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April 12, 2024

VIA Email: Jessica.Patterson@arkansas.gov

Confirmed by Hand Delivery

Ms. Jessica Patterson, Director
Office of State Procurement
Transformation and Shared Services
501 Woodlane, Suite 201
Little Rock, AR 72201

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

Dear Ms. Patterson:

I write as counsel for Primary Class, Inc. dba Odyssey (Odyssey), to submit a bid protest for the referenced solicitation. This bid protest is submitted to you pursuant to Ark. Code Ann. § 19-11-244 and in your capacity as Director of the Office of State Procurement (OSP). The anticipation to award for the referenced bid was posted on April 1, 2024 and this timely-filed protest by an actual bidder is submitted within 14 calendar days of that date.

I. Summary of Grounds for Protest

Odyssey respectfully submits that the anticipation to award the contract to SID3CAR CO dba Student First Technologies (SFT) should be rescinded, SFT should be disqualified and the contract should be awarded to Odyssey as second place bidder in this solicitation because: 1) SFT does not meet the minimum qualifications to be a prospective contractor in this solicitation; 2) SFT is not a responsible offeror under Arkansas law; and 3) SFT's proposal did not comply with the instructions set forth in the solicitation. Odyssey also requests that the scoring process should be revisited to correct an apparent error in the scoring of its technical proposal.

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II. Background

On December 15, 2023, OSP issued Solicitation Number S000000284 (S284) on behalf of the Arkansas Department of Education (ADE) to obtain pricing and a contract(s) for an Online Platform for Education Freedom Accounts (EFAs) and Literacy Tutoring Grants (LTGs). See Exhibit 1, S000000284, at p. 2. In S284, ADE sought “to find a partner to support the department in handling program applications from families and service providers, expense requests from participating families, and the transfer of program funds from the department to student accounts for the purchase of educational services and items.”

In S284, out of the responsive vendors, ADE scored Odyssey as “the top-ranked vendor” and chose to move forward into the discussion phase with Odyssey. See Exhibit 2. In the discussion phase, OSP asked for the pricing submission to be modified from its original format, in part, to more clearly delineate the pricing between EFAs and LTGs. See Exhibit 3. After receiving the response with the modified pricing, ADE then decided to rebid the solicitation on February 6, 2024, and request additional clarity on the split pricing.

On February 9, 2024, OSP issued Solicitation Number S000000313 (S313), which was substantively identical to S284 with the exception of an updated price sheet. See Exhibit 4, S000000313, at p. 2. In fact, the two solicitations were so similar, OSP used the same Q&A with responses from S284 to serve as the Q&A for S313. For ease of comparison, I have attached Exhibit 5, which is a redlined comparison of the two solicitations.

On April 1, 2024, OSP made public its anticipation to award the contract to SID3CAR CO dba Student First Technologies (SFT). Odyssey finished second in the scoring in the second solicitation. See Exhibit 6.

III. Grounds for Protest

The anticipated award to SFT fails to comply with Arkansas procurement laws, which apply to “every expenditure of public funds by this state, acting through a state agency . . . under any contract.” Ark. Code Ann. § 19-11-201 *et seq.* The overarching purpose of the procurement process is to award the contract that is “most advantageous to the state.” See, e.g., Ark. Code Ann. § 19-11-230(f)(1).

In that context, Odyssey alleges the following grounds for protest of the anticipated award to SFT:

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A. SFT should be disqualified because it does not meet the minimum qualifications to be a prospective contractor in this solicitation.

SFT should be disqualified, the anticipated award of the contract should be reversed and the contract should be awarded to Odyssey because SFT misrepresented its qualifications and experience and it does not meet the minimum qualifications established in S313 for a prospective contractor.

