

FEDERAL HIGHWAY ADMINISTRATION (FHWA) DISCRETIONARY GRANTS – INTERNAL ODOT GUIDANCE

Purpose:

The purpose of this guidance document is to assist ODOT Region Staff in developing Federal Highway Administration (FHWA) discretionary grant agreements and project agreements and to determine project roles and responsibilities. Regions are the primary contact between FHWA and the Local Public Agency (LPA). The LPA, as the grant awardee, is responsible for project delivery, not ODOT. However, the LPA may request that the project be delivered by:

1. ODOT, as an ODOT Delivered Local Agency Program (ODLAP) project, or
2. A Certified Agency under the Certification Program

Determining delivery options (ODOT Delivered, Certified Agency Delivered, or Local Agency Federal Direct Delivered) is at the discretion of the Region and the LPA. FHWA and ODOT developed the “[Determining How a Federally Funded Project Will be Delivered](#)” form (734-5440)* to assist LPAs in evaluating the preferred project delivery option. The LPA may also request consultative services to be provided by ODOT when the LPA is a Federal Direct recipient. Providing consultative services is at the Region’s discretion.

Acronyms:

A&E	Architectural and Engineering
DOJ	Department of Justice
FAHP-ESA	Federal-aid Highway Programmatic-Endangered Species Act
FHWA	Federal Highway Administration
FMIS	Financial Management Information System
LAL	Local Agency Liaison
LPA	Local Public Agency
MTIP	Metropolitan Transportation Improvement Program
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
OAR	Oregon Administrative Rule
ODLAP	ODOT Delivered Local Agency Program
ODOT	Oregon Department of Transportation
OPO	ODOT’s Procurement Office
ORS	Oregon Revised Statute
CE	Categorical Exclusion
PS&E	Plans, Specifications, and Estimate
ROW	Right of Way
SPU	Statewide Programs Unit
STIP	Statewide Transportation Improvement Program
STIP-FP	Statewide Transportation Improvement Program – Financial Plan
TPM	Transportation Project Manager

STEP 1 - AWARD NOTIFICATION, STIP PROGRAMMING, OBLIGATIONS, AND PROJECT DELIVERY DETERMINATION

1. FHWA provides notification to the awardee (LPA) via email that a project was selected and approved for funding. FHWA has agreed to notify the ODOT Federal-aid Funding manager and SPU manager of the project selection.
 2. Once ODOT learns of the federal award:
 - a. ODOT Federal-aid Funding manager notifies the STIP coordinators (statewide and regional). All discretionary grant projects must be in the STIP, regardless of delivering agency.
 - b. SPU manager notifies the area managers and the local programs managers.
 - c. Based on Region process, the area manager or TPM/LAL contacts the LPA to:
 - i. Obtain the necessary information for MTIP/STIP entry and relate this information to their STIP coordinator*; and
 - ii. Discuss who will deliver the project or if ODOT consultative services are requested. The following form has been developed by FHWA and ODOT to assist in making this determination [Determining How a Federally Funded Project Will be Delivered](#). The completed document should be retained by the Region.
- *ODOT or MPO will follow its applicable STIP amendment procedures.
3. Region receives information from LPA that informs FHWA and ODOT which agency will deliver the project.
 4. Federal Obligation:
 - a. For ODOT-delivered, Certified LPA delivered, or other projects for which ODOT serves as the pass-through entity (see 2 CFR Part [200.1](#)), after the project is entered into the STIP, the ODOT-LPA project agreement has been executed, and the federal grant agreement or amendment has been executed, an award letter or allocation memo is distributed from FHWA giving ODOT approval for obligation. (Note: Federal obligation is a multi-step process and may continue concurrently with some of the steps listed below.)
 - b. For LPA Federal Direct delivered projects, FHWA processes the obligations. If needed, Region STIP coordinators will reach out to the Federal-aid Funding manager for the obligation dates to update the data in STIP-FP.

