

ON-THE JOB TRAINING SPECIAL PROVISIONS (OJT TSP)

DESCRIPTION. This provision supplements subparagraph 7e of the Contract Provision entitled, "Standard Federal Equal Opportunity Construction Contract Specification ", and in the implementation of CFR Part 230, Subpart A, Appendix B

Purpose:

It is the policy of the MoDOT to require full utilization of all available training and skill-improvement opportunities to assure the increased participation of minority groups, disadvantaged persons and women in all phases of the highway construction industry. The intent of the On the Job Training Program is to recruit entry-level individuals, when feasible, and provide them with meaningful training intended to lead to journey-level employment. MoDOT and its sub-recipients, in carrying out the responsibilities of a federally assisted contract, shall determine which federal-aid construction contract shall include "Training Special Provisions." Under the Training Special Provisions, the Contractor shall make every reasonable effort to enroll minority, disadvantaged persons and women trainees to the extent such persons are available within a reasonable recruitment area. This training provision is not intended, and shall not be used to discriminate against any applicant for training.

The Contractor is hereby advised that it is no excuse for a union, with which the Contractor has a collective bargaining agreement providing for exclusive referral, to fail to refer minority and female employees (23 CFR 230.411(e)(1)). Contractors are hereby made aware that if union referral practices prevent the contractor from meeting the EEO requirements, the contractor should make written notification to MoDOT's External Civil Rights Division (ECR) immediately. Furthermore, the FHWA's Form FHWA-1273 EO bid conditions are to be included in the Contractor's affirmative action plan (AAP). The EEO bid conditions specifically state, "In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the Contractor will, through independent recruitment efforts, fill the employment vacancies. Unions are not allowed to discriminate based on race, color, national origin or sex, union membership or non-membership, or domicile.

Contractors can sometimes demonstrate that they referred minorities and women to the unions for referral back to them, or the Contractors can demonstrate efforts made to request minorities and women from the union when they see their work force is deficient in certain construction trades. These efforts should be documented and will be verified by MoDOT.

Missouri State Department of Transportation's Responsibility to Federal Highway Administration (FHWA)

A. Program Administration

All training goals, including the number of training hours, on federally funded projects are to be established by the External Civil Rights Division with Federal Highway Administration (FHWA) oversight. The following guidelines will be utilized in selecting projects and determining the goal to be set:

1. Availability of minorities and women for training.
2. The potential for effective training.
3. Duration of the contract.
4. Dollar value of the contract (# of working days).
 - Under \$1,000,000 – 0
 - Over \$1,000,000 to \$3,000,000 – 1-2
 - Over \$3,000,000 to \$5,000,000 – 2-3
 - Over \$5,000,000 to \$10,000,000 – 3-4
 - Over \$10,000,000 to \$15,000,000 – 4-5

Over \$15,000,000 to \$20,000,000 – 5-6
Over \$20,000,000 – * 6-7

* One Additional trainee per \$5,000,000 of estimated construction
Contract amount over \$20,000,000.

5. Total normal work force that the average bidder could be expected to use.
6. Geographical location.
7. Type of work.
8. The need for additional journeymen in the area.
9. The need to correct underutilization of minorities and females in specific trades.
A satisfactory ratio of trainees to journeymen expected to be on the contractor's workforce during normal operations (considered to fall between 1:10 and 1:4).
Recognition of the suggested minimum goal for the State

The intent of the program is to recruit entry-level individuals when feasible and provides them with meaningful training, which will normally be expected to lead them towards journeyman-level. The unions, Associated General Contractors (AGC), and the Contractors have voiced concern over the lack of young people seeking employment in the highway construction trades. This, coupled with an aging workforce, could cause us to experience a major shortage of trained highway construction workers in the near future. The industry is already experiencing a shortage of minority and female construction workers in most trades with the only exception being possibly Laborers in some areas. If the Contractors do not voluntarily train as many people as possible with beneficial training, they will have no one to work on contracts, which will affect their bidding ability as well as their business.

