

**MEMORANDUM FOR AGREEMENT (MOA)
CONCERNING**

Air Force Instruction (AFI) 38-203
Commercial Activities Program dated 1 August 2000

1. The American Federation of Government Employees (AFGE) Council 214 and Air Force Materiel Command (AFMC), hereafter referred to as the Union and management, hereby enter into this MOA regarding subject instruction as it applies to bargaining unit members in matters not covered by the Master Labor Agreement (MLA) between the Parties. For the purpose of this MOA, it is understood that any references to AFI 38-203 mean AFI 38-203 dated 1 August 2000, and any references to Union Local means the constituent Locals of AFGE Council 214. Any references to "CA," "CA initiative," or "CA cost comparison" means an Office of Management and Budget (OMB) Circular A-76 cost comparison or a direct conversion of a commercial activity being performed (or previously performed) by bargaining unit members. The additional official time for any purpose required by this MOA shall be provided in accordance with Section 4.08 of the Master Labor Agreement (MLA).
2. For the purpose of this MOA, it is understood that AFI 38-203, implements within the Department of the Air Force the Federal policy of relying on the private sector, to the maximum extent practical, for the performance of commercial activities (CA). It is the National policy, as well as the Department of the Air Force to achieve economy and enhance productivity, retain inherently governmental activities in-house, and to rely on the commercial sector. This definition of National policy therefore applies to the term "Air Force policy" as set forth in paragraph 2.3.1.1.1., 2.4.2.1.1.6, 2.4.2.1.2.1., 2.4.2.1.2.6, 4.5.1., 4.5.5., 6.2.4.4.2., 8.4.1.15, 8.4.2.14.3., 10.5.3., 11.3.13.1., 13.1, 14.1, and 18.4.1. of AFI 38-203.
3. Management and the Union shall cooperate and communicate to the maximum extent possible concerning Commercial Activities (CA) issues. Management shall provide the Union a list of all CA at each location having a Union Local current as of the effective date of this Agreement. This list shall include the name of the contractor who is performing the work, the contract number, the value, and the term of the contract.
4. During the Public Review of any CA initiative all supporting documentation shall be made readily available for review by directly interested parties, which shall include the Union Local. The supporting documentation shall be adequate to easily identify any discrepancies, errors or omissions.
5. Management agrees to notify and consult with the Union regarding any anticipated review of a function for contracting out that could affect bargaining unit positions, as required or allowed by Title 10, USC, Section 2467, and other law, rule; regulation; Office of Management and Budget (OMB) Circular A-76 and its Supplement; and this agreement. This will be accomplished by providing Council 214 the opportunity to review and comment on HQ AFMC'S submission to the annual "OMB Circular No. A-76 Inventory" (reference: Section 14 of this MOA).

6. In the Management Plan of any CA the AF description must consider existing management reinvention, consolidation, re-engineering, personnel classification, and market analyses, and may consider other analyses in the identification and development of the most efficient organization (MEO). Management will notify the union and justify in writing of any determination not to use any of the above in the MEO. At least monthly during the development of the Management Plan, management solicits the views of the civilian employees directly affected by CA through their representatives for recommendations to improve the method of operation. The input shall be documented and retained with a copy provided to the Union Local.

7. The AF developed OMB Circular A-76 Cost Comparison Software Program (COMPARE) shall be used for all CA cost comparisons unless formally waived by HQ USAF/XPM. Notification of this waiver and the justification for the waiver shall be provided to the Union within two weeks of the approval of the waiver by HQ USAF/XPM. In the documentation of Base Year Personnel Requirements and Costs utilizing the COMPARE CCF all appropriated fund civilian positions shall be entered at the position's pay plan and grade as shown in the civilian position description. As required by the Revised Supplemental Handbook to OMB Circular A-76, Mar 96, Part II, Chapter 2, paragraph B6d, step 5 shall be entered for General Schedule (GS) positions and step 4 shall be entered for Federal Wage Schedule (FWS) positions.

8. When Management determines that bargaining unit work will be contracted out through CA, and subsequent unanticipated impacts affecting bargaining unit employees are discovered, the union shall be provided the opportunity to bargain procedures and arrangements as may be appropriate under 5 USC Chapter 71. It is understood that this opportunity will not operate so as to stop or delay contract award or start up dates, or other associated actions.

9. Should the CA study result in a decision to convert to contract, it is understood that the Union has the right to bring known contract discrepancies during the period of contract performance to the attention of the appropriate contract administrator or designee.

