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Article 15

Contracting Out/Privatization/Outsourcing

Section 1. Prior Notification to Union

~~When the Administration anticipates contracting out of work presently being performed by bargaining unit employees, regardless of how the contract is to be implemented the Union will be notified prior to the invitation for bids. The notice will include general information concerning the employees who may be affected.~~

Section 2. Union Requested Discussions

~~Following such notice, upon request from the Union, the Administration will meet with the Union to discuss the information contained in the notice.~~

Section 3. Notice to the Union

~~Prior to contracting out work performed by bargaining unit employees, the Agency will provide notice and, upon request, bargain with the Union to the~~

24 ~~extent required by 5 USC 71 and in accordance with Article 4. When notice is~~
25 ~~given, it will include information on positions and locations.~~

26

27

28 **~~Section 4. Employee Privileges and Benefits~~**

29

30 ~~Employees' privileges and benefits will not be diminished by allowing contractors~~
31 ~~to participate in employee programs. Such privileges include, but are not limited~~
32 ~~to, health screening, health fitness programs, shuttle services, and Government-~~
33 ~~sponsored training.~~

34

35

36 **~~Section 5. Briefings~~**

37

38 ~~The Agency will provide a contracting out and FAIR briefing in connection with a~~
39 ~~national Union/Management meeting at least once per year. This briefing does~~
40 ~~not preclude the issue from being addressed at any subsequent national~~
41 ~~Union/Management meeting.~~

42

43

44 **Section 1. General**

45

46 **The provisions of this Article concern any contracting out, privatization, or**
47 **outsourcing functions currently or last performed by Agency employees,**
48 **whether or not there is a direct or negative effect on current bargaining unit**
49 **employees or whether or not that adversely impacts bargaining unit**
50 **employees. This Article applies to contracting out actions and/or reviews**
51 **and other privatization or outsourcing regardless of the authority under**
52 **which the action or review was initiated. This includes, but is not limited to,**
53 **contracting out reviews conducted under OMB Circular A-76 procedures,**
54 **personal services contracts, work that is directly converted to contractor**
55 **performance without a public-private competition, and outsourcing of**
56 **functions without a contractual relationship. "Work" includes work that the**
57 **Agency characterizes as "new" work, and expansion of work currently or**
58 **last performed by Agency employees or a temporary or long-term search**
59 **into work currently or last performed by Agency employees.**

60

61 **The Agency shall comply with the provisions of its own and other**
62 **applicable rules and regulations in all aspects of the contracting out**
63 **process that are not excluded from collective bargaining under 5 U.S.C.**
64 **7106(a) or 7117.**

65

66

67 **Section 2. Notification**

68

69 **The Union and potentially affected employees must be notified in writing by**
70 **the Agency at the start of the Agency's review of any work currently or last**
71 **performed by Agency employees for contracting out. If the Agency is**
72 **using the OMB Circular A-76 process, the start of the Agency's review**
73 **means the beginning of the preliminary planning process. This provision**
74 **applies regardless of the authority, or lack thereof, under which the**
75 **contracting out is being considered. In addition, the Agency will allow the**
76 **Union to designate at least one representative to participate fully on the**
77 **preliminary planning team.**

78

79 **The Agency shall provide the Union with copies of all notifications sent to**
80 **Congress regarding contracting out activities and/or studies at the same**
81 **time these notices are provided to Congress.**

82

83 **Copies of additions, changes, deletions, and supplements to OMB Circular**
84 **A-76; Agency-level procurement regulations and policies; Agency-level**
85 **regulations and policies concerning the implementation of OMB Circular A-**
86 **76; and Federal statutory procurement provisions applicable to the Agency**
87 **will be forwarded to the Union as soon as they are made known to the**
88 **Agency.**

89

90

91

92 **Section 3. Information Sharing**

93

94 **The Agency shall provide the Union and affected employees with**
95 **weekly briefings during preliminary planning, the duration of the**
96 **competition, and the post-competition transition phase. Such**
97 **briefings will include but not be limited to:**

98

99 **1. Update on actions taken during the previous week;**

100

101 **2. Action scheduled to take place during the following week;**

102

103 **3. Tentative schedule for the entire A-76 review and/or other**
104 **process;**

105

106 **4. Identification of the employees' and Union's role in each**
107 **action;**

