



OREGON DEPT OF TRANSPORTATION

LAG Manual –Section C

Chapter 16 – Construction and Contract Administration

ODOT Certification Program Office

7/9/2015

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1. Document Revision History

This document was originally issued on July 9th, 2015 The following revisions have been approved and issued:

Changes to this document must be approved by FHWA and ODOT Certification Program Manager

Revision Date	Revision Details (only the last ten revisions are retained)
7/9/2015	Original Issue
	Revised Sections xxxxxxxx

2. Overview

Construction contract administration is the responsibility of the LPA as identified in the Master Certification Agreement (MCA), Supplemental Project Agreements, this LAG Manual and [23 CFR 635.105\(c\)](#). The LPA will be responsible for the following aspects of construction engineering:

- Materials quantity and quality program;
- Project compliance with state and federal requirements;
- Inspection by inspectors 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

As outlined in the LPA's MCA and ODOT's [Stewardship Agreement](#) with FHWA, the Approval Matrix details the approval responsibilities for FHWA, ODOT and LPA. FHWA and ODOT may exercise oversight or review of any aspect of the delivery process. The [Approval Matrix](#) is located in the Appendix to Chapter 2 within Section A of this LAG Manual.

The following are some of non-delegated authorities unique to construction administration

- Certain Changes that involve major scope changes;
- Buy America waivers;
- Sole Source Approval (i.e. Public Interest/Cost Effectiveness Findings)
- Approval of State or Local Force Orders
- Final Inspection, and
- Final project acceptance
- Closure of the expenditure account with FHWA

The complete list of non-delegated items is available in the Oversight chapter 18 of this LAG Manual. These items will remain the responsibility of ODOT or FHWA. For more information or additional clarification, refer to ODOT's Local Agency Liaison (LAL) and manuals, including the [ODOT Construction Manual](#), [Manual of Field Test Procedures](#), [FHWA's Core Curriculum Manual](#), and the [ODOT Contract Administration Unit website](#). Documents and specifications are provided as resources to LPAs per [23 CFR 635.105\(c\)](#).

3. Becoming Certified for Construction Contract Administration

To become certified in construction and contract administration, an LPA must first submit a construction application along with a general application and an application for Ad, Bid and Award and meet minimum requirements. ODOT will review and assess the applications and conduct appropriate interviews with the LPA. For more details on becoming certified see chapter C2 of the LAG.

(Replace with the following)

In order to expedite the certification process, the LPA needs to adopt the “General Conditions for Construction for (Certified LPA)”, part 00100, have a Title VI plan and have a Quality Control Plan that includes:

- Appropriate references to the ODOT Construction Manual slightly modified for the LPA
- Use of Certification checklists from the LAG
- [Quality Assurance & Contract Administration Plan](#), LPA must complete form#734-2857 or the equivalent for every project
- Material quality acceptance program (field and non-field tested)
- Construction contract claims, change orders (contract change orders, extra work orders and orders for force work) or changes in project scope management; See the [ODOT Construction Manual, Chapter 15](#)
- Construction Contract time management; See the [ODOT Construction Manual, Chapter 13](#) Contractor payments, substantiated by project source documents
- Record retention
- Contractor disputes management
- Civil Rights collaboration with ODOT
- Environmental collaboration with ODOT

For more details on the QC Plan and key elements contact the ODOT Certification Program Manager.

ODOT will review the QC Plan and key staff qualifications such as inspector certifications for compliance with federal and state requirements. Prior to becoming certified, any LPA processes and programs that do not meet federal requirements will need to be revised for such compliance.

4. Construction Contract Administration

4.1 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 good partnering. 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 QC Plan. In most cases the LPA will be using ODOT’s [construction manual](#) slightly modified for the LPA.

4.2 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.

4.2.1 Pre-Construction Conference

Immediately after contract award, the LPA shall submit up to eight copies of the final plans and specifications to the ODOT LAL for distribution as appropriate to ODOT's:

- Regional 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.)

Internal Pre-construction meeting: The LPA and ODOT will meet prior to the Contractor's Pre-con on all federally funded projects with ODOT's LAL, ODOT's environmental coordinator and ODOT's [Office of Civil Rights](#) (OCR) to review the civil rights and environmental project requirements to be in compliance with federal requirements and reduce the risk of losing federal funding .

Pre-construction meeting: As prescribed in the construction contract, or as soon as possible after contract award, the LPA's project manager will schedule the meeting with contractor, subcontractors, project inspectors and technicians. Utility companies should also be invited to attend as a part of the utility notification process. The CLPA's Construction Contract Administrator will also invite ODOT's LAL, ODOT's environmental coordinator and ODOT's [Office of Civil Rights](#) (OCR) to attend the meeting. Meeting minutes will be recorded and retained for review.

