

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

COAST PROFESSIONAL, INC.	)	
	)	
Plaintiff,	)	Case No. _____
	)	
v.	)	Judge: _____
	)	
THE UNITED STATES OF AMERICA,	)	<b><u>REDACTED COPY</u></b>
	)	
Defendant.	)	
	)	

**COMPLAINT**

NOW COMES Plaintiff, Coast Professional, Inc. ("Coast"), by and through its undersigned counsel, and alleges the following for its Complaint:

**JURISDICTION**

1. This Court has jurisdiction over the instant case pursuant to 28 U.S.C. § 1491(b)(1), as the case arises out of a violation of law and regulation in connection with a procurement.
2. Pursuant to the Tucker Act, this Court has "jurisdiction to render judgment on an action by an interested party objecting to the solicitation by a Federal agency for bids or proposals for a proposed contract or to a proposed award or the award of a contract or any alleged violation of statute or regulation in connection with a procurement or a proposed procurement." Id.
3. Coast has standing to bring this Complaint.

4. An “interested party” under the Tucker Act includes an actual or prospective offeror whose direct economic interest would be affected by the award of the contract or failure to award the contract.

5. Coast provides private debt collection services to the United States Department of Education, Financial Student Aid (“ED” or “Agency”) under Contract No. GS-23F-0009U, Task Order No. ED-FSA-09-O-0022.

6. Coast has suffered direct economic impact due to ED’s decision not to award Coast an Award Term Task Order in violation of the law and regulation. Coast therefore is an “interested party” to challenge such violation as required by 28 U.S.C. § 1491(b).

7. But for the errors made by ED in improperly procuring such services, Coast would have had an opportunity to continue to perform the private debt collection services at issue; this factor also evinces the adverse economic impact suffered by Coast.

#### **PARTIES**

8. The Plaintiff is Coast, a small business incorporated under the laws of Nevada with its principal offices at 214 Expo Circle, Suite 7, West Monroe, Louisiana 71292.

9. The Defendant is the United States of America, acting through ED, an executive agency of the federal government.

#### **STATEMENT OF FACTS**

10. Coast’s Task Order No. ED-FSA-09-O-0022 from ED, issued in accordance with the General Services Administration’s (“GSA”) Financial and Business Solutions (“FABS”) Schedule under Special Item Number 520-4 for private collection services (the “TO”), began in July 2009. See Exhibit B to Memo. in Supp. of App. for TRO and Mot. for Prelim. Inj., Coast’s Task Order.

11. Upon information and belief, on or around the same date, ED issued similar task orders (collectively, the “TOs”) to 21 other contractors that held GSA FABS Schedule contracts.

12. Under the TOs, ED contracted for the services of Private Collection Agencies (“PCA”) to support collection and administrative resolution activities on debts maintained by ED resulting from non-payment of student loans made under several federal loan programs.

13. To allow for the collection of these debts, ED transferred its accounts of the debts to the PCAs.

14. In accordance with the TOs, ED conducted regular Competitive Performance and Continuous Surveillance (“CPCS”) evaluations to determine the adequacy of the contractors’ performance on all accounts transferred.

15. For the last 12 CPCS quarterly periods, Coast has an average CPCS rating of 97.85 out of 100, which is the second highest rating of any contractor on the TOs. See Exhibit A, to Memo. in Supp. of App. for TRO and Mot. for Prelim. Inj., ¶ 15.

16. Coast’s current TO is set to expire on April 21, 2015.

17. Pursuant to Clause H.4 of the TOs, ED had the authority to issue performance extensions (hereinafter “Award Term Task Orders”) to contractors based on the quality of performance during the evaluation periods.

18. Clause H.4 provided that if the contractor had an average CPCS rating of 85 or greater over the life of the TO, or the last 12 CPCS periods (whichever is shorter), the Government may award the contractor an Award Term Task Order in accordance with the terms of Clause H.4 in recognition of the contractor’s excellent or better quality performance.

19. Clause H.4 provided no other evaluation criteria for ED to consider when deciding to award an Award Term Task Order.

20. Clause H.4 further provided that “[a]ny award-term extension under this clause will be executed in the form of a new Task Order issued by the Contracting Officer under the Contractor’s then current GSA Schedule contract.”

21. Because the Award Term Task Order would be a new task order and not an extension of the current TOs, the Award Term Task Order is in fact a new procurement.

22. Before awarding the Award Term Task Orders, ED did not issue a Request for Quotations or solicit proposals from potential awardees.

