

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
BID PROTEST

CONTINENTAL SERVICE GROUP, INC.,)

Plaintiff,)

and)

PIONEER CREDIT RECOVERY, INC.,)

Plaintiff,)

v.)

THE UNITED STATES,)

Defendant,)

and)

CBE GROUP, INC.,)

FINANCIAL MANAGEMENT
SYSTEMS, INC.,)

GC SERVICES LIMITED
PARTNERSHIP)

PREMIERE CREDIT OF NORTH
AMERICA, LLC,)

VALUE RECOVERY HOLDINGS, LLC,)

WINDHAM PROFESSIONALS, INC.,)

Intervenors.)

No. 17-449C

No. 17-499C

(Consolidated)

Chief Judge Susan G. Braden

DEFENDANT'S MOTION TO VACATE THE PRELIMINARY INJUNCTION

CHAD A. READLER
Acting Assistant Attorney General

ROBERT E. KIRSHCMAN, JR.
Director

PATRICIA M. McCARTHY
Assistant Director

OF COUNSEL:

JOSE OTERO
General Attorney
Office of the General Counsel
U.S. Department of Education

SARA FALK
General Attorney
Office of the General Counsel
U.S. Department of Education

LAUREN S. MOORE
U.S. Department of Justice
Commercial Litigation Branch, Civil Division
P.O. Box 480
Ben Franklin Station
Washington, D.C. 20044
Tel: (202) 616-0333
Fax: (202) 514-8640
E-mail: lauren.moore@usdoj.gov

Attorneys for Defendant

May 19, 2017

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DEFENDANT'S MOTION TO VACATE THE PRELIMINARY INJUNCTION

Pursuant to Rule 7 of the Rules of the Court of Federal Claims (RCFC), defendant, the United States, respectfully requests that the Court lift the preliminary injunction enjoining the assignment of defaulted student loan accounts to uncontested, preexisting contracts. In addition

to our standing objections to the Court's injunctions, the Court's injunction is contrary to law because on May 2, 2017, the Court dismissed the claim underlying this injunction for lack of jurisdiction. The injunction is also contrary to the Competition in Contracting Act, 31 U.S.C. § 3553, which addresses a stay of performance of only an awardee's contract pending the protest of a procurement.

I. Background

On March 28, 2017, Continental Service Group, Inc. (Continental) filed its complaint in this Court. In its complaint, Continental challenged the Department of Education's (ED) determination that Continental was non-responsible under Solicitation No. ED-FSA-16-R-0009 (solicitation), for the collection of defaulted student loans under ED's Federal Student Aid (FSA) Program, and thus ineligible for award. Specifically, Continental alleged that its small business participation plan and subcontracting plans met the requirements of the solicitation. Cont. Compl. ¶¶ 68-106.¹

Continental's complaint also alleged that it was not receiving as many accounts under its existing 2015 award term extension (ATE) debt collection contract as it had anticipated. Cont. Compl. ¶¶ 107-114. Continental alleged that it was entitled to accounts that were instead assigned to other valid, existing contracts. *Id.* The Court subsequently dismissed this claim for lack of jurisdiction by order dated May 2, 2017.

On March 29, 2017, the Court held an initial status conference in the *Continental* case. During the conference, counsel for Continental requested that the Court impose a stay of performance of the seven contracts awarded under the solicitation at issue in this protest. Continental also requested that the Court impose a stay of ED's assignment of defaulted student

¹ "Cont. Compl." refers to Continental's complaint, filed on March 28, 2017.

loans to any other existing contract, pursuant to Count VII of Continental's complaint. Counsel for the Government explained to the Court that the Court does not possess jurisdiction to entertain Count VII of Continental's complaint, and objected to Continental's request for an injunction on valid, existing contracts.

The Court issued a Temporary Restraining Order (TRO) the evening of March 29, 2017. In its TRO, the Court restrained ED from authorizing the awardees under the solicitation from performing work on their contracts. The TRO also enjoined ED from "transferring work to be performed under the contract at issue in this case to other contracting vehicles to circumvent or moot this bid protest for a period of fourteen days, *i.e.*, until April 12, 2017."

On April 4, 2017, although disagreeing with the TRO in all respects, we filed a motion to amend the TRO, and requested that the Court revise the TRO to rescind the Court's second prohibition, on ED's assignment of defaulted loan accounts to valid, existing contracts that are in place for those services. In our motion, we demonstrated that not only is the Court's prohibition contrary to established precedent involving stays of only protested contracts, but Continental's claim with respect to this issue is an administrative contract claim that should be pursued under the Contract Disputes Act, 41 U.S.C. § 7103 (CDA), and over which this Court does not possess jurisdiction. We explained that Continental's allegations contained in paragraphs 107 through 114 of its complaint, that it did not receive the expected volume of debt collection work under its existing ATE contract, should be submitted as a CDA-certified claim to the contracting officer for that contract. Indeed, this Court's bid protest jurisdiction does not confer jurisdiction over Continental's administrative contract claim. Furthermore, we contended that a stay of work under a contested contract should not preclude the Government from obtaining necessary services under other lawful, existing contracts.

The Court declined to revise the TRO, and instead extended the TRO in its entirety by orders dated April 10, 2017 and April 19, 2017. On May 2, 2017, the Court issued a preliminary injunction with the same requirements.

II. The Court Should Vacate The Preliminary Injunction Because
The Court Has Dismissed The Underlying Claim

The Court's May 2, 2017 preliminary injunction enjoining the assignment of defaulted loan accounts to valid, existing contracts is contrary to law and should be rescinded because the Court has dismissed the claim underlying this injunction. On May 2, 2017, the Court granted defendant's motion to dismiss Count VII of Continental's complaint for lack of subject-matter jurisdiction. As we explained above, Count VII of Continental's complaint alleged that Continental was not receiving the anticipated volume of work on its 2015 contract because ED had assigned accounts to other valid contracts.

Because the Court has dismissed Continental's CDA claim, that other contracts should not be assigned defaulted loan accounts, the Court should not enjoin ED from assigning accounts to those contracts. The United States Supreme Court, in *Munaf v. Geren*, 553 U.S. 674 (2008), held that a district court improperly issued an injunction when, in that case, petitioners' request for habeas relief should have been promptly dismissed. *Id.* at 691. Similarly, the Court of Appeals for the Federal Circuit held in *U.S. Association of Importers of Textiles and Apparel v. United States*, 413 F.3d 1344 (Fed. Cir. 2005), that "[t]he question of jurisdiction closely affects the [plaintiff's] likelihood of success on its motion for a preliminary injunction." *Id.* at 1348. The Federal Circuit held in *U.S. Association* that the trial court's failure to consider the Government's jurisdictional challenge in granting the plaintiff's motion for a preliminary injunction was legal error. *Id.*

Here, the Court has already determined that it does not possess jurisdiction to entertain Continentals' challenge to ED's assignment of defaulted accounts to other existing contracts. Because the Court lacks jurisdiction over this claim, according to the Supreme Court in *Munaf*, the Court's injunction is improper. Therefore, the Court should lift the injunction, and allow ED to assign defaulted student loan accounts to valid, existing contracts.

III. In Addition To A Dismissal Of Its Underlying Claim,
Continental Cannot Demonstrate That It Satisfies Any
Of The Factors For A Preliminary Injunction

A. Standard Of Review

"A preliminary injunction is a 'drastic and extraordinary remedy that is not to be routinely granted.'" *National Steel Car., Ltd. v. Canadian Pac. Ry., Ltd.*, 357 F.3d 1319, 1324 (Fed. Cir. 2004) (quoting *Intel Corp. v. ULSI Sys. Tech., Inc.*, 995 F.2d 1566, 1568 (Fed. Cir. 1993)). Because the grant of an injunction is "extraordinary relief," the Court applies "exacting standards." *Lermer Germany GmbH v. Lermer Corp.*, 94 F.3d 1575, 1577 (Fed. Cir. 1996), *cert. denied*, 519 U.S. 1059 (1997).

