

U.S. DEPARTMENT OF COMMERCE
Office of Inspector General



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RELEASE**

**MINORITY BUSINESS
DEVELOPMENT AGENCY**

*Use of Cooperative Agreements Will Improve
Management and Oversight of the Minority
Business Opportunity Committee Program*

Final Inspection Report No. IPE-10309/March 1998

Office of Inspections and Program Evaluations



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EXECUTIVE SUMMARY

As part of the Office of Inspector General's Department-wide review of interagency and certain other agreements, we reviewed MBDA's use and handling of such agreements. We found that MBDA primarily uses joint project agreements for its Minority Business Opportunity Committee (MBOC) program. Established since 1971, MBOCs are local committees funded by MBDA. They are operated by other federal government, local government, or quasi-governmental organizations that are responsible for planning, creating, coordinating, and delivering resources to promote U.S. minority businesses in the local and global economy. Currently, city, regional, and federal organizations operate 11 MBOCs. Our work for this report grew out of concerns about whether it is prudent for MBDA to continue to use joint project agreements to establish and fund MBOCs.

Based on our review and analysis of joint project agreements and alternatives to those agreements, we concluded that MBDA should instead use cooperative agreements to provide financial assistance to MBOCs. After detailed discussions with our office during this review, as well as the Department's Office of Executive Assistance Management (OEAM) and Office of General Counsel (OGC), MBDA has agreed to switch to the use of cooperative agreements to fund MBOCs.

Interagency and other special agreements are mechanisms for federal agencies to define terms for performing work for others (reimbursable agreements), acquiring work from others (obligation agreements), or coordinating complementary programs without the transfer of funds (memoranda of understanding or agreement, also referred to as unfunded agreements). These agreements can be between Commerce Department entities; or between one Commerce unit and another federal agency, a state or local government agency, a university or other educational institution, a not-for-profit organization, or a private party. They involve a significant amount of federal resources, but are not subject to the same controls as traditional procurement contracts, grants, or cooperative agreements.

Joint project authority (15 U.S.C. §1525) permits an agency to engage in joint projects of mutual interest with a variety of organizations. Joint projects are most appropriate when the federal participant and partner organization each contribute expertise to jointly produce a product or service. But, under certain circumstances—such as with the MBOCs—cooperative agreements are a more appropriate vehicle to fund various federal assistance efforts. Under the Federal Grant and Cooperative Agreement Act (31 U.S.C. §6301 *et seq.*), an executive agency is allowed to use a cooperative agreement when the principal purpose of the relationship is for the federal government to provide assistance in order to carry out a public purpose of support or stimulation authorized by law, instead of directly acquiring a product or service, where a contract would be more appropriate. When a cooperative agreement is used to provide federal funding, substantial

involvement is expected between the executive branch agency and the recipient—when carrying out the activity contemplated in the agreement—as is the case with MBOCs. Our specific findings are as follows:

Use of cooperative agreements instead of joint project agreements will improve MBOC program. Using cooperative agreements to establish MBOCs should improve the award process, and strengthen Department oversight and monitoring of MBOCs, especially as the program continues to grow. It is also important to highlight that we believe the award process for joint project agreements is generally less thorough than for cooperative agreements because (1) the normal review process for grants and cooperative agreements is not usually used, and (2) joint project agreements are not generally awarded competitively. In particular, such awards are only reviewed by OGC for legality and proper legal authority. Legality refers to whether the agreement is permissible while legal authority review helps ensure that the agreement includes the necessary references to the legal authority used to undertake the agreement.

The current MBOC award process is not as rigorous, because it does not routinely require such prudent steps as providing for a Department review of the justifications for the awards (whether for a sole-source award or a competitive award). No credit or name checks, or preaward audit reviews are performed. In addition, the joint project agreements that fund the MBOCs do not provide for adequate oversight mechanisms because the awards made under joint project agreements are not subject to oversight and review from other important departmental parties. For example, the joint project agreements are not reviewed by the Department's federal assistance administration office. Without these reviews, it is less likely that appropriate action will be taken to correct operator deficiencies or problems with joint project agreements, such as improper conditions in, or retroactive extensions of, an agreement.

OEAM, the office that oversees the Department's federal assistance programs, possesses the expertise and independence to provide guidance to the recipient and MBDA, review the *Federal Register* notice announcing the MBOC program, and to supplement MBDA's review of all recipient (MBOC operator) reports. Fortunately, MBDA's recent decision to switch MBOC awards to cooperative agreements should ensure that these supplemental actions and reviews will occur. OEAM's mission includes development, oversight, and implementation of the Department's financial assistance policies, and oversight of the Department's audit follow-up program for financial assistance programs.

