

SUPPLEMENTAL AGENDA

Suspension of the Rules Request
ALC/Review Subcommittee

Tuesday, May 28th, 2024
1:30 pm, Room A MAC

A. Out of State Contract

1. Department of Education – SID3CAR Co

Note: All exhibits for this meeting are available by electronic means and are accessible on the General Assembly's website at www.arkleg.state.ar.us

Notice: Silence your cell phones. Keep your personal conversations to a minimum. Observe restrictions designating areas as *'Members and Staff Only'*.



Arkansas Department of Education

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Sarah Huckabee Sanders
Governor

Jacob Oliva
Secretary

May 23, 2024

Senator Scott Flippo
Representative Les Eaves
Co-Chairs, ALC-Review Subcommittee
1 Capitol Mall
Little Rock, AR 72201

Dear Senator Flippo and Representative Eaves:

The Arkansas Department of Education respectfully requests suspension of the rules of the ALC-Review Subcommittee to allow for the review of the new Education Freedom, Account and Literacy Tutoring Grant contract for the Arkansas Department of Education – Division of Elementary and Secondary Education (ADE-DESE) with Sid3Car Co. DBA Students First Technology.

ADE-DESE received two protests that were not sustainable during the April contract review process. The contract was therefore removed and not reviewed at the April Meeting. ADE-DESE was unaware that the contract had to be resubmitted to be placed on the agenda for the May ALC review subcommittee meeting until after the deadline for submissions had passed.

The results of the two protests are as follows:

Protest by Kleo, Inc DBA ClassWallet –

ClassWallet's protest raised 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.

Issue 1: Director Patterson's determination was that Student First's mistake as to the proper form did 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.

Issue 2: Director Patterson's determination was 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 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. These functions are fundamentally the same as the application requirements set forth in the RFP. Therefore, ClassWallet did not prove that Student First is not a "responsible offeror."

Protest by Primary Class Inc DBA Odyssey –

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.

Issue 1: Director Patterson's determination was 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. These functions are fundamentally the same as the application requirements set forth in the RFP. Therefore, Student First met the RFP's minimum qualifications.

Issue 2: Director Patterson's determination was 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.

Issue 3: Director Patterson's determination was 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 support or that it would ensure account holders real-time access to account information. 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," and "all account holders, including admins, have real-time access to important account information, including application status, school enrollment information, and historical ledgers." 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." 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 the solicitation. Therefore, Odyssey has not demonstrated Student First did not comply with the RFP instructions such that the contract award was materially affected.

Issue 4: Director Patterson's determination was 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.

The current Special Procurement contract that ADE-DESE has in place will expire on June 30, 2024, and the new contract needs to start on July 1, 2024. Therefore, we respectfully submit this request for a suspension of the rules to allow for a review of the contract obtained through the Request for Proposals process that would enable the continuation of services critical to the fulfillment of the Arkansas LEARNS Act requirement.

I appreciate your consideration of this request. Please do not hesitate to let me know if additional information is needed.

Sincerely,



Jacob Oliva
Secretary of Education

SUMMARY SCHEDULE OF STATE AGENCY CONTRACTS
FOR ARKANSAS LEGISLATIVE COUNCIL REVIEW
Out-of-State Contracts

1. **Agency:** Department of Education

Contractor: SID3CAR CO

Location: BLOOMINGTON

State: IN

Service Type: Technical & General Services (TGS)

Total Authorized: \$0.00 **Org. Term:** 06/01/2024 05/31/2028 **Procurement:** RFP

Total After Review: \$8,840,000.00 **Funding:** Federal - 15% - [ARP ESSER Funding]; State - 84%

Total Projected: \$15,170,000.00 **MOF:** **Contract Number:** 4600054313

<u>Org/Amt:</u>	<u>Amount</u>	<u>Paid To Date</u>	<u>Objective:</u>	<u>New Exp Date</u>
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8,840,000.00

ONLINE PLATFORM FOR EFAS AND LTGS