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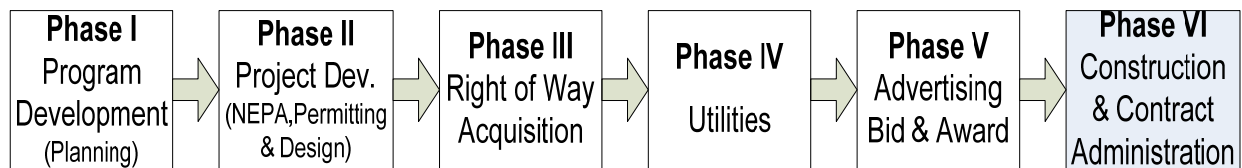
## SECTION C

## CERTIFIED AGENCY

### **Chapter 16**                      **Construction and Contract Administration**

This chapter is used for all federal-aid projects on Non-NHS (National Highway System) routes by local agencies operating under agreement with ODOT as a certified local agency.

After a project has completed the advertising, bid and award process, it enters the construction and contract administration phase.



#### **A. OVERVIEW**

Construction and contract administration is the responsibility of the certified local agency as identified in the local agency's certification master agreement and project agreement executed by the local agency and ODOT. After award of the construction contract, the certified local agency and/or its consultant, will be responsible for all aspects of construction engineering including:

- Materials quantity and quality program;
- Project compliance with state and federal requirements;
- Inspection;
- Project documentation;
- Project management services for administration of the contract; and
- Dispute resolution.

ODOT's [Regional Local Agency Liaison](#), manuals, documents and specifications are provided as resources available to certified local agencies.

#### **B. BECOMING CERTIFIED FOR CONSTRUCTION CONTRACT ADMINISTRATION**

To become certified in construction contract administration, a local agency must present to ODOT the local agency's written contract administration processes, quality control program, administrative structure and key personnel. ODOT will review and assess these processes and structure for compliance with federal and state requirements. Prior to becoming certified, any

processes and structures that do not meet federal requirements will need to be revised for such compliance. These processes and structures include:

- Project management structure, authorities, quality control and legal responsibilities of the work;
- Financial controls;
- Staff with proper certification in areas of material testing, erosion control, permit, environmental compliance and inspection -- inspectors must be appropriately trained for the specific discipline they will be inspecting such as traffic control, traffic signals and/or be appropriately trained as a general inspector;
- Contract administration plan;
- Material quality program, including quality documentation (contact the [Regional Local Agency Liaison](#) for ODOT's *Manual of Field Test Procedures* and additional information about quality control programs);
- Contract claims, change orders, force work or changes in project scope management
- Contract time management;
- Contractor payments, substantiated by project source documents (measurements and quantities);
- Plan for long term retention of documents;
- Contractor disputes management; and
- Final project acceptance, close-out and final payment.

## **C. LOCAL AGENCY CONSTRUCTION CONTRACT ADMINISTRATION**

### **1. Procedures**

Construction will be administered and materials will be accepted according to the certified local agency's previously approved written procedures. In lieu of using their own procedures, a certified local agency may choose to adapt the procedures described in ODOT's [Construction Manual](#).

All federally funded state and local agency projects are subject to FHWA environmental compliance, Disadvantaged Business Enterprise (DBE) and Equal Employment Opportunity (EEO) compliance reviews by ODOT. Additional Civil Rights information is available in Section B, Chapter 7, Civil Rights- DBE and Chapter 8, Civil Rights- EEO.

### **2. Approval Responsibilities**

As outlined in the local agency's certification master agreement and ODOT's [Stewardship Agreement](#) with FHWA, the Approval Matrix details the approval responsibilities for FHWA, ODOT and certified local agencies. FHWA and ODOT may exercise oversight or review of any

aspect of the delivery process. The Approval Matrix is located in the Appendix to Chapter 2 within Section A of this *LAG Manual*.

## **D. KEY PROCESS POINTS**

The following is a listing of key elements that need to be addressed during the construction and contract administration phase.

