

Economic Opportunity Division

Training Day

April 12, 2016



Welcome

Libby Crawford

Director, Economic Opportunity Division-INDOT



Disadvantaged Business Enterprise (DBE) Certification

Derrick Casson

DBE Certification Manager



DBE Locator/Directory

Location of Indiana DBE Directory

IN.gov

INDOT website

INDOT HOME

DOING BUSINESS WITH INDOT

- Request for Information
- Request for Qualifications
- Request for Proposals
- Consultants/Pre-Construction
- Contractors/Construction
- Standards & Specifications
- Contract Letting Information
- Indiana Design Manual
- Open Roads (Practical Design)
- Permits

ECONOMIC OPPORTUNITY

The Division of Economic Opportunity (EOD) is responsible for maximizing contracting opportunities for disadvantaged businesses on INDOT contracts. Economic Opportunity performs all Disadvantaged Business Enterprise (DBE) certification services for the state of Indiana pursuant to its Unified Certification Program.

The division also assesses DBE-owned business utilization data and ensures compliance with EEO provisions as required by INDOT contract and federal law. Economic Opportunity also administers the agency's compliance with Title VI of the Civil Rights Act of 1964 and Title II of the Americans with Disabilities Act and related laws. Additionally, Economic Opportunity provides managerial and technical assistance to DBE firms.

The mission of EOD is to:

- 1. Maximize contracting opportunities for disadvantaged businesses by certifying qualifying firms as Disadvantaged Business Enterprises
- 2. Monitor INDOT contracts for equal employment opportunity contract compliance with state and federal laws
- 3. Increase the number of journey-level women and minorities in Indiana's construction industry through the OJT Program
- 4. Provide education about and ensure enforcement of state and federal civil rights laws

EOD Sections

- DBE locator and directory
- DBE Locator User Guide

GOVERNOR MIKE PENCE

IN.gov A State that Works

INDOT Search

Indiana Department of Transportation

INDOT > Doing Business with INDOT > Economic Opportunity > Economic Opportunity

INDOT HOME

DOING BUSINESS WITH INDOT

- Request for Information
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- Open Roads (Practical Design)
- Permits
- INDOT University
- Economic Opportunity
- Local Public Agency Programs
- Utility Coordination
- Procurement
- Other Business

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Indiana DBE Directory

- DBE locator and directory
- DBE Locator User Guide

EOD Sections

Link

<https://entapps.indot.in.gov/DBELocator/>



DBE Locator/Directory

How to Use the DBE Directory

Filter Settings

Search by:

1. Company Name
2. Activity Code
3. DBE Category/Specialty
4. District
5. DBE Code

State of Indiana Directory of Certified Disadvantaged Owned Business Enterprise Search

This web application is provided as an aid in examining the locations of DBE Firms. Use the filter settings to limit the DBE search. Use the apply button to execute a search and the clear button to clear the results. In the search results table click the magnifier to zoom to that DBE Firm location. On the map, left mouse-click on a DBE Firm to show additional information.

Filter Settings

- Select a Company Name
- Select an Activity Code (NAICS)
- Select a DBE Category/Specialty
- Select a District
- Select a DBE Code
- Filter Using Current Display Area
- Certification Date Begin: 1/1/1990
- and End Date: 6/30/2020
- Apply
- Clear

Zoom to	Company Name	DBE Code/Category (Specialty)	Description	DBE Code Certification Comment	NAICS #	App Type	District
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DBE Locator/Directory

How to Use the DBE Directory

Search Example

Searched by Vincennes District

All certified DBE companies in Vincennes District are viewable at bottom

State of Indiana Directory of Certified Disadvantaged Owned Business Enterprise Search

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Filter Settings

Select a Company Name

Select an Activity Code (NAICS)

Select a DBE Category/Specialty

Vincennes District

Select a DBE Code

Filter Using Current Display Area

Certification Date Begin: 1/1/1990

and End Date: 6/30/2020

Apply Clear

Zoom to	Company Name	DBE Code/Category (Specialty)	Description	DBE Code Certification Comment	NAICS #	App Type	District
	Busch Landscaping, LLC	0051.11C	Site Preparation Contractors	Trenching, Manhole and Pipe installation, Excavation	238910	DBE	Vincennes District
	Busch Landscaping, LLC	0051.17C	Landscaping Services	Irrigation Systems, Seeding & Sodding, Erosion Control	561730	DBE	Vincennes District
	Busch Landscaping, LLC	0051.21C	Other Services to Buildings and Dwellings	Snow removal Services	561790	DBE	Vincennes District
	CK United Sheet Metal & Mechanical, Inc.	0051.53C	Plumbing, Heating, and Air-Conditioning Contractors	HVAC	238220	ACDBE	Vincennes District
	CK United Sheet Metal & Mechanical, Inc.	0051.53C	Plumbing, Heating, and Air-Conditioning Contractors	HVAC	238220	DBE	Vincennes District

Number of Records Returned: 30

Export Table to Excel



DBE Locator/Directory

How to Use the DBE Directory

Viewing DBE Details

Options:

1. Scroll horizontal
2. Scroll vertical
3. Export Table to Excel

State of Indiana Directory of Certified Disadvantaged Owned Business Enterprise Search

This web application is provided as an aid in examining the locations of DBE Firms. Use the filter settings to limit the DBE search. Use the apply button to execute a search and the clear button to clear the results. In the search results table click the magnifier to zoom to that DBE Firm location. On the map, left mouse-click on a DBE Firm to show additional information.

Zoom to	Company Name	DBE Code/Category (Specialty)	Description	DBE Code Certification Comment	NAICS #	App Type	District
	Busch Landscaping, LLC	0051.11C	Site Preparation Contractors	Trenching, Manhole and Pipe installation, Excavation	238910	DBE	Vincenne District
	Busch Landscaping, LLC	0051.17C	Landscaping Services	Irrigation Systems, Seeding & Sodding; Erosion Control	561730	DBE	Vincenne District
	Busch Landscaping, LLC	0051.21C	Other Services to Buildings and Dwellings	Snow removal Services	561790	DBE	Vincenne District
	CK United Sheet Metal & Mechanical, Inc.	0051.53C	Plumbing, Heating, and Air-Conditioning Contractors	HVAC	238220	ACDBE	Vincenne District
	CK United Sheet Metal &		Plumbing, Heating, and Air-				Vincenne

Number of Records Returned: 30

Export Table to Excel



DBE Locator/Directory

How to Use the DBE Directory

Viewing Excel Report

Detail includes:

1. Company Name
2. DBE Code/Category
3. Description
4. DBE Code
Certification Comment
5. NAICS #
6. District
7. Owner Name
8. Owner Address
9. Owner Phone
10. Owner Email

Company Name	DBE Code/Category (Specialty)	Description	DBE Code Certification Comment	NAICS #	App Type	District	City	Owner	Address Line 1	Address Line 2	City	State	Zip	Phone Number	Fax Number	Email ID	Certification Date
3D Company, Inc.	0051.21C	Other Services to Buildings and Dwellings	Specializing in driveway and parking lot (video inspection Services; Drains, Underdrains, Catchment Ponds, Paving; Storms, Outlets; Protection; Aggregate, Grills and Pedestrian Trails and Greenways	56790	DBE	Entire State		Deanna Case	220 O East CR 250 North		Munster	IN	473 02	765/266-2226	765/266-2244	dcase@3dcompanyinc.com	7/6/2015
3D Company, Inc.	0051.40C	Other Heavy and Civil Engineering Construction	Commercial and Institutional Building Construction	237990	DBE	Entire State		Deanna Case	220 O East CR 250 North		Munster	IN	473 02	765/266-2226	765/266-2244	dcase@3dcompanyinc.com	7/6/2015
3D Company, Inc.	0051.48C	Construction	Construction	236220	DBE	Entire State		Deanna Case	220 O East CR 250 North		Munster	IN	473 02	765/266-2226	765/266-2244	dcase@3dcompanyinc.com	7/6/2015
3D Company, Inc.	0051.47C	Highway, Street, and Bridge Construction	Sidewalks, Curb, Ramps and Steps, Concrete, Excavation, Removal and Clearing	237210	DBE	Entire State		Deanna Case	220 O East CR 250 North		Munster	IN	473 02	765/266-2226	765/266-2244	dcase@3dcompanyinc.com	7/6/2015
3D Company, Inc.	0051.58C	Water & Sewer Line & Related Structures Construction	Storms, Trench and Catch Basins; Water Main & Sewer Installation	237110	DBE	Entire State		Deanna Case	220 O East CR 250 North		Munster	IN	473 02	765/266-2226	765/266-2244	dcase@3dcompanyinc.com	7/6/2015



DBE Locator/Directory

Questions / Answers



Certification Standards

DBE Reporting Requirements

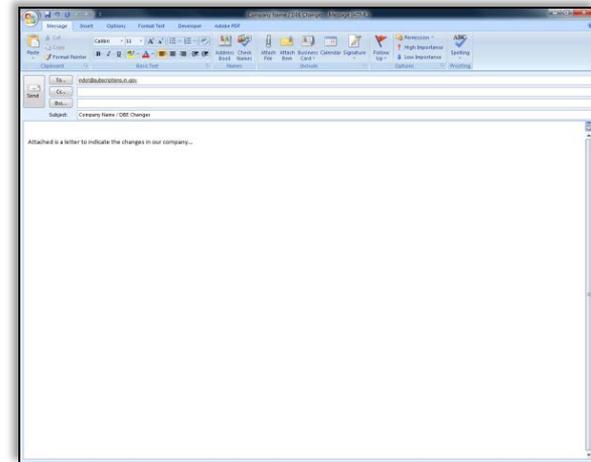
DBE owner must report changes as follows:

- ✓ Company ownership
- ✓ Services provided
- ✓ Ownership of equipment

Must be reported within 30 days of change occurrence

Subject: Company Name / DBE Changes

Attach letter with details of changes on company letterhead



Report by Email to:

dbecertification@indot.in.gov



Certification Standards

No Change Affidavit Process - Annual

Specific documents are needed from the DBE owner to confirm no changes in circumstances in the DBE company affecting its ability to meet the size, disadvantaged status, ownership or control requirements of 49 CFR Part 26.

