

## **Open Contracting and Open Data in The United States: A Global Comparison**

## **ABSTRACT**

This paper discusses the relationship between open contracting and open data in the United States federal procurement system, evaluating the extent to which key government platforms align with global open contracting principles. Despite growing efforts to enhance transparency and public accountability, United States procurement data remain fragmented across multiple systems—including GSA eBuy, SAM.gov, and others—many of which fall short in providing standardized, accessible, and comprehensive contract lifecycle information. The paper analyzes these systems against the Open Contracting Data Standard (OCDS) and principles such as transparency, participation, and accountability. Findings reveal significant gaps in data interoperability, completeness, and usability, limiting public oversight and evidence-based policy evaluation. The paper concludes by outlining recommendations for improving the United States procurement data ecosystem, including adopting OCDS, consolidating data platforms, and increasing access to contract planning and implementation data. These reforms are essential to advancing transparency and competition, combating corruption, and enabling data-driven decision-making in federal procurement.

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## I. Introduction

Enhancing transparency, promoting competition, preventing corruption, and becoming efficient have become central goals for everyone involved in public procurement. Open contracting focuses on being transparent and allowing everyone involved in the procurement process to gain information that could affect that process.<sup>1</sup> Specifically, “open contracting is about publishing and using open, accessible and timely information on public contracting to engage citizens and businesses to fix problems and deliver results.”<sup>2</sup> “Importantly, open contracting consists of disclosure and engagement throughout the entire chain of procurement, including planning, tendering, awarding, and implementation. It can also cover non-procurement issues such as licensing and extractives contracts.”<sup>3</sup> In terms of public interest, it is important that contracts within the public procurement system are published in a public matter. “The distorting effect of lack of transparency and corruption in contracting processes occurs to the detriment of the taxpayer who ends up paying more for less.”<sup>4</sup>

The implementation of e-procurement systems is becoming a trend for some governments as a way of exhibiting open contracting principles. “E-procurement generally refers to the procurement of goods, works and services through internet-based IT solutions with the view to promote integrity, transparency and accountability and strengthen competition in procurement processes. There are also potential gains in terms of simplicity, speed, promoting equal

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<sup>1</sup> Schooner, Steven L., *Desiderata: Objectives for a System of Government Contract Law* (May 19, 2011). Public Procurement Law Review, Vol. 11, p. 103, 2002, GWU Law School, Public Law Research Paper No. 37, Available at SSRN: <https://ssrn.com/abstract=304620>

<sup>2</sup> Open Contracting Partnership, *What is Open Contracting?*, <https://www.open-contracting.org/what-is-open-contracting/> (last visited May 1, 2025).

<sup>3</sup> Open Contracting Partnership, *Anticorruption*, <https://www.open-contracting.org/anticorruption/> (last visited May 1, 2025).

<sup>4</sup> Chêne, Marie. *The Benefits of Open Contracting*. U4 Anti-Corruption Resource Centre (Mar 30, 2012), <https://www.u4.no/publications/the-benefits-of-open-contracting.pdf>

opportunities, minimizing error and reducing the overall cost of information.”<sup>5</sup> However, there are some countries that have yet implemented e-procurement systems, according to a 22 UN survey.<sup>6</sup> Even without an e-procurement system in place, however, governments may well be able to take at least some of the benefits of open contracting.

## **II. The Benefits of Open Contracting**

Open contracting is, first and foremost, a way to strengthen both the economy and the government, because it encourages competition, better integrates public procurement with the broader private economy, and stems corruption through transparency. The success and stability of the economy is one of the many factors considered by those involved in public procurement. “Some further research suggests that greater domestic competition on procurement markets and greater transparency is likely to improve economic welfare.”<sup>7</sup> Open contracting aims to enhance the ability of entities to understand and engage with the public procurement system. Furthermore, “generating market opportunities in public procurement through open contracting data can help prevent corruption by promoting transparency, competition, and vendor diversity. By making procurement data publicly accessible, open contracting data empowers private sector actors to identify potential opportunities and monitor the procurement process, fostering a more competitive marketplace. Government agencies and civic actors can utilize the data to analyze trends, identify potential irregularities, and implement strategies to increase vendor diversity, reducing opportunities for favoritism and collusion.”<sup>8</sup> Additionally, “open contracting generally aims to centralize and digitize procurement processes, creating greater reliability and integrity by

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<sup>5</sup> The Benefits of Open Contracting, *supra* note 4.

<sup>6</sup> Open Contracting Partnership, *Digitizing Public Procurement: Building Better, Data-Driven Processes and Systems*, <https://www.open-contracting.org/what-is-open-contracting/e-procurement/> (last visited May 1, 2025).

<sup>7</sup> The Benefits of Open Contracting, *supra* note 4.

<sup>8</sup> Open Contracting Partnership, *DIGITISING PUBLIC PROCUREMENT SYSTEMS TO PREVENT AND COMBAT CORRUPTION* (Dec 7, 2023), <https://www.unodc.org/documents/treaties/UNCAC/COSP/session10/NGO/CAC-COSP-2023-NGO61.pdf>

distancing decision-makers from bidders as well as creating efficiencies of scale by combining the collective buying power of governments. Allowing commercial entities to have access to the entire catalogue of available tenders creates obvious advantages as far as competition goes. It levels the playing field, reducing the advantages of incumbency as established players lose their ability to obtain new contracts by capitalizing on existing relationships with officials.”<sup>9</sup>

Open contracting provides entities, governments, and individuals with a risk-management strategy by being able to make informed decisions based off the public information regarding the contracts.<sup>10</sup> As a matter of fact, for businesses, transparent contracting reduces investment risks and lowers the cost of obtaining key information, enabling them to make well-informed decisions about whether to participate in bidding.<sup>11</sup> By boosting companies’ confidence in the procurement process and encouraging more robust competition, transparency also improves supplier efficiency, supports more innovative production methods, and expands access to vibrant and competitive local markets.<sup>12</sup>

### **III. Successful Open Contracting Studies**

Open contracting is at the forefront of every government’s agenda and continues to emerge on a global scale; the case studies of its success are therefore vitally important as other governments move to implement open contracting. “In 2015, the G20 recognized openness in contracting as a key element in its Anti-Corruption Open Data Principles and Principles for Promoting Integrity in Public Procurement. At the 2016 UK Anti-Corruption Summit, 14 countries committed to make public procurement open by default, proposing “a concrete vision

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<sup>9</sup> Karanicolas, Michael, *The Costs of Secrecy: Economic Arguments for Transparency in Public Procurement* (Jan 1, 2018) available at <https://ssrn.com/abstract=3408746>

<sup>10</sup> OECD, *Public Procurement*, <https://www.oecd.org/en/topics/policy-issues/public-procurement.html> (last visited Apr 30, 2025).

