Federal Highway Administration Florida Division
Emergency Relief Program Q&A

FHWA Florida Division
Version: April 2013

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 November 2009 version (which can be found at: http://www.fhwa.dot.gov/reports/erm/). A summary of changes from the 2003 edition can be found at (http://www.fhwa.dot.gov/reports/erm/changes.cfm). The intent of this document is to serve as a guide to answer common questions that arise after a hurricane related declared event occurs. Therefore, the latest form of this document should be carried by all personnel who may deal with DDIR related topics and should also be carried by every Transportation Engineer. 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. FHWA considers the ER event to be the physical date of landfall of the hurricane or tropical storm. A repair is classified as an eligible emergency repair by the FHWA if it is performed during (meaning after landfall for hurricanes) 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.
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 (chapter II.A) 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.

The intent of the ER program is to not pay for highway damage repairs that a transportation 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 documentation with a Detailed Damage Inspection Report (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.

The counties and local governments will work directly with the State when seeking reimbursement through the FHWA ER program. The State will, in turn, work with the FHWA District Transportation Engineer (DTE). Back-up documentation (including location information for work performed) is required to be available upon request to justify costs for which entities seek reimbursement.

Notes:

- *The use of the term CEI 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

The FHWA standard DDIR form FHWA-1547 is available at:
http://www.fhwa.dot.gov/reports/erm/fhwa1547.pdf

A DDIR is a cost estimate only. It cannot be used as a contracting mechanism nor can it be used as environmental 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 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 relate all major cost items.

a) FHWA requires separate DDIRs be written for each site, specifying the type of damage (roadway pavement damage, embankment washout, culverts, bridge damage, lighting, debris, etc.). The scope of work shall be detailed and major pay items listed on the DDIR. Sites cannot be combined to meet the $5,000 minimum damage threshold, with the following exception:

   i) At certain times, county-wide DDIRs may be written at the discretion of the Program Operations Engineer for damages related to debris, signs, or signals. After each ER event, FHWA determines whether or not a county will be considered a site in its entirety. The purpose of a county-wide DDIR is to allow FHWA to combine several small sites to meet the $5000 eligibility threshold. Support documentation must still be provided on a site-by-site basis to ensure eligibility.
   ii) In order to qualify county-wide DDIR's (for the purpose of combining sites), the county must have been declared for FEMA Categories A through G.
   iii) 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), debris removal should not be combined on the same DDIR with other eligible items (e.g. signs and signals).

b) Separate DDIR's will be written for emergency work and for permanent work (except for site-specific roadway repair work where both work types are present). The site limits will be determined at the discretion of the FHWA Transportation Engineer for each DDIR.

c) Separate DDIR's must be written for each County and Municipality 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 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.

d) All completed DDIR's must be submitted to the District Transportation Engineer (DTE) for an eligibility determination as soon as practicable.

e) A single DDIR can be written to include both public agency in-house force account construction work and contract work. However, in an attempt to make cost estimates as clear as possible, include a line item on the DDIR showing the estimated in-house construction costs. Design or CEI may be estimated as a percentage of the total damage estimate. Estimated Agency indirect costs will not be shown on the individual DDIRs.

f) If the emergency work is already underway, the DDIR should be accompanied by a signed contract that includes all the federal requirements; such as FHWA 1273 physically attached to the contract, Buy America (if applicable), Davis-Bacon (if applicable), etc.

g) Initial DDIRs and DDIRs revised due to scope changes, should be written within 6 months of the FHWA declared event date. Any exceptions to this time limit must be approved by the FHWA Division Administrator.

h) 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 District Transportation Engineer, and will be attached to the DDIR at that time. Our expectation is that 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 procedures.

i) The <u>initial</u> 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 backup the DDIR/authorization dollar amount prior to granting FMIS approval.

2) Revising DDIR's

a) DDIR's will only be revised when there are changes in the scope of work. Coordination with the FHWA District Transportation Engineer is required for scope changes.

b) DDIR's will not be revised to reflect cost changes. Those changes are documented in the FMIS system used to authorize funds.
    i) 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.
    ii) Approval of the FMIS request serves as FHWA acceptance of the revised cost amount.

c) All FHWA District Transportation Engineers (DTE) must make sure that copies of any new or revised DDIR's get sent to the respective District federal-aid coordinator. The District federal-aid coordinator will in turn make sure an electronic copy gets sent to the FDOT Central Office.

II. Contractual Issues

1) Do the prequalification requirements apply to emergency contracts?

No, but 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 contracts allowed?

If normal federal-aid requirements are met, including competitive low bid advertisements, pre-event contracts are allowable. Currently, FHWA has approved boilerplate language for CEI services, debris monitoring, cut & toss and debris removal, traffic control signals, permanent lighting, and permanent sign repair. Pre-event contracts for other work types may be acceptable as long as FHWA federal-aid requirements are met.

Local agency contracts should 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. FHWA does not need to review 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 eligibility. Please refer to FHWA memo dated June 11, 2012 for further information on pre-event contracts.

A list of approved pre-event scopes of service can be found at:
http://www.dot.state.fl.us/statemaintenanceoffice/scopes.shtm

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

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 locals. The LAP process is the method by which we have assurance that the Federal-aid requirements are understood and followed by the locals. Just like regular federal-aid projects 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 would have to seek FHWA approval, in the form of a Public Interest Finding, 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) What is the FHWA policy on the use of verbal contracts, small purchases, and purchase orders?

The FHWA will not accept verbal contracts for eligible work. 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 $100,000 per federal small purchase requirements in 49 CFR 18.36.

5) 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.

6) Do Buy America and other federal-aid requirements such as Davis-Bacon and Related Acts (DBRA) apply to emergency contracts?

Yes, 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 and the FDOT Standard Specifications and Standard Indexes are supposed to be included in the contracts. The Standard Specs contain the Buy America requirements.

The FHWA Form 1273 and Davis Bacon provisions do not apply to state and local employees performing ER work by force account (actual cost of labor, equipment, and materials). A public interest finding is not required for emergency work, but is required if state or local 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) Public Interest Finding for force account permanent repair work

7) 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.

8) 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.

9) FHWA 1273

a) In accordance with FHWA 1273, 30% of the work performed must be billable to the prime contractor.
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 requirements regarding non-lobbying provisions, discriminations, etc., should be followed as set forth by Carla Perry (FDOT Central Office).

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 recent change due to passage of MAP-21 legislation. See appendix for FEMA Fact Sheet on Debris Removal.

The intent of the Emergency Relief (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 Emergency Relief Manual and this FAQ.

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 (See III.1.(f) below). 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 District Transportation Engineer will make the final determination on this issue.

FHWA recognizes that Hazardous Materials (HazMat) operations might be required as a separate operation. The FHWA Transportation Engineer 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.

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.dot.state.fl.us/planning/statistics/fedaid/

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 ft 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 will 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 agency. The one exception is when reduction is occurring as part of a rolling debris collection operation.

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?

No. Emergency relief funding will only pay for the initial hauling of the debris from the roadway. Subsequent haulings are 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

If damages from leaning trees are within FHWA-defined eligible limits as defined in III.1.(f), 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 as defined in III.1.(f). 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 described in III.1.(f).

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 DOT and a City) perform ER work on the same segment of 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 Department 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.

Refer to the approved pre-event contract for debris monitoring for local agencies:
http://www.dot.state.fl.us/statemaintenanceoffice/scopes.shtm

Minimum requirements for the electronic debris monitoring systems can be found in Sections E-G.

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?

Most lighting and ITS repairs are permanent restoration work since it is not required to restore essential traffic. If any lighting or ITS components are determined to be emergency repair the DDIR needs to state why it was an emergency – safety can't be the reason.

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? Is it acceptable to install the signals back with temporary span wires then come back with Mast arms as a permanent repair.

We will pay for emergency repairs to get damaged signals working, including police, signs, generators, etc that are temporarily directing traffic. We will pay 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 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. <u>Bridges</u>

1) **The 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 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.

