

**NEW MEXICO DEPARTMENT OF TRANSPORTATION  
ON THE JOB TRAINING PROGRAM AND SPECIAL PROVISION  
September 16, 2015**

**I. PROGRAM DESCRIPTION**

**A. Purpose**

The New Mexico Department of Transportation (NMDOT) created its On the Job Training Program and Special Provision (OJT Program) to fulfill the Training Special Provision requirements of federal-aid construction contracts included in 23 CFR 230, Appendix B to Subpart A. The purpose of the OJT Program is to address the underrepresentation of minority and female workers in the construction trades through the assignment of OJT goals. To that end, the primary objective of the OJT Program is the training and upgrading of minorities and females to journeyman status on NMDOT federal-aid contracts.

**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 fully attaining journeyman status, and (3) offering contractors abundant flexibility in fulfilling their training obligations. The OJT Program assigns contractors an annual training goal based on past dollar amounts awarded to the contractor as an NMDOT federal-aid prime contractor.

Contractors may assign approved trainees to any construction project on which the contractor is a prime, including non-NMDOT projects, as long as the majority of training hours are assigned on NMDOT projects. Contractors may also assign trainees to be trained by subcontractors on any project, so long as the prime contractor retains the primary responsibility for fulfilling its federal-aid training requirements.

Contractors shall make every effort to meet their OJT Program goals by enrolling minority and female trainees (i.e. by conducting systematic and direct recruitment through public and private sources likely to yield minority and female trainees) to the extent that such persons are available within a reasonable area of recruitment. When a contractor cannot meet its annual training goal with minorities and females, it is responsible for demonstrating its Good Faith Efforts taken 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 annual goal or the Good Faith Efforts to meet it.

**C. Annual Training Goal**

Each contractor cumulatively awarded ten million dollars or more as a prime contractor on NMDOT federal-aid projects during the previous state fiscal year (July 1 of one year through June 30 of the next year) is assigned and shall commit to an annual training goal according to the contractor's cumulative award amount. The following table details the number of trainees that must achieve certification in their training classification.

| Average Annual Estimates (Range) Contract Amounts |    |                  | Trainees Required |
|---|----|------------------|-------------------|
| Over \$220,000,00.01                              |    |                  | 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                 |

The NMDOT Construction and Civil Rights Bureau will notify contractors assigned an annual training goal prior to the beginning of the reporting period within which they must participate. While NMDOT strongly encourages contractors to independently provide on the job training on their projects, only those contractors who have reached the above-mentioned threshold are required to participate in and are bound by the provisions of the OJT Program.

## II. PROGRAM REQUIREMENTS

### A. Use of Approved Training Program

NMDOT recognizes four types of contractor based training programs. Those programs are: the New Mexico Department of Workforce Solutions' State Apprenticeship Council programs (e.g. union apprenticeships, if the contract employees are otherwise eligible); Federal Highway Administration (FHWA) and NMDOT approved contractor in-house training programs; training programs approved in other states subject to proof of approval; and the approved Workforce Development Program provided through the Associated Contractors of New Mexico (ACNM). If a contractor wants to use a training program other than one of the four mentioned above, the contractor must have the program approved by NMDOT and FHWA 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. NMDOT reserves the right to request documentation that a program fulfills these obligations. Contractors must ensure that each trainee does not exceed the maximum number of training hours required for the completion of the selected training program.

### B. Wage Requirements

Contractors must pay each approved trainee at the appropriate percentage of journeyman's wage rate based on the approved training program and consistent with applicable State and Federal regulations and guidance.

### C. Reporting Requirements

Contractors must submit the following documents to the Project Manager and the NMDOT Office of Equal Opportunity Programs:

1. Contractor shall complete and submit Form A-2201, Contractor OJT Enrollment Form, within seven business days of the contractor's intent to assign trainee(s) to a project.
2. Contractors shall complete and submit Form A-2202, OJT Program Monthly Reporting Form, on or before the 10<sup>th</sup> of each month, reporting on the preceding month.

