

Table of Contents

SECTION C	CERTIFIED AGENCY	3
Chapter 16	Construction and Contract Administration	3
	A. OVERVIEW	3
	B. BECOMING CERTIFIED FOR CONSTRUCTION CONTRACT ADMINISTRATION	4
	C. LOCAL AGENCY CONSTRUCTION CONTRACT ADMINISTRATION	5
	1. Procedures	5
	2. Approval Responsibilities	5
	D. KEY PROCESS POINTS	5
	1. Pre-Construction Conference	5
	2. Construction Milestones and Submittal Requirements	6
	b. Review of Quality and Quantity Documentation	7
	c. Recommendation of Project Acceptance	8
	3. Project Construction Inspection	8
	4. Material Quality Plan	9
	a. Non-Field Tested Materials	9
	b. Field Tested Materials	9
	5. Civil Rights Reviews	13
	a. Labor Compliance	13
	b. DBE Commercially Useful Function Reviews	14
	c. EEO Reviews	14
	d. OJT reviews	15
	5. Extra/Changed Work: Contract Change Orders, Force Account and Work By Public Forces	15
	a. Contract Change Orders and Extra Work Requirements	15
	b. Force Order Work	16
	c. ODOT Requirements	16
	6. Contractor Progress Payments	17
	a. Local Agency Requirement	17
	b. ODOT Requirements	17
	7. Project Documentation and Long Term Retention of Documents	18
	a. Local Agency Requirements	18
	b. ODOT Requirements	18
	8. Contractor Disputes and Claims	19
	9. Termination of Contract	19
	10. Compliance With Federal Contract Provisions	20
	11. Procedural Reviews	20

12. Project Data Reporting to ODOT	21
13. Indemnification	21
a. Local Agency Requirements	21
b. Contractor(s)	22
14. Final Project Acceptance, Project Close Out and Final Payment.....	22
a. Final Inspection	22
b. Final Project Documentation	22
c. ODOT Requirements	24

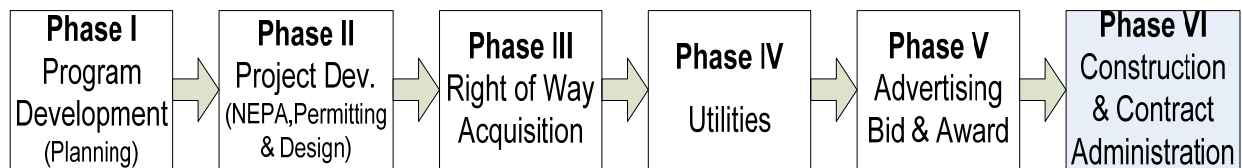
SECTION C

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 and 23 CFR 635.105(c). 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 by certified inspectors;
- Project documentation;
- Project management services for administration of the contract; and
- Dispute resolution.

The list of non-delegatable items are listed in [the Oversight chapter](#) of *this LAG Manual*. Some examples include:

- Certain Change Orders that involve scope changes (See approval authority matrix Chapter 2);
- Buy America;
- NEPA Approvals or other environmental concerns;
- Right of way;
- Title VI including Labor Compliance, Disadvantaged Business Enterprise (DBE), On the Job Training (OJT), Equal Employment Opportunity (EEO); and
- Federal funding oversight.

These items and possibly others will remain the responsibility of ODOT or FHWA. For more information or additional clarification, refer to ODOT's [Regional Local Agency Liaison](#) and manuals, including the [ODOT's Construction Manual](#), [ODOT's Manual of Field Test Procedures](#), and [FHWA's Core Curriculum Manual](#), and the contract administration website, documents and specifications are provided as resources available to certified local agencies per 23 CFR 635.105(c).