<sup>11</sup> The Benefits of Open Contracting, *supra* note 4.

<sup>12</sup> *Id.*

of accessible, useable data across the entire chain of public contracting” for the first time. Soon afterward, at the 2016 OGP Global Summit, the governments of Colombia, France, Mexico, the United Kingdom, and Ukraine founded the Contracting 5 to advance open contracting. The Paris Declaration on Open Government, signed by all members of OGP in 2016, pledged to promote open procurement as its first “collective action.”<sup>13</sup>

### **A. Increased Competition and Economic Inclusion**

Countries that have implemented open contracting principles in their procurement systems have increased competition, combated corruption, improved efficiency and value, and have improved environmental sustainability. “Over [50 governments](#) have an [open contracting program](#) in place, and major global institutions like the G7, UN, OECD, World Bank, IMF and more have endorsed the importance of open contracting.”<sup>14</sup> Every government has a goal and concern for promoting competition within their procurement systems. They want to ensure everyone is participating in the market.

Open contracting helps to promote competition and provide for economic inclusion. Ukraine is one of many countries that have seen this become true. Starting in 2015, Ukraine made standardized open data a central feature of its Prozorro e-Government Procurement (eGP) reforms, embracing the principle that “everyone sees everything.” This approach led to a significant rise in public trust and market competition. Public perception of corruption dropped by half, and the number of distinct suppliers engaging in government tenders grew by 45%. By

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<sup>13</sup> Open Government Partnership, *Global Report: Open Contracting* (May 29, 2019), [https://www.opengovpartnership.org/wp-content/uploads/2019/05/Global-Report\\_Open-Contract.pdf](https://www.opengovpartnership.org/wp-content/uploads/2019/05/Global-Report_Open-Contract.pdf).

<sup>14</sup> Open Contracting Partnership, *Evidence*, <https://www.open-contracting.org/impact/evidence/> (last visited May 1, 2025).

2017, 75% of small and medium-sized enterprises (SMEs) that submitted bids through Prozorro had won at least one public contract.<sup>15</sup>

Additionally, Ukraine’s e-procurement system is “built on open-source software, the system has been designed to make it possible for government bodies to conduct procurement deals electronically, in a transparent manner, while also making the state’s information about public contracts easily accessible online for anyone to see. Although it was initially conceived as a tool for fighting corruption, the potential benefits of the ProZorro system are much broader — increasing competition, reducing the time and money spent on contracting processes, helping buyers make better decisions and making procurement fairer for suppliers.”<sup>16</sup>

Since its launch, Ukraine’s ProZorro e-procurement system has become a global benchmark for how governments can open up procurement processes to public scrutiny and meaningful participation. The system publishes all stages of the procurement process—planning, tendering, awarding, contracting, and implementation—in real time and in a standardized, machine-readable format.<sup>17</sup> During its pilot phase, ProZorro helped over 3,900 government agencies and state-owned enterprises in Ukraine save more than UAH 1.5 billion (approximately US\$55 million).<sup>18</sup> The initiative’s success earned it a prestigious World Procurement Award in 2016 and led to the Ukrainian parliament enacting a new public procurement law mandating the use of ProZorro for all government contracts starting 1 August 2016.<sup>19</sup> Since then, the potential savings to the national procurement budget have continued to grow significantly.<sup>20</sup> “As of November 2016, they stand at an estimated UAH 5.97 billion (US\$233 million), with more than

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<sup>15</sup> Evidence, *supra* note 13.

<sup>16</sup> Open Contracting Partnership, *Everyone sees everything* (Nov, 28 2016), <https://medium.com/open-contracting-stories/everyone-sees-everything-fa6df0d00335>

<sup>17</sup> Everyone sees everything, *supra* note 15.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

15,000 buyers and 47,000 commercial suppliers using the new system.”<sup>21</sup> Furthermore, in 2015, Ukraine transferred responsibility for procuring medicines to international organizations, leading to a 40% reduction in prices. For example, the cost of Imatinib, a medication used to treat blood cancer, dropped to just 1/67th of its previous price.<sup>22</sup> “The number of people receiving treatment for conditions like HIV grew from 50,000 to 113,000 without the need for increased budget. In 2020, the agency saved an additional 21.5% of the budget on top of savings achieved by international organizations, resulting in some of the lowest cost for critical medicines in the region.”<sup>23</sup>

One of the goals behind open contracting is transparency. By being transparent with the public, the public feels more at ease and confident in participating within the procurement system because they can see the process and its results. As a matter of fact, “a World Bank survey of 34,000 companies in 88 countries found that competition was higher and kickbacks were fewer and smaller in places where transparent procurement, independent complaint procedures and external auditing are in place.”<sup>24</sup> Procurement insights help to improve every government’s procurement system but also to implement innovative mechanisms or systems to become adaptable and strategic.

One country that has aimed to improve its procurement system by becoming a leader in open contracting is the Netherlands. One of the major innovative ways the Netherlands has implemented open contracting has been the nation’s online tendering system, called TenderNed. The Dutch government is also one of the agencies furthest along in implementing eForms among

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<sup>21</sup> *Id.*

<sup>22</sup> Everyone sees everything, *supra* note 15.

