
INDIANA DEPARTMENT OF TRANSPORTATION

Disadvantaged Business Enterprise (DBE) Program Manual

**Revised
June 30, 2011**



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I. GENERAL

A. Issuing Agency

Indiana Department of Transportation
100 North Senate Avenue
Indianapolis, Indiana 46204-2217

B. Effective date

July 1, 2011

C. Statutory Authority

The Indiana Department of Transportation's (INDOT) Disadvantaged Business Enterprise (DBE) Program applies to federal aid highway funds authorized under Titles I (other than Part B) and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 105 Stat. 1914, or Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178, 112 Stat. 107. It also applies to federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by federal transit law in Title 49, U.S. Code, or Titles I, III, and V of the TEA-21, Pub. L. 105-178. The program further applies to airport funds authorized by 49 U.S.C. 47101, *et seq.* USDOT's legal authority for 49 CFR Part 23 (as amended) and Part 26, include various Executive Orders, 23 U.S.C. 304 and 324; 42 U.S.C. 2000d, *et seq.*; and 49 U.S.C. 47107, 47113, and 47123; Sec. 1101(b), Pub. L. 105-178, 112 Stat. 107, 113.

D. Definitions

This DBE Program incorporates the definitions of terms included in 49 CFR Sections 23.3 and 26.5. In addition, the following are definitions of terms used by INDOT in conjunction with this DBE Program.

- **AAC:** Affirmative Action Certification, a certified document signed by the prime contractor or prime consultant and submitted with its bid at a construction contract letting or with its consultant contract letter of interest in response to a Request for Proposal (RFP) that lists the DBE firms it intends to use to achieve the contract goal. The AAC requires the name of the DBE; the type of service the DBE will perform by line item, if applicable; and planned contract dollar amounts committed to each DBE firm for construction contracts or contract dollar percentages committed to each DBE firm for consultant contracts. The AAC requires the identification of DBE firms used for race conscious and race neutral participation.
- **ACDBE:** Airport Concessionaire Disadvantaged Business Enterprise, a firm certified by INDOT as an airport concession pursuant to the requirements set forth in 49 CFR Part 23.
- **ALJ:** Administrative Law Judge, an officer appointed by the Commissioner to hear and decide DBE revocation of certification appeals prior to appeals to USDOT. In

most cases, an ALJ is a Deputy Attorney General from the Indiana Office of the Attorney General.

- **Bid Express:** the secure internet based program contractors use to submit bids electronically to INDOT.
- **Bidder's List:** a list maintained by INDOT for internal use that provides as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors that seek work on INDOT federal aid contracts for the purpose of formulating INDOT's annual DBE goal. This list is separate both in form and function from the official INDOT Certified DBE Listing.
- **Certification Review Committee:** a group that consists of all Certification Specialists, EOD Coordinator and Certification Manager that makes DBE certification determinations based on documentation and recommendation of investigator.
- **Commissioner:** the INDOT Commissioner or his or her designee.
- **Consultant:** an individual or firm participating as a prime or subcontractor in an INDOT professional services project.
- **Contract Administration Division:** the INDOT division that is responsible for construction and consultant contract administration.
- **CUF:** Commercially Useful Function, a requirement for all INDOT projects. A DBE firm performs a CUF when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved as further defined in 49 CFR 25.55.
- **DBE:** Disadvantaged Business Enterprise, a firm certified by INDOT pursuant to the requirements set forth in 49 CFR Part 26.
- **DBE-3 Form:** officially entitled the INDIANA DEPARTMENT OF TRANSPORTATION DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION AFFIDAVIT, this form is a document signed by both the prime contractor and DBE at the end of all federal aid contracts that attests to the percentage of the contract committed to the DBE in the AAC and has in fact been paid in full to the DBE. This form must be submitted for all federal aid contracts, including those without a DBE goal, if a DBE is performing any work on the contract.
- **DBE Codes:** the codes created by INDOT to identify the primary business of a DBE firm and to assist prime contractors in locating DBEs to meet contract goals as set forth on the INDOT DBE website:
http://www.in.gov/indot/div/legal/dbe/pubs/DBE_Codes.pdf. These codes are more specific and are distinct from the North American Industry Classification System (NAICS) codes.

- **DBE Interest Report:** an INDOT report generated by INDOT's Contract Administration Division composed of specially-flagged proposal items, broken up by specification groups that DBE firms have performed in the past.
- **DBE Public Search:** an interactive public search engine that contains DBE firms certified in the State of Indiana. The directory assists contractors in identifying DBEs and the type of work they perform. The directory can be found on the DBE website: https://financial.gmis.in.gov/psc/guest/EMPLOYEE/ERP/c/SOI_APPS_MWBE.SOI_DBE_CERT.GBL?&. This public search engine is separate both in form and function from the Bidder's List.
- **Director:** the Director of the Economic Opportunity and Prequalification Division of the Indiana Department of Transportation.
- **Districts:** the six main geographic areas of INDOT operation outside of INDOT Central Office: Crawfordsville, Fort Wayne, Greenfield, LaPorte, Seymour, and Vincennes.
- **EOD:** the Economic Opportunity Division of the Indiana Department of Transportation.
- **Equal Employment Opportunity (EEO) Officers:** the INDOT employees in each of the six Districts who monitor DBE and EEO compliance on INDOT jobsites.
- **FAA:** the Federal Aviation Administration.
- **FHWA:** the Federal Highway Administration.
- **FTA:** the Federal Transit Authority.
- **INDOT:** the Indiana Department of Transportation.
- **Joint Check:** a two-party check between a DBE, a prime contractor and the regular dealer of material/supplies.
- **LOI:** Letter of Interest, a letter a professional services firm submits to INDOT in response to a Request for Proposals that evidences interest in being selected as a prime contractor. The LOI must include all proposed subcontractors and the Affirmative Action Certification if there is a DBE goal.
- **LPA:** Local Public Agency, such as a city or county, which is typically a sub-recipient of federal funds passed through INDOT.
- **MPO:** Metropolitan Planning Organization, which typically is a sub-recipient of federal funds passed through INDOT.
- **NAICS Code:** the 2007 North American Industrial Classification System Code that INDOT assigns to each DBE depending on the type of work the firm performs or seeks to perform on an INDOT contract. The NAICS Code designations are set forth on the following website: <http://www.census.gov/eos/www/naics/>.

- **Prequalification:** a certification required for most contractors and consultants doing business with INDOT verifying that they have the qualifications necessary to do business with the State. INDOT's Prequalification Division considers a firm's financial position, equipment, experience, personnel and any other relevant information in approving prequalification and setting prequalification limits. See Prequalification requirements for contractors: <http://www.in.gov/dot/div/contracts/letting/general/105iac11.pdf>. Prequalification requirements for professional services: <http://www.in.gov/dot/div/legal/rfp/consultants/CPQM.pdf>
- **Prequalification Committee:** the nine-member (seven voting members) INDOT Committee that reviews contractor and consultant qualifications in accordance with 105 IAC 11-2 of the Indiana Administrative Code (Rules for Prequalification of Contractors and Bidding). The Director serves as the Chair and a non-voting member of this committee.
- **Program:** this DBE Program as set forth herein.
- **RFP:** Request for Proposals, a process used when INDOT must make a contract award by undergoing a qualification-based selection process as opposed to basing contract award on low bid. This process is typically used for professional services or consultant work.
- **Site Exchange:** the secure, paperless, electronic system that allows INDOT prime contractors to request that INDOT approves of a subcontractor to perform on the contract.
- **SiteManager:** an integrated series of electronic forms for entering and viewing all information needed for a contract—from the planning stage to the archival stage. The information entered on these forms is then stored in a central database. SiteManager gives state DOTs the ability to maintain a unified entry point for contract data, as well as provide the most up-to-date information to all users.
- **SPT:** the Subcontract Payment Tracking system, an electronic reporting system that allows prime contractors with active INDOT contracts to report payment information made to approved subcontractors.
- **Sub-recipient:** any entity, public or private, to which DOT financial assistance is extended by and through an INDOT program.
- **USDOT:** the United States Department of Transportation.

E. Guidance and Interpretation

INDOT acknowledges that only guidance and interpretations consistent with 49 CFR Part 26 and 23, issued after March 4, 1999, have definitive and binding effect and constitute the official position of the USDOT. INDOT further acknowledges that guidance and interpretations are valid and binding only if they are issued over the signature of the Secretary of Transportation or contain the following statement: "The General Counsel of

the Department of Transportation has reviewed this document and approved it as consistent with the language and intent of 49 CFR Part 26.”

F. Record Keeping

1. **Bidder's List:** INDOT's Contract Administration Division maintains a Bidder's List, consisting of all firms bidding on prime contracts and bidding or quoting subcontracts on DOT-assisted projects pursuant to 49 CFR § 26.11 (c). INDOT requires firms working under an INDOT contract to submit this list pursuant to Section 100-C-151b, Section 103.02.1, of the INDOT Construction Contract's Recurring Special Provisions, which can be found at:
<http://www.in.gov/dot/div/contracts/standards/rsp/sep09/sec100.htm>.
2. **Subcontract Payment Tracking (SPT):** INDOT uses the data the SPT collects for two primary purposes. First, the system helps ensure that INDOT prime contractors comply with the ten (10) day payment provision in all INDOT contracts in accordance with INDOT Recurring Special Provision 100-C-151c. Second, the data helps ensure compliance with the DBE Program provisions in federal aid INDOT contracts in accordance with 49 CFR § 26.29. These provisions can be found at:
<http://www.in.gov/indot/div/legal/dbe/spt.htm>.
3. **DBE Trucking Reports:** Pursuant to Recurring Special Provision 100-C-151b, INDOT requires all DBE haulers participating on INDOT contracts to submit weekly trucking reports. The DBE hauling firms complete the reports, which record the payments received from the prime and the distribution of payments the DBE hauler makes to the haulers that it uses to supplement its fleet. DBE haulers submit reports each month to INDOT EOD. EOD then tracks these reports through an internal database. In addition, INDOT EEO Officers can access the trucking data through monthly reports generated by EOD Contract Compliance staff and located on a shared, secure network drive. The trucking forms are accessible from the following website: <http://www.in.gov/indot/div/legal/dbe/pubs/DBETruckingReport.pdf>.
4. **Commercially Useful Function (CUF) Reports:** In partial fulfillment of its responsibility to monitor DBE CUFs, pursuant to 49 CFR 26.55 (c), INDOT requires all INDOT District EEO Officers and other relevant project personnel to monitor DBE performance on federal aid INDOT project sites for compliance with CUF requirements. The EEO Officers and project staff must evaluate DBE performance and submit completed CUF Compliance Review Forms to Central Office EOD Contract Compliance staff. Pursuant to 49 CFR 26.37(b), the EEO Officer or project staff reviewing DBE performance on a contract must include a written certification as part of their report that they have reviewed contracting records and monitored work sites.
5. **DBE-3 Form:** INDOT requires all federal aid prime contractors who utilized a DBE on the contract, regardless of whether the contract included a DBE goal, to complete a DBE-3 form on the contract, prior to contract closeout, pursuant to INDOT Special Provisions 100-C-151b. Both the prime and the DBE must sign the DBE-3 form, verifying that the latter has received all payments due under the contract as committed in the AAC. The DBE-3 form allows INDOT to ensure that the prime contractor's actual payments to the DBE meet or exceed the original DBE

commitment at the time of award. INDOT also utilizes the information obtained through the DBE-3 form to determine race-neutral participation on federal contracts. If the DBE-3 form indicates that a DBE received less than the prime contractor's original commitment in the AAC used to meet the DBE goal, then INDOT will require a written explanation from the prime contractor before final payment is released. The EOD Contract Compliance Section will review the prime contractor's explanation to determine if any payment shortage was a result of the prime contractor's bad faith. If the EOD determines that the discrepancy in payment was not the result of a good faith contract variance or other legitimate reason, the EOD may recommend that INDOT not make final payment to the prime contractor, and EOD may request the Prequalification Committee consider the issue for possible action.

