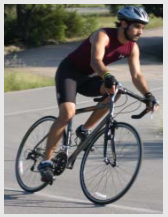
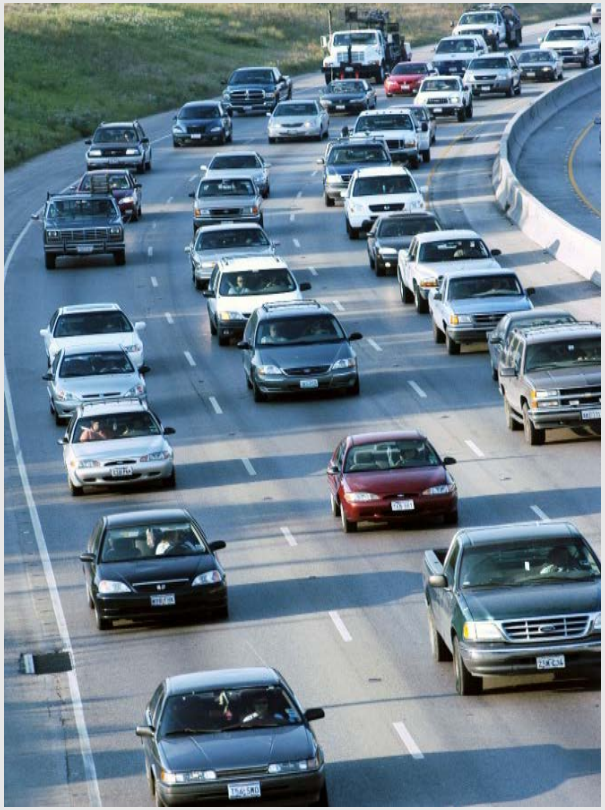
TEXAS DEPARTMENT OF TRANSPORTATION



DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

Prime Contractor Responsibilities



2017

Participant Introduction

- Participant name
- Company and role within the company
- What they desire to get out of the course

Housekeeping

- Medical Emergencies
- In case of:
  - Fire alarm
  - Tornado
  - Bomb threat
- Location
  - Safety exits
  - Gathering location
  - Restrooms
  - Food/vending
  - Smoking areas
- Be respectful
- Two 15-minute breaks

Maximizing this Training

- Be open to the information and ideas provided.
- Ask questions to clarify information.
- Pay attention to the examples used to explain the ideas.
- Take notes.
- Flag or highlight key points in the materials.

Training Topics

1. DBE Prime Contractor Guide
2. DBE Program Overview and Objectives
3. DBE Program Authorities
4. DBE Program Responsibilities
5. Texas Unified Certification Program
6. Counting DBE Participation
7. Commercially Useful Function

Training Topics

8 Diversity Management System (DMS)

9 Contract Letting

10 Good Faith Efforts

11 DMS Subcontractors

12 Race-Neutral Participation

13 Contract Award and Subcontract Execution

14 Pre-Construction Conference

Training Topics

15 Payments

16 Joint Checks

17 Assistance to DBE Firms

18 Change Orders

19 Termination and Substitution Requests

20 Monitoring DBE Activity

21 Enforcement

Training Topics

22 Project Close Out

23 Local Government Projects

24 Design-Build Projects

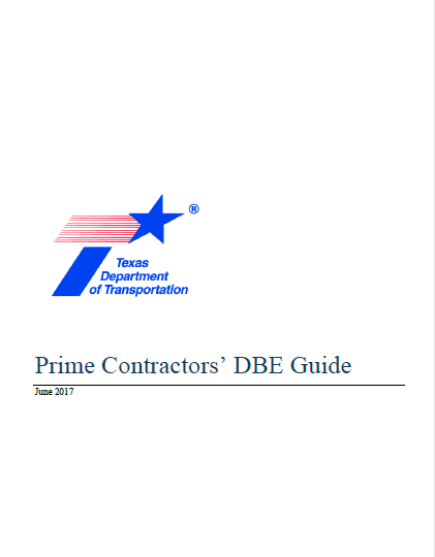
25 Resources

26 Training

PRIME CONTRACTORS' DBE GUIDE

Prime Contractors' DBE Guide

- Provides guidance for federal and state requirements of the Disadvantaged Business Enterprise (DBE) program.
- Contains processes and procedures used by the prime contractor to accomplish all phases of DBE compliance for a project.
- Includes prime contractor responsibilities and best practices to comply with federal and state requirements.



DBE PROGRAM OVERVIEW AND OBJECTIVES

TxDOT's DBE Program Overview

- Legislatively mandated by the United States Department of Transportation (USDOT).
- Applies to federal-aid highway dollars expended on federally-assisted contracts issued by USDOT.
- Administered by USDOT's three modal administrations:
  - Federal Highway Administration (FHWA)
  - Federal Transit Administration (FTA)
  - Federal Aviation Administration (FAA)
- Implementation guided by 49 CFR, Part 26.

TxDOT's DBE Program Objectives

- Ensure nondiscrimination in the award and administration of USDOT-assisted contracts.
- Create a level playing field where DBEs can compete for contracts.
- Ensure that TxDOT's DBE Program is tailored in accordance with applicable law.
- Ensure only eligible firms participate.
- Remove barriers for DBEs to participate in USDOT-assisted contracts.
- Promote the use of DBEs in all types of federally-assisted contracts.
- Develop DBEs to compete outside the DBE Program.
- Provide recipient flexibility in establishing and providing opportunities for DBEs.

DBE PROGRAM AUTHORITIES

DBE Program Authorities

- Regulations and provisions prime contractors must comply with:
  - USDOT DBE Regulations (49 CFR, Part 26)
  - DBE Special Provision Disadvantaged Business Enterprise in Federal-Aid Contracts (000-394)
  - Special Provision Measurement and Payment (009-009)

DBE PROGRAM RESPONSIBILITIES

DBE Program Responsibilities

TxDOT receives federal financial assistance from USDOT through FHWA, FAA, and FTA.

- TxDOT is:
  - Recipient of federal funds.
  - Responsible for administering its DBE Program.
  - Legally accountable for expenditures of USDOT financial assistance.
- TxDOT assures it will comply with 49 CFR, Part 26 within its DBE Program Plan.
- Breach could result in loss of federal funds.

DBE Program Responsibilities

Condition of Award

- Sub recipients include:
  - Prime contractors
  - Subcontractors
  - Suppliers
  - Manufacturers
  - Consultants
- All sub recipients must comply with 49 CFR, Part 26 requirements, and contract provisions.

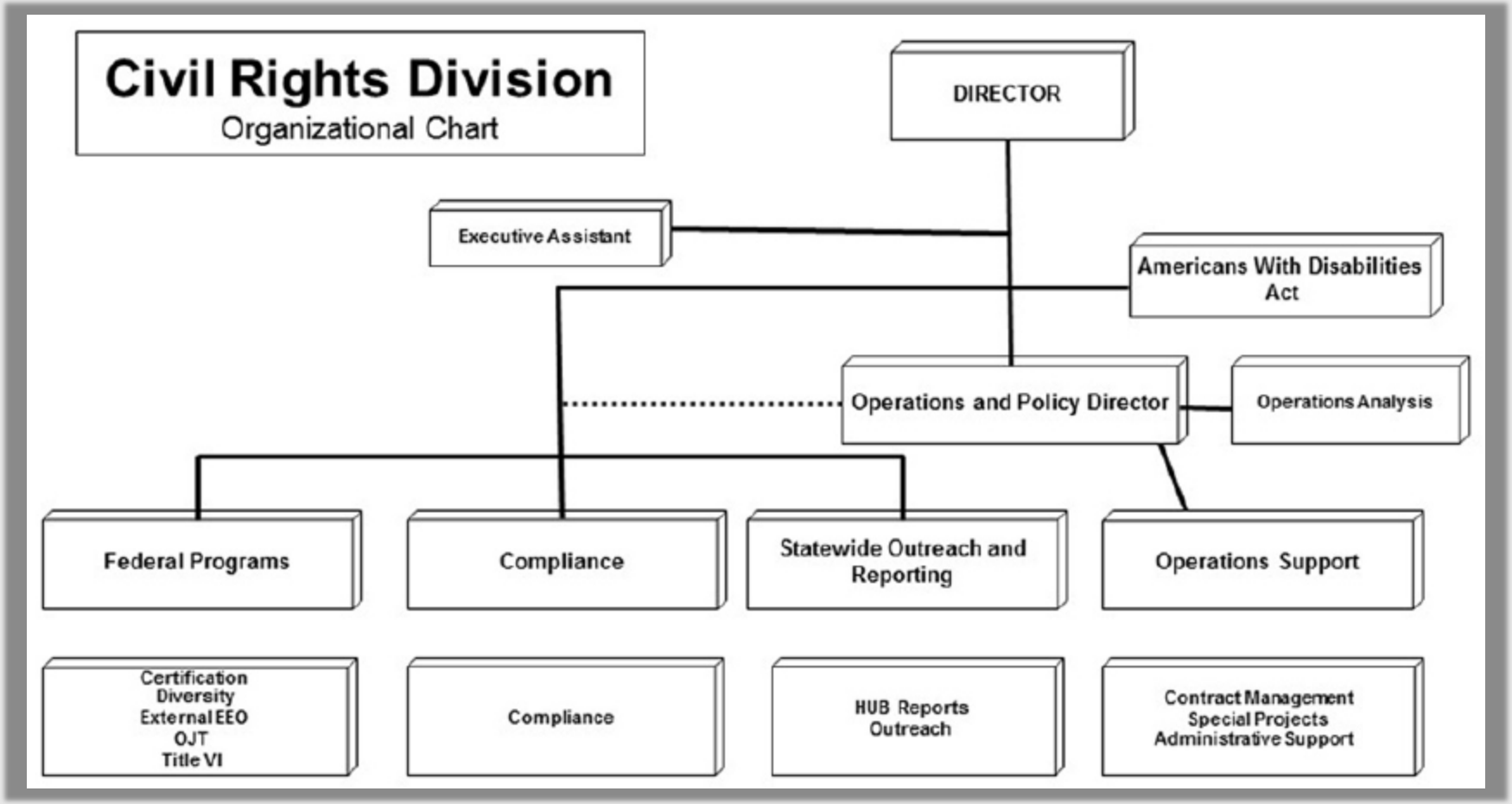
Civil Rights Division Responsibilities

- TxDOT's Civil Rights Division (CIV) administers the DBE program.
- CIV responsibilities include:
  - Develop TxDOT's DBE Program Plan.
  - Set DBE state participation goal.
  - Set specific contract goals.
  - Complete annual reporting requirements to FHWA.
  - Provide contract oversight and program administration.
  - Monitor performance of program participants (primes, subcontractors, sub recipients)
  - Verify project level monitoring at division, district, and local levels.
  - Ensure districts, divisions and local agencies take compliance and enforcement actions as described in 49 CFR, 29.13(b).