B. BECOMING CERTIFIED FOR CONSTRUCTION CONTRACT ADMINISTRATION

To become certified in construction and 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; (23 CFR 635.105)
- 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 as defined under the Project Inspection section below.
- Contract [Quality Assurance & Contract Administration Plan](#), Form # 734-2857, the certified local agency must complete this form or the equivalent for every project and submit it to the Regional Local Agency Liaison and the Region Assurance Specialist prior to commencing any project work;
- 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) See [23 CFR 637](#);
- Construction Contract claims, change orders, force work or changes in project scope management; [See ODOT's Construction Manual, Chapter 15](#)
- Construction Contract time management; [See ODOT's Construction Manual, Chapter 13](#) and [Oregon Standard Specifications 2008, Section 00180.50](#);
- Contractor payments, substantiated by project source documents (measurements and quantities); 23 CFR 635.124
- 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 adopt the procedures described in ODOT's [Construction Manual](#).

All federally funded state and local agency projects are subject to [FHWA National Environmental Policy Act \(NEPA\) environmental compliance](#), referenced in Section B Chapter 6 of this *LAG Manual*. In addition, local agency project must comply with Title VI regulations including Disadvantaged Business Enterprise (DBE) and Equal Employment Opportunity (EEO) and labor 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:

Immediately after contract award, the local agency shall submit eight copies of the final plans and specifications to the [Regional Local Agency Liaison](#) for distribution as required to ODOT's:

- Regional Assurance Specialist
- Contract Administration Unit in the Construction Section
- Office of Civil Rights including Regional Field Coordinators
- Other sections as appropriate (Roadway, Traffic, Bridge, and Environmental, etc.)

As prescribed in the construction contract, or as soon as possible after contract award, the certified local agency's project manager shall coordinate with, 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 coordinate with ODOT's [Regional Local Agency Liaison](#) and ODOT's [Office of Civil Rights](#) to set the time and place of the conference to ensure participation by the liaison and OCR staff as necessary.

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:

After receiving the eight copies of final plans and specifications from the Local Agency, the [Regional Local Agency Liaison](#) shall distribute the copies as required to ODOT's:

- Regional Assurance Specialist
- Contract Administration Unit in the Construction Section
- Office of Civil Rights
- Other sections as appropriate (Roadway, Traffic, Bridge, and Environmental, etc.)

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. Construction Milestones and Submittal Requirements

a. Local Agency Requirements

The local agency shall submit to the [Regional Local Agency Liaison](#):

- Notification of Commencement and Completion First, Second and Third Note, [ODOT form 734-3233](#) (these notes should also go to the RAS and contract admin unit)
- Certified Agency Quarterly reports [ODOT form 734-2590](#)
- Project Manager Narrative Form [ODOT form 734-2756](#)
- Recommendation of Project Acceptance [ODOT form 734-1384](#)
- [Contractor's Request for Subcontract Consent ODOT form 734-1964](#)
- Report on Contractor's Request for Subcontract Consent [ODOT form 734-1395](#)
- Foreign Steel Summary [ODOT form 734-1968](#)

- Affidavit; and
- All other items [under Project Closeout Section 14](#) of this chapter.

b. Review of Quality and Quantity Documentation

Initial Review – Only on test projects, ODOT’s Regional Assurance Specialist (RAS) will contact the certified local agency and set an appointment for the initial review. The RAS will perform an initial review and document the findings on a [Documentation Review Report \(DRR\) form #734-1903](#). Items requiring correction will be noted and rectified by the certified local agency. Three things the RAS will look at on the initial review include the presence and use of the following:

- Test summaries set up;
- Escalation items being paid per the contract; and
- The Quantity Measurement Guide and a Quality Documentation Checklist (Q and Q) specific to the project that deals with measurement, payment, and required Quality documentation for materials installed (not required but strongly suggested for project specific delivery management).

Second Review – Only on test projects, ODOT’s RAS will schedule a return appointment and confirm that each item noted for correction from the initial review had been appropriately addressed by the certified local agency. The certified agency, the RAS, and the [Regional Local Agency Liaison](#) shall retain the [Document Review Report](#) (DRR). The RAS will review all new Quality and Quantity documentation, noting any deficiencies on the DRR. At this review the RAS will also note on the DRR if there are deviations in administration of the contract from what the local agency has FHWA approval for contract administration for federal aid projects (equivalent of ODOT’s Construction Manual).