Solicitation 000000313 sets forth a mandatory minimum qualification for a prospective contractor: “The Contractor **shall** have one (1) year of experience with projects of similar size and scope as detailed in this RFP.” See Exhibit 4, at § 2.3 (p. 6) (emphasis in original). The solicitation also establishes that “**‘Shall’** and **‘must’** mean the imperative and are used to identify Requirements.” *Id.* at §1.5(F) (p. 3) (emphasis in original). Under R6:19-11-230(1), there are grounds to reject a proposal where there is a “failure of a proposal to conform to the essential requirements of a Request for Proposals[.]”

Here, SFT has misrepresented its experience in this area and misled the evaluators into awarding it full points on the technical score when, in reality, it should have been disqualified. Based on publicly available information, there are at least four active misrepresentations in SFT’s response, detailed below:

1. **Claim:** SFT inflates its actual experience with ESA programs by claiming to have “over 7 years of experience building and managing technology for education programs, including ESAs, tax-credit scholarships, and microgrants.” See Exhibit 7, SFT Response to S313, at pg. 7.

Reality: SFT has only been involved in a single state-run ESA program, under a contract that was not awarded until May 2023. See Exhibit 8, “Questions Continue to Surface Around Company Contracted to Manage Tennessee Education Savings Accounts,” *Tennessee Star*, August 11, 2023 (Accessed April 9, 2024). Even if the program began operation in May of 2023 – which it did not – this experience does not even come close to fulfilling the **minimum** requirement in the solicitation of **one year** of experience with projects of similar size and scope, as it had approximately 5 months of experience at the time of the bid. SFT should have been disqualified for this reason alone.

2. **Claim:** SFT relies upon its experience with the ESA program in Tennessee to meet S313’s minimum requirements of one year of experience with a program of similar size and scope.

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Reality: The Tennessee ESA program – which makes up SFT’s only experience with an ESA – also does not fulfill the minimum requirement of experience with a program of similar size and scope. This is because the Tennessee program is a fraction of the size that the Arkansas program is anticipated to be: based on the most recent public reporting, the Tennessee ESA program currently enrolls 2,400 students while the Arkansas ESA is anticipated to have 14,000 students participating in the first year of this contract. See Exhibit 9 “School vouchers in Tennessee: What to know about the controversy, what could change,” *The Tennessean*, January 9, 2024 (Accessed April 9, 2024); Exhibit 10, Tennessee ESA FAQ; Exhibit 4, at p. 6. In addition to that, the Arkansas Literacy Tutoring Grant Program (LTG) will add another 17,000 students to the program, for a total of 31,000 students and \$105.5 million in funds to be administered. *Id.* **SFT’s only experience consists of approximately 5 months with less than 8% of the students expected in Arkansas.**

3. **Claim:** SFT claims to be “the system of record & **distribution** for over \$100+ million in education funding to families annually across 17 states, serving 75k+ families through 11 clients.” See Exhibit 7, at p. 7.

Reality: These numbers are materially inflated. The Tennessee ESA program is the only state program involving disbursement of state funds that SFT administers. According to SFT’s own website, all of its other programs license its software to nonprofit organizations which award microgrants or tax credit scholarships to students. For these programs, they are not a state vendor, they do not work with state agencies, they do not provide customer support, they do not have a marketplace, and they do not provide state level reporting.

4. **Claim:** SFT claims it is “financially self-sufficient” and debt-free. See Exhibit 7, at p. 7.

Reality: A UCC financing statement was filed by an Indiana bank in August 2023 covering all accounts receivable, inventory, accounts, equipment, and the like. See Exhibit 11, UCC Financing Statement. This is in direct conflict with the claim that the company is “debt-free,” since the bank filed this security interest as collateral for debt.

In light of the requirements of the solicitation, SFT simply does not meet the minimum qualifications as a prospective contractor. Furthermore, upon comparison of SFT’s response to the solicitation versus publicly-available information, it appears that SFT has intentionally misrepresented its experience and qualifications. Odyssey therefore respectfully requests that SFT be disqualified from further consideration

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pursuant to R6:19-11-230, that the anticipated award be revoked and that Odyssey be awarded the contract.