6. **Affirmative Action Certification (AAC):** INDOT requires all prime construction and consultant contractors to submit, at the time of bid letting or submittal of an LOI respectively, an AAC on which the contractor verifies its DBE subcontracting or subconsulting commitments to specific DBE firms. The AAC records the dollar amounts and contract percentage commitments to DBE firms by a prime construction contractor and includes the contract percentage commitments to DBE firms by a consultant. The AAC includes a space for both race conscious and race neutral participation. Construction contractors submit the AAC information electronically to INDOT through the Bid Express program through which it is automatically entered into INDOT's central Trns*Port Database.
7. **Trns*Port and SiteManager:** Trns*Port and SiteManager are comprehensive construction management systems used in conjunction by INDOT to manage all aspects of the construction contracting process. These systems provide INDOT and EOD with up-to-date, centralized information on numerous aspects of DBE performance.

G. Assurances

Each financial assistance agreement INDOT signs with a USDOT operating administration (or a primary recipient) and each federal aid contract INDOT signs with a prime contractor includes all assurances required under 49 CFR § 26.13. Further, INDOT contract provisions require that each of its prime contractors include these assurances in each contract pertaining to an INDOT project the prime executes with a subcontractor. The EOD Contract Compliance Section will review subcontracts during the contract compliance review process to ensure that subcontracts have the required nondiscrimination language.

II. ADMINISTRATION

A. DBE Liaison Officer

The Commissioner appointed the Director of the EOD as the DBE Liaison Officer for the agency, pursuant to 49 CFR § 26.25. The EOD Director reports directly to INDOT's Chief Legal Counsel and Deputy Commissioner on matters pertaining to the DBE Program but has independent access to the Commissioner. The EOD has the responsibility for staffing, administering, and managing the DBE program in accordance

with 49 CFR Parts 26 and 23. The specific duties of this position that pertain to the DBE program include:

1. Developing and updating INDOT's DBE Program for approval by the Commissioner and the FHWA;
2. Calculating INDOT's annual DBE goal and setting individual contract goals in a manner that is narrowly tailored to meet the Program's objectives;
3. Certifying applicant firms that fully meet the DBE eligibility standards as set forth in 49 CFR Parts 26 and 23;
4. Administering appeal procedures for certification denials and revocations;
5. Maintaining sufficient staff to administer the DBE program;
6. Serving as a point of contact for EEO Officers and providing them with guidance concerning DBE compliance;
7. Serving as the agency liaison and public relations officer with the DBE community, contractors, consultants and other agencies concerned with the DBE Program;
8. Assisting with agency procedures and contract specifications that pertain to the DBE Program;
9. Assisting DBE firms with problems and developing potential solutions to those problems;
10. Providing and administering DBE supportive service programs for firm development and marketing to increase DBE firms' competitive capabilities;
11. Disseminating information on the opportunities available to DBE firms to participate in INDOT contracts;
12. Informing INDOT's prime contractors and consultants of their obligations relative to the DBE Program;
13. Monitoring INDOT DBE contract compliance;
14. Ensuring that INDOT contract provisions pertaining to the DBE Program are included in all contracts and consistent with 49 CFR Part 26;
15. Working cooperatively with other INDOT divisions to ensure interdisciplinary INDOT compliance with DBE Program requirements;
16. Keeping INDOT knowledgeable of any federal changes to the Program; and
17. Identifying the DBE Program's progress and deficiencies and making recommendations to correct any identified deficiencies.

B. Financial Institutions

INDOT will use its best efforts to identify annually services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals within the state and make reasonable efforts to use these institutions or encourage their use by prime contractors.

C. Prompt Payment

INDOT Construction Contract Recurring Special Provision Section 100-C-151c, 109 requires a contractor to make payment to all subcontractors for the value of work performed and materials in place within ten (10) business days of receipt of INDOT payment for the corresponding estimate.

The EEO Officers monitor the prompt payments to all subcontractors with information submitted by primes electronically through the Subcontractor Payment Tracking system. Primes submit their data to INDOT throughout the life of their contract, and the EOD Compliance Section conducts periodic audits of the SPT data. The Compliance Section randomly selects federal aid INDOT contracts to review and requests check copies from the prime contractor. The EOD compares the documents to reports from the SPT system. If the EOD identifies anomalies or deficiencies, it will direct the prime contractor under review to make changes to the SPT data and/or make payments to the DBE firm(s). If the prime has failed to consistently pay its DBE firms promptly, then the EOD may recommend administrative and contract sanctions to effect compliance. Sanctions may include prequalification suspension, the reduction of prequalification limits, and prequalification revocation.

D. Release of Retainage to Subcontractors

INDOT does not hold retainage on its contracts, but it does not object when prime contractors hold retainage on its subcontracts. INDOT contracts, pursuant to Recurring Special Provisions, section 100-C-151b, require prime contractors to release to the subcontractors any portions of retainage held within 30 calendar days after satisfactory completion of the work by the subcontractor. For the purposes of this section, satisfactory completion is interpreted as occurring when the subcontractor has completed all physical work and other contract requirements to INDOT's satisfaction. The subcontractor payment tracking set forth herein requires the prime contractor to report all retainage held and released per month. The EOD reviews this information by random selection monthly.

E. DBE Public Search

INDOT has a DBE Directory, which is a searchable database designed to:

- Assist prime contractors and others in identifying DBEs;
- Provide a summary of the type of service each DBE provides;
- Provide contact information for DBEs certified in the State of Indiana; and

- Assist the public in determining whether a business is certified with the State of Indiana as a DBE and/or an ACDBE.

The directory is searchable by firm name, type of work, geographical preference, NAICS and DBE Codes, as well as a user-created full listing of all certified DBE firms.

The database is updated weekly by the EOD Coordinator or Administrative Assistant in the Coordinator's absence as firms are certified or updated. The listing for each DBE firm lists its address, phone number, email, and the types of work the firm has been certified to perform as a DBE.

F. Over-Concentration

INDOT DBE Liaison and FHWA Indiana Division advisor review DBE utilization contrasted to non-DBE utilization on three common DBE work items annually to determine if there is an over-concentration in a certain type of work that unduly burdens the contracting opportunities of non-DBE firms.

Should INDOT note any DBE over-concentration, the EOD will consult with FHWA as to any appropriate measures to be taken, such as assisting DBE firms in performing work in other areas or varying its use of contract goals, to the extent consistent with 49 CFR Section 26.51 to ensure that non-DBEs are not unfairly prevented from competing for subcontracts in certain work specialties.

G. Business Development Program

General: INDOT provides business development for its certified DBE firms through its Supportive Services programs. The EOD has a Supportive Services Manager who organizes DBE programs. The Supportive Services Manager surveys DBE firms annually to determine common concerns and programming requests as a basis for specific program development.

1. **EDI:** INDOT offers the Entrepreneurial Development Institute (EDI), which is a statewide three-week training and outreach initiative that provides managerial, technical, financial management, and technological classroom training for DBE construction, construction associated, and consulting firms. Participating firms are those certified DBE firms that have demonstrated the technical potential and entrepreneurial desire to perform in the highway construction and related industries. EDI also includes one-on-one mentoring for individual DBEs and follow-up site visits to determine if the firm has implemented skills learned in the classroom training.
2. **SINDI:** INDOT offers the Statewide Indiana Initiative (SINDI), which provides statewide outreach and information for the solicitation of minority and women owned firms. INDOT started SINDI in Southern Indiana but has expanded it to a statewide program due to an identified need for an increase in the capacity of ready, willing and able DBE firms on INDOT projects. SINDI educates these firms on the benefits of and processes for DBE certification. This includes a series of statewide, one-day educational workshops both for the recruited firms as well as currently certified but under-performing DBEs. The goal of the program is to create a more diverse group of

certified firms with an emphasis on highway construction and highway design/engineering.

3. **Future:** INDOT is open to creating new Supportive Services programs in the future.

H. Monitoring DBE Program Participation

INDOT monitors the DBE Program participation from letting to contract finalization in its Contract Compliance Section that is staffed with one Compliance Manager and four Compliance Specialists. DBE utilization is monitored throughout the year with reference to the annual goal to measure attainment thereof. The EOD's Certification Section conducts any investigations required for existing DBE firms resulting from external complaints or internal concerns regarding continued DBE eligibility.

1. DBE Participation Review

The EOD Contract Compliance Section reviews all bids prior to award for compliance with any DBE contract goal by reviewing the AAC the prime contractor submits with its bid at the INDOT letting. INDOT requires all contractors and consultants to complete an AAC on which they verify DBE subcontracting or subconsulting commitments to specific DBE firms. The AAC records dollar amounts and contract percentage commitments to DBE firms by a prime contractor or consultant. The EOD reviews the AAC submitted for each apparent Lowest Qualified prime Bidder (LQB) at the time of letting and evaluates the proposed DBE participation (see Section VI for a description of Good Faith Efforts procedures, which apply on contracts with a DBE goal). After awarding the contract, the EOD ensures that prime contractors do not terminate any DBE subcontractor for convenience. A prime contractor must receive written consent from the EOD prior to terminating a DBE firm, if the DBE firm is being used towards meeting a race/gender conscious goal. The written consent, if issued, must come from EOD Central Office. District EEO approval is not sufficient. If INDOT's contractor terminates a DBE subcontractor with EOD approval or the DBE fails to adequately perform on the contract, then the EOD requires the prime contractor to make good faith efforts to find another DBE subcontractor or additional DBE participation to substitute for the original DBE firm.

2. DBE Subcontractor Payment Tracking

SPT: INDOT contract Recurring Special Provision 100-C-151c requires this tracking system in which prime contractors with active INDOT contracts must report all payment information made to assigned subcontractors online. The data collected helps to ensure compliance with the Disadvantaged Business Enterprise (DBE) Program provisions in federal aid INDOT contracts in accordance with 49 CFR § 26.29. <http://www.in.gov/indot/div/legal/dbe/spt.htm>. The EOD reviews the prime contractors' electronic submissions of its subcontractor payments monthly to ensure that prompt payment is made and to track DBE annual and contract goal attainment. This information is also tracked to monitor DBE goal race conscious achievement on an ongoing basis so that INDOT can make adjustments to its annual DBE goal if necessary.

3. Noncompliance Investigations

When INDOT has reason to believe the sub-recipient or a contractor or any subcontractor, supplier, or lessee on a DOT-assisted contract is not operating in compliance with the terms, conditions or requirements of the DBE Program, INDOT will conduct an investigation. First, INDOT contacts the District EEO Office for an initial assessment. If necessary, EOD sends its Compliance Specialists to the field to conduct formal investigations. If INDOT finds that the sub-recipient or the contractor or any subcontractor, supplier or lessee is not in compliance with the DBE Program or contract special provisions, INDOT will notify the non-compliant party or parties in writing. When a contractor receives such a writing, the contractor should either submit a Corrective Action Plan or schedule a compliance conference with INDOT to negotiate the Plan prior to the 30-day deadline in the letter.

In the event that the non-compliant party or parties fail(s) or refuse(s) to perform in compliance with the DBE Program or contract special provisions, INDOT will issue a "Notice of Non-Compliance" to the non-compliant party or parties. Depending on the severity of the matter, EOD may recommend that INDOT withhold project estimates to the contractor. If the non-compliant party or parties correct(s) the deficiencies, the EOD will rescind the "Notice of Non-Compliance." If the deficiencies are not corrected, INDOT EOD may forward all documented non-compliance with the DBE program requirements to the Prequalification Committee for consideration pursuant to Committee rules and policies. The Committee's review may lead to action in accordance with 105 IAC 11-2.

4. Commercially Useful Function Procedures and Policies

INDOT's EOD and project personnel monitor CUF DBE participation at each INDOT jobsite.