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 the ODOT's LAL and each entity that has involvement or interest in the project. Refer to the ODOT Construction Manual Chapter 11 for example pre-construction conference processes and information.

ODOT's LAL and other ODOT staff will provide support to the LPA as necessary and attend the pre-construction conference.

4.2.2 LPA Submittal Requirements during Construction

The LPA shall submit to the ODOT LAL the following documentation, either in ODOT format or in the approved LPA format:

a. Notification of Commencement and Completion

Send copies of the Notice of Commencement and Completion form [ODOT form 734-3233](#), also known as First, Second and Third Note or equivalent to the assigned RAS and the Contract Administration Unit in Salem for communication and filing purposes.

b. Environmental Reporting

For all Certified LPA Projects, the LPA is responsible for submitting a copy of the following plans to the ODOT LAL 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)**

ODOT will review 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 ODOT LAL and ODOT region environmental coordinator (REC) 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 ODOT LAL and REC.

Environmental construction inspection reports can be found on this website:

<http://www.oregon.gov/ODOT/HWY/GEOENVIRONMENTAL/Pages/fahp.aspx>

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 NPDES 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 this

website:

[http://www.oregon.gov/ODOT/HWY/GEOENVIRONMENTAL/pages/biology_mon.aspx#Biological Monitoring Reports](http://www.oregon.gov/ODOT/HWY/GEOENVIRONMENTAL/pages/biology_mon.aspx#Biological_Monitoring_Reports) . The monitoring reports should go to the ODOT LAL & Region REC and ODOT will forward on to the appropriate resource agency.

Once ODOT REC & 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.

c. Draft Change, Force or Extra Work Orders

For all test phase projects copies of all proposed draft change orders, force orders and extra work orders for review and comment. The LPA shall also submit a copy of the final executed order.

For all fully certified, 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.

All major changes must be approved by ODOT and FHWA (as appropriate) prior to work being performed as per the master agreement (see part 8 of this chapter for more details). The LPA must receive concurrence on all major CCOs by ODOT and FHWA (as per the Master Agreement), regardless of certification status.

d. Report on Contractor’s Request for Subcontract Consent Form 734-1964

This is needed because ODOT has to capture the DBE subcontractors working on FHWA projects. See chapter 8 Civil Rights of section C in this LAG manual for guidance.

e. Certified Agency Quarterly Report form

This is required on all FHWA projects for conditionally and fully certified LPAs. Quarterly, throughout the life of the project and at the end of the project, the certified LPA will complete and submit, to the ODOT Certification mail box and a copy to ODOT’s LAL, a Certified Local Public Agency Quarterly Report (Form 403). This form is located on the [certification webpage](#) under technical program guidance and construction contract administration.

4.3 Construction Oversight Process

a. Initial Project Documentation Review (Conditionally Certified)

At the start of test projects prior to construction work starting, ODOT’s Regional Assurance Specialist (RAS) will contact the conditionally certified LPA and set an appointment for the initial review.

Three things the RAS 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 RAS will also perform a documentation review of the quantity and quality items paid to date and document the findings on a [Documentation Review Report \(DRR\) form #734-1903](#). Items requiring correction will be noted and rectified by the LPA.

b. Subsequent Project Documentation Reviews (Conditionally Certified)

Subsequent reviews should occur at a minimum at the test 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 test projects to ensure the LPAs quality control reviews are sufficient for compliance on future FHWA projects.

The RAS will review the new Quality and Quantity documentation, noting any deficiencies on the [Document Review Report](#) (DRR). At these reviews, the RAS will also note if there are deviations in administration of the contract. The certified LPA, the RAS, and the ODOT LAL will retain the DRR.

The ODOT RAS 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 the LPA’s responsibility to have all prior DRR issues resolved in order to successfully become certified.

c. Project Documentation Reviews (Conditionally Certified)

Test project reviews on Quality and Quantity documentation:

- Start-up of project;
- Mid-point
- Final review at project closure.

d. Project Documentation Reviews (Fully Certified)

The timing and frequency of these reviews will be based on risk analysis.

The documentation reviews will occur in addition to the program and project oversight reviews required by the Certification Program as outlined in the Oversight Chapter 18 in this LAG Manual and any additional Civil Rights Inspections.

e. Final Project Documentation Requirements

See Section C chapter 17 for the documentation required.

f. Final Project Inspection- (On-site Project Review)

ODOT 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 chapter 17, Project Closeout for additional information.

4.4 Project Construction Inspection

4.4.1 LPA Responsibilities

The LPA is responsible for all aspects of project inspection and documentation. LPA may do 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 [ODOT's Inspection Quality Assurance Program Document](#) Form 734-2857, include the following.

