

**ADDENDUM NO. 1****TO****NEW CASTLE COUNTY VOCATIONAL TECHNICAL SCHOOL DISTRICT
HOWARD HIGH SCHOOL OF TECHNOLOGY
BID PACKAGE 'P-01'
WILMINGTON, DELAWARE**

This addendum is hereby made part of the Project Manual and Drawings dated February 22, 2019.

The Project Manual and Drawings shall be supplemented or amended as specified herein.

This Addendum contains changes to the requirement of the Project Manual. Such changes shall be incorporated into the Contract Documents and shall apply to work with the same meaning and force as if they had been included in the original Documents.

This Addendum contains changes to the requirement of the Drawings. Such changes shall be incorporated into the Contract Documents and shall apply to work with the same meaning and force as if they had been included in the original Documents. Whenever this Addendum modifies a portion of any drawing, the remainder of the drawing affected shall remain in force. Added, deleted or revised information is shown as "clouded".

The conditions and terms of the basic Contract Documents shall govern work unless otherwise described in this Addendum. Whenever the conditions of work, and the quality or quantity of materials, or workmanship are not fully described in this Addendum, the conditions of work included in the basic Contract Documents for similar items of work shall apply to the work described in this Addendum.

If no similar items of work are included in the basic Contract Document, the best quality of material and workmanship shall apply and all work shall be subject to the written acceptance of the Architect.

I. GENERAL CLARIFICATIONS

1. Contractor shall include "polymetric sand" at all paver locations identifying sand infill.
2. Security and card access work identified on documents will be provided by others.
3. This contractor to provide termination of all utilities including electric as required to perform their contract work.
4. This contractor shall include all pedestrian controls and safety measures, including signage as necessary.
5. SECTION 013216 CONSTRUCTION SCHEDULE:
 - a) Work at the courtyard yard area shall not start until school has recessed for the summer, June 14, 2019.
 - b) Work at the bus loop can start on 5/5/19. Contractor must provide safe access to the Annex Building for students and staff until school closes on 6/14/19.
 - c) This contractor shall own the schedule. Any overtime, weekend, or off hours work required to meet the dates identified in the documents, shall be included in your base proposal.
6. SECTION 312000 EARTHMOVING: This contractor shall include the removal and disposal of all excavated materials from the project site. Subgrade, trenches, and excavations shall be backfilled and graded with imported structural fill meeting the requirements of borrow type C as defined in Section 312000.



II. RESPONSES TO BIDDERS' QUESTIONS

n/a

III. REVISIONS TO PROJECT MANUAL/SPECIFICATIONS

1. SECTION 004100 BID FORM AND ATTACHMENTS: DELETE this section and REPLACE with the attached revised section.
2. SECTION 008114 DRUG TESTING FORMS: DELETE this section and REPLACE with the attached revised section
3. SECTION 011100 SUMMARY OF WORK page 10:
 - a) DELETE paragraph 28 and REPLACE with the following "This contractor to include an allowance of \$100,000 in the base bid proposal for potential changes and work to be identified by NCCVT and the Construction Manager. Any allowance that is not utilized for authorized work will be returned to the owner."
 - b) DELETE paragraph 31
4. SECTION 321312 SITE CONCRETE page 321312-4, paragraph 2.6 Related Materials: DELETE Item E.
5. SECTION 321313 CONCRETE PAVING Part 3 Execution, page 321313-2, paragraph 3.01 Removing Existing Paving and Sidewalk: ADD Item C. "After fully saw cutting into sections or breaking seal at expansion joints contractor shall handle, load, and remove concrete sections from the project site as intact as possible. Limited on site processing will be acceptable. Power breaker machines may be utilized as approved and coordinated with Construction Manager."

IV. REVISIONS TO DRAWINGS

1. DRAWING A-454 Exterior Stairs at 1972 Bldg Courtyard: ADD the attached drawing.

Attachments:

1. Section 004100 Bid Form and Attachments
2. Section 008114 Drug Testing Forms
3. Drawing A-454 Exterior Stairs at 1972 Bldg Courtyard

END OF ADDENDUM NO. 1

Contract No. HHS-55 Bus Loop and Courtyard Upgrades

BID FORM

For Bids Due: _____

To: NCC Vocational Technical School District
1417 Newport Road
Wilmington, DE 19804

Name of Bidder: _____

Bidder Address: _____

Contact Name: _____ E-Mail Address: _____

Delaware Business License No.: _____ Taxpayer ID No.: _____

(Other License Nos.): _____

(A copy of Bidder's Delaware Business License must be attached to this form.)