Trainee goals will be set in 1,000 increments or 1 slot (person) per 1,000 hours per project. For example, if the trainee goal on the project is 2,000 hours a maximum of 2 trainees will be approved for the project. In the event a trainee leaves the project for valid reasons the trainee shall be replaced as soon as possible. **No apprentice/trainee can be assigned less than 500 hours on a contract.** MoDOT will not assign training on contracts that will not support the 500 hours. **Providing less than 500 hours is not considered to be beneficial training nor helping to achieve journey-level status. Therefore, a trainee/apprentice, regardless of craft, must have been trained on the contract for at least 500 hours to be eligible for reimbursement.** However, the contractor may transfer the trainee, with MoDOT's approval, to another MoDOT highway construction project in order to continue the training. Upon reaching the 500 hours, the contractor will be compensated as noted herein. If the enrollee is transferred to a **non-federal** project, MoDOT, upon availability of funding, may have the option of reimbursing the contractor for those hours completed that achieve the 500-hour minimum and for any hours that continue the successful training of the individual(s). The same documentation will be required to be submitted in order to determine if hours will be approved. However, if the trainee is moved to another federally funded enhancement, then a "change order" could be requester the additional hours and thus offer the Contractor the necessary credit so as to accomplish the 500 hour plateau. FHWA and MoDOT will only approve training programs meeting the requirements of the Training Special Provisions (TSP). A program will be approved if it is reasonably calculated to meet the equal employment opportunity obligations of the Contractor and to qualify the average trainee for journeyman status in the classification concerned by the end of the training period. Furthermore, apprenticeship programs registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau and training programs approved but not necessarily sponsored by the Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training will also be considered acceptable provided it is being administered in a manner consistent with the equal employment obligations of Federal-aid highway construction contracts.

No individual shall be employed as a trainee in any classification in which they have successfully completed a training course leading to journeyman status or in which the individual has been employed as a journeyman. The Contractor shall satisfy this requirement by including appropriate questions in the employee application or by other suitable means. It is the Contractor's responsibility to verify that the

individual has not be trained or worked at the journey level and their records shall document the findings. Training under the TSP should only be directed toward those trades where underutilization/under representation exists. Flagging/traffic control programs are not considered as meeting the intent of the TSP. However, other programs that including flagging training will be approved if the flagging portion is limited.

A contractor may choose to transfer a trainee to another project, whether MoDOT or not. The contractor must submit monthly trainee reports for that project to the RE Office where the hours will be credited. The contractor must submit with the monthly trainee reports, copies of the certified payrolls so the RE Office can verify the number of hours worked on the project, as well as the wage the trainee was being paid. Once the RE reviews the monthly reports, copies of the monthly reports should be sent to the External Civil Rights Division. The RE Office should include with the report a note indicating the hours that are being transferred from the other project. Both job numbers must be included in the note. The contractor cannot bank hours from one project and transfer those hours to another project to fulfill a trainee requirement.

The OJT Program is only intended to be utilized if the contractor is failing to attain the affirmative action goals in its contract, which are determined by the county the project is located. The affirmative action goals are broken down by minority and female goals. If the contractor is meeting or exceeding the minority and female goals in all crafts being utilized on the project, then the OJT requirements are not applicable. If the contractor is not obtaining the minority and female goals in each craft, then the OJT goal will be depended upon the actual participation achieved and the authentic contract as outlined in the contract.

B. Approval Process General

The intended training plan must be submitted **30** days prior to work commencing. Failure to submit the plan will result in withholding of the first monthly progress payment. A written explanation outlining why the delay occurred may be submitted to the External Civil Rights Division for consideration. A revised training plan must be resubmitted when modifications to the plan or schedule occur. The plan must contain the trades proposed in which to accomplish the training item in the contract, the number of trainees, hours assigned to the trade, and the estimated beginning work date for the trainee/apprentice. Acceptable training programs include:

1. BAT Programs – Apprenticeship programs approved by the U.S. Department of Labor, Bureau of Apprenticeship and Training.
2. Any other program, such as the Missouri Manpower Programs, which have been approved by FHWA and MoDOT on an annual basis.

Apprentice/Trainee Approval Forms

Submittal of the TRAINEE NOTIFICATION/APPROVAL/UPGRADE – After the training plan has been approved, the Trainee Approval Form should be submitted prior to the trainee commencing work on the project. It is the intention of these provisions that training is to be provided in the construction crafts rather than clerk-typists or secretarial-type positions. Training is permissible in lower level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. Training in the laborer classification will be permitted only with the approval of the External Civil Rights Division with concurrence from the FHWA Division Office. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training. Reimbursement to the Contractor for off-site training as indicated above may only be made when the Contractor does one or more of the following and the trainees are concurrently employed on federal-aid projects.

- Contributes to the cost of the training.
- Provides the instruction to the trainee.

Pays the trainee's wages during the off-site training period.

