

***Yavapai***  
**COLLEGE**  
Your community. Your college.

**REQUEST FOR PROPOSAL # 252**

**For  
Lease of Excess Capacity on  
Educational Broadband Service Station WND276  
Prescott, Arizona**

**RFP Release Date: October 20, 2009**

**Proposal Due Date  
Tuesday, November 24, 2009 @ 2:30:00 p.m.**

## *Yavapai Community College*

### **SCHEDULE OF EVENTS**

<u>ACTIVITY</u>	<u>DATE</u>
Release RFP	10/20/2009
Final Date for questions	11/10/2009
Addendum issued from questions (if required)	11/16/2009
Proposal Due Date	11/24/2009
Interview Top Candidates	11/30-12/4/2009
Announce Selection	12/7-12/11/2009

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# *Yavapai Community College*

## **ACKNOWLEDGMENT OF RECEIPT**

Description: Lease of Excess Capacity for Educational Broadband Service Station WND276,  
Prescott, Arizona

RFP #: 252

Proposal Due Date: Tuesday, November 24, 2009, at 2:30:00 p.m. (local time)

Please complete this form as acknowledgment that you have received the (18) eighteen page Request for Proposal and attached (3) three exhibits noted above. If your firm is interested in participating, this sheet **MUST** be completed and faxed to Yavapai Community College Procurement and Contract Management Services at (928) 776-2193 by **Friday, October 30, 2009**. This will insure that we are able to provide notification to you of any changes to the RFP. **Yavapai Community College is not responsible for incorrect contact information (phone, fax, e-mail etc.) supplied by the vendor.**

Name of Firm: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone #: ( ) \_\_\_\_\_ Fax #: ( ) \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Website: \_\_\_\_\_

Contact Name: (Printed): \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## **General**

### **Instructions to Respondent**

**Follow the format required in the RFP** when preparing your response. Provide point-by-point responses to all sections in a clear and concise manner.

**Provide complete answers/descriptions.** Read and answer **all** questions and requirements. Don't assume the College or evaluator/evaluation committee will know what your company capabilities are or what items/services you can provide, even if you have previously contracted with the College. The proposals are evaluated based solely on the information and materials provided in your response.

**Submit your response on time.** Note all the dates and times listed in the Schedule of Events and within the document, and be sure to submit all required items on time. Late proposal responses are *never* accepted.

**To be considered responsive, the Response must include the following:**

- A cover letter signed by an officer or agent of the Respondent
- Signed Acknowledgement of Addendum, if required
- Address all mandatory requirements
- Point-by-point response to all sections and subsections of the RFP, Statement of Services
- Written confirmation that Respondent will agree to Contract terms stated in Appendix A

### **Introduction**

Yavapai County Community College District (the “College”) issues this Request for Proposals (“RFP”) to invite offers to lease excess capacity on the College’s Educational Broadband Service (“EBS”) Station WND276 (the “Station”) for any and all lawful purposes in Yavapai County, Arizona.

The College holds a license for EBS Station WND276 issued by the Federal Communications Commission (“FCC”). The license authorizes operations on Channels G1, G2, G3 and G4 (2673.5-2690 MHz and 2596-2602 MHz). The FCC renewed the license on June 19, 2009 and the new license term expires June 10, 2018. The center of the Geographic Service Area (“GSA”) for the Station is located on Mingus Mountain, geographic coordinates 34-42-04.1 N., 112-07-06.6 W. The Station has been transitioned and a minor modification to reflect operation on the “new” channel assignments listed above was filed with the FCC on October 12, 2009 and is pending before the FCC (File No. 0003995250; status may change prior to award). According to the analysis of Hardin & Associates, Inc., there are 194,746 persons residing within the GSA (2006 census estimate). The College is not currently utilizing Station WND276 for any purpose.

Excess capacity on the Station is not the subject of any existing leases, rights of first refusal, options or any other rights granting an interest to any third party.

Respondents would enjoy significant flexibility in providing fixed and mobile services for any and all lawful purposes, consistent with this RFP and U.S. and International standards, using the technology of their choice. The spectrum can be used for many services, including but not limited to broadband Internet access, multichannel video, voice communications and video conferencing. Services may be offered to consumers, business, public, governmental and educational users. It may also be used to support research and development of fixed or mobile applications. The licenses are subject to various FCC regulations,

including a requirement to demonstrate that the Station providing “substantial service” to the GSA by May 1, 2011.

