No.

In the Supreme Court of the United States

ORACLE AMERICA, INC.,
PETITIONER,

v.

UNITED STATES AND AMAZON WEB SERVICES, INC.

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT*

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Department of Defense structured its procurement for cloud-computing services, worth up to $10 billion, for award to a single bidder. Petitioner Oracle America, Inc. filed a bid protest, arguing that the single-bidder award violated federal law, which requires agencies to choose multiple bidders for contracts of this size and type. The Federal Circuit agreed with Oracle that the procurement violated federal law, yet declined to remand the issue to the agency as required by *SEC* v. *Chenery Corp.*, 318 U.S. 80 (1943). Instead, the court applied its own "harmless error" exception to conclude that even if the agency were to conduct the procurement as a multiple-award solicitation, Oracle would not stand a better chance of winning the contract.

During the bid protest, the Defense Department uncovered serious conflicts of interest between several of its employees and a leading bidder. The Federal Circuit acknowledged that one or more conflicts may have violated 18 U.S.C. § 208, the criminal conflict-of-interest prohibition. It nevertheless upheld the procurement, deferring to the Department's view that the conflicts had not "tainted" the solicitation.

The questions presented are:

1. Whether a bid protest that establishes a violation of federal law may be denied for "harmless error" based on a rationale not present in the administrative record.

2. Whether, in resolving a bid protest that establishes a violation of the criminal conflict-of-interest statute, 18 U.S.C. § 208, the Federal Circuit can enforce the contract based on deference to an agency's assessment that the criminal violation did not taint the procurement.

PARTIES TO THE PROCEEDINGS

Petitioner Oracle America, Inc. was plaintiff in the U.S. Court of Federal Claims and appellant in the Federal Circuit.

Respondent the United States was defendant in the U.S. Court of Federal Claims and appellee in the Federal Circuit. Respondent Amazon Web Services, Inc. was defendant-intervenor in the U.S. Court of Federal Claims and appellee in the Federal Circuit.

RULE 29.6 STATEMENT

Oracle America, Inc. is wholly owned by Oracle Corporation, through one or more non-publicly held wholly owned subsidiaries. Oracle Corporation is a publicly held corporation. No other publicly held corporation owns 10% or more of Oracle America, Inc.'s stock.

RELATED PROCEEDINGS

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii):

- *Oracle America, Inc.* v. *United States*, No. 2019-2326 (Fed. Cir.), judgment entered on September 2, 2020; and
- *Oracle America, Inc.* v. *United States*, No. 18-1880C (Fed. Cl.), judgment entered on July 19, 2019.

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