

STATE OF OHIO
OFFICE OF THE INSPECTOR GENERAL

RANDALL J. MEYER, INSPECTOR GENERAL

REPORT OF
INVESTIGATION



AGENCY: OHIO DEPARTMENT OF TRANSPORTATION
FILE ID NO.: 2019-CA00045
DATE OF REPORT: SEPTEMBER 1, 2020

The Office of the Ohio Inspector General ... The State Watchdog

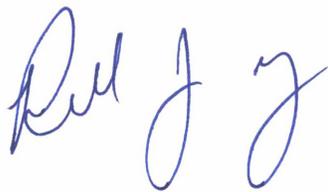
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Randall J. Meyer
Ohio Inspector General



STATE OF OHIO
OFFICE OF THE INSPECTOR GENERAL

RANDALL J. MEYER, INSPECTOR GENERAL

REPORT OF INVESTIGATION

FILE ID NUMBER: 2019-CA00045

SUBJECT NAME: Nikki Bentley

POSITION: Transportation Manager 3

AGENCY: Ohio Department of Transportation

BASIS FOR INVESTIGATION: Complaint

ALLEGATIONS: Failure to Comply with State or Departmental Rules, Procedures or Policies

INITIATED: November 20, 2019

DATE OF REPORT: September 1, 2020

INITIAL ALLEGATION AND COMPLAINT SUMMARY

On November 19, 2019, the Office of the Ohio Inspector General received a complaint from the Ohio Department of Transportation (ODOT) legal counsel alleging suspected improper activity by ODOT Transportation Manager Nikki Bentley. The complaint stated that on October 4, 2019, a motorist was traveling on State Route 41 (SR 41) when his trailer, loaded with an excavator, came in contact with uneven pavement. The motorist claimed the uneven pavement caused his trailer to overturn, striking a guardrail and coming to rest in a ditch off the side of the road.

According to the complaint, a contractor hired by ODOT had milled¹ the pavement on SR 41 down four inches upon the instruction of ODOT Transportation Manager Nikki Bentley, which allegedly caused the accident. The complaint stated the contractor verbally agreed to compensate the motorist for damage to his trailer, excavator, and truck. Bentley allegedly agreed to complete an ODOT project change order to reimburse the contractor for the amount the contractor paid to compensate the motorist.

BACKGROUND

The Ohio Department of Transportation (ODOT) is responsible for planning, building, inspecting and maintaining a safe, efficient, and accessible transportation system that integrates Ohio highways, rail systems, aviation and water networks. The department also helps coordinate and develop Ohio's public transportation and aviation programs which include public transit systems, mobility management program grantees, specialized transportation programs, and other public-use airports and heliports.²

The Ohio General Assembly enacted Ohio Revised Code (ORC) §121.51, effective July 3, 2007, which created the deputy inspector general for the Ohio Department of Transportation. The statute designated this deputy inspector general "... shall investigate all wrongful acts or omissions that have been committed or are being committed by employees of the department" and provides the deputy inspector general the same powers and duties regarding matters

¹ Milling is a process of removing pavement material from the surface of the pavement.

² Source: Biennial budget documents.

concerning the department as those specified in sections 121.42, 121.43, and 121.45 of the Ohio Revised Code for matters involving ODOT.

APPLICABLE RULES, POLICIES AND PROCEDURES

ODOT Construction and Material Specification (C&MS) *107.10 Protection and Restoration of Property* states, in part:

The Contractor is responsible for the preservation of all public and private property impacted by the Contractor's operations.

The Contractor is responsible for all damage or injury to property, during the prosecution of Work, resulting from any act, omission, neglect, defective work or materials, or misconduct in the manner or method of executing the work. The Contractor will remain responsible for all damage and injury to property until the Project is accepted under 109.12, except for portions of the Work accepted under 109.11.

ODOT Construction and Material Specification *107.13 Reporting, Investigating, and Resolving Motorist Damage Claims* states:

The Contractor and the Department are required to report, investigate, and resolve motorist damage claims according to 107.10 and 107.12 and as follows.

When a motorist reports damage to its vehicle either verbally or in writing to the Contractor, the Contractor shall within 3 days make and file a written report to the District's construction office. In the event the Department directly receives the motorist's claim, the Department shall within 3 days send the claim report to the Contractor. In the event the Contractor has not agreed to resolve the motorist claim, the District's construction office shall forward the report to the Department's Court of Claims Coordinator who, as a co-insured party, may then contact the Contractor's insurance company and request that the insurance company investigate and resolve the claim. If the Contractor or their insurance company does not resolve the claim in a timely manner, the Department may advise the motorist of the option of pursuing the claim in the Ohio Court of Claims.

In the event of a lawsuit filed against the Department in the Ohio Court of Claims by the motorist, the Department, as co insured party, may request the Contractor's insurance company to defend this lawsuit and hold the Department harmless according to 107.12. If the lawsuit claim amount is \$2,500 or less and the Court of Claims Coordinator determines that the Contractor is responsible for the claimed damages then the Department's Court of Claims Coordinator may, after notifying the Contractor, determine that it would be in the best interest of the Department to settle the claim. Any settlement amount including court costs may be assessed to the Contractor and deducted from the project. The Engineer will notify the Contractor prior to executing the deduction. The Contractor or the Contractor's insurance company may within 14 days appeal the assessment decision of the Court of Claims Coordinator to the District Construction Engineer. The decision of the DCA will be made within 14 days and will be administratively final.

ODOT Construction and Material Specification *109.05 Changes and Extra Work* states, in part:

A. General. In establishing the method of payment for contract changes or extra work orders, force account procedures shall only be used when strictly necessary, such as when agreement cannot be reached with Contractor on the price of a new work item ... the reason or reasons for using force account procedures shall be documented.

Sales tax will not be allowed on any item for which tax exemption was obtained.

B. Negotiated Prices. Negotiated prices for changes and extra work shall be comparable to prices that would have resulted from a competitive bid contract. The Engineer and Contractor will negotiate agreed lump sum prices using one or more of the following methods:

1. increased or decreased material costs specified in 109.05.C.3
2. increased or decreased labor costs specified in 109.05.C.2
3. increased or decrease equipment costs specified in 109.05.C.4

Adjustments of these prices for inflation or markup for subcontractor work is not allowed.

