

1021312 MAINTENANCE OF TRAFFIC
COMMENTS FROM INTERNAL/INDUSTRY REVIEW

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Comment: (6-25-13)

Updated Estimates Bulletin is needed to block old pay items and update selection chart.

Response: Agreed.

Guy Laprade
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Comment: (6-28-13)

Crash cushions are widely used in all 50 States but the State of Florida has always set the standard for safety. The Florida Department of Transportation has required temporary redirective crash cushions on its projects for over 30 years to protect the motorist from serious injury when impacting hazards in the work zone.

Initially the contractor was required to keep a spare crash cushion and parts in his yard to expedite the repair process when a crash cushion was impacted. Over the years projects became more complex requiring significantly more crash cushions on its projects which made it difficult to have stand by units on projects.

Crash cushions are rental items provided by the Maintenance of Traffic (MOT) contractor to the Prime contractor. With safety being the major factor, the specifications were revised to compensate the MOT contractor for repairs documented with pictures and manufacturers invoice price for parts plus 20% compensation for labor.

Specification Section 102-9.6 states "Make necessary repairs due to defective material, work, or Contractor operations at no cost to the Department." The Department is compensating the contractor for damage caused by the traveling public only and therefore does not compensate for damage caused by the contractor.

Over the years this has proven to provide a high level of safety for the motorist and assure the Department it was paying for actual repairs. Crash cushions are not insurable and therefore require a burden on the contractor when these units are impacted and there are no means of compensation. This could have a serious impact on repairs going forward in that the condition and performance of these units could deteriorate.

The January 1, 2013 implementation of the Qualified Product List (QPL) revised vendor crash cushion drawings was a major improvement by creating uniformity among the crash cushion systems and gave design and construction personnel better tools for designing and inspecting temporary systems which improved safety.

We feel current Specification Section 102-13.12 for temporary crash cushion, redirective option, capacity projects and less than 50 has not been in effect long enough or used on projects to provide data to support proposed Specification: **1021312 Maintenance of Traffic** revision.

We therefore request you consider retaining the current specification for crash cushion

repair with safety of the motorist the primary factor and continue to monitor.

Response: The proposed changes to Section 102 go with proposed changes to Article 7-14. The Department recognizes this is a change in direction for crash cushions. These changes are a sharing of risk between the Department and Contractor for damages to installed material caused by third parties. Third party damage to temporary and permanent crash cushions will be handled in accordance with 7-14 the same as other installed materials. No changes made.

Christian Cummings
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Comment: (7-2-13) For the sake of avoiding confusion and arguments in the future, can we get something in writing from someone with authority at the Department that states that the proposed spec 7-14 includes temporary attenuators? Another option that might clarify the Department’s intent would be to add language to 102-13.12 stating that “payment for restoring damaged crash cushions will be per 7-14.”

The proposed spec 7-14 states that “Repair cost will be determined in accordance with 4-4”. Spec 4-4 states “When the Department requires work that is not covered by a price in the Contract and such work does not constitute a “Significant Change” as defined in 4-3.1, and the Department finds such work is essential to the satisfactory completion of the Contract within its intended scope, the Department will make an adjustment to the Contract. The Engineer will determine the basis of payment for such an adjustment in a fair and equitable amount.” As I understand the specification, restoring damaged attenuators would not constitute “Significant Change” as defined in 4-3.1 and therefore, by spec, the “Engineer will determine the basis of payment for such an adjustment in a fair and equitable amount”. If this is the truly the case, it would present real problems as it would be completely subjective. If the Department’s intent is to determine cost using time and materials, why isn’t 4-3.2.1 just referenced instead of 4-4?

Response: Article 7-14 includes temporary attenuators. The Department’s intent is to compensate the Contractor in a fair and equitable amount which may include time, material, labor, and equipment in accordance with 4-3.2.1 but also other options. No changes made.