Civil Rights Division Responsibilities

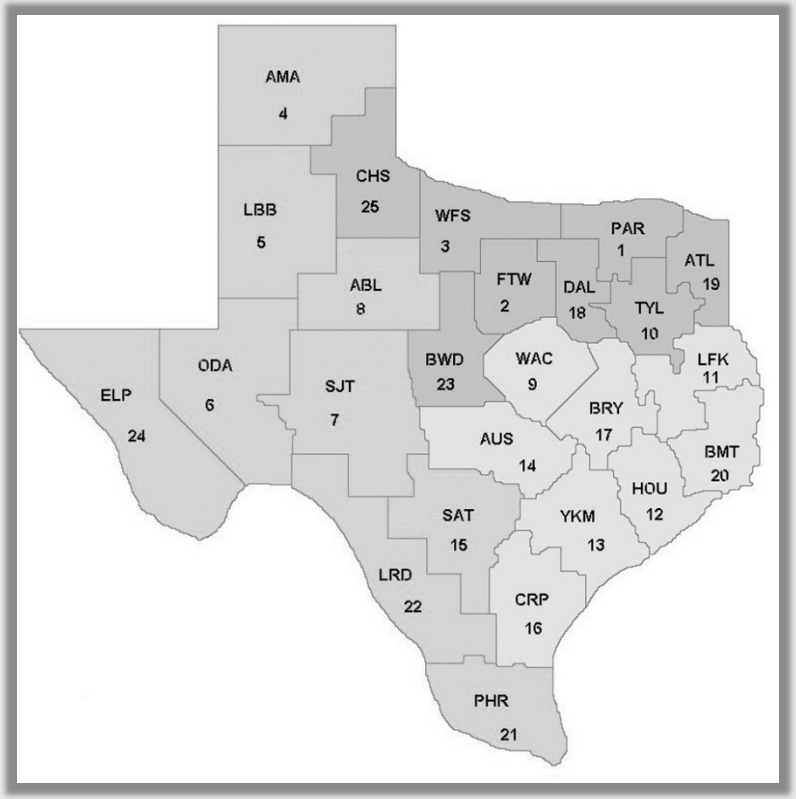
- Collect, analyze data, and submit reports to FHWA.
- Provide training on DBE Program requirements.
- Provide support and guidance to districts, divisions, and sub recipients.
- Conduct annual DBE Program compliance reviews on districts, divisions, local governments, and other entities.
- Provide oversight and administration of the Texas Unified Certification Program (TUCP).

Civil Rights Division Responsibilities



District Responsibilities

- Oversee the construction of state highways.
- Initial and primary contact for prime contractors and subcontractors.
- Provide oversight for construction division projects.
- Area offices (under district offices) support district offices during different stages of the project.
- Monitor performance of prime contractors, subcontractors, and sub recipients.



District Responsibilities

- Discuss DBE provision requirements at the pre-construction conference.
- Monitor requests to substitute DBE subcontractors and suppliers during the life of the contract. Provide responses to requests within five business days of receipt.
- Verify DBE payments can be counted towards DBE goal.
- Review joint check requests.
- Perform a Commercially Useful Function (CUF) review.
- Verify final DBE participation dollar amounts or determine adequate good faith efforts.
- Take compliance and enforcement actions when a contractor does not fulfill its DBE obligations.
- Maintain records in accordance with FHWA records retention requirements.

Prime Contractor Responsibilities

Prime Contractor Best Practices & Responsibilities:

- Sponsor and participate in outreach events for DBE entities.
- Document good faith efforts to meet the DBE contract goal.
- Set up subcontractors in DMS.
- Use DMS to report monthly payments to DBE subcontractors and suppliers.
- Ensure DBE subcontractors perform a CUF on the project.
- Monitor change orders and impacts to DBE goals.
- Make prompt payments to DBE and non-DBE subcontractors.
- Submit termination and substitution requests.
- Submit DBE joint check approval requests.
- Maintain records of DBE activities to comply with DBE Program requirements.

TEXAS UNIFIED CERTIFICATION PROGRAM

Texas Unified Certification Program

TUCP Directory

- Lists firms that meet the DBE certification requirements to perform specific work codes granted.
- Is available online at: https://txdot.txdotcms.com/FrontEnd/VendorsearchPublic.asp.
- Provides primary source for DBE firm solicitation and commitment.
- Requests for additional work codes must be approved prior to the execution of any contract the DBE wishes to perform.

Texas Unified Certification Program

- Six certifying agencies make all certification decisions.
  - City of Austin, Office of Business Opportunity
  - City of Houston, Small Business Development
  - Corpus Christi Regional Transportation Authority
  - North Central Texas Certification Agency
  - South Central Texas Certification Agency
  - Texas Department of Transportation
- Agencies require DBE firms to annually submit affidavit of no change form.
- A business' DBE certification from any TUCP agency is valid for any Texas entity that receives USDOT funds.

COUNTING DBE PARTICIPATION

Counting DBE Participation

Counting Overview

- Counting participation for goal credit depends on the work type:
  - Subcontractors – 100%
  - Manufacturers – 100%
  - Regular Dealers (i.e. suppliers) – 60%
  - Trucking Firms/Haulers – Varies
  - Brokers, Distributors, Manufacturer's Representatives – Reasonable fees and commissions
  - Joint Ventures – Varies

Counting DBE Participation

DBE Subcontractor

- Performs specific work items with own forces pursuant to a contract agreement with prime contractor.
- Must perform at least 30% of the work.
- Furnish and install.
- Count 100% of prime contractor's payment to DBE toward contract goal (labor and materials)

Counting DBE Participation

Trucking Firm/Hauling

- DBEs must own & operate at least 1 truck (licensed, insured, operational on the contract).
- Must control (manage & supervise) oversee the entire portion of the work it is committed to perform and use at least one of its own trucks.
- Limited DBE credit for non-DBE trucks, but it cannot exceed the value of transportation services provided by DBE trucks.
  - Example: DBE firm has 3 trucks, it can use up to 3 non-DBE trucks (credit received for 6 trucks).
  - DBE credit can be given if DBE leases non-DBE trucks but uses DBE employees/drivers.

Counting DBE Participation

Manufacturer

- Prime purchases materials from a DBE manufacturer
- DBE operates a factory that produces materials on the premises to meet contract specifications
- Or, takes product and alters it to meet contract specs
- Count 100%

Counting DBE Participation

DBE Regular Dealer

- Prime contracts with a regular dealer to supply and deliver products
- Regular dealer owns, operates a store or warehouse that contains products it sells to public
- Regular dealer in bulk items as petroleum product, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business.
- For bulk items must own and operate distribution equipment
- 60% Credit - if the DBE is performing as a regular dealer and determined on a contract-by-contract basis.

Counting DBE Participation

Broker, Distributor, Manufacturer's Representative

Prime hires a DBE to facilitate the procurement of materials and supplies

- Count reasonable fees and commissions

Counting DBE Participation

Joint Venture

- An association of a DBE firm and one or more other firms to carry out single, for-profit business enterprise.
- TxDOT will count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward the DBE goal.

COMMERCIALLY USEFUL FUNCTION

Commercially Useful Function

- A DBE performs a CUF when it is responsible for execution of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved.
- The DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality, quantity, ordering the material and installing (where applicable) and paying for the material itself.
- No CUF = No Goal Credit !

Commercially Useful Function

- DBE should:
  - Possess required equipment.
  - Be financially independent.
  - Employ its own laborers.
  - Own or rent its own equipment.
  - Handle its own payroll, invoicing, and negotiations.

Commercially Useful Function

- Prime contractor should ask a DBE the following questions:
  - How long has company been in business?
  - Will the DBE manage work using its own managers?
  - Will the DBE perform the work with its own workforce?
  - What work, if any, does the DBE intend to subcontract and is that amount consistent with industry practice?

CUF Review

- District staff perform CUF reviews to ensure DBE is actually performing, managing, and supervising the work.
- Field staff review project related documents:
  - Executed subcontracts
  - Certified payrolls
  - Invoices
  - Purchase orders
  - Delivery tickets and equipment title of ownership or lease agreements
- Complete the DBE Program CUF review questionnaire.

CUF Review

- If a DBE is presumed not to be providing a CUF:
  - DBE allowed to provide rebuttal information.
  - If presumption prevails, no work performed is counted towards DBE goal.
  - If denial of goal credit results in a goal short fall, the prime contractor is required to provide DBE substitute or adequate good faith effort.
  - CUF determinations are not subject to administrative appeal to USDOT.
- A prime contractor may be exposed to criminal and civil liability if:
  - DBE firm is a mere pass-through or middle man between two performing parties.
  - Deliberate attempts are made to circumvent the intent of the DBE program.

DBE Fraud Indicators

TxDOT will report any false, fraudulent, or dishonest conduct in connection with the DBE program to the USDOT Office of the Inspector General (OIG) for appropriate action. Some fraud indicators are:

- DBE owner lacks background, expertise, or equipment to perform work.
- Employees are shuffling between prime contractor and DBE firm payrolls.
- Business names on equipment covered with paint or magnetic signs.
- Orders and payment made by individuals or not employed by the DBE firm.
- DBE owner never present at job site.
- Prime contractor always uses same DBE firm.
- Financial agreements between prime and DBE contractors.
- Joint bank account with prime and DBE.
- Absence of written contracts.

DBE Fraud Indicators

Reporting Fraud

- TxDOT hotline established for employees, contractors, and others to report suspected fraud or abuse:
  - Report incidents by visiting www.txdotwatch.com
  - Call toll-free (877) 769-8936

DIVERSITY MANAGEMENT SYSTEM (DMS)

Diversity Management System

- On February 2017, TxDOT implemented the contract compliance module of the Diversity Management System.
- DMS is used for DBE commitments, contract management, and prompt payment.
- All contractors on federal-aid contracts are required to use DMS in order to do work with TxDOT. All primes and DBE subcontractors must have an account in DMS.

CONTRACT LETTING

Contract Letting

- TxDOT determines the DBE project goal prior to letting a construction project.
- Prime contractors make a commitment to meet the goal by signing the proposal and submitting a bid.
- Bidders are required to submit a DBE Utilization Plan or GFE documentation no later than 5 days after bid opening.
- Prior planning will help to ensure the prime contractor is prepared to attain the DBE goal if awarded the contract.

Contract Letting

Develop a DBE Utilization Plan (UP):

- Review project's Special Provision for DBE contract goal.
- Determine possible DBE subs and quantify based on estimated dollar amounts.
- When practical, divide large items into potential smaller subcontracting opportunities.
- Look for 2nd tier subcontracting opportunities.
- Quantify potential material supply contracting opportunities:
  - Determine allowable DBE participation.
  - 100% from manufacturer.
  - 60% from regular dealer.
- Determine likely total DBE participation and compare to DBE contract goal.

GOOD FAITH EFFORTS

Good Faith Efforts (GFE)

The prime contractor:

- Must make a good faith effort to meet the DBE contract goal by:
  - Meeting the goal.
  - Documenting GFE to meet the goal.
- If a prime contractor does not meet the DBE goal, it must provide TxDOT with documentation to show that it used GFE to do so.
- Should document steps taken to satisfy GFE requirements and meet DBE goal.
- Should understand the types of GFE found in 49 CFR, Part 26, Appendix A.
- Attempting to obtain a contract on the basis of documented GFE should be a contractor's last resort.

TxDOT will not penalize contractors if they fail to meet contract DBE goals as long as they follow the GFE guidelines in Appendix A.

Good Faith Efforts (GFE)

TxDOT will evaluate Prime Contractor's Good Faith Efforts:

- TxDOT will consider the quality, quantity, and intensity of the different efforts the prime contractor made.
- TxDOT will evaluate the overall effort of the prime contractor's documented good faith efforts (holistic).

