

**LETTERS OF
PUBLIC INTEREST FINDING
(LPIF), ANTICIPATED ITEM
REQUEST (AIR), & STATE
EXEMPTION ORDER (SEO)
GUIDANCE**

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Updated 2/17/2022 to remove Railroad Flagging LPIF template and added Local Agency project information.

Updated 3/2/2022 to bring attention that a flagging agreement is required for all railroad projects that have an anticipated railroad flagging item.

Updated 7/20/2023 to add Build America/Buy America (BABA) requirements; add post construction LPIF template link; clarify use of state forces requirements.

BACKGROUND

The Federal Highway Administration (FHWA) guidance document, [23 CFR 635.411](#), explains why and under what conditions ODOT is required to process LPIFs:

Under [23 USC 112\(a\)](#), “In all cases where the construction is to be performed by a State Transportation Department, or under its supervision, a request for submission of bids shall be made by advertisement unless some other method is approved by the Secretary. The Secretary shall require such plans and specifications and such methods of bidding as shall be effective in securing competition.”

FHWA has interpreted this clause to require competition not only for the award of the contract, but to also require competition for the various materials and processes involved in the work.

This guidance on LPIF requirements closely follows the guidance in the [FHWA Contract Administration Core Curriculum Guide, Section II.C.5.a](#). The federal requirements apply to any ODOT project containing federal funds, including Local Agency projects developed and procured under the Local Agency Certification Program, and may only be waived under specific conditions if it is found to be in the public’s best interest, or cost effective.

This LPIF guidance applies to Local Agency Certification Program projects. Generally, this LPIF guidance refers to “state” and to ODOT project development and delivery processes and procedures. References to “state forces” or “state-owned” should be read to apply to “local agency forces” or “local agency-owned” as applicable. A Certified Local Agency should also review the LPIF requirements in Section C, Chapter 11 Plans, Specifications and Estimate (PS&E) of the [Local Agency Guidelines for Certified Local Public Agencies](#).

DOCUMENT MATRIX

Template	Situation	LPIF Guidance Reference
LPIF – Publicly Owned Equipment	Contractor to use Agency furnished equipment.	Section 1.2.e.
LPIF – Contractor Purchased Equipment for State Ownership	Items are to be purchased by the contractor under the contract with ownership transferring to the Agency at the end of the project. Items include VMS, temporary bridges, and construction barrier systems.	Section 1.2.f.
LPIF – State Furnished Materials	Contractor is to use materials or sources owned by, or pre-purchased and furnished by the Agency in order to not delay construction timing.	Section 1.2.c.
LPIF – Mandatory Disposal Site	Mandatory borrow sources and disposal sites are considered State-furnished materials. These could be required for environmental reasons, or location of a project.	Section 1.2.c.3
LPIF – Separate Contract	Construction contract activities performed under a non-competitive construction contract.	Section 1.2.a
LPIF – Use of State Forces	Work is to be performed by the Agency or a partnering Agency via direct contract. Items could include work performed by Federal Lands on their own property.	Section 1.2.a.
LPIF – Salvaged Material	Permanent feature or material being removed due to construction of a project and is being considered for reuse by the Agency for maintenance activities or use on another project.	Section 1.2.d.
LPIF – Intelligent Transportation System Components	ODOT has price agreement contracts for ITS equipment. Contact the ITS standards engineer to discuss if an LPIF is needed.	Section 1.2.c.1.2
Anticipated Item Request – Programmatic	Commonly used work items that have been approved by FHWA to be in the public’s best interest to issue a separate contract or utilize State forces to perform: AHPIS; utility connections/hookups; public affairs/public outreach; railroad flagging (other than UPRR); archaeological monitoring; paint coating inspection services; and work zone safety monitoring/traffic oversight	Section 2.2.b
Anticipated Item Request	Anticipated cost that may be incurred by the project, but are not biddable items because they cannot be quantified prior to bid.	Section 2.2.a
SEO	Specify product with no approved equal. This is very rare. See Section 3.3.	Section 3.3

SECTION 1 - LETTERS OF PUBLIC INTEREST FINDING (LPIF) GUIDANCE

1.1 WHAT IS A LPIF?

A LPIF is a written document showing why it is in the public's best interest to not follow a Code of Federal Regulations (CFR) or State Statute.

1.2 REASONS FOR LPIFS

1.2.a. COMPETITIVE LOW BID [CACC Sec III.B.8.c.i., ORS 279C.300]

One of the most basic tenets of Federal-aid contracting is that construction contracts are to be awarded competitively to the responsible Contractor which submits the lowest responsive bid. However, there may be situations that support the use of a contracting method other than competitive bidding. Non-competitive construction contracting or other unusual methods of construction may be approved only if it is proven to be more cost-effective or if an emergency exists and time is a critical factor.

An example where ODOT may choose to perform construction contract activities under a non-competitive construction contracting method (separate contract) are for **Plant or Plant Establishment Work**. ODOT Environmental Section staff performs landscaping or landscape monitoring work. This is considered to be State Forces performing "biddable work" which would normally be done by the Contractor under the contract. Typically, this is only allowed if permit language requires an extended plant establishment period (longer than 1 year) which would require the construction contract to remain open for an extended period, or if planting work is very special in nature. An option that should be considered if an extended plant establishment period is required is the use of a small business contract to do the planting/establishment work under a separate contract. Separate contract for planting and/or plant establishment cannot commence work until after prime contractor has been third-noted. If the LPIF for planting or plant establishment work by State Forces is approved, an Anticipated Item Request is required to establish a method of reimbursement.

1.2.b. PUBLIC AGENCY FORCE ACCOUNT WORK – [CACC Sec. III.B.8.c.ii]

FHWA's regulations state that competitive bidding must be used for highway construction "...unless the State Transportation Department demonstrates, to the satisfaction of the Secretary, that some other method is more cost-effective, or than an emergency exists." FHWA expects that competitive bidding will be used to award the vast majority of Federal Aid highway construction contracts.

However, in an emergency situation, or in cases where the State Transportation Administration can demonstrate its cost-effectiveness, the use of public agency forces to construct the project is acceptable.

Force account work using State or other public forces is discussed in [Title 23 CFR 635 B](#) and is defined as:

“the direct performance of highway construction work by a State highway agency, a county, a railroad, or a public utility company by use of labor, equipment, materials, and supplies furnished by them and used under their direct control.”

For guidance on the documentation and approval of a cost-effectiveness finding, see [FHWA Order 5060.1 – “FHWA Policy on Agency Force Account Use”](#)

A cost-effectiveness finding is required for the FHWA/STA approval of any proposal to use a non-competitive method of contracting. [Title 23 CFR 635.205](#) cites the following situations as possible reasons for the use of non-competitive construction contracting:

- When the rights or responsibilities of the community are so affected as to require a special course of action, including situations where there is a lack of competition or unreasonable bids, it may be determined to be cost-effective to use force account, and;
- When by reason of the inherent nature of the operation, it is deemed cost-effective to do minor adjustments of railroad and utility facilities (major work still to be accomplished by competitive bidding) by force account.

Under the first circumstance the use of force account may be found cost-effective when properly documented.

Both a LPIF and AIR is required when State or other forces will be doing work during construction. The LPIF allows the work to be done by the State or other forces, while the AIR provides a bid item to pay for the work done. See [Section 2.2.a](#) for additional AIR information.

