

Bidder/Offeror: _____

THIS PAGE IS TO BE FILLED OUT AND RETURNED WITH YOUR BID. FAILURE TO DO SO MAY SUBJECT YOUR BID TO REJECTION.

ATTENTION

Federal Employer Identification Number or alternate identification number (e.g., Social Security Number) is used for internal processing, including bid tabulation.

Enter ID number here: _____

Pursuant to N.C.G.S. 132-1.10(b) this identification number shall not be released to the public.

This page will be removed and shredded, or otherwise kept confidential, before the procurement file is made available for public inspection.

**Mitchell Community College Endowment for Excellence
REQUEST FOR PROPOSALS**

TITLE: Auditing Services

USING FOUNDATION: Mitchell Community College Endowment for Excellence

ISSUE DATE: February 15, 2012

ISSUING FOUNDATION: Mitchell Community College Endowment for Excellence
Iredell County

Sealed Proposals subject to the conditions made a part hereof will be received until 12:00 noon on March 16 for furnishing services described herein.

SEND ALL PROPOSALS DIRECTLY TO THE ISSUING FOUNDATION ADDRESS AS SHOWN BELOW:

DELIVERED BY US POSTAL SERVICE	DELIVERED BY ANY OTHER MEANS
Mitchell Community College Endowment for Excellence 500 West Broad Street Statesville, NC 28677 Attn: Richard Lefevre	Mitchell Community College Endowment for Excellence 500 West Broad Street Statesville, NC 28677 Attn: Richard Lefevre

*******SPECIAL NOTE – PLEASE READ*******

IMPORTANT NOTE: Indicate firm name (“Technical Proposal” or “Cost Proposal”) (*if applicable*), on the front of each sealed proposal envelope or package, along with the date for receipt of proposals specified above.

Bids submitted via telegraph, facsimile (FAX) machine, telephone, and electronic means, including but not limited to e-mail, in response to this Request for Proposals will not be acceptable.

Direct all inquiries concerning this RFP by **EMAIL ONLY:**

Richard Lefevre, CPA
Treasurer
rlefevre@mitchellcc.edu
704-878-3202

NOTE: A MANDATORY PREPROPOSAL CONFERENCE/SITE VISIT:

For all prospective offerors is scheduled for March 2 at Mitchell Community College in the Technology & Workforce Development Center, located at 701 West Front Street, Statesville, NC, in Room 205 at 10:00 a.m. Attendance at this conference is a prerequisite for consideration of an offeror's proposal. Prospective offerors are encouraged to submit written questions in advance. A summary of all questions and answers will be posted on Mitchell Community College’s website www.mitchellcc.edu under important updates.

It is the offeror's responsibility to assure that all addenda have been reviewed and, if need be, signed and returned.

NOTE: Questions concerning the RFP requirements must be submitted by e-mail only (NO PHONE CALLS). Questions must be submitted not later than February 29, 2012. A summary of the RFP and all questions and answers will be posted on the Mitchell Community College’s website www.mitchellcc.edu under important updates. It is the vendor responsibility to check the site. (No exceptions)

It is the offeror's responsibility to assure that all addenda have been reviewed and, if need be, signed and returned.

SCHEDULE OF EVENTS SECTION:

SCHEDULE OF EVENTS

Release of RFP

February 15, 2012

Pre-Bid Conference
(Mandatory)

Date: March 2, 2012

Location: Mitchell Community College
Statesville Campus
Technology and Workforce Development Center
Room 205
701 West Front Street
Statesville, NC 28677

Time: 10:00 a.m.

Questions Due:

February 29, 2010

Reply Date:

March 1, 2010

RFP Due Date:

March 16, 2012

Award Date:

March 30, 2012

INTRODUCTION

Mitchell Community College Endowment for Excellence (MCCEE) is seeking auditing services for its fiscal year ending June 30, 2012. The contract shall commence on July 1, 2012, and continue, unless terminated in accordance with this section, June 30, 2013. Thereafter, unless either party notifies the other in writing at least 120 days before expiration of the initial term, or then the current renewal term, of its intention not to renew, MCCEE reserves the right to renew for two (2) successive one (1) year renewal periods under the same terms and conditions prevailing at the end of the initial term or the immediately preceding renewal term, as the case may be. This renewal will be based on the successful performance of the MCCEE Financial Statement Audit by the offeror.