Subsequent Reviews – These reviews will be carried out as needed to ensure that ongoing communication occurs and that all issues are identified and resolved. It is the certified local agencies responsibility to have all DRR issues resolved from the prior review by the time the RAS comes for each subsequent review. Subsequent reviews will use the same process as used in the Second Review.

Timing of Reviews – The timing of these reviews will occur as follows:

For conditionally certified local agency projects Quality/Quantity:

- a. Start-up of project;
- b. Mid point, or at least every two to three months; and
- c. Final review at project closure.

For fully certified local agency projects Quality/Quantity,:

- a. Start-up of project;
- b. As requested by local agency or deemed necessary by ODOT based on risk analysis; and

- c. Final review at project closure.

These inspection reviews will occur in addition to the program and project oversight reviews required by the Certification Program as outlined in the Oversight Chapter in this *LAG Manual* and any additional Civil Rights Inspections performed by the Regional Field Coordinators [described in the Civil Rights section below](#).

c. Recommendation of Project Acceptance

Final Project Review – When all on-site work is completed, including punch list work, the Regional Local Agency Liaison and other ODOT staff as designated by the Region, are responsible for an on-site review of the project per Stand Specification 00195.90 and must complete the form Recommendation of Project Acceptance (Form [734-1384](#) or an equivalent memo). This review cannot be delegated to the local agency.

3. Project Construction Inspection

Local Agency:

Under the Certification Program, local agencies must have a Quality Acceptance Program which is independent of ODOT. The certified local agency is responsible for all aspects of project inspection and documentation. Such inspection may be accomplished with the local agency's staff or through the use of a consultant who has personnel that are certified in project inspection. All inspection staff assigned to a project are required to be certified in general construction inspection and at least one person must have the specific certification(s) required in accord with the project needs. Specific certifications as outlined in [ODOT's Inspection Quality Assurance Program Document](#), include the following.

- Certified Bridge Construction Inspector (CBCI)
- Certified Environmental Construction Inspector (CECI)
- Certified Drilled Shaft Inspector (CDSI)
- Certified General Inspector (CGI)
- Certified Hot Mixed Asphalt Concrete Inspector (HMAC)
- Certified Traffic Signal Inspector (CTSI)

The local agency must complete the [Quality Assurance & Contract Administration Plan](#), Form 734-2857 or the equivalent for every project and submit it to the Regional Local Agency Liaison and the Region Assurance Specialist prior to commencing any project work.

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 intermediate and final inspection as a part of ODOT's Federal oversight responsibilities. ODOT will perform the intermediate

inspection independently of the local agency. The final inspection will occur as agreed by the local agency and ODOT. The certified local agency shall contact the appropriate ODOT [Regional Local Agency Liaison](#) to schedule the final inspection. See Section 14 below for additional details.

4. Material Quality Plan

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. If a certified agency develops its own Materials Quality Plan it must also amend its Section 100s Specifications to compliment. 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 details see [23 CFR 637](#). There are additional resources on the Certification website provided by other certifying local agencies, including Portland that may serve as a guidance tool.

a. Non-Field Tested Materials

Certified local agencies must specify how they will document and accept Non-Field Tested Materials. This includes the quality documentation the local agency will require from the construction contractor. For additional information reference the following:

