

CDOT Civil Rights

On-the-Job Training Manual



**Civil Rights &
Business Resource
Center**

Fall 2018

For project-specific questions, please contact:

Region 1: Kathy Williams, Regional Civil Rights Manager

kathy.williams@state.co.us

(303) 757-9386

Region 2: Sabrina Hicks, Regional Civil Rights Manager

sabrina.hicks@state.co.us

(719) 546-5432

Region 3: Karl Lehmann, Regional Civil Rights Manager

karl.lehmann@state.co.us

(970) 683-6211

Region 4: Juliet Sheets, Regional Civil Rights Manager

juliet.sheets@state.co.us <https://www.codot.gov/business/civilrights/ojt/pac-up>

(970) 350-2156

Region 5: Jason Benally, Regional Civil Rights Manager

jason.benally@state.co.us

(970) 385-1403

For programmatic inquiries, please contact:

Mónica Vialpando, Construction Contracts Compliance Specialist

monica.vialpando@state.co.us

(720) 668-0367

Erik Lacayo, Alternative Delivery Contracts Compliance Specialist

erik.lacayo@state.co.us

(303) 757-9060

Anna Mariotti, Civil Rights Compliance Supervisor

anna.mariotti@state.co.us

(303) 757-9493

Erica Downey, OJT Supportive Services (RISE)

erica.downey@state.co.us

(303) 512-4144

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Updated 2018 OJT Spec

<https://www.codot.gov/business/designsupport/cdot-construction-specifications/2017-construction-standard-specs/rev-ssp/rev-misc/ojt.docx/view>

2018 Local Agency Not Using LCPtracker OJT Spec

<https://www.codot.gov/business/designsupport/cdot-construction-specifications/2017-construction-standard-specs/rev-ssp/rev-misc/ojt-2018-la/view>

CDOT PAC-UP Classifications

<https://www.codot.gov/business/civilrights/ojt/pac-up>



Introduction

This training special provision is an implementation of 23 U.S.C. 140 (a), a federal requirement to provide equal opportunity and training on Federal-Aid construction projects. The Contractor shall meet the requirements of the FHWA 1273 for all apprentices and trainees. CDOT's On-the-Job Training Program (OJT) seeks to train and upgrade all entry level individuals, focusing on minorities, women, and other disadvantaged persons to ensure that a competent workforce is available for construction projects. The following goals are associated with 23 U.S.C. 140(a) and the CDOT OJT Project Special provision:

1. Ensure that non-discrimination and equal opportunity exist on federally assisted highway jobs;
2. Provide training to and upgrade minorities and women toward journey-level status;
3. Increase the construction labor pool.

At all times during the course of the project, the Contractor shall meet the requirements of the FHWA 1273 for all apprentices and trainees (for the purposes of this Manual, all references to "trainees" also includes apprentices). After construction work has been completed on the CDOT project, CDOT will analyze the number of approved OJT hours that have accumulated toward the project goal. If the Contractor meets the goal and submits the required documentation, the Contractor is compliant with their OJT requirements. If the Contractor does not meet the goal, a request to waive or amend the number of required hours (CDOT Form 1336) must be approved by CDOT to avoid a disincentive. If the number of required hours toward the OJT goal is not met, and no modifications or waivers have been approved, CDOT may assign a disincentive to the Contractor.

Goal Setting

CDOT's Region Civil Rights Offices will set OJT goals for every Federal-Aid CDOT construction project. Project OJT goals will be set based on the criteria that is outlined in the 23 CFR Part 230, Appendix B to Subpart A:

1. Availability of minorities, women, and disadvantaged persons for training;
2. The potential for effective training;
3. Duration of the contract;
4. Dollar value of the contract;
5. Total normal workforce that the average bidder could be expected to use;
6. Geographic location;
7. Type of work;
8. The need for journey-level workers in the area;
9. Recognition of the state's goal;
10. A satisfactory ratio of trainees to journey-level workers is expected to be on the workforce.

The number of required training hours will be shown in the contract. The following chart provides guidelines based on contract value, but the required number of hours will be determined by CDOT after consideration of the aforementioned variables.

