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BY EMAIL

Contracting Services
Attn.: JoLynn Berge
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Seattle School District No. 1
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Re: **Bid Protest by Zūm Services, Inc. of Seattle School District's Award to First Student, Inc. of Request for Proposal No. RFP022242, "Student Transportation Services for 2022-2025 and Succeeding Years."**

To Whom It May Concern:

For the second time this year, Seattle Public Schools ("SPS") has arbitrarily and improperly awarded a contract for student transportation services to First Student, Inc. ("First Student"), despite the demonstrable fact that Zūm Services, Inc. ("Zūm") would provide SPS families with better transportation service at a lower price. Stunningly, SPS committed yet another calculation error when comparing the prices offered by Zūm and First Student. As a result of that error, SPS ignores the fact that **accepting Zūm's bid would save SPS \$7 million over the course of the contract**. But that is not all. The RFP process has been marked by arbitrary delays, arbitrary scoring decisions, and an apparent bias towards First Student, despite a laundry list of safety violations and complaints against First Student. SPS's students and parents deserve better than the unreliable transportation services provided by multi-national company First Student.

For several years, the SPS community has suffered through First Student's subpar yet overpriced school transportation services. One Seattle newspaper referred to First Student's tenure as covering the "years of some of the rockiest school-bus service that Seattle kids have ever experienced."¹

Until 2021, SPS simply could not move on from the problematic First Student, because First Student was "the only company to bid when its previous contract expired" in 2017.² But that finally

¹ Ex. 1, *In Seattle schools, the cost of buses climb as transportation falters. Is there a choice?*, The Seattle Times (updated Dec. 27, 2021).

² Ex. 2, *Seattle's contractor for school buses, First Student, is no stranger to labor disputes*, The Seattle Times (Feb. 4, 2018).

changed when Zūm Services, Inc. (“Zūm”) submitted its bid in response to SPS’s first Request for Proposal No. RFP102112 (the “first RFP”) and SPS’s second Request for Proposal No. RFP022242, “Student Transportation Services for 2022-2025 and Succeeding Years” (the “RFP”). Zūm is a first-generation immigrant, female-founded and led student transportation company committed to bringing student transportation into a new age. Zūm enables equity, innovation, efficiency, and sustainability that cannot be found with legacy pupil transportation providers. Zūm combines cutting edge software with right-sized fleets to provide a modern, integrated transportation system that maximizes operational efficiency and improves students’ and families’ experience.

Unfortunately, this bidding process has been plagued by errors and unexplained delays that have led to a highly flawed procurement process that has been arbitrarily executed. SPS made a glaring error in calculating the price of bids submitted by First Student and Zūm because it failed to differentiate between regular Type A buses from Type A (Lift, Walk-On) buses. While both Type A and Type A (Lift, Walk-On) buses are required for service of the contract, and were offered by both vendors at different prices, only Type A buses were used when comparing the pricing offered by both vendors without account for any Type A (Lift, Walk-On) buses. We request that SPS rectify its mistake of deviating from the initial selection criteria by properly calculating the price and Total Price Points for the bidders. Even if SPS refuses to correct this mistake, SPS should still award the transportation contract to Zūm because of First Student’s demonstrated ineptitude, inability to serve SPS’s transportation needs and appalling safety record.

Facts and Information in Support of Bid Protest

Zūm first came to SPS in 2019, agreeing to handle student transportation routes that legacy providers had failed to serve. This year, when First Student experienced severe driver shortages and First Student cancelled over 140 SPS routes, Zūm stepped up to transport hundreds of students.³ Zūm has proven itself to be a responsive, transparent, fiscally responsible, safe, and all-weather dependable student transportation partner for SPS students and their families, delivering over 80,000 student rides for SPS since 2019 (up from 67,000 student rides since the last RFP was submitted).

On or about October 28, 2021, SPS released the first RFP.⁴ Through this RFP, SPS sought “proposals for school bus transportation for over 18,000 general education and special services students to and from school, in addition to transportation for various programs, field trips, and athletics.” Zūm submitted its bid on November 30, 2021.⁵ On February 11, 2022, nearly two months after the results were supposed to be announced, SPS initially awarded the contract to First Student. Despite Zūm scoring 22 points higher than First Student on substantive qualification metrics, SPS awarded First Student 33 more Total Price Points because First

³ Ex. 3, Seattle Public Schools suspends 142 bus routes due to driver shortage, King 5 (updated Oct. 18, 2021).

⁴ Ex. 4, Request for Proposal No. RFP102112: Student Transportation Services for 2022-2025 and Succeeding Years.

⁵ Ex. 5, November 30, 2021, Zūm bid.

Student purportedly submitted a lower pricing offer.⁶ Zūm filed a bid protest on February 16, 2022.⁷ Zūm's protest pointed out that awarding the contract to First Student was based on a fatal problem in SPS's calculation of the prices of service because SPS used the incorrect pricing bids. Instead of using Zūm's and First Student's best and final offer price, SPS inexplicably calculated the price of service using the parties' outdated and no longer relevant initial pricing offer. Had SPS properly calculated the price of service using First Student's and Zūm's actual best and final offers, SPS would have seen that Zūm's bid was approximately \$3.36 million **lower per year** than First Student. In other words, Zūm offered better services for a lower price. When recalculated using both bidders' best-and-final offers, **Zūm outscored First Student by approximately 50 points**. On that basis alone, Zūm argued, SPS should rescind its decision and award the contract in its entirety to Zūm.