- a. ODOT's [Construction Manual](#);
- b. ODOT's [Qualified Products List \(QPL\)](#);
- c. [Non-Field Tested Materials Acceptance Guide \(NFTMAG\)](#)
- d. Applicable [ODOT Construction Forms](#)

b. Field Tested Materials

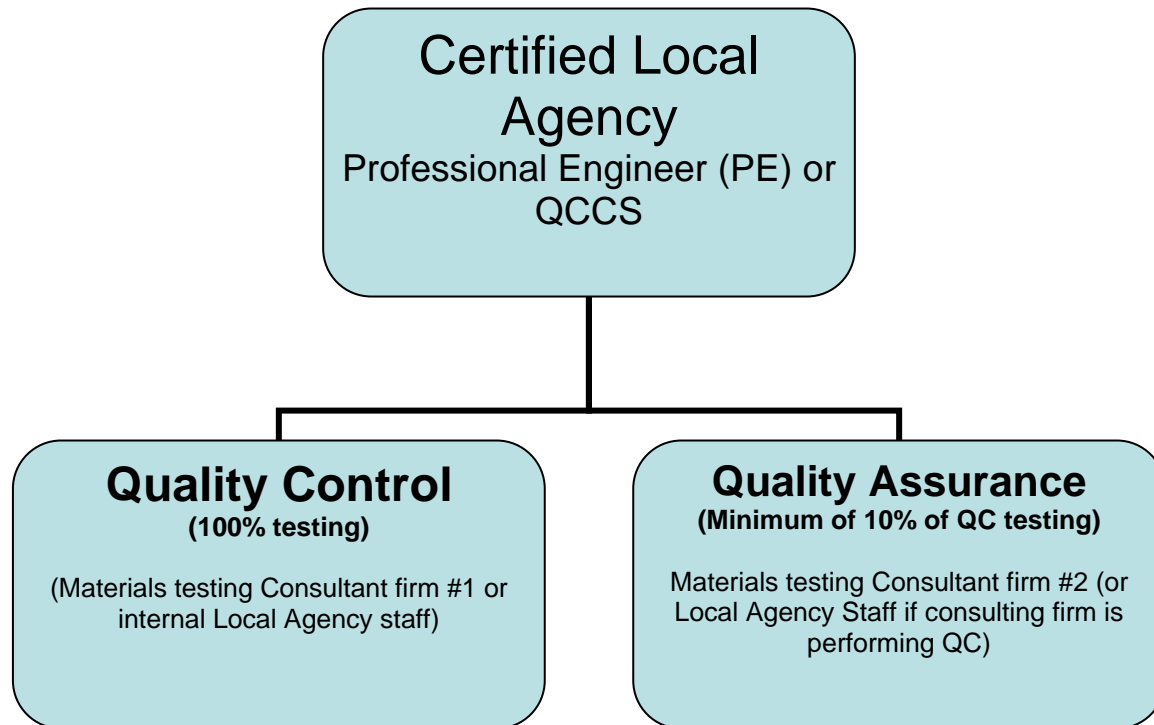
Certified local agencies must specify how they will document and accept Field Tested Materials. This process must be adequately represented by the certified local agency's Section 100s Specifications. If the certified agency's process differs from the ODOT process, this difference must be explained in the specifications.

Additionally, the local agency's Materials Quality Acceptance Plan must address requirements included in 23 CFR 637:

- Who will perform the functions of Quality Control and Quality Assurance;
- The qualification of the person performing the functions of Quality Control and Quality Assurance;
- Test procedures and frequencies for all materials including frequencies for Quality Control and Quality Assurance testing;
- A dispute resolution process; and
- An independent assurance program.

Local agencies may use ODOT's [Manual of Field Test Procedures](#), or their own procedures that ODOT and FHWA have pre-approved.

If the local agency hires consultants or uses internal staff to perform the functions of Quality Control or Quality Assurance, a certified QCCS is not required. The local agency can fulfill the role of QCCS with a staff person who is an Oregon registered Professional Engineer.

