

Project Special Provisions:

Preparing for ODOT Certification Review

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OUTLINE



Requirements



Modifications



Preparation



Submission



Review



Examples



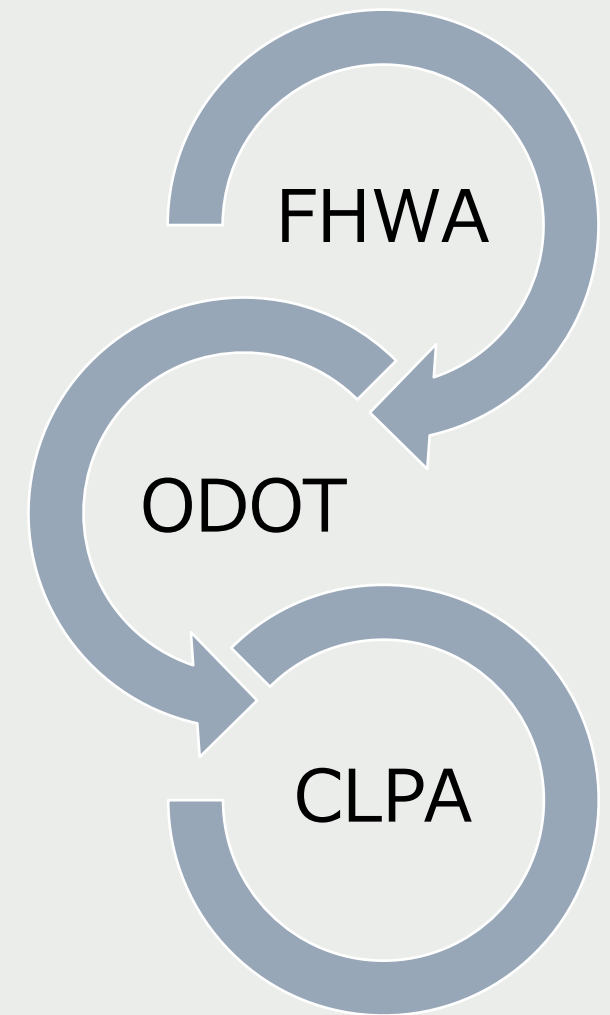
REQUIREMENTS

Certified local public agencies (CLPA) are required to have ODOT approved general conditions, bid book templates, and certain special provisions.

(LAG Section C, Chapter 11: PS&E)

CLPA are permitted to use ODOT boilerplate special provisions if they follow the instructions.

WHY IS ODOT APPROVAL NEEDED?



CHECKLIST

Note: PS&E checklist requirement to disclose changes to approved construction contracting template language. → This is what we are talking about!

Note the date of written approval in section 4.a.

By signing below, the Certified LPA acknowledges that federal or state funding for this project is limited to the amounts indicated in the above referenced Supplemental Project Agreement. The LPA also acknowledges that they are responsible for all remaining costs, including the required match for all eligible costs, any non-participating costs, and all costs in excess of the available federal or state funds.

LOCAL PUBLIC AGENCY INFORMATION

Certified Local Public Agency: _____

Master Certification Agreement #: _____

LPA Project Manager: _____

Phone #: _____

Email: _____

LPA Quality Control Coordinator: _____

Phone #: _____

Email: _____

CERTIFICATIONS

- ☐ The undersigned LPA Project Manager certifies that all project requirements have been met and all deliverables listed in this checklist have been satisfied. All required PS&E deliverables are attached hereto.
- ☐ The undersigned LPA Project Manager certifies the attached project bid documents and Special Provisions do not modify or have the effect of modifying any of the following without prior written approval from ODOT and/or FHWA, as applicable: 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.
- ☐ The undersigned LPA Quality Control Coordinator certifies that all quality control and review processes, as documented in the LPA's approved Quality Program Plan, were followed for this project. This project conforms to all applicable design standards.