108

109 **5. Provision of all relevant documents, including any**
110 **communication sent out to the group of prospective and/or**
111 **real bidders.**

112

113 **6. Electronic access to all documents made available to**
114 **prospective and/or real bidders.**

115

116 **Section 4. Bargaining and Dispute Resolution**

117

118 **The Union retains the right to additional procedures and arrangements for**
119 **adversely affected employees regarding specific decisions by the Agency**
120 **to contract out the work of bargaining unit employees as they occur. If the**
121 **Union chooses to bargain, Agency implementation will be held in abeyance**
122 **pending the completion of bargaining, including the resolution of any**
123 **impasse disputes.**

124

125 **No contract award shall be made until all grievance procedures, up to and**
126 **including arbitration, are exhausted concerning any contract provision**
127 **pertaining to the impact and implementation of a contracting-out decision.**

128

129

130 **Section 5. Employer/Employee Relationship**

131

132 **The Agency will request Voluntary Early Retirement Authority (VERA) and**
133 **Voluntary Separation Incentive Program (VSIP) authority from the Office of**
134 **Personnel Management as soon as it initiates the review of any positions**
135 **for potential contracting out. Initiation of review means the beginning of**
136 **preliminary planning for public-private competitions under OMB Circular A-**
137 **76 or any other public-private competition rules, or the decision to review**

138 **any positions for direct conversion to contractor performance without a**
139 **public-private competition. If authorized by the Office of Personnel**
140 **Management, the Agency will offer VERA/VSIP to the affected employees at**
141 **the time of formal public announcement of the public-private competition.**
142 **For OMB Circular A-76 competitions, the formal public announcement**
143 **occurs at the end of the preliminary planning process when a notice is**
144 **posted on www.fedbizopps.gov announcing the competition. The**
145 **VERA/VSIP authority will be concurrent with other methods used to draw**
146 **down the workforce and/or facilitate other agency opportunities for the**
147 **affected employees. Each time there are more volunteers for VSIP**
148 **opportunities than there are slots authorized, applicants will be released**
149 **based on seniority.**

150

151 **The Agency will not enter into personal service contracts that establish an**
152 **Employer-employee relationship, as defined by appropriate laws and**
153 **regulations.**

154

155

156 **Section 6. FAIR Act Inventory**

157

158 **The Agency shall provide to the Union an electronic copy of the FAIR Act**
159 **Inventory, including the list of inherently governmental functions required**

160 **by A-76, in an editable spreadsheet format on the same day that the FAIR**
161 **Act Inventory is made available to the public.**

162

163 **On the same day that this information is made available to the public, the**
164 **Agency shall provide to the Union an electronic copy of the full written**
165 **justifications for:**

166

167 **1. All functions listed on the FAIR Act Inventory, including the list of**
168 **inherently governmental functions required by A-76, as Commercial**
169 **with a Reason Code of A, E, or F; and**

170

171 **2. All functions listed on the inventory as Inherently Governmental.**

172

173 **The Agency shall provide to the Union a crosswalk of all positions held by**
174 **employees of the Agency to the functional listings on the FAIR Act**
175 **Inventory, including the list of inherently governmental functions required**
176 **by OMB Circular A-76, no later than the same day that the FAIR Act**
177 **Inventory is made available to the public.**

178

179 **At the same time as the Agency's inventory is made public, the Agency**
180 **shall notify the Union and all affected employees in writing of their right to**
181 **challenge Agency inventory decisions in accordance with applicable law,**
182 **rules and regulations. Such notifications will:**

183

184 **1. Explain the challenge timeframe;**

185

186 **2. Include the designation of the appropriate inventory challenge**

187 **authority;**

188

189 **3. Explain the parameters of inventory challenges;**

190

191 **4. Designate the address to which challenges are to be delivered;**

192

193 **5. Indicate the acceptable methods of delivering challenges;**

194

195 **6. Specify all required activity information;**

196

197 **7. Specify the date when challengers will receive the Agency's**

198 **decision; and**

199

200 **8. State the number of FAIR Act challenges and appeals filed since**

201 **the enactment of that law and the disposition of those challenges**

202 **and appeals.**

203

204 **The decision on an inventory challenge will be provided to the Union and**

205 **all employee challengers in writing and will:**

206

207 **1. Explain the appeal timeframe;**

208

209 **2. Include the designation of the appropriate inventory appeals**
210 **authority;**

