



Consultants Contractors

Compliance and Technical

Assistance Guide

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Introduction

The Indiana Department of Transportation as a recipient of federal financial assistance from the Federal Highway Administration (FHWA), is required to comply with Title VI of the Civil Rights Act of 1964, which provides that no person in the United States, on the ground of race, color, or national origin, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any department program or activity receiving federal financial assistance.

Recipients of Federal financial assistance are required to comply with various nondiscrimination laws and regulations. "Recipient" is defined as any entity or individual to whom Federal assistance is extended, either directly or indirectly through another recipient, for any program. See 23 Code of Federal Regulations (CFR) 200.5(n). INDOT receives Federal financial assistance directly.

In this guide, the term "subrecipient" is used to identify a recipient that receives Federal assistance indirectly (i.e., through INDOT). Subrecipients include, but are not limited to, cities, counties, consultants, contractors, suppliers, universities, colleges, planning agencies, and other recipients of Federal-aid highway funds. Per 23 CFR 200.9(b)(7), INDOT must conduct Title VI reviews of its subrecipients to monitor compliance with Title VI/Nondiscrimination requirements effectively.

The purpose of this guide is to provide a framework for subrecipients striving to establish a compliant Title VI program. This guide will address INDOT's subrecipient prequalification process as well as INDOT's monitoring/review/audit process. This guide will not guarantee compliance with all aspects of Title VI. However, this guide intends to improve a subrecipient's ability to comply with the Title VI Nondiscrimination requirements. Compliance determinations are made on a case-by-case basis by either INDOT or FHWA.

This document, forms, templates, samples, and guidelines provided are for educational and informational purposes only and should not be construed as legal advice or as an offer to perform legal services on any subject matter. In addition, use of this guide does not guarantee compliance. Subrecipients should work closely with their legal counsel to determine their level of compliance and to monitor all areas of federal regulatory compliance for risk mitigation and deficiency resolution on an ongoing basis.

For additional information or technical assistance, INDOT's Contract Compliance Attorney, Title VI/ADA Program Manager is:

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Authorities under Title VI

The authorities applicable to INDOT's Title VI/Nondiscrimination Program include, but are not limited to:


- Title VI of the Civil Rights Act of 1964 is a federal law that protects individuals, groups, and organizations from discrimination on the basis of race, color, or national origin in federally assisted programs and activities. (42 U.S.C. 2000d)
- The Civil Rights Restoration Act of 1987, further clarified the intent of Title VI to include all programs and activities of entities whether those programs and activities are federally funded or not.
- American with Disabilities Act of 1990 and Section 504 of the 1973 Rehabilitation Act (29 U.S.C. 790), as amended: Prohibits discrimination on the basis of disability.
- Federal Highway Act of 1973 - Gender Added (23 U.S.C. 324): Prohibits discrimination on the basis of sex.
- The 1975 Age Discrimination Act (42 U.S.C 6101), as amended: Prohibits discrimination on the basis of age.
- 49 CFR Part 21, (entitled Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of The Civil Rights Act of 1964);
- 23 CFR Part 200, the Federal Highway Administration's Title VI Program Implementation and Review Procedures

The following Executive Orders place further emphasis on preventing discrimination:

- Executive Order 12898, 3 CFR 859 (1995), entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," addresses disproportionate adverse environmental, social, and economic impacts that may exist in communities, specifically minority and low-income populations.
- Executive Order 13166, 3 CFR 289 (2001), entitled "Improving Access to Services for Persons with Limited English Proficiency," addresses improving access to services for persons whose primary language is not English and who have limited ability to read, write, speak or understand English.

In brief, these laws and regulations prohibit discrimination in federally assisted programs and activities. Title VI of the 1964 Civil Rights Act states that:

"No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."



By contracting with INDOT, a contractor is obligated to comply with the laws and regulations listed above and agrees to comply as part of INDOT's Contractor Prequalification application and acceptance process executed between the Department and the contractor.

Title VI Requirements for Subrecipients

Recipients of Federal financial assistance are required to comply with various nondiscrimination laws and regulations. The requirements extend to subrecipients such as cities, counties, consultants, contractors, suppliers, universities, colleges, planning agencies, and subcontractors of those subrecipients who receive federal financial assistance through the Indiana Department of Transportation (INDOT).