10. The business requirements and advisory group (BRAG) is responsible to ensure performance work statements (PWSs) and quality assurance surveillance plans (QASPs) are written. The principal members of the team are representatives from the function, contracting, and servicing manpower and organization office, and Union representatives. The Contracting Squadron Commander and/or Chiefs of Air Force Contracting Offices or their designee shall advise the Union Local President upon the establishment of a BRAG, or equivalent entities which perform duties outlined for BRAGs in AFI 63-124, in any contracting situation governed by the CA initiatives. This individual shall also invite the local Union President or designee to become a BRAG member for the purposes of providing advice and assistance, to consult and fully participate in the development of supporting documents and proposals, including the development of performance standards, performance work statements, management plans/ most efficient organization (MEO) study, the milestone chart governing the conduct of the CA study, the development of MEO cost estimates, invitation for bid, request for quotation, and any other information used in the development of the above documents (reference Sections 11, 13, 18, and 26 of this MOA). The Union designated BRAG member shall be invited to participate in any meeting of the BRAG except internal management decision-making meetings to include cost comparison and source selection discussions.

11. In any CA, at the earliest stages of development prior to the determination of whether to contract out, the Union will have the opportunity to consult and fully participate in the development of supporting documents and proposals. This shall include the development of performance standards, performance work statements, management plans/most efficient organization (MEO) study, the milestone chart governing the conduct of the CA study, the development of MEO cost estimates, invitation for bid, request for quotation, and any other information used in the development of the above documents (reference Sections 10, 13, 18, and 26 of this MOA). The Union shall have the opportunity to consult with management at least monthly.

12. Information prepared by the Installation Business Advisor shall be provided to the Union Local concurrently on the day this update is provided to the installation commander. If the information is in the form of a briefing, the script shall also be provided and/or enough information to make the report intelligible to the Union.

13. While management retains responsibility for all final management decisions during the cost comparison, union representatives shall participate in an advisory capacity on the installation competitive sourcing management steering group (CSMSG), PWS development team, and MEO development team. In this capacity union representatives shall participate in the preparation and development of recommendations for the PWS or MEO until final management decisions are made (reference Sections 10, 11, 18, and 26 of this MOA). Documentation of these consultations shall be accomplished and retained with a copy provided to the Union Local. Union representatives should consult with the functional Office of Primary Responsibility (OPR) of employees directly affected by CA to ensure they understand when final management decisions are made. Union representatives participating as members of the PWS or MEO development team shall be provided and participate in all necessary training needed to make them effective members. This training is also referenced in Sections 17 and 27 of this MOA.

14. The Union shall have the opportunity to review and make comments on Management's submission to the annual "OMB Circular No. A-76 Inventory" as required by Part 1, Chapter 1, paragraph F and Appendix 2 of the Circular's Supplement.

15. Upon issuance, a solicitation used in the conduct of any CA cost comparison will be made available to the Union for comment. The Union will be given the opportunity to review the document and submit comments before final receipt of offers from the private sector. Private sector offerors shall comment as provided by the federal acquisition regulations (FAR).

16. A Union representative will be permitted to participate in any and all "walk through(s)" held for potential bidders in any CA. A three-day written notification of the "walk through" shall be provided to the Union.

17. Civilian employees directly affected by CA who are members of a bargaining unit shall interface with their designated union representative during CA initiative (i.e., cost comparison or direct conversion), and may interface with functional OPR and servicing civilian personnel flight. Civilian employees, including designated union representatives, participating as members of either the PWS or MEO development team shall be provided training that will allow them a

complete understanding of the cost comparison process. Union representatives participating in the cost comparison process must attend all the same required training that other members of the cost comparison process are required to attend. This training is also referenced in Sections 13 and 27 of this MOA.

18. As a minimum, the CSMSG will have a union member as a participant, and it normally will consist of representatives from the servicing manpower and organization office, servicing civilian personnel flight, servicing military personnel flight, contracting, financial management office, staff judge advocate, civil engineering, public affairs, the functional offices of primary responsibility (OPRs) (reference Sections 10, 11, 13, and 26 of this MOA). The servicing manpower office shall ensure the commander, CSMSG members and advisors, as well as the union representatives of all civilian personnel directly affected by CA, are briefed on the CA process, the basic steps in the cost comparison process, why the cost comparison process is being performed, and the projected milestone dates.

19. After a tentative cost comparison decision has been made, employees directly affected by CA or their representatives (on behalf of the employees) may file an appeal of the cost comparison decision in accordance with Chapter 18 of AFI 38-203. Management recognizes the Union's right to file an Appeal of Tentative Waiver and Cost Comparison Decisions and to have necessary documentation for purposes of filing this Appeal. Such documentation shall be provided within three working days upon written request of the Union. Additionally, consideration will be given to extending the appeal period to a maximum of thirty (30) calendar days, if the cost comparison is complex.

20. Post-MEO reviews resulting from CA cost comparisons by the BRAG/Performance Management Council (PMC), or equivalent entities which perform duties outlined for BRAGs or PMCs in AFI 63-124, shall be documented by use of minutes. This information shall be provided to the President of the Council 214 constituent local at that location.

