

CHAPTER 22 – FHWA EMERGENCY RELIEF PROGRAM

22.1 OVERVIEW

In ***Title 23, United States Code, Section 125***, Congress authorized a special program from the ***Highway Trust Fund*** for the repair or reconstruction of Federal-Aid highways and roads. These roads must have suffered serious damage as a result of (1) natural disasters or (2) catastrophic failures from an external cause. This program is commonly referred to as the ***Federal Highway Administration (FHWA) Emergency Relief*** or “***ER Program***.” It supplements the commitment of resources by States, their political subdivisions, or other Federal agencies to help in the repair of facilities damaged by eligible events.

The FHWA ER Program is activated when a Governor’s Proclamation of a State of Emergency or a Presidential Declaration of a State of Emergency is issued. When the event is due to a natural disaster or catastrophic event, such as a hurricane, FHWA considers the ER event date to be the date of landfall of the storm. Additional information on types of events that trigger the program may be found in the [FHWA Emergency Relief \(ER\) Manual](#) and [FHWA Florida Division ER Q&A Guide](#).

There are two categories of emergency relief:

- 1) emergency repairs, and
- 2) permanent repairs.

Generally, all elements within the cross section of a Federal-Aid highway that are damaged as a direct result of a disaster are eligible for repair under the FHWA ER program. This includes, but is not limited to: pavement, shoulders, slopes and embankments, guardrail, signs and traffic control devices, bridges, culverts, cribbing or other bank control features, bike and pedestrian path, fencing, and retaining walls. The repair of a pedestrian or bicycle trail inside the right-of-way of a Federal-Aid highway is eligible for ER funding whether or not the roadway itself is damaged. It is important to note that all emergency relief work must comply with ***National Environmental Policy Act*** (NEPA) requirements. Additional information on how to comply with NEPA and seek required approvals from the Department is found in [Chapter 11: Compliance with NEPA](#).

Emergency and permanent work to be performed by a Local Government shall be in accordance with [Emergency Procurement During Governor Declared Emergencies, Procedure No. 375-040-130](#).

ER Program funds are allocated directly to the Department for each declared event precluding the Local Agencies from seeking reimbursement for damage sites without Department assistance. Local Agencies emergency relief projects are subject to the Department's Federal-Aid, emergency, and other relevant program policies and procedures to be eligible for reimbursement with FHWA ER program funding. A Local Agency will work directly with the Department when seeking reimbursement through the FHWA ER Program.

22.1.1 Department Roles and Responsibilities in ER Activities

The [District Maintenance Engineers](#) are the primary point of contact for the FHWA ER Program during and after a declared event to provide guidance to Local Agencies on preparing and submitting damage reports for repairs to the Department who in turn submits to FHWA. The Department assists the Local Agency in preparing the necessary documentation for justification and reimbursement, and also coordinates directly with the FHWA District Transportation Engineer (DTE) on behalf of the Local Agency. Each District coordinates site inspections, reviews, and approvals of the Detailed Damage Inspection Reports (DDIR) with the FHWA DTE. DDIRs submitted by a Local Agency shall be reviewed and signed by the Department Maintenance Engineer or their designee. Due dates for the submission of DDIRs are provided in the Department's [Work Program Instructions, Part III, Chapter 10](#). Deadlines are communicated by the Department's Federal-Aid Office. The District LAP Administrators will assist with the dissemination of critical information and deadlines to the Local Agencies from the Department.

22.1.2 FHWA Roles and Responsibilities in ER Activities

The role and responsibilities of the FHWA in ER activities under **Sections 120 and 125, 23 U.S.C.** are:

- Administration of the ER program by coordinating and implementing disaster relief policies and procedures.
- Assistance to State, Federal, or other highway agencies in seeking application for funds.
- Technical assistance to the State, Federal, or other highway agencies in the review, design, repair, and reconstruction of damaged highway facilities.

