

## CHAPTER 18 – AFFIRMATIVE ACTION PROGRAMS

All Agency Contracts with Federal-aid funding may include up to three (3) different Affirmative Action programs. These programs include:

1. Disadvantaged Business Enterprise (DBE)
2. Equal Employment Opportunity (EEO)
3. On-the-Job Training (OJT)/Apprenticeship

Each program will be addressed separately in this chapter.

Other programs, such as the Tribal Employment Rights Organization (TERO), may be incorporated into appropriate Projects.

For Projects that do not include Federal-Aid funds, the Agency may include an OJT Program requirement.

If you have questions regarding any of these programs, consult the Civil Rights Specialist (CRS), in the applicable ODOT Region, or call the [Office of Civil Rights \(OCR\)](#) at (503) 986-4350.

Regional Civil Rights Specialists contact information:

Region 1 (Portland) - (503) 731-4560  
Region 2 (Salem) - (503) 986-4356  
Region 3 (Roseburg) - (541) 957-3698  
Region 4 (Bend) - (541) 388-6065  
Region 5 (LaGrande) - (541) 962-0568

At the Pre-Construction Conference (Pre-Con), the Project Manager (PM) should address the requirements of each of the Affirmative Action programs included in the Project. The PM may request the CRS to assist in this. [*Refer to Chapter 11 - Before On-Site Work Can Begin*]

The PM must address the issue of how well the Contractor fulfilled its Affirmative Action requirements when completing the required Prime Contractor Performance Evaluation. [*Refer to Chapter 34 - Contractor Performance Evaluation*]

### **18-1 DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM**

The Contractor must comply with all requirements of the DBE Supplemental Required Contract Provisions that are included in the Contract. Those provisions must also be

incorporated into all Subcontracts for DBEs. The DBE policy statement must also be included in all subcontracts.

The OCR establishes the assigned minimum DBE participation goal for each Project.

For projects on which a DBE Goal greater than zero has been assigned, each Bidder must submit the DBE Commitment Certification and Utilization Form included in the Bid Packet, or proof of good faith effort, with their Bid. Approval of the DBE Commitment is a condition of award for projects with federal funding where a goal greater than zero has been included in the Bid requirements. All Bidders must submit a [Subcontractor/Supplier Solicitation and Utilization Form, form 734-2533](#), to OCR within ten days of Bid closing, regardless of whether there is a DBE goal on the project or not. In addition, the winning Bidder must submit a [Committed DBE Breakdown and Certification, form 734-2531](#), within ten days of Notice of Intent to Award.

The OCR will send a copy of the approved Committed DBE Breakdown and Certification form to the PM. It is the PM's responsibility to ensure that the DBE commitment is fulfilled during the life of the Project.

The PM must secure the concurrence of the OCR before the PM consents to a subcontract that involves a DBE. .

For each subcontract that involves any part of the DBE Commitment, the PM must verify that the subcontract includes all of the Work assigned to the DBE Subcontractor as listed on the DBE Commitment. If any of the subcontracted items involve only a portion of a bid item, verify that the subcontract includes a specific definition of the Work to be done by the DBE, and that it conforms to the DBE Commitment.

#### **(A) Commercially Useful Function (CUF)**

The PM or Project Inspector must perform a Commercially Useful Function (CUF) evaluation of each DBE working on the Project, whether or not the DBE is part of the DBE Commitment. The PM will need to complete a [Disadvantaged Business Enterprise Commercially Useful Function Form 3B, Form 734-2165](#), (See Exhibit 18(A)) and submit it, along with any other needed information, to the CRS. The CRS may also perform CUF reviews as determined necessary.

The PM, or Project Inspector will need to perform the CUF review at the following milestones during the Project:

- Early in the DBE's Work, when it is performing one or more of its subcontracted items of work, but before the DBE's peak performance period has passed;
- At the DBE's peak of operations,
- Whenever a change in the performance of the DBE occurs;
- Whenever a replacement or substitution of a DBE occurs; and

- Whenever a substitution or Change Order changes or affects the Work to be accomplished by the DBE.