Phone No.: () _____ - _____ Fax No.: () _____ - _____

The undersigned, representing that he has read and understands the Bidding Documents and that this bid is made in accordance therewith, that he has visited the site and has familiarized himself with the local conditions under which the Work is to be performed, and that his bid is based upon the materials, systems and equipment described in the Bidding Documents without exception, hereby proposes and agrees to provide all labor, materials, plant, equipment, supplies, transport and other facilities required to execute the work described by the aforesaid documents for the lump sum itemized below:

BASE BID:

\$ _____ (\$ _____)

ALTERNATE #1: Provide all work associated with Bid #3 Clifford Brown, as identified on documents.

\$ _____ (\$ _____)

ALTERNATE #2: Provide overlay work identified as ALTERNATE on sheet C-104 (lower section of N. Pine Street)
\$ _____ (\$ _____)

I/We acknowledge Addendums numbered _____ and the price(s) submitted include any cost/schedule impact they may have.

This bid shall remain valid and cannot be withdrawn for ninety (90) days the date of opening of bids, and the undersigned shall abide by the Bid Security forfeiture provisions. Bid Security is attached to this Bid (if required).

The Owner shall have the right to reject any or all bids, and to waive any informality or irregularity in any bid received.

This bid is based upon work being accomplished by the Sub-Contractors named on the list attached to this bid.

The undersigned represents and warrants that he has complied and shall comply with all requirements of local, state, and national laws; that no legal requirement has been or shall be violated in making or accepting this bid, in awarding the contract to him or in the prosecution of the work required; that the bid is legal and firm; that he has not, directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken action in restraint of free competitive bidding.

Upon receipt of written notice of the acceptance of this Bid, the Bidder shall, within twenty (20) calendar days, execute the agreement in the required form and deliver the Contract Bonds, and Insurance Certificates, required by the Contract Documents.

I am / We are an Individual / a Partnership / a Corporation

By _____ Trading as _____
(Individual's / General Partner's / Corporate Name)

(State of Corporation)

Business Address: _____

Witness: _____ By: _____
(SEAL) (Authorized Signature)

(Title)
Date: _____

ATTACHMENTS

Subcontractor List
Non-Collusion Statement
Bid Bond
Consent of Surety
Affidavit of Employee Drug Testing Program (1 per contractor/subcontractor)
Delaware Business License
(Others as Required by Project Manuals)

SUBCONTRACTOR LIST

In accordance with Title 29, Chapter 6962 (d)(10)b Delaware Code, the following sub-contractor listing must accompany the bid submittal. The name and address of the sub-contractor must be listed for each category where the bidder intends to use a sub-contractor to perform that category of work. In order to provide full disclosure and acceptance of the bid by the Owner, **it is required that bidders list themselves as being the sub-contractor for all categories where he/she is qualified and intends to perform such work.**

<u>Subcontractor</u> <u>Category</u>	<u>Subcontractor</u>	<u>Address (City & State)</u>	<u>Subcontractors tax payer ID #</u> <u>or Delaware Business license #</u>
1. Concrete Work	_____	_____	_____
2. Brick Pavers	_____	_____	_____
3. Landscaping	_____	_____	_____
4. Fencing/Gates	_____	_____	_____

NON-COLLUSION STATEMENT

This is to certify that the undersigned bidder has neither directly nor indirectly, entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding in connection with this proposal submitted this date _____.

All the terms and conditions of Contract No.: HHS-53 Sitework, Landscaping, and Streetscape have been thoroughly examined and are understood.

NAME OF BIDDER: _____

AUTHORIZED REPRESENTATIVE
(TYPED): _____

AUTHORIZED REPRESENTATIVE
(SIGNATURE): _____

TITLE: _____

ADDRESS OF BIDDER: _____

PHONE NUMBER: _____

Sworn to and Subscribed before me this _____ day of _____ 20__.

My Commission expires _____. NOTARY PUBLIC _____.

THIS PAGE MUST BE SIGNED AND NOTARIZED FOR YOUR BID TO BE CONSIDERED.

