Volume 9, Issue 1

TALKINGHEAVY

CFMA
CFMA's E-NEWSLETTER FOR HEAVY & HIGHWAY CONSTRUCTION

CFMA's 2012 Annual Conference & Exhibition Heavy & Highway Sessions

These Heavy & Highway sessions at CFMA's 2012 Annual Conference & Exhibition have been created with you in mind.

Catastrophic Incident Response – Protecting Your Bottom Line for Years to Come (*1.5 CPE credits)*

This session will demonstrate how to prepare and protect your company by understanding:

- Severe liability claims common to the Heavy & Highway industry
- Pre-planning critical steps and construction processes to mitigate the effects of a severe incident
- New technologies and capabilities for rapid response to incidents

Greg Stefan, VP – Risk Control Solutions
Arch Insurance Group

Brian Boggess, Project Engineer
S-E-A

Emerging Trends & Issues in Heavy & Highway Construction (*1.5 CPE credits)*

Topics in this session will include:

- GAP financing
- Design-build projects
- Joint ventures – planning and reporting
- DBE management and controls
- Diversification and self-performance of more work

Robert Davidson, Managing Partner
DGLF CPAs & Business Advisors

Strategic Planning for Heavy & Highway Contractors in Difficult Times (*2.5 CPE credits)*

In this session, attendees will discover:

- Financial benchmarks and goals
- Internal controls that make your company money
- New approaches to equipment management
- How to build better surety and banking relationships
- Acquisition strategies for buying troubled companies

Robert Davidson, Managing Partner
DGLF CPAs & Business Advisors

CEO Forum (*2 CPE credits)*

Topics in this forum will include: CEO expectations, expectations of the finance team, how CFOs can manage the downturn, strategic planning, and how the finance team can enhance the bottom line.

Moderator: Brian Cooney, CCIFP, VP-CFO
Barriere Construction Co., LLC

For more information or to register, visit *www.cfma.org/annual_conference*.

Take advantage of early bird registration by April 20 to save $100 off the full conference fee.

Call for Articles!

Do you have an idea for a future "Talking Heavy" article? Let us know!

Suggestions can be sent to Mike Molaro at mmolaro@cfma.org.

A New Way to Evaluate Performance: Part 2

In the first installment of this article, we examined the differences between the Federal Motor Carrier Safety Administration's (FMCSA) SafeStat and Compliance, Safety, Accountability (CSA) programs and looked under the hood to see what data is captured and how it's used to calculate motor carrier scores. To read Part 1, visit *www.cfma.org/cfma_newsletter_archive.*

In this second and final installment, we'll start with FMCSA intervention, discuss the effects on drivers and motor carriers, and explain how to utilize CSA as a proactive tool to drive safety initiatives.

Now that the CSA program is up and running, FMCSA will review the data to identify carriers for intervention.

Step 1: *Warning Letter.* The first step is to send a warning letter to a carrier whose score exceeds the percentage threshold in one or more Behavioral Analysis Safety Improvement Categories (BASICs): Unsafe Driving, Fatigued Driving, Crash Indicator (where the score must not exceed 65% for a General Carrier and 60% for Hazmat Carrier), Driver Fitness, Controlled Substances/Alcohol, Vehicle Maintenance, or Cargo-Related (where the score must not exceed 80% for a

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General Carrier and 75% for a Hazmat Carrier).

Carriers that receive a warning letter should conduct a detailed analysis to determine what remedial action to take. Violation data can be downloaded in an Excel spreadsheet format to identify causes or trends. Carriers should then develop and execute strategies to improve compliance. At this point, the motor carrier's trucks would be subject to increased roadside inspections, and FMCSA would monitor the carrier for improvement. A failure to rectify the situation will result in further action.

Step 2: ***Investigation conducted either onsite or off-site.*** In the case of an off-site investigation, the motor carrier would bring relevant data to a FMCSA office. An onsite investigation could be focused on one or two BASICSs or it could be a comprehensive investigation if the problems are broad in nature.

