



February 9, 2005

Ambassador Robert B. Zoellick
The United States Trade Representative
Office of the President
Washington, DC 20508

Dear Ambassador Zoellick:

The National Association of State Procurement Officials (NASPO) is a member organization consisting of the state purchasing directors for the centralized procurement organizations in each state. The membership is as diverse as the various laws, rules and regulations for each state. This letter is forwarded at the request of and with the full approval of the NASPO State and Federal Relations Committee and the NASPO Board of Directors.

NASPO is in receipt of a copy of your recent letter to the State Governors and is aware that the Administration is negotiating Free Trade Agreements (FTA's) with Panama and the Andean countries of Colombia, Ecuador, and Peru. We understand that you are seeking permission to offer these trading partners the same procurement provisions that many states have agreed to provide under the GPA and other FTAs such as the Central American Free Trade Agreement (CAFTA). We understand that these negotiations include discussion and the possible inclusion of a reciprocity policy provision, which is based on reciprocal government procurement policies used in a number of states. We also understand that the USTR's intent in

including the reciprocity policy provision in the upcoming negotiations is to provide an incentive to the states to abide by the new FTAs.

As a matter of policy, NASPO is generally supportive of open and free procurement processes and has adopted resolutions espousing the benefits of open procurement systems. However, as a member organization, NASPO cannot dictate the policies or actions of individual members or states. A majority of the NASPO member states have agreed to abide by the provisions of the GPA as it pertains to procurement.

NASPO did not take a position on CAFTA but did offer the USTR's Intergovernmental Policy Advisory Committee (IGPAC) specific comments in regard to Article 9 of the CAFTA agreement as it pertains to procurement matters. As noted above, NASPO supports the intent of open and fair bidding practices described in Article 9 of CAFTA. The NASPO comments were incorporated into the IGPAC Memorandum submitted to the USTR on September 8, 2004 (refer to several bullets on pages 4 and 5 in particular).

NASPO believes there is a need to bring to your attention a concern regarding the inclusion of the new reciprocity policy at this time and until such time as the impact of the policy, as it affects procurement, is fully known and understood. While the USTR's intent may be to provide an incentive to the states to agree to the Panama and Andean FTAs, NASPO believes that the reciprocity proposal may actually be a disincentive to the states. While it is true that many of the states have reciprocity laws and policies, these laws and policies are usually

broad in scope, requiring open and fair procurement processes policies and practices. NASPO is concerned that may not be the case with the FTAs.

According to your letter, a state will not be required to "change its current government procurement practices." However, your letter further states, "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." These are contradictory statements, in practical terms. The FTAs referred to have very specific requirements regarding how procurements are conducted. The majority of NASPO members, even those that have agreed to the GPA and FTAs and who follow the intent of open and fair procurement practices, may not be in compliance with some of the specific requirements of the FTAs, such as the length of tendering processes, placing bid evaluation criteria in the bid solicitations, requiring written responses to bid solicitations and others.

It is unclear from your recent letter whether the NASPO questions and requested clarifications have been fully addressed. Since either party can use reciprocity in an agreement, NASPO remains concerned that the new reciprocity policy could adversely affect businesses within a state if the state's procurement practices are not in full technical compliance with the FTA. As such, NASPO member states may find themselves in the untenable situation of advising their Governors that their procurements are not in compliance with the FTA requirements.

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NASPO respectfully requests that the USTR provide us with the desired clarifications so we might better inform and educate our members to facilitate discussion of this important matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. Adler", is centered on the page. The signature is written in a cursive style with a horizontal line extending to the right.

John Adler

President,

National Association of State Procurement Officials

Cc: Jean Grier - USTR
Kay Wilkie - IGPAC