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April 17, 2024

Office of State Procurement
Arkansas Department of Transformation and Shared Services
501 Woodlane Street, Suite 220
Little Rock, Arkansas 72201
Attn: Jessica Patterson, Director
E-mail: jessica.patterson@arkansas.gov

Re: Response to Odyssey's Protest of Anticipation to Award Contract Pursuant to Solicitation No. S000000313: Online Platform for Education Freedom Accounts and Literacy Tutoring Grants to Student First Technologies

Ms. Patterson:

This letter serves as the response by Sid3car Co (d/b/a Student First Technologies), an Indiana corporation ("Student First"), to the protest submitted by Primary Class, Inc. (d/b/a Odyssey), a Delaware corporation ("Odyssey"), in response to the anticipation to award a contract pursuant to Solicitation No. S000000313: Online Platform for Education Freedom Accounts and Literacy Tutoring Grants. Student First has timely filed this response within five days of receiving notice of the protest from counsel to Odyssey.

I. Background

On December 15, 2023, the Office of State Procurement ("OSP") issued Solicitation No. S000000284 ("Solicitation 284") on behalf of the Arkansas Department of Education (the "ADE") for proposals to develop an online platform for education freedom accounts ("EFAs") and literacy tutoring grants ("LTGs"). (Exhibit 1.) EFAs are accounts that allow Arkansas to provide state funds for students and their families to spend on tuition for private schools and other services provided by various education-related vendors. (Exhibit 1.) LTGs are grants that provide up to $500 to families of students in kindergarten through third grade who meet eligibility requirements for tutoring provided by an approved tutoring vendor. (Exhibit 1.) Section 2.4 of Solicitation 284 required that the online platform enable families and vendors to apply for EFAs and manage student information to disburse funds for approved EFA expenses and LTGs. (Exhibit 1.)

ADE subsequently decided to rebid the solicitation, and on February 9, 2024, OSP issued Solicitation No. S000000313 ("Solicitation 313"). (Exhibit 2.) Solicitation 313 was substantially similar to Solicitation 284 but included an updated price sheet to elicit additional information on differences in pricing as between EFAs and LTGs. Student First, Odyssey, and ClassWallet all submitted bids in response to Solicitation 313. (Exhibits 3, 4, and 5.)

On March 29, 2024, OSP announced its Anticipation to Award the contract to Student First. (Exhibit 6.) Student First received the highest score of all of the bidders, a perfect combined grand total score of 1000, consisting of a perfect weighted technical proposal score of 700 and a perfect cost score of 300 as a result of submitting the lowest-cost bid of $15,170,000. (Exhibit 7.)

Odyssey finished second in the scoring of responses to the second solicitation. (Exhibit 7.) Odyssey received a combined grand total score of 953.66, consisting of a weighted technical proposal score of 676.67 and a cost score of 276.99. (Exhibit 7.) Odyssey bid $16,430,000—an additional $1.26 million over the amount bid by Student First. (Exhibit 7.)

ClassWallet finished third in the scoring of responses to the second solicitation. (Exhibit 7.) ClassWallet received a combined grand total score of 944.88, consisting of a weighted technical proposal score of 700 and a cost score of 244.88. (Exhibit 7.) ClassWallet bid $18,584,500—an additional $3.4 million over the amount bid by Student First. (Exhibit 7.)

Odyssey and ClassWallet filed protests against the Anticipation to Award on April 12, 2024. (Exhibits 8 and 9.)

II. Responses to Odyssey's Claims

Student First respectfully requests that you deny Odyssey's protest because Odyssey's arguments are not supported by the evidence. On the contrary, Student First has accurately represented its qualifications and exceeds the minimum qualifications necessary to be awarded the contract, Student First is a responsible offeror, and Student First complied with the instructions in Solicitation 313 in all material respects. In addition, Odyssey's claim that an error in the scoring of Odyssey's bid reduced Odyssey's score should be dismissed because even if it were true, rescoring would not have changed the outcome of the award.

1. <u>Student First Has Accurately Represented Its Qualifications and Exceeds the Minimum Qualifications Required</u>.

