



# Change Management

## Alternative Delivery Program

# Change Management

This is a self-directed overview of Design-Build contracting based on Version 6.0 of the Programmatic Documents



This symbol when shown on a slide provides reference to the Section of the Programmatic Documents





## Training Goals:



- 1 Understand the types of contract-related changes.
- 2 Review the Change Order (CO) process.
- 3 Become familiar with other contractual change-related provisions.



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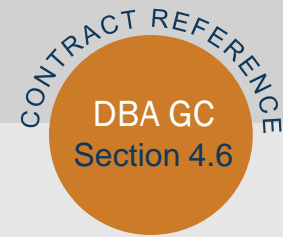
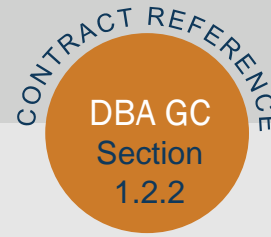
# 1. Overview





# Definition

**Change Order** means a written amendment to the terms and conditions of the Contract Documents.



## DBA GC defines the CO process

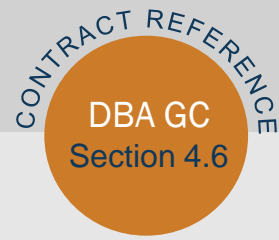
- What constitutes a change
- What is/is not eligible for a change order (entitlement)
- Roles/responsibilities and steps for processing a change order

CONTRACTOR'S  
AGREEMENT

## Reasons for changes

- Modify the scope of work
- Revise a completion deadline
- Revise the price
- Revise other terms and conditions of the contract
- Modify the DB Specifications

# Change Order Requirements



## Item 4.6.1

Circumstances under which Change Orders may be issued

## Item 4.6.2

TxDOT-Initiated Changes

## Item 4.6.3

DB Contractor- Requested Change Orders/Delay Deductible Determination

## Item 4.6.4

Request for Change Orders

## Item 4.6.5

Contents of Change Orders

## Item 4.6.6

Certain Limitations

## Item 4.6.7

Change Order Pricing for Lump Sum/Unit Price Change Orders

## Item 4.6.8

Force Account Change Orders

## Item 4.6.9

Types of Change Orders w/DB Contractor Responsibility for Delay Deductibles

## Item 4.6.10

Change Order Records

## Item 4.6.11

Change Order Eligibility

## Item 4.6.12

Disputes



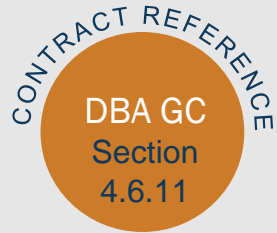
# Key Concepts and Uses



Key Terms Used in Change Order Process	Use	Example/Reason
<b>Directive Letter</b>	Issued for any matter for which a change order could be issued or in the event of claim or dispute related to work required by the DBA documents. DB Contractor required to proceed with work as directed.	<b>Removal of Culvert</b>
<b>Request for Change Proposal</b>	A written notice issued by TxDOT to the DB Contractor advising the DB Contractor that TxDOT may issue a TxDOT-directed change. Also initiates a process to develop and negotiate the change order.	<b>New Interchange Configuration</b>
<b>Unilateral Change Order</b>	Issued at any time, regardless of whether a request for change proposal has been transmitted. If appropriate, DB Contractor is entitled to compensation for additional work and can request extension of the completion deadlines.	<b>Unsuitable Materials</b>
<b>Potential Change Order Notice</b>	A written notice is delivered by the DB Contractor stating that an event or situation has occurred that could result in a change order.	<b>Delay in ROW Access provided by TxDOT</b>
<b>Request for Change Order</b>	A written notice issued by the DB Contractor advising TxDOT that the DB Contractor seeks a change order.	<b>3<sup>rd</sup> Party Delays</b>
<b>Partnering</b>	Voluntarily initiated formal partnering discussions if a potential change order or dispute is anticipated.	<b>Unidentified Utility</b>



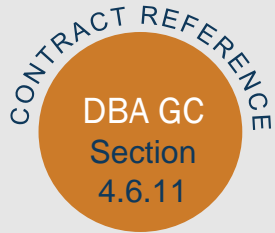
## Matters Not Eligible for Change Orders




- ❶ Errors/omissions in the design & construction documents
- ❷ Changes to address TxDOT comments on submittals
- ❸ Defective or incorrect scheduling of Work
- ❹ Action or inaction of any DB Contractor-related Entity
- ❺ Action or inaction of adjoining property owners or TxDOT's other contractors
- ❻ Groundwater levels or subsurface moisture content
- ❼ Untimely delivery, unavailability, defectiveness, or increases in costs of equipment, material, or products specified by the Contract Documents
- ❽ Any costs covered by insurance
- ❾ Correction of Nonconforming Work
- ❿ Failure by any DB Contractor-Related Entity to comply with the Requirements of the Contract Documents, Governmental Approvals or Law