Contract Dollar Value	Training Hours to Be Provided on the Contract
Up to \$1M	0
>\$1M-\$2M	320
>\$2M-\$4M	640
>\$4M-\$6M	1280
>\$6M-\$8M	1600
>\$8M-\$12M	1920
>\$12M-\$16M	2240
>\$16M-\$20M	2560
Each \$5M increment thereafter	1280

Training Plan Options

The plan options are:

1. CDOT's pre-approved classifications utilization program (PAC-UP);
2. A registered U.S. Department of Labor training program or apprenticeship program;
3. Approved programs through other groups like Colorado Contractors Association (CCA) and Western Colorado Contractors Association (WCCA) and workforce centers;
4. CDOT- and FHWA-approved plans specific to the Contractor.

The minimum length and type of training for each skilled craft shall be as established in the training program selected by the Contractor.

Contractors will recruit, select, and monitor trainees to be trained through the OJT program. Once they have identified enrollees, the appropriate plan(s) will be identified. Contractors may choose either one or more approved plans to reach the contract goal.

When one or more approved plans is/are chosen, the Contractor shall submit the OJT Contractor Commitment to Meet OJT Requirements, CDOT Form 1337, at the pre-construction meeting or as soon as possible thereafter to the CDOT Project Engineer. Additional pre-approved training programs and/or additional approved trainees may be utilized at any point throughout the project. The plan option(s) that the Contractor chooses will be effective for the duration of the project.

Journey-Level Worker to Trainee Ratio

The OJT goal requirement shall be met through an approved trainee or apprentice working on the CDOT project under the supervision of a journey-level worker. For the CDOT Pre-Approved Training Programs (PAC-UP), the apprentice/trainee ratio to journey-level worker shall not exceed a one to one ratio, and a Contractor will not exceed 25% of the workforce as apprentices/trainees at any time. Furthermore, it is at CDOT's discretion that a stricter ratio guideline may be imposed as outlined in the specific training classification. For all other approved programs, the apprentice/trainee ratio shall be as outlined in the specific program. When apprentices/trainees are on the job without proper supervision, they shall be paid full Davis-Bacon wages.

Trainee Selection

When selecting a trainee, Contractors must consider the two main goals for the OJT program overall:

1. Contractors recruit and train entry-level individuals or individuals who will be working within new classifications and guide them toward journey-level status in that specific classification. A trainee will not be approved in any classification for which they have already obtained journey-level status.
2. Primary consideration is for the Contractor to use minorities, women, and disadvantaged persons to fulfill the trainee roles, and as such, the Contractor will make every effort to enroll such individuals in the program by using “systematic and direct recruitment through public and private sources.”

The consideration to include women and minorities is based on the regulation; however, it will not be used to systematically deny any one person or group from the opportunity to be a part of the OJT program. CDOT may reject non-minority male trainees for entry into the program if it determines that a Contractor failed to make sufficient Good Faith Efforts (GFE) to hire minorities or female trainees and/or the Contractor failed to document or submit evidence of its GFE to do so. The CDOT Region Civil Rights Office will consider a Contractors’ documentation of all GFE on a case-by-case basis and will take into account the items listed in the goal setting section of the CDOT OJT Specification. For more information, please see Section 11 of the OJT specification, or contact your Regional Civil Rights Office.

Trainee Approval

As a condition of the OJT program, the Contractor (Prime or or sub) will:

1. Notify all employees at the start of employment and at least once per year about the available training programs and eligibility requirements. Contractors shall document that this information was conveyed to and received by employees.
2. Provide each trainee with a copy of his or her enrollment form (if applicable) and the training program within a month of starting the chosen plan.

CDOT OJT form submittals (CDOT Forms 1337, 832, 838) shall be filled out completely by the Contractor, submitted to the CDOT Project Engineer, and approved or rejected by the Region Civil Rights Office within ten business days. If and when approved, the CDOT Region Civil Rights Office will add the forms to LCPtracker and will notify the participating Contractor of the approval or rejection. CDOT recognizes that there will be some Local Agency projects that have OJT goals and tracking but are not using the LCPtracker system. Those projects will follow the previous OJT specification dated from 2011 and that information will be tracked manually by Contractors and reviewed

by the Region Civil Rights Offices. CDOT personnel will send the approved 838 to the CDOT Project Engineer. If more information is required for any project, the Region Civil Rights Office will reach out to the Contractor through email or by phone and copy the CDOT Project Engineer. If there is no response from the Contractor within five additional business days, the forms will be denied and sent back to the Contractor. If the forms are denied by CDOT, the Contractor may re-submit documents for approval, and it will again follow the same time frame for approval. All of the above stipulations are per DOL Regulations. (<https://www.dol.gov/whd/programs/dbra/faqs/trainees.htm>)