   The state 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 State 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 other federal aid funds available through the bridge program. In these instances, the State/Local agency should contact FEMA.**

VI. Construction Engineering and Inspection (CEI) 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 take the Emergency Relief Online Training at https://connectdot.connectsolutions.com/floridaer/ **and familiarize themselves with both the 2009 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.

   In order to be eligible for reimbursement under the FHWA ER program, any monitoring services must be contracted **directly** through a public agency.

2) **Can the State 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 an 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 the costs of the PE/CE be split from the CEI costs? Will the amount still be limited to 15% of the debris removal estimate?**

   FHWA will consider increasing the amount on a case-by-case basis after considering the State's justification for the costs exceeding the 15% threshold. To simplify the process, the DDIR process will continue to lump together the PE/CE costs due to the undefined nature of the work.

5) **A detailed discussion regarding issues related to the use of consultants can be found in the June 16, 2009 policy letter to FDOT. This letter is also included in the Appendix of this document.**

6) **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.

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

   Consultant Acquisition should comply with Chapter 287.055, F.S. and Federal laws and FHWA regulations. Competitive negotiation is required under 23 CFR 172.5. In accordance with the Federal Property and Administrative Services Act three proposals are required for permanent work. For emergency work we encourage obtaining three proposals, however, noncompetitive negotiation is permitted in an emergency. To comply with the FARs consultants must be paid by the hour based actual negotiated rates, rather than average costs then adding a 15% premium.

8) **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 49 CFR Part 18.

VII. <u>In-House Forces</u>

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 (see Section IX.25 on reimbursement of inventory items).

   If in-house forces are for debris removal, the 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

Prison 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.

4) The FDOT and local governments 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 Emergency Relief program (ER). However, any work within the limits of an active federal job could be paid with project funds using a supplemental agreement, 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 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. Eligible emergency work is normally completed through an executive supplemental agreement with the existing contractor.

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 State 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."

<u>This means the Contractor may proceed with the permanent work the day the DDIR is signed.</u> The authorization in FMIS should follow soon after. <u>The above statement must be on the DDIR when this situation occurs.</u>

5) **Erosion Control**

The identification of temporary versus permanently incorporated erosion control features should be based on FDOT Standard 104-7.1 (2007). Thus, examples of 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?**

No. The criteria for determining a "damaged site" is the same as for non-active construction areas. If the damage is in close proximity to other damaged areas, the District Transportation Engineer may combine those locations if deemed appropriate. But damage is not automatically combined together just because it is one active construction project. A 5 mile resurfacing project would not be allowed to combine sites on opposite ends of the project.

7) **The appendix of this document contains a flow chart which shows the process used to determine if an active construction project is potentially eligible for ER funds.**

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**

Yes, damage to railroad crossing signs, signals, sign structures, bells, etc are eligible <u>if</u> 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. Essentially a county for each railroad will be considered a site. If a particular RR company has less than $5,000 in damage in a declared county – that damage does not qualify for reimbursement.

5) **Logo Signs**

No, repair costs for LOGO signs are not eligible for FHWA ER fund reimbursements, since they were not erected using public funds. (Logo background board and logos panels are furnished and installed by Florida Logo Company as part of franchise contract to provide the boards and sell the spaces at no cost to FDOT.)

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

No, pre-disaster activities are not eligible. 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) **Administrative Costs**

Maintenance, administration, and overhead costs of State or local governments are not eligible.

8) **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 as described in Chapter II.B.2. of the 2009 ER manual.

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

9) **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 is eligible.

10) **Service Patrols / Road Rangers**

If the Service Patrol provided is a continuous service which is in place whether or not a disaster occurs, then it is not an ER eligible activity. However, if a Service Patrol is used for extra duty services to assist directly with traffic control following a disaster, such as a) blocking off or redirecting traffic due to damaged or impassable road conditions, or b) directing traffic at intersections similar to a police officer, then those costs could be reimbursed. There would need to be adequate accounting to support the extra pay beyond the normal duties for these activities.

Some reimbursement requests have been submitted in counties where there was no damage. These can be eligible if it is service beyond the normally provided service patrols, near the areas or counties damaged, and needed to monitor/assist traffic beginning on the established date of the event.

Proper maintenance of traffic (MOT) must be followed during ER events.

11) **Temporary Weigh Stations (operated by Motor Carrier)**

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).

12) 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. An example of an eligible fence is a fence that is applied to pedestrian walkways on a highway overpass.

13) 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.

14) Temporary Generators (for traffic signals and rail crossing signals)

If generators were purchased, ER can only be used to pay equipment rental rate (as discussed in IX.15) 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 cost rental cost. ER funds cannot be used to buy equipment. (This also applies to other equipment such as chain saws, etc.)

15) What does FHWA utilize to determine equipment rates?

FHWA does not maintain a listing of set equipment rates. The 2009 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. Short of that being available, the next step is to use rates developed by the State DOT. 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.

16) National Environmental Policy Act (NEPA) 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 <u>in-kind</u> 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 and Environmental Assessment or Environmental Impact Statement.

Typically, when writing a DDIR, the DTE will use a CE classification for the environmental recommendation. This is typically the case as mentioned above. It might be to note on the DDIR "To Be Determined" if the area is near environmentally sensitive areas such as waterways, canals, or beaches. Regardless of recommendation, the DDIR does not serve as a NEPA document and cannot be used as an environmental determination.

17) Toll Facilities

Most of Florida's toll facilities have current Section 129 Agreements and are therefore eligible for the ER program. However, part of the sustained damage is to the service plaza buildings. These service plazas have various functions – rest rooms, gas stations, food courts. Can the damage repair to the service plaza buildings be eligible for ER Program reimbursement? If these areas are on a facility that has a current section 129 agreement, and are 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.

18) Debris Storage Sites

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

19) Maintenance of Traffic (MOT)

Proper maintenance of traffic (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. 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 VMS, temporary barricades, and temporary signs beginning the date of a declared FHWA-eligible event (date of landfall), related to detours around flooded areas in a FEMA declared county (if there is widespread damage). If performed by state forces, the costs will be reimbursed on a force account basis. The costs borne by each agency must exceed the $5,000 minimum threshold on a countywide basis.

Please note that this does not include detours related to project-specific roadway damage sites, as these costs are part of the site specific damage costs.

20) 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 the disaster, 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.

21) 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. It is possible that stabilization of an existing sinkhole (after landfall of eligible event) may be eligible but must follow the aforementioned criterion. Note that an Eligible ER Event indicates that the event is Governor or President Declared.

22) Lighting

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

23) Noise walls

Noise walls are not covered as emergency repair items by FHWA. They will be treated as Permanent Restoration work. In the event that a noise wall is damaged as a result of a tree, the tree removal will be covered as emergency repair but the Noise wall will still be covered as permanent restoration.

24) 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.

25) 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 $50 a year ago is placed as part of an ER repair, but it now costs $60 to replace it in inventory, the ER program will reimburse the $50 that the sign cost originally, not the $60 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 contract was competitively bid, a Public Interest Finding would be required. If the agency wants to require the use of state supplied materials, they must comply with 23 CFR 635.407.

26) Traffic Management Center 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 Part 19... 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 should be consulted about its

participation prior to the award of the settlement. Additional 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 will work with the State 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 2009 ER manual explains this in more detail.

