

**2021**

**ODOT CERTIFICATION  
PROGRAM OFFICE**

# **LOCAL AGENCY GUIDELINES FOR CERTIFIED LOCAL PUBLIC AGENCIES**

## **SECTION B:**

**LOCAL PUBLIC AGENCY CERTIFICATION, COMPLIANCE AND  
OVERSIGHT**

Effective November 3, 2021



## SECTION B: LOCAL PUBLIC AGENCY CERTIFICATION, COMPLIANCE AND OVERSIGHT

### A. OVERVIEW

Section B of the Local Agency Guidelines for Certified Local Public Agencies (LAG for Certified LPAs) details the prerequisites, process, and maintenance requirements for becoming certified and maintaining certification status. Staff interested in understanding the background and rationale for ODOT's LPA Certification should revisit Section A (Overview). Staff looking for project delivery guidance for certified agencies should visit Section C (Project Delivery).

#### A.1. Organization

Section B of this manual is organized to provide certification information on the following topics:

- **Overview** of how to become certified and maintain certification
- **Roles and Responsibilities** for the certification program
- **Becoming Certified**, general process for becoming certified
- Consultant Selection and Contract Administration
- Design (Roadway)
- Design (Bridges and Structures)
- Advertisement, Bid, and Award
- Construction Contract Administration
- **Maintaining Certification** (Compliance and Oversight)

#### A.2. Becoming Certified and Maintaining Certification Status

Local Public Agencies (LPAs) in a Transportation Management Area (TMA) should pursue certification to deliver federal-aid transportation projects if:

- They typically have an on-going federal-aid project and;
- Generally have a minimum of two to three federal-aid projects in a four-year STIP cycle that are not eligible for alternate funding methods.

ODOT's Certification Program supports LPAs that deliver full transportation projects. This also includes Metropolitan Planning Organizations (MPOs) certified in consultant selection and contract administration for planning services. LPAs must have programmatic documents in place as required for the areas in which they are certified such as procuring consultant services,

administering consultant contracts, designing and bidding projects, and managing construction contracts.

To become certified, LPA staff must develop and implement foundational program documents, demonstrate compliance with their own approved program by delivering a demonstration project, and work with ODOT on periodic compliance and oversight reviews. The remainder of Section B details this basic process.

## **B. ROLES AND RESPONSIBILITIES**

### **B.1. Overview**

FHWA, through a Stewardship and Oversight Agreement, delegates authority to ODOT for approving project development and construction administration. ODOT has the option of delegating much of this authority to LPAs, but remains responsible to FHWA for overall compliance with federal law and regulations. The Certification Program, through a Master Certification Agreement between ODOT and Oregon cities, counties, and MPOs, provides limited approval authority at the local level for federally funded projects.

### **B.2. Programmatic Authority**

ODOT's Certification Program Manager is the primary authority on all policies and processes for the Certification Program. However, LPAs can obtain approval authority for project elements, some ODOT sections retain approval authority for their disciplines, and FHWA retains some final project approvals. The Approval Authority Matrix (Form #734-5191), found in Section D of this Manual details approval authorities for on-system, and off-system projects delivered by Certified LPAs.

### **B.3. FHWA Responsibilities**

FHWA has the authority and responsibility for implementing and monitoring federal laws, regulations, and executive orders affecting highway transportation projects undertaken with federal funding. When a project involves FHWA funding, FHWA is involved according to these responsibilities, delegations of authority, and FHWA's Stewardship Agreement with ODOT.

Under Title 23 U.S.C., FHWA retains responsibilities for certain programmatic and project related approvals, such as; planning and programming, civil rights program approvals, environmental approvals, authorization of federal funds, Buy America waivers, experimental features and major changes to a project. For more information, refer to the FHWA-ODOT Stewardship and Oversight Agreement.

#### **B.4. ODOT Responsibilities**

With the FHWA-ODOT Stewardship and Oversight Agreement, ODOT has assumed significant delegations of authority and responsibility from FHWA. ODOT is responsible to FHWA for administering the successful implementation of federal-aid programs and projects. These responsibilities can be categorized as certification program policy and procedures, funding programs and project oversight.

##### **a. Certification Program Policy and Procedures**

ODOT outlines the basic requirements for certified project delivery. ODOT supports LPAs in developing their own policy and procedures that comply with state and federal requirements. By doing this, ODOT avoids prescribing uniform policies and procedures upon the LPA and allows greater flexibility for individual agencies.

ODOT interprets federal and state laws, rules, and regulations, and provides guidance in the form of manuals, bulletins, and training to assist LPAs procure consultant services, administer consultant contracts, design, construct, and maintain their transportation systems.

##### **b. Funding Programs**

Each specific local assistance program provides funding which requires distribution, management and oversight control to ensure that the funds are expended to meet the program goals and that allocations and budget authority are not exceeded. ODOT distributes both state and federal fund allocations to the local agencies as specified by law and program requirements.

Once the distributions are established, ODOT provides program guidance for their expenditure. Some funding programs may require annual or periodic project application and selection to establish eligibility lists. ODOT also monitors project implementation to ensure that the projects are implemented in a timely manner to achieve program goals.

##### **c. Project Oversight**

Some activities delegated by FHWA to ODOT cannot be further delegated to local agencies and remain ODOT's responsibility. These include, but are not limited to the following activities:

- Approval of authorization to proceed
- Preparation of federal agreements
- Approval of specific authorization for utility relocation involving federal reimbursement
- Approval of programmatic categorical exclusions
- Approval of payments from ODOT to local agencies

- Right of Way co-certification
- Utility co-certification
- Issuance of rail grade crossing orders

Consult the subsections and chapters covering these topics in this manual for further details. Where FHWA has not delegated final approval, ODOT monitors local agency activities, reviews or prepares documents, and makes recommendations to FHWA. For example, ODOT reviews all environmental documents for completeness and sufficiency before ODOT submits them to FHWA for approval.

