

GAO

Report to the Honorable
Kweisi Mfume, House of
Representatives

September 1991

RESOLUTION TRUST CORPORATION

Progress Under Way in Minority- And Women- Owned Business Outreach Program



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General Government Division

B-245392

September 27, 1991

The Honorable Kweisi Mfume
House of Representatives

Dear Mr. Mfume:

This report responds to your request that we assess the policies and processes used by the Resolution Trust Corporation (RTC) to include minority- and women-owned businesses (MWOB) to the maximum extent possible in contracting opportunities. This report addresses RTC's MWOB program related to providing asset management services. We reported on RTC's outreach program for outside counsel services on August 30, 1991.¹

The Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of 1989 required RTC to include MWOBs in contracting opportunities to the maximum extent possible. Firms interested in working for RTC complete a registration form indicating the services they can provide. The registration form requires firms to self-certify that they are a minority- or women-owned business. To encourage participation and increase competitiveness of MWOBs, RTC, in evaluating applicant proposals, gives MWOB contract proposals preferences in the form of technical bonus points and a contract cost advantage of up to 3 percent in the cost rating category.

As agreed with your office, we reviewed (1) the assignment of resources to the MWOB program and (2) the implementation of MWOB program contracting procedures in the field, including certification of MWOB firms and award of technical bonus points and the cost advantage. Appendix I contains our objectives, scope, and methodology.

Background

FIRREA established RTC to manage and dispose of assets from failed financial institutions under its control. FIRREA also established the RTC Oversight Board and required it to develop a strategic plan by December 31, 1989, for conducting RTC operations. RTC operates under the direction of the RTC Board of Directors.

¹Resolution Trust Corporation: Progress Under Way in Minority and Women Outreach Program for Outside Counsel (GAO/GGD-91-121).

Section 1216 (c) of FIRREA required RTC to "prescribe regulations to establish and oversee a minority outreach program . . . to ensure inclusion, to the maximum extent possible, of minorities and women and entities owned by minorities and women . . . in all contracts entered into by the agency. . . ." The Oversight Board's strategic plan directed RTC to develop, by January 31, 1990, an MWOB outreach program. The program was to provide for (1) the active promotion of the outreach program to eligible firms and individuals, (2) the development of an ongoing monitoring mechanism to allow evaluation of RTC's performance under this program, (3) a definition of what constitutes an eligible individual or firm, and (4) a process for identifying and certifying eligible MWOB contractors.

The RTC Board of Directors approved an interim program for minorities and women on January 30, 1990, to begin implementation of the FIRREA mandate and published notice of it for public comment in the Federal Register. RTC revised the interim program on the basis of comments received, and the Board approved interim final regulations on July 30, 1991.

In addition to the regulations, RTC drafted a series of directives in June 1991, which, if fully implemented, would change several aspects of how the MWOB program operates. Because of this recent action, this report describes (1) the MWOB program conditions we found prior to the completion of the draft directives; (2) where applicable, the program improvements that would occur if the provisions of the draft directives were properly implemented; and (3) on the basis of our review, other MWOB program changes that should enhance program operations.

Results in Brief

RTC got off to a slow start in implementing an MWOB program for asset management contracting. Interim guidelines for the MWOB program were adopted in January 1990. Since then, RTC and the Oversight Board have worked to finalize program guidance. On August 15, 1991, interim final regulations were published in the Federal Register for public comment. In addition, minimal staff had been committed to the program at all levels of the organization.

RTC's integration of MWOB program requirements into its contracting process has been inconsistent because of the lack of comprehensive headquarters program guidance. This lack of comprehensive guidance has allowed field staff discretion to interpret and apply the interim guidance. As a result, the program has been implemented inconsistently in

the field, and RTC lacks assurance that (1) self-certified MWOBs are actually MWOBs and (2) MWOBs always receive the competitive advantage intended by the program.