Good Faith Efforts (GFE)

Evaluation of GFE - Factors

- Did prime contractor make enough work items available to meet the goal?
- Did prime contractor solicit available DBEs for work items?
- Did prime contractor follow up with specific DBEs?
- Did the prime contractor give the DBE adequate time to respond?

TxDOT will evaluate pursuant to 49 CFR, Part 26, Appendix A.

Good Faith Efforts

Administrative Reconsideration

- If bidder good faith efforts are deemed inadequate, TxDOT will provide the bidder an opportunity for administrative reconsideration.
  - The bidder will have the opportunity to provide written documentation or argument.
- The bidder will have the opportunity to meet in person with TxDOT's reconsideration official.
- Reconsideration official cannot take part in the original determination.
- TxDOT will send the bidder a written decision on reconsideration.
- Not administratively appealable to USDOT.

Good Faith Efforts

Utilization Plan (UP)

- TxDOT creates a UP record in DMS and assigns it to the apparent low bidder.
- Prime contractor's main contact in DMS is notified when the UP record has been released.
- Prime contractor is required to submit the UP through DMS within five calendar days of notification that they are the apparent low bidder, unless the fifth day is a weekend or holiday, in which case the deadline moves to the next business day.
- CIV will either:
  - Return the plan.
  - Conditionally approve the plan.
  - Approve the plan.
  - Deny the plan.

Submitting a UP in DMS

Overview

The following steps are used to submit a UP in DMS:

Step	Party	Action
1	TxDOT CIV	Releases UP to prime contractor
2	Prime Contractor	Adds subcontractor(s) to the UP
3	DBE Subcontractor	Confirms participation
4	Prime Contractor	Attaches GFE form and documentation (if it does not meet the DBE contract goal)
5	Prime Contractor	Signs and submits completed UP
6	TxDOT CIV	Reviews and approves the UP

Submitting a UP in DMS

Step 1: TxDOT CIV releases UP to prime contractor

CIV will release the UP with the basic contract information to the prime contractor via email from DMS.

From: Texas Department of Transportation
Date: 03/04/2016 9:30:32 AM
Subject: TxDOT: New Utilization Plan to be submitted Turn Lanes, Rehab Shoulders and Overlay

A Texas Department of Transportation Utilization Plan is pending submission by your firm.

The following Utilization Plan has been assigned by the organization for you to complete and submit by 03/09/2016.

Organization: Texas Department of Transportation
Proposal: Turn Lanes, Rehab Shoulders and Overlay
Proposal Number: 0009-11-999
Utilization Plan Reference: Letting 02/2016
- Phase: Original
- Version: 0
Compliance Officer: Dan Williams
Date Released: March 4, 2016
DUE DATE: March 9, 2016

To view this Utilization Plan, visit https://txdot.txdotcms.com/161803398] and login.

Texas Department of Transportation
Civil Rights Division
125 East 11th Street
Austin, Texas 78701
(512) 416-4700
https://txdot.txdotcms.com

Submitting a UP in DMS

Step 2: Prime contractor adds subcontractor(s) to the UP.

- Obtain a copy of DMS user manual prior to entering data for the first time.
- Use DMS to enter UP data.
- Use following checklist with DMS manual.

Check	Action
✓	Enter all subcontractors and suppliers.
✓	Provide a detailed description of work to be completed using the comments section.
✓	Select the NAICS code applicable to the kind of work the DBE will be performing on the contract.
✓	If a non DBE subcontractor does not have a vendor record in DMS, create one in DMS.

Submitting a UP in DMS

Step 3: DBE subcontractor confirms participation.

Once the prime contractor has saved each commitment, the DBE subcontractor will receive an email from DMS.

From: Texas Department of Transportation
Date: 03/06/2016 8:46:31 AM
Subject: Subcontractor to Confirm (Turn Lanes, Rehab Shoulders and Overlay) Participation

Dear TxDOT Test Sub Vendor 5,

TxDOT Test Prime 8 has assigned TxDOT Test Sub Vendor 5 as a SUBCONTRACTOR on the following Utilization Plan. To assist TxDOT Test Prime 8 in completing the utilization plan, please respond to this notice confirming participation ASAP. Click the link below to log into the system and review the request.

Organization: Texas Department of Transportation
Proposal: Turn Lanes, Rehab Shoulders and Overlay
Proposal Number: 0009-11-999
Utilization Plan Reference: Letting 02/2016
- Phase: Original

To view this Utilization Plan, visit https://txdot.txdotcms.com/161803398 and login.
To view all Utilization Plans, visit https://txdot.txdotcms.com/314159256 and login.

Texas Department of Transportation
Civil Rights Division
125 East 11th Street
Austin, Texas 78701
(512) 416-4700
https://txdot.txdotcms.com

Submitting a UP in DMS

The prime contractor can monitor the status of this confirmation process and send a reminder.

Subcontractors

Subcontractor Name	Sub Tier	Cert	Inc in Goal	Type	$ Commit	$ Self Perf	$ For Credit	Confirmed	Actions
1 TxDOT Test Sub Vendor 2	1	✓	✓ DBE	Truck/Haul 100%	$67,500 3.00%	$67,500 3.00%	$67,500 3.00%	✓	View
1 TxDOT Test Sub Vendor 3	1	✓	✓ DBE	Reg. Dealer 60%	$75,000 3.33%	$75,000 3.33%	$45,000 2.00%	Pending Send Reminder	View
1 TxDOT Test Sub Vendor 5	1	✓	✓ DBE	Sub 100%	$157,500 7.00%	$155,925 6.93%	$155,925 6.93%	Pending Send Reminder	View
2 TxDOT Test Sub Vendor 1	2	✓	✓ DBE	Sub 100%	$1,575 0.07%	$1,575 0.07%	$1,575 0.07%	Pending Send Reminder	View

Submitting a UP in DMS

Step 4: TxDOT CIV Compliance reviews the UP.

- Prime contractor met the contract DBE goal.
- Description of the work that each DBE will perform and dollar amount.
- DBEs are certified under NAICS that corresponds with the work DBE intends to perform.
- Dollar amounts listed are appropriate and correct.
- Information completed related to material suppliers.
- Written confirmation from each DBE listed.
- Prime contractor's GFE, if applicable.
- Review of commitments upfront is sometimes based on the faulty assumption that the DBE material supplier will act as a regular dealer and an automatic 60% is credited towards the goal.

DMS SUBCONTRACTORS

DMS Subcontractors

- During the course of a project, a prime contractor may want to add additional DBE subcontractors. This includes race-neutral participation on projects with or without DBE goals.
- The prime contractor must request approval by adding the subcontractor in DMS.
- Requests must include the subcontracting firm name and contact information, a description of the work to be performed, bid items, and the total dollar amount of the subcontract.

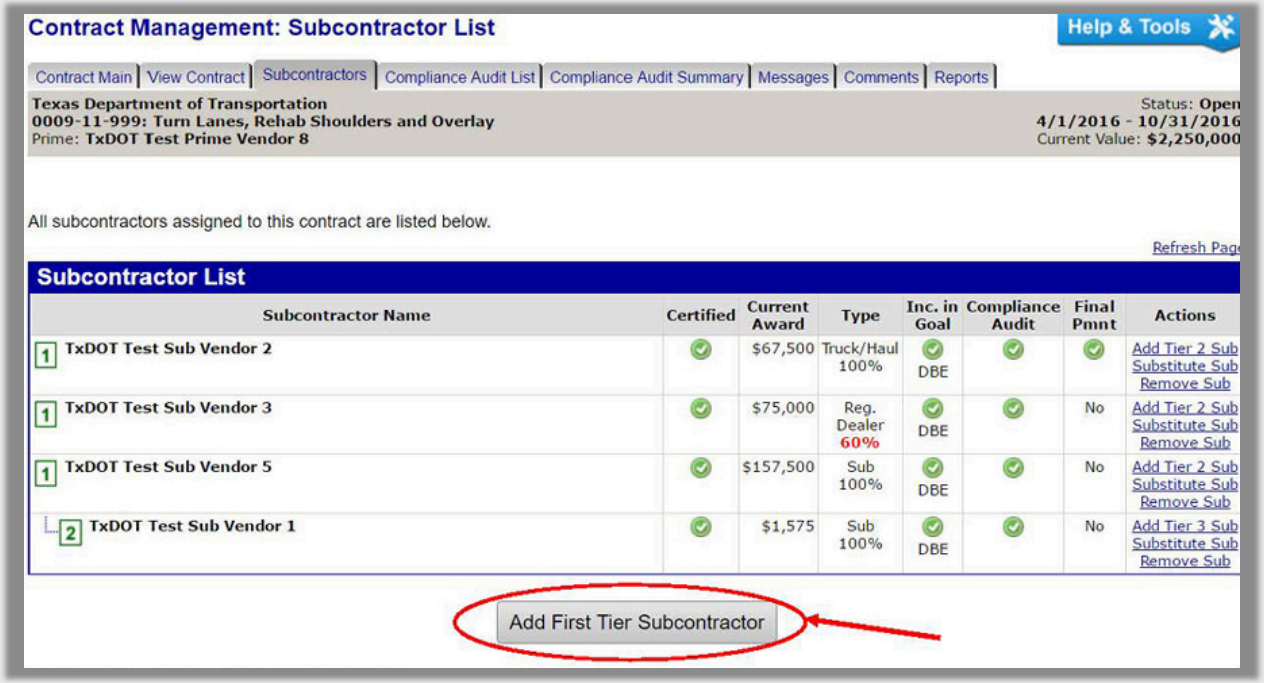
Add a DBE Firm in DMS

Steps to add a DBE firm in DMS.

Step 1: Log in to DMS.

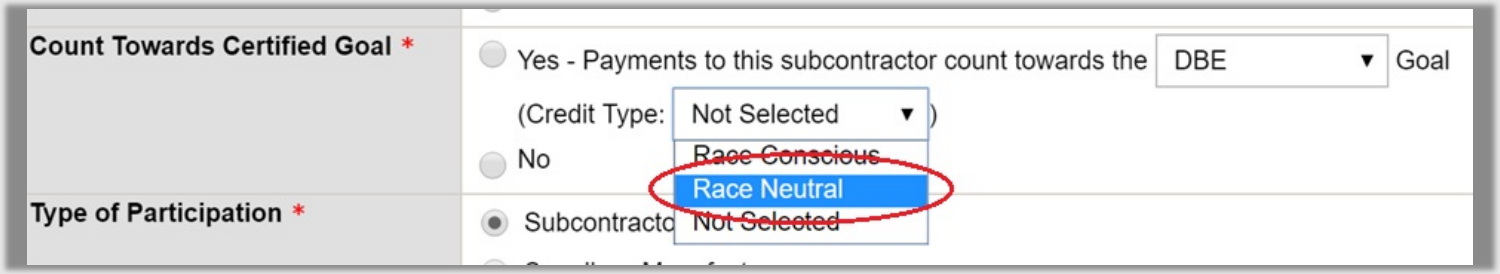
Step 2: Navigate to Page: **Contract Management: Subcontractor List.**

Step 3: Click **Add First Tier Subcontractor.**



Add a DBE Firm in DMS

Step 4: Fill out required fields on the **Contract Management: Add Subcontractor**. Selecting the goal, and credit type will also be required.