ODOT provides assistance to local agencies in interpreting the regulations, manuals and guidelines as they apply to specific project conditions. ODOT Regional Local Agency Liaisons, Certification Program Manager, other certification program staff and ODOT subject matter resources are all available to assist LPAs. Environmental issues, right of way concerns, hazardous wastes, labor compliance, equal employment opportunity, Title VI issues, Americans with Disabilities Act and Disadvantaged Business Enterprises are among these areas where assistance is available. LPAs should request any needed ODOT assistance early and coordinate with the Regional Local Agency Liaison and the technical specialists to ensure ODOT's limited resources and personnel will be available when needed.

### **B.5. Oregon Transportation Commission**

The Oregon Transportation Commission (OTC) has programming and fund allocation responsibility for federal-aid programs. The OTC approves selected projects for inclusion in the Statewide Transportation Improvement Program (STIP) for the State of Oregon.

The STIP is the funding and scheduling document for major road, highway and public transportation projects in Oregon and lists projects for the following four years. LPA projects must be approved in the STIP before an intergovernmental agreement can be executed for the project.

### **B.6. Metropolitan Planning Organizations (MPOs)**

By agreement with ODOT, MPOs in areas with populations between 50,000 and 200,000 receive federal Surface Transportation Block Grant (STBG) funds. The Region and the MPOs work together to identify and prioritize transportation improvement projects and to balance investment needs in the MPO area with other needs in the Region. Some MPOs consist of a single city while others include multiple cities and unincorporated areas. MPOs in Oregon include:

- Portland Metro
- Central Lane MPO

- Salem – Keizer Area Transportation Study
- Albany Area MPO
- Corvallis Area MPO
- Bend MPO
- Middle Valley Rogue MPO
- Rogue Valley MPO
- Walla Walla Valley MPO

### **B.7. Transportation Management Areas (TMAs)**

MPOs with populations over 200,000 are designated as Transportation Management Areas. TMAs are guaranteed a calculated amount of federal funds and can determine how to spend the funds. TMAs have project selection authority for the regional STBG program and any allocated Congestion Mitigation and Air Quality Improvement Program funds in consultation with the State. ODOT works with all MPOs in a collaborative way to select projects that best serve the needs of each MPO.

### **B.8. Local Public Agency Responsibilities**

ODOT along with the Association of Oregon Counties (AOC) and League of Oregon Cities (LOC) entered into an agreement entitled Federal-Aid Project Guidelines and Working Agreement (ODOT/AOC/LOC Working Agreement). This Working Agreement details the roles and responsibilities for ODOT and LPAs.

Resources:

- [FHWA letter to ODOT authorizing CLPA work on NHS](#)

Sections 3(b) and 3(c) of the Working Agreement states that:

- a. Local Agencies certified to administer federal-aid projects that are not on the National Highway System (NHS) shall follow the guidelines set forth by ODOT's LPA Certification Program and in the individual Intergovernmental Agreements (IGAs) written for certification.*
- b. STATE provides three options for delivering federal-aid local projects. Local agencies may:*
  - i. Exchange federal funds for state funds and deliver their project directly;*
  - ii. Utilize the certification program by becoming certified to deliver federal-aid projects or working with a certified Local Agency to deliver the project on their behalf; or*
  - iii. Have the STATE directly deliver the project for the Local Agency.*

In March 2013, FHWA's Oregon Division issued a letter that authorizes the Oregon Department of Transportation to allow certified LPAs to administer Federal-aid projects on locally owned arterials that are part of the NHS.

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Another important responsibility not covered by the working agreement is one of **financial management and internal controls**. In order to meet the requirements of 2 CFR 200 Subparts D and E for federal-aid awards, the Certified LPA must have a financial management system that provides for the following:

- Identification of all federal awards received and expended and the federal programs under which they were received.
- Accurate, current, and complete disclosure of the financial results of each federal award or program.
- Records that adequately identify the source and application of funds for federally funded activities.
- Effective control over, and accountability for, all funds, property, and other assets.
- Comparison of expenditures with budget amounts for each federal award.
- Written procedures to implement the payment requirements of 2 CFR 200.305.
- Written procedures for determining allowable costs in accordance with Subpart E.

The Certified LPA must also establish and maintain effective internal control over the federal award that provides reasonable assurance that the Certified LPA is managing the federal award in compliance with federal statutes, regulations, and the terms and conditions of the award.

LPAs have the primary responsibility for utilizing federal-aid funding for specific projects in accordance with state and federal laws and program requirements. Certified LPAs shall ensure that their staff members, consultants and contractors comply with the applicable state and federal laws, regulations and procedures in developing and constructing their projects.

Certified LPAs have optimum decision-making authority for the project delivery activities of federal-aid projects for which they have been certified.

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Certified LPAs must have internal controls in place to ensure the project is delivered in compliance with federal statute and regulations.

