



Department of Transformation and Shared Services

Governor Sarah Huckabee Sanders

Secretary Leslie Fiskens

May 3, 2024

Ms. Erika Gee
200 West Capitol Avenue, Suite 2300
Little Rock, AR 72201
ege@wlj.com

RE: Protest by Primary Class, Inc. dba Odyssey
Solicitation Number S000000313 Online Platform for Education Freedom
Accounts and Literacy Tutoring Grants

Dear Ms. Gee,

The Office of State Procurement has reviewed your client, Primary Class, Inc. d/b/a Odyssey's (Odyssey) protest of Arkansas Department of Education's (ADE) anticipated award in solicitation No. S000000313. ADE named SID3CAR CO d/b/a Student First Technologies (Student First) as the anticipated awardee. Odyssey protests on four grounds: (1) Student First does not meet the minimum qualifications in the solicitation; (2) Student First is not a responsible offeror; (3) Student First's proposal did not comply with the solicitation's instructions; and (4) there is an apparent error in the evaluation process. Odyssey's protest is denied.

I. Background

On December 15, 2023, Arkansas Department of Transformation and Shared Services (TSS) issued RFP number S000000284 for an online platform for Education Freedom Accounts¹ (EFAs) and Literacy Tutoring Grants (LTGs). On February 9, 2024, TSS withdrew the original RFP and issued a second RFP numbered S000000313 for these same services.

Three companies submitted responsive proposals to solicitation S000000313. Student First received the highest-scored proposal, and ADE issued the anticipation to award to Student First. Odyssey received the second highest scored-proposal, and

¹ The Division of Elementary and Secondary Education Rules define an EFA as "an individual funding account that is managed by the ADE for the care of and in the name of a participating student." Rule 2.07 governing The Educational Freedom Account Program.

ClassWallet received the third highest. Odyssey timely filed a protest pursuant to Ark. Code Ann. § 19-11-244.²

II. Reasoning

A. Student First failed to meet the minimum qualifications for a prospective contractor.

Odyssey first claims that Student First does not meet the minimum qualifications to be a prospective contractor. Section 2.3(A) of the RFP provides that, “The Contractor shall have one (1) year of experience with projects of similar size and scope as detailed in the RFP.” Odyssey argues that Student First misrepresented its experience and highlights “four active misrepresentations” Student First made in its response to the solicitation. In three, Odyssey alleges that Student First misrepresented its experience with some education savings account (ESA) programs, like one in Tennessee. In the fourth, it alleges that Student First misrepresented its financial independence.

Regarding Student First’s experience, the parties’ dispute involves the defined scope of the project. The solicitation states that its objective is to obtain “a comprehensive solution for the administration of the EFA program and LTGs.”³ Further, Section 2.4 of the solicitation generally requires the vendor provide an online platform to enable families and vendors to apply for EFAs and manage student information to disburse funds or approved EFA expenses.

Odyssey interprets the scope narrowly to require only experience with other EFAs. Student First interprets it more broadly to mean EFA-like programs, including ESAs, microgrants, and tax credit scholarship programs. I agree with Student First that its experience serving several different types of education funding programs, including tax credit scholarships, microgrants, and education savings accounts, were within the scope of the RFP.⁴ Although these programs have some differences, all require an online platform to perform the same core functions: (1) allow a participant to apply; (2) allow the institution or government to review the documentation and to approve or deny the participant; (3) allow the family to direct awarded funding for permitted educational expenses to an approved service provider; and (4) ensure that the institution or government, its administrators, the family, and service providers remain in compliance with the program. And these functions are fundamentally the same as the application

² Additionally, Odyssey has standing to file a protest as an “actual bidder, offeror, or contractor who is aggrieved in connection with the award of the contract.” Ark. Code Ann. § 19-11-244(a)(2).

³ Solicitation S000000313, Section 2.2.

⁴ Odyssey concedes this point in response to ClassWallet’s allegations against it. It states, “In reality, the terms ESA/EFA/microgrant/supplemental ESA does not have clear definitions within the industry and are often used interchangeably across all programs.”

requirements set forth in the RFP.⁵ Therefore, Student First met the RFP's minimum qualifications.

Odyssey also argues that Student First's statement that it is "financially sufficient" and debt-free is a misrepresentation, citing a UCC financing statement filed by an Indiana bank in 2023. Student First rebuts this argument with proof that since February 22, 2024, it has not drawn down on or carried a balance on that credit. Given Student First's response and supporting documentation, I find that Student First's statement was accurate and that Odyssey has not proven that Student First did not meet the minimum qualifications of the solicitation.

B. Student First is not a responsible offeror.

Odyssey next argues that Student First is not a "responsible offeror" as required by the RFP and Arkansas law.⁶ A "responsible offeror" is "a person who has the capability in all respects to perform fully the contract requirement and the integrity and reliability that will assure good faith performance."⁷ Odyssey claims that Student First is not a "responsible offeror" for two reasons: (1) because it isn't qualified to do business in Arkansas and (2) because its performance does not indicate the necessary integrity and reliability.