1.2.c. STATE OWNED/FURNISHED/DESIGNATED MATERIALS [CACC Sec.III.B.8.I.vii, 23 CFR 635.407]

The CFR requires the contractor to furnish all materials incorporated into the project and the contractor shall be permitted to select the sources the materials are obtained from. Exceptions to this requirement can only be made if there is a definite finding that it is in the public’s interest to require the contractor to use materials or sources owned by, or furnished by the Agency. For project bidding after January 1, 2023, any construction materials that are steel, iron, non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), lumber or drywall which are being installed on a federally funded project, must comply with the Build America Buy America requirements. See the Build America Buy America Memo on the [Contract Services web page](#) for more information. The exception for state owned/furnished/designated materials are broken down as follows:

1.2.c.1. MANUFACTURED MATERIALS

Manufactured materials provided by the Agency must be “mandatory”. The “optional” use of State-furnished materials is in violation of the Federal policy prohibiting public agencies from competing with private firms. Manufactured materials provided by the agency must be acquired through competitive bidding unless there is a LPIF for another method. Any manufactured materials provided by the Agency, which contain iron or steel, and are being installed on a federally funded project, must comply with the Buy America requirements. If Buy America requirements cannot be met, then the item or material is

assumed to use part of the project allowance for foreign-origin iron or steel, as defined in [CFR Title 23 635.410](#) and [Specification subsection 00160.20\(a\)](#). Use of the project's allowance should be quantified in the "Buy America" Section of the LPIF, listed in the project Special Provisions using the unique Special Provision made available upon request to the State Specifications Engineer with an approved LPIF. It is recommended to obtain approval from the Project Manager overseeing the construction of the project.

Examples:

- State-owned bridge beams (salvaged under a separate project),
- Variable Message Signs (VMS),
- Traffic Signal Components (salvaged or purchased through a state contract).

(1) State Supplied Sign Graphics

Some sign graphics are required to be supplied by the State, either because of graphic copyrights, or difficulty in manufacturing the sign due to complicated and/or colorful design. These signs include Scenic Byway, Oregon Trail, Oregon State Parks, city or county logo signs, etc. A LPIF and Anticipated Item request is required for these sign graphics. The Transportation Project Manager (TPM)/Resident Engineer – Consultant Projects (RECP) will obtain these sign graphics from the respective manufacturer (Oregon Parks and Recreation Department, ODOT Sign Shop, etc.). A separate bid item should be included to cover the cost of the rest of the sign fabrication and installation.

(2) Intelligent Transportation Systems (ITS) Components

ODOT has price agreement contracts for ITS equipment. Region should contact the [ITS standards engineer](#) to discuss if an LPIF ITS purchase is applicable to the project. If applicable to the project, the ITS standards engineer will create the ITS LPIF for the project.

Local Agency projects cannot use the ITS LPIF programmatic. The price agreement contracts for ITS equipment is specific between the vendor and ODOT. A local agency is considered another entity.

Why are these changes important?

The danger our Nation faces from foreign intelligence actors looking to infiltrate our systems has never been greater.

NDAAs prohibitions against nefarious networks like Huawei will ensure our Nation remains secure. This Administration is committed to working with Congress to keep America strong through implementing the NDAAs prohibitions.

Bad actors are persistent in trying to infiltrate US networks – often exploiting technologies from the identified Chinese companies to do so. The Trump Administration shares Congress's strong commitment to addressing insidious threats to the Nation's national security and intellectual property.

The Federal Government alone experiences hundreds of thousands of digital assaults every day. Malicious actors are persistent, usually well-funded and constantly changing their tactics. They often exploit technologies from the identified Chinese companies to do so. The Administration shares Congress' strong commitment to addressing insidious threats to the Nation's national security and intellectual property.

The Trump Administration is keeping our government systems strong against nefarious networks like Huawei by leaning into Congress's Huawei ban with an aggressive posture.

Part A - The Government Cannot Obtain Prohibited Telecom

Part A became effective on **August 13, 2019**.

Part A prohibits the government from **obtaining** (through a contract or other instrument) certain telecommunications equipment (including video surveillance equipment) or services produced by the following *covered entities* and their subsidiaries and affiliates:

- **Huawei Technologies Company**
- **ZTE Corporation**
- **Hytera Communications Corporation**
- **Hangzhou Hikvision Digital Technology Company**
- **Dahua Technology Company**

The Department of Defense has the authority to add additional companies to this list.

Part A has been added to the Federal Acquisition Regulation (FAR) at [FAR subpart 4.21](#).

Note that the Part A ban also applies to **commercial items** ([FAR 12.301\(d\)\(6\)](#)) and **micro-purchases** ([FAR 13.201\(j\)](#)).

Have questions about GSA's implementation of Section 889? See [GSA's 889 Part A Q&As](#)

Part B - Government Contractors Cannot Use Prohibited Telecom

Part B is effective **August 13, 2020**.

Part B prohibits the government from contracting with any entity that **uses** certain telecommunications equipment or services produced by the *entities* listed in the statute.

- The Government cannot contract with an entity that **uses** covered telecommunications equipment or services as a substantial or essential component of any system or as critical technology as part of any system.
- Prohibition applies regardless of **whether or not** that usage is in performance of work under a Federal contract.
- The prohibition applies to **every sector** and **every dollar amount**. **Your ability to enter into contracts with the Government will be impacted by Part B.**
- After conducting a **reasonable inquiry**, entities will represent whether they **do or do not use** prohibited telecommunications equipment or services.

Part B has been added to the Federal Acquisition Regulation (FAR) at [FAR subpart 4.21](#).

Figure 1: Prohibited Telecommunications Equipment Information

1.2.c.2. LOCAL NATURAL MATERIALS

When the Agency owns or controls a local natural material source such as a borrow-pit or stockpile of salvaged material, the materials may be designated for either optional or mandatory use. Mandatory use will require a LPIF; optional use does not require a LPIF. The LPIF should include location, cost and any conditions to be met.

Example:

- Mandatory use of State-owned aggregate stockpile (typically salvaged under a separate project)

1.2.c.3. MANDATORY DISPOSAL SITE

Mandatory borrow sources and disposal sites are considered State-furnished materials and require an approved LPIF. Discussion of the mandatory use of a disposal site in the environmental document may serve as the basis for the LPIF. Further guidance for materials can be found in [PD-10 Disposal of Excess Excavation Materials](#).

1.2.c.4 MANDATORY STAGING AREAS

While similar to mandatory disposal sites, mandatory staging areas are not specifically covered in the Contract Administration Core Curriculum. ODOT has determined that if the Agency elects to designate

mandatory staging areas on federally funded projects, a LPIF is required. The reason can be solely for environmental reasons (such as permits), and not economically influenced.

1.2.d. SALVAGED MATERIALS [CACC Sec.III.B.8.l.viii, 49 CFR 18.36]

When FHWA participates in the purchase of equipment or materials for a Federal Aid project, the items are generally fully-expended by the end of the project's useful life. However, changes in construction techniques and reconstruction within the project limits may result in an item that has a salvage value.

Salvage credits to Federal projects are governed by State procedures. Therefore, if a state has procedures that do not require credit to the project, then credit to a Federal Aid project is also not required.

