



# Insurance Requirements

## Alternative Delivery Program



# Insurance Requirements

- This is a self-directed overview of Design-Build contracting based on Version 7.0 of the Programmatic Documents.

The object shown below on a slide provides reference to the Section of the Programmatic Documents.

Sample

 **Contract Reference: DBA GC, Section XXX**



# Insurance Requirements

## Training Goals:

- 1** Become familiar with the insurance coverage requirements on TxDOT DB projects.
- 2** Learn more about verification of coverage requirements.
- 3** Review DB Contractor liability and claim requirements.



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# 1 Overview

 Contract Reference: DBA GC, Section 3.5

## Overview

- Both DB Contractor and Subcontractors are required to obtain and maintain the insurance coverages required in Section 3.5 of the Design-Build Agreement General Conditions (DBA GC) and the DBA Section 5.3 – Insurance Special Provisions.

 Contract Reference: DBA, Section 5.3

### 3.5 Insurance

DB Contractor shall procure and keep in effect, or cause to be procured and kept in effect with DB Contractor as a named insured, as appropriate, the insurance policies required in accordance with this Section 3.5.

#### 3.5.1 General Insurance Requirements

##### 3.5.1.1 Qualified Insurers

Each of the insurance policies required hereunder shall be procured from an insurance carrier or company that, at the time coverage under the applicable policy commences is:

- Authorized to do business in the State and has a current policyholder's management and financial size category rating of not less than "A – VII" according to A.M. Best's Insurance Reports Key Rating Guide; or
- Otherwise approved in writing by TxDOT.



# Updates in Version 7.0 of the Programmatic Documents



Builders risk insurance, professional liability insurance, and umbrella insurance coverage limits and terms for insurance policies were moved from the programmatic DB General Conditions to the DB Agreement *Section 5.3 – Insurance Special Provisions* providing greater flexibility to fit project requirements.



Simplified requirements for Subcontractor's insurance and makes DB Contractor responsible for ensuring Subcontractors have requisite insurance appropriate for the Work.



Simplified requirements for DB Contractor's and Subcontractor's professional liability insurance and transfers responsibility to the Lead Engineering Firm.

- Removed prescriptive coverage and deductible limits for Subcontractors



# 2 General Insurance Requirements

★ Contract Reference: DBA GC, Section 3.5.1

3.5.1

General Insurance Requirements



★ Contract Reference: DBA GC, Section 3.5

★ Contract Reference: DBA Section 5.3

## Coverages and Liability Requirements

DB Contractor is responsible for:

- Payment of the premiums for all insurance coverage required under the Design-Build Contract.
- Any deductibles, self-insured retentions, and any other insurance-related costs in excess of the coverage amounts.

## Insurance Coverages



Builder's Risk Insurance During Construction



Commercial General Liability Insurance



Railroad Protective Liability Insurance



Subcontractors' Insurance



Automobile Liability Insurance



Pollution Liability Insurance



Workers' Compensation and Employer's Liability Insurance




Professional Liability Insurance



Umbrella Liability

- All Subcontractors are required to obtain insurance policies per DBA GC 3.5.4.9.

# Additional Coverage and Liability Requirements for the DB Contractor and Lead Engineering Firm Policies



Indemnify TxDOT by providing insurance coverage to protect against third party claims.

The coverage obtained by DB Contractor is to the fullest extent allowed under Chapter 151 of the Texas Insurance Code.



Coverage cannot be canceled, voided, suspended, adversely modified, or reduced in coverage or in limits, except after 30 days' prior notice has been given to TxDOT and each other insured party.

Notice is reduced to 10 days in the case of cancellation for non-payment of premium.

## Additional Coverage Requirements



If DB Contractor carries additional coverage applicable to the Project beyond insurance requirements, DB Contractor includes TxDOT as an additional insured.



Each insurance policy provides coverage that is primary and noncontributory meaning the policy will not seek contribution from any other policy to cover the claim.



If any of the required coverages are unavailable on commercially reasonable terms, TxDOT may grant DB Contractor a variance as the DB Contractor seeks comparable coverage.



