International Trade Centre

UNCTAD CNUCED WTO OMC

ITC
Your partner in trade development

Wayne A. Wittig
Senior Adviser, Public Sector Procurement
wittig@intracen.org

FOREWARD **2**

INTRODUCTION **2**

1. PROFESSIONAL INDEPENDENCE: **6**
PROCUREMENT INTEGRITY 9
CONTINGENT FEES 11
OFFICE OF GOVERNMENT ETHICS 11
2. PROFESSIONAL STANDING AND TRAINING: **12**
CONTRACTING AUTHORITY AND ACCOUNTABILITY 13
DEPARTMENT OF DEFENSE CAREER MANAGEMENT 14
3. PROTEST AND DISPUTE SYSTEMS **16**
4. QUALITY CONTROL AND REVIEW SYSTEMS **18**
DEFENSE CONTRACT AUDIT AGENCY 20
INSPECTORS GENERAL 20
GENERAL ACCOUNTING OFFICE 22
FREEDOM OF INFORMATION ACT 23
WHISTLEBLOWERS 24
5. SYSTEM MANAGEMENT **26**

U.S. FRAMEWORK SUMMARY **29**

CONCLUSION **30**

FOREWARD

This paper is intended to provide a conceptual baseline for considering different approaches recommended by the International Trade Centre UNCTAD/WTO to issues arising in the area of public procurement reform. Included are descriptions of how the ITC program addresses the issue followed by a summary of the approach by the United States. This survey attempts to go to the arguments and the methods for procurement control at the institution design and legislative levels. It is based on, and uses in part, source material from the organizations referred to in the paper obtained from web sites referenced on the Internet. The United States procurement system is used as an example throughout the paper because it represents a large, well-documented system.

INTRODUCTION

The procurement process is a tributary of the budgetary stream. Organizations, whether they are private or public, determine through the budget process how resources are going to be used to meet established goals. The income from various sources is designated for specific projects and purposes. The organization then has to decide how much of the budgeted amounts will be spent in-house using internal resources to meet the organizational goals and how much will, due to economic necessity, go "out of house". This is the basic "make or buy" decision that an organization uses to manage its work. If the needed goods and services are unavailable in-house, or cheaper than they would cost internally, the organization normally buys them.

Governments provide goods and services to meet a variety of citizen-needs. Public procurement systems are the bridge between public requirements (e.g. roads, hospitals, defense needs, etc.) and private-sector providers when the government decides to go out of house. In this sense, governments traditionally use their budget process just as a private company makes similar decisions in their enterprise resource plan. However, unlike private sector procurement -- public procurement is a business process within a political system. And, just as a private company operating in a free market can be judged by its customers on the quality of its products or services, governments can be judged on the quality of governance provided.

An effective public procurement system will allow suppliers to provide satisfactory quality, service and price within a timely delivery schedule. The basic tenet of public procurement is straightforward: acquire the right item at the right time, and at the right price, to support government actions. Although the formula is simple - it involves questions of accountability, integrity and value with effects far beyond the actual buyer/seller transactions at its center. A serious and sustained review of

such decisions is needed to properly manage the public procurement function.

The degree of transparency helps to determine the effectiveness of the public procurement system. Transparency, in the context of public procurement, refers to the ability of all interested participants to know and understand the actual means and processes by which contracts are awarded and managed. This requires the release, as a minimum, of information sufficient to allow the average participant to know how the system is intended to work, as well as how it is actually functioning. Transparency is a central characteristic of a sound and efficient public procurement system and is characterized by:

- Well-defined regulations and procedures open to public scrutiny
- Clear, standardized tender documents
- Bidding and tender documents containing complete information, and
- Equal opportunity in the bidding process

Transparency requires that published rules are the basis for all procurement decisions and that these rules are applied objectively to all bidders. Transparency is an effective means to identify and correct improper, wasteful--and even corrupt--practices.

Fighting waste and corruption and improving financial accountability are essential for good governance. No country in the world appears to have escaped improper, wasteful and corrupt practices in public procurement.

Corruption deserves special attention because it works in insidious ways. It tends to undermine the whole fabric of economic and political life. Thus, it is of extreme importance to establish and sustain correct behavior in all procuring entities. Corruption, as defined by the World Bank[1] is the abuse of public office for private gain. This private gain could be in the form of money or favors for the benefit of family or friends – or for the benefit of special interest groups such as a political party seeking to obtain or retain power. Such behavior by persons concerned with the procurement process often leads to economic losses for the public. Thus, many lose for the benefit of a few.

Since corruption is generally an economic act, one way to view it is through the supply and demand mechanism. For our purposes, supply-side corruption emanates from contractors seeking to bribe or collude in some way with government officials willing to take advantage of an opportunity offered to them. This type of corruption is like rainwater falling on a roof seeking any crack or loose shingle to rot the structure.

[1] *Helping Countries Combat Corruption*, Poverty Reduction and Economic Management Network, The World Bank, Washington, DC September 1997, p 8

The government side looking for resources initiates demand side corruption. These resources may be sought just to enrich the government official in some way or to sustain a political position or party outside of accepted means. Keeping with a watery metaphor, this type of corruption is like building dams or impoundments on the riverbank to divert public water for private orchards. Within the United States government, a campaign started in the Pentagon in the 1980s against "waste, fraud and abuse" in the procurement process. This slogan included both intentional and unintentional misuse of government resources. This was a useful way to further categorize actions that would otherwise be gathered under the indistinct term of "corruption."

Transparent procedures help attract more investment by lowering risk. A transparent procurement system allows competing private enterprises to judge the risk of doing business with the government. They can make more realistic economic investment decisions where government procurement policies are in line with good commercial practice and public accountability requirements.

Market-based systems work best when constructive pressure exists to change and improve pricing, quality, or performance of a product, or to otherwise satisfy customer needs. If a competitor arranges to minimize market pressures by relying on personal contacts, bribes or other means to "influence" the system, both parties are diminished in the long term, despite the apparent immediate benefits of such corruption:

- The public sector (buyer) will most likely receive a less satisfactory product to satisfy the public need at a higher price than if fairly set by the market place; and,
- The contractor (seller) loses initiative and energy to make its product or service more competitive or actually loses market share when the public eventually becomes aware of the corruption[2].

Public procurement operations affect many different elements of society. First are the procuring entities that have needs for material support to fulfill their designated national missions. Then there is the business community of actual or potential suppliers to satisfy the government's identified requirements[3]. For the government agency needs to be properly considered by a supplier, they must be expressed in clear terms, compatible with public policies such as competition, social and economic goals, and transparency. Procurement actions should encourage suppliers

[2] In addition to international attempts to minimize the benefits of corrupt business practices through such devices as anti-bribery conventions (see OECD below), many global companies (e.g. Shell Oil in the mid 1990 because of corruption in Nigeria) have faced consumer boycotts or threatened shareholder actions when corrupt behavior has been exposed.

[3] Traditionally, a need translates into a procurement requirement. The government *need* may be to move transports across a lake. The *requirement* under the contract may eventually be described as a bridge, or a ferry or a tunnel or another solution to this need which the government has determined to be the optimum approach to meet the need.

to value government business and provide satisfactory quality, service and price in good time. Other organizations participating in the broader public procurement system are professional associations, academic entities, and public interest groups, which have important views as to the performance of public management institutions. The general public is more likely to feel satisfaction when they know that expenditures made through the public procurement system are economical, rational and fair.

But the "public" also expects that its interests are protected, or at least considered by the government when deciding how national resources are to be spent. The ability of the business community to participate in the national procurement process helps assure its members that they can remain viable employers and productive economic units to build wealth and increase the tax base. Therefore, businesses feel a legitimate need to discuss or promote their interests as part of the overall "public" interest.

