

QUESTION:

IF ANOTHER FEDERAL AGENCY ADMINISTERS A FEDERAL-AID CONTRACT OR UNDERTAKES A FEDERAL-AID PROJECT AT THE REQUEST OF A RECIPIENT, IS THE OTHER FEDERAL AGENCY SUBJECT TO THE REQUIREMENTS OF TITLE 49 CFR PART 26?

ANSWER:

- No. The USDOT DBE program requirements apply to the activities of non-Federal recipients of DOT financial assistance specified in 49 C.F.R. § 26.3. The purpose of the USDOT DBE program is to ensure that Federal funds distributed to state, local, and regional authorities are not used to engage in discriminatory conduct or to perpetuate the past effects of discrimination by denying contracting opportunities to small disadvantaged businesses.
- Similarly, it is the policy of the Federal government to ensure that small disadvantaged businesses have the maximum practicable opportunity to participate in the performance of contracts let by Federal agencies. Establishing and implementing a DBE program consistent with the requirements of Title 49 part 26 is a condition the Federal government places on the receipt of Federal funds by non-Federal authorities. It is not a condition that Congress intended to impose on Federal agencies through Federal assistance programs created to support state, local, and regional authorities. Federal agency conduct in this regard is governed by different statutory and regulatory requirements.
- Most Federal agencies have programs analogous to the DBE program aimed at ensuring equal opportunity for minority and women owned businesses to participate in Federal contracting. If another Federal agency is authorized to administer a Federal-aid contract or project on behalf or at the request of a recipient of USDOT financial assistance, the other Federal agency and the recipient should agree on how the other Federal agency will contribute to the recipient's achievement of its annual overall DBE goal. The other Federal agency must be willing to report to the recipient its DBE achievements on DOT assisted contracts for inclusion in the reports made by the recipient to the appropriate operating administration.
- The Federal Acquisition Regulations would govern the procurement activities undertaken by the other Federal agency.