BACKGROUND

The MCCEE is a legally separate not-for-profit corporation which has its financial activity blended into the financial statements of Mitchell Community College (MCC). Its fiscal year end is June 30.

MCCEE is governed by a minimum of 25 elected directors approved by the Board of Trustees of MCC. The Endowment's purpose is to aid, support and promote the educational activities of MCC. MCCEE provides funds, through contribution, to MCC to assist it in achieving excellence in its mission of education of open-admissions students; to promote, develop, and to encourage public support of MCC; and to aid, strengthen, and further in every proper and useful way the work and success of MCC.

The Endowment is a private not-for-profit organization that reports its financial statements in accordance with accounting principles generally accepted in the United States of America as prescribed by the Governmental Accounting Standards Board (GASB).

SCOPE OF WORK

All items below are for the financial statements for the year ended June 30, 2012.

1. **Deliverables:**

MCCEE

- i. an audit opinion on the financial Statements (GASB based financials) (an A-133 audit report is not needed)
- ii. the audit must be conducted in accordance with the auditing standards generally accepted in the United States of America

2. **On site work for planning and control testing should occur in May or June.**

3. **Final fieldwork:** – MCCEE fieldwork should end by no later than August 10th.

4. **Deadlines:**

MCCEE – receipt of final 2011-2012 Audit Report by August 17th.

5. **Other requirements**

MCCEE

- i. Offeror to present the final audit report to the MCCEE Executive Committee.
- ii. Offeror to provide an electronic copy of the audit report and a maximum of twenty hard copies as needed.

Prohibited Communications: FROM THE ISSUANCE DATE OF THIS RFP THROUGH THE DATE THE CONTRACT IS AWARDED, EACH OFFEROR (INCLUDING ITS SUBOFFERORS AND/OR SUPPLIERS) IS PROHIBITED FROM HAVING ANY COMMUNICATIONS WITH ANY PERSON INSIDE OR OUTSIDE THE FOUNDATION, ISSUING FOUNDATION, OR PRIVATE ENTITY, AND THE COMMUNICATION DISCUSSES THE CONTENT OF OFFEROR'S PROPOSAL OR QUALIFICATIONS, THE CONTENTS OF ANOTHER OFFEROR'S PROPOSAL, ANOTHER OFFEROR'S QUALIFICATIONS OR ABILITY TO PERFORM THE CONTRACT, AND/OR THE TRANSMITTAL OF ANY OTHER COMMUNICATION OF INFORMATION THAT HAS THE EFFECT OF DIRECTLY OR INDIRECTLY INFLUENCING THE EVALUATION OF PROPOSALS AND/OR THE AWARD OF THE CONTRACT. OFFERORS NOT IN COMPLIANCE WITH THIS PROVISION SHALL BE DISQUALIFIED FROM CONTRACT AWARD, UNLESS IT IS DETERMINED THAT THE BEST INTEREST OF MCCEE WOULD NOT BE SERVED BY THE DISQUALIFICATION. AN OFFEROR'S PROPOSAL MAY BE DISQUALIFIED IF ITS SUBOFFEROR AND SUPPLIER ENGAGE IN ANY OF THE FOREGOING COMMUNICATIONS DURING THE TIME THAT THE PROCUREMENT IS ACTIVE (I.E., THE ISSUANCE DATE OF THE PROCUREMENT TO THE DATE OF CONTRACT AWARD). ONLY THE DISCUSSIONS, COMMUNICATIONS OR TRANSMITTALS OF INFORMATION AUTHORIZED BY THE ISSUING FOUNDATION IN THIS RFP OR GENERAL INQUIRIES TO THE PURCHASER REGARDING THE STATUS OF THE CONTRACT AWARD ARE EXEMPT FROM THIS PROVISION.

