

Request for Proposal

PROFESSIONAL AUDITING SERVICES

**RFP Number: 09MAR2015 PROFESSIONAL AUDITING
SERVICES**

Date Issued: March 9, 2015

Due Date: March 27, 2015

Procurement Contact:

Jamie Glavin

Procurement Manager

jglavin@eaafmichigan.org

313/263-9837

EDUCATION ACHIEVEMENT AUTHORITY OF MICHIGAN

About the Education Achievement Authority: The Education Achievement Authority of Michigan (the “EAA”) is a statewide school system that will assume operation of the lowest five (5) percent of performing schools in the state of Michigan that are not achieving satisfactory results on a redesign plan or that are under an Emergency Manager. It is designed to provide a new, stable, financially responsible set of public schools that create the conditions, supports, tools and resources under which teachers can help students make significant academic gains. It has been initially applied to underperforming schools in Detroit and will ultimately be expanded to include low performing schools throughout Michigan.

Equal Opportunity: It is the public policy of the EAA, at all levels of procurement, to promote equal opportunity in employment and contracting opportunities. Additionally, the EAA endeavors to promote and encourage the participation of Minority Business Enterprises (“MBEs”), Women Business Enterprises (“WBEs”) and small and other disadvantaged business entities, as defined by the Small Business Administration. Therefore, the EAA is committed to pursue such avenues in its employment and contracting activities, which will further the goals of this policy. Similarly demonstrated commitment, consistent with the goals of this policy, by those with whom the EAA of Michigan does business, is highly desirable.

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Request for Proposals

I. Purpose

The EAA requests proposals from qualified individuals and/or companies interested in providing Professional Auditing Services. Proposals will be evaluated for services to be provided during the 2014-15 school year; additionally the EAA reserves the rights to have the selected firm provide services for the 2015-16, and 2016-17 years as well.

The process will include a review and evaluation of a Proposer's past experience providing similar services to other educational entities, this information should be highlighted and included in their proposal.

II. Background

The EAA is based in Detroit, Michigan. For the current school year, the EAA will have an enrollment of approximately 6,200 students in grades PK-12 in the twelve (12) schools identified in this RFP (each a "Facility" and collectively the "Facilities"). These Facilities include six (6) high school buildings (grades 9-12) and six (6) elementary/middle school buildings (grades PK-8).

The EAA currently operates under the SmartXL financial/HR operating system, from Wayne Regional Educational Service Agency (hereinafter "Wayne RESA").

III. Scope of Work

Proposer shall provide a list of previous similar k-12 educational auditing experience for the EAA. The proposer shall also provide the list of staffing and their resumes that will be responsible for the audit tasks as described below:

A. Instructions and General Conditions

1. As this is a fixed priced contract the firm is responsible to provide key staff and must maintain a sufficient number of professional staff in order to complete the deliverables within the timeline

requested within this RFP. The staff provided will be senior level auditors with adequate technical expertise and experience.

2. The firm and the staffing assigned to the EAA must have at least 5 years' experience in auditing K-12 public school districts within the State of Michigan.
3. The auditor is expected to be familiar with the types of policies and procedures school districts follow.
4. All staff must be properly trained and supervised in providing k-12 educational auditing services.
5. The firm should have an unqualified Peer Review Report. If the firm's most recent review was qualified, please disclose the reasons for the qualification.

B. Audit Requirements

1. The EAA requires the auditor to express an opinion on the fair presentation of its basic financial statements in conformity with Generally Accepted Governmental Auditing Standards as promulgated by GASB, AICPA, and the Michigan Departments of Education and Treasury.
2. Completion of a Single Audit Report in compliance with the Single Audit Act, as amended in 1996; and the provisions of the Office of Management and Budget Circular A-133.
3. Completion of the Audit Disclosure report as required by the Michigan Department of Education.
4. Preparation of a Management Letter of recommendations.
5. At a minimum, the following conferences will be held individually with the EAA:
 - a. Entrance conference with all key financial department staff. This meeting will be held at the start of the contract.

- b. Progress conferences with all key financial department staff. This meeting will be held no later than June of the auditing year
 - c. Exit conferences with all key financial department staff. This meeting will occur in November after the audit has been submitted and excepted by EAA
6. Additional meeting with key financial department staff prior to release of any report, and, at the request of the EAA, meetings with the Board of Education, or its committees, to review the above reports.
7. Final report shall include at a minimum:
 - Report on basic financial statements, including notes to the financial statement.
 - Report on internal accounting control based solely on a study and evaluation made as part of the audit of the basic financial statements and on compliance with laws and regulations that may have a material effect on the financial statement, as needed.
 - Report on supplementary schedule of federal award programs.
 - Report on internal controls and on compliance used in administering federal award programs, identifying all findings of noncompliance, internal controls and questioned costs as required by OMB Circular A133.
 - If applicable, a report on fraud, abuse, or an illegal act or indications of such acts.
 - Report to the Board of Education on audit results, operational suggestions, or other reportable matters.
8. The auditor will assist the EAA with the preparation of all official statements in connection with the sale or refunding of debt securities which will contain the basic financial statements and auditor's report.
9. All working papers and reports must be retained, at the auditor's expense, for a minimum of five (5) years, unless the firm is notified in writing by the EAA of the need to extend the retention period. All working papers will be made available by the auditor upon the EAA's request.