John Baldwin
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Comment: (7-3-13)

PAYMENT FOR ATTENUATOR DAMAGE • Over the course of years Bob’s Barricades has performed the Maintenance of Traffic on tens of thousands of projects throughout the State of Florida. The MOT includes installing, maintaining and repairing (damaged by motorists) crash cushions (attenuators. BBI has repaired or replaced thousands and thousands of crash cushions in a timely manner that have been hit, damaged or completely destroyed by motorists. • The cost of the device only is \$9,000 to over \$30,000 each. This does not include shipping, labor to repair, and lane closures. Time to schedule, Invoicing and clerical time to document the occurrences. •

Damage to redirective crash cushions caused by motorists can range from a complete and catastrophic hit which requires replacement to a minor a nuisance hit. Many hits are somewhere in between. • The majorities of the collisions occur in the late night or AM hours between midnight and 5am during darkness. • The vast majority of the collisions are hit and run accidents with one vehicle involved. The driver's car in most cases is damaged but able to drive away from the incident. In some cases the cars are towed without the knowledge of the contractor as they are not on the job or may be working miles away. In this case no law enforcement report is ever recorded. • In the cases law enforcement is called to the scene a report is written the following scenarios are likely to occur. • It is often difficult to determine which law enforcement agency if any was on the scene. Unless the Prime contractor is on the scene at the time of the incident. Therefore finding an accident report can be difficult if not impossible. • All too often the incident is a hit and run, the driver has no insurance or is underinsured as the minimum statutory requirement for liability insurance is below the cost of most damage. • In cases where a third party insurance company receives a claim the insurance company often haggles with the contractor over who is responsible or the cost of the repairs or replacement of the unit. Insurance companies are not familiar in most cases with a crash cushion therefore causing a great deal of delay if any costs of repair are to be covered. • The FDOT specification calls for repair or replacement of the damaged unit immediately or within 24 hrs. Currently the 20% mark up at times does not even cover the cost of the repair. Take into the consideration that we must pay for the parts (30 days net) and all of the other costs involved. • It is also impossible at bid time to determine the frequency of damage to the units and in many cases to even determine how many units will be used. The dilemma of who's will be responsible to cover the costs of the hits (the prime or the subcontractor is likely to cause a great deal of animosity) Does the Prime add a great deal of cost to their bid to the state to cover what may or may not happen causing the state to pay up front for damages that may not occur. • The system works fairly well at present. The attenuators are being repaired timely and the motoring public is safer for it.

Response: The Department recognizes this is a change in direction for crash cushions. These changes are a sharing of risk between the Department and Contractor for damages to installed material caused by third parties. Third party damage to temporary and permanent crash cushions will be handled in accordance with 7-14 the same as other installed materials. No changes made.

Happy Alter
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Comment: (7-3-13)

As the owner of Bob's Barricades for 38 years I get to speak to many top contractors and their top management teams all over Florida having offices throughout The Great State of Florida. I would like to draw to your attention that not one contractor I have spoken to is in favor of the specification change (PAYMENT FOR ATENUATOR DAMAGE)"Imagine if we tried to force certain food , shellfish or notes to someone that is severely allergic to it" The Highway Patrol has always informed us that the majority of the hits on attenuators occurs during "The Drunken Hours" between 1am and 5 am often with no one out there to get a license number as a way to reach the drivers insurance company if the driver even has insurance or enough to cover the

repair or replacement of the crash cushion. We and the few remaining MOT companies agree with the contractors that in this case the specification should not be changed. Please keep in mind that there is a 24 time limit to repair or replace the damaged unit. "How could anyone fund this expense while trying to find the motorist responsible that has disappeared, out of reach to FDOT, the contractors and the MOT companies. This is why the specification change makes no sense at all. This includes the impossible task of bidding the projects not knowing how many attenuators will be hit , damaged or destroyed. Thank you Happy Alter CEO/Owner Partner Bob's Barricades Inc.