- a. **Red Flags:** The following are warning signs or "red flags" that a DBE is not performing a CUF:
 - The work to be performed by the DBE is outside of the DBE's known experience or capability.
 - The DBE provides little or no supervision of the work; the DBE superintendent is not a regular employee of that firm; or supervision is performed by personnel associated with the prime contractor, another business or personnel not under the control of the DBE firm.
 - The DBE workforce is not under the DBE firm's control, and direction or work is performed by personnel normally employed by the prime contractor or another business.
 - Any portion of the work designated to be performed by a DBE subcontractor is performed by the prime contractor.
 - Any equipment used by the DBE firm belongs to the prime contractor or another contractor with no formal lease agreement, or the equipment signs

and markings cover another owner's identity, usually through the use of magnetic signs.

- Materials or supplies necessary for the DBE firm's performance are delivered to, billed to, or paid by another business.
- DBE firm subcontracts or assigns any portion of work to another firm.
- DBE trucking business uses trucks owned by the prime contractor.
- DBE prime contractor subcontracts a greater percentage than the specific contract allows.
- DBE prime contractor only purchases materials and performs little or no work.
- The agreement between the prime contractor and the DBE firm artificially inflates the DBE participation or erodes the ownership, control, or independence of the firm.
- The DBE firm works primarily for only one prime contractor.
- Employees work for both the DBE firm and the prime contractor.
- Inquiries made by INDOT to the DBE are answered by the prime contractor.
- The DBE firm's owner is not aware of the status of the work or the performance of the business.
- The DBE or prime requests INDOT to write joint checks.

b. EEO Officer CUF Requirements:

- The Project Engineer (PE) must notify the EEO Officer when a DBE will be present on the jobsite.
- Routine CUF oversight will occur on every job and the EEO Officer or project staff will complete a compliance CUF Form and submit copies of these reports to the EOD Contract Compliance Section monthly. Pursuant to 49 CFR 26.37 (b), the EEO Officer or project personnel will verify by written certification that they have reviewed contracting records and monitored work sites to ensure work committed to DBEs is actually performed by the DBEs.
- If a routine CUF oversight review reveals a concern, the EEO Officer will conduct a more in depth review and create a formal report as defined herein that identifies the problem. The EEO will forward the report to the EOD Contract Compliance Section.

c. EOD Contract Compliance Specialist CUF Requirements:

- The EOD Compliance Section will assist the EEO Officers in conducting CUF reviews and creating formal reports as needed.
- When an outside complainant, an EEO Officer, or FHWA alleges a CUF violation or identifies a red flag, the Director may request a Central Office Contract Compliance Specialist conduct an in-depth CUF review and create a formal report with a recommendation.

I. Acceptance of Joint Checks

INDOT allows the use of joint checks under certain circumstances and evaluates written requests by a DBE on a case-by-case basis.

1. INDOT will consider the following factors in determining whether it allows a joint check:
 - a. Whether the manufacturer/supplier has an established policy on requesting joint checks from firms and the content of the policy.
 - b. How often does the manufacturer/supplier request joint checks?
 - c. Are there other firms from which the manufacturer/supplier requests joint checks?
 - d. Why is the manufacturer/supplier requesting joint checks from the individual DBE firm?
 - e. How long will the DBE be required to accept joint checks?
 - f. Has the DBE received or when will it receive its payment for the materials?
 - g. What is the prime contractor's policy on issuing joint checks?
 - h. Was the joint check requirement issued by the manufacturer/supplier or the prime contractor?
2. INDOT will weigh the factors set forth above in its decision whether to allow a joint check to ensure that the practice does not compromise the independence of the DBE firm nor inhibit its ability to perform a CUF on an INDOT project.

III. DBE GOALS

A. Annual DBE Goal

1. **INDOT determines its annual DBE Goal using the following method:**

Step 1 – Base Figure, 49 CFR Section 26.45 (c)

To arrive at its Base figure, INDOT uses the most relevant and reliable data available to provide demonstrable evidence of those DBEs ready, willing, and able relative to

all firms in the market area. INDOT's Geographic Market Area (GMA) is considered to be the State of Indiana and relevant portions of Wisconsin, Michigan, Ohio, Kentucky, and Illinois. INDOT uses the following data sources: (1) INDOT's Bidder's List and (2) the active and currently certified DBE construction and consultant firms listed in INDOT's DBE Public Search. All contractors that apply for or renew their prequalification status with INDOT must complete a Bidder's List Registration Form. On this form, the company must submit a list of primes the firm has quoted to and subcontractors that have submitted quotes. This information forms the basis for INDOT's Bidder's List. Construction contractors must renew their prequalification status annually, and consultant contractors must renew their prequalification status every two years.

Step 2 – Adjustments to the Base Figure, 49 CFR Section 26.45 (d)

INDOT considers several factors in determining whether to apply adjustments to its Base Figure, as outlined in 49 CFR Section 26.45(d). First, INDOT considers the median past participation (MPP) of DBE firms relative to all firms on construction contracts closed within the past seven calendar years based on data collected from INDOT's DBE-3 form, which INDOT requires on all construction contracts with DBE participation regardless of whether the contract includes a DBE goal. The DBE-3 form, which both the DBE and the prime contractor signs, provides the final amount that was paid to the DBE. Second, INDOT further considers overall DBE participation and activity on INDOT federal aid contracts regarding certification and bidding.

2. Projection of Race Neutral Participation

In accordance with 49 CFR § 26.45(f)(3), INDOT meets the maximum feasible portion of its overall goal through race neutral means. INDOT's race neutral initiatives are designed to:

- a. Create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts;
- b. Assist the development of DBE firms so they can compete successfully in the market place outside the DBE Program; and
- c. Ensure that INDOT's DBE Program is narrowly tailored in accordance with applicable law.

INDOT considers past DBE participation as a factor in its race neutral projection. DBE past participation data is based on federal aid contracts closed during the past seven (7) calendar years. INDOT considers three types of race neutral past participation data: (1) DBE *subcontractor* participation in excess of the DBE goals on goal contracts, (2) DBE participation on contracts with no DBE goal, and (3) DBE participation as *prime* contractors.

3. Annual Goal Accountability

If INDOT fails to meet its overall DBE goal at the end of the federal fiscal year, it will analyze the reasons for the shortfall and establish specific steps and milestones to correct problems identified in its analysis that will enable the recipient to meet its goal in the new fiscal year. Pursuant with 49 CFR § 26.47(c) and (d), INDOT will submit the analysis and corrective action plan within 90 days of the end of the fiscal year for FHWA approval.

B. Individual Federal Aid Contract Goals

1. Generally

INDOT sets individual contract goals on federal aid construction, consulting, and LPA contracts as a means of satisfying the INDOT race conscious portion of its annual goal; however, INDOT only applies contract goals on those DOT-assisted contracts that have feasible subcontracting and sub-consulting opportunities and certified DBE firms that are certified to perform the pertinent work in the geographic area.

INDOT may also set DBE goals on construction inspection contracts. This is an exception to setting goals only on contracts in which subcontracting opportunities are available.

The EOD retains its own database of race conscious DBE participation commitments on both construction and consulting contracts in addition to that retained by the agency.

INDOT creates monthly reports to monitor DBE subcontractor payment with the information gathered from prime contractors' monthly subcontractor payment information submissions. These reports allow the EOD to monitor DBE payments in relation to the annual goal and adjust the race conscious goal if necessary.

INDOT examines information reported on its DBE-3 forms submitted by the prime contractor at the end of the contract performance. INDOT monitors the forms to ensure that actual payment reflects the commitment towards the contract's goal at the contract's award and any approved participation changes during the contract's performance. Should the DBE-3 form indicate that the DBE subcontractor received less than what was committed on the AAC to meet the DBE goal on the contract, INDOT will request a written explanation by the prime contractor before final payment is released. This document is reviewed by the EOD Compliance Section to determine if any payment shortage was a result of the prime contractor's bad faith. If EOD determines that the discrepancy in payment was not the result of a good faith contract variance or other legitimate reason, the EOD may recommend that INDOT not make final payment to the prime contractor, and EOD will notify INDOT Prequalification Committee for review and possible sanctions in accordance with the Committee's rules and policies.

2. Construction Contracts

Race conscious goals are set on construction contracts with the cooperation of the INDOT Contract Administration Division (CA), which provides the EOD with contract proposals and DBE Interest Reports. The Reports are composed of specially-flagged proposal items in specification groups that DBE firms have performed in the past. When CA estimators have completed the estimation process for a contract, they copy the electronic proposal and Interest Report file to a shared network drive and notify the EOD Compliance Section via email. Next the Compliance Specialists evaluate the proposal and report and choose to either set a DBE goal or to not set a goal on the contract after considering the Interest Report. The Compliance Specialists carefully evaluate the contract regarding the following:

- a. Overall contract type;
- b. Contract location;
- c. Contract estimate amount;
- d. The DBE firms certified to perform in the item groups listed in the Interest Report;
- e. The capacity of DBE firms in d. above; and
- f. The race conscious contract goal average, to date, as it relates to the Annual Goal.

Finally, the Specialists notify the CA estimators by email of the contract goal.

3. Consultant Contracts

INDOT sets its consultant contracts using the above factors. Procedurally, the process differs in that the EOD receives the contract information directly from the LPA or INDOT Consultant Section in Contracts Administration. The EOD receives contract data electronically or in a meeting with INDOT's Consultant Section regarding:

- a. The contract number;
- b. The total estimated project cost;
- c. The subconsulting opportunities typical to project type; and
- d. The project location.

When INDOT has evaluated all of the above factors, it notifies the LPA or INDOT consultant coordinator of the DBE goal on the contract.

IV. GOOD FAITH EFFORTS

INDOT has created the following process, which is incorporated into all INDOT construction contracts through Recurring Special Provisions Section 103:

A. Good Faith Efforts Process for Construction Contracts

1. Good Faith Effort Reviews at Contract Award:

- a. At an INDOT bid opening, each prime contractor must submit a proposal book together with a completed AAC that must list each DBE with which it has agreed to subcontract. The AAC must also list the line item to be contracted with the DBE and the amount to be paid to the DBE. The prime contractor must make DBE commitments when it submits its bid to INDOT in response to a letting. Primes may not wait until after contract award to commit to meeting the contract's DBE goal.
- b. If the apparent low bidder has not achieved all or any part of the DBE goal, INDOT will notify the contractor that it has three (3) business days from receipt of notice to provide INDOT's Contract Engineer with a written explanation accompanied by supporting documentation of its "good faith efforts" taken to achieve the goal prior to the bid letting. A contractor may still be awarded the contract if it documents that it made adequate good faith efforts to meet the goal. 49 CFR §26.53.
- c. If a contractor provides a response to INDOT's good faith efforts request, the EOD Compliance Section reviews the response, a copy of all proposal books, and accompanying documentation. After a review, the EOD makes a "fair and reasonable judgment" as to whether or not the bidder made good faith efforts in consideration of "the quality, quantity, and intensity of the efforts that the bidder has made." The EOD Compliance Section reviews a contractor's good faith efforts with guidance set forth in 49 CFR 26 Appendix A.
- d. The fact that a prime contractor used its Bid Express account with INDOT to locate a suitable DBE could be considered one factor, but not the only factor, in a good faith effort analysis. The prime contractor cannot rely solely on their Bid Express account to determine the availability of suitable DBEs. The prime contractor must research INDOT's DBE website:
https://financial.gmis.in.gov/psc/guest/EMPLOYEE/ERP/c/SOI_APPS_MWBE_SOI_DBE_CERT.GBL?& to determine if a DBE is certified prior to bid submittal.
- e. Although there may be some additional costs involved in finding and using DBEs, this is not in itself sufficient reason to excuse a bidder's failure to meet the contract DBE goal.
- f. If the EOD determines that the contractor demonstrated adequate good faith efforts, INDOT will award the contract to the lowest qualified bidder.

If the EOD determines that the contractor failed to demonstrate good faith efforts, the EOD shall issue a written memorandum that explains its analysis and submit it

to INDOT's Contract Administration Division. The EOD strives to make its recommendations within two business days of receipt from the contractor.

