

**2021**

**ODOT CERTIFICATION  
PROGRAM OFFICE**

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

**SUPERSEDED**

Effective November 3, 2021

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

## **SECTION A:**

OVERVIEW OF FEDERAL-AID PROJECT DELIVERY OPTIONS  
FOR LOCAL PUBLIC AGENCIES, INCLUDING CERTIFICATION



## SECTION A: OVERVIEW OF FEDERAL-AID PROJECT DELIVERY OPTIONS FOR LOCAL PUBLIC AGENCIES, INCLUDING CERTIFICATION

### A. FOREWORD

The Oregon Department of Transportation Local Agency Certification Program is a federally-authorized program that allows the State to certify Local Public Agencies (LPAs) in federal-aid highway project delivery processes.

The Local Agency Guidelines for Certified Local Public Agencies (LAG for Certified LPAs) provides guidance to local project delivery staff engaged in becoming certified, maintaining certification, and delivering federal-aid projects.

The LAG for Certified LPAs is primarily intended for local agency staff. It is also a guide for ODOT staff providing oversight to Certified LPAs, federal agencies that interact with federal-aid local project delivery, and any audience who wants to better understand Oregon's oversight of federal-aid local project delivery.

#### A.1. Organization

The LAG for Certified LPAs is organized into four sections, each intended for specific users.

**Section A** provides an overview of ODOT's Local Agency Certification Program – the basic structure, processes, and rationale for the program. The intended users are those learning about the program for the first time, or reviewing it at a general level.

**Section B** outlines how LPAs become certified and how they maintain certification status. The intended users are LPAs, ODOT Region project delivery staff assisting local agencies, and Certification Program Office staff approving Certification.

**Section C** details how to deliver a federal-aid project as a Certified LPA. The intended users are Certified LPA staff and ODOT Region staff.

**Section D** is a compendium of the templates, checklists, and similar resources that are referenced throughout the LAG for Certified LPAs.

#### A.2. Certification Program Background

ODOT's Certification Program began in the early 2000's to provide a means for local agencies to take greater day-to-day control of project delivery. The Local Agency Guidelines Manual had been the medium to explain policies, process, and requirements for all local project delivery, for both certified and non-certified LPAs.

In 2017, ODOT clarified its policy on local project delivery by focusing certification on LPAs in Transportation Management Areas (TMAs), replacing non-certified local project delivery with

alternate methods and updating its guidance manual to focus on Certification. Due to the shift in policy, this LAG for Certified LPAs, which may also be referred to as the “LAG Manual”, replaced the old LAG manual that was in effect through 2018.

## B. FEDERAL-AID HIGHWAY PROGRAM IN OREGON

### B.1. Overview

FHWA provides funds to ODOT through the Federal-aid Highway Program. The Federal-aid Highway Program is a cost-based reimbursement program between FHWA and state departments of transportation.

LPAs such as cities, counties, ports, special districts, tribes, and other agencies are eligible for this federal funding. In order to use it, the LPA must be suitably staffed and equipped to perform federal-aid work in accordance with all relevant federal and state requirements.

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 and counties, permits LPAs to obtain expanded approval authority at the local level for federally funded projects.

#### Resources:

- [Stewardship and Oversight Agreement](#)
- [ODOT/AOC/LOC Agreement and Amendment](#)
- [Local Government Funding Overview](#)

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ODOT has the option to delegate some or all of its authority from FHWA to LPAs.

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### B.2. Using Federal-Aid Funding

LPAs can use federal-aid funding through one of four methods. An intergovernmental agreement (IGA) between ODOT and the LPA will document which project delivery method has been agreed to.

- An LPA delivers its own project through the certification program.
- An LPA contracts with a Certified LPA to deliver the project.
- An LPA exchanges federal funds for state funds and delivers its own project.
- An LPA contracts with ODOT to deliver the project.

Fund exchange, the State Funded Local Projects (SFLP) program and contracting with ODOT are not covered in this LAG for Certified LPAs. More information on these LPA project delivery methods are set out in the ODOT/AOC/LOC Agreement and on ODOT's [Local Government Funding Overview page](#).

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Federal-aid funding is used by LPAs over the six phases of a project. Each of these project phases are defined below and addressed in more detail in Section C of this manual.

- **Program Development** is the planning phase for the proposed project. During this phase, projects may be accepted into the Statewide Transportation Improvement Program (STIP) and the Regional Transportation Plan (RTP).
- **Project Development** (Preliminary engineering and final design, NEPA, permitting, and other key elements) is when projects are cleared for environmental impacts; necessary permits and agreements are obtained; and designs, specifications, schedules, and estimates are completed.
- **Right of Way Acquisition** is an overlapping phase with Project Development. After NEPA requirements are satisfied, right of way acquisition may start. LPAs must consult with their ODOT regional liaison to determine when the NEPA requirements have been satisfied.
- **Utility Relocation** is an overlapping phase with Project Development, continuing throughout the life of the project. LPAs will coordinate with local utilities in this phase.
- **Advertisement, Bid, and Award** is the phase in which project plans, specifications, and estimates are approved, FHWA authorizes funding, and the project is advertised for construction.
- **Construction** is the final phase where the project is actually built. Project closeout occurs at the end of the construction phase.

## C. ODOT'S LOCAL AGENCY CERTIFICATION PROGRAM

The purpose of the Certification Program is to enable LPAs to deliver federally funded local projects.

### C.1. Benefits

Certification provides several benefits to LPAs, as well as to ODOT and FHWA. LPAs benefit from:

- **Saving time and money** by enabling Certified LPAs to manage and deliver their projects directly.

- **Mitigating the risk** of losing federal funds or failing to meet project objectives within identified scope, schedule, and budget by establishing consistent practices and processes for LPA projects that follow federal requirements.
- **Reducing day-to-day management** by ODOT of Certified LPA projects through its focus on high-level, risk-based oversight.

ODOT saves staff time and resources by ensuring LPAs have their own quality program plan, Title VI plan, , construction contracting templates and consultant contracting templates, designed to meet federal project delivery requirements, in place before they begin a project. This allows ODOT to focus on risk- based oversight and strengthening relationships between local, state, and federal partners.

Certification provides FHWA a single, consistent point of contact to approve local project delivery policies and procedures as well as assurance that federal funds are being used in compliance with stewardship agreements.

Certification can benefit the LPA, ODOT and FHWA.

## C.2. Scope of Certification

Primarily, but not exclusively, certification is focused on LPAs in Oregon’s Transportation Management Areas (TMAs). ODOT requires LPAs in the Certification Program to demonstrate competency in the functional areas necessary to deliver *all* phases of the projects that the LPA plans to deliver. The necessary functional areas are shown in the figure below alongside the federal project phases.

### Alignment of Certification functional areas with federal project phases

Certification Functional Areas	Consultant Selection and Contract Administration				
		Design			Ad., Bid, and Award
Federal Project Phase	Program Development (Planning)	Project Development	Right of Way Acquisition	Utility Re-location	Construction Contract Administration

The Certification functional areas are as follows:

**a. Consultant Selection and Contract Administration**

LPAs must demonstrate competency in the methods of procurement 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. See Section C, Chapter 12 of this manual for details.

**b. Design**

LPAs must demonstrate competency in Roadway Design, including design standards, Plans, Specifications, and Estimates (PS&E). LPAs may seek additional certification in Bridge Design, if appropriate to the projects they will deliver.

**c. Advertisement, Bid, and Award**

LPAs must demonstrate competency in the processes and procedures utilized to advertise, bid, and award construction contracts for federal-aid projects.

**d. Construction Contract Administration**

LPAs must demonstrate competency in post-award processes and procedures necessary to manage a construction contract, including federal requirements for quality assurance and quality control.

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LPAs must demonstrate compliance with project delivery functional areas.

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**C.3. Single-Discipline Certification**

ODOT does not typically provide certification in a single discipline. However, Certification of Metropolitan Planning Organizations (MPOs) only applies to Consultant Selection and Contract Administration due to the nature of MPO work.

**C.4. ODOT-Retained Responsibilities**

While ODOT certifies LPAs to deliver full projects, ODOT is not currently authorized to delegate the project responsibilities listed below. Certified LPAs must comply with ODOT's programs and processes within the following specified project areas:

- **Civil Rights:** ODOT is responsible for developing the Civil Rights programs including Disadvantaged Business Enterprises (DBE), Equal Employment Opportunity (EEO), and On the Job Training (OJT)/Apprenticeship. The Certified LPA is responsible for enforcement of those programs during project delivery. Certified LPAs are also responsible for Title VI (Civil Rights Act of 1964) Program or Non-Discrimination Agreement, ADA Title II Transition Plans and Labor Compliance. Civil Rights programs apply to all federal project delivery phases.

- **Environmental Processes:** ODOT retains authorization over the National Environmental Policy Act (NEPA) process in coordination with state and federal resource agencies and FHWA. NEPA applies to the federal project development and construction phases.
- **Final Certification of Right of Way Transactions:** ODOT retains authorization over Right of Way activities, such as co-signing the Right of Way Certificate. This signed certificate ensures that Right of Way work complies with the federal Uniform Relocation Assistance and Real Property Acquisition Act.
- **Final Certification for Utilities:** ODOT retains authorization over Utility activities, such as co-signing the Utility Certificate. This signed certificate ensures that all utility notifications and relocation work complies with ODOT's Oregon Utility Relocation Manual.
- **Public Interest Finding Determinations:** Patented, proprietary, owner designed, or sole-source products must follow ODOT's approval process.
- **Project Final Acceptance:** ODOT retains Final Acceptance authority for each certified project.

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ODOT and FHWA retain some responsibilities that are not delegated to LPAs through certification.

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#### C.5. FHWA-Retained Responsibilities

FHWA retains responsibility for several of the resources and guidelines used in project delivery by ODOT and the Certified LPA:

- Approval of National Environmental Policy Act (NEPA) and Endangered Species Act (ESA) environmental documents except for projects that qualify for Programmatic Categorical Exclusion.
- Approval of ODOT's DBE, EEO, OJT/Apprenticeship and Title VI programs.
- Approval of ODOT's LAG for Certified LPAs.

FHWA also retains responsibility for:

- Authorization of FHWA funds.
- "Buy America" waiver requests.
- Experimental features and special experimental projects.
- New project training programs.
- Periodic audits of program and specific projects.

For more detailed information on roles and responsibilities and the above referenced programs and project delivery requirements, refer to the applicable chapters and subsections within Sections B, C and D of this LAG for Certified LPAs.

#### D. CERTIFICATION PROCESS OVERVIEW

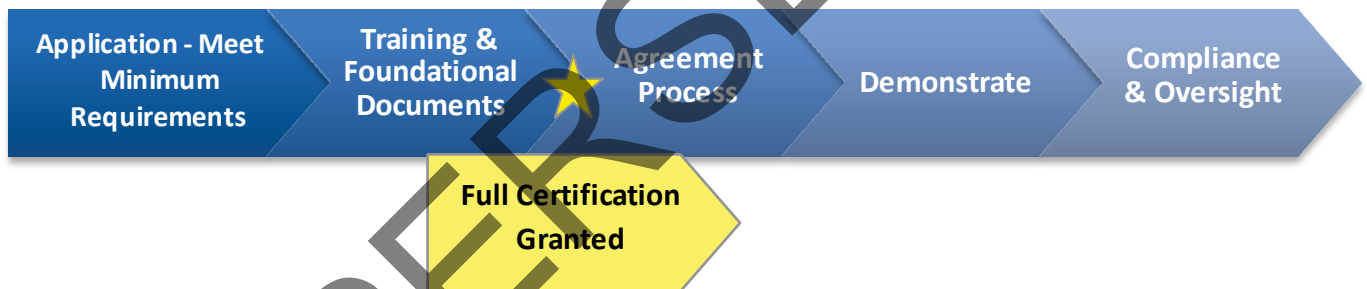
The figure below depicts the five basic phases in certification. This section describes in general what is included in each (Section B provides further detail).

**Resources:**

- [Local Government Contacts page](#)

The primary points of contact for LPAs are ODOT's Regional Local Agency Liaisons (LALs). The LAL's role is to assist LPAs through all phases of project development and delivery for federally funded projects. Visit the Local Government resources webpage for region information and contacts. Local Agency Liaisons may also be referred to as Transportation Project Managers (the formal job title), but are called Local Agency Liaisons throughout this manual to reflect the support and partnering role they provide to certified LPAs.

**Five phases of certification, with certification status conferred as indicated by the star**



##### D.1. Application - Meet Minimum Requirements

LPAs seeking certification must complete a program application to ascertain that they meet the minimum requirements of certification. The ODOT Local Agency Certification Program General Application Form (734-5327) is available in the ODOT Local Government forms library. Certification Program Office staff will review the application and discuss with the LPA its eligibility for certification.

**Resources:**

- [General Application Local Agency Certification Program](#)

Eligibility for certification requires the following:

**a. Volume of Projects**

Generally, a minimum of two to three federal-aid projects in most four-year STIP cycles is needed to warrant becoming certified.

**b. STIP Portfolio Management**

The LPA must be able to manage, schedule and adequately staff their STIP projects to ensure fund obligation deadlines are met.

**c. Person in Responsible Charge**

A full-time employee of the LPA accountable for a project.

Resources:

- [FHWA Guidance](#) defining “Responsible Charge”

**d. Certification Program Liaison**

A full-time employee of the LPA designated to be the single point of contact for the LPAs certification program.

**e. Quality Control Coordinator**

A designated person who coordinates the LPA’s certification quality program plan activities.

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Person in Responsible Charge, Certification Program Liaison and Quality Control Coordinator can be the same or different staff person(s).

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**f. Qualified Staff**

Sufficient staff, expertise, and capability to perform all project phases, including consultant selection and contract administration; design; construction contract advertisement, bid, and award; and construction contract administration.

After reviewing and discussing the application with the LPA, the Certification Program Manager will:

- Either preliminarily approve or deny the application.
- If preliminarily approved, the Certification Program Office schedules a meeting with the LPA to discuss the certification process and program requirements.
- Once consensus is reached, the Certification Program Office will notify the LPA it has been accepted into the Program and provide information about next steps.

**D.2. Training and Foundational Documents**

Effective delivery of certified local projects requires that LPAs develop and implement their own approved program documents to provide evidence that projects will be delivered in a



consistent manner and in compliance with state and federal requirements. Upon Program entry approval, LPAs need to take appropriate training and develop the foundational documents listed below:

### **a. Training**

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.

### **b. Quality Program Plan**

The Quality Program Plan documents the LPA's internal processes and quality controls necessary to effectively manage LPA projects delivered through the Certification Program.

### **c. Title VI Program and Implementation Plan or Non-Discrimination Agreement**

The Title VI Implementation Plan describes the LPA's Title VI Program. The plan should identify the LPA's Title VI Coordinator, describe the LPA's discrimination complaint mechanism, its public involvement strategy for reaching traditionally underrepresented communities, and its procedures for gathering, collecting and analyzing data. All sub-recipient LPAs are required to have and maintain a Title VI Program and Implementation Plan, as well as submit an Annual Title VI Accomplishment Reports to ODOT.

### **d. Americans with Disabilities Act (ADA) Title II Transition Plan**

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. MPOs without physical assets to inventory as the basis for a Transition Plan can address ADA compliance through the Title VI Implementation Plan.

### **e. Construction Contracting Templates**

Using the approved Oregon Standard Specifications for Construction General Conditions template available on the Certification Program website (as developed for Certified LPAs), the LPA must adapt the template for their use. Refer to the Certification Program website for the template and further information. The LPA shall align their front-end bidding documents (such as the invitation to bid, instructions to bidders, bid form and bid supplements, form of agreement, etc.) with their General Conditions, other aspects of the Standard Specifications, and ODOT/FHWA requirements.

**f. Consultant Contracting Templates:**

These templates consist of the Request for Proposal (RFP), non-A&E Planning Services RFP the A&E/non-A&E contract, and the A&E/non-A&E contract amendment.

**Resources:**

- [Certification Guidance & Forms](#)
- [Local Agency Training](#)

Once the foundational documents are approved and the LPA staff has taken the required training, the Certification Program Manager will confer full “certification”.

There are multiple resources available to LPAs who are developing or refining their programs. Section B of this LAG for Certified LPAs provides further instructions on becoming certified. In addition, ODOT Regional Local Agency Liaisons and the Certification Program Office are able to provide guidance and feedback. ODOT also provides training on requirements and processes in each discipline. Visit Certification Program Office resources webpage for training opportunities and schedules.

**D.3. Agreement Process**

In order to formalize certification, the LPA and ODOT enter into a Master Certification Agreement (MCA), which delegates allowable authorities to the LPA. It also outlines state and federal requirements, roles and responsibilities and expectations for future supplemental project agreements. ODOT initiates development of the MCA concurrent with the foundational document preparation and approval process.

At the same time the MCA is being developed, a Supplemental Project Agreement (SPA) is initiated for the selected demonstration project. Final execution of these two agreements proceeds after the Certification Program Office approves the foundational documents and the LPA has demonstrated that their staff has completed the required training.

**D.4. Demonstration Project**

Upon execution of the required agreements, the Certified LPA administers a demonstration project in accordance with their Master Certification Agreement, their Supplemental Project Agreement and their approved Quality Program Plan. It is possible that more than one demonstration project may be needed, since some required competencies may not be applicable to every project (Bridge Design, for example). The Certification Program Office’s intention is that Certified LPAs demonstrate competency in as many areas as possible on a single demonstration project. With the principle of “partnering for success” in mind, an ODOT Local Agency Liaison consults, advises, and works with the Certified LPA throughout demonstration project delivery.

During the course of the demonstration project, the Certified LPA presents their processes, procedures and documentation to the Certification Program Office following completion of four milestones; consultant selection, submittal of the plans, specifications and estimate (PS&E), award of construction contract and completion of construction. At each of these milestones, the Certification Program Office conducts a compliance review. If the compliance review reveals any issues, the Certification Program Office and the Regional Local Agency Liaison work with the Certified LPA to develop an appropriate Corrective Action Plan.

All other projects delivered in parallel or after the demonstration project are treated as certified projects.

#### D.5. Compliance and Oversight

Continued certification status is contingent upon the Certified LPA continuing to meet Certification Program requirements and maintaining qualified and experienced staff. The compliance and oversight portion of the Certification Program is designed to evaluate compliance risks at the program and project levels. See Section B of this manual for more details.

##### Compliance Review Cycle



- **Gather & Review Information:** The Certification Program Office works with ODOT Region and the Certified LPA staff to gather and review necessary program and project information.

- **CPO/Certified LPA Informational Meeting:** This meeting is for the Certification Program Office to gather any additional information that may be needed, conduct interviews with Certified LPA staff and discuss any issues found during the initial document review.
- **Draft Findings:** The Certification Program drafts and shares compliance review findings with Certified LPA.
- **CPO/CLPA Findings Review Meeting:** This meeting is to discuss the review findings with the Certified LPA staff and agree on corrective actions (if applicable).
- **Agree on Corrective Actions:** Certified LPA prepares a Corrective Action Plan, if necessary.
- **Close Review:** The Certification Program Office approves the Corrective Action Plan, if applicable, and ends compliance review of the Certified LPA.
- **Monitoring:** The Certified LPA, ODOT Region, and Certification Program Office implement any necessary Corrective Action Plan.

## E. STAKEHOLDER PARTNERING

For agencies engaged in the Certification Program, either through project delivery, oversight, or other interest in certification, ODOT provides a **Certification User Group (CUG)**. The CUG's mission is to "Streamline and improve the delivery of certified local public agency federal aid transportation projects for Oregon" through activities such as training, best-practice sharing, inter-agency communication, and process improvement. The CUG operates under the following principles:

### Resources:

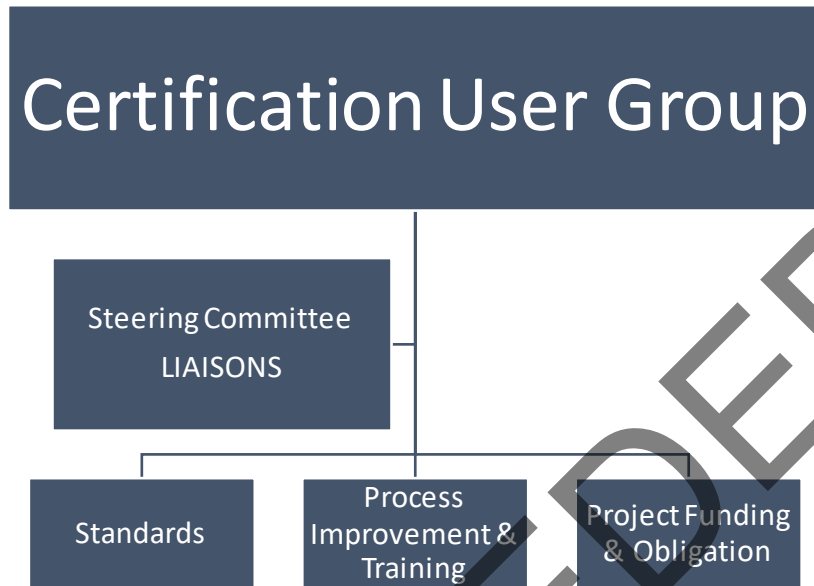
- [Certification User Group Charter](#)

- Partner for success
- Efficient delivery of projects
- Effective oversight

The CUG is led by a Steering Committee co-chaired by a Certified LPA and the Certification Program Manager. Steering Committee members include representatives from five Certified LPAs, four ODOT staff members, and one FHWA representative.

The CUG sponsors subcommittees to work on issues identified by CUG members. Each subcommittee includes one Steering Committee Liaison and any interested CUG members. The basic structure of the CUG is shown in the figure below.

## Certification User Group Structure



### F. CONCLUSION

Section A provides a high-level introduction to federal-aid local project delivery through the Certification Program. For more detail on becoming certified or maintaining certification status, refer to Section B. For more detail on day-to-day project delivery as a Certified LPA, refer to Section C. For a compendium of the templates, checklists, manuals, and similar resources needed by Certified LPAs, refer to Section D.

Lastly, for information on local project delivery methods other than through the Certification Program, such as **state funded projects** or **direct delivery by ODOT**, refer to ODOT's Local Government Funding Overview page and contact your ODOT Region Office.

#### Resources:

- [Local Government Funding Overview](#)
- [ODOT Region Offices](#)

**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:

- 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.*
- STATE provides three options for delivering federal-aid local projects. Local agencies may:*
  - Exchange federal funds for state funds and deliver their project directly;*
  - 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*
  - 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

LPAs 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>
<b>Quality Program Plan</b>	<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>
<b>Construction Contracting Templates</b>	<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.

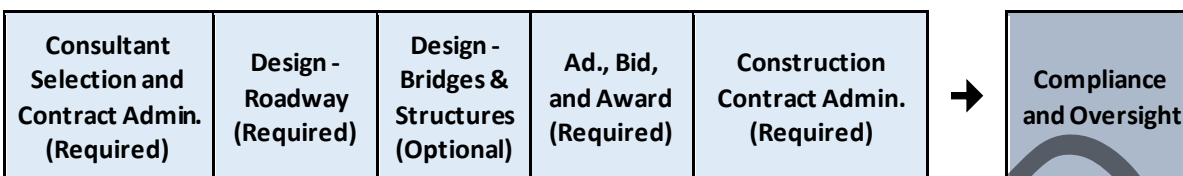
#### **C.6. Certification Phases**

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.

Type of Contract	Consultant Selection Methods		
	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:

<b>Corrective Actions Process</b>	
<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.

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

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.

SUPERSEDED



**2021**

**ODOT CERTIFICATION  
PROGRAM OFFICE**

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

## **SECTION C:**

**DELIVERING FEDERAL-AID PROJECTS AS A CERTIFIED LOCAL  
PUBLIC AGENCY**

Effective November 3, 2021



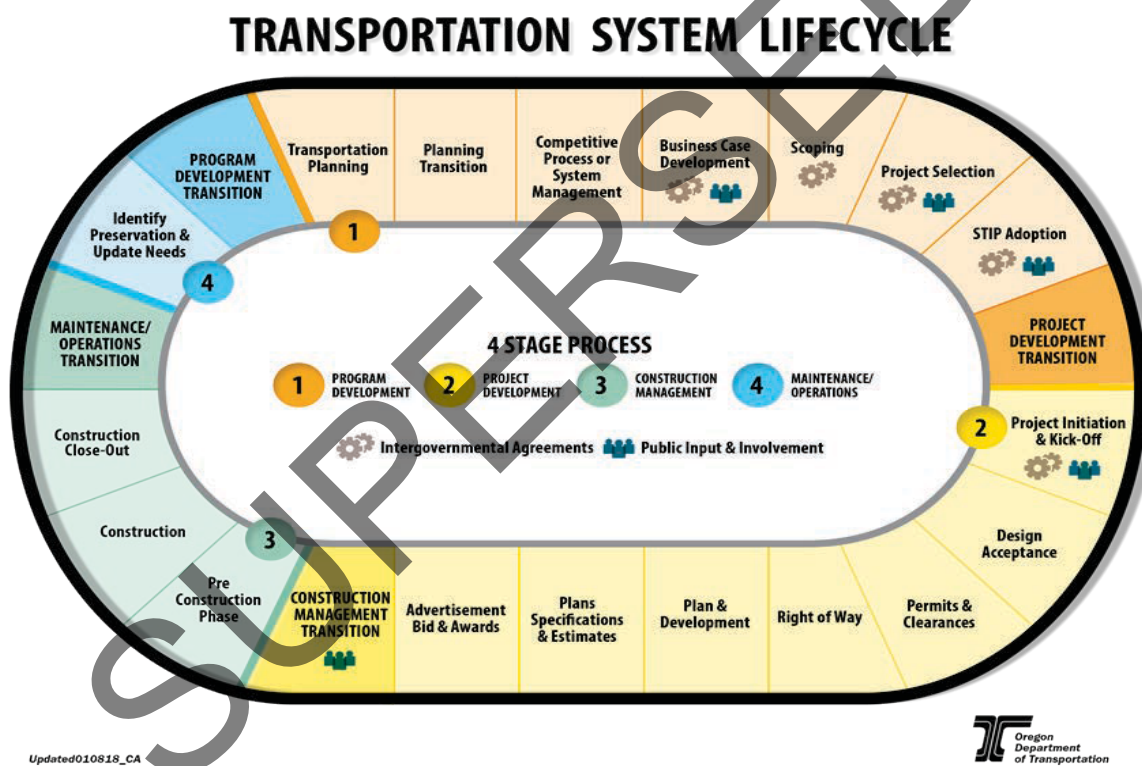
## SECTION C: DELIVERING FEDERAL-AID PROJECTS AS A CERTIFIED LOCAL PUBLIC AGENCY

### Chapter 1. Introduction

#### A. OVERVIEW

Section C of this Local Agency Guidelines (LAG) for Certified Local Public Agencies (LPAs) details information on how LPAs deliver a federal-aid project, including the roles and responsibilities of the various participants.

To provide an overview, ODOT's project delivery lifecycle is shown below. LPAs may not complete every step shown, as some steps are specific to projects on the state system. Actual steps taken will vary depending on the complexity or type of project being delivered.



The chapters that follow focus on the primary project development phases:

- **Planning and Program Development** - This is the planning phase for the proposed project. During this phase, projects may be accepted into the STIP.

- **Project Development** - In this phase, projects are cleared for environmental impacts, necessary permits are obtained, and design plans, specifications, schedules and estimates are completed.
- **Right of Way Acquisition** - There may be some overlap between the Project Development phase and the Right of Way Acquisition phase. After NEPA determinations are satisfied, right of way acquisition may start.
- **Utilities** - Coordination regarding utilities begins in the Project Development phase and continues throughout the life of the project. A separate utility federal authorization phase occurs when the utility relocation is eligible for federal reimbursement.
- **Advertisement, Bid and Award** - During this phase, PS&E is approved and FHWA authorizes federal funds. At this point, the project can be advertised for bid.
- **Construction Contract Administration** - Upon completion of the prior phases, construction commences. Project closure occurs in this phase.

## B. ORGANIZATION

Section C is organized into 17 chapters with each dedicated to a specific topic in the project delivery life-cycle.

Chapter	Title
1	Introduction
2	Planning & Program Development
3	Project Technical Scope Sheet
4	Agreements
5	Progress Billings (Reimbursement Costs)
6	NEPA and Environmental Processes
7	Right of Way Procedures
8	Civil Rights – Tracking LPA Projects (DBE, EEO & OJT)
9	General Design Requirements
10	Design Approval
11	Plans, Specifications and Estimate (PS&E)
12	Consultant Selection and Contract Administration
13	Utility and Railroad Programs
14	Bridge Selection, Scoping and Design
15	Advertising, Bid and Award Procedures
16	Construction and Contract Administration
17	Project Closeout

## C. ROLES AND RESPONSIBILITIES

### C.1. ODOT Certification Program Office

The Certification Program Office is responsible for development and management of the Certification Program's policies, processes, and procedures. Key program areas managed by this office are:

- Program policy
- Pre-certification and post-certification processes.
- Program reporting and performance measurement.
- Foundational document approval
- LPA program and project compliance
- Certification User Group (CUG) steering committee and subcommittee participation
- Training

Certification Program staff are typically not involved at the project delivery level, but play an active role assisting LPAs and ODOT staff with project delivery issues and questions related to the program. The Certification Program Office serves as the clearinghouse for programmatic inquiries and issue resolution, is the primary conduit to FHWA for certification program matters and may also facilitate resolution of project delivery matters as needed.

### C.2. ODOT Statewide Investments Management Section

The Statewide Investments Management Section is a grouping of similar programs that, by combining funding and strategic management, maximizes the value of transportation investments locally, regionally and statewide. The Statewide Investments Management Section brings together local, statewide and federal funding programs to create the Statewide Programs Unit (which houses the Certification Program Office) and Program and Funding Services Unit.

The Program and Funding Services Unit is responsible for processing all funding authorization requests and authorization increase requests for LPA projects.

### C.3. ODOT Regional Staff

The staff listed below are the primary individuals that LPAs will coordinate with during project delivery. Other individuals not listed include ODOT regional Technical Center staff who provide technical guidance and project document reviews as needed and staff from the ODOT Local Bridge Program.

- **Local Agency Liaisons** are located in each ODOT region and serve as the subject matter

experts in the federal aid project delivery process. Local Agency Liaisons work with the LPAs throughout the project delivery lifecycle and function as ODOT's main point of contact for LPAs. Local Agency Liaisons may also be referred to as Transportation Project Managers (the formal job title), but are called Local Agency Liaisons throughout this manual to reflect the support and partnering role they provide for certified LPAs.

- **Region Environmental Coordinator** is the person responsible for all NEPA document reviews and processing with FHWA. This person is also the LPA's primary resource for environmental related guidance.
- **Region Right of Way Agent** becomes involved when right of way acquisition is needed for a project. This person's primary function is to coordinate and review the acquisition files for conformance with the Uniform Act and to recommend that the Region Right of Way Manager co-sign the Right of Way Certification. The Right of Way Agent is also available as a resource to LPAs to provide project guidance and assistance.
- **ODOT Office of Civil Rights assigns regional Civil Rights Field Coordinators** to monitor and assist LPAs and regional ODOT staff with carrying out the requirements of the following federal programs: Disadvantaged Business Enterprise (DBE), Equal Employment Opportunity (EEO), On-Site Workforce Affirmative Action (OSWAA), and Reimbursable Federal OJT Apprenticeship Training (OJT). LPAs with questions should contact the assigned Field Coordinator.
- **Regional Assurance Specialist** is attached to the Contract Administration Unit of ODOT's Construction Section and serves as a project auditor that provides risk-based project document (quality and quantity) reviews and closeout mentoring to assist the LPA in establishing and maintaining appropriate FHWA documentation procedures for project construction records.

### C.4. Certified Local Public Agency

LPAs are responsible for utilizing federal-aid funding for specific projects in accordance with state and federal laws and program requirements. 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. Refer to Section B of this LAG for Certified LPAs for additional information.

FHWA expects on-time delivery of each LPA project. Therefore, 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.

LPAs must also assign a “person in responsible charge” for every federally funded project. This person must be a full-time employee of the LPA, but does not need to be a registered professional engineer (23 CFR 635.105).

### **C.5. Other Organizations**

Section B(2) of this LAG for Certified LPAs discusses other organizations such as FHWA, the Oregon Transportation Commission (OTC), Metropolitan Planning Organizations (MPOs) and Transportation Management Areas (TMAs) that are involved with project selection, programming and delivery.

### **C.6. Approval Authorities**

To better understand the relationship between FHWA, ODOT and LPAs, refer to the Approval Authority Matrix (Form #734-5191) in Section D of this LAG for Certified LPAs and review the ODOT/FHWA Stewardship and Oversight Agreement.

## **D. COMMUNICATION**

Effective, open and honest communication is the foundation for a successful project. Listening, asking questions for clarification and obtaining feedback is critically important. When working through project development or construction issues, always try to resolve those issues at the lowest level possible with the following in mind:

- Treat all individuals with respect
- Communicate both good and bad news expeditiously
- Approach controversial issues directly and timely
- Information provided to one person should also be provided to all others involved
- Clearly document all decisions made

### **D.1. Communication Types**

Communication is the effective exchange of meaning and understanding and includes various written, spoken, and electronic interaction between individuals. Examples include:

- Face-to-face
- Telephone
- In-person presentations
- Meetings
- Video and teleconference

- Written correspondence and submittals\* (letters, bulletins, meeting minutes, plans, specifications, project checklists, etc.)
- Email and voice mail

Keep in mind that information sharing is not necessarily communication. The desired message should be supplemented by face-to-face or telephone communication as necessary.

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**\*Note on submittals:** To conserve resources and enable electronic filing, all documents are to be submitted in electronic format unless otherwise noted or agreed to.

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## **D.2. Communication Plan**

For a project to be successful, an effective communication plan should be developed as part of the initial project setup. It should discuss the appropriate communication channels, a list of individuals to be included, the preferred method(s) to be used, how issue resolution will take place and how important matters will be escalated.

The communication plan need not be a stand-alone document, but should be included as part of an overall project management plan developed for the specific project.

ODOT has developed a Project Charter template that is one of many communication tools available. It provides a variety of information about the project such as constraints, assumptions, risks, schedule, funding, stakeholders, resourcing, and communication protocols. ODOT has also developed a *Project Management Plan* template that touches on topics such as management of scope, schedule, budget, and risk as well as issue resolution, change management and quality. LPAs should consider adapting these templates or using their own templates as part of their overall management plan.

### **Resources:**

- [Project Charter \(734-2948A\)](#)
- [Project Management Plan \(734-2948C\)](#)

## **D.3. Certification Program Office Bulletins**

The Certification Program Office utilizes bulletins as part of the overall communication system to provide information regarding program policies, process changes, technical information and general information. These bulletins are sent out to communicate a variety of topics to local public agencies, external stakeholders and its internal customers.

The consistent use of bulletins assures timely and comprehensive communication of decisions, policies and other guidance information specific to the Certification Program. They also serve as interim updates to the LAG for Certified LPAs. Historical bulletins can be referenced on ODOT's Local Government website.

#### **D.4. Certification User Group (CUG)**

Meetings of the Certification User Group serve as the primary forum for face-to-face interaction of LPA and ODOT staff. The CUG's mission is to "streamline and improve the delivery of certified local public agency federal aid transportation projects for Oregon" through activities such as training, best-practice sharing, inter-agency communication, and process improvement. The CUG operates under the following principles:

- Partner for success
- Efficient delivery of projects
- Effective oversight

Resources:

- [Certification User Group](#)

Please refer to Section A of this Manual for more information or contact the Certification Program Office.

#### **E. ISSUE RESOLUTION AND ESCALATION**

A key premise of the issue resolution and escalation model is to avoid the "siloeing" of issues. Siloeing occurs when an individual or organization involved with a particular issue develops its own version or interpretation of the issue at the project level, and this version then gets "escalated" to the management level of the respective organization without any of the other participants having the opportunity to discuss the issue or present clarifying information. This creates an inequitable escalation.

An equitable issue resolution and escalation process is intended to level the playing field and ensure all issues are first dealt with at the project level, and then, if no resolution is reached, are escalated equitably upward as a team to the next level of management.

##### **E.1. Issues Log**

Issues need to be recorded when they happen. The LPA should create and maintain an issues log as a tool for reporting and communicating what's happening with the project. This makes sure that issues are raised, investigated and resolved quickly and effectively.

An issues log allows you to do the following:

- Have a safe and reliable method for the team to raise issues
- Track and assign responsibility to specific people for each issue
- Analyze and prioritize issues more easily
- Record issue resolution for future reference and project learning
- Monitor overall project health and status



The log should contain enough information to track an issue through to resolution. Information should include items such as issue description, date of identification, priority, the person responsible for resolving the issue, target resolution date, status and final resolution.

## **E.2. Issues Management Framework**

The LPA should supplement the issues log with a framework, or process, for dealing with those issues. This framework helps the project team understand what to do with issues once they have been identified and logged. Developing the framework answers questions like these:

- How will you assign responsibility for resolving the issue?
- How will you know when to escalate an issue to management or a committee?
- Which criteria will determine an issue's priority status?
- Who will set the target resolution date?
- How will issues be communicated within the team?
- How will you identify different issues if several occur during one project?
- If change orders are needed, how will those be handled?
- When the resolution affects the budget or schedule, what will the update process be, and who will be responsible?

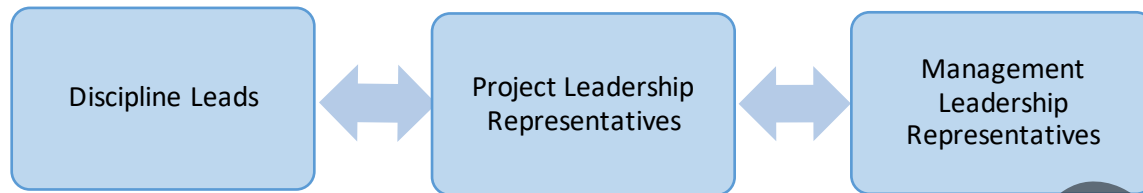
An issues management process gives the LPA a robust way of identifying and documenting issues and problems that occur during a project. The process also makes it easier to evaluate these issues, assess their impact, and decide on a plan for resolution.

## **E.3. Collaborative Organizational Chart**

A key step in issue resolution that is frequently missed by the project team is the development of the collaborative organizational chart. This differs from day-to-day project organization charts because it attempts to identify discipline-specific, cross-organizational teams with co-leads who will be held accountable for issue resolution pertinent to their discipline area.

The image below depicts a base team structure at three distinct levels of management. This serves to eliminate the silo effect by focusing on team escalation of issues. From this structure, any project can evolve to a structure that best suits the project team's needs. This structure will vary depending on the size and complexity of the project, and may actually involve a fourth or fifth level in larger applications.

### Collaborative Lines of Communication



Not everyone in the project organization appears on this chart. Only those who have clear counterparts from the other organization(s) and clear decision-making authority qualify to be on this chart. The format of these ladders is also a departure from the traditional format where positions are placed in organizational columns. Organizing by discipline follows the natural breakdown of the project and allows easier identification of where an issue should reside.

#### E.4. Partnering

Once the path for issue resolution has been defined, the next step to effective issue resolution is for the LPA to establish a culture of accountability within the partnering process. The process must drive accountability, not by individual organizations, but by team organizations. The process should be ongoing and should include the following elements.

- **Ongoing management level involvement:** Managers should be meeting on a proactive basis to assess project progress, relationships and the culture of the organization. The effectiveness of the relationships developed at this level will set the tone for the project and how issues will be resolved. A joint project update should be given by the project leadership team, as well as the status on all unresolved issues. Agendas beyond these two critical items can vary depending on the needs of the project.
- **Ongoing reporting processes at the project level:** Reporting should be occurring from discipline leads to the project leadership team on achievement of project goals, status of potential issues for escalation, and team dynamics. This reporting should be done no less than once per month.
- **Face-to-face reports:** Meetings among the discipline leads and the project leadership team enhances a culture of accountability on the team.

The success of a project issue or dispute resolution process is dependent not just on the resolution process itself, but also on how well a collaborative organization and problem-solving culture is developed and sustained on the project. This is critical in an era where multiple project delivery systems are prevalent. Project teams that correctly apply this concept have reaped the benefits and received a return on investment for their efforts.

#### **E.5. Issues Resolution with ODOT**

There are numerous and different types of issues that may come up from time-to-time during project execution - from design and construction related to interpreting laws, guidance and requirements. Since the path to resolution can take many forms depending on the issue, the regional Local Agency Liaison should be the LPA's first contact. In most cases, the Local Agency Liaison is able to contact the appropriate subject matter resources or managers within ODOT to facilitate an equitable resolution.

If an LPA needs additional program or project assistance, the Certification Program Office is available to help facilitate issue resolutions at a higher level.

SUPERSEDED

## Chapter 2. Planning & Program Development

### A. OVERVIEW

Program development begins with transportation planning to explore needs at the state and local levels and identify projects for the Statewide Transportation Improvement Program (STIP). The STIP is a staged, multi-year, statewide capital improvement plan for transportation projects. The STIP is consistent with the statewide transportation plan as well as metropolitan transportation improvement programs (also known as TIPs or MTIPs). The STIP must be developed in cooperation with the metropolitan planning organizations (MPOs), public transit providers, and any Regional Transportation Planning Organizations (RTPO) in the state.

Projects listed in the STIP may include state and federally funded highway and bridge construction or repairs; project development activities such as environmental review; and other non-construction projects such as public transit service improvements and capital purchases. The STIP also includes federal transportation projects in national parks and forests, federal lands and Indian reservation road systems, interstate highways, regional highways, and bridges, as well as many locally funded projects of statewide or regional significance, and public and active transportation projects.

### B. TRANSPORTATION PLANNING

Transportation planning includes development of the Oregon Transportation Plan and modal plans that provide Oregon's strategic transportation vision and policies. Statewide policy plans also provide guidance and direction for developing other transportation system plans.

City and county Transportation System Plans (TSPs), which include all of the state highway system within their boundaries, describe existing conditions, identify roadway classification and transportation needs over a 20-year period and develop priorities for transportation system improvements within a defined geographic area. Generally completed by local cities or counties, TSPs evaluate needs across all modes of transportation and may include portions of or whole transportation corridors. Program Managers may propose projects identified in TSPs for inclusion in the STIP.

Transportation Policy Planning includes:

- Oregon Transportation Plan
- Oregon Highway Plan and other modal plans
- Strategic vision
- A framework to help prioritize investments for all modes of transportation

- Identification of strategic objectives and outcomes from management and investment decisions

Transportation System Planning includes:

- City and county TSPs
- ODOT facility plans
- An assessment of future transportation system needs and recommended solutions
- Prioritized investment strategies and projects
- All modes of transportation
- Projects that are prioritized for inclusion in the STIP

ODOT's Transportation Planning Section is responsible for managing the statewide policy planning process and the Regional Planning Units are responsible for managing the system planning process.

### C. STIP DEVELOPMENT & ADOPTION

The STIP identifies projects to be funded, when the work should be done, and what state or federal funding sources or programs will be used to pay for them. The STIP includes a financial plan that identifies all capital and noncapital projects within the State of Oregon for which there is committed or reasonably available funding. See *Code of Federal Regulations, 23 CFR Part 450* for additional information.

The STIP further includes:

- Sufficient scope description (type of work, termini, and length)
- Estimated total project cost, which may extend beyond the program years of the STIP
- Federal funds proposed by fiscal year
- Proposed source(s) of federal and non-federal funding
- Responsible agency

#### Resources:

- [Code of Federal Regulations, 23 CFR Part 450](#)

The STIP is adopted by the Oregon Transportation Commission (OTC) and is effective once approved by the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA). Identifying and planning for transportation needs is an ongoing process with periodic reviews. The STIP is updated every three to four years, and routinely amended from month to month for project-specific changes and additions.

## D. PLANNING TRANSITION

The intent of the Planning Transition phase is to maximize communication and understanding between planning and project development to ensure information provided and commitments made to stakeholders during the planning process are carried forward.

Planning Transition is part of the STIP development process, which includes:

- STIP program and work type criteria
- Program objectives and goals
- Required Title VI and ADA considerations
- Access management
- Public involvement
- NEPA and environmental justice considerations
- System performance outcomes
- Scoping criteria

To establish realistic project delivery schedules for the STIP and to communicate critical project related information, internal communication between the LPA's project engineering and planning staff should occur at each of the following project phases:

- Scoping
- Project selection
- Project design

It is also important to consult with the funding program-awarding agency (e.g., MPO, ODOT) regarding project delivery schedules to ensure the information programmed in the STIP is up to date. LPAs should be aware of STIP and MTIP amendment requirements and timelines. See the resources linked below for additional information.

## E. IDENTIFYING POTENTIAL PROJECTS

A project evolves from a transportation problem or need identified through a variety of sources while ensuring the transportation system is accessible to all users:

- Legislation
- Data Driven Management systems
- Area Commissions on Transportation
- ODOT Modal Plans

- ODOT Facility Plans
- Local Transportation System Plans

### F. PROJECT SELECTION

The Statewide Investments Management Section allocates the annual STIP funding levels to five funding categories in support of the Oregon Transportation Commission's goals. Regions balance their individual programs with their allotted funding targets. The OTC establishes funding targets for all programs and the criteria for identifying priorities.

Statewide Investments Management Section staff use the Oregon Transportation Management System to identify and prioritize preservation, bridge and safety projects. Additional sources of information include statewide ADA compliant traffic data, Intelligent Transportation Systems, freight movement, fish passage culvert strategic or action plans, public transit, Intermodal Management Systems, MPOs, local governments, Area Commissions on Transportation (ACTs), regional partnerships, and stakeholder and public input.

ODOT funding program managers create initial business cases for projects at 150% of available funding. Region project teams scope each project, except those coming through the MPOs, to develop cost estimates and project details.

The funding program managers use scoping data to select projects at 100% of funding levels. STIP coordinators in each region reenter the selected projects into the STIP database, and the resulting list of projects make up the draft STIP. ODOT provides at least a 45-day public review of the draft STIP and a minimum of two open public meetings per region during this period. Region STIP coordinators summarize and send public comments to the STIP development manager.

#### Resources:

- [Statewide Transportation Improvement Program](#)
- [ODOT Federal Highway Administration / Federal Transit Administration Amendment Matrix](#)
- [Transportation Development Planning](#)

## Chapter 3. Project Technical Scope Sheet

### A. OVERVIEW

The Local Agency Technical Scope Sheet form 731-5151 describes the proposed project and serves as the support document for the FHWA authorization of federal funds. The Local Agency Technical Scope Sheet also provides a schedule that indicates to ODOT and FHWA when the LPA anticipates obligating federal funding phases such as preliminary engineering, right of way and construction.

The Environmental Prospectus is the environmental scoping document that identifies existing environmental resources, constraints, and probable processes that could be required for the project. As discussed further in Section C, Chapter 6 of this manual, the Environmental Prospectus is typically prepared or reviewed by the ODOT Region Environmental Coordinator (REC) as a requirement for all FHWA-nexus projects.



### B. SCOPING

The scoping effort builds upon the information provided by the LPA in its project application. Scoping is the process of defining the parameters of the project and the level of effort required in the various project delivery phases.

For federal-aid LPA projects that undergo a competitive application process through ODOT (such as the Local Bridge Program), scoping is performed by a regional ODOT scoping team that includes LPA representation. For federal-aid LPA projects that are funded through the local MPO, scoping is performed by the individual LPAs with assistance from the MPO. ODOT is generally not involved with the scoping of MPO funded projects.

ODOT recommends LPAs engage the appropriate personnel to participate on the scoping team to provide needed information regarding roadway design, bridge design (if applicable),



geotechnical (see note below), environmental, right of way, utilities, railroads, land survey, hydraulics and structural.

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**Planning Phase Note:** If a project's scope will be further developed through a planning phase, and if the planning phase includes advance investigation drilling or ground-disturbing work, refer to Section C, Chapter 6 of this manual regarding environmental clearance permitting requirements. All environmental clearances, permits, and approvals must be coordinated with the ODOT Region Environmental Coordinator and the Regional Local Agency Liaison.

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Scoping can be done by meeting with the assigned project personnel and specialists in the field at the site, or in the office if sufficient data is available. A field review is highly recommended, however, as it provides the best venue to gather project information, photograph the site for future reference, and determine if there are any other considerations needed for a successful project. ODOT recommends the scoping process be documented by a draft scoping package, as described below.

### B.1. Scoping Package

The scoping team is responsible for developing a draft scoping package. LPAs are invited to use the optional Local Public Agency Federal Aid Project Scoping Checklist form 734-5293 for MPO awarded projects and to review ODOT's Scoping Expectations Framework for additional information for ODOT awarded projects. ODOT's project scoping checklist is available in the Resources box entitled "ODOT Project Scoping Notes."

#### Resources:

- [Local Public Agency Federal Aid Project Scoping Checklist \(734-5293\)](#)
- [ODOT Project Scoping Expectations Framework](#)
- [ODOT Project Scoping Notes \(734-5128\)](#)

The draft scoping package, at a minimum, should include the following:

- Decisions regarding site investigation and analysis procedures for geometric design elements, foundations, hydraulics, structures, right of way, environment, traffic, utilities, permits, etc.
- The names and roles of the teams' members throughout the project (if known)
- Outside agency involvement
- Preliminary discussion of alternative designs and establishment of the project limits or footprints
- "Scoping Notes"
- Discussion of funding

- Desired project schedule
- A detailed breakdown of the cost for all phases of work

The scoping team collects comments from all parties involved. The comments are then incorporated into the final scoping package. Any disagreements should be resolved prior to completion of the final scoping document.

### C. THE LOCAL AGENCY TECHNICAL SCOPE SHEET

LPAs must coordinate with the Regional Local Agency Liaison to develop and submit the Technical Scope Sheet, as ODOT must concur with the final version.

#### C.1. Technical Scope Sheet - Part 1

Part 1 of the scope sheet is used, in part, for FHWA federal-aid programming purposes and includes items such as:

- General location information
- Estimated cost
- Project components
- Project categories
- Right of way information
- Who will perform the work
- Proposed bid let date and funding information
- Average daily traffic
- Existing and proposed roadway information
- Definition of the problem
- Proposed solution to the problem
- Justification for the project

#### Resources:

- [Local Agency Technical Scope Sheet \(734-5151\)](#)

#### C.2. Technical Scope Sheet - Part 2

Part 2 provides additional information about the proposed project, such as:

- Who is responsible for various project development activities
- Who is responsible for various permits and clearances
- Number of right of way acquisitions and relocations
- Suggested base design

- Structure information
- Existing and proposed improvement widths

### D. THE ENVIRONMENTAL PROSPECTUS

The Environmental Prospectus document serves to recommend the preliminary NEPA classification for a project with a FHWA-nexus and discusses topics such as land use, impacts to wetlands and waterways, water quality impacts, biological impacts, archaeological and historic impacts, and hazardous materials to name a few. It also provides the information necessary to determine if the project can be processed using ODOT's Programmatic Categorical Exclusion (PCE) Agreement.

Generally, the Region Environmental Coordinator (REC) will prepare and approve the Environmental Prospectus; however the LPA may be asked to prepare a draft. The LPA should obtain and provide supporting data such as an exhibit map of the project's area of potential impact (API). Certified LPAs should coordinate with the Regional Local Agency Liaison and Region Environmental Coordinator for completion of the Environmental Prospectus.

#### Resources:

The resources listed here include resources that may be needed to complete the Local Agency Technical Scope Sheet.

- [ODOT Project Delivery Guide](#)
- [Local Agency Technical Scope Sheet 734-5151](#)
- [NEPA Program](#)
- [LPA Statement of Work Library](#)
- [ODOT TransGIS Tool](#) (see Boundaries layer for U.S. Congressional Districts, Oregon Legislative Senate Districts and Oregon Legislative House (Representative Districts))
- [Highway Design Manual](#)
- [ODOT Geo-Technical Design Manual \(GDM\)](#)
- [ODOT Functional Classifications](#)

## Chapter 4. Agreements

### A. OVERVIEW

The Federal-aid Highway Program allows LPAs to be reimbursed with federal funds for costs incurred on approved LPA projects. Agreements (contracts) must be executed and funding approval from FHWA received in order to reimburse an LPA for these costs.

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Costs incurred prior to execution of an agreement cannot be reimbursed.

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There are two primary agreements associated with LPA project delivery. The “master certification agreement” between ODOT and each LPA serves as the basis for the LPA’s participation in the Certification Program and for the delivery of federally funded projects. A “supplemental project agreement” setting out project-specific details and costs is also required for each federally funded project. Many projects may also require other agreements, such as right of way services, utility or rail crossing agreements. This chapter provides an overview of these agreements.