ODOT has its own procedure governing the use of salvage materials: [RD07-05\(B\) Salvaging Features and Excess Materials Associated with Transportation Projects by Contract Specification](#)

This technical bulletin satisfies the FHWA requirements for ODOT to have a procedure that ensures the process of stewardship is clearly defined for salvaging materials related to Federal Aid highway program activities. This bulletin applies when the Agency wants to salvage materials. FHWA allows material to be salvaged to the Agency or a third party (city or county). If the material is being salvaged to be used on a different project, it must be used on federal aid eligible projects. Federal aid eligible projects are on minor-collector roads or above. The salvaged material cannot be used on a local street.

[RD07-05\(B\)](#) establishes the process for salvaging features and excess materials when planned for at the time of project specification development.

Salvageable materials are defined as any permanent feature or material being removed due to construction of a project and being considered for reuse by the Agency for maintenance activities or use on another project.

Examples:

- Asphalt Grindings
- Guardrail
- Bridge Rail
- Excess Soil and Rock
- Some Traffic Signal and Illumination Components – contact the Traffic Signal Engineer for questions on salvageable and non-salvageable traffic signals and illumination components.

Some examples of salvageable and non-salvageable traffic signal and illumination components include:

Salvageable:

- Service cabinet & controller cabinet (including the control systems within)
- Mast arm poles & strain poles

Non-salvageable:

- Conduit & junction boxes
- Wire & cable

The guidelines used to identify the materials as salvageable are listed in [RD07-05\(B\)](#). If the salvaged materials are considered for reuse on another project, a separate LPIF must be processed for that project to incorporate the salvaged materials as “State-owned Materials”. If the salvaged materials contain any iron, steel, or construction materials: non-ferrous metals, plastic (including PBC and PCE) and polymer-based products, lumber, glass, or drywall, which are being considered for incorporation on a federally-funded project, the materials must meet the Buy America and Build America Buy America requirements.

ODOT is allowed to salvage materials from construction projects with no project credit required for the value of the materials. On all projects, hauling costs incurred outside the project limits are paid for by the recipient of the material with a separate bid item established to capture the hauling costs. FHWA will only pay for a contractor to transport salvage material outside the project limits if the transport cost is less than the value of the salvage material.

1.2.e. PUBLICLY-OWNED EQUIPMENT [CACC Sec.111.B.8.m.i, 23 CFR 635.106]

FHWA does not allow publicly owned equipment to compete with privately-owned equipment on a project to be let to contract. If requested, the LPIF must clearly show it to be cost effective to use publicly-owned equipment instead of privately owned equipment.

1.2.f. CONTRACTOR-PURCHASE EQUIPMENT FOR STATE OWNERSHIP [CACC Sec 111.B.8.m.ii, 23 USC 302, 49 CFR 18]

Items such as variable message signs, temporary bridges, and construction barrier systems can be purchased by the contractor under the contract with ownership transferred to the Agency at the end of the project. It must be shown to be cost-effective to have the contractor purchase the equipment. If any federal funds are involved, please refer to the FHWA [CACC Sec.111.B.8.m.ii](#) for guidance on requesting FHWA participation. If the project needs to purchase equipment that will be transferred to the Agency, include FHWA in the conversation early in the project development process.

SECTION 2 – ANTICIPATED ITEM REQUEST (AIR) GUIDANCE

2.1 What is an AIR?

An anticipated item request (AIR) is a written document request for all non-standard anticipated items on a project.

2.2 Types of AIRs

2.2.a. ANTICIPATED ITEM REQUEST

Anticipated items are anticipated cost that may be incurred by the project, but are not biddable items.

Standard items not requiring approval are:

- Asphalt/Fuel /Steel Escalation
- ACP Statistical Bonus
- ACP/PCC Smoothness Bonus

Anticipated item requests for the anticipated cost of the state or other public forces to do work on a project must also complete a LPIF for Use of State Forces.

2.2.b. GENERAL PROGRAMMATIC AGREEMENTS with FEDERAL HIGHWAY

ODOT has entered into a programmatic agreement with FHWA for seven work items that are consistently shown to be in the public's best interest to be performed by forces other than the construction contractor, and with the services procured using non-competitive procurement methods. This programmatic agreement allows the Agency to issue a separate contract for these work items without having to establish that it is in the public's best interest to do so on a project-by-project basis. FHWA has only approved the general programmatic agreement with ODOT. Local agency projects cannot use the programmatic agreement. These seven work items covered by the programmatic agreement are:

(1) Use of Animal and Plant Health Inspection Services (AHPIS) for Migratory Bird Monitoring – Performed by APHIS Forces

In order to comply with the Migratory Bird Treaty Act (MBTA), bird management activities are required to prevent birds from nesting or to remove successful nests in vegetation that will be removed as part of the construction project. Allowing the U.S. Department of Agriculture Animal and Plant Health Inspection Service (APHIS) to perform these activities is in the public's best interest. APHIS is the only agency that currently has a "take" permit for birds, and will only agree to remove successful nests if they have been responsible for the bird management activities. If bird management activities were done by the construction contractor, and birds were to establish a nest in the vegetation, the construction contractor, by law, would not be permitted to remove the nest containing migratory birds. The construction contractor would be required to postpone construction activities until the nest was abandoned, delaying

construction and possibly missing the contract completion date.

(2) Utility Connections/Hookups – Performed by Utility Forces

Many utility companies require connections or hook-ups to their facilities be performed with their own forces, and not by the construction contractor. It is, therefore, in the best interest of the public to allow the utilities, when required, to perform the utility connection/hook-up work on the project.

The State Utility Liaison will need to review and concur with all Programmatic LPIFs for Utility Connections/Hook-ups prior to PCO Manager's approval. Samone Stinson will coordinate with the State Utility Liaison for review and concurrence.

(3) Public Affairs/Public Outreach – Performed by ODOT Forces

In certain instances, ODOT may choose to perform the Public Affairs/Public Outreach functions on a project instead of having the contractor do it under the construction contract. Politically sensitive projects which are considered high risk are best suited for handling by ODOT Public Affairs staff. The ODOT Public Affairs staff is usually involved in the public involvement process for these projects from project initiation and has developed relationships with stakeholders and is aware of related issues. Allowing ODOT Public Affairs staff to perform the Public Affairs/Public Outreach functions on certain projects is in the public's best interest because of their familiarity with the stakeholders and issues related with the project.

(4) Railroad Flagging – Performed by Railroad Forces (other than UPRR)

Construction activities that require the construction contractor to work on active railroad property must be included in the project special provisions. Prior to bid, the State Railroad Liaison consults with the railroad regarding agreements and flagging services needed for a project. The construction contractor is required to contact the railroad, who determines if railroad flagging or other safety measures are required to be performed by railroad forces. Railroad agreements are established prior to project advertisement for bid. The railroad reserves the right to decide who will perform railroad flagging on an active railroad property. Allowing the railroad to perform the flagging services on a project is in the public's best interest because it is required by the railroad agreement for the project.

The State Railroad Liaison will need to review and concur with all programmatic LPIFs for railroad flagging prior to PCO approval. PCO will coordinate with the State Railroad Liaison for review and concurrence. As a reminder, a flagging agreement is required for all railroad projects that have an anticipated railroad flagging item. Contact the [State Railroad Liaison](#) to verify all required agreements are in place.

