

Federal Highway Administration Florida Division

Emergency Relief Program Q&A

FHWA Florida Division
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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. 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; this includes proper Maintenance of Traffic (MOT) during emergency operations.
 - 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 detours are available).
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, based on current ER guidance; safety is not a consideration to justify emergency repair work.

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 section on Ineligible Items).

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. However,

permanent repairs require FHWA review and approval prior to contract advertisement. A detailed engineer's estimate and competitive bids are required like 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. See the Emergency Relief manual for a definition on Emergency Repairs and 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.

Notes:

- *The use of the term CEI (Construction Engineering and Inspection) in this document includes non-CEI service companies when the discussion involves the monitoring of debris-only activities.*

I. Detailed Damage Inspection Reports (DDIR's)

1) Writing DDIR's

A DDIR is a preliminary cost estimate determination only. It is not to be used as a contracting mechanism nor can it be used as environmental clearance approval. FHWA considers these inappropriate uses of the DDIR. The DDIR is written only to determine eligibility, scope, and determine a preliminary cost estimate for the work, which the Division Office uses to support its request to headquarters for ER funding. The quantities shown on the DDIR should never be used to indicate actual scope, quantities or prices to the contractor. DDIR estimates should include estimated quantities associated with a unit cost. These estimates do not need to be as detailed as an engineer's estimate but it is still an item-specific document and must include all major cost items.

- a) 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.). The scope of work shall be detailed and pay items listed on the DDIR. Sites cannot be combined to meet the \$5,000 minimum damage threshold, with the following exception:
 - I. Generally, a site is an individual location where damage has occurred. However, a site could include several adjoining locations where similar damage, related to the same cause, has occurred. **Sites within ¼ of a mile may be grouped together to form an eligible ER site.** For example, where flooding waters in a drainage course that runs along or continually crosses under a highway has caused damage at several locations within a reasonable distance of each other (no more than a ¼ mile apart), it would be acceptable to package these together as a single site. Another exception could involve damage to traffic signs or signals which has occurred at several locations. For a traffic sign to be eligible, it must have suffered serious damages that requires the sign to be removed and replaced. In this case, it would be acceptable to group signs together that are reasonably close to each other (not exceeding ¼ of a mile) with the accumulated amount considered a site.

II. DDIR's for debris removal must be written on a separate DDIR. Although DDIR's for debris removal can be written county or municipality wide (when deemed appropriate by FHWA) each site included in the DDIR must meet the \$5,000 threshold requirement. Debris removal should not be combined on the same DDIR with other eligible items (e.g. signs and signals).

- b) Separate DDIR's must be written for each local agency seeking reimbursement under the FHWA ER program through the Florida Department of Transportation (FDOT). DDIR's including work completed or to be completed by a local agency must be signed by the local agency and the FDOT representative. 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 this case the DDIR must be written for the county (the owner) and not the city.
- c) All completed DDIR's must be submitted to the appropriate FHWA DTE for an eligibility determination as soon as practicable (the FDOT has two years to submit new DDIRs to FHWA).
- d) 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 will be estimated as 10% for design and 12% for CEI of the total damage estimate.** Estimated local agency indirect costs will not be shown on the individual DDIRs.
- e) If the emergency work is already underway, the DDIR should be accompanied by a signed contract that includes all the applicable federal requirements; such as FHWA 1273 physically attached to the contract, Buy America, Davis-Bacon (if applicable), etc.
- f) If the performance of the emergency repair work has started, FHWA will require a copy of the contract and prices at the time a DDIR is written. The contract and other back up material should be made available to the DTE, and will be attached to the DDIR at that time. There should not be a request to write a DDIR for ongoing work, without having the contract documents available to FHWA staff. For permanent work the DDIR will be written without this documentation, because the work will not be underway and will be performed following normal federal-aid procedures.
- g) 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.