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## C. BECOMING CERTIFIED

The Certification Program requires participating LPAs to be able to fully manage all projects delivered through the program. This subsection describes the steps to become certified, from applying to the program through closing out the demonstration project. The five phases to becoming certified are outlined below, with “certification” status conferred after the Foundational Documents and Training phase (indicated by the star).

| The Certification Process |   |
|---------------------------|---|
| <b>1</b>                  | <b>Application Process (Meet Minimum Requirements)</b> <ul style="list-style-type: none"><li>• LPA completes and submits application.</li><li>• Certification Program Office (CPO) reviews application and determines if minimum requirements are met.</li><li>• If preliminarily approved, CPO coordinates an initial meeting with the LPA to discuss program requirements.</li><li>• With CPO and LPA in agreement, an approval to enter the Certification Program is granted by letter.</li><li>• <b>Note:</b> The application process will take approximately 6 weeks.</li></ul>  |
| <b>2</b>                  | <b>Foundational Documents and Training</b> <ul style="list-style-type: none"><li>• CPO and LPA convene an informational meeting to discuss foundational document requirements and expectations.</li><li>• LPA prepares and submits draft Quality Program Plan (QPP) to CPO.</li><li>• LPA prepares and submits draft construction contracting and consultant contracting templates to CPO.</li><li>• LPA prepares and submits the formal/informal consultant selection RFP and contract templates.</li><li>• LPA submits Title VI Plan to ODOT Office of Civil Rights.</li><li>• LPA submits an ADA Title II Transition Plan or other documentation showing compliance with ADA requirements to ODOT Office of Civil Rights.</li><li>• LPA's Key Qualified Staff takes "Federal-Aid Essentials" training courses, consultant selection training and becomes familiar with FHWA's Contract Administration Core Curriculum Manual as well as all foundational documents.</li><li>• CPO reviews the QPP, construction contracting and consultant contracting templates and provides comments.</li><li>• CPO and LPA work together to resolve comments.</li></ul> |

### The Certification Process



- Once the foundational documents are approved and LPA staff has completed the required training, "**Certification**" is granted.
- **Note:** The Foundational Document and Training process will take approximately 8 to 12 months to complete.

#### 3 Agreement Process

- Concurrent with the foundational document preparation, training and approval process, the Master Certification and Supplemental Project Agreements are initiated.
- Once full certification is granted, the Master Certification and Supplemental Project Agreements are executed and funding authorization is requested for the Demonstration Project.

#### 4 Demonstration Project Compliance

- Notice to Proceed with Demonstration Project is issued.
- LPA demonstrates compliance with approved program by delivering a single Demonstration Project.
- At a meeting, the LPA will present to the CPO their processes, procedures and documentation shortly after each of the following milestones:
  - Consultant Selection
  - Submittal of Plans, Specifications and Estimate for the Design phase
  - Award of construction contract for the Ad, Bid and Award phase
  - Completion of construction (issuance of 2<sup>nd</sup> Notification or equivalent) for the Construction Contract Administration phase
- At each of the above milestones, the CPO will conduct an independent compliance review. If any deficiencies are noted, the CPO will work with the LPA to develop and implement a Corrective Action Plan(s).

#### 5 Compliance & Oversight – Moving Forward

- Certified LPA prepares and submits an annual self-audit form along with updated approval authority and key qualified staff forms as well as a list of Qualified Staff training.
- CPO staff performs reviews of certified LPA's program and projects on a regularly scheduled basis.

**The Certification Process**

- If necessary, a Corrective Action Plan(s) will be developed for compliance issues encountered during subsequent compliance reviews.

**C.1. Application Minimum Requirements**

LPA's interested in participating in the Certification Program are required to complete a program application. This application is completed by the LPA and reviewed by the Certification Program Office to ensure the LPA meets the minimum requirements of the program. The LPA must meet the following minimum requirements prior to being approved to participate in the Certification Program:

| Requirement                          | Description  |
|--------------------------------------|--|
| <b>Volume of Projects</b>            | Generally, a minimum of two to three federal-aid projects in most STIP cycles is required to warrant becoming certified.   |
| <b>STIP Portfolio Management</b>     | The LPA must be able to manage, schedule and adequately staff their portfolio of STIP projects to ensure that federal fund obligation deadlines are met for each programmed phase of a project.  |
| <b>Certified LPA Program Liaison</b> | LPA must assign a full-time employee to be the single point of contact for the LPA's certification program.  |
| <b>Person in Responsible Charge</b>  | For locally administered projects, the person in responsible charge must be a full-time employee of the LPA. The person in "responsible charge" of LPA administered projects need not be a registered professional engineer. This requirement applies even when consultants are providing construction engineering services. |
| <b>Quality Control Coordinator</b>   | The primary responsibilities of this person are to coordinate the LPA's certification quality control activities. In many cases, the Certified LPA's Program Liaison serves in this role.  |
| <b>Qualified Staff</b>               | The LPA shall have sufficient expertise, qualified staff, and the capability to perform and supervise all project phases for which they are certified; i.e. Consultant Selection, Design, Ad, Bid, and Award and Construction Contract Administration.   |
| <b>Publications</b>                  | The LPA shall have appropriate guidance on hand or available electronically, including, but not limited to: <ul style="list-style-type: none"> <li>• ODOT LPA A&amp;E Requirements Guide</li> <li>• ODOT LPA Non-A&amp;E PSK Requirements Guide</li> </ul>   |

| Requirement | Description   |
|-------------|---|
|             | <ul style="list-style-type: none"><li>• AASHTO Policies and Design Guides</li><li>• Local Agency Guidelines for Certified Local Public Agencies</li><li>• Manual on Uniform Traffic Control Devices (MUTCD) and Oregon Supplements</li><li>• Oregon Temporary Traffic Control Handbook</li><li>• ODOT Highway Design Manual</li><li>• National Association of City Transportation Officials Bikeway Design Guide</li><li>• ODOT Bicycle &amp; Pedestrian Design Guide</li><li>• ODOT Hydraulics Manual</li><li>• ODOT Right of Way Manual</li><li>• ODOT Utility Manual</li><li>• ODOT Construction Manual</li><li>• Oregon Standard Specifications for Construction FHWA’s Contract Administration Core Curriculum Manual</li><li>• Oregon Transportation Plan and associated mode and topic plans</li></ul> |

**a. Application Approval or Denial**

The Certification Program Office will preliminarily approve or deny applications based on the criteria above. If preliminarily approved, the Certification Program Office will schedule an initial meeting with the LPA to further discuss the Certification Program. If denied, the LPA may work with the Certification Program Manager to explore potential ways to qualify in the future.