10. Auditor responsible for submitting completed audit to all required reporting agencies.

C. Audit Timeline

1. Preliminary fieldwork to be conducted in May or June of each year.
2. Audit fieldwork to commence in July. Fieldwork to be completed no later than September 1st of each year.
3. Audit documents to be delivered to the EAA four (4) weeks after fieldwork is complete but no later than October 1st of each year.
4. Audit summary to be presented to the individual Board of Education and/or Board Committee in October or November of each year. *At least one senior level member of the auditing team who participated in fieldwork must attend and present the audit to the Board, if requested by the EAA.*

IV. Proposal Requirements

A. Proposal Requirements

1. The purpose of the technical proposal is to demonstrate the qualifications, competence, and capacity of the firms seeking to undertake an independent audit of the EAA in conformity with the requirements of this proposal. Therefore, the substance of the proposals will carry more weight than their form or manner of presentation. The technical proposal should demonstrate the qualifications of both the firm and the particular staff to be assigned to this engagement. It should also specify an audit approach that will meet the request for proposal requirements.
2. Independence – The firm should provide an affirmative statement that it is independent of the EAA.
3. Licensed to practice in Michigan – An affirmative statement should be included indicating that the firm and all assigned key professional staff are properly licensed to practice in Michigan.

4. Firm Staffing Qualifications and Experience – The bidder should state the size of the firm, the size of the firm’s governmental staff, the location of the office from which the work of this engagement is being performed, and a listing of the anticipated staff members working on this engagement with their qualifications (Resumes) (include all governmental experience by staff person).

5. The firm is also required to include a listing of the Michigan local districts, intermediate school districts, and public school academy audits performed in the last three years (June 30, 2012, 2013, and 2014). Included in this information must be five references of similar size and scope to that of EAA, at school districts in Michigan that the EAA may contact.

The bidder shall provide the following information for the five references that they list:

- a. Name of school/district
- b. School contact name
- c. Contact phone number

The firm is also required to submit a copy of the report on its most recent external quality control review, with a statement as to whether that quality control review included a review of specific government engagements.

The firm should indicate its experience in assisting governmental units in preparing a Comprehensive Annual Financial Report to be submitted to the Association of School Business Officials International for its Certificate of Excellence in Financial Reporting.

6. Audit Approach – The proposal should set forth a work plan, including an explanation of the audit methodology to be followed, to perform the services required in this request for proposal. Included in this plan is the approach taken to gain and document the EAA’s internal controls, compliance with laws and regulation, and identification of any potential

audit problems. The firm should also describe their approach to drawing audit samples for testing of compliance.

Include a recent representative example of a school district audit.

7. Include a summary of the firm’s involvement in school-focused organizations on the county or state level (MSBO, MASA, MASB, etc.).

V. Bid Process/Evaluation Criteria Award process

A. Bid Process Requirements

1. Communications - The EAA will not respond to telephone inquiries or visitation by Bidders or their representatives. Bidder’s sole point of contact concerning the RFP is the Buyer named on the cover page of this RFP. Any communication outside of this process may result in disqualification or debarment or both.
2. Questions: Concerning the RFP must be submitted, in writing, no later than the time and date specified on the cover sheet to the buyer via e-mail. Changes to the RFP and answers to questions will be prepared as an addendum and posted on the under the corresponding bid number at [HTTP://WWW.BUY4MICHIGAN.COM](http://www.buy4michigan.com). All questions must be submitted via the Buy4Michigan website. Bidders shall submit their questions using the following format and with the requested information as applicable

Q #	RFP Reference Section/Document	RFP Reference Page # / Requirement #	Bidder Question
1			
2			
....			

The posted addendum officially revises and supersedes the original RFP. The approximate date for posting the addenda appears on the cover page of this RFP.

B. Award Process

1. **NOTICE TO ALL BIDDERS:** It is the bidder’s responsibility to complete **each** bidder response section, in section IV,

completely and in detail. No assumptions should be made that the EAA is aware of any bidder’s capabilities, staffing, prior experience, past performance or any other required information. The evaluation will be based on the information submitted with the proposal according to the terms of the RFP.

C. Method of Evaluation

Evaluation Criteria

The following chart represents the scoring of the particular factors as located in the RFP.

	Points
1. Section IV Statement of Work – Section IV - #1, #6,	40
2. Bidder Qualifications and Prior Experience <ul style="list-style-type: none"> • Section IV # 2, #3, #5 and #7 (Required Bidder Information and • (Prior Experience) 	40
3. Staffing Capabilities <ul style="list-style-type: none"> • Section IV - #4 	20
TOTAL	100

Oral Presentation: A Bidder may be requested to make an oral presentation. Oral presentations provide an opportunity for the Bidder to clarify their proposal. If required, EAA will schedule the oral presentation.

