

## Training Special Provisions (TSP)

This On-the-Job Training (OJT) Program was created by the Federal Highway Administration (FHWA) and the Nebraska Department of Roads (NDOR) to fulfill the Training Special Provisions requirements of federal-aid construction contracts (23 CFR 230, Appendix B to Subpart A). The purpose of the provision is to address the under-representation of minority and female workers in the construction trades through the assignment of OJT training goals. Therefore, the training and upgrading of minorities and women toward journeyman status is a primary objective of this Training Special Provision.

Accordingly, the contractor shall make every effort to enroll minority and women trainees (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.

All contractors will be responsible for demonstrating the steps that they have taken to recruit minority and women trainees prior to a determination as to whether the contractor is in compliance with this Training Special 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. The contractor shall provide on-the-job training aimed at developing full journey-level status in the type of trade or job classification involved. The number of training hours under this Training Special Provision will be assigned to each contractor as set forth below.

1. Under the NDOR Contractor-Specific On-the-Job Training (OJT) Program, OJT hours will be assigned to contractors and will not be contract or project specific, except as noted in paragraph "a." below.
  - a. Contractors who have not received an OJT assignment and are awarded a federally funded project let by NDOR will be required to fulfill the number of OJT hours as identified in each contract. The number of training hours to be provided under this contract shall be: \_\_\_\_\_ hours.

A contractor who has received an OJT assignment will be allowed to provide training on any NDOR-let project on which the contractor is working as either a prime contractor or a subcontractor. A contractor will have the flexibility to transfer trainees from one project to another after providing notification of the transfer to NDOR.

2. In January each year, NDOR will allocate OJT assignments to contractors based on the total average dollar amount of all work performed by a contractor on NDOR-let projects during the previous three (3) calendar years. The total dollar amount will consist of:
  - a. The total dollar amount of the contractor's prime contracts let by NDOR (both federal and state funded) minus the total dollar amount of the work subcontracted out to others, and
  - b. The total dollar amount of the subcontract work the contractor performed for others on NDOR-let projects.

The contractor's average dollar amount for the previous three calendar years will be calculated, and training hours will then be assigned as follows:

<u>Three Year Average</u>	<u>Training Assignments</u>
Under \$2,500,000	0 hours
\$2,500,000 to 5,000,000	1,000 hours
Over \$5,000,000 to 7,500,000	1,500 hours
Over \$7,500,000 to 10,000,000	2,000 hours
Over \$10,000,000 to 15,000,000	3,000 hours
Over \$15,000,000 to 20,000,000	4,000 hours
Over \$20,000,000 to 25,000,000	5,000 hours
Over \$25,000,000 to 30,000,000	6,000 hours
Over \$30,000,000 to 40,000,000	8,000 hours
Over \$40,000,000 to 50,000,000	10,000 hours
Over \$50,000,000 to 60,000,000	12,000 hours
Over \$60,000,000	15,000 hours

Example: Contractor A, who averaged \$28.66 million, would be assigned 6,000 hours of OJT. Contractor B, who averaged \$10.33 million, would be assigned 3,000 hours of OJT. Contractor C, who averaged \$2.26 million, would not be assigned any OJT hours.

	2011	2012	2013	3 Year Average	2014 OJT Assignment
Contractor A	24.3	33.4	28.3	28.66	6,000 hours
Contractor B	9.3	11.9	9.8	10.33	3,000 hours
Contractor C	2.3	1.4	3.1	2.26	0 hours

3. The OJT hours assigned to a contractor in January are to be completed during that calendar year (e.g., OJT hours assigned in January of 2014 are to be completed during the period of January 1, 2014 thru December 31, 2014).
  - a. If a contractor exceeds the number of OJT hours assigned for a calendar year, the contractor may request to bank up to 30 percent of the excess hours. Banked hours may then be credited toward the contractor's OJT assignment for the next calendar year.
4. A contractor who has not received an annual OJT assignment and is required to provide OJT on a contract-specific basis cannot receive credit for any OJT hours provided by any other contractor working on the project who has received a contractor-specific OJT assignment.
5. Completion of the annual OJT assignment is the contractor's responsibility. The contractor is not allowed to assign any of the OJT hours to any other contractor. The contractor must make a good faith effort to enroll an adequate number of trainees and provide the trainees a sufficient number of hours training to achieve the contractor's annual OJT assignment.
6. While trainees may be assigned to NDOR-let federally or state funded projects, the contractor should attempt to schedule and assign trainees so that at least 50 percent of a trainee's hours are earned on federally funded projects - unless otherwise approved in advance by NDOR.