A reference copy of the license is attached as Exhibit 1 hereto. A map showing the GSA is attached as Exhibit 2 hereto.

### Demographics

The mission of the College is to provide affordable, quality learning opportunities to all people living within Yavapai County’s 8,000 square mile service area. Founded in 1966, the college currently enrolls over 10,000 students in credit and non-credit classes at numerous sites throughout Yavapai County. Although transfer and career training programs remain the college’s emphasis, many other services, from the Leadership Center to Small Business assistance, are offered. Officials at the Small Business Development Center serve an average of 450 businesses annually. Yavapai College Libraries provide service to 1,326 people daily, and 58,000 attend events at the Performance Hall each year.

College campus locations are:

Prescott Campus  
1100 E. Sheldon Street  
Prescott, AZ 86301

Verde Valley Campus  
601 Black Hills Drive  
Clarkdale, AZ 86324

Prescott Valley Center  
6955 Panther Path  
Prescott Valley, AZ 86314

Sedona Center for Arts & Technology  
4215 Arts Village Drive  
Sedona, AZ 86336

Chino Valley Agribusiness and Science Technology  
2275 Old Manor Way  
PO Box 4048  
Chino Valley, AZ

CTEC Center  
220 Ruger Road  
Prescott, AZ 86301

Camp Verde Campus  
321 West Apache Trail  
Camp Verde, AZ 83622

### Purposes

The purposes of this solicitation are to select firm(s) that will: (a) utilize excess capacity on the Station to provide wireless broadband services to the communities within the Station’s GSA and the College’s locations (listed above), and (b) construct the Station and operate it in a manner sufficient for the College to demonstrate “substantial service” no later than May 1, 2011, and (c) demonstrate how the College can meet the minimum educational programming obligations required by the FCC. In addition, at their option, Respondents may propose the construction of a wireless point-to-point network using Station spectrum (*e.g.*, Channel G4) to replace the College’s existing T1 and DS3 point-to-point network that provides connectivity to and from the College and other educational facilities and/or provide stable and robust wireless broadband internet connectivity to College campus locations. A table showing the endpoints and technical information for the existing wired network is attached as Exhibit 3 hereto.

Under FCC rules, EBS licensees must provide at least 20 hours per week of EBS educational programming and must reserve an additional 20 hours per week per channel for EBS use or have that

capacity reserved for recapture. In addition, EBS licensees using digital transmissions must reserve a minimum of 5% of its channel capacity for educational use and must utilize at least 20 hours per licensed channel per week. Both analog and digital EBS licensees' educational usage may be shifted onto fewer than the authorized number of channels, so long as licensees provide a total average of at least 20 hours per channel per week of EBS educational use on authorized channels.

#### Lease of Excess Capacity

The College is charged with seeking proposals for a lease of excess capacity on the Station's G-Group channels. Respondents may propose the lease of either or both of the following:

- (a) all four G-Group channels, or
- (b) the three (3) Upper Band Segment channels (Channels G1, G2 and G3).

In addition, proposals may address the College's desire to use part of its spectrum for replacement of the wired point-to-point network and/or provide stable and robust wireless broadband internet connectivity to College campus locations..

Respondents are encouraged to propose leasing arrangements of fifteen (15) years, subject to renewal of the FCC license, with the opportunity to extend the lease if the lessee is not in default and the parties otherwise mutually agree. Respondents should include a build-out schedule that includes commitments to cover communities in the GSA and College campus locations. Respondents also are encouraged to propose creative incentives to promote educational and commercial broadband services within the College community, including free or discounted services and equipment, to students, faculty and staff; affinity agreements; and internships for students.

#### Wireless Point-to-Point Network

The College currently uses T-1 lines to connect its campus locations (listed above) at a significant monthly cost. The College would like to replace all or part of this network with a wireless point-to-point system where viable to reduce recurring payments. Respondents may include in their proposals a plan for construction of a wireless point-to-point network using the Station's licensed spectrum. The College would maintain the point-to-point network and would be willing to allow a successful Respondent to utilize the network for its own connectivity, subject to bandwidth and other restrictions. If desired, Respondents may include pricing for maintenance of the point-to-point network.

