QUESTIONNAIRE RESPONSE

UNITED STATES OF AMERICA

REGARDING THE PROVISIONS OF THE INTER-AMERICAN CONVENTION AGAINST CORRUPTION SELECTED IN THE SECOND ROUND AND FOR FOLLOW-UP ON THE RECOMMENDATIONS FORMULATED IN THE FIRST ROUND

SECTION I

QUESTIONS ON IMPLEMENTATION OF THE CONVENTION PROVISIONS SELECTED FOR REVIEW IN THE SECOND ROUND

CHAPTER ONE

SYSTEMS OF GOVERNMENT HIRING AND PROCUREMENT OF GOODS AND SERVICES (ARTICLE III (5) OF THE CONVENTION)

1. Government hiring systems

a. Are there laws and/or measures in your country establishing government hiring systems? If so, briefly describe the main systems, indicating their characteristics and principles and list and attach a copy of the related provisions and documents. Also describe how the above systems ensure openness, equity and efficiency in your country.

The United States has a system of laws and regulations governing employment in the Federal Government. At the Federal level, each branch has its own government hiring system. This response primarily relates to the competitive hiring system used in the executive branch, the largest of the three branches of the U.S. Government. Under the separation of powers principles established by the United States Constitution, the legislative and judicial branches of government are generally not subject to the laws, rules, and regulations applicable to the civil service, which serves the President as part of the executive branch. However, Congress has, by legislation, expressly included certain legislative and judicial administrative personnel under components of the civil service system or under parallel systems. The legislative and judicial branch hiring laws integrate many of the principles of transparency and fair dealing found in the executive branch laws described below. Likewise, while systems at the sub-federal level (State, municipal, and other jurisdictions) will vary, most incorporate similar principles and practices.

The laws governing federal executive branch hiring are found in Title 5 of the U.S. Code (Government Organization and Employees). The implementing regulations for Title 5 of the United States Code (U.S.C.) are found in Title 5 of the Code of Federal Regulations (C.F.R.). These laws and regulations provide for efficiency, transparency and objective criteria such as merit, equity and aptitude in the recruitment, hiring, retention, promotion and retirement of public officials.

In addition, because of the President's constitutional role as head of the executive branch, numerous presidential executive orders, which have the force of law, address competitive examinations, qualifications, suitability, merit hiring, and ethics. One of the most significant is Executive Order 10577, as amended, which is amended the Civil Service Rules and authorized a new appointment system for the competitive service (codified in 5 C.F.R. parts 1 through 10).

The executive branch accounts for approximately 97 percent of full-time federal public officials, most of which are selected through systems leading to career appointments. (http://www.opm.gov/feddata/html/2006/september/table1.asp) In general, there are two basic categories of career public officials in the federal executive branch, both of which are hired under merit system principles: 1) competitive service employees (referred to in the hiring and ranking systems as General Service (GS) employees), who are hired through a competitive examination process and must meet government-wide suitability and qualification standards; and 2) excepted service employees, who may be hired non-competitively but must still be found fit and qualified for their positions, either under government-wide standards or agency-specific standards. (Excepted service is further defined below.) A relatively small number of public officials in the executive branch are under a career senior executive personnel system, which also requires candidates to meet qualification and suitability requirements.

There are also a relatively small number of non-career public officials who are not selected on a competitive basis. These are primarily those serving in high-level positions of confidence. However, those appointments are still subject to a vetting process. For example, an individual who the President wishes to appoint as a member of his Cabinet must go through a rigorous background check, a financial conflict of interest review, and Senate confirmation.

Relevant chapters of title 5 of the United States Code are listed below:

Chapter 11 – Office of Personnel Management
Chapter 12 – Merit Systems Protection Board, Office of Special Counsel, and Employee Right of Action
Chapter 13 – Special Authority
Chapter 23 – Merit System Principles
Chapter 29 – Commission, Oaths, Records, and Reports
Chapter 31 – Authority for Employment
Chapter 33 – Examination, Selection, and Placement
Chapter 35 – Retention Preference, Voluntary Separation Incentive Payments, Restoration and Reemployment
Chapter 41 – Training
Chapter 43 – Performance Appraisals
Chapter 45 – Incentive Awards
Chapter 51 – Classification
Chapter 53 – Pay Rates and Systems
Chapter 55 – Pay Administration
Chapter 59 – Allowances
Chapter 61 – Hours of Work
Chapter 63 – Leave
Chapter 71 – Labor-Management Relations

Chapter 72 – Antidiscrimination; Right to Petition Congress
Chapter 73 – Suitability, Security, and Conduct
Chapter 75 – Adverse Actions
Chapter 77 – Appeals
Chapter 81 – Compensation for Work Injuries
Chapter 83 – Retirement
Chapter 84 – Federal Employees' Retirement System
Chapter 85 – Unemployment Compensation
Chapter 89 – Health Insurance
Chapter 91 – Access to Criminal History Records for National Security and Other Purposes

The U.S. Code is accessible generally at http://www.gpoaccess.gov/uscode/index.html.

In relation to the above-described Federal Hiring Process, refer, among others, to the following aspects:

i. Governing or administrating authorities of the systems and control mechanisms.

The U.S. Office of Personnel Management (OPM) serves as the President's advisor on federal human capital issues and is the central human resources management agency for the executive branch. OPM develops civil service regulations consistent with the laws passed by Congress and is responsible for ensuring compliance with those laws and regulations. It also delegates to the other executive branch agencies the authority to operate various Human Resources functions, including the authority to competitively examine and hire employees. While OPM has an oversight role with the other executive departments and agencies, it also provides advice and assistance to those organizations. OPM conducts (or oversees) background investigations for security clearances; runs the federal employees health benefits and life insurance programs; operates the federal retirement programs; and issues guidance or provides assistance on a wide range of Human Resources matters from recruitment to employee relations issues. OPM also designs government-wide human capital strategies and collects required data from each agency. While OPM provides a central clearinghouse for human capital practices, many specific Human Resources responsibilities (hiring employees, for example) are delegated to each agency.

ii. Access to the public service through a merit-based system.

The principal focus of the U.S. competitive hiring process is the merit of the individual considered for each position. There are nine basic merit principles (in law at 5 U.S.C. 2301, attachment 1) that govern Federal personnel management. Two of these principles are directly related to government hiring: (1) Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity, and (2) All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.

The laws also prohibits certain personnel practices and actions such as discriminating against any employee or applicant based on race, age, gender, or handicapping condition (5 U.S.C. 2302, attachment 2). Personal favoritism, nepotism, or political influence are not permitted in the selection process. Any occurrence of non-merit favoritism is viewed as a "prohibited personnel practice." The head of each agency is responsible for the prevention of prohibited personnel practices, for the compliance with and enforcement of applicable civil service laws, rules, and regulations, and other aspects of personnel management, and for ensuring (in consultation with the Office of Special Counsel, an independent agency established by the Civil Service Reform Act) that agency employees are informed of the rights and remedies available to them under law (5 U.S.C. 2301).

OPM develops and issues minimum qualification standards, policies, and instructions for General Schedule (GS) positions (which cover the great majority of competitive service employees) through the *Operating Manual: Qualification Standards for General Schedule Positions*. The standards must be met by all individuals appointed to GS positions in the competitive service. Generally, the same policies, instructions, and standards in the qualifications manual apply both to general public initial hiring appointments and to current Federal employees.

Each agency is responsible for applying the appropriate minimum qualification standard. The agency is also responsible for developing selective factors, if appropriate. Selective factors include knowledge, skills, and abilities, competencies, or special qualifications without which a candidate could not perform the duties of a position in a satisfactory manner. Selective factors are applied in addition to the minimum qualification standards. Applicants who do not meet a selective factor are not eligible to be considered for the position.

iii. Advertisement for the selection of public servants, indicating the qualifications for selection.

Most Federal agencies are required by law and OPM regulation to inform the public about job opportunities by announcing, or "posting," these opportunities on the OPM Web site, http://www.usajobs.opm.gov. This public notice, or vacancy announcement, of current job opportunities ensures open competition by informing job seekers when, where, and how to apply for these jobs. Agencies are encouraged to recruit using other means in addition to USAJOBS as well (for example, newspaper advertisements, radio announcements, and job fairs).

The vacancy announcement will state the duties and responsibilities of the job, the minimum qualifications required to be considered (general or specialized experience or education required for the position) and the specific competencies, knowledge, skills, and abilities necessary to successfully perform the job. The announcement will also include information about any minimum age or medical requirements that may be involved, such as for certain law enforcement, firefighter, and air traffic controller positions. It will describe the evaluation method that will be used to rate and rank applicants. The vacancy announcement must clearly state the application deadline. Once this information is on the USAJOBS database, OPM transmits this information electronically to State employment service offices nationwide.

Note: USAJOBS is the Federal Government's employment information system and provides on-line worldwide job vacancy information, employment information fact sheets, job applications, and forms. This site also has résumé development and electronic transmission capabilities so that job seekers can

apply for positions online. USAJOBS is updated every business day from a database of more than 25,000 worldwide job opportunities and is available to job seekers in a variety of formats to ensure access for applicants with differing physical and technological capabilities. Additionally the system sends over 260,000 email alerts regarding new postings to registered users each day. It is convenient, user friendly, accessible through a computer or telephone, and available 24 hours a day, 7 days a week.

iv. Ways to challenge a decision made in the selection system.

There are various avenues to challenge a decision made in the selection process depending on the violation alleged by the applicant. An applicant who believes that Federal agency has discriminated against him or her has the right to file a complaint with that agency. If the applicant is not satisfied with the agency investigation and decision, the applicant may appeal the decision to the U.S. Equal Employment Opportunity Commission. If an applicant believes the agency committed a prohibited personnel practice, he or she may also file a complaint with the Office of Special Counsel, another independent agency established by the Civil Service Reform Act.

v. Relevant exceptions to the above.

The executive branch gives preference in hiring to certain military veterans based upon conditions set in law at section 2108, title 5, United States Code. Generally, this "veterans' preference" is granted to those who were either disabled while serving in the military or who served in a military campaign or during specific periods in our history. Preference is reserved to those military members who were honorably discharged from active duty. The veterans' preference was established in the Federal hiring system to recognize the economic loss suffered by citizens who have served their country in uniform in times of strife, restores veterans to a favorable competitive position for Government employment, and acknowledges the larger obligation owed to disabled veterans. Veterans who qualify for veterans' preference are entitled to an advantage over other applicants. Notification of this preference is included in all job announcements so all applicants are aware of it.

Certain other exceptions result in positions being removed from the competitive service and placed in the excepted service. Agencies excepted from the competitive service establish their own hiring and workforce policies and procedures in accordance with the specific parameters of their statute. Examples of statutory exceptions to the title 5, U.S.C., competitive hiring system include:

Department of Defense Intelligence positions by chapter 83 of title 10, U.S.C.
Federal Bureau of Investigation by chapter 33 of title 18, U.S.C.
Federal Aviation Administration by chapter 401 of title 49, U.S.C.
Tennessee Valley Authority by chapter 12A of title 16, U.S.C.

Other laws establish separate personnel systems within the executive branch that are administered by agencies other than OPM, for example, the Foreign Service established under chapter 52 of title 49, U.S.C., is administered by the U.S. Department of State.

Although some personnel systems may be excepted from the title 5 competitive hiring system, the law that excepts the system may require the agency to continue to follow certain title 5 provisions. For

example, the Federal Aviation Administration must continue to provide veterans' preference in hiring in accordance with title 5.

The OPM, by delegation of the President, may except certain positions from the competitive hiring system; however, the persons selected for these positions may not be employed in the competitive service unless they compete under the competitive hiring system described above.

Once an individual competes for and is appointed to the competitive service, he/she earns a status which allows that individual to move from position to position in the competitive service without having to re-compete with the general public under the procedures described above. Federal agencies may limit their recruitment to current employees who have been competitively hired, or agencies may concurrently consider these status candidates when also recruiting under the competitive system. Agencies may select and appoint any individual under an authorized appointing authority granted by the Congress, the President, or the OPM.

b. In relation to question a), state the objective results obtained, including any available statistical data.[1]

Federal competitive service employment levels as of:

June, 2007 - 1,283,548
December 2006 - 1,285,266
December 2005 - 1,289,415
December 2004 - 1,302,229

Total New Hires:

2006:	237,525
2005:	247,241
2004:	246,086
2003:	431,120 (increase due to staffing of new Department of Homeland Security)
2002:	290,991

For additional statistics, go to www.fedscope.opm.gov.

[1] In accordance with the methodology adopted by the Committee, the information on results will seek to center on the last two years, in connection with this and the other provisions of the Convention selected for review in the framework of the second round, with the exception of information relating to the acts of corruption foreseen in Article VI (1) of the Convention, for which it will seek to center on the last five years.

2) GOVERNMENT SYSTEMS FOR THE PROCUREMENT OF GOODS AND SERVICES.

a. Are there laws and/or measures in your country establishing government systems for the procurement of goods and services? If so, briefly describe the main systems, indicating their characteristics and principles, and list and attach a copy of the related provisions and documents. Also describe how the above systems ensure openness, equity and efficiency in your country.

The U.S. has a system of laws and regulations governing the procurement of goods and services by federal agencies. There is one procurement system at the Federal or central level, and another for each State. This questionnaire response only applies to the Federal level. Each State has its own independent authority and conducts its procurements on the basis of its own laws and regulations. As a general rule, however, the States follow many of the policies required by law or regulation at the Federal level because they are considered to be good business practices.

Laws governing the U.S. procurement system are found in Titles 10, 41, and 31 of the U.S. Code (see links below). The U.S. procurement regulatory system, which implements laws of the U.S. Code, is found in the Federal Acquisition Regulatory System. This system consists of the Federal Acquisition Regulation (FAR), which is the government-wide procurement regulation, as well as agency-specific procurement regulations called agency supplements. The FAR is the primary policy document regulating Federal agencies for the procurement of goods and services; agency specific procurement regulations either implement or supplement the FAR but may not be inconsistent. This helps to ensure that offerors are subject to the same rules when doing business with different agencies. The FAR and agency supplements are found at http://acquisition.gov/far/index.html.

The primary goal of U.S. procurement laws is to obtain the most advantageous goods and services for the government while promoting full and open competition through a fair and transparent process. The Federal Acquisition Regulatory System is designed to deliver on a timely basis the best value product or service to the government while maintaining the public's trust and fulfilling public policy objectives.

