

# IMPORTANT INFORMATION CONCERNING TDOT DBE GOAL CONTRACTS

*A mini-reference for DBEs, Prime Contractors and TDOT staff*

## CONTENTS

Important Note for Prime Contractors .....	1
DBE Mailboxes.....	1
DBE Program Regulations .....	1
Important Items for all DBEs on Goal Contracts: .....	1
Important Items for Trucking/Hauling DBEs on Goal Contracts .....	2
Receiving Credit for Materials or Supplies on DBE Goal Contracts.....	2
Joint Check Utilization.....	3
Prompt Payment Process .....	4
Change Orders.....	6
TDOT DBE Utilization Workflow .....	7
TDOT Small Business Development Program Staff .....	8

***To qualify for goal credit, DBEs must perform a Commercially Useful Function (CUF). To perform a CUF, the DBE must be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installing (where applicable) and paying for the material itself. [\(SP 1247 \(B\)\)](#)***

**Important Note for Prime Contractors** – It is ultimately the prime contractor’s responsibility for the completion of the contract with TDOT; therefore they are responsible for the actions of all subcontractors working for them. It is important to ensure that whenever there are DBEs working for goal credit, they are recognized by TDOT field supervisors as being on the jobsite. A CUF must be completed for every DBE that is intended to be used for Goal Credit. **If a supplier or hauler will not be entering the jobsite, the prime contractor must arrange to have a project supervisor present in order that a CUF is completed for that DBE.** Otherwise, there is no record of the DBE’s performance and it could jeopardize making the DBE goal, resulting in sanctions (see TDOT [Special Provision 1247 \(G\)\(2\)](#)).

### **DBE Mailboxes –**

**DBE PAPERWORK SUBMITTAL** - DBE subcontracts, CC3 Forms, 2nd Tier requests and any other forms concerning DBEs should be sent in a timely manner to the Small Business Development Office (in addition to being sent to the field office) at [TDOT.DBEPprogram@tn.gov](mailto:TDOT.DBEPprogram@tn.gov).

- A CUF (Commercially Useful Function) form must be completed by TDOT personnel for each DBE and sent to this email address as soon as performed.

**PROMPT PAYMENT SUBMITTAL** - Prompt Payment forms should be completed monthly and returned in Excel format to: [DBE.Runningtally@tn.gov](mailto:DBE.Runningtally@tn.gov) (in addition to being sent to the field office).

**DBE Program Regulations:** DBEs and prime contractors must follow the state and federal regulations concerning goal contracts, specifically [49 CFR 26](#) and [SP 1247](#) (Note that many (but not all) of the most encountered issues from 49 CFR 26 are summarized in SP 1247).

**Other TDOT regulations concerning DBEs are found here:**

[Circular Letter Section 108.01 - Subletting Of Contract](#)

[Circular Letter Section 1247-01 - DBE Subcontracting - Monitoring of Projects with DBE Subcontracts](#)

### **Important Items for all DBEs on Goal Contracts:**

- DBEs must perform work with their own employees (not the prime contractor’s employees) and this must be verifiable via payroll records.
- DBEs should not rent/lease equipment from the same Prime Contractor for which they are working. If a DBE needs to rent/lease equipment, they should rent from a prime that is not affiliated with their present contract or through a third party.
- DBEs may not be dismissed from goal projects without following the guidelines in [49 CFR26.53\(f\)\(4\)](#). Prior authorization from the Small Business Development Program (SBDP) is required. The SBDP should be contacted early in the process when there are DBE issues to hopefully alleviate the need for dismissal.

**DBE TIP: Changes to scope or quantities of work? Always make sure you get this in writing**

## Important Items for Trucking/Hauling DBEs on Goal Contracts:

- DBEs should follow the regulations outlined in [49 CFR 26.55\(d\)\(2\)](#) and [SP 1247 B.7](#) for receiving DBE credit for goal contracts:
  - DBEs must own and operate at least one fully licensed, insured, and operational truck on all DBE goal contracts.
  - DBEs may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE, for full credit.
  - DBEs may also lease trucks equipped with drivers from non-DBE firms, including owner-operators, not to exceed the value of transportation services provided by DBE-owned trucks on the contract (1-to-1 ratio).
    - However, If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to full credit for the total value of these hauling services, per [49 CFR 26.55\(d\)\(6\)](#)
- **If a DBE is hauling materials and will not enter the jobsite under their contract, a TDOT Project Supervisor should be contacted to complete a Commercially Useful Function (CUF) form.**