#### Wireless Broadband Internet Connections

The College currently uses one DS3 internet connection located at the Prescott Campus for the Internet traffic to each campus, with the exception of the Sedona Campus. The College is interested in having wireless broadband internet connections at each campus in addition to the central internet connection at the Prescott Campus. Respondents may include in their proposals a plan to provide wireless broadband internet connections using the Station's licensed spectrum to viable campus locations. Please refer to Exhibit 3.

#### “Substantial Service”

Respondents must indicate how the College will demonstrate “substantial service” on the Station in a timely manner and how the College can meet the minimum educational programming requirements established by the FCC. Respondents can make this showing with respect to either the excess capacity to be leased or the retained capacity on the point-to-point network.

All EBS licensees are subject to an FCC requirement to provide “substantial service” to the GSA no later

than May 1, 2011 or to face potential license forfeiture or other sanctions. The FCC defines such service as “service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal.” Substantial service demonstrations are made license-by-license; however, an EBS licensee is deemed to have satisfied its requirements if it provides service consistent with one or more FCC-defined “safe harbors” of service. Those safe harbors are:

- (i) *For licensees providing fixed point-to-point services* -- constructing six permanent links per one million people.
- (ii) *For licensees providing mobile services* -- providing coverage of at least 30% of the population of the licensed area.
- (iii) Providing service to “rural areas” (a county with a population density of 100 persons per square mile or less, based upon the most recently Census data) and areas with limited access to telecommunications services:
  - (A) for mobile service, where coverage is provided to at least 75% of the geographic area of at least 30% of the rural areas within its service area; or
  - (B) for fixed service, where the licensee has constructed at least one end of a permanent link in at least 30% of the rural areas within its licensed area.
- (iv) Providing specialized or technologically sophisticated service that does not require a high level of coverage to benefit consumers.
- (v) Providing service to niche markets or areas outside the areas served by other licensees.

In addition, FCC rules provide that EBS licensees may demonstrate substantial service by satisfying the following criteria:

- (i) Using its spectrum (or spectrum to which the EBS licensee’s educational services are shifted) to provide educational services within the EBS licensee’s GSA.
- (ii) The license is actually being used to serve the educational mission of one or more accredited public or private schools, colleges or universities providing formal educational and cultural development to enrolled students.
- (iii) The level of service provided by the EBS licensee meets or exceeds the minimum usage requirements specified in FCC rules.

## **Statement of Services**

The College seeks written proposals from qualified Respondents. All proposals must provide information requested in the following order and number sequence. Specifically state in all applicable section(s) whether the College will have any cost/obligations associated with a function described:

### **Part A – Background Information About the Respondent**

1. Provide the full name and address of the organization, and identify any parent companies. Specify who will be the primary contact for purposes of the RFP. Provide the date and place of formation of the organization.
2. Identify the ownership and senior management of the organization and its primary business purposes. If the Respondent is acting as a broker/agent for another entity, this relationship must be fully and clearly described, and the broker/agent must provide all requested information for the company he/she is authorized to represent. Note any and all business relationships that may be relevant, including those that might be a conflict of interest.
3. Provide the most recent financial statements (preferably audited) or other documentation that demonstrates the Respondent's ability to successfully provide the service and discharge its obligations.
4. Provide a list of three (3) references (Higher Education preferred) that the College may contact.
5. Demonstrate Respondent's ability to comply with all applicable FCC laws and regulations.
6. Specify how long the Respondent has been in the business of operating wireless broadband systems similar to those contemplated in this RFP and under what company name. Respondent shall provide examples of any relevant past operations, including the locations of such operations, the licensees whose excess capacity were used in such operations, and the dates when such operations commenced.
7. Provide a list of similar proposals for which spectrum lease agreements that Respondent entered into during the last five years. The list must including the name, location, date, name of licensee, and name of licensee's representative. Identify work as completed or underway.

### **Part B – Proposed Services**

1. Describe fully the proposed use of the spectrum for both the lease of excess capacity and, if proposed, the construction of the wireless point-to-point network. Specify the technology, manufacturers, system architecture, average/peak download/upload speeds and any other pertinent information that provides the College with an understanding of the use its spectrum.
2. Describe how the lease of the excess capacity on the Station (Channels G1, G2, G3 and, if proposed, Channel G4) and, if proposed, the construction and operation of the wireless point-to-point network will enable the College to satisfy its minimum educational programming requirements
3. Describe services to be provided to the College in the form of free or discounted access to the commercial system, free or reduced-cost Customer Premises Equipment, coverage within and outside the system, capacity of the system to handle dedicated educational traffic, and willingness

to allow commercial, public, educational and government use of the retained capacity. Specify any in-kind equipment or services the vendor is prepared to offer the College in exchange for the use of its EBS excess spectrum capacity, *i.e.*, computers, laptops, iPods, projectors, discounted educator/student rates, or out-of state service access.