In addition, OGC will provide additional safeguards to ensure adequate care is taken when awarding and monitoring MBOC cooperative agreements. The OGC, in its role, will ensure that the *Federal Register* notice soliciting applications for the MBOC program is fair and proper, which can prevent award protests and help ensure a broader response and high-quality applications. Under the process for cooperative agreements, OGC will also examine the financial

assistance application kit before it is sent to prospective applicants. In addition, OGC will examine award packages before they are finalized.¹

Also, after the switch to the use of cooperative agreements takes place, OIG will perform several checks to help verify that the MBOC operator is qualified and operating properly. OIG will, for example, perform name and credit checks, as appropriate, for prospective MBOC operators, and perform other checks in order to recommend whether MBDA should deny, delay, condition, or unconditionally approve the award. After the award is made the OIG may perform interim and final audits on an as-needed basis.

While MBDA should continue to provide program guidance and assess the performance of the MBOCs, the program also requires supplemental oversight by entities outside of MBDA. This will help to ensure consistency in the selection process, provide adequate oversight during the performance of the agreement, and help enhance overall MBOC effectiveness. Funding MBOCs via cooperative agreements would also make the program subject to the same type of oversight as MBDA's other major assistance program, the Minority Business Development Centers.

After we met with MBDA officials to discuss converting to the use of cooperative agreements, for funding MBOCs, MBDA agreed to do so. OEAM and OGC have also agreed that conversion is desirable and are playing key roles in the conversion process. We appreciate the efforts of these parties in working to implement the changes in a timely fashion. MBDA needs to work closely with OGC, OEAM, and the OIG to ensure a smooth transition to the cooperative agreement format and to improve the oversight and management of the MBOC program. First, MBDA should continue discussions with OEAM, OGC, and the OIG to ensure that the transition to cooperative agreements takes places in a timely and efficient manner, including prompt creation of the application kit and timely publication of a notice, in the *Federal Register*, announcing the availability of funds under the MBOC program. Second, MBDA should implement and retain a one-year, multiple award system for MBOCs, and eliminate, to the greatest extent possible, the extension of awards.

MBDA can take other actions to improve MBOC program. We also note that while it is *not* required for all cooperative agreements to be competitively awarded, making the award process competitive would likely give MBDA a larger group of award candidates from which to choose, which should result in a stronger program. The MBOC program director stated that competition will occur, as described in the departmental guidance, and that MBDA will include additional factors, such as geographical diversity, in making award decisions. We agree with MBDA's move to introduce competition into the MBOC award process.

¹ As with other departmental grants, OGC will examine award packages for all awards *except* competitive awards of less than \$100,000.

On page 16, we offer three recommendations to assist MBDA in its transition from joint project agreements to cooperative agreements.



In responding to a draft of this report, MBDA's Director agreed with the report's recommendations. Specifically, the Agency agreed that the use of cooperative agreements will improve management and oversight of the MBOC program and stated that it is taking steps to implement our recommendations. MBDA's response is included as an appendix to this report.

INTRODUCTION AND BACKGROUND

Due in part to the concerns raised in previous reports,² in the summer of 1997, the Office of Inspector General began a Department-wide review of interagency and certain other agreements. As part of this review, we looked at MBDA's use and handling of such agreements. We found that MBDA primarily uses joint project agreements for its Minority Business Opportunity Committee (MBOC) program. Interagency, joint project and other such agreements are arrangements—other than, grants, cooperative agreements, loans, or traditional procurement contracts—between Commerce Department entities; or between one Commerce unit and another federal agency, a state or local government agency, a university or other educational institution, a not-for-profit organization, or a private party. These agreements may be entered into under differing legal authorities and, depending on the legal authority used, have different names, such as joint project agreements, memoranda of understanding, and memoranda of agreement. Many of these agreements are entered into pursuant to authority granted by either the Economy Act (31 U.S.C. §1535-1536) or the Department's joint project authority (15 U.S.C. §1525).

Established in 1969 by Executive Order 11458, MBDA has as its mission "to increase the opportunity for racial and ethnic minorities to participate in the free enterprise system through the formation, development, and preservation of competitive minority owned firms." MBDA is specifically charged in Executive Order 11625, which superceded Executive Order 11458, with (1) implementing federal policy in support of the minority business enterprise program, (2) providing technical and management assistance to disadvantaged businesses, (3) assisting in demonstration projects, and (4) coordinating the participation of all federal departments and agencies in an increased minority enterprise effort. MBDA also assists minority enterprises in identifying sources of financing and in preparing financial and bonding proposals.

In addition to its headquarters in Washington, D.C., MBDA has five regional offices (Atlanta, Chicago, Dallas, New York, and San Francisco) and four district offices (Boston, Los Angeles, Miami, and Philadelphia). MBDA staff in these offices manage assistance services in multi-state regions. MBDA also helps fund several programs designed to assist minority businesses: Minority Business Development Centers (MBDCs), Native American Business Development Centers, Business Resource Centers, and MBOCs.