Rather than awarding the contract to Zūm based on the correct calculations, SPS canceled the first RFP and issued a second one on March 7, 2022.⁸ The second RFP identified by type and number the buses SPS required, which included: 120-160 Type A buses; 20-40 Type A (Lift, Walk-On) buses; and 110-155 Type C buses.

On March 25, 2022, Zūm submitted its bid in response to the second RFP.⁹ Zūm's bid focused on four goals:

1. **Rebuild community trust** with a student transportation solution known for exceptional service that delivers safe, predictable and reliable outcomes.
2. **Bring a superior solution and team** that executes with a strong sense of urgency and promotes diversity and equity in everything we do.
3. **Bring a technology driven, transparent and data driven approach** to enable measurable outcomes, a culture of accountability, transparency and data for continuous improvement.
4. **Make SPS student transportation carbon neutral from day one** and capability to transition 100% of SPS's fleet to EV by 2027 with a fiscally responsible transition plan.

On April 19, 2022, SPS sent an email to both vendors requesting Best and Final Offer pricing to be submitted by April 20, 2022 by 5:00 pm PT. On April 20, 2022 prior to the submission deadline, Zūm submitted Best and Final pricing.¹⁰ The offer included prices for each of the bus categories SPS had designated as estimated needs: Type A between 120-160, Type A (Lift, Walk-On) 20-40 buses, and Type C between 110-155 buses.¹¹ For the minimum of 120 Type A buses to satisfy

⁶ Ex. 6, February 11, 2022 letter from SPS to Zūm.

⁷ Ex. 7, Zūm's bid protest to RFP102112.

⁸ Ex. 8, February 24, 2022 letter from Nancy Milgate, Contracting Services Manager, to Vivek Garg; Ex. 9, Request for Proposal No. RFP022242: Student Transportation Services for 2022-2025 and Succeeding Years.

⁹ Ex. 10, March 25, 2022, Zūm bid.

¹⁰ Ex. 11, Zūm's BAFO.

¹¹ Ex. 9, Request for Proposal No. RFP022242: Student Transportation Services for 2022-2025 and Succeeding Years at 35.

SPS's stated needs, 120 buses, Zūm offered a per unit basic daily rate of \$594.50. For the requisite minimum of 20 Type A (Lift, Walk-On) buses, Zūm offered a per unit basic daily rate of \$571.57. Lastly, for the requisite minimum of 110 Type C buses, Zūm offered a per unit basic daily rate of \$640.61.

That same day, First Student submitted its best and final offer.¹² For 120 Type A buses, First Student offered a per unit basic daily rate of \$647.51. A daily rate approximately **\$53 or 8 percent higher than Zūm's**. For 20 buses of Type A (Lift, Walk-On), First Student offered a per unit basic daily rate of \$647.51. A daily rate approximately **\$75 or 12 percent higher than Zūm's**. For 110 Type C buses, First Student offered a per unit basic daily rate of \$647.51. A daily rate approximately **\$7 or 1 percent higher than Zūm's**. Therefore, **on all three calculations for the minimum required number of the bus types selected by SPS, Zūm offered a lower offer.**

Despite the meaningful price difference between Zūm and First Student, on April 28, 2022, SPS informed Zūm that First Student had been awarded the contract.¹³ Undeterred, Zūm's leadership requested an opportunity to understand the scoring rubric and pricing considered in SPS's decision to award the bid to First Student.¹⁴ According to the final score sheets, First Student outperformed Zūm by a mere five (5) points.¹⁵ However, upon closer review of the final scoring, it became apparent that the scoring did not include Type A (Lift, Walk-On) buses, which are required under the RFP to service the contract. This omission is particularly notable given that SPS currently uses 40 Type A (Lift, Walk-On) buses and that SPS stated in the RFP it estimated a need for 20-40 Type A (Lift, Walk-On) buses.¹⁶

Bases for Protest

1. Zūm Has Timely Protested the Award in Compliance with the SPS's Guidelines.

On Thursday, April 28, 2022, SPS informed Zūm that First Student was awarded the contract. Section 8.3(1) of the RFP requires that protests based on events other than the terms of the RFP "must be received within three (3) working days after the aggrieved person knows, or should have known, of the facts and circumstances upon which the protest is based." Zūm, therefore, submits this protest on May 2, 2022, which is within three working days of April 28, 2022.

2. SPS Arbitrarily Calculated the Total Price Points for Zūm and First Student.

The Total Price Points SPS awarded to Zūm and First Student were based on an arbitrary and capricious decision that contradicted SPS's own RFP requirements and resulted in the incorrect calculation of the cost of the competing bids. Specifically, SPS without any explanation excluded from its final calculation the use of **any** Type A (Lift, Walk-On) buses. This arbitrary move

¹² Ex. 12, First Student's BAFO.