PS&E SUBMITTAL & COMPLETENESS CHECKLIST SIGNATURES

PS&E Submittal Prepared By: _____	_____
(LPA Project Manager)	Date
Quality Review By: _____	_____
(LPA QC Coordinator)	Date
Received By: _____	_____
(ODOT Local Agency Liaison/Transportation Project Manager)	Date



MODIFICATIONS

Prior written
approval must be
obtained **from**
ODOT
Certification for
any language in
the bid
documents and
Special Provisions
that modifies:

1. CLPA's approved General Conditions (except for approved project specific subsections of 00150.50, 00180.50, 00180.85 and ODOT boilerplate special provision updates). Including but not limited modifications to:
 - Insurance Requirements
 - Contract Time
 - Delays
 - Any provisions contained in FHWA Form 1273.
2. The technical specification subsections for:
 - Measurement
 - Payment
 - Warranties
 - Anything that modifies the General Conditions
3. Environmental permit requirements



CLPA PREPARATION

Review current [FHWA Oregon Standards approval letter](#) for any impacts to proposed modifications.



CLPA PREPARATION: FHWA Letter Review

- **Warranties** – General warranties shall not be used. Warranties must be for specific features.
- **Incidental Payment for Work Zone Traffic Control Devices** – Limits on incidental and lump sum payment for traffic control.
- **Erosion and Sediment Control** – Federal-aid projects to include all pay items for prevention, runoff, and best management practices in the contract to be eligible for federal reimbursement.
- **Section 640 – Aggregate Base and Shoulders and Section 740 – Commercial Asphalt Concrete Pavement** - Visual inspection, limited to small quantities.



CLPA PREPARATION

Show modifications in redline; explain *why* needed; include bid schedule; and include plan sheet(s) for bid items that rely on plans for evaluation.

Review proposed specification modifications with the ODOT project contact.



CONSIDERATIONS

- ✓ Check for any relevant Certification Program Bulletins.
- ✓ Start with the CLPA's approved construction contracting templates.
- ✓ Unless the CLPA has approved agency-specific special provisions, start with ODOT boilerplate special provisions. Notes:
 - *The CLPA's approved general conditions may already have incorporated ODOT boilerplate updates.*
 - *Some ODOT boilerplates should not apply to CLPA projects.*



MORE CONSIDERATIONS

- ✓ Start with ODOT standard bid items.

Use of a non-standard bid items will trigger non-standard language.

- ✓ If adding a spec – likely, there is already an applicable spec.
- ✓ Ensure consultants use the CLPA's current, approved construction contracting templates for federal-aid projects.

Beware of consultant-proposed modifications to standard language. CLPA to review and seek ODOT approval.



SUBMISSION

CLPA submits request to
ODOTCertification@odot.oregon.gov no
later than
90-95% PS&E.
(Copy ODOT project contact.)



What if the CLPA uses the same agency-specific Special Provisions on many projects?

Consider submitting a request for approval of agency-specific special provisions to ODOTCertification@odot.oregon.gov with the proposed language **in redline** and the draft project bid schedule.



EXAMPLE 1:

CLPA General Conditions, 00160.20



00160.20 Preferences for Materials:

(a) **Buy America** - If \$500,000 or more of federal highway funds are involved on the Project, the Contractor shall limit the quantity of foreign Materials incorporated into the Work as follows. Section 635.410 of Title 23, Code of Federal Regulations, and the Intermodal Surface Transportation Efficiency Act require that all iron or steel manufacturing processes, including, without limitation, the casting of ingots, for iron or steel Materials permanently incorporated into the Project shall occur in the United States, unless the cost of foreign-origin iron or steel Materials does not exceed one-tenth of one percent (0.1%) of the Contract Amount or \$2,500, whichever is greater. Buy America requirements apply to any steel or iron component of a manufactured product regardless of the overall composition of the manufactured product (e.g., Buy America applies to the steel wire mesh or steel reinforcing components of a precast reinforced concrete pipe). The Contractor shall not incorporate foreign-origin iron or steel Materials in excess of this amount into the Project. All foreign-origin iron or steel Materials incorporated in the Project in excess of the amount indicated above shall be removed and replaced with domestic iron or steel Materials at the Contractor's expense. For purposes of this Specification, the cost of foreign-origin iron or steel Materials shall be the value of the iron or steel products as of the date they are delivered to the Project Site.

