

ARTICLE 35 CONTRACTING OUT

Section 35.01 - General. The provisions of this Article concern any contracting out of work performed by employees as of the effective date of this Agreement.

Internal reorganizations, transfers of function, realignments. Reductions in Force, Voluntary Early Retirement Authority (VERA) and Voluntary Separation Incentive program (VSIP) as a result of any contracting out process shall be conducted in accordance with law, rule, regulation and the terms of the Agreement.

The Department shall comply with its own policies and other applicable government-wide rules and regulations in all aspects of the contracting out process. Any process, procedure, or issue appealable under the OMB Circular A-76 appeals process is excluded from the negotiated grievance procedures and arbitration process. This is not intended to take away any management or employee rights under the federal labor relations statute, OMB Circular A-76 or other statutes or regulations.

Section 35.02 - OMB Circular A-76 Process

Information Sharing and Notice.

- (1) The Union and potentially affected employees will be notified in writing in accordance with the OMB Circular A-76 process. Upon request, the Department shall inform the Union of the web site(s) where the mandatory Fair Act Inventory data and public notices will be available.
- (2) The Department shall provide the Union weekly reports, upon request, during preliminary planning (when management has decided to utilize the A-76 process), the duration of the competition, and the post-competition transition phase. If there has been no change since the last report, the Department will so advise the Union. If an item is prohibited from release by the Federal Acquisition Regulation, or other applicable rules or regulations, it will be excluded from release to the Union. After the weekly report is issued, if there are questions or concerns, briefings shall be provided at the request of the union. Such status reports and briefings will include but not be limited to:
 - (a) Status updates, to include planned actions and next steps;
 - (b) Tentative schedule for the entire A-76 process;
 - (c) Provision of all relevant documents, including any communication sent out to the group of prospective and/or real bidders.
- (3) The Department shall provide the Union with copies of all notifications sent to Congress or OMB as soon as it is permissible.
- (4) Copies of additions, changes, deletions, and supplements to Department level procurement regulations and policies; Department level regulations and policies concerning the

implementation of OMB Circular A-76 will be posted on the OCPO HUD@work web site.

- (5) Copies of official Departmental requests to OMB required by OMB Circular A-76, and OMB official responses, excluding any confidential information and information whose disclosure is prohibited by OMB Circular A-76 or fair bidding requirements.
- (6) If a lessons learned analysis is performed and documented relating to the contracting out activity, copies of such documentation best practices and lessons learned will be provided to the Union (post-competition) with the exception of any documentation that is privileged and exempt from disclosure.
- (7) During the OMB Circular A-76 competition, the Department will directly interface with Union representatives and the affected employees from the date of the public announcement until full implementation of the performance decision.

Competition Process.

- (8) The Department will provide the Union and all affected employees written notification of formal announcements of the start date of each OMB Circular A-76 competition at the same time as the public announcement. The notification will include all information contained in the formal public announcement, if not explicitly prohibited by A-76 rules.
- (9) By no later than the formal public announcement date of each OMB Circular A-76 competition, the Department shall provide the Union the final preliminary list of affected bargaining unit employees with the following information about each: job title, grade, step, work unit, and work location.
- (10) When a decision is made to conduct an OMB Circular A-76 competition on an area, the Department shall conduct an informational briefing with the Union and affected employees to discuss the process and the rights of competition, and answer any questions regarding the A-76 process. The briefing will include information on competition contests. At the briefing, attendees will be provided either a cite or copies of the applicable laws, rules and regulations governing contracting out.
- (11) The Union may appoint a representative to serve on either the PWS or MEO team formed under OMB Circular A-76. The same representative may not serve on both teams. The Department will train PWS and MEO team participants concerning their duties and obligations under all laws, rules, and regulations. The Union's representative assigned to these teams will sign the same non-disclosure agreement and be bound by the same obligations to protect confidential information regarding the contracting out process as all other members.

