REPORT BY THE

Comptroller General

OF THE UNITED STATES

How The Law To Prevent Discrimination And Encourage Minority Participation In Railroad Activities Is Being Implemented

The Railroad Revitalization and Regulatory Reform Act of 1976 provides that no person shall be discriminated against in any program or activity funded through financial assistance under the act. The Federal Railroad Administration is responsible for carrying out these provisions. The act also directed the establishment of a minority resource center to help minority-owned businesses participate in the business generated from maintaining, rehabilitating, restructuring, improving, and revitalizing the Nation's railroads.

This report to the Chairman, Subcommittee on Transportation, House Committee on Appropriations, and Congressman Bennett M. Stewart concludes that the Federal Railroad Administration has not adequately implemented the nondiscrimination provisions of the act. For example, financial assistance was granted to a number of recipients before the required affirmative action plans were approved, and some plans still have not been approved. The Administration also has not systematically monitored recipients' progress toward established goals. The Administration has initiated actions which can improve its effectiveness.

CED-80-55
FEBRUARY 1, 1980

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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The Honorable Robert B. Duncan
Chairman, and the Honorable
Bennett M. Stewart, Subcom-
mittee on Transportation
Committee on Appropriations
House of Representatives

HSE 312
DLG03798

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This is our report on the Federal Railroad Administration's implementation of the provisions of section 905 (nondiscrimination) and its activities under section 906 (Minority Business Resource Center) of the Railroad Revitalization and Regulatory Reform Act of 1976.

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As discussed with your offices, we did not make our own evaluation of the Minority Business Resource Center's activities because of a recent evaluation made by a consulting firm under contract with the Federal Railroad Administration. The executive summary of the firm's report is included in appendix III of our report, and we are furnishing a complete copy of the firm's report to your offices.

We have questions concerning the legality of two matters discussed in the report:

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--Would it be legal for the Small Business Administration to provide matching funds for the funds invested by the Center in minority enterprise small business investment companies? (See p. 25 of the report.)

--Can the principal architect and engineering contractor on the Northeast Corridor Improvement Project be given the responsibility to review and monitor the affirmative action plans for the other contractors on the project? (See p. 7 of the report.)

These questions are being referred to our Office of the General Counsel and, as discussed with your offices, we will provide you with a response at a later date.

AF. Act. plans
ID
Subcontractors
minority businesses
small contracts
bus. assist
Contractors
minority business assistance
compliance

Program evaluation contracting procedures
Fair employment programs
Federal aid to railroads
Railroad industry
minority contractors

As requested by your offices, we did not obtain written comments on this report, but we did discuss the report with officials of the Federal Railroad Administration. Their views were considered, where appropriate.

As arranged with your offices, we are sending copies of this report to the Director, Office of Management and Budget; the Secretary of Transportation; various Senate and House committees; Members of Congress; and other interested parties.

Comptroller General
of the United States

COMPTROLLER GENERAL'S REPORT TO THE CHAIRMAN, SUBCOMMITTEE ON TRANSPORTATION, HOUSE COMMITTEE ON APPROPRIATIONS AND CONGRESSMAN BENNETT M. STEWART

HOW THE LAW TO PREVENT DISCRIMINATION AND ENCOURAGE MINORITY PARTICIPATION IN RAILROAD ACTIVITIES IS BEING IMPLEMENTED

D I G E S T

The Federal Railroad Administration has not effectively implemented the nondiscrimination provisions of the Railroad Revitalization and Regulatory Reform Act 1976, but it has initiated actions which can improve its effectiveness.

Section 905 of the act provides that no person shall be discriminated against under any program or activity funded under the act because of race, color, national origin, or sex. The act authorizes the Secretary of Transportation to carry out this provision and the Secretary has delegated the responsibility to the Federal Railroad Administration. (See p. 1.)

Section 906 of the act directed the Secretary of Transportation to establish a minority resource center to carry out a wide range of programs to help minority entrepreneurs and businesses to participate in business opportunities related to maintaining, rehabilitating, restructuring, improving, and revitalizing the Nation's railroads. The Minority Business Resource Center was set up in the Federal Railroad Administration to carry out this provision. (See p. 1.)

IMPLEMENTATION OF SECTION 905

Under the Federal Railroad Administration's regulations, recipients of Federal financial assistance, and certain of their contractors and subcontractors, are required to take affirmative action to insure that minority persons and businesses have a fair opportunity to participate in employment and contractual opportunities resulting from the assistance.

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The types of Federal assistance which are subject to the regulations include

--purchase of redeemable preference shares or trustee certificates of railroads for rehabilitation and improvement financing;

--guarantee of obligations, the proceeds of which will be used to acquire, rehabilitate, or improve rail facilities or equipment;

--grants or contracts to implement the Northeast Corridor Improvement Project;

--purchase of securities of the Consolidated Rail Corporation (Conrail);

--grants to States for rail freight assistance programs; and

--grants to the National Railroad Passenger Corporation (Amtrak). (See p. 3.)

The Federal Railroad Administration organizations which administer the provisions of section 905 are to (1) review and approve recipients' affirmative action plans before financial assistance is granted, (2) monitor recipients' progress toward the goals established, and (3) investigate complaints. (See p. 4.)

The Federal Railroad Administration has not adequately carried out its responsibilities under section 905:

--Financial assistance was granted to recipients before their affirmative action plans were approved, and as of December 14, 1979, plans had not been approved for 10 States, Conrail, Amtrak, and the three major contractors (excluding Amtrak) working on the Northeast Corridor Improvement Project. (See pp. 7, 8, and 12.)

--The Administration has not systematically monitored recipients' progress. (See pp. 5 and 14.)

--Two of the eight railroads receiving assistance have not submitted required reports on procurements from minority businesses. (See p. 13.)

--Additional efforts are needed to assure that claimed minority businesses are eligible. (See p. 14.)

--The Administration's policies and procedures relating to the goal for minority procurements and the requirement for recipients to monitor the progress of their contractors and subcontractors need to be clarified. (See p. 16.)

The Federal Railroad Administration has initiated a number of corrective actions which should improve its implementation of the section 905 provisions, if properly implemented. For example it has set up a schedule for monitoring employment progress made by the States. (See pp. 9 and 18.)

GAO recommends to the Secretary of Transportation that (1) the Department of Transportation monitor the Federal Railroad Administration's compliance with its regulations to insure that assistance is not granted until the applicants' affirmative action plans have been approved and (2) the Federal Railroad Administration establish, and disseminate to all recipients, clear policies and procedures on requirements relating to contracting. (See p. 20.)

MINORITY BUSINESS RESOURCE CENTER

The Center has only a small in-house staff. Its major functions are carried out under contracts totaling $13 million with consulting firms, non-profit organizations, and trade associations, and an agreement with the Department of Commerce. (See p. 23.)

Through fiscal year 1980, the Congress has appropriated about $35.5 million for the Center and another $0.9 million has been transferred from other Department of Transportation programs. At the end of fiscal year 1979, the Center had obligated $18.0

million of the $26.1 million appropriated through fiscal year 1979. The Center did not begin to implement its financial assistance programs for minority businesses until fiscal year 1979 and, as a result, much of the funds appropriated in prior years were carried over unobligated to subsequent years. Parts of the financial assistance program, the development of a minority-owned surety company and a small business lending company, still have not been implemented. (See p. 23.)

Because of a recent evaluation of the Center's operations by a consulting firm hired by the Federal Railroad Administration, GAO did not make its own evaluation of the Center's program and accomplishments. The consulting firm found numerous problems that were inhibiting progress and recommended many corrective actions. (See pp. 1 and 22.) The executive summary of the consulting firms's report is included in appendix III.

The requesters asked GAO not to hold up the report to obtain agency comments because agency reactions to GAO's conclusions and recommendations could be obtained during upcoming appropriations hearings. GAO discussed the facts presented in the report with officials of the Federal Railroad Administration and the Administration's suggestions were considered, where appropriate.

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ABBREVIATIONS

AAP	affirmative action plan
Amtrak	National Railroad Passenger Corporation
Conrail	Consolidated Rail Corporation
4R Act	Railroad Revitalization and Regulatory Reform Act of 1976
FRA	Federal Railroad Administration
GAO	General Accounting Office
GSA	General Services Administration
MBRC	Minority Business Resource Center
MESBIC	minority enterprise small business investment company
NECIP	Northeast Corridor Improvement Project
OCR	Office of Civil Rights (FRA)
SBA	Small Business Administration

CHAPTER 1

INTRODUCTION

On August 3, 1979, the Chairman, Subcommittee on Transportation, House Committee on Appropriations, and Congressman Bennett M. Stewart, asked us to review the activities of the Secretary of Transportation and the Administrator of the Federal Railroad Administration (FRA) under sections 905 and 906 of the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act) (Public Law 94-210). (See app. I.) In subsequent meetings, we agreed to concentrate our work on how FRA implements section 905 and, with respect to the minority resource center authorized by section 906, that we would not make our own evaluation of the Center's program and accomplishments because a consulting firm had recently evaluated the Center.

BACKGROUND

Section 905 of the 4R Act provides that no person shall; on the grounds of race, color, national origin, or sex; be excluded from participation in, or denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or part through financial assistance (including obligation guarantees) under the act. The act authorizes the Secretary of Transportation to prescribe such regulations and take such actions as are necessary to monitor, enforce, and affirmatively carry out the purposes of section 905. The Secretary has delegated the responsibility for implementing the provisions of section 905 to FRA.

Section 906 of the 4R Act directed the Secretary to establish a minority 1/ resource center authorized to:

- --Establish and maintain, and disseminate information from, a national information clearinghouse for minority entrepreneurs to furnish information about business opportunities that involve maintaining, rehabilitating, restructuring, improving, and revitalizing the Nation's railroads.

- --Assist minority entrepreneurs and businesses in obtaining investment capital and debt financing.

1/Under section 906, "minority" includes women.

--Conduct market research, planning, economic and business analyses, and feasibility studies to identify such opportunities.

--Design and conduct programs to encourage, promote, and assist minority entrepreneurs and businesses to secure contracts, subcontracts, and projects related to maintaining, rehabilitating, restructuring, improving, and revitalizing the Nation's railroads.

--Develop support mechanisms, including venture capital, surety and bonding organizations, and management and technical services which will enable minority entrepreneurs and businesses to take advantage of business opportunities related to maintaining, rehabilitating, restructuring, improving, and revitalizing the Nation's railroads.

--Participate in and cooperate with all Federal and other programs designed to provide financial, management, and other forms of support and assistance to minority entrepreneurs and businesses.

Section 906 provides that the Center have an advisory committee of five people appointed by the Secretary from lists of qualified individuals recommended by minority dominated trade associations in the minority business community.

FRA established the Minority Business Resource Center (MBRC) to carry out the provisions of section 906.

SCOPE OF REVIEW

We made our review primarily at FRA's headquarters in Washington, D.C. We examined records, documents, and files and talked with FRA officials. Additional information was obtained from officials of several States and one of the financially troubled railroads.

We also met with an official of the consulting firm FRA hired to evaluate MBRC and reviewed some of his records to evaluate the reasonableness of the approach and the scope of work used in the firm's evaluation.

We spoke with a representative of the Office of the Inspector General, Department of Transportation, and checked its audit plans; there were no reviews of the sections 905 and 906 programs, except for one inquiry into a specific question, and no reviews are planned in the immediate future.

CHAPTER 2

IMPLEMENTATION OF SECTION 905 (NONDISCRIMINATION)

To date, FRA has not effectively implemented the provisions of section 905, but it has initiated some actions which have the potential for improving its effectiveness.