211

212 **3. Explain the parameters of inventory appeals;**

213

214 **4. Designate the address to which appeals are to be delivered;**

215

216 **5. Indicate the acceptable methods of delivering appeals;**

217

218 **6. Specify all required activity information; and**

219

220 **7. Specify the date appellants will receive the Agency's decision.**

221

222

223 **Section 7. Preliminary Planning Procedures**

224

225 **Within 90 calendar days of when the Agency decides to consider any**
226 **Agency function for potential study under OMB Circular A-76, the Agency**
227 **will notify the Union and all potentially affected employees in writing of**
228 **such decision. The Agency shall meet and confer with the Union regarding**

229 **any proposed study of a function to be considered for contracting out that**
230 **were currently or last performed by employees within the bargaining unit**
231 **before the beginning of preliminary planning under OMB Circular A-76.**

232

233 **At the beginning of the preliminary planning process, the Agency shall**
234 **provide the Union a list of all potentially affected bargaining unit**
235 **employees with the following information about each: job title, grade, step,**
236 **work unit, work location, supervisor, length of Federal service, length of**
237 **Federal service, veteran status, disability status, gender, race, and age. In**
238 **the case of a contracting out action and/or review outside the A-76 process,**
239 **the Agency shall provide the above information at the beginning of the**
240 **review for contracting out. The information shall be provided for every**
241 **employee performing a function related to the work reviewed for**
242 **contracting out.**

243

244 **1. The Agency will provide the Union and allow affected employees**
245 **to review the function descriptions, function groupings, baseline**
246 **costs, and all other pertinent documents that may be legally released**
247 **to the Union as they become available during preliminary planning.**

248

249 **2. The Agency will provide the Union and the affected employees**
250 **with all materials, including the preliminary planning report and all**
251 **documents created by outside consultants, prepared in support of**

252 **the decision to proceed with an A-76 competition at the time of**
253 **formal announcement of the A-76 competition on**
254 **www.fbo.gov<http://www.fbo.gov.**

255

256 **As part of the preliminary planning process, the Agency shall make**
257 **available to all affected employees training (conducted by a live instructor,**
258 **not via computer) on the contracting out process, including (but not limited**
259 **to) procedures, employee rights, roles of Agency personnel, and applicable**
260 **laws, rules, and regulations governing the contracting out process. The**
261 **Agency shall also provide a copy of all training materials used to the Union**
262 **in electronic format or hard copy, at the election of the Union.**

263

264 **The Agency shall provide the Union with the tentative schedule for**
265 **preliminary planning, development of the Performance Work Statement**
266 **(PWS) and solicitation, development of the Most Efficient Organization**
267 **(MEO), and source selection at the beginning of the preliminary planning**
268 **phase. The Agency shall provide the Union with all subsequent**
269 **modifications to the tentative schedule.**

270

271 **The Agency will provide the Union and the potentially affected employees**
272 **with the following materials at the beginning of the preliminary planning**
273 **process:**

274

- 275 **1. The current position description for each potentially affected**
276 **employee;**
277
- 278 **2. The Agency's rationale for reviewing the functions at issue for a**
279 **potential A-76 study;**
280
- 281 **3. Other efficiency and/or business process reengineering methods**
282 **considered before the public-private competition method was**
283 **chosen;**
284
- 285 **4. Written assurance that the Agency is conducting the study in**
286 **accordance with direction from the Office of Management and**
287 **Budget (OMB); and**
288
- 289 **5. All correspondence from OMB, Agency headquarters, Agency**
290 **component, and Agency subcomponent down to the local level**
291 **regarding instructions from higher authority to conduct the cost**
292 **study.**

293

294 **Section 8. OMB Circular A-76 Competition**

295

296 **The Agency will provide the Union, in a timely manner, copies and drafts of**
297 **pertinent information concerning all cost studies, specifically to include:**

298 **the invitation for bid (IFB), request for quotation (RFQ), or request for**
299 **proposal (RFP); abstract of bids; correspondence from higher authority**
300 **directing the cost study; correspondence from Department of Labor**
301 **regarding certification of a wage rate; the performance work statement;**
302 **documents setting forth the estimated dates for the contracting out**
303 **process; all changes to the performance work statement; all bidder**
304 **questions and activity answers related to the performance work statement.**

