**THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED
BY THE UNITED STATES OF AMERICA**

ARTICLE 9, PARAGRAPH 1 UNCAC

PUBLIC PROCUREMENT

UNITED STATES OF AMERICA (THIRTEENTH MEETING)

1. In relation to integrity in public procurement and management of public finances (article 9)

The United States has prioritized using ICT 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 will, among other things, provide a modern portal for entities to register, update, renew, and check the status of their registration SAM.gov. Federal and non-federal users will also be able to 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.

**THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED
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ARTICLE 9 UNCAC

PUBLIC PROCUREMENT

UNITED STATES OF AMERICA (SEVENTH MEETING)

1. **In relation to integrity in public procurement and management of public finances (article 9)**, States parties and signatories may wish to provide information on measures that:

- Utilize online platforms for the distribution of information relating to public procurement and tenders as a way to prevent corruption, enhance transparency and ensure competition and objective criteria in procurement decision-making.

Information sought may, in particular, include the following:

- Description of any electronic system of public procurement, including, for example:

- The means by which tender invitations are published;

- The inclusion of all pertinent information on the award of contracts;

- Ways in which applications may be submitted (including the use of electronic procurement platforms); and

- Ways in which the criteria to be used for selection and award are publicized.

In the Memorandum on Transparency and Open Government, issued on January 21, 2009, President Obama directed the Office of Management and Budget (OMB) to issue an Open Government Directive, emphasizing the importance of disclosing information that "the public can readily find and use." Responding to that instruction, the OMB issued the Open Government Directive, which instructed executive departments and agencies to take specific actions to implement the principles of transparency, participation, and collaboration, as set forth in the President's Memorandum.[1] The Memorandum required executive departments and agencies to take actions toward the goal of creating a more open government. These included, publishing government

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[1] Available <https://www.whitehouse.gov/sites/default/files/omb/assets/memoranda_2010/m10-06.pdf>

information online, improving the quality of government data, and creating an enabling policy framework for Open Government through the use of emerging technologies.

One of the high-value data sets included in the Open Government Initiative is the Federal Budget of the United States government. The Federal Budget is publicly available through the OMB, and can be viewed on its website. Budgetary information publicly available includes information about the President's budget proposals for a given fiscal year, other budgetary publications that have been issued throughout the fiscal year, actual expenditures from previous fiscal years as well as projected spending for upcoming fiscal years. Historical Tables are also available to provide data on budget receipts, outlays, surpluses or deficits, Federal debt, and Federal employment over an extended time period, generally from 1940 or earlier to 2013 or 2017. Information on the budget can be found at https://www.whitehouse.gov/omb/budget. The General Accounting Office (GAO) audits the budget and other fiscal documents, and its audits are available on its website (e.g., http://www.gao.gov/products/GAO-16-357R).

The United States also uses Open Data to promote transparency in federal public procurement. The Federal Government of the United States procures over 450 billion dollars of goods and services each year. With few exceptions, the contracts are executed agency-by-agency following the requirements and procedures found in the Federal Acquisition Regulation (FAR) contained within Chapter 1 of Title 48 of the Code of Federal Regulations. The FAR (found at www.acquisition.gov) includes uniform policies and procedures for acquisition processes describing appropriate practices for all Executive Branch agencies to use during the pre-award, award, and post-award contract process.

The U.S. Federal contracting process is designed to promote transparency and fair competitive processes that directly contribute to the promotion of integrity and the prevention corruption. This process includes the open publication of tenders (www.fbo.gov), awards, ineligible bidders, and information about subcontractors. Federal procurement is comprised of several electronic systems that support fraud protection at various parts of the contracting process. These systems include:

Pre-award:

The System for Award Management[2] (SAM) is the Official U.S. Government system that consolidated the capabilities of several procurements such as Central Contractor Registry

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[2] https://www.sam.gov/portal/SAM/##11

(CCR), Federal Agency Registration (Fedreg), Online Representations and Certifications Application (ORCA) and Excluded Parties List System (EPLS) into one system. SAM is an online procurement system used by anyone interested in the business of the Federal Government, including Entities (e.g. contractors, federal assistance recipients, and other potential award recipients) as well as the general public searching for government business information. Entities interested in applying for Federal contracts are required to enter information in SAM including marketing information, billing information, unique identification number, business size information, as well as business assertions.