The agency has recently experienced large budget cuts, including a 25 percent decrease in FY 1996 funding (from \$43 million to \$32 million), and the associated elimination of 56 headquarters positions (out of 85). In light of the difficult budget environment, MBDA designed

² *NTIA Interagency Agreements*, Institute for Telecommunications Sciences, Boulder, Colorado, (IRM-5723, January 1994), and *National Technical Information Service: Management and Procurement Deficiencies Related to the CyberFile Project*, (IPE-9364, March 1997).

a reinvention strategy, based on a series of studies which covered 30 cities and identified the needs of minority entrepreneurs. The strategy lessens MBDA's reliance on MBDCs, while offering a range of delivery mechanisms, including a proposed expansion of the MBOC program.

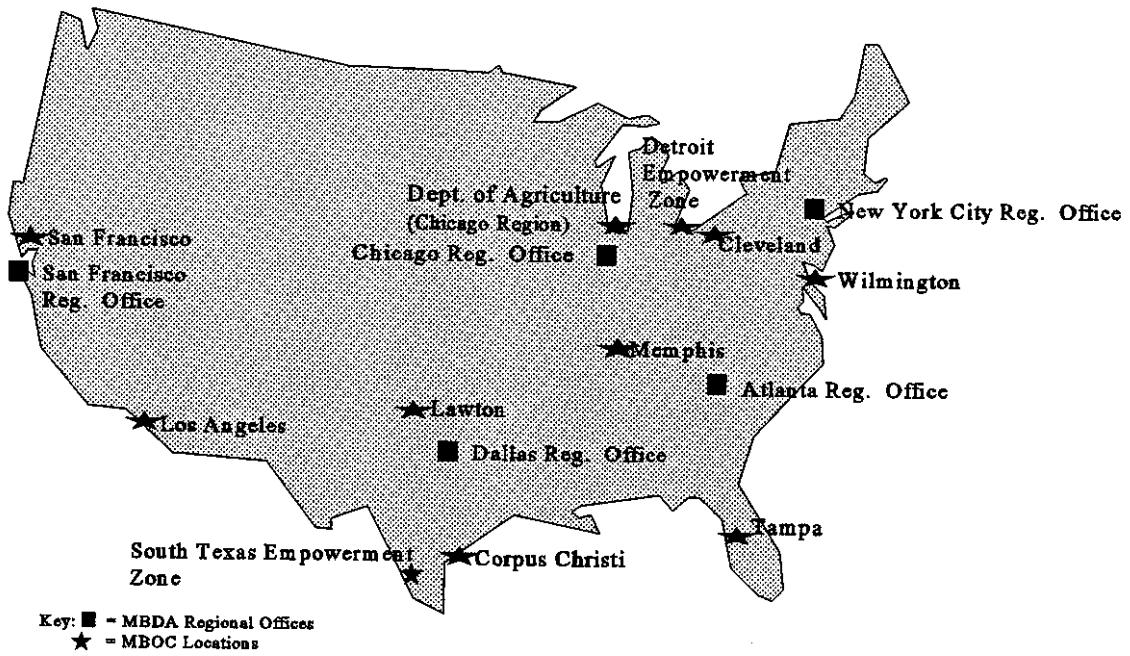
MBOCs are local committees operated by other federal government, local government, or quasi-governmental organizations that are responsible for planning, coordinating, creating, and delivering resources to promote minority business development in the local and global economy. Participants in the MBOC program include federal, state, and local government representatives; major private sector firms and organizations; educational institutions; and other individuals and groups who contribute to the economic growth of a community.

The primary goals of an MBOC are to increase opportunities for minority entrepreneurs and to facilitate the capacity of institutions to promote continuing minority business success. MBOCs are intended to function as outreach organizations, mobilizing resources and acting as a clearinghouse for market opportunities and other valuable business information in local communities. MBOCs serve as advocates for the full inclusion of the minority-owned businesses in the economic life of the community, including the expansion of public and private sector purchasing from minority firms. Unlike MBDA's MBDC program, MBOCs are not intended to provide technical assistance to businesses.

MBDA established the MBOC program in 1971. The MBOCs were originally committees composed of representatives of the various federal agencies in each federal regional city. They were often staffed and led by an official of an agency with a large regional office, such as the Department of Defense. MBDA provided staff support, but not funding, for the early MBOCs. The MBOCs focused their efforts on helping minority entrepreneurs gain access to federal contracts. MBDA modified the MBOC concept, in 1993, by providing funding to the MBOCs to be staffed and managed by local, state, or regional entities. The move away from federal agency sponsorship of MBOCs was made, in part, because the federal partners did not provide matching funds. Currently, only the Chicago MBOC is operated by a federal awardee.

MBDA funding to the 11 currently operating MBOCs is provided on a matching basis. Total MBOC funding is \$3.5 million annually. MBDA's share of this funding is \$2.29 million (65 percent), while other organizations provided \$1.26 million (35 percent). The amount of MBDA financial support to individual MBOCs varies greatly, ranging from \$70,000 in Corpus Christi, Texas, to \$583,000 in Los Angeles. The percentage of MBDA support to individual MBOCs varies greatly as well, from 39 percent in Wilmington, Delaware, to 87 percent in Chicago. MBDA's MBOC funds typically pay for a full-time executive director and support staff to develop and coordinate the activities of the MBOC. Exhibit 1 shows the location of the MBOCs and MBDA regional offices, and Table 1 shows the funding levels for the MBOCs.