The U.S. procurement system is based on fundamental principles of (1) openness and competition; (2) fair dealing and transparency; (3) value for money; (4) accountability and due process; and (5) non-discrimination. Laws that implement these principles are:

Title 10, U.S. Code

Section 2304, Competition requirements. -- http://frwebgate4.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=61518610029+0+0+0&WAISaction=retrieve
Section 2305, Planning, solicitation, evaluation and award. -- http://frwebgate1.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=614985409736+0+0+0&WAISaction=retrieve

Title 41, U.S. Code

Section 253, Competition requirements. -- http://frwebgate1.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=615121410228+0+0+0&WAISaction=retrieve
Section 253a, Planning and solicitation requirements. -- http://frwebgate5.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=614854142257+0+0+0&WAISaction=retrieve
Section 253b, Evaluation and Award. -- http://frwebgate5.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=614885151286+0+0+0&WAISaction=retrieve
Section 404, Office of Federal Procurement Policy. -- http://frwebgate2.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=614694385781+0+0+0&WAISaction=retrieve
Section 405, Authority and Functions of Administrator. -- http://frwebgate4.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=61560911519+0+0+0&WAISaction=retrieve
Section 405a, Uniform procurement regulations. -- http://frwebgate4.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=6156809878+0+0+0&WAISaction=retrieve
Section 414b, Chief Acquisition Officers Council. -- http://frwebgate1.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=615348410888+0+0+0&WAISaction=retrieve
Section 416, Procurement notices. -- http://frwebgate6.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=614139140004+0+0+0&WAISaction=retrieve
Section 418b, Publication of proposed regulations. -- http://frwebgate2.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=614902367597+0+0+0&WAISaction=retrieve
Section 421, Federal Acquisition Regulatory Council. -- http://frwebgate6.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=614200139216+0+0+0&WAISaction=retrieve
Section 422, Cost Accounting Standards Board. -- http://frwebgate4.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=6158332828+0+0+0&WAISaction=retrieve

Title 31, U.S. Code

Sections 3551 et. seq., GAO authority to hear bid protests. – http://frwebgate4.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=63179420873+0+0+0&WAISaction=retrieve

The U.S. Code is accessible generally at http://www.gpoaccess.gov/uscode/index.html.

Openness and Competition

The Competition in Contracting Act (CICA), codified in Titles 10, 31 and 41 of the U.S. Code, mandates a full and open competition standard for Federal procurement. This means that all interested suppliers may offer and participate in a given procurement. In order to increase competition and broaden private sector participation, all information required for suppliers to prepare responsive offers is made available, including the criteria for award of the contract. All information provided to prospective participants must describe the requirements of the Government clearly, accurately and completely. Unnecessary restrictive specifications or requirements that might limit the number of participants are prohibited.

Notwithstanding a full and open competition standard, Federal agencies need flexibility to meet unanticipated requirements. Therefore, CICA permits Federal agencies to limit competition under certain circumstances. Those circumstances are (1) where only one responsible source will satisfy agency requirements; (2) where there is an unusual and compelling urgency; (3) for industrial mobilization purposes; (4) as required by an international agreement; (5) as authorized by law; (6) for national security purposes; and (7) where there is a public interest reason. A Federal agency may not

commence a procurement to limit competition unless the agency justifies the use of such actions. The justification must provide sufficient information, including the description of the supplies or services, the supplier's unique qualifications, a description of efforts made to ensure that offers are solicited from as many offers as possible, to fully support the action. SEE FAR Part 6. http://acquisition.gov/far/current/html/FARTOCP06.html#wp280339

CICA also permits agencies to restrict competition to certain classes of suppliers for reasons of public policy. For example, certain procurements are "set-aside" for small businesses, and certain supplies and services are required to be purchased from agencies employing people who are blind or severely disabled and from Federal Prison Industries, a wholly owned government corporation employing inmates. SEE FAR Parts 8 and 19.
http://acquisition.gov/far/current/html/FARTOCP08.html#wp226853 and
http://acquisition.gov/far/current/html/FARTOCP19.html#wp223561

Fair Dealing and Transparency

The U.S. procurement system requires fair dealing with prospective and current suppliers by exercising discretion, using sound business judgment, and complying with all laws and regulations. Fairness requires open communication between the government and the public.

Transparency in government procurement ensures that all participants know the rules. Draft procurement regulations must be published for public comment prior to being made mandatory. Comments from the public are reviewed and consideration is given in the formation of any final regulation before it becomes effective. SEE FAR Part 1.5.
http://www.arnet.gov/far/current/html/Subpart%201_5.html#wp1043787

To further ensure transparency, procurement opportunities over $25,000 must be announced, with limited exceptions; evaluation criteria must be made public; technical specifications must be performance-based to the maximum extent possible; and contracts must be awarded on the basis of the evaluation criteria found in the tendering documents. These criteria consist of evaluation factors and significant sub-factors that are tailored to the particular procurement. All factors and significant sub-factors that will affect contract award, and their relative importance, must be stated clearly in the tendering documentation. SEE FAR Parts 5, 10, 14, 15 (http://acquisition.gov/far/index.html.) and http://www:fedbizopps.gov

Agencies are required to provide disappointed bidders with a debriefing to review their bids and to discuss inadequacies that have contributed to not being awarded a contract. Briefings generally occur within a short period of time after award has been announced. SEE FAR Part 14, 15.
http://acquisition.gov/far/current/html/FARTOCP14.html#wp301185 and
http://acquisition.gov/far/current/html/FARTOCP15.html#wp246607

Value for Money

Federal agencies are required to ensure that purchases are made from, and contracts are awarded only to, responsible prospective suppliers. To make this determination, the government looks to the adequacy of the prospective supplier's finances; the ability of the supplier to comply with the required or proposed delivery or performance schedule; any record that relates to past performance,

integrity and business ethics; and organization, technical skills and facilities. SEE FAR Subpart 9.1. http://acquisition.gov/far/current/html/Subpart%209_1.html#wp1084058

When it is determined to be in the best interest of the government to award a contract to a bidder whose bid is not the lowest priced, the U.S. procurement process has in place a "best value" mechanism. A "best value" evaluation entails a cost/technical tradeoff and is designed to provide the greatest benefit to the government while maintaining an integrity that ensures fair dealings with suppliers. When using a trade-off process, the tendering document must clearly state all evaluation factors and significant sub-factors that will affect contract award and their relative importance. The documents must also state whether all evaluation factors other than cost or price, when combined, are significantly more important than, approximately equal to, or significantly less important than cost or price. SEE FAR Part 15. http://acquisition.gov/far/current/html/FARTOCP15.html#wp246607

Accountability and Due Process

Details on how to resolve these issues at the Federal agency level and at the Government Accountability Office (GAO) are outlined in FAR Part 33. http://acquisition.gov/far/current/html/FARTOCP33.html#wp223483 An interested party that is an actual or potential offeror, including non-U.S. entities, can file a protest with the GAO relating to (1) the tendering documentation; (2) the cancellation of the tendering documentation; (3) the award of a proposed contract; (4) the termination or cancellation of an award; (5) the termination or cancellation of an award of the contract. The GAO issues its decision on a protest within 100 days from the date of filing of the protest, or within 65 days under an express option. In most cases the procurement will be suspended while the GAO reviews the protest.

Prior to filing a protest with the GAO, offerors are encouraged to resolve their differences with the Federal agency. This can be accomplished informally with open and frank discussions with the contracting officer, or through a formal agency protest. Agencies employ inexpensive, informal and procedurally simple methods to facilitate resolution. This will include the use of alternative dispute resolution.

Non-Discrimination

The basic rule to ensuring non-discrimination is that procurement laws, regulations, policies, administrative guidelines, procedures and practices should not be prepared, adopted or applied so as to afford protection/favor/preference to, or discriminate against the goods, services or supplies or any particular supplier or economy. The use of discriminatory practices in government procurement undermines the competitive process and thus the ability of the government to achieve the best value for money. This principle is applied at all stages of U.S. government procurements as follows:

(1) The same information on procurement opportunities is available to all potential suppliers through announcement on an open website, FEDBIZOPPS. (http://www:fedbizopps.gov)
(2) Criteria for qualification of suppliers, evaluation of bids and award of contracts are based solely on the ability to meet the procurement requirements such as technical and management competency, and costs considerations, rather than favoritism.
(3) Where full and open competition is not practical, the limitation of competition is based on objective criteria to meet legitimate government requirements.

(4) Specifications are not prepared, adopted or applied with a view to, or with the effect of, creating bias for or against the supplies or services of a particular supplier.
(5) Where negotiation is utilized for a particular procurement, discussions with offerors are conducted in a structured and ethical manner and not with the intent or effect of discriminating between supplies or services of different offerors.
(6) Offerors are not unjustifiably excluded from the procurement.
(7) Debriefings are available to all disappointed offerors.

In addition, the U.S. restricts participation by foreign suppliers whose governments have not agreed to provide procedural safeguards and comparable market access opportunities for U.S. suppliers in their government procurement markets. This purchasing prohibition found in the Trade Agreements Act of 1979 may be waived for supplies of any governments that agree to provide such safeguards and access for U.S. suppliers. See Title 19 of the U.S. Code, Sections 2501 et. seq.

Other restrictions apply to the procurement of supplies, for reasons of public policy. The Buy American Act of 1933 established preferences for the procurement of domestic supplies. These preferences are waived for parties to the World Trade Organization (WTO) Agreement on Government Procurement, the North American Free Trade Agreement (NAFTA), and other free trade agreements for products valued above applicable thresholds. See Title 41 of the U.S. Code Sections 10 et. seq.

In relation to the above, refer, among others, to the following:

(i). Procurement systems with a public tender and without a public tender.

The general rule in deciding between a public and private tender is that a full and open competition standard should be applied that permits all interested suppliers to participate in the procurement. However, as mentioned on the above discussion of "Openness and Competition," under certain circumstances, limited competition is permitted. CICA permits Federal agencies to limit competition in six circumstances. See FAR Part 6.
http://acquisition.gov/far/current/html/Subpart%206_3.html#wp1086841

A Federal agency may not commence a procurement under this authority unless the agency justifies the use of such actions. The justification must include the description of the supplies or services, the suppliers' unique qualifications, and a description of efforts made to ensure that offers are solicited from as many offerors as possible - to fully support the action. Contracting without providing for full and open competition may not be justified on the basis of (1) lack of advance planning or (2) concerns related to the amount of funds available for the procurement of the supplies or services.

(ii) Governing or administrating authorities of the systems and control mechanisms.

(1) The Office of Federal Procurement Policy

The Office of Federal Procurement Policy was established to provide overall direction of government wide procurement policies, regulations, procedure 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. The Office is headed by the Administrator for Federal

Procurement Policy who is appointed by the President and confirmed by the U.S. Senate. See 41 U.S.C. 404

(2) The Federal Acquisition Regulatory Council

The Federal Acquisition Regulatory 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. See 41 U.S.C. 421

(3) The Cost Accounting Standards Board.

The Cost Accounting Standards Board has the exclusive authority to make, promulgate, amend, and rescind cost accounting standards and interpretation thereof designed to achieve uniformity and consistency in the cost accounting standards governing measurement, assignment, and allocation of cost to contracts with the U.S. See 41 U.S.C. 422

(4) The Chief Acquisition Officers Council.

The Chief Acquisition officers Council was established to monitor the performance of acquisition activities and acquisition programs of the executive agency, evaluating the performance of these programs on the basis of applicable performance measurements, and advising the head of the executive agency regarding the appropriate business strategy to achieve the mission of the executive agency. See 41 U.S.C. 414b.

(5) The Inspectors General.

The Inspectors General are independent and objective units within each Federal agency that are authorized to conduct investigations and audits into the programs and operations of the agency and make findings.

(6) The Government Accountability Office.

The Government Accountability Office is an independent arm of Congress authorized to conduct investigations and issue reports on agency programs at the direction of a member of Congress.

(7) Congressional Oversight Committees.

Congressional Oversight Committees are authorized to monitor the operations of Federal agencies, conduct hearings on agency programs where appropriate, and design remedies for deficiencies in agency programs which may include new laws.

(8) The U.S. Department of Justice.

The U.S. Department of Justice is authorized to prosecute violations of laws, including those related to procurement.

<u>(iii) Registry of pre-approved contractors.</u>

Several systems of contractor registration are maintained for different reasons. They are:

(1) The Central Contractor Registration (CCR) is the primary registrant data base for the US Federal Government. CCR collects, validates, stores and disseminates data in support of each agency acquisition missions. The database was established and is maintained to increase the visibility of vendor sources for specific systems and services and to establish a common source of vendor data for the government. Contractors are required to register in the CCR database prior to award of a contract, with some limited exceptions. See http://www.ccr.gov/

(2) Qualified bidders lists include those bidders who have had their products tested and who have satisfied all applicable qualification requirements for that product or have otherwise satisfied all applicable qualification requirements.

(iv) Electronic methods and information systems for government procurement.

Several electronic systems are maintained by the Federal government. They are:

(1.) The Federal Procurement Data System (FPDS) provides a comprehensive mechanism for assembling, organizing, and presenting contract data for the federal government. The data provides a basis for recurring and special reports and a means of ensuring and assessing the impact of Federal contracting on the nation's economy. See http://www.fpds.gov.

(2) Government Point of Entry (through the internet)--FEDBIZOPPS. As required by law, agencies must issue public notices of proposed procurements above $25,000, tender documentation to include specifications, technical data, and other pertinent information to increase the opportunity for competition. This is now required by law to be accomplished through the Federal government's single point of entry at http://www.fedbizzopps.gov.

(v) Public works contracts.

Public works contracts, also know as construction contracts, are governed, for the most part, by the same set of rules as those established for the procurement of supplies and services. Contracts for the services of architect-engineers must be acquired using a quality based evaluation system as opposed to cost-based systems. See FAR Part 36.
http://acquisition.gov/far/current/html/FARTOCP36.html#wp223483

(vi) Identification of the selection criteria for contractors (e.g. price, quality and expertise).

The U.S. Government bases its award decision on evaluation factors and significant sub-factors that are tailored to the procurement. Evaluation factors and significant sub-factors must represent the key areas of importance to be considered in the selection decision and must support meaningful comparison between and among competing proposals. The evaluation factors and sub-factors are within the broad discretion of the agency but must include (1) price or cost to the government; (2) the quality of the product or service; (3) past performance; and (4) the extent of participation of small businesses. All factors and significant sub-factors that will affect contract award and their relative

importance are stated clearly in the tendering documentation. See FAR Part 15. http://acquisition.gov/far/current/html/FARTOCP15.html#wp246607

(vii) Ways to challenge a selection

As a first step, offerors are encouraged to resolve their differences with the Federal agency. This can be accomplished informally with open and frank discussions with the contracting officer, or through a formal agency protest. Agencies employ inexpensive, informal and procedurally simple methods to facilitate resolution. This will include the use of alternative dispute resolution.

A more formal route is the Government Accountability Office(GAO), an arm of the U.S. Congress. An interested party that is an actual or potential offeror, including non-U.S. entities, can file a protest with the GAO relating to (1) the tendering documentation; (2) the cancellation of the tendering documentation; (3) the award of a proposed contract; (4) the termination or cancellation of an award; (5) the termination or cancellation of an award of the contract. The GAO issues its decision on a protest within 100 days from the date of filing of the protest, or within 65 days under an express option. In most cases the procurement will be suspended while the GAO reviews the protest. See FAR Part 33 for details on how to resolve these issues at the Federal agency level and at the GAO. http://acquisition.gov/far/current/html/FARTOCP33.html#wp223483

b. **In relation to Question a, state the objective results obtained, including any available statistical data (e.g., percentage of contracts awarded through public tender; sanctions imposed on contractors)..**

The result of the array of laws and regulations is that the U.S. Government has a procurement system that (1) delivers on a timely basis the best value or service to the government; (2) minimizes administrative operating costs; (3) conducts business with integrity, fairness and openness; and (4) fulfills public policy objectives.

The U.S. maintains an extensive data base on government procurements in the Federal procurement Data System. See http://www.fpds.gov. As an example of available data, in FY 2006 the U.S. government awarded contracts valued at more than $300 billion. Of these awards, more than 60 percent were awarded based on full and open competition.