Effective in 2018, UPRR requires certified railroad flaggers to be used when ODOT highway construction activities impact rail operations. UPRR has directed the use of a third party flagging vendor from UPRR's approved third party list to provide railroad flagging services on these projects. The dedicated Railroad Flagging LPIF Template is no longer required since FHWA rescinded the long-standing regulatory provisions for patented or proprietary products in 23 CFR

635.411(a)-(e). See Section 3.2 for more information regarding the background information of patented or proprietary products.

(5) Archaeological Monitoring

Frequently, archaeological monitoring is required during construction due to a variety of factors such as the presence of existing cultural material within construction boundaries or highly sensitive areas that may reveal buried archaeological deposits not identified during project development. ODOT maintains contracts with the University of Oregon's Museum of Natural and Cultural History (MNCH) and Southern Oregon University's Lab of Archaeology (SOULA) to provide cultural resource evaluations including archaeological monitoring. In addition, ODOT maintains agreements with several of Oregon's federally-recognized tribes to perform cultural resource evaluations and archaeological monitoring. This monitoring and oversight ensure any artifacts discovered during construction activities are handled only by qualified people. Having the oversight and monitoring performed by MNCH, SOULA and Tribal partners when construction activities are on-going is in the public's best interest because of the sensitivity associated with archaeological monitoring.

If archaeological monitoring is determined necessary after the project has been awarded, see [Section 5 - Requests after Project Bid Let Date](#) for guidance.

(6) Paint Coating Inspection Services

Third party inspection for bridge protective coating has been proven to be more cost-effective for the Agency. Coating inspection is a highly specialized discipline that requires regular testing, training and certifications. ODOT has determined that this discipline be part of all bridge painting projects throughout the state. The required specific skills and on-going nationwide certifications of coating inspections can be expensive for ODOT project management staff due to the out-of-state classroom and off-site testing. ODOT has successfully used independent 3rd party inspection services on past bridge painting projects and determined that it is an effective measure to reduce risk to construction engineering budgets and to minimize expensive contractor claims.

Costs for the 3rd party inspection services will be paid out of the anticipated item. ODOT will use a separate contract administered through a separate construction engineering work order contract (WOC) for the procurement of these services.

(7) Work Zone Safety Monitoring/Traffic Oversight

Effective July 1, 2021, Project Development Team (PDTs) are required to identify, plan and budget for Work Zone Law Enforcement (WZLE) resource needs on projects. Federal funds are used to pay for presence (i.e. officer in work zone; lights on or off, and not in enforcement status) and enforcement activities (i.e. officer actively conducting traffic enforcement in/near a work zone) by the Oregon State Police forces. WZLE resources can be used for any project going to construction after July 1, 2021.

Project-specific requests for use of these work items will be submitted for approval by the Area

Manager, to [Samone Stinson](#) who will obtain the Project Controls Office Manager’s review and concurrence. The Programmatic Anticipated Item template must be used to request approval.

SECTION 3 – STATE EXEMPTION ORDER (SEO) GUIDANCE

3.1 WHAT IS A SEO?

A state exemption order (SEO) is a document, that when approved, exempts the Agency from allowing a request to use an approved equal for a specific product as required by state statute ORS 279C.345.

3.2 BACKGROUND INFORMATION ON PATENTED/PROPRIETARY PRODUCTS [ORS 279C.345]

On September 27, 2019, FHWA issued a final rule in the Federal Register rescinding the long-standing regulatory provisions for patented or proprietary products in 23 CFR 635.411(a)-(e). This rule provides greater flexibility and encourages innovation in the selection of proprietary or patented materials. It eliminates the requirements limiting the use of Federal funds in paying for patented or proprietary materials, specifications, or processes. This rule took effect on October 28, 2019.

In response to these changes, the Project Controls Office has rescinded the Letter of Public Interesting Finding and/or Exemption from Approved Equal Requirement template, and replaced it with the [State Exemption Order – Exemption from Approval Equal Requirement](#) template. The requirements for justification of the request, associated costs, procurement method, alternatives and Buy America and Build America Buy America have not changed. The submittal and approval process for the new template will not change, they will still be submitted to [Samone Stinson](#) for review, processing and approval by the Project Controls Office Manager.

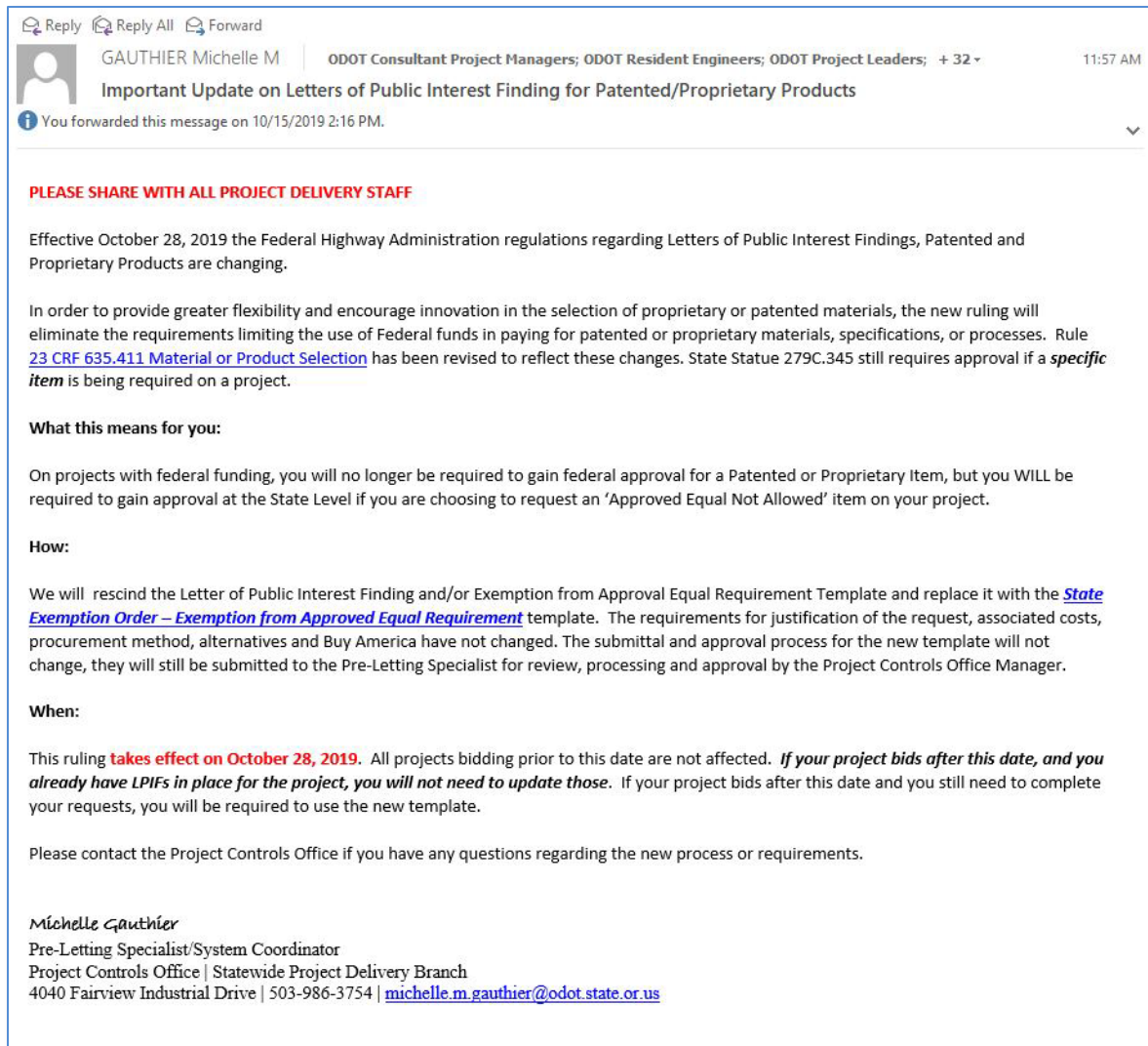


Figure 2: Email Rescinding LPIF and/or Exemption from Approved Equal Requirement template