305 **The Union and affected employees may submit comments to the Agency**
306 **on any information provided by the Agency. The Agency will provide**
307 **written responses to Union and employee comments before formal public**
308 **announcement of the OMB Circular A-76 competition is made.**

309 **All training materials and other resources, including training classes,**
310 **provided to Agency personnel involved with an OMB Circular A-76 study**
311 **will also be provided to representatives designated by the Union.**

312

313 **The Agency will provide the Union and all affected employees written**
314 **notification of formal announcements of the start date of each OMB**
315 **Circular A-76 competition no later than 90 days prior to the public**
316 **announcement date. The notification will include all information contained**
317 **in the formal public announcement.**

318

319 **By no later than the formal public announcement date of each OMB**
320 **Circular A-76 competition, the Agency shall provide the Union the final list**

321 **of affected bargaining unit employees with the following information about**
322 **each: job title, grade, step, work unit, work location, supervisor, length of**
323 **Federal service, length of Agency service, gender, veteran status, disability**
324 **status, race, and age.**

325

326 **Upon each formal public announcement of an OMB Circular A-76**
327 **competition, the Agency shall suspend hiring for all positions for which**
328 **affected employees may be qualified. When making decisions on the**
329 **assignment to training, pursuant to the National Agreement, the Agency**
330 **shall give priority consideration to employees who would be affected by**
331 **the OMB Circular A-76 competition.**

332

333 **1. The Union may appoint a representative to serve on every**
334 **Performance Work Statement (PWS) and Most Effective**
335 **Organization (MEO) team formed under OMB Circular A-76. The**
336 **Agency will train employee PWS and MEO team participants**
337 **concerning their duties and obligations under all laws, rules, and**
338 **regulations. The Agency has determined that the assignment of**
339 **the Union's representative will be treated as an assignment of**
340 **work for the purposes of duty time to participate. The Union's**
341 **representative assigned to these teams will sign the same non-**
342 **disclosure agreement and be bound by the same obligations to**

343 **protect confidential information regarding the contracting out**
344 **process as all other members.**

345

346 **2. If the A-76 competition involves a function performed in more than**
347 **one geographic location, the Union may appoint a representative**
348 **to each of the teams from each geographic location. In addition, if**
349 **they A-76 competition involves more than one function, the Union**
350 **may appoint a representative to each team from each function.**

351 **The Union's representatives to these teams will be considered full**
352 **members of these teams and may not be removed from the teams**
353 **or excluded from any activities of the teams, without good cause.**

354

355 **The Agency shall provide the Union advance notification of and the**
356 **opportunity to, fully participate in all meetings, electronic conferences, site**
357 **visits, conferences, and/or debriefing sessions with actual or potential**
358 **bidders related to OMB Circular A-76 competitions on official time.**

359

360 **The Union will be notified when site visits will be conducted for potential**
361 **and/or actual bidders of any function undergoing a commercial activities**
362 **study that affects bargaining unit employees. Union representatives may**
363 **attend pre-proposal conferences and participate in site visits held for**
364 **potential bidders.**

365

366 **The Agency will provide the Union copies of all supporting documentation**
367 **on bids.**

368

369 **The Agency shall release to the Union the certified SCF, agency tender, and**
370 **public reimbursable tenders by no later than the competition end date. The**
371 **Agency will also provide the Union all other information developed by the**
372 **Agency as part of the contracting out process, including that supplied by**
373 **prospective contractors, that is not prohibited from disclosure by law.**

374

375 **The Agency will provide the Union and all affected employees written**
376 **notification of formal announcements of the end date of each OMB Circular**
377 **A-76 competition simultaneously with the public announcement. The**
378 **notification will include all information contained in the formal public**
379 **announcement.**

380

381 **The Agency shall conduct the debriefings required by OMB Circular A-76,**
382 **Attachment B, Paragraph D6d with the Union and all affected employees by**
383 **no later than the formal end date of each OMB Circular A-76 competition.**

384

385 **The Agency will provide the Union and all affected employees written**
386 **notification of formal announcements of the cancellation date of each OMB**
387 **Circular A-76 competition simultaneously with the public announcement.**

388 **The notification will include all information contained in the formal public**
389 **announcement.**