B. SFT should be disqualified because it is not a responsible offeror under Arkansas law.

SFT should also be disqualified as it is not a “responsible offeror,” as required by Arkansas law. Under applicable Arkansas law, a contract must be awarded to a “responsible offeror.” Ark. Code Ann. § 19-11-230(g)(1). “Responsible offeror” is defined as “a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability that will assure good faith performance.” Ark. Code Ann. § 19-11-204(11). Here, SFT is not a responsible offeror because: (1) it is not qualified to do business in Arkansas; and (2) its past performance does not indicate the necessary integrity and reliability.

Arkansas requires that a foreign corporation “may not transact business in this state until it obtains a certificate of authority from the Secretary of State.” Ark. Code Ann. § 4-27-1501(a). SID3CAR CO is an Indiana corporation, incorporated in 2017, which registered the assumed name of Student First Technologies in 2021. It is not, however, registered to do business in Arkansas under either its corporate name or its assumed name. *See Exhibit 12*, Arkansas Secretary of State Certification of No Record. Similarly, it appears that it is not registered to do business in Tennessee either. *See Exhibit 13*, TN SOS Search.

In addition to its disregard for the basic requirements to do business in a state, SFT’s performance in Tennessee has raised serious questions about its reliability. Several news articles have pointed to missed deadlines and lack of customer support. *See Exhibits 8 and 9*, TN News Articles. As of the date of this protest, the TN ESA marketplace is still not yet up and running, in direct contrast to the claims in its solicitation response. *See Exhibit 14* Tennessee Education Savings Account (ESA) Platform, Family Portal User Instructions (Accessed April 12, 2024), https://www.tn.gov/content/dam/tn/education/esa/TN_ESA_Family_Portal_Instructions-Approved.pdf, p. 5.

In sum, Arkansas law requires that SFT be disqualified as a potential contractor for this solicitation because it is “unable to perform fully the contract requirements,” as it is not qualified to do business in Arkansas. Furthermore, it does not have the necessary integrity as it is not qualified to even submit a bid for this solicitation under Arkansas law nor to conduct the business it has been conducting in Tennessee. Finally, all indications regarding its performance administering its only ESA program in Tennessee raises serious questions regarding its reliability to administer

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a program a fraction of the size of the one in Arkansas. For all of these reasons, SFT should be disqualified because it is not a responsible offeror.

C. SFT should be disqualified because its proposal did not comply with the instructions set forth in the solicitation.

SFT should also be disqualified because its bid proposal does not comply with the instructions to complete the solicitation. Specifically, § 1.8(B)(4) provides that: “Prospective Contractors **should not include any other documents or ancillary information**, such as a cover letter or promotional/marketing information.” See Exhibit 4, at p. 4 (emphasis added). It also provides that “Prospective Contractors” **should not alter language in Solicitation document(s) or Official Proposal Price Sheet** provided by the State.” *Id.* at § 1.8(D) (emphasis added).

Despite this language, Student First provided detailed supplementation to the Official Proposal Price Sheet in the form of “Pricing Notes” and “Table 2 Online Platform Details,” which together added nearly a full extra page of information to the table that was allowed to be submitted by other bidders. See Exhibit 7, at pp. 33-34. This failure to follow the explicit instructions creates an unfair advantage for SFT because it was permitted to provide context and explanation for its pricing structure that no other bidder was allowed to submit.

SFT also selectively omitted responses to required information in the technical response. Most egregiously, § 2.11 **requires** that the Contractor shall provide user and technical support via telephone and email, with call center personnel, support staff and support to families and vendors. See Exhibit 4, at p. 9. SFT’s response does not affirm that it will provide all required types and manner of support, including complete omission of email support. Although this response is not consistent with the solicitation requirements, it is consistent with reports that SFT does not provide any level of customer support in Tennessee, despite similar claims to provide adequate customer support. See Exhibit 15, “Tennessee picks vendor with no voucher experience to manage its education savings account,” *Chalkbeat Tennessee*, August 10, 2023 (Accessed April 9, 2024). SFT has publicly affirmed that it does not provide a call center for any of its customers.