C. Force Account

1. General. The Department will pay the Contractor as specified in 109.05.C as full compensation for performing the force account work. The Project and Contractor personnel will document the labor and equipment used on the force account work on a Daily Force Account Record. At the end of each workday, the Project and Contractor personnel will compare and sign the Daily Force Account Record. The Department will make no force account payment before the contractor submits an itemized statement of the costs for that work.

ODOT Construction and Material Specification *614.16 Basis of Payment* states, in part:

C. If traffic permanently damages beyond use any of the following items, the Department will compensate the Contractor for the fair market value of the damaged item according to 109.05 provided the Contractor has pursued but failed to obtain compensation from the motorist. Follow the procedures given in 107.15 for compensation for traffic damage to completed permanent items of work, to obtain compensation from the motorist before requesting compensation from the Department.

1. Arrow Board.
2. Work zone signal, pole, or controller.
3. Lighting unit or pole.
4. Changeable message sign.
5. Work Zone Impact Attenuator.

ODOT's Construction *Change Order Reason Code Descriptions* document provides a list of 45 different change order numbers used for tracking change orders based on the reason a change order is needed and states, in part:

36. 107.13 Motorist Claim: Used to deduct settlement amount determined by Court of Claims Coordinator for Damage Claims.

37. 107.15 Damage to Completed Permanent Items of Work: Used to compensate the Contractor for repair of damage authorized by change order.

INVESTIGATIVE SUMMARY

Issue 1: Use of Change Order to Reimburse Contractor for Motorist Damage

On November 26, 2019, the Office of the Ohio Inspector General conducted a phone interview with ODOT Court of Claims Coordinator Patricia Mobley. Mobley stated that on October 21, 2019, she was contacted by the director's office at ODOT after they were contacted by an upset motorist who was involved in a traffic accident in a construction work zone resulting in damage to his truck, trailer, and excavator. The motorist claimed the contractor hired by ODOT to perform the work on the roadway, John R. Jurgensen Company (JRJ), initially accepted responsibility for the damage to the equipment and agreed to pay for the damage, but was at the time being unresponsive. Mobley stated she was asked by the director's office to evaluate the matter.

On the same day, Mobley contacted Dave Coniglio, director of Safety, Risk & Labor Relations at Jurgensen Companies.³ During the call, Mobley was informed that at the direction of ODOT Transportation Manager Nikki Bentley, JRJ had milled the road (State Route 41) down four inches, creating an uneven surface. Mobley was informed there was a traffic accident on October 4, 2019, during which a motorist sustained damage to his truck, trailer, and an excavator being towed. Mobley stated she was informed by Coniglio that JRJ intended to pay the motorist for the damage to the truck, trailer, and excavator, at a cost totaling between \$18,000 to \$20,000. Coniglio said JRJ had been told by Bentley that ODOT would initiate a change order for the project to reimburse JRJ for the funds paid as a result of the accident.

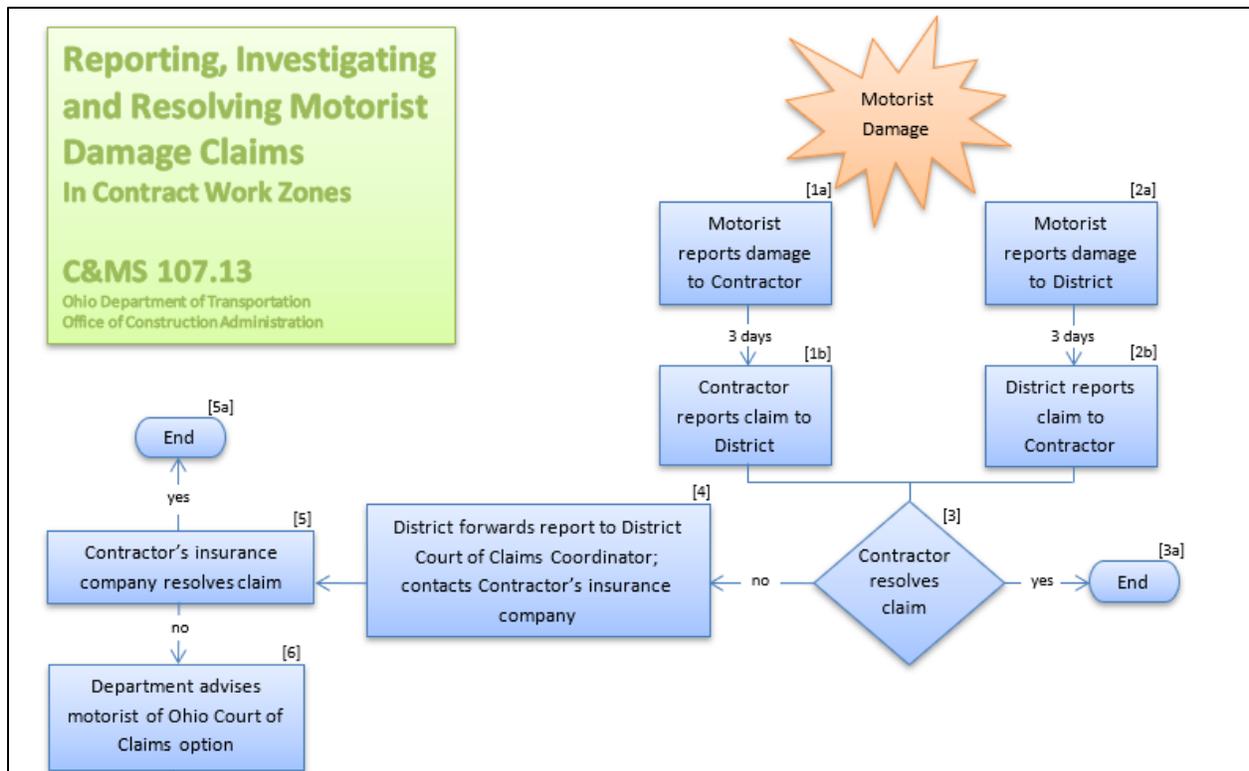
Review of the Motorist Damage Claim Process

Investigators reviewed the Construction and Material Specification (C&MS) section 107.13 to determine the steps taken when a motorist sustains and reports damage to their vehicle that

³ Jurgensen Companies is the parent company of John R. Jurgensen Company.

occurs in a contract work zone. The partial flowchart prepared by ODOT,⁴ shown in figure 1 below, outlines the initial actions taken.

