

INDOT EOD Hauling Refresher

February 2018

Purpose: To discuss current in-the-field practices regarding trucking (DBE and non-DBE) and provide clarification over requirements for prime contractors and subcontractors.

Why Now?

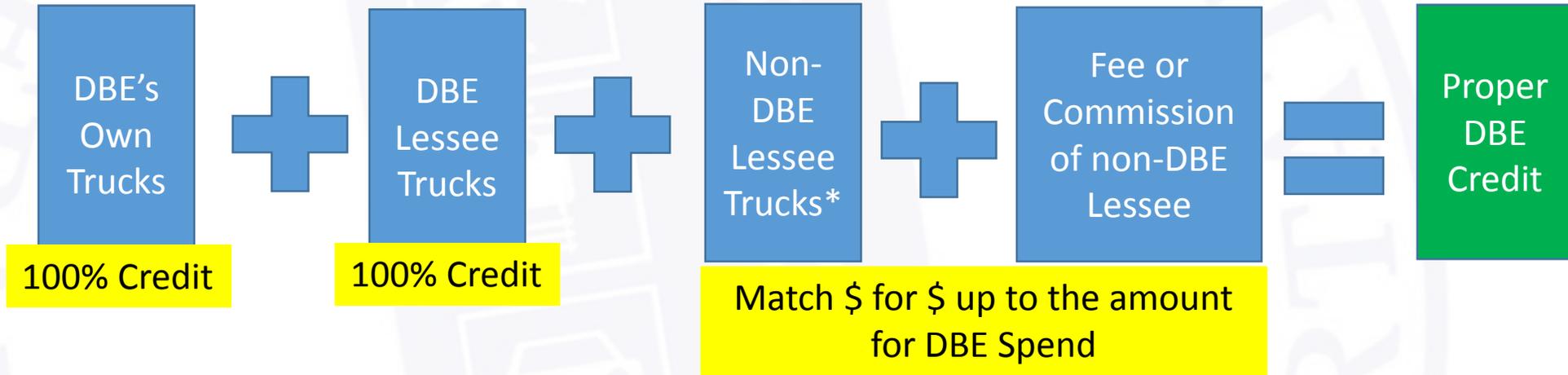
Several recent situations have come to light that trucking matters are being handled in different ways in different districts. This is an opportunity to come together, have discussion and build consensus and common understanding going forward.

Lease Agreements



- Who do we collect them from? Everyone, with one exception. (Primary hauler is a non-DBE)
- Remember- haulers are excluded from prequalification so no dollar threshold issues exist.
- Who at INDOT is collecting leases currently?
- When should INDOT collect them? Prior to anyone coming onto the job site. Easiest to collect at the pre-construction conference if possible.
- Will INDOT accept an annual lease agreement for hauling? Yes- include the job number and dollar amount at the top of the copy of the annual agreement.
- INDOT does not provide an “approved form” for leases.
- Do leases need to be physically carried in each truck? No, but they are subject to request at anytime.
- What is required of the main hauler? Does it matter if they are a DBE or not?
- What is required of the supplemental fleet? Does it matter if they are a DBE or not?

DBE Hauling Credit-What Counts?



All calculations are completed BY ACTUAL DOLLAR AMOUNT, not by the number of trucks.

*Non-DBE Lessee Trucks Cannot Exceed the total Dollar Value of the total DBE fleet to be counted for DBE Credit.

Commercially Useful Function Monitoring

- DBE participation on a contract will only be counted toward a contract goal if the DBE is performing a commercially useful function.
- A DBE performs a commercially useful function 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.
- To ensure that a DBE is performing a commercially useful function on a contract, INDOT evaluates the DBEs performance on the project. This typically entails watching the actual work taking place, interviewing employees, verifying equipment, inspecting delivery tickets and lease agreements, etc.
- Delivery tickets **MUST** include trucking firm name on EACH ticket for material delivered by a DBE
- If for whatever reason it is determined that a DBE is not performing a commercially useful function, then the amount of DBE credit a prime contractor is awarded may be reduced accordingly.

Changes in DBE Utilization

Requirements

A prime contractor:

- 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.
- INDOT will only provide written consent if there is "good cause" to do so.
- Contractor must 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.
- Contractor must inform the affected DBE that it has five (5) days to respond to its written notice with or without objection.
- If consent is provided, contractor must make "good faith efforts" at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated or had its commitment reduced, to the extent needed to meet the contract goal.
- If consent is not provided, the contractor will not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

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 (Cont.)

