# MoDOT’s Construction Workforce Program NJSP-15-17A

**1.0 Description.**

**1.1** Projects utilizing federal funds include contract provisions for minority and female workforce utilization in the various trade crafts used to complete construction contracts. These federal contract workforce goals are described in the section labeled “Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity”. These goals are included in all MoDOT federal aid contracts and are under the authorization and enforcement of the U.S. Department of Labor (US DOL).

**1.2** The Federal workforce requirement (Goals – TABLE 1) is authorized in 41 CFR Part 60-4 and Executive Order 11246 which set Equal Employment Opportunity goals with Affirmative Action requirements.

**1.3** The required federal aid workforce provisions noted above, coupled with the following additional contract provisions, constitute MoDOT’s Construction Workforce Program herein called Program.

**1.4** This provision does not require pre-qualification nor is it a condition of award.

**1.5** The Program does not eliminate or limit any actions the US DOL may take in relation to this contract’s federal provisions.

**1.6** The Program goals included in the contract are separate from any Disadvantaged Business Enterprise (DBE) or On-The-Job (OJT) training provision that may be included as contract provisions. DBE and OJT goals may or may not be included in a contract based on the individual size of contracts, type of contract work, anticipated length of contract, available and willing resources or other reasons.

**1.7** Contractor, for the purpose of this provision, means the prime contractor and any and all subcontractors.

**1.8** It is expected that the contractor recognizes the construction workforce goals for both minority and female workers in the project’s county and make efforts to attain those goals, if possible, through the existing workforce makeup of the prime (including subcontractors) that will be on the project and/or through hiring opportunities that may arise for the project. However, it is not the intent of this provision to compel any contractor to displace existing workforce or move workers around to just meet the workforce goals.

**1.9** If the contractor’s existing Missouri construction workforce meets or exceeds the federal workforce goals established in Table 1, then the OJT goal (Training Provision) if included in the contract, does not be apply.

**1.10 Contractor’s Workforce Plan.** The Contractor shall submit its Workforce Plan a minimum of 1 week before construction starts. One plan shall be submitted for the project that shall include the cumulative planned workforce of the prime and subcontractor(s). The contractor shall prepare the plan, for total minority and female utilization, regardless of the craft. The Engineer will provide the Contractor with comments regarding their Workforce Plan prior to the start of construction. Once work starts, all monthly reporting shall include the craft of each worker reported. If the contractor’s plan includes project manager, direct project support roles, project testers or other project professionals, these designations should also be included in addition to the workers designated by craft such as laborer, operator, carpenter, ironworker and others.

**1.11** The plan accepted by the engineer before the start of construction will be the effort expected of the prime contractor to maintain during the life of the project.

**1.12** If the contractors planned project workforce plan (including OJT hours if included in the contract) is short of the goals included in Table 1, there is opportunity for the contractor to receive a reimbursement of $10.00 / hour for any new project minority and female hires needed through the remainder of the project. The reimbursement is applicable to work that qualifies for prevailing wage under the federal Davis-Bacon Act, [40 U.S.C. §§ 3141](https://web2.westlaw.com/find/default.wl?mt=Missouri&db=1000546&rs=WLW15.01&docname=40USCAS3141&rp=%2ffind%2fdefault.wl&findtype=L&ordoc=2035370292&tc=-1&vr=2.0&fn=_top&sv=Split&tf=-1&pbc=E672A2B6&utid=1)–[3148](https://web2.westlaw.com/find/default.wl?mt=Missouri&db=1000546&rs=WLW15.01&docname=40USCAS3148&rp=%2ffind%2fdefault.wl&findtype=L&ordoc=2035370292&tc=-1&vr=2.0&fn=_top&sv=Split&tf=-1&pbc=E672A2B6&utid=1), in accordance with an approved workforce plan. Any reimbursement must be pre-approved by the Engineer. The reimbursement is provided as a remedy to the contractor and as an aid in the long-term growth of experienced persons in the building of roads and bridges in Missouri. The contractor shall manage the plan through the life of the project as described in the plan or as modified, in coordination with the Engineer. The total amount available per project is not capped.