FRA REGULATIONS AND POLICIES

Under FRA's regulations implementing section 905 (49 C.F.R. 265), recipients of Federal financial assistance and certain of their contractors and subcontractors are required to take affirmative action to insure that minority persons and minority businesses have a fair opportunity to participate in employment and contractual opportunities resulting from activities funded by such assistance. The regulations specify that the following assistance programs are subject to these requirements:

Assistance program	Amounts obligated fiscal years 1977-79
	(millions)
Purchase of redeemable preference shares or trustee certificates of railroads for rehabilitation and improvement financing.	$ 387.0
Guarantee of obligations, the proceeds of which will be used to acquire, rehabilitate, or improve rail facilities or equipment.	a/ 377.4
Grants or contracts made to implement the Northeast Corridor Improvement Project (NECIP).	972.8
Loans made by the United States Railway Association.	b/ 325.9
Purchase of securities of the Consolidated Rail Corporation (Conrail).	2,164.7
Grants to States or local or regional authorities for rail continuation service.	112.8

Assistance program	Amounts obligated fiscal years 1977-79
	(millions)
Grants to States for rail freight assistance programs.	91.8
Grants for planning, preserving, and converting rail passenger terminals of historical or architectural significance.	
Grants to the National Railroad Passenger Corporation (Amtrak).	2,222.6
Total	c/ $6,655.0

a/Represents the amount of railroad obligations FRA has guaranteed. These guarantees will not result in an obligation of Federal funds unless the borrowers fail to make their payments.

b/Includes $308.6 million used to defray obligations of the bankrupt railroads which were reorganized into Conrail. The costs had been incurred prior to the conveyance of the rail properties to Conrail in April 1976, but payments were not made until later.

c/Includes $377.4 million in guarantees which FRA has not obligated. (See note a.)

The employment and contracting provisions of the section 905 regulations are administered by two separate organizations within FRA. The Office of Civil Rights (OCR) handles employment and MBRC handles contracting. Their primary responsibilities are reviewing and approving recipients' affirmative action plans (AAPs) prior to the granting of financial assistance, monitoring recipients' progress toward the goals established, and investigating complaints against recipients or their contractors or subcontractors.

FRA regulations require that applicants for financial assistance have their AAPs reviewed and approved by FRA as a precondition of receiving the requested financial aid. Recipients who had already entered into an agreement or who were already receiving financial aid before the regulations were issued had to submit their AAPs for review and approval within 60 days after the regulations became effective (January 17, 1977).

In addition to developing, maintaining, and obtaining approval for their own AAPs, recipients are required to check on the AAPs of their contractors and subcontractors who receive awards of $50,000 or more. Initially, the recipients have to obtain written assurance that the contractors and subcontractors have developed and will maintain an AAP. Later, as the contract work progresses, the recipients have to monitor the practices of the contractors and subcontractors to determine whether they are complying with FRA regulations.

EMPLOYMENT PROVISIONS OF THE SECTION 905 REGULATIONS

FRA has not approved AAPs for all recipients prior to the granting of assistance, as required by its regulations, and has not adequately monitored recipients' compliance with those regulations. FRA, however, has initiated actions which, if properly implemented, should correct the situation.

FRA's regulations require that each recipient of financial assistance develop and maintain an AAP which details the recipient's plan to implement and maintain a program to insure that persons are not discriminated against because of race, color, national origin, or sex. FRA requires that the AAP contain such information as an identification and analysis of problem areas inherent in minority employment and an evaluation of opportunities for use of minority group personnel. The regulations further provide that in situations where minority employees have not been employed in proportion to the percent of minority employees in the work force in the geographic area where the recipient is located, the AAP should establish specific goals and timetables to use them in that proportion.

How FRA implements the employment provisions of the section 905 regulations

OCR is responsible for a number of programs relating to the employment of minority and handicapped individuals, including FRA's internal equal employment opportunity program and the section 905 provisions. When the section 905 regulations became effective, OCR had four staff members--three professionals and one clerical. There was no work program for the section 905 work.

OCR assigned one professional staff member to the section 905 work, which includes reviewing, approving, and monitoring affirmative action programs for 49 States, 1/ eight financially troubled railroads which have received assistance, Conrail, Amtrak, and NECIP. Even though the section 905 program was new, the employee was given no special training or any leadtime to work into the program.

Since then, the total number of employees in OCR has fluctuated. Most of the time there have been two staff members working on the section 905 AAPs and from May 1978 to May 1979, there were three staff members on section 905 work.

FRA has implemented section 905 differently for the various types of recipients.

Financially troubled railroads

OCR originally had the General Services Administration (GSA) perform some of the functions related to the AAPs for the financially troubled railroads.

Under the provisions of Executive Order 11246, September 24, 1965, GSA had responsiblity for assuring that railroad contractors complied with the equal employment opportunity requirements of their Government contracts. Because the 4R Act requirements had similar objectives, FRA and GSA decided to participate in an arrangement providing for cooperation in implementing the regulations. The memorandum of understanding with GSA was never signed but it became effective shortly after FRA's section 905 regulations went into effect.

Under the memorandum of understanding, GSA reviewed the railroads' AAPs and recommended to FRA whether the AAPs should be approved. FRA generally did not issue a separate approval notice to the railroads. When GSA found problems with an AAP, it notified FRA of the problems and recommended actions for FRA to take. GSA also monitored the railroads' programs for compliance with regulations. GSA, however, retained almost all of the railroads' records, including the AAPs and all related data. Therefore, OCR did not see the railroads' records and never really knew the extent or quality of GSA's reviews and monitoring. Later,

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1/Hawaii does not receive Federal assistance under the 4R Act.

when the FRA/GSA agreement ended, GSA kept all of the railroads' section 905 records.

The agreement between FRA and GSA ended in October 1978 because Executive Order 12086, October 5, 1978, amended Executive Order 11246 and transferred to the Department of Labor primary responsibility for the enforcement of the equal employment opportunity provisions of the earlier Executive order. At that time, OCR reassumed its duties under section 905.

During the past year, FRA formally and informally asked Labor to use its new authority under Executive Order 12086 to conduct reviews of the railroads' compliance with regulations and established goals. Labor had not decided as of December 31, 1979, whether it would help FRA. OCR has conducted compliance reviews of four of the eight railroads receiving Federal assistance. OCR made a desk audit of one railroad and onsite visits to two railroads. One railroad had both a desk audit and an onsite review.

NECIP contractors

The responsibility for reviewing and monitoring the AAPs for the prime contractors on NECIP has been split. FRA reviewed and approved the AAP for NECIP's principal architect and engineering contractor, and that contractor has the responsibility for reviewing and monitoring the AAPs for the NECIP activities of the other three prime contractors, including Amtrak.

Amtrak's AAPs (see following section) each included a section covering Amtrak's NECIP activities. The principal architect and engineering contractor reviewed the March 1977 AAP and the March 1979 draft AAP. In April 1979, the contractor told FRA that Amtrak's AAP was unsatisfactory.

On June 19, 1979, the architect and engineering contractor recommended to OCR that the AAP for one of the other NECIP prime contractors be approved, but OCR did not do so because of an oversight. The remaining contractor had not submitted an AAP for its NECIP activities as of January 14, 1980, although it was sent a reminder of its obligation to do so on August 28, 1979. The contractor official responsible for preparing an AAP told us that he will check to determine what needs to be done.

The principal architect and engineering contractor developed its own monitoring procedures and reporting plan. OCR's files show that the contractor filed periodic consolidated status reports on all of the NECIP contractors' action programs, including its own. OCR staff members said that the contractor is monitoring the other contractors, but while the OCR files contain statistical type information on the contractors, they do not contain information on what the contractor is actually doing to monitor the other contractors' progress.

States, Conrail, and Amtrak

OCR retained responsibility for reviewing, approving, and monitoring the AAPs for the States, Conrail, and Amtrak (except as noted above for Amtrak's NECIP activities). OCR did not approve the AAPs for all of the States before they received financial assistance, and OCR still has not approved the AAPs for seven States, Conrail, and Amtrak.

OCR records show that 48 States sent AAPs and almost all came in between April and June 1977. As of December 14, 1979, OCR had not received an AAP for Alaska.

The following table summarizes the length of time it took OCR to approve the AAPs for the 48 States which had submitted them.

	Number	Percent
Approved within 4 months	24	50
Approved within 8-11 months	3	7
Approved within 12-20 months	15	31
Not approved as of December 14, 1979	6	12
Total	48	100

The seven States that did not have approved AAPs are Alaska, North Carolina, South Carolina, Georgia, Michigan, Pennsylvania, and Rhode Island, all of which have received FRA funds. Additional information on the AAPs for these seven States is shown in appendix II.

Many other States, particularly those whose AAPs were approved 12 to 20 months after submission, probably received FRA funds prior to AAP approval. OCR, however, did not know when funds were given to the States or the amount of funds released.

Conrail's and Amtrak's AAPs have also not been approved. Conrail submitted 148 separate AAPs to OCR; one for each Conrail organizational unit. OCR records did not show when Conrail's AAPs were submitted, but staff members said the AAPs were never reviewed by anyone in OCR because the staff did not have the time to do so.

Amtrak submitted an AAP in March 1977 which covered its NECIP activities as well as its other operations, but the AAP was not approved because OCR found that it lacked sufficient information and did not respond to FRA's section 905 regulations. In March 1979, Amtrak submitted an updated draft AAP which was divided into two parts; an Amtrak corporate plan and an Amtrak Northeast Corridor plan. OCR obtained a final version of the AAP in December 1979. OCR began an onsite review at Amtrak in November 1979; the onsite work was later suspended temporarily but was resumed the middle of January 1980.

OCR also did not adequately monitor the progress made by the States, Conrail, and Amtrak. OCR's records show that from 1977 through most of 1979, staff members conducted onsite compliance reviews in four States. OCR did not prepare reports on its monitoring activities, except where deficiencies were found. The remaining 45 States, Conrail, and Amtrak were never monitored. The current director of OCR, who was appointed in September 1979, said that she did not know with certainty why more monitoring was not done, but believes it was because of limited and insufficiently experienced staff members.

Recipients' contractors and subcontractors

FRA regulations require the recipients of FRA funding to obtain written assurance that their contractors and subcontractors receiving $50,000 or more have AAPs and to monitor those AAPs. With the exception of NECIP, as noted above, OCR does not know if these regulations are being followed. OCR did not give the recipients any guidance or guidelines to use in carrying out their section 905 responsibilities and, since OCR has only monitored these organizations on a limited basis, OCR does not know what they have done.

Conclusions and corrective actions being taken

OCR has not adequately carried out its section 905 responsibilities but is currently undergoing extensive change. In September 1979, a new director was appointed and since then many actions have been initiated to correct OCR's problem areas, particularly with respect to staffing and monitoring.

The actions that OCR, under its new director, has taken include:

--Requesting the Administrator of FRA for nine additional professional and two additional clerical staff positions. OCR was authorized two temporary staff members and will be given approval for permanent slots when budget allocations permit.

--Notifying all of the States, Conrail, and Amtrak to submit updated AAPs to OCR.

--Setting up a monitoring schedule to assure that all 49 States will have compliance reviews by the end of calendar year 1980. The railroads were not scheduled for compliance reviews because OCR does not yet know if the Department of Labor will agree to assume this function.

--Arranging and starting an onsite compliance review of most of the Amtrak units.

--Beginning to review Conrail's AAPs.

--Instructing staff members to prepare written reports of all compliance reviews.

In addition, FRA began to work under a memorandum of understanding with the Federal Highway Administration and the Urban Mass Transportation Administration. Under the terms of the agreement, the three agencies will conduct joint monitoring reviews in those States where they can. The joint agreement was undertaken to eliminate duplication and to provide coordinated and uniform implementation and monitoring of State AAPs.

The new director of OCR stated that she plans to make additional changes in the future which should further improve the section 905 program. Some examples of these planned changes are:

--Developing guidelines for financial recipients to use when monitoring their contractors and subcontractors.

--Restoring to OCR total responsibility for reviewing, approving, and monitoring the AAPs for the NECIP prime contractors.