### B. AGREEMENTS

An agreement is a legally binding document that defines the obligations of all parties involved. Intergovernmental agreements (IGAs) between ODOT and LPAs affect the public, are binding upon the parties, and typically involve resources, services and funding.

An agreement must contain the following elements:

- Purpose
- Total cost to each agency party, including payment terms, if any

- Term of the agreement, including specific beginning and ending dates, if applicable
- Methods to be employed to terminate the agreement
- Any other necessary or proper terms or provisions

Since it may take several months to prepare and execute an IGA, the process should begin as early as possible. Ideally, the IGA development process should provide an arena for collaboration and coordination between ODOT and the LPA to resolve any certification program or project delivery issues.

### **B.1. Master Certification Agreement**

The master certification agreement between ODOT and each LPA approved to participate in the Certification Program is a key component in the line of agreements used to obligate federal transportation funding. These agreements include the following:

- FHWA/ODOT Stewardship and Oversight Agreement
- AOC/LOC/ODOT Federal-Aid Project Guidelines and Working Agreement (Association of Oregon Counties/League of Oregon Cities/ODOT Federal-Aid Agreement)
- Master certification agreement
- Supplemental project agreement
- Amendments (as-needed to any of the above-listed agreements)

The master certification agreement is the foundational agreement upon which all supplemental project agreements are based and sets out the terms of the LPA's participation in the Certification Program. It is updated periodically to reflect changes in federal and state law and ODOT policy. It includes, but is not limited to, the following elements:

#### **a. Authorities (recitals)**

#### **b. Terms of Agreement**

- Certification
- Performing work on behalf of a non-certified agency
- Program administration (funding and finance, standards, A&E contracts, preliminary engineering, right of way, Title VI, ADA, civil rights programs, ad/bid/award, construction contract administration, claims and change orders, railroads, utilities, maintenance, records and reporting requirements)
- Design standards
- Insurance and indemnification requirements
- Term and termination

- Federal provisions or requirements
- Contacts and signature authorities
- Other general provisions

A master certification agreement has been developed and executed between ODOT and each LPA delivering federal-aid projects under the Certification Program. For LPAs new to the Certification Program, a master certification agreement will be developed and executed upon ODOT-approval of the LPA's foundational documents. For more information on the certification process, refer to Section B of this LAG for Certified LPAs.

### **B.2. Supplemental Project Agreement**

A supplemental project agreement should be developed as early as possible in the project development process to outline responsibilities of the parties for the various phases of project delivery to be performed. The type of supplemental project agreement will depend upon the work to be covered.

The supplemental project agreement describes the proposed improvement, serves as the supporting document for FHWA authorization of federal funds and provides a schedule identifying the federal fund obligation years as identified in the STIP. If the federal-aid participation ratio entered in the agreement is not the full amount allowed by the FHWA, then the participation ratio entered becomes the limit of funding allowed. A supplemental project agreement typically includes the following elements:

#### **a. Authorities (recitals, including certification status and facility ownership)**

#### **b. Terms of Agreement**

- Project description and limits, including vicinity map as exhibit
- Total estimated cost, maximum federal fund participation and percentage of required LPA match
- Payment and invoicing requirements
- Indirect costs
- Master certification agreement requirements
- Federal provisions and requirements
- Project-specific design standards
- Funding program-specific deliverables (e.g., bridge)
- Work on or along a state highway
- Insurance and indemnification requirements

- Term and termination
- Contacts and signature authorities
- Other general provisions

Supplemental project agreements are also used to document other project obligations such as:

- Long-term maintenance responsibilities of a facility, such as a traffic signal or landscaping
- Guidance on federally funded non-highway projects for local governments
- Access to right of way belonging to other agencies, temporary or permanent street closures, and approval for required grade changes
- Jurisdictional transfers of roadway from one agency to another or roadway abandonment
- Permits
- Specific criteria for local land use and access management decisions affecting a transportation facility

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**Notice to Proceed Requirement:** No reimbursement payments can be made until the supplemental project agreement has been fully executed. Even after the supplemental project agreement is executed; no costs are eligible for federal-aid reimbursement until ODOT authorizes a written Notice to Proceed (NTP).

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### **B.3. Other Agreements**

Many projects may also require other agreements, such as right of way services, utility or rail crossing agreements.

#### **a. Right of Way Services Agreements:**

If federal funds will be used to acquire right of way for the project, or if the LPA would like to contract with ODOT Right of Way for acquisition services for the project, a right of way services agreement will also be required. For details on right of way acquisition requirements for federal-aid projects, including more information on right of way services agreements, refer to Section C, Chapter 7 of this LAG for Certified LPAs.

#### **b. Utility Relocation and Railroad Crossing Agreements:**

For information about when utility relocation and railroad crossing agreements may be required, refer to Section C, Chapter 13 of this LAG for Certified LPAs.

### C. AGREEMENT PROCESSING

Master certification agreements are prepared and processed by ODOT's Statewide Programs Unit in coordination with the Certification Program Office.

Supplemental Project Agreements are prepared and processed by ODOT regional agreement writers in close coordination with regional local agency liaisons. For each type of agreement, drafts are shared with the LPA for review by local staff and legal counsel. Prior to finalization and circulation of an agreement for signature, ODOT subject matter resources and the Oregon Department of Justice also provide review, consultation and authorizations or approvals as needed.

As previously noted, the project agreement process should begin well in advance of the time when the LPA plans to begin work on the project (several months). If applicable, the LPA should also consider the time it takes for agreements to be approved by their local board or commission.

To begin preparation of a supplemental project agreement:

- LPA prepares a **Local Agency Technical Scope Sheet** form 734-5151 for the project and submits it to the regional Local Agency Liaison for review and concurrence.
- LPA provides a **project vicinity map** for use as an exhibit in the agreement.
- ODOT Local Agency Liaison coordinates with the LPA and an ODOT agreement writer to **prepare and process the agreement**.
- ODOT Local Agency Liaison requests the **obligation of federal funds** for the applicable project phase once a supplemental project agreement is executed.
- ODOT Local Agency Liaison is responsible for issuing a **written notice to proceed** for the LPA to begin reimbursable work on the applicable project phase.

Resources:

- [Local Agency Technical Scope Sheet \(734-5151\)](#)

The LPA should contact the regional Local Agency Liaison to coordinate the development and processing of any other agreements needed between the LPA and ODOT for the project. Development of these other agreements should occur as early as possible in project development. If applicable and feasible, the LPA should consider working with the Local Agency Liaison and region Right of Way Agent to develop the right of way services agreement concurrently with the related supplemental project agreement.

### D. AMENDMENTS TO AGREEMENTS

From time-to-time, amendments to the agreements may be needed as a result of:



- Change in certification status
- Changes in federal or state law
- Legal language updates from the Oregon Department of Justice
- Changes to project scope or
- Changes in project funding

Amendments are prepared and processed as described above, but usually do not take as much time as the original agreement to process. However, every effort should be made to identify and act on any needed amendments early to guard against delays in later phases of the project.

SUPERSEDED

## Chapter 5. Progress Billing (Reimbursement Costs)

Certified Local Public Agencies (LPAs) may submit progress billings and obtain reimbursement for work completed after the following occurs:

- A master certification agreement is executed between the LPA and ODOT
- A supplemental project agreement is also executed between the LPA and ODOT
- FHWA authorization of federal funding is obtained
- The LPA receives a “notice to proceed” letter from ODOT



### A. OVERVIEW

All progress billings shall be submitted to the Regional Local Agency Liaison by the LPA in accordance with the terms of the LPA agreement.

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**NOTE:** Billings will only be accepted after the local agency agreement is executed, a Local Agency Technical Scope Sheet has been completed, federal authorization is obtained, and the Notice to Proceed letter has been issued by ODOT.

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The execution of the LPA master certification agreement and supplemental project agreement does not constitute authorization of federal funds. FHWA authorization of federal funds is separate from the LPA agreement process.

The expenditure account (EA) is established upon FHWA’s authorization of federal funds. The EA permits invoicing by the LPA and billing by ODOT to the project.

The LPA shall use the following identifiers in all project correspondence with ODOT:

- Agreement number

- Key number
- Project name

Local agencies receive federal funds on a cost reimbursement basis at the federally authorized pro-rata share limited to the amount of federal funds authorized for the project.

## B. PROGRESS PAYMENTS PROCEDURES FOR CERTIFIED AGENCIES

Progress payments must be based on documented measurements of work performed so the contractor can be fairly compensated and public funds will only be expended on completed and eligible work.

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### NOTE ON MAINTAINING PROJECT FILES:

It is important for LPAs to maintain clear, consistent financial and supporting documents on the project file throughout the life of the project, as project files may be subject to review or audit by state or federal authorities at any time.

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#### B.1. Local Agency Responsibilities

The LPA shall submit all progress billings to the attention and address of the LPA's ODOT Regional Local Agency Liaison in accordance with the terms of the LPA's master certification agreement, which are summarized in this section.

**Agreement Invoice Requirements:** The LPA shall present invoices for one hundred percent of actual costs incurred by the LPA on behalf of each project directly to ODOT Regional Local Agency Liaison for review, approval and reimbursement to Agency. Costs will be reimbursed consistent with federal funding provisions and the applicable supplemental project agreement.

LPA invoices shall include all of the following:

- Invoice number;
- Vendor number;
- *Remit to* name and address;
- LPA's applicable master certification agreement number;
- ODOT's expenditure account (EA) number;
- Supplemental project agreement number;
- Project name as shown in the supplemental project agreement; and
- Itemization and explanation of all expenses for which reimbursement is claimed.

All invoices received from the LPA must be approved by the LPA's ODOT Regional Local Agency Liaison prior to payment.

The LPA's actual costs eligible for federal-aid or state participation shall be those allowable under the provisions of the Federal-Aid Policy Guide (FAPG), Title 23 CFR Parts 1.11, 140 and 710.

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ITEMIZING AND EXPLAINING ALL EXPENSES FOR WHICH REIMBURSEMENT IS CLAIMED:

To ensure a smooth progress billing review process, the LPA should submit clear legible copies of the following supporting documents and information as needed to verify the federal eligibility of costs incurred during the billing cycle:

**Math calculations** → Show both total costs and federal pro-rata share on the invoice.

**Work Performed Timeframe** → LPA and LPA's consultant/contractor invoices should show the "Effective from\_ and to\_" dates. Date range should match all itemized expenses.

**Notice to Proceed Date** → LPA's and LPA's consultant/contractor invoices should show the date Notice to Proceed was given for the work being billed. (***Audit Tip:** The LPA's actual notice(s) to proceed to the consultant/contractor should be maintained in the project file, and the date(s) shown on invoices should be consistent with the dates shown on the notice(s).*)

**LPA-generated summary of costs report** → Recommended to help summarize billing information when there are multiple charges of expenses.

**Bid/pay item progress estimate payments** → Recommended especially during construction to verify total costs and authorization.

**Consultant/contractor invoices** → Shows at a minimum summary report of consultant expenses (ODOT may request full support documents if needed).

**LPA's costs breakdown** → Show item/unit breakdown of costs for charges billed.

**Materials purchase orders** → Provide copies of receipts.

**Project-specific costs** → Provide receipts/back-up showing costs of items billed.

**LPA salary/wage reports** → Verify total eligible costs.

**LPA salary/wage reports including ICAP rates** → Show department and unit classifications; the approved ICAP rate %; and the LPA has an approved letter on file with ODOT Financial Services.

**Travel/transportation documents** → Supports per diem rates charged to project.

**Any other relevant project charge documents** → Supports reimbursement request.

**Pay verification documents** → LPA's cancelled checks, check register, or other payment confirmation to support reimbursement for costs incurred by the LPA.

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**Invoices for project progress billing for periods of not less than one-month:** Invoices for services including, but not limited to, preliminary engineering and construction engineering shall be presented for periods of not less than one-month duration, based on actual expenses to date.

**Invoices due to ODOT within 90 days costs are expended:** Partial billing for project progress payments shall be submitted to ODOT per the project intergovernmental agreement. ODOT requests invoicing within ninety (90) days from date that costs are expended by the LPA.

**Expedited construction contractor reimbursement payments within 10 working days:** ODOT will reimburse LPA for construction contractor payments within ten (10) working days of receipt of payment request from LPA. Once the ODOT Regional Local Agency Liaison has received invoice from LPA, the ODOT Regional Local Agency Liaison shall forward the invoice to ODOT's Financial Services Office for payment.

**Final invoices within 45 days of the end of each funding phase:** Final invoices shall be submitted to ODOT for processing per the applicable project supplemental agreement, typically within forty-five (45) days from the end of each funding phase as follows: a) preliminary engineering, which ends at the award date of construction, b) last payment for right of way acquisition and, c) contract completion.

## **B.2. ODOT Responsibilities**

ODOT is responsible for processing and making payments to LPAs for the pro-rated federal share of the actual and eligible costs incurred by the LPA on behalf of the project, as specified in the master certification agreement and the applicable supplemental project agreement.

## **C. IDENTIFYING FEDERAL-AID REIMBURSABLE AND NON-REIMBURSABLE CHARGES**

Reimbursement of costs eligible for FHWA's participation is provided under Title 23, OMB Circular A-87 now referred to as 2 CFR 200 and 23 CFR 140. The following is an overview of federal reimbursement policies.

No costs may be claimed for reimbursement if incurred prior to FHWA authorization to proceed with the work. All work must be programmed with FHWA.

If the LPA has an approved 2 CFR 200 indirect rate plan, then ODOT will reimburse the approved rate for eligible indirect costs. Otherwise, ODOT will only reimburse direct costs.

If the LPA wants to recoup a portion of the agency's indirect costs, it must develop and

maintain an indirect cost rate as described in 2 CFR 200 Appendix VII. Developing an indirect cost rate may also require the development of a Cost Allocation Plan as described in 2 CFR 200 Appendix V.

### Resources:

- [2 CFR 200](#) (see 2 CFR 200.414, Appendix V and Appendix VII for details)
- [A Guide for State, Local and Indian Tribal Governments: Cost Principles and Procedures for Developing Cost Allocation Plans and Indirect Cost Rates for Agreements with the Federal Government, Implementation Guide for Office of Management and Budget Circular A-87](#)

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No costs may be claimed for reimbursement if incurred prior to FHWA authorization to proceed with the work.

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### **C.1. Recouping Indirect Costs for Federally Funded Projects**

In the 1980s the federal government decided that to effectively continue to rely on state and local agencies to administer federally funded projects, the federal government should contribute to the costs of maintaining programs at the state and local levels.

In order for state and local governments to recoup some of the costs of maintaining departments capable of delivering federally funded projects, an agency must develop an indirect cost rate to apply towards federal jobs. The Office of Management and Budget drafted Circular A-87 (now referred to as 2 CFR 200) which describes how to develop such a rate.

The federal government is authorized to pay state and local governments for their indirect costs associated with delivering and managing federally funded projects in 2 CFR 200. Indirect costs are costs that benefit more than one project, such as administration, management, computer support departments, and central services departments. For a complete list and more detailed definition, see 2 CFR 200.

The indirect rate is the portion of administrative, overhead, and central services resources consumed that can adequately be assigned to a particular department or agency that has federal projects.

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If the LPA is interested in recouping some of its indirect costs, the LPA must follow the steps outlined in 2 CFR 200.414 for an indirect cost rate and if necessary, developing a cost allocation plan. The Federal Department of Health and Human Services (HHS) also developed an implementation guide entitled, *A Guide for State, Local and Indian Tribal Governments, Cost Principles and Procedures for Developing Cost Allocation Plans and Indirect Cost Rates for Agreements with the Federal Government, Implementation Guide for Office of Management and Budget Circular A-87*. Once the rate has been developed and approved by the appropriate federal agency (when necessary), the LPA can apply the rate against all federal bills for projects within the specific department.

- **Benefits:** The benefit of maintaining an indirect rate is that as the LPA requests federal funds, the indirect costs associated with managing that project are includable costs in the cost estimation. This could mean more money for the individual LPA.
- **Limitations:** Be aware, however, that the federal government only provides a limited amount of funding for transportation, so once the total amount is allotted; having an indirect rate won't increase the budgetary amount the LPA receives. However, applying the rate will allow for quicker access to the funds.
- **Central services cost allocation plan:** If the LPA has a central services department, it is possible to include some costs to federal projects if the LPA develops an indirect cost allocation plan and then applies the indirect cost allocation plan to develop its indirect cost rate. The indirect cost allocation plan is a separate document that would have to be maintained and updated along with the indirect rate.

#### **a. Developing an Indirect Cost Rate**

To recoup indirect costs on federal projects, the LPA is responsible for developing an indirect rate to apply towards federal projects.

The rate is a calculated percentage of indirect costs that can be attributable to maintaining a department that successfully completes federal projects. It is the ratio of the indirect costs to a direct cost base. In other words, the portion of administrative, overhead, central services resources consumed that can adequately be assigned to a particular department or agency that has federal projects.

A separate indirect rate is usually necessary for each department or agency of the governmental unit claiming indirect costs because the amount of indirect costs consumed by

each department or agency will be different. Examples of this would be: the administration of a small two-person department could be much less than the administration and management costs of a large, 50 person unit. Costs such as system maintenance, utilities, HR services and other costs would also differ depending on the type of agency or department, the number of employees in the office, and the systems needed to operate the department or agency.

The assignment of indirect costs can be determined using a number of different accounting methods laid out in the circular, including:

- The simplified rate - used when a department or agency has only one major function or where all its major functions benefit from the indirect costs at approximately the same degree. This rate is good to use for agencies where the level of federal awards is relatively small.
- Multiple allocation base methods – when a governmental department or agency has several major functions which benefit from its indirect costs in varying degrees. In order to appropriately assign indirect costs, a method of pooling costs in individual buckets is used.
- Special indirect cost rate – when a department or agency's units within the whole use indirect costs at very different levels and using methods 1 or 2 would not adequately take into account the cost usages appropriately.
- Restricted rate – used when a federal award restricts the reimbursement of certain indirect costs.

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For additional information regarding how to develop and apply the appropriate methods, see 2 CFR 200, Appendix VII.

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### **b. Developing an Indirect Cost Allocation Plan**

LPAs could develop an indirect cost allocation plan if the agency has a central services department and wants a portion of those central services costs to be distributed to federal projects. The results of allocations assigned under this plan will aid the agency or department in the complete development of the indirect cost rate as discussed above.

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For more detailed information on developing and maintaining a cost allocation plan, refer to 2 CFR 200 Appendix V and the brochure titled “A Guide for State, Local and Indian Tribal Governments, Cost Principles and Procedures for Developing Cost Allocation Plans and Indirect Cost Rates for Agreements with the Federal Government, Implementation Guide for Office Of Management and Budget Circular A-87”.

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### **c. Audit Requirements**

The indirect cost plan is subject to audit during the LPA's program review. Though most agencies are not required to submit their indirect cost plan (and indirect cost allocation plan if applicable), all plans must be maintained and updated annually. If requested by any federal agency, the LPA must produce the plans and all documentation for review and approval. It is required that all supporting documentation used in compiling and maintaining the plan be retained at the LPA to ensure compliance with federal regulations.

### **C.2. Definitions**

In order to communicate effectively regarding billing and costs, it is important to clarify the various definitions of costs used throughout this chapter as well as 2 CFR 200 and other reimbursement statutes.

#### **a. Total cost of federal awards**

Total cost is comprised of allowable direct costs plus the allocable portion of allowable indirect costs, less applicable credits – 2 CFR 200.402.

#### **b. Actual Costs**

Actual costs are costs that an agency actually expends funds on. Examples of actual costs include:

- Engineering services 23 CFR 1.11
- ROW for purposes of highway projects 23 CFR 1.23
- Administrative Settlement Costs 23 CFR 140.505
- Bond payments for interstate projects 23 CFR 140.602
- Project Related Audit expenses 23 CFR 140.801
- Railroad project costs 23 CFR 900
- Real estate costs and ROW for STIP projects 23 CFR 710.203

#### **c. Direct costs**

Direct costs are those costs that can be identified and attributed specifically with a particular project only and can be items that don't actually expend funds, such as depreciation -- 2 CFR 200.413. Examples of direct costs include:

- Compensation of employees for time spent on federally funded project
- Costs of materials consumed, acquired or expended specifically for the purpose of a federally funded project

- Equipment and other approved capital expenditures
- Travel expense needed to carry out federal award

**d. Indirect costs**

Indirect costs are those costs incurred for a common or joint purpose benefiting more than one project and not readily assignable to the project specifically benefited without effort disproportionate to the results achieved -- 2 CFR 200.414. Examples of indirect costs allowable under 2 CFR 200 include:

- State/local-wide central services costs
- General administration
- Accounting and personnel services
- Depreciation or use allowances on buildings and equipment
- Costs of operating and maintaining facilities 2 CFR 200.414(a)

**e. Eligible costs**

Eligible costs are those costs that include all the possible costs that the federal government will reimburse.

**f. Ineligible costs**

Ineligible costs are costs that the federal government will not reimburse for. Some examples of these types of costs include:

- Lobbying costs
- Bad debts
- Contributions and donations
- Fines and penalties for failing to comply with law

This is not an exhaustive list. Please refer to 2 CFR 200.420 for guidance.

**g. Allowable costs**

Allowable costs are:

- Necessary and reasonable for proper and efficient performance and administration of federal awards
- Allocable to federal awards under 2 CFR 200 (includes direct and indirect costs)
- Authorized or not prohibited under state or local laws or regulations

- Conform to any limitations or exclusions set forth in 2 CFR 200, federal law, terms and conditions of agreement or other governing regulation as to types and amounts of cost items
- Consistent with policies, regulations, and procedures that apply uniformly to both federal awards and other activities of the governmental unit
- Accorded consistent treatment with other federal awards
- Determined in accordance with generally accepted accounting principles
- Not to be included as a cost or used to meet cost sharing or matching requirements of any other federal award
- That are the net of all applicable credits
- Adequately documented. 2 CFR 200.403(g)

#### **h. Unallowable costs**

Unallowable costs are those costs that cannot be billed to a federal job even with an approved Cost Allocation Plan or an Indirect Cost Rate Proposal unless a specific agreement expressly authorizes them.

#### **i. Allocable costs**

Allocable costs are those costs allocable to a particular project assignable to the project in accordance with relative benefits received.

#### **j. Participating costs**

Participating costs are those costs that the federal government has agreed to or does pay on a specific project. All participating costs are eligible costs, but depending on the agreement and the results of the project management, all eligible costs may not be participating.

#### **k. Non-participating costs**

Those costs that are eligible costs under the federal government payment scheme in general, but are not being reimbursed under the terms of a specific agreement or result in not being paid by federal government due to actions by state or local agencies.

Some ways in which eligible costs become non-participating include:

- If the federal funds are limited, some eligible costs will be coded as non-participatory as a means of narrowing the items that the federal money will reimburse for.

- If an agency that is managing any part of the project makes mistakes, like failing to comply with engineering standards or contract terms, items that were eligible and participating become nonparticipating by the nature of the noncompliance.
- If an agency responsible for the project begins work on the project prior to authorization, costs that were incurred before the authorization become non-participatory.

### **C.3. Standards for Selected Items of Cost**

The following standards are used for determining the eligibility of selected items of cost. In general, costs must be reasonable, necessary and allocable to the specific project. The eligibility of the selected items of cost is subject to the general policies and principles stated above.

#### **a. Salaries and Wages**

- Subject to appropriate authorization requirements, federal funds may participate in the cost of salaries, wages and related payroll expenses incurred for periods of time public employees are actively engaged, either directly or indirectly, in project-related activities.
- Salaries, wages and related payroll expenses of the LPA for maintenance, general administration, supervision and other overhead are not eligible for reimbursement.

#### **b. Travel and Transportation**

- Federal funds may participate in the cost of commercial transportation, privately owned automobiles and per diem or subsistence essential to the completion of the project and is performed in accordance with prescribed procedures.
- Reimbursement may be made for use of privately owned automobiles and per diem or subsistence incurred in conformance with the established reimbursement policy of the LPA.

#### **c. Employee Leave and Holidays**

- The LPA may claim reimbursement for the costs of leave (e.g., annual, sick, military, jury, etc.) that is earned, accounted for and used in accordance with established procedures. The cost of such leave must be a liability of the LPA, must be equitably distributed to all activities, and the pro rata costs distributed to a federal-aid project must be representative of the amount that is earned and accrued while working on the project.
- Compensatory leave granted by the LPA in lieu of payment of overtime to eligible employees may be claimed for reimbursement if accrued and granted under established policies on a uniform basis. Such leave costs must meet the criteria discussed in paragraph (a) of this section.

- Costs for other leave of a similar nature which may be unique to a specific LPA may also be reimbursed provided it meets the criteria set forth in paragraph (a) of this section.

**d. Social Security, Retirement and Other Payroll Benefits**

- Federal funds may participate in allocable costs incurred for social security, retirement, group insurance premiums and similar items applicable to salaries and wages of public employees engaged in work in federal-aid projects.
- The costs for such benefits must be a liability of the LPA and must meet the criteria set forth in paragraph (a) of this section.

For specific forms and processes used for reimbursement purposes, contact the Regional Local Agency Liaison.

**C.4. Eligible Costs**

Classifications of work programmed with FHWA and eligible for federal-aid include the following.

**a. Preliminary Engineering**

Preliminary Engineering work, including the following activities, is generally eligible for federal-aid:

- Design
- Surveying and mapping
- Identifying environmental impacts
- Developing environmental mitigation
- Performing test holes
- Performing foundation investigations
- Preparing plans, specifications and estimates (PS&E)
- Centerline and right of way plan preparation
- Incidental construction staking (to the extent such staking is necessary to review construction plans)
- Other related preliminary work

Preliminary Engineering work may also include traffic counts, studies undertaken to determine traffic demands, holding of public hearings, preparation of right of way cost estimates, legal and other costs incidental to the location and design of a highway project necessitating the acquisition of right of way thereon up to but not including the appraisal of individual parcels for

acquisition purposes. These engineering costs are generally incurred prior to the beginning of construction.

During the construction phase of a project when a major change takes place that requires additional design or preliminary engineering efforts, the appropriate job may be reopened on a case-by-case basis after approval from FHWA.

Also, any construction staking performed in advance of the award should be charged to construction engineering, not preliminary engineering.

#### **b. Acquisition of Right of Way**

Activities related to the acquisition of right of way are participating functions such as the following:

- Continued preparation of right of way plans
- Appraisal for parcel acquisition
- Review of appraisals
- Preparation for and trial of condemnation cases
- Management of properties acquired
- Furnishing of relocation advisory assistance
- Other related labor expenses

Other items related to right of way that are generally participating, including the following:

- Excess land (appraised value) including uneconomic remnants
- Improvements (appraised salvage value)
- Right of way acquired after certification by the LPA that right of way necessary for a designated federal-aid highway project has been acquired
- Judgments in condemnation cases that are not appealed when the attorney's closing report indicated a basis for appeal, but the amount in excess of the review appraiser's determination of value is nonparticipating
- Landowner costs
  - Attorney fees
  - Witness fees
  - Expert witness fees

- Similar costs to a landowner based on value of the services received and are paid by the LPA in connection with acquisition of right of way, regardless of whether such costs are included in court judgments or court costs in litigated condemnation cases, e.g., statutory evaluation allowance.

#### **c. Construction Engineering**

Construction Engineering is generally considered participating and might include the following activities:

- Construction supervision
- The inspection of construction and related mechanical aspects (e.g., staking) necessary to review construction plans together with those staking activities necessary for the LPA to control construction operations.
- Testing of materials incorporated into construction, checking shop drawings and measurements for and preparations of progress and final estimates and as-built drawings.

Construction engineering costs are generally incurred only after approval of the PS&E.

Construction engineering costs are also incurred prior to the following dates:

- The completion date of the final contract pay estimate and its submission to the contractor.
- The final date of charges for required material testing.
- The completion date of the separation of contract cost by code type, location, etc., whichever is applicable to that portion of the construction engineering phase involved.

#### **d. Highway Planning**

Highway planning includes the orderly and continuing assembly and analysis of information about highways, such as the history of highway development and their extent, dimensions and conditions, use, economic and social effects, costs and future needs. For planning activities to be participating and therefore funded with Surface Transportation Block Grant Program (STBG) funds, they must be part of ODOT's Unified Planning Work Program or the Metropolitan Planning Organization's (MPO's) annual work program for planning within a MPO boundary. Normally these are not standalone projects.

#### **e. Research and Development**

Research and development involves the search for more complete knowledge of the characteristics of the highway system and translating research results into practice. For research and development activities to be participating and therefore funded with STBG funds,

they must be part of ODOT's Unified Planning Work Program or the MPO's annual work program for planning within an MPO boundary. Normally these are not standalone projects.

**f. Administrative Settlement Cost – Contract Claims**

Services related to the review and defense of claims against federal-aid projects are, in most cases, participating functions.

**g. Miscellaneous Functions**

Costs incurred for other activities which are properly attributable to, and for the benefit of, federal-aid projects but are not assignable to any of the previously defined functions might be considered participating functions.

**h. Construction Costs for Other than Contractor Payments**

The following types of construction costs are generally authorized participating costs:

- Royalty expenses for material furnished by the LPA that are used by the contractor.
- Temporary signs, traffic control labor, traffic control devices and temporary illumination furnished by the LPA (the initial basic cost of traffic control devices purchased for use on the project is an authorized participating cost. Federal participation will not be requested for used items furnished by the LPA).
- Striping and pavement marking work performed by local forces.

Other items not specifically identified in this list such as construction engineering costs, material furnished by the LPA, work performed by local forces, are eligible for participation in accordance with the requirements of this chapter.

**C.5. Participating Cost Criteria**

Although some expenditure categories are not mentioned specifically in 23 CFR 140, Subpart I as eligible for federal participation, local agencies wishing to seek federal participation may request approval from the FHWA prior to billing. The expenditures that relate to the federal-aid project should be well identified through proper documentation.

The following criteria must be met for charges to be considered participating when charged directly to a federal-aid project:

- The work must be programmed with FHWA.
- The costs must have been incurred after the date of FHWA authorization to proceed with the work.
- The costs must be wholly for the benefit of the project being charged, e.g., labor performed directly for that project, supplies used up in the course of a project, etc.



## **C.6. Allowable Costs Criteria**

The list of items that could be included as allowable costs are within 2 CFR 200.

Some examples of participating costs for federal-aid projects include, but are not limited to the following items:

### **a. Labor**

Costs to assess project impacts, develop alternatives, design, and survey, prepare plans, appraise right of way, inspect construction activities, audit agreements, etc.

### **b. Travel and Per Diem**

Travel costs for employees involved in any participating activity related to the project.

### **c. Materials**

Costs for materials incorporated into a federally approved project.

### **d. Supplies**

Costs for supplies that are purchased and consumed entirely on a federally approved project. Such supplies might include: cloth tape, cylinder molds, drafting supplies, film (including costs related to developing and printing), hubs, paint (marking spray), stakes, royalty on materials and initial or new costs of temporary traffic control devices.

### **e. Services**

Material testing, document reproduction, mapping, computer and equipment usage charges may be participating, but the costs will be based upon rates set by FHWA.

## **C.7. Unallowable or Ineligible Costs**

Unallowable costs include those costs identified in 2 CFR 200 such as the following items.

### **a. Bad Debts**

Any losses arising from uncollectible accounts and other claims and related costs are not allowable.

### **b. Contingencies**

Contributions to a contingency reserve or any similar provisions for unforeseen events are unallowable.

### **c. Contributions and Donations**

Donations to a project are unallowable.

**d. Entertainment**

Costs of amusements, social activities and incidental costs relating thereto, such as meals, beverages, lodgings, rentals, transportation and gratuities, are unallowable.

**e. Fines and Penalties**

Costs resulting from violations of or failure to comply with federal, state and local laws and regulations are unallowable.

**f. Governor's Expenses**

The salaries and expense of the state office of the governor or the chief executive of a political subdivision are considered a cost of general state or local government and are unallowable.

**g. Interest and Other Financial Costs**

Interest on borrowings (however represented), bond discounts, cost of financing and refinancing operations and legal and professional fees paid in connection therewith, are unallowable except when authorized by federal legislation.

**h. Legislative Expenses**

Salaries and other expenses of the state legislature or similar local governmental bodies, such as county supervisors, city councils, school boards, etc., whether incurred for purposes of legislation or executive direction, are unallowable.

**i. Under-recovery of Costs under Grant Agreements**

Any excess of cost over the federal contribution under one grant agreement is unallowable under other grant agreements.

**D. UTILITY RELOCATIONS, ADJUSTMENTS AND REIMBURSEMENT**

Federal participation for utility relocations is subject to the provisions of 23 CFR 645, Subpart A.

There are four eligibility criteria that are presented in 23 CFR 645, Subpart A. Federal Funds may aid in relocation costs necessitated by highway construction if any one of the four criteria are met:

- The utility has a property interest in its present location.
- The State has some legal or legislative authority to pay for relocation costs.
- The Utility is municipally owned and occupies public right of way.

- The utility relocation involves implementing safety corrective measures to reduce roadside hazards of utility facilities to highway users.

Another website that provides a more detailed description of utility relocation reimbursement is operated by the FHWA. This website provides clear, detailed descriptions of the CFRs and is very helpful on this subject.

Resources:

- [FHWA Utility Program](#)
- [FHWA Program Guide on Utility Relocation](#)

For additional information regarding utility relocation see Chapter 13, Utility and Railroad Programs, in this LAG for Certified LPAs.

## E. REIMBURSEMENT FOR RAILROAD WORK

Costs must be incurred per 23 CFR 646, Subpart B and will be reimbursed in accordance with 23 CFR 140, Subpart I.

Further details regarding railroad work is available in Chapter 13, Utility and Railroad Programs, in this LAG for Certified LPAs.

## F. QUARTERLY REPORTS

FHWA requires ODOT to report on the “total project costs” for each federal-aid project, including costs that are state or locally funded or ineligible for federal reimbursement. ODOT’s supplemental project agreements require that LPAs “report the final cost of each phase of the project at the completion of each phase, as well as the Total Project Cost at the end of the Project” to the ODOT Certification mail box, with a copy to ODOT Regional Local Agency Liaison. In addition, ODOT is required to collect and report contract award and payment information to FHWA.

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For Certified LPA projects, project cost and contract payment information is collected through a quarterly reporting process.

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Quarterly reports are required on all federal-aid projects undertaken by Certified LPAs.

Quarterly, throughout the life of the project and at the end of the project, the Certification Program Office will send all Certified LPAs project-specific Certified Local Public Agency Quarterly Reports form 734-5034 and ODOT-provided information needed to complete that quarter’s report for each project.

Certified LPAs shall complete and submit Quarterly Report form 734-5034 for each active project according to the form instructions. Quarterly Reports are submitted to the ODOT Certification mail box, with a copy to the ODOT Local Agency Liaison.

A sample of this form, instructions, and tutorial videos on how to complete the forms are located on the Certification Program webpage under Compliance – Forms & Guidance.

SUPERSEDED

## Chapter 6. NEPA and Environmental Processes

### A. OVERVIEW

The National Environmental Policy Act (NEPA) is triggered for projects in the Federal-Aid Highway Program (FAHP) either through Federal Highway Administration (FHWA) funding or when an approval from the FHWA is required (such as an interstate access approval or interchange approval). NEPA typically serves as an “umbrella” process for meeting all environmental review requirements.

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For Oregon, NEPA responsibilities on FHWA-funded or approved projects cannot be delegated to nor managed by the local public agency (LPA) (whether Certified or not) as per the FHWA Stewardship and Oversight agreement, and the programmatic categorical exclusion (PCE) agreement, between FHWA and ODOT.

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This chapter focuses on FHWA NEPA procedures. Many federal agencies, including FHWA, developed their own implementing regulations and guidance. FHWA’s NEPA regulations primarily are codified in 23 CFR 771. If multiple federal agencies are involved in a proposed project, the federal agencies must determine NEPA responsibilities of each agency, including lead agency, early in project development.

Resources of concern are discussed in ODOT’s Environmental Prospectus, which is typically prepared or reviewed and approved by the Region Environmental Coordinator (REC). The Environmental Prospectus also documents a preliminary NEPA classification as either a programmatic categorical exclusion (PCE), a categorical exclusion (CE), an environmental assessment (EA), or an environmental impact statement (EIS).

Each environmental discipline is discussed below, followed by links to additional informational resources.

FHWA or ODOT approval of NEPA decisions for FHWA-funded projects is not a guaranteed approval of any other local, state, or federal requirement.

#### Resources:

- [ODOT NEPA Program](#)
- [ODOT NEPA Manual](#)
- [Statement of Work Library: Task Language Templates for Certified Local Agency Projects](#)

General NEPA and environmental information including templates, forms, and procedure manuals can be found on the ODOT NEPA Program website. LPAs must use the environmental statement of work template linked in the Statement of Work Library for certified LPAs (see link in Resource box and in Section D of this manual). Environmental statements of work for LPA federal-aid projects must be approved by ODOT Region Environmental staff. If the LPA needs discipline specific language not included in the LPA statement of work template, the LPA should

contact their Regional Local Agency Liaison and work with ODOT Region Environmental staff to identify appropriate templates and resources. Templates and forms should be downloaded from the ODOT website for each new project, because templates and forms are updated regularly to incorporate the newest regulatory and policy information.

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All environmental documents produced for a FHWA-funded LPA project by the LPA or their consultant are required to be reviewed and approved by ODOT Region Environmental staff to ensure the LPA's Federal-aid Highway project complies fully with FHWA NEPA and other federal and state agency environmental regulations.

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Environmental document preparation needs and review times should be established at project kickoff, and then coordinated with ODOT Region Environmental staff during the design and construction phases of the FHWA-funded local project as the environmental permitting processes progress and evolve.

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**IMPORTANT NOTE ON ADVANCE INVESTIGATION WORK:** Environmental permitting and compliance must be considered in advance of geotechnical drilling or other ground disturbing work, which may happen very early in the project lifecycle. Necessary environmental permits include: wetlands, Endangered Species Act (ESA), and archaeological clearances as relevant.

All environmental clearances, permits, and approvals must be coordinated with the ODOT Region Environmental Coordinator (REC) and Region Local Agency Liaison (LAL) to ensure the appropriate level of effort (i.e., project scope, schedule, and budget) is identified early on in order to meet the needs of the project. In addition, ODOT Archaeologists must conduct required tribal consultation in advance of the geotechnical drilling work; coordinating with the REC and LAL will ensure that this happens.

Geotechnical drilling or other ground-disturbing work shall not proceed until all relevant environmental clearances, permits, and approvals are obtained and "in hand".

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**LPA FHWA-funded/approved NEPA / Environmental Approval Responsibilities**

Discipline/Resource	Required Process, Permit, Clearance, or Approval	Responsibility
Right-of-Way	<ul style="list-style-type: none"> <li>Issue Right of Entry permit for environmental studies</li> <li>Prepare impact assessment and findings</li> <li>After NEPA approval: Perform negotiations/acquisition process</li> </ul>	<ul style="list-style-type: none"> <li>ODOT/LPA/CONS*</li> <li>LPA/CONS*</li> <li>ODOT/LPA/CONS*</li> </ul>
Land Use	<ul style="list-style-type: none"> <li>Prepare impact assessment and findings</li> <li>Prepare Findings of Consistency with other plans</li> <li>Obtain Goal Exceptions (when required)</li> <li>After NEPA approval: Obtain local land use permits</li> </ul>	<ul style="list-style-type: none"> <li>LPA/CONS*</li> <li>LPA/CONS*</li> <li>LPA/CONS**</li> <li>LPA/CONS**</li> </ul>
Socioeconomics	<ul style="list-style-type: none"> <li>Prepare impact assessment and findings</li> </ul>	<ul style="list-style-type: none"> <li>LPA/CONS*</li> </ul>
Environmental Justice	<ul style="list-style-type: none"> <li>Prepare impact assessment and findings</li> <li><b>Coordinate with FHWA (if there may be disproportionate impacts )</b></li> </ul>	<ul style="list-style-type: none"> <li>LPA/CONS*</li> <li>ODOT</li> </ul>
CWA Section 404 / Wetlands / Waters	<ul style="list-style-type: none"> <li>Prepare impact assessment and findings</li> <li>After NEPA approval: Obtain 404 Corps/DSL permit</li> </ul>	<ul style="list-style-type: none"> <li>LPA/CONS*</li> <li>LPA/CONS**</li> </ul>
Water Quality	<ul style="list-style-type: none"> <li>Prepare impact assessment and findings</li> <li>After NEPA approval: Obtain DEQ certification permit</li> <li>After NEPA approval: Prepare and submit Stormwater Plan to DEQ</li> </ul>	<ul style="list-style-type: none"> <li>LPA/CONS*</li> <li>LPA/CONS**</li> <li>LPA/CONS*</li> </ul>
ESA / T&E Species	<ul style="list-style-type: none"> <li>Prepare impact assessment and findings</li> <li>Propose ESA Effects Determination(s)</li> <li>Use FAHP ESA programmatic agreement processes</li> <li><b>If FAHP PA is unavailable, obtain Biological Opinion or other permit coverage (from NMFS/USFWS)</b></li> </ul>	<ul style="list-style-type: none"> <li>LPA/CONS*</li> <li>LPA/CONS* w/ ODOT</li> <li>LPA/CONS* w/ ODOT</li> <li>FHWA</li> </ul>
NHPA Section 106 (Cultural Resources)	<ul style="list-style-type: none"> <li>Obtain permits for surveys on federal/private lands</li> <li>Perform field surveys, reconnaissance, research</li> <li>Prepare impact assessment and findings</li> <li>Make Determinations of Eligibility</li> <li>Prepare Findings of Effect</li> <li>Consult with SHPO for concurrence</li> </ul>	<ul style="list-style-type: none"> <li>ODOT</li> <li>LPA/CONS*</li> <li>LPA/CONS*</li> <li>ODOT, for FHWA</li> <li>ODOT, for FHWA</li> <li>ODOT, for FHWA</li> </ul>
Visual Resources	<ul style="list-style-type: none"> <li>Prepare impact assessment and findings</li> </ul>	<ul style="list-style-type: none"> <li>LPA/CONS*</li> </ul>
Section 4(f)	<ul style="list-style-type: none"> <li>Prepare impact assessment</li> <li>Prepare appropriate Section 4(f) document</li> <li><b>Concurrence on Section 4(f) considerations and any effects findings</b></li> </ul>	<ul style="list-style-type: none"> <li>LPA/CONS*</li> <li>LPA/CONS* ODOT</li> <li>FHWA</li> </ul>

Discipline/Resource	Required Process, Permit, Clearance, or Approval	Responsibility
Section 6(f)(3)	<ul style="list-style-type: none"> <li>• Prepare impact assessment and draft PD/ESF (NPS)</li> <li>• Survey and mapping</li> <li>• After NEPA approval: ROW negotiations/acquisitions</li> <li>• Obtain Section 6(f)(3) Conversion Approval from NPS</li> </ul>	<ul style="list-style-type: none"> <li>• LPA/CONS*</li> <li>• LPA/CONS*</li> <li>• LPA/CONS*</li> <li>• ODOT or LPA</li> </ul>
Air Quality	<ul style="list-style-type: none"> <li>• Prepare impact assessment</li> <li>• Document regional conformity w/ MPO</li> <li>• Prepare project-level conformity analysis</li> <li>• After NEPA approval: Obtain Indirect Source permit (Lane Co.) if needed</li> </ul>	<ul style="list-style-type: none"> <li>• LPA/CONS*</li> <li>• LPA/CONS*</li> <li>• LPA/CONS*</li> <li>• LPA/CONS**</li> </ul>
Noise	<ul style="list-style-type: none"> <li>• Prepare impact assessment and findings</li> <li>• Perform noise study(s)</li> <li>• After NEPA approval: Perform surveys for recommended abatement</li> </ul>	<ul style="list-style-type: none"> <li>• LPA/CONS*</li> <li>• LPA/CONS*</li> <li>• LPA/CONS*</li> </ul>
Hazardous Materials	<ul style="list-style-type: none"> <li>• Prepare impact assessment and findings</li> <li>• Perform testing w/ findings, recommended further actions</li> <li>• After NEPA approval: Containment and cleanup plan(s)</li> </ul>	<ul style="list-style-type: none"> <li>• LPA/CONS*</li> <li>• LPA/CONS*</li> <li>• LPA/CONS**</li> </ul>
Tribal Coordination	<ul style="list-style-type: none"> <li>• Tribal consultation and coordination</li> </ul>	<ul style="list-style-type: none"> <li>• ODOT, for FHWA</li> </ul>
Public Outreach	<ul style="list-style-type: none"> <li>• Stakeholder involvement</li> <li>• Public meetings and involvement</li> </ul>	<ul style="list-style-type: none"> <li>• LPA/CONS*</li> <li>• LPA/CONS*</li> </ul>
Environmental Commitments	<ul style="list-style-type: none"> <li>• Capture/document environmental commitments</li> <li>• Database entry and track environmental commitments</li> </ul>	<ul style="list-style-type: none"> <li>• LPA/CONS*</li> <li>• ODOT</li> </ul>

LPA = Local Public Agency

CONS = Consultants hired by the LPA

**After NEPA approval:** indicates a process that is done after NEPA approval. All other items are required for FHWA NEPA Approval. \* **ODOT needs to review and concur** on any deliverable that the LPA/Consultant prepares. \*\* **ODOT needs a copy of the final documentation** that the LPA/Consultant prepared.

### A.1. Project Environmental Scoping and NEPA Classification

The Environmental Prospectus together with the Local Agency Technical Scope Sheet (discussed previously in Section C, Chapter 3 of this manual) document potential project impacts to determine the level of environmental analysis that will be required to complete NEPA and environmental processes. Project classification preliminarily identifies which type of NEPA document will be completed. If the scope of a project changes after a project has been scoped, then different and potentially additional environmental analysis may be required. Changes in project scope could result in a change to the NEPA classification of the project.



The Environmental Prospectus is the environmental scoping document that identifies existing environmental resources, constraints and probable processes that could be required for the project. For the most recent version of the Environmental Prospectus, refer to the ODOT NEPA Program website.

**Resources:**

- [Local Agency Technical Scope Sheet \(734-5151\)](#)
- [Environmental Prospectus \(734-5198\)](#)

A project will be classified as needing either a Programmatic Categorical Exclusion (PCE), a Categorical Exclusion (CE), an Environmental Assessment (EA), or an Environmental Impact Statement (EIS), depending upon what is known about the significance of the proposed project's potential environmental impacts, as documented in the Environmental Prospectus. Generally, EA and EIS NEPA processes take longer to complete than the NEPA process for a CE or PCE. *FHWA primarily relies on ODOT recommendations for NEPA classifications, and only ODOT staff can approve NEPA classifications for LPA FHWA-nexus projects.*

ODOT and FHWA have developed templates for CEs and PCEs that are used for NEPA documentation. Documentation for EA and EIS projects is determined on a project-by-project basis. ODOT and FHWA have a PCE Agreement in place, which delegates NEPA approval to ODOT on behalf of FHWA for CEs that fall within the impact thresholds of the agreement.

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*FHWA primarily relies on ODOT recommendations for NEPA classifications, and only ODOT staff can approve NEPA for LPA FHWA-nexus projects.*

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### **a. Environmental Impact Statement (EIS)**

EIS projects are likely to result in significant impacts to the environment by virtue of their impacts to land use, planned growth, development patterns, traffic volumes, travel patterns, transportation services, and natural and cultural resources, or are projects that are likely to create significant public controversy.

### **b. Environmental Assessment (EA)**

For actions where the significance of the project's environmental impact is not clearly established, an EA is prepared to assist in determining the extent of environmental impacts and to determine whether the preparation of an EIS is appropriate. If an EA results in a Finding of No Significant Impact (FONSI) then an EIS is not required. The assumption of a FONSI is not pre-supposed during any of the EA activities. Consultant contracts, project schedules and information shared with the public must reference "completion of the NEPA process".

### c. Categorical Exclusion (CE) and Programmatic CEs (PCEs)

CE and PCE projects are actions that generally do not individually or cumulatively result in significant environmental impacts. *Most LPA FHWA-funded/approved projects are CE and PCE projects.*

Per 23 CFR 771.117, Categorical Exclusions are actions which:

- Do not induce significant impacts to planned growth or land use for the area
- Do not require the relocation of significant numbers of people
- Do not have a significant impact on any natural, cultural, recreational, historic or other resource
- Do not involve significant air, noise, or water quality impacts
- Do not have significant impacts on travel patterns
- Do not otherwise, either individually or cumulatively, have any significant environmental impacts
- Do not have significant environmental impacts
- Do not have substantial controversy on environmental grounds
- Do not have significant impact on properties protected by Section 4(f) of the DOT Act or Section 106 of the National Historic Preservation Act
- Do not have inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action

### A.2. NEPA Re-evaluation

If the scope of a project changes, the NEPA documentation previously completed may need to be updated to account for the changes in the project. A re-evaluation of any previous or current NEPA decision document is required for any changes or new information if any of the following conditions exist:

- The scope of a project changes enough to create significant additional or different impacts, than those disclosed in the original NEPA document
- Three years or more have passed since a major project approval (environmental document, final design, right of way acquisition or construction)
- A change in the regulatory environment, such as different species or habitat being listed as threatened or endangered
- Single or cumulative conditions change, such as significant changes in assumed land uses, population, employment or traffic conditions

**Re-evaluation requirements are determined on a project-by-project basis, in close consultation between ODOT and FHWA.** The extent of the re-evaluation can vary greatly depending upon the circumstances. In some cases, e-mail correspondence may be adequate to meet the re-evaluation requirements; but in other cases, a re-evaluation document may be a more extensive written report.

Resources:

- [ODOT Geo-Environmental website](#) (for NEPA and environmental forms, templates and procedures)
- [National Environmental Policy Act](#)
- [Council on Environmental Quality Regulations for Implementing NEPA](#)
- [FHWA NEPA Implementing Regulations \(23 CFR 771\)](#)
- [FHWA Section 4\(f\) Regulations \(23 CFR 774\)](#)
- [FHWA/FTA Environmental Impact and Related Procedures](#)
- [FHWA NEPA Re-evaluation Guidance](#)
- [FHWA Technical Advisory T6640.8A](#) Guidance from 1987 for preparing and processing NEPA and Section 4(f) documents
- [FHWA Eco-Logical Summary of Federal Laws & Requirements](#)
- [ODOT-FHWA EIS Template](#)

## B. RIGHT OF WAY

### B.1. Overview

Right of way impacts include all public and private property needed for the project on a temporary or permanent basis. Right of way impacts include potential residential and business displacements, as well as permanent and temporary easements. The right of way requirements for a project can be a substantial factor in considering the appropriate NEPA classification (PCE, CE, EA or EIS).

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**Professional Qualifications** – Recommend that someone with NEPA experience working with the Design Team identify and document potential right of way needs and potential right of way impacts

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### B.2. Regulatory Framework

The use or acquisition of particular properties may trigger other environmental considerations such as Section 106 of the National Historic Preservation Act (NHPA); Section 6(f) of the Land and Water Conservation Act; and, Section 4(f) of the Department of Transportation Act. The acquisition of right of way is covered by ODOT's *Right of Way Manual*, which is consistent with

*Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970*, as amended. The acquisition of right of way is covered by ODOT's Right of Way Manual, which is consistent with Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended. Additional right of way information is located in Section C, Chapter 7 of this manual.

For CEs and PCEs, follow the appropriate ODOT NEPA Manual guidance section(s). For CE/PCE document ROW narratives, see 426.1 of the ODOT NEPA Manual.

### **B.3. Completed Deliverable**

Depending upon the scope of potential impacts, a technical report may be required. The estimated number of residential and business displacements will be included in the NEPA documentation. The estimated right of way impact in acres will be included in the NEPA documentation.

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#### **Is a specific template required?**

- For CEs/PCEs, use CE/PCE forms.
  - For EISs, use EIS template.
  - For EAs, work closely with LAL.
- 

## **C. LAND USE**

### **C.1. Overview**

Since 1973, Oregon has maintained a strong statewide program for land use planning. The foundation of that program is a set of 19 Statewide Planning Goals. The goals express the state's policies on land use and on related topics, such as citizen involvement, housing, and natural resources. Oregon's planning laws strongly emphasize coordination -- keeping plans and programs consistent with each other, with the goals, and with acknowledged local plans.

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**Professional Qualifications** – Recommend that someone with NEPA experience working together with the Design Team and LPA Land Use Department to identifying existing and planned land uses and documenting potential impacts to land use be engaged in project scoping.