D. Price Evaluation

Only those proposals receiving a score of **70 points** or more of the total maximum possible score will be considered for award.

All price proposals will be opened. However, prices will only be evaluated from those Bidders meeting the minimum point threshold.

E. Award Recommendation

The award recommendation will be made to the responsive and responsible Bidder who offers the best value to the EAA. Best value will be determined by

the Bidder meeting the minimum point threshold and offering the best combination of the factors stated in V. C. above, and price, as demonstrated by its proposal.

F. Reservations

The EAA reserves the right to:

- (a) consider total cost of ownership factors in the final award recommendation (i.e. transition costs, training costs, etc.);
- (b) award by item, part or portion of an item, group of items or total proposal, to reject any and all proposals in whole or in part, if, in the judgment of the EAA, the best interest of the EAA will be so served; and
- (c) award to another ‘best value’ contractor in case the original Awardee does not accept the award. This reservation applies for all of our solicitations whether they are quotes, bids, proposals, pre-qualified or pre-registered programs.

G. Award Decision

Award recommendation will be made to the Chief Financial Officer (CFO), for review and approval.

VI. Cost Proposal

1. The cost proposal should contain all pricing information relative to performing the audit engagement as described in this request for proposal. The cost proposal should include the name of the firm, the total all-inclusive maximum price for the 2014-15, 2015-16, and 2016-17 audits, and certification that the person signing the proposal is entitled to represent the firm, and authorized to sign a contract with the EAA.
2. The next page of the proposal should include a schedule of professional fees and expenses, presented in the format provided in the attachment (Appendix C).

3. Include a list of services that will be billed in addition to the audit services if the EAA so desire to utilize the chosen firm for these additional services.



VII. Terms and Conditions

A copy of the contract terms and conditions have been included for the vendor to understand the terms in which they will operate under if they have been selected as the awarded vendor.

MASTER SERVICES AGREEMENT

This Master Services Agreement ("Agreement") is entered into this _____ day of March, 2015 ("Effective Date") between the Education Achievement Authority of Michigan, a Michigan public body corporate and public authority ("EAA") and Greg Faremouth ("Vendor").

WHEREAS, the EAA desires to retain Vendor to provide certain services as described herein upon the terms and conditions set forth herein and Vendor is willing to perform such services.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

I. SERVICES TO BE PROVIDED

1.1 Scope of Services. Services provided by Vendor to the EAA under this Agreement will be defined by a Scope of Services, developed by EAA. Each Scope of Services, together with this Agreement, constitutes the complete Agreement between the Parties. Each Scope of Services will describe the services to be performed ("Services"), the schedule for the performance of the Services (the "Period of Performance"), any identifiable work product to be delivered by Vendor ("Deliverables"), the fixed price or hourly rate for the Services ("Fees"), and any other terms that apply to that specific Scope of Services ("Special Terms"). Each Scope of Services is effective upon its execution by both Parties and shall be governed by the terms of this Agreement. Except for those Special Terms in the Scope of Services that expressly provide that they take precedence over this Agreement, in the event of a conflict between this Agreement and the terms of a Scope of Services, this Agreement shall govern. Absent the execution of a Scope of Services and a corresponding authorized Purchase Order, this Agreement does not, in and of itself, represent a commitment by the EAA to receive any services from Vendor or pay Vendor any fees.

II. COMPENSATION

2.1 Fees. No fees or costs shall be paid by the EAA to Vendor, except those reflected in the attached duly executed Scope of Services for Services performed pursuant to an authorized Purchase Order, with all requisite supporting documentation of such Services being performed by Vendor. Further, Vendor

acknowledges and agrees that the total amount payable to Vendor is subject to the EAA's budgeted amount for such Services during its fiscal year.

2.2 Invoices. Vendor shall submit to the EAA monthly invoices for Services ***performed in the previous billing cycle*** electronically to finance@eaaofmichigan.org or via U.S. Mail to the address below:

Education Achievement Authority of Michigan
Attention: Accounts Payable
300 River Place, Suite 3600
Detroit, Michigan 48207

Invoices shall: 1) itemize all costs, including quantities; 2) reference a Purchase Order number; 3) identify any discounts offered to the EAA (e.g., discounts for early payment, etc.); 4) outline all Services performed during the applicable billing cycle in detail. (Dates of Services must also be included, listing each date Services occurred.); and 5) provide any and all supporting documentation that verifies the delivery of such Services. Backup documentation must correspond with and be attached to each invoice submitted. (It is solely ***Vendor's responsibility*** to keep sign-in sheets for all group and individual sessions with staff, students or parents. Copies of these sign-in sheets must accompany each invoice.) ***Failure to comply with this Paragraph 2.2 will result in the invoice being rejected.***

The EAA shall pay invoices for Services satisfactorily performed within forty-five (45) days after the EAA receives an invoice from Vendor that meets the criteria listed above. ***The forty-five (45) day period shall not begin until the EAA receives an undisputed invoice, at the address provided, and that fully meets the listed criteria.***

2.3 Disputed Fees. Section VIII (Disputes) shall govern any disputes over any fees related to this Agreement. The EAA shall not be required to pay the disputed portion of any fees (which may include the entire amount of fees claimed to be owed) until the dispute is resolved; provided that (i) the EAA continues to pay any undisputed amounts consistent with this Agreement, and (ii) Vendor continues to provide all Services and otherwise perform its obligations under this Agreement. Nonpayment by the EAA of disputed amounts shall not constitute a breach of the EAA's obligations regarding payment to Vendor, or otherwise be considered a basis for termination of this Agreement.