With regard to sanctions, contractors may be debarred or suspended based on an indictment or conviction of a fraud or criminal offense, violation of antitrust laws, commission of embezzlement, theft, forgery, bribery, falsification, or commission of any offense indicating a lack of business integrity that seriously and directly affects the ability of the contractor to perform the contract. Federal agencies may not solicit offers from or award contracts to contractors who have been debarred or suspended or proposed for debarment or suspension from government contracting. The U.S. General Services Administration operates the web-based Excluded Parties List of contractors debarred, suspended, or proposed for debarment. SEE http://www.epls.gov.

CHAPTER TWO

SYSTEMS FOR PROTECTING PUBLIC SERVANTS AND PRIVATE CITIZENS WHO, IN

GOOD FAITH, REPORT ACTS OF CORRUPTION (ARTICLE III (8) OF THE CONVENTION)

a. Are there laws and/or measures in your country establishing systems for protecting public servants and private citizens who, in good faith, report acts of corruption? If so, briefly describe them and list and attach a copy of the related provisions and documents.

The United States has a system of laws and regulations governing the protection of public officials and private citizens who, in good faith, report acts of corruption and misconduct. The laws applicable to federal employees can be found in Title 5 of the United States Code, chapter 12, as cited below. Most States have individual laws that protect private citizen whistleblowers. Because these State laws vary, this section will focus on the laws applicable to protecting federal employee whistleblowers.

i. Mechanisms for reporting (e.g. anonymous reporting, protection of identity of reporting individual)

The U.S. Office of Special Counsel (OSC), a federal executive branch agency, has a Disclosure Unit (DU) that serves as a safe conduit for the receipt and evaluation of whistleblower disclosures from federal employees, former employees and applicants for federal employment. 5 U.S.C. § 1213. In this capacity, DU receives and evaluates whistleblowing disclosures. Disclosures are separate and distinct from complaints of reprisal or retaliation for whistleblowing that are reviewed by OSC's Investigation and Prosecution Division (IPD) as potential prohibited personnel practices.

Federal law guarantees the confidentiality of whistleblowers. However, in the unusual case where the Special Counsel determines there is an imminent danger to public health and safety or violation of criminal laws, the Special Counsel has the authority to reveal the whistleblower's identity. 5 U.S.C. § 1213(h).

The Special Counsel may order an agency head to investigate and report on the disclosure; and after any such investigation, the Special Counsel must send the agency's report, with the whistleblower's comments, to the President and to Congressional oversight committees.

DU attorneys review five types of disclosures specified in the statute: violations of law, rule or regulation; gross mismanagement; gross waste of funds; abuse of authority; and substantial and specific danger to public health and safety. 5 U.S.C. § 1213(b). The disclosures are evaluated to determine whether or not there is sufficient information to conclude with a substantial likelihood that the disclosure meets one of these conditions.

Jurisdictional Requirements

The Disclosure Unit has jurisdiction over federal employees, former federal employees, and applicants for federal employment. It is important to note that a disclosure must be related to an event that occurred in connection with the performance of an employee's duties and responsibilities. The Disclosure Unit does not have jurisdiction over disclosures filed by:

- employees of the U.S. Postal Service and the Postal Rate Commission;
- members of the armed forces of the United States (i.e., non-civilian military employees);
- state employees operating under federal grants;
- employees of federal contractors.

ii. Mechanisms for reporting threats or reprisals

Section 2302(b)(8) of title 5 of the United States Code, also known as the Whistleblower Protection Act (WPA) (http://frwebgate4.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=7711439100+0+0+0&WAISaction=retrieve) prohibits a federal employee authorized to take, direct others to take, recommend, or approve any personnel action from engaging in reprisal for whistleblowing – i.e., taking, failing to take, or threatening to take or fail to take a personnel action with respect to any employee or applicant because of any disclosure of information by the employee or applicant, which he or she reasonably believes evidences a violation of a law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety. Some disclosures are barred by law or are specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs, in which case, the disclosure is only protected if made to the Special Counsel, the Inspector General, or comparable agency official.

A personnel action or a threat of a personnel action (such as an appointment, promotion, reassignment, or suspension) must be involved for a violation of the WPA to occur.

OSC has jurisdiction over violations of the WPA committed against most employees or applicants for employment in Executive Branch agencies and the Government Printing Office. OSC has jurisdiction over allegations of whistleblower retaliation for employees of -

- the government corporations listed at 31 U.S.C. § 9101;
- the Transportation Security Administration (TSA). (please see below for further information regarding TSA).
- TSA non-screener employees may file complaints alleging retaliation for protected whistleblowing under 5 U.S.C. § 2302(b)(8). OSC will process these complaints under its regular procedures, including filing petitions with the Merit Systems Protection Board, if warranted.
- TSA security screeners may also file complaints alleging retaliation for protected whistleblowing under 5 U.S.C. § 2302(b)(8) pursuant to a Memorandum of Understanding (MOU) between OSC and TSA executed on May 28, 2002. The MOU and TSA Directive HRM Letter No. 1800-01 provide OSC with authority to investigate whistleblower retaliation complaints and recommend that TSA take corrective and/or disciplinary action when warranted.

OSC has no jurisdiction over prohibited personnel practices committed against employees of:

- the Central Intelligence Agency, Defense Intelligence Agency, National Security Agency, and certain other intelligence agencies excluded by the President;
- the Government Accountability Office;
- the Federal Bureau of Investigation;
- the U.S. Postal Service (except for nepotism allegations; see above); and
- the Postal Rate Commission.

In agencies that are not within OSC's jurisdiction employees file PPP complaints either with their agency's Office of Inspector General, through internal agency grievance procedures, or through their

union if they are covered by a collective bargaining agreement.

Federal employees, former federal employees and applicants for federal employment may file a complaint alleging retaliation for whistle blowing by filling out OSC Form 11, either online on OSC's website, by mail or by facsimile.

The OSC asks everyone who seeks an investigation of possible retaliation for whistleblowing to select one of three consent statements (Form OSC-49) explaining necessary communications between OSC and the agency involved. The individual may choose to consent to the disclosure of their name for investigative purposes, to consent to the disclosure of their name for investigative purposes only if OSC believes it is necessary to conduct the investigation (OSC contacts the individual before such disclosure), or may choose not to consent to the disclosure of their name. As a practical matter, it is often necessary to disclose the complainant's identity in order to conduct a thorough investigation of the allegations. If this is the case and the individual has chosen not to consent to disclosure of their identity, the individual is informed that without such disclosure, OSC may be unable to conduct an investigation and that the individual's complaint may be closed on that basis if the individual does not want to change their choice of consent statements.

After an initial screening to determine whether OSC has jurisdiction over a complaint, and whether there is enough information for OSC to reasonably believe that a violation has occurred, OSC's IPD conducts a full investigation to review pertinent records, and to interview complainants and witnesses with knowledge of the matters alleged. Matters not resolved during the investigative phase will undergo legal review and analysis to determine whether the IPD inquiry has established a violation of law, rule or regulation, and whether the matter warrants corrective action, disciplinary action, or both.

The whistleblower seeking protection may request that the Special Counsel seek to delay, or "stay," an adverse personnel action pending an OSC investigation. If the Special Counsel has reasonable grounds to believe that the proposed or taken action is the result of retaliation for whistleblowing, the OSC may ask the agency involved to delay the personnel action. If the agency does not agree to a delay, the OSC may then ask the U.S. Merit Systems Protection Board (MSPB) to stay the action. The OSC cannot stay a personnel action on its own authority.

If there is sufficient evidence to prove a violation of the WPA, the OSC can seek corrective action, disciplinary action, or both. Alternatively, parties in selected cases may agree to mediate their dispute in order to reach a mutually agreeable resolution of the retaliation complaint.

Corrective action. The OSC may enter into discussions with an agency at any stage of a pending matter in pursuit of a resolution acceptable to all parties. The OSC follows a policy of early and firm negotiation to obtain appropriate corrective action (and/or disciplinary action) for apparent violations.

If an agency fails to remedy a prohibited personnel practice upon request by the OSC, corrective action may also be obtained through litigation before the MSPB. Such litigation begins with the filing of a petition by the OSC, alleging that there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is about to occur. Corrective actions that can be ordered by the MSPB include job restoration, reversal of suspensions and other adverse actions, reimbursement of attorney's fees, back pay, medical and other costs and damages. See 5 U.S.C. § 1214

Note: Pursuant to 5 U.S.C. § 1221 , current or former federal employees and applicants who allege that they were subjected to any personnel action because of whistleblowing may seek corrective action in an appeal to the MSPB. Such an appeal is known as an "individual right of action" (IRA). By law, the employee or applicant must seek corrective action from the OSC before filing an IRA. The IRA may be filed—

- after the OSC closes a matter in which reprisal for whistleblowing has been alleged; or
- if the OSC has not notified the complainant within 120 days of receiving an allegation of whistleblower reprisal that it will seek corrective action.

Procedures for filing an IRA are set forth in MSPB regulations at 5 C.F.R. Part 1209. (In considering an IRA, it should be noted that the MSPB may refuse to take jurisdiction over any matters not specifically raised before the OSC.)

Disciplinary action. The OSC may seek disciplinary action against any employee believed to have retaliated against a federal employee, former federal employee or applicant for federal employment. The OSC begins a disciplinary action case by filing a complaint with the MSPB, charging an employee with the commission of a prohibited personnel practice, and seeking disciplinary action against that person. Rights of employees against whom the OSC seeks disciplinary action in these cases are set forth in MSPB regulations, at 5 C.F.R. Part 1201, Subpart D. Individuals found by the MSPB to have committed a prohibited personnel practice are subject to removal, reduction in grade, debarment from federal employment for up to five years, suspension, reprimand, or fine of up to $1,000.

Pursuant to 5 U.S.C. § 1214(f), during any OSC investigation under Title 5, an agency may not take disciplinary action against any employee for any alleged prohibited activity under investigation, or for any related activity, without approval from the OSC. In the alternative, at any time during its investigation of a matter, the OSC may authorize the agency involved to take disciplinary action against an employee believed to be responsible for committing a prohibited personnel practice. See 5 U.S.C. § 1215.

Individuals who wish to file a complaint of retaliation for whistleblowing must use Form OSC-11 (Complaint of Possible Prohibited Personnel Practice or Other Prohibited Activity). Form OSC-11 may be printed from OSC's website. The OSC will not process a complaint submitted in any format other than a completed Form OSC-11. If a person uses any other format to file a complaint, the material received will be returned to the filer with a blank Form OSC-11 to complete and return to the OSC. The complaint will be considered to be filed on the date on which the OSC receives the completed Form OSC-11.

Pursuant to 5 U.S.C. § 7121(g), employees covered by a collective bargaining agreement must choose one of three avenues: an OSC complaint, an MSPB appeal, or a grievance under the collective bargaining agreement.

Title 5 of the U.S. Code authorizes the OSC to issue subpoenas for documents or the attendance and testimony of witnesses. During an investigation, the OSC may require employees and others to testify under oath, sign written statements, or respond formally to written questions.

Federal employees are also required to provide to the OSC any information, testimony, documents, and material, the disclosure of which is not otherwise prohibited by law or regulation, in investigations of

matters under civil service law, rule, or regulation. The same rule requires federal agencies to make employees available to testify, on official time, and to provide pertinent records to the OSC. See 5 U.S.C. § 1212(b); Civil Service Rule 5.4

Section 2302(c) of Title 5 requires federal agency heads, and officials with delegated authority for any aspect of personnel management, to:

- prevent prohibited personnel practices, including reprisal for whistleblowing;
- comply with and enforce civil service laws, rules and regulations; and
- ensure (in consultation with the OSC) that federal employees are informed of their rights and remedies.

iii. Witness Protection mechanisms

The Federal Witness Security Program[2] was statutorily created by the Organized Crime Control Act of 1970. The legislation which the Program operates under today is the Witness Security Reform Act of 1984, which is codified and published at 18 U.S.C. §3521, et seq. The Office of Enforcement Operations ("OEO") of the Criminal Division, Department of Justice, is charged with authorizing individuals to enter into the Program, overseeing the operations of the Program, and serving as the ombudsman for Program participants. By order of the Attorney General, the authority to place individuals in the Program has been delegated to the Associate Director of OEO, who is designated as the Director of the Witness Security Program, or in the absence of that Associate Director, the Director of OEO.

Private citizens may be considered for acceptance into the Program provided they are essential witnesses in significant: (1) serious federal or state felony prosecutions of any kind, which includes bribery and corruption offenses, (2) organized crime and racketeering offenses which offenses occasionally involve corrupt politicians, and (3) drug trafficking offenses, if any of the aforementioned offenses subject the witness to retaliation by violence or threats of violence and a bona fide threat against the life of the witness is demonstrated. The published guidelines established by the Attorney General concerning the Program are detailed in the U.S. Attorney's Manual, Chapter 9-21.000. (http://www.usdoj.gov/usao/eousa/foia_reading_room/usam/title9/21mcrm.htm.) The statute also requires that a protected witness provide testimony that is critical to the prosecution and not otherwise available, and that the risk that the witness presents to any new community in which he or she is relocated be weighed against the danger to the public if the person does not testify. Providing long term protection and a new identity to public servants is viewed as the primary responsibility of such witnesses' employing government agency, which is in a better position to assess how best to both protect them and/or continue to utilize their services. There is no statutory or Program rule prohibiting the Program from protecting public servants, but it is rarely considered.

There are two aspects to the traditional Program. One involves the permanent relocation of witnesses from their danger areas (area of cooperation) to another part of the United States and a permanent

[2] This answer describes only the Federal Witness Security Program, special long term witness protection scheme for witnesses as to whom it is determined that public use of their testimony will put their physical safety in danger due to the likelihood of intentional attempts at retaliation over an unspecified period of time. Government programs other than this exist to protect witnesses who need protection either only prior to the time they testify, and/or only while they are in court, and/or only for a very short time after they testify in case they inadvertently cross paths with a person against whom they have testified.

change of their identity. The United States Marshals Service ("USMS") administers the day-to-day operation of the Program for witnesses relocated in the community, and provides for safe and secure transportation to and from any necessary court appearances. The other aspect of the Program is the protection of "prisoner-witnesses" who are serving sentences and assigned to the custody of the Federal Bureau of Prisons ("BOP"). BOP administers the day-to-day operation of the Program for these prisoner-witnesses. Upon their release from prison a separate evaluation will be made to determine if permanent relocation and an identity change is necessary for their protection.

Two somewhat different but related Programs have been created by Program officials. For the District of Columbia only, which is geographically the smallest federal prosecutorial district, a short term relocation program was created, which is a limited security program for witnesses who are not expected to need permanent services, typically for more than a few months before or after trial, and may be able to return to their original homes and jobs. In addition, for foreign nationals who are not eligible for a visa to stay in the United States, the Special Limited Services Program allows witnesses who are subject to deportation, and are only in danger if returned to their native countries, to remain in the United States based upon their agreement to testify as witnesses. No Program services from the USMS such as relocation, change of identity, funding or employment assistance are needed or provided in the Special Limited Services Program. Consequently, only immigration documents and assistance is provided.

a. In relation to question (a), state the objective results obtained, including any available statistical data.

