

Procurement of Construction: *Drug and Alcohol Testing for Construction Projects*

Definitions—

The following definitions apply in this policy:

- “Contractor” means a person who is or may be awarded a District construction contract.
- “Covered individual” means an individual who:
 - on behalf of a contractor or subcontractor provides services directly related to design or construction under a District construction contract, and
 - is in a safety sensitive position, including a design position that has responsibilities that directly affect the safety of an improvement to real property that is the subject of a District construction contract.
- “Drug and alcohol testing policy” means a policy under which a contractor or subcontractor tests a covered individual to establish, maintain, or enforce the prohibition of:
 - the manufacture, distribution, dispensing, possession, or use of drugs or alcohol, except the medically prescribed possession and use of a drug, or
 - the impairment of judgment or physical abilities due to the use of drugs or alcohol.
- “Random testing” means that a covered individual is subject to periodic testing for drugs and alcohol in accordance with a drug and alcohol testing policy and on the basis of a random selection process.
- “District construction contract” means a contract for design or construction entered into by the District.

See Utah Code § 63G-6a-1303 (2013)

District May Require Drug and Alcohol Testing for Construction Contracts—

As set forth in this policy, the District may determine to require contractors on construction contracts to implement drug and alcohol testing by requiring that the contractor demonstrate that the contractor:

1. has and will maintain a drug and alcohol testing policy during the period of the District construction contract that applies to the covered individuals hired by the contractor;
2. posts in one or more conspicuous places notice to covered individuals hired by the contractor that the contractor has the drug and alcohol testing policy;

3. subjects the covered individuals to random testing under the drug and alcohol testing policy if at any time during the period of the District construction contract there are 10 or more individuals who are covered individuals hired by the contractor; and
4. requires that as a condition of contracting with the contractor, a subcontractor meets these same requirements.

In determining whether to include a drug and alcohol testing requirement in a construction contract, the District may consider any relevant considerations, including whether imposing the requirement would jeopardize the receipt of federal funds, cause the construction contract to be a sole source contract, cause the state construction contract to be an emergency procurement, or impose an undue burden on contractors in light of the size of the project and the composition of the contractors likely to bid on the project. If a testing requirement is imposed and a contractor or subcontractor meets that requirement, this policy does not prevent a contractor or subcontractor from imposing or implementing any other lawful provision as part of a drug and alcohol testing policy. Drug and alcohol testing by contractors and subcontractors shall comply with the requirements of Title 34, Chapter 38 of the Utah Code, which sets out requirements relating to drug and alcohol testing by private employers.

See Utah Code § 63G-6a-1303(2), (8) (2013); § 34-38-1 et seq.

Contractor Failure to Comply with Testing Requirements—

Subject to any rules issued by the Procurement Policy Board, if a contractor or subcontractor fails to comply with a testing requirement imposed under this policy, the contractor or subcontractor may be suspended or debarred in accordance with the Utah Procurement Code and the District's procurement policies. However, in such instance, the contractor or subcontractor shall be provided a process which includes reasonable notice and opportunity to cure a violation of the testing requirement before suspension or debarment in light of the circumstances of the District construction contract or the violation. In addition, a contractor is not subject to penalties for the failure of a subcontractor to comply with a testing requirement.

The failure of a contractor or subcontractor to comply with a testing requirement imposed under this policy may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor or any appeal pursuant to the District's procurement policies. In addition, such failure may not be used by the District, a prospective bidder, an offeror, a contractor, or a subcontractor as a basis for an action that would suspend, disrupt, or terminate the design or construction under a District construction contract.

See Utah Code § 63G-6a-1303(3), (5) (2013)

Limitation of District Responsibility for Testing—

After the District enters into a District construction contract which contains a testing requirement, the District is not required to audit, monitor, or take any other action to ensure compliance with such requirement. In addition, the District is not liable in any action related to this policy, including not being liable in relation to:

- a contractor or subcontractor having or not having a drug and alcohol testing policy;
- failure to test for a drug or alcohol under a contractor's or subcontractor's drug and alcohol testing policy;
- the requirements of a contractor's or subcontractor's drug and alcohol testing policy;
- a contractor's or subcontractor's implementation of a drug and alcohol testing policy, including procedures for collection of a sample, testing of a sample, evaluation of a test, or disciplinary or rehabilitative action on the basis of a test result;
- an individual being under the influence of drugs or alcohol; or
- an individual under the influence of drugs or alcohol harming another person or causing property damage.

See Utah Code § 63G-6a-1303(6) (2013)