Public data on SAM is available to search and view without having to login or register for a SAM account. Public users that want to save their searches or government users needing access to higher levels of sensitive data must register for a SAM user account. Through the SAM website, the public can search for a variety of data, including name of entity, geographic area served, and products and services rendered. Search results can be downloaded and saved in a variety of formats.

In addition to SAM, the Past Performance Information Retrieval System[3] (PPIRS) provides timely access to past performance information of contract awardees. PPIRS also includes the module for the Federal Awardee Performance and Integrity System.

Contract award:

The Federal Procurement Data System[4] (FPDS) provides public access to data on all federal contract actions over $3,000. FPDS identifies who bought what, from whom, for how much, when and where. It also includes the interagency contract directory. FedBizOpps[5] is the single government point-of-entry for solicitations of any dollar amount and for required synopsis over $25,000, allowing commercial business suppliers and government buyers to post, search, monitor, and retrieve opportunities in federal government markets. FedBizOpps contains announcements for federal contracting opportunities, training sessions for small businesses, announcements of changes to offers, can collect bids, and can be used to upload certain information for offers.

Post-award management:

Several electronic procurement systems promote transparency of the contracts and subcontracts awarded by the Federal government. The Federal Funding Accountability

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[3] https://www.ppirs.gov/
[4] https://www.fpds.gov/fpdsng_cms/index.php/en/
[5] https://www.fbo.gov/

and Transparency Act Subaward Reporting System[6] (FSRS) is the reporting tool Federal prime awardees (i.e. prime contractors and prime grants recipients) use to capture and report subaward and executive compensation data regarding their first-tier subawards. The sub-award information entered in FSRS will then be displayed on www.USASpending.gov associated with the prime award, furthering Federal spending transparency. The Electronic Subcontracting Reporting System[7] also facilitates reporting of accomplishments toward subcontracting goals. Additionally, the Excluded Parties List System, the EPLS, is an electronic, web-based system that identifies parties excluded from receiving Federal contracts, certain subcontracts, and certain types of Federal financial and non-financial assistance and benefits. The EPLS keeps its user community aware of administrative and statutory exclusions across the entire government, and individuals barred from entering the United States. The public can search for this type of information in SAM at www.sam.gov and click on SEARCH RECORDS.

All of these platforms contribute to a robust redress system for bidders who suspect instances of unfair and unequitable contracting procedures. Specifically, the transparency provided by these systems allows for increased oversight of the recipients and the types of contracts awarded. For example, businesses and watchdog organizations can review if contract awardees meet the necessary criteria for certain contracts. This is particularly helpful in protecting small businesses.

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[6] https://www.fsrs.gov/
[7]https://www.esrs.gov/

**THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED
BY THE UNITED STATES OF AMERICA**

ARTICLE 9, PARAGRAPH 1 UNCAC

PUBLIC PROCUREMENT

UNITED STATES (SIXTH MEETING)

The federal government of the United States procures over 450 billion dollars of goods and
services each year. With few exceptions, the contracts are executed agency-by-agency following the requirements and procedures found in the Federal Acquisition Regulation (FAR) contained within Chapter 1 of Title 48 of the Code of Federal Regulations. The FAR (found at www.acquisition.gov) includes uniform policies and procedures for acquisition processes describing appropriate practices for almost all Executive Branch agencies to use during the preaward, award, and post-award contract process. The FAR includes 53 parts that govern the acquisition process. Specific areas are highlighted below:

- Part 1 – Federal Acquisition Systems includes Subpart 1.6 Career Development, Contracting Authority, and Responsibilities for acquisition professionals integral to the contracting process.
- Part 3 – Improper Business Practices and Personal Conflicts of Interest. Subpart 3.10— Contractor Code of Business Ethics and Conduct (a) Implements 41 U.S.C. 3509, Notification of Violations of Federal Criminal Law or Overpayments; and (b) prescribes policies and procedures for the establishment of contractor codes of business ethics and conduct, and display of agency Office of Inspector General (OIG) fraud hotline posters.
- Part 5 – Publication of solicitation notice and award notices on www.fedbizopps.gov
- Part 7 – Acquisition Planning
- Part 9 – Integrity, ethics compliance plans, and suspension and debarment. Of note, the Interagency Suspension and Debarment Committee (ISDC) holds particular functions in this area. The ISDC website includes reports, regulations, and guidance documents – see https://isdc.sites.usa.gov/about-us/ for more information.
- Part 10 – Market Research
- Part 14 and 15 - solicitation of bid and source selection and contract award, communication with industry
- Part 33 - Protest procedures
- Part 42 - Contract management
- Part 46 - Quality Assurance
- Part 49 – Termination of contracts

The Office of Federal Procurement Policy (OFPP) in the Office of Management and Budget plays a central role in shaping the policies and practices federal agencies use to acquire the goods and services they need to carry out their responsibilities. (See https://www.whitehouse.gov/omb/procurement_default/ for more information.) OFPP was established by Congress in 1974 to provide overall direction for government-wide procurement policies, regulations and procedures and to promote economy, efficiency, and effectiveness in acquisition processes. OFPP is headed by an Administrator who is appointed by the President and confirmed by the Senate. In carrying out their duties, the OFPP Administrator chairs the Federal Acquisition Regulatory Council (FAR Council) and members include the Secretary of Defense (for the military departments and defense agencies), the Administrator of General Services (for civilian agencies other than NASA), and the Administrator of NASA (for NASA activities). The FAR Council was established to assist in the direction and coordination of Government-wide procurement policy and Government-wide procurement regulatory activities in the Federal Government, in accordance with Title 41, Chapter 7, Section 421 of the Office of Federal Procurement Policy (OFPP) Act. The Administrator, in consultation with the Council, shall ensure that procurement regulations, promulgated by executive agencies, are consistent with the Federal Acquisition Regulation (FAR) and in accordance with any policies issued pursuant to Section 405 of Title 41. The Council manages coordinates controls and monitors the maintenance and issuance of changes in the FAR. For more information on the FAR Council see

https://www.whitehouse.gov/omb/procurement_far_council. OFPP also issues circular memoranda, guides, reports, policy letters and memos on various aspects of federal procurement.

For example, the following is a selection of recent and notable information provided by OFPP in order to help improve communications with contractors:

- Acquisition 360 – Improving the Acquisition Process through Timely Feedback from External and Internal Stakeholders (March 18, 2015)
- "Myth-Busting": Addressing Misconceptions and Further Improving Communication During the Acquisition Process (May 7, 2012)
- "Myth-Busting": Addressing Misconceptions to Improve Communication with Industry during the Acquisition Process (February 2, 2011)
- Transforming the Marketplace: Simplifying Federal Procurement to Improve Performance, Drive Innovation, and Increase Savings (December 4, 2014)

OFPP has also provided guidance on strengthening the Acquisition Workforce. Examples include:

- Transforming the Marketplace: Simplifying Federal Procurement to Improve Performance, Drive Innovation, and Increase Savings (December 4, 2014)
- Revisions to the Federal Acquisition Certification for Program and Project Managers (FAC-P/PM) (December 16, 2013)
- Revisions to the Federal Acquisition Certification for Contracting Officer's Representatives (FAC-COR) (September 6, 2011)
- Increasing Efficiencies in the Training, Development, and Management of the Acquisition Workforce (September 3, 2013)
- Attracting Talent to the Acquisition Workforce (February 4, 2011)

For additional OFPP guidance, see www.whitehouse.gov/omb/procurement_index_memo/.

