

TRAINING SPECIAL PROVISIONS (1-8-0420)

The Nebraska Department of Transportation (NDOT) Contractor-Specific On-the-Job Training (OJT) Program (NDOT OJT Program) was created by the NDOT and Federal Highway Administration (FHWA) and is administered by the NDOT Highway Civil Rights Office (HCRO) to fulfill the Training Special Provisions (TSP) requirements of federal-aid construction contracts as set forth under *Code of Federal Regulations Title 23, Part 230, Subpart A, Appendix B* (23 CFR Part 230). The purpose of the TSP 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 the NDOT OJT Program.

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 good faith efforts (GFE) that they have made to recruit minority and women trainees prior to a determination as to whether the contractor is in compliance with the TSP and the NDOT OJT Program.

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. However, no employee shall be employed as a trainee in any classification in which he or she has successfully completed a training course leading to journeyman status or in which he or she has been employed as a journeyman.

The NDOT OJT Program in fulfillment of the TSP is implemented and administered as set forth below:

1. NDOT will assign OJT hours on a contractor basis annually for each calendar year.

A contractor who has received an OJT assignment will be allowed to provide training on any NDOT-let project, whether federally or state funded, on which the contractor is working as either a prime contractor or a subcontractor.

This project does not have a contract-specific training requirement. NDOT has added a training pay item with a nominal 100-hour quantity, that may overrun or underrun, which will be utilized only if the Contractor elects to provide training on this contract.

2. In January each year, NDOT will allocate OJT assignments to each contractor based on the average annual dollar amount of all work performed by a contractor on NDOT-let projects over the previous 3 calendar years. This averaged amount will include work performed as a prime contractor, minus any amounts subcontracted out, together with work performed as a subcontractor to another prime contractor.

Once a contractor's average annual dollar amount of contracts awarded over the previous 3 calendar years has been calculated, training hours will be assigned to them according to the following table:

<u>Three Year Average</u>	<u>OJT Hours Assigned</u>
Under \$5,000,000	None
\$5,000,000 to \$6,500,000	1,000
Each additional \$1,500,000	+500

Example: Contractor A, who averaged \$28.66 million, would be assigned 8,500 hours of OJT. Contractor B, who averaged \$10.33 million, would be assigned 2,500 hours of OJT. Contractor C, who averaged \$1.9 million, would not be assigned any OJT hours.

	2014	2015	2016	3 Year Average	2017 OJT Assignment
Contractor A	24.3	33.4	28.3	28.66	8,500 hours
Contractor B	9.3	11.9	9.8	10.33	2,500 hours
Contractor C	1.7	1.4	2.6	1.9	0 hours

3. The annual OJT hours assigned to a contractor are to be completed during that calendar year, i.e. by the end December 31 of the assignment year.
4. Completion of the annual OJT assignment is the contractor's responsibility. The contractor is not allowed to assign or otherwise transfer or credit OJT hours to or from any other contractor or subcontractor. The contractor must make GFE 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.
5. 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.
6. If a contractor believes they will not be able to complete their annual OJT assignment, they must submit a written request to the NDOT HCRO seeking an adjustment to or exemption from their current OJT assignment. The request must show cause for why the adjustment or exemption should be granted. Such cause may include, but is not limited to the following: absence of sufficient work on NDOT-let contracts in the assignment year; changes to the scope or scheduling of an NDOT-let contract; availability of employees eligible for training; and other circumstances demonstrated to be beyond the contractor's control. Demonstration of GFE must also be provided upon request.

After receiving from a contractor all available and relevant information the NDOT HCRO deems necessary to making a determination on the request, the NDOT HCRO will issue its determination within 7 days. The determination will be considered final and not administratively appealable. If a request is denied, the contractor will be responsible for completing the original OJT assignment. If a request is approved, the contractor will be responsible for completing the revised OJT assignment. If additional and relevant information is found or a relevant

change in the contractor's circumstance occurs after the determination, the NDOT HCRO may, at its discretion, reconsider the determination and the terms thereof.

7. While trainees may be assigned to NDOT-let federally or state funded projects, the contractor must make GFE 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 the NDOT HCRO.
8. The contractor must use an OJT training program approved by the NDOT and/or FHWA. An OJT training 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 training 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.
9. The contractor shall furnish each trainee a copy of the OJT training 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.
10. 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 the NDOT regarding OJT information, documentation, and conflict resolution. If necessary, the EEO Officer may designate another individual to assist with the OJT monitoring responsibilities. The NDOT must be provided the name and contact information for any such designee.
11. At least 7 days prior to commencing training, the contractor must submit a *Request for Trainee Approval* form to the NDOT HCRO 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 email.
12. If the contractor submits a *Request for Trainee Approval* form to the NDOT HCRO 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 GFE documentation of the type set forth below. The NDOT HCRO will reject non-minority male trainees for entry into the program if it determines that a contractor failed to make sufficient GFE to hire minorities or female trainees and/or the contractor failed to document or submit evidence of its GFE to do so.

