

**MEMORANDUM OF UNDERSTANDING BETWEEN  
THE FOOD AND DRUG ADMINISTRATION AND THE NATIONAL TREASURY  
EMPLOYEES UNION**

This memorandum contains the agreements of the parties concerning implementation of Commercial Activities (A-76) Studies initiated by the Agency for Fiscal Years 2002 and 2003. The parties agree that they have a mutual interest in ensuring constructive employee involvement in these important studies. Accordingly, they have reached the following agreements:

1. A National Treasury Employees Union (NTEU) National Representative will participate as a non-voting member on the Food and Drug Administration (FDA) A-76 Steering Committee responsible for overseeing the A-76 Studies process, except when that Committee reviews or discusses the management study, including the most efficient organization (MEO).
2. NTEU National may appoint an FDA bargaining unit employee (and an alternate) as a representative for NTEU to each Performance Work Statement (PWS) team and to each MEO team. Additionally, employees may serve on the PWS, MEO or source evaluation panel, but, if they participate on one, they cannot participate on another (with the exception of the Union MEO Development Team (discussed below) on which there are no restrictions). The parties will consult concerning assignment of additional bargaining unit employees to the PWS and MEO teams. Any bargaining unit employees participating on the PWS or MEO Teams or source evaluation panels will be provided relevant training.
3. In addition to an NTEU representative on each PWS and MEO team, NTEU may also appoint up to three (3) bargaining unit employees each to participate on a Union MEO Development Team. These teams will be limited to employees appointed by NTEU and will develop proposed MEOs for each agency function (currently seven (7)) impacted by the A-76 studies. Each Union MEO Development Team will be provided with a copy of the second draft of the associated PWS team from which they will develop their MEO. The Management MEO team for each function will review and consider the final product of the corresponding Union MEO Development Team. The A-76 contractor will invite members of the Union MEO Development Team to attend the same training offered to Management MEO Teams or equivalent training. The contractor will inform the teams of all relevant deadlines in a timely manner.
4. NTEU shall have the right to designate a representative (and alternate) to each source evaluation panel convened to evaluate contractor bids submitted in connection with each study. The NTEU representative may observe the proceedings and participate in discussions but will not submit "scores" for the contractor bids. Union designees to

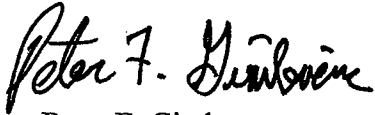
source evaluation panels shall be subject to the requirements and restrictions of the Federal Acquisition Regulation and other applicable laws, rules, and regulations and shall be informed of such requirements and restrictions.

5. In accordance with OMB Circular A-76 and in order to preserve the right-of-first-refusal or opportunity for future employment with the contractor, all employees who participate on the PWS and MEO Teams and the source evaluation panels (but not those who participate on the Union MEO Development Teams, to which the prohibitions do not apply) should be aware of the general restrictions set forth in the Circular which state that they should “not review, approve, or have direct knowledge of the final performance estimates.” In order to protect their right of first refusal, employees on the PWS Teams will cease participation in the PWS development process after providing their comments on the second draft PWS to the FDA’s A-76 Study contractor. Because they will not be involved in finalization or approval of the PWS, PWS team members have no other restrictions or impacts. However, different restrictions apply to employees participating on the MEO teams. Consequently, the level of participation in the PWS and MEO teams in which employees can engage without jeopardizing their rights of first refusal varies and will be described in detail in the employee acknowledgment form (or attachment thereto) provided to each participating employee by the FDA prior to his/her participation on any of these teams (other than for data collection).
6. Pursuant to OMB Circular A-76, any bargaining unit employee has the right to elect not to participate in the study as a team member at any time, regardless of whether appointed by NTEU or assigned by the FDA. This should not be interpreted to mean that employees may decline to furnish information concerning their duties and responsibilities or other factual matters related to their employment to the A-76 study contractor in connection with the studies.
7. All NTEU representatives (including alternates) on PWS Teams, MEO Teams, source evaluation panels, or Union MEO Development teams will receive a reasonable amount of official time to prepare for and participate in team activities. If there are any disputes about how much time is reasonable under the circumstances they will be referred to the Union’s National Office and the Agency’s Office of Human Resources and Management Services. Representatives of those offices will meet to resolve the disputes. Any disputes which cannot be amicably resolved at the national level will be resolved through the negotiated grievance procedure. Furthermore, if any management members of the PWS, Management MEO teams, or source evaluation panels are required or allowed to travel in order to participate on the teams, a similar number of bargaining unit employees may do so as well.
8. The FDA agrees to hold “town hall” meetings concerning the A-76 studies for affected personnel, including bargaining unit employees, at least quarterly. These meetings may be held by video teleconference or teleconference when necessary and will be coordinated with the appropriate NTEU representatives. NTEU will be provided thirty (30) minutes at the end of each meeting to meet separately with

bargaining unit employees. In addition, FDA will provide a website on which employee questions about the studies and the agency's answers to those questions will be posted. NTEU will have input into the process and may submit its own questions to be answered and posted.

9. Article 3, Section 3A(3) applies to this situation. More specifically, NTEU reserves the right to negotiate unresolved issues which may arise at a later date. Furthermore, NTEU reserves any appeal or protest rights it may have under law, rule, or regulation in connection with the results of FDA A-76 studies.

For the NTEU:



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National Negotiator

For the FDA:



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Effective Date:

5/7/02