## Receiving Credit for Materials or Supplies on DBE Goal Contracts:

Two ways to receive credit – 100% credit for DBE Manufacturers / 60% credit for DBE Dealers ([49 CFR 26.55\(e\)](#) and [SP 1247 \(B\)\(4\) - \(5\)](#))

- 1) A manufacturer...operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract.  
[49 CFR 26.55 \(e\)\(1\)\(ii\)](#)
- 2) A regular dealer...owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment [specified under the contract] are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.  
[49 CFR 26.55 \(e\)\(2\)\(ii\)](#)
  - A [DBE] may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided [above] if the person both owns and operates distribution equipment for the products. [i.e., trucks would be considered “distribution equipment” if they are hauling]  
[49 CFR 26.55 \(e\)\(2\)\(ii\)\(B\)](#)

**DBE TIP:** Keep good documentation at all times. It helps you remain organized and is vital in case of disputes with other parties on the contract.

**DID YOU KNOW?** Prequalification is not the same as DBE Certification. DBEs may be prequalified to perform many areas of work, but only certified through TDOT to receive goal credit for certain items.

Check certification status at <https://www.tdot.tn.gov/Applications/DBEDirect/Search>

## Joint Check Utilization

- Must be pre-approved through SBDP Office prior to use ([SP 1247 \(C\)\(5\)](#))
- DBEs should send a letter requesting joint check approval to [TDOT.DBE.Program@tn.gov](mailto:TDOT.DBE.Program@tn.gov)
  - Request must state what joint checks will be used for (steel, asphalt, etc.)
  - Suppliers should also send letter stating they are in agreement with joint check utilization and what joint checks will be used for (steel, asphalt, etc.)
- Prime Contractor notified by SBDP of decision to approve/deny joint check request
- The DBE shall then submit a signed copy of the joint check agreement between DBE/supplier/prime contractor, along with a (one-time) copy of the front and back of the cancelled checks within 30 days of the decision to [TDOT.DBE.Program@tn.gov](mailto:TDOT.DBE.Program@tn.gov)

### Example of Request for Joint Check Agreement (email to [TDOT.DBE.Program@tn.gov](mailto:TDOT.DBE.Program@tn.gov))

DBE Name

Address

City, State, Zip Code

This note is to request your approval for the use of a joint check agreement between \_\_\_\_\_ (DBE) , \_\_\_\_\_ (Prime Contractor) and \_\_\_\_\_ (Supplier) for the purchase of     (list material/supplies)     for

Contract # \_\_\_\_\_ in \_\_\_\_\_ County

Reason for joint check request: \_\_\_\_\_

Thank you for your attention in this matter,

\_\_\_\_\_  
DBE President or Owner Name/title

### Example of Supplier Agreement for a Joint Check with DBE (email to [TDOT.DBE.Program@tn.gov](mailto:TDOT.DBE.Program@tn.gov))

