

Appendices

**Appendix A – Sample Compliance
Review Materials**

**Appendix B – Commercially Useful
Function Policy**

**Appendix C – Selected DOL Davis-Bacon
Review Materials**

**Appendix D – Workforce Analysis
Materials**

Appendix E – Selected Authorities

Appendix A: Sample Compliance Review Materials

Sample Compliance Review Request

Contractor	
Address	
EEO Officer	
Review Date	
Contract Number	
INDOT District	
Conducted by	
Award Amt	
DBE Goal %	
Review Type	<input type="checkbox"/> Onsite Visit <input type="checkbox"/> Follow-Up Review
Contractor Production Schedule	
Start Date	
Est. Completion	
Peak Employment	
Notes	
Review Authorities	
<p>49 CFR §§ 21, 26 Subparts A & D</p> <p>23 CFR §§ 200, 230</p> <p>23 CFR § 635.117(d)</p> <p>Federal Aid Highway Act of 1973, (23 U.S.C. 324)</p> <p>Title VI of the Civil Rights Act of 1964, Civil Rights Restoration Act of 1987</p> <p>Federal Highway Administration Executive Order 4710.8</p>	

Onsite Verification Review Data/Documents

23 CFR § 230.409(c)(3) and 23 CFR § 230.409(d)

Please provide the following information to INDOT by _____

**Check if
Included**

I. Contractor Information

- A. Copies of all current collective bargaining agreements (if applicable), including the most recently filed EEO-3 “Local Union Report” for each union; _____
- B. Copies of a sampling of purchase orders and subcontracts containing the EEO clause; _____
- C. Annotated certified payroll records for the most recent pay period on the selected project and all other federal contracts in the same county, showing job classification, race, national origin and sex for each employee. A copy of the appropriate Davis-Bacon Wage Decision for each contract; A copy of your firm’s available employee benefit plans (insurance, profit sharing, retirement, etc.) detailing the requirements for participation and the per-hour cost for each fringe benefit provided. If your company is party to a union contract, please submit copies of similar union provisions; _____
- D. A statement of the status of any action against your firm pertaining to employment practices taken by the Equal Employment Opportunity Commission (EEOC) or other Federal, State, or local agency regarding the contractor or any source of employees; _____
- E. A listing of all INDOT contracts, State and Federal, active during the current month (Worksheet A); _____
- F. A copy of the Affirmative Action Certification for this contract (if applicable) that lists the DBE firms used to meet the DBE goal for the selected reviewed contract and any other active INDOT federal aid contracts; _____
- G. A list of all subcontractors with whom your firm currently or annually has an agreement or agreements in excess of \$10,000 to provide services on this or any other INDOT federal aid contracts (see Worksheet B); _____
- H. A list of all suppliers with whom your firm currently or annually has an _____

agreement or agreements in excess of \$10,000 to provide services on this or any other INDOT federal aid contract (see Worksheet C);

- I. A list of all haulers with whom your firm currently or annually has an agreement or agreements to provide services on this or any other INDOT federal aid contract in addition to the trucks, by owner, truck numbers and the associated Vehicle Identification Numbers (see Worksheet D); _____
- J. A list of minority or female owned companies contacted as possible subcontractors, vendors, material suppliers, etc. on the reviewed contract. _____

II. Workforce data

- A. Current Form PR-1391 developed from the most recent payroll for all federal-aid highway construction contracts during that period; _____
- B. Workforce Utilization Report A — representing your firm’s entire public and private workforce headcount, from the start of the reviewed contract to the date of receipt of this notice (see attached); _____
- C. Workforce Utilization Report B — representing your firm’s entire public and private workforce by hours worked, from the start of the reviewed contract to the date of receipt of this notice (see attached); _____
- D. A listing of all recruitment sources used or maintained by your firm, including the minority and female representation of the sources. Include unions, employment agencies, community action agencies, minority and female organizations, etc. (Worksheet E) Additionally, please submit all documentation related to your firm’s correspondence with each recruitment source; _____
- E. A list of employment actions made by your firm during the past 6 months, including data for race, national origin, and gender of employee. Actions include: applicants, hires, recalls, promotions, terminations, & layoffs (Worksheet F). _____