BID BOND

TO ACCOMPANY PROPOSAL
(Not necessary if security is used)

KNOW ALL MEN BY THESE PRESENTS That: _____ of _____ in the
County of _____ and State of _____ as Principal, and _____ of
_____ in the County of _____ and State of _____ as Surety, legally
authorized to do business in the State of Delaware ("State"), are held and firmly unto the New Castle County Vocational
Technical School District in the sum of _____ Dollars (\$_____), or percent not to exceed _____
Dollars (\$_____) of amount of bid on Contract No.
_____ to be paid to the New Castle County Vocational Technical School District for the use and benefit of
the New Castle County Vocational Technical School District for which payment well and truly to be made, we do bind
ourselves, our and each of our heirs, executors, administrators, and successors, jointly and severally for and in the whole
firmly by these presents.

NOW THE CONDITION OF THIS OBLIGATION IS SUCH That if the above bounden Principal who has submitted to the
New Castle County Vocational Technical School District a certain proposal to enter into this contract for the furnishing of
certain material and/or services within the State, shall be awarded this Contract, and if said Principal shall well and truly
enter into and execute this Contract as may be required by the terms of this Contract and approved by the New Castle
County Vocational Technical School District this Contract to be entered into within twenty days after the date of official
notice of the award thereof in accordance with the terms of said proposal, then this obligation shall be void or else to be
and remain in full force and virtue.

Sealed with _____ seal and dated this day of _____ in the year of our Lord two thousand and
_____(20__).

SEALED, AND DELIVERED IN THE PRESENCE OF

Name of Bidder (Organization)

Corporate
Seal

By: _____
Authorized Signature

Attest _____

Title

Name of Surety

Witness _____

Title

CONSENT OF SURETY

DATE _____

To:

Gentlemen:

We, the _____

(Surety Company's Address)

a Surety Company authorized to do business in the State of Delaware hereby agrees that if

(Contractor)

(Address)

is awarded the Contract No. _____

We will write the required Performance and/or Labor and Material Bond required by Paragraph 9 of the Instructions to Bidders.

(Surety Company)

By _____
(Attorney-in-Fact)

AFFIDAVIT
OF
EMPLOYEE DRUG TESTING PROGRAM

4104 Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects requires that Contractors and Subcontractors implement a program of mandatory drug testing for Employees who work on Large Public Works Contracts funded all or in part with public funds.

We hereby certify that we have in place or will implement during the entire term of the contract a Mandatory Drug Testing Program for our employees on the jobsite, including subcontractors, that complies with this regulation:

Contractor/Subcontractor Name: _____

Contractor/Subcontractor Address: _____

Authorized Representative (typed or printed): _____

Authorized Representative (signature): _____

Title: _____

Sworn to and Subscribed before me this _____ day of _____ 20_____.

My Commission expires _____. NOTARY PUBLIC _____.

THIS PAGE MUST BE SIGNED AND NOTARIZED FOR YOUR BID TO BE CONSIDERED.

END OF SECTION

SECTION 008114 – DRUG TESTING FORMS

1. SUMMARY

- A. Pursuant to 4104 Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects requires that Contractors and Subcontractors who work on Large Public Works Contracts funded all or in part with public funds submit Testing Report Forms to the Owner no less than quarterly. See the form attached hereto.
- B. The Contractor will notify the Owner in writing of any positive results of random drug testing. See the form attached hereto. The results must be reported to the Owner within 24 hours of receipt of the test results.

EMPLOYEE DRUG TESTING REPORT FORM

Period Ending:_____

4104 Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects requires that Contractors and Subcontractors who work on Large Public Works Contracts funded all or in part with public funds maintain testing data that includes but is not limited to the data elements below.

Project Number: _____

Project Name: _____

Contractor/Subcontractor Name: _____

Contractor/Subcontractor Address: _____

Number of employees who worked on the jobsite during the report period: _____

Number of employees subject to random testing during the report period: _____

Number of Negative Results _____ Number of Positive Results _____

Action taken on employee(s) in response to a failed or positive random test:

Date: _____

This form is not required to be submitted to the Owner. Included as a reference to show information required to be maintained by the Contractor. The Owner shall have the right to periodically audit all Contractor and Subcontractor test results at the Contractor's or Subcontractor's offices (or by other means to make the data available for inspection by the Owner).

