

# Federal Highway Administration Florida Division

## Emergency Relief Program Q&A

FHWA Florida Division  
Version: October 2024

### Introduction

This document has been prepared by the Florida Division of the Federal Highway Administration (FHWA) as a supplement to the official Emergency Relief (ER) Manual May 2013 version (<https://www.fhwa.dot.gov/reports/erm/er.pdf>). The intent of this document is to serve as a guide to answer common questions that arise after a declared ER event occurs. Therefore, the latest form of this document should be carried by all personnel who may deal with the Detailed Damage Inspection Report (DDIR) related topics and should also be carried by every FHWA District Transportation Engineer (DTE). It is not intended as an all-encompassing document. The FHWA still retains the ultimate decision regarding what is and is not eligible, beyond that which is covered in this document.

The FHWA must have a Governor's Proclamation of a State of Emergency or a Presidential Declaration of a State of Emergency to activate the ER program. In the case of hurricanes, the FHWA declared event date is normally the date that the storm's eye makes landfall.

A repair is classified as an eligible emergency repair by the FHWA if it is performed during (after landfall for a hurricane or tropical storm) and immediately following a disaster and if one of the following three criteria is met:

1. The purpose of the repair is to restore essential traffic;
2. The purpose of the repair is to minimize the extent of damage;
3. The purpose of the repair is to protect remaining facilities.

Please note that safety alone is not considered a justification for classifying something as an emergency repair. However, it can be considered as a contributing factor when assessing damages for one of the three criteria listed above. Safety can also be a consideration when identifying permanent repairs and may justify the need for reduced procurement times when conditions warrant it.

The ER manual discusses in more detail the characteristics that constitute a "site". Three basic characteristics must be met for a site to be potentially eligible for the ER program:

1. The event has been a federally declared event,
2. The site is within the Right of Way (ROW) of a Federal-aid highway facility, and
3. The site meets a minimum threshold amount of \$5,000 in damages.

The intent of the ER program is to not pay for highway damage repairs that an agency would normally perform as heavy maintenance (see FHWA ER Manual Chapter II.C.2).

Emergency Repair work can begin immediately without FHWA's prior approval. An eligibility determination is made by FHWA after a site review and/or documentation review with a DDIR. This document and the FHWA ER Manual provide more guidance of what types of repairs qualify as "Emergency Repairs".

Permanent Repairs require FHWA review and approval prior to contract advertisement. A detailed engineer's estimate and competitive bids are required as on normal federal-aid projects, but the use of abbreviated plans, a shortened advertisement period, etc.; are appropriate depending on the scope of the work. FHWA has also agreed to allow the use of "pre-event" contracts for specific scopes of work utilizing the IDIQ methodology, which is discussed in more detail later. This document and the FHWA ER Manual provide more guidance of what types of repairs qualify as "Permanent Repairs".

Local agencies will work directly with the FDOT when seeking reimbursement through the FHWA ER program. The FDOT will, in turn, work with the FHWA DTE. Back-up documentation (including location information for work performed and photos) are required to be available upon request to justify costs for which agencies seek reimbursement.

#### Recent Legislative Updates and Changes:

- *The implementation of the Infrastructure Investment and Jobs Act (IIJA), also known as the Bipartisan Infrastructure Law (BIL) on November 15, 2021, made changes to the FHWA ER program as summarized below, which are not reflected in the current ER manual from 2013:*
  - *The restriction on the eligibility of assets already identified in the STIP has been removed (Section 11106: 23 USC 125(b)).*
  - *Protective features that mitigate the risk of future reoccurring damages or costs of future repairs are now considered eligible expenses. More information is provided regarding this in Section IX of this FAQ. (Section 11106: 23 USC 125(d)(3)).*
  - *The window for 100% reimbursement for Emergency Repair projects has been increased from 180 days to 270 days (Section 11107: 23 USC 120(3)(A)).*
  - *Additional information can be found in the July 19, 2024 guidance memo titled "Defining and Managing Emergency Repair Activities Eligible for 100 Percent Federal Funding (Revised)". This memo supersedes the guidance provided in the March 7, 2022 memo.*

## I. Detailed Damage Inspection Reports (DDIRs)

### 1) Preparing DDIRs for FHWA Review and Approval

- a) A DDIR is written to determine the initial scope of work, preliminary cost estimate, and eligibility, which the Division Office uses to support its request to headquarters for ER funding.
- b) The scope of work shall be detailed with an estimate of pay item quantities and prices listed on the DDIR (or attached sheets). These estimates do not need to be as accurate as a traditional engineer's estimate, but it is still an item-specific document and must include all major cost items and scopes of work. Lump sum estimates are not acceptable.
- c) DDIRs must be accompanied by photos showing the extent of the damages caused by the storm prior to repairs beginning. Failure to include sufficient evidence of event-caused damages may result in an ineligible determination.
- d) If a contractor has been procured by an agency and Emergency Repairs have begun (or been completed) prior to the DDIR submittal and approval, then the prices and quantities in the DDIR should reflect those identified in the executed contract. The executed contract must include all the applicable federal requirements; such as FHWA 1273 physically attached to the contract, Buy America, Davis-Bacon (for non-debris-only contracts), etc. Contracts must be provided when Emergency Repair work is already underway or completed.
- e) The DDIR shall not be used as a contracting mechanism and is not to be included in construction contracts to indicate actual scope, quantity, or prices to the contractor.
- f) The DDIR is not a mechanism for establishing any environmental (NEPA) determinations.
- g) When evaluating a site to determine if it exceeds the \$5,000 "heavy maintenance" threshold, the \$5,000 amount must be actual damage to the site location with respect to the materials and labor that would be needed to repair the damage. It does not include secondary costs such as design, MOT, mobilization, or inspection services that accompany the repair efforts. Those costs are still potentially eligible, but they are not included in the heavy maintenance determination.
- h) Generally, a damaged site is an individual location where damage has occurred. FHWA requires separate DDIRs be written for each site, specifying the type of damage (i.e. roadway pavement damage, embankment washout, culverts, bridge damage, lighting, debris, etc.). Sites should not be combined to meet the \$5,000 minimum damage threshold, with the following exceptions (after consultation with FHWA):
  - i. A "site" can include several adjacent locations along a shared route/roadway in which damages related to the same cause/event have occurred. Sites within ¼ of a mile of an adjacent site may be linked together to form a chain of eligible ER sites.
  - ii. Sites combined in this manner must provide the following information in the DDIR:
    - A list of individual locations;
    - An estimate of items of work (not lump sum) for each location;
    - Photos of storm damages (prior to repairs being conducted) for each location (with date stamps if possible).
    - Failure to provide the above information will likely result in a determination of ineligibility, as FHWA cannot make an assessment that eligible damages occurred at the location without this information.

- iii. Adjacent sites are not required to share a similar scope of work in order to satisfy the \$5,000 threshold.
  - If DDIRs are separated by scopes of work along a corridor, the DDIRs should include a note that links them to the other associated DDIR that are being submitted in the same area in order to achieve the \$5,000 threshold (if needed).
- iv. Damages within the footprint of an Interchange for limited access facilities, including along the ramps, the mainline, and crossroad can be considered an individual “site” for a DDIR. The ramp merge, diverge, and intersection termini points with the crossroad(s) constitutes the limits for such a determination.
- v. DDIRs for debris removal can be written county- or municipality-wide (when deemed appropriate by FHWA), but each site included in the DDIR must be identified individually and meet the \$5,000 threshold requirement.
- vi. Consultation with FHWA’s Transportation Engineer is required on a case-by-case basis before utilizing any of these approaches for an event.**
- i) Debris removal should not be combined on the same DDIR with other scopes of work (e.g. signs, signals, roadway repair). If FHWA is responsible for Debris removal operations, then debris removal can be considered as a contributing cost when evaluating other damages for determining the \$5,000 heavy maintenance threshold at a particular “site” location. If this is done, make a note on the DDIR accordingly and identify associated DDIRs. If FEMA is responsible for debris, then debris is not an “eligible” scope of work for FHWA’s ER program, and therefore cannot be counted towards the heavy maintenance threshold determination.
- j) A single DDIR can be written to include both public agency in-house force account construction work and contract work. Design and/or CEI costs should be estimated as 10% for design and 12% for CEI of the total damage estimate unless the agency has more definitive information or actual costs. Indirect costs are not shown on the individual DDIRs.
- k) FHWA and FDOT generally prefer to write separate DDIRs for Emergency and Permanent Repairs at a single site because it is less confusing when changes occur and reimbursement requests are processed.
- l) For Permanent Repair work, DDIRs can be prepared utilizing estimated information since the work will not be underway and will be performed following normal federal-aid procedures. The required certifications (NEPA, Utility, ROW, Railroad) are not required at the time the DDIR is submitted for approval. They will be required to be completed prior to FHWA’s authorization to obligate funds and advertise the work. The project’s delivery will proceed as addressed in the Partnership Agreement once the DDIR has been approved as eligible, with the following exceptions:
  - i. Cost increases of 20% or more from the currently approved DDIR require FHWA concurrence and a revision of the DDIR.
  - ii. If a project was identified as a Project of Division Interest (PODI), then it’s administration will proceed under the oversight roles and responsibilities identified in the project’s PODI plan.
- m) The initial Fiscal Management Information System (FMIS) authorization for ER projects must match the DDIR with respect to scope of work. The estimated dollar amount on the DDIR must be equal to or greater than the FMIS authorization request. FHWA must have the

necessary support documentation to back up the DDIR/authorization dollar amount prior to granting FMIS approval.

