**R131. Capitol Preservation Board (State), Administration.**

**R131-15. State Construction Contracts and Drug and Alcohol Testing.**

**R131-15-1. Purpose.**

The purpose of this rule is to comply with Section 63G-6a-1303.

**R131-15-2. Authority.**

This rule is authorized under Subsection 63O-2-301(2)(a) as well as Section 63G-6a-1303.

**R131-15-3. Definitions.**

(1) The following definitions of Section 63G-6a-1303 shall apply to any term used in this rule:

(a) "Contractor" means a person who is or may be awarded a state construction contract.

(b) "Covered individual" means an individual who:

(i) on behalf of a contractor or subcontractor provides services directly related to design or construction under a state construction contract; and

(ii) 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 state construction contract.

(c) "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:

(i) the manufacture, distribution, dispensing, possession, or use of drugs or alcohol, except the medically prescribed possession and use of a drug; or

(ii) the impairment of judgment or physical abilities due to the use of drugs or alcohol.

(d) "Random testing" means that a covered individual is subject to periodic testing for drugs and alcohol:

(i) in accordance with a drug and alcohol testing policy; and

(ii) on the basis of a random selection process.

(e) For purposes of Subsection R131-15-4(5), "state" includes any of the following of the state:

(i) a department;

(ii) a division;

(iii) an agency;

(iv) a board including the Capitol Preservation Board;

(v) a commission;

(vi) a council;

(vii) a committee; and

(viii) an institution, including a state institution of higher education, as defined under Section 53B-1-102.

(f) "State construction contract" means a contract for design or construction entered into by the Capitol Preservation Board.

(g)(i) "Subcontractor" means a person under contract with a contractor or another subcontractor to provide services or labor for design or construction.

(ii) "Subcontractor" includes a trade contractor or specialty contractor.

(iii) "Subcontractor" does not include a supplier who provides only materials, equipment, or supplies to a contractor or subcontractor.

(2) In addition:

(a) "Board" means the Capitol Preservation Board established pursuant to Section 63O-2-201.

(b) "Executive Director" means the Executive Director of the Capitol Preservation Board.

(c) "State" as used throughout Rule R131-15 means the State of Utah except that it also includes those entities described in Subsection R131-15-3(1)(e) as the term "state" is used in Section R131-15-5.

**R131-15-4. Applicability.**

(1) Except as provided in Section R131-15-5, on and after July 1, 2010, the Board may not enter into a state construction contract, which includes a contract for design or construction, unless the state construction contract requires the following:

(a) A contractor shall demonstrate to the Capitol Preservation Board that the contractor:

(i) has and will maintain a drug and alcohol testing policy during the period of the state construction contract that applies to the covered individuals hired by the contractor;

(ii) 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 described in Subsection R131-15-4(1)(a)(i); and

(iii) subjects the covered individuals to random testing under the drug and alcohol testing policy described in Subsection R131-15-4(1)(a)(i) if at any time during the period of the state construction contract there are ten or more individuals who are covered individuals hired by the contractor.

(b) A contractor shall demonstrate to the Board, which shall be demonstrated by a provision in the contract where the contractor acknowledges this rule and agrees to comply with all aspects of this rule , that the contractor requires that as a condition of contracting with the contractor, a subcontractor, which includes consultants under contract with the designer:

(i) has and will maintain a drug and alcohol testing policy during the period of the state construction contract that applies to the covered individuals hired by the subcontractor;

(ii) posts in one or more conspicuous places notice to covered individuals hired by the subcontractor that the subcontractor has the drug and alcohol testing policy described in Subsection R131-15-4(1)(b)(i); and

(iii) subjects the covered individuals hired by the subcontractor to random testing under the drug and alcohol testing policy described in Subsection R131-15-4(1)(b)(i) if at any time during the period of the state construction contract there are ten or more individuals who are covered individuals hired by the subcontractor.

(2)(a) Except as otherwise provided in this Subsection R131-15-4(2), if a contractor or subcontractor fails to comply with Subsection R131-15-4(1), the contractor or subcontractor may be suspended or debarred in accordance with this rule.

(b) On and after July 1, 2010, the Board shall include in a state construction contract a reference to this rule.

(c)(i) A contractor is not subject to penalties for the failure of a subcontractor to comply with Subsection R131-15-4(1).

(ii) A subcontractor is not subject to penalties for the failure of a contractor to comply with Subsection R131-15-4(1).

(3)(a) The requirements and procedures a contractor shall follow to comply with Subsection R131-15-4(1) is that the contractor, by executing the construction contract with the Board, is deemed to certify to the Board that the contractor, and all subcontractors under the contractor that are subject to Subsection R131-15-4(1), shall comply with this rule as well as Section 63G-6a-1303; and that the contractor shall on a semi-annual basis throughout the term of the contract, report to the Executive Director in writing information that indicates compliance with this rule and Section 63G-6a-1303.

(b) A contractor or subcontractor may be suspended or debarred in accordance with the applicable Utah statutes and rules, if the contractor or subcontractor violates Section 63G-6a-1303. The contractor or subcontractor shall be provided reasonable notice and opportunity to cure a violation of Section 63G-6a-1303 before suspension or debarment of the contractor or subcontractor in light of the circumstances of the state construction contract or the violation. The greater the risk to persons or property as a result of noncompliance, the shorter this notice and opportunity to cure shall be, including the possibility that the notice may provide for immediate compliance if necessary to protect persons or property.

(4) The failure of a contractor or subcontractor to meet the requirements of Subsection R131-15-4(1):

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Title 63G, Chapter 6a, Part 16, Protests or the similar rules of the Board; and

(b) may not be used by the Board, 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 state construction contract.

(5)(a) After the Board enters into a state construction contract in compliance with Section 63G-6a-1303, the state is not required to audit, monitor, or take any other action to ensure compliance with Section 63G-6a-1303.

(b) The state is not liable in any action related to Section 63G-6a-1303 and this rule, including not being liable in relation to:

(i) a contractor or subcontractor having or not having a drug and alcohol testing policy;

(ii) failure to test for a drug or alcohol under a contractor's or subcontractor's drug and alcohol testing policy;

(iii) the requirements of a contractor's or subcontractor's drug and alcohol testing policy;

(iv) a contractor's or subcontractor's implementation of a drug and alcohol testing policy, including procedures for:

(A) collection of a sample;

(B) testing of a sample;

(C) evaluation of a test; or

(D) disciplinary or rehabilitative action on the basis of a test result;

(v) an individual being under the influence of drugs or alcohol; or

(vi) an individual under the influence of drugs or alcohol harming another person or causing property damage.

**R131-15-5. Non-applicability.**

(1) This rule and Section 63G-6a-1303 does not apply if the Board determines that the application of this rule or Section 63G-6a-1303 would severely disrupt the operation of a state agency to the detriment of the state agency or the general public, including:

(a) jeopardizing the receipt of federal funds;

(b) the state construction contract being a sole source contract; or

(c) the state construction contract being an emergency procurement.

**R131-15-6. Not Limit Other Lawful Policies.**

If a contractor or subcontractor meets the requirements of Section 63G-6a-1303 and this rule, this rule may not be construed to restrict the contractor's or subcontractor's ability to impose or implement an otherwise lawful provision as part of a drug and alcohol testing policy.

**KEY: drug and alcohol testing, contractors, contracts**

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**Authorizing, and Implemented or Interpreted Law: 63G-6a-1303**