For example, in four of the six consolidated offices visited, we found that the minority contract specialists rarely verified the information supplied by firms to support their self-certification as MWOBs. Also, when reviews were done they were often done inconsistently among offices. This inconsistency resulted in at least one firm being provided MWOB preferences in one office while being denied them in another. We also found that RTC field offices did not apply technical bonus points in a consistent manner, thereby precluding some MWOBs from final consideration for contracts.

In addition, the 3 percent cost advantage often was not applied because the MWOBs' cost proposals were generally not within 3 percent of the cost proposal submitted by the low bidder as required. This resulted in the use of only \$256,315 of the \$4 million available for cost advantages. As structured, it appears the cost advantage may not be meeting its objective of increasing the competitiveness of MWOBs.

Finally, the lack of comprehensive headquarters guidance and adequate staff have also inhibited RTC's ability to provide comprehensive oversight of MWOB program implementation.

RTC has taken several positive steps with the July 30, 1991, approval of interim final regulations by the RTC Board of Directors and the June 1991 draft directives that could improve implementation of the program. The draft directives provide for additional staffing in the field offices, define roles and responsibilities, and outline certification procedures to be used for all MWOBs. However, headquarters staffing and its impact on the implementation of program guidance as well as program oversight still need to be addressed. In commenting on a draft of this report, RTC officials said they have created a new Minority and Women Outreach and Contracting Program Office. RTC officials expect the creation of this office to enhance the oversight of the program.

Development of the MWOB Program Has Been Slow

RTC approved interim guidelines for the MWOB program on January 30, 1990. However, this interim program guidance lacked clarity, and many aspects of the program were not well defined. For example, the guidance called for resources to be devoted to the program but did not specify the quantity of resources.

Also, only general policy guidance, with no mechanism for more specific development, was provided for identifying, certifying, and promoting MWOBs. The interim guidelines say that "the RTC must satisfy itself that the ownership and control provision of the program's requirements are fulfilled." The guidelines also say that accomplishing this segment of the program will involve (1) the development and use of certification procedures and (2) the review of certification documents to ensure that they are from qualified participants. However, no criteria were provided for deciding what should be included in or how to develop certification procedures.

RTC revised the interim January 1990 guidance on the basis of staff experiences and public comments. In April 1991, RTC formally transmitted the draft final MWOB contracting program policy to the Oversight Board for review. In a June 3, 1991, letter to RTC, the Oversight Board expressed concern that the policy did not constitute regulations as required by FIRREA. RTC was encouraged to promptly adopt and promulgate regulations. The Oversight Board also asked that RTC seek a legal opinion from the Department of Justice for giving preferences based on race, ethnic identity, or gender.

The RTC Board of Directors approved MWOB interim final regulations on July 30, 1991. RTC's attorneys said that the possibility of a successful challenge to the use of preferences is slight. However, RTC has asked for a legal opinion from the Department of Justice as the Oversight Board requested. Justice has not yet issued its opinion; therefore, RTC did not include preferences in the regulations. However, RTC has announced that it will continue to use preferences unless Justice issues an opinion advising against their use.

The interim final regulations were published in the Federal Register on August 15, 1991.

Minimal Resources and Oversight Provided for the MWOB Program

Each RTC region and consolidated office establishes its own policy for staffing the MWOB program. The January 1990 interim program guidelines do not address the question of appropriate staffing levels. As of July 1991, staffing of the MWOB outreach program at various levels in RTC was minimal compared to responsibilities to be carried out. The following staff were assigned to the MWOB asset management program:

- The headquarters MWOB office, which is responsible for developing and overseeing national asset management program guidelines, was staffed with a director and one secretary.
- The four regional MWOB program offices were responsible for overseeing the implementation of the MWOB asset management program within the region. The three regional offices we visited each had one minority contract specialist and shared technical and secretarial support with regional contract departments.
- The 14 consolidated offices were responsible for implementing the MWOB asset management program, including outreach efforts (e.g., seminars, workshops, etc.) to the minority and women communities. Five of the six consolidated offices we visited had one minority contract specialist each and shared secretarial support with the contract departments. In the other consolidated office, the MWOB program had three technicians and one secretary supporting and reporting to the minority contract specialist.

