

Working Party on GATS Rules

COMMUNICATION FROM THE UNITED STATES

Response to the Questionnaire on Government Procurement of Services

The following communication is being circulated at the request of the delegation of the United States to Members of the Working Party on GATS Rules.

Attachment II (referred to on page 11, question 12(b)) will be circulated at a later date.

I. EXISTING PROCUREMENT REGIMES

Where a Member's procurement regime is different for central government entities, sub-central government entities, and other entities, such as public undertakings (e.g. public utilities), it would be useful if these differences were specified under each of the headings indicated below.

Definition

1. *What is the definition of government procurement employed in completing this questionnaire?*

Procurement is generally defined in terms of purchasing for the direct benefit and use of government entities. The Office of Federal Procurement Policy (OFPP) Act (41 USC 403) defines procurement on the following basis:

The term procurement includes all stages of the process of acquiring property or services, beginning with the process for determining a need for property or services and ending with contract completion and closeout.

Procurement generally does not include non-contractual agreements or any form of government assistance, including cooperative agreements, grants loans, equity infusions, guarantees, fiscal incentives, and governmental provisions of goods and services to persons or governmental authorities not specifically covered under U.S. annexes to the WTO Government Procurement Agreement (GPA) and NAFTA Chapter 10.

Public sector procurement defined broadly includes purchasing by Federal, state and municipal governmental authorities. However, the U.S. procurement system is not centralized, except with respect to U.S. Federal executive agencies. The answers provided in response to this inventory generally refer to procurement by Federal executive agencies.

Administrative structure

2. ***How are government procurement activities administered? To what extent are procurement activities centralized? Please specify the identity of any central procurement agencies and their respective responsibilities.***

See discussion of the Federal Acquisition Regulations (FAR) under Question 3(a) below. Although Federal executive agencies are covered by the same framework of laws and regulations on their procurement activities, they generally conduct procurements individually, except when procuring off General Services Administration (GSA) or Defense Logistics Agency (DLA) supply schedules.

Laws and regulations in force

- 3.(a) ***Please specify the laws, regulations, rules, guidelines, decrees, decisions and other measures governing government procurement. What is the scope of their application? In particular, please describe any exemptions that exist. Please provide a brief summary of the content of each of these measures.***

United States Code, Titles 10 and 41 contain the bulk of the laws upon which the FAR is based. On an annual basis, authorization and appropriation acts passed by Congress and signed by the President may provide additional authority and requirements.

The FAR System codifies and publishes uniform policies and procedures for acquisition by all U.S. executive agencies (central government entities). The FAR System consists of the FAR itself, which is the primary legal document, and agency-specific acquisition regulations that implement or supplement the FAR. The FAR does not permit agency acquisition regulations that unnecessarily repeat, paraphrase, or otherwise restate the FAR; limits agency acquisition regulations to those necessary to implement FAR policies and procedures within an agency; and provides for coordination, simplicity, and uniformity in the U.S. Federal acquisition process.

Title 41 of the U.S. Code and the FAR are available on the Internet at <http://www.findlaw.com>.

Executive agencies receive appropriations from Congress each year. These appropriations stipulate the programs that entities are authorized to fund and the dollar amounts they are authorized to spend. Executive Agencies are required in some instances to satisfy requirements for goods or services from or through centralized government supply sources. One example is obtaining goods or services from wholesale supply sources such as the GSA or the DLA. See Attachment 1 for a list of pertinent laws.

41 USC 253(c) and 10 USC 2304(c) -- Other than Full and Open Competition -- authorize, under certain conditions, contracting without providing for full and open competition. The conditions include:

- 1) only one responsible source and no other supplies or services can meet agency requirements;
- 2) unusual and compelling urgency;
- 3) industrial mobilization, engineering, developmental, or research capability, or expert services;
- 4) international agreement;
- 5) authorized or required by statute, e.g., national industries for the blind and severely handicapped; Federal prison industries (UNICOR); government printing and binding;

- 6) national security; and
- 7) public interest, which is rarely used because it requires notification to Congress not less than 30 days prior to contract award.

Additionally, the Department of Defense (DOD), in particular, has specific requirements to procure from domestic sources, as specified in annual appropriations and authorization legislation. These include items such as textiles, food, specialty metals, and hand and measuring tools, among other things, that are set forth in the Defense Federal Acquisition Regulations (DFAR) and are exempt from U.S. obligations under the WTO GPA and NAFTA Chapter 10.

