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# SECTION C

## *Chapter 2*

# CERTIFIED AGENCY

## *Becoming Certified*

FHWA, through a [Stewardship Agreement](#) with ODOT, delegates authority to ODOT for approving project development and construction administration. ODOT has the option of delegating some or all of this authority to qualified local agencies per [23 CFR 635.105](#). ODOT's Certification Program permits an agency to retain more of the approval authority at the local level when developing FHWA funded transportation projects. The Certification Program does not eliminate any project development procedures. The Certification Program benefits local agencies through savings in time and money as certified agencies have the authority to develop, advertise, award and manage its own projects.

### **A. OVERVIEW**

The Certification Program requires local agencies to commit sufficient staff and other resources to project administration to ensure that all the applicable agency, state and federal requirements are met and that the work can be accomplished efficiently. Once an agency has been certified, the certification agreement may remain in effect indefinitely unless rescinded due to lack of adequate staffing or performance.

A certified local agency has the option of requesting that ODOT or another certified local agency administer any given project.

### **B. CERTIFICATION ACCEPTANCE PROCESS**

A certified agency is the approving authority for administering FHWA funded projects in the following project items. These functions should be administered per the responsibilities outlined in the certified local agency's certification master agreement.

- Consultant Selection
- Developing Plans, Specifications and Estimates (PS&E)
- Advertisement, Bid and Award
- Environmental Processes\*
- Right of Way\*
- Civil Rights\*
- Construction Contract Administration

*\*ODOT retains final approval of certain elements for these activities per federal requirements.*

Specifically, ODOT and FHWA retain approval authority for the following:

### **ODOT**

- Implementation of Civil Rights ([Disadvantaged Business Enterprises \(DBE\)](#), [Equal Employment Opportunity \(EEO\)](#), [On the Job Training \(OJT\)/Apprenticeship](#) and [Title VI \(Civil Rights Act of 1964\) Program](#))
- Environmental Processes\*
- Final Certification of Right of Way Transactions
- Public Interest Finding Determinations (regarding use of patented, proprietary, owner designated materials or sole source products), ODOT's [PS&E Materials Users Guide](#)
- Agency Certification Acceptance Approval
- Project Final Acceptance
- Documentation/Project Management Reviews
- Certification Program Review
- Periodic Audits

### **FHWA**

- Authorization of FHWA funds
- Approval of National Environmental Protection Act (NEPA) and Endangered Species Act (ESA) environmental documents
- Approval of ODOT's DBE, EEO, OJT/Apprenticeship and Title VI programs
- "Buy America" waiver requests
- Approval of ODOT's *LAG Manual*
- Certification Program Review
- Periodic Audits

## **1. Certification Acceptance Requirements**

- a. Projects must be administered in accordance with this *LAG Manual*.
- b. Projects must be administered utilizing a Professional Civil Engineer registered in the State of Oregon who is either on staff as a public employee or is a contract employee designated as the agency's Engineer.
- c. The agency shall have sufficient expertise and capability to perform and supervise the project phases for which they are certified e.g. consultant selection; design; bid and award; right of way; environmental processes and construction contract administration phases of the project.
- d. The agency shall have appropriate manuals, guidelines and standards on hand that are related to the project phases for which the local agency is certified. Such manuals and guidelines include but are not limited to.
  - *LAG Manual*
  - AASHTO Design Guides
  - ODOT's Construction Manual
  - Oregon Standard Specifications
  - Manual on Uniform Traffic Control Devices

- ODOT’s Highway Design Manual
  - ODOT’s Utility Manual
  - ODOT’s Right of Way Manual
  - ODOT’s Hydraulics Manual
- e. The agency must designate and maintain an official approving authority (e.g., agency executive or policy body), as identified in the certification master agreement. Such approving authority must officially approve each project step as required.
- f. Local Public Agency Quality Control process must be documented and followed to monitor design during Project Development, Engineering Services, PS&E package, Construction Contract Administration and Project Closure.

Elements within the Quality Control process should include:

The local agency's Reviewer must have equal or greater skills in their area of responsibility (e.g. if a structural engineer is designing a bridge, quality control must be carried out by another individual with equal or greater structural engineering experience).

In addition to the Local Public Agency’s Quality Control process, there must be a signed compliance statement for each project that states the QC process was used on that project.

## **2. Application for Certification Acceptance**

A local agency applying for certification to administer contracts under the Certification Program must submit two copies of the Certification Acceptance Qualification Agreement to ODOT’s Certification Program Manager. Additional information regarding the Certification Program can be found at ODOT’s [Local Government Section](#) website.

After receiving the Certification Acceptance Qualification Agreement form, ODOT’s Certification Program Manager will arrange an interview with the local agency administrators to determine whether the agency is suitably staffed and has appropriate procedures to administer federal-aid projects. Areas of consideration will include a review of the local agency’s project delivery processes and procedures, current staffing, overall capability and knowledge of FHWA and state requirements.

Based on satisfactory findings from the interview, the local agency will receive “conditional certified local agency” status as noted in the “Certified Local Agency Introduction” chapter in this manual. Upon successful completion of identified “test projects,” the local agency will become fully certified in the appropriate federal-aid project delivery functions.

## **3. Certification Acceptance Compliance**

ODOT’s [Regional Local Agency Liaison](#) will consult and advise the local agency concerning project delivery procedures. The level of assistance will depend on the nature of each project and the demonstrated capabilities of the agency. In addition, ODOT’s Certification Program Manager will annually select project(s) for an in-depth procedural review. Additional information regarding procedural reviews is available in Chapter 16, Construction Contract Administration.

The local agency's certification status is contingent upon:

- Completion of satisfactory Certification Program reviews or successful corrective actions to unsatisfactory reviews and
- Maintaining qualified and experienced staff.

If a vacancy occurs in the certified local agency position(s) serving as the "Approving Authority" outlined in the certification master agreement, the local agency shall notify ODOT's Certification Program Manager. Once the local agency has established a new "Approving Authority," the Certification Program Manager will schedule an interview of the local agency's new staff serving as the agency's Approving Authority. The purpose of the interview is to verify staff qualifications and experience and discuss the certification program.

In the event appropriate corrective action has not been implemented following an unsatisfactory review, or the qualifications and experience of the staff are inadequate, then the following may occur:

- The agency's delegation of authority may be reduced on a project or phase of a project, or
- The agency may be placed on probation.

ODOT and FHWA may discover program and project inadequacies through:

- Program review;
- Documentation review;
- A formal audit; and
- Final project inspection.

The local agency certification status and any appropriate reinstatement conditions will be outlined in a letter from ODOT's Certification Program Manager.

### **C. NON-CERTIFIED LOCAL AGENCIES**

As depicted in Chapter 1, Certified Local Agency Introduction, if an agency does not have certified local agency status, the following two options are available for administration of a FHWA funded project.

#### **Option 1**

A local agency may contract with a certified local agency to secure project development and delivery services. Under this option a non-certified local agency may enter into an agreement with a certified local agency to administer any or all aspects of the project. This action requires approval by ODOT's Certification Program Manager.

**Option 2**

A local agency may contract with ODOT and work through the ODOT [Regional Local Agency Liaisons](#) to secure project development and delivery services. Procedures related to this are outlined in the Non-Certified Section of this manual.