

LMR Obligations Associated with Competitive Sourcing

(3/15/02)

Competitive Sourcing Activity	Grievable?	Negotiable?	Considerations
Designation of FTEs as being commercial activities in the FAIR Act Inventory	No – appeal process prescribed in FAIR Act, Section 3.	No – right established by law in the FAIR Act.	<ul style="list-style-type: none"> -Attempt to answer questions informally to avoid formal appeals. -BUEs and labor organization heads are “interested parties” under the FAIR Act and can appeal a commercial activities designation if their interests are directly affected
Packaging of positions for competitive sourcing studies under OMB Circular A-76	Yes – however, a grievance based solely on the placement of a position in a competitive sourcing study package is not likely to prevail.	No – involves management’s reserved rights, including that to organize	<ul style="list-style-type: none"> - Agency efforts to involve BUEs in packaging determinations will likely constitute a “formal discussion” - Packaging phase of the process is an good time to collaboratively engage Unions – soliciting input
Conducting a cost comparison study under OMB Circular A-76	Yes – only as to whether management fails to follow applicable (Collective Bargaining Agreement) CBA provisions or requirements of the FSLMRS (e.g. re: formal discussions).	Yes – only as to procedures and arrangements to mitigate any adverse affects.	<ul style="list-style-type: none"> - Management is obligated to inform the Union of any studies involving BU positions per A-76 - In determining whether there is a bargaining obligation, check your CBA to determine if this subject is “covered by” existing language. - Agency efforts to involve BUEs in cost studies will likely constitute a “formal discussion” - study phase of the process is an good time to collaboratively engage Unions – soliciting input is encouraged by A-76 (Note: avoid potential conflict of interest situations that would jeopardize employee rights if work is outsourced)

Agency decision to tentatively waive cost comparisons, grant direct conversions, or after issuance of agency's tentative cost comparison decision.	No	No	- BUEs or their Union representatives directly affected by the agency action may challenge agency decisions over application of A-76 procedures as prescribed in that Circular but agency decisions are not arbitrable. See 52 FLRA 125.
Implementing an MEO after competition occurs	No – as it pertains to issues involving compliance with A-76 procedures. Yes – as it pertains to allegations of violations of any applicable CBA provisions or requirements of the FSLMRS.	Yes – only as to procedures and appropriate arrangements to mitigate adverse affects (aka I&I)	- Implementing an MEO falls within management's reserved right to organize and assign employees work. - BUEs or their Union representatives directly affected by the agency action may challenge tentative agency decisions over application of A-76 procedures as prescribed in that Circular but agency decisions are not arbitrable. See 52 FLRA 125
Contracting out work	Yes – if in so doing management violates a provision of the CBA or the FSLMRS.	Yes – only as to procedures and appropriate arrangements to mitigate adverse affects (aka I&I)	-Check your CBA to determine if this subject is “covered by” existing language. - BUEs or their Union representatives directly affected by the agency action may challenge tentative agency decisions over application of A-76 procedures as prescribed in that Circular but agency decisions are not arbitrable. See 52 FLRA 125.
Conducting a RIF	Yes – if in so doing management violates a provision of the CBA, regulation or law.	Yes – only as to procedures and appropriate arrangements to mitigate adverse affects (aka I&I)	Check your CBA to determine if this subject is “covered by” existing language.
Union Information requests – for competitive sourcing related documents/data	Yes – if denying a request, management violates a provision of the CBA or the FSLMRS. (Note: Denial or failure to respond may also trigger a ULP allegation)	NA	- Check you CBA to determine if release of information during A-76 activities is covered. - Apply FLRA Guidance on Union Information Requests under Section 7114(b)(4) at http://www.flra.gov/gc/inf_guid.html to determine obligation to furnish requested information.