3.3 STATE EXEMPTION ORDER

Oregon law ORS 279C.345 requires that “contracts may not expressly or implicitly require any product by any brand name or mark, nor the product of any particular manufacturer or seller unless the product is exempt.” The Oregon Standard Specifications for Construction complies with the law by including three subsections that specifically allow an “approved equal” for everything in the Contract unless exempted by a SEO. Subsections 00120.16, 00160.05 and 00180.31 allow a Bidder or the Contractor to request a substitution product. These subsections require the Agency to consider the substitution product but the subsections **do not** require the Agency to approve the substitute product.

It is important to note that when an item is identified in a SEO, the project is locked into the specific item. If there is an error in the SEO or the product is no longer available, there is no process to rescind or supersede the SEO. Errors cannot be fixed by a Contract Change Order.

Products listed on the [ODOT Qualified Projects List \(QPL\)](#) can be used on projects only when the QPL is referenced in the specifications.

Any specified materials containing iron, steel, or construction materials: non-ferrous metals, plastic (including PBC and PCE) and polymer-based products, lumber, glass, or drywall, which are being incorporated into a federally funded project, or a non-Federal-Aid highway contract that is included within the scope of a NEPA document and at least one other contract within the scope of the same NEPA document is funded or will be funded with Federal-Aid highway funds, must comply with Buy America and Build America Buy America requirements. See [CACC Sec. III.B.8.i.i.](#)

Pursuing an exemption order is rare and on average ODOT only seeks one exemption during a calendar year. If an order is granted, the [State Specification Engineer](#) must be contacted to provide the SEO specification language.

For Local Agency Certification Program projects only: The Certified Local Agency is responsible for satisfying the state law exemption requirement under ORS 279C.345 and 279C.350 in accordance with its local contract review board processes. ODOT has developed the [Sample Exemption Order When No Approved Equal Allowed](#) letter for use on Certified Local Agency projects, which does not require ODOT approval. However, the Certified Local Agency should coordinate with its assigned ODOT Transportation Project Manager – Local Agency Liaison to ensure appropriate use of the sample letter as needed.

SECTION 4 – SUBMITTING A LPIF, AIR OR SEO

4.1 WHEN TO SUBMIT A LPIF, AIR, or SEO

LPIFs, AIRs, and SEOs must be submitted to the [Project Controls Office](#) as early in the project development process as possible. These documents are required on all projects (when applicable), regardless of funding source, including Local Agency projects developed and procured under the Local Agency Certification Program.

The LPIF, AIR, or SEO must be submitted at least two weeks prior to the PS&E Submittal due date. The project team is encouraged to contact [Samone Stinson](#) to review the proposed LPIF, AIR, or SEO prior to obtaining region signatures. If the request is not approved, changes to the contract documents (and potentially the schedule) could result.

4.1.a. STANDARD PROJECTS

Draft LPIFs, AIRs and SEOs should be submitted to the [Samone Stinson](#) for review and comment. Please allow a minimum of two weeks for processing drafts by PCO.

Final LPIFs, AIRs and SEOs should be submitted to the [Project Controls Office](#) for review and comment. Please allow a minimum of 2 weeks prior to PS&E for processing final LPIFs, AIRs and SEOs by PCO.

Project development teams need to keep in mind that denial of a submitted LPIFs, AIRs and SEOs would likely require modification to the Plan, Specifications and Estimate (PS&E) package, so early submittal is encouraged.

4.1.b. CONSTRUCTION MANAGER/GENERAL CONTRACTOR AND DESIGN-BUILD

Draft LPIFs, AIRs and SEOs should be submitted to the [Samone Stinson](#) for review and comment. Please allow a minimum of two weeks for processing drafts by PCO.

Final LPIFs, AIRs and SEOs should be submitted to the [Samone Stinson](#) for review and comment. Please allow a minimum of 2 weeks prior to the Request for Proposal (RFP) date for processing final LPIFs, AIRs and SEOs by PCO.

Project development teams need to keep in mind that denial of a submitted LPIFs, AIRs and SEOs would likely require modification to the Plan, Specifications and Estimate (PS&E) package, so early submittal is encouraged.

4.2 HOW TO SUBMIT A LPIF, AIR, or SEO

LPIFs, AIRs and SEOs must be completed using the appropriate template available on the [PCO Website](#). For Certified Local Agency projects, the local agency letterhead must be used. All other projects must use the ODOT letterhead.

Examples of the LPIF Templates can be found in Appendix A and Appendix B, of this manual. Examples of the AIR Templates can be found in Appendix C and Appendix D of this manual. An example of the SEO Template can be found in Appendix E of this manual.

The LPIF, AIR and SEO must include all of the information asked for on the template. The template must not be edited to remove any of the information.

If an anticipated Item is also required, it can either be submitted at the same time as the LPIF, or after the LPIF is approved.

Once the document is completed, the LPIF, AIR, or SEO is added to the Project Management ProjectWise folder and a link to the document is sent to [Samone Stinson](#). Certified Local Agency staff should work with their assigned ODOT Transportation Project Manager – Local Agency Liaison to coordinate LPIF approvals with ODOT. Samone Stinson will review the submitted LPIF, AIR or SEO for completeness, and will work with the submitter to obtain any additional information or clarification if needed. Once Samone Stinson has reviewed the request and Region signatures are present, Samone Stinson will obtain the State Utility and Rail Liaison (as needed) and the PCO Manager’s signatures. When adding [digital signature fields](#), remember to add all required signature fields before any signatures are applied to prevent voiding of the applied signatures. Once all approval signatures have been obtained, an approval email with a link to the document will be sent to the submitter, and any others on the cc list.

All approved LPIFs and SEOs must be [loaded to Electronic Bidding Information System \(eBIDS\)](#) as a Bid Reference Document prior to the PS&E submittal due date. Do not load any documents that include anticipated items into eBIDS. This includes Anticipated Item Requests, Programmatic Anticipated Item Requests, and ITS LPIFs. Loading of Bid Reference Documents can be completed by internal-ODOT system users only. A Certified Local Agency should post (or otherwise provide) the LPIF letters to bidders as a Bid Reference document along with its own project solicitation documents, following its own advertisement and bidding procedures.

LPIFs and SEOs are available to registered plan holders during the advertisement period on eBIDS.