Step 3: ***Actions and sanctions.*** There are four types of actions that can be taken:

- A **Cooperative Safety Plan** is developed by the motor carrier based on a template from FMCSA.
- A **Notice of Violation** is an official written notice mandating the motor carrier to respond with a detailed plan to correct the deficiencies.
- A **Notice of Claim** is issued in cases where the regulatory violations are severe enough to warrant assessment and issuance of civil penalties.
- An **Out-of-Service Order** would result from egregious circumstances or a failure of the motor carrier to react to one or more preceding steps.

Currently, the only way a motor carrier receives a Safety Fitness Determination rating (Unsatisfactory, Conditional, or Satisfactory) is to undergo an onsite compliance review. However, FMCSA will replace that system with one that is tied to the carrier's BASIC scores. The rating would be updated monthly and based on all available safety data. The three possible ratings are: Continue to Operate, Marginal, or Unfit. Unfit would place the carrier out of service and marginal would require strong action to rectify the problems.

It is expected that FMCSA will publish a rule-making guide in 2012 outlining this process.

Effects on Drivers

So far, we've talked about how CSA affects motor carriers. What about the drivers? Any driver-related activity (i.e., tickets and inspection violations) is recorded against the motor carrier. Enforcement action, if any, is taken against the motor carrier.

However, CSA also monitors the safety performance of individual drivers for a rolling three-year period (five years for crash data). Violations and points assessed become part of the driver's record. The FMCSA Driver Pre-Employment Screening Program allows prospective employers access to an applicant's CSA record. There is an annual subscription fee plus $10 per record, and the driver must authorize access. This program cannot be used to check the record of drivers whom a motor carrier currently employs.

Only tickets and violations that are recorded on a roadside inspection form submitted to FMCSA will be recorded on the driver's CSA record. The driver's CSA record does not reflect tickets received in his/her personal vehicle. Violations and tickets will be scored and recorded, but FMCSA will not take any action against individual drivers as it does with motor carriers. However, there is a possibility that this could become part of the program in the future. This information is separate from a driver's Motor Vehicle Record (MVR) and thus, a motor carrier should still run an MVR check on prospective drivers.

CSA is now in operation – and it's changing the way the industry looks at safety-related information. A motor carrier's CSA scores can be accessed by anyone; this information is public and available on the Web. It's a likely bet that your insurance company is paying attention to your BASIC scores. You can count on the fact that plaintiffs' attorneys will be using the information to further post-accident lawsuits. Here is a sample comment from a truck injury lawyer's blog: "It is anticipated that 8% of all carriers (about 50,000) will receive warning letters in the next few months… This means almost one in every 10 trucks on the roadway is being operated by a trucking company that is unsafe in some fashion."

CSA also offers prospective employers a look at information that they previously didn't have access to: A driver's performance report while employed at previous carriers. Every piece of information that employers can gather will be beneficial to the hiring process.

How should you approach the information that CSA brings to the table? To start, monitor your BASIC scores and verify that the data is correct. If that's the only action you take, then it's a case of too little, too late. After each roadside inspection, drivers should send a copy of the report. The motor carrier is required to sign off on repairs made to defective equipment. Remember, this is the raw data that's driving your CSA scores. You don't have to wait for your scores to be impacted. You don't have to wait to download information from the CSA Website. You can analyze the reports as you receive them and take action at the individual driver level. Also, look for trends that point to certain problem areas.

Determining the Root Cause

Keep in mind that the violation on the inspection form only speaks to the symptom, not necessarily the underlying cause. For example, let's say a truck is stopped and the inspector notes low tread on a trailer tire. The first response is probably to assume that the driver did a poor pre-trip inspection. Remedial action against the driver is taken, but is the problem solved? It takes time for tire tread to wear down. If the tread was low for the driver who got caught, then it was likely low for the previous driver, and maybe even the one before that. What is your company's policy for trailer inspections? It's required annually, but that's a long time for a trailer to be out of sight of your mechanical forces. Certainly, the driver is a part of the process and needs to be held accountable, but the goal is to drill down to the root cause. By doing this, you will ultimately keep your BASIC scores low.