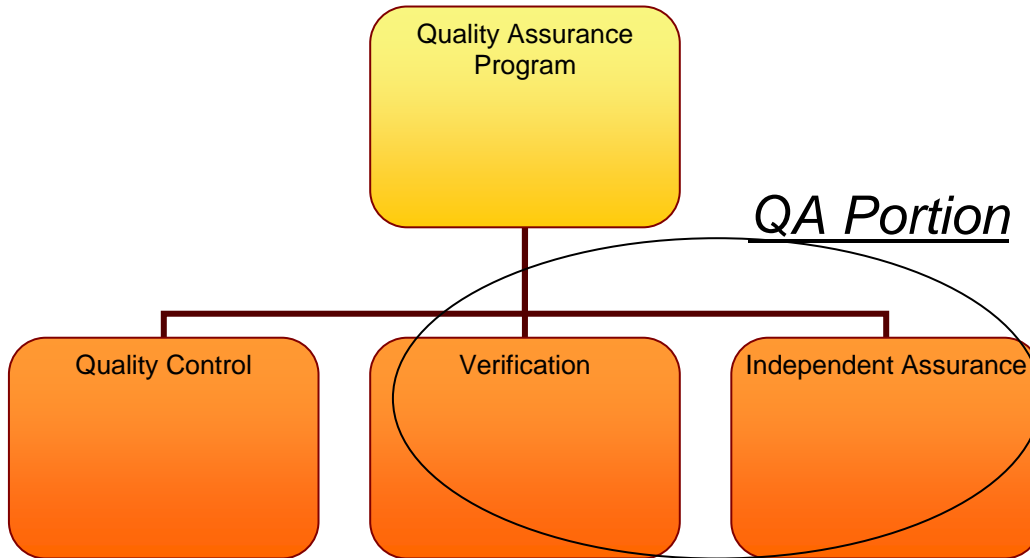


Certified Local Agency Professional Engineer (PE) – The Professional Engineer’s responsibilities include administering the Local Agency’s Quality Assurance Plan and to ensure all testing is conducted in accordance with the QA Plan. This includes reviewing testing personnel test procedures, reviewing test results for compliance with specifications and Independent Assurance Program requirements.

Quality Control- Material testing consulting firm (or internal Local Agency staff) with ODOT certified staff and laboratories. Testing is conducted in accordance with the Local Agency’s procedures and frequencies as defined in the Quality Assurance Plan.

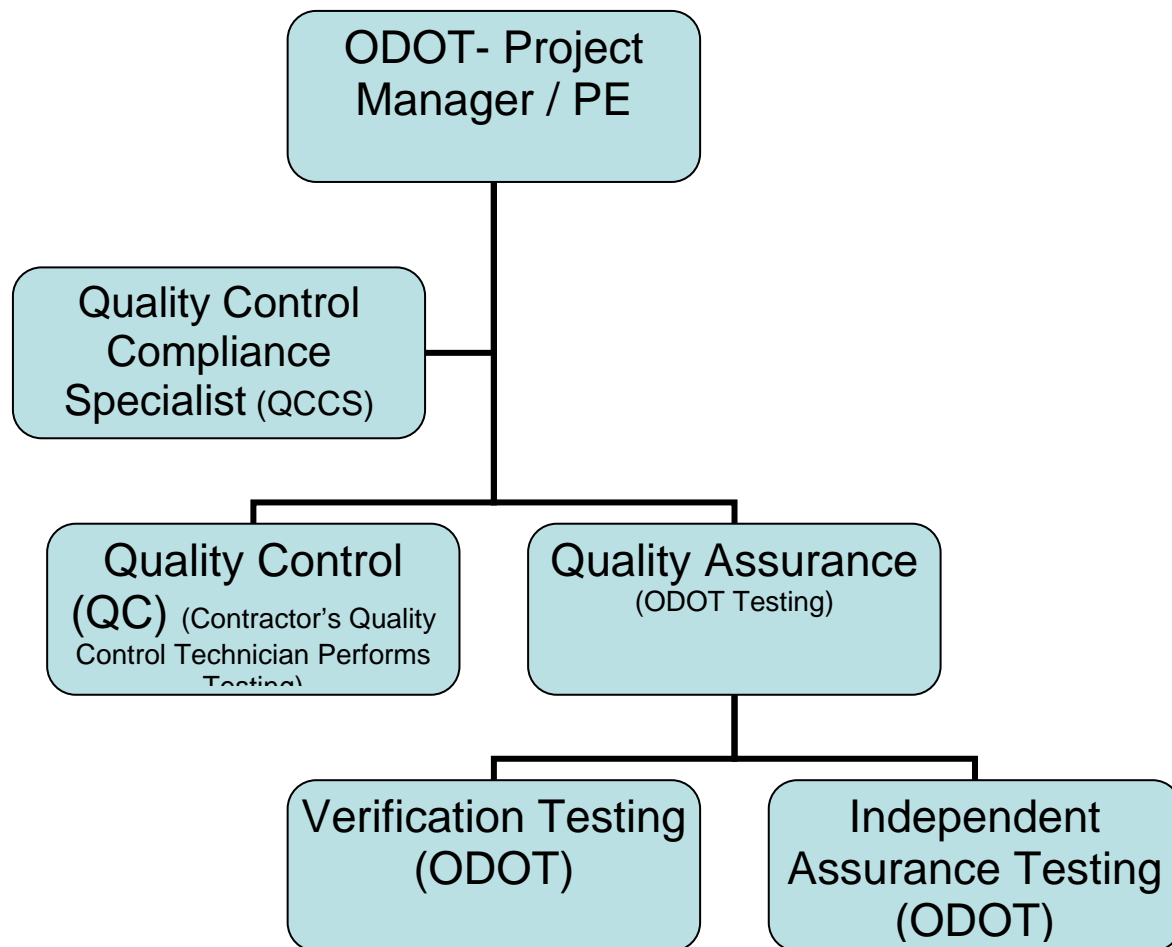
Quality Assurance- A materials testing consulting firm or internal Agency staff (The QA function is independent of the Quality Control) with ODOT certified staff and laboratories. Testing is conducted in accordance with the Local Agency’s procedures and frequencies as defined in the Quality Assurance Plan.