Step 5: Click **Review**.

Step 6: Review for accuracy and click **Submit**.

DMS will automatically notify TxDOT of the prime contractor's request to add a subcontractor. Any changes to DMS may not be visible until the request is approved.

RACE-NEUTRAL PARTICIPATION

Race-Neutral Participation

Federal DBE Program requires TxDOT to meet the maximum feasible portion of the overall DBE goal by using race-neutral measures.

- TxDOT uses a combination of race-neutral and race-conscious measures to meet its overall DBE goals.
- Voluntary DBE participation will count as race neutral participation.
- Prime contractors must report race-neutral participation on federal-aid contracts with and without a DBE goal.
- The prime contractor will report race neutral participation in accordance with the DBE monthly report requirements in the contract.
- TxDOT uses DMS to track race-conscious and race-neutral participation on federal-aid funded projects.

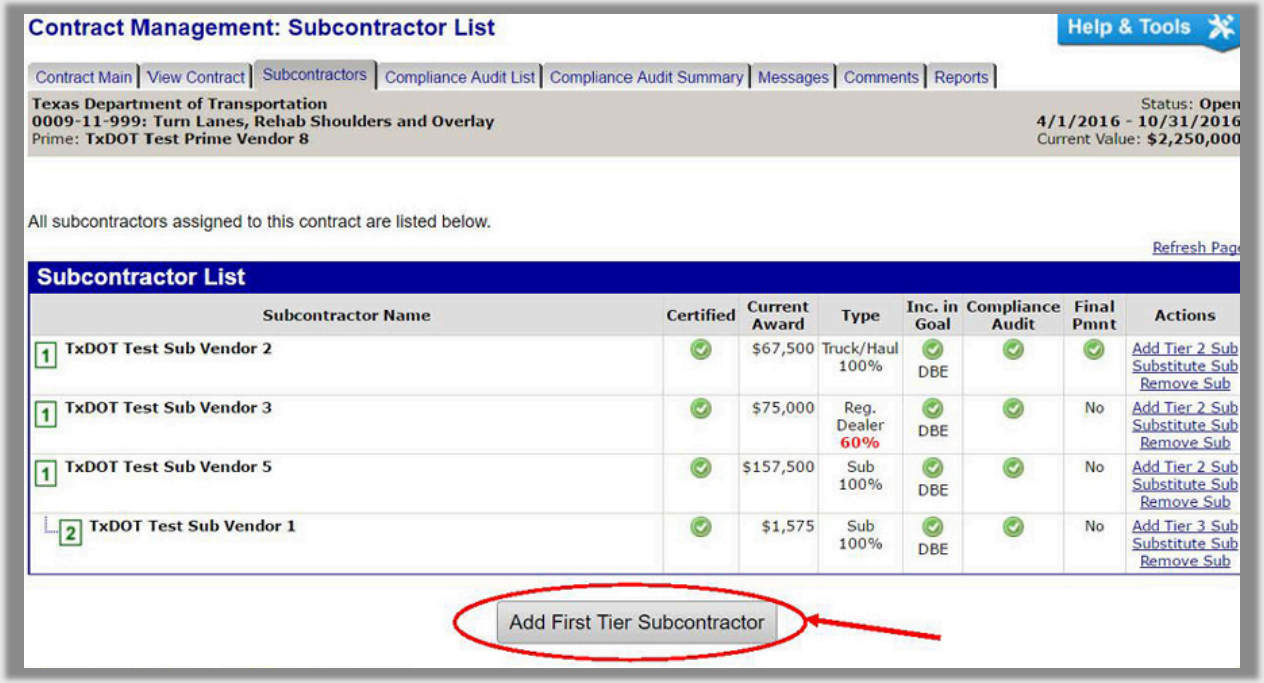
Add a Race-Neutral DBE Firm in DMS

Steps to add a race-neutral DBE subcontractor in DMS

Step 1: Log in to DMS.

Step 2: Navigate to Page: **Contract Management: Subcontractor List.**

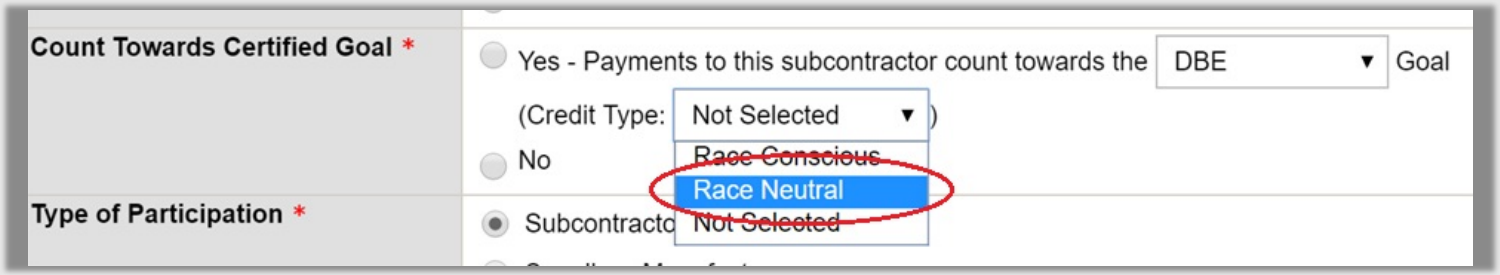
Step 3: Click **Add First Tier Subcontractor.**



Add a DBE Firm in DMS

Steps to add a race-neutral DBE subcontractor in DMS (cont'd)

Step 4: Fill out required fields on the **Contract Management: Add Subcontractor**. Selecting the goal, and credit type will also be required.



Step 5: Click **Review**.

Step 6: Review for accuracy and click **Submit**.

DMS will automatically notify TxDOT of the prime contractor's request to add a subcontractor. Any changes to DMS may not be visible until the request is approved.

CONTRACT AWARD AND SUBCONTRACT EXECUTION

Contract Award and Subcontract Execution

The prime contractor must submit a copy of the executed subcontract agreements or purchase orders for all DBE subcontracts, including all tiered DBE subcontractors.

Subcontract Agreement

- Must incorporate the following TxDOT provisions in all subcontract agreements or material purchase agreements:
  - Disadvantaged Business Enterprise in Federal-Aid Contracts (000-394)
  - Measurement and Payment (009-009)
  - Contract Assurances (49 CFR, Part 26.13)
- As a best practice, include language regarding the ability of a DBE to perform a CUF.

Contract Award and Subcontract Execution

Multiple Tier Subcontracts

- The prime contractor is responsible for all subcontractors and second tier DBE subcontractors.
  - Ensure that any subcontract between a first tier subcontractor and a DBE subcontractor contains language that the DBE goals are to be met and that the DBE performs a CUF.
  - Inform the first tier subcontractors of the process of terminating a DBE subcontractor.

District Verification

- District staff reviews each DBE subcontract to verify:
  - Signatures of prime contractor and DBE subcontractor.
  - The dollar amount of DBE subcontract is equal or greater than the commitment and the scope of work does not differ from the commitment.
  - DBE certification is valid at the time of subcontract execution.

DBE Trucking Utilization Form

- Prime contractors that plan to use DBE trucking for goal credit will submit DBE Program Trucking Agreement Form 2660.
- Form 2660 must be completed prior to the prime contractor beginning any hauling services for DBE credit.
- The district will verify ownership by the DBE owner using TxDMV-MVINET.

Texas Department of Transportation

Disadvantaged Business Enterprise (DBE)
Trucking Utilization

Form 2660
(Rev. 02/17)
Page 1 of 1

The prime contractor must submit this form to the project Area Office prior to any hauling services being performed for DBE credit. This form is intended to support the DBE Trucking Utilization entered in the Diversity Management System (DMS).

THIS SECTION TO BE COMPLETED BY THE PRIME CONTRACTOR

Project #:	County:	Contract-CSJ:
Name of DBE Trucking Company	Total Committed Dollar Amount of the Utilization Plan	Number of Dump Trucks, Tractors/ Trailers (specify)
	$	

THIS SECTION TO BE COMPLETED BY THE DBE TRUCKING FIRM

1. Number of hours contracted or quantities to be hauled?
2. Number of fully operational trucks owned by DBE? Dump trucks: Tractors/trailers:
3. Number of leased trucks to be used? Provide copies of lease agreement(s).

PRE-CONSTRUCTION CONFERENCE

Pre-Construction Conference

District staff discusses the DBE requirements of the contract to ensure that the prime contractor is aware of its DBE obligations, administrative and reporting procedures.

Topics covered include:

- DBE goal
- Participating DBE subcontractors
- Requirement to make a GFE to meet the assigned goal
- DMS reporting process
  - Reporting payments within 15 days of the end of the calendar month
  - Adding subcontractors to include race-neutral DBEs
- Termination/substitution process
- Use of joint checks

PAYMENTS

Payments

Prompt Payment

- Special Provision 009-009 entitled Measurement and Payment requires prime contractors to pay all subcontractors, material suppliers, and truckers within 10 days from when a prime contractor receives a payment from TxDOT.
- Prime contractors must also pay any retainage on subcontractor's work within 10 days after satisfactory completion.
- Satisfactory completion is accomplished when:
  - The subcontractor fulfills the contract requirements of TxDOT and subcontracted work, including submittal of all information required by the contract and TxDOT.
  - TxDOT has inspected and approved the subcontractor's work.
- The prime contractor should incorporate the Special Provision 009-009 into all subcontractor or material purchase agreements.

Payments

Final Reimbursement to Prime Contractor

- TxDOT cannot make the final reimbursement to the prime contractor until TxDOT :
  - Approves the completion of the project construction.
  - Receives and reviews all necessary documentation, including the DBE Program requirements.

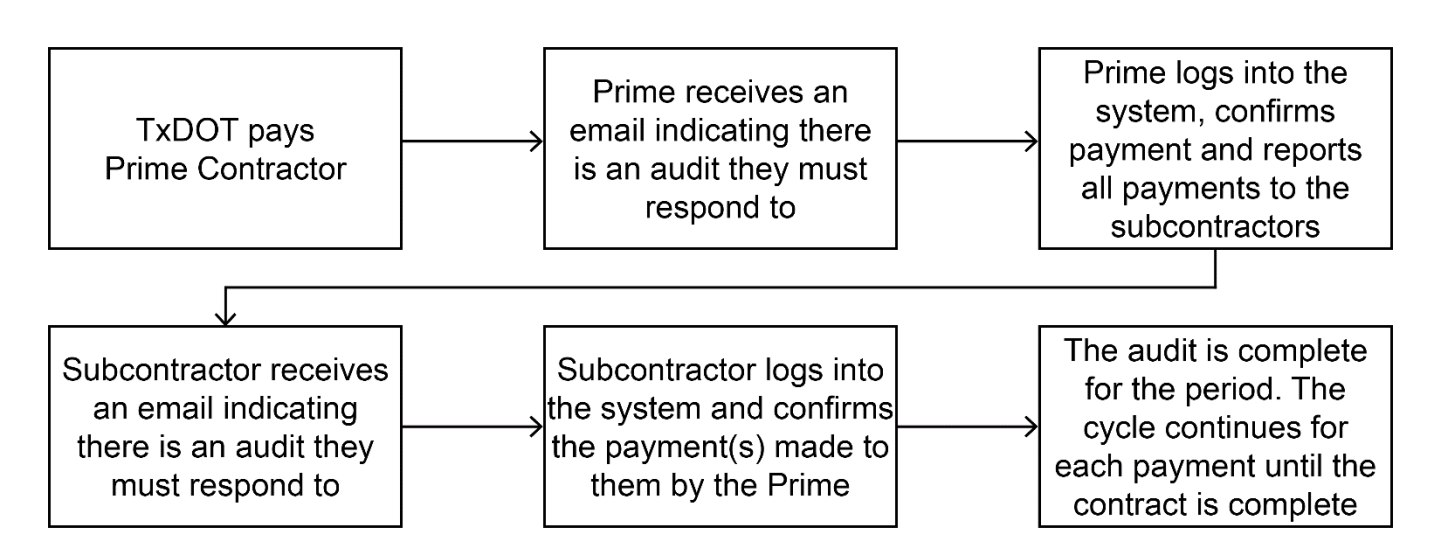
Prompt Payment – Non-Compliance

- TxDOT may pursue actions against the prime contractor for failure to execute prompt payment requirements.