- Certified Bridge Construction Inspector (CBCI)
- Certified Environmental Construction Inspector (CECI)
- Certified Drilled Shaft Inspector (CDSI)
- Certified General Inspector (CGI)
- Certified Hot Mixed Asphalt Concrete Inspector (HMAC)
- Certified Traffic Signal Inspector (CTSI)

LPAs may also use ODOT inspectors through prior arrangement with the ODOT. Such services will be added to the project IGA special provisions.

4.4.2 ODOT Responsibilities

ODOT may perform intermediate project inspection(s) independently of the LPA on projects and as needed to comply with ODOT's Federal oversight responsibilities.

4.5 Material Quality Plan (Programmatic)

Under the Certification Program, LPA's must have a Quality Assurance Program for acceptance of materials, which is independent of ODOT. The LPA will follow its own ODOT approved Materials Quality Assurance Program as defined in the LPA Material Quality Plan. The LPA shall also maintain a management and staff structure ensuring that quality materials are incorporated into projects.

If a certified LPA develops its own Materials Quality Assurance Program it must also amend its Section 100s Specifications in parallel with its Program. Section 100s Specifications must be reviewed and approved for use by ODOT, DOJ and FHWA. Any changes to approved Section

100s Specifications must be in track changes as per the Master Agreement and also must be reviewed and approved by ODOT.

Alternatively, the certified LPA may adopt the procedures in the ODOT [Construction Manual](#) and the [ODOT Manual of Field Test Procedures](#) for construction contract administration, quality control, quality assurance, material sampling and testing. The source for each type of material must be approved by the certified LPA. If a Certified LPA decides to modify the materials QA program, Section 2 of the MFTP, then the "LPA Quality Assurance Program" template needs to be submitted to ODOT for review and concurrence along with the "General Conditions for Construction for (Certified LPA)"

An LPA Material Quality Plan should also include elements as indicated on FHWA's website for [Buy America](#). The LPA's Project Specifications shall provide the following instruction, "Steel and/or iron materials that are permanently incorporated into the project shall consist of American made materials. FHWA must approve all waivers to the "Buy America" requirements per [23 CFR 635.410](#)." For additional guidance refer to chapter 11, Plans, Specifications and Estimates in this *LAG Manual*, the FHWA Core Curriculum, [Quick Facts](#) regarding Buy America requirements and the Current [Oregon Standard Specifications for Construction](#), subsection 00160.20 or the approved specifications for Buy America.

For additional details on developing a Material Quality Plan refer to [23 CFR 637](#).

a. Non-Field Tested Materials

LPA's must specify how they will document and accept Non-Field Tested Materials. This includes the quality documentation required from the construction contractor. For additional information reference the following:

- a. ODOT's [Construction Manual](#);
- b. ODOT's [Qualified Products List \(QPL\)](#);
- c. Applicable [ODOT Construction Forms](#)
- d. [Non-Field Tested Materials Acceptance Guide \(NFTMAG\)](#)

Advanced notification

Note: Any request for ODOT Structural Services Inspections will require advance notification from LPA to LAL. (LPA will need to provide shop drawings, etc.). LAL shall contact the ODOT Structural Services Unit and provide all the necessary information.

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 certified LPA's general specifications. If the LPA's

process differs from the ODOT process, the certified LPA’s process must be explained in the Materials Quality Plan and modified in the contract specifications.

Additionally, the LPA’s Material Quality Assurance Program 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 procedures by modifying the materials QA program, Section 2 of the MFTP 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 (JMF) reviews for certified LPA projects:

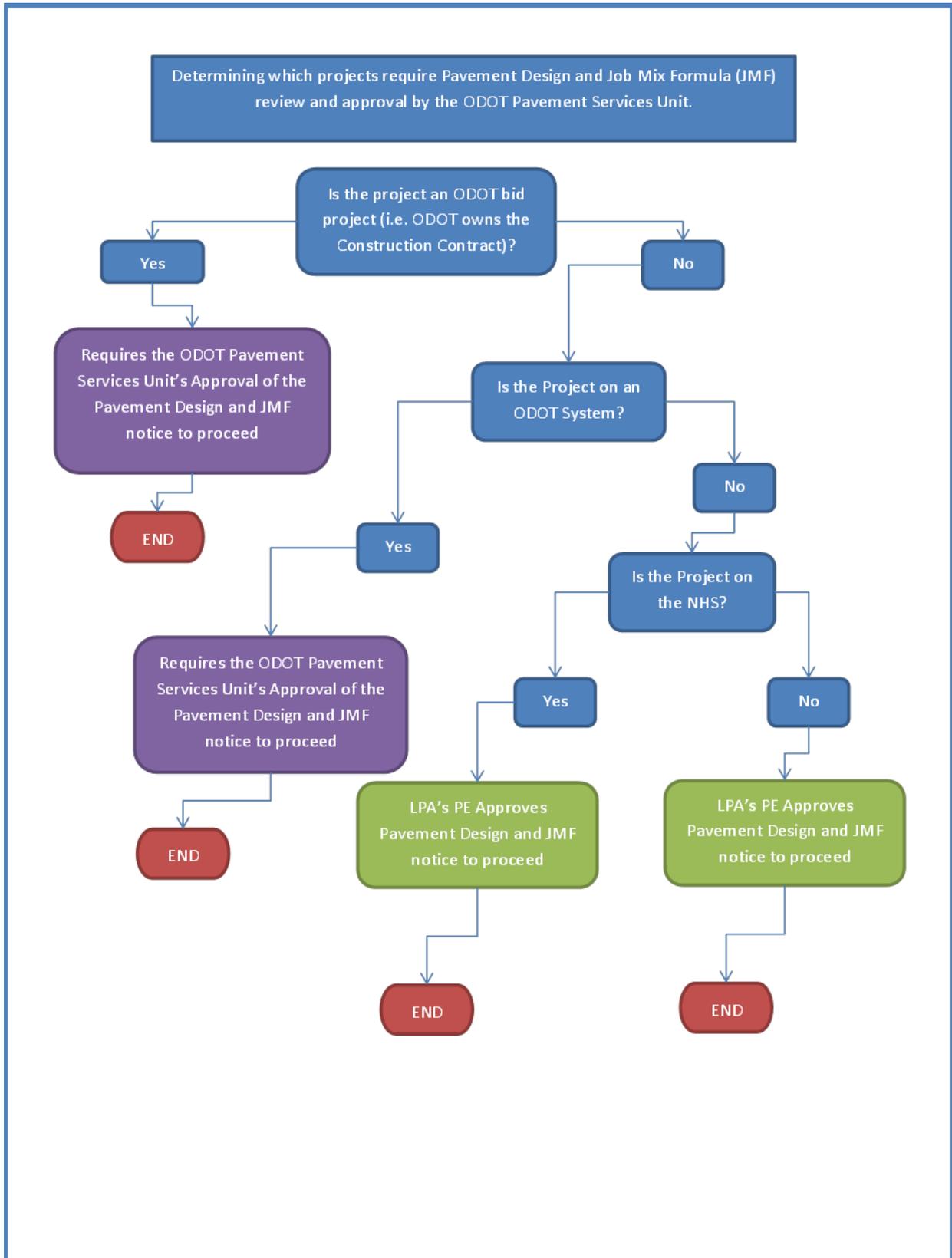
For certified LPA Projects - (ODOT doesn’t own the contract with the Contractor) - there will be the following criteria to determine if an ODOT review and approval/concurrence on the Pavement Design and JMF are required:

1. Local system only - (non-NHS & Local roads on the NHS) local agency engineer or qualified owners representative approves the pavement design & JMF. Regardless of whether the LPA is in the test phase, conditionally certified or fully certified, an ODOT pavement design review and JMF review and notice to proceed for the project **is not** required.
2. On an ODOT system (e.g. roadway or other structure) - An ODOT review and concurrence of the pavement design and a notice to proceed of the JMF **is** required. Additionally, the design must be in accordance with the current [ODOT Pavement Design Guide](#) and the JMF must be in accordance with the current [ODOT Mix Design Guide](#).

Subsequently, the LPA in the Certification Program will also be required to supply the following to their ODOT LAL:

- a. During the design phase – the pavement design, specifications and all plan sets which include the Design acceptance plans (DAP), Preliminary Plans, Advanced and Final Plans.
- b. During the construction phase – at least 15 days prior to placement of materials, send the JMF meeting the requirements of the project specifications for a notice to proceed from ODOT Pavement Services to the following:
 - i. ODOT LAL
 - ii. Copy the ODOT Mix Design at ODOTMixDesign@odot.state.or.us

Note: See the following exhibit depicting the decision process.