When completing the required Prime Contractor Performance Evaluation, the PM must address whether the Contractor had any CUF violations. [*Refer to Chapter 34 - Contractor Performance Evaluation*]

The DBE Supplemental Required Contract Provisions also recite the requirements of ORS 279C.580, requiring the Contractor to pay each of its Subcontractors within 10 days after it received payment from the Agency.

The Contractor must complete and submit to the PM a [Subcontractors Paid-Summary Report, form 734-2536](#), after each payment is received from the Agency on each Federal-Aid Project, certifying payments made to all Subcontractors. The PM will forward the completed Subcontractor Paid-Summary Report forms to the CRS. The PM must initiate any corrective action needed to prevent violations of the DBE Program.

If a DBE is in need of assistance in bidding/estimating, business development, or technical and project management, refer them to the [OCR, Small Business Programs Manager](#) at (503) 986-4355.

## **18-2 EQUAL EMPLOYMENT OPPORTUNITY (EEO) PROGRAM**

The Contractor, and all of its Subcontractors, must comply with the requirements of the Required Contract Provisions Federal-Aid Construction Contracts (FHWA 1273), On-Site Workforce Affirmative Action Requirements for Women and Minorities on Federal-Aid Contracts, and the Equal Employment Opportunity Provisions included in all contracts with Federal-Aid funding.

Select OTIA III and Portland tri-county Projects may also include Equal Employment Opportunity-Aspirational Target Provisions:

The Agency is seeking to increase participation rates statewide to fourteen percent (14%) for women and fourteen (14%) percent for minorities by 2012. In the Portland tri-county area, the Agency will seek to increase participation rates to fourteen (14%) percent for women and twenty percent (20%) for minorities. More information on the ODOT Workforce Program is available on the OCR website at:

<http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/> OR

[http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/contractor\\_workforce.shtml](http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/contractor_workforce.shtml)

The goal of these requirements is to assure that women and minorities are adequately represented in construction work.

## **(A) EEO Reports**

By the 5<sup>th</sup> of each month, the Contractor and all Subcontractors with subcontracts of \$10,000 or more, must complete and submit a [Monthly Employment Utilization Report \(MEUR\), Form 731-0394](#), (See Exhibit 18(B)), or a [Monthly Employment and Apprenticeship Utilization Report \(MEAUR\), Form 731-0505](#), (See Exhibit 18(C)) as required by the supplemental provisions. Each Contractor or Subcontractor must complete and submit the form for each calendar month whether work was performed or not. A calendar month begins on the 1<sup>st</sup> and ends on the last day of the month.

The PM shall ensure that each Contractor and Subcontractor has submitted the completed reports by the 5th of each month. The PM must forward the completed forms, along with a completed [Project Manager's Monthly EEO Report \(optional\), Form 734-3858](#), (See Exhibit 18(D)) to the CRS by the 10<sup>th</sup> of each month.

## **18-3 ON-THE-JOB / APPRENTICESHIP TRAINING REQUIREMENTS**

The OCR determines whether to apply the On-the-Job Training (OJT) requirements or the Reimbursable Federal On-the-Job and Apprenticeship Training on a project-by-project basis.

OJT requirements include a specific number of positions as shown in the Special Provisions, along with a bid item for OJT hours. The number of positions and the number of hours must be met.

Reimbursable Federal On-the-Job and Apprenticeship Training requirements are set as a specific number of hours as a bid item with a set bid item price. The Contractor is reimbursed for qualified hours worked up to 150% of the bid item. If the Contractor fails to meet the bid item quantity, the “no payment” clause in Section 8 of the Special Provisions will be enforced.

It is the practice of the OCR to solicit feedback from the PM when assigning an OJT requirement to a Project.

### **(A) Apprentice vs Trainee**

An “Apprentice” is defined as a person dispatched to work through a Joint Apprenticeship and Training Committee (JATC). Employees identified as Apprentices may be verified by requesting a copy of the dispatch slip from the Contractor. Apprentices may be paid reduced wages and fringe benefits as called for by the JATC. Attach a copy of the dispatch slip to the first certified payroll on which the Apprentice appears.

A “Trainee” is defined as a person enrolled in a standardized training program (commonly called In-House Training Programs) approved and monitored by the Agency

and FHWA for Projects which include Federal-Aid funding only. The currently approved In-House Training Programs are:

- Carpenter Trainee
- Cement Mason Trainee
- Ironworker Trainee
- Utility Trainee
- Construction Assistant

Trainees enrolled in In-House Training Programs must be paid full prevailing wages and fringe benefits.

