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April 12, 2024

## **VIA EMAIL & HAND-DELIVERY**

Jessica Patterson (*Jessica.patterson@arkansas.gov*)  
Director, Office of State Procurement  
Arkansas Department of Transformation and Shared Services  
501 Woodlane Street, Suite 220  
Little Rock, AR 72201

Re: Protest of Award in Solicitation No. S000000313: Online Platform for Education  
Freedom Accounts and Literacy Tutoring Grants

Dear Ms. Patterson:

We represent Kleo, Inc. d/b/a ClassWallet (“ClassWallet”). On behalf of ClassWallet and pursuant to the provisions of Ark. Code Ann. § 19-11-244(a)(2) and Office of State Procurement Rule R1:19-11-244, we are submitting this protest of the anticipated award to SID3CAR CO dba Student First Technologies (“Student First”) of the contract for an Online Platform for Education Freedom Accounts and Literacy Tutoring Grants for the Arkansas Department of Education. (RFP Number S000000313) (the “RFP”). **Exhibit 1.** Pursuant Ark. Code Ann. § 19-11-244(f), ClassWallet respectfully requests no contract be awarded until its protest has been finally resolved.

ClassWallet is an industry-leading financial technology platform for both education and state and local agencies as an efficient and nimble digital wallet technology. Today, ClassWallet serves over 6,200 schools, 20 US and State Agencies, and serves over 4.1 million students. It has been ClassWallet’s privilege to serve the State of Arkansas in providing the platform for Education Savings/Freedom Accounts (ESAs/EFAs) since August of 2023.

On December 15, 2023, TSS issued an RFP numbered S000000284. This RFP was withdrawn, and on February 9, 2024, TSS issued RFP number S000000313. Pursuant to the RFP, TSS, on behalf of the Arkansas Department of Education, sought submissions to obtain pricing

Ms. Jessica Patterson  
April 12, 2024  
Page 2

and a contract for an Online Platform for Education Freedom Accounts (EFAs) and Literacy Tutoring Grants (LTG).

This protest is made on one or all of the following grounds pursuant to Ark. Code Ann. § 19-11-244:

- The procurement agency failed to adhere to the rules of the procurement as stated in the solicitation, and the failure to adhere to the rules of the procurement materially affected the contract award;
- The procurement process involved responses that were collusive, submitted in bad faith, or not arrived at independently through open competition; and
- The award of the contract resulted from a technical or mathematical error made during the evaluation process.

Ark. Code Ann. § 19-11-244((a)(4)(iii), (iv), and (v).

The submissions of four companies were considered. Two bidders received perfect technical scores, Student First and ClassWallet. When cost scores were included, Student First received a Grand Total Score of 1000, Primary Class dba Odyssey (“Odyssey”) scored at 953.66, and ClassWallet had a score of 944.88. ClassWallet submits that there are grounds to disqualify both Student First and Odyssey which would leave ClassWallet with the leading Grand Total Score.

## **I. STUDENT FIRST.**

Student First’s proposal did not conform with the requirements of the RFP and should have been disqualified.

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

The following is the “Required Certifications” portion of the Proposal Signature Page in the Technical Proposal Packet for S000000313:

Ms. Jessica Patterson

April 12, 2024

Page 3

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.	
¶	
An official authorized to bind the Prospective Contractor to a resultant contract shall sign below. The signature below signifies agreement that any exception that conflicts with a Requirement of this Solicitation may cause the Prospective Contractor's proposal to be rejected.	
¶	
¶	
Authorized Signature:	→ → → → → → → → Title: → → → → → ¶
¶	
Printed/Typed Name:	→ → → → → → → → Date: → → → → →

As can be seen, the Prospective Contractor “shall sign below.” The RFP indicates that “‘shall’ and ‘must’ mean the imperative and are used to identify Requirements.” RFP at § 1.5(F). In turn, “Requirement” is defined as “a term, condition, provision, deliverable, specification, or combination thereof, that is obligated under the Solicitation, resulting contract, or both.” RFP at § 1.5(D). Merriam-Webster defines “imperative” as “not to be avoided or evaded” and “requirement” as “something essential to the existence or occurrence of something else.” Thus, the words “shall” and “must” were used in the proposal to indicate essential requirements that had to be met by the bidders. See also, **Exhibit 2** (February 2, 2017 Protest Decision re: RFP SP-17-001)(“the terms ‘must’ and ‘shall’ clearly mandate an obligation[.]”).