Payment Reporting in DMS

Understanding the Audit Process

- TxDOT maintains a running tally of DBE attainments (commitments and payments).
- Payments are tracked in DMS.
- A contract is ready for auditing once TxDOT begins making payments to the prime contractor.
- Auditing is generated on a monthly basis using the following audit process:



Payment Reporting in DMS

Understanding the Audit Process

- A prime contractor will report payments after work begins:
  - To meet the DBE goal.
  - For DBE race-neutral participation on projects with and without DBE goals.
- Reports are required until all DBE subcontracting activity is completed.
- Reports are due within 15 days after the end of the month using the following sample timeline:

Reporting Timeline

Date	Action
March 10th	TxDOT pays prime contractor.
March 20th	Prime contractor pays DBE subcontractor.
April 5th	DMS alerts prime contractor to report March subcontractor payments.
April 15th	Prime contractor completes entering payments.
April 22nd	DBE subcontractor confirms payment received.
April 23rd – 30th	District staff completes reporting audit.

Payment Reporting in DMS

How to Report Payments

By the fifth of each month, DMS notifies the prime contractor to report payments to subcontractors.

Step 1: Click the link provided in the e-mail:

Dear Contact Person,

The Civil Rights Division monitors participation on all Texas Department of Transportation contracts with goals. To assist our office in the monitoring process, please login to your account in the Diversity Management Software and provide the requested subcontractor payment information for October 2016.

If you have received this notice, then you are currently listed as a PRIME contractor on an active Texas Department of Transportation contract. You are required to respond to this notice with the payment information requested.

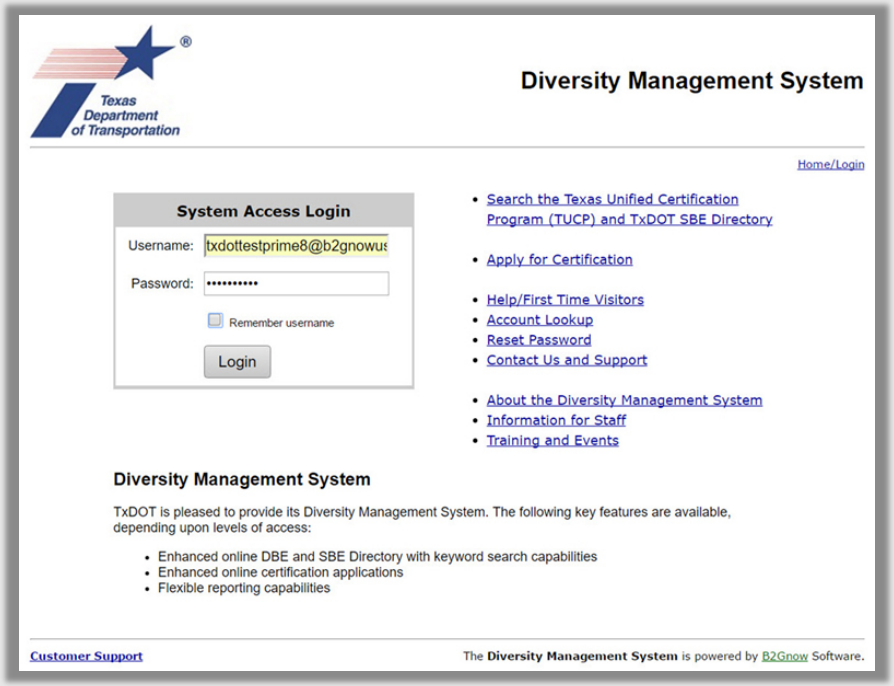
To view the audit notice and respond, visit: https://txdot.txdotcms.com/?GO=397
To view all audit notices, visit: https://txdot.txdotcms.com/?GO=753

Payment Reporting in DMS

Step 2: Log in to DMS.

Note: If the e-mail link is not available, use the following steps to navigate to the incomplete audit.

1. Log in to DMS.
2. Click **View** in the left margin.
3. Click **My Contract Audits**.
4. Click on **Incomplete** to report payments and continue to Step 3 on the next slide.



Step 3: Click Report Subcontractor Payment

Compliance Audit: Audit Notice for October 2016

Help & Tools

Contract Main | View Contract | Subcontractors | Compliance Audit List | Compliance Audit Summary | Messages | Comments | Reports

Texas Department of Transportation
0009-11-999: Turn Lanes, Rehab Shoulders and Overlay
Prime: **TxDOT Test Prime Vendor 8**

Status: **Open**
4/1/2016 - 10/31/2016
Current Value: **$2,250,000**

This is an audit notice for the contract listed below. Submit a response for each item listed below by clicking each link in the **Audit Actions** table. It is possible that some actions are not available at a specific time due to pending reports from other contractors.

Audit Information

Time Period	**October 2016**
Date & Time Posted	**Local: 11/15/2016 3:30:12 PM CST** **System: 11/15/2016 3:30:12 PM CST**

Submit a response for each item listed below by clicking each link. It is possible that some actions are not available at a specific time. As the **prime contractor** your responsibility is to report payments made to subcontractors.

Audit Actions

Category	Action Required & Response Due Date	
Prime Contractor	Report 3 subcontractor payments	due by 11/30/2016 audit lock on 12/15/2016

Compliance Officer Information

Contact Person	Daniel Williams
Organization	**Texas Department of Transportation**
User Number	30000082-051

Buyer/Project Manager Information

Contact Person	Contact Person
Department	**Dallas District**
User Number	10002457-001

Payment Reporting in DMS

Step 4: Click **Submit Response** to report a selected subcontractor or click **Submit all Incomplete Records** to report bulk payments.

Mark 3 Remaining Subcontractors as Zero | Mark Audit as Final

Submit ALL Incomplete Records | Report Error

Subcontractor Payments for October 2016

Subcontractor	Certified	Type	Inc. in Goal	Actions	Paid Amount in October 2016	Confirmed by Sub	Total To October 2016	Contract Goal	Actual Percent
1 TxDOT Test Sub Vendor 2 TxDOTSub Test2 txdottestsub2@b2gnowuser.com P 650-555-5555	✓	Truck/Haul 100%	✓ DBE	Not included in audit (Final payment made) Add to audit			$67,500.00	3.000%	3.000%
1 TxDOT Test Sub Vendor 3 TxDOTSub Test3 txdottestsub3@b2gnowuser.com P 650-555-5555	✓	Re De 60%	✓ DBE	Submit Response	Not Reported	--	$0.00	3.333%	0.000%
1 TxDOT Test Sub Vendor 5 TxDOTSub Test5 txdottestsub5@b2gnowuser.com P 650-555-5555	✓	Sub 100%	✓ DBE	Submit Response	Not Reported	--	$50,500.00	6.930%	2.244%
2 TxDOT Test Sub Vendor 1 TxDOTSub Test1 txdottestsub1@b2gnowuser.com P 602-325-9277	✓	Sub 100%	✓ DBE	Submit Response	Not Reported	--	$0.00	0.070%	0.000%

Click subcontractor name to view payment history for this contract. Click contact person's name to send them a message.

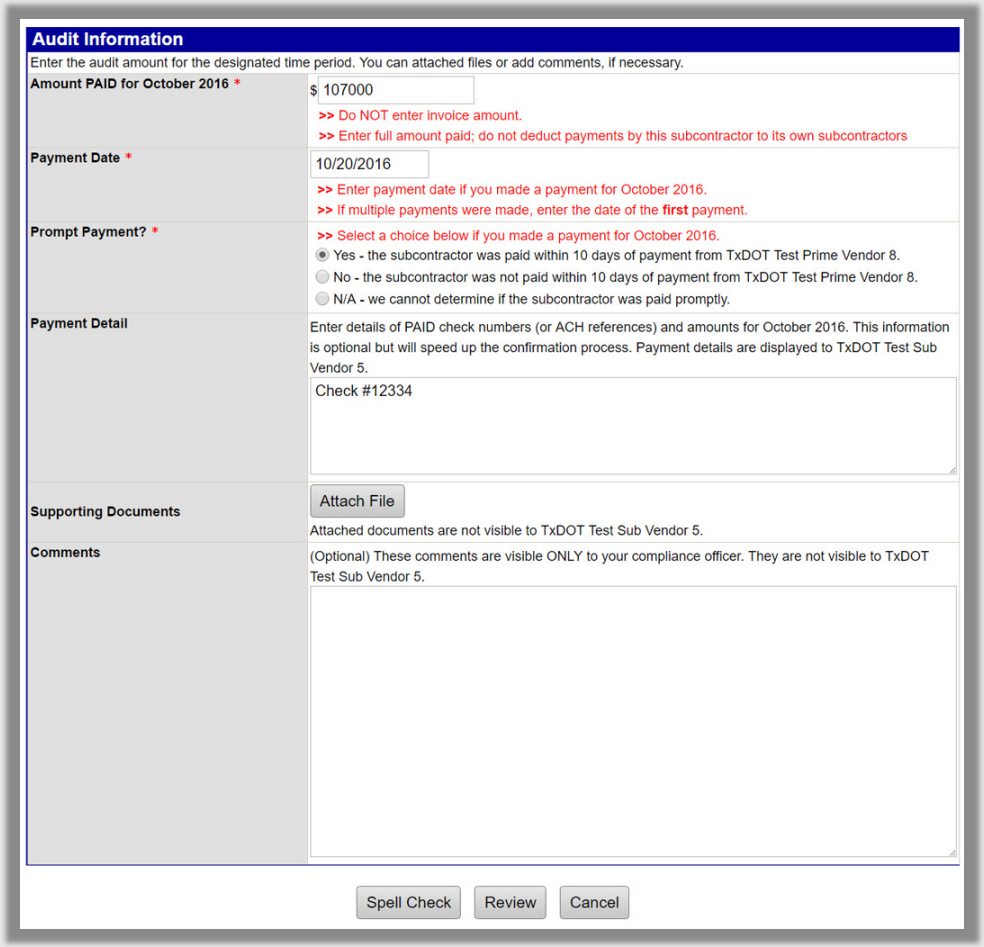
Payment Reporting in DMS

Step 5: Enter payment amount, date, and prompt payment.