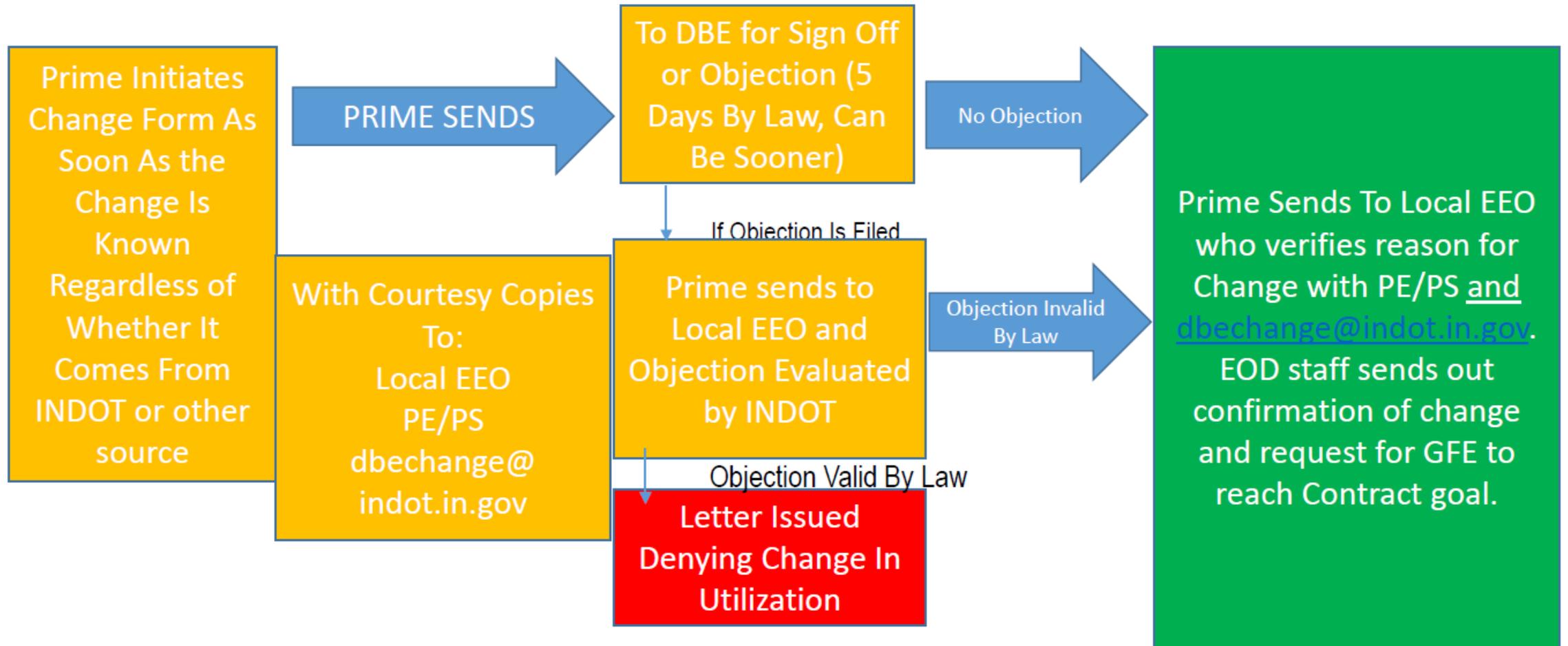
Potential Good Cause
Considerations As
Defined in
49 CFR § 26.53

- 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"

Link to the Change in Utilization Form: <http://bit.ly/2ErRZ34>

Processing a Change In Utilization Request

Updated 3/27/2018



Prompt Payment



- INDOT EOD staff conducts random audits to insure compliance.
- Primes are not required to pay when invoices are generated but some may out may due to awareness of challenges small businesses face.
- If you have questions about timing of payment reach out to the prime first, then to your local EEO if unresolved.



