

September 10, 2019

Hon. Steve A. Linick
Inspector General
U.S. Department of State
P.O. Box 9778
Arlington, VA 22219

Re: Department of State procurement activities related to the 2020 G7 Summit

Dear Inspector General Linick:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Office of Inspector General (“OIG”) investigate procurement activities of the Department of State related to the upcoming Group of Seven (“G7”) Summit in 2020. President Trump’s August 26, 2019, announcement that the United States will likely host the event at his own Miami resort, Trump National Doral, suggests the possibility of corruption or, at least, the appearance of corruption in the department’s processes.

The prospect that Trump National Doral could be selected as the site for the G7 Summit in 2020 is concerning because the government will need to award a contract for a facility to host the event – and President Trump would directly benefit from its selection. The stunning revelation that the President of the United States is competing with American companies for a federal contract to host an event that he will lead in his official capacity marks a new low in an already ethically troubled administration.¹ It marks an escalation of President Trump’s rampant abuse of public office. It also strongly suggests the possibility of a loss of impartiality on the part of the State Department’s procurement officials warranting investigation. President Trump put extraordinary pressure on those procurement officials when he announced his resort’s likely selection and touted its virtues in what has been described as an infomercial for the resort.

Questions surrounding President Trump’s participation in this matter raise significant legal and constitutional issues. At a minimum, there is an appearance of potentially fatal deficiencies in the pending or finalized contract award that the OIG should investigate. His remarks are also grounds for investigating whether he obtained contractor bid or proposal information or source selection information, which would require the State Department to consider canceling any contract award and potentially implicate a criminal provision of the Procurement Integrity Act. Moreover, payments made by the government under a contract awarded to the President’s commercial resort would violate the Constitution’s Domestic Emoluments Clause and could lead to violations of its Foreign Emoluments Clause.

Therefore, CREW urges the OIG to undertake a thorough investigation and put procurement officials on notice of the need to preserve records and act strictly in accordance with the Constitution and laws of the United States.

¹ Presidential Profiteering: Trump’s Conflicts Got Worse in Year Two, *Citizens for Responsibility and Ethics in Washington*, Jan. 16, 2019, <https://bit.ly/2FBC2IK>.

I. Factual Background

The Group of Eight (“G8”) Summit was an annual meeting of the leaders of eight highly industrialized nations – France, Germany, Italy, the United Kingdom, Japan, the United States, Canada, and Russia – who met to discuss “global issues like economic growth and crisis management, global security, energy, and terrorism.”² The G8 suspended Russia from the group and became the G7 in 2014 after Russia annexed Crimea.³ Member nations rotate responsibility for hosting summits, and the United States will host the G7 Summit in 2020.⁴ Our government will need to undertake major procurement actions in support of logistics for the 2020 G7 Summit, which will require scrupulous stewardship of federal appropriations and careful attention to security arrangements.⁵

The *Washington Post* first broke the news in June 2019 that President Trump wanted his for-profit business to host the 2020 G7 Summit.⁶ Then, *Axios* reported in July that “[t]he Trump administration, which next year will host the leaders of the world’s most powerful economies for the G7 summit, is down to its final few choices after completing site surveys of possible locations — and Trump National Doral, President Trump’s 800-acre golf club in Miami, is among the finalists.”⁷ On August 26, President Trump publicly suggested that Trump National Doral – which he owns – was likely to host the event.⁸

In remarks connected to this announcement, President Trump discussed what he perceived as the benefits of hosting the event at his resort and appeared to reveal his own personal involvement in the site selection process:

Doral happens to be within Miami. It’s a city. It’s a wonderful place. It’s a very, very successful area of Florida. It’s, very importantly, only five minutes from the airport; the airport is right next door. It’s a big international airport, one of the

² Zachery Laub, *The Group of Eight (G8) Industrialized Nations*, *Council on Foreign Relations*, Mar. 3, 2014, <https://on.cfr.org/2GPDRRQ>.

³ Jim Acosta, *U.S., other powers kick Russia out of G8*, *CNN*, Mar. 24, 2014, <https://cnn.it/2ztxoY2>.

⁴ Josh Dawsey and David Fahrenthold, *Near the airport, ample parking: Why Trump says his Florida golf club should host the next G-7*, *Washington Post*, Aug. 26, 2019, <https://wapo.st/2zmefHx>; U.S. Dep’t of State (archived website), *G8 Frequently Asked Questions*, <https://bit.ly/2LioIJv> (last viewed Sept. 8, 2019); U.S. Dep’t of Justice (archived website), *G8 Background*, <https://bit.ly/2zwXidu> (last viewed Sept. 8, 2019).

⁵ See USASpending.gov, SAQMMA12C0019, Hyatt Corp., Dec. 8, 2011- Apr. 5, 2013, <https://bit.ly/2ZCnbTK>.