Step 6: Enter the invoice and check number.

Step 7: Attach any documents by clicking **Attach File**.

Step 8: Click **Review**.



Audit Information

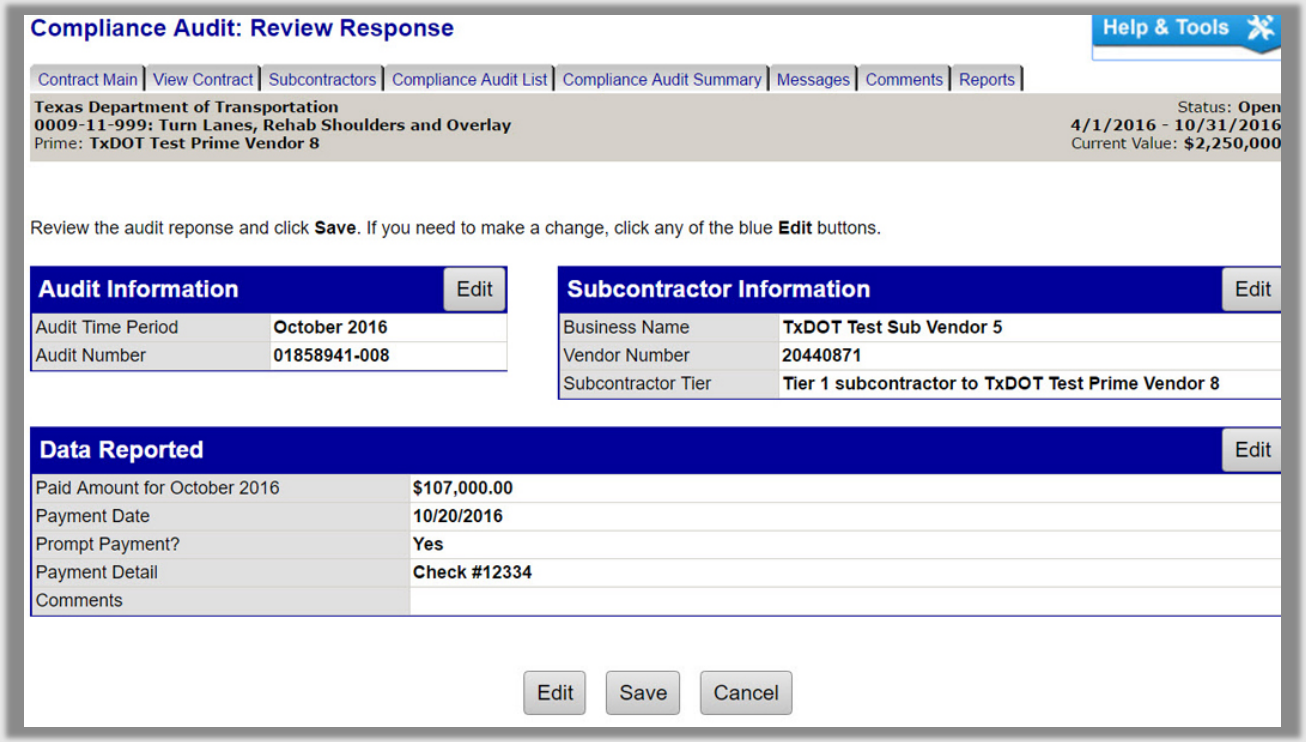
Enter the audit amount for the designated time period. You can attached files or add comments, if necessary.

Amount PAID for October 2016 *	$ 107000 >> Do NOT enter invoice amount. >> Enter full amount paid; do not deduct payments by this subcontractor to its own subcontractors
Payment Date *	10/20/2016 >> Enter payment date if you made a payment for October 2016. >> If multiple payments were made, enter the date of the **first** payment.
Prompt Payment? *	>> Select a choice below if you made a payment for October 2016. ◉ Yes - the subcontractor was paid within 10 days of payment from TxDOT Test Prime Vendor 8. ○ No - the subcontractor was not paid within 10 days of payment from TxDOT Test Prime Vendor 8. ○ N/A - we cannot determine if the subcontractor was paid promptly.
Payment Detail	Enter details of PAID check numbers (or ACH references) and amounts for October 2016. This information is optional but will speed up the confirmation process. Payment details are displayed to TxDOT Test Sub Vendor 5. Check #12334
Supporting Documents	Attach File Attached documents are not visible to TxDOT Test Sub Vendor 5.
Comments	(Optional) These comments are visible ONLY to your compliance officer. They are not visible to TxDOT Test Sub Vendor 5.

Spell Check | Review | Cancel

Payment Reporting in DMS

Step 9: Review content and click **Save**.



Compliance Audit: Review Response

Help & Tools

Contract Main | View Contract | Subcontractors | Compliance Audit List | Compliance Audit Summary | Messages | Comments | Reports

Texas Department of Transportation
0009-11-999: Turn Lanes, Rehab Shoulders and Overlay
Prime: TxDOT Test Prime Vendor 8

Status: Open
4/1/2016 - 10/31/2016
Current Value: $2,250,000

Review the audit reponse and click **Save**. If you need to make a change, click any of the blue **Edit** buttons.

Audit Information Edit

Audit Time Period	October 2016
Audit Number	01858941-008

Subcontractor Information Edit

Business Name	TxDOT Test Sub Vendor 5
Vendor Number	20440871
Subcontractor Tier	Tier 1 subcontractor to TxDOT Test Prime Vendor 8

Data Reported Edit

Paid Amount for October 2016	$107,000.00
Payment Date	10/20/2016
Prompt Payment?	Yes
Payment Detail	Check #12334
Comments	

Edit Save Cancel

Step 10: Complete steps 3-9 for each subcontractor.

Payment Reporting in DMS

Subcontractor Verification of Payments

- DMS will notify all subcontractors by system generated e-mail when a payment is recorded by the prime contractor.
- Once notified, the subcontractor has seven days to log into DMS and agree or disagree with the payment reported by the prime contractor.
- Reference the Prime Contractors' DBE Guide or the DMS Users Guide for the steps to this process.

Payment Reporting in DMS

Payment Discrepancy

- When a subcontractor indicates the amount paid is incorrect in the **Subcontractor Verification of Payments** process, a discrepancy is created.
- The following process is required to resolve the discrepancy:
  - The monthly payment report is sent to the prime contractor.
  - The prime contractor should review the payment differences and comments provided by the subcontractor.
  - The prime contractor may correct any error and re-submit to the subcontractor for review again.
  - The prime and sub contractors should work together to resolve any payment discrepancies.
- After two attempts to resolve the discrepancy, DMS will turn the audit record over to TxDOT to assist with resolution.

JOINT CHECKS

Joint Checks

- A joint check is a two-party check between a DBE subcontractor and a prime contractor to a materials supplier of the DBE.
- The prime contractor issues a check as payer to a DBE subcontractor and the materials supplier jointly to guarantee payment to the supplier.
- All joint check arrangements must be pre-approved by TxDOT before the arrangement or transaction takes place.
- The prime contractor must submit to the TxDOT district:
  - Form 2178
  - Correspondence showing the rejections of a line of credit from the material supplier to the DBE subcontractor
  - A joint check agreement

Joint Check

- Using a joint check for payment of materials or supplies is acceptable when the following conditions are met:
  - The prime contractor issuing the check acts solely as a guarantor.
  - The DBE subcontractor must release the check to the supplier.
  - The DBE subcontractor negotiates the quantity, price, and delivery of the materials.
  - The DBE subcontractor is responsible for both furnishing and installing the materials or supplies.
  - The prime contractor cannot require the subcontractor to use a specific supplier or the prime contractor's negotiated price.
  - The arrangement is short-term with the purpose being to establish or increase the line of credit between the DBE subcontractor and the supplier.

ASSISTANCE TO DBE FIRMS

Assistance to DBE Firms

- In accordance with 49 CFR, Part 26, Appendix A, it is appropriate for a prime contractor to provide assistance to DBEs in various areas such as:
  - Bonding
  - Credit
  - Insurance
  - Equipment
  - Materials, and
  - Supplies
- Prime contractor should be careful not to provide so much assistance to a DBE that TxDOT would conclude that the DBE is not viable without the relationship to the prime contractor.

CHANGE ORDERS

Change Orders

Change Orders

- Circumstances may arise during construction requiring changes to the scope of the work contained in the contract.

Increases to Scope of Work

- If the scope of work increases, the prime contractor must ensure that it has obtained sufficient DBE participation to meet the contract goal on the final contract value or has made good faith efforts to do so.

Reduction to Scope of Work

- If a change order eliminates work designated in a DBE commitment, the prime contractor must follow the termination procedures and must make a good faith effort to meet the DBE goal on the final contract value.

TERMINATION AND SUBSTITUTION REQUESTS

Termination and Substitution Requests

Policy

- The prime contractor cannot terminate a committed DBE (in whole or part) without the written approval by TxDOT.
- Written consent only for good cause.
- Some examples of good cause include:
  - DBE fails or refuses to execute contract.
  - DBE becomes bankrupt.
  - The prime contractor has determined the DBE is not a responsible contractor.

Commitment Reduction

- A prime contractor cannot reduce the amount of work committed to a DBE at contract award without good cause.

Termination and Substitution Requests

Termination Process

The following steps must be followed to terminate a DBE:

Step 1: The prime contractor must give the DBE notice and give the DBE five days to respond. The prime contractor must copy TxDOT on the notice.

Step 2: The prime contractor shall submit a request and provide justification for the DBE termination to TxDOT.

Step 3: TxDOT will review the termination request and related information and if necessary seek additional information to formulate its response.

Step 4: TxDOT will provide written consent to the termination request only if TxDOT agrees there is good cause.

Step 5: If TxDOT does not approve the request, the prime contractor shall continue to use the committed DBE.

Termination and Substitution Requests

No DBE Shortfall

- If termination of a DBE firm does not result in a DBE contract goal shortfall, the prime contractor is not required to find a substitute DBE firm.

DBE Shortfall

- If a termination of a DBE firm results in a shortfall, the prime contractor has seven days to make good faith efforts to find, as a substitute for the original DBE, another DBE to perform, at least to the extent needed to meet the DBE contract goal. An additional seven days may be given if requested by the prime contractor.
- TxDOT will respond in writing to the prime contractor's request to use the substitute DBE.
- The substitute DBE cannot work on the contract until its work eligibility has been confirmed by TxDOT.

Termination and Substitution Requests

Failure to Secure a Substitute DBE

- If a substitute DBE firm is not found that can perform at least the same amount of work as the terminated DBE, the prime contractor shall submit good faith efforts.
- TxDOT will provide the prime contractor with a written response either accepting or rejecting the prime contractor's good faith efforts. If the prime contractor's good faith efforts are rejected, TxDOT shall assess whether administrative remedies are appropriate.

