



# Capital Maintenance Contract (CMC)

Alternative Delivery Program

Rev. 01

Released: 08/27/2024





# Capital Maintenance Contract (CMC)

## Training Goals:

- 1** Become familiar with maintenance contracting on TxDOT's Alternative Delivery Program.
- 2** Learn more about the CMC.
- 3** Understand some of the key CMC Provisions.



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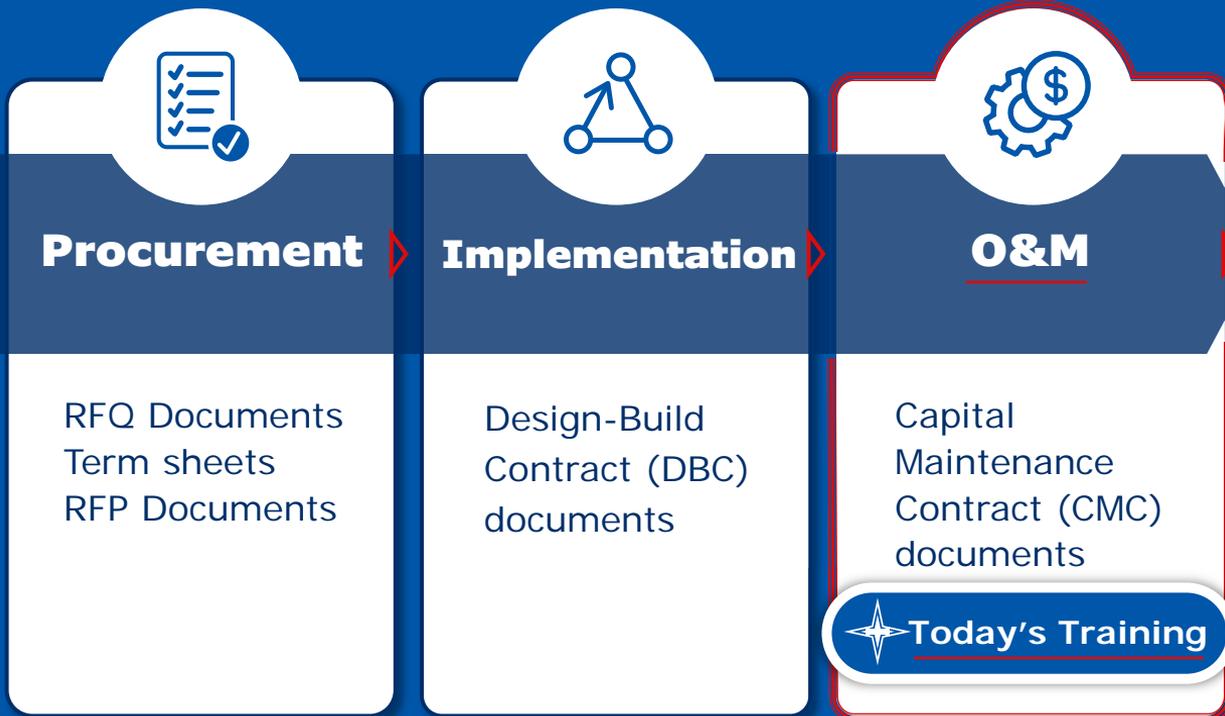
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# 1 Maintenance Contracting on TxDOT DB Projects

## Background

- TxDOT's Alternative Delivery Division has developed a series of programmatic documents and trainings for the Alternative Delivery Program (ALD).
- This training will cover the Capital Maintenance Contract (CMC) documents.



# TxDOT Alternative Delivery Maintenance Contract Types

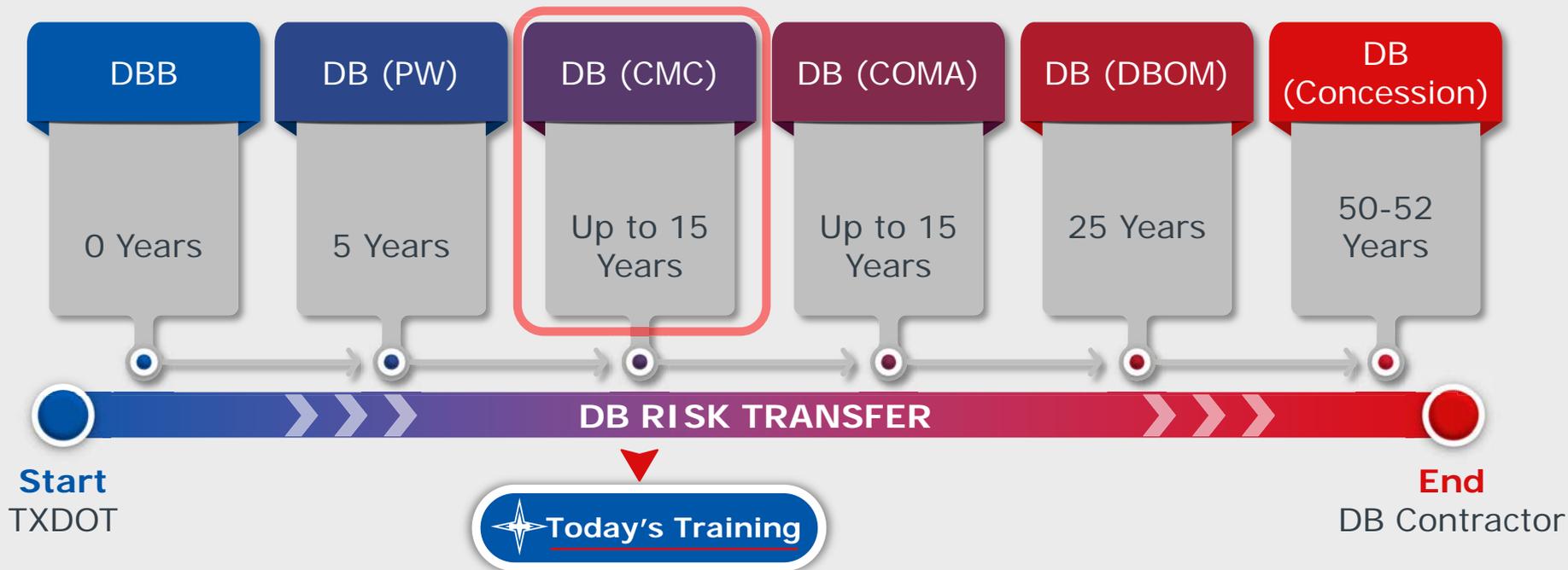


 **Today's Training**

\* [Sec. 223.242](#) of the Transportation Code requires a maintenance agreement may have an initial term of no longer than five years, with subsequent, separately priced, optional five-year extension terms at the discretion of TxDOT. So DBOM is no longer an option for TxDOT.

\*\* [Sec. 223.201](#) of the Transportation Code states the authority to enter into a CDA (DBFOM) (other than the State Highway 99 (Grand Parkway) project) expired on August 31, 2017.

# Maintenance Contract Type Risk Spectrum



## A CMC includes the following protections



### Errors and Omissions (Texas Law)

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- State Law
- Ensures design compliance
- Standard in DBB & DB



### 1-Year Materials and Workmanship Warranty

---

- Standard Warranty
- Workmanship
- Ensures construction quality
- Standard in DBB & DB



### Maintenance Contract

---

- Long-Term obligation w/ Performance Thresholds
- Ensures the performance of the Maintained Elements during the maintenance period

# Maintenance Contracts (as of Apr. 2024) TxDOT Alternative Delivery





## 2 CMC Overview



## What is a CMC?

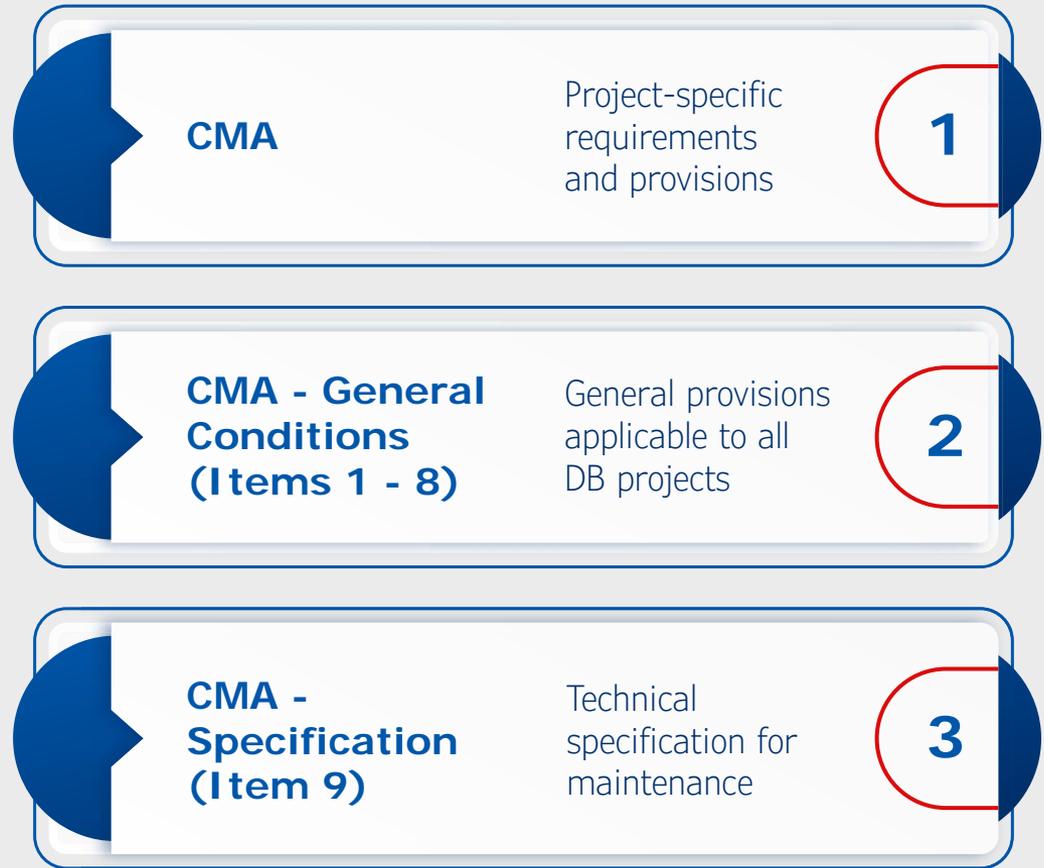
- A CMC is a separate maintenance agreement document between DB Contractor and TxDOT that is signed simultaneously with the Design-Build Agreement.

The CMC holds DB Contractor responsible for the maintenance over Maintained Elements while TxDOT performs maintenance on all other non-Maintained Elements and operational services (e.g. incident response, mowing, litter pickup, sweeping, etc.)

# CMC Documents



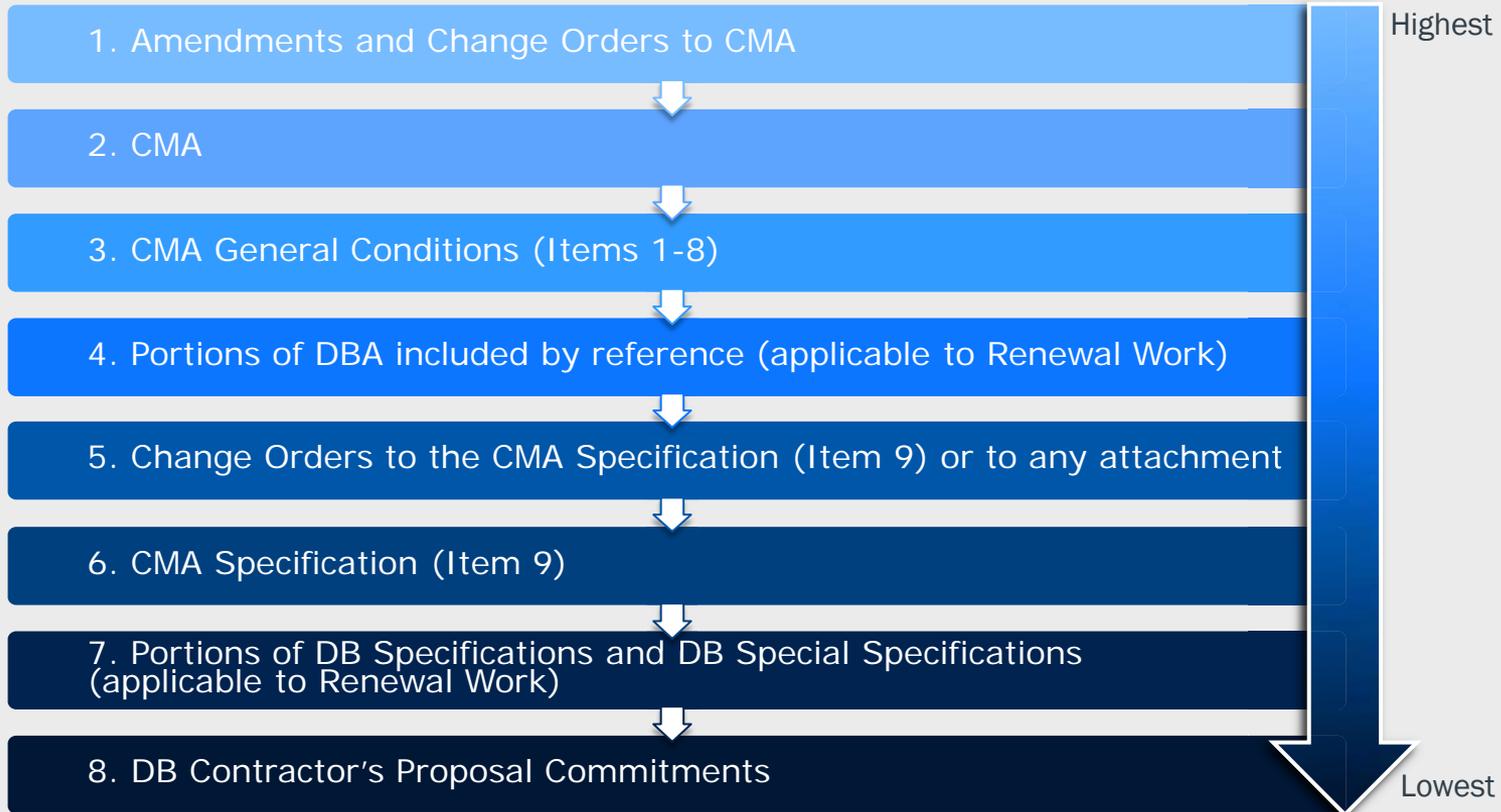
Comprised of 3 main documents, Capital Maintenance Agreement (CMA), CMA General Conditions, and CMA Specification (Item 9).