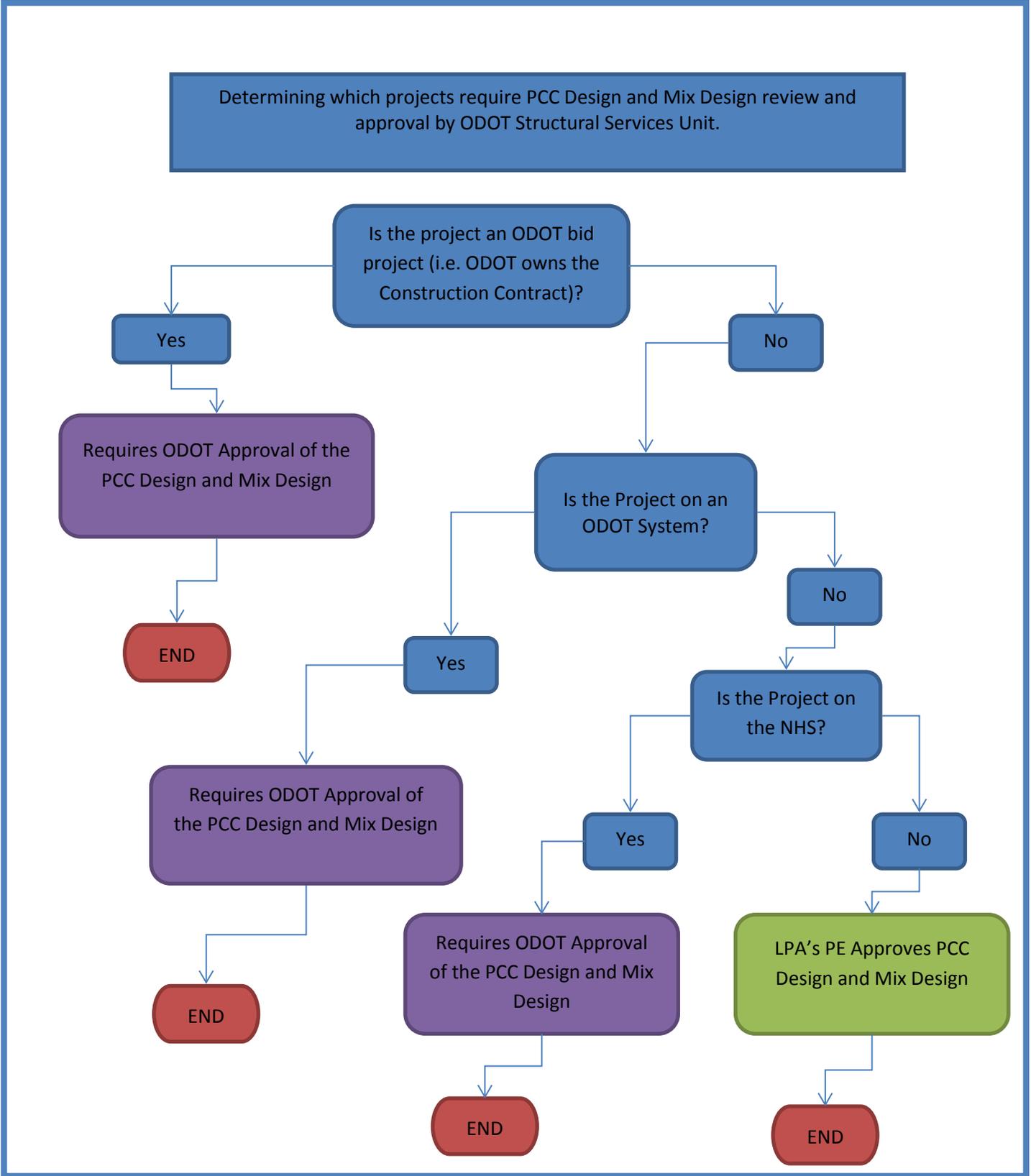
d. Structural PCC mix design reviews

The following describes the process of how ODOT will respond to Structural PCC mix design reviews for certified LPA FHWA projects in the STIP:

For certified LPA Projects - (ODOT doesn't own the contract with the Contractor) - there will be the following criteria to determine if an ODOT review and approval/concurrence on the mix design is required:

1. Local system only - (Local roads off the NHS) local agency engineer or qualified owners representative approves the mix design. If the LPA is in the test phase or requests ODOT review, then ODOT may review for approval/concurrence on the mix design. For fully certified LPA, an ODOT mix design review is not required.
2. On an ODOT system or Local roads on the NHS (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 (LAL) 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.

Note: See the following exhibit depicting the decision process



4.6 Material Quality Acceptant and Monitoring Assurance Programs

The LPA will fully document the Quality Acceptance and Quality Assurance process. Acceptance of materials for payment can be accomplished through two different methods:

- a. The traditional usage of a Quality Control Compliance Specialist (QCCS), or
- b. 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 QCCS Staffing Method

The traditional QCCS is used when:

- The LPA is using ODOT's field testing 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 certified laboratory, by ODOT. The LPA staff or a Consultant performs Verification Testing and Independent Assurance on a minimum of 10% as defined in the Manual of Field Tested Procedures. Additionally, the LPA's or consultant's materials laboratory conducting the verification or independent assurance testing is required to be certified laboratory by ODOT.