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### **C.2. Regulatory Framework**

Transportation projects have the potential to affect land use and growth patterns, local traffic circulation, the goals of local Comprehensive Plans, Oregon Statewide Planning Goals, Exclusive Farm Use property and Coastal Management Zones. OAR 731-015-0075 and 731-015-0085 require ODOT and LPAs who are the sponsors of FHWA-funded/approved projects to consider land use impacts during NEPA project development. OAR 731 Division 15 establishes the

procedures used by the Department of Transportation to implement the provisions of its State Agency Coordination Program which assure that Department land use programs are carried out in compliance with the

statewide planning goals and in a manner compatible with acknowledged comprehensive plans, as required by ORS 197.180 and OAR 660, Divisions 30 and 31.

**Resources:**

- [Oregon Statewide Planning Goals](#)
- [State Agency Coordination Rule \(OAR 731-015-0005 through 0135\)](#)

For CEs and PCEs, follow the appropriate ODOT NEPA Manual guidance section(s). For CE/PCE document Land Use narratives, see 426.2 of the ODOT NEPA Manual.

### **C.3. Completed Deliverable**

Depending upon the scope of potential impacts a technical report may be required. The NEPA documentation will vary with the type of NEPA document and the context and intensity of land use changes associated with the project. The NEPA document will describe any state Goal Exception requirements and special land use considerations, such as project compatibility with acknowledged comprehensive plans as well as the need for local permits.

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#### **Is a specific template required?**

- For CEs/PCEs, use CE/PCE forms.
- For EISs, use EIS template.
- For EAs, work closely with LAL.

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## **D. SOCIO-ECONOMIC**

### **D.1. Overview**

Potential impacts to neighborhoods, community cohesion, civic groups, infrastructure, environmental justice populations, and businesses should be considered early in planning and further identified during project scoping. The socio-economic benefits and adverse effects of implementing a proposed project should be captured in the NEPA documentation. Environmental justice has additional considerations outside of socio-economic and is covered in more detail in the following section.

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**Professional Qualifications** – Recommend that someone with NEPA experience in identifying potential socio-economic resources and documenting potential impacts be engaged in project scoping.

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## D.2. Regulatory Framework

Socio-economic impacts are those that should be broadly captured under the NEPA umbrella.

For CEs and PCEs, follow the appropriate ODOT NEPA Manual guidance section(s). For CE/PCE document socio-economic narratives, see 426.3 of the ODOT NEPA Manual.

### Resources:

- [Community Impact Assessment website](#)
- [NCHRP 456 Guidebook for Assessing the Social and Economic Effects of Transportation Projects](#)

## D.3. Completed Deliverable

At the completion of the NEPA process, the socio-economic documentation should capture the benefits of the project when constructed and summarize known socio-economic impacts resulting from the project. If construction will result in a closure of a transportation facility, describe estimated closure duration and any potential impacts including detours. Specifically address potential business impacts and if the impacts are permanent or temporary. Address detour length in miles or time in minutes and impacts from those detours to the community, both to residents and visitors.

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### Is a specific template required?

- For CEs/PCEs, use CE/PCE forms.
- For EISs, use EIS template.
- For EAs, work closely with LAL.

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## E. ENVIRONMENTAL JUSTICE

### E.1. Overview

Environmental justice (EJ) requires federal agencies to focus attention on the environmental and human health conditions in minority and low-income communities, enhance efforts to assure nondiscrimination in Federal programs affecting human health and the environment, and promotes meaningful opportunities for access to public information for public participation in proposed projects which have the potential to impact minority and low-income communities and their environment.

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**Professional Qualifications** – Recommend that someone with NEPA experience in identifying potential environmental justice impacts be engaged in scoping and documenting potential impacts.

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## E.2. Regulatory Framework

Executive Order 12898 was signed requiring each federal agency to make environmental justice part of its mission. In order to comply with environmental justice requirements, agencies are required to identify and address disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations.

In 1997, the United States Department of Transportation (USDOT) issued its DOT Order to Address Environmental Justice in Minority Populations and Low-Income Populations to summarize and expand upon the requirements of Executive Order 12898 on environmental justice. The FHWA issued an agency-level Environmental Justice Order in 1998 further defining the responsibilities for FHWA-funded/approved projects.

For CEs and PCEs, follow the appropriate ODOT NEPA Manual guidance section(s). For CE/PCE document Environmental Justice narratives, see 426.4 of the ODOT NEPA Manual.

### Resources:

- [FHWA Environmental Justice website](#)
- [Executive Order 12898](#)
- [DOT Order to Address Environmental Justice in Minority Populations and Low-Income Populations](#)
- [FHWA Environmental Justice Order](#)

## E.3. Completed Deliverable

Depending upon the scope of potential impacts a technical report may be required. Documentation on how impacts were minimized or avoided should be maintained throughout the development of the project. The NEPA documentation will include a clear Environmental Justice finding pursuant to Executive Order 12898, following the process outlined in the 2011 FHWA EJ guidance.

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### Is a specific template required?

- For CEs/PCEs, use CE/PCE forms.
  - For EISs, use EIS template.
  - For EAs, work closely with LAL.
- 

Potential EJ Findings Include:

- **Example statement of a determination of no adverse impacts because no EJ populations are present:** No minority or low-income populations have been identified that would be adversely impacted by the proposed project as determined above. Therefore, in accordance with the provisions of E.O. 12898 and FHWA Order 6640.23,



no further EJ analysis is required.

- **Example statement of a determination of no disproportionately high and adverse effects:** Based on the above discussion and analysis, the XYZ alternative(s) will not cause disproportionately high and adverse effects on any minority or low-income populations in accordance with the provisions of E.O. 12898 and FHWA Order 6640.23. No further EJ analysis is required.
- **Example statement of a determination of adverse effects that are not disproportionately high:** Based on the above discussion and analysis, the XYZ alternative(s) will cause adverse effects on {name EJ population}; however, those effects are not disproportionately high. Therefore, in accordance with the provisions of E.O. 12898 and FHWA Order 6640.23, no further EJ analysis is required.
- **Example statement of a determination of disproportionately high and adverse effects\*:** Based on the above discussion and analysis, the XYZ alternative(s) will cause disproportionately high and adverse effects on {name EJ population}. {Summarize benefits of the project to the EJ populations, summarize mitigation considered but not incorporated, summarize practicable mitigation commitments, summarize how the EJ populations were involved in the decision-making process, summarize input received from EJ populations and how that input was considered.} **\*FHWA should be consulted any time this finding is considered.**

## F. WETLANDS AND WATERWAYS

### F.1. Overview

Wetlands provide important functions and values, including groundwater recharge, flood flow attenuation, water quality improvements, erosion control and shoreline stabilization, as well as fish and wildlife food and habitat. Impacts to wetlands and waters can occur due to the placement or discharge of fill material, or other alterations including material removal. Some local jurisdictions require protection of wetland buffers. When wetlands are adversely affected by a transportation project, compensation for the impacts by restoring, enhancing or creating wetlands must be made in accordance with a variety of laws and regulations.

For CEs and PCEs, follow the appropriate ODOT NEPA Manual guidance section(s). For CE/PCE document Wetlands & Waterways (including U.S. Coast Guard coordination) narratives, see 426.5 of the ODOT NEPA Manual. For CE/PCE document Floodways & Floodplains narratives, see 426.6 of the ODOT NEPA Manual.

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**Professional Qualifications** – Recommend that someone with NEPA and soils experience in identifying potential wetland and waterway resources and impacts to those resources be engaged in scoping and documenting potential impacts.

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## F.2. Regulatory Framework

Wetlands and waterways are regulated under section 10 of the Rivers and Harbors Act, section 404 of the Clean Water Act, and the Oregon Removal-Fill Law (ORS 196.800-196.990). Wetlands located within the project area that may be impacted should be delineated in accordance with the 1987 U.S. Army Corps of Engineers Wetland Delineation Manual, and any applicable regional

supplements. Wetland delineations are submitted to the Oregon Department of State Lands (DSL) and the US Army Corps of Engineers (USACOE) for review and concurrence before submitting the permit application. Permit applications are submitted to both the DSL and the USACOE.

When impacts exceed regulatory thresholds, a permit must be obtained by the LPA from the USACOE and the DSL before impacting a wetland. Activities that occur below the ordinary high water mark of jurisdictional non-tidal waterways (i.e., intermittent streams, perennial streams, rivers, lakes, ponds and other water bodies), or that occur below the highest tide elevation on tidal waterways, also require permits from the USACOE and DSL.

Projects that affect mitigation site wetlands must double the mitigation ratio when replacing such wetlands as per the Removal-Fill Law. The ratios for compensatory wetland mitigation vary depending on the type of mitigation being conducted. For each acre of wetland impacted, the DSL requires that one acre of wetland be restored, or that 1.5 acres of wetlands be created, or that 3 acres of wetlands be enhanced.

## F.3. Completed Deliverable

Depending upon the scope of potential impacts a technical report may be required. NEPA documentation will include a summary of the amount of known impacts, and the type of impacts and required mitigation. NEPA documentation will indicate if a nationwide or individual permit is needed. When individual permits are required, the NEPA documentation will include a summary of coordination with the USACOE regarding the designation of the Least Environmental Damaging Practicable Alternative.

### Resources:

- [ODOT Geo-Environmental Wetlands Program](#)
- [Clean Water Act](#)
- [Oregon Removal/Fill Law](#)
- [1987 U.S Army Corps of Engineers Wetland Delineation Manual](#)

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### Is a specific template required?

- For CEs/PCEs, use CE/PCE forms.
  - For EISs, use EIS template.
  - For EAs, work closely with LAL.
-

## G. WATER QUALITY

### G.1. Overview

Waterways provide important functions and values that support people, fish, and wildlife and the environment within which they live. Water quality should be preserved, restored and maintained to ensure the chemical, physical, and biological integrity of the nation's waters by preventing point and nonpoint pollution sources, providing assistance to publicly owned treatment works for the improvement of wastewater treatment, and maintaining the integrity of wetlands.

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**Professional Qualifications** – Recommend that someone with NEPA experience in identifying potential water quality triggers and impacts be engaged in scoping and documenting potential impacts.

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### G.2. Regulatory Framework

The Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA), is the primary law covering water quality. Management of water quality on projects that require a US Army Corps of Engineers permit under Clean Water Act Section 404 must be reviewed and approved by the Oregon Department of Environmental Quality (DEQ) under the Clean Water Act Section 401 requirements. DEQ can also request to review and comment on an Oregon Department of State Lands

Removal/Fill permit. A water quality certification is the mechanism by which the State evaluates whether an activity meets water quality standards. Guidance on the development of a stormwater management plan can be found in the Oregon Department of Environmental Quality Stormwater Guidelines.

For Oregon Department of State Lands Removal/Fill permit, Oregon Department of Environmental Quality requires a stormwater management plan approval. Guidance to the management plan can be found in the Oregon Department of Environmental Quality Stormwater Guidelines.

Projects that require a Biological Assessment for potential impacts to aquatic listed Threatened or Endangered species must include a description of the stormwater management plan in the Biological Assessment if the project involves impervious area with stormwater discharges. The information required for a CWA 401 Certification is usually sufficient.

Resources:

- [ODOT Stormwater Management Program](#)
- [Clean Water Act Section 401](#)
- [Clean Water Act Section 404](#)
- [Oregon DEQ Stormwater Guidelines](#)
- [ODOT Water Resources](#)
- [ODOT Hydraulics Manual, Chapter 14](#)
- [Underground Injection Control \(UIC\) Program](#)

Projects using dry wells or injection wells to dispose of storm water are subject to regulation and permitting by the Underground Injection Control (UIC) program administered by the Oregon Department of Environmental Quality.

All FHWA-funded/approved projects must conform to the water quality mitigation requirements of ODOT Project Delivery Notice PD-05. Guidance on the selection and design of treatment facilities is available in ODOT Hydraulics Manual, Chapter 14.

For CEs and PCEs, follow the appropriate ODOT NEPA Manual guidance section(s). For CE/PCE document Water Quality narratives, see 426.7 of the ODOT NEPA Manual.

### **G.3. Completed Deliverable**

Depending upon the scope of potential impacts a technical report may be required. The NEPA documentation will include a summary of the stormwater treatment requirements. A stormwater management plan or a SLOPES notification form may be required. A stormwater management plan report template based on DEQ guidance is available on the ODOT Stormwater Management Program page.

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#### **Is a specific template required?**

- For CEs/PCEs, use CE/PCE forms.
  - For EISs, use EIS template.
  - For EAs, work closely with LAL.
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## **H. BIOLOGICAL RESOURCES**

### **H.1. Overview**

A variety of Federal and state laws focus on the conservation of fish and wildlife species and their habitat in the state of Oregon. These laws, along with ODOT policies, require the consideration of resource avoidance, protection, mitigation, and other measures needed to develop FHWA-funded/approved projects in concert with their natural environment. Biological resources include threatened, endangered and sensitive fish and wildlife species along with their habitats. Mitigation and monitoring requirements for native species establishment, with minimal invasive species interference may apply.

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**Professional Qualifications Requirement** – ODOT requires LPAs to assign ESA document preparation and Biological Assessment (BA) consultation work to consulting firms that retain at least one biologist who is pre-qualified by ODOT to write and review ESA effects determinations and their resulting documents, including individual BAs. To become an ODOT-qualified biologist, ODOT requires an individual to meet

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minimum educational requirements, to attend a training course, and to pass a written exam. ODOT requires qualified biologists to participate in a one-day re-qualification training every three years.

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## **H.2. Regulatory Framework**

All FHWA-funded/approved projects must comply with the Endangered Species Act (ESA). The National Marine Fisheries Service (NMFS) and the US Fish and Wildlife Service (USFWS) primarily manage the ESA. Section 7 of the ESA requires that federal action agencies consult with the Services to ensure that a proposed action is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. When a project is proposed in an area where endangered species or their habitat is located, an evaluation of the impact of that project to those species must be conducted.

### **Resources:**

- [ODOT Biology website](#)
- [Endangered Species Act](#)
- [Magnuson-Stevens Act](#)

Other Federal and state laws and regulations that must be considered include Magnuson-Stevens Act, Migratory Bird Treaty Act, Bald and Golden Eagle Protection Act, Oregon Endangered Species Act, and Oregon State Fish Passage.

For CEs and PCEs, follow the appropriate ODOT NEPA Manual guidance section(s). For CE/PCE document Biological narratives, see 426.8 of the ODOT NEPA Manual.

## **H.3. Completed Deliverable**

The deliverable varies depending upon the existence of threatened or endangered species or their habitat and the potential impacts to those species and their habitat. ESA clearance for USFWS and NMFS species may be documented separately for each agency's trust species. At least one of the following documents will be completed for each project unless a programmatic agreement is used: No Effect (NE) Determination; Not Likely to Adversely Affect (NLAA) letter of concurrence from the Services; or a Biological Opinion from the Services. Programmatic agreements offer an additional method of ESA compliance.

The Biological Opinion includes an Incidental Take Statement (ITS), mandatory terms, conditions, and conservation recommendations. The ITS will quantify the amount of a listed species or its designated critical habitat that may be taken during project implementation. Any take of a listed species or its habitat that is not covered under an ITS is a clear violation of the ESA. Incidental take statements are not provided for in NLAA or NE determinations. The ESA can carry civil and criminal penalties for violations.

### Is a specific template required?

**Yes.** ODOT has developed templates to document No Effect, and Determinations of Not Likely to Adversely Affect and Likely to Adversely Affect.

Other documentation may be required related to ODOT's FAHP ESA Programmatic Agreement.

Any forms, templates, and procedural guidance can be found on the ODOT Biology website.

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## I. SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT (CULTURAL RESOURCES)

### I.1. Overview

The Section 106 review process considers archaeological resources, traditional cultural properties and historic resources, and consultation with federally recognized Indian tribes.

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**Professional Qualifications Requirement** – Cultural resources documentation must be conducted by persons meeting the Secretary of the Interior's Professional Qualifications of 36 CFR part 61 Appendix A in the fields of archaeology, history, and architectural history. **\*\*ODOT Cultural Resources staff should be included in scoping and review of all FHWA-funded/approved LPA projects.\*\***

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### I.2. Regulatory Framework

Any project, activity, or program funded in whole or in part, under the direct or indirect jurisdiction of a federal agency, including those carried out on behalf of a federal agency, as well as those actions requiring a federal permit, license, or approval are considered to be an "undertaking," and are subject to the requirements of Section 106 of the National Historic Preservation Act (NHPA).

When cultural resources are identified, the resources will be evaluated to determine if they meet eligibility requirements for listing in the National Register of Historic Places. If the resources are eligible, the effects will be assessed to determine whether the project adversely affects these resources.

For CEs and PCEs, follow the appropriate ODOT NEPA Manual guidance section(s). For CE/PCE document Cultural Resource narratives, see 426.9 of the ODOT NEPA Manual.

#### Resources:

- [ODOT Archaeology website](#)
- [ODOT Historic Resources website](#)
- [Section 106 of the National Historic Preservation Act](#)

### I.3. Completed Deliverable

Section 106 findings for a project are made by FHWA. The Section 106 review process is complete when the State Historic Preservation Officer (SHPO) has concurred in writing with that finding.

ODOT may act on behalf of FHWA for purposes of fulfilling the procedural requirements of Section 106, including consultations and effects determinations. Although LPAs may hire consultants to do general research, field reconnaissance, and write impact assessments that consider Section 106 resources, LPAs (including certified LPAs) may not conduct consultations (with Tribes or with SHPO), make eligibility determinations, or make effects determinations on FHWA funded/approved projects.

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#### Is a specific template required?

**Yes.** The 2011 Section 106 Programmatic Agreement amongst ODOT, FHWA, SHPO and ACHP outlines the different types of documentation required for each type of Section 106 determination.

Also see the [ODOT Archaeology website for more information on archaeological requirements.](#)

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## J. VISUAL RESOURCES

### J.1. Overview

If any LPA FHWA- funded/approved project has the potential to affect visual resources, a Visual Impact Assessment may be required. Some examples of activities that may adversely affect visual resources include *introduction of a transportation facility into a rural or forested area, removal of vegetation, or addition of structures including bridges, walls, poles or cameras.* The level of analysis can range from no formal analysis to a complex analysis depending on the project features, the setting and the viewers. The analysis may require assessment of viewshed impacts from users of the transportation facility, as well as assessment of impacts the transportation facility may have on the viewshed.

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**Professional Qualifications** – Recommend that someone with NEPA experience in identifying visual resources and potential impacts be engaged in scoping and documenting potential impacts.

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### J.2. Regulatory Framework

Applicable statutes, regulations, and guidance that may apply to a project include, but are not limited to Scenic Byway designations, Wild and Scenic River Act, Columbia River Gorge National

Scenic Area Act, National Forest Management Plans, and Goal 5 resources identified in local comprehensive plans. Coordination with the agency or agencies of jurisdiction may be necessary to demonstrate compliance.

For CEs and PCEs, follow the appropriate ODOT NEPA Manual guidance section(s). For CE/PCE document Visual Resources narratives, see 426.10 of the ODOT NEPA Manual.

### **J.3. Completed Deliverable**

Depending upon the scope of potential impacts, a technical report may be required. A visual impact assessment will generally include “before” photographs and “after” simulations or sketches to demonstrate the likely visual resource effects.

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#### **Is a specific template required?**

- For CEs/PCEs, use CE/PCE forms.
  - For EISs, use EIS template.
  - For EAs, work closely with LAL.
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## **K. SECTION 4(F)**

### **K.1. Overview**

Section 4(f) references the 1966 U.S. DOT Act, which has since been codified in 23 CFR 774. Section 4(f) applies to all US Department of Transportation projects and stipulates that the Federal Highway Administration (FHWA) and other DOT agencies cannot approve the use of land from publicly owned parks, recreational areas, wildlife and waterfowl refuges, or public and private historic or archaeological sites unless: (1) there is no feasible and prudent alternative to the use of land; (2) the action includes all possible planning to minimize harm to the property resulting from use; or, (3) the action results in only a Section 4(f) *de Minimis* use or provides a Section 4(f) net benefit to the resource.

Section 4(f) is a high regulatory bar and can prevent the selection of particular alternatives. Early and correct identification of potential Section 4(f) properties is critical in the development of alternatives that may be selected. FHWA-funded/approved LPA projects that include Section 4(f) considerations should involve the ODOT Regional Local Agency Liaison and FHWA at the point the potential involvement is known.

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**Professional Qualifications** – Recommend that someone with NEPA experience in identifying potential Section 4(f) impacts be engaged in scoping and documenting potential impacts.

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## K.2. Regulatory Framework

Section 4(f) of the 1966 U.S. DOT Act requirements apply to: significant publicly- owned public parks and recreational areas (which may include public school playground areas and ball fields) that are open to the public, significant publicly owned wildlife and waterfowl refuges (regardless of whether these refuge areas are open to the public or not), and historic sites. In some cases, Section 4(f) applies to planned parks and recreation areas.

For CEs and PCEs, follow the appropriate ODOT NEPA Manual guidance section(s). For CE/PCE document Section 4(f) narratives, see 426.11 of the ODOT NEPA Manual.

### Resources:

- [ODOT Cultural Resources website](#)
- [Section 4\(f\) of the U.S. DOT Act](#)
- [23 CFR 774](#)

## K.3. Completed Deliverable

Every FHWA-funded or approved project will document Section 4(f) considerations. The type of documentation will vary depending upon the existence of Section 4(f) resources within the project area, and the potential uses of Section 4(f) resources.

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**Is a specific template required?** Yes, ODOT and FHWA require specific templates for documenting Section 4(f), which vary based on the type of Section 4(f) resources and the potential uses.

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## L. SECTION 6(F) OF THE LAND AND WATER CONSERVATION FUND ACT

### L.1. Overview

The Land and Water Conservation Fund (LWCF) Act establishes funding assistance for federal acquisition of park and recreation lands as well as matching grants to state and local governments for recreation planning, acquisition and development. The LWCF Act also set requirements for state planning through the State Comprehensive Outdoor Recreation Plan and provides a formula for allocating annual LWCF appropriations to the states and territories. Over 40,000 park and other recreation lands have been funded with assistance from the LWCF program throughout the country. This section applies only to properties that receive LWCF funding.

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**Professional Qualifications** – Recommend that ODOT Geo- Environmental NEPA Program staff who have experience with Section 6(f)(3) Conversion Request processes be involved in all potential conversions caused by LPA FHWA- funded/approved projects.

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Early contact with OPRD in cooperation with ODOT’s NEPA Program Coordinator (who is ODOT’s Liaison with OPRD for conversion processes), through the LAL and the assigned Region Environmental staff, is crucial if it is uncertain whether a Section 6(f) conversion will occur.

Due to the long lead time to gather data, appraise properties, conform to NPS NEPA requirements, and to complete all other necessary materials for a Section 6(f) conversion request, early coordination during the project scoping process is crucial.

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## **L.2. Regulatory Framework**

Pursuant to federal law, LWCF grant-assisted areas are to remain available for public outdoor recreation use “in perpetuity”. This is enforced in part through the National Park Service (NPS) NEPA compliance process, as Section 6(f) (3) of the Act falls within NEPA, which provides analysis regarding the impact of losing public parklands and recreation opportunities. In Oregon, if a transportation project, regardless of funding source, has the potential to impact any portion of an LWCF grant-assisted area, or affect users of such areas, the impact can constitute a potential “conversion” under Section 6(f)(3) as codified in 36 CFR 59.3. All conversions must be replaced with property(s) of reasonably equivalent recreation usefulness and location and be of at least equal fair market value to the conversion area(s).

**Resources:**

- [LWCF Act](#)
- [LWCF Compliance Responsibilities](#)
- [OPRD LWCF webpage](#)

Conversions must be approved by NPS through a formal Conversion Request. The state of Oregon, through Oregon State Parks and Recreation Department (OPRD), has the responsibility for all Conversion Requests in Oregon.

For CEs and PCEs, follow the appropriate ODOT NEPA Manual guidance section(s). For CE/PCE document Section 6(f) LWCF narratives, see 426.12 of the ODOT NEPA Manual.

## **L.3. Completed Deliverable**

All Conversion Requests are developed in collaboration with OPRD by ODOT and the LPA of jurisdiction over the LWCF assisted property, and are formally submitted by OPRD to NPS for approval. Conversion Requests include the appropriate NEPA document(s), public comments, appraisals meeting federal standards, and the appropriate survey and mapping for the specific conversion. The general timeline for completion of a Conversion Request is one to two years or more depending on the complexity of the conversion and replacement property appraisal and NEPA processes.

**Is a specific template required? Yes.** NPS and ODOT have required templates, available on the ODOT and OPRD websites. The LPA should work through the LAL to determine which template(s) are required for their specific conversion.

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## M. AIR QUALITY

### M.1. Overview

Multiple areas in Oregon, including Certified LPA jurisdictions, are currently designated as non-attainment or maintenance of the National Ambient Air Quality Standards. Information regarding current maintenance and non-attainment areas can be found on DEQ's Air Quality website.

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**Professional Qualifications** –To be eligible to conduct an air quality report, the air quality expert shall have the following qualifications and experience:

- At a minimum, a Bachelor's degree in environmental engineering, atmospheric science, transportation engineering or a closely related field, or be a registered professional engineer in civil, environmental, or closely related field. An Associate of Science degree in civil, environmental, or closely related field may substitute for the BS degree if the applicant also has a minimum of four years' experience in civil or engineering.
  - In addition, a minimum of two years' experience in research, analysis, and performance of complex air quality modeling for transportation projects. This experience must include work on transportation projects requiring NEPA documentation at the level of an Environmental Assessment (EA) or higher.
  - Possess considerable knowledge of the National Ambient Air Quality Standards (NAAQS), various air pollutants and air toxics, and experience in both qualitative and quantitative (mesoscale and microscale) analysis and also have a thorough understanding of the Transportation Conformity Rule OAR 340-252 and 40 CFR 93.
- 

### M.2. Regulatory Framework

Air quality must be addressed for transportation projects in order to satisfy NEPA, the Clean Air Act and Transportation Conformity Rule Requirements (State Conformity Rule OAR 340-252-0010 through 0290 and the Federal Conformity Rule (40 CFR Part 93).

In order to meet transportation conformity rule requirements, all projects that are contained in metropolitan air quality maintenance and non-attainment areas must first be included in that metropolitan area's long-range transportation plan (RTP) and transportation improvement

program (TIP), prior to FHWA making a final environmental decision. The design concept and scope of the project should be the same as the project description in RTP and TIP.

**Resources:**

- [ODOT GES Air Quality website](#)

For CEs and PCEs, follow the appropriate ODOT NEPA Manual guidance section(s). For CE/PCE document Air Quality narratives, see 426.13 of the ODOT NEPA Manual.

### **M.3. Completed Deliverable**

The ODOT Region Environmental Coordinator (REC) and ODOT Air Quality Specialist can assist in determining if conformity applies and what level of work is necessary. The LPA, as the project sponsor, is responsible for preparing project-level conformity documentation. For Categorical Exclusion projects, a formal air quality report is only required if a CO quantitative or PM quantitative hot spot analysis is needed. An air quality report is also required if an ISCP is needed.

If the LPA project is exempt from needing an air quality report, the NEPA documentation should still document any qualitative analysis that was done and provide an MSAT statement. If the project is in a carbon monoxide (CO) or particulate matter (PM) area, project level conformity may be required. For CO areas, a qualitative or quantitative CO hot spot analysis may be required.

For PM<sub>2.5</sub> or PM<sub>10</sub> areas, most projects will be exempt from PM hot spot project level conformity requirements. Projects requiring a PM analysis are “projects of air quality concern,” types of projects that are listed in 40 CFR 93.123(b) (1). If exempt, the project-level conformity determination should document that the project is not of the type identified in 40 CFR 93.123(b)(1), and EPA has determined that such projects meet the Clean Air Act’s requirements without any further hot-spot analysis. The Environmental Prospectus should identify if a PM analysis is required. For questions, contact the ODOT REC or ODOT Air Quality Specialist.

Mobile Source Air Toxics (MSATs) are an issue that must also be addressed, as outlined in FHWA’s Interim Guidance Update on Mobile Source Air Toxic Analysis in NEPA. When an air quality report is required, the report must document if the project is exempt from MSAT analysis, or report the findings of the qualitative or quantitative analysis.

For projects located in Lane County, some transportation projects that increase capacity or involve new sections of roadway may require an Indirect Source Construction Permit (ISCP). For complete information regarding ISCP, requirements refer to the Lane Regional Air Protection Agency Rules for Indirect Sources, Title 20. The air quality report should identify if an ISCP is needed for a particular project.

### Is a specific template required?

**Yes.** For CE projects that require a “quantitative” CO analysis, the standard scope of work template to use when hiring a consultant can be found at the ODOT GES Air Quality Website. For all required documentation, the ODOT Air Quality Specialist can provide assistance to the LPA for estimate of hours needed to conduct a quantitative CO hot spot analysis, an air quality report, or a qualitative CO Analysis memo.

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## N. NOISE

### N.1. Overview

FHWA-funded/approved projects will be developed in conformance with the ODOT Noise Manual. Proposed transportation projects have the potential to create long-term, permanent noise impacts to residents and businesses. The ODOT Noise Manual defines when noise impacts occur and when noise abatement must be considered. The physical construction of transportation projects can also create temporary noise issues that need to consider best management practices for construction noise. Conducting a noise impact and abatement analysis is time consuming and can greatly affect the project schedule and budget if the decision regarding the need for a noise study is postponed.

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**Professional Qualifications** Recommend that someone with NEPA experience in identifying potential noise receptors and impacts and has experience with performing transportation noise studies be engaged in scoping and documenting potential impacts. Professionals conducting noise studies should be experienced in using the traffic noise model (TNM) and the barrier analysis of the ODOT Noise manual. Contact ODOT’s Noise Program Coordinator if it is uncertain whether a noise study is required. Due to the long lead-time to gather data and complete a traffic noise study, early contact during the project scoping process is advised.

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### N.2. Regulatory Framework

Any highway project or multimodal project that receives FHWA funds or is otherwise subject to FHWA approval is subject to the policies contained in the ODOT Noise Manual and the FHWA Noise Standard (23 CFR 772).

#### Resources:

- [ODOT GES Acoustics website](#)
- [ODOT Noise Manual](#)

For CEs and PCEs, follow the appropriate ODOT NEPA Manual guidance section(s). For CE/PCE document Noise narratives, see 426.14 of the ODOT NEPA Manual.

### **N.3. Completed Deliverable**

A traffic noise study is required when one or more of the following events will happen:

- The construction of a highway on new location.
- The physical alteration of an existing highway where there is either a substantial horizontal or vertical alteration.
- The addition of a through-traffic lane(s), including the addition of a through-traffic lane that functions as a High-Occupancy Vehicle (HOV) lane, High-Occupancy Toll (HOT) lane, bus lane, or truck climbing lane.
- The addition of an auxiliary lane, except when the auxiliary lane is a turn lane.
- The addition or relocation of interchange lanes or ramps added to a quadrant to complete an existing partial interchange.
- Restriping existing pavement for the purpose of adding a through-traffic lane or an auxiliary lane.
- The addition of a new or substantial alteration of a weigh station, rest area, ride-share lot, or toll plaza.

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**Is a specific template required?** – Requirements for noise studies are included in the Noise Study Outline found in Appendix I of the ODOT Noise Manual. A sample noise study conducted for an ODOT highway project can also be found in the Air and Noise section in the Sample Documents. For CEs, use CE template. For EISs, use EIS template. For EAs, work closely with LAL. No other specific templates are required.

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## **O. HAZARDOUS MATERIALS**

### **O.1. Overview**

The LPA is responsible for all wastes generated from their property including, but not limited to, contaminated soils and groundwater, asbestos, demolition debris, lead-paint, treated wood, striping grindings, mercury lamps, PCB ballasts and hydraulics. The LPA may also be responsible for cleanup of contaminated property if they owned or operated the source of contamination, acquired the property without eminent domain authority, contributed to or exacerbated the contamination, hindered cleanup efforts or otherwise attained liability per ORS 465.255. Even if the LPA is not liable for cleanup, as is often the case, the LPA may end up paying for cleanup in order to complete the construction project, to avoid liability for human health effects (such as allowing drinking water wells to become contaminated), or to facilitate future sale of surplus property. It is essential to conduct hazardous materials assessments early in project development to minimize the risk of unexpected project costs and risks to worker health and

safety. Early characterization of project wastes can facilitate reuse and recycling options that reduce overall project costs, e.g. reusing concrete demolition debris or asphalt grindings as aggregate.

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**Professional Qualifications** – Recommend that an environmental professional meeting the education, training and experience as set forth in 40 CFR 312.10(b) be engaged in scoping and documenting potential impacts and someone with NEPA experience in identifying potential hazardous materials for NEPA and project scoping and documentation.

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## **O.2. Regulatory Framework**

FHWA policies require evaluation of hazardous materials issues early in project development. The Comprehensive Environmental Response, Compensation, and Liability Act and ORS 465 require the responsible party to clean-up contaminated property.

### **Resources:**

- [ODOT Hazardous Materials website](#)
- [ODOT Hazardous Materials Corridor Assessment template](#)
- [Resource Conservation and Recovery Act Comprehensive Environmental Response, Compensation, and Liability Act \(CERCLA\)](#)

Resource Conservation and Recovery Act and ORS 448, 465 and 466 require the owner to manage wastes appropriately. OSHA and OR-OSHA regulations require an employer to ensure the health and safety of their employees and strictly regulate hazardous materials operations. ORS 468A requires asbestos surveys for all structures to be demolished or renovated and regulates asbestos abatement.

For CEs and PCEs, follow the appropriate ODOT NEPA Manual guidance section(s). For CE/PCE document Hazardous Materials narratives, see 426.15 of the ODOT NEPA Manual.

## **O.3. Completed Deliverable**

To meet these laws and regulations and protect both the LPA and ODOT from future cleanup liability, hazardous materials assessments are required if the project includes any of the following activities:

- Land acquisition (including easements and leases).
- Excavation below road base.
- Demolition or renovation of structures.
- Any activities with the potential to generate wastes.

The hazardous materials assessment may identify testing required before construction.

### Is a specific template required?

- For CEs/PCEs, use CE/PCE forms.
  - For EISs, use EIS template. For EAs, work closely with LAL.
  - It is advised that a Hazardous Materials Technical Memorandum should follow ODOT's Hazardous Materials Corridor Assessment template.
- 

## P. TRIBAL COORDINATION

### P.1. Overview

The LPA should consult early with ODOT (in project scoping or planning) for all FHWA-funded/approved local projects to ensure tribal consultation for the LPA project, *by ODOT staff on behalf of FHWA*, is accomplished in a timely manner using the most complete project description and mapping information possible.

LPAs should prepare project maps that include Township and Range, county information, and all potential project-related activities to ensure the Tribes can comment appropriately and completely. **\*\*LPAs may not coordinate** with Tribes nor conduct Tribal consultation on behalf of ODOT or FHWA for FHWA-funded/approved LPA-sponsored projects.\*\*

For CEs and PCEs, follow the appropriate ODOT NEPA Manual guidance section(s). For CE/PCE document Tribal Coordination narratives, see 426.16 of the ODOT NEPA Manual.

### P.2. Regulatory Framework

There are nine federally recognized Native American Tribes in Oregon, as well as Tribes outside of Oregon that have retained interest in Oregon. Projects receiving federal-aid are required to consult with all federally recognized tribes with an interest in the project.

### P.3. Completed Deliverable

For every NEPA document, a summary of tribal consultation is included in the format FHWA and ODOT have agreed.

#### Resources:

- [ODOT GES Cultural Resources Program website](#)
- [Tribes and Treaty Ceded Areas of Oregon](#)

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**Is a specific template required?** – ODOT is responsible for managing a template developed with FHWA that provides FHWA-funded/approved project-level summary of all tribal coordination efforts completed.

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## Q. PUBLIC OUTREACH & ENGAGEMENT

### Q.1. Overview

Public outreach and engagement needs to be an early and continuing part of the transportation and FHWA-funded/approved project development process. It is essential that the project sponsor knows the community's values in order to avoid, minimize, and mitigate impacts, as well as to narrow the field of alternatives and alignments. The community also needs to understand the constraints and tradeoffs of the proposed project and understand the transportation problem.

Early and continuing public involvement allows the project sponsor to be aware of the problems and impacts and to deal with these issues early. If involved early, the public can provide insight into what their community would find acceptable. Often, there are designs or enhancements that will allow the project to fit more harmoniously into the existing community.

Early in project development, LPAs should contact the ODOT Region Local Agency Liaison (LAL) who will work with the appropriate ODOT Region environmental staff to determine appropriate levels of coordination with the public, appropriate project stakeholders, and external agencies.

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**Professional Qualifications** – Recommend that someone with NEPA experience in designing public involvement for transportation projects in Oregon be engaged in determining an appropriate public involvement plan.

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### Q.2. Regulatory Framework

For regulatory framework for CEs, PCEs, EAs, and EISs, see **ODOT NEPA Manual Section 412**. This section is ODOT's and FHWA Oregon Division's collective Public Involvement and Agency Coordination policy for the FHWA Environmental Review (i.e., NEPA) program area.

**Resources:**

- [ODOT Public Involvement website](#)
- [FHWA Public Involvement website](#)

For FHWA Oregon Division Federal-Aid Project development, to ensure that the public is involved in transportation decisions and activities, the Oregon Department of Transportation (ODOT) engages with the public and seeks their input during the Planning and NEPA phases and throughout project development and into construction. Specific public involvement activities for each project are commensurate with the project, regulatory requirements, the intensity of public and agency interest, and the potential for controversy or adverse impacts. These procedures are consistent with 23 CFR 771.111(h) and were approved by the Federal Highway Administration, Oregon Division office on May 17, 2017.



For CEs and PCEs, follow the appropriate ODOT NEPA Manual guidance section(s). For CE/PCE document Public Outreach & Engagement narratives, see 426.17 of the ODOT NEPA Manual.

### **Q.3. Completed Deliverable**

For every NEPA document, a summary of public involvement is included in the format upon which FHWA and ODOT have agreed. The summary should include outreach events, opportunities, comments received and how comments were considered.

## **R. OTHER FEDERAL AGENCY APPROVALS**

Many times, other Federal agency NEPA approvals (i.e., separate from FHWA's NEPA approval) are required for FHWA-nexus projects. As per ODOT NEPA Manual Section 426.18, if other Federal agency NEPA approvals are required (i.e., permits, other approvals), list the agency, the type of approval, and the date of approval. If another Federal agency's NEPA approval is pending, provide an expected timeframe for completion.

For CEs and PCEs, follow the appropriate ODOT NEPA Manual guidance section(s). For CE/PCE document Other Federal Agency Approvals narratives, see 426.18 of the ODOT NEPA Manual.

## **S. ENVIRONMENTAL COMMITMENT TRACKING**

### **S.1. Overview**

Environmental commitments include any required, negotiated, or voluntary action that is intended to avoid, minimize, or mitigate environmental impacts of a project. In the Federal-Aid Highway Program, environmental commitments may begin in planning, would certainly be formed and would evolve during project development, would be implemented prior to or during project construction, and to some extent may require monitoring or other action during maintenance and operation of the transportation facility.

As an initial part of project development, the LPA should establish an "environmental commitments file" for each FHWA-funded/approved LPA project. Establishment of this file generally coincides with preparation of all NEPA documentation.

For CEs and PCEs, follow the appropriate ODOT NEPA Manual guidance section(s). For CE/PCE document Environmental Commitments narratives, see 426.19 of the ODOT NEPA Manual.

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**Professional Qualifications Requirement** – The FHWA-funded/approved project sponsor (the LPA) should always have a comprehensive knowledge of the status of all environmental commitments for a project.

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## **S.2. Regulatory Framework**

FHWA policy, applicability, and responsibilities for fulfilling environmental commitments are codified in 23 CFR 771.105(d), 771.109(b), and 771.109(d). In essence, these regulations mandate that environmental commitments are implemented by the project applicant as a required condition of project approval from the FHWA. As part of its program management responsibilities, *FHWA may conduct project or program reviews and inspections to ensure that environmental commitments are implemented.*

## **S.3. Completed Deliverable**

ODOT maintains an Environmental Commitment Tracking System (ECTS) that captures environmental commitments at a project-level. The LPA environmental commitments file consists of proposed mitigation measures, commitments made to resource or other agencies with permitting authority, and other commitments made on the project. The file normally consists of design-related environmental commitments such as those commitments that may come from public involvement, planning, environmental review, or project permitting.

Other commitments may be added at the LPA's discretion, such as right of way, access, maintenance, other permits, and agreements. The LPA's environmental commitments file is shared with ODOT so that commitments may be entered into ODOT's Environmental Commitment Tracking System.

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### **Is a specific template required?**

- For CEs/PCEs, use CE/PCE forms.
  - For EISs, use EIS template.
  - For EAs, work closely with LAL.
-

## Chapter 7. Right of Way Procedures

This chapter outlines project development requirements for any LPA acquiring right of way on any federal-aid local agency project. Right of way acquisition is broadly defined to include all real property interests for a public use, including temporary easements. Local agencies may proceed with their own right of way procedures that lead up to final right of way project co-certification\* by the certified local agency and ODOT, provided they comply with the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 as amended (*Uniform Act*), ODOT's *Right of Way Manual*, and the requirements discussed below. Right of way issues have statutory timeframes built into the process, so working the issues as early as feasible in the project delivery process is recommended.

Resources:  
- [ODOT Right of Way Manual](#)

ODOT has overall responsibility to FHWA for project right of way acquisition. Federal regulations require that ODOT performs the final right of way project certification and acceptance of the process used to acquire right of way, in conformance with ODOT's *Right of Way Manual*.

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**\*Note:** In this context, "right of way project co-certification" involves a project specific review of the right of way documentation and procedures used to secure rights of way for a particular project. As part of that review, the LPA submits a Right of Way Certification Form to ODOT for review and approval. This process is independent of a local agency becoming "certified" as discussed in Section B of this manual.

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The acquisition process is regulated by ODOT's *Right of Way Manual* to assure compliance with the federal and state laws, assure fair and equitable treatment of any persons whose property rights are impacted by the project, and encourage and expedite acquisitions by negotiations.

In the case of a conflict between ODOT's *Right of Way Manual* and this *LAG Manual*, ODOT's *Right of Way Manual* shall prevail.

### A. AUTHORIZATION FOR ACQUISITION OF RIGHT OF WAY

An LPA may acquire the necessary right of way on a project by utilizing its own staff, the staff of other local agencies, or consultants. An LPA may also utilize ODOT region right of way staff if available (see Subsection A.2 of this chapter). Authorization or approval to undertake any of the acquisition tasks must be given to the LPA by the ODOT Region Right of Way Manager before any of the tasks are initiated. Authorization and approval requirements are detailed below. Periodic reviews of procedures will be conducted on agencies acquiring right of way on federal-aid projects.

**A.1. Acquisition Services provided by LPA staff, Alternate Local Agency staff, or Consultants**

In order for an LPA to be authorized to acquire right of way using its own staff, consultants, or alternative local agency staff, the LPA must follow the procedures and meet the criteria in Chapter 10 of ODOT's *Right of Way Manual*. While the contract between the LPA and a consultant (or alternate local agency) is administered by the LPA, the Regional Local Agency Liaison and Region Right of Way staff should be consulted regarding contract language for any complex right of way activities to be undertaken. The ODOT *Right of Way Manual* should be used for guidance when establishing the consultant contracting requirements and expectations that ensure compliance with federal and state laws and regulations. If the LPA intends to hire a consultant to perform any right of way activities, the LPA must follow applicable consultant selection requirements; see Section C, Chapter 12 of this manual for details.

**A.2. Acquisition Services provided by ODOT Region Right of Way Staff**

If an LPA wants to request right of way acquisition services be performed by ODOT's Right of Way Section, the LPA shall request this as early as possible in the project development phase. The LPA shall advise ODOT's region right of way staff and Local Agency Liaison of the LPA's need for assistance. When ODOT is to perform the right of way project acquisition services, the Regional Local Agency Liaison shall coordinate with the Region Right of Way Manager and the LPA to ensure right of way acquisition services are included in the Intergovernmental Agreement and Right of Way Services Agreement. ODOT will furnish the LPA with an estimate of the cost, as well as other terms and conditions of ODOT's right of way services to be mutually agreed upon.

If ODOT's region right of way staff is experiencing heavy workloads, ODOT may not be able to perform acquisition activities on the LPA's project. In these cases, the LPA should reconsider, in consultation with and approval by ODOT's region right of way staff, whether they will conduct their own acquisition activities, retain a consultant, or engage with an alternate local agency for such acquisition services.

**B. RIGHT OF WAY SERVICES AGREEMENT**

As part of any state or federal-aid local agency project, an Intergovernmental Agreement and Right of Way Services Agreement must be executed, regardless of the need for right of way acquisition in the respective project. ODOT's Regional Local Agency Liaison and region right of way staff member must be consulted when the Right of Way Services Agreement is being completed. Execution of the Right of Way Services Agreement requires the signature of the State Right of Way Manager, among other ODOT representatives, as well as attorneys with the Oregon Department of Justice. To the extent the LPA seeks to utilize ODOT or the Department of Justice for any of its project's condemnation activity, the LPA must seek approval from the

Department of Justice through ODOT's Region Right of Way Manager before the Right of Way Services Agreement is sent for execution. Execution of the Right of Way Services Agreement can be a time consuming process, therefore it is recommended that proposals regarding the responsible party for any right of way task be discussed as early in the project development process as possible.

## C. RIGHT OF WAY ACQUISITION FUNDING

### C.1. Acquisition With Federal Funds

If federal funds are to be used in **any part** of the project, federal guidelines for acquisition of the right of way as identified in the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 as amended, and further explained in the ODOT *Right of Way Manual*, must be followed. Additionally, authorization of federal funds for right of way requires FHWA approval of environmental documents and the completion of the following documents, in coordination with the Regional Local Agency Liaison:

- Intergovernmental Agreement;
- Right of Way Services Agreement;
- Estimate (in dollars) of probable project costs and expenses broken down by file. The right of way cost estimate shall be broken down into the following items:
  - Individual acquisition parcels (fee, permanent easement, temporary easement);
  - Impacted improvements (and a brief description of the improvements);
  - Damages/cost to cure;
  - Relocation;
  - Demolition;
  - Personnel and administration;
  - Title services;
  - Legal and contingencies and totals for all items (Right of Way Project Funding Estimate);
  - Legal descriptions; and
  - Relocation plan (if required - contact region right of way staff for assistance).

The legal descriptions should be written such that the areas to be acquired can be "made certain" by the description. All legal descriptions must carry the seal and signature of a Professional Land Surveyor.

The Real Estate Acquisition Guide for Local Public Agencies (LPA Guide) is available on the FHWA Office of Real Estate Services website.

The LPA Guide summarizes the regulations found in 49 CFR Part 24, and continues to be a valuable tool for Division and Federal Lands Highway Realty Officers, their partners at the State

Departments of Transportation, and Local Public Agencies. The LPA Guide provides a road map of applicable federal laws and regulations by explaining the real estate acquisition and relocation process and how it is integrated into overall project development.

**Resources:**

- [Real Estate Acquisition Guide for Local Public Agencies](#)

Once FHWA approval has been obtained, the Regional Local Agency Liaison will notify the LPA of authorization to acquire right of way. No acquisition costs are eligible for reimbursement prior to this authorization.

### **C.2. Acquisition With Local Agency Funds**

#### **a. Local Agency Acquisition for STIP Projects**

After consultation with the Regional Local Agency Liaison, an LPA using its own funding for right of way acquisition can start its process without waiting for FHWA authorization, provided the following documents are available, or milestones met, for review and agreement by ODOT's Region Right of Way Manager:

- Legal descriptions (see prior section Acquisition with Federal Funds for minimum requirements);
- Relocation plan if relocation is required;
- Right of Way phase is fully identified and funded in the STIP;
- National Environmental Policy Act (NEPA) phase is completed; and
- Programming Estimate is completed.

All other rules and regulations pertaining to right of way acquisition and project certification shall apply.

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**NOTE:** When a state DOT or Agency proceeds with early acquisition using its own money and with no intention of seeking federal-aid credit or reimbursement, the FHWA must make certain that the Agency's actions do not affect the environmental analysis or review of the project, or bias the FHWA's decisions on the Project.

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## **b. Voluntary Right of Way Acquisition**

Voluntary acquisition differs from the donation process (see Donated Property). Voluntary acquisition typically occurs when property is already available for purchase, independent of any current project and the LPA acquires the property through a real property sales transaction.

Local agencies acquiring property using the voluntary acquisition process must follow all requirements set forth in 49 CFR 24.101(B)(1). The decision to proceed on the basis of voluntary acquisition and not use the agency's eminent domain authority must be made prior to commencing other right of way activities.

## **c. Historical Acquisitions of Right of Way**

Local agencies that have previously acquired property and wish to use such property as right of way for a federal-aid project must provide documentation that the property had been acquired in accordance with state and federal law, including but not limited to the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 as amended, Title 49 Part 24, ORS Chapter 35, Federal-Aid Policy Guide (FAPG), Code of Federal Regulations, the ODOT *Right of Way Manual*, and Title 23 CFR Part 710.

### **C.3. Acquisition in Advance of NEPA Clearance**

The following circumstances outline methods under which right of way can be acquired in advance of NEPA clearance:

#### **a. Use of Own Funds**

An agency may use its own funds to purchase right of way prior to NEPA clearance, as long as the requirements of 23 CFR 710.501(b) are met and they follow the MAP-21 requirements in ODOT's *Right of Way Manual*.

#### **b. Purchase under Protective Buying and Hardship**

With prior approval from FHWA's division office through ODOT's Right of Way Section, an agency may purchase right of way prior to NEPA clearance under the protective buying and hardship acquisition provisions, as per 23 CFR 710.503. These provisions are further explained in Chapters 2, 3 and 6 of ODOT's *Right of Way Manual*. Note, that while these purchases are in advance of formal NEPA clearance of the project, individual clearance via a Categorical Exclusion is required. Consequently, although the project has not yet been cleared, the individual parcels have been cleared.

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**NOTE:** Under each of these methods, the LPA cannot be reimbursed for these project costs; however, they may apply the purchase price (or if donated, the fair market value) as credit toward their share of project costs.

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If an LPA chooses to use one of the options above, they must first contact the Regional Local Agency Liaison, who will coordinate with ODOT's right of way staff.

#### D. APPRAISAL

Federal and state regulations require a public agency to appraise real property prior to its initiation of negotiation in right of way acquisition. The requirements pertaining to appraisal of property to be acquired are identified in ODOT's *Right of Way Manual*, Chapter 5. Appraisals must be completed by an appraiser on ODOT's Qualified Appraiser List, or by an agency staff appraiser that has been specifically approved for the project by ODOT's Region Right of Way Manager. Chapter 10.610 of ODOT's *Right of Way Manual* details the minimum requirements that must be met by an agency staff appraiser in order to be approved for appraisal tasks.

Appraisals shall be prepared according to Chapter 5 of ODOT's *Right of Way Manual* and ODOT's *Guide to Appraising Real Property*. ODOT appraisal report forms can be found online at ODOT's Right of Way Section website.

##### D.1. Administrative Determination of Just Compensation

Local agencies that have staff experienced in eminent domain appraisals may be authorized by ODOT to administratively establish just compensation for given properties. The administrative process is called an Administrative Determination of Just Compensation. This process is allowed under 49 CFR Part B 24.102(c) (2) and is detailed in the ODOT's *Right of Way Manual*, Section 5.545-5.550. It can only be completed and approved by qualified agency staff that are knowledgeable in real property valuation. Any request by an LPA for use of the Administrative Determination of Just Compensation must be made in writing to the Deputy State Right of Way Manager through the Region Right of Way Manager. Under current law, it cannot be used by a consultant under contract with the agency.

The Administrative Determination of Just Compensation process can only be used for uncomplicated takings that have a valuation not exceeding \$2,500 and that do not involve complex valuation problems, such as potential damages to the remainder property or unique improvements within the taking area that require special analysis.

In instances where the Administrative Determination of Just Compensation process is used, just compensation should be based on comparable sales. All data used to arrive at just compensation must be included in the project file. When the Administrative Determination of Just Compensation is used, it is essential that the LPA have an experienced staff person with authority to determine that the just compensation estimate is fair and equitable and approve it. See ODOT's *Right of Way Manual*, Chapter 5, for a complete discussion of the Administrative Determination of Just Compensation procedure.