# Contract Framework - CMC Documents

| CMA   | CMA General Condition (Items 1-8)  | CMA Specification (Item 9)  |
|---|--|---|
| <ul style="list-style-type: none"> <li>• <b>Section 1:</b> Contract</li> <li>• <b>Section 2:</b> Scope of Maintenance Services</li> <li>• <b>Section 3:</b> Compensation</li> <li>• <b>Section 4:</b> Maintenance Security</li> <li>• <b>Section 5:</b> Change Orders</li> <li>• <b>Section 6:</b> Lane Rental Charges; Liquidated Damages</li> <li>• <b>Section 7:</b> Key Subcontractors and Key Personnel</li> <li>• <b>Section 8:</b> Notice and Authorized Representatives</li> <li>• <b>Section 9:</b> Representations, Warranties, Acknowledgements, and Certifications</li> <li>• <b>Section 10:</b> Miscellaneous Provisions</li> <li>• Exhibits 1 through 17</li> </ul> | <ul style="list-style-type: none"> <li>• <b>Item 1:</b> Definitions of Terms</li> <li>• <b>Item 2:</b> CMC Documents and Interpretation</li> <li>• <b>Item 3:</b> Federal Requirements; Insurance; Performance Security</li> <li>• <b>Item 4:</b> Scope of Work</li> <li>• <b>Item 5:</b> Control of the Maintenance Services</li> <li>• <b>Item 6:</b> Legal Relations and Responsibilities</li> <li>• <b>Item 7:</b> Prosecution and Progress</li> <li>• <b>Item 8:</b> Payment</li> </ul> | <ul style="list-style-type: none"> <li>• <b>9.1</b> General Requirements</li> <li>• <b>9.2</b> Maintenance Management</li> <li>• <b>9.3</b> Performance Requirements</li> <li>• <b>9.4</b> Defect Identification; Recording and Categorization</li> <li>• <b>9.5</b> Inspections</li> <li>• <b>9.6</b> Maintenance Management System (MMS)</li> <li>• <b>9.7</b> Maintenance Obligations</li> <li>• <b>9.8</b> Report Requirements</li> <li>• <b>9.9</b> Submittal</li> <li>• Attachment 9-1, 9-2, 9-3</li> </ul> |

# CMC Documents - Order of Precedence





## CMC Pros

### Lock-in Price

"Locks-in" price at the time of the bid (subject to inflation) for maintaining the facility to specified performance standards.

### Flexible Terms

After the first term (5 years), TxDOT can choose to terminate or continue the second and third terms.

### One Contract

Executed simultaneously with the Design-Build Contract (DBC) Documents.

### Familiar to Industry

Familiar to Industry with over dozen executed CMCs.

### Transfer Risks

Protects TxDOT from unexpected defects and suitable for large & complex projects.

### Longer Term (up to 15 years)

Encourages long-term durability in design and construction due to 15-year contract option.

Administrative overhead and bonding requirements increase costs.

**Cost Increase**

Fixed DBC overhead costs may be inefficient if unable to spread over large project area.

**Inefficient Overhead**

CMC Bond separately priced when CMC implemented (inability to wrap up with DB Bond reduces efficiency).

**Separate Pricing**

TXDOT and DBC both performing maintenance within the project limits can create challenges for defining scope.

**Scope Challenges**

Pricing Risk due to optionality, longer term, and inflation.

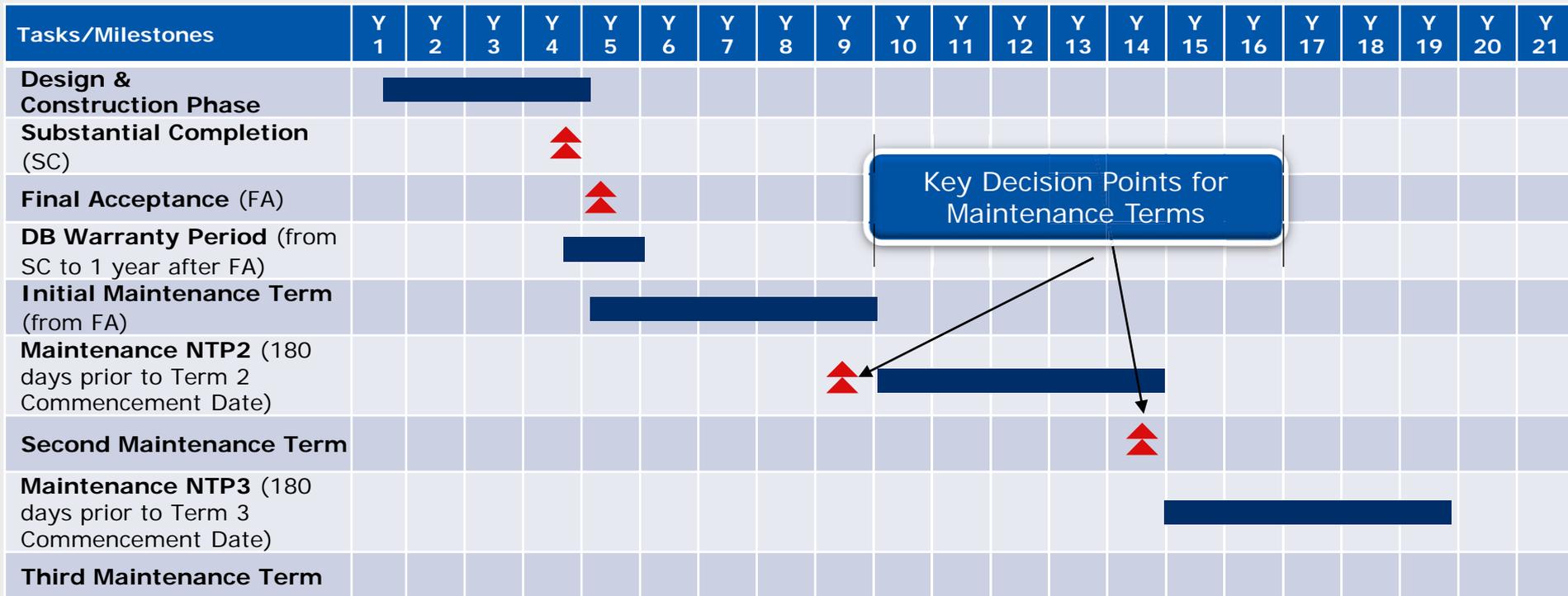
**Pricing Risk**

2-contract structure (DBC and CMC) adds complexity.

**Complex Structure**



# CMC Timeline



■ Activity ▲ Milestone



# 3 Maintenance Term

A five-year Initial Maintenance Term, with two optional five-year Maintenance Terms, up to a maximum period of 15 years.

★ *Contract Reference:*  
CMA 2.2, 2.3, 2.4

### Construction

Commences at NTP2 and terminates at Final Acceptance.

### Initial Maintenance Term

Commences at Final Acceptance without Maintenance NTP.

### Second Maintenance Term

Extended only if TxDOT issues Maintenance NTP on or before 180 days prior to the scheduled expiration of the prior term.

### Third Maintenance Term

Extended only if TxDOT issues Maintenance NTP on or before 180 days prior to the scheduled expiration of the prior term.

# Maintenance Term Optionality Analysis

- Option Rights Analysis

|                               | Scenario One | Scenario Two | Scenario Three | Scenario Four                              |
|-------------------------------|--------------|--------------|----------------|--|
| Commence 1 <sup>st</sup> term | Yes          | Yes          | Yes            | Yes, but terminate at conclusion of year 1 |
| Renew 2 <sup>nd</sup> term    | Yes          | Yes          | No             | No   |
| Renew 3 <sup>rd</sup> term    | Yes          | No           | No             | No   |

- To achieve best value for money in O&M period, TxDOT will evaluate the available scenarios that will result in the optimum combination of CMC and TxDOT lifecycle maintenance.



# 4 Maintenance Scope and Limits

★ *Contract Reference:  
CMA Section 2.1 and Exhibit 14*

★ *Contract Reference: CMA Specification (Item 9),  
Section 9.1.2 and Attachments 9-1 and 9-3*

## Maintenance Scope

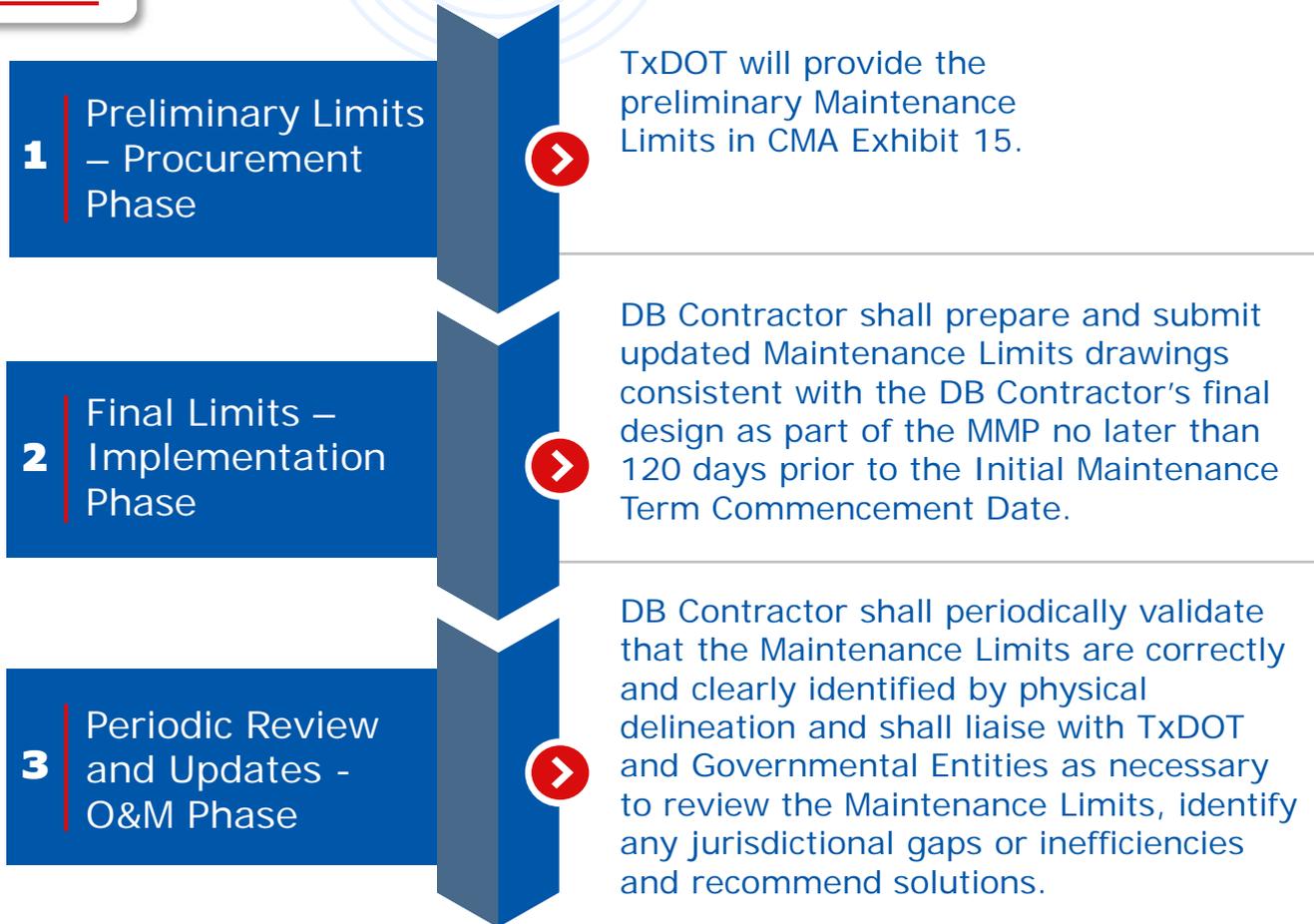
- DB Contractor is responsible for the following four Maintained Elements within the Maintenance Limits.
- TxDOT or applicable third party shall retain maintenance responsibilities for all other Non-Maintained Elements and other operational services such as incident response or roadside maintenance.



