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Report to the President and Chief Executive Officer, Resolution Trust Corporation

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RESOLUTION TRUST CORPORATION

Ineffective Management of HomeFed Bank Environmental Services Contracting

GAO

United States
General Accounting Office
Washington, D.C. 20548

General Government Division

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December 28, 1993

The Honorable Roger C. Altman
President and Chief Executive Officer
Resolution Trust Corporation

Dear Mr. Altman:

Since October 1992, we have been monitoring the Resolution Trust Corporation's (RTC) activities at HomeFed Bank Federal Association (HomeFed) in San Diego, California. We have done this as part of our continuing oversight of RTC activities and because HomeFed is the largest thrift placed under RTC's control. To date, we and the RTC Inspector General have reported on problems we have observed in RTC's management of the HomeFed resolution.[1]

In this report, we discuss RTC's planning for and management of the environmental services contracts at HomeFed.[2] Our review focused on this area because of the potential liability and costs to the taxpayers associated with identifying and managing environmentally sensitive assets.

Results in Brief

RTC's planning and management of the HomeFed environmental services contracts were not effective, and RTC incurred added costs in excess of $570,000—25 percent of the $2.3 million spent to date. HomeFed was one of the largest environmental contracting efforts undertaken by RTC, with 20 contracts and over 500 assets. RTC's National Sales Center attempted to manage the HomeFed environmental assessment effort with RTC staff from Washington, D.C., Phoenix, and Denver, instead of San Diego, where the assets were previously managed.

RTC did not adequately plan or administer the HomeFed environmental services contracts to ensure that the asset sales time frames, which were dependent on the completion of environmental assessments, were achieved. RTC did not (1) adequately consider the magnitude of its task and the staffing necessary to achieve its sales objectives, (2) provide contractors with complete information on contract requirements or assets to be assessed, (3) follow contracting procedures, (4) ensure that key staff were available to resolve fundamental project issues, (5) know the status

[1]Arthur Andersen HomeFed Contract (GAO/GGD-93-40R, May 7, 1993) and RTC's Management and Continuity Contractor Contract with Price Waterhouse, RTC Office of Inspector General, Audit Report A93-045 (June 25, 1993).

[2]These contracts provide for environmental services that require collecting data on real estate assets to determine whether they possess special resources or pose environmental hazards.

of individual environmental assessments during the project, and (6) provide effective oversight of contractors and the contracting officer's and oversight manager's performance.

As a result, RTC's efforts to complete the environmental assessments required for the asset sales were impeded. The majority of asset reports were not completed on time, delaying 83 sale closings. Further, of the 402 assets that required assessment reports, 82 reports were not ordered and 73 reports were duplicate orders.

Background

RTC was created by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) to manage and resolve insolvent thrifts and to dispose of their assets. In February 1992, the Office of Thrift Supervision (OTS) identified HomeFed as a potential thrift to be resolved. With about $13 billion in assets, HomeFed was the largest thrift ever assigned to RTC for resolution.

To resolve HomeFed, OTS proposed that RTC use its Accelerated Resolution Program (ARP), which would involve selling HomeFed without first placing it into conservatorship. The ARP is intended to preserve deposit franchise and asset values by avoiding the negative impact associated with placing the thrift under government control. OTS and RTC agreed to market HomeFed through RTC's Cooperative Institution Marketing (CIM) program. The intent of CIM was to increase the price RTC received for the deposit franchise and assets of a thrift by marketing them separately and simultaneously. The CIM permits every potential qualified buyer of a thrift and any of its assets to bid on whatever part (or all) of the thrift (deposit franchise and/or assets) that are of interest to the buyer. The strategy has bidders competing against each other, resulting in the disposition of most of the assets at one time and at the highest possible prices.

Had RTC succeeded in resolving HomeFed through the ARP, it would have been the largest thrift ever sold through this program. However, according to the Deputy Director for Regional Operations of OTS, "on July 6, 1992, with no apparent RTC funding at hand, OTS determined it had no other option but to place HomeFed into RTC conservatorship."[3]

RTC's actions to resolve HomeFed and sell its assets were initially driven by an agreement with OTS to resolve HomeFed by September 30, 1992. On

[3] In testimony concerning HomeFed, before the House Committee on Banking, Finance and Urban Affairs (Sept. 1, 1993).

April 7, 1992, with this target date as its goal, RTC contracted for a feasibility study to assist it in the planning for the HomeFed project. The study concluded that the "completion of the due diligence process within the specified time constraints will be a difficult and challenging task due to the large number of assets held by HomeFed Bank and the relatively compressed time frame."[4]

In June 1992, it became apparent to RTC that it would not get sufficient funding to complete the resolution of HomeFed. RTC officials told us they advised OTS that it would not be possible to meet the September 30 target date. RTC and OTS jointly agreed to move the target date to October 31, 1992. Subsequently, as funding continued to be a problem, they mutually agreed to move the target date to December 31, 1992.[5] In July 1992, when OTS moved HomeFed from the ARP into conservatorship, RTC revised its asset sales strategy for HomeFed and removed the real estate and nonperforming loan assets from the CIM effort. We were told that this action was taken because potential HomeFed buyers had informed RTC that they were not interested in acquiring these types of assets.

