

# Pentagon: \$10B cloud contract that snubbed Amazon was legal

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This March 27, 2008, aerial file photo, shows the Pentagon in Washington. The Pentagon is reconsidering its awarding of a major cloud computing contract to Microsoft after rival tech giant Amazon protested what it called a flawed bidding process. U.S. government lawyers said in a court filing this week of March 13, 2020 that the Defense Department "wishes to reconsider its award decision" and take another look at how it evaluated technical aspects of the companies' proposals to run the \$10 billion computing project. (AP Photo/Charles Dharapak, File)

The Pentagon's process for awarding a highly lucrative cloud computing contract to Microsoft instead of Amazon was in line with legal and government purchasing standards, a government watchdog agency said Wednesday.

The Defense Department inspector general found no evidence of White House interference in the contract award process. But the report said investigators could not fully review that aspect of the matter because the White House would not allow unfettered access to witnesses.

The contract, potentially worth \$10 billion, was awarded to Microsoft last October, prompting tech rival Amazon to cry foul.

Amazon Web Services, a market leader in providing cloud computing services, had long been considered a leading candidate to run the Pentagon's Joint Enterprise Defense Infrastructure project, known as JEDI. The project will store and process vast amounts of classified data, allowing the U.S. military to improve communications with soldiers on the battlefield and use artificial intelligence to speed up its war planning and fighting capabilities.

Amazon sued the Pentagon after Microsoft won the contract. Work on the project has been halted as the lawsuit proceeds.

The judge presiding over the bid protest in the U.S. Court of Federal Claims said in March that Amazon's challenge likely had merit on some technical grounds involving pricing.

The review released Wednesday by the Defense Department's inspector general did not draw a conclusion about whether the Redmond, Washington-based Microsoft Corp. was appropriately declared the winner. Rather, it looked at whether the decision-making process was proper and legal. It also examined allegations of unethical behavior by

Pentagon officials involved in the matter and generally determined that any ethical lapses did not influence the outcome.

The review also sought to determine whether the White House influenced the Pentagon's decision, as Amazon has alleged. The report said that although it appears there was no such White House pressure, the reviewers could not definitely determine the full extent of White House interactions with the Pentagon's decision makers.

"We could not review this matter fully because of the assertion of a 'presidential communications privilege,' which resulted in several DOD witnesses being instructed by the DOD Office of General Counsel not to answer our questions about potential communications between White House and DOD officials about JEDI," the report said.

"As a result, we could not be certain whether there were any White House communications with some DOD officials which may have affected the JEDI procurement," it said.

"However, we believe the evidence we received showed that the DOD personnel who evaluated the contract proposals and awarded Microsoft the JEDI cloud contract were not pressured ... by any DOD leaders more senior to them, who may have communicated with the White House," the report said.

Amazon has asserted that the bidding was improperly influenced by President Donald Trump's dislike of Amazon and its CEO, Jeff Bezos. Bezos owns The Washington Post, a news outlet often criticized by Trump.

Frank Shaw, Microsoft's vice president for communications, said in response to the inspector general's report: "It's now apparent that Amazon bid too high a price and is seeking a do-over so it can bid again.

As the IG's report indicates, Amazon has proprietary information about Microsoft's bid that it should never have had."

Late Wednesday, Amazon issued a statement saying, "It's clear that this report couldn't assess political interference because several DoD witnesses were instructed by the White House not to answer the IG's questions about communications between the White House and DoD officials."

"The White House's refusal to cooperate with the IG's investigation is yet another blatant attempt to avoid a meaningful and transparent review of the JEDI contract award."

The Project on Government Oversight, a private watchdog group, said it was alarmed by the White House's use of presidential privilege to limit the inspector general's access to witness information.

"Executive privilege is designed to protect national security and the president's candid conversations with close advisers, not to block agency officials from discussing a large government contract that does not call for direct presidential decision-making," the group's top lawyer, Scott Amey, said in a statement.

A Pentagon spokesman, Lt. Col. Robert Carver, said the inspector general's report shows that the contract award process was fair and legal.

"This report should finally close the door on the media and corporate-driven attacks on the career procurement officials who have been working tirelessly to get the much needed JEDI cloud computing environment into the hands of our frontline warfighters while continuing to protect American taxpayers," Carver said.

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