STEP 2 - AGREEMENTS

A. **Federal Grant Agreements**¹ (applicable only when the project is being delivered as an ODLAP or by a Certified LPA):

1. FHWA provides the preliminary version of the federal grant agreement to the LPA, Region, ODOT Federal-Aid Funding manager and SPU manager. (Note: FHWA has been requiring amendments to federal grant agreements to match the project funding amount exactly prior to obligation each phase. Such amendments require approval by federal headquarters.)
2. Regions, in coordination with FHWA, develop the federal grant agreement. (NOTE: It is preferred that the same ODOT agreement coordinator coordinates ODOT review and revision of the federal agreement and drafts the project agreement to ensure consistency with required federal terms and conditions.)
3. Region project contact will initiate an agreement requisition in OregonBuys and attach the *draft* federal agreement received from FHWA to the request.
4. ODOT agreement coordinator updates the draft federal grant agreement provided by FHWA and sends to the following for review: SPU, the ODLAP or Certification program manager as applicable, and ODOT.STIP@odot.oregon.gov (Federal Aid Funding manager). SPU will consult with OPO at intergovernmental.agreements@odot.oregon.gov on grant agreements, as needed.
5. DOJ legal sufficiency is not required for these federal grant agreements because ODOT has assigned Cecelia Gilbert, Interim Manager of SPU, as the grant coordinator pursuant to OAR 137-045-0050(8). SPU will coordinate DOJ approval (not legal sufficiency) as part of SPU's review process. The agreement coordinators may request additional DOJ review and advice at the Region's discretion.
6. Statewide Investments Management Section Manager will approve the federal grant agreement. Email final document to DiscretionaryGrantReview@odot.oregon.gov with a subject line that clearly describes that the federal grant agreement is ready for approval.
7. Agreement coordinator shares the final/executed federal grant the ODLAP or Certification program manager as applicable, and ODOT.STIP@odot.oregon.gov and posts in OregonBuys. Since the project agreement and the federal grant agreement are connected, the federal grant agreement should be saved in OPO's master agreement drive.

B. **Project Agreements** (applicable to projects delivered through the ODLAP or Certification programs):

The agreement coordinator should follow the requirements outlined in their letter of authority from OPO. In addition, the agreement coordinator should:

1. Use the applicable OPO-approved agreement templates, including following the template instructions and technical review contact list.

¹ The development of a federal grant agreement falls outside of the delegation orders/letters of authority and OPO agreement standards.

2. Maintain consistent terms, to the extent possible, across the federal grant agreement (between FHWA and ODOT) and the project agreement (between ODOT and the LPA).

C. Consultative Services Agreements (applicable to LPA-Federal Direct delivered projects when the LPA has requested such services from ODOT):

1. The consultative services agreement may be developed by the LPA or by ODOT. The preference is for ODOT to develop the agreement. The agreement coordinator should contact OPO at intergovernmental.agreements@odot.oregon.gov for assistance.
2. Agreement coordinator should follow the requirements outlined in their letter of authority from OPO.
3. Agreement coordinator must seek technical review of the consultative services agreement from SPU.
4. Consultative services agreements must be emailed to ODOT.STIP@odot.oregon.gov for review by the Federal Aid Funding Manager to ensure advance deposit requirements are included. The email subject line should include "Discretionary Grant Consultative Services."
5. DOJ legal sufficiency is required on all consultative services agreements greater than \$250,000 (or the then current threshold in OAR 137-045-0030 and OAR 137-045-0050).
6. Consultative services provided by ODOT:
 - a. **Shall not** include:
 - i. Performing procurement or contract administration of any A&E, goods/trades/services, or construction contracts.
 - ii. Providing *final* approval of contract language.
 - iii. Providing *final* approval of project deliverables.
 - iv. Providing *final* certification of right of way, utility, or rail for the project's PS&E package.
 - v. Required attendance at ongoing project wide meetings or any meetings not specific to the consultative services being provided by ODOT.
 - vi. Using ODOT permits that FHWA is not a party to.
 - b. **May** include:
 - i. Providing consultative and non-final reviews on: procurement or contract administration related processes and documentation; right of way, utility, or rail for the project's PS&E package; and other project deliverables.
 - ii. Coordination with regulatory agencies through environmental regulatory agency liaisons, pending a request from the FHWA Environmental Program manager and subject to ODOT's resourcing capacity. (Note: Communication should occur between FHWA, LPA, and ODOT together.)
 - iii. Providing advice on the use of FHWA programmatic agreements, including NEPA) Categorical Exclusion (CE Agreement, the FAHP-ESA, the NHPA Section