## **(B) Traditional OJT Requirements**

The PM is responsible for ensuring the OJT requirement is fulfilled. Contact the CRS for assistance.

### **(1) Pre-Construction Conference (Pre-Con)**

At the Pre-Con, the Contractor shall submit their completed [Training Program\(s\), Form 731-0335](#) (See Exhibit 18(E)). This form indicates the crafts, number of positions per craft, total hours assigned to the craft, and the estimated start date for that craft that the Contractor intends to use to fulfill the OJT requirement. The Contractor may choose to have one (1) or more of its Subcontractors fulfill part or the entire OJT requirement. However, the Prime Contractor is ultimately responsible for meeting the OJT requirement. Training Program form(s) indicating how the OJT requirement will be achieved shall be submitted at the Pre-Con. If the Contractor fails to submit the Training Program form(s) at the Pre-Con, the PM should set a definitive date for the form(s) to be submitted and follow up with the Contractor.

The PM will forward the submitted Training Program form(s) to the CRS. Upon approval/denial, the form(s) will be returned to the PM for distribution back to the Contractor.

The Contractor must plan to involve OJT persons earlier in the Project than other employees of the same craft are employed. If the Contractor fails to involve OJT persons early in the Project, the PM shall take appropriate action, such as withholding progress payment or suspending Work, until the issue is resolved.

### **(2) First Notification**

Before the Contractor can begin receiving credit/payment toward the OJT bid item, an approved [Apprentice/Trainee Approval Request\(s\) \(ATAR\), form 731-0294](#), (See Exhibit 18(F)), must be on file in the PM office.

The Contractor shall submit the ATAR to the PM. The PM shall forward the ATAR(s) to the CRS. Upon approval/denial, the ATAR will be returned to the PM for distribution back to the Contractor. For the Reimbursable On-the-Job and Apprenticeship Training goal, the ATAR form does not need approval as all Apprentice hours will apply towards the training goal and bid item hours reimbursed.

By the 10<sup>th</sup> of each month, the Contractor and each approved Apprentice/Trainee must complete and submit to the PM an [ODOT Apprentice/Trainee Monthly Progress Record, form 731-0332](#), (See Exhibit 18(G)), for each month in which the Apprentice/Trainee worked. If the approved person is registered in an apprenticeship program, they may submit the apprenticeship program record in lieu of the completed ODOT form.

The PM shall verify the hours on the [ODOT Apprentice/Trainee Monthly Progress Record, form 731-0332](#), or apprenticeship record against the hours recorded on the certified payrolls. Any discrepancies need to be noted on the Monthly Progress Record or apprenticeship record. Once hours have been verified, the PM shall note total hours to be paid on the record, ensure that the Contract number is on each record, and forward to the CRS each month for monitoring and reporting.

### **(3) OJT Bid Item Overrun**

A Contract Change Order is **NOT** required for an overrun of the OJT bid item. The Contractor must request the overrun prior to completion of the original bid item amount and must be current on all paperwork. The PM shall communicate with the CRS for concurrence on any overrun of OJT hours prior to making payment.

Where the number of positions or the OJT bid item has not been fulfilled by the contractor, the PM shall document the reasons for the shortage and communicate the issues with the CRS.

### **(4) Second Notification**

The PM shall notify the CRS when Second Notification is issued so they may determine if any paperwork is missing prior to issuance of the Third Notification.

When completing the required Prime Contractor Performance Evaluation, the PM shall address whether the Contractor fulfilled the OJT requirements. [*Refer to Chapter 34 - Contractor Performance Evaluation*]

## **18-4            WORKFORCE            DEVELOPMENT            PROGRAM            (WDP)            –                          OJT/APPRENTICESHIP TRAINING**

During the planning phase of a Project, the OCR determines which projects the Workforce Development Program (WDP) will apply to. There are several WDP Specifications, including the “Federal On-The-Job / Apprenticeship Training Special Provisions” and the “State Apprenticeship Supplemental Required Contract Provisions.”