### **1. Pre-Construction Conference**

#### **Local Agency:**

As soon as practical after a contract is awarded, or as prescribed in the construction contract, the certified local agency's project manager shall coordinate, staff and fully document a pre-construction conference with the prime contractor, subcontractors, project inspectors and technicians. Utility companies should also be invited to attend as a part of the utility notification process. The certified local agency's Construction Contract Administrator shall notify ODOT's [Regional Local Agency Liaison](#) and ODOT's [Office of Civil Rights](#) of the time and place of the conference.

On large complex projects, a pre-construction conference should be held before each construction phase. It may be desirable to hold separate conferences for some specialized construction items such as paving, roadside planting, or electrical work. The pre-construction conference may include a partnering session, if appropriate. A sample pre-construction conference agenda and other construction forms are available on ODOT's [Construction Section](#) website.

The certified local agency shall appropriately document the meeting with official minutes or electronic recordings. Copies of the meeting documentation shall be provided upon request to the [Regional Local Agency Liaison](#) and each entity that has involvement or interest in the project. Refer to ODOT's [Construction Section/Publications](#) website for example pre-construction conference processes and information.

#### **ODOT:**

ODOT's [Regional Local Agency Liaison](#) and staff from ODOT's [Office of Civil Rights](#) will provide resource support as necessary for the pre-construction conference.

### **2. Labor Compliance**

#### **Local Agency:**

The certified local agency is responsible for ensuring that all construction craft workers and mechanics working on federal funded projects receive the appropriate prevailing wage rates and fringe benefits. This includes:

- Monitoring compliance with prevailing wage requirements;
- Ensuring that the prime contractor and all subcontractors submit weekly certified payrolls for all federal funded public works projects;
- Reviewing certified payrolls for accuracy and compliance utilizing the [Payroll Review Process](#), and the [Certified Payroll Checklist for Project Managers and Contractors](#);
- Investigating disputes, wage related complaints and determine appropriate action; and
- Gathering information from resolved labor issues and reporting semiannually to the U.S. Department of Labor.

**ODOT:**

For additional labor compliance information, contact the [Regional Local Agency Liaison](#) and refer to the [Labor Compliance Program](#) within ODOT’s Office of Civil Rights.

### 3. Project Inspection

**Local Agency:**

The certified local agency is responsible for all aspects of project inspection. Such inspection may be accomplished through the use of a consultant who has personnel that are certified in project inspection. Local agencies may also use ODOT inspectors through prior arrangement with the [Regional Local Agency Liaison](#).

**ODOT:**

In partnership with the local agency, ODOT will perform the project final inspection as a part of ODOT’s oversight responsibilities. This final inspection will occur after the contractor and the local agency have completed all the on-site work including the punch list items. The certified local agency shall contact the appropriate ODOT [Regional Local Agency Liaison](#) to schedule the final inspection. See Section 12 below for additional details.

### 4. Material Quality Plan

**Local Agency:**

The certified local agency shall follow its own ODOT approved Materials Quality Plan. The local agency shall also maintain a management and staff structure ensuring that quality materials are incorporated into projects. Alternatively, the certified local agency may adopt the procedures in ODOT’s [Construction Manual](#) for construction contract administration, quality control, quality assurance, material sampling and testing. The source for each type of material must be approved by the certified local agency. For additional information reference the following:

- a. ODOT’s [Construction Manual](#);
- b. ODOT’s [Qualified Products List \(QPL\)](#);

- c. ODOT's *Manual of Field Test Procedures* – Section 5 of this manual provides local agencies Quality Assurance (QA) testing program choices (This manual is not currently available on-line but a hard copy can be ordered via the [Manual Order Form](#)). Certified local agencies wishing to qualify a new material source or request information regarding an existing material source should contact the [Regional Local Agency Liaison](#) who will coordinate with ODOT's [Material Sources](#) staff.; and
- d. ODOT's [Standard Specifications](#) website

**“Buy-America” Requirements.** Steel and/or iron materials that are permanently incorporated into the project shall consist of American-made materials, as outlined in the [Oregon Standard Specifications for Construction](#), subsection 00160.20.