Figure 1: Partial Process for Reporting Motorist Damage Claims



Investigators noted when a motorist reports damage to their vehicle – either verbally or in writing – to the contractor, the contractor shall within three days make and file a written report to the ODOT district’s construction office. In the event ODOT directly receives the motorist’s claim, ODOT shall within three days send the claim report to the contractor. However, if a contractor resolves the claim, the process is ended and no further action is warranted on behalf of ODOT.

Investigators requested the written report that should have been completed by the contractor within three days of the accident that occurred on October 4, 2019. Investigators discovered that the only written report that existed on the accident was a Roadway Defect/Damage Incident

⁴ This flowchart was recently updated in February 2020, but the process has not changed. This is the flowchart in place at the time of the accident.

Report that was filed online by Mobley on October 21, 2019. Based on the following emails provided in response to a request by investigators, the accident was discussed verbally but no written report was completed by those directly involved in the construction project.

From: Bentley, Nikki
Sent: Friday, December 13, 2019 9:04 AM
To: Ebersole, Brooke <Brooke.Ebersole@dot.ohio.gov>
Cc: Opsitnik, Andrew <Andrew.Opsitnik@dot.ohio.gov>; Adams, Jon <Jon.Adams@dot.ohio.gov>
Subject: RE: Request for Information

Brooke,

The Contractor and ODOT verbally discussed and the contractor immediately started their investigation.

The claimant is paid.

According to information provided by ODOT District 6, investigators also learned that currently, there is not a standard ODOT form available for use by a contractor to file a written report to the ODOT district's construction office.

From: Ebersole, Brooke
Sent: Friday, December 13, 2019 3:47 PM
To: Doyle, Angel
Subject: FW: Request for Information

Hi Angel,

Here is the info we were able to get. Sounds like there was a verbal discussion, and my understanding is that there's not a standard form currently in practice for this. Please let me know if you need anything else. Thanks.

Review of Change Order, Supporting Documentation, and Payments

Investigators requested for review all change orders, and documentation supporting the costs for those change orders, for the construction project on SR 41 that were submitted after the accident on October 4, 2019. Investigators found a change order totaling \$20,546.69 was entered into the ODOT Change Order Approval Tracking system on December 12, 2019, with the description "Jones Accident." On the ODOT Regular Work Change Order form, the justification for the change order stated:

The Project verified the lengths of the proposed deep beam retrofit and noticed the existing roadway was too high to accept this application. ODOT directed the contractor to plane an additional depth to properly accept the deep beam retrofit. The claimant lost control in the vicinity of this milled asphalt. The contractor investigated the incident to properly reimburse for vehicle and borrowed trailer. This change order represents all associated costs. Backup documentation is attached.

Investigators reviewed emails between Bentley and Coniglio and learned the change order that was submitted used Force Account Procedures which are defined in ODOT Construction and Material Specification (C&MS) 109.05.C.

From: [REDACTED]
Sent: Thursday, December 5, 2019 1:44 PM
To: Bentley, Nikki <Nikki.Bentley@dot.ohio.gov>
Subject: SR 41 Accident

Nikki:
Attached please find the information concerning the vehicle accident that occurred on the SR 41 project (190417). I am submitting in force account format with copies of checks and the \$500 credit from the equipment being sold.

From: [Bentley, Nikki](#)
To: [REDACTED]
Subject: RE: SR 41 Accident
Date: Wednesday, December 11, 2019 4:16:00 PM
Attachments: [image001.png](#)

Dave,

This will come through as a change order in the project.

Thank you,
Nikki Bentley
740.816.6930

Investigators reviewed the supporting documentation for the force account work costs submitted to ODOT to verify JRJ and ODOT project personnel documented the labor and equipment used on the force account work on a Daily Force Account Record.⁵ Also, investigators reviewed

⁵ A spreadsheet template is provided on the ODOT public website containing detailed instructions on properly tracking labor, equipment, material, etc., used on force account work.

whether ODOT and JRJ personnel compared and signed the Daily Force Account Record as required by C&MS 109.05.C.

Investigators found the only documentation that was submitted to ODOT detailing the costs incurred for the force account work were the following two tables:

JOHN R. JURGENSEN COMPANY	
SUMMARY OF COST ANALYSIS	
LABOR	\$0.00
OWNED EQUIPMENT	\$0.00
OWNED/BROUGHT EQUIP	\$0.00
RENTED EQUIPMENT	\$0.00
TRUCKING	\$0.00
MATERIALS	\$0.00
PROFESSIONAL/SPECIALIZED WORK	\$20,546.69
SUMMARY TOTAL	\$20,546.69

JOHN R. JURGENSEN COMPANY				
VENDOR	QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL
	1.00	Payment for Equipment	\$14,576.31	\$14,576.31
	1.00	Payment for Trailer	\$3,200.00	\$3,200.00
Hixon Towing	1.00	Payment for Cleanup, Tow & Storage	\$1,402.50	\$1,402.50
Robert's Auto Transport	1.00	Scrap Credit	(\$500.00)	-\$500.00
Sub-Total				\$18,678.81
Markup 8%				\$1,867.88
TOTAL AMOUNT				\$20,546.69

Investigators reviewed supporting documentation which showed a payment totaling \$1,402.50 was made by JRJ to Hixon Towing via credit card on October 4, 2019, for towing and cleanup costs incurred on the date of the accident. A check totaling \$14,576.31 was issued by JRJ on October 23, 2019, and was paid to the motorist involved in the accident for damage sustained to his pickup truck and excavator. A check totaling \$3,200, also issued on October 23, 2019, was paid to the owner of the trailer that was being towed by the motorist and was damaged.

