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BY EMAIL

Contracting Services
Attn.: JoLynn Berge
Chief Financial Officer
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. RFP102112, "Student Transportation Services for 2022-2025 and Succeeding Years."***

To Whom It May Concern:

Seattle Public School ("SPS") students and parents deserve better than the unreliable transportation services provided by multi-national company First Student, Inc. ("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 changed when Zūm Services, Inc. ("Zūm") submitted its bid in response to SPS's Request for Proposal No. RFP102112, "Student Transportation Services for 2022-2025 and Succeeding Years" (the "RFP"). Zūm is a first-generation immigrant, female-founded and led student transportation company that aims to bring student transportation into a new age that enables equity, innovation, efficiency, and sustainability that cannot be found with legacy pupil transport providers. Zūm combines cutting edge software with right-sized fleets to provide a modern, integrated transportation system.

¹ Ex. 16, *In Seattle schools, the cost of buses climb as transportation falters. Is there a choice?*, The Seattle Times (updated Dec. 27, 2021).

² Ex. 17, *Seattle's contractor for school buses, First Student, is no stranger to labor disputes*, The Seattle Times (Feb. 4, 2018).

Zūm's bid indisputably offered higher quality school transportation services than First Student's bid. Zūm scored over **22 points higher** than First Student on substantive qualification metrics.³ Nevertheless, SPS awarded the contract to First Student because First Student's price of service was allegedly lower than Zūm's.

But there was a fatal problem in SPS's calculation of the prices of service; SPS used the incorrect 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 bid approximately \$3.36 million lower than First Student. In other words, ***Zūm offered better services for a lower price.*** On that basis alone, SPS should rescind its decision and award the contract in its entirety to Zūm.

Even if SPS refuses to correct this mistake, it should still award the transportation contract to Zūm because of First Student's demonstrated ineptitude and inability to serve SPS's transportation needs. Short of awarding Zūm the contract, SPS must at least restart the bidding process, which has been plagued by irreparable errors.

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. Zūm has proven itself to be a responsive, transparent, fiscally responsible, and all-weather dependable student transportation partner for SPS students and their families.

On or about October 28, 2021, SPS released the "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. Zūm's bid focused on four goals: (1) rebuilding trust with the SPS community; (2) complementing SPS's core values of diversity, equity, and inclusion; (3) ensuring transparency and accountability for SPS staff and families; and (4) providing environmentally sustainable transportation.

Between November 30, 2021, and the date of this letter, Zūm and SPS have communicated extensively regarding Zūm's bid. On January 10, 2022, Contracting Services Manager Nancy Milgate asked Zūm for answers to 17 questions.⁵ Within two days, Zūm answered all 17 questions.⁶ On January 12, 2022, Ms. Milgate again requested information from Zūm, including

³ Ex. 1, Final Evaluation Points (Dec. 8, 2021).

⁴ Ex. 2, Request for Proposal No. RFP102112: Student Transportation Services for 2022-2025 and Succeeding Years.

⁵ Ex. 3, January 10, 2022 letter from SPS to Zūm.

⁶ Ex. 4, Zūm response to SPS.

an updated pricing proposal.⁷ On January 18, 2022, Zūm provided the requested update.⁸ On February 8, 2022, Ms. Milgate inquired whether Zūm would be interested in a contract for *selected* transportation services.⁹

Also on February 8, 2022, Ms. Milgate asked Zūm to submit its “Best and Final offer of pricing for Three-tier, Six-hour daily rate service.”¹⁰ On February 9, 2022, Zūm provided SPS with its “Best and Final Offer Pricing (BAFO) for Three-tier, Six-hour daily rate service”¹¹ and reminded SPS of the tangible advantages over First Student that Zūm was offering, including a brand-new fleet, extensive technological advancements at no additional cost that would increase transparency, carbon neutral transportation, and a focus on equity and diversity.¹²

On February 11, 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 On February 14, 2022, Zūm submitted a public records request seeking, among other things, First Student’s bid and any communications between SPS and First Student.¹⁵ One day later, Ms. Milgate sent Zūm a “Final Evaluation Points” scoring sheet for Zūm to review before its scheduled meeting this coming Friday, February 18, 2022.¹⁶ The scoring summary reflects an evaluation system in which six judges scored First Student’s and Zūm’s bids on five categories: (1) “prior relevant experience,” (2) “vendor’s approach,” (3) “references,” (4) “Contractor demonstrates they will have required personnel to cover RFP requirements,” and (5) willingness to accept SPS’s terms and conditions.¹⁷ These five categories of “qualification points” added up to a maximum of 700 points. SPS then awarded up to 300 “price points” based on each bidder’s price offer.

