auditor to ensure that modified or withdrawn proposals are resubmitted before the Submittal Deadline.

PROPOSAL OPENING AND RESULTS

No Public Opening. Proposals will not be opened publicly but a list of the names of companies submitting proposals will be available within a reasonable time after the Submittal Deadline.

PROPOSAL PRICES, NOTATIONS, AND MISTAKES All prices and notations must be in ink or typewritten. Mistakes may be crossed out and corrections typed or printed adjacent to the mistake and initialed in ink by the person signing the Proposal. Prices shall be stated in units and offers made separately on each item. In case of conflict between unit prices and extended prices, unit prices will govern. Where there is a conflict between words and figures, words will govern.

PROPOSAL RECEIVED LATE Proposals received late will not be accepted and will be returned to Independent Auditors unopened.

PROPOSAL RESULTS It is not the policy of the District to provide RFP results in response to telephone inquiries. A tabulation of the names of Independent Auditors will be posted on the Purchasing Office's website.

PROPOSAL SUBMITTAL Proposals must be clearly labeled and submitted in a sealed envelope or box bearing the name of the Independent Auditor, RFP number, and Submittal Deadline. Independent Auditor's authorized representative must properly initial any erasures or alterations of any kind. Proposals that contain omissions or improper Corrections or irregularities may be rejected.

PROPOSAL WITHDRAWAL Independent Auditor's authorized representative may withdraw proposals only by written request received before the Submittal Deadline

SCHEDULE FOR RFP

Release of Request for Proposal	February 3, 2023
Questions are due by Monday, 2:00 p.m.	February 13, 2023
Answers posted by the end of business day	February 15, 2023
Deadline for receipt of proposals 2:00 p.m.	February 22, 2023
Notification to finalists(s)	February 27, 2023
Optional presentations	March 2 and March 3, 2023
Notice of intent to award	March 7, 2023
Anticipated contract award date	March 14, 2023

INDEPENDENT AUDITOR IS SOLE POINT OF CONTACT The Successful Independent Auditor will be the sole point of contact. The District will look solely to the Successful Independent Auditor for the performance of all contractual obligations that may result from an award based on this RFP.

INDEPENDENT AUDITOR'S BACKGROUND Independent Auditor must provide a company profile. The Independent Auditor must include in their proposal a complete disclosure of any alleged significant prior or ongoing contract failures, any civil or criminal litigation or investigation pending which involves the Independent Auditor in which the Independent Auditor has been judged guilty or liable. Failure to comply with the terms of this provision will disqualify any proposal. The District reserves the right to reject any proposal based upon the Independent Auditor's prior history with the District or with any other party, which documents, without limitation, unsatisfactory performance, adversarial or contentious demeanor, significant failure(s) to meet contract milestones or other contractual failures.

QUESTIONS AND COMMENTS Questions and comments regarding this solicitation must be submitted by email to Charles Hergenraeder, Director of Purchasing and Risk Management, charles.hergenraeder@mccd.edu by 2:00 p.m., on February 13, 2023. The questioner's company name, address, phone and email address and contact person must be included with the questions or comments. The Purchasing Office will answer all questions in writing to all known proposal holders.

REJECTION OF PROPOSALS, WAIVER OF INFORMALITIES The District reserves the right to reject any or all proposals, or any part of a proposal. The District reserves the right to reject the proposal of any Independent Auditor who previously failed to perform adequately for the District or any other governmental agency.

RULES FOR SUBMITTING PROPOSALS

- a. **Submittal Deadline.** Independent Proposals must arrive in the Purchasing Office, 3600 M. Street, Merced, California 95348, by the Submittal Deadline shown in these specifications or subsequent addenda. Independent Proposals may be submitted by hand, by courier, or any other method specified herein.
- b. **Responsibility.** Independent Auditors are solely responsible for ensuring that their proposals are received by the District in accordance with the solicitation requirements, before the Submittal Deadline, and at the place specified. The District shall not be responsible for any delays in mail or by common carriers or by transmission errors or delays or mistaken delivery. Delivery of proposals shall be made at the office specified in the Request for Proposals.
- c. **Extension of Submittal Deadline.** The District reserves the right to extend the Submittal Deadline when it is in the best interest of the District.
- d. **Facsimile Transmissions.** Proposals may NOT be submitted by facsimile.
- e. **Signature.** To be considered for award, each proposal shall be signed by an authorized representative of the Independent Auditor.
- f. **Sealed Proposal.** Proposals MUST BE sealed upon submittal.

End of Section 2

Section 3

TERMS AND CONDITIONS

ASSIGNMENT OF RIGHTS OR OBLIGATIONS Except as noted hereunder, Successful Independent Auditor may not assign, transfer or sell any rights or obligations resulting from this solicitation without first obtaining the specific written consent of the Merced Community College District.