XI. Miscellaneous Issues

1. Declared Counties

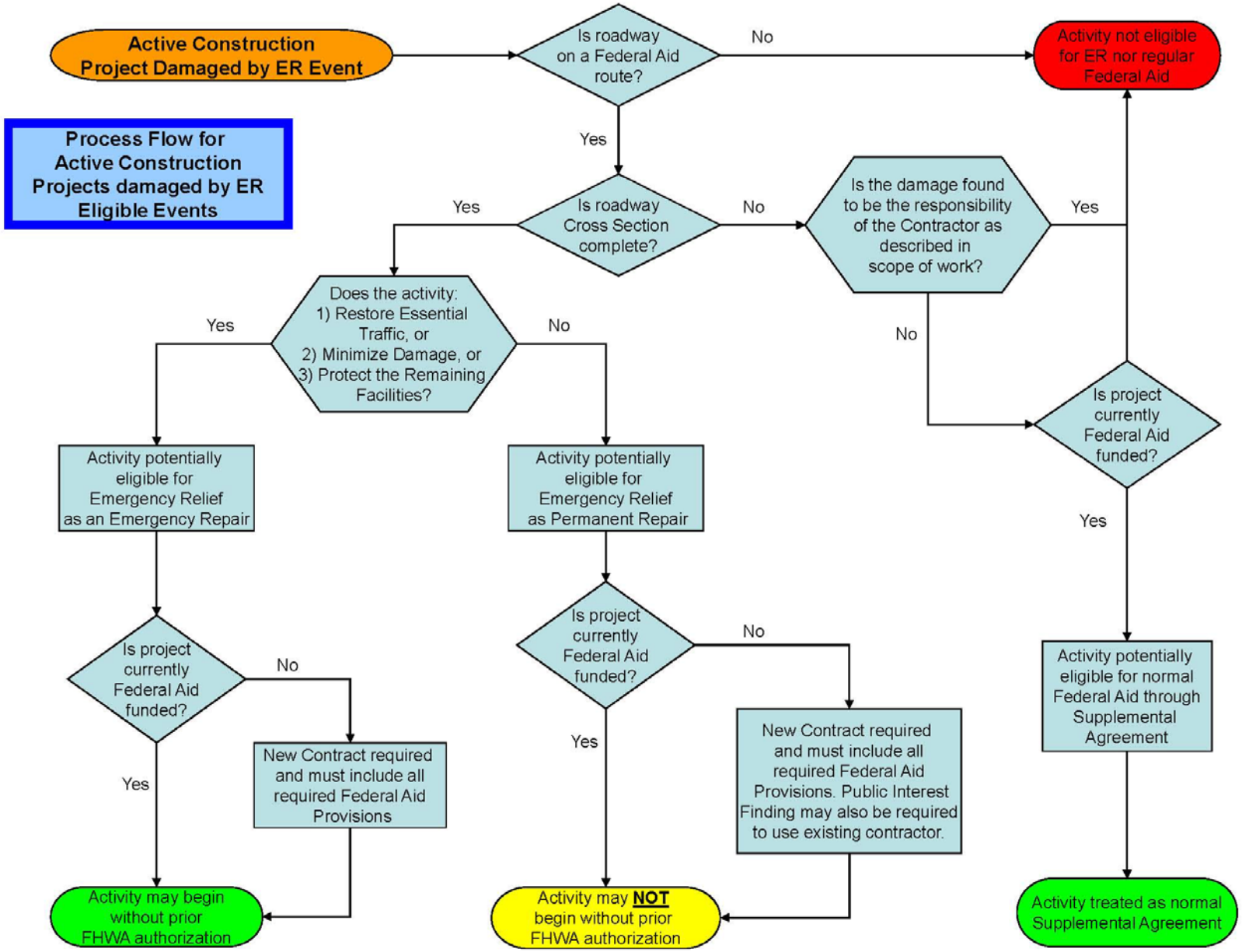
The Governor's Declaration included the entire State for most of the hurricanes before landfall. If FEMA has the county declared it makes FHWA's decision easier in determining if a particular county's damage is eligible for ER reimbursement. **All DDIR requests in counties not on FEMA's declaration list (with supporting documentation) must be submitted to the FHWA FLDIV Program Operations Engineer for review and approval.** FHWA will consider damage in counties not on FEMA's declared list, but the damage must clearly meet the $5,000 per site threshold. Most likely this will be sporadic damage; therefore, the sites must be clearly identified. Do not combine minor damage sites to reach the $5,000 threshold in these counties. For example, if there are a few signs damaged, each one needs to meet the $5,000 threshold to qualify. Or they must be adjacent to one another.

2. The CFDA # (The Catalog of Federal Domestic Assistance number) for all ER Program work is 20.205

http://12.46.245.173/cfda/cfda.html
http://12.46.245.173/pls/portal30/CATALOG.PROGRAM_TEXT_RPT.show

APPENDIX

1. Active Construction Flow Chart
2. FEMA Fact Sheet-Debris Removal
3. June 11, 2012 Debris Policy Letter to FDOT
4. June 16, 2009 Policy Letter to FDOT
5. June 16, 2008 Policy Letter to FDOT
6. September 12, 2006 Policy Letter to FDOT
7. Reimbursement Process Flow Chart


Active Construction Project Damaged by ER Event
Process Flow for Active Construction Projects damaged by ER Eligible Events
Is roadway on a Federal Aid route?
No
Activity not eligible for ER nor regular Federal Aid
Yes
Is roadway Cross Section complete?
Yes
No
Is the damage found to be the responsibility of the Contractor as described in scope of work?
Yes
No
Does the activity:
1) Restore Essential Traffic, or
2) Minimize Damage, or
3) Protect the Remaining Facilities?
Yes
No
Is project currently Federal Aid funded?
Yes
Activity potentially eligible for Emergency Relief as an Emergency Repair
Activity potentially eligible for Emergency Relief as Permanent Repair
Is project currently Federal Aid funded?
No
Yes
New Contract required and must include all required Federal Aid Provisions
Activity may begin without prior FHWA authorization
Is project currently Federal Aid funded?
No
Yes
New Contract required and must include all required Federal Aid Provisions. Public Interest Finding may also be required to use existing contractor.
Activity may NOT begin without prior FHWA authorization
Activity potentially eligible for normal Federal Aid through Supplemental Agreement
Activity treated as normal Supplemental Agreement

FEMA RECOVERY

FACT SHEET 9580.214

Debris Removal on Federal-Aid Highways

Overview

This fact sheet explains a change in the eligibility of debris removal on Federal-aid highways under the Federal Emergency Management Agency's (FEMA) Public Assistance (PA) Program. Until recently, the Federal Highway Administration (FHWA) had the primary authority to remove debris on Federal-aid highways under its Emergency Relief (ER) Program, including in the event of major disasters and emergencies declared by the President under Sections 401 and 501, respectively, of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, (42 U.S.C. 5121 et seq.) ("Stafford Act"). FEMA was able to assist with additional debris removal that was not covered by the ER Program and was otherwise eligible for PA Program funding.

The Moving Ahead for Progress in the 21st Century Act ("MAP-21") was signed into law July 6, 2012, (Public Law 112-141) and amended the statutory authorization for the FHWA ER Program. Section 125(d)(3) of Title 23 of the United States Code, Highways, states in part:

> **"(3) DEBRIS REMOVAL.—The costs of debris removal shall be an eligible expense under this section only for—**
>
> **(A) an event not declared a major disaster or emergency by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.); or**
>
> **(B) an event declared a major disaster or emergency by the President under that Act if the debris removal is not eligible for assistance under section 403, 407, or 502 of that Act (42 U.S.C. 5170b, 5173, 5192)."**

This change went into effect October 1, 2012. For major disasters and emergencies declared under the Stafford Act on or after this date, the FHWA ER Program will not provide assistance for debris removal on Federal-aid highways in jurisdictions designated for FEMA PA. Debris removal on Federal-aid highways in these areas will be eligible for FEMA PA Program funding, pursuant to established eligibility requirements. (See 44 CFR Part 206)

This change applies to debris removal and does not affect any other categories of PA work. Permanent work on Federal-aid highways is not eligible for PA funding. (See 44 CFR 206.226(a)) Debris removal funded by FEMA must meet the eligibility, procurement and documentation requirements established in the Stafford Act, regulations for FEMA's PA program found in 44 CFR Parts 206 and 13, and guidance.

RECOVERY FACT SHEET – RP9580.214

Debris Removal on Federal-Aid Highways

Frequently Asked Questions

1. The Governor declares the event to be an emergency, but there is no Presidential declaration under the Stafford Act. What is FEMA's authority to fund debris removal under its PA program?