★ Contract Reference: CMA Exhibit 15

# Maintenance Limits

DB Contractor is only responsible for newly constructed elements and the CMA Maintenance Limits can only be finalized upon the completion of the construction.



## Maintenance Limits Example



- Here is an example of maintenance limits for a pavement reconstruction/rehabilitation project with a portion of the pavement sections being reconstructed while others remaining intact or with non-structural overlay:
  - DB Contractor is responsible for newly constructed/replaced pavement sections
  - TxDOT is responsible for all other existing or overlay pavement sections

|          |                                   |
|----------|-----------------------------------|
| <b>C</b> | DB Contractor Maintained Elements |
| <b>T</b> | TxDOT Maintained Elements         |



# 5 Maintenance Security and Insurance

★ Contract Reference: CMA Section 4

★ Contract Reference: CMA GC, Section 3.2 and 3.4

## Maintenance Security

- DB Contractor shall maintain at all times adequate security for meeting its obligations in the form of either (i) the Performance & Payment (P&P) Letter of Credit or (ii) the Maintenance Performance Bond and Maintenance Payment Bond (the “P&P Bonds”).

### Initial Issuance

---

No later than 14 days prior to the Initial Maintenance Term Commencement Date.

### Renewal or Extension

---

No later than 14 days prior to the commencement of the subsequent Maintenance Term, or, if earlier, 14 days prior to the expiration of the then outstanding Maintenance Security.

### Replacement

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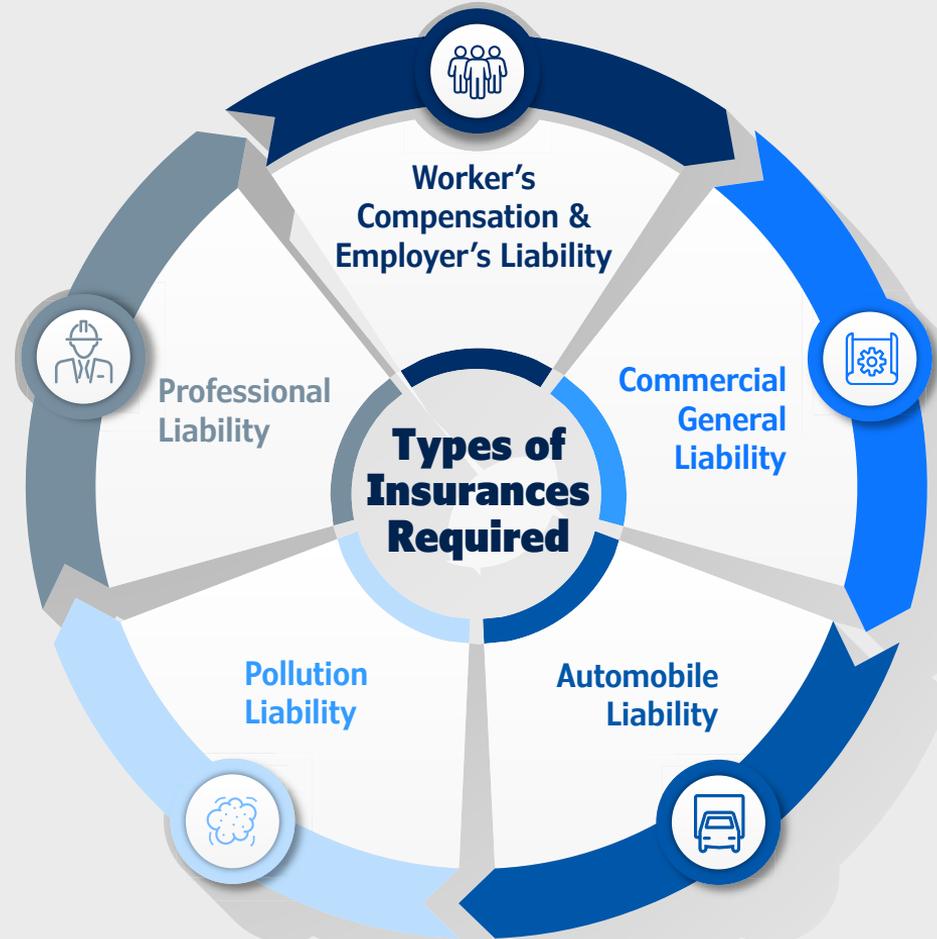
No later than 10 days after any Maintenance Security becomes ineffective or no longer meets the requirements.

★ Contract Reference:  
CMA Section 4.3

★ Contract Reference:  
CMA GC, Section 3.3

## Insurance Requirements

- DB Contractor has the insurance policies required not later than 10 days prior to the Initial Maintenance Term Commencement Date and maintains them at all times during the Maintenance Period.
- Insurance premiums are reimbursed by TxDOT as a pass-through cost.





# 6 Maintenance Price

★ Contract Reference: CMA Exhibit 3

# Maintenance Pricing Forms



MAINTENANCE PRICE [BASE SCOPE] – Form Q-1

|                          | Year <sup>(3)</sup> | General Maintenance Price <sup>(4)</sup><br>(A) | Pavement Renewal Work Price <sup>(5)</sup><br>(B) | Total Maintenance Price<br>(C) = (A+B) |
|--------------------------|---------------------|---|---|--|
| Initial Maintenance Term | 1                   | \$0.00  |   | \$0.00                                 |
|                          | 2                   | \$0.00  |   | \$0.00                                 |
|                          | 3                   | \$0.00  |   | \$0.00                                 |
|                          | 4                   | \$0.00  |   | \$0.00                                 |
|                          | 5                   | \$0.00  |   | \$0.00                                 |
|                          | 5-Year Subtotal     | \$0.00  |   | \$0.00                                 |
| Second Maintenance Term  | 6                   | \$0.00  | \$0.00  | \$0.00                                 |
|                          | 7                   | \$0.00  | \$0.00  | \$0.00                                 |
|                          | 8                   | \$0.00  | \$0.00  | \$0.00                                 |
|                          | 9                   | \$0.00  | \$0.00  | \$0.00                                 |
|                          | 10                  | \$0.00  | \$0.00  | \$0.00                                 |
|                          | 5-Year Subtotal     | \$0.00  | \$0.00  | \$0.00                                 |
| Third Maintenance Term   | 11                  | \$0.00  | \$0.00  | \$0.00                                 |
|                          | 12                  | \$0.00  | \$0.00  | \$0.00                                 |
|                          | 13                  | \$0.00  | \$0.00  | \$0.00                                 |
|                          | 14                  | \$0.00  | \$0.00  | \$0.00                                 |
|                          | 15                  | \$0.00  | \$0.00  | \$0.00                                 |
|                          | 5-Year Subtotal     | \$0.00  | \$0.00  | \$0.00                                 |
| 15-Year Total            |                     | \$0.00  | \$0.00  | \$0.00                                 |

MAINTENANCE PRICE [BASE SCOPE] – Form Q-1.1'  
PAVEMENT RENEWAL WORK PRICE CALCULATION

|                         | Year <sup>(3)</sup> | Total area of flexible pavement subject to Pavement Renewal Work (SY) <sup>(A)</sup> | Pavement Renewal Work Unit Rate (per SY) <sup>(4)</sup><br>(B) | Percentage of area of flexible pavement subject to Pavement Renewal Work (%) <sup>(5)</sup><br>(C) | Pavement Renewal Work Price <sup>(4)</sup><br>(D) = (A) x (B) x (C) | Cumulative Maximum Pavement Renewal Work Price<br>(E) |
|-------------------------|---------------------|--|--|--|---|---|
|                         |                     | [0.00]   | [\$0.00]   |  |   |   |
| Second Maintenance Term | 6                   |  |  |  | \$0.00  | \$0.00  |
|                         | 7                   |  |  |  | \$0.00  | \$0.00  |
|                         | 8                   |  |  |  | \$0.00  | \$0.00  |
|                         | 9                   |  |  |  | \$0.00  | \$0.00  |
|                         | 10                  |  |  |  | \$0.00  | \$0.00  |
|                         | 5-Year Subtotal     |  |  |  | \$0.00  | \$0.00  |
| Third Maintenance Term  | 11                  |  |  |  | \$0.00  | \$0.00  |
|                         | 12                  |  |  |  | \$0.00  | \$0.00  |
|                         | 13                  |  |  |  | \$0.00  | \$0.00  |
|                         | 14                  |  |  |  | \$0.00  | \$0.00  |
|                         | 15                  |  |  |  | \$0.00  | \$0.00  |
|                         | 5-Year Subtotal     |  |  |  | \$0.00  | \$0.00  |
| Total                   |                     |  |  | 100%   | \$0.00  | \$0.00  |



★ Contract Reference: CMA Exhibit 3

★ Contract Reference: CMA GC Item 8

# Maintenance Price

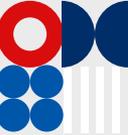
Is composed of General Maintenance Price and Pavement Renewal Work Price.

## Maintenance Price

|                    |  |                               |            |        |                        |
|--------------------|--|-------------------------------|------------|--------|------------------------|
| Payment Type       | General Maintenance Payment              | Pavement Renewal Work Payment |            |        |                        |
| Amount Payable     | Full amount as included in CMA Exhibit 3 | Actual amount performed       |            |        |                        |
| Scope              | Routine and Major Maintenance            | Overlay 2" or more            |            |        |                        |
| Maintained Element | Pavement                                 | Drainage                      | Structures | Slopes | Flexible Pavement Only |

★ Contract Reference:  
CMA Item 8, Section 8.1.2.2

## Pavement Renewal Work Payment Eligibility



- Applicable only for asphalt pavement and actual work performed along with other restrictions below:
  - **For Specific Work Only:** Only for the performance and satisfactory completion of flexible pavement overlay with a minimum overlay thickness of 2.0 inches. Overlay with a thickness of less than 2.0 inches may be eligible for Pavement Renewal Work Payments at TxDOT's sole discretion.
  - **Not Exceeding Cumulative Maximum Amount:** The cumulative value of Pavement Renewal Work Payments can not exceed the Cumulative Maximum Pavement Renewal Work Amount available in the applicable year.
  - **Limit to One Payment Only for the Same Section:** For any given flexible pavement area, DB Contractor shall be entitled to Pavement Renewal Work Payment only once throughout the Maintenance Period.

★ Contract Reference: CMA GC, Section 8.1.3

# Escalation

Prior to the commencement of each Maintenance Term year, the annual General Maintenance Price or eligible Pavement Renewal Work Payment amount will be adjusted for escalation based on ENR CCI in accordance with Section 8.1.3.