Whistleblower Protection

OSC's Annual Report to Congress provides five years' worth of data at http://www.osc.gov/documents/reports/ar-2006.pdf. Statistics for 2006 are as follows:

i. reporting, protection of identity reporting – for 2006:

Pending disclosures carried over from previous fiscal year:	110
New disclosures received:	435
Total disclosures:	545
Disclosures referred to agency heads for Investigation and report:	24
Referrals to Agency IGs	10
Agency head reports sent to President and Congress:	24
Results of Agency investigations and reports –	
-- disclosures substantiated in whole or in part:	21
-- disclosures unsubstantiated:	3

ii. Mechanisms for reporting threats or reprisals – for 2006 as "Prohibited Personnel Practice (PPP) Matters Activity – Favorable Actions":

Total favorable actions obtained (all PPP):	52
Favorable actions obtained (reprisal for whistleblowing)	40
Stays negotiated with agencies (included in totals above):	8

Stays obtained from Merit Systems Protection Board (included in totals above): 1

Witness Protection Mechanisms

The Program is primarily used to facilitate prosecution of persons and groups involved in organized criminal activity that are not easily infiltrated. More than 8,000 protected witnesses during the past 36 years have contributed to the conviction of members of many major organized criminal groups. The Witness Security and Special Operations Unit ("WSSOU") within OEO is responsible for managing a wide variety of operational aspects of the Program. The WSSOU receives an average of 230 applications for witnesses to be admitted into the Program each year and accepts approximately 160. Over 95 percent of the witnesses authorized into this Program are trusted criminal associates of major criminal offenders. Consequently, the witnesses or targets of these protected witnesses tend not to be politicians or civil servants. We do not have statistics which readily identify exactly how many Program witnesses have testified in cases involving allegations of official bribery or corruption. However, a cursory review of 854 cases handled by the Program in the period between 1987 to 2001 indicates that approximately 44 cases, or 5 percent, involved bribery or corruption. Since the Program has very rarely protected a public servant, we believe that the witnesses protected in these cases would have been the criminal offering the bribe or one of that criminal's close associates. We are also not aware of any Program participant who has followed the Program's rules that has been killed as a result of his or her cooperation.

CHAPTER THREE

ACTS OF CORRUPTION (ARTICLE VI OF THE CONVENTION)

1. Criminalization of acts of corruption provided for in Article VI (1) of the Convention

a. Does your country criminalize the acts of corruption provided for in Article VI (1) of the Convention transcribed in this chapter of the questionnaire? If so, describe briefly the laws and/or measures regarding them, indicating to which of the particular aforesaid acts of corruption they refer, including sanctions, and attach a copy of them.

- Acts of corruption provided for in Article VI (1) of the Convention:

i. The solicitation or acceptance, directly or indirectly, by a government official or a person who performs public functions, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions.

ii. The offering or granting, directly or indirectly, to a government official or a person who performs public functions, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions.

iii. Any act or omission in the discharge of his duties by a government official or a person who performs public functions for the purpose of illicitly obtaining benefits for himself or for a third party.

iv. The fraudulent use or concealment of property derived from any of the acts referred to in this article.

v. Participation as a principal, co-principal, instigator, accomplice or accessory after the fact, or in any other manner, in the commission or attempted commission of, or in any collaboration or conspiracy to commit, any of the acts referred to in this article.

The United States has a number of federal statutes that criminalize the conduct outlined above; both in terms of the substantive corruption offenses, as well as crimes related to rendering assistance or profiting from fraudulently obtained funds or property. For the purposes of this answer, the criminal statutes have been separated into three categories: 1) bribery and related crimes; 2) criminal use of the proceeds of bribery and related crimes; and 3) conspiracy and accessory liability, each of which are described in brief below. Each of these three categories contains an overview summary of the statutes, as well as a list of the statutes, their salient points, and references to the full statutory text.

(1) Bribery and Related Crimes

a. Overview of Offenses

1. Bribery and Illegal Gratuities, 18 U.S.C. § 201

The United States has multiple bribery statutes that prohibit the offer, acceptance, and/or solicitation of a bribe, defined under the law as anything of value, with the intent to influence an official act. The core bribery statute, 18 U.S.C. § 201, defines two degrees of the offense: 1) bribery, and 2) offering, accepting, and/or soliciting an illegal gratuity. The distinction between these two offenses lies in the relationship between the thing of value and the official act. That is to say, where the thing of value is offered, accepted, or solicited in exchange for the official act, the conduct is bribery and accorded a more severe penalty. However, when the thing of value is offered, accepted, or solicited for or because of the official act, the conduct is offering, accepting, and/or soliciting an illegal gratuity and is accorded a lesser penalty. As one Circuit Court of Appeal has explained,

> The two prohibitions differ in two fundamental respects. First, bribery requires a *quid pro quo*, and accordingly can be seen as having a two-way nexus. That is, bribery typically involves an intent to affect the future actions of a public official through giving something of value, and receipt of that thing of value then motivates the official act … A gratuity, by contrast, requires only a one-way nexus; the gratuity guideline presumes a situation in which the offender gives the gift without attaching any strings …. The two provisions additionally differ in their temporal focus. Bribery is entirely future-oriented, while gratuities can be either forward or backward looking. (United States v. Schaffer, 183 F.3d 833, 841 (D.C. Cir. 1999), vacated in part on other grounds by, 240 F.3d 35 (D.C. Cir. 2001).)

In the case of either a bribe or illegal gratuity, the "thing of value" has been interpreted by federal courts to be anything -- whether it be a good, service, or opportunity -- that has value to the recipient.

This could include money and other tangible objects, but also services or favorable terms on a loan, an offer of employment, etc. It is not necessary that the public official actually receive the thing of value or undertake the official act; a mere agreement or promise is sufficient for criminal liability to attach. Finally, with respect to bribery, the thing of value can either directly or indirectly benefit the public official and includes, for example, a payment of money to a third party on the official's behalf. The maximum penalties for bribery and illegal gratuities are 15 years and two years imprisonment, respectively.

2. Federal Program Bribery, 18 U.S.C. § 666

A separate statute, 18 U.S.C. §666, is aimed at ensuring the integrity of federal programs that are administered by non-federal entities. Section 666 penalizes bribery involving a public official employed by any non-federal organization, agency, or government that received more than $10,000 in federal funds through any federal program, grant, contract, subsidy, loan, guarantee, insurance, or other form of federal assistance. That is to say, where the corrupt conduct occurs at the state, local, or non-profit level, it is nevertheless a crime if the public official's employer is a recipient of federal funds above the threshold amount.

Congress enacted §666 to "protect the integrity of the vast sums of money distributed through Federal programs from theft, fraud, and undue influence by bribery." S. Rep. No. 98-225, p. 370 (1983). Title 18 U.S.C, §§641 (theft) and 201 (bribery) were determined to be inadequate prosecutorial vehicles due, in part, to the fact that federal courts interpreted the bribery statute as inapplicable to bribes made to state and local officials. The U.S. Department of Justice has a policy of limiting §666 prosecutions "to cases in which the Federal assistance is given pursuant to a specific statutory scheme that authorizes assistance to promote or achieve policy objectives. The statute was not intended to reach every Federal contract or every Federal disbursement." U.S. Attorney's Manual, §9-46.110. (http://www.usdoj.gov/usao/eousa/foia_reading_room/usam/title9/46mcrm.htm.) The maximum penalty for federal funds bribery is 10 years imprisonment.

3. Hobbs Act Extortion, 18 U.S.C. § 1951

When a public official solicits or extorts property under color of official right in a manner that affects interstate commerce, that conduct is not only covered by the statutes described above, but it is also penalized under 18 U.S.C. §1951, also known as the Hobbs Act. To show a violation of the Hobbs Act under this provision, the United States Supreme Court has held that "the Government must prove that a public official has obtained a payment to which he was not entitled, knowing that the payment was made in return for official acts." (Evans v. United States, 504 U.S. 255, 268 (1992)). The government must also show that the conduct had an impact on interstate commerce, though under existing law this is a fairly low hurdle. Like the "thing of value" in the Section 201 bribery offense, courts have interpreted the term "property" in the context of §1951 very broadly to include both tangible and intangible things of value.

This statute is particularly useful to highlight the culpability of the public official. In addition, because it involves simply an official acting under "color of official right," i.e. using the official's position, there is no requirement that the extorted payment be tied to any particular official act. Unlike the other offenses, under U.S. Department of Justice policy, any federal prosecution of this offense must be

cleared with the Justice Department's Public Integrity Section within the Criminal Division. The maximum penalty for a Hobbs Act extortion violation is 20 years imprisonment.

4. Federal Extortion Statute, 18 U.S.C. § 872

Though seldom used, there is also a Federal Extortion Statute, codified at 18 U.S.C §872, which criminalizes extortion by a public official. It also applies to private citizens holding themselves out to be public officials. Unlike the statutes outlined above, this statute contains both misdemeanor and felony provisions, depending upon the amount of money extorted or demanded. Where the amount is $1,000 or less, the maximum penalty is one year imprisonment; otherwise it is a maximum of three years imprisonment.

5. Honest Services Mail or Wire Fraud, 18 U.S.C. §§ 1346, 1341, 1343

The United States also has laws that penalize anyone who devises or executes a scheme to defraud the United States and its citizens of their intangible right to the honest services of public officials, where such a scheme involves the use of interstate wire communications or the U.S. mails. Traditionally, the mail and wire fraud statutes encompassed only schemes to obtain money or property. However, 18 U.S.C. §1346, expands the mail and wire fraud statutes to include schemes to deprive the government and public-at-large of the intangible right to a public official's honest services. This is based on the premise that public officials and public employees, by the nature of their employment, inherently owe a duty to the government and the public to act in the public's best interest. As one Circuit Court of Appeal has explained,

> When a government officer decides how to proceed in an official endeavor . . . his constituents have a right to have their best interests form the basis of that decision. If the official instead secretly makes his decision based on his own personal interests -- as when an official accepts a bribe or personally benefits from an undisclosed conflict of interest -- the official has defrauded the public of his honest services. (United States v. Lopez-Lukis, 102 F.3d 1164, 1169 (11th Cir. 1997).

An honest services mail or wire fraud charge is established by evidence of: 1) a scheme or artifice to defraud another of the intangible right of honest services; 2) that involved a material misrepresentation or concealment of fact; 3) undertaken with the specific intent to defraud; and 4) was furthered by a use of interstate wire communications or the U.S. mails. See Neder v. United States, 527 U.S. 1, 25 (1999). Because honest services fraud is concerned with the manner in which officials make their decisions and not the wisdom of the official action itself, once the decision-making process has been corrupted, it is of no matter whether a public official's actions actually benefited his constituents. In other words, it is not a defense to honest services fraud that a public official would have performed the same official action absent the payments he received or conflict of interest. The maximum penalty for a mail or wire fraud violation is 20 years imprisonment or, if the offense involved a financial institution, 30 years imprisonment.

6. Anti-Kickback Act, 41 U.S.C. §§ 51-58

While most of these offenses are codified in Title 18, Title 41 also contains what is known as the Anti-Kickback Act, 41 U.S.C. §§ 51-58. The Act is aimed at protecting the integrity of U.S. Government contracts and subcontracts for supplies, materials, equipment, or services of any kind by targeting "kickbacks" between contractors. That is to say, the statute prohibits the offer, solicitation, or payment of any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind paid to a prime or sub-contractor for the purpose of obtaining or rewarding favorable treatment in connection with a prime contract or a subcontract for goods or services to be provided to the United States. The statute also penalizes the inclusion of the cost of a kickback in the price of a prime or subcontract. This statute is relevant to public corruption in the sense that it addresses corruption in the federal procurement process. Further, experience has shown that a contractor who is willing to pay a bribe to a government official may also be willing to solicit or accept a kickback from a subcontractor, perhaps to defray or off-set the cost of the bribe. The maximum penalty for a violation of the Anti-Kickback Act is 10 years imprisonment.

b. Statutes

1. 18 U.S.C. § 201 – Bribery of Public Officials and Witnesses[3]

- Sections 201(b)(1) and (b)(2) – Contain the bribery prohibitions for the bribers and the public official. In either case, the thing of value must be given, solicited, or received with the intent or agreement to: 1) influence or be influenced in any official act; 2) influence the public official or be influenced to commit, aid, collude in, or allow any fraud against the United States; or 3) induce the public official or be induced to do or omit any act in violation of the official's lawful duty.

- Sections 201(b)(3) and (b)(4) – Contain the bribery prohibitions relating to influencing or being influenced in witness testimony in connection with any trial, hearing, or other proceeding before any court, congressional committee, agency, commission, or any officer authorized to take testimony.

- Section 201(c)(1) – Contains the illegal gratuity prohibition for both the payor and the public official.

- Section 201(c)(2), (3) – Contain the illegal gratuity prohibitions relating to influencing or being influenced in witness testimony.

http://www4.law.cornell.edu/uscode/html/uscode18/usc_sec_18_00000201----000-.html

2. 18 U.S.C. § 666 – Theft or Bribery Concerning Programs Receiving Federal Funds

- Section 666(a)(1)(B) – Contains the bribery prohibition for any agent of an organization or any state, local, or Indian tribe government or any agency thereof that receives in excess of $10,000 under a federal program in any one year, who solicits or demands for the benefit of any person or who accepts or agrees to accept anything of value from any person with the intent to be influenced or

[3] All references in this statute to "public officials" encompass both persons presently serving as public officials, as well as persons who have been selected to serve as public officials.

rewarded in connection with any business or transaction of any organization, government, or agency involving anything of value of $5,000 or more.

- Section 666(a)(2) – Contains the bribery prohibition outlined above, as applicable to the payer of the bribe.
http://www4.law.cornell.edu/uscode/html/uscode18/usc_sec_18_00000666----000-.html

3. 18 U.S.C. § 1951 – Interference with Commerce by Threats or Violence

- Section 1951(a) – Contains the prohibition against obstructing, delaying, or affecting interstate commerce by, among other things, extortion, or attempts or conspiracies to extort.

- Section 1951(b)(2) – Defines "extortion" as obtaining property from another, with his or her consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.
http://www4.law.cornell.edu/uscode/html/uscode18/usc_sec_18_00001951----000-.html

4. 18 U.S.C. § 872 – Extortion by Officers or Employees of the United States

- Section 872 – Contains the prohibition against any officer or employee of the United States or any department or agency thereof, acting under color or pretense of office, attempting or committing an act of extortion.
http://www4.law.cornell.edu/uscode/html/uscode18/usc_sec_18_00000872----000-.html

5. 18 U.S.C. §§ 1341, 1343, and 1346 – Honest Services Mail or Wire Fraud

- Section 1341 – Contains the prohibition against using the U.S. mails to further any scheme to defraud or for the purposes of obtaining money or property by false or fraudulent pretenses.
http://www4.law.cornell.edu/uscode/html/uscode18/usc_sec_18_00001341----000-.html

- Section 1343 – Contains the prohibition against using interstate wires to further any scheme to defraud or for the purposes of obtaining money or property by false or fraudulent pretenses.
http://www4.law.cornell.edu/uscode/html/uscode18/usc_sec_18_00001343----000-.html

- Section 1346 – Contains the "honest services" element of the above-described statutes by defining "scheme or artifice to defraud" to include a scheme or artifice to deprive another of the intangible right of honest services.
http://www4.law.cornell.edu/uscode/html/uscode18/usc_sec_18_00001346----000-.html

6. 41 U.S.C. §§ 51-58 – Anti-Kickback Act

- Section 52(2) – Defines "kickback" as any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind provided, directly or indirectly, to any prime contractor or employee or subcontractor or employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or a subcontract. http://www4.law.cornell.edu/uscode/html/uscode41/usc_sec_41_00000052----000-.html

- Section 53 – Contains the prohibition against: 1) offering, attempting to provide, or providing any kickback; 2) soliciting, attempting to accept, or accepting any kickback; or 3) including, directly or indirectly, the amount of any kickback in the price charged by a prime contractor or subcontractor involving a contract with the United States. http://www4.law.cornell.edu/uscode/html/uscode41/usc_sec_41_00000053----000-.html

- Section 54 – Contains the penalty provisions for criminal violations.

  http://www4.law.cornell.edu/uscode/html/uscode41/usc_sec_41_00000054----000-.html

- Section 55 – Authorizes civil actions by the United States to recover civil penalties.

  http://www4.law.cornell.edu/uscode/html/uscode41/usc_sec_41_00000055----000-.html

(2) Criminal Use or Concealment of the Proceeds of Bribery and Related Crimes

a. Overview of Offenses

1. Money Laundering Offenses, 18 U.S.C. §§ 1956, 1957

The most common method of penalizing the criminal use of ill-gotten funds is through the money laundering statutes, such as 18 U.S.C. §§1956 and 1957. Section 1956(a) defines three types of criminal conduct: 1) domestic money laundering transactions (§1956(a)(1)); 2) international money laundering transactions (§1956(a)(2)); and 3) undercover "sting" money laundering transactions (§1956(a)(3)). This summary focuses on domestic money laundering within the United States.