- n) DDIRs written for Emergency and Permanent Repairs conducted under “Pre-event” contracts have additional requirements. See Section II.(3) for more information about these requirements.
- o) Emergency repairs typically involve temporary measures but can include the placement of elements that are utilized as part of the final permanent repair. Restoring an eligible damaged site to its pre-disaster condition (even if completed within 270 days) is considered a permanent repair and must follow all applicable Federal-aid requirements for regular Federal Aid projects (including contracting methods and advertisement periods).
  - i. In rare cases, an exception can be made for scenarios where the emergency repair is the only viable alternative. Adequate justification must be provided to FHWA demonstrating that constructing the facility to its final condition is the only plausible and viable alternative to address the criteria in 23 CFR 668.103 that qualifies the repair as an emergency repair.
    - The repair(s) must meet the criteria in 23 CFR 668.103 for qualifying as an “Emergency Repair”.
    - Only repairs performed within 270 days of the event date are eligible for 100% reimbursement. Activities performed beyond 270 days revert to the pro-rata participation rates.
    - FHWA must be consulted in advance to verify that it concurs with this approach for the site and recommended repairs prior to beginning those repairs.
      - a. Agencies advancing permanent repairs as emergency repairs without prior FHWA concurrence do so at their own risk and could render the entire location as ineligible for reimbursement by not following proper procurement procedures for permanent repair projects.
      - b. Returning a facility to its pre-disaster condition for the convenience of the maintaining agency (such as to avoid multiple contract lettings or construction deployments) is not an adequate justification for advancing a permanent repair as an emergency repair.
  - ii. Refer to the July 19, 2024 memo titled “Defining and Managing Emergency Relief Repair Activities Eligible for 100 Percent Federal Funding (Revised)” for more information.
- p) Separate DDIRs must be written for each local agency seeking reimbursement under the FHWA ER program and submitted through the Florida Department of Transportation (FDOT).
  - i. There could be instances where a city is doing work for a county and the county will be paying the city then the county seeking reimbursement through the FDOT. In these cases the DDIR must be written for the county (the owner) and not the city.
- q) The DDIR must be signed by a person in responsible charge within FDOT and the local agency (if applicable) before FHWA will approve the DDIR.

- r) All completed DDIRs must be submitted to the appropriate FHWA DTE for an eligibility determination as soon as practicable (agencies have two years from the date of the event to submit new DDIRs to FHWA).
- s) For Emergency Repair projects/sites, TE's shall document their basis for eligibility determination, rationale for classifying projects as emergency repairs, and a description of what repairs constitute the restoration of essential traffic.

## 2) DDIR Revisions

- a) DDIRs must be revised when there's a 20% increase in cost or significant changes in the scope of work. Coordination with the FHWA DTE is required.
- b) Cost decreases generally do not require a DDIR revision, but substantial changes in scope or costs may necessitate a revision in order to confirm the site is still eligible and not considered a "heavy maintenance" activity.

- 3) DDIRs **exceeding \$25 million** must receive concurrence from FHWA's Emergency Relief Program Office in the Office of Infrastructure (HISM-10) prior to the approval of the initial or any revised DDIRs per FHWA Order 5182.1.

## II. Contractual Issues

### 1) **Do the prequalification requirements apply to emergency contracts?**

FDOT prefers pre-qualified contractors be used. FHWA has no requirements for prequalification, other than state procedures can't limit competition.

### 2) **Are pre-event emergency and permanent contracts allowed?**

If all federal-aid requirements are met, including competitive low bid advertisements, pre-event contracts are allowable. As per the August 14, 2020 and June 18, 2020 memos from the Florida Division to FDOT, FHWA has approved the following scopes of work:

- Emergency Repairs:
  - debris monitoring;
  - cut & toss;
  - debris removal;
  - traffic signals (one signal head in each direction in most cases)
  
- Permanent Repairs:
  - traffic signals;
  - roadway lighting;
  - traffic sign repairs

Pre-event contracts for other work types may be acceptable as long as FHWA federal-aid requirements are met. Pre-event contracts must follow FHWA's Indefinite Delivery /Indefinite Quantity (ID/IQ) requirements. Additional information concerning ID/IQ contracts can be found in the following link: <https://www.fhwa.dot.gov/construction/cqit/idiq.cfm>

Local agency contracts should be consistent with the FDOT approved boilerplate language. Consistent means that the contract includes all necessary federal-aid contract requirements and contains all the same basic criteria as provided in the state standard scope. FHWA does not need to review and/or approve pre-event contracts, but local agencies are encouraged to allow FDOT to review contracts prior to bid letting for FHWA eligibility requirements. Local agencies should contact their District FDOT emergency management coordinator for additional questions regarding pre-event contract requirements in order to preserve FHWA ER eligibility.

### 3) **Are there special procedures when utilizing pre-event contracts for emergency or permanent repairs?**

Emergency Repairs performed under pre-event contracts may commence work immediately and FHWA will coordinate with FDOT and Local Agencies in the preparation of the DDIRs after response activities are underway.

- a) Pre-event Emergency Repair contracts are currently limited to Debris Removal and Emergency Signal Repair scopes of work.
- b) Pre-event contracts must be procured in compliance with normal federal-aid procurement procedures (including advertisement periods).

Permanent Repair DDIRs and projects that are utilizing a pre-event contract to perform permanent repair work must include the following information and follow the processes discussed below:

- a) Pre-event contract number and any addendums or extensions;
- b) Pay item numbers and unit costs as identified in the pre-event contract;
- c) Include the following statement in the notes section of the DDIR:
  - “The work under this DDIR is [being completed] *or* [to be completed] under the federally compliant pre-event contract #####, executed on ##/##/#### and renewed on ##/##/#### (if applicable).”
- d) Permanent Repair DDIRs should also include the following information in the notes section:
  - “The [FDOT] *or* [Agency] is authorized to prepare the necessary Task Work Orders (TWO) needed to perform the work described in the DDIR. Upon FHWA’s review and approval of each TWO, the [FDOT] *or* [Agency] may begin the work as described in the approved TWO(s).”
- e) The FHWA District Transportation Engineer must be provided a copy of the contract, addendums, and any Task Work Orders executed under a pre-event contract for Permanent Repairs prior to the commencement of work and concur that the proposed scope of work aligns with the eligibility determination of the approved DDIR.
- f) Permanent Repairs to be performed utilizing pre-event contracts are only eligible for reimbursement after the approval date of the associated DDIR and TWO(s) by the FHWA division office.
- g) Reimbursement requests for TWO(s) may be submitted via FMIS after the FHWA DTE has approved the associated TWO(s).
- h) See section II.9) for additional concerns when advertising pre-event and ID/IQ style contracts.

See the August 14, 2020 and June 18, 2020 memos [Subject: Emergency Relief Pre-event Contracts (Emergency and Permanent Repairs)] from FHWA Florida Division to FDOT for more information.

#### **4) What are the allowances for utilizing Local Agency Program (LAP) or Joint Project Agreement (JPA) agreements when undertaking ER repairs?**

For emergency repair work, the FDOT has the flexibility to use either a LAP Agreement or a JPA when working with local agencies to conduct emergency repairs utilizing ER program funds. Local agencies must still ensure they include the required federal contracting provisions for any contract work performed, regardless of whether or not they utilize the LAP or JPA agreement process.

For permanent repair work, the Florida Division of FHWA requires that local agencies be LAP certified through FDOT’s LAP program before they can administer permanent repair ER projects. The LAP process is the method by which we have assurance that the Federal-aid requirements are understood and followed by the locals.

If a local agency seeks to perform permanent repairs by force account, they must be LAP certified. Additionally, they must receive prior FHWA approval, in the form of a Public Interest Finding, in order to demonstrate the method is more cost effective than a competitive bid contract. [References: 23 U.S.C. 112, 23 CFR 635.106(a), 635.204, 635.205, 635.407(a), 635.411(c)]

Please note that Force Account, by definition, is the actual cost of all labor, equipment, and materials expended by the local or state agency. Percentage estimates are not an acceptable method of tracking Force Account expenditures.

## 5) Contracting Methods

- a) Alternative Contracting Methods for Emergency Repairs are permissible. While Force Account, Solicited, and Negotiated contracts are allowed for emergency work, their use should be minimized if possible. Competitive bidding methods from multiple contractors is the preferred method. Documentation shall be maintained of which contractors were solicited for bids, including those that were solicited but declined to submit a bid. See Chapter 5.M of the 2013 ER manual for more information on allowable contracting methods for Emergency Repair Work. See Section II.(9) for important information when seeking bids for these types of contracts.
- b) In some special circumstances, Phased Design Build could be allowed for Emergency Repairs. Prior consultation with the Florida FHWA Division Office is required before pursuing this contracting method.
- c) Regardless of the contract method, documentation on how contracts are advertised, bid responses received, and awarded must be available upon request.
- d) It is possible to request reduced advertising periods for permanent repairs. FHWA pre-approval is required for any such request.