Odyssey's argument that Student First does not satisfy the minimum qualifications required to be awarded the contract and has actively misrepresented its qualifications generally consists of quoting true statements from Student First's proposal, inaccurately claiming that these true statements are false, and then making additional false assertions in an attempt to show that Student First's true statements are false. Ordinarily, Student First would not begrudge Odyssey the right to protest the anticipation of an award of the contract, but Student First does insist that Odyssey's claims be well grounded in a reasonable factual basis. These are not. This is exactly why Section 19-11-244(h) of the Arkansas Code expressly grants a vendor the right to sue for tortious interference with a business expectancy in connection with an unmeritorious protest, and Student First expressly reserves its right to do so unless Odyssey immediately withdraws its protest with prejudice.

(a) <u>It Is True That Student First Has Seven Years of Experience Serving Education Funding Programs</u>.

Section 2.3A of Solicitation 313 requires that "the Contractor shall have one (1) year of experience with projects of similar size and scope as detailed in this RFP." (Exhibit 2.) Section 2.4 of Solicitation 313 generally required that the online platform enable families and vendors to apply for EFAs and manage student information to disburse funds for approved EFA expenses and LTGs. (Exhibit 2.) In other words, ADE required that the Contractor have at least one year of experience building software-as-a-service technology platforms that allow an institution to set aside funds for and disburse those funds to educational service providers for the benefit of particular students.

That experience is precisely what Student First has. Student First's platform has serviced several types of education funding programs, including tax credit scholarships, microgrants, and education savings accounts. A tax credit scholarship program is a program that allows a state or local government to provide a full or partial tax credit to a taxpayer, whether an individual or a business, when the taxpayer donates to a nonprofit that provides private school scholarships. A microgrant program is a program that allows a state or local government or nonprofit to make a one-time grant to a family to pay for education-related expenses for a student. An education savings account program is a program that allows a state or local government to set aside funds for a family that the family can use to pay for education-related expenses for a student on an ongoing basis. Regardless, tax credit scholarships, microgrants, and education savings accounts are all fundamentally similar in that they enable institutions to disburse funds to families to pay for education-related expenses. In all cases, Student First's platform needs to perform the same core functions: (i) allow a participant to apply to the program; (ii) allow the institution to approve the participant; (iii) allow the family to direct their funding for permitted educational expenses to an approved service provider; and (iv) ensure that the institution, its administrators, the family, and service providers stay in compliance with the specific program. Student First's platform has successfully done that to the tune of tracking and/or disbursing over $100 million of education funding. (Exhibit 3.)

Student First has been developing technology platforms for these programs for the last seven years. Student First was founded in 2017, and it began serving its first tax credit scholarship program the same year. Student First has since provided a technology platform for eleven tax credit scholarship programs, one microgrant program, and three tutoring and other similar education savings account programs.

In its proposal in response to Solicitation 313, Student First stated, "Student First has over 7 years of experience building and managing technology for education programs, including ESAs, tax-credit scholarships, and microgrants." (Exhibit 3.) This is a true statement. Odyssey claims that it is false but offers no evidence whatsoever that suggests that it is false. (Exhibit 8.)

(b) That Experience Includes Programs Outside the State of Tennessee.

As noted below, Student First has provided technology platforms for education funding programs in seventeen states. That includes tax credit scholarships in Alabama, Arizona, Arkansas, Georgia, Illinois, Indiana, Louisiana, Missouri, Nebraska, New Hampshire (currently in implementation), Ohio, Oklahoma, Pennsylvania, Rhode Island (in development), Utah, and

Virginia; microgrants in Indiana, and tutoring and other similar education savings accounts in Indiana, Tennessee, Utah, and West Virginia (starting implementation).

In its protest, Odyssey claims that Student First's bid relies solely on its experience in Tennessee. (Exhibit 8.) This is a mischaracterization of Student First's bid. Student First expressly states that it has operated technology platforms in seventeen states and annually tracks and/or distributes over $100 million in education funding in those states. (Exhibit 3.) In addition, in its description of its relevant experience, in addition to the Tennessee program, Student First expressly calls out the education funding programs in Indiana and Arkansas. (Exhibit 3.)

(c) <u>It Is True That Student First Provides the System of Record and/or Distribution for Over $100 Million in Education Funding to Families Annually Across 17 states, Serving Over 75,000 Families Through 11 Clients</u>.