**EMPLOYEE DRUG TESTING
REPORT OF POSITIVE RESULTS**

4104 Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects requires that Contractors and Subcontractors who work on Large Public Works Contracts funded all or in part with public funds to notify the Owner in writing of a positive random drug test.

Project Number: _____

Project Name: _____

Contractor/Subcontractor Name: _____

Contractor/Subcontractor Address: _____

Name of employee with positive test result: _____

Last 4 digits of employee SSN: _____

Date test results received: _____

Action taken on employee in response to a positive test result:

Authorized Representative of Contractor/Subcontractor: _____
(typed or printed)

Authorized Representative of Contractor/Subcontractor: _____
(signature)

Date: _____

This form shall be sent by mail to the Owner within 24 hours of receipt of test results.

Enclose this test results form in a sealed envelope with the notation "Drug Testing Form – DO NOT OPEN" on the face thereof and place in a separate mailing envelope.

END OF SECTION



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4000 Office of Management and Budget 4100 Division of Facilities Management

4104 Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects

1.0 Purpose

The Office of Management and Budget ("Office"), has developed these regulations that require Contractors and Subcontractors to implement a program of mandatory drug testing for Employees who work on Large Public Works Contracts funded all or in part with public funds pursuant to 29 Del.C. §6908(a)(6). The regulations establish the mechanism, standards and requirements of a Mandatory Drug Testing Program that will be incorporated by reference into all Large Public Works Contracts awarded pursuant to 29 Del.C. §6962.

2.0 Definitions

"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.

"Contractor" means an entity such as, but not limited to, an individual, firm, partnership or corporation that has a contractual obligation to perform work for contracts awarded pursuant to 29 Del.C. §6962.

"Division of Facilities Management" and "DFM" means the Division of Facilities Management within the Office of Management and Budget.

"Drug Testing Firm" is an entity engaged in the business of providing drug testing services for businesses, individuals, governments or any entity that requires drug testing of Employees, applicants, licensees, etc., in compliance with these requirements.

"Employee" means an individual employed by a Contractor or Subcontractor who works on the Jobsite of a Large Public Works Contract but does not fulfill a clerical or administrative function. For the purpose of this definition, clerical or administrative functions shall refer to job responsibilities that do not generally require an employee to work outside of the Contractor's Jobsite office, home office or other employer-provided office. For the purposes of this regulation, the term "Employee" shall also include supervisors and foremen working on the Jobsite. The term "Employee" shall also include employees of a Contractor or Subcontractor working on or delivering materials and equipment to and from a Jobsite.

"Impairment" or "Impaired" means symptoms that an Employee while working may be under the influence of drugs or alcohol that may decrease or lessen the Employee's performance of the duties or tasks of the Employee's job position, including symptoms of the Employee's speech, walking, standing, physical dexterity, agility, coordination, actions, movement, demeanor, appearance, clothing, odor, irrational or unusual behavior, negligence or carelessness in operating equipment, machinery or production or manufacturing processes, disregard for the safety of the Employee or others, or other symptoms causing a reasonable suspicion of the use of drugs or alcohol.

"Jobsite" means the site or area directly or indirectly owned, operated or controlled by the Owner in which the Contractor or Subcontractor performs work or delivers services to the Owner. For the purpose of this definition, "Jobsite" does not mean a remote work site not under the direct or indirect control of the Owner in which work is performed to fulfill the Contractor's or Subcontractor's obligations.

"Large Public Works Contract" means a contract for a public works construction awarded pursuant to 29 Del.C. §6962.

"Mandatory Drug Testing Program" and "Program" means a defined set of basic procedures, requirements and rules that must be used by a Contractor or Subcontractor to test employees for drugs in compliance with these requirements.

"Owner" is the state agency, school district or entity that awards a Large Public Works Contract to a Contractor pursuant to 29 Del.C. §6962.

"Positive Test Result" and "Fail a Drug Test" means the result reported by a Health and Human Services certified laboratory when a specimen contains a drug or drug metabolite equal to or greater than the cutoff

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concentration. For purposes of these regulations, an Employee shall not be considered to have a Positive Test Result nor shall an Employee be considered to "Fail a Drug Test", unless the employee was impaired by marijuana at the Jobsite if:

- The Employee is a Registered Qualifying Patient and;
- The drug detected was marijuana, a component of marijuana, or marijuana metabolites.