## 6) What is the applicability of typical federal-aid requirements such as Buy America, FHWA-1273, Davis-Bacon and Related Acts (DBRA) with respect to emergency repair contracts?

FHWA Chief Counsel issued a briefing paper on Jan 27, 1994 reaffirming these requirements apply to all ER contracts, such as ADA, DBE, Davis Bacon, and Buy America, etc. The FHWA 1273 must also be included in all construction contracts.

Listed below are the basic federal-aid requirements that must be followed and included for emergency and permanent repair contracts/projects. These requirements apply to all State and local agency contracts for both emergency and permanent restoration types of projects. These requirements cannot be waived just because there is a State or FEMA emergency declaration.

- a) FHWA Form 1273, titled Standard Federal-Aid Provisions
  - Must be physically incorporated (not referenced) into all prime and subcontractor construction contracts.
  - The 30% work performance by the prime contractor requirement is only applicable to roadways on the NHS.
  - FHWA 1273 is not applicable to law enforcement activities eligible for ER reimbursement. They are considered “in-house” or “force account” activities.

- FHWA 1273 is not applicable to professional services (CEI) contracts.
  - FHWA 1273 is not required for contracts that have scopes of work consisting exclusively of Debris Removal operations. However, if any roadway repairs or road construction activities are also included, then FHWA 1273 is required.
- b) Davis-Bacon Wage Rate Tables
- Required for all construction contracts;
  - Not required for contracts performing only Debris Removal;
  - <https://www.fhwa.dot.gov/construction/cqit/dbacon.cfm>
- c) Buy America requirements for Iron, Steel, and Manufactured Products (23 CFR 635.410)
- d) Disadvantaged Business Enterprises (DBE)
- e) Americans with Disability Act (ADA)
- f) Convict Labor and Material Prohibition
- g) Build America Buy America (BABA) for Construction Materials is conditionally applicable to Emergency Relief Projects. See Section II.(10) for more information on this topic.
- h) Professional Services contracts must still comply with 23 CFR 172 provisions. It is recommended that the FDOT Standard Boilerplate of required federal-aid provisions as maintained by FDOT’s Central Office of Procurement be utilized for these contracts.

**7) Can local agencies piggyback on another local agency’s Emergency Repair contract for debris removal, traffic signal repair, etc. if normal federal-aid requirements are met in the contract that they are piggy-backing on?**

Yes, it is acceptable to allow adjacent jurisdictions to piggy-back on other contracts so long as there is not a unit cost price increase. “Piggy-backing” in this manner is effectively the equivalent of a “negotiated” contract as allowed for emergency repairs. If a unit cost price increases, then the piggyback request is subject to a case-by-case approval basis, but may necessitate a competitive advertisement approach instead.

If the piggy-backing creates a significant increase in the geographical areas covered, then there might be an issue as this might result in the exclusion of potential bidders that might have submitted bids for a contract that covered a larger or different area. Such an approach may limit competition, and some justification from the requesting agency is appropriate to justify the request. Consideration also needs to include the potential impact on Davis Bacon Wage Rates, which may differ between jurisdiction and may require an update to the DBWR table being utilized in the contract [see 29 CFR 1.6(c)(2)(iii)(A)]. Piggy-backing is not permissible for Pre-Event or Permanent Repair Contracts.

**8) What are the requirements for ROW, RR, Utility, and NEPA/Environmental Certifications?**

All emergency and permanent repair projects must have all four certifications completed prior to the obligation of funds for reimbursement. For emergency repairs, the certifications can be completed during or after the project is completed if all work was performed within the existing ROW limits. For Permanent Repairs, the certifications are required to be completed prior to the advertising of the contract.

Since projects are typically advanced as “State Administered” projects per the Partnership Agreement, once FHWA has established the eligibility of the project, the FHWA does not require these certifications to be provided to the division at the time of the funding authorization request. But they must be prepared prior to the initial funding request and must be made available upon request.

**9) Bid Quantities for Solicited and Negotiated Emergency Repairs, and ID/IQ Repair Contracts**

When preparing bids for pre-event IDIQ, solicited, or negotiated contracts, it is strongly recommended that the contracting agency utilize estimated or theoretical quantities that could be expected in a typical repair scenario (or several scenarios) in order to identify the lowest bidder for these contracts, instead of a single unit quantity per pay item approach. *The use of single unit pay-item bids during the bidding process introduces an increased risk of price gouging and unbalanced bids.*

Agencies should pay special attention to the prices submitted for low-cost/high-quantity pay items when seeking bids from contractors (particularly if utilizing a single unit bid-item approach). Reasonably priced high-cost/low-quantity pay items can obscure over-inflated prices for low-cost/high-quantity items of work. Even though a pay item may not amount to a substantial cost as a single unit, when the cumulative quantities for a project are tallied, high-quantity items such as cables, wiring, or silt fence, often amount to hundreds or thousands of linear feet per pay item. While some higher-than-normal costs increases are to be expected during recovery efforts after a major event, low-cost/high-quantity items have been observed to range between 300% to 800% of the Statewide Average. When these items’ costs are excessively over-inflated on a per-unit basis, the impact to the overall contract cost is significant. The “lowest apparent bidder” can end up being the most expensive when actual quantities are totaled for the project.

**10) Does Build America Buy America (BABA) apply to Emergency Relief (ER) funded projects?**

As provided under BABA Section 70912(4) of the IIJA and codified in 2 CFR 184.8, BABA does **not** apply when the ER event is based on a major disaster declaration issued by the President under the Robert T. Stafford Act (42 U.S.C. 5121 et seq.).

However, BABA does apply where no Stafford Act declaration has been issued and the ER event is based solely on a Governor of the State issuing an emergency or disaster proclamation.

The FHWA's Buy America requirements for steel, iron, and manufactured products (23 CFR 635.410) **will still apply** to ER funded projects, regardless of the status of Presidential activation of the Stafford Act. While manufactured products are currently exempt from Buy America requirements as of April 9, 2024, the Manufactured Products Waiver is in the process of being discontinued and the effects of that discontinuation will be addressed when implemented and as more guidance comes out.

### III. Debris Collection Guidelines

#### 1) Definitions:

- **CEI:** The use of the term CEI (Construction Engineering and Inspection) includes non-CEI service companies when the discussion involves the monitoring of debris-only activities. See Section VI of this document for an expanded discussion of CEI related topics.
- **Clear Zone:** The total roadside border area, starting at the edge of the traveled way, available for use by errant vehicles. Simply stated, it is an unobstructed, relatively flat area beyond the edge of the traveled way that allows a driver to stop or regain control of a vehicle that leaves the traveled way.
- **Edge Line:** The line that separates the travel lane from the shoulder of the roadway.
- **Essential Traffic:** This is comprised of response personnel such as Police, Emergency Medical Services (EMS), Firefighters, DOT response staff, utility vehicles, and construction staff and equipment required to conduct repairs and restore public services to an area. Fuel and supply vehicles may also qualify in this category if they are contributing to relief efforts for the public good. See Section X. Topic #26 for an expanded discussion.
- **Operation:** Recovery activities involved for a section of roadway during a continuous time period. Once the activities have moved to another section of roadway, then the operation for the previous location has been completed.
- **Traveled Way:** The portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

#### 2) Determining the Federal Agency responsible for Debris Removal Reimbursement

Section 1107 of MAP-21 establishes when FHWA participates in debris removal costs versus when FEMA is responsible for debris reimbursements. More details can be found under Question #7 of the MAP 21 Q&A found at <https://www.fhwa.dot.gov/map21/qandas/qaer.cfm>. There are four scenarios that determines whether FEMA or FHWA funds debris removal:

- **Scenario 1:**
  - No Presidential Declaration under the Stafford Act.
  - State's Governor declares an emergency.
  - USDOT Secretary concurs with the Governor's emergency declaration.
  - Responsible Agency:
    - FHWA's ER program would fund debris removal in counties declared by the governor.
- **Scenario 2:**
  - The President declares the event to be an emergency or a major disaster under the Stafford Act.
  - Debris removal is deemed eligible for assistance under sections 403, 407, or 502 of the Act.
  - There may or may not be a Governor's emergency declaration.
  - Responsible Agency:
    - FEMA would fund debris removal.

- FHWA will not participate in debris removal costs, including any excess costs not covered by FEMA.
- **Scenario 3:**
  - The President declares the event to be an emergency or a major disaster under the Stafford Act.
  - FEMA has determined that debris removal is not eligible for its assistance.
  - Responsible Agency:
    - FHWA’s ER program can pay for debris removal for federally eligible roadways and sites,
    - But FEMA’s determination of ineligibility of the event necessitates a review of the determination by FHWA to verify whether or not reason(s) for the ineligibility determination would prevent FHWA’s activation/participation in the event.
- **Scenario 4:**
  - The President declares the event to be an emergency or a major disaster under the Stafford Act.
  - Debris removal is eligible for assistance from FEMA.
  - The Governor's emergency declaration covers more counties than the President's declaration.
  - The Secretary has concurred with the Governor's declaration.
  - Responsible Agency:
    - FEMA would fund debris removal operations for counties identified in the Presidential declaration.
    - FHWA would fund debris removal operations for counties identified in the Governor’s Declaration that are not covered by the Presidential Declaration.