Without a Stafford Act declaration from the President, debris removal activities are not eligible for PA funding. If the Secretary of Transportation concurs with the Governor's emergency declaration, ER funds may be applied to debris removal from Federal-aid highways in the same manner as before the MAP-21 changes. ER funds will only be available in those counties included in the Governor's emergency declaration and any amendments for the same event.

2. The President has declared a major disaster or emergency under the Stafford Act and authorized debris removal assistance in designated areas. Can FEMA fund debris removal from Federal-aid highways?

Debris removal from Federal-aid highways in the areas designated by a Presidential declaration may be eligible for Public Assistance funding, subject to FEMA applicant and work eligibility requirements, as well as specific debris removal criteria under 44 C.F.R. § 206.222, § 206.223(a) and (c) and § 206.224, respectively.

3. What if the Governor's emergency declaration designates areas, such as counties, independent cities, and tribal lands not included in the Presidential declaration?

Areas not designated in the Presidential declaration are not eligible for Public Assistance funding. Federal-aid highways outside the designated areas are treated as if there was no Stafford Act declaration (see #1 above).

4. If the event is declared a major disaster or emergency by the President, but Public Assistance funding for debris removal has not been authorized, or FEMA has determined that the debris removal is ineligible for Public Assistance funding, is debris removal from Federal-aid highways still eligible for assistance?

If the President has declared a major disaster or emergency, but debris removal has not been authorized or FEMA determined that debris removal costs submitted by the applicant are ineligible, then ER funds may be available for debris removal activities on Federal-aid highways through the FHWA ER Program. If requested by FHWA, FEMA will provide documentation of FEMA's determination(s) of ineligibility. Any costs submitted to FHWA will be subject to FHWA's ER eligibility requirements.

Debris Removal on Federal-Aid Highways

5. Which program rules should local jurisdictions follow if debris needs to be removed from a Federal-aid highway after an event, and no declaration has yet been made authorizing either the FHWA Emergency Relief program or the FEMA Public Assistance program?

There is no guarantee that either program will be authorized after an incident. To be eligible for FEMA funding, local jurisdictions need to adhere to the eligibility requirements and administrative procedures of the Public Assistance Program. If a jurisdiction has questions regarding eligibility under the FHWA ER Program, they should contact FHWA personnel in their respective states.

Deborah Ingram
Assistant Administrator
Recovery Directorate

10/28/12
Date

U.S. Department of Transportation
Federal Highway Administration

545 John Knox Road, Ste. 200
Tallahassee, FL 32303
850-553-2200

June 11, 2012

In Reply Refer To:
HPO-FL

Mr. Tom Byron
Chief Engineer
Florida Department of Transportation
605 Suwannee Street
Tallahassee, FL 32399

Subject: Emergency Relief Debris Removal

Dear Mr. Byron:

As the 2012 hurricane season approaches, we want to make you aware of some recent changes in how we will administer the Emergency Relief (ER) program in Florida. On February 16, 2012, our Office of Program Administration issued a memo (attached) which clarified debris removal policies and pointed out potential inconsistencies in the Division Offices' interpretation of these policies. Based upon further discussion within FHWA as well as our meeting with FDOT staff on May 14, 2012, we are revising our Division policy and updating our Frequently Asked Questions (FAQs).

For previous ER events our policy has been to reimburse FDOT and local agencies for initial debris pickup on federal-aid highways (first push/first pass), transportation of debris to a temporary site, debris reduction, and final disposal of reduced debris. This cradle-to-grave approach was implemented during an especially active 2004-2005 hurricane season and allowed maximum flexibility regarding debris handling in the State of Florida.

It should be pointed out that the intent of emergency repairs within ER is to restore essential traffic, minimize damage and protect the remaining facility. Chapter II.B-13 of the ER Manual states that:

> The cost of stockpiling and disposing of debris *at adjacent sites*, as well as the cost of removing marketable timber from the acceptable clearing limits and transporting to adjacent stockpile sites, is eligible for ER participation. However, hauling costs to sawmills or to other locations beyond the *general proximity* of the damaged highway are not eligible.

Therefore, debris removal is only eligible for reimbursement for the initial pickup, hauling and tipping fee, if applicable, within the general proximity of the roadway. Excessively long haul routes will not be reimbursable. Immediately after pickup, the debris must be taken to the

nearest available debris management site or landfill. Debris reduction operations and secondary hauling will no longer be reimbursable with ER funding. The one exception would be for debris reduction where the debris is being reduced as part of a rolling pickup operation. The Florida Division Frequently Asked Questions (http://www.fhwa.dot.gov/fldiv/erpfaq.htm) will be updated to reflect these policy changes.

In order to ensure that first push/first pass debris is eligible, the removal is expected to be completed within 60 days from the FHWA-declared event date. Going beyond this timeframe increases the risk that ineligible debris will become co-mingled with eligible debris and could result in the denial of reimbursement.

By copy of this letter, we are notifying the Federal Emergency Management Agency (FEMA), Region IV. The above mentioned changes are to comply with FHWA's national policy on ER eligibility.

For further information or if you have any questions, please contact Chad Thompson, by e-mail at Chad.Thompson@dot.gov or by phone at (850) 553-2239.

Sincerely,

For: Martin C. Knopp
Division Administrator

Enclosure: Emergency Relief (ER) Program
Debris Removal Policy

cc: FEMA, Region IV
James Jobe, FDOT
Chuck Rohling, FDOT
Robin Naitove, FDOT

U.S. Department of Transportation
Federal Highway Administration

Memorandum

Subject: **INFORMATION**: Emergency Relief (ER) Program Debris Removal Policy

Date: February 16, 2012

In Reply Refer to: HIPA-10

From: David A. Nicol
Director, Office of Program Administration

To: Division Administrators
Directors of Field Services

Recently we became aware of inconsistencies in the application of FHWA policy on the removal of debris with ER funds. FHWA limits ER participation in debris cleanup to debris that was directly deposited by an ER eligible event. Our statute restricts ER participation to the repair or reconstruction of eligible roads. As such, our ER policy limits participation in debris removal to assure the full functioning of the roadway, and includes "the cost of stockpiling and disposing of debris at adjacent sites, as well as the cost of removing marketable timber from the acceptable clearing limits and transporting to adjacent stockpile sites...." Debris removal beyond that is outside the scope of roadway repair and not eligible for ER participation. Debris removal beyond the general proximity of the damaged roadway is the responsibility of the agency responsible for the maintenance of the roadway. In some cases, the Federal Emergency Management Agency (FEMA) may participate in debris removal under their Public Assistance Program.

To ensure consistency, we are reminding Divisions that FHWA's debris removal policy is contained in the ER Manual (Chapter II.B-13, "Timber and Debris Removal") and can be found at http://www.fhwa.dot.gov/reports/erm/ermchap2.cfm#b13. Divisions that have provided guidance that is not consistent with the ER Manual, including guidance material posted on their websites, must revise such guidance to be consistent with the ER Manual.

If you have any further questions regarding this issue, please contact Greg Wolf at 202-366-4655 or via e-mail.

U.S. Department
of Transportation
**Federal Highway
Administration**

545 John Knox Road, Ste. 200
Tallahassee, FL 32303
850-553-2200

June 11, 2012

In Reply Refer To:
HPO-FL

Mr. Tom Byron
Chief Engineer
Florida Department of Transportation
605 Suwannee Street
Tallahassee, FL 32399

Subject: Emergency Relief Pre-event Contracts

Dear Mr. Byron:

Many important lessons have been learned in the years following the eight hurricanes that impacted Florida in 2004 and 2005. It became vitally clear that the State needed contractors ready to go with disaster recovery as soon as possible following an event. As a result of these experiences, several pre-event scopes of services have been developed by the State Maintenance Office and our office has approved their use by FDOT and local agencies for disaster recovery. This letter clarifies our expectations of the various pre-event contracts when funding is provided from the Federal Highway Administration Emergency Relief program.