Also, the RFP made clear that “Prospective Contractors shall utilize the *Technical Proposal Packet* to submit their responses.” RFP at § 1.8.B.1 (emphasis in original). Student First did not do this. The RFP also indicates that Technical Proposal Packets “that do not meet Submission Requirements will be rejected and will not be evaluated.” RFP § 3.1.A. (emphasis added). Indeed, the first listed Submission Requirement is a “Signed Proposal Signature Page”:

2. The following items are proposal Submission Requirements and **must** be submitted as part of a Prospective Contractor's proposal response.
  - a. Signed *Proposal Signature Page*; signature may be ink or digital.

RFP at § 1.8.B.2.a.

Ms. Jessica Patterson  
April 12, 2024  
Page 4

Student First did not submit the Required Certifications and did not utilize the Technical Proposal Packet provided with the RFP. Rather, certain significant portions of the Proposal Signature Page were missing:

REQUIRED CERTIFICATIONS	
By signing and submitting a response to this Solicitation, Prospective Contractor agrees and certifies that they do not and <b>shall not</b> during the aggregate term of a contract awarded as a result of this Solicitation:	
<ul style="list-style-type: none"><li>• Knowingly employ or contract with illegal immigrants.</li><li>• Boycott Israel.</li><li>• Boycott an Energy, Fossil Fuel, Firearms, or Ammunition Industry.</li></ul>	
An official authorized to bind the Prospective Contractor to a resultant contract <b>shall</b> sign below. The signature below signifies agreement that any exception that conflicts with a Requirement of this Solicitation may cause the Prospective Contractor's proposal to be rejected.	
Authorized Signature: _____	Title: <u>CO-Founder/CEO</u>
Printed/Typed Name: _____	Date: <u>02/22/2024</u>

**Exhibit 3** (Student First Response). As easily seen, Student First failed to certify that it would not “Employ a Scrutinized Company as a Contractor” and that it would not “become a Scrutinized Company during the aggregate term of a contract[.]” This failure was material in that Student First avoided “required” elements of the RFP, and Student First should be disqualified because it did not submit a conforming response by the deadline for submissions.

The failure to provide required information has long been a grounds for disqualifying and rejecting proposals. See, **Exhibit 2** (February 2, 2017 Protest Decision re:RFP SP-17-001). There, Director Armstrong stated,

By failing to disclose information required by the RFP regarding those of its corporate affiliates that it identified as necessary to meet the requirements of the RFP, DentaQuest failed to timely submit a proposal that conformed to all of the material requirements of the RFP. Accordingly, it’s proposal must be rejected.”

*Id.* at 6.

Ms. Jessica Patterson  
April 12, 2024  
Page 5

The facts as outlined in this Protest are aptly compared to those in the Protest involving RFP No. 710-20-0041. See, **Exhibit 4** (Protest Decision). There, RedMane Technology, the successful bidder, failed to submit a Cost spreadsheet on an amended form. The original version of the spreadsheet had not included a cell dedicated to capturing data hosting costs. RedMane used this superseded version of the spreadsheet which caused its cost proposal to differ from the proposals submitted by the other prospective contractors. RedMane was offered the option in the discussions phase to either “honor” the price that DHS asserted was an error or be “disqualified.” RedMane chose the latter.

In upholding the protest, the State Procurement Director noted that all of the offerors responding to the RFP were required to submit their price using the revised bid spreadsheet, and if RedMane had used this revised document, all of the offerors would have been presented with exactly the same opportunity to provide precisely the same responsive pricing information to be tallied and considered. **Exhibit 4** at 3.

The same is true here. All offerors were required to use the same forms in the Technical Proposal Packet. Student First plainly did not. The RFP is clear that failure to do so will result in the proposal being rejected. RFP § 3.1.A. Student First’s proposal should be rejected here.

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

Section 2.3(A) of the RFP provided that “The Contractor **shall** have one (1) year of experience with projects of similar size and scope as detailed in the RFP.” (emphasis in original). Again, the word “shall” indicates a Requirement. As demonstrated below, Student First cannot meet this requirement.

The only other ESA program with which Student First has been involved is in Tennessee. The contract with Tennessee was effective May 26, 2023, well less than one (1) year before the submissions in this case. Indeed, Student First’s own response indicates that the ESA program was delivered to Tennessee in October 2023, a little more than four (4) months prior to this RFP. **Exhibit 3** (Student First Response) at p. 7.