Our working definition of the term "public interest" is "an activity devoted or directed to the general welfare of a state". However, this still leaves a lot of room in a political system for justifying special treatment of a narrow segment of the public. The best measure for determining how legitimate the "public interests" being protected are is to consider the extent to which they agree with established public policies. Transparency, or openness, of the decision-making process and actions of government are the most effective tool to directly or indirectly measure "the greatest good for the greatest number" in a Utilitarian sense. Again, transparency means that established rules are known and followed as provided under the law or regulations. Transparency means that information is released in accordance with the rules, not indiscriminately to all people. Information may not be available to the general public in matters classified for national security purposes or which are sensitive in adjudicating the award of a competitive contract, for example. However, a transparent system will allow for some properly authorized representatives for public oversight (e.g. Congress) to assure the public that government decisions followed proper procedures.

Balancing competing interests is one of the main functions of a political system. Governments have struggled with how to allow competing interests to contend in the political arena within acceptable rules. Some countries have addressed the issues involving corruption in public procurement in a more complete manner than others. To help assess the issues involved and the means to control corruption, we have developed a framework (Table 1). which allows us to highlight key elements in controlling corruption in public procurement. By focusing on how to define corruption and establish the means to expose it, the corruption can then be corrected. Our ultimate goal is to prevent corruption within the public procurement system. To do so, we have set out for further review five topic areas to be discussed in each of the remaining chapters of the

paper. We will examine how the United States has addressed these areas of concern and how they balance the need for accountability and integrity with efficiency and effectiveness to try to prevent corruption.

Table 1 – A FRAMEWORK FOR CONTROLLING CORRUPTION IN PUBLIC PROCUREMENT	
	Key Elements
DEFINE by	Criminal law, public procurement law, government regulations, professional code of ethics, custom and practice
EXPOSE by	Internal and external auditors, whistle blowers, public availability of government information, protests of contract awards, other external oversight, professional diligence
CORRECT by	Implementation of law and regulation, protest resolution, management improvements
PREVENT by	1. **PROFESSIONAL INDEPENDENCE:** to assure the professional independence of officials in charge of procurement to make properly balanced decisions on the basis of merit and shield them from improper pressure of higher ranking politically designated officials 2. **PROFESSIONAL STANDING AND TRAINING**: to enhance the professional skills of the officials in charge of procurement and approaches used to train the officials in charge of procurement to prevent corruption and to enhance efficiency. 3. **PROTEST AND DISPUTE SYSTEMS:** Approaches used to resolve challenges to the rules promulgated and actions taken within the public procurement system 4. **QUALITY CONTROL AND REVIEW SYSTEMS:** Approaches to conduct pre and post award reviews and establish internal and external controls and process evaluation on the procurement process. 5. **SYSTEM MANAGEMENT:** Approaches to maintain the procurement infrastructure and keep permanent contact with operational officials.

1. PROFESSIONAL INDEPENDENCE:

If Adam Smith's "Invisible Hand" causes the free market to work through optimizing self-interest, governments need to glove that hand with integrity rules to keep it from sullying public procurement.

Influencing, or trying to influence, a person in power appears to be part of mankind’s perpetual competition for resources. Whether state power is represented in the form of autocrat, council or elected representative, there will be attempts to turn that power into favors for family and friends or to help the powerful retain power. And the bigger the influence of government on individuals, the larger the bag of favors and resources to be dispensed. Since procurement is just one of many functions of government, it has no exclusive claim on corruption – merely a wide area for its application since public procurement can account for 9 to 20 % of a nation’s gross domestic product.

The political process may legitimately demand that uneconomic decisions be made to support higher national goals, like favoring small businesses, or a business sector or even a selected company, which is perceived to be important to national interests. These favored industries may be selected as a result of legitimate lobbying by industry (e.g. demonstration of the overall economic benefits or strategic value of the national source) or illegitimate lobbying (e.g. payment of bribes) or gray areas such as legal contributions to legislator campaign funds. From a public management perspective, the role of the career professional in these cases should be to demonstrate the costs of the favored (non-competitive) treatment and let the proposed benefits be matched against them in a public and transparent way with politicians held accountable for their actions.

The presence of strong institutional support at the top levels of government for the independent administering and monitoring of the public procurement process is an essential factor for promoting integrity and proper application of procurement law. This leads to increased efficiency and professional performance in procurement operations.

National governments can address corruption within its own borders or in foreign countries. Historically, countries were much more interested in controlling and punishing bribery that took place within their borders. In the new global economy, there is an increasing awareness within the trading nations that their own nationals offering bribes to foreign officials harmed the global economy in which they were becoming more involved.

The most comprehensive evidence of this relatively new awareness is the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. This Convention, often referred to as The Anti-Bribery Convention, was signed on 17 December 1997 and became effective on 15 February 1999.

This international agreement only addresses supply-side bribery, not demand-side bribery. OECD, its sponsor, concedes that demand-side bribery must also be addressed, but says that supply-side bribery was a logical first step because contractors in OECD countries constitute the greatest potential source of bribe money.

This convention, signed by 34 countries—all OECD countries[4] and five other countries[5], obliges its signatories to:

- Adopt national legislation to make bribing a foreign public official a crime
- Adopt a broad definition of public official—that is, all persons

[4]Australia, Austria, Belgium, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom, the United States

[5] Argentina, Brazil, Bulgaria, Chile, and the Slovak Republic

exercising a public function
- Punish such bribery by effective, proportionate and dissuasive criminal penalties similar to penalties used for bribing the nation's own public officials
- Interpret territorial jurisdiction in as broad a manner as possible (establishing national jurisdiction if compatible with the national legal system)
- If the national system does not provide criminal liability for private enterprises, impose dissuasive non-criminal sanctions, including monetary fines
- Co-operate with other counties in their prosecutions (including the elimination of bank secrecy as a valid legal basis for financial institutions to deny access to their records)

National ethics programs can be integrity- based (e.g. a positive approach, focusing on inducement, support, and values while de-emphasizing enforcement) or compliance-based (e.g. emphasis on reporting and punishment of ethics violations). In a nine-country sample of national ethics programs taken from within its membership in 1996[6], the OECD found that all countries had some aspects of both approaches. However, the overall approach of Portugal, Mexico, and the United States was compliance-based. The other countries in the sample—Australia, Finland, the Netherlands, New Zealand, Norway, and the United Kingdom—followed a more integrity-based approach.

A shift toward compliance-based elements in national programs can be expected among OECD countries and other signatories to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions because:
- there is an emphasis on compliance in the convention requirements for national laws regarding foreign bribery and
- there is a requirement that foreign bribery laws be at least as strong as laws addressing domestic violations.

To help control the supply side of the corruption equation, the United States in 1977 enacted The Foreign Corrupt Practices Act that made it illegal for U.S. nationals to pay bribes to obtain business abroad when those bribes are against local laws in the foreign country. The record-keeping provisions of the Act require that all publicly held companies must keep records that clearly indicate how their assets are used. The government audits the books when unethical practices are suspected.

The United States also has similar procedures in its law to guide the actions of all civil servants. In general, an employee of government, no matter the rank or method of appointment, should not misuse their office

6 *Ethics in the Public Service*, Public Management Occasional Paper No. 14, OECD, 1996.

for private gain. Detailed prescriptions of behavior are contained in the Federal Acquisition Regulation (FAR). The Office of Federal Procurement Policy (OFPP) Act of 1974 authorizes the FAR System (Public Law. 93-400 as amended). The FAR is prepared, issued, and maintained, jointly by the Secretary of Defense, the Administrator of General Services, and the Administrator, National Aeronautics and Space Administration, under their statutory authorities.