¹³ Ex. 13, April 28, 2022 letter from Nancy Milgate, Contracting Services Manager, to Vivek Garg.

¹⁴ Ex. 14, April 28, 2022 email from Vivek Garg to Nancy Milgate.

¹⁵ Ex. 15, Final Evaluation Points.

¹⁶ Ex. 9, Request for Proposal No. RFP022242: Student Transportation Services for 2022-2025 and Succeeding Years at 35.

(whether intentional or a mere mistake) manipulates the results of the calculation in a manner that hides the fact that **Zūm would in fact save SPS almost \$1.5 million per year over First Student, or almost \$7.5 million over the full five-year term of the contract.**

Under Washington law, the primary purpose of public bidding is to benefit the taxpayers by procuring the best work or material at the lowest price practicable. See *Savage v. State*, 75 Wash.2d 618, 621 (1969) (“[C]ompetitive bid statutes are for the purpose of inviting competition, to guard against favoritism, improvidence, extravagance, fraud and corruption, and to secure the best work or supplies at the lowest price practicable, and they are enacted for the benefit of taxpayers, and not for the benefit or enrichment of bidders.” (internal quotations and citation omitted)). To ensure that agencies protect the public’s interest in public bidding, Washington courts apply the arbitrary or capricious standard. “The arbitrary or capricious standard has been applied to challenges to bidding procedures even though there is no statutory provision affording review.” *Equitable Shipyards, Inc. v. State By & Through Dep’t of Transp.*, 93 Wash. 2d 465, 474 (1980). Arbitrary and capricious action has been consistently defined as “willful and unreasoning action, without consideration and in disregard of facts or circumstances.” *DuPont-Ford Lewis School Dist. 7 v. Bruno*, 79 Wash.2d 736, 739 (1971). If a bid determination is shown to “have been influenced by fraud” or “is an arbitrary, unreasonable misuse of discretion” it can be subject to judicial intervention. See *Chandler v. Otto*, 103 Wash. 2d 268, 275 (1984).

Here, as shown in figure 1 below, SPS specified in the RFP requirements and BAFO request that it needs were 120-160 Type A buses, 20-40 Type A (Lift, Walk-On) buses, and 110-155 Type C buses.¹⁷ SPS therefore asked for pricing these three types of buses, and provided an estimated range for the number of each type of bus. Notably, these ranges are commensurate with the existing number of buses currently used to serve SPS’s student population; SPS currently employs 160 Type A buses, 40 Type A (Lift, Walk-On) buses, and 163 Type C buses.

¹⁷ Ex. 9, Request for Proposal No. RFP022242: Student Transportation Services for 2022-2025 and Succeeding Years at 35.

Figure 1 – RFP Request for Type of Buses

BASE BID FOR SIX-HOUR DAILY RATE TRANSPORTATION

The district will only accept pricing proposals in the format supplied in this document.

Busing requirements for the 2022-2023 school year are pending. The district will provide equipment needs at the earliest date possible; however, proposers need to anticipate and be ready to provide an initial higher number of buses and drivers for the start of the 2022-2023 school year with an understanding that equipment requirements may be reduced for the following two years of the contract.

The estimated needs are:

Type A (20-Passenger): between 120-160 buses
 Type A (Lift, 10 Walk-On/2 Chairs): 20-40 buses
 Type C (72+ Passenger): between 110-155 buses

Based on the RFP and Best and Final Offer requirements, Zūm and First Student submitted their best and final offers with tiered pricing for each bus category. For example, in Zūm Best and Final Offer, Zūm offered a price of \$594.50 per bus for between 101-150 Type A buses; \$571.57 per bus for between 1-60 Type A (Lift, Walk-On) buses; and \$640.61 per bus for between 101-125 Type C buses.¹⁸ In First Student's Best and Final Offer, First Student offered a price of \$647.51 per bus for between 101-125 Type A buses and \$592.63 per bus for 126-150 Type A buses; \$647.51 per bus for between 1-25 Type A (Lift, Walk-On) buses; and \$647.51 per bus for between 101-125 Type C buses.¹⁹

However, as shown in Figure 2 below, in its final pricing comparison, SPS omitted **any** Type A (Lift, Walk-On) buses.²⁰ Instead of using logical metrics, such as the lower end of the estimated range for each category of bus, SPS inexplicably decided to run the calculations based on 136 Type A buses, 111 Type C buses, and **no** Type A (Lift, Walk-On) buses. Not only is such a calculation arbitrary and contradictory to the district's stated requirements per the RFP and the Best and Final Offer Letter, but also it fails to account for the transportation needs of some of SPS's most vulnerable students—students with disabilities who need and are entitled to receive reasonable accommodations as required by applicable law.

¹⁸ Ex. 11, Zūm BAFO.

¹⁹ Ex. 12, First Student BAFO.

²⁰ Ex. 16, Best and Final Offer Calculations.

