



CUPERTINO UNION SCHOOL DISTRICT
10301 Vista Drive, Cupertino, CA 95014

RFP No. 23-B07-01

INDEPENDENT AUDITING SERVICES

DATE DUE: May 23, 2023 – 2:00 P.M.

By: **Dana Ino**
Director, Business Operations

Date: **May 1, 2023**

NOTICE TO BIDDERS

Request for Proposals
RFP 23-B07-01
Independent Auditing Services

NOTICE IS HEREBY GIVEN that the Cupertino Union School District, hereinafter referred to as the District, will receive up to, but not later than 2:00 p.m. on May 23, 2023, sealed proposals for the award of a contract for independent auditing services for the fiscal year ending June 30, 2025, with the option on the part of the District to renew the contract for a period or periods not to exceed a total of four (4) years thereafter.

All proposals shall be submitted in the format specified by the District. Proposals shall be addressed Attn: Dana Ino, Director, Business Operations, Cupertino Union School District, and delivered by 2:00 p.m. on May 23, 2023, at the Facility Modernization office (Door 10), 10301 Vista Drive, Cupertino, CA 95014, and shall be labeled "Independent Auditing Services, RFP 23-B07-01."

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. No oral, electronic, facsimile, or telephonic proposals or modifications will be considered unless specified. 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 will not be accepted by telephone or facsimile machine. Proposals must bear original signatures and figures.

Specifications may be examined and obtained at no charge at the District's Purchasing website: <https://www.cusdk8.org/departments/purchasing/bid-opportunities>.

Dana Ino
Director, Business Operations

Ad dates: May 1 and May 8, 2023

SECTION 1

SCOPE OF WORK For INDEPENDENT AUDITING SERVICES

GENERAL REQUIREMENTS

Sections 1625 and 41020 of the Education Code of the State of California require that school districts shall provide for an annual financial audit of the financial records and statements and audits for compliance with the Standards and Procedures for Audits of California K-12 Local Educational Agencies issued by the State Controller's Office. Further, the audit must meet the compliance requirements of the United States Office of Management and Budget (OMB) Circular A-133.

The audit shall be made in accordance with auditing standards generally accepted in the United States of America; the standards for financial and compliance audits contained in Government Auditing Standards, issued by the Comptroller General of the United States; and OMB Circular 133, Audits of States, Local Governments, and Nonprofit Organizations. The audit shall include all funds of the District, but not limited to District General Fund, Student Nutrition Services Fund, Building Funds, General Obligation Bond Funds, Capital Project Fund, Self-Managed Insurance Fund and Workers' Compensation Fund, General Fixed Assets Account Group, Long-Term Debt Account Group, Student Body Funds, and all other funds under the control of the Governing Board of the Cupertino Union School District. The auditors shall prepare the GASB 34 conversions journal entries required by the State Controller's office.

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. Supplementary Information, with accompanying notes.
4. Auditor's Report on State Compliance Requirements.
5. Auditor's Report on the District's Measure H General Obligation Bond Fund Performance.
6. Auditor's Report on the District's Measure H General Obligation Bond Fund Annual Financial Statements.

7. Auditor's Report on Compliance and on Internal Control over Financial Reporting Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards (Subject to A-133).
8. Auditor's Report on Compliance Requirements Applicable to each Major Program and Internal Control over Compliance in Accordance with OMB Circular A-133.
9. Status Report on Prior-Year's Findings and Recommendations.
10. Auditors will conduct the exit conference with the Chief Business Officer and Director of Fiscal Services.
11. One (1) electronic copy of the draft audit report to be reviewed with the Cupertino Union School District's Audit Committee.
12. Seven (7) copies of the final audit report 10 days prior to the appropriately scheduled Board of Education meeting at which the audit report will be presented.
13. Present the audit report to the Board of Education.
14. Send the audit report to the appropriate agencies as required in the Standards and Procedures for Audits of California K-12 Local Educational Agencies.

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.

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

1. 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.
2. Specifically describe recent K-12 school district auditing experience of those staff assigned to this audit.
3. 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.
4. List other governmental agency audits performed by the firm. List only those audits performed by the assigned office.