<sup>23</sup> *Id.*

<sup>24</sup> Evidence, *supra* note 13.

the EU Member States.<sup>25</sup> All Dutch public authorities are required to publish tenders that exceed the threshold on the TenderNed platform, ensuring that businesses can find all related public information and documents in one place.<sup>26</sup> For tenders below the threshold, publication is optional.<sup>27</sup> “About 55% of the tenders visible on the TenderNed platform are published from a dedicated TenderNed application, which contracting authorities can use to manage all steps of the tendering process. The rest come from commercial applications.”<sup>28</sup> TenderNed also operates a dedicated team that analyzes procurement trends to enhance the value of their data. Their website frequently features insights on important topics, such as the top 10 public buyers that support innovation, the most frequently purchased items (identified by CPV codes), and the significant rise in the use of consultancy services.<sup>29</sup>

Another example of the efficiency behind transparency is Mexico. “In the state of Nuevo Leon, Mexico, a multistakeholder coalition implemented the Open Contracting for Infrastructure Data Standard to make public infrastructure procurement more transparent and efficient, increasing competition by 25% since 2017 with 93% of tenders having multiple bidders.”<sup>30</sup>

Not only does open contracting help by building public trust, but it also helps by reducing risks to governments by potential buyers being more invested in the tender being offered or sought. A study analyzing over 3.5 million government contracts across Europe found that each additional piece of information disclosed about a tender reduces the likelihood of receiving only

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<sup>25</sup> Georg Neuman, *Striving for data excellence: How the Netherlands’ TenderNed is enabling procurement insights for government and public users* (Jul 5, 2023), <https://www.open-contracting.org/2023/07/05/striving-for-data-excellence-how-the-netherlands-tendered-is-enabling-procurement-insights-for-government-and-public-users/>

<sup>26</sup> *Striving for data excellence: How the Netherlands’ TenderNed is enabling procurement insights for government and public users*, *supra* note at 25.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Evidence, *supra* note 13.

one bid.<sup>31</sup> This is important, as single-bid contracts pose governance concerns and tend to cost over 7% more on average.<sup>32</sup> By reducing the likelihood and risk of a single-bid contract, governments are promoting competition by encouraging new buyers to the market. In Paris, the use of negotiated housing contracts alongside increased transparency led to a 26% drop in bid prices and significantly lowered the likelihood of renegotiating those bids.<sup>33</sup>

Slovakia previously had issues during the bidding process when participants were excluded from tenders because the conditions of participation were illogical or unclear (such as requiring experience in fields that were not related to the award).<sup>34</sup> As a result, “in 2010 Slovakia introduced procurement reforms, including OCDS. The results were rewarding – a doubling of the average number of bidders and a decrease in the number of tenders with limited possible suppliers, contractors or service providers, and tenders which include solicitation and negotiation with only one source from 21% to 4%.”<sup>35</sup> Furthermore, the Czech Republic became encouraged by Slovakia’s example and as a result approved a procurement law enshrining open as the default: a government contract will not be official until is published.<sup>36</sup>

## **B. Preventing and Combating Corruption**

In terms of corruption within public procurement, it is a major concern and risk, as well as a major expense. As a matter of fact, “the OECD, the European Commission, and the UN Office of Drugs and Crime (UNODC) all cite public procurement as the largest corruption risk for governments. According to the UNODC, corruption reduces the value of a public contract by

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Evidence, *supra* note 13.

<sup>34</sup> Sanja Arizanović, *A recipe for a good shopping - how can open contracting change public procurement for the better in Serbia?* (Jul 21, 2021), <https://www.undp.org/serbia/blog/recipe-good-shopping-how-can-open-contracting-change-public-procurement-better-serbia>

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

10 to 25%.”<sup>37</sup> Additionally, it’s the point where public funds can slip into illicit financial channels. Open contracting offers improved, connected data that helps identify warning signs and trace the flow of money.”<sup>38</sup> In order for governments to ensure they are prepared to combat corruption, or even better, prevent it, it is imperative that the proper systems and mechanism are set in place. “In Ukraine, in just three years the DoZorro community of civil society and citizen procurement monitors flagged 21,000 tenders, 30% of which were resolved. More than 1,200 tenders were revised, 59 criminal charges pressed, and 198 sanctions issued.”<sup>39</sup>

When governments have systems in place to monitor corruption, they are being proactive and efficient. It shows the public that corruption will not be tolerated and that those involved in corruptive behavior will be held accountable. Nevertheless, it also helps with monitoring inconsistencies and discrepancies that could potentially indicate corruption in the respective systems. For example, in Ukraine, “watchdog groups like Transparency International and Eidos Center use bi.prozorro.org to spot suspicious contracts. The organizations told the news site Ukrayinska Pravda earlier this year that some healthcare facilities in Kiev were attempting to circumvent the e-procurement system by including unclear terms of reference for tenders or tailoring them to advantage certain suppliers. In particular, they found that one oncology center purchased cleaning mops using the vague description “a device with a nozzle and a holder.” Only one bidder applied, and 50 mops were procured for the equivalent of around US\$100 each.”<sup>40</sup>

Argentina is another country that has shown success in detecting corruption within its procurement system. In 1996, the City of Buenos Aires began gathering data on the prices paid

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<sup>37</sup> Global Report: Open Contracting, *supra* note 12.

<sup>38</sup> *Id.*

<sup>39</sup> Evidence, *supra* note 13.

<sup>40</sup> Everyone sees everything, *supra* note 15.

for various medical supplies across its 33 hospitals.<sup>41</sup> This enabled procurement officers to compare their spending with that of other hospitals and uncovered significant price variations for similar items.<sup>42</sup> In the early months of the initiative, both the price discrepancies and average costs dropped sharply, indicating that sharing price information can help control procurement expenses and potentially deter corrupt behavior among public officials.<sup>43</sup>

### **C. Improvement in Government Service Delivery and Efficiency**

Open contracting improves government service delivery and efficiency by applying digital and data driven resources to provide timely data and information for public services provided by the government. For instance, “Moldova has some of the highest rates of HIV and Hepatitis in Europe. Thanks to a collaboration between patients and the government on open contracting reforms, the country improved and increased treatment by saving 14.5% on medical procurement overall – including 19% saving on HIV medicines – and enabled real-time monitoring of \$40 million worth of medical contracts and medicine supply and delivery to hospitals.”<sup>44</sup>

Open contracting also improves government service delivery and efficiency by increasing transparency, thus encouraging greater citizen participation in public procurement. Up until the end of 2010, Georgia had a highly inefficient and paper-based procurement system.<sup>45</sup> As a result, the public was not able to access the documents related to the government’s procurement process.<sup>46</sup> In response, the Procurement Agency developed a fully electronic procurement

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<sup>41</sup> The Benefits of Open Contracting, *supra* note 4.