⁶ David Fahrenthold, Josh Dawsey, Jonathan O’Connell, and Michelle Ye Hee Lee, *When Trump visits his clubs, government agencies and Republicans pay to be where he is*, *Washington Post*, June 20, 2019, <https://wapo.st/31EgsuO>.

⁷ Jonathan Swan, *Scoop: Trump resort in mix to host G7*, *Axios*, July 22, 2019, <https://bit.ly/2STtKzL>.

⁸ Dawsey and Fahrenthold, *Washington Post*, Aug. 26, 2019. President Trump’s financial disclosure report discloses a financial interest in Trump National Doral. Donald J. Trump, *Public Financial Disclosure Report*, May 15, 2019 (Part 2, Line 64), <https://bit.ly/2WhTs0Q>. An appendix containing information about Trump National Doral and other assets explains: “All of the Interests listed below in this exhibit, which were formerly held by Donald J. Trump, directly or indirectly, are now held by The Donald J. Trump Revocable Trust.” *Id.* (A1 and A23, Line 279). But the Office of Government Ethics has explained that “the grantor of a revocable living trust retains such rights of control and enjoyment with respect to the trust property that OGE must view the grantor as the true owner of the property.” Office of Gov’t Ethics, DO-02-15, at 7 (2002), <https://bit.ly/2lyKYWB> (“OGE DO-02-15”).

biggest in the world. Everybody that's coming — all of these people with all of their big entourages come.

It's set up so — and, by the way, my people looked at 12 sites. All good, but some were two hours from an airport. Some were four hours from — I mean, they were so far away. Some didn't allow this, or they didn't allow that.

With Doral, we have a series of magnificent buildings; we call them bungalows. They each hold from 50 to 70 very luxurious rooms with magnificent views. We have incredible conference rooms, incredible restaurants. It's like — it's like such a natural — we wouldn't even have to do the work that they did here. And they've done a beautiful job. They've really done a beautiful job.

And what we have also is Miami. And we have many hundreds of acres, so that in terms of parking, in terms of all of the things that you need, the ballrooms are among the biggest in Florida and the best. It's brand new. And they want — my people wanted it. From my standpoint, I'm not going to make any money. In my opinion, I'm not going to make any money. I don't want to make money. I don't care about making money. If I wanted to make money, I wouldn't worry about \$3 billion to \$5 billion. Because that's what — I mean, at some point, I'm going to detail that and will show.

But I think it's just a great place to be. I think having it in Miami is fantastic. Really fantastic. Having it at that particular place, because of the way it's set up, each country can have their own villa, or their own bungalow. And the bungalows, when I say, they have a lot of units in them. So I think it just works out well.

And when my people came back, they took tours, they went to different places. I won't mention places, but you'll have a list because they're going to give a presentation on it fairly soon. They went to places all over the country. And they came back and they said, "This is where we'd like it to be." Now, we had military people doing it. We had Secret Service people doing it. We had people that really understand what it's about. It's not about me, it's about getting the right location. I think it's very important.⁹

Shortly thereafter, the White House posted a video of his remarks on Twitter and indicated that a final selection had been made: "President @realDonaldTrump shares the location of the next @G7 summit, hosted by the United States!"¹⁰ A news report later indicated officials

⁹ Remarks by President Trump and President Macron of France in Joint Press Conference, *White House*, Aug. 26, 2019, <https://bit.ly/328d7Uc> ("White House Transcript").

¹⁰ White House (@WhiteHouse), Twitter (Aug. 26, 2019), <https://twitter.com/WhiteHouse/status/1166031887242018816>.

considered removing the tweet because the White House had “not finalized its plans.”¹¹ But one official indicated that Trump National Doral remains a “strong contender” to host the event.¹²

Though the White House has been less than transparent about the site selection process, historical data and publicly available information indicates that the State Department is responsible for important G7-related procurements. In 2011, the State Department awarded a contract to the Hyatt Corporation for “hotel accommodations and meeting rooms” to support both the G8 Summit and the NATO Summit, scheduled for 2012 in Chicago.¹³ (The United States ultimately hosted the 2012 G8 Summit at Camp David but had initially planned to hold it in Chicago.¹⁴) The State Department also awarded a number of other contracts in connection with the 2012 G8 Summit.¹⁵ For fiscal year 2020, the State Department’s budget request includes funding for the G7 Summit.¹⁶ – and CREW has identified three State Department procurement actions related to the G7 Summit.¹⁷

II. President Trump’s involvement in the site selection process raises concerns under federal procurement law and the Constitution’s Emoluments Clauses

President Trump’s unprecedented attempt to host the 2020 G7 Summit at his resort taints the procurement process and raises serious concerns about conflicts of interest, loss of impartiality, a possible criminal violation, and unconstitutionality.