The OFPP Administrator and the FAR Council work closely with the Chief Acquisition Officers Council (CAO Council) to promote the use of effective business practices in the acquisition system. The CAO Council was established pursuant to Section 16 of the Office of Federal Procurement Policy Act, as amended, 41 USC 403, et seq. The Council consists of a diverse group of acquisition professionals in the Executive Branch established to provide a senior level forum for monitoring and improving the federal acquisition system. The Council promotes effective business practices that ensure the timely delivery of best value products and services to the agencies, achieve public policy objectives, and further integrity, fairness, competition, and openness in the federal acquisition system. For information about the CAO Council, membership and activities, visit https://cao.gov/about-caoc/.

The Federal Acquisition Institute (FAI) was established in 1976 under the OFPP Act, and has been charged with fostering and promoting the development of a federal acquisition workforce.

FAI facilitates and promotes career development and strategic human capital management for the acquisition workforce. FAI coordinates with organizations such as the OFPP, CAO Council, and the Interagency Acquisition Career Management Council to develop and implement strategies to meet the needs of the current and future acquisition workforce. In conjunction with its partners, FAI seeks to ensure availability of exceptional training, provide compelling research, promote professionalism, and improve acquisition workforce management. For information about contracting training and courses developed for the acquisition workforce, visit http://www.fai.gov/drupal/about/about-fai.

UNITED STATES (THIRD MEETING)

Article 9.paragraph 1.(e)
In the executive branch, agencies typically require procurement officials to file confidential financial disclosures to ensure that contracting decisions are made free from bias. These individuals are required to receive annual ethics training. In addition, the Office of Federal Procurement Policy has developed common certification programs that generally reflect a government-wide standard for education, training, and experience leading to the fulfilment of core competencies in a variety of acquisition-related disciplines. (See http://www.whitehouse.gov/sites/default/files/omb/assets/procurement/fac_contracting_program.pdf and http://www.whitehouse.gov/sites/default/files/omb/procurement/revisions-to-the-federalacquisition- certification-for-contracting-officers-representatives.pdf
Procurement personnel have a variety of avenues for certification and training. For instance, both the Federal Acquisition Institute and the Defense Acquisition University

have learning resources to assist Government agencies in ensuring the acquisition workforce is adequately trained on responsibilities and fundamental contract rules and regulations, including the rules related to ethics and integrity in procurement (www.dau.mil and www.fai.gov).

o *the reporting by a public official of an act of corruption through mechanisms established in accordance with the provisions of the Convention.*
Most agencies allow any individual, including public officials, to report fraud, waste, or abuse via an online complaint form, email, toll-free phone numbers, mail, or fax. A list of agency IG website links and contacts is located at http://www.ignet.gov/igs/homepage1.html. Examples of specific agency reporting mechanisms include: the Department of Commerce (http://www.oig.doc.gov/Pages/Hotline.aspx), the Department of Agriculture (http://energy.gov/ig/services).
Inspectors General semi-annually submit reports to the Congress that describe the work of the OIG within the reporting period. These reports may include summaries of complaints received by the IGs and the status of the resulting investigations. In addition, Inspectors General frequently file public reports on the results of investigations conducted as the result of a report made by a public official.
In addition to agency-specific reporting mechanisms, there are initiative-specific reporting mechanisms. For instance, the American Recovery and Reinvestment Act of 2009 (Recovery Act) responded to the economic crisis by providing $787 billion in tax benefits, entitlement programs, and funding for Federal contracts, grants and loans. On www.recovery.gov, individuals, including public officials, can track how and where Recovery Act funds are spent and report suspected fraud, waste, or abuse related to Recovery funding.
The U.S. Office of Special Counsel may order an agency head to investigate and report on a whistleblower disclosure. After any such investigation, the Special Counsel must send the agency's report, with the whistleblower's comments, to the President and Congressional oversight committees. For copies of those reports visit http://www.osc.gov/FY%202012%20A.html

4. Have you ever assessed the effectiveness of the measures adopted to implement articles 7 – 9? Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized.

States parties may wish, in particular, to provide information in relation to assessments of the effectiveness of measures aimed at:
o *identifying and resolving conflicts of interest in the public sector,*
o *the identification of potential conflicts of interest by requiring the completion of asset declarations by public officials.*