Figure 2 – BAFO Price Comparison

BEST and FINAL OFFER									
First Student - Six Hour Daily Rate									
	Buses Required	Six Hour Daily Rate	One Hour Excess Rate	Total Unit Rate	Total Daily Rate	Total Daily Rate X 180 Days	One Time Charge for Tablets \$0 - Included in Bid	One Time Charge for RFID Readers \$160 X 247	Yearly Cost
Type A	186	\$	592.65	\$	62.50	\$	655.13	\$	89,097.68
Type C	111	\$	647.51	\$	62.50	\$	710.01	\$	78,811.11
					Total Daily Rate	\$	167,908.79	\$	30,223,582.20
								\$	39,520.00
									\$ 30,263,102.20
ZUM - Six Hour Daily Rate									
	Buses Required	Six Hour Daily Rate	One Hour Excess Rate	Total Unit Rate	Total Daily Rate	Total Daily Rate X 180 Days	One Time Charge for Tablets \$500 X 247	One Time Charge for RFID Readers \$300 X 247	Yearly Cost
Type A	186	\$	594.50	\$	60.55	\$	655.05	\$	89,086.80
Type C	111	\$	640.61	\$	60.55	\$	701.16	\$	77,828.76
					Total Daily Rate	\$	166,915.56	\$	30,044,800.80
								\$	123,500.00
								\$	74,100.00
									\$ 30,242,400.80

There are two logical options for incorporating Type A (Lift, Walk-in) buses. First, SPS could have used the minimum number of each category of bus. Second, SPS could have used a consistent method in calculating the new number of each type of bus based on its expected move to a three-tier system. If SPS calculated the price comparison under either approach, then Zūm would have won the bid.

First, one logical approach is to calculate the price comparison using the low end of the range for all three bus types. This would be 120 Type A buses, 20 Type A (Lift, Walk-On) buses, and 110 Type C buses. Under these circumstances, as shown in Figure 3 below, **Zūm would save SPS over \$1.5 million per year over First Student, or over \$7.5 million over the term of the contract.** Moreover, the cost difference would result in a 15-point difference in Total Price Points, leaving Zūm with a 10-point advantage in the overall scoring. See Figure 3 below.

Figure 3 – Price Calculations with Minimum Number of Each Category of Bus

	Quantity	First Student		Zum	
		Base	Excess	Base	Excess
Type A	120	\$647.51	\$62.50	\$594.50	\$60.55
Type A (Lift / Walk-ons)	20	\$647.51	\$62.50	\$571.57	\$60.55
Type C	110	\$647.51	\$62.50	640.61	\$60.55
Total	250	\$29,137,950.00	\$2,812,500.00	\$27,582,930.00	\$2,724,750.00
Tablets	250	\$0.00		\$500.00	
RFID Reader	250	\$160.00		\$300.00	
RFID Cards	18000	\$1.75		\$0.00	
Total		\$71,500.00		\$200,000.00	
Total Pricing (Overall)		\$32,021,950.00		\$30,507,680.00	
Total Pricing Score		285.81		300.00	

Alternatively, SPS could have calculated the total of 247 buses using 109 Type A buses, 27 Type A (Lift, Walk-On) buses, and 111 Type C buses. These numbers are logical because SPS assumed that in the three-tier system, the “routes per bus ratio” will improve to be 2.5 instead of the 1.7 “routes per bus ratio” currently used in the existing system. The district currently employs 363 buses: 160 Type A buses, 40 Type A (Lift/Walk-On) buses, and 163 Type C buses. In two-tier system “routes per bus ratio” for these buses is 1.7, which when multiplied by each bus type quantity gives around 617 routes performed by 363 buses. In three-tier system, SPS assumed that “routes per bus ratio” will improve to be 2.5. Thus, dividing each bus type routes by 2.5 results in a requirement of 109 Type A buses, 27 Type A (Lift, Walk-On) buses, and 111 Type C buses in three-tier system. This is consistent with the mistake SPS made when it took 136 Type A buses to calculate pricing. SPS seems to have lumped 109 Type A buses with 27 Type A (Lift, Walk-On) buses to establish the 136 Type A buses in one category. Under these circumstances, as shown in Figure 4 below, **Zūm would save SPS almost \$1.2 million per year over First Student, or almost \$6.2 million over the term of the contract.** Moreover, the cost difference would result in a 12-point advantage in Total Price Points, leaving Zūm with 7-point advantage in the overall score.

Figure 4 – Price Calculations Based on Actual “Routes Per Bus Ratio”

		First Student		Zum	
	Quantity	Base	Excess	Base	Excess
Type A	109	\$647.51	\$62.50	\$594.50	\$60.55
Type A (Lift / Walk-ons)	27	\$592.63	\$62.50	\$571.57	\$60.55
Type C	111	\$647.51	\$62.50	\$640.61	\$60.55
Total	247	\$28,521,577.80	\$2,778,750.00	\$27,241,308.00	\$2,692,053.00
Tablets	247	\$0.00		\$500.00	
RFID Reader	247	\$160.00		\$300.00	
RFID Cards	18000	\$1.75		\$0.00	
Total		\$71,020.00		\$197,600.00	
Total Pricing (Overall)		\$31,371,347.80		\$30,130,961.00	
Total Pricing Score		288.14		300.00	

In sum, SPS’s failure to include the costs for Type A (Lift, Walk-On) buses not only ignores the transportation needs of an important and vulnerable portion of its student community, but also will cost SPS’s families and community to pay an extra \$1.5 million once SPS is charged by First Student under the actual pricing table submitted in the bid, which would show separate prices for Type A buses and Type A (Lift, Walk-On) buses. Such a calculation error is a complete disservice to the taxpayers who trust SPS to procure the best service at the best price, as well as a misrepresentation to the SPS School Board, who would be unwittingly voting on a \$7 million costlier solution.