Investigators noted an 8% markup was applied to the total \$18,678.81 payment for the equipment, trailer, cleanup, towing, and storage. Investigators reviewed the C&MS and found when force account procedures are used, based on various subsections of C&MS 109.05, an 8% markup can be added in the following instances:

- For work performed by an approved subcontractor, ODOT will pay an amount to cover administrative costs of 8% on the first \$10,000 of work and 5% for work in excess of \$10,000.
- Trucking firms and owner operators not subject to prevailing wage will be paid at the invoiced cost plus 8% on the first \$10,000 of trucking and 5% for trucking in excess of \$10,000 to cover administrative costs.
- Other professional or specialized work not contemplated at the time of bid when performed by a firm hired by the contractor is paid at the reasonable and fair market invoiced cost plus 8% on the first \$10,000 of work and 5% for work in excess of \$10,000.

Additionally, C&MS 109.05.A specifies,

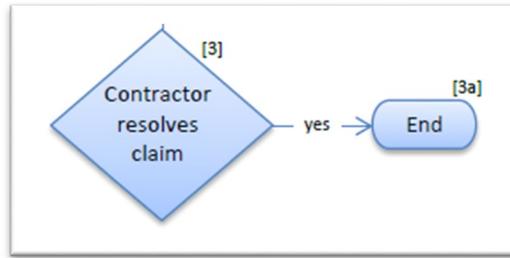
... **force account procedures shall only be used when strictly necessary** *[emphasis added]*, such as when agreement cannot be reached with the contractor on the price of a new work item, or when the extent of work is unknown or is of such character that a price cannot be determined to a reasonable degree of accuracy.

Investigators were informed by ODOT District 6 Interim Area Engineer Jon Adams⁶ that the accident cleanup was treated as professional/specialized work and due to the amount of administrative work, the contractor received an 8% markup per section 109.05C. Investigators determined the price paid by the contractor was determinable and question whether force account procedures were **strictly necessary** *[emphasis added]*. Additionally, investigators found the 8% markup was incorrectly applied to the total amount of the payment and not 8% on the first \$10,000 and 5% markup on the work in excess of \$10,000.

⁶ Adams was an interim area engineer at the time until District 6 hired a permanent area engineer.

Motorist Damage Claim Process When Contractor Resolves Claim

In October 2019, JRJ issued payments to all parties that were financially impacted by the accident that occurred on SR 41 on October 4, 2019. Based on the motorist damage flowchart (figure 1) presented earlier in this report, if the contractor resolves the motorist’s claim, that is the end of the process and no further action is warranted on behalf of ODOT.



Investigators learned via email from Adams that after the accident occurred, Bentley discussed the issue with him and they decided that since ODOT directed the contractor to mill the additional depth of the surface of the roadway, “we felt it was fair to compensate the contractor for the damage claim incurred.”

The change order was entered into the Change Order Approval Tracking System by ODOT Transportation Technician Tina Christenson and approved by Adams on December 12, 2019, as a regular work change order. The change order was changed from a regular work change order to an extra work change order and approved by JRJ on February 7, 2020. Additional actions were taken on February 13, 2020, by ODOT transportation engineers Kevin Fiant and Zachary Amnah, who were respectively listed on the ODOT change order approval tracking form as the change order recommender, and the change order approver.

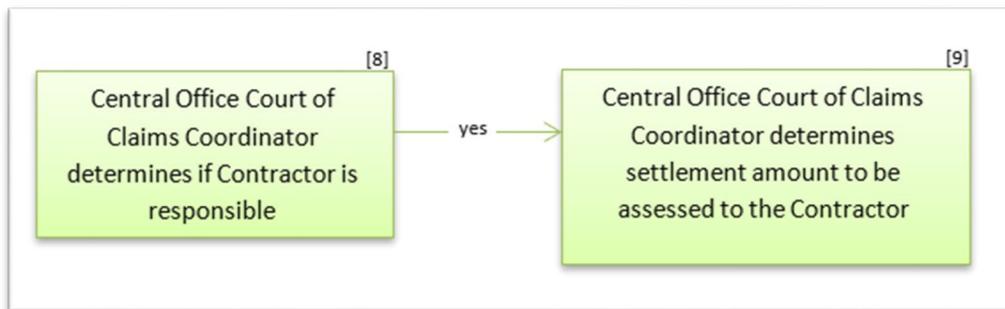
Investigators reviewed the ODOT process for motorist damage claims ([Exhibit 1](#)) and determined that the practice of ODOT reimbursing a contractor for motorist damage claims is not a normal practice and is outside the scope of C&MS 107.13, the ODOT procedure for reporting, investigating, and resolving motorist damage claims in contract work zones.

Review of Change Order Reason Code

Investigators reviewed the ODOT change order documents and noted the reason code used on the change order submitted to reimburse JRJ as follows:

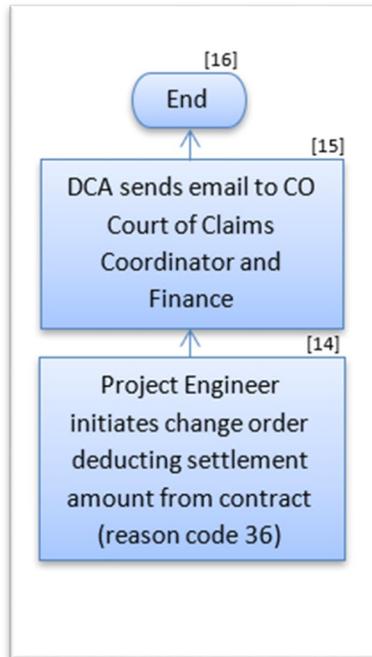
Change Order Reason Code(s)	Change Order Description(s)
36	107.13 MOTORIST CLAIM

Upon review of the ODOT change order reason codes,⁷ investigators learned reason code 36 is used “to deduct settlement amount determined by Court of Claims Coordinator for motorist claims.” As laid out in the motorist damage claim flowchart, reason code 36 should only be used in instances when a contractor does not resolve a motorist’s damage claim and the claim goes through the Court of Claims process. During this process, if the ODOT Central Office Court of Claims coordinator determines the contractor is responsible for the damage, the coordinator will determine the settlement amount to be assessed to the contractor (step 9).



