

# **FEDERAL CONTRACTS PERSPECTIVE**

Federal Acquisition Developments, Guidance, and Opinions

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## **COMMENTS ON COSTS/BENEFITS OF U.S. INTERNATIONAL GOVERNMENT PROCUREMENT OBLIGATIONS SOUGHT**

The International Trade Administration (ITA) and the Office of the United States Trade Representative (USTR) are seeking comments on “the impacts of all United States free trade agreements and the World Trade Organization Agreement on Government Procurement [WTO GPA] on the operation of Buy American laws, including their impacts on the implementation of domestic procurement preferences.” These comments are being sought in compliance with Section 3(e) of President Trump’s Executive Order 13788, Buy American and Hire American (for more on Executive Order 13788, see the May 2017 *Federal Contracts Perspective* article

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“Trump Issues ‘Buy American and Hire American’ Executive Order”). In addition, because reciprocal access to trading partners’ markets is an important motivation for including government procurement obligations in U.S. free trade agreements and for the United States’ membership in the WTO GPA, the ITA and the USTR are also seeking information about the costs and benefits of these obligations to U.S. manufacturers and suppliers competing in U.S. trading partners’ government procurement markets.

The trading partners with which the U.S has international government procurement obligations are: Armenia, Aruba, Australia, Bahrain, Canada, Chile, Chinese Taipei (Taiwan), Colombia, Costa Rica, Dominican Republic, El Salvador, the European Union (which includes Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxemburg, Malta, the Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and the United Kingdom), Guatemala, Honduras, Hong Kong, Iceland, Israel, Japan, the Republic of Korea, Liechtenstein, Mexico, the Republic of Moldova, Montenegro, Morocco, New Zealand, Nicaragua, Norway, Oman, Panama, Peru, Singapore, Switzerland, and Ukraine.

The following are the questions the ITA and the USTR would like to be addressed:

1. What is your company’s experience with respect to U.S. federal and/or foreign government procurement, either as prime contractor or a subcontractor? While any experience is welcome, please identify experiences within the past five (5) years.
  - a. Have you bid on U.S. federal contracts? How many?
  - b. Were you awarded any U.S. federal contracts? How many?

- c. What share of annual revenue from your U.S. operations was from U.S. federal contracts?
- d. Have you bid on foreign government contracts? How many? List the countries of five largest bids.
- e. Were you awarded any foreign government contracts? How many? List the countries of five largest awards.
- f. What share of annual revenue from your U.S. operations was from foreign government contracts?
- g. List the industries in which your company was awarded U.S. federal or foreign government contracts. Indicate North American Industry Classification System (NAICS) code(s) if possible.

2. Describe in a few sentences how your company's decisions to bid on or supply U.S. federal contracts (as a prime or subcontractor or company that produces goods used in procurements) are affected by U.S. free trade agreements and the WTO GPA which allow equal participation by companies from U.S. trading partners.

3. Describe in few sentences your company's experience as a prime or subcontractor in bidding on national government procurements in countries with which the U.S. has a trade agreement with government procurement obligations. What are your three greatest challenges? How does this differ from your experience competing for bids in markets in countries with which the U.S. does not have a trade agreement with government procurement obligations?

4. What is the average U.S. content of goods that your company supplies to the U.S. federal government?

5. What is the average U.S. content of goods that your company supplies to foreign governments?

6. What are the three principal barriers to having 100% domestic content in the goods that you produce for U.S. federal or foreign governments?

7. Describe in a few sentences how trade agreements with government procurement obligations affect strategic decisions your company makes about production and supply chains for government procurements as well as for commercial (private sector) customers.

8. Describe in a few sentences any experience your company has had with conflict between Buy American or similar foreign requirements and U.S. free trade agreement or WTO GPA requirements, including whether and how the conflict was resolved.

Vivina McVay, Editor-in Chief

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9. Describe in a few sentences whether the presence of Buy American or similar foreign requirements affected positively or negatively your company's ability to bid and/or win contracts for U.S. or foreign government procurement.

In responding to these questions commenters should consider the effect for participating in U.S. federal and/or foreign government procurement markets with respect to:

- Business opportunities that are made available;
- Economic incentives that trade agreements and Buy American laws provide;
- How trade agreements impact business competitiveness, or increase or decrease competition, in government procurement opportunities;
- How trade agreements affect companies' (prime contractors') supply chain and sourcing decisions for goods;
- How Buy American or similar foreign requirements increase or decrease companies' (prime contractors') competitiveness in government procurement opportunities;
- Administrative compliance costs tied to Buy American and similar government procurement policies; and
- Additional costs relating to providing or otherwise proving the country of origin of goods provided.

Comments must be submitted no later than September 18, 2017, by either of the following methods: (1) the Federal eRulemaking Portal: <http://www.regulations.gov> (attachments will be accepted in Microsoft Word, Excel, or Adobe PDF formats only); or (2) written/paper submissions: Adam Boltik, International Trade Administration, Department of Commerce, 1401 Constitution Ave. NW, Room 3043, Washington, DC 20230.