The most significant provisions involve the prohibition of gratuities and contingent fees, and procurement integrity controls. Each of these tries to closely define how contractors and government officials can avoid problems in their conduct. Contractors are restricted by criminal statutes and contracting regulations from providing goods and services to the personal benefit of federal employees. These restrictions apply to anything of monetary value -- including gifts, entertainment, loans, travel, favors, hospitality, lodging, discounts, and meals. Many of the activities a contractor may undertake with its commercial customers (e.g., taking a prospective client to dinner) are prohibited when dealing with federal government employees. Some exceptions to the gratuities rules do exist, however. For example, contractors may provide federal employees (a) modest items of food and refreshments offered other than as part of a meal; (b) favorable rates/discounts available to the public or all Government employees; and (c) greeting cards and items with little intrinsic value (e.g., plaques, trophies). Federal employees may also accept non-cash gifts of $20 or less, not to exceed $50 annually from any one person or company. Because of these stringent rules, contractors must train employees who deal with the federal government so they understand these restrictions and avoid even the suspicion of wrongdoing.

Procurement Integrity

If there is a suspicion of improper behavior, the procedures set out how the contracting officials should deal with it and what sanctions are appropriate. The section on procurement integrity and its detailed requirements for the safeguarding of source-selection sensitive material was primarily the result of a scandal in the 1980s involving the disclosure of source-selection-sensitive information by an Assistant Secretary of the Navy (a political appointee) and other government officials to friends working for competing contractors. This case, actually a series of cases against 10 contractors, was known by the Department of Justice code name of “Operation Ill Wind”. [7]

[7] *“Litton Industries Pleads Guilty, Closing Book On 'Ill Wind' Scandal”,* Washington Post, January 15, 1994 ; Page A11

Outline Of Regulations On Procurement Integrity

I. Disclosing and Obtaining Contractor Bid or Proposal Information or Source Selection Information

A. A present or former employee of, or person acting on behalf of or advising, the U.S. on a procurement, who has or had access to such information shall not disclose it before the award of the contract to which the information relates. (FAR 3.104-4(a))

B. No person shall knowingly obtain such information before the award of the contract to which the information relates. (FAR 3.104-4(b))

II. Offers of Non-Federal Employment

An official participating personally and substantially in a procurement for a contract in excess of the simplified acquisition threshold ($100,000) who is contacted by a bidder regarding non-federal employment during the conduct of the procurement shall:

A. Report the contact to his supervisor in writing; and

B. Reject the offer; or

C. Disqualify himself in writing to the Head of the Contracting Activity in accordance with 18 U.S.C. § 208 until authorized to resume on grounds that:

1. the offeror is no longer a bidder; or

2. all discussions have terminated without an agreement for employment. (FAR 3.104-4(c))

D. This requirement does not apply after the award of the contract or after the procurement has been canceled, although 18 U.S.C. § 208 would still require disqualification on the part of an employee who is administering a contract.

III. Accepting Compensation from a Contractor

A. A former official may not accept compensation from a contractor within a year after he served as the procuring contracting officer, the source selection authority, a member of the source selection evaluation board or the chief of a financial or technical evaluation team for a procurement for a contract in excess of $10 million awarded to that contractor.

B. The above restriction also applies to a former official who served as program manager, deputy program manager or administrative contracting officer for a contract over $10 million.

C. It applies to a former official who made a decision to:

1. award a contract, modification, subcontract, task order or delivery order, in excess of $10 million;

2. establish overhead or other rates applicable to a contract in excess of $10 million; or

3. approve issuance of a contract payment or payments in excess of $10 million, or pay or settle a claim in excess of $10 million. (FAR 3.104-4(d))

D. Note that this restriction can apply to decisions made after the award of the contract which need not be competitively awarded. The restriction does not apply to accepting compensation from a division or affiliate of the contractor that does not produce the same or similar product or service.

E. The one-year prohibition on accepting compensation begins:

1. on the date of selection of the contractor for a former official who served in a position listed in paragraph A at that time, but not on the date of the award of the contract;

2. on the date of the award of the contract for a official who served in a position listed in paragraph A at that time whether or not he was serving at the time of selection;

3. on the last date an official served in a position listed in paragraph B; or

4. on the date a decision listed in paragraph C was made.

IV. Definitions

A. Contractor bid or proposal information means information not made available to the public and includes:

1. cost or pricing data;

2. indirect costs and direct labor rates;

3. proprietary information about manufacturing processes, operations or techniques; and

4. information marked by the contractor as "contractor bid or proposal information".

B. Source selection information means information not made available to the public and includes:

1. bid prices;

2. proposed costs or prices from bidders;

3. source selection and technical evaluation plans;

4. technical evaluations, cost or price evaluations, competitive range determinations, rankings of bids, reports of source selection panels; and

5. other information marked as "source selection" based on a determination that its disclosure would jeopardize the procurement.

V. Application

A. The prohibitions on disclosing and obtaining procurement information, and on handling offers of non-federal employment apply on January 1, 1997 with respect to every federal agency procurement using competitive procedures.

B. The post-employment restrictions apply to any former official whose federal employment ended on or after January 1, 1997. Those whose employment ended before January 1, 1997 are subject to the prior restrictions. However, an official who made key pre-award decisions on a contract before January 1, 1997 but who did not leave government until after January 1, 1997 is not covered by either the old or the new restrictions,(1) although the provisions of 18 U.S.C. § 207(a) would apply.

An official who serves in a post-award position or makes post-award decisions after January 1, 1997 would be subject to the one-year bar even on a contract that was awarded before January 1, 1997.

Source: Department of Justice (http://www.usdoj.gov/jmd/ethics/text/procuretxtb.htm)

Contingent Fees

In regards to members of Congress, there is a long-standing provision in US law (United States Code Title 41 Section 22) which prohibits any member of Congress from "any share or part of the contract, or to any benefit that may arise therefrom". The complete language follows:

Sec. 22. Interest of Member of Congress
No Member of Congress shall be admitted to any share or part of any contract or agreement made, entered into, or accepted by or on behalf of the United States, or to any benefit to arise thereupon. The provisions of this section shall not apply to any contracts or agreements heretofore or hereafter entered into under the Agricultural Adjustment Act (7 U.S.C. 601 et seq.), the Federal Farm Loan Act, the Emergency Farm Mortgage Act of 1933, the Federal Farm Mortgage Corporation Act, the Farm Credit Act of 1933, and the Home Owners' Loan Act of 1933 (12 U.S.C. 1461 et seq.), and shall not apply to contracts or agreements of a kind which the Secretary of Agriculture may enter into with farmers: Provided, That such exemption shall be made a matter of public record.

Office of Government Ethics

In addition to the provisions covering procurement integrity, there has been established in the United States an Office of Government Ethics (OGE). The OGE is the supervising ethics office for the executive branch of the Federal Government. OGE provides advice and guidance to departments and agencies and their employees on Government ethics matters. The Office answers inquiries from government employees and the public on ethics. In addition, the Office writes regulations on financial disclosure, standards of ethical conduct, outside employment, financial interests, ethics training and post-Government employment restrictions. OGE also provides ethics training and produces educational brochures, videos and posters for the executive branch. The Office periodically reviews ethics programs throughout the executive branch. The Office has various organizational units, including an education and program services division, a financial disclosure division, a program review division, a legal office and an information resources office.

In addition, OGE and the agencies maintain a separate public disclosure system for Standard Form (SF) 278 Public Financial Disclosure Reports filed by high-level executive branch officials. The reports of Presidential appointees subject to Senate confirmation, designated agency ethics officials, and certain other officials are available from OGE directly by filing the appropriate access form, OGE Form 201. SF 278 reports of those officials and all other public filers are also available from the officials' own employing departments and agencies throughout the executive branch. These records are available under the Ethics in

Government Act of 1978 (5 U.S.C. appendix, § 105), subject to certain restrictions on use (including a general prohibition on commercial use, except for dissemination to the general public by news and communications media). The Ethics Act access procedures also apply to certain other "covered records", including certificates of divestiture and some qualified trust documents. Under a separate procedure requiring a simple request, OGE also makes available semiannual agency reports of gifts of travel from non-Federal sources under a special statutory provision, 31 U.S.C. § 1353.