- g. Should the EOD determine that the contractor did not use or document adequate good faith efforts to achieve the DBE goal, the Contract Administration Division will send the contractor a copy of the written memorandum and inform it of its right to an informal review hearing.
- h. If the contractor desires an informal review of the decision, it shall send a written request to INDOT. Upon receipt of the request, INDOT will provide the contractor with an opportunity for an informal review of the decision before INDOT's Chief Legal Counsel and Deputy Commissioner or his or her designee (the "Deputy Commissioner") who did not participate in the EOD's decision. The sole issue before the Deputy Commissioner shall be whether the EOD made any material errors of law or fact in its decision, or conducted its process in a manner sufficiently arbitrary or capricious to support a recommendation to the Commissioner of INDOT contrary to EOD's decision not to award the contract to the contractor.
- i. At the informal review, the contractor may present any evidence it deems relevant, including but not limited to: affidavits, documents, and testimony of witnesses. The contractor may request INDOT staff to appear and present testimony.
- j. After the informal review, the Deputy Commissioner will make a written finding. If the finding overrules the EOD decision, INDOT will award the contract to the contractor if otherwise qualified. If the written finding upholds the EOD's decision not to award the contract to the contractor, it shall be forwarded to the Commissioner for review.
- k. If after review of the total record, the Commissioner determines that the contractor's good faith efforts were sufficient, he shall issue a final written determination that overrules the Deputy Commissioner's decision and orders that the contract be awarded to the contractor (lowest qualified bidder).
- l. If the Commissioner determines that the contractor's good faith efforts were insufficient, he shall issue a contract award determination approving the EOD's and Deputy Commissioner's decision and at the Commissioner's sole option, and without further proceedings, either direct INDOT's Contract Administration Division to award the contract to the next lowest, qualified bidder or to reject all bids and re-let the contract.

2. Good Faith Efforts Associated with Change Order

- a. INDOT's DBE program applies to all DOT-assisted contracting opportunities, including change orders on contracts that affect the contract DBE goal. INDOT has the following DBE Change Order Policy:
- b. A change order to a contract with a DBE goal shall be considered significant if, as a result of the change order, a new item or items of work have been added that

result(s) in a new contracting opportunity or opportunities not reasonably related to pay item(s) currently being performed by the prime or any subcontractor (“Significant Change Order”).

- c. If there is a Significant Change Order to a contract with a DBE goal, the prime contractor must hire or make good faith efforts to hire a DBE firm to perform the work.
- d. If, as a result of a change order, work has been added to a contract with a DBE goal that involves or is related to pay items of work that was committed to a DBE firm, whether or not counted toward the DBE goal, the prime contractor shall offer that same DBE firm the opportunity to perform the additional work. The prime contractor shall consider other DBE subcontractors if the additional work puts the original DBE firm over its prequalification limits. If the DBE firm is unable to perform the additional work, the prime must make good faith efforts to hire an alternate DBE firm to perform the work.
- e. If, as a result of a change order, work has been added to a contract with a DBE goal that involves or is related to pay items subcontracted to a non-DBE subcontractor, the non-DBE subcontractor may perform the additional work. The prime contractor may have to consider other subcontractors if the additional work puts the original subcontractor over its prequalification limits.
- f. If, as a result of a change order, work has been added to a contract with a DBE goal, that involves or is related to pay items that a prime contractor is already self-performing, the prime contractor may self-perform the additional work. However, if the prime contractor chooses to subcontract the additional work that results from the change order the change order shall then be considered a Significant Change Order, and the prime contractor must make good faith efforts to hire a DBE firm to perform the work.
- g. The prime contractor shall forward all documentation of its good faith efforts to hire a DBE as a result of a Significant Change Order to the EEO Officer for review. Contract performance shall not be delayed as a result of a prime contractor’s good faith efforts responsibilities or INDOT’s review thereof.
- h. Should the EEO Officer determine that a prime contractor failed to use good faith efforts to hire a DBE firm as required as a result of a Significant Change Order, the EEO Officer should make a written determination and forward it to the Director for review. If the Director concurs with the EEO Officer’s determination, he or she may refer the prime contractor to INDOT’s Prequalification Committee for appropriate action.

3. DBE Public Search

Bidders on federally-assisted contracts have the affirmative obligation to consult the list or use other means to ensure that each firm listed on the AAC is a certified DBE for the items listed at the time of bid submission. It will not be considered “good faith” if a contractor does not achieve the DBE goal because it lists a firm that is not included on the INDOT DBE Public Search.

B. Good Faith Efforts Process for Consultant Contracts

INDOT normally lets consultant services contracts through the issuance of a RFP. In an INDOT or sub-recipient RFP, EOD may include a DBE goal if reasonable sub-consulting opportunities exist and there are qualified DBE firms to perform the type of work. The consultants respond to the RFP by submitting a LOI that is then ranked by qualification. The consultant with the highest rating is sent to INDOT's Consultant Selection Review Committee for approval. The approval process includes a determination by the EOD whether the highest rated consultant achieved the DBE goal or demonstrated that it used adequate good faith efforts to do so.

INDOT allows a consultant that has not achieved the DBE goal at the time of the submission of the LOI a three-day period to present documentation of its good faith efforts to do so. INDOT's EOD will evaluate the information received based upon the same criteria listed above and issue a written determination as to whether the firm made adequate good faith efforts to achieve the DBE goal.

If the EOD determines that the DBE goal was not met but good faith efforts were made, INDOT may proceed with contract negotiations with the consultant.

Conversely if INDOT determines that good faith efforts were inadequate, INDOT will not proceed with contract negotiations with that consultant. The consultant is then entitled to the same informal appeal procedures as in the procedure for construction contracts set forth above.

If, during the negotiation phase of the contract, either INDOT or the consultant decreases or eliminates work committed to a DBE to meet the DBE goal, the consultant must use good faith efforts to increase the participation of DBEs listed in its response or commit to the use of additional DBEs in other areas of the project to meet the project goal. The fact that the consultant can perform the work with its own forces does not relieve the consultant from using good faith efforts to meet the DBE goal.

V. COUNTING DBE PARTICIPATION TOWARD GOALS

A. DBE Prime Contractors

When INDOT awards a contract to a DBE as a prime contractor, INDOT will count only that portion of work actually performed by the DBE prime contractor toward its annual DBE goal in addition to any DBE subcontracting work. DBE prime contractors are identified as such in the EOD DBE database. DBE prime contractors are subject to the same DBE subcontracting responsibilities as non-DBE primes.

B. DBE Service Providers

For services, INDOT will count toward DBE goals the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service required for the performance of a contract, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.

C. DBE Subcontractor - 49 CFR § 26.55 (a).

A prime contractor may count 100% of the amount paid to a DBE subcontractor for labor and materials provided to perform a defined and distinct item of the contract work. The work must be performed by the DBE's own employees and the DBE must order and pay for all supplies and materials. The DBE must meet all subcontractor requirements in the contract, including payroll and labor compliance requirements.

D. DBE Manufacturer - 49 CFR § 26.55 (e)(1).

A prime contractor may count 100% of the value paid to a DBE manufacturer for materials furnished that become a permanent part of the project. A manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

E. DBE Supplier (regular dealer) - 49 CFR § 26.55 (e)(2).

A prime contractor may count 60% of the value paid to a DBE supplier (regular dealer) for materials furnished that become a permanent part of the project. A supplier is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. The firm must be an established, regular business that engages as its principal business and under its own name in the purchase and sale or lease of the products in question. Pursuant to 49 CFR § 26.55(e)(2)(ii)(B), a DBE may be a supplier in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business if the firm both owns and operates distribution equipment for the products. INDOT considers currently certified field office providers to be suppliers not manufacturers for the purposes of counting DBE participation.

F. DBE Broker - 49 CFR § 26.55 (e)(3).

A prime contractor may count 100% of the *fee* or *commission* received by the DBE broker for the materials purchased and resold to the contractor that become a permanent part of the project. The prime contractor cannot count any portion of the cost of the materials and supplies themselves toward DBE goals. A facilitator, packager, manufacturers' representative, or other person who arranges or expedites transactions but does not manufacture or supply on a regular basis cannot be a regular dealer or manufacturer.

G. Joint Ventures

INDOT has the right to approve or not approve joint ventures with DBE firms. When a DBE performs as a participant in a joint venture, INDOT will count toward its DBE goal that portion of the total dollar value of the contract equal to the distinct and clearly defined portion of the work of the contract that the DBE either performs with its own forces or subcontracts to, or purchases/leases from another DBE. Joint venture

applications should be submitted to EOD for consideration at least twenty-four hours prior to the submission of bids.

H. CUF

INDOT will allow expenditures to a DBE contractor to be counted toward DBE goals only when the DBE is performing a CUF on that contract.

It is the responsibility of both the prime contractor and the DBE to ensure that the DBE is performing a CUF. Failure of a DBE to perform a CUF will result in that work not being counted toward the prime contractor's DBE goal. In certain cases it could result in prime or DBE contractor non-payment or ineligibility for future INDOT contracts.

1. Management

The DBE must manage the work that has been contracted. Management includes scheduling daily operations, ordering equipment and materials, preparing and submitting certified payrolls, and hiring and firing employees. All work must be performed with the DBE's own workforce. The DBE owner must supervise daily operations either personally or with a full time, skilled and knowledgeable superintendent. The superintendent must be under the DBE's direct supervision. The DBE owner must make all operational and managerial decisions of the firm.

2. Materials

The DBE shall negotiate the cost, arrange delivery, and pay for the materials and supplies for the job. INDOT or project management staff shall review invoices to determine if they are billed to and paid by the DBE. The DBE must determine the quantity of the material and be responsible for the quality of the material. No credit toward the DBE goal will be given to the cost of materials or supplies paid directly by the prime contractor for the DBE.

3. Employees

The DBE work must be performed by personnel employed and under the control and direction of the DBE firm. These include employees of the DBE or those recruited through the traditional recruitment or employment centers available. To be considered independent businesses, DBEs shall keep a regular workforce. DBEs shall not share employees with non-DBE contractors, especially the prime contractor. The DBE firm must be responsible for all payroll and labor compliance requirements for all employees within the control of the firm and is expected to prepare and finance the payrolls.

I. Trucking

1. Preconstruction Requirements

- a. For any INDOT contract involving trucking ("Contract"), at the preconstruction conference (or for those situations where the preconstruction conference is held several weeks prior to the start of construction, within a reasonable time after the preconstruction conference but at least five days before work begins), the

general/prime contractor ("Contractor") shall provide the INDOT Project Engineer/Project Supervisor (PE/PS) with a list of trucking companies, both DBE and non-DBE, that the Contractor and any of its subcontractors intend to use for hauling with respect to the Contract.

- b. This provided list shall include only those haulers with which the Contractor or one of its subcontractors has an agreement for the Contract ("Primary Haulers"). The Contractor shall advise INDOT's PE/PS of any subsequent changes to the list of Primary Haulers.
- c. The Contractor must provide a copy of any written agreement or agreements it has with a DBE trucking company or companies to the INDOT PE/PS.
- d. Trucks from other haulers ("Supplemental Haulers") may be used on the Contract to supplement the trucks available from the Primary Haulers. These Supplemental Haulers shall operate under agreements with the Primary Hauler.
- e. It is not necessary for INDOT to be given advance notification that a Supplemental Hauler shall be used; however, INDOT should receive such notice prior to submittal of the corresponding trucking report. INDOT's district and field personnel understand that Contractors will only have agreements with Primary Haulers.

2. Post Construction Requirements for DBE haulers only

A participating DBE hauler must submit monthly trucking reports to EOD, Central Office Contract Compliance Section. The reports are to be completed by the DBE hauler and record the payments received from the Prime Contractor and the distribution of payments the DBE hauler makes to haulers used to supplement its fleet. The trucking form is accessible from the following website:
<http://www.in.gov/indot/div/legal/dbe/pubs/DBETruckingReport.pdf>

3. Monitoring of Trucking Reports

INDOT EOD will review trucking reports submitted by the DBE Trucking firm each time it receives payment from the prime contractor.