Termination and Substitution Requests

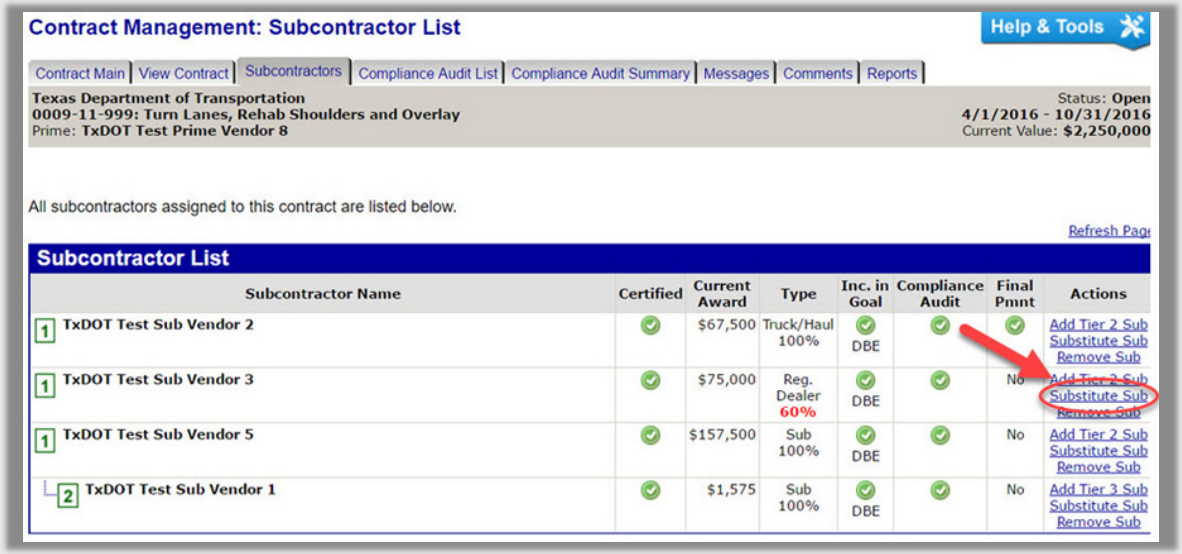
Substitution Process

Use the following steps to substitute a DBE in DMS:

Step 1: Log in to DMS

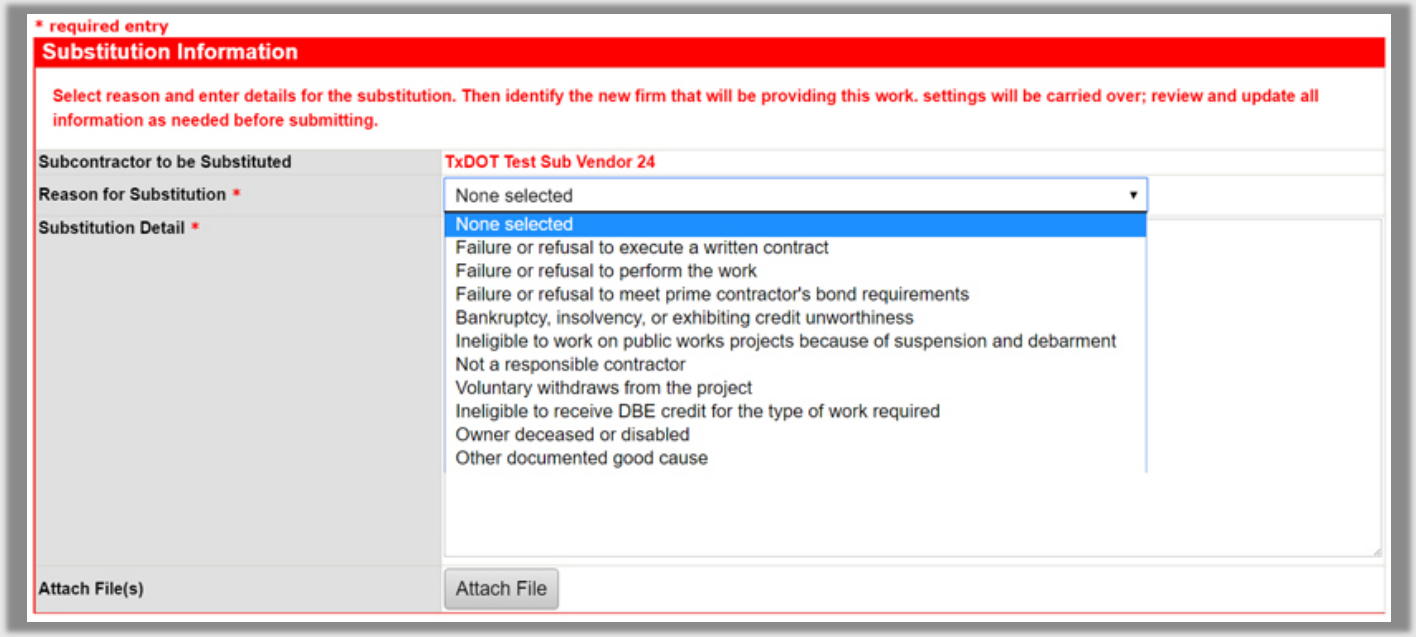
Step 2: Navigate to this page: **Contract Management: Subcontractor List.**

Step 3: Click: **Substitute Sub.**



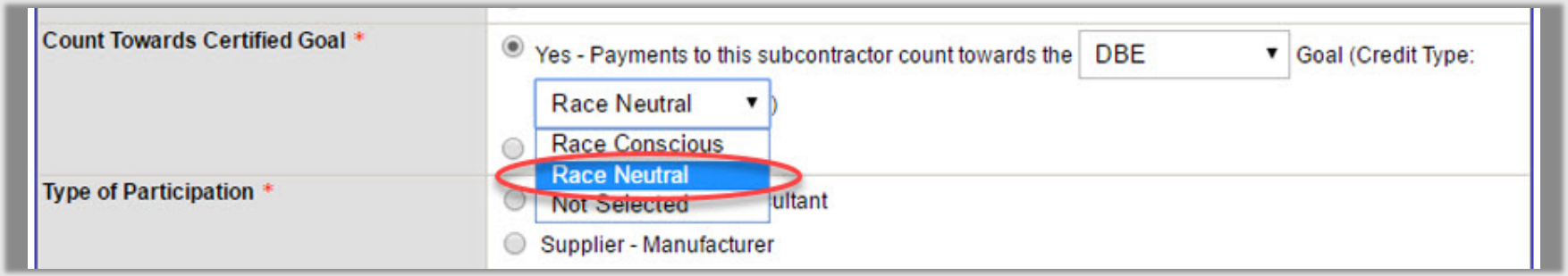
Termination and Substitution Requests

Step 4: Enter the subcontractor to be substituted and the reason for the substitution.



Termination and Substitution Requests

Step 5: Select yes to indicate the payment will count to towards the DBE goal. Select Race Conscious or Race Neutral.



Step 6: Click **Review.**

Step 7: Review Substitution request for accuracy and Click **Submit.**

MONITORING DBE ACTIVITY

Monitoring DBE Activity

Monitoring DBE Goal Attainment

- The prime contractor is responsible for monitoring its progress towards meeting the goal. This should be done on a monthly basis.
- DMS includes the following information to monitor DBE goal attainment:
  - DBE commitment amounts
  - Payments to DBE subcontractors
  - Modifications to the original contract amount by change order
- The prime contractor must contact TxDOT should a concern arise that it will not meet the contract DBE goal and seek options available to meet the goal.
- TxDOT will also be monitoring the DBE project goal.

Monitoring DBE Activity

Viewing the Audit Summary in DMS

- On the **Contract Audit: Audit Summary for Total Contract** page, the prime contractor can view the total payments TxDOT paid to the prime contractor and the reported payments the prime contractor paid to its subcontractors.
- Compare the **For Credit Progress** bar graph to the **Contract Progress** bar graph.

Audit Summary - Total Contract Through TODAY (11/15/2016)

	Award	Award Percent	Payments	Payments Percent	Difference (Payments - Award)
Prime Contract	$2,250,000.00		$2,250,000.00		
For Credit	$270,000.00	12.000%	$270,000.00	12.000%	Goal matched
For Credit to DBE Goal	$270,000.00	12.000%	$270,000.00	12.000%	Goal matched
For Credit to HUB Goal	$0.00	0.000%	$0.00	0.000%	Goal matched
Contract Progress	100%				
For Credit Progress	100%				

Monitoring DBE Activity

- The **For Credit $** column shows the dollar amount of DBE participation the prime contractor has achieved. Use this amount to monitor attainment progress in comparison to the DBE Utilization Plan submitted.

Prime Contractor - Total Contract

Prime Contractor		Cert	Inc in Goal	Contracted % Paid %	Paid TO Prime Prime's Share
TxDOT Test Prime Vendor 8 Prime Contact txdottestprime8a@b2gnowuser.com P 650-555-5555, F 650-555-5555	Payments Email	No	No	86.67% 93.16%	$1,725,000 $1,607,000

* Amounts listed below are payments retained by each subcontractor after payment of successive lower tier subcontractors.

Subcontractor Payments for

Subcontractor		Cert	Type	Inc in Goal	*Contracted % *Paid %	*Contracted $ *Paid $	For Credit $
1 **TxDOT Test Sub Vendor 2** TxDOTSub Test2 txdottestsub2@b2gnowuser.com P 650-555-5555	Payments Email	✓	Truck/Haul 100%	✓ DBE	3.00% 3.91%	$67,500 $67,500	$67,500
1 **TxDOT Test Sub Vendor 3** TxDOTSub Test3 txdottestsub3@b2gnowuser.com P 650-555-5555	Payments Email	✓	Reg. Dealer 60%	✓ DBE	3.33% 0.00%	$75,000 $0	$0
1 **TxDOT Test Sub Vendor 5** TxDOTSub Test5 txdottestsub5@b2gnowuser.com P 650-555-5555	Payments Email	✓	Sub 100%	✓ DBE	6.93% 2.93%	$155,925 $50,500	$50,500
2 **TxDOT Test Sub Vendor 1** TxDOTSub Test1 txdottestsub1@b2gnowuser.com P 602-325-9277	Payments Email	✓	Sub 100%	✓ DBE	0.07% 0.00%	$1,575 $0	$0