III. REPRESENTATIONS AND WARRANTIES

3.1 EAA's Representations and Warranties. The EAA represents and warrants to the Vendor as follows and acknowledges that the Vendor is relying on such representations and warranties to enter into this Agreement and complete the transactions contemplated:

(a) Organization and Good Standing. The EAA is duly organized, validly existing and in good standing under the laws of the State of Michigan and is duly authorized to do business in the State of Michigan.

(b) Power and Authorization. The EAA has all requisite power to enter into this Agreement and to carry out and perform its obligations hereunder. All action required by the EAA through its officers, directors, or administrators for the authorization, execution and delivery of this Agreement, and the performance by the EAA of its obligations hereunder have been taken. This Agreement, when executed and delivered along with a duly executed Scope of Services, shall constitute the legal and binding obligation of the EAA in accordance with its terms, subject to (a) judicial principles respecting election of remedies or limiting the availability of specific performance, injunctive relief and other equitable remedies and (b) bankruptcy, insolvency, reorganization, moratorium or other similar laws generally relating to or affecting creditors' rights hereafter in effect.

(c) No Conflict or Breach. The execution, delivery and performance by the EAA of its obligations under this Agreement will not result in any violation of, be in conflict with, or constitute a default under, in any material respect, any material instrument, mortgage, deed of trust, loan, contract, commitment, judgment, decree, order or obligation binding upon the EAA, or result in the creation of any mortgage, pledge, lien, encumbrance, or charge upon any of its properties or assets.

3.2 Vendor's Representations and Warranties. Vendor represents and warrants to the EAA as follows and acknowledges that the EAA is relying on such representations and warranties to enter into this Agreement and complete the transactions contemplated:

(a) Organization and Good Standing. Vendor is duly organized, validly existing and in good standing under the laws of the State of Michigan and is duly authorized to do business in the State of Michigan.

(b) Power and Authority. The Vendor has all requisite power to enter into this Agreement and to carry out and perform its obligations hereunder. All action required on the part of the Vendor and its officers, and agents for the authorization, execution and delivery of this Agreement and the performance by the Vendor of its obligations hereunder have been taken. This Agreement when executed and delivered along with a duly executed Scope of Services, shall constitute the legal and binding obligations of the Vendor in accordance with its terms, subject to (a) judicial principles respecting election of remedies or limiting the availability of specific performance, injunctive relief and other equitable remedies and (b) bankruptcy, insolvency, reorganization, moratorium or other similar laws generally relating to or affecting creditors' rights hereafter in effect.

(c) No Conflict or Breach. The execution, delivery and performance by the Vendor of its obligations under this Agreement will not result in any violation of, be in conflict with, or constitute a default under, in any material respect, any material instrument, mortgage, deed of trust, loan, contract, commitment, judgment, decree, order or obligation binding upon the Vendor, or result in the creation of any mortgage, pledge, lien, encumbrance or charge upon any of its properties or assets.

(d) No Debarment, Pending Governmental Action or Record of Violations. Vendor has not been debarred by either the federal, state, or any local unit of government from providing Services, nor is it currently the subject of any debarment or similar proceedings. Vendor has no record of violation of any federal, state or local government's procurement, contracting, or ethics rules.

(e) Conflicts; No Undue or Improper Influence or Inducement. Vendor has disclosed in writing any existing conflicts of interest involving the EAA, and will disclose in writing to the EAA any conflicts that arise during the term of this Agreement. Vendor represents and warrants that it has not and will not offer to the EAA or any of the EAA's Board members and/or employees any unlawful inducement, prohibited benefit, or improper incentive to enter into this, or any other agreement with the EAA.

3.3 Performance of Services. The Services will be performed in a diligent manner in accordance with industry practices, by individuals of suitable training and skill. Vendor has and will maintain throughout the term of this Agreement, all licenses, permits, authorizations and approvals necessary for the lawful conduct of its business.

3.4 False Statements. No representation or warranty by either the EAA or Vendor contained in this Agreement contains any untrue statement or omission that amounts to a statement of a material fact that is misleading or false.

3.5 Disclaimer of Warranties. EXCEPT AS (1) EXPRESSLY SET FORTH IN THIS AGREEMENT, AND (2) WITH RESPECT TO VENDOR ONLY, AS SET FORTH IN THE SPECIAL TERMS OF A SCOPE OF SERVICES, NEITHER THE EAA NOR VENDOR MAKES ANY OTHER REPRESENTATION OR WARRANTY REGARDING THE SERVICES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE.