4. Set forth the proposed lease term and any renewal provisions, while confirming that the initial lease term shall not exceed fifteen (15) years, and specifying the conditions by which the lease can be renewed for a maximum term of thirty (30) years.
5. Describe how the Respondent(s) anticipates assisting the College in demonstrating “substantial service,” provide a timetable for key construction milestones for both the excess capacity and the point-to-point network, and indicate how the College can protect the license if there is a failure to provide “substantial service” by October 31, 2010 (*i.e.*, six months prior to the FCC’s deadline).
6. Describe any desire for a master lease or similar agreement for access/use of the College’s tower and site locations and existing infrastructure, including the wireless point-to-point replacement network, and proposed terms and conditions.
7. Describe any one-time royalty or grant, if any, upon execution of the lease.
8. Provide a proposed start date of monthly lease/royalty fees and/or periodic lump-sum payments.
9. Provide payment structure/compensation, including (a) monthly royalty or lease minimum per channel and as a function of MHz Pops for a lease of the desired excess capacity, and/or (b) revenue-share proposals.
10. Describe Respondent’s willingness to reimburse legal, engineering and other expenses (both as to the contracting process and during the lease term).
11. Describe any other compensation or revenue or benefit to be provided for the term of the proposed lease.
12. Describe any additional services or equipment to be provided under the lease term – especially as might pertain to distance learning programs.
13. Describe terms under which the lease may or may not be transferred or assigned and any compensation upon any such transfer or assignment.
14. Describe Respondent’s willingness to make commitments to offer wireless broadband service to the communities within the GSA and where the College’s facilities are located, including any timeline or milestones for service to the College’s facilities.
15. Describe Respondent’s willingness to provide a lifeline wireless broadband service to low-income residents and define “lifeline wireless broadband services” for purposes of this commitment in terms of download and upload speeds.
16. Describe fully the proposed technology that Respondent intends to use.
17. Detail how FCC filings, engineering, or other legal or procedural matters will be handled and paid for by Respondent.

### Part C – Additional Information

1. If multiple Respondents are submitting a joint proposal, provide the above-requested information for all Respondents.
2. Provide any additional information relevant to the proposal and its evaluation.
3. A statement that the Respondent will agree to the Contract language specified in Appendix A.

### Due Diligence

The College makes no representations or warranties about the use of this spectrum for particular services and does not endorse any particular service, technology, or product. Respondents should conduct their own individual due diligence to, among other things, determine the existence of pending administrative or judicial proceedings that might affect the facilities and to evaluate all legal, technical and marketplace factors that may affect the value of the spectrum offered. In addition, respondents should perform technical analyses and engineering studies sufficient to assure themselves that they will be able to build and operate facilities that will fully comply with the FCC's technical and legal requirements. Respondents are solely responsible for identifying associated risks of leasing the spectrum. The College makes no representations or warranties regarding the accuracy or completeness of information in FCC databases or in any third party databases or regarding the accuracy or completeness of information that has been provided by licensees and incorporated into the database. Respondent(s) assume the risk of any incompleteness or inaccuracy in such databases and in any information provided or attached to this RFP, including the GSA maps. If any errors or omissions are discovered, please contact the College at the address provided herein.

### Modifications to Request for Proposal

Any interpretation, correction, or change of this RFP will be made by written Addendum. Interpretations, corrections, or changes of this RFP made in any other manner will not be binding, and Respondents shall not rely upon such interpretations, corrections, and changes. Any changes or corrections will be issued by the Director of Procurement and Contract Management Services. Addenda will be emailed or faxed to all Respondents that have returned the Acknowledgement of Receipt and posted on the College's Procurement Website. The College is not responsible for incorrect contact information provided by vendor. **Failure to acknowledge any addendum(s) may be cause for rejection; therefore, Respondents must return the completed acknowledgment(s) upon receipt.**

