

RESOLUTION TRUST CORPORATION**12 CFR Part 1617**

RIN 3205-AA08

Minority and Women Owned Business and Law Firm Program

AGENCY: Resolution Trust Corporation.

ACTION: Final rule.

SUMMARY: The Resolution Trust Corporation (RTC) hereby promulgates a final rule implementing section 1216(c) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), section 401 of the RTC Refinancing, Restructuring and Improvement Act of 1991 (RRIA) and section 21A(w) of the Federal Home Loan Bank Act (FHLBA), which was added by section 3(a) of the Resolution Trust Corporation Completion Act of 1993, (RTCCA). The final rule augments the RTC's existing outreach program, which ensures the inclusion of minorities and women and entities owned by minorities and women in RTC contracting to the maximum extent possible, by meeting the mandates in RRIA and the RTCCA. Specifically, this rule augments the bonus points required by the RRIA for firms owned or controlled by minorities or women, as well as for other entities in which they have substantial involvement. The final rule implements new requirements imposed by the RTCCA, including the requirement that the RTC revise its contracting procedures to ensure that minority and women owned businesses and law firms are not inadvertently excluded, and that contracts with fees of equal to or greater than \$500,000 not be awarded unless the contractor subcontracts specified percentages of work to minority or women owned businesses and law firms.

EFFECTIVE DATE: This regulation is effective February 8, 1995.

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SUPPLEMENTARY INFORMATION:**A. Background**

FIRREA, enacted on August 9, 1989, amended the FHLBA, 12 U.S.C. 1421 *et seq.*, by adding section 21A, that established the RTC. Section 21A(b)(11)(A)(ii) provides that, in carrying out the duties of the RTC, the services of independent contractors shall be utilized if deemed practicable

and efficient by the RTC. FIRREA, at section 1216, 12 U.S.C. 1833e, additionally required the RTC to prescribe regulations to establish and oversee a minority and women outreach program to ensure inclusion, to the maximum extent possible, of minorities and women and entities owned by minorities and women in contracting activities of the RTC.

On August 15, 1991, the RTC published in the (56 FR 40484) an Interim Final Rule (12 CFR 1617) (1991 Rule) to govern the outreach portion of the program. The 1991 Rule also provided standards for qualifying as a minority and women owned business (MWOB) or minority and women owned law firm (MWOLF) for purposes of the program. Public comment was solicited, and 57 comments were received.

In November of 1991, Congress passed the RRIA. The RRIA required that in evaluating contract offers, the RTC provide technical bonuses of at least 10 percent and cost bonuses of at least 5 percent to MWOBs, MWOLFs and certain joint ventures. The RRIA also gave the RTC authority to adjust the level of bonus points as necessary.

On August 10, 1992, the RTC published (57 FR 35728) a second Interim Final Rule, 12 CFR 1617, (1992 Rule) to incorporate the mandates of the RRIA and to respond to comments that were filed in response to the 1991 Rule. The 1992 Rule set forth the scope of the RTC's Minority and Women Outreach and Contracting Program (MWOC) and set out as its mission the identification, promotion, and certification of appropriate entities for inclusion in RTC contracting activities. The 1992 Rule incorporated the Congressionally mandated program for awarding cost and technical bonuses to eligible individuals and firms, including qualified joint ventures.

The RTC stated in the preamble to the 1992 Rule, its expectation that implementation of its augmented outreach program and authority to award cost and technical bonus points would increase the percentage awarded to MWOBs to 30 percent annually. The RTC also expected that the percentage of fees paid would be commensurate with the percentage of awards to MWOBs. The RTC expected that the Division of Legal Services would increase the level of legal fees paid annually on new assignments to MWOLFs to at least 20 percent. In addition, the RTC expected that at least 10 percent of the fees paid annually to law firms would be for services performed by minority or women partners and other minority and women attorneys in non-MWOLFs. Public comment on the 1992 Rule was

solicited and four comments were received.

On December 17, 1993, the RTCCA was enacted which amended section 21A of the FHLBA. The RTC is specifically required to establish guidelines for achieving the goal of a reasonably even distribution of contracts awarded to the various subgroups of the class of MWOBs and MWOLFs whose total number of certified contractors comprise not less than 5 percent of all MWOBs and MWOLFs; to promulgate sanctions for failure to comply with MWOB and MWOLF subcontracting provisions; and to establish procedures to require all contracts let, including legal services, under which the contractor would receive fees or other compensation in an amount equal to or greater than \$500,000, to have a subcontract with a MWOB or MWOLF.

Section 21A(w)(6)(A) requires the RTC to revise the procedures for reviewing and qualifying applicants for eligibility for future contracts on all Basic Ordering Agreements/Task Order Agreements (BOAs/TOAs) to ensure that minorities and women are not excluded from eligibility for task orders or other contracting mechanisms. Section 21A(w)(6)(B) requires the RTC to review all lists of contractors determined to be eligible for future task orders and other contracting mechanisms to ensure the maximum participation level possible of minority and women owned businesses; and to issue appropriate regulations and procedures. In keeping with these requirements, this rule defines procedures for ensuring that MWOBs and MWOLFs are not excluded from eligibility for task orders and other contracting mechanisms.

Section 21A(w)(7) requires the RTC to establish procedures and uniform standards, and to commit sufficient resources, including personnel, to contract oversight and enforcement of all laws, regulations, orders, policies and standards governing contracts with the Corporation. This rule identifies procedures for contract oversight and enforcement relating to Minority and Women's Programs.

Section 21A(w)(15) requires the RTC to establish guidelines for achieving the goal of a reasonably even distribution of contracts awarded to the various subgroups of the class of MWOBs and MWOLFs whose total number of certified contractors comprise not less than 5 percent of all MWOBs and MWOLFs. The RTCCA states that these guidelines may reflect the regional and local geographic distribution of contracts awarded, but shall not be accomplished at the expense of any

eligible MWOBs and MWOLFs in any subgroup that falls below the 5 percent threshold in any region or locality. The RTC is studying this issue to assess the reasonable distribution of contract awards with commensurate fees to each ethnic and gender subgroup on a region-by-region basis. Guidelines will be issued separately from this regulation.

Section 21A(w)(16) requires the RTC to prescribe regulations which provide contract sanctions for failure to comply with subcontract and joint venture requirements. Under this provision, regulations defining sanctions relating to violation of MWOB joint venture and subcontracting plans, as well as, violations of MWOLF joint referral arrangements are incorporated in this rule.

Section 21A(w)(18) requires the RTC to establish reasonable goals for contractors for services with the Corporation to subcontract with MWOBs and MWOLFs. The RTCCA states that the RTC may not enter into any contracts under which the contractor would estimate to receive fees or other compensation for services in an amount equal to or greater than \$500,000, unless the contractor subcontracts with MWOBs and MWOLFs in an amount commensurate with the percentage of services provided by the businesses. This rule sets forth guidelines and procedures to meet the statutory mandates.

Given RTC's sunset date of December 31, 1995, and that contracting activity is expected to decline in both awards and contract dollars, the mandatory subcontracting goals are being set at a level that seem, at a minimum, achievable based on RTC's data. For all contracts awarded to non-MWOB and non-MWOLF prime contractors, and MWOB joint ventures and MWOLF joint referrals with less than 50 percent MWOB/MWOLF participation, a mandatory MWOB/MWOLF subcontracting requirement of 10 percent has been established for all contracts equal to or greater than \$500,000. In other words, on each such contract, a minimum of 10 percent of the fees and other compensation must be paid to an MWOB or MWOLF subcontractor, which shall be commensurate with the percentage of the services performed by such MWOB or MWOLF. For a MWOB or MWOLF prime contractor, and a MWOB joint venture or a MWOLF joint referral with 50 percent or more MWOB/MWOLF participation, the RTC has established a 5 percent MWOB/MWOLF subcontracting requirement. These requirements serve the dual purpose of increasing MWOB/MWOLF

participation levels while still encouraging MWOB joint venture and MWOLF joint referral arrangements. For purposes of this subcontracting provision, if a non-MWOLF, MWOLF or RTC joint venture, co-counsel, joint-counsel or consortium arrangement is to be allocated legal fees equal to or greater than \$500,000, it is required to subcontract with an MWOLF, and this MWOLF's share of the work and commensurate fees must equal no less than 5 percent or 10 percent of the contract amount, as described above. In the RTC Refinancing, Restructuring and Improvement Act of 1991, Congress mandated that the RTC "provide additional incentives to minority- or women-owned businesses by awarding any such business an additional 10 percent of the total technical points and an additional 5 percent of the total cost preference points achievable" when evaluating contract proposals from such businesses. FHLBA section 21(A)(r), 12 U.S.C. 1441a(r). Congress required that such points be afforded to offers by qualifying joint ventures as well as by prime contract offerors. Congress authorized the RTC to adjust the points prescribed by statute "to the extent necessary to ensure the maximum participation level possible for minority- or women-owned businesses." 12 U.S.C. 1441a(r)(3). These statutory mandates were incorporated in the 1992 Rule at 12 CFR 1617.61.

In light of the RTC's experience in contracting, and the limited time until the RTC's sunset at the end of 1995, the RTC finds that, in order to comply with Congress's directive to ensure the maximum participation possible by MWOBs and MWOLFs for the duration of the RTC, the RTC has, since March 30, 1994, found it necessary to increase the bonus points available to MWOB and MWOLF prime contractors and joint ventures. This was done in keeping with the increased emphasis by Congress on ensuring maximum participation by MWOBs and MWOLFs, as evidenced by the numerous management reforms prescribed in the RTCCA in late 1993. Based upon its experience since that time, the RTC finds that it is necessary to continue to provide the increased level of bonus points contained in §§ 617.51 (MWOBs) and 1617.201 (MWOLFs) of the 1995 Rule. The RTC finds that the increased bonus point structure provides additional incentives to improve their competitive positions as prime contractors with the RTC and to encourage non-MWOBs and non-MWOLFs to enter into more substantial,

longer-lasting business arrangements with MWOBs and MWOLFs.

B. The 1995 Final Rule

The RTC is hereby adopting a final rule (1995 Rule) that incorporates the new requirements contained in section 21A(w) (6), (7), (16) and (18) of the FHLBA which relate to the RTC's contracting program, and makes certain technical changes based on RTC's experience under the 1992 Rule and the comments submitted in response to the 1992 Rule.