<sup>42</sup> *Id.*

<sup>43</sup> The Benefits of Open Contracting, *supra* note 4.

<sup>44</sup> Open Contracting Partnership, *Patients, Experts, and Openness: A Powerful Combination Therapy for Unaffordable Medicines in Moldova* (Nov. 23, 2021), <https://www.open-contracting.org/2021/11/23/patients-experts-and-openness-a-powerful-combination-therapy-for-unaffordable-medicines-in-moldova/>.

<sup>45</sup> Open Contracting Partnership, *How Georgia is Handling Procurement Transparency* (Feb. 3, 2014), [https://www.open-contracting.org/2014/02/03/how\\_georgia\\_is\\_handling\\_procurement\\_transparency/](https://www.open-contracting.org/2014/02/03/how_georgia_is_handling_procurement_transparency/).

<sup>46</sup> *Id.*

platform in-house, spending just over one million US dollars. The platform was launched within a year and ultimately helped save money for Georgian taxpayers.<sup>47</sup> Furthermore, “the platform has succeeded in increasing transparency in government procurement by eliminating a paper-based, bureaucratic system (often riddled with opaqueness and corruption) and turning it into a more efficient operation.<sup>48</sup> This has made it one of the most transparent government systems in the world. At least that we know of.”<sup>49</sup>

As discussed previously, Ukraine’s e-procurement system is one that is highlighted by many as a prime example of open contracting. For businesses, a major advantage of the ProZorro system is that it simplifies the contracting process, making it less expensive and less time-consuming to participate in tenders. The number of companies using the system to bid on public tenders has tripled since the new procurement law came into effect (there are now more than 47,000 bidders registered compared to around 14,000 in April 2016), with suppliers ranging from local businesses to multinational corporations.<sup>50</sup>

#### **D. Environmental Sustainability and Resilience**

There is an increasing trend towards environmental sustainability and resilience within public procurement, with open contracting assisting with improving these areas. This is reflected by concerns raised from the impacts of flooding, increased carbon dioxide emissions, lack of adequate public transportation systems, and lack of sustainable infrastructure. Mexico is one of those countries with a high population of individuals and highly polluted areas caused by carbon dioxide emissions. As a result, to upgrade its bikeshare system, Mexico City embraced open

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<sup>47</sup> *Id.*

<sup>48</sup> How Georgia is Handling Procurement Transparency, *supra* note 45.

<sup>49</sup> *Id.*

<sup>50</sup> The Benefits of Open Contracting, *supra* note 4.

contracting at every stage, from initial planning to final implementation.<sup>51</sup> Furthermore, the city needed to promote competition in a concentrated marketplace, learn more about the latest bike share technology and innovations, and provide better and expanded service at the same or lower budget.<sup>52</sup> Mexico City applied open contracting principles to create a transparent procurement process for expanding and modernizing its bike share system. A cross-departmental team adopted innovative strategies and a structured communication approach to actively engage international vendors and gather user feedback throughout the process.<sup>53</sup>

Procurement insights for government and public users is essential for creating a better environment. One country that has aimed to continuously improve sustainability, especially in procurement, is the Netherlands. In 2005, the Dutch government established PIANOo as a knowledge network to support procurement professionals and contracting authorities.<sup>54</sup> Its primary goal was to enhance the professionalism, efficiency, and compliance of public procurement.<sup>55</sup> Over time, PIANOo expanded to include a dedicated section on Sustainable Public Procurement (SPP), which provides educational resources, practical guidance, and a criteria tool to help public entities integrate environmental considerations into their tendering processes.<sup>56</sup>

#### **IV. The Relationship Between Open Contracting and Open Data in The United States**

The United States has a strong commitment to open data which intersects with open contracting. “Data.gov is the federal government's open data site, and aims to make government

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<sup>51</sup> Kaye Sklar, Oscar Hernández and Mariana Lopez, *Peddling openness: Mexico City's journey to procure a better bike share system* (Jan 27, 2022) <https://www.open-contracting.org/2022/01/27/peddling-openness-mexico-citys-journey-to-procure-a-better-bike-share-system/>

<sup>52</sup> Peddling openness: Mexico City's journey to procure a better bike share system, *supra* note 41.

<sup>53</sup> *Id.*

<sup>54</sup> Open Contracting Partnership, *Creating a knowledge network for procurement officers in The Netherlands* <https://sustainable.open-contracting.org/creating-a-knowledge-network-for-procurement-officers-in-the-netherlands>

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

more open and accountable. Opening government data increases citizen participation in government, creates opportunities for economic development, and informs decision making in both the private and public sectors.”<sup>57</sup> The United States has a history of being dedicated to open data as shown from previous administrations in passing related legislation. “On May 9, 2013, President Obama signed an executive order that made open and machine-readable data the new default for government information. Making information about government operations more readily available and useful is also core to the promise of a more efficient and transparent government.”<sup>58</sup>

Furthermore, President Trump signed an open data law in 2019 as part of the government’s commitment to transparency and accountability. “Data.gov implements The OPEN Government Data Act (Title II of the Foundations for Evidence-Based Policymaking Act of 2018, Public Law 115-435). The OPEN Government Data Act makes Data.gov a requirement in statute, rather than a policy. It requires federal agencies to publish their information online as open data, using standardized, machine-readable data formats, with their metadata included in the Data.gov catalog.”<sup>59</sup>

Additionally, beyond the federal government, numerous states, cities, and counties in the United States have launched open data sites.<sup>60</sup> The six highest-ranking states are Hawaii, Illinois, Maryland, New York, Oklahoma, and Utah.<sup>61</sup> Each of these states has implemented an open data policy, with New York doing so solely through an executive order, while the others either passed

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<sup>57</sup> U.S. General Services Administration, *Open Government*, <https://data.gov/open-gov/> (last visited May 1, 2025).

<sup>58</sup> Executive Office of the President, *Open Government*, <https://obamawhitehouse.archives.gov/open> (last visited May 1, 2025).

