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IN THE UNITED STATES COURT OF FEDERAL CLAIMS
BID PROTEST

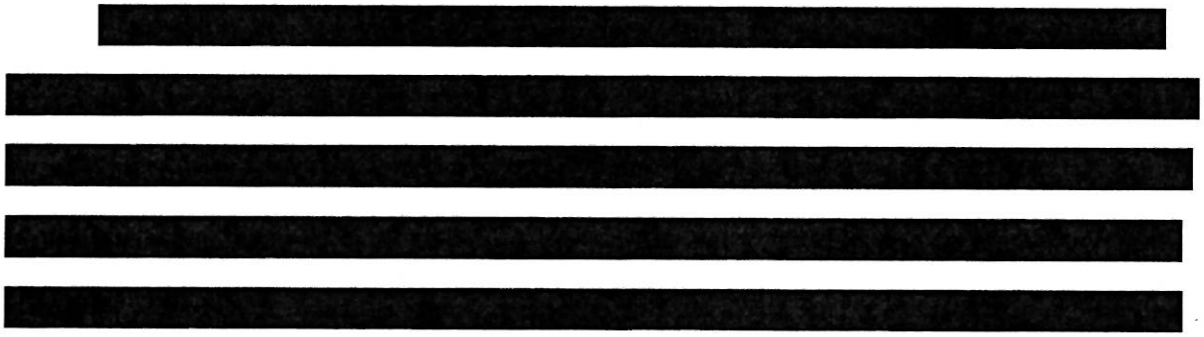
ORACLE AMERICA, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
THE UNITED STATES,	)	
	)	No. 18-1880C
Defendant,	)	(Senior Judge Bruggink)
	)	
and	)	
	)	
AMAZON WEB SERVICES, INC.,	)	
	)	
Defendant-Intervenor.	)	

DEFENDANT'S UNOPPOSED MOTION TO STAY

Defendant, the United States, respectfully requests that the Court stay this case while the Department of Defense (DoD) reconsiders whether possible conflicts of interest involving former DoD employee Deap Ubhi impacted the integrity of the procurement at issue, based upon new information provided to the contracting officer on February 12, 2019. Counsel for plaintiff, Oracle America, Inc. (Oracle), has indicated that Oracle does not oppose this motion. Counsel for defendant-intervenor, Amazon Web Services, Inc. (AWS), has also indicated that AWS does not oppose this motion.

Oracle alleges that the contracting officer failed to reasonably investigate and address conflicts of interest involving Mr. Ubhi and AWS. *See. e.g.*, Compl. 83-91. In a July 23, 2018 memorandum for record, the contracting officer addressed possible personal conflicts of interest regarding Mr. Ubhi. The contracting officer determined that no restrictions attached to Mr.

Ubhi's participation in the JEDI procurement due to his employment with AWS ending in January 2016 and that Mr. Ubhi had promptly recused himself from the procurement, on October 31, 2017, once AWS had expressed an interest in purchasing a company he founded, called Tablehero. *See* AR 686-87; *see also id.* at 2777 (Mr. Ubhi stating, in his recusal e-mail, "Tablehero, a company I founded, may soon engage in further partnership discussions with Amazon, Inc."). The contracting officer also determined that Mr. Ubhi's participation in the JEDI procurement was limited to market research activities. *Id.* at 687. Accordingly, she determined that his connections to AWS did not negatively impact the integrity of the JEDI procurement. *See id.*[1]



In light of this new information, of which the contracting officer was not aware before February 12, 2019, the contracting officer is re-opening her investigation regarding Mr. Ubhi's possible personal conflicts of interest and reconsidering her July 2018 no impact determination with regard to Mr. Ubhi. *Id.* at 2. The contracting officer intends to issue a new determination

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[1] In her July 2018 memorandum, the contracting officer did not address any potential organizational conflict of interest (OCI) based upon Mr. Ubhi returning to AWS in late November 2017, because she considered the issue premature, as AWS had not yet submitted a proposal. *See id.* at 686-87, 5021. In denying Oracle's motion to supplement the administrative record, the Court determined that this OCI issue is not ripe. See Dkt. No. 51, p. 8. Now that AWS has submitted a proposal, the contracting officer is currently considering whether AWS's re-hiring of Mr. Ubhi creates an OCI for AWS that cannot be avoided, mitigated, or neutralized. *See* App. 2 ("App. __" refers to the appendix attached to this motion.).

regarding whether Mr. Ubhi's possible personal conflicts impacted the integrity of the procurement. *Id.* If the contracting officer determines that there is no impact to the procurement from Mr. Ubhi's possible conflicts, she intends to forward her determination and documentation supporting her determination to David Kao, the Deputy Director, Acquisition Directorate, Washington Headquarters Services (WHS AD), who is the individual designated to review no impact determinations pursuant to 48 C.F.R. § 3.104-7(a)(1). App. 2. If, on the other hand, she determines that Mr. Ubhi's possible conflicts impacted the procurement, then she intends to forward her determination and supporting documentation to Dave Sanders, WHS AD Director and Head of Contracting Activity, pursuant to 48 C.F.R. § 3.104-7(a)(2). *See* App 2. The contracting officer does not intend to issue a competitive range determination unless and until Mr. Sanders or Mr. Kao authorizes such action. *Id.*