A specific regulatory change to the 1992 Rule intended to increase the participation of MWOLFs is that the RTC will now, in competitive solicitations for legal services, give higher bonus points to MWOLFs and MWOLF joint ventures than to other joint referral arrangements. In doing so, the regulation recognizes that joint ventures may take many forms. Since the primary intent of this provision (which is consistent with the mandates of FIRREA and RRIA) is to increase fees to MWOLFs and MWOLF joint ventures, the bonus points provided to MWOLF joint ventures which have a single tax identification number are greater than to MWOLF joint-counsel arrangements wherein the law firms retain their individual tax identification number.

Since announcing its MWOB/MWOLF contracting expectations in the 1992 Rule, the RTC has demonstrated the ability to reach these expectations. The RTC is mindful, however, that it is necessary to continue to meet these expectations each year.

During 1991, the RTC awarded 47,540 non-legal contracts with related estimated fees of \$1,675.4 million, of which 13,219 contracts (28 percent) were awarded to MWOBs with related fees of \$316.7 million (19 percent). During 1992, the RTC awarded 45,949 non-legal contracts with related estimated fees of \$1,293.8 million, of which 16,093 contracts (35 percent) were awarded to MWOBs with related fees of \$303.9 million (23 percent). During 1993, the RTC awarded 24,500 non-legal contracts with related estimated fees of \$560.3 million, of which 10,483 contracts (43 percent) were awarded to MWOBs with related fees of \$210.3 million (38 percent). In 1994, the RTC awarded 17,946 non-legal contracts with related estimated fees of \$555.8 million, of which 8,725 contracts (49 percent) were awarded to MWOBs with related fees of \$268.8 million (48 percent).

Regarding legal services, the RTC had similar success. During the 1991 calendar year, the RTC paid \$251,525,563 in fees to outside counsel;

of that amount, \$6,866,275 (2.7 percent) was paid to MWOLFs. During 1992, the RTC paid \$351,329,268 in fees to outside counsel; of that amount \$36,204,201 (10.3 percent) was paid to MWOLFs. During 1993, the RTC paid \$389,230,203 in fees to outside counsel; of that amount, \$61,713,140 (15.9 percent) was paid to MWOLFs. In 1994, the RTC paid \$232,100,704 in fees to outside counsel; of that amount \$60,344,296 (26.0 percent) was paid to MWOLFs.

On May 20, 1992, the Legal Division established a goal of increasing fees paid on new referrals to MWOLFs to at least 20 percent per year. The Legal Division has met this goal each year. From May 20, 1992 to December 31, 1992, the RTC paid \$27.5 million to outside counsel on new referrals (i.e. referrals made since May 20, 1992), and of that amount, \$7.4 million (26.8 percent) was paid to MWOLFs. During 1993, the RTC paid \$145.3 million to outside counsel on new referrals, of that amount, the RTC paid \$38.7 million (26.7 percent) to MWOLFs; and during 1994, the RTC paid \$129.9 million on new referrals, of that amount, the RTC paid \$46.7 million (36 percent) to MWOLFs. The RTC will continue its efforts to maximize participation by MWOBs, MWOLFs, and minority and women partners in non-MWOLF firms.

It should be noted that the RTC's outreach efforts to minorities and women include other matters beyond contracting. They also include outreach to potential purchasers of assets from financial institutions under the RTC's control and to acquirors of such institutions. In addition, in keeping with the principles underlying the Americans with Disabilities Act, the RTC provides outreach to individuals with disabilities who wish to participate in its contracting and other programs. The 1995 Rule, however, addresses only the RTC's MWOB/MWOLF contracting program and strict conformance to this regulation is required. FIRREA, RRIA, RTCCA, FHLBA and this regulation create no private right of action and no such right should be inferred.

C. Discussion of Comments on the 1992 Rule

The following discussion summarizes comments submitted in response to the 1992 Rule, and provides the RTC's response to those comments. All comments were considered, however all were not specifically addressed.

Four comments were filed in response to the 1992 Rule. Two commenters were concerned that the RTC is interpreting both the MWOB and the MWOLF provisions of the rules to exclude

persons of Portuguese descent from the categories of minorities entitled to participate in the program. Both commenters asserted that the term "Hispanic American," one of the categories of minorities that the RTC recognizes, includes descendants of Spain or Portugal. They asserted that the RTC should either include Portuguese Americans as among the categories of Hispanic Americans or revise the rules to make Portuguese Americans an additional category.

The commenters cited several bases for their arguments. First, the commenters asserted that, whether or not Portuguese Americans technically fall within the category of Hispanic Americans, the language in FIRREA should be as inclusive as possible, and that the burden would be on the RTC to justify excluding Portuguese Americans from the program. Second, the commenters argued that Portuguese are historically included in the definition of Hispanic. Next, the commenters asserted that federal agencies that have adopted regulations concerning minority-related programs treat persons of Portuguese descent as Hispanic. In addition, the commenters asserted that federal agencies that have not adopted regulations concerning minority-related programs, in practice, treat Portuguese Americans as Hispanic Americans. They asserted that regardless of technicalities, Portuguese Americans face discrimination as a minority group.

Another commenter commended the use of bonuses, but stated that the RTC requirement that contractors have liability insurance coverage impeded participation by minority-owned contractors. The commenter suggested that future contract solicitations provide certain considerations or assistance for minority contractors to enable them to compete.

The last comment was filed by the National Bar Association (NBA). The NBA offered suggestions for improving certain sections of the rule. First, the NBA asserted that, in regard to § 1617.3, awards and fees should be tracked as follows: (1) white men; (2) white women; (3) African Americans; (4) Hispanic Americans; (5) Asian Americans and Pacific Islanders; and (6) American Indians. The commenter asserted that this tracking procedure also should apply to the law firms. The commenter also asserted that, in regard to § 1617.91, the word "and" should connect subparagraphs 1 and 2 to help the RTC more readily determine whether or not a woman has the requisite ownership of the firm.

In regard to § 1617.100, the commenter suggested that RTC program

personnel report results of their tracking efforts on a semi-annual basis to the senior counsel for the MWOLF program in Washington, and that senior counsel should make such reports available to the legal community and in particular minority bar associations. This change would purportedly eliminate the need to make Freedom of Information Act requests, and would provide an incentive for RTC personnel to reach out to MWOLFs. The same comment was made in regard to MWOBs as well as MWOLFs. The commenter also argued that § 1617.102 should be amended to allow the legal minority and women outreach coordinators in the field to report directly to the senior counsel in Washington rather than reporting to their field supervisor. Finally, the commenter argued that the RTC should promulgate stronger inspection and enforcement regulations that will apply to firms that fraudulently certify that they are minority or women owned law firms. The commenter suggested that suspension or debarment should be made part of this regulation. The commenter also argued that the Small Business Act of 1978 applies to the RTC and that each contractor should be required to submit to the RTC a subcontracting plan to ensure that the concentration of subcontracts in the hands of large companies is reduced and that a fair proportion will be placed with minorities and women.

The RTC hereby responds to these comments as follows:

The commenters raised the issue of whether persons of Portuguese descent should be included in the definition of Hispanic American. Some federal agencies have included persons of Portuguese descent in their definitions of Hispanic American. RTC's definition of minority is based on the definition in section 1204 of FIRREA, 12 U.S.C. 1811. After due consideration, the definition in section 1204 does not provide a basis for expanding the definition of Hispanic American. The RTC's definition of minority includes persons of Central and South American origin. RTC's definition, in common with that of other federal agencies, does not include any persons with origins in Europe.

Regarding the comment on liability insurance requirements, the RTC will review this in the context of its contracting procedures. It does not feel that it would be appropriate to remove this requirement as a part of this rulemaking proceeding. However, for those contracts where insurance requirements may be lowered, a Division of Minority and Women's Program representative shall coordinate

their efforts with the Office of Contracts on a case by case basis.

In regard to the comments from the NBA, the RTC has the following responses. In regard to the tracking of fees and awards, the RTC believes that its current tracking is sufficient. In regard to the reporting of tracking results to Washington and to the public, the RTC believes that the comment is merited, and is amending the regulation accordingly. In regard to the reporting relationship of MWOLF personnel in the field to Washington, the RTC believes that the comment is merited, and is amending the regulation accordingly. Regarding enforcement procedures, the rule is being amended to state clearly that suspension and debarment from the entire RTC contracting program as well as from MWOB or MWOLF bonus considerations will be a potential consequence of false or fraudulent certifications. There is no need, however, to put detailed procedures in this regulation because the RTC's existing suspension and exclusion regulation, 12 CFR part 1618, provides sufficient procedures to handle these cases. Finally, the RTC disagrees that the Small Business Act directly applies to the RTC. However, the RTC is committed through this final rule and through its program and procedures (as mandated by the RTC Completion Act of 1993) to increase the percentage of contracts and subcontracts awarded to minority and women owned firms.

D. Technical Changes to the 1992 Rule

In light of its experience in administering the program under the 1992 Rule, the RTC is making certain technical changes to the 1995 Rule. Sections 1617.20 and 1617.30 govern the requirements that MWOB joint ventures and subcontracting arrangements receive technical and cost bonuses. Under the 1992 Rule, joint ventures receive compensation proportional to the work performed, whereas in subcontracting arrangements, the subcontractors receive "commensurate fees." The requirements set forth in this Rule are the same for joint ventures and subcontractors. That the MWOB joint venturer or subcontractor must perform work that is significant and to be compensated in relation to the work performed. The modified language reflects this requirement. Section 1617.21(a) is being amended to clarify that the MWOB joint venture participant(s) need not have the same degree of ownership and control over the joint venture that a minority or woman would need in order for the

company to be certified as a "stand alone" MWOB. Rather, the joint venture MWOB partner's percentage of ownership in the joint venture must directly equate to the joint venture MWOB partner's management and contract responsibilities.

E. Administrative Procedure Act

The RTC is adopting this final rule in order to implement the provisions of section 1216 of FIRREA, section 401 of RRIA and section 21A(w) of the FHLBA as added by section 3(a) of the RTCCA. The rule will be effective immediately upon publication in the **Federal Register**.

Several of the provisions of the final rule have been adopted without the prior notice and comment generally required by the Administrative Procedure Act (APA), 5 U.S.C. 533. The requirement of prior notice and comment may be waived for "good cause". The RTC hereby finds that there is good cause for such a waiver.