FHWA policy letters were issued on September 12, 2006 and July 16, 2008, which should be familiar to all participants in the ER program. The following information does not supercede but rather supplements the previously provided information.

FHWA has reviewed and accepted the standard scopes of services for the following types of pre-event contracts:

Emergency Repairs (State and Local Use)

- Debris removal (3 types) – Cut & Toss, Debris Removal and Debris Removal Monitoring
- Signals & Generators (3 types) – Emergency Signal Repair & Emergency Generator Installation, Emergency Generator Installation, and Emergency Signal Repair

Permanent Restoration (State Use Only)

- Permanent Sign Repair
- Permanent Lighting or Permanent Signal Repair

The approved scopes are listed at http://www.dot.state.fl.us/statemaintenanceoffice/scopes.shtm These pre-event contracts must be competitively bid and must include all required federal aid provisions. Local agencies contracts must include scopes that are consistent with the approved

scopes detailed above. All costs associated with establishing the pre-event contracts are not eligible. After there is a declared eligible ER event the work performed by these contracts will become eligible if reasonable and supported. Further requirements are listed below.

Emergency Repairs

In accordance with 23 CFR 668.109(a)(1), prior FHWA authorization is not necessary for emergency repairs related to an ER event. Therefore, work on these contracts can proceed immediately after the event. FHWA Transportation Engineers will follow up with a site inspection and Detailed Damage Inspection Report (DDIR) as soon as possible following the event. In all cases, it is essential that FDOT and local agencies thoroughly document the damage and recovery efforts. Federal FMIS authorizations must have an approved DDIR number located in the State Remarks section. For eligibility questions, staff should refer to our FAQs at http://www.fhwa.dot.gov/fldiv/erpfaq.htm. Emergency repair work done within the first 180 days after the event will be reimbursed at 100%. Debris removal should be accomplished within the first 60 days and only "first push/first pass" debris is eligible. Second and subsequent passes on federal-aid highways are not eligible.

The contracts which contain *Signals Emergency Repair* work are eligible for ER funding if the work restores essential traffic through intersections. The majority of this work will involve replacing or repairing one signal head in each approaching direction (Type I work). There may be some instances that warrant repair of more than one signal head in each direction during the emergency phase (Type II work). This additional work is considered permanent restoration and proper justification must be discussed and approved in advance by FHWA staff. The actual work may be performed prior to Federal FMIS authorization (23 CFR 668.109(a)(2)). This Type II work must remain a small percentage of the overall work and it will be paid at the pro-rata share rather than 100% federal share.

Permanent Restoration

The scope for *Permanent Sign Repair* was approved for statewide use in October 2011. *Permanent Lighting or Permanent Signal Repair* is now also approved for statewide use by FDOT. The intent of these scopes is to procure contractors in advance of ER events for eventual permanent repair work. The main difference between these contracts and emergency repair contracts is that the work performed here is considered permanent restoration (will be reimbursed at the normal pro-rata share) and must be approved by FHWA before any work commences.

Therefore FDOT Districts electing to use these scopes must establish District-wide projects and an advance construction (AC) federal-aid authorization must be approved by FHWA prior to contract advertisement and award. After an eligible ER event, FDOT establishes new federal project numbers for each specific DDIR written and Task Work Orders (TWO) are then executed with the contractor. The DDIR number must be included on all TWOs as well as the State Remarks section of each FMIS request. These new federal projects will be funded with AC if ER funds are not yet available, or with ER funds if they have already been allocated to Florida.

The corresponding District-wide project will have its AC funds reduced by the same amount requested for each site-specific authorization. Failure to follow these procedures will result in a violation of 23 CFR 1.9(a) and the inability to be reimbursed for otherwise eligible costs. Finally, if an eligible event does not occur, there will be no eligible Federal-aid costs for these contracts.

These permanent restoration contracts will have one year terms with an option to extend the contract one additional year. Any extension beyond that must be related to work for an event that occurred within the contract timeframe. Escalation clauses or price indexes may not be a part of any renewal.

For further information or if you have any questions, please contact Chad Thompson, by e-mail at Chad.Thompson@dot.gov or by phone at (850) 553-2239.

Sincerely,

For: Martin C. Knopp
Division Administrator

cc: James Jobe, FDOT
Chuck Rohling, FDOT
Robin Naitove, FDOT
Greg Wolf, HIPA

U.S. Department of Transportation
Federal Highway Administration

Florida Division

545 John Knox Road, Suite 200
Tallahassee, Florida 32303

(850) 942-9650

June 16, 2009

In Reply Refer To: HPO-FL
Re: Emergency Relief (ER)
2009 Policy Guidance

Ms. Stephanie C. Kopelousos
Secretary of Transportation
Florida Department of Transportation
605 Suwannee Street
Tallahassee, Florida 32399-0450

Attention: Mr. Brian Blanchard, Chief Engineer

Dear Ms. Kopelousos:

The purpose of this letter is to update you on the FHWA Florida Division's procedures regarding administration of the Emergency Relief program. The following sections provide information that supplements the FHWA policy letter issued on July 16, 2008, which should now be familiar to all participants in the ER program. As part of an outreach effort in summer 2008, FHWA personally met with members of your staff in each District and in Central Office, which created an opportunity for feedback on administration of the ER program. Suggestions for new ideas and clarifications that resulted from the stakeholder sessions were discussed at FHWA, and further policy guidance is provided below.

Deadline for Submission of Invoices

General consensus from FDOT was that guidance on a timeline by which local agencies can submit invoices is strongly preferred, since that would give FDOT some leverage in keeping their accounting books more up-to-date and would help them to close out projects more effectively. It should be noted that the federal regulations do not contain any provisions to deny reimbursement when there is sufficient documentation, no matter how long after an event. After considering the request, FHWA has established a timeline in coordination with the FDOT Office of Comptroller to require that submission of invoices for ER work, should occur within 2 years after initial Fiscal Management Information System (FMIS) project authorization date for Emergency work, and submission of invoices for permanent work should occur within 4 years after initial FMIS authorization date. The FMIS project authorization date for emergency work is the date the Governor (or President) declared the state of emergency.

Ms. Stephanie C. Kopelousos
June 16, 2009

Detailed Damage Inspection Report (DDIR) Documentation

FDOT suggested that revising DDIRs for cost changes alone may be redundant since cost increases are requested utilizing the electronic modification request through the FMIS. Revising the DDIR for cost changes duplicates this effort. Therefore FHWA will revise DDIRs only when a scope change occurs.

Since the DDIRs are no longer being revised for cost changes, 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.

On August 19, 2008, an email was shared with all emergency management contacts in Central Office and the Districts which outlined the systematic approach to writing DDIRs for all future storms. Tropical Storm Fay provided an opportunity to test the standardized approach for both FHWA and FDOT. Based on that and prior experience, the major criteria for writing DDIRs includes the following:

- The FHWA must have a Governor's declaration of state of emergency (or a Presidential declaration will suffice) to invoke the ER program and there must be a minimum of $700,000 in statewide damage to federal-aid roadways.
- FHWA requires separate DDIRs be written for site-specific damage (roadway pavement damage, embankment washout, culverts, bridge damage, lighting, etc.). Sites cannot be combined to meet the $5,000 minimum damage threshold. The scope of work shall be detailed and major pay items listed on the DDIR.
- If there is widespread damage, DDIRs may be written for the following individual categories on a county-wide basis: debris, signs or signals. The scope of work shall be item-specific on the DDIR. Note that FHWA will only write county-wide (combining of sites to meet the $5000 threshold) DDIRs for counties that experienced widespread damage. For this determination, FHWA will utilize the list of counties that are eligible for Federal Emergency Management Agency (FEMA) Public Assistance Grant Categories A-G.
- If the emergency work is already underway, the DDIR should be accompanied by a signed contract that includes all the federal requirements; such as FHWA 1273 physically attached to the contract, Buy America (if applicable), Davis-Bacon (if applicable), etc.
- Write a separate DDIR for emergency work and for permanent work (except for site-specific roadway repair work where both work types are present). The site limits will be determined at the discretion of the FHWA Transportation Engineer for each DDIR.
- A single DDIR can be written to include both public agency in-house force account construction work and contract work. However, in an attempt to make cost estimates as clear as possible, include a line item on the DDIR showing the estimated in-house construction costs. Design or CEI may be estimated as a percentage of the total damage estimate. Estimated FDOT indirect costs will not be shown on the individual DDIRs.