## Proposal Instructions

### Proposal Questions

From the date this RFP is issued until a Respondent is selected and the selection is announced by the procurement officer, **Respondents are not allowed to communicate with any College staff or officials regarding this procurement, except as stated below with respect to questions and at the direction of Denise K. Finn**, the procurement officer in charge of the solicitation. Any unauthorized contact may disqualify the Respondent from further consideration. Contact information for the single point of contact is as follows:

Denise K. Finn, CPPO, C.P.M., CPPB  
Director  
Procurement and Contract Management Services  
Yavapai Community College  
1100 E. Sheldon St.  
Bld. 7, Rm. 107  
Prescott, AZ 86301  
Phone: (928) 776-2190 Fax: (928) 776-2193  
E-Mail: [denise.finn@yc.edu](mailto:denise.finn@yc.edu)

Respondents with questions or requiring clarification or interpretation of any section within this RFP must address these questions in writing or via e-mail to the procurement officer referenced above on or before the date specified in the Schedule of Events for written/e-mailed Questions. Each question must provide clear reference to the section, page, and item in question. Questions received after the deadline may not be considered.

The College will provide an official written response, by the date and time specified in the Schedule of Events for posting of written answers, to the College's website to all questions received by the date specified in the Schedule of Events. The College's response will be by formal written addendum. Any other form of interpretation, correction, or change to this RFP will not be binding upon the College. Any formal written addendum will be posted on the College's website alongside the posting of the RFP by the close of business on the date listed. Respondents must sign and **return with their RFP response an Acknowledgment of Addendum for any addendum issued.**

The final date that questions will be accepted is November 10, 2009 at 4:00:00 p.m. (local time).

### Proposal Response Requirements

Respondents should carefully review the instructions; mandatory requirements, specifications, standard terms and conditions set out in this RFP and promptly notify the procurement officer identified above in writing or via e-mail of any ambiguity, inconsistency, unduly restrictive specifications, or error which they discover upon examination of this RFP.

Respondents must include a cover letter signed in ink by an individual authorized to legally bind the business submitting the proposal. The Respondent's signature on a proposal in response to this RFP guarantees that the offer has been established without collusion and without effort to preclude the College from obtaining the best possible supply or service. Proof of authority of the person signing the RFP response must be furnished upon request.

It shall be the responsibility of the Respondent to assure that the Proposal packet contains one (1) original, (1) CD and five (5) copies of the proposal. The original must be clearly marked "Original" and the Proposal must be delivered Sealed.

Additionally, it is the Respondent's responsibility to confirm that its proposal is received in Procurement and Contract Management Services located in building seven on the Prescott Campus before the closing date and time. A map can be found on the College's website. For Respondents not hand-delivering their responses, they should be addressed as follows:

Denise K. Finn, CPPO, C.P.M., CPPB  
Director  
Procurement and Contract Management Services  
Yavapai Community College  
1100 E. Sheldon St.,  
Bld. 7, Rm. 107  
Prescott, AZ 86301

Proposals must be received no later than 2:30:00 p.m. (local time) on Tuesday, November 24, 2009. Proposals received after this time and date will not be considered and will be returned unopened. The time clock in the Procurement Department shall be the official time of receipt.

The following information must be **clearly visible** on the Proposal **Packaging**:

1. **Request for Proposal # 252,**
2. **Proposal Closing Date: Tuesday, November 24, 2009 at 2:30:00 p.m. (local time)**

The Respondent certifies that by submitting a proposal neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the Respondent cannot certify this statement, attach a written explanation for review by the College.

In the event of inconsistencies or contradictions between language contained in the College's solicitation document and a Respondent's response, the language contained in the College's original solicitation document will prevail. Intentional manipulation and/or alteration of solicitation document language will result in the Respondent's disqualification and possible debarment.

## **Proposal Evaluation**

Using criteria outlined in the following section, a team of representatives will evaluate the proposals. Based on the outcome of the initial evaluation, one or more firms may be invited to make a presentation regarding their proposal.