III. EEO Data

- A. EEO Officer’s appointment letter; _____
- B. A description of EEO Officer’s authority and responsibilities; _____
- C. All documentation necessary to demonstrate that your firm holds regular EEO meetings, the extent to which they include supervisory personnel and employees, and what matters are discussed (e.g. meeting minutes, agendas, attendance lists, etc.); _____

- D. Documentation describing your firm's hiring processes and procedures, including any internal documents used by the firm to track employment data. In addition, please submit documents relating to the methods your firm uses to locate and hire minorities and females (e.g. advertising, job fairs, etc.); _____
- E. A copy of your firm's current employment application, including any documents relating to voluntary applicant EEO information; _____
- F. Documentation relating to your firm's follow up efforts with applicants, from the start of work on this contract to the date of receipt of this notice (i.e. log files including names, contact dates, crafts, demographics, reason(s) for failure to hire, etc.); _____
- G. A copy of your firm's Employee Handbook, or similar document(s), that details your firm's EEO Policy(s) and procedures; and, if not included in the Handbook, documents regarding your promotion/upgrade, termination/layoff, and complaint procedures; _____
- H. A detailed narrative of union participation (if applicable), including: _____
1. Whether the union has exclusive referral rights;
 2. Whether the union sponsors or participates in apprentice or post apprentice training programs;
 3. Whether your firm participates in pre-employment, apprentice, or post employment training programs;
 4. Whether your firm's union agreement incorporates an Equal Employment Opportunity clause;
 5. Whether your firm's union agreement allows your firm to bring minority and female applicants into the union when the union is unable to help you to fulfill your training goals.
- I. A description of how your firm monitors subcontractor EEO compliance, including supporting documentation (e.g. CC-257, PR-1391, etc.). In addition, please complete the subcontractor worksheet for all subs on this contract (Worksheet G). _____

Sample Show Cause Notice to Contractor

Certified Mail

To: Lucky Con Tractor, Inc.
1111, S. Street, St.
Compliance, IN 55555

Attn: EEO Officer
Re: Contract #/ District

Show Cause Notice

Dear Contractor:

The Indiana Department of Transportation-Economic Opportunity Division (INDOT) has completed its review of your firm pursuant to INDOT's _____, 20__ onsite visit on the above contract, which was conducted by _____. After evaluating all relevant documentation and evidence, INDOT has determined that _____ is in **noncompliance** with the requirements of the Equal Opportunity Employment Special Provisions (EEO) of its INDOT contract (FHWA 1273) and related federal requirements, and that sufficient Good Faith Efforts have not been made at this time to correct the deficiencies. INDOT has identified the following past and ongoing deficiencies:

Current Onsite Deficiencies and Suggested Corrective Actions:

- 1.
- 2.
- 3.

General Observations:

- 1.
- 2.
- 3.

Deficiencies Identified During the _____, 20 Desk Audit:

- 1.
- 2.
- 3.

Conclusion

Based on the above, INDOT finds that _____ has failed to take meaningful steps to fulfill the relevant EEO obligations pursuant to its INDOT contract. See The Federal Highway Act of

1968, 23 CFR § 230D, 41 CFR § 60, FHWA 1273, and FHWA Order 4710.8. **These regulations provide that because INDOT has identified equal opportunity deficiencies on _____'s Federal Aid contract with INDOT, _____ must commit in writing to correct such deficiencies before it may be found in compliance. The written commitment must be submitted within thirty (30) days of receipt of this notice. Should _____ submit a written commitment within the time frame indicated it must immediately contact this office to schedule a Compliance Conference.**

Additionally, the commitment must include the specific actions by _____ that will correct each identified deficiency and the proposed date of completion for each action. The time period allotted shall be no longer than the minimum period necessary to effect the necessary correction. The commitment must also provide for the submission of monthly progress reports which shall include a head count of minority and female representation at each level of each trade and list of all minority and female employees.

If the commitment is deemed acceptable by INDOT, then no further action will be taken until INDOT schedules a future compliance review to appraise _____'s progress in implementing its commitment. _____ is cautioned, however, that INDOT's determination is subject to review by the Federal Highway Administration and may not be approved if the written commitment is deemed insufficient.

_____ is further advised that making the written commitment will not preclude a further determination of noncompliance based on a future INDOT determination that the commitment is not sufficient to achieve compliance.