Contractors shall submit to the NMDOT Office of Equal Opportunity Programs an Annual Summary Report by January 20<sup>th</sup> of the following calendar year. The report must give an accurate account of all trainee hours; identifying each trainee by name, ethnicity and gender and identifying each project and/or contract and the trainee hours attributed thereto.

Contractors should also note that:

- a. Monthly reports submitted after January 10<sup>th</sup> of the following year will not be accepted or considered towards goal attainment for the previous calendar year.
- b. If a contractor did not attain its annual goal, it must submit, with its Annual Summary Report, documentation of its Good Faith Efforts to attain the goal (see Section III below).

Contractors should only submit paperwork for individuals accepted and enrolled in an NMDOT approved training program and not for individuals participating in other training and apprenticeship programs.

#### **D. Contractor Participation**

The contractor's Equal Employment Opportunity Officer (EEO Officer) shall be responsible for monitoring and administering the trainees' progress. The EEO Officer 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 further make every reasonable effort to provide training that develops skills as required by 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.

#### **E. Contractor Reimbursement**

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 receipt of a certified payroll that shows the related payroll numbers, the name of the trainee, and total hours trained under the program. Reimbursement will not be made for training in excess of the annual goal. Reimbursement will not be made for a trainee's hours that exceed the maximum number of training hours required for the completion of the selected training program.

### **III. Good Faith Efforts**

If a contractor does not or can not achieve its annual training goal with female or minority trainees, it must produce adequate Good Faith Efforts documentation. Good Faith Efforts are those efforts designed to achieve equal opportunity through positive, aggressive, and continuous result-oriented measures. (23 CFR 230.409(g)(4)). Good Faith Efforts should be taken as trainee hiring opportunities arise. Whenever a contractor requests NMDOT approval of someone other than a minority or a female for credit towards its annual training goal, the contractor must submit documented evidence of its Good Faith Efforts to fill that position with a minority or female.

NMDOT will consider all contractors' documentation of Good Faith Efforts on a case-by-case basis, and take into account the following:

- Availability of minorities and females for training;
- The potential for effective training;
- Duration of the contract;
- Dollar value of the contract;
- Total normal work force that the average bidder could be expected to use
- Geographic location;
- Type of work;
- 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;
- Upgrade minority and female unskilled workers into the skilled classifications when possible;
- Accept applications at the project site or at the contractor's office;
- Review and follow up on previously received applications from minorities and females when hiring opportunities arise;
- Maintain evaluations that monitor efforts made to achieve diversity on federal-aid projects and the contractor's workforce in general (i.e. significant numbers of minorities and females employed on a company wide basis);

NMDOT may reject utilization of non-minority male trainees for credit toward meeting the annual goal if it determines that the 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 Effort to do so.

## **IV. NMDOT PROGRAM MONITORING**

### **A. Site Visits**

NMDOT will conduct periodic site visits to a contractor's worksite to review OJT Program compliance along with other contract compliance issues related to the project. NMDOT will make every effort to ensure minimal disruption to a contractor's work.

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

NMDOT will perform an end of year audit of each contractor to verify attainment of the annual OJT goal. If a contractor, through its Annual Summary Report, can demonstrate that it attained its annual OJT Program goal or made adequate Good Faith Efforts to do so, then NMDOT will determine that the contractor is in compliance with the OJT Program requirements.

If a contractor has neither attained its goal nor submitted adequate Good Faith Efforts documentation, NMDOT will issue a Show Cause Notice outlining its findings of non-compliance and providing its determination of sanctions attributed thereto. Within thirty (30) days of receiving the Show Cause Notice, the contractor may submit a written response to the Show Cause Notice providing argument and 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 NMDOT to change its findings of non-compliance and/or its determination of sanctions, NMDOT will issue its Final Order to the contractor regarding the non-compliance and assessing 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 MORE INFORMATION CALL OR WRITE:**

New Mexico Department of Transportation  
Office of Equal Opportunity Programs  
1596 Pacheco Street, Suite 107  
Santa Fe, New Mexico 87505  
1-800-544-0936