To be criminally culpable under 18 U.S.C. § 1956(a)(1), a defendant must conduct or attempt to conduct a financial transaction, knowing that the property involved in the financial transaction represents the proceeds of some unlawful activity, with one of the four specific intents set out below, and the property must in fact be derived from a specified unlawful activity. Further, the defendant must know that the property involved was the proceeds of any felony under state, federal, or foreign law.

A "financial transaction" is defined in §1956(c)(4) as a transaction that affects interstate or foreign commerce and: (1) involves the movement of funds by wire or by other means; (2) involves the use of a

monetary instrument; or (3) involves the transfer of title to real property, a vehicle, a vessel or an aircraft; or (4) involves the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce.

In conducting the financial transaction, the defendant must have acted with one of the following four specific intents:

- Section 1956(a)(1)(A)(i): intent to promote the carrying on of specified unlawful activity;
- Section 1956(a)(1)(A)(ii): intent to engage in tax evasion or tax fraud;
- Section 1956(a)(1)(B)(i): knowledge that the transaction was designed to conceal or disguise the nature, location, source, ownership or control of proceeds of the specified unlawful activity; or
- Section 1956(a)(1)(B)(ii): knowledge that the transaction was designed to avoid a transaction reporting requirement under State or Federal law [e.g., in violation of 31 U.S.C. §§ 5313 (Currency Transaction Reports) or 5316 (Currency and Monetary Instruments Reports), or 26 U.S.C. § 6050I (Internal Revenue Service Form 8300)].

Prosecutions under 18 U.S.C. § 1957 arise when the defendant knowingly conducts a monetary transaction in criminally derived property in an amount greater than $10,000, which is in fact proceeds of a specified unlawful activity. Section 1957(f)(1) defines a monetary transaction as a "deposit, withdrawal, transfer, or exchange, in or affecting interstate or foreign commerce, of funds or a monetary instrument . . . by, through, or to a financial institution (as defined in Section 1956 of this title), including any transaction that would be a financial transaction under §1956(c)(4)(B) …."

The most significant difference between §§1956 and 1957 is the intent requirement. Under §1957, the four intents outlined above are replaced with a $10,000 threshold amount for each non-aggregated transaction and the requirement that a financial institution be involved in the transaction. Although the prosecutor need not prove any intent to promote, conceal or avoid the reporting requirements, he must still show that the defendant knew the property was derived from some criminal activity and that the funds were in fact derived from a specified unlawful activity.

Sections 1956 and 1957 include "attempts" as well as completed offenses. Conspiracies to violate either statute are criminalized in §1956(h).

Prosecution of money laundering offenses may require the prior approval of the Justice Department's Asset Forfeiture and Money Laundering Section within the Criminal Division. The maximum penalty for a violation of §§1956 and 1957 is 20 years and 10 years imprisonment, respectively. In addition to criminal liability, §1956 also contains a civil penalty provision, which may be pursued as a civil cause of action.

2. Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises, 18 U.S.C. § 1952

Another statute closely related to money laundering, is the Travel Act, 18 U.S.C. §1952, which prohibits travel or use of the U.S. mails in interstate or foreign commerce with the intent to: 1) distribute the proceeds of any unlawful activity; 2) commit any crime of violence to further any

unlawful activity; or 3) otherwise promote, manage, establish, or carry on any unlawful activity. Section 1952 specifies that "any unlawful activity" includes, among other things, extortion and bribery. The maximum penalty for a violation of this statute is five years imprisonment, unless it involves traveling to commit a crime of violence, in which case the maximum penalty is 20 years to life imprisonment.

3. Receiving the Proceeds of Extortion, 18 U.S.C. § 880

In addition to the money laundering statutes, the Federal Extortion Statute described above has a companion statute, 18 U.S.C. §880, which penalizes anyone who receives, possesses, conceals, or disposes of any money or other property which was obtained from, among other things, the commission of the extortion offense. If the defendant knew that the money was obtained illegally, the maximum penalty is three years imprisonment, otherwise it is a maximum of more than one year imprisonment.

b. Statutes

1. 18 U.S.C. § 1956 – Laundering of Monetary Instruments
   - Section 1956(a)(1) – Contains the prohibition against domestic money laundering.
   - Section 1956(a)(2) – Contains the prohibition against international money laundering.
   - Section 1956(a)(3) – Contains the prohibition against undercover "sting" money laundering transactions.
   - Section 1956(b) – Contains the penalty provisions.
   - Section 1956(c) – Defines pertinent terms.
   - Section 1956(h) – Contains the prohibition against conspiracies to violate Section 1956 or 1957.
     http://www4.law.cornell.edu/uscode/html/uscode18/usc_sec_18_00001956----000-.html

2. 18 U.S.C. § 1957 – Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity

   - Section 1957(a) – Contains the prohibition against engaging or attempting to engage in monetary transactions in excess of $10,000 derived from specified unlawful activity.
   - Section 1957(b) – Contains the penalty provisions.
   - Section 1957(f) – Defines pertinent terms.
     http://www4.law.cornell.edu/uscode/html/uscode18/usc_sec_18_00001957----000-.html

3. 18 U.S.C. § 1952 – Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises

   - Section 1952(a) – Contains the prohibition against traveling or using the U.S. mails in interstate or foreign commerce to: 1) distribute the proceeds of any unlawful activity; 2) commit any crime of violence to further any unlawful

activity; or 3) otherwise promote, manage, establish, or carry on any unlawful activity.

- Section 1952(b) – Defines "any unlawful activity." http://www4.law.cornell.edu/uscode/html/uscode18/usc_sec_18_00001952----000-.html

4. 18 U.S.C. § 880 – Receiving the Proceeds of Extortion

- Section 880 – Contains the prohibition against receiving, possessing, concealing, or disposing of any money or property obtained from, among other things, a violation of §872, extortion by officers or employees of the United States. http://www4.law.cornell.edu/uscode/html/uscode18/usc_sec_18_00000880----000-.html

(3) Conspiracy and Accessory Liability

a. Overview of Offenses

1. Conspiracy to Commit Offense or Defraud the United States, 18 U.S.C. § 371

Under the federal system, some statutes individually penalize conspiracies to commit the designated offense, as was the case, for instance, with 18 U.S.C. §1956(h) (specifically prohibiting conspiracies to commit money laundering in violation of §§1956 and 1957). However, the United States' federal criminal law also has a separate, more general conspiracy statute, 18 U.S.C. §371. Section 371 has two prongs. That is to say, it criminalizes both a conspiracy between two or more people to commit any offense against the United States, as well as a conspiracy to defraud the United States or any agency thereof. The general purpose of "defraud" prong of the statute is to protect governmental functions from frustration and distortion through deceptive practices. As the United States Supreme Court has explained,

> To conspire to defraud the United States means primarily to cheat the government out of property or money, but it also means to interfere with or obstruct one of its lawful governmental functions by deceit, craft or trickery, or at least by means that are dishonest. It is not necessary that the government shall be subjected to property or pecuniary loss by the fraud, but only that its legitimate official action and purpose shall be defeated by misrepresentation, chicane, or the overreaching of those charged with carrying out the governmental intention. (Hammerschmidt v. United States, 265 U.S. 182, 188 (1924).

Federal courts have interpreted the defraud prong of §371 as designed to protect the integrity of the United States and its agencies, programs and policies, in addition to reaching financial or property loss through use of a scheme or artifice to defraud. Thus, a substantive conspiracy charge pursuant to the defraud prong of the statute is yet another means of prosecuting corruption offenses. Similar to honest services fraud, a conspiracy to defraud the United States encompasses both an undisclosed conflict of interest and/or receipt of bribes or illegal gratuities.

Either type of conspiracy -- to commit an offense or to defraud the United States -- requires proof of: 1) an illegal agreement; 2) criminal intent; 3) and at least one overt act in furtherance of the agreement. The maximum penalty for a violation of Section 371 is five years imprisonment, unless it is a conspiracy to commit a misdemeanor offense, in which case the maximum penalty parallels that of the underlying statute.

2. Principals, 18 U.S.C. § 2

Title 18, U.S.C. §2, is the first of the accessory liability statutes. Section 2 confers criminal liability upon anyone who aids, abets, commands, induces, or procures the commission of a crime or who willfully causes an act to be done that, if done by himself or herself, would constitute a crime. A violation of §2 requires proof that someone committed a crime and that the defendant knowingly and deliberately associated himself or herself in some way with the charged crime and participated in it with the intent to commit the crime. While aiding and abetting might commonly be thought of as an offense in itself, in actuality, it is not an independent crime. Section 2 provides no penalty. Instead, it merely abolishes the distinction between common law notions of "principal" and "accessory."

3. Accessory after the Fact, 18 U.S.C. §3

The second accessory liability statute is 18 U.S.C. §3, which penalizes anyone who, knowing that an offense against the United States has been committed, receives, relieves, comforts, aids or assists the offender to prevent his or her apprehension, trial, or punishment, is an "accessory after the fact." The maximum penalty for an accessory after the fact is half of the maximum penalty for the underlying offense committed by the principal. When the underlying offense is punishable by life imprisonment, the maximum penalty for the accessory after the fact is 15 years imprisonment.

4. Misprision of a Felony, 18 U.S.C. §4

Title 18 U.S.C. §4, misprision of a felony, imposes an obligation to report federal felony offenses. That is to say, §4 penalizes anyone who has knowledge of the commission of a federal felony offense and does not report the crime to a judge or other civil or military authority. The maximum penalty for a violation of §4 is three years imprisonment.

b. Statutes

1. 18 U.S.C. § 371 – Conspiracy to Commit Offense or to Defraud United States
   - Section 371 – Contains the prohibition against two types of conspiracies, including agreements between two or more people to: 1) commit any offense against the United States; and 2) defraud the United States or any agency thereof. Conspiracies to defraud encompass both loss of money and property, as well as any interference with governmental function through deceptive or fraudulent practices.
     http://www4.law.cornell.edu/uscode/html/uscode18/usc_sec_18_00000371----000-.html

2. 18 U.S.C. § 2 – Principals

- Section 2 – Eliminates the distinction between "principal" and "accessory" and provides that anyone who aids, abets, counsels, commands, induces, or procures the commission of a crime, or who willfully causes an act to be done that, if done by himself or herself, would constitutes a crime, is punishable as a principal. http://www4.law.cornell.edu/uscode/html/uscode18/usc_sec_18_00000002----000-.html

3. 18 U.S.C. § 3 – Accessory after the Fact

- Section 3 – Contains the prohibition against rendering assistance to someone who has committed a federal crime, providing for punishment up to one half of the maximum penalty for the underlying crime. http://www4.law.cornell.edu/uscode/html/uscode18/usc_sec_18_00000003----000-.html

4. 18 U.S.C. § 4 – Misprision of a Felony

- Section 4 – Imposes a reporting requirement upon all citizens, penalizing the failure to report the commission of a federal felony and providing for a maximum punishment of up to three years imprisonment. http://www4.law.cornell.edu/uscode/html/uscode18/usc_sec_18_00000004----000-.html

b. Briefly state the objective results that have been obtained in enforcing the above provisions, and provide the pertinent information available in your country on which those results are based, such as judicial proceedings undertaken and their outcome, referring, as far as possible, to the last five years.

The Public Integrity Section is a specialized office within the U.S. Department of Justice's Criminal Division that oversees the federal effort to combat corruption through the prosecution of elected and appointed public officials at all levels of government. The Section has exclusive jurisdiction over allegations of criminal misconduct on the part of federal judges and also monitors the investigation and prosecution of election and conflict of interest crimes. Section attorneys prosecute selected cases against federal, state, and local officials, and are available as a source of advice and expertise to other prosecutors and investigators. Since 1978, the Section has supervised the administration of the Independent Counsel provisions of the Ethics in Government Act. Section 603 of the Ethics in Government Act of 1978 requires that the Attorney General report annually to Congress on the operations and activities of the Public Integrity Section. A portion of this annual report contains current and historical statistics on the nationwide federal effort against public corruption. Apart from the Public Integrity Section, prosecutions are undertaken at the federal level by individual United States Attorney's Offices, each of which is assigned a jurisdiction within the U.S. and which in total cover the entire country. Following is a summary of the statistics relating to public corruptions prosecutions by the United States Attorney's Offices across the country drawn from the Public Integrity Section's 2001 through 2005 annual reports, supplemented with statistics compiled within the Public Integrity Section relating to its own prosecutions during that same timeframe.

2001

During 2001, the United States Attorney's Offices across the country indicted 1,087 individuals for corruption offenses, of whom 502 were federal officials, 95 were state officials, 224 were local officials, and 266 were other individuals. In addition, the United States Attorney's Offices obtained 920 convictions in 2001, whether by guilty plea or following trial. Of the convicted defendants, 414 were federal officials, 61 were state officials, 184 were local officials, and 261 were other individuals. An additional 437 individuals were awaiting trial on corruption offenses at the close of the year. During this same timeframe, the Public Integrity Section charged 57 defendants with corruption offenses and obtained 36 convictions, whether by guilty plea or trial.

2002

During 2002, the United States Attorney's Office across the country indicted 1,136 individuals for corruption offenses, of whom 478 were federal officials, 110 were state officials, 299 were local officials, and 249 were other individuals. In addition, the United States Attorney's Offices obtained 1,011 convictions in 2002, whether by guilty plea or following trial. Of the convicted defendants, 429 were federal officials, 132 were state officials, 262 were local officials, and 188 were other individuals. An additional 413 individuals were awaiting trial on corruption offenses at the close of the year. During this same timeframe, the Public Integrity Section charged 37 defendants with corruption offenses and obtained 45 convictions, whether by guilty plea or trial.

2003

During 2003, the United States Attorney's Office across the country indicted 1,150 individuals, for corruption offenses, of whom 479 were federal officials, 94 were state officials, 259 were local officials, and 318 were other individuals. In addition, the United States Attorney's Offices obtained 868 convictions in 2003, whether by guilty plea or following trial, of whom 421 were federal officials, 87 were state officials, 119 were local officials, and 241 were other individuals. An additional 412 individuals were awaiting trial on corruption offenses at the close of the year. During this same timeframe, the Public Integrity Section charged 85 defendants with corruption offenses and obtained 61 convictions, whether by guilty plea or trial.