# 3 Verification of Coverage

★ *Contract Reference: DBA GC, Section 3.5.1.4*

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3.5.1

General Insurance Requirements

 Contract Reference: DB GC 3.5.1.4

- DB Contractor and Lead Engineering Firm are required to initially obtain each insurance policy, and
- Thereafter acquire another no later than 10 days prior to the expiration date of each insurance policy, and
- Deliver to TxDOT a certificate of insurance as verification of coverage for each new policy.



Each of the insurance policies required hereunder shall be procured from an insurance carrier or company that, at the time coverage under the applicable policy commences is:

- Authorized to do business in the State and has a current policyholder's management and financial size category rating of not less than "A - VII" according to A.M. Best's Insurance Reports Key Rating Guide; or
- Otherwise approved in writing by TxDOT.

3.5.1.2

Premiums, Deductibles and Self-Insured Retentions.

DB Contractor shall timely pay the premiums for all insurance required under this Design-Build Contract. Subject to Section 4.6 and except as provided in the DBA, DB Contractor shall be responsible for and TxDOT shall have no liability for any deductibles, self-insured retentions and amounts in excess of the coverage provided. In the event that any required coverage is provided under a self-insured retention, the entity responsible for the self-insured retention shall have an authorized representative issue a letter to TxDOT, at the same time the insurance policy is to be procured, stating that it shall protect and defend TxDOT to the same extent as if a commercial insurer provided coverage for TxDOT.

3.5.1.3

Primary and Non-Contributory Coverage

Each insurance policy shall provide that the coverage is primary and noncontributory coverage with respect to all named and additional insureds, except for coverage that by its nature cannot be written as primary. Any insurance or self-insurance beyond that specified in this Design-Build Contract that is maintained by an insured or any such additional insured shall be excess of such insurance and shall not contribute with it.

3.5.1.4

Verification of Coverage

3.5.1.4.1

At each time DB Contractor is required to initially obtain or cause to be obtained each insurance policy, including insurance coverage required of the Lead Engineering Firm, and thereafter not later than 10 days prior to the expiration date of each insurance policy, DB Contractor shall deliver to TxDOT a certificate of insurance. Unless requested by TxDOT, DB Contractor is not required to provide certificates of insurance for policies provided by Subcontractors other than the Lead Engineering Firm. Each required certificate must meet the requirements of Texas Insurance Code Chapter 1811 and, to the extent permitted under applicable Laws, state the identity of all carriers, named insureds and additional insureds required under the Contract Documents, state the type and

Texas Department of Transportation  
[Name of Project]  
[Date]

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Request for Proposals  
General Conditions  
Version 6.0 - November 2023

★ Contract Reference: DBA GC, Section 3.5.1.4

## Verification of Coverage

DB Contractor is required to deliver to TxDOT:



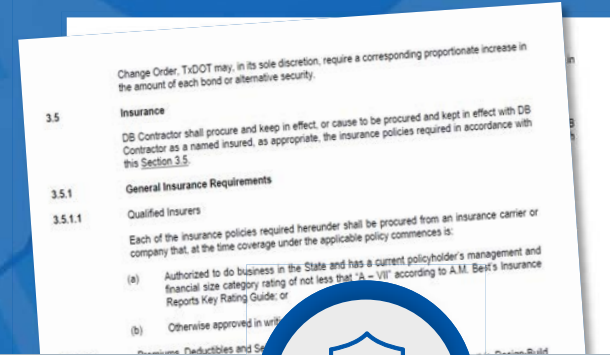
- Certificate(s) of insurance as verification of coverage for DB Contractor and Lead Engineering Firm policies.



- Letter(s) signed by the DB Contractor confirming that the certificates of insurance fully comply with all legal and contractual provisions.



- Certified copies of insurance policy(ies) with evidence of payment of premium upon TxDOT request.



Insurance certificates must meet the requirements of Texas Insurance Code Chapter 1811.





# Verification of Coverage

 *Contract Reference: DBA GC, Section 3.5.1.4*

Certificates of coverage to TxDOT include:

- the identity of all carriers.
- named insureds and additional insureds required under the Contract Documents.
- type and limits of coverage.
- deductibles.
- subrogation waiver.
- termination provisions of the policy.
- all additional insured endorsements.