2) Revising DDIR's

- a) **DDIR's 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.**

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. Currently, FHWA has approved the following scope of work:

- Emergency Repairs:
 - debris monitoring,
 - cut & toss,
 - debris removal,
 - traffic signals
- 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/joc.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 Local Agency Program (LAP) /Joint Project Agreement (JPA) agreements required for local agencies to utilize ER funds?**

For emergency repair work, the FDOT has the flexibility to use either the LAP Agreement or JPA when working with local agencies to utilize ER funds.

For permanent repair work FHWA requires the FDOT to utilize the LAP Certification Process for repair projects done by local agencies. The LAP process is the method by which we have assurance that the Federal-aid requirements are understood and followed by the locals. These projects have to be authorized for construction and have to meet all regular federal-aid requirements.

Additionally, if the local agency does permanent work by force account, they must be LAP certified and require FHWA approval, in the form of a PIF, as being 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 a legitimate way of tracking Force Account expenditures.

4) Important Note: For emergency work it is important to remember to take the following into account:

- a) Emergency Repair projects under the Emergency Relief Program must comply with the requirements of the National Environmental Policy Act (NEPA).
- b) Negotiated or solicited contracts are allowed for emergency work, but their use should be minimized. Some type of competitive bid from multiple contracting is the preferred method.
- c) Regardless of the contract method, there should be documentation on how contracts are negotiated, solicited, or competitively bid.

5) Do Buy America and other federal-aid requirements such as Davis-Bacon and Related Acts (DBRA) apply to emergency 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, Buy America, etc. The FHWA 1273 is to be included in the contracts.

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 PIF is not required for emergency work, but is required if State or local agency employees perform permanent work.

Listed below are the basic federal-aid requirements that must be followed for emergency repair projects and permanent restoration 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.

- 1) FHWA Form 1273, titled Standard Federal-aid Provisions, must be physically incorporated (not referenced) into all prime and subcontractor contracts.
- 2) Davis-Bacon Wages Act – waived for Debris Removal services only; applies to all other work types <http://www.fhwa.dot.gov/construction/cqit/dbacon.htm>
- 3) Buy America
- 4) Disadvantaged Business Enterprises (DBE)
- 5) Americans with Disability Act (ADA)
- 6) Convict Labor Prohibition
- 7) PIF for force account permanent repair work

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

It is acceptable to allow adjacent jurisdictions to piggyback on other contracts so long as there is not a unit cost price increase. If a unit cost price increases, then the piggyback is subject to a case-by-case approval basis. If the piggybacking 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 area. This only applies to Emergency Repairs.

7) **Davis Bacon and Debris Removal:**

As per a letter from Timothy Helm of the Office of Enforcement Policy from the US Department of Labor (received 8/25/2006), "DBRA requirements would not apply where the only work on a project is the removal of debris (and related clean-up) from a roadway or public right-of-way. However, debris removal performed in conjunction with construction, alteration, or repair work would be covered by DBRA requirements." Additionally, the Davis-Bacon labor standards requirements do not apply to state or local government agency employees who perform work as in-house 'force account' work.

8) **FHWA 1273**

- a) In accordance with FHWA 1273, 30% of the work performed must be billable to the prime contractor (this only apply to roadways on the NHS).
- b) The requirements of FHWA 1273 do not apply for law enforcement activities that are eligible for ER reimbursement. Activities by these institutions are considered the equivalent to "in-house" or "force account" activities.
- c) The FHWA 1273 doesn't apply to professional services such as CEI Monitoring contracts. The FDOT Standard Boilerplate that includes Federal-aid requirements for procurement should be followed as set forth by FDOT Central Office of Procurement.

9) **ROW, RR, Utility, and Environmental Certifications.**

- a) All emergency and permanent repair projects must have all four certifications. For emergency repairs the certifications can be completed during or after the project is completed. Permanent repairs must have the certifications before FHWA initial authorization.

III. **Debris**

1) **Debris Collection Guidelines**

Definitions:

- ***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.
- ***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.*

a) Debris Removal

In areas where FEMA Public Assistance is available following a natural disaster, debris removal will not be reimbursed by FHWA. This is a change due to passage of MAP-21 legislation.