- (12) Upon request by the Union, the Department shall release to the Union the certified Standard Competition Form (SCF), Department tender, and public reimbursable tenders after the expiration of the time for filing a contest or upon resolution of a contest, in accordance with A-76.
- (13) If there is adverse impact to bargaining unit employees resulting from making government property available to prospective and selected providers, it shall notify the Union under Article 49 procedures.
- (14) The Department will provide the Union and all affected employees written notification of formal announcements of the completion end date of each OMB Circular A-76 competition simultaneously with the public announcement. The notification will include all information contained in the formal public announcement.
- (15) The Department shall offer debriefings required by OMB Circular A-76, Attachment B, Paragraph D6d, with the Union and all affected employees as soon as is practicable after the end of each OMB Circular A-76 competition.

Competition Cancellation.

- (16) The Department will provide the Union and all affected employees written notification of formal announcements of the cancellation date of each OMB Circular A-76 competition as soon as is practicable after the public announcement. The notification will include all information contained in the formal public announcement.

Competition Challenges and Appeals.

- (17) Without regard to whether the Union is an interested party and unless otherwise prohibited by law, rule, or regulation, the Department will inform the Union of all contests and appeals filed by interested parties at the same time as the Department provides notice to other interested parties.

Section 35.03 - Contracting Outside of OMB A-76 Process.

- (l) Information that is generally available to the Public will be provided to the Union upon request.

Immediately upon publication of a solicitation to contract out work covered by this Article, the Department will make its best effort to notify the Union of the solicitation and provide a link to the solicitation. The Union has the right to raise concerns directly with the Chief Procurement Officer (CPO) regarding any solicitation of work covered by this Article. The CPO will give full consideration to the concerns raised by the Union in advance of the end of the solicitation period. The CPO may make changes to the solicitation, time permitting. Upon request, the CPO, or designee, will conduct a conference call with the Union to discuss the consideration given to the concerns raised by the Union, up to once per quarter. If there is more than one solicitation during the same time period, they will be grouped together to be discussed together on the same call. If a cost analysis, estimate, or projection is available, all

such information shall be provided to the Union upon request unless prohibited by law or regulation.

- (2) For those contracting out decisions falling outside of the A-76 process, Management will issue an Article 49 notice to the Union if the change will result in a duty to bargain.

Section 35.04 - Contract Out Decision/Reduction in Force. If a decision is made to contract out work, which results in a reduction in force, or if a decision results in an in-house win but includes a reduction in force, the Department will comply with all provisions of Article 33, Reduction in Force.

The Department will provide the Union with any changes to the list of the employees affected by the performance decision. If required by law, rule or regulation, the Department will include contractors' obligations to grant to eligible employees the right of first refusal in all contracts executed with contractors. Refusing the right of first refusal because of displacement due to contracting out shall not deny a bargaining unit employee of any rights they might otherwise have under this Agreement for applicable RIF procedures or any other personnel procedures.

Section 35.05 - Inventory of Contracts and Contractors. Upon request, management shall provide to the Local President annually, a list of contractors who are occupying space in HUD buildings. The FAIR Act Inventory and information on challenging Fair Act inventory decisions shall be published in accordance with OMB requirements, including the list of inherently governmental functions required by A-76 on the same day that the FAIR Act Inventory is made available to the public.

Section 35.06 - Minimizing Adverse Impact. Management agrees, wherever practicable, to minimize adverse actions and reduce separations of employees affected by a contracting out decision.

Section 35.07 - Supervision. Management agrees that applicable regulations prohibit bargaining unit employees being supervised by consultants and contractor personnel. Management agrees to issue an Article 49 notice and an opportunity to bargain the impact and implementation of any regulatory changes regarding the supervision of bargaining unit employees by consultants and contractors.

Section 35.08 - Space Allocations for Contractors. Space and equipment provided to contract employees will not conflict with HUD policy and GSA guidelines for government employees. In any allocation of space occurring after the effective date of this Agreement, Management will give HUD employees preference over contract employees in allocating space. This provision does not change negotiated floor plans and seating arrangements currently in effect.