- (b) ***Does the procurement regime distinguish between the procurement of goods and services? If so, then how is the application of rules determined in cases of joint procurement involving both goods and services?***

The United States generally does not distinguish among procurement of goods and services in terms of competitive and transparent procedures. The same transparent procurement regulations apply to all types of contracts listed above. Please see response to Question 3.(a) above.

The United States does have some specialized rules for services, construction, major systems, utilities, purchases under \$100,000 and commercial item acquisitions, which are set forth in specific provisions of the Federal Acquisition Regulations (FAR), but even these specialized rules are still within the general umbrella of procedures and requirements on transparency and competition.

FAR provisions generally apply to any combination of goods and services, although there may be specialized additional rules that apply to specific services, for example.

Procurement procedures applied

- 4.(a) ***What procedures are followed in the procurement process?***

Procurement procedures could differ according to the openness of the invitations to tender. At least three broad categories of procedures are commonly distinguished: (i) public or open tendering procedures under which all interested parties may submit a tender; (ii) selective or restricted tender procedures under which participation is limited to a certain number of selected suppliers, and only these suppliers are invited to submit a tender; (iii) private contract or single tender in which the awarding authority contracts suppliers individually, and sometimes only a single supplier.

The general rule is full and open competition, although there may be specific circumstances in which selective tendering or sole sourcing may be permissible. See the response to Question 3(b) above.

Two main procurement procedures are used based on the level of complexity of the goods or services being procured. Simplified acquisition procedures are used for procurements expected to be less than \$100,000, and sealed bid or negotiation procedures are used when the procurements are expected to be above \$100,000. Irrespective of the procedure used, the emphasis is on ensuring transparency throughout the process. Procedures are predictable. The Competition in Contracting Act (CICA) requires that criteria for award of a contract be set forth in the solicitation. If the agency changes the criteria without advising the offerors, the procurement may be protested. Bid deadlines are the same for all offerors. Where the

procurement is conducted using price and other factors, the unsuccessful offerors may request, in writing, debriefings from the contracting officer. If the price is the only decision factor, the unsuccessful offeror will be notified in writing of the number of bidders, the number of proposals and the total contract price of the items in the award.

By law, technical specifications are generally to be free from any restrictive requirements so as to allow maximum competition among potential offerors. The order of preference for specifications is:

- 1) voluntary standards;
- 2) commercial item descriptions in the acquisition of commercial items;
- 3) government product descriptions stated predominantly in terms of functions to be performed or performance required;
- 4) government product descriptions stated predominantly in terms of material, finishing schematics, tolerances, operating characteristics, component parts and other design requirements.

Solicitations generally contain detailed specifications (although the trend recently has been towards commercial item acquisition), as well as contact points for obtaining more detailed information. The Commerce Business Daily (CBD), in which most Federal solicitations are published, includes initial notifications of the intent to procure certain supplies and services. Specific requirements and specification information are contained in the solicitation document itself. The CBD will only contain a brief description, along with information regarding whether a particular procurement is using a performance or design-based specification.

Additionally, in complex procurements, procuring officials may develop a draft Request for Proposal (RFP) and send it out to interested suppliers for comment. This process is open to all interested suppliers. Depending on the comments received, the RFP may be altered. If a change is made after the solicitation is issued, the change is generally transmitted through an amendment to the solicitation.

- (b) *Under what circumstances are different procedures used? For instance, if the method used depends on the value of the procurement, the thresholds should be given.***

The general principles and requirements are described in the response to Question 4(a) above. The FAR contains very detailed provisions to guide contacting officials in ensuring transparent, competitive procurement. These procedures generally apply to all procurements above \$2,500, although they are simplified with respect to procurements below \$100,000.

- (c) *What are the time limits for submission of bids?***

The CBD notice generally must be published 15 days before issuance of the solicitation, and the solicitation must allow at least 30 days response time. However, the response time is a function of the procurement's complexity. Consequently, in some procurement cases, the response time will be greater than 30 days. Additionally, required time limits have been recently reduced for commercial, off-the-shelf (COTS) acquisitions and will be reduced in the future for procurements that are conducted electronically. As procurement methods evolve, particularly by eliminating government-specific requirements and adopting new technologies, the period of time necessary to allow for competitive procurement opportunities is likely to decrease.