--Instituting an arrangement so that OCR would be notified immediately whenever recipients came in for supplemental funding. The notification would allow OCR to see if the applicant's AAP was approved and being maintained.

We believe that FRA could adequately implement its section 905 employment program if the proposed corrective actions are properly implemented.

CONTRACTING PROVISIONS OF THE SECTION 905 REGULATIONS

FRA's administration of the contracting provisions of the section 905 regulations could be improved by correcting the following problems:

--In some cases, FRA has not approved AAPs before providing financial assistance or awarding contracts under NECIP. Some AAPs still have not been approved.

--Some railroads have not submitted required reports on procurements from minority businesses.

--MBRC has not systematically monitored recipients' implementation of their AAPs, including verification of reported procurements from minority businesses.

--Additional efforts are needed to assure that claimed minority businesses are eligible businesses.

--Policies and procedures need to be clarified.

FRA's regulations provide that an AAP shall include the following:

--Identification of the actions planned to solve the problem areas inherent in the use of minority businesses.

--Details on proposed contracts in excess of $10,000 in connection with activities funded in whole or in part with financial assistance.

--Analysis of contract awards to minority businesses in the past year, including the nature of the goods and services, the dollar amounts, and the percent of such purchases to the total procurement activity.

--Plans to insure that minority businesses are given the opportunity to do business, including designating a liaison officer and setting a goal for the use of minority businesses, where appropriate.

The AAP requirements are the same for State and railroad recipients except that States receiving only planning funds are required to prepare a less detailed plan. According to the Chief of MBRC's Affirmative Action Branch, participation by minority businesses is unlikely where States receive funds only for planning their State rail programs. Prior to August 1979, most States receiving funds were planning States. In August and September, 24 of the States (referred to as "program" States) received grants for rehabilitation and/or substitute service projects, for which complete AAPs are required.

Approval of AAPs

As of December 14, 1979, the financially troubled railroads receiving assistance, Conrail, and Amtrak had approved AAPs.

Of the 49 States for which funds had been obligated, 46 had fully approved AAPs while three had only contingently approved AAPs--Delaware, Maryland, and Virginia. The status of the latter three States--which are program States--is discussed in appendix II. Seven of these States had been awarded program funds 1 or 2 months before their AAPs were approved. The Director of FRA's Office of State Assistance told us that she had approved the commitments of funds for these States only after she had found that approval of their AAPs was imminent. She said that the grants had to be approved by the end of fiscal year 1979 or else the States involved would have lost the funds for that year. Eighteen of the States had also received planning funds before their AAPs were approved.

The AAP for NECIP and NECIP's principal architect and engineering contractor had not been approved as of January 10, 1980. NECIP's affirmative action officer told us that the development of an affirmative action program is the responsibility of the project's principal architect and engineering contractor. He said that a draft program had been developed and delivered to MBRC at the end of calendar year 1978. In March 1979, a working group made up of representatives of NECIP, the contractor, and MBRC reviewed the program and agreed on the final form; however, there is no documentation on such an agreement.

According to an attorney in FRA's Office of General Counsel, the AAP for NECIP must be revised to incorporate the provisions of Public Law 95-507 because NECIP is a Federal procurement program. Public Law 95-507, October 24, 1978, which amended the Small Business Act, contains a number of provisions that differ from those of section

905 and the FRA regulations implementing section 905. Public Law 95-507 establishes an affirmative action program for the benefit of small and disadvantaged businesses and requires each Federal agency having procurement powers to establish an Office of Small and Disadvantaged Business Utilization that will be responsible for implementing the newly established program. The Department of Transportation's proposed regulations were issued for comment on May 17, 1979, but the regulations had not been issued in final form as of January 10, 1980.

MBRC has no record of whether the other two major contractors (excluding Amtrak) working on NECIP ever submitted, or received approval of, their AAPs. The Chief of MBRC's Compliance, Evaluation, and Monitoring Division said that this was an oversight and that the contractors would be advised of the requirement for AAPs.

Reports on minority business procurements

Recipients, other than States, are required to submit monthly reports of their procurements from minority businesses. Two railroads--the Columbus and Greenville and the Boston and Maine--have not submitted these reports and the reports for NECIP have been few and far between.

The Chief of MBRC's Compliance, Evaluation, and Monitoring Division said that he did not know why the two railroads did not submit the required reports. He said he will have a staff member check into the situation at the Columbus and Greenville and then take appropriate action. For the Boston and Maine, he said that a visit has been scheduled for the near future, at which time the reports will be discussed.

According to MBRC records, through September 1979 NECIP had submitted a report only for March 1979. The Chief of MBRC's Evaluation and Monitoring Branch said he did not know why reports were not being submitted by the project but that he would take action to see that NECIP starts submitting them. NECIP's affirmative action officer said that he thought the required monthly reports were submitted to MBRC. He furnished us a copy of NECIP's most recent report which was cumulative through October 1979 and told us that a copy was also sent to MBRC.

The States will be required to submit quarterly procurement reports starting in January 1980; they had not been required to submit reports previously. (See p. 17.)

Monitoring

MBRC did not systematically monitor recipients' activities.

According to the Chief of MBRC's Evaluation and Monitoring Branch, he monitors primarily by reviewing and, where appropriate, questioning the railroads' procurement reports because he does not have sufficient staff to make onsite visits. He said that MBRC plans to visit the railroads next year to review the reliability of their reporting systems and assess progress toward the goals established in their AAPs. The Chief of MBRC's Compliance, Evaluation, and Monitoring Division told us that during 1979 he had visited Conrail, Amtrak, and the financially troubled railroads in the Chicago area (the Chicago visits were primarily in response to a complaint by minority vendors) to discuss their affirmative action programs and to spot check their files to ascertain whether they had obtained certifications of minority business eligibility from firms whose contracts were being counted in their statistics. However, he could not furnish any documentation on these monitoring visits. Also, MBRC does not have a schedule for future monitoring visits or guidelines on what is to be done during such visits.

Under one of the MBRC contracts for carrying out its functions (see p. 23), there are representatives stationed at Conrail and Amtrak and one in Chicago to cover the four railroads there. These representatives provide a form of monitoring since they are responsible for screening all procurements by those recipients to assure that minority businesses have been given an opportunity to participate.

MBRC has initiated action to develop a systematic monitoring system. In June 1979, MBRC assigned one of its contractors the task of developing a system for onsite visits and monitoring recipients' compliance.

Eligibility of minority businesses

MBRC's efforts to verify the eligibility of minority businesses being used by recipients consist of (1) requiring recipients to obtain certifications from the minority businesses they buy from and (2) investigating the eligibility of minority businesses in response to complaints from recipients, the public, or other businesses. MBRC's Executive Director (until January 4, 1980) and the Chief of the Compliance, Evaluation, and Monitoring Division told us that the Chicago railroads had recertified their minority businesses earlier this year (after a complaint by minority businesses in the Chicago area) and this resulted in a drop in procurements from women-owned firms from about 81 percent of total minority procurements to about 50 percent. The Chief of the Compliance, Evaluation, and Monitoring Division said that he had not had enough staff to do more work on eligibility.

In our recent report "Minority Firms on Local Public Works Projects--Mixed Results" (CED-79-9, Jan. 16, 1979), we concluded that the questionable eligibility of minority firms had been a persistent problem for the Economic Development Administration. In a special Administration investigation, a substantial number of claimed minority firms were found to be not bona fide minority firms. An analysis of the documentation one of the Administration's field teams used indicated that the primary reasons why firms were declared non-bona fide were:

--Minority members did not participate enough in management of the firm, or the firm was established as part of a contractor to meet minority firm use requirements.

--The businesses' minority members did not actually qualify as minorities.

--Minority firms subcontracted most of the work to nonminority subcontractors.

There have also been recent reports in the news media about the questionable eligibility of minority firms involved in other Government efforts to help minority businesses.

Because of the obvious importance of the eligibility of minority firms to the objectives of sections 905 and 906 of the 4R Act and the prevalence of problems with the eligibility of minority firms, we believe that MBRC needs to establish a system for periodically verifying the eligibility of minority firms.

MBRC has begun to take action in this area. In June 1979, it assigned to one of its contractors the task of developing and implementing procedures to determine the eligibility of minority business firms. It has also developed a step-by-step methodology for conducting onsite reviews to verify eligibility. FRA's Office of General Counsel is reviewing the proposed methodology.

Policies and procedures should be clarified

Some of MBRC's policies and procedures have not been adequately developed or clearly and uniformly disseminated to the recipients. As a result, the MBRC program may not be operating as effectively as it should. The areas in question related to

--the dollar base to which the minority procurement goal of 15 percent should be applied for recipients and contractors,

--monitoring criteria for recipients and contractors,

--State reporting requirements, and

--recertifications for minority businesses.

Minority business procurement goal

On September 16, 1977, the Secretary of Transportation announced a goal of 15 percent participation for minority businesses for recipients of financial assistance under the 4R Act and their contractors.

MBRC's Executive Director and the Chief of the Compliance, Evaluation, and Monitoring Division told us that the 15 percent goal is not applied to only procurements made with Federal funds, but to all purchases made by the railroads, which results in a higher minority procurement goal. They said that it is clear that the goal is intended to be applied to total procurements, however, they were unable to document their position. They said that the railroads have accepted MBRC's position. Our review of MBRC's files showed, however, that a number of the railroads questioned the applicability of the 15-percent goal to total procurements. On the other hand, the Chief of MBRC's Affirmative Action Branch stated that the 15-percent goal for contractors and State recipients applies only to their procurements in connection with the federally supported project or activity in which they are involved.

These interpretations are not made clear in the FRA regulations or in the material sent to recipients. The regulations and material sent to the recipients state that an affirmative action program must be developed which meets the requirements of the regulations but do not specify the base to which the 15-percent goal should be applied.

The differences in the definition of the dollar base of procurements could have a large impact on attempts to establish goals and measure progress for minority contracting. For example, if a railroad made procurements with Federal funds totaling $10 million, its minority procurement goal would be $1.5 million if the Federal funds were used as the base. On the other hand, if the same railroad's total procurements from all sources of funds were $100 million, then its goal would be $15 million if total procurements were the base. If that same railroad had actually made $2 million in procurements from minority businesses, it would have exceeded its goal under the first assumption but would not have come close to its goal under the second assumption.

Recipient and contractor monitoring

MBRC requires recipients and contractors to monitor the activities of their contractors and subcontractors who receive awards of more than $50,000. The requirement for recipients' monitoring is explicitly stated in the regulations and, according to MBRC's Executive Director and the Chief of the Compliance, Evaluation and Monitoring Division, the contractor monitoring requirement is clearly implied (but is not specifically stated).

MBRC has not issued instructions to recipients and contractors explaining what they are expected to do or telling them what the extent or frequency of the monitoring should be. We discussed this point with officials of a State and they said that they were aware of their monitoring responsiblity but had never received any guidance from MBRC and so did not know what they are supposed to do.

MBRC's Executive Director and the Chief of the Compliance, Evaluation, and Monitoring Division were unable to tell us what they expected the recipients and contractors to do in the way of monitoring.

State reporting requirements

There has been confusion as to whether States were supposed to submit reports on procurements from minority businesses.

Although there were no written requirements for States to submit procurement reports at the time of our review, during our discussions with the Chief of MBRC's Compliance, Evaluation, and Monitoring Division and the Chief of MBRC's Evaluation and Monitoring Branch, these officials gave us conflicting responses as to whether States have been required to submit reports. Some States did submit reports during 1979, but MBRC has done nothing with the reports.

MBRC's Executive Director, the Chief of the Compliance, Evaluation, and Monitoring Division, and the Chief of the Evaluation and Monitoring Branch told us that the States will be required to submit reports starting in January 1980. On January 10, 1980, MBRC sent a letter to the States transmitting recently developed reporting forms and reporting instructions, including the date when the first report is due.