**b. Initial Meeting**

The Certification Program Office will schedule an initial meeting between the LPA, Certification Program, ODOT Region staff, and applicable ODOT discipline resources. This meeting is to discuss the Certification Program in detail and to verify approval to enter the Program. The Certification Program Office will also provide the LPA a document package for review, including information about the:

- Master Certification Agreement draft
- Quality Program Plan elements

- Title VI program and Title VI plan guidance
- Construction contracting templates (general conditions, bid booklet, and other contracting forms and provisions)
- Consultant contracting templates
- Supplemental project agreements
- Demonstration projects

Once approval to enter the Program is confirmed, the Certification Program Office will notify the LPA it has been accepted into the Program and provide information about next steps.

### C.2. Foundational Documents

Once approved to participate in the Certification Program, LPAs must develop and implement foundational certification program documents upon which all future projects will be reviewed against. The table below details required documents:

| Document  | Description   |
|---|---|
| <b>Title VI Program &amp; Plan</b>                        | <ul style="list-style-type: none"> <li>• All LPAs that are subrecipients of federal funds must maintain a Title VI Program that includes a Title VI Implementation Plan, which is updated every three years, and submission of an Annual Accomplishments Report annually to the Office of Civil Rights.</li> <li>• LPA Title VI Implementation Plans must identify a Title VI Coordinator, develop and describe the agency’s discrimination complaint mechanism, develop its public involvement strategy for reaching traditionally underrepresented communities, and develop and maintain its procedures for gathering, collecting and analyzing data.</li> <li>• The ODOT Office of Civil Rights Title VI Program Manager can answer any questions regarding Title VI obligations.</li> </ul> |
| <b>ADA Title II Transition Plan &amp; Self-Assessment</b> | <ul style="list-style-type: none"> <li>• All certified LPAs must provide documentation showing compliance with ADA Title II requirements. Typically, this includes maintaining an ADA Title II Transition Plan available to the public that outlines the agency’s compliance with the ADA if applicable.</li> <li>• The Transition Plan should identify an ADA Coordinator and complaint mechanism, an inventory of barriers to physical and programmatic access, and a remediation schedule developed with public involvement. LPAs must complete a Self-Assessment of their agency.</li> <li>• LPA Title VI Programs must identify an ADA Coordinator, develop a</li> </ul>   |

| Document   | Description   |
|--|---|
|  | <p>complaint mechanism, and develop a public involvement strategy for review of the plan.</p> <ul style="list-style-type: none"> <li>• MPOs without physical assets to inventory as the basis for a Transition Plan can address ADA compliance, including identifying an ADA point of contact, through the Title VI Implementation Plan.</li> <li>• The ODOT Office of Civil Rights ADA Program Manager can answer any questions regarding ADA obligations.</li> </ul>  |
| <p><b>Quality Program Plan</b></p>               | <p>The Quality Program Plan (QPP) documents the LPA’s internal processes and quality controls necessary to effectively manage LPA projects delivered through the Certification Program. The QPP includes, but is not limited to the following:</p> <ul style="list-style-type: none"> <li>• How Certification Program requirements will be met</li> <li>• LPA’s delegated approval authorities</li> <li>• Staffing and resourcing plan</li> <li>• Financial accounting controls</li> <li>• Single Audit Act compliance (2 CFR 200 Subpart F)</li> <li>• Title VI compliance</li> <li>• Civil Rights compliance</li> <li>• ADA compliance</li> <li>• Communication plan – how information, decisions and changes are managed</li> <li>• Project quality control and quality assurance</li> <li>• Consultant selection and management</li> <li>• Environmental compliance</li> <li>• Uniform Relocation Assistance and Real Property Acquisition Act compliance</li> <li>• Administration of design, ad/bid/award and construction contracts</li> <li>• Construction monitoring, including quality control/quality assurance (QA/QC)</li> </ul> |
| <p><b>Construction Contracting Templates</b></p> | <ul style="list-style-type: none"> <li>• The LPA shall establish their proposed general conditions for all FHWA certified projects by using the Word version of the ODOT Section 00100</li> </ul>   |

| Document                                | Description  |
|---|--|
|   | <p>template and employing track change.</p> <ul style="list-style-type: none"> <li>• The LPA shall align their front-end bidding documents (such as the invitation to bid, instructions to bidders, bid form, bid supplements, form of agreement, etc.) with their general conditions, other aspects of the standard specifications and ODOT/FHWA requirements.</li> <li>• Refer to the Certification Program Office website for templates and further information.</li> </ul> |
| <b>Consultant Contracting Templates</b> | <p>The LPA shall adopt ODOT consultant contracting templates (prepared by ODOT Procurement Office) and propose any changes needed to accommodate the LPA’s process differences. The templates include:</p> <ul style="list-style-type: none"> <li>• A&amp;E Request for Proposal (RFP)</li> <li>• Non-A&amp;E Planning Services RFP</li> <li>• A&amp;E/Non-A&amp;E Contract</li> <li>• A&amp;E/Non-A&amp;E Contract Amendment</li> </ul>                                       |

These documents will be reviewed and approved by the Certification Program Office in consultation with ODOT subject matter resources, Oregon DOJ and the LPA.