IV. TERM AND TERMINATION

4.1 Term. This Agreement commences on the Effective Date, as defined herein, and shall remain in effect so long as a Scope of Services between the Parties is in effect, or until otherwise terminated under Paragraph 4.2 (Termination).

4.2 Termination.

(a) The EAA may suspend services for a period of time and/or terminate this Agreement, any Scope of Services, and/or any Purchase Order hereunder without cause by providing at least thirty (30) days written notice of such suspension/termination to Vendor.

(b) Either Party may terminate this Agreement, any Scope of Services, and/or any Purchase Order for cause upon breach by the other Party, which breach remains uncured fourteen (14) days after written notice describing such breach is given to the breaching Party.

(c) This Agreement, any Scope of Services, and/or any Purchase Order may be terminated immediately by a Party upon (i) the commission of an illegal act, unethical practice, or violation of public policy, including theft or embezzlement, by the other Party; (ii) conduct by the other Party that may adversely affect a Party, as determined by such Party in its sole discretion, (iii) unavailability of funds to cover the services being provided under the Agreement or (iv) the filing of bankruptcy by either Party. Further, the EAA may terminate this Agreement, any Scope of Services, and/or any Purchase Order immediately upon the substantial failure of Vendor to perform the Services that it is obligated to perform hereunder in a timely manner or breach by Vendor of the provisions of Section VI (Confidentiality).

(d) Upon the expiration or termination of this Agreement, any Scope of Services, and/or any Purchase Order for any reason, Vendor will cooperate with the EAA in the orderly completion or transfer of Services and return of all EAA data and information, including any work in progress. Vendor will recover, as its sole remedy, payment for Services satisfactorily completed prior to such expiration or termination and not previously paid for by the EAA. Vendor waives and forfeits **all** other claims for payment including, without limitation, anticipated profits or revenue or other economic loss arising out of or resulting from such termination or expiration.

(e) Suspension or termination of this Agreement serves to similarly suspend or terminate all associated Scope of Services and Purchase Orders between the Parties.

V. CONFIDENTIAL INFORMATION

5.1 Standard of Care. Vendor acknowledges that it may receive or have access to the EAA's "Confidential Information", as that term is defined below. Vendor shall prohibit unauthorized use and shall not disclose or otherwise make available EAA's Confidential Information to any third party without the prior written consent of the EAA. Authorized use by Vendor is limited to its officers, employees, and contractors who need access to the Confidential Information to perform Vendor's obligations to the EAA, and who are themselves bound by nondisclosure obligations at least as restrictive as those set forth in this Section. Further, Vendor shall comply with all confidentiality-related guidelines, standards and law applicable to the EAA. Vendor agrees to immediately notify the EAA in the event Vendor becomes aware of any loss or unauthorized disclosure of the EAA's Confidential Information.

5.2 Confidential Information. "Confidential Information" *means* any information related to the business, personnel and operations of the EAA, or the schools within the EAA's district that may be obtained by Vendor during the term of this Agreement. Confidential Information includes, but is not limited to, business affairs, operation manuals, financial and accounting data, data and information concerning students, contracts, intellectual property, proprietary information and other operational information. Confidential Information shall not include anything that Vendor can document: (i) was generally available to the public at the time it was received by Vendor, (ii) was known to Vendor, without restriction, at the time of disclosure, or (iii) was independently developed by Vendor without any use of the Confidential Information.

5.3 Return of Confidential Information. Upon expiration or termination of this Agreement, Vendor shall promptly return to EAA all Confidential Information, or at EAA's option, Vendor shall destroy the Confidential Information.

5.4 Criminal History Background Checks. In compliance with MCL §380.1230 through MCL §380.1230h, MCL §1535a, and MCL §380.1539b, Vendor consents and agrees to the EAA conducting criminal history background checks on any or all of the Vendor's employees, contractors, or agents as required under state law. Vendor agrees to provide all information the EAA requires in order to assist with the process of obtaining the necessary clearances for Vendor personnel who will be working on site, including requiring such personnel to provide finger prints for such checks. The EAA reserves the right to require Vendor to pay fees for criminal history records checks for personnel assigned to work under this Agreement.

5.5 Public Releases. All releases of reports, papers, data, or other documents or information in any way related to the services provided under this Agreement shall be subject to review and written approval by the EAA prior to its release for publicity or any other purpose.

VI. AUDITS

6.1 General. Upon reasonable notice from the EAA, Vendor shall provide the EAA and its agents access to information and personnel, as well as any assistance reasonably required, to verify Vendor's performance of the Services under this Agreement and enable the EAA to confirm Vendor's compliance with this Agreement and applicable law, including but not limited to, the security of the EAA's Confidential Information.

6.2 Cooperation and Record Retention. Vendor agrees to maintain accurate books and records in connection with Vendor's performance of the Services outlined herein. Unless returned to the EAA, upon its written request, all such books and records (including, without limitation, all papers, correspondence, data, information, reports, records, receipts, and other sources of information relating to the Services and Fees paid to Vendor) will be held and preserved for the duration of this Agreement and for a period of six (6) years after the expiration or termination of this Agreement. Vendor shall make such books and records available to the EAA at the EAA's request. Further, Vendor shall, and shall cause its agents, employees and contractors to provide the EAA with all assistance required to enable the EAA to comply with applicable law and standards pertaining to the disclosure and confidentiality of such books and records.