To obtain preliminary injunctive relief, the moving party must demonstrate:

- (1) A reasonable likelihood of success on the merits;
- (2) an irreparable harm suffered by the movant;
- (3) that the harm suffered by the movant if the temporary injunctive relief is not granted will outweigh the harm to the Government and third parties if the temporary relief is granted; and
- (4) that granting the injunction serves the public interest.

Sofamor Danek Group, Inc. v. DePuy-Motech, Inc., 74 F.3d 1216, 1219 (Fed. Cir. 1996); *Kola Nut Travel, Inc. v. United States*, 68 Fed. Cl. 195, 197 (2005); *see also New England Braiding Co., Inc. v. A.W. Chesterton Co.*, 970 F.2d 878, 882 (Fed. Cir. 1992); *T.J. Smith and Nephew Ltd.*

v. Consolidated Medical Equipment, Inc., 821 F.2d 646, 647 (Fed. Cir. 1987). Although no one factor is independently dispositive, the movant must point to clear and convincing evidence that each factor has been satisfied. *FMC Corp. v. United States*, 3 F.3d 424, 427 (Fed. Cir. 1993); *Bean Dredging Corp. v. United States*, 22 Cl. Ct. 519, 522 (1991); *Kola Nut*, 68 Fed. Cl. at 197 (citing *Baird Corp. v. United States*, Cl. Ct. 662, 664 (1983)). Thus, Continental bears the heavy burden of proving entitlement to injunctive relief. *Id.* In contrast, the Government, as the non-movant, need only establish the absence of an adequate showing as to either likelihood of success or irreparable harm to defeat the motion for preliminary injunction. *See Reebok Int'l Ltd. v. J. Baker, Inc.*, 32 F.3d 1552, 1556 (Fed. Cir. 1994).

B. Continental, Nor Any Party, Will Suffer Irreparable Harm
Should The Court Vacate The Preliminary Injunction

Neither Continental, nor any other party to this litigation, will suffer irreparable injury should the Court lift the preliminary injunction on valid, existing contracts, because the Court cannot provide Continental the relief that it seeks. To constitute irreparable harm, the alleged injury must be “certain and great,” not theoretical. *Tenacre Found. V. INS*, 78 F.3d 693, 695 (D.C. Cir. 1996); *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985).

As we explained above, the Court has dismissed the underlying claim upon which the preliminary injunction on existing contracts was based, namely, Count VII of Continental’s complaint. It follows that the Court cannot address the merits of Continental’s claim. Thus, neither Continental nor any other plaintiff will suffer irreparable injury because the Court cannot provide the relief that Continental seeks.

C. Continental Cannot Succeed On The Merits Of Its Dismissed Claim

Continental cannot succeed on the merits of the claim on which the preliminary injunction is based because the Court has dismissed the claim. As we explained above, it is contrary to law for a court to enjoin an action when the underlying claim has been dismissed. Indeed, the Supreme Court held in *Munaf* that it is improper for a Court to issue an injunction when the underlying claim has been, or should have been, dismissed. Here, the underlying claim *has already* been dismissed. Because this Court has ruled that it does not possess jurisdiction to entertain Count VII of Continental's complaint, Continental cannot succeed on the merits of its claim, and the Court should lift the preliminary injunction on the existing contracts.

Moreover, continuing the injunction on assigning defaulted accounts to existing contracts is contrary to the Competition in Contracting Act, 31 U.S.C. § 3553 (CICA). A stay under the CICA prohibits the protested awardee from receiving work under the protested contract, but it does *not* preclude the Government from assigning the same or similar work to other, lawful contracts. *See* 31 U.S.C. § 3553(d)(3)(A) (the contracting officer may not authorize performance of the challenged contract to begin while a protest is pending). Here, no party contests the validity of the small business contracts awarded in 2014 to perform debt collection work.

This Court has consistently held that the purpose of CICA's automatic stay provision is to preserve the *status quo* during the pendency of the protest. In this regard, this Court has encouraged and approved bridge contracts where the bridge contractor is assigned the work under the protested contract, and thus the agency is able to maintain the *status quo* during the protest. Maintaining the *status quo* allows the Government to continue to procure necessary goods and services utilizing a valid contract during a protest. *Carahsofttechnology Corp.*

v. United States, 86 Fed. Cl. 325, 347 (2009). *See also Keeton Corrections, Inc. v. United States*, 59 Fed. Cl. 753, 757-59 (2004) (agency could have continued awarding short-term, sole-source contracts to incumbent contractor during pendency of stay of protested contract, negating the need for an override); *Nortel Gov't Solutions, Inc. v. United States*, 84 Fed. Cl. 342, (2008) (because bridge contracts are a reasonable alternative, agency override decision was arbitrary and capricious); *Access Sys. Inc. v. United States*, 84 Fed. Cl. 241, 243 (2008) (award of bridge contract was not a *de facto* override because it did not disturb the *status quo*).

Here, the *status quo* is that, since April 2015, well before the solicitation under protest was issued, ED has assigned defaulted student loan accounts to the 11 small business contracts identified in Exhibit A. Decl. Wong,² ¶¶ 4, 5; Ex. A at 5 (identifying 11 small business contracts). These contracts were awarded under a small business set aside solicitation in 2014. Decl. Wong, ¶ 4. As Associate Administrator Wong explained, the Court's injunction has prevented ED from assigning new accounts to the small business contracts. Decl. Wong ¶ 9.

Lifting the preliminary injunction on valid existing contracts is in accordance with the CICA as well as case law. *See* 31 U.S.C. § 3553(d)(3)(A) (CICA stay requires only that work cannot be performed on the protested contract); *Keeton*, 59 Fed. Cl. at 757-59. Moreover, lifting the preliminary injunction to allow ED to assign defaulted accounts to current, valid contracts would appropriately maintain the *status quo*.

D. The Harm To The Government From A Continued Injunction Outweighs Any Harm To Plaintiffs

The harm to ED from a continued injunction on the assignment of defaulted student loans outweighs any harm to Continental. As we explained above, Continental will not suffer any

² Robb Wong is the Associate Administrator of the Office of Government Contracting and Business Development at the U.S. Small Business Administration.

harm should the Court lift the preliminary injunction, because the underlying claim has been dismissed.

The harm to the Government of a continued injunction, however, is severe. The Court's preliminary injunction has resulted in and will continue to cause immediate, extensive, and severe harm both to the Government as well as to ten of thousands of Federal student loan borrowers. Decl. Runcie³ ¶ 7. The Court's injunction has, and will continue to deprive the Government of significant revenue. Because of the Court's order, ED did not assign accounts to the small businesses in April 2017. Decl. Runcie ¶ 8. ED estimates that approximately 91,000 borrower accounts, most of them newly-defaulted, would have been assigned to the small businesses at that time. The total dollar value of those accounts is approximately \$2.1 billion. *Id.* For the month of May, 2017, ED would normally assign a new group of accounts on or about May 27, 2017. Decl. Runcie ¶ 9. ED estimates that approximately 143,000 additional accounts, most of them newly defaulted, will be available for assignment at that time. *Id.* The total dollar value of those accounts is approximately \$2.5 billion. *Id.* Therefore, by the end of May, 2017, a total of 234,000 borrowers, holding accounts valued at approximately \$4.6 billion, will have been denied loan account services if the Court's injunction is not lifted. Decl. Runcie ¶ 10.