1. Presidential conflicts of interest implicate the conduct of State Department officials.

The prospect of the United States hosting the 2020 G7 Summit at Trump National Doral implicates possible corruption in the State Department’s procurement process. The prime directive of the executive branch ethics program instructs employees that *public service is a*

¹¹ Jim Acosta and Maegan Vazquez, White House shies away from locking in Trump's Doral resort for the next G7, CNN, Aug. 28, 2019, <https://cnn.it/32ebDrO>.

¹² *Id.*

¹³ USASpending.gov, SAQMMA12C0019, *Hyatt Corp.*, Dec. 8, 2011-Apr. 5, 2013, <https://bit.ly/2ZCnbTK>.

¹⁴ Julie Pace, G8 summit moved to Camp David last-minute, *Christian Science Monitor*, Mar. 5, 2012, <https://bit.ly/2Zy0voL>.

¹⁵ See, e.g., USA Spending.gov, SAQMMA12C0018, *Hargrove, Inc.* (\$27,523,909), <https://bit.ly/2NzXh0K>; USA Spending.gov, SAQMMA12F1687, *Conference Systems, Inc.* (\$370,434), <https://bit.ly/2UINNHS>.

¹⁶ U.S. Dep’t. State, Congressional Budget Justification Department of State, Foreign Operations, and Related Programs, Fiscal Year 2020, at 14, Mar. 11, 2019, <https://bit.ly/2YiYAb5>.

¹⁷ On May 16, 2019, the department posted a solicitation on behalf of the Bureau of Diplomatic Security for hotel rooms for various events, including the G7 Summit (which it calls the G8 Summit). FedBizOpps.gov, Diplomatic Security Hotel and Lodging Space, 19AQMM19R0100, May 16, 2019 (“Task Four”), <https://bit.ly/340nfA9>. On September 3, 2018, the department temporarily extended a possibly related contract while it worked to finalize a replacement contract by August 15, 2019. FedBizOpps.gov, Hotel Lodging and Conference space – supporting DS/DO/P, Sept. 3, 2018, <https://bit.ly/2zrd61A>. This extension referenced a Request for Information (“RFI”) that “was released on the follow-on via FedBizOpps.gov on 01/19/2018,” which “[r]eceived capability statements from 10 respondents.” *Id.* The RFI (which was actually issued January 20, 2018) referenced “the G-8 meetings” and was a “market survey to query the capability of the competitive market.” FedBizOpps.gov, Hotel Lodging and Conference Services, Solicitation DOS-Lodging-2018, U.S. Dep’t of State, Jan. 20, 2018, <https://bit.ly/2llps1m>.

public trust.¹⁸ In service to this principle, the Federal Acquisition Regulation (“FAR”) requires federal procurement officials to “[c]onduct business with integrity, fairness, and openness” and deliver “the best value product or service to the customer, while maintaining the public’s trust and fulfilling public policy objectives.”¹⁹ FAR § 3.101-1 provides that “[t]ransactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct” and that “[t]he general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships.”²⁰

President Trump’s participation in a procurement supporting the 2020 G7 Summit directly implicates the FAR’s strict mandate to avoid conflicts of interest or the appearance of conflicts of interest in federal procurements. Commonsense dictates that his dual role as both owner of a competing company and head of the government responsible for hosting the event constitutes conflict of interest. To be sure, if he were any executive branch official other than the President or Vice President, his participation in a procurement for which his own company was competing would be a crime under two conflict of interest laws – sections 205 and 208 of title 18, United States Code.²¹

Though the President is exempt from these two laws, his exemption was never intended as a perk of high office. Both the Office of Government Ethics and the Department of Justice have emphasized the importance of Presidents acting as though they were covered by the conflict of interest laws whenever practicable.²² That the nation’s laws do not prescribe criminal penalties for every presidential conflict of interest does not diminish the danger posed by President Trump’s very real conflict of interest in this matter. The Supreme Court has cautioned that a conflict of interest is “an evil which endangers the very fabric of a democratic society, for a democracy is effective only if the people have faith in those who govern, and that faith is bound to be shattered when high officials and their appointees engage in activities which arouse suspicions of malfeasance and corruption.”²³

President Trump’s conflict of interest and any resulting loss of impartiality on the part of State Department employees necessarily implicate the foundational principles of government ethics and federal procurement law.²⁴ State Department employees are, after all, bound by the 14 principles of government ethics incorporated in the Standards of Ethical Conduct for Employees of the Executive Branch.²⁵ Much like FAR § 3.101-1, they provide that employees “shall act impartially and not give preferential treatment to any private organization or individual.”²⁶ A

¹⁸ Executive Order 12674, § 101(a) (1989), as modified by Executive Order 12731 (1990) (“Public service is a public trust”), <https://bit.ly/30DnDCN> (“E.O. 12674, as modified”); 5 C.F.R. § 2635.101(a), (b)(1).

¹⁹ 48 C.F.R. § 1.102.

²⁰ 48 C.F.R. § 3.101-1.

²¹ 18 U.S.C. §§ 205(a), 208(a).