Notably, the scoring summary reveals that Zūm outperformed First Student by over 22 points when it came to all substantive qualifications. It also reveals that SPS awarded price points based on Zūm’s and First Student’s initial price offers—a decision that makes no sense given that SPS requested and received best-and-final price offers from both bidders. The scoring summary also falsely states that Zūm’s price of service is around \$3 million more than First Student’s. But this entry calculation is inaccurate and nonsensical. Despite requesting a best and final offer price from Zūm, SPS’s calculations used Zūm’s original offer to calculate the price of service, instead

⁷ Ex. 5, January 12, 2022 letter from SPS to Zūm.

⁸ Ex. 6, January 18, 2022 letter from Zūm to SPS.

⁹ Ex. 7, February 8, 2022 letter from SPS to Zūm.

¹⁰ Ex. 8, February 8, 2022 letter from SPS to Zūm requesting Best and Final offer.

¹¹ Ex. 9, February 9, 2022 letter from Zūm to SPS providing Best and Final Offer Pricing.

¹² Zūm representatives also spoke by phone with SPS representatives at several points.

¹³ Ex. 10, February 11, 2022 letter from SPS to Zūm.

¹⁴ Ex. 11, February 11, 2022 letter from SPS to Zūm.

¹⁵ Ex. 12, February 14, 2022 Public Records Request Form.

¹⁶ Ex. 11, February 11-16, 2022, email chain between SPS and Zūm.

¹⁷ Ex. 1, Final Evaluation Points (Dec. 8, 2021).

of Züm's February 9, 2022 best-and-final-offer price.¹⁸ SPS also did not use First Student's best-and-final-offer price when it calculated the price of service in the "Final Evaluation Points."

Had SPS compared the bidders' best-and-final-offer prices, it would have seen that Züm offered to provide transportation services for **\$3.36 million less** per year than First Student. Properly calculated using both bidders' best-and-final offers, the scoring summary shows Züm outperforming First Student by approximately 50 points.

Bases for Protest

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

On Friday, February 11, 2022, SPS informed Züm 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." Züm therefore submits this protest on February 16, 2022, which is within three working days of February 11, 2022.

2. Züm's Bid Is Better for SPS Based on Züm's Qualifications and Price of Service.

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)). Here, Züm indisputably offered the better work at the better price.

As shown in the Final Evaluation Points (Figure 1 below), Züm's bid scored over **22 points higher** than First Student's bid on substantive qualification metrics.

¹⁸ SPS ignored Zum's Best and Final offer, which would have saves taxpayers more than \$2.9 million. SPS' unexplained application of Züm's original, as opposed to its Best and Final offer, throws the integrity of the entire RFP process into question.

Figure 1 – Final Evaluation Points

Final Evaluation Points RFP102112: Student Transportation Services for 2022-2025 and Succeeding Years December 8, 2021									
Note: points shown are FINAL points. The final evaluation points in some categories may change as a result of vendor product demonstrations, interviews, references, or other factors.									
VENDOR	Prior Relevant Experience	Vendor's Approach	References	Contractor demonstrates they will have required personnel to cover RFP requirements	Willingness to Accept T's & C's	Total Qualification Points	Price Points		Total Points
							Price of Service	TOTAL Points for Services	TOTAL POINTS
VENDOR	200	100	100	200	100	700	3 tier, 6hr w/ excess hours X 180 days	300	
First Student	165	65	78	100	90	498	\$ 30,165,798.60	300	873.0
	180	80	78	180	90	608			
	200	70	78	190	90	628			
	190	70	78	180	90	608			
	200	70	78	100	90	538			
	200	60	78	130	90	558			
						573.0			
Zum	100	70	75	120	100	465	\$ 33,890,277.60	267	862.9
	160	90	75	160	100	585			
	160	100	75	180	100	615			
	160	100	75	190	100	625			
	190	100	75	190	100	655			
	175	100	75	180	100	630			
						595.8			

In the Final Evaluation Points, SPS calculated a total price of service for Zūm’s bid of \$33,890,277.60, while SPS calculated a total price of service for First Student’s bid of \$30,165,798.60. SPS granted First Student 300 points for price and Zūm 267 points for price.¹⁹ After adding up the qualification points and price points, SPS awarded First Student 873 total points and Zūm 862.9 total points.

But there is a fatal problem in SPS’s calculation of the prices of service; SPS did not use either party’s proper bids. Instead of using Zūm’s and First Student’s best-and-final price offers, SPS **calculated the price of service using the parties’ outdated and no longer relevant initial pricing offer**, an inexplicable decision given that SPS requested updated pricing offers from both bidders.