Certified Payrolls for Haulers

- Is the haul taking place “on the site of work”?
- “Site of work” is defined under 29 CFR 5.2 (j) (2) as:

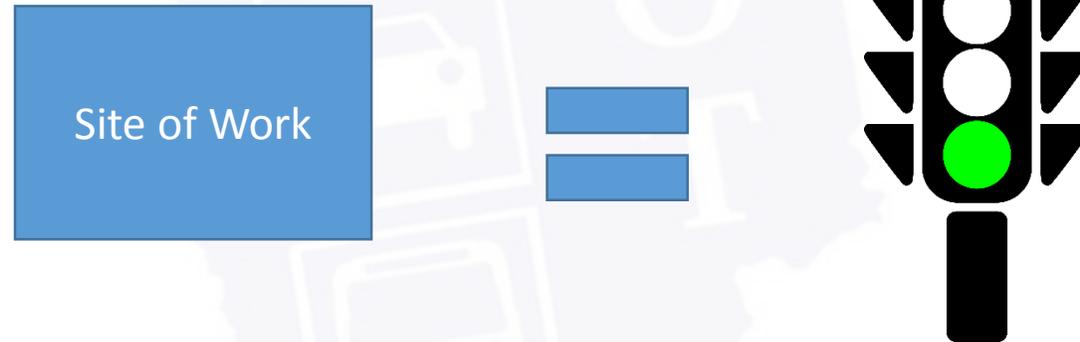
The term *site of the work* is defined as follows:

- (1) *The site of the work* is the physical place or places where the building or work called for in the contract will remain; and any other site where a significant portion of the building or work is constructed, *provided* that such site is established specifically for the performance of the contract or project;
- (2) Except as provided in paragraph (l)(3) of this section, job headquarters, tool yards, batch plants, borrow pits, etc., are part of the *site of the work*, *provided* they are dedicated exclusively, or nearly so, to performance of the contract or project, *and provided* they are adjacent or virtually adjacent to the *site of the work* as defined in paragraph (l)(1) of this section;
- (3) Not included in the *site of the work* are permanent home offices, branch plant establishments, fabrication plants, tool yards, etc., of a contractor or subcontractor whose location and continuance in operation are determined wholly without regard to a particular Federal or federally assisted contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool yards, 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 the work as stated in paragraph (l)(1) of this section, are not included in the *site of the work*. Such permanent, previously established facilities are not part of the *site of the work*, even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

Handy Tip: INDOT EOD defines “adjacent” to the site of work as ¼ mile.

Certified Payrolls (Cont'd)

- If hauling (materials or supplies) does NOT take place on the “site of work” then NO certified payrolls are required from ANY hauler.



Certified Payroll Content (Cont'd)

Type of Hauler Working "On the Site"	Wage Rate Required	Hours Worked Required	Notation Required
DBE Primary Hauler	Yes	Yes	No
Supplemental Fleet (DBE or non-DBE)	Yes, must submit OWN payroll to majority hauler	Yes	No
Owner/Operator Driving Own Truck	No	No	Yes- Owner/Operator and Name ONLY can appear on primary hauler's payroll
Owner/Operator Driving Another Firm's Truck or An Employee Driving Owner/Operator Trucks	Yes	Yes	No

EOD and Hauling At a Glance

	Primary Hauler Is A DBE Listed on AAC (Race Conscious)	Primary Hauler Is A DBE Not Listed on AAC (Race Neutral)	DBE Hauler Is Supplemental Fleet	Non-DBE Hauler Is Supplemental Fleet	Non-DBE Is Primary Hauler
EEO Obtains Lease [Spec 103.01 (h)]	YES	YES	YES	YES	NO
Engineer Obtains Lease [Spec 103.01(h) or 108.12]	YES	YES	YES	YES	YES
Site Manager Entry Required	YES	YES	NO	NO	NO
Contract Specific Lease Needed (Can Be Annual Plus Project Number)	YES	YES	NO	NO	NO
Lease Includes Exclusivity Clause [Spec 103.01(h)]	YES	YES	YES	YES	NO
Dollar Amount Needed on Lease (Can Be Annual Plus Contract and Dollar)	YES	YES	NO	NO	NO
Modified Signage Required	NO	NO	YES	YES	NO
EEO Can Recommend Holding Estimate To PE/S	YES	YES	YES	YES	NO

Additional Information

- Spec Book 108.12 any documents (including leases) can be requested at any time;
- Haulers need to be e-verified;
- No haulers need to identify an EEO on the bulletin board.
- Trucking Reports are no longer required. The required form now is the hauling affidavit which is filled out by the parties during the DBE-3 close out process.

Time for Questions and Contacts

Start Local! Seek EEO's out for processing changes in utilization, CUF issues, and Davis Bacon compliance questions. Select the relevant District EEO based on the job location.

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