2004

During 2004, the United States Attorney's Office across the country indicted 1,213 individuals, for corruption offenses, of whom 424 were federal officials, 111 were state officials, 268 were local officials, and 410 were other individuals. In addition, the United States Attorney's Offices obtained 1,020 convictions in 2003, whether by guilty plea or following trial. Of the convicted defendants, 381 were federal officials, 81 were state officials, 252 were local officials, and 306 were other individuals. An additional 419 individuals were awaiting trial on corruption offenses at the close of the year. During this same timeframe, the Public Integrity Section charged 48 defendants with corruption offenses and obtained 43 convictions, whether by guilty plea or trial.

2005

During 2005, the United States Attorney's Office across the country indicted 1,163 individuals, for corruption offenses, of whom 445 were federal officials, 96 were state officials, 309 were local officials, and 313 were other individuals. In addition, the United States Attorney's Offices obtained

1,027 convictions in 2005, whether by guilty plea or following trial. Of the convicted defendants, 390 were federal officials, 94 were state officials, 232 were local officials, and 311 were other individuals. An additional 451 individuals were awaiting trial on corruption offenses at the close of the year. During this same timeframe, the Public Integrity Section charged 95 defendants with corruption offenses and obtained 84 convictions, whether by guilty plea or trial.[4]

These statistics are summarized in the charts below. Additional details regarding the cases and results are available in the Public Integrity Section's annual reports.

Defendants Charged

	U.S. Attorney's Offices					Public Integrity Section	GRAND TOTAL
	Federal Officials	State Officials	Local Officials	Other Individuals	TOTAL		
2001	502	95	224	266	1,087	57	**1,144**
2002	478	110	299	249	1,136	37	**1,173**
2003	479	94	259	318	1,150	85	**1,235**
2004	424	111	268	410	1,213	48	**1,268**
2005	445	96	309	313	1,163	95	**1,258**

Defendants Convicted

	U.S. Attorney's Offices					Public Integrity Section	GRAND TOTAL
	Federal Officials	State Officials	Local Officials	Other Individuals	TOTAL		
2001	414	61	184	261	920	36	**956**
2002	429	132	262	188	1,011	45	**1,056**
2003	421	87	119	241	868	61	**929**
2004	381	81	252	306	1,020	43	**1,063**
2005	390	94	232	311	1,027	84	**1,111**

Resources:

Report to Congress on the Activities and Operations of the Public Integrity Section for 2001
http://www.usdoj.gov/criminal/pin/docs/Annual_Report_2001.pdf

Report to Congress on the Activities and Operations of the Public Integrity Section for 2002
http://www.usdoj.gov/criminal/pin/docs/AR_Final_2002.pdf

Report to Congress on the Activities and Operations of the Public Integrity Section for 2003
http://www.usdoj.gov/criminal/pin/docs/AnnReport_03.pdf

Report to Congress on the Activities and Operations of the Public Integrity Section for 2004

[4] It should be noted that in 2005, the Public Integrity Section prosecuted one case that involved 54 charged defendants (40 of whom were convicted or plead guilty), which accounts for the high numbers that year.

http://www.usdoj.gov/criminal/pin/docs/AnnReport_04.pdf

Report to Congress on the Activities and Operations of the Public Integrity Section for 2005
http://www.usdoj.gov/criminal/pin/docs/AnnReport_05.pdf

c. If the aforementioned acts of corruption are not criminalized, what steps is your country taking to criminalize these acts.

Not applicable in light of the previous answers.

2. Application of the Convention to acts of corruption not described therein, in accordance with Article VI (2)

a. Has your State entered into any agreements with other States Parties to apply the Convention to any act of corruption not described therein, in accordance with Article VI (2)? If so, briefly describe the respective agreements or conventions and attach a copy of the related documents.

No, the United States has not entered such agreements with OAS member states, but, in fact, the United States may have broader coverage of corruption offenses with OAS states by virtue of the United States being a party to the UN Convention against Corruption and the UN Convention against Transnational Organized Crime. To the extent OAS member states are parties to those agreements, we also have obligations with those parties with respect to the offenses set forth in those instruments. We also may have broader coverage for corruption related offenses with particular states as a result of bilateral treaties.

SECTION III

INFORMATION ON THE OFFICIAL RESPONSIBLE FOR COMPLETION OF THIS QUESTIONNAIRE

(a) State Party: United States of America
(b) The official to be consulted regarding the responses to the questionnaire is:
( ) Amb. Robert Manzanares, and
( ) Ms. Diane M. Kohn – 202-312-9718
Title/position: Acting Permanent Representative to the OAS
Agency/office: U.S. Department of State
Mailing address: 2201 C Street NW, Room 5914
Washington, DC 20520
Telephone number: (202) 647-9422
Fax number: (202) 647-0911
E-mail address: usa@oas.org

SECTION II

FOLLOW-UP ON THE RECOMMENDATIONS FORMULATED IN THE NATIONAL REPORT IN THE FIRST REVIEW ROUND

In accordance with Article 29 of the *Rules*, please provide information, in the standard format attached to this questionnaire, on progress in implementation of the recommendations formulated in the report adopted by the Committee with respect to your country in the framework of the first review round (Annex entitled "Standard format for presentation of information on progress in implementation of recommendations formulated in the national report in the first review round").

1. STANDARDS OF CONDUCT AND MECHANISMS TO ENFORCE COMPLIANCE

1.1. Standards of conduct intended to prevent conflicts of interest and enforcement

RECOMMENDATION: Continue to improve the provisions, measures and mechanisms for enforcement relating to conflicts of interest.

To comply with this recommendation, the United States may wish to take the following measures into account:

a) Continue the process of periodic review and appropriate updating of the provisions, measures and mechanisms for enforcement related to conflicts of interest. (See Part B, Chapter II, Section 1.1.2. of this report)

b) Continue to carry out periodic evaluations, by means such as the surveys conducted by OGE, or by other means that are considered appropriate, with respect to the effectiveness of the provisions, measures and enforcement mechanisms related to conflicts of interest; and continue to promote or adopt appropriate decisions based on the results of evaluations designed to improve those provisions, measures and mechanisms. (See Part B, Chapter II, Section 1.1.3 of this report).

The United States continues to monitor and review the provisions, measures and mechanisms for enforcement relating to conflicts of interest for purposes of improvement. Since the issuance of the first round report in September 2005, activities meeting this recommendation have included the review and evaluation of various statutes dealing with conflicts of interest; regulations implementing those statutes; the standards of conduct; and the training programs and the prevention program in general. Activities have also included enhancing an understanding of conflicts with regard to their investigation and the review of enforcement actions for purposes of identifying trends. On the basis of these evaluations and cooperative programs, improvements have been made where appropriate. The following is a short descriptive list of some of these activities:

Statutes:

The Office of Government Ethics completed a review of the five criminal conflict of interest statutes that apply to executive branch officials and submitted a report to the President and to the Congress. The report contains a discussion of OGE's view of the limitations and anomalies of the statutes'

current application based on its review.
http://www.usoge.gov/pages/forms_pubs_otherdocs/fpo_files/reports_plans/rpt_title18.pdf

Congress enacted the Honest Leadership and Open Government Act (Pub.L 110-81) which, in part, enhances the post employment conflict of interest statute (18 USC 207) and increases the penalties for knowing and willful falsification of or failure to report information on a public financial disclosure report.

Conflict of Interest Regulations:

OGE is awaiting concurrence from the Department of Justice on revisions to OGE explanatory regulations on the post-employment restrictions of 18 U.S.C. § 207.

Standards of conduct:

OGE has conducted a thorough review of the Standards of Conduct for Employees of the Executive Branch and is currently evaluating the results of that review to determine if any regulatory modifications are warranted.

Both the Senate and the House of Representatives (the two houses of Congress) have amended their Rules dealing with the conduct of Senators and Members and staff. Amendments to the House Rules covered gifts from lobbyists, agents of foreign principals, and certain organizations that employ lobbyists or foreign agents and requirements concerning the acceptance of travel expenses for "officially connected" travel by Members and staff from outside private sources. Amendments to the Senate Rules addressed accepting gifts, meals or trips from lobbyists or the organizations that employ them.

Training and prevention programs:

OGE introduced a new training course for new ethics officials on conflicts of interest. This course instructs ethics officials on how to determine whether a fundamental financial conflict of interest exists (18 U.S.C. § 208), to assess impartiality issues, and to analyze job-hunting conflicts. The course also includes a discussion of appropriate remedies.

OGE is in the process of publishing five new educational brochures and revising several existing brochures. The topics of the new brochures include: government procurement, blind trusts, seeking employment and contractor employee ethics issues. The revised brochures address post government employment and general ethics rules for senior employees.

Program evaluations:

OGE continues to administer various surveys to evaluate agency ethics programs and to establish baseline data for the OGE strategic plan. One survey instrument measures employees' perceptions of their agencies' ethical culture and ethics program. Another newly developed survey was administered to ethics officials throughout the executive branch departments and agencies to assess the effectiveness of the services and support provided by OGE.

OGE encourages agencies to use, and assists them in the development of, self-assessment tools to evaluate employees' perceptions of their agencies' ethical culture and ethics program. For example, at the 15th National Government Ethics Conference and at a recent meeting of the Interagency Ethics Council, OGE participated on panels discussing the use of self-assessment tools by individual agencies.

OGE continues to assess enforcement activity at executive branch agencies during the course of ethics program reviews. Additionally, OGE administers an employee ethics survey prior to conducting a program review. The survey asks employees questions on their perception of the agencies' willingness to take corrective action when employees have been found to have violated ethics rules.

Investigation and enforcement:

-The Director of OGE continues to be an active participant in the President's Council on Integrity and Efficiency. This Council is comprised of the Presidentially appointed and Senate confirmed Inspectors General who are responsible for addressing integrity, economy, and effectiveness issues that transcend individual government agencies as well investigating violations of the conflict of interest statutes and the standards of conduct. In an address to this Council and a subsequent broadcast email to Inspectors General staff, the Director emphasized the importance of and the statutory requirement for agencies to notify OGE of any referrals of conflict of interest violations made to the Department of Justice. The Director noted that greater coordination can support the process of imposing possible disciplinary sanctions for the conduct referred as well as help identify possible weaknesses in the ethics training program.

OGE recently created an electronic reporting system for the OGE Form 202, Notification of Conflict of Interest, to assist agencies in notifying OGE of referrals they make to the Department of Justice concerning potential violations of the criminal conflict of interest statutes. The report form is available on OGE's public Web site and will improve compliance with reporting requirements by providing agencies with an easier, more efficient method of reporting the required information to OGE. The enhanced ease of reporting may assist in gathering more information on the referrals in order to possibly identify trends and potential new strategies for strengthening enforcement efforts.

OGE continues to publish an annual summary of conflict of interest prosecutions by the Department of Justice. OGE surveys the U.S. Attorneys' Offices to identify cases involving the conflict of interest statutes, summarizes those cases, and disseminates the summary to ethics officials in the executive branch.

1.2. Standards of conduct and mechanisms to ensure the proper conservation and use of resources entrusted to government officials in the performance of their functions and enforcement mechanisms

RECOMMENDATION: **Continue to strengthen the implementation of the standards of conduct in order to ensure the conservation and proper use of the resources entrusted to public officials in the performance of their functions.**

The United States continues to strengthen the implementation of the extensive network of laws and regulations designed to minimize the potential for waste, fraud, and mismanagement and to ensure that Federal Government resources are used efficiently and effectively to achieve intended program results

The Office of Government Ethics (OGE) continues to monitor and review the implementation of the standards of conduct and the criminal conflict of interest statutes which include provisions on the proper use of government resources. (See also response to 1.1.) OGE is developing a new training course for executive branch employees on misuse of their official positions that includes a section specifically on misuse of government resources.

1.3. Standards of conduct and mechanisms concerning measures and systems requiring officers and employees to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware.

RECOMMENDATION: Continue to strengthen the mechanisms related to the existing measures and systems requiring public officials to report acts of corruption in the performance of public functions of which they are aware to the appropriate authorities.

To comply with this recommendation, the United States may wish to take the following measure into account:

a) Continue to implement measures that allow timely consideration by the U.S. Special Counsel's Office of those cases related to protecting employees, ex-employees, and those seeking Federal employment ("whistleblowers), as provided for by law, and thus, *inter alia,* facilitate compliance with the requirement that officers and employees report acts of corruption in the performance of public functions of which they are aware to the appropriate authorities. (See Part B, Chapter II, Section 1.3.3 of this report).

The Office of Special Counsel (OSC) continues to seek ways to process whistleblower retaliation complaints more efficiently without sacrificing the thoroughness of its consideration of these allegations. These measures include using technology to cut down on travel time, encouraging early settlement of appropriate cases, and reducing internal paperwork and levels of review. OSC collaborates with other federal agencies seeking "best practices" regarding investigation and prosecution of cases and continues to monitor the timeliness of its resolution of cases to ensure that a backlog does not develop. This ongoing process of improving and monitoring efficiency allows OSC to timely consider complaints and provide whistleblowers with the protections they are afforded by law, thereby encouraging public employees to report acts of corruption in government.

2. SYSTEMS FOR REGISTERING INCOME, ASSETS AND LIABILITIES (ARTICLE III, PARAGRAPH 4 OF THE CONVENTION)

RECOMMENDATION: Continue to strengthen the systems for registering income, assets and liabilities.

To comply with this recommendation, the United States may wish to take the following measure into account:

a) Continue the process of periodic review and appropriate updating of the system of financial disclosure. (See Part B, Chapter II, Section 2.2. of this report).

The Office of Government Ethics (OGE) continues to review, evaluate and update the financial disclosure systems for government officials. After evaluating the results of a survey of executive branch ethics officials, OGE published a revised confidential financial disclosure regulation and reporting form. The revisions to the regulation are designed to streamline the reporting requirements, provide a more accurate definition of a confidential report filer, and emphasize an agency's ability to implement alternative reporting systems that are more specifically tailored to the types of conflicts of interest and ethics issues that arise at their particular agency. The changes to the confidential financial disclosure report form are designed to reflect the regulatory changes and to make the form easier to complete electronically. The first cycle of reports under the revised system were collected in the in the first quarter of 2007. OGE developed an online training course and frequently asked questions regarding the new regulation and form and made them available to ethics officials and filers on the OGE website.

OGE also conducted a review of executive branch agencies that have adopted non-standard pay systems and how those agencies are determining what positions in these systems are required to file a public financial disclosure report. As a result of this review, OGE issued guidance to help ethics officials properly identify positions which are subject to the public financial disclosure filing requirement.

3. OVERSIGHT BODIES FOR THE SELECTED PROVISIONS (ARTICLE III, PARAGRAPHS 1, 2, 4 AND 11 OF THE CONVENTION)

The United States has considered and adopted measures intended to establish, maintain and strengthen oversight bodies with functions related to effective compliance with the provisions selected for analysis within the framework of the first round (Article III, paragraphs 1, 2, 4, and 11 of the Convention), as noted in Part B, Chapter II, Section 3 of this report.

In view of the comments made in that section, the Committee suggests that the United States consider strengthening the cooperation and coordination relationships among the federal oversight bodies regarding the functions they carry out with respect to the provisions of paragraphs 1, 2, 4, and 11 of the Convention.