Minority business recertifications

MBRC has made changes in the recertification format used by the railroads to determine the eligibility of minority businesses. It has also given the railroads differing instructions on when to recertify the minority businesses.

In February 1979, the FRA Administrator notified the Chicago railroads receiving assistance that they should recertify all minority businesses they are contracting with or have contracted with since January 1, 1976, using a specified recertification format. In April 1979, MBRC requested that, as a part of the recertification process, the railroads obtain some additional information. Correspondence from one of the railroads indicated that this change was imposing an administrative burden on it since it had already begun recertifying contractors using the original FRA format.

MBRC's Executive Director and the Chief of the Compliance, Evaluation, and Monitoring Division told us that in September 1979 they had met with some, but not all, of the railroads and advised them that rather than conducting a blanket recertification of all minority vendors, they could obtain the recertifications prior to awarding another contract to or extending an existing contract with the businesses. According to these officials, all railroads will be advised of this new procedure in a letter that will also transmit the final version of the recertification form. The letter had not been sent as of January 10, 1980.

Conclusions

FRA's administration of the contracting provisions of the section 905 regulations has not been adequate and needs to be improved. Corrective actions have been initiated which should resolve some of the problems, if properly implemented.

As of December 14, 1979, some AAPs still had not been approved, even though AAPs are supposed to be approved before assistance is granted. Also, there have been cases where AAPs were approved after the assistance was granted. One of the unapproved AAPs--NECIP--was not approved because of the impacts of relatively recent legislation, the regulations for which have not been finalized as yet. We believe FRA should comply with its own regulations and should not grant funds to recipients until their AAPs have been approved. This requirement for approval of an AAP as a precondition for receiving assistance can help assure that recipients comply with the provisions of section 905 of the 4R Act.

Some recipients have not been submitting the required monthly reports on procurements from minority businesses. MBRC has stated that it will take action to have the recipients submit the reports.

MBRC has not been systematically monitoring the activities of recipients to assess their progress and compliance with AAPs and regulations. Some monitoring has been done, but it has only covered some items and has not been regularly scheduled. There are no written records of much of the claimed monitoring activity, and MBRC had neither a schedule for monitoring visits nor guidelines on what is to be done during these visits. MBRC, however, has recently assigned one of its contractors the task of developing a system for onsite visits and monitoring recipients' compliance, which could resolve the problem, if properly implemented.

The questionable eligibility of claimed minority firms has proven to be a problem in other Government efforts to help minority businesses. MBRC, however, did not have any procedures for regularly verifying, even on a test basis, that the minority businesses being used by recipients are actually eligible minority firms. MBRC has assigned one of its contractors the task of developing and implementing procedures for determining the eligibility of minority business firms and has also drafted a step-by-step methodology to be used in onsite visits to verify eligibility.

Some of MBRC's policies and procedures have not been adequately developed or clearly and uniformly disseminated to all recipients. This can create confusion on the part of recipients and can hinder the effective operation of MBRC's program. MBRC needs to establish--and disseminate to all recipients--clear policies and procedures concerning (1) the dollar base to which the minority procurement goal of 15 percent is supposed to be applied and (2) what recipients and contractors are expected to do to monitor the activities of their contractors and subcontractors. There has also been uncertainty regarding reporting requirements for States and the recertification procedures to be used by the railroads, but MBRC is acting to clear these matters up.

Recommendations to the Secretary of Transportation

We recommend that the Department of Transportation monitor FRA's compliance with its regulations to insure that assistance is not granted until the applicants' AAPs have been approved. We also recommend that FRA direct MBRC to establish--and disseminate to all recipients--clear policies and procedures on (1) the dollar base to which the minority procurement goal of 15 percent is supposed to be applied and (2) what recipients and contractors are supposed to do to monitor the activities of their contractors and subcontractors.

CHAPTER 3

THE MINORITY BUSINESS RESOURCE CENTER

MBRC was created to help assure that minority-owned businesses would be given the maximum practical opportunity to participate in business generated from public funds to the Nation's railroads for restructuring or rebuilding. MBRC's mission is to contribute to the Federal Government's effort to bring minority businesses into the mainstream of the American economic system by helping minority businesses obtain contracts with the railroads receiving Federal funds. The 4R Act authorized MBRC to carry out a wide range of activities to achieve its mission. (See p. 1.)

As discussed on page 16, the Department of Transportation established a goal of 15 percent minority participation for this program. According to MBRC, minority-owned business contracts with the railroads have increased from a total of $53 million in 1976 and 1977 to an estimated $174 million in 1979, totaling about $379 million since MBRC's establishment. Although the amount of minority contracts with the railroads has increased substantially, it is not possible to determine how much of this increase can be attributed to the activities of MBRC.

EVALUATION OF MBRC

During the past 2 years, three outside organizations have reviewed MBRC's programs and operations. In 1978, MBRC requested one of its contractors, International Business Services, Inc., to conduct an evaluation of MBRC's programs. In its January 1979 report, the consulting firm identified a number of management and administrative weaknesses and made several recommendations to improve MBRC operations. MBRC officials did not totally agree with the consultant's conclusions and recommendations, but did implement some of the changes suggested.

In early 1979, FRA's Office of Planning and Budget Development also reviewed MBRC's programs. Its report concluded that MBRC's effectiveness could not be determined because no reliable measure of minority contracting specifically resulting from MBRC's efforts existed. The report, however, did make a number of observations regarding MBRC's operations, including:

--About twice the projected amount of money was being spent on business development activities while less than half of the projected amount was being spent on other contractual services.

--The venture capital fund would be tapped for $1.5 million a year in management costs.

--About 37 percent of MBRC's contracts, many of which were sole-source contracts, had been increased in scope after award.

Because of growing concern that MBRC was not making progress toward meeting the objectives of sections 905 and 906 at the rate expected or desired, in May 1979, the Administrator of FRA contracted with the consulting firm of Ferguson-Bryan and Associates, Inc., to assess the status of MBRC's implementation of section 906. The objectives of the study were to determine the extent to which MBRC and the railroads were fulfilling the legislated mandate and to develop a course of action FRA and MBRC could take to correct any problems found and to prevent new problems from occurring.

During its review the consultant (1) reviewed large amounts of written material on the section 906 program, including legislation, orders, regulations, and various reports and documents, (2) conducted hundreds of interviews with participants from key groups in the program, and (3) conducted extensive independent analysis of various data and other information. Although we did not review the consultant's work in detail, we did look at the approach used and the scope of its work and they seemed to be reasonable.

The December 14, 1979, Ferguson-Bryan report cited numerous problems that were inhibiting progress in implementing section 906 and recommended many corrective actions. The principal conclusions were:

--The success of the section 906 program has been marginal.

--A number of problem areas existed and inhibited more rapid progress.

--Existing problems could be corrected and the program's rate of progress increased substantially.

The executive summary of the Ferguson-Bryan report is included in appendix III.

MBRC FUNDING AND OBLIGATIONS

Through fiscal year 1980, the Congress has appropriated about $35.5 million for MBRC. In addition, MBRC has received $940,000 allocated from other Department of Transportation programs; $350,000 from the Office of the Secretary during MBRC's first year of operation, and $590,000 from the FRA Administrator's appropriation in fiscal years 1976 through 1978 for MBRC's administrative salaries and expenses. The table on page 24 shows MBRC's financial history.

In carrying out its mission, MBRC employs a small in-house core staff--a total of 14 full-time employees as of December 31, 1979--and makes extensive use of outside contractors. Since MBRC was established, it had entered into 22 contracts totaling more than $13.0 million, of which about $9.7 million had been obligated through fiscal year 1979. These contractors--which include consulting firms, nonprofit organizations, and trade associations--perform MBRC's major functions, such as (1) identifying minority businesses interested in and capable of serving the railroads, (2) conducting market analysis and research, (3) designing and executing various program elements, (4) reviewing recipient compliance, (5) collecting and disseminating procurement information, and (6) providing management and technical assistance to minority businesses.

In addition to the contracts with private firms, MBRC had obligated about $1.9 million through fiscal year 1979 under an interagency agreement with the Department of Commerce's Minority Business Development Agency--formerly the Office of Minority Business Enterprise. Concerning its business development operations, the agency agreed to provide staff and resources to MBRC for establishing and operating MBRC's field offices--called local outreach centers. These resources are provided from the staff of local business development offices under contract with the agency. As of December 1979, 26 of MBRC's 28 local outreach centers across the Nation were included under this agreement.

As shown in the table, MBRC did not begin to implement its financial assistance program until fiscal year 1979, resulting in large carryovers from prior fiscal years. At the end of fiscal year 1978, only $8.1 million of the $16.8 million appropriated had been obligated. During fiscal year 1979, MBRC began to obligate the financial assistance program funds and by the end of the fiscal year, it had obligated about $18.0 million of the $26.1 million appropriated--about 69 percent of its total appropriations.

Minority Business Resource Center

Financial History ($ in thousands)

Category	FY 76 a/ Appropriations	FY 76 Budget Authority b/	FY 76 Obligations	FY 76 Carry Over	FY 77 Appropriations	FY 77 Budget Authority	FY 77 Obligations	FY 77 Carry Over	FY 78 Appropriations	FY 78 Budget Authority	FY 78 Obligations	FY 78 Carry Over	FY 79 Appropriations	FY 79 Budget Authority	FY 79 Obligations	FY 79 Carry Over	FY 80 Appropriations	FY 80 Budget Authority
FINANCIAL ASSISTANCE	0	0	0	0	5,000	5,000	0	5,000	3,500	8,500	100	8,400	4,300	12,700	4,650	8,050	4,500	12,550
PROGRAM/CONTRACT SUPPORT	1,250	c/ 1,600	399	1,201	3,000	4,201	2,414	1,787	4,000	5,787	5,565	222	4,570	4,792	4,718	74	4,320	4,394
SALARIES AND EXPENSES	0	d/ 50	50	0	0	d/ 180	180	0	0	d/ 360	360	0	460	460	460	0	580	580
TOTAL	1,250	1,650	449	1,201	8,000	9,381	2,594	6,787	7,500	14,647	6,025	8,622	9,330	17,952	9,828	8,124	9,400	17,524

a/ Includes Transition Quarter.

b/ Budget Authority equals appropriation, intra-departmental transfers, and carry over.

c/ Includes $350,000 reprogrammed from Office of the Secretary.

d/ MBRC Salaries and Expenses in FY 76-78 were funded from FRA's Office of the Administrator.

In a statement submitted for the record during the fiscal year 1979 Senate appropriations hearings, MBRC said that its financial assistance program would be operational as early as fiscal year 1978, but the venture capital mechanism did not become operational until fiscal year 1979 and the development of a minority-owned surety company and a small business lending company--the other mechanisms included in the planned financial assistance program--have not yet been implemented. Because these programs were specifically authorized by the legislation but have not been fully implemented, their current status is discussed in the following sections.

IMPLEMENTATION OF THE VENTURE CAPITAL MECHANISM

In fiscal year 1978, MBRC decided that the venture capital program would consist of investments in a number of minority enterprise small business investment companies (MESBICs) that would be willing to provide financial assistance to minority firms capable of doing business with the railroad industry. One reason for MBRC's selecting this mechanism was that small business investment companies, licensed and regulated by the Small Business Administration (SBA), could receive up to $4 in SBA matching funds for every dollar invested in the company from other sources. Therefore, MBRC hoped that the funds it invested could result in up to four times that amount being available to minority firms. MBRC's decision was based on a February 1978 consultant's report evaluating several alternative strategies.

In March 1978, MBRC solicited proposals from MESBICs interested in participating in this program and, based on the proposals received, decided in May 1978 to invest $2 million--$400,000 each--in five MESBICs. Based on the responses received to an April 1978 solicitation, MBRC decided during fiscal year 1979 to invest an additional $6 million--$3 million each--in two large MESBICs.