## Matters Not Eligible for Change Orders



- 
- 11** Delays not on a Critical Path.
  - 12** Any suspensions, terminations, interruptions, denials, non-renewals of or delays in issuance of a governmental approval required to be obtained by DB Contractor
  - 13** Delays caused by untimely provision of access to project ROW, except the extent TxDOT has agreed to be responsible for any such delays
  - 14** Increased costs or delays related to any utility adjustment work or failure to timely obtain any approval, work, or other action from a utility owner, except the extent TxDOT has agreed to be responsible for any such costs or delays
  - 15** Any situations (other than relief events) which should have been anticipated
  - 16** All other events beyond the control of TxDOT for which TxDOT has not expressly agreed to assume liability hereunder



## 2. Categories



# Categories, Codes, Usages



COs are categorized by the underlying reason with an assigned code and is captured in the CO review/approval procedure

CO Reason Category		CO Reason Code	Design-Build Project's Change Order Reason Usage
10	Access to ROW	10.A	TxDOT's failure to make right of way available by the specified deadline
11	Force Majeure	11.A	Relief for Force Majeure Events
12	Hazardous Materials	12.A	Discovery of Hazardous Materials
13	Necessary Basic Configuration Change	13.A	Necessary Basic Configuration Changes
14	Other	14.A	Reimbursement for Eminent Domain Assistance
		14.B	Railroad delays and railroad agreements
		14.C	Special Event Delays
		14.D	Third Party Agreements
		14.E	Settlement Agreement or Dispute Resolution changes if no other category applies

# Change Order Categories, Codes, Usages



CO reason codes are similar to CO codes used in DBB CO process

CO Reason Category		CO Reason Code	Design-Build Project's Change Order Reason Usage
15	Other Relief Events	15.A	Discover of archeological, paleontological, cultural resources
		15.B	Discovery of species listed as a Threatened or Endangered Species
		15.C	Change in Law
		15.D	Third Party Release of Hazardous Materials or TxDOT Release of Hazardous Materials
		15.E	Court issued temporary restraining order or injunction
		15.F	The suspension, termination, interruption, modification, denial or failure to obtain or non-renewal of any TxDOT-Provided Approval
		15.G	Modifications to a Government Approval made by the Government Entity after the Government Approval is issued
		15.H	Modifications to any Third Party Approvals included in the RIDs
		15.I	Issuance of a New Drainage Permit by TxDOT
16	Scope Change	16.A	TxDOT-Initiated Change Orders
		16.B	TxDOT exercises Options or Deferred Work Components
		16.C	Contractor-Initiated Change Orders
		16.D	Third Party Requested Change in Scope

# Change Order Categories, Codes, Usages



The assigned code is used for reporting CO usage for various reasons, such as to FHWA

CO Reason Category		CO Reason Code	Design-Build Project's Change Order Reason Usage
17	Site Conditions	17.A	Discovery of Differing Site Conditions
		17.B	Discovery of Karst Features
18	Supply Chain Disruptions	18.A	Unavailability of materials that cannot be provided by alternate sources in the marketplace resulting from specified events
19	TxDOT-Directed Changes or Caused Delays	19.A	TxDOT-Directed Change
		19.B	Delay in TxDOT Approvals
		19.C	TxDOT-required uncovering of work that is not Nonconforming Work
20	Utilities	20.A	Unidentified and New Utilities
		20.B	Public Utility Owner Delays
		20.C	Pre-Proposal Utility Commitments
		20.D	Level A SUE (error)





## 3. Change Order Process





TxDOT may at any time issue a Directive Letter to DB Contractor regarding any matter for which a Change Order can be issued or in the event of any Claim or Dispute regarding the scope of the Work