## **D.2. Appraisal Review / Establishing Just Compensation**

Prior to just compensation being set by the LPA, each appraisal must go through an appraisal review. The requirements pertaining to appraisal review are available in Chapter 5 of ODOT's *Right of Way Manual*. The appraiser and review appraiser shall not be the same person on any given acquisition file.

The review appraiser should be knowledgeable about property values in the project area. The depth of review should be in direct relationship to the difficulty of the particular appraisal. The review appraiser must be either an ODOT Right of Way Review Appraiser, a fee appraiser on ODOT's Qualified Appraiser List, or a permanent employee of the acquiring agency who is qualified to review appraisals according to Chapter 10 of ODOT's *Right of Way Manual*.

The review appraiser must inspect the property appraised and the comparable properties from which the appraiser(s) used to arrive at the fair market value of the acquisition.

It is the responsibility of the LPA to approve just compensation before initiating negotiations with an owner. The agency may not delegate the function of approving just compensation to someone outside the agency. The agency may empower a qualified staff review appraiser to approve the just compensation with their signature at the bottom of the Appraisal Review Form. If a non-staff reviewer is utilized, a line can be added following the reviewer's signature on the Appraisal Review Form for the signature of the agency staff person authorized to approve the just compensation amount.

## **E. TITLE**

The LPA will acquire evidence of the condition of title for all properties from which rights are to be acquired. It is strongly recommended that clear title to the acquisition area be obtained with title insurance for the area vested to the agency, though exceptions to clear title are allowed if considered reasonably acceptable. If a title company is not used to provide this information, the acquisition file must include sufficient documentation to validate the signatories on the instruments and show that the interest acquired is free from unreasonable encumbrances.

In general, the elements necessary to acquire the needed interest are the following:

- Acquisition instruments signed by all parties with an interest in the fee title or permanent easement;
- Releases from mortgages and deeds of trust as LPA determines to be reasonable, if the property will be for the LPA's use. If an LPA is buying property and intends to deed it to ODOT (e.g. property along a state highway), then ODOT must be consulted. In short, it is prudent for all property interests be cleared to avoid encumbering any roadway or highway with any interest that is detrimental to the agency;

- Releases of encumbrances, such as easements, which adversely impact the rights being acquired;
- Releases of priority liens, such as material liens, judgments, state tax liens and federal tax liens; and
- Property to be clear of hazardous materials. Property owners may be required to sign an exhibit to relieve agency's responsibility for cleanup of any hazardous materials subsequently found.

## F. NEGOTIATIONS

According to state statute, a public agency must adopt a resolution or ordinance of necessity to acquire any real property *prior* to the initiation of negotiations with the owner of the property.

Various requirements in negotiating an acquisition of property are found in ODOT's *Right of Way Manual, Chapter 6*. Among those requirements are the notices that must be sent to the owner of the property and the minimum time that is allotted to the owner of the property to consider the offer before condemnation can begin. An LPA, or its consultant, may not make any attempt to compel an agreement with a property owner to acquire right of way by deferring negotiations, advancing or deferring condemnation, or by utilizing any other coercive action.

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*Failure to establish condemnation authority prior to the initiation of negotiations can constitute a coercive action.*

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If an LPA uses a consultant fee negotiator, the negotiator must meet the applicable state real estate licensing requirements. ODOT's *Right of Way Manual* provides a good model for utilizing consultants for negotiations and other right of way functions.

In order for LPA staff to be approved by the Region Right of Way Manager to acquire property, they must follow the guidelines provided in Chapter 10.610, 10.620 and 10.630 of ODOT's *Right of Way Manual*.

A separation of functions maintains the integrity of the acquiring LPA's transactions. Thus, the appraisal, appraisal review and negotiations for a file are performed by three different persons. Recognizing the fact that the use of two separate individuals as appraiser and negotiator on a low-value taking can be both difficult and expensive, the use of a single individual to both appraise and negotiate a file is permitted where the value of the acquisition is \$2,500 or less, if first approved by the Region Right of Way Manager. It should be noted that the appraisal shall be reviewed prior to negotiations and the review appraiser shall be neither the appraiser nor the negotiator.

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A separation of function maintains the integrity of the acquiring LPA's transactions.

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Before initiating negotiations for real property, the agency shall establish the just compensation which shall not be less than the reviewed appraisal of the property, and shall make a written offer to acquire for that amount.

When negotiations are complete, the negotiator shall keep a project file with a signed statement for each acquisition that:

- The written agreement embodies all considerations agreed to by the negotiator and the property owner;
- The negotiator understands that the acquired property is for use in connection with a federal-aid transportation project;
- The negotiator has no direct or indirect interest in the property or in any monetary benefit from its acquisition, at present or in the future; and
- The agreement has been reached without any type of coercion.

In addition, the LPA shall maintain a diary, wherein each individual involved in relocations, negotiations, or property management functions shall enter and initial a suitable description of each contact and other information concerning that function. Each entry shall clearly show the month, day and year of the contact, the name of the individual who made such contact; and the name(s) of the individual(s) contacted.

#### **F.1. Making the Offer**

Contacting each property owner in person to initiate negotiations to acquire the necessary right of way is preferred, although negotiations can be initiated by certified mail. Chapter 6.405 of ODOT's *Right of Way Manual* outlines ODOT's own guidelines for making a valid offer and the contents of the acquisition packet, and it is recommended that those guidelines are followed on LPA projects as applicable.

Federal law provides that grantors must be given reasonable time to consider the offer of just compensation. State law further specifies that a minimum of 40-days must be given to grantors before condemnation action can be initiated (see ORS 35.346).

Within a reasonable period of time from initiating negotiations, the LPA must make follow-up contact to answer questions, negotiate any disparities between the parties in the opinion of value, and confirm the status of settling the file.

## F.2. Acquisition of Contaminated Properties

The LPA should take reasonable care to determine if properties needed for a project are contaminated. Appropriate levels of care are detailed in ODOT's *HazMat Program Manual*. In the case where properties being acquired by the LPA will become part of a state highway, the LPA must involve ODOT in the acquisition process as early as possible to ensure that the property will be in a condition from which ODOT will accept ownership. In some cases, grantors will be required to sign an agreement obligating them to clean up any hazardous materials discovered at a later time.

### Resources:

- [ODOT HazMat Program Manual](#)

## G. DONATED PROPERTY

In some instances, property owners may wish to donate their property. A donation of right of way is an acquisition of a property right that can be accepted only after the owners have been notified in writing by the LPA of their right to receive just compensation based on appraisal. If the property owner wishes to donate the necessary property, the property owner must sign a Donation Agreement Form indicating that their rights have been explained to them. The form must be saved in the file, and may also provide the option for the owner to waive their right to an appraisal. If an appraisal is still requested (e.g. for tax purposes), then the LPA must provide one. Donations from other government agencies are exempt from these requirements.

The LPA must take great care to make certain there is no real or perceived coercion involved when agreeing to a donation. ODOT recommends the LPA contact ODOT's Region Right of Way representative in the event an owner wishes to donate right of way.

Chapter 6.320 of ODOT's *Right of Way Manual* provides additional details regarding donations.

## H. CREDIT FOR REAL PROPERTY

The LPA may be credited an amount equal to the fair market value of that portion of the land or easements acquired for a project. If real property is used as credit against the LPA's share of the match, the LPA must apply to ODOT at the onset of the project and at a minimum provide documentation indicating the acquisition has been, is, or will be:

- lawfully obtained;
- incorporated into the project;
- not land described in 23 USC 138 (i.e. park lands);
- acquired in accordance with the provisions of 49 CFR Part 24;
- in compliance with the requirements of Title VI of the Civil Rights Act of 1964 (see

ODOT's Title VI website for details);

- based the project's construction needs in concurrence with FHWA, following consideration of all alternatives considered in the environmental assessment, and not based on the ownership of the property;
- approved by FHWA for use; and
- fair market value.

The fair market value shall not include any increase or decrease in the value of acquired properties caused by the project. The fair market value of land shall be established on the earliest occurrence of the effective date of the acquisition, or the date on which equitable title to the land vests in the state or LPA.

## I. ADMINISTRATIVE SETTLEMENTS

An administrative settlement or stipulated settlement is a negotiated settlement of a right of way acquisition that is typically in excess of the LPA's approved offer of just compensation. FHWA and ODOT encourage local agencies to carefully consider and utilize administrative settlements in appropriate situations.

The LPA shall document the following and make it available for review by ODOT:

- The responsible official who has the authority to approve administrative settlements.
- The procedure for handling administrative settlements.

Any administrative settlement which exceeds the LPA's approved just compensation must be documented and thoroughly justified in order to be eligible for federal-aid funds. The rationale for the settlement shall be set forth in writing. The extent of written explanation is a matter of judgment and should be consistent with the circumstances and the amount of money involved. If the LPA has any doubt as to eligibility, it should obtain prior approval from ODOT through the Region Right of Way Manager.

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[FHWA and ODOT encourage local agencies to carefully consider and utilize the use of administrative settlements in appropriate situations.](#)

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The designated LPA representative may approve an administrative settlement when it is determined that such action is in the public interest. In arriving at a determination to approve an administrative settlement, the designated official must give full consideration to all pertinent information. At a minimum, the information to be considered consists of:

- All appraisals, including the owner's, and the probable range of testimony in a condemnation trial.

- The ability of the LPA to acquire the property and gain possession through the condemnation process to meet the construction schedule.
- The risk and impact of any potential construction delay pending acquisition and possession.
- The negotiator's recorded information, including file details and the owner's rationale for increased compensation.
- Recent court awards in cases involving similar acquisition and appraisal problems;
- The likelihood of obtaining an impartial jury in the local jurisdiction and the opinion of legal counsel where appropriate.
- The estimate of trial costs weighed against other factors.

## J. RELOCATION

The regulations governing relocation assistance are covered in Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 as amended, and ODOT's *Right of Way Manual*, Chapter 8.

The majority of local agencies will find that it is not economically feasible to maintain staff to perform the relocation function. Local agencies that have qualified staff with appropriate training, education, licensing and experience may be approved by ODOT through the procedures process to provide relocation services as identified in Chapter 10.630 of ODOT's *Right of Way Manual*. Local agencies may contact the Regional Local Agency Liaison for advice on contracting with private consultants. ODOT does not maintain a list of qualified relocation consultants.

If a project includes relocation, the LPA should submit a relocation plan prior to right of way funding authorization. Local agencies should contact the Regional Local Agency Liaison, who will coordinate with the Region Right of Way Manager for assistance in preparing relocation plans and carrying out relocation activities.

## K. CONDEMNATION

The LPA must carry out the condemnation process under its own authority if the project right of way acquisition takes place on a non-ODOT facility. Prior to the initiation of negotiations, the LPA is responsible for securing its own resolution to acquire and condemn. Failure to do so prior to the initiation of negotiation can constitute a coercive action. The condemnation process shall be carried out in conformance with the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended, and other applicable federal and state laws and regulations. The LPA shall not advance the time of condemnation, nor defer negotiations or the deposit of funds into court for the use of an owner, nor take any other action coercive in nature to

compel an agreement on the price to be paid for a property. No owner shall be required to surrender possession of real property until the LPA has paid the agreed purchase price or has deposited into court, for the benefit of the owner, an amount not less than the just compensation determined by the LPA for the property.

If the LPA's project occurs on an ODOT facility, prior to the commencement of right of way acquisition activities, the LPA should coordinate with the Regional Local Agency Liaison and Right of Way representative to establish an Intergovernmental Agreement and Right of Way Services Agreement to identify the condemnation procedures. The coordination with the Region Right of Way representative must also include approval up front from the Department of Justice before any agreement is executed.

## L. RIGHT OF WAY CERTIFICATION

### L.1. Certification with Right of Way

Prior to submitting the PS&E Checklist, the LPA must complete the Right of Way Certification Form, developed and approved by FHWA. (See ODOT's *Right of Way Manual*, Chapters 2 and 3 and Appendix A to Chapter 2 for more detailed information). The purpose of the certification is to:

- Identify and affirm that no additional right of way and relocation assistance is required for construction of the project, with assurances that the acquisition and relocation have been completed in compliance with the Uniform Act, or identify the estimated availability of the properties that are not yet in possession and cleared for construction;
- Ensure that the right of way needed for the project has been cleared so there are no unnecessary delays or additional costs attributable to delays in accessing the right of way; and
- Identify the extent to which hazardous waste is present in the acquired right of way.

The right of way certification must be co-signed by the LPA and by ODOT's Region Right of Way Manager. The typical target date for submitting right of way certification should be approximately two to four weeks prior to the planned PS&E submittal date. This is highly variable and should be coordinated early on with the Regional Local Agency Liaison and right of way staff.

The Regional Local Agency Liaison will submit the certification request to the LPA and region right of way representative for consideration. The region right of way representative will visit the LPA, or its acquisition consultant, and review the acquisition files to determine if the right of way was acquired according to the Uniform Act.

If the Regional Local Agency Liaison, LPA and the region right of way representative determine that the project is ready for certification, the Region Right of Way Manager and LPA will co-sign



the certification form for transmittal to the Right of Way Headquarters Programming Coordinator. The Region Right of Way Manager will also provide the LPA and the Regional Local Agency Liaison with a letter detailing deficiencies if any were noted.

If the Regional Local Agency Liaison and the Region Right of Way Manager determine that the project cannot be certified, a letter will be provided to the LPA and the ODOT Certification Program Office, detailing the deficiencies encountered and the corrective action required before certification can be completed.

## **L.2. Certification with No Right of Way**

If it is determined that right of way acquisition is not required for a project, local agencies must complete the Right of Way Certification Form in consultation with the region right of way representative and submit it to the Regional Local Agency Liaison. Local agencies should exercise caution before making a determination that right of way acquisition is definitely not required. If an LPA determined right of way acquisition was not necessary and then subsequently found right of way acquisition was actually needed, the project will likely be delayed. In this situation, a Right of Way Project Funding Estimate must be prepared and the Regional Local Agency Liaison and the Region Right of Way Manager must be notified.

Right of way obtained through normal zoning, subdivision or building permit procedures may be incorporated into a federal-aid project without jeopardizing participation in other project costs.

## **M. PROPERTY MANAGEMENT**

If a local project is funded, either fully or partially with federal dollars, the acquiring LPA shall establish property management policies and procedures that will ensure control and administration of excess lands and improvements acquired for right of way purposes in a manner consistent with the public interest and designed to reflect the maximum long-range public benefit. These procedures shall establish the following items:

- An inventory of all improvements acquired as a part of the right of way
- An accounting of excess properties acquired with federal-aid funding
- An accounting of the property management expenses and the rental payments received.
- An accounting of the disposition of improvements and the recovery payments received.
- The methods for accomplishing the clearing of right of way when such clearance is performed separately from the control for the physical construction of the project.
- The methods for managing the rodent control program.



- The methods for the preservation of the improvements and safety measures of the acquired property.
- The methods for accomplishing the disposition of improvements through resale, salvage, owner retention, or other means.

If the LPA permits an owner or tenant to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the LPA on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

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When using FHWA funding to acquire property, the acquiring agency must establish property management policies and procedures to ensure control and administration of excess lands and improvements.

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In the event that right of way acquired with federal-aid funds becomes excess, the surplus right of way may be disposed of only after approval by ODOT's Right of Way Section. In this situation, the LPA must notify the Regional Local Agency Liaison, who will coordinate with the Region Right of Way Manager. If the disposal is to a private party, the LPA must determine fair market value (either through the appraisal process or by public sale) and either credit FHWA for the pro rata share of the proceeds of the sale or use the federal share of the net proceeds for activities eligible for funding under Title 23 of the United State Code for transportation purposes.

Federal regulations provide for the use of airspace for non-highway purposes above, at, or below the highway's established grade line, lying within the approved right of way limits. For information regarding right of way use agreement issues, refer to ODOT's *Right of Way Manual*.

If a non-highway use of the right of way is contemplated, the LPA should contact the Regional Local Agency Liaison, who will coordinate with the Region Right of Way Manager for more detailed policies and procedures that must be considered.

### N. DOCUMENT RETENTION

The acquiring LPA shall maintain all records of its right of way actions as required by state and federal law. The LPA shall be responsible to secure and maintain all project related documents and records generated from consultants retained on the LPA's behalf to perform the right of way acquisition services. Upon request, the Regional Local Agency Liaison will provide guidance regarding retaining appropriate and adequate records.

### O. ADA RAMPS

When the LPA project focuses on the repair and replacement of ADA ramps, the LPA should contact the Regional Local Agency Liaison and Region Right of Way representative regarding its plan for acquiring the necessary right of way for building the ramps. If the project includes the

use of federal aid funding, all applicable federal and state laws must be followed when remediating the curb ramps. See Section C, Chapter 9 for design requirements.

SUPERSEDED

## Chapter 8. Civil Rights – Tracking LPA Projects

### A. OVERVIEW

This chapter provides guidance to certified Local Public Agencies (LPAs) to promote compliance with the following ODOT Civil Rights programs on federal-aid projects:

- Disadvantaged Business Enterprise (DBE)
- Equal Employment Opportunity (EEO)
- On-the-Job Training (OJT) / Apprenticeship Training Program (ATP) The basic responsibilities are these:
- FHWA is responsible for overall Civil Rights program oversight.
- ODOT's Office of Civil Rights (OCR) is responsible to develop, implement and monitor DBE, EEO, and OJT programs for FHWA-funded contracts.
- Certified LPAs are responsible to comply with ODOT's Civil Rights programs on the FHWA-funded projects they administer and enforce the program requirements with contractors.

OCR conducts quarterly audits of all LPA-administered federal-aid projects. A finding of noncompliance may result when an LPA fails to verify compliance of its contractor with the Civil Rights program, fails to implement program requirements, or fails to take remedial action at ODOT's or FHWA's request. An LPA found to be in noncompliance may lose federal funds and certification status. The guidance provided in this chapter will help LPAs maintain compliance with ODOT's Civil Rights programs. ODOT staff is also available to help.

The ODOT Local Agency Liaison is the first contact for general advice and assistance on ODOT program matters, including civil rights programs.

Resources:  
- [Office of Civil Rights](#)

However, the LPA may contact OCR directly by email at [OCRInfoRequest@odot.oregon.gov](mailto:OCRInfoRequest@odot.oregon.gov) or contacting the DBE Program Manager directly. During the construction phase of the project, the OCR Field Coordinator is the primary point of contact. Visit ODOT's OCR website for additional information and full list of contacts.

For information about the Title VI (Civil Rights Act of 1964, non-discrimination) and the Americans with Disabilities Act (ADA) requirements, refer to Sections B and D of this manual.

## B. ODOT'S CIVIL RIGHTS PROGRAMS ON FEDERAL PROJECTS

### B.1. Disadvantaged Business Enterprise (DBE) Program

It is the policy of ODOT to practice nondiscrimination on the basis of race, color, sex and/or national origin in the award and administration of U.S. Department of Transportation (USDOT) assisted contracts. The intention of ODOT is to create a level playing field on which DBEs can compete fairly for contracts and subcontracts relating to ODOT's highway construction, procurement and professional service activities. See the full ODOT DBE Policy Statement posted on the DBE Program page of the OCR website.

ODOT is required to establish Overall Annual DBE Goals for state-wide federal-aid programs. FHWA-funded LPA projects contribute to meeting these annual state-wide goals. Therefore, ODOT assigns contract-specific goals for DBE participation on all FHWA-funded contracts, including LPA-administered projects.

LPAs are required to adopt ODOT's DBE Program as their own, in accordance with each LPA's master certification agreement. ODOT's DBE Program Plan is posted on the DBE Program page of the OCR website.

**Disadvantaged Business Enterprise** – Is a defined term in 49 CFR 26.5. A DBE is a for-profit small business concern that is at least 51 percent owned and controlled by one or more socially and economically disadvantaged individuals. The management and daily business operations of the for-profit and small business concern must also be controlled by one or more such owners.

**Resources:**

- [DBE Program](#)
- [49 CFR 26.5](#)

In order to be part of the Disadvantaged Business Enterprise program, a firm must be certified as a Disadvantaged Business Enterprise. ODOT only accepts Disadvantaged Business Enterprise certification from the Certification Office for Business Inclusion and Diversity (COBID).

Only firms that have DBE certification can be used towards meeting DBE goals (WBE, MBE, SDVBE, ESB firms that do not also have a DBE certification will not qualify).

LPAs must include the applicable ODOT DBE provisions in all FHWA-funded consultant solicitation and contract documents. See subsection C. Consultant Selection Process below.

LPAs must include ODOT's DBE Commitment Requirements and DBE Supplemental Required Contract Provisions in the construction bid book and collect certain information (forms) about prime and subcontractor participation on the projects to allow tracking of DBE utilization. The LPA construction bid book that has been reviewed and approved by ODOT for use on FHWA-funded projects will include these provisions. Please review and become familiar with DBE program provisions, forms, and processes. See the complete checklist in subsection D.8 below

(Please leave publication dates on all documents inserted into Bid Books). See subsection D. Project Delivery Process for forms, roles and responsibilities.

## **B.2. Equal Employment Opportunity (EEO) Program**

The goal of the Equal Employment Opportunity (EEO) Program is to ensure women and minorities are adequately represented in construction work. ODOT has established EEO Aspirational Targets for use on state-wide federal-aid projects. Women and minority participation on all FHWA-funded contracts, including LPA-administered projects contribute to meeting these annual state-wide targets. Likewise, contractors working on LPA-administered projects must comply with ODOT's annual EEO Program reporting requirements for FHWA-funded contracts.

The LPA bid book that has been reviewed and approved for use on FHWA-funded projects will include all EEO provisions listed in the Civil Rights Pre-Advertisement Checklist below. Please review and become familiar with EEO program provisions, forms, and processes. See subsection D of this chapter for Project Delivery Process, forms, roles and responsibilities.

**OJT** – The goals of the On-the-Job Training Program are to develop and encourage the use of women and minorities in construction work and to ensure adequate representation. The OJT Program is for use on Federal-Aid projects only.

Objectives:

- Training and upgrading skills of women and minorities in highway construction trades
- OJT may be used as an affirmative action tool to assist contractors in meeting their Equal Employment Opportunity obligations
- OJT may lead workers into the apprenticeship system and result in journey-level status and a career in highway construction

**ATP** – The Apprenticeship Training Program, which is approved by the Bureau of Labor and Industries, provides a combination of field and classroom trade-specific experience under the supervision of journey-level workers. This is a race and gender neutral program. However, the contractor is still obligated to comply with all applicable EEO requirements.

OCR will determine whether the OJT/ATP provisions apply to a project, and if applicable, LPAs must include Reimbursable Federal On-The-Job and Apprenticeship Training special provisions in the LPA bid book and collect certain information (forms) to track workforce utilization. Please review and become familiar with

### **Resources:**

- [Equal Employment Opportunity Contractor Compliance](#)
- [Workforce Development](#)

OJT/ATP program provisions, forms, and processes. See subsection D below for forms, roles and responsibilities.

When OCR determines the OJT/ATP program provisions apply to a Project, a specific number of hours are assigned as a Bid Item with a fixed Bid Item price. The LPA must reimburse the Contractor for qualified hours worked up to 150% of the Bid Item quantity. If the Contractor fails to meet the Bid Item quantity, the LPA must enforce the “disincentive” clause in Section 6 of the applicable provisions.

For more information see the *Equal Employment Opportunity Contractor Compliance* and the *Workforce Development* pages on the ODOT OCR website.

### C. CONSULTANT SELECTION PROCESS

LPAs are required to follow the processes identified for civil rights requirements in the LPA A&E Requirements Guide or LPA Non-A&E PSK Requirements Guide, as applicable.

The DBE goal setting process, required forms and contract award notification requirements are covered in Section 3.4 of both guides.

Resources:

- [LPA A&E Requirements Guide](#)
- [LPA Non-A&E PSK Requirements Guide](#)

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**Note on Consultant Contract Submittals:** DBE forms and related information for consultant contracts are to be submitted to a different email address than used for construction correspondence.

Submit all consultant-related forms and correspondence to [ocr.psk@odot.oregon.gov](mailto:ocr.psk@odot.oregon.gov).  
Copy the ODOT Local Agency Liaison.

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The LPA shall not set or include any additional civil rights or affirmative action goals as requirements for the contract.

### D. PROJECT DELIVERY PROCESS

This subsection lists the Civil Rights process steps ODOT and LPAs must follow to comply with ODOT’s Civil Rights programs during design, advertisement, bidding and award of FHWA-funded construction contracts. A sample Civil Rights Tracking Sheet is provided in Section D of this LAG Manual for Certified LPAs. LPAs should document the completion of each process step using the tracking log, or equivalent. The tracking sheet is formatted to enable LPAs to track all FHWA-funded construction contracts on a single worksheet, not including consultant contracting.



#### **D.6. Goals Request Date**

This is the date the LPA submits the following to [OCRGOALSREQUEST@odot.oregon.gov](mailto:OCRGOALSREQUEST@odot.oregon.gov) and copies the ODOT Local Agency Liaison at Advance Plans or approximately 90% of PS&E readiness:

- Civil Rights Request for Goals form 731-0663, posted under “Other forms”
- Engineer’s estimate
- Construction schedule

LPA should provide at least five business days for processing goal requests.

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NOTE: Advance (90%) PS&E must include all project work to be constructed by the contractor in order to establish the proper civil rights goals (e.g. it cannot exclude a category or work such as landscaping.)

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For additional details regarding PS&E development, refer to Section C, Chapter 11 of this manual.

#### **D.7. Goals Issue Date**

This is the date OCR issues the assigned construction contract DBE goals, EEO aspirational targets and/or OJT training hours. OCR will issue the goals to the LPA and copy the ODOT Local Agency Liaison. The LPA shall publish the civil rights goals in the bid book. The LPA shall not modify ODOT’s assigned goals nor set its own goals for either civil rights or affirmative action. This is an FHWA stipulation.

#### **D.8. Bid Book Submission Date**

This is the date the LPA submits the final PS&E submittal to the ODOT Local Agency Liaison for review (electronic copy is preferred). The ODOT Local Agency Liaison will forward the bid book to OCR for confirmation that civil rights goals and provisions have been correctly included. ODOT Local Agency Liaison will copy the LPA on the email.

These requests should be sent to [OCRINFOREQUEST@odot.oregon.gov](mailto:OCRINFOREQUEST@odot.oregon.gov).



### Civil Rights Pre-Advertisement Checklist

#### Bid Booklet Preparation and Submittal Notes:

- Use the **current version** of each set of provisions available under **Part 00000 – Documents and Forms** of the ODOT Boilerplate Special Provisions page.
- Do not revise the ODOT Civil Rights Programs provisions or forms. **Keep the ODOT footer intact** when inserting civil rights programs provisions, forms or processes in the LPA's bid booklet.
- Subject to ODOT approval, the LPA may add the following or similar provision to their bid book or contract template as applicable to provide context:

*The following programs are administered by the Oregon Department of Transportation (ODOT), Office of Civil Rights (OCR) as a condition of federal funding: Disadvantaged Business Enterprise (DBE), Equal Employment Opportunity (EEO), On-Site Workforce Affirmative Action (OSWAA), and Reimbursable Federal OJT Apprenticeship Training (OJT). The DBE, EEO, OSWAA and, if applicable, OJT program provisions are set out in **[Sections ## through ##, as outlined in the Table of Contents of the bid book]**, and are hereby incorporated as a part of this Contract. As **[City or County]** is entering into this Contract under authority granted by ODOT and OCR, the DBE, EEO, OSWAA and, if applicable, OJT program provisions apply to this Contract in the same application and manner as if ODOT were the contracting agency. Under this Contract, Contractor shall be required to comply, cooperate and abide by the DBE, EEO, OSWAA and, if applicable, OJT program requirements as set forth in this Contract. It is the **[City or County]**'s responsibility to enforce the contractual obligations in this Contract.*

*Where the DBE program provisions cross-reference a specific section or subsection of the Oregon Standard Specifications for Construction the same or equivalent section or subsection of the **[City or County]** General Conditions, as modified by the project Special Provisions, shall apply to this Contract.*

#### Disadvantaged Business Enterprise Program

##### Bidding Provisions/Forms

- ☐ DBE Commitment Requirements (BB35\_DBE)
- ☐ DBE Commitment Certification & Utilization Form (734-2785 or BB38\_DBE)
- ☐ DBE Information Page (BB\_74\_DBE\_INFO)

### **Contract Provisions**

- ☐ ODOT Policy Statement DBE Program (SP00027\_ODOT)
- ☐ DBE Supplemental Required Contract Provisions (SP00029\_DBE\_PROV)
- ☐ Assigned DBE Contract Goal (SP00030\_DBE)
- ☐ Source of Materials (Provision #: 00160.01(a))\*
- ☐ Legal Relations and Responsibilities (Provision #: 00170.10(g))\*
- ☐ Prosecution and Progress (Provision #: 00180.20(d) & (e))\*

\*Either the LPA's ODOT-approved general conditions for use on federal-aid projects or the LPA's ODOT-approved boilerplate special provisions for section 00100s must include the current provisions that reference DBE program requirements.

### **Equal Employment Opportunity Program**

- ☐ Required Contract Provisions for Federal-aid Contracts (FHWA-1273) (SP00017\_FHWA\_1273)
- ☐ On-site Workforce Affirmative Action Requirements for Women and Minorities on Federal-aid Contracts (SP00021\_AA\_REQ)
- ☐ Equal Employment Opportunity Provisions (SP00023\_EEO\_PROV)
- ☐ Equal Employment Opportunity-Aspirational Target Provisions (SP00025\_EEO\_ASP\_TARGET)
- ☐ Reimbursable Federal On-the-Job and Apprenticeship Training (If goal is 0 then no need to include) (SP00032\_REIM\_FED\_OJT)

### **Miscellaneous**

- ☐ First-tier Subcontractor Disclosure Instructions & form (BB71\_SUB\_DISCLOSURE)

Should not include:

- Reimbursable State Apprenticeship Training
- Contractor supplied diversity training
- Minority Business Enterprise, Women Business Enterprise, and Emerging Small Business (MWESB) Supplemental Aspirational Contract Provisions
- Assigned MWESB aspirational target
- Other Local Diversity Program Goals or Targets

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NOTE: The master certification agreement prohibits the incorporation of DBE Special Provisions by reference.

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Resources:  
- [ODOT Boilerplate Special Provisions](#)

#### **D.9. Bid Book Verification Date**

This is the date OCR completes the bid book verification review, generally within three business days of receipt from the ODOT Local Agency Liaison. OCR will notify the ODOT Local Agency Liaison and LPA by email the results of the review. If corrections are required, LPA shall resubmit corrected bid book for verification. This step must be completed before ODOT will issue NTP to advertise for bid. ODOT Local Agency Liaison submits a copy of the bid book verification letter (email) from OCR to the FHWA Field Operations Engineer with the PS&E package.

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**Note on Demonstration Projects:** ODOT recommends a 4-week advertisement for certification demonstration projects to accommodate a mandatory pre-bid meeting. Consult with ODOT to determine if a mandatory pre-bid meeting should be required for the agency's demonstration project. The pre-bid meeting provides a forum for the LPA to explain the civil rights processes to prospective bidders. The ODOT Local Agency Liaison and Civil Rights Field Coordinator should be invited to attend to answer pre-bid questions from contractors who may be unfamiliar with ODOT Civil Rights Program requirements.

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#### **D.10. Advertised Bid Date**

This is the date listed in the advertisement for bid opening.

#### **D.11. Actual Bid Date**

This is the date the bids are actually opened.

#### **D.12. SSUR Notice Issued Date**

This is the date the LPA sends the Subcontractor Solicitation and Utilization Report (SSUR) form 734-2721 to all bidders. LPA shall send form 734-2721 to all bidders with instructions directing each bidder to submit the form to LPA within 10 calendar days of bid opening. It is recommended LPA distribute this notification on the day following the bid opening to provide sufficient time for bidders to complete the form. Distribution of form 734-2721 is required even when the DBE goal is zero. Upon receipt of the forms from bidders, forward them to [OCRINFOREQUEST@odot.oregon.gov](mailto:OCRINFOREQUEST@odot.oregon.gov).

#### **D.13. SSUR Received Date**

This is the date the LPA submits the form to [OCRINFOREQUEST@odot.oregon.gov](mailto:OCRINFOREQUEST@odot.oregon.gov), and copy the ODOT Local Agency Liaison. All bidders shall submit the Subcontractor Solicitation and Utilization Report (SSUR) (Form 734-2721) to LPA within 10 calendar days of bid opening. All bidders must submit Form 734-2721 even when the DBE goal is zero.

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#### **D.14. OCR & DBE Bid Notification Date**

This is the date LPA submits bid information to OCR. Submit the following **within two working days** of bid opening:

##### **DBE goal greater than 0%:**

- Submit Civil Rights Bid Notification for Certified Agency Projects form 734-2848 and each bidder's DBE Commitment Certification and Utilization form 734-2785 to [OCRINFOREQUEST@odot.oregon.gov](mailto:OCRINFOREQUEST@odot.oregon.gov), and copy ODOT Local Agency Liaison.
- LPA shall include any Good Faith Effort documentation submitted by bidders. OCR will determine whether bidders are responsive to DBE goals greater than zero.

##### **DBE goal is 0%:**

- Submit **only** the Civil Rights Bid Notification for Certified Agency Projects form 734-2848 to [OCRINFOREQUEST@odot.oregon.gov](mailto:OCRINFOREQUEST@odot.oregon.gov) and ODOT Local Agency Liaison.

#### **D.15. DBE Goal Results Report Date (Only if goal is greater than 0%)**

This is the date OCR issues its DBE Goal Results Report, generally within three business days of receipt of the bid notification and DBE commitments forms 734-2848 and 734-2785 from the LPA. OCR may request supplemental information from the LPA as-needed.

OCR will review and evaluate each bidder's responsiveness to the assigned DBE goal in accordance with the DBE Commitment Requirements in the bid book and report the results to the LPA by email.

If the apparent low bidder is determined to be non-responsive, OCR will provide the LPA with specified language that offers the bidder administrative reconsideration. The LPA shall include the specified language in its notice to the apparent low bidder on LPA letterhead. The LPA shall not change the specified language provided by OCR.

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**Note on DBE Administrative Reconsiderations:** OCR is the sole responsible party for the DBE administrative reconsideration process. The LPA shall not issue the Notice of Award until the allotted time to request administrative reconsideration has passed and there are no outstanding appeals. The reconsideration period typically lasts 5 calendar days.

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#### **D.16. Notice of Award Date (Only if goal is greater than 0%)**

If the DBE goal is greater than zero, and after the notice of intent to award and protest period has passed, then LPA shall require in its Notice of Award that the

Resources:  
[-Form 734-2531](#)

responsive low bidder submit a Committed DBE Breakdown and Certification Form 734-2531 for each DBE firm committed at time of bid to meet the goal. LPA shall include the OCR URL address to the form and instructions in the Notice of Award directing the responsive low bidder to submit the completed 734-2531 forms to the LPA within 10 calendar days of the Notice of Award.

**D.17. DBE Commitment Date (Only if goal is greater than 0%)**

This is the date LPA submits Committed DBE Breakdown and Certification Form 734-2531 to [OCRINFOREQUEST@odot.oregon.gov](mailto:OCRINFOREQUEST@odot.oregon.gov). Copy the ODOT Local Agency Liaison of the results. Responsive low bidder shall submit completed Committed DBE Breakdown and Certification Form 734-2531 to the LPA within 10 calendar days of the Notice of Award. One copy of form 734-2531 is required for each DBE subcontractor used to meet the goal. Submittal of form 734-2531 is not required when the DBE goal is zero. OCR will separately email a PDF copy of the “approved” Committed DBE Breakdown and Certification Form to the LPA to be attached to the Pre-Con Letter. The Local Agency Liaison and Field Coordinator will be copied.

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The LPA must not execute the contract until the LPA receives confirmation from OCR that the awarded bidder is responsive to all DBE commitment requirements.

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**D.18. Award Date**

Within three days of the date of award, LPA shall submit Civil Rights Award Notification for Certified Agency Projects form 734-2849 along with the award letter to the ODOT Local Agency Liaison and to [OCRINFOREQUEST@odot.oregon.gov](mailto:OCRINFOREQUEST@odot.oregon.gov). The LPA shall include the LPA’s contract number on the award notification form.

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NOTE: The Office of Civil Rights should only receive the Award Letter, not the Notice of Intent to Award. The LPA shall not issue the Award Letter until the protest period has passed without challenges from the date on which the Notice of Intent to Award was issued.

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**E. PROJECT CONSTRUCTION PHASE**

For questions regarding project construction activities related to civil rights program matters, the LPA’s first point of contact should be your assigned ODOT Civil Rights Field Coordinator.

To ensure OCR is aware when project work has started, the LPA must notify the ODOT Civil Right Field Coordinator when the LPA issues a Notice to Proceed to the Contractor.

### E.1. OCR Pre-Con Letters

Prior to the Pre-Construction Conference (Pre-Con), the LPA must send the OCR Pre- Con Requirements outlining the Civil Rights Requirements to the Prime Contractor and any committed DBE Subcontractors.

The OCR Pre-Con letter will be emailed to the LPA within three days of the “Award Letter” notification by OCR. The report generated letter will auto-fill the LPA Project Manager's name on the template letter. The corresponding ODOT Civil Rights Field Coordinator (FC) and ODOT Local Agency Liaison will be copied.

**For a Project with a zero DBE goal, the LPA must:**

Resources:  
- [ODOT Civil Rights Field Coordinators](#)

- Add to or create a new cover letter listing the OCR Pre-Con letter as an attachment to the packet of information sent to the Contractor.
- Print or email OCR Pre-Con letter as an attachment to the packet of information sent to the contractor.
- Copy the ODOT FC on the packet sent to the contractor.

**For a Project with a DBE goal greater than zero:**

OCR will separately email a PDF copy of the “approved” Committed DBE Breakdown and Certification Form (Form 2) to the LPA to be attached to the Pre- Con Letter. The FC will be copied. **Do not send the OCR Pre-Con letter to the contractor until the “approved” Committed DBE Breakdown and Certification Form has been received.**

**Once received, the LPA must:**

- Create a new cover letter listing the OCR Pre-Con requirements as an attachment to the packet of information sent to the Contractor.
- Print and/or email Pre-Con requirements and the approved Committed DBE Breakdown and Certification Form as an attachment to the packet of information sent to the Contractor.
- Copy the ODOT FC on the packet of information sent to the Contractor.

### E.2. OCR “Internal Pre-Con” Meeting / Pre-Con

The ODOT FC will schedule an “internal pre-con” meeting with the LPA to review the requirements and assure that expectations are clear on what is expected of them. These meetings are intended to be Project-specific and identify the focus of the reviews and

oversight. The LPA must ensure appropriate staff attends these meetings, and neither prime nor subcontractors are permitted to attend.

The LPA must also copy the ODOT FC on all civil rights program related communications.

The ODOT FC may provide guidance on the content of communications.

At the pre-construction conference with the Contractor, the LPA should address each requirement for the civil rights programs included in the Project. The LPA shall notify the FC and the ODOT local Agency Liaison of when the pre-construction conference meeting will occur and may request assistance from the ODOT FC.

### **E.3. OCR Quarterly Reviews**

Between First and Second Notification, or LPA's equivalent, the ODOT FC will conduct, at a minimum, quarterly project reviews to determine missing paperwork and project compliance status. The ODOT FC will review the following documents:

- Subcontracts (including specialty Subcontractors)
- Report on Contractor's Request for Subcontract Consent, form 734-1395
- Contractor's Request for Subcontract Consent, form 734-1964
- Actual First and last day worked for each Subcontractor
- Paid Summary reports (PSR) form 734-2882
- DBE Work Plans (Form 3A) 734-2165A
- DBE Commercially Useful Function (CUF) form 3B 734-2165
- Contract Change Orders form 734-1169, affecting total contract dollars or work
- Monthly Employment Utilization Reports (MEUR) form 731-0668
- Training Program Approval Request (TPAR) form 734-2880
- Apprentice/Trainee Approval Request (ATAR) form 734-2878
- Apprentice/Trainee Monthly Progress Record (MPR) form 734-2879
- Discrepancies from last audit report
- Tribal Employment Rights Ordinance (TERO) goal progress, if applicable

The ODOT FC will send an electronic summary of the civil rights quarterly audit review and send it to the LPA and copy the ODOT Local Agency Liaison. The LPA should resolve any outstanding issues before the next FC quarterly audit review.



The quarterly audit review report shows all the known DBEs on the Project, commitment amount, contract payment amounts, whether a CUF review has been completed, and whether Form 3A has been logged as received. The report also includes workforce tracking, including Training Goal progress, MEURs missing on the Project, Contract Payment System versus Monthly Progress Reports, workforce rates for women and minorities on the Project.

After Second Notification, or LPA's equivalent, is issued, the ODOT FC will perform a final review listing any missing documents that need to be received prior to the LPA's issuance of Third Notification, or LPA's equivalent. A final review summary will be emailed to the LPA and ODOT Local Agency Liaison, and will list performance measures for any applicable DBE goal, OJT/Apprenticeship goal, TERO goal, (if applicable), and any missing documents that need to be received prior to the LPAs issuance of Third Notification, or LPA's equivalent.

#### **E.4. Disadvantaged Business Enterprise (DBE) Program – Federal Funded**

##### **a. Subcontracts**

LPA must forward copies of all Contractor's Request for Subcontract Consent form 734-1964 and Report on Contractor's Request for Subcontract Consent form 734-1395 with copies of the full subcontract for DBE subcontractors to the ODOT FC. Upon receipt of each subcontract, the ODOT FC will enter data into the Civil Rights Compliance Tracking (CRCT) system for tracking related payments, DBE, OJT/Apprenticeship and Equal Employment Opportunity (EEO) compliance. LPA shall record the date on which all DBE subcontracts have been received.

##### **b. Termination and Substitutions of Committed DBEs**

The contractor is required to have "good cause" to terminate and/or substitute a committed DBE. The contractor is required to notify ODOT in writing and obtain written consent before terminating and/or substituting the committed DBE that was a condition of Contract Award. The contractor also has notice requirements under the DBE Provisions, Section 10.00(b) and is required to notify the affected DBE.

The LPA must:

- First consult with the ODOT FC and DBE Program Manager if needed before providing written concurrence with a DBE termination and/or substitution. Copy the ODOT FC and the DBE Program Manager on the correspondence;
- Consider the DBE's response under the DBE Provision, Section 10.00(b) prior to concurrence of DBE terminations and/or substitutions; and
- Be aware that self-performance by the Prime Contractor of Work committed to the DBE is considered a termination or a partial termination of the DBE and would require prior written consent.



### **c. Commercially Useful Function**

#### **i. DBE Work Plan Proposal – Form 3A**

The Form 3A is required for all DBEs participating as Subcontractors on the Project, including non-committed DBEs.

The DBE Work Plan Proposal Form (3A) 734-2165A (Form 3A) is completed by the DBE and submitted to the Prime Contractor. The contractor is required under the DBE Provision, Section 7.00 to submit the DBE Work Plan Proposal to the LPA at the pre-con meeting, for all known and committed DBE(s).

The completed Form 3A should show sufficient description of the DBE Work to support a DBE Commercially Useful Function Form 734-2165 (CUF) review. Contact the ODOT FC for any technical advice and assistance.

The LPA will:

- Review the Form 3A for all DBEs (committed and non-committed) for completeness, including supporting documentation.
- Review and compare the Form 3A for committed DBEs, for consistency with the Committed DBE Breakdown and Certification Form 734-2531.
- Verify that the subcontract is consistent with the Form 3A and Committed DBE Breakdown and Certification Form 734-2531, as appropriate.
- Send a copy of all documents to the FC. The ODOT FC will review Form 3A and any supporting documentation for compliance.
- Send a copy of the reviewed Form 3A to the Contractor.
- Coordinate with the ODOT FC if CUF compliance issues are identified.
- If the ODOT FC or project manager determines corrective action is needed, provide written comments to the Contractor.

The Contractor must comply with all requirements of the DBE Supplemental Required Contract Provisions that are included in the Contract. Those provisions must also be incorporated into all subcontracts, at all tiers.

#### **ii. Commercially Useful Function (CUF) Review – Form 3B**

The LPA or designated representative must perform a Commercially Useful Function (CUF) evaluation of each DBE performing Work on the Project, including committed and non-committed DBEs.

The LPA must complete and sign a DBE Commercially Useful Function Form 734-2165 and submit it, along with any other needed information, to the FC.

The LPA or designated representative must perform at least one CUF review per DBE:

- For each twelve month period, for Projects where the DBE's Work lasts longer than twelve months.
- Whenever a significant change in the operation of the DBE occurs (when new Equipment is used or Work crews change).
- Whenever a replacement or substitution of a DBE occurs (for the new DBE).
- Whenever a significant Change Order changes or affects the Work to be accomplished by the DBE (when a new type of Work is added).

If the ODOT FC or the LPA note any discrepancies or CUF issues on Form 3B, they will coordinate to determine any needed corrective action.

#### **d. DBE Truck Monitoring**

This section is specific to Projects in which the contractor is using DBE trucking to meet the committed DBE goal for the Project.

The following is in addition to all other DBE responsibilities of the LPA:

##### **i. DBE Trucking - Work Plan Proposal – Form 3A**

Whenever a DBE trucking firm is being used to meet an assigned contract goal, DBE contractor/subcontractor must individually identify all trucks intended for use on the project on its DBE Work Plan Proposal Form 3A or an attached list.

The LPA will request the DBE contractor/subcontractor supply detailed information about each driver, each truck and any required supporting documentation must be provided, including:

- The driver's name, craft classification, and whether regularly employed by the DBE. If not regularly employed, list the recruitment source.
- The truck information, including:
  - License plate/truck Number.
  - Who owns the truck and whether or not the owner is a DBE firm.
  - Type of truck (end dump, belly dump, etc.).
  - Make and model of tractor and trailer.
  - Whether the truck, tractor or trailer is owned or leased by the DBE.

- Copy of lease agreements for any trucks, tractors or trailers leased by the DBE.

The DBE firm may add trucks to the Form 3A at any time prior to the truck being utilized on the Project.

For any owner/operators being utilized, the contractor will also need to provide the information as required in 00170.65(b) (4), General Provisions.

## **ii. DBE Trucking – Daily DBE Trucking Log Form 734-2916**

The DBE trucking subcontractor(s) are required to maintain a daily DBE trucking log of all trucks used on the Project. The form 734-2916 or an alternate form must include the same information. This log shall identify the truck used by either license plate number or some other specific identification system, truck owner, and the number of hours it was used for each day.

The DBE contractor/subcontractor is required to submit to the LPA the Daily DBE trucking log within 14 days of the first recorded date of the Work, and then on a weekly basis thereafter.

## **iii. DBE Trucking – CUF Review - Form 3B and Full Shift Verification**

In addition to the CUF review, the LPA is also responsible for performing an independent verification of all trucks used on the Project for a full work shift. The LPA must, without prior notice to any contractor or subcontractors, independently verify at least 10% of the total value of DBE trucking services being provided on the Project.

The LPA will generate the shift verification listing of trucks from one of the following methods below:

- Use truck tickets for weighed material delivery, where appropriate.
- Use an inspector to maintain a log or photograph of all trucks entering the project for the selected day.
- For projects where it is not practical to identify every truck on the project for a given Day, the LPA will develop and document an alternate plan in cooperation with the ODOT FC.

Again, the LPA office should not provide advance notification to the DBE subcontractor for days performing the independent verification.

The LPA will:

- Choose random peak trucking days to perform the verification.
- Verify all trucks in use on the project for a full shift.
- Compare the PM's listing of trucks on the project to the appropriate daily log provided

by the DBE subcontractor.

- Contact the ODOT FC if there is a discrepancy in the comparison and to assist in investigating the discrepancy.
- Document the resolved discrepancy.

If the discrepancy is unresolved, the verification will be expanded until the LPA and ODOT FC are satisfied that appropriate DBE credit is being given on the project.

DBE credit will be given based on the total subcontractor trucking logs, provided the comparison validates the contractor's Daily DBE Trucking Log.

#### **iv. DBE Crediting for Trucking Firm Services**

The LPA will be responsible for determining the crediting for the DBE Trucking firm. To determine the crediting, the LPA will:

- Compare the dollar value of the DBE trucks to the non-DBE trucks that work for the DBE trucking firm.
- Determine the credit by evaluating to the total value of the DBE trucks the DBE Trucking firm provides, plus the equal value of the non-DBE trucks that performed work on the project.

For instance, a DBE Trucking firm has both DBE trucks and non-DBE trucks performing work on a Project. If the dollar value of the DBE trucking work performed is determined to be \$50,000 and the non-DBE trucking work performed is determined to be \$72,000. The total DBE credit for the trucking services will be limited to \$100,000 and not \$122,000.

#### **e. Contractor Payments to Subcontractors**

The DBE Supplemental Required Contract Provisions include the requirements of ORS 279C.580, requiring the contractor to pay each of its subcontractors within 10 days after receiving payment from the LPA.

The contractor is required to certify payments made to subcontractors. On each project, the contractor is also required to complete and submit a Paid Summary Report form 734-2882 to the LPA 20 days after receipt of payment from the LPA.

The LPA is responsible for forwarding a copy of the completed Paid Summary Report forms to the ODOT FC for all subcontracts. The ODOT FC will review the report and alert the LPA if there are any discrepancies.

#### f. Corrective Action

If the LPA or ODOT FC identifies any failure to perform by either the Prime Contractor or any Subcontractor on Projects covered by Federal regulation or State statute, the LPA must initiate any actions needed to correct violations of the DBE Program.

##### Resources:

- [Chapter 35-Termination and Breach of Contract](#)

The LPA must:

- Notify the Prime Contractor in writing to require that the violation is corrected in a timely manner.
- Consider use of all legally allowed sanctions and penalties to achieve DBE Program compliance including those actions listed in the ODOT Construction Manual Chapter 35 – Termination and Breach of Contract if, as a result of failure by the Prime, the DBE commitment is not met.
- Copy the ODOT FC on all actions.

#### E.5. Equal Employment Opportunity (EEO) Program - Reports

By the date designated in the contract, the contractor and all subcontractors must complete and electronically submit the **Monthly Employment Utilization Report (MEUR)** form 731-0668 as required by the supplemental provisions. Each contractor or subcontractor (on contracts that require certified payrolls) shall complete and submit the form for each calendar month whether or not work was performed. A calendar month begins on the 1st and ends on the last day of the month.

The LPA will review all MEURs submitted by the prime contractor and its subcontractors monthly. The LPA will review all forms for completeness and accuracy and must verify that the following items are correct:

- Contractor's and subcontractor's name
- The ODOT Contract number
- Subcontract number
- Report month and year

The LPA should also review whether the report is new or revised. If the "No Work performed" box is checked, verify that no Work was performed by the contractor for that month. Instructions on the MEUR are available on the form.

If acceptable, the LPA will approve the MEUR by forwarding the MEUR Form to the FC.

If unacceptable, the LPA will return the original email and attachment (MEUR pdf file) to the prime contractor. The LPA should:

- Indicate in the subject line that the MEUR is being returned (example: MEURxxx - Possible Errors).
- In the body of the email, give a brief explanation of the question and/or discrepancy.
- Provide a due date to the contractor to ensure that the MEUR is corrected and re-submitted timely.

Once the revised MEUR is submitted and accepted by the LPA, the LPA will forward it to the ODOT FC.

If the ODOT FC reviews the MEUR and determines the MEUR has an error and is not acceptable, the ODOT FC will return the email and MEUR to the LPA for correction.

The FC should:

- Indicate why the MEUR is being returned.
- Give a brief explanation of the question and/or discrepancy in the body of the email.
- Request the MEUR is corrected and re-submitted timely.

**Contractor Annual Reporting Requirement:** All Contractors and Subcontractors with active (in First Note) federal-aid contracts in Oregon funded through ODOT shall submit Form PR-1391 each July for the duration of the Project. This report shall be sent directly to the ODOT Office of Civil Rights. The collection of information is required by law and regulation 23 USC 140a and 23 CFR Part 230. All Contractors or Subcontractors with qualifying contracts will receive a notice each July with instructions and the FHWA 1391 form. For further information, contact the ODOT Office of Civil Rights.

#### **E.6. Federal Reimbursable On-the-Job and Apprenticeship Training Provision Processes**

The following procedures apply when the contract includes the Reimbursable Federal On-The-Job and Apprenticeship Training special provisions:

##### **a. Pre-Construction Conference (“Pre-Con”)**

At or prior to the Pre-Construction Conference, the LPA needs to require the contractor to electronically submit completed Training Program Approval Request form 734-2880 prior to trainee/apprentice working. The contractor is ultimately responsible for meeting the OJT/Apprenticeship requirement. However, the contractor may choose to have one or more of its subcontractors fulfill part of, or the entire, OJT/Apprenticeship requirement. If the contractor fails to submit the Training Program Form(s) at the Pre-Con, the LPA should set a

deadline for the form(s) to be submitted (prior to the contractor beginning work) and follow up with the contractor.