Response: The Department recognizes this is a change in direction for crash cushions. These changes are a sharing of risk between the Department and Contractor for damages to installed material caused by third parties. Third party damage to temporary and permanent crash cushions will be handled in accordance with 7-14 the same as other installed materials. No changes made.

Christian Cummings
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Comment: (7-3-13)

Contractors should be reimbursed for repairing damages to all work caused by third parties without being subject to deductibles and payment reductions. This is especially true for the restoration of damaged Temporary Crash Cushions damaged by third parties. Temporary Crash Cushions are unique compared to the rest of Contractor's work. Temporary Crash Cushions are required solely for the safety of motorists. They are placed in areas that are at high risk of being hit by motorists. In every case damaged Temporary Crash Cushions must be restored within 24 hours thereby creating a burden on the Contractor to maintain extra inventory and personnel to be able to meet this requirement. Why penalize the Contractor with deductibles and payment reductions for damage to an item that is required to be placed in high risk areas, is critical to the safety of the public, is impossible to predict the frequency or severity of damage, and requires special consideration, costs, and effort on the contractor to meet the requirement for restoration within 24hrs? Doing so places an unfair burden on the Contractor and potentially risks the safety of motorists. Therefore the method of reimbursement of cost of parts + 20% is effective and fair and should not be replaced with the proposed method.

Furthermore, the reimbursement method proposed in 7-14 is even more punitive when it comes to the restoration of damaged Temporary Crash Cushions damaged by "unknown third parties" than for other Contractor's work for the following reason. Temporary Crash Cushions are designed to absorb the impact and soften vehicle crashes. This means less damage to vehicles than most other crashes. As a result, vehicle drive offs are very common meaning high frequency of damage caused by "unknown third parties". In short, since Temporary Crash Cushions do their intended job very well, there is a much higher rate of instances where reimbursement for the repairs will be reduced by \$2,000 and further reduced by 50% under the proposed spec.

Response: The Department recognizes this is a change in direction for crash cushions. These changes are a sharing of risk between the Department and Contractor for damages to installed material caused by third parties. Third party damage to temporary and permanent crash cushions

will be handled in accordance with 7-14 the same as other installed materials. No changes made.

Tom Brady
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Comment: (7-5-13) In speaking with ATSSA members, some contributed to the following comments. Temporary attenuators are critical life saving devices. They must be maintained to ensure the safety of the motoring public. There should be no uncertainty as to who is responsible for payment to damaged attenuators. This uncertainty may cause undue delays in completing the necessary repairs, leaving the public exposed. We suggest that 102-13.12 remain unchanged. The department would likely continue to receive the same expedited service from the contractor while also having a well defined mechanism to pay for the repairs (cost plus 20%).

Response: The Department recognizes this is a change in direction for crash cushions. These changes are a sharing of risk between the Department and Contractor for damages to installed material caused by third parties. Third party damage to temporary and permanent crash cushions will be handled in accordance with 7-14 the same as other installed materials. No changes made.

D4 Const.
Comment: (7-7-13)

1. 7-11.1: Suggest the section include defining existing to also mean any such items that need to remain until replaced by the work. Example: existing ped pole gets knocked down by third party. The ped pole will ultimately be replaced when a new one is installed as part of the work. Also: the new text in this section should address theft vs. vandalism.

Response: This was addressed in the responses to Section 7.

2. 7-14 Second para: "For damage to the Work caused by third parties, the Contractor may pursue recovery" add:"from the third party" "after reducing the amount of the repair cost by a \$2000.00 deductible for each occurrence, borne solely by the Contractor." Not sure what we mean by "solely by the Contractor", what about subs? "the Contractor may be reimbursed proportionally, up to the amount of the deductible" What do we mean by "proportionally"? Does this imply that if we may not recover 100% of our costs? If so thne I understand the purpose.

Response: This was addressed in the responses to Section 7.