Economic Opportunity Division will notify the DBE owner by email as a courtesy

Forms

- ✓ No Change Affidavit
- ✓ Tax Forms
- ✓ Other information as requested

Upcoming

- Will be electronic as of July 16
- Instructions will be posted on website



Certification Standards

No Change Affidavit Form

Recent Changes

Previous form known as DBE Annual Update Form was updated to No Change Affidavit (NCA)

Reminders

- 2 page document
- All boxes must be completed

INDIANA DEPARTMENT OF TRANSPORTATION
AFFIDAVIT OF CONTINUED DBE CERTIFICATION ELIGIBILITY

Name of Firm: _____ Contact Person: _____
Address of Firm: _____ Business Telephone Number: _____
Cellular Telephone Number: _____
E-Mail Address: _____ Alternative Telephone Number: _____ FAX Telephone Number: _____

No Change Affidavit

I swear (or affirm) that there have been no changes in the circumstances of _____ affecting its ability to meet the size, disadvantaged status, ownership or control requirements of 49 CFR Part 29. There have been no material changes in the information provided with _____ application for certification, except for any changes about which I have provided written notice to the Indiana Department of Transportation under §29.83(i).

_____ meets Small Business Administration (SBA) criteria for being a small business concern, and its average annual gross receipts do not exceed the maximum dollar limit, as defined by SBA rules (13 CFR 121.402), over the firm's previous three fiscal years. The Secretary of Transportation adjusts this amount for inflation from time to time, and will vary with the type of firm.

I certify that my personal net worth does not exceed \$1,320,000, and that I am economically disadvantaged because my ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business that are not socially and economically disadvantaged.

I declare under penalty of perjury that this information provided in this application and the supporting documents is true and correct.

FOR USE OF NOTARY PUBLIC

Notary Public

Signature of Majority Owner: _____ Date: _____ Title: _____

"Please note, if there have been changes in ownership and/or control, the following documents will be required before our information can be processed. Other documentation may be requested if additional questions arise."

For Ownership Changes:
1. Board of Directors meeting minutes;
2. Stock Ledgers and/or copies of stock certificates;
3. Investment proof (minority and female owners only);
cancelled checks, bank withdrawals/transfers, etc.

For Control Changes:
1. Board of Directors meeting minutes;
2. Current listing of officers

Employed by firm: _____
Tax returns must be attached.



Certification Standards

Request for Documents

Standard Email Notification

Annual

1 Documents Requested

2 No response may result in removal from DBE Program

3 Additional information may be requested

4 Respond if you do not wish to continue your Indiana DBE certification

5 Timely response is requested

To: DBE owner

From: indot@subscriptions.in.gov

Dear Indiana Certified DBE/ACDBE,

In accordance with Federal Regulation 49 CFR Part §26.83(j), all Indiana DBE owners must submit an annual affidavit stating that there have been no changes in circumstances affecting firms' ability to meet size, disadvantaged status, ownership or control requirements or any material changes in the information provided in its application form, except for changes about which the DBE has notified INDOT.

If you choose to continue to participate as an Indiana DBE/ACDBE and you have no changes to report, please complete and return the following documents:

1. *Indiana DBE No Change Affidavit (PDF attached)*
2. *Current Federal Income Tax Returns (Corporate/all pages) and/or (Proof of Extension)*

Failure to provide such information in accordance with Federal Regulation 49 CFR Part 26.109(c) may result in your firm's removal from the Indiana DBE Program and/or suspension by the DBE Certification Committee. Failure to respond to this notification can be grounds for determining your firm to be ineligible to participate in the Indiana DBE program.

Please note that additional information can be requested on a case by case basis if we have concerns about your continued eligibility.

If you do not wish to continue your Indiana DBE certification, (Please include the name of your company in your response) please submit by e-mail to be removed from the DBE Program to the following e-mail: dbecertification@indot.in.gov

All documentation is due electronically via e-mail to INDOT at dbecertification@indot.in.gov by the last business day of month

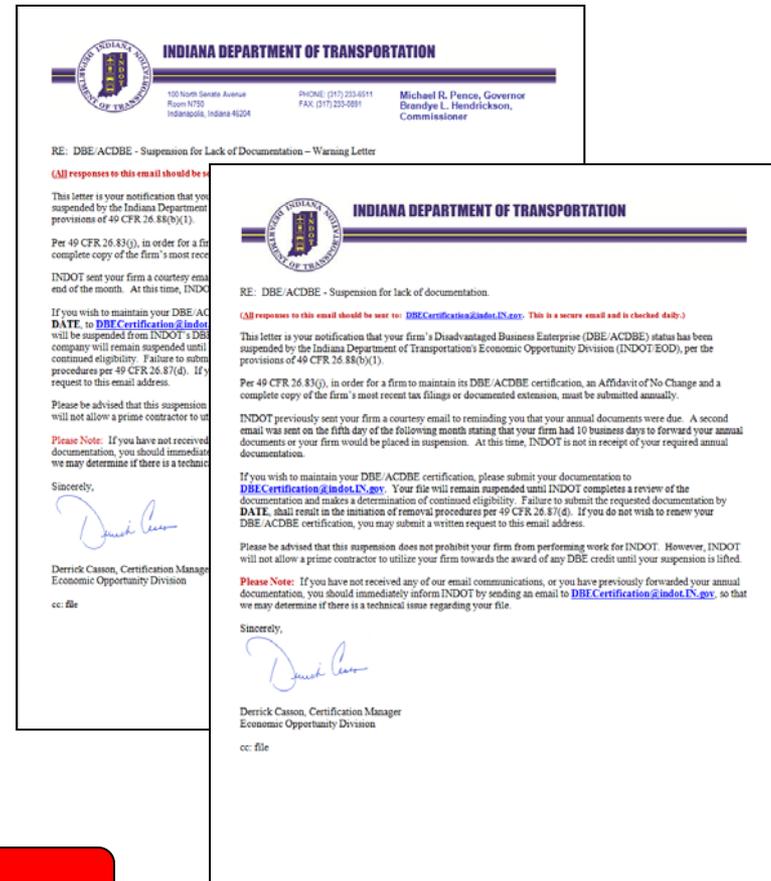


Certification Standards

Protocol for Failure to Provide Requested Documents

Process

- 5th business day of the month:
 - Final reminder email sent
- 11th business day following the final reminder:
 - Company placed in DBE suspension status
- Documentation not received within 6 months of final due date given:
 - Company placed in DBE termination status



Reference: 49 CFR 26.87



Certification Standards

Questions / Answers



Personal Net Worth – Certified Entities

DBE Owner(s) Net Worth:

- Cannot exceed \$1.32 million
- Assets are everything owned
- Liabilities are deducted

Liability Examples

Items include but are not limited to:

- Mortgage (except for equity in principle residence)
- Loans on life insurance
- Unpaid taxes

Asset Examples

Items include but are not limited to:

- Cash or equivalents
- Retirement accounts, IRA, 401K, Pension
- Stocks or bonds
- Assets held in Trust Fund
- Shareholder loan
- Life insurance
- Real estate owned
- Personal property items:
 - Automobiles
 - Jewelry
 - Clothing

Reference: 49 CFR 26.67



Personal Net Worth – Certified Entities

Owner(s) AGI Reviewed Annually

Calculating Adjusted Gross Income (AGI):

Corporation or Partnership:

1. Officer salary (W-2's)
2. Business income from K-1's
3. Less: Section 179 deduction (Need to verify using Schedule E from personal taxes)
4. Less: Total tax due from personal taxes

Sole Proprietor:

1. Personal taxes
2. Schedule C for net profit/loss
3. Wages/W-2's
4. Less: Total tax due

Tax Information

- Corporate taxes with all schedules & K-1's
- Personal taxes with all schedules & W-2's
- Other businesses owned – same information required

Reference: 49 CFR 26.67



Personal Net Worth – Certified Entities

Ability for owner(s) to accumulate financial wealth



Factors considered when reviewing the owner(s) AGI:

- Did the owner(s) adjusted gross income (AGI) (past 3 year average) exceed \$350,000?
- Was the income unusual and is it not likely to occur in the future?
- Were the earnings offset by losses?
- Was the income reinvested in the firm or used to pay taxes arising in the normal course of operations by the firm?
- Did the total fair market value of the owner's assets exceed \$6 million?