## Directive Letter:

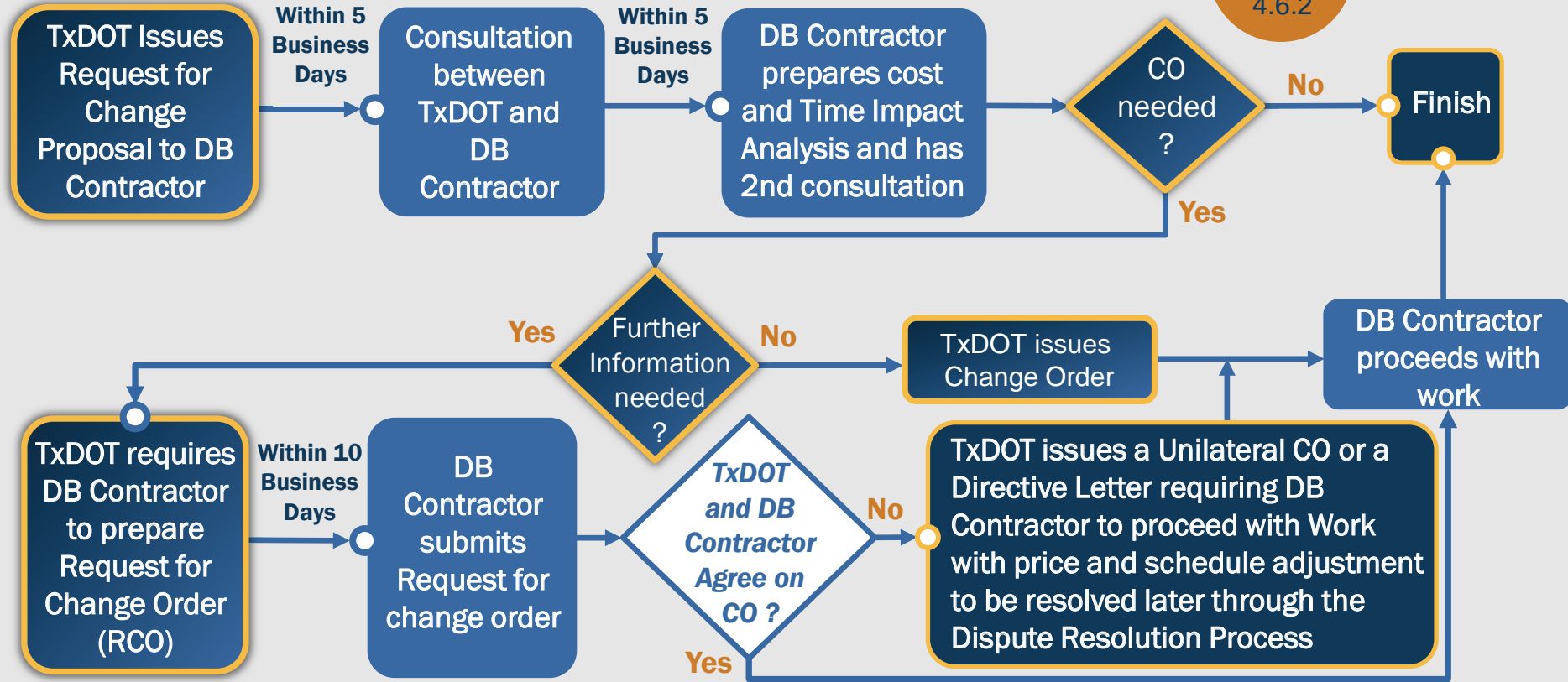
- DB Contractor proceeds immediately as directed in the DL.
- Receipt of Directive Letter from TxDOT by DB Contractor is condition precedent to a claim that a TxDOT-directed change has occurred.
- DB Contractor is not entitled to additional compensation or time extension for work performed prior to receipt of Directive Letter.

## TxDOT Initiated COs:

- If TxDOT desires to issue a TxDOT-Directed Change or to evaluate whether to initiate such a change, then TxDOT may, in its sole discretion, issue a Request for Change Proposal.
- Or TxDOT may issue a Unilateral Change Order, regardless of whether it has issued a Request for Change Proposal or received a Request for Change Order.

# TxDOT Initiated Change Order (CO)

CONTRACT REFERENCE  
DBA GC  
Section  
4.6.2





## TxDOT may issue a Unilateral CO at any time



- DB Contractor will be compensated per General Conditions (GCs) for additional Work required as result of Unilateral CO.



- DB Contractor must submit a time impact analysis if seeking adjustment to completion deadline.



- If unable to agree on CO entitlement and adjustments, DB Contractor may submit to dispute resolution.

# Potential Change Order (PCO) Notice



DB Contractor submits a PCO Notice after becoming aware of an event or situation causing entitlement to either

- **Change Order**
- **Credit toward the Delay Deductible Aggregate Cap**



PCO Notice  $\leq$  10 days

DB Contractor is obligated to notify TxDOT within 10 days:

- Facts of the occurrence
- Contact information
- Contractual entitlement
- Supporting documentation

10 days  
< PCO Notice  $\leq$   
60 days

DB Contractor waives the right to seek the following **for the time before the PCO Notice:**

- Costs incurred
- Extension of Completion Deadline
- Credit toward the Delay Deductible Aggregate Cap

PCO Notice > 60 days

DB Contractor may not be entitled to any relief.

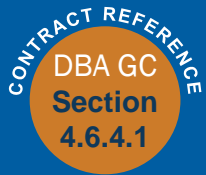
At a minimum, the DB Contractor waives the right to seek relief for the time before the PCO notice.

# Request for Change Order (RCO)



Request for Change  
Order  
Within 30 days of PCO  
- or -

Within 10 days of  
receipt of TxDOT  
Request for Change  
Proposal requirements  
per 4.6.2.1.3



TxDOT may  
require  
separate  
RCOs

Construction  
Change(s)

Design  
Change(s)