²² U.S. Office of Gov’t Ethics, OGE Inf. Adv. Op. 83 x 16 (1983), <https://bit.ly/2fRpIG0>; Letter from Antonin Scalia, Assistant Attorney Gen., Office of Legal Counsel, to Kenneth A. Lazarus, Associate Counsel to the President, Dec. 16, 1974, <https://bit.ly/2Zv0xgb>.

²³ *United States v. Mississippi Valley Generating Co.*, 364 U.S. 520, 562 (1961).

²⁴ E.O. 12674, as modified; 5 C.F.R. § 2635.101; 48 C.F.R. §§ 1.102(b)(3), 3.101-1.

²⁵ 5 C.F.R. § 2635.101(b).

²⁶ 5 C.F.R. § 2635.101(b)(8).

violation of these ethical principles or the FAR – including even the creation of an *appearance* of a conflict of interest – can serve as a basis for disciplinary action.²⁷

There can be no doubting that President Trump’s remarks in connection with his announcement of Trump National Doral’s consideration as the site for the G7 Summit, as well as the White House’s tweet, have put extraordinary pressure on the State Department’s procurement officials. *Politico* observed that “he used the world stage to deliver an infomercial for his property twice in one day.”²⁸ Other news outlets called President Trump’s remarks “a strong pitch,” “an extended sales pitch,” and “an infomercial for his sagging golf and resort business in southern Florida.”²⁹ Yet another observed that he “was in full sales mode Monday, doing everything but pass out brochures as he touted the features that would make the Doral golf resort the ideal place for the next G-7 Summit.”³⁰

These characterizations of his remarks by the media were apt. President Trump described features of the resort and its environs as “wonderful,” “magnificent,” “very luxurious,” “incredible,” “beautiful,” “fantastic,” “brand new” and a “great place to be.”³¹ He pointed out that the resort is in a “very successful area of Florida” and is “right next door” to “one of the biggest” international airports “in the world,” where people with “big entourages come.” He touted its “many hundreds of acres,” parking lots and restaurants – as well as its ballrooms, which he characterized as “among the biggest in Florida and the best.” Speaking from the site of the 2019 G7 Summit in France, President Trump speculated that, to use his resort for the next G7 Summit, the American government “wouldn’t even have to do the work that [the French] did here.” He most pointedly emphasized that “because of the way it’s set up, each country can have their own villa, or their own bungalow.” As for competing facilities, he cautioned that they were “good” but that some were too far from the airport and “[s]ome didn’t allow this, or they didn’t

²⁷ The Merit Systems Protection Board has upheld disciplinary action based on charges that included violations of ethical principles at 5 C.F.R. § 2635.101(b) and FAR § 3.101-1. *Ryan v. Dep’t of Homeland Sec.*, 123 M.S.P.R. 202, 207 (2016) (upholding charge based on § 2635.101(b)(14) and stating “the agency could prove its charge by establishing that the appellant’s conduct created the appearance of a conflict of interest under the standards of ethical conduct, even if it failed to prove an actual conflict of interest”); *Suarez v. Dep’t of Hous. & Urban Dev.*, 96 M.S.P.R. 213, 220 (2004), *aff’d*, 125 F. App’x 1010 (Fed. Cir. 2005) (violation of impartiality principle at § 2635.101(b)(8)); *Mazzoleni, Flavio v. Fed. Deposit Ins. Corp.*, MSPB No. DC-0752-14-0573-I-1, 2016 WL 108029 (2016) (nonprecedential) (discipline based partly on § 2635.101(b)(12)); *Burke, Todd v. Agric.*, MSPB No. CH-0752-14-0124-I-1, 2014 WL 6616551 (2014) (nonprecedential), *pet. for review den.* 122 M.S.P.R. 441 (2015) (Table) (citing FAR § 3.101-1 and declaring the “government clearly has an interest in prohibiting the appearance of a conflict of interest and insuring its agents and employees are not compromised by outside influences”).

²⁸ Caitlin Oprysko, ‘Each country can have their own villa’: Trump promotes his Doral resort for next G-7, *Politico*, Aug. 26, 2019, <https://politi.co/2ZxJe1U>.

²⁹ Andrew O’Reilly and John Roberts, Trump’s Doral resort eyed for next G-7: ‘Each country can have their own villa’, *Fox News*, Aug. 26, 2019, <https://fxn.ws/2ksfn8H>; Jennifer Jacobs, Josh Wingrove, and Jonathan Levin, Trump Pitches Luxury Miami Property for Next G-7: His Own, *Bloomberg*, Aug. 26, 2019, <https://bloom.bg/2Pky1HK>; Patricia Mazzei, Michael D. Shear, and Eric Lipton, Trump Has Just the Place for the Next G7 Meeting: His Own Golf Resort, *New York Times*, Aug. 26, 2019, <https://nyti.ms/2lv84NH>; Dawsey and Fahrenthold, *Washington Post*, Aug. 26, 2019.