**Certificates must be signed by an authorized representative of the insurance company shown on the certificate or its agent or broker.**

## Verification of Coverage - *Requested by TxDOT or for an Event of Default*

Within 15 days of a request from TxDOT and/or within 5 days of notice of an Event of Default from TxDOT, DB Contractor shall deliver:

- A complete certified copy of requested policy including endorsements.
- Satisfactory evidence of payment.

If not received within 5 days of Event of Default notice, TxDOT may:

- Obtain a policy and deduct the cost from DB Contractor.
- Suspend all or any part of work until a policy is obtained.

An Event of Default is a breach of contract. Conditions of "DB Contractor Default" may be found in DBA GC 8.8.1.1



# 4 Prosecution of Claims and Disclaimer

★ Contract Reference: DBA GC, Section 3.5.2

★ Contract Reference: DBA GC, Section 3.5.3

★ Contract Reference: DBA GC, Section 3.5.2 & 3.5.3

## Prosecution of Claims

### DB Contractor is responsible for:




Reporting and processing all claims by TxDOT or DB Contractor against the insurance policies.



Reporting timely to the insurers any matters which may give rise to an insurance claim by DB Contractor or TxDOT.



Enforcing all legal rights against the insurer under the applicable insurance policies.



*If the DB Contractor has not performed its insurance obligations or is unable to enforce or collect insurance for failure to properly assert claims, then DB Contractors liability will be as if they are self-insured up to the amount that would have been available had the DB Contractor not failed.*

★ Contract Reference: DBA GC, Section 3.5.2.1 & 3.5.2.2

## Prosecution of Claims

For claims and suits against TxDOT:



Communicating & and coordinating defense strategy with TxDOT and Texas Office of the Attorney General for claims against TxDOT.



DB Contractor's insurer must not agree to any settlement without first obtaining the concurrence of the Texas Office of the Attorney General.



### Disclaimer

*DB Contractor and its Subcontractors are responsible for obtaining any insurance coverage they deem advisable, whether or not contractually required.*



# 5 Insurance Coverage Requirements

★ Contract Reference: DBA GC, Section 3.5.4



# Required Insurance Coverages

★ Contract Reference: DBA GC, Section 3.5.4



1

Builder's Risk  
Insurance During  
Construction



2

Commercial General  
Liability Insurance



3

Automobile  
Liability Insurance



4

Pollution Liability  
Insurance



5

Professional  
Liability Insurance



6

Workers' Compensation and  
Employer's Liability Insurance



7

Umbrella  
Liability



8

Railroad Protective  
Liability Insurance



9

Subcontractors' Insurance

- All Subcontractors are required to obtain insurance policies per DBA GC 3.5.4.9.

★ Contract Reference: DBA GC, Section 3.5.4.1

★ Contract Reference: DBA, Section 5.3.1



## Builder's Risk Insurance During Construction

*Covers all loss or damage to the Work whether resulting from faulty work of the DB Contractor or incidents outside DB Contractor's control.*

*TxDOT is named as an insured party.*

Coverage per incident of the greater of the following:

- An amount specified in DBA 5.3.1. ❖ ❖ ❖

**OR**

- Maximum probable loss determined by DB Contractor's insurance advisor and agreed by TxDOT.

*[\$50,000,000] is shown in brackets in the DBA Section 5.3.1 - Insurance Special Provisions template. This indicates a typical project value.*

*Values will become specific to each project in the DBA as appropriate.*

★ Contract Reference: DBA GC, Section 3.5.4.1

★ Contract Reference: DBA, Section 5.3.1

1 2 3 4 5 6 7 8 9



## Builder's Risk Insurance During Construction

Deductible or self-insured retention must not exceed \$1,000,000 per occurrence.

Self-insured retention is like a deductible but shifts some obligations from the insurer to the insured.

Policies may include coverage sub-limits including:

- $\geq$  \$[25,000,000] for windstorm, flood and earth movement.
- $\geq$  \$[2,000,000] for existing property.
- $\geq$  \$[2,000,000] for soft cost expense.
- $\geq$  \$[5,000,000] for demolition and debris removal.
- $\geq$  \$[500,000] for restoration of data.

[Values will become specific to each project in the DBA as appropriate].