Good Faith Efforts (GFE)

Substantial Compliance – Although the OJT Program is specifically designed to increase minority and female participation on federal aid highway construction projects where underutilization exists, it is not intended to be discriminatory. Contractors and subcontractors may utilize a non-minority male apprentice/trainee if sufficient documented good faith efforts are taken to fill the specific training position with either minorities or females. The Contractor shall enroll minorities, women or economically disadvantaged individuals, where possible, and document their good faith efforts, prior to the hiring of non-minority males not identified as economically disadvantaged. The Contractor may suggest that a subcontractor fulfill a portion of the contract work. However, he/she shall determine how many, if any, of the trainees are to be trained by the subcontractor, and secure approval from MoDOT. Never the less, the Contractor shall retain the primary responsibility for meeting the training requirements imposed by this Special Provision. The Contractor shall apply the requirements of this Training Special Provision to such subcontracts. Where feasible, 25% of apprentice or trainees in each craft shall be in their first year of apprenticeship training. The Contractor shall be aware that even if a trainee has been previously approved to work on a prior MoDOT project, that trainee may not be approved on future projects if the trainee is not in their first year of apprenticeship training.

A good faith effort requires that the Contractor furnish evidence of his/her systematic and direct recruitment efforts through the use of public and private sources likely to yield minorities and females. The following, example, represents one element of good faith efforts: The Contractor must submit letters that are project specific (where is the project, how long it will last, type of pay) and targeted for the crafts utilized and must be sent to Community Based Organizations (CBOs) (two or three that are likely to refer minorities or females), and unions/apprenticeships (if union shop). The letters must be forwarded prior to job startup to alert CBOs to the possibility of the Contractor needing assistance finding minorities and females. These letters should be ongoing and targeted when the Contractor needs assistance in locating minorities and/or females in a specific craft. The Contractor's letters should also address anything the Contractor has done to hire minorities and/or females as well as files including employee referrals. The Contractor in his or her letter **must** request a response and the Contractor must note the results of the Contractor's request for assistance. Good faith efforts must be two-way communications with documented results. If a union contractor, contact the union first, then any and all other resources to include two or three CBOs.

The Contractor shall, upon requests, be able to provide documentation of written solicitations to the unions, local or regional community action agencies, or other sources likely to refer minorities or women, such as the St. Louis Agency on Training and Employment or (SLATE), if applicable. Such efforts may be considered good-faith efforts if they were **results oriented**. If the Contractor's efforts are repetitive mechanical exercises that have never produced a referral or are "stuffing" - that is copies of letters not sent, then the non-productive activity cannot be considered to have been made in good faith. If, however, the Contractor can demonstrate that it employed referrals from the sources contacted on prior occasions and some efforts were not productive due to the lack of availability from usually dependable and responsive sources, then the non-productive effort can be considered good faith. In the absence of reasonable representation in any craft, the Contractor should be able to provide proof of its having requested referrals of minorities and women (i.e., records of telephone requests, including dates and times, persons talked with, and for which crafts minorities and women were requested). Letters should be detailed and include the type of vacancy to be filled, location of the project, potential employment opportunities with the company, and current as it relates to the specific job opportunity (ies).

All sources relied upon by the Contractor in advertising for vacancies and recruiting employees, especially those that resulted in referrals and employment should be identified and reported. Lists of minority organizations and other recruiting sources that have not been used or which have not been used recently or which if used have never referred anyone for employment should not be considered to meet the good faith effort test. All efforts reported by the Contractor to contact recruiting sources will be verified

with the recruiting source listed. Contractors often send these recruiting sources "form" letters indicating they are under contract for a federal project. To be considered valid, recruitment letters should be specific. For example, recruitment letters should specify the positions for which referrals are sought, the number of employees needed, position requirements, estimated dates, who to contact, wage/salary range, and other information sufficient to elicit interest and references of potential employees. Form letters without specific information **will not** be considered good-faith efforts.

The terms and conditions of employment practiced by the Contractor should be explored to allow the Contractor the opportunity to demonstrate whether there is adequate representation of minorities and women throughout the life of the contract.

While it is the Contractor's prerogative to select who will be hired, recalled, rehired, or name requested, it is also the Contractor's responsibility to ensure equal employment opportunity for minorities and women.

The hours of minority and female employment and training should be substantially uniform throughout the length of the contract, and in each trade, and the Contractor is required to make a good faith effort to employ minorities and women evenly on each project when there are opportunities to do so. The Contractor should not wait to hire minorities and women at the "eleventh hour" or "bicycle" employees from project to project.

In the event the External Civil Rights Division denies the Good Faith Effort (GFE) submitted by the contractor, the contractor shall have the right to an Administrative Reconsideration Hearing. The request for an administrative reconsideration hearing must be made within seven (7) days of the receipt of the denial letter. The Administrative Reconsideration Committee may be constituted, as MoDOT deems appropriate and fair, provided that no committee member on the Reconsideration Committee shall have taken part in the original MoDOT determination that the contractor failed to meet the OJT contract goal and/or failed to make adequate good faith efforts to do so.