First, as discussed at length above, in the RTCCA, Congress mandated several reforms to improve and maximize the participation of MWOBs and MWOLFs in RTC's contracting activities. In one case (required subcontracting by MWOBs/MWOLFs), Congress made such participation a prerequisite to the RTC's ability to enter into or modify contracts after December 17, 1993 where compensation would equal or exceed \$500,000. The RTC believes that in imposing these requirements, Congress was mindful of the limited duration of the RTC (which in fact was further limited by the RTCCA), and that Congress intended that the RTC implement these mandates as soon as possible in order that the maximum benefits of the mandates would be achieved.

Where the RTC has acted without prior **Federal Register** notice and comment in implementing the RTCCA, it has not done so without providing actual notice to contractors or considering feedback from such contractors. All such changes have been incorporated into the RTC's Contract Policies and Procedures Manual, which is widely available to RTC contractors. RTC contractors and offerors are regularly in communication with RTC contracting officers. If there had been major problems in the implementation of the Completion Act mandates, there is no doubt that the RTC would have been made aware of them and adjusted for them.

On balance, the RTC finds that any harm to the public from implementing the Completion Act reforms without prior rulemaking notice and comment is

outweighed by the benefit to the public, and therefore, good cause as required by the APA exists.

F. Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, comments were specifically sought on an initial regulatory flexibility analysis. No comments were specifically filed in response. The following analysis is provided.

1. *Reasons, Objectives, and Legal Basis Underlying the 1995 Rule.* These elements have been discussed elsewhere in the Supplementary Information. By publishing this 1995 Rule, the RTC intends to ensure the maximum participation levels possible of MWOBs and MWOLFs in RTC contracting activities and awards.

2. *Comments on Initial Regulatory Flexibility Analysis; Assessment of Issues Raised.* In the Preamble to the 1992 Rule, the RTC provided an initial regulatory flexibility analysis and specifically sought comments on alternative methods of compliance, or reporting requirements. No such comments were filed.

3. *Alternatives to the 1995 Rule.* The RTC has not identified alternatives that would be less burdensome to small businesses and yet effectively accomplish the objectives of the 1995 Rule. The RTC has made every attempt to bear the administrative burdens rather than shifting them to prospective contractors.

List of Subjects in 12 CFR Part 1617

Government contracts, Lawyers, Legal services, Minority businesses and Women.

For the reasons set out in the preamble, the RTC hereby revises part 1617, title 12, chapter XVI, of the Code of Federal Regulations to read as follows:

PART 1617—MINORITY AND WOMEN OWNED BUSINESS AND LAW FIRM PROGRAM

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Authority: 12 U.S.C. 1441a(t) and 1833e.

Subpart A—General Provisions**§ 1617.1 Purpose.**

(a) Section 1216 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), 12 U.S.C. 1833e, requires that the Resolution Trust Corporation (RTC or the Corporation) 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, including financial institutions, investment banking firms, underwriters, accountants, and providers of legal services, in all contracts entered into by the agency with such persons or entities, public and private, in order to manage the institutions and their assets for which the agency is responsible or to perform such other functions authorized under any law applicable to the agency.

(b) This part details the procedures that the RTC will follow to ensure the inclusion of businesses and law firms owned by minorities or women in RTC's contracts for goods and services in connection with its management of savings and loan institutions placed under RTC control and the disposition of their assets.

§ 1617.2 Policy.

(a) It is the policy of the RTC that Minority and Women Owned Businesses (MWOBs) and Minority and Women Owned Law Firms (MWOLFs) are included to the maximum extent possible in all contracting activities of the Corporation. The RTC's objectives in contracting will be achieved through the establishment of goals using RTC contracting procedures. This applies to contracting for the procurement of goods and services, and the contracting activities of Conservatorships and Receiverships. Every employee of the RTC has the affirmative duty and responsibility to identify and seek to remove any barriers to the maximum possible participation by MWOBs, MWOLFs and minority and women partners in non-MWOLFs in the RTC's contracting activities.

(b) It is the policy of the RTC to ensure that MWOBs are included, to the maximum extent possible, in all non-legal services contracted for by the RTC, including non-legal services contracted for by private sector contractors. It is

expected that all program and sales offices will increase the level of participation and fees paid annually by the RTC to at least 30 percent for minority and women owned businesses.

(c) It is the policy of the RTC to ensure that MWOLFs, and minority and women partners in non-MWOLFs are included to the maximum extent possible, in all legal services contracted for by the RTC, including legal services contracted for by private sector contractors. It is expected that the RTC will increase the level of legal fees paid annually on new referrals to MWOLFs to at least 20 percent. In addition, at least 10 percent of the total legal fees paid annually will be paid to minority or women partners and other minority and women attorneys in non-MWOLFs.

§ 1617.3 Scope.

(a) This part applies to all contracting activities engaged in by the RTC in its Corporate, Conservatorship and Receivership capacities (including contracting by private sector contractors for the RTC, services provided directly to the Corporation and services provided to Conservatorships and Receiverships) with private persons and entities for all functions authorized by law.

(b) Sections 1617.10 through 1617.60 and § 1617.300 apply to all non-legal contracting activities engaged in by the RTC, in any of its capacities. It applies to non-legal services including, but not limited to, asset management, accounting services, appraisals, property management, information systems, property maintenance, surveying, general contracting and subcontracting, architectural/engineering consulting, title work, financial investigation services, marketing, signage and printing services and related services.

(c) Sections 1617.70 through 1617.202 and § 1617.301 apply to all contracts for legal services engaged in by the RTC, in any of its capacities (including contracting by private sector contractors for the RTC, services provided directly to the Corporation and services provided to Conservatorships and Receiverships). It applies to legal services including, but not limited to, litigation, transactions, bankruptcy, bond claims, director and officer liability, and other areas of law specific to the RTC.

§ 1617.4 RTC organizational responsibilities and staffing.

(a) *Organization.* The RTC has established a Division of Minority and Women's Programs (DMWP) in Washington with a Vice President to

provide management, direction, consultation, and training to other RTC offices in order to ensure that this program is being effectively and consistently implemented. The RTC shall have staff and resources within the DMWP dedicated to this program in each of its offices.

(b) The DMWP staff in Washington and the RTC field offices both report directly to the Vice President for the DMWP in Washington, D.C. The RTC shall allocate sufficient resources, including personnel to oversee, manage, and implement the MWOB and MWOLF programs in accordance with statutory mandates, RTC policies, directives and procedures. All DMWP personnel decisions that include selection, performance appraisals, promotion and disciplinary actions shall be made directly by, or through delegated authority of, the above-mentioned Vice President of the DMWP.

(c) There are three major departments in the DMWP responsible for including MWOBs and MWOLFs in RTC contracting:

(1) *Department of Minority and Women Owned Business.* The DMWP has established a Department of Minority and Women Owned Business (DMWOB) to ensure that firms owned and operated by minorities and women are included, to the maximum extent possible, in all contracting activities of the Corporation. The DMWOB is headed by a Director in the Washington Office who has the responsibility for the direction of all MWOB activities and programs relating to contracting, MWOB certification, investor opportunities, and the preservation and expansion of minority ownership of financial institutions. In each field office, there is staff dedicated to the MWOB Program. Program efforts include direct participation in the contracting process, promotion of joint ventures and subcontracting, working with program areas to structure asset management portfolios to facilitate MWOB participation, and other special initiatives to increase the level of MWOB contract awards. The DMWOB also targets and promotes opportunities for minorities and women as investors and acquirors of thrift institutions and assets, and encourages RTC deposits with financial institutions owned by minorities.

(2) *Department of Legal Programs.* The DMWP has established a Department of Legal Programs (DLP) to ensure that MWOLFs and minority and women partners in non-MWOLFs are included, to the maximum extent possible, in all legal contracting by the RTC and by its contractors on behalf of

the RTC. The DLP is a voting member of the RTC Legal Services Committee which approves all outside counsel referrals for legal services. The DLP is headed by a Senior Counsel/Director in the Washington Office. In the field, each office has staff dedicated to implementing, overseeing, monitoring and tracking the outreach program. The DLP coordinates activities with the Legal Division to identify MWOLFs and enhance contracting opportunities through direct referrals, joint referrals or other arrangements.

(3) *Department of Policy, Evaluation and Field Management.* The DMWP has established a Department of Policy, Evaluation and Field Management (DPEFM) to provide uniform policy development, interpretation, implementation and management to ensure that the RTC achieves its contracting, sales and other goals and objectives related to the participation of minorities and women. The DPEFM evaluates the effectiveness of the RTC's activities, initiatives, and actions to determine adherence to, and compliance with, DMWP's policies, programs and procedures. The DPEFM is headed by a Director in the Washington Office who is responsible for the implementation of all policy development, interpretation, evaluation, oversight and monitoring functions for the DMWP to assure coordinated and consistent implementation of the MWOB, MWOLF and other DMWP initiatives. The DPEFM implements an oversight and evaluation program to ensure that the RTC achieves its minority and women contracting program goals and objectives. The DPEFM manages the administrative, resource distribution, field planning, reporting, and related functions for the DMWP. In addition, the DPEFM provides the official complete and up-to-date information on contracting activities to RTC management, the Congress, and the public.

§ 1617.5 Definitions.

The following definitions and eligibility criteria have been established to allow RTC to review, evaluate, and approve private sector certifications for minority- and woman-owned business and law firm status.

(a) *"Control" by a minority or women.* RTC shall find that minority or women owned businesses or law firms are controlled by a minority or woman when the person(s) upon whom eligibility is based:

(1) Has the right to vote his or her shares or other equity interest to elect the majority of voting members of the board of directors or other governing

body, and holds the position of chairperson of the board, president, chief executive officer, or equivalent position;

(2) Has direct full-time responsibility for the day-to-day management of the business, as evidenced by:

- (i) Directly related managerial or technical experience and competency;
- (ii) Establishment of company policies;
- (iii) Determination and selection of business opportunities;
- (iv) Supervision and coordination of projects;
- (v) Control of major expenditures;
- (vi) Hiring and dismissing key personnel;
- (vii) Marketing and sales decisions;

and

(viii) Signature on major business documents (including, but not limited to any RTC documents, tax returns, leases, mortgages, notes, contracts, and other financial documents);

(3) Has a significant percentage of senior management positions held by women, if a woman-owned business; and

(4) Has met the expectation of the RTC that the requirements of paragraph (a) of this section be performed on a day-to-day basis, at the principle place of business of the minority- or woman-owned business or law firm, by the minority or woman upon whom eligibility is based. That is, the RTC expects that such individuals shall have actual, direct, non-delegable, daily responsibility for the requirements in paragraphs (a)(2) (i) through (viii) of this section.