VII. INDEMNIFICATION, DAMAGES, INSURANCE

7.1 Indemnification. Vendor shall indemnify and hold harmless the EAA and the EAA's employees, agents, directors and officers against all claims, demands, and causes of action arising out of or resulting from (i) the failure of Vendor or any of its agents, employees or contractors, to comply with the terms of this Agreement or any applicable law; or (ii) any injury, loss, claim or damages arising from the actions or omissions of Vendor or an agent, employee, director, officer or contractor of Vendor. Vendor's indemnity under this Section shall be without regard to and without any right to contribution from any insurance maintained by EAA.

7.2 Limitation of Liability; No Special Damages. Notwithstanding any other provision of this Agreement, the EAA shall not be liable to Vendor for any damages for loss of profits, revenues, goodwill, anticipated savings or data, the cost of purchasing replacement services, or any indirect, incidental, special, consequential, exemplary or punitive damages arising out of the performance or failure to perform under this Agreement or any Scope of Services. Nothing in this Agreement shall be construed as a waiver of governmental immunity, where applicable. No such limitation upon Vendor's liability for damages shall exist unless expressly set forth in the Special Terms of the Scope of Services.

7.3 Insurance.

(a) At all times during the term of this Agreement, Vendor and its subcontractors shall procure and maintain, at its sole cost and expense, the following types and amounts of insurance coverage issued by an insurance company reasonably acceptable to the EAA:

(1) **Commercial General Liability Insurance:** On an “Occurrence Basis” with limits of liability not less than \$1,000,000 each occurrence, \$5,000,000 aggregate, combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: A) Contractual Liability; B) Products and Completed Operations; C) Independent Vendor’s Coverage; D) Broad Form General Liability Extensions or equivalent; E) Deletion of all Explosion, Collapse and Under group (XCU) Exclusions, if applicable.

(2) **Workers’ Compensation including Employer’s Liability Coverage:** \$100,000 each accident, \$500,000 annual aggregate, in accordance with all applicable Michigan law.

(3) **Motor Vehicle Liability:** If Vendor, or its employees, will use motor vehicles to satisfy its responsibilities, then Vendor must have a minimum amount of \$1,000,000 per occurrence combined single limit, including coverage for hired or leased vehicles, and owned and non-owned vehicles with No-Fault coverage as required by law. If an insurance coverage furnished by Vendor is on a “claims made” basis, Vendor shall continue the coverage required under this Agreement for a minimum period of three (3) years after the expiration or termination of the Agreement.

(b) Vendor shall include the following as Additional Insured: The Education Achievement Authority of Michigan, including its elected and appointed officials, employees, and volunteers.

(c) Upon request by the EAA, Vendor shall provide the EAA with copies of the certificates of insurance and policy endorsements for all insurance coverage required by this Paragraph 7.3. Such certificates of insurance shall not be materially amended or cancelled without thirty (30) days prior written notice to the EAA; provided that, prior to such cancellation, Vendor shall have new insurance policies in place that meet the requirements of this Paragraph 7.3.

(d) If it is determined that any insurance required under this Section VII exceeds the maximum limits permitted under applicable law, it is agreed that said insurance requirements shall automatically be amended to conform to the maximum monetary limits permitted under such law and that Vendor’s insurer has no right of subrogation against the EAA.

VIII. DISPUTES

8.1 Informal Dispute Resolution. The EAA and Vendor will attempt to settle any dispute through informal good faith negotiations. The dispute will be escalated to appropriate senior level management of the parties, if necessary. If the dispute is unresolved within ten business days of a Party providing a written Notice of Dispute (or any other mutually agreed upon timeframe), the Parties will undertake non-binding mediation as described below in a good faith attempt to resolve such dispute.

8.2 Mediation. There will be a single mediator. If the Parties cannot agree upon an acceptable mediator within ten (10) business days after negotiations under Paragraph 8.1 are terminated, each Party will select one mediator from a list of not less than five (5) mediators provided by the other Party. These two (2) mediators will select a third (3rd) mediator who will serve as the sole mediator. Subject to the availability of the mediator, the mediation will occur not more than thirty (30) days after the request for mediation. The mediation process will continue until the dispute (or any part thereof) is resolved or until such time as the mediator makes a finding that there is no possibility of resolution short of referring the Parties to final and binding arbitration. The mediation will be held in person, in Detroit, Michigan, unless the mediator, on his or her own initiative, wishes to conduct any mediation proceeding by other means of communication. The Parties agree that the mediator is acting in a neutral capacity and is not serving as an attorney, advocate, representative or fiduciary for either or both of them. The cost of mediation, including the mediator's fees and expenses, will be shared equally by the Parties. Each Party will have the right to be represented by attorneys of their own choosing to advise them before and during the mediation process and their attorneys may review any settlement agreement, or other agreement, which the Parties have reached through mediation, prior to the execution of such agreement. Each Party will pay its own attorney's fees and costs. In connection with the mediation process, the mediator may meet in confidential "caucus" sessions separately with each Party. The mediator will be obligated to treat as confidential and refrain from disclosing to the other Party or its counsel any information conveyed to the mediator during the caucus sessions unless the party conveying such information authorized the mediator to disclose it to the other Party.