The LPA will forward the submitted Training Program form(s) to the ODOT FC. Upon approval/denial, the form(s) will be returned to the LPA for distribution back to the contractor.

**b. First Notification**

**i. Apprentice/Trainee Approval Request (ATAR)**

Before the contractor can begin receiving credit/payment toward the OJT/Apprenticeship Bid Item, the contractor shall complete and submit an Apprentice/Trainee Approval Request (ATAR) form 734-2878 to the LPA for each apprentice to be credited toward the bid item. The LPA shall forward the ATAR(s) to the ODOT FC. Upon approval or denial, the form(s) will be returned to the LPA for distribution back to the contractor.

**ii. Monthly Progress Record (MPR)**

Each approved Apprentice/Trainee shall complete an Apprentice/Trainee Monthly Progress Record (MPR) form 734-2879 for each month in which the apprentice or trainee worked on that project. The contractor is required to submit the MPR to the LPA by the 10th of each month.

The LPA is required to:

- Verify that the contractor has an approved training program and approved ATAR for the apprentice or trainee.
- Verify the hours claimed on the MPR match the hours recorded on the certified payrolls.
- Verify the classification/craft on the certified payrolls match the approved Training Program and ATAR.
- Verify that the hours to date are correct.
- Verify that the MPR has all required signatures.
- Track the hours monthly and overall to ensure the contractor meets at least 100% of the goal, but payment does not exceed 150% of the item.
- Return any discrepancies to the contractor for correction.

Once hours have been verified, the LPA shall note the total hours to be paid on the record, ensure that the contract number is on each record, and forward to the ODOT FC each month for monitoring and reporting.

The LPA may use the MPR for “pay note” source documentation. The LPA must submit copies to the ODOT FC.

### c. Second Notification

The LPA will notify the ODOT FC when Second Notification, or LPA equivalent, is issued so the ODOT FC can determine if any paperwork is missing prior to the LPA's issuance of Third Notification, or LPA equivalent.

The LPA should also verify that the amount paid matches the amount tracked on the Apprentice/Trainee Monthly Progress Report (MPR) form 734-2879.

If, at the Second Notification, or LPA equivalent, the contractor has not achieved the Training Goal there will be a disincentive to the contractor. See Section 6 of the applicable Special Provisions.

### F. CIVIL RIGHTS FORMS LIST

A comprehensive list of OCR forms includes the following, which can be found on the Office of Civil Rights webpage linked in the Resources box.

Resources:  
[- Office of Civil Rights Forms](#)

#### Consultant Contracts

- DBE Goal Calculation Worksheet A&E
- Committed DBE Breakdown & Certification Form AE form 734-5235
- Award Notification ODOT OCR for Certified Agency Projects form 734-2849

#### Goals Request and Project Forms (Pre-Construction Phase)

- Civil Rights Request for Goals form 731-0663 & Goal Setting Issues & Resolution Process
- DBE Commitment Certification & Utilization Form (734-2785)
- Bid Notification ODOT OCR for Certified Agency Projects form 734-2848
- Subcontractor Solicitation and Utilization Report form 734-2721
- Committed DBE Breakdown and Certification form 734-2531
- Award Notification ODOT OCR for Certified Agency Projects form 734-2849

#### DBE Forms (Construction Phase)

- Paid Summary Report form 734-2882
- DBE Work Plan Form 3A form 734-2165A
- DBE CUF Review Form 3B form 734-2165
- Daily Trucking Log form 734-2916



- Contractor's Request for Sub-contract Consent form 734-1964
- Request for Release of Retainage for Subcontracted Work form 734-2510

**Equal Employment Opportunity (Construction Phase):**

- Monthly Employment Utilization Report (MEUR) form 731-0668
- Complaint Form - External Civil Rights

**OJT/Apprentice (Construction Phase)**

- Apprentice/Trainee Approval Request (ATAR) form 734-2878
- Apprentice/Trainee Monthly Progress Report (MPR) form 734-2879
- In House Trainee MPR Templates:
  - Carpenter
  - Cement Mason
  - Construction Assistant
  - Iron Worker
  - Utility
- Monthly Progress Record (MPR) form 0332
- Training Program Approval Request (TPAR) form 734-2880
- Training Program Form (TP) form 0335

**ADA and Title VI**

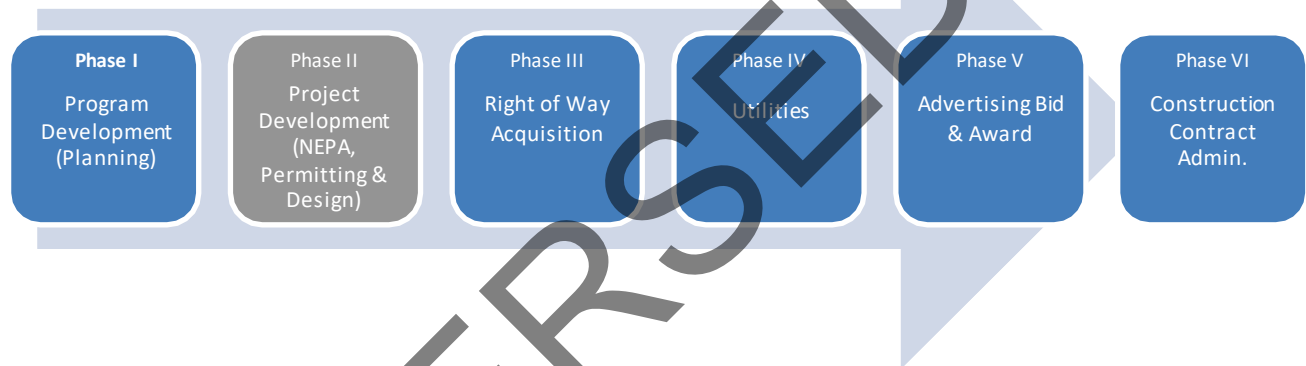
- ADA Accessibility Request Form Video
- ADA Comment, Questions, Concern or Request - Web Form
- ADA Comment, Questions, Concern or Request form 734- 5061
- Discrimination Complaint form 734-5008
- Department of Justice ADA Complaint Online Form

## Chapter 9. General Design Requirements

This chapter and the following two chapters of this manual relate to the design phase of FHWA funded Certified LPA projects:

- Chapter 9, General Design Requirements
- Chapter 10, Design Approval
- Chapter 11, Plans, Specifications, and Estimates (PS&E)

In the sequence of project delivery, design occurs during project development, but prior to advertising for bids and award.



### A. OVERVIEW

The American Association of State Highway and Transportation Officials (AASHTO) guidelines have been adopted as the design standard for FHWA funded projects on local national highway system (NHS) routes and projects on the LPA's transportation system. Design standards for projects on the state highway system must conform to the requirements detailed in ODOT's current *Highway Design Manual*, other ODOT Manuals, and ODOT Technical Bulletins and Directives.

Resources:

- [Highway Design Manual](#)

The approving agency identified for the various phases of work is indicated in the Approval Authority Matrix in Section D of this manual.

Different standards apply to the design of:

- New construction / reconstruction projects;

- Resurfacing, restoration, and rehabilitation projects; and
- Low-volume local agency roadways (average daily traffic of less than 2000).

Each of these standards is defined in separate sections below. LPAs should determine which standards apply before beginning their project design.

For FHWA funded projects, current AASHTO standards apply based on the federal functional classification of the roadway. Additional classification information is available on ODOT's *Federal Functional Classification* website. Generally, context sensitive design concepts should be considered for all project designs. Additional information related to context sensitive design can be found at the Oregon Transportation and Growth Management website.

Resources:

- [Federal Functional Classification](#)
- [Oregon Transportation and Growth Management](#)

## B. VALUE ENGINEERING

Value Engineering (VE), as stated in ODOT Policy Number DES 01-03, is a project analysis technique that often generates significant cost reduction; however, the primary focus is value improvement. VE will help ODOT and LPAs in the goals of providing cost-effective projects and procedures, and improved productivity and efficiency. Transportation agencies can use VE in all aspects of transportation such as design, traffic operations, construction, maintenance, specifications, standard drawings, and planning.

The VE methodology is a systematic approach used to identify opportunities for reductions in cost, schedule, and risk, while increasing lifecycle performance. The Federal Highway Administration (FHWA) states that VE is "the most effective technique for identifying and eliminating unnecessary costs and enhancing value".

All ODOT Highway construction projects in the Statewide Transportation Improvement Program (STIP) shall be screened based upon established criteria to determine the need to conduct a formal Value Engineering Study.

As of January 1, 2020 ODOT has adopted value engineering guidance outlined in DES 01-03 for STIP projects. While LPAs are exempt from DES 01-03, they are required to meet the following FHWA regulations (23 CFR 627):

- All Projects with an estimated total cost of \$50 million or more are required to have a Value Engineering study regardless of funding source or NHS designation.
- All Federal aid funded bridge projects on the National Highway System (NHS) with an estimated total cost of \$40 million or more are required to have a Value Engineering study (23 CFR 627).
- VE analysis is not required by ODOT for projects delivered using the design-build

method of construction (23 USR 106(e)(5)).

Regardless of project cost, ODOT encourages LPAs to consider performing VE for projects with one or more of the following attributes:

- Projects that have significantly exceeded preliminary cost estimates
- Projects with initial total cost estimates approaching and that may exceed federal thresholds through project development and construction
- Projects with alternative solutions to documented problems
- Major structures
- Complex projects
- Projects using critical or high cost materials and procedures
- Projects with multiple phases
- Projects that include extensive or expensive environmental or geotechnical requirements
- Projects with complex traffic staging
- Projects being considered for alternative contracting methods
- Projects of high cost

See ODOT Risk Management, Value Engineering, and Constructability Reviews webpage and 23 CFR 627 for additional value engineering information.

Resources:

- [ODOT Risk Management, Value Engineering, and Constructability Reviews](#)
- [23 CFR 627](#)

### C. NEW CONSTRUCTION/RECONSTRUCTION PROJECTS (4R)

A reconstruction project is designed to meet the design criteria for new construction for the functional class. Reconstruction includes significant changes in cross section or shifts in both vertical and horizontal alignment. If 50 percent or more of the project length involves vertical or horizontal alignment changes, the project will be considered reconstruction (4R), as opposed to a resurfacing, restoration, and rehabilitation project (3R). For additional information, refer to ODOT's *Highway Design Manual*.

Reconstruction may require acquisition of additional right of way, and may include the items of work usually associated with new construction, including but not limited to the design considerations outlined in items 1 through 15 in section F below. New construction/reconstruction projects on routes under State jurisdiction shall be designed to the 4R standards found in ODOT's *Highway Design Manual*.

Projects on other routes shall be designed to the standards found in the current version of AASHTO's *A Policy on Geometric Design of Highways and Streets*. AASHTO manuals can be purchased at the AASHTO Bookstore website.

If it is not clear which standard should be used, contact the regional Local Agency Liaison. It is important that the standards chosen are appropriate for the functional classification of the road in question.

#### D. RESURFACING, RESTORATION AND REHABILITATION PROJECTS (3R)

Resurfacing, restoration and rehabilitation projects on routes under State jurisdiction shall be designed to ODOT 3R standards found in ODOT's *Highway Design Manual*. These types of projects on other routes may be designed to ODOT 3R or AASHTO standards.

Care should be taken to ensure that the standards chosen are appropriate for the functional classification of the road in question.

Additional design guidance for 3R projects may be found in Transportation Research Board (TRB) Special Report 214 and additional information for 3R projects geared toward the urban environment may be found in NCHRP Report #876.

#### E. DESIGN OF LOW-VOLUME LOCAL ROADS (ADT < 2000)

A low-volume road is a road that is functionally classified as a local road and has a design ADT of 2000 vehicles per day or less. Design standards for low volume local agency roadways, can be found in the AASHTO *Guidelines for Geometric Design of Low-Volume Local Roads* manual.

The AASHTO *Guidelines for Geometric Design of Low-Volume Local Roads* manual is intended for application in the design of new construction or improvements to existing very low-volume roads. These guidelines apply in both urban and rural areas.

The design guidelines enable designers to apply design criteria that are generally less restrictive than those used on higher volume roadways. The risk assessment upon which these guidelines are based shows that these less restrictive design criteria can be applied on low-volume roads without compromising safety.

AASHTO manuals can be purchased at the AASHTO Bookstore website.

##### Resources:

- [AASHTO Bookstore](#)
- [ODOT Engineering Guidance](#)

#### F. DESIGN CONSIDERATIONS

##### F.1. Roadside Inventory

A Roadside Inventory (see ODOT's *Highway Design Manual*) is an integral part of all projects and should include:

- Upgrading existing substandard roadway design elements;
- Improving existing operational features;
- Reducing the potential hazard of existing roadside features; and
- Upgrading bridge safety features.

## **F.2. Roadway Geometrics**

Designs shall be based upon accepted engineering practices and the requirements listed in this manual.

## **F.3. Pavement Determination**

To be eligible for federal funding, pavements shall be designed to provide a service life of 20 years for new or reconstructed pavements and 15 years for rehabilitated pavements. Any departure from these service life requirements will be considered a design deviation. See the Design Exceptions/Deviations Section below for additional details on the design exception process. Refer to ODOT's Pavement Design Guide for additional information.

ODOT must approve all pavement designs for LPA projects on the State Highway System. The determination of pavement type is of major importance in the development of plans for any urban street and road paving improvement.

### **Resources:**

- [Pavement Design Guide](#)
- [Bridge Design Manual](#)
- [Traffic Control Manuals](#)

## **F.4. Structural Design**

Design procedures shall conform to AASHTO's Load and Resistance Factor Design (LRFD) methodology.

The AASHTO LRFD Bridge Design Specifications can be purchased at the AASHTO Bookstore website. Bridge deck protection is required for all FHWA funded bridge construction. The recommended protective systems are outlined in *ODOT's Bridge Design Manual*.

## **F.5. Traffic Control**

All traffic control devices on the State Highway system and on all public roads shall conform to the *Manual on Uniform Traffic Control Devices* (MUTCD) and *Oregon Supplement to the Manual on Uniform Traffic Control Devices*. (23 CFR 655.603; ORS 810.200). In addition, when an LPA installs a traffic control device under interim approval by FHWA, the LPA must inform the State Traffic-Roadway Engineer's office in order to maintain a comprehensive list of such installations. One example of devices allowed under interim approval that need to be reported

### **Resources:**

- [ODOT MUTCD page](#)
- [ODOT Traffic Control Device Installation Report form](#)
- [FHWA Interim Approvals](#)

are Rectangular Rapid Flashing Beacons (RRFBs). Once an interim approval device is installed, LPAs can report the installation through the Traffic Control Device Installation Report form on the ODOT Engineering website. A list of devices that require reporting is located on the ODOT MUTCD web page. Traffic control poles and foundations should be checked by a structural engineer or responsible manufacturer.

Critical required elements of temporary traffic control include safe bicycle, pedestrian and ADA accommodations through or around work zones. These accommodations must be equal to or better than the existing level of accessibility prior to construction. Refer to Section 6D of the MUTCD for more information.

Additional guidance is also provided in ODOT's Technical Services Directive TSB17-01(D) entitled *Temporary Pedestrian Accessible Route Plans Required for Work Zones*.

#### **F.6. Clear Zone**

The clear zone is the unobstructed, traversable area beyond the edge of the traveled way that allows an errant driver to stop or regain control of a vehicle. See Chapter 4 of ODOT's *Highway Design Manual* for further clear zone discussion.

Refer to the *AASHTO Roadside Design Guide* criteria for establishing clear zone distances, discussions of roadside features, and data on roadside barriers. If the guidelines in the *Roadside Design Guide* are not followed, the deviation process outlined in the Design Exceptions/Deviations Section below shall be followed. The *AASHTO Roadside Design Guide* can be purchased at the AASHTO Bookstore website.

##### **Resources:**

- [Bicycle and Pedestrian Design Guide](#)
- [Standard Drawings and Standard Details](#)
- [Bridge Design Manual](#)

#### **F.7. Vertical Clearance**

Refer to the appropriate section of AASHTO's *A Policy on Geometric Design of Highways and Streets* for the required vertical clearance for each functional classification of roadway. Vertical Clearance on state highways must follow guidance and criteria established in the *ODOT Highway Design Manual*.

As noted on page 7-13 of the *Bicycle and Pedestrian Design Guide*, the standard vertical clearance of structures above multi-use paths and sidewalks is 10 feet and under some circumstances, a minimum of eight feet may be allowable with good horizontal and vertical clearance, so users approaching the structure can see through to the other end.

#### **F.8. Bridge Approach Railings**

Approach guardrail is required at all bridge ends and shall be made structurally continuous with the bridge railing.



Guardrail layouts have been developed for use when an intersecting roadway or private approach exists within the limit of the standard bridge approach guardrail.

See ODOT's Standard Drawings and Standard Details website for additional information.

### **F.9. Bridge Railings**

Only bridge rail designs that have been successfully crash tested (or their equivalents) shall be used on federally funded new construction or reconstruction projects. *ODOT's Bridge Design Manual* contains guidelines and performance levels for bridge railing along with examples of bridge rail designs that have been crash tested.

### **F.10. Illumination**

Consider roadway illumination for high activity pedestrian areas (bus stops, crosswalks, etc.), locations with a high number of night-time accidents, interchanges, etc. Low energy consumption designs should be considered as the maintenance and operation costs of illumination systems may exceed the installation costs. Lighting levels should be designed according to Illuminating Engineering Society Standards. Light poles and foundations should be checked by a structural engineer or responsible manufacturer.

### **F.11. Pedestrian Facilities**

Refer to Appendix L in the *ODOT Highway Design Manual: the Oregon Bicycle and Pedestrian Design Guide* for design, traffic control and illumination standards, best practice recommendations, guidance and information on pedestrian accommodation.

Sidewalks should be incorporated into reconstruction projects as required by law and into other projects where appropriate.

Refer to the Oregon Bicycle and Pedestrian Plan to ensure that projects conform to statewide goals, policies and strategies for accommodating pedestrians. See also ODOT's Pedestrian and Bicycle Program website for information related to bicycle facility laws, standards, funding, contacts, etc. for design and traffic control standards, best practices, guidance and information on pedestrian accommodation.

### **F.12. Bicycle Facilities**

Refer to Appendix L in the *ODOT Highway Design Manual: the Oregon Bicycle and Pedestrian Design Guide* for design, traffic control, and illumination standards, best practice recommendations, guidance and information on accommodating people on bicycle.

#### **Resources:**

- [Pedestrian and Bicycle Program](#)
- [Americans with Disabilities Act](#)
- [Engineering for Accessibility](#)
- [Standard Drawings and Details](#)



Bikeways should be incorporated into reconstruction projects as required by law and into projects where appropriate.

Refer to the Oregon Bicycle and Pedestrian Plan to ensure that projects conform to statewide goals, policies and strategies for accommodating bicyclists. See also ODOT's Bicycle/Pedestrian website for information related to bicycle facility laws, standards, funding, contacts, etc.

### **F.13. Accessibility Features**

Every service or facility provided in a project must be accessible and usable to people with disabilities in accordance with the Americans with Disabilities Act. For example, where sidewalks are provided, the sidewalks, curb ramps and driveways shall meet the accessibility requirements of the Americans with Disabilities Act.

Refer to ODOT's Engineering for Accessibility website for information about curb ramps, traffic signals, parking, accommodation in work zones, crosswalks and for ADA requirements. Reference ODOT's Standard Drawings for additional guidance.

For projects on or along state highways, ODOT's Curb Ramp Process policy and procedures for the design and construction of sidewalks and ramps shall be followed, including the use of all ODOT forms. For projects on a local facility, ODOT's process must be followed unless the LPA has an ODOT-approved ADA design, design exception, and inspection processes in place.

### **F.14. Drainage and Hydraulic Design**

Refer to the ODOT Hydraulics Manual or other ODOT approved manuals.

### **F.15. Construction Specifications**

Unless otherwise agreed upon, all federally funded certified LPA projects shall be constructed in conformance with the current edition of the Oregon Standard Specifications for Construction as modified by the LPA and approved by ODOT.

Refer to Section B and Section C, Chapter 11 of this manual for additional information.

#### **Resources:**

- [ODOT Curb Ramp Process](#)
- [Hydraulics Manual](#)
- [Oregon Standard Specifications for Construction](#)
- [Design Exception Request](#)

## **G. DESIGN EXCEPTIONS/DEVIATIONS**

Certified LPAs are required to have a documented design exception process and shall document project design exceptions and the reasons for deviation from standards. Each documented design exception should include a description of the problem, its proposed solution, and any other information that may be helpful as a future reference.

For ADA-related design exceptions, the design exception should describe how it has ensured adherence to ADA standards to the maximum extent feasible.

LPAs are authorized to design projects to the standards referenced in this chapter, following the warrants and qualifying statements given. In the event all minimum recommendations cannot be incorporated into the design, the LPA shall obtain exception/deviation approval as applicable.

- Design exceptions shall be documented and approved by the appropriate authority prior to the LPA's completion of PS&E documents. Approval of any design exception is a prerequisite for PS&E approval.
- Roadway design exceptions for work on a local facility are processed and approved by the LPA.
- Design exceptions for work on or along the state highway system requires approval of a Design Exception Request from ODOT. To obtain ODOT approval the LPA must submit a completed ODOT Design Exception Request Form and supporting documentation to ODOT's Regional Local Agency Liaison for processing.
- All bridge design deviations must be approved by ODOT (and FHWA if necessary) if the bridge is on the National Bridge Inventory (NBI). For locally-owned bridges not on the NBI, the LPA has approval authority.

For additional information, see the Approval Authority Matrix in Section D Resources and Section C, Chapter 11 of this manual.

## Chapter 10. Design Approval

On all FHWA funded transportation projects (excluding bridges), LPAs are the approving authority for the design of projects on a local facility or a local NHS facility. For work on or along a state highway or bridges on the National Bridge Inventory list, ODOT retains final approval authority. ODOT also retains approval authority over all final plans, specifications, and estimate (PS&E) submittal packages. See the Approval Authority Matrix form 734-5191 in Section D of this manual for additional information.



### A. OVERVIEW

The design approval process involves a series of milestones as depicted within the following flow chart. This chapter generally addresses roadway design. Information specific to bridge design is located in Section C, Chapter 14 of this manual. For a list of approval actions and the agency responsible, refer to the Approval Authority Matrix form 734-5191 located in Section D of this manual.

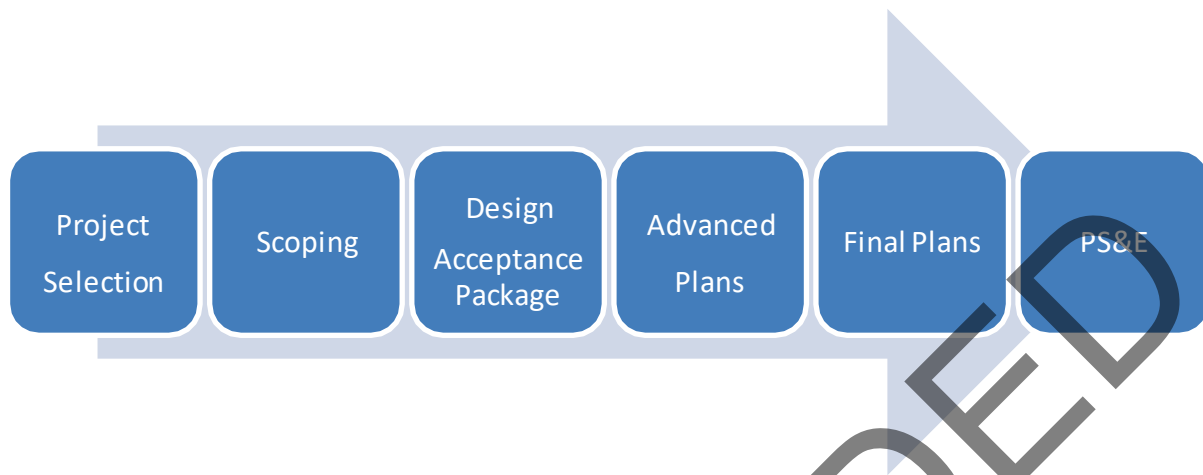
The *ODOT ADA Curb Ramp Process* document outlines ODOT's requirement for each of the project milestones. This process document is intended to give designers, developers and LPAs information and guidance on the ODOT pedestrian curb ramp design and construction acceptance process.

#### Resources:

- [ODOT ADA Curb Ramp Process](#)

Certified LPAs are required to use the ODOT process for work on or along the state highway and can either adopt the ODOT process for use or refer to it to guide their own ODOT and FHWA-approved procedures to ensure that ADA considerations are included throughout the project development process.

## B. DESIGN ACCEPTANCE PACKAGE (DAP)



The Design Acceptance Package (DAP) is a critical milestone in the decision-making process. It establishes the geometric boundaries of the project footprint, provides the basis for conducting NEPA studies, identifies any right of way that may be needed and provides for a more reliable update to the project scope, schedule, and budget.

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**Approval Authority Note:** For a project on a local facility or on a local NHS facility, the LPA has approval authority for the design acceptance package. ODOT retains approval authority for work on or along the state highway system.

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Design acceptance occurs at the end of the initial design phase when preliminary plans are approximately 30-60% complete, depending on project complexity and the LPA's design processes. The Design Acceptance Package review allows all project disciplines to review the design for balance of context with standards and policies.

It is the primary opportunity for both technical and non-technical stakeholders to review design elements according to their specific interest. All anticipated design exceptions should be identified and draft design exceptions included with the Design Acceptance Package.

By the time the Design Acceptance Package is complete, curb ramp design should be sufficiently developed to identify whether any additional right-of-way is needed to design and construct compliant curb ramps and any pedestrian signals to meet ADA accessibility standards.

All design exceptions for work on or along the state highway, including curb ramp-related exceptions, must complete the review and approval process before PS&E submittal can be approved. It is important to allow sufficient time for ODOT's review and approval process (typically, two to four-weeks) for work on or along the state highway.

The items listed below are normally included in the Design Acceptance Package:

**B.1. Traffic Data**

The LPA should include a design-year Average Daily Traffic (ADT) forecast during the design. The design year should be 15 years from the projected start of construction for resurfacing, restoration and rehabilitation projects and 20 years from the projected start of construction for new construction/reconstruction projects.

**B.2. Right of Way**

The Design Acceptance Package may include the right of way map (if necessary) and proposed footprint. Refer to Section C, Chapter 9 of this manual for further details.

**B.3. Horizontal and Vertical Alignment**

Overlaid on a topographic survey map, the LPA's design should include a plan showing the proposed horizontal alignment, existing streets and existing right of way lines with proposed right of way takes. The plan should also show existing and proposed drainage features and how storm water treatment is being handled. Such plan need only show sufficient detail to generally portray the scope of the project.

If there is little change in the profile, the LPA need not include a profile. If there is a reasonable amount of change, then the LPA should also furnish a profile showing existing and recommended vertical alignments.

**B.4. Roadway Typical Section(s)**

The roadway typical section(s) indicating the structural pavement section, any widening and other information should be shown for each general type of roadway in the project. This is not required on signal projects if the lane description has been shown.

Preliminary curb ramp details need to be developed with enough information to show how the design will meet ADA requirements. Identify if any formal crosswalk closures have been approved or if any ADA design exceptions are approved. An accessible route plan should be provided and evaluated for any right of way needs.

**B.5. Preliminary Cost Estimate**

A preliminary cost estimate should be prepared that reflects all project construction items (including mobilization and temporary traffic control) as well as costs for anticipated items, construction engineering (CE) and contingencies. These costs should be checked against the STIP phase authorization to ensure adequate funding is available.

## **B.6. Environmental Considerations**

Environmental considerations, including public involvement requirements and outreach to the impacted communities, must be documented and approved by ODOT and FHWA. Additional information is available in Section C, Chapter 6 of this manual.

## **B.7. Permits and Clearances**

There are a number of permits and clearances required from various sources to meet regulations prior to construction of a project. Some of these permits may involve wetlands, material sources, fish passage, airport clearance, railroad, utilities, waterways and local ordinances. It is critical to obtain the permit prior to submission of Plans, Specs & Estimates. Permits and clearances should be obtained with enough time to make any changes to the project plans prior to PS&E, as dictated by the conditions of the permit. For the purposes of the Design Acceptance Package, all permits and clearances required for the project should be identified at this stage.

Refer to Section C, Chapter 6 of this manual and *ODOT's Project Delivery Guidebook* for a listing of permits that may be required.

## **C. PRELIMINARY PLANS**

This step is an additional technical and construction review between the Design Acceptance Package and Advanced Plans for more complex projects. For simple projects, such as asphalt concrete pavement grind and inlay, this phase may be omitted. The project team coordinates the completion of preliminary plans, including accessible transportation elements that help to build the bid documents for the project. Preliminary plans for the approved DAP are approximately 70% complete at this point in the project development. Preliminary plans include the following:

- Noise mitigation final design
- Utility test-hole excavation
- Preliminary plans
- Updated construction cost estimate
- Updated construction schedule

Completion of this stage is a primary opportunity for technical staff to provide comments and feedback on the adequacy and appropriateness of the design with respect to the design standards established for the project.

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**Note:** A Value Engineering study must be performed if the project meets the threshold requirements. See Section C, Chapter 9 for additional information about Value Engineering requirements.

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## D. ADVANCE PLANS

This key interim step of the contract document phase requires all project disciplines to review draft contract documents for completeness and accuracy. It is the primary opportunity for technical staff to provide quality control review of the project PS&E as a package. Advanced Plans are approximately 90% complete and should include the revisions resulting from any Preliminary Plan reviews and are accompanied by the project's draft special provisions.

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**Approval Authority Note:** For a project on a local facility or on a local NHS facility, the LPA has approval authority for the advance plans package. ODOT retains approval authority for work on or along the state highway system.

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### D.1. Advance Plans Review Package

The Advanced Plans Review Package includes:

- Incorporation of DAP and preliminary plan review comments
- Advanced project plans
- Approved utility relocation plans
- Final hydraulics report
- Final stormwater report
- Final geotechnical report
- Roadside inventory
- Revised project construction cost estimate
- Advanced special provisions
- Pavement design
- Revised construction schedule
- Approved design exceptions, including any ADA-related design exceptions (if needed)
- Traffic Control Plan Design that addresses the Temporary Pedestrian Accessible Route (TPAR)
- Letters of public interest findings and exemption orders (LPIF)

## D.2. Quality Control / Quality Assurance

Quality control should be occurring throughout project development. Quality assurance should occur during the advance plans review.

## E. FINAL PLANS

This step occurs in follow-up to review and comment on the advanced plans and specifications. It is the last opportunity for contract documents to be reviewed by technical staff for quality control and document completeness, before the project is ready to move forward for FHWA review (when needed) and PS&E submittal.

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**Approval Authority Note:** For a project on a local facility or on a local NHS facility, the LPA has approval authority for the final plans package. ODOT retains approval authority for work on or along the state highway system.

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### E.1. Final Plans Review Package

Based on the comments provided during the advanced plans review, the draft contract documents are advanced to the final plans. The final plans review package includes:

- Incorporation of advance plan review comments
- Final plans, special provisions and cost estimate
- Final construction schedule
- Final insurance risk assessment (when on or along a state facility)
- Final Mobility Consideration Checklist form 735-9983 (when on or impacting a state facility)
- Draft PS&E Submittal & Completeness Checklist
- Final documents required for PS&E submittal.
- Approved Design Exceptions, including any ADA-related design exceptions

## F. PS&E SUBMITTAL

This point of decision-making provides certainty of the completeness and constructability of a project for bid. Decision-making with any desired interim milestones between Design Acceptance Package and Plans Specifications and Estimate submittal (e.g., TS&L, Advanced, and Final Plans) should be addressed through individual Quality Control Plans

### Resources:

- [ODOT Project Delivery website](#)
- [Regional Local Agency Liaison Contacts](#)
- [Region Traffic Engineer Contacts](#)



and Project Development Change Requests as needed. For information regarding PS&E submittals, refer to Section C, Chapter 11 of this manual.

For further information regarding project submittals and related checklists, reference ODOT's project delivery website.

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**Approval Authority Note:** ODOT retains approval authority for all certified LPA PS&E submittal packages.

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## G. ADDITIONAL DATA REQUIRED FOR SPECIAL PROJECTS

### G.1. Traffic Signal Projects

The LPA shall provide warrants for signalization in accordance with the *Manual on Uniform Traffic Control Devices* and *Oregon Supplements*. Designs for signalization at intersections with state routes require review by ODOT. An ODOT signal permit is required for all traffic signals on state routes. LPAs should contact their Regional Local Agency Liaison, as early application and coordination with ODOT's Region Traffic Engineer is required.

### G.2. Projects Involving the State Highway System

Designs for all projects involving state highway system shall be submitted to the ODOT Regional Local Agency Liaison for processing and obtaining ODOT approval. All work at intersections with the state highway system requires submittal of an intersection plan to the Regional Local Agency Liaison for processing and obtaining ODOT approval. Prints of existing intersection plans are available from ODOT. Revisions should be shown on these prints.

### G.3. Special Research or Use of Experimental Features

Such projects require FHWA approval. Contact the Regional Local Agency Liaison for additional information.

### G.4. Bridge Projects

#### a. Design Acceptance Package

For projects that include bridges, the Design Acceptance Package must include a Type, Size and Location (TS&L) Design Package as described in Section C, Chapter 14 of this manual. Note, bridge work may trigger ADA-related work and design exception processes. Refer to ADA Compliance for Bridge Work and design Considerations in ODOT's *Bridge Design Manual*.

#### b. Approval Authorities

Refer to FHWA's Bridge Technology Memorandum and Chapter 14, Bridge, in Section C of this manual, for additional information regarding "unusual" bridges. For bridge projects, the

approving authority for the Design Acceptance Package is outlined in Approval Authority Matrix form 734-5191 in Section D of this manual.

Additionally, bridge projects that fall under the category of “major” (e.g. a bridge estimated to cost more than \$5 million) or “unusual,” then ODOT’s approval is required prior to final TS&L. For bridge projects on state routes or bridges on the National Bridge Inventory, design approval by ODOT’s Bridge Engineer is required.

### **c. Timing of Review Comments**

It is important that review comments be made as soon as practical in the project development process. For example, comments on major features of a bridge project such as structure type, location, length, constructability, etc., should be made at the Type Size & Location stage. Significant comments made later in the project’s development may not be accommodated. Comments at the PS&E stage should be limited to refinements in the plans and specifications and suggestions for improved details.

### **d. Submittal of Data**

Refer to Section C, Chapter 14 of this manual for additional information regarding the submittal of data.

### **e. Bridges on State Right of Way**

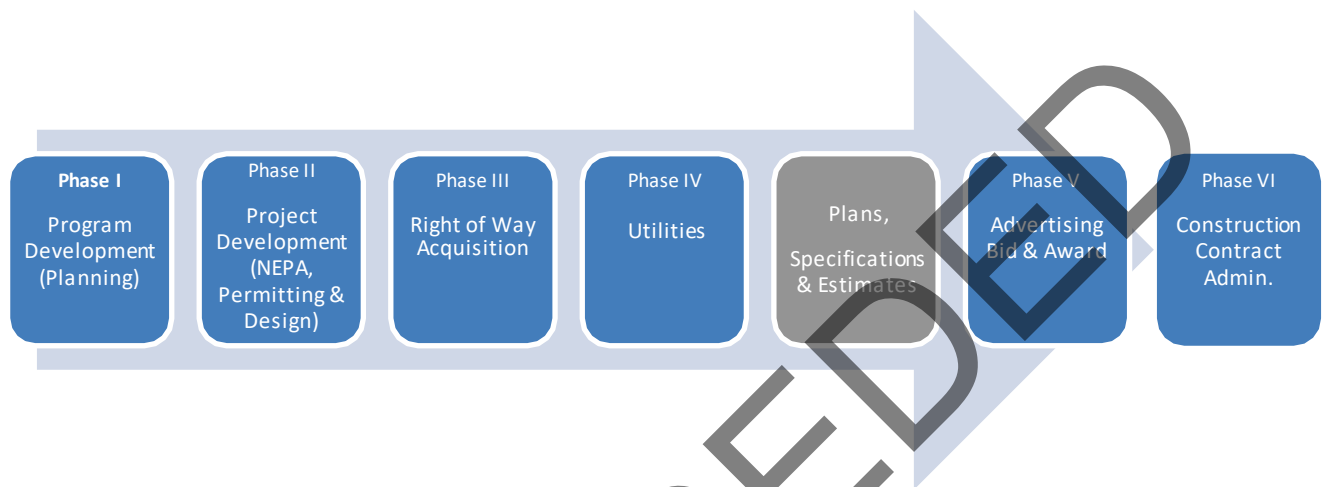
Bridge projects designed and constructed by a LPA within state right of way must be coordinated with ODOT’s Regional Local Agency Liaison who will serve as the project liaison and the ODOT contact for all aspects of the project. The liaison will coordinate ODOT technical reviews and ensure that adequate coordination between the LPA and ODOT takes place at each appropriate stage.

All pertinent review data submitted to the LPA by ODOT’s Bridge Section concerning constructability, safety, aesthetics, or use of the bridge by the motoring public will be forwarded to the LPA through ODOT’s Regional Local Agency Liaison.

LPAs should refer to Section C, Chapter 14 of this manual for detailed information related to delivery of local bridge projects.

## Chapter 11. Plans, Specifications and Estimate (PS&E)

This chapter is used for all federal-aid projects undertaken by LPAs operating under agreement with ODOT. In the sequence of project development, Plans, Specifications & Estimates (PS&E) occurs prior to advertise, bid and award.



### A. OVERVIEW

This chapter details the requirements for development of the final PS&E package, including design plans, environmental documentation, bid book and special provisions, cost estimate, and the right of way and utility certifications to name a few. These documents are applicable to all Federal-Aid Highway Program (FAHP) funded projects.

As noted in other chapters, there are generally four milestones during the design process: design acceptance package (DAP) (30-60% plans, depending on project complexity and the LPA's design processes); advance plans (90%); final design (100%); and final PS&E. Although ODOT is responsible for approval and acceptance of the final PS&E package, the LPA typically has approval authority for the other milestones. Exceptions apply when the project is on or along the state highway system. See the Certified LPA Approval Authority Matrix form 734-5191 in Section D of this manual for more information.

Upon LPA request, ODOT will provide program and project technical support, training, advice and guidance to the LPA. ODOT will also fulfill its oversight role as documented in Section B of this manual.

### B. PS&E QUALITY CONTROL

The LPA is responsible to ensure the quality control of the PS&E package. The PS&E shall at a minimum be in conformance with the applicable, current editions of the following, unless otherwise requested by LPA and approved by ODOT:

- AASHTO “A Policy on Geometric Design of Highways and Streets” for local facilities
- Oregon Standard Specifications for Construction including boilerplate special provision updates or the LPA’s standard provisions
- Manual on Uniform Traffic Control Devices and Oregon Supplements
- Transportation Research Board’s Highway Capacity Manual
- Local agency certification procedures found in this LAG Manual on ODOT’s Local Government web page
- Title 23 and Title 49 of the Code of Federal Regulations
- FHWA Contract Administration Core Curriculum Manual
- ODOT Right of Way Manual
- ODOT Utility Manual
- ODOT Bridge Manuals
- ODOT Highway Design Manual for ODOT facilities (note: Design standards for all projects on or along the Oregon State Highway System shall be in compliance with standards specified in the current edition of the ODOT Highway Design Manual and related references. Construction plans shall be in conformance with ODOT’s standard practices.
- Other ODOT Technical Services manuals, directives and guidance, including ADA-related design standards.

### C. KEY PS&E PROCESS POINTS

The following discusses certain key elements necessary for a complete and acceptable PS&E document package. The items listed in this subsection are required submittals. Refer to the PS&E Submittal & Completeness Checklist form 734-5182 in Section D of this manual.

#### C.1. Design Plans

Each project design plan sheet must be professionally certified by insertion of the Professional of Record’s (POR) seal (stamp) and signature with license expiration date. Professional certification is not required for the standard drawings, title sheet and index of drawings sheet. Additionally, the title sheet must contain the following elements:

- Federal-aid project number
- Vicinity map
- Project name

- Project length
- Sheet index
- Applicable standard drawings
- Oregon utility certification language
- Provision for approving official(s) signature(s) and date(s)
- Scale

The LPA's "*approving authority*" must approve the plans and specifications, and a POR licensed in the State of Oregon must seal, sign and date the plans and specifications, as appropriate.

## **C.2. Completed Environmental Documentation**

All FHWA-nexus projects are required to conform to the National Environmental Policy Act (NEPA) as primarily codified in 23 CFR 771. The majority of LPA projects are classified as Categorical Exclusions (CEs) under NEPA. The type of documentation required for a project depends on the level and significance of environmental impacts the project will have. There are different documentation and approval requirements for each type or class of project:

**NEPA Class 1 or Class 3:** If the project is NEPA Class 1 (EIS) or Class 3, (EA), an Environmental Assessment (EA) or Environmental Impact Statement (EIS) is required and must be completed and approved by FHWA prior to the authorization of construction funds.

**NEPA Class 2:** If the project is NEPA Class 2 (CE), which the majority of the projects are, the fully signed CE Closeout Document (CE Closeout) or Programmatic CE (PCE) Approval Document (PCE Approval) must be completed, or reviewed and signed, by the Region Environmental Coordinator (REC) and approved either by ODOT management (for PCEs) or FHWA (for CEs). CE projects that meet the conditions of the 2015 PCE Agreement require the PCE Approval, which is approved by ODOT management. The fully signed CE Closeout or PCE Approval document must be submitted with the PS&E package.

Refer to Section C, Chapter 6 of this manual for more information on the NEPA process and procedures for CEs and PCEs.

## **C.3. General Conditions, Special Provisions and Bid Book**

### **a. General Conditions**

Since the general conditions provide the legal framework for the construction contract, the LPA must physically include, or include by reference, their latest ODOT approved general conditions (Section 100's) in the final PS&E bidding documents. For all federally funded projects, the general conditions must include "Buy America" and "Cargo Preference Act" specifications as described in subsections D.2 and D.3 below.

## **b. Special Provisions**

Special provisions are included in construction contract documents to modify or define work not covered in the standard specifications. All project special provisions must be based on the current version of the Oregon Standard Specifications for Construction and the current boilerplate special provisions available on the ODOT Project Controls Office website unless ODOT has granted approval for specific LPA requested modifications. The expectation is that the standard specifications and boilerplate special provisions will be used unless there are project-specific, special circumstances that warrant the use of something different.

Prior written approval must be obtained from ODOT's Certification Program Office (and/or FHWA as applicable) for any language contained in the bid documents and Special Provisions that modifies or has the effect of modifying any of the following: the LPA's approved General Conditions (except for project specific parts of Subsections 00150.50, 00180.50, 00180.85 and ODOT issued boilerplate special provision updates); the technical specification subsections for measurement; payment; warranties; insurance requirements; environmental permit requirements; contract time; delays; or any provisions contained in FHWA Form 1273.

Class of Work: If the LPA requires bidder prequalification, the Description of Work page must show the Class(es) of Work, as this determines which contractors are prequalified to submit a bid on the project. For information on how ODOT calculates the Class of Work, see the ODOT Fuel, Steel Class of Work and the ODOT Fuel Index and Scheduling Program Calculator (excel workbook), available on the ODOT Project Controls Office webpage.

**Resources:**

- [ODOT Project Controls Office](#)

If required by the LPA, contractors must be pre-qualified in the stated class or classes of work indicated. Some additional fundamental requirements for the Project Special Provisions include:

- Every work item identified on the project Plans must have a corresponding Specification showing the method of measurement and payment.

Unless otherwise approved by ODOT, the project completion date must be shown on both Description of Work pages, and in subsection 00150.8000180.50(h) and these entries must match exactly. Any interim completion dates must also be shown.

## **c. Bid Book**

This book contains the front-end bidding documents such as the invitation to bid, instructions to bidders, bid form, bid supplements, the form of agreement and other contractual provisions. Following are a few key points to be aware of:

**i. Bonds**

LPAs are required to include in the bid book the requirement of a bid guaranty in an amount not to exceed ten (10) percent of the bid amount; a performance bond in an amount equal to the full contract price; and a payment bond in the amount equal to the full contract price. ORS 279C.380. Each bid guaranty, performance bond and each payment bond must be executed solely by a surety company or companies holding a certificate of authority to transact surety business in Oregon. The LPA must ensure that State is included as either a dual obligee or a named additional obligee under the performance and payment bonds.

**ii. Required Provisions and Certifications**

The bid book must include the following provisions in the solicitation and contract documents:

- FHWA-1273 Required Contract Provisions for Federal-Aid Construction Contracts
- On-site Workforce Affirmative Action requirements for Women and Minorities
- EEO provisions
- EEO Aspirational Target Provisions
- ODOT DBE program policy statement
- DBE Supplemental Required Contract Provisions
- DBE information page and DBE goal requirement
- OJT hours requirement
- Project wage rates page or statement informing contractor of required wage rates
- First-Tier Subcontractor Disclosure form

The bid book must also include the following certifications in the solicitation and contract documents:

- Non-collusion
- Non-involvement in any Debarment & Suspension
- Lobbying Activities
- Compliance with Oregon tax laws
- Employee drug testing program
- Nondiscrimination
- Use of registered subcontractors
- Incorporation of all Addenda

### **iii. Construction Contract**

As part of the intergovernmental agreements between ODOT and the LPA, including the LPA's approved General Conditions, the construction contract must include specific language naming the State as an additional insured, naming the State as a third party beneficiary with express authority to enforce the terms and conditions of the contract and indemnification of the State for all contract related claims and suits. See the Master Certification and Supplemental Project Agreements for more information.

### **iv. Prevailing Wage Rates**

Under the federal Davis-Bacon Act and ORS 279C.830, both state and federal wage rates must be included in federal-aid projects. The contractor is required to pay the higher of the two rates. For additional wage rate information, see the links below or contact the Regional Local Agency Liaison:

- Oregon State Bureau of Labor and Industries (BOLI) index of wage rates
- US Department of Labor
- ODOT Specifications Wage Rate

Prevailing wage rate requirements must either be referenced or attached to the Special Provisions for each project. Federal regulations require that Davis-Bacon wage rates be physically attached to the construction contract. State law allows the BOLI wage rates to be incorporated by reference. However, because state law also requires that workers be paid the higher of BOLI wage rates or Davis-Bacon wage rates on projects that are subject to both BOLI and Davis-Bacon prevailing wages, ODOT recommends physically attaching the BOLI wage rates to the construction contract. See ODOT's Local Government website, under Guidance and Forms for a sample Project Wage Rates page.

### **v. DBE Goals**

LPAs must include ODOT's DBE Commitment Requirements and DBE Supplemental Required Contract Provisions in the bid book for all federally funded projects. See Section C, Chapter 8 of this manual for additional information, procedures and related forms.

### **vi. Equal Employment Opportunity (EEO) and On-The-Job Training (OJT) / Apprenticeship Training Program (ATP)**

LPAs must include ODOT's EEO provisions in the bid book and if determined applicable by ODOT's Office of Civil Rights, the OJT/ATP program provisions must be included as well. See Section C, Chapter 8 of this manual for additional information.



Note: Emails from OCR setting the DBE goal, OJT/ATP hours (if applicable) and their bid book approval are required PS&E submittal items.

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#### **C.4. PS&E Cost Estimate**

LPAs are required to electronically submit an “Excel” format Cost Estimate to ODOT through their Regional Local Agency Liaison. LPAs are to use the standardized Cost Estimate form 734-5096 for all federally funded projects. ODOT Program and Funding Services uses the Cost Estimate to calculate and report required project cost information to get FHWA approval to obligate project funds.

Some fundamental points to consider when developing the PS&E Estimate are:

- Federally non- participating bid items are to be separated from participating bid items.
- Anticipated items are to be shown separately from bid items.
- Combining two or more existing pay items into one pay item is not recommended. Combining pay items creates a flawed bid history for the particular pay item that is used and it leads to highly inaccurate costs and misinterpretation by contractors.
- If incidental work items or tasks are more than 3% of the total cost of a primary pay item, a separate bid item is required for the work. Combining work items or tasks, and making them incidental to other work is not appropriate.
- The most current ODOT bid item list should be used when developing the PS&E Estimate. ODOT’s bid item list is available for download under Standard Specifications on the ODOT Project Controls Office website.
- Non-standard anticipated items must have approval and funding secured before it is added to the project estimate. See section 3-b for more information on anticipated items.
- Projects should be adequately designed to avoid the need for a large contingency budget. FHWA has found that ODOT’s standard 3.5% contingency factor works well and is reasonable. If needed, a higher percentage may be acceptable with justification; but a project contingency calculation factor greater than 5% is uncommon.
- The total CE budget is negotiated between the LPA and ODOT, but should not exceed 20% of the construction phase costs without justification and approval by FHWA. ODOT’s general CE percentage guidelines by project category are:
  - Modernization: Not to exceed 12%

- Preservation: Not to exceed 7%
- Bridge: Not to exceed 13.5%
- Safety: Not to exceed 12.5%
- Operations: Not to exceed 14.5%
- Other programs: Not to exceed 11%
- CE performed by consultants is normally in the range of 12 to 17%

See Section D of this manual for the cost estimate form template.

### **C.5. Right of Way Certification**

A Right of Way Certification form must be completed by the LPA and co-signed by the Region Right of Way Manager for all projects. PS&E submittals without a Right of Way Certification cannot be accepted and will cause the project bid date to be delayed.

Certification Exceptions (aka “Holdouts”) listed in Box 4 of the Right of Way Certification require a Letter of Public Interest Finding (LPIF) showing why it is in the public’s best interest to proceed with the project at that time rather than delay advertisement until the right of way acquisition and relocation work is complete. Right of Way Certification Exception LPIFs are not included in the PS&E Submittal.

For more information on the right of way acquisition and certification process, refer to Section C, Chapter 7 of this manual.

### **C.6. Utility Certification Form**

The Utility Certification form 734-5162 must be completed on all projects. This form certifies that all utility work has been completed, or that all necessary arrangements have been made for it to be undertaken and completed as required for proper coordination with the construction schedule.

For more information on the utility notification, relocation and certification process, refer to Section C, Chapter 13 of this manual.

### **C.7. Railroad Agreement Assurance Form**

The Railroad Agreement Assurance form 734-5285 must be completed on all projects. This form certifies that all railroad coordination work has been completed, or that all necessary arrangements have been made for it to be undertaken and completed as required for proper coordination with the construction schedule.

For more information on railroad coordination, refer to Section C, Chapter 13 of this manual.

### **C.8. PS&E Submittal & Completeness Checklist**

The PS&E Submittal & Completeness Checklist is the LPA's certification that all items on the project are complete, or the proper exceptions have been granted, and that adequate funding exists to proceed with bid advertisement.

The Checklist has two components; the Submittal portion of the checklist outlines documents that are required to be submitted for every project as well as those that are required if they apply to the particular project. The Completeness portion of the checklist outlines certain other items that the LPA must have either in the plans, on file, in the bid book or in the Special Provisions.

The checklist is prepared by the LPA's Project Manager and signed by both the Project Manager and the LPA's Quality Control Coordinator. This signed document, along with the rest of the PS&E package must be submitted to ODOT's Regional Local Agency Liaison for review, acceptance and processing.

The PS&E Submittal & Completeness Checklist is linked in Section D of this manual.

## **D. OTHER PS&E AND CONTRACT DOCUMENT REQUIREMENTS**

### **D.1. Form FHWA-1273**

Each set of contract documents must physically include Form FHWA-1273, "Required Contract Provisions Federal-Aid Construction Contracts." Copies of Form FHWA-1273 are available from FHWA's website.

### **D.2. "Buy-America" Requirements**

As required by 23 CFR 635.410(b)(1), steel and/or iron materials that are permanently incorporated into the project shall consist of American-made materials, as outlined in the LPA's ODOT approved General Conditions, Subsection 00160.20. The LPA must use the "Buy-America" requirements in each federal-aid contract. FHWA must approve all waivers to the "Buy America" requirements.

### **D.3. "Cargo Preference Act" Requirements**

46 CFR 381 requires that United States flag ocean vessels must be used for the transport of materials or equipment acquired specifically for the project. This is outlined in the LPA's ODOT approved General Conditions, Subsection 00160.21. The LPA must use the "Cargo Preference Act" requirements in each federal-aid contract. FHWA must approve all waivers to this requirement.