After determining the contractor is responsible and completing several further steps (i.e., notifying the parties involved, allowing the contractor to appeal the decision), the ODOT project engineer initiates a change order using change order reason code 36 deducting the settlement amount (step 14).

⁷ Source: Microsoft Word document available on ODOT public website.



Issue 2: Use of Change Order Reason Codes on Past Construction Projects

Review of Change Order Reason Code 36

Based on information acquired during the investigation by the Office of the Ohio Inspector General, investigators performed an additional review of change orders that have been processed using change order reason code 36 to determine how code 36 had been used previously on other settlement deductions.

Investigators learned change order reason code 36 was created in May 2012 with the intention of improving the tracking of change orders deducting settlement amounts. Since 2012, reason code 36 has been used 68 times. Investigators determined that reason code 36 was properly used in only six of the 68 times to deduct settlement amounts from a contract, totaling \$11,541.97. The 62 remaining uses of reason code 36 were to compensate contractors for damage to guardrails, crash attenuators, message boards, permanent items of work, and other damaged items related to highway projects. The following chart is a breakdown of the use of reason code 36 by district since May 2012:

ODOT DISTRICT	SUM OF CHANGE ORDERS	NUMBER OF TIMES CHANGE ORDER REASON CODE 36 USED
2	\$56,821.33	12
4	\$99,604.79	7
6	\$389,910.83	38
7	\$28,347.48	3
8	\$4,592.52	1
10	\$7,339.44	4
12	\$15,365.67	3
TOTAL	\$601,982.06	68

Investigators learned change order reason code 37 was created in November 2014 and is used to compensate the contractor to repair damage to completed permanent items of work as outlined in C&MS 107.15. Investigators found that after reason code 37 was created, several ODOT districts continued completing change orders, a total of 55, using reason code 36 to compensate contractors for damage to traffic control devices. The misapplication of these codes impacts ODOT’s ability to accurately track change orders by description or reason.

Issue 3: Contractor Reimbursement for Damage to Traffic Control Devices Using Force Account Procedures and Markups

Investigators noted C&MS 614.16 allows for contractors to be compensated for the fair market value of damaged arrow boards, changeable message signs, work zone impact attenuators and other traffic control devices according to C&MS 109.05. However, C&MS 109.05 states that, ... in establishing method of payment for contract changes and extra work orders, force account procedures **shall only be used when strictly necessary [emphasis added]**, such as when agreement cannot be reached with the contractor on a new work item, or when the extent of the work is unknown or is of such character that a price cannot be determined to a reasonable degree of accuracy. The reason or reasons for using force account procedures shall be documented.

Investigators reviewed the supporting documents for selected change orders compensating contractors for damaged traffic control devices, and question the use of force account procedures by ODOT personnel illustrated in the following examples #1 & 3, and provide example #2 as an

illustration of proper reimbursement for the fair market value of the item that was damaged in accordance with ODOT C&MS 614.16 and 109.05:

1. A message board owned by Kokosing Construction Company, Inc., was hit on August 13, 2017, by a motorist and damaged beyond repair. A quote to purchase a new message board was obtained for a total cost of \$16,285 ([Exhibit 2](#)). Investigators noted Ohio sales tax was not included in the estimate. Force account procedures were used and an additional 15% was added to the total cost. A change order was processed by ODOT totaling \$18,727.75 ([Exhibit 3](#)). However, the reason for using force account procedures is questionable when the price to replace the item was determinable from the amount specified on the quote obtained.
2. A message board owned by JD Williamson Construction Co., Inc., was hit on May 20, 2017, by a motorist and damaged beyond repair. A quote ([Exhibit 4](#)) to purchase a new message board was obtained for a total cost of \$4,428. No markup was added to the cost to replace the sign as was the case in example #1 above, and investigators noted the ODOT change order form ([Exhibit 5](#)) indicated that reimbursement was for the fair market value of the damaged equipment according to C&MS 109.05 (agreed lump sum). Investigators verified Ohio sales tax was added to the cost.
3. A trailer-mounted speed sensor used by Complete General Construction Company was damaged beyond repair after it was struck by a motorist on October 30, 2017. A quote was obtained to replace the item at a total cost of \$19,479. Included in this cost was Ohio sales tax totaling \$1,359. A change order was processed by ODOT using force account procedures totaling \$20,752.95 covering the cost of the speed sensor plus an 8% markup on the first \$10,000 and a 5% markup on the remainder.

Since the cost to replace the speed sensor was determinable, investigators question the use of force account procedures and the additional markup that comes with using force account procedures, and why the reimbursement was not in the amount of the fair market value of the sign as shown above in example #2. Additionally, the change order documents ([Exhibit 6](#)) completed by ODOT personnel stated, “the department shall seek reimbursement thru the Ohio Court of Claims.” Investigators learned from ODOT Court

of Claims Coordinator Patricia Mobley that seeking reimbursement through the Ohio Court of Claims is not a normal ODOT practice.

CONCLUSION

On November 19, 2019, the Office of the Ohio Inspector General received a complaint from the Ohio Department of Transportation (ODOT) legal counsel alleging suspected improper activity by ODOT Transportation Manager Nikki Bentley when she initiated a project change order to reimburse ODOT contractor John R. Jurgensen Company (JRJ) for funds they paid to settle a motorist accident that occurred in a project work zone.

On October 4, 2019, a motorist was involved in an accident caused by uneven pavement on State Route 41 in a project work zone under the construction of ODOT contractor JRJ. As a result of the accident, damage was sustained to the motorist's pickup truck, excavator, and a borrowed trailer. During October 2019, JRJ issued payments totaling \$18,678.81 to compensate the motorist for the damage sustained to all equipment and to pay for towing and cleanup costs incurred.