(b) *Direct referral.* A direct assignment of a legal matter to an MWOLF.

(c) *Joint referrals.* The assignment of a legal matter to two or more law firms, at least one of which must be an MWOLF. The joint legal referral may take a variety of forms:

(1) *Co-counsel.* A joint referral in which two or more outside counsel, at least one of which must be a MWOLF, obtain work together through a relationship established by the RTC. Each co-counsel law firm has a separate taxpayer identification number.

(2) *Joint-counsel.* A joint referral in which two or more outside counsel, at least one of which must be a MWOLF, obtain work together through a relationship proposed in writing by them to the RTC. Each joint-counsel law firm has a separate taxpayer identification number.

(3) *Joint law firm venture.* A joint referral in which two or more outside counsel, at least one of which must be a MWOLF, obtain work together through a partnership formed by them under

state law to engage in and carry out the practice of law as a business venture, for which purpose they combine their efforts, resources and skills for joint profit. The joint law firm venture has a single taxpayer identification number.

(4) *Consortium of MWOLFs.* A joint referral of more than two outside counsels, all of which must be MWOLFs, pool their personnel, expertise, support, staff and facilities to obtain work together through a relationship proposed by them to the RTC. Each consortium law firm has a separate taxpayer identification number.

(d) *Joint venture with MWOB participation.* An association of entities and/or individuals, with the combined entity having its own unique tax identification number, which at least one of the participants is a certified MWOB, formed by written contract to engage in and carry out a specific business venture for which purpose they combine their efforts, resources, and skills for joint profit, but not necessarily on a continuing or permanent basis for conducting business generally.

(e) *Legal services agreement.* An agreement entered into between the Legal Division and outside counsel, as defined in the RTC Legal Division Contracting Procedures.

(f) *Legal services committee.* The committee established in each office whose members represent the Legal Division and the DMWP, and whose responsibility it is to select and engage all outside counsel with regard to legal services to be performed within the supervision of said office.

(g) *List of counsel.* The list of law firms in the Legal Division's computer database that are eligible to perform legal services for the RTC. Only law firms on this list may have legal matters referred to them.

(h) *Minority.* Any Asian American, Black American, Hispanic American, Native American, Eskimo or Pacific Islander who is either a citizen or a permanent resident of the United States.

(1) *Asian American.* A person having origins in any of the original peoples of the Far East, Southeast Asia or the Indian Subcontinent.

(2) *Black American (not of Hispanic Origin).* A person having origins in any of the black racial groups of Africa.

(3) *Hispanic American.* A person of Mexican, Puerto Rican, Cuban, Central or South American origin, regardless of race.

(4) *Native American.* A person having origins in any of the original peoples of North America.

(5) *Eskimo.* A person having origin in the Eskimo or Aleutian peoples.

(6) *Pacific Islander.* A person having origins in any of the original nations commonly referred to as the "Pacific Rim Countries", including the Hawaiian Islands.

(i) *Minority owned business.* Any business in which:

(1) More than 50 percent of the ownership or control is held by one or more minority individuals; and

(2) More than 50 percent of the net profit accrues to one or more minority individuals.

(j) *Minority owned law firm.* Any law firm or practice in which:

(1) More than 50 percent of the ownership or control is held by one or more minority attorneys;

(2) More than 50 percent of the net profit accrues to one or more minority attorneys; and

(3) All attorneys within the firm are in good standing with the respective state bar licensing authority.

(k) *MWOLF subcontractor.* An RTC-approved outside counsel retained by another RTC-approved outside counsel, for the purposes of the RTC Completion Act, to provide legal services when anticipated fees or other compensation are expected to be \$500,000 or more. The outside counsel retained as the subcontractor shall have the same professional liability relationship with the RTC and the prime contractor as if the subcontractor were joint counsel with the prime contractor in providing legal services to the RTC.

(l) *Outside counsel.* A law firm or individual attorney therein, or solo practitioner that has entered into a Legal Services Agreement with the Legal Division to be available for engagement to provide legal services.

(m) *Bonus considerations.* (1) *Bonus considerations for MWOBs and MWOLFs.* Bonus considerations are authorized by § 401(t)(1) of RRIA. In the review and evaluation of proposals, the Corporation shall provide additional incentives to minority or women owned businesses and law firms by awarding any such business or firm a percentage of the total technical points and a percentage of the total cost points achievable in the technical and cost rating process applicable with respect to such proposals.

(2) *Bonus considerations for joint ventures.* Bonus considerations shall apply to any proposal submitted by a joint venture in which MWOBs and MWOLFs have at least 25 percent MWOB/MWOLF participation.

(3) *Bonus considerations for subcontracting.* Bonus Considerations shall apply to any proposal submitted by a non-minority firm in which a certified MWOB or MWOLF has at least

25 percent MWOB or MWOLF subcontracting participation.

(4) *Authority to adjust technical and cost bonus considerations.* The RTC may adjust the technical and cost bonus points applicable in evaluating proposals to the extent necessary to ensure the maximum participation level possible for minority or women owned businesses and law firms.

(n) *Private sector contractor.* Any person or entity that performs services on behalf of the RTC pursuant to a contract, including, but not limited to, an asset manager.

(o) *Request for proposals (RFPs).* Any request to a law firm for proposals to provide certain legal services to or on behalf of the RTC.

(p) *RTC oversight attorney.* Any attorney within the RTC Legal Division who oversees and manages outside counsel in relation to a particular legal matter.

(q) *Solicitation of services (SOS).* Any request to a business for proposals to provide certain services to or on behalf of the RTC.

(r) *Women owned business.* Any business in which:

(1) More than 50 percent of the ownership or control is held by one or more women;

(2) More than 50 percent of the net profit or loss accrues to one or more women; and

(3) A significant percentage of senior management positions are held by women.

(s) *Women owned law firm.* Any law firm or practice in which:

(1) More than 50 percent of the ownership or control is held by one or more women attorneys;

(2) More than 50 percent of the net profit or loss accrues to one or more women attorneys;

(3) A significant percentage of senior management positions are held by women attorneys; and

(4) All attorneys within the firm are in good standing with the respective state bar licensing authority.

Subpart B—General Provisions Applicable to Businesses

§ 1617.10 Contracting objectives.

The RTC has established standards by which it will evaluate its success in maximizing participation of minority and women owned businesses (MWOBs) in its contracting activities. The awards and fees shall be tracked separately for minorities and women. All awards and fees shall be tracked by RTC regional and local geographic areas. The RTC's success in meeting its objectives will be evaluated

periodically, and modifications will be made as needed.

(a) Each office, including sales centers, shall make every effort to raise MWOB participation in accordance with the RTC's objectives.

(b) Contractors are strongly encouraged to utilize joint ventures and subcontracting arrangements with MWOBs to increase MWOB participation. Bonus considerations shall be given to contractors that, through joint ventures or subcontracting, achieve specified levels of MWOB participation.

(c) Within six months of the date of conservatorship, each conservatorship must bring its contracting activity into compliance with the RTC's DMWP policies and procedures.

(d) Evaluation of performance of contractors shall include their efforts and success in meeting RTC's DMWP goals, including mandatory MWOB and MWOLF subcontracting. The DMWP will conduct periodic visits or reviews of contractors to assess their compliance with RTC policies.

(e) RTC contractor's failure to comply with RTC rules and regulations, including DMWP policies and procedures, particularly with respect to certification, joint venture and subcontracting requirements, may result in adverse actions against the MWOB, prime contractor, or joint venture partners including, but not limited to, withholding of fees, contract termination, and/or referral to the Office of Ethics, which may result in suspension or exclusion from the RTC contracting program pursuant to 12 CFR part 1618, with appropriate referrals to the Office of the Inspector General.

§ 1617.11 Program components.

(a) The DMWOB coordinates with the Contracts, Program and Sales Offices to ensure the inclusion of minority and women owned businesses to the maximum extent possible in RTC contracting activities. DMWOB monitors RTC private contractors to ensure that they are aware of, adopt and adhere to, all RTC policies and procedures for contracting with MWOBs.

(b) The DMWOB shall be a non-voting member of the Technical Evaluation Panel (TEP) and shall participate directly in the contract award process to ensure that the evaluation of proposals from MWOBs for potential awards is fair and follows RTC's policies and procedures, and that technical and cost bonus points are applied appropriately and correctly. After the technical evaluation, scoring material shall be available for review and concurrence by

the Program Office, Legal Division, and the DMWP.

(c) The DMWOB shall concur on the assignment of technical and cost bonus points prior to selection of offerors in competitive range.

(d) The DMWOB staff shall develop and maintain a direct relationship with the Contract, Program and Sales Offices, Oversight Managers and Conservatorship staff in order to increase the number of non-legal contracts and fees awarded, as well as sales transactions, to MWOBs.

(e) *Outreach.* A continuing effort of the RTC involves identifying MWOBs capable of providing contracting services to the RTC. This effort is nationwide in scope and focuses on networking and training.

(1) *Networking.* Washington and field office staff will network with Federal, State and local governments, non-profit organizations, professional and trade organizations; and participate in conventions and seminars sponsored and widely attended by minorities and women. Promotional campaigns will be developed to inform the minority and women owned business community of the Corporation's needs and its commitment to involve such firms in its contracting activities; and information on purchasing RTC assets and thrifts shall be disseminated. MWOB firms shall be assisted in understanding and meeting the RTC's contracting needs, especially as they shall be represented in various Solicitations of Services (SOSs), and these firms shall be placed on appropriate source lists for SOSs. MWOB firms shall also be informed about RTC's regulations governing ethical responsibilities, conflicts of interest, confidentiality, and the certification process for eligibility as a MWOB.

(2) *Training.* The Washington Office shall coordinate training initiatives, workshops, and seminars for MWOBs and RTC staff. These activities are designed to increase awareness and to ensure the inclusion of minorities and women, and firms owned by minorities and women, in the RTC's contracting process, regulations, and special initiatives, as well as ensure that all RTC staff who interact with the contracting and investment community are knowledgeable of and support the program. Technical training needs of MWOB contractors shall be identified and materials and training modules shall be developed to increase MWOB participation. In addition, DMWP policies, directives and program goals and objectives shall be incorporated into training modules for an internal education program for all RTC staff to

promote RTC's commitment to the full participation of MWOBs in all contracting and sales activities.

