

such transferee to transfer to the transferor thereof securities as described above, at a date certain not later than one year after such transfers or on demand, against the transfer of funds.

(c) *Swap agreements.* The following agreements shall be deemed “swap agreements” under section 11(e)(8)(D)(vi) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1821(e)(8)(D)(vi)): A spot foreign exchange agreement is any agreement providing for or effecting the purchase or sale of one currency in exchange for another currency (or a unit of account established by an intergovernmental organization such as the European Currency Unit) with a maturity date of two days or less after the agreement has been entered into, and includes short-dated transactions such as tomorrow/next day and same day/tomorrow transactions.

(d) Nothing in this section shall be construed as limiting or changing a party’s obligation to comply with all reasonable trading practices and requirements, non-insolvency law requirements and any other requirements imposed by other provisions of the FDI Act. This section in no way limits the authority of the Corporation to take supervisory or enforcement actions, or to otherwise manage the affairs of a financial institution for which the Corporation has been appointed conservator or receiver.

[60 FR 66865, Dec. 27, 1995]

## PART 361—MINORITY AND WOMEN OUTREACH PROGRAM—CON- TRACTING

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AUTHORITY: 12 U.S.C. 1833e.

SOURCE: 57 FR 15004, Apr. 24, 1992, unless otherwise noted.

### §361.1 Purpose.

(a) The purpose of the FDIC Minority and Women Outreach program, (“MWOP” or “Program”) is to ensure that firms owned by minorities and women are given the opportunity to participate fully in all contracts entered into by the FDIC.

(b) This part is issued by the Office of Equal Opportunity (“OEO”). Authority is derived from the Financial Institutions Reform, Recovery, and Enforcement Act (“FIRREA”) of 1989, title XII, section 1216(c), which requires the FDIC to prescribe regulations establishing and overseeing a minority outreach program ensuring 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 FDIC with public or private sector contractors.

### §361.2 Policy.

It is the policy of the FDIC that minorities and women and entities owned by minorities and women shall have the maximum practicable opportunity to participate in contracts awarded by the FDIC.

### §361.3 Definitions.

For the purposes of this part:

(a) *Minority and/or women-owned business* (“MWOB”) means firms at least fifty-one (51) percent owned and controlled by one or more minorities and/or women. In the case of publicly owned companies, at least fifty-one (51) percent of its voting stock must be owned and controlled by minorities and/or women. Additionally, the management and daily business operations must be controlled by one or more such individuals.

(b) *Joint venture (non-legal services)* means an arrangement in which twenty-five (25) percent or more of the duties are performed by the MWOB and the MWOB is compensated proportionally to its duties. Additionally, twenty-

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five (25) percent or more of the management and daily business operations must be controlled by such individuals.

(c) *Co-counseling (legal services)* means an association between two or more attorneys or law firms for the joint provision of legal services.

(d) *Legal services* means all services provided by attorneys or law firms (including services of support staff).

(e) *Minority* means any Black American, Native American Indian, Hispanic American, or Asian American.

### §361.4 Scope.

The MWOP applies to all contracts entered into by the FDIC, whether public or private. The MWOP is incorporated into FDIC policies and guidelines governing contracting and the retention of outside services.

### §361.5 Oversight and monitoring.

(a) The FDIC Office of Equal Opportunity has overall responsibility for nationwide MWOP oversight, which includes, but is not limited to, the monitoring, review and interpretation of MWOP regulation. In addition, the OEO is responsible for providing the FDIC with technical assistance and guidance to facilitate the identification, registration, and solicitation of minority and women-owned businesses.

(b) Each FDIC office and division that performs contracting or outreach activities shall submit information to the OEO on a quarterly basis, or upon request. Quarterly submissions will include, at a minimum, statistical information on contract awards and solicitations by designated demographic categories and related outreach activities. Additionally, for contracts requiring a subcontracting plan, the prime contractor is required to maintain statistical and outreach data and information regarding the implementation of the subcontracting plan.