ATTORNEY FEES In the event a suit or action is instituted in connection with any controversy arising out of this contract, the prevailing party shall be entitled to receive, in addition to its costs, such sum as the court may adjudge reasonable as to attorney's fees and costs.

AUTHORITY OF THE MERCED COMMUNITY COLLEGE DISTRICT Subject to the power and authority of the District as provided by law in this contract, the District shall in all cases determine the quantity, quality, and acceptability of the work for which payment is to be made under this contract. The District shall decide the questions that may arise relative to the fulfillment of the contract or the obligations of the contractor hereunder.

ANTIDISCRIMINATION It is the policy of the District that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the Consultant agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735.

CANCELLATION OF THE CONTRACT *Without* cause, the District may cancel this contract at any time with thirty (30) days' written notice to the contractor. *With cause*, the District may cancel this contract at any time with ten (10) days' written notice to the Independent Auditor. Cancellation for cause shall be at the discretion of the District and shall be, but is not limited to, failure to provide service specified within the time allowed or within the terms, conditions or provisions of this contract. The successful Independent Auditor may not cancel this contract without prior written consent of the Director for Purchasing.

COMPLIANCE WITH OR DEVIATION FROM SPECIFICATIONS Independent Auditor hereby agrees that the service offered will meet all the requirements of the specifications in this solicitation unless deviations from them are clearly indicated in the Auditor's response. Independent Auditor may submit an attachment entitled "Exceptions to Specifications," which must be signed by Independent Auditor's authorized representative. An explanation must be made for each item in which an exception is taken, giving in detail the extent of the exception and the reason for which it is taken.

COMPLIANCE WITH LAWS Consultant shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances, and regulations. Consultant shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If Consultant observes that any of the Work required by this Contract is at variance with any such laws, ordinance, rules, or regulations, Consultant shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated effective upon Consultant's receipt of a written termination notice from the District. If Consultant performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Consultant shall bear all costs arising therefrom.

CONTRACT INCORPORATION This contract embodies the entire contract between the District and the Contractor. The parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein. No changes, amendments, or modifications of any of the terms or conditions of the Contract shall be valid unless reduced to writing and signed by both parties. The complete Contract shall include the entire contents of the RFP solicitation, all addenda, all of Independent Auditor's successful submittals, supplemental agreements, and any and all written agreements, which alter, amend, or extend the contract.

FORCE MAJEURE If execution of this contract shall be delayed or suspended out of causes beyond the control of Independent Auditor, the Auditor shall notify the District in writing, within twenty-four (24) hours, after the delay. Such causes may include, but are not limited to: acts of God, war, fires, floods, epidemics, strikes, and severe weather.

FORMATION OF CONTRACT Independent Auditor's signed offer (Proposal) and the District's written acceptance shall constitute a binding contract.

LAWS GOVERNING CONTRACT This contract shall be in accordance with the laws of the State of California. The parties stipulate that this contract was entered into in the County of Merced, in the State of California. The parties further stipulate that the County of Merced, California, is the only appropriate forum for any litigation resulting from a breach hereof or any questions risen here from.

PERMITS/LICENSES Consultant and all Consultant's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this agreement.

INDEMNIFICATION To the furthest extent permitted by California law, Consultant shall, at its sole expense, defend, indemnify, and hold harmless the District, the State of California, and their agents, representatives, officers, consultants, employees, trustees, and volunteers (the "indemnified parties") from any and all demands, losses, liabilities, claims, suits, and actions (the "claims") of any kind, nature, and description, including, but not limited to, personal injury, death, property damage, and consultants and/or attorney's fees and costs, directly or indirectly arising out of, connected with, or resulting from the performance of the Agreement or from any activity, work, or thing done, permitted, or suffered by the Consultant under or in conjunction with this Agreement, unless the claims are caused wholly by the sole negligence or willful misconduct of the indemnified parties.

The District shall have the right to accept or reject any legal representation that Consultant proposes to defend the indemnified parties.

INDEPENDENT CONTRACTOR In accepting this contract, Successful Bidder (hereinafter Contractor) covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder. Contractor further covenants that, in the performance of this contract, no subcontractor or person having such an interest shall be employed. Contractor certifies that to the best of their knowledge, no one who has or will have any financial interest under this contract is an officer or employee of the District. It is expressly agreed by Contractor that in the performance of the services required under this contract, Contractor, and any of its subcontractors or employees, shall at times be considered independent contractors and not agents of the District.

INSURANCE The Consultant shall procure and maintain at all times it performs any portion of the Services the following insurance:

General Liability, including contractual liability. One Million Dollars (\$1,000,000) per occurrence for bodily injury, property damage and personal injury with a general aggregate limit of Two Million Dollars (\$2,000,000).

Automobile Liability Insurance. Automobile Liability Insurance with a Combined Single Limit (CSL) of One Million Dollars (\$1,000,000).