³⁰ Bernard Condon and Adriana Gomez Licon, Ethics outcry as Trump touts ‘magnificent’ Doral for next G7, *Associated Press*, Aug. 26, 2019, <https://bit.ly/2ktKaC6>.

³¹ White House Transcript.

allow that.” No State Department procurement official could miss President Trump’s strongly expressed desire to hold the G7 summit at his Trump National Doral resort.

The OIG is the front line of defense against corruption in procurements – and the stakes are high for procurements related to the 2020 G7 Summit. In 2019, France reportedly spent \$23 to \$40 million for the G7 Summit in Biarritz – an amount President Emmanuel Macron called thrifty.³² Canada paid more than ten times that amount for the 2018 G7 Summit in La Malbaie.³³ “But corruption in public procurement isn’t just about money,” cautions Transparency International. “It also reduces the quality of work or services” and “can cost lives.”³⁴

The circumstance of President Trump announcing the likely selection of his own resort as the site for the 2020 G7-Summit raises legitimate questions as to whether mandated procurement processes have been followed. It is unclear what role State Department officials have played in the selection process, what consideration they have given to conflicts of interest, or how they have mitigated the risk of losing impartiality in a procurement that involves the President’s personal business. There is cause for concern that a loss of impartiality could lead, for example, to a failure on their part to fully consider threats to contract performance specific to President Trump’s resort. Such threats could include Miami’s status as “one of the most vulnerable cities in the U.S. to hurricanes,” litigation or congressional investigations challenging violations of the Constitution’s Emoluments Clauses, “questions about the property’s cleanliness” of Trump National Doral, or concerns about security at Trump properties that have been highlighted in news reports.³⁵

In a very real sense, President Trump’s corrupting influence jeopardizes the integrity of the procurement process, puts millions of taxpayer dollars at risk of waste or abuse, and may even compromise the security of visiting dignitaries or the confidentiality of their communications. Therefore, it is imperative that the OIG fulfill its mission “to prevent and detect” impropriety before any of these concerns can come to fruition.³⁶

³² Asian News International (wire service), *G7 Summit in Biarritz to cost France around 36.4 million euros*, *Business Standard*, Aug. 21, 2019, <https://bit.ly/2PgRDmz>; Associated Press (wire service), *G7 leaders make joint statement on fair trade*, *ABC News*, Aug. 26, 2019, <https://abcn.ws/2Lnzpeb>.

³³ Kevin Nielson, *Taxpayers to shell out \$650M for G7 meeting*, *Global News*, Feb. 28, 2018, <https://bit.ly/2NzelnF>.

³⁴ Transparency International (website), *Public Procurement*, <https://bit.ly/33Zl93B> (last viewed Sep. 8, 2019).

³⁵ City of Miami, *Miami’s Vulnerability to Stronger Storms*, <https://bit.ly/2lZrAbS> (last viewed Sept. 8, 2019); Savannah Behrmann, *House Judiciary Committee to investigate Trump’s desire to use his Doral resort to host next G-7 summit*, *USA Today*, Aug. 28, 2019, <https://bit.ly/2k1jdFH>; Michael Brice-Saddler, *Trump says ‘no bedbugs’ at his Doral resort. But inspectors have found a host of other problems*, *Washington Post*, Aug. 27, 2019, <https://wapo.st/2kk34eK>; Jonathan Lemire, Colleen Long and Terry Spencer, *Arrest renews security concerns at Trump’s Mar-a-Lago*, *Associated Press*, Apr. 3, 2019, <https://to.pbs.org/2UxjrEw>; Sarah Blaskey and Jay Weaver, *He’s a Chinese billionaire and a member of Trump’s Mar-a-Lago. Is he also a communist spy?*, *Miami Herald*, July 23, 2019, <https://hrld.us/2lHaxoa>; Letter from Sen. Charles Schumer, *et al.*, to James Murray, Director, U.S. Secret Service, July 18, 2019, <https://bit.ly/2lDrZu1>.

³⁶ Office of Inspector General, *Mission*, U.S. Dep’t of State, www.stateoig.gov/about (last viewed Sep. 8, 2019).

2. *President Trump's remarks further warrant an investigation to determine whether he obtained "contractor bid or proposal information or source selection information" in violation of the Procurement Integrity Act.*

President Trump's remarks further warrant an investigation to determine whether he obtained contractor bid or proposal information or source selection information resulting in a civil or criminal violation of the Procurement Integrity Act. 41 U.S.C. § 2102(b) provides: "Except as provided by law, a person shall not knowingly obtain contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates."³⁷ The phrase "contractor bid or proposal information" is a term of art that does not include every communication with a prospective contractor.³⁸ Nevertheless, his remarks raise the realistic possibility of a section 2102(b) violation.