In its proposal in response to Solicitation 313, Student First stated, "Our platform is the system of record & distribution for over $100+ million in education funding to families annually across 17 states, serving 75k+ families through 11 clients." Exhibit 3. This is a true statement. In fact, the numerical values were conservative estimates. The following table sets out the amount of funding that Student First has tracked and/or distributed to families in each state, and the approximate number of such families, through February 22, 2024, the date of Student First's submission in response to Solicitation 313:

State	Program Types	Funding Total (2/22/23 – 2/22/24)	Estimated Families Served (2/22/23 – 2/22/24)
Indiana	Tax credit scholarships and microgrant (ESA)	$41,740,917.49	36,000
Arizona	Tax credit scholarships	$17,448,927.44	5,000
Tennessee	ESA (multiple programs)	$20,000,000 (estimated)	4,100
Utah	ESA (tax credit funded)	$4,000,000 (estimated)	900
Other States (Arkansas, Georgia, Illinois, Louisiana, Oklahoma, Missouri, Nebraska, Ohio, Pennsylvania, Virginia)	Tax credit scholarships	$85,639,172.42	15,000
Other States (Indiana, New Hampshire, Ohio)	Discovery Calculators	$0	15,000

Odyssey claims that the numbers in Student First's statement in its response to Solicitation 313 are inflated, but it fails to offer any factual basis whatsoever for this allegation. (Exhibit 8.) Does Odyssey have an independent factual basis for believing that Student First has made disbursements in fewer than seventeen states? Does Odyssey have an independent factual basis for believing that fewer than eleven institutions have run education funding programs in those states? Does Odyssey have an independent factual basis for believing that Student First has tracked and/or distributed less than $100 million? Does Odyssey have an independent factual basis for believing that fewer than 75,000 families have benefited from these disbursements or otherwise interacted with Student First's platform? Odyssey does not point us to a single independent fact that suggests that these numbers are inflated because Odyssey does not have any reason to doubt those numbers; it has simply made a completely unsubstantiated accusation without any reasonable basis in fact.

(d) <u>It Is True That Student First Did Not Have Outstanding Debt on Its Revolving Line of Credit at Any Time Relevant to Its Proposal</u>.

In its submission in response to Solicitation 313, Student First stated, "We are a debt-free and financially sound organization." (Exhibit 3.) This is a true statement. Student First is a seven-year-old company that achieved revenue and profitability without any investment from a venture capital fund or other institutional investor, which speaks to the effectiveness of Student First as an organization. As of February 22, 2024, the date of Student First's submission in response to Solicitation 313, and at all times since that date, Student First has not carried any debt on its balance sheet. Student First has entered into a revolving line of credit with First Internet Bank of Indiana, but again, Student First has not drawn down any amounts that remained outstanding as of the date of Student First's submission or at any time since that date. (Exhibit 10.)

Odyssey claims that the fact that First Internet Bank of Indiana has filed a UCC financing statement "is in direct conflict with the claim that the company is 'debt-free,' since the bank filed this security interest as collateral for debt." (Exhibit 8.) In doing so, Odyssey either is deliberately mischaracterizing the implications of UCC financing statements or does not know how lines of credit work and UCC financing statements work.

A UCC financing statement is not a security interest and does not create a security interest for debt, and therefore the fact that a lender has filed a UCC financing statement should not necessarily lead one to conclude that any debt definitely exists. On the contrary, a UCC financing statement either perfects a security interest that has already been created or gives notice that a security interest may attach to collateral in the future. <u>See</u> Ind. Code § 26-1-9.1-502(d) ("A financing statement may be filed before a security agreement is made or a security interest otherwise attaches."). When a borrower enters into a line of credit, the borrower may not immediately borrow on the line of credit. The borrower is obtaining the right, but not the obligation, to draw down on the line of credit in the future, and until the borrower does draw down on a line of credit, the borrower has not incurred in any debt, so no security interest has attached to any collateral. <u>See</u> Ind. Code § 26-1-9.1-203(a)–(b). The lender, however, will generally file a UCC financing statement at the time that the parties enter into the line of credit so as to give third parties notice that a security interest may in the future attach to certain collateral of the borrower in the event that the borrower ever does decide to draw down on the line of credit and incur any debt. Even if the borrower never actually borrows a single dollar, however, then the UCC financing statement will still appear in a search of UCC financing statements under the borrower's name.

