

USA Response: Prevention of corruption in procurement at various government levels

The United States is pleased to provide the following response to the request for information provided by Secretariat contained in CU 2024/132(A)/DTA/CEB/TSS:

I - Information requested from States parties and signatories in relation to prevention of corruption in procurement at various government levels and the effective use of technology to prevent, detect, deter and counter corruption in procurement (arts. 9 and Conference resolution 10/9).

- 1. Please describe (cite and summarize) the measures/steps your country has taken (or is planning to take) to implement this provision of the Convention.*

Numerous laws and regulations have evolved over many years to assure the citizens of the United States that the government is objective, fair, and completely transparent in awarding public contracts. There is no succinct way to fully describe the comprehensive body of regulations, statutes, and case precedent that protect the integrity of the federal procurement process, assuring a fair process open process to all parties.

The Federal Acquisition Regulations provide an introduction and effective roadmap to the process. The Federal Acquisition Regulations were established in order to codify and publish uniform policies and procedures for acquisition by all executive branch agencies. This body of regulations, which is codified at Title 48 Code of Federal Regulations, ensures that executive branch agencies receive the best value product or service in a timely basis while maintaining the public's trust and fulfilling public policy objectives. This document may be searched or downloaded from the Internet at <<https://www.acquisition.gov/browsefar>>.

Procurement responsibilities for the overall procurement policies and practices of the executive branch reside with the Office of Federal Procurement Policy, Office of Management and Budget. For individual Agencies and Departments, specialized offices and staffs provide day-to-day procurement policy and oversight functions. There are well-established appeal procedures, discussed below, both administrative and through legal proceedings in the courts that afford fair and impartial review of the federal contracting process. Subpart 33 of the Federal Acquisition Regulations describes many of these procedures. A brief overview of the procurement process may be gleaned from the following highlights:

The Competition in Contracting Act of 1984, Pub. L. 98-369, Div. B, Title VII, 2701, ensures transparency and equality by requiring the use of competitive procedures in selecting products and services. Under this authority, Government agencies normally award contracts on a competitive basis using two procedures. The first process, termed "sealed bidding," involves an "invitation for bids" whereby the Government issues a written solicitation and private contractors submit bids by a uniform deadline. In the second procedure, termed "competitive negotiation," the Government issues a detailed "request for proposals" and then engages in "competitive negotiation" with selected responding companies, eventually requesting revised "best and final offers." In either case, the Government must publicly advertise the solicitation and award the contract to the source whose proposal is most advantageous to the United States based solely upon the factors specified in the solicitation. Only in extraordinary circumstances may the Government purchase goods and services without opening the contract to competition, such as when only one source will satisfy agency requirements, where disclosure of solicitation information could compromise national security, or where there is an urgent need for expeditious procurement, 10 U.S.C. §§ 2304-2305; 41 U.S.C. § 253.

Another major legislative effort to ensure transparency and equality in the contracting process is the Office of Federal Procurement Policy Act Amendments of 1988, Pub. L. No. 100-679. These rules apply to all government procurement regardless of dollar value. The "procurement integrity" provisions of this law provide substantial civil and criminal penalties against competing contractors, intermediaries, and government personnel for specified prohibited practices. For example, the law prohibits discussions of possible employment between a competing contractor or his agent and government procurement official during the conduct of procurement. A competing contractor or its agent is also prohibited from directly or indirectly offering or giving money, a gratuity, or anything of value to a procurement official. The Act further prohibits the solicitation or disclosure of any proprietary or source selection information regarding the procurement. In addition to providing rules governing certification and disclosure for contractors and government procurement officials, the Act also prohibits, for two years, a former government employee from working for a private contractor on a contract where the employee "personally and substantially" was involved while a government employee. See generally 41 U.S.C. § 423.

In addition, Supreme Court precedent and statutes permit the Government to void certain government transactions that have been tainted by corruption. In *U.S. v. Mississippi Valley Generating Co.*, 364 U.S. 520 (1961), the Supreme Court upheld the non-enforcement of a contract that was "infected by an illegal conflict of interest." Specifically, the government employee at issue had participated in the contract at a time when he was seen as having an indirect interest in the contract through his outside employer. This principle has been adopted and expanded upon by the U.S. Congress through passage of 18 U.S.C. § 218, which states that the Government may "declare void and rescind any contract, loan, grant, subsidy, license, right, permit, franchise, use, authority, privilege, benefit, certificate, ruling, decision, opinion, or rate schedule awarded, granted, paid, furnished, or published, or the performance of any service or transfer or

delivery of any thing to, by or for any agency of the United States or officer or employee of the United States or person acting on behalf thereof, in relation to which there has been a final conviction for any” violation of the bribery or conflict of interest statutes in chapter 11 of title 18, United States Code.