<sup>59</sup> GSA, *Open Government*, <https://data.gov/open-gov/> (last visited May 1, 2025)

<sup>60</sup> Laura Drees and Daniel Castro, *State Open Data Policies and Portals* (Aug 18, 2014), <https://datainnovation.org/2014/08/state-open-data-policies-and-portals/>

<sup>61</sup> *Id.*

legislation or issued both an executive order and legislation.<sup>62</sup> These policies mandate that open data portals publish fundamental government information, such as expenditure data, along with other agency data, and ensure that the data is available in machine-readable formats.<sup>63</sup> The portals feature comprehensive open data catalogs, are easy to navigate, and offer data in accessible machine-readable formats.<sup>64</sup>

The key terms derived from the definition of open contracting are open and accessible which relate to open data. In the context of open data, open has various definitions but is generally defined or referred to as “digital data that is made available with the technical and legal characteristics necessary for it to be freely used, re-used, and redistributed by anyone, anytime, anywhere.”<sup>65</sup> The key indicators for determining whether the open contracting principles have been implemented are whether the data provided is accessible and machine-readable.

In terms of accessibility and open, the data should be easy to obtain, for example, a website or portal. There should not be any obstacles or limitations in accessing the data, and “should make datasets free to access, with organizations only charging if they incur any reproduction costs (printing and posting information).”<sup>66</sup> For redistribution and reusing purposes, there should not be limitations on being able to reuse the data and share them with other individuals, entities, or platforms. Examples of open data that are accessible include but are not limited to: publishing open data on central portals, or in ways that can increase its accessibility, so that it can be easily discoverable and accessible for users;<sup>67</sup> and releasing data in open formats

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<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> State Open Data Policies and Portals, *supra* note 60.

<sup>65</sup> G20, *Anti-Corruption Open Data Principles* (2015), <https://www.g20.utoronto.ca/2015/G20-Anti-Corruption-Open-Data-Principles.pdf>.

<sup>66</sup> Opendatasoft, *What is open data? - Practical Guide* <https://www.opendatasoft.com/en/what-is-open-data-practical-guide/>

<sup>67</sup> *Anti-Corruption Open Data Principles*, *supra* note 49.

to ensure that it is available to the widest range of users to find, access, understand and use.<sup>68</sup> “In many cases, this will include providing data in multiple, standardized formats, so that it can be processed by computers and used by people... Releasing open data that is free of charge, under an open and unrestricted license and without mandatory registration, allowing users to choose to download data without being required to identify themselves.”<sup>69</sup> Additionally, it must be available to everyone, “whether private sector companies, individuals, researchers or public organizations . . . for whatever purpose.”<sup>70</sup>

The other aspect of open contracting data is that it is machine readable. Machine readable is defined as “information or data that is in a format that can be easily processed by a computer without human intervention while ensuring no semantic meaning is lost.”<sup>71</sup> Another definition is “data in a data format that can be automatically read and processed by a computer, such as CSV, JSON, XML, etc. Machine-readable data must be structured data.”<sup>72</sup>

## **V. Open Contracting in The United States is Accessible and Machine-Readable**

Open contracting in the United States is increasingly embracing principles of transparency, accessibility, and technological innovation through the adoption of machine-readable formats. By making government procurement data open and standardized, agencies at all levels are working to ensure that contracting processes are more transparent, efficient, and accountable to the public. Accessible and machine-readable contracting information not only empowers journalists, watchdogs, and citizens to analyze spending and detect corruption, but also enables developers and businesses to build tools that improve procurement outcomes. This

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<sup>68</sup> *Id.*

<sup>69</sup> Anti-Corruption Open Data Principles, *supra* note 49.

<sup>70</sup> What is open data? - Practical Guide, *supra* note 50.

<sup>71</sup> TODO Project, *Machine-Readable (File or Data or Format)*, <https://todo-project.eu/en/node/622.html> (last visited May 1, 2025).

<sup>72</sup> Open Knowledge Foundation, *Machine-readable*, <https://opendatahandbook.org/glossary/en/terms/machine-readable/> (last visited May 1, 2025).

shift toward open contracting reflects a broader commitment to open government and data-driven decision-making across the public sector.

The most current example of the United States efforts to ensure open data is the current administration's executive order on increasing transparency with respect to foreign funding at U.S. colleges and universities.<sup>73</sup> "The Order directs the Secretary of Education to: Reverse or rescind any actions undertaken by the prior Administration that permit higher education institutions to obscure details of their foreign funding sources; Require universities to disclose specific details about foreign funding, including the true source and purpose of the funds; Provide the American people with greater access to information about foreign funding to higher education institutions; and Coordinate with other federal departments/agencies to conduct audits and investigations to ensure compliance with laws concerning disclosure of foreign funding."<sup>74</sup>

The Biden administration also made efforts to be transparent in procurement through its Made in America waivers. "As directed by the Executive Order on Ensuring the Future is Made in All of America by All of America's Workers (Executive Order 14005), the Office of Management and Budget (OMB) is publishing agencies' requests for exceptions from Made in America laws online. These re-requests include a justification for why agencies are not using goods, products, or materials from the United States, as well as OMB's decision on the waiver. By making these waivers available online in an easy-to-access format, the Government can help members of the public better understand what their tax dollars are supporting. This transparency can also help with accountability for requested waivers and members of the public can make comments on waivers listed on the website, empowering civil society to understand where the

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<sup>73</sup> Tessa Capeloto, *Trump Issues Executive Order Aimed at Foreign Influence on American Campuses* (Apr 25, 2025) <https://www.wiley.law/alert-Trump-Issues-Executive-Order-Aimed-at-Foreign-Influence-on-American-Campuses>

<sup>74</sup> *Id.*

Federal Government is meeting its Made in America goals and where the Federal Government could be doing more to realize those objectives.”<sup>75</sup>

### **A. Accessible**

The United States has not officially adopted Open Contracting Data Standard (OCDS) at the federal level, but several cities and states have experimented with or implemented it voluntarily. The OCDS is a free, non-proprietary open data standard used for public contracting and has been adopted by more than 50 governments worldwide.<sup>76</sup> It is the only global open standard dedicated to the disclosure of information across all stages of public contracting—planning, procurement, and implementation—and has received endorsements from the G20, G7, and major international bodies.<sup>77</sup> OCDS provides guidance on how to publish both data and documents throughout the entire contracting process.”<sup>78</sup>

### **B. Machine-Readable**

The United States federal procurement system is structured in a way that allows for machine-readable access to a variety of government contracts, procurement data, and other related information. It is organized in several ways that allow machines (such as software, scripts, or bots) to retrieve, process, and analyze the data. The United States has a variety of systems and websites that allow for government contracts to be machine readable. One example is USAspending.gov. It is a government website that offers detailed data on federal spending, including contracts. The data provided on the platform are available in machine-readable formats such as: JSON (JavaScript Object Notation), CSV (Comma Separated Values), and XML

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<sup>75</sup> Open Gov’t Partnership, *Innovative Techniques to Engage Public in Public Procurement (Commitment ID US0124)*, <https://www.opengovpartnership.org/members/united-states/commitments/US0124/> (last visited May 1, 2025).

