

**NEW MEXICO DEPARTMENT OF TRANSPORTATION
ON-THE-JOB TRAINING PROGRAM SPECIAL PROVISION
September 1, 2020**

I. PROGRAM DESCRIPTION

A. Purpose

The On-The-Job Training (OJT) Program is administered by the New Mexico Department of Transportation (NMDOT) Construction and Civil Rights Bureau (CCRB). The NMDOT created the OJT Program Special Provision to fulfill the Training Special Provision requirements of Federal-aid construction contracts included in 23 CFR 230, Appendix B to Subpart A. The OJT Program's purpose is to address the underrepresentation of minority and female workers in the construction trades through the assignment of training goals. The primary objective of the OJT Program is the training and promotion of minority and female workers.

B. Program Summary

The OJT Program fulfills its objective by: (1) fostering long-term relationships between Contractors and trainees, (2) encouraging Contractors to assist trainees in achieving certification in a skilled classification, and (3) offering Contractors abundant flexibility in fulfilling their training obligations. Contractors may assign eligible trainees enrolled in an approved training program, as outlined in Section II A below, to any construction project on which the Contractor is a prime or subcontractor, including non-NMDOT projects.

Contractors shall make every effort to meet their training goals by enrolling minority and female trainees. When a Contractor cannot meet its training goal, it is responsible for demonstrating the Good Faith Efforts made to meet the goal. Examples of what actions constitute Good Faith Efforts are set forth in Section III below. NMDOT will make compliance determinations regarding the OJT Program based upon either attainment of the training goal or Good Faith Efforts made.

No employee shall be employed as a trainee in any classification in which they have already successfully completed a training course or in which they have already been employed. Contractors shall satisfy this requirement by including appropriate questions in the employment application or by other suitable means. Regardless of methods used, Contractor records shall document the findings in each case. Such records shall be available for inspection by authorized representatives of NMDOT and the Federal Highway Administration (FHWA).

C. Annual Training Goal

Contractors will receive a notification listing their assigned OJT Program training goals by September 1, 2020. Contractors are assigned training goals based on the dollar amount

awarded to the Contractor as an NMDOT Federal-aid prime Contractor during the previous state fiscal year (July 1 – June 30). The number of trainees required is based on annual contract amounts as illustrated in the following table:

Average Annual Contract Amounts		Trainees Required
\$220,000,000.01	and above	10
\$195,000,000.01	to \$220,000,000.00	9
\$170,000,000.01	to \$195,000,000.00	8
\$145,000,000.01	to \$170,000,000.00	7
\$120,000,000.01	to \$145,000,000.00	6
\$95,000,000.01	to \$120,000,000.00	5
\$70,000,000.01	to \$95,000,000.00	4
\$40,000,000.01	to \$70,000,000.00	3
\$25,000,000.01	to \$40,000,000.00	2
\$10,000,000.00	to \$25,000,000.00	1

Training hours may be accrued during the 15 month period from October 1, 2020 through December 31, 2021. Training hours cannot “roll-over” from the end of one program year to the following program year.

The Contractor must develop an action plan to fill the assigned training spots by October 1, 2020. The Contractor must have one or more trainees enrolled in the program by January 1, 2021. Should a Contractor not have any individuals enrolled by January 1, 2021, the following information must be provided to the NMDOT:

1. Contractor’s action plan
2. explanation as to why the Contractor has not yet enrolled a trainee(s)
3. list of recruitment sources utilized

While NMDOT strongly encourages Contractors to independently participate in the OJT Program, only those Contractors who have reached the above-mentioned thresholds are required to participate and are bound by the OJT Program provisions. Contractors assigned a training goal may pay trainees the wages allowed in the approved training program, which may be less than the minimum pay rate for the classification. Contractors not assigned an annual training goal but still utilizing trainees on a Federal-aid project, will not be reimbursed for training hours under the OJT pay item.

II. PROGRAM REQUIREMENTS

A. Use of Approved Training Program

The NMDOT recognizes four types of Contractor based training programs. Those programs are: (1) Contractor in-house training programs that have received prior approval from both FHWA and NMDOT, (2) training programs approved in other states subject to proof of approval, (3)

the approved Workforce Development Program provided by ACNM, and (4) the New Mexico Department of Workforce Solutions' State Apprenticeship Council programs (i.e., union apprenticeships, if contract employees are eligible). Contractors using approved apprenticeship programs will be deemed to have met the OJT requirements. If a Contractor chooses to use a training program other than one of the four mentioned above, the Contractor must have the program approved by the FHWA and NMDOT prior to commencing work.

All training programs must be administered in a manner consistent with the equal employment obligations of Federal-aid highway construction contracts. When an approved training program does not provide a specific ratio, the ratio of trainees to journeymen shall, pursuant to 23 CFR 230.111(c)(10), fall between 1:10 and 1:4. The NMDOT reserves the right to request documentation that the program fulfills these obligations.

