Launch of the Ariane 6 rocket, photo courtesy of European Space Agency and Arianespace.

Is There Space For Foreign-Owned Launch Service Providers With The Federal Government?

Navigating the Commercial Space Act and National Space Transportation Policy

A recent executive order from President Trump makes "[l]eading the world in space exploration and expanding human reach and American presence in space" an administration priority.[1]

The commercial space industry, and commercial launch services providers in particular, may be interested in making this priority a reality, as the federal government spends billions of dollars each year on space-related programs.

From satellites to nuclear reactors to missile defense systems to orbital debris clean-up to scores of other space-based solutions, the opportunities to help the federal government get to space will be numerous. In fact, only four months earlier, President Trump had declared that it "is the policy of the United States to enhance American greatness in space by enabling a competitive launch marketplace and substantially increasing commercial space launch cadence and novel space activities by 2030."[2]

Foreign-owned launch services providers wanting to compete for the opportunities to put U.S. government payloads in space, however, may encounter obstacles not applicable to their U.S.-based peers. The Commercial Space Act of 1998 and the National Space Transportation Policy are two such potential challenges. Both establish requirements that appear to limit launch services contract opportunities to U.S. companies and manufacturers. Understanding these two rules is therefore critical for a company based outside the U.S. to see if there is space in the federal budget for their launch services solutions.

Commercial Space Act of 1998

Congress passed the Commercial Space Act of 1998 (CSA) with the stated purpose to "encourage the development of a commercial space industry in the United States."[3] It also provides guidance for the federal government's acquisition of "space transportation services," the preparation of a launch vehicle to transport payloads to, from, or within space. Notably, the CSA specifically requires the federal government to buy space transportation services from "United States commercial providers."[4]

What is a U.S. Commercial Provider?

There are two ways a company can qualify as a U.S. commercial provider. One way is as a subsidiary of a foreign company. However, a European company should not race off to form a U.S. subsidiary (or at least a wholly owned subsidiary), because the CSA makes clear merely having a subsidiary is insufficient. Rather, the Secretary of Transportation—not the company—must determine that the subsidiary has a "substantial commitment to the U.S. market through investment and manufacturing in the U.S. and employment of U.S. persons.[5]

Additionally, the Secretary must find that the parent company's country does not create barriers to U.S. subsidiaries operating in their countries to participate in government-sponsored research and development opportunities or receive local investment.[6]

Thus, it would seem only wholly owned subsidiaries with well-established ties to the U.S. economy, and owned by companies from countries that enable U.S.-owned subsidiaries, might be able to qualify as a U.S. commercial provider to sell launch vehicle services to the federal government.

The second way to be a U.S. commercial provider under the CSA is if the company is established under U.S. law and is more than 50 percent owned by "United States nationals."[7] Under this definition, a foreign launch services provider could form a U.S. subsidiary, but it could not be a wholly owned subsidiary nor could the foreign company be the majority owner. Instead, it would need to partner with U.S. citizens or corporate entities it finds suitable, to satisfy the greater than 50 percent ownership by U.S. nationals requirement. Finding such partners may be difficult since it means the foreign provider will not have as much control over the subsidiary's operations.

Before changing or executing any ownership structures with the idea of being CSA-compliant, a foreign launch provider should consult with counsel, for similar reasons we discussed in a previous article *at this direct link*.
Indeed, the recent on-ramp request for proposals for Phase 3 for the U.S. Space Force's National Security Space Launch program requires each company to "provide a clear statement attesting to, and explaining how, the Offeror meets the … definition of U.S. Commercial Provider. In addition, the Offeror must provide relevant, supporting documentation and an explanation of how that documentation supports their attestation."[8] It cannot be emphasized the importance of getting the ownership structure right.

Exceptions to the CSA

To be fair, there are exceptions to the CSA's U.S. commercial provider requirement. But the bar to meet an exception is high; whether or not an exception applies depends on a determination by the National Aeronautics and Space Administration (NASA) or U.S. Air Force.[9] Moreover, although there are seven exceptions, a foreign launch services provider likely may be eligible only for a small subset:

- *The payload requires transport by the space shuttle.*
- *No U.S. commercial provider can deliver a cost-effective solution for the space transportation requirements.*
- *Use of a U.S. commercial provider poses an unacceptable risk of a loss of a unique scientific opportunity.*
- *Use of a U.S. commercial provider is inconsistent with national security objectives.*
- *Use of a U.S. commercial provider is inconsistent with international agreements.*

It is more cost effective to transport the payload in conjunction with a test or demonstration of a launch vehicle owned by the federal government.
The payload can launch from the space shuttle as a secondary payload and would be consistent with NASA programs.

As this list suggests, the exceptions relevant to a foreign launch services provider might only be providing cost effective space transportation services no U.S. commercial provider can, loss of a unique scientific opportunity, or because of an international agreement. Nevertheless, it is important to recognize that the government would seek the exception, not the foreign launch services provider.

