

5440000 CRASH CUSHIONS  
COMMENTS FROM INTERNAL/INDUSTRY REVIEW

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John Mauthner  
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Comments: (6-23-11)

I recommend to revise 544-4 to read “, *and restoration of crash cushions damaged during construction operations.*”

Response:

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Russell Gilbert  
813-875-8935  
[rgilbert@alfordconstruction.com](mailto:rgilbert@alfordconstruction.com)

Comments: (6-23-11)

Alford Const. over the last 20 years has installed about 150 permanent (not MOT units). Of those less than 5% have been damaged before final acceptance of the job. The average cost is about 3500.00 for each of those damage repairs. If this spec. change takes effect we will be adding about 5000.00 to our quote price on the permanent crash cushions to cover damage repairs that may or may not happen. The end result of this spec. change in my view will be that FDOT will be paying for damage repairs on all crash cushions that more than likely won't happen. As a taxpayer I think the spec. should remain as is and the damage repairs should be paid for on a as needed basis or at least exempt the Permanent units from the spec. and only apply it to the MOT units.

Response:

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Anonymous

Comments: (6-23-11)

As a prime contractor who has had this occurred several times on one project before, can't agree with this. There is too much uncertainty & risk. I think it's unfair to have the contractor assume all the costs in the repairs on a crash cushion that "may" be damaged. Attempting to put imaginary numbers in a bid to compensate can drastically change the outcome and make you uncompetitive. All bids should have quoted numbers on set parameters, materials, and work involved. There shouldn't be theoretical guesses in a bid. Isn't this what the contingency funds are for??

Response:

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David Price  
813-626-9032  
[www.roadwayspecialty.com](http://www.roadwayspecialty.com)

Comments: (6-23-11)

I am responding to the Industry review sent out on 6-23-2011.

My guess is you are going to have a flood of emails on this. I do not agree with this change at all. There is absolutely no way to protect and newly installed attenuators required to be installed before traffic is to be shifted or to have a roadway opened due to phasing during construction. These items are there to do a job. To protect the traveling public. So when we installed these items, the FDOT and the motoring public is using them for free. If they get damaged, we have to repair them at our cost???? How does this make any sense whatsoever??? I'm not even sure how we can include the cost of the repairs in the bid. How many repairs do we count on? To what extent is the repair?

The same goes for the 7-11.4 traffic signs, signal equipment, highway lighting, and guardrail spec that changed. We install these things and then forced to put traffic against them. Damages are going to occur but we don't know when or to what extent. Again, the FDOT and the public is using these items, however; the Department won't compensate us for the repairs? How can this be???

**Response:**

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J. C. Miseroy  
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Comments: (6-27-11)

Eliminating any compensation for repair to temporary attenuators places too much risk on the contractor. Most damage to these devices occurs at night when there may be no one on the project. Unless the vehicle is disabled, we usually do not know who caused the damage. This makes it very difficult to recover any of the cost for repairs from insurance companies. Repairs to these devices can be > \$200,000 on large interstate reconstruction projects. Why should this be the responsibility of the contractor. We have no control on vehicle speeds, penalties for speeding, driver training, etc.

**Response:**

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Marshall Dougherty, Jr.  
863-370-4079  
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Comments: (6-28-11)

Please remove the second sentence from the proposed Article 544-2 which states:

...Manufacturers seeking evaluation of their crash cushions shall furnish certified test reports showing that their products meet all test requirements of NCHRP 350 or the Manual for Assessing Safety Hardware 2009 (MASH).

The Division II specifications are written instructions to the contractor about construction methods. They aren't instructional information areas for manufacturers wanting to have their product placed on the Qualified Products List. This same topic is fully covered in Subarticle 6-1.3.1.1 of the Division I specifications and doesn't need replication in this proposed Section 544 revision. (It really shouldn't have been in the original 544 specification.) Subarticle 6-1.3.1.1 is the better, and more appropriate, place for this information. Thank you for the opportunity to review and comment on this proposed revision.

Response:

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Scott Pittman  
813-769-3260  
[spittman@ajaxpaving.com](mailto:spittman@ajaxpaving.com)

Comments: (7-8-11)

I believe it is unrealistic to expect the Contractor to estimate the number of times a crash cushion will be damaged throughout the life of a project. The win-win solution to me seems easy. Have the Contractor attempt to track down the driver's insurance company for reimbursement. If the coverage is sufficient to cover the repair costs, then the Contractor will pursue payment through the insurance company. If the driver has no insurance or the information is not available (i.e. hit and run) then the State pays for the repair.