Exhibit I: Location of MBOCs and MBDA Regional Offices



**Table 1: MBDA MBOC Agreements
(as of February 1998)**

MBOC Operating Organization	Annual Funding			Expiration Date
	MBDA	Matching	Totals	
City of Wilmington, Delaware	\$75,000	\$118,000	\$193,000	9/30/97 ^a
Detroit Empowerment Zone (affiliated with City of Detroit)	200,000	76,000	276,000	11/30/97 ^a
City of Cleveland	108,000	103,000	211,000	11/30/97 ^a
U.S. Department of Agriculture (Chicago)	180,000	27,000	207,000	3/31/98 if renewed, will be a cooperative agreement
City of Corpus Christi, Texas	70,000	35,000	105,000	8/31/98 ^b
South Texas Empowerment Zone (regional government organization)	167,000	100,000	267,000	11/30/98 ^c
City of Los Angeles	583,000	464,000	1,047,000	7/31/98 ^b
City of Tampa	206,000	71,000	277,000	12/31/97 ^a
City of Memphis	250,000	100,000	350,000	8/30/98 ^b
City of Lawton, Oklahoma	158,145	100,000	258,145	8/30/98 ^b
City of San Francisco	285,000	165,000	450,000	8/30/98 ^b
TOTALS	\$2,282,145	\$1,359,000	\$3,641,145	

^a Agreement is being modified to expire on December 31, 1998.

^b MBDA will either convert the agreement and extend the expiration date to December 31, 1998, or allow the MBOC to submit an application in response to a planned notice in the *Federal Register* which will solicit MBOC applications for cooperative agreements.

^c This MBOC was converted to a cooperative agreement.

MBDA *Administrative Order 718* provides the policy and procedures for developing, approving, and coordinating all MBDA interagency agreements and memoranda of understanding. In addition, MBDA *Administrative Order 719* sets forth the bureau's policy and procedures for funding MBOCs and assessing their performance.

MBDA uses the Department's joint project authority to establish and fund the MBOCs. The Department's joint project authority (15 U.S.C. section 1525) permits the agency to engage in joint projects or perform services on matters of mutual interest for nonprofit organizations, research organizations, or public organizations and agencies. The total costs (sum of costs for all participants in the joint project) for such projects must be apportioned equitably as determined by the Secretary of Commerce, who may waive payment of any portion of such costs when authorized under Office of Management and Budget (OMB) regulations. Joint projects may be performed only if (1) the project cannot be done at all or as effectively without the participation of all parties to the project and (2) the project is essential to the furtherance of the Department's programs. Under joint project authority, a binding commitment on the part of each agency obligates all funds specified in the agreement at the time the agreement becomes effective. Thus, funds transferred to Commerce under this authority are treated as Commerce funds and can be carried over to the next fiscal year.

There has been some discussion, prior to our review, about MBDA's use of joint project authority for funding MBOCs. The Department's Office of the Secretary conducted a study of MBDA and recommended, in June 1997, that MBDA consider whether it should switch to the use of cooperative agreements for the MBOC program.³ Earlier, in a 1994 memorandum to MBDA, the OIG had raised questions about the appropriateness of using joint project authority to fund the MBOCs.⁴ During follow-up discussions that same year with OGC and MBDA, we expressed our concerns that the MBOC awards were not receiving adequate levels of review by both MBDA and departmental units. We also questioned whether using Section 1525 authority (i.e., using a joint project agreement) was the proper vehicle to provide such a large amount of funding (\$905,000) to one particular MBOC, and whether it was appropriate for one agency official to initiate and approve MBOC awards without sufficient legal review.

³ *MBDA Management Review*, June 1997.

⁴ Office of Inspector General memorandum for Michael C. Rogers, Director, Minority Business Development Agency, October 1994.

PURPOSE AND SCOPE

In reviewing the Department's use of interagency and other special agreements, we will assess, in a series of inspections, (1) the effectiveness and efficiency of the Department's and the bureaus' processes for undertaking these projects, (2) Department and bureau oversight of the projects, (3) the relevance of such projects to the Department's goals and objectives, and (4) whether such agreements are being used to circumvent grant or financial assistance and contract processes.

In the case of MBDA, we sought to evaluate its use of joint project agreements as the mechanism for establishing and funding MBOCs. This included determining whether the use of joint project authority is appropriate, or whether the MBOC program would be better served if cooperative agreements, grants, or another form of funding arrangement were used. In addition, we examined whether the MBOC award process is adequate, and whether additional oversight is warranted.