The responsibility for the HomeFed sales efforts rested with the two principal RTC program offices—the Division of Institution Operations and Sales, through its Department of Resolutions and the Director of ARP, and the Division of Asset Management and Sales, through its National Sales Center.[6] The management and administration of the environmental services contracts discussed in this report were the responsibility of the National Sales Center. The Center attempted to manage and administer these contracts from Washington, D.C., without having anyone in San Diego to oversee and coordinate the work on the HomeFed environmental services contracts. As of September 1, 1993, RTC spent $2.3 million on these contracts.

The contracts were awarded by RTC's Phoenix office at the end of June 1992. The contracting officer and responsibility for the contracts were transferred to the Denver office when Phoenix was closed in August 1992. In October 1992, responsibility for the contracts was

[4]Due diligence involves data collection on specific assets. It may include property inspection and environmental site assessments, market analysis, cash flow analysis, asset valuation, and asset pool preparation. Potential investors may use the information prepared during this process to assist them in determining a bid price for the assets.

[5]HomeFed was not completely resolved until December 3, 1993, although some of its branches and many of its assets were sold earlier.

[6]This effort was undertaken during a period of management challenges resulting from the downsizing and consolidation of RTC field offices.

transferred to RTC's Office of Contracts in Washington, D.C. During this entire period, the contract's oversight manager was located at the National Sales Center in Washington.

Some environmental conditions, either special resource values or environmental hazards, may significantly affect an asset's value. FIRREA requires RTC to identify assets that possess natural, cultural, recreational, or scientific values of special significance. Examples of these special resources are sole source aquifers, wetlands, threatened or endangered species, wild rivers, coastal dunes and beaches, and historic structures and sites. In addition, other federal laws require environmental hazards to be identified.[7] Such hazards are generally described as posing a health or safety risk to workers and the general public. The hazards addressed by RTC's guidelines include underground and aboveground storage tanks, disposal sites, hazardous substances, radiological hazards, historic disposal/contamination sites, polychlorinated biphenyls (PCB), asbestos, pesticides, and radon.

To meet these requirements, RTC uses what is commonly called a phase I environmental site assessment. The purpose of such an assessment is to provide information on existing or potential environmental hazards, as well as information on special resources of natural, cultural, recreational, and scientific values of special significance, and to recommend whether further investigation is required. The information in a phase I environmental assessment is used by RTC to evaluate its legal and financial liabilities for transactions related to foreclosure, purchase, sale, loan workout, and seller financing. This assessment can also be used to identify a special resource for the purpose of evaluating the property's overall development potential, the associated market value, and the impact of applicable laws that restrict financial and other types of assistance for the future development of a site, or require specific actions to be taken prior to the sale of the property. The information contained in an environmental site assessment can also assist purchasers of real estate properties and investors of loans secured by real estate in making informed decisions.

To make these assessments on HomeFed assets, RTC used three types of contractors: (1) advisory environmental, (2) phase I environmental, and (3) legal. The advisory contractors were engaged to identify potential environmental issues, recommend environmental work, and review the phase I contractors' reports to ensure that they complied with RTC

[7]Some of these laws include the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA); the Resource Conservation and Recovery Act of 1976; the Clean Air Act; and the Clean Drinking Water Act.

requirements. The phase I environmental contractors were engaged to complete the environmental site assessments and prepare reports summarizing their findings. The outside counsel were engaged to provide a legal review of the reports.

Objective, Scope, and Methodology

Our objective was to assess RTC's planning and administration of the environmental services contracts awarded for HomeFed assets. To accomplish our objective, we visited HomeFed in San Diego, where we interviewed RTC's managing agent and staff, as well as HomeFed employees. We analyzed available documentation, including case files, correspondence, and asset files related to the HomeFed resolution. We also interviewed HomeFed staff who were involved with HomeFed's environmental assessments before and after RTC's intervention.

Further, we interviewed RTC headquarters officials in Washington, D.C., and RTC field officials in Newport Beach, CA; Kansas City, MO; and Denver to determine how the environmental assessment process for HomeFed was planned and implemented. We reviewed pertinent RTC directives and contract files for the 15 environmental services contracts. We interviewed RTC officials involved in the award and administration of these contracts and analyzed correspondence, reports, and other documentation in RTC contract and contract oversight files. We also interviewed 8 of the 15 environmental services contractors and 2 of the 5 legal firms. These contractors, judgmentally selected, corroborated information obtained from other sources. This sample served to verify contractor concerns and problems with the HomeFed environmental assessment process.

Finally, we met with OTS officials in Washington, D.C., and San Francisco to discuss OTS' role in the resolution strategy for HomeFed.

We did our review between December 1992 and July 1993 in accordance with generally accepted government auditing standards.

We discussed the contents of this report with RTC officials in October 1993. RTC also provided written comments, which are discussed and evaluated on pages 18 and 19. See appendix I for the full text of RTC's comments.

