

General Terms and Conditions

ACCESS TO RECORDS

Proposer may be required to grant duly authorized representatives of Acelero Learning, and local, state, and federal authorities access to contracts, books, documents, and records necessary to verify the nature, extent, and cost of services provided by the vendor.

AWARD

Acelero Learning reserves the right to reject any and all proposals, and reserves the sole right at its discretion to accept any proposal(s) it considers most favorable to the interests of Acelero Learning and waive any and all minor irregularities in any proposal(s). Acelero Learning further reserves the right to reject any proposal(s) and seek new proposals through the issuance of a new or amended RFP if such action is deemed in the best interest of Acelero Learning.

OFFER COMPLETION

Fill out and return to your local (or national) Acelero offices two complete proposal forms, as instructed under the Special Requirements section of this document. An authorized company representative should sign the Cover Sheet. Completion of these forms is intended to verify that the proposer has submitted the proposal, is familiar with its contents and has submitted the material in accordance with all requirements.

The submission of a response shall be prima facie evidence that the proposer has full knowledge of the scope, nature, quantity and quality of work to be performed, the detailed requirements of the project, and the conditions under which the work is to be performed. All terms, conditions, specifications, stipulations and vendor requirements stated in the RFP, any attached Appendices to the RFP and any and all Addenda issued shall become part of the contract entered into between Acelero Learning and the Vendor.

OFFER RETURNS

Proposers must return all completed proposals to a local or national office of Acelero Learning as indicated on the Cover Sheet of this package. Late proposals will not be accepted. It is the responsibility of the responding vendor to assure that the response is received prior to the date/time indicated on the Cover Page of this package. Acelero Learning is not responsible for delays due to “busy” fax lines, etc.

CONTRACT RENEWALS

Renewals may be made ONLY by written agreement between Acelero Learning and the proposer. Any price escalations are limited to those stated by the proposer in the original proposal.

DIGITAL FORMAT

Documents contained in this RFP must be submitted digitally to katherine@acelero.net by the written deadline.

If, in its response, proposer makes any changes whatsoever to the Acelero Learning published RFP specifications, the RFP specifications **as published** by Acelero Learning shall control. Furthermore, if an alteration of any kind to the RFP specifications as published is discovered after the contract is executed and is or is not being performed, the contract is subject to immediate cancellation.

DISQUALIFICATION OF PROPOSER

Upon signing this offer document, a proposer certifies that the proposal has not violated the state antitrust laws of New York, New Jersey, Pennsylvania or Nevada, or the federal antitrust laws, and has not communicated directly or indirectly the proposal made to any competitor or any other person engaged in such line of business. Any or all proposals may be rejected if Acelero Learning believes that collusion exists among the proposers. Proposals in which the prices are obviously unbalanced may be rejected.

EVALUATION

In evaluating the proposals submitted, Acelero Learning will apply the "Best Value" process in selecting the vendor to be awarded a contract for this project. See "Judging and Selection Criteria" attachment for all relevant selection criteria.

DOCUMENT INTERPRETATION

In the event of any conflict of interpretation of any part of this overall document, the interpretation of Acelero Learning shall govern.

GOVERNING LAW

Any agreements resulting from this RFP shall be governed by, construed and enforced in accordance with the laws of the State of New York applicable to contracts made and wholly performed within such state (without regard to the conflicts or choice of law principles thereof). The parties irrevocably consent to the jurisdiction of the State of New York, and agree that any court of competent jurisdiction sitting in the County of New York, State of New York, for disputes with Acelero Learning, shall be an appropriate and convenient place of venue, and shall be the sole and exclusive place of venue, to resolve any dispute with respect to any such agreements.

HOLD HARMLESS AGREEMENT

The successful vendor(s) shall indemnify, hold harmless, and defend Acelero Learning, its directors, officers, and employees (paid or volunteer) from and against any and all claims, demands, causes of action of whatever kind or nature arising out of error, omission, misrepresentation, negligent act, conduct or misconduct of the vendor and its subcontractors, agents and employees (paid or volunteer) in the provision of goods or the performance of services arising out of the preparation of this proposal and execution and performance of any contracts resulting there from. Such indemnification shall also include reasonable attorneys' fees, court costs, and expenses.

INSPECTIONS

Acelero Learning reserves the right to inspect any item(s) or service locations for compliance with specifications, requirements, and needs of Acelero Learning. If a proposer cannot furnish a sample of a proposed item, where applicable, for review, or fails to satisfactorily show an ability to perform, Acelero Learning can reject the proposal as inadequate.

