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SECTION B

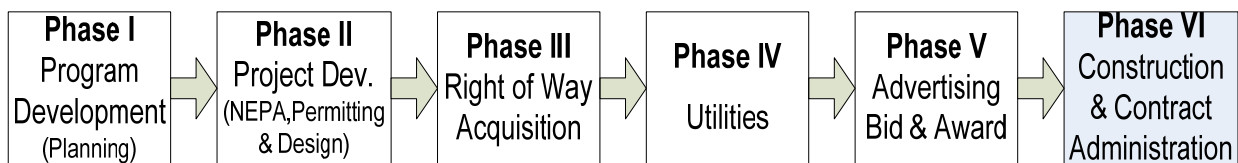
NON-CERTIFIED AGENCY

Chapter 16

Construction and Contract Administration

This chapter is used for FHWA funded projects on NHS (National Highway System) and non-NHS routes by local agencies operating under agreement with ODOT as non-certified local agencies.

After a project has completed the advertising, bid and award process, it enters the construction and contract administration phase.



A. OVERVIEW

ODOT is responsible for the proper expenditure of FHWA funds on local agency projects. [23 CFR 635.105](#) ODOT is also responsible to assure that the local agency provides adequate supervision and inspection to ensure that the projects are completed in conformance with the approved plans and specifications. The quality of materials and workmanship on a project must conform to the contract specifications so that the public funds expended will provide a safe, economical, and fully functional transportation facility. Reimbursement of FHWA funds may be denied for work performed contrary to the contract documents.

Ensuring that the required documentation is properly performed is a vital part of the construction contract administration process. Non-certified local agency FHWA funded projects will be administered in accordance with ODOT's [Construction Manual](#), including supporting forms and documents, as well as this chapter of the *LAG Manual*.

FHWA funded projects are subject to Civil Rights compliance reviews by ODOT. Additional Civil Rights information is available in Section B, Chapter 7, Disadvantaged Business Enterprises and Chapter 8, Equal Employment Opportunity.

B. OPTIONS FOR CONSTRUCTION CONTRACT ADMINISTRATION

By agreement between ODOT and the local agency, non-certified local agency FHWA funded projects may be administered under several different options:

1. the non-certified local agency may assign their own qualified project manager and staff to administer the contract for the project with the ODOT oversight role being fulfilled by the ODOT [Regional Local Agency Liaison](#);
2. the non-certified local agency may hire a consultant to act on their behalf to administer the local agency FHWA funded project, with the ODOT oversight role being fulfilled by the ODOT [Regional Local Agency Liaison](#); or
3. on rare occasions such as the delivery of combined state and local projects in an area, or for short timeline projects to meet a specific need, an ODOT Project Manager and staff may be assigned to provide the contract administration for the project.

Options 1 and 2 require prior authorization by ODOT and are arranged via an intergovernmental agreement. Local agencies interested in pursuing these actions must first contact the [Regional Local Agency Liaison](#).

During the administration of non-certified local agency projects, the [Regional Local Agency Liaison](#) will consult and work with local agencies as needed and ODOT's [Construction Contract Administration](#) staff to perform systematic project reviews.

During the administration of a FHWA funded local agency project, the non-certified local agency is required to follow ODOT's [Construction Manual](#).

The Approval Authority Matrix illustrates the contract administration and oversight authorities and responsibilities for FHWA, ODOT, and non-certified local agencies. All FHWA approvals are through ODOT.

C. PROGRESS PAYMENTS

Progress payments must be based on measurements of work performed and materials accepted so the contractor can be fairly compensated and public funds will not be expended on work that has not been completed.

For all local agency administered projects, the project manager must maintain, in the project office files, the records necessary to show how the progress estimate quantities were determined. Each progress estimate must stand on its own when subjected to an audit. The project manager is responsible for measurement and quantity determinations for all pay items. Contractors and subcontractors are not allowed to document or establish pay quantities. Refer to ODOT's [Construction Manual](#) for further information regarding pay quantities.

Progress estimates should be prepared on a pre-selected date each month. The non-certified local agency shall document the quantities paid each month. Progress estimates should be prepared

promptly by the project manager and should be forwarded to the contractor for review prior to payment. Non-certified local agencies will coordinate with the [Regional Local Agency Liaison](#) for processing progress payments.

Payment for work not properly documented may be deemed non-participating and therefore ineligible for federal reimbursement. The local agency is responsible for funding non-participating work.

D. CHANGES AND EXTRA WORK

Whenever a change in the contract is required, the non-certified local agency shall coordinate with the [Regional Local Agency Liaison](#) to prepare a change order. The change order shall include an explanation in sufficient detail so that everyone involved will understand the nature of the change, the specifications under which the work will be completed, and how the work will be paid. Contract change orders require supporting data including:

- Who requested the change;
- The reasons why the work is necessary;
- Why the work is not the contractor's responsibility under the original contract;
- A list of parties other than the local agency who have agreed to share in the costs;
- The estimated effect on the contract completion date; and
- An independent estimate of cost.

Contract change orders must be numbered in sequence. When changes in the work will alter the termination date, character, or scope (i.e. a major change) of the project, approval by ODOT's Contract Administration Engineer, and/or FHWA, is required prior to the commencement of the physical work. Refer to ODOT's [Construction Manual](#) for further information.

To be eligible for FHWA participation, all non-certified local agency change orders must first be approved by ODOT prior to the commencement of the changed work.