### 3) Identifying areas where FEMA Public Assistance is activated

Information on FEMA Declared Disasters can be found at:

- <https://www.fema.gov/disaster/declarations>
- Searching for the event in question and select the “Designated Areas” option
  - A maps is generated showing which areas qualify for FEMA assistance.
  - Zones classified as “Category A” qualify for FEMA Public Assistance for Debris Removal and therefore are the areas that FHWA would not be reimbursing for debris removal operations.
  - More information on the various FEMA Categories classifications can be found here: <https://www.fema.gov/pdf/government/grant/pa/pdigest08.pdf>.
  - Note that these maps are regularly revised in the days following an event, so make sure to verify you using the most recently updated version.

#### 4) FHWA ER Program Guidance for Debris Removal

If FHWA is responsible for reimbursing for debris, the FHWA Florida Division has developed the below guidance points to facilitate that activity. Specific operational parameters and guidelines necessary to clear the roadways are detailed in the FHWA ER Manual and this Q&A.

The intent of the ER Program is to clear debris from federal-aid eligible roadways which was deposited as a direct result of an ER eligible disaster event in order to restore essential traffic. Debris removal is expected to be completed within 60 days from the FHWA-declared event date. This includes both “cut and toss” operations as well as debris pickup. These operations will be considered emergency repairs and reimbursed at 100% of eligible costs when performed within 270 days of the event date.

FHWA does not reimburse costs incurred for locating, leasing, or accessing temporary debris management sites (TDMS) sites. Such sites are never exclusively used for Federal-Aid eligible routes, and it is impossible to accurately track and split costs because eligible and ineligible debris sourced facilities.

##### a) First Push

The **first push** is the initial operation to clear the roadway, which includes cut and toss operations, to push debris out of the traveled way. Subsequent operations to push debris from the roadway will not be eligible for ER program reimbursement. It needs to be understood that if circumstances regarding mobility arise that do not allow immediate first push operations on the roadway, such as downed power lines, that a secondary clean-up of the **initial** debris in the ROW is still considered first push.

- Example: A 24 ft. wide roadway is completely covered by debris and one side has downed power lines. A path of debris is cleared away to allow the power companies access to the power lines on day one. On day three, after the power company operations are completed and the environment is clear, the rest of the **initial** debris in the ROW can be pushed into a pile and is still considered first push.

##### b) First Pass

The **first pass** is the initial operation to collect and remove debris pushed aside during the first push operations. The debris may be located within the cut and fill slopes, drainage ditches, and clear zone. The first pass is meant to be accomplished as one continuous operation on the same section of roadway before relocating the clean-up operation team to the next section or site.

Only debris (vegetative and non-vegetative) collected during the first pass operation within the eligible clearing limits will be eligible for FHWA ER program reimbursements. Once debris from such roadway segments or locations has been initially cleared, subsequent efforts to clear and remove debris from those same areas are not considered ER eligible expenses, regardless of the date or time in which the material was collected. FHWA allows different types of debris (vegetative, white goods, etc.) to be picked up over a period of a few days, but it should not extend over several weeks. Vegetative and non-vegetative

debris are not required to be on the same vehicles, but they are to be removed within the same time period for the first pass operation for that section of roadway in order to be eligible for reimbursement. The FHWA DTE will make the final determination on this issue.

FHWA recognizes that Hazardous Materials (HazMat) operations might be required as a separate operation. The FHWA DTE will make the final determination on this issue.

**c) Documentation of Debris Collection**

The debris collected should be documented by specific information (e.g., load tickets, spreadsheets, etc.) that clearly indicates the date and exact location (federal aid roadway) where it was removed and the quantity of debris that was removed. Debris removed from federal aid routes should be clearly separated from debris taken from non-federal aid roadways. The total volume of all first-pass debris should be collected within 60 days of the event. Photographs of locations before and after the first push/first pass debris pick up operation must be included in the backup documentation in order to be considered eligible for reimbursement.

**d) Federal Aid Roadway**

Federal aid eligible roadways are those shown on the approved federal aid maps. The list is maintained by FDOT at <http://www.fdot.gov/statistics/fedaid/default.shtm>.

**e) Clearing Limits**

The clearing limits for debris normally include the traveled way, cut and fill slopes, and any additional clearing required to ensure the full functioning of the pavement, drainage ditches, and structures. It also includes the clear zone. Clearing of the remainder of the full right-of-way is the responsibility of the agency having jurisdiction and shall not be considered as part of the first pass collection activities eligible under the Emergency Relief Program. The definition of eligible limits for various federal aid road classifications is as follows:

- i) Interstate:** eligible limits not to exceed 50 feet from the edge line, or the ROW limits, whichever is less. This includes up to 50 feet on each side of the inside median; the rest is considered to be heavy maintenance and is a state cost responsibility.
- ii) US/State Roads:** eligible limits not to exceed 40 feet from the edge line, or the ROW limits, whichever is less.
- iii) Other Federal Aid Roads:** eligible limits not to exceed 20 feet from the edge line, or the ROW limits, whichever is less.

Debris in drainage ditches beyond the limits presented above may be eligible for first pass removal to enable proper functioning of the drainage system. Consult with the FHWA DTE.

**f) Reduction of Vegetative Debris**

In general, reduction operations for federal aid roadway debris is not eligible for ER funding. The final disposition of the debris is the responsibility of the maintaining public agency.

## 5) General Debris Questions

- a) **Some of the debris being removed is being hauled to a temporary location and then transported to a permanent location (landfill). Is the cost of hauling the debris from the temporary location to the landfill eligible?**

No. ER funding will only pay for the initial hauling of the debris from the roadway. Subsequent hauling is not eligible. Once debris from an eligible roadway is combined with ineligible debris, it is impossible to accurately track subsequent processing costs as it is manipulated and transported to the final location. In addition, the initial debris hauling must be transported to the most expeditious location, which is usually the closest Debris Management Site (DMS) or landfill. Excessively long-haul routes will not be reimbursable. As stated in the ER Manual, the debris must be transported within the general proximity of the roadway. Tipping fees, if applicable to the initial hauling, are reimbursable.

- b) **Can FHWA base its reimbursements using percentages to adjust for eligible versus ineligible debris volumes?**

FHWA will not base its debris reimbursement costs using percentages or pro-rata methodologies. Reimbursement under the FHWA ER program must be based on actual first push and first pass time sheets and load ticket volumes cleared from Federal Aid routes to be eligible. Loads containing debris from both eligible and ineligible routes will be considered ineligible because it becomes impossible to accurately measure the volume of debris from the eligible route once the loads are combined into a single truck. Time sheet charges must delineate actual time spent on eligible locations versus ineligible locations in order to be reimbursable.

- c) **What is FHWA's position on leaning and hanging trees?**

If damages from leaning trees are within FHWA-defined eligible limits and are such that the responsible agency decides that they cannot be saved and need to be cut and it threatens the roadway or other infrastructure, then this cost is reimbursable under the ER program provided it is performed at the same time as the first push and/or first pass operations of the debris removal. The costs of replacing trees removed in this manner are not eligible for reimbursement.

FHWA will not participate in the cut and removal of any tree elements that are outside the eligible debris limits. If a tree has portions both inside and outside of the eligible debris limits, those portions beyond the eligible clearing limits are not eligible for reimbursement. FHWA will only participate in the cut and removal of the portion that was within the eligible debris limits. However, if a tree is leaning into the eligible limits and needs to be cut at the base, FHWA will participate in that activity, though FHWA will not participate in the removal of elements outside the eligible clearing limits.

Staking of a tree after the storm is not an allowable expense and is considered a maintenance item. FHWA's ER role is to remove debris and not to maintain landscaping.

**d) What is the eligibility of Stump Grinding and Stump Removal?**

In the case of uprooted trees, stump grinding or stump removal could be eligible for reimbursement if the root ball is within the eligible debris clearing limits.

FHWA expects that the cheaper option between stump removal and stump grinding be utilized.

- If stump removal is used, then the cost of filling the hole should also be taken into the cost evaluation comparison. The removal of the stump is expected to occur within 60 days of the first pass operation. Filling of the holes can occur in a separate operation.
- If stump grinding is used, then that activity can occur in a follow-up operation since it requires specialized equipment. Stump grinding is also expected to occur within 60 days of the first pass operation.

**e) If two agencies (say FDOT and a City) perform ER work on the same segment of a State Highway, can they both submit for reimbursement?**

*(For example: The City performs emergency clearing operations at 2:00 am to clear a path to the Hospital or EOC and then the FDOT comes through after daylight to clear more debris and conduct 1<sup>st</sup> pass.)*

FHWA is less concerned with the agency performing the work than with the timeliness of the first push work being done. A scenario in which this “double push” would be acceptable is as follows:

For non-interstate roads, suppose the local agency/State cuts an initial swath through the debris on the roadway, in order for the utility companies to “safe up” the roadway. Then the local agency/State (or their contractor) crews follow up, coming through within 48 hours to push the remainder of debris from the roadway (outside of the initial swath pushed for the power company). If both operations are performed within 48 hours of each other, then both are eligible for federal reimbursement as first push. Then the first pass is expected to occur sometime soon afterwards.