2. PROFESSIONAL STANDING AND TRAINING:

Professionalism - which is generally defined by the status, methods, or standards within a career area - is a means to help control corruption. While being a professional does not eliminate the possibility of individual members being corrupt, it helps control improper behavior by allowing actions to be judged against standards accepted by the profession.

Government officials performing contracting duties should be seen not as providing a clerical function but as part of the strategic process of controlling the use of government resources through a managed interaction with the private sector. Only by looking at officials in this way can a culture of professionalism and ethical behavior be developed. This does not mean that every position in the public procurement field needs to be filled with people of the highest skill levels, because many tasks can be routine if properly designed, such as placing orders for supplies under previously negotiated framework contracts. Public procurement personnel need to clearly understand their role and develop the proper culture of responsibility and accountability to properly manage these resources.

A good first step to professionalize the procurement workforce is for the government to adopt a code of ethical conduct, not only for those who make purchases, but also for all its employees. Corruption has extended to those who receive goods and services and those who use them. Some aspect of the procurement system affects each and every employee in the public sector. A cultural change is usually needed to make the business culture compatible with recognized international guidelines for ethical business behaviour. A code of ethics is a rally point for such a change, and should include the following:

Ethical Principles--general statements indicating a professional approach, for example: “Avoid even the appearance of a conflict of interest”.

Ethical Rules--these typically take the form of "do's and don'ts" Examples are: Do seek wide participation from industry to fulfil government needs. Do not try to influence an award to your brother for a potential government tender (even if you really think he is the best competitor). Do

not accept substantial gifts or favours to yourself or to members of your family.

Practice Principles--general statements about how to achieve what is intended for the good of the user or public (Avoid any involvement in government tenders with companies in which you or your immediate family has a financial interest. Insist that suppliers fulfil their contractual obligations).

Practice Rules--very specific guidance related to professional practice (the possession of minor public stock offerings in a company does not constitute a financial interest, but significant possession of public stock offerings does constitute a financial interest--in cases where there might be differences of opinion as to whether a financial interest is significant, employees must consult with a representative of the appropriate advisory office and comply with the decision provided.

New-employee orientations should include an explanation of any ethical codes adopted by the government. When a code is first introduced or changed, all current employees should be given a briefing on the details of new codes or changed content. Some countries require that employees be briefed at regular intervals (once a year, for example), and that they certify that they have read and understand the ethical codes.

Contracting Authority and Accountability

Contracting authority is passed through the President to the political heads of Executive Branch agencies in the United States. Over the last 30 years, there has been sustained pressure from within the agencies and within Congress to improve the management of the system through which about $200 billion is obligated each year. This has resulted in a public procurement infrastructure of agencies and people accountable and responsible for spending procurement dollars. Contracting employees as well as other civil servants are covered by the President's Executive Order 12674 of April 12, 1989 re "Principles Of Ethical Conduct For Government Officers And Employees".

As required by law (OFPP Act Title 41 United States Code Section 414) each agency head is to appoint a "Senior procurement executive" responsible for management direction of the acquisition system of the executive agency, including implementation of the unique acquisition policies, regulations, and standards of the executive agency. This individual is also responsible for the career development, and use of contracting authority within the agency.(Title 41 United States Code Section 433).

As set out in the FAR, the agency head may establish contracting activities and delegate broad authority to manage the agency's contracting functions to heads of such contracting activities. Contracts may be entered into and

signed on behalf of the Government only by contracting officers. In some agencies, a relatively small number of high level officials are designated contracting officers solely by virtue of their positions. Contracting officers are selected and appointed after considering their integrity and experience. Contracting officers have authority to enter into, administer, or terminate contracts and make related determinations and findings. Contracting officers may bind the Government only to the extent of the authority delegated to them, which they receive in writing from the appointing authority. Information on the limits of the contracting officers' authority is to be readily available to the public.

Contracting officers are responsible for ensuring that all requirements of law, executive orders, regulations, and all other applicable procedures have been met. They are responsible for ensuring performance of all necessary actions for effective contracting, ensuring compliance with the terms of the contract, and safeguarding the interests of the United States in its contractual relationships. In order to perform these responsibilities, contracting officers are asked to exercise their best business judgment.

To promote fair dealing with contractors, contracting officers are to ensure that sufficient funds are available for obligation under the contract, that contractors receive impartial, fair, and equitable treatment; and that they request and consider the advice of specialists in audit, law, engineering, transportation, and other fields, as appropriate. Termination of a contracting officer appointment will be by letter, unless the Certificate of Appointment contains other provisions for automatic termination. Terminations may be for reasons such as reassignment, termination of employment, or unsatisfactory performance...Contracting officers normally head a team of contract specialists, assistants and clerks to prepare the document for signature. This preparation often involves issuing the solicitations, evaluation of offers received and negotiation of the contract terms if necessary.

Department of Defense Career Management

The Department of Defense established its Defense Acquisition University (DAU) in 1991 as a consortium of 16 Defense colleges, schools, and agencies to provide its education and training. Title XII of Public Law 101-510 added a new chapter 87 on Defense Acquisition Workforce Improvement to Title 10, United States Code in 1990. The Secretary of Defense was required to establish policies and procedures for the effective and uniform management of the workforce in the Department of Defense. The Act applied only to Defense acquisition[8] personnel. Some key features of the Act:

[8] Within the Department of Defense, the "acquisition" workforce includes program managers and other personnel involved in developing military systems as well as contracting personnel normally covered by the term "procurement" in civilian agencies.

- Required specific qualifications in terms of education, experience, degree requirements, and mandatory training, for acquisition jobs (Table 2 below);
- Created new acquisition corps for more senior acquisition personnel with special qualification requirements for acquisition managers;
- Established new education and training authorities for cooperative education opportunities, a scholarship program, an intern program for career development and a new Defense Acquisition University;
- Required a database to assess progress and mandates annual reports on the program.

The passage of the Defense Acquisition Workforce Improvement Act stimulated action to provide civilian agencies like authorities so that career management rules would be consistent in Defense and civilian agencies. Under the leadership of OFPP and its Federal Acquisition Institute, Congress set the requirements in law, thus assuring that what many agency heads were already doing, would now be done universally and consistently.

Under Division D of the Federal Acquisition Reform Act (FARA) of 1996, the OFPP was granted explicit authority for the Federal acquisition workforce in a new section 433. The head of each executive agency, after consultation with the Administrator for Federal Procurement Policy, is required to establish policies and procedures for the effective management (including accession, education, training, career development, and performance incentives) of the acquisition workforce of the agency. The senior procurement executive of the agency is to implement this authority, including constructing a plan for the career development of the agency's workforce. For each career path, the head of each executive agency is required to establish requirements for the completion of course work and related on-the-job training in the critical acquisition-related duties and tasks of the career path. The head of each executive agency is also to encourage employees to maintain the currency of their acquisition knowledge and generally enhance their knowledge of related acquisition management disciplines through academic programs and other self-developmental activities.

To help encourage improvements in performance, each agency head is to provide for a system of incentives to reward performance of employees that contribute to achieving the agency's performance goals. These incentives include higher pay and faster promotions. The agency head, through the Senior Procurement Executive is also responsible for establishing qualification requirements for entry into the workforce and to set aside funds for training the workforce.

