



STATE OF NEW YORK

GEORGE E. PATAKI
GOVERNOR

Assigned: Droschen/Gric
cc: Vaupe
Padilla/Smille
Droschen
Subject: Procurement
(And)
Pan FTA

March 10, 2005

Dear Ambassador Zoellick:

I have reviewed your request that New York State continue to support federal efforts to increase trade. Specifically, you would like the State's commitment to offer the same level of procurement coverage now included in the Government Procurement Agreement (GPA) and some recent Free Trade Agreements (FTA) to future trade agreements with Panama and Andean countries of Colombia, Ecuador and Peru. New York State's business and taxpayer communities stand to benefit from increasingly open, transparent and fair international business opportunities, and as such it is clearly in the interest of New York.

Multilateral, regional and bilateral international trade agreements as well as dispute resolution processes- particularly with respect to investor-state and procurement provisions- have substantially deepened the role of states in trade policy matters.

While continuing to urge the USTR to improve federal-state trade policy coordination, I would like to express our support for the reciprocity approach outlined in your request of other Governors. In contrast to New York's comparatively open contracting process, many US states maintain barriers and preferences favoring in-state firms. Your new approach should redress the detrimental impact on national and New York State business competitiveness that may occur if foreign firms, benefiting from trade agreements on procurement, were to gain greater access than our own domestic firms to certain US state markets.

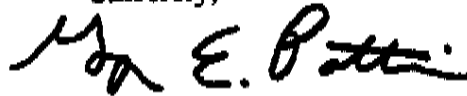
In response to your request, I am pleased to agree to allow the USTR to engage in negotiation leading to the expansion of international access for Panama and the Andean nations of Colombia, Ecuador and Peru to New York State procurement for state agencies, the state university system, public authorities and public benefit corporations, with the exception of those entities with multi-state mandates, per WTO GPA commitments, with the following terms and conditions:



- FTA language on tendering/bid process and documents and documentation that appears inconsistent with GPA obligations needs to be clarified, per recent IGPAC reports on the CAFTA and other FTAs including specific concerns detailed by experts from the National Association of State Procurement Officials;
- New York's agreement to be included may be withdrawn or modified upon a subsequent decision by the appropriate legislative and executive offices;
- The New York State Contract Reporter, with its online version, will remain scheduled as an internationally recognized publication, meeting all relevant requirements;
- Federal officials will provide necessary resources and assistance to impacted agencies for procurement trade agreement implementation and compliance;
- Amendment of inconsistent New York State laws to conform with the obligations New York State laws to conform with the obligations undertaken depends upon approvals by the NYS Legislature and other relevant administrative and executive bodies;
- In the event that a New York State contract award is disputed by a foreign bidder, the procurement process will not be impeded or delayed, thereby preserving public interest and safety;
- In the event of a dispute settlement adverse to the US due to the actions of a New York State entity, such entity and New York State will NOT be held liable to compensate the US for any costs or sanctions imposed under the dispute settlement;
- Any substantial changes to the types of commitments covering New York State procurement contained in this agreement, future agreements currently provided to the USTR without providing such entities an opportunity for full review and a new decision on inclusion;
- Existing state exceptions to coverage will be maintained, including but not limited to: all existing or future preferences and practices benefiting small, minority and women- owned businesses
 - procurement contract awards made to state companies due to tie-bids
 - procurement of transit cars, buses and related equipment, steel, coal, autos, and printing services and others
 - requirements related to public policy objectives, such as discouraging sweat shop production

- requirements designed to encourage economic development for the purpose of alleviating economic distress, and requirements to promote recycling, and to protect the State's environmental quality
- To be awarded a New York State contract, foreign and domestic companies must comply with the application of all New York State laws, regulations and non-discriminatory specifications;
- New York State will not be required to consider bids from firms in nations or subnational jurisdictions which boycott firms doing business in Israel;
- New York State reserves the right to reconsider our offer based on our examination of the final agreements and implementing legislation and their inclusion of our terms and conditions listed herein.

Sincerely,

A handwritten signature in black ink, appearing to read "G. E. Pataki", with a stylized flourish at the end.

George E. Pataki

Ambassador Robert B. Zoellick
The United States Trade Representative
Office of the President
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