The President's words suggest that, though his company was a competitor for the contract, he was personally involved in the procurement process. He described the officials who undertook site visits as his people: "my people looked at 12 sites." He remarked on specifics of the other possible sites: "All good, but some were two hours from an airport. Some were four hours from — I mean, they were so far away. Some didn't allow this, or they didn't allow that." He also described reactions to the site visits and an upcoming presentation:

And when my people came back, they took tours, they went to different places. I won't mention places, but you'll have a list because they're going to give a presentation on it fairly soon. They went to places all over the country. And they came back and they said, "This is where we'd like it to be." Now, we had military people doing it. We had Secret Service people doing it. We had people that really understand what it's about. It's not about me, it's about getting the right location. I think it's very important.³⁹

On their face, these remarks could be interpreted as suggesting that President Trump knowingly obtained contractor bid or proposal information or source selection information before the award of a federal agency procurement contract to which the information relates. His remark that "[s]ome didn't allow this, or they didn't allow that" may refer to conditions of the bids or proposals of his competitors. Moreover, his remark that his "people" conducted site visits and "came back" with a preference as to what they "would like," may suggest that they came back to *him* specifically and shared information gleaned from the site visits. There are, of course, other ways to interpret his vague remarks. But, in the extraordinary context of the owner of a

³⁷ 41 U.S.C. § 2102(b); Harlan Gottlieb and Kevin L. Phelps, Government Contract Compliance Handbook (5th Ed.), § 6:11 (2018) ("The Procurement Integrity Act contains a simple bright-line rule prohibiting unauthorized disclosure or receipt of contractor bid or proposal information or source selection information before the award of a contract to which the information relates."); Karen Louise Manos, Government Contract Costs & Pricing, § 91:17 (2019) (Section 2102(b) "applies to all competitive procurements for the acquisition of supplies or services (including construction) from non-federal sources using appropriated funds.").

³⁸ 48 C.F.R. § 3.104-1.

³⁹ White House Transcript.

competing company participating in the source selection process, these remarks are enough to warrant a searching investigation to ascertain whether he violated the Procurement Integrity Act.

Access to such information could have afforded President Trump a competitive advantage. While we do not know what President Trump said behind closed doors, his attempt to make what the media has characterized as a public “sales pitch” for his resort is cause for concern that he may have made a similar sales pitch to source selection officials – which he could have tailored to his advantage if he obtained contractor bid or proposal information or source selection information.⁴⁰ He could have used contractor bid or proposal information to help the Trump Organization offer services that other competitors did not offer – a concern heightened by his remark that “[s]ome didn’t allow this, or they didn’t allow that.” He could have similarly tailored the Trump Organization’s submissions based on source selection information.⁴¹ If President Trump obtained source selection information, he also could have used his position as President to adjust plans for the summit to give his company a competitive advantage (for instance, by manipulating the summit’s timing, schedule, or planned activities).⁴² In fact, a statement he attributes to the site inspection team – “[t]his is where we’d like it to be” – might suggest they believed they needed his blessing or input as to the source selection, though there are other possible meanings of the phrase.

President Trump could personally face serious consequences, including civil or criminal penalties, for a violation of section 2102(b).⁴³ In addition, if the OIG were to find that a violation occurred, the State Department’s procurement officials would have an affirmative legal obligation to refer the matter to the head of the contracting activity, who would have to decide whether to cancel any contract awarded to the Trump Organization.⁴⁴

⁴⁰ Jacobs, Wingrove, and Levin, *Bloomberg*, Aug. 26, 2019 (“he delivered an extended sales pitch to hold the meeting at his Miami property”), <https://bloom.bg/2PkyIHK>.

⁴¹ Among other things, source selection information includes source selection plans, technical evaluation plans, and any information marked “Source Selection Information” based on a finding that its disclosure would jeopardize the integrity of the procurement. 48 C.F.R. § 2.101.

⁴² For example, a decision by President Trump to adjust the timing of the summit to avoid holding it in August – the month chosen for the 2019 G7 Summit – or September could have reduced the degree to which the Trump Organization would be impacted by evaluation criteria involving the risk of adverse weather events.

⁴³ 41 U.S.C. § 2105(a)-(b); see U.S. Dep’t Justice, [Sales Executive of American Furniture Company Pleads Guilty to Procurement Fraud](#), June 10, 2019 (“From in or around December 2016 to in or around March 2017, Anstine knowingly obtained bid prices and design plans of at least three of his and his company’s competitors from the two State Department employees. Anstine knowingly obtained this information in order to achieve a competitive advantage for himself and his company. The information Anstine obtained enabled him and his company to win the contract to provide the furniture for the new embassy with a bid of approximately \$1,569,000.”), <https://bit.ly/2HwIBfX> (last viewed Sep. 8, 2019).