Reference: 49 CFR 26.67



Personal Net Worth – Certified Entities

Questions / Answers

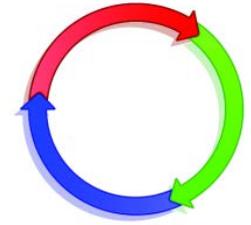


Application Pitfalls



Examples of Frequently Encountered Issues During Processing

Issue	Cause(s)
Incomplete application submitted / Delayed application	DBE application checklist not utilized and items missing
Lack of expertise by majority owner (husband and wife owned businesses)	Majority owner listed unable to demonstrate experience, education, and training
Personal net worth exceeds limit / Economic disadvantage rebutted	DBE applicant has ability to accumulate substantial wealth (\$1.32M) / Assets collectively exceed limitations
Real and substantial ownership status not qualified for DBE program	Individual listed as majority owner is not contributing at least 51% of the business' retained earnings



Goal

Accuracy
Timeliness

Helpful Tips

- Respond on-time
- Maintain accuracy
- Stay informed
- Ask questions



Application Pitfalls

Questions / Answers



Electronic Applications

Project

Purpose

- Streamline the certification application process for new and existing DBE's into a web-based format

Results

- Total electronic processing
 - Including attachments and notifications
- 21st century approach to the certification application process



To be launched in 2016!

Benefits

- Going Green – provide environmental impact
- Eliminate need for physical storage space
- Provide electronic source for INDOT and DBE's to review file information
 - Beneficial to DBE's interested in pursuing interstate certifications
- Improve the efficiency of application reviews while maintaining integrity of the Indiana DBE program



Electronic Applications

Questions / Answers



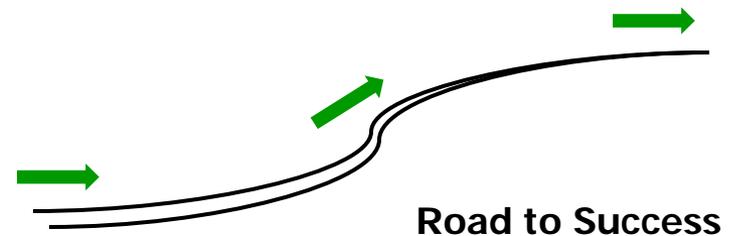
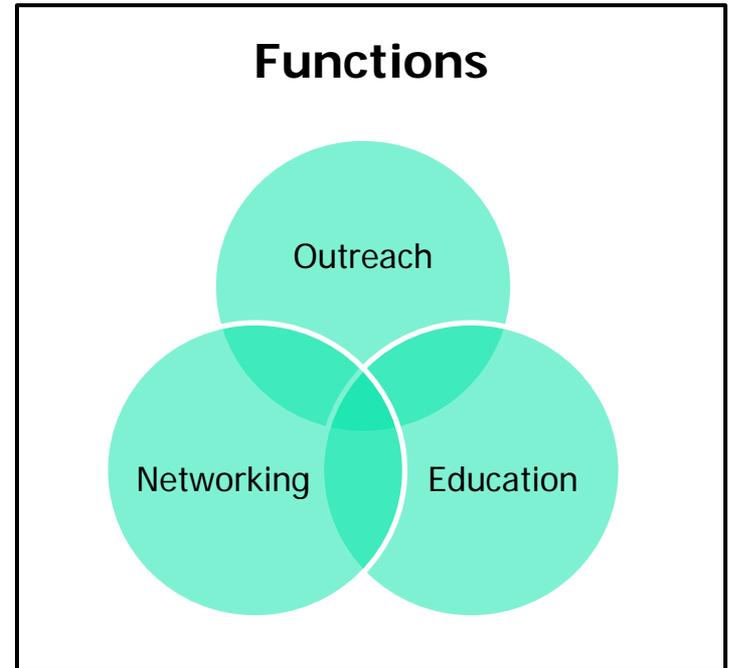
Supportive Services

Purpose

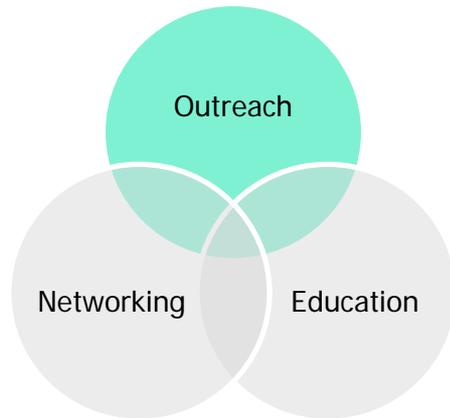
- Promote increased participation of DBEs on federally funded highway and bridge contracts.
- Provide training, assistance, and services to firms that are certified in the DBE program within the State of Indiana.

Goal:

To ensure DBE's have every opportunity to succeed and eventually graduate from the DBE program.



Supportive Services



Methods

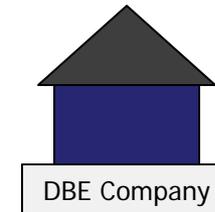
1. Attendance at networking events
2. Meeting with agency partners
3. Contacting members of related organizations

Outreach

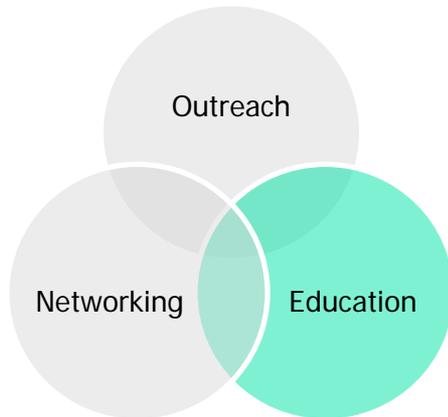
INDOT's DBE program provides a necessary pool of contractors for transportation related projects with federal dollars.

Outreach efforts are designed to:

- raise awareness of our program
- recruit new DBE's



Supportive Services



Education

Certified DBE's

Entrepreneurial Development Institute (EDI)

Learning objectives include:

- ✓ Establishing company vision & goals
- ✓ Marketing for your company
- ✓ Bid preparation and submission
- ✓ Doing Business with INDOT
- ✓ Safety awareness

10 days

Anyone in the public

Statewide Indiana DBE Initiative (SINDI)

Learning objectives include:

- ✓ Management
- ✓ Technology
- ✓ Construction
- ✓ Doing Business with INDOT
- ✓ Recruiting DBE's

3 days

Other Educational Events

Available through networking:

- ✓ Agencies
- ✓ Organizations

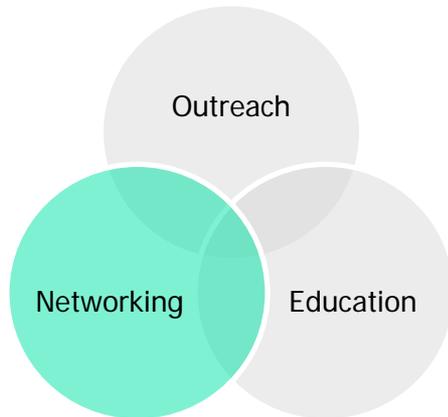
Various dates

Educational opportunities are communicated as they become available.

Including those of sister agencies



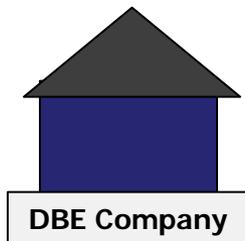
Supportive Services



Networking

- We actively pursue networking opportunities to identify:
 - Potential Partners
 - Projects
 - Programs

Goal: Success



Benefits of Networking

- ✓ Improved Supportive Services
- ✓ Increased opportunities for DBE's

Supportive Services

Communication Resources

- eNewsletters – emailed to your company personnel
- [Website – INDOT Supportive Services](#)
 - Email
 - Phone

Improvements upcoming!

EOD Website
Improvements

Exploring Additional Communication Methods:

twitter 

facebook

YouTube



Supportive Services

Newsletters

Wholesale trade agents and

Economic Opportunity

News from INDOT's Economic Opportunity Division



February 2016



2016 Newly Certified DBEs

Barbara J Sales Associates, Inc., Wholesale trade agents and brokers

Bumpy Steel Erection, LLC, Highway, street and bridge construction

Civil Engineering Consultants Inc., Engineering services

Design Performance, Inc., Wholesale trade agents and brokers

Exterior Solutions Plus, Inc., Roofing contractors

Growth Development Marketing, Inc., Other heavy and civil engineering construction

Featured DBE: Thompson Iron and Construction Company



The Rev. KC Thompson and his wife, Mattie, are owners of Thompson Iron and Construction Company. Thompson Iron & Construction is a certified and prequalified Disadvantaged and Minority Business Enterprise in Indiana, specializing in structural steel, precast concrete, poured concrete foundations, masonry services, commercial and industrial building construction, and more. The Thompson Iron owners were asked a series of questions concerning being entrepreneurs and the success of their business. [Read more](#)

Allowable Ratios – Apprentices (Trainees) to Journeyworkers

The allowable ratio of apprentices to journeyworkers on a federal-aid job site in any craft classification shall not be greater than the ratio permitted the contractor as to the entire workforce under the approved programs. The allowable ratio is applied daily. An approved program is one that has been registered with the U.S. Department of Labor or approved by the appropriate Federal Highway Administration (FHWA) Division Administrator. [Read more](#)

DBE Assessment

In a few weeks, you will be receiving an email asking you to complete a DBE Assessment. The assessment has been revised and should take no more than 10 to 15 minutes to complete. The DBE Assessment is a tool used to determine how we can better assist DBEs. When you receive the assessment, please take the time to complete it.

