

# **Executive Order No. 1-31: Mayor's Drug Detection and Deterrence Procedures for Contractors**

(Effective Date 3.01.95)

## **1.0 PURPOSE**

To provide procedures for implementation of the Mayor's Amended Drug Detection and Deterrence Policy as applicable to contractors who do business with the City of Houston. These procedures are based upon the City's commitment to maintain a safe, healthful and productive work environment for all employees and contractors, and to ensure the safe and efficient delivery of contracted services to citizens of the City of Houston.

## **2.0 OBJECTIVES**

- 2.1 To establish a procedure to achieve a drug-free workforce and to provide a workplace that is free of illegal drugs and substance abuse.
- 2.2 To establish a procedure for drug screening by contractors where there is reasonable suspicion that an employee has certain banned illegal or illicit substances in their system while on duty or in the performance of the scope of a contract with the City.
- 2.3 To establish a procedure for random drug screening of contractor employees in positions that have a significant impact upon the safety of themselves or others.
- 2.4 To establish a procedure for post accident drug screening of contractor employees.

## **3.0 POLICY**

It is the policy of the City of Houston that the manufacture, distribution, dispensation, possession, sale or use of illegal drugs or alcohol by contractors while on duty for or in behalf of the City is prohibited. The City's goal is to establish and maintain a work environment that is free from the effects of use of certain banned substances or alcohol. Consequently, contractors are prohibited from being at work or acting in the scope of their contract with the City while impaired by alcohol or with certain banned substances present in their systems, on their persons, or on City worksites and premises. This policy incorporates any off duty use or misuse of certain banned substances that result in a positive drug test pursuant to these procedures.

## **4.0 SCOPE**

This procedure applies to all City of Houston contracts for labor and/or services except the following:

- 4.1 Contracts authorized by Emergency Purchase Orders.
- 4.2 Contracts in which imposition of the requirements of this Executive Order would exclude all potential bidders or proposers or would eliminate meaningful competition for the contract.
- 4.3 Contracts with companies that have fewer than fifteen employees during any 20-week period during a calendar year and no safety impact positions.
- 4.4 Contracts with non-profit organizations providing services at no cost or reduced cost to the public.
- 4.5 Contracts with federal, state, or local governmental entities.

## 5.0 DEFINITIONS

- 5.1 ACCIDENT means an unexpected or unintended event resulting in a time loss personal injury or significant property damage.
- 5.2 CONTRACT includes prime contracts and subcontracts.
- 5.3 CONTRACTOR means an individual or company that has contracted with the City of Houston to provide labor and/or services to the City of Houston. This term includes employees of the contractor and subcontractors providing labor and/or services, but excludes vendors or suppliers of materials or other goods.
- 5.4 CONTRACT COMPLIANCE OFFICER FOR DRUG TESTING (CCODT) means the individual in each City of Houston department designated to receive the required drug testing policies, agreements, certifications and reports from contractors.
- 5.5 CONTRACTOR CONTACT PERSON means the designated individual for the City to call regarding suspicion of drug use of an employee of a contractor.
- 5.6 CITY PREMISES means all City facilities, their surrounding grounds and parking lots, worksites and leased space.
- 5.7 COLLECTION SITE means a site where urine samples are collected from a contractor employee in compliance with federal Department of Health and Human Services (DHHS) collection guidelines.
- 5.8 DEPARTMENT DIRECTOR means all City of Houston Department Directors, the Division Director and Chief (s) of Staff of the Mayor's office, and the City Controller. The Mayor Pro Tem is the Department Director for Council Members.
- 5.9 DIRECTOR OF PERSONNEL means the Department Director of the City of Houston's Personnel Department.
- 5.10 DRUG/BANNED SUBSTANCE means any chemical substance that is defined by any statute as a controlled substance or which may produce physical, mental, emotional, or behavioral change in the user. The specific substances which are banned for purposes of this policy are set forth in Section 8.0.
- 5.11 DRUG-FREE WORKPLACE means every site for the performance of work for or on behalf of the City of Houston at which City employees and contractors are prohibited from engaging in the unlawful manufacture, distribution, dispensation, possession, sale, or use of drugs/banned substances.
- 5.12 DRUG SCREENING/DRUG TESTING means a procedure to, at a minimum, screen and/or test urine samples for the purpose of detecting the presence of amphetamines, cocaine metabolites, opiate metabolites, phencyclidine, and marijuana metabolites.
- 5.13 LABORATORY means a federal Department of Health and Human Services (DHHS) certified laboratory authorized by the contractor to perform drug screening/testing.
- 5.14 MEDICAL REVIEW OFFICER (MRO) means a physician authorized by the contractor to review and interpret drug test results.

## **5.0 DEFINITIONS (continued)**

- 5.15 ON DUTY means that time period that constitutes a contractor's work day, or that time period when any affected employee has been recalled to work.
- 5.16 RANDOM means a selection process (for drug testing) based on a scientific, unbiased method, lacking a definite or predetermined pattern.
- 5.17 REASONABLE SUSPICION means an articulable belief based on specific facts and reasonable inferences drawn from those facts.
- 5.18 SAFETY IMPACT POSITION means a contractor's employment position involving job duties that if performed with inattentiveness, errors in judgment, or diminished coordination, dexterity, or composure may result in mistakes that could present a real and/or imminent threat to the personal health or safety of the employee, co-workers, and/or the public.