**1.13** The Contractor’s workforce plan may include existing construction support and professional services staff.

**2.0 Forms and Documentation.** The bidder must submit the following documents if awarded the contract:

**Cumulative Workforce Utilization Reports.** This report is contract specific. One report shall be submitted to the Engineer by the 15th of each month. The report will be used to report the total workforce compliance data for the prime contractor and all subcontractors retained by the contractor on the Commission’s construction contract. The reporting shall include the workforce hours per each craft broken down by gender and ethnicity. Construction Support, testing and other professional services hours shall be included as these hours are part of the overall plan. The report will include the previous month’s hours worked for the project. For projects less than 60 days in length, only one report with total hours worked by classification is required at substantial completion of construction.

3.0 Methods for Securing Workforce Participation and Good Faith Efforts.

3.1 By submitting a bid, the Bidder agrees, as a material term of the contract, to carry out MoDOT’s Construction Workforce Program by making good-faith efforts to utilize minority and female workers on the contractor’s job sites to the fullest extent consistent with submitting the lowest bid to MoDOT. The Bidder shall agree that the Program is incorporated into this document and agree to follow the Program. If a bidder is unable to meet the workforce goals at the time of bid, it shall be required to objectively demonstrate to MoDOT that the goals have been met or demonstrate a good faith effort has been made with the level of effort submitted prior to the start of construction.

**3.2** The Engineer, through consultation with MoDOT’s External Civil Rights (ECR’s) Division, may determine that the contractor has demonstrated that good-faith efforts to secure minority and female participation have been made.

**3.3** In evaluating good-faith efforts, the ECR’s Division will take into consideration the affirmative actions listed in the Federal Provisions (including provisions of Executive Order 11246).

**3.4** MoDOT’s Program allows the contractor flexibility to implement a project specific workforce and improve the diversity of their existing workforce that can be utilized across various areas of the state to meet future MoDOT Program goals and Federal Provisions.

**3.5** If the contractor’s approved plan changes during the project and/or the available workforce changes from what is approved at any time, it is the contractor’s responsibility to remedy, in coordination with MoDOT’s ECR Division, the conditions as outlined and made available through this provision.

**4.0 Compliance Determination. (Required with project closeout)** All documentation and on-site information will be reviewed by MoDOT’s ECR Division in making a determination of whether the contractor made sufficient good faith efforts to meet the compliance with MoDOT’s Construction Workforce Program.

**5.0 Liquidated Damages.** If the contractor elects to not submit a workforce plan prior to work starting or fails to fulfill their workforce plan committed to prior to the start of construction, the contractor will be required to establish a good-faith effort determination, as to why either of these events occurred. MoDOT may sustain damages, the exact extent of which would be difficult or impossible to ascertain, as this impacts the cost of future road and bridge construction. Therefore, in order to liquidate those damages, MoDOT shall be entitled, at its sole discretion, to deduct and withhold the following amounts: **The sum of one thousand five hundred ($1,500)**

**6.0 Administrative Reconsideration.** The contractor shall be offered the opportunity for administrative reconsideration upon written request related to findings and/or actions determined by MoDOT’s ECR’s Division. The Administrative Reconsideration Committee shall be composed of individuals not involved in the original MoDOT determination(s).

**7.0** **Available Pre-Apprentice Training Programs.** The Commission has established a labor force recruiting program intended to assist contractors in identifying, interviewing and hiring qualified job applicants. MoDOT strongly encourages the hiring of individuals from the MoDOT funded pre-apprentice training programs.

**8.0 Independent Third-Party Compliance Monitor (Monitor).** MoDOT may utilize a monitor that will be responsible for tracking the project’s workforce utilization for the information the contractor submits. The contractor and its subcontractors shall allow the monitor access to their reports, be available to answer the monitor’s questions and allow the monitor to access to the site and to contractor and subcontractor employees. The monitor shall abide by the contractor’s project site protocols.

**9.0 Regional Diversity Council (Council).** (Applicable to the Kansas City and St. Louis District regions only) The Council shall consist of local community leaders, leadership of local construction trades, MoDOT staff, Industry representation, and a representative(s) from the Federal Highway Administration. The Council will meet quarterly and evaluate the workforce activity per each project according to the following criteria:

* + 1. Review monthly workforce reports.
    2. Review progress toward the stated project workforce program.

c. Review findings of Administrative Reconsideration hearings.

d. Recommend *other* workforce actions to MoDOT.

