



## Department of Energy

Brookhaven Site Office

P.O. Box 5000

Upton, New York 11973

Suzanne Davidson  
Chief Financial officer  
Brookhaven Science Associates, LLC  
Brookhaven National Laboratory  
Upton, New York 11973

OCT 20 2011

Dear Ms. Davidson:

**SUBJECT:** CONTRACT DE-AC02-98CH10886, APPLICABILITY OF THE UNITED STATES EUROPEAN UNION "OPEN SKIES" AIR TRANSPORT AGREEMENT TO BROOKHAVEN SCIENCE ASSOCIATES, LLC (BSA)

**References:**

1. Letter from S. Davidson, BSA, to R. Gordon, SC-BHSO, Subject: Contract DE-AC02-98CH10886, Applicability of the United States European Union "Open Skies" Air Transport Agreement to BSA, dated October 13, 2011
2. Email from E. Landini, BSA, to K. Fox, BSA, Subject: "Fly America Act – Open Skies Agreement Guidance", dated August 9, 2011

Your referenced letter requested formal authorization to begin utilizing the Open Skies Air Transport Agreement and attached a GSA Memorandum dated October 6, 2010. However, authorization was already provided via the referenced email along with the requisite Department of Energy (DOE) Guidance document.

As stated in the referenced email, "the attached DOE guidance paper, effective August 4, 2011, clarifies that FAR Section 47.403-2, is an acceptable exception to the Fly America Act requirements promulgated by FAR Clause 52.247-63 (clause I.76 of Contract DE-AC02-98CH10886). Please note that as stipulated in section (d) of the aforementioned clause and the Documentation section of the attached guidance, specific certification must accompany each voucher involving such transportation."

Accordingly, per your request, this letter iterates official notification to afford BSA the opportunity to use the Open Skies Agreements in accordance with the provisions of the attached DOE Guidance.

Please note that Evelyn Landini is the focal point for Prime Contract issues. She can be reached at extension 7812 with any additional questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert P. Gordon".

Robert P. Gordon  
Contracting Officer

cc: E. Landini, SC-BHSO, w/o encl.  
L. Sadler, SC-BHSO, w/o encl.  
K. Fox, BSA, w/encl.  
M. Goldman, BSA, w/encl.

**SUBJECT:** Open Skies Agreements – Guidance for M&O Contractors

**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 47.403

FAR 52.247-63

FTR §301-10.131 through §301-10.143

GSA Bulletin FTR 11-02

**WHEN IS THIS EFFECTIVE?**

Guidance is effective upon issuance.

**WHEN DOES THIS EXPIRE?**

Guidance will remain in effect until superseded or canceled.

**WHO ARE THE POINTS OF CONTACT?**

Stephanie Fuller

[Stephanie.Fuller@ch.doe.gov](mailto:Stephanie.Fuller@ch.doe.gov)

(630) 252-2722

**WHAT IS THE PURPOSE?**

To provide guidance on Management and Operating (M&O) contractor use of foreign air carriers in accordance with GSA Bulletin Federal Travel Regulations (FTR) 11-02 and the June 24, 2010, amendment to the United States-European Union (U.S.-EU) Open Skies Agreements within the constraints of the M&O contract clause FAR 52.247-63 PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JUNE 2003).

**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).

**WHAT IS THE BACKGROUND?**

All Management and Operating prime contracts include clause 52.247-63, PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JUNE 2003) as prescribed in FAR 47.405.

This clause requires that, if available, the Contractor, in performing work under this contract, shall use U.S.-flag air carriers for international air transportation of personnel (and their personal

effects) or property. Paragraph (d) of this clause 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. Subsection 47.403-2 is an acceptable exception to the Fly America Act requirement and is consistent with the FTR §301-10.135 which provides exceptions to the Fly America Act. Following are the FAR and FTR explanations:

**FAR 47.403-2:**

“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.”

**FTR §301-10.135:**

“You are required by 49 U.S.C. 40118, commonly referred to as the “Fly America Act,” to use U.S.-flag air carrier service for all air travel funded by the U.S. Government, except as provided in [§§301-10.136](#) and [301-10.137](#) or when one of the following exceptions applies:

(b)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.”

Therefore, transportation provided under a bilateral or multilateral air transport 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 (Open Skies Agreements), is allowable.

There are currently three bilateral/multilateral “Open Skies Agreements” which meet this standard (see <http://www.gsa.gov/openskies> to access these agreements).

On October 2, 2010, GSA issued GSA Bulletin FTR 11-02, which provides guidance on the amendment to the U.S.-EU Open Skies Agreement. 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 the Opens Skies amendment, if there was a city pair in place, Government Contractors were precluded from using the Open Skies Agreements for travel. The 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. The text of GSA Bulletin FTR-11-02 can be viewed at: <http://www.gsa.gov/portal/content/102886#TravelPerDiemBulletins>.

**APPLICABILITY:**

M&O contractors, subcontractors, and purchase orders issued under the contract that may involve international air transportation.

**GUIDANCE:**

Based on existing regulation as discussed in the Background section of this document, contractors may use the Open Skies Agreement fares for international transportation when appropriately documented as required below.

Bulletins providing further guidance on transportation agreements may be found at <http://www.gsa.gov/portal/content/102886#TravelPerDiemBulletins>.

**DOCUMENTATION:**

When a foreign air carrier is used in accordance with the Open Skies Agreements, a certification must be provided in accordance with §301-10.142 of the FTR when a travel voucher is submitted. Reimbursement for 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
- Statement regarding use of Open Skies Agreement in accordance with FAR 47.403-2 and FTR §301-10.135(b).

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.