Response:

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Rammy Cone  
813-690-4065  
[rammycone@gmail.com](mailto:rammycone@gmail.com)

Comments: (7-8-11)

Too much risk to transfer to the contractor. How about: "The Contractor will first make an effort to receive reimbursement through the driver's insurance company (if there is one or that information is available), if unsuccessful the DOT will then pay for the repair."

Response:

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John Meagher  
[jmeagher@johnson-bros.com](mailto:jmeagher@johnson-bros.com)

Comments: (7-8-11)

Make the change to state that the contractor will attempt to collect from the driver's insurance company and if that is not possible, then FDOT will reimburse the contractor for the repairs.

Response:

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Tom Craft  
407-625-1975  
[tcraft@prince-sdc.com](mailto:tcraft@prince-sdc.com)

Comments: (7-11-11)

This is an unreasonable revision to the current specification. The contractor will not be able to estimate the number of incidents causing damage to these devices.

Response:

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Tom Boyle  
813-623-5877  
[tom.boyle@gcinc.com](mailto:tom.boyle@gcinc.com)

Comments: (7-12-11)

The proposed change is not appropriate. This proposed change will make each Contractor guess how much money to add to the bid. How much money should each bidder add? What is reasonable? How many times should the Contractor repair a crash cushion before it becomes unforeseen cost and becomes a claim? If a police report is made and the responsible party has insurance then the Contractor can try to seek reimbursement from the responsible party; however, the State should provide reimbursement if 3rd party recovery is unsuccessful.

Response:

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James T. Barfield  
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Comments: (7-14-11)

We have reviewed the subject document, entitled "Crash Cushions," and submit the comments below for your consideration.

As the specification is currently written, provisions are in place for payment to restore damaged crash cushions if in fact damage does occur. With this method, the contractor did not have to inflate the bid price to compensate for unforeseen damage to crash cushion installed on the project. With this proposed change, the bid price will go up and, if there are no instances where damage occurs, the Department will be paying for this increased cost under the bid item. We do not recommend this change.

Response:

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Jeff Smith  
Work Area Protection Corp.  
800-365-6375x7502  
[jsmith@workareaprotection.com](mailto:jsmith@workareaprotection.com)

Comments: (7-14-11)

Payments for crash cushion impacts in workzones are disappearing. The list of states that do this is becoming quite small. New York just eliminated theirs. Contractors in these states do not have a problem with managing their risk. Contractors are on the job and eliminating state involvement on collections from insurance companies, etc. is in the states best interest. However, contractors will now have to research these cushions to pick the unit that reduces their risk the most.

Response:

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Bob Schafer  
[bob.schafer@rangerconstruction.com](mailto:bob.schafer@rangerconstruction.com)

Comments: (7-15-11)

Bad idea.."Specifications have been modified to encourage the use of the most efficient crash cushions." Not true. The Specs are being modified to shift 100% of the liability to the contractor and it's MOT sub. How is a contractor to guess how many times a cushion will be damaged? The State is trying to stretch dollars as far as possible and is already getting unsustainably cheap prices from contractors. All this Spec change will do is have MOT subs quoting \$25,000 per each to assure no risk on their part. How is that benefiting the taxpayers?

Response:

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Chuck Cameron  
772-429-4450  
[Ccameron@dfifl.com](mailto:Ccameron@dfifl.com)

Comments: (7-15-11)

I am in disagreement with the proposed change in the crash attenuator specification to include repairs for third party damage. This additional language, effectively making the Contractor responsible for the acts of others, will adversely impact the FDOT in the long run. Intuitively you can expect contractors to increase bid prices relative to the exposure resulting in additional unnecessary cost to the taxpayers. For every attenuator that is placed there will be a premium cost attached in the event it is damaged; for each attenuator that is installed and not damaged the premium cost will remain with the Contractor. There is also a great potential for dispute and disagreement between Prime Contractors and Specialty Subcontractors providing the installation of the attenuators. Most Prime Contractors require Subcontractors to quote pay items in accordance with the plans and specifications which are also included in their respective Subcontract agreements by reference. In these cases the cost of the repairs and the responsibility to obtain accident reports and claim against motorist insurance policies would fall to the least capable party, the Specialty Subcontractor. These same Specialty Subcontractors have the greatest exposure and the smallest amount of resources in terms of administration, finances, and legal counsel to assist them with the risk exposure that will be forced into their contracts. By review of the FDOT website I have noted no less than 15 certified DBE firms performing this scope of work which seems to put a disproportionate number of DBE's at risk under this proposed change. The last component of this issue is the relative cost of the attenuator materials compared to the installation and mark up for the pay item. As you are aware the material

represents the majority of the cost and the subsequent exposure for damage repairs. This compounds the risk / reward calculation when evaluating attenuator installation as a viable business operation particularly when the product is designed to be at the point of greatest risk and exposure to third party damage; after all it is a crash attenuator. The assumption that compensation for damages can be obtained by pursuing vehicle insurance policies also contains inherent flaws as most insured vehicles in Florida carry the minimum required insurances which are insufficient to cover the cost of the attenuator alone much less other damages incurred in these types of accidents.