ED estimates that, if the preliminary injunction is not lifted, the Government will have failed to collect approximately \$2.4 million by the end of June 2017. Decl. Runcie ¶ 13. There are additional significant costs to ED arising from the disruption of services due to the Court's order, but they are more difficult to ascertain at this time. Decl. Runcie ¶ 14.

³ James Runcie is the Chief Operating Officer of Federal Student Aid at the Department of Education.

Another way in which the Court's injunction is harming the Government, as well as borrowers, is by preventing ED from recalling accounts held by six contractors whose contracts expired on April 21, 2017.⁴ Decl. Runcie ¶ 16. ED cannot recall the accounts nor transfer them to the small business contractors. Decl. Runcie ¶ 17. Accordingly, those borrowers are unable to obtain certain critical services, such as establishing a new repayment agreement. Because many of the borrowers whose accounts have not been recalled are enrolled in rehabilitation programs, they may be particularly impacted by any disruption in service and may be at risk of falling out of rehabilitation. Decl. Runcie ¶ 18. ED's Default Resolution Group can provide only limited services as the accounts are still assigned to the contractor even though the contract has expired. *Id.*

When contractors are able to service defaulted accounts, the collection on those accounts increases significantly. Decl. Runcie ¶ 12. Many borrowers enroll in loan rehabilitation programs, in which they gain access to income-based repayment options and other significant benefits. If rehabilitation is successful, the borrower is no longer in default and ED removes the record of default from the borrower's credit reports. The loan returns to regular (non-default) servicing, at which time the borrower is eligible for all benefits associated with the loan prior to default, including deferments, and is no longer subject to additional collection costs. *Id.*

By prohibiting the assignment of any defaulted student loan accounts to any valid, existing contract, such as the 11 small business contracts, the Court has seriously disrupted the Government's defaulted student loan collection program. Decl. Runcie ¶ 15.

⁴ Plaintiffs Progressive Financial Services and Van Ru claim that the accounts on their expired contracts should not be recalled. Plaintiff Collection Technology, Inc. claims that no accounts should be assigned to the small business contracts. Because these are CDA claims, or claims that have no connection to the procurement at issue in this case, they should be dismissed. We intend to file motions to dismiss these complaints.

Because Continental cannot demonstrate harm, and because the harm to the Government, as well as student loan borrowers, has been and will continue to be severe and substantial, the harm to the Government of continuing the stay far exceeds any harm to Continental or other plaintiffs.

E. Vacating The Preliminary Injunction Would Serve
The Public Interest

Defendant submits that lifting the preliminary injunction on existing contracts would serve the public interest. As we explained above, the harm to the Government, or the public, in suspending all new student loan account work far outweigh any harm to Continental or any other plaintiff.

In addition to the reasons described above to vacate the injunction, the current small business contractors would be allowed to continue receiving assignments of new accounts. Should the Court continue the injunction for more than two months, past the end of May 2017, the small businesses will be forced to place loyal, skilled personnel on unpaid leave, or worse, terminate them. As one small business declarant stated, “[e]ither scenario will result in the permanent loss of our highly skilled workforce as they look for other job opportunities elsewhere given the uncertainty of the [c]ontract. Such a loss is not easily replaceable for a small business such as ourselves.” Decl. Traficante-Cann ¶ 15; *see also* Decl. Yanes ¶¶ 7, 8; Decl. Smith ¶¶ 7, 8. As Associate Administrator Wong stated, “[t]he [s]mall [b]usiness [c]ontractors likely will suffer disproportionate harm from the continuation of the prohibition on assigning new accounts. In general, small business contractors lack full access to credit and capital and, as such, are less able than larger businesses to withstand shocks to cash flow and performance schedules.” Decl. Wong ¶ 11. Associate Administrator Wong also explained that allowing the small business

contractors to resume their work advances the public interest by ensuring that [ED] utilizes the maximum possible capacity of its small business contractors. Decl. Wong ¶ 12.

The Court should lift the injunction because enjoining ED from placing student loan accounts with the 2014 small business contractors or any other existing contracts will result in ED having no active contracts with which to place new accounts. ED will be deprived from placing newly defaulted student loan accounts with longstanding contractors that perform this work, and the collection on those accounts will be stopped. Moreover, student borrowers will be deprived on critical information and services, including various programs that assist them in getting out of debt. These assistance programs are part of the collection services provided to ED under this work.

For these reasons, lifting the preliminary injunction would serve the public interest.

Finally, today the Court issued an order indicating that the Court “has no interest in continuing the injunction, but the Government must provide assurances that the ED will not award any of the work, subject to the proposed corrective action, to other contracting vehicles and dilute the amount of work available for potential awardees under Solicitation No. ED-FSA-16-R-0009.” Order at 2. To be clear, the Government is **not** providing any such assurances. As established above, such a request for assurances is beyond the Court’s authority to request because the claims not previously outside the Court’s subject-matter jurisdiction are now moot, and the Court therefore lacks jurisdiction to afford any relief whatsoever.

CONCLUSION

For these reasons, we respectfully request that the Court lift the preliminary injunction and allow defaulted loan accounts to be assigned to existing contracts.

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General

ROBERT E. KIRSHCMAN, JR.
Director

s/ Patricia M. McCarthy

PATRICIA M. McCARTHY
Assistant Director

s/ Lauren S. Moore

OF COUNSEL:

JOSE OTERO
General Attorney
Office of the General Counsel
U.S. Department of Education

SARA FALK
General Attorney
Office of the General Counsel
U.S. Department of Education

May 19, 2017

LAUREN S. MOORE
U.S. Department of Justice
Commercial Litigation Branch, Civil Division
P.O. Box 480
Ben Franklin Station
Washington, D.C. 20044
Tel: (202) 616-0333
Fax: (202) 514-8640
E-mail: lauren.moore@usdoj.gov

Attorneys for Defendant

EXHIBIT A

**ACTUAL/POTENTIAL BID PROTESTS BEFORE COURT OF FEDERAL CLAIMS ON
DEPARTMENT OF EDUCATION RELATED LITIGATION**

There are two (2) procurement decisions of the Department of Education (ED) which are under protest before the Court:

- 1) the decision in April 2015 to issue award term extensions ("ATE Awards") to five private collection agency (PCA) contracts initially awarded in 2009, and
- 2) the decision in December 2016 to award seven new PCA contracts ("December 2016 Awards").

LITIGATION RELATED TO ATE AWARDS

The April 2015 ATE Awards are the subject of the cases consolidated as Coast Professional et al (No. 15-207C). The protesters challenge Solicitation ED-FSA-09-O-0022, issued in 2008, and more specifically a down-select in April 2015 under Clause H.4 of the contracts resulting from that Solicitation. ED awarded five ATEs and denied ATEs to four other firms. The four (4) firms who were denied ATEs are the Plaintiffs in Coast Professional et al on protest before this court.

PLAINTIFFS ON ATE LITIGATION (Coast Professional et al (No. 15-207C) – they seek new ATEs

Protestor	Date COFC Protest Filed
Coast Professional, Inc.	March 2, 2015
National Recoveries, Inc.	March 9, 2015
Enterprise Recovery Systems, Inc. (aka Alltran)	March 10, 2015
Pioneer Credit Recovery, Inc.	March 16, 2015

DEFENDANT-INTERVENORS ON ATE LITIGATION (Coast Professional et al (CIV-15-2007C) – they hold ATEs

Protestor	ATE Contract Number
GC Services	ED-FSA-15-O0027
Windham Professional	ED-FSA-15-O0030
FMS	ED-FSA-15-O0028
ACT	ED-FSA-15-O0025
Continental Services	ED-FSA-15-O0029

The Department is taking voluntary corrective action in this litigation. ED will reconsider its decision to deny ATEs to the four plaintiffs. The Court has ordered parties to reconvene June 7, 2017 for a status conference.