8.3 Binding Arbitration. Should any dispute (or part thereof) remain between the Parties after completion of the mediation process described in Paragraph 8.2, such dispute will be submitted to final and binding arbitration in Detroit, Michigan under the Commercial Arbitration Rules of the American Arbitration Association ("AAA"), except to the extent that the AAA Rules are contrary to the specific terms of this Paragraph 8.3. At the election of the EAA, the arbitration may be done privately and not under the auspices of the AAA, although the AAA rules shall still otherwise govern except as herein stated. There will be three (3) arbitrators. Each Party will select one (1) arbitrator. The two (2) arbitrators selected by the Parties will select a third (3rd) arbitrator. At least one (1) of the arbitrators will have at least five (5) years of relevant experience. Each Party may be represented by an attorney. The costs of the arbitration, including the arbitrators' fees and expenses, will be shared equally by the

Parties. Each Party will pay its own attorney's fees and costs; provided that, if the arbitrators find either Party has acted in bad faith, the arbitrators will have discretion to award attorneys' fees to the other Party. No Party may raise new claims against the other Party in the arbitration not raised during mediation. The arbitrators will have the power to resolve all disputes between the Parties. The arbitrators will apply the law of the state of Michigan. The arbitrators will only interpret and apply the terms and provisions of the Agreement and will not change any such terms or provisions or deprive either party of any right or remedy expressly or impliedly provided for in the Agreement. The arbitrators will not have the power to award damages other than those described in the Agreement. The determination of a majority of the arbitrators will be conclusive upon the Parties and will be non-appealable. At least thirty (30) days before the arbitration is scheduled to commence, the Parties will exchange lists of witnesses and copies of all exhibits intended to be used in arbitration. The Parties will be entitled to limited discovery. A stenographic record of the proceedings will be kept at the equal expense of the Parties, unless waived by both Parties. The arbitration will be completed within one hundred twenty (120) days of selection of the third (3rd) arbitrator. The arbitrators will render a written decision, which contains findings of fact and conclusions of law, within thirty (30) days of the conclusion of the arbitration and will specify a time within which the award will be performed. Judgment upon the award, including specific enforcement of the decision, will be entered in any court of proper jurisdiction. The Parties have knowingly chosen arbitration as an alternative to proceedings in court and they specifically waive their rights to proceed by any means before a court otherwise having jurisdiction of any dispute between them, except to the extent necessary for injunctive relief or other equitable relief.

IX. GENERAL PROVISIONS

9.1 Independent Contractor. The Services of Vendor are as an independent contractor. Nothing contained in this Agreement shall be deemed to constitute a partnership, agency, joint venture, or employment agreement between the Parties for any purposes, including, without limitation, for federal income tax purposes. Vendor assumes full responsibility for the payment of wages, salaries, and other amounts due to all persons engaged by Vendor in connection with the Services performed hereunder, and Vendor will be responsible for all taxes, including Social Security, unemployment and withholding taxes, with respect to such persons.

9.2 Tax Exempt Status. Vendor acknowledges that the EAA is a tax-exempt entity. Vendor may not use any EAA facility for any unauthorized purpose and will not act in any way that might jeopardize EAA's tax-exempt status.

9.3 Entire Agreement and Amendments. This Agreement (including the Scope of Services and its attachments), constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior oral or written agreements, negotiations, representations, discussions and understandings between the Parties. This Agreement may be amended only by a written instrument executed by each Party.

9.4 Governing Law. This Agreement shall be construed and interpreted under the laws of the State of Michigan without giving effect to other conflicts of laws or principles thereof.

9.5 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

9.6 Binding Effect and Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties hereto. No Party to this Agreement may assign its rights under this Agreement to any other person without obtaining the written permission of the other Party in advance.

9.7 No Third Party Beneficiaries. No provision of this contract shall be for the benefit of any party other than the Vendor and the EAA. Nothing expressed or referred to in this Agreement is intended or shall be construed to give any person other than the Parties to this Agreement or their respective successors or permitted assigns any legal or equitable right, remedy or claim under or in respect to this Agreement; it being the intention of the Parties that this Agreement and the transactions contemplated hereby shall be for the sole and exclusive benefit of such Parties or such successors and permitted assigns.

9.8 Expenses. Each Party shall bear its own expenses incurred in connection with this Agreement and with the performance of its obligations hereunder.

9.9 Notices. All written notices, consents, approvals, requests and other communications ("Notices") required or permitted under this Agreement shall be personally delivered with receipt obtained, or mailed by overnight mail or registered or certified first-class mail, return receipt requested, addressed as follows:

If to Vendor:

XXXX

[The remainder of this page is intentionally blank.]

