

GAO

Report to the Chairman, Committee on
Government Operations, House of
Representatives

May 1993

RESOLUTION TRUST CORPORATION

Status of Minority and Women Outreach and Contracting Program



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General Government Division

B-253242

May 19, 1993

The Honorable John Conyers, Jr.
Chairman, Committee on Government
Operations
House of Representatives

Dear Mr. Chairman:

This report responds to your request that we update information in our previous reports on the Resolution Trust Corporation's (RTC) Minority and Women Outreach and Contracting Program. We last reported on this program in August and September of 1991.¹ We reported then that RTC had been slow in establishing a program for ensuring that minority- and women-owned businesses (MWOBS) and minority- and women-owned law firms (MWOLFS) participated in all contracting activities.² Specifically, we noted that the absence of adequate oversight, comprehensive regulations, and sufficient staffing contributed to the slow start. This report updates information on the program and discusses the areas where RTC recognizes that progress is still needed.

Results in Brief

Since September 1991, RTC has made several significant changes to strengthen its program. These changes have contributed to an increase in the number of contracts awarded and amount of fees paid to MWOBS and MWOLFS in 1992. RTC strengthened the program by creating an Office of Minority and Women Outreach and Contracting Program in December 1991 and by consolidating its business and legal programs under one department in November 1992. In May 1992, RTC also established agencywide goals to award 30 percent of its contracts and related fees to MWOBS and to award 20 percent of its legal fees to MWOLFS.

Of the \$1.13 billion in estimated fees paid by RTC during 1992, minority-owned businesses received \$206 million, or 18 percent, and women-owned businesses received \$117 million, or 10 percent. The combined 28 percent was close to RTC's 30-percent goal. However, RTC was well short of its goal to award 20 percent of its legal contracts to MWOLFS. RTC paid \$351 million in legal fees during 1992; minority-owned law firms

¹Resolution Trust Corporation: Progress Under Way in Minority and Women Outreach Program for Outside Counsel (GAO/GCD-91-121, Aug. 30, 1991) and Resolution Trust Corporation: Progress Under Way in Minority- and Women-Owned Business Outreach Program (GAO/GGD-91-138, Sept. 27, 1991).

²RTC defines "minority-owned businesses" to include minority men and women while "women-owned businesses" includes non-minority women. The same reference is made to "minority-owned law firms" and "women-owned law firms."

were paid \$22 million, or 6 percent, and women-owned law firms were paid \$14 million, or 4 percent.

While this represents progress, RTC recognizes that key areas need improvement to ensure that the program's goals are achieved. Expanding opportunities for MWOBS and MWOLFS is one of the nine critical management areas recently targeted for improvement by the Chairman of the Thrift Depositor Protection Oversight Board. RTC is developing a plan designed to make improvements in these management areas. In addition, RTC has not fully implemented its revision of the policies and procedures used to certify that businesses claiming MWOB status are qualified to participate in the program, as we recommended in 1991.

Background

The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) requires RTC to use private contractors whenever practicable and efficient. During 1992, RTC awarded about 45,000 contracts with estimated fees of about \$1.13 billion. Section 1216 of FIRREA mandated that RTC ensure inclusion to the maximum extent possible of businesses owned by minorities and women, including law firms, in all RTC contracts.

With the passage of the RTC Refinancing, Restructuring, and Improvement Act of 1991, additional requirements were placed on the program. For example, the act required RTC to provide additional incentives to MWOBS by increasing the bonus points that these businesses may receive in the evaluation process. Bonus points are designed to increase the competitive position of acceptable MWOB proposals relative to the proposals of non-MWOBS.

In our 1991 reports, we identified several weaknesses with the program and made recommendations for improving its effectiveness. We reported that inadequate staffing in headquarters and in the field offices were hampering RTC's ability to implement and oversee this program. We also found that the absence of comprehensive program regulations contributed to inconsistencies in the application of the program's bonus points and in the implementation of procedures for ensuring that businesses certified as MWOBS meet the program's requirements. Accordingly, we recommended that RTC (1) assess the adequacy of staff in headquarters and the field offices that implement the program and (2) determine at what phase during the rating process that the bonus points would be applied.