### C.3. Intergovernmental Agreements

The Certification Program uses two types of Intergovernmental Agreements (IGAs) to formalize program and project expectations between ODOT and the Certified LPA. The two types are:

- **Master Certification Agreement (MCA):** The primary IGA between ODOT and the LPA and foundational agreement upon which all supplemental project agreements are based. The MCA is updated with each new federal transportation act to reflect revisions to ODOT’s Stewardship Agreement with FHWA or the AOC/LOC Agreement, and include laws which are the basis for all federal-aid agreements. A draft is provided at the initial meeting.
- **Supplemental Project Agreement (SPA):** Governs specific projects under the Certification Program. A SPA between ODOT and the LPA is required for every funded project. Agreements must be executed before any phase of the project is funded with federal money.

#### **C.4. Amendments to Intergovernmental Agreements**

For a Certified LPA that only needs to transition one conditional discipline area to full certification, the MCA amendment will be initiated shortly following issuance of the formal certification letter. For those Certified LPAs that will be transitioning more than one discipline area, the Certification Program Office will initiate an amendment to the MCA at an appropriate time as agreed upon. The Certification Program Office would like to avoid multiple MCA amendments.

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Should the need arise for a Supplemental Project Agreement (SPA) prior to finalizing an MCA amendment, language indicating full certification for the particular discipline area will be included in the SPA.

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#### **C.5. Key Staff Training**

In addition to the foundational documents described above, Key Qualified Staff members must take FHWA's "Federal Aid Essentials" training, engage in on-going federal-aid project delivery training to maintain proficiency and must be familiar with FHWA's Contract Administration Core Curriculum Manual.

Training relative to consultant selection and contracting is also required. This training, offered by ODOT, consists of statement of work writing, negotiating contracts, contract administration and invoice review. A contract administration training course, offered by the Oregon Department of Administrative Services, is required as well.

Two other documents that Key Staff should also be familiar with include the FHWA/ODOT Stewardship and Oversight Agreement and the ODOT/Association of Oregon Counties (AOC)/League of Oregon Cities (LOC) Federal-Aid Project Guidelines and Working Agreement.

Staff training will be reported to the Certification Program Office on an annual basis.

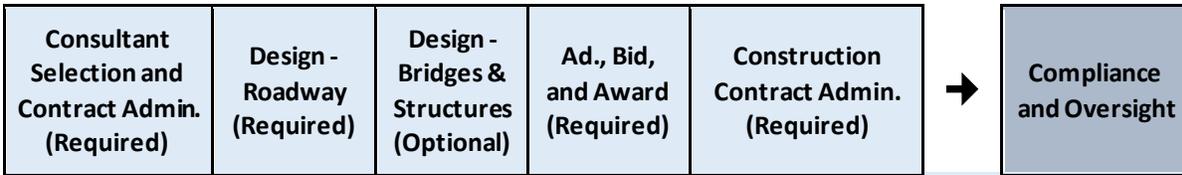
#### **C.6. Certification Phases**

The figure below depicts the six basic components of certification:

- Consultant selection and contract administration;
  - Roadway design;
  - Bridge design (optional);
  - Construction advertisement, bid and award;
  - Construction contract administration; and
  - Compliance and oversight.
-

The first five are the functional areas of certification and the last is to maintain certification. The following subsections describe in further detail what is included in each.

**Certification Phases**



**D. CONSULTANT SELECTION AND CONTRACT ADMINISTRATION**

LPA’s must demonstrate competency in the method(s) of consultant selection and contract administration for Architecture & Engineering (A&E) and related services or other (non-A&E) services as needed to deliver the LPA’s certified projects. There are two methods of consultant selection certification available to LPA’s: Small Purchase and Informal or Intermediate/Formal. Certification in at least one method is required. Section C, Chapter 12 of this manual provides information about the consultant selection and contract administration requirements that apply to Certified LPA projects.

The following table provides an overview of the different consultant selection methods. Note, LPA’s should be aware of any local procurement requirements and dollar limitations that may be more restrictive.

| Consultant Selection Methods   |   |   |  |
|--|---|---|--|
| Type of Contract   | Small Purchase  | Informal/Intermediate/Formal  |  |
| <b>Architecture &amp; Engineering and Related Services (A&amp;E)</b> | Total contract value not to exceed \$100K.            | <b>Informal:</b> Total contract value not to exceed \$250K federal limit.               | <b>Formal:</b> Total contract value in excess of \$250K  |
| <b>Non-A&amp;E Planning Services</b>                                 | Total contract value not to exceed \$10K              | <b>Intermediate:</b> Total contract value not to exceed the \$150K state limit.         | <b>Formal:</b> Total contract value in excess of \$150K. |
| <b>Both A&amp;E and Non-A&amp;E</b>                                  | Prepare contract to include DBE “no-goal” provisions. | Prepare an RFP and include the appropriate DBE goal per ODOT Civil Rights instructions. |  |

| Type of Contract                    | Consultant Selection Methods                        |  |   |
|-------------------------------------|---|--|---|
|                                     | Small Purchase                                      | Informal/Intermediate/Formal   |   |
| <b>Both A&amp;E and Non-A&amp;E</b> | Public advertising not required.                    | Public advertising not required; distribute RFP to a minimum of three firms.   | Publicly advertise or publish the RFP electronically. |
|                                     | Identify, rank a minimum of three qualified firms.  | Evaluate and rank all proposals received.  |   |
|                                     | Contact firms for additional information as needed. | Evaluate and rank all proposals received. Issue notice of intent to award to the highest ranked firm and not selected notice to all other proposers. |   |
|                                     | Negotiate contract with highest ranked firm.        | Negotiate contract with highest ranked proposer.   |   |

For the demonstration project, the LPA will present to the Certification Program Office and ODOT subject matter resources their processes, procedures and documentation shortly after the consultant procurement process has been completed, but prior to execution of the contract. The LPA’s contract administration procedures will be reviewed during the annual project compliance review process. Any deficiencies noted will be resolved through the Corrective Action Plan process.