### **Evaluation and Award**

1. **Evaluation Process:** A numerical evaluation method may be used as an aid to evaluation; however the selection ultimately is a business judgment that will reflect an integrated assessment of the relative merits of proposals using the factors identified below. An evaluation committee will compare the relative value of the proposals and make an award which is most advantageous to the College. The College reserves the right to reject any or all proposals, to waive informalities or irregularities, and to contract in the best interest of the College. The College reserves the right to make an award without further discussion of the proposals received; therefore, it is critical that all proposals be submitted initially in the most favorable terms possible, both economically and technically. It is anticipated that a decision will be made and definitive agreements entered into within ninety (90) days from the opening of the proposals.
2. **Respondent Interview:** Respondent interviews with the evaluation committee will be held during the Week of November 30-December 4, 2009, on the Prescott campus of the College. The Respondents whose proposals are determined to be the most responsive to the requirements of the RFP will have an opportunity to meet with the evaluation committee and provide clarification, elaboration, and promotional information to aid the committee's evaluation. Any changes to a proposal shall be submitted and confirmed in writing by the Respondent.
3. **Evaluation Factors:**
  - a. **Responsiveness:** The ability of the Respondent to provide the required services will be evaluated from the responses to the **Statement of Services** section above. This portion of the Respondent's offer should illustrate completely how the Respondent will accomplish the required services in the context of an understanding of the history, purposes, and objectives of the College.
  - b. **Evaluation Factors:** Proposals will be examined to determine compliance with the minimum requirements of this RFP, and will be evaluated in large part based on the following factors:
    - Overall responsiveness to the purposes of the RFP
    - Completeness of statements in the response explaining in detail how the requirements of this RFP will be fulfilled.
    - Composition, structure and net present value of financial proposal.
    - Public, governmental or educational services to be provided or facilitated.
    - Commitment to and timing of launch of services in the GSA, including to College campuses.
    - Satisfaction of FCC and State rules and regulations, including assistance in meeting the FCC's substantial service test.
    - Respondent's experience, financial strength and technical capabilities and plans.

This list of selection criteria is not exhaustive, and the College reserves the right to add, delete, or amend these criteria without notice. Submitted responses may not include references to information located elsewhere, such as internet websites or libraries, unless specifically requested.

### **College Rights Reserved**

The College reserves the right to request clarification of information submitted, to negotiate with one or more Respondent(s) and to request additional information of one or more Respondent(s). The College reserves the right to negotiate terms and conditions with one or more prospective Respondents, including requesting “best and final offers” from selected Respondents, to ensure that the arrangement reflects the best possible deal and that the College has best achieved its purposes.

While the College has every intention to award a contract as a result of this RFP, issuance of the RFP in no way constitutes a commitment by the College to award and execute a contract. Upon a determination such actions would be in its best interest, the College, in its sole discretion, reserves the right to:

- Cancel or terminate this RFP ;
- Reject any or all proposals received in response to this RFP;
- Waive any undesirable, inconsequential, or inconsistent provisions of this RFP which would not have significant impact on any proposal;
- Not award if it is in the best interest of the College not to proceed with contract execution; or
- If awarded, terminate any Contract if the College determines adequate College funds are not available.

### **Proprietary Information**

In the event any Respondent shall include in the Proposal any information deemed “proprietary” or “protected”, such information shall be separately packaged from the balance of the proposal and clearly marked as to any proprietary claim. The College discourages the submission of such information and undertakes to provide no more than reasonable efforts to protect the proprietary nature of such information. The College, as a public entity, cannot and does not warrant that proprietary information will not be disclosed. The College shall have the right to use any or all information included in the proposals submitted unless the information is expressly restricted by the Respondent.

### **Subsequent Contract**

This RFP does not constitute a commitment by the College to award a contract. The College reserves the right to waive any formalities and/or to reject any or all proposals and/or cancel this RFP at any time. Any contract(s) awarded under this RFP shall be made because it serves the best interest of the College and will not be evaluated solely on a monetary basis. No contract award shall exist until executed in writing. The College reserves the right to procure services from other sources when it is in the best interest of the College and to do so without notice.

In its response to this RFP, Respondent must agree to acceptance of the standard terms and conditions as set out in Appendix A of this RFP. Any material exceptions requested and granted to the standard terms and conditions and contract language will be addressed in any formal written addendum issued for this RFP and will apply to all Respondents submitting a response to this RFP. The College will make any final determination of changes to the standard terms and conditions and/or Contract. This RFP and any addenda, the Respondent’s RFP response, including any amendments, a best and final offer, and any clarification question responses shall be incorporated into any resulting contract.