"Random Drug Testing" means that an Employee is chosen at random for testing without advance notice, from a pool of Employees or as a member of a Consortium. Specific requirements for random drug testing conducted under these regulations are described in Section 5.0.

"Registered Qualifying Patient" means a person (1) validly issued and in possession of an unexpired Registry Identification Card as defined by 16 Del.C. §4902A (14), and (2) subject to confirmation through a "verification system" as set forth at 16 Del.C. §4902A(17).

"Subcontractor" 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 2.0.

21 DE Reg. 503 (12/01/17)

3.0 Employee drug testing documentation requirements.

3.1 The following documentation requirements apply:

- 3.1.1 At bid submission - A solicitation for a Large Public Works Contract must require each Contractor that submits a bid for the work to submit with the bid a signed affidavit certifying that the Contractor and Subcontractor(s) has in place or will implement during the entire term of the contract a Mandatory Drug Testing Program that complies with this regulation.
- 3.1.2 At least two business days prior to contract execution – The awarded Contractor shall provide to the Owner copies of the Employee Drug Testing Program for the Contractor and for all listed Subcontractors.
- 3.1.3 During contract execution – Contractors that employ additional Subcontractors on the jobsite may do so only after submitting a copy of the Subcontractor's Employee Drug Testing Program. A Contractor or Subcontractor shall not commence work until the Owner has concluded the Employee Drug Testing Program complies with this Regulation as per subsection 3.2.
- 3.1.4 In the event of an emergency a Contractor may employ additional Subcontractors on the jobsite prior to submitting the Subcontractor's Employee Drug Testing Program provided that said Program is submitted to the Owner as soon as practicable.

3.2 A Contractor or Subcontractor shall be treated as having a Mandatory Drug Testing Program that complies with this regulation if the Program includes the following:

- 3.2.1 The Program meets the minimum standards in Section 4.0 of this regulation.
- 3.2.2 The Program provides for the frequency of testing of Employees as per Section 5.0 of this regulation:
- 3.2.3 The Program imposes disciplinary measures on an Employee who fails a drug test as per Section 6.0 of this regulation.

3.3 Prequalified Contractors and Subcontractors – A Contractor or Subcontractor may meet the provisions of subsection 3.1 if they are Prequalified through the DFM Prequalification and if the DFM Prequalification includes provisions requiring an Employee Mandatory Drug Testing Program that meet the requirements of Sections 4.0, 5.0 and 6.0 of this Regulation

3.4 The State shall not be obligated to pay, and the Contractor or Subcontractor shall expressly agree that, any portion of work performed by a Contractor or Subcontractor commenced before that Contractor or Subcontractor has complied with subsections 3.1 and 3.2, provided however that emergency work as referenced in subsection 3.1.4 may not be subject to this provision.

21 DE Reg. 503 (12/01/17)

4.0 Minimum Standards for a Mandatory Drug Testing Program

4.1 Testing for the presence of drugs in an Employee's system and the handling of test specimens shall be conducted in accordance with guidelines for the collection, chain-of-custody procedures, laboratory testing, and Medical Officer Review procedures contained within the Mandatory Guidelines for Federal Workplace Drug Testing Programs published by the Substance Abuse and Mental Health Services Administration (SAMHSA). (49 CFR Part 40).

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All tests must be processed by a federal Health and Human Services certified laboratory. Contractors must provide documentation detailing the procedures used in the collection, testing and reporting of drug tests sufficient to show conformance with SAMHSA guidelines.

- 4.2 Contractors and Subcontractors subject to these regulations may procure the services of an appropriate Drug Testing Firm to administer their program. A Contractor or Subcontractor may also participate in a Consortium. A Contractor or Subcontractor may also implement a Mandatory Drug Testing Program using in-house personnel and resources.
- 4.3 Employees subject to drug testing shall be tested using at a minimum a seven-panel protocol testing plus alcohol screening for the following:

Initial test analyte	Initial test cutoff concentration	Confirmatory test analyte	Confirmatory test cutoff concentration
Marijuana metabolites	50 ng/mL	THCA	15 ng/mL.
Cocaine metabolites	150 ng/mL	Benzoylecgonine	100 ng/mL.
Opiate metabolites			
Codeine/Morphine	2000 ng/mL	Codeine	2000 ng/mL.
		Morphine	2000 ng/mL.
6-Acetylmorphine	10 ng/mL	6-Acetylmorphine	10 ng/mL.
Phencyclidine	25 ng/mL	Phencyclidine	25 ng/mL.
Amphetamines			
AMP/MAMP	500 ng/mL	Amphetamine	250 ng/mL.
		Methamphetamine	250 ng/mL.
MDMA	500 ng/mL	MDMA	250 ng/mL.
		MDA	250 ng/mL.
		MDEA	250 ng/mL.
Alcohol	0.04%		

- 4.4 The frequency of Random Drug Testing and the methodology for selecting Employees to be screened are defined in Section 5.0 and shall be incorporated into Contractor and Subcontractor mandatory testing procedures. A Contractor or Subcontractor may incorporate rules or requirements that exceed the requirements defined herein.

21 DE Reg. 503 (12/01/17)

5.0 Drug Testing Requirements – Frequency for the Testing of Employees

- 5.1 Initial Drug Testing - Employees commencing work on a Jobsite must be tested with the exception that an Employee who has passed a random or scheduled drug test within the past 180 days from the date of commencing work or an Employee who passed a pre-employment drug test administered pursuant to an Contractor's or Subcontractor's Program and is subject to testing as part of a Contractor's or Subcontractor's ongoing Program or as part of a Consortium shall be permitted to work at the Jobsite without further testing; however, the Employee is still subject to random testing.
- 5.2 Random Drug Testing - During the course of a project, each Contractor and Subcontractor with Employees on the Jobsite shall maintain a Program that meets or exceeds the following requirements.
- 5.2.1 All Employees will be subject to random, unannounced testing.
- 5.2.2 The selection of Employees shall be made by a scientifically valid method of randomly generating an employee identifier from a Contractor or Sub-contractor's entire pool of employees, through those Employees working on a Public Works Jobsite or through the Contractor or Subcontractor's participation in a Consortium.
- 5.2.3 A Contractor or Subcontractor's Program shall provide that no less than 5% of a Contractor's or Subcontractor's employees shall be randomly selected each month for drug testing and no less than 2.5% of a Contractor or Subcontractor's employees be randomly selected for alcohol testing. Contractors or Subcontractors may participate in a Consortium provided that no less than 5% of the Consortium's pool shall be subject to drug testing each month and no less than 2.5% of the Consortium's pool shall be subject to alcohol testing each month. Contractors or Subcontractors with less than 10 employees that do not participate in a Consortium shall test at least one of their employees, selected randomly per month.

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Each employee shall have an equal chance of selection each time the selection is made. Because the selection process is random, some Employees may not be tested within a year, while others may be tested more than once. Nothing in this regulation shall require an Employee of a Contractor or Subcontractor not working or assigned to a Public Works Jobsite to be subject to random alcohol testing.

- 5.2.4 Employees notified that they have been selected must report within four hours for testing to a site specified. Employees so notified must have been given such notification at least four hours before the scheduled closing time of the testing facility. Any failure to report for random testing, or to cooperate with the testing procedure shall be considered a positive result.
- 5.2.5 Purposely impeding or delaying an Employee's fulfillment of the testing requirements herein by a Contractor or Subcontractor may subject the Contractor or Subcontractor to sanctions listed in Section 8.0.
- 5.3 Reasonable Suspicion Testing – An Employee will be required to take a drug and/or alcohol test at any time his or her employing Contractor, Subcontractor or the Owner reasonably believes that he or she has an Impairment caused by drugs and/or alcohol. Further, an Employee may be required to take a drug and/or alcohol test at any time his or her employing Contractor, Subcontractor or the Owner finds drug paraphernalia and/or open alcohol containers on the Jobsite.
- 5.4 Return to Duty Testing – As required in Section 6.0.
- 5.5 Accident Triggered Testing – An Employee will be required to take a drug test and may be subject to an alcohol breathalyzer test at any time there is a Jobsite accident involving loss or significant property damage, injury or death to an Employee of the Contractor, Subcontractor, or Owner or member of the public.
 - 5.5.1 As soon as practicable following an accident, the Contractor will notify the Employee(s) whose performance could have contributed to the accident of the need for the test.
 - 5.5.2 The appropriate Contractor shall ensure that an Employee, required to be tested under this section, report to a testing center as soon as practicable, but no longer than 4 hours after the accident. Employees so notified must have been given such notification at least four hours before the scheduled closing time of the testing facility. If the drug test is not conducted within 4 hours, attempts to conduct the test must cease and the reasons for the failure to test documented.
 - 5.5.3 An Employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying a supervisor of his or her location if he or she leaves the scene of the accident prior to submission to such test, may be deemed to have refused to submit to testing.
 - 5.5.4 If an Employee fails or refuses to be tested, he/she must be removed from the Jobsite and shall be subject to consequences in Section 6.0.
 - 5.5.5 Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident, or to prohibit an Employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.
- 5.6 All testing required by this section shall be administered according to the standards outlined in Section 4.0.