MIKE ROWE 317-234-1944
mrowe@indot.in.gov
(Certification Specialist)

Sean Howard 317-233-4944
showard1@indot.in.gov (Lead Supportive Services)

Kim Sons 317-234-8087
ksons@indot.in.gov
(Certification Specialist)

Taryn "Sissy" Guynn 317-233-0420
tguyenn@indot.in.gov (Supportive Services)

David Aleya 317-234-7843
daleya@indot.in.gov (Contract Compliance Manager)

Donna Poole 317-232-5088
dpool@indot.in.gov (Contract Compliance Specialist)

Kristin Stone 317-232-0628
krstone@indot.in.gov (Contract Compliance Specialist)

Katie Daniels 317-233-2412
kdaniels2@indot.in.gov
(Contract Compliance Specialist)

INDOT EEO Officers

Mary Konig 812-895-7349
mkonig@indot.in.gov (Lead EEO Officer Vincennes District)

Dell Ballard 812-524-3730
dballard@indot.in.gov (Seymour District)

Diane Keefer 260-969-8210
dkeefe@indot.in.gov (Fort Wayne District)

Jennifer Hicks 765-361-5260
jhicks2@indot.in.gov
(Crawfordsville District)



An Upcoming Event

On Jan. 21, EOD attended the 2016 kickoff event for the Indiana Subcontractors Association (ISA). The kickoff hosted not only

subcontractors but prime contractors, as well, and showcased a number of past, present, and future projects. On Feb. 25, the ISA will host a trade show at the JW Marriott in Downtown Indianapolis; the event could be an excellent networking opportunity for our DBEs. The ISA's manager provided the following description of the organization and synopsis of the upcoming trade show. If you are interested in learning more about the ISA and its upcoming tradeshow, the information below includes a link that will take you directly to ISA's [website](#). [Read more](#)

Continued Certification Requirements

The regulations require DBEs to report any circumstances or changes to their firm that may affect your eligibility in the program to INDOT within 30 days of occurrence. This change could be as simple a phone number to as crucial as an ownership change.

Additionally, the regulations also require DBEs to submit a No Change Affidavit annually on the anniversary of their certification. EOD will send a courtesy reminder at the beginning of the DBE's anniversary month along with a copy of the form required. [Read more](#)

Say What? INDOT Clarifies What Jargon Means

Attention, Indiana-certified DBEs! It has been brought to the attention of the Economic Opportunity Division (EOD) at INDOT that many of you DBE/MBE/WBEs don't understand what we are saying most of the time. For that, we at the EOD sincerely apologize. [Read more](#)

Don't Forget!

If you received your DBE certification in the month of February, it is time to submit your yearly No Change Affidavit. All documentation should be in the EOD office no later than close of business Monday, Feb. 29th. Forms can be found on the [EOD webpage](#).

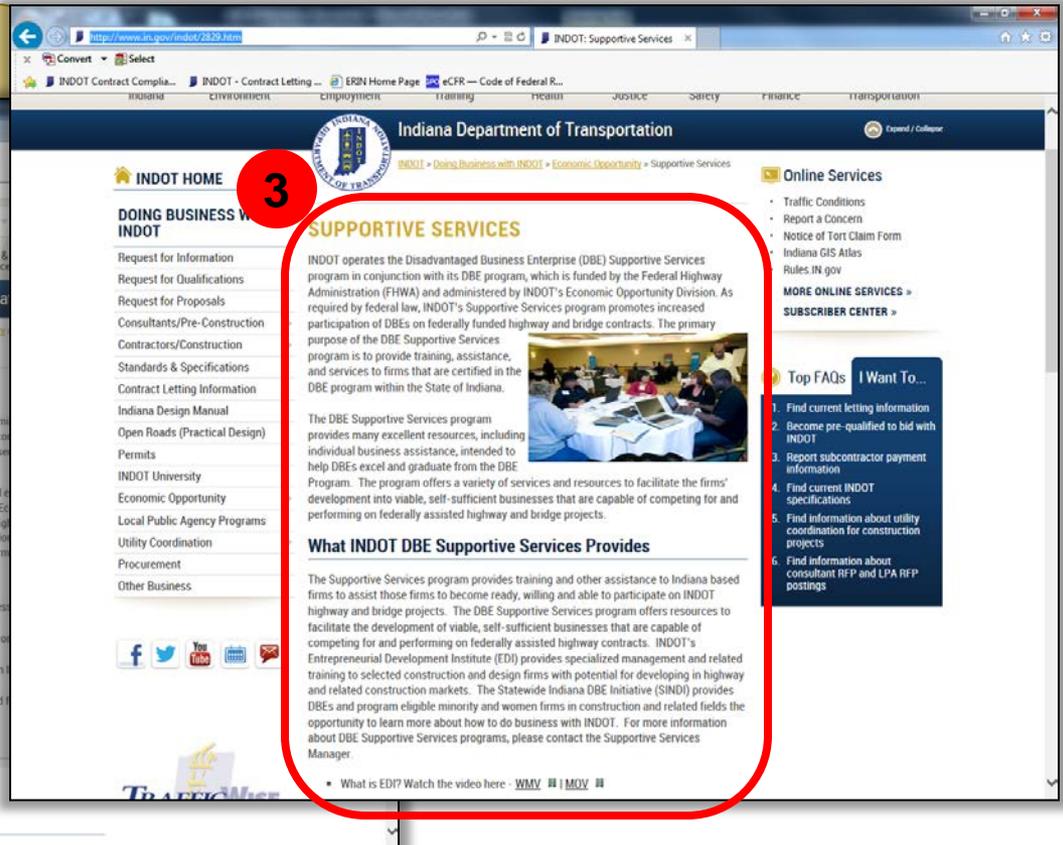


Supportive Services

Location of Supportive Services Information Online

IN.gov

INDOT website



Link

<http://www.in.gov/indot/2829.htm>



Supportive Services

Questions / Answers



Contract Compliance

David Alyea – Contract Compliance Manager



Good Faith Efforts

Contract Letting Process

- A DBE goal is set on all local and state contracts that have opportunities for DBE participation which include federal dollars
- Bidder must make Good Faith Effort to meet the DBE goal by utilizing DBE companies
- Contract awarded to lowest qualified bidder

DBE Goal Review

- If DBE goal is not met, bidder must provide proof of Good Faith Efforts taken to meet the goal.
- Bidder must provide proof of Good Faith Effort by providing documentation.

Bidder must prove:

- Sufficient DBE participation to meet the goal
- Adequate steps taken to meet the goal

"Responsiveness" Good Faith Efforts Program

Bidder's pre-bid intent to meet DBE Goal



Good Faith Efforts

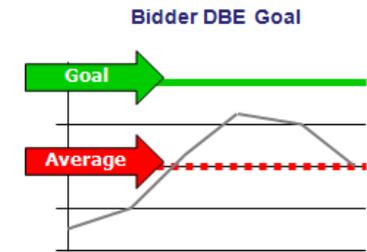
Factors utilized to determine Bidder's Good Faith Effort on contracts with federal dollars may include:

Did the Bidder...

- Solicit interest of all certified DBEs with capacity to perform the work?
 - Sufficient time for DBE subcontractor to respond
 - Follow-up communication to confirm disinterest by DBE subcontractor
- Separate contract work items into economically feasible units to facilitate DBE participation?
 - Regardless if bidder prefers to perform the work items with its own forces
- Negotiate in good faith with interested DBEs to facilitate DBE participation?
- Consider additional costs involved to find & use DBEs?
 - Costs not excessive or unreasonable

Other consideration

DBE goal performance by other bidders to determine average potential performance capability



Helpful Tips

- Keep a call log
- Comparative cost analysis
- Keep copies of all quotes received
- Evidence of negotiations



Image for Example Only



Good Faith Efforts

100% State-Funded Contracts

- Contract goals and Good Faith Efforts on 100% state-funded contracts are administered by the Indiana Department of Administration.