To be eligible for consideration, a Respondent *must* meet the intent of all mandatory requirements. The College will determine whether a Respondent’s RFP response complies with the intent of the requirements. RFP responses that do not meet the full intent of all requirements listed in this RFP may

not be considered or will be given less weight during the evaluation process. By submitting a response to this RFP, Respondent agrees to an understanding of and compliance with the specifications and requirements described in this RFP.

The Respondent selected will be the prime contractor (“Contractor”) if a contract is awarded and shall be responsible, in total, for all work of any subcontractors. All subcontractors, if any, must be listed in the proposal. The College reserves the right to approve all subcontractors. The Contractor shall be responsible to the College for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by the Contractor. Further, nothing contained within this document or any contract documents created as a result of any contract awards derived from this RFP shall create any contractual relationships between any subcontractor and the College.

If a Respondent to whom a contract is awarded refuses to accept the award or fails to deliver in accordance with the contract terms and conditions, the College may, at its discretion, suspend the Respondent for a period of time from entering into to any contracts with the College.

#### **Modifications to Proposals; Withdrawal of Proposals by Proposer**

No telephone, facsimile or computer data transfer modifications will be considered. Any Respondent may withdraw its proposal by written request at any time **prior** to the deadline set for receipt of proposals. No proposal may be withdrawn or modified after that deadline and shall be binding upon Respondent for a period of (90) ninety-days after due date. Withdrawn proposals may be resubmitted up to the time designated for the receipt of proposals provided that they are then fully in conformance with the general terms and conditions of the RFP.

#### **Cost of Preparing Proposals**

Any and all costs associated with the preparation of responses to this Request for Proposal, including site visits, oral presentations and any other costs shall be entirely the responsibility of the Respondent and shall not be reimbursable in any manner by the College or its District Governing Board.

#### **Contract Assignment**

An awarded contract, in part or in whole, shall not be subcontracted or assigned to another contractor without prior written permission of the approval of the appropriate College authority.

#### **Full Disclosure**

All partnerships, affiliations, or other influences must be disclosed. Failure to do so will disqualify Respondent from this and any future dealing with the College.

#### **Submitted Materials Become College Property**

All materials submitted in response to this RFP become the property of the College and are to be appended to any formal documentation, if any, which would further define or expand any contractual relationship between the College and Respondent resulting from this RFP process.

**Yavapai Community College  
Procurement and Contract Management Services Department**

<b>Terms and Conditions Applicable to Request for Proposal</b>
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1. All items contained herein are applicable to the enclosed Request for Proposal unless otherwise stated.
2. **All proposals must be submitted in writing.** Oral, facsimile (fax machine) or computer data transfer proposals **will not** be accepted. Each proposal shall be prepared simply, providing a straightforward, concise description of the Respondent's ability to meet the requirements of the RFP. Emphasis should be on completeness and clarity of contents.
3. No proposal may be withdrawn after the scheduled closing time for receipt for at least ninety (90) days. Proposals received after the indicated time of required receipt will not be accepted. Respondent is responsible for receipt of proposal at Procurement Department (Bld 7 on the Prescott campus).
4. **Proposals** may be hand delivered, shipped or mailed; it is the Respondent's responsibility to confirm receipt before time of closing. All proposals must be submitted with the firm name and signature of an authorized officer of the company.
5. **Proposal results ARE NOT given in response to telephone inquires.** Results are tabulated and placed on file in the Procurement Department. The tabulation is available upon **written requests to the Procurement Officer of record.**
6. The College is **not** responsible for any Respondent error(s) or omission(s) on Proposals.
6. Time of delivery is a part of the consideration and must be stated in definite terms, as this may be a factor in making the award. Compliance with delivery time quoted is an essential element in Respondent evaluation.
7. The Respondent shall hold the College, its officers and employees, harmless from liability of any nature or kind on account of use of any copyrighted or un-copyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used under this request.
8. Successful Respondent is specifically denied the right of using in any form or media, the name of the College for public advertising unless express permission is granted in writing by the College's Office of Public Information.
9. The College, through its Director of Procurement and Contract Management Services, reserves the right to reject or accept any or all responses or any part thereof, or to waive any aspect not materially affecting the response deemed to be in the best interests of the College.
10. A response from a Respondent who has previously failed to perform adequately in furnishing materials, services and/or equipment to the College may be rejected.
11. The College will not be liable for any costs for the preparation of responses, response material, reproductions, presentations, copyright infringements, etc.