The following information, while not comprehensive, highlights steps subrecipients should take to achieve compliance with INDOT's Title VI program.

Nondiscrimination Policy Statement

A policy statement that assures nondiscrimination to the effect that no person shall on the grounds of race, color, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination or retaliation under any program or activity.

Requirements:

- The policy statement, signed by the head of the company, should express the company's

commitment to the nondiscrimination provisions of Title VI:

No person shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity conducted by the recipient regardless of whether those programs and activities are federally- funded or not.

- The policy statement should define federal financial assistance and describe specific forms of prohibited discrimination.
- Must be signed by the top official.
- Title VI Policy Statement should be circulated internally and to the general public
- Where appropriate, published in languages other than English
- If your company doesn't already have a signed policy statement, consider using INDOT's template.

Nondiscrimination Assurances

Subrecipients must sign the U.S. DOT Standard Title VI Assurances. General nondiscrimination language from the assurances must be included in all solicitations for bids or requests for proposals. The clauses of Appendix A and Appendix E must be included in every contract or agreement that you execute. Form FHWA-1273 must also be physically attached to all federal-aid construction contracts of \$10,000 or more.



Assurances serve two important purposes:

- They document company's commitment to nondiscrimination and equitable service to its community.
- They serve as a legally enforceable agreement by which the Company may be held liable for not adhering to.

The Assurances lists all the Title VI requirements that a subrecipient agrees to perform in return for receiving FHWA funds from the INDOT, including developing a nondiscrimination policy statement and a discrimination complaint handling procedure.

Nondiscrimination Coordinator

A Title VI Coordinator must be designated. This person must have a responsible position in the organization with access to the head of the company. Subrecipients are required to identify a Title VI Coordinator and publish/post the coordinator's contact information where it is available to the public (including online). In addition, the coordinator must have unimpeded access to the head of the company, to discuss nondiscrimination issues. There should be a description of the Title VI Coordinator's responsibilities and an organizational chart showing the Title VI coordinator's relationship to the head of the company.


Requirements:

- Organizational chart or other literature should identify the Title VI Coordinator
- Point of contact for Title VI implementation and monitoring of programs and/or activities receiving federal financial assistance.
- Implementation of procedures for the prompt processing of Title VI external discrimination complaints.
- Develop Company specific Title VI information for public dissemination

External Discrimination Complaints

Subrecipients must develop Title VI complaint procedures that address how to handle Title VI complaints. Subrecipients are encouraged to utilize INDOT's FHWA complaint procedures template. At a minimum, a Title VI complaint procedure must include the subrecipient's specific contact information on how and where to file a complaint, as well as a section on how to file a complaint directly with FHWA. Complainants should also have 180 days from the last alleged discrimination to file a complaint. All FHWA Title VI complaints received by a subrecipient must be forwarded to INDOT within three (3) business days. INDOT will then forward any Title VI complaints to FHWA for processing. A subrecipient's Title VI complaint procedure must be posted on their website.

A list of all external discrimination complaints and lawsuits filed against the company must be maintained. The information in this list should include: the identification of each complainant by race, color, sex, or national origin; the name of the complainant;



the nature of the complaint; the date(s) the complaint was filed, the investigation was completed; the disposition and date; and other pertinent information.

Requirements:

The subrecipient complaint handling procedures should indicate the following:

The FHWA has jurisdiction to investigate complaints of discrimination filed under:

- The Americans with Disabilities Act/ Section 504 Program
 - The Americans with Disabilities Act of 1990
 - Section 504 of the Rehabilitation Act of 1973 (Section 504)
- The Title VI Program
 - Title VI of the Civil Rights Act of 1964 (Title VI)

Any person who believes they, or any specific class of persons, to be subjected to prohibited discrimination based on race, color, or national origin may file a written complaint individually or through a representative. A complaint must be filed no later than 180 days after the date of the alleged discrimination, unless the discrimination is ongoing, or the time for filing is extended by the FHWA.