Minority Business Enterprise Goals: 7%

Woman Business Enterprise Goals: 5%

Veteran Business Enterprise Goals: 3%



Good Faith Efforts and Letting Process

Questions / Answers



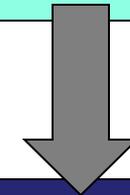
Commercially Useful Function

DBE performs a CUF:

- When it is responsible for execution of work carrying out its responsibilities by performing, managing, and supervising the work involved.
- With respect to materials and supplies, it is responsible for
 1. Negotiating price
 2. Determining quality and quantity
 3. Ordering materials and installing (where applicable)
 4. Paying for the materials

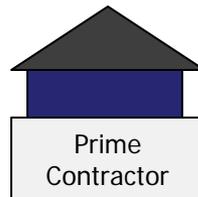
Anytime a DBE is scheduled to:

- work on a project
- deliver materials or supplies to a project site

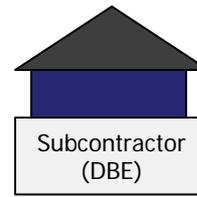


The Engineer shall be notified at least 24 hours in advance of undertaking construction operations.

Who is responsible to ensure the DBE performs CUF?



Prime Contractor



Subcontractor (DBE)



DBE Credit

Categories of DBE Credit

- DBE participation credit is awarded based on how the DBE is participating on a given contract.
- Credit is given for all work performed by DBE's own forces – including cost of supplies and materials obtained by DBE.

Credit for Materials & Supplies Purchased from a DBE

- Supplier-Manufacturer **100%**
- Supplier-Regular Dealer **60%**
- Supplier-Broker **Only fees or commissions**
Drop Shipped Items

A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces the following, on the premises:

- materials
- supplies
- articles
- equipment



DBE Credit

Hauling Operations - Circumstances for Awarding DBE Credit

- DBE responsible for management and supervision of entire trucking operation for which responsible.
- DBE must own and operate at least one fully licensed, insured, and operational truck used on contract.
- DBE receives credit for the total value of the transportation services it provided with its own trucks.
- The DBE may receive credit for trucks leased from other DBE's, including owner-operator certified as a DBE.
- The DBE may receive credit for trucks leased from a non-DBE firm with limitations. Example below:

DBE Trucking Firm A (Primary):

- uses its own trucks on a contract for a total value of transportation services in amount of \$200,000
- leases trucks from:
 1. DBE Trucking Firm B for a total value of transportation services in amount of \$150,000
 2. A Non-DBE Trucking Firm for a total value of transportation services in amount of \$400,000

$$\begin{array}{ccccccc} \$200,000 & + & \$150,000 & + & \$350,000 & = & \$700,000 \\ & & & & \del{\$400,000} & & \end{array}$$

Example Only – Used for Illustrative Purposes



DBE Credit

Hauling Operations – Other items to remember

Federal regulations require the following:

- Lease must indicate DBE has exclusive use and control over truck(s)
- In addition to the lessor's identification number and name, leased trucks must display the name and identification number of the DBE firm



INDOT reviews lease agreements for compliance purposes only

DBE Credit



Common Cited Issues

Brokered arrangement	DBE has contract line items “drop-shipped” directly from a manufacturer’s facility to a job site, never being in the physical possession of or transported by the DBE.
Pass-Through Arrangements	DBE outsources a portion of it’s subcontract to a third-party through a lease agreement whereby the third-party furnishes and installs contract line items with its own work force.
Affiliate Arrangements	DBE purchases supplies and/or leases equipment from the prime contractor or its affiliates.



Red Flags

- DBE employees supervised by another contractor
- DBE shares employees with another non-DBE contractor
- Equipment used by DBE belongs to prime contractor or affiliate
- Prime contractor orders and pays for materials to be used by DBE
- DBE work is done jointly with another non-DBE contractor

Commercially Useful Function and DBE Credit

Questions / Answers



Changes in DBE Utilization

Requirements

A prime contractor:

- May not terminate a DBE or reduce its commitment to a DBE listed on the Affirmative Action Certification without INDOT's prior written consent.
- Must first give written notice to the affected DBE (with copy to INDOT) of its intent to request a termination or reduction and the reason(s) for the request.
- Must give the DBE five (5) days to respond to its written notice.
- Shall utilize the specific DBE's listed to perform the work and supply the materials.
 - ✓ Unless the contractor obtains written consent from INDOT
- Must make "good faith efforts" at finding another DBE to perform the same work if a previous DBE is terminated or commitment is reduced.



Failure by the prime contractor to meet these requirements is a material breach of contract and may result in administrative sanctions.



Changes in DBE Utilization

Additional Requirements

A prime contractor:

- May not terminate a DBE or reduce its commitment to a DBE listed on the Affirmative Action Certification without INDOT's prior written consent
- Must first give written notice to the affected DBE (with copy to INDOT) of its intent to request a termination or reduction and the reason(s) for the request
- Must give the DBE five (5) days to respond to its written notice

Potential Good Cause Considerations

- DBE fails or refuses to execute a written contract
- DBE fails or refuses to perform the work of its subcontract
- DBE fails or refuses to meet the prime contractor's reasonable nondiscriminatory bond requirements
- DBE voluntarily withdraws from project with written notice
- DBE ineligible to receive DBE credit for type of work required
- DBE owner becomes disabled or deceased with result of unfinished DBE commitment
- DBE is determined by INDOT to be irresponsible
- Other documented "good cause"

Reference: 49 CFR 26.53



Changes in DBE Utilization

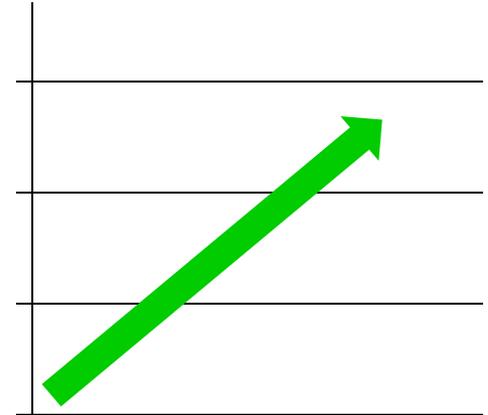
Questions / Answers



On-the-Job Training Program

Purpose

- To offer equal opportunity for training and upgrading of minorities, women, and disadvantaged persons toward journey-level status in the highway construction trades industry.



Who is Covered?

Minorities, women, and disadvantaged persons

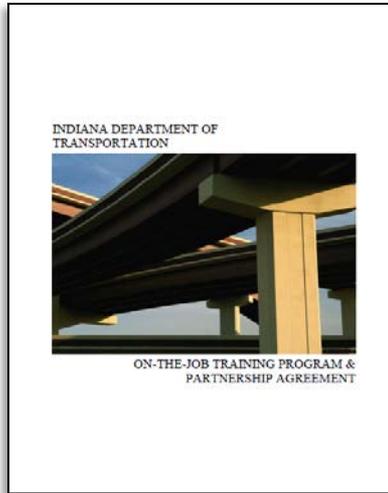


Image for Example Only



On-the-Job Training Program

Partnership Agreement

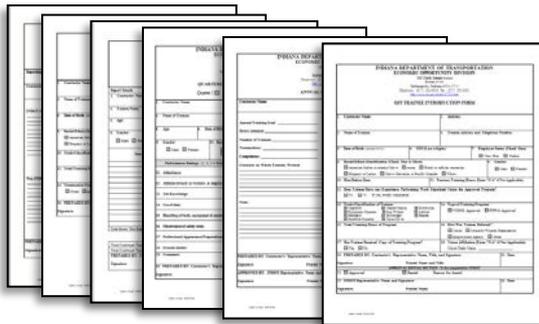


- Partnership agreement administered by contractor and EOD
- Contractor OJT goal calculation
 - 5% of 3 year average hours worked

If no 3 year average:

INDOT will review contractors intended workforce and length of contract to determine training goal

Reports



Images for Example Only

Reporting:

- Monthly, quarterly, and annual
- Training hours, performance, and projects

On-the-Job Training Program

Resources

1. Approved Apprenticeship Program

- U.S. Department of Labor
- Federal Highway Administration



Reminder
Provide trainee a copy of the approved Apprentice Program.

