

## **TRAINING PROVISION**

**1.0 Description.** This provision supplements subparagraph 7(e) of the Contract Provision entitled "Standard Federal Equal Opportunity Construction Contract Specification" (Executive Order 11246)", and in the implementation of CFR Part 230, Subpart A, Appendix B.

**2.0 Training Requirements.** As part of the contractor's equal employment opportunity affirmative action program, training shall be provided as follows.

**2.1** The contractor shall provide on-the-job training aimed at developing full journeymen in the type of trade or job classification involved.

**2.2** The number of trainee hours to be provided under this provision will be specified in the bidding documents.

**2.3** Trainee goals will be set in 1,000 hour increments or 1 slot (person). 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. 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 requested for 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.

**2.4** When a contractor subcontracts a portion of the contract work, the contractor shall determine how many, if any, of the trainee hours are to be trained by the subcontractor, provided, however, that the contractor shall retain the primary responsibility for meeting the training requirements imposed by this provision.. The contractor shall also insure this training provision is made applicable to such subcontract. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training.

**2.5** The number of trainee hours shall be distributed among the work classifications on the basis of the contractor's needs and the availability of journeymen in the various classifications within a reasonable area of recruitment. Prior to commencing construction, the contractor shall submit to the engineer for approval a trainee notification for each individual they intend to train on the project. The contractor will be credited for the hours worked by each trainee employed on the contract work who is currently enrolled or becomes enrolled in an approved program and will be reimbursed for such trainees as provided hereinafter. If the trainee goal on the project is 1,000, no more than two trainees will be approved for the project. Each individual must complete at least 500 hours before reimbursement or hour will be counted towards meeting the goal. In the event a trainee leaves the training program prior to completing the minimum 500 hours the External Civil Rights Division will determine if that individual can be replaced on the project.

**2.6** Training and upgrading of minorities and women toward journeyman status is a primary objective of this provision. Accordingly, the contractor shall make every effort to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent that such persons are available within a reasonable area of recruitment. The contractor shall be responsible for demonstrating the steps taken in pursuance thereof, prior to a determination as to whether the contractor is in compliance with this provision. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

**2.7** No employee shall be employed as a trainee in any classification in which the employee has successfully completed a training course leading to journeyman status or in which the employee 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. Regardless of the method used the contractor's records shall document the findings in each case.

**2.8** The minimum length and type of training for each classification will be as established in the training program selected by the contractor and approved by the engineer and FHWA. 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 of apprenticeship 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 the training is being administered consistent with the equal employment obligations of Federal-aid highway construction contracts.

**2.9** Approval or acceptance of a training program shall be obtained from the engineer prior to beginning work on the classification covered by the program. 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 will be permissible in lower level management positions, such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications and must be approved by FHWA. Training in the laborer classification may be permitted, provided significant and meaningful training is provided and approved by the engineer. Some offsite training will be 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.

**2.10** Except as otherwise noted below, the contractor will be reimbursed \$10.00 per hour of training given an employee in the contract in accordance with an approved training program. As approved by the engineer, reimbursement will be made for training persons in excess of the number of trainee hours specified in the contract. Reimbursement will be made even though the contractor receives additional training program funds from other sources, provided such other sources do not specifically prohibit the contractor from receiving other reimbursement. Reimbursement for offsite training indicated above may only be made to the contractor when the trainees are concurrently employed on a federal-aid project and the contractor does one or more of the following, and contributes to the cost of the training, provides instruction to the trainee, or pays the trainee's wages during the offsite training period. In order to receive the reimbursement the trainee must complete at least 500 hours on the project

**2.11** No payment will be made to the contractor if either failure to provide the required training or failure to hire the trainee as a journeyman is caused by the contractor and evidences a lack of good faith on the part of the contractor in meeting the requirements of this provision. It is normally expected that a trainee will begin training on the project as soon as feasible after start of work, utilizing the skill involved and remain on the project as long as training opportunities exist in the trainee's work classification or until the trainee has completed the training program. It is not required that all trainees be on board for the entire length of the contract. The contractor's responsibilities under this provision will be fulfilled if the contractor has provided acceptable training for the number of trainee hours specified.

**2.12** Trainees shall be paid at least 60 percent of the appropriate minimum journeyman'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, unless apprentices or trainees in an approved existing program are enrolled as trainees on this project. In that case, the appropriate rates approved by the U.S. Department of Labor or Transportation in connection with the existing program will apply to all trainees being trained for the same classification who are covered by this provision.

**2.13** Contractor may choose to transfer trainee hours worked on 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.

**2.14** 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.

**2.15** 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  $550 \times \$20.00 = \$11,000.00$ .

**2.16** 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 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.

**2.17** If the Administrative Reconsideration Committee does not find the contractor met the OJT contract goal, and/or does not find 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 sections of the OJT Training Special Provision will 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.

**2.18** 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 completed, 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.

**2.19** The contractor shall furnish to the trainee a copy of the training program the contractor will follow in providing the training. The contractor shall provide each trainee and the resident engineer with a certification showing the type and length of training satisfactorily completed.

**2.20** The contractor shall provide for the maintenance of records and furnish monthly reports documenting the contractor's performance under this provision. Monthly reports shall include at least the following information:

Contractor's name and address

Period that 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
- Cumulative hours for the project

Total trainee hours for the project for this period

Cumulative trainee hours for the project

**2.21** 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.