ENFORCEMENT

Enforcement

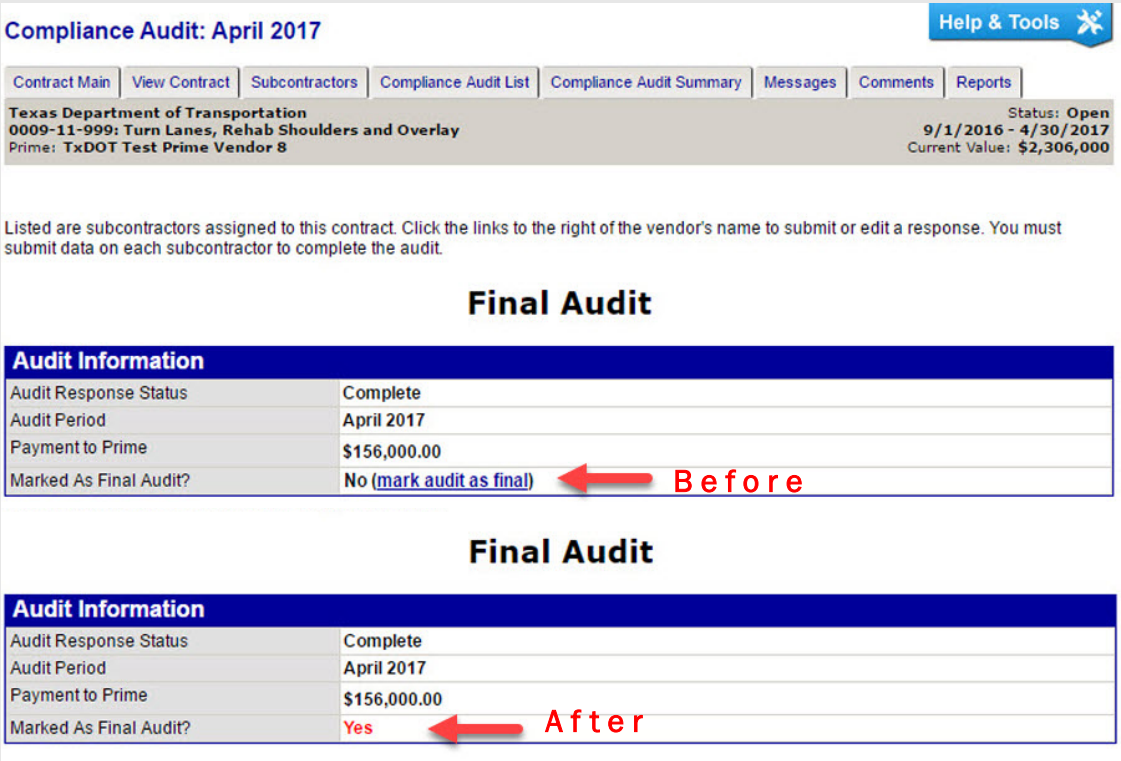
- Failure by the prime contractor to carry out their requirements is a material breach of the contract.
- May result in termination of the contract or other remedies as TxDOT deems appropriate, which may include:
  - Withholding all or a percentage of monthly partial payments;
  - Assessing sanctions;
  - Liquidated damages;
  - Disqualifying the contractor from future bidding as non-responsible.
- If the district determines the prime contractor has failed to meet the established DBE goal, has not demonstrated good faith efforts, or failed to correct DBE Program deficiencies, the district will initiate administrative actions against the prime contractor.

PROJECT CLOSE OUT

Complete Final Contract Audit in DMS

When a project is completed, the prime contractor performs the following action:

- In the most recent monthly contract audit, indicate **YES** to the question, **Marked as Final Audit.**

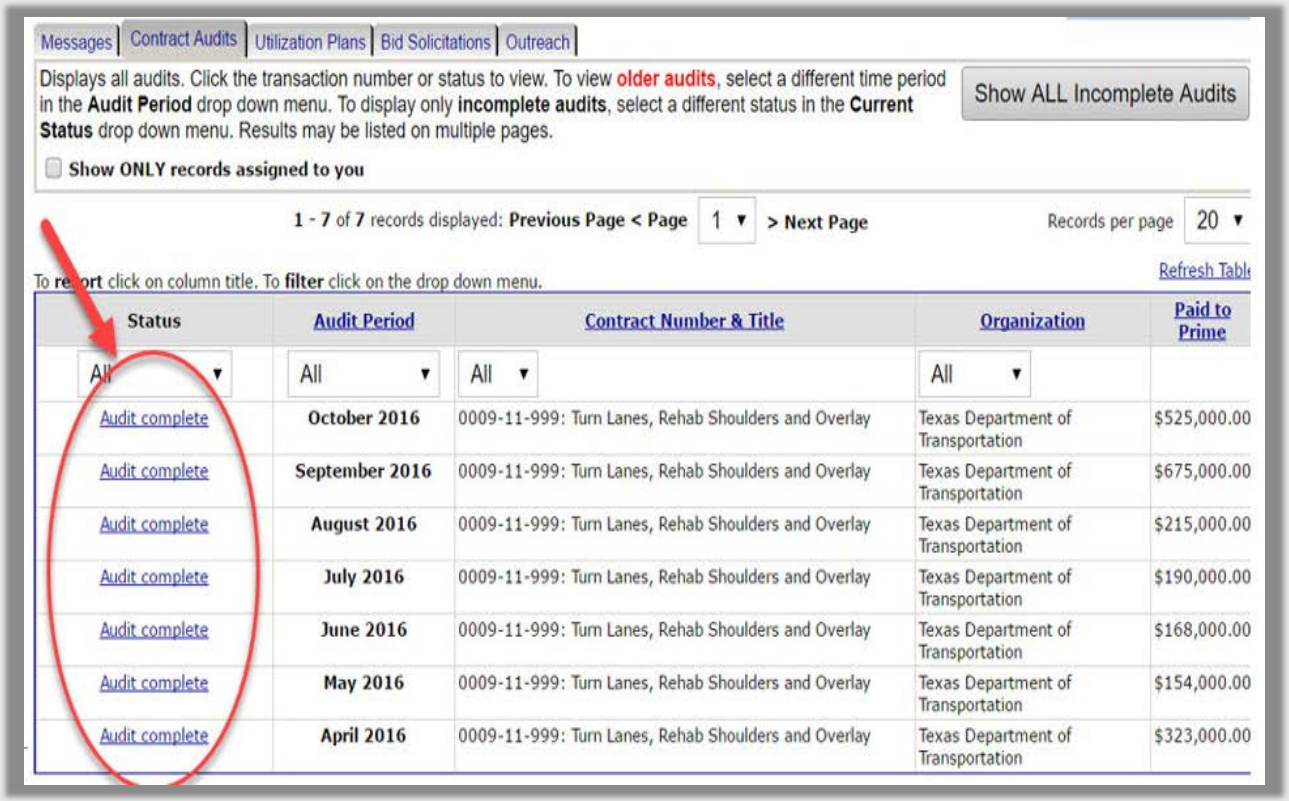


Project Close Out

Prime Contractor Actions

When a project is completed, the prime contractor performs the following actions in the **Compliance Audit List** tab in DMS to submit all audit information:

- Ensures there are no incomplete audits for the project.
- Ensures subcontractors have confirmed all payments.



Project Close Out

The final monthly **Contract Audit** in DMS allows the contractor to assess its goal attainment.

- If the DBE subcontractor participation goal is met, no further action is needed.
- If the project goal falls short, submit a letter to TxDOT explaining the shortfall.

Compliance Audit: October 2016

Help & Tools

Contract Main | View Contract | Subcontractors | Compliance Audit List | Compliance Audit Summary | Messages | Comments | Reports

Texas Department of Transportation
0009-11-999: Turn Lanes, Rehab Shoulders and Overlay
Prime: TxDOT Test Prime Vendor 8

Status: Open
4/1/2016 - 10/31/2016
Current Value: $2,250,000

Final Audit

Audit Information	
Audit Response Status	Complete
Audit Period	October 2016
Payment to Prime	$525,000.00
Marked As Final Audit?	Yes

Audit Summary - Total Contract Through TODAY (11/15/2016)

	Award	Award Percent	Payments	Payments Percent	Difference (Payments - Award)
Prime Contract	$2,250,000.00		$2,250,000.00		
For Credit	$270,000.00	12.000%	$270,000.00	12.000%	Goal matched
For Credit to DBE Goal	$270,000.00	12.000%	$270,000.00	12.000%	Goal matched
For Credit to HUB Goal	$0.00	0.000%	$0.00	0.000%	Goal matched
Contract Progress	100%				
For Credit Progress	100%				

Award values may not match due to differences between overall contract goal and subcontractor assignments.

Project Close Out

Records Retention

Prime contractor must:

- Retain records for a minimum of three years after final payment.
- Keep records securely filed and available for audit review.

LOCAL GOVERNMENT PROJECTS

Local Government Projects

- Local government (LG) refers to:
  - Municipalities
  - Counties
  - County and regional toll authorities
  - Metropolitan planning organizations (MPOs)
  - Regional mobility authorities (RMAs)
  - Some private entities
- The LG is responsible for managing and monitoring the project to ensure the prime contractor and their subcontractors comply with the DBE Program provisions.

DESIGN-BUILD PROJECTS

Design-Build Projects

- Design-build (DB) is a construction project contract that combines engineering design services, construction services, and sometimes maintenance services into a single contract.
- Usually awarded to a general construction contractor, but in some cases, an engineering design firm.
- Each developer submits DBE Performance Plan prior to award that includes outreach efforts and categories of work for DBE subcontracting opportunities.
- During the design and construction portions of the project, the DB contractor is required to submit commitments and monthly progress reports to show the contractor is meeting the contract goal.

RESOURCES

DBE Program Resource Websites

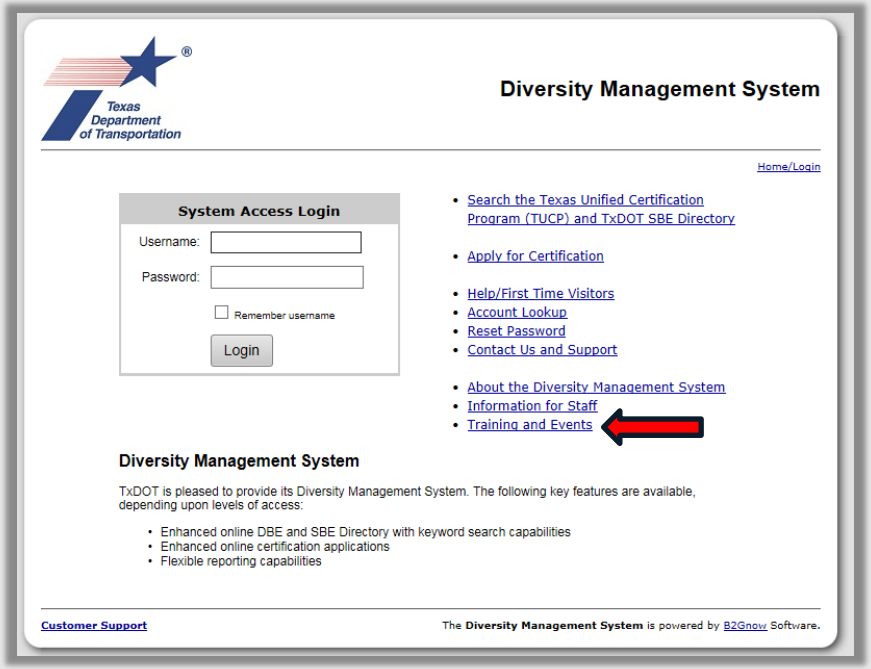
- USDOT - DBE Program Overview - https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/dbe-program-overview
- USDOT - Departmental Office of Civil Rights (Official Questions and Answers regarding 49 CFR, Part 26) - https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/official-questions-and-answers-qas-disadvantaged
- FHWA - DBE Code of Federal Regulations – http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl
- FHWA - DBE Program - http://www.fhwa.dot.gov/civilrights/programs/dbess.cfm
- TxDOT - DBE Program - http://www.txdot.gov/inside-txdot/division/civil-rights/dbe.html
- TxDOT - DBE Forms - http://www.txdot.gov/inside-txdot/forms-publications/doing-business/dbe-forms.html

DMS Resources

- Resources found in DMS: (https://txdot.txdotcms.com/)
  - Vendor Guide
  - Vendor Training Manual
  - Utilization Plans
  - Video Tutorials

TRAINING

Training

Diversity Management System

- Training provided by B2Gnow.
- Courses include:
  - Vendor registration and questionnaire
  - An introduction to the system
  - Utilization plan and contract compliance reporting