In regards to Article 9(1)(e) of the Convention, all employees who are involved in public procurement are governed by the conflict of interest statutes as well as the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct), issued by the U.S. Office of Government Ethics (OGE). Amongst the various provisions that are of utmost relevance for procurement officials are the criminal prohibition on employees participation, personally and substantially, in any particular matter (including any contract) in which that employee has a personal or imputed financial interest. 18 U.S.C. § 208. In addition, all employees including procurement officials are required to act impartially and may not give favorable treatment to any private organization or individual. 5 C.F.R. § 2635.101(b)(8).

OGE’s Standards of Conduct amplify this principle, and therefore require all employees to consider the appearance of a conflict of interest as well as the potential for a conflict of interest in the instances where they are called on to participate in a particular matter involving specific parties, such as a contract, in which one of the parties has a “covered relationship” with the employee, or where the matter could affect the financial interests of a member of the employees household. Procurement officials are generally required to recuse themselves from contracts that would involve such persons if it is determined that a reasonable person would question the employee’s participation. Likewise, an employee must generally be recused from any contract if he or she is seeking employment with one of the parties to that contract. 5 C.F.R. § 2635.604.

2. Please describe (cite and summarize) the measures/steps your country has taken, if any (or is planning to take, together with the related appropriate time frame) to promote the effective use of technology to prevent, detect, deter and counter corruption in procurement.

The United States has prioritized using technology to promote integrity in public procurement and management of public finances. One example is the Integrated Award Environment (IAE), a government-wide initiative administered by General Services Administration. The IAE facilitates the federal awards processes in multiple online systems, including the System for Award Management (SAM). Those systems are used for registering to receive federal financial assistance or contracts from the federal government, listing contract opportunities, capturing contractor performance, viewing contract data, searching assistance listings, reporting subcontracts, and more. The public can access SAM on the website SAM.gov. In May 2021, GSA completed work to modernize and improve the SAM.gov platform. The system, among other things, provides a modern portal for entities to register, update, renew, and check the status of their registration. Federal and non-federal users can also search for registrations and exclusions as well as other public information about entities seeking federal awards. Additionally, users can use SAM.gov to access publicly available award data via data extracts and system accounts.

In addition to the IAE, the public can find procurement information on a variety of public websites. For example, the U.S. Treasury Department manages USAspending.gov. This website is the official source for overall spending data for the U.S. government and shows the public how much the federal government spends every year and how it spends the money. It also allows the public to follow the money from the Congressional appropriations to the federal agencies and down to local communities, businesses, and other organizations. The financial data on USAspending.gov are uploaded directly from more than a hundred federal agencies' financial systems. Contract data are provided from the GSA IAE, financial assistance award and financial data are submitted by agencies. On a quarterly basis, all

the different information is pulled together to provide the federal spending picture. The quarterly data must be appropriately linked using a certain key, usually the award ID, and agency Senior Accountable Officials must certify that the quarterly submissions are correctly linked for display. All this data is available to copy, adapt, redistribute, or otherwise use for non-commercial or for commercial purposes, subject to some limitations. This type of transparency gives civil society and ordinary citizens the ability to track and understand how tax dollars are being spent, and potentially identify irregularities or areas of concern.

Lastly, while agencies maintain several systems that provide transparency and integrity information on the use of taxpayer funding, agencies must also balance data protection considerations as well as a range of financial impacts and technical requirements.

Information sought may, in particular, include the following:

- *Description of any electronic system of public procurement, including, for example:*
 - *Any other ways, in which technology is used in the procurement process*
 - *Any other ways, in which technology is used to detect corruption or identify irregularities.*

The Office of Management and Budget (OMB) issued a new policy directive entitled “Circular A-137, Strategic Management of Acquisition Data and Information.” This new policy establishes a centralized data management strategy to allow for the creation of more comprehensive knowledge and data banks, and requires U.S. Government agencies to begin sharing acquisition data into a centralized data environment, so that stakeholders from across the entire Federal enterprise are able to utilize data that has been historically siloed. This directive represents an important step in our efforts to buy as an organized entity, rationalize acquisition activities, and achieve cost savings at a broader scale. Through this new data environment, the United States will have centralized access to acquisition data at an

unprecedented scope and scale, enabling broader and more granular analysis of data to detect and deter corruption.

Federal agencies are also leveraging the innovative application of emerging technologies, such as artificial intelligence (AI), machine learning (ML), natural language processing (NLP), and robotic process automation (RPA) to modernize procurement operations. These innovative technologies are being deployed across the acquisition lifecycle—primarily to reduce human intervention in procurement processes, helping agencies increase speed, improve accuracy, reduce administrative cost, and lower risk, including risk associated with fraudulent activities. For example, several agencies employ RPA to assist contracting officers when making required determinations of contractor responsibility before awarding contracts. The RPA scrapes data from public websites, including SAM.gov and the Federal Awardee Performance and Integrity Information System (FAPIS). Next, the technology solution compiles the data into reports that are sent to contracting officers for consideration during the decision-making process. This strategic use of emerging technologies to facilitate procurement processes and analyses strengthens fraud prevention measures in federal procurement activities.