Odyssey has made an unsubstantiated allegation without a reasonable factual basis for doing so, and one that is completely contradicted by the actual evidence. Student First expressly reserves the right to raise this issue in the context of a subsequent suit for tortious interference with a business expectancy. See Ark. Code Ann. 19-11-244(h).

2. Student First Is a Responsible Offeror.

An agency must award a contract to the responsible offeror "whose proposal is determined in writing to be the most advantageous to the state, taking into consideration price, the evaluation factors set forth in the request for proposals, any best and final offers submitted, and the results of any discussions conducted with responsible offerors." Ark. Code Ann. § 19-11-230(g)(1). "No other factors or criteria shall be used in the evaluation." Ark. Code Ann. § 19-11-230(g)(2). No one contests that that Student First submitted the best offer that received the highest score on the technical dimension for the lowest price. (Exhibit 7.) But Odyssey is trying to use the definition of a responsible offeror, "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), to (i) manufacture a requirement that Student First have filed a certificate of authority and (ii) malign Student First's integrity without a reasonable factual basis.

(a) The Department Did Not Ask Student First to File a Certificate of Authority, But Student First Has Since Done So.

Section 1.8A(1) of Solicitation 313 states that vendors need to be registered in ARBuy to submit proposals but did not ask contractors to file a foreign qualification. (Exhibit 2.) Moreover, we are not aware of any provision in the Arkansas Procurement Code that expressly requires a contractor to file a certificate of authority in order to bid on a contract. See Ark. Code Ann. § 19-11-101 et seq. At most, a note to R4:19-11-217 merely reminds vendors that a foreign corporation may not transact business in Arkansas until it has filed a certificate of authority but does not say what activities in the procurement process constitute transacting business in Arkansas. Similarly, while Section 4-27-1501 of the Arkansas Code requires a foreign corporation to obtain a certificate of authority from the Secretary of State in order to transact business in Arkansas, it does not define what it means to transact business in the state but does expressly provide a list of eleven activities that do not constitute transacting business in Arkansas. Ark. Code Ann. § 4-27-1501(b). Some of these activities would appear to involve more substantial contacts with the state of Arkansas than merely responding to RFPs and engaging in preliminary business discussions for potential transactions. See, e.g., Ark. Code Ann. § 4-27-1501(b)(2), (3), (5), (6), (7), and (10). Moreover, Section 4-27-1501(c) of the Arkansas Code expressly provides that that list of excluded activities is not exhaustive, which suggests that the Arkansas legislature did not intend to trip up foreign corporations when they had only minimal contacts with Arkansas.

In compliance with OSP's request in Solicitation 313, Student First registered in ARBuy. As of the date of Student First's submission of its bid in response to Solicitation 313, Student First had not filed a certificate of authority because Student First did not yet know whether Student First would win the contract and have any occasion to transact any actual business in Arkansas at all. Doing so would seem premature. As a general matter, on this same rationale, it is not Student First's practice to file a foreign qualification in a state as soon as it submits a bid in that state unless the state requests that Student First do so. Regardless, even though OSP's Anticipation to Award the contract to Student First has not yet become final, now that OSP has issued its Anticipation to Award the contract to Student First, Student First has gone ahead and filed a certificate of authority early for the sake of mooting this issue. (Exhibit 11.)

(b) Student First's Past Performance in Other States Establishes Its Integrity, and Student First Has Never Been Accused of the Ethical Breaches of Which Odyssey Has Been Accused.

As noted multiple times, Student First has facilitated the disbursement of over $100 million in education funding to families in seventeen states over the last seven years, and it has never been accused of unethical conduct. (Exhibit 3.) Odyssey has tried to bootstrap ordinary course changes in deployment schedules into evidence of a lack of integrity, but that is a bridge too far. They are simply a part of the processing in building and deploying technology platforms and other enterprise solutions in the fintech space. Odyssey should know this since Odyssey itself has had its own deployment delays and a troubled rollout in Missouri. (Exhibit 12.) So if Odyssey's standard for questioning the integrity of others is to be the standard for determining whether a vendor is a responsible offeror who is eligible to bid on a contract with Arkansas, then that same standard would disqualify Odyssey as a bidder, too.

