Trade Facts

Office of the United States Trade Representative [*www.ustr.gov*](http://www.ustr.gov)
February 24, 2005

State Government Procurement and Free Trade Agreements:

A New Sub-Federal Reciprocity Approach That Preserves State Sovereignty and Provides Direct Benefits to States

What is the reciprocity approach to sub-federal procurement in Free Trade Agreements (FTAs)?

- The Bush Administration has recently written to Governors requesting that state governments consider voluntarily covering their procurement under the U.S.-Panama and U.S.-Andean Free Trade Agreements under a new "reciprocity" policy.

- If a State agrees to allow nondiscriminatory access to its procurement to foreign suppliers from Panama and the Andean countries of Colombia, Ecuador, and Peru, then businesses and workers from that State will enjoy the same access to sub-federal procurement in those countries, opening up new export opportunities.

- Reciprocal government procurement policies are already used in a number of states, such as New York. More than 30 states have some type of reciprocity in their procurement practices vis-à-vis other U.S. states.

- The reciprocity approach does <u>not</u> apply to previous commitments that states have made under the WTO Government Procurement Agreement (WTO/GPA) and other FTAs. Nor does it apply to federal or central government procurement covered by the FTAs.

Why a reciprocity approach to procurement?

- The approach offers a state a direct incentive and benefit for agreeing to cover its state procurement in the new FTAs, by ensuring that the benefits of open sub-federal procurement markets overseas flow to companies and workers in states that offer reciprocal opportunities.

- It ensures that the United States can obtain similarly advantageous coverage from our new foreign trading partners, and that state suppliers gain access to the sub-federal procurement negotiated in the new agreements.

How does the reciprocity approach work?

- ***The reciprocity approach is based on voluntary state coverage, exclusions for sensitive areas, and self-certification by suppliers.***

<u>Supplier Self-Certification</u>

- The U.S. government has designed the reciprocity policy to ensure broad participation by U.S. firms. This is how the new approach will work. The sub-central entities in our foreign trading partner will be required to open their procurement to any U.S. supplier:

  1) that offers goods substantially produced or assembled, or services substantially performed, in one or more states that have agreed to cover procurement under the FTA (this means at least 51 percent of the production or assembly of goods, or performance of services, in one or more such states); <u>or</u>

  2) that has a principal place of business in one or more states that have agreed to cover procurement under the FTA. "Principal place of business" is defined to include the headquarters or main office of a supplier or any other place where a supplier's business is managed, conducted, or operated. This means that, under this policy, a supplier could have more than one principal place of business.

- With regard to implementation, a supplier will self-certify that it meets one of the criteria.

<u>Voluntary State Coverage, including the Exclusion of Sensitive Areas</u>:

- As under the WTO/GPA and earlier FTAs:

  - state commitments to cover government procurement in trade agreements are voluntary;
  - a state decides whether, and the extent to which, it will cover its procurement under the new agreements;
  - a state decides the manner in which it will make a commitment to cover its procurement;
  - a state may exclude sensitive goods and services; for example, some states exclude procurement of construction-grade steel, motor vehicles, or coal;
  - the agreements also exclude preference programs for small businesses, distressed areas, minorities, and women;
  - a state may maintain its own environmental policies for "green" procurement;
  - county and city procurement is not covered by the agreements; and
  - the thresholds for the application of the FTAs are high: $477,000 for purchases of goods and services and $6.7 million for construction contracts.

Will states have to change their procurement practices to participate in the FTAs?

- Most states already apply open and transparent procurement procedures and would not have to change their practices in order to participate in the FTAs.
- The transparency and other bidding obligations contained in the FTAs will ensure that our trading partners employ the same type of "good governance" procedures that most states have already adopted.

How will state taxpayers benefit from more competitive state government procurement?

- At a time when many demands are being made on U.S. state and federal government budgets, taxpayers benefit from open and competitive procurement markets.
- Participation in the FTAs can increase competition for government procurement contracts, thus lowering the costs of government.

How will state suppliers and workers benefit from more open foreign procurement markets?

- If states do not provide access for suppliers from FTA partners to state procurement, their suppliers may not gain reciprocal access to the procurement of sub-central entities in those countries.
- Since the U.S. and most states already have open procurement practices, FTAs level the playing field and open new trading partners' procurement markets.