

No. 20-1057

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In the Supreme Court of the United States

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ORACLE AMERICA, INC., PETITIONER

*v.*

UNITED STATES OF AMERICA, ET AL.

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

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**BRIEF FOR THE UNITED STATES IN OPPOSITION**

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## QUESTIONS PRESENTED

1. Whether under the provision in the Administrative Procedure Act stating that “due account shall be taken of the rule of prejudicial error” when reviewing agency action, 5 U.S.C. 706, a court may deny a bid protest when it determines that the plaintiff was not prejudiced by an allegedly improper term in the agency’s solicitation because the plaintiff was ineligible for a contract award under a separate, lawful term of the solicitation.

2. Whether a court may defer to a federal contracting officer’s factual determinations, following an investigation, that potential conflicts of interest on the part of certain agency employees did not affect the procurement.

(I)

**ADDITIONAL RELATED PROCEEDINGS**

United States Court of Federal Claims:

*Amazon Web Services, Inc. v. United States*, No. 19-cv-1796 (filed Nov. 22, 2019)

United States Government Accountability Office:

*Oracle America, Inc.*, B-416657 *et al.*, 2018 CPD ¶ 391 (Comp. Gen. Nov. 14, 2018)

(II)

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