**f) What is considered being in the “same time period” when completing the First Push, First Pass operations?**

By “same time period”, FHWA is implying that the First Push and First Pass operations are completed in one continuous operation for that stretch of roadway before the clean-up team relocates to another section.

**g) What is FHWA’s policy on the use of Electronic Debris Monitoring?**

FHWA does not oppose the use of electronic debris monitoring methods in the processing of debris for FHWA ER eligible events. However, agencies are not allowed to require electronic debris monitoring methods as the only allowable method when letting a debris contract. Debris monitoring via manual methods must be allowed as an alternative for

debris contracts so as to ensure that the lowest price can be achieved by whichever method is most economical for a given situation.

If a contractor wins a low bid contract in which either manual or electronic debris monitoring methods are permitted, and if the contractor chooses to utilize electronic debris monitoring as their preferred method of collection, then the electronic monitoring would be considered reimbursable provided that the debris removed is eligible for FHWA ER reimbursement.

**NOTE:** This modifies the position stated in the June 16, 2009 policy letter to FDOT as discussed under the “Pre-event Contracts” section.

**h) Are the FHWA 1273 Form or Davis Bacon Wage Rates required for contracts in which the scope of work only consists of Debris Removal operations?**

The 1273 and Davis Bacon provisions do not apply to contracts that are consist of debris removal scopes of work only, as those activities are not considered “construction”.

#### **IV. Signalized Intersections**

- 1) The FDOT has a policy requiring the installation of Mast Arms for signals within 10 miles of the coastline. Mast arms are much more expensive than span wires, so will the cost of the mast arms be eligible for ER Funds?**

FHWA will reimburse for mast arm installation in accordance with FDOT's current design standard (10 mile criteria) where the existing signals sustained significant damage (at least one pole needing replacement or straightening). The mast arm installation will be a Permanent Restoration project that goes through normal federal-aid procedures.

- 2) What is the eligibility of installing Light Emitting Diode (LED) signal heads when non-LED signal heads are damaged?**

The replacement of older types of signal heads with LED signal heads is approved as long as the agency has a policy or standard in place prior to the event to only install LED heads, or if it is less expensive to use the LED signal heads. The sustained damage must first warrant signal head replacements. ER funds can only be used to replace damaged signal heads. ER funds cannot be used to replace the undamaged assemblies.

When evaluating if an LED signal head is "less expensive", that evaluation must include any hardware that may be necessary to utilize the LED signal heads. If their use would require the replacement of signal cabinets that were not otherwise damaged by the storm, then those costs would have to be included in the evaluation.

- 3) What level of repair on a signalized intersection is expected for Emergency Repair versus Permanent Repair?**

- a) Emergency Repairs for a signalized intersection would normally consist of labor, materials, and equipment necessary to provide one signal head in each direction per movement so as to allow basic stop and go traffic coordination.
  - i. In cases where the roadway facility services higher volumes of traffic and has 4 or more lanes of through traffic at an intersection, a turning signal head may be necessary in order to ensure traffic continues to flow so that response vehicles are not constrained by traffic jams from reaching their destinations.
- b) Permanent Repairs for a signalized intersection would normally consist of labor, materials, and equipment necessary to restore full operational functions for all traffic movements to pre-storm conditions.
- c) Signals must have suffered serious damage that requires components to be removed and replaced. The straightening or reorienting of signals that are otherwise structurally or functionally uncompromised is considered a heavy maintenance activity.
- d) See Section I.(1)(h) for additional discussions on how signalized intersections can be grouped together.

## V. Bridges

### 1) **Are costs associated with initial damage assessments for bridge inspections reimbursable whether or not damage is found?**

The cost of an initial damage assessment of a bridge to determine if the bridge has been damaged is not directly reimbursable because it is considered an indirect cost. Indirect costs are recovered through the indirect cost procedures discussed in the ER manual Chapter II.B.2.

If an initial damage assessment (i.e. initial damage inspection) shows that an eligible repairs are needed, and if additional bridge inspections are necessary to provide detailed damage information for the purposes of designing and constructing eligible repairs, the second and subsequent bridge inspections are directly eligible for reimbursement through the project costs because it is required for the design and construction of an ER eligible repair.

### 2) **Is damage to a bridge (especially scour) eligible?**

It is FHWA's responsibility to obtain a reasonable assurance that the damage was caused by the ER eligible event and not by a lack of proper maintenance. FHWA will utilize the latest NBIS bridge inspection reports dated prior to the ER event to determine if the requested damages were preexisting conditions, or if the new damages were a result of deficient preexisting conditions due to a lack of maintenance by the maintaining agencies. Damages determined to be preexisting or attributable to preexisting conditions will not be eligible for reimbursement.

FDOT and local agencies must utilize the NBIS inspection reports to evaluate and determine legitimate bridge damages before submitting the request for reimbursement to FHWA.

Similar approaches will be utilized in the evaluation of scour damages and the scour profiles from the latest inspection reports.

### 3) **Are bridges that have been closed by FDOT or Responsible Local Officials eligible for ER Funds?**

No, If the bridge was permanently closed prior to an eligible ER event occurring due to structural or other deficiencies, then it would not be eligible for ER funds if damaged by an event. If it was closed because of the damages sustained from an eligible event, then it could be eligible so long as there were not pre-existing deficient conditions that contributed to the damages sustained by the structure due to a lack of proper maintenance.

Title 23 USC Section 125 (b) stipulates:

"Funds under this section shall not be used for the repair or reconstruction of a bridge that has been permanently closed to all vehicular traffic by the State or responsible local official because of imminent danger of collapse due to a structural deficiency or physical deterioration."

### 4) **Can a bridge on a Non-Federal Aid route receive ER funding if it received Federal Funds under another program that allowed it to qualify for those funds?**

No. Per Title 23 USC Section 125 (d)(1), non-federal-aid roadway bridges cannot qualify for ER funds, even though there might be other federal aid funds available through the bridge program. In these instances, the FDOT/Local agency should contact FEMA.

## **VI. Construction Engineering and Inspection and Debris Monitoring Services**

It is the responsibility of the contracting public agency to ensure that the personnel performing monitoring activities are adequately familiar with the policies of the FHWA ER program. It is strongly encouraged that persons hired to monitor FHWA ER activities to familiarize themselves with both the ER manual and this FAQ.

Improper enforcement/application of the policies and procedures of the FHWA ER program could result in an ineligibility determination of the recovery operations, thereby resulting in no reimbursement of incurred expenses from FHWA. Pictures of each individual site's damages and repairs are required to be provided by the administering agency requesting reimbursement in order to establish eligibility. **Failure to provide both will likely result in an ineligibility determination for the site.**

### **1) Are CEI services an eligible item under the FHWA ER program?**

CEI services for eligible ER projects are eligible. However, if portions of work are performed by the CEI for items or projects are determined to be ineligible, those costs shall be deducted from the reimbursement request. Documentation must be adequate to delineate between eligible and ineligible work. **CEI expenses cannot be reimbursed for locations that did not sustain eligible damages from an eligible ER event.**

### **2) Can FDOT or local agency utilize an existing consultant contract for Emergency or Permanent Restoration project Preliminary Engineering (PE) or CEI?**

Yes, existing consultant contracts can be utilized for emergency or permanent restoration projects under the following conditions:

- a) The existing contract must have been procured by the normal federal-aid procedures in accordance with the State's Consultant Selection process for Federal-aid work.
- b) The existing contract must be federalized and contain the required Federal provisions. These cannot be added via supplemental agreement after the execution of the contract.
- c) The existing contract must have included an appropriate scope of services that would allow them to conduct the Emergency Relief response efforts they are being asked to perform. New scopes of services cannot be added to the contract in order to allow them to be used for an ER response.
- d) The PE or CEI work must be added to the existing agreement as a separate Task Work Order so ER eligible costs can be easily kept separate.
- e) Prior to beginning the Preliminary Engineering (PE) or CEI tasks for permanent work, the extra work must be authorized in FMIS by FHWA. Emergency repair work can proceed without prior FHWA authorization. The authorization request must identify the contract and task work order number added for ER work and identify the DDIR number.
- f) If the consultant contract being tasked is a FHWA oversight project, then the actual task scope will have to be submitted to FHWA for approval prior to the authorization as with other oversight projects. CEI work must be contracted through a governmental agency.

**3) What percent of CEI costs are payable for monitoring at temporary debris staging areas?**

The CEI costs will be based on the pro-rata amount of the respective debris categories by volume that are delivered to the site and supported by load tickets from eligible and ineligible locations. Given the difficulty in splitting the time between trucks arriving from FHWA eligible routes versus ineligible routes in real time, this is the only time this pro-rata percentage approach is allowed.

**4) Will FHWA consider paying for site specific monitoring costs based upon a ratio of the volume of eligible debris collected?**

No. The time spent at each location in the field is not necessarily proportionate to the volume of debris collected at each site. Therefore, we must still keep track of how much actual time is spent at federal aid eligible sites versus non-eligible sites for both the loading crews and the monitors.