#### **D.4. Traffic Control and Work Zone Access Plans**

Traffic control and work zone access plans shall be included in the contract documents and shall be consistent with Part VI of the Manual on Uniform Traffic Control Devices and Oregon Supplements. Construction projects that impact bicycle and/or pedestrian traffic must include accommodation for all impacted modes of travel in the contract Traffic Control Plans.

These plans must be included in the contract documents and are a required PS&E submittal.

#### **D.5. Roadway Design Exceptions**

Design exceptions for work on a local facility are processed and approved by the LPA. Design exceptions for work on or along a State highway must be approved by ODOT and FHWA (if required).

All ADA related design exceptions on a local facility must be approved by ODOT unless the LPA has an ODOT approved ADA design exception and inspection process in place.

Design Exceptions are explained in the ODOT Highway Design Manual. The General Design Exception Request Form and the ADA Curb Ramp Design Exception Request Form are available on the ODOT Engineering website.

If applicable to the project, ODOT approved roadway design exceptions are a required PS&E submittal item. Locally approved design exceptions do not require submittal.

#### **D.6. Bridge Design Deviations**

All bridge design deviations must be approved by ODOT and FHWA (if required) if the bridge is on the National Bridge Inventory (NBI). For locally owned bridges not on the NBI, the LPA approves the design deviations.

Bridge design deviations are explained in the ODOT Bridge Design Manual, Section 1.2.2. The Bridge Design Manual Deviation Form is available on the ODOT Bridge Engineering website.

If applicable to the project, ODOT approved bridge design deviations are a required PS&E submittal item. Locally approved design exceptions do not require submittal.

#### **D.7. Signed Signal Plans**

The traffic signal approval process is established by Oregon Administrative Rules (OAR) 734-020-0400 through 734-020-0500. Signals include ramp meters, traffic signals, temporary traffic signals, overhead flashing beacons, push button activated flashing beacons, and loop detector modifications.

The Traffic Signal drawings require approval by the ODOT Traffic Engineering Section if the signal items are on or along a state highway. Traffic drawing numbers are available from Traffic

Standards Unit, (503) 986-3568. If the signal items are on the local system, the LPA or consultant Professional of Record (POR) will sign the Traffic Signal drawings. See the ODOT Traffic Standards website for additional information on the design review and approval process.

#### **D.8. Project Mobility Considerations Checklist**

For a project on or along a state highway or that may impact mobility on a state highway, a signed Mobility Considerations Checklist form 735-9983 must be submitted with the PS&E Submittal for all projects. Include any emails indicating Mobility Advisory Committee support of any project

restrictions identified in the Special Provisions. The ODOT Mobility Procedures Manual and the checklist can be found on the ODOT Statewide Mobility Program webpage.

##### **Resources:**

- [Mobility Procedures Manual](#)
- [Mobility Considerations Checklist \(735-9983\)](#)

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**Note:** If the project has any mobility impacts the LPA will be required to make a presentation to the Mobility Advisory Committee. The LPA should account for the time necessary to complete this step.

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#### **D.9. Bid Reference Documents**

Bid reference documents are the technical documents and reports that may be referenced in the project special provisions but provided separately, as needed, to a contractor to understand the project and develop an informed bid. Not every project will require bid reference documents. The LPA should provide (upload) the project bid reference documents at the time of bid advertisement to ensure the documents will be available to all interested parties during the advertisement and bidding phase.

These documents are required to be in the LPA project file, but are not required to be submitted as part of the PS&E package.

#### **D.10. Project Construction Schedule**

The LPA must prepare a construction schedule to be used in developing the contract completion date. It is preferred that the schedule be developed using a scheduling software such as Microsoft Project and utilize the Critical Path Method.

When preparing the construction schedule events, the contract award schedule elements need to be included (i.e. activities post bid opening through official Notice to Proceed). Refer to the LPA's ODOT approved General Conditions, Section 00130 for legal time limits for the contract award period.

The construction schedule must also show any time restrictions, such as in-water work periods or migratory bird (clearing and grubbing) restrictions.

This document is required to be in the LPA's project file, but is not a required submittal for the PS&E package.

#### **D.11. Letters of Public Interest Findings (LPIFs)**

Letters of public interest findings (LPIFs) are required to document why it is in the public's interest to not follow a Code of Federal Regulations or Oregon Statute requirement.

FHWA requires competition not only for the award of a construction contract, but also competition for the various materials and processes involved in the work. Whenever competition for materials or processes is eliminated, a LPIF is required.

Examples of materials or processes that require a LPIF are:

- LPA supplied materials
- Salvaged materials
- Work performed by utilities, railroad or Agency forces
- Publicly owned equipment
- Mandatory disposal site

Guidance and instructions for developing and processing LPIF's can be found in the LPIF Guidance Document on the ODOT Project Controls Office website. LPIF examples and templates are also on the ODOT Project Controls Office website.

If applicable to the project, ODOT approved LPIFs are a required PS&E submittal item.

#### **D.12. Patented or Proprietary Materials (Exemption Order)**

For projects bid prior to October 28, 2019, FHWA disallowed the use of proprietary or patented products, processes, or specifications on federally funded projects unless certain criteria were met and such usage was documented in an LPIF. Effective October 28, 2019, through a Notice of Final Public Rulemaking, FHWA rescinded its restriction on the use of proprietary and patented products and an LPIF is no longer required to meet federal requirements.

However, under ORS 279C.345, 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 based on one or more of the following 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;

- 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;
- There is only one manufacturer or seller of the product of the quality required;or
- Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment or supplies.

Thus, when an LPA determines that “no approved equal” for a specified product will be allowed, state law still requires the LPA, through its local contract review board, to making findings and issue an “Exemption Order” under 279C.350 for the use of the specified product(s). For products being incorporated into work on or along the state highway system, the LPA shall seek ODOT concurrence in the specified products.

A sample Exemption Order letter is has been developed for use on Certified LPA projects. See Section D of this manual for a link to program forms and templates. A copy of the LPA’s signed Exemption Order should be saved in the project file.

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An Exemption Order is not required when two or more acceptable products are listed in the specifications. If only one product is listed in the specifications, a state law Exemption Order must be approved according to the LPA’s contract review board processes and documented to the project file. Referencing a single product by NAME, even if the product is listed on the QPL, will require and Exemption Order.

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Products listed on the ODOT Qualified Projects List (QPL) can be used on projects only when the QPL is referenced in the specifications. If only one product is available on the QPL, a state law Exemption Order is required. If two or more products are available on the QPL, an Exemption Order is not required.

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**Note on Buy America:** Any patented or proprietary materials containing iron or steel that will be incorporated into a federally funded project must comply with Buy America requirements. This requirement also applies to any non-federal-aid highway contract that is included within the scope of a NEPA document if at least one other contract within the scope of the same NEPA document is funded or will be funded with federal-aid highway funds. See FHWA Contract Administration Core Curriculum, Section III.B.8.I.i.

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### **D.13. LPA Supplied Materials**

Justification for the use of LPA supplied materials or services (e.g. striping a project) must be documented by the LPA. LPA-supplied materials must be justified through the LPA's LPIF to the Regional Local Agency Liaison for ODOT's approval. The LPA must have produced or acquired the materials through competitive bidding.

See FHWA's Contract Administration Core Curriculum Manual for additional information.

### **D.14. Salvaging Materials**

FHWA regulations do not allow materials being salvaged as part of a proposed construction contract to be given to anyone other than the construction contractor without having a LPIF. For more detailed information regarding salvaging items in a construction contract, see ODOT's Technical Bulletin RD07-05(B) "Salvaging Features and Excess Materials Associated with Transportation Projects by Contract Specification." This bulletin applies when the LPA wants to salvage an item.

Requiring the contractor to give salvaged materials to a third party is not allowed. Approval for Salvaging materials LPIF is done by the Region Roadway Engineering Manager when salvaged material is less than \$25,000. When the salvaged material totals more than \$25,000, the Project Controls Office Manager must approve the LPIF.

### **D.15. Warranty/Guarantee**

Local agencies should take advantage of any existing, standard manufactured product warranties or guarantees. General warranties on projects are not allowed unless the project is to be delivered by a design-builder (see 23 CFR 635.413(e)). All requests for warranty requirements and subsequent revisions shall be submitted to the ODOT Regional Local Agency Liaison for approval. See FHWA's Contract Administration Core Curriculum Manual and 23 CFR 635.413 for additional guidance.

### **D.16. Anticipated Items**

Requests for anticipated items must be approved in writing by the ODOT Project Controls Office for all non-standard anticipated items on all projects, including anticipated items added after PS&E and/or bid opening. Anticipated Items must be included in the PS&E Cost Estimate.

Items that do not require ODOT approval include: asphalt smoothness bonuses; asphalt statistical bonus; asphalt escalation; fuel escalation; and steel escalation or bid item modifier. The Anticipated Item request template can be found on the ODOT Project Controls Office website.

If applicable to the project, ODOT's approval for anticipated items is required to be in the LPA's project file, but is not a required submittal for the PS&E package.



### **D.17. Consultant Construction Engineering or Professional of Record Contracts**

The LPA may perform its own preliminary and construction engineering or solicit for consultants to perform services needed to develop a federal-aid project. LPAs requesting federal funds to reimburse architectural and engineering consultants must follow the selection and contracting procedures detailed in Section C, Chapter 12 of this manual.

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**Note on CA/CEI contracts:** While Contract Administration/Construction Engineering-Inspection (CA/CEI) and Professional of Record (POR) personal services contracts are not a PS&E submittal requirement, the consultant contract should be fully executed at the time of PS&E. For CA/CEI contracts, the name, address and phone number of the consultant staff administering the construction contract for the LPA should be listed on the project Special Provisions Description of Work page.

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Resources:

- ODOT [Local Government](#)
- ODOT [Office of Civil Rights](#)
- ODOT [Planning & Technical Guidance](#)
- ODOT [Project Controls Office](#)
- ODOT [Statewide Mobility Program](#)

## Chapter 12. Consultant Selection and Contract Administration

### A. OVERVIEW

In the sequence of project development, consultant selection occurs prior to any stage when consultant services are needed.

Certification Functional Areas	← Consultant Selection and Contract Administration →					
		Design			Ad., Bid, and Award	Construction Contract Administration
Federal Project Phase	Program Development (Planning)	Project Development	Right of Way Acquisition	Utility Relocation	Ad., Bid, and Award	Construction

ODOT recommends project managers consult their local procurement staff to identify all applicable procurement requirements as part of the consultant selection process.

For consultant services costs to be eligible for federal reimbursement, LPAs are required to follow federal and state statutes and rules for the procurement and contract administration of architecture and engineering (A&E), design related, and other consultant services.

Certification in the functional area of consultant selection and contract administration is a Certification Program requirement. An LPA may choose to pursue certification in the following consultant section procurement methodologies:

- Formal Selection
- Informal/Intermediate Selection
- Small Purchase Selection

Regardless of the procurement methodology, an LPA shall be in conformance with federal, state, and local laws regarding conflicts of interest

and shall require appropriate disclosures from consultants. To assist LPAs with meeting procurement requirements, ODOT has developed the LPA A&E Requirements Guide, LPA Non-A&E PSK Requirements Guide, and related templates and forms for use on federal-aid projects.

#### Resources:

- [LPA A&E Requirements Guide](#)
- [LPA Non-A&E PSK Requirements Guide](#)
- [Statement of Work Writing Guide](#)
- [Related templates and forms](#)

**Note on ODOT oversight:** For disciplines in which ODOT retains oversight or approval authority, such as environmental and right of way, or when specified in the project agreement, ODOT may require the LPA to use specified task language and to submit the draft statement of work along with a breakdown of costs to ODOT for technical review prior to the LPA executing the contract. The purpose of ODOT's review is to assist the LPA with ensuring technical and project specific compliance and reasonableness of consultant costs.

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## **B. TYPES OF CONSULTANT SELECTION**

### **B.1. Formal Selection**

LPAs certified by ODOT in the formal selection process may conduct formal procurements without any state or federal dollar limitation. Solicitations must be publicly advertised and awarded using the applicable formal selection process for procurements above the following thresholds (including any potential contract amendments):

- A&E and design related services exceeding \$250,000 or any lower threshold in applicable rules adopted by the LPA.
  - Non-A&E planning services exceeding \$150,000 or any lower threshold in applicable rules adopted by the LPA.
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LPAs should be aware of any local procurement requirements and dollar limitations that may be more restrictive.

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**For both A&E and design related services and non-A&E planning services,** the formal selection process requires the LPA to solicit and evaluate proposals in a manner that provides full and open competition that assures qualified in- and out-of- state consultants are given a fair opportunity to be considered for award. This process requires the LPA to use a minimum of three evaluators to review and score all responsive proposals.

**For A&E and design related services,** a Disadvantaged Business Enterprise (DBE) goal will typically apply to formally procured consultant contracts. Regardless of whether a DBE goal applies, the LPA shall ensure applicable DBE contract provisions are included in the contract and follow program reporting requirements.

Refer to the following sections in the LPA A&E Requirements Guide for detailed requirements:

- 3.2 Informal and Formal Selection for A&E Services
  - 3.4 Disadvantaged Business Enterprise (DBE) Goals
  - 3.5 Billing Rate and Overhead Cost Data
-

- 3.6 Estimates, Costs Analysis, Negotiations, Profit and Method of Compensation

**For non-A&E planning services,** a DBE ‘no-goal’ is the standard assignment for formally procured consultant contracts. The LPA shall ensure applicable DBE provisions are included in the contract and follow program reporting requirements.

Refer to the following sections in the LPA Non-A&E PSK Requirements Guide for detailed requirements:

- 3.2 Intermediate and Formal Selection
- 3.4 DBE Goals
- 3.5 Billing Rates
- 3.6 Estimates, Cost Analysis, Negotiations, Profit and Method of Compensation

## **B.2. Informal/Intermediate Selection**

LPAs certified by ODOT in the informal or intermediate selection process may conduct procurements up to the following limits (including potential amendments):

- Informal selection for A&E and design related services: Up to the lesser of \$250,000 or the applicable authority limits in rules adopted by the LPA.
- Intermediate selection for non-A&E planning services: Up to the lesser of \$150,000 or the applicable authority limits in rules adopted by the LPA.

**For A&E and related services,** the informal selection process requires the LPA to prepare and distribute a request for proposal (RFP) and sample contract documents to a minimum of three prospective consultants identified on an ODOT-approved list of qualified consultants. For consultants not on an ODOT-approved list, the LPA may seek ODOT approval by submitting a Consultant List Exception Request form to the Certification Program Office.

A DBE goal may apply to informally procured consultant contracts. Regardless of whether a DBE goal applies, the LPA shall ensure applicable DBE contract provisions are included in the contract and follow program reporting requirements.

Refer to the following sections in the LPA A&E Requirements Guide for detailed requirements:

- 3.2 Informal & Formal Section for A&E Services
- 3.4 Disadvantaged Business Enterprise (DBE) Goals
- 3.5 Billing Rate and Overhead Cost Data
- 3.6 Estimates, Costs Analysis, Negotiations, Profit and Method of Compensation

**For non-A&E planning services,** the intermediate selection process requires the LPA to prepare and distribute a request for proposal (RFP) and sample contract documents to a minimum of three prospective consultants qualified to perform the needed services.

DBE goals are not currently assigned for non-A&E contracts, but the DBE no-goal provisions must be included in the contract.

Refer to the following sections of the LPA Non-A&E PSK Requirements Guide for detailed requirements:

- 3.2 Intermediate & Formal Selection
- 3.5 DBE Goals
- 3.5 Billing Rates
- 3.6 Estimates, Cost Analysis Negotiations, Profit and Method of Compensation

### **B.3. Small Purchase**

LPAs certified by ODOT in the small purchase process may use this process to enter into consultant contracts, including any amendments, up to the following limits:

- A&E and related services: the lesser of \$100,000 or the applicable authority limits provided in rules adopted by the LPA.
- Non-A&E planning services: the lesser of \$10,000 or the applicable authority limits provided in rules adopted by the LPA.

**For A&E and related services,** this process requires the LPA to identify a minimum of three qualified consultants to consider for the needed services and prepare a Small Purchase Selection form listing each of the consultants considered. The LPA shall select consultants from an ODOT-approved list of qualified consultants or otherwise seek ODOT approval by submitting a Consultant List Exception Request form to the Certification Program Office.

While DBE goals typically do not apply to contracts under \$100,000, other DBE program requirements still apply to small purchase procurements. The LPA shall ensure the applicable DBE contract provisions are included in the contract and follow program reporting requirements.

Refer to the following sections in the LPA A&E Requirements Guide for detailed requirements:

- 3.1 Small Purchase
- 3.4 Disadvantaged Business Enterprise (DBE) Goals
- 3.5 Billing Rate and Overhead Cost Data
- 3.6 Estimates, Costs Analysis, Negotiations, Profit and Method of Compensation

**For non-A&E planning services**, the LPA may directly select any consultant with experience performing the needed services. The LPA shall ensure the DBE no-goal contract provisions are included in the contract and follow program reporting requirements. Refer to the following sections of the LPA Non-A&E PSK Requirements Guide for detailed requirements:

- 3.1 Small Procurements
- 3.4 DBE Goals
- 3.5 Billing Rates
- 3.6 Estimates, Cost Analysis, Negotiations, Profit and Method of Compensation

### **C. CONTRACT ADMINISTRATION**

LPAs are required to maintain a contract administration system that ensures consultants perform in accordance with the terms, conditions and specifications of their contract. Contract administration must include, but is not limited to:

- collecting and submitting subcontractor Paid Summary Reports (form 734-2882)
- maintaining records
- reviewing invoices and supporting documentation
- determining contract amendment necessity
- evaluating consultant performance
- enforcing the LPA's errors and omissions procedures
- closeout documentation

Refer to Section 3.7 Contract Administration Procedures and Section 4. Documentation Requirements of the LPA A&E Requirements Guide or LPA Non-A&E PSK Requirements Guide, as applicable, for more details regarding requirements.

### **D. DEMONSTRATION PROJECT**

#### **D.1. Procurement Procedures**

LPAs are certified in consultant selection on the basis of ODOT's approval of the LPA's foundational documents and training requirements per Section B of this LAG for Certified LPAs. Additionally, LPAs must demonstrate their competency in adhering to the procurement processes outlined in the LPA A&E Requirements Guide or LPA Non-A&E PSK Requirements Guide, as applicable, by performing a "demonstration project" for each procurement methodology: formal, informal/intermediate, and small purchase. If an LPA is first approved in the formal methodology, then the LPA will not be required to conduct a separate

demonstration for the informal/intermediate methodology. However, a demonstration will still be required for the LPA's first use of the small purchase methodology.

For each procurement demonstration the LPA will present their processes, procedures and documentation to ODOT for evaluation and compliance determination. **The LPA presentation will be required after the consultant procurement process has been completed, but prior to contract execution.**

Consultant Selection Procurement Demonstration Process	
1.	<b>LPA</b> identifies an appropriate project with consultant needs to serve as a demonstration project for the procurement method(s) selected and contacts the Certification Program Office for concurrence and copies the ODOT Local Agency Liaison.
2.	<b>ODOT Local Agency Liaison, LPA, and the Certification Program Office</b> coordinate to include the appropriate consultant selection demonstration project language in the applicable supplemental project agreement.
3.	<b>LPA</b> follows the applicable procurement processes outlined in the LPA A&E Requirements Guide or LPA Non-A&E PSK Requirements Guide, as applicable (or LPA's alternate procedures approved by ODOT). LPA conducts the procurement up to contract execution, but does <b>not</b> execute.
4.	<b>LPA</b> contacts the Certification Program Office to coordinate the evaluation meeting date with ODOT Procurement <b><u>several weeks prior to the anticipated contract execution date</u></b> .
5.	<b>Certification Program Office</b> sets up the evaluation meeting.
6.	<b>LPA</b> submits organized supporting documents <b><u>3-7 days prior to the evaluation meeting</u></b> for preview by ODOT evaluators.
7.	<b>LPA</b> presents the following documents to ODOT at the consultant selection evaluation meeting: <ul style="list-style-type: none"><li>• Scope of Work/Statement of Work (Note, the LPA works with the Local Agency Liaison to coordinate any ODOT technical reviews that may be required, for example, review of environmental or right of way related services tasks.)</li><li>• Request for Proposal (RFP) (formal and informal/intermediate procurements only)</li><li>• Small Purchase Selection form (small purchase procurements only)</li><li>• Internal Cost Estimates and Breakdown of Costs</li><li>• Record of Negotiation and Cost Analysis</li><li>• Approved Committed DBE Breakdown Forms (only for contracts with an assigned goal)</li><li>• Final Negotiated Contract</li></ul>
8.	<b>ODOT</b> evaluates the LPA using the applicable Consultant Evaluation Checklist and provide feedback to the LPA: <ul style="list-style-type: none"><li>• <a href="#">Small Purchase</a></li><li>• <a href="#">Informal</a></li><li>• <a href="#">Formal</a></li></ul>

Consultant Selection Procurement Demonstration Process
9. <b>LPA</b> resolves any outstanding issues. If needed to address more serious deficiencies, ODOT may require LPA may to develop a Corrective Action Plan.
10. Once <b>ODOT</b> is satisfied LPA has met the procurement procedure requirements, ODOT will notify the LPA it has been approved to proceed with executing the contract.
11. <b>LPA</b> executes consultant contract and begins contract administration.

## D.2. Consultant Contract Administration

For the LPA's first demonstration project that includes consultant contract administration, the LPA's compliance with consultant contract administration requirements will be reviewed during the Certification Program project compliance review as set out in Section B of this LAG for Certified LPAs. If any deficiencies are noted, the Certification Program Office may work with the LPA to develop and implement a corrective action plan on the Review and Corrective Action Report form 734-5070.

### Resources:

- [Certification Program Office](#)
- [Small Purchase Certification Evaluation Checklist \(734-5082\)](#)
- [Informal Consultant Evaluation Checklist \(734-5092\)](#)
- [Formal Consultant Selection Evaluation Checklist \(734-5083\)](#)
- [Consultant Contract Administration Certification Presentation Checklist \(734-5087\)](#)

Additionally, to ensure the LPA's consultant contract administration demonstration project gets off to a good start, at approximately 30% contract completion, the LPA should work with ODOT to informally review the LPA's files against the consultant contract administration certification presentation checklist with respect to following required elements:

- Contract administration responsibilities.
- Deliverables and schedule.
- Contract amendments (if applicable).
- Invoicing review and processing.
- Records Retention (review of file organization at this point of contract completion).

The LPA and ODOT might also discuss any questions the LPA has around the other required elements of records retention, consultant evaluation, and contract closeout.

**Note:** Thirty percent completion is approximate. It is recommended to review earlier for larger, more complex projects or later for smaller, less complex contracts. The idea is to ensure there has been sufficient work performed, deliverables received, and invoicing



processed to evaluate whether the LPA is meeting the contract administration requirements.

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## **E. ADDITIONAL INFORMATION AND RESOURCES**

Information on the consultant selection certification process can be found in Section B of this manual.

Refer to Section D of this manual for links to additional consultant selection and contract administration guidance, templates and related forms.

SUPERSEDED

## Chapter 13. Utility and Railroad Programs

This chapter provides information related to utility relocation and railroad crossings in federal-aid project delivery for LPAs. In the sequence of project development, utility and railroad issues should be addressed early in the process, generally beginning at approximately the 30% design stage or sooner if possible.

### A. OVERVIEW

#### A.1. Utilities

Most transportation improvement projects involve utilities in some fashion. Depending on the project, utility involvement could be relatively minor, such as requiring utilities to mark their facility locations in the project area. Alternatively, utilities might be required to relocate their facilities due to conflicts with the project.

These facilities consist of, but are not limited to, poles, power lines, telephone landlines, and cable television lines; buried water, sewer, gas and telecommunication lines. For a definition of what constitutes a “utility facility”, refer to OAR 734-055-0010 (26). To avoid construction delays, these facilities must be identified and the owners contacted as early in the design process as possible. The LPA’s utility coordinator should consult ODOT’s Utility Relocation Program Resources website and the Oregon Utility Relocation Manual to comply with state and federal requirements.

#### Resources:

- [Utility Relocation Program Resources](#)
- [Rail Safety Programs](#)
- [23 CFR 645A](#)
- [OAR 734-055-0010](#)

#### A.2. Railroads

When a project overlaps with a railroad corridor, the LPA must coordinate with the railroad for safety and project approval. This may be true even when the project does not directly cross the railroad. Early engagement is highly recommended as coordination with railroads can be a lengthy (year-plus) process.

There are four possible components to railroad coordination, each detailed below: 1) the need for a crossing order, 2) railroad engineering approval of the project work, 3) easement acquisition and 4) flagging.

The State Rail Liaison in the ODOT Statewide Project Delivery Branch acts as a single point of contact with the railroads for ODOT. This person is responsible for acquiring permanent easements and other property rights from the railroads and is a good source of information when coordinating with the railroads and road authorities in Oregon.

## B. UTILITY PROGRAM

### B.1. Relocation Policy

Utility relocations, adjustments and reimbursement policy requirements are defined in the Code of Federal Regulations 23 CFR 645A and OAR 734-055. The LPA shall follow these regulations on projects receiving federal-aid or state funding.

ODOT's Utility Relocation Manual outlines the basic requirements governing the relocation and reimbursement procedures and practices that an LPA must use on federally funded local projects.

### B.2. Coordination

As design work begins, the LPA should consider the following:

- Project scope
- Utility relocation timelines
- Existing utility facilities in the right of way
- Options to eliminate or reduce utility relocations
- Available right of way for tree and brush clearing
- Utility company concerns

Early consideration of utility issues will give all parties time to work out the details of avoidance, relocation, protection or upgrading as a project is being designed. The earlier the utilities are contacted to start the process, the more likely it is the utility coordination work will go smoothly and the schedule of a project will be met.

For more particular information and guidance on required utility notifications, please refer to Section 3 of the ODOT Utility Relocation Manual.

### B.3. Relocation

Relocation of affected utilities are either non-reimbursable or reimbursable. Typically, if the utility has a compensable property interest in its present location, it would be entitled to reimbursement. If the utility is located on public right of way by permit or franchise agreement, the relocation would generally be non-reimbursable. The LPA's utility permit or franchise agreement should explicitly define these parameters.

- For reimbursable utility relocations on LPA projects that are receiving state or federal funds, the relocation will be accomplished by the utility in accordance with the ODOT Utility Relocation Manual and the approved utility's relocation plan and schedule. This should result in the least possible interference with the progress of the LPA's project.

“Buy America” requirements (23 CFR 635.410) apply to all compensable utility work that is accomplished as a result of a federally funded transportation project.

- LPAs have been granted the authority to contract directly with a reimbursable utility for the cost of relocation work and issuance of notice to proceed (i.e. preliminary engineering, construction, materials, etc.) for any FHWA reimbursable work performed by the Utility Owner. The ODOT Utility webpage has a Checklist for CLPA Utility Agreements to provide guidance on what the LPA is required to include in the agreement to be eligible for federal reimbursement. After the agreement is executed, the LPA shall issue a separate notice to proceed for each phase of authorized relocation work. The LPA must confirm that the funding is authorized through ODOT before issuing each notice to proceed. See Section 3.7 of the ODOT Utility Relocation Manual for additional information and requirements.
- Regardless of the utility’s reimbursement status, the following documents are required to be submitted to the State Utility Liaison prior to PS&E and as the documents are generated. See ODOT’s Utility Relocation Program webpage to access required utility forms and other resources.
  - Copies of all Project Notification Letters (when no conflicts are found)
  - Copies of all Conflict Letters
  - Copies of all Time Requirement Letters
  - Utility Certification Form and
  - A draft of Special Provision Section 00150.50 that includes the name of each utility within the project limits, the utility’s contact information, the type of work, completion date and any special considerations.

Resources:  
- [Utility Relocation Program](#)

For situations not covered here, or for other related questions, contact the ODOT State Utility Liaison.

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**Note:** The State Utility Liaison is the only one with authority to co-sign the Utility Certification.

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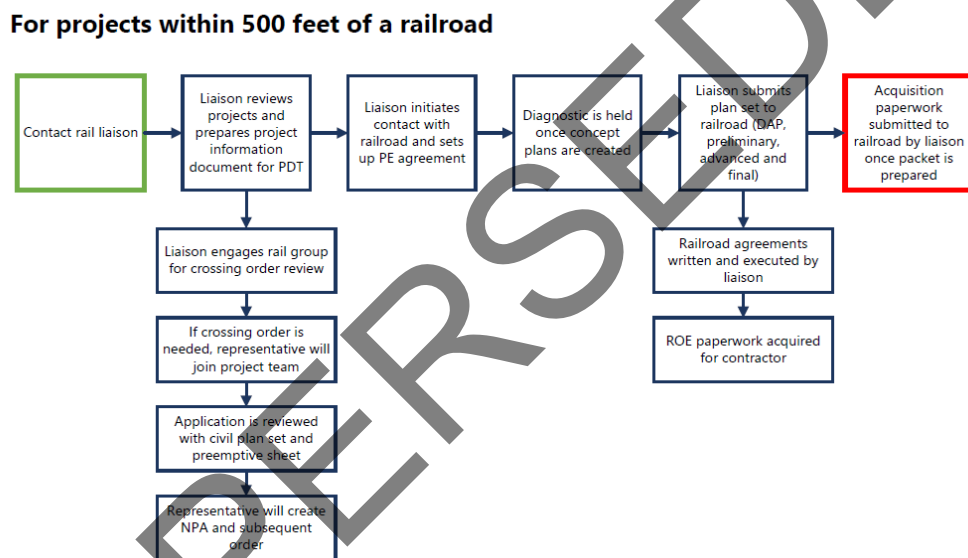
## C. RAILROAD PROGRAM

### C.1. Coordination with Railroads

A general rule to follow is to review each project that comes within 500 feet of a railroad in any direction, including parallel to, perpendicular to, above and below.

If an LPA needs to enter railroad property, they must first contact the railroad for access. Each railroad has a process for access to railroad property, which includes a Right of Entry. The State Rail Liaison can assist in guiding the LPA to the right location for information and permission, but the LPA will secure its own access.

The below graphic shows a basic flow chart for rail coordination. For LPA projects, the rail “liaison” is whomever the LPA assigns this position to on the project team.



There are four types of coordination with the railroad that may be needed.

#### a. Rail Crossing Order

A rail crossing order is required for any alterations made within the jurisdiction of the ODOT Rail Crossing Unit as explained in subsection C.4 below. To initiate this process, the LPA should contact the ODOT Commerce and Compliance Division for a representative to work with the project team. The representative will work the LPA through the necessary steps. An application, civil drawings and preemptive sheets will be necessary.

#### **b. Railroad Engineering Approval**

Any work within an easement from the railroad needs the approval of the railroad. This process includes sending each plan set to the railroad to allow feedback and comments. The final approval will only be given with a final stamped plan set.

#### **c. Easement Acquisition**

Obtaining property from the railroad requires the purchase of an easement. This cannot happen until the project engineering is approved by the railroad. Survey exhibits and descriptions will be needed for the property and a Construction and Maintenance Agreement will be executed to detail the new responsibilities of the easement. Each railroad has its own process to follow for acquisitions.

#### **d. Flagging**

Any work within 25 feet of railroad tracks requires a railroad flagger. It is essential that traffic control near a railroad is reviewed to ensure that queuing will not affect a crossing. If queuing will be impacted, a flagger is recommended for safety even if the work zone is outside the 25 foot zone.

### **C.2. Railroad Assurance Form**

Similar to providing a utility certification, a Railroad Assurance Form is required as part of the PS&E package. This document informs FHWA that all coordination with the railroad has taken place. Unlike the utility certification, ODOT does not need to co-sign. Before signing the Railroad Assurance form, be sure one or more of the following have taken place:

- The project has been reviewed and guaranteed that no railroad involvement was necessary.
- All agreements are executed for work to be done by the railroad.
- Crossing orders have been issued.
- Permission has been granted by the railroad when work will be within railroad property (right of entry and flagger approval).
- The correct boilerplate specification has been included in the bid documents indicating the contractor requirements.
- License agreements have been secured when a utility (such as an IT line) or culvert will affect railroad property.

### **C.3. Railroad Agreements**

In order to advance projects involving railroad facilities, the LPA must coordinate project development with each affected railroad. Most railroads will require a PE agreement (NTP) which promises payment for their review and oversight ahead of any involvement. This work may be contracted out to a third party by the railroad. A sample PE agreement is linked in Section D of this manual.

In addition, any work that impacts rail property requires an agreement. Any agreement required by the affected railroad is necessary to set forth the essential terms and conditions to be adhered to in the modification or relocation of railroad facilities or encroachments into railroad right of way. Negotiations with railroads can be lengthy and intricate so it is important to begin discussions with railroads at an early stage of project development. ODOT can assist with the agreement process, but the LPA is the road authority and therefore is the party to the agreement. Each railroad may have a template to use as a starting point. If ODOT is a party to the agreement, ODOT's template must be used.

Two types of agreements can be executed as part of an LPA project. A Construction and Maintenance (C&M) Agreement is necessary when changes of responsibility have taken place at that location. A Rail Services Agreement is necessary to pay the railroad for work it is doing as part of the project, but no changes to the existing C&M will occur.

### **C.4. Highway Grade Crossing Safety Program**

The ODOT Rail Crossing Unit will assist with crossing order needs within their jurisdiction. The Rail Crossing Unit's jurisdiction extends a distance equal to the safe stopping distance, for the posted or statutory speed, measured back from the location of the stop clearance lines. Rail Crossing Unit's jurisdiction for grade-separated crossings will be at the crossing only. Per ORS 824.202, the unit has authority over all rail crossings to include but not limited to safety, placement of warning devices, geometry of the road approaches and any other appurtenances to a crossing.

If a highway or related project is within the state's jurisdiction, the LPA must notify the Regional Local Agency Liaison and coordinate with the Rail Crossing Unit to discuss any changes included in the project. Contact these parties as early as possible in the project scoping phase.

All LPAs and railroads needing to work within this jurisdiction, which may include an alteration, closure or addition of a crossing, must contact the ODOT Rail Crossing Unit prior to any work. This unit will work through the process to issue a Crossing Order for the changes.

For details regarding the Rail Crossing program, see the ODOT Rail Safety Program webpage.

### **C.5. Additional Resources**

Information on rail crossings, ODOT contacts, crossing applications and law can be found at ODOT Commerce and Compliance Division Rail Safety Programs website.

23 CFR 646 governs the development of highway projects involving railroads, including the requirements of an agreement.

ODOT's relocation procedures, state law, and federal regulations can be found on the ODOT Railroad Relocation Program webpage. Examples of railroad agreements and boiler plate contract specifications are available under Part 00000-Documents and Forms on the ODOT Boilerplate Special Provisions webpage.

For situations not covered here, or for other related questions, contact the ODOT Regional Local Agency Liaison and State Rail Liaison.

Resources:

- [Rail Safety Programs](#)
- [23 CFR 646](#)
- [Railroad Relocation Program](#)



## Chapter 14. Bridge Selection, Scoping and Design

### A. OVERVIEW

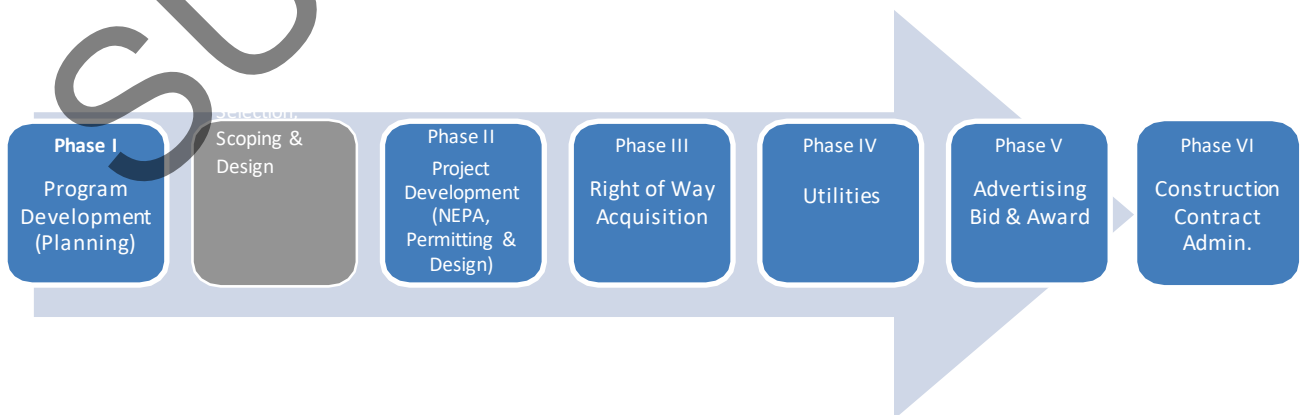
This chapter details bridge project design requirements for certified local public agencies (LPAs) and is applicable to all federal-aid bridge projects in conformance with the regulations adopted by FHWA of Title 23 of the Code of Federal Regulations (CFR) 650 on the National Bridge Inventory. LPAs receive federal funds through ODOT's Local Bridge Program (LBP) to replace or rehabilitate bridges that are structurally deficient or functionally obsolete.

There are two project delivery options available to a certified LPA:

Resources:  
- [National Bridge Inventory](#)

- The first option is for the LPA to become certified with LPA's staff for bridge and highway-related structures design. This option requires a separate application and the successful completion of two demonstration projects. Contact the Certification Program Office for additional information and guidance.
- The second option is where the LPA does not become certified with LPA staff for bridge and highway-related structures design, but would like to utilize consultants for that type of work. If this delivery method is chosen, the LPA must meet the minimum staffing qualifications and coordination requirements to oversee the consultants, then receive ODOT approval as outlined in a document entitled *Qualifications and Coordination Requirements for Certified LPA not Certified in Bridge Design*. This document is located in Section D of this LAG for Certified LPAs.

Bridge selection, scoping and design occur as a part of project development and before advertising, bid and award.



## B. BRIDGE DEVELOPMENT PROCESS

The following flow chart identifies the milestones within the project development process specific to bridge projects.

### B.1. Project Selection

#### a. Bridge Funding

LPAs receive federal funds through ODOT's Local Bridge Program to replace or rehabilitate bridges that are structurally deficient or functionally obsolete. The required local agency match for bridge funds is federally stipulated at 10.27 percent local and 89.73 percent federal. The LPA is required to supply the local funding portion.

#### b. Bridge Selection Process

LPAs and ODOT have developed a technical ranking system to select and prioritize bridges for funding with Highway Bridge Program. Candidates for the program are accepted every three years coinciding with the Statewide Transportation Improvement Program (STIP). Additional details and specifics regarding local agency bridge project selection can be found in ODOT's Bridge Section; Bridge Priority Selection Policy.

Resources:

- [ORS 366.155](#)
- [Highway Bridge Program](#)
- [Bridge Priority Selection Policy](#)

Candidate bridge replacement projects in the small bridge category submitted by LPAs to ODOT will be evaluated under the direction of the Local Agency Bridge Selection Committee before being prioritized with a technical ranking system.

Candidate bridge rehabilitation projects in the small bridge category and bridges in the large bridge category are evaluated individually without using the technical ranking system.

After the technical review, bridge projects will be prioritized, scoped and then programmed in priority order, to the limits of available funding and placed in the STIP.

The emergency exception to the above selection process is discussed in the next subsection.

#### c. Emergency Exceptions

In the event a bridge has been destroyed or substantially damaged causing an emergency situation, and no other state or federal funds are available for its replacement or restoration, the LPA may apply for Local Bridge Program funds to have the bridge replaced or restored.

Resources:

- [Statewide Transportation Improvement Program \(STIP\)](#)

If the emergency request is approved, another project may have to be delayed by adding this project. The failed or damaged structure will be given a new Sufficiency Rating to reflect its new condition. A new technical ranking will be calculated, using the recalculated Sufficiency Rating. If the emergency structure has a lower priority than currently scheduled projects, the emergency funding will be denied. If the failed or damaged structure has 30,000 square feet of deck area or greater, the bridge will be evaluated and a funding strategy recommended by the Bridge Selection Review Committee.

## **B.2. Scoping**

The scoping effort builds upon the information provided by the LPA in its project application. Scoping is the process of defining the parameters of the project and the level of effort required in the various project delivery phases.

Scoping will be performed using an ODOT Local Program scoping team. The scoping team may consist of staff from the following entities:

- ODOT Bridge Section, Senior Local Bridge Standards Engineer
- ODOT Regional staff
- Consultant
- LPA staff

In addition to this staff, it is recommended that other appropriate personnel participate on the scoping team to provide needed information regarding roadway design, environmental – including the ODOT Region Environmental Coordinator (REC), right of way, utilities, railroads, land survey, bridge foundation, hydraulics, and structural issues.

Scoping can be done by meeting with the assigned project personnel and specialists at the project site, or in the office, if sufficient data is available. ODOT and the scoping consultant coordinate a field review in consultation with LPA and the Regional Local Agency Liaison. The field review provides the initial project data and information needed to program the project in the STIP. It also guides the Project Development Team to the successful production of the Plans, Specification & Estimate (PS&E).

Additional information regarding PS&E is available in Section C, Chapter 11 in this LAG for Certified LPAs. It is recommended that the scoping process be documented by a bridge scoping package, as described below.

### **a. Bridge Scoping Package**

The scoping team is responsible for developing a draft scoping package.

ODOT's Project Delivery Guide page provides links to the Scoping Expectations Framework and a checklist under the document entitled "Scoping Notes," which together provide an overview of ODOT's process for scoping projects. ODOT's process references the ODOT Business Case and Charter documents. However, for many Certified LPA projects, business case information will instead be documented in the LPA's funding application and charter-type information will instead be documented in a Local Agency Technical Scope Sheet (also posted on the ODOT Project Delivery page).

**Resources:**

- [Scoping Expectations Framework](#)
- [Scoping Notes](#)
- [Local Agency Technical Scope Sheet \(734-5151\)](#)

The draft scoping package at a minimum will include the following:

- The names and roles of the teams' members throughout the project (if known)
- Outside agency involvement
- Decisions regarding site investigation and analysis procedures for geometric design elements, foundations, hydraulics, structures, right of way, environmental, traffic, utilities and permits
- Preliminary discussion of alternative designs and establishment of the project limits
- "Scoping Notes"
- Discussion of funding and who will perform project development, advertisement, award and administration of construction
- Desired project schedule
- A detailed break-down of the cost for all phases of work

The scoping team will supply the draft scoping package for each bridge scoped to the ODOT Bridge Section, Regional Local Agency Liaison and the LPA for review and comment.

The scoping team delivers the final scoping package to ODOT's Bridge Section. The Bridge Section will distribute the final scoping package so each involved entity and department has access to the package.

### **b. Rehabilitating vs. Replacing Decisions**

On each project, a determination must be made as to whether an existing bridge should remain in place, be rehabilitated, or replaced. This decision should be based on an assessment of the structural and functional adequacy of the bridge for the type and volume of projected traffic

over its design life. The determination for replacement should consider historic significance of the bridge as well as the technical difficulty and impact to integrity when attempting to bring an older structure up to existing standards. If the project impacts a bridge owned by the State of Oregon, coordination with ODOT will be required before any decision can be finalized to replace or modify a historically significant bridge using federal funds. For other federally-funded projects on structures owned by counties and other local governments, ODOT can provide coordination and recommendations for evaluation and regulatory compliance.

#### **i. Rehabilitated Bridges**

Rehabilitated bridges should be designed to meet or exceed minimum standards as described previously in this chapter. Exceptions to these standards may be approved based upon individual site evaluations; however, the rehabilitated bridges should, as a minimum, meet the design loading requirements of ODOT's *Bridge Design Manual* Section 1.3.

Bridge rehabilitation projects must bring all major structural and safety features up to standards, as required for LBP funds. Substandard bridge rail should be upgraded to current standards. "Safety" curbs which can cause vehicles to vault, should be eliminated. Exceptions may be considered on a case-by-case basis if safety can be adequately enhanced for the intended use. Cost-effective considerations may prevent full widening or full upgrading of the bridge rail. Also, if the structure is listed on or determined eligible for the National Register of Historic Places, exceptions may be considered.

When a decision is made to retain a bridge, the bridge rail should be evaluated to determine if it can adequately contain and redirect vehicles without snagging, penetrating, or vaulting.

Consideration should be given to upgrading structurally inadequate or functionally obsolete bridge rail. The evaluation should be based upon criteria similar to that shown in the

National Cooperative Highway Research Program's NCHRP Report 350, "Multiple-Service-Level Highway Bridge Railing Selection Procedures." Guidance concerning width, rail and geometric criteria tradeoffs and the effects on safety are contained in NCHRP's Research Digest 98 and Report 203 both entitled "Safety at Narrow Bridges" as noted in FHWA's Federal-Aid Policy Guide – Non-Regulatory Supplement. A list of crash tested barriers can be found through the FHWA website, linked in the resource box.

#### **Resources:**

- [Bridge Design Manual](#)
- [National Register of Historic Places](#)
- [NCHRP Report 350](#)
- [Federal-Aid Policy Guide – Non-Regulatory Supplement](#)
- [AASHTO](#)
- [Crash Tested Barriers List](#)

#### **ii. Bridge Replacement**

Bridge replacement projects should meet or exceed minimum standards as described previously in this chapter. In the case of bridges on low volume roads and streets, exceptions

may be appropriate if the existing road will not be upgraded in the foreseeable future (typically 20 years or more).

### **iii. Bridges Classed As Non-Deficient or Non-Functionally Obsolete**

Bridges which have been strengthened or rehabilitated to eliminate deficiencies are to be reclassified as non-deficient in the bridge inventory. Those existing bridges for which FHWA has approved an exception to the AASHTO standards are also to be reclassified as non-deficient since it was determined that the bridge is adequate for the type and volume of projected traffic over its remaining design life. If exceptions were granted as a temporary measure because of a scheduled future replacement project, the bridge may remain classified as deficient.

### **c. Historic Bridge Coordination Procedures**

The following are general guidelines for the treatment of existing bridges, bridge replacement and bridge rehabilitation projects for bridges 50 years or older. For bridges that are 50 years old or older, a determination of historic eligibility is required to be listed on the National Historic Register. Eligibility criteria is available at the National Register of Historic Places website.

#### **i. National Historic Preservation Act**

Bridges which have been listed on, determined eligible for or are considered potentially eligible for the National Register of Historic Places, should meet the following environmental requirements provided in Section 106 of the National Historic Preservation Act of 1966.

Section 106 Report requires that a determination be made regarding whether there are any National Register listed or eligible properties within the project area and the effect the proposed project will have on these properties. A LPA with a bridge project affecting a historically significant structure should contact the Regional Local Agency Liaison who will coordinate with ODOT's Cultural Resources staff.

This process, as outlined below, includes obtaining ODOT's concurrence on eligibility and level of effect prior to requesting a determination from the State Historic Preservation Office.

STEP 1: The Regional Local Agency Liaison will forward the Determination of Eligibility form and Cultural Resource Report to ODOT Cultural Resources staff, who will review and forward this documentation to the State Historic Preservation Office for concurrence.

STEP 2: If a property is on or eligible for the National Register of Historic Places, then the Criteria of Adverse Effect will be applied. The Regional Local Agency Liaison will forward the Finding of Effect to ODOT's Cultural Resources staff, who will review and forward this documentation to State Historic Preservation Office for concurrence. The Finding of Effect and other related forms can be found in ODOT's Cultural Resources Manual. If the project will have an Adverse Effect on historic properties, the Finding of Effect must indicate alternatives considered that avoid, minimize, or mitigate effects to historic properties.

STEP 3: If the project will have an Adverse Effect on historic properties, contact the Regional Local Agency Liaison who will coordinate with the LPA for the development of a Memorandum of Agreement with the Advisory Council, State Historic Preservation Office, ODOT and FHWA. The Memorandum of Agreement will include measures to mitigate the adverse effects on a resource prior to final environmental document preparation.

STEP 4: Projects which involve right of way acquisition or excavation have potential to uncover archaeological or historical resources. Under these conditions, an archaeological survey or archaeological clearance letter must be completed. For information on archaeological surveys, contact the Regional Local Agency Liaison who will coordinate with ODOT Region Environmental Coordinators (RECs) and other appropriate Environmental staff.

**Resources:**

- [ODOT Cultural Resources page](#)
- [National Register of Historic Places](#)
- [State Historic Preservation Office \(SHPO\)](#)
- [Section 106 of the National Historic Preservation Act of 1966](#)
- [Bridge Design Manual](#)

**ii. Section 4(f)**

Section 4(f) requirements may apply if the proposed project will adversely affect the historic integrity of the National Register or register eligible property. When a Section 4(f) Evaluation is required, the Section 106 Report and Draft Section 4(f) Evaluation will be prepared separately to satisfy the requirements of both laws. For further details, see Section C, Chapter 6 of this manual. LPAs are to send Section 4(f) Evaluations to the Regional Local Agency Liaison who will coordinate with ODOT's Cultural Resources staff to review and forward this documentation to FHWA for approval.

**iii. Design Considerations**

Consideration should be given to design standard exceptions for railing replacements, roadway widths, etc., when the structure is listed on or determined eligible for the National Register of Historic Places according to the criteria in ODOT's *Bridge Design Manual*.

For additional information contact the ODOT Regional Local Agency Liaison, or refer to ODOT's Cultural Resources website, ODOT's Covered Bridge website and FHWA's Covered Bridge Manual.

**B.3. Design Acceptance Package (DAP)**

The Design Acceptance Package is a critical milestone of the decision-making process that establishes the geometric boundaries of the project footprint, and provides for a more reliable update to the project scope, schedule, and budget. Design acceptance occurs at the end of the initial design phase and requires all project disciplines to review the design for balance of



context with standards and policies. At this time, technical and non-technical stakeholders review design elements according to their specific interest.

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**Note on ADA:** Bridge work may trigger ADA-related work and design exception processes. Refer to ADA Compliance for Bridge Work and Design Considerations in the ODOT Bridge Design Manual.

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#### **a. Type, Size & Location (TS&L) Design Package**

The TS&L Design Package is part of the Design Acceptance Package. See Section C, Chapter 10 of this manual for further details.

The TS&L design package shall include:

- TS&L Plan and Elevation drawing
- TS&L Estimate of structure construction cost
- TS&L Narrative, including a discussion of the bridge alternative study
- TS&L Geotechnical Report
- Draft Hydraulics Reports
- A list of anticipated design exceptions or design deviations required for the execution of the project.

The above items should be prepared in accordance with:

- ODOT Bridge Design Manual Sections 2.4, 3.3.4 3.3.5 and 3.9, Type, Size, and Location (TS&L) Design, and CAD Manual, Section 6 Type, Size and Location Plan & Elevation.
- ODOT Geotechnical Design Manual for TS&L Foundation Design Memo.
- ODOT Hydraulics Manual for Draft Hydraulics Report.

#### **Resources:**

- [Bridge Design Manual](#)
- [CAD Manual](#)
- [Geotechnical Design Manual](#)
- [Hydraulics Manual](#)

The plans as submitted for review should be prepared in such a manner that when reduced to half size (11 inches by 17 inches) all notes and details will be legible. All contract documents shall be prepared in English units. Additional information, refer to ODOT's Bridge Engineering Section's *Bridge Design Manual*, Section 2.6 Type, Size and Location Plan and Elevation for the check-list.



ODOT reviewers will ensure that LPA plans, details and specifications are legible and that the work is constructible. With ODOT approval, the plans, details and specifications are not required to be written or shown in precisely the same manner as ODOT-prepared documents.

**b. Bridge Alternatives Study**

Typically, up to three bridge structure-type alternatives are investigated, prior to completion of Type, Size & Location (TS&L) Design Package. The available foundation and hydraulics information is used to develop the appropriate structure-type alternatives. Preliminary square foot cost estimates are developed for the bridge using historical cost data. In some cases, it may be useful to develop sketches for the bridge alternatives.

ODOT and the LPA will discuss advantages, disadvantages, and cost estimates for each, and the recommended alternative. The preferred alternative is presented in the TS&L Report.

**c. Type, Size and Location Study for Major or Unusual Structures**

For bridge replacement projects of a major or “unusual” structure, FHWA requires a LPA to conduct a more detailed Type Size & Location Report. Factors which constitute “unusual” site conditions are defined in ODOT’s Bridge Engineering Section’s *Bridge Design Manual*, Section 2.4.3(2) Special Considerations for Federal-aid Projects, Unusual Structures.