If the Administrative Reconsideration Committee does not find the contractor met the OJT contract goal, and/or does not find that the contractor made adequate and sufficient good faith efforts to do so, then The Administrative Reconsideration Committee will recommend that liquidated damages as outlined in the non-compliance sanctions section below be carried out. If the Administrative Reconsideration Committee does find that the contractor has met a good faith effort (GFE), then no liquidated damages will be assessed.

Ethnicity Verification

When there is a questionable ethnic claim concerning an individual submitted for participation in the OJT Program, further documentation of that claim may be necessary to ensure eligibility. Acceptable documentation for ethnicity verification includes, in order of preference:

- Birth certificate

- Naturalization papers

- Native American – Indian Tribal roll, tribal voter registration certificate, or other official document

- History of individual having held himself to be a member of the minority group or community (driver's license, school, medical, and service records)

- Recognition of applicant in a particular minority community as a minority through sworn and notarized statements from bona fide members of the community who are clearly disinterested parties

- Proof of membership and interaction in recognized minority organizations

If requested, the Contractor will be required to obtain this information from the employee claiming the minority status

If an individual requesting minority status cannot provide acceptable documentation and does not manifest the visual characteristics of the ethnic group claimed, the individual **cannot** claim minority status for the purpose of the OJT Program

If a person manifests the visual characteristics of an acceptable ethnic minority group, the contractor may consider the person to be a member of that group

Economically Disadvantaged Verification

When a contractor submits a trainee who is economically disadvantaged the following information should be submitted with the trainee notification to verify this status.

The previous year's tax return verifying the individual's income is less than the federal poverty guidelines

Verification of enrollment in food stamps received from Missouri Department of Social Services

Verification of housing assistance received from Missouri Department of Social Services

Beneficial Training

MoDOT will ensure its contractors provide on-the-job training aimed at developing or contributing to full journey level status in the type of trade(s) involved. Training shall be consistent with the trainee/apprentice program. Training tasks will be consistent with the approved trade classification for the specific contract. The Contractor shall furnish the trainee a copy of the program the Contractor will follow in providing the training. The Contractor shall provide each trainee and Resident Engineer documentation showing the type and length of training that will be completed include classroom and on-the-job hours. This includes providing information on the monthly trainee report and trainee notification as to the total working and classroom hours the trainee/apprentice has completed to date.

Training Reimbursement Process

Submittal of a certified invoice requesting payment for training is required. Except as otherwise noted herein, the Contractor will be reimbursed \$10.00 per hour of training given an employee on this contract in accordance with an approved training program.

Payments will not be made through a contract adjustment, if the failure to provide the required training is caused by the Contractor and a lack of good faith on the part of the Contractor to meet the training requirements has been determined. For example, if the goal on the project is 1,000 hours and only one trainee reaches the 500 minimum threshold, then the Contractor will be reimbursed for the 500 hours, and must continue to train a new trainee for the remaining 500 hours or they will be assessed liquidated damages for failure to achieve the OJT goal of 1,000 hours. However, if the trainee goal on the project is 1,000 hours and the trainee receive less than the 500-hour minimum, the Contractor will not secure credit for any of the hours under 500 that the trainees completed. If the trainee goal on the project is not met, then the remaining hours will be subject to the sanctions as outlined in this TSP noted below. If a trainee quits the project voluntarily, then the Contractor is required to fill the trainee slot as soon as possible and shall be reimbursed according to these standards. The hours completed by the previous trainee will not be counted toward the new enrollee, if the original unskilled party has not obtained the 500 hours.

Training will not be reimbursed if the Contractor fails to provide beneficial training. This includes only partially meeting the training goal on the project.

Change orders may be submitted to the External Civil Rights Division to increase the Training Hours assigned to a contract. Approval of such requests by the External Civil Rights Division will be granted on a case-by-case basis.

Overrun hours of the training item must not exceed 25% or 500 hours of the contract quantity of hours assigned or 1,000 hours, whichever is less.

This reimbursement will be made even though the contractor receives additional training program funds from other sources, provided those sources do not specifically prohibit the contractor from receiving other reimbursement.

Monitoring

MoDOT will monitor contractors to ensure trainees and apprentices are receiving beneficial training in the type of trades submitted. Training shall be consistent with the training program or those OJT Programs the FHWA and MoDOT have approved.