In addition to engaging in outreach activities, the minority contract specialists in the consolidated offices were expected to do other program activities such as certify contractors, provide MWOB program training, and monitor all contracting activity in both receiverships and conservatorships for compliance with the MWOB program. Officials from two of the three regional and four of the six consolidated offices we visited said that more MWOB staff were needed to fully implement the program.

The MWOB program operates in a decentralized environment. As a result, effective oversight mechanisms would be beneficial to monitor and evaluate program implementation. The January 1990 interim program guidance did not provide for an oversight program. The Director of the RTC Headquarters MWOB Program Office said she recognizes the need for effective oversight but has been unable to make it a high priority due to limited staff. The Director has requested four additional professional staff to help implement the asset management outreach program at headquarters, but at the time of our fieldwork, the request had not been approved. Because of the small number of staff assigned to the MWOB program, some regional and consolidated MWOB contract specialists we spoke with believed the MWOB program was not a priority for RTC headquarters.

The June 1991 draft directives provide more specific guidance regarding program staffing and implementation of an oversight program for the MWOB asset management outreach program at each regional and consolidated office, as shown below:

- Each regional and consolidated office will establish an MWOB department consisting of one department head, one or two MWOB specialists, one asset technician, and one secretary.
- Each regional office MWOB department head will oversee the implementation of the MWOB program within the region to ensure compliance with policies and procedures and prepare MWOB status reports.
- Each consolidated office department head will review and evaluate the reporting and databases for the extent of MWOB participation, prepare MWOB status reports, interface with the oversight manager, and perform analysis on MWOB information in order to promote more MWOB participation in the contracting process.

The draft directives provide for additional MWOB staff and require oversight by the heads of the regional and consolidated offices. However, they do not address staff levels and specific oversight responsibilities for RTC headquarters, such as oversight of the regional offices. We believe that adequate staff and a comprehensive oversight program at the RTC headquarters level is important both for providing direction and showing a strong commitment to the successful implementation of the MWOB program. In responding to a draft of this report, RTC officials said they have created a new Minority and Women Outreach and Contracting Program Office. This office will be headed by an executive level Director who will report to the Executive Director of RTC.

Integration of the MWOB Program Into RTC Contracting Procedures Has Been Inconsistent

Due to the vagueness of the January 1990 interim guidelines, the regional and consolidated offices we visited interpreted them differently. As a result, the MWOB asset management outreach program's implementation has been inconsistent. Specifically, the lack of specific guidance in verifying MWOB status resulted in at least one firm obtaining a contract as an MWOB in one office but not in another office. In addition, the technical bonus points were not consistently applied across offices. Finally, the cost advantage was often not applied at all during the evaluation process because MWOB contractors were not within the required 3 percent of the lowest bidder.

MWOB Certification Process Inconsistent

RTC's January 1990 guidelines require that RTC's minority contracting specialists verify whether firms meet the eligibility criteria for participating in the MWOB program. However, the guidelines do not outline the criteria or process for determining if a firm is owned and/or controlled

by a minority or woman. This has resulted in differing verification procedures in the consolidated offices and inconsistent verification of MWOB status.

For example, the minority contract specialist in the San Antonio Consolidated Office verified MWOB status based on a review of the documents the firm submitted to obtain certification. Some of these documents included the firm's articles of incorporation or partnership agreements, statements as to ownership or control of the firm filed with state or federal agencies, and a current organizational chart or management personnel list showing operating responsibilities. In Tampa, the minority contracting specialist administered a questionnaire during on-site visits of MWOBs in addition to reviewing certification documents. The questionnaire was designed to verify ownership and daily control of the firm through questions about origination of the firm, division of ownership, relationship of owners, daily responsibilities, and time spent on specific activities.