Manufacturing processes include without limitation the casting of ingots and the application of coatings to finished iron or steel products or components. Coatings include epoxy coating,



(Use the following subsection .20 when this Contract is state funded and the Work was considered and included in a NEPA decision that also applies to any other work that has any federal funding. This requires 00160.20(a) Option B.)

00160.20 Preferences for Materials - Add the following paragraph to the beginning of this subsection:

Section 1518 of Moving Ahead for Progress in the 21st Century Act provides that Buy America applies to all Contracts eligible for federal assistance under Title 23, United States Code, included within the scope of an applicable National Environmental Policy Act (NEPA) finding, determination or decision, regardless of the funding source of such Contracts, where at least one Contract is funded with Title 23 funds. This Contract includes Title 23 funds under such a NEPA finding, determination or decision and Buy America under subsection (a) and Build America Buy America under subsection (d) apply to this Contract.



EXAMPLE 2:

CLPA Special Provisions 00180.85(b)



(Use one of the following subsection .85(b) options as instructed below. Delete the one that does not apply.)

[Option 1 - Use this subsection .85(b) on projects that have one completion time. Select the dollar amount from the template example from the ODOT Certification Program Office website:

<https://www.oregon.gov/odot/LocalGov/Pages/Certification-Guidance-Forms.aspx#construction> to determine the liquidated damages to be filled in.)

00180.85(b) Liquidated Damages - Add the following to the end of this subsection:

The liquidated damages for failure to complete the Work on time required by 00180.50(h) will be \$_____ per Calendar Day *.

* Calendar Day amounts are applicable when the Contract time is expressed on the Calendar Day or fixed date basis.



(Use the following subsection .85(b)(1) when the Project has been identified as 100% preservation.)

00180.85(b)(1) Single Contract Time - Replace this subsection, except for the subsection number and title, with the following:

The Liquidated Damages per Calendar Day* are 15.0 percent of C divided by T as defined in this Section.

C = The Contractor's Bid amount for the Contract.

T = The total Calendar Days between the latest completion date or time listed under 00180.50(h) in the Solicitation Documents and the Bid Opening that will result in the greatest value for T.

* Calendar Day amounts are applicable when the Contract time is expressed on the Calendar Day or fixed date basis.

EXAMPLE 3:

ODOT Special Provision 00170.65(e)

Funding type often requires a project to be treated as a federal-aid highway project. See [FHWA Contract Provisions Matrix](#)



Don't let the "rural" and "local" functional classification fool you!

(The following subsection .65(e) is required only on Federal-Aid Projects that do not require Davis-Bacon prevailing wages. Use according to the following:

- Do not use this subsection on Projects that are funded by the Safe Routes to School Program.*
- Do not use this subsection on Projects that are required by an environmental document, even if the Project is away from the Federal-aid highway Right-of-Way. Example: wetland mitigation. (This type of project is linked to, or dependent upon, the Federal aid highway Project.)*
- Use this subsection on Projects that have a Functional Classification of 08 rural minor collector, 09 rural local, or 19 urban local. (Obtain the Functional Classification from the Project Insurance Risk Assessment.)*
- Use this subsection on Projects that are not located within the Federal-Aid highway right-of-way, and are not linked to, nor dependent upon, the Federal-Aid highway. Examples:*
 - Restoration of a historic Railroad station*
 - Construction of an independent bike path*
 - A landscaping or scenic beautification Project that is not on the Federal-Aid highway Right-of-Way and is not required because of a Federal-aid highway Project*

For questions about application of this section contact the ODOT State Specifications Engineer.)

00170.65(e) Additional Requirements When Federal Funds are Involved - Replace this subsection, except for the subsection number and title, with the following:

For this Federal-Aid Project, the Contractor shall comply with 00170.65(a) through 00170.65(d) and the provisions of FHWA Form 1273, *Required Contract Provisions Federal-Aid Construction Contracts*, except Section IV of FHWA Form 1273 does not apply.

00170.65(e) in the CLPA's approved general conditions is usually the right answer.