4. General Trucking Credit Policies

EOD follows 49 CFR 26.55(d) and uses the following guidelines for an accurate assessment of DBE goal attainment through the use of a DBE hauler:

- a. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, including its dispatching, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
- b. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract but not necessarily at the site of work for each day that the prime contractor requests trucks.

- c. INDOT will allow DBE credit for the total value of the transportation services the DBE provides on the contract using trucks it owns, insures, and operates using drivers it employs.
- d. The DBE may lease trucks from another DBE firm, including owner-operators certified as DBEs. INDOT will allow DBE credit for the total value of the transportation services the lessee DBE provides on the contract.
- e. The DBE also may lease trucks from non-DBE firms or non-DBE owners-operators. When a DBE leases trucks from a non-DBE, INDOT will allow DBE credit for the value of transportation service provided on the contract by trucks equal in number to the number of trucks used under subsections "c" and "d." INDOT also will allow DBE credit for any fee or commission the DBE receives as a result of the lease arrangement for any additional non-DBE trucks.
- f. For purposes of counting under "c" and "d" above, the lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease when the truck is not needed by the DBE and with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

J. Removal of DBEs from DBE Eligibility or DBE Certification Revocation

- 1. When a prime contractor has made a commitment to use a DBE firm as noted on its AAC but a subcontract has not been executed before a DBE firm becomes ineligible, a prime contractor may not count that firm toward the contract goal, and INDOT will direct the contractor to meet the contract goal with an eligible DBE firm or demonstrate that it has made a good faith effort to do so.
- 2. If a prime contractor has executed a subcontract with the firm before the firm has been notified of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward the DBE goal for the firm's work. In this case or in a case where a prime contract was let to a DBE later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after the issuance of the notice of its eligibility shall not count toward INDOT's overall goal but may count toward the contract goal.
- 3. Exception: If the DBE's ineligibility is caused solely by its having exceeded the business size standard or the personal net worth limitation during the performance of the contract, INDOT will continue to count its participation on that contract toward overall and contract goals.
- 4. DBEs that have had their certification revoked by INDOT and have requested an internal INDOT appeal remain certified throughout the internal appeal process and until INDOT has notified the DBE of its final decision.
- 5. If the prime contractor can demonstrate a "good cause" situation to INDOT's EOD, the prime contractor may terminate the DBE subcontractor with written consent from INDOT's EOD. Good cause includes a situation where the DBE subcontractor has

failed or refused to perform the work of its subcontract in accordance with normal industry standards.

- a. INDOT's EOD also may permit a prime contractor to terminate a DBE subcontractor "for other documented good cause that the recipient determines compels the termination of the DBE subcontractor."
- b. Good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that it can self-perform the work in question or substitute another DBE or non-DBE firm. Nor does it exist from the failure or refusal of the DBE subcontractor to perform its work on the subcontract resulting from the bad faith or discriminatory action of the prime contractor.

VI. DBE Certification

A. Authority

INDOT is the sole certifying agency for the Indiana DBE Program and certifies for all transit authorities, FHWA, FTA, and FAA as set forth in the State of Indiana's Unified Certification Program (UCP) as amended.

B. Overview

INDOT's EOD has a certification section comprised of a manager, EOD coordinator and three certification specialists. Certification Specialists review DBE and ACDBE applications, evaluate relevant financial forms, conduct interviews to determine expertise and control, and perform on-site evaluations of firm facilities to determine if each applicant meets the requirements as set forth in 49 CFR Part 26 Subpart D and 49 CFR Part 23 Subpart C. INDOT keeps all applicants financial documents confidential and does not release any such information without the applicant's written consent.

C. Qualifications for DBE Certification

1. Social and Economic Disadvantage

To qualify for certification as a DBE, a for-profit firm must be at least 51% owned by a socially and economically disadvantaged individual(s) who is a citizen of the United States or lawfully admitted permanent resident. The following classes are rebuttably presumed to be socially and economically disadvantaged under 49 CFR 26.67(a): Female, Black, Hispanic, Asian Pacific, Asian Indian, or Native American. Although these groups have a rebuttable presumption of social disadvantage, any individual who can establish social disadvantage by a preponderance of the evidence, based on guidelines set forth in Appendix E to 49 CFR Part 26, may qualify. Individuals who do not belong to a presumptively disadvantaged group have the burden of persuasion that they are in fact socially and economically disadvantaged.

2. Personal Net Worth

The socially and economically disadvantaged owner must not have an individual personal net worth, excluding the value of the owner's primary residence and ownership interest in the firm, of more than \$1.32 million.

3. Control

The socially and economically disadvantaged individual must “control” the firm, meaning that he or she must have an overall understanding of and managerial and technical competence and experience directly related to the type of business in which the firm is engaged and in the firm’s operations.

4. Independence

The socially and economically disadvantaged owner must have operational and managerial control and independence from non-DBE firms. The contributions of capital or expertise used to acquire ownership must be “real and substantial” and derived from individually and independently owned resources. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible even if the debtor’s ownership interest is security for the loan.

5. Factoring Method

Factoring method of financing does not raise any more concerns about a DBE firm’s independence than does any other typical lending institution financing arrangement if the agreement sets forth the following provisions: the seller of the accounts receivable remains liable for the purchase price fronted by the factor through collateral or the rescinding of purchase funds; the debtors, or customers, are not guarantors of payments to the factor; there are only two parties at risk: the seller of the accounts receivable and the purchaser, or factoring institution. INDOT will require a copy of the DBE’s factoring agreement to ensure that there are no third party (e.g. prime contractor) guarantors that could compromise its independence.

6. Small Business Requirement

A DBE firm must be a small business. This means that a firm applying for DBE status may not have gross receipts, averaged over a three-year period, that exceed the Small Business Administration size standards associated with the specific type of firm. See 13 CFR Part 121. In no case, may a DBE firm’s gross receipts averaged over a three-year period exceed \$22,410,000.00. More information on the small business size standards can be found at the USDOT’s Office of Small and Disadvantaged Businesses website at: <http://www.osdbu.dot.gov/index.cfm>.

D. Interstate Certification

INDOT accepts out of state certification applications for DBE firms certified in their home state. INDOT will review applications independently, however, regardless of the certification determination of the home state. INDOT will request the following information from the firm:

1. A complete copy of the application form and all supporting documents and any other information submitted to any state related to its certification. This includes affidavits of no change and any notices of changes it submitted to any state concerning its application or status;

2. Any notices or correspondence from states other than the home state concerning its status as an applicant or a DBE (e.g. denial of certification or subject to decertification action);
3. If the firm has filed a certification appeal with DOT, it must disclose this and provide its appeal letter and DOT's response; and
4. An affidavit sworn to by the firm's owners before a person authorized by state law to administer such oaths or an unsworn declaration under penalty of perjury that the firm's owner has submitted all information required by 49 C.F.R. 26.85 (c) (above) and the information is correct and that the information is identical to the information submitted to the home state. If the home state's on-site report is more than three years old as of the date of the firm's application to INDOT, INDOT may require that the affidavit also affirm that the facts in the on-site report remain true and correct.

INDOT must take the following actions when it receives all the information listed above:

1. Within seven days request the following: a copy of the site visit report from the home state, any updates to the site review, and any evaluation based on the site visit. In accordance with the federal regulation, the home state must transmit this information to INDOT within seven days of receiving the request.
2. Determine whether INDOT believes the home state's certification is accurate, erroneous or should not apply in Indiana. If INDOT determines the home state's certification is erroneous or should not apply, this determination should be based upon:
 - a. Evidence of fraud involved in the certification;
 - b. Information not available when the home state certified the firm showing that the firm is not eligible;
 - c. Evidence that home state's certification is erroneous or was inconsistent with the requirements of the federal regulations;
 - d. Different requirements in INDOT's state law than the home state's law;
 - e. The information provided by the firm does not meet the requirements listed in 49 CFR §26.85(c) (described above).

E. Qualifications of an ACDBE firm

A firm applying for ACDBE certification must state that it is applying for certification as an ACDBE and comply with all application requirements set forth in 49 CFR §§26.61-91 and 49 CFR § 23.31-39.

1. Small Business Requirement

- a. Generally, A firm applying for ACDBE status is eligible for certification if its gross receipts averaged over the firm's previous three fiscal years do not exceed \$30 million or current limit as may be set by the U.S. Secretary of Transportation.

b. Exceptions to this include:

- i. Banks and financial institutions that may not have gross receipts averaged over the firm's previous three fiscal years over \$275 Million or current limit as may be set by the U.S. Secretary of Transportation.
- ii. Car rental companies' gross receipts averaged over the firm's previous three fiscal years may not exceed \$40 Million or current limit as may be set by the U.S. Secretary of Transportation.
- iii. Pay Telephone firms may not have greater than 1,500 employees to be eligible for ACDBE certification or current limit as may be set by the U.S. Secretary of Transportation.

2. DBE Presumption of Eligibility

Firms certified as a DBE are presumed eligible to participate as an ACDBE if socially and economically disadvantaged owners control the firm with respect to its activity in the concessions program. Further, INDOT is not required to certify a DBE firm as an ACDBE firm if it does not do work relevant to the airport's concessions program.

3. INDOT will take the following steps to certify ACDBEs:

- a. Obtain the resumes or work histories of the principal owners of the firm and conduct personal interviews.
- b. Analyze stock ownership if it is a corporation.
- c. Analyze the bonding and financial capacity of the firm.
- d. Determine the work history of the firm, including any concession contracts or other contracts it may have received.
- e. Obtain a list of the licenses of the firm and its key personnel to perform the concession contracts or other contracts it wishes to receive.
- f. Obtain a statement from the firm of the type of concession it prefers to operate or types of other contracts it prefers to perform.
- g. Eligibility of Alaskan Native Corporations do not apply under this part but are governed by 49 CFR §26.73(h).

F. Annual Updates Applicable to Both DBE and ACDBE Firms

Certified DBE/ACDBE firms are required to report any changes in their business structure to the EOD. In all cases, DBE and ACDBE firms must provide the EOD with an annual update of its business and financial structure, including any changes in the personal net worth of the owner. These updates are in affidavit form and must be accompanied by the owner's and firm's most recent tax returns. The EOD will investigate if information indicates a possibility that the firm may no longer qualify for the DBE program.

G. Continued Certification Reviews of DBE and ACDBE Firms

INDOT relies upon the annual updates certified firms submit and does not wait until a three-year period elapses to analyze changes in certified firms that may affect certification. INDOT will use its best efforts to conduct an onsite investigation of each certified firm every three years.

H. Updated Certification Letters

Upon request by a certified DBE/ACDBE, INDOT will issue a letter with the current date that reads the firm is still a certified DBE, provided that the firm is current on all of its annual update submittals. This letter is not intended as nor should it be interpreted as a recertification. This letter is merely a confirmation by INDOT that the firm remains certified.

I. Certification Denial Appeals Applicable to Both DBE and ACDBE Firms

If the EOD determines that an applicant does not qualify for DBE status, the EOD will issue a denial letter setting forth the specific reasons for the denial and applicable federal regulations and mail it to the applicant via certified mail. Should the EOD determine that an applicant does not qualify for DBE status, the applicant may appeal the decision to the USDOT within 90 days of the determination, pursuant to 49 CFR §26.89. The appellant has the burden of proof to show that the EOD was incorrect in its determination not to certify the firm. An applicant that does not exercise its right to appeal within the 90 days may re-apply with the EOD for certification no sooner than nine months after the date of the EOD letter denying certification. A firm that is certified in its home state and is denied certification by INDOT may request an in-person meeting in writing to discuss INDOT's objections to the firm's eligibility. If such a meeting is requested, INDOT will schedule it within thirty days of receipt of the written request.

