

Washington Business Journal
By: Carten Cordell | May 10, 2019

Would acquisition reform have spared DOD of JEDI drama?



JOSHUA ROBERTS

The Section 809 panel was tasked with making recommendations on how to streamline the DOD's acquisition process, including reforming the contract protest process.

The Department of Defense's ongoing saga to award its flagship cloud-computing contract reached a new chapter this week in the wake of Oracle Corp.'s most recent protest.

The Redwood Shores, California technology company amended its complaint in the Court of Federal Claims Tuesday, following a DOD investigation that allowed the acquisition to proceed, continuing the Joint Enterprise Defense Infrastructure (JEDI) contract's pingponging journey through the protest process.

The court is currently weighing whether Amazon Web Services held an unfair competitive advantage because one of its former employees worked for the Defense Digital Service when the contract was developed before returning to work for Amazon (NASDAQ: AMZN).

Arguments on this most recent filing will be heard July 10, nine days before the DOD would be allowed to award the \$10 billion contract to either AWS or Microsoft Corp. (NASDAQ: MSFT). But it's anyone's guess where the 21-month procurement can lead next.

Following recent efforts to diagnose how the defense acquisition process can be streamlined, the JEDI case has become emblematic of the *Sturm und Drang* endemic in the federal government's efforts to onboard technology: prudent compliance versus a need for speed.

Those issues were recently weighed by the [Section 809 panel](#), a 16-member body tasked by the 2016 National Defense Authorization Act to provide Congress with statutory guidance on how to overhaul the defense acquisition process. Among the group's 98 recommendations were to make changes to the bid protest process, including eliminating the ability to appeal a Government Accountability Office decision to the COFC, capping the timeline of a COFC decision to 100 days, limiting the entities' jurisdiction to cases valued at more than \$75,000 and enhancing the contract debriefing process, among others.

Would those recommendations have improved the JEDI acquisition? It's difficult to say, but they certainly could have curtailed Oracle's protest, which has now survived a GAO ruling and a Pentagon investigation into former DDS and current Amazon employee Deap Ubhi's involvement in crafting the requirements of the contract.

Section 809 Chairman [David Drabkin](#) didn't delve into the specifics of the JEDI case, but said that if, hypothetically, the panel's recommendations were in place, Oracle (NYSE: ORCL) would have had to choose between filing with GAO or the COFC, with each having 100 days to render a decision.

"Given what appears to be the argument by Oracle, it seems to me, at a distance, that the Court of Federal Claims would have been the right forum," he said.

That would have given COFC until Nov. 14, 2018, to render a decision for Oracle's initial Aug. 6 protest. But provided [the widely held belief](#) the contract will again be protested once JEDI is awarded, Drabkin said it's also important the DOD improve the transparency of its debriefing process to explain to losing contractors how it reached its decision.

"Some people say, of course, there will be one because there's a loser," Drabkin said. "But many of the companies don't make their decisions to protest because they lost. They make the decision to protest in many cases because they don't have the information to understand why they lost."

[Alan Chvotkin](#), executive vice president and counsel of the Professional Services Council, said he doesn't agree with some of the Section 809 panel's recommendations, raising concerns that the focus on speed might come at the expense of agency accountability. But he concurred that large technology procurements like JEDI — which will be awarded to a single contractor — do require more insights into the process.

"When you have any large award where you are going to essentially close a marketplace for a long period of time, anybody who is in that marketplace is going to want to know with a high degree of certainty why somebody else was selected and why they were not," Chvotkin said. "Rule No. 1 is if you know and you can share it, they ought to share it."

At this point, the Section 809 panel's recommendations are just that — suggestions offered to Congress on how to streamline procurement that likely won't be implemented before the JEDI acquisition is resolved. But Drabkin said they could improve how the DOD does business going forward.