TESTING

Acelero Learning reserves the right to test equipment, supplies, material and goods proposed for quality, compliance with specifications and ability to meet the needs of Acelero Learning. Demonstration units must be available for review. Should the goods or services fail to meet requirements and/or be unavailable for evaluation, the proposal is subject to rejection.

INVOICES AND PAYMENTS

Acelero Learning standard payment terms are net 30 days after receipt of invoice. When a vendor offers Acelero Learning a cash discount for payment of an invoice(s) with stated discount terms, every effort will be made to obtain the cash discount.

Invoices will be date and time stamped upon receipt in the Accounts Payable Department, and the cash discount, when applicable, will be calculated from the "receipt date" stamped on the invoice.

Invoices should be provided to Acelero Learning in a timely manner. Vendors are requested to invoice Acelero Learning within 30 days of providing goods and/or services to Acelero Learning. Vendors who continuously invoice Acelero Learning in a manner that is outside of generally accepted business practices may affect their continuing relationship with Acelero Learning.

In the event a vendor presents Acelero Learning with invoices, statements, reports, etc. that are incomplete, or inaccurate, Acelero Learning may be required to perform substantial research that could result in delay of payment. Acelero Learning will not be responsible for any interest charges and/or late fees as a result of delayed payment due to time delays caused by inadequate, incomplete, or inaccurate information provided in invoices by vendor.

PRICING

Prices for all goods and/or services shall be negotiated to a firm amount for the duration of the contract term or for a specified time period if it differs from the contract term. All prices must be written in ink or typewritten. The only exceptions to the firm price policy are for items that change frequently based on market.

SCANNED OR RE-TYPED RESPONSE

If in its response, proposer either electronically scans, re-types, or in some way reproduces the Acelero Learning published RFP package, then in the event of any conflict between the terms and provisions of the published RFP package, or any portion thereof, and the terms and provisions of the response made by the proposer, the RFP package **as published** by Acelero Learning shall control. Furthermore, if an alteration of any kind to the Acelero Learning published RFP package is only discovered after the contract is executed and is or is not being performed, the contract is subject to immediate cancellation.

SEVERABILITY

If any section, subsection, paragraph, sentence, clause, phrase or word of these requirements or the specifications shall be held invalid, such holding shall not affect the remaining portions of these requirements and the specifications and it is hereby declared

that such remaining portions would have been included in these requirements and the specifications as though the invalid portion had been omitted.

SUPPLEMENTAL MATERIALS

Proposers are responsible for including all pertinent product data in the returned offer package. Literature, brochures, data sheets, specification information, completed forms requested as part of the offer package and any other facts that may affect the evaluation and subsequent contract award should be included. Materials such as legal documents and contractual agreements, which the proposer wishes to include as a condition of the proposal, must also be in the returned proposal package. Failure to include all necessary and proper supplemental materials may be cause to reject the entire proposal.

TAXES

In the event that taxes are imposed on the goods or services purchased, these items should be clearly marked on the Pricing Proposal forms, as applicable.

TERM CONTRACTS

Any contract that results from this RFP shall be for a period of one year from the effective date of the contract with the exclusive options by Acelero Learning to renew on an annual basis thereafter for two additional one-year terms.

The successful Vendor, as determined by Acelero Learning, shall be required to execute a contract to furnish all goods and/or services and other deliverables required for successful completion of the proposed project. No Vendor shall obtain any interest or right in any award until Acelero Learning has executed a contract, and any such interest and rights shall be subject to the terms and conditions as contained in such contract. The successful Vendor may not assign, sell, or otherwise transfer its interest in the contract award or any part thereof, without prior written consent from Acelero Learning.

QUANTITY

There is no guaranteed amount of business, expressed or implied, to be purchased or, contracted for by Acelero Learning in the initial one year contract term or in subsequent renewals that may or may not be negotiated and agreed to by Acelero Learning and any vendor(s). However, the vendor(s) awarded the contract shall furnish all required goods and/or services to Acelero Learning at the stated price, when and if required.

