



Delaware Department
of Transportation

Contractor Compliance Manual

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CHAPTER 1

GENERAL INFORMATION

I. OVERVIEW

A. Background

The Delaware Department of Transportation, hereinafter DelDOT, is a recipient of federal funding for various projects and is required to insure EEO contract compliance on all federally funded projects. Contractors and consultants who participate on DelDOT contracts are required to comply with certain Equal Employment Opportunity (EEO), Disadvantaged Business Enterprises (DBE), On-the-Job Training (OJT), Equal Opportunity (EO), and Wage and Labor Compliance provisions. As a state agency recipient of federal funds, DelDOT is responsible for assuring that contractors, consultants, and subcontractors do not discriminate in their employment and contracting practices based on race, color, religion, sex, national origin, age, or disability. On the advice and with the assistance of the Federal Highway Administration (FHWA), this Contractor Compliance Program has been reviewed and revamped to improve efficiency and effectiveness and provide clear guidance to all stakeholders. This manual is designed to inform and assist contractors in complying with the federal EEO contract compliance requirements.

B. Goals

1. To insure non-discrimination in the selection and retention of subcontractors, subconsultants, material suppliers, and vendors.
2. To secure adequate representation and utilization of minorities and women by craft and/or trade in the contractors' workforce.
3. To insure good faith efforts (GFE) are undertaken on meeting Disadvantaged Business Enterprise program requirements, the on-the-job training (OJT) and training special provisions (TSP) and provisions contained in FHWA 1273.

C. Authority

1. Several authorities are applied to insure non-discrimination and equal employment opportunity (EEO) on Federal-aid projects. These authorities include the following laws, regulations and policies:
2. Laws:
 - a. Title VI and VII of the Civil Rights Act of 1964
 - b. Federal-Aid Highway Act of 1968 and 1973 (23 USC 140, 234)
 - c. Rehabilitation Act of 1973
 - d. Age Discrimination Act of 1975
 - e. Civil Rights Restoration Act of 1987
 - f. Americans with Disabilities Act of 1990
 - g. Executive Orders 11246, as amended by E.O. 11375 and E.O. 11478
3. Regulations (See Exhibit C)
 - a. 23 CFR 200
 - b. 23 CFR 230, Subparts A, C and D
 - c. 23 CFR 633 Subpart A
 - d. 23 CFR 635.117(d) and (e)

- e. 49 CFR 21
 - f. 49 CFR 26
 - g. FHWA Order 4710.8
 - h. FHWA Notice N4720.7 (g)(Indian Preference)
4. Contract Provisions: FHWA 1273
(<http://www.fhwa.dot.gov/programadmin/contracts/1273.cfm>)
- D. FHWA Responsibilities
1. The Federal Highway Administration provides policy guidance for DelDOT on federal aid projects. FHWA Headquarters and Divisions have the stewardship, monitoring, and enforcement responsibility to work with DelDOT and institute a program that effectively assures that all activities of federal-aid recipients meet Federal Equal Opportunity, Equal Employment Opportunity, Non-Discrimination and contractual requirements.
 2. The FHWA approves DelDOT's Contract Compliance Program, reviews overall compliance activity, and reviews individual contracts and/or contractors as deemed appropriate. Then FHWA monitors DelDOT's compliance review activities, provides feedback on program activities, approves compliance review reports, and enforces the applicable regulations, laws, and statutes.
 3. The FHWA provides training and technical assistance to DelDOT staff.
 4. The FHWA insures compliance by utilizing sanctions; such as not extending Federal-aid assistance until compliance is achieved, canceling or terminating a Federal-aid project, or referring a case to an appropriate Federal agency for legal action.
- E. DelDOT Responsibilities
1. DelDOT must insure Equal Opportunity requirements are included in all federally assisted contracts and that contractors and consultants are in compliance with such requirements.
 2. DelDOT's Civil Rights section is responsible for developing and implementing the Equal Opportunity Program, including the Contract Compliance Program.
 3. DelDOT is responsible for conducting regular and periodic Contractor Compliance Reviews and rendering a determination regarding contractor compliance with requirements and regulations, subject to FHWA review and approval.
 4. DelDOT is responsible for using administrative remedies to enforce compliance.
- F. Contractor, Subcontractor, Consultant, Subconsultant or DBE Responsibilities
1. To insure non-discrimination in terms and conditions of employment.
 2. To provide EEO & Affirmative Action as necessary.
 3. To fully cooperate with FHWA and DelDOT in reviews.
 4. To insure compliance by all subcontractors with whom the prime contractor (consultant) employs.

