

## CHAPTER 31 – PROTECTION OF WORK / RESPONSIBILITY FOR DAMAGES

### 31-1 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.

Subsection 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 as specified in 00170.80(c)(1).

As specified in 00170.80(d), if damages due to an occurrence of vandalism exceed \$5,000, 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*.

### 31-2 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.

Generally, the Work can be classified in one of the two (2) following scenarios. Contact the Contract Administration Engineer (CAE) if you need further assistance.

**1. IF the Agency has not accepted responsibility for the Work under 00170.80(c):**  
Under this scenario the Contractor is responsible for all associated costs.

The PM will:

- Have the Contractor repair the damage to the Contract Work.
- Hold the Contractor responsible for the cost of the repairs to the Contract Work. These costs are not the responsibility of the Agency. However, as with any issue the Contractor may file a claim to recover these costs. [*Refer to Chapter 27 – Disagreements, Disputes, and Claims*]
- If Maintenance or other Agency forces had to perform emergency repairs or cleanup, the costs must be tracked and back-charged to the Contractor. When public forces perform repairs to the Contract Work, the PM must prepare an [Order for Force Work, form 734-1105](#) so that the public forces can charge emergency repair costs to the Project. Contact the Contract Administration Unit (CAU) who will work with the Highway Program Office, Program and Funding Services Section to establish a subjob for this specific work. Ensure the District Manager has the SFO, expenditure account and subjob to charge all the associated costs of the Work performed by Maintenance or other Agency forces. Once the repair work is completed, the PM must determine the total Agency charges made against the subjob. Prepare a Contract Change Order (CCO) to deduct these Agency charges for the Work from the next progress payment to the Contractor. The use of a CCO will provide the Contractor with a breakdown of the Work and costs involved in the repair Work performed by the Agency.

The Contractor may attempt to recover the costs from the third-party responsible for the damage, if the party is known. ODOT's Highway Program Office, Budget & Maintenance Section, may be able to provide assistance in obtaining Police report information if it is available.

## **2. IF the Agency has accepted responsibility under 00170.80(c).**

Under this scenario the Project will fund all associated costs.

The PM will:

- Track all emergency repairs or cleanup costs so they can be paid by Project funding. Contact the CAU who will work with the Highway Program Office, Program and Funding Services Section, to establish a subjob for this specific Work.
- Contact the ODOT Highway Program Office, Budget & Maintenance Section to learn if they know who the responsible third-party is so they can be billed for the damage.
- If public forces will perform repairs to the Contract Work, the PM must prepare an [Order for Force Work, form 734-1105](#) so that the public forces can charge emergency repair costs to the Project. Establish the cost of incidental cleanup from the accident with the District Manager. All Agency charges for such repairs must be charged against the subjob that was established for this specific Work.

- When the PM directs the Contractor to repair damage from the accident, the PM will pay for the work under the appropriate bid item or through an appropriate Contract Change Order (CCO) or Extra Work Order (EWO). Costs will be charged to the Project, specifically against the subjob that was established for this specific Work.
- Notify ODOT Highway Program Office, Budget & Maintenance Section when the repair Work is complete. This Section will work with the PM and others to obtain the necessary documentation in order to recover the costs from the responsible third-party.