Environmental Services Contracts at HomeFed Were Not Managed Well

RTC did not adequately plan and manage the HomeFed environmental services contracts to achieve the resolution and sales goals. The original September 30, 1992, target date for completing the resolution of HomeFed was the driving force behind the initial planning effort for the environmental assessments. The project's planning did not adequately ensure that required environmental site assessments were completed on time so that sales could be completed by the original target date, or even by the revised target dates. Given the large number of assets involved, RTC needed to exercise extra care in planning and managing the entire project. However, this did not happen. The contracts awarded to prepare and review the phase I environmental site assessments were inefficiently administered, and the oversight of the contractors' work was deficient. These management weaknesses resulted in RTC incurring additional costs and delayed sales and exposed RTC to potential environmental claims.

Contract Planning Was Not Adequate

RTC management did not take the required steps to ensure that the elements of effective contract planning were adequately applied in planning the HomeFed environmental services contracting effort. The RTC Contracting Policies and Procedures Manual (CPPM) in effect at the time this effort was planned did address contract planning. Specifically, it stated that contract planning was necessary to ensure that RTC's needs were met in the most effective, economical, and timely manner. CPPM's elements of contract planning included establishing realistic lead times, planning the workload, identifying potential problems, and ensuring adequacy of statements of work and specifications.

RTC did not adequately consider the magnitude of its task and the staffing necessary to achieve its asset sales objectives. It did not effectively determine the environmental assessment workload and the availability of key information required to accomplish these assessments within the established target dates. Although planning for the HomeFed resolution was initiated in April 1992, it did not address the environmental services requirements. RTC did not begin to plan for required environmental services until June 24, 1992, just days before the contracts were awarded. By that date, without knowledge of the number of assets requiring environmental site assessments, we doubt that RTC was in a position to determine whether contractors could have completed the work within the September 30 and October 31 time frames it specified in contracts for delivering the completed environmental assessment reports.

When the environmental services contracts were awarded at the end of June 1992, and two RTC staff were assigned to manage and administer them, RTC did not know how many HomeFed assets required phase I environmental assessments. RTC expected that no more than 250 assets would require environmental screening. However, by mid-July, it had identified approximately 500 assets requiring screening. In spite of the 100-percent increase in the environmental screening workload, RTC took no actions to ensure that the target dates were met.

The two staff assigned to manage and administer the contracts had other work requirements in addition to the HomeFed contracts. As the project progressed, they recognized the need for additional staff. Given the 20 contractors, the large number of assets, and the short time frames involved, it is questionable whether two staff with other work requirements were sufficient to carry out an effort of this magnitude.

Accurate and timely asset information was essential for contractors to meet the tight deadlines. Yet, at the time the contracts were awarded, RTC had not verified whether the asset files and other key information needed by the phase I contractors were available for transfer. As a result, RTC was often unable to provide complete asset files to the contractors. The contractors informed us that the asset files they did receive often lacked such key information as the asset's address or location, legal description, and property type. Without this information, contractors could not begin fundamental environment assessment tasks, such as site inspections, title searches, and other searches for evidence of past environmental hazards or related events. The advisory contractors, therefore, spent a week locating the needed asset information, which cost RTC an additional $40,000.

Contract Administration Was Deficient

RTC did not adequately perform key contract administration functions. The goal of contract administration is to ensure that the contract is adequately performed and the responsibilities of both parties are properly discharged. The primary responsibility of RTC's contract administration staff was to monitor and guide the contractors that were chosen to provide services and goods. RTC personnel needed to provide this guidance to the contractors in a timely and effective manner.

RTC did not effectively communicate key project requirements, follow its contracting procedures, and always make key staff available to respond to contractor questions. RTC did not adequately control the assignment of assets requiring environmental assessments to phase I contractors, and it also did not adequately oversee the contracts and the performance of the contracting officer and oversight manager.

Project Requirements Were Not Effectively Communicated

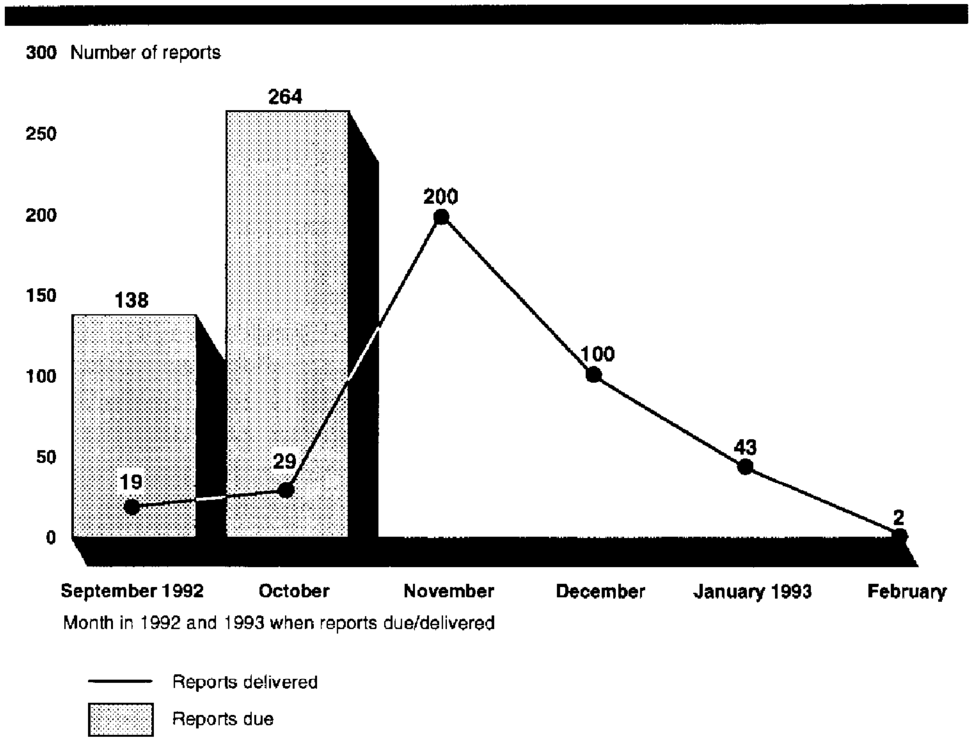
RTC did not clearly communicate to project participants such basic information as the roles and responsibilities of all of the project participants and the report review process. RTC's lack of effective communication contributed to lengthy delays in completing the final reports, and it also delayed sales of the assets.