J. Revocation of Certifications of DBE and ACDBE Firms

If the EOD revokes a current DBE firm's certification status, the firm may request an appeal before an ALJ. INDOT generally uses attorneys from the Indiana Office of Attorney General trained in certification matters to preside as ALJs over decertification appeals. At a decertification denial or revocation hearing, EOD has the burden of proof to show it correctly based its determination to revoke certification upon federal regulations, 49 CFR Parts 26 and/or 23. After a hearing before the ALJ, both INDOT and the firm have further appeal rights with the Federal DOT.

Any DBE firm whose status has been revoked by the EOD shall remain certified and listed in the DBE Public Search until the internal INDOT appeal has been completed. Should the firm exercise its right to further appeal to USDOT, pursuant to 49 CFR 26.87(i)(2), the EOD may remove the DBE firm from its DBE Public Search of certified firms. Should USDOT overturn the INDOT revocation determination, INDOT will re-enter the firm in its DBE Public Search.

K. Withdrawal of Certification Application

If an applicant for DBE certification withdraws its application before INDOT has issued a decision on the application, the applicant can resubmit the application at any time. INDOT will place the reapplication at the "end of the line," behind other applications that have been made since the firm withdrew its previous application. An applicant may withdraw and reapply within twelve months from the date of the original submittal so long as the applicant does not establish a pattern of frequent withdrawal of applications before INDOT makes a decision.

L. Certification Procedures

1. The EOD receives applications either by mail, courier, or personal delivery. The Administrative Assistant stamps the "Received Date" in the mid-section of Page 1 of the application on the day it is received.
2. The Administrative Assistant enters into an INDOT database the name of the applicant company and the date the EOD received the application. The Administrative Assistant must complete this process within one business day of application receipt by the EOD.
3. The Administrative Assistant verifies whether the applicant has obtained their Business Registration Number (BRN).
 - a. If the BRN is not evident upon review of the application, the Administrative Assistant contacts the company via email, phone, fax or mail to inform it that a BRN must be obtained within seven business days before the EOD can process their application. The Administrative Assistant places a reminder in Outlook of the deadline and holds the file for ten business days allowing the applicant time to obtain the BRN.
 - i. If the BRN is not obtained and communicated to the EOD by the tenth business day, the Administrative Assistant calls the applicant reminding it of the need for the BRN. After that call is made the applicant shall have one business day to email or fax a copy of its BRN to the EOD. If the EOD does not receive notification of the BRN within this time period, the Administrative Assistant sends a certified letter to the applicant stating that the file was closed due to lack of information Administrative Assistant will place the file folder in the cabinet designated for closed files.
 - ii. If the BRN is received within the aforementioned deadline, advance to step 3.b.
 - b. If the BRN is provided timely, the Administrative Assistant logs the application into the Repository by completing the Profile and Application pages within one business day of receipt. Applications are listed with a status of "Pending" on the Applications page. Acknowledgement of receipt of application is noted on the Communication page and a letter acknowledging receipt is sent to applicant via email, phone, fax or mail within one business day of receipt of a complete application or a BRN.

4. Within one business day of receipt of an application with a BRN or within one business day of receipt of the BRN, the Administrative Assistant places the application and accompanying documentation in a folder, two hole punches the documents that have been received. Then the Administrative Assistant reviews the incoming applications to determine if the applicant has provided all required documentation as identified on the EOD certification checklist. This review will not assess the accuracy of the documents. If the application is deficient, the Administrative Assistant will so document in the Repository and on the checklist.
5. If the application is deficient, the Administrative Assistant will request via email, fax, or certified mail that the applicant cure the deficiency so the file can be reviewed. The applicant has fifteen (15) calendar days from the date the applicant receives the letter to provide the additional documentation. The Administrative Assistant files the applicant's folder with the application in the filing cabinet for the seven calendar days.
 - a. If requested documentation is not provided within the fifteen (15) calendar days period, the Administrative Assistant notes his or her comments in the Repository on the Communication Log and sends the second request by email, fax or certified mail (whichever request was not used the first time.)
 - b. If the applicant does not respond to the second request within fifteen (15) calendar days of such contact, the Administrative Assistant makes a third and final attempt to reach the applicant by whichever method that was not used before, allowing seven (7) calendar days from date of contact for the applicant to respond. The Administrative Assistant will note this in the Repository on the Communication Log.
 - c. If requested documentation is not provided within a seven (7) calendar day period, the Administrative Assistant will write a letter closing the file for lack of cooperation. This letter will be sent certified mail and signed by the Certification Manager.
 - d. If the applicant is an out of state firm, the Administrative Assistant will request a site visit from the home state UCP.
6. Once the Administrative Assistant has a complete application, he or she will give the application to the EOD Coordinator.
7. The EOD Coordinator assigns files evenly among the Certification Specialists and logs all activity in the Repository by submitting comments in the Communications Log.
8. Once the Certification Specialist has completed the file for review, the Specialist must complete the review within ninety days. The Certification Specialist may extend the time period one time for no more than an additional sixty days upon written notice to the firm explaining in detail the reason for the need for an extension.
9. The Certification Specialist conducts a desk audit of the file.

10. After all requisite documentation has been received and evaluated, the Certification Specialist schedules a site visit with the Applicant (if it is an Indiana company).
11. The Certification Specialist conducts the site visit asking all questions and for the provision of documents as needed.
12. The Certification Specialist completes a DBE Final Review/Revisions Report and adds the Report to the file.
13. The Certification Specialist presents all findings/recommendations at the weekly Certification Review Committee meeting.
14. Once a decision is agreed upon by the Certification Review Committee, the Certification Specialist drafts an appropriate determination letter. If the decision is a denial, the letter will include the reasons for denial with an appropriate reference to the federal regulation. The determination letter should include the initials of the Certification Manager or Director and the Certification Specialist. If the applicant is an out of state firm, it will also copy the certifying agency.
15. The Certification Specialist updates the application status in the Repository.
 - a. If the applicant is **certified**, the Certification Specialist determines the NAICS Codes and the DBE Codes applicable to the company's products/services. The Certification Specialist logs the NAICS and DBE codes into the Repository on the Application page.
 - b. If the applicant is **denied**, the Certification Specialist enters the denial reason(s) into the Communication log (use 49 CFR codes).
 - c. If the applicant is **closed**, the Certification Specialist enters the reason(s) it is closed into the Application page and the Communication log (use 49 CFR codes).
16. The Certification Specialist delivers the completed file to the Certification Manager with the appropriate letter attached to the file.
17. The Certification Manager reviews the file, signs the letter and returns the file to the EOD Coordinator to note in the Communication Log.
18. The EOD Coordinator changes the desk audit and forwards the file to the Administrative Assistant
19. The Administrative Assistant copies the signed letter for placement in the folder, then sends the letter to the applicant by electronic mail and notes the date INDOT sends the letter in the Communication Log within one business day of receipt of file. Electronic notices only apply to notices of initial certification, continued certification, and code change updates. INDOT mails all other notices by certified mail.
20. INDOT accepts out of state certification applications for DBE firms certified in their home state. INDOT will review the applications independently, however, regardless of the certification determination of the home state. INDOT will request a copy of the on-site investigation from the applicant's home state.

21. If a firm applying for certification has a current, valid certification form or is recognized by the Small Business Administration (SBA) under the 8(a) small business program, INDOT will accept its 8(a) application instead of a DBE application and all documents relevant to the SBA determination. INDOT will however ask for additional documentation, if necessary, to make an appropriate determination concerning the firm's DBE status.
22. If an applicant is denied certification, INDOT will follow the procedures outlined in subsections H and I of this section of the Manual.

M. DBE Certification File Procedures

The Certification Section shall follow the procedures set forth below in organizing and maintaining DBE files:

Section 1 (Inside Cover)

- Checklists
- DBE Final Review/Revision
- Onsite Reviews

Section 2

- DBE Application
- Annual Update Form
- Certification Letters

Section 3

- Correspondence Letters
- Miscellaneous Items
- Out of State Certifications

Section 4

- Birth Certificates/Green Card/Passport
- Drivers License
- Relevant Licenses
- Resumes
- Relevant Licenses
- Spousal Renunciation

Section 5

- Loan Agreements/Promissory Notes
- Lease Agreements (Equipment, Office & Vehicle)
- Insurance Binders
- List of Company Owned Equipment
- Company Owned Real Estate Docs
- Vehicle Titles and/or Registration

Section 6

- Articles of Incorporation
- Bylaws

- Stock Certificates with Ledger
- Minutes of Board & Shareholder's Meetings
- Bank Signatory Card

Section 7

- Initial Contribution
- Personal Net Worth Statement

Section 8 (Inside Back Cover)

- Balance Sheets & Income Statements
- Federal Taxes (Corporate & Personal)
- Salaries

Financial records and documents marked "CONFIDENTIAL" will be filed chronologically with the most recent year on top.

N. Third Party Complaints Pertaining to DBE and ACDBE Firms

Overview: EOD Certification Specialists perform investigations in response to third-party complaints of DBE ineligibility or fraud in accordance with 49 CFR 26.87. The EOD reviews only written complaints that set forth specific allegations of DBE ineligibility. INDOT may choose whether or not to review an anonymous written complaint. INDOT will consult with EEO Officers and investigate the development of the firm's history as appropriate.

The EOD Certification Manager tracks the receipt and progress of its investigations and will make every effort to complete third-party complaint investigations within sixty days of receipt.

Procedure: The following sets forth the internal procedure and policy for receiving and investigating 3rd Party Complaints:

1. INDOT will accept only written complaints, which must be signed by the complainant.
2. The EOD will respond with an acknowledgement, which notes the receipt of the complaint and contains the following:
 - a. A statement that INDOT investigates certified firms only.
 - b. A summary of the investigation process.
 - c. A copy of the Complaint Form.
 - b. Instructions that the Form must be signed/notarized and returned to the Division within seven business days.
3. Upon receipt of the Complaint Form the Division notes the official filing date and logs the complaint into Third Party Complaint Database.

4. The Certification Review Committee discusses the complaint and determines if the substance of the complaint causes an investigation to be appropriate.
5. The Certification Review Committee will produce an action plan.
6. The EOD will then issue an official response to the complaint with correspondence accepting or denying the EOD's responsibility to investigate.
7. If warranted, the EOD will commence an investigation.
 - a. The investigator will interview the complainant.
 - b. Within fourteen days of filing date, the investigator will:
 - i. Identify witnesses
 - ii. View evidence.
 - c. The investigator shall conduct a fact- finding conference with the reviewing committee.
 - d. The investigator shall submit a summary of the investigation and:
 - i. Discuss the case with the review committee.
 - ii. Obtain the signature authorization from the Director, who will submit these written findings with FHWA.
8. If the investigation reveals cause to revoke a DBE firm's certification, INDOT will notify the firm that there is reasonable cause to remove its eligibility from the program and will follow the procedures outlined above in the "Revocation of Certifications of DBE and ACDBE Firms" of this Manual.
9. Confidentiality

INDOT recognizes that in responding to requests for information concerning any aspect of the DBE program, the USDOT will comply with the provisions of the Federal Freedom of Information and Privacy Acts and that any information concerning the DBE program, release of which is not prohibited by federal law, may be made available to the public. INDOT will safeguard from disclosure to unauthorized persons information that may reasonably be considered as confidential business information, consistent with federal, state, and local law.

Notwithstanding the above, INDOT shall keep the identity of complainants confidential, at the election of the complainant. However, if such confidentiality will hinder the investigation, proceeding, or hearing, or result in a denial of appropriate administrative due process to other parties, INDOT will advise the complainant for the purpose of waiving the privilege. INDOT will advise complainants that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing.

APPENDIX A

Indiana Department of Transportation DBE TRUCKING REPORT

The DBE primary trucker must complete and submit this report each time it receives payment from a Prime to: INDOT Economic Opportunity Division, Attention: Donna Poole 100 N. Senate Ave., Room 750, Indianapolis 46204, or email dpoole@indot.in.gov, or fax 317-233-0891.