Complaints alleging violations of Title VI by subrecipients may be filed in writing directly with the following local, state, and federal agencies:


(Name of your company)
Attn: Title VI Coordinator
Street Address
City / State / Postal Code

Title VI / ADA Coordinator
Indiana Department of Transportation
100 N. Senate Avenue – Room N758-PQ
Indianapolis, IN 46204

Federal Highway Administration
U.S. Department of Transportation
575 North Pennsylvania Street, Room 254
Indianapolis, Indiana 46204

Federal Highway Administration
Office of Civil Rights
HCR-20, Room E81-320
1200 New Jersey Avenue, SE
Washington, DC 20590

Complaint and investigation files are confidential. The contents of such should only be



disclosed to appropriate company personnel, and state, and federal authorities in accordance with Federal and State laws. Subrecipients will retain files in accordance with records retention schedules and all Federal guidelines.

Roles and Responsibilities

Subrecipients must have a complaint form and keep a complaint log whether or not a complaint is ever filed with the subrecipient company. Once a Title VI or ADA complaint is received by the subrecipient company, the subrecipient must notify and refer the complaint to INDOT for routing.

Complaints are routed in the following ways:

1. All complaints are routed to the FHWA Headquarters Office of Civil Rights (HCR) for processing. HCR is responsible for all determinations regarding whether to accept, dismiss, or transfer Title VI complaints filed against INDOTs or Subrecipients of Federal financial assistance.
2. Complaints are forwarded from the initial receiving company through the Federal aid highway oversight hierarchy until the complaint reaches HCR. For example, if a complaint is filed with a Subrecipient City, that receiving company should forward the complaint to INDOT, which should forward the complaint to the State's FHWA Division Office, which should forward the complaint to HCR. If a complaint is filed with INDOT, then INDOT should forward the complaint to the State's FHWA Division Office, which should forward the complaint to HCR.
3. INDOT and Subrecipients must log all complaints received.
4. When HCR decides on whether to accept, dismiss, or transfer the complaint, HCR will notify the Complainant, the FHWA Division Office, INDOT, and Subrecipient (where applicable).

Requirements:

- External discrimination complaints filed under Title VI with the subrecipient in which the subrecipient or its lower-tier subrecipient is named as the respondent must be forwarded to INDOT for routing within 3 calendar days.
 - Develop an external discrimination complaint form.
 - Distribute written discrimination complaint handling procedures to company personnel.
 - Make the public aware of the procedures for filing a discrimination complaint, such as making the information available on the company's Web site or in a brochure.
 - Maintain a complaint log, including any complaints or lawsuits filed against the company, that identifies:
 - 1) Each complainant by race, color, sex, or national origin
 - 2) The recipient
 - 3) The nature of the complaint
 - 4) The dates the complaint was filed and the investigation completed
 - 5) The disposition
 - 6) The date of the disposition

- 7) Other pertinent information
- 8) The status of the complaint investigation or lawsuit
- 9) Corrective actions taken, if any.
- Maintain all correspondence related to the complaint

Limited English Proficiency (LEP)

Responsible steps must be taken to ensure meaningful access to the benefits, services, information, and other important portions of your programs and activities for individuals who are LEP.

Recommendations:

- Develop an company Language Assistance Plan that establishes guidelines in accordance with Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency.
- Translate written information and outreach materials into regularly encountered languages other than English.

Staff Training

The Title VI Plan must indicate how and when company staff are trained on Title VI-related policies and procedures. The plan should include instructions to staff regarding non-discrimination policies, requirements of the Federal agencies in implementing Title VI, and techniques for communicating this to all employees, recipients, and vendors (if any)

Notice of Rights: Agencies must post nondiscrimination notices on the basis of race, color, and national origin under Title VI and how they can file a Title VI discrimination complaint. The Notice must include information on how to file a complaint directly with FHWA. The Notice must be made available on the company's website and be posted in locations accessible to the public.

Title VI Program Visibility

Subrecipients are required to identify how they advise the public of nondiscrimination policies, procedures, and other related information. Electronic or web-based posting of Title VI information alone is insufficient. The company must post in publicly accessible locations.

Title VI, Subrecipient Compliance Procedures

Subrecipient Prequalification and Reviews

23 CFR 200.9(b)(7). Also required for Title VI per 28 C.F.R § 42.410: "Each state company administering a continuing program which receives federal financial assistance shall be required to establish a Title VI compliance program for itself and other recipients which obtain federal assistance through it."



INDOT evaluates and verifies information submitted by subrecipients to:

1. Ensure compliance with Title VI;
2. Identify subrecipients requiring immediate Title VI Program technical assistance; and
3. Monitor Title VI Program compliance which is evaluated.