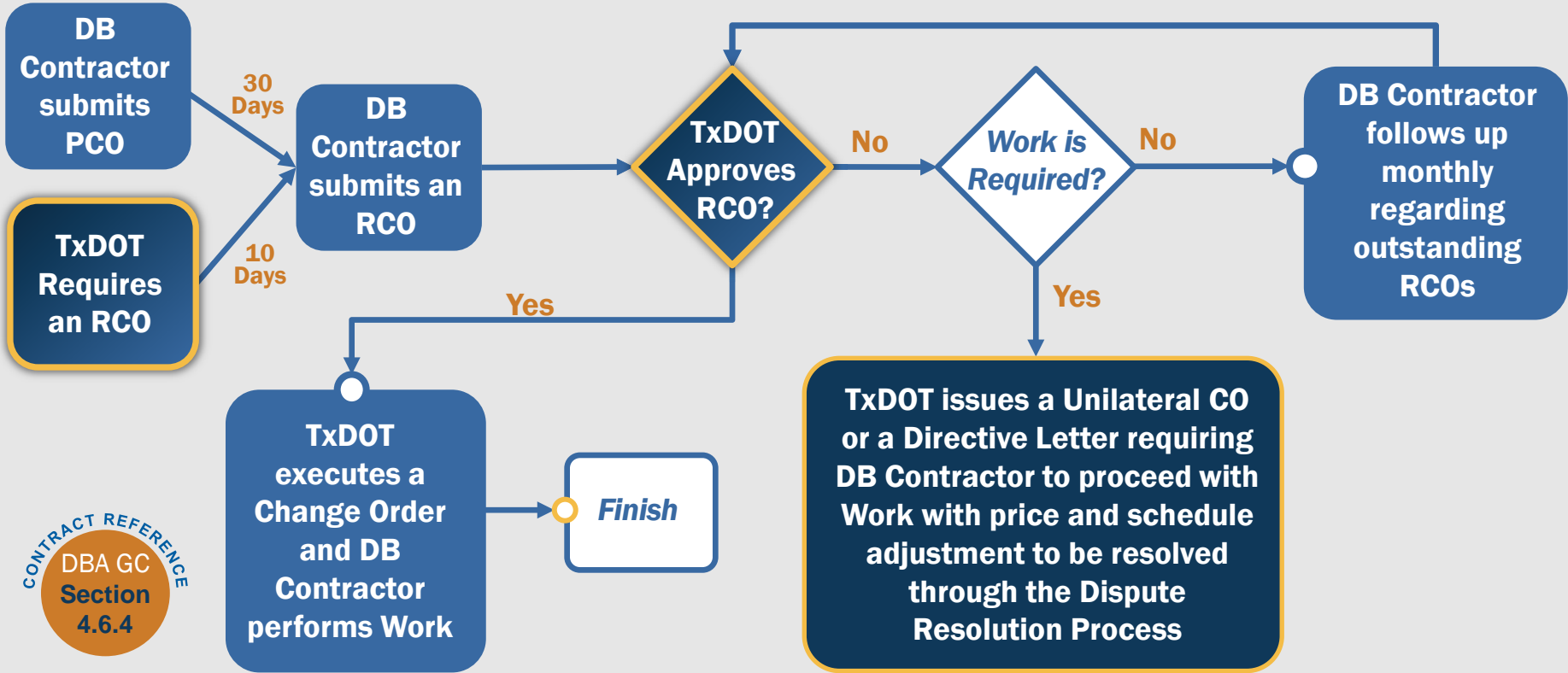
TxDOT may  
require options  
for time  
extensions

Additional cost  
+  
time extension

- or -

Additional cost  
+  
time extension  
including  
acceleration costs to  
meet Completion  
Deadline

# Request for Change Order (RCO)



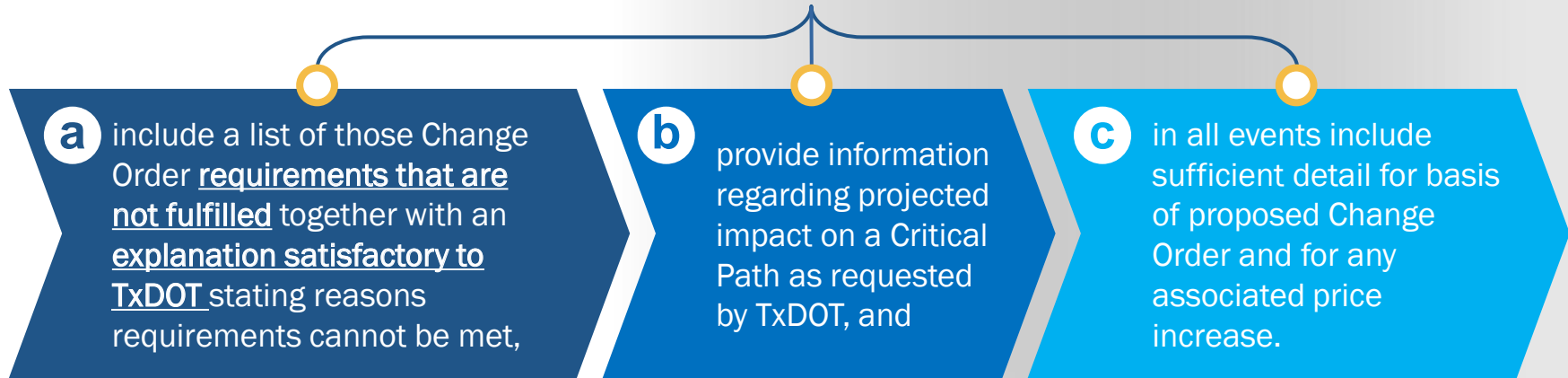




Even if all RCO requirements cannot be met:

- DB Contractor provides an incomplete Request for Change Order that fills in all information capable of being ascertained.