Since the time the United States submitted its response to the First Round Questionnaire in January 2005, the U.S. Department of Justice has undertaken several initiatives aimed at strengthening cooperation and coordination relationships within the Justice Department and between the Justice

Department and other federal law enforcement or oversight bodies, including, among other things, the establishment of: (1) the U.S. Department of Justice Katrina Fraud Task Force; (2) the U.S. Department of Justice National Procurement Fraud Task Force; and (3) the International Contract Corruption Task Force. Through these initiatives U.S. Department of Justice has worked to strengthen leadership, garner resources, improve communication, and coordinate the law enforcement response to a variety of public corruption issues. Each of these efforts is discussed below.

(1) U.S. Department of Justice Katrina Fraud Task Force

On September 8, 2005, Attorney General Alberto Gonzalez established the U.S. Department of Justice Katrina Fraud Task Force, whose mission is to deter, detect, and prosecute instances of fraud related to the Hurricane Katrina disaster, including the associated public corruption crimes. In addition to fraudulent claims for disaster relief benefits and schemes to defraud potential hurricane donors, the Task Force also investigates and prosecutes allegations of bribery, extortion, and fraud involving public officials associated with disaster relief or recovery efforts. The Katrina Fraud Task Force, chaired by Assistant Attorney General for the Criminal Division Alice S. Fisher, is comprised of representatives of components of the U.S. Department of Justice, as well as other federal agencies, including:

U.S. Department of Justice; the Antitrust Division; the Criminal Division; the Civil Division; the Executive Office of the United States Attorneys; the Federal Bureau of Investigation; the United States Attorney's Offices for the Gulf Coast Region and throughout the United States; the Federal Trade Commission; the Internal Revenue Service Criminal Investigations Division; the Securities and Exchange Commission; the U.S. Postal Inspection Service; the U.S. Secret Service, the President's Council on Integrity and Efficiency, the Executive Council on Integrity and Efficiency, and numerous Inspectors General, including:

- the Department of Agriculture;
- the Department of Commerce;
- the Department of Defense;
- the Department of Education;
- the Department of Energy;
- the Department of Health and Human Services;
- the Department of Homeland Security;
- the Department of Housing and Urban Development;
- the Department of Labor;
- the Department of Transportation;
- the Department of the Treasury;
- the Environmental Protection Agency;
- the Federal Deposit Insurance Corporation;
- the General Services Administration;
- the National Aeronautics and Space Administration;
- the Small Business Administration;
- the Social Security Administration;
- the United States Postal Service;
- the Veterans Administration;

- Representatives of state and local law enforcement, including:

    - the National Association of Attorneys General;
    - the National Association of District Attorneys.

The task force also operates in a close partnership with the American Red Cross and a variety of private-sector organizations that have been assisting law enforcement in identifying new hurricane-related fraud schemes.

At the outset, the Katrina Fraud Task Force established hotlines and formed working groups designed to bring together law enforcement agents from the federal, state, and local levels. In addition, the task force created a Joint Command Center in Baton Rouge, Louisiana to coordinate efforts, handle deconfliction, problem-solve, and house databases with the capacity to track complaints and lead referrals and analyze trends and data. Among the noted trends, the task force identified a particularly distressing pattern of criminal activity involving individuals who used their positions with governmental agencies and charitable organizations to exploit the disaster relief programs that they were supposed to protect. The task force is engaged in prosecuting employees of the Federal Emergency Management Agency ("FEMA"), the Army Corps of Engineers, the Louisiana Department of Labor, and the American Red Cross for fraud committed by those individuals against the very programs they were entrusted to administer.

As of May 10, 2006, the Katrina Fraud Task Force had brought criminal charges against 261 defendants in 218 cases in 24 judicial districts across the country. Some examples of cases involving public corruption are set forth below:

- On May 3, 2006, a contract employee working at the Louisiana Department of Labor was arrested in the Middle District of Louisiana after accepting a payment from an individual for a fraudulent benefit card that he issued at the request of the individual. The former contract employee allegedly facilitated numerous fraudulent claims for disaster unemployment benefit cards.

- On April 5, 2006, two former FEMA employees pleaded guilty in the Eastern District of Louisiana to soliciting bribes as public officials. According to the criminal charges in the case, the two FEMA employees were responsible for managing the FEMA base camp Located in Algiers, Louisiana. Those employees approached a local contractor and, in a series of meetings, solicited a $20,000 bribe from the contractor in exchange for inflating the headcount for a $1 million meal service contract at the base camp. The two FEMA employees were arrested on January 27, 2006 after each took one envelop containing $10,000 from the contractor.

- On March 21, 2006, in the Southern District of Mississippi, a subcontractor involved in debris removal after Hurricane Katrina, as well as the U.S. Army Corp of Engineers employee, pleaded guilty to conspiracy to commit bribery of a federal official. The subcontractor paid the Corps of Engineers employee multiple bribes to create false load tickets for debris that the subcontractor never dumped at a dumpsite where the Corps of Engineers employee served as a quality assurance representative. Federal agents recorded conversations between the two defendants in which the subcontractor paid the Corps of

Engineers employee $100 for five false load tickets. The defendants admitted to at least 14 additional false load tickets.

- On December 15, 2005, a federal grand jury for the Eastern District of Louisiana indicted a St. Tammany Parish Councilman on charges of extortion under the Hobbs Act and money laundering. The indictment alleges that the defendant used his official position as a councilman to obtain inside information about a debris removal contract resulting from Hurricane Katrina, and that he used his official position to influence a prime contractor in St. Tammany Parish to enter into a contract with another company. It further alleges that the defendant pressured the owners of a second company to pay him 50 percent of the funds that the company received from the prime contractor.

Resources:

U.S. Department of Justice Katrina Fraud Task Force website
http://www.usdoj.gov/katrina/Katrina_Fraud/

U.S. Department of Justice, Press Release, September 5, 2005
http://www.usdoj.gov/opa/pr/2005/September/05_ag_462.htm

Statement of Alice S. Fisher, Assistant Attorney General, Criminal Division, U.S. Department of Justice, Before the Committee on Homeland Security and Governmental Affairs, U.S. Senate, Concerning "Hurricane Katrina: Waste, Fraud and Abuse Worsen the Disaster," February 13, 2006
http://www.usdoj.gov/katrina/Katrina_Fraud/pr/testimonies/2006/feb/2-13-06FisherTestimony.pdf

Statement of Alice S. Fisher, Assistant Attorney General, Criminal Division, U.S. Department of Justice, Before the Subcommittee on Government Management, Finance, and Accountability of the Committee on Government Reform, U.S. House of Representatives, Concerning "After Katrina: The Role of the Department of Justice Katrina Fraud Task Force and Agency Inspectors General in Preventing Waste, Fraud, and Abuse," May 10, 2006
http://www.usdoj.gov/katrina/Katrina_Fraud/pr/testimonies/2006/may/AliceFisher_testimony051106.pdf

U.S. Department of Justice Katrina Fraud Task Force, A Progress Report to the Attorney General, October 2005
http://www.usdoj.gov/katrina/Katrina_Fraud/docs/KatrinaProgressReport10-18-05.pdf

U.S. Department of Justice Katrina Fraud Task Force, A Progress Report to the Attorney General, February 2006
http://www.usdoj.gov/katrina/Katrina_Fraud/docs/katrinareportfeb2006.pdf

U.S. Department of Justice Katrina Fraud Task Force, A Progress Report to the Attorney General, September 2006
http://www.usdoj.gov/katrina/Katrina_Fraud/docs/09-12-06AGprogressrpt.pdf

Preventing and Detecting Bid Rigging, Price Fixing, and Market Allocation in Post-Disaster Rebuilding Projects -- An Antitrust Primer for Agents and Procurement Officials, Antitrust Division, U.S. Department of Justice
http://www.usdoj.gov/atr/public/guidelines/disaster_primer.htm

(2) U.S. Department of Justice National Procurement Fraud Task Force

On October 10, 2006, Deputy Attorney General Paul J. McNulty created the National Procurement Fraud Task Force to promote the prevention, early detection and prosecution of procurement fraud. The Task Force is chaired by Assistant Attorney General for the Criminal Division Alice S. Fisher, is comprised of representatives of components of the U.S. Department of Justice, as well as other federal agencies, including:

- U.S. Department of Justice;
    - the Antitrust Division;
    - the Criminal Division;
        - Asset Forfeiture and Money Laundering Section;
        - Fraud Section;
        - Public Integrity Section;
    - the Federal Bureau of Investigation;
    - Inspector General;
    - the Tax Division;
    - the United States Attorney's Offices in the Eastern District of Virginia, the District of Columbia, the District of Maryland, and across the United States;
- all defense-related investigative agencies, including:
    - the U.S. Air Force Office of Special Investigations;
    - the U.S. Army Criminal Investigation Command;
    - the U.S. Department of Defense, Office of Inspector General, Defense Criminal Investigative Service;
    - the U.S. Naval Criminal Investigative Service;
- the Special Inspector General for Iraq Reconstruction and other federal Inspectors General, including
    - the Central Intelligence Agency;
    - the Department of Agriculture;
    - the Department of Defense;
    - the Department of Energy;
    - the Department of Homeland Security;
    - the Department of Housing and Urban Development;
    - the Department of Interior;
    - the Department of State;

- the Department of Transportation;
- the Department of Treasury;
- the Department of Veteran's Affairs;
- the General Services Administration;
- the National Aeronautics and Space Administration
- the National Reconnaissance Office;
- the Nuclear Regulatory Commission;
- the Office of the Director of National Intelligence;
- the Small Business Administration;
- the Social Security Administration;
- the U.S. Postal Service.

The Task Force's emphasis is to increase civil and criminal enforcement where it can have the greatest effect, including defective pricing, product substitution, misuse of classified and procurement sensitive information, false claims, grant fraud, labor mischarging, fraud involving foreign military sales, ethics and conflict of interest violations, and public corruption associated with procurement fraud. The Task Force also focuses on maximizing information sharing and takes significant leadership in addressing issues such as grant fraud, relations with the private sector, training and legislation.

The Asset Forfeiture and Money Laundering, Fraud, and Public Integrity Sections of the Justice Department's Criminal Division have successfully brought several joint prosecutions in the procurement fraud area. In 2006 alone, these three Sections teamed up to bring a series of fraud and bribery cases -- including forfeiture counts and seizure warrants -- against military and civilian personnel involved in an elaborate kickback scheme involving Iraqi reconstruction funds. Examples of these cases include:

- On February 2, 2006, Robert Stein, Coalition Provisional Authority-South Central Region's ("CPA-SC") Comptroller and Funding Officer pleaded guilty to conspiracy, bribery, money laundering, possession of machine guns, and being a felon in possession of a firearm in connection with the scheme to defraud the CPA. On January 29, 2007, Stein was sentenced to nine years in prison, three years of supervised release, and ordered to pay $3.6 million in restitution and forfeit $3.6 million in assets.

- On March 9, 2006, Philip Bloom, a U.S. citizen who resided in Romania and Iraq, pleaded guilty to conspiracy, bribery, and money laundering in connection with a scheme to defraud the CPA. Bloom admitted that from December 2003 through December 2005, he along with Stein and numerous public officials, including several high-ranking U.S. Army officers, conspired to rig the bids on federally-funded contracts being awarded by the CPA-SC so that all of the contracts were awarded to Bloom. The total value of the contracts awarded to Bloom exceed $8.6 million. Bloom admitted paying Stein and other public officials over $2 million in stolen money that were the proceeds of the fraudulently awarded bids and at least $2 million in stolen money from the CPA in order to conceal the source and origin of the funds. On February 16, 2007, Bloom was sentenced to 46 months in prison, two years of supervised release, and ordered to pay $3.6 million in restitution and forfeit $3.6 million in assets.

- On August 25, 2006, in the District of Columbia, Bruce D. Hopfengardner, a Lieutenant Colonel in the United States Army Reserves, pleaded guilty to conspiracy to commit wire fraud and money laundering in connection with a scheme to defraud the CPA-SC in Al-Hillah, Iraq. In his guilty plea, Hopfengardner admitted that while serving as a special advisor to the CPA-SC he used his official position to steer contracts to Philip H. Bloom, a U.S. citizen who owned and operated several companies in Iraq and Romania in return for Bloom providing Hopfengardner with various things of value, including $144,500 in cash, over $70,000 worth of vehicles, a $2,000 computer and a $6,000 watch. Hopfengardner and his coconspirators laundered over $300,000 through various bank accounts in Iraq, Kuwait, Switzerland and the United States. Finally, Hopfengardner admitted that he stole $120,000 from the CPA-SC that had been designated to be used for the reconstruction of Iraq and smuggled the stolen currency into the United States aboard commercial and military aircraft. Hopfengardner was sentenced to 21 months in prison and a fine of $144,500.

- On October 12, 2006, former civilian Department of Defense employee Gheevarghese Pappen pleaded guilty to accepting illegal gratuities while detailed to the U.S. Army Area Support Group, Host Nation Office at Camp Arifjan, Kuwait, which supports U.S. military operations in Iraq. Pappen was sentenced to two years in prison.

Resources:

U.S. Department of Justice National Procurement Fraud Task Force website
http://www.usdoj.gov/criminal/npftf/

U.S. Department of Justice, Combating Procurement Fraud: A National Initiative to Increase Prevention and Prosecution of Fraud in the Federal Procurement Process
http://www.usdoj.gov/criminal/npftf/links/related_fraud.html

Transcript of Press Conference on Indictment of Five Defendants in Cases Involving Bribery, Fraud and Money Laundering Scheme in al-Hillan, Iraq, February 7, 2007
http://www.usdoj.gov/dag/speech/2007/dag_speech_070207.htm

Statement of Barry M. Sabin, Deputy Assistant Attorney General, Criminal Division, U.S. Department of Justice, Before the Committee on the Judiciary, United States Senate, Concerning Combating War Profiteering: "Are We Doing Enough to Investigate and Prosecute Contracting Fraud and Abuse in Iraq?," presented on March 20, 2007
http://www.usdoj.gov/criminal/npftf/pr/testimony/2007/03-20-07sabin-testimony.pdf

(3) International Contract Corruption Task Force

The International Contract Corruption Task force was established in October 2006 as an operational task force that deploys criminal investigative and intelligence assets world wide to detect and investigate corruption and contract fraud resulting primarily from the global war on terror. The task force is led by a Board of Governors and is comprised of the following charter agencies:

- Special Inspector General for Iraq Reconstruction;

- U.S. Agency for International Development, Office of Inspector General;
- U.S. Army Criminal Investigation Command, Major Procurement Fraud Unit;
- U.S. Department of Defense, Inspector General, Defense Criminal Investigative Service;
- U.S. Department of Justice, the Federal Bureau of Investigation;
- U.S. Department of State, Office of Inspector General.

The International Contract Corruption Task Force was formed, in part, based on the recognition that procurement fraud cases, especially those occurring in the context of the wars in Iraq and Afghanistan, are usually very complex and resource intensive. These cases often involve extraterritorial conduct, as well as domestic conduct, requiring coordination between appropriate law enforcement agencies. To improve coordination and information sharing, the task force has established a Joint Operations Center in Washington, DC. The Joint Operations Center coordinates intelligence-gathering, deconflicts case work and deployments, coordinates dissemination of intelligence, and provides analytic and logistical support for task force member agencies.

