

# INSTRUCTIONAL MEMORANDUMS

## To Local Public Agencies



To: Counties and Cities	Date: May 24, 2024
From: Local Systems Bureau	I.M. No. 1.180
Subject: Procedures for Developing and Administering Emergency Relief (ER) Program Projects	

**Contents:** This Instructional Memorandum (I.M.) includes guidelines and procedures for a Local Public Agency (LPA) to understand and comply with project development and contract administration of the Federal Highway Administration (FHWA) Emergency Relief (ER) Program projects.

### Introduction

The purpose of this I.M. is to assist the LPAs on the project development and the contract administration of the Emergency Relief (ER) Program projects. Refer to the [FHWA Emergency Relief Manual](#) for additional guidance, as well as an Iowa Specific “[ER Guide for Iowa](#)”, which among other things, further clarifies emergency repairs, permanent repairs, rates of reimbursements, and when prior FHWA concurrence is required.

### Definitions

*Emergency Repair:* Repairs undertaken during or within 270 days from the first day of the event after a disaster to restore essential traffic, to minimize the extent of damage, or to protect the remaining facilities.

*Essential Traffic:* Refer to the colored tables in the “[ER Guide for Iowa](#)” to understand how essential traffic is defined in Iowa.

*Permanent Repair:* Repairs undertaken after the occurrence of a disaster to restore the highway to its pre-disaster condition.

*Detailed Damage Inspection Report (DDIR):* A form used to prepare a comprehensive list of Emergency Relief repairs at a specific site. DDIRs document the cause and extent of damage, scope of repair work, and the preliminary estimated cost of repair. DDIRs are used to document both emergency and permanent repair work, as well as right of way (ROW), preliminary engineering (PE), and construction engineering (CE) costs needed to perform the ER repairs.

*Site of Work:* Generally, a site is an individual location where damage has occurred. However, a site could include several adjoining locations where similar damage, related to the same cause, has occurred. For example, where flooding waters in a drainage course that runs along or repeatedly crosses under a highway has caused damage at several locations within a reasonable distance of each other, it would generally be acceptable to package these together as a single site.

### Eligibility

To be eligible to receive ER funding, **all** of the following conditions must be met:

1. The ER eligible damage must be in a county covered by a Governor's Proclamation of Emergency or a Presidential Declaration of Emergency.
2. The damage must occur on a major collector route or higher classification, according to the [Federal Functional Classifications Map](#).
3. The estimated damage must be a minimum of \$5,000 for a site. The project scope of the site will be determined on a case-by-case basis.
4. The statewide combined **estimated** damage value must be in excess of \$1,000,000 (the Iowa DOT will determine this number, after receiving damage estimates from the LPAs).

Sites and damages that qualify for ER Funding will not be eligible for FEMA reimbursement. For that reason, when damage occurs to major collector routes or higher, in association with an event that has the potential to meet the above eligibility requirements, it is important to submit DDIRs via the below process. This could save

your agency valuable time and will help Iowa DOT establish eligibility requirement #4. The one exception to this rule is debris related costs, which are ER eligible unless FEMA Public Assistance is active in that county.

The Bipartisan Infrastructure Law (BIL), signed in November 2021, removed a restriction of bridges in the Statewide Transportation Improvement Plan (STIP) being ineligible; Bridges in the STIP that are damaged are considered to be eligible for ER funding if they meet all other ER requirements.

### **Detailed Damage Inspection Report (DDIR)**

The first step in documenting an ER site of work is to submit a [DDIR](#). The DDIR estimate is to be submitted electronically through an Enterprise A & A account within 90 calendar days of Day 1 of the disaster event, and the finalized DDIR shall be submitted within 2 years of Day 1 of the disaster event. The LPA will need to create an [Enterprise A & A Account](#), if they do not currently have an account. A sample DDIR form can be found in the [FHWA Emergency Relief Manual](#).

When completing the DDIR, the FHWA Disaster Number for the ER event must be included. The disaster number will initially be provided by the Iowa DOT Local Systems Bureau and will be in the ER Web Tool for applicants to select when preparing the DDIR. The FHWA Disaster Number will be developed by FHWA when the four eligibility criteria, shown above, have been met, and FHWA has declared it an eligible ER event.

The DDIR separates the cost estimates for emergency repairs from those for permanent repairs. Emergency repair cost estimates are documented on the top portion of the DDIR and permanent repairs are documented on the bottom portion.