23. On or about February 20, 2015, the ED contracting officer (“CO”) informed Coast that ED would not award Coast an Award Term Task Order.

24. Coast was informed it was not awarded an Award Term Task Order due to an undisclosed audit of Coast’s performance on the TO which allegedly revealed negative performance and purported [REDACTED]

[REDACTED].

25. Upon information and belief, nine of the 22 contractors under the TOs were eligible for an Award Term Task Order based on their average CPCS ratings.

26. Upon information and belief, all 22 contractors received identical notices from ED informing them of their purported [REDACTED].

27. Upon information and belief, five contractors, namely FMS Investment Corp., Continental Service Group, Inc., Account Control Technology, Inc., Windham Professionals, Inc., and GC Services Limited Partnership, were awarded Award Term Task Orders.

28. Upon information and belief, the CO did not decide to whom to award the Award Term Task Orders, as is required by the TOs.

## ALLEGATIONS

### **COUNT I – ED’s Decision Not to Award Coast an Award Term Task Order was Arbitrary and Capricious**

29. Plaintiff reasserts the allegations contained in paragraphs 1-28 above.

30. As described above, Coast has demonstrated excellent performance throughout the TO and has received an average CPCS rating of 97.85 out of 100 for the last 12 CPCS periods.

31. Although Coast greatly exceeded the one evaluation criterion for awarding an Award Term Task Order, ED arbitrarily and unreasonably decided not to award it an Award Term Task Order.

32. ED improperly relied on an undisclosed audit of Coast’s performance, which was not included in the one criterion specified in TO Clause H.4.

33. Even if this unstated evaluation criterion were a valid consideration for awarding Award Term Task Orders, Coast did not [REDACTED] and, accordingly, ED’s reliance on the audit was unreasonable.

34. Therefore, ED’s decision not to award Coast an Award Term Task Order was arbitrary, capricious, and not in accordance with the law.

35. Coast was prejudiced by ED’s arbitrary decision not to award it an Award Term Task Order, as there was a substantial chance it would have received the award but for that error.

### **COUNT II – ED Improperly Awarded the Award Term Task Order to Several Contractors without Appropriate Competitive Procedures**

36. Plaintiff reasserts the allegations contained in paragraphs 1-35 above.

37. Alternatively, ED violated the applicable statutes and regulations by awarding the Award Term Task Orders without proper competitive procedures.

38. When procuring services, ED was obligated to comply with the requirements of the Competition in Contracting Act (“CICA”), 10 U.S.C. § 2304, to obtain full and open competition through the use of appropriate competitive procedures.

39. Under CICA, agencies must solicit proposals from potential awardees in accordance with 48 C.F.R. Part 15, § 15.201, et seq.

40. Under the regulations regarding GSA Schedule Ordering, ED could satisfy its competitive procedure requirements under CICA by following the procedures of 48 C.F.R. § 8.401, et seq.

41. ED failed to comply with the requirements to obtain full and open competition through the use of appropriate competitive procedures, in accordance with both 48 C.F.R. § 15.201, et seq. and 48 C.F.R. § 8.401, et seq., by awarding Award Term Task Orders to FMS Investment Corp., Continental Service Group, Inc., Account Control Technology, Inc., Windham Professionals, Inc., and GC Services Limited Partnership.

42. ED’s award of any Award Term Task Orders was improper where it failed to use appropriate competitive procedures.

WHEREFORE, Plaintiff respectfully requests that upon review of this Complaint, this Court:

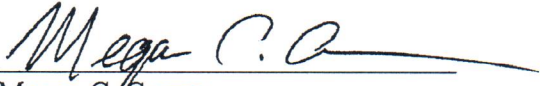
1. Take jurisdiction over this action;
2. Expedite a hearing on the Temporary Restraining Order and the Preliminary Injunction;
3. Issue a Temporary Restraining Order enjoining ED from proceeding with the Award Term Task Orders to FMS Investment Corp., Continental Service Group,

Inc., Account Control Technology, Inc., Windham Professionals, Inc., and GC Services Limited Partnership;

4. Issue a Preliminary Injunction enjoining ED from proceeding with any Award Term Task Orders unless it complies with the procurement criteria and/or uses appropriate competitive procedures;
5. Issue a Permanent Injunction to prohibit ED from proceeding with any Award Term Task Orders unless it complies with the procurement criteria and/or it uses appropriate competitive procedures; and
6. Grant Coast all other relief that the Court finds to be just and proper.

Respectfully submitted,

Dated: March 2, 2015

  
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