Our field work was conducted between July 1997 and January 1998. In conducting the inspection, we (1) reviewed the structure and basis for establishing and funding MBOCs using joint project authority; (2) interviewed appropriate MBDA officials in headquarters and regional offices, OEAM officials, and OGC representatives; and (3) examined pertinent files and records relating to the MBOC operations and management.

We did not review the effectiveness of the overall MBOC program or of individual MBOCs. Rather, we focused on the characteristics of the instrument used to support the MBOCs and how those factors affect critical management and oversight functions. Inherent in our review is the assumption that the authority used to establish and fund MBOCs can greatly affect their performance and the perceptions about whether MBOCs are awarded, reviewed, and renewed fairly and properly.

Our review was conducted in accordance with the Inspector General Act of 1978, as amended, and the *Quality Standards for Inspections*, issued by the President's Council on Integrity and Efficiency.

OBSERVATIONS AND CONCLUSIONS

I. Using Cooperative Agreements Instead of Joint Project Agreements Will Improve MBOC Program

By using joint project agreements, we believe that MBDA has not chosen the best vehicle to fund its MBOCs. There are few, if any, advantages to using joint project agreements, and they provide MBDA with less than optimal oversight of the award process and subsequent MBOC operations. While joint project agreements may be easier to execute because they require fewer levels of approval, it is better to use cooperative agreements because the additional review steps for cooperative agreements will strengthen the MBOC award and monitoring process and eliminate the weaknesses associated with the use of joint project authority.

Cooperative agreements are clearly an appropriate vehicle to fund and establish MBOCs. Under 31 U.S.C. §6305, an executive agency is allowed to use a cooperative agreement when the principal purpose of the relationship is to transfer a thing of value to a state, local government, or other recipient, in order to carry out the public purpose of support or stimulation authorized by law, instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use by the U.S. government, where a contract would be more appropriate. With a cooperative agreement, substantial involvement is expected between the executive branch agency and the recipient when carrying out the activity contemplated in the agreement. MBDA procedures for MBOCs call for strong interaction between agency officials and awardees, including: (1) holding extensive discussions with potential applicants, (2) conducting visits and quarterly reviews to evaluate awardee performance, and (3) holding decision-making authority over MBOC personnel selections.

After discussions with our office, OEAM, and OGC, during this review, MBDA has agreed to use cooperative agreements to fund all MBOCs. Under this type of agreement, OEAM will assume a major role in ensuring that the award process and subsequent MBOC operations satisfy federal and Department rules and regulations. In addition, OGC and OIG will also provide additional reviews. We believe this new process will (1) help improve MBOC operations and avoid irregularities, such as retroactive extensions of agreements, (2) provide useful independent guidance to the award recipient, and (3) supplement the oversight and review of all MBOC operations and reports. While the new process does not guarantee that problems will not occur, it provides adequate steps and controls to lessen the chances of problems. Table II shows the additional oversight and administration to be provided by the Department and MBDA as the MBOCs convert from joint project agreements to cooperative agreements.

**Table II: Major Reviews and Actions for MBOCS:
Joint Project Agreements Versus Cooperative Agreements**

Procedure or Action	MBOC Joint Project Agreements (current practice)	Cooperative Agreements (Proposed Funding Instrument)
Federal Register notice soliciting MBOC proposals	No	Yes
Review panel reports, recommendations, and competitive evaluation forms in award package	No	Yes
Applicant's proposal in award package	Yes	Yes
Application for federal assistance in award package	No	Yes
MBDA project clearance and approval sheet in award package	No	Yes
Budget and reservation of funds information in award package	Yes	Yes
Time-phased plan in award package	Yes	Yes
A. Certifications regarding debarment, suspension, and other responsibility matters; drug-free workplace requirements and lobbying in award package B. Disclosure of lobbying activities standard in award package	Yes	Yes
Staff time allocation chart in award package	No	Yes
Recipient's letter requesting amendment and all related correspondence in award package	Yes	Yes
Department legal review of agreement (OGC)	Yes	Yes
Department legal review of award package (OGC)	No	Yes ¹
OIG review of award package, including name and credit checks	No	Yes
Recommendation memorandum for new award in award package	Yes	Yes
Federal assistance information provided to awardees	No	Yes
Performance evaluations and required reports maintained in award file.	Yes	Yes
Audit performed on awardee receiving more than \$300,000 annually	Yes	Yes
Independent group (OEAM) can request MBDA to pay for audit of awardees, regardless of award amount	No	Yes
Independent (FARB) review of proposed increases in funding and renewals for MBOCs receiving over \$100,000 annually	No	Yes

¹ Except for agreements of less than \$100,000 that are awarded competitively.

A. New review steps will strengthen MBOC award and monitoring processes

With the use of joint project authority, MBOC agreements currently are not subject to many useful review steps that are provided for grants and other financial assistance awards. In part, this is because OEAM, OGC, and OIG are not required to review joint project agreement packages. Changing the MBOC funding mechanism to a cooperative agreement will trigger several additional review mechanisms.