The DDIR shall include the following documentation:

- The specific location, Federal Functional Classification of highway, cause, nature and extent of damage, including mileposts where available and estimated length and width.
- The estimated repair cost
- Potential environmental/historical impacts
- Photographs of the damaged facilities before repairs are made
- A location map and field site sketch
- Indicate whether the work is classified as emergency or permanent repairs.
  - If emergency work, state the Project Procurement method as shown in that section below. Also describe how one or more of the following criteria was met for the project to be eligible for emergency repairs.
    - The work was needed to protect the remaining facility
    - The work was needed to restore essential traffic
    - The work was needed to minimize the extent of damage
  - If permanent repairs are done during emergency repairs, identify what the permanent repairs are. Look at tables 1 and 2 in the ER Guide for Iowa to insure the correct people are contacted before starting the permanent work.
- Define the nature of the repair: Restore In-kind, Constructing to current standards, Betterment

Refer to the DDIR Details section in the [ER Guide for Iowa](#) for more information.

Note: If the LPA anticipates any potential costs for right of way, preliminary engineering, or construction engineering, they must be documented on the DDIR. If the cost estimates for ROW, PE or CE are not documented on the DDIR, reimbursement can't be requested for these items. See below for detailed authorization and reimbursement processes.

### **FHWA Review and Approval**

Emergency Repairs:

When emergency repairs are needed to restore essential traffic or prevent further damage to infrastructure, those repairs should begin immediately and don't need FHWA approval. Pictures should be taken of the site damage prior to the emergency repair work being performed. The LPA may contact the Regional [Local Systems Field](#)

[Engineer](#) or Iowa DOT ER Coordinator if they have questions about the repairs.

#### Schedule Site Visits:

FHWA provides their approval of a DDIR after visiting the site, for both emergency and permanent repairs. FHWA may not know about a damaged site until it receives the final DDIR. Therefore, it's recommended that the LPAs and Iowa DOT coordinate with FHWA early on to schedule times to witness the damage or repair activities. This allows for problems and questions to be discussed on site which can greatly reduce additional justification, corrections, and final DDIR approval time.

#### Permanent Repairs:

Permanent repairs must receive FHWA approval and authorization before the work begins, because these repair projects are administered and executed just like the standard Federal-aid process. There could be times when an LPA may want to do some permanent repairs at the same time as the emergency repairs, and this is allowed if the LPA can explain why it is economically feasible to do so. FHWA still must be contacted and concur with the work before it starts, but it's less formal and can be accomplished quickly by a phone call or email.

#### DDIR Approvals:

Once the DDIR is submitted through Enterprise A&A, the Regional [Local Systems Field Engineer](#), Iowa DOT ER Coordinator and FHWA will be able to sign and approve the DDIR. If FHWA is unaware of the DDIR until they receive it, a site visit will still have to be completed and could delay the DDIR approval. Depending on how widespread the damage is, site reviews can take several weeks to occur. If the site of work receives FHWA approval, the DDIR will be electronically signed by FHWA and emailed to the LPA, the Emergency Management Coordinator in the Traffic Operations Bureau, and the Regional [Local Systems Field Engineer](#).

#### DDIR Revisions:

Once a DDIR is approved, it cannot be revised unless it is unlocked by the Emergency Management Coordinator. DDIRs shall be updated at the time of FHWA authorization when estimated costs increase or decrease by more than 20% of the approved estimate. DDIR scopes must also be updated if the project scope changes.

#### FHWA Authorization:

FHWA Authorization will occur after a DDIR is approved; however, the DDIR approval is not considered FHWA Authorization. The LPA shall verify with the Local Systems Regional Field Engineer that FHWA Authorization has occurred. No Permanent Repair work will be reimbursed prior to FHWA Authorization. All damaged sites, that become ER projects, must be authorized within 2 years (+rounding up to the next federal fiscal year) of the event date. Example: An ER project from a May 2024 event has until September 30, 2026 to be authorized in FMIS by FHWA.

## Emergency Repairs

### Project Development

Due to the immediate need for emergency repairs, project development in the typical Federal-aid sense is not necessary. Emergency repairs are not to be delayed while waiting for approval of the DDIR or declaration of a disaster event. Examples of Emergency Repairs can be found in Tables 1 and 2 in [The Emergency Relief Guide for Iowa](#). As noted above, take site pictures before repairs are made and document repairs.

For emergency repairs, PE/CE Consultant contracts do not need to follow [I.M. 3.310](#), Federal-aid Participation in Consultant Costs, and do not need to follow the formal selection process.