Had SPS properly calculated the price of service using First Student’s and Zūm’s best-and-final offers, SPS would have seen that First Student bid \$34,319,563.20 while Zūm bid \$30,952,929.60—**\$3.36 million less than First Student**. In this example, Zūm scores almost 50 points higher than First Student, as shown in Figure 2 below.

¹⁹ It appears that SPS calculated the price points by calculating that First Student’s alleged price of service was 89 percent of Zūm’s alleged price of service; granting First Student all of the 300 available price points for being the alleged lowest bidder; and calculating 89 percent of 300, which is approximately 267. This approach is arguably arbitrary and Zūm looks forward to learning how SPS established this methodology.

Figure 2 – Best and Final Offers

Final Evaluation Points (Based on BAFO)									
RFP102112: Student Transportation Services for 2022-2025 and Succeeding Years December 8, 2021									
Note: points shown are FINAL points. The final evaluation points in some categories may change as a result of vendor product demonstrations, interviews, references, or other factors.									
First Student BAFO and Zum BAFO									
VENDOR	Prior Relevant Experience	Vendor's Approach	References	Contractor demonstrates they will have required personnel to cover RFP requirements	Willingness to Accept T's & C's	Total Qualification Points	Price Points		Total Points
							Price of Service	TOTAL Points for Services	TOTAL POINTS
	200	100	100	200	100	700	3 tier, 6hr w/ excess hours X 180 days	300	
	165	65	78	100	90	498	\$34,319,563.20	270.57	843.57
	180	80	78	180	90	608			
	200	70	78	190	90	628			
	190	70	78	180	90	608			
	200	70	78	100	90	538			
	200	60	78	130	90	558			
First Student						573			
	100	70	75	120	100	465	\$30,952,929.60	300	895.8
	160	90	75	160	100	585			
	160	100	75	180	100	615			
	160	100	75	190	100	625			
	190	100	75	190	100	655			
	175	100	75	180	100	630			
Zum						595.8			

Even if the SPS had considered only the lowest offer from each bidder, Zūm still would have won the contract. First Student’s lowest price (its initial, outdated offer) was for \$30,165,798.60, while Zūm’s lowest price (its best-and-final offer) was for \$30,952,929.60. First Student’s somewhat lower price—just \$800,000 less than Zūm’s—would not be enough to overcome Zūm’s advantage in qualification points. Therefore, under this alternative calculation, as shown in Figure 3 below, Zūm should still have been awarded the contract given its 14 point overall advantage over First Student.

Figure 3 – Lowest Offers

Final Evaluation Points (Based on BAFO)										
RFP102112: Student Transportation Services for 2022-2025 and Succeeding Years December 8, 2021										
Note: points shown are FINAL points. The final evaluation points in some categories may change as a result of vendor product demonstrations, interviews, re										
First Student Original and Zum BAFO										
VENDOR	Prior Relevant Experience	Vendor's Approach	References	Contractor demonstrates they will have required personnel to cover RFP requirements	Willingness to Accept T's & C's	Total Qualification Points	Price Points		Total Points	
							Price of Service	TOTAL Points for Services	TOTAL POINTS	
	200	100	100	200	100	700	3 tier, 6hr w/ excess hours X 180 days	300		
	165	65	78	100	90	498	\$30,165,798.60	300	873	
	180	80	78	180	90	608				
	200	70	78	190	90	628				
	190	70	78	180	90	608				
	200	70	78	100	90	538				
	200	60	78	130	90	558				
First Student						573				
	100	70	75	120	100	465	\$30,952,929.60	292.37	888.17	
	160	90	75	160	100	585				
	160	100	75	180	100	615				
	160	100	75	190	100	625				
	190	100	75	190	100	655				
	175	100	75	180	100	630				
Zum						595.8				

In sum, had SPS compared the relevant price offers from Züm and First Student—the best-and-final offers that SPS itself requested—Züm would have scored higher than First Student on total qualification points and on total price points, resulting in a 50-point overall advantage over First Student. Alternatively, if SPS compared the lowest prices offered by the parties, Züm would still carry a 14-point overall advantage. No matter how SPS slices it, Züm offered the best work at the lowest price practicable. *Savage*, 75 Wash.2d at 621. SPS should correct its improper price calculations and award Züm the entire contract—just as SPS would have done if it had properly compared the bidders’ offers in the first instance.