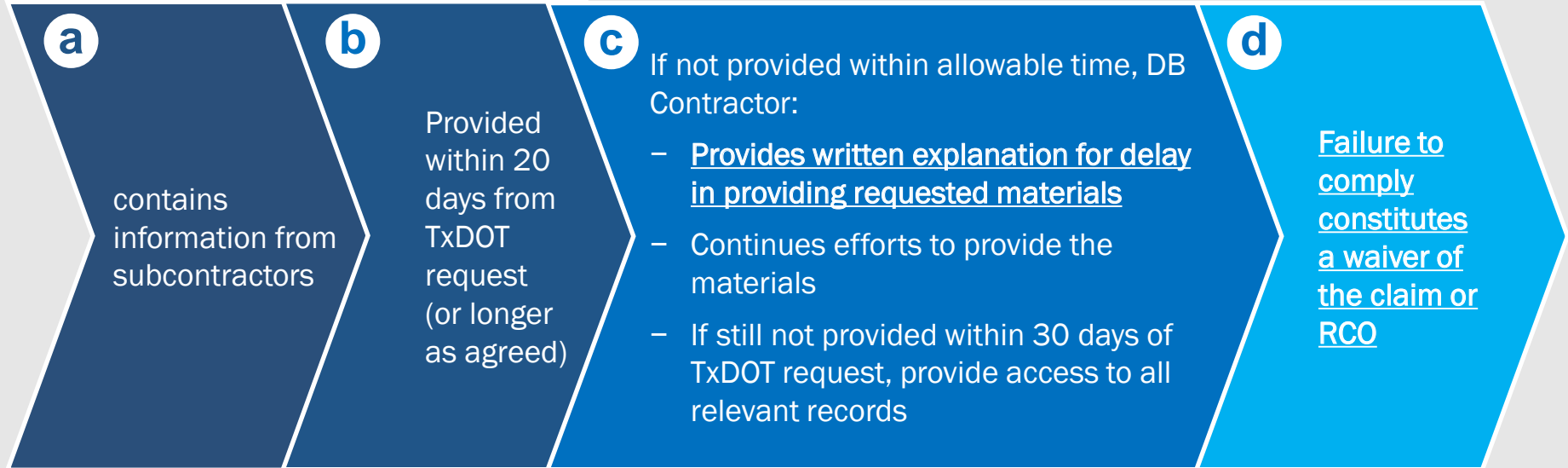
- With each incomplete RCO:



# Additional Information to TxDOT



When requested by TxDOT, DB Contractor must provide (at its expense) further details requested by TxDOT to determine merits of claim:





## 4. Overview of Risk Sharing Concepts







Qualifying Delays -  
Delays to the Critical  
Path caused by the  
following events



- Uncooperative Utility Delay
- Utility Owner Delay
- Unidentified Utility Delay
- Differing Site Conditions Delay
- Force Majeure Delay
- Eminent Domain Delay

## QUALIFYING DELAYS

- Only these 6 relief events are considered as Qualifying Delays with respect to the Delay Deductible Aggregate Cap.

## DELAY DEDUCTIBLE

- Days that contribute to the Delay Deductible Aggregate Cap.
- DB Contractor does not get schedule relief or project overhead.

## DELAY RISK SHARING

- DB Contractor gets schedule relief and gets project overhead for some of the relief days.

# Delay Deductible Aggregate Cap (DDAC)



The percentage will be derived based on project specific characteristics and risks.



Determined on project-by-project basis.



DB Contractor's responsibility for Delay Deductibles shall not exceed the DDAC.

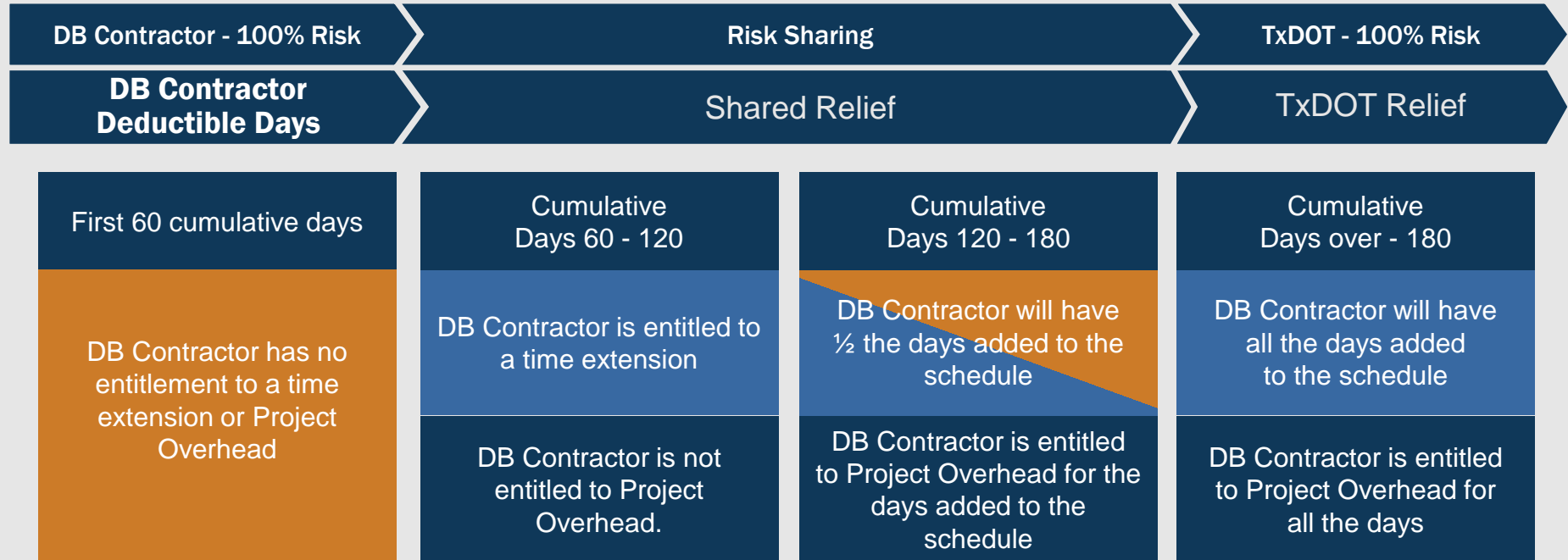


Once the DDAC is reached, DB Contractor shall thereafter be entitled to an extension of the applicable Completion Deadline(s) for each day of delay to the Critical Path due to Qualifying Delays.