FEE PROPOSAL	
SERVICE	FEE
Audit of the financial statements of Mitchell Community College Endowment for Excellence for the year ended June 30, 2012	
Total	
2ND YEAR OPTIONAL (Ended June 30, 2013)	
Audit of the financial statements of Mitchell Community College Endowment for Excellence for the year ended June 30, 2013	
Total	
3rd YEAR OPTIONAL (Ending June 30, 2014)	
Audit of the financial statements of Mitchell Community College Endowment for Excellence for the year ended June 30, 2014	
Total	

THE PROCUREMENT PROCESS

The following is a general description of the process by which a firm will be selected to provide services

1. Request for Proposals (RFP) is issued to prospective offerors.
2. A proposal conference and/or deadline for written questions are sent (See cover of this for details).
3. Proposals in one original and 2 copies will be received from each offeror in a sealed envelope or package. Each original shall be signed and dated by an official authorized to bind the firm. Unsigned proposals will not be considered.
4. All proposals must be received by the issuing Foundation not later than the date and time specified on the cover sheet of this RFP.
5. At their option, the evaluators may request oral presentations or discussion with any or all offerors for the purpose of clarification or to amplify the materials presented in any part of the proposal. However, offerors are cautioned that the evaluators are not required to request clarification; therefore, all proposals should be complete and reflect the most favorable terms available from the offeror.
6. Proposals will be evaluated according to completeness, content, and experience with similar projects, ability of the offeror and its staff, and cost. The evaluators will randomly select at least three of offeror's references, but the evaluators' reserve the right to contact all the references listed, if information from the three references contacted warrant further inquiry. The failure of the offeror to list all similar contracts in the specified period may result in the rejection of the offeror's proposal. The evaluators may check all public sources to determine whether offeror has listed all contracts for similar work within the designated period. If the evaluators determine that references for other public contracts for similar contracts were not listed, the evaluators may contact the public entities to make inquiry into offeror's performance of those contracts and the information obtained may be considered in evaluating offeror's proposal. Award of a contract to one offeror does not mean that the other proposals lacked merit, but that, all factors considered, the selected proposal was deemed most advantageous to the Foundation.
7. In addition to any other evaluation criteria identified in the Foundation's solicitation document, the Foundation shall consider the following factors to ensure that any award will be in the best interest of the Foundation:
 - a. Total cost to the Foundation
 - b. Level of quality provided by the offeror
 - c. All contract performance within the United States.
 - d. Protection of the Foundation's information and intellectual property
 - e. Availability of pertinent skills
 - f. Ability to understand the Foundation's business requirements and internal operational culture including (Great Plains and other relevant information systems).
 - g. Risk factors such as the security of the Foundation's information technology
 - h. Relations with citizens and employees
8. Offerors are cautioned that this is a request for offers, not a request to contract, and the Foundation reserves the unqualified right to reject any and all offers when such rejection is deemed to be in the best interest of the Foundation.

PROPOSAL REQUIREMENTS

The response to this RFP shall consist of the following sections:

Corporate Background and Experience
Project Staffing and Organization
Technical Approach
Fee Proposal

1. Corporate Background and Experience

This section shall include:

- a) An executive summary of the company
- b) Background information on the organization and should give details of experience with similar projects.
- c) A list of references (including contact persons and telephone numbers) for which similar work has been performed shall be included and the list shall include all similar contracts performed by the offeror in the past three, years. The evaluators will randomly select at least three of these references, but the evaluators reserve the right to contact all the references listed, if information from the three references contacted warrant further inquiry. The failure to list all similar contracts in the specified period may result in the rejection of the offeror's proposal. The evaluators may check all public sources to determine whether offeror has listed all contracts for similar work within the designated period. If the evaluators determine that references for other public contracts for similar contracts were not listed, the evaluators may contact the public entities to make inquiry into offeror's performance of those contracts and the information obtained may be considered in evaluating offeror's proposal.
- d) The firm's most recent peer review report and letter of comments
- e) A description of any regulatory actions taken against the firm or key personnel in the last three years.

2. Project Staffing and Organization

This section must include the proposed staffing, deployment and organization of personnel to be assigned to this project.

The offeror shall provide information as to the qualifications and experience of all executive, managerial, legal, and professional personnel to be assigned to this project, including the personnel's experience with similar projects and the responsibilities to be assigned to each person.

3. Technical Approach

This section shall include, in narrative, outline, and/or graph form the offeror's approach to accomplishing the tasks outlined in the Scope of Work section of this RFP. A description of each task and deliverable and the schedule for accomplishing each shall be included.