If the local agency is using ODOT's field testing procedure, including accepting contractor testing for payment, then the local agency must also identify one or more persons who will serve as the Quality Control Compliance Specialist (QCCS). This person(s) must be certified through an accepted technical certification program in the materials disciplines applicable to the specific project work. For additional information about QCCS, refer to [ODOT's Quality Assurance Program](#).



The quality assurance tester performs both the verification and the independent assurance within this diagram.

For more details on the staff level activities associated with the ODOT QA program refer to the following diagram.



Quality Control Compliance Specialist (QCCS) - The QCCS is an ODOT certified technician responsible for the administration of the Quality Assurance program at the project level. The qualifications and responsibilities of the QCCS are defined in the Manual of Field Tested Procedures and the Quality Control Compliance Specialist Manuals.

Quality Control (QC) The Contractor's Quality Control Technician performs 100% of testing required by the Manual of Field Tested Procedures

Quality Assurance (QA) - ODOT Staff or a certified testing Consultant performs **Verification** and **Independent Assurance** Testing on a minimum of 10% as defined in the Manual of Field Tested Procedures

For additional information reference the following.

- [ODOT's Manual of Field Test Procedures](#) – Section 5 of this Manual provides local agencies Quality Assurance testing program choices. 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 appropriate ODOT staff;
- ODOT's [Construction Manual](#); and

- ODOT's [QCCS Manual](#).

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

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. Civil Rights Reviews

Regional field coordinators are intended to be the project managers direct point of contact for any issue relating to civil rights. However, the Regional Local Agency Liaison should be cc'ed on all communication relating to the project. Regional field coordinators (RFC) are required to perform quarterly reviews on all elements of civil rights per the special provisions, including the payrolls, MEURs/MPRs/SPSRs. Certified projects are treated the same as non-certified and ODOT projects. For a complete list of required submittals refer to the [OCR Forms Matrix](#) in this *LAG Manual*.

NOTE: The contract number must be included on all documentation for the project including payroll and monthly submissions in order for the Regional Field Coordinator to adequately review a project for Civil Rights compliance.

a. Labor Compliance

The certified local agency is responsible for ensuring that all construction trade personnel working on federal and state 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 and state 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.