# New Risk Sharing Qualifying Delays



This example applies to Uncooperative Utility Delays



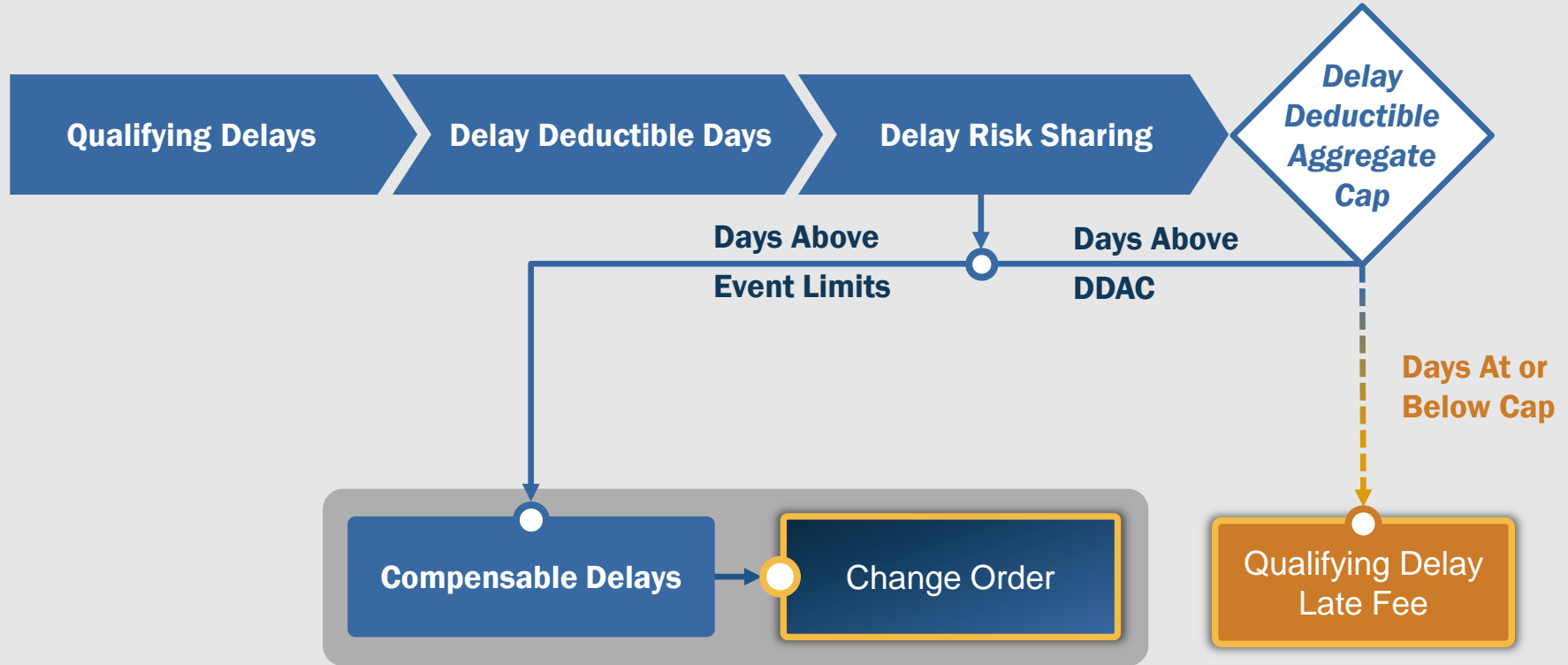
Days will be included in Delay Deductible Aggregate Cap



Days will not be included in Delay Deductible Aggregate Cap



# New Risk Sharing Qualifying Delays Process





## Daily late fee for failure to achieve Substantial Completion due to Qualifying Delays



Delay Late Fee applies to days after missed Substantial Completion.



Not to exceed the number of days in the Delay Deductible Aggregate Cap.



50% of amount set for liquidated damages per day for delay past Substantial Completion.

Full Liquidated Damages for Delay apply for Substantial Completion exceeding Delay Deductible Aggregate Cap

# Delay Deductible Determination Documentation



- Appendix 3: Form of Request for Delay Deductible Determination.
- Appendix 4: Form of Delay Deductible Determination.



## 5. CO Pricing





- CO pricing is negotiated as lump sum or unit price (Force Account CO)

May be requested by TxDOT to be a detailed cost proposal meeting Force Account requirements.

CONTRACT REFERENCE  
DBA GC  
Section  
4.6.7.1

Must identify any conditions of pricing.