Neither the advisory nor the phase I contracts clearly assigned responsibility for performing technical reviews of the reports or provided time frames for these reviews. The phase I contractors initially were not aware that the advisory contractors and outside counsel were required to review their reports. As set forth in their contracts, the phase I contractors submitted their reports directly to RTC. However, on Friday, August 14, 1992, RTC notified the phase I contractors that they should send their reports to specific advisory contractors for review. The notification, which occurred only 3 days before the first reports were due on Monday, August 17, did not provide contractors sufficient time to resubmit their reports.

Some advisory and phase I contractors did not have a clear understanding of RTC's reporting requirements. The advisory and phase I contractors we interviewed said that there was confusion over the reporting requirements. This confusion caused the advisory contractors to review the reports more frequently than expected. The additional reviews increased the overall review time and delayed the completion of the reports.

RTC's poor communication contributed to the lengthy delays in delivering the reports and it delayed sales. Figure 1 shows that only 48 (12 percent) of the 402 required reports with September and October 1992 due dates were delivered on time. As of the end of February 1993, nine reports still had not been delivered. The remainder of the reports were delivered between November 1992 and February 1993, as shown in figure 1.

Figure 1: Delivery Dates of HomeFed Environmental Site Assessment Reports Due in September and October 1992



Source: GAO analysis of RTC data.

Because RTC was required to furnish buyers with phase I environmental assessment reports, the delay of 1 to 4 months for completed reports meant that RTC could not close its sales as planned. The delayed reports postponed the closing of at least 83 sales valued at over $303 million.[8] Additionally, two assets were sold without the required environmental reports being done, exposing RTC to potential environmental claims.

Contracting Procedures Were Not Followed

The contracting officer allowed verbal changes and did not modify the environmental services contracts accordingly. Contracts are legally binding instruments and are the controlling documents for administering contracts and for measuring contractors' performances. RTC's CPPM designated the contracting officer as the only person who may enter into a contract or change a contractual commitment on behalf of RTC. The CPPM required the contracting officer to execute written modifications to the

[8]As of October 12, 1993, 74 of the postponed sales had been closed.

contracts after changes were agreed to with the contractor. The CPPM also stated that formal and informal communications between the oversight manager and the contracting officer are critical to successfully accomplishing contract tasks and safeguarding the interests of RTC.

During RTC's management of the HomeFed environmental services contracts, there were breakdowns in formal and informal communications. Contractors acted on verbal instructions from the oversight manager and contracting officer to do additional work that was outside the scope of their contracts. The contractors we interviewed told us that they had worked with the oversight manager and the contracting officer on prior RTC projects. They said that in the past, the contracting officer had followed verbal modifications with written documentation reflecting those changes, and they had expected the HomeFed project to be handled similarly.

In 46 of the 65 instances where verbal changes to the contracts were identified, the contracting officer did not execute written modifications to the HomeFed environmental services contracts confirming these changes. Without the written modifications, RTC had no record of the agreed to changes and could not verify the validity of invoices received for the additional out-of-scope work.

The CPPM prohibited the oversight manager from (1) soliciting proposals for enhancements to the contract, (2) modifying the contract terms, and (3) approving cost items not specifically authorized by the contract. However, on the HomeFed contracts, the oversight manager took these prohibited actions by requesting and directing the contractors to perform additional out-of-scope work. One illustration of the oversight manager's failure to follow RTC contracting procedures was a request for "buyer disclosure letters".[9] The oversight manager (1) solicited contractor services for the out-of-scope work; (2) verbally modified the contracts by instructing the contractors to prepare the letters; and (3) agreed to additional compensation for the contractors, totaling over $67,000, for preparing these disclosure letters. The oversight manager considered these letters necessary to provide limited environmental information to potential buyers, while preventing inappropriate disclosure of privileged information in the phase I reports.

[9]These letters contained preliminary environmental information and did not fulfill RTC's requirement to provide buyers with a completed environmental assessment report.