106 Programmatic Agreement, and other state and federal environmental regulations, pending a request from the FHWA Environmental Program manager and subject to ODOT's resourcing capacity. (Note: Communication should occur among FHWA, LPA, and ODOT together.)

- iv. Limited *advisory* review of project deliverables or contract language. Any such review must be conducted by an ODOT subject matter resource and is contingent upon the availability of ODOT resources.
 - v. Attending necessary meetings specific to the consultative services being provided by ODOT (ODOT subject matter experts/resources).
7. For all consultative services, ODOT must provide a detailed estimate that aligns with the services to be performed. Anticipated costs should include:
- a. Staff time.
 - b. Indirect Cost Allocation Plan rate.
 - c. All direct costs including travel.
 - d. Any legal or other services that may result in costs to ODOT.
8. The consultative services agreement must include:
- a. *Specific* services to be provided.
 - b. A requirement that the LPA must provide an advance deposit to ODOT by phase or other agreed upon schedule. The AM or LAL/TPM must negotiate with the LPA for a deposit schedule that ensures ODOT will invoice against a deposited amount. The project lead should confer with technical disciplines as needed on the ODOT services estimate.
 - c. That the costs to be incurred by ODOT are an estimate only and are subject to change.
 - d. That all expenditures incurred by ODOT shall be reimbursed by LPA.
 - e. That ODOT will provide a statement of costs to be billed against the advance deposit on an agreed-upon frequency.
 - f. That, for purposes of the agreement, ODOT is considered a vendor and is not considered a recipient or a subrecipient.

As a quick reference guide, see attached the FHWA Discretionary Grant Delivery Options Matrix.

For more information, contact:

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FHWA DISCRETIONARY GRANT DELIVERY OPTIONS MATRIX

Activity/Entity	ODOT Delivered Local Agency Program (ODLAP)	Certified LPA Delivered (CLPA)	LPA-Federal Direct Delivered
Lead agency manages delivery, contracting and contract administration	ODOT	CLPA	LPA
Lead oversight agency	ODOT	ODOT	FHWA
Recipient status	Recipient	Subrecipient	Recipient
Stewardship & oversight agreement applicability	Yes	Yes	No
Award notification	1. FHWA notifies ODOT and LPA 2. LPA requests ODOT to deliver*	1. FHWA notifies ODOT and LPA 2. LPA requests to deliver as Certified LPA*	1. FHWA notifies ODOT and LPA 2. LPA works with FHWA 3. LPA may request consultative services by ODOT
Project in STIP	Yes	Yes	Yes
Federal grant agreement parties	FHWA/ODOT	FHWA/ODOT	FHWA/LPA
Project intergovernmental agreement parties	ODOT/LPA	ODOT/Certified LPA	**If requested by LPA and at ODOT's discretion, ODOT and LPA enter into a consultative services agreement.
ODOT agreement template	ODOT Delivered Template	ODOT Certified LPA Template	See Section C above.
Environmental compliance	FHWA/ODOT	FHWA/ODOT	FHWA
Certifications (ROW, Utility, Rail)	ODOT: all	ODOT: ROW- co-certified, Utility CLPA: rail	FHWA
Federal Financial System	FMIS	FMIS	Delphi

*Use of form (734-5440) is strongly recommended under the circumstances noted in the matrix above. The completed form should be kept in the project file.

**See guidance on the scope and limitation of ODOT's consultative services in paragraph 6 of section C Consultative Services Agreements above.