# Sample Escalation Calculation Form

Escalated Maintenance Price = Maintenance Price x (Current Index / Base Index)

### Annual Escalation Change Amount Calculation

Contract Execution Date: March 22, 2013  
month/day/year

Maintenance Commencement Date: January 27, 2018  
month/day/year

Maintenance Year X: 5

Maintenance Year X Start Date: January 27, 2022  
month/day/year

|   |              |
|---|--------------|
| <b>Year X Maintenance Fee (Before Escalation)</b> |              |
| Year X Maintenance Fee (From Proposal) (A)        | \$ 1,000,000 |
| Year X Change Orders (B)                          | \$ -         |
| Year X Total Maintenance Fee (C) = (A) + (B)      | \$ 1,000,000 |

|   |           |
|---|-----------|
| <b>Year X Escalation Factor</b>                               |           |
| CCI (three months prior to maintenance year X start date) (D) | 12,464.94 |
| CCI (three months prior to contract execution date) (E)       | 9,412.25  |
| Year X Escalation Factor (F) = (D) / (E)                      | 1.32      |

|   |              |
|---|--------------|
| <b>Year X Adjusted Maintenance Fee (After Escalation)</b> |              |
| Year X Adjusted Maintenance Fee (G) = (A) x (F)           | \$ 1,324,332 |
| Year X Adjusted Change Orders (H) = (B) x (F)             | \$ -         |
| Year X Total Adjusted Maintenance Fee (I) = (G) + (H)     | \$ 1,324,332 |

|   |            |
|---|------------|
| <b>Year X Escalation Change Amount</b>          |            |
| Year X Escalation Change Amount (J) = (I) - (C) | \$ 324,332 |

|                               |  |
|-------------------------------|--|
| <b>Escalation Index Month</b> |  |
| <u>October 2021</u>           |  |
| <u>December 2012</u>          |  |

Maintenance Fee before Escalation

Base and Current Index Months

Base and Current Escalation Index

Maintenance Fee after Escalation



# 7 Draw Request Process and Form

# Draw Request Process

**On or about the tenth Business Day each month**

DB Contractor submits Draw Request. Attached a report containing information that TxDOT can use to verify the Draw Request and any deductions and Liquidated Damages

**Within 10 Business Days after TxDOT's receipt of a complete Draw Request**

TxDOT reviews and notifies DB Contractor the amount approved for payment and the reason for disapproval of any remaining invoiced amount.

**Within 15 Business Days after TxDOT's receipt of a complete Draw Request**

TxDOT pays DB Contractor the amount of the Draw Request approved for payment less any amounts that TxDOT is otherwise entitled to withhold or deduct.

**No later than 10 days after receipt of payment from TxDOT**

DB Contractor promptly pays each Subcontractor, out of the amount paid to DB Contractor on account of such Subcontractor's portion of the Maintenance Services.

# Monthly Draw Request - Calculation

 **Contract Reference:**  
CMA Exhibit 4

| General Maintenance Payment  | This Draw Request |
|--|-------------------|
| G. General Maintenance Price for Maintenance Term Year X (unadjusted amount from <u>Exhibit 3</u> )  | \$                |
| H. ENR CCI for the month that is three months prior to the month in which Maintenance Term Year X commenced  |                   |
| I. ENR CCI for the month that is three months prior to the execution of the CMC (BICCI)  |                   |
| J. Adjusted General Maintenance Price pursuant to Section 8.1.3(b) of the CMA General Conditions: $G \times (H / I)$   | \$                |
| K. <b>General Maintenance Payment: <math>J / 12</math></b> (except with respect to partial months or during the last six months of the Maintenance Period. See notes below.) | \$                |

**Note:**

Payments for any partial month or partial year shall be prorated as set forth in CMA General Conditions Section 8.1.2.1(b) and Section 8.1.2.1(c) and further elaborated below.

For example, for each Maintenance Term year:

- First month's payment: One-twelfth (1/12) of the adjusted General Maintenance Price pro-rated by multiplying by the number of days for which payment is made, and dividing by the total number of days in that month.
- Final month's payment: The remaining balance of the adjusted General Maintenance Price. If there is a subsequent Maintenance Term year, the partial payment for the first month of the next term is added to this remaining balance, such that all payments are made on a calendar month basis.

Payments during the last six months of the Maintenance Period shall be calculated as set forth in CMA General Conditions Section 8.1.2.1(d).

| Pavement Renewal Work Payment  | This Draw Request |
|--|-------------------|
| L. Cumulative total number of square yards of Pavement Renewal Work meeting the requirements set forth in Sections 8.1.2.2(a), 8.1.2.2(b) and 8.1.2.2(c) of the CMA General Conditions that has been completed |                   |
| M. Pavement Renewal Work Unit Rate from <u>Exhibit 3</u>   | \$                |
| N. Cumulative total Pavement Renewal Work Price earned: $L \times M$   | \$                |
| O. Cumulative Maximum Pavement Renewal Work Price for Maintenance Term Year X from <u>Exhibit 3</u>  | \$                |
| P. Cumulative total Pavement Renewal Work Price eligible for invoicing: lesser of N and O  | \$                |
| Q. Cumulative total Pavement Renewal Work Payments previously invoiced and paid  | \$                |
| R. Pavement Renewal Work Price eligible for invoicing: $P - Q$   | \$                |
| S. ENR CCI three months prior to the month in which Maintenance Term Year X commenced  |                   |
| T. ENR CCI three months prior to the execution of the CMC  |                   |
| U. <b>Pavement Renewal Work Payment pursuant to Section 8.1.3(c) of the CMA General Conditions: <math>R \times (S / T)</math></b>  | \$                |





# 8 Inspections

# Inspections

The following inspections are conducted by DB Contractor and TxDOT

★ *Contract Reference:  
CMA GC 5.9 and DBA GC 5.10*

★ *Contract Reference:  
CMA Specification (Item 9), Section 9.5*

## General Inspection (Monthly)

- DB Contractor - General Inspections of **the Maintained Elements** by trained staff
- DB Contractor invites TxDOT to participate in all such General Inspections with a minimum of seven days' notice and shall provide transportation and safety equipment for up to two TxDOT personnel.

## Specialist Inspection (Annual or Biennial)

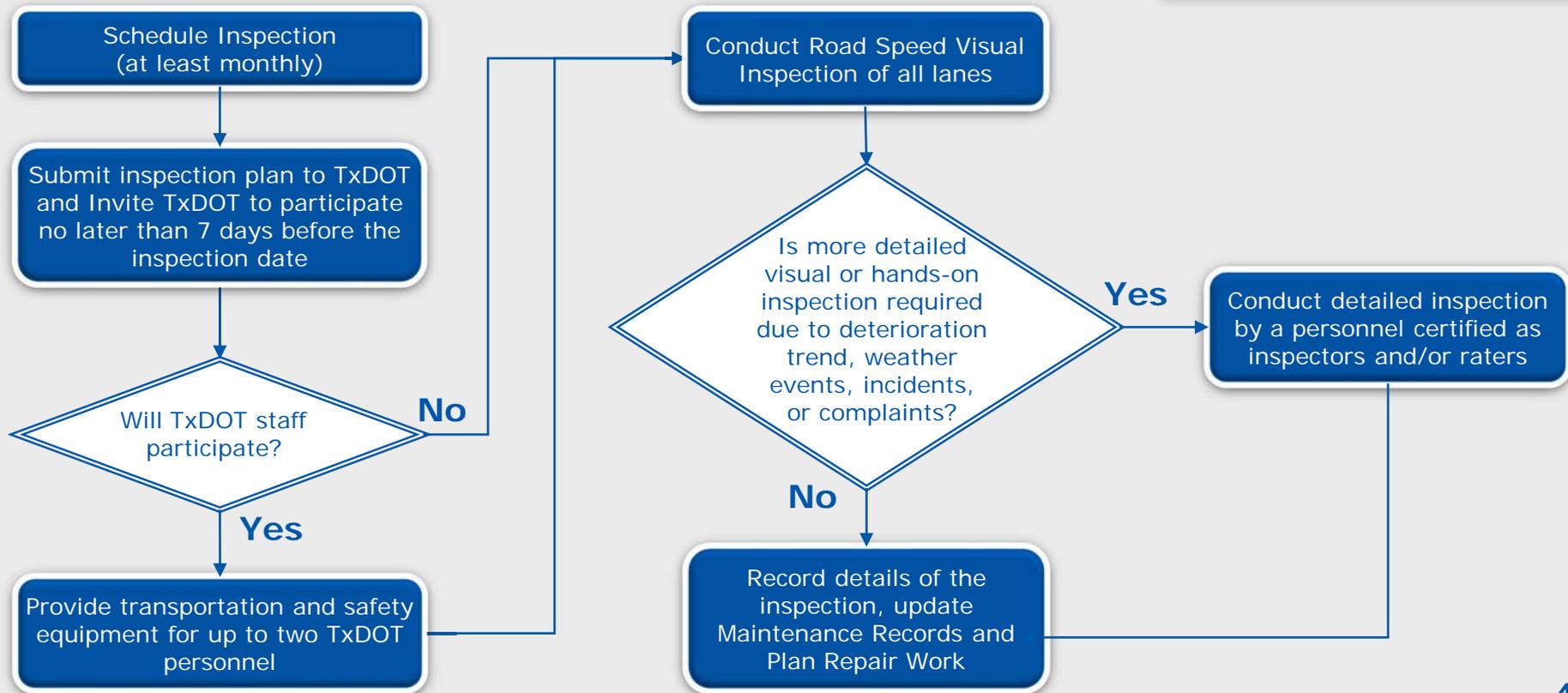
- DB Contractor - Biennial inspections of **drainage** Maintained Elements
- TxDOT - Annual survey of **pavement** condition for every travel lane of the entire Project
- TxDOT - Routine inspections, to the extent required, for all **structures** in compliance with the latest FHWA / NBIS and TxDOT requirements

## Construction Inspection (As required)

- DB Contractor – For **Renewal Work** using the same or similar construction work and materials to those described in the Design-Build Contract, inspects all such construction work and materials at the frequencies required in **Section 5.10 of the DB General Conditions.**

# General Inspection Process

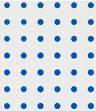
 **Contract Reference:**  
CMA item 9, Section 9.5.1





# 9 Performance Requirements

★ *Contract Reference:  
CMA Specification (Item 9),  
Section 9.3 Attachment 9-1*



## Performance Requirements

- Performance Requirement(s) means, for each Maintained Element in connection with the Maintenance Services, the requirements set forth in the Performance and Measurement Table. A Performance Requirement is achieved provided DB Contractor repairs each Defect within the specified Defect Repair Period.

# Performance and Measurement Table (Attachment 9-1)

CMA SPECIFICATION ATTACHMENT 9-1 - CMA PERFORMANCE AND MEASUREMENT TABLE

NOTES TO PERFORMANCE AND MEASUREMENT TABLE

Note 1. DB Contractor shall record a Defect in accordance with Section 9.4.2 and Section 9.4.3 upon failure to achieve any of the requirements set forth in the Performance Objective or Measurement Record. DB Contractor shall complete hazard mitigation, temporary repair, and permanent repair of each Defect within the specified Defect Repair Period as set forth in Section 9.4.4 and Section 9.4.5.

Note 2. DB Contractor shall conduct hazard mitigation with respect to a Category 1 Defect to mitigate the hazard to Users or imminent risk of damage or deterioration to property or the environment such that the hazard no longer exists. DB Contractor shall complete temporary repair where needed, monitor hazard mitigation, and take action to avoid a recurrence of the hazard prior to the permanent repair. Refer to Section 9.4.5 for TxDOT's rights to conduct hazard mitigation and temporary repair and the remedies available to TxDOT.

Note 3. DB Contractor shall conduct permanent repair of all Defects to restore the condition of a Maintained Element: (a) to the standard required for new construction; or (b) to a condition such that the Measurement Record is achieved.

Note 4. Unless stated otherwise only in this table, measurements shall be conducted using procedures, techniques, and measuring equipment consistent with TxDOT's Pavement Management Information System Rater's Manual, TxDOT Designation TEX-1001-S "Test Procedure for Operating Inertial Profilers and Evaluating Pavement Profiles" and TxDOT Specification No. TxDOT 968-62-65 "Pavement Condition Data Collection Services".

Note 5. For Element Category 1.1 (ride quality) the Performance Requirements shall apply to all mainlines and frontage roads and to ramps, direct connectors, and other roadways including cross streets greater than or equal to 0.5 miles in length within the Maintenance Limits.

Note 6. Pavement distress data includes distresses identified directly by automated methods and distresses revealed by post-processing of visual images obtained during data collection by TxDOT certified visual distress raters for flexible and rigid pavements.

Note 7. For travel lane ride quality: (i) Performance Requirements for the Second Maintenance Term shall come into effect for Performance Sections that do not meet the Performance Requirements in the Initial Maintenance Term only after DB Contractor has restored the Initial Maintenance Term ride quality through permanent repair; and (ii) Performance Requirements for the Third Maintenance Term shall come into effect for Performance Sections that do not meet the Performance Requirements in the Second Maintenance Term only after DB Contractor has restored the Second Maintenance Term ride quality through permanent repair.

Note 8. Subject to Section 9.4.4, for every Performance Section which does not meet the travel lane ride quality Performance Requirement as demonstrated by the annual pavement Specialist Inspection in year Y, the permanent repair to restore ride quality shall be completed prior to the date of the annual pavement Specialist Inspection in year Y+1. For every Performance Section with average RI > 120" per mile, the permanent repair to restore ride quality shall be completed no later than 6 months after the ride quality Defect is first identified.