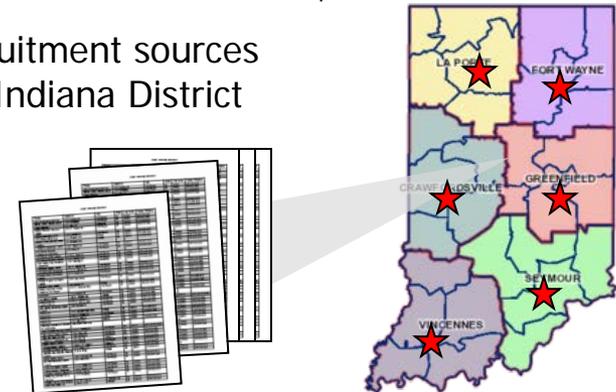
2. Recruiting Sources

- Union
- Employment Agencies
- Minority/Women Organizations
- Other

OJT Recruitment List

Accessible from INDOT website > Contract Compliance

- 300+ recruitment sources
- Listed by Indiana District



Images for Example Only



On-the-Job Training Program

Location of On-the-Job Training Information Online

IN.gov

INDOT website

INDOT HOME

DOING BUSINESS WITH INDOT

CONTRACT COMPLIANCE SECTION

ON THE JOB TRAINING

Request a State Map

ON THE JOB TRAINING

- On-The-Job Training and Partnership Agreement
- On-The-Job Training Program Forms
- On-The-Job Training Recruitment List

Link

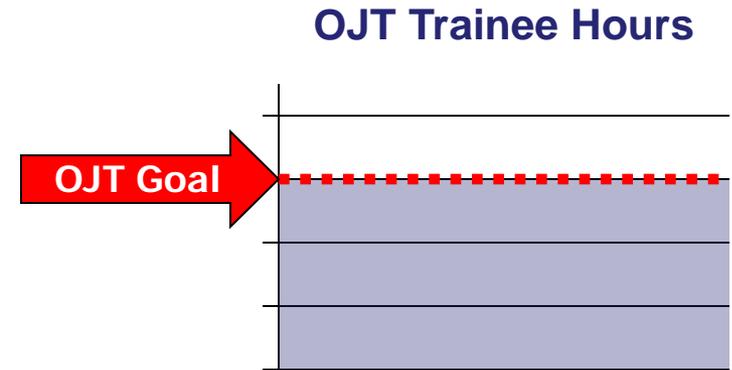
http://www.in.gov/indot/files/EO_OJTRecruitmentList.pdf



On-the-Job Training Program

Compliance Evaluation:

- Measure progress against goal
- If goal not met:
Good Faith Efforts review conducted



Good Faith Efforts Review:

1. Journeyworker to Apprentice Ratios:
Was there opportunity to bring on apprentice(s) based on number of journeyworkers?
2. Recruitment Activities:
Were good efforts made by company to actively recruit new trainees?



Image for Example Only



On-the-Job Training Program

Questions / Answers



Prompt Payment

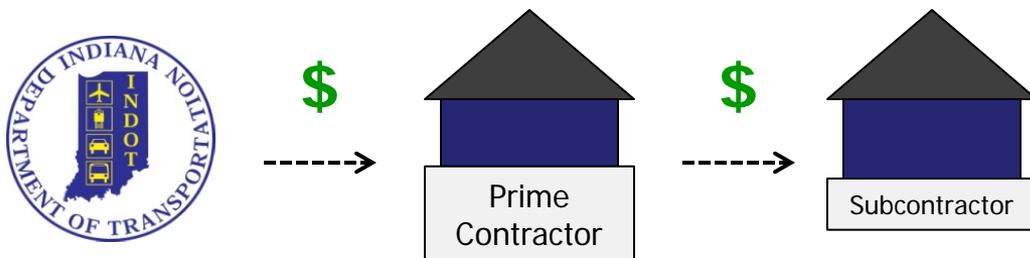
Governing Rules

After payment to the contractor from INDOT:

Prime contractor must pay subcontractor for satisfactory performance within 10 business days.

Retainage:

Prime contractor must make prompt and full payment of retainage to its subcontractors within 30 days after the subcontractor's work is satisfactorily completed.