Publicity for inviting tenders

- 5.(a) *How are intended procurements publicised? Are invitations to tender published? If so, where, and in what languages?***

Two statutes require public notice in the CBD: 15 USC 637 (c) and 41 USC 416. These statutes are implemented in 48 CFR 15.201, "Synopsis of Proposed Contract Actions." There are 12 exceptions to the synopsis publishing requirement. These are listed in 48 CFR 1 subpart 5.202. In addition, at the discretion of the Federal government entity, invitations to tender can be publicized through periodic handouts, announcements in newspapers, trade journals, magazines, or other mass communication media. The Federal Government is increasingly looking to the use of electronic means of publication, which promises to greatly increase commercial access to information on procurement opportunities. The Federal Acquisition Streamlining Act (FASA) of 1994 specifically requires the establishment of a government-wide electronic system. Additionally, individual agencies, such as NASA, provided their solicitations over the Internet.

- (b) *Do the extent and form of publicity differ according to tendering procedures applied and/or on the value of procurement?***

Publishing requirements are less rigorous for procurements falling below the small acquisition threshold of \$100,000.

- (c) *What details of the intended procurement are normally published? Is there a minimum set of information that is required to be published? If so, please specify.***

Details could include a description of the good or service to be procured, tender opening and closing dates, conditions of participation, procuring entity, enquiry point, procurement plans, procurement outcomes, contract award notices, etc.

All necessary information concerning the procurement is contained in the CBD announcement and is specified in 48 CFR 5.207. Information in the CBD notice includes, but is not limited to, contracting office address, subject, proposed solicitation number, opening/closing response date, contact point/contracting officer, and description of goods or services. The description of supplies or services must be clear and concise and not unnecessarily restrictive of competition. It should allow a prospective offeror to make an informed business judgment as to whether a copy of the solicitation should be requested.

- (d) *Are there any charges for obtaining the full set of tender documents? If so, please specify and describe how these charges are set?***

Solicitations are provided free of charge to anyone who is interested in making an offer. A subscription to the CBD or account on an electronic bulletin board, however, is not free.

- (e) *Are electronic means used to advertise procurement opportunities? What is the nature of systems that are in place? Are different tendering provisions applied to contracts advertised in this manner? If so, please describe.***

Tender notices are posted on an electronic bulletin board in addition to being published as noted in the CBD. Some agencies, such as NASA, have Home Pages on the Internet and include tender notices at these websites. For example, the NASA Home Page has now been linked to the APEC Home Page.

In October 1993, President Clinton sent a memorandum to all Federal agencies directing them to streamline procurement through "electronic commerce." The central component of electronic commerce is EDI, computer-to-computer exchange of business data.

The use of EDI allows organizations to generate, receive and process data with minimum human intervention. EDI networks will be able to automatically update inventories, invoice customers, pay suppliers, advertise federal government requirements and many other tasks that are now time, labor, and paper intensive. It is estimated that the new electronic purchasing could cut federal procurement costs by 10 percent by 1997 and speed delivery times by a third.

In order to implement EDI, FASA calls for the establishment of a government-wide Federal Acquisition Network (FACNET) within five years. This network will open up the acquisition process to any business with a personal computer. Agencies have been given an incentive to implement the new system quickly because they may not use the new simplified acquisition procedures for contracts greater than \$50,000 until they have developed "interim FACNET capability." This means that, at a minimum, they must be able to provide widespread public notice of solicitations and receive responses to those solicitations and related requests for information.

After December 31, 1999, agencies may not use the simplified acquisition procedures for contracts greater than \$50,000 until they have implemented a "full FACNET capability." This means that an agency must be able to conduct 75 percent or more of its acquisitions above \$2,500 and below \$100,000 through EDI. Once there is full government-wide use of electronic commerce, the requirement to publish contract notices in the CBD will be waived for all contracts below \$250,000 that are conducted using electronic commerce.

Requirements laid down for possible suppliers

6.(a) *Are there registration, residence or other requirements for potential suppliers?*

Generally, the United States does not have registration, residence or other requirements for potential suppliers. However, on a particular procurement the government might require the contractor to be within a certain distance of the site of contract performance. This requirement would be in the solicitation and applicable to all offerors and would only relate to a legitimate need of the contracting entity to have the contractor in close proximity. Additionally, for sensitive procurements, a contractor may have to have appropriate security clearances, which may be obtainable by foreign suppliers.