1. Pavement
2. - Drainage
3. - Structures
4. - Earthwork

1. Performance Objectives
2. Defect Repair Periods
3. Inspection and Measurement Methods
4. Measurement Records

**Four Maintained Elements**

**Four Key Requirements**

| MAINTAINED ELEMENT CATEGORY | REF. | MAINTAINED ELEMENT | PERFORMANCE OBJECTIVE | DEFECT REPAIR PERIOD (See Note 2 & Note 3) | INSPECTION AND MEASUREMENT METHOD (See Note 4) | REF. | MEASUREMENT RECORD (See Note 1) |
|-----------------------------|------|--------------------|-----------------------|--|--|------|---------------------------------|
|-----------------------------|------|--------------------|-----------------------|--|--|------|---------------------------------|

**Two Tables**

| HAZARD MITIGATION AND PERMANENT REPAIR OF CATEGORY 1 DEFECTS |     |                         |  |                            |  |       |  |
|--|-----|-------------------------|--|----------------------------|--|-------|--|
| 1) PAVEMENT  | 0.1 | All Maintained Elements | Provide hazard mitigation and permanent repair to any Category 1 Defect in a pavement Maintained Element.        | 24 hours hazard mitigation | The inspection and measurement method for the identification of Category 1 Defects may include any of the methods in this Table. | 0.1.1 | No Category 1 Defects, including but not limited to: any failure as defined in TxDOT PWIS System Rater's Manual. |
| 2) DRAINAGE  | 0.2 |                         | Provide hazard mitigation and permanent repair to any Category 1 Defect in a drainage system Maintained Element. | 3 months permanent repair  |  |       | not limited to: any failure of a ... to accumulate on the travel way to represent a hazard because of its        |
| 3) STRUCTURES  | 0.3 |                         | Provide hazard-mitigation and permanent repair to any Category 1 Defect in a structures Maintained Element.      |                            |  |       | not limited to: any structural ... , crack or settlement that exceeds the  |
| 4) EARTHWORK   | 0.4 |                         | Provide hazard mitigation and permanent repair to any Category 1   |                            |  | 0.4.1 | No Category 1 Defects, including but not limited to: any settlement,   |

- Three Repair Types**
1. Hazard Mitigation
  2. Temporary Repair
  3. Permanent Repair

1. Cat. 1 Defects
2. Cat. 2 Defects

 Contract Reference:  
CMA Specification (Item 9), Section 9.4.1

# Repair Types

The sequence of mitigation and repair measurements are shown below:

## Hazard Mitigation

Mitigate a hazard to Users or imminent risk of damage or deterioration to property or the environment such that the hazard no longer exists

## Temporary Repair

Restore the normal flow of traffic in a safe manner prior to a permanent repair

## Permanent Repair

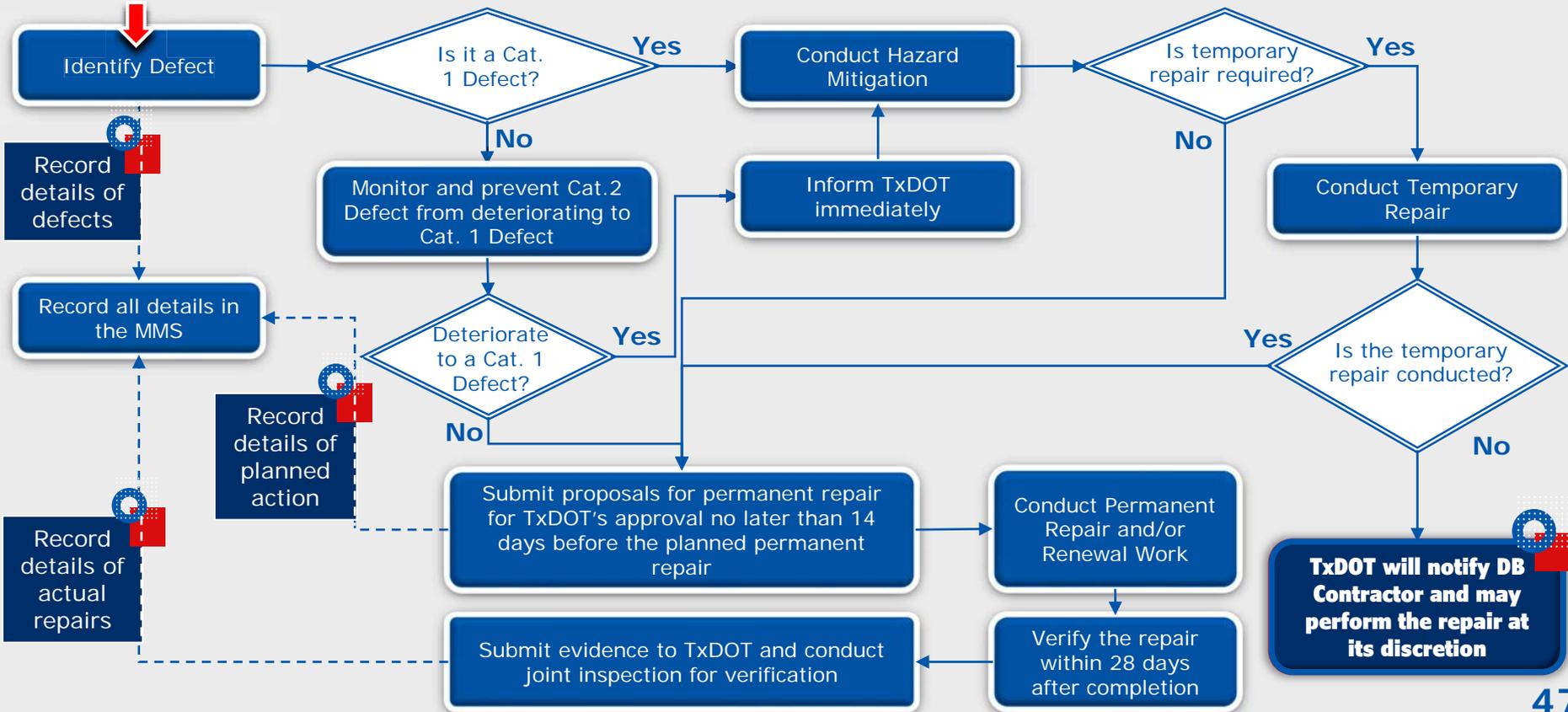
Restore the condition of a Maintained Element (a) to the standard required for new construction; or (b) to a condition such that no Defect exists

Cat. 1 Defects Only

Cat. 1 and Cat. 2 Defects

# Defect Identification and Repair Process

★ Contract Reference:  
CMA Specification (Item 9), Section 9.4

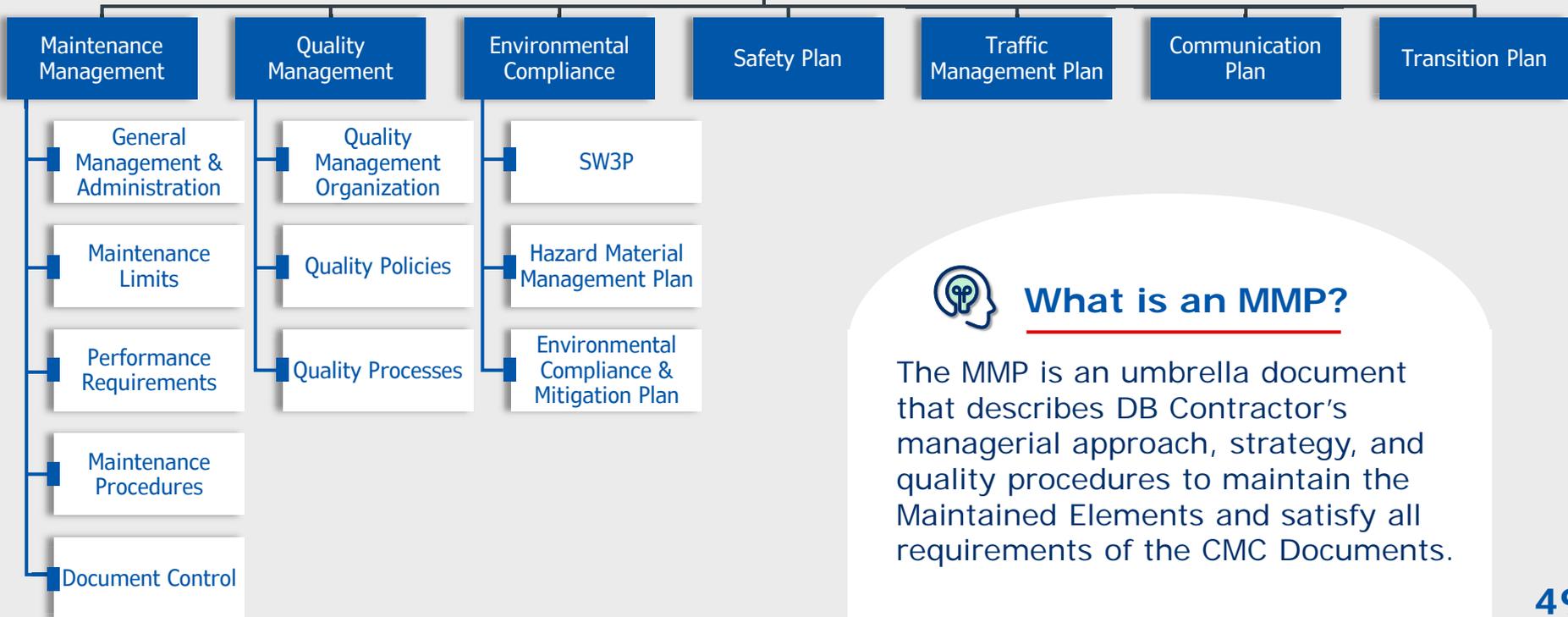




# 10 Maintenance Management Plan

# Maintenance Management Plan (MMP)

## Typical MMP Components



★ Contract Reference: CMA Specification (Item 9) Section 9.2.1 Attachment 9-2

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★ Contract Reference: CMA GC, Section 4.2



### What is an MMP?

The MMP is an umbrella document that describes DB Contractor’s managerial approach, strategy, and quality procedures to maintain the Maintained Elements and satisfy all requirements of the CMC Documents.

# MMP Template (Attachment 9-2)

- A Maintenance Management Template (Attachment 9-2) is provided as part of the CMC documents that:

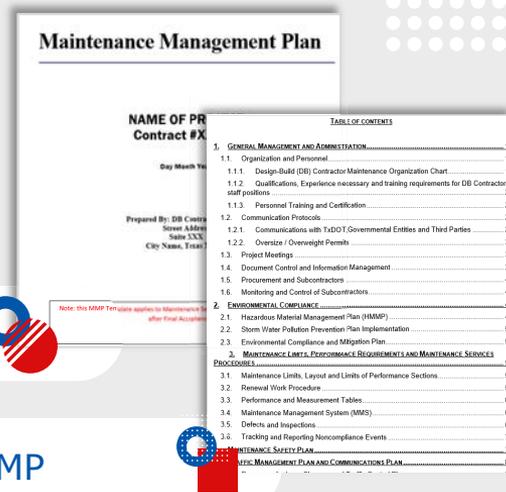
defines the structure and required contents of the MMP

identifies the procedures (i.e. detailed steps) that will be utilized

promotes a consistent approach to maintenance management document

ensures inclusion of key components of MMP

facilitates management and approval for TxDOT



**Maintenance Management Plan**

NAME OF PROJECT: \_\_\_\_\_  
 Contract #X: \_\_\_\_\_  
 Day Month Year: \_\_\_\_\_

Prepared By: DB Contractor  
 Street Address: \_\_\_\_\_  
 State, ZIP: \_\_\_\_\_  
 City Name, State: \_\_\_\_\_

*Note: this MMP Template applies to Maintenance Plans after final acceptance.*

| TABLE OF CONTENTS   |          |
|---|----------|
| <b>1. GENERAL MANAGEMENT AND ADMINISTRATION</b>   | <b>1</b> |
| 1.1. Organization and Personnel   | 1        |
| 1.1.1. Design-Build (DB) Contractor Maintenance Organization Chart                                      | 1        |
| 1.1.2. Qualifications, Experience necessary and training requirements for DB Contractor staff positions | 2        |
| 1.1.3. Personnel Training and Certification   | 2        |
| 1.2. Communication Protocols  | 2        |
| 1.2.1. Communications with TxDOT Government Entities and Third Parties                                  | 2        |
| 1.2.2. Overseer / Oversight Permits   | 3        |
| 1.3. Project Meetings   | 3        |
| 1.4. Document Control and Information Management  | 3        |
| 1.5. Procurement and Subcontractors   | 4        |
| 1.6. Monitoring and Control of Subcontractors   | 4        |
| <b>2. ENVIRONMENTAL COMPLIANCE</b>  | <b>4</b> |
| 2.1. Hazardous Material Management Plan (HMMP)  | 4        |
| 2.2. Storm Water Pollution Prevention Plan Implementation   | 5        |
| 2.3. Environmental Compliance and Mitigation Plan   | 5        |
| <b>3. MAINTENANCE LIMITS, PERFORMANCE REQUIREMENTS AND MAINTENANCE SERVICES PROCEDURES</b>              | <b>5</b> |
| 3.1. Maintenance Limits, Layout and Limits of Performance Sections                                      | 5        |
| 3.2. Renewal Work Procedure   | 5        |
| 3.3. Performance and Measurement Tables   | 6        |
| 3.4. Maintenance Management System (MMS)  | 6        |
| 3.5. Defects and Inspections  | 6        |
| 3.6. Tracking and Reporting Noncompliance Events  | 7        |
| <b>4. MAINTENANCE SAFETY PLAN</b>   | <b>7</b> |
| <b>5. PUBLIC MANAGEMENT PLAN AND COMMUNICATIONS PLAN</b>  | <b>8</b> |



# MMP Submittal and Updates

## D&C Phase

Initial MMP Submittal

No later than 120 days before the scheduled Initial Maintenance Term Commencement Date.