⁴⁴ 41 U.S.C. § 2105(c); 48 C.F.R. § 3.104-7(a); *Compliance Corp. v. United States*, 22 Cl. Ct. 193, 203-204 (1990), aff’d, 960 F.2d 157 (Fed. Cir. 1992) (table) (upholding agency’s decision to disqualify a company in order “to protect the integrity of the procurement process” after its employees sought proprietary proposal information); *In re: Dell Servs. Fed. Gov’t, Inc.*, B-414461 (Comp. Gen. 2017) (FAR “states that a contracting officer who receives or obtains information of a violation or possible violation of the Procurement Integrity Act must determine if the reported violation or possible violation has any impact on the pending award or selection of the contractor.”).

3. *Payments made under a federal contract award to the Trump Organization would violate the Domestic Emoluments Clause of the Constitution, and such an award would likely lead to violations of the Foreign Emoluments Clause.*

Two provisions of the Constitution are designed to prevent self-dealing and corruption by the President: the Domestic Emoluments Clause and the Foreign Emoluments Clause. Awarding a federal contract to the Trump Organization to host the 2020 G7 Summit at President Trump's private resort would result in the government making payments that violate the Domestic Emoluments Clause, and such an award would likely lead to violations of the Foreign Emoluments Clause.

Reflecting the concerns of the nation's founders about the very type of conflict of interest implicated by President Trump's attempt to host the summit at Trump National Doral, the Domestic Emoluments Clause provides: "The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and *he shall not receive within that Period any other Emolument from the United States*, or any of them."⁴⁵ In establishing this prohibition, the Framers sought both to stop states and the federal government from improperly influencing the President through financial rewards,⁴⁶ and to address their "concern that the President should not have the ability to convert his or her office for profit."⁴⁷ The clause thus establishes an absolute prohibition on the President receiving "any other emolument," offering no exceptions. It also is broad – an emolument includes any profit, gain, or advantage received by the President.⁴⁸

The President's company clearly would receive a profit, gain, or advantage from State Department payments for hotel accommodations, meeting rooms, or similar services. Accordingly, payments made by the federal government under a contract awarded to the Trump Organization to host the G7 Summit would violate the Domestic Emoluments Clause.⁴⁹

A contract award to the Trump Organization would also likely lead to subsequent violations of the Foreign Emoluments Clause. That clause bars any person "holding any Office of Profit or Trust" – such as the President – from, "without the Consent of the Congress, accept[ing] of any present, Emolument, Office, or Title, of any kind whatever, from any King,

⁴⁵ U.S. Const., art. II, § 1, cl. 7 (emphasis added).

⁴⁶ 5 Op. O.L.C. 187, 189 (1981).

⁴⁷ *Griffin v. United States*, 935 F. Supp. 1, 4 (D.D.C. 1995). See also Brianne J. Gorod, Brian R. Frazelle, and Samuel Houshower, The Domestic Emoluments Clause: Its Text, Meaning, and Application to Donald J. Trump, *Constitutional Accountability Center*, July 2017, available at <https://bit.ly/2kuOXmE>.

⁴⁸ *Blumenthal v. Trump*, 373 F. Supp. 3d 191, 207 (D.D.C. 2019), certified for interlocutory appeal, 2019 WL 3948478 (D.D.C. Aug. 21, 2019); *Dist. of Columbia v. Trump*, 315 F. Supp. 3d 875, 878 (D. Md. 2018), *rev'd on other grounds*, *In re Trump*, 928 F.3d 360 (4th Cir. 2019).

⁴⁹ As discussed earlier, though President Trump placed his financial interest in Trump National Doral in a revocable trust, OGE has made clear that the grantor of a revocable trust is the "true owner" of the asset for conflict of interest purposes. OGE DO-02-15. In this case, President Trump has also structured his trust in a way that permits him to access income flowing through the trust at will. Derek Kravitz and Al Shaw, Trump Lawyer Confirms President Can Pull Money From His Businesses Whenever He Wants, *Pro Publica*, Apr. 4, 2017, <https://bit.ly/2o1OM1C>.

Prince, or foreign State.”⁵⁰ The foreign dignitaries staying at the Trump National Doral resort during the G7 Summit would likely need to spend money at the resort. The predictably intense security arrangements would likely force them to stay mostly on site for the duration of the event, where they would presumably purchase goods or services from the Trump Organization and its affiliates.⁵¹

These potential constitutional violations alone warrant an investigation by the OIG. In any event, as discussed in the next section, the department has an obligation to independently and fully evaluate whether a contract award to the Trump Organization would violate the Emoluments Clauses, and its failure to do so could give rise to a legal challenge under the Administrative Dispute Resolution Act (“ADRA”).⁵²

4. *State Department officials have an affirmative obligation to consider whether payments made under a contract with the Trump Organization would violate the Emoluments Clauses, and their failure to do so would be subject to judicial review under the ADRA.*

The State Department’s contracting decisions are subject to judicial review in bid protest actions under the ADRA.⁵³ “Under the ADRA, the Court of Federal Claims ‘review[s] the agency’s decision pursuant to . . . the standards found in the Administrative Procedure Act (APA).”⁵⁴ “Among the various APA standards of review in section 706, the proper standard to be applied in bid protest cases is provided by 5 U.S.C. § 706(2)(A): “a reviewing court shall set aside the agency action if it is ‘arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.’”⁵⁵

Agency action is “arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, *entirely failed to consider an important aspect of the problem*, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.”⁵⁶ The “agency must examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’”⁵⁷ In reviewing the agency’s decision, a court “must ‘consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment.’”⁵⁸ Moreover, the D.C. Circuit has repeatedly recognized that agencies have a special obligation to address properly-presented constitutional issues, reasoning that the failure to do so

⁵⁰ U.S. Const. art. I, § 9, cl. 8.