5. Describe the experience in performing audits of online and integrated computerized financial systems. Specifically, describe the experience in this area of those staff members who will be assigned to the audit.
6. Describe education, including continuing education, of staff in the related areas of auditing K-12 school districts.
7. List of references, including name, title, and telephone number of five (5) school districts, which the firm has audited in the past six (6) years. At a minimum, two (2) of the districts must be a K-12 school district, preferably a multi-secondary school district. At least two (2) of the references must be from prior audit clients for whom the firm is no longer performing services.
8. A timetable of proposed beginning and completion dates of major audit areas and estimated hours.

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 Cupertino Union School District will establish an evaluation committee. The Committee will evaluate all proposals received in accordance with the evaluation criteria. The Cupertino Union School District shall not be obligated to accept the lowest priced proposal, but will make an award in the best interests of the Cupertino Union School District after all factors have been evaluated.

Projected Time Table		
	Issue Request for Proposals	May 1, 2023
	Advertise RFP	May 1 and May 8, 2023
	Questions in Writing Deadline	May 16, 2023 @ 2:00 pm
	Amendment/Addendum Deadline	May 19, 2023 @ 2:00 p.m.
	Proposals Due	May 23, 2023 @ 2:00 p.m.
	Evaluation of Proposals	May 24-June 2, 2023
	Recommendation to Board for Contract Award	June 15, 2023
	Issue Notice of Intent for services to commence July 1, 2024	July 1, 2023

EVALUATION CRITERIA Evaluation criteria that will be used to evaluate all proposals that are received are listed below:

1. Appropriateness and adequacy of proposed procedures;
2. Reasonableness of time estimates;
3. Appropriateness of assigned staff;

4. Timeliness of expected completion dates;
5. Technical and related experience of the firm;
6. Qualifications and experience of staff;
7. Description of the services to be provided;
8. Cost of the work to be performed.

The evaluation 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 evaluation committee shall not be obligated to accept the lowest price, but shall make an award in the best interests of the District.

Discussions 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. Discussions 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 discussions, 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.

CONTRACT FOR AUDIT

The District and Independent Auditors are both responsible for fulfilling contractual obligations for audits. The contract between the District and independent accountant 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 provision, as applicable.

4. Reference that the audit will be conducted and distributed in accordance with requirements contained in the “The State Controller’s Standards and Procedures for Audits of California K-12 Local Educational Agencies (Audit Guide).”
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 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, 2025, through the year ending June 30, 2029.

The District shall provide the Independent Auditors with working space for maximum of three (3) persons. Request for space shall be directed to the Director of 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 Auditors. Copies of these reports are available in the office of the Director of Fiscal Services, (408) 252-3000, ext. 61412.

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 Cupertino Union School 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 Auditors 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 Cupertino Union School District Board of Education for approval. The Independent Auditor selected will enter into a contract with the District.

CANCELLATION OF SOLICITATION The Cupertino Union School 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 Cupertino Union School 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 lump sum proposal and also state the firms 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 and be in accordance with School Board Policy 3350 (see Exhibit A).

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

- a. **Consultant.** Same as Successful Independent Auditor or Auditing firm.
- b. **Evaluation Committee.** A committee established by the District to review, evaluate, and score the proposals, 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 Cupertino Union School 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 Cupertino Union School 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 Cupertino Union School 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 Cupertino Union School 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 Cupertino Union School District may consider that the Independent Auditor has abandoned the contract. After the contract has been executed,

including the insurance documents, a Notice to Proceed will be issued. Independent Auditor agrees to commence work within ten (10) working days after the date of the Notice to Proceed.

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)** years' experience in the magnitude and character of the work proposal. Each Independent Auditor shall set forth his/her experience on the form entitled Independent Auditor's Experience and submit it with his/her proposal. It is the intention of the Cupertino Union School 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 Cupertino Union School 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.

FORMATION OF CONTRACT Independent Auditor's signed proposal and Cupertino Union School District's written acceptance shall constitute a binding contract.

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, he/she may submit to the Cupertino Union School District a written request for an interpretation or correction. Requests for interpretations shall be made in writing and delivered to the Cupertino Union School District, Door 10, 10301 Vista Drive, Cupertino, California 95014, or by email: ino_dana@cusdk8.org, at least seven (7) days before the Submittal Deadline. The requesting party is responsible for prompt delivery of any requests. When the Cupertino

Union School 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 Cupertino Union School 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 Cupertino Union School District has its correct business name and address on file. Any prospective auditing firm who obtained a set of contract documents from anyone other than the Cupertino Union School 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 Consultant and Consultant may be used interchangeably in these specifications and shall refer exclusively to the Independent Auditing firm with whom the Cupertino Union School 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 bound copy marked "Master," one unbound copy, and one electronic copy delivered on a flash drive must be submitted on or before the Submittal Deadline. The unbound copy shall be marked "Copy for Reproduction," and shall be submitted as follows:

No divider sheets or tabs;

Pages with propriety information removed; and

A cover sheet listing the firm's name, total number of pages, and identifying those pages removed due to propriety information.