## O&M Phase

Periodic MMP updates

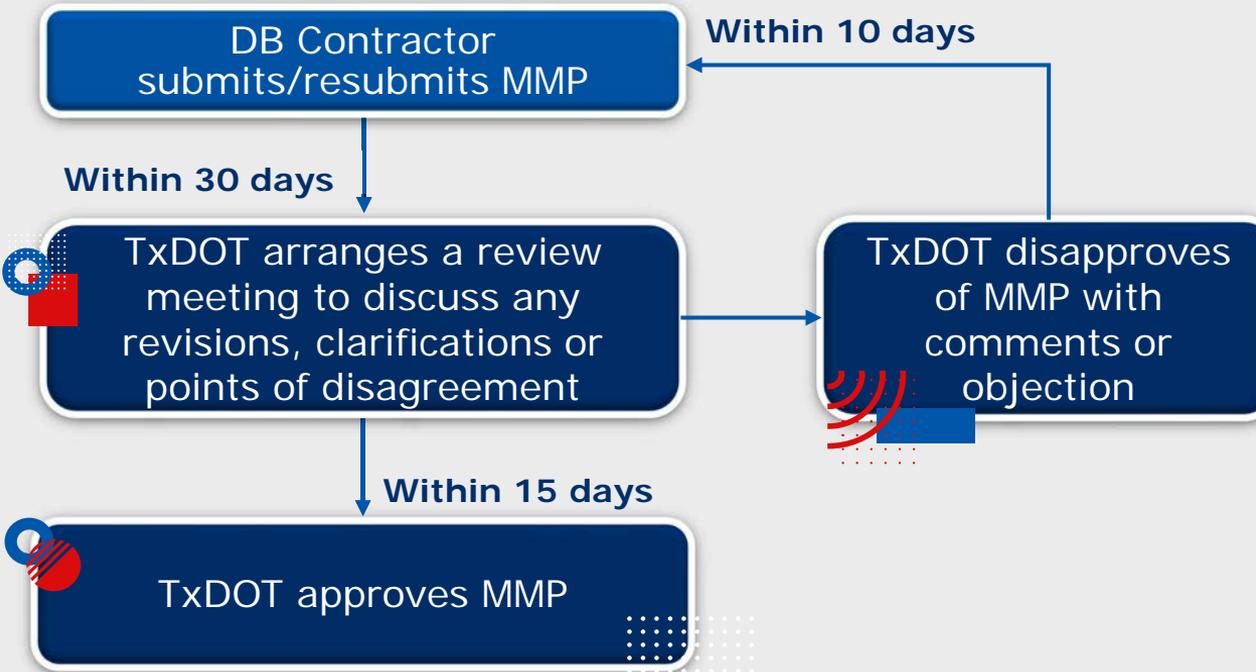
No later than 60 days after the occurrence of any of the following changes:

- Key maintenance personnel
- Procedure required to prevent recurrence of a Noncompliance Event or Nonconforming Work
- Performance and Measurement Table
- Maintenance standard affecting a procedure

★ Contract Reference: CMA GC, Section 4.2

# MMP Review Process

TxDOT shall review the MMP and each update in accordance with the following process.





# 11 Quality Management

★ Contract Reference: CMA GC, Section 4.3,  
DBA GC, Section 4.3

## Renewal Work

- Whenever Renewal Work is undertaken that requires design work or construction work, DB Contractor shall follow procedures systems and obligations set forth in the Section 4.3 of the DBA General Conditions (see screenshot on the right) as appropriate to the nature of the work to be performed, in TxDOT's discretion.
- Comply with TxDOT QAP for Renewal Work when applicable (see next slide).

### 4.3 Quality Management



DB Contractor is responsible for all quality assurance and quality control activities necessary to fulfill all of its obligations under the Contract Documents. DB Contractor shall undertake all aspects of quality assurance and quality control for the Project and Work in accordance with the approved Quality Management Plan (QMP) and Good Industry Practice.

The QMP shall consist of the Professional Services Quality Management Plan (PSQMP) and the Construction Quality Management Plan (CQMP) as described in [Section 4.3.3](#) and [Section 4.3.4](#). These distinct plans shall be coordinated with one another such that common Quality Management System (QMS) requirements, such as control of documents, control of records, quality training, process auditing, control of nonconformance, corrective and preventive action, and opportunities for improvement, can be addressed with a single approach. The component plans of the QMP shall comply with ISO 9001:2015 and the requirements of the version of the QAP for DB Projects in effect on the Effective Date. In the event of a conflict between the QMP and the QAP for DB Projects, the QAP for DB Projects in effect on the Effective Date will control.

DB Contractor shall contract for all PSQAF and IQF services through one or more independent firms.

The PSQAF and the IQF shall not be owned at any time during the term of the Design-Build Contract by DB Contractor or any subsidiary or related company affiliated with DB Contractor or the Design Firms unless agreed to in writing by TxDOT at TxDOT's sole discretion.

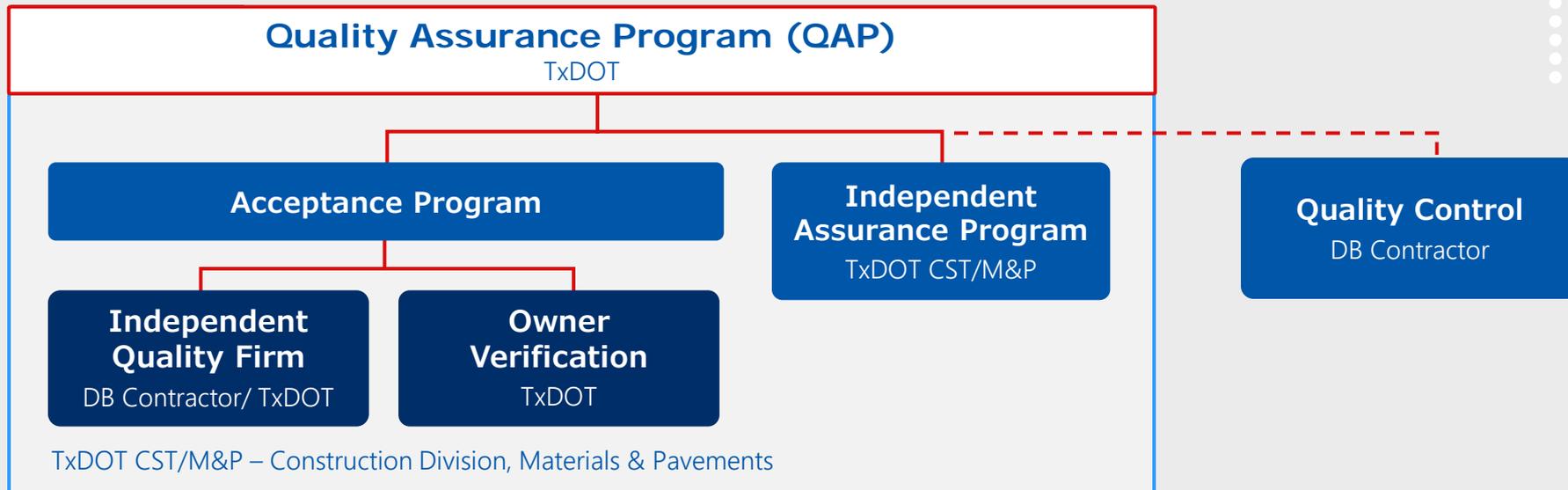
DB Contractor shall not terminate its agreement with the PSQAF or IQF, or permit or suffer any substitution or replacement of the PSQAF or IQF, except with TxDOT's prior written approval.

DB Contractor shall cause the Subcontracts to be entered into between DB Contractor and the PSQAF and between DB Contractor and the IQF to provide that: (a) the PSQAF and the IQF shall owe a duty of care to TxDOT in carrying out its obligations in relation to the Project; and (b) the Professional Services Quality Assurance Manager (PSQAM) and the IQFM shall be independent from DB Contractor, including by having authority independent of the Project Manager, and shall not be directed by the Project Manager.

DB Contractor shall prepare and submit a comprehensive QMP to TxDOT for approval. The QMP shall describe the authority and responsibility for the administration of the QMP and describe how all

the design and construction quality management and operational requirements of the QMP will be met. The QMP shall be consistent with and expand upon the quality approaches and commitments submitted by DB Contractor prior to the Effective Date. DB Contractor shall address any comments received from TxDOT regarding the relevant section of the initial QMP submitted by DB Contractor prior to the Effective Date. The QMP shall be conformed and updated annually. DB Contractor shall revise its QMP within 14 days of TxDOT or DB Contractor detection of a substantial or systemic problem related to the Work, or as directed by TxDOT. Submissions of the QMP and all updates to the QMP shall include both a clean copy and a copy tracking all changes since the previous approval.

# Quality Assurance Program for CDA/Design-Build Projects with a CMA



Quality Assurance Program for CDA / Design-Build Projects with a Capital Maintenance Agreement with Three Optional 5-Year Terms

[https://ftp.txdot.gov/pub/txdot-info/cst/qap\\_db.pdf](https://ftp.txdot.gov/pub/txdot-info/cst/qap_db.pdf)



# 12 Nonconforming Work

★ *Contract Reference:  
CMA Specification (Item 9), Section 9.8.2  
and CMA GC, Section 5.3*



## Nonconforming Work

- Nonconforming Work means Maintenance Services that do not conform to the requirements of the CMC Documents, the Governmental Approvals, or applicable Law.

★ Contract Reference:  
CMA GC, Section 5.3

## Rejection, Removal and Replacement of Nonconforming Work

TxDOT-rejected nonconforming work must be removed and replaced to comply with the CMC Documents at the DB Contractor's cost.

There will be no adjustment to the Maintenance Price or any other form of relief.

DB Contractor must take prompt action to prevent similar nonconforming work from happening in the future.

TxDOT not discovering the nonconforming work earlier does not constitute acceptance.

★ Contract Reference: CMA GC, Section 5.3.1

## TxDOT Options

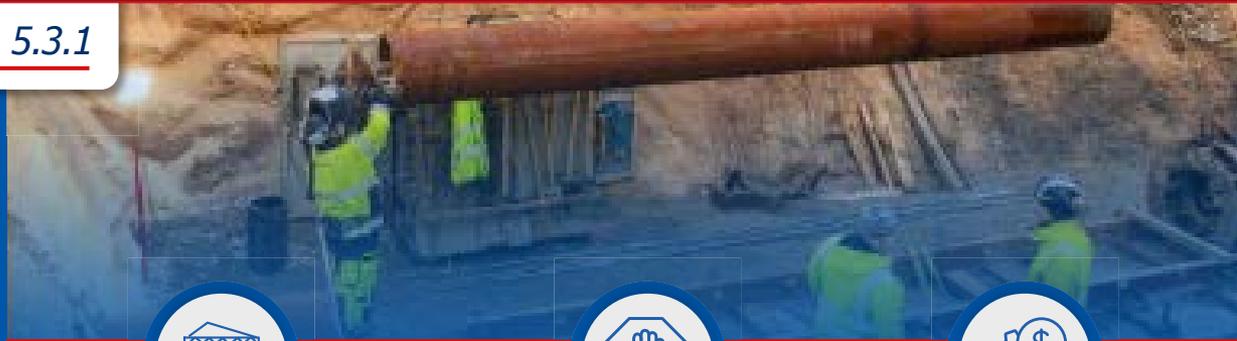
TxDOT has two options for addressing Nonconforming Work:

### Option 1:

Rejection: Removal and Replacement of Nonconforming Work

### Option 2:

Acceptance: Agree to accept Nonconforming Work without requiring it to be fully corrected



- Corrections are to be made within 10 days
- Or within 10 days
  - Provide TxDOT a correction schedule.
  - Begin the correction
  - Diligently prosecute correction per approved schedule.



- If DB Contractor does not comply within 10 days, then TxDOT may cause the Nonconforming Work to be remedied or removed and replaced.



- Removal and replacement of the Nonconforming Work will be at DB Contractor's cost and without any adjustment to the Price or any Completion Deadline or any other relief.

