

United States Court of Appeals for the Federal Circuit

ORACLE AMERICA, INC.,
Plaintiff-Appellant

v.

UNITED STATES, AMAZON WEB SERVICES, INC.,
Defendants-Appellees

2019-2326

Appeal from the United States Court of Federal Claims
in No. 1:18-cv-01880-EGB, Senior Judge Eric G. Bruggink.

Decided: September 2, 2020

CRAIG HOLMAN, Arnold & Porter Kaye Scholer LLP,
Washington, DC, argued for plaintiff-appellant. Also represented by KARA L. DANIELS, NATHANIEL EDWARD CASTELLANO, AMANDA J. SHERWOOD.

WILLIAM PORTER RAYEL, Commercial Litigation
Branch, Civil Division, United States Department of Justice,
Washington, DC, argued for defendant-appellee
United States. Also represented by ETHAN P. DAVIS,
ROBERT EDWARD KIRSCHMAN, JR., PATRICIA M. MCCARTHY.

DANIEL RUBEN FORMAN, Crowell & Moring, LLP,
Washington, DC, argued for defendant-appellee Amazon

Web Services, Inc. Also represented by ROBERT JOSEPH SNECKENBERG, OLIVIA LOUISE LYNCH, ZACHARY H. SCHROEDER; GABRIELLE TRUJILLO, Los Angeles, CA; MARK ANDREW PERRY, Gibson, Dunn & Crutcher LLP, Washington, DC.

Before NEWMAN, BRYSON, *and* O'MALLEY, *Circuit Judges*.
BRYSON, *Circuit Judge*.

This is a federal contract pre-award protest case. The United States Court of Federal Claims (“the Claims Court”) analyzed a number of legal challenges by Oracle America, Inc., to a large Department of Defense procurement. After a thorough treatment of all the issues presented, the Claims Court rejected Oracle’s protest. *Oracle Am., Inc. v. United States*, 144 Fed. Cl. 88 (2019). We affirm.

I

The procurement at issue in this case, known as the Joint Enterprise Defense Infrastructure (“JEDI”) Cloud procurement, is directed to the long-term provision of enterprise-wide cloud computing services to the Department of Defense. The JEDI Cloud solicitation contemplated a ten-year indefinite delivery, indefinite quantity contract. The Defense Department decided to award the contract to a single provider rather than making awards to multiple providers.

The JEDI Cloud solicitation included several “gate” provisions that prospective bidders would be required to satisfy. One of the gate provisions, referred to as Gate Criteria 1.2 or Gate 1.2, required that the contractor have at least three existing physical commercial cloud offering data centers within the United States, each separated from the others by at least 150 miles. Those data centers were required to provide certain offerings that were “FedRAMP Moderate Authorized” at the time of proposal. The Federal

Risk and Authorization Management Program (“FedRAMP”) is an approach to security assessment, authorization, and continuous monitoring for cloud products and services. “FedRAMP Moderate Authorized” is a designation given to systems that have successfully completed the FedRAMP Moderate authorization process. FedRAMP Moderate is the Defense Department’s minimum security level for processing or storing the Department’s least sensitive information. Oracle did not satisfy the FedRAMP Moderate Authorized requirement as of the time the proposals were to be submitted.

Oracle filed a pre-bid protest challenging the solicitation. Oracle’s protest focused on the Department’s adoption of Gate 1.2 and on the Department’s decision to conduct the procurement on a single-source basis, rather than providing for multi-source contracts.

Following a hearing and briefing, the U.S. Government Accountability Office (“GAO”) denied the protest. Oracle then filed suit in the Claims Court challenging the solicitation. The court analyzed Oracle’s claims in detail and rejected Oracle’s protest in a lengthy opinion.

The court first addressed Oracle’s claim that the contracting officer and the Under Secretary of Defense violated separate provisions of 10 U.S.C. § 2304a when they each determined that it was appropriate to structure the JEDI Cloud procurement on a single-award basis rather than providing for multiple awards. Section 2304a sets out the conditions under which the Department may enter into large task and delivery order contracts with a single awardee, as opposed to awarding such contracts to two or more sources.

Section 2304a(d)(3) generally prohibits the award of a task or delivery order contract in excess of \$100 million¹ to a single vendor unless the head of the agency determines in writing that one of four exceptions to that general prohibition applies. The exceptions are:

- (i) the task or delivery orders expected under the contract are so integrally related that only a single source can efficiently perform the work;
- (ii) the contract provides only for firm, fixed price task orders or delivery orders for—
 - (I) products for which unit prices are established in the contract; or
 - (II) services for which prices are established in the contract for the specific tasks to be performed;
- (iii) only one source is qualified and capable of performing the work at a reasonable price to the government; or
- (iv) because of exceptional circumstances, it is necessary in the public interest to award the contract to a single source.

10 U.S.C. § 2304a(d)(3)(A).

In addition to that provision, section 2304a(d)(4) requires that regulations implementing section 2304a(d) “establish a preference for awarding, to the maximum extent practicable, multiple task or delivery order contracts for the same or similar services,” and that they “establish criteria for determining when award of multiple task or delivery order contracts would not be in the best interest of the

¹ The statutorily defined threshold amount is subject to an inflation adjustment requirement. *See* 41 U.S.C. § 1908.

Federal Government.” 10 U.S.C. § 2304a(d)(4). Pursuant to that directive, the Federal Acquisition Regulation (“FAR”) provides that, except for indefinite-quantity contracts for advisory and assistance services, “the contracting officer must, to the maximum extent practicable, give preference to making multiple awards of indefinite-quantity contracts under a single solicitation for the same or similar supplies or services to two or more sources.” 48 C.F.R. § 16.504(c)(1)(i) (“FAR 16.504(c)(1)(i)”). The FAR further provides, however, that the contracting officer must not elect to use a multiple-contract award if one or more of several conditions applies:

- (1) Only one contractor is capable of providing performance at the level of quality required because the supplies or services are unique or highly specialized;
- (2) Based on the contracting officer’s knowledge of the market, more favorable terms and conditions, including pricing, will be provided if a single award is made;
- (3) The expected cost of administration of multiple contracts outweighs the expected benefits of making multiple awards;
- (4) The projected orders are so integrally related that only a single contractor can reasonably perform the work;
- (5) The total estimated value of the contract is less than the simplified acquisition threshold; or
- (6) Multiple awards would not be in the best interests of the Government.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.