

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

CONTINENTAL SERVICES GROUP,)	
INC. and PIONEER CREDIT)	
RECOVERY, INC.,)	
)	
Plaintiffs,)	
)	
and)	
)	
COLLECTION TECHNOLOGY, INC.,)	
PERFORMANT RECOVERY, INC.,)	
ALLTRAN EDUCATION, INC., and)	
and PROGRESSIVE FINANCIAL)	Nos. 17-449C, 17-499C
SERVICES, INC.,)	(Chief Judge Braden)
)	
Intervenor-Plaintiffs,)	
)	
v.)	
)	
UNITED STATES,)	
)	
Defendant,)	
)	
and)	
)	
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 AUTOMATED COLLECTION)	
SERVICES, INC.,)	
)	
Intervenor-Defendants.)	

DEFENDANT’S STATUS REPORT

Pursuant to the Court’s Order dated August 2, 2017, defendant, the United States, respectfully submits this status report. As directed by the Court, we describe in this report the current status of the corrective action being undertaken by the United States

Department of Education (Education) with regard to Solicitation No. ED-FSA-16-R-0009, activity of which we first notified the Court on May 19, 2017. Education is striving to have the corrective action – although subject to various contingencies, including a protest that is currently pending before this Court, *see Automated Collection Services, Inc. v. United States*, Ct. No. 17-765C – completed by August 25, 2017.

We also address in this report the attachments to the Court's Orders dated May 31, 2017 and August 2, 2017, to clarify how the solicitation for Federal student loan management services described in those attachments is unrelated to the single procurement for private collection agency services for student loans that are in default that is pending before the Court. To assist the Court, we file with this status report the accompanying Declarations of William Leith, Chief Business Operations Officer, Federal Student Aid, and Dr. Patrick Bradfield, Head of the Contracting Activity, Federal Student Aid.

1. Status Of The Corrective Action

As explained in the accompanying declaration of Dr. Bradfield, Education has been working diligently on the corrective action, maintaining its targeted completion date of August 25, 2017. As described in our May 19 notice and May 25, 2017 amended notice, as corrective action, Education invited revised proposals under the solicitation for debt collection services that is the subject of this bid protest action, and the agency is currently reevaluating those proposals in accordance with the announced evaluation criteria. Bradfield Decl. at ¶ 1. After completing this reevaluation, Education will conduct a new source selection determination and announce any new award or awards, or the termination of previously-awards contracts, as appropriate. *Id.*

As of the date of this status report, Education has completed a review of more than half of the 37 proposals it has received under the corrective action. Bradfield Decl. at ¶ 2. The

agency is striving to complete the reevaluation by August 25, 2017, but there are various contingencies that may cause Education to require more time to complete its corrective action.

First, there remains an active protest of the corrective action that is pending before the Court in *Automated Collection Services, Inc. v. United States*, Ct. No. 17-765C. *Id.* at ¶ 4.

Mindful of the August 25, 2017 projected completion date for the corrective action, the parties agreed to an expedited briefing schedule. The protest is now fully briefed and awaiting the Court's decision, which could affect Education's ability to meet the projected completion date. *Id.*

In addition, Education is entering into a critical phase of the reevaluation that potentially could cause it to require additional time. *Id.* at ¶ 2. In addition to preparing an administrative record and conducting various internal reviews, Education may decide to establish a competitive range and conduct discussions, which could consume an additional few weeks. *Id.* After Education identifies prospective awardees, the contracting officer will need to determine their responsibility, which may require communications with some offerors and the negotiation of subcontractor agreements. *Id.*

This corrective action is a top priority of Federal Student Aid, and it is working diligently to complete the corrective action by the August 25 target date. *Id.* at ¶ 5. If Education concludes that it will not meet this target date, it will promptly advise the Department of Justice, *id.*, at ¶ 6, and we will immediately so advise the Court.