4.3 REQUESTS AFTER PROJECT BID LET DATE

LPIFs, AIRs and SEOs are still required to be submitted and approved after the bid let date if any of the conditions listed in the LPIF, AIR, and SEO guidance are added to the contract by Change Order. The LPIF, AIR or SEO needs to be submitted and approved prior to execution of the related Contract Change Order, Extra Work Order or State Force Order.

The differences between a LPIF requested prior to the bid let date, and one requested after the bid let date are:

a) Salvage Materials

If the request for salvageable materials occurs after the bid let date, then the process described in the [ODOT Construction Manual, Chapter 33](#) – Materials Left Over or Produced for a Third-Party, shall be used.

b) LPIF Approval

LPIF requests submitted after the project bid let date are submitted to the ODOT Contract Administration Unit for approval, not PCO. Copies of LPIF requests approved after the project bid let date do not need to be submitted to PCO.

c) *Anticipated Items*

Anticipated items identified after award of the contract are handled as a request for overrun or increase of Construction Authorization by the Resident Engineer, not PCO. See the [Construction Manual - Chapter 5](#) for additional guidance.

d) *LPIF Template*

The Contract Administration Unit has provided a [post award LPIF Template](#) on the [Contract Administration webpage](#) for requests submitted after the project bid let date.

SECTION 5 - RESOURCES

[PS&E Delivery Manual](#)

[FHWA Contract Administration Core Curriculum Manual](#)

[RD-07-05\(B\) Salvaging Features and Excess Materials Associated with Transportation Projects by Contract Specification](#)

[ODOT Construction Manual](#)

[Oregon Revised Statutes – Chapter 279C – Public Contracting – Public Improvements and Related Contracts \(2019 Edition\)](#)

[ODOT Local Agency Guidelines Manual](#)

APPENDIX A – LPIF TEMPLATE

INSERT REGION LETTERHEAD

(This template is maintained by OPL's Pre-Letting Unit. Unauthorized changes to the template may result in the letter being rejected. Please submit requests to update or change the template to: ODOTPre-Letting@odot.state.or.us.)

DATE: September 30, 2022

TO: ~~Jaimé Viramontes~~
Project Controls Office Manager

FROM: Click here to enter submitter's name.
Click here to enter submitter's position title

SUBJECT: LETTER OF PUBLIC INTEREST FINDING

Request Type: Choose An Item

Project Name: Enter the STIP Project Name.

Highway: Enter the Highway Name.

County: Enter the County Name.

Key No.: Enter the Key Number.

Control No. (PCO use only): _____

PS&E Due Date: Enter the PS&E due date.

Bid Date: Enter the Bid Date.

Anticipated Item Request Required? Yes No

Project Description: Give a brief description of the project including the purpose, general location and other key details.

Click here to enter text.

Exemption Description: What exemption to the existing CFR or Statute is being requested? Wherever possible, provide product specifications (make, model#)

Choose an item.

Public Interest: Why is it in the public's best interest to not follow the existing CFR or Statute?

Click here to enter text.

Associated Costs: What is the cost associated with this request? Is there a cost savings to the project? If there is a cost savings to the project, include the cost savings and clearly describe how the savings will impact the project.

Click here to enter text.

Procurement Method: How will the material or work be procured? E.g., biddable work in the construction contract, Contract Change Order, separate sole source contract, Agency supplied material or labor, etc.

Click here to enter text.

Alternatives: *What alternatives can be used if the LPIF isn't approved? If there are no alternatives, please describe why.*

Click here to enter text.

Buy America/Build America Buy America: *How will conformance to Buy America requirements for any iron or steel materials and Build America Buy America requirements for construction materials that are non-ferrous metals, plastic and polymer-based products, glass, lumber or drywall be confirmed (applies to federally funded projects only)? If Buy America or Build America Buy America requirements do not apply, please describe why.*

Click here to enter text.

Submitted by: _____ Date: _____
Click here to enter submitter's name and position title.

Concurred by: _____ Date: _____
*Click here to enter the Project Leader's or Local Agency Liaison's name and position title.
(Required only if the submitter isn't the Project Leader or Local Agency Liaison)*

Concurred by: _____ Date: _____
Click here to enter AM's name and position title.

Concurred by: _____ Date: _____
*State Utility/State Railroad Liaison
(Required for Utility Connections / Hookups and non-UPRR Railroad Flagging Only)*

Concurred by: _____ Date: _____
*Doug Spencer, ITS Standards Engineer
(Required for ITS Equipment only)*

Approved by: _____ Date: _____
Jaimé Viramontes, Project Controls Office Manager

Cc.: Enter the Spec Writer's name and position title (email required for non-ODOT employees).

APPENDIX B – LPIF TEMPLATE – SALVAGED MATERIALS

INSERT REGION LETTERHEAD

(This template is maintained by the Project Controls Office, Pre-Letting Unit. Unauthorized changes to the template may result in the letter being rejected. Please submit requests to update or change the template to:

ODOTPre-Letting@odot.state.or.us)

DATE: September 30, 2022

TO: ~~Jaimé Viramontes~~
Project Controls Office Manager

FROM: Click here to enter submitter's name.
Click here to enter submitter's position title

SUBJECT: LETTER OF PUBLIC INTEREST FINDING FOR SALVAGED MATERIALS

Project Name: Enter the STIP Project Name.

Highway: Enter the Highway Name.

County: Enter the County Name.

Key No.: Enter the Key Number.

Control No. (PCO use only): _____

PS&E Due Date: Enter the PS&E due date.

Bid Date: Enter the Bid Date.

Anticipated Item Request Required? Yes No

Per [ODOT Technical Bulletin RD07-05\(B\)](#), all Letters of Public Interest Findings (LPIF) for Salvaged Materials are submitted to the Project Controls Office (PCO) for approval. Use this template to submit LPIF for Salvaged Materials to PCO.

Project Description: Give a brief description of the project including the purpose, general location and other key details.

Click here to enter text.

Description of the items being proposed for salvage: What materials are being salvaged?

Click here to enter text.

Justification for the proposed salvaging: Why are the materials being salvaged instead of remaining the property of the Contractor? Are the materials going to be reused? If the materials are going to be reused, please describe how they will be reused.

Click here to enter text.

Value of Materials: What is the estimated the value of the proposed salvageable materials?

Click here to enter text.

Materials Hauling and Storage: *How will the materials be transported and where the materials be stored? What is the associated hauling and/or storage costs?*

Click here to enter text.

Buy America/Build America Buy America: *How will conformance to Buy America requirements for any iron or steel materials and Build America Buy America requirements for construction materials that are non-ferrous metals, plastic and polymer-based products, glass, lumber or drywall be confirmed (applies to federally funded projects only)? If Buy America or Build America buy America requirements do not apply, please describe why.*

Click here to enter text.

Submitted by: _____ Date: _____

Click here to enter submitter's name and position title.

Concurred by: _____ Date: _____

*Click here to enter the Project Leader's or Local Agency Liaison's name and position title.
(Required only if the submitter isn't the Project Leader or Local Agency Liaison)*

Concurred by: _____ Date: _____

Click here to enter AM's name and position title.

Approved by: _____ Date: _____

Jaimé Viramontes, Project Controls Office Manager

Cc.: Enter the Spec Writer's name and position title (email required for non-ODOT employees).