G. Training

DelDOT will provide or facilitate training for contractor or consultant personnel regarding the requirements of the DelDOT Contract Compliance Program.

II. CONTRACTOR DUTIES CONTAINED IN CONTRACT PROVISIONS

The contractor or consultant has the fundamental role and responsibility to take all reasonable and necessary steps to insure that the terms and conditions of its employment policy and its selection of subcontractors is void of discrimination for minorities and women. A contractor's minimum equal opportunity requirements are set forth in the contract provisions referenced in Form FHWA 1273 in the Nondiscrimination section and include the following:

- A. Adopt an EEO Policy.
- B. Designate an EEO Officer within the company.
- C. Educate all company personnel on EEO issues. Conduct meetings with supervisory personnel and employees regularly before the start of work. Post notices and posters.
- D. Engage in recruitment designed to yield minority and women applicants and hires. Advertise broadly for vacant positions with identified sources of minorities and women, utilize referral sources and procedures to attract minorities and women for hire. Advise employees and applicants of training opportunities. Assist in increasing the skills of minority and women employees and applicants, including fully implementing designated OJT programs.
- E. Insure nondiscrimination in: wages, working conditions and benefits; hiring, upgrading, and promotion; transfer, demotion, layoff, and termination. Periodically review such actions to insure nondiscrimination.
- F. Investigate complaints of discrimination, and take corrective action remedying issues raised in complaints.
- G. To insure compliance with EEO requirements by subcontractors with whom they enter into subcontracts.

CHAPTER 2

COMPANY EEO/AA REQUIREMENTS

I. GENERAL

- A. Purpose
Contractors, subcontractors, consultants, subconsultants and DBEs (hereinafter references as Companies/contractors) participating on federally aided projects are required to comply with certain requirements that exhibit their company's permanent commitment to equal employment opportunity and affirmative action. These required elements are designated as Company requirements in this Contract compliance Program. **A company's/contractor's Equal Employment Opportunity/Affirmative Action (hereinafter EEO/AA) documents and data are reviewed, as part of the Contract Compliance Program, by DelDOT or its designees, and DelDOT personnel determine compliance, subject to FHWA approval.**
- B. Scope & Responsibilities
1. All companies/contractors seeking to participate or active on any federally aided project are to conform to these Company/Contractor EEO/AA requirements.
 2. Companies/Contractors are responsible for establishing and administering wages, working conditions, and employee benefits, and taking personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, **without regard to race, color, religion, age, disability, sex, or national origin.**
- C. Company's/Contractor's EEO/AA Elements
The following elements are included in the Company/Contractor EEO/AA Requirements. Subsequent sections of this manual detail each element and the related necessary recordkeeping for compliance.
1. EEO/AA Policy, Plan, Officer and Program
 2. Supervisory and Office Personnel EEO Communications
 3. Company Wide EEO Communications
 4. Workforce Documentation
 5. Employee and DBE Recruitment Efforts
 6. Complaint Documentation
 7. Training Efforts Documentation

II. COMPANY EEO/AA POLICY, PLAN, OFFICER and PROGRAM

- A. Companies/Contractors must have a written EEO/AA Policy and Plan. This document must reflect the signature of a company officer and be implemented and practiced. Samples are available
<http://www.dol.gov/esa/regs/compliance/ofccp/pdf/sampleap.pdf>
- B. Companies/Contractors must have continuously appointed an individual responsible for effectively administering and promoting a company's/

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contractor's active Equal Employment Opportunity Program and insuring that the company's/contractor's policy, plan and program are being carried out.