If to EAA:

Education Achievement Authority
300 River Place, Suite 3600
Detroit, Michigan 48207
Attention: Legal Department

All Notices shall be deemed given on the day when hand delivered or, if mailed, on the day following the day of mailing. Either Party to this Agreement may change its address for the receipt of Notices at any time by giving Notice to the other Party as provided in this Paragraph.

9.10 Compliance with Laws. Vendor's actions and performance of Services shall be in full compliance with all applicable federal, state and local laws, rules, regulations and standards, including all EAA policies and procedures, and all laws applicable to the EAA's operations, or to which the EAA is otherwise bound. The Parties agree to comply with all laws, rules, and regulations applicable to this Agreement or the performance of work hereunder. If either Party is required to pay any fine or penalty resulting from the other Party's violation of such laws, rules or regulations, the Party who committed the direct violation shall immediately reimburse the other for any such payment.

9.11 No Waiver. No waiver by either Party of any of the terms, provisions or conditions of this Agreement shall be effective unless the waiver is in writing and signed by an authorized representative of both Parties.

9.12 Severability. In the event any provision of this Agreement is inconsistent with or contrary to any applicable law, rule, or regulation, the provision shall be deemed to be modified to the extent required to comply with the law, rule, or regulation, and this Agreement, as so modified, shall continue in full force and effect.

9.13 Headings. Headings are included for convenience of reference only and shall not affect the meaning or interpretation of this Agreement.

9.14 Further Assurances. Each Party promptly shall cause to be taken, executed, acknowledged or delivered all such further acts, conveyances, documents and assurances as any other Party from time to time reasonably may request in order to carry out and effectuate the intent and purposes of this Agreement.

9.15 Survival. Sections V through VIII and Paragraphs 9.4 and 9.15 shall survive termination of the Agreement and any Scope of Services incorporated within it. Except as otherwise expressly provided in

this Agreement, this Paragraph 9.15 does not limit or exclude any rights or obligations that may survive termination under the laws of the State of Michigan or at common law.

Appendix A

District Specific Information – Education Achievement Authority of Michigan

The EAA is a statewide K-12 school district located in Michigan.

Key financial personnel: CFO, Controller

Number of student FTE	<u>~6,500</u>	
Number of staff FTE	<u>~500</u>	
Annual payroll	<u>~\$32,000,000</u>	
Expenditures by fund:	General Fund	<u>~\$86,000,000</u>

The EAA utilizes the Wayne RESA SmartXL financial system for all general ledger, accounts payable, accounts receivable, and payroll purposes.

The EAA prepares its own financial statements and journal entries.

More detailed information on the EAA and its finances can be found on our website at www.michigan.gov/ea

Appendix B

Proposer Guaranty and Warranty

Proposer Guaranty

The proposer guarantees it can and will provide and make available, at a minimum, all services set forth in Section II, Nature of Service Required.

Proposer Warranty

- A. Proposer warrants that it is willing and able to comply with the laws of the State of Michigan.
- B. Proposer warrants that it is willing and able to obtain an errors and omission insurance policy providing a prudent amount of coverage for the willful or negligent acts or omissions of any officers, employees or agents thereof.
- C. Proposer warrants that it will not delegate or subcontract its responsibilities under an agreement without express prior written permission of the EAA.
- D. Proposer warrants that all information provided by it in connection with this proposal is true and accurate.

Signature of Official

Name (Typed)

Title

Firm

Date

Appendix C

Cost Proposal

A. Total Fixed Price for each of the FY years:

Total All-Inclusive Maximum Price for 2014-2015 Audit \$_____

Total All-Inclusive Maximum Price for 2015-2016 Audit \$_____

Total All-Inclusive Maximum Price for 2016-2017 Audit \$_____

The Fixed prices stated above are for the following Deliverables/Milestones:

- Report on basic financial statements, including notes to the financial statement.
- Report on internal accounting control based solely on a study and evaluation made as part of the audit of the basic financial statements and on compliance with laws and regulations that may have a material effect on the financial statement, as needed.
- Report on supplementary schedule of federal award programs.
- Report on internal controls and on compliance used in administering federal award programs, identifying all findings of noncompliance, internal controls and questioned costs as required by OMB Circular A-133.
- If applicable, a report on fraud, abuse, or an illegal act or indications of such acts.
- Report to the Board of Education on audit results, operational suggestions, or other reportable matters.

B. Breakdown Schedule of Professional Fees and Expenses

For the Audit of the 2014-2015 Financial Statements

	Hours	Standard Hourly Rates	Quoted Hourly Rates	Total
Partners	_____	_____	_____	_____
Managers	_____	_____	_____	_____
Supervisory Staff	_____	_____	_____	_____
Staff	_____	_____	_____	_____

Other (Specify)	_____	_____	_____	_____
			Subtotal	_____
			Out-of-Pocket Expenses	_____
			Total All-Inclusive Maximum Price	_____

Note: The rate quoted should not be presented as a general percentage of the standard hourly rate or as a gross deduction from the total all-inclusive maximum price. Proposer must fill out this form and clearly indicate if additional fees are charged for the single audit, CAFR, bond issue, etc.