3. The Qualitative Scores Given by SPS Appear to be Arbitrary and Capricious.

Arbitrary and capricious action has been consistently defined by Washington courts as “willful and unreasoning action, without consideration and in disregard of facts or circumstances.” *DuPont-Ford Lewis School Dist. 7 v. Bruno*, 79 Wash.2d 736, 739 (1971). Here, the scores given by SPS exemplify a complete and willful disregard of the relevant facts.

SPS scored First Student higher on the second RFP than in the first RFP despite the fact that since SPS rescinded its initial award, First Student has received various citations from the Washington Utilities and Transportation Commission totaling in a staggering \$396,000 in fines for more than 600 safety and procedural violations.²¹ While the Utilities and Transportation

²¹ Ex. 17, *State Regulators Seek \$396,000 in Fines from Seattle’s School Bus Carrier for Years of Safety Violations*. The Seattle Times (updated April 12, 2022).

Commission only regulates Charter buses, First Student has admitted that the same buses and driver were used to transport SPS students from home to school every day — putting SPS students in harm's way.²² In addition to these immense safety violations, First Student has also canceled hundreds of SPS routes and continually had a record of poor service.²³ Despite all these failings, First Student's overall qualification points increased on average by around 10 points without seemingly any justification.

The arbitrary nature of the scores given is also exemplified by the substantial score changes from the evaluation of this RFP and the first RFP. For example, in the first RFP, Zūm scored 20 points higher on quality.²⁴ This drastic change appears to have no basis given Zūm's business model and overall quality of service has not changed since the first RFP occurred a month ago. Additionally, the scoring of each of Zūm's references went down by five (5) points while First Student's references each increased by 2 (two) points leading to an overall difference of ten (10) points in First Student's favor compared to the initial three (3) point difference in Zūm's favor.²⁵ This discrepancy is also notable given the drastic change in reference scoring in a one month period. It is highly questionable that, without this arbitrary seven point change, Zūm would have won the bid by two points.

In addition there are a number of quotes and statements in the pros and cons list that are arbitrary and capricious because they ignore relevant facts and circumstances and misrepresent information. See *DuPont-Ford Lewis School Dist. 7 v. Bruno*, 79 Wash.2d 736, 739 (1971).

- First Students' pro list includes "[m]ostly positive working relationship between FS and SPS".

This statement completely excludes evidence of First Student's repeated service failures. First Student failed to provide coverage for required routes resulting in cancellation of 140+ routes.²⁶ In addition, the routes that First Student continued to service were often delayed by over an hour.²⁷ First Student also failed to disclose pivotal information to SPS about not being prepared for service.²⁸

- First Student's con list fails to include any mention of First Student's persistent and severe service issues.

First Student cancelled 140 bus routes this year and neglected to inform SPS about these cancelations until the last moment, leaving SPS scrambling to find a transportation solution for

²² *Id.*

²³ Ex. 18, *As Seattle Schools' busing woes persist, it has few options to ding its contractor*, The Seattle Times (updated Nov. 8, 2021).

²⁴ Ex. 19, Score Sheets from RFP RFP102112; Ex. 15, Final Evaluation Points.

²⁵ Ex. 15, Final Evaluation Points.

²⁶ Ex. 3, *Seattle Public Schools suspends 142 bus routes due to driver shortage*, King 5 (updated Oct. 18, 2021).

²⁷ Ex. 20, *Seattle Public Schools has a transportation problem. Will this year be any better?*, The Seattle Times (Sept. 4, 2019).

²⁸ Ex. 21, *Drivers risk school bus service as vaccine mandate approaches*, KIRO 7 (Oct. 13, 2021).

some of its most vulnerable students.²⁹ Additionally, First Student has annually raised prices on SPS.³⁰ In the past, First Student was able to leverage the threat of ceasing service if not given rate increases. However, SPS appeared to recategorize this apparent monopoly as a pro adding to First Student's pro list the fact that First Student has been in the Puget Sound market for over 30 years.

- In Zūm's pro list, SPS completely neglects to mention that Zūm has been serving the district for the past 3 years.

When First Student canceled 140 routes, SPS asked Zūm to step in and provide the necessary transportation for the district's hundreds of affected students. Zūm excitedly rose to the challenge. During that time, Zūm established a great working relationship with SPS staff and provided exceptional service including 98% on time performance with over 80,000 student rides since 2019 (up from 67,000 student rides since the most recent bid was submitted) and a 4.96 out of 5 point rating by parents.³¹ Despite, this immense success, Zūm's prior service in SPS is completely excluded from the pro list.

- In Zūm's con list, the company's stability is questioned.