Consultant Contractor Prequalification

Prequalification

A company MUST be prequalified by INDOT as a contractor if:


- (1) The company bids on INDOT work as a prime contractor
- (2) The company subcontracts for more than \$300K in total INDOT at one time
- (3) The company bids or subcontracts for more than \$300K in local government work that is the construction, improvement, alteration, repair, or maintenance of a highway, street, road, or alley.

Only companies deemed qualified and responsible are eligible to do business with INDOT. A company's eligibility is regulated throughout the duration of its certificate of qualification.

To monitor compliance, each contractor, and sub-contractors, during the Prequalification process are required to submit a "Statement of Compliance with Nondiscrimination Requirements". This Statement of Compliance is an affirmation, pursuant to 105 Ind. Admin. Code 11-2-1(c) that it operates in compliance with Title VI of the Civil Rights Act of 1964 and all related laws, executive orders, rules, and regulations. As part of the application process, companies are required to review their operating procedures to ensure they comply with the following requirements.

- This company displays the "It's the Law" poster in English and Spanish on all job sites.
- This company does not discriminate on the basis of religion, race, color, national origin, sex, sexual orientation, gender identity, age, disability, income level, or limited English proficiency in any aspect of its operations.
- This company has a grievance procedure and maintains a log of any external complaints of discrimination.
- This company has a Title VI Coordinator who has received Title VI training within the past two (2) years.
- This company includes any required language from the Assurances of Nondiscrimination in its subcontracts.
- This company monitors further subrecipients of federal funds for compliance with the assurances.
- This company provides Title VI training to its staff upon hire and at least every two (2) years.

Please note that to comply with federal regulation 23 CFR 200 all the above are required. Self-certification provides documentation that a contractor has procedures in



place to prevent discrimination in programs and services based on Title VI. If compliance with the above is not being met, INDOT provides training tools on INDOT's Title VI resource page at <http://www.in.gov/indot/3586.htm>. Contractors / Consultants can also contact INDOT's Title VI Subrecipient Compliance Auditor.

Subrecipient Consultants Contractors /Monitoring/Review /Audits

In compliance with 23 CFR 200.0(b)(7) Conduct Title VI reviews of cities, counties, consultant contractors, suppliers, universities, colleges, planning agencies, and other recipients of Federal-aid highway funds.

INDOT conducts periodic reviews of subrecipients to monitor Title VI Compliance. These reviews ensure Title VI compliance and an opportunity to provide technical assistance/training to subrecipients. Subrecipient selection criteria are:

- Program funding amount and type received by the year
- Number of complaints against a subrecipient
- Subrecipient with previously identified deficiencies
- Length of time between reviews

Notification

The subrecipient will receive an email or notification letter stating it has been selected for review. The notification letter includes an itemized list of information and documentation to be submitted to INDOT within no longer than thirty calendar days.

Any Subrecipient who fails to respond to a notice of compliance review, including the request for information, within the prescribed deadline shall receive written notification of the subrecipient's deficiency status from the Title VI Manager. The subrecipient will be notified that failure to comply may result in a suspension of federal funding.

Desk Audit Review

INDOT's Title VI Manager reviews subrecipients submitted material. The Title VI Manager will offer assistance and recommendations to strengthen the subrecipient's Title VI requirements, including corrective action(s).

On-Site Review and Interview

- a. Depending on the findings of the desk audit, a request for an on-site review may be made, including an inspection of the subrecipient's facilities and an interview with relevant personnel. If an on-site review is necessary, the subrecipient will be notified by email and/or mail. The following factors will play a role in determining whether an on-site review is necessary:
 - Deficiencies are directly related to improvements being constructed or maintained by the Subrecipient.
 - Deficiencies include missing entire program components or are otherwise considered major deficiencies.

- The Subrecipient's program Manager or representative has not been identified and/or does not appear to have the support of the executive leadership of the company in ensuring program compliance; and,
- The review is based upon the receipt of a complaint.