CONTRACT TYPE

The preferred contract type to be awarded is a fixed fee contract. However, if a vendor has reason to believe a better (more cost effective) method is practical, then the vendor is encouraged to offer that better pricing option as an alternative in its submitted proposal. Acelero Learning will consider that type of contract as it compares with other recommended contract options. The contract type providing the best "Total Cost" value, over the longest period of time is what Acelero Learning seeks. Vendors are asked to provide Acelero Learning with a menu of any optional services offered. Each service must be priced separately and independently of any other services offered or rendered.

Where the needs of different Acelero Learning sites and regions are congruent, a single contract will be negotiated; where the needs of different sites and regions diverge, amendments reflecting separate and unique provisions will be negotiated.

TERMINATION

Acelero Learning reserves the right to terminate the contract without cause with 30 days prior written notice and immediately if the termination is for cause, if Vendor breaches any of the terms therein, including warranties of Vendor or if the Vendor becomes insolvent or commits acts of bankruptcy. Such right of termination is in addition to and not in lieu of any other remedies that Acelero Learning may have in law or equity. Cause may be construed as, but not limited to, failure to deliver the proper goods and/or services within the proper amount of time, and/or to properly perform any and all services required to Acelero Learning's satisfaction and/or to meet all other obligations and requirements.

If the vendor breaches any provision of the proposal stipulations, becomes insolvent, enters voluntary or involuntary bankruptcy, or receivership proceedings, or makes an assignment for the benefit of creditors, Acelero Learning will have the right (without limiting any other rights or remedies that it may have in the contract or by law) to terminate any contract with five (5) days prior written notice to the vendor.

Acelero Learning will then be relieved of all obligations, except to pay the reasonable value of the vendor's prior performance (at a cost not exceeding the contract rate, subject to any offers). The vendor will be liable to Acelero Learning for all costs exceeding the contract price that Acelero Learning incurs in completing or procuring the service as described in the proposal. Acelero Learning's right to acquire strict performance of any obligation in this contract will not be affected by any previous waiver, forbearance, or course of dealing.

FUNDING OUT OPTION

Any contract resulting from this RFP is contingent upon the continued availability of budget appropriations and is subject to cancellation, without penalty to Acelero Learning, either in whole or in part, if funds are not appropriated by the Acelero Learning Board of Directors, or otherwise not made available to Acelero Learning.

WARRANTIES

Proposers shall furnish all data pertinent to warranties or guarantees that may apply to items in the proposal. Proposers may not limit or exclude any implied warranties.

ASSOCIATION

Vendors may not use the Acelero Learning official logo(s), or any phrase associated with Acelero Learning, without the written permission from Acelero Learning.

EXCEPTIONS

If any exceptions are taken to any portion of this RFP, the Vendor must clearly indicate the exception taken and include a full explanation as a separate attachment to the Proposal. The failure to identify exceptions or proposed changes will constitute acceptance by the Vendor of the RFP as proposed by Acelero Learning. Acelero Learning reserves the right to reject a proposal containing exceptions, additions, qualifications, or conditions.

PROPOSAL PREPARATION COSTS

All costs related to the preparation and submission of this proposal shall be paid by the proposer. Issuance of this RFP does not commit Acelero Learning, in any way, to pay any costs in the preparation and submission of the proposal, nor does the issuance of

the RFP obligate Acelero Learning to award a contract or purchase any goods and services stated in the RFP.

RETENTION OF PROPOSAL DOCUMENTATION

All proposal materials and supporting documentation that is submitted in response to this proposal becomes the permanent property of Acelero Learning.

MODIFICATION/WITHDRAWAL OF PROPOSAL

Proposals may be modified in writing at any time prior to the due date. Proposals may be withdrawn in writing, by facsimile written transmission, or in person before the response date.

Special Terms and Conditions

CONTRACT TERMS

Acelero Learning reserves the right to award multiple contracts. Vendors are encouraged to bid on the service as a whole but proposals for only one product type (as outlined in the "Introduction and Purpose" document) will be accepted.

NON-PERFORMANCE BY CONTRACTOR

Performance, before and during the contract term, will be a major consideration of current contract award, renewals, and future award considerations. Failure to perform, in any sense relative to this contract, may result in the probation and/or termination of this agreement by Acelero Learning on the basis of nonperformance. Nonperformance shall be determined as follows:

1. Failure to meet and maintain all qualifications required in this RFP;
2. Failure to meet required personnel standards and operating performance standards;
3. Failure to maintain appropriate and/or necessary personnel licenses and certifications;
4. Failure to meet all inspections, certifications, etc. that are needed to comply with federal, state and/or local requirements;
5. Failure to keep and maintain all required insurance coverage;
6. Failure to cure deficiencies within a reasonable amount of time as stated herein.