Electronic Records for ER Program

Financial records and supporting documentation shall be retained, for a minimum of 3 years after project completion in accordance with requirements set forth in 49 CFR Part 19. This requirement may be satisfied through the use of electronic media. In addition to meeting federal record retention requirements, FDOT must also ensure that they and local agencies follow the State of Florida's Records Management Program requirements.

First Pass Timing Definition for Debris Removal

Several of the District staff indicated they needed further clarification from FHWA on the duration of first pass completion, after the initial first push operation. 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. 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. FHWA recognizes that HazMat operations might be required as a separate operation. The FHWA Transportation Engineer will make the final determination on these issues. Please refer to the Florida Division's *Frequently Asked Questions* (FAQ) for additional requirements regarding debris removal.

Pre-event Contracts

Much discussion centered on the section of the July 16, 2008, letter that dealt with pre-event contracts. FHWA reiterates that they have approved the use of pre-event contracts (based on scopes developed by the FDOT State Maintenance Office for statewide application) for cut & toss and debris removal, three types of signals and generators, and permanent lighting or signal repair. However, FHWA has not yet received for review a standard state-wide scope for pre-event contracts for CEI monitoring or for signs. In addition, the use of electronic debris monitoring for the ER program has not been approved. Although there have been several staff discussions and vendor demonstrations, the FDOT has not submitted any data analysis, including cost comparisons, or a standard statewide scope for FHWA's review and approval.

One of the requests that FDOT made was for FHWA to further define for local contracts was the meaning of "consistent with scope" from Page 3 of July 16, 2008, letter. Consistent means that the contract contains all the same basic criteria as the state standard scope includes.

Verbal Contracts, Small Purchases, Purchase Orders

A question about the use of verbal contracts has come as a result of the ER audits. The FHWA will not accept verbal contracts for eligible work. 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 $100,000 per federal small purchase requirements in 49 CFR 18.36.

Consultant Acquisition

There were many questions about the hiring of consultants. Consultant Engineering services, in order to be eligible for reimbursement under the FHWA ER program, must be procured by public agencies in accordance with FDOT Procedure No. 375-040-130, Emergency Procurement During Governor Declared Emergencies or by following the normal process for "Acquisition of Professional Services." Professional consultant services which are permissible under Emergency Procurement Procedure No. 375-040-130 are:

1. New contracts after the event occurs: If FHWA reimbursement will be requested, at least three (3) quotes/proposals should be obtained, but in no way should it prevent, hinder, or delay necessary action in coping with an emergency. During emergencies, many of the formal procurement steps may be expedited in order to speed up the execution of the contract. FHWA recognizes after a major disaster there may be situations where there is only time to obtain quotes from a single firm.

2. Existing professional services contracts: Existing contracts may be used to provide for emergency services if the emergency service required falls within the original intent of the contract, or the scope of services/specification specifically addressed providing for emergency situations. An existing contract may be utilized if: a) The existing contract was procured by the normal federal-aid procedures and processes for federal-aid work; b) The existing contract was federalized, thus already performing federal-aid work, not only state funded work; c) a separate task order with scope and cost must be established d) the emergency services are authorized in accordance with FDOT Procedure No. 375-040-130.

3. Pre-event contracts: Consultant pre-event contracts, such as for CEI services, may be eligible for FHWA reimbursement under the ER program if procured using established state procedures. However, FHWA must review and approve the standard scope developed for statewide use, as has been done for other types of pre-event contracts. To date these have not been submitted to the FHWA. Therefore, any pre-event consultant contract runs the risk of being determined ineligible if all of the federal aid requirements have not been met.

CEI services for monitoring debris removal should be established utilizing the processes described above. FHWA has not approved the use of a "contractor" acquisition process, described by one District, to acquire companies doing disaster relief that do not meet the criteria for "professional engineering firms". We understand this to be a service contract that provides qualified staff to perform monitoring and management for debris removal and does not involve any construction inspection or sampling and testing. To date, no information describing or justifying this method has been provided to the FHWA for review.

The cost method used by one District of paying average costs by position plus 15% is not acceptable since it conflicts with federal regulations. For cost-plus contracts, federal regulations require that the consultant be paid actual audited costs for labor and overhead expenses.

When local agencies hire consultants to perform engineering services they must be in conformance with 23 CFR 172 and the "Brooks Act," (competitive negotiation) in title 40 USC,

section 1101-1104; since it applies to local agencies the same way it applies to state agencies. To help ensure compliance it is expected that the FDOT standard boilerplate for contract requirements (such as discrimination, non-lobbying provisions, etc.) be followed by local agencies when they hire consultants. As a point of clarification, the FHWA 1273 applies only to construction contracts; thus, it does not apply to professional services such as CEI monitoring contracts for roadway construction, debris removal, sign and signal repair. In no cases can the consultant providing inspection be hired by a contractor, the CEI must be independently hired by the public agency.

Local Agency Force Account

As part of discussions in the Districts, FDOT asked for guidance on how local agency force account (in-house) construction work should be estimated, if not by percentage. By definition, force account is the actual cost of labor, equipment, and materials expended by the local or state agency. Thus, percentage estimates are not allowed by FHWA and the agencies electing to participate in the ER program should provide the estimated cost of labor, equipment and materials. After the work has been completed they are allowed to invoice and claim for reimbursement the actual costs incurred. It is required they set up an adequate tracking mechanism to provide the detailed information as outlined above.

Insurance and the ER Program

If there is insurance coverage for damage, the ER Program can not pay for items covered by the insurance. We expect the agencies to pursue insurance first. FDOT will need to show there are additional costs not supported by a pending insurance claim and then that documentation will be attached to the DDIR. The DDIR amount will be for the difference between storm damage and insurance claim. The practice of refunding the ER program back when claims are finalized is an unacceptable practice. If insurance will not pay for all eligible damage, the ER program can pay for the remaining balance as long as it is for ER eligible work.

Clarification of DCE Memo 22-08

After the issuance in August 2008 of DCE Memo 22-08, several requests for clarification were directed to both FDOT Central Office and FHWA. It should be noted that the first section of FDOT DCE Memo 22-08 is intended to describe the use of regular federal-aid funds to repair damage. The discussion dealing specifically with ER eligibility is described in Section 7. It is FHWA's position that 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.

Ms. Stephanie C. Kopelousos
June 16, 2009

Summary

FHWA recommends that this guidance be shared with all FDOT employees who may be involved with the ER program, and urge that it be shared with FDOT's local agency partners throughout the state. Additionally, the Florida Division has also developed on-line web-based training which can be found at http://www.fhwa.dot.gov/fldiv/index.htm and clicking the "Emergency Relief Online Training" link. This training covers the major topics of discussion regarding the Emergency Relief program for Florida, and includes discussions on Debris issues, Detailed Damage Inspection Reports (DDIRs), eligible vs. ineligible items, and Emergency Repairs vs. Permanent Repairs. The training is 89 minutes long, with two optional videos that would add an additional 19 and 22 minutes to the viewing time. The above link also has the most current version of the Emergency Relief FAQ, which is a living document that gets updated periodically.

FHWA will pursue providing dissemination of updates for the ER program to FEMA.

FDOT is encouraged to update their internal FDOT ER Manual to be consistent with the FHWA ER Manual (August 2003 version) and FAQ document.

If you have any questions please contact Mr. Chris Richter or Mr. Chad Thompson at (850) 942-9650.