ACTUAL/POTENTIAL BID PROTESTS BEFORE COURT OF FEDERAL CLAIMS ON
DEPARTMENT OF EDUCATION RELATED LITIGATION

LITIGATION RELATED TO DECEMBER 2016 AWARDS

On December 9, 2016, the Department of Education awarded seven indefinite delivery/indefinite quantity (IDIQ) contracts to the following vendors:

Financial Management Service Investment Corp.;
GC Services Limited Partnership;
Premiere Credit of North America, LLC;
The CBE Group;
Transworld Systems, Inc.;
Value Recovery Holding, LLC, and
Windham Professionals, Inc.

The December 2016 PCA awards were initially protested at GAO by 22 of 47 offerors. The challenge is to Solicitation ED-FSA-16-R-0009, issued in December 2015. Nine (9) of the 22 protesters lost at GAO, withdrew their protests, or were dismissed by GAO. Four (4) of those (9) nine have filed complaints at the Court:

Pioneer Credit Recovery, Inc. (GAO dismissed its protests)
Continental Services (withdrew its GAO protest)
Enterprise Recovery Systems, Inc. (ERS) (aka Alltran) (GAO denied its protest)
Account Control Technology (ACT) (GAO denied its protest)

**ACTUAL/POTENTIAL BID PROTESTS BEFORE COURT OF FEDERAL CLAIMS ON
DEPARTMENT OF EDUCATION RELATED LITIGATION**

PROTESTERS AT GAO WHO DID NOT PREVAIL, WITHDREW OR WERE DISMISSED

Protestor	Date GAO Protest Filed	Outcome at GAO	File/Appeal to COFC
Continental Service Group, Inc.	Jan. 9, 2017	Protester withdrew its protest on March 29, 2017	Filed March 28, 2017; COFC Docket No. 17-449
Account Control Technology, Inc.	Jan. 9, 2017	GAO denied the protest on March 27, 2017	Filed April 7 COFC Docket No. 17-493
Pioneer Credit Recovery	Jan. 9, 2017	GAO dismissed the protest on March 31, 2017 as matter is related to case pending before court of competent jurisdiction	Filed April 10, 2017 COFC Docket no. 17-499
Enterprise Recovery Systems, Inc. (aka Alltran)	Jan. 9, 2017	GAO denied the protest on March 27, 2017	Filed April 12, 2017 COFC Docket no. _
Central Credit Services	Jan. 5, 2017	GAO dismissed on January 30, 2017	n/a
Financial Asset Management Systems	Jan. 9, 2017	GAO dismissed on February 6, 2017	n/a
Weltman, Weinberg & Reis, Co.	Jan. 9, 2017	GAO dismissed on February 24, 2017	n/a
Global Receivables Solutions, Inc.	Jan. 9, 2017	GAO denied the protest on March 27, 2017	n/a
Sutherland Global Services	Jan. 9, 2017	GAO denied the protest on March 27, 2017	n/a

**ACTUAL/POTENTIAL BID PROTESTS BEFORE COURT OF FEDERAL CLAIMS ON
DEPARTMENT OF EDUCATION RELATED LITIGATION**

The other 13 GAO protesters prevailed at GAO. The Department is presently reviewing GAO's recommended corrective action.

PROTESTERS AT GAO WHOSE PROTESTS WERE SUSTAINED

Protestor	Date GAO Protest Filed	Outcome at GAO
Williams and Fudge, Inc.	Jan. 9, 2017	GAO sustained the protest on March 27, 2017; recommended corrective action.
Performant Recovery, Inc.	Jan. 9, 2017	GAO sustained the protest on March 27, 2017; recommended corrective action.
General Revenue Corp.	Jan. 9, 2017	GAO sustained the protest on March 27, 2017; recommended corrective action.
Collection Technology, Inc.	Jan. 9, 2017	GAO sustained the protest on March 27, 2017; recommended corrective action.
Texas Guaranteed Student Loan Corp.	Jan. 9, 2017	GAO sustained the protest on March 27, 2017; recommended corrective action.
Van Ru Credit Corp.	Jan. 9, 2017	GAO sustained the protest on March 27, 2017; recommended corrective action.
Progressive Financial Services, Inc.	Jan. 9, 2017	GAO sustained the protest on March 27, 2017; recommended corrective action.
Automated Collection Services, Inc.	Jan. 9, 2017	GAO sustained the protest on March 27, 2017; recommended corrective action.
Team Automated Collection Services, Inc.	Jan. 9, 2017	GAO sustained the protest on March 27, 2017; recommended corrective action.
Gatestone & Co. International, Inc.	Jan. 9, 2017	GAO sustained the protest on March 27, 2017; recommended corrective action.
Delta Management Associates, Inc.	Jan. 9, 2017	GAO sustained the protest on March 27, 2017; recommended corrective action.
Allied Interstate LLC	Jan. 9, 2017	GAO sustained the protest on March 27, 2017; recommended corrective action.
Collecto, Inc. d/b/a EOS CCA	Jan. 9, 2017	GAO sustained the protest on March 27, 2017; recommended corrective action.

**ACTUAL/POTENTIAL BID PROTESTS BEFORE COURT OF FEDERAL CLAIMS ON
DEPARTMENT OF EDUCATION RELATED LITIGATION**

SMALL BUSINESS CONTRACTOR POOL

Unrelated to any of the Solicitations and award decisions which are the subject of the above litigations, ED has held contracts with 11 small business firms for several years. Those awards were issued on September 30, 2014. The first of these eleven firms began performing collection services under those contracts in November 2015. Since November 2015, on a monthly basis, ED has transferred accounts needing collection services to some or all of these 11 small businesses. There are no bid protests or other litigation related to the award or administration of these contracts.

ED'S SMALL BUSINESS PCA CONTRACTORS

Small Business Contractor	Contract Number	Award Effective Date
Action Financial	ED-FSA-14-D-0010	September 30, 2014
Bass & Associates	ED-FSA-14-D-0011	September 30, 2014
Central Research, Inc.	ED-FSA-14-D-0012	September 30, 2014
Credit Adjustments Inc.	ED-FSA-14-D-0013	September 30, 2014
F.H. Cann & Associates, Inc.	ED-FSA-14-D-0014	September 30, 2014
Professional Bureau of Collections of Maryland, Inc.	ED-FSA-14-D-0015	September 30, 2014
Reliant Capital Solutions, LLC	ED-FSA-14-D-0016	September 30, 2014
Immediate Credit Recovery, Inc.	ED-FSA-14-D-0017	September 30, 2014
National Credit Services, Inc.	ED-FSA-14-D-0018	September 30, 2014
National Recoveries, Inc.	ED-FSA-14-D-0019	September 30, 2014
Coast Professional, Inc.	ED-FSA-14-D-0020	September 30, 2014

**ACTUAL/POTENTIAL BID PROTESTS BEFORE COURT OF FEDERAL CLAIMS ON
DEPARTMENT OF EDUCATION RELATED LITIGATION**

PCA CONTRACTS EXPIRING APRIL 21, 2017

On Friday, April 21, 2017, thirteen (13) of the 2009 PCA task orders will expire. On Saturday, April 22, 2017, the Department plans to recall the accounts being serviced under those task orders. The accounts that are recalled will be held and maintained under ED's Default Management Collections System (DMCS) contract. The recalled accounts will not be transferred to any PCA, in accordance with the Court's Temporary Restraining Order. The 13 contractors whose 2009 PCA task orders expire April 21, 2017 are:

PCA CONTRACTS EXPIRING APRIL 21, 2017

Name of PCA	End of Period of Performance	Dec 2016 awards	Disposition of GAO Protest	Coast Prof case Corrective Action
Allied Interstate LLC	April 21, 2017	n/a	Sustained	
The CBE Group	April 21, 2017	Awardee	n/a	
Collection Technology, Inc. (CTI)	April 21, 2017	n/a	Sustained	
Collecto, Inc. d/b/a EOS CCA	April 21, 2017	n/a	Sustained	
Delta Management Associates	April 21, 2017	n/a	Sustained	
Enterprise Recoveries Systems, Inc. (aka Alltran)	April 21, 2017	n/a	Denied	Pending
Financial Asset Management Systems, Inc.	April 21, 2017	n/a	Dismissed	
Performant Recovery, Inc.	April 21, 2017	n/a	Sustained	
Premiere Credit of North America, LLC	April 21, 2017	Awardee	n/a	
Progressive Financial Services, Inc.	April 21, 2017	n/a	Sustained	
Transworld Systems, Inc.	April 21, 2017	Awardee	n/a	
Van Ru Credit Corp.	April 21, 2017	n/a	Sustained	
Global Receivables Solutions, Inc.	April 21, 2017	n/a	Denied	

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
(Bid Protest)**

CONTINENTAL SERVICE GROUP, INC.,)	
)	
Plaintiff,)	
)	
and)	
)	
PIONEER CREDIT RECOVERY, INC.,)	
)	
Plaintiff,)	
)	
v.	)	No. 17-449C
	)	No. 17-499C
THE UNITED STATES,	)	(Consolidated)
	)	Chief Judge Braden
Defendant,)	
)	
and)	
)	
CBE GROUP, INC.,)	
)	
FINANCIAL MANAGEMENT)	
SYSTEMS, INC.,)	
)	
GC SERVICES LIMITED)	
PARTNERSHIP)	
)	
PREMIERE CREDIT of NORTH)	
AMERICA, LLC,)	
)	
VALUE RECOVERY HOLDINGS, LLC)	
)	
WINDHAM PROFESSIONALS, INC.,)	
)	
Intervenors.)	

DECLARATION OF ROBB N. WONG

I, Robb N. Wong, Associate Administrator, Office of Government Contracting and Business Development at the U.S. Small Business Administration (SBA), make the following declaration in lieu of an affidavit, as permitted by Section 1746 of Title 28 of the United States

Code. I am aware that this declaration will be filed with the United States Court of Federal Claims in connection with the bid protests filed by Continental Services Group, Inc. (Continental), docketed as Civ. Nos. 17-449C and 17-499C; Progressive Financial Services, docketed as Civ. No. 17-588C; Collection Technology, Inc., docketed as Civ. No. 17-578C; and Van Ru Credit Corporation, docketed as Civ. No. 17-633C. I also understand that this declaration is the legal equivalent of a statement under oath. This declaration is provided for the limited purpose of supporting the defendant's efforts to lift any injunction imposed by the Court against the small business contracts listed herein. I make this declaration to the best of my knowledge and belief, based on my personal knowledge and information made available to me in my official capacity:

1. On March 27, 2017, I was appointed by SBA Administrator Linda E. McMahon to serve as the Associate Administrator, Office of Government Contracting and Business Development, at the SBA. This is a political appointment, Presidential Appointee/No Senate Confirmation. As Associate Administrator, I serve as an advocate throughout the Federal Government on behalf of small business owners wanting to do business as Federal contractors and subcontractors. I also help to set small business contracting policy and hold Federal agencies accountable for their small business contracting goals.

2. The Office of Government Contracting and Business Development is tasked with aiding, assisting, and protecting small businesses, including fostering the maximum participation in contracting opportunities of the Government by small business concerns, including participants in the 8(a) Business Development (BD) program (a program designed to assist small businesses owned and controlled by socially and economically disadvantaged individuals), small

disadvantaged businesses (SDBs), women-owned small businesses, HUBZone small business and Service Disabled veteran owned small business concerns. 15 U.S.C. § 631(j). It is SBA's responsibility to assist these concerns in obtaining maximum practicable opportunity to participate in Federal prime contracts, subcontracts, and property sales. 15 U.S.C. § 644(g). The SBA is charged with working with procuring authorities to ensure that a fair proportion of all Federal purchases and contracts for property, services and construction for the Government in each industry category are placed with small business concerns. 15 U.S.C. § 644(a). The Office is the advocate on behalf of small business in the Federal procurement world.

3. Under the Small Business Act, Federal agencies conduct a variety of procurements that are reserved exclusively for small business participation. 15 U.S.C. §§ 637(a), 644, 657a, 657f. SBA has extensive regulations that describe the SBA's significant role in ensuring that small businesses are included in all of the Federal Government's procurement strategies. 13 C.F.R. §§ 125.1-125.30. These involve both Federal Government contract awards and large prime subcontract awards. These transactions are called "small business set-asides." Generally, where there are 2 or more small businesses that the contracting officer reasonably believes can perform the requirement, then the contracting officer shall set the requirement aside for small business. 13 C.F.R. § 125.2(f). Similarly, where a Contracting officer has a multiple award contract, the procuring Agency is required to assess the ability of small business concerns to perform all or parts of the award. 13 C.F.R. § 125.2(e). SBA works diligently to ensure that eligible small businesses are awarded their fair share of these strategies. The Federal Government has protest mechanisms in place to ensure that procurement decisions on set aside contracts are both substantively and procedurally proper. As set forth in 13 C.F.R. Part 121, these include small

business size protests, NAICS code protests, and challenges to decisions of a contracting officer to set aside a procurement.

4. The SBA is aware that, in February 2014, the Department of Education, Office of Federal Student Aid, issued solicitation ED-FSA-13-R-0006, as a total (100%) small business set aside. In the solicitation, the Department of Education sought small businesses to perform default collection services for the Department. We understand that the Department of Education awarded 11 contracts to small businesses (Small Business Contractors) in September 2014 to perform default collection services, including:

- a. Contract ED-FSA-14-D-0010, awarded on September 30, 2014 to Action Financial of Grant Pass, Oregon, a small business concern;
- b. Contract ED-FSA-14-D-0011, awarded on September 30, 2014 to Bass & Associates of Tucson, Arizona, a small business concern;
- c. Contract ED-FSA-14-D-0012, awarded on September 30, 2014 to Central Research, Inc. of Lowell, Arkansas, a Service Disabled Veteran Owned Small Business Concern;
- d. Contract ED-FSA-14-D-0020, awarded on September 30, 2014 to Coast Professional, Inc. of West Monroe, Louisiana, a small business concern;
- e. Contract ED-FSA-14-D-0013, awarded on September 30, 2014 to Credit Adjustments Inc. of Defiance, Ohio, a small business concern;
- f. Contract ED-FSA-14-D-0014, awarded on September 30, 2014 to F.H. Cann & Associates, Inc. of North Andover, Massachusetts, a Women-Owned Small Business Concern;
- g. Contract ED-FSA-14-D-0017, awarded on September 30, 2014 to Immediate Credit Recovery, Inc. of Wappingers Falls, New York, a small business concern;
- h. Contract ED-FSA-14-D-0018, awarded on September 30, 2014 to National Credit Services, Inc. of Woodinville, Washington, a small business concern;
- i. Contract ED-FSA-14-D-0019, awarded on September 30, 2014 to National Recoveries Inc. of Anoka, Minnesota, a small business concern;

- j. Contract ED-FSA-14-D-0015, awarded on September 30, 2014 to Professional Bureau of Collections of Maryland, Inc. of Greenwood Village, Colorado, a small business concern; and
- k. Contract ED-FSA-14-D-0016, awarded on September 30, 2014 to Reliant Capital Solutions of Columbus, Ohio, a small business concern.

5. The Small Business Contractors had been performing default loan collection services for the Department of Education pursuant to their contracts until, on March 29, 2017, this Court issued a Memorandum Opinion and Temporary Restraining Order (TRO) in the above captioned protest. The TRO, among other things, prohibited the Department of Education from “transferring work to be performed under the contract at issue in this case to other contracting vehicles to circumvent or moot this bid protest” until April 12, 2017.