It is normally expected that the trainee/apprentice will begin training on the project as soon as possible, utilizing the skills involved and remaining on the project as long as training opportunities exist in the work classifications or until the completion of the training program.

Onsite Interviews are performed to determine:

- Whether apprentice/trainee is receiving in designated craft
- Work place environment
- If trainee/apprentice is experiencing problems on the job site
- If the apprentice/trainee is being treated fairly

MoDOT monitors contracts with training through onsite visits, monthly training reports and construction reports. These reports are generated by the Contractor and are to be disseminated to the Resident Engineer Office. If there are problems, the External Civil Rights Division will contact the Contractor to address the deficiencies.

1. If there are deficiencies, the Contractor must provide a corrective action plan addressing the deficiencies.
No payment will be made under the bid item "Training" if the Contractor fails to provide the required training.
Payment will not be made if the Contractor fails to submit trainee reports in a timely manner.

Wages

Trainees will be paid at the rate set by the training program. The appropriate minimum journeyman's rate paid cannot be less than the amounts set out in the 23 CFR Subpart A, Appendix B. For example, at least 60 percent of the appropriate minimum journey person's rate specified in the contract for the first half of the training period, 75 percent for the third quarter of the training period and 90 percent for the last quarter of the training period. The appropriate rates approved by the Department of Labor or Transportation in connection with the existing programs shall apply to all apprentice or trainees being trained for the same classification who are covered by the Training Special Provision.

Reports

The Contractor shall provide for the maintenance of records and furnish monthly reports documenting the Contractor's performance under this provision. All trainee notifications must be submitted prior to the start of the project. If a trainee has been previously approved by MoDOT, the Contractor must still notify MoDOT of the name of the individual(s) and proposed craft the trainees will be trained in, as well as, indicate which project the trainees will be working on. The trainee notifications or listing of the proposed trainees must be submitted via fax, mail or electronically to the ECR Division. If the Contractor fails to submit the trainee notification or list of proposed trainees prior to the onset of the project, the Contractor will be subject to the sanctions as outlined in this OJT TSP. Monthly reports shall include at least the following information:

- Contractor's name and address
- Period, which the report covers
- Job Number, Description, and Federal Aid number
- Information for each employee being trained on the project, including:

- Name
- Social Security Number
- Trade/craft
- Pay percent, based on portion of training complete (if applicable)
- Journeyman's full prevailing wage applicable
- Trainee wage
- Hours this period
- Total trainee hours for the project for this period

Non-Compliance Sanctions

Progress payments shall be withheld for failing to comply with all OJT Program requirements unless MoDOT accepts Good Faith Efforts.

Sanctions (Violations of EEO/OJT Provisions):

When the job is 50% complete the Contractor must have at least 50% of the trainee hours assigned on that job completed. The percentage of job completion is based on the total value of the contract paid to the Contractor. The remaining amount of the hours must be completed before the completion of the project or the Contractor will be subject to liquidated damages unless a GFE is submitted to and approved by the External Civil Rights Division.

If the training hours have not been obtained and a GFE has not been displayed upon project completion, the Contractor will be assessed liquidated damages in the amount of \$20.00 per hour for those hours not realized. For instance, if the project goal was 1,000 hours and only 450 hours were met, then liquidated damages would be assessed at $550 \times \$20.00 = \$11,000.00$.

If the External Civil Rights Division approves a GFE, then liquidated damages will not be assessed.

If the Contractor does not achieve the full OJT goal, they will not receive partial credit for hours completed. For instance, if the goal on the project was 1,000 hours and only 450 were convened, then no reimbursement will be given for any hours fulfilled. If the goal on the project is 2,000 hours and only 1,500 hours are completed and no GFE is demonstrated, the contractor will receive credit for the 1,500 hours and also be assessed liquidated damages in the amount of the 500 hours there were not met.

In the event the Contract exceeds the trainee goal on the project, the Contractor must submit a request to ECR to obtain an extension of hours. The maximum amount of hours beyond those enumerated in the contract cannot exceed 500 hours per 1,000. For instance, if the goal was 1,000, the Contractor can be granted an extra 500 hours subject to the **advance** approval of the ECR Division, and concurrence from the FHWA.

Trainee reports must be submitted following the last pay period of the month. Failure to timely submit the reports, hours completed during that month will not be credited. In the cases of voluntary or involuntary trainee termination or when the trainee completes the hours specified in the program, the contractor must complete the trainee completion form within five working days. The Contractor's failure to submit the proper reports in a timely manner may result in the loss of reimbursement for the training hours for that month.

Failure to satisfactorily comply with the OJT requirements will also be reflected in the contractor's performance evaluation.