*There are also Special Provisions for Federal and State Design-Build projects.*

The training goals for WDP projects are assigned as a percentage of overall hours worked in each craft. The assigned percentage for each Project can be found in the Special Provisions. The CRS, in partnership with the PM, monitors these projects for compliance.

WDP training goals apply to the Prime Contractor and all Subcontractors with subcontracts valued at \$300,000 and above. The \$300,000 threshold is cumulative per Project. For instance, if ABC Contractors has a first-tier subcontract for \$250,000 and a second-tier subcontract for \$75,000, the cumulative total is over \$300,000 and the training goal would apply.

#### **(A) Pre-Construction Conference (Pre-Con)**

The Prime Contractor shall complete and submit a [Federal OJT/Apprenticeship Program Form 731-0502](#). This form should include an estimate of all hours and crafts expected to complete the entire Project. If a given craft is expected to be entirely subcontracted to a firm for under \$300,000, the apprenticeship hours may be listed as zero with a letter of explanation (not an Exception Request) attached.

If applicable, the Contractor shall also submit any Exception Requests for their workforce at the Pre-Con. For more information about the Exception Request process, see our Web site at <http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/>. Exception Requests for Subcontractors must be submitted and approved prior to the Subcontractor starting Work.

Subcontractors with subcontracts valued at \$300,000 and above shall submit a Federal [OJT/Apprenticeship Program, form 731-0502](#) for crafts and hours expected to be achieved by their workforce.

For Contractors wishing to adopt an In-House Training Program to meet these requirements, contact the CRS for instructions. In-House Training Programs shall not be used on state-funded projects to meet these requirements.

The PM will forward the submitted Federal OJT/Apprenticeship Program form(s) and Exception Request(s) to the CRS. Upon approval/denial, the form and exceptions will be returned to the PM for distribution back to the Contractor.

#### **(B) First Notification**

During the life of the Project containing WDP provisions, the PM shall submit a copy of each certified payroll to the CRS as they are received. The CRS uses the certified payrolls to monitor compliance with the EEO and Apprenticeship requirements. Attach a copy of each apprentice dispatch slip to the first payroll on which they appear.

If a Contractor is approved to use an In-House Training Program, the contractor shall complete and submit an [In-House Trainee Approval Request, form 731-0503](#), (See [Exhibit 18\(I\)](#)), to the PM prior to the Trainee starting work. The PM shall forward the request to the CRS. Upon approval/denial, the form will be returned to the PM for distribution back to the Contractor.

By the 5<sup>th</sup> of each month during which an In-House Trainee is working on the Project, the Trainee and the Contractor shall complete and submit an [ODOT Trainee Monthly Progress Record, form 731-0504](#), (See [Exhibit 18\(J\)](#)), listing the hours worked each day in each work process outlined in the Training Program. The progress records must be signed by the Trainee and the Contractor. The PM shall verify hours submitted on the progress record with those reported on the certified payroll and indicate acceptance on the progress record. Any discrepancies must be corrected prior to forwarding the progress record to the CRS. In-House Trainees must be paid full prevailing wage.

For WDP projects, the Monthly Employment and Apprenticeship Utilization Report (MEUR) supersedes the Monthly Employment Utilization Report (MEUR). (See Federal On-the-Job/Apprenticeship Training Special Provisions). The MEUR provides the SSN, ethnicity, and gender for all employees on the Project, for monitoring and reporting purposes. The MEUR is required monthly by every Contractor and Subcontractor with values over \$10,000 regardless of apprenticeship requirements. The PM forwards the MEURs to the CRS each month.

During the life of the Contract, the CRS will assist in monitoring the progress of the apprenticeship percentage achieved. If the Contractor is found to be non-compliant with the apprenticeship Special Provisions, the CRS may recommend withholding progress payment or other remedies to bring the Contractor into compliance.

### **(C) Second Notification**

The PM shall notify the CRS when Second Notification is issued so they may determine if any paperwork is missing prior to issuance of the Third Notification.

When completing the required Prime Contractor Performance Evaluation, the PM shall address whether the Contractor fulfilled the OJT requirements. [*Refer to Chapter 34 - Contractor Performance Evaluation*]

## **18-5 REIMBURSABLE FEDERAL ON-THE-JOB AND APPRENTICESHIP TRAINING**

When OCR determines the Reimbursable Federal On-the-Job Training Special Provisions will apply to a project, there are a specific number of hours assigned as a bid item with a fixed bid item price. The Contractor is reimbursed for qualified hours worked up to 150% of the bid item quantity. If the Contractor fails to meet the bid item quantity, the “no payment” clause in Section 8 of the applicable Special Provisions will be enforced.