Workers' Compensation and Employers' Liability Insurance. For all of the Consultant's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, Consultant shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide employers' liability coverage with minimum liability coverage of One Million Dollars (\$1,000,000) per accident for bodily injury or disease. Contractor shall provide an endorsement that the insurer waives the right of subrogation against the District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.

Professional Liability (E&O) Insurance. Consultant shall be insured against professional liability (errors and omissions) under a policy providing Professional Liability (E&O) insurance on a claims made form that is applicable and appropriate to the Consultant's profession. The policy shall contain a provision that allows the insured to purchase "tail coverage" for a period of time that is at least three (3) years beyond the expiration of this agreement.

Other Insurance Provisions: The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- a) The District, its trustees, officers, officials, employees, agents, and volunteers ("Additional Insured") are to be named as additional insured on both the Commercial General Liability policy as well as the Automobile Liability policy.
- b) For any claims related to the projects, the Consultant's insurance coverage shall be primary insurance as respects the Additional Insured. Any insurance or self-insurance maintained by the Additional Insured shall be in excess of the Consultant's insurance and shall not contribute with it.

- c) Any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the Additional Insured.
- d) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District.
- e) Consultant shall furnish the District with Certificates of Insurance maintenance of the required insurance coverage and original endorsements affecting general liability and automobile liability coverage. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the District before work begins.

REJECTION OF WORK Contractor agrees that the District has the right to make all final determinations as to whether the work has been satisfactorily completed.

SAFETY AND SECURITY Consultant is responsible for maintaining safety in the performance of this Agreement. Consultant shall be responsible to ascertain from the District the rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present.

SEVERABILITY The Independent Auditor and the District shall be severed from this contract any provisions, or portion of any provision, of this contract that are held invalid, illegal or unenforceable. The Independent Auditor and the District shall be severed from the contract and the remaining provisions shall be valid and enforceable.

SPECIFICATIONS, CHANGES TO The parties shall not be bound by or be liable for any statement, representation, promise, inducement, or understanding of any kind or nature not set forth herein or by written amendment. No changes, amendments, or modifications of any of the terms or conditions of the specification shall be valid unless reduced to writing and signed by both parties.

SPECIFICATIONS, DEFINITION The term "specification" or "RFP specification" as used in this solicitation shall be interpreted to mean all the pages that make up this solicitation, including, *but not limited to*: the Request For Proposals, Instructions to Bidder, Terms and Conditions, Detailed Specifications or Scope of Work, Special Provisions, and Workers' Compensation Insurance Certificate, Non-collusion Affidavit, Confidentiality Agreement,

WAIVER The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

End of Section

– IMPORTANT NOTICE –

PROPOSAL DOCUMENTS TO BE RETURNED

The following forms must be completed and submitted on or before the Submittal Deadline.

- a. Amendment form**
- b. Workers' Compensation Insurance Certificate**
- c. Vendor representation and certification**

Failure to complete, sign (where required), and return the above proposal documents with your proposal may render it nonresponsive.

AMENDMENT FORM

THE VENDOR(S) SHALL ACKNOWLEDGE ALL AMENDMENTS TO THE SOLICITATION, AND COMPLETE THE FOLLOWING INFORMATION WITH THE SUBMISSION OF THE PROPOSAL.

Acknowledgment of Amendment(s):

Amendment number: _____

Date and time received: _____

By: _____

Date: _____

Manual Signature of Agent(s)

WORKERS' COMPENSATION INSURANCE CERTIFICATE

TO: THE MERCED COMMUNITY COLLEGE DISTRICT

I am aware of the provisions of Section 3700 of the Labor Code that requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code. I will comply with such provisions before commencing the performance of the work under this contract and submit the necessary evidence of workers' compensation to Merced Community College District.

Company: _____
Business Address: _____
Signature: _____
Name of Signing Official _____
Title of Signing Official: _____
Date: _____

Company Seal:

VENDOR REPRESENTATION AND CERTIFICATION

The undersigned hereby affirms that:

1. They are a duly authorized agent of the vendor (corporate or other authorization confirmation may be requested prior to final contract execution).
2. The offer is being offered independently of any other Vendor's and is in full compliance with the collusive prohibitions of this State. The Vendor certifies that no employee of its firm has discussed, or compared the proposal with any other Vendor or District employee, and has not colluded with any other Vendor or District employee.
3. The Vendor will accept any awards made to it as a result of this solicitation if the acceptance is made within 90 calendar days after the proposal due date.

I hereby certify that I am submitting the following offer as my firm's proposal. I understand that by virtue of executing and returning with this proposal this required response form, I further certify full, complete, and unconditional acceptance of the contents of this Solicitation (except as may be noted in the offer). I also agree to be bound by any and all specifications, terms and conditions, contract document, accepted offer and other documents of the Solicitation.

Submitted by: _____

Title: _____

Company Name: _____

Address: _____

Phone: _____ Fax: _____

By: _____
Manual Signature of Agent(s)

Date: _____

End of Document