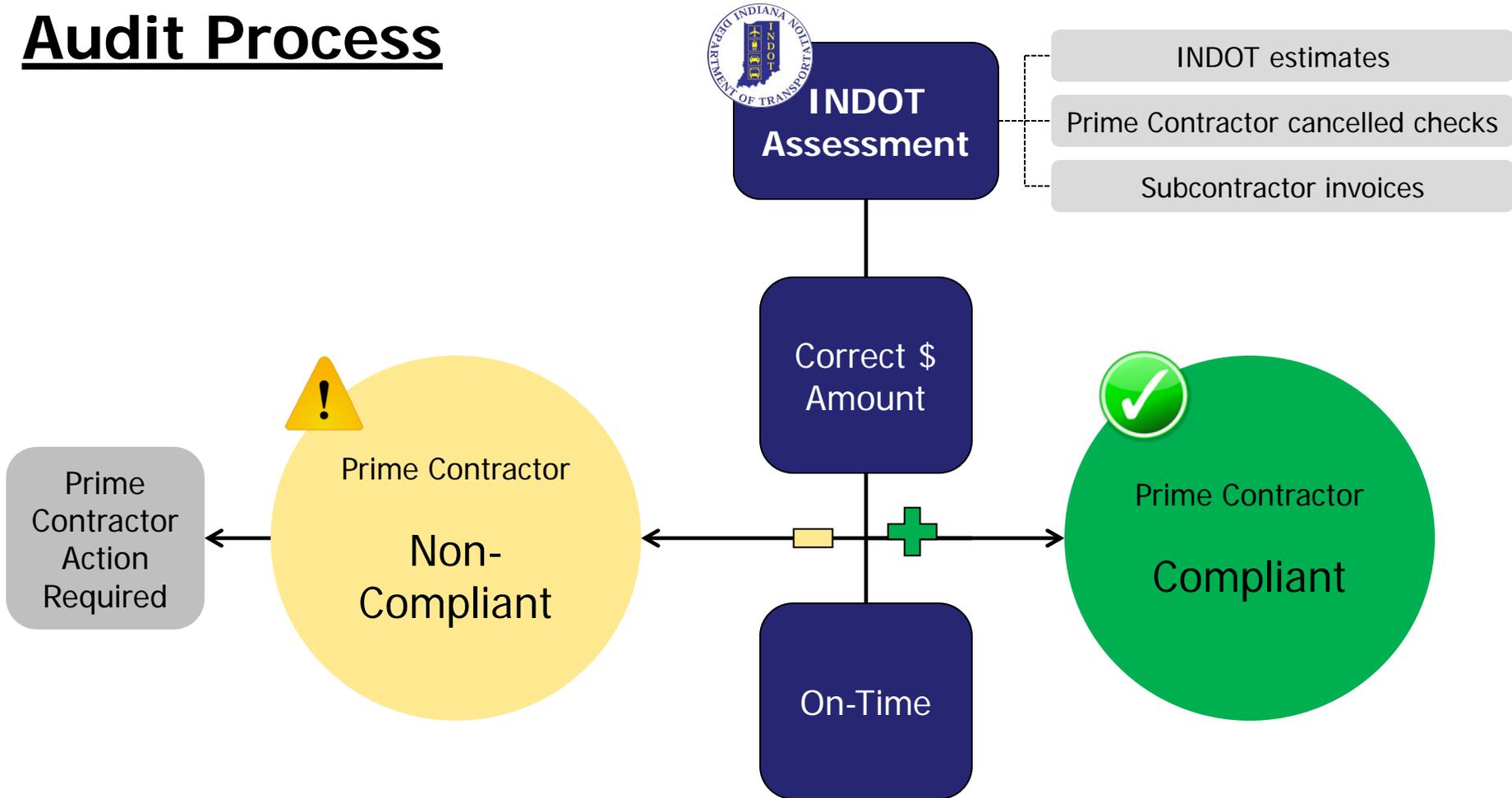


Reference: 49 CFR 26.29



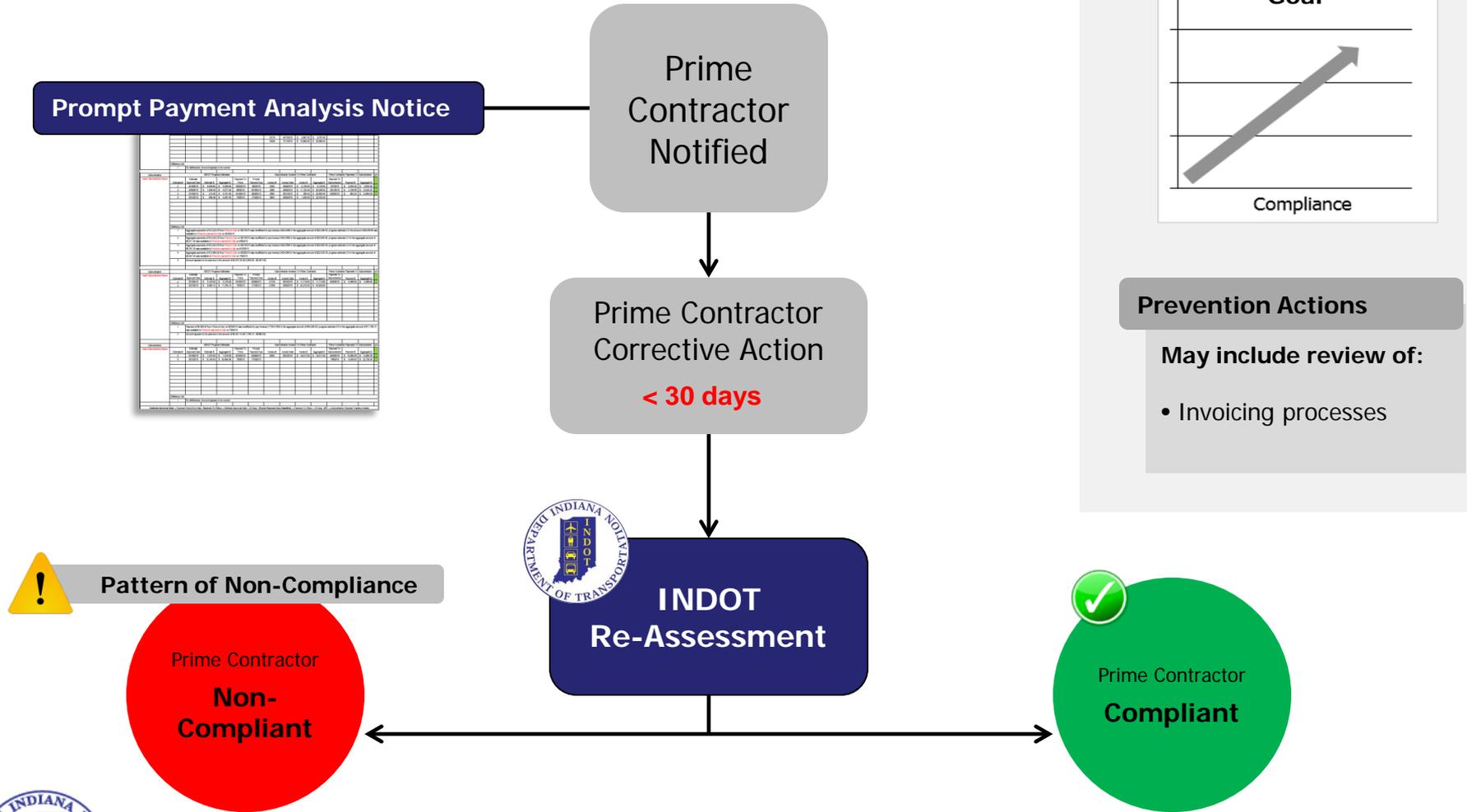
Prompt Payment

Audit Process



Prompt Payment

Audit Process for Non-Compliance



Prompt Payment

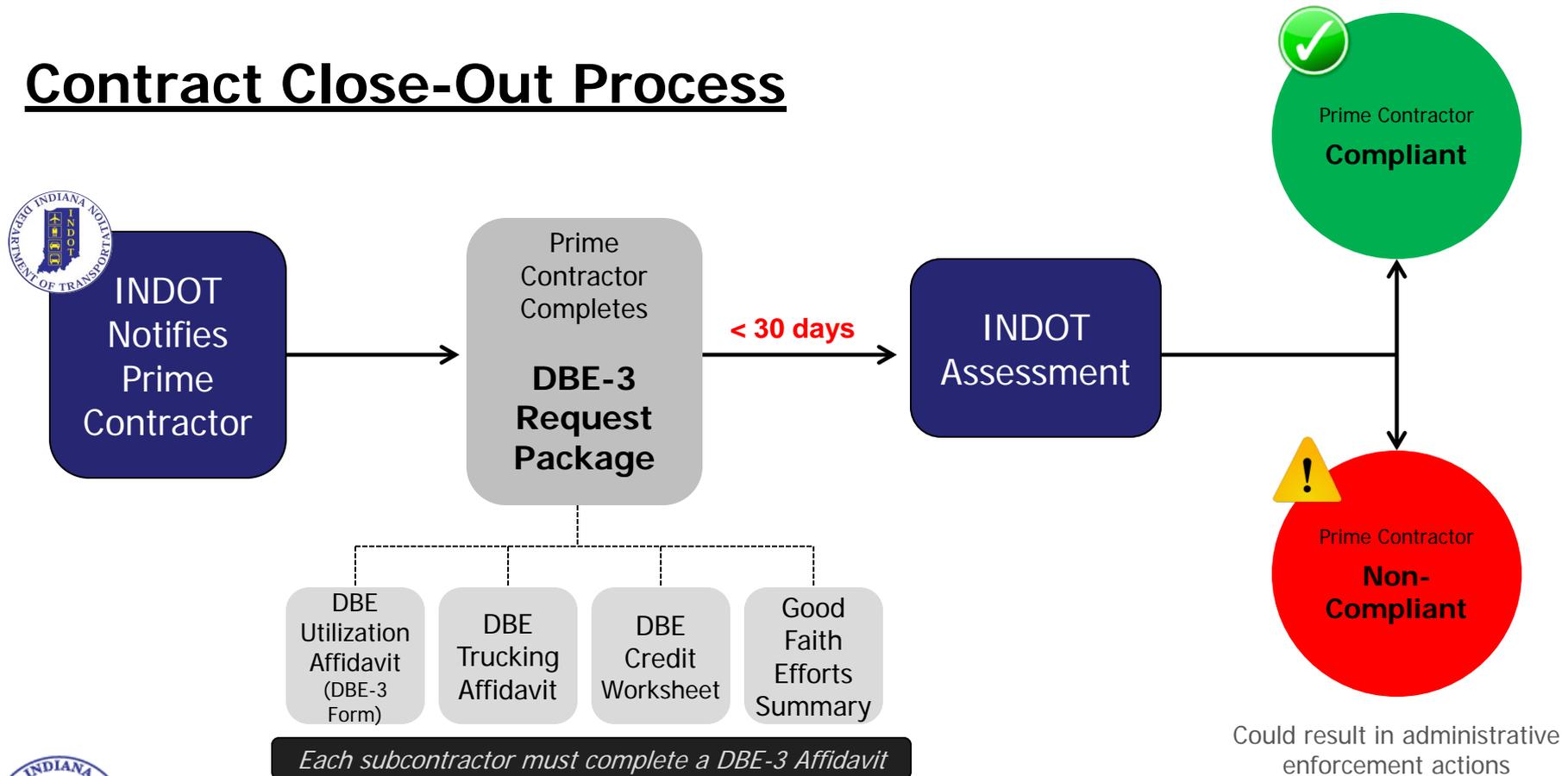
Questions / Answers



DBE-3 (Contract Close-Out)

At the end of every INDOT contract, an assessment is conducted to measure compliance with DBE Goal.

Contract Close-Out Process



DBE-3 (Contract Close-Out)

DBE-3 Affidavit Example

Prime Contractor

\$ Paid

Subcontractor

\$ Received

FORM DBE-3

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: _____, 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. **Entered amount represents all monies due for participation on this contract.**

Amount paid to: _____; \$ _____
(Name of DBE Firm)

The DBE was utilized as a: Subcontractor Lessor Supplier (Manufacturer) Supplier (Regular Dealer) Supplier (Broker)

Description of services provided: _____

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

(Name of Prime Contractor)

(Signature and Title of Authorized Representative)

ACKNOWLEDGEMENT

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

(Notary Public)

My Commission Expires: _____

Amount received from: _____; \$ _____
(Name of Prime Contractor)

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

(Name of DBE Firm)

(Signature and Title of Authorized Representative)

ACKNOWLEDGEMENT

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

(Notary Public)

My Commission Expires: _____

State Form 25381 (R/11-11)



DBE-3 (Contract Close-Out)

Questions / Answers



Contract Compliance Reviews

Contract Compliance Review

- A comprehensive review of employment practices of INDOT contractors and subcontractors to determine compliance with contractual obligations regarding:
 - **Equal Employment Opportunity** – law which prohibits specific types of job discrimination in certain workplaces.
 - **Affirmative Action** – requirements of federal contractors and subcontractors to recruit and advance qualified minorities, women, persons with disabilities, and covered veterans.

Reference: 23 CFR 230.409



Contract Compliance Reviews

Contractor Selection Criteria

- 16 - 20 INDOT contracts per year
- Highest contract award dollar (\$) amount
- Areas with higher demand of minority and female employment based on % of population
- Past compliance issues or pattern of non-compliance