⁵¹ Angelique Chrisafis, [Biarritz in lockdown as G7 summit descends on French resort](https://bit.ly/2HugBZe), *The Guardian*, Aug. 24, 2019, <https://bit.ly/2HugBZe>.

⁵² See 5 U.S.C. § 701, *et seq.*; 28 U.S.C. § 2201, *et seq.*

⁵³ *Banknote Corp. of Am. v. United States*, 365 F.3d 1345, 1350 (Fed. Cir. 2004).

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (emphasis added).

⁵⁷ *Id.*

⁵⁸ *Id.*

is “the very paradigm of arbitrary and capricious administrative action.”⁵⁹ These rulings flow from the bedrock principle that “Federal officials are not only bound by the Constitution, they must also take a specific oath to support and defend it.”⁶⁰

Consistent with this case law, earlier this year the Inspector General for the General Services Administration (“GSA”) faulted government officials for failing to consider the Emoluments Clauses in connection with the Trump Organization’s lease of the Old Post Office building.⁶¹ GSA officials believed that constitutional issues were outside their purview. But, as the GSA Inspector General found, this “decision to exclude the emoluments issues from GSA’s consideration of the lease was improper because GSA, like all government agencies, has an obligation to uphold and enforce the Constitution. . . .”⁶²

Applying these principles here, the State Department has an affirmative obligation to fully consider emoluments issues before awarding any contract to the Trump Organization relating to the 2020 G7 Summit. Any failure to do so by the department’s procurement officials would not only violate their oath to “support and defend the Constitution” but also could result in the contract award being vacated under the ADRA.⁶³ To ensure the appropriate agency officials are aware of this issue, we are sending a copy of this letter to the Under Secretary of State for Management and the department’s Legal Adviser. But we urge the OIG to take its own steps to ensure that the department thoroughly evaluates emoluments issues in considering any contract award to the Trump Organization.

III. Conclusion

The spectacle of a presidential administration awarding a costly and highly sensitive contract to a company owned by the President, in support of an event that he will lead, undermines the credibility of the federal procurement system. Such an occurrence ought to be unthinkable in the United States. President Trump’s involvement in this procurement raises serious concerns about conflicts of interest, loss of impartiality, and violations of the Constitution’s two Emoluments Clauses. His remarks have even raised the possibility of a civil or criminal violation of the Procurement Integrity Act because they suggest he obtained sensitive procurement information that might have advantaged his company. If the OIG finds a violation of that law occurred, the State Department will have an affirmative legal obligation to consider that violation and decide whether to cancel any contract awarded to the Trump Organization.

Therefore, it is imperative that the OIG investigate the extraordinary circumstance of the President of the United States seeking a federal contract for this high-profile gathering of world

⁵⁹ *Meredith Corp. v. FCC*, 809 F.2d 863, 874 (D.C. Cir. 1987); *accord Graceba Total Commc’ns, Inc. v. FCC*, 115 F.3d 1038, 1041-42 (D.C. Cir. 1997); *McBryde v. Comm. to Rev. Circuit Council Conduct*, 264 F.3d 52, 62 (D.C. Cir. 2001).

⁶⁰ *Meredith Corp. v. FCC*, 809 F.2d 863, 874 (D.C. Cir. 1987).

⁶¹ Office of Inspector General, General Servs. Admin., *Evaluation of GSA’s Management and Administration of the Old Post Office Building Lease*, JE19-002 (redacted), at 1, Jan. 16, 2019, <https://bit.ly/2RAV9ct>.

⁶² *Id.*

⁶³ 5 U.S.C. § 3331 (oath of office).

Hon. Steve A. Linick
Inspector General
Page 13

leaders. An investigation is needed to uncover any corruption or resolve the growing doubts about the integrity of the State Department's procurement process – and the investigative report should be made public, consistent with the FAR's requirement that the government must "[c]onduct business with integrity, fairness, and openness."

Sincerely,



Noah Bookbinder
Executive Director



Walter M. Shaub, Jr.
Senior Advisor

cc. Hon. Brian Bulatao (M)
Under Secretary of State for Management
U.S. Department of State

Mr. Marik String (L)
Acting Legal Adviser
U.S. Department of State