

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.