OEAM will provide oversight of MBOC cooperative agreements

When cooperative agreements are used, OEAM will examine the proposed agreements for adequacy of terms and conditions, ensure that the awardees understand vital terms and conditions, and validate the award procedures. Such actions will minimize weaknesses in the award process and help reduce subsequent questions as to whether performance of the MBOCs may be adversely affected by the lack of a more rigorous selection process (see page 11). In addition, the OEAM review should result in MBDA including more useful information in each award package. MBDA will now prepare an award package that includes an official application for federal assistance and an MBOC staff time allocation chart. These items serve to provide critical information about the applicant and the use of staff to accomplish the goals of the cooperative agreement.

Also, we note that OEAM will create a recipient file to assist in (1) handling administrative issues related to MBOC operations, (2) answering questions or complaints about the award process, (3) evaluating awardee performance, (4) clarifying previous communications with the grantee regarding terms and conditions or other critical elements of an MBOC's performance, (5) maintaining an accurate history of the grant administration, and (6) evaluating whether an existing MBOC should receive a subsequent award. Presently, OEAM does not maintain an MBOC recipient file, nor does it perform the other actions above.

Given that the federal government's share of MBOC funding is \$2.28 million (65 percent of all MBOC funds) and the plans for the growth of the MBOC program, as confirmed to us by the MBDA Director, annual audits of some or all the MBOCs may be prudent. For cooperative agreements that it oversees, OEAM can ask MBDA to initiate an audit if there is a history of problems, or for other good cause. OEAM has expertise in arranging for and monitoring such audits and tracking compliance with audit recommendations. A recent change in OMB provisions increased the threshold award amount for automatic annual audits to \$300,000, meaning that, under current MBOC funding amounts, only the Los Angeles MBOC would be automatically audited annually. The remaining MBOCs are now exempt from automatic federal audit requirements under the June 1997 provisions of OMB Circular A-133, which exempts most entities receiving less than \$300,000. However, OEAM, or the other applicable departmental grants offices, can call for audits without using A-133, when necessary, as noted above.

Finally, MBDA plans to place a notice in the *Federal Register* announcing the MBOC program and soliciting applications, which will trigger another OEAM review action. OEAM and OGC will review the notice for accuracy and compliance, a practice which will help to ensure that the MBDA selection process is fair and competitive. Using a public announcement that is reviewed outside the awarding agency should result in increased competition and openness in the award process.

Expanded oversight by OGC and OIG will further strengthen MBOC review process

Currently, the only Department level review of MBOC joint project agreements comes from OGC. OGC reviews several features of agreements, primarily justification and legal authority. However, this type of review is not designed to detect potential weaknesses in the MBOC selection and administrative process. For example, OGC does not assess the adequacy of the award process. Therefore, we believe that while review of an agreement's justification and legal authority is necessary, it is neither sufficient nor designed to assure the Department that the award selection process is adequate. The OGC official responsible for managing the reviews of MBOC agreements confirmed that his office's review is limited to an examination of the agreement for legal consistency—essentially determining whether an agreement is valid, not whether it is the most appropriate funding instrument.

Both MBDA and OGC officials stated that when cooperative agreements are used for funding MBOCs, OGC will expand its review to include additional steps. First, OGC will review the proposed notice of intent to make MBOC awards which will be published in the *Federal Register*. Under the joint project agreement structure, MBDA is neither required to, nor does it voluntarily, print a *Federal Register* notice of intent to make MBOC awards. The OGC review will ensure that the MBOC notice is fair and proper, which can prevent award protests and help ensure a broader response and high-quality applications. The notice will contain such information as evaluation criteria (basic qualifying factors) and selection factors (used to distinguish among qualified applicants). The *Federal Register* notice, in combination with agency rules and procedures, defines the program.

Under the process for cooperative agreements, OGC will also examine the financial assistance application kit before it is sent to prospective applicants. In addition, OGC will examine award packages before they are finalized.⁵

In addition, the OIG will review several aspects of the MBOCs after the switch to cooperative agreements takes place. First, the OIG will perform name and credit checks, as appropriate, for

⁵ As with other departmental grants, OGC will examine award packages for all awards except competitive awards of less than \$100,000.

prospective MBOC operators. In addition, the OIG will review completed audit and inspection reports and investigative files for negative findings on the proposed recipient and discuss ongoing audit and/or inspection work related to proposed recipients with the OIG staff performing the work to ascertain potential problems that need consideration before an MBOC award is approved.

The OIG uses this information to evaluate the ability of the proposed recipient to properly administer federal funds. Based on this analysis, the OIG is able to recommend corrective action before an award is made or renewed. Recommendations to program and grant officials address whether the agency should deny, delay, condition, or unconditionally approve the award. After the award is made, the OIG may perform interim and final audits on an as-needed basis.