This statement is not factually accurate. Zūm is funded by world class investors, has been awarded numerous awards for school transportation, and has already been selected to serve districts larger than SPS including Los Angeles Unified School District, representing over 600,000 students. In fact, First Student's bank letter stated it maintains a "low eight-figure balance," while Zūm's bank letter stated it maintains a high eight-figure unrestricted cash amount in its bank account.

- Zūm's con list, also includes questions about the maturity of Zūm's products and services allegedly based on a statement by a reference from SFUSD that described Zūm software tools as under development.

This statement excludes relevant facts and is a mischaracterization of Zūm's products and services. Not only is Zūm's technology mature, but it is the best available on the market. SFUSD has been repeatedly impressed by Zūm's technological capabilities. The statement from the SFUSD representative was taken out of context and misrepresented. The representative said that Zūm continues to build the technology, which is an integral part of Zūm's culture. Zūm never stops improving and is constantly building new technologies. Currently, SPS does not have access to technology comparable to the technology provided by Zūm. Zūm is able to offer real time data for the district to track KPIs and performance metrics. Zūm also provides the ability for parents to track students' rides in real time, which provides increased safety and transparency that Seattle parents and families have long been seeking, a capability that First Student does not offer. This technology is much more advanced than the technology currently being provided, if any, by First Student.

²⁹ *Id.*; Ex. 18, *As Seattle Schools' busing woes persist, it has few options to ding its contractor*, The Seattle Times (updated Nov. 8, 2021).

³⁰ Ex. 22, October 2, 2019 Board Action Report at 4; Ex. 23, CGCS: Review of the Student Transportation Program of the Seattle Public School (January 2019).

³¹ Ex. 23, Zūm Performance Data.

- Zūm's con list also includes that Zūm has not operated a yellow bus transportation program the size of SPS (250-400 buses).

This statement also disregards relevant facts and circumstances. SPS is evaluating for 3 tier system which needs 250 buses, yet Zūm is being compared against two tier bus operations - 400 buses. Zūm has operated 200 plus school buses in SF and has been awarded a 450 school bus contract by LAUSD.

- First Student's pro list includes being the largest provider of school transportation.

This statement completely ignores the fact that First Student's monopoly has enabled First Student to provide subpar service with no accountability. Because SPS has had no other provider to turn to, First Student has never been forced to improve their inadequate service standards. This monopoly is mischaracterized as a pro, when in fact, it is a con. Rather than taking SPS for granted, Zūm would enter SPS energized and committed to providing exceptional service. Zūm has already proved this commitment along with our responsiveness and high-quality service to SPS over the past three years.

- First Student's pro list includes the fact that First Student has been in the Puget Sound market for over 30 years.

This statement completely disregards the subpar poor performance that has plagued those past 30 years. By adding this statement to First Student's pro list, SPS is voting for the status quo despite the fact that families within the district and the entire community have repeatedly asked for a change.

The bidding process for public works has several purposes, including protection of the general public from fraud, collusion, and favoritism, and provision of a **fair forum** for those interested in bidding on public contracts. See *Skyline Contractors, Inc. v. Spokane Housing Authority*, 172 Wash. App. 193 (Div. 3 2012). "This requires a guarantee of **impartial treatment** for all those participating in public bidding." *A. A. B. Elec., Inc. v. Stevenson Pub. Sch. Dist. No. 303*, 5 Wash. App. 887, 890 (1971). Here, the scores given by SPS violate the essence of the public bidding process by failing to be grounded in reason and logic. Rather, the scores appear to be the result of arbitrary and capricious decisions that fail to provide impartial treatment to the bid participants.

4. SPS's Cancellation of the First RFP Was Arbitrary

SPS's decision to cancel the first RFP and issue a second RFP was arbitrary and it unfairly benefitted First Student. As set forth in Zūm's first bid protest letter, SPS made demonstrable mistakes in calculating Zūm's and First Student's Total Price Points. Had SPS properly calculated the price of service using First Student's and Zūm's actual best and final offers, SPS would have seen that Zūm's bid was approximately **\$3.36 million lower per year and \$16.8 million lower over the 5-year term** than First Student. When recalculated using both bidders' best-and-final offers, **Zūm outscored First Student by approximately 50 points**. On that basis alone, SPS should have awarded the bid to Zūm. Instead, SPS inexplicably **cancelled** the first RFP altogether and issued a new RFP that was substantively identical to the first one.

SPS's decision to cancel the first RFP and its repeated delays in this bidding process reflect what seems to be SPS's improper bias towards First Student. By cancelling the RFP, SPS essentially gave First Student a dry run that allowed First Student to have access to scoring sheets, Zūm's bid, and various other materials that First Student would use to improve its bid on the second RFP. For example, First Student could see that their failure to accept SPS's terms and conditions resulted in receiving 10 points fewer than Zūm in the first RFP process. Armed with this knowledge, First Student accepted SPS's terms and conditions on the second go-round. Second, now that scorers could see what their colleagues were scoring various elements, each scorer could theoretically change their scoring in ways to favor the incumbent First Student. SPS therefore made it impossible for true blind scoring to occur in the second RFP. Finally, SPS's repeated delays appear designed to favor First Student by creating an atmosphere where SPS is left with only one option: the incumbent provider, First Student.