Further, as noted in the attached **Exhibit 5**, the Tennessee education voucher program is currently limited to three urban counties and has just under 2,000 enrollees. The Arkansas RFP noted that the Department of Education anticipates 14,000 EFA participants and 17,000 LTG participants beginning on July 1, 2024, for a total of 31,000 participants. This is a 1,550% increase over Student First’s experience in Tennessee. Thus, Student First’s experience meets neither the time requirements nor the size and scope requirements of the RFP.

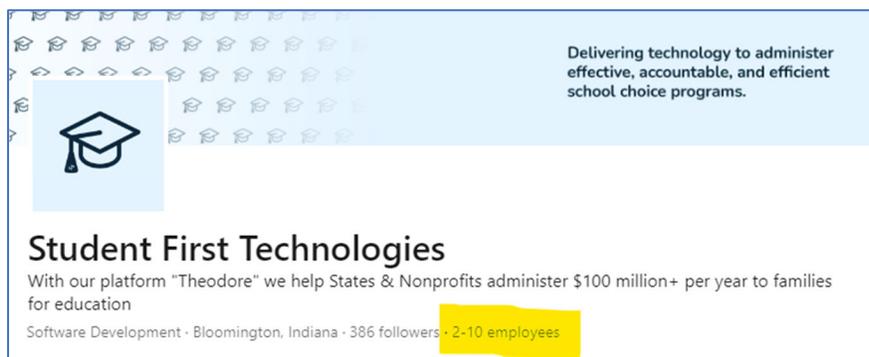
Student First’s claimed experience in Arkansas and Indiana do not meet the size and scope requirements either. Again, Student First’s own RFP response indicates that the Indiana program involved a “microgrant program.” Student First RFP Response at p. 7. A microgrant program is

Ms. Jessica Patterson  
April 12, 2024  
Page 6

not of similar size nor scope as the ESAs involved in this RFP. Indeed, they are small (typically \$1,500 or less), one-time funding grants for COVID learning loss and are not eligible to be spent on tuition.

Regarding Arkansas, Student First admits that there were 362 students served by The Reform Alliance and 646 students for the Succeed program. Neither of these programs involve an ESA/EFA. Again, this does not come close to “experience with projects of similar size and scope as detailed in the RFP.” RFP at § 2.3(A).

It has been noted by others that in 2023, Student First had only three full-time employees other than its two founders. Nine other persons provided some freelance, consulting, or part-time work. **Exhibit 6.** Also, Student First’s own LinkedIn page (<https://www.linkedin.com/company/student-first-technologies>) illustrates the size of the organization as between 2 and 10 employees.



**Exhibit 7.** Again, Student First does not have the staff, experience or financing to provide the services required by the RFP.

By comparison and contrast, ClassWallet employs approximately 350 full-time staff, of which approximately 100 are dedicated to customer support using telephone, chat and email. Arkansas is currently leveraging this capacity during the first year of the EFA.

Student First’s lack of candor in its proposal and its sheer lack of experience demonstrate that it is not a “responsible offeror.” That term is defined in Ark. Code Ann. § 19-11-204(11) 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.” Student First’s experience does not meet the plain requirements of the RFP, and it should be disqualified as a non-responsible offeror. The misrepresentations regarding its experience demonstrate that Student First lacks the integrity and reliability to assure a good faith performance of the contract.

Ms. Jessica Patterson  
April 12, 2024  
Page 7

## II. PRIMARY CLASS dba ODYSSEY.

Odyssey's Response contains several demonstrable falsehoods. Odyssey claimed in its response that:

- Odyssey has successfully implemented three ESA programs in three states, and we have maintained an average implementation time of 53 days.
  - Iowa – 54 days
  - Idaho – 30 days
  - Missouri – 76 days

and that:

- Odyssey's team has extensive experience launching 3 ESAs, and decades of experience working in the payments, marketplace, and education sectors.

**Exhibit 8** (Odyssey Response) at p. 6. In truth, Odyssey has implemented only one (1) ESA (in Iowa), not three (3) as affirmatively claimed. The other two states (Idaho and Missouri) are microgrants, not ESAs.

The following is from the website of Missouri's Department of Elementary and Secondary Education:

“The Missouri Department of Elementary and Secondary Education (DESE) is pleased to announce the new Close the Gap Grant program. This is a **one-time grant** of up to \$1,500 for parents to use for allowable education expenses for their K-12 public school district and charter school student(s).”