**FHWA:**

FHWA must approve all waivers to the “Buy America” requirements. See [23 CFR 635.410](#) for additional information.

**ODOT:**

ODOT has approval authority of the local agency's Material Quality Plan. A local agency quality plan should include elements as indicated on FHWA's website regarding [Buy America](#); see also [Quick Facts](#) regarding Buy America requirements.

## **5. Extra/Changed Work: Contract Change Orders, Force Orders and Work By Public Forces**

**Local Agency:**

The certified local agency shall follow it's own approved written procedures for contractor claims, contractor change orders, force orders and extra work.

**Requirement:**

Based on the need for ODOT to obtain FHWA approval for certain contract changes (see items listed in the "Approval Matrix located in Section A, Chapter 2, Appendix, of this *LAG Manual*") and pursuant to the local agency's certification master agreement with ODOT, the certified local agency's approved procedures must include a process for ODOT approval of the above referenced changed or added work.

No changed or added work, requiring ODOT or FHWA approval, shall proceed prior to receiving written approval from the appropriate authority. In the case of time sensitive situations, verbal approval may suffice until written approval is obtained. Verbal approval must be followed by prompt submission of a written change order. No contract payment shall be made for work accomplished prior to having appropriate approval. Work performed prior to approval will be funded in its entirety by the certified local agency or contractor.

*NOTE: Changes outside of the scope of the federal funding program may not be reimbursable with federal funds due to ineligibility. Local agencies must contact the appropriate program manager to verify eligibility and availability of funds prior to proceeding with changes outside the project scope.*

Changed or added work documentation involves:

- a. Obtaining appropriate signatures on approved change orders, force orders and extra work orders and
- b. The backup documentation must include:
  1. sufficient detail so that everyone involved will understand the need for the changed or added work;
  2. how the changed or added work will affect the overall contract; and
  3. detailed justification of the cost and/or any adjustment to contract time associated with the changed or added work.

*NOTE: The detailed cost justification shall be documented independent of the contractor's proposal to substantiate the changed or added work.*

The certified local agency must also obtain *prior* ODOT approval and follow ODOT's process for any increase in FHWA project authorization. Local agencies should contact the [Regional Local Agency Liaison](#) to commence ODOT's approval process. It is important to receive project funding source (e.g. local agency executive body, ODOT's Bridge Program, Transportation Enhancement Program, etc.) approval before submitting an increase in project authorization request.

**ODOT:**

ODOT will review requests for increases in project authorization and return its findings to the certified local agency. ODOT will also request an increase in federal authorization for the project, as appropriate.

## **6. Contractor Progress Payments**

**Local agency:**

Progress payments must be based on documented measurements, independently verified by the local agency, of work performed so the contractor can be fairly compensated and public funds will not be expended on work that has not been done. The certified local agency shall also monitor labor prevailing wage rate compliance. See Section C, Chapter 11, Plans Specifications and Estimates (PS&E) for wage rate compliance information.

- a. The certified local agency shall pay all contractor progress estimates, make final contractor payment, check final quantities and costs, oversee all construction activities

- b. The local agency shall submit timely invoices to ODOT. All invoices shall:
1. be submitted to ODOT within three months from the date that costs are incurred;
  2. identify an invoice and vendor number;
  3. reference the ODOT number for the certification master agreement between ODOT and the local agency;
  4. reference the ODOT supplemental project agreement number;
  5. identify the project by the same project name used in the supplemental project agreement; and
  6. itemize and explain all expenses for which reimbursement is claimed.

**ODOT:**

*Wages* – As indicated in the local agency certification master agreement, after receipt of 90 percent PS&E, the local agency shall determine whether the [Oregon State Bureau of Labor and Industries \(BOLI\)](#) index of wage rates (state) or [Davis Bacon](#) (federal) wage rates apply and inform certified local agency within ten working days after receiving the 90 percent PS&E.

*Reimbursement* – All billings received from the certified local agency must be approved by the [Regional Local Agency Liaison](#) prior to payment. Specifically, ODOT will reimburse the certified local agency for:

- a. construction contractor payments, per the local agency’s certification master agreement with ODOT; and
- b. approved construction contractor payments within ten working days of receipt of appropriate payment request from the certified local agency, unless otherwise specified in the local agency’s certification master agreement.