Supplier Name

Address

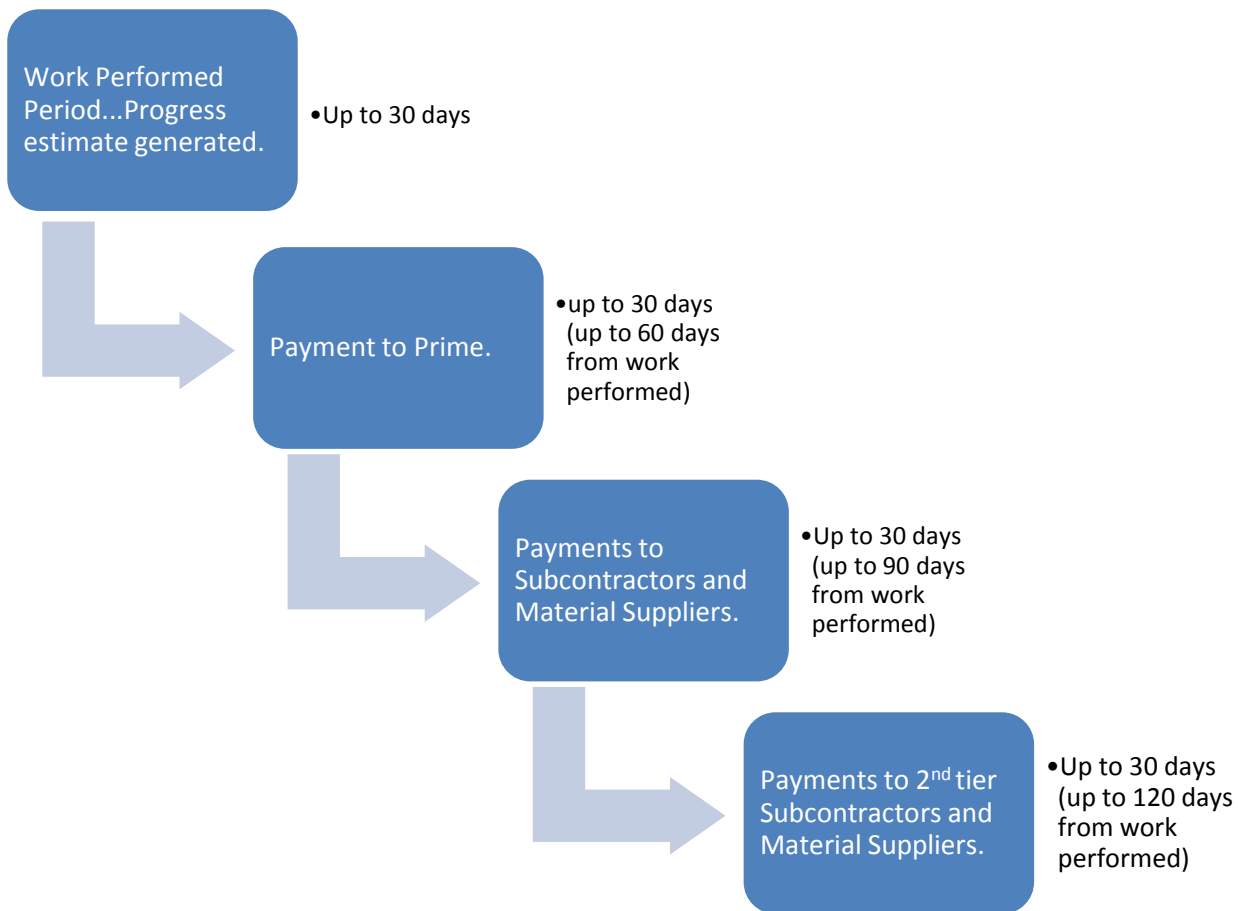
City, State, Zip Code

\_\_\_\_\_ (supplier) agrees to enter in to a joint check agreement with \_\_\_\_\_ (DBE).  
\_\_\_\_\_ (prime contractor) is the guarantor for payment.

\_\_\_\_\_  
Signature and title from Supply Company

## Prompt Payment Process

TDOT has thirty (30) calendar days from the time a monthly progress estimate is generated by the TDOT field office to issue payment to the prime contractor. In accordance with the TDOT Standard Specification, Section 109.02 *Scope of Payment*, The prime contractor then has thirty (30) calendar days from the time they receive payment from TDOT to pay their subcontractors and material suppliers. The same prompt payment requirements apply to subcontractors and material suppliers at all tiers. This may sometimes result in a payment that appears delayed, but is actually in accordance with prompt payment guidelines.



**Example:** On October 1<sup>st</sup>, the TDOT field office generates a progress estimate for the work items performed from the cutoff of the previous progress estimate up to the day before (September 30<sup>th</sup>). TDOT has thirty days to pay the prime contractor (payment made no later than October 31<sup>st</sup>). Let's assume the prime contractor was paid on the 30<sup>th</sup> day (October 31<sup>st</sup>). Since all subcontractors and material suppliers must be paid within 30 days of the prime contractor receiving payment, the prime contractor shall pay each subcontractor and material supplier no later than November 30<sup>th</sup>, thirty (30) calendar days after October 31<sup>th</sup>.