## Commercial General Liability Insurance

- Insures against the legal liability of DB Contractor and the insureds relating to claims by third parties for accidental death, bodily injury or illness, property damage, personal injury and advertising injury.
- Contains extensions of coverage typical for type project and only those exclusions typical to the type project.
- Minimum coverage of \$1,000,000 per occurrence and \$2,000,000 in aggregate.
- Deductible or self-insured retention no greater than \$1,000,000 per occurrence.

 **Contract Reference:**  
*DBA GC Section 3.5.4.2*

Legal liability coverage against third party claims extends seven years after all work is completed on the Project for products and completed operations.



## Automobile Liability Insurance

- Covers accidental death, bodily injury and property damage liability arising from the ownership, maintenance or use of all owned, non-owned, borrowed and hired vehicles connected with performance of the Work, including loading and unloading.
- DB Contractor's policy has a combined single limit per policy period of at least \$1,000,000.
- Each policy provides a deductible or self-insured retention not exceeding \$1,000,000 per occurrence.





## Pollution Liability Insurance

- Covers liability for losses caused by pollution conditions that arise from the operations of DB Contractor on site as well as transportation and off-site disposal:
  - Injuries to persons
  - Property damage
  - Clean up costs
- Coverage of no less than \$3,000,000 per occurrence.
- Deductible or self-insured retention not exceeding \$1,000,000 per occurrence.







## Professional Liability Insurance Terms

- Policy term begins at the time Professional Services are rendered and continue for the:
  - DB Contractor until 5 years after Final Acceptance.
  - Lead Engineering Firm until 5 years after final completion.
  - Subconsultants until 3 years after Professional Services are performed.





## Professional Liability Insurance Minimum Coverage Limits

- DB Contractor has minimum coverage of \$[3,000,000]\*.
- Lead Engineering Firm has minimum coverage of \$[10,000,000].
- DB Contractor and Lead Engineering Firm provide liability coverage for TxDOT and the Indemnified Parties for third party claims for bodily injury or property damage.

[DBA template values to become project specific as appropriate.]

★ Contract Reference: DBA GC, Section 3.5.4.5

★ Contract Reference: DBA, Section 5.3.2





# Professional Services Subcontractor's Liability Insurance



- Minimum coverage limits for the Subcontractors performing Professional Services are in the table below.

Estimated Total Contract Value	Minimum Limit of Insurance
>\$10 million	[\$5] million per claim and aggregate
>\$5 million to \$10 million	[\$2] million per claim and aggregate
>\$1 million to \$5 million	[\$1] million per claim and aggregate
≤\$1 million	[\$500,000] per claim and aggregate

★ Contract Reference: DBA GC, Section 3.5.4.6

1 2 3 4 5 6 7 8 9




## Workers' Compensation and Employer's Liability Insurance

DB Contractor must comply with applicable Worker's Compensation Law



Employer's liability insurance insures against claims arising from employee injury, illness and rights violations.



- Include U.S. Longshore and Harbor Worker's Compensation Act and Jones Act coverage (if work is over or adjacent to navigable waters)