4. Fee Proposal

The Fee Proposal shall include all costs associated with the completion of the scope of work. The billing for the engagement is to take place when the final audit report is delivered to MCCEE.

FEE PROPOSAL/EXECUTION OF PROPOSAL

By submitting this proposal, the potential offeror certifies the following:

This proposal is signed by an authorized representative of the firm.

It can obtain insurance certificates as required within 10 calendar days after notice of award.

The cost and availability of all equipment, materials, and supplies associated with performing the services described herein have been determined and included in the proposed cost.

All labor costs, direct and indirect, have been determined and included in the proposed cost.

The offeror has attended the mandatory conference/site visit and is aware of prevailing conditions associated with performing these services.

The potential offeror has read and understands the conditions set forth in this RFP and agrees to them with no exceptions.

Billing of services will be submitted with the delivery of the final audit report.

Therefore, in compliance with this Request for Proposals, and subject to all conditions herein, the undersigned offers and agrees, If this proposal is accepted within **30** days from the date of the opening.

OFFEROR: _____

ADDRESS: _____

CITY, FOUNDATION, ZIP: _____

TELEPHONE NUMBER: _____ FAX: _____

E-MAIL: _____

Principal Place of Business if different from above (See General Information on Submitting Proposals, Item 18.):

N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any Foundation or MCC employee of any gift from anyone with a contract with the Foundation, or MCC, or from any person seeking to do business with the Foundation or MCC. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

BY: _____ TITLE: _____ DATE: _____
(Signature)

(Printed name)

ACCEPTANCE OF PROPOSAL

(Mitchell Community College Endowment for Excellence)

BY: _____ TITLE: _____ DATE: _____

THIS PAGE MUST BE SIGNED AND INCLUDED IN YOUR PROPOSAL.

Unsigned proposals will not be considered.

GENERAL INFORMATION ON SUBMITTING PROPOSALS

1. **EXCEPTIONS:** All proposals are subject to the terms and conditions outlined herein. All responses shall be controlled by such terms and conditions and the submission of other terms and conditions, price lists, catalogs, and/or other documents as part of an offeror's response will be waived and have no effect either on this Request for Proposals or on any contract that may be awarded resulting from this solicitation.

Offeror specifically agrees to the conditions set forth in the above paragraph by signature to the proposal.

2. **CERTIFICATION:** By executing the proposal, the signer certifies that this proposal is submitted competitively and without collusion (G.S. 143-54), that none of our officers, directors, or owners of an unincorporated business entity has been convicted of any violations of Chapter 78A of the General Statutes, the Securities Act of 1933, or the Securities Exchange Act of 1934 (G.S. 143-59.2), and that we are not an ineligible vendor as set forth in G.S. 143-59.1. False certification is a Class I felony.
3. **ORAL EXPLANATIONS:** The Foundation shall not be bound by oral explanations or instructions given at any time during the competitive process or after award.
4. **REFERENCE TO OTHER DATA:** Only information which is received in response to this RFP will be evaluated; reference to information previously submitted shall not be evaluated.
5. **ELABORATE PROPOSALS:** Elaborate proposals in the form of brochures or other presentations beyond that necessary to present a complete and effective proposal are not desired.

In an effort to support the sustainability efforts of the Foundation we solicit your cooperation in this effort.