## **What to do if you think you are not being paid on time**

- Look at TDOT's Progress Payments website to see if the work items you performed have been paid:  
<https://www.tdot.tn.gov/APPLICATIONS/Documents?pathName=%5CConstruction%5CProgressPayments> (click on the first three letters of contract, then on the next page find the full contract number. This shows the item quantities and payments to date. Look for your work items. You may also want to print or save this form and discuss with the prime contractor).
- Contact the prime contractor to see when they were last paid by TDOT and for what time period.
  - Was the payment for the work you are inquiring about performed in that time period? If so, payment should be made within 30 days (for each tier) from the time TDOT paid the prime contractor. If no payment has been made to you, ask the contractor why the funds have been delayed and/or what needs to be done for the payment to be released.
- Review your contract - Is there any wording about contractor payments, retainage (not permitted) or other items about how you are to be paid? Everything should be in compliance with TDOT payment provisions.
- Contact TDOT Supportive Services for guidance on your best plan of action on resolving this issue (only available to TDOT and TNUCP-certified DBEs) at 615-469-5398 or [info@tyler-engineers.com](mailto:info@tyler-engineers.com)
- Contact TDOT's Small Business Development Program - via email at: [TDOT.DBE.Program@tn.gov](mailto:TDOT.DBE.Program@tn.gov) or call 615-741-3681 or 888-370-3647.
- Contact TDOT's Construction Office - For any questions, contact the Construction Office directly at 615-741-2414.

Many prompt payment issues should be resolved by staying in communication with the prime contractor and through researching what items have been paid to date. If you still feel like payment is due and the prime refuses to pay or is late, please contact TDOT's Small Business Development Program @ 615-741-3681 or at [TDOT.DBE.Program@tn.gov](mailto:TDOT.DBE.Program@tn.gov).

### **2015 Standard Specifications for Road and Bridge Construction:**

<http://www.tn.gov/tdot/article/transportation-construction-2015-standard-specifications#sthash.JuKQgUNa.dpuf>

### **“Pay When Paid Clause”**

#### **49 CFR 26.29**

#### **(Prompt Payment Mechanisms for Federal Recipients (TDOT))**

49 CFR 26.29 regulates TDOT’s DBE program by providing the basis for the prompt payment provision.

“...a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment [the state DOT] make[s] to the prime contractor.” Unless there is good cause (the prime contractor must document this cause to TDOT each month).

#### **PROMPT PAYMENT INFORMATION (from TDOT Special Provision 1247 D. 4.)**

4. The Contractor shall provide a monthly payment certification to the Department entitled “Prompt Payment Certification Form.” The Department shall provide the Contractor with a computer generated Prompt Payment Certification Form. An officer of the Contractor shall provide an electronic signature to the Prompt Payment Certification Form and return via email to [DBE.Runningtally@tn.gov](mailto:DBE.Runningtally@tn.gov). The Department will hold estimate payments if information is not submitted. Reasons for non-payment to a DBE could include the following:

- a) Whether the DBE is performing satisfactorily;
- b) Whether the Contractor has reason to believe the DBE is not performing a commercially useful function, and if so, why and what steps the Contractor is taking to rectify the situation.

### **Change Orders**

Change Orders...