## **PROGRAM FRAUD CIVIL REMEDIES ACT PENALTIES INCREASED**

The General Services Administration (GSA) is amending the General Services Administration Property Management Regulations (GSPMR) Part 105-70, Implementation of the Program Fraud Civil Remedies Act of 1986, to adjust for inflation the civil penalties for the Program Fraud Civil Remedies Act of 1986 (Sections 6103 and 6104 of the Omnibus Budget Reconciliation Act of 1986 [Public Law 99-509]) from \$5,500 to \$10,781.

The Program Fraud Civil Remedies Act imposes a penalty against any person who, with knowledge or reason to know, makes, submits, or presents a false, fictitious, or fraudulent claim or statement to the government. When GSA codified the act in 1996, it established \$5,500 as the maximum penalty under the act.

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701 of Public Law 114-74) requires that all civil penalties be adjusted for inflation with an initial "catch up" and then adjusted annually thereafter. To comply with Section 701, GSA is adjusting the penalties in GSPMR 105-70.003 Basis for Civil Penalties and Assessments, to reflect inflation between 1996 and 2016 by replacing "\$5,500" with "\$10,781" in paragraphs (a)(1)(iv) (for false claims) and (b)(1)(ii) (for false statements).

## GSA ISSUES FY 2018 CONUS PER DIEM RATES

The General Services Administration (GSA) has issued per diem rates for Fiscal Year (FY) 2018, which go into effect October 1, 2017. These rates are for the 48 Continental United States (CONUS) and are the maximum allowances that federal employees are reimbursed for expenses incurred while on official travel. (**EDITOR'S NOTE:** The State Department establishes rates for foreign countries (for example, "overseas rates" for Canada, Spain, Japan), while the Department of Defense (DOD) establishes "non-foreign overseas rates," which includes Alaska, Hawaii, and all U.S. Territories. For more information on non-foreign overseas rates and overseas rates, visit DOD's Per Diem, Travel, and Transportation Allowance Committee at <http://www.defensetravel.dod.mil>.)

The CONUS per diem rate for an area is actually three allowances: the lodging allowance, the meals allowance, and the incidental expense allowance. Most of the CONUS (approximately 2600 counties) are covered by the standard CONUS per diem rate of \$144 (\$93 lodging, \$51 meals and incidental expenses). In FY 2018, there are 332 Non-Standard Areas (NSAs) that have per diem rates higher than the standard CONUS rate.

While there are no new NSA locations this year, 14 locations that were NSAs in FY 2017 will move into the standard CONUS rate category. They are:

Redding, CA  
Cedar Rapids, IA  
Bonner's Ferry/Sandpoint, ID  
Dickinson/Beulah, ND  
Watertown, NY  
Youngstown, OH  
Enid, OK  
Mechanicsburg, PA  
Scranton, PA  
Laredo, TX  
McAllen, TX  
Pearsall, TX  
San Angelo, TX  
Gillette, WY

For more information on the FY 2018 CONUS per diem rates, go to <http://www.gsa.gov/perdiem>. Also refer to Federal Travel Regulation (FTR) Part 301-11, Per Diem Expenses, at <https://gsa.gov/portal/ext/public/site/FTR/file/Chapter301p011.html/category/21868/>.

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## REIMBURSEMENT AUTHORIZED FOR UBER ON OFFICIAL TRAVEL

The General Services Administration (GSA) has issued Federal Travel Regulation (FTR) Bulletin 17-04 to clarify that federal travelers away from their duty station on official business may be reimbursed for the use of Transportation Network Companies (TNCs) or innovative mobility technology companies (IMTCs) under FTR Part 301-10, Transportation Expenses; Subpart E, Special Conveyances; Section 301-10.400, What types of special conveyances may my agency authorize me to use?; specifically, paragraph (c): “[Your agency may authorize/approve use of] any other special conveyance when determined to be advantageous to the government.”

This bulletin implements the Modernizing Government Travel Act (Public Law 115-34). Public Law 115-34 requires GSA to “prescribe regulations...to provide for the reimbursement for the use of a transportation network company or innovative mobility technology company by any federal employee traveling on official business” (paragraph (a) of Section 2, Federal Employee Reimbursement for Use of Modern Travel Services). The law defines IMTCs and TNCs as follows:

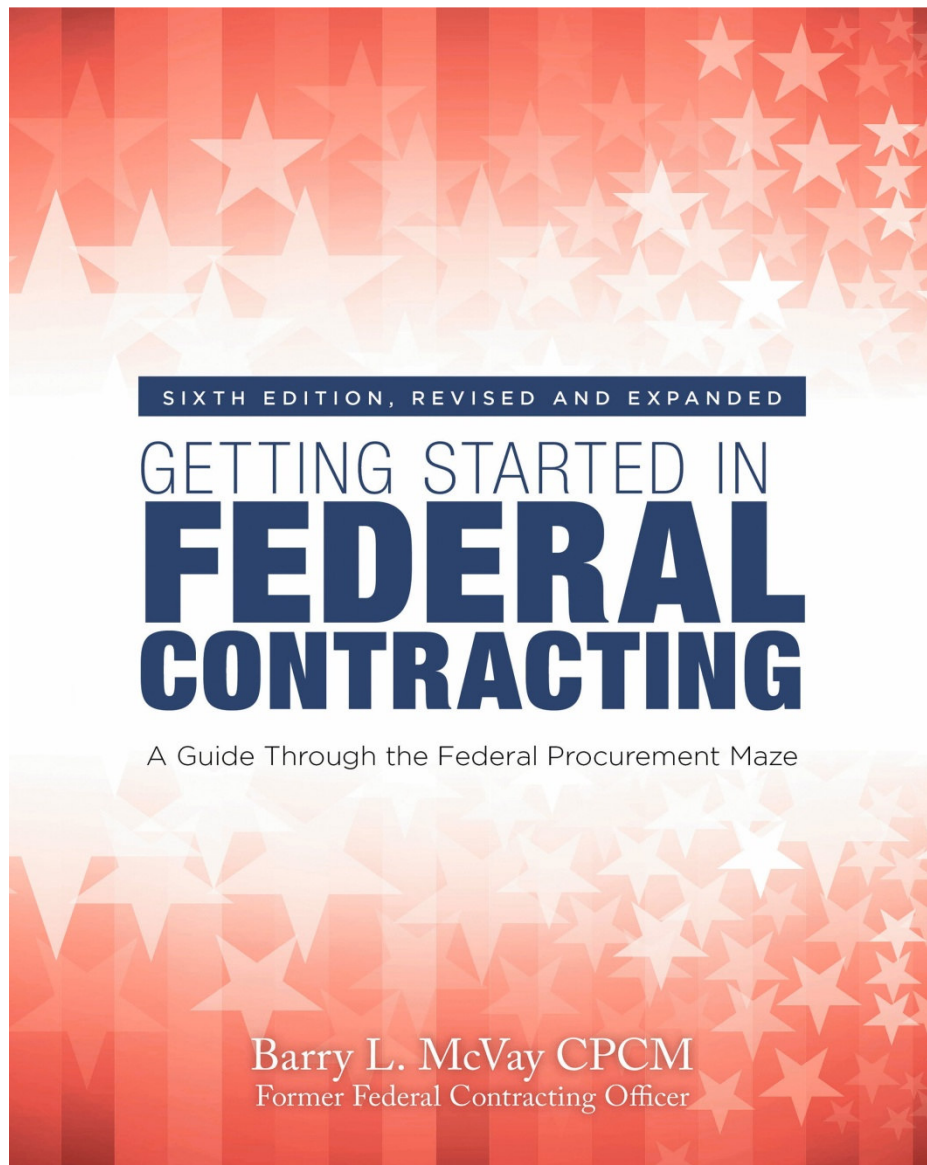
- ***Innovative Mobility Technology Company***: “...an organization, including a corporation, limited liability company, partnership, sole proprietorship, or any other entity, that applies technology to expand and enhance available transportation choices, better manages demand for transportation services, or provides alternatives to driving alone.”
- ***Transportation Network Company***: “...(A) means a corporation, partnership, sole proprietorship, or other entity, that uses a digital network to connect riders to drivers affiliated with the entity in order for the driver to transport the rider using a vehicle owned, leased, or otherwise authorized for use by the driver to a point chosen by the rider; and (B) does not include a shared-expense carpool or vanpool arrangement that is not intended to generate profit for the driver.”

Examples of an IMTC are bike-sharing and car-sharing companies; examples of a TNC are Uber and Lyft.

The bulletin states, “For purposes of the FTR, TNCs and innovative mobility technology companies are forms of special conveyance and, when permissible under local laws and ordinances, may be efficient and cost effective alternatives to taxis or rental cars. Federal agencies may authorize and reimburse federal travelers on TDY [temporary duty travel] for use of TNCs or innovative mobility technology companies in accordance with internal agency policy.”

**EDITOR’S NOTE:** In addition to providing increased options, Section 3 of Public Law 115-34 requires agencies to submit to GSA “(A) data on total agency payments for such items as travel and transportation of people, average costs and durations of trips, and purposes of official travel; (B) data on estimated total agency payments for employee relocation; and (C) an analysis of the total costs of transportation service by type, and the total number of trips utilizing each transportation type for purposes of official travel.” Agencies have not been required to provide such information in the past, and this breakdown will help GSA and Congress understand the true costs associated with official travel. Also, this information will be made available to the public so the government’s use of transportation resources can be assessed.

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