B. Wage Requirements and Contractor Reimbursement

Contractors must pay each approved trainee, at a minimum, the appropriate percentage of the journeyman wage rate based on the approved training program and consistent with applicable Federal and State regulations and guidance. Contractors must ensure that each trainee does not exceed the maximum number of training hours required for completion of the selected training program. Upon graduation, trainees shall be paid at least the prevailing wage that corresponds with their classification.

Except as otherwise noted below, NMDOT will reimburse the Contractor 80 cents per hour of training given an employee on a State or Federal-aid project in accordance with an approved training program. Reimbursements will be made upon submission to and approval by the Project Manager of a request for change order with the properly completed OJT Program Monthly Reporting Forms attached. Reimbursement will not be made for trainee hours exceeding the maximum number of training hours required for the completion of the selected classification in the training program.

C. Reporting Requirements

Contractors must submit the following documents to the administrator of the approved training program, the NMDOT CCRB, and, for NMDOT Federal-aid projects, to the Project Manager:

1. Form A-2201, Contractor OJT Enrollment Form, within seven business days of the Contractor's intent to assign a trainee to a project.
2. Form A-2202, OJT Program Monthly Reporting Form, on or before the 10th of each month, reporting on the preceding month.
3. For NMDOT Federal-aid projects, form A-2203, OJT Program Labor Classification Request within seven business days of the Contractor's intent to assign a trainee to a project.

4. Form A-2204, OJT Program Annual Reporting Form, following the end of the program year, Contractors shall submit to the NMDOT an Annual Summary Report by January 20, 2022. The report must give an accurate account of all trainee hours; identifying each trainee by name, gender, ethnicity, and identifying each project and/or contract the trainee hours are attributed.

Contractors should also note that:

- a. Monthly reports submitted after January 10, 2022 will not be accepted or considered toward goal attainment for the previous calendar year.
- b. If a Contractor did not attain their annual goal, they must submit, with the Annual Summary Report, documentation of Good Faith Efforts to attain the goal (see Section III below).

D. Contractor Participation

The Contractor shall assign a representative to be responsible for monitoring and administering trainee progress. This individual shall serve as the point of contact for NMDOT representatives regarding information, documentation, and conflict resolution. The Contractor shall furnish each trainee a copy of the training program and other documentation related to the training program. The Contractor shall furnish to each trainee, upon successful completion of their training program, a certificate showing the type and length of training satisfactorily completed.

III. GOOD FAITH EFFORTS

If a Contractor does not or cannot achieve its annual training goal, they must produce documentation of Good Faith Efforts. Good Faith Efforts are any efforts made in an attempt to reach a Contractor's assigned training goal. The NMDOT will consider Contractor documentation of Good Faith Efforts on a case-by-case basis.

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

- Enroll trainees early during the allowable training period.
- Enroll more trainees than are required by the designated training goal.
- Replace trainees that have resigned or been terminated within 30 days.
- Notify the NMDOT of any issues regarding the recruitment of eligible trainees.

IV. NMDOT PROGRAM MONITORING

A. Site Visits

The NMDOT may conduct periodic site visits to review OJT Program compliance along with other contract compliance issues related to the project. The NMDOT will make every effort to ensure minimal disruption of the project.

B. End of Year Audits and Sanctions for Non-Compliance

The NMDOT will perform an end of year audit of each Contractor to verify attainment of their training goal. If a Contractor, through its Annual Summary Report, can demonstrate they attained their training goal or made adequate Good Faith Efforts to do so, the NMDOT will find the Contractor compliant with the OJT Program requirements.

If a Contractor has neither attained its goal, nor submitted adequate documentation of Good Faith Efforts, the NMDOT will issue a Show Cause Notice outlining its findings of non-compliance and/or provide its determination of sanctions. Within 30 days of receiving the Show Cause Notice, the Contractor may submit a written response to the Show Cause Notice providing evidence in opposition to the NMDOT findings of non-compliance and/or its determination of sanctions.

If a Contractor fails to submit a written response to the Show Cause Notice within the specified period, or the written response to the Show Cause Notice does not cause the NMDOT to change its findings of non-compliance and/or its determination of sanctions, the NMDOT will issue its Final Order to the Contractor regarding non-compliance and the assessment of sanctions.

Sanctions for non-compliance may include, but are not limited to: liquidated damages, suspension of any payment in whole or in part, termination or cancellation of contracts in whole or in part, and/or suspension or debarment of the Contractor.

FOR FURTHER INFORMATION, PLEASE CONTACT:

Joe Knight, OJT Program Coordinator
Tel. 505-629-6981, joseph.knight@state.nm.us
New Mexico Department of Transportation
Construction and Civil Rights Bureau
1570 Pacheco St, Ste A10
Santa Fe, NM 87505