Additional information about consultant selection certification and links to the LPA A&E Requirements Guide and LPA Non-A&E PSK Requirements Guide are located on the Local Government website.

Resources:  
 - [Local Government website](#)

### E. DESIGN (ROADWAY)

Roadway design encompasses a long list of processes and several professional disciplines. The basics include engineering design, environmental approvals and permitting, right of way acquisition, utility coordination and/or relocation, and preparation of the final plans, specifications and estimate (PS&E).

Several aspects of the design phase are of particular interest to the CPO, such as:

- Design standards and design criteria
- Technical design reports

- ADA compliance
- Work zone temporary pedestrian accessible routes
- Design exceptions
- Letters of Public Interest Findings
- National Environmental Policy Act compliance
- Compliance with the federal Uniform Relocation Assistance and Real Property Acquisition Act when acquiring right of way
- Civil rights program compliance
- Utility and right of way co-certifications
- Final signed PS&E documents
- Signed PS&E Submittal and Completeness Checklist

As noted in subsection C above, the LPA and Certification Program Office will convene a meeting where the LPA will present their processes, procedures and documentation. This meeting will occur shortly after the PS&E submittal. The Certification Program Office will then conduct a compliance review. Any deficiencies noted will be resolved through the Corrective Action Plan process.

### F. DESIGN (BRIDGES AND STRUCTURES)

Bridge and structures design is an optional certification for LPAs and requires a separate application and screening process. The application allows for certification for in-house design as well as certification for oversight of consultant designed projects.

In addition to some of the elements listed in Section E above, the application focuses on:

- Bridge design experience
- Bridge design specifications, standards and manuals
- Foundation design
- Design quality control and quality assurance procedures
- Hydraulic design and scour analysis
- Geotechnical design
- Load rating
- Bridge design approvals

Unlike the single “demonstration” project concept on which the rest of the LPA certification program is based, to become certified in bridges and structures requires the successful completion of two test projects.

For a copy of the application or more information on bridge and structures certification, please see the ODOT Certification website or contact the ODOT Certification Program Office by email at [ODOTCertification@odot.oregon.gov](mailto:ODOTCertification@odot.oregon.gov).

Refer to Section C, Chapter 14 and Section D of this manual for information related to bridge and structures project delivery.

### G. ADVERTISEMENT, BID, AND AWARD

The basics of the advertisement, bid and award phase include the advertisement and bidding documents, bid opening / bid review and the construction contract award process. The following table illustrates some of the more important aspects of this phase.

| Advertisement                     | Bidding                             | Award                            |
|-----------------------------------|-------------------------------------|----------------------------------|
| Authorization to proceed          | Public bid opening                  | Notice of intent to award        |
| Competitive low bid process       | Contractor prequalification         | Certificates of insurance        |
| Time period for advertisement     | Contractor eligibility confirmation | Performance and payment bonds    |
| How and where it was advertised   | Appropriate bid sheets              | Public works bond                |
| Proper advertisement content      | Bid bond                            | Oregon CCB license               |
| DBE language and goal             | First-tier subcontractor disclosure | Responsible bidder determination |
| Buy America language              | Committed DBE subcontractors        | Notice of award                  |
| Prevailing wage rates             | Bid tabulation                      | Contract execution               |
| Addenda(s) and bid clarifications | Bid analysis                        | BOLI fee payment                 |

For the demonstration project, the LPA submits the Ad, Bid & Award Checklist to the Regional Local Agency Liaison and the Certification Program Office for review and comment. For all other projects the LPA is encouraged to maintain a copy of the checklist (or equivalent tracking tool) in the project file. The checklist can be found in Section D of this manual.

As noted in subsection C above, the LPA will present their processes, procedures and documentation to the Certification Program Office shortly after award of the construction contract. The Certification Program Office will then conduct an in-depth compliance review and any deficiencies noted will be resolved through the Corrective Action Plan process.

Refer to Section C, Chapter 15 in this manual for additional information.

#### H. CONSTRUCTION CONTRACT ADMINISTRATION

Construction contract administration of a federal-aid project can be very complex and if not managed properly can lead to delays, disputes and claims.

The construction contract should be administered and materials accepted according to the Certified LPA's approved Quality Program Plan. In many cases the Certified LPA will follow ODOT's Construction Manual with modifications to accommodate the LPA's staffing and process differences.

As an overview, the administration of a construction contract includes the following:

- Project management for administration of the contract
- Project compliance with state and federal requirements
- Subcontract review and approval
- Materials quantity measurement
- Materials quality acceptance (field and non-field tested)
- Inspection by inspectors certified through ODOT
- NEPA related environmental commitment and mitigation inspections (including erosion and sediment control plan monitoring and compliance)
- Civil rights and labor compliance, including monitoring of prompt payments to subcontractors
- Buy America compliance
- Project documentation and retention
- Contract Payments
- Contract dispute management and resolution

Refer to Section C, Chapter 16 of this manual for more detailed information.

To help ensure success during this phase of the demonstration project, ODOT's Regional Local Agency Liaison or Region representative, with assistance from ODOT's Regional Assurance

Specialist and the region Environmental Coordinator, will provide a higher level of oversight and consultation with the Certified LPA than would normally occur on certified non-demonstration projects.