### Project Procurement

Emergency repair work can be accomplished by contract, solicited contract, negotiated contract, or LPA force account. Further explanation of each procurement method is noted below.

- For Emergency Repairs, I.M. 3.310 does not need to be followed for procurement of Preliminary Engineering and/or Construction Engineering, as a formal selection process is not required.
- Construction Contract: Work that is competitively bid through a letting process. Repair work is awarded to the lowest responsive bidder. This is the least common method of the emergency repair due to the timely nature in which the repairs need to be performed.
- Solicited Construction Contract: The LPA contacts at least three contractors to solicit quotes for a defined

scope of work. The LPA documents how the contractors were solicited, who was contacted, and the responses received. The ER work is typically awarded to the lowest cost response; however, the lowest cost response does not have to be chosen if justifiable reasons can be documented (example - the second lowest cost response can begin the work immediately versus the lowest cost response being able to begin work in three days). If the LPA desires to not select the lowest cost response, it is recommended to discuss the matter with the Local Systems Field Engineer, who may also contact FHWA for guidance, prior to having the work performed.

- Negotiated Construction Contract: The LPA negotiates a contract with one contractor. Use only when competitive bidding is not effective or feasible. The LPA must be able to demonstrate that the negotiated cost is fair and reasonable. This typically requires a cost analysis to be performed prior to awarding the negotiated contract. This method of procurement should be used as a last resort when it is critical to restore essential traffic in an expedited manner. Normally, this would take place with a contractor who is already under contract to do similar work in the area.
- LPA Force Account: The emergency repair work is performed by utilizing the LPA's equipment and labor. The LPA must document the hours of personnel and equipment used each day to conduct the repairs. Materials are documented based upon invoice costs and quantities incorporated into the site of work. Use of stockpiled materials will NOT be reimbursable and is not advised. Labor costs associated with hauling and placing stockpile materials may be reimbursable with proper documentation as noted above.

For contracts, solicited contracts, and negotiated contracts, the contract documents must have [FHWA-1273](#) physically attached in its entirety, which includes the following provisions: Davis-Bacon wages, Buy America, EEO, DBE, ADA, etc. Buy America shall apply to all ER funded projects, including LPA Force Accounts. Use of iron and steel stockpile materials that are not documented to meet Buy America could jeopardize the entire project's funding.

Exception: In an instance where a FEMA event has not been activated, the ER program may cover debris removal. For an ER project that consists solely of debris removal, 23 U.S.C. 113 requirements do not apply. This is not considered to be a "construction" activity. Since 23 U.S.C. 113 only applies to "construction work", 23 U.S.C 113 prevailing minimum wage requirements do not apply to debris removal under the emergency relief program. However, debris removal performed in conjunction with construction, alteration, and repair work (such as highway resurfacing, re-grading, significant earthmoving, bridges repairs, etc.) is covered by 23 U.S.C. 113. <https://www.fhwa.dot.gov/construction/contracts/080625.cfm>

## Reimbursement

Emergency repair costs can be submitted for reimbursement after the DDIR has been approved by FHWA and the ER funding has been loaded into FHWA's Fiscal Management Information System (FMIS). It can sometimes take several months after an event for ER funding to be loaded into FMIS. This generally only happens twice per year. Therefore, it can take 8-9 months for LPAs to receive reimbursement. LPAs need to be prepared for this potential delay in reimbursement.

If costs increase or decrease more than 20% of the approved DDIR estimate, an amendment to the DDIR will be requested. If the scope of work did not change, the amendment should update the prices to reflect the current costs. If the scope of work did change, to remain eligible for ER Funding, the DDIR will need to be updated and reapproved to reflect the scope change.

The FHWA share of emergency repair costs is 100% if the repair work is completed within 270 calendar days of the disaster event. Emergency repair work completed after 270 calendar days will be reimbursed at 90% for Interstate highways and 80% for all other Federal-aid highways. Any emergency work still in progress at the time of the 270 day mark will be reimbursed at the non-emergency rate after that date. LPAs will need to provide a breakdown of work done/costs incurred up to the 270 days date and afterward.

Reimbursement requests are to be submitted to the appropriate Local Systems Field Engineer. The LPA can submit the Claim for Reimbursement of Project Costs form ([Form 517050](#)) or a cover letter to request reimbursement. The Claim for Reimbursement of Project Costs form ([Form 517050](#)) or cover letter needs to include the disaster number, date, DDIR number, the amount claimed for reimbursement, and signature of the LPA.