The electronic copy will only be accepted via flash drive with the following programs:
Microsoft Office Suite or PDF.

Each submission will be reviewed to determine completeness prior to the actual evaluation. Failure to respond with all items as requested may disqualify respondent's proposal.

- b. Envelopes containing the original and the copies should be marked in accordance with the directions found elsewhere in these instructions.
- c. Discrepancies. If discrepancies are found in any copy or copies, the original "MASTER" will provide the basis for resolving such discrepancies. If one document is not clearly marked "MASTER," the Cupertino Union School District reserves the right to use the original as the Master.

PROPOSAL CONTENT The Independent Auditor must describe in detail how they will meet the requirements of this RFP, and may provide additional related information with his/her proposal. The proposal should be presented in a format that corresponds to the sections outlined in the specification or scope of work. Responses to each section should be labeled to indicate which item is being addressed.

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 Cupertino Union School 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 Cupertino Union School 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 Cupertino Union School 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 REJECTION OF The Cupertino Union School District reserves the right to reject any or all Proposals or any part of a Proposal. The Cupertino Union School District reserves the right to reject the Proposal of any Independent Auditor who previously failed to perform adequately for the Cupertino Union School District or any other governmental agency.

PROPOSAL RESULTS It is not the policy of the Cupertino Union School District to provide RFP results in response to telephone inquiries. A tabulation of the names of Independent Auditors will be posted on the District Purchasing website at <https://www.cusdk8.org/departments/purchasing/bid-opportunities>.

PROPOSAL SUBMITTAL Proposals should 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 erasures or irregularities may be rejected. No oral, electronic, telegraphic, or telephonic proposals or modifications will be considered unless otherwise specified herein.

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

INDEPENDENT AUDITOR IS SOLE POINT OF CONTACT The Successful Independent Auditor will be the sole point of contact. The Cupertino Union School 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. Information provided shall 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. Name, address, and telephone number of the Independent Auditor's point of contact for a contract resulting from this RFP.
- f. Company background/history and why Independent Auditor is qualified to provide the services described in this RFP.
- g. Length of time Independent Auditor has been providing services described in this RFP. Please provide a brief description.
- h. Résumés for key staff to be responsible for performance of any contract resulting from this RFP.
- i. Independent Auditor's bank of record.

The Independent Auditor must include in his/her 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 Cupertino Union School District reserves the right to reject any proposal based upon the Independent Auditor's prior history with the Cupertino Union School 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 in writing, either by mail: Attn: Dana Ino, Director, Business Operations, Cupertino Union School District, 10301 Vista Drive, Cupertino, CA 95014, or by email to: ino_dana@cusdk8.org, no later than seven (7) days before the Submittal Deadline. The questioner's company name, address, phone and fax number, 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 Cupertino Union School District reserves the right to reject any or all proposals, or any part of a proposal. The Cupertino Union School District reserves the right to reject the proposal of any Independent Auditor who previously failed to perform adequately for the Cupertino Union School District or any other governmental agency.

RULES FOR SUBMITTING PROPOSALS

- a. **Submittal Deadline.** Independent Proposals must arrive in the Purchasing Office, Door 10, 10301 Vista Drive, Cupertino, CA 95014, 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 Cupertino Union School District in accordance with

- the solicitation requirements, before the Submittal Deadline, and at the place specified. The Cupertino Union School 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 Cupertino Union School District reserves the right to extend the Submittal Deadline when it is in the best interest of the Cupertino Union School District.
 - d. **Facsimile Transmissions.** Proposals may NOT be submitted by facsimile, unless otherwise specified herein.
 - 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 Cupertino Union School 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 CUPERTINO UNION SCHOOL DISTRICT Subject to the power and authority of the Cupertino Union School District as provided by law in this contract, the Cupertino Union School 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 Cupertino Union School District shall decide the questions that may arise relative to the fulfillment of the contract or the obligations of the Consultant 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 Cupertino Union School District may cancel this contract at any time with thirty (30) days' written notice to the Consultant. *With cause*, the Cupertino Union School 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 Cupertino Union School District and shall be, but is not limited to, failure to 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 Purchasing Manager.