If _____ indicates, either directly or by inaction, that it does not intend to submit a written commitment or participate in the scheduled conference within the allotted time frame, then INDOT will commence enforcement proceedings based on the above referenced legal authorities.

If _____'s written commitment is accepted and INDOT determines that _____ failed to comply with the commitment, it will be advised of this determination and formal sanction proceedings will be instituted immediately.

In the event formal sanction proceedings are instituted and the final determination is that _____ has failed to fulfill its equal opportunity contract requirements, any Federal-aid highway construction contracts or subcontracts that it holds may be canceled, terminated, or suspended, and _____ may be barred from further such contracts or subcontracts.

INDOT encourages _____ to take whatever actions are necessary to resolve this matter and is eager to assist your company in achieving compliance. If you have any questions or concerns, please direct them to INDOT via the contact information provided below.

Sincerely,

_____, Compliance Specialist
Economic Opportunity Division -- IGC-N750
Indiana Department of Transportation
100 N. Senate Ave
Indianapolis, IN 46204
(317)-232-_____
_____@indot.in.gov

CC: FHWA
District EEO Officer
District P.E.

Sample Notice of Compliance to Contractor

Certified Mail

DATE

To: Contractor
Attn: EEO Officer
Re: Notice of Compliance
Contract #/ District

Dear Contractor:

The Indiana Department of Transportation-Economic Opportunity Division (INDOT) has completed its review of your firm pursuant to INDOT's _____, 20__ onsite visit on the above contract, which was conducted by _____. Following INDOT's exit conference with your firm and after evaluating all relevant documentation and evidence, INDOT has determined that _____ is in **compliance** with the requirements of the Equal Opportunity Employment Special Provisions (EEO) of its INDOT contract (FHWA 1273). Please note that this determination is subject to final review by the Federal Highway Administration and may not preclude a finding of noncompliance should additional deficiencies be found at a later date.

Through your actions and Good Faith Efforts, your firm has demonstrated its commitment to fulfilling its EEO requirements. We thank you for your cooperation and courtesy in this endeavor and we look forward to your continued participation. If you have any questions or concerns, please direct them to INDOT via the contact information provided below.

Sincerely,

_____, Compliance Specialist
Economic Opportunity Division -- IGC-N750
Indiana Department of Transportation
100 N. Senate Ave
Indianapolis, IN 46204
(317)-232-____
____@indot.in.gov

CC: FHWA
District EEO Officer
District P.E.

**Sample Contractor Voluntary Corrective Action Plan (VCAP)
Letter to INDOT**

Certified Mail

DATE

To: Economic Opportunity Division -- IGC-N750
Indiana Department of Transportation
100 N. Senate Ave
Indianapolis, IN 46204

Attn: _____, Compliance Specialist EEO Officer

Re: Voluntary Corrective Action Plan
Contract #/ District

Dear _____:

During the Compliance Review Conference conducted on _____, CONTRACTOR agreed to preliminary Voluntary Corrective Action Plan (VCAP) with the Indiana Department of Transportation-Economic Opportunity Division (INDOT). The purpose of the VCAP is to: (1) formally acknowledge the preliminary Review findings and (2) submit an agreed-upon plan for corrective actions within a designated time frame.

1. Deficiency:
Aggressive, results-oriented corrective measures
Time frame for implementation [“expect results by”]

2. Deficiency:
Aggressive, results-oriented corrective measures
Time frame for implementation

3. Deficiency
Aggressive, results-oriented corrective measures
Time frame for implementation

As stated during the Compliance Review Meeting, CONTRACTOR understands that the acceptance of this VCAP does not preclude a future determination of noncompliance, particularly if deficiencies are not sufficiently addressed after a final review. CONTRACTOR further understands that the following deficiencies and corrective measures only represent those currently identified and do not preclude future findings of noncompliance. Should INDOT have any questions, please contact CONTRACTOR at: _____.

Sincerely,

**Sample Show Cause Notice Rescission and
CAP Acceptance**

Certified Mail

DATE

To: Contractor
Attn: EEO Officer
Re: Show Cause Notice Rescission Notice
Contract #/ District

Dear Contractor:

On _____, 20__, the Indiana Department of Transportation - Economic Opportunity Division (INDOT) conducted an Onsite Review on the above contract. As a result of INDOT's finding of noncompliance, INDOT issued a 30-Day Show Cause Notice to _____ on _____, 20__.

