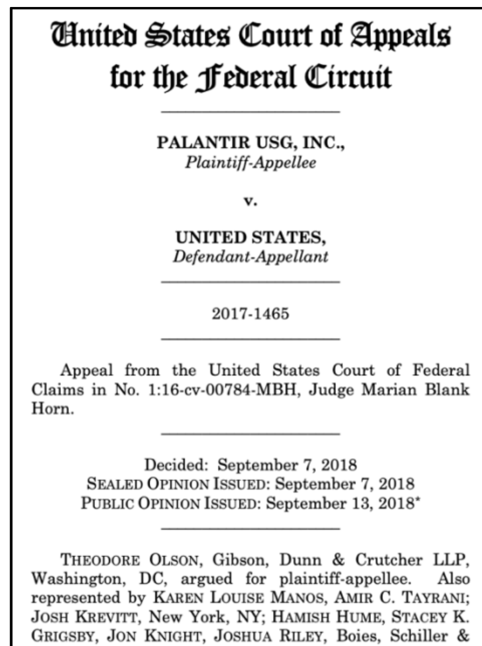
Boies Schiller & Flexner LLP – Palantir USG Inc. v United States

In 2017 and 2018, Josh Riley was a member of the team of lawyers that pursued legal action against the US Army on behalf of Palantir for allegedly violating legal statute by unlawfully soliciting a government contract for DCGS-A2 defense technology:

Editor's Note: *DCGS-A2 is an acronym that stands for "Distributed Common Ground System-Army 2" – a Palantir-developed defense-intelligence software suite.*

- **Josh Riley represented Palantir in a 2017 case against the US Army that was decided on September 7, 2018.**



United States Court of Appeals for the Federal Circuit

PALANTIR USG, INC.,
Plaintiff-Appellee

v.

UNITED STATES,
Defendant-Appellant

2017-1465

Appeal from the United States Court of Federal Claims in No. 1:16-cv-00784-MBH, Judge Marian Blank Horn.

Decided: September 7, 2018
SEALED OPINION ISSUED: September 7, 2018
PUBLIC OPINION ISSUED: September 13, 2018*

THEODORE OLSON, Gibson, Dunn & Crutcher LLP, Washington, DC, argued for plaintiff-appellee. Also represented by KAREN LOUISE MANOS, AMIR C. TAYRANI; JOSH KREVITT, New York, NY; HAMISH HUME, STACEY K. GRIGSBY, JON KNIGHT, JOSHUA RILEY, Boies, Schiller &

("2017-1465: Palantir USG Inc. v. United States," United States Court of Appeals for the Federal Circuit, 9/13/18)

- **Palantir pursued legal action against the US Army by filing a "pre-award bid protest in the Court of Federal Claims, challenging the Army's solicitation for DCGS-A2" technology, alleging that "the Army violated [legal statute] by, among other things, failing to determine whether its needs could be met by commercial items before issuing the contested solicitation" for the DCGS-A2 technology.**

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BACKGROUND[1]

Palantir USG, Inc. ("Palantir") filed a pre-award bid protest in the Court of Federal Claims, challenging the Army's solicitation[2] for DCGS-A2. The solicitation seeks a single contractor to be the system data architect, developer, and integrator of DCGS-A2. Palantir's complaint alleges that the Army violated § 2377(c) by, among other things, failing to determine whether its needs could be met by commercial items before issuing the contested solicitation. *See* § 2377(c)(2). To provide background, we introduce the applicable statute and regulations, the DCGS-A2 system, the relevant facts regarding pre- and post-solicitation activity, and the procedural history of this case.

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- **The United States Court of Appeals for the Federal District sided with Palantir against the US Army and in its decision concluded that the government's argument was "unpersuasive" and the US Army "must satisfy the requirements of" and "comply" with certain legal statutes before awarding a new contract to meet its DCGS-A2 requirements.**

CONCLUSION

We do not reach the Court of Federal Claims' finding of prejudice because the government does not contest it. Therefore, we need not reach its argument that the Court of Federal Claims erred in admitting the expert testimony of Mr. Bryant Choung, which the Court of Federal Claims relied on solely for its prejudice analysis.

We have considered the government's remaining arguments and find them unpersuasive. We affirm the judgment of the Court of Federal Claims that the Army must satisfy the requirements of 10 U.S.C. § 2377, which, thus far, the Army has failed to do. Only after the Army has complied with 10 U.S.C. § 2377 should it proceed to award a contract to meet its DCGS-A2 requirements. To be clear, we are not suggesting that the Army must choose Palantir as the awardee. We simply affirm that the Army must satisfy the requirements of 10 U.S.C. § 2377.

AFFIRMED

COSTS

Costs to Appellee.

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