(b) *What is the nature of any conditions for participation required from suppliers - such as financial guarantees, commercial standing and technical qualifications? Do the conditions of participation vary according to the nature of the tender process and/or the value of the intended procurement?*

Offerors must be determined to be "responsible" by the contracting officer. This entails a review of the contractor's financial, technical and managerial capabilities in order to predict the probability of whether the contractor will be able to perform the terms of the contract.

- (c) *Do there exist lists of approved suppliers? If so, what are the procedures for checking the capability of firms applying for inclusion on tenderers' mailing lists? Are lists of approved suppliers, if any, regularly reviewed/updated?*

Generally, Federal government entities do not use source lists for qualified suppliers. In exceptional cases, however, a Federal entity can establish a source list, although only after the head of the entity prepares a written justification explaining the extenuating circumstances for use of such a list. Potential foreign suppliers from designated countries under the terms of the WTO GPA may be included in source lists. Additionally, Part 9 of the FAR provides for the possibility of qualified bidders lists (QBLs), qualified manufacturers lists (QMLs) and qualified products lists (QPLs). Entities must specifically justify and document the need for establishing such lists and all interested suppliers must be provided an opportunity to be included in such lists.

Criteria for assessing bids and awarding contracts

- 7.(a) *What criteria are taken into account in the award of tenders? Are criteria for award of contracts made available in advance to potential suppliers?*

For instance, whether obtaining the best value for money spent is the aim and whether criteria other than price are taken into account.

Criteria for award, known as evaluation factors, are found in section "m" of the solicitation, as published in the CBD.

- (b) *Is procurement subject to any offset provisions, such as local content, technology transfer or countertrade requirements?*

Federal executive agencies do not apply offsets, but there are certain Buy America requirements, set asides and other restrictions. Please see the answer to (c) below.

- (c) *Is preference given to any particular enterprises or group of enterprises? If so, please specify.*

Local content requirements: In general, the Buy American Act of 1933 requires that domestic end products be acquired for public use. Executive Order 10582, December 17, 1954 (as amended) implements the statutory preference by stating that an offered price of a domestic product is unreasonable and that an award can be made for a foreign product if the price exceeds the price of a foreign product by six percent. Moreover, the Executive Order authorizes a Federal agency to use any factor to determine that the offered price of a domestic product is excessive. For example, a factor of 12 percent is used by many civilian agencies to determine whether a price offered by a small business firm is unreasonable. Generally, Federal agencies other than DOD use the six or 12 percent evaluation factor to determine if the offered price of a domestic product is unreasonable. DOD uses a 50 percent factor.

Procurement subject to U.S. international obligations is exempt from Buy American Act preferences by Presidential action authorized under the Trade Agreements Act (TAA) of 1979. Authority under the TAA has been used to implement obligations under the WTO GPA, NAFTA, the U.S.-Israel Free Trade Agreement and the WTO Agreement on Civil Aircraft. The President has also used the authority granted under the TAA to exempt procurement from certain other countries from Buy American Act preferences. Additionally, the Buy American Act does not apply to procurement of services or procurement by state and local governments, although many of these subfederal jurisdictions apply their own preferential procurement policies.

However, specific services sectors, particularly in the transportation sector, may be subject to domestic source requirements. Examples include the Cargo Preference Act and the Fly American Act.

In addition to the Buy American Act, appropriations and authorization legislation, particularly for DOD, may require procurement from domestic sources, as discussed under Question 3(b) above.

Preferences for small and medium size enterprises: There is no preference for medium size companies. The Small Business Act requires that awards of any size shall be set aside for small business participation when there is a reasonable expectation that offers will be obtained from at least two small businesses and awards will be made at fair market prices. This is the so-called "Rule of Two" for application of set asides.