Table 2 - Department of Defense Acquisition Career Development Program (DOD Manual 5000.52-M) for Contracting Personnel		
	Education Requirements	***Training Requirements***
Level I (Junior Officer and Civilian Equivalents)	*Mandatory:* *a. College Degree or* *b. 24 Hours of college level course work in business subjects, or* *c. pass equivalency exam, or* *d. have at least 10 years of experience as of 1 October 1991*	*Mandatory:* *a. One basic level Defense Acquisition University (DAU) course in contracting* *b. One basic level DAU course in contract pricing*
Level II (Field Grade Officer and Civilian Equivalents)	*Mandatory:* *a. College Degree or* *b. 24 Hours of college level course work in business subjects, or* *c. pass equivalency exam, or* *d. have at least 10 years of experience as of 1 October 1991* *Desired:* *a. Graduate studies in business administration or procurement*	*Mandatory:* *a. One intermediate level DAU course in contract law* *b. One intermediate level DAU course in cost and price analysis* *c. One intermediate level DAU course in contract operations or contract management*
Level III (Senior Officer and Civilian Equivalents)	*Mandatory:* *a. College Degree or* *b. 24 Hours of college level course work in business subjects, or* *c. pass equivalency exam, or* *d. have at least 10 years of experience as of 1 October 1991* *Desired:* *Masters degree in business administration or procurement*	*Mandatory:* *One advanced level DAU course in executive contracting* *One advanced level DAU course in contract operations or contract management* *Desired:* *Two weeks management and leadership training*

3. PROTEST AND DISPUTE SYSTEMS

Complaints by disappointed bidders of government actions both before and after contract award allow the procurement process to improve. This is an important self-policing mechanism to assure good governance by allowing people most affected by the system to call attention to its shortcomings. Meritorious grievances of suppliers force a review of questionable or improper actions so that the procurement system is strengthened and integrity and accountability of government maintained.

Complaints that arise before contract award – or in the contract formation phase – are generally known as *protests*. Complaints that arise after award - or during the contract execution phase - are often termed *disputes* under the contract.

A tenderer may also claim to be aggrieved because proper competitive procedures were not followed. Procurement laws that provide a means of recourse usually designate the forum or forums where recourse can be sought. In most countries, the procurement entity is suggested as the first level for review, with possible further review at higher levels of authority. In addition to this, laws in some countries provide for recourse to be made to administrative bodies or are dealt with judicially through the court system. In some countries, procurement claims are to be resolved by an arbitration tribunal, with its composition sometimes provided in the procurement law. Independent administrative bodies are generally recognized as being an efficient mechanism to deal with procurement claims, rather than mandating that judicial action be taken. This is especially the case where judicial review can still occur even after administrative review.

In the United Sates, there are several fora to review protests. A protester can protest a solicitation before the contracting agency, the General Accounting Office, the Court of Federal Claims, or U.S. District Courts. Protests to the contracting officer at the contracting agency are less costly and do not necessarily involve significant delays, but they carry a perception that the contracting officer is not impartial in reviewing a challenge to his or her decision. The various protest fora provide a choice of venue for contractors depending on the standards that they think should apply to their complaints. These are set forth in Table 3.

Table 3 – United States Bid Protest For a

Forum	***Standard of Review***	***Remarks***
Contracting Agency	*Administrative reviews to assure actions were in keeping with policies, laws & regulations.*	*Allows higher-level management to have feedback on how contracting officials are performing. May not be seen as objective.*
General Accounting Office	*Review to determine whether there is a violation of law or regulation, with presumption of correctness of the agency action and acceptance of agency's version of facts unless disproved.*	*GAO has moved toward more formal proceedings, with the possibility of hearings.*
District Courts	*Review to determine whether there was a clear violation of applicable law or regulation, or no rational basis for the government action.*	*Protester must show that the government violated a statute that was created to protect their interests (e.g. Small Business Act).*
Court of Federal Claims	*Review to determine whether there was a clear violation of statute or regulation or whether there was no rational basis for the government action.*	*Has nation-wide jurisdiction, can conduct hearings around the country, and is more experienced in government contract issues as a result of its jurisdiction to resolve contract performance controversies.*

The vast majority of protests are filed in the administrative forum of GAO. If a protest is filed before award, the government must suspend work on the procurement except in urgent and compelling situations. A protest generally can be filed at any time prior to the closing date for receipt of offers (e.g., challenging the fairness of a solicitation document, or within 10 days of contract award (e.g., challenging the award). If the protester wins, the government may be required to re-solicit the requirement, reevaluate the offers, cancel the contract (if already awarded), or take other appropriate action. In many instances the protester is entitled to recover his bid or proposal preparation costs as well as attorney fees.

Disputes are handled under special procedures set out in all US Government contracts under rules established in the FAR under authority of the Contract Disputes Act of 1978 (Title 41 United States Code Sections 601-613). The clause describes the actions that the contractor and the contracting officer must take to resolve the problem. The essential requirement for the government is that performance proceeds toward completion of the contract even when there is a disagreement. The contractor agrees to this condition and the government agrees to pay the contractor the adjudicated amount with interest. While the contracting officer is the first level of review in any dispute, the contractor can pursue his claim through the agency before an independent Board of Contract Appeals and even to the Federal Courts.

4. QUALITY CONTROL AND REVIEW SYSTEMS

Internal and external checks of the procurement system, done in a reasonable manner, can pay dividends of more uniform policy approaches, improved cost controls and fewer instances of corruption or waste.

Since governments are not normally expected to show a profit like private sector firms, there is no easy objective measure of performance. The type of internal and external reviews undertaken by most governments provide at least some basis for judging how effectively resources have been put to use.

Approval authorities are public officials who must approve specific actions in the procurement process before they are finalized. To function as an effective internal control, such approval is typically not required for every action. For example, an approval may be needed before award. Typically, such approvals are only required above a certain monetary threshold, although different thresholds may be specified for specific types of awards. For example, awards that are of a sensitive nature such as military weapons may have a different threshold for approval than awards of office supplies for the bureaucracy.

Other common reviews by approval authorities include:

- Reviews of budgetary documents for budget approval
- Reviews of the request for tenders prior to its release to the business community
- Reviews of key milestone dates for larger or time-sensitive purchases

The level of involvement by approval authorities depends to some extent on the degree of centralization or decentralization with the specific public procurement system. Approval authorities would be more involved in a centralized system than in most other systems. In any event, the system of checks and balances that involve oversight by approval officials is integrated into the regular process of individual purchases.

Auditing officials oversee the public procurement system as a whole. There may be more than one auditing group that oversees a public procurement system. For example, if a public procurement system is within a finance ministry, the ministry may have an inspector general or internal auditing organization that reviews the contracting office operations on a periodic basis. At the same time, that country's parliament may also have a watchdog organization that takes direction from members of parliament to look into such matters as conflicts of interest, extent of competition in public purchases, and so forth. It is essential that auditing personnel have an intimate understanding of the manner in which the public contracting office should be operating.

Typically these auditing organizations use sampling and checklists to decide whether the contracting office follows laws and regulations or to what extent they vary from the standards of acceptable contracting practices. Standards for internal auditors who would conduct such policy and program reviews in an organization are needed. The International Organization of Supreme Audit Institutions (INTOSAI) has been formed to provide such standards, working with its members from governments around the world. The Internal Control Standards Committee of INTOSAI issued guidelines[9] in 1992 that define management controls as "promoting orderly, economical, efficient, and effective operations and quality products and services consistent with the organization's mission; safeguarding resources against loss due to waste, abuse, mismanagement, errors, and fraud and other irregularities; adhering to laws, regulations and management directives; and, developing and maintaining reliable financial and management data and fairly disclosing that data in timely reports."

Within the United States, contracting officers rely on internal auditors to help establish negotiating target prices and monitor contract performance. These auditors are specially trained for this purpose and reside primarily

---

9. *Management Control in Modern Government Administration: Some Comparative Practices*. OECD/GD(96)16 Organization for Economic Cooperation and Development, Paris 1996 , Annex

in the Defense Contract Audit Agency, providing their services to defense and civilian agencies as required.

Defense Contract Audit Agency

Defense Contract Audit Agency (DCAA) provides a wide variety of products and services to contracting officers[10]: from Defense as well as non Defense agencies during the pre award and post award phases of the procurement process, as well as oversight at contractor facilities when the size of the contract warrants it or as requested by the contracting officer. In the pre-award phase, contract audit services include the review of supplier price proposals, pre-award surveys of a supplier's capacity to perform the contract, and review of agreed rates affecting labor and overhead. In the post-award phase, contract audit services include the review of actual incurred costs and annual overhead rates, compliance with the Truth in Negotiation Act to the extent that costs relied on by the government in negotiations were current, complete and accurate, Cost Accounting Standards applicable under certain contracts were properly applied, contractor claims for changes in the contract are accurate and the overall financial capability of the contractor.