When using this method, the LPA must identify one or more persons who will serve as the 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 must be an ODOT certified technician in the materials disciplines applicable to the specific project work. The following is a list of Technician Certifications required:

- Certified Aggregate Technician (CAgT) or WAQTC equivalent (AgTT):
- Certified Embankment and Base Technician (CEBT):
- Certified Density Technician (CDT)
- Certified Asphalt Technician I (CAT-I)
- Quality Control Technician (QCT)

The qualifications and responsibilities of the QCCS are defined in the [ODOT Quality Assurance Program](#) and the ODOT [QCCS Manual](#).

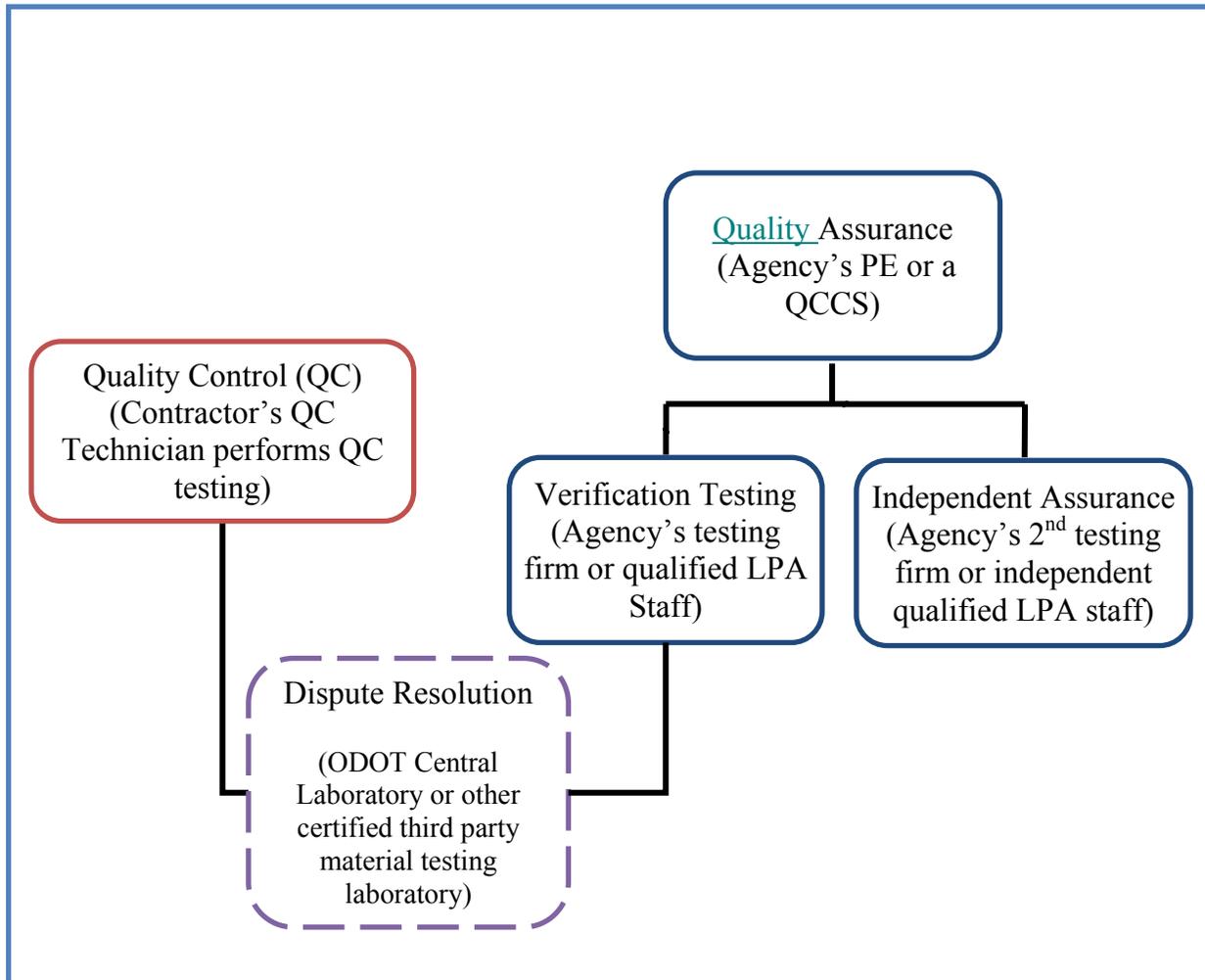


Figure 1 – Traditional QCCS Staffing Method – Contractor’s Quality Control testing is used for acceptance and payment of Materials

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 also be a ODOT certified laboratory. Additionally, the LPA’s Dispute Resolution Laboratory *cannot* be the same laboratory performing the verification testing or the Quality Control testing for the Contractor. The test results from the Dispute Resolution laboratory will be used for the contractor payments.

b. The Alternative PE Staffing Method

The PE method is used when:

- The Contractor’s Quality Control (QC) testing is NOT used for material acceptance,
- The LPA or consultant performs all required Verification testing for material acceptance and payment.