Contractor Selection Goal:
Highest impact on
State of Indiana

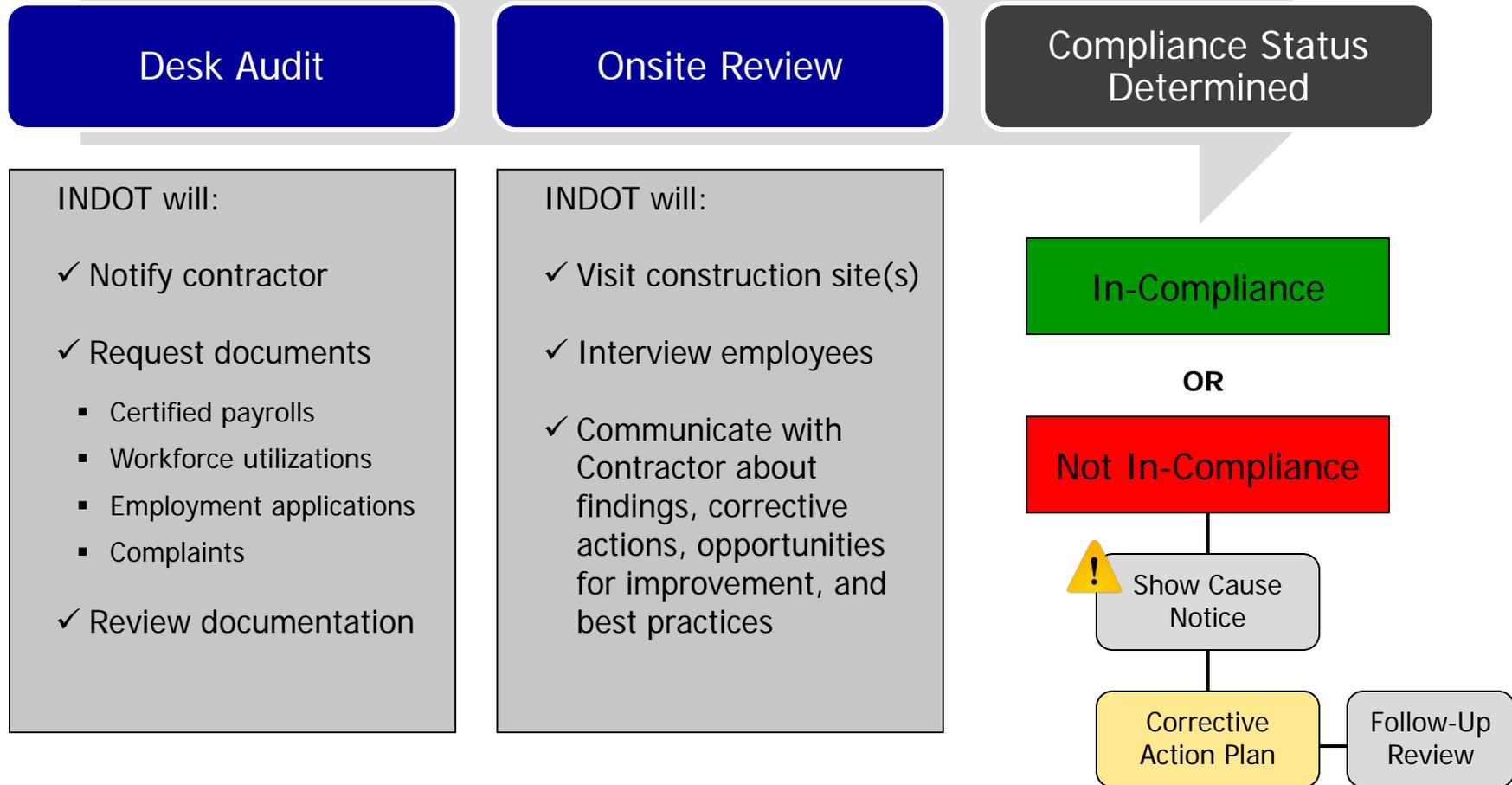
Frequency:

Annually during construction season: May - October



Contract Compliance Reviews

Audit Process



Contract Compliance Reviews

Most Common Deficiencies

Common deficiency		Proactive Step
Subcontract	Missing Equal Opportunity Clause 41 CFR 60-1.4(b)	Ensure language is translated from prime contract to subcontract(s)
	Missing E-Verify Clause IC 22-5-1.7-11	
	Missing FHWA 1273	
EEO Policy	Incomplete	Ensure EEO Policy is created and communicated to employees regularly
	Not Adopted by Contractor	
Complaint Policy	Incomplete	Ensure Complaint Policy is created and communicated to employees regularly
	Not Adopted by Contractor	
Subcontractor E-Verification	Incomplete	Ensure e-verification is conducted on all subcontractors
EEO Employee Awareness	Insufficient	Ensure employees are regularly informed of EEO Policy and reporting methods
EEO Officer Engagement	Insufficient	Ensure EEO Officer regularly engages with employees regarding the EEO Program



Contract Compliance Reviews

Questions / Answers



Davis-Bacon and Related Acts

Coverage

- The DBRA applies to federally funded or assisted contracts and requires contractors to pay their laborers and mechanics who are employed directly on the site of work certain prevailing wages.
- These prevailing wages are outlined in applicable wage determinations and incorporated into each covered contract.

Terms: Laborers and Mechanics

- In general, includes workers whose duties are manual or physical in nature as distinguished from mental or managerial, and include apprentices, trainees, and helpers.
- Does not apply to workers whose duties are primarily administrative, executive, professional, or clerical.
- Mechanics are considered to include any worker who uses tools or is performing the work of a trade.

Wage Determination

A contract document that lists the prevailing wages (hourly rate of pay and fringe benefits) that must be paid for corresponding classes of laborers and mechanics in the area(s) where work is to be performed.



Davis-Bacon and Related Acts

Site of Work

- Place(s) where the building or work called for in the contract will remain
- Any other site(s) where a significant portion of the building or work is constructed

Included in the Site of Work

Job headquarters, tool yards, batch plants, borrow pits, etc. of a prime contractor or subcontractor provided they are dedicated exclusively or nearly so to the contract or project and are adjacent to or virtually adjacent to the site of work.

Not Included in the Site of Work

Permanent home offices, branch plant establishments, fabrication plants, tool yards, etc. of a prime contractor or subcontractor whose location and continuance in operation are determined wholly without regard to a particular federal-aid contract.

Fabrication plants, batch plants, borrow pits, job headquarters, tool yard, etc. of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the site of work.



Davis-Bacon and Related Acts

Apprentices and Allowable Ratios

- Apprentices are permitted to work at less than the predetermined rate for work they perform, provided they are registered in a bona fide approved apprentice program.
- The allowable ratio of apprentices to journeyworker on the job site in any craft classification shall not be greater than the ratio permitted under the approved program.
 - Any apprentice performing work on the job site in excess of the ratio permitted under the approved program shall be paid the journeyworker wage for work performed.
 - Allowable ratio is applied on daily basis.

Example:

If an employer is permitted to employ three (3) apprentices to every one journeyworker (3:1) under an approved program and is determined that the employer is employing five (5) apprentices on the project:

- The first three (3) will be considered within the quota
- The last two (2) must be paid the full prevailing wage for the work performed



Davis-Bacon and Related Acts

Certified Payrolls

Timing:

- All laborers and mechanics employed or working on the site of work must be paid at least one a week
- The contractor shall also submit a copy of the certified payrolls each week to INDOT

Content:

- Shall include name of employee, an individual identifying number (i.e. last four of SSN), correct classification(s), hourly rate of wages paid (including fringe benefits or cash equivalents), daily and weekly number of hours worked, deductions made and actual wages paid, and a Statement of Compliance.

Prime Contractor Responsibilities

Prime contractor is responsible to submit copies of payrolls by all subcontractors

Record Retention

Prime contractor and subcontractors shall maintain payrolls and basic payroll records for period of three years from the completion of the contract for all laborers and mechanics

Wage Interviews

INDOT conducts employee interviews periodically throughout project lifecycle to establish degree of adequacy and accuracy of:

- Required records
- Nature and extent of any violations



Davis-Bacon and Related Acts

Employee Notice

Prime Contractor and Subcontractor

- Responsible to post the wage determination and Davis-Bacon poster (WH-1321)
- Shall be posted at all times at the worksite
- Must be in prominent location to maximize and accessibility and view ability

EMPLOYEE RIGHTS UNDER THE DAVIS-BACON ACT

FOR LABORERS AND MECHANICS EMPLOYED ON FEDERAL OR FEDERALLY ASSISTED CONSTRUCTION PROJECTS

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

PREVAILING WAGES

You must be paid not less than the wage rate listed in the Davis-Bacon Wage Decision posted with this Notice for the work you perform.

OVERTIME

You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 40 in a work week. There are few exceptions.

ENFORCEMENT

Contract payments can be withheld to ensure workers receive wages and overtime pay due, and liquidated damages may apply if overtime pay requirements are not met. Davis-Bacon contract clauses allow contract termination and debarment of contractors from future federal contracts for up to three years. A contractor who falsifies certified payroll records or induces wage kickbacks may be subject to civil or criminal prosecution, fines and/or imprisonment.

APPRENTICES

Apprentice rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs.

PROPER PAY

If you do not receive proper pay, or require further information on the applicable wages, contact the Contracting Officer listed below:

or contact the U.S. Department of Labor's Wage and Hour Division.



For additional information:
1-866-4-USWAGE
(1-866-487-9243) TTY: 1-877-889-5627



WWW.WAGEHOUR.DOL.GOV

U.S. Department of Labor | Employment Standards Administration | Wage and Hour Division

WH 1321 (Revised April 2009)



Davis-Bacon and Related Acts

Enforcement Actions



If a contractor is not paying prevailing wages:

- INDOT may take the following actions depending on the nature and extent of a violation:
 - Withhold payments to the prime contractor until the payroll submittal requirements are met
 - Terminate the contract
 - Refer the violating contractor to the USDOL for possible legal prosecution and/or debarment



Davis-Bacon and Related Acts

Common Violations of the DBRA

Common Violation

Misclassification of laborers and mechanics

Failure to pay full prevailing wage, including fringe benefits, for all hours worked (including overtime hours)

Inadequate recordkeeping, such as not counting all hours worked or not recording hours worked by an individual in two or more classifications during a day

Failure to maintain a copy of bona fide apprentice program and individual registration documents for apprentices

Failure to submit certified payrolls weekly

Failure to post the Davis-Bacon poster and applicable wage decision at the project site



Davis-Bacon and Related Acts

Questions / Answers



Closing

Remarks