When required by contracting regulations and the contract provisions, auditors review a contractor's internal control system (e.g. estimating, material management, purchasing, etc.) to ensure there is adequate information for understanding the basis of individual contract proposals and other contract actions.

In addition to performing formal audit activities, auditors provide negotiation assistance to contracting officers, including fact-finding and analysis of contractor information.

In 1998, DCAA audited 10,473 pricing proposals with a total dollar value of $78.7 billion. During that same period, DCAA reports they audited incurred costs and special audits of $104.5 billion. Approximately $2.2 billion in net savings were reported during the year at a cost of $370.3 million expended for the Agency's operations.

Inspectors General

In addition to contract auditors, there are special internal auditors assigned to the Inspector General's office in each major agency. Congress passed the Inspector General Act of 1978, which created independent audit and investigative offices within 12 Federal agencies. Before that time, most Federal audit and investigative resources were in the program offices they were reviewing. In FY 1998, there were 57 Offices of Inspector General (OIGs) providing oversight to 59 Federal agencies.

[10] This information is taken from the DCAA website at: http://www.dcaa.mil/

The term “Inspector General” derives from the military’s independent review of the combat readiness of troops. Today’s civilian IGs are charged with detecting and preventing fraud, waste, and abuse and promoting economy, effectiveness, and efficiency so that their agencies can best serve the public.

The major way IGs are different from other Federal officials is their independence. The Inspector General Act authorizes IGs to:

- Conduct such investigations and issue such reports as they believe appropriate (with limited national security and law enforcement exceptions);
- Issue subpoenas for information and documents outside the agency (with same limited exceptions);
- Have direct access to all records and information of the agency;
- Have ready access to agency heads;
- Administer oaths for taking testimony;
- Hire and control their own staff and contract resources; and
- Request assistance from any Federal, State, or local government;

In simple terms, the IGs have two basic roles; to find and report on current problems and to foster good program management to prevent future problems. Their statutory mission is to:

- conduct and supervise audits and investigations relating to the programs and operations of their agencies;
- review existing and proposed legislation and regulations relating to the programs and operations of their agencies;
- provide leadership for activities designed to promote economy, effectiveness, and efficiency and fight fraud, waste; and abuse in their agencies programs; and
- inform their agency heads and the Congress of problems in their agencies’ programs.

The IGs serving at the cabinet-level departments and major sub-cabinet agencies are nominated by the President and confirmed by the Senate. Only the President can remove these IGs. IGs at smaller independent agencies and corporations are appointed by their agency heads, who can also remove them from office. In either case, both houses of Congress must be notified of the reasons for removal.

It is important to get the balance right between the investigator and consultant roles of the IG. The National Performance Review (NPR) of the public procurement system found that in some cases 23 signatures were required to authorize the purchase of a computer[11]. This was in large part because of all the checks and reviews that years of recommendations

[11] *Reinventing Procurement, Accompanying Report of the National Performance Review, Office of the Vice President,* Washington. September 1993, p.3 (www.npr.gov/library/nprrpt/annrpt/sysrpt93/reinven.html)

for tighter control imposed on the procurement system. The NPR sought to improve procurement operations without degrading accountability for wrongdoing; It allowed IGs and others to take a closer look at these systems and institute more efficient and effective checks on the system, including improved training of the Federal workforce.

In May, 1992, President Bush established by Executive Order 12805 , the President's Council on Integrity and Efficiency (PCIE). It is comprised of all Presidentially appointed Inspectors General. In addition, the Executive Order specifies the Office of Government Ethics, the Office of Special Counsel, the Federal Bureau of Investigations, and the Office of Management and Budget (OMB) as members of the PCIE. The Deputy Director for Management at OMB chairs the Council and an IG holds the position of Vice Chair. The PCIE is charged with conducting interagency and inter-entity audit, inspection and investigation projects to effectively and efficiently deal with government-wide issues of fraud, waste and abuse. The Council accomplishes this through committee activity. Established committees of the PCIE include: Audit, Inspection & Evaluation, Integrity, Investigations, Legislation and Professional Development.

There is also an Executive Council on Integrity and Efficiency (ECIE). The ECIE and PCIE are the same except that the ECIE is comprised mainly of the designated Inspectors General. An ECIE member serves as a Council representative on each of the PCIE Committees.

General Accounting Office

The external audit review body in the United States is the General Accounting Office, the investigative arm of Congress. GAO's mission is to help the Congress oversee federal programs and operations to assure proper accountability. GAO requires a multidiscipline staff of evaluators, auditors, lawyers, economists, public policy analysts, information technology specialists, and other professionals. GAO performs a variety of services, the most prominent of which are audits and evaluations of Government programs and activities. The majority of these reviews are made in response to specific congressional requests. The Office is required to perform work requested by committee chairpersons and, as a matter of policy, assigns equal status to requests from ranking minority Members (that is, the senior member of the opposition party on a Congressional committee) for a bipartisan audit approach.

GAO performs financial audits, program reviews, investigations, legal support, and policy/program analyses and is charged with examining all matters relating to the receipt and disbursement of public funds. The GAO was established by the Budget and Accounting Act of 1921 (31 U.S.C. 702), to independently audit Government agencies. Over the years, the Congress has expanded GAO's audit authority, added new responsibilities and duties, and strengthened GAO's ability to perform independently. The

Office is under the control and direction of the Comptroller General of the United States, who is appointed by the President with the advice and consent of the Senate for a term of 15 years. The Office is organized so that staff members concentrate on specific subject areas, enabling them to develop a detailed level of knowledge. When an assignment requires specialized experience not available within GAO, outside experts assist the permanent staff. GAO's staff goes wherever necessary on assignments, working onsite to gather data, test transactions, and observe firsthand how government programs and activities are carried out.

Freedom Of Information Act

Another area of relevant law involves the availability of public information. The control of information can itself be a path to corrupt behavior since certain government information (e.g.; Census Data) can be sold as a commodity. Clear policies on what information should be released to the public and under what conditions can help promote more public access to government decisions and policies. One primary means of access to government records is through the Freedom of Information Act (FOIA).

The Freedom of Information Act, 5 U.S.C. § 552, allows persons to request copies of records not normally prepared for public distribution or otherwise publicly available. The FOIA applies to existing records only and does not require agencies to create new records to comply with a request. It also does not require agencies to collect information they do not have or to do research or analyze data for a requester. Moreover, FOIA requests must be specific enough to permit an employee who is familiar with the subject matter to locate records in a reasonable period of time.

Under the FOIA, certain records may be withheld in whole or in part from the requester if they fall within one of nine FOIA exemptions or certain exclusions. In some cases, the agency is able to provide copies of all of the records requested. However, in other instances, a portion or all of the information requested is sensitive and is therefore withheld as permitted under the FOIA. The FOIA exemptions for withholding at least some information fall in the following categories:

- Information that is prohibited from disclosure by other laws, such as Confidential Financial Disclosure Reports.
- Trade secrets and privileged or confidential commercial or financial information.
- Certain interagency and intra-agency pre-decisional deliberative communications.
- Information about individuals when disclosure would constitute a clearly unwarranted invasion of personal privacy.
- Information compiled for law enforcement purposes, if certain interests would be harmed by release, including when disclosure could reasonably be expected to interfere with enforcement

proceedings or to constitute an unwarranted invasion of personal privacy.

- Information on regulated financial institutions.
- Information on geological and geophysical information and data, including maps, concerning wells.
- Information that is classified.

In the event that an agency relies on one or more FOIA exemptions to deny a requester access to records, the response letter will inform the requester of this. The letter will also notify the requester of the right to administratively appeal the initial denial determination to the agency.