6. On April 10, 2017, the Court extended the TRO until April 24, 2017.

7. On April 24, 2017, the Court extended (and modified) the TRO until May 2, 2017.

8. On May 2, 2017, the Court issued a preliminary injunction in the above captioned case that again prohibited the Department of Education from “transferring work to be performed under the contract at issue in this case to other contracting vehicles to circumvent or moot this bid protest” until May 22, 2017.

9. These injunctions have prevented the Small Business Contractors from being assigned new accounts by the Department of Education under their contracts with the agency.

10. The SBA became aware of these injunctions on or about May 1, 2017 when several Small Business Contractors alerted my Office to the effects of the TRO. The agency contacted the Department of Justice, in order to determine how to best present the SBA’s specific concerns

to the Court. The matter has been briefed before the Chief of Staff of the SBA. This declaration is the product of those efforts.

11. The Small Business Contractors likely will suffer disproportionate irreparable harm from the continuation of the prohibition on assigning new accounts. In general, small business contractors lack full access to credit and capital and, as such, are less able than larger businesses to withstand shocks to cash flow and performance schedules.

12. The continued stoppage of work on the small business set-aside contracts detrimentally impacts the Federal procurement system, which relies on the full participation of small business to promote competition in Federal contracting. Permitting the Small Business Contractors to resume work advances the public interest by ensuring that the Department of Education utilizes the maximum possible capacity of its small business contractors and encouraging the contractors' continued participation in Federal contracting.

DATED: 05/19/17



ROBB N. WONG

Associate Administrator, Office of Government Contracting and Business Development
United States Small Business Administration
409 Third Street SW
Washington, DC 20416

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
BID PROTEST

CONTINENTAL SERVICE GROUP, INC.,)	
)	
Plaintiff,)	
)	
and)	
)	
PIONEER CREDIT RECOVERY, INC.,)	
)	
Plaintiff,)	
)	
v.)	
	)	No. 17-499C
THE UNITED STATES,	)	(Consolidated)
	)	Chief Judge Braden
Defendant,)	
)	
and)	
)	
THE CBE GROUP, INC.,)	
)	
FINANCIAL MANAGEMENT)	
SYSTEMS, INC.,)	
)	
GC SERVICES LIMITED)	
PARTNERSHIP)	
)	
PREMIERE CREDIT of NORTH)	
AMERICA, LLC,)	
)	
VALUE RECOVERY HOLDINGS, LLC)	
)	
WINDHAM PROFESSIONALS, INC.,)	
)	
Intervenors.)	

DECLARATION OF JAMES W. RUNCIE,
CHIEF OPERATING OFFICER, FEDERAL STUDENT AID,
UNITED STATES DEPARTMENT OF EDUCATION

1. I, James W. Runcie, am the Chief Operating Officer of Federal Student Aid (FSA), a part of the United States Department of Education.
2. As FSA's highest official, I oversee all FSA programs and offices, including Business Operations and FSA Acquisitions.
3. I am providing this Declaration in support of the Government's request for relief from the Preliminary Injunction issued by the Court on May 2, 2017 in this case, as well as related cases *Progressive Financial Services, Inc. v. United States* (Fed. Cl. No. 17-558C), *Collection Technology, Inc. v. United States* (Fed. Cl. No. 17-578C), and *Van Ru Credit Corp. v. United States* (Fed. Cl. No. 17-633C).
4. Most critically, FSA requests that the Court lift that portion of the Preliminary Injunction which prohibits FSA from assigning accounts needing private collection agency (PCA) services to a group of small business contractors who have been performing such services since 2014.
5. The validity of those small business contracts is not subject to any legal challenge.
6. The Court's May 2, 2017 Preliminary Injunction states that the Department may not transfer "work to be performed under the contract at issue in this case to other contracting vehicles to circumvent or moot this bid protest." Similar language was included in temporary restraining orders first issued by the Court on March 29, 2017.
7. The Court's orders have been interpreted to prohibit FSA's assignment of accounts to the small businesses. As a direct result, the Government has been seriously harmed and tens of thousands of students across the country have been denied critical services and significant benefits.

8. Due to the Court's order, FSA did not assign accounts to the small businesses in April 2017. FSA estimates that approximately 91,000 borrower accounts, most of them newly-defaulted, would have been assigned to the small businesses at that time. The total dollar value of those accounts is approximately \$2.1 billion.¹
9. For the current month of May 2017, FSA would normally assign the new batch of accounts on or about May 27, 2017. The Department estimates that approximately 143,000 additional borrowers accounts, most of them newly defaulted, will be available for assignment at that time. The total dollar value of those accounts is approximately \$2.5 billion.
10. This means that by the end of this month (May 2017) a total of 234,000 borrowers (91,000 plus 143,000), holding accounts valued at \$4.6 billion (2.1 billion plus 2.5 billion), will have been denied PCA services if the Court's injunction is not lifted.
11. The delay in providing PCA services to borrowers has significant negative impacts on both the Government and on borrowers and their families.
12. When PCAs are able to service defaulted accounts, collection on the accounts increase significantly. Also, many borrowers enroll in rehabilitation programs, under which they gain access to income-based repayment options and other significant benefits. If rehabilitation is successful, the borrower is no longer in default and the Department removes the record of default from the borrower's credit reports. The loan returns to regular (non-default) servicing, at which time the borrower is eligible for all benefits associated with the loan prior to default, including deferments, and is no longer subject to additional collection costs.
13. FSA estimates that if the Preliminary Injunction is not lifted, the Government will have failed to collect approximately \$2.4 million by the end of June 2017.

¹ An earlier declaration filed by the Contracting Officer in these cases incorrectly stated this figure as \$21 million. This was an inadvertent mathematical error. FSA regrets the error.

14. There are certainly additional significant costs to the Department arising from the disruption of services due to the Court's orders, but which are more difficult to ascertain at this time.
15. I understand that April 2017 was the first time in at least four years that the Department was prevented, for reasons other than operational considerations, from allocating accounts needing PCA services. Essentially, the Plaintiffs have succeeded in seriously disrupting the Government's Federal student loan collection system, including work under eleven contracts awarded to small businesses years ago under an entirely separate solicitation.
16. A second way in which the Court's Preliminary Injunction is harming borrowers is by preventing FSA from recalling accounts held by six PCAs whose contracts expired on April 21, 2017.³
17. Due to the Court's order, FSA cannot recall the accounts nor transfer them to the small business contractors. Accordingly, those borrowers are unable to obtain certain critical services (e.g., establishing a new repayment agreement). FSA's Default Resolution Group can provide only limited services to those borrowers as the accounts are still assigned to the PCA but the PCA's contract has expired.
18. As many of the borrowers whose accounts have not been recalled are enrolled in rehabilitation programs, they may be particularly impacted by any disruption in service and may be at risk of falling out of rehabilitation.

³ On Saturday, April 22, 2017, thirteen (13) PCA contracts that were awarded in 2009 expired. On April 29, 2017, ED recalled the accounts from seven (7) out of those 13, leaving six (6) firms for which the account recall process remains interrupted. They are defendant-intervenors The CBE Group, Inc. and Premiere Credit of North America LLC, plaintiffs in related cases Alltran Education, Inc., Progressive Financial Services, Inc., and Collection Technology, Inc. (CTi), and Transword Systems Inc., who is not a party to this litigation.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 19th day of May, 2017.

A handwritten signature in black ink, appearing to read "James W. Runcie", is written over a horizontal line.