INDOT Contract Number _____ District _____

Name of DBE Primary Trucker _____

Name of Prime Contractor _____

Total Contract Commitment to DBE Primary Trucker \$ _____

Date trucking services began on this job _____

Are trucking services completed on this job? ___ Yes ___ No Completion Date: _____

This report represents trucking services provided and/or brokered by the DBE Primary Trucker for the period beginning _____, and ending _____, under the above-referenced INDOT contract.

1. Amount of payment to DBE Primary Trucker from Prime \$ _____
2. Amount of payment made by DBE Primary Trucker to all supplemental DBE truckers \$ _____
3. Amount of payment made by DBE Primary Trucker to all supplemental non-DBE truckers \$ _____

I AFFIRM, UNDER PENALTIES OF PERJURY, that the above information is true and correct to the best of my knowledge, information and belief.

DBE Primary Trucker Name (print)

By: _____
(Signature of Representative)

(Date)

(Title)

APPENDIX B

Request for Proposals Bulletin _____

Project _____

AFFIRMATIVE ACTION CERTIFICATION FOR DBE

I hereby certify that my company intends to affirmatively seek out and consider Disadvantaged Business Enterprises (DBEs) certified in the State of Indiana to participate as part of this proposal. I acknowledge that this certification is to be made an integral part of this proposal. I understand and agree that the submission of a blank certification may cause the proposal to be rejected. I certify that I have consulted the following DBE website to confirm that the firms listed below are currently certified DBEs: https://financial.gmis.in.gov/psc/guest/EMPLOYEE/ERP/c/SOI_APPS_MWBE.SOI_DBE_CERT.GBL?& I certify that I have contacted the certified DBEs listed below, and if my company becomes the CONSULTANT, these DBEs have tentatively agreed to perform the services as indicated. I understand that neither my company nor I will be penalized for DBE utilization that exceeds the goal. After contract award, any change to the firms listed in this Affirmative Action Certification to be applied toward the DBE goal must have prior approval by INDOT's Economic Opportunity Division.

SUBCONSULTANTS

DBE SUBCONSULTANTS TO BE APPLIED TOWARD GOAL

Certified DBE Name	Service Planned	Estimated percentage to be paid to DBE*
		%
		%
		%
		%

DBE SUBCONSULTANTS TO BE USED BEYOND GOAL

Certified DBE Name	Service Planned	Estimated percentage to be paid to DBE*
		%
		%
		%
		%

Estimated Dollar Amount Credited toward DBE Goal: _____

Estimated Dollar Amount of Voluntary DBE Work Anticipated over DBE Goal: _____

Name of Company: _____

By: _____ Date: _____

*It is understood that these individual firm percentages and dollar amounts are estimates only and that amounts paid may be greater or less as a result of negotiation of the contract scope of work. My firm will use good faith efforts to meet the overall DBE goal through the use of these or other certified and approved DBE firms.

APPENDIX C

Contract Number _____

Contract Bid Amount _____

DBE Goal _____

DBE AFFIRMATIVE ACTION CERTIFICATION

I do hereby certify that it is the intention of my company to affirmatively seek out and consider certified DBEs to participate in this contract as subcontractors, lessors, or suppliers of materials or services.

I understand and agree that all subcontracting or leasing in connection with this contract, whether undertaken prior to or subsequent to award of contract, will be in accordance with the requirements for the Disadvantaged Business Enterprise (DBE) Program. The applicable requirements are included in the Standard Specifications and the Special Provisions in the Contract Information Book for this contract. I understand and agree that no subcontracting will be approved or commenced until the Department has reviewed and approved the affirmative actions taken by my company or me.

I understand that utilization of certified DBEs is in addition to all other equal employment opportunity requirements of this contract.

I acknowledge that this certification is to be made an integral part of this contract.

I understand and agree that the submission of a blank certification shall cause my bid to be rejected.

I hereby certify that contact has been made with the firms listed in this certification, and that I have confirmed that these firms are certified by the State of Indiana as DBEs (For listing of DBE certified firms, see: https://financial.gmis.in.gov/psc/guest/EMPLOYEE/ERP/c/SOI_APPS_MWBE.SOI_DBE_CERT.GBL.)

If my company becomes the Contractor, the certified DBEs listed below have tentatively agreed to perform the corresponding services as part of this contract's DBE goal ("race/gender conscious" DBE participation). If a portion of a line item is used to satisfy the goal, the full dollar amount of the item will be considered as race conscious.

I have also listed the certified DBEs that have tentatively agreed to perform the corresponding services listed below beyond what is necessary to meet the contract's DBE goal ("race/gender neutral DBE participation). I understand that neither my company nor I will be penalized for failure to achieve the dollar amounts listed beyond the contract goal.

After contract award, any change to the firms listed as DBE SUBCONTRACTORS AND LESSORS TO BE APPLIED TOWARD GOAL or DBE MATERIAL SUPPLIERS TO BE APPLIED TOWARD GOAL in this Affirmative Action Certification must have prior approval by INDOT's Economic Opportunity Section, Central Office.

DBE SUBCONTRACTORS AND LESSORS TO BE APPLIED TOWARD GOAL

<u>Certified DBE Name & Address</u>	<u>Pay Item Number and Service Planned</u>	<u>Actual Dollar Amount to be paid to DBE</u>
---	--	---

DBE MATERIAL SUPPLIERS TO BE APPLIED TOWARD GOAL

<u>Certified DBE Supplier Name & Address</u>	<u>Item(s)</u>	<u>Multiplier 60% or 100% from 103.01(c)</u>	<u>DBE Dollar Amount Allowable</u>
--	----------------	--	------------------------------------

Contract Number _____

DBE SUBCONTRACTORS, LESSORS AND MATERIAL SUPPLIERS TO BE USED BEYOND GOAL

Certified DBE Name & Address **Pay Item Number and Service Planned** **Actual Dollar Amount to be paid to DBE**

Total Dollar Amount Credited toward DBE Goal (Race/Gender Conscious): _____

Total Dollar Amount of Voluntary DBE Work Anticipated over DBE Goal (Race/Gender Neutral): _____

Name of Company:

By: _____ **Date:** _____

Individual's Name and Title (printed or typed)

(revised 06-08-07)

APPENDIX D

INDIANA DEPARTMENT OF TRANSPORTATION
DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION AFFIDAVIT

KNOW ALL MEN BY THESE PRESENTS:

THAT, in order to comply with the Disadvantaged Business Enterprise requirements set out in Contract _____
Project _____, the below signed persons, representing the Prime Contractor and the Disadvantaged
Business Enterprise, do hereby certify and swear that the amounts shown below were paid to, and received by, the Disadvantaged
Business Enterprise, represented below, who performed subcontract work, provided materials, or rendered any other service
in the carrying forward, performing, and completing of said contract.

AMOUNT PAID TO _____ \$ _____
(NAME OF DBE)

The DBE was a: Subcontractor, Lessor, Supplier

Type of work performed or service provided: _____

IN WITNESS WHEREOF, I have affixed my signature this _____ day of _____, _____.

PRIME CONTRACTOR
By _____
SIGNATURE

TITLE

ACKNOWLEDGEMENT

STATE OF INDIANA, COUNTY OF _____ SS:
Subscribed and sworn to before me by _____ of the firm of _____
this _____ day of _____, _____.

NOTARY PUBLIC

My Commission expires _____

* * * * *

AMOUNT RECEIVED FROM (including retainage) _____ \$ _____
(NAME OF PRIME CONTRACTOR)

IN WITNESS WHEREOF, I have affixed my signature this _____ day of _____, _____.

DBE COMPANY NAME
By _____
SIGNATURE

TITLE

ACKNOWLEDGEMENT

STATE OF INDIANA, COUNTY OF _____ SS:
Subscribed and sworn to before me by _____ of the firm of _____
this _____ day of _____, _____.

NOTARY PUBLIC

My Commission expires _____

APPENDIX E

DISADVANTAGED BUSINESS ENTERPRISE ANNUAL UPDATE

This annual update form is required by Indiana Department of Transportation in order to keep your DBE eligibility status. When submitting this form you are required to enclose your Board of Director's Meeting Minutes (if Incorporated), Balance Sheets & Income Statements, Federal Income Tax Returns (Business & Personal), Personal Net Worth Statement, and any other documentation that supports the reported changes on this form.

GENERAL INFORMATION

Name of Firm:		
Street Address:		
City:	State:	Zip:
Mailing Address:		
City:	State:	Zip:
Owner of Firm:	Email:	
Telephone Number:	Fax Number:	
Describe the primary business activity of the firm:		
Person preparing this application:		Title:

OWNERSHIP

Items such as amendments to any corporate by-laws or partnership agreements, transfers or issuance of stock, changes in management personnel or corporate officers, etc. should be enclosed. Note: failure to disclose all information concerning the control and ownership of the firm may lead to decertification of the firm.

Attach additional sheets if necessary.

Have there been any changes in the ownership structure of the company in the past year? YES NO

Please check what structure the company is currently using below.

<input type="checkbox"/> Sole Proprietorship	<input type="checkbox"/> Partnership	<input type="checkbox"/> Corporation	<input type="checkbox"/> Other
--	--------------------------------------	--------------------------------------	--------------------------------

List equipment purchased or leased in the past year with value greater than \$1,000.00

Type of Equipment	Make	Model	Year	Date Acquired	Present Value

List five largest contracts completed in past year.

Owner/Contractor	Phone	Contract Amount	Project Name/Location	Type of Work Performed

PERSONAL NET WORTH INFORMATION

Have you acquired any personal assets or liabilities in the last year? YES NO

If answered "YES", list details below: Note: Attach proof of change in assets or liabilities.

Description	Acquired/Sold	Names on Assets	Liabilities Against Asset	Value of Asset



PERSONAL FINANCIAL STATEMENT

U.S. SMALL BUSINESS ADMINISTRATION

As of _____, _____

Complete this form for: (1) each proprietor, or (2) each limited partner who owns 20% or more interest and each general partner, or (3) each stockholder owning 20% or more of voting stock, or (4) any person or entity providing a guaranty on the loan.

Name	Business Phone
Residence Address	Residence Phone
City, State, & Zip Code	
Business Name of Applicant/Borrower	

ASSETS	(Omit Cents)	LIABILITIES	(Omit Cents)
Cash on hand & In Banks	\$ _____	Accounts Payable	\$ _____
Savings Accounts	\$ _____	Notes Payable to Banks and Others	\$ _____
IRA or Other Retirement Account	\$ _____	(Describe in Section 2)	
Accounts & Notes Receivable	\$ _____	Installment Account (Auto)	\$ _____
Life Insurance-Cash Surrender Value Only	\$ _____	Mo. Payments \$ _____	
(Complete Section 8)		Installment Account (Other)	\$ _____
Stocks and Bonds	\$ _____	Mo. Payments \$ _____	
(Describe in Section 3)		Loan on Life Insurance	\$ _____
Real Estate	\$ _____	Mortgages on Real Estate	\$ _____
(Describe in Section 4)		(Describe in Section 4)	
Automobile-Present Value	\$ _____	Unpaid Taxes	\$ _____
Other Personal Property	\$ _____	(Describe in Section 6)	
(Describe in Section 5)		Other Liabilities	\$ _____
Other Assets	\$ _____	(Describe in Section 7)	
(Describe in Section 5)		Total Liabilities	\$ _____
Total	\$ _____	Net Worth	\$ _____
		Total	\$ _____

Section 1. Source of Income	(Omit Cents)	Contingent Liabilities	(Omit Cents)
Salary	\$ _____	As Endorser or Co-Maker	\$ _____
Net Investment Income	\$ _____	Legal Claims & Judgments	\$ _____
Real Estate Income	\$ _____	Provision for Federal Income Tax	\$ _____
Other Income (Describe below)*	\$ _____	Other Special Debt	\$ _____

Description of Other Income in Section 1.

