

**FREQUENTLY ASKED QUESTIONS  
DRUG TESTING PROGRAM FOR LARGE PUBLIC WORKS PROJECTS**

<b>Question:</b>	Which State projects require that contractors have a Drug Testing program in place?
<b>Answer:</b>	Large Public Works (PW) projects as defined by Title 29, Chapter 69 of <u>Del Code</u> . Large Public Works projects are those projects which are required to be bid at a threshold level set by the Procurement Council; currently that level is those projects \$100,000 and over. Letter bids (not formally advertised) are not subject to testing.
<b>Question:</b>	Which Contractors are subject to testing?
<b>Answer:</b>	The Prime or General Contractor and all <i>listed</i> subcontractors.
<b>Question:</b>	What do I submit with my bid to certify compliance with the Regulation?
<b>Answer:</b>	An Affidavit Form is submitted with your bid for your firm and a separate form(s) for all <i>listed</i> subcontractors certifying compliance or will have program in place prior to award.
<b>Question:</b>	Do we have to use the Drug Affidavit and Reporting Forms that come with the bid forms?
<b>Answer:</b>	Use the Affidavit Form as contained in the Bid Documents. It is acceptable for the contractor to use their own Reporting Form as long as the Owner agrees, and it contains the minimum data elements as specified in the regulation.
<b>Question:</b>	Is there an expiration for the Drug Affidavit Forms? Can they be used on multiple projects? Do the forms have to be originals?
<b>Answer:</b>	The Drug Affidavit Forms do not expire unless they are no longer valid. They can be used on multiple projects and are not "project specific" but must be submitted with every bid. Original signatures and raised seal are NOT required; copies of the form are acceptable.
<b>Question:</b>	What do I submit prior to contract award?
<b>Answer:</b>	A copy of the Drug Testing program for your firm and from <i>listed</i> subcontractors that meets the requirements in the Regulation is submitted 2 days prior to award.
<b>Question:</b>	Which employees are tested?
<b>Answer:</b>	All employees that will be working on the jobsite are subject to testing. Home office employees and other workers not located on the jobsite and not under control of the contractor are not subject to testing.
<b>Question:</b>	When are employees tested?
<b>Answer:</b>	Initially (prior to work on the job, unless they've passed a random or scheduled drug test within the past 60 days), and randomly (either quarterly or monthly as defined in the contract). There are also "Reasonable Suspicion" and "Accident Triggered" testing requirements.

<b>Question:</b>	How is the 30 days in Section 7.1.1.3 calculated?
<b>Answer:</b>	The 30 days refers to a consecutive number of calendar days, including weekend days.
<b>Question:</b>	Does the 60 day prior test in Section 5.1 necessarily include alcohol testing?
<b>Answer:</b>	No.
<b>Question:</b>	How many employees are tested randomly?
<b>Answer:</b>	At least 10% of the Contractor's workforce, not less than one, are randomly tested during the contract period.
<b>Question:</b>	What is considered a "scientific valid method of randomly generating an Employee identifier" for the random testing requirement as noted in 5.2.2?
<b>Answer:</b>	Any method, mechanical (pulling names from a hat) or electronic (random number generator) that provides an unbiased and equal chance of selection to all employees in the pool to be tested.
<b>Question:</b>	If a contractor/subcontractor tests <u>all</u> their employees randomly (10%) are they covered if the person tested that period isn't in the "pool"?
<b>Answer:</b>	Yes.
<b>Question:</b>	Because manpower ramps up and down on a construction site and sometimes very quickly, at what point in the month do you make the determination of how many employees are on site for the pool to determine what constitutes 10%?
<b>Answer:</b>	The measurement of the number of employees is addressed in 5.2 as follows: "No less than 10% of a Contractor's or Subcontractor's anticipated workforce based on construction schedules validated by certified payrolls shall be randomly selected each month for testing". The key word is "anticipated"; the random number pull for a particular month would be based on how many employees you anticipate to be on the job during that month.
<b>Question:</b>	What if there is only one person working for a sub on a project? Since at least 10%, not less than one, need to be tested, are they tested every month/quarter?
<b>Answer:</b>	Yes, unless the subcontractor has a program in place to randomly test at least 10% of <u>all</u> of their employees monthly. Please refer to Section 5.2.3.
<b>Question:</b>	If a subcontractor hires another firm to do portions of their work but they aren't employees (i.e. a "sub of a sub"), do they need to drug test those employees or require the firm to have a program in place?
<b>Answer:</b>	There is nothing in the regulation that requires "subs of subs" to have a testing program in place.
<b>Question:</b>	Are temp agencies or temp employees required to be tested?
<b>Answer:</b>	If they are a listed subcontractor, yes. If they are a "sub of a sub", no.