22.2 PROGRAM ELIGIBILITY

Title 23 CFR Part 668, Subpart A provides that an event generally must have caused at least \$700,000 (Federal share) in eligible damage to the entire declared area for the event to be eligible for ER Program funding. Disaster damage totaling less than \$700,000 (Federal share) is generally considered to be heavy maintenance or routine emergency repairs. For exceptions to this damage threshold, see **23 CFR 668.105(j)**. A minimum \$5,000 in actual damages per site, within the declared area, is used to determine if specific sites are eligible for ER funds. Sites that have sustained less than \$5,000 in damage are generally considered to be heavy maintenance. Sites meeting the damage threshold are not guaranteed ER funding; the threshold denotes those sites that are eligible to apply for ER funding.

By statute, ER funding is limited to the cost of repair or reconstruction of a comparable facility. A comparable facility is a facility that meets the current geometric and construction standards required for the types and volume of traffic that the facility will carry over its design life. A risk-based analysis should be used when designing and constructing repairs to ensure they are cost effective and to reduce the potential for future losses. The analysis should apply the best available scientific and economic information to forecast and assess future risk factors.

22.2.1 Site Characteristics

Three basic characteristics that shall be met for a damage site to be potentially eligible for the ER Program are:

1. The event is declared by the President or the Governor.
2. The site is within the right of way of a Federal-Aid highway facility.
3. The site meets a minimum threshold amount of \$5,000 in damage. Multiple locations on the same Federal-Aid highway that are **less than** ¼ mile apart may be grouped together as one “site”.

22.2.2 Qualifying Roadways

A qualifying roadway must be a Federal-Aid highway. Federal-Aid highways are public roads that are classified as arterial, urban collectors and major rural collectors. Highways that are classified as minor rural collectors or local roads are not eligible for ER funding even if other Federal-aid funds have been used on those roads. The Department's Transportation Statistics Office updates reports and maps on Federal-Aid highways monthly. The reports and maps to assist in determination of eligibility may be found at <http://www.fdot.gov/statistics/fedaid/default.shtm>. For additional information on eligibility

for sites outside the right of way of a Federal-Aid highway, consult the ***FHWA ER Manual, Chapter II, Section B.16.***

22.2.3 LAP Projects Previously Completed or in Active Construction

Previous LAP projects constructed with Federal-Aid funds off the Federal-Aid highway system are not eligible. An active construction project generally will not qualify for reimbursement under the ER program. 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. The contractor must take all necessary precautions to protect Federal-Aid projects from damage prior to final acceptance by the Local Agency and the State.

The District will defer to the [FDOT Construction Project Administration Manual \(CPAM\), Chapter 7.6](#) for procedures on how to determine eligibility of contract changes, claims, down time, and other contractual items on active projects related to Governor declared emergency events.

22.2.4 Ineligible Activities

Some common ineligible activities are listed below. Full descriptions are provided in the ***FHWA ER Manual.***

- Pre-disaster activities by state or local agencies are not eligible for ER reimbursement.
- Maintenance, administration, and overhead costs of state and local agencies are not eligible.
- Repair to damaged utilities are not eligible.
- Ineligible highways that are neither Federal-Aid highways nor on Federal Lands. The ***Federal Emergency Management Authority (FEMA), Public Assistance Policy Digest, January 2008, Publication Number FEMA 321*** provides program guidance, authorized by the ***Stafford Act, P. L. 93-288***, and is available at <http://www.fema.gov/pdf/government/grant/pa/pdigest08.pdf>.

22.3 PRE-EVENT CONTRACTS

Pre-event contracts are allowable when Federal-Aid requirements are met, including competitive low bid advertisements. Currently, FHWA has approved boilerplate language for Construction Engineering and Inspection (CEI) services, debris monitoring, cut & toss and debris removal, traffic control signals, and permanent sign repair. Pre-event contracts for other work types may be acceptable as long as FHWA Federal-Aid requirements are met during the procurement process and incorporated into the contract

document. A list of approved pre-event scopes of service may be obtained by contacting the District Maintenance Engineer. A boilerplate for CEI services may be found on the Department's [State Construction Office](#) website.