Purchasing Prohibition: The TAA requires that procurement of products from countries that the President has not exempted from application of the Buy American Act be prohibited for Federal goods contracts that are covered by the GPA. This provision is intended to provide incentive to WTO Members to join the GPA. The prohibition affects approximately \$20-\$30 billion in procurement opportunities annually. Amendments to the TAA contained in the Uruguay Round Agreements Act (URAA) of 1994 permit the President to waive the purchasing prohibition and apply Buy American preferences in its place for countries that are not signatories to the GPA but agree to apply equivalent competitive procurement procedures and effective anti-corruption measures. This authority has yet to be exercised. The purchasing prohibition does not apply to services that are covered under the GPA.

(d) *Do the procurement criteria differ according to sector or region of the economy?*

Generally, criteria do not differ according to sector or region of the economy. However, where there is a labor surplus area set-aside, geographical location is designated.

(e) *What is the margin of choice or discretion allowed to the purchasing authority? What does the extent, if any, of discretion allowed depend upon?*

The margin of choice or discretion could relate to (i) the relative weight/importance of each contract award criteria; (ii) margins of preference, if any, in respect of specific criteria; and (iii) threshold values, if any, above which referral to a higher level of purchasing authority is required. The discretion allowed to the purchasing authority could vary according to whether there is (i) automatic tender, where the contract is awarded on the basis of predetermined criteria; (ii) discretionary tender procedures which involve acceptance of the bid which is most advantageous-the award of the contract is based on several criteria, some of which are predetermined, but which in general leave the awarding authority a certain measure of choice; and (iii) negotiated tender in which the awarding authority negotiates freely with the potential supplier or suppliers as to the conditions of the contract.

Contracts are always awarded on the basis of specified criteria in the solicitation. These criteria may be weighted for purposes of making best overall value awards. Preferences under the Buy America Act are described under (c) above. Negotiated procedures are generally only used to select a supplier from the competitive range.

Disclosure of bids received and contracts awarded

8.(a) *How are tenders received, registered and opened?*

The responses to sealed bids are opened publicly. However, in negotiated procurements, the prices are kept confidential until an award is made. The reason for doing so relates to the proprietary nature of the pricing information. In addition, the knowledge of prices could lead to a situation in which the incumbent contractor has an unfair advantage over its competitors. This could affect the integrity of the procurement system. Accordingly, the only time when prices are publicly disclosed is in a sealed bid situation.

(b) *Are entities required to publish details of the contracts awarded and/or notify unsuccessful tenderers?*

The contracting officer shall award a contract with reasonable promptness to the successful offeror by transmitting written or electronic notice of the award to that offeror. Within three days after the date of the contract award, the contracting officer shall notify, in writing or electronically, each offeror whose proposal is determined to be unacceptable or whose offer is not selected for award. Additionally, a post-award notice must be published in the CBD.

(c) *Are entities required to publish, or provide to unsuccessful bidders, pertinent reasons why their bid was rejected?*

When a contract is awarded on the basis of competitive proposals, an offeror, upon its written request received by the agency within three days after the date on which that offeror has received notice of contract award, shall be debriefed and furnished the basis for the selection decision and contract award. When practicable, debriefing requests received more than three days after the offeror receives notice of contract award shall be accommodated. However, accommodating such untimely debriefing requests does not extend the time within which suspension of performance can be required, as this accommodation is not a "required debriefing" as described in FAR Part 33. To the maximum extent practicable, the debriefing should occur within five days after the receipt of the written request. Debriefings of successful and unsuccessful offerors may be done orally, in writing, by electronic means, or any other method acceptable to the contracting officer.

At a minimum, the debriefing information shall include: (1) the entity's evaluation of the significant weaknesses or deficiencies in the offeror's proposal, if applicable; (2) the overall evaluated cost or price and technical rating, if applicable, of the successful offeror and the debriefed offeror; (3) the overall ranking of all offerors when any ranking was developed by the agency during the source selection; (4) a summary of the rationale for award; (5) for acquisitions of commercial end items, the make and model of the item to be delivered by the successful offeror; and (6) reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed. The debriefing shall not include point-by-point comparisons of the debriefed offeror's proposal with those of other offerors.

Treatment granted to domestic and foreign services and/or suppliers

9. *What laws, regulations, procedures or practices accord domestic services and/or suppliers treatment more favourable than that accorded to foreign services and/or suppliers, or accord services and/or suppliers of a Member more favourable treatment than those of another*

Member? Please specify how, if at all, more favourable treatment is accorded. Please also specify the working definition of "domestic" in relation to domestic services and suppliers.