James W. Runcie
Chief Operating Officer
Federal Student Aid
United States Department of Education

UNITED STATES COURT OF FEDERAL CLAIMS
Bid Protest

CONTINENTAL SERVICES GROUP, INC.))	
Plaintiff,)	
)	
v.	)	Case No: 17-449C
	)	Chief Judge Braden
THE UNITED STATES,)	
)	
Defendant,)	
)	
and)	
)	
CBE GROUP, INC.,)	
)	
FINANCIAL MANAGEMENT)	
SYSTEMS, INC.,)	
)	
GC SERVICES LIMITED)	
PARTNERSHIP,)	
)	
PREMIERE CREDIT OF NORTH)	
AMERICA, LLC,)	
)	
VALUE RECOVERY HOLDINGS, LLC,)	
and)	
)	
WINDHAM PROFESSIONALS, INC.)	
)	
Defendant-Intervenors.)	
)	

DECLARATION OF SHERI A. TRAFICANTE-CANN

I, Sheri A. Traficante-Cann, based upon my personal knowledge, declare under penalty of perjury that the following is true and accurate to the best of my knowledge and belief:

1. I am over the age of 21, have knowledge of the facts set forth in this declaration, and am competent to testify to such facts.

2. I am the majority owner, President and Chief Executive Officer of F.H. Cann & Associates, Inc. ("FHC"). I founded FHC in 1999. I have more than twenty years of experience in the collection industry.
3. FHC is a certified woman-owned small business concern ("WOSB").
4. The Small Business Act of 1953 created the U.S. Small Business Administration ("SBA") to "aid, counsel, assist and protect, insofar as is possible, the interests of small business concerns". The SBA's charter stipulated it would ensure small businesses a "fair proportion" of government contracts. On September 30, 2014, after a long and competitive process, the U.S. Department of Education ("ED") awarded FHC a competitive small-business set-aside contract No. ED-FSA-14-D-0014 for debt collection (the "Contract") based upon its significant experience in default collections, superior performance, outstanding customer service and strong compliance and security.
5. The purpose of the SBA and the spirit of this small business set aside contract are each frustrated greatly by the current stays imposed by this Court.
6. FHC invested significant time and monetary resources on information security and, twenty months later on June 2, 2016, after a rigorous review process, ED granted FHC an authority to operate ("ATO"). The majority of small businesses that received contract awards in 2014 experienced a similar delay in receiving their ATO, as ED refined its requirements for awarding an ATO. The delay between award and receipt of the ATO significantly tested our limited resources as a small business.
7. There is no protest either before the U.S. Government Accountability Office or the U.S. Court of Federal Claims regarding the solicitation or award of our small business contract, or ED's other small business awards in 2014.
8. Despite the fact that there is no dispute that we are entitled to a contract award and to perform that Contract, the stay issued in the Temporary Restraining Order in the above-referenced case, and the stays subsequently entered, will potentially prevent small businesses like FHC from continuing to receive work from ED under our contracts for debt collection through May 22, 2017. Where the initial TRO would cause us significant, irreparable harm, the continued stay would be all the more devastating to FHC, causing more disruption to our work force and small business model.
9. With ED stopping work on our Contract because the Court extended its injunction to award of work pursuant to Solicitation No. ED-FSA-16-R-0009 "to other contracting vehicles," including small business contracts, FHC will again be in an untenable position of having to choose whether to: (1) pay personnel salaries at risk to keep qualified and experience personnel ready to meet EDs needs; or (2) terminate personnel working on this Contract. Since FHC began performance under the Contract, the labor market has significantly tightened.
10. FHC's success as a WOSB and a government contractor has been due in large part to our hospitable work environment. In December 2015, we were selected for the fourth straight year as one of the Best Places to Work in Collections. Our healthy company

culture has allowed us to retain our skilled workforce, despite the fact that they are regularly solicited by larger competitors.

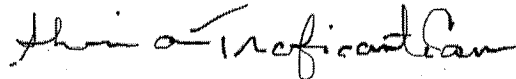
11. FHC has also become invested in assisting consumers resolve their defaulted education loan debt. We have built a well-deserved reputation among our industry peers as providing excellent customer service to these borrowers, and believe this is at the heart of the services we provide for ED.
12. On April 18, 2017, the United States filed a “Notice of Recalling Accounts From Expiring Contracts,” and “Notice That It Intends to Maintain The Recalled Accounts On A Non-Private Collection Agency Contract.” See ECF. No. 65. As the government acknowledges in its filing, the entire portfolios of 13 private collection agencies (“PCAs”) will be recalled on April 21, 2017 and will be administered by Federal Student Aid’s Default Resolution Group (“DRG”). It further stated that “The work of the DRG is very limited in comparison to the work of the PCAs, in that DRG staff may answer telephone calls received from student borrowers but cannot initiate telephone collections calls to borrowers. The DRG has historically performed such basic account maintenance work on recalled accounts while the accounts are prepared to be placed again with a PCA.” *Id.* at 2-3.
13. While FHC does not know how many accounts are affected by this action, based on our knowledge of the industry, we believe at a minimum tens of thousands of ***paying accounts*** are being recalled. The federal Rehabilitation Program can be a complex process for borrowers to navigate, and they need the full-time assistance that only trained, contracted PCAs can deliver at this time. These borrowers are trying to establish good credit and leave default by completing the Rehabilitation Program, but the prolonged stay entered by this Court will jeopardize many of them from successfully completing the process, requiring them to start all over again once the smoke clears from the current series of stays. Many will be disenchanted with the entire process and won’t bother to start again, subjecting them to involuntary repayment measures such as tax off-sets and administrative wage garnishment. Complaints will abound and the very constituency the Rehabilitation Program is meant to serve will be harmed irreparably.
14. In her memo of April 11, 2017 to Federal Student Aid,¹ Secretary of Education Betsy DeVos stated a critical goal of her new Department: “We have a duty to do right by both borrowers and taxpayers...to acquire new federal student loan capabilities that will provide borrowers with the tools necessary to efficiently repay their debt.” Accounts sitting within FSA’s DRG receiving less-than-optimal servicing frustrate this noble goal.
15. The gap between contract award and receipt of our ATO has already tested the loyalty of our employees. If the prolonged stay issued this week by this Court remains in place, causing ED to withhold work from FHC for at least two months, we will be required to

¹ See Memorandum from Betsy DeVos, Sec. of Ed., to James W. Runcie, Chief, COO, Federal Student Aid (Apr. 11, 2017), available at <https://www2.ed.gov/documents/press-releases/student-loan-servicer-recompete.pdf>.

place loyal, skilled personnel on unpaid leave, or worse, terminate them. Either scenario will result in the permanent loss of our highly skilled workforce as they look for other job opportunities elsewhere given the uncertainty of this Contract. Such a loss is not easily replaceable for a small business such as ourselves.

16. Since there is no guarantee of how or when the Court will resolve this protest, we fully expect personnel who are placed on unpaid leave or forced to take leave at an inconvenient time to find new jobs during a period of forced unemployment, or, for current incumbent employees, a period of no job security. If the Court ordered stay requiring ED to withhold the placement of accounts for at least two months, we will lose important staff through no fault of their own.
17. FHC has sustained serious business expenses while administering this Contract, including [REDACTED]. If ED disrupts the placement and revenue cycle, much of these longer-term investments will be at risk.
18. FHC also subcontracts a portion of this contract to three other companies, including a [REDACTED]. Like FHC, these contractors have invested significant resources to get ready for and perform under this Contract. A stay on account placements would likewise similarly injure these companies, and unnecessarily strain our working relationships.

Executed on this 21st day of April 2017.



Sheri A. Traficante-Cann
President and Chief Executive Officer
F.H. Cann & Associates, Inc.

UNITED STATES COURT OF FEDERAL CLAIMS

Bid Protest

CONTINENTAL SERVICES GROUP, INC.)