B. Weaknesses in the joint project authority review process will be corrected

The joint project agreements used to establish MBOCs do not routinely provide a thorough and independent award process. Because MBOCs were funded as joint project agreements, relatively little review of the award process took place outside of MBDA, as such external review was not required. Under joint project agreements, MBDA selected MBOC operators through an informal process, which raised questions about the validity of the selections and the selection process. For example, no announcements were made to solicit applications, the amount of money available and the matching fund requirements were not clear, or made public, and no official application kits were available. In addition, according to several MBDA officials, MBDA management sometimes awarded MBOCs based almost entirely on location. While location is a legitimate criterion in choosing an MBOC, such a narrow focus on one criterion does not leave adequate room for soliciting and generating proposals nationwide that may be superior to those selected under the narrower selection process.

The MBDA selection process for joint projects is not as useful as the process for cooperative agreements because it does not include valuable review steps described throughout this section. The joint project selection process used for MBOCs often, but not always, included a visit or series of visits by a senior MBDA official to the MBOC candidate city. An application was then submitted that included cost share information and quantitative evidence showing that an area would benefit from an MBOC and detailed other commitments the MBOC must make. The MBOC program director stated that negotiations with an awardee over the conditions of the award were common. After an agreement was written, the MBDA chief counsel reviewed the draft agreement and sent it forward to OGC for review of justification and legal authority. The agreement was then presented to MBDA and the awardee for signature. (We note that OIG, OEAM review, extensive OGC review, and an official request for proposal published in a *Federal Register* notice, are not included in this process.

There are, however, several strong features of MBDA's current award policy that should be continued with the use of cooperative agreements. These include preaward evaluation to make sure the potential MBOC: (1) has a work plan that addresses the needs of minority business enterprises (MBEs); (2) can identify procurement opportunities available for MBEs; (3) has a program designed to address the business needs of local MBEs; and (4) has obtained commitments to participate in the MBOC project from both minority and non-minority business persons and companies, and state and local procurement officials.

The review process for MBOCs under the cooperative agreement authority will be more standardized and thorough than the previous MBOC review process, according to officials from OEAM and OGC, and to procedures set forth under *Departmental Administrative Order 203-26, Department of Commerce Grants Administration*. After applications are submitted in response to the *Federal Register* notice, a panel of at least three non-MBDA reviewers will examine each properly submitted application. Independent review by several people is necessary to eliminate bias and potential manipulation by those too close to the program or otherwise less qualified to objectively review applications. The review panel will recommend by rank-order priority the most qualified applicants. The MBDA program manager will make the final decision, justifying any deviation from the ranking of applicants cited by the review panel.

The MBDA decision will then be presented to a Department of Commerce grants officer to verify that the entire award process was adequate. If the OEAM grants officer determines the process was not adequate, corrective action must be taken. The grants officer checks for structural problems in the awards process that would hinder competition. For example, a significant structural problem would exist if the criteria used to evaluate applications differed materially from the criteria cited in the *Federal Register* notice.

Under the new plan endorsed by MBDA, the MBOC award and review process will be much more uniform and transparent than before. The advantages of increased competition, especially the openness of the process, should result in a stronger program. We note that MBDA's largest program, the Minority Business Development Centers, uses competitively awarded grants that go through the OEAM for review (see page 13 for further discussion of the competitive award process).

According to the MBOC program manager, MBDA plans to work closely with OGC, OEAM, and the OIG to ensure a smooth transition to the use of cooperative agreements. Issues still to be determined include the composition of the application kit, and the wording and timing of the *Federal Register* announcement of the MBOC program, which will also solicit MBOC award applications and announce MBDA's tentative plans for a January 1999 start date for all new MBOC cooperative agreements. In addition, for MBOCs expiring before January 1, 1999, MBDA must decide whether to extend them as cooperative agreements through December 31, 1998, or simply place those MBOCs in the competitive pool with other applicants responding to

the *Federal Register* notice. These issues need to be examined promptly to ensure that the transition to cooperative agreements is accomplished in a timely manner.

II. MBDA Can Take Other Actions to Improve MBOC Program

As noted in *Purpose and Scope*, we did not attempt to assess the performance or effectiveness of the MBOC program. Nevertheless, we did make two observations that warrant the attention of MBDA's management. First, as mentioned previously, we brought the issue of competition in the MBOC award process to the attention of MBDA management during our review. MBDA's decision to introduce competition into the MBOC award process makes sense because it may give MBDA a larger and stronger group of applicants. Second, MBOCs should not be allowed to operate for interim periods without valid agreements, as was the case for several MBOCs over the last two years.