Upon receipt of the certified local agency’s proper invoice, ODOT’s [Regional Local Agency Liaison](#) shall forward the invoice to ODOT Highway Program Office for payment.

NOTE: Progress payment billings shall be submitted to ODOT’s [Regional Local Agency Liaison](#) within three months from the date that costs are incurred. Progress billings submitted after the three month time period will not be eligible for reimbursement.

## **7. Project Documentation and Long Term Retention of Documents**

**Local Agency:**

The certified local agency is responsible for using their procedures, as approved by ODOT, for project documentation and long term retention of project documentation. The contractor and subcontractor(s) shall maintain the records and keep the records accessible and available at reasonable times and places for a minimum period of six years from the date of final payment under the contract or subcontract or until the conclusion of any audit, controversy or litigation arising out of or related to the contract, whichever date is later, unless a different period is required by law. See the Secretary of State's Retention Schedule; e.g. OAR Chapter 166, [Division 150](#) for counties, [200](#) for cities and [300](#) for state agencies. This shall include, but is not limited to:

- Daily work records;
- Quantity documentation;
- Material invoices;
- Quality documentation;
- Certificate of materials origin;
- Process control records;
- Project diary;
- Erosion control reports;
- Temporary protection and direction of traffic reports;
- Final materials certification;
- Foreign steel summary;
- Warranties;
- Test results; and
- Inspection records to ensure that projects are completed in conformance with approved plans and specifications.

**ODOT:**

ODOT will use the certified local agency's project documentation in its review and oversight process to confirm the use of certified local agency processes and procedures as appropriate for reimbursement of federal funding.

## **8. Contractor Disputes and Claims**

**Overview:**

Administrative settlement costs are costs related to the defense and settlement of contract claims. These include, but are not limited to, salaries of contracting officers or their authorized representatives, attorneys, or members of arbitration boards, appeal boards etc. that are allowable to the findings and determination of contract claims, but do not include administrative or overhead costs.

FHWA funds may participate in administrative settlement costs which are:

- Incurred after notice of claim;
- Properly supported;

- Directly allocable to a specific FHWA project; or
- For employment of special counsel for review and defense of contract claims when recommended by the certified local agency's legal counsel and approved in advance by ODOT.

*Note: Any claims or disputes that result from the local agency working outside the contract are not eligible for federal participation. This exclusion even applies to items in which FHWA would otherwise normally participate.*

Whenever a claim is submitted, the local agency should contact the [Regional Local Agency Liaison](#) for advice on how to proceed.

**Local agency:**

The certified local agency's contract specifications must include a process for dispute and claim resolution. Those specifications must require a claims review by ODOT of any unresolved claims prior to the contractor being allowed to, escalate the issues to a review board, arbitration, mediation or pursue litigation.

**ODOT:**

ODOT will conduct claim reviews and will make independent and binding decisions regarding federal funding eligibility on the local agency regarding the contractor's entitlement and award of damages. For additional information regarding [ODOT's claims review process](#) go to Specifications and click on "00199 – Disagreements, Protests and Claims."

## 9. Termination of Contract

**Local Agency:**

The certified local agency may use its written procedures and criteria as approved by ODOT for termination of a contract. Prior to termination action against a contractor, the certified local agency must obtain ODOT's concurrence.

**ODOT:**

ODOT will review and provide a response to the certified local agency's request for termination of a contract.

## 10. Compliance With Federal Contract Provisions

**Local agency:**

The certified local agency is responsible to ensure full compliance with FHWA requirements. FHWA requires that all subcontracts at any tier be in writing, per [23 CFR 635](#). This includes

both contracts between the prime contractor and their subcontractors, and contracts between subcontractors and their agents.

Each of these subcontracts must also physically contain the following documents that are available from the [Regional Local Agency Liaison](#). Please note none of these documents can be included by reference only:

- [FHWA Form 1273](#) “Required Contract Provisions, Federal-Aid Construction Contracts”;
- The minimum wage rates for the contract as required by [ORS 653](#) and [Title 29](#) of the Code of Federal Regulations; and
- Buy America.