## **6.0 RESPONSIBILITIES**

- 6.1 All contractors are responsible for reviewing and complying with the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Policy) and the Mayor's Drug Detection and Deterrence Procedures for Contractors (Executive Order), developing and implementing a written drug-free workplace policy, and providing a copy of their drug-free workplace policy to the contracting department's Contract Compliance officer for Drug Testing (CCODT) as designated by the contracting department in the Request for Proposal.
- 6.2 All contractors are required to complete and submit a Drug Policy Compliance Agreement and, if applicable, a Contractor's Certification of No Safety Impact Positions In Performance of a City Contract to the contracting department's CCODT before a City contract is awarded. Examples of each are attached to this Executive order as Attachments A and C.
- 6.3 All contractors are required to designate in writing all safety impact positions, if any, within the company to be utilized in performing a City contract. A contractor designating safety impact positions pursuant to this Executive Order shall:
  - a. obtain a facility to collect urine samples consistent with federal Department of Health and Human Services (DHHS) guidelines,
  - b. obtain a DHHS certified laboratory to perform drug tests,
  - c. monitor and keep records of drug tests given and their results,
  - d. supply reports and documentation of drug tests given and/or results of such testing as requested by the City of Houston, and
  - e. submit semi-annual and final Drug Policy Compliance Declarations to the contracting department's CCODT.
- 6.4 If no safety impact positions have been certified pursuant to this Executive Order, the contractor has a continuing obligation after the initial certification to notify the Director of the City's Personnel Department if this situation changes and safety impact positions are established in the company to be utilized in performing City contracts, and to establish and implement additional drug testing procedures for random testing in compliance with this Executive order.
- 6.5 All contractor employees are responsible for reviewing and complying with this Executive Order and the contractor's own policies and procedures for drug testing.

## **6.0 RESPONSIBILITIES (continued)**

- 6.6 Each Department Director is responsible for appointing a CCODT and giving written notice to each contractor of the appointment. The CCODT may be someone other than the department's contract administrator. The CCODT shall receive the contractor's required Drug Policy Compliance Agreement, Drug Compliance Declaration and/or Contractor's Certification Of No Safety Impact Positions In Performance Of A City Contract (form). The CCODT shall forward these agreements, declarations and/or certifications to the Director of Personnel with a report of the contractor's drug testing activity.
- 6.7 The Director of Personnel is responsible for maintaining all Drug Policy Compliance Agreements, Drug Compliance Declarations, and Contractor Is Certification Of No Safety Impact Positions In Performance Of A City Contract forms received from each department's CCODT. The Director of Personnel shall develop the reporting format to be used by the CCODT for the contractor drug testing activity. Additionally, the Director of Personnel shall periodically prepare a report reflecting citywide contractor drug testing activity.

## **7.0 BASIS FOR TESTING**

- 7.1 Contractor drug procedures will stipulate the requirements for drug testing under the following circumstances:

- 7.1.1 Random - All contractor employees who perform job duties that are defined as safety impact positions shall be subject to random drug testing. All employees in positions defined as safety impact positions shall be eligible for each random selection. The contractor shall randomly drug test a number equal to at least 25% of the employees in safety impact positions annually. Drug testing shall be evenly distributed over the term of the contract or the year, whichever is shorter.

Contractors may enter into multi-contractor or multi-contract pooling arrangements, subject to the approval of the director (or designee) of the department involved, as long as those arrangements comply with the requirements of these procedures.

- 7.1.2 Reasonable suspicion - Contractors shall drug test employees when reasonable suspicion to test exists. "Reasonable suspicion" means an articulable belief based on specific facts and reasonable inferences drawn from those facts that an employee is under the influence of illegal drugs/banned substances. Specific designated acts or conduct can create a reasonable suspicion or trigger a request for a drug screen. Circumstances which can constitute a basis for determining reasonable suspicion may include, but are not limited to:

- a. abnormal or erratic behavior on the part of the employee;
- b. information provided by a reliable and credible source;
- c. direct observation of drug use; or
- d. presence of the physical symptoms of drug use (i.e., glassy or bloodshot eyes, slurred speech, poor coordination or reflexes).

## 7.0 BASIS FOR TESTING (continued)

Employees reasonably suspected to be under the influence of drugs shall be prevented from engaging in further work of any sort for the City and will give the contractor cause to subject them to immediate drug testing in accordance with the procedures set forth in this Executive Order.

The City will cooperate in all aspects of supplying statements that might provide a basis for reasonable suspicion.

7.1.3 Post accident - The contractor drug policy shall mandate drug testing if an employee has been involved in a work related accident on a City contract that involves an injury to himself or to another or causes property damage.

