

(ATTACHMENT 7) ACTION ON THE AWARD OF PROFESSIONAL SERVICES CONTRACTS

Contract Requisition Number: CR057563
Contract Number: C031042
Vendor Number: V016471

MILWAUKEE BOARD OF SCHOOL DIRECTORS BUSING CONTRACT

This Contract is being entered into this 1st day of November, 2022, by and between **First Student, Inc.** (“Contractor”) and the Milwaukee Board of School Directors (“MPS”), a school district organized and operating pursuant to Wisconsin Statutes. Contractor shall further be held to the “*General Specifications and Operating Procedures*”, (the “Specifications”), attached hereto as Exhibit A and incorporated by reference.

1. SCOPE OF SERVICES

Contractor shall specifically perform the following tasks:

Contractor shall provide yellow school bus transportation for MPS in accordance with RFB 5810 and Contractor’s Response to RFB 5810 which are incorporated as reference.

Contractor shall provide, at its own expense, all personnel required to perform the services under this Contract.

2. TERM

This Contract shall be in effect from November 1, 2022 through September 30, 2024.

No work shall commence before a Contractor receives a fully executed Contract and has been given approval to proceed. Any work performed by the Contractor prior to obtaining a fully-executed Contract with approval to proceed shall not be compensated pursuant to this Contract. Any continuation of the Contract beyond this term must be set forth in writing and signed by the original signatories to the Contract.

3. COMPENSATION

Subject to the escalation clauses set forth herein, Contractor’s pricing for the term of the Contract shall be as follows:

Traditional Schools (T) - 30 Minute Route / 10 miles in length - two (2) buses per day - five (5) days a week

School	Time	First Student, Inc.
		Flat rate, per bus
Auer Avenue School	6:00pm	\$ 135.00
Hawthorne	6:00pm	\$ 135.00
Greenfield School	5:30pm	\$ 160.00
Kluge	5:30pm	\$ 160.00
Hopkins Lloyd	4:30pm	\$ 160.00
Eighty-First Street School	4:30pm	\$ 160.00
W.G. Bruce Elementary	4:30pm	\$ 160.00
Grant School	4:30pm	\$ 160.00
Browning School	4:30pm	\$ 160.00
Samuel Clemens	4:30pm	\$ 160.00
Milwaukee Sign Language School	4:30pm	\$ 160.00
Escuela Vieau	4:30pm	\$ 160.00
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Manitoba	4:30pm	\$ 160.00
Milwaukee Parkside	5:00pm	\$ 160.00

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Specialty Schools (S) - 1 Hour Route / Up to 20 miles in length - two (2) buses per day - five (5) days a week

School	Time	First Student, Inc.
		Flat rate, per bus
Washington High School	5:30pm	\$ 180.00
Morgandale School	6:00pm	\$ 180.00
Riverside University High School	5:00pm	\$ 180.00
Bay View High School	6:00pm	\$ 180.00
Bradley Tech and Trade	6:00pm	\$ 200.00
James Madison Academic Campus	6:00pm	\$ 180.00
Milwaukee Parkside	4:30pm	\$ 200.00
Lloyd Barbee Montessori	4:30pm	\$ 200.00
Milwaukee French Immersion School	4:30pm	\$ 200.00
Bay View High School	4:30pm	\$ 200.00
Alliance High School	4:30pm	\$ 200.00
Hamilton HS	4:30pm	\$ 200.00
Pulaski	4:30pm	\$ 200.00
Milwaukee German Immersion School	4:30pm	\$ 200.00

Total compensation under this Contract shall not exceed \$3,600,000.00.

Contractor shall invoice on a monthly basis according to the pricing set forth herein for the routes. Invoices shall be submitted to:

MPS Transportation Services
5225 W. Vliet Street
Milwaukee, WI 53208

A properly submitted invoice must include: the route number; the school(s) being served; the number of days service was provided; and the cost per route. Additional requirements for invoices are found in G-40 of the Specifications.

As a matter of practice, MPS attempts to pay all invoices in 30 days. It is mutually agreed that State Prompt pay law does not apply to this Contract.

Unless otherwise specified by the Director of Business of Business and Transportation Services, MPS shall not pay invoices submitted more than 60 days after actual work. In the case of grant funding, no payments shall be made after grant close out. Final invoices must be marked as such.

4. TERMINAL OPERATIONS

The terminal locations for Contractor is as follows:

- a. 5873 N 55th Street, Milwaukee, WI 53218
- b. 4150 West Mitchell Street, Milwaukee, WI 53215

5. NON APPROPRIATION OF FUNDS

This Contract is contingent upon the appropriation of sufficient funds by the State of Wisconsin and appropriate MPS officials.