1. Selection of an employee to serve as EEO Officer should take into consideration the following factors:
 - a. The appointee should have the knowledge and authority, within the company/contractor, to effectively perform the necessary functions, which precludes appointing clerical staff to perform such functions;
 - b. The appointee must be considered an Official of the company/contractor (but not necessarily an officer of the company/contractor);
 - c. The appointee must have meaningful interaction with principals of the company;
 - d. The appointee must be accountable for the on-going execution, evaluation, and re-direction of this area;
 - e. The appointee must be capable of and willing to effectively administer and promote an active EEO/AA program.
 2. Companies/Contractors must widely disseminate the EEO Officer's name and contact information to employees and specifically to DelDOT.
- C. Companies/Contractors will develop, implement, and regularly evaluate a program(s) for achieving the EEO/AA policy and plan.
- D. Companies will maintain a continuous written record documenting policy, plan officer designations, programs, communications and disseminations, and effectiveness assessments. Such record is subject to review as part of a compliance review.

III. SUPERVISORY AND OFFICE PERSONNEL EEO COMMUNICATIONS

- A. The two groups that should be targeted for attendance at supervisory meetings are:
1. Employees or agents of the company/contractor with supervisory responsibilities, working at project sites as well as in the offices. This includes individuals who are authorized to initiate, approve, or otherwise influence one or more of the following types of personnel actions:
 - a. Active supervision
 - b. Hire
 - c. Promotion
 - d. Discharge
 2. Office personnel that may influence personnel actions should be included in supervisory meetings. Persons in this group may not initiate or approve but may influence such actions officially or unofficially (i.e. greeting applicants, maintaining applicant logs, scheduling interviews, etc.).

B. Timeframes and Content of Supervisory Meetings

1. Within thirty (30) days of hire or appointment, supervisory personnel and others involved in personnel matters should have communicated to them the required content regarding EEO/AA policy, plan, program and advised of their responsibilities related to the same.
2. At routine intervals, at least every six months, meetings should be held with all supervisory and office personnel employees addressing the following content:

- | | |
|---|---|
| * EEO Policy and Affirmative Action Plan | * Identification of EEO Officer |
| * Workforce Diversity and Recruitment | * Wages and Payroll |
| * Training Opportunities | * Complaints (investigation and resolution) |
| * Utilization of Disadvantaged Businesses | |

3. Documentation of the dates, attendees, and information covered for all supervisory and office personnel meetings will be maintained for a period of three (3) years and is subject to review as part of a compliance review. Records will include the name, title, and signature of all attendees. Sample documentation is available.

IV. COMPANY WIDE COMMUNICATIONS

- A. Companies will develop, implement, and maintain a communication/dissemination program for on-going announcement of EEO/AA policy, plan, and EEO Officer to employees, applicants, and other parties of interest, including DelDOT.

1. Regular communication and dissemination of the EEO/AA Policy, plan, and EEO Officer is required. This includes written, verbal, electronic, or any other communications issued internally and externally to employees, applicants, the public, and to other businesses and contractors.
2. Communication methods used for employees should be broad based and may include meetings, payroll stuffers, employee handbooks, company newsletters, notices, bulletin board postings, websites, solicitations for employment and other appropriate means.

- B. Records or documentation will be maintained of company-wide communications and are subject to review as part of a compliance review. Such records will include the dates posters are posted or payroll stuffers are issued, copies of electronic postings, documentation of meetings held or employees handbooks distributed, etc.

V. WORKFORCE DOCUMENTATION

- A. Companies will periodically review identified selected personnel actions (hiring, promotions, terminations, etc.) in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will

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promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons. Documentation of the Contractor's review of personnel actions, corrective measures taken in any of the areas listed below must be maintained for three (3) years and is subject to review as part of a compliance review. For the purpose of these activities minorities are defined as Black (African-American), Hispanic, Asian (including Pacific Islander), American Indian or Alaskan Native.