SPS did not initially articulate a reason why it cancelled the first RFP. On April 29, 2022, for the very first time, an SPS official publicly stated, "[t]he previous request for proposals was cancelled to allow the district to improve its selection process."³² But as discussed above, the SPS selection process was not improved at all; to the contrary, the second selection process was marred with equally concerning calculation and scoring errors.

5. First Student is not a Responsive and Responsible bidder.

To win a public contract under Washington law, the vendor must be the "lowest responsive and responsible" bidder. Wash. Rev. Code § 39.26.160(1)(a)(iii). An agency must consider factors such as "[t]he ability, capacity, and skill of the bidder to perform the contract or provide the service," "[t]he character, integrity, reputation, judgment, experience, and efficiency of the bidder," and "[t]he quality of performance of previous contracts or services." *Id.* § 39.26.160(2). In addition, the agency may consider whether "the bid encourages diverse contractor participation" and "the bid considers human health and environmental impacts." *Id.* § 39.26.160(3).

Based on the limited information Zūm has received thus far, it appears that SPS did not conduct a threshold analysis regarding whether First Student qualifies as a "responsible bidder." Had SPS conducted such an analysis, SPS would likely have concluded that First Student failed to demonstrate the responsibility factors required under Washington law.

First Student has failed SPS. First Student's tenure covered the "years of some of the rockiest school-bus service that Seattle kids have ever experienced."³³ Reports of "chronically late buses" and "frenetic bus services" abound.³⁴ In one instance, it was reported that a First Student driver had spent the morning looking for the keys to his bus, but First Student had marked him as having

³² Ex. 24, *Seattle Schools may tap First Student again for another school bus contract*, The Seattle Times (April 29, 2022).

³³ Ex. 1, *In Seattle schools, the cost of buses climb as transportation falters. Is there a choice?*, The Seattle Times (updated Dec. 27, 2021).

³⁴ *Id.*

departed.³⁵ In the 2016-2017 school year, First Student buses were an hour late over 5,000 times and were more than 15 minutes late 4,600 times.³⁶ From 2016-2019, students in Seattle Public Schools (“SPS”) missed “thousands of hours of class waiting for a [First Student] yellow school bus.”³⁷

First Student’s troubles have only gotten worse. During the COVID-19 pandemic, First Student suffered a severe bus driver shortage in Seattle that resulted in a suspension of “approximately 142 routes out of the district’s 600 total bus routes.”³⁸ SPS Assistant Superintendent of Operations Fred Podesta was quoted in an article saying “It’s our hope that the staffing shortages faced by First Student will be resolved as quickly as possible so we can resume – and improve upon – all bus service.”³⁹ One SPS parent reported that she was not receiving texts or emails from First Student about transportation for her third-grade student, despite calling First Student multiple times.⁴⁰ She said “I have nowhere to check for updates. So, since that’s been a mess in the morning and I have no idea what to rely on, I’ve just been taking him in the morning, which means I’m just late to work.”⁴¹

Despite the poor bus service, SPS has experienced a 36 percent *increase* in school transportation costs since the 2016–2017 school year.⁴² SPS spends more on school transportation per student than the national or Washington state average.⁴³

First Student’s relationship with its unionized employees also is irresponsible. In early 2018, First Student’s bus drivers engaged in a worker strike that “left families of some 12,000 students scrambling to find ways to get their children to school.”⁴⁴ A spokeswoman of the union representing First Student’s Seattle school bus drivers stated First Student’s “business model is based on paying their employees as little as possible with no benefits.”⁴⁵ Seattle is not alone; First Student has faced labor strikes in cities such as Alhambra, Glendale, and Pasadena, California and even Montreal in Canada.⁴⁶

³⁵ Ex. 20, *Seattle Public Schools has a transportation problem. Will this year be any better?*, The Seattle Times (Sept. 4, 2019).

³⁶ *Id.*

³⁷ *Id.*

³⁸ Ex. 3, *Seattle Public Schools suspends 142 bus routes due to driver shortage*, King 5 (updated Oct. 18, 2021).

³⁹ Ex. 25, *Seattle Public Schools to suspend 142 bus routes starting next week amid driver shortage*, Seattle PI (Oct. 15, 2021).

⁴⁰ Ex. 26, *Seattle Public Schools families struggle with ongoing bus delays*, King 5 (Sept. 23, 2021).

⁴¹ *Id.*

⁴² Ex. 1, *In Seattle schools, the cost of buses climb as transportation falters. Is there a choice?*, The Seattle Times (updated Dec. 27, 2021).

⁴³ *Id.*

⁴⁴ Ex. 27, *Seattle’s contractor for school buses, First Student, is no stranger to labor disputes*, The Seattle Times (Feb. 4, 2018).

