



Department of Transformation and Shared Services

Governor Sarah Huckabee Sanders

Secretary Leslie Fiskien

May 3, 2024

Mr. Michael Shannon
111 Center Street Suite 1900
Little Rock, Arkansas 72201
mshannon@ggtlaw.com

RE: Protest by Kleo, Inc. d/b/a ClassWallet (ClassWallet)
Solicitation No. S000000313: Online Platform for Education Freedom Accounts and
Literacy Tutoring Grants

Dear Mr. Shannon,

The Office of State Procurement has reviewed your client, Kleo, Inc. d/b/a ClassWallet's (ClassWallet) 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. ClassWallet's protest raises two issues: (1) Student First failed to complete required portions of the RFP; and (2) Student First did not demonstrate the experience the RFP requires. Class Wallet'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 Accounts (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 proposals in response to solicitation S000000313. Student First received the highest-scored proposal, and ADE issued the anticipation to award to Student First. Primary Class d/b/a Odyssey (Odyssey) received the second highest scored-proposal, and ClassWallet received the third highest. ClassWallet timely filed a protest pursuant to Ark. Code Ann. § 19-11-244.¹

II. Reasoning

A. Student First Failed to Complete Required Portions of the RFP.

¹ Additionally, ClassWallet 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).

ClassWallet first claims that Student First failed to execute required certifications. As part of the proposal signature page, ClassWallet was required to agree to these certifications:

REQUIRED CERTIFICATIONS
By signing and submitting a response to this Solicitation, Prospective Contractor represents, warrants, and certifies that they are not a Scrutinized Company and they do not currently and shall not for the aggregate term of a resultant contract:
<input type="checkbox"/> Boycott Israel.
<input type="checkbox"/> Knowingly employ or contract with illegal immigrants.
<input type="checkbox"/> Boycott Energy, Fossil Fuel, Firearms, or Ammunition Industries.
<input type="checkbox"/> Employ a Scrutinized Company as a contractor.
Prospective Contractor further represents, warrants, and certifies that it shall not become a Scrutinized Company during the aggregate term of a contract resulting from this solicitation.

However, when submitting its proposal in response to the solicitation, Student First included an outdated version of the certifications. This version was included in the Technical Proposal Packet for RFP S000000284, which was subsequently updated for solicitation S000000313. The prior version stated:

REQUIRED CERTIFICATIONS
By signing and submitting a response to this Solicitation, Prospective Contractor agrees and certifies that they do not and shall not during the aggregate term of a contract awarded as a result of this Solicitation:
<ul style="list-style-type: none">• Knowingly employ or contract with illegal immigrants.• Boycott Israel.• Boycott an Energy, Fossil Fuel, Firearms, or Ammunition Industry.

ClassWallet argues that Student First's failure to execute the correct form, which included a certification that it shall not "employ a Scrutinized Company as a Contractor" or "become a Scrutinized company during the aggregate term of a contract," disqualifies it. These required certifications are mandatory, and a contractor must agree to them to contract with the State. ADE cannot proceed with a new contract until a vendor has signed the current version of the required certifications.

A protest is limited five grounds, one of which is that the procurement agency "failed to adhere to the rules of procurement as stated in the solicitation and the failure to adhere to the rules ... materially affected the contract award."² Here, Student First's mistake as to the proper form does not result in an immediate disqualification because it did not materially affect the contract award. It rendered no competitive advantage to Student First and no disadvantage to ClassWallet. Moreover, Student First has since executed the current version of the required certifications.

² Ark. Code Ann. § 19-11-244(a)(4)(A)(iii)

Instead, this mistake was a technical deficiency which can be corrected. I may waive technicalities in proposals or minor irregularities in procurement, which do not affect the material substance of the RFP. Generally, it is in the best interest of the State not to disqualify proposals for minor irregularities where, as here, the purpose of the requirement is served and the offeror does not derive any unfair competitive advantage.³ Because no competitive advantage was derived from this error, I deny the protest on this ground.

B. Student First Did Not Demonstrate the Experience Required by the RFP.

Next, ClassWallet argues that Student First did not meet the minimum qualifications the RFP requires. 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.” ClassWallet asserts that Student First has been involved with only one other EFA program in Tennessee. However, the Tennessee program did not begin until May 2023 and currently serves just under 2,000 enrollees which is 29,000 less than Arkansas anticipates will participate in the EFA and LTGs. This lack of experience, it claims, demonstrates that it is not a “responsible offeror.”⁴

Student First’s proposal stated that its “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.” And in response to ClassWallet’s protest, Student First claims the values cited in its proposal were conservative estimates, and that when considering all the different types of programs it serves, it has surpassed even those figures.

The dispute concerning Student First’s and ClassWallet’s allegations 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.”⁵ 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.

Student First’s 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. Although these programs have differences, all require an online platform to perform the same core functions: (1) allow a participant to apply; (2) allow the institution or government review the documentation and to approve or deny the participant; (3) allow the family to direct awarded funding for permitted educational

³ Ark. Procurement R7:19-11-230(a).

⁴ Ark. Code Ann. § 19-11-204(11) defines a “responsible offeror” 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.”

⁵ Solicitation S000000313, Section 2.2

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 requirements set forth in the RFP.⁶ Therefore, ClassWallet did not prove that Student First is not a “responsible offeror.”

III. Conclusion⁷

ClassWallet’s protest is denied. ADE may proceed with the procurement consistent with Arkansas Procurement Law with the understanding that all required certifications, including those required by Arkansas Code Annotated § 25-1-1203 will be executed before the contract is finalized. This determination is final and conclusive.

With kind regards,



Jessica Patterson
State Procurement Director

cc: by Email Only:

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⁶ See Solicitation S000000313, Section 2.5

⁷ ClassWallet’s remaining arguments are directed at disqualifying Odyssey’s proposal. Because Student First has not been disqualified, these arguments are moot.