By the end of fiscal year 1979, MBRC had invested $4.2 million in four MESBICs--one large and three small companies. A fourth small MESBIC was funded in November 1979. According to MBRC officials, the remaining small MESBIC under consideration probably will not be funded because its financial condition was found to be impaired.

According to FRA, negotiations with the remaining large MESBIC were delayed for a number of reasons. The principal delay concerned the MESBIC's difficulty with FRA's target of a rate of investment of 25 percent of FRA and any matching

SBA funds every 6 months. The MESBIC has since advised FRA that it believes it can meet the target and FRA is now reviewing the MESBIC's recent investment record. In October 1979, FRA received a request for an investment of $2 million in another MESBIC. FRA has requested comments from the public and SBA on this application and the applicant is also providing additional material to FRA. The negotiations required to reach agreement on this application will further delay full implementation of this program.

As noted above, MBRC had hoped that the funds it invested in the MESBICs could result in much greater financial assistance to minority firms because of the additional funds the MESBICS could obtain through SBA. In negotiations leading up to the signing of the memorandum of understanding between FRA and SBA, however, SBA indicated that its approval of the financing agreements between FRA and the individual MESBICs did not commit SBA to providing matching funds or leverage, as this depended upon SBA having the funds available, among other factors. SBA also stated that it could not give priority to FRA-funded MESBICs because this would deprive other licensees of the benefit of SBA funds, but it assured FRA that all participants, including the FRA-funded MESBICs, would be given fair and equitable treatment.

As of December 31, 1979, none of the five FRA-funded MESBICs had obtained additional funds from SBA. Without the SBA funds, the amount of financial assistance that can be provided to minority firms interested in doing business with the railroads will be limited. Based on the $170,700 average financial assistance package the MESBICs had provided as of December 31, 1979, the $8 million will only provide for a total of about 47 assistance packages. It is important that the money be available to meet the demand for funds that MBRC expects as a result of the next round of contracts to be awarded under NECIP, but the existing agreement does not assure that sufficient funds will be available.

MESBICs can provide essentially two types of financial assistance to small businesses--long-term loans or equity participation. According to MBRC's Executive Director, another reason MBRC chose to invest in MESBICs was because they could provide financing more suitable to minority business needs than the loans available through banking institutions.

We have issued three reports 1/ that deal with MESBICs and SBA's small business investment company program. In those reports, we pointed out that the investment companies generally provided loans rather than equity participation to those businesses receiving help, and the loans made serve the same clientele--but often charging higher interest rates and requiring greater collateral--as those of SBA's section 7(a) business loan program. In addition to our reports, a section of the MBRC evaluation performed by International Business Services, Inc., pointed out that minority business entrepreneurs had expressed concern about the MBRC's investment in MESBICs because, among other things, MESBIC loan qualification requirements were generally as conservative and demanding as those of most commercial banks and banks can often provide loan funds for longer periods at equal or better interest rates.

The information available on the activities of the four FRA-funded MESBICs which had made investments as of December 31, 1979, showed that these MESBICs were also favoring loan rather than equity investments in the minority businesses they have assisted. As of that date, the four MESBICs had made seven awards totaling $1.195 million--including five loans totaling $1.075 million and two equity participation agreements totaling $120,000.

ESTABLISHMENT OF A MINORITY-OWNED SURETY BONDING ORGANIZATION

Although section 906 of the 4R Act authorized MBRC to establish a bonding mechanism for minority businesses, and MBRC had indicated its intent, in a statement submitted for the record during the fiscal year 1979 House appropriation hearings, to have such a mechanism developed by the end of fiscal year 1978, a study to examine alternatives for establishing such a company was not started until March 1979. In July 1979, the contractor responsible for carrying out the study submitted its proposal for the establishment of a minority-owned surety company that presented six financing

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1/"A Look At How the Small Business Administration's Investment Company Program for Assisting Disadvantaged Businessmen Is Working" (GGD-75-74, Oct. 8, 1975); "The Small Business Investment Company Program: Who Does It Benefit? Is Continued Federal Participation Warranted?" (CED-78-45, Mar. 3, 1978); and "Efforts To Improve Management of the Small Business Administration Have Been Unsatisfactory--More Aggressive Action Needed" (CED-79-103, Aug. 21, 1979).

alternatives available to MBRC. On December 7, 1979, that same contractor submitted a proposal to provide a detailed plan for creating, financing, and placing into operation a minority-owned and controlled casualty company. If this contractor is selected, he has indicated that the project would take at least 7 months, exclusive of the time needed for (1) FRA approval of proposed plans, (2) presenting the potential profitability estimates to various investor groups and raising the required capital, and (3) obtaining the necessary licenses for the company. Based upon this information, and the fact that the contract has not yet been executed, it is unlikely that the bonding organization will become operational before the end of fiscal year 1980.

According to the Executive Director of MBRC, the establishment of the surety bonding organization has not been critical up to this point because one of MBRC's contractors has been able to provide assistance in obtaining bonds to those businesses needing it to date. MBRC anticipates that the real need for this organization will coincide with the major contracting on NECIP, which has been repeatedly delayed.

The July 1979 contractor study also indicated that one of the primary reasons minority entrepreneurs fail to get bonds was their inability to obtain adequate working capital. To overcome this problem, MBRC officials indicated that they planned to establish a small business lending company to be made operational at about the same time the surety bonding company is established. As of December 1979, however, MBRC had not arranged for any studies on how to organize or establish such a company.

RELATIONSHIP WITH OTHER FEDERAL PROGRAMS

Section 906 of the 4R act specifically authorizes MBRC to participate in and cooperate with all Federal programs designed to provide financial, management, and other support and technical assistance to minority businesses. The MBRC programs are similar to other Department of Commerce and SBA programs designed to assist small economically or socially disadvantaged businesses. MBRC's programs, however, are limited to providing assistance to minority (specifically including women) firms interested in doing business with the railroad industry. Through interagency agreements, MBRC has been able to take advantage of existing programs in the Department of Commerce and SBA, rather than having to develop new programs.

All but two of MBRC's local outreach centers are operated in conjunction with Commerce's business development operations under a March 1978 agreement between FRA and the Department of Commerce. Under this agreement, the personnel provided for MBRC outreach center operations concentrate their efforts on railroad-related business and are supervised by the local Minority Business Development Office, but their performance, monitoring, and evaluation are MBRC's responsibility.

In November 1979, FRA and SBA executed a memorandum of understanding which established the relationship between SBA and FRA with respect to the funding of MESBICs. This memorandum of understanding recognized that the agreements between FRA and the MESBICs participating in the railroad program would not diminish SBA's authority over its licensees or change the types of businesses (small and disadvantaged) in which its licensees could invest. It also gave SBA priority over FRA in any liquidation and made clear that the FRA agreements would not excuse the MESBICs from making payments to SBA on any obligations due.

MBRC is also planning to cooperate with SBA in other ways. MBRC and SBA have informally agreed to exchange updated directories of minority businesses. In addition, MBRC hopes to enter into an agreement with SBA which would allow MBRC's technical assistance program to use SBA call contractors. These contractors provide management help in such areas as accounting, engineering, and marketing to companies included in SBA's program for socially and economically disadvantaged businesses.

POSSIBLE TRANSFER OF MBRC

Public Law 95-507 required Federal agencies to establish an Office of Small and Disadvantaged Business Utilization to insure that small and disadvantaged businesses have an opportunity to participate as prime or subcontractors in direct contract awards.

In July 1979, the Department of Transportation established an Office of Small and Disadvantaged Business Utilzation to increase substantially the Department's funding for small businesses, especially those owned by minorities and women. At the same time, the Department announced that MBRC would be transferred into the new office in about 6 months. Testifying before the House Small Business Committee in June 1979, Department officials said that this transfer would provide the new office with the benefits of experienced staff and organization. Also, they thought this would avoid duplication of effort that would occur with both MBRC and an Office of Small and Disadvantaged Business Utilization. Following the proposed transfer announcement, however, a new Secretary of Transportation took office and, as of December 1979, the new Secretary had not made a decision about moving MBRC to the new office.

As part of its assessment of MBRC, Ferguson-Bryan examined the potential for expanding the MBRC concept to other modes of transportation. Its conclusions were: (1) the MBRC concept does have the potential to be expanded to other modes of transportation, (2) the creation of the new office does not automatically expand MBRC's concept to other transportation modes, (3) the establishment of MBRC-like replicas in all other Department administrations would be operationally inefficient, and (4) MBRC should not be expanded to cover other modes.

Congress of the United States
House of Representatives
Committee on Appropriations
Washington, D.C. 20515

August 3, 1979

Honorable Elmer B. Staats
Comptroller General of the United States
General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Staats:

On March 12, 1979, a member of Mr. Stewart's staff met with several representatives from the General Accounting Office to discuss the implementation of Section 905 of Public Law 94-210 by the Secretary of Transportation and the person to whom he has delegated this responsibility, the Administrator of the Federal Railroad Administration.

As Chairman of the Transportation Subcommittee and a Member of the Transportation Subcommittee of the House Appropriations Committee, we are concerned about the Federal Railroad Administrator's compliance with the intent of Congress in implementing Section 905. We are also concerned about the utilization of funds appropriated for the Minority Resource Center authorized by Section 906 of Public Law 94-210. We are, therefore, requesting that the General Accounting Office review the activities of the Secretary of Transportation and the Administrator of the Federal Railroad Administration under Sections 905 and 906.

May we hear from you soon on this matter.

Sincerely,

Robert B. Duncan
Robert B. Duncan
Chairman
Subcommittee on Transportation
Appropriations

Bennett M. Stewart
Bennett M. Stewart
Member
Subcommittee on Transportation
Appropriations

ADDITIONAL INFORMATION ON THE STATUS OF STATE AFFIRMATIVE ACTION PLANS NOT COMPLETELY APPROVED AS OF DECEMBER 14, 1979

Alaska--FRA approved a planning grant in September 1979. The AAP for contracting was approved November 6, 1979, but OCR had not received an AAP for employment as of December 14, 1979, and was not aware that Alaska's grant application had been approved.

Delaware--The employment AAP was approved August 11, 1977. Because of a mix up within FRA, MBRC was not aware until recently that Delaware was receiving program funds. MBRC contingently approved the contracting AAP and Delaware submitted a revised AAP on October 31, 1979. MBRC said that it did not anticipate any problems with the AAP.

Georgia--The AAP for contracting was approved but the employment AAP has not been approved. Georgia submitted its employment AAP in 1977, but OCR classified it as unresponsive because it lacked needed data. Since then there have been meetings, correspondence, and phone calls between OCR and the State, but the AAP is still not approved. On November 30, 1979, a State official told us that the State was preparing an updated AAP in response to a recent request by OCR.

Maryland--The employment AAP was approved September 20, 1977, but the contracting AAP was not because of a difference on the goal for minority contracting; FRA's goal is 15 percent while State law calls for 10 percent. The difference has been recently resolved and MBRC contingently approved the State's AAP. MBRC expects to fully approve the AAP shortly.

Michigan--The employment AAP had not been approved but the contracting AAP was. Michigan's employment AAP was submitted in early 1977. OCR found deficiencies in the AAP and has asked for additional information several times but the State has not provided all the information OCR wants.

North Carolina--North Carolina sent in an employment AAP in early 1977, but it apparently covered the University of North Carolina, rather than the State itself. The State submitted an AAP for its Department of Transportation in September 1978, but OCR classified it as unresponsive because it did not contain enough information. OCR's files show no record of any contact with the State since then. On November 26, 1979, a State official told us he thought that the AAP had been fully approved because the State had received an approval letter from FRA. After we explained that the approval only applied to the AAP for contracting (April 19, 1979, for planning purposes and September 14, 1979, for program purposes), he said that North Carolina will submit an updated employment AAP.