EXAMPLE 4

Special Provision 00221.99 Payment, Method “B”

00221.99 Payment, Method “B”. – Lump Sum Basis

Add the following to the end of this subsection:

Temporary Pedestrian Routes are incidental to the Temporary Pedestrian Work Zone Traffic Control pay item. No separate payment will be made for Temporary Pedestrian Routes.

Add the following Pay Item(s) to the Pay Item list:

Pay Item	Unit of Measurement
(a) Temporary Work Zone Traffic Control, Complete.....	Lump Sum
(b) Temporary Pedestrian Work Zone Traffic Control.....	Lump Sum

What ODOT is looking for:

- Small quantities.
- *Number, type, and location of the traffic control devices can be easily and readily identified from the project plans per FHWA letter.*



EXAMPLE 5

City of Salem Special Provisions, Section 00415

SECTION 00415 - VIDEO PIPE INSPECTION

Replace Section 00415 of the Standard Specifications with the following: ~~Video Pipe Inspection~~

Description

00415.00 Scope ~~=~~ This ~~work~~ Work consists of ~~cleaning~~ inspecting pipes ~~and correcting deficiencies as by video accompanied by a recorded~~ in City of Salem video inspection narrative and written report. ~~of the findings.~~

Issues upon first review:

- State/local forces work require Letter of Public Interest Finding (LPIF)
- Formatting the specification to be consistent with Oregon Standards (see ODOT Specifications Manual)
- Ensuring measurement (.80) and payment (.90) are addressed in the specification – resolved with:
 - *No measurement of quantities will be made for Work performed under this Section.*
 - *Work performed under this section is considered incidental to Work performed under Section 00445.*



RESOURCES: STANDARD SPECIFICATIONS

On this page:

[2024 Oregon Standard Specifications](#)

[2024 Boilerplate Special Provisions](#)

[Bid Item List](#)

[Federal Highway Administration Approval of 2024 Standard Specifications](#)

[Specifications Manual](#)

[Specifications: Legalese Course](#)

[Specifications: Team Overview Course](#)

[Specifications: Project Special Provisions Process Course](#)

[Email the Specifications Team](#)

[Stay in the loop - Join our email distribution list.](#)

. . . and much more!



RESOURCES: CERTIFICATION GUIDANCE

Certification Guidance and Forms

Certified Local Public Agencies

Certified LPA Review Schedule

ENGAGEMENT

Committees & Contacts

Training Opportunities

Certification User Group

Small City Allotment Program

Training & Events Calendar

Consultant Contracting

Construction Related - Templates & Samples

Specifications Templates and Resources

Generally, Certified LPAs are required to use the Oregon Standard Specifications for Construction. The General Conditions found in the section 00100 of the Oregon Standard Specifications must be used by all LPAs and approved by ODOT. A committee of ODOT and American Public Works Association serves as the starting point for certified LPAs. Most recently, ODOT consulted with Oregon Department of Justice Standards Subcommittee in the development of the 2024 update.

- [2024 Certified LPA Construction Contracting Templates Checklist](#)
- [2024 Certified LPA General Conditions Template](#) (with redlines as of 08/01/2024)
- [2024 - 2021 Certified LPA General Conditions Comparison \(redline\)](#)
- [Sample Contract for Certified LPAs](#)
- [Sample Performance & Payment Bonds for Certified LPAs](#)
- [Sample Project Wages Rates for Certified LPAs](#)
- [Sample Liquidated Damages Calculator](#)
- [Sample Certified LPA Special Provision 00180.85\(b\) Liquidated Damages](#)
- [Other Sample Bid Book Documents for Certified LPAs \(not linked in the checklist\)](#)



RESOURCES: OTHER

[Local Agency Guidelines for Certified Local Public Agencies](#)

[FHWA-ODOT Stewardship and Oversight Agreement](#)

[FHWA Contract Provisions Matrix](#)

[FHWA Contract Administration Issues](#)

[FHWA Core Curriculum Manual](#)

QUESTIONS



THANK YOU

ODOT Local Agency Certification

[About the Program](#)

odotcertification@odot.Oregon.gov

ODOT Specifications

[Standard Specifications](#)

ODOTSpecifications@odot.oregon.gov