- Ensure the Contractor submits the required Office of Civil Rights forms (Summary of Subcontractors Paid, MPRs, Employee Interview Forms, MEURS, etc.) and submits these to the ODOT Office of Civil Rights Field Coordinator on a monthly basis.

ODOT's Office of Civil Rights Labor Compliance Program Manager and the Regional Field Coordinators shall coordinate with the certifying local agency, the Regional Local Agency Liaisons and the project managers to perform quarterly reviews on a project by project basis and as necessary.

NOTE: One of the major issues for Regional Field Coordinators in performing labor compliance reviews involves the Employee Interview Form; both receiving the form every six months from the project manager as well as having the form filled out accurately. The point of the form is to give the employee an opportunity to disclose whether they are getting properly paid or not and whether they are getting paid for the work that they actually perform.

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.

b. DBE Commercially Useful Function Reviews

The project inspector is responsible for performing a commercially useful function review (CUF) for all DBE's on the project. The RFC will perform reviews of the CUF reports as they come in to ensure accuracy and to record the CUF into the federal data system. The RFC will also perform quarterly reviews to ensure that all DBE's on the project has had a CUF review performed. It is the Prime's responsibility to inform the project inspector when a DBE will be performing work for the project, however, the project manager is responsible for ensuring that the Prime is aware of their obligations regarding the DBE work schedule and notifications.

For more information on CUF reviews, refer to the [DBE chapter](#) in this *LAG Manual* and the Office of [Civil Rights DBE website](#) .

c. EEO Reviews

The project manager is responsible for reviewing all the "Monthly Employment Utilization Report" (MEUR), [Form 731-0668](#) packet submitted by the primes on a monthly basis. The MEUR packet includes the Prime's monthly MEURS and the monthly MEURS from all the prime's subcontractors that have a contract for more than \$10,000. E-MEURS are also available now. After the project manager has reviewed, all of the documentation is submitted to the RFC

for review and entry into the federal tracking system. For more information refer to the [EEO/OJT chapter](#) of this *LAG Manual* or the Office of Civil Rights [EEO website](#).

d. OJT reviews

The RFC performs OJT quarterly reviews of the project managers documentation of their training programs. The Prime is responsible for submitting montly progress reports form number 731-0332, verifying how the contractors are attaning OJT goals or explaining how the contractor will manage the goals if behind shedule.

For more information on the OJT program, review [Section B, Chapter 8](#) of this LAG Manual and the [OJT website](#).

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

a. Contract Change Orders and Extra Work Requirements

The certified local agency shall follow it's own approved written procedures for contractor claims, contractor change orders, force orders and extra work. If these processes differ from ODOT process, the certified local agency must also amend their specifications 100s to adequately represent their process.

The certified local agency shall submit all change orders to the Regional Local Agency Liaison for review. Additionally, all major change orders must be approved by ODOT and FHWA (as appropriate) prior to work being performed. For more information on what consitutes a major change, refer to the [ODOT Construction Manual](#).

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 Master Certification 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 and cc' the Regional Local Agency Liaison 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.

b. Force Order Work

Force order work is work performed by the public agency, Utility or Rail. Force work usually only occurs in the follow two instances:

- Emergency situations that require the work to be performed in an expedient manner;
- It is more cost effective for the public agency to perform the work; or
- Work that a contractor can not do.

A certified local agency must perform a cost analysis and justification for force work orders. The certified local agency should prepare an [Order for Force Work, form 734-1105](#), to request to perform this work and allow for the cost of the work to be charged to the project during the construction phase.

All orders for force work are classed as major changes. The certified local agency must obtain approval from the proper authority as defined in ODOT's [Construction Manual Chapter 3 - Delegation of Authority](#). For more information, refer to [Section A, Chapter 5 Force Accounts in this LAG Manual](#) and [ODOT's Construction Manual](#).