FHWA recommends that Local Agency contracts be consistent with the state 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(s). FHWA does not review pre-event contracts, but Local Agencies are encouraged to allow the Department to review contracts prior to bid letting for FHWA eligibility requirements. Local Agencies should contact their District Maintenance Engineer for additional guidance regarding pre-event contract requirements in order to preserve FHWA eligibility. Additional information on pre-event contracts may be found in the *FHWA Emergency Relief Manual* and *FHWA Florida Division ER Q&A Guide*.

For pre-event contracts that identify a sole source material supplier or proprietary product, a Public Interest Finding must be submitted to FHWA for approval in advance of executing the contract, as per **23 CFR 635.411**. This applies to both the Department and Local Agency pre-event contracts.

22.4 EMERGENCY REPAIRS

An eligible emergency repair is performed during (meaning after landfall for hurricanes) and immediately following a disaster and one of the following three criteria is met:

- 1) The purpose of the repair is to restore essential traffic; this includes proper Maintenance of Traffic (MOT) during emergency operations. Essential traffic is defined as emergency crews and debris crews; not restoring traffic to normal flow.
- 2) The purpose of the repair is to minimize the extent of damage.
- 3) The purpose of the repair is to protect remaining facilities.

Emergency repair work generally occurs in the first 180 days after the event date and may be eligible for federal reimbursement at 100%. If access to a site is obstructed, time may be extended past 180 days. Emergency repairs incurred after the first 180 days are eligible for reimbursement under the permanent repair Federal share methodology described in **Section 22.2**.

Emergency repair work may begin immediately without FHWA's prior approval. A reimbursement eligibility determination is made by FHWA after a site review and/or documentation review with a Detailed Damage Inspection Report (DDIR). A DDIR, photographs, engineer's estimate, and scope of work are required documentation for each site.

22.4.1 Emergency Repair Work Type Examples

A list of common emergency repair work types is provided in the *ER Manual, Chapter II* and the *FHWA FL Division ER Program Q&A*. More detailed information may also be found within both sources. Information regarding debris removal and FEMA vs. FHWA jurisdiction over roadways is also located in the ER Manual.

22.4.2 Emergency Repair Authorization and Agreement

A Local Agency seeking reimbursement for emergency repairs is not required to be LAP Certified by the Department. The Department staff may execute the grant disbursement agreement [Form No. 350-000-15 Emergency Local Government Emergency Relief Reimbursement Agreement](#) with a local agency regardless of certification status. The grant agreement boilerplate contains reference to the federal requirements the agency must comply with when seeking reimbursement with federal funds.

Authorization items and activities to consider:

- NEPA actions may be completed concurrently with emergency repairs or completed after the repair is complete, but must be done prior to the Local Agency beginning permanent repairs.
- A Finding of Cost Effectiveness for Force Account emergency repair work is not required.
- Certifications or other documentation addressing utilities, railroad, right of way, and permits within the project limits per 23 CFR 635.309(a) are required.
- Execution of **Form No. 350-000-15** must occur during the time period that statutes are suspended pursuant to the Secretary's Emergency Order (reference **FDOT Procedure 375-040-130**).

Completion of emergency repair projects must occur within 180 days after the occurrence of the event for the state to receive 100 percent reimbursement from ER funds. Expenses for work performed after 180 days will be reimbursable at the normal federal pro-rata rate. If work is performed by local governments on roads, which are off the State Highway System (SHS) but on the Federal Highway System, after 180 days, the local government will be reimbursed by the department only for the amounts eligible for reimbursement from ER funds.