“Domestic” with respect to products is generally on the basis of the Buy American Act rule of origin, which specifies that more than 50 percent of the content must be manufactured in the United States and that the product itself must be manufactured in the United States. Although it is generally not necessary to determine “domestic” with respect to services, including public works, the Buy American Act provides a definition with respect to construction services that includes an examination of ownership, nationality of directors and place of incorporation.

Information regarding laws, regulations, procedures or practices that accord domestic goods, services, public works and/or suppliers treatment more favourable than that accorded to foreign goods, services, public works and/or suppliers is provided in the response to Question 7(c) above.

Information regarding laws, regulations, procedures or practices that accord goods, services, public works and/or suppliers of one country more favourable treatment than those of another country (e.g. through regional agreements) is provided in the response to Question 7(c) above.

Procedures for hearing and reviewing complaints/appeals

- 10. *What, if any, are the procedures available for parties, domestic and foreign, to lodge complaints against the award of a contract? Please provide details.***

Details could include:

- ***institutional status: whether challenges are heard by an administrative tribunal, a court or any other review body;***
- ***time limits for complaints/appeal;***
- ***type of remedy, if any, that may be granted.***

There are procedures available for potential suppliers, domestic and foreign, to lodge complaints during any step of the procurement process. These apply to all U.S. Federal executive entities. An interested party can protest: (a) a solicitation or other request by an agency for offers for a contract for the procurement of property or services; (b) the cancellation of the solicitation or other request; (c) an award or proposed award of a contract; (d) a termination or cancellation of an award of the contract, if the written objection contains an allegation that the termination or cancellation is based in whole or in part on improprieties concerning the award of the contract.

The interested party can file a protest with a Congressional agency, the General Accounting Office (GAO), which is responsible for general oversight of Federal executive agency activities. The GAO issues its recommendation on a protest within 125 days from date of filing of the protest with GAO, or within 65 days under an accelerated review procedure. The GAO can suspend the procurement process while it reviews a case to ensure that all suppliers' interests are not prejudiced.

For controversial issues that arise under a contract, the contractor and the Federal government entity are encouraged to resolve the issues through mutual agreement -- alternative dispute resolution. A contractor also has the option of filing a claim with the contracting officer and filing an appeal with the Agency Board of Contract Appeals or a suit in the Federal Court of Claims.

II. MEMBERSHIP OF PLURILATERAL, REGIONAL AND/OR BILATERAL AGREEMENTS

11. *Is the Member party to any plurilateral, regional and/or bilateral agreements with provisions on government procurement? If so, please describe the relevant provisions.*

The United States is a signatory to the WTO Government Procurement Agreement, NAFTA and the U.S.-Israel Free Trade Agreement.

III. ECONOMIC IMPORTANCE OF SERVICES PROCUREMENT

12.(a) *Please provide statistics (if available) on the number and value of services procurements*

- *on both an aggregate and sectoral basis;*
- *by origin of services and suppliers.*

In order to enhance the comparability of data provided, Members may choose to provide statistics according to the services sectoral classification in document MTN/GNS/W/120 (dated 10 July 1991) at the appropriate level of aggregation.

(b) *Please provide statistics (if available) on the*

- *share of services procurement in total procurement;*
- *share of procurement of each service in total domestic output of the service;*
- *share of procurement of each service in total domestic consumption of the service.*

Total domestic consumption is defined as the sum of public and private consumption or the sum of domestic output and net imports (i.e. imports minus exports) of the service in question.

Attachment II contains summary information on U.S. Federal procurement for Fiscal Year 1995.

ATTACHMENT 1: LAWS RELATED TO PROCUREMENT

| Citation | Name/Description | Applicability |
|--|--|---|
| Ethics | | |
| Section 27 of the Office of Federal Procurement Policy Act (41USC 423), as amended by section 814 of the FY 90/91 National Defense Authorization Act, Public Law 101-189, and section 815 of the 1991 National Defense Authorization Act, Public Law 101-510 | Procurement Integrity | |
| 18 USC 201, 10 USC 201, 10 USC 2207, 5 USC 7353, and CFR Parts 735 and 2635 - | Prohibition of the offer or acceptance of a bribe. | |
| 18 USC 208 - | Precludes a USG employee from participating personally and substantially in any particular matter that would affect the financial interests of any person. | |
| 18 USC 207 | Post-employment restrictions. Prohibits certain activities by former USG employees, including representation of a contractor before the USG in relation to any contract on which the former employee worked while employed by the USG. | |
| 41 USC 51-58 | The Anti-Kickback Act; deters subcontractors from making payments, and contractors from accepting payments for the purpose of improperly obtaining or rewarding favourable treatment in connection with contracts. | Certain provisions do not apply to contracts under \$100,000. |
| 10 USC 2306(b) and 41USC 254(a) | Restrictions on certain contingent fees. | Applies to contracts above \$100,000. |

