

March 20, 2023

Mr. Himamauli Das
Acting Director
Financial Crimes Enforcement Network
U.S. Department of the Treasury
P.O. Box 39
Vienna, VA 22183

Submitted electronically via <https://www.regulations.gov>

Re: Agency Information Collection Activities; Proposed Collection; Comment Request; Beneficial Ownership Information Reports

Docket No.: FINCEN-2023-0002 and OMB Control No.: 1506-0076

Dear Acting Director Das,

This letter responds to a notice and request for comment regarding the Intake Form proposed by Financial Crimes Enforcement Network (FinCEN) of the U.S. Department of Treasury (Treasury) to collect Beneficial Ownership Information (BOI) from reporting entities, pursuant to the Corporate Transparency Act (CTA).

This letter was drafted by the Open Contracting Partnership, a registered 501(3)c organization based in Washington, D.C. which operates globally in over 50 countries to promote open, transparency, effective public procurement as a critical component of integrity in public financial management. We provide expertise to governments and multilateral institutions including the UN Organization on Drugs and Crime, the International Money Fund, the World Bank, and a number of regional development banks on integrity in public procurement in line with the UN Convention Against Corruption, of which the United States is a party. We host the Open Contracting Data Standard, a global digital public good that is freely available to appropriately structure and publish data on public procurement in formats that are easily accessed and analyzed for insights on competition, integrity risks, overall market health, supplier performance, supplier diversity, and more.

Public procurement is a government's number 1 corruption risk, with 57% of OECD anti bribery cases involving a public contract with a company. Understanding who benefits from winning public contracts is essential to mitigating conflicts of interest, protecting national security, ensuring free and fair market competition, and understanding who the government is really doing business with.

The Financial Action Task Force recommendation number 24 states:

“The revisions to Recommendation 24 will require countries to follow a risk-based approach and consider the risks of legal persons in their countries. They must assess and address the risk posed by legal person, not only by those created in their countries, but also by foreign-created persons which have sufficient links with their country. The changes also specify that access to information by competent authorities should be timely, and information should be adequate for identifying the beneficial owner, accurate - based on verification - and up-to-date. Furthermore, the revisions require countries to ensure that public authorities have access to beneficial ownership information of legal persons in the course of public procurement.”

These recommendations and associated guidance were developed to reduce money laundering risks and ensure the integrity of public finances and the essential goods, works and services contractors deliver, and were strongly supported by the United States. It would therefore be important to ensure the implementation of the collection of beneficial ownership information in line with the Corporate Transparency Act implements the intent of these agreements in practice.

For this reason, **this comment letter supports the FACT Coalition’s comment to urge the Treasury to amend the Proposed BOI Intake Form to remove any field that allows filers to declare that certain information is “unknown” or that filers are “unable to obtain” such information**, and to ensure that the form is consistent with best data practices.¹ The Proposed Intake Form, as written, would effectively make the CTA an *optional* reporting regime for affected filers, which would be an absurd outcome and contrary to the clear statutory requirement of the CTA. We urge the Treasury to reverse course on the unprecedented reporting optionality FinCEN proposes offering under the CTA.

The Proposed BOI Intake Form undermines the statute by making critical information necessary to determine who benefits from winning public contracts by making the essential data *optional*. This has large implications for the Treasury and Government Accountability Office’s ability to implement the CTA and FATF Recommendation 24 in practice, undermining the effort to boost integrity, competition and efficiency in the public procurement market.

Failing to rectify the shortcomings of the Proposed BOI Intake Form risks undermining the entire CTA as well as the US’ international anticorruption leadership credibility on this issue. We therefore urge the Treasury to reconsider its position and ensure that these data fields are mandatory, insisting that those businesses wishing to bid on US solicitations disclose this data.

We thank you for the opportunity to comment and remain at your disposal for questions or further detail at krobinson@open-contracting.org.

Signed,

Kristen Robinson

¹ See Proposed BOI Intake Form supra note 5.



Head of Advocacy, Open Contracting Partnership