*Alimony or child support payments need not be disclosed in "Other Income" unless it is desired to have such payments counted toward total income.

Section 2. Notes Payable to Banks and Others. (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed.)

Name and Address of Noteholder(s)	Original Balance	Current Balance	Payment Amount	Frequency (monthly, etc.)	How Secured or Endorsed Type of Collateral

Section 3. Stocks and Bonds. (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed).

Number of Shares	Name of Securities	Cost	Market Value Quotation/Exchange	Date of Quotation/Exchange	Total Value

Section 4. Real Estate Owned. (List each parcel separately. Use attachment if necessary. Each attachment must be identified as a part of this statement and signed.)

	Property A	Property B	Property C
Type of Property			
Address			
Date Purchased			
Original Cost			
Present Market Value			
Name & Address of Mortgage Holder			
Mortgage Account Number			
Mortgage Balance			
Amount of Payment per Month/Year			
Status of Mortgage			

Section 5. Other Personal Property and Other Assets. (Describe, and if any is pledged as security, state name and address of lien holder, amount of lien, terms of payment and if delinquent, describe delinquency)

Section 6. Unpaid Taxes. (Describe in detail, as to type, to whom payable, when due, amount, and to what property, if any, a tax lien attaches.)

Section 7. Other Liabilities. (Describe in detail.)

Section 8. Life Insurance Held. (Give face amount and cash surrender value of policies - name of insurance company and beneficiaries)

I authorize SBA/Lender to make inquiries as necessary to verify the accuracy of the statements made and to determine my creditworthiness. I certify the above and the statements contained in the attachments are true and accurate as of the stated date(s). These statements are made for the purpose of either obtaining a loan or guaranteeing a loan. I understand FALSE statements may result in forfeiture of benefits and possible prosecution by the U.S. Attorney General (Reference 18 U.S.C. 1001).

Signature: _____ Date: _____ Social Security Number: _____

Signature: _____ Date: _____ Social Security Number: _____

PLEASE NOTE: The estimated average burden hours for the completion of this form is 1.5 hours per response. If you have questions or comments concerning this estimate or any other aspect of this information, please contact Chief, Administrative Branch, U.S. Small Business Administration, Washington, D.C. 20416, and Clearance Officer, Paper Reduction Project (3245-0188), Office of Management and Budget, Washington, D.C. 20503. PLEASE DO NOT SEND FORMS TO OMB.

APPENDIX F

Indiana Department of Transportation – Economic Opportunity Division Commercially Useful Function Policy

I. Introduction

Federal aid prime contractors and INDOT are responsible for ensuring that every Disadvantaged Business Enterprise (DBE) that performs on federal aid contracts performs a Commercially Useful Function (CUF) in order to remain in compliance with federal DBE requirements. Failure of a DBE to perform a CUF will result in that work not being counted toward the prime contractor's DBE goal. In severe cases it could result in non-payment to the prime or ineligibility for the prime or DBE to work on future INDOT contracts. INDOT is required to conduct CUF reviews early and regularly throughout the life of the project. To determine a DBE's CUF compliance, the following essential questions must be answered:

- Who supervises and carries out the work?
- Who pays the DBE's employees?
- Who owns the equipment used by the DBE?

Three Contract Areas

Generally, INDOT expects prime contractors to answer the following question: how would a subcontractor or lessor perform the work assigned to it if it was not a certified DBE? In most cases, standard industry practices are used as a benchmark for ascertaining CUF compliance; however, if the standard practices conflict with the CUF management and control requirements, then the CUF requirements prevail. CUF requirements fall into three major contract areas:

A. Management

The DBE must actually manage the work that has been contracted. Management includes scheduling daily operations, ordering equipment and materials, preparing and submitting certified payrolls, and executing decisions related to personnel. This means:

1. The DBE owner must make all operational and managerial decisions of the firm.
2. All work must be performed with the DBE's own workforce.
3. The DBE owner must supervise daily operations either personally or with a full time, skilled, and knowledgeable superintendent. The superintendent must be under the DBE's direct control.

B. Materials

The DBE shall negotiate the cost, arrange delivery, and pay for the materials and supplies for the job. INDOT or project management staff will review invoices to determine if they are billed to and paid by the DBE. Also, the DBE must determine the

quantity of the material and be responsible for the quality of the material. Two-party checks for payment may be made to the DBE and the supplier only if approved by INDOT Central Office in advance. No credit toward the DBE goal will be given to the cost of materials or supplies paid directly by the prime contractor for the DBE.

C. Employees

The DBE's work must be performed by personnel employed and under the control and direction of the DBE firm. These include employees of the DBE or those recruited through traditional recruitment or employment avenues. To be considered independent businesses, DBEs shall keep a regular workforce. DBEs shall not share employees with non-DBE contractors, especially the prime contractor. The DBE firm must be responsible for all payroll and labor compliance requirements for all employees within the control of the firm and is expected to prepare and finance the payrolls. With union employees, the same individuals may work for primes on some days, DBEs on others, provided the DBE controls, manages, and pays for all individuals when they work for the DBE.

II. Counting DBE Participation

A. DBE Subcontractor - 49 CFR § 26.55 (a).

May count 100% of the amount paid to a DBE contractor for labor and materials provided to perform a defined and distinct item of the contract work. The work must be performed by the DBE's own employees and the DBE must order and pay for all supplies and materials. The DBE must meet all subcontractor requirements in the contract, including payroll and labor compliance requirements.

B. DBE Manufacturer - 49 CFR § 26.55 (e)(1).

May count 100% of the value paid for materials furnished that become a permanent part of the project. A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

C. DBE Supplier (regular dealer) - 49 CFR § 26.55 (e)(2).

May count 60% of the value paid for materials furnished that become a permanent part of the project. A supplier is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. The firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

D. DBE Broker - 49 CFR § 26.55 (e)(3).

May count 100% of the *fee* or *commission* received by the DBE for the materials purchased and resold to the contractor that become a permanent part of the project. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals. A facilitator, packager, manufacturers' representative, or other person who arranges or expedites transactions but does not manufacture or supply on a regular basis can not be a regular dealer or manufacturer.

E. DBE Trucking Company – 49 CFR § 26.55 (d).

The DBE trucker must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals. Also, the DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract. Prime contractors receive credit toward the DBE goal based on the following factors:

1. The DBE receives 100% credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
2. The DBE receives 100% credit for any trucks it leases from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
3. The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees equal to the value of transportation services provided by DBE-owned trucks on the contract.

Example: DBE Firm X, used to meet a DBE goal, uses 2 of its own trucks on a contract. Firm X leases 2 trucks from DBE Firm Y for work on the contract. Firm X also leases 6 trucks from non-DBE Firm Z for the contract. The DBE would get the following credit:

Firm X: 2 trucks

+ Firm Y: 2 trucks

4 DBE Trucks

+ Prime may count 4 (out of the 6) additional non-DBE trucks (the number that is equal to but not more than the number of DBE trucks provided by the DBE above).

Therefore the total DBE credit = 8 trucks

III. CUF Red Flags

The Federal Highway Administration has provided guidance to INDOT in the form of "red flags" that

may suggest that a DBE is not performing a Commercially Useful Function. The presence of one or more of these "red flags" must result in a more thorough investigation by INDOT.

When an INDOT or project manager staff member detects a "red flag", he or she will notify the District EEO Officer immediately and log the information in the daily report. The District EEO Officer will then notify the Central Office Equal Opportunity Division about the "red flag(s)" and will commence an investigation as soon as possible with the expected complete cooperation of the Contractor(s). The "red flags" as identified include the following:

- The work to be performed by the DBE is outside of the DBE's known experience or capability.
- The DBE provides little or no supervision of the work, the DBE superintendent is not a regular employee of that firm or supervision is performed by personnel associated with the prime contractor, another business or personnel not under the control of the DBE firm.
- The DBE work force is not under the DBE firm's control and direction or work is performed by personnel normally employed by the prime contractor or another business.
- Any portion of the work designated to be performed by a DBE subcontractor is performed by the prime contractor.
- Any equipment used by the DBE firm belongs to the prime contractor or another contractor with no formal lease agreement or the equipment signs and markings cover another owner's identity, usually through the use of magnetic signs. The EEO Officer will determine "substantial portion" on a case by case basis.
- Materials or supplies necessary for the DBE firm's performance are delivered to, billed to, or paid by another business.
- DBE firm subcontracts or assigns any portion of work to another firm.
- DBE trucking business uses trucks owned by the prime contractor.
- DBE prime contractor subcontracts a greater percentage than the specific contract allows.
- DBE prime contractor only purchases materials while performing little or no work.
- The agreement between the prime contractor and the DBE firm artificially inflates the DBE participation or erodes the ownership, control or independence of the firm.
- The DBE firm works primarily for only one prime contractor.
- Employees work for both the DBE firm and the prime contractor or mentor (shared

employees).

- The volume of work is beyond the capacity of the DBE firm.
- Inquires made by INDOT or FHWA representatives are answered by the prime contractor or mentor.
- The DBE firm's owner is not aware of the status of the work or the performance of the business.

APPENDIX G

Indiana Department of Transportation Commissioner

065001

Revised 12/03/2010

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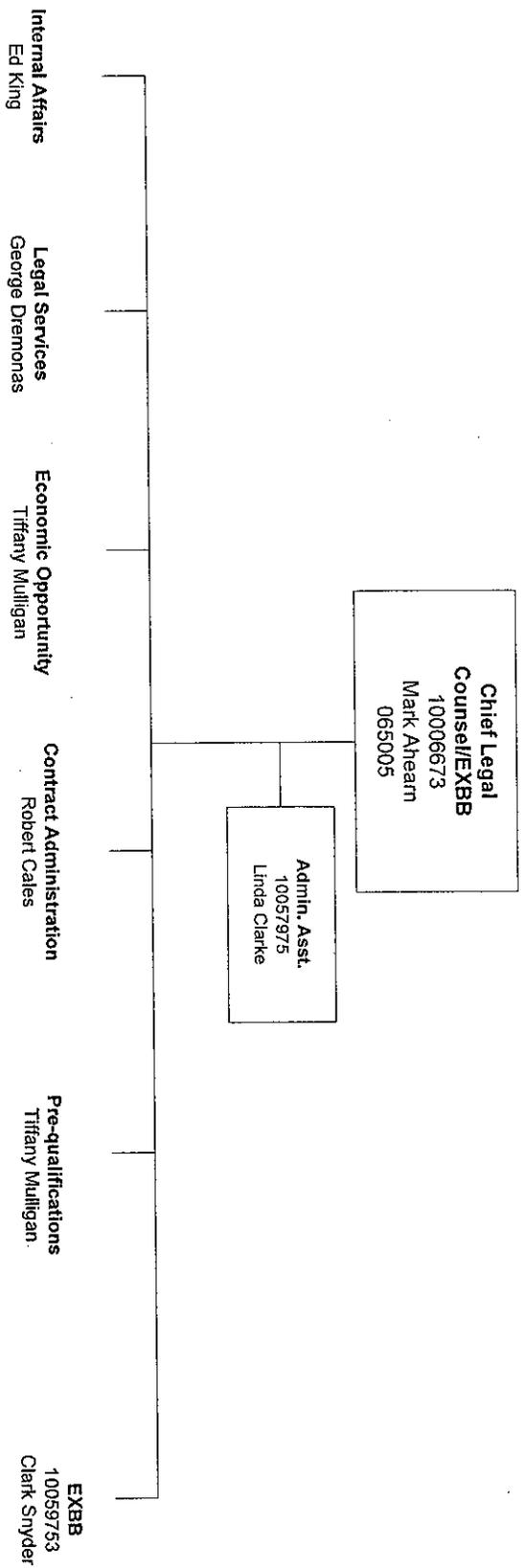
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Indiana Department of Transportation

Legal
065005

Revised 6/27/2011



Indiana Department of Transportation Economic Opportunity & Pre Qualifications

065118

Revised 6/27/2011