Whistleblowers

The general public can also help identify and correct contractor abuses under qui tam proceedings. This Latin phrase refers to a legal procedure meaning "who sues for the king as well as for himself in the matter".[12] Under the 1986 amendments to the False Claims Act, any person may bring a civil action under the Act for "for the person and for the United States". The action is brought in the name of the United States. (31 USC 3730 b). Qui tam plaintiffs are given a share of the Government's monetary recovery against the contractor and are granted whistleblower protection under the law. Violators of the False Claims Act are liable for three times the dollar amount that the government is defrauded and civil penalties of $5,000 to $10,000 for each false claim. A qui tam plaintiff can receive between 15 and 30 percent of the total recovery from the defendant, whether through a favorable judgment or settlement. To be eligible to recover money under the Act, a qui tam lawsuit must be filed. Merely informing the government about the violation is not enough. An award is received only if, and after, the government recovers money from the defendant as a result of the suit.

This helps to incentivize knowledgeable employees to file civil complaints against an employer or contractor which has cheated the government. If the Department of Justice intervenes in the case, it bears primary responsibility for prosecuting the action. However, even where the Department of Justice declines or fails to intervene, the qui tam plaintiff may continue the suit to conclusion. A "bounty system" of this type can be very effective in turning contractor employees into informants on the misdeeds of their employer. But this incentive may cause suits to be filed even where there is inadequate cause. The use or abuse of this right is ultimately for the courts to sort out as the suit proceeds through the legal process.

The creation of federal rights for whistleblowers has enhanced the ability of employees to disclose employer violations of law. However, only

[12] Nash, Schooner & O'Brien; The Government Contracts Reference Book; The George Washington University Law School, Washington, DC; 1997; p.430.

employees who engage in certain specific whistle blower conduct in certain specifically protected industries are covered under federal law. Each federal whistle blower statute has its own filing provisions, its own statute of limitations, and its own administrative or judicial remedies. Thus, each potential whistle blower case is evaluated on the basis of who the employer is, what the disclosure concerns, and in which state the whistle blowing occurred.

The following is an outline of federal statutes and constitutional protections for employee whistleblowers:[13]

1. Constitutional Protection- Under the First and Fourteenth Amendments to the U.S. Constitution, state and local government officials are prohibited from retaliating against whistleblowers.
2. Environmental Laws- Employee protection provisions of the Toxic Substances Control Act [15 U.S.C. 2622], the Superfund [42 U.S.C. 9610], the Water Pollution Control Act [33 U.S.C. 1367], the Solid Waste Disposal Act [42 U.S.C. 6971], the Clean Air Act [42 U.S.C. 7622], the Atomic Energy and Energy Reorganization Acts [42 U.S.C. 5851], and the Safe Drinking Water Act [42 U.S.C. 300j-9], contain whistle blower provisions which protect employees who disclose potential violations of these environmental laws.
3. Conspiracies to Intimidate Witnesses and Obstruct Justice in Federal Court Proceedings [42 U.S.C. 1985(2)]-This clause, which was passed as part of the Reconstruction era, anti-Ku Klux Klan civil rights legislation, contains very broad provisions prohibiting conspiracies to intimidate parties or witnesses in proceedings before courts of the United States.
4. False Claims Act- The whistle blower protection provision of the False Claims Act [33 U.S.C. 3730(h)] is extremely liberal and protects "any employee" who is discharged or discriminated against on the basis of assisting in the preparation of litigation or in filing an action under this Act.
5. Surface Transportation Assistance Act- This Act [49 U.S.C. 2305 [Appendix 13]] protects employee whistleblowers (generally truck drivers) who file a complaint, testify in or cause to be instituted proceedings to enforce a commercial motor vehicle safety rule, regulation or standard.
6. Occupational Safety and Health Act- OSHA [29 U.S.C. 660(c)] protects employees from any form of retaliation for raising complaints concerning workplace health and safety. This has been interpreted to include a right to refuse hazardous work under certain specified and limited circumstances.
7. Federal Mine Health and Safety Act- This Act, 30 U.S.C. 815(c) (1977), provides for an administrative remedy for any miner, miner's representative or applicant for employment in a mine, who files or makes a complaint regarding a potential violation of the Act.

[13] http://www.whistleblowers.org/Federal. National Whistleblower Center Washington, DC

8. National Labor Relations Act- The NLRA , 29 U.S.C. 158(a)(4), protects from retaliation employees who testify or file charges alleging a violation of the Act.
9. Other Statutory Protections- Other employee whistle blower protection provision can be found in the Surface Mining Control and Reclamation Act [30 U.S.C. 1293]; Job Training and Partnership Act [29 U.S.C. 1574(g)]; Civil Rights Act of 1871 [42 U.S.C. 1983]; Jones Act (Maritime employees) [46 U.S.C. 688]; Employee Retirement Income Security Act [29 U.S.C. 1140]; Fair Labor Standards Act [29 U.S.C.215]; Civil Service Reform Act [5 U.S.C. 2302]; Longshoreman's and Harbor Worker's Compensation act [33 U.S.C. 948(a); Migrant and Seasonal Agricultural Workers Protection Act [29 U.S.C. 1855]; The Safe Containers for International Cargo Act [46 U.S.C. 1501 et. seq.]; and Title VII of te Civil Rights Act of 1964 [42 U.S.C. 2000e, et. seq.] (administered by the Equal Employment Opportunity Commission).

5. SYSTEM MANAGEMENT

Government procurement objectives will not be achieved simply by developing procurement rules. Like in the sport of football, the rules provide the guidelines under which the game is played but compliance with the rules alone does not make a competent or successful team. It requires constant attention to the state of play and devising up-to-the-minute strategies to reach your goal. To do this in public procurement, an organizer or supervisory body is needed to ensure that all the procurement entities are working together to obtain maximum value for the nation.

In any supervisory body, the contracting, monitoring and auditing roles should be clearly separated. Such a separation of function avoids conflicts of interest, encourages competition and improves value for money spent. The separation of the three roles helps ensure that the process is accountable and is seen to be accountable. This is important for developing trust between the public sector and its suppliers. Examples of other general tasks of such a unit could be to:

- Develop and disseminate recommended procurement policies
- Set professional standards
- Develop a “code of business ethics"
- Provide professional advice and support to the individual procuring entities
- Issue “good practice guides” in relation to procurement
- Undertake research into the needs of procuring entities
- Undertake research into domestic and international sources of supply
- Develop a data base of information on which to base procurement decisions
- Operate a professional development scheme for staff with purchasing and contracting responsibilities
- Promote economy by facilitating rationalization of demand and intra-government contracting, and

- Rationalize standards for the procurement of information systems and equipment

In the United States, the central supervisory body for the Federal contracting is the Office of Federal Procurement Policy (OFPP). Congress established OFPP in 1974 as an integral part of the Office of Management and Budget in the Office of the President. The OFPP Act states that OFPP is "to provide overall direction of Government-wide procurement policies, regulations, procedures, and forms for executive agencies and to promote economy, efficiency and effectiveness in the procurement of property and services by the executive branch of the Federal government." (41 U.S.C. 404.) OFPP is headed by an Administrator who is appointed by the President and confirmed by the Senate, and has a staff of approximately 20 people.

In recent years, OFPP's primary goal has been to reform the procurement process to provide better support for agency missions and obtain better value for the dollars spent. In pursuing reform, OFPP has sought to make competitive procurement procedures more flexible and easy to use, contracting strategies more effective, oversight mechanisms less intrusive, and government contracting more like commercial practice overall. OFPP pursues reform by working closely with Congress and Federal agencies.

OFPP seeks direct input from front-line professionals at periodic (about every two months) meetings with a group of about 35 reform-minded individuals nominated by their agencies. The forum, which was established in January 1995, allows the procurement reform leaders to obtain quick, frank reactions as to the impact particular reforms are likely to have, new ideas for practical ways to improve the acquisition process, and timely feedback on whether reforms are reaching the front-line.