(3) *Database review.* The DMWP field staff shall enhance the efforts of the outreach program through their ongoing review of the MWOB database and the Contracting Activity Reporting System (CARS) identifying geographic and service categories in which firms are under represented. The outreach program shall target its efforts in areas where the MWOB database indicates MWOBs are under represented.

(4) *Special events.* Special events shall be developed to meet the needs or concerns of MWOBs. These events may include: subcontracting, teaming, joint venture fairs or seminars, open houses with Standard Asset Management and Disposition Agreement (SAMDA) contractors, investor forums, and coordination of events with the Minority Business Development Agency, Small Business Administration, other governmental entities, and private and non-profit organizations.

§ 1617.12 Program promotion.

(a) The DMWOB shall conduct seminars and workshops for MWOB firms. The focus of these events shall be to provide information regarding the program, its goals and objectives, and companies qualified to participate in the program; to facilitate interaction between RTC and these firms; and to manifest RTC's commitment to doing business with these groups.

(b) Contract opportunities for MWOBs shall be expanded by encouraging both minority and women owned firms to form joint venture arrangements and cooperative agreements with other larger firms.

§ 1617.13 Certification.

(a) Each firm claiming status as a MWOB shall be required to provide certification of that status. To preserve the integrity and foster the objectives of the program, RTC must satisfy itself that the ownership or control requirements of the program are fulfilled. On-site visits shall be performed by the DMWOB and may include the Office of Contract Oversight and Surveillance (OCOS).

(b) RTC has implemented a certification policy and procedures designed to prevent fraudulent representations. Procedures have been established by which the DMWP shall review, evaluate, and approve notarized certification forms and accompanying documents from MWOBs, prior to submission of the firm for a source list, or prior to participation in the contracting process.

(c) When a MWOB firm is selected for an award, a pre-award on-site verification is required for all contracts with estimated fees in excess of \$100,000, or when the award will result in accumulated fees over \$100,000. The DMWP reserves the right to perform an on-site verification to firms with fees under \$100,000. Additionally, all joint ventures are subject to on-site verifications. If the eligibility of a firm as a MWOB is questionable, based on misrepresentation, the OCOS will participate in the on-site verification.

(d) RTC shall be notified of any changes in ownership, senior management, MWOB joint venture participant(s), or other factors that may affect eligibility.

(e) Any misrepresentations, (including falsification of MWOB Certification), omissions or changes by the MWOB, the non-MWOB, or the joint venture partnership with respect to ownership or control; senior management; MWOB joint venture participant(s); the allocation of profits and losses; or any other factors that may affect eligibility, may result in adverse actions against the MWOB, prime contractor, or joint venture partners including, but not limited to, withholding of fees, contract termination, and/or referral to the Office of Ethics, which may result in suspension or exclusion from the RTC contracting program pursuant to 12 CFR part 1618, with appropriate referrals to the Office of the Inspector General.

(f) If the firm is found ineligible for MWOB status, and is denied such status, it shall be informed of its right to file an appeal to the Vice President, DMWP in Washington, DC.

§ 1617.14 Participation of MWOB contractors in task order agreements.

(a) To ensure the maximum participation of MWOBs in its contracting activities, the RTC shall maintain procedures to ensure that minorities and women shall not be inadvertently excluded from eligibility for Task Order Agreements. Such procedures shall include reviewing lists of contractors eligible to compete for such Task Order Agreements in order to ensure that the maximum participation level of MWOBs.

(b) The RTC has promulgated detailed procedures to comply with this policy. The procedures are contained in the RTC's Contract Policies and Procedures Manual (CPPM). Copies of the CPPM are available from the RTC Public Reading Room, 801 17th Street, NW., Room 100, Washington, DC 20434-0001.

Subpart C—Joint Ventures

§ 1617.20 General.

In an effort to ensure and enhance inclusion of MWOBs in the RTC's contracting activities, the Corporation supports and promotes the concept of joint ventures. The intention of this policy is to provide MWOBs an opportunity to acquire training through their association with a more established or larger firm and to increase resource development opportunities so that MWOB firms will continue to develop the expertise and capacity to compete independently.

§ 1617.21 Eligibility.

A joint venture will be eligible for this program if it meets the following requirements:

(a) Each MWOB participant is responsible for a clearly defined portion of the work to be performed and holds management/contract oversight responsibilities related to the main purpose of the contract; and

(b) The MWOB participant(s) performs at least 25 percent of the substantive duties under the entire contract, and is contractually entitled to compensation proportionate to its(their) duties.

§ 1617.22 Establishing joint ventures.

A firm receiving a solicitation from the RTC may form a qualifying joint venture with one or more other firms that may or may not have received the solicitation. Each joint venture that is established before receipt of any SOS, and every joint venture engaged by RTC, must have its own tax identification number (TIN) and must meet RTC's fitness and integrity requirements.

§ 1617.23 Joint venture agreements.

To qualify for bonus considerations, the joint venture must provide a copy of its written joint venture agreement to RTC prior to being submitted for a source list or at the time it submits a proposal. That agreement must identify clearly the work to be performed, the extent of total work participation by each firm in the joint venture, the address of each firm, and the following:

(a) The purpose of the joint venture;

(b) The date the joint venture was established;

(c) The joint venture's federal TIN;

(d) Any other names under which the joint venture has done or is doing business;

(e) The management structure of the joint venture, including which of the joint venture participant(s) employs each of the management staff and the roles and responsibilities of each

venturer in performing the services under the contract;

(f) The percentage of joint venture ownership interests, the percentage of substantive work to be performed by the MWOB participant(s) on the contract and the percentage of RTC funds earned by the joint venture to be distributed to the MWOB participant(s);

(g) The allocation of joint venture income/loss derived from the joint venture's activities with the RTC (as measured by total joint venture fees less total joint venture expenses). The joint venture agreement also should state the method of determining income/loss (*i.e.*, cash or accrual and tax basis or using generally accepted accounting principles);

(h) The initial capital investment, including investments made in cash, equipment, facilities, etc., by each participant;

(i) Whether other resources will be furnished by each joint venture participant and the basis on which such resources will be furnished;

(j) Whether the insurance requirements will be apportioned among the joint venture participants and to what extent;

(k) That each party to the joint venture is liable for the proportionate percentage of joint venture participation for all activities of the joint venture;

(l) That the MWOB participant(s) in the joint venture will have the opportunity to represent itself, at all RTC meetings related to the contract, such as offerors' conferences, debriefings, contract closings and contract oversight reviews;

(m) That all parties to the joint venture shall fully disclose to one another all SOSs, Task Order Bids, Notices of Best and Final Offers, SOS Amendments, Notices of Awards, Contracts and any and all other documents or meetings necessary or relative to the joint venture. Such disclosures must be made to the MWOB participant(s) before submission of any proposals, bids or offers for contracts with the RTC; and

(n) That financial, ownership, control, or shared employee (including members of the board of directors) relationships of the members of the joint venture, if such relationships exist, shall be disclosed.

§ 1617.24 Joint venture reporting and sanctions.

(a) The contractor shall be required to submit periodic detailed reports of substantive work and distribution of payments to each joint venture partner, to allow the RTC to determine the extent of compliance by the contractor with the

MWOB joint venture agreement. Summary joint venture reports shall be required in accordance with RTC instructions.

(b) The RTC shall evaluate the contractor's performance in relation to its implementation of the MWOB joint venture agreement. The DMWP shall give notice to the contractor during performance if the contractor is failing to meet his or her commitments under the joint venture agreement. If a contractor's performance is inadequate, the contractor shall be given a 30-day period on contracts of one year or more and a proportionate period on contracts of shorter duration to resolve the non-compliance. If after the compliance period elapses, the contractor has not corrected the non-compliance, the RTC shall initiate appropriate remedial action. Any misrepresentations, omissions or changes by the MWOB, the non-MWOB, or the joint venture partnership with respect to ownership or control; senior management; MWOB joint venture participant(s); the allocation of profits and losses; or any other omissions or changes or other factors that may affect eligibility, may result in adverse actions against the MWOB, prime contractor, or joint venture partners including, but not limited to, withholding of fees, contract termination, and/or referral to the Office of Ethics, which may result in suspension or exclusion from the RTC contracting program pursuant to 12 CFR part 1618, with appropriate referrals to the Office of the Inspector General.

Subpart D—Subcontracting

§ 1617.30 Policy.

(a) The RTC has determined that one of the most effective methods for increasing participation of MWOBs in its contracting activities is the use of MWOBs as subcontractors. While the ability to subcontract is within the power of the contractor, the RTC shall provide additional bonus points to offerors subcontracting at least 25 percent of the substantive work and commensurate fees to MWOBs. More bonus points will be available to contractors who reach levels of subcontracting greater than 25 percent.

(b) In accordance with RTC's other general requirements for subcontracting activity, the RTC shall satisfy itself that all private sector firms awarded a contract with the RTC will provide the maximum opportunity possible to minority and women owned contractors to participate in subcontracting awards. All RTC contractors must agree to carry out this policy in a manner consistent

with RTC's overall contracting policies and procedures.

(c) Bonus points are available to any offeror who subcontracts at least 25 percent of the substantive work and commensurate fees under a contract to MWOBs. Any offeror that seeks to obtain bonus points on a prime contract or task order agreement through subcontracting work to MWOBs must submit with its proposal a subcontracting plan. The offeror's subcontracting plan shall apply throughout the life of the contract.

(d) If a prime contractor proposes to contract with a MWOB subcontractor(s), the RTC requires that an offeror certify that if awarded a contract, the firm will implement the MWOB Subcontracting Plan submitted with its proposal, to provide the approved percentage of MWOB participation to the named MWOB subcontractor(s).

(e) The prime contractor must obtain a completed MWOB certification package from each proposed MWOB subcontractor in its subcontracting plan and must submit these documents with its proposal or RTC certified MWOB affidavit. The prime contractor shall not substitute the named MWOB subcontractor(s) without prior approval from the DMWP.

§ 1617.31 Subcontracting plans.