Because the contracting officer is currently reconsidering her July 2018 no impact determination with regard to Mr. Ubhi, in light of new information she just received, litigating the rationality of that determination would be a wasteful exercise that would not promote the "just, speedy, and inexpensive determination" of this action. RCFC 1. Rather, the parties should wait until the agency makes a final determination regarding the impact of Mr. Ubhi's possible personal conflicts of interest and any action it should take as a result of that determination, before litigating any remaining issues. Indeed, in its proposed order supporting its motion for judgment on the administrative record (p. 2), Oracle requests that DoD be "enjoined from proceeding with the Solicitation until such time as it conducts a proper investigation of the Deap Ubhi conflicts of interest[.]" DoD has voluntarily agreed to conduct an investigation in light of

the new information it has just received with regard to Mr. Uhbi, and, thus, the requested injunctive relief is not necessary.[2]

Additionally, because the contracting officer is reconsidering her July 2018 no impact determination regarding Mr. Ubhi, it would be inefficient to continue briefing the other issues in this case. As the Court recognized in granting AWS's motion to intervene, Oracle's allegations of personal conflicts of interest by former DoD employees are related to its challenges to the terms of the solicitation. Indeed, in its memorandum in support of its motion for judgment on the administrative record (pp. 8, 17), Oracle alleges that Mr. Ubhi "drove the decision to adopt a single award approach" and "established requirements (metrics)" for the JEDI procurement. Although we disagree with these characterizations, we do not dispute that Mr. Ubhi participated in early discussions regarding the single-award approach and potential JEDI requirements.

Moreover, granting this motion should not cause any undue difficulty in resolving this protest prior to award. DoD will not award the JEDI contract any earlier than three months after it issues a competitive range determination. *See* App. 2. Accordingly, there should be sufficient time to resolve all of Oracle's objections to this procurement, in an orderly fashion, after the competitive range determination is issued.

For these reasons, we respectfully request that the Court stay this case while DoD reconsiders whether Mr. Ubhi's possible personal conflicts of interest impacted the integrity of the JEDI procurement. The Government will provide a status report within five days of a final

[2] Likewise, with regard to Oracle's OCI allegation, the Court has already determined that this issue is not ripe and, in Oracle's memorandum in support of its motion for judgment on the administrative record (p. 57), "Oracle requests that the Court stay the contractor-side conflict of interest challenge until DoD completes its investigation." We concur with Oracle's request.

decision by DoD with regard to Mr. Ubhi's possible personal conflicts (*e.g.*, a determination by Mr. Sanders or Mr. Kao).

Respectfully submitted,

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Director

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February 19, 2019

Attorneys for Defendant

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APPENDIX

INDEX TO APPENDIX

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	)	
and	)	
	)	
AMAZON WEB SERVICES, INC.,	)	
	)	
Defendant-Intervenor.	)	

DECLARATION OF CHANDA BROOKS

I, Chanda Brooks, declare as follows:

1. I am the Contracting Officer for the Department of Defense (DoD) Joint Enterprise Defense Initiative (JEDI) Cloud Synopsis/Solicitation No. HQ0034-18-R-0077 (JEDI Solicitation).

2. Before the JEDI Solicitation was released, I conducted an investigation concerning potential conflicts of interest involving Mr. Deap Ubhi and four other current or former DoD employees with ties to Amazon Web Services, Inc. (AWS). On July 23, 2018, I concluded that the actions of these individuals did not negatively impact the integrity of the JEDI procurement.

3. As a result of my investigation, at the time of my no impact determination, my understanding was that Mr. Ubhi promptly recused himself from the JEDI procurement, on October 31, 2017, once AWS expressed an interest in purchasing a start-up (Tablehero) owned

by Mr. Ubhi, and that Mr. Ubhi [redacted] prior to October 31, 2017, while he was working on the JEDI procurement.

4. [redacted]

5. In light of this new information, I am re-opening my earlier investigation and reconsidering my earlier no impact determination with regard to Mr. Ubhi. If I determine that there is no impact to the procurement from Mr. Ubhi's possible conflicts, I intend to forward my determination and documentation supporting my determination to Mr. David Kao, the Deputy Director, Acquisition Directorate, Washington Headquarters Services (WHS AD), who is the individual designated to review no impact determinations pursuant to 48 C.F.R. § 3.104-7(a)(1).

6. If, on the other hand, I determine that Mr. Ubhi's possible conflicts impact the procurement, then I intend to forward my determination and supporting documentation to the Head of Contracting Activity, Mr. Dave Sanders, WHS AD Director.

7. I do not intend to issue a competitive range determination unless and until Mr. Sanders or Mr. Kao authorizes such action. I will not award the JEDI contract until at least three months after I issue the competitive range determination.

8. Also, my investigation regarding a potential organizational conflict of interest (OCI) for AWS, based upon its re-hiring of Mr. Ubhi, is ongoing. I intend to complete the OCI investigation and issue a determination prior to issuing a competitive range determination.

[redacted]

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 19th day of February, 2019.

Chanda Brooks

Exhibit A