

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).

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.

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.

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.

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 2nd 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.

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.

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 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.

Resources:
- [ODOT Quality Assurance & Contract Administration Plan \(734-2857\)](#)

- 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.

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.

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

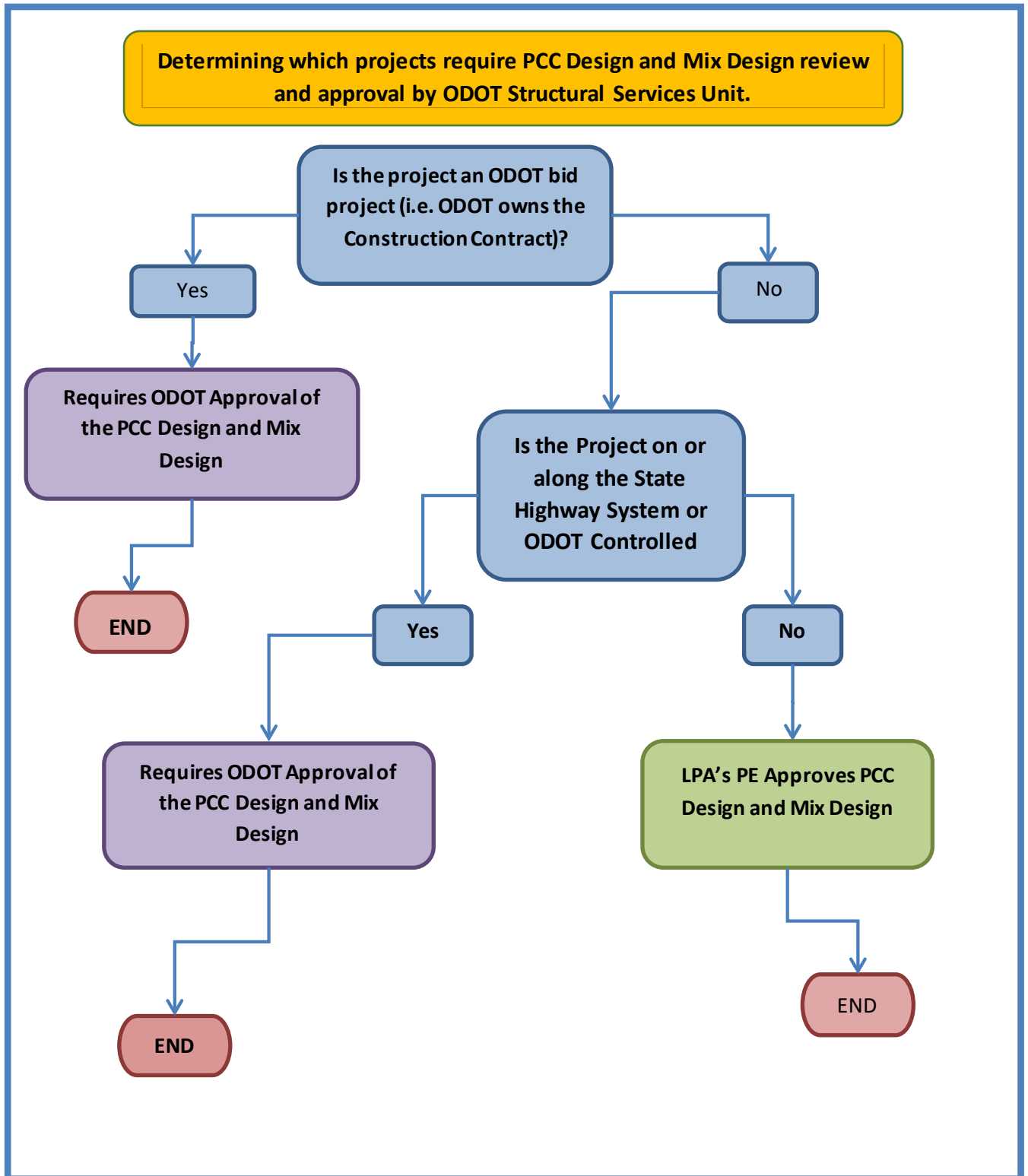
d. Structural Portland Cement Concrete (PCC) Mix Design Reviews

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.