Your Corrective Action Plan (CAP), negotiated and submitted on _____, 20__, has been reviewed and determined to be acceptable. Your commitment, in addition to continued implementation of the Plan shows that _____ is now taking the required affirmative actions and is hereby found in **compliance** with its contractual obligations, and pursuant to 23 CFR § 230, Subparts A and D.

Following _____'s stated correction period, roughly _____ months from receipt of this Notice, INDOT will conduct a follow up review. If _____'s affirmative actions and Good Faith Efforts are deemed sufficient according to the terms of its CAP, the review file will be closed for the above contract. If INDOT determines that _____'s efforts are insufficient, then further action may be taken. Nothing in this Rescission Notice shall preclude a subsequent finding of noncompliance on this or any other INDOT contract in the future.

In view of the above, this Notice is to inform you that the 30-Day Show Cause Notice of _____, 20__ is hereby rescinded. INDOT commends _____ for its cooperation and commitment to ensuring Equal Opportunity and nondiscrimination. If you have any questions or concerns, please direct them to INDOT via the contact information provided below.

Sincerely,

_____, Compliance Specialist
Economic Opportunity Division -- IGC-N750
Indiana Department of Transportation

100 N. Senate Ave
Indianapolis, IN 46204
(317)-232-_____
_____@indot.in.gov

CC: FHWA
District EEO Officer
District P.E.

Appendix B: Commercially Useful Function Policy

I. Introduction

In order to determine whether a DBE performs a CUF on every INDOT Federal aid job, INDOT must rely upon much of its staff, including each district's EEO Officer, Construction Engineer, Project Engineers, and Central Office's Contract Compliance Specialists. To determine a DBE's CUF compliance, the following essential questions must be answered:

- Who supervises the DBE employees?
- Who pays the DBE employees?
- Who owns the equipment used by the DBE?

Contractors, DBEs and all INDOT or project management employees are required to cooperate with staff conducting these field audits. 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 non-payment and/or ineligibility for future contracts by INDOT of the prime contractor, the DBE, or both.

CUFs in Three Major Contract Areas

An investigator of CUF must possess knowledge of normal industry practices. (Note, in certain circumstances such practices may be inconsistent with DBE regulations and these guidelines.) The CUF investigator must ask the following question: how would this job be performed if there was not a DBE involved? CUF may become an issue in three major contract areas.

A. 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.

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 shall review invoices to determine if they are billed and paid by the DBE. 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 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. With union workers, the same workers may work for primes on some days, DBEs on others. Keep track of who the worker is documented to be working for on a particular day. Look for patterns. What percentage does a worker work for the prime vs. a DBE? Does the prime seem to be controlling the union worker's performance or is the DBE controlling the performance?

II. Counting DBE Participation

A. DBE Manufacturer (49 CFR 26.55 (e) (1))

May count 100% of the value paid for materials furnished which become a permanent part of the project. A manufacturer is a firm that owns and operates the facilities to produce a product required by the contract and purchased by the contractor.

B. DBE Supplier (49 CFR 26.55 (e) (2))

May count 60% of the value paid for materials furnished which become a permanent part of the project. A supplier sells goods to the general public and maintains an inventory at an owned or leased warehouse or store. A DBE supplier may count 100% of the value paid for material which has been sufficiently altered by the DBE.

C. DBE that Facilitates or Assists with the Procurement of Materials and Supplies (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 which become a permanent part of the project. A facilitator, packager, manufacturers' representative, or other person who arranges or expedites transactions but does not manufacture or supply on a regular basis is not a regular dealers or supplier.

D. DBE Contractor

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.

III. CUF Red Flags

The following are “red flags” that could suggest that a DBE is not performing a CUF. The presence of one or more of these “red flags” must result in a more thorough investigation. Should an INDOT staff member or project manager detect a “red flag,” he or she must log this in the daily report and notify the District EEO Officer and Central Office immediately. Upon receiving information of the red flag, the EEO Officer should commence an investigation at once.

- ❖ 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.
- ❖ The DBE or prime requests INDOT to write joint checks.