The contractor will keep such records as are necessary to determine compliance with the contractor's equal employment opportunity obligations. The records kept by the contractor will be designed to indicate:

1. The number of minority and non-minority group members and women employed in each work classification;
2. The progress and efforts being to increase opportunities for minorities and women;
3. The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority and female representation.

B. Utilization and Representation

Company/Contractor are expected to maintain data and information reflecting the equitable representation and utilization of minorities, women and persons with disabilities in the Company's/Contractor's workforce. Such records include certified payroll records for federally aided projects as well as the Company's/Contractor's certified payrolls for other work paid for by the Company/Contractor.

C. Wage and Hour Issues

Company/Contractor must maintain data and information on the entire work force, listing positions/classifications, rates of pay and race, national origin and gender of those holding the positions/classifications. Documentation must also be maintained of changes in rates of pay and the reasons, such as promotions, terminations, etc and changes to part-time status. This documentation must reflect the previous job classification/position and pay/wage rate. Company/Contractor must maintain data and information on all terminations including the reasons for termination, by job classification/position, race, national origin and sex.

D. Non-Segregated Facilities

Contractors are to insure that working conditions and facilities used or provided in connection with employment are not discriminatory. Companies/contractors must not maintain segregated facilities at any of the locations under their control and take affirmative steps to insure that their employees do not perform their functions where segregated facilities are permitted. Documentation of any affirmative steps

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taken by the company/contractor must be maintained and is subject to review as part of a compliance review.

Segregated facilities, as used in this program, includes any waiting rooms, work areas, restrooms, wash rooms, eating areas, time clocks, locker rooms, storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees that are segregated by explicit directive or are in fact segregated, on the basis of race, color, religion, sex or national origin because of company/contractor policies, written or oral, or employee custom. Separate or single-user restrooms or necessary dressing or sleeping areas provided to insure privacy between the sexes are not deemed segregated facilities in this context.

VI. EMPLOYEE and DBE RECRUITMENT EFFORTS

Laws, regulations and contract provisions pertaining to federally aided projects specify recruitment efforts are required of companies and contractors in order to insure non-discrimination, equal employment opportunity and affirmative access to employment which is funded, in whole or in part, by federal funds. A company's EEO/AA Policy and Plan should provide further detail regarding recruitment efforts. The recruitment requirements are to be put in place and effectively maintained in good faith. Compliance with provisions designed to increase opportunities for employment and upward mobility for minorities and females is required whether the company or contractor is in a hiring or non-hiring mode. The requirements apply to recruitment for part-time or full-time employees as journeymen/women, trainees and/or apprentices in all EEO job categories. Recruitment requirements should also be structures effective in a unionized work environment.

Companies and contractors are likewise required to engage in recruitment efforts to select Disadvantaged Business Enterprises (DBEs) as business partners in seeking and securing awards of federally aided contracts from DelDOT. These recruitment efforts should also include locating and doing business with DBEs in the procurement of materials and leases of equipment. DelDOT Civil Rights section personnel are available to assist company/ contractor personnel to develop and maintain successful recruitment plans and activities for employees and DBEs.

Documentation must be maintained of all recruitment efforts and activities for both employee and DBEs for three (3) years. Compliance with the recruitment requirements is evidenced by a company's/ contractor's *good faith* to fulfill the contract and policy recruitment requirements and achieving the stated purpose. Characteristics of good faith efforts are sincere, meaningful and results-oriented actions, evaluations, and redirection of efforts to improve results.

Companies/contractors have an affirmative duty to investigate, respond to and, if possible, resolve complaints of discrimination made against them. Companies/contractors must maintain documentation of all complaints of discrimination made against the company/contractor with external agencies or under internal complaint procedures. Such documentation must be maintained for three (3) years and is subject to review as part of a compliance review. Documentation must include the name, job title/position, date of receipt of the complaint, identification of any governmental agency involved in the complaint resolution, and contact information for the complaining party/parties, along with the nature of and resolution of the complaint.

