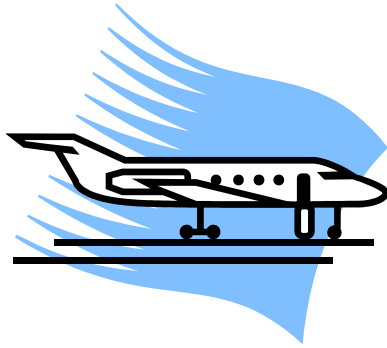


## Documentation and Approval of Federally Funded International Travel (Fly America Act-Open Skies Agreement)



### References:

- 49 U.S.C. §40101(e)
- 49 U.S.C. §40118 (Fly America Act)
- Airline Open Skies Agreements (<http://www.gsa.gov/portal/content/103191>)
- FAR Subpart 47.4
- FAR 52.247-63
- 41 CFR §301-10.131 through §301-10.143 (Federal Travel Regulations)
- GSA Bulletin FTR 11-02

### Overview

This section provides guidance to DOE Contracting Officers, Contracting Officer Representatives, and Program Officials on documentation and approval of federally funded international travel by Federal contractors and subcontractors in accordance with FAR 52.247-63 PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JUNE 2003), 49 U.S.C. §40118 (Fly America Act) and the Open Skies Agreements as amended.

### Background

Contracts that include FAR clause 52.247-63, PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JUNE 2003) as prescribed in FAR 47.405 require that, if available, the Contractor (and subcontractors), in performing work under the contract, shall use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property. The clause also indicates that if the Contractor selects a carrier other than a U.S.-flag air carrier, the travel voucher must include a statement indicating the reason it was necessary and allowable to use the foreign-flag air carrier as provided in FAR Section 47.403 - Guidelines for implementation of the Fly America Act.

The Fly America Act (40 U.S.C. §40118) is part of the Federal Travel Regulations (41 CFR Parts 301-10.131 through 301-10.143) promulgated by the General Services Administration (GSA) which implements statutory requirements and Executive branch policies for travel by Federal civilian employees and others authorized to travel at Government expense. Recipients of Federal funds, either through Federal contracts, subcontracts or Federal financial assistance, are required to abide by the provisions of the Fly America Act. The Fly America Act requires that foreign air travel funded with Federal dollars be performed on U.S. flag air carriers, except as provided in 41 CFR §301-10.136 and § 301-10.137 or when one of the exceptions in 41 CFR §301-10.135 applies.

An exception to the Fly America Act is FAR 47.403-2 – AIR TRANSPORT AGREEMENTS BETWEEN THE UNITED STATES AND FOREIGN GOVERNMENTS which states:

“Nothing in the guidelines of the Comptroller General shall preclude, and no penalty shall attend, the use of a foreign flag air carrier that provides transportation under an air transportation agreement between the United States and a Foreign government, the terms of which are consistent with the international aviation policy goals at 49 U.S.C. 1502(b) and provide reciprocal rights and benefits.”

This is consistent with the exception provided in 41 CFR §301-10.135(b) which states you must use a U.S. flag air carrier for travel unless:

“The transportation is provided under a bilateral or multilateral air transportation agreement to which the United States Government and the government of a foreign country are parties, and which the Department of Transportation has determined meets the requirements of the Fly America Act.”

The United States Government has entered into several air transport agreements that allow federal funded transportation services for travel and cargo movements to use foreign air carriers under certain circumstances. Open Skies agreements are considered qualifying "bilateral or multilateral [air transportation] agreement[s]". A full list of current Open Skies partners is available at <http://www.gsa.gov/openskies>.

On October 6, 2010, GSA issued GSA Bulletin FTR 11-02, to inform agencies of the amendment to the U.S.-EU Open Skies Agreement effective June 24, 2010. One significant change made by the amendment affects Contractors' use of the Open Skies Agreement rates when a GSA Airline City Pair Contract fare is in place. Contractors are **not** eligible to utilize GSA Airline City Pair Contract fares. Prior to this Open Skies amendment, if there was a GSA Airline City Pair in place, Government Contractors were precluded from using foreign carriers per the Open Skies Agreement for travel. However, this amendment to the Open Skies Agreement now provides that Government contractors may use Open Skies Agreement rates even when a GSA Airline City Pair Contract fare exists. This amendment also allows EU airlines to transport passengers between points in the United States and points outside the EU if the EU airline is authorized to serve the route under the United States-EU Open Skies Agreement. For more details see GSA Bulletin FTR-11-02 at: <http://www.gsa.gov/portal/content/102886#TravelPerDiemBulletins>.

#### **TERMS AND DEFINITIONS:**

*International Air Transportation* means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

*United States* means the 50 States, the District of Columbia, and outlying areas of the United States.

*U.S.-flag air carrier* means an air carrier holding a certificate under section 401 of the Federal Aviation Act of 1958 (49 U.S.C. §41102).

**GUIDANCE:**

Contracting Officers, Contracting Officer Representatives or Program Officials responsible for reviewing and approving for payment Contractor invoices that include travel expenses must ensure that when a foreign air carrier is used a certification is provided with the invoice in accordance with §301-10.142 of the FTR. Reimbursement for travel expenses from a foreign air carrier fare may be denied if appropriate certification is not provided. The certification must include:

- Traveler's name
- Dates of travel
- Origin and destination of travel
- Detailed itinerary of travel, name of air carrier and flight number for each leg of the trip
- A statement explaining why you met one of the exceptions in [§301-10.135](#), [301-10.136](#), or [301-10.137](#) or a copy of your agency's written approval that foreign air carrier service was deemed a matter of necessity in accordance with [§301-10.138](#).

This certification satisfies the requirement of FAR 52.247-63, PREFERENCE FOR U.S.-FLAG AIR CARRIERS, subparagraph (f) for contractor use of the Open Skies Agreement.