

July 21, 2015

The President
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear Mr. President:

We understand that the White House, and specifically the Office of Science and Technology Policy (OSTP), has formally launched development of the Third Open Government National Action Plan (NAP), which will cover the years 2016 and 2017. This will be an important opportunity for the Obama Administration to consolidate the gains in transparency that it has championed over the past six years and to institutionalize them for the future. Although we recognize that the plan is only in its earliest conceptualization phase, we want to take this opportunity to propose two areas—contract transparency and open policy making—where progress could make a significant, positive difference for global development.

The first is in the area of contract transparency. Through the ForeignAssistance.gov website and participation in the International Aid Transparency Initiative (IATI), the United States has made steady, though incomplete, progress toward documenting and publishing official aid flows. However, foreign assistance accounts for only a small portion of the resources that are available for international development, and illicit financial flows out of the developing world exceed the total of aid and investment combined. Therefore, transparency about other financial flows is essential.

Because corruption is so often linked to government contracting processes, the release of detailed data around contract terms, corporate ownership, and payments to governments, including tax payments, would vastly enhance efforts to hold governments accountable for delivering results. While the Extractive Industries Transparency Initiative (EITI) covers contracts with mining and natural resource extraction, other industries, such as construction, transportation, health, telecommunications and agriculture, are not included.

Moreover, as recognized by the EITI in the 2013 Standard, the collection and publication of the actual true owners of companies that receive government contracts (known as a “beneficial owner”) is essential to combatting corruption. Beneficial ownership transparency reduces incidents of conflicts of interests and cronyism in contracting, and it prevents individuals who are prohibited from winning contracts due to suspension, debarment or criminal conviction from evading those bans.

To date, 11 countries have signed up to the EITI’s beneficial ownership pilot scheme; and as of June 2015, six countries have released EITI reports with information about company beneficial ownership information included.¹ Beneficial ownership disclosure is due to become a mandatory EITI requirement as of January 2016, as per the 2013 EITI Standard. The National Action Plan should commit the U.S. government to collecting and publishing beneficial ownership information as a part of implementing EITI in this country. The U.S. Government, as a member of the EITI International Board, should also lead the way in ensuring the proper and timely implementation of the beneficial ownership requirement by January 2016.

¹ Extractive Industries Transparency Initiative, “Pilot project: Beneficial Ownership,” accessed at <https://eiti.org/pilot-project-beneficial-ownership>.

To increase transparency and accountability, the National Action Plan should also commit to open contracting and to collecting beneficial ownership for all companies that bid for U.S. government contracts, or operate or invest in extractive assets. All beneficial ownership, award and contract information should be made publicly available for free and in an open data format using, for example, the Open Contracting Data Standard.

In fact, statistics have shown a reduction in costs, fraud and corruption related to the contracting process when linked to open contracting.² The U.S. has already committed to increase transparency around the beneficial owners of American companies through the Open Government Partnership, G8 and G20, and open contracting and publishing beneficial ownership information for all companies receiving U.S. government contracts would be a natural progression for these commitments.

The United States could set an important example in this regard by publishing its own contracts and grant agreements, or at the very least a standard set of information about each that includes key details necessary for holding implementers accountable. Work may be required to ensure that sensitive and proprietary business information is protected, but the Center for Global Development's Working Group on Contract Publication has examined these issues and issued an in-depth report addressing potential concerns.³

The National Action Plan should also include commitments to support the creation and use of an international Legal Entity Identifier system, and to publish beneficial ownership information of all companies registered within the United States.

The second area that should be included in the next NAP is open policymaking. To date, most U.S. Government transparency initiatives have focused on increasing the availability of information. While this is a vital first step, the next stage of transparency should include greater participation in policymaking and priority setting, by establishing regularized and inclusive feedback loops.

In the foreign assistance arena, certain agencies have consistently demonstrated a willingness to engage external stakeholders in decision making. The Millennium Challenge Corporation (MCC) includes civil society representatives on its Board of Directors and the U.S. Agency for International Development has informally adopted a practice of releasing new policies for comment before they are finalized.

The old practices of publishing regulations in the Federal Register and establishing a public comment period are necessary, but outdated. They do not include agency priorities, strategies and policies, only rulemaking, and they do not make use of technological innovations that can make the process more inclusive and open. Nor are there regular and reliable opportunities for program beneficiaries, here in the U.S. and abroad, to provide information about how programs and policies are functioning. Such a system might have prevented the tragic delays and cover-ups of malfunctions in health facilities for our veterans.

² Charles Kenny with Jonathan Karver, "Publish What You Buy, The Case for Routine Publication of Government Contracts," August 2012, accessed at http://www.cgdev.org/files/1426431_file_Kenny_Publish_What_You_Buy_FINAL.pdf.

³ Center for Global Development, "Publishing Government Contracts: Addressing Concerns and Easing Implementation," 2014, accessed at <http://www.cgdev.org/sites/default/files/publishing-government-contracts-report.pdf>.

Excellent models of open policymaking already exist for us to draw upon. For instance, the UK government conducts public consultations on agency websites, in which draft documents are published, specific questions are posed, and comments are welcomed from all interested parties within a given time period, and then posted on the Internet. In our foreign assistance programs, particularly in operating environments as difficult as Pakistan and Afghanistan, we have pioneered fraud hotlines and local monitoring networks that could be replicated here at home.

Putting these ideas into action would no doubt require a great deal of thought and preparation. We hope you will agree that they are worth pursuing, and we would be happy to work with you to flesh out the details.

Thank you very much for soliciting our input to this process, and we look forward to hearing from you.

Sincerely,

Advocacy for Principled Action in Government
Alliance for a Just Society
American Sustainable Business Council
Center for Effective Governance
Center for International Environmental Law
Citizens for Tax Justice
EG Justice
Enough Project
Fair Share
Financial Accountability and Corporate Transparency (FACT) Coalition
Global Financial Integrity
Global Integrity
Global Witness
Government Accountability Project
iSolon.org
Jubilee USA Network
Main Street Alliance
Missionary Oblates of Mary Immaculate
New Rules for Global Finance
Open Contracting Partnership
OpenTheGovernment.org
Oxfam America
Public Citizen
Publish What You Pay
Sunlight Foundation
Transparency International – USA
U.S. Public Interest Group (PIRG)

cc: Shaun Donovan, Director, Office of Management and Budget
Mary Beth Goodman, Senior Director Development & Democracy, National Security Council
Corinna Zarek, Senior Advisor for Open Government to the U.S. Chief Technology Officer, Office
of Science and Technology Policy