**5) What is the policy on Consultant Acquisitions?**

Consultant Acquisition shall comply with State and Federal laws and regulations. Competitive negotiation is required under 40 U.S.C 11, and 23 CFR 172.7. For emergency work we encourage obtaining three proposals, however, noncompetitive negotiation is permitted in an emergency.

**6) Is the use of non-engineering firms allowed for the purposes of performing debris-only monitoring activities?**

Yes. Acquisition of these services must follow Section 287.057 F.S., as contractual services, and the procurement method must be consistent with 2 CFR 200.

## **VII. In-House Forces and Force Account**

### **1) Applicability of FHWA Form 1273 and Davis Bacon**

The FHWA Form 1273 and Davis Bacon provisions do not apply to state and local agency employees performing ER work by force account (actual cost of labor, equipment, and materials). A Public Interest Finding (PIF) is not required for Emergency Repairs. If an agency desires to utilize in-house forces for Permanent Repairs, a PIF must be approved first.

### **2) Eligible Expenses for In-House/Agency (Force Account) Staff**

Regular and overtime salaries/wages plus payroll additives of employees directly engaged in the performance of work on specific ER projects associated to a specific DDIR are eligible. The employee's time must be documented and tied to eligible ER projects/work sites and therefore tied to a DDIR. Engineering and general office supplies of an expendable nature charged from stock or purchased for and traceable to a specific ER project are eligible.

If in-house forces are used for debris removal, the public agency must provide a statement and supporting documentation that the debris removal was for initial push / first pass only on Federal-aid highways.

### **3) Temporary Housing Camps**

If State or local agencies utilized a "camp" to house personnel performing ER eligible work, the reasonable costs are eligible. Any contracts used to erect/construct the camps and being requested for reimbursement must meet Federal contracting requirements. FHWA can only reimburse the full cost if the State or local agency can demonstrate all the employees were performing ER eligible work. If only a portion of the employees were performing ER eligible work, FHWA will consider the appropriate portion for reimbursement as supported by appropriate documentation such as time sheets at eligible work sites. The costs of the camp and its operations must be detailed to support any eligible expenses being requested for reimbursement.

### **4) Inmate Labor or Materials**

Inmate labor cannot be used in any Federal-Aid project, including (but not limited to) debris removal, emergency repairs, or permanent repairs. Materials supplied by inmate labor are also prohibited on all Federal-Aid projects. Work release programs in which the workers are still designated as "incarcerated" individuals are still classified as "inmate" labor.

### **5) If the FDOT and local agencies are using in-house force account labor for emergency work (such as debris removal, etc.), can we reimburse the cost of lodging (hotel, RV, etc.), meals, rental cars, portable toilets, tolls as part of this force account work?**

Yes, within the following limitations. Reasonable justifiable costs for these items are only eligible if the employees are strictly performing work on ER eligible projects and the documentation identifies the ER projects – which must be tied to a DDIR. If the employees are also performing work not eligible for ER reimbursement, then the items used by those employees are not eligible. If people not performing work on ER eligible projects are also utilizing the items (rental cars, toilets, etc.) then the cost of such items are not eligible for reimbursement under the ER Program.

## VIII. Active Construction Projects

### 1) **Is pre-disaster work eligible, such as removing barricades from existing projects?**

Pre-disaster preparations are ineligible under the FHWA ER program. However, any work within the limits of an active federal job could be paid with regular federal aid project funds via change order, if FDOT instructed the contractor to take pre-event actions.

### 2) **Is damage from an eligible event on active construction projects eligible?**

The intent of the ER Program is to fund repairs to damaged roadways caused by a natural disaster or catastrophic failure, not repairs to roadways damaged as a result of preexisting and non-disaster related, i.e., inherent deficient condition. A roadway under construction should be treated the same as a roadway with an inherent deficient condition unless a roadway segment cross section has been completed in conformance with the project's contract requirements. **Therefore, FHWA generally will NOT reimburse for fixing damages on active construction projects with ER funding unless the damage occurs on a segment of the roadway in which the cross section has been completed.** Regular federal aid funds may still be used for the repairs provided the repair work is determined to be outside the requirements of the construction contract, thus it is not the contractor's responsibility to make the repairs at no additional cost under the contract terms.

Based on this statement, the pavement structure, drainage structures, ditches, slopes, turf establishment, etc. would all need to be complete before FHWA would consider using ER Funds. Also, items that are not incorporated into the final project, but are on the project as part of the construction are NOT eligible for reimbursement of ER funding. The following are examples of ineligible items:

- Damage to landscaping,
- Damage to retention detention ponds,
- Replacement of aggregate base washed out from a road in which the final cross section is incomplete,
- Damage to incomplete bridges,
- Repair of damage caused by drainage structures not being placed,
- Fixing washed-out ditches or slopes in which the turf was not completely established
- Damage to equipment,
- Erosion of stockpiled material,
- Damage to the Contractor's or CEI's trailers or equipment,
- Repair/replacement of silt fence and other erosion control measures (only eligible for ER funds if necessary as part of an ER eligible repair such as a roadway washout),
- Replacement of Maintenance-of-Traffic devices (signs, drums, etc.),
- Pumping of water from Contractor's work areas,
- Cutting holes in temporary tarp protecting bridge strands to reduce wind load.

The Contractor should take all necessary precautions to protect Federal-aid projects from damage, including ER-funded projects still under construction or practically completed, but not yet accepted by the State. Before considering an ER project for rehabilitation/repair work on

an active project, it must clearly be established that such rehabilitation/repair work is not, in fact, the responsibility of the Contractor.

**3) Emergency Repair Work on active construction projects:**

Emergency Repair work must meet the definition given in the ER Manual for this type of repair.

**4) Permanent Restoration work on active construction projects:**

Permanent Repair work must meet the definition given in the ER Manual for this type of repair. If there is ER eligible work on an active construction project that is determined by FHWA to be eligible for Permanent Restoration, there are two choices:

- a) The agency can let a competitive bid contract according to normal Federal-aid procedures, or
- b) The existing contractor may perform the work if FHWA concludes (and includes this statement on the DDIR):

*“It is most economical to have the existing contractor complete the work at existing contract prices or at negotiated prices. This situation usually occurs for a relatively small amount of work. Therefore, this DDIR authorizes the State to proceed with the permanent restoration work accordingly.”*

FHWA must give prior concurrence before proceeding with either approach and may require a cost justification analysis to support the request.

**5) Erosion Control**

Temporary erosion control features include hay bales, silt fencing, mulching, grassing, seed, berms, sod, etc. Permanent erosion control features include sod (with a fertilizer plan), geofabrics, geogrids, etc. Temporary erosion control devices are not eligible for ER funds unless they are part of an ER eligible repair activity. The DTE makes the final determination of eligibility regarding the repair of permanent erosion control devices.

**6) Does an active construction project automatically constitute a single site for meeting the \$5,000 threshold?**

The criteria for determining a “damaged site” is the same as for non-active construction areas. If the damages are within ¼ between each other, the FDOT may combine those locations (with prior consultation and concurrence by FHWA). But damage is not automatically combined just because it is one active construction project.

## **IX. Protective Features (i.e. Resiliency and Betterments)**

- 1)** 23 USC 125 (d)(3) identifies a list of protective features that are considered eligible resiliency expenses when included in permanent repairs to improve the resiliency of a facility.
- 2)** ER projects that include betterments or resiliency improvements may require further NEPA review and should not be assumed to qualify as a Categorical Exclusion since they typically involve elements and features that were not previously present in the pre-event condition.
- 3)** 23 USC 125(d)(2)(A)(ii) indicates that additional protective features must still be an “economically justifiable improvement.” Therefore, a Cost-Benefit analysis is needed for any resiliency or betterment modifications to a facility. This analysis looks purely at the reconstruction costs for comparison purposes and does not include traditional Cost-Benefit elements such as “road user” costs or economic impacts to the area.
- 4)** A suggested process for conducting a resiliency analysis is as follows in Florida’s ER program:
  - a)** A 20-year analysis cycle is used as that represents the expected life of a typical roadway.
  - b)** Utilize NOAA’s database to identify the 20-year historical storm interval for Hurricanes and Tropical Storms impacting the county in question:  
<https://www.ncdc.noaa.gov/stormevents/choosedates.jsp?statefips=12%2CFLORIDA>
  - c)** Include storms that are one category less, and all categories higher, than the storm being analyzed for determining a reoccurrence interval.
    - For Example, a Cat 3 storm repair could include Cat 2 through Cat 5 storm events in establishing the frequency interval of storms impacting the county in which the damage site is located.
  - d)** Utilize the time value of money inflationary adjustment factors as discussed in FDOT’s Florida Design Manual for Cost-Benefit analyses to calculate the Net Present Value of the replacement costs of rebuilding the “in-kind” facility at each storm interval year versus the proposed improvements of the resiliency/betterment being proposed.
  - e)** If the Net Present value of replacements over the 20-year period equals or exceeds the proposed resiliency/betterment costs, then the proposed improvements might be justified for utilizing ER program funds. Consult with the FHWA District Transportation Engineer for further information on preparing an analysis.
- 5)** Emergency Relief Program funds cannot be used to fund resiliency improvements for locations that were not damaged by an eligible ER event as part of an ER recovery effort. But they can be combined into a larger project in which multiple funding sources (state, local, or non-ER Federal Aid, etc.) are utilized to “fill in” the gaps between eligible damage locations under a single contract. The contract must comply with all federal requirements.