The subcontracting plan must include within the proposal:

(a) Specific name(s), roles and responsibilities of the MWOB subcontractor(s);

(b) Separate percentages of work allocated to minority and/or woman subcontractor(s) (how much to each) and projections of the monthly work distribution schedule for the term of the contract for each subcontractor and/or joint venture partner;

(c) Estimated dollar amount of participation of MWOB subcontractor(s);

(d) The name of an individual employee of the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual;

(e) A statement as to whether the MWOB subcontractor(s) will be required to provide the following insurance and to what extent: fidelity bond, errors and omissions, and liability;

(f) Previous experience working with MWOB firms;

(g) Assurances that the offeror will cooperate in any oversight, review, study or survey, as may be required;

(h) A copy of the written agreement between the contractor and the subcontractor establishing that the plan

meets at least the 25 percent participation requirement; and

(i) Disclosure of financial, ownership, control, or shared employee (including members of the board of directors) relationships between the MWOB subcontractor and the primary contractor, if such relationships exist.

§ 1617.32 MWOB subcontracting requirements.

(a) Effective December 17, 1993, the RTC shall not, in any capacity, enter into or modify any contract for the provision of goods and services to RTC under which the contractor would receive fees or other compensation in an amount equal to or greater than \$500,000, unless the contractor subcontracts part of the engagement with one or more MWOBs, and pays fees or other compensation to such MWOBs in an amount commensurate with the percentage of services provided by the MWOB(s). The mandatory MWOB subcontracting provisions apply to both non-minority and minority contractors. For all contracts with estimated fees and other compensation equal to or greater than \$500,000, non-MWOB contractors shall be required to subcontract no less than 10 percent of the contract services and commensurate fees to MWOBs. A MWOB or a joint venture with 50 percent or more MWOB participation is required to subcontract no less than 5 percent of contract services and commensurate fees to a MWOB.

(b) The RTC shall not enter into or extend a contract, task order and modification thereto which will result in fees or other compensation equal to or greater than \$500,000, unless the contractors agree to meet the MWOB mandatory subcontracting requirements.

(c) More specific procedures and guidelines for the implementation of paragraphs (a) and (b) of this section are contained in the RTC's Contract Policies and Procedures Manual (CPPM). Copies of the CPPM are available from the RTC Public Reading Room, 801 17th Street, NW, Room 100, Washington, DC 20434-0001.

(d) The RTC may exclude a contractor from the requirements of paragraph (b) of this section if the Chief Executive Officer of the Corporation determines, through written documentation, that imposing such a subcontracting requirement would:

- (1) Substantially increase the cost of contract performance; or
- (2) Undermine the ability of the contractor to perform its obligations under the contract.

(e) Reports and notarized certifications subject to 18 U.S.C. 1001.

(f) The RTC, through a written determination by the Chief Executive Officer, may grant a waiver from the requirements of paragraphs (a) and (b) of this section for any contract, provided that the contractor certifies that it has determined that no eligible MWOB is available to enter into a subcontract, with respect to a contract to which paragraphs (a) and (b) of this section are otherwise applicable; provides a list of MWOB contractors contacted, including firm name, MWOB tax identification number, address, telephone number, and contact official; and provides a detailed explanation of the basis for the contractor's determination, including written documentation from the local RTC DMWP concurring in the determination that there are no eligible MWOBs available.

(g) The offeror/contractor is subject to §§ 1617.30, 1617.31 and 1617.33.

§ 1617.33 Post-award oversight.

(a) The contractor will be required to submit periodic detailed reports of substantive work and payments to MWOB subcontractors, to allow the RTC to determine the extent of compliance by the contractor with the MWOB subcontracting plan. Summary subcontracting reports will be required in accordance with RTC instructions.

(b) The RTC will evaluate the contractor's performance in relation to its implementation of the MWOB subcontracting plan. The RTC will give notice to the contractor if the contractor is failing to meet his or her commitments under the subcontracting plan. If a contractor's performance is inadequate, the contractor will be given notice in accordance with the terms and conditions of the contract. If after the compliance period elapses, the contractor has not corrected the non-compliance issue, the RTC shall initiate appropriate remedial action, that could result in the withholding of fees, contract termination, and/or referral to the Office of Ethics which may result in suspension, or exclusion of the contractor.

Subpart E—Solicitation and Contract Award Guidelines

§ 1617.40 Inclusion in solicitations.

RTC policies and guidelines will ensure, to the maximum extent possible, participation of MWOBs in each contract solicitation. In order to increase competition for MWOBs, the RTC shall implement smaller contract assignments, such as soliciting proposals for asset managers to manage small, homogeneous, geographically concentrated asset pools. For

noncompetitive contracts under \$5,000, the use of MWOB firms is encouraged.

§ 1617.41 Participation by the Division of Minority and Women's Programs in the solicitation and award process.

(a) The DMWP staff shall participate in the initial review and Statement of Work meeting with the requesting program office and the Legal Division to establish milestones, specific task descriptions, and contractor responsibilities. The DMWP shall participate in the Source Selection Plan process to assure inclusion of MWOB firms. The DMWP shall assure that the following contract requirements are fair, equitable and consistent:

(1) The selection criteria for notices or issuance of S OSS;

(2) The advertising language; and

(3) Standards for most important, more important, and important factors, and scoring criteria.

(b) The DMWP shall participate in the preparation of responses to questions received from offerors in consultation with the Contracts Office, Program Office, and Legal Division.

(c) The DMWP staff shall participate as non-voting members in the technical evaluation process. After the technical evaluation, scoring material shall be available for review and concurrence by the Program Office, Legal Division, and the DMWP.

(d) The DMWP shall concur on the assignment of technical and cost bonus points prior to selection of offerors in competitive range.

(e) To ensure inclusion by MWOBs in the contracting process, the DMWP must concur in the selection of the contractor.

(f) In the post-award phase, the DMWP shall participate in MWOB debriefings and contractor performance evaluations.

(g) The DMWP, in conjunction with OCOS, will conduct quarterly and annual site visitations of SAMDA contractors to review contractor compliance with RTC policies and procedures.

(h) The DMWP shall conduct quarterly and annual site visitations of any contractor who is subject to MWOB participation in joint ventures and subcontracting plan(s).

§ 1617.42 Participation by the Division of Minority and Women's Programs in contract administration.

The DMWP shall participate in the oversight (i.e. evaluation, rating, and other matters) relating to contract performance and compliance, specifically those matters related to the implementation of DMWP activities and

fulfillment of subcontracting plan and joint venture agreement obligations and commitments. This includes interactions between parties once payment has been made, during the resolution of any disputes or adjustments, and until the contract is formally closed. The DMWP shall participate and concur in decisions related to contract changes and modifications to assure that MWOBs are fully included in decisions related to changes and modifications to their contracts; and in conformance with the joint venture agreement and subcontracting plan terms and conditions related to MWOB eligibility. The DMWP shall:

(a) Participate and concur in the preparation of the Contract Administration Plan with the oversight managers and contract officer; the post-award conference to discuss milestones, reporting requirements, training needs, roles and responsibilities; and technical requirements of MWOB Program implementation;

(b) Participate as a contract administration team member with full responsibility for monitoring compliance of all firms with MWOB Program requirements; attending site visits and performance reviews; and providing technical oversight, assistance, training, and other direction as required;

(c) Monitor contractor payments for timeliness and accuracy of the contractor's payment to MWOB subcontractors in accordance with established and previously approved subcontracting plans;

(d) Monitor contractor fee splits for timeliness and accuracy, and verify fee distributions to MWOB joint venture participants;

(e) Review and concur on all requests for contract amendments and modifications initiated by the contractor or RTC to assure that they are not prohibitive or impediments to maximizing the levels of participation for MWOBs in potential contract opportunities; and

(f) Review and concur in all requests for the assignment and/or re-assignment of contracts to determine the impact of such assignments on RTC's MWOB goals and on the participation of minorities and women.

Subpart F—Technical and Cost Bonus Points

§ 1617.50 Policy.

In the review and evaluation of proposals submitted by firms eligible as MWOBs, MWOB joint ventures, or non-MWOBs with qualifying subcontracting

plans, RTC shall provide bonus points in the technical and cost rating process.

§ 1617.51 Application of technical and cost bonus points.

(a) Technical bonus points shall be awarded as a percentage of the total technical points achievable in the rating process in addition to each offeror's technical score.

(b) Cost bonus points shall be awarded as a percentage of the total cost points achievable in the rating process in addition to each offeror's cost score.

(c) The technical and cost bonus points shall be allocated as follows:

| Firm type | Percent technical | Percent cost |
|---|-------------------|--------------|
| MWOB | 15 | 10 |
| Joint Venture with at least 40 percent MWOB participation | 15 | 10 |
| Joint Venture with at least 25 percent MWOB participation | 10 | 5 |
| Non-MWOB firm with sub-contracting plan of at least 40 percent MWOB participation | 10 | 5 |
| Non-MWOB firm with sub-contracting plan of at least 25 percent MWOB participation | 5 | 2.5 |

(d) All contracts which have estimated fees or other compensation equal to or greater than \$500,000 or when the award will result in accumulated fees or other compensation which will be equal to or greater than \$500,000, the contractor shall be required to satisfy the 5 percent or 10 percent mandatory MWOB subcontracting requirement. For non-MWOB contractors, this 10 percent subcontracting requirement is deemed satisfied in cases where offerors submit acceptable MWOB subcontracting plans of at least 25 percent and are requesting technical and cost bonus consideration.

§ 1617.52 Authority to adjust technical and cost bonus points.

(a) The DMWP shall evaluate the Corporation's application of bonus points annually. This annual review shall determine whether the Corporation is meeting the mandate to ensure the maximum participation possible for MWOBs and the need to adjust the bonus points.

(b) The Vice President of the DMWP, with the concurrence of the Chief Executive Officer, has the authority to

increase the technical and cost bonus points to ensure maximum MWOB participation in the contracting process.

Subpart G—Conservatorship Contracting

§ 1617.60 Policy and application.

(a) The RTC recognizes the role of conservatorships in ensuring inclusion of MWOBs in RTC contracting and disposition activities to the maximum extent possible. Within six months after an institution has been placed into conservatorship, each conservatorship shall comply with DMWP policies and procedures.