CONTRACT REFERENCE  
DBA GC  
Section  
4.6.7.2

Contents: Specify all costs, scheduling, and time extensions. Parties may agree on a multiple step process allowing for preliminary design to a level allowing for further defined construction cost estimating.

CONTRACT REFERENCE  
DBA GC  
Section  
4.6.7.3

Added Work: increase in price is based on estimated costs of labor, material, and equipment.

CONTRACT REFERENCE  
DBA GC  
Section  
4.6.7.4



- TxDOT may request pricing be based on information from the Escrow Proposal Documents or Open Book Basis

Deleted Work: reduction in price based on current estimate of all materials, labor, and equipment costs. Estimated amount for risk is also taken into account.

CONTRACT REFERENCE  
DBA GC  
Section  
4.6.7.5

CO Both Adding and deleting Work – base CO on net increase or net decrease.

CONTRACT REFERENCE  
DBA GC  
Section  
4.6.7.6

Unit-Priced COs: Unit prices include all costs for labor, material, OH, & profit and are not subject to change based on final quantities. If estimated not to exceed quantities are exceeded, DB Contractor notifies TxDOT and TxDOT may approve an increase.

CONTRACT REFERENCE  
DBA GC  
Section  
4.6.7.7

All-Inclusive COs: All inclusive, comprehensive and complete. Do not include conditions with respect to pricing or schedule.

CONTRACT REFERENCE  
DBA GC  
Section  
4.6.7.8





## 6. CO Records







- DB Contractor's records are managed to provide a clear distinction between the Direct Costs for which it believes it is entitled to an increase in the Price and the costs of other operations.
- DB Contractor contemporaneously collects, records in writing, segregates and preserves:
  - a all data necessary to determine the costs of all Work that is the subject of a Change Order or a requested Change Order, specifically including costs associated with design Work as well as Utility Adjustments, and
  - b all data necessary to show the actual impact (if any) of the change on each Critical Path with respect to all Work that is the subject of a Change Order or a proposed Change Order, if the impact on the Project Schedule is in dispute.





- Form of CO: Each Request for Change Order and Change Order is prepared using the forms in the Contract documents.
- **Scope of Work**: describes work detail to TxDOT's satisfaction.
- **Cost Estimate**: sets out the estimated cost for a fair evaluation by TxDOT:
  - Labor, materials, equipment, and markups for OH and profit (unless TxDOT agrees otherwise).
  - contains allowable cost limitations on Acceleration Costs, Project Overhead, Delay and Disruption Damages.
  - contains subcontractor costs broken down on subcontractor stationary.
  - DB Contractor identify all conditions with respect to pricing.
- **Cost Estimate Time Impact Analysis (TIA)**: if impacts to the critical path, CO must include a TIA.
- Other supporting Documentation.

**EXHIBIT 14**

**CHANGE ORDER AND DELAY DEDUCTIBLE DETERMINATION FORMS**

- Appendix 1: Form of Request for Change Order
- Appendix 2: Form of Change Order
- Appendix 3: Form of Request for Delay Deductible Determination
- Appendix 4: Form of Delay Deductible Determination

Texas Department of Transportation  
[Name of Project]  
[Date] [DRAFT/FINAL]

EXHIBIT 14  
Page 1

Request for Proposals [Addendum #if any]  
Design-Build Agreement  
Ex. 14 – Change Order and Delay Deductible Determination Forms  
Version 6.0 – November 2023



- Justification: attachment containing detailed narrative of justification describing circumstances and including all data required.
- Certification under penalty of perjury that amount and time are true and correct.
- Certificate of Interested Parties (Form 1295).
- Other requirements are included in the DB General Conditions.





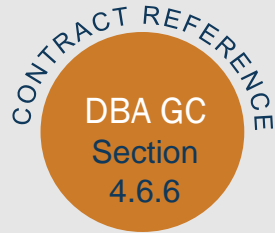
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## CO Limitations





## Cost Exclusions:

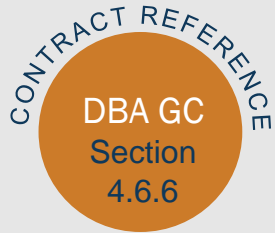


- ❶ Costs caused by the acts, omissions, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval by any DB Contractor-Related Entity
- ❷ Unnecessary costs that could reasonably be avoided by DB Contractor, including by re-sequencing, reallocating or redeploying its forces to other portions of the Work or to other activities unrelated to the Work; and
- ❸ Costs for remediation of any Nonconforming Work
- ❹ Costs for acceleration
- ❺ Delay and Disruption Damages

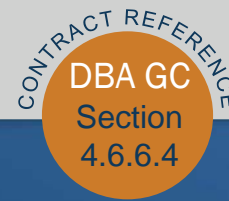
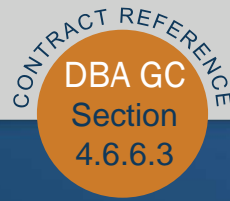




## Cost Exclusions for Project Overhead:



- 1 DB Contractor is not entitled to Project Overhead for any days of delay to the Critical Path that are within a Delay Deductible or for which a time extension is not granted.
- 2 DB Contractor is not entitled to compensation for home office overhead costs.
- 3 Time extensions alone will not be justification for reimbursement for Project Overhead.