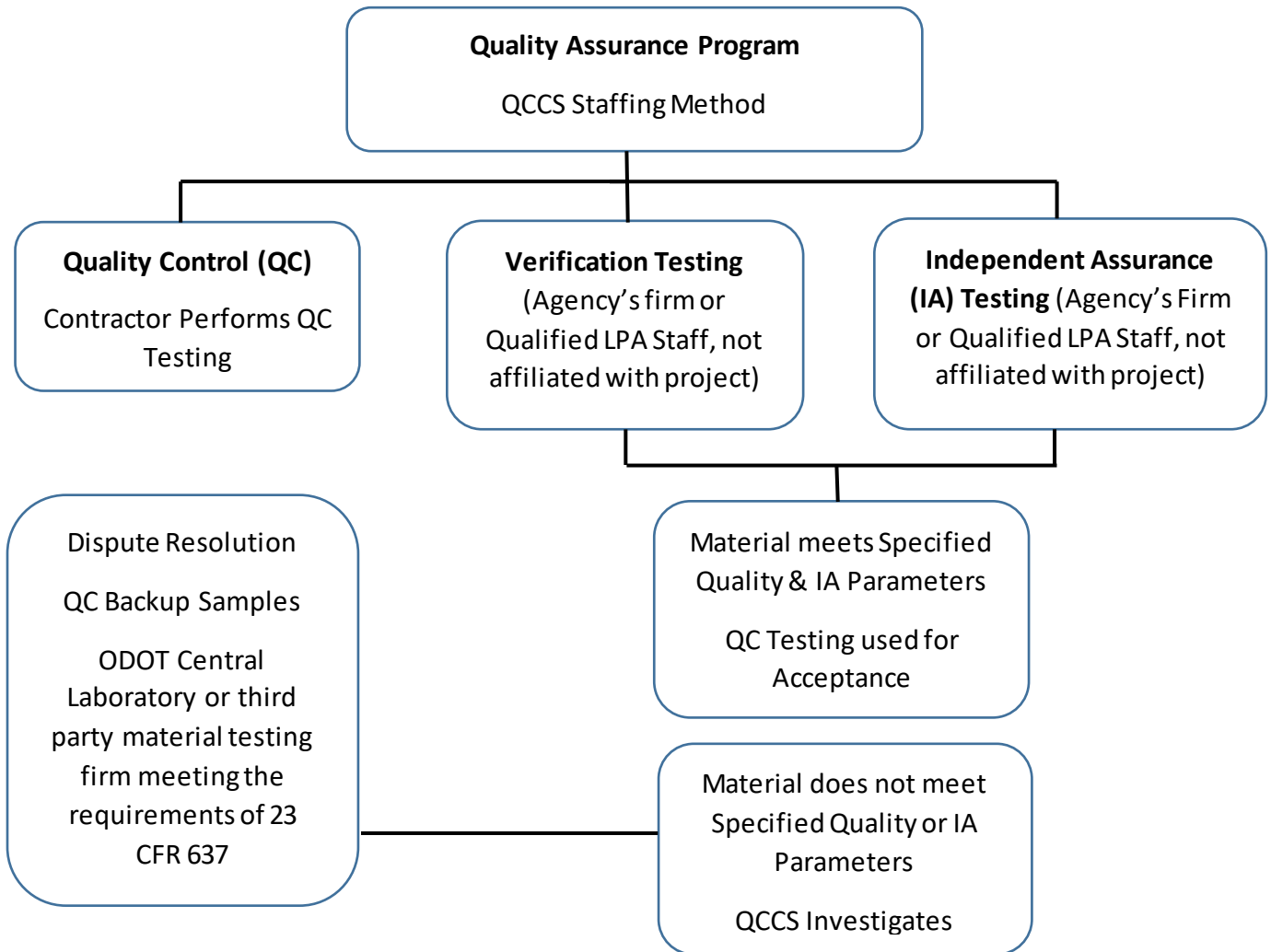
The LPA must identify a certified Quality Control Compliance Specialist (QCCS). Their role is to oversee and administer the LPA's Quality Assurance (QA) Program and to ensure all testing is conducted in accordance with that program. This includes reviewing testing personnel, test procedures, reviewing 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.

