



State of Delaware

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DRUG TESTING FOR LARGE PUBLIC WORKS CONTRACTS



Agenda

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1. Background on Law and Regulation
2. Applicability
3. Bid Requirements
4. Contract Award
5. Testing during the contract
6. Consequences of positive result
7. Penalties



1. Background

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- Law was passed in 2006 (75 Del. Laws, c. 283, § 1)
- Discussions between State and contractor community for a few years until the regulations were developed
- Initial regs published in January 2015- public comment was January – March 2015
- Final regs published in September 2015
- Forms, contract term changes and procedures developed by OMB
- Effective January 1, 2016 (all Large Public Works projects advertised on that date or later)
- Covers 7 substances plus urine alcohol
- State ensures compliance but doesn't administer testing program



2. Applicability

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- Large Public Works- currently all formal bids over \$100K
- General Contractors and *listed* Subcontractors
- Initial testing- all employees unless they have passed a random or scheduled drug test within past 60 days
- Random testing- unannounced, not less than 10% of workforce on the jobsite (can't be less than one)
- Contractors and Subs on the jobsite for less than 30 days do not have to submit Testing Report Forms

2. Applicability

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- Random Testing- selected employees must report within 4 hours for testing. Any failure to report or not cooperate is considered a positive result
- Reasonable Suspicion Testing- Contractor and/or Owner directed
- Accident Triggered Testing- any jobsite accident with loss or significant property damage, any injury/loss of life
- Work on the jobsite- includes supervisors and foremen but not home office staff.

3. Bid Requirements

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- Signed Affidavit(s) at bid submission from the Contractor (GC) and all *listed* subcontractors certifying compliance with Drug Testing or will have in place prior to award
- Affidavit(s) are attached to Bid Forms



4. Contract Award

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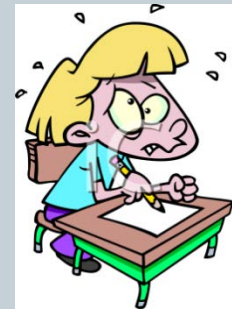
- Awarded contractor provides copies of Employee Drug Testing Program for the Contractor and all *listed* Subcontractors to the Owner for approval
- Submission due 2 days prior to contract execution (along with typical Bonds and Insurance)



5. Testing During Contract

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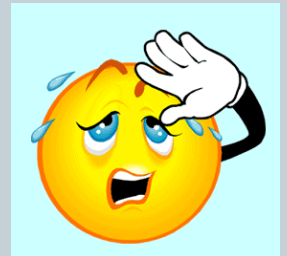
- Work cannot begin until Owner has concluded Testing Program complies with Regulation.
- Testing Report Forms:
 - Random Testing Report: # of employees, # tested, # of positive results, any action taken (no names) Submitted at least Quarterly, (Owner may require Monthly submission)
 - Positive Test Report: whenever there is a positive result, includes name of employee and action taken



6. Consequences of a Positive Result

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- Consequences of a positive result (employee):
 - Immediate suspension from any PW jobsite
 - Not eligible on any PW jobsite until 30 days after a negative test result
 - Subject to one year of unscheduled random testing or term of contract whichever is less
 - Marijuana positive results- if employee has a medical card they are not subject to above unless impaired on the jobsite



7. Penalties (contractor)

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- If a Contractor or Subcontractor fails to implement Drug Testing Program IAW regulation or falsifies results:
 - Written warning (1st offense)
 - Prohibition from bidding on any new public works jobs for a period not to exceed 3 months (2nd offense), and one year (3rd offense)
 - For subsequent offenses, debarment or bond revocation



Questions?

Thank You.

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