VIII. TRAINING EFFORTS and DOCUMENTATION

A. Internal Activities

Companies/contractors are expected to review the training and promotion potential of minority and female employees. Companies/contractors should assist in increasing skills of minorities and women employees and applicants. This responsibility includes advising employees and applicants of training opportunities and encouraging minorities and women to apply for training and promotion.

A. Unionized Work Environments

In those work environments where employees belong to collective bargaining units, companies/contractors also have responsibilities to assist in increasing skills of minorities and women employees and applicants. These responsibilities include engaging in best efforts to gain union cooperation in increasing opportunities for minorities and women, to develop training programs with unions and to incorporate in each collective bargaining agreement EEO language binding unions to non-discriminatory referrals for employment. Companies/contractors should obtain information on union referral practices to insure non-discriminatory actions. Contractors should make full use of apprenticeship training programs available.

(<https://joblink.delaware.gov/ada/customization/Delaware/documents/employer.cfm>)

B. On-the-Job Training (OJT) Program

Contractors/Companies must make efforts to identify OJT opportunities for minorities and females. Where, based on regulations and/or contract provisions, contractors are required to include OJT opportunities and an OJT program/plan as part of their contractual obligations; documentation of such efforts must be generated and maintained. Such documentation must be maintained for three (3) years and is subject to review as part of a compliance review.

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C. Training Special Provisions (TSP)

As noted above, where based on the regulations and/or contract provisions, Contractors/Companies are required to include special training provisions as part of their contractual obligations; documentation of such efforts must be generated and maintained. Such documentation must be maintained for three (3) years and Is subject to review as part of a compliance review.

CHAPTER 3

COMPLIANCE REVIEW PROCESS

I. PLANNING and SELECTION

- A. DelDOT will generally determine which type of compliance review is to be conducted. This is generally at DelDOT's discretion. Notification to any contractor/ company being reviewed will clearly communicate the type of review being conducted. This will facilitate the gathering of appropriate documentation by the contractor/company.
1. **Area-wide Company/Contractor Based compliance review** – is a review of a contractor's/company's operation in one geographical area. The purpose of this type of compliance review is to obtain and consider information on the contractor's/company's efforts to insure non-discrimination and provide equal opportunity in employment, training, and contracting on all of the contractor's/company's federally-funded projects within the designated area.
 2. **Project-specific compliance review** – is a review of a single project to determine whether a contractor/company and its subcontractors are meeting the employment, training, and subcontracting requirements on a specific contract. Project reviews should include all primes and subcontractors, including joint ventures and material suppliers. This type of review is best for major projects with significant employment, training, and subcontracting potential.
 3. **Consolidated compliance review** – is a cooperative effort by multiple governmental agencies, such as FHWA and OFCCP, to review all active federal aid contractors in a particular geographic area. Most often this type of review is conducted if it is known that contractors in a certain area are experiencing similar problems with respect to EEO issues.
- B. Selection Process
1. To accomplish the selection of companies/contractors for compliance review DelDOT has adopted a mechanism that evaluates each company/contractor in an objective and quantifiable manner, resulting in a ranking.
 2. An objective analysis will be conducted of companies/contractors based on:
 - a. the awarding of contracts to any company/contractor;
 - b. the nature of funding on any contracts awarded to any company/contractor within a designated evaluation period;
 - c. the percentage value of the contract(s) awarded to any company/contractor as compared to total value of contracts awarded by DelDOT within the designated evaluation period;
 - d. the potential for employment opportunities for minorities and females for the contractor/company based on work performed during the designated evaluation period, utilizing geographic census demographic data related to actual projects awarded;
 - e. an assessment of the company's/contractor's business practices during the designated evaluation period.
 3. Each of these areas will be valued and all companies/contractors will be ranked as part of the analysis. Selection for contractor compliance review will be made solely on this analysis, except where issues of potential non-compliance have been detected or review has been directed by the FHWA.