**B.4. Preliminary Plan Package**

Preliminary Plans is for technical staff to provide comments and feedback on the adequacy and appropriateness of the bridge design with regard to the standards described under the “Bridge Design Standards” section of this chapter and the project needs.

Preliminary Plans Review Package shall include:

- Preliminary Bridge Plans
- Preliminary Cost Estimates
- Final Foundations Report
- Final Hydraulics Report

The above items should be prepared in accordance with:

- ODOT’s Bridge Design Manual
- Geotechnical Design Manual for Final Foundation Report
- Hydraulics Manual

### **B.5. Advance Plans**

Advanced Plans Package is a key interim step of the contract document phase and requires all project disciplines to review draft contract documents for completeness and accuracy. It is for technical staff to provide quality control review of the project plans, specifications, and estimates as a package.

#### **a. Advanced Plans Review Package**

The Advanced Plans Review Package shall include:

- Advanced Bridge Plans
- Advanced Bridge Construction Cost Estimate
- Advanced Construction Standard Specifications and Special Provisions

#### **b. Quality Control/Quality Assurance**

A Class I check will be performed on the advance plans, specifications and estimates, as described in ODOT's Bridge Engineering Section's *Bridge Design Manual* at Section 3.5.7. Class II and III checks will be considered based on the complexity of the bridge project, per *ODOT's Bridge Design Manual* Section 3.5.7.

At this point, foundation and hydraulics engineers will review the final plans and specifications for conformance with the report recommendations.

### **B.6. Final Plans Package**

This step occurs in follow-up to review and comment on the advanced plans, and specifications, and cost estimate. It is the last opportunity for contract documents to be reviewed by technical staff for quality control and document completeness, before the project is ready to move forward for FHWA review (when needed) and PS&E submittal.

Based on the comments provided during the Advanced Plans review, the draft contract documents are advanced to the final plans. The Final Plans Review Package shall include:

- Final Bridge Plans
- Final Bridge Construction Cost Estimate and
- Final Construction Standard Specifications and Special Provisions

### **B.7. Plans, Specifications and Estimates (PS&E)**

This point of decision-making provides certainty of the completeness of a project for bid. Decision-making with any desired interim milestones between Design Acceptance and PS&E Submittal (e.g., TS&L, Advanced, and Final Plans) should be addressed through individual Quality Control Plans and Project Development Change Requests as needed.

For information regarding PS&E submittals, refer to Chapter 11, in Section C of this manual.

## **B.8. Project Completion**

LPAs shall submit to ODOT all as-built bridge drawings, pile records, foundation reports, hydraulics reports, and a PE stamped load rating report for all National Bridge Inventory structures.

This information must be submitted to ODOT within 90 days of the issuance of Second Notification pursuant to Oregon Standard Specification 00180.50(g), or Agency's approved equivalent. As-built bridge drawings shall be in accordance with the CAD Manual, Section 7.11.1.

### **Resources:**

- [National Bridge Inventory](#)
- [ODOT Load Rating](#)

Bridges designed using the AASHTO Load Resistance Factor Design (LRFD) Bridge Design Specifications will be load rated using the AASHTO Guide Manual for Condition Evaluation and Load and Resistance Factor Rating (LRFR) of Highway Bridges and the ODOT LRFR Manual (Tier 2). Documentation of the completed load ratings, including electronic files, will be consistent with the requirements contained in the ODOT LRFR Manual (Tier-2).

Refer to Section C, Chapter 17 of this manual and the LPA Master Certification Agreement for additional information.

## **C. BRIDGE DESIGN, PRACTICE AND POLICIES**

### **C.1. Bridge Design and Standards**

Design standards for bridge projects on the National Highway System and the Oregon State Highway System shall be in compliance with the standards specified in the current *AASHTO LRFD Bridge Design Specification*, AASHTO guide specifications for highway bridges, ODOT Hydraulics Manual, and related references as well as the following ODOT manuals:

- Bridge Design Manual
- Geotechnical Design Manual

#### **a. Bridge Design and Standards for Non-Highway System**

Design standards for bridge projects on the non-National Highway System and the Local Agency Road System shall be in compliance with the standards specified in the current *AASHTO LRFD Bridge Design Specification*, AASHTO guide specifications for highway bridges, ODOT Hydraulics Manual, and related references as well as the ODOT manuals listed above except as modified by this section:

**BDDM Section 1.23 “Bridge End Approach Slabs and Slope Paving”** is modified as follows:

Add the following:

Approach slabs may be deleted under certain conditions. A geotechnical and structural evaluation is required for considering the deletion of approach slabs and approval of a deviation from ODOT Senior Local Bridge Standards Engineer. The final decision on whether or not to delete approach slabs shall be made by the ODOT's Senior Local Bridge Standards Engineer with consideration to the geotechnical and structural evaluation.

Design all bridge components for full seismic loading according to the current edition of *AASHTO Guide Specifications for LRFD Seismic Bridge Design*, and the LPA is not required to design to *Bridge Design Manual* 1.17.2.

1) Design to the 1000 year criteria.

### **1.17.2 Applications of AASHTO LRFD Bridge Design Specifications**

#### **1.17.2.1 General Considerations is modified as follows:**

LPAs shall design to AASHTO seismic design specification and are not required to follow the *Bridge Design Manual*, State seismic design requirements.

### **C.2. Deviations/Design Exception Process**

Deviations and design exceptions from the Bridge Design Standards identified previously in this chapter, and the standards identified in Section C, Chapter 9 of this manual, require approval of a Local Agency Design Exception Request from ODOT. The deviation and design exception process is described in Section C, Chapter 9 of this manual.

### **C.3. Proprietary or Patented Products**

For projects bid prior to October 28, 2019, FHWA disallowed the use of proprietary or patented products, processes, or specifications on federally funded projects unless certain criteria were met and such usage was documented in a letter of Public Interest Finding.

Effective October 28, 2019, through a Notice of Final Public Rulemaking, FHWA rescinded its restriction on the use of proprietary and patented products.

However, when an LPA determines that “no approved equal” for a specified product will be allowed, state law still requires an LPA’s contract review board to issue an order waiving state law limitations on the use of proprietary and patented products. See Section C, Chapter 11 of this manual for additional information.

### **C.4. Value Engineering Study**

Bridge projects over \$40 million must include a Value Engineering Study during the design phase.

See Section C, Chapter 9 of this manual for additional information about Value Engineering.

### **C.5. Approach Guard Rail and Bridge Rail**

On all projects involving bridges, the approach guard rail should be evaluated and upgraded to current standards. Approach guard rail, if warranted, must be properly anchored to the bridge. The transition between the approach guard rail and the bridge rail should be smooth and of sufficient strength (i.e., reduced post spacing) to prevent snags and vehicle pocketing.

Consideration should be given to design standard exceptions where safety can be adequately enhanced for the intended use and when the structure is listed on or determined eligible for the National Register of Historic Places.

Bridge rail designs for new and reconstructed bridges shall have been successfully crash tested and adopted as an ODOT standard or approved by ODOT according to ODOT's *Bridge Design Manual*, which contains specific requirements relating to railings on historic bridges.

### **C.6. Foundation Design**

Bridge foundation design standards may be found in ODOT's Geotechnical Design Manual, which is available on ODOT's Geo-Environmental website. This manual establishes ODOT standards for all aspects of foundation design including site reconnaissance (scoping), office research, field investigations, foundation selection and design, and seismic design. Provide information in the final Geotechnical Report.

ODOT foundation design methods generally follow those described in *AASHTO LRFD Bridge Design Specifications*.

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**NOTE:** The value of an experienced foundation specialist is critical even on a small bridge project. This is because a large error in the constructability of even a small foundation can occasionally result in an extremely costly "fix" during construction.

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#### **a. Foundation Investigation**

The level of foundation investigation for a specific project will require careful consideration by the geotechnical engineer and appropriate members of the project development team. Some guidelines which will aid the team in their determination are as follows:

- Exposed bedrock can reduce the need for extensive investigation unless the structure is unusually large or part of a critical road network. For certain structures, the quality of the rock and its consistency at depth will be required.
- Single span bridges can typically accommodate settlement, such as differential settlement, better than multiple span bridges. Although settlement must be considered, there may be less need for extensive settlement prediction methods depending on the foundation conditions and the performance requirements of the structure.

- The cost-benefit of extensive subsurface exploration may be reduced somewhat on projects with small, relatively low cost bridges. When very small foundations are needed, construction cost overruns resulting from a lack of subsurface information may also be small. On small projects, an assessment may be made to compare and balance the costs of a standard exploration program with the potential consequences and cost impacts that could occur during construction due to a lack of sufficient foundation information.
- In areas where the geologic model is well known from previous investigation and is known to be very consistent, the need for additional exploration may be reduced to that sufficient for confirmation of the expected profile.
- Bridge replacements which do not involve raising the road grade and have no significant increase in load on the underlying soil, greatly reduce the concern for stability or settlement, unless the site is in a high seismic zone.

Sites with bedrock either exposed at the ground surface or within shallow test pit depth will sometimes require only minimal investigation if the bedrock is of good quality and the structure is supported on lightly loaded spread footings. If the structure is a major bridge, an arch structure, involves drilled shafts or highly loaded footings additional investigation of the bedrock materials will be required. The scour potential of bedrock materials must also be considered.

#### **b. Foundation Exploration**

The level of effort expended in performing subsurface exploration and design should be consistent with type of structure and type of foundation proposed based on literature or office review and initial scoping. Sufficient information to develop an understanding of the site geology is always necessary. Also, it is essential to understand that subsurface exploration and design is a step by step process in which ongoing interaction and communication with the geotechnical and hydraulics specialists (or sub consultants) and structural designer are required if the final product is to be determined in an efficient and cost effective manner.

Below is a table to help describe the different expectations for foundational exploration.

Two primary factors in determining the level of investigation appropriate for a given project	<ul style="list-style-type: none"> <li>• The selection of the individuals directing the foundations work who have specific successful experience with bridge foundation work and</li> <li>• The foundation designer's understanding of the entire overall project requirements</li> </ul>
The subsurface data should provide support for the following	<ul style="list-style-type: none"> <li>• Definition of the geologic model and</li> <li>• Selection of the type of support and the design parameters</li> </ul>

The foundation report should explain and support	<ul style="list-style-type: none"><li>• Understanding of the needs and scope of the project throughout all design and construction phases;</li><li>• Use of state-of-the-practice design as described in ODOT's Geotechnical Design Manual and the AASHTO LRFD Bridge Design Specifications; and</li><li>• Constructability of the project.</li><li>• A contingency for consultation during construction for any design contracts for foundation exploration</li></ul>
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### c. Foundations Report

Any LPA bridge scheduled for new construction must have a foundations report prepared and finalized prior to completion of the bridge design. The foundation report will be prepared in conformance with the guidelines provided in ODOT's *Geotechnical Design Manual* in conjunction with the following guidelines:

The foundation report contains information needed by the structural designer to understand the site conditions, complete the foundation design and provide specifications as needed for the project and address construction situations. The report is based on an understanding of the overall project requirements. The foundation report is written and finalized after interaction with the structural designer which leads to a proposed foundation design and the Type Size & Location plan and narrative. The report should also demonstrate good project understanding. In addition to foundation recommendations, it includes a brief description of reasonable alternative designs and the reasons why the recommended alternate was selected. Alternatives may be eliminated when believed to be impractical, without detailed analysis, or appropriate for the site conditions and structure type.

A Foundation Data Sheet is part of the bridge plans for all bridge projects that include any subsurface exploration work such as test borings or test pits.

### d. ODOT Review Effort

ODOT's Geotechnical Design Manual provides guidelines for the review of foundation reports. A checklist is provided to aid in the review process. However, it is understood that not every guideline within the Geotechnical Design Manual applies to each project. The consultant's report should state that the items were either not applicable or have been resolved, either by engineering judgment, site inspection, or by analysis. In the review process, ODOT engineers will normally base their comments on the data presented in the consultants' documents. If the basis for a design element is not clearly stated or resolved, a question or comment may be given. ODOT will clearly indicate whether comments are informational, or are requirements which affect legal, safety, or significant economic issues.

The geotechnical designer should remain involved throughout project development and should also review and comment on both the Type Size & Location and final plans and specifications.



ODOT requires that consultants use sound engineering judgment in establishing the approach and scope of geotechnical work. Some latitude will be allowed in the degree of documentation if the selected foundation is believed to be practical, safe and cost-effective.

### **C.7. Hydraulic Investigation Guidelines**

#### **a. Overall Hydraulic Design**

ODOT's Bridge and Hydraulic Engineering and Environmental Services (HEES) Sections and FHWA require that the structure not wash out or suffer significant damage or failure during a 500-year flood event.

**Resources:**

- [ODOT Hydraulics Engineering](#)
- [Hydraulics Manual](#)

LPAs should use ODOT's Hydraulics Manual along with the guidelines depicted in Section D of this manual (Bridge Hydraulics Performance Specification).

#### **b. Hydraulics Report**

The hydraulics report contains information needed by the structural designer to understand the site conditions, complete the bridge opening design and address construction situations. The report is based on an understanding of the entire, overall project requirements. The hydraulics report is written and finalized after interaction with the structural designer, roadway designer, foundation designer, environmental specialists and regulatory agencies.

This process leads to a proposed hydraulic opening, scour provisions and the Type Size & Location report and narrative. In addition to the bridge opening recommendations, the hydraulics report also includes a description of reasonable alternative designs and the reasons why the recommended alternate was selected.

A draft hydraulics design shall be submitted to identify hydrologic factors and parameters that will affect the selection of the structure. The study must be detailed enough so that the proposed structures layout and type can be identified. The draft Hydraulic report will need to be submitted in time to be used in the TS & L phase of the project.

The hydraulics information, along with the foundations information are key components for determining the scour risk for the structure.

An engineer with a hydraulics specialty should remain involved throughout project development. The hydraulics engineer should review and comment on both the Type Size & Location and preliminary PS&E documents. Contracts should also include a contingency for consultation during construction if there are unusual circumstances or problems involving rip rap placement or other special features.



The designer or project manager shall submit the Hydraulics Report with scour analysis and a Temporary Water Management Plan to the ODOT for review and comment prior to the start of construction of project elements effecting drainage.

The final Hydraulics Report will include all supporting analysis and drawings. An electronic file with all pertinent data used to run the computer model as well as contour mapping depicting cross section locations used to generate the computer model, shall be kept on file and submitted as requested by ODOT.

A temporary Water Management Plan shall be submitted. When a bridge project is in the Federal Emergency Management Agency floodway, provide a 100-year no-rise certification to the regulatory agency.

Also refer to the Bridge Hydraulics Performance Specifications in Section D of this manual.

### **c. ODOT Review Effort**

The Hydraulics Performance Specifications in Section D of this manual are intended to be a comprehensive representation of areas with possible applicability. However, it is understood that not every item applies to each project. The engineer's report should state that the items were either not applicable or have been resolved, either by engineering judgment, site inspection, or by analysis.

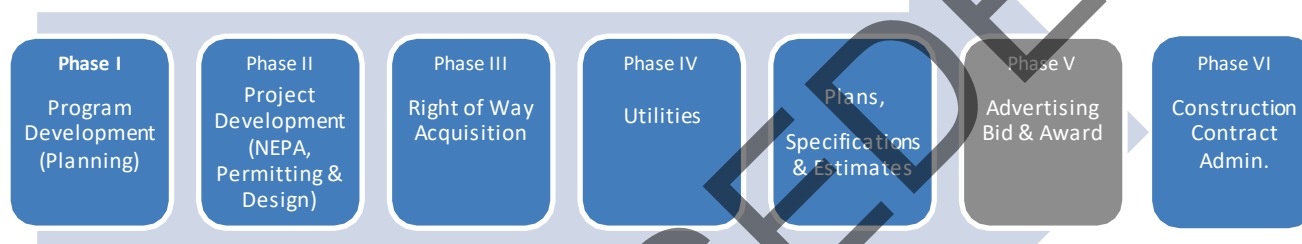
In the review process, ODOT engineers will normally base their comments on the data presented in the engineer's documents. If the basis for a design element is not clearly stated or resolved, a question or comment may be given. ODOT will clearly indicate whether comments are informational, or are requirements which affect legal, safety, or significant economic issues.

Communication between ODOT and the engineer is encouraged during project development.

## Chapter 15. Advertising, Bid and Award Procedures

This chapter specifies how certified local public agencies (LPAs) may operate under a Master Certification Agreement with ODOT and use FHWA approved processes to their procedures to advertise, bid and award construction contracts for federal-aid projects.

In the sequence of project development, advertising, bid and award generally occurs in Phase V, after the completion of plans, specifications, and estimates (PS&E). See Section C, Chapter 11 of this manual for PS&E information.



### A. OVERVIEW

The PS&E documents are used to advertise, bid and award the construction contract. Advertising, bid and award is the responsibility of the certified LPA as identified in the Master Certification Agreement. The LPA's approving authority must approve the plans and specifications, and a professional engineer licensed in the State of Oregon must seal and date the plans and specifications.

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**NOTE:** If any special federal funds are used on a LPA project there may be additional eligibility requirements such as a special contract language or specifications. This special contract language may cover additional reporting requirements for the LPA and the contractor.

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### B. APPLICABLE LAW

The certified LPA shall maintain procedures that follow all appropriate laws, regulations and other requirements applicable to federal-aid projects including but not limited to:

All non-Title 23 requirements such as:

- National Environmental Policy Act (NEPA) and other environmental laws and requirements (Section C, Chapter 6, Environmental Process/Permits)
- Uniform Relocation Assistance Act (Section C, Chapter 7, Right of Way)
- Civil Rights Act of 1964 and other Civil Rights laws and requirements including the DBE Program (Chapter 8, Civil Rights- EEO/OJT; Section A; Chapter 7, Title VI Program)
- Davis Bacon Act and other labor laws and requirements, Oregon Bureau of Labor and Industries (BOLI) laws Chapter 16, Construction and Contract Administration
- Common Rule (49 CFR 18) with respect to procurement
- Lobbying Prohibition (49 CFR 20)
- Suspension and Debarment USDOT Order 4200.5E 03-15-2010 (replaces revoked 49 CFR 29)

And selected Title 23 requirements:

- Competitive bidding requirements 23 USC 112
- Preconstruction Activities 23 CFR 630
- Required Contract Provisions, Form FHWA-1273, 23 CFR 633
- Buy America requirements 23 CFR 635.410 (Section C, Chapter 11, PS&E; Chapter 16, Construction and Contract Administration)

State statutes apply to the extent they do not conflict with federal laws and regulations, ORS 279A.030. State laws include ORS chapters 279A and 279C. OAR 137-047, 731-005, 731-007, and 734-010.

If any provisions or policies operate contrary to federal requirements including, Title VI of the Civil Rights Act of 1964, and prevent responsible, qualified bidders from submitting bids, then such provisions or policies shall not be applicable to federal-aid projects. Refer to 23 CFR 635.112(d).

Under state and federal law, construction contracts are to be based upon competitive bids and federal law requires the contract to be awarded to the lowest responsible bidder. Refer to 23 USC 112 and ORS 279C.335. Exceptions to competitive bidding, for example, design-build, construction manager/general contractor (CMGC) or other alternative contracting methods require approval. See the Certified LPA Approval Authority Matrix form 734-5191. No LPA shall bid in competition or enter into a subcontract with private contractors. Refer to 23 CFR 635.112(e).

FHWA's Contract Administration Core Curriculum Manual contains additional details regarding federal bidding requirements.

## C. PROCEDURES

The Certification Program Office along with the regional Local Agency Liaison (LAL) will monitor LPA compliance with the following process points for advertising, bid and award procedures. The ODOT Procurement Office also provides technical advice and support to the Certification Program as needed.

### C.1. Prior to Bid Advertisement

ODOT's regional LAL must have received the complete PS&E submittal package as described in the Certified LPA PS&E Submittal & Completeness Checklist (see Section D of this Manual). Upon ODOT's approval, the LAL will forward the applicable documents to ODOT's Program and Funding Services and FHWA for authorization of construction funds.

Following FHWA's authorization of the funding, the LAL will issue written approval to the certified LPA to proceed with advertising the project for bids. The LPA cannot advertise until the notice to proceed is received.

### C.2. Prequalification

FHWA recommends certified LPAs prequalify prime contractors. Unless otherwise approved, ODOT requires that certified LPAs use prequalified prime contractors as part of the Certification Program. Certified LPAs can use ODOT's list of prequalified prime contractors or the LPA may use their own prequalification process of prospective bidders, as approved by ODOT. In the event that a LPA does not have an ODOT approved process in place, the LPA must use ODOT's list of prequalified prime contractors.

If a contractor is prequalified with ODOT, then that contractor is presumed qualified with any other public agency for the same kind of work. Refer to ORS 279C.435.

Note, if the certified LPA decides to prequalify prospective bidders, the LPA shall have written procedures for mandatory prequalification by using one of the following methods:

- The LPA may use its own procedures and the LPA's Local Contract Review Board shall adopt such procedures and a contractor prequalification form for prime contractors ORS 279C.430 or use the Attorney General Model Rules OAR 137-049- 0220; 137-049-0370;
- Utilize ODOT's Prequalification Procedures specified in the Oregon Standard Specifications for Construction, APWA Oregon Chapter, current edition; OAR 731-007-0530 OAR 734, Division 10, and ODOT's procedures and form concerning prequalification of prime contractors.

No procedures or requirements for qualifications or licensing of contractors may operate to restrict competition, prevent submission of a bid, or prohibit consideration of a bid submitted by any responsible contractor, whether resident or nonresident of the state. Refer to 23 CFR 635.110(a) and (b).

Prequalification of contractors shall be required as a condition for submission of a bid or award of contract only if the period between the date of issuing a call for bids and the date of opening of bids affords sufficient time to enable a bidder to obtain the required prequalification rating. Refer to 23 CFR 635.110(c).

### **C.3. Solicitation Documents and Project Specifications**

The certified LPA shall clearly identify in the bidding documents those requirements which the bidder must assure are complied with to make the bid responsive. If the bidder fails to comply with these identified bidding requirements, such failure shall make the bid non-responsive and not eligible for award consideration. Refer to 23 CFR 635.112(h).

Per ORS 279C.365, all contracting agency's solicitation documents (which may include a separately bound bid booklet) for a public improvement contract shall include:

- The option for the contracting agency to reject any bid not in compliance with all prescribed public contracting procedures and requirements, and may reject for good cause all bids upon a finding by the agency that it is in the public interest to do so
- Information addressing whether a contractor or subcontractor must be licensed under ORS 468A.720
- 23 CFR 635.110(b) and (c) state that contractors need not be licensed at time of bid letting but must obtain required license by contract execution

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**NOTE:** Residence requirements as found in ORS 279A.120 are in conflict with 23 CFR 635.110 and 23 CFR 635.112 and must not be used in certified LPA projects.

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All contracts shall specify the minimum percentage of work that a contractor must perform with its own organization. This percentage shall not be less than 30 percent of the total original contract price excluding any identified specialty items. Refer to 23 CFR 635.116(a).

#### **a. Engineer's Estimate**

FHWA discourages disclosure of the Engineer's Estimate. ODOT policy requires that the Engineer's Estimate be kept strictly confidential. The certified LPA shall ensure that the Engineer's Estimate for a particular project is not published. Placing a cost range in the project advertisement for each project is preferable. The purpose of the range is to provide information to bidders regarding bonding requirements.

## **b. Addenda**

Following advertisement, the LPA may change a solicitation document only by issuing written addenda. The solicitation document shall specify how the LPA will provide notice of addenda and how the LPA will make the addenda available. The LPA must issue addenda within a reasonable time to allow prospective bidders to consider the addenda in preparing their bids.

The LPA must submit addenda requests to the ODOT regional LAL for any addenda that contain a major change to the approved plans or specifications during the advertising period before transmitting the addendum to the individual contractors holding bid documents. The LAL will then coordinate with FHWA or within ODOT for final approval as needed.

FHWA must also approve addenda for “major changes” in scope and all changes to project limits. Major change means a change that will significantly affect the federal funds of the project or alter the scope of work. The certified LPA will ensure that all potential bidders receive the approved addendum as expeditiously as possible. Refer to 23 CFR 635.112(c) and OAR 137-049-0250.

For changes that are not major, the certified LPA must retain copies of addenda in the project file.

For a summary of LPA changes that may trigger ODOT or FHWA approvals, refer to the Approval Authority Matrix form #734-5191 linked in Section D of this manual at part V. Detailed/Final Design (2), part VII. Advertisement, Bid, and Award (2.), and part VIII. Construction (2a-i).

## **c. Clarification, Request for Change**

Clarification of any provision of the solicitation, request for a change, or protest of the specifications or contract terms and conditions, may be made by a bidder in writing prior to the deadline for submitting requests for changes. Refer to OAR 137-049- 0260(1)-(2).

## **d. Solicitation Protest**

A prospective bidder may file a protest with the LPA if the prospective bidder believes that the procurement process is contrary to law or that a solicitation document is unnecessarily restrictive, is legally flawed or improperly specifies a brand name. Under OAR 137-049-0260, if a prospective bidder fails to timely file such a protest, the prospective bidder may not challenge the contract on grounds under this subsection in any future legal or administrative proceeding.

The LPA shall evaluate the protest if it contains all the required information and consider the protest and issue a decision in writing. The decision shall be issued no less than three business days before bids are due, unless a written determination is made by the LPA that circumstances exist that require a shorter time limit.

#### **e. Cancellation**

A certified LPA may cancel a solicitation for good cause if the LPA finds that cancellation is in the public interest. A copy of the cancellation shall be sent to the ODOT regional LAL. For compliance review purposes, the LPA's cancellation procedures should include the following items:

- Cancellation of solicitation at any time prior to signing contract;
- Finding that cancellation is in the public interest and is documented;
- Notice of cancellation; and
- Process for disposition of bids if solicitation canceled prior to and after opening bids;

If the project contains a DBE goal, the LPA must also notify the ODOT Office of Civil Rights of the cancellation.

#### **C.4. Advertisement Process**

##### **a. Advertising for Federally Funded Projects**

Certified LPAs must receive written approval from the ODOT regional LAL prior to advertising the project for bid. The LPA shall advertise for a minimum of three-weeks prior to the opening of bids unless otherwise approved by ODOT. The three week advertisement period begins when the advertisement is published. Refer to 23 CFR 635.112.

##### **b. Larger/Complex Projects**

Projects with cost estimates of \$10 million or more, or extremely complex projects, may have an advertisement period greater than three weeks to permit prospective bidders adequate time to prepare a responsive bid proposal. Also, for more complex projects, scheduling a pre-bid conference to address prospective contractors' concerns and questions is considered good industry practice. If a pre-bid conference is scheduled, adding two weeks to the advertisement length is recommended. This allows time for the conference and subsequent amendments to be prepared and distributed prior to bid opening, if necessary.

##### **c. Publication in Newspaper/Trade Journal**

The advertisement must be published at least once in a minimum of one newspaper, of general circulation in the area where the contract is to be performed and in as many additional issues and publications as the contracting agency may determine. If the contract has an estimated cost in excess of \$125,000, the advertisement must be published in at least one trade newspaper of general statewide circulation such as *The Daily Journal of Commerce*. Internet advertising is supplemental to print advertising. See FHWA's Contract Administration Core Curriculum Manual for more information. Refer to ORS 279C.360.

#### **d. Nondiscriminatory Procedures**

The certified LPA's advertising policies shall afford nondiscriminatory bidding procedures to all qualified bidders regardless of national, state or local boundaries and without regard to race, color, religion, sex, national origin, age, or handicap. Refer to 23 CFR 635.112(d).

#### **e. Proof of Advertisement**

The LPA is responsible to ensure that proof of advertisement is retained in the project file.

### **C.5. Advertisement Content**

Per ORS 279C.360, all advertisements for public improvement contracts must state:

- The public improvement project;
- The office where the specifications for the project may be reviewed;
- The date that prequalification applications must be filed under ORS 279C.430 and the class or classes of work for which bidders must be prequalified;
- The date and time after which bids will not be received, which must be at least five days after the date of the last publication of the advertisement;
- The name and title of the person designated for receipt of bids;
- The date, time and place that the contracting agency will publicly open the bids; and
- That the contract is for a "public work" subject to ORS 279C.800 to 279C.870 and the federal Davis-Bacon Act;

#### **a. Buy America**

While not a requirement, ODOT recommends notifying bidders of Buy America Requirements in the advertisement. ODOT's ad states "All federal aid projects have Buy America requirements per 23 CFR 635.410."

#### **b. Cargo Preference Act**

ODOT also recommends notifying bidders of Cargo Preference Act requirements in the advertisement, as all federal-aid projects are subject to 46 CFR 381.

#### **c. Title VI**

The certified LPA shall comply with the standard U.S. Department of Transportation (USDOT) Title VI Assurances by including language in the advertisement. ODOT uses this sample language:

"The Oregon Department of Transportation is an Equal Opportunity and Affirmative Action Employer."



“The policy of the Oregon Department of Transportation is to provide equal opportunity for participation in its contracting activities to all persons and firms in compliance with applicable Federal and State laws, rules and regulations.”

**d. DBE**

The certified LPA shall include the DBE goal percentage per project, even if the goal is 0%. Example: “This project contains a 0% DBE goal.”

**e. Prequalification**

Information regarding prequalification is required in the advertisement for bid.

**f. Percentage of Work**

ODOT includes a statement requiring the prime contractor to perform at least 30% of the original contract amount. Example: “All projects require the contractor’s own organization to perform at least 30% of the awarded contract amount.”

**g. Mandatory Pre-Bid Conference**

If the LPA is requiring a mandatory pre-bid conference, the advertisement must include the date, time and location as well as the fact that the pre-bid conference is mandatory.

**C.6. Bid Opening**

All bids received in accordance with the terms of the advertisement shall be publicly opened and read aloud either item-by-item or by total amount. Oregon statute also indicates that bids must be “opened publicly” by the contracting agency immediately after the deadline for submission of bids. After having been opened, the bids must be made available for public inspection.

If any bid received is not read aloud, the name of the bidder and the reason for not reading the bid aloud shall be publicly announced at the letting. Refer to 23 CFR 635.113(a) and ORS 279C.365(3)(c).

The LPA shall not consider bids, withdrawals, or modifications that are not in compliance with the terms of the solicitation. Bids, withdrawals or modifications that are late do not comply with the terms of the solicitation and shall not be considered.

Negotiation with contractors, during the period following the opening of bids and before the award of the contract is not permitted. Refer to 23 CFR 635.113(a).

### **C.7. Bid Responsiveness Review**

The certified LPA must verify proper submission of all required bid documents by the lowest bidder. The bid review provides the foundation for substantiating the contract award or rejection of bids. A thorough bid review will help ensure proper and effective use of federal funds. The LPA shall review and certify the bids as being complete and responsive to ensure good competition and the receipt of the lowest possible price.

#### **a. Bid Content Sufficiency**

The bid meets all the terms of the solicitation. Refer to 23 CFR 635.113(c)(1).

#### **b. Bid Figures**

The bid item and total cost figures have been verified for accuracy. Refer to 23 CFR 635.114.

#### **c. Revisions**

If there have been revisions by addendum, the contractor must use the correct bid sheets and the bidder must comply with all identified requirements in the bid document. Refer to 23 CFR 635.112 and ORS 279C.370.

#### **d. Bid Security**

Bid security must be received as discussed in Section C, Chapter 11, Subsection 3(c) of this manual.

#### **e. Pre-Bid Meeting**

If a mandatory pre-bid conference was held, the contractor's attendance must be verified.

#### **f. Subcontractor Disclosure Form**

The subcontractor disclosure form must be submitted with the required information within the required filing time deadline. Refer to ORS 279C.370.

Failure to provide the name, category of work and dollar value of each subcontractor that meets contract value inclusion limits shall result in bid rejection. The certified LPA shall consider the bid of any contractor that does not submit a subcontractor disclosure to the LPA to be a non-responsive bid and may not award the contract to the contractor. An LPA is not required to determine the accuracy or the completeness of the subcontractor disclosure. Refer to ORS 279C.370(3).

#### **g. Prequalification**

The contractor is pre-qualified in the required class or classes of work. Refer to ORS 279C.430 and OAR 731-007-0530.

#### **h. Bid Signature**

The bid document has been signed by the contractor's authorized personnel. Refer to ORS 279C.375 and Oregon Standard Specifications 00120.40 or LPA's equivalent.

#### **i. Licenses and Registrations**

##### **Bidder Registered with the Secretary of State Corporate Division**

The contractor's name is registered and active with the Oregon Secretary of State's Corporation Division. The contractor need not be registered at time of bid letting but must be registered prior to execution of a contract.

##### **Bidder Licensed with the Construction Contractor's Board**

The contractor must be licensed with Construction Contractor's Board (CCB), and the CCB number must not have expired. The contractor need not be licensed at time of bid letting but must be licensed prior to execution of the contract. Refer to ORS 279C.375(3)(a) and ORS 701.227.

##### **Bidder Licensed with the Landscape Contractor's Board**

If it is a landscape project, the contractor must be licensed with the Landscape Contractors Board prior to execution of the contract by the LPA. Refer to ORS 671.520(2), ORS 671.530 and ORS 671.560.

#### **j. Verify that Contractor is not on Ineligible Lists:**

- Bureau of Labor and Industries list of Ineligible Contractors
- Construction Contractors Board list of Contractors Not Qualified
- Federal Excluded Parties List: System for Award Management (SAM)

#### **k. Disadvantaged Business Enterprise (DBE) Requirements**

For projects with a DBE goal greater than 0%, each bidder must submit a completed, signed, dated DBE Commitment Certification and Utilization form 734- 2785 with the bid. When the DBE goal is greater than 0% and the bidder has failed to submit, sign and date the form, the LPA must find the bidder non-responsive.

When the DBE goal is greater than 0%, the LPA must send the DBE Commitment Certification and Utilization form 734-2785 from all bidders to the ODOT's Office of Civil Rights within two working days of bid opening. DBEs listed by the bidder for participation in the contract must be certified as eligible DBEs as of the time of bid opening. See Section C, Chapter 8 of this manual for more specific information regarding DBE form submission and review requirements.

## **I. Responsible Bidder under State Statute**

Pursuant to ORS 279C.375(3) the certified LPA shall determine whether the bidder has met the standards of responsibility. All public entities awarding public improvement contracts to the lowest responsible bidder must complete and submit a Responsible Bidder Determination form to the State Construction Contractors Board within 30 days of the award.

### **m. Bidder Determined Not Responsible**

A contractor bidding on a project may be deemed not responsible because of past unsatisfactory performance, as evidenced by failure to meet qualification requirements or because of state or federal suspension/debarment action. Any such determination of non-responsibility must be documented and the contractor notified in writing prior to receipt of the bids.

If the low bid is found to be non-responsive or the bidder is not responsible, the LPA shall document the justification for rejection and notify the bidder before awarding to the next lowest bidder. Refer to 23 CFR 635.114(f).

A record of these items must be maintained for justification of award or rejection. The LPA should also document the bidder responsiveness of the low bidder for inclusion in the project file. Refer to 23 CFR 635.114.

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**NOTE:** A **responsive bid** meets all the requirements of the advertisement and proposal, and a **responsible bidder** is one who is physically organized and equipped with the financial wherewithal to undertake and complete the contract.

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### **n. Disqualification**

With proper notice to the bidder(s), a LPA may disqualify bidder(s) from receiving an award in accordance with ORS 279C.440. Bidders may appeal disqualification per ORS 279C.445. If the LPA determines that the lowest bidder is not qualified, it shall document those findings prior to awarding the bid to the next-lowest responsible bidder.

## **C.8. Bid Price Analysis**

### **a. Bid Verification and Correction**

All bids shall be reviewed for accuracy with tabulations checked and confirmed. Any corrections to the bid tabulations are made if necessary, in accordance with Sections 00120 and 00130 of the LPA's ODOT approved General Conditions.

## **b. Bid Tabulations**

The LPA shall prepare a tabulation of bids showing the Engineer's estimated bid item values and the bid item details for the lowest three acceptable bids, plus the total bid amounts of all other acceptable bids. Refer to 23 CFR 635.113(b).

## **c. Conformance with Engineer's Estimate**

After bid opening, the LPA shall review "the apparent low bid for reasonable conformance with the engineer's estimated prices." Bids with any extreme variations from the engineer's estimate shall be thoroughly evaluated. Refer to 23 CFR 635.114(c). The bid analysis, following FHWA guidelines, should identify all mathematical and materially unbalanced bid items.

If the LPA finds obviously unbalanced bid items, the LPA shall document its decision to award or reject the bid with a written justification. The LPA may award a bid if it is found to be mathematically unbalanced, but not materially unbalanced. Refer to 23 CFR 635.114(d).

This analysis should result in an Engineers Recommendation of Award to either award to the lowest responsive bidder, award to the next lowest responsive bidder or rebid the project with additional modifications. If the LPA determines that it wants to reject all bids and rebid the project, the decision must first receive ODOT's concurrence.

## **d. Other considerations**

Some additional metrics to review during the Bid Analysis include, but are not limited, to the following:

- Number of bids
- Distribution or range of the bids
- Identity and geographic location of the bidders
- Urgency of the project
- Current market conditions and workloads
- Comparison of bid prices with similar projects in the letting
- Justification for significant bid price differences
- Potential for savings if the project is re-advertised
- Other factors as warranted

If the bid exceeds the engineer's estimate by 10 percent, prior to the LPA awarding the contract, the LPA must contact the regional LAL to ensure sufficient funding is available.

#### **e. Rejection of All Bids**

Where the lowest bid exceeds the engineer's estimate by 10 percent or where award of contract is not justified as being in the best interest of the public in accordance with the adopted Local Contract Review Board rules, all bids may be rejected. For further details regarding the engineer's estimate, see FHWA's Contract Administration Core Curriculum Manual.

**Resources:**

- [Administration Core Curriculum Manual](#)

The certified LPA must define the criteria for rejection of all bids and comply with ORS 279C.395. Any LPA proposal to reject all bids received for a federal-aid contract shall be submitted, with adequate justification, to the Regional Local Agency Liaison who will coordinate with ODOT and FHWA for appropriate concurrence. Refer to 23 CFR 635.114(h).

When all bids are rejected, the documentation in the project file should include the following items for compliance review purposes:

- Reasons for rejection including reference of appropriate local, state or federal law;
- Definition of responsible bidder(s);
- Specific criteria for rejection;
- Written finding for rejecting all bids;
- Written approval from authorized LPA official;
- Notification to all bidders that all bids were rejected; and
- Notification of such rejection to the regional LAL and ODOT's Office of Civil Rights.

#### **C.9. Contract Award Requirements**

##### **a. DBE Responsiveness**

The LPA must receive approval from ODOT's Office of Civil Rights regarding DBE responsiveness prior to issuing notice of intent to award.

##### **b. Notice of Intent to Award**

At least seven days prior to contract award, unless the LPA determines that seven days is impractical, the LPA shall notify each bidder of the contracting agency's intent to award a contract. ORS 279C.375(2). Such notice of intent to award should be documented in the project file.

Please note that if the low bidder was found non-responsive to the DBE goal requirements, and has requested administration reconsideration through ODOT's Office of Civil Rights, the LPA

must postpone sending the notice of intent to award letter to the apparent awardee until the completion of, and the final decision from, the administrative hearing. Bidders may appeal the award pursuant to procedures specified in ORS 279C.460. Please refer to Section C, Chapter 8 of this Manual for additional information.

#### **c. Award**

If the execution date is greater than 60 days from bid opening, the LPA shall advise the regional LAL who will advise ODOT's Program & Funding Services. Pursuant to OAR 137- 049-0410, 30 days is standard for time to award, then the execution of contract follows, after all bonding and insurance coverage is in place. For more information, refer to Section 00130 of the certified LPA's ODOT approved General Conditions.

#### **d. Letter of Award**

After award by the certified LPA, the contractor must be advised of the award in writing.

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NOTE: "Award" means approval of award by the appropriate authorities. "Execution" of a contract occurs after the contract "award" is approved.

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### **C.10. Post Award**

#### **a. Contract Execution**

Certified LPA's shall not execute a contract with any contractor who is not registered or licensed in accordance with state and federal laws. Additionally, contractors must comply with the following requirements for insurance, bonds, and payment of a Prevailing Wage Rate fee to the Bureau of Labor and Industries.

#### **b. Insurance**

Prior to the execution of the contract, the LPA shall ensure that contractor has furnished copies of the Certificates of Insurance for the insurance specified in the Standard Specifications and/or Special Provisions. The LPA shall ensure that contractor lists on the Certificate of Insurance as an additional insured the State of Oregon, Oregon Transportation Commission and its members, and Department of Transportation, its officers and employees.

Prior to Notice to Proceed, the contractor shall provide insurance certificates to the LPA for commercial general liability, automobile, worker's compensation, and any other required insurance. Refer to ORS 701.073 as well as the LPA's Master Certification and Supplemental Project Agreements.

**c. Bonds**

Performance and payment bonds must be furnished by the contractor from a Surety authorized to do business in the State of Oregon. The LPA must provide proof of bonding to ODOT's regional LAL. Bond requirements are outlined in Section C, Chapter 11 of this manual.

**d. Payment of Public Works Contract Fee**

As required by state law, a public works contract fee must be paid to the Oregon Bureau of Labor and Industries by the public agency that awards a public works contract valued at \$50,000 or higher. The fee requirement applies to public works contracts and is calculated at one-tenth of one percent of the contract value. This amount is determined by multiplying the contract value times .001 to determine the fee amount. The maximum fee is \$7,500, and the minimum fee is \$250. If the contract amount is less than \$250,000, the \$250 minimum fee applies. If the contract amount is over \$7,500,000, the \$7,500 maximum fee applies. Refer to ORS 279C.825.

**e. Project Agreement Estimate (Post-Bid Final Estimate)**

The Project Agreement Estimate (PAE) is in the same form as the engineer's estimate, but includes the actual bid item values, an adjusted construction contingency value and an adjusted summary of funds. After awarding the construction contract, the LPA submits the PAE to the regional LAL, who will check it and forward it to ODOT's Program and Funding Services for processing with FHWA. The LPA shall include the date of the notice of award to the contractor on the PAE form.

**f. Notice to Proceed**

Per Section 00130.90 of the LPA's ODOT approved General Conditions, notice to proceed (NTP) will be issued within 5 calendar days after the contract is executed by the LPA. Should the LPA fail to issue the NTP within that time frame, the contractor may apply for an adjustment of Contract Time.

**C.11. Record Retention**

For records retention requirements, refer to the Code of Federal Regulations, Title 48: Federal Acquisition Regulations System, Part 4 – Administrative Matters, Subpart 4.8 – Government Contract Files, Section 4.805 – Storage, Handling, and disposal of contract files. 48 CFR, Section 4.805. Current regulations require retention of construction contracts for 6 years and 3 months after final payment.

The documents listed in the regulations should be retained by the LPA. The LPA should develop a process for records retention that complies with the federal and state records retention regulations.



The LPA shall ensure that the contractors and subcontractors shall maintain all fiscal records relating to contracts in accordance with generally accepted accounting principles. Contractors and subcontractors shall maintain all other records necessary to clearly document their performance and any claims arising from or relating to their performance under the contract.

#### **C.12. Right to Audit Records**

The LPA shall ensure that contractors and subcontractors make all records pertaining to their performance and any claims against the contract accessible to ODOT, FHWA, and the Secretary of State. ODOT, FHWA, Secretary of State Audit Division or designees, shall be entitled to inspect, examine, copy and audit contractor or subcontractor records.

Contractor and subcontractor shall maintain the records and keep the records accessible and available at reasonable times and places for a minimum period of six years from the date of final payment under the contract or subcontract or until the conclusion of any audit, controversy or litigation arising out of or related to the contract, whichever date is later, unless a different period is required by law.

See the Secretary of State's Retention Schedule; e.g. OAR Chapter 166, Division 150 for counties, 200 for cities, and 300 for state agencies. For project on or affecting a state facility and bridges, reference LPA's Master Certification Agreement.

**Resources:**

- [Oregon Standard Specification for Construction](#)
- [Local Government website](#)

## Chapter 16. Construction and Contract Administration

### A. OVERVIEW

Construction contract administration is the responsibility of the LPA as identified in the Master Certification Agreement, Supplemental Project Agreements, this LAG for Certified LPAs and 23 CFR 635.105(c). The LPA is responsible for the following aspects of construction engineering:

- Materials quantity and quality program;
- Project compliance with state and federal requirements;
- Inspection by inspectors who are certified by ODOT;
- Project documentation and retention;
- Project management for administration of the contract:
- Dispute resolution for claims;
- Contract Payments;
- Coordination with ODOT Environmental and ODOT Office of Civil Rights

#### Resources:

- [23 CFR 625.105\(c\)](#)
- [Stewardship and Oversight Agreement](#)
- [Approval Authority Matrix \(734-5191\)](#)
- [ODOT Construction Manual](#)
- [Manual of Field Test Procedures](#)
- [Non-field Tested Materials Acceptance Guide](#)
- [FHWA Contract Administration Core Curriculum Manual](#)
- [ODOT Contract Administration Unit](#)

As outlined in the LPA's Master Certification Agreement and ODOT's Stewardship and Oversight Agreement with FHWA, the Approval Authority Matrix details the approval responsibilities for FHWA, ODOT and the LPA. FHWA and ODOT may exercise oversight or review of any aspect of the delivery process. The Approval Authority Matrix (Form #734- 5191) is located in Section D of this LAG for Certified LPAs.

For more information or additional clarification, contact ODOT's regional Local Agency Liaison or refer to guidance and manuals, including the ODOT Construction Manual, ODOT's Manual of Field Test Procedures, ODOT's Non-field Tested Materials Acceptance Guide, FHWA's Contract Administration Core Curriculum Manual, and the ODOT Contract Administration Unit website. Documents and specifications are provided as resources to LPAs per 23 CFR 635.105(c).

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**Important Note: For more detailed guidance on the civil rights submittals and contract administration requirements referenced throughout this chapter, refer to Section C, Chapter 8 of this manual.**

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## B. CONSTRUCTION CONTRACT ADMINISTRATION

### B.1. Preface

Construction contract administration of a federal-aid project can be very complex. Therefore, it is essential that partnering between the LPA and ODOT is positive, professional and mutually beneficial. Communication is the primary key to success. Timely dialog need not delay a project; rather it should enhance the delivery time and quality.

Construction will be administered and materials will be accepted according to the LPA's approved Quality Program Plan. In most cases the LPA will be using ODOT's Construction Manual as modified for the LPA's program.

Resources:

- [ODOT Construction Manual](#)

To help document the LPAs processes during construction, the Certified Local Public Agency (LPA) Construction & Contract Administration Checklist is provided in Section D of this LAG for Certified LPAs. This checklist is a required Certification Program Office submittal for all demonstration projects. For all other projects, this checklist is not a required submittal, however, the LPA is encouraged to maintain a copy (or the LPA's equivalent) in the project file.

### B.2. Construction Contract Administration Plan – Key Activities

The following is a listing of key processes that will be addressed during the construction and contract administration phase.

#### a. Pre-Construction Conference

Following contract execution, but prior to the pre-construction conference, the LPA shall submit digital .pdf copies of the executed contract documents (bid book with special provisions and final plans) to ODOT's Local Agency Liaison for distribution within ODOT as appropriate.

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

Additionally, the LPA must also submit the Certified Local Public Agency Quality Assurance & Contract Administration Plan to the Local Agency Liaison.

Resources:

- [Certified Local Public Agency Quality Assurance & Contract Administration Plan \(734-5033\)](#)

**i. Internal Pre-construction meeting**

LPA representatives and ODOT will meet prior to the formal pre-construction conference on all federal-aid projects. This meeting is to review the civil rights and environmental requirements for the project. The ODOT attendees will include the regional Local Agency Liaison, the Region Environmental Coordinator and the regional Civil Rights Field Coordinator.

**ii. Pre-construction conference**

As prescribed in the construction contract, or as soon as possible after contract execution, the LPA's project manager will schedule the conference with contractor, subcontractors, project inspectors and technicians. Utility companies should also be invited to attend as a part of the utility notification process. The LPA's Construction Contract Administrator will also invite ODOT's Local Agency Liaison, ODOT's Environmental Coordinator and ODOT's Civil Rights Field Coordinator to attend the meeting.

On large complex projects, a pre-construction conference should be held before each construction phase. It may be desirable to hold separate conferences for some specialized construction items such as paving, bridge work, or electrical work. The pre-construction conference may include a partnering session, if appropriate. A sample pre-construction conference agenda and other construction forms are available in the ODOT Construction Manual, Chapter 11.

The LPA will appropriately document the meeting with official minutes. Electronic recordings may be used to substantiate the written record. Copies of the meeting documentation shall be provided to all those attending the conference and others that may have an interest in the project. Refer to the ODOT Construction Manual Chapter 11 for example pre-construction conference processes and information.

**b. Certified LPA Submittal Requirements During Construction**

Once construction begins, the LPA must submit to the Local Agency Liaison the following documentation, either using an ODOT format or in the approved LPA format:

**i. Notification of Commencement and Completion**

Send copies of the Notice of Commencement and Completion (ODOT Form 734-3233), also known as First, Second and Third Notification or equivalent, to the Local Agency Liaison as well as the Region Assurance Specialist assigned to the project and the Contract Administration Unit in Salem for communication and filing purposes.

**ii. Environmental Reporting**

For all LPA projects, the LPA is responsible for submitting a copy of the following plans to the Regional Local Agency Liaison and Region Environmental Coordinator prior to the start of any construction activities when applicable:

- Erosion and Sediment Control Plan (ESCP)
- Pollution Control Plan (PCP)
- Temporary Water Management Plan (TWMP)
- Work Containment Plan and System (WCP/WCS)
- Weed Control Work Plan (WCWP)
- Migratory Bird Protection Plan (MBBP)
- Fish Passage Plan (FPP)

Resources:

- [Environmental Construction Inspection Report \(734-2902\)](#)
- [ODOT Geo-Environmental website](#)

ODOT will review, comment and monitor these plans as part of its oversight commitment to confirm ongoing environmental compliance is achieved by the LPA. If any significant changes are proposed by the LPA during construction to any of the above plans, then the LPA is required to submit those proposed changes to the Local Agency Liaison and Region Environmental Coordinator to make sure the proposed plans still meet applicable permitting requirements. There usually always is some kind of change to the original plans during construction.

Most of the time these changes are for the better, however ODOT needs to be involved in the review of those proposed changes just as ODOT was for the plans submitted prior to construction.

For projects that used the Federal-Aid Highway Program - Endangered Species Act Programmatic Biological Opinion (FAHP ESA Programmatic) for ESA compliance, the LPA is required to conduct at least 1 environmental construction inspection site visit. The LPA office will be responsible for submitting a copy of the environmental construction inspection report(s) (form 734-2902) to the Local Agency Liaison and Region Environmental Coordinator.

Environmental construction inspection reports can be found on the Geo- Environmental website.

Once received, this report will be submitted to FHWA and other resource agencies by ODOT.

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**NOTE:** The FAHP ESA Programmatic required environmental construction inspection report does not replace the inspection report(s) required by any project related National Pollutant Discharge Elimination System permit.

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Environmental monitoring requirements can vary by project; the LPA is responsible for reviewing and satisfying the permit requirements. Monitoring Reports can be found on the Geo-Environmental website. The monitoring reports should go to the Local Agency Liaison and Region Environmental Coordinator and ODOT will forward on to the appropriate resource agency.

Once the Region Environmental Coordinator and assigned ODOT Biologist receive the FAHP ESA Programmatic construction inspection form it is reviewed for completeness and when deemed complete it is filed into an ODOT statewide FAHP ESA Programmatic project file and sent to the “stakeholders list” which includes FHWA, the resource agencies and others depending on the project.

**Resources:**

- [ODOT Endangered Species Act \(ESA\) website](#)

### iii. **Draft Change, Force or Extra Work Orders**

For all demonstration projects, copies of all proposed draft change orders, force orders and extra work orders must be sent to the Local Agency Liaison for review and comment prior to execution. The LPA shall also submit a copy of the final executed order.

For all fully certified projects, ODOT will not require a review of drafts, but will be available to assist as requested by the LPA. The LPA shall also submit a copy of the final executed order to the Local Agency Liaison.

Certain changes must be approved by ODOT and FHWA (as appropriate) prior to work being performed as per 23 CFR 635.102 and the Approval Authority Matrix form 734- 5191 in Section D of this manual (see also subsection B.8 of this chapter for more details). The LPA must receive approval on all major contract change orders (CCOs) from ODOT and FHWA (as appropriate) regardless of certification status.