At the Pre-Con, the Contractor shall submit their completed [Training Program\(s\), form 731-0335](#) (See Exhibit 18(E)). This form indicates the crafts, number of positions per craft, total hours assigned to the craft, and the estimated start date for that craft that the Contractor intends to use to fulfill the OJT requirement. The Contractor may choose to have one (1) or more of its Subcontractors fulfill part, or the entire OJT requirement. However, the Contractor is ultimately responsible for meeting the OJT requirement. If the Contractor fails to submit the Training Program forms at the Pre-Con, the PM should set a definitive date for the form(s) to be submitted and follow up with the Contractor.

The PM will forward the submitted Training Program form(s) to the CRS. Upon approval/denial, the form(s) will be returned to the PM for distribution back to the Contractor.

The Contractor must plan to involve OJT/Apprentices earlier in the Project than other employees of the same craft are employed. If the Contractor fails to involve OJT/Apprentices early in the Project, the PM must take appropriate action, such as withholding progress payment or suspending Work, until the issue is resolved.

**(A) First Notification**

Before the Contractor can begin receiving credit/payment toward the OJT bid item: by the 10<sup>th</sup> of each month, the Contractor and each Apprentice/Trainee must complete and submit to the PM an ODOT Apprentice/Trainee Monthly Progress Record, form 731-0332, (See Exhibit 18(G)), for each month in which the Apprentice/Trainee worked. If the approved person is registered in an apprenticeship program, they may submit the apprenticeship program record in lieu of the completed ODOT form.

The Contractor shall submit the ATAR to the PM. The PM shall forward the ATAR(s) to the CRS. Upon approval/denial, the ATAR will be returned to the PM for distribution back to the Contractor. For the Reimbursable On-the-Job and Apprenticeship Training goal, the ATAR form does not need approval as all Apprentice hours will apply towards the training goal and bid item hours reimbursed.

By the 10<sup>th</sup> of each month, the Contractor and each approved Apprentice/Trainee must complete and submit to the PM an [ODOT Apprentice/Trainee Monthly Progress Record, form 731-0332](#), (See Exhibit 18(G)), for each month in which the Apprentice/Trainee worked. If the approved person is registered in an apprenticeship program, they may submit the apprenticeship program record in lieu of the completed ODOT form.

The PM shall verify the hours on the [ODOT Apprentice/Trainee Monthly Progress Record, form 731-0332](#), or apprenticeship record against the hours recorded on the certified payrolls. Any discrepancies need to be noted on the Monthly Progress Record or apprenticeship record. Once hours have been verified, the PM shall note total hours to be paid on the record, ensure that the Contract number is on each record, and forward to the CRS each month for monitoring and reporting.

## **18-6 TITLE VI / ENVIRONMENTAL JUSTICE**

### **Title VI of the Civil Rights Act of 1964**

*“No persons in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”*

This law has been amended to include sex, handicap, age and socio-economic position as protected groups. It also includes Environmental Justice (EJ); the socio-economic impacts on communities and Limited English Proficiency (LEP); those who do not speak English as their native language.

The scope of this law includes all activities and programs of a recipient; not just the specific ones funded by federal dollars.

As such, Title VI, LEP and EJ should be included and addressed throughout the life of a Project. Any activities that could adversely impact a protected group could be a Title VI issue. Activities such as where construction Equipment is parked to detour could be issues.

When necessary and requested, documents will be translated to the language participants can clearly understand under the LEP program.

If any group or individual feels their rights have been violated under Title VI, they may file a complaint in writing with the entity they feel violated them or the Agency. This complaint must be made within 180 days of the alleged action, be in writing and contain clear details as to what happened, when, and who was involved.

If you have any questions, please contact the ODOT Title VI Officer at (503) 986-3169. More information on the Title VI/Environmental Justice program is available on the ODOT Office of Civil Rights website at:

[http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/titlevi/title\\_vi.shtml](http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/titlevi/title_vi.shtml)