<sup>76</sup> Open Contracting Partnership, *Open Contracting Data Standard*, <https://www.open-contracting.org/data-standard/> (last visited May 1, 2025).

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

(Extensible Markup Language)<sup>79</sup>. The data on USAspending.gov is highly structured and can be accessed using APIs, making it easy for developers to query and process information about contracts, grants, and other federal expenditures.<sup>80</sup>

## **VI. Federal Procurement Resources That Are Not Accessible**

While there are other federal procurement resources that facilitate government procurement electronically, they are not deemed to be fully accessible under the principles of open contracting. “Data on pending and approved federal purchases through IDIQ (“framework”) contracts, for example, are notoriously incomplete. And data on subcontract awards, which are supposed to be published for first-tier subcontracts, are widely believed to be only partially reported and published.”<sup>81</sup> Furthermore, “the United States does not have a single electronic portal for public procurement notices/summaries.”<sup>82</sup>

Furthermore, at the state level, many states require companies to register before they can access contract information or submit bids. Each state sets its own registration rules, and some impose fees for registering as a bidder. These requirements create additional barriers to market entry. EU companies, in particular, must deal with a fragmented system involving hundreds of procurement platforms and face numerous challenges just to complete the bidder registration process.<sup>83</sup>

The examples of non-transparent systems in the federal government can loom quite large. The General Services Administration (GSA) eBuy platform is a government tool used for federal agencies to procure goods and services from approved vendors, typically through GSA

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<sup>79</sup>U.S. Dep’t of the Treasury, USAspending.gov API, <https://api.usaspending.gov> (last visited May 1, 2025).

<sup>80</sup> USAspending.gov API, *supra* note 67.

<sup>81</sup> Christopher R. Yukins, *The U.S. Federal Procurement System: An Introduction 2017* UPPHANDLINGSRÄTTSLIG TIDSKRIFT 69, available at <https://ssrn.com/abstract=3063559>.

<sup>82</sup> European Commission, Access2Markets, Barrier ID 11190, [https://trade.ec.europa.eu/access-to-markets/en/barriers/details?isSps=false&barrier\\_id=11190](https://trade.ec.europa.eu/access-to-markets/en/barriers/details?isSps=false&barrier_id=11190)

<sup>83</sup> *Id.*

Schedules or Government-wide Acquisition Contracts (GWACs). The GSA eBuy system is not fully accessible under the principles of open contracting because it limits public access to specific users and lacks machine-readable format.<sup>84</sup> The GSA eBuy's primary users are federal contracting officers and government-approved vendors who participate in the GSA Schedule and other government procurement programs.<sup>85</sup> In other words, the platform is restricted to specific users (government employees and registered vendors) rather than being open to the general public. This limitation means that eBuy does not offer open access to procurement data for anyone who wants to inspect or analyze it. Furthermore, unlike systems like USAspending.gov which provides detailed and machine-readable datasets about federal contracts, the data from eBuy is not regularly published or provided in bulk in formats like CSV, JSON, or XML. While it plays a critical role in government procurement, it does not provide open, machine-readable access to all its data, especially in ways that align with the goals of open data for transparency and public analysis.

There are discussions and questions as to whether the consolidation of governmentwide acquisition contracts, or GWACs, and other common purchases under the GSA (and thus eBuy) is going to take tens of billions of dollars in contracting out of the "open." While this streamlining aims to enhance efficiency and reduce administrative burdens, consolidation may obscure this transparency by centralizing information, making it harder for stakeholders and the public to access specific contract details.<sup>86</sup>

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<sup>84</sup> Federal Schedules, Inc., *GSA eBuy - RFQs for GSA Contractors' Eyes Only*, <https://gsa.federalschedules.com/resources/gsa-ebuy-rfq-for-gsa-contractors-eyes-only/> (last updated May 22, 2019).

<sup>85</sup> *Id.*

<sup>86</sup> Holland & Knight LLP, *Contract Consolidation Under GSA Could Hurt Innovation*, <https://www.hklaw.com/en/news/intheheadlines/2025/03/contract-consolidation-under-gsa-could-hurt-innovation> (Mar. 24, 2025).

Another example of a federal procurement resource that is not accessible is SAM.gov because it lacks comprehensive transparency, standardization, and accessibility across the entire public procurement process. While it provides access to certain federal contract and assistance data, the information is fragmented across multiple platforms, making it difficult to follow the full lifecycle of a contract—from planning to award to implementation. Additionally, SAM.gov does not publish data in the Open Contracting Data Standard (OCDS) format, limiting interoperability and usability for analysis or reuse. Bulk data access is restricted, and some information is redacted or delayed due to exemptions and security concerns, reducing public oversight. These limitations prevent SAM.gov from aligning with the open contracting principles of openness, completeness, timeliness, and user-centered design.

The e-procurement system, Automated Acquisition Management System (AAMS), widely used by US federal agencies to support their procurement processes lacks accessibility and data accuracy. “AAMS is a web-based tool that assists agencies with all aspects of the acquisition lifecycle, including writing Statements of Work and Requests for Proposals.”<sup>87</sup> This e-procurement system lacks accessibility because it is limited to specific users and not all the data is accessible, but rather is restricted even to some of those specific users. “Authorized NRC staff (e.g., Contracting Officer, Contract Specialist, Project Officer, Voucher Examiners) will have access to the data as it pertains to their contract management responsibilities... Access will be controlled by multiple-level access controls.”<sup>88</sup>

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<sup>87</sup> U.S. Env'tl. Protection Agency, *Review of Federal E-Procurement Systems for Sustainable Purchasing Integration* (Mar. 23, 2015), <https://www.epa.gov/sites/default/files/2015-09/documents/eprocurement.pdf>.