[ORS 279C](#) requires every subcontract to include the required statements about prompt payment, interest penalty and lower tier subcontracts. [ORS 701](#) requires that the project administrator not allow use of subcontractors that the Construction Contractors Board has placed on the list of persons not qualified to hold or participate in a public contract. The current sub-contractor checklist is available at [Construction Section Forms](#), under the “Subcontractor Consent Checklist” link.

**ODOT:**

The [Regional Local Agency Liaison](#) will provide the forms noted above upon request from the certified local agency.

## 11. Procedural Reviews

**ODOT:**

ODOT’s [Regional Local Agency Liaison](#) will consult and advise the local agency concerning project delivery procedures. The level of assistance will depend on the nature of each project and the demonstrated capabilities of the agency.

In order to be reasonably certain that certified local agencies are administering FHWA funds in accordance with state and federal law as well as this *LAG Manual*, ODOT’s Certification Program Manager will conduct project management reviews annually on selected certified local agency projects. These reviews will cover:

- General procedural compliance items noted in [OMB Circular A-133](#);
- Items noted in FHWA’s *Good Practices For the Oversight of Federal-aid Projects Administered by Local Public Agencies*;
- Compliance with the local agency’s master certification agreement with ODOT;

- Items of special interest developed from any audit reports, recommendations from FHWA or previous process reviews;
- Compliance with “Equal Employment Opportunity” and “Disadvantaged Business Enterprise” programs; and
- Procedures in the *LAG Manual*.

For information regarding ODOT’s procedural review forms, contact the Certification Program Manager.

## 12. Project Data Reporting to ODOT

### Local agency:

Quarterly, throughout the life of the project and at the end of the project, the certified local agency will complete and submit, to the [Regional Local Agency Liaison](#), a Certified Agency Quarterly Report form. This form can be found at [ODOT Construction Forms](#), and then click on the “Certified Agency Quarterly Report” in the Forms List.

### ODOT:

The Liaison will forward the Certified Agency Quarterly Report form to ODOT’s [Construction Contract Administration Unit](#) for recording of specific project information such as project starting and completion dates, project construction costs and contractor information.

## 13. Indemnification

### Local agency:

As indicated in the local agency certification master agreement, the certified local agency shall require its contractor(s) to list the State of Oregon, the Oregon Transportation Commission and its members, and the Oregon Department of Transportation, its officers and employees, as additional insured in the insurance certificates required of contractor(s) under its contracts with the certified local agency. The insurance coverage shall be in effect for the life of the contract. See [Oregon Standard Specifications for Construction Section 170.72](#) for example language.

In addition, as noted in the master certification agreement, the local agency shall require its contractor(s) to indemnify the State of Oregon, Oregon Transportation Commission and its members, and the Oregon Department of Transportation, its officers and employees, for performance of the obligations of the contractor(s) under its contract(s) with the local agency.

The certified local agency shall include ODOT as a third party beneficiary in the specifications of the certified local agency’s construction contract on any projects, with express authority to enforce the terms and conditions of the contract.

### CONTRACTOR(S):

Prior to Notice to Proceed, contractor(s) shall provide insurance certificates to the certified local agency.

## 14. Final Project Acceptance, Project Close Out and Final Payment

### Local agency:

Final project acceptance, closeout and payment are the responsibility of the certified local agency using its own approved processes, including the following activities.

*Final Inspection* – The certified local agency shall send a request for ODOT to participate in the final inspection and acceptance to the [Regional Local Agency Liaison](#) within 15 days of completion of all the on-site work including the punch list items. A copy of the physical completion letter that is sent to the contractor should accompany the request for ODOT to participate in the final inspection.

*Final Project Documentation* – A construction project is considered complete when the items below have been completed.