7.1.4 A contractor's drug policy is not limited to the drug testing criteria in these procedures and may be more stringent.

7.1.5 Contractors may be subject to other drug testing related requirements as specified in their contract with the City of Houston.

## 8.0 DRUG TESTING PROCEDURES

8.1 Contractors shall develop and follow their own drug testing procedures, if required to do so.

8.2 When drug screening of employees is required or authorized under the contractor policy or procedures, a urinalysis test shall be given to detect the presence of amphetamines, cocaine metabolites, opiate metabolites, phencyclidine, and for marijuana metabolites.

8.2.1 Any drug screen under the provisions of this Executive order shall include a urinalysis test to detect the presence of the following drug groups:

.	DRUG GROUP	Initial EMIT Screen (ng/ml)	Confirmatory GC/MS Test (ng/ml)
a.	Amphetamines Amphetamine Methamphetamine	1000	500 500
b.	Cocaine Metabolites	300	150*
c.	Opiate Metabolites Morphine Codeine	300	300 300
d.	Phencyclidine	25	25
e.	Marijuana Metabolites	50	15**
* Benzoylcegonine			
** Delta 9 tetrahydrocannabinol - 9 - carboxylic acid			

8.2.2 An initial screening shall use the enzyme immunoassay techniques (EMIT) test and a confirmatory test shall use the gas chromatography/mass spectrometry (GC/MS) test. Both tests must be performed and confirmed positive by a Medical Review Officer before any notice of a positive test result will be provided to the employee.

## **8.0 DRUG TESTING PROCEDURES (continued)**

- 8.2.3 At a minimum, contractors shall test for the drugs/banned substances specified herein. The cutoff levels may be lower for the banned substances listed herein, but shall not be higher than the levels in this Executive Order.
- 8.3 Upon observing conduct that would give rise to a reasonable suspicion, a city supervisor shall communicate with the contractor contact person to inform that person of the factors constituting such reasonable suspicion.
- 8.4 As appropriate, if drug use is suspected by a contractor's employee, the City has the authority to temporarily remove a contractor's employee off a job or require the contractor's employee to leave a City worksite if it is in the best interest of the City to do so. In such an instance, the Department Director or designee of the department holding the contract shall authorize the removal.
- 8.5 All contractors shall adhere to this Executive Order.
  - 8.5.1 Contractors who have safety impact positions pursuant to this Executive Order shall file a completed Drug Policy Compliance Declaration on a semi-annual basis as stipulated in the Drug Policy Compliance Agreement with the contracting department's CCODT on or before 30 days following the expiration of 6 months of performance under the contract or the completion of the contract if less than 6 months. An example of the Drug Policy Compliance Declaration is attached to this Executive order (Attachment B).
  - 8.5.2 Contractors may substitute Department of Transportation compliance that requires drug testing standards equal to or exceeding this Executive Order on a format approved by the Director of Personnel.

## **9.0 POSSESSION OF DRUGS; CONSEQUENCE OF POSSESSION**

- 9.1 Contractor employees are prohibited from possessing, using, distributing, dispensing, manufacturing, selling or having in their possession or control any drug/banned substance while on duty on City premises, or while acting in the course and scope of their contract at any geographic location.
- 9.2 Possession or control can include an employee's person or personal property if on City premises, a contractor's motor vehicle/equipment under the employee's control, or property provided by the contractor under an employee's control including, but not limited to tool boxes, lockers, desks, and files.
- 9.3 An employee who is determined to have violated this provision shall be treated in accordance with Section 10.1.

## **10.0 CONSEQUENCE OF POSITIVE TEST RESULT**

- 10.1 A contractor employee who has a confirmed positive test result pursuant to a drug test required by these procedures shall be permanently removed from any contract City worksite.

## **11.0 CONSEQUENCE OF REFUSAL TO CONSENT TO A DRUG TEST**

- 11.1 Any contractor employee who refuses to consent to a drug test after notification of the consequences of refusal shall be permanently removed from any contract City worksite.
- 11.2 Any contractor employee who consents to a drug test but fails to appear timely at the collection site or who fails to give their urine sample after reasonable opportunity to do so, will be considered as having refused to consent to a drug test and treated in accordance with Section 11.1.

## **12.0 CONSEQUENCE OF FAILURE TO COMPLY WITH THIS EXECUTIVE ORDER**

- 12.1 Any contractor who fails to comply with this Executive order, to complete, execute and submit the Drug Policy Compliance Agreement and, if applicable, the contractor's Certification of No Safety Impact Positions In Performance of a City contract, the semi-annual Drug Policy Compliance Declaration or any requested drug testing records timely if required to do so by this policy, shall be considered in breach of contract and may be subject to having the contract with the City of Houston terminated.
- 12.2 Any contractor who falsifies any test records, reports or declarations required by this Executive Order shall be considered in breach of contract and the City of Houston contract will be terminated.

## **13.0 COMPLIANCE WITH LAWS**

Contractors shall comply with all applicable laws regarding drug testing of employees. In the event of a conflict between these procedures and an applicable drug testing law, the applicable law shall prevail.