★ Contract Reference: CMA GC, Section 5.3.2

## TxDOT Options

TxDOT has two options for addressing Nonconforming Work:

### Option 1:

Rejection: Removal and Replacement of Nonconforming Work

### Option 2:

Acceptance: Agree to accept Nonconforming Work without requiring it to be fully corrected



- With this option, TxDOT is entitled to reimbursement from the DB Contractor based on TxDOT's selection from two options



1. The amount deemed appropriate by TxDOT as compensation for all impacts relating to the Nonconforming Work.



2. The amount reasonably allocated to the work had it been performed in accordance with the Contract Documents. 100% of the DB Contractor's cost savings from not performing the work according to the CMC Documents.

*Alternatively, TxDOT may deduct the reimbursement amount from any sums owed to the DB Contractor.*



# 13 Liquidated Damages and Charges

# Types of Liquidated Damages and Charges

## Key Personnel Unavailability Liquidated Damages

For each day that the relevant Key Personnel role is not filled by an approved individual.

## Liquidated Damages and Lane Rental Charges (optional)

Liquidated Damages and Lane Rental Charges assessed for certain Lane Closures during the Maintenance Period as set forth in Exhibit 8 to this CMA.

## Noncompliance Charges (optional)

Upon assessment of the tenth Noncompliance Point pursuant, and upon assessment of each subsequent tenth Noncompliance Point, TxDOT shall be entitled to immediate and automatic Noncompliance Charges per Noncompliance Point.

 Contract Reference: CMA Exhibit 8

★ Contract References:  
CMA Section 6 and CMA GC,  
Section 7.5

## Liquidated Damages

- May be assessed by TxDOT for DB Contractor noncompliance.
- Are not and do not constitute a penalty.
- Represent good faith estimates and evaluations as to the actual potential damages that TxDOT would incur as a result of DB Contractor's noncompliance.
- May be deducted by TxDOT from any amounts owned to DB Contractor.



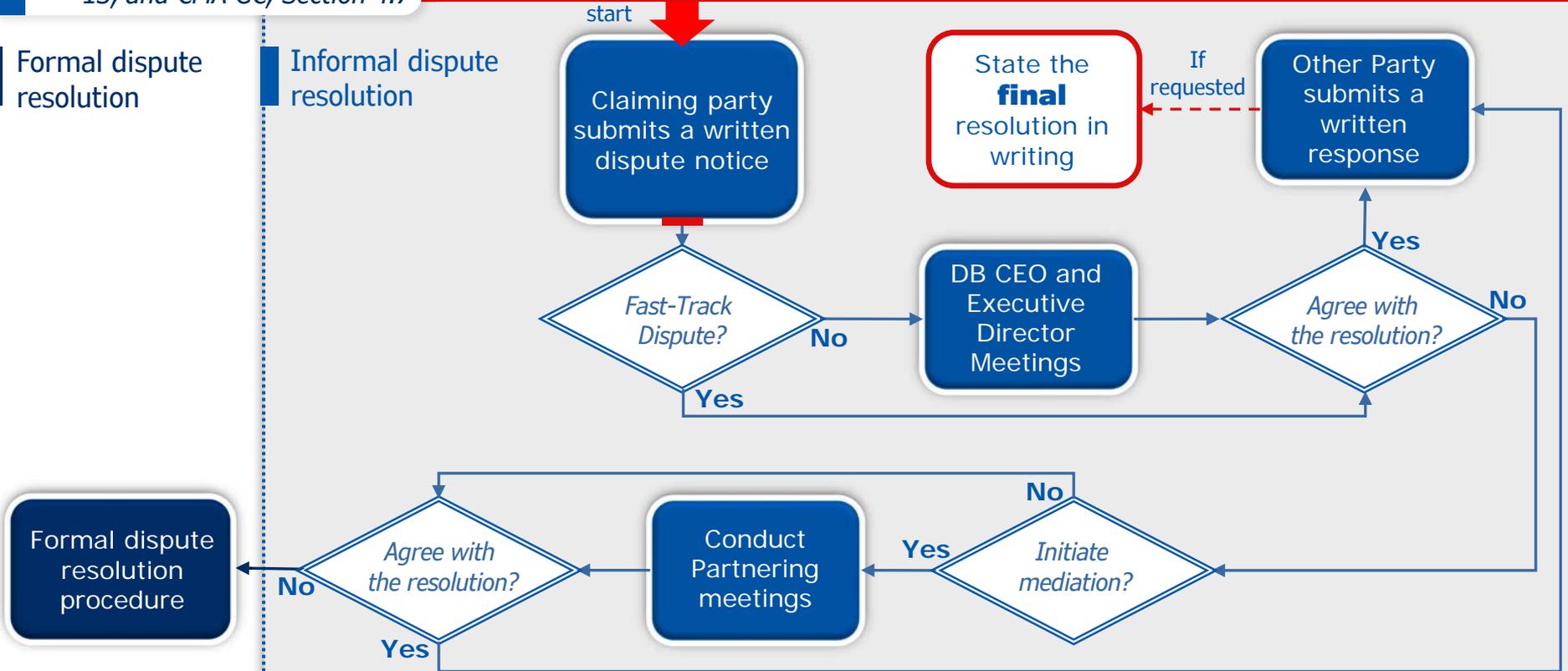
# 14 Dispute Resolution

★ Contract Reference:  
CMA Section 10.1, Exhibit  
13, and CMA GC, Section 4.7

# Dispute Resolution Procedure

Formal dispute resolution

Informal dispute resolution



 **Contract Reference:**  
CMA GC, Section 4.7.1

# Dispute Notice



If the Parties have mutually agreed that the Dispute is a Fast-Track Dispute



The date of the act, inaction or omission giving rise to the Dispute



An explanation of the Dispute, including a description of its nature, circumstances and cause



A reference to any pertinent provision(s) from the CMC Documents



If applicable and known, the estimated dollar amount of the Dispute, and how that estimate was determined (including any cost and revenue element that has been or may be affected)



If applicable, an analysis of the schedule showing any changes or disruptions (including an impacted delay analysis reflecting the disruption in the manner and sequence of performance that has been or will be caused, delivery schedules and staging)



If applicable, the claiming Party's plan for mitigating the amount claimed and the delay claimed



The claiming Party's desired resolution of the Dispute



Any other information the claiming Party considers relevant



## Formal Dispute Resolution

- Disputes are resolved pursuant to the administrative rules promulgated in accordance with Section 201.112(a) of the Code, adopted by TxDOT in accordance with the Texas Administrative Procedure Act, and effective under Rule §9.2 of Subchapter A, Chapter 9, Part 1, Title 43 of the Texas Administrative Code and subject to (i) the procedures set forth in Section 4.7 of the CMA General Conditions and (ii) the requirements set forth in Exhibit 13 to this CMA.



# 15 Maintenance Personnel

★ Contract Reference:  
CMA Section 6.3, 7, Exhibit 12

★ Contract Reference:  
CMA GC, Section 7.3

★ Contract Reference: CMA  
Specification (Item 9), Section 9.2.3

# Maintenance Personnel

## DB Contractor

### Maintenance Manager (Key Personnel)

Point of contact and overseeing the performing of the Maintenance Services.

### Maintenance Safety Manager

Carrying out the Maintenance Safety Plan and all safety-related activities

### Maintenance Quality Manager

Performing all quality responsibilities in accordance with the MQMP

### Field Representatives

Present at the job site at all times while Maintenance Services are in progress

### Additional Quality Management Personnel (as required)

In connection with Renewal Work



 **Contract Reference:**  
CMA GC Section 7.3

# Key Personnel Change Process



## Notification

Notify TxDOT in writing of any proposed changes in a person filling a Key Personnel role



## Written Consent

Shall not change, or permit any change in, the person filling a Key Personnel role without the prior written consent of TxDOT.



## Approval

TxDOT shall be given the opportunity to interview and approve or disapprove the replacement candidate(s).



## Replacement

Propose a replacement with equivalent or better qualifications who shall be available within 30 days after TxDOT's approval.

If not filled by an approved individual

**Key Personnel Unavailability Liquidated Damage**

*Any change in Key Personnel will require TxDOT's approval*

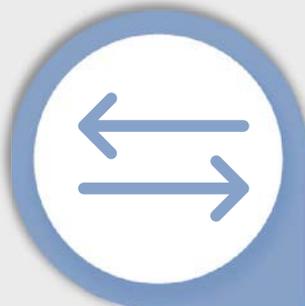


# 16 Change Management

# Four Types of Changes in CMC Documents

## Deviation

- Issued in writing by TxDOT:
  - ✓ a no-cost change in the Maintenance Services or other requirements of the CMC Documents



## Directive Letter

- Issued by TxDOT:
  - ✓ in the event of any desired change in the Maintenance Services or
  - ✓ in the event of any Claim or Dispute regarding the scope or DB Contractor's performance



## Change Order

- Initiated by TxDOT or DB Contractor:
  - ✓ To modify the scope
  - ✓ To revise the Maintenance Price
  - ✓ To revise other terms and conditions of the CMC Documents



## Contract Amendment

- Mutually agreed between TxDOT and DB Contractor:
  - ✓ To revise terms and conditions of the CMC Documents



TxDOT may issue a Unilateral Change Order at any time, regardless of whether it has issued a Request for Change Proposal or received a Request for Change Order.

 Contract Reference: CMA Section 5, Exhibit 7 and CMA GC, Section 4.5

# Change Orders Events



Force Majeure Events



Hazardous Materials Management



Damage to the Project

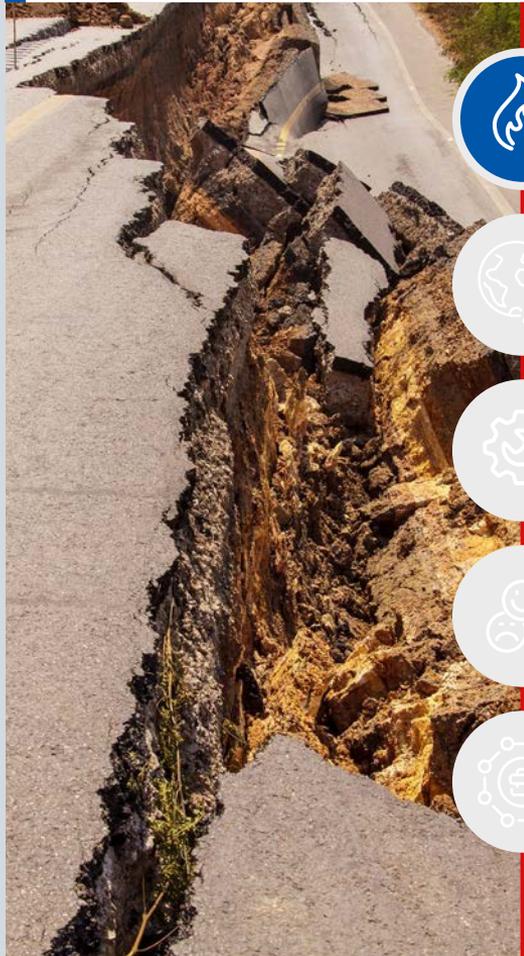


Discriminatory Changes



Non-Discriminatory Changes

 Contract Reference: CMA Section 5, Exhibit 7 and CMA GC, Section 4.5



## Force Majeure Events

- TxDOT issues Change Orders to compensate DB Contractor for additional costs directly attributable to Force Majeure Events.
- DB Contractor's rights to recover additional costs directly attributable to Force Majeure Events shall not include delay and disruption damages.

★ Contract Reference: CMA Section 5, Exhibit 7 and CMA GC Section 4.5



## Hazardous Materials Management

- TxDOT issues Change Orders to compensate DB Contractor for additional costs directly attributable to Hazardous Materials Management, except Hazardous Materials Management costs arising out of or relating to DB Contractor Releases of Hazardous Materials.

 Contract Reference: CMA Section 5, Exhibit 7 and CMA GC Section 4.5



## Damage to the Project

- DB Contractor is entitled to a Change Order for its reasonable and documented costs to repair direct physical damage to any of the Maintained Elements due to the acts of third parties or listed events beyond DB Contractor control.

★ Contract Reference: CMA Section 5, Exhibit 7 and CMA GC Section 4.5

## Discriminatory Changes

- TxDOT has the right to adopt at any time, and DB Contractor acknowledges it must comply with all Discriminatory Changes.
- DB Contractor implements a Discriminatory Change only after TxDOT issues a Change Order or Directive Letter.