Overall, the CSA methodology provides more usable information than its predecessor. The seven BASICs arrange the information into groups that make it possible to target specific problem areas. But, it is more important than ever that motor carriers take proactive action to prevent their scores from rising.

This industry is becoming more complex and dependent on technology and data management. But, in the end, a motor carrier needs common-sense approaches to identifying root causes and implementing strategies to prevent them from becoming larger problems.

Learn more about CSA by watching CFMA's KnowledgeNOW Webinar, "Compliance. Safety. Accountability: FMCSA's System for Monitoring Carriers," available for viewing at *www.prolibraries.com/cfma.*

Web Resources:

Pre-Employment Screening Program
www.psp.fmcsa.dot.gov/Pages/default.aspx

CSA Most Frequently Asked Questions
www.csa2010.com/articles/CSA2010_Questions.htm#1

CSA Home Page
csa.fmcsa.dot.gov/default.aspx

Challenge Safety Data
dataqs.fmcsa.dot.gov/login.asp

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Public Private Partnerships: Alternative Project Delivery for America's Failing Infrastructure

The fiscal challenges that face all levels of government against a backdrop of failing infrastructure in the U.S. call for innovative methods of project funding. The changing economic environment leaves core infrastructure in great need of revitalization. Demographic changes will require greater investment in transit as more people migrate back to urban environments.

Public Private Partnerships (P3) or other forms of Alternative Project Delivery will be at the core of keeping the country competitive through private investment in transportation and social infrastructure, leveraging public sector resources and improving underperforming assets. Private investment is keen on opportunities in the U.S., but lack of experience and low deal flow adds to the complexity of these deals.

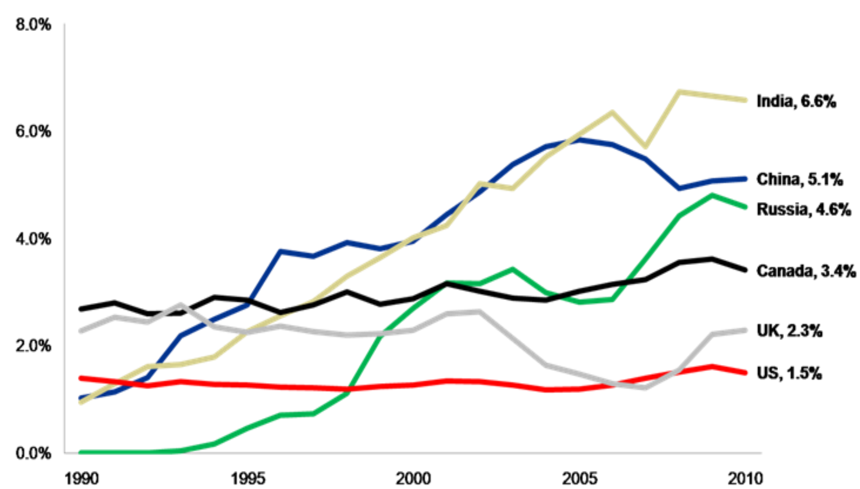
Allowing for greater private sector participation in the delivery and financing of public projects and service provisions, P3 offers the opportunity to transfer certain risks to a private entity that may be better suited to finance or manage the asset. By increasing collaboration among public and private stakeholders, P3 can yield cost efficiency, greater leverage of financial resources by the public sector, and high-quality projects driven by performance-based compensation models.

The last report card delivered by the American Society of Civil Engineers regarding the quality of infrastructure in the U.S. was released in 2009. At that time, grading for 15 types of significant infrastructure earned a cumulative grade of "D." The necessary five-year spending total to bring the condition of our nation's infrastructure to "good" is estimated at $2.2 trillion.[1]

A robust economy relies on strong infrastructure. As a percentage of GDP, the U.S. lags behind our global competitors by a significant margin (see exhibit below).