**10.0 Federal Workforce Goals.**

Female Participation for Each Trade is 6.9% Statewide for Missouri.

Minority Participation for Each Trade is shown below in Table 1.

**TABLE 1:**

|  |  |  |  |
| --- | --- | --- | --- |
| **County** | **Goal (Percent)** | **County** | **Goal (Percent)** |
| Adair | 4 | Linn | 4 |
| Andrew | 3.2 | Livingston | 10 |
| Atchison | 10 | McDonald | 2.3 |
| Audrain | 4 | Macon | 4 |
| Barry | 2.3 | Madison | 11.4 |
| Barton | 2.3 | Maries | 11.4 |
| Bates | 10 | Marion | 3.1 |
| Benton | 10 | Mercer | 10 |
| Bollinger | 11.4 | Miller | 4 |
| Boone | 6.3 | Mississippi | 11.4 |
| Buchanan | 3.2 | Moniteau | 4 |
| Butler | 11.4 | Monroe | 4 |
| Caldwell | 10 | Montgomery | 11.4 |
| Callaway | 4 | Morgan | 4 |
| Camden | 4 | New Madrid | 26.5 |
| Cape Girardeau | 11.4 | Newton | 2.3 |
| Carroll | 10 | Nodaway | 10 |
| Carter | 11.4 | Oregon | 2.3 |
| Cass | 12.7 | Osage | 4 |
| Cedar | 2.3 | Ozark | 2.3 |
| Chariton | 4 | Pemiscot | 26.5 |
| Christian | 2 | Perry | 11.4 |
| Clark | 3.4 | Pettis | 10 |
| Clay | 12.7 | Phelps | 11.4 |
| Clinton | 10 | Pike | 3.1 |
| Cole | 4 | Platte | 12.7 |
| Cooper | 4 | Polk | 2.3 |
| Crawford | 11.4 | Pulaski | 2.3 |
| Dade | 2.3 | Putnam | 4 |
| Dallas | 2.3 | Ralls | 3.1 |
| Daviess | 10 | Randolph | 4 |
| DeKalb | 10 | Ray | 12.7 |
| Dent | 11.4 | Reynolds | 11.4 |
| Douglas | 2.3 | Ripley | 11.4 |
| Dunklin | 26.5 | St. Charles | 14.7 |
| Franklin | 14.7 | St. Clair | 2.3 |
| Gasconade | 11.4 | St. Francois | 11.4 |
| Gentry | 10 | Ste. Genevieve | 11.4 |
| Greene | 2 | St. Louis City | 14.7 |
| Grundy | 10 | St. Louis County | 14.7 |
| Harrison | 10 | Saline | 10 |
| Henry | 10 | Schuyler | 4 |
| Hickory | 2.3 | Scotland | 4 |
| Holt | 10 | Scott | 11.4 |
| Howard | 4 | Shannon | 2.3 |
| Howell | 2.3 | Shelby | 4 |
| Iron | 11.4 | Stoddard | 11.4 |
| Jackson | 12.7 | Stone | 2.3 |
| Jasper | 2.3 | Sullivan | 4 |
| Jefferson | 14.7 | Taney | 2.3 |
| Johnson | 10 | Texas | 2.3 |
| Knox | 4 | Vernon | 2.3 |
| Laclede | 2.3 | Warren | 11.4 |
| Lafayette | 10 | Washington | 11.4 |
| Lawrence | 2.3 | Wayne | 11.4 |
| Lewis | 3.1 | Webster | 2.3 |
| Lincoln | 11.4 | Worth | 10 |
|  |  | Wright | 2.3 |

**STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION**

**CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)**

This contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

As used in these specifications:

"Minority" includes;

(i) Black (all person having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

(iii) Asian and pacific islander (all persons having origins in any of the original peoples of the Far East, southeast Asia, the Indian Subcontinent, or the Pacific Islands; and

(iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North American and maintaining identifiable tribal affiliations through membership and participation or community identification).