4. Companies/Contractors will also be selected for compliance reviews in those instances where credible information creates a presumption of potential compliance deficiencies in any of the EEO Program areas.

C. Scheduling and Notification

1. Once DelDOT has determined the type of compliance review, and the selection process has been completed, the selected contractor/company will be formally notified, in writing, of the compliance review.
2. This notice will contain requests for specific information, documentation and records, including *but not limited to*:
 - a. Identifying information regarding the contractor/company EEO Officer and documentation of required meetings, etc.;
 - b. Payroll documentation (certified, annotated and project) as identified in the request and for the period requested, broken down by race, gender, national origin, job classifications of all employees;
 - c. Copies of any current collective bargaining agreements;
 - d. Copies of executed purchase orders and subcontracts;
 - e. Information on any complaints of discrimination filed against the company/contractor within one year (1) of the review.
 - f. A list of new hires, rehires, promotions or firings/terminations during the six month period immediately preceding the notice of compliance review;
 - g. A list of all recruitment sources utilized;
 - h. A list of all firms including minority and women-owned firms contacted as possible subcontractors and material suppliers, and those firms selected, with contact information for all listed.
3. The notice of compliance review will include a timeframe for responding and a deadline by which documentation must be received.
4. In the instance of a project-specific compliance review, the Company/Contractor will be provided sufficient time to secure the requested documentation from all subcontractors on the project as well. It is the responsibility of the Company/Contractor to secure such documentation from the subcontractors or to provide sufficient evidence of a *good faith effort* to do so.

II. PRELIMINARY ANALYSIS

A. Workforce Analysis

1. Availability Analysis

Availability is defined as an estimate of the number of qualified minorities or women available for employment in a particular job group. This estimate is generally derived from a number of sources outside of DelDOT such as the current census data, state employment offices, governmental entities etc. This estimate is expressed as a percentage of all qualified persons for employment in the particular job group and is used as a benchmark against which to compare the Company/Contractor's existing workforce.

2. Representation Analysis

The next step is to review the Company's/Contractor's workforce to determine the number and percentage of minorities and women employed in a particular job classification/trade. If the percentage of minorities or women is less than would be reasonably expected, given the availability in the labor force of the geographic region, the Company/Contractor must demonstrate good faith efforts or equal employment opportunity in hiring and recruiting.

3. Utilization Analysis

Utilization analysis looks to the number of hours worked by minorities and women as compared to the total hours worked by all employees to determine if equal opportunity is provided to employees irrespective of race and gender. A comparison of the Company/Contractor's workforce, the hours they worked and their respective race and gender is done. Where there are disparities detected then further review is conducted to insure the reason for the disparity is non-discriminatory.

4. The purpose of these analyses is to determine if there is a reasonable representation and utilization of minorities and women in each craft, classification or occupation, based on their availability in the relevant labor market. Additionally, if disparities are determined, review must continue to ascertain what good faith efforts have been undertaken to reduce or eliminate such disparities by the Contractor/Company. These analyses are also instrumental in gathering evidence of discriminatory practices relating to employment terms and conditions.

B. DBE Utilization Analysis

This step looks into how the Company/Contractor solicits, reviews and selects subcontractors, vendors and suppliers for all of their work. Emphasis is placed on determining whether the Contractor/Company has an open process, inviting quotes from diverse business entities or considers quotes from a particular group and excludes others. Review is also made of any good faith efforts undertaken by the Company/Contractor to open up their subcontracting and vendor opportunities.

III. ON-SITE VERIFICATION

A. Scheduling and Notification

Conducting an on-site review and verification is optional, based on the preliminary analysis of the documents, information and data supplied by the Contractor/Company. DeIDOT determines when it is appropriate to conduct an on-site review. Instances where documentation submitted is incomplete, insufficient, untimely or otherwise problematic will require an on-site review process to clarify and verify inconsistencies, inaccuracies, ambiguities or other concerns.