A. MBDA's decision to introduce competition into the award process is sound

First, the Department requires that discretionary grants and cooperative agreements go through competitive review, unless a special waiver is obtained. *Departmental Administrative Order 203-26* states that "DoC discretionary grant [which includes cooperative agreements] program awards shall be made on the basis of competitive review." The minimum requirements for competitive review, which would apply to MBOC cooperative agreements, include:

- (a) An application is reviewed only when it has been submitted in response to an application notice published in the *Federal Register* or any additional publication used by the organization unit.
- (b) Applications are treated fairly under the review process.
- (c) Each application receives an independent, objective review by one or more review panels qualified to evaluate the applications submitted under the program.
- (d) Each review panel uses the selection criteria that apply to the program covered by the application notice.
- (e) After the review panel has evaluated the applications, the organization unit (operating units authorized to award or administer financial assistance—in the case of MBOCs, MBDA) prepares a rank ordering of the applications based solely on the evaluations by the review panel.
- (f) The organization unit determines the order in which applications will be selected for funding based on the following factors:
 - (1) Any priorities or other program requirements that have been published in the *Federal Register* and apply to the selection of applicants for new awards; and
 - (2) The rank order of the applications established by the review panel on the basis of the selection criteria.
- (g) The Grants Officer may choose not to fund a highly ranked application based on certain high risk factors.

In addition, increasing the competitiveness of the MBOC award process may give MBDA a larger, and stronger, group of potential MBOC operators from which to choose, thereby resulting in a more robust and successful program. Therefore, we endorse MBDA's plan, as described by the MBDA program director, to introduce competition into the award process for all MBOCs.

We stress that competition may take many forms, and MBDA officials may weigh criteria, such as geographical location, according to their best judgement. The criteria for the awards will still be the prerogative of MBDA management. For example, according to the MBOC program director, geographic distribution is likely to be deemed important by MBDA management. Therefore, that factor, or any other legitimate characteristic, can be given due consideration in the award process. Likewise, MBDA will not be forced to accept the "lowest bid" for MBOC operators. MBDA will still be able to base its decisions on the relevant factors it views as most important. Such selection criteria will be laid out in the MBOC program public announcement in the *Federal Register*.

B. MBOCs should not be allowed to operate for interim periods without valid agreements

In several instances, during the last two years, retroactive extensions of MBOC agreements were made. This is an administrative issue of great importance because retroactive extensions put both the operator and MBDA at risk. First, in the case where an MBOC is under consideration for a renewal, the operator may be required to operate with its own funds for months, without assurance that MBDA will be able to renew the funding agreement. Second, operating in such an uncertain manner may harm the effectiveness of the MBOC, result in staffing losses or uncertainties, and give potential operators doubts about MBDA's ability to adequately manage and fund the MBOCs. For example, at the time of our review, the Los Angeles MBOC had been operating since August 1, 1997, without an agreement. Several other MBOCs (Alameda, Chicago, Cleveland, and Detroit) were operating under extensions of their original agreement or were operating on their own, pending extension or renewal decisions.⁶

According to the MBOC program director, MBDA plans to announce the availability of program funds via a public announcement in the *Federal Register*, in the summer of 1998. Awards would be made in the fall, with 12-month funding for each awardee to begin in January 1999. Because MBDA plans to award all new MBOC cooperative agreements for the same funding period (January through December), extensions should be less likely. We encourage MBDA to implement and retain a one-year, multiple award system, and work to avoid extending awards.

⁶ The Alameda MBOC was not renewed.

RECOMMENDATIONS

We concur with MBDA's plans already underway to change the instrument used to fund MBOCs from joint project agreements to cooperative agreements. In that regard, we recommend that MBDA's Director take the following actions without delay:

1. Establish the MBOC program as a competitive financial assistance program, in line with departmental orders and other guidance. Establish and implement an MBDA policy to use cooperative agreements and the competitive award process for all MBOC financial assistance awards (see page 7).
2. Continue MBDA's discussions with OEAM, OGC, and the OIG to ensure that the transition to cooperative agreements takes place in a timely and efficient manner, including prompt creation of the application kit and timely publication of a notice in the *Federal Register*, announcing the availability of funds under the MBOC program (see page 11).
3. Implement and retain a one-year, multiple award system for MBOCs, and eliminate, to the greatest extent possible, irregular award or renewal actions such as retroactive extensions of MBOCs (see page 13).

In responding to a draft of this report, MBDA's Director agreed with the report's recommendations. Specifically, the Agency agreed that the use of cooperative agreements will improve management and oversight of the MBOC program and stated that it is taking steps to implement our recommendations. MBDA's response is included as an appendix to this report.

APPENDIX--AGENCY COMMENTS



UNITED STATES DEPARTMENT OF COMMERCE
Minority Business Development Agency
Washington, D.C. 20230

March 26, 1998

MEMORANDUM FOR: Jill Gross
Acting Assistant Inspector General
Inspections and Program Evaluation

FROM: Courtland Cox 
Acting Director

SUBJECT: Draft Inspection Report No.
IPE-10309 / March 1998

The Minority Business Development Agency (MBDA) has reviewed the subject report and does not have any comments regarding the content. The Agency agrees that the use of Cooperative Agreements will improve management and oversight of the Minority Business Opportunity Committee Program, and we are taking steps to implement your recommendations.