6. **COST FOR PROPOSAL PREPARATION:** Any costs incurred by offerors in preparing or submitting offers are the offerors' sole responsibility; the Foundation will not reimburse any offeror for any costs incurred prior to award.
7. **TIME FOR ACCEPTANCE:** Each proposal shall state that it is a firm offer which may be accepted within a period of 30 days. Although the contract is expected to be awarded prior to that time, the 30 day period is requested to allow for unforeseen delays.
8. **TITLES:** Titles and headings in this RFP and any subsequent contract are for convenience only and shall have no binding force or effect.
9. **CONFIDENTIALITY OF PROPOSALS:** In submitting its proposal the offeror agrees not to discuss or otherwise reveal the contents of the proposal to any source outside of the using or issuing Foundation, government or private, until after the award of the contract. Only those communications with the Foundation authorized by this RFP are permitted. All offerors are advised that they are not to have any communications with the using or issuing Foundation during the evaluation of the proposals (i.e., after the public opening of the proposals and before the award of the contract), unless the Foundation's purchaser contacts the offeror(s) for purposes of seeking clarification. An offeror shall not: transmit to the Foundation and/or using Foundation any information commenting on the ability or qualifications of other offerors to perform the advertised contract and/or the other offerors' proposals and/or prices at any time during the procurement process; or engage in any other communication or conduct attempting to influence the evaluation and/or award of the contract that is the subject of this RFP. Offerors not in compliance with this provision may be disqualified, at the option of the Foundation, from contract award. Only discussions authorized by the Foundation are exempt from this provision.
10. **RIGHT TO SUBMITTED MATERIAL:** All responses, inquiries, or correspondence relating to or in reference to the RFP, and all other reports, charts, displays, schedules, exhibits, and other documentation submitted by the offerors shall become the property of the Foundation when received.
11. **OFFEROR'S REPRESENTATIVE:** Each offeror shall submit with its proposal the name, address, and telephone number of the person(s) with authority to bind the firm and answer questions or provide clarification concerning the firm's proposal.

**NORTH CAROLINA GENERAL CONTRACT TERMS AND CONDITIONS
(Contractual and Consultant Services)**

1. **GOVERNING LAW:** This contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina.
2. **SITUS:** The place of this contract, its situs and forum, shall be North Carolina, where all matters, whether sounding in contract or tort, relating to its validity, construction, interpretation and enforcement shall be determined
3. **INDEPENDENT OFFEROR:** The Offeror shall be considered to be an independent offeror and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. The Offeror represents that it has, or will secure at its own expense, all personnel required in performing the services under this agreement. Such employees shall not be employees of, or have any individual contractual relationship with the Foundation.
4. **KEY PERSONNEL:** The Offeror shall not substitute key personnel assigned to the performance of this contract without prior written approval by the Foundation's Contract Administrator. The individuals designated as key personnel for purposes of this contract are those specified in the Offeror's proposal.
5. **SUBCONTRACTING:** Work proposed to be performed under this contract by the Offeror or its employees shall not be subcontracted without prior written approval of the Foundation's Contract Administrator. Acceptance of an offeror's proposal shall include any subofferor(s) specified therein.
6. **PERFORMANCE AND DEFAULT:** If, through any cause, the Offeror shall fail to fulfill in timely and proper manner the obligations under this agreement, the Foundation shall thereupon have the right to terminate this contract by giving written notice to the Offeror and specifying the effective date thereof. In that event, all finished or unfinished deliverable items under this contract prepared by the Offeror shall, at the option of the Foundation, become its property, and the Offeror shall be entitled to receive just and equitable compensation for any satisfactory work completed on such materials. Notwithstanding, the Offeror shall not be relieved of liability to the Foundation for damages sustained by the Foundation by virtue of any breach of this agreement, and the Foundation may withhold any payment due the Offeror for the purpose of setoff until such time as the exact amount of damages due the Foundation from such breach can be determined.

In case of default by the Offeror, the Foundation may procure the services from other sources and hold the Offeror responsible for any excess cost occasioned thereby. The Foundation reserves the right to require a performance bond or other acceptable alternative performance guarantees from successful offeror without expense to the Foundation.

In addition, in the event of default by the Offeror under this contract, the Foundation may immediately cease doing business with the Offeror, immediately terminate for cause all existing contracts the Foundation has with the Offeror, and de-bar the Offeror from doing future business with the Foundation

Upon the Offeror filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Offeror, the Foundation may immediately terminate, for cause, this contract and all other existing contracts the Offeror has with the Foundation, and de-bar the Offeror from doing future business

Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

7. **TERMINATION:** The Foundation may terminate this agreement at any time by *30 days* notice in writing from the Foundation to the Offeror. In that event, all finished or unfinished deliverable items prepared by the Offeror under this contract shall, at the option of the Foundation, become its property. If the contract is terminated by the Foundation as provided herein, the Offeror shall be paid for services satisfactorily completed, less payment or compensation previously made.
8. **PAYMENT TERMS:** Payment terms are Net not later than 30 days after receipt of correct invoice(s) or acceptance of services, whichever is later, or in accordance with any special payment schedule identified in this RFP. The Foundation is responsible for all payments to the offeror under the contract
9. **CONFIDENTIALITY:** Any information, data, instruments, documents, studies or reports given to or prepared or assembled by the Offeror under this agreement shall be kept as confidential and not divulged or made available to any individual or organization without the prior written approval of the Foundation.
10. **CARE OF PROPERTY:** The Offeror agrees that it shall be responsible for the proper custody and care of any property furnished it for use in connection with the performance of this contract or purchased by it for this contract and will reimburse the Foundation for loss of damage of such property.
11. **COPYRIGHT:** No deliverable items produced in whole or in part under this agreement shall be the subject of an application for copyright by or on behalf of the Offeror.

12. **ASSIGNMENT:** No assignment of the Offeror's obligations nor the Offeror's right to receive payment hereunder shall be permitted. However, upon written request the Foundation may:
- a. Forward the offeror's payment check(s) directly to any person or entity designated by the Offeror, or
 - b. Include any person or entity designated by Offeror as a joint payee on the Offeror's payment check(s).

In no event shall such approval and action obligate the Foundation to anyone other than the Offeror and the Offeror shall remain responsible for fulfillment of all contract obligations.

13. **COMPLIANCE WITH LAWS:** The Offeror shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, Foundation, and local agencies having jurisdiction and/or authority.
14. **AFFIRMATIVE ACTION:** The Offeror shall take affirmative action in complying with all Federal and Foundation requirements concerning fair employment and employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin, or disability.
15. **INSURANCE:** During the term of the contract, the offeror at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the contract. As a minimum, the offeror shall provide and maintain the following coverage and limits:
- a. Worker's Compensation - The offeror shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$150,000.00, covering all of Offeror's employees who are engaged in any work under the contract. If any work is subcontracted, the offeror shall require the subofferor to provide the same coverage for any of its employees engaged in any work under the contract.
 - b. Commercial General Liability - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$500,000.00 Combined Single Limit. (Defense cost shall be in excess of the limit of liability).
 - c. Automobile - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the contract. The minimum combined single limit shall be \$150,000.00 bodily injury and property damage; \$150,000.00 uninsured/under insured motorist; and \$1,000.00 medical payment.

Providing and maintaining adequate insurance coverage is a material obligation of the offeror and is of the essence of this contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The offeror shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this contract. The limits of coverage under each insurance policy maintained by the offeror shall not be interpreted as limiting the offeror's liability and obligations under the contract.

16. **ADVERTISING:** The offeror shall not use the award of a contract as part of any news release or commercial advertising.
17. **ENTIRE AGREEMENT:** This contract and any documents incorporated specifically by reference represent the entire agreement between the parties and supersede all prior oral or written Statements or agreements. This Request for Proposals, any addenda thereto, and the offeror's proposal are incorporated herein by reference as though set forth verbatim.
- All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or Foundation statutes of limitation.
18. **AMENDMENTS:** This contract may be amended only by written amendments duly executed by the Foundation and the Offeror.
19. **TAXES:** G.S. 143-59.1 bars the Secretary of Administration from entering into contracts with vendors if the vendor or its affiliates meet one of the conditions of G. S. 105-164.8(b) and refuse to collect use tax on sales of tangible personal property to purchasers in North Carolina. Conditions under G. S. 105-164.8(b) include: (1) Maintenance of a retail establishment or office, (2) Presence of representatives in the Foundation that solicit sales or transact business on behalf of the vendor and (3) Systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. By execution of the proposal document the vendor certifies that it and all of its affiliates, (if it has affiliates), collect(s) the appropriate taxes.

20. **GENERAL INDEMNITY:** The offeror shall hold and save the Foundation, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the offeror in the performance of this contract and that are attributable to the negligence or intentionally tortuous acts of the offeror provided that the offeror is notified in writing within 30 days that the Foundation has knowledge of such claims. The offeror represents and warrants that it shall make no claim of any kind or nature against the Foundation's agents who are involved in the delivery or processing of offeror goods to the Foundation. The representation and warranty in the preceding sentence shall survive the termination or expiration of this contract.

Revised 2/02/2012