\*\*\*\*

Allowable educational expenses include

- Instructional resource materials;
- Tutoring;
- Academic day or summer camps;
- Computer equipment;
- Internet connectivity;
- Before- and afterschool educational programs;
- Course fees and textbooks;
- Online access for an academic app or subscription;
- Education, learning, or study skills services;
- Arts-related day or summer camps; and
- Art enrichment.

Ms. Jessica Patterson  
April 12, 2024  
Page 8

**Exhibit 9** (emphasis added). In this program, tuition cannot be paid to nonpublic schools. It is not an ESA/EFA.

Similarly, the State of Idaho’s own website confirms that the program there was merely a microgrant and not an ESA/EFA.

“The Empowering Parents program provides eligible families with grant funds for use towards eligible education services and devices to help students recover from learning loss. Section 33-1030, Idaho Code, defines eligible education expenses.”

\*\*\*\*\*

“Each eligible family will have access to \$1,000 per eligible student, with a maximum award of \$3,000 per family.”

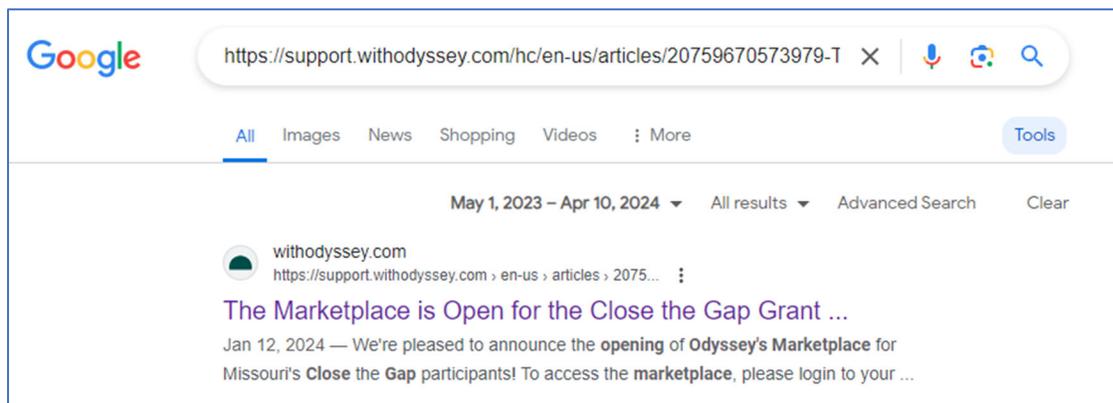
See, **Exhibit 10**. A chart included on the website also indicates that the following are not approved expenses:

<b>Not Approved</b>
Tuition and fees for enrollment in a virtual school or class in which the eligible student is enrolled as a private paying student
Private school tuition and fees
Religious camps
Annual funds
Giving Funds
Fundraising fees, donation fees, volunteer waiver fees
Homeschool co-op tuition and fees
Gift cards
Transportation and fees

**Exhibit 11**. Again, private school tuition and fees are not allowed, and this is not an ESA/EFA. Thus, Odyssey’s claim that it “has successfully implemented three ESA programs in three states” is demonstrably false and misleading.

Further, Odyssey’s claim that it implemented the program in Missouri in 76 days is just not true. The contract in Missouri was effective May 1, 2023. See, **Exhibit 12** (Missouri Contract). Per Odyssey’s own website, the marketplace in Missouri did not go live until January 12, 2024.

Ms. Jessica Patterson  
April 12, 2024  
Page 9



This is 256 days, more than three (3) times the number of days falsely represented in Odyssey's response. A similar implementation time would go well past the date needed by the State of Arkansas.

These false claims from Odyssey go beyond mere puffery -- they are falsehoods designed to avoid the kind of transparency residents of the State of Arkansas require. The failure to accurately report its experience denied the evaluators the opportunity to decide what weight should be given to Odyssey's real track record.

Demonstrable falsehoods through omission or commission in an RFP response have been the source for disqualification in the past in Arkansas. See, **Exhibit 13** at 4 (May 4, 2018 Protest Decision in RFP No. 710-18-1006)(The failure to provide information required by the RFP "deprived the DHS evaluators of information that DHS had requested, and that First Data should have provided.") Providing true and correct information "would have satisfied the language of the RFP and allowed the evaluators to make an informed evaluation." *Id.* at 4. Even if a portion of an RFP does not contain "shall" or "must" language, "it does not invite any offeror to provide materially incomplete or incorrect information[.]" *Id.* at 4.