But Odyssey's history suggests more than just deployment delays that give rise to concerns about Odyssey's integrity. For example, there is evidence that Odyssey previously misrepresented that Odyssey worked with the Love Your School microgrant program in Arizona, but Jennifer Clark, the executive director of Love Your School who also served on the Arizona State Board of Education, stated that Love Your School never worked with Odyssey at all. (Exhibit 13.) There is also evidence that Odyssey misappropriated funds from an Idaho education funding program by retaining interest on principal that belonged to the state of Idaho. (Exhibit 14.) Idaho similarly found evidence that Odysseys platform permitted approximately $180,000 in improper purchases. (Exhibit 15.)

Any inquiry into a lack of integrity should be focused on unethical business practices, but it is Odyssey, not Student First, who has been accused of unethical business practices in the past. For that reason, we urge that you not to disqualify Student First on grounds on which Odyssey is substantially weaker.

3. Student First Complied with the Instructions in the Solicitation in All Material Respects.

Odyssey argues that Student First should also be disqualified because its bid proposal does not comply with the instructions to complete the solicitation, but it ignores the fact that the State Procurement Director or agency procurement official may waive technicalities in proposals or minor irregularities in a procurement that do not affect the material substance of the Request for Proposals when it is in the State's best interest to do so. R7:19-11-230(a). The reason for this is obvious: "There is a strong public interest in favor of conserving public funds in awarding public contracts, and little, if any, public benefit in disqualifying proposals for technical deficiencies in form or minor irregularities where the offeror does not derive any unfair competitive advantage therefrom." R7:19-11-230(a). None of the alleged deficiencies in Student First's bid rise to a level of materiality that would justify disqualifying Student First and forcing the state of Arkansas to spend an additional $1.26 million to award the contract to Odyssey. On the contrary, each of the issues that Odyssey claims were failures to follow instructions were in fact expressly discussed with or authorized by ADE.

(a) <u>The Payment Spreadsheet Expressly Invited Bidders to Add Additional Lines to Table 2, Which Student First Did for the Sake of Completeness and Transparency</u>.

The instructions to the Official Proposal Price Sheet expressly provided that "[t]he 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. (Exhibit 16.) The instructions further provide that "[i]f the Contractor does not propose to charge for an activity identified by the State, the Contractor may enter a cost of zero or leave the field blank." (Exhibit 16.)

That is precisely what Student First did. Of the activities listed by ADE, Student First included a cost only for the implementation fee and then stated the other activities identified by ADE would be included in the implementation fee. (Exhibit 17.) Student First then included additional activities separated out by whether they related to EFAs or LTGs and stated that they, too, would be included in the implementation fee because Student First understood that the primary reason why ADE issued Solicitation 313 in place of Solicitation 284 was to obtain more transparency on pricing as between EFAs and LTGs. Out of the same concern for transparency in pricing, Student First clarified that is percentage-based cost could be collected when and as funds were disbursed or reconciled with ADE directly. (Exhibit 17.)

Odyssey points to Section 1.8(B)(4) of Solicitation 313, which provides that "Prospective Contractors should not include any other documents or ancillary information, such as a cover letter or promotional/marketing information." (Exhibit 2). It seems clear that this language was intended to prevent vendors from including lengthy marketing materials that would substantially lengthen the submission and burden the Evaluation Committee with more materials to review, not to prevent a vendor from including simple clarifications that the instructions to the Official Proposal Price Sheet invite.

Odyssey further points to Section 1.8(D) of Solicitation 313, which says that "Prospective Contractors should not alter language in Solicitation document(s) or Official Proposal Price Sheet provided by the State." (Exhibit 2.). The plain meaning of "to alter" is "to change," not "to add." Student First did not change any language in the Official Proposal Price Sheet; it merely added clarifications to ensure that its disclosures in the version of the pricing sheet that Student First submitted were not misleading. Given Odyssey's eagerness to manufacturer misrepresentations out of Student First's statements and omissions, Student First's desire to be as transparent as possible with ADE on pricing would seem understandable to say the least.