APPENDIX C – ANTICIPATED ITEM REQUEST TEMPLATE

INSERT REGION OR LOCAL AGENCY LETTERHEAD

(This template is maintained by the Project Controls Office. Unauthorized changes to the template may result in the letter being rejected. Please submit requests to update or change the template to: ODOTPre-Letting@odot.state.or.us.)

DATE: January 6, 2021

TO: ~~Jaimé Viramontes~~
Project Controls Office Manager

FROM: Click here to enter submitter's name.
Click here to enter submitter's position title

SUBJECT: LETTER OF APPROVAL FOR ANTICIPATED ITEMS

Project Name: Enter the STIP Project Name.
Highway: Enter the Highway Name.
County: Enter the County Name.
Key No.: Enter the Key Number. **Control No. (PCO use only):** _____
PS&E Due Date: Enter the PS&E due date. **Bid Date:** Enter the Bid Date.

Project Description: Give a brief description of the project including the purpose, general location and other key details.

Click here to enter text.

Justification for the Anticipated Item: What is the name of the Anticipated Item? What is the reason for having the Anticipated Item? Why does it have to be an Anticipated Item versus biddable work in the construction contract?

Click here to enter text.

Associated Costs: What is the cost associated with this request? Is there a cost savings to the project? If there's a cost savings to the project, include the cost savings and clearly detail how the savings will impact the project.

Click here to enter text.

Procurement Method: Is the Anticipated Item expected to be a separate payment or added to the contract via Contract Change Order?

Click here to enter text.

Submitted by: _____ **Date:** _____
Click here to enter submitter's name and position title.

Concurred by: _____ Date: _____
*Click here to enter the Project Leader's Local Agency Liaison's name and position title.
(Required only if the submitter isn't the Project Leader or Local Agency Liaison)*

Concurred by: _____ Date: _____
Click here to enter AM's name and position title.

Concurred by: _____ Date: _____
*State Utility/State Railroad Liaison
(Required for Utility and Railroad work or materials only)*

Concurred by: _____ Date: _____
*Doug Spencer, ITS Standards Engineer
(Required for ITS Equipment only)*

Approved by: _____ Date: _____
Jaimé Viramontes, Project Controls Office Manager

Cc.: Enter the Spec Writer's name and position title (email required for non-ODOT employees).

APPENDIX D – ANTICIPATED ITEM PROGRAMMATIC REQUEST TEMPLATE

INSERT REGION LETTERHEAD

(This template is maintained by the Project Controls Office, Pre-Letting Unit. Unauthorized changes to the template may result in the letter being rejected. Please submit requests to update or change the template to: ODOTPre-Letting@odot.state.or.us.)

DATE: July 27, 2022

TO: ~~Jaimé Viramontes~~, P.E.
Project Controls Office Manager

FROM: [Click here to enter submitter's name.](#)
[Click here to enter submitter's position title](#)

SUBJECT: PROGRAMMATIC ANTICIPATED ITEM REQUEST

Project Name: Enter the STIP Project Name.

Highway: Enter the Highway Name.

County: Enter the County Name.

Key No.: Enter the Key Number.

PS&E Due Date: Enter the PS&E due date. **Bid Date:** Enter the Bid Date.

Per ODOT's [2022 Programmatic AI Request](#) and [FHWA's Letter of Approval](#) dated December 29, 2021 the following items of work are requested for the above referenced project.

APHIS Migratory Bird Monitoring (by APHIS forces) Anticipated Item Amt.: Enter amount.

Utility Connection / Hookup (by Utility forces) Anticipated Item Amt.: Enter amount.

Utility Name: [Click here to enter utility company name.](#)

Public Outreach / Public Affairs (by ODOT forces) Anticipated Item Amt.: Enter amount.

Railroad Flagging (by Railroad forces) Anticipated Item Amt.: Enter amount.

Monitoring of Archaeological Site (by third party) Anticipated Item Amt.: Enter amount.

Paint Coating Inspection Service (by third party) Anticipated Item Amt.: Enter amount.

Work Zone Safety Monitoring/Traffic Oversight
(by Oregon State Police forces) Anticipated Item Amt.: Enter amount.

Project Description: Give a brief description of the project including the purpose, general location and other key details.

[Click here to enter text.](#)

Submitted by: _____ Date: _____

Click here to enter submitter's name and position title.

Concurred by: _____ Date: _____

*Click here to enter the Project Leader's or Local Agency Liaison's name and position title.
(Required only if submitter isn't the Transportation Project Manager or Resident Engineer –
Consultant Projects)*

Concurred by: _____ Date: _____

Click here to enter AM's name and position title.

Concurred by: _____ Date: _____

*State Utility/State Railroad Liaison
(Required for Utility Connections / Hookups and Railroad Flagging Only)*

Approved by: _____ Date: _____

Jaimé Viramontes, Project Controls Office Manager

Cc.: Enter the Spec Writer's name and position title (email required for non-ODOT employees).

APPENDIX E – STATE EXEMPTION ORDER TEMPLATE

INSERT REGION LETTERHEAD

(This template is maintained by Project Controls Office, Pre-Letting Unit. Unauthorized changes to the template may result in the request being rejected. Please submit requests to update or change the template to:

ODOTPre-Letting@odot.state.or.us)

DATE: September 30, 2022

TO: ~~Jaimé Viramontes~~
Project Controls Office Manager

FROM: Click here to enter submitter's name.
Click here to enter submitter's position title

SUBJECT: REQUEST FOR STATE EXEMPTION ORDER - EXEMPTION FROM APPROVED EQUAL REQUIREMENT

Project Name: Enter the STIP Project Name.

Highway: Enter the Highway Name.

County: Enter the County Name.

Key No.: Enter the Key Number.

Control No. (PCO use only): _____

PS&E Due Date: Enter the PS&E due date.

Bid Date: Enter the Bid Date.

Project Description: Give a brief description of the project including the purpose, general location and other key details.

Click here to enter text.

Product Description: Give a brief description of the product including the name or description, general purpose, general location and other key details.

Click here to enter text.

Exemption Description: This request is for an exemption under ORS 279C.345 and ORS 279C.350 from the requirement to allow an approved equal. (ODOT Contract ONLY) As required by ORS 279C.345(1), specifications for public improvement contracts may not expressly or implicitly require any product by any brand name or mark, nor the product of any particular manufacturer or seller unless the product is exempt under subsection (2) of ORS 279C.345. - Check one or more Findings below that support this request.

Findings:

- It is unlikely that the exemption will encourage favoritism in the awarding of public improvement contracts, or substantially diminish competition for public improvement contracts (279C.345(2)(a));
- The specification of a product by brand name or mark, or the product of a Particular manufacturer or seller, would result in substantial cost savings to the contracting Agency (279C.345(2)(b));
- There is only one manufacturer or seller of the product of the quality required (279C.345(2)(c)); or
- Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment or supplies (279C.345(2)(d)).

Explanation: Factual background and justification must be provided below for each finding selected above:

Click here to enter text.

Procurement Method: Explain how the material or work will be procured. E.g., biddable work in the [construction contract](#), Contract Change Order, separate sole source contract, etc.

Click here to enter text.

Impact of Non-approval of Request: Explanation of impacts, if any, if the Exemption request is not approved.

Click here to enter text.

Buy America/Build America Buy America: How will conformance to Buy America requirements for any iron or steel materials and Build America Buy America requirements for construction materials that are non-ferrous metals, plastic and polymer-based products, glass, lumber or drywall be confirmed (applies to federally funded projects only)? If Buy America or Build America buy America requirements do not apply, please describe why.