Pennsylvania--The contracting AAP was approved September 14, 1979, but the employment AAP has not been approved. Pennsylvania submitted an employment AAP in early 1977 but OCR found that additional information was needed. OCR requested the State to submit additional information in May and July 1978, but OCR's files show no contacts with the State since then.

Rhode Island--The contracting AAP was approved December 5, 1979, but the employment AAP has not been approved. Rhode Island submitted its employment AAP in early 1977 but OCR found that some needed information was missing. OCR's files show that additional information was requested in June 1977, May 1978, and November 1979.

South Carolina--The contracting AAP was approved April 19, 1978, but the employment AAP has not been approved. South Carolina submitted its employment AAP in early 1977 and submitted additional information in October 1977 and January 1978. OCR's files show no contacts with the State since then although OCR told us that South Carolina's information was not sufficient.

Virginia--The employment AAP was approved on December 12, 1978, but its contracting AAP has only been contingently approved. Because of a mix up within FRA, MBRC was not aware until recently that Virginia was receiving program funds. MBRC contingently approved the contracting AAP and notified the State on November 8, 1979, that additional information was needed.

 APPENDIX III

EXECUTIVE SUMMARY OF REPORT ON THE MINORITY BUSINESS RESOURCE CENTER PREPARED BY FEGUSON-BRYAN AND ASSOCIATES, INC.

I - EXECUTIVE SUMMARY

The objective of the Railroad Revitalization and Regulatory Reform (4R) Act was to ensure minorities the opportunity to participate in and benefit from the employment and business opportunities provided as a result of Federal funding to improve and revitalize the Nation's railroads. The Congress realized that minority participation in these activities would be neither extensive nor comprehensive unless: a) minority business enterprises and entrepreneurs were made aware of opportunities in which they could participate; and, b) assistance was made available to them to overcome the endemic problems of minority businesses in this country, i.e. lack of capital, lack of access to major markets and lack of a sufficient supply of capable managers. Accordingly, Section 906 of the legislation established the Minority Business Resource Center (MBRC) as a mechanism for addressing these critical areas and provided it - by authorizing a series of seven specific actions the Center could take - the tools necessary for the task.

After nearly three years of program operation and considerable activity on the part of MBRC to address the problems identified above, there was growing concern - both within and outside the Federal Railroad Administration (FRA), the Administration in which the MBRC is located - that the rate of progress toward the realization of the objectives of Sections 905 and 906 was not at the pace that was expected or desired.

It was felt that some problems existed that were inhibiting the rate of progress; but, what they were and why they were was not known.

As a result of this concern, we were asked to conduct an assessment of the status of implementation of Section 906 with the dual objectives of: a) determining the extent to which MBRC and the railroads were fulfilling the mandates of Section 906 and, by inference, Section 905; and, b) develop a course of action to be taken by FRA and MBRC to correct any inhibiting problems found to exist and to prevent new problems from occuring. Clearly, an assessment of Section 906 could not be conducted by limiting the scope of the assignment to the MBRC and the railroads. There are simply to many other direct and indirect participants in this initiative whose actions, or lack thereof, have an impact on the overall program. These include the FRA, other Federal agencies such as the Office of Minority Business Enterprise (OMBE) and the Small Business Administration (SBA), various trade associations, contractors to the MBRC, and, importantly, the MBEs who are the targeted beneficiaries of this effort. Accordingly, in our assessment activities, we took care to ensure that we included an examination of the roles played by these "other" program participants.

To meet the dual objectives of our assessment, over the last seven months we have:

- <u>Reviewed large amounts of written material relative to the operation of the Section 906 program including:</u>

a) enabling legislation; b) Orders of the Secretary; c) implementing regulations; d) MBRC's mission/ function statement and position descriptions; e) various reports and documents supplied by the FRA, MBRC, the railroads and others; and, f) reports prepared by contractors to the MBRC

- Conducted more than 300 interviews with direct and indirect participants in this effort: We have held face-to-face interviews with a substantial number of individuals in each of the key groups participating in the Section 906 program. These interviews, which were conducted around the country, were held in confidence in order to encourage the participants to speak openly and frankly. We are confident that they did so.
- Conducted extensive independent analyses of various data and other information available to us: Our project team has carried out in-depth analyses of procurement contract awards to minority businesses, program funding data, and Local Outreach Center (LOC), activity information, etc.

On the basis of these activities, we are confident in both the conclusions we have reached about the Section 906 program and the course of action that should be taken to strengthen it. Further, we are equally confident that our optimism about the future of this program is well-justified.

APPENDIX III

Although we reached a number of specific conclusions about every aspect of the Section 906 program, these conclusions can fairly be summarized in the following <u>principal</u> conclusions:

- The success of the Section 906 program to-date has been marginal
- A number of problem areas exist and have inhibited the more rapid progress of the initiative
- Existing problems can be corrected and the program's rate of progress increased substantially

In the remainder of this chapter, we discuss each of these conclusions in greater detail.

A - PROGRAM SUCCESS MARGINAL

Regardless of what has or has not been done in terms of adhering to the letter of Section 906, the principal measurement of the status of the 4R minority business program's implementation and its success must ultimately be what the results have been - quantitatively and qualitatively.

Since the beginning of this program, the awards made to MBEs by participating railroads and the Northeast Corridor Improvement Project (NECIP) have increased dramatically from a total of only $53 million in the first two Calendar Years (CY) of the legislation to some $152 million in CY 1978 and an estimated $148 million through the first nine months of this year. A straight-line projection for the remainder of this year indicates that the total awards for this Calendar Year can be expected to approach $200 million.

In absolute terms, the estimated $353 million awarded to MBEs since the establishment of the MBRC is considerable. As an illustrative example, this amount is more than 300 percent of the entire Department of Transportation's direct minority procurement for Fiscal Year 1978. However, the amount must also be viewed in relative terms i.e. a) who the money went to; b) what it bought; and c) where it leaves the program in terms of the goal it seeks to achieve.

WHO IT WENT TO

An analysis of a sample of nearly 2,000 contracts awarded to MBEs in the 18 month period between January, 1978 and June, 1979 shows that despite the fact that MBRC's efforts are directed almost exclusively toward ethnic minorities, 52 percent of the total dollar value of the contracts awarded went to white female-owned companies and only 48 percent went to ethnic minorities. In Illinois, where four 4R recipients are being sued by a minority vendors group for failing to meet a minority participation goal of 15 percent of their procurement budgets, the white female to ethnic ratio is 70:30.

There are several factors contributing to the disproportion that exists between white female and ethnic minority awards: 1) the average contract awarded to ethnic minorities in the areas where most MBEs are found i.e. service and supplies, are 20 percent lower than the average contract awarded to white females in the same areas; 2) white females received more total contracts than ethnic minorities - 53.5 percent to 46.5 percent of the total; and, most importantly, 3) we believe the railroads are consciously giving more and larger contracts to white females because it is more "comfortable" for them to do so.

While the existing pattern of awards to minorities may well be legal in terms of the letter of Section 905 of the 4R Act and the implementing regulations issued by the Department of Transportation, we are unable to accept that this pattern reflects the intent of that legislation.

WHAT WAS BOUGHT

Supply, manufacturing and fuel contracts account for nearly 90 percent of the total MBE contract dollars and for roughly the same percentage amount of dollar awards to white female and ethnic minorities. Interestingly, though, while fuel contracts account for only 9.6 percent of the dollar awards to white females, they represent 31.5 percent of the dollar awards to ethnic minorities. This is a meaningful finding because of the lack of leverage - in terms of job creation and capital development - that exists in fuel contracts. Specifically, the average $360,000 fuel contract given to ethnic minorities can be handled by a single truck and driver in less than a month and will provide the distributor a gross margin of only $7,000. Yet, the same contract in other categories e.g. service, construction - could create a number of job opportunities. Fuel contracts - which are only 4 percent of the total contracts awarded ethnic minorities - simply constitute too high a proportion of the award dollars and distort the picture of what is happening in the overall pattern of awards to ethnic minorities.

DISTANCE FROM THE GOAL

Since there is a 15 percent minority participation goal for this program, the program's accomplishments must be viewed in the context of that goal. Whether the goal is 15 percent of the total procurement budgets of the 4R recipients or 15 percent of the Federal funds they receive

- a highly contested issue - the $353 million awarded thus far is nowhere near the goal. With less than 2 years remaining in the program, the accomplishments are less than 40 percent of a goal that is in excess of $1 billion. We doubt that the difference can be made up in the time remaining by the concerted action of MBRC and the railroads.

The distance from some arbitrary dollar goal should not be the major concern about this effort. Rather, concern should focus on its distance from achieving the overall objective of institutionalizing fair and equitable opportunity for MBEs to benefit from procurements in the railroad industry at-large. In this more qualitative area, an even larger gap exists between what has been accomplished and what remains to be accomplished.

* * *

Although there has been considerable progress in the number and dollar amounts of contracts awarded to MBEs since this program was launched, the results to-date indicate that the progress and success has not been nearly as substantial as it might have been had not some inhibiting problems existed.

B - INHIBITING PROBLEMS EXIST

In the course of our assessment, we identified a number of problems - some serious, some not - some avoidable, some not - that have inhibited the rate of progress toward full implementation of Section 906 and the realization of its objectives. The major problems identified are summarily discussed in the sections that follow.

INFORMATION "SYSTEM" WEAKNESSES

The degree to which the objectives of Sections 905 and 906 can be met depends heavily on the information that is collected, analyzed and disseminated. To collect, analyze and disseminate needed information, e.g. regarding general and specific market forecasts, MBE locations and capabilities, and information about specific procurement opportunities - MBRC has structured a rather comprehensive information "system" that consists of: a) consultants who have gathered and analyzed general market data; b) monthly reports from 4R recipients on their procurement activity; c) consultants, various trade associations and Local Outreach Centers (LOCs) who identify MBEs interested in and capable of serving 4R recipients; and, d) a centralized Marketing Assistance Clearinghouse (MAC). The MAC is the hub of the "system" and has as its purpose: a) the identification of MBEs and verification of their capability; b) identification of current and near-term procurement opportunities for the MBEs in its files;

c) matching specific MBEs with those opportunities; and,
d) transmission of information about opportunities to the MBEs and information about the MBEs to the sources of procurement.

Conceptually, the essential elements of the type of well-integrated process necessary to an efficient and effective information collection, analysis and dissemination activity exist. However, the efficiency and effectiveness of the process - in the collection and analysis functions - is weakened by the following factors: a) marketing research and analysis is sporadic rather than continual; b) there are huge gaps in some of the information that is collected - a problem caused by the recipients' failure to furnish timely data; c) some key information is not collected at all, e.g. about what contracts were actually carried out and the quality of performance on the contracts; d) little analysis is made of the reports that are submitted by the railroads on an ongoing basis; and, e) there is still no settled format for recipient reporting. Because of these weaknesses, the ability of the MBRC to have and use complete and up-to-date information as a major input to decisions it makes affecting the program is limited.

There are also some soft spots in the information dissemination mechanisms that have been established. Specifically: a) the Clearinghouse function is a time-consuming, largely manual operation and, thus, is not geared to reflect the reality of railroad procurement, e.g. that most solicitations take place by telephone; b) the number of minority vendors in the manual and automated files is limited, so the number of companies that can be referred to the railroads and those actually receiving contracts is relatively low ; and, c) the railroads often provide too little information in their written Requests for Quotations for an MBE who has not been intimately involved with them to be able to respond.

UNEVEN SUPPORT PROGRAM EXECUTION

The MBRC, in terms of program design, has responded well to the mandate of Section 906 to design and conduct programs that would result in the participation of minority businesses in the benefits from procurement opportunities generated by the 4R Act. Specifically, the Center has designed a set of programs collectively unique to Federal efforts to enhance minority business development in that they constitute a wholistic rather than piecemeal approach to meeting the objectives of Section 905 and 906. The programs of the MBRC are designed to: a) focus and impact on a specific industry; b) be individually strong and mutually supportive; and, c) attack the root causes of past limited minority business progress. These causes are limited access to large growth markets, a limited number of capable minority managers, and the limited availability of capital. Three categories of programs have been designed to address these root causes: 1) business development programs; 2) management and technical assistance programs; and, 3) financial assistance programs.