Key Staff Not Always Available

According to the contractors, fundamental questions related to asset information and additional work requirements were unresolved because the oversight manager and the contracting officer often were unavailable during critical periods of the project to answer contractors' questions. For example, during the period that the phase I contractors were beginning their fieldwork, the oversight manager was on annual leave, and the contracting officer was in the process of transferring from the Phoenix office to the Denver office. Consequently, both were unavailable to answer the phase I contractors' questions about the statement of work, the lack of legal descriptions, and the lack of property access.

Both the contracting officer and the oversight manager acknowledged that at times they were not available to respond to contractor questions because of other competing job demands. However, they requested additional staff to help them meet their job requirements. Denver office management was aware that the contracting officer needed help and assigned an employee to assist part-time. The oversight manager had primary responsibility for the environmental services associated with many National Sales Center initiatives, including HomeFed. However, the National Sales Center provided no additional staff to assist the oversight manager. The former National Sales Center Director told us that he had not considered dedicating more staff.

Asset Assignments Inadequately Controlled

The majority of the environmental assessment reports were not completed on time. The contracting officer did not have an effective method for tracking the assignment of assets to phase I contractors. The method used could not identify which reports had been ordered, which contractors were to perform the assessments, and the status of the work. As a result, 73 duplicate phase I reports were requested and another 82 needed phase I reports were not requested. Eight duplicate advisory reviews were also requested. The duplicate reports and reviews added approximately $383,000 to the project costs.

Inadequate Management Oversight and Continuity

The National Sales Center and the Denver office did not adequately oversee the HomeFed environmental services contracting and the performance of the contracting officer and oversight manager. Also, both the contracting officer's and the oversight manager's responsibilities for these contracts were transferred twice during the contract period. This disrupted the management continuity of the effort and exacerbated the contract administration problems previously mentioned, contributing to delays in completing the needed environmental reports.

Standards for internal controls require qualified and continuous supervision of staff.[10] The supervision standard requires that staff be provided with necessary guidance and training to help ensure that errors, waste, and wrongful acts are minimized and that specific management directives are achieved. Adequate oversight and assessment of a staff's work should result in the proper handling of tasks, including (1) following approved procedures and requirements; (2) detecting and eliminating errors, misunderstandings, and improper practices; and (3) discouraging wrongful acts from occurring or from recurring.

Neither the National Sales Center nor the Denver office exerted adequate supervision over the staff responsible for the HomeFed environmental services contracts. They conducted minimal to no assessment of their staffs' work. Consequently, they were not aware that contracting procedures had not been followed, or that many agreed verbal contract changes had not been appropriately documented.

The contracting officer was originally located in RTC's Phoenix office. However, when the Phoenix office closed, the contracting officer was transferred to the Denver office on August 10, 1992. Subsequently, Denver officials requested that the HomeFed contracts be transferred to Washington, D.C. RTC's Office of Contracts assumed responsibility for the contracts in late October 1992. Throughout these transfers, the National Sales Center retained the responsibility for overseeing and managing the environmental services effort.

The oversight manager for the HomeFed environmental services contracts was detailed to the National Sales Center and located in Washington, D.C. In October 1992, the oversight manager was reassigned to the Federal Deposit Insurance Corporation. A replacement from the National Sales Center was initially assigned the contract oversight responsibilities; however, in November 1992, RTC's HomeFed managing agent assumed and carried out these responsibilities. These multiple transfers of responsibility broke RTC's management continuity and its oversight of the contracting efforts.

The transfer of the HomeFed project and personnel to various RTC offices disrupted the supervision of the project. When the Office of Contracts accepted the contracting documents, its review of the documents and the contracting officer's performance identified numerous contracting problems, such as missing original contract documents, poorly

[10]Accounting Series, Standards for Internal Controls in the Federal Government, (GAO, 1983).

documented verbal contract modifications, and unpaid invoices. At this time, it became apparent that contractor inquiries had not been responded to, and tasks that should have been taken care of before the transfer of the contracting documents had not been completed.

RTC's lack of oversight delayed the identification and correction of the contracting problems and resulted in a difficult transition of project responsibility between RTC offices. RTC, lacking an understanding of the scope of the contracting effort and its associated problems, transferred the contracting officer's responsibility to another office and perpetuated the problems. RTC's transfer of the environmental contracts between RTC offices and its lack of oversight exacerbated contract administration problems, contributing to delays in completing the needed environmental reports.

Corrective Actions Taken by RTC

Before and during our review at HomeFed, RTC took several steps to address some of the conditions we found. In some instances, the new procedures and controls were not effective because they either had not been implemented or had been improperly implemented.

To deal with the specific HomeFed environmental services contracting problems, the HomeFed managing agent, faced with sales delayed by missing environmental assessments, established a task force in November 1992 to identify the assets still needing environmental assessment reports. To accomplish this, the task force had to reconstruct the contract files, modify the contracts to reflect the verbal changes, and determine the fees to be paid to the environmental contractors. The task force consisted of 1 RTC official and 14 HomeFed employees. It cost RTC approximately $82,700 for the salaries of the HomeFed employees needed to remedy the contracting problems. The task force completed most of the project by April 1993. However, efforts to verify and approve contractor services that were verbally requested continued through September 1993.