(b) Accordingly, it is the responsibility of the Conservatorship and Contracting Departments to provide the DMWP with an opportunity to review and concur on:

- (1) Requests for contracting services;
- (2) Solicitation of Services (SOS) lists;
- (3) SOS, contract, Statement of Work;
- (4) Other contracting documents;
- (5) Application of MWOB bonus points; and

(6) Certification/verification of contractor's MWOB status.

(c) In addition, the DMWP shall have the opportunity to participate in conferences, debriefings, negotiation meetings, final interviews, and any other meetings between RTC and MWOB contractors.

(d) Because of the large number of small awards emanating from conservatorships, the conservatorships are strongly encouraged, in all sole source contracts, to give preference to local MWOBs. The DMWP staff at RTC field offices shall work with the conservatorship contracting offices in identifying and certifying MWOBs, prior to the conservatorship offices soliciting for services.

Subpart H—General Provisions Applicable to Law Firms

§ 1617.70 Contracting objectives.

(a) The Division of Legal Services shall, to the maximum extent possible, increase the level of legal fees paid annually on new assignments to MWOLFs to at least 20 percent. In addition, at least 10 percent of the total legal fees paid annually will be paid to minorities or women partners and other minority and women attorneys in non-MWOLFs.

(b) Further, the Division of Legal Services shall:

(1) Increase MWOLF participation and fees at each field office and in Washington in accordance with the RTC goals and objectives.

(2) Assist RTC attorneys and outside counsels in identifying both the

capacity and the experience to provide the required legal services to the RTC.

(3) Encourage non-MWOLFs to utilize joint referral arrangements with MWOLFs to increase MWOLF participation and fees. Bonus points will be awarded to law firms that engage in joint referrals, and achieve specified levels of fees for MWOLF participation.

(4) Consistent with Division of Legal Services Policy No. 92-04, Minority and Women Partners Program, refer legal matters to the minority or women partners in non-MWOLFs who are identified as the RTC contact persons listed in the RTC Legal Information System (RLIS) and are principally responsible for the coordination of the legal services provided to the RTC. These partners are responsible for ensuring that RTC legal matters are successfully performed by other minority and women attorneys in non-MWOLFs.

(5) Copies of the document referred to in paragraph (b)(4) of this section are available from the RTC Public Reading Room, 801 17th Street NW., Room 100, Washington, DC 20434-0001.

§ 1617.71 Program components.

The Department of Legal Programs (DLP) shall:

(a) Design and implement a nationwide program, to identify MWOLFs capable of meeting the legal services contracting needs of the RTC. Implementation of the outreach program will entail having on-going communications with national, state and local bar associations, and other entities, and will participate in professional conventions and seminars sponsored and widely attended by MWOLFs.

(b) Coordinate with the Legal Division to identify and develop opportunities to increase referrals to MWOLFs, and minority and women partners in non-MWOLFs.

(c) Develop and implement outreach programs, such as seminars, conferences, and training workshops on legal contracting to increase the referrals and fees to MWOLFs and to minority and women partners in non-MWOLFs, and encourage the use of MWOLFs in joint referrals, such as co-counsel, joint counsel, joint venture arrangements, and consortia of MWOLFs.

(d) Monitor the implementation of the DMWP goals and objectives.

(e) Conduct on-site reviews of each field office and the Washington Office to determine compliance with the RTC's minority and women outreach goals and objectives.

§ 1617.72 Certification.

(a) A law firm seeking status as a MWOLF shall provide certification of that status. To this end, RTC must satisfy itself that the ownership, control and licensing requirements of the program are fulfilled. Therefore, on-site visits shall be performed by the DLP and may include OCOS.

(b) RTC has developed and implemented a certification policy and procedures designed to prevent fraudulent representations. Procedures have been established by which the DMWP shall review, evaluate, and approve notarized certification forms and accompanying documents from MWOLFs prior to any engagement.

(c) When an MWOLF is awarded an engagement with estimated fees of \$100,000 and over, or applies for a new or renewed Legal Services Agreement (LSA), an on-site verification may be performed by DMWP to ensure that no changes have occurred in the eligibility for MWOLF status. Verification of a certification may also be required when a referral would result in an accumulation of over \$100,000 in estimated fees to a MWOLF. Further, the DMWP reserves the right to perform an on-site verification upon certification, if fees under a referral would amount to less than \$100,000. As part of its oversight role, DMWP also reserves the right to verify any MWOLF's eligibility at any time. If the eligibility of a firm as a MWOLF is questionable, the Legal Division's Outside Counsel Management Section (OCMS) may participate in the on-site verification.

(d) RTC shall be notified immediately of any factors that may affect MWOLF certifications as a result of changes in ownership, senior management or MWOLF joint referral participant(s).

(e) Any misrepresentations (including falsification of MWOLF certification), omissions or changes by the MWOLF, non-MWOLF or the joint referral participants with respect to MWOLF status shall be referred to the Legal Services Committee, which may result in termination of the Legal Services Agreement, termination or suspension of the engagement(s) and/or exclusion from the RTC legal contracting program, and/or referral to the Office of Inspector General.

(f) Any firm found ineligible for MWOLF certification shall be informed of its right to file an appeal to the Vice President, DMWP in Washington, DC.

Subpart I—Competitive Legal Engagements**§ 1617.80 Inclusion in solicitations.**

RTC shall ensure, to the maximum extent practicable, that MWOLFs and minority and women partners in non-MWOLFs who are the RTC contact persons are included in each competitive engagement solicitation.

§ 1617.81 Participation by the Division of Minority and Women's Programs in solicitation and referral process.

(a) The DMWP shall participate as a voting member on each of the RTC's Legal Services Committees to ensure that the evaluation of MWOLFs for potential outside counsel engagements is consistent with the overall objectives of inclusion, to the maximum extent practical, and where applicable, that the award of technical and cost bonus points to MWOLFs, and non-MWOLFs with qualifying joint referral arrangements with MWOLFs, is assigned appropriately.

(b) The DMWP staff may participate in the initial review and Statement of Work preparation to establish milestones, specific task descriptions and law firm responsibilities. The DMWP shall participate in the source list preparation to ensure inclusion of MWOLFs.

(c) The DMWP shall ensure that the following requirements for competition are fair, equitable and consistent:

- (1) The selection criteria for notices or issuance of RFPs;
- (2) The solicitation language; and
- (3) The engagement parameters, including reasonable standards for substantive, technical and scoring criteria.

(d) The DMWP, in consultation with the Legal Division, shall participate in the preparation of responses to questions concerning the RTC's Minority and Women Outreach Program received from offerors.

(e) The technical and cost bonus points shall be assigned prior to selection of the competitive range.

(f) In the post-engagement phase, the DMWP may participate, in conjunction with OCMS, in periodic site visits conducted by the Legal Division of outside counsel(s) to review contractor compliance with the RTC's goals and objectives regarding MWOLFs and minority and women partners in non-MWOLFs.

Subpart J—Joint Referrals and Representations**§ 1617.90 General.**

(a) A joint referral will be used to combine the resources of two or more

law firms. MWOLFs with experience in the area of the referral will be paired with other MWOLFs or with non-MWOLFs that have more experience in the same area or have greater resources to provide legal services to the RTC.

(b) All joint referrals to outside counsel will provide the maximum opportunity possible for MWOLFs to participate in the engagement. RTC outside counsel shall implement this policy in a manner consistent with RTC's overall legal contracting policies and procedures. As MWOLFs become more experienced in RTC legal issues, their level of participation in matters referred pursuant to the Joint Referral Program, as well as the fees they are paid, shall increase.

(c) Written justification will be provided for a referral made pursuant to the joint referral exemption in the Legal Division Policy No. 92-03, Statement of Policy and Procedures Concerning Limitations Upon the Use of Outside Counsel, (Fee Cap Policy) as amended.

(d) The DLP, in conjunction with the Legal Division, shall review the joint referral arrangement. The agreement must set forth the distribution of legal fees and work for each firm. This agreement shall apply throughout the term of the engagement. These arrangements must be in conformance with Legal Division Policy No. 92-02, Joint Referrals and Representation Program, as amended.

(e) All arrangements must be approved by the RTC Legal Services Committee.

(f) The overriding objective of these arrangements and others pursuant to § 1617.91 is that less experienced MWOLFs receive sufficient training in the relevant issues while pursuing a matter as cost effectively as possible.

(g) To qualify for bonus points, at least 25 percent of the fees shall be earned by a MWOLF.

(h) Copies of documents referred to in paragraph (c) and (d) of this section are available from the RTC Public Reading Room, 801 17th Street, NW., room 100, Washington, DC 20434-0001.

§ 1617.91 Joint referral agreements.

(a) Outside counsel shall prepare and execute a Joint-Venture Agreement, a Joint-Counsel Agreement, or a Consortium Agreement. Each such agreement must include:

- (1) The name of each firm, its role and responsibilities;
- (2) The percentage of substantive work allocated to each firm;
- (3) Estimated legal fees to be generated by each firm;
- (4) A requirement for each engagement under the agreement that a

lead attorney will be designated and a description of the duties and responsibilities of this individual;

(5) Assurances that outside counsel will cooperate in any oversight, review, study or survey, as may be required;

(6) A statement that the minority or women owned law firm is a certified RTC MWOLF;

(7) A statement that the joint referral arrangement is entitled to MWOLF bonus points, if it meets the minimum 25 percent MWOLF participation requirement; and

(8) A statement that, if engaged, the firm will implement the joint referral agreement submitted with its proposal to provide the approved percentage of MWOLF participation and fees.

(b) The RTC Oversight Attorney shall be encouraged to prepare the MWOLF Co-Counsel engagement memorandum, said memorandum to include:

(1) The name of each firm, their role and responsibilities;

(2) An indication of the percentage of substantive work allocated to each firm;

(3) Estimated legal fees to be generated by each firm;

(4) A requirement for each engagement under the agreement that a lead attorney will be designated and responsibilities of this individual;

(5) Assurances that outside counsel will cooperate in any oversight, review, study or survey, as may be required;

(6) A statement that the minority or women owned law firm is a certified RTC MWOLF; and

(7) A statement that, if engaged, the RTC Oversight Attorney will implement the joint referral agreement to provide the approved percentage of MWOLF participation and fees.

§ 1617.92 Other arrangements.

Other forms of affiliation between less experienced MWOLFs and more experienced MWOLFs or non-MWOLFs are available and are encouraged for work on a particular matter or for a specified period of time.