## Limitation on Time Extensions:



- 1 Did not impact the Critical Path
- 2 DB Contractor's fault
- 3 Could have been avoided (e.g. resequencing)

## Work Performed Without Direction:



- 1 Deemed to have undertaken the extra work voluntarily and not be entitled to a CO.
- 2 TxDOT may require DB Contractor to remove or otherwise undo work DB Contractor's sole cost.





8.

## Disputes





TxDOT and DB Contractor agree on merit, but are unable to agree on Price or time extension:

- TxDOT will mark up RCO to reduce the price or time extension as deemed appropriate by TxDOT.



In such event:

- TxDOT executes and delivers a Unilateral Change Order within a reasonable period after request by DB Contractor to do so,
- and thereafter makes payment or grants a time extension based on the Unilateral Change Order.

# Change Disputes



The failure of TxDOT and DB Contractor to agree to any CO:

- Dispute to be resolved according to Informal Dispute Resolution Procedures and Dispute Escalation/Disputes Review Panel.

CONTRACT REFERENCE  
DBA GC  
Section  
4.6.12

CONTRACT REFERENCE  
DBA GC  
Section 4.9  
& 4.10

CONTRACT REFERENCE  
DBA  
Exhibit  
20



DB Contractor's Claim and any award by the dispute resolver:

- Limited to the incremental costs from DB Contractor with respect to the Dispute (crediting TxDOT for any corresponding reduction in DB Contractor's other costs),
- and in no event exceed allowed amounts.



## 7. Resources





## Design-Build Agreement (DBA)

contains DB specific and traditional contract language. Allows flexibility for district specific language.

## Design-Build General Conditions (DB GC)

Items 1-9 of the DB Specifications are the Design-Build General Conditions and provide the static terms and conditions for Design-Build contracts.

## Design-Build Specifications Items 10-28 (DBS)

contains DB specific and traditional contract language. Allows flexibility for district specific language.

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## Capital Maintenance Agreement General Conditions (CMA GC)

Items 1-8 of the CAM Specifications are the CMA General Conditions and provide the static terms and conditions for Design-Build contracts.

contains provisions for maintenance during construction & options for maintenance after substantial completion. The CMA Specifications are included in item 9

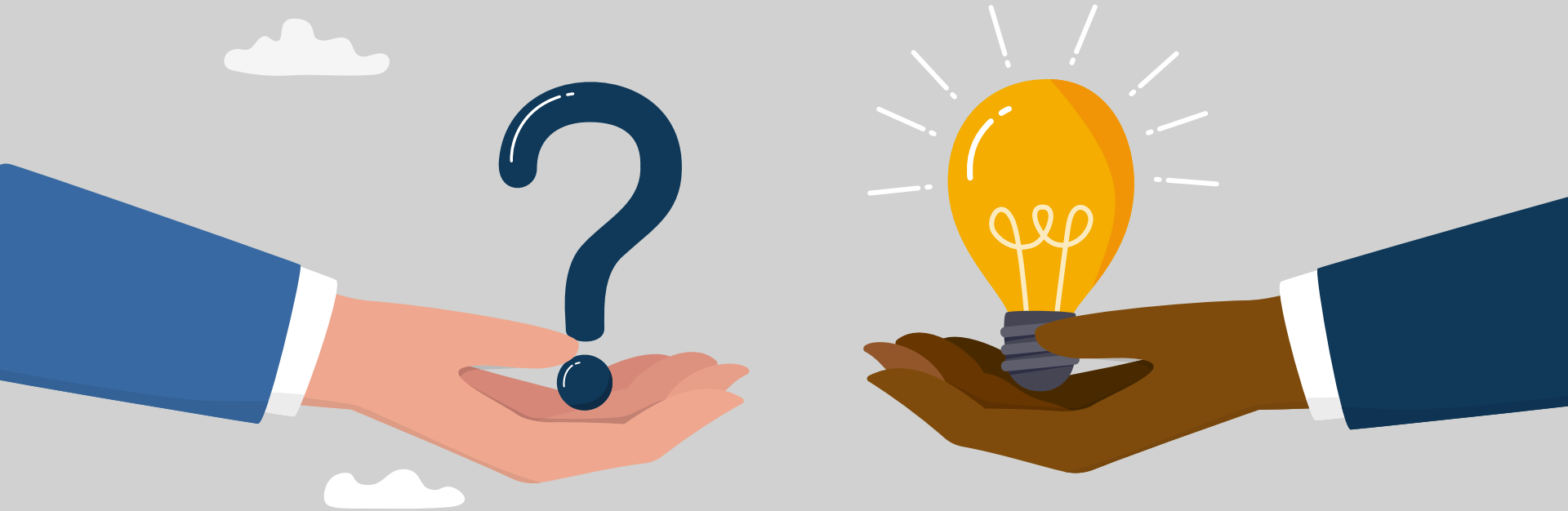


These and other resources can be found at:

<https://ftp.txdot.gov/pub/txdot/atd/programmatic-docs/>



# Questions & Discussion







# HELP #EndTheStreakTX

End the streak of daily deaths on Texas roadways.

**TxDOT.gov** (Keyword: #EndTheStreakTX)



#EndTheStreakTX Toolkit