6. NON-DISCRIMINATION

In the performance of work under this Contract, Contractor shall not discriminate in any way against any employee or applicant for employment on the basis of a person's sex, race, age, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation, disability, or socio-economic status. This prohibition includes but is not limited to employment; promotions, demotions and transfers; recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. Contractor is required to include a similar provision in all subcontracts to this Contract.

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If MPS determines Contractor has violated this non-discrimination policy, MPS may terminate this Contract without liability for undelivered services or materials. MPS may also deem the Contractor ineligible to participate in future contracts with MPS.

7. INDEMNITY

Notwithstanding any references to the contrary, Contractor assumes full liability for all of its acts or omissions in the performance of this Contract, as well as the acts or omissions of its subcontractors. Contractor shall indemnify and hold harmless MPS, its agents, officers and employees against all liabilities, losses, judgments, decrees, costs, and expenses that may be claimed against MPS as a result of granting of this Contract to said Contractor, or that may result from the carelessness or neglect of said Contractor, its agents, or employees. If judgment is recovered against MPS in suits of law or equity for any reason, including by reason of the carelessness, negligence, or acts or omissions of the Contractor, against such persons, firms or corporations carrying out the provisions of the Contract for the Contractor, the Contractor assumes full liability for such judgment, not only as to any monetary award, but also as to the costs, attorneys' fees or other expenses resulting therefrom.

In accordance with applicable laws, MPS shall be responsible for defending and paying judgments on behalf of its officers, employees and agents while acting within the scope of their employment or agency for any claims that may arise out of MPS' negligence for acts, policies, or directives that affect the activities covered by this Contract.

8. DEFENSE OF SUITS

In the event any court action or administrative proceeding is brought against MPS or any of its officers, agents, or employees, for Contractor or its subcontractors' acts or failure in whole or in part to perform any acts required by this Contract, MPS shall tender its defense of any claim or action at law or equity to Contractor or Contractor's insurer, and upon such tender it shall be the duty of Contractor and Contractor's insurer to defend such claim or action without cost or expense to MPS, its officers, agents or employees. Contractor shall be solely responsible for the conduct and performance of the services performed under this Contract.

9. BACKGROUND CHECKS

Criminal background checks are required as set forth in G-09 of the Specifications.

10. INSURANCE AND PROOF OF FINANCIAL RESPONSIBILITY

Contractor understands and agrees that financial responsibility for claims or damages to any person, or to Contractor's employees and agents, shall rest with Contractor. Contractor and its subcontractors shall effect and maintain the insurance coverage set forth in G-13 of the Specifications. Contractor's indemnification obligation shall not be reduced in any way by existence or non-existence, limitation, amount or type of damages, compensation, or benefits payable under Workers' Compensation laws or other insurance provisions.

11. IRREPARABLE HARM

It is mutually agreed the breach of this Contract on Contractor's part shall result in irreparable and continuing damage to MPS for which money damages may not provide adequate relief. Therefore, the breach of this Contract on Contractor's part shall entitle MPS to both preliminary and permanent injunctive relief and money damages insofar as they can be determined under the circumstances. Provisions for Liquidated Damages are found in G-42 of the Specifications.

12. TERMINATION

For violations of or failure to adequately fulfill a contract, the Board may, within its sole discretion, terminate said Contract as set forth herein. When feasible, MPS must give 30 days' notice of the breach. The Contract shall not be terminated if, upon receipt of the notice, Contractor promptly cures the alleged violation within ten (10) days. In the event of termination, MPS will only be liable for the services rendered through the date of termination and not the uncompleted portion, or for any materials or services Purchased or paid for by Contractor for use in completing the Contract. Nothing in this Contract or any documents incorporated by reference shall prevent MPS from immediately terminating a Contract if the health, safety or welfare of MPS students is in imminent peril.

Additionally, it is understood that strict adherence to the provisions of this Contract, including, but not limited to, starting points, destinations and times of departure and arrival, are necessary to adequately fulfill this Contract. For violations of or failure to adequately fulfill a contract, the Board may, within its sole discretion, terminate this Contract. Failure to terminate shall not constitute a waiver of the Board's right to terminate for subsequent violations of or failure to adequately fulfill the Contract.

MPS further reserves the right to terminate this Contract without liability if it determines to bring transportation services in-house.