Sincerely,

/s/ J. Chris Richter
For: Martin C. Knopp, P.E.
Division Administrator

cc: Messrs. John Fain, James Jobe, and Chuck Rohling, FDOT (MS-21)
Mr. Anthony Broom, (MS-53)

JCR/CT:awa S:ER Damage\ER Policy Letter June 2009 Final 409

U.S. Department of Transportation
Federal Highway Administration

Florida Division 545 John Knox Road, Suite 200 Tallahassee, Florida 32303

(850) 942-9650

July 16, 2008

In Reply Refer To: HPO-FL
Re: Emergency Relief (ER)
Program Requirements
2008 Guidance

Ms. Stephanie C. Kopelousos
Secretary of Transportation Florida
Department of Transportation 605
Suwannee Street Tallahassee, Florida
32399-0450

Attention: Ms. Lora Hollingsworth, Interim Chief Engineer

Dear Ms. Kopelousos:

The purpose of this letter is to update you on the FHWA Florida Division's procedures regarding administration of the ER program. Many important lessons have been learned in the years following the eight hurricanes that impacted Florida in 2004 and 2005. As a result of this experience, FHWA would like to preempt any future events by ensuring the requirements and expectations of ER program are clear to all participants. Of particular importance is the need for Local Agencies to better understand our requirements.

The following sections provide information that supplements the FHWA policy letter issued on September 12, 2006, which should be familiar to all participants in the ER program.

Debris Collection Guidelines

The intent of the Emergency Relief (ER) Program is to only remove debris which was deposited on the Federal-Aid Roadway by the FHWA ER eligible disaster event. As such, debris removal is expected to be completed within 60 days from the FHWA declared event date. In the case of hurricanes, this will usually be the date that the storm makes landfall, unless there are multiple landfall dates. Specific operational parameters and guidelines necessary to clear the roadways are detailed in the FHWA Emergency Relief Manual.

Based on Florida practices, FHWA has defined first push and first pass as follows:

> First push - is the initial effort to clear the roadway of debris which includes cut and toss operations to push debris out of the traveled way. Subsequent efforts to push debris from the roadway will not be eligible for ER program reimbursement.

MOVING THE AMERICAN ECONOMY

First pass - is the initial effort to collect debris pushed aside during first push operations and other debris removed from clearing limits as defined below. 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. Once debris from a roadway segment has been initially removed, subsequent efforts to remove debris are not considered ER eligible expenses, regardless of the date or time in which the material was collected. It should be further clarified that with the exception of the initial collection of hazardous waste deposited on the roadway by the storm (which requires separate handling and disposal), there can not be multiple first pass efforts for collecting different types of debris within the same roadway section.

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 considered heavy maintenance, and shall not be considered as part of the first pass collection activities eligible under the Emergency Relief Program. The eligible limits for various Federal-aid road classifications are as follows:

- Interstate/Florida Turnpike/Other Freeways: not to exceed 50 feet from the edge line, or the ROW limits, whichever is less.
- U.S./State roads: not to exceed 40 feet from the edge line, or the ROW limits, whichever is less.
- Other Federal-aid roads: 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, will be eligible for first pass removal to enable proper functioning of the drainage system. 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. The documentation for debris removed from Federal-aid routes should clearly separate it from debris taken from non-Federal- aid roadways. Federal-aid eligible roadways are those shown on the approved Federal-aid maps maintained by the FDOT State Planning Office at:
http://www.dot.state.fl.us/planning/statistics/fedaidinfo/

Detailed Damage Inspection Report (DDIR) Documentation

As stated in the September 12, 2006, letter if the performance of emergency repair work has already started, FHWA will require a copy of the contract and prices at the time a DDIR is written. The contract and other supporting material should be made available to the FHWA Transportation Engineer, and will be attached to the DDIR at the time of submittal. Our expectation is that there should not be a request to write a DDIR for ongoing work, without having the contract documents available to FHWA staff. For permanent ER work, the DDIR will be written without this documentation since the work will not be underway, but will be authorized following normal Federal-aid procedures used for regular program funds.

The initial and any revised DDIRs should be written within six months of the FHWA-declared event date. Any exceptions to this timeframe will be considered on a case-by-case basis; the request must be signed and submitted by the FDOT District Secretary, and subsequently must be approved by the FHWA Division Administrator.

Ms. Stephanie C. Kopelousos
July 16, 2008

Pre-Event Contracts

FHWA has reviewed and accepted the standard scope, developed by the State Maintenance Office for statewide use, for the following types of pre-event contracts:

1 Debris removal (2 types) – Cut & Toss and Debris Removal.
2 Signals & Generators (3 types) – Emergency Signal Repair & Emergency Generator Installation, Emergency Generator Installation, and Emergency Signal Repair.
3 Permanent lighting or signal repair - The use of pre-event contracts for permanent lighting or signal repair has been approved as a pilot based on the criteria established in FHWA letters dated August 10, 2006 and September 1, 2006. Under this concept the PS&E contract documents are submitted to FHWA for review. An advance construction (AC) authorization is submitted prior to contract advertisement and award. Work eligibility will be determined later based on an eligible event occurring and FHWA providing an allocation of funds for that event; and the site specific FHWA approved DDIRs written as a result of that event. If an eligible event does not occur, there will be no eligible Federal-aid costs for these contracts.

All costs associated with establishing the pre-event contracts are not eligible. After there is a declared eligible ER event the work performed by these contracts will become eligible if reasonable and supported. If local agencies utilize pre-event contracts they must be consistent with the approved State FDOT scope to be considered eligible for Federal-aid reimbursement. FHWA will not routinely review the local agency contracts but it is expected the local agency should coordinate the review of these contracts with the FDOT Districts.

The use of electronic debris monitoring has not been approved. Since the additional costs are unknown at this time, the approval of this method may not be appropriate for all quantity levels. The FHWA is currently awaiting a detailed analysis from the FDOT, before approving this method.

For pre-event contracts that identify a sole source material supplier or proprietary product, a Public Interest Finding must be sent to the FHWA Transportation Engineer for approval in advance of executing the contract. This applies to both FDOT and local agency pre-event contracts where Federal-aid reimbursement through the ER Program is anticipated.

Consultant Services

In order to be eligible for reimbursement under the FHWA ER program, any consultant CEI monitoring services must be contracted directly through a public agency (e.g., city, county, town, state). The consultant cannot be hired by a contractor, including any Asset Maintenance contractors. The consultant must be procured following the "Acquisition of Professional Services" procedure. If local agencies do not use the State's procedures then their own procedures must be consistent with the Federal-aid requirements for hiring consultants. The consultant should be familiar with the requirements of the FHWA ER program and that it differs from the FEMA program.

Authorization of Funds

The State financial management number (FM) must match the FMIS authorization request and the authorization amount requested should be consistent with the supporting documentation accompanying the authorization request. Documentation provided to FHWA accompanying the authorization request should be adequate and sufficient to support the requests. All emergency and permanent work must be

performed on Federal-aid-eligible roads with the route locations clearly annotated on the supporting documents.

Reimbursement Procedures

Conditional approval of ER reimbursement requests will no longer be utilized by FHWA. A summary of documentation requirements were prepared by FDOT Emergency Management staff, in their July 2007 "Supporting Documentation Requirements for FHWA ER Program and FEMA Public Assistance Program" document. Additionally, reimbursements should be processed as quickly as possible after the event, in order to identify discrepancies and reduce disputes.

Indirect Cost Eligibility

FHWA will work with FDOT to establish an appropriate indirect cost ratio. Indirect costs for ER projects may be reimbursed in accordance with Federal regulations and guidance. Indirect costs will not be estimated and shown on individual DDIRs. The indirect cost will be estimated based on the ER event total costs, and added to the total ER allocation requested from FHWA headquarters.

We recommend that this guidance be shared with all FDOT employees who may be involved with the ER program and urge that it is shared with FDOT's local agency partners throughout the state. In addition, a Frequently Asked Questions (FAQ) document developed by the FHWA Florida Division is enclosed to serve as another resource for participants in the ER program. The FAQ is found at the following web link: http://www.fhwa.dot.gov/fldiv/erpfaq.htm.