On-site interview sample topics include but are not limited to:

- Organization, staffing, and training
- Nondiscrimination Policy and Notice
- Limited English Proficient (LEP) Executive Order 13166
- Complaints, Forms and Procedures
- USDOT 1050.2A Title VI/ Nondiscrimination Assurances
- Access for Individuals with Disabilities under Section 504 Rehabilitation Act and ADA Act
- Subcontracts

Compliance Review Letter – Findings

A compliance review letter or email will be issued following the completion of a desk audit and /or on-site review. The findings will

- Document any deficiencies observed and direct the subrecipient to come into compliance within a specified date
- Require that any deficiencies, that cannot be resolved within a specified date, be reflected in a corrective action plan to be submitted to the Title VI Manager for approval within the specified period.

If the subrecipient fails to submit appropriate and complete documentation to support its commitment to comply with Title VI, INDOT's Title VI Manager will issue a noncompliance letter and forward a copy to FHWA and may then take or participate in other legally available action against the subrecipient for failure to comply, such as withholding payment on a contract, and/or suspending or terminating the contract.

Follow-Up Monitoring

INDOT will determine whether any follow-up monitoring is necessary to ensure ongoing Title VI compliance.

Training

INDOT provides Title VI training materials on its website at: <http://www.in.gov/indot/3586.htm>. Onsite Title VI training is conducted on an as-needed basis or requested by consultant contractor subrecipients.



AUDIT REVIEW TOOL FOR SUBRECIPIENTS



INDOT Sub-Recipient Title VI Desk Audit Compliance Assessment Tool

23 Code of Federal Regulations (CFR) Part 200 requires that the Indiana Department of Transportation (INDOT) conduct periodic reviews of its cities, counties, consultant contractors, suppliers, universities, colleges, planning agencies, and other recipients of Federal-aid highway funds. of federal-aid highway funds to ensure they are complying with Title VI of the Civil Rights Act of 1964. Title VI states that “no person in the United States shall be excluded from participation, denied the benefits of, or be subjected to discrimination in any Federally funded program, policy, or activity on the basis of race, color or national origin.”

INDOT has developed this assessment as a means of determining sub-recipient compliance; helping sub-recipients understand their Title VI responsibilities; and assisting INDOT in planning future training and technical assistance. This assessment is part of INDOT's Quality Assurance Review (QAR) process.

Please email the completed questionnaire with attachments, to Taffanee Keys, Civil Rights Counsel, Title VI Coordinator, @ tkeys@Indot.in.gov by no later than _____ . Questions or concerns may be e-mailed to tkeys@indot.in.gov or you may call 317-941-4512.


Desk Audit Questionnaire


1. Name of your Company:

2. Number of full-time and part-time employees:

3. Who is the Title VI contact person for your company? Does this person accept complaints from the public? If not, who does? Please include the title, email, and telephone number for each person listed.

4. Staff designated to have Title VI coordination responsibilities (in conjunction with other duties).

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5. Does your company have a current Title VI Implementation Plan?
 6. Has your company provided written Title VI Assurances to INDOT? Please attach a copy.
 7. Does your company have a Title VI Policy or Policy Statement in place for your organization, signed by the head of the company? If so, attach proof of public dissemination of Title VI Policy or Policy Statement.
 8. Does your company have a written discrimination complaint process? If so, please provide a copy as an attachment.
 9. Has your company made the public aware of the right to file a complaint? If so, by what mechanism? Provide as an attachment.
 10. In the past three years, has your company been named in a discrimination complaint or lawsuit? If so, when and what was the nature of the complaint or lawsuit and the outcome?
 11. Does your company provide free translation services for persons with Limited English Proficiency (LEP)? Explain.
 12. Does your company physically include the Civil Rights Special Provisions (FHWA-1273) in all contracts and ensure they are included in all sub-contracts, including the third tier?
 13. Do your contracts/agreements contain Title VI non-discrimination assurances.

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14. Has the staff received any Title VI training (formal or informal). If so, please list the dates and times of the instructor. Attach sign-in sheets if any and provide copies of the training documents, for example, PowerPoints.

 15. Please state, in detail, how your company monitors its' subrecipients. Please attach a copy of your subrecipient contract.

 16. Do you have any questions regarding this assessment or Title VI? Please include them here along with your email address or phone number and an INDOT representative will respond.

 17. Would your company like Title VI training or other Civil Rights technical assistance from INDOT? If yes, please explain. Does your company have teleconferencing ability?

 18. Please list each attachment provided with the desk audit.

 19. Please provide the Name, Title, and contact information of the person who completed this baseline assessment.



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