With respect to RTC's legal contracting program for MWOLFS, we noted that insufficient staffing contributed to the program's slow start. For example, headquarters staff consisted of one senior attorney and a secretary, and each field office staff consisted of one senior attorney who carried out the program's responsibilities in addition to his or her regular workload. Moreover, we found that inconsistencies in the use of policies and procedures for selecting outside counsel limited opportunities for MWOLFS to provide legal services. We recommended that RTC review the staffing levels assigned in headquarters and the field offices and develop and consistently implement procedures for selecting outside counsel to ensure that MWOLFS are considered for providing legal services.

Objective, Scope, and Methodology

Our objective was to update information on RTC's program since our 1991 review. To meet our objective, we interviewed RTC headquarters officials responsible for managing and overseeing the program. We also reviewed RTC's revised policies and procedures for including MWOBS and MWOLFS in its contracting activities. Finally, we collected and reviewed statistics on the participation of MWOBS and MWOLFS in RTC's contracting activities. We did not independently verify the data received from RTC.

We did our work from November 1992 through April 1993 at RTC headquarters in Washington, D.C., in accordance with generally accepted government auditing standards.

Minority and Women Outreach and Contracting Program Improved

A central finding in our 1991 reports was that RTC lacked an adequate infrastructure for ensuring that MWOBS and MWOLFS participated to the maximum extent possible in all contracts entered into by RTC. We pointed out that staffing was insufficient and program regulations were unclear and inconsistently implemented. When we issued our 1991 report, management and oversight of the program were the responsibility of a Senior Contracting Manager within the Division of Asset and Real Estate Management. We found that this structure contributed to inadequate oversight and to the development of unclear policies and procedures for the program.

Since that time, however, RTC has made several fundamental changes. In December 1991, RTC established an Office of Minority and Women Outreach and Contracting Program and appointed a senior-level executive to manage the program. RTC began to focus on improving oversight of the program and conducting compliance reviews of each field office. Recently,

RTC changed the organizational position of the Assistant Vice President of the Department of Minority and Women's Programs so that she is now the Vice President of the Division of Minority and Women's Programs and reports directly to RTC's President and Chief Executive Officer. In addition, she serves as a member of RTC's Executive Committee.

RTC also increased staff in headquarters and the field offices to ensure appropriate oversight and implementation of the program. Currently, headquarters has a staff of 22 compared with a manager and a secretary at the time we issued our 1991 reports. Similarly, each field office now has between five and seven staff compared to the one professional staff and shared technical and administrative staff that were assigned in 1991.

MWOB and MWOLF Programs Consolidated

In November 1992, RTC transferred its Minority and Women Outreach Unit from its Legal Division to the Office of Legal Programs, which is within the Department of Minority and Women's Programs. This transfer was an improvement over the structure that we reported on in 1991, where the unit providing RTC's legal services, formerly with the Federal Deposit Insurance Corporation, was responsible for hiring outside counsel and recruiting MWOLFS. RTC realized that this structure was not conducive to fulfilling FIRREA's mandate that businesses owned by minorities and women be included to the maximum extent possible. With the transfer of its MWOLF contracting program, RTC has consolidated all programs relating to minority and women contracting under one department, which it believes will provide more consistency and uniformity in the development and implementation of policies.

As part of the realignment, RTC also increased staff in the Office of Legal Programs, which is responsible for ensuring inclusion of MWOLFS in the legal contracting process. Headquarters staff currently consists of a senior counsel, two senior attorneys, a paralegal specialist, and an administrative person compared to a senior counsel and a secretary at the time we did our review in 1991. In addition, RTC plans to have two full-time senior attorneys, a paralegal specialist, and a secretary in each field office by June 1993 to implement and monitor the program. In contrast, in 1991, a senior attorney was designated to implement the minority and women outside counsel program, in addition to his or her regular workload.

Bonus Point Procedures and Contracting Goals Established

RTC also corrected other long-standing weaknesses in its program that we noted in our 1991 report. For example, we reported that there was no guidance on when bonus points should be applied. Consequently, this contributed to various interpretations among the field staff that resulted in bonus points being provided at different stages of the evaluation process. Thus, some MWOBS were precluded from consideration in final contracting offers. In August 1992, RTC issued its directive on evaluation of proposals and application of bonus points. This directive states that bonus points will be applied in a separate process after the technical review and determination of scoring by the evaluation panel. RTC's Division of Minority and Women Programs in conjunction with RTC's Office of Contracts will determine the eligibility and percentage of bonus points available. Once the points are applied, decisions regarding the contract award or competitive range can be made.