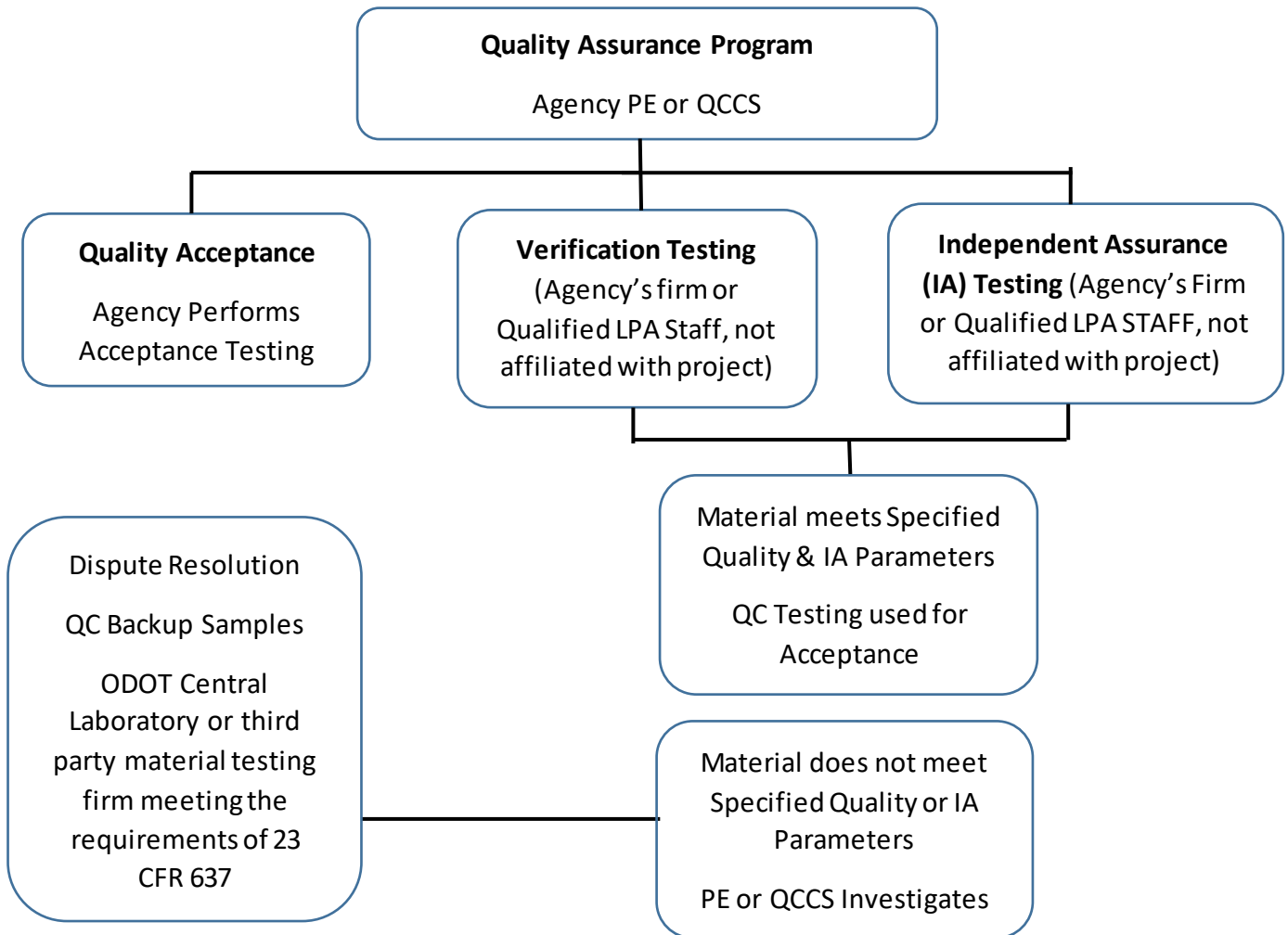
Additionally, the LPA's or consultant's materials laboratory conducting both materials verification testing and independent assurance testing are required to be ODOT certified laboratories.

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.

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."

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

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

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.