In the United States Court of Federal Claims

No. 17-493
Filed: May 22, 2017

ACCOUNT CONTROL TECHNOLOGY, INC.,	*	Preliminary Injunction, Rule of the United States Court of Federal Claims 65(d).
Plaintiff,	*	
v.	*	
THE UNITED STATES,	*	
Defendant,	*	
and	*	
PREMIERE CREDIT OF NORTH AMERICA, LLC, GC SERVICES LIMITED PARTNERSHIP, FINANCIAL MANAGEMENT SYSTEMS, INC., VALUE RECOVERY HOLDINGS LLC, CBE GROUP, INC., AUTOMATED COLLECTION SERVICES, INC., WINDHAM PROFESSIONALS, INC., and TEXAS GURANTEED STUDENT LOAN CORP.,	*	
Intervenor-Defendants.	*	

CONTINUATION OF PRELIMINARY INJUNCTION

On May 2, 2017, the court issued a Preliminary Injunction, enjoining the United States Department of Education ("ED") from:

(1) authorizing the purported awardees to perform on the contract awards under Solicitation No. ED-FSA-16-R-0009; and
(2) transferring work to be performed under the contract at issue in this case to other contracting vehicles to circumvent or moot this bid protest.

ECF No. 53.

The purpose of the May 2, 2017 Preliminary Injunction was to protect the interests of all parties and afford the Government an opportunity to reach a global solution to the related bid protests challenging Solicitation No. ED-FSA-16-R-0009.[1] For this reason, the court stated that the Preliminary Injunction would remain in place until "COB May 22, 2017, the first business day after the Department of Justice represented that the ED [would] file a notice announcing corrective action, in response to the [Government Accountability Office's ("GAO") March 27, 2017 Decision in *Gen. Revenue Corp.*, B-414220.2, Mar. 27, 2017, 2017 WL 1316186.]" ECF No. 53.

On May 19, 2017, the Government filed a Notice Of Corrective Action, advising the court that the ED intended to take corrective action consistent with the GAO's March 27, 2017 Decision. ECF No. 59. The ED expects to complete this corrective action on, or before, August 25, 2017. ECF No. 59.

On May 22, 2017, the court convened a status conference to determine whether to extend the May 2, 2017 Preliminary Injunction. During the May 22, 2017 Status Conference, Continental Services, Inc., Account Control Technology, Inc., Progressive Financial Services, Inc., Collection Technology, Inc., Performant Recovery, Inc. and Van Ru Credit Corporation requested that the Preliminary Injunction remain in place while the ED takes corrective action.

The Government, CBE Group, Inc., Premiere Credit of North America, LLC, GC Services Limited Partnership, Financial Management Systems, Inc., Value Recovery Holdings, LLC, Windham Professionals, Inc. and Alltran Education, Inc. requested that the court allow the May 2, 2017 Preliminary Injunction to expire. Pioneer Credit Recovery, Inc. informed the court that it did not oppose lifting the Preliminary Injunction, so long as the ED continued to abide by its April 3, 2017 declaration (*Continental Services*, No. 17-449, ECF No. 23) that the December 9, 2016 Contracts, awarded under Solicitation No. ED-FSA-16-R-0009, would remain stayed until the resolution of this bid protest.

After hearing the parties' positions, the court indicated that it was inclined to lift the May 2, 2017 Preliminary Injunction, but it was concerned that the ED would transfer accounts that had been serviced by Progressive Financial, Inc., Collection Technology, Inc., Performant Recovery, Inc. and Van Ru Credit Corporation under United States General Services Administration ("GSA") Schedule Nos. GS-23F-0239K, GS-23F-0227N, GS–23F–0286K, GS-23F-0204K (collectively the "prior accounts"), because those contracts expired on April 21, 2017. This would appear unfair, because the GAO sustained challenges to Solicitation No. ED-FSA-16-R-009 brought by those contractors. In other words, the GAO determined that but-for the ED's alleged errors during the procurement process, Progressive Financial, Inc., Collection Technology, Inc., Performant Recovery, Inc. and Van Ru Credit Corporation might have received contracts on December 9, 2016, under which they could continue to service their prior accounts.

[1] Plaintiffs filed challenges to Solicitation No. ED-FSA-16-R-0009 in the following seven cases: (1) *Continental Services Group, Inc. v. United States*, No. 17-449; (2) *Pioneer Credit Recovery, Inc. v. United States*, No. 17-499; (3) *Account Control Technology, Inc. v. United States*, No. 17-493; (4) *Alltran Education, Inc. v. United States*, No. 17-517; (5) *Progressive Financial Services, Inc. v. United States*, No. 17-558; (6) *Collection Technology, Inc. v. United States*, No. 17-578; and (7) *Van Ru Credit Corporation v. United States*, No. 17-633.

Therefore, the court asked the Government whether it could allow Progressive Financial, Inc., Collection Technology, Inc., Performant Recovery, Inc. and Van Ru Credit Corporation to continue servicing prior accounts until the ED completes the proposed corrective action. The Government informed the court that it could not make that representation, without conferring with Dr. Patrick Bradfield, Head of Contracting at Federal Student Aid. Dr. Bradfield responded, by telephone from his home, that Progressive Financial, Inc., Collection Technology, Inc., Performant Recovery, Inc. and Van Ru Credit Corporation could not continue servicing their prior accounts, because they did not have existing contracts with the ED, but he did not know if there was a legal means for the ED to enter into a temporary contractual relationship with those parties and would have to consult with the ED's attorneys before making that determination. Dr. Bradfield informed the court that he would not be able to consult with counsel until, at least, May 23, 2017.

For these reasons, the court has determined to continue the May 2, 2017 Preliminary Injunction until June 1, 2017, to afford Dr. Bradfield an opportunity to determine whether the ED can enter into a temporary contractual relationship with Progressive Financial, Inc., Collection Technology, Inc., Performant Recovery, Inc. and Van Ru Credit Corporation that will allow those companies to continue to service their prior accounts until the ED completes the proposed corrective action.

IT IS SO ORDERED.

s/Susan G. Braden
SUSAN G. BRADEN
Chief Judge