RTC has also taken steps to address the problems experienced in communicating the project requirements to the HomeFed environmental services contractors. In February 1993, RTC revised the statements of work for phase I environmental site assessment contracts and for environmental advisory services contracts. It also developed operational guidance related to environmental site assessments to help contractors understand RTC's procedures. This new guidance clarifies the requirements for the environmental site assessment report format and the report review process, as well as the roles of the various contractors and RTC officials involved in the process.

These changes provide contractors a clearer framework for understanding RTC's environmental site assessment requirements and its process and thus may help RTC avoid future environmental services contract administration problems. However, to ensure that contractors clearly understand what they are required to do and that RTC can hold contractors responsible for performing and meeting contract requirements, it is essential that contracting officers and designated oversight managers carry out their contract responsibilities. The CPPM sets forth these responsibilities as (1) soliciting and awarding contracts, (2) conducting post-award conferences, (3) monitoring contractor performance, (4) authorizing contractor payments, (5) modifying contracts, (6) resolving claims and disputes, and (7) closing out contracts.

Even before the HomeFed environmental services contracts were awarded, RTC took a number of actions intended to prevent the occurrence of the conditions we found concerning these contracts. For example, in May 1992, RTC revised its contracting manual to clarify the responsibilities of various offices and expand the description of some aspects of the contracting system. RTC also created the Field Monitoring Program in June 1992 as part of its efforts to better control and monitor its contracting operations. The program, however, was not staffed and fully operational until October 1992. Further, on April 12, 1993, RTC senior management notified all employees and contractors that only a warranted contracting officer has the authority to issue contracts and contract modifications on behalf of RTC.[11]

Under the monitoring program, which directly addresses many of the contracting issues discussed in this report, a team of 14 RTC headquarters staff are responsible for items such as (1) performing field contracting oversight and liaison, (2) identifying and reporting field problems, and (3) interpreting contracting policies and procedures for field personnel at RTC's six contracting offices. As part of their field oversight review, the 14 headquarters staff determine whether RTC policies and procedures are being correctly followed when contracts are modified. These policies and procedures were not always followed on the environmental services contracts at HomeFed, especially in modifying the contracts. Had the

[11]This letter was issued in response to contracting problems we identified on the HomeFed Arthur Andersen due diligence contract (GAO/GGD-93-40R, May 7, 1993) which exhibited similar contract modification problems.

monitoring program been in place earlier, most of the problems identified in this report probably could have been detected and remedied.

A program official told us that because fewer contracts were being issued and renewed, there were more contract disputes and claims from contractors. This official also told us that recently there has been an increasing number of requests for assistance on appropriate procedures in resolving these claims. Further, he said that staffing is not currently a concern, although the monitoring program is thinly staffed. If the monitoring program loses staff and cannot replace them or if there are significant shifts in the program's workload, such as further increases in claims resolution work or assignment of responsibility for monitoring legal services contracting, the current staff may be unable to carry out all of their responsibilities effectively.

Actions taken by RTC to address missing and incomplete asset files problems that we identified in an earlier report relating to asset file problems on Standard Asset Management and Disposition Agreement contracts[12] will also address the same problems discussed in this report. On July 16, 1993, RTC issued a new directive, circular 1210.16, entitled Records Management Activities During Conservatorship and Receivership. This circular provided more formal procedures for asset files inventory in conservatorships and receiverships and for effective and efficient transfer of asset files from thrifts to contractors. Designated records coordinators, working with field office records management, are responsible for, among other things, ensuring that all records, including asset files, are properly inventoried at the document level before their assignment to contractors. Field office records managers are responsible for ensuring that all active asset files, note and collateral files, and institution inactive records are inventoried and bar coded using RTC's Records Management Tracking System, an automated tracking system that uses bar code technology to control and track asset and collateral files.

In addition, in March 1993, the Chairman of the Thrift Depositor Protection Oversight Board presented a 10-point program of reforms for the President and Chief Executive Officer of RTC to implement immediately. One of these reforms focused on RTC's contracting; another focused on overall internal control. RTC is to strengthen its contracting systems and contractor oversight by ensuring that (1) contracts are adequately planned and include a clear assessment of services needed and

[12]Resolution Trust Corporation: Timelier Action Needed to Locate Missing Asset Files (GAO/GGD-93-76, Apr. 28, 1993).

scope of the work to be done, (2) all policies and procedures are followed in the award of contracts, (3) adequate and sufficient oversight and contract administration are exercised, and (4) management's span of control over contractors provides sufficient and adequate staffing to protect RTC's interests. RTC is also to strengthen its management by developing and maintaining an accountable internal control environment. Plans for implementing the reforms have been developed. When fully implemented, these reforms could reduce the likelihood of future contracting problems.

Conclusion

The HomeFed environmental services contracts were not completed until April 1993 and were not managed well. Because of this, the total effort cost more than it should have. The target dates set for completing the HomeFed asset sales were clearly a driving force in the contracting effort and a major factor in the haste that RTC exhibited. However, the tight time frames do not explain or justify the poor management and other deficiencies noted in the HomeFed environmental services contracting effort.