7. The contractor must use an OJT program approved by NDOR and/or the FHWA. An OJT Program shall be approved if it is reasonably calculated to meet the equal employment opportunity obligations of the contractor and qualify the average trainee for journey-level status in the job classification concerned by the end of the training period. An approved OJT Program must specify the number of hours required for a trainee to achieve journey-level status in each job classification. 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 U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, shall also be considered acceptable provided they are being administered in a manner consistent with the equal employment obligations of federal-aid highway construction contracts.
8. The contractor shall furnish each trainee a copy of the OJT Program he/she will follow in providing the training. The contractor shall also provide each trainee with a certification showing the type and length of training satisfactorily completed.
9. The contractor's Equal Employment Opportunity (EEO) Officer shall be responsible for administering the contractor's OJT and monitoring the trainees' progress. The EEO Officer shall serve as the point of contact for NDOR regarding OJT information, documentation, and conflict resolution. If necessary, the EEO Officer may designate another individual to assist with the OJT monitoring responsibilities. NDOR must be provided the name and contact information for any such designee.
10. At least seven (7) days prior to commencing training, the contractor must submit a "Request for Trainee Approval" form to NDOR for each individual to be enrolled as a trainee and a tentative list of the projects to which the trainee will be assigned. Requests for Trainee Approval may be submitted by mail, fax, or e-mail.
11. If the contractor submits a "Request for Trainee Approval" form to NDOR for an individual who is not a minority or female, or cannot replace departing trainees with minorities or females, the contractor must also produce sufficient Good Faith Efforts documentation of the type set forth below. NDOR may reject non-minority male trainees for entry into the program if it determines that a contractor failed to make sufficient Good Faith Efforts to hire minorities or female trainees and/or the contractor failed to document or submit evidence of its Good Faith Efforts to do so.
12. Any training hours provided to a trainee prior to the contractor receiving approval from NDOR will not be credited toward the contractor's annual OJT assignment.
13. When an individual is first enrolled as a trainee, the individual will be approved for the number of hours of OJT required to achieve journey-level status in the classification for which the individual is to receive training. (A contractor will not be penalized if a trainee does not achieve the full number of hours for which the trainee is approved.)
14. If the contractor is unable to provide a trainee the full number of training hours required to achieve journey-level status on one project, the trainee should be transferred to other NDOR-let projects on which the contractor is working.

15. No individual may be employed as a trainee in any classification in which they have successfully completed training leading to journey-level status or in which they have been employed at journey-level. No individual may be employed as a trainee in any classification with a lower skill level than any classification in which they have successfully completed training leading to journey-level status or in which they have been employed at journey-level (e.g., an individual who has achieved journey-level status as an equipment operator may not be trained as a laborer). The contractor should 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 should document the findings in each case.

An individual may be trained in multiple classifications that require relatively equal skill levels but different skill sets (e.g., an individual who has received training as a milling machine operator may also receive training as a roller operator, or a scraper operator, etc.). Preferably, an individual should have achieved journey-level status in a classification before beginning training in another classification.

The contractor must request and receive approval from NDOR for an individual to receive training in a classification other than the classification for which the individual was originally approved. Any training hours provided prior to receiving approval from NDOR will not be credited toward the contractor's annual OJT assignment.

16. Training shall be provided in construction crafts rather than clerk-typist or secretarial-type positions. Training is permissible in positions that are not assigned to a specific project such as office engineers, estimators, timekeepers, shop mechanics, etc. if the selected OJT program includes these classifications. Training in such positions will not be eligible for reimbursement, but will be eligible to be credited toward the contractor's annual OJT assignment.
17. Some off-site training is permissible as long as the training is an integral part of an approved OJT program and does not comprise a significant part of the overall training (e.g., 16 hours training per trainee per year in areas such as jobsite safety or accident response would be permissible). A copy of a training certificate, agenda, or curriculum must be provided to verify off-site training.
18. The contractor will be reimbursed \$2.00 per each hour of training provided in accordance with an approved OJT program and the NDOR Training Special Provisions.
19. Contractors shall be allowed to transfer trainees or utilize trainees on other NDOR-let projects which do not contain the Training Special Provisions. NDOR will utilize a Change Order / Supplemental Agreement to incorporate the Training Special Provisions and the appropriate pay item into the contracts of such projects.
20. On all federally funded NDOR-let projects, trainees must be paid at least 60 percent of the appropriate minimum journey-level rate specified in the contract for the first half of the training period, 75 percent for the third quarter, and 90 percent for the last quarter of the training period - or the appropriate rates approved by the U.S. Department of Labor or the U.S. Department of Transportation in connection with the program in which the trainee is enrolled.