## **X. Miscellaneous Eligibility Topics and Questions**

Are the following topic areas eligible for ER funds?

### **1) Landscaping**

Landscaping repair is only eligible if it is incidental to otherwise eligible Federal-aid highway repairs. ER funds cannot participate in damages only involving landscaping features.

### **2) Locations constructed with Federal-aid funds but off the Federal-aid highway system**

The damage must be on a Federal-aid highway.

### **3) Sidewalks and Bike Trails**

When a pedestrian or bicycle trail that is within the ROW of a Federal-Aid highway is damaged by an eligible event, that damage is eligible for ER funding whether or not the roadway itself is damaged. The site damage must still exceed the \$5,000 threshold, and the damage must be clearly attributable to an ER eligible event. Preexisting damage is not eligible. Maintenance records or other documentation establishing the preexisting condition may be required.

### **4) Railroad Crossings**

Damage to railroad crossing signs, signals, sign structures, bells, etc. are eligible if the crossing is on a Federal-aid highway. The DDIRs would be handled with the FDOT (usually a Central Office Rail Office). The railroad company would also be involved, especially supplying disaster assessment and repair costs.

### **5) Logo Signs**

Repair costs for LOGO signs are not eligible for FHWA ER fund reimbursements, since they were not installed using public funds.

### **6) Pre-Disaster activities by state or local agencies**

Pre-disaster activities are not eligible. State and local agencies are expected to take the necessary action to minimize damage. The lowering of high mast lights is one example of work that is not eligible.

### **7) General Damage Assessments, General Supervision, and Contract Administration Costs**

Costs such as a general assessment of damage (including bridge inspections), general supervision, contract administration (other than construction engineering), and project planning/scheduling are considered eligible if they relate to implementation of the ER program as a whole, but are generally not directly reimbursable. These costs are normally recovered through the indirect cost reimbursement function of the ER program.

The Division Office and the FDOT have already established indirect cost rates which are utilized to compensate for indirect costs expenses incurred to administer the ER program.

## **8) Utilities**

Repair to damaged utilities on federal-aid highways is not an eligible item under the ER program. 23 CFR 668.109(b) defines eligible scopes of work for ER funding and utilities are not identified as being an eligible item for ER funding. Additionally, 23 CFR 645 discusses Utilities and their relationship to highways. While there are provisions for the participating in the RELOCATION of utilities necessitated by the project's design, the utilities themselves are privately owned facilities occupying public ROW being allowed to occupy public ROW. The DOT is under no obligation to pay for damages to those facilities because of an ER eligible event.

Damage to power lines, sewer/wastewater treatment facilities, and other utilities owned by the FDOT at rest areas, welcome centers, and toll facilities may be eligible since they are a part of a publicly owned facility.

## **9) Temporary Weigh Stations**

If weigh stations are installed to monitor loads on bridges that suffered eligible damage or temporary bridges installed as a result of eligible damage, the installation and operating (including personnel, etc.) costs are eligible as long as it is beyond their normal work load (extra personnel - rather than pulling personnel from elsewhere).

## **10) Fence Repair**

Fences are only eligible if they have been installed as part of the highway infrastructure to control the limited access ROW and have not been installed as an aesthetic fence placed by property owners in place of standard highway fences. The damage must have been caused by the ER eligible event.

For a fence to be eligible, the section must have suffered significant damage that requires the removal and installation of a new fence system. If the fence can be repaired, then it is considered heavy maintenance and not eligible for ER funds.

Fences that have excessive overgrowth due to a lack of proper maintenance and are "pushed" over by wind forces striking the overgrowth could be considered a pre-existing deficient condition rendering the damage ineligible for reimbursement. The ultimate decision resides with the DTE.

## **11) Insurance Coverage**

If there is insurance coverage for damaged infrastructure/facilities, the ER Program cannot pay for items covered by said insurance. FHWA expects the agencies to pursue insurance first. If insurance will not pay for all eligible damage, the ER program can participate for the balance as long as it is all for ER eligible work. However, ER funds cannot be used to cover the deductibles for insurance-covered damages.

The practice of applying for ER funds while waiting for an insurance claim to process, and then refunding the ER program any differences, is not an acceptable practice.

## **12) Temporary Generators (for traffic signals and rail crossing signals) and Rental Equipment**

If generators were purchased, ER funds can only be used to pay equipment rental rate (not to exceed the purchase cost). After reaching the purchase price, the ER program can only pay the cost to operate and maintain the equipment. If rented, FHWA will pay rental cost. ER funds cannot be used to buy equipment. (This also applies to other equipment such as chain saws, etc.). Only generators and equipment acquired within 3 months of the eligible event will be considered for the “purchase price” reimbursement and must be supported with a purchase invoice. This way FHWA can be reasonably certain that the equipment was not acquired and used for other ineligible purposes besides ER response and helps prevent FHWA from paying for the same pieces of equipment over multiple hurricane seasons. **Temporary generators used on intersections that did not suffer ER Eligible damage are not eligible for ER funds.**

## **13) What does FHWA utilize to determine equipment rates?**

FHWA does not maintain a listing of set equipment rates. The 2013 ER manual discusses how to handle equipment in Chapter II.B.19 as far as source documents. The burden is placed on the applicant to use the rates as supported by verifiable analysis. If those rates are not established, then it would be acceptable to utilize FEMA’s rates for equipment or Blue Book Rental rates. The last paragraph of the referenced section also discusses the pricing for equipment from commercial sources.

The ER manual also states that “Each applicant should use either the FHWA approved State DOT rates or its own rates, but not a combination of both.” So there should not be a mixing and matching of rates to achieve maximum reimbursement.

## **14) National Environmental Policy Act (NEPA) Compliance**

23 CFR 668.113(b)(3) states that an “Emergency repair meets the criteria for categorical exclusions pursuant to 23 CFR 771.117 and normally does not require any further NEPA approvals.” The §668.113(b)(3) provision is reiterated in §771.131 which states:

Responses to some emergencies and disasters are categorically excluded under §771.117 for FHWA, §771.118 for FTA, or §771.116 for FRA. Otherwise, requests for deviations from the procedures in this part because of emergency circumstances (40 CFR 1506.11) must be referred to the Administration’s Headquarters for evaluation and decision after consultation with CEQ.

Furthermore, the 23 CFR 668 Non-Regulatory Supplement (dated December 9, 1991) for section §668.113 states:

Project Procedures: Pursuant to 23 CFR 771, emergency repairs are categorically excluded from requirements to prepare an environmental impact statement. No environmental documentation or environmental clearance by FHWA is needed for these emergency repairs.

Given that these codification references establish the Class of Action for emergency repair projects as Categorical Exclusions for most normal emergency repair projects, and the Non-

Regulatory Supplement explicitly states that there is no documentation or environmental clearance needed, the FHWA Florida division does not require FDOT to conduct the NEPA evaluations prior to the State (or County) DOTs commencement of their **emergency** repair activities so long as those activities occur within existing Right of Way.

Recognizing though that there could be instances where a repair may require a higher class of action than a Categorical Exclusion, the Florida Division office has opted to utilize the authority granted to it via §668.113(b)(2) and implement a streamlined process, which permits state and local departments of transportation and public works, to begin emergency repairs immediately. While those Emergency Repairs proceed, the FDOT should conduct a NEPA evaluation concurrently in order to verify the class of action remains a Categorical Exclusion. Upon verification that the emergency repair's class of action remains a Categorical Exclusion, the state or local agency is permitted to seek reimbursement for eligible sites through the Title 23 Emergency Relief program (assuming the program has been appropriately activated).

If a higher-level class of action is appropriate, then projects must follow the normal National Environmental Policy Act (NEPA) processes and requirements. Care should be taken to recognize potential conflicts that could require more in-depth analysis that could result in the need to perform an Environmental Assessment or Environmental Impact Statement. If impacts to protected or otherwise sensitive resources are possible, advance coordination with the appropriate local, State, and Federal resource agencies should be performed to avoid or minimize project delays or shutdown.

All permanent repair project shall have all the environmental clearance requirements completed prior to FHWA's initial construction authorization. ER projects that include betterments or resiliency improvements may require further NEPA review and should not be assumed to qualify as a Categorical Exclusion since they typically involve elements and features that were not previously present in the pre-event condition.

The DDIR does not serve as a NEPA document and cannot be used as an environmental clearance determination.

### **15) Toll Facilities**

Toll Facilities that have entered into a Section 129 Toll Agreement or MOU (as per 23 USC 129) with FHWA are eligible for reimbursement for damages to those facilities from an eligible ER event.

Toll Facilities not previously covered by a Section 129 Tolling Agreement or MOU can seek FHWA ER reimbursement if they agree to the terms and conditions discussed in 23 USC 129 prior to the collection of any tolls after completion of the repairs and the continued operation of the facility.