Response:

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Jacob Lawrence  
[Jlawrence@superiorfla.com](mailto:Jlawrence@superiorfla.com)

Comments: (7-18-11)

Please do not make any changes to the current attenuator spec.

Response:

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Glen Ballard  
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Comments: (date)

Although I can commend the state for actively pursuing methods to reduce cost to the taxpaying citizens of this state, I feel that it must be done in areas where the exact cost of the change can be quantified. Attenuator's and other items for which it is not possible to quantify the number of times that they will need replacement or repair should be included in all bids in a manner in which the state maintains control of the cost. As the specification is written now the cost is defined as materials plus 20%. Although the number or times that an attenuator may be struck is unknown, the cost for each strike can easily be accounted for. Perhaps a specification change where the contractor is responsible for a certain number and then if that amount is surpassed the state participates in the cost per the current specification would be a good compromise. This may satisfy the needs of both the state and the contractors.

Response:

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Bobby Naik  
904-292-4240  
[bnaik@superiorfla.com](mailto:bnaik@superiorfla.com)

Comments: (7-18-11)

How are Contractors supposed to price the potential for damage to an attenuator? It cannot be accurately forecasted and is usually dependent on the nature of the project. Specification 102-13.12.1 has worked well to alleviate this problem with regards to attenuator damage on projects;

however, the FDOT wants to pass all the risk to the Contractors. Our insurance company will not underwrite this kind of risk because of the uncertainty involved. The FDOT must recognize that requiring Contractors to assume all of the risk and liability for these repairs will noticeably increase costs to the FDOT. We ask that FDOT reconsider the rewrite of this specification.

Response:

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Moe Moussavi  
561-471-4100  
[jwcmoe@jwcheatham.com](mailto:jwcmoe@jwcheatham.com)

Comments: (7-20-11)

Since we do not know how many times a crash cushion is going to be damaged by causes beyond our control, by not paying for the damages you are putting a lot of guess work on the contractors. Any time that the contractor is guessing on unknowns, he will be trying to cover costs that might not happen or happen. This is waste of taxpayer's money. To pay for something that might not happen. Why the Department do the logical thing and just pay for the damage if it happens? Just remember, unknowns cost more money.

Response:

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Robbie Powell  
239-481-5000  
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Comments: (7-20-11)

Specification 544-4 should not be changed to the new proposed specification. By giving the contractor all the risk in the damage repair of the crash cushion, the pricing will be increased. Compensation should be made by either the contractor's insurance company, provided an accident report is available and the contractor provides documentation that he attempted to receive the accident report. The other option would be the replacement of the crash cushion by using Specification 4-3.2.1 allowable cost for extra work.

Response:

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Anonymous

Comments: (7-20-11)

You have a good and fair existing spec in place in regards for repair of damaged attenuators. Your new spec puts the burden on the contractor to estimate the cost of repairs that might or might not occur on a given project. This estimated cost will be passed on to the FDOT in the bidding process even if repairs are not incurred thus passing it on to the tax payers. This new spec does not make any sense and can only lead to increase cost.

Response:

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Anonymous

Comments: (7-20-11)

I believe this will cost both industry and FDOT more during construction. Contractors will have to guess at future replacements and will build in more costs at bid date,if estimate is low for number of replacements, it costs the contractor, if the estimate for number of replacements is high, the FDOT pays for unincirred expense. Current system is fair and reasonable to both parties.

Response:

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John Baldwin  
954-423-2627  
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Comments: (7-20-11)

It is my contention that the State has already in place a most efficient procedure regarding the payment for the installation and the repair of temporary redirective attenuators. By creating a specification change, instead of creating efficiency, which leads to cost savings; the opposite will occur. Contractors will need to inflate their prices to cover unseen damage costs. The process that now allows for units to be repaired only when damaged, eliminates the bloating of prices, and has provided the State and the traveling public the most practical method available. This specification change should not take place.

Response:

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Anonymous

Comments: (7-20-11)

The Contractor will first make an effort to receive reimbursement through the driver's insurance company (if there is one or that information is available), if unsuccessful the DOT will then pay for the repair.

Response:

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