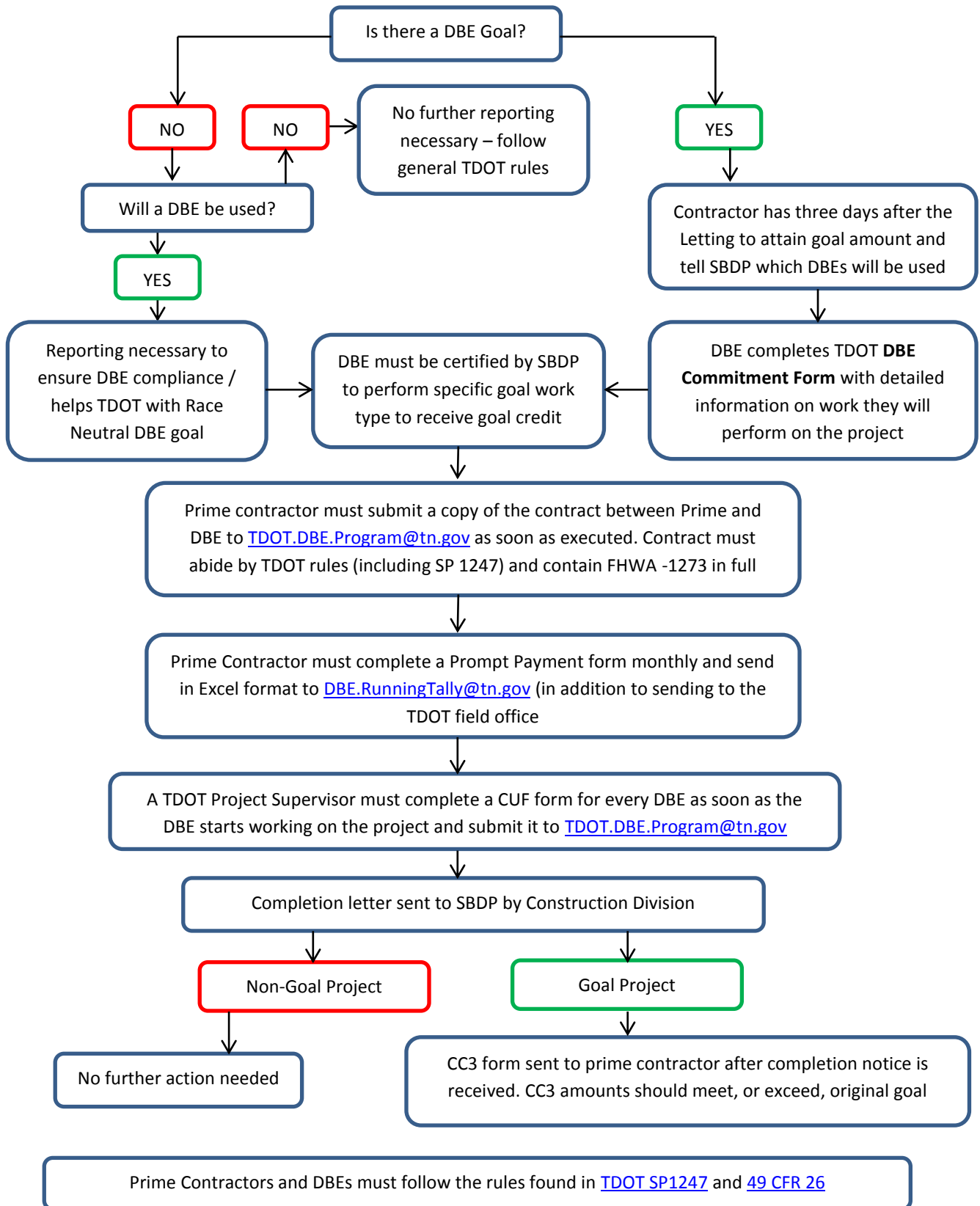
- alter the work in the original construction contract.
- are between TDOT and the prime contractor.
- usually delay the contract, and therefore delay payment.
- if not submitted to TDOT, contractors will not be receiving payment.
- in the case of a Change Order delay, Prompt Payment statues do not apply.
- subcontractors must seek recourse through the prime when the contractor is not being paid by TDOT.
- once Change Order payments resume for the prime, prompt payment applies.

Whenever a prime contractor indicates they anticipate significant changes to the amount of work to be performed by a subcontractor on a contract, the subcontractor should be in contact with both the Prime and TDOT Project Supervisor to identify exactly what is expected from them, as well as to ensure there is an actual change order involved. Change orders will add new work to the contract. Change Orders are not issued to increase or decrease quantities.

- Without written documentation from the prime for additional work items, there is a risk of not being paid for the extra work performed.
- A modified agreement before performing beyond the original contracted work items is the way to safeguard against any misunderstandings that could occur.

# TDOT DBE Utilization Workflow

## TDOT Small Business Development Program (SBDP)





**TDOT Small Business Development Program Staff**  
**615-741-3681**

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[Ross.H.Webb@tn.gov](mailto:Ross.H.Webb@tn.gov)

<http://www.tn.gov/tdot/topic/small-business>

**Supportive Services Consultant**

Tyler Construction Engineers, P.C.

615-469-5398

[info@tyler-engineers.com](mailto:info@tyler-engineers.com)

To receive Supportive Services emails for newsletters, Notices from Primes for DBE subcontractors, etc., send an email to [info@tyler-engineers.com](mailto:info@tyler-engineers.com) to get on the mailing list.

For any questions, additions or deletions to this document, please contact:

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