



State of Delaware

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DRUG TESTING FOR LARGE PUBLIC WORKS CONTRACTS



12/14/2017

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
8. Recordkeeping
9. Auditing
10. Consortium



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 9 substances plus alcohol
- State ensures contractor's testing programs comply with minimum reqmts but doesn't administer testing program



1. Background cont.

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- **Comments from the contractor community were received by OMB since implementation**
- **Several meetings held with contractor groups**
- **Public comment period June 1 through July 18, 2017**
- **Public Hearing was held June 23rd.**
- **Public comments received were of such significance that we had to re-advertise in the October Register.**

1. Background cont.

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- Goal was to clarify the regulation and to simplify implementation and cost impacts
- Several changes to regulation were made in response to comments received at meetings and in writing
- New reg implementation date January 1, 2018 (all large PW projects advertised after this date)

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~~ **180** days
- Random testing- unannounced, not less than ~~10%~~ **5%** of workforce on the jobsite per month (can't be less than one). **2.5% for alcohol**
- ~~Contractors and Subs on the jobsite for less than 30 days do not have to submit Testing Report Forms~~

2. Applicability cont.

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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 office staff (if at home office or in the trailer)

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 Contractor submits for themselves and certifies that subs will comply



4. Contract Award

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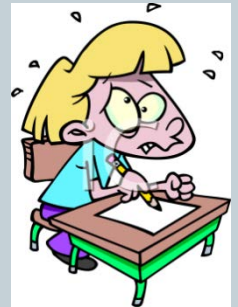
- Awarded contractor provides copies of Employee Drug Testing Program for the Contractor and all *listed* Subcontractors to the Owner
- Submission due **at least** 2 days prior to contract execution (along with typical Bonds and Insurance)



5. Testing During Contract

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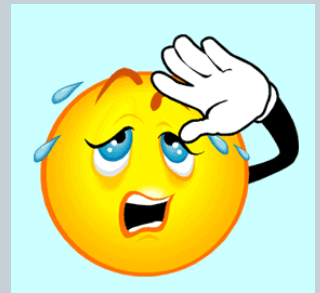
- Work cannot begin until Owner has concluded Testing Program complies with Regulation.
- Testing Report Forms:
 - ~~Random Testing Report: # of employees, # tested, # of positive results, any action taken (no names) Submitted at least Quarterly, (Owner may require Monthly submission)~~ **audit**
 - Positive Test Report: submitted in writing to Owner whenever there is a positive result, including 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 in DE
 - Not eligible on any State PW jobsite until 30 days after a subsequent negative test result
 - Subject to one year of unscheduled monthly random testing ~~or term of contract whichever is less~~
 - More than one positive within 3 year period - permanently banned from PW jobsites
 - Marijuana positive results - if employee has a medical card they are not subject to above unless impaired **by marijuana** on the jobsite or if it would impact federal \$ of project



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



8. Recordkeeping

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- **During the term of the contract, Contractors and Subcontractors on the jobsite for more than 30 Days shall maintain testing data that includes but is not limited to the data elements below:**
 - The number of Employees who worked on the jobsite during the previous month or quarter
 - The number of Employees subjected to random testing during the previous month or quarter
 - The number of negative results and the number of positive results
 - Action taken by the Contractor or Subcontractor on an Employee who failed or tested positive to a random test

9. Audit

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- The Owner shall have the right to periodically audit all Contractor and Subcontractor test results at the Contractor or Subcontractor's offices (Or by other means to make the data available for inspection by the owner)
- The failure to comply with these reporting requirements may be considered a material breach of any agreement relating to the performance of work by the contractor or Subcontractor.



10. Consortium

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- **“ Consortium”/”Third Party Administrator or “(C/TPA)” means a service agent that provides or coordinates the provision of a variety of drug and alcohol testing services to employers.**
- C/TPAs typically perform administrative tasks concerning the operation of the employers’ drug and alcohol testing programs. This term includes, but is not limited to, groups of employers who join together to administer, as a single entity, the drug and alcohol testing programs of its members.
- Company-wide programs are also allowed.

Questions?

Thank You.

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