★ Contract Reference: CMA Section 5, Exhibit 7 and CMA GC Section 4.5

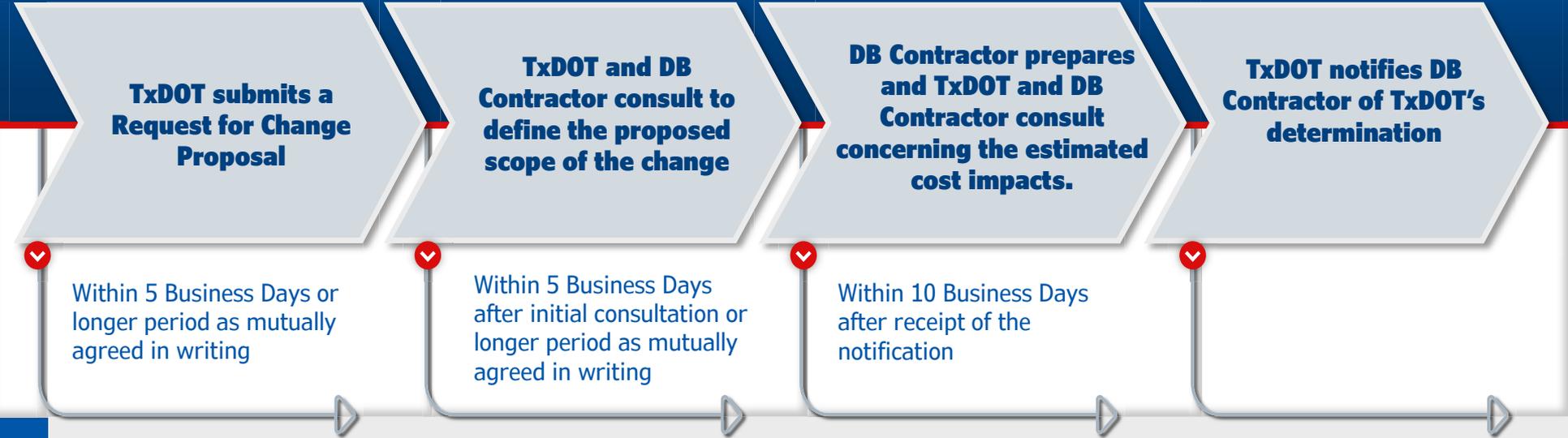
## Non-Discriminatory Changes

- Non-Discriminatory Changes do not require a Change Order or Directive Letter.
- DB Contractor is entitled to an increase in the Maintenance Price solely for additional costs required for Renewal Work due to a Non-Discriminatory Change only if TxDOT directs DB Contractor to implement the Non-Discriminatory Change (or DB Contractor is otherwise obligated by Law to implement such Non-Discriminatory Change) prior to the date when DB Contractor performs or is scheduled to perform the Renewal Work (if any) on the affected Maintained Element.



# TxDOT-Initiated Change Orders

★ Contract Reference: CMA GC Section 4.5.4



**TxDOT may request changes at any time, except any change that:**

- is not in compliance with applicable Laws;
- would contravene an existing Governmental Approval and such contravention could not be corrected by the issuance of a further or revised Governmental Approval;
- constitutes a fundamental change in the nature or scope of the Maintenance Services;
- would cause an insured risk to become uninsurable;
- would materially adversely affect the health or safety of workers or users of the Project;

# DB Contractor-Initiated Change Orders

## Eligible Changes for DB Contractor:

- additional costs directly attributable to additional Maintenance Services resulting from TxDOT-Directed Changes for which TxDOT has not submitted a Change Order or a Request for Change Proposal;
- additional costs relating to Force Majeure Events, Hazardous Materials, Non-Discriminatory Changes and Damage to the Project; and
- additional costs directly attributable to uncovering, removing and restoring the work.

TxDOT may reject the Request for Change Order at any point in the process. TxDOT's failure to respond to a complete Request for Change Order within 15 Business Days of delivery of the request shall not be deemed an acceptance of the Request for Change Order, and DB Contractor shall have the burden of following up with TxDOT on the status of any Request for Change Order submitted.



## PCO Notice

DB Contractor delivers Each PCO Notice as promptly as possible after the occurrence of such event or situation.

## Request for Change Order

DB Contractor delivers a Request for Change Order within 30 days after delivery of the PCO Notice or within 10 Business Days after receipt of TxDOT's determination to require a Request for Change Order

## Additional Information to TxDOT

DB Contractor shall furnish, when requested by TxDOT or its designee, such further information and details as may be required to determine the facts or contentions involved.

## Response and Follow-up

DB Contractor shall provide TxDOT with a monthly update to all outstanding Requests for Change Order describing the status of all previously unfulfilled requirements and stating any changes in projections previously delivered to TxDOT, expenditures to date and time anticipated for completion of the activities for which the time extension is claimed.

# Content of Change Orders



**Form of Change Order**



**Details of Change Order**



**Justification**



**Certification**



**Certificate of Interested Parties (Form 1295)**





## Form of Change Order

- See CMA Exhibit 7



## Change Order Contents include:

- A description of additions, deletions and modifications to the existing requirements of the CMC Documents.
- A breakdown for labor, materials, equipment and markups for overhead and profit, unless TxDOT agrees otherwise.
- Other supporting documentation as may be requested by TxDOT.





## Justification

- Contains a detailed narrative justification therefor, describing the circumstances underlying the proposed change.
- Describes the data and documents that establish the necessity and amount of such proposed change.





## Certification

- The amount of compensation requested is justified as to entitlement and amount.
- The amount of compensation requested includes all known and anticipated impacts or amounts that may be incurred as a result of the event or matter giving rise to such proposed change.
- The cost and pricing data forming the basis for the Change Order is complete, accurate and current.





## Certificate of Interested Parties (Form 1295)

- DB Contractor provides a certification to TxDOT certifying that there has been no change to the Interested Parties disclosed in the most recent Form 1295.
- If there has been a change to the disclosure of Interested Parties or if the value of the amendment is \$1,000,000 or greater, file a new Form 1295 with the Texas Ethics Commission as required by the Form 1295 Laws.





# 17 Records Management

Maintenance records in the Maintenance Management System:

★ Contract References: CMA GC, Section 4.2.5, 5.10  
CMA Specification (Item 9), Section 9.6, 9.7.10

### Defects

Description, picture (showing GPS coordinates, location, date-time), identification and categorization of Defects

### Actual Repairs

Details including date-time of actual repairs performed with inspection tests/reports and associated pictures of repairs (showing GPS coordinates, location, and date-time)

### Accidents and Incidents

Accidents and incidents relating to the Maintenance

### Planned Actions

Planned actions including traffic control plan and repair procedure, date-time for scheduled and actual permanent repair of all Defects, [and] date of contractual cure period[, and running total of non-compliance points]

### Complaints

Complaints and reports received from TxDOT and third parties

★ Contract Reference:  
CMA Specification (Item 9), Section 9.6

## Records Management – Maintenance Management System

- ◆ Maintenance Records shall be organized by Performance Section and be recorded in the MMS as follows.



# Records Management - Retention Schedule

## Record Retention

CMC specified time period for retention (if any)



If not specified above

Texas State Records Retention Schedule



If not specified above

the later of the date of completion of the CMC or five years after the date the record or document is generated



At the end of the term, at TxDOT's discretion, DB Contractor either

- a** Submits to TxDOT at DB Contractor's cost and expense all Contracting Information related to this Capital Maintenance Contract in the custody or possession of DB Contractor, or
- b** Preserves such Contracting Information for the respective time periods applicable to TxDOT as set forth in the Texas State Records Retention Schedule.

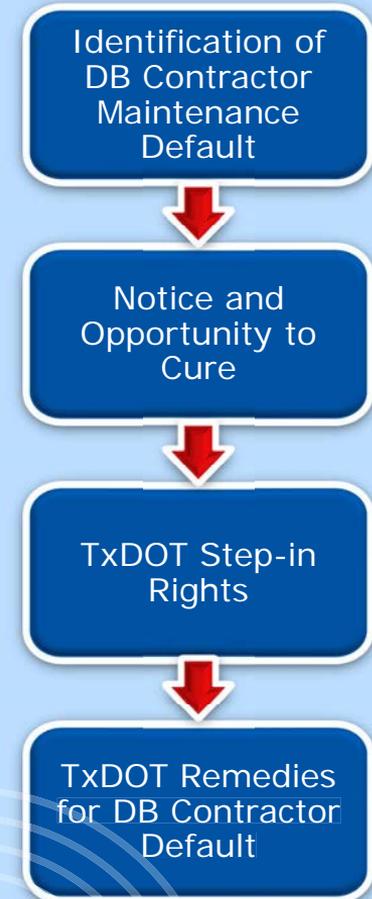


# 18 Default and Termination

★ Contract Reference:  
CMA GC, Section 7.6

## Default

- DB Contractor Maintenance Default:
  - Occurs upon the happening of specific events or conditions.
  - Examples include failure to observe obligations, suspension of services, or violation of laws.
- Opportunity to Cure
  - A period of 10 days to cure if the default can be cured.
  - TxDOT may allow additional time so long as DB Contractor commences such cure within such 10-day period but in no event exceed 60 days in total.
  - Some defaults can not be cured by its nature.
- TxDOT Remedies include termination of the contract, withholding payments, and completing the maintenance services at DB Contractor's cost.



★ *Contract Reference:  
CMA GC, Section 7.7.1  
and 7.7.4*

## Termination for Convenience

TxDOT may, at any time, terminate this Capital Maintenance Contract and the performance of the Maintenance Services by DB Contractor, in whole or in part, if TxDOT determines, in its discretion, that a termination is in TxDOT's best interest ("**Termination for Convenience**")

TxDOT provides a written Notice of Termination for Convenience, specifying extent and effective date.

DB Contractor submits a final termination settlement proposal to TxDOT no later than 90 days from the effective date of termination, unless DB Contractor has requested a time extension in writing within such 90-day period and TxDOT has agreed in writing to allow such an extension.

 Contract Reference:  
CMA GC, Section 7.7.2

## DB Contractor Responsibilities During Termination

-  Stop all specified maintenance services.
-  Notify subcontractors and suppliers of the termination.
-  Provide an inventory of unused materials and project documentation.
-  Complete any remaining maintenance services not terminated.
-  Take actions to ensure safety and protect project assets.
-  Assist TxDOT with a smooth transition of services.



# 19 Resources

# Resources

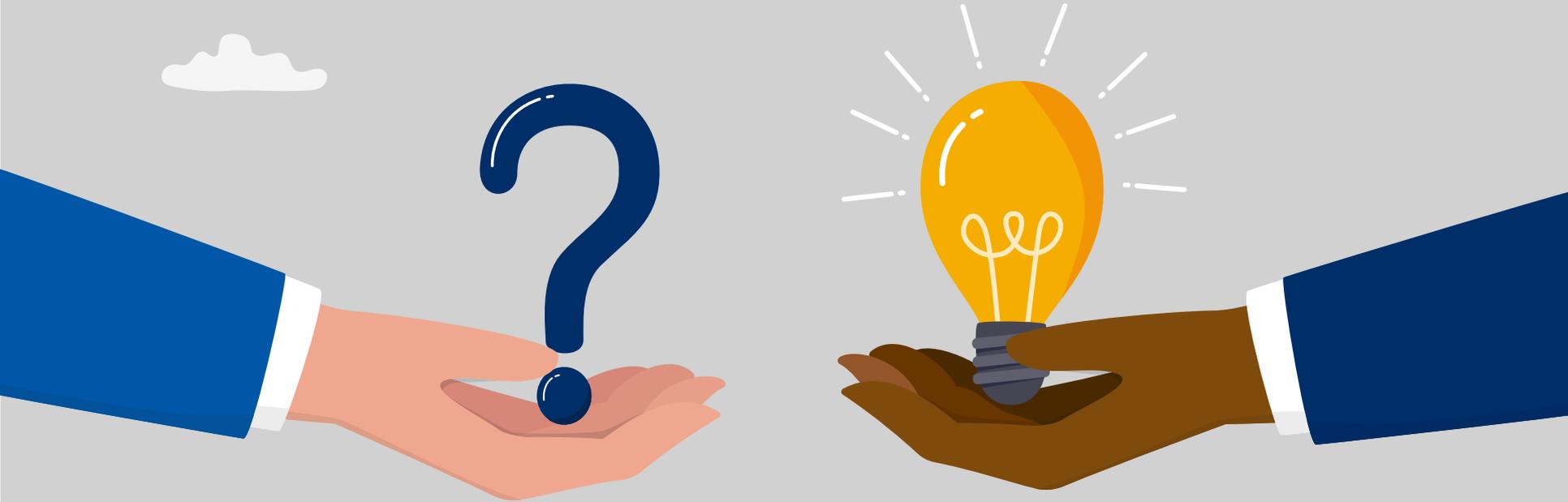
## Resources – Alternative Delivery Projects

Programmatic Documents:

- [Programmatic CMC Documents – Final Version 6.0 \(txdot.gov\)](https://www.txdot.gov/programmatic-cmc-documents-final-version-6.0)



# 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](https://www.txdot.gov) (Keyword: #EndTheStreakTX)

#EndTheStreakTX Toolkit