Following completion of construction (issuance of 2<sup>nd</sup> Notification or the LPA's equivalent), the Certified LPA and the Certification Program Office will convene a meeting where the Certified LPA will present their processes, procedures and documentation. The Certification Program Office will then conduct an in-depth compliance review and any deficiencies noted will be resolved through the Corrective Action Plan and monitoring processes.

#### I. MAINTAINING CERTIFICATION (COMPLIANCE AND OVERSIGHT)

This subsection describes ODOT's compliance and oversight (C&O) process for Certified LPAs, as well as the escalation process for certification issues generally. The Certification Compliance Coordinator is the primary point of contact and administrator of the compliance and oversight portion of the Certification Program.

The compliance and oversight process is designed to evaluate compliance risks at the program and project levels. The process evaluates risk in multiple ways to focus oversight activities on the aspects of program and project activities that are more likely to present a compliance risk. Additionally, the process evaluates compliance trends in order to adjust to changes in risk areas over time. The Certification Program Office may use the following sources of information to assess and manage risk:

- Certified LPA Quarterly Reports
- Certified LPA Self Audits
- Certified LPA Program and Project Compliance Reviews
- Internal surveys and discussions with ODOT staff who interact with Certified LPAs
- Risk-based Regional Assurance Specialist (RAS) reviews
- Co-certification of right-of-way and utilities
- Civil Rights reviews and reports

The Certification Program Office will use risk assessment and compliance review information to focus training areas to reduce risk of noncompliance. The program and project compliance review cycle will follow the steps described below.

Project reviews may include selected aspects of the following areas of certification. Risk assessments and compliance trends will be used to focus project reviews on areas of observed compliance issues, or where program or procedural changes introduce potential compliance

issues. In order to evaluate multiple aspects of certification, more than one project may be selected for review.

- Consultant Selection and Consultant Contract Administration
- Design
- Ad/Bid/Award
- Construction Contract Administration
- Bridge Design (optional)

Program reviews will have a particular emphasis on the following:

- Key Qualified Staff
- Training
- STIP Portfolio Management
- Quality Program Plan
- Construction Contracting Templates
- Civil Rights (e.g. Disadvantaged Business Enterprises Program, Title VI etc.)
- Accounting Controls and Improper Payments



### I.1. Certified LPA Self-Audit

This is the first tier of the compliance review process and requires the certified LPA to submit to the Certification Program Office a Certified LPA Self-Audit form 734-5152 along with updated Certified LPA Approval Authority and Certified LPA Key Qualified Staff forms 734-5084 and 734-5091 as well as documentation of staff training. The information received will be utilized, in part, to assess risk and to prioritize the review schedule discussed below.

### I.2. Prepare and Publish Review Schedule

The Certification Program Office will develop and publish a program and project compliance review schedule that aligns with the four-year Statewide Transportation Improvement Program (STIP) cycle. Generally, the Certification Program Office will perform a combined program and project review for each Certified LPA during the review cycle. However, the frequency and scope of self-audits, program reviews, and projects reviews may be adjusted during the review

cycle if events occur that change the level of risk, or if an issue arises that requires an ad hoc review and/or corrective action. The review schedule will be reviewed annually and updated if necessary.

Through these risk-based reviews, ODOT will assess each Certified LPA’s continued ability, resources and experience to deliver federally funded projects pursuant to federal and state laws as well as the LAG manual.

The basic steps to set up the compliance review cycle are as follows:

| Review Schedule Process   |
|---|
| The portfolio of projects included in the STIP is released and the level of each Certified LPA’s involvement in the STIP cycle is evaluated to assess risk levels.            |
| The LPA Self-Audit form along with updated Approval Authority and Key Qualified Staff forms will be requested from the Certified LPAs   |
| Assemble review team (Certification Program Manager, Certification Compliance Coordinator, FHWA, Regional LAL, HQ Subject Matter Resources, and other Region staff as needed) |
| Review team identifies high-risk or priority review areas [Risk assessment form]  |
| Certification Program Office decides which agencies will be reviewed  |
| Compliance Program Office forecasts resources necessary for reviews   |
| Compliance Program Office prepares and publishes review schedule  |
| Compliance Program Office notifies individual Certified LPAs of the review process, timeline, and expectations  |

### I.3. Request and Gather Information

After publishing the review schedule and notifying individual LPAs, the Certification Program Office gathers necessary information to conduct reviews from individual Certified LPAs and works with necessary ODOT resources. The information and documents required may be different from one review to the next, depending on priority review areas, Certified LPA past performance, types of projects under review, and other criteria.

The basic steps for gathering information are:

| Initial Document Gathering and Review Process   |
|---|
| <b>1</b> Compliance Program Office requests/receives necessary documents and/or information from Certified LPA. |

|          |  |
|----------|--|
| <b>2</b> | Compliance Program Office requests/receives additional independent review documents from ODOT resources as needed (RAS reviews, Civil Rights audits, Region/LAL information etc.). |
| <b>3</b> | Compliance Program Office and ODOT review team reviews assembled documents and information; determines information gaps to be filled.  |
| <b>4</b> | The Certification Program Office identifies Certified LPA or statewide issues applicable to the individual Certified LPA and develops a draft list of issues or concerns.          |
| <b>5</b> | Compliance Program Office consults with FHWA on review (if previously agreed upon in review schedule preparation).   |

#### **I.4. Draft Findings Report**

Based upon the information provided, and in consultation with selected review team members, the Certification Program Office will prepare a draft findings report. This report details how well the LPA complied with applicable requirements for each area of review and highlights areas needing corrective action (if any).

Prior to the informational meeting, the draft report is sent to the LPA for review. The LPA is then given an opportunity to supply additional documentation that may have an influence on the final findings or corrective actions.