In December 2019, Bentley initiated a project change order to compensate JRJ for the \$18,678.81 expended as a result of the October 4, 2019, accident. In addition, a 15% markup was added to the total cost resulting in an additional \$1,867.88. A change order totaling \$20,546.69 was entered into the Change Order Approval Tracking system by ODOT Transportation Technician Tina Christensen and approved by ODOT District 6 Interim Area Engineer Jon Adams on December 12, 2019, and additional actions were taken by ODOT transportation engineers Kevin Fiant and Zachary Amnah on February 13, 2020.

Ohio Department of Transportation Construction and Management Specification *107.13 Reporting, Investigating, and Resolving Motorist Damage Claims* states, in part:

In the event the Contractor has not agreed to resolve the motorist claim, the District's construction office shall forward the report to the Department's Court of Claims Coordinator who, as a co-insured party, may then contact the Contractor's insurance company and request that the insurance company investigate and resolve the claim.

According to C&MS 107.13, when JRJ agreed to resolve the motorist's claim and issued payments in October 2019, no further action should have been taken by ODOT.

Accordingly, the Office of the Ohio Inspector General finds reasonable cause to believe a wrongful act or omission occurred in this instance.

The Ohio Department of Transportation publishes a list of 45 different change order reason codes used for tracking purposes on the ODOT change order form. Investigators determined reason code 36 was used on the change order to reimburse JRJ. As stated on the change order document published by ODOT, reason code 36 is used to **deduct settlement amounts [emphasis added]** determined by the Court of Claims coordinator for motorist damage claims.

Additionally, reason code 37 was created in November 2014 to be used to track funds paid to contractors for repair of damage authorized by change orders. Investigators determined that since reason code 37 was created in November 2014, reason code 36 had been improperly used a total of 55 times on other change orders to compensate contractors for repair of damages authorized. The misapplication of these codes impacts ODOT's ability to accurately track change orders by description or reason.

Accordingly, the Office of the Ohio Inspector General finds reasonable cause to believe a wrongful act or omission occurred in this instance.

ODOT Construction and Material Specification *109.05 Changes and Extra Work* states, in part:

- A. **General.** In establishing the method of payment for contract changes or extra work orders, **force account procedures shall only be used when strictly necessary [emphasis added]**, such as when agreement cannot be reached with Contractor on the price of a new work item, or when the extent of work is unknown or is of such a character that a **price cannot be determined to a reasonable degree of accuracy [emphasis added]**. The reason or reasons for using force account procedures shall be documented.

Investigators determined the change order to reimburse JRJ was processed using force account procedures when the amount was determinable based on the estimates received for repairs, invoices issued for towing and clean up, and the salvage values of the damaged vehicles/equipment.

Investigators also identified additional instances where force account procedures were used to reimburse contractors for damage to traffic control items, resulting in additional markups when the amount was determinable from obtained quotes. Additionally, investigators identified discrepancies in sales tax being included on some reimbursements and not others.

Accordingly, the Office of the Ohio Inspector General finds reasonable cause to believe a wrongful act or omission occurred in this instance.

RECOMMENDATION(S)

The Office of the Ohio Inspector General makes the following recommendations and asks the director of the Ohio Department of Transportation to respond within 60 days with a plan detailing how the recommendations will be implemented. The Ohio Department of Transportation should:

1. Review the conduct of ODOT employees listed and determine if administrative action is warranted.
2. Determine whether legal recourse exists to recoup the \$20,546.69 that was improperly reimbursed to John R. Jurgensen Company through the change order which did not follow the proper procedure for Motorist Damage Claims as listed in C&MS 107.13.
3. Determine whether additional change order reason codes are needed to properly track change orders used for traffic control items listed in C&MS 614.16 that don't meet the definition of permanent items of work as stated in change order reason code 37 or consider amending the use of change order reason code 37 to include these temporary traffic control items.

4. Consider reviewing change orders that have been processed using force account procedures and determine whether force account procedures are being used only when strictly necessary. If not, consider whether legal recourse exists to recoup improper markups that have been added to reimbursements.
5. Determine whether ODOT retains property of the damaged message signs if they are essentially paying for the replacement and whether there is any value in the damaged signs (batteries, tires, solar panels etc.)
6. Consider re-educating those employees involved in initiating and processing change orders on the relevant sections of the C&MS and the proper uses of change orders, force account procedures, and change order reason codes.

REFERRAL(S)

The Office of the Ohio Inspector General has determined that no referrals are warranted for this report of investigation.



STATE OF OHIO
OFFICE OF THE INSPECTOR GENERAL

RANDALL J. MEYER, INSPECTOR GENERAL

NAME OF REPORT: Ohio Department of Transportation

FILE ID #: 2019-CA00045

KEEPER OF RECORDS CERTIFICATION

This is a true and correct copy of the report which is required to be prepared by the Office of the Ohio Inspector General pursuant to Section 121.42 of the Ohio Revised Code.