RTC minority contract specialists in one regional office and three consolidated offices told us they recognize the need to verify MWOB status to preserve the integrity of the program but admitted that it was not always done consistently. In addition, in four consolidated offices we found that most of the time verification of MWOB status was not done at all. Some minority contract specialists attributed the confusion about their authority to verify eligibility to RTC headquarters' failure to adopt final MWOB verification procedures. The Director of the MWOB Program Office said that without specific criteria for denying MWOB status it is difficult for a minority contract specialist to deny MWOB status to anyone.

Two minority contract specialists believed the verification of MWOB status should be done at the national level to avoid conflicting results emanating from the use of different verification procedures at the field office level. For example, in the San Antonio Consolidated Office, the minority contract specialist denied MWOB status to a woman-owned joint venture. The denial was on the basis that the woman-owned portion of the joint venture did not have the minimum level of control necessary for MWOB program eligibility. Because there is no national listing of firms that have been denied MWOB status, the firm remained a self-certified MWOB joint venture in RTC's contractor database and continued to receive the MWOB bonus points when competing for contracts.

From August 1989 through September 6, 1991, RTC had awarded 148 asset management contracts with estimated fees totaling almost \$510 million. Together, firms claiming MWOB status received 38 percent of the asset management contracts and 32 percent of the estimated fees. Contractors claiming minority status represented 12 percent of the contractors on RTC's database and were awarded 12 percent of the asset management contracts and paid 10 percent of the estimated fees. On the other hand, women-owned firms comprised 17 percent of the database, received 26 percent of the asset management awards, and were paid 22 percent of the estimated fees. (See app. II for additional data on RTC contracting.) RTC staff have raised questions about the validity of the MWOB status claimed by some of the firms receiving the preferences. Until RTC implements MWOB asset management program verification procedures consistently across its offices, it will remain vulnerable to questions regarding the legitimacy of the firms it designates as MWOBs.

According to RTC procedures, a preaward visit is to be made to all firms that reach the best and final round in the contracting process. One of the recently proposed draft directives would require the completion of an MWOB verification questionnaire during a preaward visit for all contracts over \$25,000. The directive also centralizes certification processing by assigning the Washington, D.C., Registration Office the responsibility for processing certification status. We believe that these actions, if properly implemented, would improve the MWOB asset management certification process.

MWOB Technical Bonus Not Consistently Applied

Each contractor's technical proposal is evaluated and given a numerical score. RTC's Asset Management and Disposition Manual says that MWOB firms are to receive a bonus of 10 percent of the total points achievable in the technical rating process. However, the manual does not say at what point in the contracting process to apply the bonus points. As a result, RTC's consolidated offices are applying technical bonus points at different stages. Specifically, in four of the six consolidated offices we visited, the technical bonus points were generally applied to all MWOBs submitting bids prior to determining the competitive range of technically capable contractors. In the other two offices, the technical bonus points were applied to MWOB firms only if they were determined to be in the competitive range without the bonus points. Our review of the evaluation and award process for four asset management contracts awarded before April 1991 at these two offices showed that not applying the bonus points before determining the competitive range precluded consideration of seven MWOB proposals altogether.

According to an RTC official, minority contract specialists discussed this issue at their April 1991 quarterly meeting. The discussion resulted in an agreement that the technical bonus should be applied to all MWOB bids prior to determining the competitive range. However, no change had been made to the existing guidance for applying the bonus points as of July 26, 1991, and the recent series of proposed MWOB program directives do not address this issue. In commenting on a draft of this report, RTC officials said training modules are now being provided to all contracting staff in recognition of the inconsistent application of technical bonus points.

MWOB Cost Advantage Is Not Working as Intended

RTC's policy for enhancing the cost competitiveness of technically capable MWOB contractors does not appear to be working as intended. When evaluating the cost proposal of an MWOB firm, RTC applies the 3-percent cost advantage only if the MWOB's cost proposal falls within a 3-percent variance range from the lowest cost proposal. The January 1990 interim guidelines for the MWOB program and RTC's Asset Management and Disposition Manual state that MWOBs should receive a price advantage of up to 3 percent for competitively bid services, subject to a \$2 million per annum ceiling for all contracts.