**APPENDIX A**  
**MANDATORY TERMS AND CONDITIONS**

**1. ACCESS AND RETENTION OF RECORDS**

**A. Access to Records.** The Respondent agrees to provide the College, the State, or their authorized agents access to any records necessary to determine contract compliance if and as required by State law.

**B. Retention Period.** The Respondent agrees to create and retain records supporting [its performance under the Contract](#) for a period of five years after either the completion date of this Contract or the conclusion of any claim, litigation or exception relating to this Contract taken by the College, the State of Arizona or a third party.

**2. ASSIGNMENT, TRANSFER AND SUBCONTRACTING**

The Respondent shall not assign, transfer or subcontract any portion of this Contract without the express written consent of the College, which consent may be provided for in defined circumstances in the definitive lease agreement. The Respondent shall be responsible to the College for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by the Respondent. No contractual relationships exist between any subcontractor and the College.

**3. HOLD HARMLESS/INDEMNIFICATION**

The Respondent agrees to protect, defend, and save the College, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Respondent's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the Respondent and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the College, under this Contract.

**4. COMPLIANCE WITH LAWS**

The Respondent must, in performance of work under this Contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the Respondent subjects subcontractors to the same provision. In accordance with Executive Order 99-4, the Respondent agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing this Contract.

**5. INTELLECTUAL PROPERTY**

All patent and other legal rights in or to inventions created in whole or in part under this [Contract must](#) be available to the College for royalty-free and nonexclusive licensing. Both parties shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use and authorize others to use, copyrightable property created under this Contract.

**6. PATENT AND COPYRIGHT PROTECTION**

**A. Third Party Claim.** In the event of any claim by any third party against the College that the products furnished under this Contract infringe upon or violate any patent or copyright, the College shall promptly notify Respondent. Respondent shall defend such claim, in the College's name or its own

name, as appropriate, but at Respondent's expense. Respondent will indemnify the College against all costs, damages and attorney's fees that accrue as a result of such claim. If the College reasonably concludes that its interests are not being properly protected, or if principles of governmental or public law are involved, it may enter any action.

**B. Product Subject of Claim.** If any product furnished is likely to or does become the subject of a claim of infringement of a patent or copyright, then Respondent may, at its option, procure for the College the right to continue using the alleged infringing product, or modify the product so that it becomes non-infringing. If none of the above options can be accomplished, or if the use of such product by the College shall be prevented by injunction, the College will determine if this Contract has been breached.

**7. CONTRACT TERMINATION**

**A. Termination for Cause.** The College may, by written notice to the Respondent, terminate this Contract upon an uncured breach by Respondent as specified in Paragraph 8.

**B. Bankruptcy or Receivership.** Voluntary or involuntary Bankruptcy or receivership by Respondent may be cause for termination.

**8. EVENT OF BREACH – REMEDIES**

**A. Event of Breach.** Any one or more of the following acts or omissions of the Respondent shall constitute an event of breach:

- i. products or services furnished by the Respondent fail to conform to any requirement of the Contract, or
- ii. failure to make any payment required hereunder; or
- iii. failure to perform any of the other covenants and conditions of the Contract.

**B. College's Actions in Event of Breach.** Upon the occurrence of any event of breach, the College may take any one, or more, or all, of the following actions:

- i. give the Respondent a written notice specifying the event of breach and requiring it to be remedied within, in the absence of a greater or lesser specification of time, 30 days from the date of the notice; and if the event of breach is not timely remedied, terminate this Contract upon giving the Respondent notice of termination;
- ii. treat the Contract as materially breached and pursue any of its remedies at law or in equity, or both.

**9. WAIVER OF BREACH**

No failure by the College to enforce any provisions hereof after any event of breach shall be deemed a waiver of its rights with regard to that event, or any subsequent event. No express failure of any event of breach shall be deemed a waiver of any provision hereof. No such failure or waiver shall be deemed a waiver of the right of the College to enforce each and all of the provisions hereof upon any further or other breach on the part of the Respondent.

**10. CHOICE OF LAW AND VENUE**

This Contract is governed by the laws of Arizona. The parties agree that any litigation concerning this bid, proposal or subsequent Contract must be brought in the County of Yavapai, State of Arizona and each party shall pay its own costs and attorney fees.