First, Odyssey claims that Student First isn't qualified because it has not registered to do business in Arkansas. However, the solicitation did not require Student First to be registered as an Arkansas company to submit a proposal. Additionally, the failure to be registered at the time of the bid does not render Student First incapable of performing the contract if it has registered before the contract is executed and work is initiated. Also, in response to Odyssey's protest, Student First submitted its certificate of authority to transact business within the State. So, Student First is currently compliant with the certificate of authority requirement.

Second, Odyssey argues that Student First's past performance does not demonstrate integrity and reliability. It cites news articles reporting problems with a project Student First performed in Tennessee as an example of its unreliability. Here, the procurement process allowed ADE to vet the potential bidders through an evaluation committee, who reviewed the proposals and interviewed the responding bidders. The evaluation committee scored Student First the maximum points after considering its proposal and experience and evaluating its risk. The evidence Odyssey offers is insufficient to prove that Student First is unable to perform the services with integrity and reliability as contemplated by the RFP.⁸

⁵ Solicitation S000000313, Section 2.5.

⁶ Ark. Code Ann. § 19-11-230(g)(1).

⁷ Ark. Code Ann. § 19-11-204(11).

⁸ Although Odyssey has presented insufficient evidence to sustain the protest on this ground if, after reviewing the arguments, ADE thinks that Student First cannot perform the RFP requirements, it can cancel the contract with Student First.

C. Student First failed to comply with the solicitation's instructions.

Odyssey next argues that Student First should be disqualified because its proposal did not comply with the RFP's instructions. Specifically, it argues that Student First provided additional information with its pricing sheet in violation of the RFP. Section 1.8(B)(4) of the solicitation provides that "prospective contractors should not include any other documents or ancillary information, such as a cover letter or promotional/marketing information."

Here, the price sheet accompanying Student First's proposal includes "pricing notes," which explains platform license options and a "Table 2 Online Platform Details," which details the activities included in the EFA licensing and the LTG licensing. This additional information is not the type of "ancillary information"—like a cover letter or marketing information—contemplated by Section 1.8(B)(4) of the RFP. Indeed, the RFP's Official Proposal Price Sheet provides that "the Contractor may identify additional tasks not specified by the State in the blank lines on Table 2 and may add lines to Table 2 as needed."

Odyssey also argues that Student First's proposal omitted responses to required information in its technical response. For example, it claims that Student First did not affirm that it would provide user and technical email support⁹ or that it would ensure account holders real-time access to account information.¹⁰ However, in its proposal, Student First states its platform "offers families a digital wallet, a budgeting tool, and the ability to schedule services directly with education providers inside their accounts,"¹¹ and "all account holders, including admins, have real-time access to important account information, including application status, school enrollment information, and historical ledgers."¹² Additionally, Student First states,

"User and technical support will be appropriately staffed to ensure the best support experience for all users. We will support families and providers with platform navigation, technical challenges, and expense and invoice submissions. Our Support plan will feature technical phone support with native English and Spanish speakers that is ADA accessible."¹³

The evaluators were able to consider these statements when reviewing and scoring the proposals. And, if the evaluators had concerns about Student First's proposal not meeting the RFP's specifications, they were able to address those during the discussion phase of

⁹ RFP Section 2.11 C.

¹⁰ RFP Section 2.4 D.

¹¹ Student First Technical Proposal Response, pg 7.

¹² Student First Technical Proposal Response, pg 9.

¹³ Student First Technical Proposal Response, pg 10.

the solicitation.¹⁴ Therefore, Odyssey has not demonstrated Student First did not comply with the RFP instructions such that the contract award was materially affected.

D. There is an apparent error in the evaluation.

Finally, Odyssey claims that there is an apparent error in the evaluation because one evaluator decreased Odyssey's score in the "Risk" category between the first and second solicitation. This argument fails because evaluators are not required to maintain consistent scoring between two procurements, and a change in a score alone is insufficient to demonstrate an apparent error. Therefore, Odyssey has not shown that there was a technical or evaluation error in the evaluation process.

III. Conclusion

Odyssey's protest is denied. ADE may proceed with the procurement consistent with Arkansas Procurement Law. This determination is final and conclusive.

With kind regards,



Jessica Patterson
State Procurement Director

cc: by Email Only:

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¹⁴ RFP, Section 3.6 F.-K.; See R.8:19-11-230.1 ("During a request for proposals procurement, Arkansas Procurement Law allows for discussions with responsible offerors whose proposals have been determined to be reasonably susceptible to being selected for award. Discussions may be used to clarify a proposal or the terms of a request for proposals, and for purposes of negotiation.")