The on-site review process commences with official written notification. This written notification will inform the Contractor/Company management of the purpose, scope, date, and time of the review. A major purpose of an on-site review is to accomplish the following:

1. Verify information obtained in the desk-audit phase and to clarify and discrepancies in the material submitted;
2. Conduct interviews with representative members of the Contractor's/Company's workforce and management;
3. Verify implementation of employee referral sources and methods used to place employees;
4. Conduct a physical tour to insure non-segregation of facilities;
5. Discuss issues and concerns.

Efforts will be made to provide any Contractor/Company ten (10) business days notice of the on-site review process. Efforts will also be made to adjust the timing of the on-site review, upon legitimate request by the Contractor/ Company. The notification will clearly describe the responsibilities of the Contractor/Company to provide all pertinent documentation and information requested as well as to make all arrangements to have the other steps of the review process go smoothly, such as providing meeting space, facilitating requested interviews, and insuring needed individuals are present.

B. Kick-off Meeting

The Kick-off meeting should include company/contractor senior management/owner/executives. At the initial meeting the DelDOT representative will discuss and review the following information:

1. Objectives of the on-site review and visit;
2. Authorities for the review;
3. Materials submitted by the Contractor/Company;
4. Arrangements for on-site inspections and employee/management interviews.

The DelDOT representative will respond, as much as possible, to questions from the Contractor/Company.

C. Exit Conference

The purpose of the exit conference is not to communicate the results or findings of the on-site review to the Contractor/Company. The exit conference is to advise the Contractor/Company that the on-site process has been completed. The DelDOT representative will advise the Contractor/Company of the time frame within which a formal determination will be provided, in writing.

IV. COMPLIANCE REVIEW DETERMINATIONS

A. DelDOT determines compliance based on information submitted and on-site verification. A notice of compliance will be sent to the Company/Contractor within thirty (30) days of the determination of compliance. Full compliance review reports must be submitted to FHWA for review and concurrence prior to notice to the Company/Contractor.

B. Compliance

1. A Contractor/Company is in compliance when there is sufficient information, data and evidence obtained during the compliance review to determine the equal opportunity requirements have been effectively implemented.

2. Compliance determinations are based on the data, records and other information gathered during the entire compliance review process, including but not limited to the on-site review process.
3. Compliance determinations will be made by the DelDOT Civil Rights Section, considering the following:
 - a. Does the Company/Contractor have a designated EEO Officer, EEO plan and policy and has such information been appropriately disseminated to management and employees within the business?
 - b. Is there reasonable representation and utilization of minorities and women in each craft, classification, occupation or job based on their availability in the relevant labor force?
 - c. Has the Contractor/Company taken any action to increase recruitment, hiring opportunities, promotions, and training of minorities and women and/or minority and women owned subcontractors?
 - d. Have the Contractor's/Company's efforts to provide equal opportunity been effective or are those efforts likely to result in an increase in the representation and utilization of minorities and women or in the increase of minority-and women- owned businesses with whom the Company/Contractor enters into agreements?
 - e. Is there impartiality in the treatment of minorities and women?
 - f. Are the Contractor's/Company's affirmative action efforts an isolated or of an on-going nature?
 - g. Have the Contractor's/Company's efforts produced results?
4. Good Faith Efforts
 - a. A Contractor/Company is deemed to be in compliance with equal opportunity requirements where there is evidence that *every good faith effort* has been made, in spite of continued disparities in representation, etc.
 - b. Good faith efforts must be targeted, specific and reasonably calculated to result in the desired compliance. Repeated use of unsuccessful activities, such as sending form letters, which produce no results, will not be considered good faith efforts.
 - c. Documentation of good faith efforts must include specific information such as which referral sources were used, with whom the Contractor/Company interacted, documentation of telephone requests for women and minorities in specific crafts with underrepresentation, etc.
 - d. Good faith efforts also apply to a Contractor's/Company's efforts to do business with minority-owned and women-owned businesses and suppliers. A pattern of using DBE business partners only on federally aided projects, with no similar involvement in other business ventures will require closer examination to be considered good faith efforts.