INSURANCE

The selected contractor(s) shall carry, at a minimum as shown in the table below, Accidental Insurance.

Workers' Compensation or Accidental Insurance Requirements

Type of coverage	Minimum Coverage
Medical expenses and coverage for at least 104 weeks	\$ 300,000
Accidental death and dismemberment, 70% of employee's pre-injury income for not less than 104 weeks when compensating for loss of income	\$100,000
Maximum weekly benefit	\$500

Additionally, Vendors shall carry Commercial General Liability insurance with a minimum combined single limit of \$1,000,000.

Vendors shall submit evidence with the proposal and again at the time of any execution of any contract with Acelero Learning that they have in full force and effect all insurance requirements listed above. Vendors shall maintain such insurance in full force and effect throughout the duration of the agreement and must provide Acelero Learning with immediate notification of any lapses in coverage.

Acelero, Inc. and subsidiaries shall be named as Additional Insureds on the Commercial General Liability policies. Acelero Learning shall be named as an Alternate Employer on

the Workers' Compensation policy. A Waiver of Subrogation shall be issued in favor of Acelero Learning on the Workers' Compensation, Automobile and Commercial General Liability policies.

Vendors shall provide Acelero Learning with original certificates of insurance, acceptable to Acelero Learning. Such certificates shall indicate an agreement by each carrier not to cancel or significantly diminish coverage without a minimum of thirty (30) days prior written notice to Acelero Learning. In the event there is a deductible on any policy, Vendors shall provide evidence to the satisfaction of Acelero Learning that it is able to satisfy the deductible.

Subcontractors to vendors shall be required to show evidence of coverage of the types of insurance indicated above.

QUALITY ASSURANCE AUDITS

Vendor shall cooperate with Acelero Learning in conducting quality assurance audits as determined appropriate by Acelero Learning. Scheduled audits will be scheduled at least one week in advance. Unscheduled audits and inspections shall be conducted Acelero Learning as the need warrants.

RESPONSIBILITY FOR PERFORMANCE

The vendor shall be responsible for the performance of their staff members, equipment and procedures. Acelero Learning reserves the right to reasonably require the suspension or removal of any vendor-employed staff member or process for unacceptable performance. This employee or process shall not be used to meet the requirements of this agreement until such time as Acelero Learning authorizes its use in writing.

GOVERNMENT VIOLATIONS

Vendor shall notify Acelero Learning of all health and safety violations, OSHA violations, wage and hour violations, or labor violations assessed to vendor by any city, state or federal government department or agency.

NON-COMPLIANCE NOTIFICATION

In the event a vendor is determined by Acelero Learning to have failed to perform services in accordance with the requirements listed herein, Acelero Learning will forward a written notification specifying the violation or the area of non-compliance to the vendor.

The vendor in non-compliance shall immediately remedy all violations as determined by Acelero Learning. Any violations not so remedied shall be grounds for termination of the contract, in whole or in part.

LIQUIDATED DAMAGES

Because of the difficulty in ascertaining and quantifying the actual damages that Acelero Learning may sustain should a vendor fail to perform services as required under this contract, Acelero Learning and the vendor shall agree that Acelero Learning shall have the right to assess liquidated damages for each failure by the vendor to perform the services required under this contract. The amount of liquidated damages for each such failure by the vendor shall be assessed on a per occurrence basis as identified in this agreement.

Acelero Learning shall have the right not to access liquidated damages in its sole determination however, failure by Acelero Learning to access liquidated damages in any particular instance or occasion shall not preclude, or constitute a waiver of Acelero Learning's right to assess such damages at a later time, or on a subsequent occasion. Acelero Learning's right to assess liquidated damages shall not preclude the assertion of, or be exclusive of, any other available remedy at law or equity. Service issues that Acelero Learning identifies with normal school year start-up will not be assessed liquidated damages for the first five days of school.

Liquidated damages will not be assessed if lateness or a no-show results from "Force Majeure." The term "Force Majeure" as used herein means acts of god; acts of public enemy, blockages, wars, insurrections or riots; landslides, earthquakes, fires, storms, floods, or washouts; governmental restraints, either federal or state, civil or military; civil disturbances; explosions; and traffic accidents caused entirely by a party other than vendor or vendor's employees.