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In lieu of terminating the entire Contract for a breach of contract, MPS may, in its sole discretion, reassign buses from Contractor to another contractor with available buses.

13. COMPLIANCE WITH APPLICABLE LAWS

Contractor shall comply with any and all applicable federal, state or local laws, rules and regulations, including such policies as may be enacted from time to time by MPS. Such statutes, rules and regulations of the federal government, the State of Wisconsin, and policies of MPS are incorporated herein by reference the same as if set out verbatim. If the statutes, rules and regulations should conflict with these terms, then it is understood that this Contract shall be deemed modified to conform to such statutes, rules and regulations.

14. INDEPENDENT CONTRACTOR

Contractor agrees and stipulates that in performing this Contract, it is acting as an Independent Contractor, and that no relationship of employer and employee, partnership or joint venture is created by this Contract. Contractor has exclusive control over work hours, location, and other details of such services, and MPS' sole interest is to ensure that said service shall be performed and rendered in a competent, safe, efficient, timely and satisfactory manner in accordance with the terms of this Contract.

Contractor has the sole obligation to provide for and pay any contribution or taxes required by federal, state or local authorities imposed on or measured by income. Contractor specifically covenant not to file any complaint, charge, or claim with any local, state or federal agency or court in which Contractor claims to be or to have been an employee of MPS during the period of time covered by this Contract and that if any such agency or court assumes jurisdiction of any complaint, charge or claim against MPS on Contractor's behalf, Contractor will request such agency or court to dismiss such matter. MPS shall not be charged any obligation or responsibility whatsoever of extending any fringe benefits which may be extended to MPS employees, including any insurance, or pension plans.

Contractor further agrees that MPS is not to be charged with the obligation or responsibility of extending any fringe benefits such as hospital, medical and life insurance, or pension plans which may be extended to employees of MPS from time-to-time and further agree to indemnify and hold harmless MPS and all its employees, officers and agents from any liability for personal injuries, including death, or for damage to or loss of personal property, which might occur as a result of the performance of the services provided for under this Contract.

15. ASSIGNMENT LIMITATION

This Contract shall be binding upon and inure to the benefit of the parties and their successors and assigns; provided, however, that neither party shall assign its obligations hereunder without the prior written consent of the other.

16. PROHIBITED PRACTICES

A. Contractor during the period of this Contract shall not hire, retain or use for compensation any member, officer, or employee of MPS to perform services under this Contract, or any other person who, to the knowledge of Contractor, has a conflict of interest.

B. Contractor hereby attests it is familiar with MPS's Code of Ethics, providing in pertinent part, "[a]n employee of Milwaukee Public Schools may not accept any gift or gratuity in excess of \$25.00 annually from any person, persons, group or any firm which does business with or is attempting to do business with MPS."

C. No person may enter into this Contract for services that the MPS employee would otherwise perform as an employee.

D. No current or former MPS employee may perform services on a professional services Contract without the prior written consent of the Director of Human Relations or her designee.

17. LIVING WAGE REQUIREMENT

Contractor shall comply with, and ensure its subcontractors performing work under this Contract comply with, Milwaukee Board of School Directors' Administrative Policy 3.09(17), which requires that employees be paid a "living wage."

18. NOTICES

Notices to either party provided for in this Contract shall be sufficient if sent by Certified or Registered mail, postage prepaid, addressed to the signatories on this Contract, or to their designees.

19. WAIVER

The waiver or failure of either Party to exercise in any respect any rights provided for in this Contract shall not be deemed a waiver of any further right under this Contract.

20. INTEGRATION / SEVERABILITY

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This Contract and its exhibits and addenda, if any, constitute the entire Contract among the Parties with respect to the subject matter hereof and supersede all prior proposals, negotiations, conversations, discussions and Contracts among the Parties concerning the subject matter hereof. No amendment or modification of any provision of this Contract shall be effective unless the same shall be in writing and signed by both Parties.

The District shall not be bound by any terms and conditions included in of Contractor's packaging, service catalog, brochure, technical data sheet or other document which attempts to impose any conditions at variance with or in addition to the terms and conditions contained herein.

If any term or provision of this Contract should be declared invalid by a court of competent jurisdiction or by operation of law, the remaining terms and provisions of this Contract shall be interpreted as if such invalid Contracts or covenants were not contained herein.

21. CHOICE OF LAW & FORUM

The state courts of Wisconsin shall be the sole forum for all disputes arising of this Contract. The validity, construction, enforcement and effect of this Contract shall be governed solely by the laws of the State of Wisconsin.

22. TIMING

Time is of the essence in this Contract.