390

391 **When competitions are cancelled, the Agency will provide, upon the**
392 **Union’s request, all documentation supporting the decision that may be**
393 **legally released.**

394

395

396 **Section 9. Challenges, Appeals, and Contests**

397

398 **The Agency shall notify the Union and all affected employees in writing at**
399 **the beginning of each preliminary planning process of their right to contest**
400 **certain decisions involved in the contracting out process.**

401

402 **The Agency shall provide the Union at the beginning of each preliminary**
403 **planning process and affected employees upon request a copy of the**
404 **applicable laws, rules, and regulations governing contracting out decision**
405 **contests as provided for under OMB Circular A-76, Paragraph F and**
406 **Federal Acquisition Regulations (FAR) Part 33.**

407

408 **The Agency will inform the Union of all contests filed by interested parties**
409 **other than the Union within 24 hours of all such filings.**

410

411 **The Agency will hold the implementation of all decisions in abeyance until**
412 **final decisions have been reached upon timely filed contests.**

413

414

415 **Section 10. Job Impacts**

416

417 **If a decision is made to contract out work, or if a decision results in an in-**
418 **house win but includes a reduction in force, the Agency will comply with all**
419 **provisions of the National Agreement.**

420

421 **The Agency will include the contractor's obligation to grant to eligible**
422 **employees the right of first refusal in all contracts executed with**
423 **contractors.**

424

425 **Refusing the right of first refusal, because of displacement due to**
426 **contracting out, shall not deny a bargaining unit employee of any rights**
427 **s/he might otherwise have under this Agreement or applicable Reduction-**
428 **In-Force procedures, or any other personnel procedures.**

429

430 **In Direct Conversions, the Agency will negotiate a provision with each**
431 **winning contractor that provides that unit employees who occupy**
432 **positions targeted for contracting out, whether or not they are subject to**
433 **RIF, will have the right of first refusal for contractor positions that require**

434 **substantially the same skills as the positions that employees encumber**
435 **and for which there is more than one applicant during the transition period.**

436

437

438 **Section 11. Contracting Without Competition**

439

440 **If the Agency contracts with the private sector to perform any work**
441 **currently or last performed by bargaining unit employees without holding a**
442 **competition in compliance with OMB Circular A-76 due to (1) statutory**
443 **exemption, (2) prior written permission from OMB, (3) violation of Federal**
444 **policy, or (4) any other reason, then the Agency shall notify the affected**
445 **employees and the Union 60 calendar days prior to any such contract**
446 **being signed by the Agency. If such a decision will result in adverse**
447 **employee action or any change in employee working conditions, the Union**
448 **will be allowed to submit alternatives to such adverse action or change in**
449 **working conditions, and the Agency must consider these alternatives and**
450 **provide a written response to the Union regarding these alternatives within**
451 **ten (10) calendar days.**

452

453 **If the Union is not satisfied with the Agency's response, or for other**
454 **reasons believe that bargaining is required, the parties will bargain.**

455

456

457 **Section 12. Non-Contract Outsourcing**

458

459 **It is understood that functions may be outsourced at the initiation of SSA,**
460 **or by the initiation of another party, and that in either case SSA must fulfill**
461 **its obligations to the Union if the Agency will be involved in any way.**

462 **Whenever SSA considers outsourcing functions to individuals or**
463 **organizations (public, private, or non-profit) that had been performed by**
464 **bargaining unit employees, or are currently being performed by them,**
465 **AFGE will be notified and given opportunities for pre-decisional**
466 **involvement. When decisions are made to outsource any function,**
467 **advance notice and an opportunity to bargain will be afforded, and there**
468 **will be no implementation until a full and final agreement is in place, with**
469 **all contractual and statutory obligations satisfied.**

470

471

472 **Section 13. In sourcing and Return of Work**

473

474 **Within 30 days of the effective date of this National Agreement, the National**
475 **Labor-Management Forum will charter an AFGE/SSA Team that will be**
476 **charged with identifying functions, both inherently governmental and**
477 **commercial, that should be considered for in sourcing if being handled by**
478 **contract, or returned in-house if they have been outsourced without a**
479 **contract. The Team will further be responsible for making**

480 **recommendations to SSA regarding the methods and means by which**
481 **performance of these functions would be returned to Agency employees.**