<sup>88</sup> U.S. Nuclear Regulatory Commission, *Automated Acquisition Management System (AAMS) Privacy Impact Assessment* (Apr. 20, 2004), <https://www.nrc.gov/docs/ML0707/ML070720307.pdf>.

The lack of open contracting in the U.S. federal procurement system extends as well to the chief enforcement tool in federal contracting: the False Claims Act (FCA). While the FCA is a powerful legal tool for fighting fraud against the United States government, particularly in procurement and contracting, it does not fully align with open contracting principles. The FCA does not fully align with open contracting principles because it does not afford ready public access to information on fraud – a lack of accessibility. Under the FCA, qui tam lawsuits are filed under seal—often for months or years—while the Department of Justice investigates. During this time there is no access to the case. Details of alleged fraud in public procurement are hidden, despite the public's right to know how taxpayer money is spent. Open contracting emphasizes proactive disclosure of red flags, not secrecy.

Public procurement plays a pivotal role in shaping economies by directing government spending toward goods, services, and infrastructure that drive growth, create jobs, and influence market behavior. In the United States, the government allocates \$4.4 trillion each year on goods, services, and labor.<sup>89</sup> For small businesses, securing government contracts can lead to hiring additional staff, expanding their operations, and boosting the local economy by creating demand for services like accounting and cleaning.<sup>90</sup> However, small businesses often face challenges in obtaining these contracts due to complicated procurement processes and systems that tend to favor large, established companies.<sup>91</sup>

## **VII. What The United States Could Learn and Implement**

Although the United States already has some strong procurement transparency systems in place (USAspending.gov and SAM.gov), there is still plenty the country could learn and

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<sup>89</sup> Open Contracting Partnership, *A Focus on People: Delivering Better Public Procurement* (Nov. 19, 2024), <https://www.open-contracting.org/2024/11/19/a-focus-on-people-delivering-better-public-procurement/>

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

implement from global best practices in open contracting to make its public procurement more efficient, transparent, and accountable.

### **A. Improve Data on The Full Contracting Lifestyle**

Right now, most of the United States federal procurement systems focus on pre-award data (e.g., bid announcements). “Open contracting principles call for information to be published in a timely manner at all stages of the public contracting process, from planning, tender, award, and contract through to implementation. Laws and regulations should clearly identify publication requirements at each stage, ideally through an online information system, including in contracts that are awarded through non-competitive processes.”<sup>92</sup> In the United States there is less visibility into: contract implementation, payments and delivery milestones, and performance evaluations. “Beyond these, procurement authorities should consider expanding publication requirements to include publication of draft specifications before tendering, publication of bid evaluation reports, publication of non-competitive award data, contract data, changes to the contract after signing, details of implementation, implementation progress, and contractor performance. This is particularly important for high-value procurement (including high-value non-competitive procurement).”<sup>93</sup>

It is important there is access and visibility into these areas because problems often arise after contracts are signed and more. Without implementation data, it is hard to hold contractors accountable or learn from past projects. As a result, the United States should establish clear requirements for required reporting on contract implementation and outcomes, not just awards. Such requirements at a minimum should include procurement plans; tender notices in full detail,

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<sup>92</sup> Open Contracting Partnership, *Open Contracting Legislative Guide* (Oct. 2021), <https://www.open-contracting.org/wp-content/uploads/2021/10/OCP2021-OCLegislative-Guide.pdf>.

<sup>93</sup> *Id.* at 78.

including links to bidding documents; award notices, including prices and reasoning (bid evaluation reports); implementation progress (physical and financial) and contract variations; feedback/complaints and decisions; and sanctioned or restricted companies.<sup>94</sup>

## **B. Implement and Enforce Publication Requirements**

To strengthen transparency and accountability in federal procurement, it is essential to enforce clear publication requirements and deadlines, while systematically managing exemptions to ensure consistent and timely disclosure of contracting data. “Strong publication requirements are of little use unless they can be effectively enforced to help ensure data quality. At the same time, we recommend governments try to minimize the risk of non-compliance by implementing digital procedures with pre-defined processes and checks that automate the publication of information as part of the workflow.”<sup>95</sup> Enforceability within the United States federal procurement process is inherently restrictive due to the decentralized nature of procurement systems and the complex web of regulations governing them. Furthermore, while laws such as the Freedom of Information Act (FOIA) support transparency, they often lack the specificity and enforcement mechanisms needed to ensure timely and comprehensive disclosure of procurement data.

Broad exemptions implemented in government contracts presents issues of transparency and accountability. “The most common types of exemptions seek to protect national security, the national interest, law enforcement and court proceedings, fair competition, or the privacy of individuals. In the United States, for example, confidentiality of the offeror/ contractor information is very common. However, general provisions enabling confidentiality to protect “the commercial interests of suppliers” or “fair competition” present a significant loophole to

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<sup>94</sup> Open Contracting Legislative Guide, *supra* note 75.

<sup>95</sup> *Id.*

transparency requirements in modern procurement legislation.”<sup>96</sup> Therefore, for purposes of open contracting, it is highly recommended that these exemptions shift from broad to as narrow as possible.

The more specific the exemptions, the more transparent the system becomes. “For example, the publication of prices, the results of the evaluation, including the justification for the award, and the identity of the contract recipient, and any statements of beneficial ownership provided should be explicitly required. We also recommend explicitly stating when information should be kept confidential and when it should be disclosed (for example, communications may be kept confidential during the deliberation process but should then be disclosed after award).”<sup>97</sup> Additionally, those general provisions enabling confidentiality as a means to protect “the commercial interests of suppliers” or “fair competition” have been shown in studies to not necessarily be a fact.