23. CERTIFICATION REGARDING DEBARMENT OR SUSPENSION

Contractor certifies that neither Contractor or its principals; its subcontractors or their principals; the sub-recipients (if applicable) or their principals are suspended, debarred, proposed for debarment, voluntarily excluded from covered transactions, or otherwise disqualified by any federal department or agency from doing business with the Federal Government pursuant to Executive Orders 12549 and 12689. Contractor specifically covenants that neither the Contractor or its principals, its sub-contractors or their principals, or the sub-recipients (if applicable) or their principals are included on the Excluded Parties List System ("EPLS") maintained by the General Services Administration ("GSA").

24. FORCE MAJEURE

Terms are found in Section VII of the Specifications.

25. STUDENT DATA

Contractor acknowledges that student data is protected by both federal and state law. *See* Wis. Stat. § 118.125; 20 U.S.C. § 1232g(b); 34 C.F.R. § 99.1 *et seq.* If MPS determines that Contractor has disclosed any student record information in violation of either federal or state law, without prejudice to any other rights or remedies the MPS may have, MPS shall be entitled to immediately terminate this and every other existing Contract without further liability. Moreover, MPS may bar Contractor from future MPS contracts for varying periods up to and including permanent debarment.

Contractor agrees to maintain the confidentiality of any information regarding student riders which may be obtained from any sources associated with this service, other than information necessary to the performance of service, or the health and safety of the riders.

26. NON-DISCLOSURE

Absent prior written consent of the person listed in Section 3 or his/her designee, Contractor shall not: (1) disclose, publish, or disseminate any information, not a matter of public record, that is received by reason of this Contract, regardless of whether the Contractor is or is not under contract at the time of the disclosure; or (2) disclose, publish, or disseminate any information developed for MPS under this Contract. Contractor agrees to take all reasonable precautions to prevent any unauthorized use, disclosure, publication, or dissemination of the same information.

All information and any derivatives thereof, whether created by MPS or Contractor under this Contract remains the property of MPS and no license or other rights to such information is granted or implied hereby. For purposes of this Contract, "derivatives" shall mean: (i) for copyrightable or copyrighted material, any translation, abridgment, revision, or other form in which an existing work may be recast, transformed, or adapted; and (ii) for patentable or patented material, any improvement thereon.

Within ten business days of the earlier of receipt of MPS' written or oral request, or final payment, Contractor will return all documents, records, and copies thereof it obtained during the development of the work product covered by this Contract.

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27. MPS LOGO/PUBLICITY

No Contractor shall use the MPS Logo in its literature or issue a press release about the subject of this Contract without prior written notice to and written approval of MPS' Director of Communication and Public Affairs.

28. ORDER OF PRIORITY

In the event of a conflict among the documents constituting this Contract, the order of priority to resolve the conflict shall be: 1) this Contract; 2) the Specifications; and 3) Request for Bid 5810.

29. PUBLIC RECORDS

Both parties understand that the Board is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Contract are subject to and conditioned on the provisions of Wis. Stat. § 19.21, *et seq.* Contractor acknowledges that it is obligated to assist the Board in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of this Contract, and that the Contractor must defend and hold the Board harmless from liability under the law. Except as otherwise authorized, those records shall be maintained for a period of seven years after receipt of final payment under this Contract.

30. COMPLIANCE REQUIREMENT

The requirements that follow are required per 12-month contract term. The HUB requirement on this Contract is 5%. The student engagement requirement of this Contract is 900 hours. The Career Education requirement for this Contract is 30 hours. Failure to achieve these requirements may result in the application of some or all of the sanctions set forth in Administrative Policy 3.10, which is hereby incorporated by reference.

IN WITNESS WHEREOF, the parties here to have executed this Contract on the day, month and year first above written.

CONTRACTOR (Vendor #: V0594733)

MILWAUKEE BOARD OF SCHOOL DIRECTORS

By: _____

By: _____
*Janine Adamczyk, Director
Procurement & Risk Management*

Date: _____

Date: _____

First Student, Inc.
600 Vine Street, Ste. 1400
Cincinnati, OH 45202

By: _____
*Keith P. Posley, Ed.D.
Superintendent of Schools*

SS# or FEIN: XXXXXXXXXX

Date: _____

By: _____
*Robert E. Peterson, President
Milwaukee Board of School Directors*

Date: _____

Budget Code:
CTP-0-A-9W3-RC-EPPT (\$3,600,000.00)

Reviewed by Insurance Compliance:

By: _____

Date: _____