We reviewed 14 of 58 asset management contracts awarded before June 1991 at the 6 consolidated offices we visited. We found that four of the consolidated offices had not applied the cost advantage to any MWOB proposals in awarding the eight contracts we reviewed. Contract specialists said that the "up to 3-percent" adjustment had not been applied because most of the MWOBs' cost proposals that were not already the lowest were not within the required 3-percent of the lowest bidder. RTC is allowed to spend up to \$2 million per year to lower MWOB cost proposals in order to help them win contracts. In over a year and a half, RTC has used \$256,315 of the \$4 million allotted for the 2-year period.

Some of the regional and consolidated office minority contract specialists we spoke to suggested that the cost advantage should be raised, perhaps to 5 percent, to help the competitive status of MWOBs. RTC's April 1991 draft final MWOB contracting program policy proposed increasing the cost advantage to 5 percent of the lowest cost proposal. However, since RTC has not yet received a legal opinion from the Department of Justice on the use of racial, ethnic, and gender preferences, the policy

has not yet been changed. We believe RTC should review this MWOB contracting feature to determine whether the proposed increase to 5 percent would result in the cost advantage achieving its intent of increasing MWOB competitiveness.

Conclusions

The lack of comprehensive program guidance and oversight, combined with inadequate staff at RTC headquarters, regional, and consolidated offices resulted in a slow start for the MWOB program as well as inconsistent implementation of MWOB program provisions. For example, during the preaward contract phase, RTC field office minority contract specialists did not always verify the self-certification of MWOBs. When such reviews were done, they were often done inconsistently among offices.

In addition, MWOB technical bonus points were being applied inconsistently, thereby precluding some MWOBs from final consideration for contracts. Also, the cost advantage was not being applied because MWOB contractors' cost proposals were generally not within the required 3 percent of the lowest bid. This situation suggests that the MWOB program's technical bonus and cost advantage features, as structured, may not be meeting the objective of increasing the competitiveness of MWOBs in the asset management contracting area.

RTC has taken several positive steps by proposing a series of directives that could improve implementation of the MWOB program. Under the proposed directives, regional and consolidated offices will have more employees to implement the MWOB program. However, oversight efforts may still fall short of ensuring that the program is uniformly implemented by the field offices because the directives do not provide for (1) additional MWOB staff in headquarters or (2) procedures for nationwide oversight to ensure uniform implementation of the MWOB program.

Recommendations

To improve the effectiveness of the MWOB program, we recommend that the Executive Director of RTC

- assess the adequacy of staff assigned to the MWOB program in headquarters;
- provide the necessary oversight structure to ensure that the recently proposed MWOB status verification procedures, as well as other aspects of the program, are consistently implemented;
- determine at what stage during the contract evaluation process technical bonus points should be applied for MWOB asset management firms

and issue guidance to the consolidated offices to consistently implement that policy; and

- review the cost advantage feature and determine whether the proposed “up to 5 percent” is sufficient to enhance the ability of MWOBS to effectively compete for RTC asset management contracts.

Agency Comments and Our Evaluation

In commenting on a draft of this report, RTC officials generally agreed with the findings and recommendations. However, they said that RTC recently started many initiatives to improve the MWOB program and enhance opportunities for MWOBS that are not discussed in this report. They said, for example, that RTC has initiated a pilot program to create smaller portfolios, with assets totalling \$50 million or less, that are more geographically concentrated. The objective of this effort is to increase the opportunity for MWOBS to win RTC asset management contracts.

RTC officials also said they have undertaken initiatives related to outreach activities aimed at registering more MWOBS. Since our report focuses on the contracting process, these outreach initiatives were outside the scope of our work. Nevertheless, we recognize the importance of outreach activities in focusing the attention of MWOBS on contracting opportunities available in RTC.

Additionally, the officials said that the draft of this report did not mention that the Federal Deposit Insurance Corporation’s Office of Equal Opportunity oversees RTC’s Minority Outreach Program from an organizationwide perspective. Its oversight, they explained, includes statistical analysis, preparing statistical reports for RTC top management and Congress, and participating in outreach activities. Although this may constitute oversight in a broad sense, our work focused on oversight as it related to program implementation at the field office level.