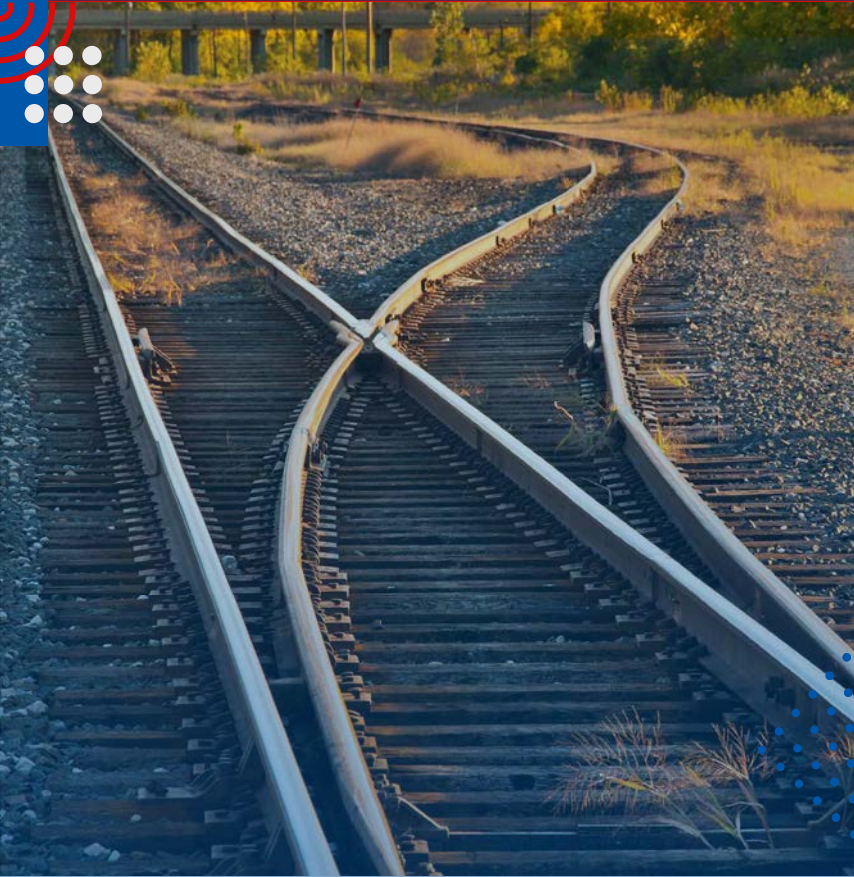
- Employer's liability insurance limits of \$500,000 per accident or disease.



## Umbrella Liability Insurance

- DB Contractor shall procure and maintain umbrella liability insurance to extend the coverage limits of:
  - commercial general liability
  - automobile liability
  - employer's liability
- The umbrella policy will be on a form-following basis meaning they cover what the underlying policies cover.
- Per occurrence and aggregate limits  $\geq$  \$[10,000,000] as listed in DBA 5.3.2. [values are project specific]





① ② ③ ④ ⑤ ⑥ ⑦ ⑧ ⑨

## Railroad Protective Liability Insurance

- DB Contractor shall procure and keep in force prior to performing any Work adjacent to the railroad's tracks or right-of-way, Railroad Protective Liability Insurance Policy.
- The limits and coverage terms and conditions are as required by the operating railroad with the railroad as the named insured.



## DB Contractor ensures Subcontractors provide insurance:



- Of the types and commercially reasonable amounts applicable to the Work performed by the Subcontractor on-site or for any off-site fabrication facilities.
- Compliant with requirements of the law.

If requested, DB Contractor will provide certificates of insurance (COIs) for subcontractors.

The requested COI will be accompanied with a letter certifying the policy is compliant with the DBA and the law.



# 6 Key Takeaways and Resources

## Key Takeaways



**Review the insurance against the requirements of the contract before submitting to TxDOT.**

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There are a range of coverage limits, terms of coverage, reporting and other requirements depending on the Work performed by each entity.



**In addition to providing required certificates for DB Contractor and Lead Engineering Firm, DB Contractor must certify that each policy is compliant with Contract Documents.**

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Subcontractor certificates will be provided with DB Contractor letter of compliance upon request from TxDOT.



**DB Contractor is responsible for reporting and processing all insurance claims.**

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DB Contractor must enforce all legal rights against the insurer under the applicable insurance policies.

## Resources – Alternative Delivery Projects

### DBA General Conditions - Section 3.5

[Programmatic DBA General Conditions Items 1-9 – Final Version 6.0 \(txdot.gov\)](#)

### Texas Insurance Code, Chapter 1811

[INSURANCE CODE CHAPTER 1811. CERTIFICATES OF PROPERTY AND CASUALTY INSURANCE \(texas.gov\)](#)

### Commercial General Liability 20 10 04 13

[Microsoft Word - CG20104W.doc \(iiat.org\)](#)

### Commercial General Liability 20 37 04 13

[Microsoft Word - CG20374W.doc \(iiat.org\)](#)

### United States Department of Transportation Form MCS-90, Endorsement for Motor Carrier Policies of Insurance for Public Liability Under Sections 29 and 30 of the Motor Carrier Act of 1980

[Carrier Policies of Insurance for Public Liability under Sections 29 and 30 of the Motor Carrier Act of 1980 | FMCSA \(dot.gov\)](#)

- [V7.0 Programmatic documents in Adoreplus V7.0 FHWA-AGC Programmatic](#)

INSURANCE CODE

TITLE 10. PROPERTY AND CASUALTY INSURANCE

SUBTITLE A. GENERAL PROVISIONS

CHAPTER 1811. CERTIFICATES OF PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1811.001. DEFINITIONS. In this chapter:

(1) "Agent" means a person required to hold a license as a property and casualty agent or surplus lines agent.