For contracts, solicited contracts, and negotiated contracts, submit copies of the pay estimate worksheets or billing statements from the Contractor or Consultant, along with proof of payment for those costs.

For LPA force account work, a summary of labor needs to be submitted that identifies the employees' names, hours worked per calendar day, work classification, and hourly rate of pay. Davis Bacon rates do not apply to LPA force account work. A summary of equipment needs to be submitted that defines the type and size of equipment used, the equipment working hours per calendar day, and the hourly billable rate as defined by the [Iowa DOT Schedule of Equipment Rates](#) (be sure to utilize the appropriate fiscal year rates). Material costs must be documented by invoices generated from the material supplier and quantities of materials incorporated into the site of work.

#### Project Closeout

Emergency repair contracts typically have funding authorized by FHWA under one project number that covers all of the approved sites of work involved in the disaster event. As such, it is important to notify the Iowa DOT Local Systems Field Engineer when all of the emergency repair costs for a particular site of work have been submitted for reimbursement, so the Iowa DOT is able to determine when all of the emergency repair costs, for all sites of work involved in a disaster event, have been submitted and the project number can be closed with FHWA. The LPA is to retain all cost records for a three-year period beginning with the date of the last FHWA signature on the project closeout document.

#### Permanent Repairs

##### Project Development

Permanent Emergency Relief projects require the same development and Federal-aid funding authorization procedures as required for non-emergency Federal-aid programs. A site-specific project number will be assigned by the appropriate DOT Local Systems Field Engineer. Environmental and historical clearances must be obtained. If Federal participation in consultant services are desired for preliminary engineering, the procedures outlined in [I.M. 3.310](#), Federal-aid Participation in Consultant Costs, must be followed. If Federal participation in right-of-way costs are desired, [I.M. 3.600](#), Right-of-Way Acquisition and [Attachment B](#), FHWA Authorization of Right-of-Way Costs Flowchart must be followed. For LPA ER projects, the Administering Team is the Local Systems Bureau and FHWA authorization requests should be submitted to the appropriate DOT Local Systems Field Engineer. Examples of Permanent Repairs can be found in Tables 1 and 2 in [The Emergency Relief Guide for Iowa](#).

##### Project Procurement

Permanent Emergency Relief projects must be let through the Iowa DOT Contracts and Specifications Bureau. After the contract is awarded, the project is administered per [I.M. 6.000](#), Construction Inspection, and other applicable I.M.s. If Federal participation in consultant services are desired for construction engineering, the procedures outlined in [I.M. 3.310](#), Federal-aid Participation in Consultant Costs, must be followed.

If the estimate at the time of letting increases or decreases more than 20% from the approved DDIR estimate, an amendment to the DDIR will be requested. If the scope of work did not change, the amendment should update the prices to reflect the current costs. If the scope of work did change, to remain eligible for ER Funding, the DDIR will need to be updated and reapproved to reflect the scope change. The LPA shall take responsibility for recognizing the need for an adjustment to be made, but Local Systems Project Development staff will perform this check at the check plan stage.

##### Reimbursement

Permanent repair costs can only be incurred and submitted for reimbursement after Federal-aid has been authorized for the individual cost categories involved with the project (PE, ROW, CE, Construction).

The FHWA share of permanent repair costs is 90% for Interstate highways and 80% for all other Federal-aid highways.

For eligible project costs paid from a county's Farm-to-Market (FM) account, Federal-aid reimbursement will automatically be requested from FHWA by the Iowa DOT Finance Bureau and the ER reimbursement will credit the FM account at the appropriate pro-rata share.

For eligible project costs paid with local funds, reimbursement requests are to be submitted to the appropriate Local Systems Field Engineer. The LPA should submit the Claim for Reimbursement of Project Costs form ([Form 517050](#)) to request reimbursement, and follow the instructions included with the form. Besides the Claim for Reimbursement of Project Costs form ([Form 517050](#)), submit a copy of the consultant firm's invoices for PE and CE services, submit a copy of the purchase agreements for ROW costs, and a copy of the pay estimate worksheets for construction costs. For all costs, proof of payment must also be submitted.

#### Project Close-out

Project closeout will follow [I.M. 6.110](#), Final Review, Audit, and Close-out Procedures for Federal-aid, Federal-aid Swap, and Farm-to-Market Projects.