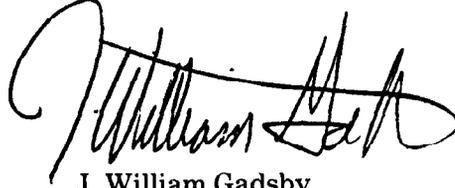
Other technical changes have been made to the report in response to RTC’s comments.

We will send copies of this report to the Chairman and Executive Director of RTC and the President of the RTC Oversight Board. We will also provide copies to other parties upon request.

This report was prepared under the direction of Gaston L. Gianni, Associate Director, Federal Management Issues. Other major contributors to

this report are listed in appendix III. If you have any questions about this report, please call me on (202) 275-8387.

Sincerely yours,

A handwritten signature in black ink, appearing to read "J. William Gadsby". The signature is stylized with a large initial "J" and a long horizontal stroke.

J. William Gadsby
Director, Federal
Management Issues

Objectives, Scope, and Methodology

Our objectives were to evaluate (1) the assignment of resources to the MWOB program and (2) the implementation of MWOB program contracting procedures in the field, including certification of MWOB firms and award of technical bonus points and the cost advantage. In addition, we were asked to determine whether contractors were adhering to RTC's guidance on hiring MWOB subcontractors to the maximum extent possible. We were unable to do this because information on subcontractors was not available because of the recent award of most asset management contracts.

To meet our objectives, we reviewed and assessed the policies and processes that RTC is using to include MWOBs in asset management contracting opportunities. We obtained organization charts indicating the number of staff dedicated to the MWOB program at all levels of the organization. Also, we reviewed and documented RTC's integration of the MWOB program into its contracting procedures, which included certification of MWOBs and application of bonus points and the cost advantage.

We did work at RTC headquarters, 3 of 4 regional offices, and 6 of 14 consolidated offices. These offices were selected on the basis of geographic location, diversity in MWOB programs, and concentration of MWOB contractors. We visited the Southwest Regional Office and its three field locations in Dallas, San Antonio, and Houston, Tex.; the Eastern Regional Office and two of its field locations in Atlanta and Tampa; and the Western Regional Office and one of its field locations in Denver.

During our visits, we interviewed numerous RTC contracting and policy-making officials involved in MWOB efforts. We documented selection and engagement contracting procedures used at each field office. We randomly selected and reviewed 14 of 58 asset management contracts awarded before June 1991 at the six offices we visited to document selection and engagement procedures used. We interviewed the minority contract specialist at each regional and consolidated office visited and documented their MWOB outreach efforts. Finally, we maintained contact with officials from the RTC Oversight Board to keep abreast of the most recent policy initiatives related to the January 1990 interim MWOB program guidelines.

We did our work between March and July 1991 in accordance with generally accepted government auditing standards.

MWOB Participation in RTC Contracting Process

Table II.1: MWOBs' Participation in RTC Contracting Process as of September 6, 1991

	Percent of minority firms (men & women)	Percent of women firms (nonminority)	Percent of men firms (nonminority)	Total
Registrations	12%	14%	74%	73,112
Solicitations	9	16	75	146,355
Proposals	8	15	77	93,214
Awards	7	17	76	33,554
Estimated fees	7	14	79	\$1.2 ^a

^aDollars in billions.

Source: RTC Contractor Activity Reporting System.

Table II.2: MWOBs' Participation in RTC Asset Management Contracting Process as of September 6, 1991

	Percent of minority firms (men & women)	Percent of women firms (nonminority)	Percent of men firms (nonminority)	Total
Registrations	12%	17%	71%	18,229
Solicitations	15	19	66	9,164
Proposals	12	22	66	2,436
Awards	12	26	62	148
Estimated fees	10	22	68	\$510 ^a

^aDollars in millions.

Source: RTC Contractor Activity Reporting System.

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