### **16) Maintenance of Traffic (MOT)**

Pre-event MOT is not eligible for ER work due to the fact that pre-event work itself has never been eligible. Removal and replacement of MOT devices in anticipation of a storm is not eligible

for ER funds. The removal is pre-event work, and the replacement of the devices is considered an extension of that activity.

Proper MOT is expected to be followed during ER events and recovery operations. FHWA will pay rental rates for MOT items when the MOT is necessary for road closures or damage repairs due to an eligible event and eligible damages. FHWA will reimburse the costs for short-term Variable Message Signs, temporary barricades, and temporary signs beginning the date of a declared FHWA-eligible event (date of landfall), related to detours around areas that incurred eligible ER damage. If performed by FDOT forces, the costs will be reimbursed on a force account basis. The facility damages must exceed the \$5,000 minimum threshold independent from the costs of the associated MOT. If there is no actual damage to the roadway, the MOT costs are generally ineligible for ER funds.

An exception to this may be granted if the detour was necessary because the roadway was flooded, regardless of whether or not the roadway was ultimately damaged by the flooding itself. Preventing traffic from using a facility with saturated base conditions is considered to qualify as “protecting the remaining facilities” from subsequent traffic damage. The ER manual stipulates that roadway damage caused by traffic where the base is still saturated is not eligible for ER reimbursement. Therefore, it is in the agency’s interest to protect such facilities until floodwaters have receded and traffic can return without damaging the roadway. Photos must be provided to demonstrate these flooded conditions and the cumulative costs of the MOT deployment must still exceed the \$5,000 heavy maintenance threshold in order to be reimbursable under this scenario.

When bidding contracts for “MOT services only” for an uncertain period of time, it is advisable to prepare the bid quantities to reflect all the MOT elements that are expected to be deployed at the project site for multiple days as a baseline estimate. This will help reduce the risk of bid price manipulations that are sometimes observed for single unit bid quantity or IDIQ contracts.

### **17) Police Officers**

Traffic Services provided by police officers are typically limited to activities which direct traffic 1) through damaged intersections, or 2) to or through detour routes. These activities must be directly related to an eligible ER site, and be above and beyond normal day-to-day responsibilities, and represent additional overtime or shift costs. The added costs should be itemized and documented to support the use of ER funds. There is an expectation that the appropriate MOT devices are put into place as soon as possible to close off the roadway and free up the officers.

### **18) Sinkholes**

Sinkholes are only eligible if they meet all other necessary criteria for ER funding. These criteria include development of sinkholes during an eligible ER event or sinkholes developing within the ROW of a federal-aid highway during an eligible ER event. Also, Sinkholes could be categorized as a catastrophic event if it meets the necessary requirements.

### **19) Highway Lighting Repairs**

Lighting repairs are considered Permanent Restoration work since it is not required to restore essential traffic.

### **20) Noise walls**

Noise walls are treated as Permanent Restoration work.

### **21) If a contractor cuts holes in temporary tarps protecting bridge strands on an active construction painting project to reduce the potential wind load from a storm, is the work eligible?**

The work is not eligible for the following reasons:

- a) It is pre-event work.
- b) The damage was self-inflicted by the contractor. The ER program is meant to repair damage inflicted by the hurricane (or eligible event).
- c) "Most states require the contractor to take all necessary precautions to protect Federal Aid projects from damage..." (FHWA ER manual section II.B.7)
- d) The tarps are temporary due to the work underway and not accepted by the state as completed. The tarps are very large and cover the suspension bridge strands they are painting, so it's the contractor's cost and responsibility.

### **22) Materials from agency-owned inventories or stockpiles**

The ER program will pay the individual inventory costs for items that are incorporated into the project that were incurred at the time of purchase, but it will not pay to replace that inventory item at current market value. For example, if a sign purchased for \$100 a year ago is placed as part of an ER repair, but it now costs \$120 to replace it in inventory, the ER program will reimburse the \$100 that the sign cost originally, not the \$120 needed to replace it in inventory.

The restocking of inventory in anticipation of future needs is not an eligible activity. Invoices for materials used are expected to be available to verify original purchase prices upon request.

If the agency wants to require the use of state supplied materials, they must comply with 23 CFR 635.407 for both Emergency and Permanent Repair projects.

### **23) Traffic Management Center (TMC) Staffing**

Additional manpower may be required at TMCs for a short period immediately after significant events to better dispatch FHP or others for improved traffic control. These additional costs, above and beyond the normal day to day staffing levels, are eligible for ER funding. Detailed accounting will need to be provided to justify the reimbursements.

### **24) ITS system repairs**

ITS system repairs are considered Permanent Restoration work since they are not required to restore essential traffic.

## **25) Back-to-back storms occurring within close time periods of each other**

Each ER event is considered a separate event with a separate funding pool. When it appears that an impending storm could impact an area that is still recovering from a previous event, it is necessary to document the condition (typically via photos) of the facilities under repair before the next storm arrives. This allows FHWA the ability to see what additional damages (if any) were caused by the subsequent event and assign them to the appropriate storm as needed.

## **26) Restoring Essential Traffic**

Restoring essential traffic is defined as the minimum repairs necessary to open the roadway to emergency vehicles, utility and/or construction vehicles and roadways that lead to emergency facilities (if no reasonable detours are available). Such repairs may require reduced numbers of lanes, minimal pavement standards, detours, and lower design speeds. Supply vehicles, such as fuel, food, and water needed to aid disaster and first responders, may also be considered “essential traffic” if the circumstances necessitate it. Restoration of essential traffic should be based on an evaluation of need and does not mean a return to normal levels of service or full reconstruction of the site.

Public access to essential locations, such as medical facilities, schools, work, and grocery stores, could also be considered “essential” under some circumstances, but justification and evaluation should be provided to demonstrate the sites meet the eligibility criteria as discussed in 23 CFR 668.103 and 668.109

## **27) Traffic Signs**

Traffic signs must have suffered serious damages that requires them to be removed and replaced. The straightening of signs otherwise structurally or functionally uncompromised is considered a heavy maintenance activity.

Traffic signs may be grouped into one DDIR along a single corridor route to reach the heavy maintenance threshold, so long as their distances between signs are within approximately ¼ miles of each other or within an interchange site (when applicable) as discussed in Section I.(1)(h) of this FAQ.

## **28) Post-Event Damages**

Emergency Relief funds may only be used to repair damages caused by an ER eligible event. While it is permissible to include items that might not have been identified during the initial damage inspection, ER program funds cannot be utilized to address damages caused by subsequent natural occurrences such as heavy rainstorms or tidal activities. Those additional damages are the responsibility of the maintaining agency to fund. Although it would be allowable to split fund the repair efforts between ER funding and non-ER funded sources under one contract.

## **XI. Financial Processing Issues**

### **1) FMIS Project Authorization Date**

The initial FMIS project authorization date is the date the Governor (or President) declared the state of emergency (declaration date).

### **2) Invoice Deadlines**

All invoices for ER work should be submitted within 2 years from the date of initial authorization in FMIS; invoices for PR work should be submitted within 4 years after initial FMIS authorization. Note that any reimbursement requests (submitted with appropriate supporting documents) received after the 2 year or 4 year deadline will be reviewed and approved on a case-by-case basis.

### **3) Review of Invoices and Documentation**

Personnel designated to review and approve payment of invoices shall ensure “reasonable” assurance exists that the payment is appropriate and eligible for Federal participation. An acceptable methodology for assurance may be periodic reviews of a sample of invoices encompassing a complete review of all supporting documentation. While the normal review and approval of invoices may not require a review of all supporting documentation; any supporting documentation reviewed must be retained in the payment file. However; ALL documentation supporting the validity of an invoice, whether used in the approval of an invoice or not, shall be retained per FHWA and FDOT record retention requirements. These may be housed at the local agency or FDOT.

Documents must be retained, as required, and readily available for review. Financial records and supporting documentation shall be retained, for a minimum of 3 years in accordance with all requirements set forth in 49 CFR. This requirement may be satisfied through the use of electronic media. In addition to meeting federal record retention requirements, FDOT must also ensure the State of Florida’s Records Management Program requirements are met

### **4) Settlement Claims**

FHWA will participate in settlement claims to the extent that they are supported and justified using the same criteria as regular federal-aid funding. FHWA must be consulted about its participation prior to the award of the settlement. Additional ER funds to cover the costs that are approved will be authorized after the claim is settled.

### **5) Fund Management**

At the end of each Fiscal Year, unobligated ER funds will be withdrawn for use in other parts of the country as needed. The Division Office will work with the FDOT to determine the need for ER funds into the next fiscal year for damages incurred in prior fiscal years, but the reallocation and availability of the funds to the state is not guaranteed. Chapter VI.B of the 2013 ER manual explains this in more detail.

**6) Project Closeout**

In cases where FDOT is requesting FMIS reimbursements less than \$5,000 for a project, the FMIS State remarks field should provide a clarifying statement indicating that eligible damages exceed \$5,000 but the FDOT is not seeking full reimbursement of the eligible costs. Otherwise, the project might be classified as “Heavy Maintenance” and withdrawn.

**7) CEI-only Charges**

Reimbursement for CEI related expenses must be associated with an eligible repair activity. The agency cannot request reimbursement for CEI expenses for sites where no eligible repair activities occurred or were requested for reimbursement.