“In the event employees reported as apprentices or trainees on a covered project have not been properly registered within the meaning of the Regulations and the contract stipulations, or are utilized at the job site in excess of the ratio to journey-level workers permitted under the approved program, they must be paid the applicable wage rates for laborers and mechanics employed on the project performing in the classification of work they actually performed.”

If the apprentice/trainee is working within any one of the proposed classification(s) before approval is granted, full Davis-Bacon prevailing wages will be paid to the individual.

The Regional Civil Rights Office must approve the CDOT Form 838 prior to any of the hours counting toward the OJT goal. If there is a CDOT delay that is completely outside of the Contractor’s responsibility for approval of the apprentices/trainees, and if approval is ultimately granted, the date that will be utilized will be ten business days after the date that the Contractor submitted CDOT Form 838. The Region Civil Rights Office will make an effort to prioritize review of the CDOT Form 838.

If there is no OJT goal for a project, CDOT will not require the submission of OJT-related forms.

The Contractor shall retain full responsibility for meeting the training requirements imposed by the special provision associated with this manual.

Training Provisions and Trainee Monitoring

Contractors will provide the trainee with a copy of the program requirements and training plan to be followed. A Contractor’s representative (supervisor, manager, or other designee) will evaluate progress for the trainee monthly using the CDOT Form 832 which the Contractor will submit to the project engineer monthly. Each trainee will be given a copy of the CDOT Form 832 within 30 calendar days. This evaluation should include what the trainee did well and what needs to be improved. The signed copy will be completed manually or electronically and once approved by the CDOT

Project Engineer, the Region Civil Rights Office will upload the signed forms into the Edocs (electronic documents) section in LCPtracker. For those local agency projects that are not using LCPtracker, the local agencies and regions will follow the previous 2011 version of the On-The-Job Specification, and manual tracking will take place.

For the PAC-UP program, a trainee can graduate in either a module or craft area. The two craft areas are Heavy Equipment and Structures.

Module Graduation

The completion of each pre-approved classification is one module. For each module graduation, the Contractor will print out a copy of the hours obtained by the trainee and will present it to the trainee with a certificate that can be obtained through LCPtracker.

Craft Area Graduation

To graduate from a craft area, each employee will need to meet 3100 hours using the different classifications. The Contractor will work with CDOT to ensure that the trainee has met the requirements of the entire craft area by providing hours and certificates of the previous module graduation.

For all other programs, graduation will be obtained when the trainee reaches the number of hours specifically outlined in the Contractor's selected program. Contractors will print a certificate from LCPtracker and submit it to the CDOT HQ Civil Rights Office for tracking and reporting.

Craft Area: Heavy Equipment

Asphalt Distributor Operator, Asphalt Plant Operator, Asphalt Paving Machine Operator, Asphalt Screed Operator, Backhoe Operator, Bobcat/Skidsteer Operator, Broom/Sweeper Operator, Bulldozer Operator, Concrete Paver Operator, Crane Operator, Drill Operator, Excavator Operator (Under and Over 50,000 pounds), Front End Loader Operator, Milling (Planing) Machine, Motor Grader Operator, Roller Operator, Scraper, Truck Driver Operator (Multi-Rear Axle)

Craft Area: Structures

Form Setter, Form Builder, Ironworker, Welder, Bridge Carpenter

Eligible Work Activities that Count Toward the Training Goal

For all Federal-Aid projects in which the OJT special provision is included, the work hours that are completed on the site of work and per the training documents for approved trainees in approved classifications and programs will apply toward the

project goal. Hours for work performed outside the individual's approved training classification will not count toward the project OJT goal and the individual shall be paid full applicable prevailing wage. For more information, see DOL Fact Sheet #66:

“Contractors and subcontractors must pay laborers and mechanics employed directly upon the site of the work at least the locally prevailing wages (including fringe benefits), listed in the Davis-Bacon wage determination in the contract, for the work performed.”