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The business development programs of the Center, i.e. the Marketing Assistance, Standard Business, and High Intensity business programs - are designed to develop opportunities for MBEs and to match capable businesses with those opportunities. Where significant market opportunities exist but known MBEs are either not of a size to penetrate the market or, in fact, not involved or interested in the particular area - the High Intensity Program seeks to either expand the capacity and capability of an existing business or to identify, for acquisition by a minority entrepreneur, a company in the particular commodity area. The program then provides heavy technical assistance to the expanding or acquiring company. Although a number of companies have been selected for the High Intensity Program, the results, in terms of procurement dollars received, have been fairly limited. Overall, the business development programs have had only limited success although they have been funded at nearly twice the amount appropriated for them.

The Management and Technical Assistance Program (M&TA) is designed to provide both general and industry-specific M&TA to companies to ensure that they have the capability to bid for and to execute contracts with the 4R recipients. Although most of the Center's contractors are involved in the provision of M&TA, the 28 Local Outreach Centers located in 24 cities around the nation are the mainstay of this program. It has been difficult for the LOCs to perform their ambitious mandate of providing a full range of M&TA

to MBEs in their areas because they are typically under-funded and have small staffs with generally only limited practical business or marketing experience. Additionally, the M&TA activities of the MBRC have been funded at less than half the amount appropriated for them although assistance is a critical need.

Probably the most controversial program area the MBRC has is the Financial Assistance Program which consists of a venture capital element and a proposed surety bonding element. The Financial Assistance Program is not controversial because of the way in which is designed - since it is designed to ensure the provision of needed capital and bonding assistance to MBEs. Rather, it is controversial because of the slowness in which it has gotten "off the ground." Both elements of this program were specifically mentioned in the Section 906 legislation in recognition of the fact that capital and bonding were two of the primary needs of minority business - needs that would have to be met before many of them could successfuly participate in 4R procurements. Yet, after more than three years, the surety bonding element has not yet been implemented and the venture capital element was only recently funded for approximately 60 percent of the funds that are allocated to it. Both elements of this program are extremely important and we believe that a delay of the magnitude that exists was avoidable.

Although some specific weaknesses existing in the individual support programs have inhibited their overall effectiveness, there are other weaknesses that transcend all of the programs. Specifically, we believe that these programs have not yet proven overly effective as a result of: a) the over-dependence on inappropriate and/or weak institutions to execute the programs e.g. the Local Outreach Centers; b) unrealistic and unbalanced funding for some of the programs as indicated by the fact that only 40 percent of the funds allocated for technical assistance and operations have been spent in these areas while the business development programs received over 187 percent of their allocated funding; c) cumbersome reporting systems which require program executors to spend an inordinate amount of unnecessary time in the preparation of unnecessary paperwork or in participating in face-to-face meetings; and, d) the only limited involvement of OMBE and SBA in terms of providing support to the various program areas.

UNCLEAR AND CONFUSING POLICIES

Although the Section 906 program has been underway for more than three years, there still is a lack of clarity about basic program policy. And, this lack of clarity has led to confusion, conflicting interpretations and a good deal of unnecessary animosity among the program's key participants. Specifically, there exists conflict over precisely what the policy is with regard to:

- The minority participation goal for 4R recipients i.e. is it 15 percent of their total procurement budgets, 15 percent of the Federal funds they receive, or, is it 15 percent of the contract amount for "projects, programs and activities funded in whole or in part by...(4R funds)..."
- The goal's application to prime suppliers i.e. is it 15 percent of their total procurement budgets or 15 percent of the amount of the contracts they have with 4R recipients.

Until June of this year, there were two operative definitions in the Department as to what constituted a "minority business." Specifically, 49 CRF 265, the implementing regulation for Section 905 of the Act, defined a minority business as any business in which 50 percent of the stock is owned by a minority person. Yet, Order 4000.7A, issued by former Secretary Adams, defined a minority business as one in which 51 percent of the stock is owned by a minority person and there was operational control of the business in the hands of that individual. The difference in the implications of these two definitions was staggering - and particularly so since the railroads operated under the regulation and the MBRC operated under the Secretary's Order. As a result, charges and counter-charges were leveled and considerable hositility generated.

Clearly, the interpretation of "existing" policies in these areas does make a difference. Depending on the interpretation of what funds the 15 percent applies to, the accomplishments of individual railroads changes dramatically. And, with what is now a single policy on the definition of "minority business," a number of "suspect" companies will no longer be able to participate in the program.

There is no acceptable reason for confusion over policy to exist at this point in the life of the 906 effort.

STRAINED WORKING RELATIONSHIPS

Although MBRC bears the principal responsibility for implementing Section 906, it cannot do so without having effective working relationships with and the active support and cooperation of other program participants within and outside FRA. The working relationships that now exist between the Center and the various participants are not as good as they should be if the program is to move forward expeditiously. We have concluded that: a) existing relationships have, in some cases, been detrimental to the movement of the program - although it is impossible to measure the quantity of the impact; and, b) unless the relationships are improved, the total effort will never reach even near-optimum effectiveness or efficiency.

Below, we describe the current status of the working relationships between MBRC and those direct and indirect participants whose support is essential to the implementation of Section 906:

- FRA Support Units: Among the most crucial working relationships MBRC must have are those with the FRA support staff units. Presently, these relationships are severely strained with the units and MBRC charging each other with having been uncooperative. As the result of the strain that exists: a) contract awards have been delayed and some contractors have been informed that they should prepare to end their work - even though they are involved in critical program areas - because the necessary steps had not been taken to ensure their contracts' extensions; b) only one newsletter has been published despite the fact that lack of publicity is a major problem in the overall effort; c) the Center's authorized staffing level has not been reached although authorized positions have been vacant for some time and the Center has continually complained of being short of staff; and, d) internal FRA resources that could be made available to assist the Center have not been utilized.
- The Railroads: The railroads and MBRC are essentially locked in an adversarial rather than cooperative relationship. This is understandable since the railroads had not, before Sections 905 and 906, done the things they are now required to do and MBRC is the unit responsible for making

sure that they comply with the law. We doubt that there will ever be peace between these adversaries, nor do we believe that would necessarily be the best thing for the program. What is mandatory for the program to continue its progress, though, is at least a truce.

- <u>Office of the Administrator</u>: Because the Center has no inherent authority to command compliance of the railroads and other 4R recipients, it must, to a large extent, depend on the strength of the relationship with the Office of the Administrator to get action. Until recently, MBRC management operated as though its substantive reporting relationship was to the MBRC Advisory Committee and not to the Administrator. Thus, no steps were taken to keep the Administrator up-to-date on the program, its priorities, its status, and, importantly, its problems. For its part, the Office of the Administrator tended to take a "traditional" management approach to the Center, i.e., it was permitted to operate independently without direct involvement in its operations unless a problem arose.

  We believe that because the Section 906 program initiative is a special program, a working relationship involving more direct and frequent contact between the MBRC and the Office of the Administrator is called for.

- The MBRC Advisory Committee: The working relationship between the MBRC and its 5-member Advisory Committee is the strongest and most effective the Center has. It is clear that the Executive Director seeks and listens to the advice and counsel of the Committee and that the Committee is dedicated to the Center and advancing the program.
- "Constituencies": The constituencies of the MBRC consist of all the MBEs in the country and the various trade associations representing them. MBRC has wisely established relationships with key trade associations to provide it with linkages to identify MBEs capable of serving the railroads and to have a channel of communication to the minority business community. Almost every trade association with which we spoke is less than pleased with the MBRC - an expected situation since the interests of these associations revolve around their members and none will ever really be satisfied that their members are receiving all of the procurement opportunities and awards they deserve. We believe MBRC has a minimum of responsibility for this situation.

  It is impossible to judge the relationship between MBRC and MBEs at-large. For one thing, most MBEs know little about MBRC although a number were aware of the "railroad program" and some had had contact with one or more of the Center's consultants. The majority of the criticisms of the MBEs were directed at the railroads or at the fact that the "program" hadn't provided them with any or "enough" contracts.

In sum, the essential working relationships between MBRC and other program participants are strained. Some of the strain is the result of MBRC's actions or in-actions and some is the result of other participants not actively trying to be cooperative or to make the very difficult job of MBRC easier. These relationships need to be improved to prevent the divisions that now exist from continuing to inhibit the progress of the Section 906 program.

MBRC OPERATION AND MANAGEMENT SHORTCOMINGS

As the hub of activity for the Section 906 program, MBRC must operate efficiently and effectively if overall success is to be achieved. We do not believe the Center now functions as efficiently or effectively as it should or as it could.

Some of the factors affecting MBRC's operation are not of its making, e.g., it must continually respond to political entreaties which divert both time and attention from the business of running the program, and its performance is largely dependent on the unpredictable actions of two major participant groups over which it has no control, i.e., the railroads and the MBEs. However, even given these "outside" factors, we have concluded that the Center is manageable and that the effectivness and efficiency of its operation to-date could have been substantially improved had its management built effective working relationships with elements whose support and/or cooperation is essential, and had it:

- Utilized basic management tools or implemented sound operating systems and procedures. There are certain basic management tools, operating systems and procedures any organization needs to function efficiently and effectively. Specifically, the MBRC needs but does not have: a) a Concept of Operations that spells out the purpose and objectives of the organization and how each element of it is to function to achieve both near and longer-term objectives; b) an annual Operating Plan that sets out the specific priorities and measurable goals for the year as well as the activities, staffing and financial resources that will be needed (a budget is not a substitute for an operating plan); and, c) a sound operational monitoring and control system/process to ensure that planned activities are being carried out on schedule, within resource limitations and with desired results.

- Assembled and organized a staff with enough of the right kinds of skills to carry out the Center's critical responsibilities. Although the staff of the MBRC is extremely dedicated to the Center and the program it operates, we found that while most of the functional skills needed to carry out the responsibilities of the Center are present among the existing staff: a) the degree of expertise available in the basic business skills, e.g., finance, marketing, economics - is inadequate; b) there is a scarcity of individuals with private sector experience in these basic areas; c) the possessors of some key skills are not working in areas where those skills are used or needed; and, d) some key skills and experience are lacking.

  Basically, we have concluded that MBRC does not now have among its existing professional staff an adequate supply of the types of skills and experience needed to: a) operate a business oriented program; b) perform the types of analyses needed to design financial or market penetration programs; or, c) converse knowledgeably with the railroads about the economic impact of the MBE program on them. We have also concluded, as has the Executive Director, that the Center does not now have enough staff - particularly given what remains to be done in the program.

The Center is over-structured to take maximum advantage of the skills it does have available. With a staff as small as MBRC's, a traditional hierarchical approach is inappropriate.

- Utilized its support contractors in the most efficient and effective manner. The Center was established to operate with a small core-staff and to make heavy use of outside contractors. This concept was and is good because it permitted the flexibility to ensure that needed skills, experience and expertise were available in the right quantities and at the right time without creating a large staff as a permanent part of the FRA. Yet, while the concept of heavy utilization of contractors is sound, it is our conclusion that, in practice, the effectiveness with which outside contractors have been and are being used has been less than desirable. Specifically, we believe that their contribution could have been considerably more if their utilization had reflected better: a) timing in that a great deal of the work they have been asked to do should have been assigned earlier to prevent creating delays in the implementation of major elements of the overall program; b) selection in that we do not believe that in all cases the best contractors available were selected to perform specific functions, and, c) diversity in that the majority of prime contracts have been with black organizations and, as a result, the involvement of the non-black ethnic minorities has been limited. This has caused some to charge MBRC with discrimination against non-black minorities. We do not believe this charge to be factually supportable. Finally, we believe the overall utilization of outside contractors could have been better if extensive overlap and duplication of responsibility among the major contractors did not exist.