22.5 PERMANENT REPAIRS

Permanent repairs are those repairs undertaken after the occurrence of a disaster to restore the roadway to its pre-disaster condition. Unless there is satisfactory justification

for project delay to warrant its retention, projects for permanent repairs that have not advanced to construction obligation by the end of the second federal fiscal year following the federal fiscal year in which the disaster occurred will not be advanced [**23 CFR 668.104(h)**]. Local agencies seeking reimbursement for permanent repair work must be LAP Certified and enter into a LAP Agreement with the Department.

Eligible reimbursement for permanent repairs is generally not 100 percent. A Federal share is determined by the type of Federal-Aid highway being repaired. For Interstate highways, the Federal share is approximately 90 percent. For all other Federal-Aid highways, the Federal share is approximately 80 percent. The federal share is determined based on the approved Detailed Damage Inspection Report (DDIR). For example, if the total DDIR is \$100,000 and the Local Agency adds work not eligible under the ER program and takes the total amount of the project to \$150,000, FHWA will only reimburse 90% or 80% of the \$100,000 previously approved. The Local Agency will be required to provide any required matching funds. Ineligible costs related to a permanent repair project are not eligible for use as the Local Agency's matching funds. The [Work Program Instructions, Part III- Chapter 10](#) provides funding codes and programming information for District use.

22.5.1 Permanent Repairs Authorization and Agreement

Before beginning any permanent repair work, the Local Agency must confirm with the Department that the project has received necessary approvals from the Department and FHWA. For each permanent repair project, a DDIR, photographs, a LAP Construction Checklist, engineer's estimate, and approved scope will be required to request Federal Authorization. Permanent repair projects must be authorized by FHWA prior to beginning construction and must meet all the Federal-Aid requirements.

If the project is to be advertised and awarded to a contractor, the process is identical to the traditional Federal-Aid procurement process for construction projects. As applicable, the use of abbreviated plans or as-built drawings, a shortened advertisement period, and other cost or time saving measures may be appropriate depending on scope of work. These types of exceptions to the standard Federal-Aid procurement process will be determined by the FHWA District Transportation Engineer.

Additionally, if the Local Agency intends to perform permanent work by Force Account they must receive the Department and FHWA approval in the form of a Cost Effectiveness Finding [References: **23 U.S.C. 112, 23 CFR 635.106(a), 635.204, 635.205, 635.407(a), 635.411(c)**]. 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 a legitimate way of tracking Force Account expenditures. **Chapter 24** provides additional

details on how to write the cost effectiveness findings and receive approval for Force Account work.

The Department executes a standard [Local Agency Program Agreement \(Form #525-010-40\)](#) with the eligible certified Local Agency for permanent repair work. Any exceptions to the standard Federal-Aid procurement process approved by FHWA will be incorporated into the Special Conditions of **Exhibit A (Form #525-010-40A)** of the LAP Agreement. All permanent repair projects are administered by the Department per the [LAP Manual](#).

22.6 HOW TO SUBMIT A REQUEST FOR EMERGENCY RELIEF

If an event occurs, the Local Agency should begin emergency repairs to restore essential traffic when conditions are safe for work. The Local Agency maintains detailed descriptions and photographs of work performed and documents all costs incurred to the best of their ability (i.e. load tickets, landfill weigh tickets, timesheet hours for employees, photos). The Local Agency determines which affected transportation facilities are Federal-Aid eligible roadways as detailed above in **Section 22.2.2**. For non-Federal-Aid roadways, contact FEMA as described in **Section 22.2.4**.

22.6.1 Mission Requests

The next step for a local agency is to submit a mission request in the [WebEOC 8.4](#) emergency management platform for the State of Florida. The Florida Division of Emergency Management is responsible for coordinating, tracking and assigning mission requests for emergency relief through the **WebEOC**. The platform adopted by the State of Florida to provide county, state, federal and mutual aid entities use of the same operating environment when responding to and recovering from an emergency.