RTC did not establish realistic lead times, plan workloads, identify potential problems, and ensure adequacy of statements of work and specifications in planning the HomeFed environmental services contracting effort. It also did not give adequate consideration to the number of staff required to effectively manage and oversee the contracting effort. These planning deficiencies led to problems in completing the acquired services and increased the cost of these services.

RTC's administration of the environmental services contract was also deficient. RTC did not communicate key project requirements and participant responsibilities, follow its contracting procedures, and make key staff available to respond to contractor questions. It also did not adequately control the assignment of assets requiring environmental assessments to phase I contractors. RTC's lack of communication contributed to lengthy delays in completing the final reports and delayed sales.

The National Sales Center and the Denver office did not adequately oversee the environmental services contracting at HomeFed and the performance of the contracting officer and oversight manager. RTC management was unaware that the contracting officer had not made written modifications to the environmental services contracts to reflect previous oral agreements and had not completed other assigned tasks. Because RTC had not provided adequate staffing, the transfer of contracting and contract oversight responsibilities interrupted management continuity. Had appropriate supervision occurred throughout the contracting effort, problems could have been prevented or minimized.

The new records and file management procedures, when fully implemented, should adequately address the missing and incomplete asset file problems identified in this report. Therefore, we are not making any recommendations addressing this problem. Further, we do not believe that additional changes to contracting procedures are required because the problems stem from improper implementation of the current procedures. The changes to the contract documents used for phase I environmental site assessments should also clarify the scope of work, roles of project participants, and report review responsibilities.

However, RTC needs to take strong steps to strengthen its oversight of the contracting process and ensure that its contracting policies and procedures, as well as the standards of internal controls, are effectively implemented throughout RTC. Until this weakness is corrected, RTC will continue to have problems controlling the contracting process and achieving the desired results at the least cost to the taxpayers.

Setting up the Field Monitoring Program is a step in the right direction. However, RTC will need to ensure that this office is adequately staffed to carry out its responsibilities if the focus of the program expands or shifts to deal with problems, or if responsibilities for new areas are assigned to the program. As part of RTC's efforts to implement the contracting reforms under the 10-point plan, the staffing for the Field Monitoring Program should be reassessed to ensure that sufficient qualified staff are assigned to enable the program to successfully achieve its objectives.

Recommendations

To improve the management and administration of environmental services contracts, we recommend that you

- reemphasize the importance of supervision and assessment of staff performance and ensure that the internal control supervision standard is followed,
- require that sufficient staff are assigned to manage and administer contracts and ensure management continuity throughout the full term of contracts, and

- determine whether the Field Monitoring Program is adequately staffed to ensure that RTC's contracting policies and procedures are followed under the 10-point reform initiative.

Agency Comments

In October 1993, we discussed the contents of this report with RTC officials responsible for HomeFed's resolution, asset sales, contracting, and contractor oversight activities. These officials told us that they had taken steps to more clearly communicate the scope of work and reporting requirements to environmental site assessment contractors. They asked that these actions be discussed in the corrective actions section of the report. This information has been included.

We also provided RTC a draft copy of this report for review and comment. In its written response, RTC stated it has taken a number of steps to improve the process by which environmental services contracts are to be managed and administered. It believes that these changes will effectively accomplish the objectives of our recommendations. RTC said it has taken or is taking the following steps to implement the three recommendations in this report:

- An oversight manager's course has been developed. The first presentation of the course was in the Denver office on November 1 and 2, 1993. At least two sessions of this course will be given in each of the six field offices as soon as possible. RTC also mentioned its training course on contract administration, which it said has been given to 1,800 employees.[13]
- The National Sales Center's role in the management of environmental services has changed. In its new role, the Center will guide the field offices in their oversight of asset managers in the ordering and completion of required environmental reports as these activities relate to assets slated for sale. RTC's Environmental Branch will continue to provide technical assistance and support at the national and field office levels.
- RTC has reemphasized the primary responsibility of the field offices and the asset managers. Personal responsibility and accountability for program oversight and contract administration will be clearly identified, and staff's performance against these expectations will be considered during the personnel appraisal process.
- The contracting function in every field office has been reorganized so that each field office will have a Contractor Selection and Engagement Branch

[13]Both of these courses, which had been under development for some time, were developed in response to recommendations we previously made. See Resolution Trust Corporation: Performance Assessment to Date (GAO/T-GGD-91-7, Feb. 20, 1991); and Resolution Trust Corporation: Further Actions Needed to Implement Contracting Management Initiatives (GAO/GGD-92-47, Mar. 5, 1992).

and a Contract Administration Branch. RTC expects this configuration to bring proper emphasis and continuity throughout the term of all contracts.

- In future engagements, workload requirements will be more fully considered in determining staffing needs to successfully accomplish the work.

RTC advised us that it believes that its Field Monitoring Program has been adequately staffed, and it will continue the aggressive monitoring program already in place. Also, RTC said that the field monitoring staff would rely upon other programs and internal reviews to supplement the Field Monitoring Program efforts.

