

Chapter 31 - Protection of Work/Responsibility for Damages

General Responsibilities

Section 00150.75 states that the Contractor is responsible to protect and maintain all work required by the Contract, until the work is completed and accepted, unless that responsibility is specifically relieved by another part of the Contract.

Section 00170.80(b) provides that, upon written request of the Contractor and written approval of the Project Manager (PM), the Agency may relieve the Contractor of responsibility for damage by public traffic on certain completed portions of the work. The PM must provide this relief in writing. The PM may grant temporary, partial, or conditional relief, see Specification 00170.80(c)(1).

If damages due to an occurrence of vandalism exceed \$5000, the Agency may compensate the Contractor if they have provided reasonable protection of the Work.

Under certain conditions, as discussed in Section 00220.60, the Agency is responsible for maintaining the roadway for public traffic. Although the Agency has the authority to perform work that is the responsibility of the Contractor, the PM must use that authority carefully. The PM should give the Contractor the opportunity to perform the work. The Agency forces, or forces other than those of the Contractor, should generally not perform Contract work unless an emergency exists.

Also refer to the warranties in **Chapter 41 - Warranties, Guarantees, Responsibility for Materials and Workmanship** section of this Manual.

Repair of Damage from Public Traffic

When the motoring public has an accident within a construction project, the contract work is frequently damaged. Unless emergency repairs or cleanup need to be performed by public forces, the PM should have the Contractor perform all needed repairs to the contract work.

Following are several different scenarios:

1. An accident has damaged some of the contract work and ODOT has not accepted responsibility under 00170.80(a) or (b).

The PM should:

- Have the Contractor repair the damage to the contract work.
- Hold the Contractor responsible for the cost of the repairs to the contract work. The Contractor may attempt to recover the costs from the party responsible for the damage, if the party is known.

2. An accident has damaged some of the contract work, ODOT has not accepted responsibility under 00170.80(a) or (b). Maintenance forces had to perform emergency repairs or cleanup, and the party responsible for the accident damage is known.

The PM will:

- Ensure the District Manager establishes a CAO (Claims Against Others) expenditure account, charges all associated costs of the work by the Maintenance forces to the CAO.
- Hold the Contractor responsible for all costs of repairs that it had to perform. Share the information the PM has about the party responsible. The Contractor may attempt to recover the costs from the party responsible for the damage.

3. An accident has damaged some of the contract work, ODOT has accepted responsibility under 00170.80(a) or (b), and the party responsible for the damage is known.

The PM will:

- Work with the District Manager to establish a CAO expenditure account
- If Maintenance had to perform emergency repairs or some cleanup due to the accident, all costs would be charged to the CAO expenditure account.
- Order the Contractor to perform needed repairs
- Pay the Contractor for the repairs under the Contract Payment System. The PM must identify those costs with a separate Participation Indicator (sub-job) or separate payment so that the costs can be correctly charged to the CAO directly, or shown on a Journal Entry.
- Charge all associated engineering costs to the same Participation Indicator (sub-job).
- Notify the District Manager when the repair work is complete. The District Manager will initiate closure of the CAO.

4. An accident has damaged some of the contract work, ODOT has accepted responsibility under 00170.80(a) or (b), and the party responsible for the damage is unknown.

The PM will:

- Establish an Order for Force Work so that the public forces can charge emergency repair costs to the project, if public forces performed repairs to the contract work due to the accident. Negotiate the cost of incidental cleanup from the accident with the District Manager.
- Order the Contractor to repair damage from the accident and pay the costs under the appropriate bid item or through an appropriate Contract Change Order or Order for Extra Work to Be Performed on a Force Account Basis. Costs would be charged to the project.