The certified local agency must also obtain *prior* ODOT approval and follow ODOT's process for any increase in FHWA project authorization. A request for additional authorization may also require an increase the the local funds. Local agencies shall 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.

c. ODOT Requirements

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

a. Local Agency Requirement

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. For the Davis [Bacon/ BOLI prevailing wage rate worksheet and other wage compliance forms](#), refer to the [Labor Compliance website](#). Also, see [Section C, Chapter 11, Plans Specifications and Estimates \(PS&E\)](#) for wage rate information and the [Construction Manual](#) for wage rate compliance information. ODOT has training information available online at the LGS Training website.

- a. The certified local agency shall pay all contractor progress estimates, make final contractor payment, check final quantities and costs, oversee all construction activities and provide inspection services during the construction phase of the project. The certified local agency will be reimbursed through ODOT, per the local agency's Master Certification Agreement with ODOT. For further payment details see [Section C, Chapter 5, Progress Billings Payments](#).
- 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 Master Certification 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.

b. ODOT Requirements

Wages – As indicated in the local agency Master Certification Agreement, after receipt of 90 percent PS&E, [ODOT's Labor Compliance program manager](#) performs a reviews of whether the [Oregon State Bureau of Labor and Industries \(BOLI\)](#) wage (state) or [Davis Bacon](#) (federal) wage determination apply, or both, and informs the certified local agency within ten working days whether ODOT concurs with the certified agency's determination.

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 Master Certification 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 Master Certification 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

a. Local Agency Requirements

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 certified local agency's specifications must represent the local agency's procedure adequately. 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. More information is also available at [49 CFR 18.42](#). 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.

b. ODOT Requirements

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

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 certified local agency should follow their own approved policies, procedures, and specifications and inform the [Regional Local Agency Liaison](#).

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 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

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

10. Compliance With Federal Contract Provisions

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 and is helpful to use to ensure contracts have the required elements.

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

11. Procedural Reviews

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, "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

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](#) #734-2590. This form can be found at [ODOT Construction Forms](#), and then click on the "Certified Agency Quarterly Report" in the Forms List.

The Liaison will forward the [Certified Agency Quarterly Report form #734-2590](#) 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

a. Local Agency Requirements

As indicated in the local agency Master Certification 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 2008 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.

The certified local agency shall submit all contractor contracts and insurance certificates for the federal project to the Regional Local Agency Liaison for review and filing.

b. Contractor(s)

Prior to Notice to Proceed, contractor(s) shall provide insurance certificates to the certified local agency with proper indemnifications named. Certified local agencies should forward a copy to the Regional Local Agency Liaison.

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

Final project acceptance, closeout and payment are the responsibility of the certified local agency using its own approved processes, including the following activities. However, if the certified local agency's process differs from ODOT's, the local agency shall amend their Section 100s Specifications to represent their procedures.

a. 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 punch list letter that is sent to the contractor should accompany the request for ODOT to participate in the final inspection.

b. Final Project Documentation

A construction project is considered complete when the items below have been completed.

1. 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 2008 [Oregon Standard Specifications for Construction](#).
2. Preliminary and Final Quantities (approving authority file) – This is a listing of items that show the preliminary and final quantities.
3. Final Invoice (approving authority file) – The local agency shall submit the final invoice and mark it as “Final Billing.”

4. 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 the Regional Local Agency Liaison, with a copy cc'ed to the appropriate ODOT staff, such as Bridge, Construction Contract Administration, or Tech. Contact the Regional Local Agency Liaison for additional information.
5. 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.
6. Materials Certification - The purpose of the final 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. The [Final Materials Certification Form #734-1979](#) shall be completed in accordance with ODOT’s [Construction Manual](#) or in conformance with the certified local agency’s approved procedures, as appropriate. Upon request, the local agency shall submit the materials certification along with the project completion letter to the ODOT [Regional Local Agency Liaison](#).
7. 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.
8. 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](#).
9. 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.
10. 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 the Regional Local Agency Liaison a final copy of "As Constructed" plans with a cc'ed copy to the Bridge Section, 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.

c. ODOT Requirements

ODOT will reimburse the certified local agency for final payment, per the local agency's Master Certification 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.