13. Any training hours provided to a trainee prior to the contractor receiving approval from the NDOT HCRO will not be credited toward the contractor's annual OJT assignment.
14. If a trainee completes their training, or is no longer employed by the contractor, or is otherwise unavailable or ineligible for training, the contractor must notify the NDOT HCRO. The contractor may then submit a replacement trainee but must make GFE to enroll a minority or female trainee.
15. 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.)
16. 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 NDOT-let projects on which the contractor is working.
17. A contractor may transfer trainees from one NDOT-let project to another as needed or desired. No prior approval from the NDOT HCRO is required.
18. 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 the NDOT HCRO 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 the NDOT HCRO will not be credited toward the contractor's annual OJT assignment.

19. 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.

20. 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.
21. The contractor will be reimbursed \$2.00 per each hour of training provided in accordance with an approved OJT training program, the NDOT OJT Program and the TSP.
22. Contractors shall be allowed to transfer trainees or utilize trainees on other NDOT-let projects that do not contain the Training Special Provisions. NDOT will utilize a Change Order/ Supplemental Agreement to incorporate the Training Special Provisions and the appropriate pay item into the contracts of such projects.
23. On all federally funded NDOT-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.
24. In order to document and evaluate a trainee's progress toward journey-level status, the contractor must, at the beginning of each month, provide the NDOT HCRO a *Training Special Provision Monthly On-The-Job Training Report* form for each project on which training occurred the previous month. The form will list each trainee and indicate the number of hours he or she trained on the project during that month, and will confirm the trade or job classification in which the OJT training was performed and the wage the trainee received.

Note: The monthly reporting requirements may change if/when on-line reporting is implemented by NDOT.
25. 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 GFE 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 GFE taken in pursuance of the goal. Examples of what actions constitute GFE are set forth below. The NDOT HCRO will make compliance determinations regarding the NDOT OJT Program and TSP based upon either attainment of the annual goal or GFE to meet it.

26. Good faith efforts are those designed to achieve equal opportunity through positive, aggressive, and continuous results-oriented measures (23 CFR 230.409(g)(4)). GFE should be taken as trainee-hiring opportunities arise and when minorities and women are under-represented in the contractor's workforce. The NDOT HCRO will consider all contractors' documentation of GFE on a case-by-case basis and take into account the following:

- Availability of minorities, females, and disadvantaged persons for training;
- The potential for effective training;
- Duration of any applicable contract;
- Dollar value of any applicable contract;
- Geographic location;
- Type of work;
- The need for journeyman level individuals in the work type or trade area;
- Total workforce the average contractor could be expected to use.

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;
- Collaborate with workforce development centers, supportive services programs and other employment and on-the-job training programs to identify and recruit minority and female applicants;
- 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).

27. Failure by the contractor to demonstrate GFE to achieve their full OJT assignment or for failure to demonstrate GFE to achieve their full OJT assignment with minority and women trainees, may result in remedies as the NDOT deems appropriate, which may include, but are not limited to:
- Withholding monthly progress payments;
 - Assessing sanctions; and/or
 - Disqualifying the contractor from future bidding as non-responsible.
28. The established per hour unit price for the item "Training" shall be full compensation for all costs incurred, which includes but is not limited to providing the necessary supervision, labor, equipment, tools, and material. Any additional costs due to payment of wages in excess of the minimum rates specified and for the payment of any fringe benefits shall not be paid for directly, but shall be considered subsidiary to the items for which direct payment is made.

AMENDMENT TO CONSTRUCTION TRAINING REPORT REQUIREMENTS (1-8-0420)

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.

NDOT OJT Program Contact Information

NDOT HCRO - OJT
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Lincoln, NE 68509-4759
Email: ndot.hcro-ojt@nebraska.gov
Phone: 402-479-4514 / 402-479-4531
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NDOT OJT Program Forms

Copies of the *Request for Trainee Approval* form (NDOT Form 103) and *Training Special Provision Monthly On-The-Job Training Report* form (NDOT Form 298) are provided below but can also be downloaded from the NDOT website at: <https://dot.nebraska.gov/business-center/civil-rights/>.