“The Open Contracting Partnership’s Mythbusting Confidentiality in Public Contracting consulted with over 70 experts across government, business, and civil society from more than 20 countries, included comparative legal research in seven countries (Chile, Colombia, France, India, Mexico, Nigeria, and Peru) in addition to studies of recent public tenders in eight countries (Australia, Canada, Chile, Colombia, Georgia, New Zealand, Ukraine, and the UK). The research found almost no examples of commercial harm to companies from disclosing contracting information and a multitude of benefits, including improved competition and public probity.”<sup>98</sup>

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<sup>96</sup> Open Contracting Legislative Guide, *supra* note 75.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

### C. Promote Civic Monitoring and Participation

Countries such as Ukraine use open contracting to involve citizens and watchdog groups in tracking public projects through platforms like ProZorro and Civic Monitor to prevent and combat corruption.<sup>99</sup> The reasoning and importance behind this initiative is because citizens often spot issues government auditors miss, especially in local projects. “Supporting civic participation in the procurement process is a fundamental element of open contracting and crucial to its success. Engaging with contractors, CSOs and citizens can provide governments with much needed feedback about the performance of contracts, as well as instill confidence in potential bidders that irregularities will be addressed. Georgia’s complaint mechanism is exemplary.”<sup>100</sup>

Although the United States is well-known for its exemplary whistleblower protections, the process of reporting suspicious behavior can become even better if an electronic procurement platform were implemented. Currently, to file a whistleblower complaint with the federal government, a whistleblower (relator) must first determine which federal agency's Office of Inspector General (OIG) is responsible for the contract or grant in question. In the United States there are various ways to file the complaint, however in some circumstances the whistleblower is limited to specific means of reporting the wrongdoing depending on the agency: online forms, hotlines, and written reports (paper-based). Hotlines are discouraged by some because they are said to be monitored by those in power. “However, some whistleblower programs (external) have dedicated phone hotlines where you can speak directly with a representative and report your

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<sup>99</sup> Digitizing Public Procurement: Building Better, Data-Driven Processes and Systems, *supra* note 6.

<sup>100</sup> Open Contracting Partnership, *Why Open Contracting Is the Most Important Commitment* (Oct. 21, 2015), [https://www.open-contracting.org/2015/10/21/why\\_open\\_contracting\\_is\\_the\\_most\\_important\\_commitment/](https://www.open-contracting.org/2015/10/21/why_open_contracting_is_the_most_important_commitment/)

concerns. This might be preferable if you have questions or require clarification during the filing process.”<sup>101</sup>

Countries such as Georgia that have implemented electronic complaint platforms are paving the way for providing transparent procurement data. “Users of the procurement website can also file online complaints if there has been a violation of the law. Such complaints can put a tender on hold for up to ten days – until a dispute review board which includes a representative from Transparency International Georgia, has discussed the complaints and decided on how to proceed. Again, all complaints and decisions by this Board are published online. Furthermore, the central government’s bank account is linked to the system. This linkage allows the public to see transactions made by government entities (who have to upload a procurement plan with the purchases they have budgeted for) and the days these transactions were made.”<sup>102</sup> By following Georgia’s example, the United States could create user-friendly platforms for public feedback and contract tracking by partnering with civil society to train communities on how to use procurement data and report suspicious behaviors.

#### **D. Link Procurement to Performance Outcomes**

In places like Chile and the U.K., procurement is increasingly tied to outcomes-not just inputs and cost. It is important to know if a contract actually solved the problem it was meant to address (e.g., reducing homelessness, improving transit) in order to track progress or flaws that need improvement. By building systems that track and publish whether public services met their goals, not just whether money was spent, a government can better gauge whether the current system or process in place is functional.

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<sup>101</sup> Kohn, Kohn & Colapinto LLP, *How to File a Whistleblower Complaint: An Essential Guide*, <https://kkc.com/frequently-asked-questions/how-to-file-a-whistleblower-complaint-an-essential-guide/> (Oct. 22, 2024).

<sup>102</sup> How Georgia is Handling Procurement Transparency, *supra* note 35.

## **E. Implementing E-Procurement Systems That Are Accessible**

Improving or reforming e-procurement systems is one of various ways to implement accessibility. It has the potential to save governments and businesses billions in transaction costs, while enhancing competition, fostering economic inclusion (particularly for small businesses), and promoting public integrity. In fact, the Copenhagen Consensus Centre (2023) ranks a comprehensive e-GP system as one of the top 10 investments for a country to reach the UN Sustainable Development Goals.<sup>103</sup> The United States still relies on paper-based procurements processes or does not have a user-friendly e-procurement platform that fully aligns with the open contracting principles. As mentioned previously, the GSA eBuy is a prime example. “A successful e-GP project needs well-defined goals, user-centered teams and a clear change management process.”<sup>104</sup> A well-designed e-procurement system, when accessible and developed with a focus on user needs, can lead to significant efficiencies. By utilizing digital tools, it can connect suppliers with potential buyers, facilitate transactions, and manage contracts. Additionally, it can automate the sharing of information in accessible, open formats, which not only promotes public trust but also enables effective digital monitoring.

## **F. Official Adoption of the OCDS**

Although the United States has taken steps to implement and adopt the open contracting principles of the OCDS, the federal government could fully and officially adopt the OCDS in the same manner other countries have. “Following OCDS rules and guidance will help you and your users to: Access clear definitions for the meaning, structure and format of your data, access a growing ecosystem of reusable tools and methodologies for working with OCDS data, compare

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<sup>103</sup> Digitizing Public Procurement: Building Better, Data-Driven Processes and Systems, *supra* note 6.

<sup>104</sup> *Id.*

your data with other publishers' data to examine value for money and other types of analysis, Check the structure, format and quality of your data against the OCDS schema"<sup>105</sup>

## **VIII. Conclusion**

While the United States has made strides toward enhancing transparency in federal procurement, significant challenges remain in achieving truly open contracting. This paper's analysis highlights persistent fragmentation and inconsistency across key government platforms, which undermines public accountability and limits the potential of procurement data to inform policy and oversight. Aligning more closely with the OCDS by officially adopting it, and parallel reforms such as accessible e-procurement systems and expanded data access throughout the contract lifecycle, are critical steps forward. These improvements would not only strengthen transparency and competition but also support more effective, data-driven governance across the procurement landscape, both in the United States and abroad.

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<sup>105</sup> Open Contracting Partnership, *How Does the OCDS Work?*, <https://standard.open-contracting.org/latest/en/primer/how/> (last visited May 1, 2025).