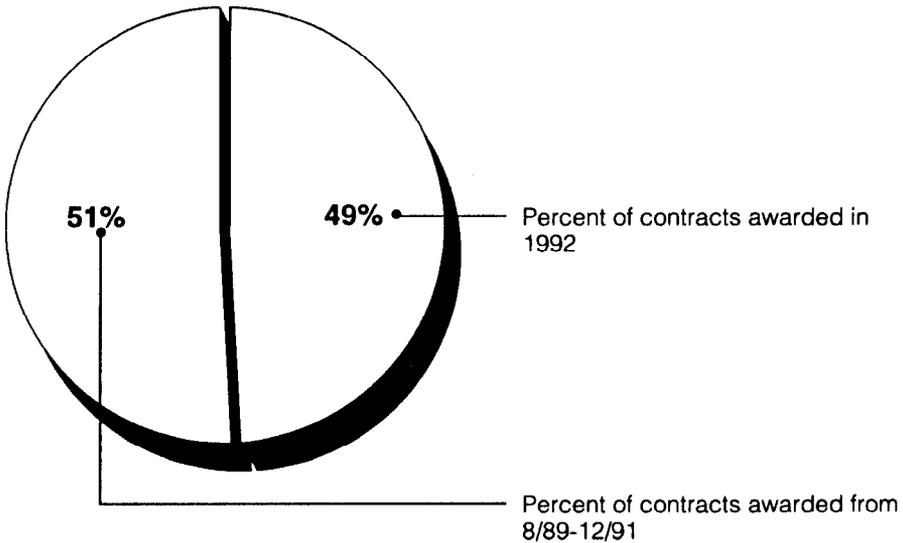
Equally important, when we issued our 1991 reports RTC had not established goals for its program. During 1992, RTC established an agencywide goal to increase the number of contracts and the amount of related fees paid to MWOBS to 30 percent and to increase referrals and fees paid to MWOLFS to 20 percent.

Contracts to MWOBS and MWOLFS Increased

Since August 1989, RTC has awarded over 105,000 contracts with estimated fees totaling about \$3 billion. In 1992, about 45,000 contracts with estimated fees of about \$1.13 billion were awarded. Of the contracts awarded in 1992, MWOBS were awarded over 15,000 with estimated fees of \$323 million or 28 percent of the \$1.13 billion paid by RTC. This represents a larger percentage of the total fees paid when compared to earlier years. For example, from August 1989 through December 1991, MWOBS received estimated fees of \$406 million or 23 percent of the \$1.79 billion paid by RTC.

MWOBS were awarded a significant number of contracts and related estimated fees in 1992 compared to the period August 1989 through December 1991, as figures 1 and 2 illustrate. More specifically, minority-owned businesses were awarded 5,427 contracts with related estimated fees of \$206 million, and women-owned businesses were awarded 9,688 contracts with related estimated fees of \$117 million during 1992.

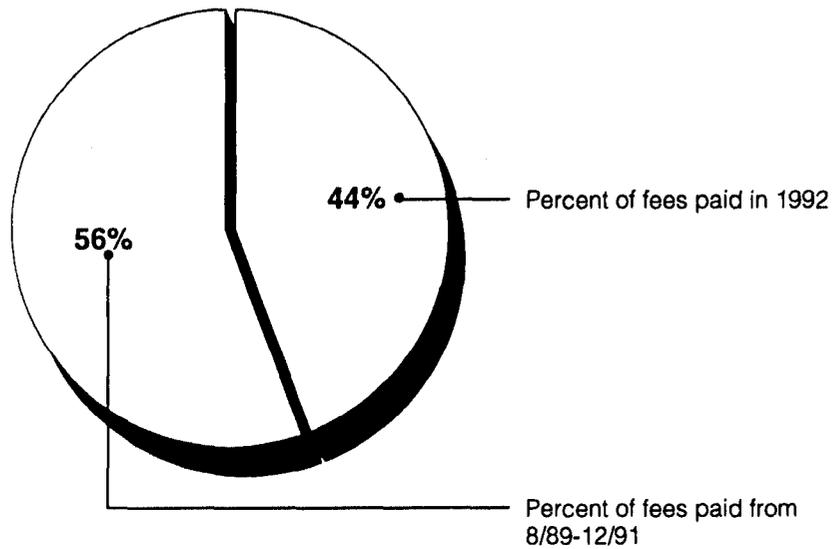
Figure 1: Almost Half of Contracts to MWOBs Were Awarded in 1992