Jill Jones
KEEPER OF RECORDS

CERTIFIED
September 1, 2020

MAILING ADDRESS

OFFICE OF THE INSPECTOR GENERAL
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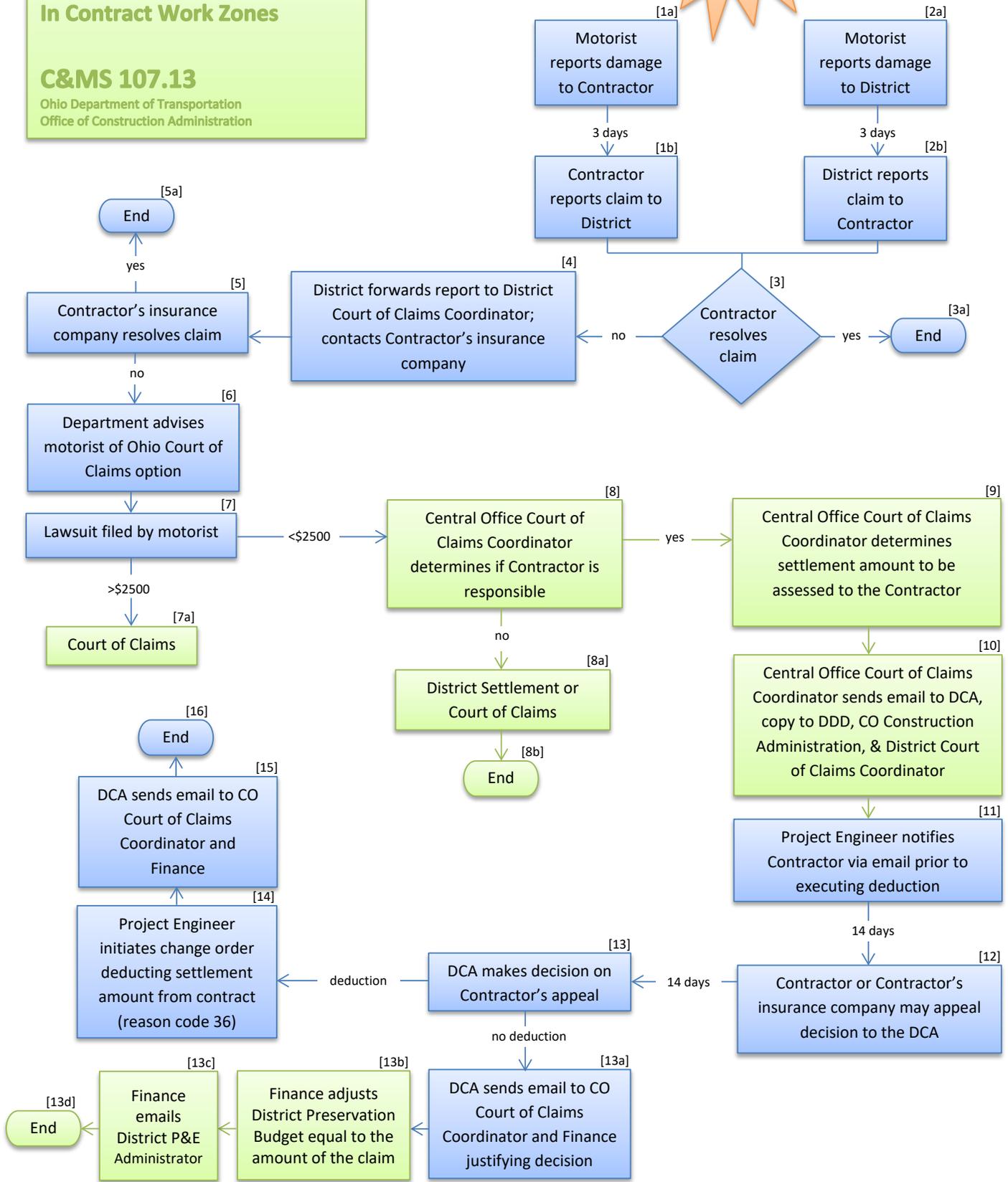
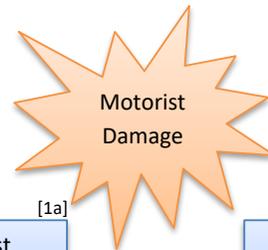
INTERNET

WATCHDOG.OHIO.GOV

Reporting, Investigating and Resolving Motorist Damage Claims In Contract Work Zones

C&MS 107.13

Ohio Department of Transportation
Office of Construction Administration



Kokosing Construction Co., Inc.
 886 McKinley Avenue
 Columbus, OH 43222

ODOT PROJECT 268 (17)
 1-70/71 2G
 KCC Project 15983

ACTUAL COST ANALYSIS

SCOPE OF WORK:

Damaged Message Board from 8.13.17 Accident

DATE	DESCRIPTION OF MATERIALS	INVOICE/ QUOTE NO.	SUPPLIER	QUANTITY	UNITS	UNIT PRICE	TOTAL COSTS
	Wanco Class A Full Matrix Changeable Message Board	See Attached	Paul Peterson Company	1.00	EA	\$ 16,285.00	\$ 16,285.00
SUBTOTAL							\$ 16,285.00
O/H & PROFIT @ 15%							\$ 2,442.75
TOTAL COST OF MATERIALS							\$ 18,727.75

Paul Peterson Company

◆ GUARD RAIL ◆ FENCING ◆ HIGHWAY SIGNAGE ◆ TRAFFIC CONTROL

950 Dublin Road ◆ P.O. Box 1510 ◆ Columbus, Ohio 43216-1510
614/486-4375 ◆ Fax 614/486-5517 ◆ www.ppco.net



November 3, 2017

TO: KATIE PHILLIPS
KOKOSING CONSTRUCTION

FROM: Andrew Wildman

QUOTE: WANCO CLASS A FULL MATRIX CHANGEABLE MESSAGE BOARD

Following are prices for which the Paul Peterson Company will furnish materials the following items per plans and specifications unless otherwise noted:

<u>Quantity</u>	<u>Description</u>	<u>Unit</u>	<u>Total</u>
1 EA.	WANCO FULL SIZE, FULL MATRIX CLASS A BOARD WITH CELLULAR MODEM (SERVICE SUPPLIED BY CUSTOMER). CUSTOM KOKOSING ORANGE POWER COAT. KEYBOARD BOX AND CONTROLLER. 6 FLOODED BATTERIES, COMBO PINTLE HITCH/2" BALL HITCH. ELECTRIC BRAKES. 260 WATT SOLAR PANELS. HD STEEL SECURITY BATTERY BOX. 7 PIN ROUND RV TRAILER PLUG FREIGHT	\$15,935.00 \$350.00	\$15,935.00 \$350.00
		TOTAL	\$16,285.00

CONDITIONS FOR ITEMS ABOVE

- ALL PRICES ARE FIRM, PROVIDED ORDER IS RECEIVED BY THIRTY 30 DAYS FROM DATE OF QUOTE.
- PRICE DOES NOT INCLUDE OHIO SALES TAX.
- PRICE INCLUDES A FIVE YEAR, PARTS AND LABOR WARRANTY (EXCLUDING TIRES AND BATTERIES).
- TERMS NET 30.

Respectfully Submitted:
The Paul Peterson Company

Andrew Wildman
Sales and Marketing

A&A Safety, Inc.
1126 Ferris Road
Amelia, OH 45102

Invoice: 139118

(513) 943-6100

RECEIVED

Sold to

J.D. Williamson Construction
PO Box 113
Tallmadge, OH 44278-0113

JUN - 2 2017

J.D. WILLIAMSON
CONSTRUCTION CO., INC.