Accordingly, given that it is in Arkansas's best interests to ensure transparency in pricing that is ultimately indirectly borne by taxpayers, Student First respectfully asks that you treat any deviations from the Official Proposal Price Sheet as a technicality or minor irregularity that does not affect the material substance of Student First's bid and therefore dismiss Odyssey's request that Student First be disqualified.

(b) ADE and Student First Are Working Together to Provide the Support That Odyssey Accuses Student First of Refusing to Provide.

Odyssey argues that Student First should be disqualified because Student First did not expressly state to Odyssey's satisfaction that Student First would provide user and technical support, but Odyssey ignores the fact that Student First has communicated with ADE on these very points. (Exhibit 8.) In the first Q&A process, Student First asked ADE whether ADE was planning to staff its own helpdesk or would like Student First to provide one. (Exhibit 18, at line 22.) ADE responded by telling Student First that ADE would handle general customer support questions but would need to partner with Student First to provide helpdesk services. (Exhibit 18, at line 22.) Student First fully intends to do so as soon as the contract is approved.

Similarly, Odyssey argues that Student First should be disqualified because Student First's bid did not expressly copy and paste the exact language out of Section 2.4(D) of Solicitation 313 (Exhibit 8), which requires that the platform provide account holders and administrators with real-time access to account information such as (i) account application status; (ii) up-to-date balances; (iii) transaction statuses and details; (iv) historical account information; and (v) enrollment information. (Exhibit 2.) But it is misleading to suggest that Student First is not willing to track all of the information required by Section 2.4(D) of Solicitation 313. In fact, Student First's platform already tracks all of these pieces of information, and the fact that Student First expressly stated that "[a]ll account holders, including admins, have real-time access to important account information, including application status, school enrollment information, and historical ledgers" in no way was intended or should be read to imply otherwise. (Exhibit 2, at PDF pg. 9.) In addition, Student First further committed to working with ADE to develop any other reporting and tracking tools that ADE would like. (Exhibit 2.)

4. The Alleged Mistake in Scoring Would Not Have Changed the Department's Determination.

Section 3.1(B) of Solicitation 313 lays out a detailed process for scoring the vendors' proposals. (Exhibit 2.) ADE would appoint an Evaluation Committee to evaluate and score the proposals, and members of the Evaluation Committee would individually review and evaluate the proposals and complete an Individual Score Worksheet for each proposal. After initial individual evaluations were complete, the Evaluators would meet to discuss their individual scores. At the initial consensus meeting, each Evaluator would be afforded an opportunity to discuss his or her score for each evaluation criteria. After Evaluators have had an opportunity to discuss their individual scores with the committee, the Evaluators will be given the opportunity to change their initial individual scores, if they felt that that was appropriate. The final individual scores of the Evaluators would be recorded on the Pre-Interview Consensus Score Sheets and averaged to determine the group or consensus score and rank for each proposal.

The scoring sheets provided to the vendors suggest that this is exactly what happened. (Exhibit 7.) Although Odyssey may not like the score assigned to them by Greg Rogers, the scoring process expressly built in a chance for each Evaluator to meet with the other Evaluators, discuss their scores, and change his own score if he saw fit to do so. Mr. Rogers chose not to change his score, so there seems to be no reason to force the Evaluators to revisit their scores now.

Moreover, asking Mr. Rogers to review his score now would not change the outcome of ADE's determination. Odyssey received a weighted technical proposal score of 676.67—23.33 points lower than Student First's perfect score of 700. (Exhibit 7.) Odyssey received a cost score of 276.99—23.01 points lower than Student First's perfect score of 300, which Student First earned by submitting the lowest-cost bid. (Exhibit 7.) As a result, Odyssey's 23.33-point deficit on the technical dimension amounts to only about 50% of the total margin separating Student First's perfect combined grand total score of 1000 and Odyssey's lower score of 953.66. (Exhibit 7.) In other words, even if ADE revisited the scoring and gave Odyssey a perfect score on the technical dimension, then Odyssey would still only get about halfway of the distance toward the goal and would still come up short. At the end of the day, revisiting the scoring would serve no useful purpose because it would not change the outcome.

III. Conclusion

In conclusion, Student First Technologies respectfully requests that you dismiss the protest filed by Odyssey and finalize the award of the contract to Student First Technologies.

Sincerely,

Jonathan McPike