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 Cupertino Union School District and the Consultant. 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.

FINGERPRINTING OF EMPLOYEES It is not contemplated at the time of execution of this Agreement that Consultant or its employees will have contact with students during the provision of services under this Agreement. If, at a future time, Consultant will have contact with any pupils, Consultant shall comply with the provisions of Education Code section 45125.1 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees. The Consultant shall not permit any employee to have any contact with District pupils until such time as the Consultant has verified in writing to the governing board of the District that the employee has not been convicted of a felony, as defined in Education Code section 45122.1. The Consultant's responsibility shall extend to all employees, subcontractors, agents, and employees or agents of subcontractors regardless of whether those individuals are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Consultant. Verification of compliance with this section and the Criminal Background Investigation Certification that may be required with this Agreement, shall be provided in writing to the District prior to each individual's commencement of employment or performing any portion of the Services and prior to permitting contact with any student.

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 Cupertino Union School 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 Cupertino Union School 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 Santa Clara, in the state of California. The parties further stipulate that the county of Santa Clara, 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 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 CONSULTANT In accepting this contract, Successful Bidder (hereinafter Consultant) 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. Consultant further covenants that, in the performance of this contract, no subcontractor or person having such an interest shall be employed. Consultant certifies that to the best of his/her knowledge, no one who has or will have any financial interest under this contract is an officer or employee of Cupertino Union School District. It is expressly agreed by Consultant that in the performance of the services required under this contract, Consultant, and any of its subcontractors or employees, shall at times be considered independent contractors and not agents of Cupertino Union School District.

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

General Liability. One million dollars (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage in the form of comprehensive general liability and contractual liability. If commercial general liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately

to each project/location or the general aggregate limit shall be twice the required occurrence limit.

Sexual Abuse/Molestation. (May be included under General Liability) One million (\$1,000,000) minimum limit per occurrence; two million (\$2,000,000) minimum general aggregate.

Automobile Liability Insurance. One million (\$1,000,000) per accident for bodily and property damage automobile liability insurance, that shall protect the District from all claims of bodily injury, property damage, personal injury, death, and medical payments arising performing any portion of the services by Consultant.

Workers' Compensation and Employer's 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 employer's liability coverage with minimum liability coverage of one million dollars (\$1,000,000) per accident for bodily injury or disease. Consultant 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.

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 representatives, consultants, trustees, officers, officials, employees, agents, and volunteers ("additional insureds") are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Consultant; instruments of service and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the additional insureds.
- b) For any claims related to the projects, the Consultant's insurance coverage shall be primary insurance as respects the additional insureds. Any insurance or self-insurance maintained by the additional insureds 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 insureds.
- d) The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- e) 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.

- f) Consultant shall furnish the District with certificates of insurance showing 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 commence.

REJECTION OF WORK Consultant agrees that the Cupertino Union School 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, and Workers' Compensation Insurance Certificate, and Consultant Representation and Certification.

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 3.

– Important Notice –

PROPOSAL DOCUMENTS TO BE RETURNED

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

- a. Addendum Form
- b. Workers' Compensation Insurance Certificate
- c. Consultant Representation and Certification

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

ADDENDUM FORM

The Consultant(s) shall acknowledge all addenda to the solicitation, and complete the following information with the submission of the proposal.

Acknowledgments of Addenda:

Addenda numbers: _____

Date and time received: _____

By: _____ Date: _____
Manual Signature of Agent(s)

WORKERS' COMPENSATION INSURANCE CERTIFICATE

To: Cupertino Union School 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 Cupertino Union School District.

Company: _____

Business Address: _____

Signature: _____

Name of Signing Official _____

Title of Signing Official: _____

Date: _____

CONSULTANT REPRESENTATION AND CERTIFICATON

The undersigned hereby affirms that:

1. He/she is a duly authorized agent of the Consultant (corporate or other authorization confirmation may be requested prior to final contract execution).
2. The offer is being offered independently of any other Consultant and is in full compliance with the collusive prohibitions of this state. The Consultant certifies that no employee of its firm has discussed, or compared the proposal with any other Consultant or District employee, and has not colluded with any other Consultant or District employee.
3. The Consultant 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: _____ Date: _____
Manual Signature of Agent(s)