FDOT is strongly encouraged to update their internal FDOT ER Manual to be consistent with the FHWA ER Manual (August 2003 version) and FAQ document.

If you have any questions please contact Mr. Chris Richter or Dr. Leslie McCarthy at (850) 942-9650.

Sincerely,

/s/ Leslie McCarthy, PhD, P.E. For: David C. Gibbs Acting Division Administrator
Enclosure(s)

cc: Messrs. James Jobe, and Chuck Rohling, FDOT
(MS-21) Mr. Jason Wheeler, (MS-53)

JCR:awa JCR :LM S:ER Damage\2008 ER Guidance_policy letter Final (3) 409

U.S. Department
of Transportation
**Federal Highway
Administration**

545 John Knox Road, Suite 200
Tallahassee, Florida 32303

(850) 942-9650

September 12, 2006

In Reply Refer To: HPO-FL

Mr. Denver J. Stutler, Jr., P.E.
Secretary of Transportation
Florida Department of Transportation
Tallahassee, Florida

Dear Mr. Stutler:

Attention: Mr. Ananth Prasad

Subject: Emergency Relief (ER) Program Requirements

The purpose of this letter is to clarify the FHWA's requirements for emergency and permanent ER projects, and the documentation required for a detailed damage inspection reports (DDIR's). As requested by the FDOT Federal-aid Office we are providing this guidance to expand and clarify the email guidance issued by District 6 on July 11, 2006. We agree there is a statewide need to clarify the application of the ER criteria to emergency repair contracts, permanent restoration projects, and work performed by state or local forces.

During 2004 and 2005 Florida was impacted by 8 hurricanes resulting in substantial reimbursement from FHWA's emergency relief program, for both emergency and permanent repairs totaling over $1.5 billion. Due to the unprecedented impact of these storms on the FHWA, the FDOT and local agencies, we were very lenient concerning contracting requirements and the documentation for emergency repairs for these events. As a result of this experience, there is a need to improve both the damage documentation and compliance with basic federal-aid contract requirements. Of particular importance is the need for Local Agencies to better understand our requirements.

Emergency Repairs

Emergency repairs are those repairs during (meaning after landfall) and immediately following a disaster, which can begin immediately without FHWA's prior approval. Permanent repairs require FHWA review and approval prior to contract advertisement. To be eligible for emergency repair the work performed must always meet one of the following three conditions:

1. To restore essential traffic
2. To minimize the extent of the damage
3. To protect the remaining facility

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Mr. Denver J. Stutler, Jr., P.E
September 12, 2006

Please note that based on current ER guidance, safety is not a consideration to justify emergency repair work.

DDIR Documentation:

For future eligible ER events, 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 our Transportation Engineer, and will be attached to the DDIR at that time. Our expectation is that 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 procedures.

Contract Requirements:

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; refer to 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

Additionally, for emergency work it is important to remember to take the following into account:

1. Emergency repair projects under the ER Program must comply with the requirements of the National Environmental Policy Act (NEPA).

2. Negotiated or solicited contracts are allowed for emergency work, but their use should be minimized. Some type of competitive bids are the preferred method.

3. Regardless of the contract method, there should be documentation on how contracts are negotiated, solicited, or openly bid.

Mr. Denver J. Stutler, Jr., P.E
September 12, 2006

Permanent work is handled just like a normal federal-aid project, but can be expedited so long as the requirements are met. Permanent repairs require FHWA review and approval in advance of 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.

State and Local Force Account:

The FHWA Form 1273 and Davis Bacon provisions do not apply to state and local employees performing ER work by force account (actual cost of labor, equipment and materials). A public interest finding is not required for emergency work, but is required if state or local employees perform permanent work.

Use of Joint Participation Agreements (JPA's) or Local Agency Program (LAP) Agreements

The FHWA has previously agreed to accept the use of JPA's for the performance of emergency work. Local agencies must be LAP certified to perform permanent work.

If you have any questions, please contact Mr. Chris Richter at 942-9650.

Sincerely,

/s/ J. Chris Richter
For: David C. Gibbs
Division Administrator

Enclosure

cc: Mr. James Jobe, FDOT (MS-21)

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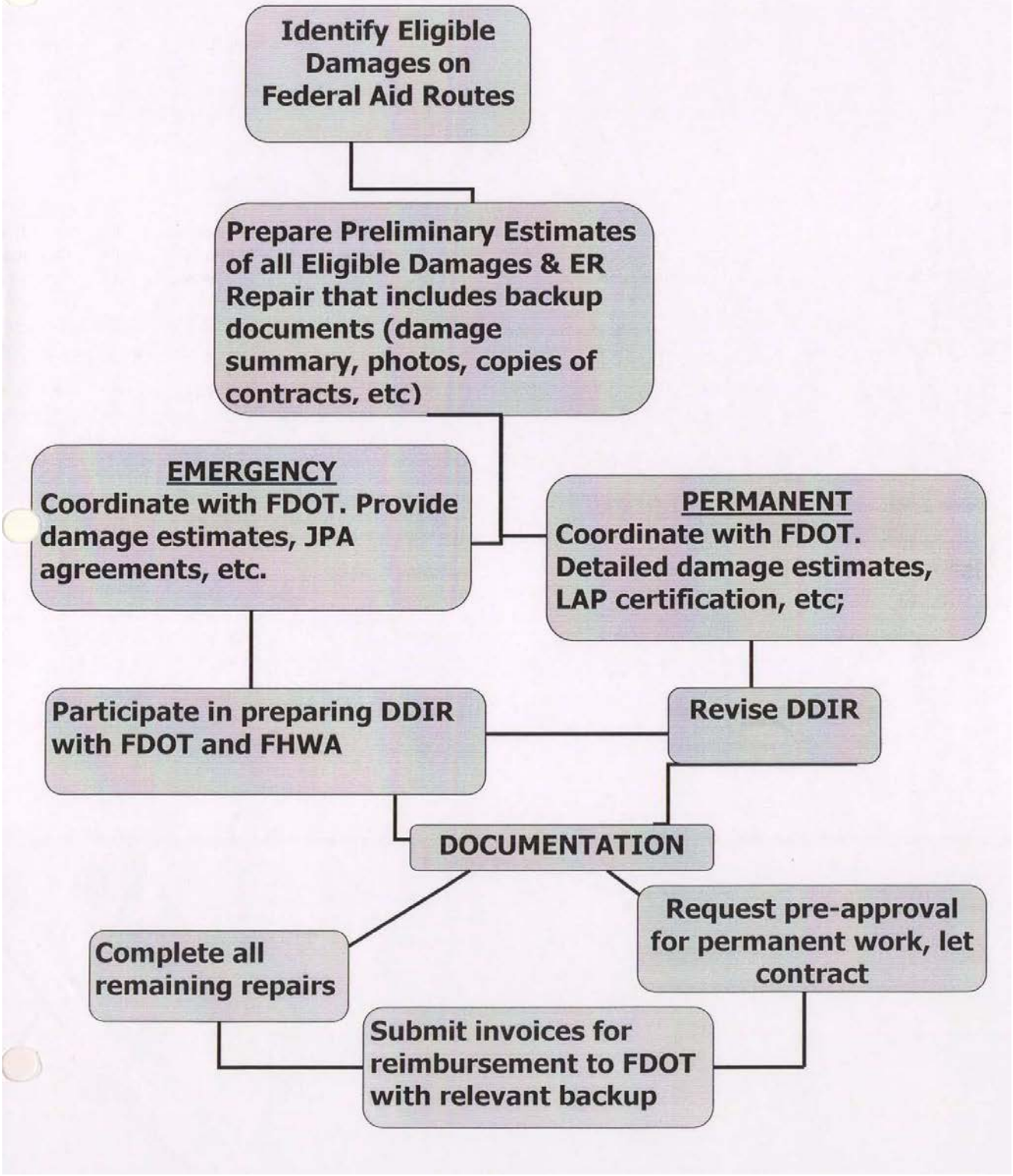
Flowchart of Procedural Steps For FHWA Reimbursement After an Event