NOTE: No change order work shall be done prior to ODOT approval.

In the case of time sensitive situations, verbal approval may suffice, however, verbal approval must be followed by prompt submission of the corresponding written change order. The local agency should expect to fund any work in its entirety if the work has been performed prior to approval.

NOTE: Non-certified local agencies have not been delegated authority to approve changes to the contract.

Local agencies must receive ODOT approval prior to executing contract change orders, extra work orders, or force orders on FHWA funded local agency projects. The non-certified local

agency shall obtain the contractor's signature and route all orders through the [Regional Local Agency Liaison](#) to ODOT's Contract Administration Engineer in the Construction Section.

E. COMPLIANCE WITH STATE AND FEDERAL LEGAL REQUIREMENTS

Non-certified local agency projects shall comply with all relevant state and federal legal requirements including but not limited to the following items.

1. State Requirements

[Oregon Revised Statutes \(ORS\) 701.630](#) requires payment to subcontractors within seven days of receiving an invoice. [ORS Chapter 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.

2. Federal Requirements

FHWA requires that all subcontracts at any tier be in writing, per [23 CFR Section 635](#). This includes contracts between the prime contractor and their subcontractors, and contracts between subcontractors and their agents. All subcontracts on FHWA funded projects are required to include [FHWA Form 1273](#), "Required Contract Provisions, FHWA Construction Contracts," and such amendments that modify [FHWA Form 1273](#). Copies of the [FHWA Form 1273](#) and amendments are available from the [Regional Local Agency Liaison](#).

Implementation of DBE and EEO programs are also federal contract requirements. For further details see Section B Chapter 7, Civil Rights – DBE and Chapter 8, Civil Rights – EEO.

F. ADMINISTRATIVE SETTLEMENT COSTS

Administrative settlement costs are costs related to the defense and settlement of contract claims including, but not limited to, salaries of contracting officers or their authorized representatives, attorneys or members of arbitration boards, appeal boards, etc., which are allocable to the findings and determination of contract claims, but not including 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; and
- For employment of special counsel for review and defense of contract claims when recommended by the local agency's legal counsel and approved in advance by ODOT.

Whenever a claim is submitted, the [Regional Local Agency Liaison](#) must be contacted on how to proceed.

G. COMPLETION OF CONSTRUCTION

Non-certified local agencies are responsible for carrying out the following requirements in preparing the project for acceptance by ODOT.

1. Final Inspection

Within 15 calendar days after completion of the on-site work, the Local Agency Project Engineer shall notify the [Regional Local Agency Liaison](#) with a request for final inspection and acceptance.

2. Final Project Documentation

A construction project is complete once the local agency submits all of the items listed below to the [Regional Local Agency Liaison](#).

a. Final Billing (Approving Authority File)

As noted in the intergovernmental agreement, the local agency must submit the final billing to ODOT's [Regional Local Agency Liaison](#).

b. Final Records (Approving Authority File)

The local agency Project Engineer must document the work performed on the project. Documentation consists of any field books, inspector's record of field tests, project engineer's and inspector's diaries, all invoices, weigh bills, truck measurements, quantity tickets, receiving reports, field office ledgers, mass diagrams, cross-sections, computer listings, work profiles, approved time slips, etc., when they are a basis of payment for work performed or material furnished. Photographs or video before, during and after construction could be useful, especially if care is taken to show any unusual conditions, equipment, or procedures. Final records shall be in accordance with, and retained as specified in, ODOT's [Construction Manual](#).

c. Materials Certification

The purpose of the material certification is to ensure that the quality of all materials incorporated into the project conforms to the plans and specifications. This material certification (Final Material Certification 734-1979 available at [ODOT Construction Forms](#)) shall be completed in accordance with ODOT's [Construction Manual](#). The local agency shall also retain documents related to such material certification as specified in this chapter.

d. “Buy America” Documentation

All steel, iron and any coating applied to a finished steel or iron product, must meet the “Buy America provisions” of [23 CFR 635.410](#). Local agencies must use ODOT’s [Certificate of Materials Origin](#) form to document compliance. All FHWA funded projects must complete a Foreign Steel Summary form 734-1968 (available [at ODOT Construction Forms](#)), even if there was no permanently incorporated foreign steel on to the project.

e. Warranties

All project managers must submit warranties (e.g. striping, signage, and signals) to ODOT’s [Regional Local Agency Liaison](#).

f. As Constructed Plans

All project managers must submit as constructed plans to ODOT’s [Regional Local Agency Liaison](#).

See also, Section 37 of ODOT’s [Construction Manual](#) for further details regarding final project documentation.

H. SUMMARY

As specified in [23 CFR 635.105](#), ODOT, as the State Highway Agency, has responsibility for the construction of all FHWA funded projects, even though ODOT may have authorized performance of the work by local agency.

Regardless of the extent of ODOT’s oversight during the administration of a FHWA funded local agency project by a non-certified local agency, the local agency must follow ODOT’s [Construction Manual](#).

NOTE: Work which is improperly administered or documented may be non-participating and may therefore be ineligible for FHWA reimbursement. The local agency is responsible for funding the entire cost of all non-participating work.

Processes, examples, and forms referenced in this chapter may be found in ODOT’s [Construction Manual](#).

ODOT’s [Regional Local Agency Liaisons](#), [Construction Contract Administration](#) staff and [Construction Section](#) staff are also available to provide support and assistance to non-certified local agencies.