Click here to enter text.

Submitted by: _____ Date: _____
Click here to enter submitter's name and position title.

Concurred by: _____ Date: _____
*Click here to enter the Project Leader's or Local Agency Liaison's name and position title.
(Required only if the submitter isn't the Project Leader or Local Agency Liaison)*

Concurred by: _____ Date: _____
Click here to enter AM's name and position title.

Concurred by: _____ Date: _____
*State Utility and State Railroad Liaison
(Required for Utility Connections / Hookups and Railroad Items Only)*

Concurred by: _____ Date: _____
*Doug Spencer, ITS Standards Engineer
(Required for ITS Equipment only)*

I hereby grant the requested exemption by order based on the above identified findings.

Approved by: _____ Date: _____
Jaimé Viramantes, Project Controls Office Manager

APPENDIX F – ITS LPIF



Oregon
Kate Brown, Governor

Department of Transportation
Intelligent Transportation Systems
2080 Laura St.
Springfield, OR 97477
Phone (503) 856-6528

To: Jaime Viramontes, P.E.
Manager, Project Controls Office

From: Doug Spencer, P.E.
ITS Standards Engineer

Date: _____

Subject: *Letter of Public Interest Finding and Anticipated Costs for ITS Project*

Project Name: _____

Key No.: _____

Letter of Public Interest Finding

Per ODOT's ITS 2021 authorization request and FHWA's approval dated March 30th, 2021. Certification of material origin and quality assurance documents are on file with the ITS Unit.

State Supplied Items (ODOT ITS Contracts approved by FHWA)

<i>Network Equipment (Contract No. B38039)</i>	Yes_____	No_____
<i>Radio Equipment (Contract No. B37627)</i>	Yes_____	No_____
<i>Traffic Sensor Station (Contract No. 29183)</i>	Yes_____	No_____
<i>Variable Message Signs (Contract No. 29871)</i>	Yes_____	No_____
<i>Advanced Transportation Controller (ATC) (Contract No. 30352)</i>	Yes_____	No_____
<i>Ramp Metering Firmware and Services for the ATC (Contract No. B31370)</i>	Yes_____	No_____
<i>Video Management Software and Camera Equipment (Contract No. 730-B1902-14)</i>	Yes_____	No_____
<i>Traffic Signal Software, DSRC radio, and Services for the ATC (Contract No. B34294)</i>	Yes_____	No_____

Anticipated Items

<i>Network Equipment</i>	Cost _____
<i>Radio Equipment</i>	Cost _____
<i>Traffic Sensor Station</i>	Cost _____
<i>Variable Message Signs</i>	
<i>Type 1 Signs</i>	Cost _____
<i>Type 2 Signs</i>	Cost _____
<i>Type 3 Signs</i>	Cost _____

<i>Type 4 Signs</i>	Cost	_____
<i>Lane Control Signs (VSL, VAS, MUTCD)</i>	Cost	_____
<i>Digit Signs (Travel Time)</i>	Cost	_____
<i>Other Sign Types</i>	Cost	_____
<i>Software</i>	Cost	_____
<i>Other</i> _____	Cost	_____
 <i>Advanced Transportation Controller</i>	Cost	_____
 <i>Ramp Metering Firmware and Services for the ATC</i>	Cost	_____
 <i>Video Management Software and Equipment</i>	Cost	_____
 <i>Traffic Signal Firmware, DSRC Radio, and Services for ATC</i>	Cost	_____
 <i>Connection to Utility Power/Communications</i>	Cost	_____
 <i>Fiber Optic Termination and Testing by ODOT ITS Contractor (Contract No. 27944)</i>	Cost	_____
 <i>ITS equipment commissioning by ODOT technician</i>	Cost	_____

Funding to cover commissioning costs of small ITS projects that require extensive travel to rural locations.

Approved By: _____ Date: _____
 Manager, Office of Project Controls

cc: Region Project Manager, Resident Engineer, or Local Liaison

2080 Laura St. Springfield, OR 97477 | Phone (503) 856-6528

APPENDIX G – SAMPLE EXEMPTION ORDER WHEN NO APPROVED EQUAL ALLOWED

This is for Certified Local Agency projects only

INSERT CERTIFIED LOCAL AGENCY LETTERHEAD

(This sample exemption order is for use on Certified Local Agency projects only and may only be used for the limited purposes set out below. The Certified Local Agency should retain the completed and signed exemption in its Project file records. This sample is maintained by the ODOT Certification Program Office. Please submit requests to update or change the sample to: ODOTCertification@odot.state.or.us.)

DATE: [mm/dd/yyyy]

TO: [Insert Name, Title of Certified LPA's person authorized to make this order per ORS 279C.345 and 279C.350.]

FROM: [Insert name and position title of "person in responsible charge" of the project per Certified LPA's approval authorities]

SUBJECT: Request for Exemption Order when No Approved Equal Allowed

Project Name: [Insert name]
Project Key No: [Insert no.]
Federal Aid No: [Insert no.]

Project Description: Give a brief description of the project including the purpose, general location and other key details.

[Click here to enter text.](#)

Product Description: Give a brief description of the product including the name or description, general purpose, general location and other key details.

[Click here to enter text.](#)

Exemption Description: *This request is for an exemption under ORS 279C.345 and ORS 279C.350 from the requirement to allow an approved equal. As required by ORS 279C.345(1), specifications for public improvement contracts may not expressly or implicitly require any product by any brand name or mark, nor the product of any particular manufacturer or seller unless the product is exempt under subsection (2) of ORS 279C.345. Check one or more Findings below that support this request.*

Findings:

- It is unlikely that the exemption will encourage favoritism in the awarding of public improvement contracts, or substantially diminish competition for public improvement contracts (279C.345(2)(a));
- The specification of a product by brand name or mark, or the product of a Particular manufacturer or seller, would result in substantial cost savings to the contracting Agency (279C.345(2)(b));
- There is only one manufacturer or seller of the product of the quality required (279C.345(2)(c)); or

Page 1 of 2

- Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment or supplies (279C.345(2)(d)).

Explanation: *Factual background and justification must be provided below for each finding selected above:*

Click here to enter text.

Procurement Method: *Explain how the material or work will be procured. E.g., biddable work in the construction contract, Contract Change Order, separate sole source contract, etc.*

Click here to enter text.

Impact of Non-approval of Request: *Explanation of impacts, if any, if the Exemption request is not approved.*

Click here to enter text.

Buy America: *Explanation of how Buy America requirements will be met for any iron or steel materials (applies to federally funded projects only). If Buy America requirements do not apply, please explain why.*

Click here to enter text.

Requested by: _____ Date: _____
[Insert name and position title of "person in responsible charge" of the project per Certified LPA's approval authorities. Insert additional concurring or authorizing signature lines if needed to conform to Certified LPA's internal approval processes.]

Ordered by: _____ Date: _____
[Insert Name, Title of Certified LPA's authorized person. Note, ORS 279C.345 and 279C.350.]
I hereby grant the exemption by order based on the above-identified findings.

Cc.: [Insert the name, position title, and email address of appropriate members of the design team as necessary].
[Insert name and email address] ODOT Transportation Project Manager / Local Agency Liaison