21. Management agrees that, to minimize adverse actions and reduce separations of employees affected by a contracting out decision, they will consider attrition patterns and restricting new hires. Also, existing vacancies shall be used to the maximum extent possible to place affected employees in continuing positions.

22. Management shall consult monthly with union representatives and consider their views during the development and preparation of the PWS and Management Plan (10 USC 2467). Documentation of consultations shall be accomplished and shall be retained as part of the cost comparison documentation.

23. Management and the Union recognize the right of first refusal required by OMB Circular No. A-76 and its Supplement. The servicing civilian personnel flight with the assistance of the contracting office shall ensure civilian employees directly affected by CA are provided a copy of the Right of First Refusal Clause (FAR 52.207-3) early in the cost comparison process. Upon request, a copy shall also be provided to any civilian employee potentially affected by the CA initiative and the Clause should be publicized locally (e.g., web page, base paper, etc.). In the event of a final contract decision, adversely affected civilian employees shall also receive a copy

of FAR 52.207-3 from their servicing civilian personnel flight. The servicing staff judge advocate shall advise adversely affected employees, and their union representatives, of their Right of First Refusal and applicable post-government employment restrictions. Declining to exercise the right of first refusal due to displacement by contracting out shall not be deemed to be a waiver of any appeal or grievance right that a bargaining unit employee may have under applicable law, regulation, and this agreement.

24. CA performance periods for cost comparisons may be in excess of five years when approved by HQ USAF/XPM (see paragraph 10.2.5. of AFI 38-203). A command request to exceed five years must include justification by the command XP stating that no known cost comparison advantage will be conveyed to the in-house or contract/ISSA offer by the extension. Copies of the request with justification and the response from HQ USAF/XPM shall be provided to the President of the Union Local within five (5) working days of signature (for requests) or receipt (for approval/disapproval).

25. During any CA initiative, it is essential that labor unions partner with management to ensure cost comparison milestones are met in addition to assuring a well-developed PWS and MEO are achieved. For civilian employees directly affected by CA, the Union representatives shall interface with the civilian employee's functional OPR and servicing civilian personnel flight during the CA initiative (i.e., cost comparison or direct conversion).

26. Management's oversight or advisory group for all CA shall include a Union Representative during the conduct of a cost study (reference Sections 10, 11, 13, and 18 of this MOA).

27. Until final management decisions are made, management is required to consult monthly with the union representatives of civilian employees directly affected by CA during the development and preparation of the PWS and MEO, and to provide monthly updates on the status of the cost comparison process. Documentation of these consultations shall be accomplished and retained with a copy provided to the Union Local. Union representatives of civilian employees directly affected by CA shall be offered an opportunity to provide inputs during the preparation and development of the PWS and MEO. Union representatives shall be included on the PWS or MEO development teams. Civilian employees directly affected by CA should consult with their union representative to ensure they clearly understand when final management decisions are made. Civilian employees, including Union representatives, participating as members of either the PWS or MEO development team shall be provided and participate in all necessary training needed to make them effective members (reference Sections 13 and 17 of this MOA). Civilian employees directly affected by CA and their union representatives, who participate in the cost comparison process, must attend ethics training from the servicing staff judge advocate and must ensure they are in compliance with the Joint Ethics Regulation (DoDD 5500.7-R). Civilian employees directly affected by CA and their union representatives are also encouraged to understand the type of acquisition process to be used and their rights during the Administrative Appeal Process. Union representatives shall be trained to understand the type of acquisition process to be used and the administrative appeal rights of the employees they represent.

28. The servicing manpower office shall notify the functional OPR, servicing civilian personnel flight, and the Union of the tentative cost comparison decision (i.e., at the time of the bid

opening or at the time of public disclosure for Negotiated acquisitions) as soon as possible to provide the functional OPR and servicing civilian personnel flight with sufficient time to process the necessary personnel actions (e.g., formally advise affected employees and their representatives of the results, Reduction in Force (RIF) actions, right of first refusal actions, etc.).

29. It is the intent of the Parties that information will be shared with the Union to the maximum extent releasable, to include sanitization where necessary.

30. Union participation in the BRAG, CSMSG, PWS and MEO development teams, and any other group or team established to perform a CA oversight or advisory function, shall not extend to internal management decision-making meetings.

31. All remedies available under the MLA or 5 USC Chapter 71 are available to the Parties if either party believes the other has failed to comply with any of the requirements of this MOA.

Richard Benz, Jr. 11/22/00
FOR UNION DATE

Delores Ewing 22 Nov 00
FOR MANAGEMENT DATE

Frederic N. Curwin 22 Nov. 2000
FOR UNION DATE

Paul McKeeg 11/22/00
FOR MANAGEMENT DATE