21. In order to document and evaluate a trainee's progress toward journey-level status, the contractor must provide NDOR at the end of each month a "Special Training Provision Monthly On-The-Job Training Report" listing each trainee, the project(s) on which the trainee worked for hours, and the number of hours trained during the month.

NOTE: The monthly reporting requirements may change if/when on-line reporting is implemented by NDOR.

22. If a trainee's employment is terminated for any reason prior to completion of the number of OJT hours for which the individual was approved, the contractor must make Good Faith Efforts to replace the trainee with another minority or female.
23. Contractors will have fulfilled their OJT responsibilities if they have provided acceptable training for the number of hours assigned, or have demonstrated that they made a good faith effort to provide the number of OJT hours assigned. Where a contractor cannot meet his or her annual training hour goal with females and minorities, the contractor remains responsible for demonstrating the Good Faith Efforts taken in pursuance of the goal. Examples of what actions constitute Good Faith Efforts are set forth below. NDOR will make compliance determinations regarding the Training Special Provisions based upon either attainment of the annual goal or Good Faith Efforts to meet it.
24. Good Faith Efforts are those designed to achieve equal opportunity through positive, aggressive, and continuous results-oriented measures (23 CFR §230.409(g)(4)). Good Faith Efforts should be taken as trainee hiring opportunities arise and when minorities and women are under-represented in the contractor's workforce. NDOR will consider all contractors' documentation of Good Faith Efforts on a case-by-case basis and take into account the following:
  - a. Availability of minorities, females, and disadvantaged persons for training;
  - b. The potential for effective training;
  - c. Duration of the contract;
  - d. Dollar value of the contract;
  - e. Total normal work force that the average contractor could be expected to use;
  - f. Geographic location;
  - g. Type of work;
  - h. The need for journey level individuals in the area.

Good Faith Efforts may include, but are not limited to, documentation of efforts to:

- Contact minority and female employees to gain referrals on other minority and female applicants;
- Refer specific minorities and females to training programs and specifically request these trainees by name in the future;
- Upgrade minority and female unskilled workers into the skilled classifications when possible;
- Accept applications at the project site or at the contractor's home office;

- Review and follow up on previously received applications from minorities and females when hiring opportunities arise;
- Maintain monthly evaluations that monitor efforts made to achieve diversity in the contractor's workforce in general (i.e., significant numbers of minorities and females employed on a company wide basis);
- Provide incentives for project management personnel or superintendents when hiring goals are met on a project (i.e., similar to performance bonuses paid when a job is completed in a timely manner and under budget).

25. Liquidated damages will be assessed the contractor for failure to demonstrate a good faith effort to achieve their full OJT assignment or for failure to demonstrate a good faith effort to achieve their full OJT assignment with minority and women trainees.

Liquidated damages will be assessed at the rate of \$4.00 per hour for the number of OJT hours not achieved or, even if achieved, the number of OJT hours in which the contractor fails to demonstrate good faith efforts to hire minorities and women. (e.g. If the contractor was assigned 3,000 hours but only achieved 2,000 hours and did not demonstrate a good faith effort, the liquidated damages would be assessed at 1,000 hours x \$4.00 = \$4,000.00.)

26. NDOR will invoice a contractor for liquidated damages assessed as a result of the contractor's failure to demonstrate a good faith effort to achieve the number of OJT hours assigned.

The contractor's failure to promptly pay any invoice for liquidated damages may result in the contractor being disqualified to bid work with NDOR for a time period determined by the Director/State Engineer.

27. At the end of the calendar year, if the dollar amount of work the contractor performed on NDOR-let projects is substantially below the three-year average upon which the contractor's OJT assignment was based, the contractor's OJT goal for that year may be adjusted according to the table in paragraph 2 above.

#### AMENDMENT TO CONSTRUCTION TRAINING REPORT REQUIREMENTS

The last sentence under Paragraph C, on Page 5 of the Standard Federal Equal Employment Opportunity Construction Contract Specifications dated November 3, 1980 is void. FHWA Form 1409 "Federal-aid Highway Construction Contractor's Semi-Annual Training Report" is not required.