3. 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 Züm has received thusfar, 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."²⁰ Reports of "chronically late buses" and "frenetic bus services" abound.²¹ 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 departed.²² 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.²³ From 2016-2019, students in Seattle Public Schools ("SPS") missed "thousands of hours of class waiting for a [First Student] yellow school bus."²⁴

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."²⁵ 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."²⁶ 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.²⁷ 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."²⁸

Despite the poor bus service, SPS has experienced a 36 percent *increase* in school transportation costs since the 2016-2017 school year.²⁹ SPS spends more on school transportation per student than the national or Washington state average.³⁰

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

²⁰ Ex. 16, *In Seattle schools, the cost of buses climb as transportation falters. Is there a choice?*, The Seattle Times (updated Dec. 27, 2021).

²¹ *Id.*

²² Ex. 18, *Seattle Public Schools has a transportation problem. Will this year be any better?*, The Seattle Times (Sept. 4, 2019).

²³ *Id.*

²⁴ *Id.*

²⁵ Ex. 19, *Seattle Public Schools suspends 142 bus routes due to driver shortage*, King 5 (updated Oct. 18, 2021)

²⁶ Ex. 20, *Seattle Public Schools to suspend 142 bus routes starting next week amid driver shortage*, Seattle PI (Oct. 15, 2021)

²⁷ Ex. 21, *Seattle Public Schools families struggle with ongoing bus delays*, King 5 (Sept. 23, 2021)

²⁸ *Id.*

²⁹ Ex. 16, *In Seattle schools, the cost of buses climb as transportation falters. Is there a choice?*, The Seattle Times (updated Dec. 27, 2021).

³⁰ *Id.*

scrambling to find ways to get their children to school.”³¹ 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.”³² Seattle is not alone; First Student has faced labor strikes in cities such as Alhambra, Glendale, and Pasadena, California and even Montreal in Canada.³³

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.”³⁴ Notably, Seattle twice agreed to raise rates paid to First Student since 2017.³⁵

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 is Zūm offering the district a brand new state-of-the-art fleet, but Zūm is 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.

³¹ Ex. 17, *Seattle’s contractor for school buses, First Student, is no stranger to labor disputes*, The Seattle Times (Feb. 4, 2018).

³² *Id.*

³³ *Id.*

³⁴ Ex. 22, *As Seattle Schools’ busing woes persist, it has few options to ding its contractor*, The Seattle Times (updated Nov. 8, 2021).

³⁵ *Id.*

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.

4. The Scoring System Employed By SPS Appears To Be Arbitrary And Capricious.

“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).

Based on the limited information Zūm has thus far received, it appears that SPS employed an arbitrary and capricious scoring methodology. Zūm is unaware of whether the six graders were provided guidance on how to score the five “qualifications” categories. Based on the massive disparity between certain scores, however, it appears that the SPS graders either were provided no scoring guidance or improperly applied the scoring guidance they received. Zūm believes a standardized and professional scoring rubric would have resulted in Zūm receiving even more qualification points. Given the inherent defects of the scoring system, SPS should begin the bidding process anew and ensure the process is compliant with Washington law, which requires clear and public scoring guidelines.

On February 16, 2022, SPS informed Zūm that SPS allegedly understood that the best and final offers Zūm and First Student submitted were solely applicable in the event SPS awarded the contract to both vendors. But the initial request for the best and final offer did not say it was only applicable in the event two vendors shared the contract award. Moreover, both Zūm’s and First Student’s final and best offers clearly envisioned the possibility of the party being the sole recipient of the contract. Both companies, for example, quote prices for a total number of buses that would only be applicable if the company was the sole vendor. SPS’s decision to ignore the fact that Zūm’s offer applied to a single-vendor contract was arbitrary and potentially cost SPS millions of dollars in lost savings.

5. 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).

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.³⁶

Zūm believes that the evidence uncovered through its public records request may shed light on whether some of the RFP’s procedures (including but not limited to those identified above) were improperly altered, thereby rendering the bid process unenforceable. If so, Zūm requests that SPS cancel the RFP process and begin another RFP process consistent with Washington law.

Reservation of Rights

As of the date of this protest, Zūm has not had the opportunity to 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.

On February 14, 2022, one working day after the notification of the final decision, Zūm filed a public records request to SPS. As of the time of this letter’s submission, Zūm has not received any information as a result of its public records request. Zūm 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 Final Evaluation Points summary sheet with each party’s best and final offer and award the entire contract to Zūm; or, in the alternative,

³⁶ Ex 2, Request for Proposal No. RFP102112: Student Transportation Services for 2022-2025 and Succeeding Years; Ex. 13, Addendum No. 1 to RFP; Ex. 14, Addendum No. 2 to RFP; Ex. 15, Addendum No. 3 to RFP.

2. Recalculate the Final Evaluation Points summary sheet with each party's lowest offer 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 the entire contract to Zūm; or, in the alternative,
4. 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,
5. Cancel the RFP process and initiate a new RFP process consistent with Washington law.

Conclusion

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