What does the migration to P3 mean for Heavy & Highway civil contractors? In one word: Jobs. The uptick of private equity interest in U.S. infrastructure is gaining the attention of income-strapped state authorities. The states looking to private sources are Texas, Virginia, and Florida. Currently, 31 states have passed

Global Infrastructure Spend as a Percentage of GDP[2]



legislation enabling private investment in highways, roads, and bridges. Twenty-one have passed similar legislation for transit. While not the answer for every project, P3 is a tool that can help get necessary projects into production.

Although the federal government has been reviewing the value of P3, it is more likely to succeed at the state level. The dilemma here is that each state is unique in its approach to the delivery model, which makes it difficult to migrate through various processes. The federal government can be a catalyst for P3 via oversight by the Federal Highway Administration (FHA) or in loan programs such as the *Transportation Infrastructure Finance and Innovation Act (*TIFIA); still, states will be the drivers.

States that have a sound legal basis for P3 will be the most successful. The proposal must clearly support the public good through proper communication of its sense of purpose. There are a number of financing options available for P3, and they do not all rely upon tolling to succeed. Financing can be accomplished via a combination of bank loans, tax-exempt bonds (PABs), and federal loans such as TIFIA – all of which offer attractive terms. Rather than the traditional Design-Bid-Build method of delivery, P3 requires a more streamlined approach such as design-build or design, bid, finance, operate, maintain. Often, a lease or concession agreement is put in place for asset operation over several years.

Contractors have expanded their skill sets in recent years to take advantage of this procurement strategy by creating subsidiaries to address equity, design, and operations. Key drivers for construction firms are to understand the value of early negotiation with a team including public and private stakeholders vs. the traditional hard bid approach. The team must offer transparent, measurable value by delivering high-quality, sustainable assets by aligning long-term use to financial and operational goals. If the general public understands the value, then support can be gained.

The basic goal for the construction team remains the same. Deliver a project on time and on budget. Contracts can be complicated and are most effective when risk is transferred though the party best able to manage vs. placing the sole responsibility to the public sector for risk mitigation. Contractors that have the tools in place to support the overall project goals will be well suited to win in this model. The turnkey nature of asset performance over time will be determined by the private sector in terms of innovation and operational efficiency. Contractors that understand the value of design-build and can transfer value into operations and maintenance will also be valued by the concession teams.

P3 or other forms of alternative project delivery have been utilized outside of the U.S. for many years. This phenomenon has increased global competition for P3 capable contractors. Sophisticated U.S. contractors are improving their capabilities to compete on a global platform.

The demands of this model will require increased cross-industry partnerships, which are rapidly evolving. Global financiers and contractors are in the best position to capture emerging opportunities.

A successful P3 operation is based upon core business execution and the ability to build the right strategic partnerships.

- **Drive best value, not lowest bid:** Align procurement, bid, and delivery of critical P3 construction elements with long-term project goals.
- **Secure broad market contacts:** Leverage advisory positions to drive additional deal flow and alert GC management with cutting-edge market information.
- **Form strong relationships:** Expand interaction with financial and insurance markets to ensure competitive positioning during project organization.
- **Manage expanding risk profile:** Identify, assess, and quantify the impact of long-term, life cycle risks unique to contractors in the P3 space.
- **Maintain a long-term view:** Understand P3 is a long-term investment and work to build core business support in maximizing returns under this model.

Alternative Project Delivery, including P3, will continue to evolve in the U.S., as our vitality as a nation depends on strong infrastructure. Contractors that are well versed in the model and are ready to partner with public and private stakeholders with innovative solutions will help drive the process and create additional income for their companies.

Learn more about P3 by watching CFMA's KnowledgeNOW Webinar, "Public-Private Partnerships (P3s) and the Building and Upgrading, of American Infrastructure," available for viewing at *www.prolibraries.com/cfma.*

Endnotes:

1) **2009 Report Card for America's Infrastructure, *www.asce.org/reportcard***

2) **World Bank, *www.worldbank.org/***

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