Job shadowing can apply toward the project goal if it is written into the specific training plan. For a Contractor who is using CDOT's PAC-UP training program, job shadowing can apply toward the project goal when the approved employee is performing within the “Observation” part of the Observation and Orientation CDOT pre-approved Classifications (hours vary by classification). Non-CDOT project hours will not be accepted toward the project goal.

Although US DOL apprenticeship programs can use the reduced wages for any CDOT job with approval, none of these “additional” hours may be banked or included for use as part of the required special provisions on any other project other than that for which it was approved.

A Prime Contractor may count OJT hours accomplished by a subcontractor toward the project goal with an approved plan. The subcontractor's trainee or apprentice, who is enrolled in any of the approved OJT programs in meeting a project's OJT goal hours, can count toward the project's OJT goal to satisfy the requirement of the OJT specification. A subcontractor who chooses to participate in meeting the OJT goal will follow the same process as the Prime Contractor in terms of approving apprentices/trainees, submitting forms, etc. The Prime Contractor retains the full responsibility for meeting the training requirements imposed by the OJT special provision.

Trainee Wages

The Contractor may pay trainee wages at a reduced rate for those trainees that are in an approved program according to the following guidelines:

US DOL Apprenticeship Programs

Rates (at minimum) will be paid according to the scaled adjustments for registered US DOL Apprenticeship programs. Fringe benefits (either in cash and/or bona fide benefits in lieu of cash) will be paid in full and as outlined by the bargained agreement. If fringe benefits are not mentioned as part of a bargained agreement or if there is no collectively bargained agreement, full fringe benefits will be paid as outlined through the US DOL wage decision. Approved US DOL apprenticeship programs can use the reduced wages for any CDOT job with approval.

If the project does not have a training goal and the Contractor is seeking to pay apprenticeship rates as part of a registered US DOL Apprenticeship Program, the following documentation is required: program registration, OA (formerly BAT) certificates, and collective bargaining agreement including the wage sheet.

Other Approved Programs

For all other OJT wage reductions, the reduced percentages are allowed for projects where there is a goal greater than zero as outlined in 23 CFR Appendix B to Subpart A of Part 230 (as described in this section), in the collectively bargained agreement, or as outlined in the specific plans. If choosing to pay the trainee rates, the reduced percentage will be based only on the base rate of pay. The full fringe amount (either in cash or benefit) will be paid at 100% of the journey-level wage. If the apprentice/trainee is working within the proposed classification before approval is granted, full Davis-Bacon wages will be paid to the trainee.

The minimum trainee wage (base and fringe) shall be no less than \$13.00 per hour.

Trainees will be paid at minimum:

First half of the training period -- at least 60 percent of the appropriate minimum journey-level rate

Third quarter of the training period - at least 75 percent of the appropriate minimum journey-level rate

Last quarter of the training period -- at least 90 percent of the appropriate minimum journey-level rate

Contractor Reporting

Contractors will keep all data associated with the trainees and the project for a period of at least three years from the closing date of the contract.

Reimbursement to Contractors

For the purposes of reimbursement, the CDOT Region Civil Rights Office will determine whether a Contractor has satisfied its responsibilities under the OJT specification by fulfilling the acceptable number of training hours. Contractors will be reimbursed at a rate of \$10 per hour per (approved) apprentice/trainee for all OJT hours worked in approved classifications up to the project goal. For local agency projects with OJT goals, the local agency may elect to follow the OJT Specification dated July 29, 2011



and use traditional paper payroll submission which provides a reimbursement rate of \$2.00 per hour for all approved trainees and apprentices for all hours worked, or the local agency may elect to follow the new OJT Specification, which utilizes LCPTracker and provides a reimbursement rate of \$10 per hour per (approved) apprentice/trainee. The Contractor will be reimbursed for no more than the amount outlined in the OJT Force Account budget.

OJT Good Faith Efforts

CDOT recognizes two explanations of Good Faith Efforts:

- 1) The Contractor will be required to prove an effort has been made to achieve a diversified workforce, but has not yet been accomplished, or
- 2) The attempt has been made to meet the number of required OJT hours by using approved trainees or apprentices in approved classifications utilizing approved plans, but the Contractor cannot meet the required number of hours.