The actions described by RTC should, when fully implemented, accomplish the objectives of our recommendations. However, RTC will still need to monitor the adequacy of the Field Monitoring Program's staffing if it is expanded to include new areas, such as legal services contracting. RTC's written response is presented in appendix I.

Because RTC was created as a mixed-ownership government corporation, it is not required by 31 U.S.C. 720 to submit a written statement on actions taken on these recommendations to the Senate Committee on Governmental Affairs, the House Committee on Government Operations, and the House and Senate Committees on Appropriations. However, we would appreciate receiving such a statement within 60 days of the date of this letter to assist our follow-up actions and allow us to keep the appropriate congressional committees informed of RTC activities.

We will provide copies of this report to interested congressional members and committees and the Chairman of the Thrift Depositor Protection Oversight Board. We will also provide copies to others upon request.

This report was prepared under the direction of Ronald L. King, Assistant Director, Government Business Operations Issues. Other major contributors are listed in appendix II. Please contact me on (202) 736-0479 if you or your staff have any questions concerning this report.

Sincerely yours,

Gaston L. Gianni

Gaston L. Gianni, Jr.
Associate Director, Government
Business Operations Issues

Comments From the Resolution Trust Corporation

RTC
RESOLUTION TRUST CORPORATION
Resolving The Crisis
Restoring The Confidence

November 3, 1993

Mr. Gaston L. Gianni, Jr.
Associate Director, Government
Business Operations Issues
U.S. General Accounting Office
Washington, DC 20548

Dear Mr. Gianni:

re: GAO Draft Report - October 1993
Resolution Trust Corporation: Ineffective Management of
HomeFed Bank Environmental Services Contracting

We have reviewed the above-referenced draft report by the General Accounting Office and, on behalf of CEO Roger Altman, I would like to report the status of RTC's implementation of your recommendations.

As indicated in the "Results In Brief" section of the report, HomeFed was one of the largest environmental contracting efforts undertaken by RTC. This effort was undertaken during a period of management challenges resulting from the downsizing and consolidation of RTC field offices.

We are pleased to note that the report acknowledges measures RTC has taken, before and during GAO's review at HomeFed, to address some of the conditions that GAO found. Also, RTC has implemented a number of significant steps to improve the process by which environmental services contracts are managed and administered. These changes will effectively accomplish the objectives of GAO's recommendations.

Now on pp. 17 and 18

The following three points address your specific recommendations set forth on page 32 of the draft report.

1. RTC has taken steps to re-emphasize the importance of oversight management and contract administration. The Headquarters' Office of Contracts developed a training course on Contract Administration which has been provided to 1,800 employees over the past year at

801 17th Street, N.W. Washington, D.C. 20434

all RTC Offices. Participants have included program personnel as well as contracting personnel. A second training course, an Oversight Manager's Course, has been developed and is scheduled for its first presentation in the Denver Field Office on November 1 and 2, 1993. This session will be quickly followed by at least two sessions in each city where there is an RTC Field Office.

A number of significant changes to the National Sales Center's role in the management of environmental due diligence services have been implemented since the HomeFed project. A new role for the National Sales Center is to guide the Field Offices in their oversight of asset managers in the ordering and completion of required environmental reports as these activities relate to assets slated for sale. Technical assistance and support are provided by RTC's Environmental Branch at the national and Field Office levels.

Personal responsibility and accountability for program oversight and contract administration will be clearly identified, and performance against these expectations will be considered during the personnel appraisal process.

2. RTC will continue to maintain supervision over the contracting process. As part of our focus on contract and contractor performance, the contracting function in every RTC Field Office has been reorganized into (1) Contractor Selection and Engagement Branch and (2) Contract Administration Branch. RTC's dedication of a separate branch of contracting professionals and staff to the administration of all contracts will bring proper emphasis and continuity throughout the term of all contracts.

   Moreover, RTC has re-emphasized the primary responsibility of the Field Offices and the asset managers, which are appropriately staffed by those who are the most knowledgeable and ultimately responsible for the management of the asset(s).

   In addition, RTC will more fully consider the workload requirements in future engagements such as this to identify sufficient staffing needed to successfully accomplish the work on schedule.

3. RTC's Field Monitoring Program has been adequately staffed to ensure that RTC's contracting policies and procedures are being followed within the Office of Contract at Headquarters and at each of the Field Offices. The Headquarters' Field Monitoring staff will continue its aggressive monitoring program already in place. In addition, the Field Monitoring staff rely

upon programs such as the Contracting Officer's Warrant Program, Program Compliance/Internal Reviews, the Competition Advocacy Program, and the Minority and Women's Program, to provide support in ensuring that RTC's contracting policies and procedures are being followed.

In support of the Field Monitoring Program and responses 1 and 2 above, RTC senior management has notified all employees and contractors in an April 12, 1993, letter that only a Warranted Contracting Officer has the authority to issue contracts and contract modifications on behalf of RTC. This notification has instilled an organization-wide awareness of the prohibition on unauthorized commitments.

If you should need any further information, please contact me at (202) 416-7582.

Sincerely,

Thomas P. Horton

Thomas P. Horton
Vice President for Field Activities

cc: Donna Cunninghame
Jon Karlson

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