⁴⁵ *Id.*

⁴⁶ *Id.*

First Student's history with the Seattle community demonstrates that it has repeatedly failed SPS. In fact, one newspaper reported that First Student's internal corporate financial statements describe their negotiating strategy as "up or out," meaning "increase its rate of return with a school district or walk away from it."⁴⁷ Notably, Seattle twice agreed to raise rates paid to First Student since 2017.⁴⁸

Unlike First Student, Zūm does possess the "ability, capacity, skill . . . character, integrity, reputation, judgment, experience, and efficiency" necessary for the job. Wash. Rev. Code § 39.26.160(2). In the last few years, Zūm has helped large urban districts like SPS break away from First Student. And the results have been promising.

Unlike First Student, Zūm did not suffer from extreme driver shortages or service outages during the pandemic. Zūm focuses significant energy and resources in maintaining a positive work culture by offering better wages, benefits, and training. Zūm is committed to providing SPS exceptional, uninterrupted service. Zūm is also at the forefront of introducing technological advancements in the industry. Not only was Zūm offering the district a brand new state-of-the-art fleet, but Zūm was also prepared to provide SPS with real-time performance data in order to promote 100% transparency and accountability. Zūm's Parent App also allows parents / guardians to track their students' ride in real time and view when their child was safely picked up and dropped off—transparency and visibility that increases safety and provides parents with the peace of mind they have been asking for but never received from First Student.

Awarding the bid to Zūm would also promote "diverse contractor participation." Wash. Rev. Code § 39.26.160(3)(b). Zūm is led by first generation female immigrant. Eighty percent of Zūm's leadership team are women, and the majority of the leadership team are immigrants.

Lastly, Zūm is the only bidder that sufficiently "considers human health and environmental impacts." See *id.* at § 39.26.160(3)(d). Zūm is the first and only 100% carbon neutral student transportation company in the U.S. Zūm is proposing to provide SPS 100% carbon neutral transportation to SPS from day one of the contract.

In sum, SPS should have considered whether First Student even qualified as a "responsive and responsible bidder." In assessing the factors set forth under Washington law, it is clear that Zūm is a responsive and responsible bidder, while First Student is not. On that basis alone, SPS should rescind its decision and award the contract to Zūm.

6. SPS May Have Violated The Requirements Set Forth in the RFP.

"Public contracts awarded pursuant to competitive bidding procedures must be substantially in accordance with the terms of the invitation to bid." *Platt Elec. Supply, Inc. v. City of Seattle, Div. of Purchasing*, 16 Wash. App. 265, 279 (1976); see also *Skyline Contractors, Inc. v. Spokane Hous. Auth.*, 172 Wash. App. 193, 201 (2012).

⁴⁷ Ex. 18, *As Seattle Schools' busing woes persist, it has few options to ding its contractor*, The Seattle Times (updated Nov. 8, 2021).

⁴⁸ *Id.*

Based on the limited information Zūm has thus far received, it appears that SPS may have meaningfully and improperly altered the requirements set forth in the RFP or that First Student did not properly follow the defined RFP procedures. For example, the RFP provides:

- “In the event that a firm attempts to contact any official, employee, or representative of Seattle Public Schools in any manner contrary to the above [specified] requirements, said firm may be disqualified for further consideration.”
- “Any firm failing to submit information in accordance with the procedures set forth herein may be considered non-responsive.”
- “Upon receipt of best and final proposals, the Committee will select the best proposal, all factors considered.”
- “If the proposer has had a contract terminated for default in the last five years, this must be indicated. . . . If the proposer has had a contract terminated for default in this period, then the proposer shall submit full details including the other party’s name, address, and phone number. The District will evaluate the facts and may, at its sole discretion, reject the proposal on the grounds of the proposer’s past experience.”

In addition, the announcement date for awarding the contract was delayed several times without explanation in a manner that benefited the incumbent, First Student.

Reservation of Rights

As of the date of this protest, Zūm has not had the opportunity to carefully review First Student’s bid or communications with SPS. At this time, Zūm’s grounds for protest are based solely on its proposal, the RFP, and certain communications it had with SPS throughout the selection process.

Zūm plans to submit a public records request and anticipates that other grounds of protest, as well as additional facts to supplement the protest grounds asserted herein, may be discovered from the information obtained through the public records request. Therefore, Zūm reserves its right to supplement its protest.

Remedy Sought

Zūm requests that SPS take the following actions:

1. Recalculate the price scoring using the minimum number of Type A (Lift, Walk-On) required by the RFP, which should result in awarding the entire contract to Zūm; or, in the alternative,
2. Find that First Student is not a responsive and responsible bidder and award the entire contract to Zūm; or, in the alternative,
3. Find that First Student is not a responsive and responsible bidder and award a meaningful portion of the contract to Zūm; or, in the alternative,

4. Allow Zūm and First Student to make presentations to the SPS Board of Directors to allow it to vote on the more responsible bidder.
5. Cancel the RFP process and initiate a new RFP process consistent with Washington law.

Conclusion

SPS's repeated and unfair delays have caused this process to extend nearly five months past the initial expected completion date of January 2022. In light of these prejudicial delays and the pending school year, Zūm requests that SPS provide its response by Friday, May 6, 2022.

Please give this Protest your immediate attention and issue a prompt decision on all matters raised herein. We look forward to your response.

Sincerely,



Daniel R. Suvor
of O'MELVENY & MYERS LLP

Attorney for Zūm