Odyssey has a history of untruthfulness in its RFP responses in other states. For example, an Iowa Administrative Law Judge made the following findings:

In regards to the Arizona programs, Odyssey represented that it had provided services to two Arizona programs called the Arizona Tax Credit Scholarship Child Opportunity Fund and the Arizona Microgrant Love Your School Program. Both programs required the following services from Odyssey: (1) marketing and outreach, (2) application verification; (3) marketplace creation; (4) payments; and (5) data retention. Ex. D1 at 231. However, contrary to its statements, Odyssey had not provided any services to either program because both programs were placed on hold due to a new government being elected in Arizona. *Id.*; Connor Testimony, Tr. at 234. Both programs were officially cancelled in late February after Odyssey submitted its proposal to the RFP.

Ms. Jessica Patterson  
April 12, 2024  
Page 10

Here, it is undisputed that Odyssey made inaccurate statements regarding its experience in its proposal. In regards to the Idaho program, Odyssey made representations that it distributed more funds to more students than it had at the time it submitted its proposal to DAS.<sup>1</sup> At the time Odyssey submitted its proposal, it had distributed approximately \$31.4 million to 31,397 children. However, Odyssey rounded up in its proposal and stated that it had “successfully distributed \$50 million to families in ESA and microgrant programs” and helped over 50,000 children access the programs. *See* Ex. D1 at 221, 223. Odyssey did not meet the \$50 million benchmark until March 2023, or a few weeks after it submitted its proposal. At the hearing, Odyssey’s CEO testified that he “reasonably thought” that by the time Odyssey’s proposal was considered, Odyssey would have met the numbers it presented in its proposal, *i.e.*, \$50 million distributed to 50,000 students. *See* Connor Testimony Tr. 231-32 (“At the time we submitted the RFP, we reasonably thought we were at or near that number. As it turns out, it took a little longer for us to hit that number, but today we are beyond that.”).

**Exhibit 14.**

Odyssey has also been accused of “holding taxpayer funds in an interest-bearing account and retaining those interest earnings.” *See* **Exhibit 15**. Ultimately, Odyssey agreed to reimburse the State of Idaho nearly \$500,000 in interest it had collected from the microgrant program. *Id.*

Odyssey’s conduct described here demonstrates that it is not a “responsible offeror” because it lacks the ability to perform the contract and the “integrity and reliability” to assure good faith performance. Ark. Code Ann. § 19-11-204(11) Odyssey should be disqualified as a non-responsible offeror.

**III. CONCLUSION.**

A Multiple Award and Request for Proposals (RFP) justification form signed by the OSP Director on September 6, 2023 explains why a full and fair RFP process was crucial for this state contract. That justification, attached as **Exhibit 16** states:

**Explain why evaluating the vendor’s capabilities and experience is necessary.**

Research has shown that serious missteps have been made by the vendors in the field (issues with student privacy, issues with misuse of funds, issues with family service levels/time) that have resulted in public/media scrutiny. While price will be an essential determinant, it cannot be the only one, given the high-stakes nature of the program. The potential number of Arkansas families served by this program will be significant, and based on the very few states that have implemented similar programs, vendor capabilities will be a crucial success factor. To ensure that Arkansas is successful, it will need a qualified and competent vendor that can serve the scale of families and schools in Arkansas’ programs while ensuring fiscal transparency and accountability.

The Literacy grant program, being new, will also need a vendor with very distinct capabilities to service the application, expense review, and fund disbursement. Securing a vendor with proven success in these critical areas is necessary to ensure that Arkansas families are served well and that there is transparency and accountability within the fund disbursement process.

The state must uphold its justification for the RFP process with a full and fair evaluation of its potential vendors’ experience and qualifications. ClassWallet is the only qualified vendor that can

Ms. Jessica Patterson  
April 12, 2024  
Page 11

serve, and has served, the scale of families and schools in Arkansas' programs with a platform designed to ensure fiscal transparency and accountability.

Accordingly, ClassWallet respectfully requests that the State do one or more of the following:

1. Disqualify both Student First and Odyssey for the reasons stated above and award the contract to ClassWallet; or
2. Cancel RFP S000000313 and extend ClassWallet's current contract for the programs for one year. This would allow time for a full and comprehensive RFP that provides a more in-depth review of the various vendors. This would also allow sufficient time for the awarded bidder to meet the implementation timeline while reducing risk to families, vendors, and the EFA and LTG programs.

Respectfully,

**QUATTLEBAUM, GROOMS & TULL PLLC**



Michael N. Shannon

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