Note: A total of 30,766 contracts have been awarded to MWOBs since RTC's inception in 1989.

Source: RTC.

Figure 2: Sizeable Amount of Fees Paid to MWOBs During 1992

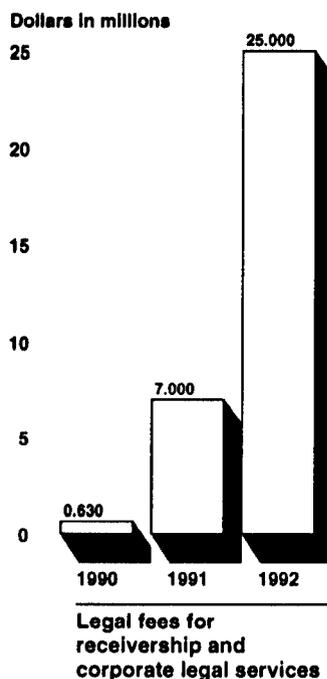


Note: A total of \$729 million in estimated fees were paid to MWOBs since RTC's inception in 1989.

Source: RTC.

Minority-owned law firms received \$22 million, or 6 percent, and women-owned law firms were paid \$14 million, or 4 percent, of the total \$351 million paid by RTC for all legal services in 1992. Moreover, fees paid to MWOLFS in 1992 for receivership and corporate legal matters were significantly higher than fees paid in 1990 and 1991, as figure 3 illustrates.

Figure 3: Legal Fees Paid to MWOLFs Were Significantly Higher in 1992



Source: RTC.

Minority- and women-owned investment firms also participated in RTC's securitization program in 1992. Securitization is the process of assembling similar assets into pools, which are used to collateralize newly issued securities. Nine minority- and women-owned investment firms underwrote \$884.5 million, or 4 percent, of the \$22 billion of mortgage-backed securities issued by RTC in 1992.

Work Remains in Key Areas

While progress has been made, RTC recognizes that key areas still need improvement to ensure that opportunities for MWOBS and MWOLFs are maximized. The Chairman of the Thrift Depositor Protection Oversight Board targeted expanding opportunities for minorities and women as one of the nine critical management areas for improvement at RTC. Achieving agencywide goals to increase the participation of MWOBS to 30 percent and of MWOLFs to 20 percent and fully implementing policies and procedures

for ensuring that businesses claiming MWOB status are qualified to participate in the program are also key areas where work remains.