<b>Question:</b>	We are an Architectural/Engineering sub-consultant firm currently providing services to (State agency). Does this new regulation concerning drug testing apply to A/E contracts, or is it just for general contractors and for bid public works contracts?
<b>Answer:</b>	Reference the definition of “subcontractor” as reflected in the regulation 2.1: <b>“Subcontractor”</b> means an entity such as, but not limited to, an individual, firm, partnership or corporation that has a contractual obligation to perform work for, or supply services to a Contractor as defined in section 2.1.” As you are providing services to (state agency) directly and not to the Contractor you would not be included in this definition.
<b>Question:</b>	For the 10% random requirement, what happens at 11 employees? Do we test two or one?
<b>Answer:</b>	Because Section 5.2.3 currently states that “no less than 10%...” per month must be tested, if a contractor or a subcontractor has 11 employees on the jobsite, they must randomly test two per month unless the contractor or subcontractor has a program in place to randomly drug test at least 10% of <u>all</u> of their employees monthly.
<b>Question:</b>	If there are 10 employees working 4 job sites and each are required to have programs under this regulation, do 4 of the 10 (10% per jobsite) have to be tested each month?
<b>Answer:</b>	No, 10% of the total need to be tested.
<b>Question:</b>	If a company or firm has several State Large Public Works jobs going at the same time, may they put all employees from each job into one random testing pool?
<b>Answer:</b>	Yes, as long as the program meets all other requirements of the Regulation.
<b>Question:</b>	If office or administrative staff goes to a jobsite for just a site visit or meeting, will they be required to be tested since they are not doing any work onsite?
<b>Answer:</b>	No, the Regulation only covers workers performing work at the jobsite. Note that covered employees DOES also include supervisors/foremen working on the jobsite and delivery personnel delivering materials and equipment to and from the jobsite.
<b>Question:</b>	What are the reporting requirements during the contract?
<b>Answer:</b>	Random testing is reported either quarterly or monthly to verify that 10% of the Contractor’s employees are being tested (no names are included, just # tested). Any Positive Test Results are reported to the Owner within 24 hours (name is included in a sealed envelope).
<b>Question:</b>	Is Alcohol screening a requirement for the Initial Drug Test (within 60 days in advance of employee at the jobsite)?
<b>Answer:</b>	No.
<b>Question:</b>	Does alcohol testing have to be urine alcohol?
<b>Answer:</b>	The Regulation does not specify the specific methodology for urine testing.

<b>Question:</b>	What are the consequences of a Positive Result?
<b>Answer:</b>	Employee is immediately suspended from the jobsite. Not eligible on any State PW jobsite until 30 days after a subsequent negative test result. Also subject to one year of unscheduled random testing. More than one positive within a 3 year period results in a permanent ban for the employee from State of Delaware PW jobsites.
<b>Question:</b>	What is the definition of “significant damage” in Section 5.5?
<b>Answer:</b>	As of the current version, it is not defined in the regulation. Generally it is an amount of damage that has a large monetary effect or delays the project schedule.
<b>Question:</b>	What constitutes an injury requiring drug testing as required in 5.5?
<b>Answer:</b>	Any injury requiring medical care beyond first aid.