Mission requests related to transportation are routed to the Department's Emergency Coordination Officer in Central Office. The request is reviewed in Central Office and is then assigned to the appropriate District. The District's Maintenance Engineer will coordinate with the Local Agency and the FHWA District Transportation Engineer to complete the DDIR.

22.6.2 Detailed Damage Inspection Reports

A DDIR must be submitted on form [Department Form No. 500-000-25](#) to the Department. An eligibility determination is made by FHWA after a site review and/or documentation is provided on the DDIR form. Back-up documentation (including location information for work performed) is required to be available upon request to justify costs for which Local

Agencies seek reimbursement. Photos of the damage must be included in the DDIR. If emergency work has already been completed, then photos of the repairs must also be included in the DDIR.

The purpose of the DDIR is to determine eligibility, scope, and a preliminary cost estimate for the emergency and permanent work. The DDIR is only an estimate of quantities and cost. A DDIR is item specific and must relate all major cost items, but does not need to be as detailed as an engineer's estimate. The Local Agency may enter percentages of the total construction costs for the design work (10%) and the CEI work (12%) as the initial estimate for the costs related to these services.

The Department prefers to fill out two (2) separate DDIRs for emergency and permanent repairs. The Local Agencies are not required to fill out separate forms, but may choose to follow Department procedure and fill out separate forms. If the Local Agency provides separate DDIRs for emergency and permanent repair work for one site; it is critical that the Department identifies and provides a cross-reference between the projects in the Fiscal Management Information System (FMIS). If the Local Agency provides only one DDIR for a site requiring emergency and permanent repair work, the Department will divide the activities in FMIS for authorizations.

22.6.3 Revising Detailed Damage Inspection Reports

- DDIRs will only be revised when there are changes in the scope of work or there's a 20% increase in cost. Coordination with the Department and the FHWA District Transportation Engineer is required.
- All documentation that supports any increase in the amount originally estimated on the DDIR must be provided at the time of any requests to FHWA for FMIS authorizations or modifications. Approval in FMIS request serves as FHWA acceptance of the revised cost amount.
- All Department Federal Aid Coordinators must make sure that copies of any new or revised DDIRs are sent to the respective FHWA District Transportation Engineer for review and signature. Also, the District Federal-Aid Coordinator will ensure an electronic copy is sent to Central Office.

22.7 FEDERAL-AID CONTRACTING REQUIREMENTS

In **Sections 22.4 and 22.5**, general applicability of Federal-Aid requirements to repair work types and contracting methods were identified. This section is intended to expand the description of required conditions for emergency relief procurement and

reimbursement eligibility. Listed below are the basic Federal-Aid requirements that must be followed for emergency repair projects and permanent repair projects. These requirements apply to all State and Local Agency contracts for both emergency and permanent repair projects. These requirements cannot be waived due to a State or Presidential emergency event declaration. As stated in Section 22.5, all permanent repair projects delivered by Local Agencies shall conform to the Department's LAP program and all requirements of the LAP Manual shall apply.

22.7.1 Federal-Aid Construction Contract Requirements

Requirements for construction contracts include, but are not limited to:

- **FHWA Form 1273**, titled Standard Federal-Aid Provisions, must be physically incorporated (not referenced) into all prime and subcontractor contracts.
- **Davis-Bacon Wages Act** – waived for Debris Removal services only; applies to all other work types
- Buy America
- Disadvantaged Business Enterprises (DBE)
- **Americans with Disability Act (ADA)**
- Convict Labor Prohibition
- Cost Effectiveness Finding for Force Account permanent repair work

Competitive low bid is the preferred method of construction contracting for Federal-Aid projects. Alternate procurement methods may be allowed for emergency work, but their use should be minimal. Use of alternate contracting methods should be approved by FHWA Florida Division Office prior to contracting and awarding the project. Additional information on alternate procurement and contracting is found in the [FHWA FL Division ER Q&A, Section II Contractual Issues](#). Additional information on alternate contracting methods allowed for LAP projects is found in Chapter 9 of the LAP Manual. FHWA will only reimburse work outlined in a contractual document that includes a scope of work, estimated cost or actual unit cost. A purchase order may be used as a contract if the cost of the work is less than \$150,000 per federal small purchase (*Simplified Acquisition*) requirements in **2 CFR 200.88**.