Additionally, §2.4(D) requires that: “The system **must ensure** that account holders and administrators have real-time access to account information, including, but not limited to: 1. Account application status 2. Up-to-date balances 3. Transaction statuses and details 4. Historical account information 5. Enrollment information[.]” See Exhibit 4, at p. 6. In its response, SFT stated that its system would provide real-time access but it only affirmed that it would provide such access to 3 out of the 5

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required items. See Exhibit 7, at p. 9. Similarly, in § 2.7(E), the system is required to track all data changes, including a list of (a)-(d). See Exhibit 4, at p. 8. SFT skirts this requirement by affirming that it would track only (a)-(c). See Exhibit 7, at p. 9.

In conclusion, SFT should be disqualified for the failure to follow mandatory instructions in the solicitation.

D. There is an apparent error in the evaluation process.

There is an apparent error in the evaluation process that warrants a revisiting of the scoring. In the first procurement, S284, the three evaluators were Daniel Collier, Evie Scherrey and Greg Rogers. The technical scores for Odyssey in S284 were 10/10 in all categories from all three evaluators, for a final weighted technical score of 700.

However, although the second procurement, S313, and Odyssey's second submission was identical in all material respects, and the three evaluators were identical, evaluator Greg Rogers gave Odyssey a 5/10 on the "Risk" category on the second procurement, instead of the 10/10 score he gave on the first procurement. Mr. Rogers' notes on the "Risk" category for Odyssey states: "are they currently in only one state? Missouri?" See Exhibit 16, Second Rogers Evaluation Sheet.

However, Odyssey provides ESA programs in three states—Iowa, Idaho and Missouri—and it refers to all three states repeatedly throughout its response, including in the "Risk" section. Furthermore, this note was not made by Mr. Rogers in the first solicitation, where he awarded Odyssey a score of 10/10 on "Risk," although Odyssey's response was identical in both solicitations. In fact, in the first solicitation, Mr. Rogers noted on the "Experience" category that Odyssey administers programs in "3 states/ 193,000 [applications]/ \$225 million." See Exhibit 17, First Rogers Evaluation Sheet. In addition, the other two evaluators gave Odyssey a 10/10 on this category in both solicitations.

Under these circumstances, Odyssey respectfully submits that there is an apparent error in the scoring of the Risk category, which warrants a revisiting of the process.

IV. Summary

For all of these reasons, Odyssey respectfully requests that the tentative award to be revoked, that you disqualify SFT from any further consideration under this RFP and award the contract to Odyssey.

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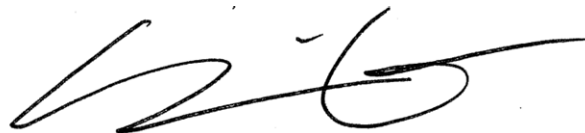
Odyssey believes the concerns expressed in this bid protest must be resolved pursuant to Ark. Code Ann. § 19-11-244 and Ark. Code Ann. § 19-11-247. Therefore, we request an opportunity to meet with you soon to discuss this protest.

In accordance with Ark. Code Ann. § 19-11-244(f), we request that you not proceed further with the award of the contract until this protest is resolved. In addition, we reserve the right to supplement this protest as additional information is received and reviewed.

We look forward to discussing these grounds with you at your earliest convenience.

Respectfully yours,

WRIGHT, LINDSEY & JENNINGS LLP

A handwritten signature in black ink, appearing to read 'Erika Gee', with a stylized flourish at the end.

Erika Gee

Enclosures

Cc w/ encl.: Mark Duran, Student First Technology by email and USPS