§ 1617.93 MWOLF contracting requirements.

(a) For the purposes of this section, any referral to outside counsel constitutes an engagement.

(b) Effective December 17, 1993, when RTC enters into or modifies any engagement for the provision of legal services to the RTC for which the contractor would receive fees or other compensation in an amount equal to or greater than \$500,000:

(1) An MWOLF must be included in the referral as a subcontractor. This requirement applies if the arrangement is with a single outside counsel whether

or not such outside counsel is an MWOLF or; outside counsel consists of a joint referral or co-counsel relationship.

(2) A subcontractor MWOLF will be allocated not less than 10 percent of the substantive legal work and commensurate fees. However, if there is a joint counsel or co-counsel referral relationship in which an MWOLF has been allocated at least 50 percent of the substantive legal work and commensurate fees, a subcontractor MWOLF will be allocated no less than 5 percent of the total.

(c) The RTC may exempt a referral from the requirements of paragraph (b) of this section if the Chief Executive Officer of the Corporation determines, through written documentation, that imposing such a joint representation requirement would:

(1) Substantially increase the cost of the engagement performance; or

(2) Undermine the ability of the majority firm to perform its obligations under the engagement.

(d) Reports and notarized certifications subject to 18 U.S.C. 1001.

(e) The RTC, through a written determination by the Chief Executive Officer, may grant a waiver from the requirements of paragraph (b) of this section for any engagement, provided that the majority firm has certified that no eligible MWOLF is available and has provided a basis for that conclusion.

§ 1617.94 Compliance.

The Legal Division shall evaluate the performance of law firms as it relates to their efforts and success in meeting DMWP goals and objectives. The evaluation may include on-site reviews of law firms to assess their compliance with DMWP policies. The DMWP will evaluate outside counsel's performance in relation to its implementation of the MWOLF joint referral agreement. When outside counsel is failing to meet its commitments under the MWOLF joint referral agreement, the DMWP will give written notice to the RTC Oversight Attorney, with a copy to the Legal Services Committee. When outside counsel's performance falls below the written commitment, the outside counsel may be given a 30-day period to resolve the non-compliance. When the compliance period expires, and outside counsel has not corrected the non-compliance, the matter shall be referred to the Legal Services Committee for appropriate remedial action, including but not limited to termination or suspension of the engagement and/or exclusion of the firm from the RTC legal contracting program.

Subpart K—Minority and Women Partners Program

§ 1617.100 Minority and women partner referral.

(a) Legal matters may be referred to minority or women partners in non-MWOLFs who are the RTC contact persons. Pursuant to the Minority and Women Partners Program, the RTC will provide opportunities for these minority and women partners who are the RTC contact persons to render legal services to the RTC.

(b) The RTC expects that as minority and women partners in non-MWOLFs become more experienced in RTC legal issues, their level of participation in matters referred pursuant to the Partners Program, as well as the fees they generate, shall increase.

(c) The DLP, in conjunction with the Legal Division, will review the minority and women partner referral arrangements that must set forth the distribution of legal work and commensurate fees for each minority and woman partner within the firm. These proposals must be in conformance with Legal Division Policy No. 92-04, Minority and Women Partners Program, as amended.

(d) Copies of the document referred to in paragraph (c) of this section are available from the RTC Public Reading Room, 801 17th Street, N.W., Room 100, Washington, DC 20434-0001.

Subpart L—Technical and Cost Bonus Points

§ 1617.200 Policy.

When reviewing and evaluating proposals submitted by firms eligible as MWOLFs or MWOLF joint referral, the RTC has the statutory authority to award bonus points in the technical and cost rating process. With regard to joint referral arrangements, (i.e., joint venture, joint counsel, MWOLF consortia or subcontracting arrangements), the RTC shall have the authority to provide bonus points to joint referral arrangements when at least 25 percent of the substantive work and commensurate fees are paid to MWOLFs. Additional bonus points may be awarded to joint referrals when a minimum of 40 percent of the substantive work and commensurate fees are paid to MWOLFs.

§ 1617.201 Application of technical and cost bonus points.

(a) In addition to each offeror's technical score, technical bonus points shall be awarded as a percentage of the total technical points achievable in the rating process.

(b) In addition to each offeror's cost score, cost bonus points shall be awarded as a percentage of the total cost points achievable in the rating process, in addition to each offeror's cost score.

(c) Beginning with the effective date of this final rule, the technical and cost bonus points shall be allocated as follows:

| Firm type | Percent technical | Percent cost |
|---|-------------------|--------------|
| MWOLF or MWOLF Consortia | 15 | 10 |
| Joint Venture with at least 40 percent MWOLF legal fees | 15 | 10 |
| Joint Venture with at least 25 percent MWOLF legal fees | 10 | 5 |
| Joint Counsel or Subcontractors with at least 40 percent MWOLF legal fees | 10 | 5 |
| Joint Counsel or Subcontractors with at least 25 percent MWOLF legal fees | 5 | 2.5 |

(d) All non-MWOLF outside counsels who receive referrals in which fees and expenses are equal to or greater than \$500,000 are required to satisfy the 10 percent MWOLF referral requirement. All MWOLF outside counsels who receive referrals in which fees and expenses are equal to or greater than \$500,000 are required to satisfy the 5 percent MWOLF referral requirement. For non-MWOLF outside counsels requesting technical and cost bonus consideration, this 10 percent is deemed satisfied in cases where referrals are at least 25 percent.

§ 1617.202 Authority to adjust technical and cost bonus points.

(a) The DMWP shall periodically evaluate the RTC's application of bonus points. The review shall determine whether the Corporation is meeting its legislative mandate to ensure the maximum participation possible for MWOLFs and determine if there is a need to increase the bonus points.

(b) The Vice President of the DMWP, with the concurrence of the Chief Executive Officer, has the authority to increase the technical and cost bonus points applicable in evaluating proposals to the extent necessary to ensure the maximum participation for MWOLFs.

Subpart M—General Procedures Applicable to Contractor Suspension and Exclusion, Contract Rescission, and Other Administrative Actions

§ 1617.300 Procedures for MWOBs.

(a) Once any RTC department or office recognizes and/or identifies a problem arising out of an award to a MWOB and alleges issues concerning action that may involve the suspension or the exclusion of a MWOB, the rescission of an award to a MWOB, or any other adverse action against the MWOB, the DMWP shall be notified in writing immediately. This includes emergency asset management and disposition matters arising out of an award to a MWOB.

(b) The DMWP shall have the opportunity to participate in the process, from identification of the alleged problem through resolution, to determine whether adverse or disciplinary action shall be taken against any MWOB as a result of any alleged problem.

(c) By including this § 1617.300, the RTC does not intend to create any right of action in private parties that would not otherwise exist.

§ 1617.301 Procedures for MWOLFs.

(a) Once the Legal Division or any other RTC department or office recognizes and/or identifies a problem arising out of a MWOLF referral which alleges issues concerning actions that may involve the suspension or the exclusion of a MWOLF, the rescission of a referral to a MWOLF, or any other adverse action against the MWOLF, the DMWP shall be notified in writing immediately. This includes emergency litigation matters, arising out of a referral to a MWOLF.

(b) The DMWP shall have the opportunity to participate in all phases of the process, (i.e., from the identification of the alleged problem through the resolution stage) to determine whether adverse or disciplinary action shall be taken against any MWOLF as a result of any alleged problem.

(c) In compliance with the RTC's Procedures Regarding Adverse Actions Affecting Minority- and Women-Owned Law Firms, the DMWP shall be notified immediately when the Legal Division refers a matter subject to said procedures to the Outside Counsel Conflicts Committee or to the Legal Services Committee. The Legal Division, in consultation with the MWP Division, will determine whether the RTC is required to take adverse or disciplinary action against a MWOLF, and, if so, will consult with DMWP regarding the

course of adverse or disciplinary action to be taken.

(d) Nothing in this section precludes the Legal Division from taking an adverse action in an emergency situation.

(e) By including this § 1617.301, the RTC does not intend to create any right of action in private parties that would not otherwise exist.

Subpart N—General Provisions Applicable to Program Compliance

§ 1617.400 Program compliance.

(a)(1) The RTC recognizes that the success of the MWOB and MWOLF programs involves commitment and leadership from senior management. The RTC pledges the continuing involvement of all levels of its staff in ensuring the success of these programs.

(2) Department of Policy, Evaluation and Field Management (DPEFM) staff dedicated to oversight and monitoring shall continuously assess the implementation of RTC policies, procedures, and guidelines for compliance with the goals of FIRREA, the RTC Funding Act of 1991, the RRIA, and the RTCCA to ensure the maximum inclusion of MWOBs and MWOLFs in the management and disposition of assets of failed thrifts. An oversight and evaluation program has been established utilizing a uniform assessment process to assure RTC's adherence to Minority and Women's Programs goals and objectives, including certification requirements and MWOLF contracting plan commitments.

(b) RTC field office shall be visited periodically by the DPEFM staff to:

(1) Review the effectiveness of RTC's efforts to assure the maximum inclusion and participation of MWOBs and MWOLFs in all of its programs and activities;

(2) Determine the effectiveness of the interface of the DMWP field staff with the contract program, sales offices, contractor oversight management, conservatorship, the legal division and administration staff;

(3) Evaluate and assess the results of the MWOB and MWOLF program activities; and

(4) Develop comprehensive performance assessments in accordance with established criteria and make recommendations for program improvements, including specialized technical assistance and training. These oversight and monitoring reviews shall serve, in part, as a basis for the annual performance appraisal of DMWP field managers.

(c) *Monitoring, evaluation and reporting.* The DPEFM shall track,

review and periodically report on the implementation of RTC's DMWP activities and accomplishments to RTC management, the Congress, and the public. These reports will address RTC's progress in utilizing MWOBs and MWOLFs including, but not limited to, identifying geographic and service categories in which MWOBs and MWOLFs are under represented.

§ 1617.401 Performance appraisals.

Adherence to, and assistance with, MWOB and MWOLF program policies shall be reflected in RTC Personnel Appraisals for senior and management officials to encourage performance and maintain individual accountability. All annual performance evaluations for such officials in each RTC office shall include a review of their success in

meeting the goals and objectives of the RTC's Minority and Women's Programs.

By order of the Chief Executive Officer.

Dated at Washington, DC, this 30th day of January, 1995.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Secretary.

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