In this scenario, the LPA’s or consultant’s Material Technician performs 100% of Verification testing required by the LPA’s approved Materials Quality Program (or as required by the Project Specifications).

When using the alternative staffing method, the LPA will identify an Oregon registered Professional Engineer (PE) who will serve as the LPA’s Quality Manager. An Agency can still have a QCCS fulfill this role, but it is not required in this alternative method. The Agency’s PE serves as the LPA’s Quality Manager and 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. 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 Independent 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 verification testing can be performed by qualified internal staff or a testing consultant. Independent Assurance must be performed either by qualified internal staff not involved with the verification testing or the Contractor’s QC testing, or a second (independent) testing Consultant.

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 required.

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.

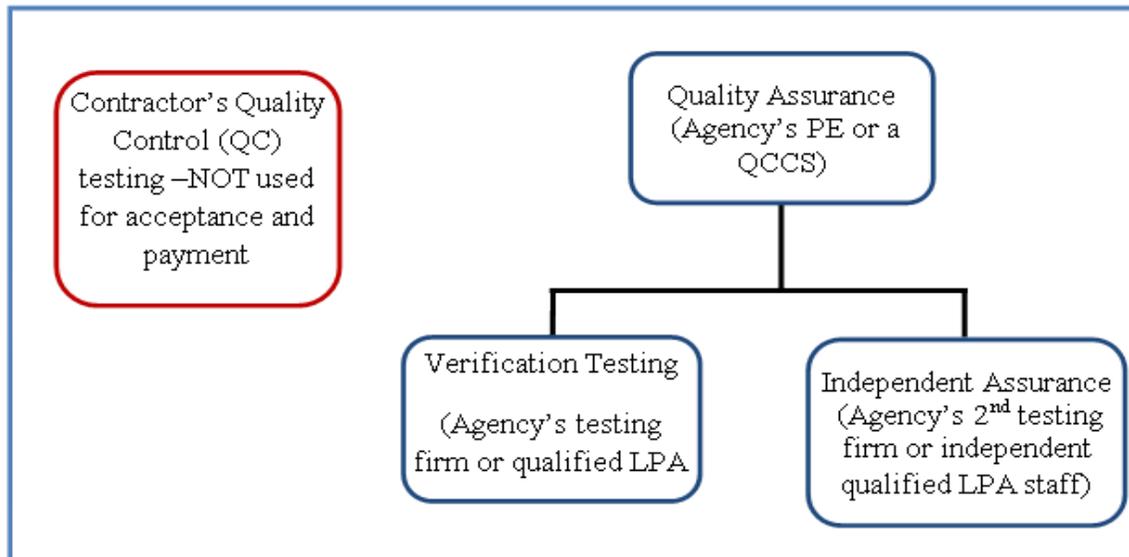


Figure 2 – *Alternative PE Staffing Method – Contractor’s Quality Control testing is **NOT** used for acceptance, verification, or payment of Materials.*

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. Certified 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](#); and
- The ODOT [QCCS Manual](#).

5. Civil Rights Reviews

The Office of Civil Rights review requirements are outlined in [Section C, Ch.8](#) Subsection D.

6. Extra/Changed Work: Contract Change Orders, Force Account and Work by Public Forces Procedures

a. Contract Change Orders and Extra Work Requirements

The certified LPA needs to follow its own approved general conditions (section 00100s of the specifications) for all their contractor claims, contractor 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 A, Chapter 2, Appendix, of this LAG Manual) and pursuant to the LPA’s Master Certification Agreement with ODOT, the certified LPA’s approved procedures must include a process for ODOT approval of contract change orders or extra work.

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 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: Changes outside of the scope of the federal funding program may not be reimbursable with federal funds. Local public agencies must contact the appropriate program manager and cc’ the LAL to verify eligibility and availability of funds prior to proceeding with changes outside the project scope.

The LPA will maintain documentation of any changed or added work on the project. This must include all ODOT 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; and
- Detailed justification of the cost and/or any adjustment to contract time associated with the changed or added work.