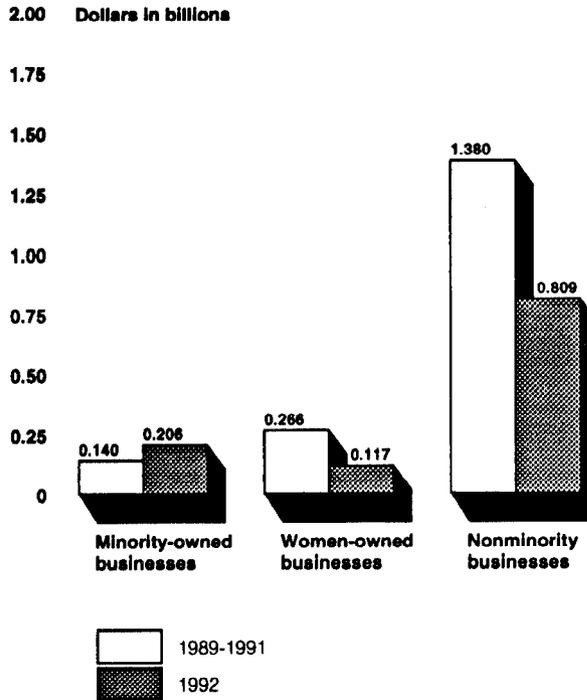
Expanding MWOB Opportunities

While RTC developed and implemented several initiatives that increased the participation of MWOBs and MWOLFs in 1992, it recognizes that more work is needed to enhance opportunities for these businesses. For example, on March 16, 1993, the Chairman of the Thrift Depositor Protection Oversight Board directed RTC to make a number of improvements, such as developing ways to provide more opportunities for MWOBs in the management and disposition of all its assets. RTC is developing a plan to implement these initiatives. Additionally, outreach seminars focusing on legal and securitization activities for minority- and women-owned legal and investment firms were held by RTC in early 1993.

Achieving Agency Goals

Establishing goals for contracting with MWOBs and MWOLFs is the first step in ensuring that they receive an adequate number of contracts and related fees. In May 1992, RTC established a goal of awarding 30 percent of its contracts and fees to MWOBs and of increasing fees to MWOLFs to 20 percent during 1992. However, RTC was not able to meet these goals. In 1992, businesses owned by minorities and women were paid \$206 million and \$117 million respectively. This combined \$323 million or 28 percent of the total \$1.13 billion in estimated fees paid by RTC was close to its 30-percent goal. Conversely, RTC paid minority-owned law firms \$22 million, or 6 percent, and women-owned law firms \$14 million, or 4 percent, of the \$351 million paid for all legal services, which was well short of its 20-percent goal. In addition, as figure 4 illustrates, there continues to be a disparity between fees paid to MWOBs and those paid to nonminority-owned businesses.

Figure 4: Majority of Fees Paid by RTC Were Received by Non-MWOBs



Source: RTC.

To help achieve these goals in 1993, efforts are under way by RTC to include elements in the performance evaluations of RTC senior officials regarding their success in meeting the program's goals and objectives.

Implementing MWOB Certification Policies and Procedures

The integrity of RTC's program depends heavily on its ability to ensure that businesses meet its qualifications for obtaining MWOB status. As such, it is important to have adequate policies and procedures to safeguard against the misrepresentation of MWOB status. In our September 1991 report on the program, we noted that RTC's certification requirements did not include clear criteria to determine whether a business is owned by a minority or woman. Consequently, four of the six offices we visited were rarely using the guidelines, and in the two offices where they were being used it was done inconsistently. This resulted in the subsequent identification of

several businesses that misrepresented their MWOB status. These businesses were awarded contracts with estimated fees of \$2.5 million.

RTC has drafted new certification policies and procedures, but they have not been finalized or implemented. Under the new certification policies and procedures, a business that is seeking MWOB status must complete and submit a notarized documentation package regarding its status. Moreover, an on-site verification is planned for all contracts, including joint ventures and subcontracting, where estimated fees exceed \$50,000, including contracts where the accumulated fees exceed this amount. In cases where a potential contractor does not qualify for MWOB status, that contractor will have the opportunity to file an appeal with the Vice President, Division of Minority and Women's Programs. RTC plans to hire additional staff for headquarters and the field offices to implement the certification program.

Conclusions

While RTC took some steps in 1992 that contributed to an increase in the number of contracts awarded and to the amount of fees paid to MWOBS, it recognizes that work remains in key areas to ensure that the program's goals are achieved. Expanding MWOB opportunities, achieving agency goals, and ensuring that businesses claiming MWOB status meet the program's requirements are key areas that require RTC's full attention. RTC is taking actions to address these areas, such as developing a plan to increase opportunities for MWOBS and MWOLFS.

Agency Comments

We discussed the report with RTC officials, who agreed with the information presented. RTC officials suggested some technical changes to our report, which we incorporated as appropriate.

As arranged with the Committee, unless you publicly announce its contents earlier, we plan no further distribution of the report until 30 days from the date of this letter. At that time, we will send copies of this report to RTC's acting President and Chief Executive Officer, the Chairman of the Thrift Depositor Protection Oversight Board, and interested congressional committees and other interested parties. Copies will also be made available to others upon request. The major contributors to this report are listed in the appendix. Please contact me on (202) 736-0479 if you have any questions concerning this report.

Sincerely yours,



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