In either case, a GFE process will be required, and the Region Civil Rights Office will make the determination.

If a Contractor does not meet its OJT project goal with the inclusion of some female and/or minority trainees, the Contractor may be requested to produce documentation of adequate Good Faith Efforts taken to fill that position with a minority or female applicant. Good Faith Efforts are designed to achieve equal opportunity through positive, assertive, and continuous result-oriented measures. Good Faith Efforts should be taken as hiring opportunities arise.

If the Contractor does not meet its project goal the Contractor may provide documentation to the Project Engineer so that the Project Engineer may submit a CDOT Form 1336, Waiver Request for Contract's OJT Hours, to the Region Civil Rights Office. On the form, the Contractor will outline and submit all Good Faith Efforts made, should the Contractor anticipate that the required number of training hours will not be met. If a GFE is not demonstrated and approved, Contractors will be subject to payment reductions outlined in the Contractor Disincentives Section of this Manual. This process can occur at any time during the life of the project when it is believed the Contractor will not achieve the OJT project goal. Region Civil Rights Offices shall take into consideration timeliness of documents submitted by the Contractor and approval or denial by the Region Civil Rights Office when evaluating Good Faith Efforts.

If a good faith effort has been denied by CDOT, the Contractor may ask for reconsideration by the Region Civil Rights Manager and the Resident Engineer for the region where work is being performed. Additionally, if requested by the Contractor, the Region Civil Rights Office and the Project Engineer shall meet with the Contractor to discuss the Contractor's initial Good Faith Effort determination.

Contractor Disincentives

A failure to provide the required training without the demonstration and approval of GFE to meet the project OJT goal may result in the Region Civil Rights Office assigning the following disincentive:

Total number of hours not met in the contract multiplied by the journey worker hourly wages plus fringe benefits [(hours not met) x (dollar per hour + fringe benefits)] = disincentive amount.

In order to obtain the disincentive amount, the journey worker wages will be figured using the classifications outlined on the CDOT Form 1337. Subcontractor classifications will not be taken into account for this disincentive assignment. If a single classification is noted on the submitted CDOT Form 1337, then that one wage will be used to figure the monetary amount owed. If multiple classifications are used, then the journey worker wages of all classifications will be used to determine an average wage rate. If the Contractor does not submit any documentation toward the OJT goal, the disincentive rate will be calculated at \$30.00 per hour. CDOT will provide the Contractor a written notice at the final acceptance stage of the project informing them of the noncompliance with this specification which will include a calculation of the disincentive(s) to be assessed.

Contractor Dispute Process

If a Contractor does not comply with CDOT's contract compliance rules and processes and there is no resolution between parties, escalation steps may be taken, and the the Contractor may exercise their rights pursuant to CDOT's Dispute Resolution process. The following are examples of situations that could require escalation:

- Not Meeting the OJT goal; Not Approved for a Waiver or Amendment to the Goal If a Contractor is not successful or is likely not going to be successful in meeting the OJT goal on the project, there should be immediate communication with CDOT project personnel. Every effort should be taken to meet the OJT goal, but if it cannot be met, the Contractor will utilize the process outlined in Section 11, Part B of the updated specification. If there are extenuating circumstances as to why the Contractor could not meet the goal, and the Region Civil Rights Office has not approved the waiver or amendment of an OJT goal, escalation may occur.
- A Disincentive Has Been Applied
If a Contractor has been assigned a disincentive for not meeting the required OJT goal on the project, and the Contractor feels that the amount is unfairly applied, escalation may occur.



- The Contractor Feels that They Have Been Treated Unfairly

If a Contractor believes they have been treated unfairly regarding the application of the OJT specification, GFE, or associated disincentives, they should begin by communicating with CDOT project personnel. Should the proposed resolution be insufficient, the Contractor may escalate to the Region Civil Rights Manager and Resident Engineer. If further escalation is needed, the Contractor may contact the Program Engineer and Region Transportation Director and include all previous communication in that escalation.

Questions?

Contact your Region Civil Rights Office

OR

dot_compliance@state.co.us

(303) 757-9234

crbrc.org

Connect2DOT

info@connect2dot.org

(720) 720-624-6728

connect2dot.org



www.connect2dot.org

Disputes