21 DE Reg. 503 (12/01/17)

6.0 Consequences of a Positive Test Result

- 6.1 The disciplinary measures contained within a Contractor's or Subcontractor's Program for an employee who tests positive to a mandatory drug test must include at a minimum, all of the following:
 - 6.1.1 The Employee is subject to an immediate suspension from any public works Jobsite.
 - 6.1.2 The Employee is not eligible for reinstatement by the Contractor or Subcontractor to any public works Jobsite until 30 days after the Employee tests negative on a seven drug panel plus alcohol test certified by a medical review officer.
 - 6.1.3 The Employee is subject to unscheduled monthly random testing as per subsection 5.2.
 - 6.1.4 An Employee who has tested positive for more than one drug test within a three year period shall be permanently banned from working at public works Jobsites.
 - 6.1.5 An Employee who has tested positive for marijuana, a component of marijuana, or marijuana metabolites and is a Registered Qualifying Patient shall be exempted from the disciplinary actions contained in this section unless:
 - 6.1.5.1 The Employee was Impaired by marijuana at the Jobsite

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6.1.5.2 Employment of the Registered Qualifying Patient would cause the Owner to lose monetary or licensing-related benefits under Federal law.

6.2 A Contractor or Subcontractor shall report the Positive Test Result to the Employee's professional licensing board, if applicable.

21 DE Reg. 503 (12/01/17)

7.0 Contractor and Subcontractor Certification of Compliance with Regulations

7.1 During the term of the contract:

7.1.1 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 contained in subsection 7.1.2:

7.1.1.1 A Contractor or Subcontractor that is employed on the Jobsite for less than 30 days shall not be subject to the reporting requirements contained in subsection 7.1.2 of this regulation, unless the Owner specifies that such reporting is required in the Invitation to Bid or Specifications relating to the work to be performed.

7.1.2 The data shall at a minimum contain the following elements:

7.1.2.1 The number of Employees who worked on the Jobsite during the previous month or quarter.

7.1.2.2 The number of Employees subjected to random testing during the previous month or quarter.

7.1.2.3 The number of negative results and the number of positive results.

7.1.2.4 Action taken by the Contractor or Subcontractor on an Employee who failed or tested positive to a random test.

7.1.3 Test results must be kept by a Contractor or Subcontractor for a minimum of 1 year subsequent to the date of close out of the Public Works project.

7.1.4 Any Positive Test Result of an Employee working on a Public Works Jobsite including the Employee name and action taken in response by a Contractor or Subcontractor must be reported by the Contractor or Subcontractor to the Owner in writing within 24 hours of the Contractor or Subcontractor receiving the test results.

7.1.5 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.

7.1.6 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.

21 DE Reg. 503 (12/01/17)

8.0 Penalties

8.1 A Contractor or Subcontractor on a Large Public Works contract that fails to implement a Mandatory Drug Testing Program in accordance with this regulation or falsifies testing results shall be subject to the following sanctions:

8.1.1 Written warning (1st offense).

8.1.2 Prohibition from bidding on new public works jobs for a period not to exceed three months (2nd offense) and one year (3rd offense).

8.1.3 For subsequent offenses, debarment or bond revocation.

8.2 Notwithstanding any other provision of this regulation, if any failure to comply with the requirements of this regulation are particularly flagrant or egregious, the Owner may seek a termination for cause, a temporary suspension, a determination that the Contractor or Subcontractor is not responsible, debarment or bond revocation, and any other statutory, common law, or equitable remedy.

19 DE Reg. 207 (09/01/15)

21 DE Reg. 503 (12/01/17)

21 DE Reg. 645 (02/01/18)