- Managed better the expectations of the minority business community: One of the major problems confronting this program is the fact that the expectations of the minority business community exceed the reality of what the program has, to this point, been able to deliver. We believe MBRC could have kept these expectations more consistent with reality had they ensured that the MBEs understood, from the beginning, that: a) not every MBE would benefit from the program; b) the program would not be fully operational immediately; c) contracts would not be available for the asking; d) the average size of contracts in the product and service areas where most MBEs are found would be small; and e) dependence on railroad contracts to keep a business going would be a high-risk undertaking.

The management and operations "short-falls" we have discussed - and which we believe could and should have been avoided in spite of the inherent difficulties of managing so complex a program as the Section 906 effort - are not so serious that they threaten the overall effort with collapse. However, when viewed in terms of the impact these deficiencies have on the ability of the Center to expeditiously implement its programs, the overall effect is to inhibit the effort.

RAILROAD SUPPORT

It is highly doubtful that the Section 906 program has been welcomed with open arms by the railroad recipients of 4R funds. Their critics have told us that the railroads are "dragging their feet" and are doing only what they are forced to do. The railroads, on their behalf, argue that they are doing as much as they can as fast as they can given the nature of the program and the limited assistance they receive from the MBRC.

While we generally agree with the railroads that their ability to achieve substantial minority participation in their procurement is constrained by a number of factors, e.g., the dearth of minority vendors in the "big ticket" procurement areas, e.g., rail, wheels, frogs and switches, it is evident to us that the railroads - as a group* have failed to voluntarily take a number of reasonable steps to meet the requirements that have been placed on them or to take inno-

* - Individual railroads have taken steps to address each of the criticisms that are made of them as a group

vative steps that may well be beyond the legal requirements - but are clearly in the spirt - of institutionalizing a pattern of equal procurement opportunities of minority businesses. Specifically, we find significant fault with the railroads as a group because they have failed to:

- Require their prime suppliers to meet the requirements of Regulation 49 CFR 265 to develop and execute a minority business affirmative action plan even though 70 percent of all procurement dollars go to major suppliers
- Expand the program to cover purchases of staff offices or the utilization of outside services by these offices
- Develop minority vendors in areas where there are few
- Implement a set-aside program as one available and straight-forward means to ensure greater MBE participation in procurements
- Actively promote the MBE program on their own although it is their responsibility for complying and not that of the MBRC
- Be willing to pay slight initial premiums to minority vendors who, over time, could become cost-competitive as their volume increased and economies-of-scale came into play

- Be willing to pay minority vendors expeditiously since most minority businesses operate under severe cash-flow constraints
- Giving white, female-owned companies a disproportionate share of MBE awards when they are fully aware that is not the intent of the legislation. Basically, we believe that the railroads utilize this route as the "easy way out" of the requirements of the program

We have concluded that the level of commitment of the railroads to this program, while probably not less than could be expected, is certainly less than is needed if the program is to be a success in the near-term and the institutionalization of fair and equitable procurement opportunity for minorities is to be a reality for the long-term.

FRA TOP MANAGEMENT INVOLVEMENT

There are a number of reasons the Section 906 program is unlike any other operated by the Federal Railroad Administration. Chief among them are that the program is: a) a minority program with importance and implications beyond the railroad industry or even the overall transportation industry; b) a program operated on a day-to-day basis by minorities and, thus, automatically suspect in the eyes of many; c) an externally oriented program with a large number of sometimes conflicting constituencies; d) a highly visible and politically sensitive program; and, e) an imposed program. For these reasons, the direct involvement of FRA top management with the program is more necessary than it is with any other program or activity in the Administration.

While heavy, direct involvement by the Administrator with this program is subject to be viewed as keeping it "under his thumb", and too little involvement is likely to be viewed as "not caring enough" about the program, the simple fact is that this program - because it is so different and so important - needs more direct involvement than would normally be appropriate. As pointed out earlier, the approach of FRA top management has been "traditional". However, we believe that in the future the program would benefit substantially from the Administrator's being more heavily involved in:

- <u>Publicly supporting and publicizing the program in a formal and consistent manner</u>
- <u>Ensuring that all FRA support units fully understand the program</u>, its potential, and the Administration's and Department's commitment to it
- <u>Being actively involved in major operating and policy decisions</u> affecting the program
- <u>Assisting the Center in some of its critical negotiations</u> with other Government agencies.

* * *

In this section, we have discussed a number of problem areas that have been and are inhibiting the rate of progress in fully implementing Section 906. Importantly, we believe that all of these problems are correctable and discuss this point in more detail in the section that follows.

C - EXISTING PROBLEMS ARE CORRECTABLE

While the existence of problems that inhibit the rate of progress in implementing Section 906 of the 4R Act is a cause for concern, these problems are neither unsolvable nor do they justify even a moment's consideration of de-emphasizing the program. The potential of this program remains strong!

We have developed a course of action we recommend FRA and MBRC take to address the problems that exist. Our recommendations for corrective action are not exotic. In fact, most are basic and straight-forward. It should be pointed-out that these recommendations, like many of the problems inhibiting the progress towards full realization of the objectives of Section 906, are inter-dependent and do not have impact exclusive to one specific problem that may have been identified. However, the recommendations have been grouped for purposes of presentation.

INFORMATION COLLECTION, ANALYSIS AND DISSEMINATION

To improve the efficiency and effectiveness with which essential information is collected, analyzed and disseminated, our major recommendations are that:

- An on-going information collection and analysis process be formally instituted in the MBRC to ensure that the Center and its contractors have the most up-to-date information on procurement patterns of individual railroads and sufficient information about MBEs to permit both the Center and buyers at the railroads to make a decision concerning the capacity and capability of individual companies.

- Computer terminals, with access to the automated listing of MBEs be placed with the Marketing Representatives at the railroads to speed the provision of names of minority firms capable of bidding on a specific procurement to individual buyers. To accommodate the increased activity, the number of Marketing Representatives at each site should be doubled.
- The Requests for Quotations sent out by the railroads be sent directly to identified MBEs from the procurement site rather than through the time-consuming Clearinghouse process that is now in place
- MBRC settle and agree on the monthly reporting format with the railroads so that uniform information can be collected as soon as possible.

SUPPORT PROGRAM EXECUTION

It is important that each of the programs that have been implemented or planned by MBRC to support and meet the overall objectives of Sections 905 and 906 function, individually and collectively, as efficiently and effectively as expected. To this end, we recommend that MBRC:

- Substantially increase its outreach effort so that more firms, larger firms, and more diversed firms can be identified and referred to 4R recipients and their prime suppliers

- Develop, with Public Affairs, a major public awareness program to inform MBEs about the MBRC and its programs
- Increase and improve the amount and quality of the management and technical assistance provided to MBEs by utilizing more skilled and experienced contractors and ensuring that enough assistance is provided an MBE to have a real and positive impact
- Renegotiate the existing agreement with OMBE (MBDA) take advantage of the proposed OMBE (MBDA) shift toward the utilization of more private firms for the provision of technical assistance to MBEs
- Increase the budget for the Acquisition Program to an amount sufficient to ensure each potential acquisition target receives the rigorous analyses necessary before it can be recommended and that the time necessary is spent to consummate the best deal possible for the buyer. A budget of $300,000 - $400,000 should prove sufficient.
- Make an expeditious decision on the surety bonding company so that bonding for the construction firms that will be involved on the Northeast Corridor will be available

- Investigate the feasibility of establishing a premium payment program for selected MBEs with joint-funding by MBRC and the railroads
- Plan to increase the allocations to the small MESBICs so that sufficient leverage capital is available to assist a sizeable group of MBEs to enhance their capability to go after larger railroad contracts. Each MESBIC should be funded for a minimum of $1 million.

CONTRACTED SERVICES

We have indicated that the initial concept of a small core-staff in the Center and the heavy utilization of support contractors is sound. However, we also pointed out that there were some problems with the utilization and capability of some of the contractors. To ensure more effective utilization of support contractors and the selection of highly capable contractors, we recommend that MBRC:

- Restrict all support contractors to a single functional responsibility and that the responsibility be in a functional area in which the contractor has demonstrated skill, experience and expertise
- Ensure a rigorous formal review of the capabilities of all potential contractors before making an award decision
- Limit the activities of the Local Outreach Centers to MBE identification and program outreach since -

given their size and funding levels - it is unlikely that they will be able to carry out the vast number of responsibilities they have in providing management and technical assistance.

POLICY CLARIFICATION

The policy issues over which there still exists confusion should be resolved as quickly as possible and the resolution should be strongly and clearly communicated to all program participants. Specifically, the Department, FRA, and MBRC should move immediately to establish policies addressing the issues of: a) to whom the 15 percent minority participation goal applies; and, b) to what funds it applies. Additionally, the policy implications of Public Law 95-507 for all recipients and their prime suppliers should be determined and a policy statement issued.

WORKING RELATIONSHIPS

The improvement of the working relationships between MBRC and other key participants in the program will go far toward the alleviation of many of the problems now inhibiting program progress. To this end, we recommend:

- A full-day sesssion involving FRA support heads, MBRC senior management, and the Administrator be held to: a) provide an opportunity for MBRC to explain its programs, activities and accomplishments; and, b) permit the discussion of existing difficulties and relationships between the support staffs and Center

- A meeting be convened by the Administrator with the MBRC Executive Director and the Chief Executives of the 4R railroads to "clear the air" between the Center and the railroads
- The Administrator and the MBRC Executive Director participate in one-on-one meetings on at least a monthly basis to discuss the progress of the program, areas in which the Administrator's involvement would be needed or desired, and problem areas affecting the degree to which the Center is able to perform it functions
- The Administrator and the MBRC Advisory Committee meet on a more regularly scheduled basis to engage in a frank exchange of views and advice on issues pertaining to the Section 906 program.

MBRC OPERATIONS AND MANAGEMENT

In order for MBRC and the Section 906 program to be externally effective, the internal operation and management of the Center must, itself, be efficient and effective. Improvements are needed in this area. As initial steps in this direction, we recommend that MBRC:

- Develop a Concept of Operations that spells out the purpose and objectives of the organization and the contribution each element is expected to make toward the achievement of objectives

- Develop a detailed Operating Plan for Calendar Year 1980 that translates its overall objectives into specific priorities, establishes measurable goals to be achieved, and identifies the specific activities that must be carried out to achieve these goals
- Develop and institute sound monitoring and control mechanisms so that: a) the performance of the railroads can be monitored on a regular basis; and b) Center staff and support contractor performance can be measured against schedule, planned accomplishments and projected resource utilization rates
- Consolidate existing MBE files into a single file on the Transportation Computer Center's computer to eliminate the current problem of multiple files that do not match up, and to facilitate access to the file by either the MBRC or the Marketing Representatives on-site at the railroads
- Establish a Technical Advisory Board of railroad procurement specialists to advise the MBRC on its strategies with regard to specific product areas and to assist the Center in shaping its technical assistance programs for MBEs interested in supplying specific products to the railroads.
- Increase the staff available to the Center to ensure that it has a sufficient quantity and variety

of skills to facilitate its operational efficiency and effectiveness. This increase in staff available should include: a) a deputy with a strong operations background; b) a statistician; c) an economic analyst; d) a financial analyst; e) a systems analyst to get the automated and manual systems in shape; and, f) a liaison to the NECIP

- Adopt a matrix organizational structure consisting of program managers who call on and use the functional skills of the remainder of the staff on an as-needed basis.

* * *

As we indicated, our recommendations are basic and straight-forward. However, we believe that if they are implemented they will have a substantial and positive impact on the degree to which the quantitative and qualitative goals of the Section 906 program can be met in the time remaining. Accordingly, we finally recommend that the implementation of these recommendations begin as soon as possible after they have been carefully reviewed.

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