Plaintiff,)

v.)

Case No: 17-449C

Chief Judge Braden

THE UNITED STATES,)

Defendant,)

and)

CBE GROUP, INC.,)

FINANCIAL MANAGEMENT
SYSTEMS, INC.,)

GC SERVICES LIMITED
PARTNERSHIP,)

PREMIERE CREDIT OF NORTH
AMERICA, LLC,)

VALUE RECOVERY HOLDINGS, LLC,)
and)

WINDHAM PROFESSIONALS, INC.)

Defendant-Intervenors.)

DECLARATION OF FELIPE J. YANES

I, Felipe J. Yanes, based upon my personal knowledge, declare under penalty of perjury that the following is true and accurate to the best of my knowledge and belief:

1. I am over the age of 21, have knowledge of the facts set forth in this declaration, and am competent to testify to such facts.

2. I am the President and Co-Owner of Immediate Credit Recovery, Inc. ("ICR"). I started in this industry 34 years ago as a collector working with students to get them back into good standings with the Department of Education. I started at the bottom and worked my way up the ranks. In 2007 I partnered with ICR, a minority owned Small Business Company, who specialized in helping students solve their student loan issues. Frank Roa, ICR's CEO/Founder and I shared the same principles of treating people fairly and ethically. We both had over two decades of experience each dealing with students and student loans. Frank's experience had been at the College and University level and mine had been with ED at the Federal level. ICR was awarded its first Department of Education (ED) Contract in 2008 as a Small Business Minority owned Company.
3. On February 7, 2014, the U.S. Department of Education ("ED") awarded ICR its second competitive small-business set-aside Contract No. ED FSA 14 D0017-0002 for debt collection (the "Contract"). ICR was awarded the contract based upon [REDACTED]
[REDACTED]
[REDACTED]. On February 2014, after a rigorous review process, ED granted ICR an authority to operate ("ATO"). The vast majority of small businesses that received contract award in 2014 experienced a similar delay in receiving their ATO, as ED refined its requirements for an ATO. The delay between award and receipt of the ATO significantly tested our limited resources.
4. There is no protest either before the U.S. Government Accountability Office or the Court of Federal Claims regarding the solicitation or award of our small business contract, or ED's other small business awards in 2014.
5. Despite the fact that there is no dispute that we are entitled to a contract award and to perform that Contract, the stay issued in the TRO in the above referenced case will cause us significant, irreparable harm.
6. Should ED stop work on our Contract because the Court extended its injunction to award of work pursuant to Solicitation No. ED-FSA-16-R-0009 "to other contracting vehicles" ICR will be in an untenable position of having to choose whether to: (1) pay personnel salaries at risk to keep qualified and experience personnel ready to meet ED's needs; or (2) terminate personnel working on this contract to meet its obligation under FAR 52.233-3 to mitigate costs to the government during a stop work period. Since ICR began performance under the Contract, the labor market has significantly tightened.
7. If the TRO causes ED to issue another stop work on our contract, we will be required to place personnel on unpaid leave, or worse, terminate them. Either scenario will result in the permanent loss of our highly skilled workforce as they look for other job opportunities elsewhere given the uncertainty of this Contract. Such a loss is not easily replaceable for the small businesses which received awards from ED in 2014.
8. Since there is no guarantee of how or when the Court will resolve this protest, we fully expect personnel who are placed on unpaid leave or forced to take leave at an

inconvenient time to find new jobs during a period of forced unemployment, or, for current incumbent employees, a period of no job security. If the Court orders us to stand down for even a few weeks, we risk losing important staff.

9. ICR currently has [REDACTED] Small Business Subcontracting partners that are receiving ED new business. ICR is currently passing out over [REDACTED] of every placement that ED is giving us monthly. We have committed to ED's philosophy of growing other Small Businesses from this ED procurement. [REDACTED]

[REDACTED]. These Small Business partners have themselves invested their futures on the ED contract and any disruption in placements will put their Company and their staff's future in jeopardy

Executed on this 20th day of April 2017.



Felipe J. Yanes
President and Co-Owner
Immediate Credit Recovery, Inc.

UNITED STATES COURT OF FEDERAL CLAIMS

Bid Protest

_____)	
CONTINENTAL SERVICES GROUP, INC.,)	
)	
Plaintiff,)	
)	
v.	)	Case No: 17-449C
	)	Chief Judge Braden
THE UNITED STATES,)	
)	
Defendant,)	
)	
and)	
)	
CBE GROUP, INC.,)	
)	
FINANCIAL MANAGEMENT)	
SYSTEMS, INC.,)	
)	
GC SERVICES LIMITED)	
PARTNERSHIP,)	
)	
PREMIERE CREDIT OF NORTH)	
AMERICA, LLC,)	
)	
VALUE RECOVERY HOLDINGS, LLC,)	
and)	
)	
WINDHAM PROFESSIONALS, INC.)	
)	
Defendant-Intervenors.)	
_____)	

DECLARATION OF CREDIT ADJUSTMENTS, INC

I, Dexter A. Smith, based upon my personal knowledge, declare under penalty of perjury that the following is true and accurate to the best of my knowledge and belief:

1. I am over the age of 21, have knowledge of the facts set forth in this declaration, and am competent to testify to such facts.

2. I am the President of Credit Adjustments, Inc. ("Credit Adjustments"). I have been in the Account Receivables Management Industry for over 31 years. Specifically, I have worked on the U.S. Department of Education for a number of Private Collection Agencies (PCA's) in various roles since 1986. These positions started with the role of debt collector and over three decades included Vice President and Sr. Vice President of Operations. In 2008 I became President and one of the owners of Credit Adjustments, a small business headquartered in Defiance, OH.
3. On September 29, 2014, the U.S. Department of Education ("ED") awarded Credit Adjustments a competitive Historically Underutilized Business (HUB Zone), small-business set-aside Contract No. ED-FSA-14-D-0013 for debt collection (the "Contract") based upon [REDACTED]
[REDACTED]
[REDACTED]
4. There is no protest either before the U.S. Government Accountability Office or the Court of Federal Claims regarding the solicitation or award of our small business contract, or ED's other small business awards in 2014.
5. Despite the fact that there is no dispute that we are entitled to a contract award and to perform that Contract, the stay issued in the TRO in the above referenced case will cause us significant, irreparable harm.
6. Should ED stop work on our Contract because the Court extended its injunction to award work pursuant to Solicitation No. ED-FSA-16-R-0009 "to other contracting vehicles" Credit Adjustments will be in an untenable position of having to choose whether to: (1) pay personnel salaries at risk to keep qualified and experience personnel ready to meet ED's needs; or (2) terminate personnel working on this contract to meet its obligation under FAR 52.233-3 to mitigate costs to the government during a stop work period. Since Credit Adjustments began performance under the Contract, the labor market has significantly tightened.
7. If the TRO causes ED to issue another stop work on our contract, we will be required to place personnel on unpaid leave, or worse, terminate them. Either scenario will result in the permanent loss of our highly skilled workforce as they look for other job opportunities elsewhere given the uncertainty of this Contract. Such a loss is not easily replaceable for a small business such as ourselves.
8. Since there is no guarantee of how or when the Court will resolve this protest, we fully expect personnel who are placed on unpaid leave or forced to take leave at an inconvenient time to find new jobs during a period of forced unemployment, or, for current incumbent employees, a period of no job security. If the Court orders us to stand down for even a few weeks, we risk losing important staff.
9. Should the stop work order on the small business 2014 contract continue, Credit Adjustments will have [REDACTED] including direct employees or

subcontractor employees, [REDACTED] throughout the nation, who will be at risk of losing gainful employment.

Executed on this 19th day of April 2017.

/s/ Dexter A. Smith

President,]

Credit Adjustments, Inc.