NOTE: The detailed cost justification shall be documented independent of the contractor's proposal to substantiate the changed or added work.

b. 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 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 force work orders. 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 [ODOT Construction Manual, Chapter 3](#) - Delegation of Authority. For more information, refer to [Section A, Chapter 5 Local Agency Force Projects](#) in this LAG Manual and the [ODOT Construction Manual, Chapter 15](#)

7. Contractor Progress Payments

a. 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 Oregon Standard Specifications for Construction, 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 and/or testing is performed.

b. ODOT Requirement

ODOT will reimburse the LPA as per the LPA’s Master Certification Agreement with ODOT. For further payment details see [Section C, Chapter 5, Progress Billings Payments.](#)

c. Project Authorization Requests

The LPA will obtain prior ODOT approval and follow ODOT’s process for any increase in FHWA project authorization, with the exception of certain signature authorities. A request for additional authorization may also require an increase in the local funds.

LPAs will contact the ODOT LAL to begin ODOT’s approval process. It is important to receive project funding source (e.g. LPA executive body, ODOT’s Bridge Program, MPO/STP-U, 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.

8. Labor Compliance

Federal projects are subject to wage rate requirements as per 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 Oregon Standard Specifications for Construction. 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/or
- 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 as defined in 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

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, Plans Specifications and Estimates \(PS&E\)](#) for wage rate information and the [Construction Manual](#) for wage rate compliance information.

The ODOT Contract Administration’s Unit Labor Compliance Officer will coordinate with the LPA and the ODOT LAL to perform reviews on test projects on a project by project basis **and as necessary**.

9. 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
- Employee Interview Forms
- Monthly Employee Utilization Reports
- Commercially Useful Function (CUF) Review
- Contracts and Subcontracts
- Quantity documentation
- Material invoices
- Quality documentation
- Certificate of materials origin
- Process control records
- Project diary
- Erosion control reports
- Temporary protection and direction of traffic reports
- Final materials certification
- Foreign steel summary
- Warranties
- Construction Plans
- As-Constructed Plans
- Test results; and
- Inspection records to ensure that projects are completed in conformance with approved plans and specifications.

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.

10. 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 FHWA project
- For employment of special counsel for review and defense of contract claims when recommended by the certified 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.

Whenever a claim is submitted, the LPA should follow their approved policies, procedures, and specifications and inform the ODOT LAL. A copy of the claim should be provided to the ODOT LAL and Construction Liaison.

The LPA's contract specifications will include a process for dispute and claim resolution. Upon the LPA's request, ODOT may conduct claims reviews and may make independent determinations on contractor's entitlement and award of damages.

ODOT will review the claim and make independent determination regarding the contractor's entitlement and award of damages if federal funding eligibility is requested.

For additional information regarding ODOT's claims review process go to ODOT's Specifications website and click on "00199 – Disagreements, Protests and Claims."

11. Termination of Contract

Prior to termination action against a contractor, the LPA must obtain ODOT and FHWA concurrence.

ODOT will review and provide a response to the certified LPA's request for termination of a contract.

The certified 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 contact by the certified LPA.

12. 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 documents that are available from the ODOT LAL. Please note none of these documents listed below can be included by reference only:

- [FHWA Form 1273](#) "Required Contract Provisions, Federal-Aid Construction Contracts";
- The [minimum wage rates](#) for the contract as required by [ORS 653](#) and 29 CFR 5.5 ; and 279C.83

- Buy America. [Title 23 C.F.R. 635.410](#) provides the FHWA's regulatory policy regarding Buy America.

[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 current [ODOT](#) sub-contractor checklist is available at [Construction Section Forms](#), under the “Subcontractor Consent Checklist (form 734-2518)” link and is helpful to use to ensure contracts have the required elements.

The ODOT LAL can provide the forms noted above upon request from the certified LPA.

13. Final Project Acceptance, Project Close Out and Final Payment

See Chapter C17 of the LAG.

NOTE: The Lists for final Documentation Submittals are in chapter 17

14. Certification Project Audits

ODOT’s LAL will consult and advise the LPA concerning project delivery procedures. The level of assistance will depend on the nature of each project and the demonstrated capabilities of the LPA.

In order to be reasonably certain that LPAs are administering FHWA funds in accordance with state and federal law as well as this LAG Manual, ODOT’s regional staff shall conduct project management reviews annually on selected certified LPA projects as scheduled by the Certification Program Office. FHWA may also audit the project records. These reviews may cover:

- General procedural compliance items noted in Title 2 CFR Section C: Subpart F Audit Requirements;
- Items noted in [FHWA’s Good Practices For the Oversight of Federal-aid Projects Administered by Local Public Agencies](#);
- Compliance with the LPA’s Master Certification Agreement with ODOT;
- Items of special interest developed from any audit reports, recommendations from FHWA or previous process reviews;
- Compliance with “Equal Employment Opportunity, “Disadvantaged Business Enterprise” programs; and
- Procedures in the LAG Manual.

For information regarding ODOT’s procedural review forms, review the Certification Oversight Chapter in this LAG Manual or contact the Certification Program Manager.