Ship to

J.D. Williamson Construction
PO Box 113
Tallmadge, OH 44278-0113

Account
JDCONSTR

P.O. Num
Verbal Rusty

Ship Via
Customer Pickup

Ship Date

Terms
Net 30

Invoice Date
5/31/17
Page 1

Item

Quantity	Description
1	SolarTech Silent Sentinel 15 LED Solar Assisted Arrowboard 40W Solar 2" Ball Hitch ODOT Spec VIN 4GM1A0913H1528919

Unit Price	Extended Price
3,800.00	3,800.00

NEW EQUIP # AR2018 (F)

Vendor # 000002
 Job # 16130
 Phase # _____
 CC 129
 Pay Date 6/27
 Approved RB P04671
 Taxable YES ___ NO ___
 Entered JUN 05 2017
 Account 6200

Subtotal	3,800.00
Tax	328.00
Freight	300.00 <i>on pay</i>
Total	\$4,428.00



EXTRA WORK CHANGE ORDER
Ohio Department of Transportation

J.D. Williamson Construction Co., Inc.
Change Order Approved 01/04/2018

Proposal	Proj Nbr	Line Item	Item Code	Unit	Quantity	Unit Price	Additions	Non - Performance
Ln Nbr	Description							
9006	CUY12343-3	9006	990E30000	LS	1	\$4,428.00	\$4,428.00	
AGREED LUMP SUM (CMS 614.16 C. - DAMAGED ARROW BOARD)								
Grand Totals							\$4,428.00	\$0.00
Change Order Grand Total							\$4,428.00	

Proj Nbr	State Acct Code	State Funding Code	Funding Source Code	Funding Source Desc	Source Part %
CUY12343-3	4PS7	123490	OHIO	STATE OF OHIO FUNDS	100

THIS EXTRA WORK RESULTS FROM TRAFFIC DAMAGE TO TEMPORARY TRAFFIC CONTROL EQUIPMENT.

ON MAY 20, 2017 A TRAFFIC ACCIDENT OCCURRED ON I-271 NB, WITHIN THE PROJECT'S LONG-TERM CONSTRUCTION ZONE, CAUSING PERMANENT DAMAGE TO THE CONTRACTOR'S MAINTENANCE OF TRAFFIC EQUIPMENT.

THE CONTRACTOR PURSUED, BUT FAILED TO OBTAIN RECOVERY FROM THE RESPONSIBLE PARTY. DOCUMENTATION OF THEIR GOOD FAITH EFFORT WAS PROVIDED TO THE ENGINEER.

AS PER CMS 614.16 C., THE DEPARTMENT WILL MAKE COMPENSATION FOR THE FAIR MARKET VALUE OF THE DAMAGED EQUIPMENT ACCORDING TO 109.05 (AGREED LUMP SUM).

INVOICES SUPPORT A COST OF \$4428.00 FOR:
1 EA. - SOLAR TECH SILENT SENTINEL 15 LED SOLAR ASSISTED ARROW BOARD.

THIS WORK DID NOT DELAY COMPLETION OF THE PROJECT.

Change Order Reason Code(s)	Change Order Description(s)
36	107.13 MOTORIST CLAIM

	EXTRA WORK CHANGE ORDER Ohio Department of Transportation	COMPLETE GENERAL CONSTRUCTION COMPANY Change Order
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Proposal	Proj Nbr	Line Item	Item Code	Unit	Quantity	Unit Price	Additions	Non - Performance
Ln Nbr	Description							
9306	FRA25594-2	9306	990E200 00	LS	1	\$20,752.95	\$20,752.95	
FORCE ACCOUNT Cost to Replace a Trailer Mounted Speed Sensor that was part of the WZ Speed Information System								
Grand Totals							\$20,752.95	\$0.00
Change Order Grand Total							\$20,752.95	

Proj Nbr	State Acct Code	State Funding Code	Funding Source Code	Funding Source Desc	Source Part %
FRA25594-2	7PM7		045	GARVEE BONDS	100
	7RAB		BOND	BOND FUNDS	100
	4SW7		OHIO	STATE OF OHIO FUNDS	100
	4RA7		OHIO	STATE OF OHIO FUNDS	100

Explanation Type	PRPSL LN NBR	Proj Nbr	Explanation of Necessity
ITM	9306	FRA25594-2	<p>THIS CHANGE ORDER HAS BEEN WRITTEN TO COMPENSATE THE CONTRACTOR FOR THE EXTRA WORK TO REPLACE A DAMAGED TRAILER MOUNTED SPEED SENSOR. THIS ENTIRE UNIT WAS STRUCK BY A MOTORIST. THE DRIVER OF THE VEHICLE FLED THE SCENE. THE VEHICLE WAS TOWED FROM THE SCENE. THE REGISTERED OWNER OF THE VEHICLE HAS NOT RESPONDED TO ANY CORRESPONDENCE FROM THE CONTRACTOR. COMPENSATION SHALL BE MADE TO THE CONTRACTOR PURSUANT TO 107.15(B).</p> <p>*** THE DEPARTMENT SHALL SEEK REIMBURSEMENT THRU THE OHIO COURT OF CLAIMS. THIS EXTRA WORK DID NOT EXTEND THE PROJECT COMPLETION DATE.</p>

For Improving Various Sections In The Cities, Villages, Townships, County, Ohio, In Accordance With Plans and Specifications By Improvement of 4.19 Miles of IR-70 Including The Resurfacing Of IR-70 From SIm 3.41 Yo 5.27, Full Depth Pavement Replacement FRom SIm 5.27 to 6.90, Addition Of Auxiliary Lanes From SIm 5.27 to SIm 6.90, Elimination Of Eastbound Inside Merge Between SIm 6.90 and SIm 7.60, and Rehabilitation of Four Mainline Bridges.

Change Order Reason Code(s)	Change Order Description(s)
37	107.15 DAMAGE TO COMPLETED PERM ITEM