22.7.2 Federal-Aid Professional Services Contract Requirements

Preliminary Engineering and CEI services are eligible for reimbursement under the ER Program. Per FHWA, it is the responsibility of the Local Agency to hire responsible, qualified personnel who are experienced with the policies of the FHWA ER Program. Consultant Acquisition must comply with **Chapter 287.055, F.S.** and **23 CFR 172.5**. In some cases, noncompetitive negotiation is permitted in an emergency. **Chapter 18** provides additional information on LAP Professional Services Procurement.

22.7.3 Invoicing

Reallocations to the State of ER funds for events declared in prior fiscal years are not guaranteed. Unobligated ER funds will be withdrawn for use in other states or events. It is of the utmost importance that the ER Program funds are obligated and expended in a short period of time. Quarterly (90 days) invoices are the minimum requirement for submission, but it is recommended the Local Agency submits invoices every thirty (30) days due to the very short timeframes of these projects. If issues are identified with supporting documentation or contract compliance, they are more easily resolved when the contractor is still under contract. If the agency submits the invoice(s) after work is completed, it can increase the difficulty in achieving Federal-Aid contract compliance and jeopardize reimbursement.

Local Agency reimbursement with Federal funds requires the agency to submit an invoice to the Department for payment. Once paid, the Department in turn submits an invoice to FHWA for reimbursement of invoices paid to the Local Agencies. Invoices should be submitted no less than quarterly (90 days) by both the Local Agency and the Department. All Department invoices for emergency repair work should be submitted to FHWA for payment within two years from the event date; Department invoices for permanent repair work should be submitted to FHWA for payment within four years of the event date. Given that Local Agency emergency repair work should be complete within 180 days of the event date and permanent repair work generally commences approximately 180 days after the event the two and four-year time clocks should be achieved with few exceptions if consistent quarterly invoices are submitted and approved for payment.

The Work Program Instructions, Part III, Chapter 10, Subsection D. Federal Highway Administration Reimbursement Emergency Relief provide additional details on how invoices are processed for emergency work.

22.8 RESOURCES

[Form No. 500-000-25](#) Detailed Damage Inspection Report Form

[Form No. 350-000-15](#) Emergency Local Government Emergency Relief Reimbursement Agreement (JPA)

[Form No. 525-010-40](#) Local Agency Program Agreement

[Procedure No. 375-040-130 Emergency Procurement During Governor Declared Emergencies](#)

The Work Program Instructions, Part III, Chapter 10

<http://www.fdot.gov/workprogram/Development/PDFInstructions/WorkProgramInstructions.pdf>

FHWA Emergency Relief Manual for Federal-Aid Highways, updated May 31, 2013

<http://www.fhwa.dot.gov/reports/erm/er.pdf>

FHWA Florida Division Emergency Relief Program Q&A guide, revised publication
June 2018

<http://www.fhwa.dot.gov/fldiv/erpfaq.cfm>

Federal-Aid Eligible Roadways Maps

<http://www.fdot.gov/statistics/fedaid/default.shtm>

Federal Emergency Management Authority (FEMA), Public Assistance Policy Digest, January 2008, Publication Number FEMA 321

<http://www.fema.gov/pdf/government/grant/pa/pdigest08.pdf>.

Construction Project Administration Manual (CPAM) Chapter 7.6: Contracting for Governor Declared Emergencies

<http://www.fdot.gov/construction/manuals/cpam/New%20Clean%20Chapters/Chapter7s6.pdf>

[WebEOC 8.4](#), State of Florida emergency management platform