Resources:
Statement of Barry M. Sabin, Deputy Assistant Attorney General, Criminal Division, U.S. Department of Justice, Before the Committee on the Judiciary, United States Senate, Concerning Combating War Profiteering: "Are We Doing Enough to Investigate and Prosecute Contracting Fraud and Abuse in Iraq?," presented on March 20, 2007
http://www.usdoj.gov/criminal/npftf/pr/testimony/2007/03-20-07sabin-testimony.pdf

4. MECHANISMS TO ENCOURAGE PARTICIPATION BY CIVIL SOCIETY AND NONGOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ARTICLE III, PARAGRAPH 11 OF THE CONVENTION).

The United States has considered and adopted measures intended to establish, maintain and strengthen mechanisms to encourage the participation of civil society and nongovernmental organizations in efforts aimed at preventing corruption, as discussed in Part B, Chapter II, Section 4 of this report.

In view of the comments made in that section, the Committee suggests that the United States consider the following recommendations:

4.1. General participation mechanisms

No recommendations are formulated by the Committee in this section.

4.2. Mechanisms for access to information

Continue to strengthen the mechanisms for access to public information.

To comply with this recommendation, the United States may wish to take the following measures into account:

a) Continue the process of evaluating and perfecting implementation of the Freedom of Information Act, as amended by the 1996 Electronic Freedom of Information Act Amendments. (See Part B, Chapter II, Section 4.2.3. of this report)

Since the time the United States submitted its response to the First Round Questionnaire in January 2005, the United States has endeavored to improve the functioning of the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA" or "the Act"). Although there have been no changes to FOIA's statutory text or implementing regulations since the time the United States submitted its response to the First Round Questionnaire in January 2005, the executive branch of the United States government has strived to increase the public's access to information. Specifically, on December 14, 2005, President George W. Bush issued Executive Order 13,392, entitled, "Improving Agency Disclosure of Information," which contains several statements of government-wide FOIA policy, as well as many specific requirements in the areas of customer service, planning, and reporting that affect all federal agencies in their administration of the Act. This first-of-its-kind FOIA executive order established a "citizen-centered" and "results-oriented" policy for improving the Act's administration throughout the executive branch; it drew new attention to the difficulties presented by agency backlogs of pending FOIA requests and placed new obligations on all agencies to be met by specific deadlines.

Most fundamentally, Executive Order 13,392 emphasized the importance of the Freedom of Information Act to "[t]he effective functioning of our constitutional democracy" and reminded all agencies that "FOIA requesters are seeking a service from the Federal Government and should be treated as such." Accordingly, it stated an overall policy of responding to FOIA requests "courteously and appropriately" and in ways that permit the FOIA requesters to "learn about the FOIA process" -- most particularly, "about the status of a person's FOIA request." It called upon all federal agencies to discharge their FOIA responsibilities in an efficient as well as "results-oriented" manner and to "achieve tangible, measurable improvements in FOIA processing." Its goal is to "improve service and performance" and "increase efficiency" in agency FOIA operations, "thereby strengthening compliances with the FOIA" and minimizing both "disputes and related litigation" arising under it.

Towards that end, Executive Order 13,392 directed all federal agencies subject to the FOIA to, among other things, take the following basic steps:

(1) Designate within 30 days a senior official of each agency (at the Assistant Secretary or equivalent level) to serve as the Chief FOIA Officer of the agency.

(2) Establish one or more FOIA Requester Service Centers ("Center"), as appropriate, to serve as the first place that FOIA requesters can contact in order to seek information concerning the status of their FOIA requests and appropriate information about the agency's FOIA responses. The Center must include appropriate staff to receive and respond to inquiries from FOIA requesters.

(3) Designate one or more agency officials, as appropriate, as FOIA Public Liaisons, who may serve in the Center or who may serve in a separate office. FOIA Public Liaisons serve as supervisory officials to whom a FOIA requester can raise concerns about the service the FOIA requester received from the Center, following an initial response from the Center staff.

(4) Conduct a review of the agency's FOIA operations in order to determine whether agency practices are consistent with the policies set forth in the Executive Order.

(5) Develop, in consultation, as appropriate, with the staff of the agency (including the FOIA Public Liaisons), the Attorney General, and the OMB Director, an agency-specific plan to ensure that the agency's administration of FOIA is in accordance with applicable law and the policies set forth in the Executive Order.

(6) Submit a report to the Attorney General and the OMB Director that summarizes the results of the agency's review and encloses a copy of the agency's FOIA Improvement Plan under the Executive Order.

(7) Include in the agency's annual FOIA reports for fiscal years 2006 and 2007 a report on the agency's development and implementation of its FOIA Improvement Plan and on the agency's performance in meeting the milestones set forth in that plan, consistent with Department of Justice guidelines.

Resources:

Executive Order 13,392, "Improving Agency Disclosure of Information," December 14, 2005
http://www.whitehouse.gov/news/releases/2005/12/print/20051214-4.html

Executive Order 13,392 Implementation Guidance, April 27, 2006, U.S. Department of Justice, Office of Information and Privacy
http://www.usdoj.gov/oip/foiapost/2006foiapost6.htm

Freedom of Information Act Guide, March 2007, U.S. Department of Justice
http://www.usdoj.gov/oip/foia_guide07/procedural_requirements.pdf

Statement of Melanie Ann Pustay, Acting Director, Office of Information and Privacy, U.S. Department of Justice, Before Subcommittee on Information Policy, Census, and National Archives, Committee on Oversight and Government Reform, U.S. House of Representatives, Hearing on "Implementing FOIA [Freedom of Information Act] -- Assessing Agency Efforts to Meet FOIA Requirements," February 15, 2007
http://www.usdoj.gov/oip/foia30.pdf

4.3. Mechanisms for consultation

To comply with this recommendation, the United States may wish to take the following measure into account:

a) Continue the periodic evaluation of the functioning of the Advisory Committees, and taking into account the results thereof, adopt the pertinent measures to ensure the fulfillment of the objectives of the mechanisms, and *inter alia*, contribute to the fulfillment of the purposes of the Convention. (See Part B, Chapter II, Section 4.3.2 of this report).

b) Consider, where appropriate, the creation and use of advisory committees by agencies which do not currently utilize them. (See Part B, Chapter II, Section 4.3.2 of this report).

The Committee Management Secretariat of the General Services Administration is charged with a number of responsibilities designed to improve the management and accountability of advisory committees. These responsibilities include: conducting an annual comprehensive review covering the performance of, and need for, existing advisory committees; issuing regulations, guidelines, and management controls of government-wide applicability; and assuring that advisory committees are established in accordance with the Federal Advisory Committee Act's requirements. The Secretariat also maintains data on advisory committees and confirms that the committees are fulfilling the purpose for which they were established. Today, advisory committees are used by over 60 agencies to address issues that reflect the complex mandates undertaken by the Government. During fiscal year 2006, over 65,000 committee members served on 1,000 committees and provided advice and recommendations on such matters as the safety of the nation's blood supply, steps needed to address the management of natural resources, and the country's national defense strategies.

Additionally, in response to Government Accountability Office Reports issued in 2002 and 2004, the Office of Government Ethics updated its guidance to agencies regarding appointments to federal advisory committees and focused increased attention on advisory committee appointment matters in agency program reviews. See http://www.usoge.gov/pages/daeograms/dgr_files/2005/do05012.pdf.

4.4. Mechanisms to encourage participation in public administration

Continue to strengthen the mechanisms to encourage civil society and nongovernmental organizations in public administration. To comply with this recommendation, the United States may wish to take the following measure into account:

a) Perform periodic evaluations of the existing mechanisms to encourage civil society and nongovernmental participation in public administration, in order to, *inter alia*, determine the strengths of the mechanisms and identify those areas where improvements are needed, and based on the results of those evaluations, adopt the pertinent measures to ensure the fulfillment of the objectives of the mechanisms and *inter alia*, contribute to the fulfillment of the purposes of the Convention. (See Part B, Chapter II, Section 4.4.2. of this report).

The Executive Branch consistently explores new mechanisms to facilitate participation in public administration. In order to promote public participation in U.S. Government decision-making process, the National Archives has developed two websites with links to all federal agency public comment websites. (See http://www.archives.gov/federal-register/public-participation/rulemaking-sites.html and http://www.regulations.gov/fdmspublic/component/main.) These websites provide the text of proposed rules and regulations, opportunities for filing comments electronically, and updates on the status of rules once public comment periods have closed. These websites provide an easy method for all members of the public to submit comments to government agencies as they develop new rules and regulations.

4.5 Mechanisms for participation in the follow up of public administration

Continue to strengthen the mechanisms for participation in the follow-up of public administration. To comply with this recommendation, the United States may wish to take the following measure into account:

a) Perform periodic evaluations of the existing mechanisms to encourage civil society and nongovernmental participation in the follow-up of public administration, in order to, *inter alia*, determine the strengths of the mechanisms and identify those areas where improvements are needed, and based on the results of those evaluations, adopt the pertinent measures to ensure the fulfillment of the objectives of the mechanisms and *inter alia*, contribute to the fulfillment of the purposes of the Convention. (See Part B, Chapter II, Section 4.5.2. of this report).

The websites mentioned above also provide citizens with the opportunity to follow-up on decision-making processes.

5. ASSISTANCE AND COOPERATION (ARTICLE XIV OF THE CONVENTION)

The United States has adopted measures in relation to mutual assistance and technical cooperation, in accordance with the provisions of Article XIV of the Convention, as discussed in Part B, Chapter II, Section 5 of this report.

In view of the comments made in that section, the Committee suggests that the United States consider the following recommendations:

a) Continue to consider offering the technical cooperation requested by other States Parties, in order to support implementation of the Convention and of the recommendations made to that effect by the Committee in the respective country reports.

b) Continue to consider participating in and supporting mutual technical cooperation initiatives, through the exchange of information within the framework of the networks of competent government authorities, in areas related to the Convention.

c) Consider entering into mutual legal assistance treaties with OAS Member States with which the US does not have an existing Mutual Legal Assistance Treaty in the areas covered under the Convention.

Since the time the United States submitted its response to the First Round Questionnaire in January 2005, the United States has continued to participate in and support mutual assistance and cooperation efforts with OAS member states in the areas of corruption-related training, investigation, prosecution, and asset seizure. The U.S. Department of Justice's Office of International Affairs ("OIA") regularly consults with OAS member states that have mutual legal assistance treaties with the United States. OIA frequently discusses cases, provides information, and templates for documents required to make a formal request for assistance from the United States. During the last several years, U.S. Department of Justice's Asset Forfeiture and Money Laundering Section in the Criminal Division and various United States Attorney's Offices have been active in assisting officials in Panama and elsewhere in the region recoup assets stolen by former heads of state and other government officials. In addition, OIA is active in the OAS MLAT working groups.

The U.S. Department of Justice Office of Overseas Prosecutorial Development, Assistance, and Training (OPDAT), currently has US prosecutors serving as Resident Legal Advisors (RLAs) in three OAS countries -- Colombia, Paraguay, Mexico – and one will start in December 2007 in Brazil. Four RLAs at

the U.S. Embassy in Bogota, Colombia are assisting with the implementation of the new Colombian criminal procedure code, training of specialized investigative units, and the design and implementation of technical assistance programs in specialized areas such as forensics, asset forfeiture and money laundering, anti-kidnapping, anti-corruption, court and judicial security, and witness protection. The RLA to the U.S. Embassy in Asuncion, Paraguay is focusing on bilateral assistance in the areas of money laundering, terrorist financing and reform of the Paraguayan criminal procedure code. He also is also working to provide technical assistance in the areas of money laundering and terrorist finance in the tri-border region between Paraguay, Brazil and Argentina. The Intermittent Legal Advisor to the U.S. Embassy in Mexico City, Mexico is working to provide technical assistance on issues of human trafficking. Starting in December 2007, a new RLA in Brazil will focus on issues of money laundering, organized crime, cyber crime and intellectual property and prison management.

Finally, the United States has also facilitated training seminars for OAS partners. For example, on May 2 to 6, 2006, in Miami, Florida, the U.S. Department of Justice's Asset Forfeiture and Money Laundering Section and US DOJ's OPDAT, along with the International Narcotics and Law Enforcement Affairs Bureau of the U.S. Department of State and the General Secretariat of the Organization of American States, conducted a seminar on the recovery of the proceeds of acts of corruption. The seminar brought together 90 participants, including prosecutors, investigators, judges, and attorneys general, from 30 OAS and G-8 nations. Topics at the workshop included strategies for investigating corruption in different sectors, differences in legal approaches to forfeiture, asset tracking and financial investigations, effective forfeiture procedures and international cooperation, transparency and recommendations for future prosecution.

The United States Agency for International Development (USAID) includes anticorruption efforts a central part of its foreign assistance strategy and takes a broad approach to assisting partner countries to strengthen their systems to resist corruption. USAID's anticorruption programs are designed to help reduce opportunities and incentives for corruption; support stronger and more independent judiciaries, legislatures, and oversight bodies; and promote independent media, civil society, and public education.

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

No recommendation was made.

7. GENERAL RECOMMENDATIONS

These recommendations are addressed above under the relevant subject matter.

Attachment 1 - **Merit System Principles- Title 5 United States Code §2301**:

1. Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.

2. All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.

3. Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition should be provided for excellence in performance.

4. All employees should maintain high standards of integrity, conduct, and concern for the public interest.

5. The Federal work force should be used efficiently and effectively.

6. Employees should be retained on the basis of the adequacy of their performance, inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards.

7. Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.

8. Employees should be -

(A) protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and

(B) prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for election.

9. Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences -

(A) a violation of any law, rule, or regulation, or

(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

Attachment 2 - **Prohibited Personnel Practices- Title 5 United States Code §2302**:

Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority -

(1) discriminate for or against any employee or applicant for employment -

(A) on the basis of race, color, religion, sex, or national origin, as prohibited under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16);

(B) on the basis of age, as prohibited under sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a);

(C) on the basis of sex, as prohibited under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d));

(D) on the basis of handicapping condition, as prohibited under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791); or

(E) on the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation;

(2) solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of -

(A) an evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or

(B) an evaluation of the character, loyalty, or suitability of such individual;

(3) coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity;

(4) deceive or willfully obstruct any person with respect to such person's right to compete for employment;

(5) influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment;

(6) grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment;

(7) appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in section 3110(a)(3) of this title) of such employee if such position is in the agency in which such employee is serving as a public official (as defined in section 3110(a)(2) of this title) or over which such employee exercises jurisdiction or control as such an official;

(8) take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment because of -

(A) any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences -

(i) a violation of any law, rule, or regulation, or

(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

(B) any disclosure to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences -

(i) a violation of any law, rule, or regulation, or

(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

(9) take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for employment because of -

(A) the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation;

(B) testifying for or otherwise lawfully assisting any individual in the exercise of any right referred to in subparagraph (A);

(C) cooperating with or disclosing information to the Inspector General of an agency, or the Special Counsel, in accordance with applicable provisions of law; or

(D) for refusing to obey an order that would require the individual to violate a law;

(10) discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, of the District of Columbia, or of the United States;

(11)(A) knowingly take, recommend, or approve any personnel action if the taking of such action would violate a veterans' preference requirement; or

(B) knowingly fail to take, recommend, or approve any personnel action if the failure to take such action would violate a veterans' preference requirement; or

(12) take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of this title.