The intent of the ER Program is to only remove that debris which was deposited as a direct result of an ER eligible disaster event and restore essential traffic on the Federal Aid Roadway. 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.

For example, in the case of hurricanes, the FHWA declared event date would be the date that the storm makes landfall. Specific operational parameters and guidelines necessary to clear the roadways are detailed in the FHWA ER Manual and this Q&A.

b) 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. (Ex: A 24 ft. wide roadway is completely covered by debris and one side is covered by power lines. To allow the power companies access, an 8-foot path of debris is cleared away from 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.)

c) First Pass

The **first pass** is the initial operation to collect and remove debris pushed aside during the first push operations and 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.

All debris (vegetative and non-vegetative) within the eligible clearing limits must be collected during the first pass operation. 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. 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.

d) 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 debris should be calculated within 60 days of the event. Photographs of before and after debris pick up must be included in the backup documentation.

e) Federal Aid Roadway

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

f) 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.

2) 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

3) 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?

ER funding will only pay for the initial hauling of the debris from the roadway. Subsequent hauling is not eligible. 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) FHWA will not base its estimates using the percentages from FEMA's worksheets.

Reimbursement under the FHWA ER program must be based on actual first push and first pass time sheets and load ticket volumes to be eligible.

c) Leaning Trees 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, 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) 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 1st 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 for first push. Then the first pass is expected to occur sometime 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.

IV. Lighting and Signals

- 1) **Federal-aid highway lighting and ITS system repairs – Are these emergency or permanent restoration work?**

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

2) 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.

3) Installation of Light Emitting Diode (LED) signal heads:

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. The sustained damage must first warrant signal head replacements. If only one signal head assembly is damaged, ER funds are not eligible to replace the undamaged assemblies.

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

a) Emergency Repair 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.

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.

V. Bridges

1) The Public Agency is conducting a considerable number of underwater bridge inspections. Will the cost of these inspections be eligible whether damage is found or not?

The cost of the initial bridge inspection to determine if the bridge has been damaged is not directly reimbursable, but it is now considered an indirect cost and recovered through the indirect cost procedures discussed in the ER manual Chapter II.B.2.

If a damage assessment (i.e. initial damage inspection) shows that an emergency repair is needed, and if a further (second) in-depth bridge inspection is necessary to provide detailed damage information for the purpose of design and/or construction, the second bridge inspection is 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?

According to Title 23 of USC Section 125 “In no event shall funds be used...for the repair or reconstruction of bridges that have been permanently closed...by the State or responsible local official because of imminent danger of collapse due to a structural deficiency or physical deterioration.” The conditions are likely covered by other funds. Note, however, that if a bridge was closed for a hurricane-related issue not related to design or construction techniques, it would be eligible for ER funding.

4) As per Title 23 USC Section 125, any 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.

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 determined to be ineligible, those costs shall be deducted from the reimbursement request.** Documentation must be adequate to delineate between eligible and ineligible work.

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 with the following conditions:

- a) The existing consultant 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 consultant contract must be federalized, thus already performing Federal-aid work, not only state funded work.

- c) The PE or CEI work must be added to the existing agreement as a separate task so ER eligible costs can be easily kept separate.
- d) Prior to beginning the PE or CEI task for permanent work, the extra work must be authorized in FMIS by FHWA. Emergency work can proceed without prior FHWA authorization. The authorization request must specify the task is being added for ER work and identify the DDIR number.
- e) 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.

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

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

1) In-House/Agency (Force Account) forces

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 a particular ER project** are eligible.

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

2) Temporary Housing Camps

If State or local agencies utilized a "camp" to house personnel performing ER eligible work, the reasonable costs are eligible. FHWA can only reimburse the full lump cost if the State or local agency demonstrates 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. The cost of the camp must be broken down to fully support all the submitted cost.

3) **Inmate Labor**

Inmate labor is not allowed within the limits of a federal aid project, thus there is no way to reimburse the FDOT for inmate labor from the Department of Corrections for emergency debris removal. **Inmate labor cannot be used in any Federal-Aid project.**

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

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 project funds using a change order, if FDOT instructed the contractor to take some kind of action.