| Citation | Name/Description | Applicability |
|--|---|--|
| 31 USC 1352 | Prohibits a recipient of a Federal contract from using appropriated funds to pay any person for influencing or attempting to influence an employee of any agency or a Member of Congress in connection with the awarding of a Federal contract. | |
| Transparency/Openness | | |
| 10 USC 2304 and 41 USC 253 | Full and Open Competition Requirement; with certain exceptions, USG contracting officers shall promote and provide for full and open competition in soliciting offers and awarding USG contract. | |
| Section 30 of the Office of Federal Procurement Policy (OFPP) Act (41USC 426) | Electronic commerce in contracting - provides policy and procedures for the establishment and use of the Federal Acquisition Computer Network (FACNET). FACNET is the preferred method of soliciting and receiving quotes and providing notice of Government purchases between \$2,500 and \$100,000. | Purchases between \$2,500 and \$100,000. |
| 15 USC 637(e) and the Office of Federal Procurement Policy Act (41 USC 416) | Requirement for dissemination of information on any action that would result in a contract. | |
| Title VII of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355) | Acquisition of Commercial Items - USG preference for acquisition of commercial items or nondevelopmental items when they are available to meet the needs of the agency. | |
| 10 USC 2306(a) and 41 USC 254(b) - Truth in Negotiation Act | Requirement and exceptions for cost or pricing data requirements. Also imposes restrictions on profit for different types of contracts. | |

| Citation | Name/Description | Applicability |
|---|--|--|
| 31 USC 1341 | Multiyear Contracting - Specific statutory authority is needed for an agency to make financial commitments for amounts greater than those appropriated annually by the Congress. | |
| Socio-Economic | | |
| Small Business Act (15 USC 631, et seq.), Armed Services Procurement Act (10 USC 2302, et seq.), the Federal Property and Administrative Services Act (41 USC 2520, and Executive Order 12138 - Small Business Programs | This is also known as the Rule of Two - Award of any size shall be set aside for small business participation when there is a reasonable expectation that offers will be obtained from at least two small businesses and awards will be made at fair market prices. | |
| Defense Manpower Policy No. 4B, May 23, 1980 (44 CFR 331), US Department of Labor Regulations (20 CFR 654, Subpart A), and the Small Business Act (15 USC 644(d), (e), and (f) - Labor Surplus Area Concerns | Aiding labor surplus areas in the US, its territories and possessions. | Applies to procurements above \$100,000. |
| 18 USC 4082(c)(2) - Convict Labor | Federal prisoners authorized by the Attorney General to work at paid employment in the community under certain circumstances. | |
| 40 USC 327-333 - Contract Work Hours and Safety Standards Act | Requires certain contracts contain a clause specifying that no laborer or mechanic doing any part of the work contemplated by the contract shall be required or permitted to work more than 40 hours in any work week unless paid for all such overtime hours at not less than one and one half times the basic rate of pay. | |

| Citation | Name/Description | Applicability |
|--|---|---------------|
| 40 USC 276a-276a-7 | Davis Bacon Act - Provides that contracts in excess of \$2,000 to which the USG is a party for construction, alteration, or repair of public buildings or public works within the United States shall contain a clause that no laborer or mechanic employed directly upon the site of the work shall receive less than the prevailing wage rates as determined by the Secretary of Labor. | Above \$2,000 |
| 41 USC 35-45 | Walsh-Healy Public Contracts Act - Contracts for the manufacture or furnishing of goods in excess of \$10,000 shall be with manufacturers or regular dealers in the goods manufactured or used in performing the contract. . Certain statutory and regulatory exemptions exists, such as contracts for perishables, commercial items, and supplies manufactured outside the US. | |
| Executive Order 11246, as amended - Equal Employment Opportunity | | |