

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

2005

The Honorable Kenny Guinn
Governor of Nevada
Office of the Governor
State Capitol
101 North Carson Street
Carson City, NV 89701

Dear Governor Guinn:

I am writing to ask that you consider Nevada's participation in two new free trade agreements (FTAs). I believe that Nevada's involvement will help create opportunities for your state's workers and businesses, while lowering costs for Nevada's taxpayers.

The Administration is negotiating FTAs with Panama and the Andean countries of Colombia, Ecuador, and Peru, which will open new opportunities in government procurement. Continuing our practice of consulting with the States, we would like to seek your voluntary commitment for Nevada to be covered under the government procurement provisions of the new agreements.

In particular, I wanted you to be aware that a new U.S. Government policy will provide increased market access opportunities to your state suppliers and workers if your state chooses to cover some of its procurement. This policy, which is based on reciprocal government procurement practices already used in a number of states, is outlined in further detail below.

The new agreements would include the following basic obligations, which are likely to already be consistent with your state's practices:

- treating suppliers from these FTA partners in the same manner as domestic suppliers;
- publishing laws and regulations relating to government procurement;
- using technical specifications that do not favor a particular supplier;
- publishing notices of intended procurement;
- using open tendering except in specific cases;
- providing suppliers with the information necessary to submit responsive tenders;
- providing suppliers with minimum time periods to submit tenders;
- evaluating contracts based on identified criteria available to all suppliers;
- publishing information on awarded contracts;
- providing an independent domestic review mechanism to enable suppliers to challenge the conduct of a procurement; and
- protecting confidential information.

The government procurement provisions of the new agreements would apply only to larger state government purchases (over \$477,000 for goods and services and over \$6.75 million for construction contracts) and only to those entities that you designate. Certain state procurements could be excluded from the agreement. For example, some states exclude procurement of construction-grade steel, motor vehicles, or coal.

Offering state-level coverage in the new FTAs will ensure that the United States can obtain similarly advantageous coverage from our new trading partners and that your suppliers gain access to the sub-federal procurement negotiated in the new agreements. The transparency and other bidding obligations contained in the FTAs will also ensure that our trading partners employ the same type of "good governance" procedures that most states have already adopted. In addition, participation in the FTAs also increases competition for government procurement contracts, lowering the costs of government.

In September 2003, I wrote asking whether Nevada would be willing to cover its government procurement under several FTAs that we were negotiating at that time. Your state chose not to participate. Since then, the U.S. Government has introduced this innovative approach to state participation in sub-federal government procurement opportunities and obligations under U.S. FTAs.

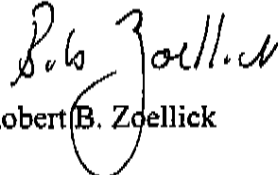
The agreements we intend to enter with Panama and the Andean countries will incorporate this new policy, which is designed to secure greater and broader access for U.S. suppliers to sub-federal procurement covered by our trading partners in these FTAs. Specifically, U.S. negotiators will be asking Panama and the Andean countries to open their sub-federal government procurement markets to suppliers from U.S. states that agree to participate in the FTAs. The new policy will ensure that when a state elects to participate, the benefits of its decision will flow directly to workers, businesses, and farmers in that state. If Nevada chooses not to cover its procurement in an FTA, your suppliers will not be assured of access to the sub-federal purchases of our FTA partners. Suppliers in your state will have access to federal government procurement covered by the FTAs even if Nevada chooses not to participate in the trade agreements.

This is how the new policy will work. If your state chooses to participate in the new FTAs, our foreign trading partners' sub-federal entities will open their procurement to any supplier that: 1) offers goods substantially produced or services substantially performed in your state; or 2) has its principal place of business in your state.

This new policy builds on state government procurement practices in effect in a number of states that offer non-discriminatory treatment to out-of-state suppliers if and only if the supplier's home state offers reciprocal treatment. We anticipate this policy will be effective in addressing foreign sub-federal procurement in our FTAs and will continue to leave decision-making in the hands of individual states.

I would like to extend my personal appreciation for your consideration of my request, and I hope I can count on your support. I look forward to receiving a response as soon as possible as to whether Nevada is willing to participate in the Panama and Andean FTAs. Please call Jean Heilman Grier, Senior Procurement Negotiator, at (202) 395-9476 or email jean_grier@ustr.eop.gov with any questions. We look forward to hearing from you.

Sincerely,


Robert B. Zoellick