2. The Attachments To The Court's Orders Dated May 31 And August 2, 2017

The Court's May 31 and August 2 Orders refer to and attach press releases and press reports that concern a separate aspect of the Federal Student Aid program, that is, Education's general need for loan servicing services. As Mr. Leith explains in his

declaration, Education also contracts for the management of student loans that are not in default. Leith Decl. at ¶ 5. Education needs these management services for loans that it has made to borrowers who are still in school, or who are in a post-graduation grace period, or who are now repaying them and remain current on their payments. *Id.* A contractor who performs loan servicing work for Education receives a “booked” loan from Education after the agency disburses the loan proceeds to the student. *Id.* The contractor then contacts the student before the student is required to begin paying back the loan to establish the desired repayment plan and payment method. Then, once the borrower begins paying back the loan, the loan servicing contractor provides the borrower with billing statements, processes the payments received from the borrower, and offers the borrower related loan processing services if desired. *Id.*

This loan servicing work is very different from the debt collection work performed by the private collection agencies who are the plaintiffs, defendant-intervenors, and plaintiff-intervenors in this bid protest action. Private collection agency contractors work exclusively on student loans that are in default. *Id.* at ¶ 6. As Mr. Leith explains, a student loan that is in default is one that is extremely delinquent because the borrower is more than 360 days past due in his or her payment. *Id.* When a loan becomes extremely delinquent, Education assigns it to Debt Management Collection Systems, which, in ordinary circumstances, periodically assigns a private collection agency contractor several defaulted accounts for collection services. *Id.* Private collection agency contractors attempt to locate borrowers in default and then contact them to collect. *Id.* They also explain to the delinquent borrower the various rehabilitation programs that may be available and establish a rehabilitation payment plan.

Id. If appropriate, private collection agency contractors may institute administrative wage garnishment procedures. *Id.*

Loan servicing and collection of loans in default are substantively different functions that are performed at different stages in the life of a loan (which, ideally, would never go into default). *Id.* at ¶ 7. Education awards contracts for the performance of each function using entirely separate solicitations and contracts. *Id.*

The attachments to the Court's May 31 and August 2 Orders refer to Education's now-cancelled solicitation for loan servicing, which was and is unrelated to the solicitation for debt collection services that is the subject of the protests before this Court. *Id.* at ¶¶ 1-4, 8. As Mr. Leith explains, Education's announcements concerning that cancelled solicitation for loan servicing have no connection to the solicitation that is the subject of the protests before this Court, and therefore have no effect whatsoever on Education's corrective action. *Id.* at ¶¶ 9-10. The schedule for completion of the corrective action is unaffected by Education's loan servicing procurement activities. *Id.* at ¶ 10.

The Court's May 31 and August 2 Orders note that the Department of Justice failed to advise the Court of developments described in the attachments to these orders. But, for the reasons Mr. Leith sets forth, we respectfully did not perceive any relevance of Education's loan servicing procurement activities to the debt collection bid protests that are pending before this Court. As explained above, however, we do intend to keep the Court apprised of the corrective action, and to the extent, if any, Education advises us that its projected date for completion of the corrective action should change, we will promptly advise the Court.

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General

ROBERT E. KIRSCHMAN, JR.
Director

s/ Patricia M. McCarthy
PATRICIA M. McCARTHY
Assistant Director

s/ Lauren S. Moore by Patricia M. McCarthy

LAUREN S. MOORE
Trial Attorney
Commercial Litigation Branch
Civil Division
Attn: Classification Unit, 8th Floor
P.O. Box 480
Ben Franklin Station
Washington, DC 20044
Telephone: (202) 616-0333
Facsimile: (202) 514-8640
E-mail: lauren.moore@usdoj.gov

OF COUNSEL:

JOSE OTERO
SARA FALK
General Attorneys
Office of the General Counsel
U.S. Department of Education

August 4, 2017

Attorneys for Defendant United
States