#### **I.5. Certification Program Office/Certified LPA Informational Meeting**

Once the draft findings report has been prepared and transmitted to the LPA, the Certification Program Office will schedule a meeting with the Certified LPA and selected members of the ODOT review team. This meeting is to gather any additional information needed, conduct interviews and to discuss any issues found in the initial document review. This meeting will also serve as a forum to discuss areas of statewide importance applicable to the Certified LPA.

#### **I.6. Final Findings Report**

After reviewing any additional LPA supplied documents and information, the Certification Program Office will prepare the final compliance review findings for each Certified LPA reviewed. The Certified LPA Review and Corrective Action Report form 734-5070 will be used to document the findings.

The basic steps for drafting findings are:

| <b>Findings Report Process</b> |  |
|--------------------------------|--|
| <b>1</b>                       | Compliance Program Office drafts initial findings based on document reviews, site visits, interviews, and consultation with the review team (and FHWA if applicable) |
| <b>2</b>                       | Compliance Program Office circulates draft findings to the LPA and review team; receives comments  |

|          |  |
|----------|--|
| <b>3</b> | An informational meeting is held to discuss the draft findings and to gather any additional information the LPA may want to provide                      |
| <b>4</b> | Compliance Program Office finalizes findings report and any corrective actions that may be needed and transmits it to the Certified LPA for their review |

**I.7. Corrective Action Review Meeting (if applicable or needed)**

The final task is for the Certification Program Office and Certified LPA to discuss any corrective actions (if applicable). The Certification Program Office’s role is to review and identify corrective actions (in consultation with the Certification Program Manager and the ODOT review team) in the Certified LPA’s program and project delivery process. The Certified LPA’s role is to prepare a plan for Certification Program Office approval on how they will address the corrective actions identified.

The basic steps are:

| Corrective Actions Process |  |
|----------------------------|--|
| <b>1</b>                   | Certification Program Office and Certified LPA agree on corrective actions needed (if necessary).      |
| <b>2</b>                   | Certified LPA prepares a Corrective Action Plan (with LAL assistance).                                 |
| <b>3</b>                   | Certified LPA submits Corrective Action Plan to Certification Program Office.                          |
| <b>4</b>                   | Certification Program Office distributes Corrective Action Plan to review team; receives comments.     |
| <b>5</b>                   | Certification Program Office returns Corrective Action Plan to Certified LPA for revision (if needed). |
| <b>6</b>                   | Certification Program Office informs Certified LPA of the approved Corrective Action Plan.             |

**I.8. Close Review & Monitor**

Once the Certified LPA’s Corrective Action Plan (CAP) is approved (if needed), the Certification Program Office will close out the review process. The Regional Local Agency Liaison and Certification Program Office will monitor the Certified LPA’s progress on addressing actions described in the Corrective Action Plan.

**I.9. Corrective Action Escalation Process**

Corrective Action Plans are used both as part of the formal compliance and oversight process as well as to resolve issues identified outside of formal reviews.

In the event issues and corrective actions need to be escalated to higher or more formal levels, this section details the process to be followed. If at any point the issue is resolved, the process below is ended at the last completed step.

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**Remember:** The Certification Program Office’s policy is to resolve issues at the lowest possible level.

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| Corrective Action Escalation Process Steps |  |
|--|--|
| <b>1</b>                                   | <b>Informal Escalation:</b> The Local Agency Liaison works with the Certified LPA’s Project Manager (PM) & other staff (Verbal/Email) to try to resolve the issue.   |
| <b>2</b>                                   | <b>Informal Escalation:</b> If the issue remains unresolved, the Local Agency Liaison escalates to the Certification Program Manager. A telephone or email discussion on the merit of escalation will ensue.   |
|  | <b>a.</b> If the Local Agency Liaison and Certification Program Manager decide to escalate but want the issue to remain informal, discussion(s) will take place with the Certified LPA’s PM, the Certified LPA PM’s manager or Certified LPA’s Certification Liaison, and the Local Agency Liaison’s manager. The discussion(s) may involve email and/or in person meeting(s).                                   |
|  | <b>b.</b> If the Local Agency Liaison and Certification Program Manager are not satisfied with 2a results, continue to Step 3.   |
| <b>3</b>                                   | <b>Formal Escalation:</b> The Certification Program Manager and the regional Local Agency Liaison will send a signed warning letter to Certified LPA; with a copy sent to the ODOT Region Manager and the FHWA Oregon Division Office. The warning letter will outline the corrective action(s) needed, potential consequences, next steps, and a time frame for Certified LPA response and issue remedy.        |
|  | <b>a.</b> If the Certified LPA satisfactorily resolves the issue: the Certification Program Manager and ODOT Region Manager will send a joint resolution letter to the Certified LPA.  |
|  | <b>b.</b> If Certified LPA does not satisfactorily resolve issue: the Certification Program Manager initiates a discussion between ODOT Active Transportation, Program & Funding Services, and the Region Manager as well as the regional Local Agency Liaison. The group decides consequences appropriate for the Certified LPA’s issue. The Certification Program Manager documents decision and consequences. |
| <b>4.</b>                                  | <b>Formal Escalation:</b> The Certification Program Manager and ODOT Region Manager sends a signed decision letter to the Certified LPA identifying consequences of Certified LPA non-compliance to be carried out by ODOT.  |

Potential consequences for non-compliance include:

- The Certified LPA may be subject to increased monitoring as deemed appropriate.
- ODOT may withhold approval of final PS&E documents until the non-compliance is remedied.
- ODOT may remove the Certified LPA's certification status until such time the corrections are made and/or resolved.

ODOT retains the right to remove federal funds from Certified LPA federal aid projects if deemed necessary.