### iv. **Report on Contractor’s Request for Subcontract Consent (Form 734-1964WB)**

Subcontract review and approval is an integral part of the LPA’s civil rights and contract management responsibilities and includes monitoring and enforcement of the DBE program. Refer to Section C, Chapter 8 in this manual for civil rights guidance.

### v. **Certified Agency Quarterly Report**

Quarterly reports are required on all federal-aid projects undertaken by LPAs. Quarterly, throughout the life of the project and at the end of the project, the Certification Program Office will send each LPA a project- and quarter-specific Certified Local Public Agency Quarterly Report form 734-5034 to be completed and submitted to the ODOT Certification mail box, with a copy to the ODOT Local Agency Liaison.

**Resources:**

- [Certified Local Agency Quarterly Report – Sample \(734-5034\)](#)
- [Certification Program webpage](#)

A sample of this form is located on the Certification Program webpage under technical program guidance and construction contract administration.

### **B.3. Construction Oversight Process**

ODOT's Contract Administration Unit (CAU) provides project auditing resources for LPAs in the Certification program. A Region Assurance Specialist is assigned to LPA projects to provide risk-based documentation reviews and closeout mentoring to assist the LPA in establishing and maintaining appropriate project records for quality and quantity documentation.

#### **a. Initial Project Documentation Review (Demonstration Project)**

Prior to construction work starting on the LPA's demonstration project, ODOT's Region Assurance Specialist will contact the LPA and set an appointment for an initial review and discussion.

Three things the Region Assurance Specialist will look at on the initial review include the presence and use of the following:

- Test summaries - field tested and non-field tested bid items;
- Asphalt, Fuel and Steel escalation items being paid per the contract; and
- The Quantity Measurement Guide / Quality Documentation Checklist also known as a "Q&Q". The "Q&Q" lists all the bid items and how they will be measured for payment, as well as required corresponding quality documentation for materials installed. This document is not required, but strongly suggested for project specific delivery management.

When payments to the contractor have been made, the Region Assurance Specialist will also perform a documentation review of the quantity and quality items paid to date and document the findings in a Documentation Review Report form 734-1903. Items requiring correction will be noted and shall be rectified by the LPA.

#### **b. Subsequent Project Documentation Reviews (Demonstration Project)**

Subsequent reviews should occur, at a minimum, at the project mid-point and the end of the project. Additional reviews may occur depending on the progress of the work, performance of the LPA and other factors. The LPA should shadow the ODOT reviewer during the demonstration project to ensure the LPAs quality control reviews are sufficient for compliance on future federal-aid projects.

The Region Assurance Specialist will review the new Quality and Quantity documentation, noting any deficiencies in the Documentation Review Report. Following 2<sup>nd</sup> Notification (or equivalent) any unresolved or new deficiencies will be documented in the Completion Strategy and Action Plan form 734-1903. At these reviews, the Region Assurance Specialist will also note if there are deviations in administration of the contract. The LPA, the Region Assurance Specialist, and the ODOT Local Agency Liaison will retain the completed form.



The Region Assurance Specialist will confirm each item noted for correction from previous reviews has been appropriately addressed by the LPA. These reviews will be carried out as needed to ensure that ongoing communication occurs and that all issues are identified and resolved. It is expected that the LPA will have all prior Documentation Review Report issues resolved prior to the next scheduled review. Issues that remain unresolved for a period of time may be escalated as necessary.

#### **c. Project Documentation Reviews (Post-Demonstration Projects)**

The timing and frequency of Region Assurance Specialist reviews will be based on a risk analysis performed by the Contract Administration Unit. The reviews may take into consideration the following items:

- High dollar value items – Asphalt Concrete Pavement (ACP), Aggregates, Concrete Items, Grindings, Earthwork, etc. (Items with a large quantity)
- High dollar value – greater than 5% of the Contract total bid
- Items requested by LPA
- Environmental documentation
- Contract Change Orders
- Buy America – Steel Items (e.g. Reinforcement, Guard Rail)

The frequency of the reviews will depend on number of projects in the Program, project size, duration and complexity and percent complete. Additionally, the Contract Administration Unit may determine that only a subset of LPA projects in a given season will be reviewed by the Region Assurance Specialist.

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**NOTE: Should the Region Assurance Specialist identify significant issues during a risk-based review, ODOT may expand its review to include additional or all bid items as deemed necessary.**

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The quality and quantity documentation reviews performed by the Region Assurance Specialist will occur in addition to the program and project oversight reviews conducted by the Certification Program Office as outlined in Section B of this manual and any additional Civil Rights Inspections.

#### **d. Final Project Documentation and Close-Out Requirements**

Refer to Section C, Chapter 17 of this manual for information on this topic.



#### **e. Final Project Inspection - (On-site Project Review)**

The ODOT Local Agency Liaison and Region Environmental Coordinator may accompany the LPA on a punch list inspection. This is preferably after the LPA and contractor have developed their own punch list and before the contractor has completed all of the LPA's punch list work and demobilized from the site. See Section C, Chapter 17 of this manual for additional information.

### **B.4. Project Construction Inspection**

#### **a. LPA Responsibilities**

The LPA is responsible for all aspects of project inspection and documentation. The LPA may use in-house staff for the construction engineering inspection or use a consultant who has personnel that are certified in project inspection. All inspection

**Resources:**

- [ODOT Quality Assurance & Contract Administration Plan \(734-2857\)](#)

staff assigned to a project is required to be ODOT certified in general construction inspection and at least one person must have the specific ODOT certification(s) required in accordance with the project needs. Specific certifications as outlined in the ODOT Quality Assurance and Contract Administration Plan form 734-2857, include the following.

- Certified Bridge Construction Inspector (CBCI)
- Certified Environmental Construction Inspector (CECI)
- Certified Drilled Shaft Inspector (CDSI)
- Certified General Construction Inspector (CGI)
- Asphalt Concrete Pavement Inspector (ACPI)
- Certified Traffic Signal Inspector (CTSI)
- Certified ADA Inspector (ADAI)

#### **b. ODOT Responsibilities**

ODOT may perform intermediate project inspection(s) independently of the LPA on projects as needed to comply with ODOT's federal oversight responsibilities.

### **B.5. Material Quality Plan (Programmatic)**

Under the Certification Program, LPAs must have a quality assurance program for acceptance of materials. The LPA will follow its ODOT approved materials quality assurance program as defined in the LPA's Quality Program Plan. The LPA shall also maintain a management and staff structure necessary to meet the standards for quality materials that are incorporated into projects.

If a LPA decides to modify the materials quality assurance program (Section 2 of the MFTP) or develop its own materials quality assurance program, it must also amend its general conditions (Section 100's) specifications in parallel with its program. The quality assurance program and the general conditions must be reviewed and approved for use by the Certification Program Office. See Section B of this manual for additional information.

**Resources:**

- [ODOT Construction Manual](#)
- [ODOT Manual of Field Test Procedures \(MFTP\)](#)
- [Non-Field Tested Materials Acceptance Guide](#)

Alternatively, the LPA may adopt the procedures in the ODOT Construction Manual, the ODOT Manual of Field Test Procedures and the ODOT Non-field Tested Materials Acceptance Guide for construction contract administration, quality control, quality assurance, material sampling and testing. The source for each type of material must be approved by the LPA. For additional details on developing a Material Quality Plan refer to 23 CFR 637.

#### **a. Non-Field Tested Materials**

LPAs must specify how they will document and accept non-field tested materials. This includes the quality documentation required from the construction contractor.

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**ADVANCE NOTIFICATION:** Any request for ODOT Structural Services Inspections will require advance notification from LPA to the Local Agency Liaison. (LPA will need to provide shop drawings, etc.) The Local Agency Liaison will contact the ODOT Structural Services Unit and provide all the necessary information.

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For additional information reference the following:

- Oregon Standard Specifications for Construction;
- ODOT's Construction Manual;
- ODOT's Qualified Products List (QPL);
- Applicable ODOT Construction Forms;
- ODOT Non-field Tested Materials Acceptance Guide (NTMAG)

## **b. Field Tested Materials**

LPA's must specify how they will document and accept Field Tested Materials. This process must be adequately represented by the LPA's general conditions specifications. If the LPA's process differs from the ODOT process, the LPA's process must be explained in the Quality Program Plan and modified in the contract specifications.

Additionally, the LPA's Quality Program Plan must address requirements included in 23 CFR 637:

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

LPA's may use ODOT's Manual of Field Test Procedures, or their ODOT and FHWA approved program that complies with 23 CFR 637 as described above.

## **c. Pavement Design and Job Mix Formula (JMF) Reviews**

The following describes the process of how ODOT's Pavement Services Unit will respond to pavement design reviews and job mix formula reviews for LPA projects:

For LPA projects, the following criteria will be used to determine if an ODOT review and approval/concurrence on the Pavement Design and Job Mix Formula are required:

### **Resources:**

- ODOT [Pavement Design Guide](#)
- ODOT [Mix Design Guidelines](#)

- Local system (includes non-NHS and local roads on the NHS) – the LPA's engineer or qualified owner's representative approves the pavement design and job mix formula. ODOT review is not required.
- On or along the state highway system (e.g. roadway or other structure):
- An ODOT review and concurrence of the pavement design and a notice to proceed of the job mix formula is required. Additionally, the design must be in accordance with the current ODOT Pavement Design Guide and the job mix formula must be in accordance with the current ODOT Mix Design Guide.
- During the construction phase – at least 15 days prior to placement of materials, the

LPA shall send the job mix formula meeting the requirements of the project specifications for a notice to proceed from ODOT Pavement Services to the following:

- ODOT Local Agency Liaison
- Copy the ODOT Mix Design at [ODOTMixDesign@odot.oregon.gov](mailto:ODOTMixDesign@odot.oregon.gov)

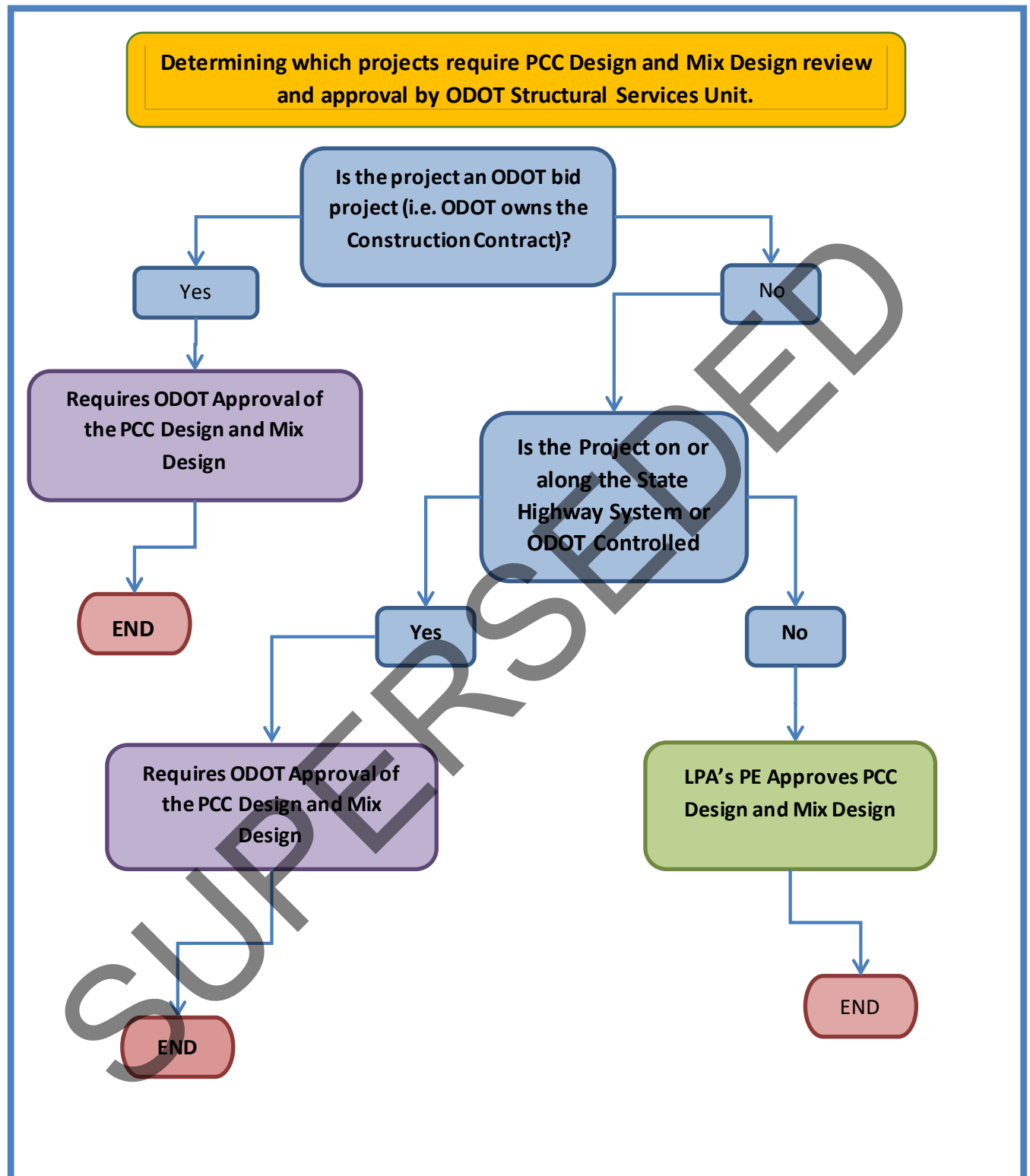
**d. Structural Portland Cement Concrete (PCC) Mix Design Reviews**

The following describes the process of how ODOT will respond to Structural PCC mix design reviews for LPA federal-aid projects in the STIP:

For LPA projects, the following criteria will be used to determine if an ODOT review and approval/concurrence on the mix design is required:

- Local system (includes non-NHS and local roads on the NHS) - LPA engineer or qualified owners representative approves the mix design. If the LPA is conducting a demonstration project or requests ODOT review, then ODOT may review for concurrence on the mix design. However, an ODOT mix design review is not required.
- On or along the state highway or bridges on the National Bridge Inventory (e.g. roadway or other structure) - An ODOT review and concurrence of the mix design is required. Subsequently, the LPA in the Certification Program will also be required to submit the mix design information to their ODOT Local Agency Liaison for them to forward to the ODOT Structural Services Unit. ODOT will review mix designs per the requirements of Section 02001.30 of the Standard Specifications.

See the decision flow chart on the next page for an illustration of the process.



## **B.6. Material Quality Acceptance and Monitoring Assurance Programs**

The LPA will fully document the Quality Acceptance and Quality Assurance process. There are two different methods of materials acceptance:

- The traditional usage of a Quality Control Compliance Specialist (QCCS), or
- The alternative method of a staff PE.

The following subsections describe the requirements for each of the methods. Regardless of the method chosen, ODOT and FHWA will need to review and approve the LPA's material quality plan.

### **a. The Traditional Quality Control Compliance Specialist (QCCS) Staffing Method**

The traditional QCCS is used when:

- The LPA is using ODOT's Manual of Field Test Procedures (MFTP) procedures.
- The Contractor's quality control (QC) testing is used for acceptance and payment.
- The LPA or consultant performs the required verification and independent assurance testing.

In this scenario, the Contractor's QC Technician performs 100% of Quality Control testing required by the Manual of Field Tested Procedures (or as required by the Project Specifications). The Contractor's laboratory conducting materials testing for acceptance must also be a laboratory certified by ODOT. The LPA staff or a consultant performs Verification Testing and Independent Assurance according to the frequency defined in the MFTP. Additionally, the LPA's or consultant's materials laboratory conducting the verification or independent assurance testing is required to be certified by ODOT.

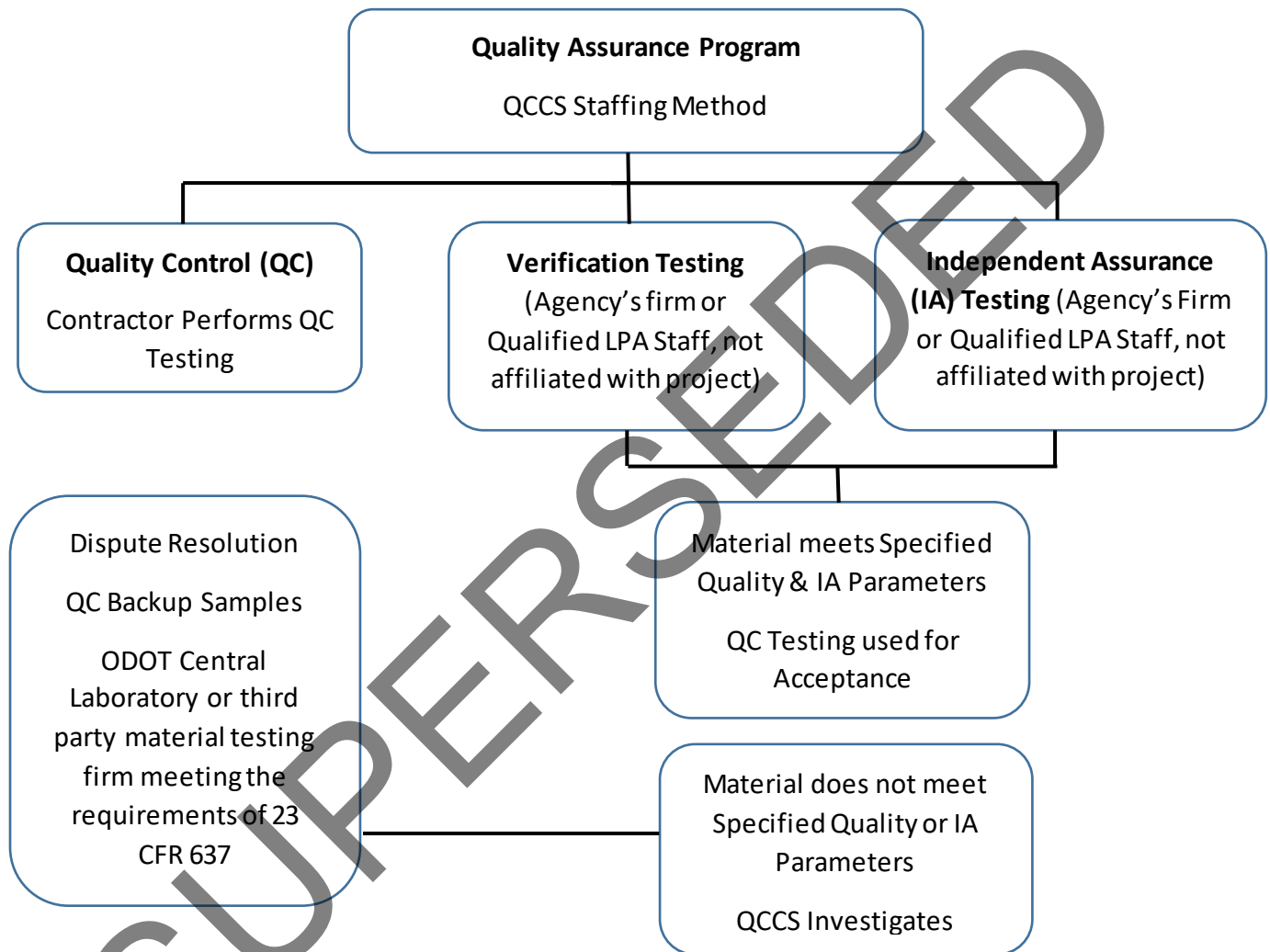
The LPA must identify a certified Quality Control Compliance Specialist (QCCS). Their role is to oversee and administer the LPA's Quality Assurance (QA) Program and to ensure all testing is conducted in accordance with that program. This includes reviewing testing personnel, test procedures, reviewing test results for compliance with specifications and Independent Assurance Program requirements.

The QCCS shall possess all of the following certifications:

- Certified Aggregate Technician (CAgT):
- Certified Embankment and Base Technician (CEBT):
- Certified Density Technician (CDT)
- Certified Asphalt Technician I (CAT-I)
- Quality Control Technician (QCT)

A Professional Engineer cannot substitute or provide oversight for a non-certified technician. The MFTP and QCCS Handbook provide a guideline for the qualifications and responsibilities of the QCCS.

**Traditional QCCS Staffing Method – Contractor’s Quality Control testing is used for acceptance and payment of Materials**



When Quality Control and Verification test results conflict and the conflict cannot be resolved; a third party, a neutral Dispute Resolution Laboratory will test the material in question. The LPA’s Dispute Resolution Laboratory will need to meet 23 CFR 637 and be an ODOT certified laboratory. Additionally, the LPA’s Dispute Resolution Laboratory *cannot* be the same laboratory performing independent assurance, verification testing or the quality control testing. The test results from the Dispute Resolution laboratory will be used for contract acceptance.

## **b. The Alternative Professional Engineer (PE) Staffing Method**

The PE method is used when:

- The Contractor's QC testing is NOT used for material acceptance,
- The LPA or consultant performs all required acceptance testing for material acceptance and payment.

In this scenario, the LPA's or consultant's Material Technician performs 100% of acceptance testing required by the LPA's approved Materials Quality Program (or as required by the contract).

The LPA will identify an Oregon registered PE who will serve as the LPA's Quality Manager. An LPA can still have a QCCS fulfill this role, but it is not required in this alternative method. The LPA's Quality Manager role is to oversee and administer the LPA's Quality Assurance (QA) Program and to ensure all testing is conducted in accordance with that program. Their role also includes administering the LPA's Material Quality Plan and ensuring that all testing is conducted in accordance with the plan.

This includes reviewing testing personnel qualifications, test procedures, reviewing test results for compliance with the project specifications and the Quality Assurance Program requirements. This person may also serve as the LPA's Project Manager, responsible for administering the Contract with the Contractor as well.

The LPA's Independent Assurance and Verification testing shall be performed by qualified technicians not involved with the acceptance or Quality Control testing.

All Verification and Independent Assurance testing shall be performed by ODOT certified technicians in the materials disciplines applicable to the specific project work. Refer to Section 6.a above for a list of the Technician Certifications available.

Additionally, the LPA's or consultant's materials laboratory conducting both materials verification testing and independent assurance testing are required to be ODOT certified laboratories.

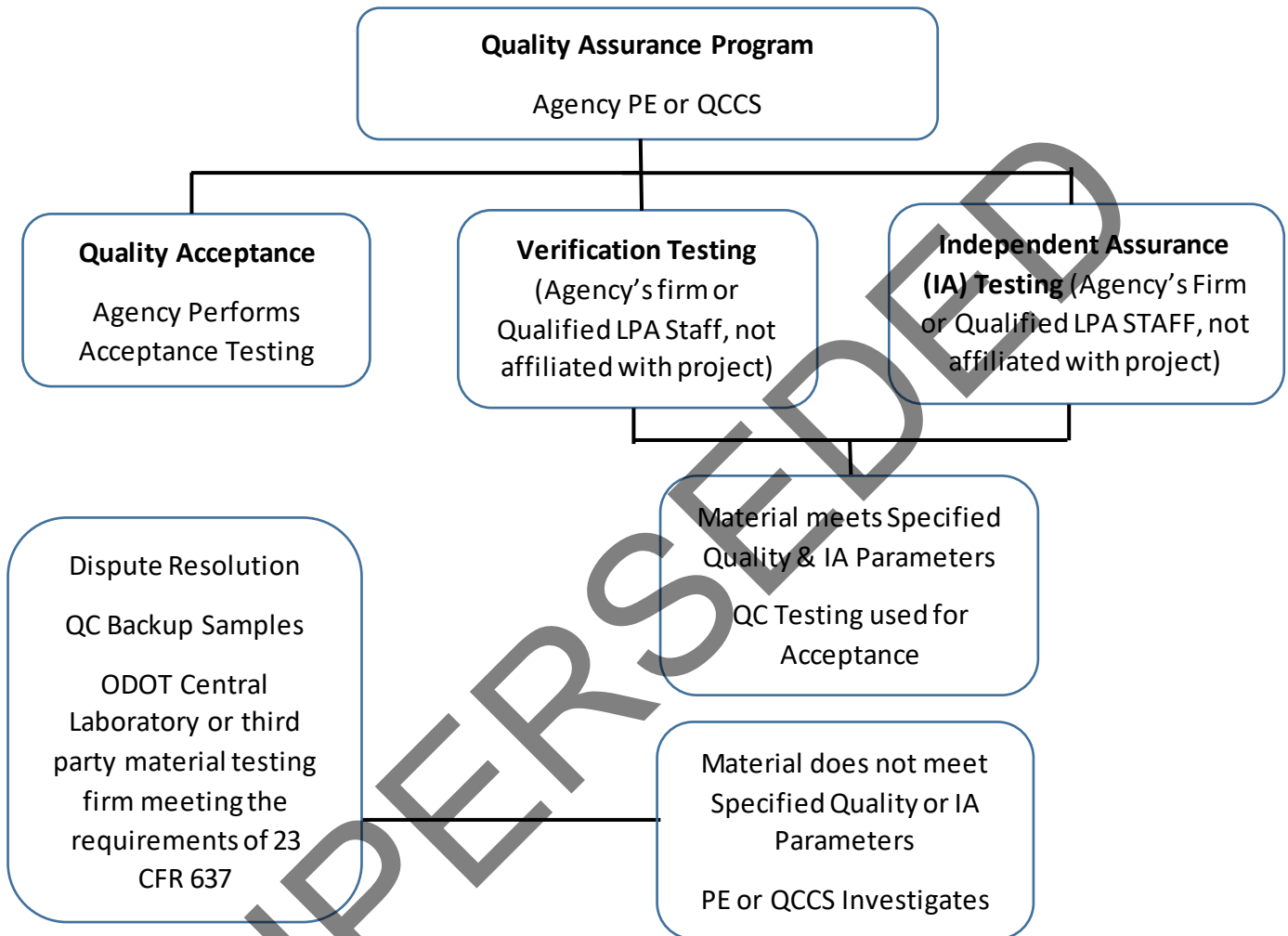
For additional information reference the following:

- For additional information about QCCS, refer to ODOT's Quality Assurance Program
- The ODOT Manual of Field Test Procedures – Sections 4D and 5 of the Manual of Field Test Procedures (MFTP) provides LPAs Quality Assurance testing program choices. LPAs wishing to qualify a new material source or request information regarding an existing material source should contact the LAL who will coordinate with appropriate ODOT staff;
- The ODOT Construction Manual



- The ODOT QCCS Manual

**Alternative PE Staffing Method – Contractor’s Quality Control testing is NOT used for acceptance, verification, or payment of Materials.**



### C. CIVIL RIGHTS REVIEWS

The Office of Civil Rights review requirements are outlined in Section C, Chapter 8 of this LAG for Certified LPAs.

## D. EXTRA/CHANGED WORK: CONTRACT CHANGE ORDERS, FORCE ACCOUNT AND WORK BY PUBLIC FORCES PROCEDURES

### D.1. Contract Change Orders and Extra Work Requirements

The LPA needs to follow its own approved general conditions (section 100s of the specifications) for all contractor claims, contract change orders, force orders and extra work orders. If these processes differ from ODOT's process, the LPA must also amend their general conditions specifications to adequately represent its process.

Based on the need for ODOT to obtain FHWA approval for certain contract changes (see items listed in the Approval Matrix located in Section D of this LAG for Certified LPAs) and pursuant to the LPA's Master Certification Agreement with ODOT, the LPA's approved procedures must include a process for ODOT approval of contract change orders or extra work.

**Note on changes impacting DBE work:** The LPA shall consult with ODOT's Civil Rights Field Coordinator early on for changes in prime or subcontract work that may impact the work of committed DBE subcontractors and DBE contract goal achievement. For more information, refer to Section C, Chapter 8 of this LAG for Certified LPAs.

No changed or added work, requiring ODOT or FHWA approval, shall proceed prior to receiving written approval from the appropriate authority. In the case of time sensitive situations, verbal approval may suffice until written approval is obtained. Verbal approval must be followed by prompt submission of a written contract change order. No contract payment will be made for work accomplished prior to having appropriate approval. Work performed by the LPA or contractor prior to written approval will not be reimbursable with FHWA funds.

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**Note on major changes:** Title 23 CFR 635.102 defines major change as "a change which will significantly affect the cost of the project to the Federal government or alter the termini, character or scope of work."

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The LPA shall maintain documentation of any changed or added work on the project. This must include all applicable ODOT and FHWA approvals for a major change. However, since ODOT is not required to sign the actual contract change order for every change, the LPA process must be able to capture that approval of the work for federal reimbursement.

Documentation must exhibit enough project specific information, such as:

- Sufficient detail so that everyone involved will understand the need for the changed or added work
- How the changed or added work will affect the overall contract
- Detailed justification of the cost or any adjustment to contract time associated with the

changed or added work

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**Note on early coordination between LPA and ODOT on changes:**

Early coordination is essential in the review and handling of change orders. This includes locally funded change orders since the proposed work may adversely impact the original scope and timetable for the project (see 23 CFR 635.120(f)).

The four basic components to consider for any proposed change order are:

- Federal-aid eligibility
  - Impact on the “original scope of the work”
  - Basis of payment, and
  - Time adjustments
- 

**D.2. Local Agency Force Order Work**

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

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

Except for emergency projects, force work should be identified and a Public Interest Finding approval received during the PS&E phase.

LPA will perform a cost analysis and justification for orders for force work. The LPA will prepare an Order for Force Work, form 734-1105, to request this work and allow for the cost of the work to be charged to the project during the construction phase.

All orders for force work are classed as major changes. The LPA must obtain approval from the proper authority as defined in the Approval Authority Matrix form 734-5191 found in Section D of this guidelines for Certified LPAs.

**E. CONTRACTOR PROGRESS PAYMENTS**

**E.1. LPA Requirements**

Progress payments are based on documented measurements, independently verified by the LPA, of work performed so the contractor can be fairly compensated and public funds will not be expended on work that has not been done.

The LPA will pay all contractor progress estimates, make final contractor payment, double check final quantities and costs, oversee all construction activities and provide inspection

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services during the construction phase of the project. To ensure FHWA funding compliance and as specified in Subsection 00165.70 of the LPA's approved General Conditions, the LPA will not allow the Contractor to incorporate Materials into the Project without acceptable conformance documents. This condition may be temporarily waived only if the Material must be installed for immediate traffic safety, but no payment will be made for the value of the Materials, or the costs of incorporating them, until acceptable conformance documentation is received or testing is performed.

### **E.2. ODOT Requirement**

ODOT will reimburse the LPA as per the LPA's Master Certification Agreement and supplemental project agreement with ODOT. For further payment details see Section C, Chapter 5 of this manual.

### **E.3. Project Authorization Requests**

For any increase in FHWA project authorization, the LPA shall obtain prior ODOT approval and follow ODOT's process. A request for additional authorization may also require an increase in the local funds.

LPAs will contact the ODOT Local Agency Liaison to begin ODOT's approval process. It is important to receive project funding source (e.g. LPA executive body, ODOT's Bridge Program, MPO, etc.) approval before submitting an increase in project authorization request.

ODOT will review requests for increases in project authorization and return its findings to the LPA. ODOT will also request an increase in federal authorization for the project, as appropriate. For more information on Construction Authorization, see Chapter 5 of the Construction Manual.

## **F. LABOR COMPLIANCE**

Federal projects are subject to wage rate requirements as per Form FHWA-1273. Federal projects "on system" are subject to both federal and state prevailing wage rate requirements and not less than the higher of the applicable federal or existing State prevailing wage rates shall be paid to workers according to 00170.65(b) and 00170.65(e) of the LPA's approved General Conditions. The applicable federal prevailing wage rates and the existing State prevailing wage rates last published prior to the time of Bid Opening apply to the contract.

Prevailing wage rates published in the following wage determination and any applicable modifications or amendments below may apply to a project:

- U.S. Department of Labor, "General Wage Determinations Issued under the Davis Bacon and Related Acts: Oregon Highway Construction Projects", and
- Oregon Bureau of Labor and Industries (BOLI), "Prevailing Wage Rates for Public Works Contracts in Oregon"

The LPA is responsible for ensuring that all construction trade personnel working on federal and state funded projects receive the appropriate prevailing wage rates and fringe benefits. This includes:

- Monitoring compliance with prevailing wage requirements (refer to the ODOT Construction Manual, Chapter 19)
- Ensuring that the contractor and all subcontractors submit weekly certified payrolls for all federal and state funded public works projects
- Investigating disputes and wage related complaints and working with the ODOT Labor Compliance Officer to determine appropriate action
- Gathering information from resolved labor issues and reporting to ODOT Labor Compliance Officer for compilation in the semiannual report to the U.S. Department of Labor
- Perform Employee Interview Reports for wage compliance on the prime Contractor and Subcontractors
- Retaining certified payroll records identified in the FHWA-1273 Section V, retainage schedule

Resources:

- [Certified Local Public Agency Labor Compliance Certification \(734-5032\)](#)

The LPA will monitor labor prevailing wage rate compliance. For the Davis Bacon/ BOLI prevailing wage rate worksheet and other wage compliance forms, refer to the Labor Compliance website. Also, see Section C, Chapter 11 of this manual for wage rate information and the ODOT Construction Manual for wage rate compliance information. The Certified Local Public Agency Labor Compliance Certification form is available for LPA use on the ODOT Certification Program website.

For “demonstration” projects, the Certification Program Office will coordinate with the ODOT Contract Administration’s Unit Labor Compliance Officer for labor compliance reviews as necessary.

### G. PROJECT DOCUMENTATION AND LONG TERM RETENTION OF DOCUMENTS

The LPA is responsible for using its procedures, as approved by ODOT, for project documentation and long term retention of project documentation. The LPA’s specifications must represent the LPA’s procedure adequately. See the Secretary of State’s Retention Schedule; e.g. OAR Chapter 166, Division 150 for counties, 200 for cities and 300 for state agencies and the Master Certification Agreement.

More information is also available at 49 CFR 18.42. This shall include, but is not limited to:

- Daily work records
- Certified Payrolls
- Monthly Employee Utilization Reports
- DBE Work Plan Proposals and Commercially Useful Function (CUF) Review forms
- Trucking Logs
- Contracts and Subcontracts
- Quantity documentation
- Certificate of materials origin
- Process control records
- Inspection records to ensure that projects are completed in conformance with approved plans and specifications
- Employee Interview Forms
- Foreign steel summary
- Final materials certification
- Temporary protection and direction of traffic reports
- Warranties
- Construction Plans
- As-Constructed Plans
- Test results
- Erosion control reports
- Project diary

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

#### H. CONTRACTOR DISPUTES AND CLAIMS

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

FHWA funds may participate in administrative settlement costs which are:

- Incurred after notice of claim
- Properly supported
- Directly allocable to a specific federal-aid project
- For employment of special counsel for review and defense of contract claims when recommended by the LPA's legal counsel and approved in advance by ODOT.

Any claims or disputes that result from the LPA working outside the contract are not eligible for federal participation. This exclusion even applies to items in which FHWA would otherwise normally participate. Refer to FHWA's Contract Administration Core Curriculum Manual for additional guidance.

If a claim is anticipated, the LPA should inform ODOT's Local Agency Liaison as early in the process as possible. Whenever a claim is submitted, the LPA should follow their approved policies and procedures as documented in Section 00199 of the LPA's approved General Conditions. The LPA must also provide a copy to the Local Agency Liaison.

When indicated by the Approval Authority Matrix form 734-5191 or upon request by ODOT, the LPA will submit all claim documentation (claim submittals, correspondence, meeting notes, preliminary response, LPA position, settlement proposal, etc.) to ODOT for review. The LPA is required to obtain concurrence from ODOT prior to settlement of those claims.

### I. TERMINATION OF CONTRACT

Prior to termination action against a contractor, the LPA must obtain ODOT's concurrence. ODOT will review and provide a response to the LPA's request for termination of a contract.

The LPA will follow its written procedures and criteria, as approved by ODOT, for termination of a contract.

These procedures must contain language requiring ODOT's concurrence prior to any early termination of contract by the LPA.

#### Resources:

- [Form FHWA-1273](#)
- [Title 23 CFR 635.410](#)

### J. SUBCONTRACT PROVISIONS

The LPA is responsible to ensure full compliance with FHWA requirements. FHWA requires that all subcontracts at any tier be in writing, per 23 CFR 635. This includes both contracts between the contractor and their subcontractors, and contracts between subcontractors and their agents.

Each of these subcontracts must also physically contain the following provisions. Please note none of the documents listed below can be included by reference only:

- Form FHWA-1273 "Required Contract Provisions, Federal-Aid Construction Contracts";  
**Note:** If the subcontract is in paper format, form FHWA-1273 must be physically included. If the subcontract is in electronic format, form FHWA-1273 may also be electronic. However, an electronic link to form FHWA-1273 within the subcontract is not allowed.
- The minimum wage rates for the contract as required by ORS 653 and 29 CFR 5.5, and ORS 279C.830
- Buy America. Title 23 CFR 635.410 provides the FHWA's regulatory policy regarding American made steel and iron products.
- Cargo Preference Act. Title 46 CFR 381 provides the FHWA's regulatory policy regarding U.S. flag ocean vessels for transport of materials or equipment specific to the project.



Other subcontract terms that must be included are:

- If the prime contractor passes down the contract insurance requirements to the subcontractor, the subcontract must name the State as an additional insured as required by the LPA's Master Certification Agreement.
- The subcontract must indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Oregon Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as required by the LPA's Master Certification Agreement.
- The subcontract must indemnify and hold the State harmless from all contract related claims and suits as required by the LPA's Master Certification Agreement.

ORS 279C requires every subcontract to include the required statements about prompt payment, interest penalty and lower tier subcontracts. ORS 701 requires that the project administrator not allow use of subcontractors that the Construction Contractors Board has placed on the list of persons not qualified to hold or participate in a public contract. The LPA must also check the list of suspended and debarred parties on the U.S. GSA's System for Award Management (SAM) website.

For a helpful summary of subcontracting requirements, refer to Chapter 14 of the ODOT Construction Manual. The subcontract consent procedure includes a list of required contract elements and licenses and certifications to be verified prior to subcontract consent.

**Resources:**

- [GSA System for Award Management \(SAM\) website](#)

### K. FINAL PROJECT ACCEPTANCE, PROJECT CLOSE OUT AND FINAL PAYMENT

See Section C, Chapter C17 of this manual. The lists for final documentation submittals are also found in this Chapter.

### L. CERTIFICATION PROJECT AUDITS

ODOT's Local Agency Liaison is available to provide guidance and assist the LPA concerning project delivery procedures. The level of assistance will depend on the nature of the project.

In order to be reasonably certain that LPAs are administering federal-aid funds in accordance with state and federal law as well as this LAG for Certified LPAs, ODOT's Certification Program Office will conduct project and program reviews per Section B, Subsection I of this manual. FHWA may also audit the project records.



## Chapter 17. Project Closeout

### A. OVERVIEW

Closing the construction phase of a project in a timely manner is a high priority for ODOT, FHWA, LPAs and construction contractors in order to reduce administrative costs and free resources to work on other projects.

Project closeout is most successful when the LPA has set up a quality control plan at the beginning of the project and maintained the project records needed for final closeout concurrent with the progress of the project. It is also important for the LPA to diligently pursue contract completion with the contractor for any missing items or punch list work.

Federal Project closeout requirements are outlined in a short video on the FHWA website. Please select the link in the Resources box to view.

Resources:

- [FHWA Federal-aid Essentials Project Closeout](#)

### B. ROLES AND RESPONSIBILITIES

#### B.1. LPA Responsibilities

##### a. Final Acceptance Inspection

The LPA sends a request to the ODOT Local Agency Liaison to participate in the final inspection **within 15 days** of completion of all the on-site work including the punch list items. A copy of the punch list letter that is sent to the contractor should accompany the request for ODOT participation. Depending on the project, the Local Agency Liaison may invite the ODOT Region Environmental Coordinator, a representative of ODOT's Bridge Section or others as needed.

The Local Agency Liaison may accompany the LPA on the initial punch list inspection depending on the complexity or risk of the project, as this helps to avoid discovery of additional punch list work after the contractor has demobilized from the site.

##### b. Civil Rights at Second Notification

The LPA shall notify the ODOT Civil Rights Field Coordinator when Second Notification (or LPA's equivalent) is issued so the Civil Rights Field Coordinator can determine if any paperwork is missing prior to the LPA's issuance of Third Notification. The LPA shall work closely with the Civil Rights Field Coordinator to confirm project goals and training hours have been met as applicable. Refer to Section C, Chapter 8 of this LAG for Certified LPAs for more information.

### c. Bridge Project Requirements within 90 Days of Second Notification

For projects with work on the National Bridge Inventory, the LPA must provide written notification to the ODOT Bridge Inventory Coordinator when a bridge project is complete so the initial inspection can be scheduled.

The LPA shall also submit (or ensure its consultant submits) the following reports and documentation to the ODOT Local Bridge Standards Engineer:

- As-constructed bridge drawings in electronic (PDF format) (signed, final copy that contains final construction notes)
- Foundation report (PDF format)
- Pile records and drill logs (if applicable)
- Hydraulics reports (scour analysis report include within)
- Load rating calculation book (either digital PDF format that is digitally sealed and signed, or a hard printed copy that has been stamped, bound and labeled). The LPA shall provide a stamped report with all electronic files to the ODOT Local Bridge Standards Engineer when the project is complete.

The notification of bridge project completion and the project submittals are required **within 90 days** of the issuance of Second Notification (or LPA's equivalent). Copy the ODOT Local Agency Liaison.

### d. Project Acceptance

Following the final acceptance inspection, the LPA completes and signs the Recommendation of Project Acceptance form 734-1384 and sends it to the Local Agency Liaison for ODOT signature and distribution as needed.

#### Resources:

- [Recommendation of Project Acceptance \(734-1384\)](#)

### e. Third Notification (or LPA Equivalent)

Once all of the project documentation (including certifications and warranties) has been received and compiled by the LPA, and the ODOT Region Assurance Specialist has signed-off on their risk-based review of the LPA's quality and quantity documentation, the LPA will issue Third Notification (or the LPA's equivalent) to the contractor.

### f. LPA Submittals:

The LPA will then submit the following to the regional ODOT Local Agency Liaison:

- Third Notification or equivalent (copy the ODOT Construction Section)

- Foreign Steel Summary form 734-1968 - All steel, iron and any coating applied to a finished steel or iron product, must meet the “Buy America” provisions.
- Final Materials Certification form 734-1979.
- The final Documentation Review Report signed by the ODOT Region Assurance Specialist assigned to the project.

Additional submittals for projects with work on or along the state highway system:

- Contract plans and As-Constructed drawings

Resources:

- [ODOT Construction Section email](#)
- [Final Materials Certification Form \(734-1979\)](#)
- [Certified Local Public Agency Quarterly Report – Sample \(734-5034\)](#)

In addition, the LPA shall provide the Local Agency Liaison with documentation confirming submittal of the following documents (if applicable and for the portions of work on or along the state highway system):

- ODOT Signal Inspection forms
- ODOT Push Button Inspection forms (734-5245 a-b, as applicable)
- ODOT Curb Ramp Inspection forms (734-5020 a-g, as applicable)

**g. Final Project Invoice:**

The LPA submits the final invoice to ODOT and marks it as “Final Invoice.” Final invoices shall be submitted for processing per the project intergovernmental agreement, which typically requires submittal within 45 days from the end of contract completion date for construction.

**h. Final Quarterly Report:**

Submit final Certified Local Public Agency Quarterly Report form 734-5034 to the Certification Program Office.

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**Note on Records Retention:** The LPA is responsible for retaining all certifications and reports for at least six years after final acceptance of the project.

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For additional Information about ODOT’s approach to project close-out, refer to Chapters 36 and 37 of the ODOT Construction Manual.

Resources:

- [ODOT Construction Manual](#)

**B.2. ODOT Responsibilities**

- Final inspection and project acceptance.

- Final payment to the LPA.
- Notice to FHWA of project completion.
- Closeout of ODOT expenditure accounts.

#### C. ADDITIONAL INFORMATION FOR DEMONSTRATION PROJECTS

The following covers common items the LPA submits to the ODOT Local Agency Liaison for demonstration projects in addition to documents listed in section 1 above.

- Final progress payment estimate.
- Any contractor disputes or claims.
- Final test summary.
- Certified Local Public Agency Labor Compliance Certification (Form 734-5032).

Resources:

- [Certified Local Public Agency Labor Compliance Certification \(734-5032\)](#)

**2021**

**ODOT CERTIFICATION  
PROGRAM OFFICE**

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

## **SECTION D:**

### **RESOURCES DIRECTORY**

Effective November 3, 2021

## SECTION D: RESOURCES DIRECTORY

### ABOUT THIS DIRECTORY

Section D of this Local Agency Guidelines for Certified Local Public Agencies (LAG for Certified LPAs) serves as a directory of resources (governance, manuals, templates, forms, checklists, and other guidance) that are referenced throughout this manual or may otherwise be helpful to users.

The resources in this directory are generally organized by the topics that are covered in each section of the *LAG for Certified LPAs*. For many topics, a single link will access a webpage where users will find multiple resources.

### A. OVERVIEW RESOURCES

#### A.1. [Governance](#)

- Stewardship and Oversight Agreement
- FHWA Letter Certified LPAs on the NHS
- ODOT/AOC/LOC Agreement

#### A.2. [Local Agency Guidelines](#)

- Local Agency Guidelines for Certified Local Public Agencies (November 2021)
- Archived Local Agency Guidelines for Certified Local Public Agencies (December 2018, Rev 1 January 2020)

#### A.3. [Certification User Group](#)

- User Group Governance
- Annual Meeting Materials
- Subcommittee Work Session Materials
- User Group Training & Workshops
- User Group Resources

#### A.4. [Local Government \(Other Resources\)](#)

- Local Government Funding Overview
- STIP
- Connect Oregon
- Keep Oregon Moving (HB 2017): Local Governments
  - Road and Bridge Condition Reporting
  - Transportation Project Website Reporting
  - Other – Statewide Transportation Improvement Fund
- Certified Local Agency Resources for Consultant Selection
- Certification: Program, Guidance, Forms, LPA Status

- Engagement: Committees & Contacts, CUG, Training Opportunities

## B. PROGRAM & COMPLIANCE RESOURCES

### B.1. Certification Program Guidance and Forms

- Agreements – sample templates\*
- Application – Local Agency Certification (734-5327)
- Bulletins
- Certified Local Public Agencies (status & contact information)
- Forms Library
- Transitioning Conditionally Certified LPAs to Full Certification

### B.2. **Foundational Documents**

- Quality Program Plan - sample template\* (see also [Library of Quality Program Plans](#), under User Group Resources)
- [Construction Contracting Templates & Samples](#)
  - General conditions and bid book review checklists
  - Sample contract
  - Sample performance & payment bonds
  - Sample wage rates page
- [Consultant Contracting Templates & Guidance](#)
  - A&E Request for Proposal (RFP)
  - Non-A&E Planning Services RFP
  - A&E/Non-A&E Contract
  - Contract Amendment
- Title VI Implementation Plan – sample template\*\*
- ADA Title II Transition Plan\*\*

### B.3. Training

- Federal-Aid Essentials for LPAs
- Consultant Selection
- Civil Rights Training & Events
- Construction Training & Certification
- FHWA-AASHTO TC3 Local Agency Training
- Technical/Engineering Training
- Technology Transfer Center
- Certification User Group Materials
- Workday Learning

### B.4. Maintaining Certification: Compliance & Oversight

- Compliance Review Guides

#### **Notes:**

\* Resource under development, contact the Certification Program Office if needed.

\*\*Contact ODOT Office of Civil Rights for additional information and support in developing these documents.

- Certification Program Core Question Guide
- Project Core Question Guide
- Consultant Selection Review Guide
- Right of Way Review Guide
- Project Civil Rights Review Guide
- Material Quality Review Guide
- Work Zone Safety and Mobility Review Guide
- Compliance Forms and Reports
  - Certified LPA Annual Self-Audit (734-5152)
  - Certified LPA Approval Authority (734-5084)
  - Certified LPA Review and Corrective Action Report (734-5070)
- Certified LPA Quarterly Reports (sample and tips handout)
- [Certified LPA Review Schedule](#)

## C. PROJECT DELIVERY RESOURCES

### C.1. Certification Program Project Delivery Authorities & Checklists

- [Approval Authority Matrix for Certified LPA Projects](#) (734-5191)
- [Bridge Design Qualification and Coordination Requirements for Certified LPAs Not Certified in Bridge Design](#)
- [Consultant Selection Checklists](#)
  - Formal
  - Informal
  - Small Purchase
  - Consultant Contract Administration
- [Civil Rights Tracking Sheet](#) (734-5192)
- [PS&E Submittal & Completeness Checklist](#) (734-5182)
- [Advertising, Bid and Award Checklist](#) (734-5193)
- [Construction Contract Administration Checklist](#) (734-5194)

### C.2. Publications: Manuals, Standards, Other Guidance

#### a. ODOT

- [ADA Curb Ramp Process for LPAs](#)
- [Bridge Design/Drafting Manual](#)
- [Bridge Hydraulics Performance Specification](#)
- [Construction Guidance](#) (Construction Manual, Qualified Products List, Pavement Design Guide, Quality Assurance, etc.)
- [Consultant Selection](#)
  - [LPA A&E Requirements Guide](#)
  - [LPA Non-A&E PSK Requirements Guide](#)



- [Engineering Guidance & Manuals](#) (highway design, traffic control, right-of-way, construction, testing procedures, standard drawings and details, design standards, technical bulletins, design exceptions, etc.)
- [Geo-Environmental Section website](#) (Environmental guidance, rules and laws, forms, templates, and procedures on the following: air quality and energy, noise, hazardous materials, cultural resources, biology, NEPA, wetlands, and storm water management)
- [Letters of Public Interest Finding \(LPIF\) Guide](#)
- [Oregon Transportation and Growth Management](#)
- [Planning & Technical Guidance](#)
- [Project Delivery Guide](#)
- [Safety Programs](#)
- [Scoping Expectations Framework](#)
- [Specifications for Construction](#)
- [Utility & Railroad Relocation Program Resources](#)
- [Sample Railroad PE Agreement](#)
- [Value Engineering](#)

**b. Other Organizations**

- [AASHTO Policies and Design Guides](#)
- [FHWA Contract Administration Core Curriculum Manual](#)
- [FHWA Guidance on “Responsible Charge”](#)
- [National Association of City Transportation Officials Urban Bikeway Design Guide](#)
- [USDOT DBE Program Best Practices](#)
- [USDOT Official Questions and Answers \(Q&A’s\) Disadvantaged Business Enterprise \(DBE\) Program Regulation \(49 CFR 26\)](#)

**c. Maps & District Information**

- [Federal Functional Classification](#)
- [National Register of Historic Places](#)
- [ODOT Maps website](#)
- [Oregon Legislative Senate and House \(Representative\) Districts](#)
- [U.S. Congressional Districts](#)

**C.3. Forms & Templates**

- [Certification Program Forms](#)
- [Certified LPA Quality Assurance & Contract Administration Plan](#)
- [Civil Rights Forms](#)
- [Construction Forms](#)
- [Consultant Contract Statement of Work Library \(LPAs\)](#)
- [Consultant Selection Contract Templates & Forms](#)

- [Design Exception Request \(LPAs\)](#)
- [Engineering/Technical Forms](#)
- [Local Agency Technical Scope Sheet \(734-5151\)](#)
- [NEPA Forms & Templates \(including Environmental Prospectus\)](#)
- [ODOT Project Controls Office Templates & Worksheets](#)
  - Specifications for Construction (standard and boilerplate special provisions)
  - Estimating, guidance and tools
  - Resources, searchable library that includes:
    - Letters of Public Interest Finding (LPIF) Guidance
    - LPIF letter templates
    - Anticipated Items letter templates
    - Fuel, Steel, Class of Work and Scheduling Templates Guide
    - Fuel Index and Scheduling Program (fuel and steel escalation worksheets)
- [Project Charter](#)
- [Project Management Plan](#)
- [Local Public Agency Federal Aid Project Scoping Checklist \(734-5293\)](#)
- [ODOT Scoping Notes Form](#)
- [Statewide Mobility Program](#)

**C.4. Look-up Lists (Eligible/Ineligible Entities)**

- [BOLI List of Ineligible Contractors](#)
- [CCB Licensing](#)
- [COBID Directory of Certified Firms \(DBE, MBE, WBE, ESB, SDV\)](#)
- [GSA System for Award Management \(SAM\)](#)
- [Insurance, Surety, Financial Entity Licensing](#)
- [ODOT-approved lists of qualified consultants](#)
- [OIG Exclusions](#)
- [Oregon Secretary of State Business Registry](#)