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 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 pond,

- Replacement of aggregate base washed out from a road in which the entire 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 or CEI trailers,
- 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 to be Permanent Restoration, there are two choices:

- a) Require the FDOT to let a competitive bid contract according to normal Federal-aid procedures, or
- b) The existing contractor may perform the work if FHWA concludes:

“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.”

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. But damage is not automatically combined just because it is one active construction project.

IX. Miscellaneous Eligibility Questions

The following topic areas have been raised regarding their eligibility:

1) Landscaping

Landscaping repair is only eligible if it is incidental to otherwise eligible Federal-aid highway repair. This means you cannot have a damage site only involving landscaping repairs.

2) Other projects constructed with Federal-aid funds off the Federal-aid highways?

No, 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, 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. These costs are 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. Damage to power lines, sewer and utilities owned by the FDOT at rest areas, welcome centers, and toll facilities may be eligible.

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

Fence repair in rural areas is normally not eligible for emergency repair. Fences are only eligible if they have been installed as part of the highway infrastructure and have not been installed as an aesthetic fence placed by property owners in place of standard highway fences. **For a fence to be eligible the section must have suffered significant damage that requires the removal and installation of a new fence. If the fence can be repaired, then its considered heavy maintenance and not eligible for ER funds.**

11) Insurance Coverage

If there is insurance coverage for damage, 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 pay for the balance as long as it is all for ER eligible work.

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)

If generators were purchased, ER 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.). **Temporary generator used on intersection 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 rate 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 Compliance

Emergency repairs normally meet the criteria for a Categorical Exclusion (CatEx) as defined in 23 CFR 771.117(c)(9). ER projects to permanently restore the existing facility in-kind at the existing location also qualify as a CatEx. However, 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.

On occasion, an ER project that includes betterment, whether or not eligible for ER funding, may require further NEPA review. 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.

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

For emergency repair projects the FDOT can conduct the environmental process during or after the project is completed (only if the emergency repair is within the existing ROW).

All permanent repair project shall have all the environmental clearance requirements prior to FHWA initial authorization

15) Toll Facilities

Public authorities are currently required to execute a tolling agreement with FHWA prior to imposing tolls on a Federal-aid highway (or to use Federal-aid funds on an existing toll facility). Under MAP-21, such agreements are no longer statutorily required. For toll facilities that have executed Section 129 tolling agreements prior to October 1, 2012, the terms of those agreements will continue in force.

If these areas are on a facility within the highway ROW's and are on a Federal-aid route, then they would be eligible for ER for any amounts remaining unpaid after insurance claims have been processed. The per-site damage must still meet the minimum \$5,000 threshold.

16) Debris Storage Sites

FHWA does not reimburse costs incurred for temporary debris management sites (TDMS) sites.

17) Maintenance of Traffic (MOT)

Proper MOT is expected to be followed during ER events and recovery operations. 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.

FHWA will pay rental rates for MOT items. FHWA will reimburse 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 flooded roads that incurred eligible ER damage. If performed by FDOT forces, the costs will be reimbursed on a force account basis. The costs borne by each agency must exceed the \$5,000 minimum threshold. **If there is no actual damage to the roadway, the MOT cost is not eligible for ER funds.**

18) 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.

19) 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.

20) Lighting

Lighting is not covered as an emergency repair item by FHWA. It must be treated as Permanent Restoration work.

21) Noise walls

Noise walls are not covered as an emergency repair item by FHWA. They will be treated as Permanent Restoration work.

22) The contractor cut holes in temporary tarps protecting bridge strands on an active construction painting project to reduce the wind load. Is the work eligible?

The work is not eligible:

- 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.

23) How are materials utilized from agency inventories or stockpiles handled?

The ER program will pay the individual inventory cost for items that are incorporated into the project that was 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.

24) 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 kept to justify the reimbursements

X. 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 appropriately.

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.