C. Non-compliance with Supporting Findings

1. A Contractor/Company is in **non-compliance** when there is sufficient information, data and evidence to make a determination that the

Contractor/Company failed to effectively implement the equal opportunity requirements.

2. **Non-Compliance** determinations are based on the data, records and other information gathered during the entire compliance review process, including but not limited to the on-site review process.
3. Efforts to bring a Company/Contractor into compliance may be accomplished through negotiating immediate corrective action or through the issuance of a Show Cause Notice.
4. Negotiation of immediate corrective action(s) is appropriate where the findings of **non-compliance** are based on relatively minor deficiencies in the Company's/Contractor's implementation of the equal opportunity requirements.
5. A Show Cause Notice is required when the finding of **non-compliance** is based on any one of the following:
 - a. The findings of a compliance review;
 - b. The results of an investigation, which verifies the existence of discrimination;
 - c. Reports reflect underutilization of minorities and women throughout the Company's/Contractor's workforce.

V. CORRECTIVE ACTION and ENFORCEMENT

A. Voluntary Corrective Action Plan (VCAP)

1. A Company/Contractor determined to be in **non-compliance** has thirty (30) days from the receipt of a Show Cause Notice to develop and submit an acceptable Corrective Action Plan, in writing
2. If cited deficiencies can be corrected within thirty (30) days, no written Corrective Action Plan is necessary. However the time frame for corrective action remains thirty (30) days for completion.
3. Any Show Cause Notice is rescinded upon submission and approval of a Corrective Action Plan.
4. The written Corrective Action plan must state a clear action plan with time limits for the Company/Contractor to correct each cited deficiency. The Corrective Action Plan submitted to DelDOT must be sufficient to correct deficiencies or DelDOT will not approve it.

B. Follow-Up

1. In circumstances where cited deficiencies can be corrected within thirty (30) days, DelDOT personnel will monitor progress on the corrective action during that thirty (30) day period. At the completion of the corrective action or the thirty (30) day period, whichever ever comes first, a report of progress will be generated, sent to the Company/Contractor, and become part of the compliance review record.
2. Failure to correct deficiencies where those deficiencies could have been corrected within thirty (30) days will result in a formal finding of **non-compliance**, reinstatement of the Show Cause Notice and time frame, and appropriate enforcement action taking place.

3. In those circumstances where a Voluntary Corrective Action Plan has been approved, DelDOT will monitor progress on the correction of deficiencies cited.
4. Failure to complete a Corrective Action Plan, once approved, or failure to make reasonable progress under a Corrective Action Plan on correction of deficiencies cited will result in a formal finding of **non-compliance**, reinstatement of the Show Cause Notice and time frame, and appropriate enforcement action taking place.
5. Satisfactory completion of a Corrective Action Plan, written or otherwise, will remove any finding of **non-compliance**. A final closure letter will be sent to the Company/Contractor culminating the review process. Such documentation will be retained by DelDOT.

C. Enforcement

1. Administrative action to address **non-compliance** after a Show Cause Notice has been issued will be the same as those taken for other failure to perform issues pursuant to a contract.
2. Contract administration procedures may also be invoked against a **non-compliant** Contractor/Company. Such measures **include but are not limited** to:
 - a. Determining the Contractor/Company a non-responsible bidder on contracts containing the provisions which were violated and not subsequently corrected when the opportunity existed;
 - b. Future bids being held irregular and non-responsive based on deficiencies on other contract(s);
 - c. Disqualification as a bidder pending correction of deficiencies;
 - d. Creating the Contractor's/Company's bid ceiling;
 - e. Canceling or suspending the contract(s) on which the violations were found;
 - f. Determining Contractor/Company is in default on the contract where the violation occurred and terminating the Contractor's/Company's right to do work on that contract and initiating action pursuant to the termination of the contract;
 - g. Debarment from future federal contracts.
3. Documentation of all enforcement efforts will be forwarded to FHWA