- a. Final Estimate (approving authority file) – When a contractor has a claim pending against the certified local agency and wants to receive a final estimate, a claim must be submitted in writing, detailing the specific items and amounts. When a claim is submitted, the local agency shall immediately contact the [Regional Local Agency Liaison](#) so that FHWA can be informed of the claim’s details as soon as possible. See Section 195.90 and 199 of [Oregon Standard Specifications for Construction](#).
- b. Preliminary and Final Quantities (approving authority file) – This is a listing of items that show the preliminary and final quantities.
- c. Final Invoice (approving authority file) – The local agency shall submit the final invoice and mark it as “Final Billing.”
- d. As-Built Bridge Drawings and Reports – For all [National Bridge Inventory \(NBI\)](#) structures, the local agency shall submit all as-built bridge drawings, pile records, foundation report and hydraulics report to ODOT.
- e. *Foreign Steel Summary* — All steel, iron and any coating applied to a finished steel or iron product, must meet the “Buy America” provisions of [23 CFR 635.410](#) – see ODOT’s [Certificate of Materials Origin](#) form and FHWA’s website regarding [Buy America](#) and related [Quick Facts](#). All FHWA funded projects must complete a Foreign Steel Summary form 734-1968 (available at [ODOT Construction Forms](#)), even if no foreign steel had been permanently incorporated into the project.
- f. *Materials Certification* — The purpose of the materials certification is to ensure that the quality of all materials incorporated into the project conforms to the plans and specifications and thus ensures a service life equivalent to the design life. This materials

certification, available at [ODOT Construction Forms](#), shall be completed in accordance with ODOT's [Construction Manual](#). The Final Materials Certification form is available at [ODOT Construction Forms](#) then click on the "Final Materials Certification," "Form No. 734-1979 in the Forms List. The local agency shall also retain documents related to such material certification as specified in this chapter. The materials certification shall be completed in conformance with the certified local agency's approved procedures or using ODOT's [Construction Manual](#), as appropriate. Upon request, the local agency shall submit materials certification along with the project completion letter to the ODOT [Regional Local Agency Liaison](#).

- g. Affidavit of Wages Paid – Upon completion of the contract, the certified local agency will prepare a Project Manager's Labor Compliance Certification ([ODOT Form 734-1734](#)) to be retained with the certified payrolls from the prime contractor and all subcontractors.
- h. Civil Rights Forms – The local agency shall contact the [Regional Local Agency Liaison](#) who will coordinate with ODOT's Office of Civil Rights for proper remittance of project Civil Rights records and data to ODOT. For further details see Section B Chapter 7, Civil Rights – DBE and Chapter 8, Civil Rights – EEO.
- i. Final Records (approving authority file). The certified local agency must document the work performed on the contract. Documentation can consist of field books, pile records, inspector's record of field tests, project engineer's and inspector's diaries, all invoices, weigh bills, truck measurements, quantity tickets, receiving reports, field office ledgers, mass diagrams, cross-sections, computer listings and work profiles. Photographs or video tapes before, during and after construction could be useful, especially if care is taken to show any unusual conditions, equipment, or procedures.
- j. Quality Records – All documentation that shows that materials that were incorporated into the project meet the requirements of the contract. Documentation can include inspection reports, test reports, quality compliance certifications, certificates of materials origins, and warranties.

Final records shall be retained by the certified local agency for at least six years following acceptance of the project by ODOT. The certified local agency will receive the administrative review letter showing the starting and ending date of the six-year retention period from ODOT.

Additional information is available in [OMB Circular A-133](#). This [Circular](#) sets forth standards for federal audits of state and local governments, related to the expenditure of federal funds.

As noted in the local agency's master certification agreement, within one year following contract completion for construction, the certified local agency shall send ODOT a final copy of "As Constructed" plans if a roadway project is on or affects the state highway system and for all bridge projects both on and off the state highway system where ODOT has responsibility for inspection of such bridges.

**ODOT:**

ODOT will reimburse the certified local agency for final payment, per the local agency's certification master agreement with ODOT. After release of final payment, ODOT's [Regional Local Agency Liaison](#) will oversee completion of the following:

- Close-out of the appropriate Expenditure Account; and
- Notification to FHWA that ODOT considers the project closed.