


TRANSPORTATION

DISTRIBUTION & LOGISTICS ALERT

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CSA Update

By Barbara A. Darkes

- Carriers exceeding acceptable thresholds in any BASICs category should expect to receive a warning letter from FMCSA. FMCSA is in the process of sending 50,000 letters. FMCSA's goal in sending these letters is to encourage carriers to take remedial action, improve scores and avoid more severe intervention, such as on-site and off-site inspections, suspensions, or revocations.
- The current orange "ALERT" symbol used on the CSA website to identify when a carrier has exceeded a BASICs threshold will be replaced with a yellow triangle with an exclamation point in it. 
- FMCSA has requested a budget of \$78M for its 2012 CSA operations; this is approximately eight times its 2010 expenditure on CSA.
- Carriers should remember to update their MCS-150 form. This is required once every 24 months, but may be done more often as changes occur. Keeping the information reported on this form up-to-date will assist in more accurate CSA scores. ■



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Government Contracts Carry Hidden Risks and Responsibilities

By Shaun D. Henry

In this difficult economy, funding sources can be scarce. The financial climate makes government contracts appear quite lucrative. Every industry, including trucking, should seriously consider the ramifications of their actions on other areas of the business when entering into government contracts. We frequently see situations where the sales force of an organization enters into a contract without coordination with the sections of the business responsible for compliance with the reporting procedure that often goes along with government contracts. In fact, there have been a number of occasions where a company's contracting agents had no idea that the work being secured for the company would result in significant reporting requirements. Two relatively new developments should give companies pause when considering government contracting.

First, Executive Order 11246 requires that all government contractors undertake affirmative action in the hiring of traditionally disenfranchised groups where the contractor or subcontractor has a government contract of \$10,000 or more. Contractors who have contracts of \$50,000 or more must prepare, maintain, and comply with a written affirmative action program. Compliance with affirmative action plans is onerous enough, but the bigger issue is that these

plans may be classified as admissible evidence to prove discrimination. This issue has been visited in the past by appellate courts, and there is recent case law successes in this area of discrimination. At least one court has recently found that a former employee of the Peoria School District in Illinois could use the existence of the District's affirmative action plan as evidence of discriminatory intent, so long as other evidence of intent was also present. This case is evidence of the fact that the Office of Federal Contract Compliance Programs' ("OFCCP") mandates for affirmative action plans can create hidden dangers to a company. These factors should be considered prior to entering into any government contract.

The second fairly new issue of concern is the fact that government contractors are now required to disclose the compensation earned by certain company executives. This information will be made publicly available once it has been reported to the government. An amendment to the federal acquisition regulation, which became effective March 1, 2011, requires all contractors and first-tier subcontractors to report the executive compensation (in all forms) of their top five most highly compensated executives for the contractor's previous fiscal year. The reporting is applicable to all contracts where the prime contract is for \$25,000 or more. Contractors and first-tier

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subcontractors must report the information by the end of the month following the month of the award of the contract and annually thereafter. Many companies will be less than thrilled about such information becoming public.

The wise move is to think long and hard about entering into any government contract. Once the decision is made, companies would do well to recognize the risks of such contracts and take steps to limit those risks. Here are some do's and don'ts when considering entering into government contracts:

- Educate your sales force on the potential attendant requirements of any government contract.
- Require sales executives to get approval of a management official before proceeding with any government contract.
- Carefully examine all requirements of the contract before signing.

- Assign reporting requirements to a specific entity within the company.
- Know the end date for the contract. You are not required to continue any contract-related reporting or other recordkeeping after the completion of the contract. Doing so may subject the company to discrimination claims and unnecessary scrutiny.

Should you require additional information about any of the information discussed above, please feel free to contact Shaun Henry at (717) 237-5346. ■



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Marcellus Shale Transportation Hot Topics *By Curtis N. Stambaugh*

The exploration for, and production of, natural gas from the Marcellus Shale formation has caused a dramatic resurgence in a industry that was born in the Commonwealth. The methods used to produce gas from this unconventional play also require significant transportation resources. Most wells require more than 1,000 truck trips from initial development through production. This increase in truck transportation throughout the Marcellus footprint has spawned a variety of transportation related issues, including:

- Dramatic increase of local road bonding in the affected townships
- Issues associated with winter maintenance during the freeze/thaw cycles

- Increased inspection activity (i.e. PSP Operation FracNET)
- Historic competition for drivers
- Significant business opportunity for those serving the industry, especially aggregate and bulk haulers. ■



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