



Amazon Protest of the Department of Defense's JEDI Cloud Contract Award to Microsoft

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In September 2017, the Deputy Secretary of Defense issued a [memorandum](#) calling for the adoption of a Department of Defense (DOD) enterprise-wide cloud services solution. As part of its ongoing technology modernization efforts, DOD [sought to acquire](#) a commercial cloud services solution known as the Joint Enterprise Defense Infrastructure (JEDI) Cloud.

In April 2019, DOD selected Microsoft and Amazon Web Services (henceforth Amazon) to contend for the contract award from qualified proposals submitted by IBM, Amazon, Microsoft, and Oracle. In October 2019, DOD [announced](#) it had awarded the JEDI contract to Microsoft. The contract award process was contentious, attracting [significant industry and congressional interest](#). Oracle filed pre-award bid protests with the Government Accountability Office (GAO) and U.S. Court of Federal Claims (COFC). GAO and COFC ruled against Oracle; however, Oracle is in the process of appealing the COFC decision to the U.S. Court of Appeals for the Federal Circuit.

In November 2019, Amazon [filed a post-award bid protest](#) with COFC, alleging potentially improper “political influence” in DOD’s award decision and “clear deficiencies” in the contract evaluation process. Many [observers](#) trace Amazon’s accusation of political influence in part to President Donald Trump’s July 2019 [remarks](#) that his Administration would “take a very strong look” at the [JEDI Cloud acquisition process](#). While Amazon was [expected by some analysts](#) to win the JEDI contract, due in part to its extensive data center infrastructure and compliance with [DOD cloud security requirements for hosting classified information](#), other analysts have speculated that Microsoft prevailed over Amazon based on offering a [lower-priced solution](#), as well as the company’s [existing business relationships](#) with the Department.

The JEDI Source Selection Process

In August 2019, [separate from the source selection process](#), Secretary of Defense Mark Esper [indicated](#) that he would review the JEDI Cloud program. In October 2019, Esper [recused himself](#) from further

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involvement in the JEDI Cloud contract “out of an abundance of caution to avoid any concerns regarding ... impartiality,” as one of his children was employed by IBM.

DOD emphasized in its October 2019 [contract award announcement](#) that “all offerors were treated fairly and evaluated consistently with the solicitation’s stated evaluation criteria.” These criteria [indicated](#) that the JEDI contract would be awarded to the offeror whose proposal met specified requirements and represented the best value to the government. Offerors were first evaluated on an acceptable-unacceptable basis against seven sequential subfactor performance-based criteria. A judgment of unacceptable for any subfactor immediately disqualified a proposal from further consideration. If a proposal received a mark of acceptable for all subfactors, it proceeded to the second phase of the source selection process, where it was then evaluated against five technical factors, together with price proposals, to determine a competitive range of offerors. Qualifying offerors in the competitive range (Microsoft and Amazon) were next evaluated against two additional factors: proposed approaches for meeting small business participation goals and a demonstration of the offered solution’s capabilities.

During his October 2019 [confirmation hearing](#), DOD Chief Information Officer (CIO) Dana Deasy addressed congressional concerns regarding the potential for political pressures to influence the contract award process. To this end, he described how the JEDI [source selection evaluation panel](#), which made the recommendation to award the JEDI contract to Microsoft, was composed of approximately 50 federal civilian experts in cloud computing. These individuals, selected by the JEDI contracting officer in accordance with the [Federal Acquisition Regulation](#), served on compartmentalized teams. Deasy stressed that the identity of every member of the source selection team was kept “anonymous ... throughout this process” and confirmed that, to the best of his knowledge, the White House had not contacted members of the source selection team.

Next Steps

Amazon’s choice to file its bid protest with COFC instead of GAO reflects [certain trade-offs](#). For example, parties that initiate a COFC bid protest do not gain the benefit of an automatic stay that would halt the initiation of contract activities; however, the scope of discovery may be broader in a COFC protest, as the entire [administrative record of a procurement](#) is generally reviewed. Amazon may petition the COFC to issue a preliminary injunction or temporary restraining order; in its appeal to the Federal Circuit, Oracle has requested the issuance of a [permanent injunction](#).

In a [November 2019 statement](#), a DOD official indicated that Microsoft has begun work on the JEDI contract.

Considerations for Congress

Further delays in initiating work on the JEDI contract could affect the timely acquisition of other [new capabilities](#). DOD CIO Deasy, as well as Lt. Gen. Bradford Shwedo, Director for Command, Control, Communications and Computers/Cyber of the J6 Directorate of the Joint Staff, have emphasized that delays may adversely affect ongoing Department activities, such as the recently established [Joint Artificial Intelligence Center](#), which seeks to accelerate the delivery of artificial intelligence-enabled capabilities to the DOD.

In light of Congress’s sustained interest in bid protest procedural reform—expressed through numerous provisions enacted in recent National Defense Authorization Acts (NDAA), such as [Section 822 of the FY2019 National Defense Authorization Act](#) (10 U.S.C. §2302 note), which requires DOD to conduct a study of the frequency and effects of so-called “second bite at the apple” bid protests involving the same contract award or proposed award filed through both GAO and COFC—Congress may further scrutinize the ultimate impact of bid protests on DOD efforts to acquire new or innovative capabilities.

Additional Resources

CRS In Focus IF11264, *DOD's Cloud Strategy and the JEDI Cloud Procurement*

CRS Report R45080, *Government Contract Bid Protests: Analysis of Legal Processes and Recent Developments*

CRS Report R45847, *The Department of Defense's JEDI Cloud Program*

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