National Space Transportation Policy of 2013

Should a foreign launch services provider be able to satisfy the CSA, another requirement to navigate is the U.S. National Space Transportation's policy (Policy).

Last updated in 2013, the Policy's goal is for the U.S. to have assured access to diverse regions of space.[10]

That said, launch services providers competing for contracts with the federal government to transport U.S. government payloads to space should be aware of the Policy's direction concerning the sourcing of the launch vehicle. Specifically, "United States Government payloads shall be launched on vehicles manufactured in the United States."[11] Similar to the CSA, the Policy provides for an exemption to the domestic manufacturing requirement, although such an exemption requires approval from and coordination among high-level government officials.[12]

Interestingly, the Policy does not define "manufacture" and neither does the federal government's acquisition regulations. This lack of a definition may be particularly challenging for a company that makes a launch vehicle consisting of components and assemblies from several different countries. Arguably the more processes and substantial changes to the components that take place in other countries may make it less likely the finished product that is the launch vehicle would be found to be manufactured in the U.S.[13]

One possible standard federal agencies could use relies on the Buy American Act (BAA). Under this standard, the government may require that more than 65 percent of the cost of components of the launch vehicle be manufactured in the U.S. However, there is no law, policy, or regulation that requires the BAA standard. Other opportunities could use a different method.

Thus, companies without a significant manufacturing presence in the U.S. might consider engaging potential federal government agency customers early in the acquisition process to define what manufacture means in a way that may accommodate some of their overseas processes. Otherwise, to remain eligible for launch services contracts with the federal government—after having established CSA compliance—companies may need to evaluate how to bring manufacturing capacity to the U.S. to build their launch vehicles.

Conclusion

Foreign launch services providers eyeing contracts with the U.S. government must keep the CSA and National Space Transportation Policy in mind. Not being in compliance with the requirements of either will make them ineligible for contract awards and unable to participate in making the current administration's objectives a reality.

Preparation, well in advance of submitting a proposal for a federal government contract for launch services, is therefore key. Likewise, a foreign company that thinks it is in compliance but is not, or claims compliance without thoroughly evaluating the requirements, and receives a contract risks more severe consequences, to include contract termination, False Claims Act allegations, and suspension/debarment from future federal contracts. Understanding the scope of the requirements and whether there is a way to compliance is, therefore, essential.

wsgr.com

WILSON SONSINI

Author Curt Blake co-founded and was CEO of Spaceflight Inc., the largest provider of integrated launch services for small satellites. He established Spaceflight's global network of launch providers, which included SpaceX, Rocket Lab, Orbital, JAXA, Arianespace, and NSIL (the commercial arm of the Indian Space Agency). Curt was one of the first attorneys on-site at Microsoft, general counsel at Aldus, and COO at Starwave, giving him a solid combination of practical business experience and an intimate understanding of the legal risks involved in running companies. Curt has negotiated numerous launch contracts with companies all over the world, including India, Japan, Russia, New Zealand, Australia, France, Germany, Italy, the UK, Kazakhstan, Israel, Brazil, Luxembourg, Korea, and Canada, among others.

Author Tim Cox is a staff attorney in the Washington, D.C., office of Wilson Sonsini Goodrich & Rosati, where he advises on government contracts, grants, and compliance matters. He was previously was an active-duty attorney in the United States Air Force Judge Advocate General's Corps. He also served as in-house counsel at a software and sensor company, providing the lead legal support to its federal business operations. Prior to joining Wilson Sonsini, Tim was a supervisory attorney for the Federal Aviation Administration in the Acquisition and Fiscal Law Division.

References

1 *Executive Order, Ensuring American Space Superiority, December 18, 2025, available at https://www.whitehouse.gov/presidential-actions/2025/12/ensuring-american-space-superiority/.*
2 *Executive Order, Enabling Competition in the Commercial Space Industry, August 13, 2025, available at https://www.whitehouse.gov/presidentialactions/2025/08/enabling-competition-in-the-commercial-space-industry/.*
3 *P.L. 105-303 (1998).*
4 *Id. at section 201(a), as codified at 51 U.S.C. § 50131(a).*
5 *1 U.S.C. § 50101(7)(B)(i).*
6 *Id. at § 50101(7)(B)(ii).*
7 *Id. at § 50101(7)(A).*
8 *See National Security Space Launch (NSSL) Phase 3 Lane 1 Fiscal Year (FY) 2026 On-Ramp Request for Proposal (RFP), available at https://sam.gov/ workspace/contract/opp/f991badf321440bf8abd3972bc5c9e87/view.*
9 *51 U.S.C. § 50131(b).*
10 *National Space Transportation Policy at 2 (Nov. 21, 2013), available at https:\space.commerce.gov/policy/national-space-transportation-policy/ (Policy).*
11 *Id. at 8.*
12 *See Policy at 8.*
13 *See Federal Acquisition Regulation 25.201(b)(2).*