(2) "Certificate holder" means a person, other than a policyholder:

(A) who is designated on a certificate of insurance as a certificate holder; or

(B) to whom a certificate of insurance has been issued by an insurer or agent at the request of the policyholder.

(3) "Certificate of insurance" means a document, instrument, or record, including an electronic record, no matter how titled or described, that is executed by an insurer or agent and issued to a third person not a party to the subject insurance contract, as a statement or summary of property or casualty insurance coverage. The term does not include an insurance binder or policy form.

(4) "Electronic record" has the meaning assigned by Section 322.002, Business & Commerce Code.

(5) "Insurance" means an insurance contract for property or casualty insurance.

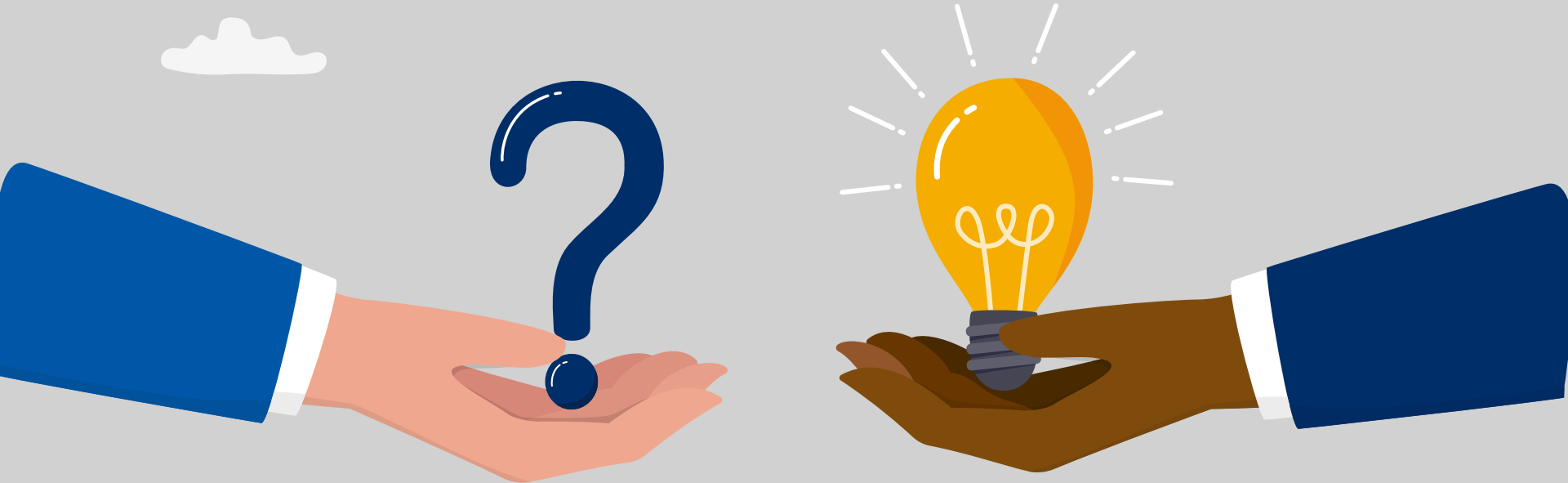
(6) "Insurer" means a company or insurance carrier that is engaged in the business of making property or casualty insurance contracts. The term includes:

(A) a stock fire or casualty insurance company;

(B) a mutual fire or casualty insurance company;

(C) a Mexican casualty insurance company;

# Questions & Discussion



**TxDOT Website:**

<https://www.txdot.gov/business/road-bridge-maintenance/alternative-delivery/resources.html>

# HELP #EndTheStreakTX

End the streak of daily deaths on Texas roadways.



[TxDOT.gov](http://TxDOT.gov) (Keyword: #EndTheStreakTX)

#EndTheStreakTX Toolkit