OFPP also frequently takes the lead to coordinate the resolution of issues that arise when Congress or the President seek to use the procurement process to achieve larger socio-economic goals, e.g., promote small and minority business enterprises, buy U.S. made products, or maintain wage levels.

OFPP oversees the formulation of the executive branch position on all legislation relating to procurement. In close consultation with the major procuring agencies, OFPP develops legislative proposals and formulates positions on bills to reform the acquisition process. OFPP staff also works closely with Congressional committees to explain and refine the legislation as it proceeds to final passage. The Administrator testifies frequently before Congress on pending legislative proposals and in support of the Administration's procurement reform agenda. Once the President signs legislation, OFPP ensures that effective implementing regulations are issued.

Under the leadership of the OFPP Administrator, the Federal Acquisition Regulation Council oversees the development and maintenance of the FAR, the government wide regulation that governs all agency acquisitions. OFPP staff participates either directly as liaisons, or as members of interagency regulation writing teams. The OFPP Administrator can issue policy letters stating principles that must be incorporated in the FAR and followed by the agencies. Staff reviews all significant FAR rules prior to their issuance and the Administrator resolves differences among the agencies

OFPP helps implement with OMB an integrated program to plan for and monitor fixed asset acquisitions under the umbrella of the Government Performance and Results Act (GPRA). Acquisition goals are incorporated into the annual GPRA performance plans so that a unified picture of agency management activities is presented and acquisition performance goals are linked to the achievement of mission goals.

OFPP worked with key Federal agencies to establish performance measures to bring agencies up to the level of a world class procurement system. A menu of possible measures was developed that agencies could use to assess progress in improving the performance of their operations in terms of quality, timeliness, price, and productivity. Agencies have selected those measures that are most pertinent to their overall mission, internal organizational structure, types of contracts awarded, and data collection systems. The measures are integrated with the agency strategic plans and annual performance plans that are required by the Government Performance and Results Act.

OFPP encourages individual agencies to test new ideas for reform, with OFPP staff acting as expert consultants in designing the tests, endorsing those considered promising, and providing waivers of laws in those circumstances where necessary and OFPP is empowered to do so. Recent legislation has given OFPP limited authority to waive laws in order to allow agencies to conduct tests of innovative procurement procedures. However, section 6 of the OFPP Act, 41 U.S.C. 405, specifically states that the OFPP Administrator's authority "shall not be construed to interfere with the determination by executive agencies of specific actions in the award or administration of procurement contracts."

Other OFPP functions include:

- conducting and reporting on Congressionally mandated studies;
- providing for and directing the activities of the computer-based Federal Procurement Data System to measure the output of procurement entities; and

- directing the activities of the Federal Acquisition Institute, which develops training materials to enhance the competence and professionalism of the procurement workforce.

U.S. FRAMEWORK SUMMARY

Table 4 follows the framework introduced in the beginning of this paper to highlight key elements in controlling corruption in public procurement. It provides an illustrative use of the framework to cite important legislation and regulations of the United States, for which we have the most complete information.

Table 4 – A FRAMEWORK FOR CONTROLLING CORRUPTION IN PUBLIC PROCUREMENT – The United States Example

	Key Elements	Applicable Laws and Regulations Referred to in the Text
DEFINE by	Criminal Law	The Foreign Corrupt Practices Act ;Officials Not To Benefit USC Title 41 Section 22; Ethics in Government Act of 1978 (5 U.S.C. appendix, § 105); Conflict of Interest Laws - 18 U.S.C. §§ 201-209; Gifts of travel from non-Federal sources, 31 U.S.C. § 1353;.
	Public Procurement Law,	Office of Federal Procurement Policy (OFPP) Act of 1974 (Public. Law. 93-400 as amended).
	Government Regulations	Federal Acquisition Regulation; Department of Defense Directive 5000.1
	Professional Code Of Ethics	The President's Executive Order 12674 of April 12, 1989 re "Principles Of Ethical Conduct For Government Officers And Employees";
	Custom And Practice	(This involves peer group or societal pressures for government employees and contractors to act responsibly and with integrity based on best international practice)
EXPOSE by	Internal And External Auditors,	Defense Contract Audit Agency; Inspector General Act of 1978; Executive Order 12805 President's Council on Integrity and Efficiency; General Accounting Office Budget and Accounting Act of 1921 (31 U.S.C. 702),
	Whistle Blowers,	Qui Tam 1986 amendments to the False Claims Act 31 USC 3730
	Public Availability Of Government Information	Freedom of Information Act 5 U.S.C. § 552;
	Protests Of Contract Awards	FAR Part 33: Executive Order 12979, Agency Procurement Protests; 4 Code of Federal Regulations Part 21 (GAO Bid Protest Regulations);
	Other External Oversight	Office of Government Ethics;
	Professional Diligence	(This is the conscientious execution of one's duties and responsibilities)
CORRECT by	Implementation Of Law And Regulation,	This applies to all stated laws and regulations
	Management Improvements	Professional application of authority and responsibility.
	Protest Resolution,	FAR Part 33: Executive Order 12979, Agency Procurement Protests; 4 Code of Federal Regulations Part 21 (GAO Bid Protest Regulations);

PREVENT by	PROFESSIONAL INDEPENDENCE:	Department of Defense Directives 5000.1; Federal Acquisition Regulation Part 3; Conflict of Interest Laws - 18 U.S.C. §§ 201-209; Officials Not To Benefit USC Title 41 Section 22; Gifts of travel from non-Federal sources, 31 U.S.C. § 1353;.
	PROFESSIONAL STANDING AND TRAINING:	The President's Executive Order 12674 of April 12, 1989 re "Principles Of Ethical Conduct For Government Officers And Employees"; OFPP Act Title 41 United States Code Section 414, "Senior procurement executive"; Title 41 United States Code Section 433. Career Development; Title X USC Chapter 87, Defense Acquisition Workforce,. DOD Manual 5000.52-M Acquisition Management;
	PROTEST AND DISPUTE SYSTEMS:	Contract Disputes Act of 1978 (Title 41 United States Code Sections 601-613); FAR Part 33: Executive Order 12979, Agency Procurement Protests; 4 Code of Federal Regulations Part 21 (GAO Bid Protest Regulations); .
	QUALITY CONTROL AND REVIEW SYSTEMS:	Defense Contract Audit Agency; Inspector General Act of 1978; Executive Order 12805 President's Council on Integrity and Efficiency; General Accounting Office Budget and Accounting Act of 1921 (31 U.S.C. 702); Freedom of Information Act 5 U.S.C. § 552;
	SYSTEM MANAGEMENT:	41 U.S.C. 404. Office of Federal Procurement Policy Act

CONCLUSION

Public procurement systems can be on opposite poles -- they can either add value to the economy or siphon it away into corrupt, wasteful or unethical purposes. Few countries - developed or undeveloped - are at either one of these poles, yet, like people, many are at some point between perfection and perdition. Because of the domestic and international imperatives that are coalescing around the function of public procurement, all governments should have a clear understanding of where their system lies on this line.

The most effective way to understand the uses of a public procurement system vis-a-vis national goals and interests is to conduct a structured analysis of it. The information above, with examples from actual law and regulation in selected countries, is intended to help formulate that type of review and plan. But the one resource above all which will make the most difference in the task of enhancing values through improved procurement operations is a dedicated, trained, professional procurement workforce. No matter how well intentioned and well written a law or policy document is, its goals can be unmet if not championed by a professional staff.

People are needed to translate management goals and policies into reality. Throughout the world, future demands on the procurement workforce are expected to be even more critical than they are today. As the economy of a developing country grows, its procurement requirements can be expected to become more complex. If procurement is to adequately support this growth, the procurement workforce must be able to make more informed judgments about the best items available in national and global markets to satisfy requirements within the government's policies.