### §361.6 Outreach.

(a) Each regional office and consolidated site including the Legal Division, involved in contracting with the private sector will designate one or more MWOP coordinators. The coordinators will perform outreach activities for the Program and act as liaison between the FDIC and the public on MWOP issues.

On a quarterly basis, or as requested by the OEO, the coordinators will report to the OEO on their implementation of the Program.

(b) Outreach includes the identification and registration of MWOBs who can provide goods and services utilized by the FDIC. This includes distributing information concerning the MWOP and providing appropriate registration materials for use by vendors and/or contractors. The identification of MWOBs will primarily be accomplished by:

(1) Obtaining various lists and directories of minority and women-owned firms maintained by other federal, state and local governmental agencies;

(2) Participating in conventions, seminars and professional meetings comprised of, or attended predominately by, MWOBs;

(3) Conducting seminars, meetings, workshops and other various functions to promote the identification and registration of MWOBs;

(4) Placing MWOP promotional advertisements indicating opportunities with FDIC in minority and women-owned media and,

(5) Monitoring to assure that FDIC staff interfacing with the contracting community are knowledgeable of, and actively promoting, the MWOP.

### §361.7 Certification.

(a) In order to qualify as MWOB, each vendor or contractor must either:

(1) Self-certify ownership status by completing the appropriate section of the applicable registration form; or

(2) Submit a valid MWOB certification received from a federal agency, designated state or authorized local agency.

(b) Questions regarding minority and/or women ownership status will be resolved by the Division of Administration or, with respect to outside counsel, the FDIC Office of Inspector General, both located at 550 17th Street, NW., Washington, DC 20429.

[57 FR 15004, Apr. 24, 1992, as amended at 60 FR 31384, June 15, 1995]

### §361.8 Solicitation of non-legal services.

(a) As part of the solicitation process, vendors and contractors, for non-legal services who submit a completed

FDIC “Vendor Application,” Form #3700/13, will be registered in the National Contractor System (NCS), an automated database. The NCS will be available to all FDIC offices involved in contracting activities. The NCS will be utilized to identify qualified MWOBs for inclusion on bid lists.

(b) To ensure that minority and women-owned firms are being included in each solicitation, the solicitation process will include:

(1) Disseminating procedures and information governing FDIC’s solicitation rules and policies to MWOBs;

(2) Providing MWOBs technical guidance in the preparation of proposals;

(3) Allowing qualified MWOBs a 3% price advantage and additional technical consideration for competitively bid services; and

(4) Providing post-award technical guidance to unsuccessful MWOBs.

#### **§361.9 MWOB joint ventures.**

The FDIC encourages the formation of bona fide joint ventures to assist MWOBs in gaining access to FDIC contracting opportunities.

#### **§361.10 Subcontracting.**

Consistent with §361.2 of this part, the contractor is required to carry out the FDIC minority and women-owned business contracting policy in the awarding of subcontracts to the fullest extent, consistent with the efficient performance of the awarded contract.

#### **§361.11 Solicitation and awards for legal services.**

(a) The Legal Division engages outside counsel primarily to provide legal services for liquidation, conservatorship and receivership activities. Outside counsel is selected on a competitive basis, as defined in the FDIC “Guide for Outside Counsel”, P-2100-002-91 (“Guide”), as amended from time to time.

(b) To be retained as outside counsel, law firms must be free of conflicting interests, unless the Legal Division waives those conflicts in writing. Outside counsel must also enter into a Legal Services Agreement with the FDIC and agree to comply with the provisions of the “Guide”.

(c) The Legal Division actively seeks to engage firms owned by minorities and women, both directly and in association with other firms. The Legal Division’s Minority and Outreach Office provides assistance to minority and women-owned firms, and to minority and women attorneys within other firms, with respect to registration or other matters relating to the retention of outside counsel.

### **PART 362—ACTIVITIES OF INSURED STATE BANKS AND INSURED SAVINGS ASSOCIATIONS**

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AUTHORITY: 12 U.S.C. 1816, 1818, 1819(a)(Tenth), 1828(m), 1831a, 1831e.

SOURCE: 63 FR 66326, Dec. 1, 1998, unless otherwise noted.