

No. 20-1057

In the Supreme Court of the United States

ORACLE AMERICA, INC., PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

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

SUPPLEMENTAL BRIEF FOR THE UNITED STATES

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Pursuant to Rule 15.8 of the Rules of this Court, the government respectfully files this supplemental brief to alert the Court to important developments since the filing of the government's brief in opposition. This case involves a bid protest by petitioner to the procurement by the Department of Defense (DoD) of a single-award contract for the Joint Enterprise Defense Infrastructure (JEDI) Cloud computing project. On July 6, 2021, DoD canceled the JEDI Cloud solicitation and initiated the termination of the contract that had been awarded to Microsoft (which was ultimately terminated on September 1, 2021). In July, DoD also announced a new multiple-award procurement called Joint Warfighting Cloud Capability (JWCC).

The cancellation of the JEDI Cloud solicitation has rendered this case moot, which is an additional and independent reason that this Court should deny the petition for a writ of certiorari. The petition asserts that

(1)

the original single-award JEDI Cloud solicitation was unlawful and tainted by conflicts of interest, and thus seeks to unwind the solicitation and the award of the single-source contract to Microsoft. See Pet. i. In light of the cancellation of the JEDI Cloud solicitation and termination of the Microsoft contract, however, petitioner has effectively received all the relief it could have obtained in its bid protest (and more). And the JWCC solicitation is a new multiple-award procurement that will be conducted afresh in the coming months. Any challenges that petitioner may wish to make to the JWCC procurement should be the subject of a separate proceeding.

Because the bid protest at issue in this case is moot, the lower court's decision does not warrant further review. Nor is this an appropriate case in which to grant the petition and vacate the decision below under *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950), because the petition did not merit further review even before the JEDI Cloud solicitation was canceled.

1. The JEDI Cloud procurement was “directed to the long-term provision of enterprise-wide cloud computing services to [DoD].” Pet. App. 2a. The procurement contemplated the award of a single indefinite-quantity contract, which “does not procure or specify a firm quantity of services [or property] (other than a minimum or maximum quantity),” but instead “provides for the issuance of orders for the performance of tasks [or the delivery of property] during the period of the contract.” 10 U.S.C. 2304d(1); see 10 U.S.C. 2304d(2). Congress has expressed a preference that such contracts, especially those that exceed a certain dollar value, be awarded to multiple sources rather than to a single source, see 10 U.S.C. 2304a(d)(3) and (4)(A), but

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